AGENDA

ALISO VIEJO CITY COUNCIL
WEDNESDAY, MAY 04, 2022
7:00 PM REGULAR MEETING

City Hall
Council Chambers
12 Journey
Aliso Viejo, CA

Mayor Ross Chun
Mayor Pro Tem Richard W. Hurt
Councilmember Tiffany Ackley
Councilmember David C. Harrington
Councilmember Mike Munzing

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 September 16, 2021, Assembly Bill 361 (AB 361) was signed by Governor Newsom, to allow for the City Council to attend City Council meetings telephonically and for the public to participate in the City Council meeting by electronic means.

Given the health risks associated with COVID-19, state and local officials are recommending measures to promote social distancing; therefore, the City of Aliso Viejo will not have the Council Chambers open to the public for this meeting. Members of the public may access the meeting live using any of the following sources:

- Cox Communications Channel 851
- AT&T U-Verse Channel 99
- Online at www.avcity.org
- Online at https://attendee.gotowebinar.com/register/4034205342036439311

Public comments may be submitted by calling (949) 425-2509 to leave a recorded message by 4:00 pm on the day of the meeting or via email to Community-Input@avcity.org. Alternatively, public comments may be submitted by logging onto the meeting through this link and using the “Raise Hand” feature: https://attendee.gotowebinar.com/register/4034205342036439311. Comments are limited to three minutes each.

WELCOME to the City of Aliso Viejo City Council meeting. Those persons wishing to address the City Council are requested to complete and submit to the City Clerk a "Request to Address City Council" form available at the entrance to the City Council Chambers. Speakers will be called at the appropriate time as their interested matter is heard. COMMENTS WILL BE LIMITED TO THREE MINUTES PER SPEAKER. Council proceedings are recorded.

It is the City's intention to comply with the Americans with Disabilities Act (ADA). If you need special assistance to participate in the meeting, the City will make reasonable arrangements to ensure accessibility and/or accommodations. [28 CFR 35.102-35.104 ADA Title II] Please contact the City Clerk's Office at (949) 425-2505 at least 48 hours prior to the meeting.

Regular meetings of the City Council are held on the first and third Wednesday of the month at the City Hall Council Chambers, 12 Journey, Aliso Viejo. Copies of the agenda are available in the lobby at City Hall on the Thursday preceding a regularly scheduled City Council meeting. All communications received by the City regarding an agenda item have been included in the agenda materials. Supplemental documents relating to specific agenda items, including communications received after agenda delivery, are presented at the dais and in the Public Copy agenda binder at the time of the meeting. Supplemental documents are also available for review in the City Clerk's office, 12 Journey, Aliso Viejo. For more information, please contact City Hall at (949) 425-2505.

This meeting will be broadcast live on Cox Communications Channel 851, AT&T U-Verse Channel 99 and the City's website. By attending the City Council Meeting, you are giving your permission to be televised. The Council Meetings are rebroadcast on Wednesday at 7:00 p.m. on Cox Communications Channel 851, AT&T U-Verse Channel 99, and can be viewed on the internet at www.avcity.org.

DAVID A. DOYLE	SCOTT C. SMITH	MITZI ORTIZ
CITY MANAGER	CITY ATTORNEY	CITY CLERK

PLEASE SILENCE ALL CELL PHONES AND OTHER ELECTRONIC EQUIPMENT WHILE CITY COUNCIL IS IN SESSION

CALL TO ORDER: CONVENE REGULAR MEETING

ROLL CALL

PLEDGE OF ALLEGIANCE:

1. SPECIAL PRESENTATIONS:

1.1. PROCLAMATION - MENTAL HEALTH AWARENESS MONTH
Proclamation

1.2. PROCLAMATION - HARVEY MILK DAY
Proclamation

1.3. PROCLAMATION - DROWNING PREVENTION AWARENESS
Proclamation

1.4. TRUSTED PARTNER RECOGNITIONS - ORANGE COUNTY FIRE AUTHORITY AND ORANGE COUNTY SHERIFF'S DEPARTMENT
Certificate of Recognition - OCFA
Certificate of Recognition - OCSD

1.5. INTRODUCTION OF FINANCIAL SERVICES DIRECTOR ANN EIFERT

2. ADDITIONS, DELETIONS, REORDERING TO THE AGENDA:

3. COMMUNITY INPUT:

Members of the public wishing to address the City Council can submit public comments by calling (949) 425-2509 to leave a recorded by 4:00 pm on the day of the meeting or via email to Community-Input@avcity.org. Written comments will be read into the record and recorded messages will be aired during the meeting. Alternatively, public comments may be submitted by logging onto the meeting through this link and using the "Raise Hand" feature: https://attendee.gotowebinar.com/register/4034205342036439311. Comments are limited to three (3) minutes each. In compliance with the Brown Act, no discussion or action may be taken on comments received at this time, except the City Council may briefly respond to statements made or questions posed.

4. CONSENT CALENDAR:

All matters listed on the Consent Calendar will be acted upon by one vote unless members of the City Council, or staff request a matter to be discussed and/or removed from the Consent Calendar for separate action. Items removed from the Consent Calendar will be discussed and voted upon immediately following City Council action on the remainder of the Consent Calendar.

4.1. WAIVE THE READING OF ALL ORDINANCES AND RESOLUTIONS
Recommended Action: Approve the reading by title only of all ordinances and resolutions wherein the titles appear on the public agenda; said titles shall be determined to have been read by title, and further reading is waived.

4.2. RESOLUTION EXTENSION AUTHORIZING VIRTUAL CITY COUNCIL MEETINGS PURSUANT TO ASSEMBLY BILL 361
Recommended Action: Move to reconfirm findings under Assembly Bill 361 and extend Resolution No. 2021-27 to continue virtual City Council meetings.
Staff Report
Attachment 1 - Resolution No. 2021-27

4.3. APPROVAL OF MINUTES
Recommended Action: Approve the Minutes as submitted for the April 20, 2022 Special Meeting and the April 20, 2022 Regular Meeting.
Draft Minutes - April 20, 2022 Special Meeting
Draft Minutes - April 20, 2022 Regular Meeting

4.4. SECOND READING AND ADOPTION OF AN ORDINANCE RELATING TO URBAN LOT SPLITS AND OUTDOOR DINING

Recommended Action: Conduct second reading and adopt Ordinance entitled: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, ADDING SECTIONS 14.28 URBAN LOT SPLITS AND 15.14.210 TWO UNIT PROJECTS AND AMENDING SECTION 15.22.190 OUTDOOR DINING AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA.

Staff Report
Attachment 1 - Ordinance

4.5. SECOND READING AND ADOPTION OF AN ORDINANCE RELATING TO AFFORDABLE HOUSING UNIT REPORTING

Recommended Action: Conduct second reading and adopt Ordinance entitled: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA ADDING CHAPTER 3.18 TO THE ALISO VIEJO MUNICIPAL CODE REGARDING AFFORDABLE HOUSING UNIT REPORTING AND FINDING THE ORDINANCE NOT SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

Staff Report
Attachment 1 - Ordinance

4.6. ACCOUNTS PAYABLE

Recommended Action: Ratify accounts payable checks and electronic funds transfers issued April 14, 2022, in the amount of $1,010,104.82.

Staff Report
Attachment 1 - Accounts Payable Report

4.7. PROFESSIONAL SERVICES AGREEMENT FOR OUT-OF-SCHOOL TIME PROGRAMS WITH THE BOYS & GIRLS CLUBS OF CAPISTRANO VALLEY

Recommended Action: Approve and authorize the City Manager to execute a Professional Services Agreement with the Boys and Girls Clubs of Capistrano Valley for out-of-school time programs.

Staff Report
Attachment 1 - Agreement

4.8. FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT WITH WESTAMERICA COMMUNICATIONS, INC. FOR PRINTING SERVICES

Recommended Action: Approve and authorize the City Manager to execute the First Amendment to the Professional Services Agreement with Westamerica Communications, Inc. for printing services for the “Aliso Viejo Community Connection” quarterly brochure.

Staff Report
Attachment 1 - Agreement Amendment

4.9. PROFESSIONAL SERVICES AGREEMENT WITH CABCO YELLOW, INC. FOR SENIOR TRANSPORTATION SERVICES

Recommended Action: Approve and authorize the City Manager to execute the Professional Services Agreement with Cabco Yellow, Inc., DBA California Yellow Cab for senior transportation services under the Senior Mobility Program.

Staff Report
Attachment 1 - Agreement

4.10. PROFESSIONAL SERVICES AGREEMENT WITH MICHAEL JUE FOR GRAPHIC DESIGN SERVICES

Recommended Action: Approve and authorize the City Manager to execute a Professional Services Agreement with Michael Jue for graphic design services.

Staff Report
Attachment 1 - Agreement

4.11. CONTRACT AWARD TO CT CONSTRUCTION SERVICES, INC. FOR INSTALLATION OF CONCRETE SOUND BARRIER AT ALISO VIEJO FARM

Recommended Action:

1. Award a contract in the amount of $83,237.42 to CT Construction Services, Inc. for the Sound Barrier Wall project;
2. Authorize the City Manager to execute a contract with CT Construction Services, Inc.;
3. Authorize City staff to make total compensation to CT Construction Services, Inc. up to $83,237.42 plus $8,324 (10% of the contract amount) to allow for contingencies, totaling $91,561.42; and
4. Appropriate $55,000 from General Fund Reserves.

Staff Report
Attachment 1 - Contract

5. PUBLIC HEARINGS:

5.1. ADOPTION OF THE FISCAL YEAR 2022-2023 ANNUAL ACTION PLAN FOR EXPENDITURES OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS

Recommended Action:

1. Conduct a public hearing;
2. Declare the City Council finds the FY 2022-2023 Annual Action Plan is not subject to the California Environmental Quality Act (CEQA) as the activity is not a project defined in Section 15378(b)(5) of the state CEQA Guidelines;
3. Approve and adopt the FY 2022-2023 Annual Action Plan for the use of Community Development Block Grant (CDBG) funds;
4. Authorize the City Manager to submit the Action Plan to the U.S. Department of Housing and Urban Development (HUD), which executes the HUD contract, and authorize the City Manager to submit all related documents with the implementation of the Action Plan.

Staff Report
Attachment 1 - Annual Action Plan
Attachment 2 - Presentation

6. DISCUSSION:

6.1. AMENDMENT TO CITY'S PUBLIC AGENCY RETIREMENT SYSTEM (PARS) DEFINED CONTRIBUTION PLAN TO COMPLY WITH INTERNAL REVENUE SERVICE (IRS) REGULATIONS

Recommended Action: Adopt a Resolution approving an amendment to the City's PARS Plan to:

1. Conform the contribution rate to the City Council's intent at the time the plan was adopted;
2. Correct Schedule A regarding employee contributions to the Plan; and
3. Eliminate Tier II of the Plan disallowing any future contributions.

Staff Report
Attachment 1 - Resolution and Amendment
Attachment 2 - Amendment w/ Schedule A

7. CITY MANAGER' S REPORT:

8. ANNOUNCEMENTS / COUNCIL COMMENTS / COMMITTEE UPDATES:

9. ADJOURNMENT:

Adjourn to June 1, 2022. The regularly scheduled City Council meeting of May 18, 2022 has been cancelled.

Proclamation

Mental Health Awareness Month
May 2022

WHEREAS, the month of May has been declared National Mental Health Awareness Month; and

WHEREAS, according to the U.S. Surgeon General, mental health is fundamental to health and indispensable to personal well-being, family, and interpersonal relationships; and

WHEREAS, one in five Americans will face mental health challenges in a given year, regardless of age, gender, race, ethnicity, religion, or economic status; and

WHEREAS, there are widespread misunderstandings and discrimination concerning mental health that can be eliminated by recognizing that mental health challenges are real, common, and treatable; and

WHEREAS, National Mental Health Awareness Month is a time for communities to acknowledge the importance of mental health and take action to ensure that individuals facing mental health challenges have access to the care, treatment, and prevention services they need.

NOW THEREFORE, BE IT RESOLVED, that the Aliso Viejo City Council does hereby proclaim May 2022 as Mental Health Awareness Month in the City of Aliso Viejo.

Dated this 4th day of May, 2022

Ross Chun, Mayor

Proclamation

Harvey Milk Day – May 22, 2022

WHEREAS, San Francisco Supervisor Harvey Milk is remembered as a prominent figure in the Lesbian, Gay, Bisexual, and Transgender civil rights movement; and

WHEREAS, Harvey Milk was a tireless advocate of fairness for all Americans, whose agenda extended beyond gay rights to encompass support for labor, tenants, and seniors; and

WHEREAS, tragically, Harvey Milk was assassinated on November 27, 1978, sparking a march of an estimated 30,000 people through the streets of San Francisco; and

WHEREAS, Harvey Milk's example reminds us of the importance of full equality for all, including equal rights in matters of employment, housing, and public accommodation as it pertains to sexual orientation, gender identity, and expressions thereof; and

WHEREAS, the California legislature established Harvey Milk Day in 2009 to honor the life and accomplishments of Harvey Milk; and

WHEREAS, although California has been a leader in advancing the civil rights of its LGBT residents, further progress is still needed.

NOW, THEREFORE BE IT RESOLVED that the Aliso Viejo City Council does hereby proclaim May 22, 2022, as Harvey Milk Day and urges residents to be vigilant in advocating for the rights and dignity of all human beings.

Dated this 4th day of May, 2022

Ross Chun, Mayor

Proclamation

Drowning Prevention Awareness

WHEREAS, drowning is the leading cause of death and disability in California for children under five years of age; and

WHEREAS, for every child who dies from drowning, another eight receive emergency care for non-fatal submersion injuries; and

WHEREAS, fatal and non-fatal drowning is a silent event, occurring in as little as two inches of water, including inflatable swimming pools, spas, bathtubs, the ocean, and any other body of water; and

WHEREAS, this year's water safety campaigns "Always Watch the Water" and "Never Swim Alone" give in-depth information to residents on ways to prevent drowning; and

WHEREAS, the initiatives set forth in the "ABCs of Water Safety" program will increase public awareness regarding proper procedures to prevent this needless tragedy; and

WHEREAS, the City of Aliso Viejo, in partnership with the Orange County Fire Authority, will be taking this opportunity to increase public awareness about drowning prevention through a diverse community outreach campaign;

NOW, THEREFORE, BE IT RESOLVED, that the Aliso Viejo City Council does hereby proclaim its participation in the "Always Watch the Water" and "Never Swim Alone" 2022 campaigns that run from May through August by encouraging all residents, schools, recreational facilities, businesses, and homeowner associations to become partners in preparedness by increasing their knowledge of proper safety measures in drowning prevention.

Dated this 4th day of May, 2022

Ross Chun, Mayor

Certificate of Recognition

Presented to

ORANGE COUNTY SHERIFF'S DEPARTMENT

Trusted Partner Supporting the City of Aliso Viejo

May 2022

Presented this 4th day of May, 2022

Ross Chun, Mayor

Certificate of Recognition

Presented to

ORANGE COUNTY FIRE AUTHORITY

Trusted Partner Supporting the City of Aliso Viejo

May 2022

Presented this 4th day of May, 2022

Ross Chun, Mayor

City of Aliso Viejo
AGENDA ITEM

DATE: May 4, 2022

TO: Mayor and City Council

FROM: Mitzi Ortiz, Director of Government Services

SUBJECT: RESOLUTION EXTENSION AUTHORIZING VIRTUAL CITY COUNCIL MEETINGS PURSUANT TO ASSEMBLY BILL 361

Recommended Action:

Move to reconfirm findings under Assembly Bill 361 and extend Resolution No. 2021-27 to continue virtual City Council meetings.

Fiscal Impact:

None.

Background:

Assembly Bill 361 ("AB 361"), effective October 1, 2021, waives certain provisions of the Ralph M. Brown Act and allows legislative bodies to meet virtually until January 1, 2024, provided there is a state of emergency and either:

1. state or local officials have imposed or recommended measures to promote social distancing; or
2. the legislative body determines by majority vote that meeting in person would present imminent risks to the health and safety of attendees.

Under AB 361, the City is not required to allow public access at teleconference locations; however, the City must provide access to meetings via a call-in option or internet-based service option so that members of the public may address the City Council in real time. Additionally, every 30 days the City Council must reconsider the state of emergency and make the determination to continue meeting virtually in accordance with AB 361.

Discussion:

On October 20, 2021, the City Council adopted Resolution No. 2021-27 authorizing virtual City Council meetings under AB 361, having found and determined that (1) a state of emergency related to COVID-19 is currently in effect; (2) state and local officials have

recommended measures to promote social distancing in connection with COVID-19; and (3) due to the COVID-19 emergency, meeting in person would present imminent risks to the health and safety of attendees. At subsequent meetings, the City Council has reconfirmed the findings and extended the resolution pursuant to AB 361.

Staff will agendize this matter for consideration at each City Council meeting until such time as the state of emergency has been terminated or the City Council determines that conditions no longer exist to prevent meeting safely in person.

Staff recommends that the City Council reconfirm the findings in Resolution No. 2021-27 continue to exist and approve the extension of the resolution.

Attachment:

1. Resolution No. 2021-27

RESOLUTION NO. 2021-27

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, AUTHORIZING VIRTUAL CITY COUNCIL MEETINGS PURSUANT TO ASSEMBLY BILL 361

WHEREAS, the Aliso Viejo City Council ("Council") is committed to preserving and nurturing public access and participation in meetings of the Council; and

WHEREAS, with the exception of closed sessions, all meetings of the Council are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend and participate in the Council's meetings; and

WHEREAS, starting in March 2020, in response to the spread of COVID-19 in the State of California, the Governor issued a number of executive orders aimed at containing theCOVID-19 virus; and

WHEREAS, among other things, these orders waived certain requirements of the BrownAct to allow legislative bodies to meet virtually; and

WHEREAS, pursuant to the Governor's executive orders, the Council has been holding virtual meetings during the pandemic in the interest of protecting the health and safety ofthe public, staff, and Councilmembers; and

WHEREAS, the Governor's executive order related to the suspension of certain provisions of the Brown Act expires on September 30, 2021; and

WHEREAS, on September 16, 2021 the Governor signed Assembly Bill 361 (in effect asof October 1, 2021 – Government Code Section 54953(e)), which allows legislative bodies to meet virtually provided there is a state of emergency, and either (1) state or local officials have imposed or recommended measures to promote social distancing; or (2) the legislative body determines by majority vote that meeting in person would presentimminent risks to the health and safety of attendees; and

WHEREAS, such conditions now exist in Orange County, specifically, a state of emergency has been proclaimed related to COVID-19, state and local officials are recommending measures to promote social distancing, and because of the ongoing threatof COVID-19, meeting in person would present imminent risks to the health and safety of attendees;

NOW, THEREFORE, BE IT RESOLVED BY THE ALISO VIEJO CITY COUNCIL AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are true and correct and areincorporated into this Resolution by this reference.

Section 2. Remote Teleconference Meetings. Consistent with the provisions of Government Code Section 54953(e), the Council finds and determines that (1) a state ofemergency related to COVID-19 is currently in effect; (2) state and local officials have recommended measures to promote social distancing in connection with COVID-19; and (3) due to the COVID-19 emergency, meeting in person would present imminent risks to the health and safety of attendees. Based on such facts, findings and determinations, the Council authorizes staff to conduct remote teleconference meetings of the Council under the provisions of Government Code Section 54953(e).

Section 3. Effective Date of Resolution. This Resolution shall take effect upon adoption and shall be effective for 30 days unless earlier extended by a majority vote of the Council in accordance with Section 4 of this Resolution.

Section 4. Extension by Motion. The Council may extend the application of this Resolution by motion and majority vote by up to 30 days at a time, provided that it makes all necessary findings consistent with and pursuant to the requirements of Section 54953(e)(3).

PASSED, APPROVED AND ADOPTED this 20th day of October, 2021.

Tiffany Ackley
Mayor

APPROVED AS TO FORM:

Scott C. Smith
City Attorney

ATTEST:

Mitzi Ortiz, MMC
City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF ALISO VIEJO)

I, MITZI ORTIZ, City Clerk of the City of Aliso Viejo, California, DO HEREBY CERTIFY that foregoing Resolution No. 2021-27 was duly passed and adopted by the City Council of the City of Aliso Viejo at their regular meeting held on the 20th day of October 2021, by the following roll call vote, to wit:

AYES: Mayor Ackley, Mayor Pro Tem Chun, Councilmembers Harrington, Hurt and Munzing

NOES: None

ABSENT: None

MITZI ORTIZ, MMC
CITY CLERK

(SEAL)

CITY OF ALISO VIEJO
CITY COUNCIL MINUTES
SPECIAL MEETING
April 20, 2022, 6:00 P.M.
Council Chambers, City Hall, 12 Journey
Aliso Viejo, California

City Council conducted this meeting in accordance with California Government Code Section 54953(e)(2) and COVID-19 pandemic protocols.

CALL TO ORDER: Mayor Chun called the Special Meeting of the City Council of the City of Aliso Viejo to order 6:05 p.m.

ROLL CALL:

PRESENT: MAYOR ROSS CHUN *(via teleconference)*
MAYOR PRO TEM RICHARD HURT *(via teleconference)*
COUNCILMEMBER TIFFANY ACKLEY *(via teleconference)*
COUNCILMEMBER DAVID C. HARRINGTON *(via teleconference)*
COUNCILMEMBER MIKE MUNZING *(via teleconference)*

ABSENT: NONE

STAFF PRESENT: DAVID A. DOYLE, CITY MANAGER
SCOTT C. SMITH, CITY ATTORNEY
MITZI ORTIZ, CITY CLERK
SHAUN PELLETIER, PUBLIC WORKS DIRECTOR
ISAAC AZIZ, INFORMATION TECHNOLOGY MANAGER
CAPT. SCOTT MERRILL, CHIEF OF POLICE SERVICES

STUDY SESSION:

BICYCLE TRACKS OVERVIEW

City Manager David Doyle introduced Public Works Director Shaun Pelletier. Mr. Pelletier provided a brief overview and introduced Carlos Ortiz (ADVANTEC Consulting Engineers, Inc.) who provided additional information on bicycle facilities and cycle tracks. Staff and consultant responded to questions regarding e-bikes, line of sight concerns, striping treatment options, bicycle counts, vehicle speed limits, grant funding, cycling deterrents, and pop-up bike lanes. Councilmembers commented on the matter.

ADJOURNMENT: Mayor Chun adjourned the meeting at 7:04 p.m. to the April 20, 2022 Regular City Council Meeting.

Respectfully submitted:

_____
MITZI ORTIZ, MMC
CITY CLERK

Approved by:

_____
ROSS CHUN
MAYOR

DRAFT

CITY OF ALISO VIEJO
CITY COUNCIL MINUTES
REGULAR MEETING
April 20, 2022, 7:00 P.M.
Council Chambers, City Hall, 12 Journey
Aliso Viejo, California

City Council conducted this meeting in accordance with California Government Code Section 54953(e)(2) and COVID-19 pandemic protocols.

CALL TO ORDER: Mayor Chun called the Regular Meeting of the City Council of the City of Aliso Viejo to order at 7:08 p.m.

ROLL CALL:

PRESENT: MAYOR ROSS CHUN *(via teleconference)*
MAYOR PRO TEM RICHARD HURT *(via teleconference)*
COUNCILMEMBER TIFFANY ACKLEY *(via teleconference)*
COUNCILMEMBER DAVID C. HARRINGTON *(via teleconference)*
COUNCILMEMBER MIKE MUNZING *(via teleconference)*

ABSENT: NONE

STAFF PRESENT: DAVID A. DOYLE, CITY MANAGER
SCOTT C. SMITH, CITY ATTORNEY
TODD LEISHMAN, DEPUTY CITY ATTORNEY
MITZI ORTIZ, CITY CLERK
SHAUN PELLETIER, PUBLIC WORKS DIRECTOR
LIZZY MENDOZA, RECREATION & COMMUNITY SERVICES MANAGER
ISAAC AZIZ, INFORMATION TECHNOLOGY MANAGER
SHERYL MARIANO, ACCOUNTING SUPERVISOR
CAPT. SCOTT MERRILL, CHIEF OF POLICE SERVICES

PLEDGE OF ALLEGIANCE: Councilmember Harrington led the pledge of allegiance.

1. SPECIAL PRESENTATIONS:

1.1. FEATURED BUSINESS OF THE MONTH - PACIFIC LIFE INSURANCE

Mayor Chun introduced the video and presented the certificate of recognition to Senior Vice President Tennyson Oyler. Mr. Oyler expressed his appreciation.

1.2. TRUSTED PARTNER RECOGNITIONS - CAPISTRANO UNIFIED SCHOOL DISTRICT AND BOYS & GIRLS CLUB OF CAPISTRANO VALLEY

Mayor Chun presented the certificates of recognition to Aliso Niguel High School Principal Michael Hatcher, Don Juan Avila Middle School Principal Amy Varrichio, Aliso Viejo Middle School Principal George Duarte, and Boys & Girls Club of Capistrano Valley Associate Executive Director Nicole Watson. Recipients expressed their appreciation. Ms. Watson introduced Youth of the Year Xitlalic Rojas. Ms. Rojas provided a presentation on her experience with the Boys & Girls Club.

1.3. PROCLAMATION - FAIR HOUSING MONTH

Mayor Chun presented the proclamation to Fair Housing Foundation Community Engagement Liaison Martha Torres. Ms. Torres expressed her appreciation and provided information on services available to the community.

1.4. PROCLAMATION - DMV / DONATE LIFE MONTH

Mayor Chun introduced Councilmember Munzing, who commented on the importance of tissue, eye, and organ donation. Mayor Chun presented the proclamation to OneLegacy Ambassador Angela Betts. Ms. Betts expressed her appreciation and commented on the importance of the designation.

2. ADDITIONS, DELETIONS, REORDERING TO THE AGENDA:

None.

3. COMMUNITY INPUT:

1. Marlene Lewis requested changes to the reporting procedures for barking dogs.
2. Angel Fernandez expressed concern with recreational vehicle parking on city streets.
3. Jonathan Light urged support of the Energy Innovation and Carbon Dividend Act.
4. Max Wakeman urged support of the Energy Innovation and Carbon Dividend Act.

4. CONSENT CALENDAR:

Unless otherwise indicated below, the following pertains to all items on the Consent Calendar.

Motion: Mayor Pro Tem Hurt moved and Councilmember Harrington seconded to approve the recommended actions. Motion carried 5-0.

4.1. WAIVE THE READING OF ALL ORDINANCES AND RESOLUTIONS

DRAFT

Recommended Action: Approve the reading by title only of all ordinances and resolutions wherein the titles appear on the public agenda; said titles shall be determined to have been read by title, and further reading is waived.

4.2. RESOLUTION EXTENSION AUTHORIZING VIRTUAL CITY COUNCIL MEETINGS PURSUANT TO ASSEMBLY BILL 361

Recommended Action: Move to reconfirm findings under Assembly Bill 361 and extend Resolution No. 2021-27 to continue virtual City Council meetings.

4.3. APPROVAL OF MINUTES

Recommended Action: Approve the Minutes as submitted for the March 2, 2022 Special Meeting and the March 2, 2022 Regular Meeting.

4.4. ACCOUNTS PAYABLE

Recommended Action:

1. Ratify accounts payable checks and electronic funds transfers issued March 10, 2022, in the amount of $790,050.75;
2. Ratify accounts payable checks and electronic funds transfers issued March 17, 2022, in the amount of $354,268.22; and
3. Ratify accounts payable checks and electronic funds transfers issued March 31, 2022, in the amount of $398,414.80.

4.5. TREASURER'S STATEMENTS – JANUARY AND FEBRUARY 2022

Recommended Action: Approve January and February 2022 Treasurer's Statements

4.6. AWARD CONTRACT TO RJ NOBLE COMPANY, INC. FOR THE ALISO CREEK ROAD REHABILITATION PROJECT – WOLVERINE TO ALICIA PARKWAY

Recommended Action:

1. Approve Contract Documents, Specifications, and Plans for the Aliso Creek Road Rehabilitation Project – Wolverine to Alicia Parkway;
2. Award a contract in the amount of $1,423,585 to RJ Noble Company, Inc. as the lowest responsible bidder for the Aliso Creek Road Rehabilitation Project – Wolverine to Alicia Parkway;
3. Authorize the City Manager to execute a contract with RJ Noble Company, Inc.;
4. Authorize City staff to make total compensation to RJ Noble Company, Inc. up to $1,423,585 plus $142,358.50 (10% of the contract amount) to allow for contingencies, totaling $1,565,943.50; and
5. Declare this project categorically exempt from the California Environmental Quality Act (CEQA) process Per Title 14 of the California Code of Regulations, Chapter 3, Article 19, Section 15301 (Class 1: Existing Facilities).

5. PUBLIC HEARINGS:

5.1. ADOPTION OF AN URGENCY ORDINANCE AND INITIATION OF CODE AMENDMENT TO ADD SECTIONS RELATED TO URBAN LOT SPLITS AND OUTDOOR DINING

City Manager David Doyle introduced City Attorney Scott Smith, who provided a brief overview. Deputy City Attorney Todd Leishman provided additional information. Staff responded to questions regarding existing structures and property covenants. Mayor Chun opened the public hearing. There were no speakers. Mayor Chun closed the public hearing. Councilmembers commented on the matter.

Recommended Action:

1. Find that said actions are statutorily exempt from the California Environmental Quality Act (CEQA) under California Government Code sections 65852.21, subd. (j), and 66411.7, subd. (n), whereby the adoption of an ordinance by a city to implement the provisions of Government Code sections 66411.7 and 65852.21, regulating Urban Lot Splits and Two-Unit Projects, is statutorily exempt from the requirements of CEQA;
2. Adopt Urgency Ordinance No. 2022-224 entitled: AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA ADDING SECTIONS 14.28 URBAN LOT SPLITS AND 15.14.210 TWO UNIT PROJECTS AND DETERMINING THE ACTION TO BE EXEMPT FROM CEQA; and
3. Introduce and give first reading to an Ordinance entitled: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA ADDING SECTIONS 14.28 URBAN LOT SPLITS AND 15.14.210 TWO UNIT PROJECTS AND AMENDING SECTION 15.22.190 OUTDOOR DINING AND DETERMINING THE ACTION TO BE EXEMPT FROM CEQA.

Motion: Councilmember Munzing moved and Councilmember Ackley seconded to approve the recommended actions. Motion carried 5-0.

6. DISCUSSION:

6.1. CONSIDERATION OF REIMBURSEMENT OF CITY FEES FOR TASTE OF ALISO NIGUEL EVENT

City Manager David Doyle provided an overview. Councilmembers commented on the matter.

Recommended Action: Discuss and provide direction to staff regarding reimbursement of the cost of City fees for Taste of Aliso Niguel event to Parents & Friends of Aliso Niguel High School (PFAN) in the amount of $509.53.

Motion: Councilmember Harrington moved and Councilmember Ackley seconded to approve the reimbursement of the cost of City fees for Taste of Aliso Niguel event to Parents & Friends of Aliso Niguel High School (PFAN) in the amount of $509.53. Motion carried 5-0.

6.2. ORDINANCE AND CITY COUNCIL POLICY REGARDING AFFORDABLE HOUSING UNIT DOCUMENTATION

City Manager David Doyle introduced City Attorney Scott Smith, who provided an overview. Councilmembers commented on the matter.

Recommended Action:

1. Find that the Ordinance is not subject to the requirements of the California Environmental Quality Act for the following reasons:
   a) The ordinance is not a "project" within the meaning of Section 15378 of the State CEQA Guidelines because it has no potential for resulting in direct or indirect physical change in the environment.
   b) The ordinance is exempt under Section 15061(b)(3), the general rule exemption, because it can be seen with certainty that there is no possibility that this code amendment will have a significant effect on the environment;
2. Introduce for first reading an Ordinance entitled: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA ADDING CHAPTER 3.18 TO THE ALISO VIEJO MUNICIPAL CODE REGARDING AFFORDABLE HOUSING UNIT REPORTING AND FINDING THE ORDINANCE NOT SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; and
3. Adopt City Council Policy No. 600-5 regarding affordable housing unit documentation.

Motion: Mayor Pro Tem Hurt moved and Councilmember Harrington seconded to approve the recommended actions. Motion carried 5-0.

6.3. ORDINANCE REGARDING TRANSIENT LODGING OCCUPANT REGISTRATION

City Manager David Doyle introduced City Attorney Scott Smith, who provided an overview. Councilmembers commented on the matter.

Recommended Action:

1. Find that the Ordinance is not subject to the requirements of the California Environmental Quality Act for the following reasons:
   a) The Ordinance is not a "project" within the meaning of Section 15378 of the State CEQA Guidelines because it has no potential for resulting in direct or indirect physical change in the environment;
   b) The Ordinance is exempt under Section 15061(b)(3), the general rule exemption, because it can be seen with certainty that there is no possibility that the code amendments therein will have a significant effect on the environment; and
2. Introduce for first reading an Ordinance entitled: ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA AMENDING CHAPTERS 3.06 AND 15.18 OF THE ALISO VIEJO MUNICIPAL CODE REGARDING TRANSIENT LODGING OCCUPANT REGISTRATION AND FINDING THE ORDINANCE NOT SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

Motion: Councilmember Ackley moved and Councilmember Harrington seconded to approve the recommended actions. Motion carried 5-0.

7. CITY MANAGER' S REPORT:

City Manager David Doyle addressed the public comments received; announced spring Recreation Class and Summer Camp registration; JamFest & Summer Camp Expo to be held from 11:00 a.m. to 2:00 p.m. on April 30, 2022 at Aliso Viejo Ranch; and reported on the Study Session held prior to the Regular Meeting.

8. ANNOUNCEMENTS / COUNCIL COMMENTS / COMMITTEE UPDATES:

Councilmember Ackley: None

Councilmember Harrington: None

Councilmember Munzing:

- Attended Movie Night
- Attended Aliso Viejo Chamber of Commerce Networking Breakfast
- Attended Aliso Niguel High School Science Building Ribbon Cutting Ceremony

Mayor Pro Tem Hurt:

- Participated in Career Day at Wood Canyon Elementary School
- Attended OCTA South Orange County Multimodal Transportation Study webinar
- Attended Orange County Business Council Annual Dinner and Installation
- Attended San Onofre Nuclear Generating Station tour
- Encouraged teens to attend Virtual Mental Health Program at Aliso Viejo Library

Mayor Chun:

- Attended San Onofre Nuclear Generating Station tour
- Attended Medal of Valor Luncheon
- Attended Aliso Ridge Behavioral Health Center Grand Opening
- Observed OCFA equestrian rescue training
- Appointed to OCFA Security Ad-hoc Committee
- Attended City / AVCA Standing Committee Meeting
- Arranging City tour for Soka University students
- Presented on disaster response and humanitarian support in Ukraine
- Expressed appreciation to those who offered condolences on loss of pet

9. ADJOURNMENT:

Mayor Chun adjourned the meeting at 9:07 p.m. to the regularly scheduled meeting of May 4, 2022.

Respectfully submitted:

_____
MITZI ORTIZ, MMC
CITY CLERK

Approved by:

_____
ROSS CHUN
MAYOR

DRAFT

City of Aliso Viejo
AGENDA ITEM

DATE: May 4, 2022

TO: Mayor and City Council

FROM: Mitzi Ortiz, Director of Government Services

SUBJECT: SECOND READING AND ADOPTION OF AN ORDINANCE RELATING TO URBAN LOT SPLITS AND OUTDOOR DINING

Recommended Action:

Conduct second reading and adopt Ordinance entitled:

> AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, ADDING SECTIONS 14.28 URBAN LOT SPLITS AND 15.14.210 TWO UNIT PROJECTS AND AMENDING SECTION 15.22.190 OUTDOOR DINING AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA.

Discussion:

On April 20, 2022, the City Council approved the introduction and first reading of the subject Ordinance by a 5-0 vote. If adopted, the Ordinance will take effect 30 days after adoption.

Attachment:

1. Ordinance

ORDINANCE NO. 2022-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, ADDING SECTIONS 14.28 URBAN LOT SPLITS AND 15.14.210 TWO UNIT PROJECTS AND AMENDING SECTION 15.22.190 OUTDOOR DINING AND DETERMINING THE ORDINANCE TO BE EXEMPT FROM CEQA

WHEREAS, the City of Aliso Viejo, California ("City") is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, in 2021, the California Legislature approved, and the Governor signed into law Senate Bill 9 ("SB 9"), which among other things, adds Government Code section 65852.21 and 66411.7 to impose new limits on local authority to regulate urban lot splits and two-unit projects; and

WHEREAS, SB 9 allows local agencies to adopt objective design, development, and subdivision standards for urban lot splits and two-unit projects; and

WHEREAS, SB 9 took effect January 1, 2022, and preempts any conflicting city ordinance; and

WHEREAS, the City desires to amend its local regulatory scheme to comply with Government Code sections 66411.7 and 65852.21 and to appropriately regulate projects under SB 9; and

WHEREAS, there is a current and immediate threat to the public health, safety, or welfare based on the passage of the new SB 9 Law because if the City does not adopt appropriate objective standards for urban lot splits and two-unit projects under SB 9 as of January 1, 2022, the City would thereafter be limited to applying the few objective standards that are already in its code, which did not anticipate and were not enacted with urban lot splits and ministerial two-unit projects in mind; and

WHEREAS, in 2021, the California Legislature approved, and the Governor signed into law, Assembly Bill 61, which among other things adds Government Code Section 65907 to permit the outdoor expansion of businesses to mitigate COVID-19 impacts; and

WHEREAS, AB 61 took effect January 1, 2022, and preempts any conflicting city ordinance; and

WHEREAS, the City desires to amend its local regulatory scheme to comply with Government Code section 65907 and to appropriately regulate outdoor dining with social distancing; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALISO VIEJO ORDAINS AS FOLLOWS:

Section 1. The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 2. Under California Government Code sections 65852.21, subd. (j), and 66411.7, subd. (n), the adoption of an ordinance by a city or county implementing the provisions of Government Code sections 66411.7 and 65852.21 and regulating urban lot splits and two-unit projects is statutorily exempt from the requirements of the California Environmental Quality Act ("CEQA"). Therefore, the proposed ordinance is statutorily exempt from CEQA in that the proposed ordinance implements these new laws enacted by SB 9.

In addition to being statutorily exempt from CEQA, the proposed ordinance is also categorically exempt from CEQA under the Class 15 exemption set forth in State CEQA Guidelines section 15315. The Class 15 exemption categorically exempts from CEQA, among other things, the division of property in urbanized areas zoned for residential use into four or fewer parcels. Here, the ordinance is categorically exempt under Class 15 exemption because the ordinance regulates a single urban lot split of one parcel into two separate lots between 60 percent and 40 percent of the original lot area in a residential zone. Further, the proposed ordinance is also categorically exempt from CEQA under the Class 3 exemption set forth in State CEQA Guidelines section 15303. The Class 3 exemption categorically exempts from CEQA, among other things, the construction and location of new, small structures and the conversion of existing small structures from one use to another. Section 15303 specifically lists the construction of a second dwelling unit in a residential zone and a duplex or similar multi-family residential structure totaling no more than four dwelling units as examples of activity that expressly falls within this exemption. Here, the ordinance is categorically exempt under the Class 3 exemption because the ordinance regulates the construction of two primary dwelling units or, if there is already a primary dwelling unit on the lot, the development of a second primary dwelling unit, in a residential zone. Moreover, the City Council finds that none of the "exceptions" to the use of the Class 3 exemption, set forth in State CEQA Guidelines section 15300.2, apply here. Specifically, the City Council finds that the ordinance will:

Section 3. Sections 14.28 and 15.14.210 of the City of Aliso Viejo Municipal Code is hereby added and Section 15.22.190 is amended and restated as provided in Exhibit "A", attached hereto and incorporated herein by reference.

Section 4. This ordinance takes effect 30 days after its adoption.

Section 5. The City Clerk shall either: (a) have this ordinance published in a newspaper of general circulation within 15 days after its adoption or (b) have a summary of this ordinance published twice in a newspaper of general circulation, once five days before its adoption and again within 15 days after its adoption.

Section 6. If any provision of this ordinance or its application to any person or circumstance is held to be invalid, such invalidity has no effect on the other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this resolution are severable. The City Council declares that it would have adopted this resolution irrespective of the invalidity of any portion thereof.

Section 7. The City Council hereby directs staff to prepare, execute, and file with the Orange County Clerk a notice of exemption within five (5) working days of the adoption of this Ordinance.

Section 8. The Custodian of Records for this Ordinance is the City Clerk and the records compromising the administrative record for this Ordinance are located at 12 Journey, Suite 100, Aliso Viejo, CA 92656.

PASSED, APPROVED AND ADOPTED this 4th day of May, 2022.

_____
Ross Chun
Mayor

APPROVED AS TO FORM:

_____
Scott C. Smith, City Attorney

ATTEST:

_____
Mitzi Ortiz, MMC, City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF ALISO VIEJO)

I, MITZI ORTIZ, City Clerk of the City of Aliso Viejo, California, DO HEREBY CERTIFY that foregoing Ordinance No. 2022-__ was duly passed and adopted by the City Council of the City of Aliso Viejo at their regular meeting held on the 4th day of May, 2022, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

_____
MITZI ORTIZ, MMC
CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 2022-__ duly passed and adopted by the Aliso Viejo City Council at its regular meeting held May 4, 2022 and that the Summary of the Ordinance was published on (date) and (date) in the Laguna Niguel News.

_____
MITZI ORTIZ, MMC
CITY CLERK

(SEAL)

Exhibit A

Chapter 14.28 Urban Lot Splits

14.28.010 **Purpose.** The purpose of this section is to allow and appropriately regulate urban lot splits in accordance with Government Code section 66411.7.

14.28.020 **Definition**. An “urban lot split” means the subdivision of an existing, legally subdivided lot into two lots in accordance with the requirements of this section.

14.28.030 **Application**.

A. Owners.

1. Only individual property owners may apply for an urban lot split. “Individual property owner” means a natural person holding fee title individually or jointly in the person’s own name or a beneficiary of a trust that holds fee title. “Individual property owner” does not include any corporation or corporate person of any kind (partnership, LP, LLC, C corp, S corp, etc.) except for a community land trust (as defined by Rev. & Tax Code § 402.1(a)(11)(C)(ii)) or a qualified nonprofit corporation (as defined by § 214.15).

2. Any person with a mortgage interest in the lot to be split under this section must sign the application and the parcel map indicating the person’s consent to the project.

B. An application for an urban lot split must be submitted on the city’s approved form. Only a complete application will be considered. The city will inform the applicant in writing of any incompleteness within 30 days after the application is submitted.

C. The city may establish a fee to recover its costs for adopting, implementing, and enforcing this section of the code, in accordance with applicable law. The city council may establish and change the fee by resolution. The fee must be paid with the application.

14.28.040 **Approval**.

A. An application for a parcel map for an urban lot split is approved or denied ministerially, by the Community Development Director, without discretionary review.

B. A tentative parcel map for an urban lot split is approved ministerially if it complies with all the requirements of this section. The tentative parcel

map may not be recorded. A final parcel map is approved ministerially as well, but not until the owner demonstrates that the required documents have been recorded, such as the deed restriction and easements.

C. The approval must require the owner and applicant to hold the city harmless from all claims and damages related to the approval and its subject matter.

D. The approval must require the owner and applicant to reimburse the city for all costs of enforcement, including attorneys' fees and costs associated with enforcing the requirements of this code.

14.28.050 **Requirements**. An urban lot split must satisfy each of the following requirements:

A. **Map Act Compliance**.

1. The urban lot split must conform to all applicable requirements of the Subdivision Map Act (Gov. Code § 66410 et. seq., "SMA") and implementing requirements in this code, except as otherwise expressly provided in this section.

2. If an urban lot split violates any part of the SMA, the city's subdivision regulations, including this section, or any other legal requirement:

a. The buyer or grantee of a lot that is created by the urban lot split has all the remedies available under the SMA, including but not limited to an action for damages or to void the deed, sale, or contract.

b. The city has all the remedies available to it under the SMA, including but not limited to the following:

i. An action to enjoin any attempt to sell, lease, or finance the property.

ii. An action for other legal, equitable, or summary remedy, such as declaratory and injunctive relief.

iii. Criminal prosecution, punishable by imprisonment in county jail or state prison for up to one year, by a fine of up to $10,000, or both; or a misdemeanor.

iv. Record a notice of violation.

v. Withhold any or all future permits and approvals.

3. Notwithstanding section 66411.1 of the SMA, no dedication of rights-of-way or construction of offsite improvements is required for an urban lot split.

B. **Zone.** The lot to be split is in a single-family residential zone. For purposes of this section, a single-family residential zone is a zone where the only residential use that is allowed as a primary use is a single residential dwelling on a lot.

C. **Lot Location**.

1. The lot to be split is not located on a site that is any of the following:

a. Prime farmland, farmland of statewide importance, or land that is zoned or designated for agricultural protection or preservation by the voters.

b. A wetland.

c. Within a very high fire hazard severity zone, unless the site complies with all fire-hazard mitigation measures required by existing building standards.

d. A hazardous waste site that has not been cleared for residential use.

e. Within a delineated earthquake fault zone, unless all development on the site complies with applicable seismic protection building code standards.

f. Within a 100-year flood hazard area, unless the site has either:

i. been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction, or

ii. meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program.

g. Within a regulatory floodway, unless all development on the site has received a no-rise certification.

h. Land identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan.

i. Habitat for protected species.

j. Land under conservation easement.

2. The purpose of subpart ~~15.28.040C.1 above~~15.28.040C.1 above is merely to summarize the requirements of Government Code section 65913.4(a)(6)(B)–(K). (See Gov. Code § 66411.7(a)(3)(C).)

3. The applicant must provide evidence that the requirements of Government Code section 65913.4(a)(6)(B)–(K) are satisfied.

4. Not Historic. The lot to be split must not be a historic property or within a historic district that is included on the State Historic Resources Inventory. Nor may the lot be or be within a site that is designated by ordinance as a city or county landmark or as a historic property or district.

D. **No Prior Urban Lot Split**.

1. The lot to be split was not established through a prior urban lot split.

2. The lot to be split is not adjacent to any lot that was established through a prior urban lot split by the owner of the lot to be split or by any person acting in concert with the owner.

E. **No Impact on Protected Housing**.

1. The urban lot split must not require or include the demolition or alteration of any of the following types of housing:

a. Housing that is income-restricted for households of moderate, low, or very low income.

b. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

c. Housing, or a lot that used to have housing, that has been withdrawn from rental or lease under the Ellis Act (Gov. Code §§ 7060–7060.7) at any time in the 15 years prior to submission of the urban lot split application.

d. Housing that has been occupied by a tenant in the last three years.

2. As part of the urban lot split application, the applicant and the owner of a property must provide a sworn statement by affidavit

representing and warranting that subpart 15.28.040E.1 above is satisfied.

a. The sworn statement must state that:

i. No housing that is income-restricted for households of moderate, low, or very low income will be demolished or altered.

ii. No housing that is subject to any form of rent or price control will be demolished or altered.

iii. No housing that has been withdrawn from rental or lease under the Ellis Act at any time in the last 15 years will be demolished or altered.

iv. No housing that has been occupied by a tenant in the last three years will be demolished or altered.

b. The city may conduct its own inquiries and investigation to ascertain the veracity of the sworn statement, including but not limited to, surveying owners of nearby properties; and the city may require additional evidence of the applicant and owner as necessary to determine compliance with this requirement.]

F. **Lot Size**.

1. The lot to be split must be at least 2,400 square feet.

2. The resulting lots must each be at least 1,200 square feet.

3. Each of the resulting lots must be between 60 percent and 40 percent of the original lot area.

G. **Easements**.

1. The owner must enter into an easement agreement with each public-service provider to establish easements that are sufficient for the provision of public services and facilities to each of the resulting lots.

2. Each easement must be shown on the tentative parcel map.

3. Copies of the unrecorded easement agreements must be submitted with the application. The easement agreements must be recorded against the property before the final map may be approved, in accordance with subpart 14.28.040B above.

4. If an easement is recorded and the project is not completed, making the easement moot, the property owner may request, and the city will provide, a notice of termination of the easement, which the owner may record.

H. **Lot Access**.

1. Each resulting lot must adjoin a public street right-of-way.

2. Each resulting lot must have frontage on the public street right-of-way of at least 10 feet.

I. **Unit Standards**.

1. **Quantity**. No more than two dwelling units of any kind may be built on a lot that results from an urban lot split. For purposes of this paragraph, “unit” means any dwelling unit, including, but not limited to, a primary dwelling unit, a unit created under section 15.14.080 of this code, an ADU, or a JADU

2. **Unit Size**.

    a. The total floor area of each primary dwelling that is developed on a resulting lot must be

        i. less than or equal to 800 square feet and

        ii. more than 500 square feet.

    b. A primary dwelling that was legally established prior to the urban lot split and that is larger than 800 square feet is limited to the lawful floor area at the time of the urban lot split. It may not be expanded.

    c. A primary dwelling that was legally established prior to the urban lot split and that is smaller than 800 square feet may be expanded to 800 square feet after the urban lot split.

3. **Height Restrictions**.

    a. On a resulting lot that is larger than 2,000 square feet, no new primary dwelling unit may exceed a single story or 16 feet in height, measured from grade to peak of the structure.

    b. On a resulting lot that is smaller than 2,000 square feet, no new primary dwelling unit may exceed two stories or 22 feet in height, measured from grade to peak of the structure. Any

portion of a new primary dwelling that exceeds one story must be stepped back by an additional five feet from the ground floor; no balcony deck or other portion of the second story may project into the stepback.

c. No rooftop deck is permitted on any new or remodeled dwelling or structure on a lot resulting from an urban lot split.

4. **Lot Coverage**. The maximum lot coverage is 75 percent. This lot coverage standard is only enforced to the extent that it does not prevent two primary dwelling units on the lot at 800 square feet each.

5. **Setbacks**.

   a. **Generally**. All setbacks must conform to those objective setbacks that are imposed through the underlying zone.

   b. **Exceptions**. Notwithstanding subpart 15.28.040I.5.a above:

      i. **Existing Structures**. No setback is required for an existing legally established structure or for a new structure that is constructed in the same location and to the same dimensions as an existing legally established structure.

      ii. **800 sf; four-foot side and rear**. The setbacks imposed by the underlying zone must yield to the degree necessary to avoid physically precluding the construction of up to two units on the lot or either of the two units from being at least 800 square feet in floor area; but in no event may any structure be less than four feet from a side or rear property line.

   c. **Front Setback Area**. Notwithstanding any other part of this code, dwellings that are constructed after an urban lot split must be at least 10 feet from the front property lines. The front setback areas must:

      i. be kept free from all structures greater than three feet high;

      ii. be at least 50 percent landscaped with drought-tolerant plants, with vegetation and irrigation plans approved by a licensed landscape architect;

      iii. allow for vehicular and fire-safety access to the front structure.

6. **Parking**. Each new primary dwelling unit that is built on a lot after an urban lot split must have at least one off-street parking space per unit unless one of the following applies:

    a. The lot is located within one-half mile walking distance of either

        i. a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours or

        ii. a site that contains

            (ia) an existing rail or bus rapid transit station,

            (ib) a ferry terminal served by either a bus or rail transit service, or

            (ic) the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

    b. The site is located within one block of a car-share vehicle location.

7. **Architecture**.

    a. If there is a legal primary dwelling on the lot that was established before the urban lot split, any new primary dwelling unit must match the existing primary dwelling unit in exterior materials, color, and dominant roof pitch. The dominant roof slope is the slope shared by the largest portion of the roof.

    b. If there is no legal primary dwelling on the lot before the urban lot split, and if two primary dwellings are developed on the lot, the dwellings must match each other in exterior materials, color, and dominant roof pitch. The dominant roof slope is the slope shared by the largest portion of the roof.

    c. All exterior lighting must be limited to down-lights.

    d. No window or door of a dwelling that is constructed on the lot after the urban lot split may have a direct line of sight to an adjoining residential property. Fencing, landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.

e. If a dwelling is constructed on a lot after an urban lot split and any portion of the dwelling is less than 30 feet from a property line that is not a public right-of-way line, then all windows and doors in that portion must either be (for windows) clerestory with the bottom of the glass at least six feet above the finished floor, or (for windows and for doors) utilize frosted or obscure glass.

8. Landscaping.

a. Tree Removal.

i. No mature tree may be removed on a lot with any development under this chapter unless removal is necessary to constructing a dwelling unit that must be allowed under state law.

ii. “Mature tree” means a tree with a diameter of six inches or more or a height of eight feet or taller.

iii. A tree may only be removed under subparagraph 15.28.040I.8.a.i above if it is replaced with at least two mature trees of the same type and with a trunk diameter that is the same or larger than that of the removed tree.

b. Evergreen landscape screening must be planted and maintained between each dwelling and adjacent lots (but not rights of way) as follows:

i. At least one 15-gallon size plant shall be provided for every five linear feet of exterior wall. Alternatively, at least one 24~~”~~-inch box size plant shall be provided for every ten linear feet of exterior wall.

ii. Plant specimens must be at least six feet tall when installed. As an alternative, a solid fence of at least ~~6~~six feet in height may be installed.

iii. All landscaping must be drought-tolerant.

iv. All landscaping must be from the city’s approved plant list.

9. Nonconforming Conditions. An urban lot split ~~may be~~is approved without requiring a legal nonconforming zoning condition to be corrected.

10. Utilities.

a. Each primary dwelling unit on the lot must have its own direct utility connection to the utility service provider.

b. Notwithstanding paragraph 15.28.040I.10.a above, a primary dwelling unit may have a direct utility connection to an onsite wastewater treatment system in accordance with this paragraph and the city's code. Each primary dwelling unit on the lot that is or that is proposed to be connected to an onsite wastewater treatment system must first have a percolation test completed within the last five years or, if the percolation test has been recertified, within the last 10 years.

c. All utilities must be underground.

11. Building & Safety. All structures built on the lot must comply with all current local building standards. An urban lot split is a change of use.

J. **Fire-Hazard Mitigation Measures**.

1. A lot in a very high fire hazard severity zone must comply with each of the following fire-hazard mitigation measures:

a. It must have direct access to a public street right-of-way with a paved street with a width of at least 40 feet. The public street right-of-way must have at least two independent points of access for fire and life safety to access and for residents to evacuate.

b. All dwellings on the site must comply with current fire code requirements for dwellings in a very high fire hazard severity zone.

c. All enclosed structures on the site must have fire sprinklers.

d. All sides of all dwellings on the site must be within a 150-foot hose-pull distance from either the public street right-of-way or of an onsite fire hydrant or standpipe.

e. If the lot does not have a swimming pool, the lot must have a water reservoir of at least 5,000 gallons per dwelling, with fire-authority approved hookups compatible with fire-authority standard pump and hose equipment.

2. Prior to submitting an application for an urban lot split, the applicant must obtain a certificate of compliance with all applicable fire-hazard mitigation measures in accordance with this subpart 15.28.040J. The

city or its authorized agent must inspect the site, including all structures on the site, and certify as to its compliance. The certificate must be included with the application. The applicant must pay the city's costs for inspection. Failure to pay is grounds for denying the application.

K. **Separate Conveyance**.

1. Within a resulting lot.

a. Primary dwelling units on a lot that is created by an urban lot split may not be owned or conveyed separately from each other.

b. Condominium airspace divisions and common interest developments are not permitted on a lot that is created by an urban lot split.

c. All fee interest in a lot and all dwellings on the lot must be held equally and undivided by all individual property owners.

d. No timeshare, as defined by state law or this code, is permitted. This includes any co-ownership arrangement that gives an owner the right to exclusive use of the property for a defined period or periods of time.

2. Between resulting lots. Separate conveyance of the resulting lots is permitted. If dwellings or other structures (such as garages) on different lots are adjacent or attached to each other, the urban lot split boundary may separate them for conveyance purposes if the structures meet building code safety standards and are sufficient to allow separate conveyance. If any attached structures span or will span the new lot line, the owner must record appropriate CC&Rs, easements, or other documentation that is necessary to allocate rights and responsibility between the owners of the two lots.

L. **Regulation of Uses.**

1. Residential-only. No non-residential use is permitted on any lot created by urban lot split.

2. No STRs. No dwelling unit on a lot that is created by an urban lot split may be rented for a period of less than 30 days.

3. Owner Occupancy. The applicant for an urban lot split must sign an affidavit stating that the applicant intends to occupy one of the dwelling units on one of the resulting lots as the applicant's principal

residence for a minimum of three years after the urban lot split is approved.

M. **Notice of Construction**.

1. At least 30 business days before starting any construction of a structure on a lot created by an urban lot split, the property owner must give written notice to all the owners of record of each of the adjacent residential parcels, which notice must include the following information:

a. Notice that construction has been authorized,

b. The anticipated start and end dates for construction,

c. The hours of construction,

d. Contact information for the project manager (for construction-related complaints), and

e. Contact information for the Building & Safety Department.

2. This notice requirement does not confer a right on the noticed persons or on anyone else to comment on the project before permits are issued. Approval is ministerial. Under state law, the City has no discretion in approving or denying a particular project under this section. This notice requirement is purely to promote neighborhood awareness and expectation.

N. **Deed Restriction**. The owner must record a deed restriction on each lot that results from the urban lot split, on a form approved by the city, that does each of the following:

1. Expressly prohibits any rental of any dwelling on the property for a period of less than 30 days.

2. Expressly prohibits any non-residential use of the lots created by the urban lot split.

3. Expressly prohibits any separate conveyance of a primary dwelling on the property, any separate fee interest, and any common interest development within the lot.

4. States that:

a. The lot is formed by an urban lot split and is therefore subject to the city's urban lot-split regulations, including all applicable limits on dwelling size and development.

b. Development on the lot is limited to development of residential units under sections 15.10 and 15.14 of this code, except as required by state law.

15.28.050 **Specific Adverse Impacts**.

A. Notwithstanding anything else in this section, the city may deny an application for an urban lot split if the building official makes a written finding, based on a preponderance of the evidence, that the project would have a "specific, adverse impact" on either public health and safety or on the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

B. "Specific adverse impact" has the same meaning as in Gov. Code § 65589.5(d)(2): "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete" and does not include (1) inconsistency with the zoning ordinance or general plan land use designation or (2) the eligibility to claim a welfare exemption under Revenue and Taxation Code section 214(g).

C. The building official may consult with and be assisted by planning staff and others as necessary in making a finding of specific, adverse impact.

15.28.050 **Coastal Regulations Apply in Full.** Nothing in this section alters or lessens the effect or application of the California Coastal Act.

Section 15.14.210 Two-unit Projects

A. **Purpose.** The purpose of this section is to allow and appropriately regulate two-unit projects in accordance with Government Code section 65852.21.

B. **Definition**. A "two-unit project" means the development of two primary dwelling units or, if there is already a primary dwelling unit on the lot, the development of a second primary dwelling unit on a legally subdivided lot in accordance with the requirements of this section.

C. **Application**.

1. Owners.

    a. Only individual property owners may apply for a two-unit project. “Individual property owner” means a natural person holding fee title individually or jointly in the person’s own name or a beneficiary of a trust that holds fee title. “Individual property owner” does not include any corporation or corporate person of any kind (partnership, LP, LLC, C corp, S corp, etc.) except for a community land trust (as defined by Rev. & Tax Code § 402.1(a)(11)(C)(ii)) or a qualified nonprofit corporation (as defined by Rev. & Tax Code § 214.15).

    b. Any person with a mortgage interest in the lot to be split under this section must sign the application and the parcel map indicating the person’s consent to the project.

2. An application for a two-unit project must be submitted on the city’s approved form.

3. The applicant must obtain a certificate of compliance with the Subdivision Map Act and the implementing regulations in this code for the lot and provide the certificate with the application.

4. Only a complete application will be considered. The city will inform the applicant in writing of any incompleteness within 30 days after the application is submitted.

5. The city may establish a fee to recover its costs for adopting, implementing, and enforcing this section of the code, in accordance with applicable law. The city council may establish and change the fee by resolution. The fee must be paid with the application.

D. **Approval**.

1. An application for a two-unit project is approved or denied ministerially, by the Community Development Director, without discretionary review.

2. The ministerial approval of a two-unit project does not take effect until the city has confirmed that the required documents have been recorded, such as the deed restriction and easements.

3. The approval must require the owner and applicant to hold the city harmless from all claims and damages related to the approval and its subject matter.

4. The approval must require the owner and applicant to reimburse the city for all costs of enforcement, including attorneys' fees and costs associated with enforcing the requirements of this code.

E. **Requirements**. A two-unit project must satisfy each of the following requirements:

1. **Map Act Compliance**. The lot must have been legally subdivided.

2. **Zone.** The lot is in a single-family residential zone. For purposes of this section, a single-family residential zone is a zone where the only residential use that is allowed as a primary use is a single residential dwelling on a lot.

3. **Lot Location**.

a. The lot is not located on a site that is any of the following:

i. Prime farmland, farmland of statewide importance, or land that is zoned or designated for agricultural protection or preservation by the voters.

ii. A wetland.

iii. Within a very high fire hazard severity zone, unless the site complies with all fire-hazard mitigation measures required by existing building standards.

iv. A hazardous waste site that has not been cleared for residential use.

v. Within a delineated earthquake fault zone, unless all development on the site complies with applicable seismic protection building code standards.

vi. Within a 100-year flood hazard area, unless the site has either:

(ia) been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction, or

(ib) meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program.

vii. Within a regulatory floodway, unless all development on the site has received a no-rise certification.

viii. Land identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan.

ix. Habitat for protected species.

x. Land under conservation easement.

b. The purpose of subpart 15.28.040C.1 above is merely to summarize the requirements of Government Code section 65913.4(a)(6)(B)–(K). (See Gov. Code § 66411.7(a)(3)(C).)

c. The applicant must provide evidence that the requirements of Government Code section 65913.4(a)(6)(B)–(K) are satisfied.

4. **No Impact on Protected Housing**.

a. The two-unit project must not require or include the demolition or alteration of any of the following types of housing:

i. Housing that is income-restricted for households of moderate, low, or very low income.

ii. Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

iii. Housing, or a lot that used to have housing, that has been withdrawn from rental or lease under the Ellis Act (Gov. Code §§ 7060–7060.7) at any time in the 15 years prior to submission of the two unit project application.

iv. Housing that has been occupied by a tenant in the last three years.

b. As part of the two-unit project application, the applicant and the owner of a property must provide a sworn statement by affidavit representing and warranting that subpart E.4.a above is satisfied.

i. The sworn statement must state that:

(ia) No housing that is income-restricted for households of moderate, low, or very low income will be demolished or altered.

(ib) No housing that is subject to any form of rent or price control will be demolished or altered.

(ic) No housing that has been withdrawn from rental or lease under the Ellis Act at any time in the last 15 years will be demolished or altered.

(id) No housing that has been occupied by a tenant in the last three years will be demolished or altered.

b. The city may conduct its own inquiries and investigation to ascertain the veracity of the sworn statement, including but not limited to, surveying owners of nearby properties; and the city may require additional evidence of the applicant and owner as necessary to determine compliance with this requirement.]

B. **Unit Standards**.

1. Quantity.

a. No more than two dwelling units of any kind may be built on a lot that results from an urban lot split. For purposes of this paragraph, “unit” means any dwelling unit, including, but not limited to, a primary dwelling unit, a unit created under this section of this code, an ADU, or a JADU.

b. A lot that is not created by an urban lot split may have a two-unit project under this section, plus any ADU or JADU that must be allowed under state law and the city’s ADU ordinance.

2. Unit Size.

a. The total floor area of each primary dwelling built that is developed under this section must be

(ia) less than or equal to 800 square feet and

(ib) more than 500 square feet.

ii. A primary dwelling that was legally established on the lot prior to the two-unit project and that is larger than 800 square feet is limited to the lawful floor area at the time of the two-unit project. The unit may not be expanded.

iii. A primary dwelling that was legally established prior to the two-unit project and that is smaller than 800 square feet may be expanded to 800 square feet after or as part of the two-unit project.

b. Height Restrictions.

i. On a lot that is larger than 2,000 square feet, no new primary dwelling unit may exceed a single story or 16 feet in height, measured from grade to peak of the structure.

ii. On a lot that is smaller than 2,000 square feet, no new primary dwelling unit may exceed two stories or 22 feet in height, measured from grade to peak of the structure. Any portion of a new primary dwelling that exceeds one story must be stepped back by an additional five feet from the ground floor; no balcony deck or other portion of the second story may project into the stepback.

iii. No rooftop deck is permitted on any new or remodeled dwelling or structure on a lot with a two-unit project.

c. Demo Cap. The two-unit project may not involve the demolition of more than 25 percent of the existing exterior walls of an existing dwelling unless the site has not been occupied by a tenant in the last three years.

d. Lot Coverage. The maximum lot coverage is 75 percent. This lot coverage standard is only enforced to the extent that it does not prevent two primary dwelling units on the lot at 800 square feet each.

e. Setbacks.

i. **Generally**. All setbacks must conform to those objective setbacks that are imposed through the underlying zone.

ii. **Exceptions**. Notwithstanding subpart A1.e above:

(ia) **Existing Structures**. No setback is required for an existing legally established structure or for a new structure that is constructed in the same location and to the same dimensions as an existing legally established structure.

(ib) **800 sf; four-foot side and rear**. The setbacks imposed by the underlying zone must yield to

the degree necessary to avoid physically precluding the construction of up to two units on the lot or either of the two units from being at least 800 square feet in floor area; but in no event may any structure be less than four feet from a side or rear property line.

ii. **Front Setback Area**. Notwithstanding any other part of this code, dwellings that are constructed under this section must be at least 10 feet from the front property lines. The front setback area must:

(ia) be kept free from all structures greater than three feet high;

(ib) be at least 50 percent landscaped with drought-tolerant plants, with vegetation and irrigation plans approved by a licensed landscape architect;

(ic) allow for vehicular and fire-safety access to the front structure.

b. Parking. Each new primary dwelling unit must have at least one off-street parking space per unit unless one of the following applies:

i. The lot is located within one-half mile walking distance of either

(ia) a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours or

(ib) a site that contains:

- an existing rail or bus rapid transit station,
- a ferry terminal served by either a bus or rail transit service, or
- the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

ii. The site is located within one block of a car-share vehicle location.

b. Architecture.

i. If there is a legal primary dwelling on the lot that was established before the two-unit project, any new primary dwelling unit must match the existing primary dwelling unit in exterior materials, color, and dominant roof pitch. The dominant roof slope is the slope shared by the largest portion of the roof.

ii. If there is no legal primary dwelling on the lot before the two-unit project, and if two primary dwellings are developed on the lot, the dwellings must match each other in exterior materials, color, and dominant roof pitch. The dominant roof slope is the slope shared by the largest portion of the roof.

iii. All exterior lighting must be limited to down-lights.

iv. No window or door of a dwelling that is constructed on the lot may have a direct line of sight to an adjoining residential property. Fencing, landscaping, or privacy glass may be used to provide screening and prevent a direct line of sight.

v. If any portion of a dwelling is less than 30 feet from a property line that is not a public right-of-way line, then all windows and doors in that portion must either be (for windows) clerestory with the bottom of the glass at least six feet above the finished floor, or (for windows and for doors) utilize frosted or obscure glass.

c. Landscaping. Evergreen landscape screening must be planted and maintained between each dwelling and adjacent lots (but not rights of way) as follows:

i. At least one 15-gallon size plant shall be provided for every five linear feet of exterior wall. Alternatively, at least one 24” box size plant shall be provided for every ten linear feet of exterior wall.

ii. Plant specimens must be at least six feet tall when installed. As an alternative, a solid fence of at least 6 feet in height may be installed.

iii. All landscaping must be drought-tolerant.

iv. All landscaping must be from the city's approved plant list.

d. Nonconforming Conditions. A two-unit project may only be approved if all nonconforming zoning conditions are corrected.

e. Utilities.

i. Each primary dwelling unit on the lot must have its own direct utility connection to the utility service provider.

ii. Notwithstanding paragraph A1.e.i above, a primary dwelling unit may have a direct utility connection to an onsite wastewater treatment system in accordance with this paragraph and the city's code. Each primary dwelling unit on the lot that is or that is proposed to be connected to an onsite wastewater treatment system must first have a percolation test completed within the last five years or, if the percolation test has been recertified, within the last 10 years.

i. All utilities must be underground.

f. Building & Safety. All structures built on the lot must comply with all current local building standards. A project under this section is a change of use and subjects the whole of the lot, and all structures, to the city's current code.

2. **Fire-Hazard Mitigation Measures**.

a. A lot in a very high fire hazard severity zone must comply with each of the following fire-hazard mitigation measures:

i. It must have direct access to a public street right-of-way with a paved street with a width of at least 40 feet. The public street right-of-way must have at least two independent points of access for fire and life safety to access and for residents to evacuate.

ii. All dwellings on the site must comply with current fire code requirements for dwellings in a very high fire hazard severity zone.

iii. All enclosed structures on the site must have fire sprinklers.

iv. All sides of all dwellings on the site must be within a 150-foot hose-pull distance from either the public street right-of-way or of an onsite fire hydrant or standpipe.

v. If the lot does not have a swimming pool, the lot must have a water reservoir of at least 5,000 gallons per dwelling, with fire-authority approved hookups compatible with fire-authority standard pump and hose equipment.

b. Prior to submitting an application for an urban lot split, the applicant must obtain a certificate of compliance with all applicable fire-hazard mitigation measures in accordance with this subpart A2. The city or its authorized agent must inspect the site, including all structures on the site, and certify as to its compliance. The certificate must be included with the application. The applicant must pay the city's costs for inspection. Failure to pay is grounds for denying the application.

3. **Separate Conveyance**.

a. Primary dwelling units on the lot may not be owned or conveyed separately from each other.

b. Condominium airspace divisions and common interest developments are not permitted within the lot.

c. All fee interest in the lot and all the dwellings must be held equally and undivided by all individual property owners.

i. No timeshare, as defined by state law or this code, is permitted. This includes any co-ownership arrangement that gives an owner the right to exclusive use of the property for a defined period or periods of time.

4. **Regulation of Uses.**

a. **Residential-only**. No non-residential use is permitted on the lot.

b. **No STRs**. No dwelling unit on the lot may be rented for a period of less than 30 days.

c. **Owner Occupancy**. Unless the lot was formed by an urban lot split, the individual property owners of a lot with a two-unit project must occupy one of the dwellings on the lot as the owners' principal residence and legal domicile.

5. **Notice of Construction**.

   a. At least 30 business days before starting any construction of a two-unit project, the property owner must give written notice to all the owners of record of each of the adjacent residential parcels, which notice must include the following information:

      i. Notice that construction has been authorized,

      ii. The anticipated start and end dates for construction,

      iii. The hours of construction,

      iv. Contact information for the project manager (for construction-related complaints), and

      v. Contact information for the Building & Safety Department.

   b. This notice requirement does not confer a right on the noticed persons or on anyone else to comment on the project before permits are issued. Approval is ministerial. Under state law, the City has no discretion in approving or denying a particular project under this section. This notice requirement is purely to promote neighborhood awareness and expectation.

6. **Deed Restriction**. The owner must record a deed restriction, on a form approved by the city, that does each of the following:

   a. Expressly prohibits any rental of any dwelling on the property for a period of less than 30 days.

   b. Expressly prohibits any non-residential use of the lot.

   c. Expressly prohibits any separate conveyance of a primary dwelling on the property, any separate fee interest, and any common interest development within the lot.

   d. If the lot does not undergo an urban lot split: Expressly requires the individual property owners to live in one of the dwelling units on the lot as the owners' primary residence and legal domicile.

   e. Limits development of the lot to residential units that comply with the requirements of this section, except as required by state law.

B **Specific Adverse Impacts**.

1. Notwithstanding anything else in this section, the city may deny an application for a two-unit project if the building official makes a written finding, based on a preponderance of the evidence, that the project would have a “specific, adverse impact” on either public health and safety or on the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

2. “Specific adverse impact” has the same meaning as in Gov. Code § 65589.5(d)(2): “a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete” and does not include (1) inconsistency with the zoning ordinance or general plan land use designation or (2) the eligibility to claim a welfare exemption under Revenue and Taxation Code section 214(g).

3. The building official may consult with and be assisted by planning staff and others as necessary in making a finding of specific, adverse impact.

C **Coastal Regulations Apply in Full.** Nothing in this section alters or lessens the effect or application of the California Coastal Act.

D **Remedies**. If a two-unit project violates any part of this code or any other legal requirement:

1. The buyer, grantee, or lessee of any part of the property has an action for damages or to void the deed, sale, or contract.

2. The city may:

   a. Bring an action to enjoin any attempt to sell, lease, or finance the property.

   b. Bring an action for other legal, equitable, or summary remedy, such as declaratory and injunctive relief.

   c. Pursue criminal prosecution, punishable by imprisonment in county jail or state prison for up to one year, by a fine of up to $10,000, or both; or a misdemeanor.

   d. Record a notice of violation.

   e. Withhold any or all future permits and approvals.

f. Pursue all other administrative, legal, or equitable remedies that are allowed by law or the city's code.

Section 15.22.190 Outdoor Dining

A. Applicability – General Provisions. Outdoor dining may be permitted as an accessory use subject to the provisions of this section if an administrative use permit is approved in accordance with AVMC 15.74.040.

B. Allowing an Increase in Outdoor Dining Area If an Exception Permit Is Approved. The area devoted to outdoor dining shall not exceed 1,000 square feet and shall be accessory to the main restaurant use. Outdoor dining area may be expanded to a maximum of 40 percent of the indoor floor area of the restaurant if an exception permit is approved pursuant to AVMC 15.74.070.

C. Required Findings. Before approving an application, the decision-making authority shall make the following findings in addition to those required in AVMC 15.74.040:

1. That the proposed outdoor dining is accessory to the eating and drinking establishment;

2. That the accessory outdoor dining area will not result in the reduction of existing parking spaces below that required for the restaurant use.

D. Required Conditions. Approval of an application to add or expand outdoor accessory dining shall include the following conditions:

1. The outdoor dining area shall be subject to the existing hours of operation, operational characteristics and conditions of any use permit applicable to the overall establishment;

2. Amplified live music shall not be permitted outdoors unless an exception permit is approved pursuant to AVMC 15.74.070. Unamplified live music may be permitted if included as part of the outdoor dining administrative use permit;

3. All doors and windows leading to the outdoor dining area shall remain closed while indoor amplified music or live entertainment is being played;

4. Fences, walls, roofs or similar barriers shall serve only to define the outdoor dining area and shall not constitute a permanent all-weather enclosure;

5. Any additional conditions the decision-making authority deems necessary or appropriate to ensure that operation of the outdoor dining area is consistent with the findings made at the time of approval.

E. Notwithstanding Subsection A through C, until January 1, 2024, any legally established restaurant may utilize up to 10 percent of their parking spaces for the establishment of outdoor dining with the approval of a Temporary Use Permit provided measures can be taken to protect the health, safety and welfare of diners and employees.

City of Aliso Viejo
AGENDA ITEM

DATE: May 4, 2022

TO: Mayor and City Council

FROM: Mitzi Ortiz, Director of Government Services

SUBJECT: SECOND READING AND ADOPTION OF AN ORDINANCE RELATING TO AFFORDABLE HOUSING UNIT REPORTING

Recommended Action:

Conduct second reading and adopt Ordinance entitled:

> AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA ADDING CHAPTER 3.18 TO THE ALISO VIEJO MUNICIPAL CODE REGARDING AFFORDABLE HOUSING UNIT REPORTING AND FINDING THE ORDINANCE NOT SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

Discussion:

On April 20, 2022, the City Council approved the introduction and first reading of the subject Ordinance by a 5-0 vote. If adopted, the Ordinance will take effect 30 days after adoption.

Attachment:

1. Ordinance

ORDINANCE NO. 2022-___

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA ADDING CHAPTER 3.18 TO THE ALISO VIEJO MUNICIPAL CODE REGARDING AFFORDABLE HOUSING UNIT REPORTING AND FINDING THE ORDINANCE NOT SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, the Southern California region is experiencing a housing crisis, especially in providing housing affordable to very low and low income households (collectively "Low Income Households"); and

WHEREAS, the City of Aliso Viejo ("City") actively creates, increases, and preserves affordable housing opportunities; and

WHEREAS, the City's efforts in this sphere include: (1) conditioning City entitlements for housing developments with a percentage of units affordable to Low Income Households; and (2) extending loans to qualifying Low Income Households to facilitate the purchase of a home (often referred to as an "affordable housing subsidy"); and

WHEREAS, these designated units are typically governed by an affordability covenant, resale restriction, or other agreement that restricts future tenants or purchasers to qualifying Low Income Households and establishes annual reporting requirements regarding household income and/or proof of occupancy;[1] and

WHEREAS, most households comply with their reporting responsibility, but occasionally some do not; and

WHEREAS, timely and accurate household information helps the City comply with State reporting obligations and ensures that the City's affordable units remain occupied by qualified households; and

WHEREAS, the Aliso Viejo Municipal Code ("Code") does not currently regulate affordable housing reporting requirements; and

WHEREAS, this Ordinance adds a provision to the Code that requires households to submit any income or occupancy verification requested by the City in accordance with an affordable housing agreement (which is defined to include any City-executed resale restriction, affordability covenant, or housing agreement); and

WHEREAS, this Code amendment is intended to incentivize households to comply with their reporting responsibilities and to provide City staff with an additional tool for ensuring compliance with them;

[1] Common terms for these affordability covenants and resale restrictions range from 30 – 55 years.

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALISO VIEJO ORDAINS AS FOLLOWS:

SECTION 1. **Recitals**. The City Council hereby finds and determines that the recitals above are true and correct and are incorporated herein.

SECTION 2. **CEQA**. The City Council finds that this Ordinance is not a "project" subject to the California Environmental Quality Act ("CEQA"). The Ordinance does not qualify as a project because it has no potential to result in either a direct, or reasonably foreseeable indirect, physical change in the environment. (State CEQA Guidelines, § 15378, subd. (a).) The Ordinance simply regulates documentation that must be submitted to the City. In the alternative, the City Council finds that the Ordinance falls within the "common sense" exemption set forth in State CEQA Guidelines section 15061, subdivision (b)(3), which exempts activity from CEQA where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." Here, it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment because the Ordinance merely regulates documentation that must be submitted to the City; it will not result in any development or in any new activity with the potential to impact the environment.

SECTION 3. **Code Amendment**. Chapter 3.18 (Reporting for Affordable Housing Units) is hereby added to the Aliso Viejo Municipal Code to read in its entirely as follows:

"**3.18.010 Definitions**

The following words shall have the meaning indicated when used in this chapter:

"Affordable Housing Agreement" means any effective, City-executed agreement regulating the operation and maintenance of property and restricting the sale or occupancy thereof to specified households at a specified price or rent. Examples include, but are not limited to an: affordable housing resale restriction, affordability covenant, or housing agreement.

"City" means the City of Aliso Viejo, California.

3.18.020 Reporting for Affordable Housing Units

It is unlawful for any person owning, occupying, or leasing property subject to an Affordable Housing Agreement to fail to submit any verification of income or occupancy requested by the City in accordance with the Affordable Housing Agreement."

SECTION 4. **Severability**. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid

provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 5. **Effective Date**. This Ordinance shall take effect 30 days after its adoption.

SECTION 6. **Publication**. The City Clerk shall certify as to the adoption of this Ordinance and shall cause a summary thereof to be published within 15 days of the adoption and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

SECTION 7. **Record of Proceedings**. The documents and materials associated with this ordinance that constitute the record of proceedings on which these findings are based are located at Aliso Viejo City Hall, 12 Journey, Aliso Viejo, California 92656. The City Clerk is the custodian of the record of proceedings.

PASSED, APPROVED AND ADOPTED this 4th day of May, 2022.

_____
Ross Chun
Mayor

APPROVED AS TO FORM:

_____
Scott C. Smith, City Attorney

ATTEST:

_____
Mitzi Ortiz, MMC, City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF ALISO VIEJO)

I, MITZI ORTIZ, City Clerk of the City of Aliso Viejo, California, DO HEREBY CERTIFY that foregoing Ordinance No. 2022-__ was duly passed and adopted by the City Council of the City of Aliso Viejo at their regular meeting held on the 4th day of May, 2022, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

_____
MITZI ORTIZ, MMC
CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. 2022-__ duly passed and adopted by the Aliso Viejo City Council at its regular meeting held May 4, 2022 and that the Summary of the Ordinance was published on (date) and (date) in the Laguna Niguel News.

_____
MITZI ORTIZ, MMC
CITY CLERK

(SEAL)

City of Aliso Viejo
AGENDA ITEM

DATE: May 4, 2022

TO: Mayor and City Council

FROM: Sheryl Mariano, Accounting Supervisor

SUBJECT: ACCOUNTS PAYABLE

Recommended Action:

Ratify accounts payable checks and electronic funds transfers issued April 14, 2022, in the amount of $1,010,104.82.

Fiscal Impact:

Expenditures in the amount of $1,010,104.82.

Background:

The City issues accounts payable checks on bi-weekly basis and presents it to City Council for ratification at its next regularly scheduled City Council meeting.

Discussion:

The attached register containing checks and electronic funds transfers dated April 14, 2022, $1,010,104.82 is being presented for ratification. All payments have been made in compliance with the City's purchasing policy and procedures. Payments have been reviewed and approved by the appropriate departmental staff. The issued accounts payable checks and electronic funds transfers have been audited and deemed accurate by the Accounting Supervisor.

Attachment:

1. Accounts Payable Report

Accounts Payable
04/14/2022

Vendor Name	Description (Item)	Amount
101 - GENERAL FUND		
SAN JOAQUIN HILLS TRANSPORTATION CORRIDOR AGENCY	MAR'22 SAN JOAQUIN ROAD FEES	37,058.90
PEGASUS REMODELING, INC	P#21-0047-C&D REFUND-PEGASUS/14 SHERRELWOOD	500.00
TURELK INC	P#21-0714-C7D REFUND-TURELK/1 ENTERPRISE	750.00
ALL OC CONSTRUCTION	P#21-1728-C&D REFUND-ALL OC CONST/32 VENETO LN	500.00
ADVANCED PERMIT SERVICES	P#22-0041 CANCELED BLDG PERMIT-ADVANCED PERMIT	17.40
PACIFIC TUSK BUILDERS	P#21-1905-CANCELED BLDG PERMIT-PACIFIC TUSK	244.34
ADVANCED ROOFING SYSTEMS, INC	P#22-0348-C&D REFUND-ADVANCED ROOFING/30 SPICEWOOD	500.00
		39,570.64
CITY MANAGER		
STAPLES ADVANTAGE	CM-OFFICE SUPPLIES	35.01
	CITY MANAGER TOTAL:	**35.01**
ECONOMIC DEVELOPMENT		
HAULAWAY STORAGE CONTAINERS INC	APR'22-AVTC- STORAGE BIN RENTAL C-19-R2	92.40
	ECONOMIC DEVELOPMENT TOTAL:	**92.40**
HUMAN RESOURCES		
US BANK PURCHASING CARD PROGRAM	LM-3/3 CPRS JOB POSTING FOR RL/SRL	125.00
	HUMAN RESOURCES TOTAL:	**125.00**
CITY CLERK		
STAPLES ADVANTAGE	CC-OFFICE SUPPLIES	273.88
	CITY CLERK TOTAL:	**273.88**
CITY ATTORNEY		
BEST BEST & KRIEGER	JAN'22 BBK - #801 TOWN CTR SPECIFIC PLAN	1,995.00
	CITY ATTORNEY TOTAL:	**1,995.00**
INFORMATION TECHNOLOGY		
COX COMMUNICATIONS, INC	3/19- 4/18/22 ACCT #9302-CH-IT SERVER ROOM	85.39
NATHAN M KEETER	MAR'22 NETWORK SUPPORT & SECURITY ENGINEER	416.67
GO LIVE TECHNOLOGY INC	MAR'22 ELM & ASSET MGMT IMPLEMENTATION	5,940.00
AT&T	3/22-4/21/22-CH-ELEVATOR	1,108.24
AT&T	2/19-3/18/22 CH-AT&T INTERNET	1,105.52
JIVE COMMUNICATIONS INC	APR'22 CH JIVE VOIP SERVICE & SUPPORT	1,847.86
PAGEFREEZER SOFTWARE INC	FY21-22 PAGEFREEZER-SOCIAL MEDIA ARCHIVER	4,848.00
	INFORMATION TECHNOLOGY TOTAL:	**15,351.68**
NON-DEPARTMENTAL		
CERTIFIED RECORDS MANAGEMENT	APR'22 RECORDS OFF SITE STORAGE	447.25
RICOH USA	4/12-5/11/22 RICOH C5200S - LEASE	729.92
NESTLE WATERS NORTH AMERICA	MAR'22 CH COFFEE SERVICE	45.23
DS SERVICES OF AMERICA, INC	3/17 CH BOTTLED WATER SERVICE	85.61
CHARLENE CHENG	CC-4/4 AVCA MTG WITH CM/CC & STAFF- F&B REIMB	127.77
CINTAS CORPORATION NO. 2	APR'22 CH-FIRST AID MAINTENANCE	171.23
STAPLES ADVANTAGE	CEN-COPY PAPER & BREAK ROOM SUPPLIES	654.96
MOULTON NIGUEL WATER DIST	2/14-3/21/22 MTR#2206 VISTA PARK WATER SERVICE	860.34
ALISO VIEJO SELF STORAGE	MAR & APR'22 RENTAL STORAGE UNIT #535	860.00
ALISO VIEJO SELF STORAGE	MAY'22 RENTAL STORAGE UNIT #519	330.00
	NON-DEPARTMENTAL TOTAL:	**4,312.31**
C. S. ADMINISTRATION		
US BANK PURCHASING CARD PROGRAM	JB-MOVIE NIGHT SUPPLIES-FUNEXPRESS	238.99
US BANK PURCHASING CARD PROGRAM	JB-3/4 SHAMROCKIN FUN WORKSHOP-F&B	81.80
US BANK PURCHASING CARD PROGRAM	JB -8/26 MOVIE NIGHT GAMES-AMAZON	37.70
US BANK PURCHASING CARD PROGRAM	LM-SUMMER CAMP AD	1,040.00
US BANK PURCHASING CARD PROGRAM	LM-SUMMER CAMP AD - CREDIT	(1,040.00)
SOLINK INC	HONORING OUR HISTORY-INVITATION CARDS	135.77
WESTAMERICA COMMUNICATIONS INC	AVR "BEWARE OF WILDLIFE" SIGNS	185.25

Vendor Name	Description (Item)	Amount
MANHATTAN STITCHING COMPANY INC	JAMFEST EVENT SHIRTS	328.64
	C. S. ADMINISTRATION TOTAL:	**1,008.15**
PLANNING		
REBECCA J CAHA	MAR'22 AFFORDABLE HOUSING CONSULTANT SRV	1,187.50
	PLANNING TOTAL:	**1,187.50**
LAW ENFORCEMENT-CONTRACT		
COUNTY OF ORANGE	APR'22 CONTRACT PAYMENT CREDIT	(1,980.08)
COUNTY OF ORANGE	APR'22 LAW ENFORCEMENT	782,783.60
	LAW ENFORCEMENT-CONTRACT TOTAL:	**780,803.52**
LAW ENFORCEMENT-OTHER		
US BANK PURCHASING CARD PROGRAM	BG-4/25-4/29 CPTED TRAINING/REGIS FOR SGT PHILLIPS	625.00
US BANK PURCHASING CARD PROGRAM	BG-4/4-4/6 CPTED TRAINING/REGIS FOR SGT PHILLIPS	425.00
US BANK PURCHASING CARD PROGRAM	BG-FRAMES FOR SHERIFF'S BANQUET	86.15
US BANK PURCHASING CARD PROGRAM	BG-3/1 ADMIN MEETING/LUNCH	165.08
US BANK PURCHASING CARD PROGRAM	BG-2/23 AMMO FOR RANGE PRACTICE	201.26
US BANK PURCHASING CARD PROGRAM	CK-AWARD/PLAQUE FOR SGT GARDNERS RETIREMENT	325.62
US BANK PURCHASING CARD PROGRAM	SM-3/18 COFFEE FOR PATROL DEPUTIES-SHOOTING IN AV	53.85
US BANK PURCHASING CARD PROGRAM	SM-3/18 FOOD FOR PATROL DEPUTIES-SHOOTING IN AV	243.52
SEAVCO INC	LE-DEP.BAKER'S M/C #3962-TIRE REPLACEMENT	361.91
ALL CITY MANAGEMENT SERVICES	2/20-3/5/22-412.5HRS-SCHOOL CROSSING GUARD SRV	10,448.63
	LAW ENFORCEMENT-OTHER TOTAL:	**12,936.02**
EOC		
EVERBRIDGE, INC	EOC-2/22/22-2/21/23 NIXLE 360 ALERT-ANNUAL FEES	5,800.00
	EOC TOTAL:	**5,800.00**
	GENERAL FUND TOTAL:	**863,491.11**

102 - GEN. FD-CITY HALL

NON-DEPARTMENTAL		
THE GAS COMPANY	3/7-4/5/22 MTR#6544 CITY HALL GAS SERVICE	565.67
SOUTH COAST AIR QUALITY MGMT DIST	FY21-22-CH-AQMD GENERATOR G43862 PERMIT FEE	440.15
SOUTH COAST AIR QUALITY MGMT DIST	FY21-22-AQMD-EMISSION FEE	142.59
NIEVES LANDSCAPE INC	2/16 CH- BEGONIA PLANTS INSTALLATION SRV	44.16
NIEVES LANDSCAPE INC	3/8 CH-ROSE PLANTS INSTALLATION SRV	14.72
MOULTON NIGUEL WATER DIST	2/14-3/21/22 MTR#8510 CITY HALL WATER SRV	163.57
MOULTON NIGUEL WATER DIST	2/14-3/21/22 MTR#6010 CITY HALL WATER SRV	139.90
MOULTON NIGUEL WATER DIST	2/14-3/21/22 MTR#7051 CITY HALL WATER SRV	326.44
SEMACONNECT INC	4/17/22-4/17/23 EV CHARGING-NETWORK SERVICE PROG	480.00
	NON-DEPARTMENTAL TOTAL:	**2,317.20**
	GEN. FD-CITY HALL TOTAL:	**2,317.20**

103 - GF-AV RECREATION SERVICES

WALT DISNEY TRAVEL CO, INC	8/4-CITY CAMP-DISNEY CALIFORNIA ADVENTURE TICKETS	6,424.00
WALT DISNEY TRAVEL CO, INC	8/11 CITY CAMP-DISNEYLAND RESORT TICKETS	8,020.00
		14,444.00
RECREATION SERVICES		
TLP EDUCATION LLC	WINTER2022-RWC070 SPANISH-2 PARTICIPANTS	234.00
FITNESS WITH FLAVOR LLC	WINTER2022-RWC164/166/169/170 HIP HOP BODY-6PART	258.00
VERNE'S PLUMBING, INC	3/22 AVR RESTROOM SINK REPAIR	275.00
TEAM ONE MANAGEMENT SERVICES	MAR'22 AV RANCH JANITORIAL SERVICE	5,190.00
US BANK PURCHASING CARD PROGRAM	JB-CITY DAY CAMP SUPPLIES-WALMART	19.85
US BANK PURCHASING CARD PROGRAM	JB-CITY DAY CAMP SUPPLIES-WALMART	43.55
US BANK PURCHASING CARD PROGRAM	JB-CITY DAY CAMP SUPPLIES-WALMART	20.87
US BANK PURCHASING CARD PROGRAM	JB-CITY DAY CAMP SUPPLIES-AMAZON	30.14
US BANK PURCHASING CARD PROGRAM	JB-CITY DAY CAMP SUPPLIES-AMAZON	52.77
US BANK PURCHASING CARD PROGRAM	JB-CITY DAY CAMP SUPPLIES-AMAZON	236.56
US BANK PURCHASING CARD PROGRAM	LM-WALL MOUNT-AMAZON	26.88
US BANK PURCHASING CARD PROGRAM	LM-HOOKS FOR GREENROOM-POTTERY BARN	287.96
US BANK PURCHASING CARD PROGRAM	LM-HDMI CABLE FOR MONITOR-AMAZON	6.82
US BANK PURCHASING CARD PROGRAM	LM-MAGNETIC ERASER-OFFICE DEPO	1.71
US BANK PURCHASING CARD PROGRAM	LM-AVR CATERING KITCHEN SUPPLIES-AMAZON	31.02
US BANK PURCHASING CARD PROGRAM	LM-AVR CATERING KITCHEN SUPPLIES-AMAZON	8.51
US BANK PURCHASING CARD PROGRAM	LM-REFUND MINOR EQUIPMENTS-OFFICE DEPOT	(145.45)

Vendor Name	Description (Item)	Amount
US BANK PURCHASING CARD PROGRAM	LM-REFUND-OFFICE DEPOT	(43.63)
US BANK PURCHASING CARD PROGRAM	LM-REFUND MINOR EQUIPMENTS-OFFICE DEPOT	(145.45)
US BANK PURCHASING CARD PROGRAM	LM-MAGNETIC WHITEBOARD-OFFICE DEPOT	320.62
US BANK PURCHASING CARD PROGRAM	LM-WHITEBOARD-AMAZON	355.56
US BANK PURCHASING CARD PROGRAM	LM-MAGNETIC WHITEBOARD-OFFICE DEPOT	363.52
ELIZABETH DRAY PLUMB	WINTER2022-RWC156/157KINDERGARTEN READINESS-35PAR	5,280.00
DS SERVICES OF AMERICA, INC	3/16 AVR BOTTLED WATER SERVICE	35.02
EVER AFTER EVENT PRODUCTIONS LLC	WINTER2022-RWC020/005/093/008/009/011DANCE-36PART	1,393.20
ROXANNE BELL	WINTER2022-RWC138 BALLET-1 PARTICIPANT	52.50
ROUND STAR WEST, LLC	WINTER2022-RWC178/179/180 SOCCER-22 PARTICIPANTS	1,452.00
CAROLYN WOJCIECHOWSKI	WINTER2022-RWC127/128/144/145 LINE DANCE-24 PART	348.00
CINTAS CORPORATION NO. 2	APR'22 AVR-FIRST AID MAINTENANCE	170.00
CINTAS CORPORATION NO. 2	APR'22 AVR-FIRST AID MAINTENANCE	1.61
MANHATTAN STITCHING COMPANY INC	CAMP SHIRTS	1,450.85
MOULTON NIGUEL WATER DIST	2/14-3/21/22 MTR #0819 AV RANCH WATER SRV	107.79
MOULTON NIGUEL WATER DIST	2/21-3/28/22 MTR#1100 AV RANCH WATER SRV	157.48
MOULTON NIGUEL WATER DIST	2/14-3/21/22 MTR#5356 AV RANCH WATER SRV	326.44
MOULTON NIGUEL WATER DIST	2/14-3/21/22 MTR#7892/6534 AV RANCH WATER SRV	557.12
MOULTON NIGUEL WATER DIST	2/21-3/28/22 MTR #0958 AV RANCH WATER SERVICE	129.80
MOULTON NIGUEL WATER DIST	2/14-3/21/22 MTR #0973 AV RANCH WATER SERVICE	83.09
BAKER ELECTRIC INC	AVR-CAMERA CONDUIT INSTALLATION OLD BARN(BLGD A)	3,570.00
JIVE COMMUNICATIONS INC	APR' 22 AVR JIVE VOIP SERVICE & SUPPORT	678.07
	RECREATION SERVICES TOTAL:	**23,221.78**
	GF-AV RECREATION SERVICES TOTAL:	**37,665.78**

203 - GAS TAX

STREET MAINTENANCE

MOULTON NIGUEL WATER DIST	2/21-3/28/22 MTR #4551 MEDIANS WATER SRV	105.58
MOULTON NIGUEL WATER DIST	2/21-3/28/22 MTR#6544 MEDIANS WATER SRV	96.93
MOULTON NIGUEL WATER DIST	2/21-3/28/22 MTR #2066 MEDIANS WATER SRV	84.80
	STREET MAINTENANCE TOTAL:	**287.31**
	GAS TAX TOTAL:	**287.31**

215 - PUBLIC SAFETY GRANTS

LAW ENFORCEMENT-OTHER

COUNTY OF ORANGE	APR'22 E CITATION RECURRING COSTS	384.97
COUNTY OF ORANGE	APR'22 MDC RECURRING	4,011.56
COUNTY OF ORANGE	APR'22 PVS RECURRING	1,838.97
COUNTY OF ORANGE	APR'22 MDC REPLACEMENT	1,627.11
COUNTY OF ORANGE	APR'22 PVS REPLACEMENT	1,136.46
COUNTY OF ORANGE	APR'22 MOTORCYCLE REPLACEMENT COSTS	64.60
COUNTY OF ORANGE	APR'22 E CITATION REPLACEMENT COSTS	183.56
	LAW ENFORCEMENT-OTHER TOTAL:	**9,247.23**
	PUBLIC SAFETY GRANTS TOTAL:	**9,247.23**

261 - CITY FAC.-AQUATIC CENTER

PREMIER AQUATIC SERVICES	APR'22-AQ CTR-RETENTION FEES	(1,625.00)
		-1,625.00

GEN-AQUATIC CENTER

COX COMMUNICATIONS, INC	3/19-4/18/22 ACCT #6701-AQ CTR-INTERNET	494.73
PREMIER AQUATIC SERVICES	APR'22-AQ CTR-MANAGEMENT FEES	10,833.33
THE GAS COMPANY	3/8-4/6/22 MTR#2349 AQ CTR GAS SERVICE PO#5503	3,045.11
MOULTON NIGUEL WATER DIST	2/14-3/21/22 MTR #6054 AQ CTR WATER SERVICE	341.41
MOULTON NIGUEL WATER DIST	2/14-3/21/22 MTR#2996 AQ CTR WATER SRV	226.69
THE ILLINI COMPANIES, INC	MAR'22 AQ CTR-POOL CHEMICALS	646.82
ALISO VIEJO BANQUET CENTER LLC	JAN-MAR'22-AQ CTR-MTR#4987 ELECTRICITY	2,514.13
ALPHA WATER SYSTEMS INC	REISSUE PMT-AQ CTR ROBOTIC POOL CLEANER	5,279.71
KNORR SYSTEMS INC	OCT'21 AQ CTR-HEAT EXCHANGER REPAIR SERVICE	20,526.93
KNORR SYSTEMS INC	JAN'22 AQ CTR-MONTHLY POOL MAINTENANCE	1,792.64
	GEN-AQUATIC CENTER TOTAL:	**45,701.50**
	CITY FAC.-AQUATIC CENTER TOTAL:	**44,076.50**

Vendor Name	Description (Item)	Amount
331 - CAPITAL IMPROVEMENTS		
CAPITAL IMPROVEMENTS		
SHADE STRUCTURES, INC	DEC'21 AV RANCH SHADE STRUCTURE	24,999.99
	CAPITAL IMPROVEMENTS TOTAL:	**24,999.99**
	CAPITAL IMPROVEMENTS TOTAL:	**24,999.99**
741 - RENEWABLE FARMS		
AARON FLORA	MAR'22 RENEWABLE FARMS-RETENTION PAYMENT	(3,113.30)
AARON FLORA	MAR'22 RENEWABLE FARMS-PAYMENT	31,133.00
		28,019.70
	RENEWABLE FARMS TOTAL:	**28,019.70**
	GRAND TOTAL:	**1,010,104.82**

City of Aliso Viejo
AGENDA ITEM

DATE: May 4, 2022

TO: Mayor and City Council

FROM: Lizzy Mendoza, Recreation & Community Services Manager

SUBJECT: PROFESSIONAL SERVICES AGREEMENT FOR OUT-OF-SCHOOL TIME PROGRAMS WITH THE BOYS & GIRLS CLUBS OF CAPISTRANO VALLEY

Recommended Action:

Approve and authorize the City Manager to execute a professional services agreement with the Boys and Girls Clubs of Capistrano Valley for out-of-school time programs.

Fiscal Impact:

Services for out-of-school time programs are billed monthly, reflecting actual program costs, including program supplies and services, staff costs, benefit costs, and administrative costs, and shall not exceed $177,500 annually. Total compensation for the five-year term shall not exceed $887,500. There is a 12.7% increase in cost for services from Fiscal Year 2021-22.

Background:

On May 19, 2010, the Council approved a three-year agreement with the Boys & Girls Clubs of Capistrano Valley in an amount not to exceed $145,000 annually for recreation program services to be held at Iglesia Park Community Center. The agreement was amended to continue services for fiscal years 2012-13, 2013-14, 2014-15 with compensation not to exceed $152,500 annually. In 2015, the City entered into a 3-year agreement for recreation program services with the Boys & Girls Clubs of Capistrano Valley to be held at Iglesia Park Community Center with annual compensation not to exceed $157,500. In 2018, the City entered into a 3-year agreement for recreation program services with the Boys & Girls Clubs of Capistrano Valley to be held at Iglesia Park Community Center with annual compensation not to exceed $157,500 and two additional 1-year amendment options with rates subject to adjustment in accordance with the annual average Consumer Price Index of the prior calendar year. The agreement was amended to continue services for fiscal year 2021-22 without a rate adjustment due to the COVID-19 pandemic.

Discussion:

The Aliso Viejo Branch of the Boys & Girls Clubs of Capistrano Valley was established at the Iglesia Park Community Center to provide year-round recreational programs for the youth of Aliso Viejo. Youth programs include a focus on activities revolving around academic success, health and life skills, character and leadership, safety, and DEIB (Diversity, Equity, Inclusion, and Belonging), games, crafts, field trips, homework club, computer lab, sports, fitness and nutrition, and social programs. Currently, the Aliso Viejo branch serves upwards of 325 children on a weekly basis. The program is staffed by the Boys & Girls Clubs of Capistrano Valley full and part-time employees, maintaining a staff to participant ratio of 1:20. Volunteers provide additional assistance with the program offerings.

Out-of-school time programs are offered Monday-Friday from school dismissal until 6:00 p.m. for children ages 6-12. The teen program is available Monday-Thursday from school dismissal until 7:00 p.m. and one Friday a month from 6:00 p.m. to 9:00 p.m. During the summer and spring recesses, hours of operation are expanded to include morning activities beginning at 8:00 a.m.

Although there are no fees charged for the drop-in program, all participants are required to become members of the Boys & Girls Clubs of Capistrano Valley at a cost of $125 for youths 6 to 12 years old per calendar year and $40 for teens 13 to 18 years old per calendar year. Financial aid and scholarships are available to families needing financial assistance so that no child is turned away.

A final 1-year amendment option is available for fiscal year 2022-23. The cost of the amendment is $165,375 for FY 2022-23, which accounts for a 5% CPI-U increase from the current rate. However, if the City exercises the amendment option, the Boys and Girls Club proposes a four (4) year agreement to begin in FY 2023-24. The total cost over the 5-year period, including the 2022-23 amendment year, would be $913,801.

The City received a second proposal for a new 5-year agreement with a set rate of $177,500 annually, totaling $887,500. The option to enter a 5-year term saves the City $26,301 over the life of the agreement when compared to exercising the amendment option and entering a new 4-year agreement beginning fiscal year 2023-24 per the proposal submitted by the Boys & Girls Club.

The Boys & Girls Clubs of Capistrano Valley has been a staple in the Aliso Viejo community since 2005. The organization continues to foster youth development, academic success, confidence, and responsibility while cultivating collaborative relationships with City staff to provide enriching experiences for the residents of Aliso Viejo. Staff continues to be impressed with the high quality of programs and professional level of service offered by the Boys & Girls Club. As such, staff recommends, the City Council approve a new five-year agreement with the Boys & Girls Clubs of Capistrano Valley for out-of-school time programs beginning fiscal year 2022-23. After the initial 5-year term, two additional 2-year extensions will be available subject to the annual average

Consumer Price Index of the prior calendar year, All Urban Consumers, Los Angeles-Long Beach-Anaheim, up to a maximum percentage of five percent (5%).

Attachment:

1. Agreement

CITY OF ALISO VIEJO
PROFESSIONAL SERVICES AGREEMENT
FOR
OUT-OF-SCHOOL TIME PROGRAMS

1. PARTIES AND DATE.

This Agreement is made and entered into this 14 day of April, 2022, by and between the City of Aliso Viejo, a municipal organization organized under the laws of the State of California with its principal place of business at 12 Journey, Suite 100, Aliso Viejo, California 92656 ("City") and **BOYS & GIRLS CLUBS OF CAPISTRANO VALLEY**, a **CALIFORNIA CORPORATION**, with its principal place of business at **1 VIA POSITIVA, SAN JUAN CAPISTRANO, CA 92675** ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of professional **OUT-OF-SCHOOL TIME PROGRAMS** consultant services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional **OUT-OF-SCHOOL TIME PROGRAMS** consultant services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such services for the **OUT-OF-SCHOOL TIME PROGRAMS** project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional **OUT-OF-SCHOOL TIME PROGRAMS** consultant services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from **JULY 1, 2022** to **JUNE 30, 2027,** unless earlier terminated as provided herein. The City Manager shall have the unilateral option, at its sole discretion, to renew this Agreement annually for no more than two additional two-year terms. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant shall complete, execute, and submit to City a Request for Taxpayer Identification Number and Certification (IRS FormW-9) prior to commencement of any Services under this Agreement. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: **Executive Director; Area Manager; Branch Manager.**

3.2.5 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. The City Manager hereby designates **Recreation & Community Services Manager,** or his or her designee, as the City's contact for the implementation of the

Services hereunder. Consultant shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates **James Littlejohn, Executive Director**, or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and sub consultants shall have sufficient skill and experience to perform the services assigned to them. Finally, Consultant represents that it, its employees and sub consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the services and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any sub consultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the sub consultant has secured all insurance required under this section.

3.2.10.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder and without limiting the indemnity provisions of the Agreement, the Consultant in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement, the following policies of insurance. If the existing policies do not meet the Insurance Requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

(a) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, with minimum limits of at least $1,000,000 per occurrence, and if written with an aggregate, the aggregate shall be double the per occurrence limit. Defense costs shall be paid in addition to the limits.

The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

(b) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1) with minimum limits of $1,000,000 each accident.

(c) Professional Liability: Professional Liability insurance with minimum limits of $1,000,000. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.).

If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

(d) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability

Insurance with a limit of not less than $1,000,000 per accident for bodily injury and disease.

3.2.10.3 Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

(a) The policy or policies of insurance required by Section 3.2.10.2 (a) Commercial General Liability and (c) Contractor's Pollution Liability shall be endorsed to provide the following:

(1) Additional Insured: The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement.

Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the Agreement.

(2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(b) The policy or policies of insurance required by Section 3.2.10.2 (b) Automobile Liability and (d) Professional Liability shall be endorsed to provide the following:

(1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(c) The policy or policies of insurance required by Section 3.2.10.2 (e) Workers' Compensation shall be endorsed to provide the following:

(1) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

(2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City

except ten (10) days shall be allowed for non-payment of premium.

3.2.10.4 Primary and Non-Contributing Insurance. All insurance coverages shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.2.10.5 Waiver of Subrogation. Required insurance coverages shall not prohibit Consultant from waiving the right of subrogation prior to a loss. Consultant shall waive all subrogation rights against the indemnified parties. Policies shall contain or be endorsed to contain such provisions.

3.2.10.6 Deductible. Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.2.10.7 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the City. 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.

3.2.10.8 Failure to Maintain Coverage. Consultant agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Consultant until Consultant has fully complied with the insurance provisions of this Agreement.

In the event that the Consultant's operations are suspended for failure to maintain required insurance coverage, the Consultant shall not be entitled to an extension of time for completion of the Services because of production lost during suspension.

3.2.10.9 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.2.10.10 Insurance for Sub consultants. All sub consultants shall be included as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing sub consultants to purchase the appropriate insurance in compliance with

the terms of these Insurance Requirements, including adding the City as an Additional Insured to the sub consultant's policies.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and sub consultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **EIGHT-HUNDRED EIGHTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS ($887,500)** ("Total Compensation") without written approval of City's **CITY MANAGER**. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation.

Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or

"maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant:

Boys & Girls Clubs of Capistrano Valley
1 Via Positiva
San Juan Capistrano, CA 92675
Attn: **James Littlejohn, Executive Director**

City:

City of Aliso Viejo
12 Journey, Suite 100
Aliso Viejo, CA 92656
Attn: **Lizzy Mendoza, Recreation & Community Services Manager**

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all sub consultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the sub consultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.5.3.3 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the Release Notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.5.4 Fraud Policy. Consultant shall provide a copy of the City's Fraud Prevention Policy to each of its employees assigned to perform Services under this Letter of Agreement. Consultant shall submit to the City a statement signed by an authorized representative for Consultant certifying receipt of the City's Fraud Prevention Policy. A finding by the City that any of Consultant's employees have committed fraud against the City or have violated the City's Fraud Prevention Policy shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Letter of Agreement at City's request and/or termination of this Letter of Agreement. Consultant shall reimburse the City for any costs and expenses associated with fraud against the City.

3.5.5 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.6 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.7 Indemnification.

To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Consultant or the City, its officials, officers, employees, agents or volunteers.

If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.5.8 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.9 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.

3.5.10 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.6 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.7 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.8 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.9 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and sub consultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.10 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.11 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or

service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.12 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.13 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.14 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.15 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any sub consultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.16 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.17 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.18 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.19 Declaration of Political Contributions. Consultant shall, throughout the term of this Agreement, submit to City an annual statement in writing declaring any political contributions of money, in-kind services, or loan made to any member of the City Council within the previous

twelve-month period by the Consultant and all of Consultant's employees, including any employee(s) that Consultant intends to assign to perform the Services described in this Agreement.

3.20 Subcontracting.

3.20.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties have executed this Professional Services Agreement on this 14 day of April, 2022.

CITY OF ALISO VIEJO

By:_____
David Doyle
City Manager

BOYS & GIRLS CLUBS OF CAPISTRANO VALLEY

By:
Name: [signature]
Title: Executive Director

[If Corporation, TWO SIGNATURES, President **OR** Vice President **AND** Secretary, **AND** CORPORATE SEAL OF CONSULTANT REQUIRED]

ATTEST:

By:_____
Mitzi Ortiz, MMC
City Clerk

By:_____

APPROVED AS TO FORM:

By:_____
Best Best & Krieger LLP
City Attorney

APPROVED AS TO COMPLIANCE WITH BUDGET:

By:_____
Director of Financial Services

CITY OF ALISO VIEJO

DECLARATION OF POLITICAL CONTRIBUTIONS

Using the space provided below, please list any political contributions of money, in-kind services, or loans made to any member of the City Council within the last twelve (12) months by Consultant and all of Consultant's employees, including any employee(s) that applicant intends to assign to perform the work or services described in this Agreement:

None

To the best of my knowledge, I declare under penalty of perjury that the foregoing is true and was executed at:

San Juan Capistrano, Orange, CA — 04-14-2022
City/County/State — Date

Boys + Girls Clubs of Capistrano Valley — James E. Littlejohn
Name of Business — Print Name

Signature

NOTE: THIS DECLARATION IS INCLUDED AS PART OF THE AGREEMENT AND MUST BE SIGNED AND ATTACHED HERETO.

CITY OF ALISO VIEJO

ACKNOWLEDGMENT OF RECEIPT OF FRAUD POLICY

I hereby acknowledge that I have received a copy of the City's "Fraud Prevention Policy" dated October 1, 2008. I understand that I am to promptly read its contents and distribute copies to employees assigned to perform Services for the City of Aliso Viejo.

To the extent that provisions of this policy conflict with previously issued policies or practices, whether or not such policies and practices were contained in written policies, this policy shall prevail.

Boys + Girls Clubs of Caprstrano Valley — Name of Business

James E. Littlejohn — Print Name

Signature

04-14-2022 — Date

EXHIBIT "A"

SCOPE OF SERVICES

I. Provide traditional Boys & Girls Club out-of-school time programs in the areas of: Education and Career Development; the Arts and Technology; Health and Life Skills; Sports, Fitness and Recreation; and Character and Leadership Development.

II. Consultant to provide yearly sport activities in the park for members during approved times by the City. Sport activities may include but are not limited to: basketball, soccer, baseball, softball, flag football, volleyball and tennis.

III. During the summer time program, Consultant to provide preplanned field trips and excursion opportunities for participants. Additional fees may be charged for the cost of such field trips and/or excursions provided they are published in the summer schedule and the fees collected are netted against the operational costs in the monthly billing.

IV. Unless otherwise approved, standard operating hours shall be as follows:

YOUTH PROGRAM

	Youth After School Program	Youth Summer Program	Youth Spring Recess
Ages	6 – 12 Years	6 – 12 Years	6 – 12 Years
Days	Monday – Friday	Monday – Friday	Monday - Friday
Hours	School Dismissal until 6:00 pm	8:00 am – 6:00 pm	8:00 am – 6:00 pm

TEEN PROGRAM

	Teen After School Program	School Year Teen Night Program	Teen Spring Recess/Summer Program
Ages	13 – 18 Years	13 – 18 Years	13 – 18 Years
Days	Monday - Thursday	One Friday a month	Monday - Friday
Hours	School Dismissal until 7:00 pm	6:00 pm – 9:00 pm	8:00 am – 6:00 pm

V. Consultant shall host programs to accommodate for any minimum day schedule during the Saddleback Valley Unified School District (SVUSD) school year. During the Spring Recess, SVUSD school holidays that fall outside of legal federal holidays, the Consultant shall provide out-of-school time activities at Iglesia Park Community Center.

VI. Consultant to provide an extended fee-based summer program from 8:00 am - 6:00 pm Monday - Friday. Fees charged must be applied to operational costs of the summer program provided they are published in the summer schedule and the fees collected are netted against the operational costs in the monthly billing.

VII. Scholarship and financial assistances shall be available by the Consultant.

VIII. Advertise the program activities through media releases, City eNews, and City and Consultant websites. All promotional materials must include City logo and recognition for City funded program support.

IX. Consultant to provide a monthly calendar of daily and special events to participants, public, and City designee for inclusion in the City brochure, City website, and other publication as deemed appropriate by the City designee.

X. Consultant to keep records of daily attendance and provide City staff with weekly attendance and program summary report.

XI. Consultant shall also provide City with weekly reports in a format containing such information about the programs as specified by the City.

XII. All Consultant program and/or event participants must have a release of liability/waiver form on file with Consultant.

XIII. All participants must have annual membership with the Consultant. Fees collected by the Consultant at the Aliso Viejo Branch location must be netted against the monthly billing in which they were received.

XIV. Consultant will develop an application process to award full scholarships as necessary to families with financial hardship.

XV. Participate in City and partner events as requested.

XVI. Consultant to host ongoing fundraising efforts to supplement program costs. When requested, Consultant must provide a written report on fundraising efforts to include; monies raised, funds allocated to the Aliso Viejo Branch, and specific uses of such funds.

XVII. There shall be an adult-child ratio of 1:20. Compliance with this ratio may be adjusted based on actual attendance.

XVIII. Volunteers may be recruited by the Consultant to assist with programs and/or events and will be included in City's annual volunteer recognition program.

XIX. Consultant shall report to City any accident or incident that occurs at the program specified in this agreement within twenty-four (24) hours on the City designated forms. Accidents or incidents that receive emergency response and/or head injuries must be reported immediately.

EXHIBIT "B"

SCHEDULE OF SERVICES

I. Unless otherwise approved, standard operating hours shall be as follows:

Youth Program

	After School Program	**Summer Time Program**	**Spring Recess**
Ages	6-12 years	6-12 years	6-12 years
Days	Monday-Friday	Monday-Friday	Monday-Friday
Hours	School Dismissal-6:00pm	8am-6:00pm	8am-6:00pm

Teen Program

	School Year Teen Program	**School Year Teen Program**	**Spring Recess/Summer Teen Program**
Ages	13-18yrs	13-18yrs	13-18yrs
Days	Monday-Thursday	One Friday a month	Monday-Friday
Hours	School Dismissal until 7:00 pm	6:00pm-9:00pm	8am-6:00pm

II. Consultant shall host programs to accommodate for any minimum day schedule during the Saddleback Valley Unified School District (SVUSD) school year. During the Spring Recess, SVUSD school holidays that fall outside of legal federal holidays, the Consultant shall provide out-of-school time activities at Iglesia Park Community Center.

III. Consultant to provide an extended fee-based summer program from 8:00am- 6:00pm Monday-Friday. Fees charged must be applied to operational costs of the summer program provided they are published in the summer schedule and the fees collected are netted against the operational costs in the monthly billing.

In the event that this Agreement is renewed pursuant to Section 3.1.2, the first renewal period shall be from **JULY 1, 2027 - JUNE 30, 2029**. The second renewal period shall be from **JULY 1, 2029 - JUNE 30, 2031.**

EXHIBIT "C"

COMPENSATION

The Scope of Services will be compensated based on actual hours spent rendering the out-of-school time program services including program staff and administrative support, and the cost of reimbursable program expenses including supplies, materials, and equipment necessary to deliver such programs, less any fees, fundraising monies, and donations collected for the Aliso Viejo Branch of the Boys & Girls Clubs of Capistrano Valley.

The total annual compensation shall not exceed $177,500 annually.

Consultant to supply a monthly invoice in compliance with the guidelines below:

I. The monthly invoice shall include total expenses to operate the Aliso Viejo Branch; list of itemized operational expenditures to include program supplies and services, staff costs, benefit costs, administrative costs so that the total cost of operations can be easily determined. The monthly billing shall then include an itemized amount which has been paid by the Consultant including any non-reimbursable expenses, application of any fees collected (i.e. membership fees, excursion fields, etc.) which are netted against the total monthly invoice submitted to the City.

II. Purchases in excess of $500 must receive authorization by the City's designee prior to purchase. All purchases that are submitted for reimbursement must be used solely for the operations and programs at the Aliso Viejo Branch unless otherwise approved by the City's designee and comply with the City's purchasing policy.

III. Timecards must properly be filled out by Consultant's staff which accurately reflects time worked at the Aliso Viejo Branch of the Consultant. Unless otherwise approved, time for work performed at locations other than the Aliso Viejo Branch will not be subject to reimbursement.

IV. Itemized receipts and payroll records including benefit information, must be turned in on a timely manner with the monthly billing and be for approved items and services.

V. Non-reimbursable expenses include but may not be limited to; gifts and parties for staff, items which have been purchased or identified for purchase with donated or raised funds, travel for conferences and/or training seminars, registration fees for conferences or training seminars, training costs for training otherwise provided by and/or required by the Consultant, mileage costs for staff to travel to different clubs as designated by the Consultant, and any items the Consultant wishes to be named owner.

VI. Title to, and possession of, any and all equipment purchased by Contractor with funds that are subsequently reimbursed by City pursuant to this Agreement shall revert to City upon termination of this Agreement. Due to the uniqueness of Consultant's out-of-school time programs, Consultant and City agree to the interchangeable use of Consultant and City equipment and supplies purchased pursuant to this Agreement at the Iglesia Park Community Center facility.

In the event that this Agreement is renewed pursuant to Section 3.1.2, the rates set forth above may be adjusted each year at the time of renewal described in Exhibit "B" in accordance with the annual average Consumer Price Index of the prior calendar year, All Urban Consumers, Los Angeles-Riverside-Orange Counties up to a maximum percentage of five percent (5%).

City of Aliso Viejo
AGENDA ITEM

DATE: May 4, 2022

TO: Mayor and City Council

FROM: Lizzy Mendoza, Recreation & Community Services Manager

SUBJECT: FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT WITH WESTAMERICA COMMUNICATIONS, INC. FOR PRINTING SERVICES

Recommended Action:

Approve and authorize the City Manager to execute the First Amendment to the Professional Services Agreement with Westamerica Communications, Inc. for printing services for the "Aliso Viejo Community Connection" quarterly brochure.

Fiscal Impact:

The total fiscal impact is $110,260 for Fiscal Year 2022-23. This is a 5% increase from the previous fiscal year for printing services for the quarterly brochure.

Background:

The City has been using Westamerica Communications, Inc. for print services since July 2017. In Fall 2018, the City newsletter was rebranded as "Aliso Viejo Community Connection." The "Aliso Viejo Community Connection" brochure features expanded content including the City Manager's message, a special events corkboard, library services, What's Happening in Aliso Viejo section, and recreation class information.

The City and Westamerica Communications, Inc. entered into the current agreement on July 1, 2019 which is for a three-year term with two optional one-year amendments. Since 2019, the total page count for the quarterly brochures has increased from thirty-two pages to forty-four pages due to the increase in recreation classes and camps. There are currently 25,000 copies printed and mailed to Aliso Viejo postal customers and distributed to City facilities including Aliso Viejo Ranch, Aliso Viejo Aquatic Center, Iglesia Park Community Center and City Hall. Additional copies are dispersed at the library, expos, and special events.

Discussion:

Staff has been extremely pleased with the printing services performed by Westamerica Communications, Inc. The scope of work includes specialized services consisting of proofreading and consulting which have been a great benefit to the City. In addition to producing exceptional quality products, the firm provides top notch customer service, is highly responsive, flexible, and collaborative.

Staff recommends City Council approve a one-year agreement amendment to continue printing services for the “Aliso Viejo Community Connection” quarterly brochure with Westamerica Communications, Inc. for Fiscal Year 2022-23, after which staff plans to negotiate a new three-year agreement term for printing services.

Attachment:

1. Agreement Amendment

CITY OF ALISO VIEJO

FIRST AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT
FOR
PRINTING SERVICES

1. PARTIES AND DATE.

This First Amendment to the **PROFESSIONAL SERVICES AGREEMENT FOR PRINTING SERVICES** ("First Amendment") is entered into on the 13 day of April, 2022, by and between the City of Aliso Viejo (hereinafter referred to as the "City") and **WESTAMERICA COMMUNICATIONS, INC.** (hereinafter referred to as the CONTRACTOR. City and Contractor are sometimes collectively referred to herein as the "Parties."

2. RECITALS.

2.1 Agreement. The Parties entered into that certain PROFESSIONAL SERVICES AGREEMENT FOR PRINTING SERVICES dated JULY 1, 2019 ("Agreement").

2.2 First Amendment. The Parties now desire to amend the Agreement in order to amend the scope of services, extend the term of the Agreement, increase the total compensation and amend the rates of compensation under the Agreement.

3. TERMS.

3.1 Scope of Services. Exhibit "A" of the Agreement is hereby amended in its entirety as set forth in Exhibit "A" to this First Amendment, attached hereto and incorporated herein by reference.

3.2 Term. Section 3.1.2 of the Agreement is hereby amended in its entirety to read as follows:

"The term of this Agreement shall be from **JULY 1, 2019** to **JUNE 30, 2023** unless earlier terminated as provided herein. The City Manager shall have the unilateral option, at his sole discretion, to renew this Agreement annually for no more than one additional one-year term. Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines."

3.3 Compensation. Section 3.3.1 of the Agreement is hereby amended in its entirety to read as follows:

"Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under the Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. Total compensation shall not exceed **FOUR HUNDRED TWENTY FIVE THOUSAND TWO-HUNDRED SIXTY DOLLARS ($425,260)** without written approval of the

City Manager or City Council, as applicable. Extra Work may be authorized, as described below, and if authorized will be compensated at the rates and in the manner set forth in this Agreement."

3.4 Rates of Compensation. Exhibit "C" of the Agreement is hereby amended to add the annual rates of compensation for 2022-2023 as set forth in Exhibit "B" to this First Amendment, attached hereto and incorporated herein by reference.

3.5 Continuing Effect of Agreement. Except as otherwise specifically set forth in this First Amendment, the remaining provisions of the Agreement shall remain in full force and effect. From and after the date of this First Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this First Amendment.

SIGNATURES ON FOLLOWING PAGE

SIGNATURE PAGE FOR FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT FOR PRINTING SERVICES BETWEEN THE CITY OF ALISO VIEJO AND WESTAMERICA COMMUNICATIONS, INC.

IN WITNESS WHEREOF, the parties have executed this First Amendment to Agreement on this 13 day of April, 2022.

CITY OF ALISO VIEJO

Approved:

By: _____
David Doyle
City Manager

ATTEST:

By: _____
Mitzi Ortiz, MMC
City Clerk

APPROVED AS TO FORM:

_____
Best Best & Krieger LLP
City Attorney

APPROVED AS TO COMPLIANCE WITH BUDGET

By: _____

Director of Financial Services

WESTAMERICA COMMUNICATIONS, INC

By: _____

Its: CEO

Printed Name: Doug Grant

By: _____

Its: Vice President

Printed Name: Mark DeBellis

60367.01100\33489405.1

EXHIBIT "A"
TO FIRST AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT FOR PRINTING SERVICES

SCOPE OF SERVICES

Provide production and printing services for the City of Aliso Viejo's Community Connection Brochure.

Community Connection Brochure Specifications

COVER
Flat Size: 17 x 11 Finishing at: 8.5 x 11
Paper: 100# White Endurance Gloss Book
Printing: 4-Color Process + OA Gloss AQ 2 Sides

TEXT INTERIOR

Flat Size: 17 x 11 Finishing at: 8.5 x 11
Paper: 70# White Endurance Gloss Book
Printing: 4-Color Process + OA Gloss AQ 2 Sides
Proofing: Improof & Epson
Finishing: Fold, Saddle Stitch, Prepare for Mailing
Deliver local
Mailing Services Include:

- Prepare approx. 21,328 pieces for EDDM mailing.
- Import Data
- NCOA/CASS & Data Sort
- Postal documentation Prep (d) Sort, Tray & Deliver to USPS
- Postage is additional; estimate will be provided in advance based on current resident counts

Work Plan for Aliso Viejo Recreation Publication

Westamerica team of supervisors works with the Project Manager, who updates Account Representative as to the status of the project, both daily, and as the need requires.

The process begins with the collaboration between Westamerica and the City of Aliso Viejo Recreation team regarding publication specifications such as the theme, content flow, page count, and the deadline.

- Once Westamerica receives that approved files, the following steps are followed:
- Project Manager plans the job for the press based on page count, orders the paper, and schedules the job for Production.
- The publication moves to the Prepress Supervisor for file prep and proofing. This process involves imposing or positioning the pages in the appropriate locations on the press sheet layout to ensure that they will be in correct page order when folded. Prepress operators

"soft-proof" the project on their computers to ensure correct pagination. Color-managed proofs are generated in flat format (Epson proofs), as well as folded and stitched (digital blueline). The Epson proofs are color-accurate to press, using our G7 Certified color calibration system. We affix proof tags to each proof for client sign-off and proof disposition (i.e., OK to print, OK with corrections, or new proofs required).

- Prepress Supervisor, Project Manager and Account Representative review the digital proofs in advance of Westamerica presenting the proofs to the City.
- Account Representative schedules a meeting with the City and provides a proof for review.
- If corrections are required, edits are made with PDF's emailed for review and approval.
- If approved, proofs are returned to Prepress to prepare printing plates.
- Final proofs have a "Final Proof" sticker affixed to EACH proof, and the production job ticket and proofs are submitted to the Plating department.
- Westamerica to create a flip-book PDF, which can be sent to the Recreation team for inclusion on their website.
- The platemaker will access the imposed files residing on our Kodak Prinergy system, and generates the plates. For each plate, the platemaker will review each printing plate against the final signed off proofs to ensure that all corrections (if applicable) were made, and that there are no missing graphics or other elements. Once this inspection process is complete, the platemaker takes the plates to the pressroom.
- The printing process commences. Press operators mount the plates onto the press and load the paper into the "feed" end. As each side of each press sheet is printed, Account Representative "press checks" the press sheet along with Press Room Supervisor, John Dailey. Throughout the print run the publication is being reviewed against target color specifications and quality requirements, press operators check the press sheets against the final proof to make sure that the printed sheet matches the signed-off proof.
- Following the successful print run, the flat press sheets go into our Bindery department for folding, cutting and saddle-stitching. Bindery Supervisor Michael Carpenter inspects each folded form to ensure that it is folded correctly by matching it against the client approved digital blueline. After the folding process is complete, the job is set up on the saddle-stitcher. Mike inspects the stitched form against the final proof, making sure that all pages are in correct order and no copy is being trimmed off. During the stitching run, our QA process involves operators removing samples from the stitched books to check for accuracy.
- The Quality Assurance team completes a through quality review before releasing the publication to the Mail House. They inspect the job for color accuracy and consistency, correct pagination, and confirm that all corrections were made. This is the final step in the entire QA process before going to the Mail House.
- Carrier Routes are calculated, mail data processing is performed, and USPS paperwork is prepared.
- A postage estimate is presented, and the City postage account is used.
- All issues are bundled and delivered to the City of Aliso Viejo for mail delivery.

EXHIBIT "B"
TO FIRST AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT FOR PRINTING SERVICES

COMPENSATION

The pricing below includes all direct costs, indirect costs, and mailing services. Postage will be estimated at time of project and presented as a separate fee. As the City's Recreation Brochure is a quarterly publication, it is not subject to sales tax. There pricing below is based on publication size and quantity. They all share the same characteristics as follows:

	28 Pg Plus Cvr	32 Pg Plus Cvr	36 Pg Plus Cvr	40 Pg Plus Cvr
25 M Quantity				
2022-2023	$22,724	$22,516	$26,084	$27,565

City of Aliso Viejo
AGENDA ITEM

DATE: May 4, 2022

TO: Mayor and City Council

FROM: Lizzy Mendoza, Recreation & Community Services Manager

SUBJECT: PROFESSIONAL SERVICES AGREEMENT WITH CABCO YELLOW, INC. FOR SENIOR TRANSPORTATION SERVICES

Recommended Action:

Approve and authorize the City Manager to execute the Professional Services Agreement with Cabco Yellow, Inc., DBA California Yellow Cab for senior transportation services under the Senior Mobility Program.

Fiscal Impact:

The agreement provides compensation to Cabco Yellow, Inc., DBA California Yellow Cab for senior transportation services in an amount not to exceed $40,902 annually for a total of $193,867 for a five-year term. For Fiscal Year 2022-23 and 2023-24, services are to be billed monthly at a rate of $17.50 per one-way trip. For Fiscal Years 2024-25, 2025-26, and 2026-27, the rate is expected to increase to $20.00 per one-way trip. The Senior Transportation Program is free for participants.

Eighty percent of funding for the City's Senior Transportation Program is provided by the Orange County Transportation Authority's (OCTA) Measure M2 Senior Mobility Program. Measure M2 Senior Mobility Funds in the amount of $29,965 have been forecasted for Fiscal Year 2022-23. Measure M2 Senior Mobility Funds are projected annually. The funding allocation for Aliso Viejo for the next five years is projected to be a total of $161,556.

Twenty percent of funding for the City's Senior Transportation Program is provided through City matched funds. For fiscal year 2022-23, that amount is expected to be $5,993, and by fiscal year 2026, City matching funds are expected to be $6,817. For the life of the agreement, it is expected that the City will fund $32,311 for senior transportation.

Background:

The Senior Mobility Program is designed for Orange County cities to provide their senior residents with transportation services that are locally oriented, personalized, and flexible.

The OCTA Board of Directors originally established it in October 2001 to assist Orange County cities in providing local transportation services to residents 60 years and older. The City of Aliso Viejo entered into a cooperative agreement with OCTA in August 2013, effectively establishing the Senior Mobility Program. As part of the cooperative agreement with OCTA, the City is to provide transportation services to local community and senior centers to participate in senior programs, including nutrition.

Funding for the Senior Mobility Program comes from Measure M2, Orange County's local ½ cent transportation sales tax measure. Project U in M2 provides funding for senior and disabled programs, including the Senior Mobility Program. As provided in Orange County Local Transportation Authority (OCTA) Ordinance No. 3, one percent of net revenue is allocated to continue and expand the Senior Mobility Program. These funds are apportioned to all Orange County cities and to the County of Orange according to a formula based on each jurisdiction's share of Orange County's population 60 years of age and older.

During FY 2021-22, 146 one-way trips were completed through the City of Aliso Viejo Senior Transportation Program. The current program provides transportation to and from Aliso Viejo Ranch for recreation programs and services; Aliso Viejo City Hall, Aliso Viejo Library, Iglesia Park Community Center, Sea Country Senior and Community Center in Laguna Niguel, and the Florence Sylvester Senior Community Center in Laguna Hills for their senior programs, including, but not limited to the senior nutrition programs.

Discussion:

As part of the cooperative agreement with OCTA, the City is to provide transportation services for residents 60 years of age and older to local community and senior centers to participate in senior programs, including nutrition. In March 2018, Staff published a Request for Proposals (RFP) for Senior Transportation Services, and by the April 10, 2018, close date, three proposals were received. A three-member Selection Committee reviewed and rated each submission. Proposals were evaluated and scored for both technical qualifications and price. After conducting an interview and review of the proposals, the agreement was awarded to California Yellow Cab.

California Yellow Cab has been a senior transportation services provider in South Orange County since 2003. Currently, the firm provides Senior Transportation Services as part of the OCTA Senior Mobility Program to, Laguna Niguel, Laguna Woods, Laguna Hills, Lake Forest, Rancho Santa Margarita, Mission Viejo, and San Clemente.

Additionally, California Yellow Cab provides senior transportation services to several other Orange County cities, including; Irvine, Costa Mesa, Brea, Villa Park, Fullerton, Garden Grove, Cypress, Orange, Yorba Linda, Seal Beach, and Fountain Valley.

City staff regularly speaks with participants and conducts surveys on program satisfaction. Participants have been extremely satisfied with the level of service provided by California Yellow Cab. California Yellow Cab continues to abide by all of the guidelines

set by OCTA and meets the deadlines for the monthly, quarterly, and annual reports without issues.

California Yellow Cab offers both scheduled and on-demand transportation service to Aliso Viejo residents Monday-Friday from 9 a.m. to 4 p.m., excluding City holidays. The firm maintains a network of highly skilled drivers who have completed specialized training to transport seniors and disabled persons. Additionally, during their previous agreement term, California Yellow Cab demonstrated that it has excellent resources for flexible scheduling, reporting, expansion, and customer service.

Attachment:

1. Agreement

CITY OF ALISO VIEJO
PROFESSIONAL SERVICES AGREEMENT
FOR
SENIOR TRANSPORTATION SERVICES

1. PARTIES AND DATE.

This Agreement is made and entered into this 12 day of April 2022, by and between the City of Aliso Viejo, a municipal corporation organized under the laws of the State of California with its principal place of business at 12 Journey, Suite 100, Aliso Viejo, California 92656 ("City") and **CABCO YELLOW, INC. DBA CALIFORNIA YELLOW CAB** a **CORPORATION**, with its principal place of business at **520 WEST DYER ROAD, SANTA ANA, CA 92707** ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of professional **SENIOR TRANSPORTATION** consultant services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional **SENIOR TRANSPORTATION** consultant services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such services for the **SENIOR TRANSPORTATION SERVICES AS PART OF THE ORANGE COUNTY TRANSPORTATION AUTHORITY (OCTA) SENIOR MOBILITY PROGRAM COOPERATIVE AGREEMENT** project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional **SENIOR TRANSPORTATION SERVICES** consultant services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from **JULY 1, 2022** to **JUNE 30, 2027** unless earlier terminated as provided herein. The City Manager shall have the unilateral option, at its sole discretion, to renew this Agreement annually for no more than two additional

two-year terms. Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant shall complete, execute, and submit to City a Request for Taxpayer Identification Number and Certification (IRS FormW-9) prior to commencement of any Services under this Agreement. Neither City, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services.

3.2.2.1 Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.2.2 Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the Services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the Services, only to the extent such strikes and other organized labor action are beyond the control of Consultant and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders,

rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the Services and Agreement.

3.2.2.3 Should a Force Majeure Event occur, the non-performing Party shall, within a reasonable time of being prevented from performing, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events and/or delays, regardless of the Party responsible for the delay, shall not entitle Consultant to any additional compensation. Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: **TIM CONLON, PRESIDENT, AND MELISSA GOMEZ, DIRECTOR OF SALES.**

3.2.5 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. The City Manager hereby designates **RECREATION & COMMUNITY SERVICES MANAGER**, or his or her designee, as the City's contact for the implementation of the Services hereunder. Consultant shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates **TIM CONLON, PRESIDENT**, or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants, and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence Work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

3.2.10.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder and without limiting the indemnity provisions of the Agreement, the Consultant in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement, the following policies of insurance. If the existing policies do not meet the Insurance Requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

(a) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, with minimum limits of at least $1,000,000 per occurrence, and if written with an aggregate, the aggregate shall be double the per occurrence limit. Defense costs shall be paid in addition to the limits.

The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

(b) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1) with minimum limits of $1,000,000 each accident.

(c) Contractors Pollution Liability:

Contractors Pollution Liability Insurance covering all of the contractor's operations to include onsite and offsite coverage for bodily injury (including death and mental anguish), property damage, defense costs and cleanup costs with minimum limits of $5 million per loss and $10 million total all losses. The policy shall contain no endorsements or provisions limiting contractual liability or coverage for cross liability of claims or suits by one insured against another.

If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

(d) Professional Liability: Professional Liability insurance with minimum limits of $1,000,000. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.).

If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

(e) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than $1,000,000 per accident for bodily injury and disease.

3.2.10.3 Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

(a) The policy or policies of insurance required by Section 3.2.10.2 (a) Commercial General Liability and (c) Contractor's Pollution Liability shall be endorsed to provide the following:

(1) Additional Insured: The City of Aliso Viejo, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement.

Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the Agreement.

(2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(b) The policy or policies of insurance required by Section 3.2.10.2 (b) Automobile Liability and (d) Professional Liability shall be endorsed to provide the following:

(1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(c) The policy or policies of insurance required by Section 3.2.10.2 (e) Workers' Compensation shall be endorsed to provide the following:

(1) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

(2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

3.2.10.4 Primary and Non-Contributing Insurance. All insurance coverages shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.2.10.5 Waiver of Subrogation. Required insurance coverages shall not prohibit Consultant from waiving the right of subrogation prior to a loss. Consultant shall waive all subrogation rights against the indemnified parties. Policies shall contain or be endorsed to contain such provisions.

3.2.10.6 Deductible. Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.2.10.7 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the City. 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.

3.2.10.8 Failure to Maintain Coverage. Consultant agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Consultant until Consultant has fully complied with the insurance provisions of this Agreement.

In the event that the Consultant's operations are suspended for failure to maintain required insurance coverage, the Consultant shall not be entitled to an extension of time for completion of the Services because of production lost during suspension.

3.2.10.9 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.2.10.10 Insurance for Subconsultants. All Subconsultants shall be included as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing Subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City as an Additional Insured to the Subconsultant's policies.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions where applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **ONE HUNDRED AND NINETY-THREE THOUSAND EIGHT-HUNDRED AND SIXTY-SEVEN ($193,867)** ("Total Compensation") without written approval of City's **CITY MANAGER**. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation.

Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay all non-disputed and approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.3.5 Prevailing Wages; DIR Registration.

3.3.5.1 Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.3.5.2 If the Services are being performed as part of an applicable "public works" or "maintenance" project, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this

Agreement except for cause. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this Agreement.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant:

CABCO YELLOW, INC.
DBA CALIFORNIA YELLOW CAB
520W. DYER ROAD, SANTA ANA, CA 92707
ATTN: TIM CONLON, PRESIDENT

City:

City of Aliso Viejo
12 Journey, Suite 100
Aliso Viejo, CA 92656
Attn: **LIZZY MENDOZA, RECREATION & COMMUNITY SERVICES MANAGER**

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for

any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.5.3.3 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the Release Notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.5.4 Fraud Policy. Consultant shall provide a copy of the City's Fraud Prevention Policy to each of its employees assigned to perform Services under this Agreement. Consultant shall submit to the City a statement signed by an authorized representative for Consultant certifying receipt of the City's Fraud Prevention Policy. A finding by the City that any of Consultant's employees have committed fraud against the City or have violated the City's Fraud Prevention Policy shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request and/or termination of this Agreement. Consultant shall reimburse the City for any costs and expenses associated with fraud against the City.

3.5.5 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.6 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.7 Indemnification.

3.5.7.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorneys fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the City. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by the Consultant or the City, its officials, officers, employees, agents or volunteers.

3.5.7.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.5.8 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.9 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.

3.5.10 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.6 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.7 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.8 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.9 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.10 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.11 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.12 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.13 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.14 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.15 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or

applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.16 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.17 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.18 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.19 Declaration of Political Contributions. Consultant shall, throughout the term of this Agreement, submit to City an annual statement in writing declaring any political contributions of money, in-kind services, or loan made to any member of the City Council within the previous twelve-month period by the Consultant and all of Consultant's employees, including any employee(s) that Consultant intends to assign to perform the Services described in this Agreement.

3.20 Subcontracting.

3.20.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

[Signatures on following page.]

SIGNATURE PAGE TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ALISO VIEJO AND CABCO YELLOW, INC. DBA CALIFORNIA YELLOW CAB

IN WITNESS WHEREOF, the parties have executed this Professional Services Agreement on this 12 day of April, 2022.

CITY OF ALISO VIEJO

Approved:

By:_____
David Doyle
City Manager

ATTEST:

By:_____
Mitzi Ortiz, MMC
City Clerk

APPROVED AS TO FORM:

_____
Best Best & Krieger LLP
City Attorney

APPROVED AS TO COMPLIANCE WITH BUDGET

By:_____
Gina Tharani
Director of Financial Services

CABCO YELLOW, INC. DBA CALIFORNIA YELLOW CAB

[If Corporation, TWO SIGNATURES, President OR Vice President AND Secretary OR Treasurer REQUIRED]

By: Tim Conlon
Its: President
Printed Name: Tim Conlon

By: Robert Bowsher
Its: CFO
Printed Name: Robert Bowsher

CITY OF ALISO VIEJO

DECLARATION OF POLITICAL CONTRIBUTIONS

Using the space provided below, please list any political contributions of money, in-kind services, or loans made to any member of the City Council within the last twelve (12) months by Consultant and all of Consultant's employees, including any employee(s) that applicant intends to assign to perform the work or services described in this Agreement:

Ø

To the best of my knowledge, I declare under penalty of perjury that the foregoing is true and was executed at:

City/County/State	Date
Cabco Yellow Inc.	Tim Conlon
Name of Business	Print Name
Tim Conlon	
Signature	

NOTE: THIS DECLARATION IS INCLUDED AS PART OF THE AGREEMENT AND MUST BE SIGNED AND ATTACHED HERETO.

CITY OF ALISO VIEJO

ACKNOWLEDGMENT OF RECEIPT OF FRAUD POLICY

I hereby acknowledge that I have received a copy of the City's "Fraud Prevention Policy" dated October 1, 2008. I understand that I am to promptly read its contents and distribute copies to employees assigned to perform Services for the City of Aliso Viejo.

To the extent that provisions of this policy conflict with previously issued policies or practices, whether or not such policies and practices were contained in written policies, this policy shall prevail.

Cabco Yellow Inc.	Tim Conlon
Name of Business	Print Name
Tim Conlon	
Signature	
4.12.22	
Date	

EXHIBIT "A"

SCOPE OF SERVICES

1. Contractor shall provide transportation free to senior residents ages 60 and older by either taxi, min-van or passenger van to and from Aliso Viejo Ranch for recreation programs and services; Aliso Viejo City Hall, Aliso Viejo Library, Iglesia Park Community Center, Sea Country Senior and Community Center in Laguna Niguel, and the Florence Sylvester Senior Community Center in Laguna Hills for their senior programs, including, but not limited to the senior nutrition programs.

2. Contractor shall provide on-demand and scheduled door-to-door transportation services from the hours of 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding City-observed holidays (see attachment- Observed Holidays). On-demand services will arrive within 60 minutes of requests. Residents can schedule transportation services up to two weeks in advance.

3. Contractor must provide wheelchair accessible vehicles for residents needing/requiring them.

4. Contractor will appropriately maintain their vehicles and pass any inspections required for operation. Contractor will also provide preventative maintenance inspection reports.

5. Contractor will ensure that all drivers of their vehicles have current and valid California Driver's License, and verified ten-year driving record with no more than two moving violations with the last three years and zero serious violations. Drivers must also have an OCTAP Taxi Driver Permit or a permit that is otherwise approved by the City. Drivers must pass a driver training program that includes specific training to provide transportation services to seniors and disabled individuals.

6. Contractor will provide a toll-free telephone number for Aliso Viejo residents to request on-demand or schedule transportation services using their own assigned identification numbers provided by Contractor.

7. Contractor will complete accurate documentation and reporting, including monthly trip data, invoicing, OCTA Senior Mobility Program monthly reporting forms and safety reports, California Highway Patrol inspections, vehicle inspections, and other documentation required by Orange County Transportation Authority, the City of Aliso Viejo, the County of Orange, and the State of California.

8. Any and all complaints received by either the Contractor or the City will be reviewed by Contractor's project manager within 24 hours and a remedy for the issue will be offered with notification of status to the City will be provided within 48 hours.

9. Any and all incidents and accidents will be responded to immediately by Contractor with appropriate, detailed, and timely notification, investigation and reporting to the City of Aliso Viejo.

EXHIBIT "B"

SCHEDULE OF SERVICES

Days and Hours of Operation: The Contractor shall provide transportation services five (5) days per week, Monday through Friday, with the first drop-off to the centers no earlier than 8:45 a.m. and the last pick-up no later than 4:00 p.m. There will be no services provided on City-observed holidays.

Transportation Locations: The Contractor shall provide transportation free to senior residents ages 60 and older by either taxi, min-van or passenger van to and from Aliso Viejo Ranch for recreation programs and services; Aliso Viejo City Hall, Aliso Viejo Library, Iglesia Park Community Center, Sea Country Senior and Community Center in Laguna Niguel, and the Florence Sylvester Senior Community Center in Laguna Hills for their senior programs, including, but not limited to the senior nutrition programs.

EXHIBIT "C"

COMPENSATION

TOTAL COMPENSATION:
Total annual compensation for the FY 2022-2023 Senior Transportation Services provided pursuant to this Agreement shall not exceed $35,958. Total compensation for fiscal years 2023-2024, 2024-2025, 2025-2026, and 2026-2027 will be based upon annual forecasts for Senior Mobility Program M2 funds and budgeted City contributions.

TRIP RATES:
City shall pay Contractor the following rates per one-way trip for senior transportation to and from Aliso Viejo Ranch, Aliso Viejo City Hall, Iglesia Park Community Center, Sea Country Senior and Community Center in Laguna Niguel, and Florence Sylvester Memorial Senior Center in Laguna Hills.

2022-2023: $17.50 per one-way trip
2023-2024: $17.50 per one-way trip
2024-2025: $20.00 per one-way trip
2025-2026: $20.00 per one-way trip
2026-2027: $20.00 per one-way trip

In the event that this Agreement is renewed pursuant to Section 3.1.2, the rates set forth above may be adjusted each year at the time of renewal described in Exhibit "B" in accordance with the annual average Consumer Price Index of the prior calendar year, All Urban Consumers, Los Angeles-Riverside-Orange Counties up to a maximum percentage of five percent (5%).

City of Aliso Viejo
AGENDA ITEM

DATE: May 4, 2022

TO: Mayor and City Council

FROM: Lizzy Mendoza, Recreation & Community Services Manager

SUBJECT: PROFESSIONAL SERVICES AGREEMENT WITH MICHAEL JUE FOR GRAPHIC DESIGN SERVICES

Recommended Action:

Approve and authorize the City Manager to execute a Professional Services Agreement with Michael Jue for graphic design services.

Fiscal Impact:

Services for graphic design are billed per project at an hourly rate of $75. Total compensation for the three-year term shall not exceed $85,000. There is no increase from the previous term.

Background:

Since 2017, Michael Jue has been providing graphic design services for the City. Services include designing the City's quarterly "Aliso Viejo Community Connection" brochure, event flyers, print and digital advertisements, and several special projects.

Discussion:

Staff has been extremely pleased with the graphic design work performed by Michael Jue. Mr. Jue has demonstrated exceptional design skills, offers custom tailored services to the City, understands the City's branding efforts, and has proven to be collaborative, creative, and responsive. Staff recommends the City Council approve and authorize the City Manager to execute the agreement with Michael Jue for graphic design services for the City of Aliso Viejo.

Attachment:

1. Agreement

CITY OF ALISO VIEJO
PROFESSIONAL SERVICES AGREEMENT
FOR
GRAPHIC DESIGN

1. PARTIES AND DATE.

This Agreement is made and entered into this 4th day of April, 2022, by and between the City of Aliso Viejo, a municipal corporation organized under the laws of the State of California with its principal place of business at 12 Journey, Suite 100, Aliso Viejo, California 92656 ("City") and **MICHAEL JUE**, a **SOLE PROPRIETORSHIP**, with its principal place of business at **4813 W 132ND STREET, HAWTHORNE, CA 90250** ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of professional **GRAPHIC DESIGN** consultant services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional **GRAPHIC DESIGN** consultant services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project.

City desires to engage Consultant to render such services for the project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional **GRAPHIC DESIGN** consultant services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from **JULY 1, 2022 to JUNE 30, 2025**, unless earlier terminated as provided herein. The City Manager shall have the unilateral option, at its sole discretion, to renew this Agreement annually for no more than two additional two-year terms. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant shall complete, execute, and submit to City a Request for Taxpayer Identification Number and Certification (IRS FormW-9) prior to commencement of any Services under this Agreement. Neither City, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services.

3.2.2.1 Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.2.2 Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include a Force Majeure Event. A Force Majeure Event shall mean an event that materially affects a Party's performance and is one or more of the following: (1) Acts of God or other natural disasters; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the Services); (4) strikes and other organized labor action occurring at the site and the effects thereof on the Services, only to the extent such strikes and other organized labor action are beyond the control of Consultant and its subcontractors, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (5) pandemics, epidemics or quarantine restrictions. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of a public agency applicable to the Services and Agreement.

3.2.2.3 Should a Force Majeure Event occur, the non-performing Party shall, within a reasonable time of being prevented from performing, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. Force Majeure Events and/or delays, regardless of the Party responsible for the delay, shall not entitle Consultant to any additional compensation.

Notwithstanding the foregoing in this section, the City may still terminate this Agreement in accordance with the termination provisions of this Agreement.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: **MICHAEL JUE.**

3.2.5 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. The City Manager hereby designates **RECREATION & COMMUNITY SERVICES MANAGER**, or his or her designee, as the City's contact for the implementation of the Services hereunder. Consultant shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates **MICHAEL JUE**, or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the

standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence Work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section.

3.2.10.2 Types of Insurance Required. As a condition precedent to the effectiveness of this Agreement for work to be performed hereunder and without limiting the indemnity provisions of the Agreement, the Consultant in partial performance of its obligations under such Agreement, shall procure and maintain in full force and effect during the term of the Agreement, the following policies of insurance. If the existing policies do not meet the Insurance Requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

(a) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 0001, with minimum limits of at least $1,000,000 per occurrence, and if written with an aggregate, the aggregate shall be double the per occurrence limit. Defense costs shall be paid in addition to the limits.

The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

(b) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form

CA 0001 covering "Any Auto" (Symbol 1) with minimum limits of $1,000,000 each accident.

(c) Contractors Pollution Liability: [Include only if there is a pollution liability exposure.]

Contractors Pollution Liability Insurance covering all of the contractor's operations to include onsite and offsite coverage for bodily injury (including death and mental anguish), property damage, defense costs and cleanup costs with minimum limits of $5 million per loss and $10 million total all losses. The policy shall contain no endorsements or provisions limiting contractual liability or coverage for cross liability of claims or suits by one insured against another.

If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

(d) Professional Liability: Professional Liability insurance with minimum limits of $1,000,000. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.).

If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Agreement and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Agreement.

(e) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than $1,000,000 per accident for bodily injury and disease.

3.2.10.3 Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

(a) The policy or policies of insurance required by Section 3.2.10.2 (a) Commercial General Liability and (c) Contractor's Pollution Liability shall be endorsed to provide the following:

(1) Additional Insured: The City of Aliso Viejo, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement.

Additional Insured Endorsements shall not (1) be restricted to "ongoing operations"; (2) exclude "contractual liability"; (3) restrict coverage to "sole" liability of Consultant; or (4) contain any other exclusions contrary to the Agreement.

(2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(b) The policy or policies of insurance required by Section 3.2.10.2 (b) Automobile Liability and (d) Professional Liability shall be endorsed to provide the following:

(1) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(c) The policy or policies of insurance required by Section 3.2.10.2 (e) Workers' Compensation shall be endorsed to provide the following:

(1) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

(2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

3.2.10.4 Primary and Non-Contributing Insurance. All insurance coverages shall be primary and any other insurance, deductible, or self-insurance maintained by the indemnified parties shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions.

3.2.10.5 Waiver of Subrogation. Required insurance coverages shall not prohibit Consultant from waiving the right of subrogation prior to a loss. Consultant shall waive all subrogation rights against the indemnified parties. Policies shall contain or be endorsed to contain such provisions.

3.2.10.6 Deductible. Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention.

3.2.10.7 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the City. 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.

3.2.10.8 Failure to Maintain Coverage. Consultant agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Consultant until Consultant has fully complied with the insurance provisions of this Agreement.

In the event that the Consultant's operations are suspended for failure to maintain required insurance coverage, the Consultant shall not be entitled to an extension of time for completion of the Services because of production lost during suspension.

3.2.10.9 Acceptability of Insurers. Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.2.10.10 Insurance for Subconsultants. All Subconsultants shall be included as additional insureds under the Consultant's policies, or the Consultant shall be responsible for causing Subconsultants to purchase the appropriate insurance in compliance with the terms of these Insurance Requirements, including adding the City as an Additional Insured to the Subconsultant's policies.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions where applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed **EIGHTY-FIVE THOUSAND DOLLARS ($85,000)** ("Total Compensation") without written approval of City's **RECREATION & COMMUNITY SERVICES MANAGER** Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation.

Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 45 days of receiving such statement, review the statement and pay all non-disputed and approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.3.5 Prevailing Wages; DIR Registration.

3.3.5.1 Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.3.5.2 If the Services are being performed as part of an applicable "public works" or "maintenance" project, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the project and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Contractor's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause. The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under this Agreement.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant:

MICHAEL JUE
4813 W. 132ND STREET
HAWTHORNE, CA 90250

City:

City of Aliso Viejo
12 Journey, Suite 100
Aliso Viejo, CA 92656
Attn: **LIZZY MENDOZA, RECREATION & COMMUNITY SERVICES DEPARTMENT**

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.5.3.3 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public

Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the Release Notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.5.4 Fraud Policy. Consultant shall provide a copy of the City's Fraud Prevention Policy to each of its employees assigned to perform Services under this Agreement. Consultant shall submit to the City a statement signed by an authorized representative for Consultant certifying receipt of the City's Fraud Prevention Policy. A finding by the City that any of Consultant's employees have committed fraud against the City or have violated the City's Fraud Prevention Policy shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request and/or termination of this Agreement. Consultant shall reimburse the City for any costs and expenses associated with fraud against the City.

3.5.5 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.6 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.5.7 Indemnification.

3.5.7.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorneys fees and other related costs and expenses except such loss or damage caused by the sole negligence or willful misconduct of the City. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by the Consultant or the City, its officials, officers, employees, agents or volunteers.

3.5.7.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined

under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.5.8 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.5.9 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.

3.5.10 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.6 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.7 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.8 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.9 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.10 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.11 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.12 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.13 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.14 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.15 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.16 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.17 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.18 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.19 Declaration of Political Contributions. Consultant shall, throughout the term of this Agreement, submit to City an annual statement in writing declaring any political contributions of money, in-kind services, or loan made to any member of the City Council within the previous twelve-month period by the Consultant and all of Consultant's employees, including any employee(s) that Consultant intends to assign to perform the Services described in this Agreement.

3.20 Subcontracting.

3.20.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

[Signatures on following page.]

SIGNATURE PAGE TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF ALISO VIEJO AND MICHAEL JUE

IN WITNESS WHEREOF, the parties have executed this Professional Services Agreement on this 4 day of April, 2022.

CITY OF ALISO VIEJO

Approved:

By: _____
David Doyle
City Manager

ATTEST:

By: _____
Mitzi Ortiz, MMC
City Clerk

APPROVED AS TO FORM:

_____
Best Best & Krieger LLP
City Attorney

APPROVED AS TO COMPLIANCE WITH BUDGET

By:
Director of Financial Services

MICHAEL JUE

[If Corporation, TWO SIGNATURES, President OR Vice President AND Secretary OR Treasurer REQUIRED]

By: Michael Jue

Its: Michael Jue

Printed Name: Michael Jue

By: _____

Its: _____

Printed Name: _____

CITY OF ALISO VIEJO

DECLARATION OF POLITICAL CONTRIBUTIONS

Using the space provided below, please list any political contributions of money, in-kind services, or loans made to any member of the City Council within the last twelve (12) months by Consultant and all of Consultant's employees, including any employee(s) that applicant intends to assign to perform the work or services described in this Agreement:

NA

To the best of my knowledge, I declare under penalty of perjury that the foregoing is true and was executed at:

Aliso Viejo, California	Apr 4, 2022
City/County/State	Date
Michael Jue	Michael Jue
Name of Business	Print Name
Signature	

NOTE: THIS DECLARATION IS INCLUDED AS PART OF THE AGREEMENT AND MUST BE SIGNED AND ATTACHED HERETO.

CITY OF ALISO VIEJO

ACKNOWLEDGMENT OF RECEIPT OF FRAUD POLICY

I hereby acknowledge that I have received a copy of the City's "Fraud Prevention Policy" dated October 1, 2008. I understand that I am to promptly read its contents and distribute copies to employees assigned to perform Services for the City of Aliso Viejo.

To the extent that provisions of this policy conflict with previously issued policies or practices, whether or not such policies and practices were contained in written policies, this policy shall prevail.

Michael Jue	Michael Jue
Name of Business	Print Name
	
Signature	
Apr 4, 2022	
Date	

EXHIBIT "A"

SCOPE OF SERVICES

PROVIDE GRAPHIC DESIGN SERVICES FOR CITY RELATED MATERIALS, PUBLICATIONS, AND SPECIAL PROJECTS.

EXHIBIT "B"

SCHEDULE OF SERVICES

GRAPHIC DESIGN SERVICES OF THE ALISO VIEJO COMMUNITY CONNECTION BROCHURE ARE PROVIDED QUARTERLY. A SAMPLE SCHEDULE IS BELOW:

FALL COMMUNITY CONNECTION BROCHURE: DESIGNED IN MAY

WINTER COMMUNITY CONNECTION BROCHURE: DESIGNED IN OCTOBER

SPRING COMMUNITY CONNECTION BROCHURE: DESIGNED IN JANUARY

SUMMER COMMUNITY CONNECTION BROCHURE: DESIGNED IN MARCH

THE ACTUAL SCHEDULE OF GRAPHIC DESIGN SERVICES FOR THE COMMUNITY CONNECTION WILL BE NEGOTIATED QUARTERLY BASED ON CITY REGISTRATION DATES AND MAILING NEEDS. ALL OTHER GRAPHIC DESIGN SERVICES TO BE PERFORMED AS REQUESTED FOR ADDITIONAL PROJECTS INCLUDING; FLYERS, POSTCARDS, TV SLIDES, ADVERTISEMENTS, AND OTHER MARKETING PROJECTS.

EXHIBIT "C"

COMPENSATION

THE SCOPE OF SERVICES WILL BE COMPENSATED BASED ON ACTUAL HOURS SPENT RENDERING GRAPHIC DESIGN SERVICES AT AN HOURLY RATE OF $75.

In the event that this Agreement is renewed pursuant to Section 3.1.2, the rates set forth above may be adjusted each year at the time of renewal described in Exhibit "B" in accordance with the annual average Consumer Price Index of the prior calendar year, All Urban Consumers, Los Angeles-Long Beach-Anaheim up to a maximum percentage of five percent (5%).

ALISO VIEJO - MODEL Professional Services Agreement (2022)

Final Audit Report 2022-04-04

Created:	2022-04-04
By:	Lizzy Mendoza (LMendoza@AVCity.org)
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"ALISO VIEJO - MODEL Professional Services Agreement (2022)" History

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City of Aliso Viejo
AGENDA ITEM

DATE: May 4, 2022

TO: Mayor and City Council

FROM: Shaun Pelletier, City Engineer

SUBJECT: CONTRACT AWARD TO CT CONSTRUCTION SERVICES, INC. FOR INSTALLATION OF CONCRETE SOUND BARRIER AT ALISO VIEJO FARM

Recommended Actions:

1. Award a contract in the amount of $83,237.42 to CT Construction Services, Inc. for the Sound Barrier Wall project;

2. Authorize the City Manager to execute a contract with CT Construction Services, Inc.;

3. Authorize City staff to make total compensation to CT Construction Services, Inc. up to $83,237.42 plus $8,324 (10% of the contract amount) to allow for contingencies, totaling $91,561.42; and

4. Appropriate $55,000 from General Fund Reserves.

Fiscal Impact:

Funds were included in the mid-year budget as a placeholder for these improvements, but quotes had not yet been received. The additional appropriation of $55,000 from General Fund Reserves will ensure the completion of the sound barrier wall.

Background:

The Aliso Viejo Ranch and Farm have been in operation for just under one year. During this time staff received some feedback from residents regarding the sound levels at the Farm. Several studies and recommendations to help mitigate this have been reviewed and are starting to be implemented.

Discussion:

Two of the recommendations to lower sound levels were to upgrade the speakers and install a sound barrier wall behind the reception area. The upgraded speakers have been

on site as a test for a few weeks and did help reduce the lower bass tones at the adjacent homes. These speakers could be purchased and installed for about $15,000. Staff is recommending waiting until the wall is completed to test the existing speakers and determine if upgraded speakers are necessary.

The second recommendation was to install a concrete sound barrier behind the reception trellis. This wall should effectively block the direct sound waves travelling towards the residential area, but should be noted, will not eliminate all sounds.

Following the structural engineering design and permitting, this work is scheduled to be completed within 4-5 weeks, including the prep work of relocating the utilities, irrigation modifications and final landscape restoration, all being performed by the City's on-call contractors.

Gold Coast Farms is in support of the project and has agreed to allow weekday construction without any event cancellations or reduced bookings. A temporary screening fence will be utilized for safety and to help aesthetics during the work.

Staff respectfully recommends approval of the recommend actions.

Attachment:

1. Contract



CITY OF ALISO VIEJO

Sound Barrier Wall Project

CONTRACT DOCUMENTS

SECTION 00500
CONTRACT

THIS CONTRACT is made this _____ day of _____, 202_, in the County of Orange, State of California, by and between the City of Aliso Viejo hereinafter called City, and **CT Construction Services, Inc.**, hereinafter called Contractor. City and the Contractor for the considerations stated herein agree as follows:

ARTICLE 1. SCOPE OF WORK. The Contractor shall perform all Work within the time stipulated the Contract and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the Work required in strict compliance with the Contract Documents as specified in Article 5 below for the following Project:

SOUND BARRIER WALL PROJECT

The Contractor and its surety shall be liable to City for any damages arising as a result of the Contractor's failure to comply with this obligation.

ARTICLE 2. TIME FOR COMPLETION. Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in City's Notice to Proceed. The Contractor shall complete all Work required by the Contract Documents within forty (40) calendar days from the commencement date stated in the Notice to Proceed (the "Contract Time"). By its signature hereunder, Contractor agrees the time for completion set forth above is adequate and reasonable to complete the Work.

ARTICLE 3. CONTRACT PRICE. City shall pay to the Contractor as full compensation for the performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs, the sum of Eighty Three Thousand, Two Hundred Thirty Seven Dollars and 42/100 ($83,237.42) (the "Contract Price"). Payment shall be made as set forth in the General Conditions.

At any time during the term of the Contract, City may, pursuant to the terms and provisions of the Contract Documents, request that the Contractor perform additional work. Contractor shall not perform, nor be compensated for, additional work without written authorization from the City pursuant to the terms and provisions of the Contract Documents. Notwithstanding any other provisions of the Contract Documents, for contracts in excess of $25,000.00, the City Manager may approve additional work not to exceed 10% of the original Contract amount, Eight Thousand Three Hundred Twenty Four Dollars ($8,324.00), as set forth in this Article 3. Any additional work in excess of this amount shall be approved by the City Council.

ARTICLE 4. LIQUIDATED DAMAGES. The Contractor acknowledges that the City will sustain actual damages for each and every day completion of the Project is delayed beyond the Contract Time. Because of the nature of the Project, it would be impracticable or extremely difficult to determine the City's actual damages. Accordingly, as provided in accordance with Government Code section 53069.85, it is agreed that the Contractor will pay City the sum of **$500** for each and every calendar day of delay beyond the time prescribed in the Contract Documents for finishing the Work, as Liquidated Damages and not as a penalty or forfeiture. In the event this is not paid, the Contractor agrees City may deduct that amount from any money due or that may become due the Contractor under the Contract. This Article does not affect the City's rights to other damages or remedies specified in the Contract Documents or allowed by

law. These provisions for liquidated damages shall not prevent the City, in case of Contractor's default, from terminating the Contractor.

ARTICLE 5. COMPONENT PARTS OF THE CONTRACT. The "Contract Documents" include the following documents, each of which is incorporated into this Contract by reference:

Contractor's Certificate Regarding Workers' Compensation form
Iran Contracting Act Certification form
Contract
General Conditions
Special Conditions
Any other documents contained in or incorporated into the Contract

The Contactor shall complete the Work in strict accordance with all of the Contract Documents.

All of the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. This Contract shall supersede any prior agreement of the parties.

ARTICLE 6. PROVISIONS REQUIRED BY LAW. Each and every provision of law required to be included in these Contract Documents shall be deemed to be included in these Contract Documents. The Contractor shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including but not limited to, the provisions of the California Labor Code and Public Contract Code applicable to this Project.

ARTICLE 7. INDEMNIFICATION. Contractor shall provide indemnification as set forth in the General Conditions.

ARTICLE 8. PREVAILING WAGES. Contractor shall be required to pay the prevailing rate of wages in accordance with the Labor Code which such rates shall be made available at the office of the City Engineer or may be obtained online at http//www.dir.ca.gov/dlsr. and which must be posted at the job site.

ARTICLE 9. DECLARATION OF POLITICAL CONTRIBUTIONS. Prior to the City's approval of this Contract, Contractor shall submit to City a statement in writing declaring any political contributions of money, in-kind services, or loan made to any member of the City Council within the previous twelve-month period by the Contractor and all of Contractor 's employees, including any employee(s) that Contractor intends to assign to perform work on the Project.

IN WITNESS WHEREOF, this Contract has been duly executed by the above-named parties, on the day and year above written.

CITY OF ALISO VIEJO

By:_____
David A. Doyle
City Manager

Attest:

By:_____
Mitzi Ortiz, MMC
City Clerk

Approved as to Form:

By:_____
Best Best & Krieger LLP
City Attorney

Approved as to Compliance with Budget:

By:_____
Department of Financial Services

CT CONSTRUCTION SERVICES, INC.

By:_____
Craig Tokarski
President

If Corporation, TWO SIGNATURES, President **OR** Vice President **AND** Secretary OR Treasurer REQUIRED]

By:_____

_____
Classification of Contractor's License

CITY OF ALISO VIEJO

DECLARATION OF POLITICAL CONTRIBUTIONS

Using the space provided below, please list any political contributions of money, in-kind services, or loans made to any member of the City Council within the last twelve (12) months by Contractor and all of Contractor's employees, including any employee(s) that applicant intends to assign to perform work on the Project:

To the best of my knowledge, I declare under penalty of perjury that the foregoing is true and was executed at:

City/County/State

Date

Name of Business

Print Name

Signature

NOTE: THIS DECLARATION IS INCLUDED AS PART OF THE AGREEMENT AND MUST BE SIGNED AND ATTACHED HERETO.

END OF CONTRACT

SECTION 00405
CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract.

Name of Bidder_____

Signature_____

Name_____

Title_____

Dated_____

END OF CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION

SECTION 00450
IRAN CONTRACTING ACT CERTIFICATION

As required by California Public Contract Code Section 2204, the Contractor certifies subject to penalty for perjury that the option checked below relating to the Contractor's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 et seq.) is true and correct:

□ The Contractor is not:

(i) identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or

(ii) a financial institution that extends, for 45 days or more, credit in the amount of $20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.

□ The City has exempted the Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, the City will be unable to obtain the goods and/or services to be provided pursuant to the Contract.

□ The amount of the Contract payable to the Contractor for the Project does not exceed $1,000,000.

Signed:_____

Titled:_____

Firm:_____

Date:_____

Note: In accordance with Public Contract Code Section 2205, false certification of this form shall be reported to the California Attorney General and may result in civil penalties equal to the greater of $250,000 or twice the Contract amount, termination of the Contract and/or ineligibility to bid on contracts for three years.

END OF IRAN CONTRACTING ACT CERTIFICATION

SECTION 00700
GENERAL CONDITIONS

SECTION 1. DEFINITIONS

1.1 Acceptable, Acceptance or words of similar import shall be understood to be the acceptance of the Engineer and/or City.

1.2 Act of God is an earthquake in excess of a magnitude of 3.5 on the Richter scale and tidal waves.

1.3 Approval means written authorization by Engineer and/or City .

1.4 Change Order means a document that authorizes an addition, deletion, or revision in The Work or an adjustment in the Contract Price or the Contract Times, issued on or after the effective date of the Contract, in accordance with the Contract Documents and in the form contained in the Contract Documents.

1.5 Contract Documents includes all documents as stated in the Contract.

1.6 Contract Price is the amount to be paid by the City to the Contractor as full compensation for the performance of the Contract and completion of The Work, subject to any additions or deductions as provided in the Contract Documents, and including all applicable taxes and costs.

1.7 Contract Time is the number of days or the dates stated in the Contract Documents to: achieve defined milestones, if any; and to complete The Work so that it is ready for final payment.

1.8 City and Contractor are those stated in the Contract. The terms City and Owner may be used interchangeably.

1.9 Critical Supply Shortage means an unusual shortage in materials that is (a) supported by documented proof that Contractor made every effort to obtain such materials from all available sources; (b) such shortage is due to the fact that such materials are not physically available from single or multiple sources or could have been obtained only at exorbitant prices entirely inconsistent with current and standard rates taking into account the quantities involved and the usual industry practices in obtaining such quantities; and (c) such shortages and the difficulties in obtaining alternate sources of materials could not have been known or anticipated by Contractor at the time it submitted its bid or entered the Contract. Market fluctuations in prices of materials, whether or not resulting from a Force Majeure Event, does not constitute a Critical Supply Shortage.

1.10 Day shall mean calendar day unless otherwise specifically designated.

1.11 Engineer shall mean the City Manager, or his or her designee, of the City, acting either directly or through properly authorized agents, such as agents acting within the scope of the particular duties entrusted to them. Also sometimes referred to as “City’s Representative” or “Representative” in the Contract Documents.

1.12 Equal, Equivalent, Satisfactory, Directed, Designated, Selected, As Required and similar words shall mean the written approval, selection, satisfaction, direction, or similar action of the Engineer and/or City.

1.13 Force Majeure Event means an event that materially affects a party's performance and is one or more of the following: (1) Acts of God or other natural disasters occurring at the Project site; (2) terrorism or other acts of a public enemy; (3) orders of governmental authorities (including, without limitation, unreasonable and unforeseeable delay in the issuance of permits or approvals by governmental authorities that are required for the Work); (4) pandemics, epidemics or quarantine restrictions; (5) strikes and other organized labor action occurring at the Project site and the effects thereof on the Work, only to the extent such strikes and other organized labor action are beyond the control of Contractor and its subcontractors, of every tier, and to the extent the effects thereof cannot be avoided by use of replacement workers; and (6) a Critical Supply Shortage. For purposes of this section, "orders of governmental authorities," includes ordinances, emergency proclamations and orders, rules to protect the public health, welfare and safety, and other actions of the City in its capacity as a municipal authority.

1.14 Indicated, Shown, Detailed, Noted, Scheduled or words of similar meaning shall mean that reference is made to the drawings, unless otherwise noted. It shall be understood that the direction, designation, selection, or similar import of the Engineer and/or City is intended, unless stated otherwise.

1.15 Install means the complete installation of any item, equipment or material.

1.16 Material shall include machinery, equipment, manufactured articles, or construction such as form work, fasteners, etc., and any other classes of material to be furnished in connection with the Contract. All materials shall be new unless specified otherwise.

1.17 Perform shall mean that the Contractor, at Contractor's expense, shall take all actions necessary to complete The Work, including furnishing of necessary labor, tools, and equipment, and providing and installing Materials that are indicated, specified, or required to complete such performance.

1.18 Project is The Work planned by City as provided in the Contract Documents.

1.19 Provide shall include provide, complete in place, that is furnish, install, test and make ready for use.

1.20 Recyclable Waste Materials shall mean materials removed from the Project site which are required to be diverted to a recycling center rather than an area landfill. Recyclable Waste Materials include asphalt, concrete, brick, concrete block, and rock.

1.21 Specifications means that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the work. Except for Sections 1-9 of the Standard Specifications for Public Works Construction ("Greenbook"), 2015 Edition which are specifically excluded from incorporation into these Contract Documents, the Work shall be done in accordance with the Greenbook, including all current supplements, addenda, and revisions thereof.

1.22 The Work means the entire improvement planned by City pursuant to the Contract Documents.

1.23 Work means labor, equipment and materials incorporated in, or to be incorporated in the construction covered by the Contract Documents.

SECTION 2. CONTRACT DOCUMENTS

2.1 **Contract Documents**. The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all.

2.2 **Interpretations**. The Contract Documents are intended to be fully cooperative and to be complementary. If Contractor observes that any documents are in conflict, the Contractor shall promptly notify the Engineer in writing. In case of conflicts between the Contract Documents, the order of precedence shall be as follows:

2.2.1 Change Orders or Work Change Directives, the most recent first

2.2.2 Addenda

2.2.3 Environmental documents and approvals

2.2.4 Permits from other agencies as may be required by law

2.2.5 Contract

2.2.6 Special Provisions (or Special Conditions)

2.2.7 Technical Specifications

2.2.8 Plans (Contract Drawings)

2.2.9 General Conditions

2.2.10 Instructions to Bidders

2.2.11 Notice Inviting Bids

2.2.12 Contractor's Bid Documents

2.2.13 Greenbook

2.2.14 Standard Plans

2.2.15 Reference Documents

With reference to the Drawings, the order of precedence shall be as follows:

2.2.1 Figures govern over scaled dimensions

2.2.2 Detail drawings govern over general drawings

2.2.3 Addenda or Change Order drawings govern over Contract Drawings

2.2.4 Contract Drawings govern over Standard Drawings

2.2.5 Contract Drawings govern over Shop Drawings

2.3 **Conflicts in Contract Documents**. Notwithstanding the orders of precedence established above, in the event of conflicts, the higher standard shall always apply.

2.4 **Organization of Contract Documents**. Organization of the Contract Documents into divisions, sections, and articles, and arrangement of drawings shall not control the Contractor in dividing The Work among subcontractors or in establishing the extent of Work to be performed by any trade.

SECTION 3. CONTRACTS DOCUMENTS: COPIES & MAINTENANCE

Contractor will be furnished, free of charge, **three (3)** copies of the Contract Documents. Additional copies may be obtained at cost of reproduction.

Contractor shall maintain a clean, undamaged set of Contract Documents at the Project site.

SECTION 4. DETAIL DRAWINGS AND INSTRUCTIONS

4.1 **Examination of Contract Documents.** Before commencing any portion of The Work, Contractor shall again carefully examine all applicable Contract Documents, the Project site and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall immediately notify the Engineer in writing of any potential error, inconsistency, ambiguity, conflict or lack of detail or explanation. If Contractor performs, permits, or causes the performance of any Work which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction. In no case shall the Contractor or any subcontractor proceed with Work if uncertain as to the applicable requirements.

4.2 **Additional Instructions.** After notification of any error, inconsistency, ambiguity, conflict or lack of detail or explanation, the Engineer will provide any required additional instructions, by means of drawings or other written direction, necessary for proper execution of Work.

4.3 **Quality of Parts, Construction and Finish.** All parts of The Work shall be of the best quality of their respective kinds and the Contractor must use all diligence to inform itself fully as to the required construction and finish. In no case shall Contractor proceed with The Work without obtaining first from the Engineer such written Approval as may be necessary for the proper performance of Work.

4.4 **Contractor's Variation from Contract Document Requirements.** If it is found that the Contractor has varied from the requirements of the Contract Documents including the requirement to comply with all applicable laws, ordinances, rules and regulations, the Engineer may at any time, before or after completion of the Work, order the improper Work removed, remade or replaced by the Contractor at the Contractor's expense.

SECTION 5. EXISTENCE OF UTILITIES AT THE WORK SITE

5.1 Existing Utilities

5.1.1 City has endeavored to determine the existence of utilities at the Project site from the records of the owners of known utilities in the vicinity of the Project. The positions of these utilities as derived from such records are shown on the Plans. However, nothing herein shall be deemed to require the City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the project can be inferred from the presence of other visible facilities, such as buildings, cleanouts, meter and junction boxes, on or adjacent to the Project site.

5.1.2 Notwithstanding the above, pursuant to Section 4215 of the Government Code, City has the responsibility to identify, with reasonable accuracy, main or trunkline facilities on the plans and specifications. The City will compensate the Contractor for the costs of locating and repairing damage not due to the failure of the Contractor to exercise reasonable care, and for removing or relocating such main or trunk line utility facilities not indicated in the Contract Documents with reasonable accuracy, and for the cost of equipment on the Project necessarily idled during such work.

5.1.3 If interferences occur at locations other than those indicated in the Contract Documents with reasonable accuracy, the Contractor shall notify the Engineer in writing. The Engineer will supply a method for correcting said interferences in accordance with the responsibilities of this Section and Government Code section 4215. To the extent any delay is caused thereby, Contractor shall submit a notice of delay within five (5) Days of discovery of the circumstances giving rise to the delay.

5.2 Utility Location

5.2.1 It shall be the responsibility of the Contractor to determine the exact location of all service connections. The Contractor shall make its own investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing Work which could result in damage to such utilities. The Contractor shall immediately notify City in writing of any utility discovered in a different position than shown on the Plans or which is not shown on the Plans.

5.2.2 It shall be the Contractor's responsibility to determine the exact location and depth of all utilities, including service connections, which have been marked by the respective utility owners and which the Contractor believes may affect or be affected by the Contractor's operations. The Contractor shall not be entitled to additional compensation nor time extensions for work necessary to avoid interferences nor for repair to damaged utilities if the Contractor does not expose all such existing utilities as required by this Section.

5.2.3 The locating of utilities shall be in conformance with Government Code section 4216 et seq. except for the City's utilities located on the City's property and not on public right-of-way. Contractor, except in an emergency, shall contact the

appropriate regional notification center, Southern California Underground Service Alert at 1-800-227-2600 at least two working days prior to commencing any excavation if the excavation will be performed in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by City, and obtain an inquiry identification number from that notification center. No excavation shall be commenced or carried out by the Contractor unless such an inquiry identification number has been assigned to the Contractor or any subcontractor of the Contractor and City has been given the identification number by the Contractor.

5.3 Utility Relocation and Repair

5.3.1 Care shall be exercised by the Contractor to prevent damage to adjacent existing facilities and public or private works; where equipment will pass over these obstructions, suitable planking shall be placed.

5.3.2 All water meters, water valves, fire hydrants, electrical utility vaults, telephone vaults, gas utility valves, and other subsurface structures shall be relocated or adjusted to final grade by the Contractor. Locations of existing utilities shown on the Plans are approximate and may not be complete. The Contractor shall be responsible for coordinating its Work with all utility companies during the construction of The Work.

5.3.3 Temporary or permanent relocation or alteration of utilities desired by the Contractor for its own convenience shall be the Contractor's responsibility and it shall make arrangements and bear all costs for such work.

5.4 Construction at Existing Utilities

5.4.1 Where the Work to be performed crosses or otherwise interferes with water, sewer, gas, or oil pipelines; buried cable; or other public or private utilities, the Contractor shall perform construction in such a manner so that no damage will result to either public or private utilities. It shall be the responsibility of the Contractor to determine the actual locations of, and make accommodates to maintain, all utilities.

5.4.2 Before any utility is taken out of service, permission shall be obtained by the Contractor from the owner. The owner, any impacted resident or business owner and the Engineer will be advised of the nature and duration of the utility outage as well as the Contractor's plan for providing temporary utilities if required by the owner. The Contractor shall be liable for all damage which may result from its failure to maintain utilities during the progress of The Work, and the Contractor shall indemnify City as required by the Contract Documents from all claims arising out of or connected with damage to utilities encountered during construction; damages resulting from disruption of service; and injury to persons or damage to property resulting from the negligent, accidental, or intentional breaching of utilities.

SECTION 6. SCHEDULE

6.1 **General Requirements.** The schedule shall be prepared in a Critical Path Method ("CPM") formal and in an electronic scheduling program acceptable to the City. Contractor shall deliver the schedule and all updates to the City in both paper and electronic form. The electronic versions shall be in the format and include all data used to prepare the schedule; pdf. Copies are not acceptable.

6.2 **Schedule.** Within fourteen (14) Days after the issuance of the Notice to Proceed, Contractor shall prepare a Project schedule for the performance of the Work and shall submit this to the Engineer for Approval. The receipt or Approval of any schedules by the Engineer or City shall not in any way relieve the Contractor of its obligations under the Contract Documents. The Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the Project. Contractor's failure to incorporate all elements of Work required for the performance of the Contract or any inaccuracy in the schedule shall not excuse the Contractor from performing all Work required for a completed Project within the specified Contract Time period. If the required schedule is not received by the time the first payment under the Contract is due, Contractor shall not be paid until the schedule is received, reviewed and accepted by the Engineer.

6.3 **Schedule Contents.** The schedule shall allow enough time for inclement weather that can be reasonably expected at the Project site. The schedule shall indicate the beginning and completion dates of all phases of construction; critical path for all critical, sequential time related activities; and "float time" for all "slack" or "gaps" in the non-critical activities. The schedule shall clearly identify all staffing and other resources which in the Contractor's judgment are needed to complete the Project within the Contract Time. Schedule duration shall match the Contract Time. Schedules indicating early completion will be rejected.

6.4 **Schedule Updates.** Contractor shall continuously update its construction schedule to show the actual status of the Work and incorporate changes in the Work. Contractor shall submit an updated and accurate construction schedule to the Engineer whenever requested to do so by Engineer and with each progress payment request. The Engineer may withhold progress payments or other amounts due under the Contract Documents if Contractor fails to submit an updated and accurate construction schedule.

SECTION 7. SUBSTITUTIONS

7.1 Pursuant to Public Contract Code section 3400(b) City may make a finding that is described in the invitation for bids that designates certain products, things, or services by specific brand or trade name.

7.2 Unless specifically designated in the Contract Documents, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specifications shall be deemed to be used for the purpose of facilitating the description of the material, process or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer for substitution any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified in the Contract Documents. However, City may have adopted certain uniform standards for certain materials, processes and articles.

7.3 Contractor shall submit written requests, together with substantiating data, for substitution of any "or equal" material, process or article no later than thirty-five (35) days after award of the Contract. To facilitate the construction schedule and sequencing, some requests may need to be submitted before thirty-five (35) days after award of Contract. Provisions regarding submission of "or equal" requests shall not in any way authorize an extension of time for performance of this Contract. If a proposed "or equal" substitution request is rejected, Contractor shall be responsible for providing the specified material, process or article without adjustment to the Contract Price or Contract Time. The burden of proof as to the equality of any material, process or article shall rest with the Contractor. City has the complete and sole discretion to determine if a material, process or article is an "or equal" material, process or article that may be substituted.

7.4 Data required to substantiate requests for substitutions of an "or equal" material, process or article data shall include a signed affidavit from the Contractor stating that, and describing how, the substituted "or equal" material, process or article is equivalent to that specified in every way except as listed on the affidavit. Substantiating data shall include any and all illustrations, specifications, and other relevant data including catalog information which describes the requested substituted "or equal" material, process or article, and substantiates that it is an "or equal" to the material, process or article. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted "or equal" material, process or article. Failure to submit all the required substantiating data, including the signed affidavit, to City in a timely fashion will result in the rejection of the proposed substitution.

7.5 The Contractor shall bear all of City's costs associated with the review of substitution requests.

7.6 The Contractor shall be responsible for all costs related to a substituted "or equal" material, process or article.

7.7 Contractor is directed to the Special Conditions (if any) to review any findings made pursuant to Public Contract Code section 3400.

SECTION 8. SHOP DRAWINGS

8.1 Contractor shall check and verify all field measurements and shall submit with such promptness as to provide adequate time for review and cause no delay in his own Work or in that of any other contractor, subcontractor, or worker on the Project, six (6) copies of all shop or setting drawings, calculations, schedules, and materials list, and all other provisions required by the Contract Documents. Contractor shall sign all submittals affirming that submittals have been reviewed and approved by Contractor prior to submission to Engineer. Each signed submittal shall affirm that the submittal meets all the requirements of the Contract Documents except as specifically and clearly noted and listed on the cover sheet of the submittal.

8.2 Contractor shall make any corrections required by the Engineer, and file with the Engineer six (6) corrected copies each, and furnish such other copies as may be needed for completion of the Work. Engineer's approval of shop drawings shall not relieve Contractor from responsibility for deviations from the Contract Documents unless Contractor has, in writing, called Engineer's attention to such deviations at time of submission and has secured the Engineer's written Approval. Engineer's Approval of

shop drawings shall not relieve Contractor from responsibility for errors in shop drawings.

SECTION 9. SUBMITTALS

9.1 Contractor shall furnish to the Engineer for approval, prior to purchasing or commencing any Work, a log of all samples, material lists and certifications, mix designs, schedules, and other submittals, as required in the Contract Documents. The log shall indicate whether samples will be provided in accordance with other provisions of the Contract Documents.

9.2 Contractor will provide samples and submittals, together with catalogs and supporting data required by the Engineer, to the Engineer within a reasonable time period to provide for adequate review and avoid delays in the Work.

9.3 These requirements shall not authorize any extension of time for performance of this Contract. Engineer will check and approve such samples, but only for conformance with design concept of work and for compliance with information given in the Contract Documents. Work shall be in accordance with approved samples and submittals.

9.4 Contractor shall not be entitled to any extension of the Contract Time on account of the requirements of this Section.

SECTION 10. MATERIALS

10.1 Except as otherwise specifically stated in the Contract Documents, Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendence, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this Contract within the Contract Time.

10.2 Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted and/or specified, and workmanship shall be of good quality.

10.3 Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of The Work and shall be stored properly and protected as required by the Contract Documents. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or Work.

10.4 No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in the work and agrees upon completion of all work to deliver the Project, to City free from any claims, liens, or charges.

10.5 Materials shall be stored on the Project site in such manner so as not to interfere with any operations of City or any independent contractor.

10.6 Contractor shall verify all measurements, dimensions, elevations, and quantities before ordering any materials or performing any Work, and the City shall not be liable for

Contractor's failure to so. No additional compensation, over and above payment for the actual quantities at the prices set out in the Bid Schedule, will be allowed because of differences between actual measurements, dimension, elevations and quantities and those indicated on the Plans and in the Specifications. Any difference therein shall be submitted to the Engineer for consideration before proceeding with The Work.

SECTION 11. CONTRACTOR'S SUPERVISION

Contractor shall continuously keep at the Project site, a competent and experienced full-time Project superintendent approved by City. Superintendent must be able to proficiently speak, read and write in English. Superintendent shall have the authority to make decisions on behalf of the Contractor. Contractor shall continuously provide efficient supervision of the Project.

SECTION 12. WORKERS

12.1 Contractor shall at all times enforce strict discipline and good order among its employees and subcontractors. Contractor shall not employ or allow subcontractors to employ on the Project any unfit person or any one not skilled in the Work assigned to him or her.

12.2 Any person in the employ of the Contractor whom City may deem incompetent or unfit shall be dismissed from The Work and shall not be employed on this Project except with the written Approval of City.

SECTION 13. SUBCONTRACTORS

13.1 Contractor agrees to bind every subcontractor to the terms of the Contract Documents as far as such terms are applicable to subcontractor's portion of The Work. Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by its subcontractors, as Contractor is for acts and omissions of persons directly employed by Contractor. Nothing contained in these Contract Documents shall create any contractual relationship between any subcontractor and City.

13.2 City reserves the right to Approve all subcontractors. City's Approval of any subcontractor under this Contract shall not in any way relieve Contractor of its obligations in the Contract Documents.

13.3 Prior to substituting any subcontractor listed in the Bid Documents, Contractor must comply with the requirements of the Subletting and Subcontracting Fair Practices Act pursuant to California Public Contract Code section 4100 et seq.

SECTION 14. PERMITS AND LICENSES

Permits and licenses necessary for prosecution of The Work shall be secured and paid for by Contractor, unless otherwise specified in the Contract Documents.

14.1 Contractor shall obtain and pay for all other permits and licenses required for The Work, including excavation permit and permits for plumbing, mechanical and electrical work and for operations in or over public streets or right of way under jurisdiction of public agencies other than City.

14.2 The Contractor shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the specifications, drawings, or by governing authorities, except for such off-site inspections delineated as City's responsibility pursuant to the Contract Documents.

14.3 Before Acceptance of the Project, the Contractor shall submit all licenses, permits, certificates of inspection and required approvals to City.

SECTION 15. UTILITY USAGE

15.1 All temporary utilities, including but not limited to electricity, water, gas, and telephone, used on the Work shall be furnished and paid for by Contractor. Contractor shall Provide necessary temporary distribution systems, including meters, if necessary, from distribution points to points on The Work where the utility is needed. Upon completion of The Work, Contractor shall remove all temporary distribution systems.

15.2 Contractor shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the Project including but not limited to startup and testing required in the Contract Documents.

15.3 All permanent meters Installed shall be listed in the Contractor's name until Project Acceptance.

15.4 If the Contract is for construction in existing facilities, Contractor may, with prior written Approval of City, use City's existing utilities by compensating City for utilities used by Contractor.

SECTION 16. INSPECTION FEES FOR PERMANENT UTILITIES

All inspection fees and other municipal charges for permanent utilities including, but not limited to, sewer, electrical, phone, gas, water, and irrigation shall be paid for by City. Contractor shall be responsible for arranging the payment of such fees, but inspection fees and other municipal fees relating to permanent utilities shall be paid by City. Contractor may either request reimbursement from City for such fees, or shall be responsible for arranging and coordination with City for the payment of such fees.

SECTION 17. TRENCHES

17.1 Trenches Five Feet or More in Depth. The Contractor shall submit to City, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches five feet or more in depth. If the plan varies from shoring system standards, the plan shall be prepared by a registered civil or structural engineer. The plan shall not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations and all costs therefor shall be included in the Contract Price. Nothing in this Section shall be deemed to allow the use of a shoring, bracing, sloping or other protective system less effective than that required by the Construction Safety Orders. Nothing in this section shall be construed to impose a tort liability on the owner, any of its officers, officials, partners, employees, agents, consultants or volunteers. The City's review of the Contractor's excavation plan is only for general conformance to the

Construction Safety Orders and does not relieve the Contractor of any obligation hereunder. Prior to commencing any excavation, the Contractor shall designate in writing to the City the "competent person(s)" with authority and responsibilities designated in the Construction Safety Orders.

17.2 Excavations Deeper than Four Feet. If work under this Contract involves digging trenches or other excavation that extends deeper than four feet below the surface, Contractor shall promptly, and before the following conditions are disturbed, notify City, in writing, of any:

17.2.1 Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

17.2.2 Subsurface or latent physical conditions at the site differing from those indicated by information made available to bidders prior to the deadline for submitting bids.

17.2.3 Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

City shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of The Work, shall issue a change order under the procedures described in the Contract Documents.

In the event that a dispute arises between City and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of The Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the parties.

SECTION 18. DIVERSION OF RECYCLABLE WASTE MATERIALS [CITY SHOULD REVIEW ARTICLE FOR COMPLIANCE WITH LOCAL WASTE DIVERSION ORDINANCES**]**

In compliance with the applicable City's waste reduction and recycling efforts, Contractor shall divert all Recyclable Waste Materials to appropriate recycling centers. Contractor will be required to submit weight tickets and written proof of diversion with its monthly progress payment requests. Contractor shall complete and execute any certification forms required by City or other applicable agencies to document Contractor's compliance with these diversion requirements. All costs incurred for these waste diversion efforts shall be the responsibility of the Contractor.

SECTION 19. REMOVAL OF HAZARDOUS MATERIALS

19.1 Should Contractor encounter material reasonably believed to be polychlorinated biphenyl (PCB) or other toxic wastes and hazardous materials (as defined in section 25117 of the Health and Safety Code) (collectively "Hazardous Materials") which have not been rendered harmless at the Project site, the Contractor shall immediately stop work at the affected Project site and shall report the condition to the City in writing. The City shall contract for any services required to directly remove and/or abate Hazardous Materials, if required by the Project site(s), and shall not require the Contractor to subcontract for such services. The Work in the affected area shall not thereafter be resumed except by written agreement of the City and Contractor.

19.2 The City shall not be responsible for any Hazardous Materials brought to the site by the Contractor. If the Contractor: (i) introduces and/or discharges Hazardous Materials onto the site in a manner not specified by the Contract Documents; and/or (ii) disturbs Hazardous Materials identified in the Contract Documents, the Contractor shall hire a qualified remediation contractor at Contractor's sole cost to eliminate the condition as soon as possible. Under no circumstance shall the Contractor perform Work for which it is not qualified. The City, in its sole discretion, may require the Contractor to retain at Contractor's cost an independent testing laboratory.

SECTION 20. SANITARY FACILITIES

Contractor shall provide sanitary temporary toilet buildings for the use of all workers. All toilets shall comply with all applicable federal, state, and local codes ordinances, and regulations. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers as required by CAL-OSHA regulation. The toilets shall be maintained in a sanitary condition at all times. Use of toilet facilities in The Work under construction shall not be permitted. Any other sanitary facilities required by CAL-OSHA shall be the responsibility of the Contractor.

SECTION 21. AIR POLLUTION CONTROL

Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes. All containers of paint, thinner, curing compound, solvent or liquid asphalt shall be labeled to indicate that the contents fully comply with the applicable material requirements. Without limiting the foregoing, Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/ or providing services, including but not limited to, emissions limits and permitting requirements imposed by the Air Quality Management City with jurisdiction over the Project and/ or California Air Resources Board (CARB). Contractor shall specifically be aware of the application of these limits and requirements to "portable equipment" which definition is considered to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City against any fines or penalties imposed by the air quality management City, CARB, or any other governmental or regulatory agency for its violations of applicable laws as well as those of its subcontractors or others for whom Contractor is responsible under its indemnity obligations provided for in the General Conditions.

SECTION 22. WATER QUALITY MANAGEMENT AND COMPLIANCE

22.1 Storm, surface, ground, nuisance, or other waters may be encountered at various times during the Work. Contractor hereby acknowledges that it has investigated the risk

arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.

22.2 Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions of the City's ordinances regulating discharges of storm water; the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); and any and all regulations, policies, or permits issued pursuant to any such authority. These include, but are not limited to California Regional Water Quality Control Boards (Santa Ana and San Diego Regions) Order NO. R8-2009-0030, Order NO. R9-2009-0002, Order NO. R8-2009-0045, Order NO. R9-2008-0002, and State Water Resources Control Board Order NO. 2010-0014-DWQ and Order NO. 2009-0009-DWQ.

22.3 Contractor shall comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Work is to be conducted, regarding discharges of storm water to separate storm drain systems or watercourses, including all applicable requirements of the Orange County Drainage Area Management Plan ("DAMP") and the City of Aliso Viejo Local Implementation Plan ("LIP"). Sections 5, 7, and 8 of the DAMP contain requirements related to design and construction of public projects. Contractor shall be familiar the DAMP, and the LIP and shall comply with the requirements as specified therein.

A copy of the DAMP is available on the internet at:

http://www.ocwatersheds.com/StormWater/documents_damp.asp

A copy of the LIP is available on the internet at:

22.4 Contractor shall be required to comply with all aspects of the State Water Resources Control Board ("State Board") Water Quality Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity ("Construction General Permit") for all projects that involve construction on or disturbance of one acre or more of land or which are part of a larger common area of development.

22.5 City may require Contractor to file the Notice of Intent ("NOI") and obtain coverage for the Project under the Construction General Permit. This may include filing all necessary documentation including the Permit Registration Documents ("PRDs") through the Stormwater Multiple Applications and Report Tracking System ("SMARTS"); preparing and implementing a Storm Water Pollution Prevention Plan ("SWPPP") for the Work site; implementing all other provisions, and monitoring and reporting requirements required by the Construction General Permit; and providing a Qualified SWPPP Developer ("QSD") and Qualified SWPPP Practitioner ("QSP"), as necessary for all Work site activities, including but not limited to preparation and submittal of all reports, plans, inspections, and monitoring information in compliance with the Construction General Permit. City retains the right to develop its own documentation for the project site,

including but not limited to the SWPPP, and in the alternative may require Contractor to adopt and implement portions of the City developed SWPPP. Specific requirements for the Work site shall be set forth in the Special Conditions. Contractor shall include all costs of compliance with specified requirements in the Contract amount.

22.6 For those Work sites where construction activity results in the disturbance of less than one acre of total land area and/or do not need coverage under the Construction General Permit, the Contractor shall be responsible for preparing and implementing an Erosion and Sediment Control Plan in accordance with California Regional Water Quality Control Board Order NO. R8-2009-0030 and Order NO. R9-2009-0002 and the City's LIP and Orange County DAMP.

22.7 Notwithstanding the above, before any PRDs, SWPPP, or other Construction General Permit related document may be submitted to the State Water Resources Control Board or implemented on the Work site, it must first be reviewed and approved by the City and/or the City's designee. The City expressly reserves the right to procure coverage under the Construction General Permit for the Work site if Contractor fails to draft satisfactory PRDs or SWPPP or otherwise fails to proceed in a manner that complies with the requirements of the Construction General Permit. The City additionally reserves the right to hire additional contractors to maintain compliance at the Work site. Whether Contractor has adequately maintained compliance with the Construction General Permit shall be the City's sole determination. Any costs incurred by the City in procuring coverage under the Construction General Permit, or drafting and/or implementing a SWPPP for the Work site shall be paid by Contractor.

22.8 Failure to comply with laws, regulations, and ordinances listed in this Section 22 is a violation of federal and state law. Notwithstanding any other indemnity contained in this Agreement, Contractor agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Work, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

22.9 City reserves the right to defend any enforcement action or civil action brought against the City for Contractor's failure to comply with any applicable water quality law, regulation, or policy. Contractor hereby agrees to be bound by, and to reimburse the City for the costs associated with, any settlement reached between the City and any relevant enforcement entity.

22.10 City may seek damages from Contractor for delay in completing the Work in accordance with the Contract Documents, caused by Contractor's failure to comply with the laws, regulations and policies described in this Section 22, or any other relevant water quality law, regulation, or policy.

SECTION 23. CLEANING UP

23.1 Contractor at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment. Contractor shall not store debris under, in, or about

the premises. Upon completion of Work, Contractor shall clean the interior and exterior of the building or improvement including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected so surfaces are free from foreign material or discoloration. Contractor shall clean and polish all glass, plumbing fixtures, and finish hardware and similar finish surfaces and equipment and contractor shall also remove temporary fencing, barricades, planking and construction toilet and similar temporary facilities from site. Contractor shall also clean all buildings, asphalt and concrete areas to the degree necessary to remove oil, grease, fuel, or other stains caused by Contractor operations or equipment.

23.2 Contractor shall fully clean up the site at the completion of The Work. If the Contractor fails to immediately clean up at the completion of The Work, City may do so and the cost of such clean up shall be charged back to the Contractor.

SECTION 24. LAYOUT AND FIELD ENGINEERING

All field engineering required for laying out The Work and establishing grades for earthwork operations shall be furnished by the Contractor at its expense. Layout shall be done by a registered civil engineer Approved by the Engineer. Any required "as-built" drawings of the Work shall be prepared by the registered civil engineer.

SECTION 25. EXCESSIVE NOISE

25.1 The Contractor shall use only such equipment on the work and in such state of repair so that the emission of sound therefrom is within the noise tolerance level of that equipment as established by CAL-OSHA.

25.2 The Contractor shall comply with the most restrictive of the following: (1) local sound control and noise level rules, regulations and ordinances and (2) the requirements contained in these Contract Documents, including hours of operation requirements. No internal combustion engine shall be operated on the Project without a muffler of the type recommended by the manufacturer. Should any muffler or other control device sustain damage or be determined to be ineffective or defective, the Contractor shall promptly remove the equipment and shall not return said equipment to the job until the device is repaired or replaced. Said noise and vibration level requirements shall apply to all equipment on the job or related to the job, including but not limited to, trucks, transit mixers or transit equipment that may or may not be owned by the Contractor.

SECTION 26. TESTS AND INSPECTIONS

26.1 If the Contract Documents, the Engineer, or any instructions, laws, ordinances, or public authority require any part of The Work to be tested or Approved, Contractor shall provide the Engineer at least two (2) working days' notice of its readiness for observation or inspection. If inspection is by a public authority other than City, Contractor shall promptly inform City of the date fixed for such inspection. Required certificates of inspection (or similar) shall be secured by Contractor. Costs for City testing and City inspection shall be paid by City. Costs of tests for Work found not to be in compliance with the Contract Documents or applicable laws and regulations shall be paid by the Contractor.

26.2 If Contractor gives notice of an inspection pursuant to the Contract Documents, the City will provide inspection during normal working hours from 7:00 a.m. to 5:00 p.m. Monday through Friday. Requested inspections before or after this time will be charged to the Contractor as reimbursable inspection time. Inspections on weekends requires two (2) Days' notice for review and approval.

26.3 If any Work is done or covered up without the required testing or approval, the Contractor shall uncover or deconstruct the Work, and the Work shall be redone after completion of the testing at the Contractor's cost in compliance with the Contract Documents, at the Contractor's cost.

26.4 Where inspection and testing are to be conducted by an independent laboratory or agency, materials or samples of materials to be inspected or tested shall be selected by such laboratory or agency, or by City, and not by Contractor. All tests or inspections of materials shall be made in accordance with the commonly recognized standards of national organizations.

26.5 In advance of manufacture of materials to be supplied by Contractor which must be tested or inspected, Contractor shall notify City so that City may arrange for testing at the source of supply. Any materials which have not satisfactorily passed such testing and inspection shall not be incorporated into The Work.

26.6 If the manufacture of materials to be inspected or tested will occur in a plant or location outside the geographic limits of City, the Contractor shall pay for any excessive or unusual costs associated with such testing or inspection, including but not limited to excessive travel time, standby time and required lodging.

26.7 Reexamination of Work may be ordered by City. If so ordered, Work must be uncovered or deconstructed by Contractor. If Work is found to be in accordance with the Contract Documents, City shall pay the costs of reexamination and reconstruction. If such work is found not to be in accordance with the Contract Documents, Contractor shall pay all costs.

SECTION 27. PROTECTION OF WORK AND PROPERTY

27.1 The Contractor shall be responsible for all damages to persons or property that occur as a result of The Work. Contractor shall be responsible for the proper care and protection of all materials delivered and Work performed until completion and final Acceptance by City. All Work shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as necessary. Contractor shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the Project site where Work is being performed. Contractor shall erect and properly maintain at all times, as required by field conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created in the course of construction.

27.2 In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from the Engineer, is hereby permitted to act to prevent such threatened loss or injury; and Contractor shall so act, without appeal, if so authorized or instructed by the Engineer or City. Any compensation claimed by

Contractor on account of emergency work shall be determined by and agreed upon by City and the Contractor in accordance with Section 45 of these General Conditions.

27.3 Contractor shall provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions.

27.4 Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, and other adjoining property and structures, and to avoid damage thereto, and Contractor shall repair any damage thereto caused by The Work operations. Contractor shall:

27.4.1 Enclose the working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to the public.

27.4.2 Provide substantial barricades around any shrubs or trees indicated to be preserved.

27.4.3 Deliver materials to the Project site over a route designated by the Engineer.

27.4.4 Provide any and all dust control required and follow the Applicable air quality regulations as appropriate. If the Contractor does not comply, City shall have the immediate authority to provide dust control and deduct the cost from payments to the Contractor.

27.4.5 Confine Contractor's apparatus, the storage of materials, and the operations of its workers to limits required by law, ordinances, permits, or directions of the Engineer. Contractor shall not unreasonably encumber the Project site with its materials.

27.4.6 Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved civil engineer or land surveyor, at no cost to City.

27.4.7 Ensure that existing facilities, fences and other structures are all adequately protected and that, upon completion of all Work, all facilities that may have been damaged are restored to a condition acceptable to City.

27.4.8 Preserve and protect from injury all buildings, pole lines and all direction, warning and mileage signs that have been placed within the right-of-way.

27.4.9 At the completion of work each day, leave the Project site in a clean, safe condition.

27.4.10 Comply with any stage construction and traffic handling plans. Access to residences and businesses shall be maintained at all times.

27.5 These precautionary measures will apply continuously and not be limited to normal working hours. Full compensation for the Work involved in the preservation of life, safety

and property as above specified shall be considered as included in the prices paid for the various contract items of Work, and no additional allowance will be made therefor.

27.6 Should damage to persons or property occur as a result of The Work, Contractor shall promptly notify the City in writing and be responsible for proper investigation, documentation, including video or photography, to adequately memorialize and make a record of what transpired. City shall be entitled to inspect and copy any such documentation, video, or photographs.

SECTION 28. CONTRACTORS MEANS AND METHODS

Contractor is solely responsible for the means and methods utilized to Perform The Work. In no case shall the Contractor's means and methods deviate from commonly used industry standards.

SECTION 29. INSPECTOR'S FIELD OFFICE

29.1 If indicated on the plans or on the bid schedule, the Contractor shall be responsible for providing the inspector's field office. The Office shall be a substantial waterproof construction with adequate natural light and ventilation by means of stock design windows. Door shall have a key type lock or padlock clasp. The office shall have heating and air conditioning and shall be equipped with a telephone, a telephone answering machine, high speed internet connection, and a fax machine at Contractor's expense.

29.2 A table satisfactory for the study of plans and two chairs shall be Provided by Contractor. Contractor shall Provide and pay for adequate electric lights, local telephone service, and adequate heat and air conditioning for the field office until authorized removal.

SECTION 30. AUTHORIZED REPRESENTATIVES

City shall designate representatives, who shall have the right to be present at the Project site at all times. City may designate an inspector who shall have the right to observe all of the Contractor's Work. The inspector is not authorized to make changes in the Contract Documents or excuse the Contractor from performing in accordance with the Contract Documents. The inspector shall not be responsible for the Contractor's failure to carry out The Work in accordance with the Contract Documents. Contractor shall provide safe and proper facilities for such access.

SECTION 31. HOURS OF WORK

31.1 Eight (8) hours of work shall constitute a legal day's work. The Contractor and each subcontractor shall forfeit, as penalty to City, twenty-five dollars ($25) for each worker employed in the execution of Work by the Contractor or any subcontractor for each day during which such worker is required or permitted to work more than eight (8) hours in any one day and forty (40) hours in any week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, except as provided in Labor Code Section 1815.

31.2 The Contractor and every subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each

worker employed in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of the City and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.

31.3 Work shall be accomplished on a regularly scheduled eight (8) hour per day work shift basis, Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m.

31.4 Any work necessary to be performed after regular working hours, or on Saturdays and Sundays or other holidays, shall be performed without additional expense to the City.

31.5 It shall be unlawful for any person to operate, permit, use, or cause to operate any of the following at the Project site, other than between the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, with no Work allowed on Sundays and City-observed holidays, unless otherwise Approved by the Engineer:

31.5.1 Powered Vehicles

31.5.2 Construction Equipment

31.5.3 Loading and Unloading Vehicles

31.5.4 Domestic Power Tool.

SECTION 32. PAYROLL RECORDS

32.1 Pursuant to Labor Code Section 1776, the Contractor and each subcontractor shall maintain weekly certified payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the work. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury.

32.2 In accordance with Labor Code section 1771.4, the Contractor and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations ("DIR") on the specified interval and format prescribed by the DIR, which may include electronic submission. Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

32.3 Any stop orders issued by the DIR against Contractor or any subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or

liability arising out of stop orders issued by the DIR against Contractor or any subcontractor.

32.4 The payroll records described herein shall be certified and submitted by the Contractor at a time designated by the City. The Contractor shall also provide the following:

32.4.1 A certified copy of the employee's payroll records shall be made available for inspection or furnished to such employee or his or her authorized representative on request.

32.4.2 A certified copy of all payroll records described herein shall be made available for inspection or furnished upon request of the DIR.

32.5 Unless submitted electronically, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement ("DLSE") of the DIR or shall contain the same information as the forms provided by the DLSE.

32.6 Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, the City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor awarded the Contract or performing the Contract shall not be marked or obliterated.

32.7 In the event of noncompliance with the requirements of this Section, the Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying any item or actions necessary to ensure compliance with this section. Should noncompliance still be evident after such ten (10) day period, the Contractor shall, as a penalty to the City, forfeit One Hundred Dollars ($100.00) for each Day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the DIR, such penalties shall be withheld from contract payments.

SECTION 33. PREVAILING RATES OF WAGES

33.1 The Contractor is aware of the requirements of Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is $1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Agreement from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. In the alternative, the Contractor may view a copy of the prevailing rates of per diem wages at City. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold City, its elected officials, officers, employees and agents free and harmless

from any claims, liabilities, costs, penalties or interest arising out of any failure or allege failure to comply with the Prevailing Wage Laws.

33.2 The Contractor and each subcontractor shall forfeit, as a penalty to City, not more than two hundred dollars ($200) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontract under him, in violation of the provisions of the Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

33.3 Contractor shall post, at appropriate conspicuous points on the Project site, a schedule showing all determined general prevailing wage rates and all authorized deductions, if any, from unpaid wages actually earned.

SECTION 34. EMPLOYMENT OF APPRENTICES

The Contractor's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the Labor Code concerning employment of apprentices by the Contractor or any subcontractor. The Contractor shall obtain a certificate of apprenticeship before employing any apprentice pursuant to Section 1777.5, 1777.6, and 1777.7 of the Labor Code. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, the Administrator of Apprenticeships, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices. Knowing violations of Labor Code section 1777.5 will result in forfeiture not to exceed one hundred dollars ($100.00) for each calendar day of non-compliance pursuant to Labor Code section 1777.7.

SECTION 35. LABOR COMPLIANCE

35.1 This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be the Contractor's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Contract and applicable law.

35.2 Contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code section 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the City. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

SECTION 36. CONTRACTOR AND SUBCONTRACTOR REGISTRATION

Pursuant to Labor Code sections 1725.5 and 1771.1, the Contractor and its subcontractors must be registered with the DIR prior to the execution of a contract to perform public works. By entering into this Contract, Contractor represents that it is aware of the registration requirement and is currently registered with the DIR. Contractor shall maintain a current registration for the

duration of the Project. Contractor shall further include the requirements of Labor Code sections 1725.5 and 1771.1 in any subcontract and ensure that all subcontractors are registered at the time this Contract is entered into and maintain registration for the duration of the Project.

SECTION 37. NONDISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

Pursuant to Labor Code Section 1735 and other applicable provisions of law, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap on this Project. The Contractor will take affirmative action to insure that employees are treated during employment or training without regard to their race, color, religion, sex, national origin, age, political affiliation, marital status, or handicap.

SECTION 38. LABOR/EMPLOYMENT SAFETY

The Contractor shall maintain emergency first aid treatment for his employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), and California Code of Regulations, Title 8, Industrial Relations Division 1, Department of Industrial Relations, Chapter 4. Contractor certifies that it is aware of and has complied with the provisions of California Labor Code section 6401.7, which requires every employer to adopt a written injury and illness prevention program.

SECTION 39. INSURANCE

39.1 Commercial General Liability Insurance.

39.1.1 Contractor shall procure and maintain during the life of this Contract and for such other period as may be required herein, at its sole expense, Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products/completed operations if applicable, personal and advertising injury – which may arise from or out of Contractor's operations, use, and management of the Project site, or the performance of its obligations hereunder. Policy limits shall not be less than $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

39.1.2 Such policy shall comply with all the requirements of this Section. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to City, and shall not preclude City from taking such other actions available to City under other provisions of the Contract Documents or law.

39.1.3 Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this Contract. If any subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold City harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by City as a result thereof.

39.1.4 All general liability policies provided pursuant to the provisions of this Section shall comply with the provisions of the Contract Documents.

39.1.5 All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, under-ground excavation, removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in these General Conditions, relating to liability for injury to or death of persons and damage to property. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, City may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement described in the Contract Documents.

39.2 Automobile Liability Insurance. Contractor shall take out and maintain at all times during the term of this Contract Automobile Liability Insurance in the amount of, at least, one million dollars ($1,000,000). Such insurance shall provide coverage for bodily injury and property damage including coverage for non-owned and hired vehicles, in a form and with insurance companies acceptable to City. Such insurance shall comply with the provisions of ARTICLE 42 below.

39.3 Workers' Compensation Insurance. The Contractor shall provide, during the life of this Contract, workers' compensation insurance for all of the employees engaged in Work under this Contract, on or at the Project site, and, in case any of sublet Work, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees as prescribed by State law. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract, on or at the Project site, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor is required to secure payment of compensation to his employees in accordance with the provisions of Section 3700 of the Labor Code. The Contractor shall file with City certificates of his insurance protecting workers. Company or companies providing insurance coverage shall be acceptable to City, if in the form and coverage as set forth in the Contract Documents.

39.4 Employer's Liability Insurance. Contractor shall provide during the life of this Contract, Employer's Liability Insurance, including Occupational Disease, in the amount of, at least, one million dollars ($1,000,000.00) per person per accident. Contractor shall provide City with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of the Contract Documents. The policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement and contain a Waiver of Subrogation in favor of City.

39.5 Builder's Risk ["ALL RISK"].

39.5.1 It is the Contractor's responsibility to maintain or cause to be maintained Builder's Risk ["All Risk"] extended coverage insurance on all work, material, equipment, appliances, tools, and structures which are a part of the Contract and subject to loss or damage by fire, and vandalism and malicious mischief, in an amount to cover 100% of the replacement cost. City accepts no responsibility until the Contract is formally accepted by the City Council for The Work. The Contractor is required to file with City a certificate evidencing fire insurance coverage.

39.5.2 Provide insurance coverage on completed value form, all-risk or special causes of loss coverage.

A. Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.

B. Coverage shall include all materials stored on site and in transit.

C. Coverage shall include Contractor's tools and equipment.

D. Insurance shall include boiler, machinery and material hoist coverage.

E. Such insurance shall comply with the provisions of the Contract Documents.

39.6 Form and Proof of Carriage of Insurance.

39.6.1 Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by City's Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A:VII. Insurance deductibles or self-insured retentions must be declared by the Contractor, and such deductibles and retentions shall have the prior written consent from City. At the election of City the Contractor shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

39.6.2 Contractor shall cause its insurance carrier(s) to furnish City with either 1) a properly executed original Certificates(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, or 2) if requested to do so in writing by City's Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect, City of Aliso Viejo, its officials and officers, employees, agents or representatives are named as Additional Insureds and Provide a Waiver of Subrogation in favor of those parties. Further, said Certificates(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that shall provide no less than thirty (30) days written notice be given to City prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, City may terminate or Stop Work pursuant to the Contract Documents, unless City receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original

policies, including all endorsements and attachments thereto evidencing coverages set forth herein and the insurance required herein is in full force and effect. Contractor shall not take possession, or use the Project site, or commence operations under this Agreement until City has been furnished original Certificate(s) of Insurance and certified original copies of Endorsements or policies of insurance including all Endorsements and any and all other attachments as required in this Section. The original Endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.

39.6.3 It is understood and agreed to by the parties hereto and the insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary, and City's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

39.6.4 City reserves the right to adjust the monetary limits of insurance coverage's during the term of this Contract including any extension thereof-if in City's reasonable judgment, the amount or type of insurance carried by the Contractor becomes inadequate.

39.6.5 Contractor shall pass down the insurance obligations contained herein to all tiers of sub-contractors working under this Contract.

SECTION 40. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

40.1 **Time for Completion.** Work shall be commenced within ten (10) Days of the date stated in the City's Notice to Proceed and shall be completed by Contractor in the Contract Time. The City is under no obligation to consider early completion of the Project; and the Contract completion date shall not be amended by the City's receipt or acceptance of the Contractor's proposed earlier completion date. Furthermore, Contractor shall not, under any circumstances, receive additional compensation from the City (including but not limited to indirect, general, administrative or other forms of overhead costs) for the period between the time of earlier completion proposed by the Contractor and the Contract completion date.

40.2 **Liquidated Damages**. If The Work is not completed within the Contract Time, it is understood that the City will suffer damage. In accordance with Government Code section 53069.85, being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to the City as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Contract for each day of delay until The Work is fully completed. Contractor and its surety shall be liable for any liquidated damages. Any money due or to become due the Contractor may be retained to cover liquidated damages.

40.3 **Inclement Weather.** Contractor shall abide the Engineer's determination of what constitutes inclement weather. Time extensions for inclement weather shall only be granted when the Work stopped during inclement weather is on the critical path of the Project schedule.

40.4 **Extension of Time.** Contractor's entitlement to an extension of the Contract Time is limited to a City-caused extension of the critical path, reduced by the Contractor's concurrent delays, and established by a proper time impact analysis. Contractor shall not be charged liquidated damages because of any delays in completion of The Work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor (or its subcontractors or suppliers). The City shall ascertain the facts and extent of delay and grant extension of time for completing The Work when, in its judgment, the facts justify such an extension. No delay claims shall be permitted unless the event or occurrence delays the completion of the Project beyond the Contract completion date. Contractor shall not be entitled to an adjustment in the Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a subcontractor or supplier shall be deemed to be delays within the control of Contractor.

40.5 **Force Majeure.** In accordance with subparagraph 40.4 above, the Contractor shall not be charged liquidated damages, and the City shall not be responsible, for any delays resulting from a Force Majeure Event. If a delay to the critical path results from a Force Majeure Event, the Contractor will be entitled to a time extension but will not receive an adjustment to the Contract Price or any other compensation. Such a non-compensable adjustment shall be Contractor's sole and exclusive remedy for such delays.

40.6 **No Damages for Reasonable Delay.** City's liability to Contractor for delays for which City is responsible shall be limited to only an extension of time unless such delays were unreasonable under the circumstances. In no case shall City be liable for any costs which are borne by the Contractor in the regular course of business, including, but not limited to, home office overhead and other ongoing costs. Damages caused by unreasonable City delay, including delays caused by items that are the responsibility of City pursuant to Government Code section 4215, shall be based on actual costs only, no proportions or formulas shall be used to calculate any delay damages.

40.7 **Procedure for Time Extensions and Delay Damages.** Contractor shall within seven (7) Days of identifying any such delay notify the City in writing of causes of delay. Contractor shall not be entitled to any extension of time unless Contractor properly notices the delay and adjustment to compensation and requests a Change Order in accordance with these General Conditions. Contractor's failure to timely and fully comply with the Change Order procedures in the Contract Documents shall constitute a waiver of Contractor's right to a time extension.

SECTION 41. COST BREAKDOWN AND PERIODIC ESTIMATES

41.1 Contractor shall furnish on forms Approved by City:

41.1.1 Within ten (10) Days of award of the Contract a detailed Schedule of Values giving a complete breakdown of the Contract Price, if the Contract Price is lump sum. The Schedule of Values shall be adjusted as directed by the City

41.1.2 A monthly itemized estimate of Work done for the purpose of making progress payments. In order for City to consider and evaluate each progress payment application, the Contractor shall submit a detailed measurement of Work performed and a progress estimate of the value thereof before the tenth (10th) Day of the following month.

41.1.3 Contractor shall submit, with each of its payment requests, an adjusted list of actual quantities, verified by the Engineer, for unit price items listed, if any, in the Bid Form.

41.1.4 Following City's Acceptance of the Work, the Contractor shall submit to City a written statement of the final quantities of unit price items for inclusion in the final payment request.

41.1.5 City shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any estimate for payment.

41.2 Contractor shall certify under penalty of perjury, that all cost breakdowns and periodic estimates accurately reflect the Work on the Project.

SECTION 42. MOBILIZATION

42.1 When a bid item is included in the Bid Form for mobilization, the costs of Work in advance of construction operations and not directly attributable to any specific bid item will be included in the progress estimate ("Initial Mobilization"). When no bid item is provided for "Initial Mobilization," payment for such costs will be deemed to be included in the other items of The Work.

42.2 Payment for Initial Mobilization based on the lump sum provided in the Bid Form, which shall constitute full compensation for all such Work. No payment for Initial Mobilization will be made until all of the listed items have been completed to the satisfaction of the Engineer. The scope of the Work included under Initial Mobilization shall include, but shall not be limited to, the following principal items (as applicable to The Work):

42.2.1 Obtaining and paying for all bonds, insurance, and permits.

42.2.2 Moving on to the Project site of all Contractor's plant and equipment required for first month's operations.

42.2.3 Installing temporary construction power, wiring, and lighting facilities.

42.2.4 Establishing fire protection system.

42.2.5 Developing and installing a construction water supply.

42.2.6 Providing and maintaining the field office trailers for the Contractor and the Engineer, complete, with all specified furnishings and utility services including telephones, telephone appurtenances, computer and printer, and copying machine.

42.2.7 Providing on-site communication facilities for the Owner and the Engineer, including telephones, radio pagers, and fax machines.

42.2.8 Providing on-site sanitary facilities and potable water facilities as specified per Cal-OSHA and these Contract Documents.

42.2.9 Furnishing, installing, and maintaining all storage buildings or sheds required for temporary storage of products, equipment, or materials that have not yet been installed in the Work. All such storage shall meet manufacturer's specified storage requirements, and the specific provisions of the specifications, including temperature and humidity control, if recommended by the manufacturer, and for all security.

42.2.10 Arranging for and erection of Contractor's work and storage yard.

42.2.11 Posting all OSHA required notices and establishment of safety programs per Cal-OSHA.

42.2.12 Full-time presence of Contractor's superintendent at the job site as required herein.

42.2.13 Submittal of construction schedule as required by the Contract Documents.

SECTION 43. PAYMENTS

43.1 City shall make monthly progress payments following receipt of undisputed and properly submitted payment requests. Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of Work performed up to the last day of the previous month, less the aggregate of previous payments, except where the City has adopted a finding that the Work done under the Contract is substantially complex, and then the Contractor shall be paid a sum equal to ninety percent (90%) of the value of the Work performed up to the last day of the previous month, less the aggregate of previous payments.

43.2 The Contractor shall, after the full completion of The Work, submit a final payment application. All prior progress estimates shall be subject to correction in the final estimate and payment.

43.3 Unless otherwise required by law, the final payment of five percent (5%) of the value of the Work (or ten percent (10%) in the event the City has adopted a finding that the Work under the Contract is substantially complex), if unencumbered, shall be paid no later than sixty (60) Days after the date of recordation of the Notice of Completion or as required by Public Contract Code section 7107.

43.4 Acceptance by Contractor of the final payment shall constitute a waiver of all claims against City arising from this Contract.

43.5 Payments to the Contractor shall not be construed to be an acceptance of any defective work or improper materials, or to relieve the Contractor of its obligations under the Contract Documents.

43.6 The Contractor shall submit with each payment request the Contractor's conditional waiver of lien for the entire amount covered by such payment request, as well as a valid unconditional waiver of lien from the Contractor and all subcontractors and materialmen for all work and materials included in any prior invoices. Waivers of lien shall be in the forms prescribed by California Civil Code Section 8132, 8132, 8136 and 8138. Prior to final payment by the City, the Contractor shall submit a final conditional waiver of lien for

the Contractor's work, together with unconditional releases of lien from any subcontractor or materialmen.

SECTION 44. PAYMENTS WITHHELD AND BACKCHARGES

44.1 In addition to amounts which City may retain under other provisions of the Contract Documents, City may withhold payments due to Contractor as the City may consider to be necessary to cover:

44.1.1 Stop notice claims.

44.1.2 Defective work not remedied.

44.1.3 Failure of Contractor to make proper payments to its subcontractors or suppliers.

44.1.4 Completion of the Contract if there exists a reasonable doubt that the work can be completed for balance then unpaid.

44.1.5 Damage to another contractor or third party.

44.1.6 Amounts which may be due City for claims against Contractor.

44.1.7 Failure of Contractor to keep the record ("as-built") drawings up to date.

44.1.8 Failure to provide updates on the construction schedule.

44.1.9 Site clean-up.

44.1.10 Failure of the Contractor to comply with requirements of the Contract Documents.

44.1.11 Liquated damages.

44.1.12 Legally permitted penalties.

44.2 Upon completion of the Contract, City will reduce the final Contract amount to reflect costs charged to the Contractor, backcharges or payments withheld pursuant to the Contract Documents.

SECTION 45. CHANGES AND EXTRA WORK

45.1 Change Order Work.

45.1.1 City, without invalidating the Contract, may order changes in the Work consisting of additions, deletions or other revisions, the Contract Price and Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order and shall be performed under the applicable conditions of the Contract Documents. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including any adjustment in the Contract amount or the Contract time, and the full and final settlement of all costs (direct, indirect and overhead) related to the Work authorized by the Change Order.

45.1.2 All claims for additional compensation to the Contractor shall be presented in writing before the expense is incurred and will be adjusted as provided herein. No work shall be allowed to lag pending such adjustment, but shall be promptly executed as directed, even if a dispute arises. No claim will be considered after the work in question has been done unless a written contract change order has been issued or a timely written notice of claim has been made by Contractor. Contractor shall not be entitled to claim or bring suit for damages, whether for loss of profits or otherwise, on account of any decrease or omission of any item or portion of Work to be done. Whenever any change is made as provided for herein, such change shall be considered and treated as though originally included in the Contract, and shall be subject to all terms, conditions and provisions of the original Contract.

45.1.3 Contractor shall not reserve a right to assert impact costs, extended job site costs, extended overhead, constructive acceleration and/or actual acceleration beyond what is stated in the change order for work. No claims shall be allowed for impact, extended overhead costs, constructive acceleration and/or actual acceleration due to a multiplicity of changes and/or clarifications. The Contractor may not change or modify the City's change order form in an attempt to reserve additional rights.

45.1.4 Any alterations, extensions of time, extra work or any other changes may be made without securing consent of the Contractor's surety or sureties.

45.2 Process for Determining Adjustments in Contract Price

45.2.1 Owner Initiated Change. The Contractor must submit a complete cost proposal, including any change in the Contract Time, within seven (7) Days after receipt of a scope of a proposed change order initiated by the City, unless City requests that proposals be submitted in less than seven (7) Days.

45.2.2 Contractor Initiated Change. The Contractor must give written notice of a proposed change order required for compliance with the Contract Documents within seven (7) Days of discovery of the facts giving rise to the proposed change order.

45.2.3 Whenever possible, any changes to the Contract amount shall be in a lump sum mutually agreed to by the Contractor and City.

45.2.4 Price quotations from the Contractor shall be accompanied by sufficiently detailed supporting documentation to permit verification by City, including, but not limited to, estimates and quotations from subcontractors or material suppliers, as City may reasonably request..

45.2.5 If the Contractor fails to submit a complete cost proposal within the seven (7) Day period (or as requested), City has the right to order the Contractor in writing to commence the work immediately on a force account basis and/or issue a lump sum change to the Contract Price and/ Contract Time in accordance with City's estimate. If the change is issued based on City estimate, the Contractor will waive its right to dispute the action unless within fifteen (15) Days following

completion of the added/deleted work, the Contractor presents written proof that City's estimate was in error.

45.2.6 Estimates for lump sum quotations and accounting for cost-plus-percentage work shall be limited to direct expenditures necessitated specifically by the subject extra work, and shall be segregated as follows:

A. Labor. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of worker at the time the extra work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State or local laws, as well as assessment or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the extra work cost will not be permitted unless the contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

B. Materials. The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available in the quantities involved, plus sales tax, freight and delivery. Materials cost shall be based upon supplier or manufacturer's invoice. If invoices or other satisfactory evidence of cost are not furnished within fifteen (15) Days of delivery, then the Engineer shall determine the materials cost, at its sole discretion.

C. Tool and Equipment Use. No payment will be made for the use of small tools, tools which have a replacement value of $1,000 or less. Regardless of ownership, the rates to be used in determining equipment use costs shall not exceed listed rates prevailing locally at equipment rental agencies, or distributors, at the time the work is performed.

D. Overhead, Profit and Other Charges. The mark-up for overhead (including supervision and home and field office costs) and profit on work added to the Contract shall be according to the following:

1. "Net Cost" is defined as consisting of costs of labor, materials and tools and equipment only excluding overhead and profit. The costs of applicable insurance and bond premium will be reimbursed to the Contractor and subcontractors at cost only, without mark-up. Contractor shall provide City with documentation of the costs, including but not limited to payroll records, invoices and such other information as City may reasonably request.

2. For Work performed by the Contractor's forces the added cost for overhead and profit shall not exceed fifteen (15%) percent of the Net Cost of the Work.

3. For Work performed by a subcontractor, the added cost for overhead and profit shall not exceed fifteen (15%) percent of the

Net Cost of the Work to which the Contractor may add five (5%) percent of the subcontractor's Net Cost.

4. For Work performed by a sub-subcontractor the added cost for overhead and profit shall not exceed fifteen (15 %) percent of the Net Cost for Work to which the subcontractor and general contractor may each add an additional five (5 %) percent of the Net Cost of the lower tier subcontractor.

5. No additional markup will be allowed for lower tier subcontractors, and in no case shall the added cost for overhead and profit payable by City exceed twenty-five (25%) percent of the Net Cost as defined herein.

45.2.7 All of the following costs are included in the markups for overhead and profit described above, and Contractor shall not receive any additional compensation for: submittals, drawings; field drawings, shop drawings, including submissions of drawings; field inspection; general superintendence; general administration and preparation of cost proposals, schedule analysis, change orders, and other supporting documentation; computer services; reproduction services; salaries of project engineer, superintendent, timekeeper, storekeeper, and secretaries; janitorial services; small tools, incidentals and consumables; temporary on-site facilities (offices, telephones, internet access, plumbing, electrical power, lighting; platforms, fencing, water), jobsite and home office overhead or other expenses; vehicles and fuel used for work otherwise included in the contract documents; surveying; estimating; protection of work; handling and disposal fees; final cleanup; other incidental work; related warranties; insurance and bond premiums.

45.2.8 For added or deducted Work by subcontractors, the Contractor shall furnish to City the subcontractor's signed detailed record of the cost of labor, material and equipment, including the subcontractor markup for overhead and profit. The same requirement shall apply to sub-subcontractors.

45.2.9 For added or deducted work furnished by a vendor or supplier, the Contractor shall furnish to City a detailed record of the cost to the Contractor, signed by such vendor or supplier.

45.2.10 Any change in The Work involving both additions and deletions shall indicate a net total cost, including subcontracts and materials. Allowance for overhead and profit, as specified herein, shall be applied if the net total cost is an increase in the Contract Price; overhead and profit allowances shall not be applied if the net total cost is a deduction to the Contract Price. The estimated cost of deductions shall be based on labor and material prices on the date the Contract was executed.

45.2.11 Documentation of Time and Materials Costs.

A. T&M Daily Sheets. Contractor must submit timesheets, materials invoices, records of equipment hours, and records of rental equipment hours to the City's for an approval signature each day that Work is

performed on a time-and-material basis. The Engineer's signature on time sheets only serves as verification that the Work was performed and is not indicative of the City's agreement to Contractor's entitlement to the cost.

B. T&M Summary Sheet. Contractor shall submit a T&M Summary Sheet, which shall include total actual costs, within five (5) Days following completion of additional work on a time-and-material basis. Contractor's total actual cost shall be presented in a summary table in an electronic spreadsheet file by labor, material, equipment, and any other costs, along with documentation supporting the costs. Contractor's failure to submit the T&M Summary Sheet within five (5) Days of completion of the additional work will result in Contractor's waiver for any reimbursement of any costs associated with the additional work.

45.3 Change of Contract Time

45.3.1 Contract Time may only be changed by a Change Order.

45.3.2 All changes in the Contract Price and/or adjustments to the Contract Time related to each change shall be included in Contractor's change order proposal, as described above. No cost or time will be allowed for cumulative effects of multiple changes. All Change Orders must state that the Contract Time is not changed or is either increased or decreased by a specific number of days. Failure to include a change to time shall waive any change to the time unless the parties mutually agree in writing to postpone a determination of the change to time resulting from the Change Order.

45.3.3 Notice of the amount of the request for adjustment in the Contract Time with supporting data shall be delivered within seven (7) Days after such start of occurrence, unless the City allows an additional period of time to ascertain more accurate data in support of the request. No extension of time or additional compensation shall be given for a delay if the Contractor failed to give notice in the manner and within the time prescribed.

45.3.4 The City may elect, at its sole discretion, to grant an extension in Contract Time, without Contractor's request, because of delays or other factors.

45.3.5 Float is for the benefit of the Project. Float shall not be considered for the exclusive use or benefit of either the City or the Contractor. Contractor shall not be entitled to compensation, and the City will not compensate Contractor, for delays which impact early completion. Any difference in time between the Contractor's early completion and the Contract Time shall be considered a part of the Project float.

45.3.6 Contractor's entitlement to an extension of the Contract Time is limited to a City-caused extension of the critical path, reduced by the Contractor's concurrent delays, and established by a proper time impact analysis. No time extension shall be allowed unless, and then only to the extent that, the City-caused delay extends the critical path beyond the previously approved Contract Time. If

approved, the increase in time required to complete the Work shall be added to the Contract Time.

45.3.7 Requests for Contract Time Extension. Contractor's justification for entitlement shall be clear and complete citing specific Contract Document references and reasons on which Contractor's entitlement is based. At a minimum, each request for a time extension must include:

A. Each request for an extension of Contract Time must identify the impacting event, in narrative form, providing a description of the delay event and sufficient justification as to why the Contractor is entitled to a time extension. Contractor must demonstrate that the delay arises from unforeseeable causes beyond the control and without the fault or negligence of both Contractor and any subcontractors or suppliers, or any other persons or organizations employed by any of them or for whose acts any of them may be liable, and that such causes in fact lead to performance or completion of the Work, or specified part in question, beyond the corresponding Contract Time, despite Contractor's reasonable and diligent actions to guard against those effects.

B. Each request for an extension of Contract Time must include a time impact analysis in CPM format, using the most recent monthly update to calculate the impact of the delay event.

45.4 Unilateral Change Order

45.4.1 If City disagrees with the proposal submitted by Contractor, it will notify the Contractor and City will provide its opinion of the appropriate price and/or time extension. If the Contractor agrees with City, a change order will be issued by City. If no agreement can be reached, City shall have the right to issue a unilateral change order setting forth its determination of the reasonable additions or savings in costs and time attributable to the extra or deleted work. Such determination shall become final and binding if the Contractor fails to submit a claim in writing to City within fifteen (15) Days of the issuance of the unilateral change order, disputing the terms of the unilateral change order.

45.4.2 No dispute, disagreement or failure of the parties to reach agreement on the terms of the change order shall relieve the Contractor from the obligation to proceed with performance of the work, including extra work, promptly and expeditiously.

45.5 Contractor's Waiver of Further Relief

CONTRACTOR'S FAILURE TO PROVIDE A COMPLETE AND TIMELY NOTICE OF CHANGE/DELAY AND/OR CHANGE ORDER REQUEST, OR TO COMPLY WITH ANY OTHER REQUIREMENT OF THIS ARTICLE, SHALL CONSTITUTE A WAIVER BY CONTRACTOR OF THE RIGHT TO A CONTRACT ADJUSTMENT ON ACCOUNT OF SUCH CIRCUMSTANCES AND A WAIVER OF ANY RIGHT TO FURTHER RECOURSE OR RECOVERY BY REASON OF OR RELATED TO SUCH CHANGE BY MEANS OF THE CLAIMS DISPUTE RESOLUTION PROCESS OR BY ANY OTHER LEGAL PROCESS OTHERWISE PROVIDED FOR UNDER APPLICABLE LAWS.

Contractor recognizes and acknowledges that timely submission of a formal written notice of change/delay and Change Order request, whether or not the circumstances of the change may be known to the City or available to the City through other means, is not a mere formality but is of crucial importance to the ability of the City to promptly identify, prioritize, evaluate and mitigate the potential effects of changes. Any form of informal notice, whether verbal or written (including, without limitation, statements in requests for information, statements in submittals, statements at any job meeting or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal requirements of this Section, shall accordingly be insufficient.

SECTION 46. OCCUPANCY

City reserves the right to occupy or utilize any portion of The Work at any time before completion, and such occupancy or use shall not constitute Acceptance of any part of Work covered by this Contract. This use shall not relieve the Contractor of its responsibilities under the Contract.

SECTION 47. INDEMNIFICATION

47.1 To the fullest extent permitted by law, Contractor shall immediately defend (with counsel of the City's choosing), indemnify and hold harmless the City, its officials, officers, agents, employees, and representatives, and each of them from and against:

47.1.1 Any and all claims, demands, causes of action, costs, expenses, injuries, losses or liabilities, in law or in equity, of every kind or nature whatsoever, but not limited to, injury to or death, including wrongful death, of any person, and damages to or destruction of property of any person, arising out of, related to, or in any manner directly or indirectly connected with the Work or this Contract, including claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses, however caused, regardless of whether the allegations are false, fraudulent, or groundless, and regardless of any negligence of the City or its officers, employees, or authorized volunteers (including passive negligence), except the sole negligence or willful misconduct or active negligence of the City or its officials, officers, employees, or authorized volunteers.

47.1.2 Contractor's defense and indemnity obligation herein includes, but is not limited to damages, fines, penalties, attorney's fees and costs arising from claims under the Americans with Disabilities Act (ADA) or other federal or state disability access or discrimination laws arising from Contractor's Work during the course of construction of the improvements or after the Work is complete, as the result of defects or negligence in Contractor's construction of the improvements.

47.1.3 Any and all actions, proceedings, damages, costs, expenses, fines, penalties or liabilities, in law or equity, of every kind or nature whatsoever, arising out of, resulting from, or on account of the violation of any governmental law or regulation, compliance with which is the responsibility of Contractor.

47.1.4 Any and all losses, expenses, damages (including damages to the Work itself), attorney's fees, and other costs, including all costs of defense which any of them may incur with respect to the failure, neglect, or refusal of Contractor to faithfully

perform the Work and all of Contractor's obligations under Contract. Such costs, expenses, and damages shall include all costs, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.

47.2 Contractor shall immediately defend, at Contractor's own cost, expense and risk, with the counsel of the City choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City, its officials, officers, agents, employees and representatives. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against the City, its officials, officers, employees, agents, employees and representatives, in any such suit, action or other legal proceeding. Contractor shall reimburse the City, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. The only limitations on this provision shall be those imposed by Civil Code section 2782.

47.3 The provisions of this Section shall survive the termination of this Contract howsoever caused, and no payment, partial payment, or acceptance of occupancy in whole or part of the Work shall waive or release any of the provisions of this Section.

SECTION 48. RECORD ("AS BUILT") DRAWINGS

48.1 Contractor shall prepare and maintain a complete set of record drawings (herein referred to as "as-builts") and shall require each trade to prepare its own as-builts. The as-builts must show the entire site for each major trade, including but not limited to water, sewer, electrical, data, telephone, cable, fire alarm, gas and plumbing. Contractor shall mark the as-builts to show the actual installation where the installation varies from the Work as originally shown. Contractor shall mark whichever drawings are most capable of showing conditions fully and where shop drawings are used, Contractor must record a cross-reference at the corresponding location on the contract drawings. Contractor shall give particular attention to concealed elements that would be difficult to measure and record at a later date. Contractor shall use colors to distinguish variations in separate categories of The Work.

48.2 Contractor shall note related change order numbers where applicable. Contractor shall organize as-builts into manageable sets, bound with durable paper cover sheets and shall print suitable title, dates and other identification on the cover of each set. These as-builts shall be maintained up-to-date during the progress of the Project. As-builts shall be accessible to the Engineer at all times during the construction period. Failure on the Contractor's part to keep as-builts current could result in withholding partial payment. Contractor to also provide an electronic version of the as-builts.

48.3 Upon completion of the Project and as a condition of final acceptance, the Contractor shall finalize and deliver a complete set of as-builts to the Engineer. The suitability of the as-builts will be determined by the Engineer. The information submitted by the Contractor will be assumed to be correct, and the Contractor shall be responsible for, and liable to the City, for the accuracy of such information, and for any errors or omissions which may or may not appear on the as-builts.

SECTION 49. RESOLUTION OF CONSTRUCTION CLAIMS

Contractor shall timely comply with any and all requirement of the Contract Documents

pertaining to notices and requests for changes to the Contract Time or Contract Price, including but not limited to all requirements of Section 45, as a prerequisite to filing any claim governed by this Section. The failure to timely submit a notice of delay or notice of change, or to timely request a change to the time for completion or Contractor's compensation, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Contract or at law.

49.1 Intent. Effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of $375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with all applicable law, including but not limited to these statutes.

49.2 Claims. For purposes of this Section, "Claim" means a separate demand by the Contractor for:

49.2.1 An adjustment to the time for completion including, without limitation, for relief from damages or penalties for delay assessed by the City;

49.2.2 Payment by the City of money or damages arising from Work done by or on behalf of the Contractor pursuant to the Contract, payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled; or

49.2.3 An amount the payment of which is disputed by the City.

A "Claim" does not include any demand for payment for which the Contractor has failed to provide notice, request a Change Order, or otherwise failed to follow any procedures contained in the Contract Documents.

49.3 Filing Claims. Claims governed by this Section may not be filed unless and until the Contractor completes any and all requirements of the Contract Documents pertaining to notices and requests for changes to the Contract Time or Contract Price, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Section must be filed no later than thirty (30) Days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to the City and shall include on its first page the following words in 16 point capital font: "THIS IS A CLAIM." The Claim shall include the all information and documents necessary to substantiate the Claim, including but not limited to those identified below. Nothing in this Section is intended to extend the time limit or supersede notice requirements otherwise provided by Contract Documents. Failure to follow such contractual requirements shall bar any Claims or subsequent proceedings for compensation or payment thereon.

49.4 Documentation. The Contractor shall submit all Claims in the following format:

49.4.1 Summary description of Claim including basis of entitlement, merit and amount of time or money requested, with specific reference to the Contract Document provisions pursuant to which the Claim is made

49.4.2 List of documents relating to Claim:

A. Specifications

B. Drawings

C. Clarifications (Requests for Information)

D. Schedules

E. Other

49.4.3 Chronology of events and correspondence

49.4.4 Narrative analysis of Claim merit

49.4.5 Analysis of Claim cost, including calculations and supporting documents

49.4.6 Time impact analysis in the form required by the Contract Documents or, if the Contract Documents do not require a particular format, CPM format, if an adjustment of the Contract Time is requested

49.5 City's Response. Upon receipt of a Claim pursuant to this Section, the City shall conduct a reasonable review of the Claim and, within a period not to exceed 45 Days, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the Claim will be processed and made within 60 Days after the City issues its written statement.

49.5.1 If the City needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the City's governing body does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a Claim sent by registered mail or certified mail, return receipt requested, the City shall have up to three (3) Days following the next duly publicly noticed meeting of the City's governing body after the 45-Day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

49.5.2 Within 30 Days of receipt of a Claim, the City may request in writing additional documentation supporting the Claim or relating to defenses or Claims the City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the City and the Contractor. The City's written response to the Claim, as further documented, shall be submitted to the Contractor within 30 Days (if the Claim is less than $50,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by the

Contractor in producing the additional information or requested documentation, whichever is greater.

49.6 Meet and Confer. If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within 15 Days of receipt of the City's response or within 15 Days of the City's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the City shall schedule a meet and confer conference within 30 Days for settlement of the dispute.

49.7 Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the City shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 Days after the City issues its written statement. Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing the associated costs equally. The public entity and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing, unless the parties agree to select a mediator at a later time.

49.7.1 If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

49.7.2 For purposes of this Section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this Section.

49.7.3 Unless otherwise agreed to by the City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

49.7.4 The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved Claims shall be considered jointly in a single mediation, unless a new unrelated Claim arises after mediation is completed.

49.8 Procedures After Mediation. If following the mediation, the Claim or any portion remains in dispute, the Contractor must file a Claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a Claim must be filed shall be tolled from the time the Contractor submits his or her written Claim pursuant to

subdivision (a) until the time the Claim is denied, including any period of time utilized by the meet and confer conference.

49.9 Civil Actions. The following procedures are established for all civil actions filed to resolve Claims of $375,000 or less:

49.9.1 Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. The mediation process shall provide for the selection within 15 Days by both parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

49.9.2 If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

49.10 Government Code Claim Procedures.

49.10.1 This Section does not apply to tort claims and nothing in this Section is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commending with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.5 of Title 1 of the Government Code.

49.10.2 In addition to any and all requirements of the Contract Documents pertaining to notices of and requests for adjustment to the Contract Time, Contract Price, or compensation or payment for Additional Work, disputed Work, construction claims and/or changed conditions, the Contractor must comply with the claim procedures set forth in Government Code Section 900, et seq. prior to filing any lawsuit against the City.

49.10.3 Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to adjustment of the Contract Time or Contract Price for Additional Work, disputed Work, construction claims, and/or changed conditions have been followed by Contractor. If Contractor does not comply with the Government Code claim procedure or the prerequisite contractual requirements, Contractor may not file any action against the City.

49.10.4 A Government Code claim must be filed no earlier than the date the Work is completed or the date the Contractor last performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved Claims known to Contractor or that should reasonably by known to Contractor excepting only new unrelated Claims that arise after the Government Code claim is submitted.

49.11 Non-Waiver. The City's failure to respond to a Claim from the Contractor within the time periods described in this Section or to otherwise meet the time requirements of this Section shall result in the Claim being deemed rejected in its entirety, and shall not constitute a waiver of any rights under this Section.

SECTION 50. CITY'S RIGHT TO TERMINATE CONTRACT

50.1 **Termination for Cause**: City may, without prejudice to any other right or remedy, serve written notice upon Contractor of its intention to terminate this Contract if the Contractor: (i) refuses or fails to prosecute The Work or any part thereof with such diligence as will ensure its completion within the time required; (ii) fails to complete The Work within the required time; (iii) should file a bankruptcy petition or be adjudged a bankrupt; (iv) should make a general assignment for the benefit of its creditors; (v) should have a receiver appointed; (vi) should persistently or repeatedly refuse or fail to supply enough properly skilled workers or proper materials to complete the work; (vii) should fail to make prompt payment to subcontractors or for material or labor; (viii) persistently disregard laws, ordinances, other requirements or instructions of City; or (ix) should violate any of the provisions of the Contract Documents.

The notice of default and intent to terminate shall contain the reasons for termination. Unless within ten (10) Days after the service of such notice, Contractor resolves the circumstances giving rise to the notice of default to the City's satisfaction, or makes arrangements acceptable to the City for the required corrective action, this Contract shall be terminated. In such case, Contractor shall not be entitled to receive any further payment until the Project has been finished. City may take over and complete The Work by any method it may deem appropriate. Contractor and its surety shall be liable to City for any excess costs or other damages incurred by City to complete the Project. If City takes over The Work, City may, without liability for so doing, take possession of and utilize in completing The Work such materials, appliances, plant, and other property belonging to the Contractor as may be on the Project site.

50.2 **Termination For Convenience:** City may terminate performance of The Work in whole or, in part, at any time upon ten (10) Days written notice to Contractor, if City determines that a termination is in City's interest. The Contractor shall terminate all or any part of The Work upon delivery to the Contractor of a Notice of Termination specifying that the termination is for the convenience of City, the extent of termination, and the effective date of such termination.

After receipt of Notice of Termination, and except as directed by City, the Contractor shall, regardless of any delay in determining or adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:

50.2.1 Stop Work as specified in the Notice.

50.2.2 Complete any Work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.

50.2.3 Leave the site and any other property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.

50.2.4 Terminate all subcontracts and purchase orders to the extent that they relate to the portions of The Work terminated.

50.2.5 Place no further subcontracts or orders, except as necessary to complete the remaining portion of The Work.

50.2.6 Submit to City, within ten (10) Days from the effective date of the Notice of Termination, all of the documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Effective Date of the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of City's exercise of its right to terminate this Contract pursuant to this clause, which costs the Contractor is authorized under the Contract Documents to incur, shall: (i) be submitted to and received by City no later than thirty (30) Days after the Effective Date of the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs Occasioned by City's Termination for Convenience." If the City rejects any costs, Contractor shall be deemed to waive the rejected costs unless Contractor files a claim within thirty (30) Days of the rejection pursuant to these General Conditions.

50.2.7 In no event shall the City be liable for unreasonable costs incurred by the Contractor or subcontractors after receipt of a Notice of Termination. Contractor shall be entitled to receive only the amounts payable under this Section, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits. Such non-recoverable costs include, but are not limited to, the cost of or anticipated profits on Work not performed as of the date of termination, post-termination employee salaries, unreasonable post-termination administrative expenses, post-termination overhead or unabsorbed overhead, surety costs of any type, costs of preparing and submitting the Contractor's termination claim, attorney fees of any type, and all other costs relating to prosecution of a claim or lawsuit. The provisions in this Sections are in addition to and not in limitation of any other rights or remedies available to the City.

50.2.8 Termination of the Contract shall not relieve surety of its obligation for any just claims arising out of or relating to the Work performed.

50.3 If City terminates Contractor for cause, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Contractor shall be entitled to receive only the amounts payable under this Section, and Contractor specifically waives any

claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

50.4 Notwithstanding any other provision of this Section, when immediate action is necessary to protect life and safety or to reduce significant exposure or liability, City may immediately order Contractor to cease Work on the Project until such safety or liability issues are addressed to the satisfaction of City or the Contract is terminated.

SECTION 51. WARRANTY AND GUARANTEE

51.1 Contractor warrants that all materials and equipment furnished under this Contract shall be new unless otherwise specified in the Contract Documents; and that all Work conforms to the Contract Document requirements and is free of any defect whether performed by the Contractor or any subcontractor or supplier.

51.2 Contractor hereby agrees to repair or replace, at the discretion of the City, any or all Work that may prove to be defective in its workmanship, materials furnished, methods of installation or fail to conform to the Contract Document requirements together with any other Work which may be damaged or displaced by such defect(s) within a period of one (1) year (or as otherwise indicated in the Contract Documents or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) from the date of the Notice of Completion of the Project without any expense whatever to the City, ordinary wear and tear and unusual abuse and neglect excepted.

51.3 The City shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage. The Contractor shall within ten (10) Days after being notified commence and perform with due diligence all necessary Work to complete or correct the Work at issue. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. If the Contractor fails to promptly remedy any defect, or damage; the City shall have the right to replace, repair, or otherwise remedy the defect, or damage at the Contractor's expense.

51.4 In the event of any emergency constituting an immediate hazard to health, safety, property, or licensees, when caused by Work of the Contractor not in accordance with the Contract requirements, the City may undertake at Contractor's expense, and without prior notice, all actions necessary to correct such condition.

51.5 The Contractor shall remedy at its expense any damage to City-owned or controlled real or personal property.

51.6 For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one (1) year period, commencing with the date of acceptance of such corrected Work. The reinstatement of the one (1) year warranty shall apply only to that portion of work that was corrected. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. In the event of Contractor's failure to comply with the above-mentioned conditions within ten (10) Days after being notified in writing of required repairs, to the

reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder immediately upon demand.

51.7 Contractor shall furnish the City with all warranty and guarantee documents prior to final Acceptance of the Project by the City.

51.8 With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for Work performed and Materials furnished under this Contract, the Contractor shall:

51.8.1 Obtain for City all warranties that would be given in normal commercial practice or that are required in the Contract Documents;

51.8.2 Require all warranties to be executed, in writing, for the benefit of the City; and

51.8.3 Enforce all warranties for the benefit of the City, unless otherwise directed in writing by the City.

This Section shall not limit the City's rights under this Contract or with respect to latent defects, gross mistakes, or fraud. The City specifically reserves all rights related to defective work, including but not limited to the defect claims pursuant to California Code of Civil Procedure section 337.15.

SECTION 52. DOCUMENT RETENTION & EXAMINATION

52.1 In accordance with Government Code Section 8546.7, records of both City and the Contractor shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment.

52.2 Contractor shall make available to City any of the Contractor's other documents related to the Project immediately upon request of City.

52.3 In addition to the State Auditor rights above, City shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of the Contractor (including electronic records, computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to City, for a period of four (4) years after final payment.

SECTION 53. SOILS INVESTIGATIONS

When a soils investigation report for the Project site is available, such report shall not be a part of the Contract Documents. Any information obtained from such report as to subsurface soil condition, or to elevations of existing grades or elevations of underlying rock, is approximate only and is not guaranteed. Contractor acknowledges that any soils investigation report (including any borings) was prepared for purposes of <u>design only</u> and Contractor is required to examine the site before submitting its bid and must make whatever tests it deems appropriate to determine the underground condition of the soil.

SECTION 54. SEPARATE CONTRACTS

54.1 City reserves the right to let other contracts in connection with this Work or on the Project site. Contractor shall cooperate with and permit other contractors reasonable access and storage of their materials and execution of their work and shall properly connect and coordinate its Work with theirs.

54.2 To ensure proper execution of its subsequent Work, Contractor shall immediately inspect work already in place and shall at once report to the Engineer any problems with the work in place or discrepancies with the Contract Documents.

54.3 Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by City in prosecution of the Project to the end that Contractor may perform this Contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at site of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, the Engineer shall decide which Contractor shall cease Work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. City shall not be responsible for any damages suffered or for extra costs incurred by Contractor resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on the Project site.

SECTION 55. NOTICE AND SERVICE THEREOF

All notices shall be in writing and either served by personal delivery or mailed to the other party as designated in the Bid Documents. Written notice to the Contractor shall be addressed to Contractor's principal place of business unless Contractor designates another address in writing for service of notice. Notice to City shall be addressed to City as designated in the Notice Inviting Bids unless City designates another address in writing for service of notice. Notice shall be effective upon receipt or five (5) Days after being sent by first class mail, whichever is earlier. Notice given by facsimile shall not be effective unless acknowledged in writing by the receiving party.

SECTION 56. NOTICE OF THIRD PARTY CLAIMS

Pursuant to Public Contract Code Section 9201, City shall provide Contractor with timely notification of the receipt of any third-party claim relating to the Contract.

SECTION 57. STATE LICENSE BOARD NOTICE

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

SECTION 58. INTEGRATION

58.1 This Contract, together with its incorporated documents, contains the entire, integrated agreement of the parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the parties hereto. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void.

58.2 Any modification of this Contract shall be effective in in writing signed by all parties hereto. No oral order, objection, direction, claim or notice by any party or person shall affect or modify any of the terms or obligations contained in the Contract Documents.

SECTION 59. ASSIGNMENT

Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract or any part thereof including any claims, without prior written consent of City. Any assignment without the written consent of City shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or Material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such Materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure or the Government Code.

SECTION 60. CHANGE IN NAME AND NATURE OF CONTRACTOR'S LEGAL ENTITY

Should a change be contemplated in the name or nature of the Contractor's legal entity, the Contractor shall first notify the City in order that proper steps may be taken to have the change reflected on the Contract and all related documents. No change of Contractor's name or nature will affect City's rights under the Contract, including but not limited to the bonds.

SECTION 61. ASSIGNMENT OF ANTITRUST ACTIONS

Pursuant to Section 7103.5 of the Public Contract Code, in entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor or subcontractor offers and agrees to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (chapter 2 (commencing with Section 16700) of part 2 of division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to this Contract or any subcontract. This assignment shall be made and become effective at the time City makes final payment to the Contractor, without further acknowledgment by the parties.

SECTION 62. PROHIBITED INTERESTS

No City official or representative who is authorized in such capacity and on behalf of City to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the project, shall be or become directly or indirectly interested financially in the Contract.

SECTION 63. LAWS AND REGULATIONS

63.1 Contractor shall give all notices and comply with all federal, state, and local laws, ordinances, rules and regulations bearing on conduct of work as indicated and specified. References to specific laws, rules or regulations in the Contract Documents are for reference purposes only and shall not limit or affect the applicability of provisions not specifically mentioned. If Contractor observes that drawings and specifications are at variance therewith, he shall promptly notify the Engineer in writing and any necessary changes shall be adjusted as provided for in this Contract for changes in work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Engineer, he shall bear all costs arising therefrom.

63.2 Contractor shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.). The Work will be performed in compliance with ADA regulations.

63.3 Contractor acknowledges and understands that, pursuant to Public Contract Code section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code section 2717(b) in order to supply mined material for this Contract.

63.4 **Fraud Policy.** Contractor shall provide a copy of the City's Fraud Policy to each of its employees assigned to perform the tasks under this Contract. Contractor shall submit to the City's Personnel Manager a statement signed by Contractor and by each of its employees who are assigned to perform the Work under this Contract certifying receipt of City's Fraud Policy and certifying that they have read the Fraud Policy. A finding by the City that any of Contractor's employees have committed fraud against the City shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Contract at City's request. Contractor shall reimburse the City for any costs and expenses associated with fraud against the City.

63.5 **Harassment Policy.** Contractor shall provide a copy of the City's Harassment Policy to each of its employees assigned to perform the tasks under this Contract. Contractor shall submit to the City'' Personnel Manager a statement signed by each of its employees who are assigned to perform the Work under this Contract certifying receipt of City's Harassment Policy and certifying that they have read the Harassment Policy. A finding by the City that any of Contractor's employees has harassed a City employee shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Contract at City's request.

SECTION 64. PATENT FEES OR ROYALTIES

The Contractor shall include in its bid amount the patent fees or royalties on any patented article or process furnished or used in the Work. Contractor shall assume all liability and responsibility arising from the use of any patented, or allegedly patented, materials, equipment, devices or processes used in or incorporated with The Work, and shall defend, indemnify and hold harmless City, its officials, officers, agents, employees and representatives from and against any and all liabilities, demands, claims, damages, losses, costs and expenses, of whatsoever kind or nature, arising from such use.

SECTION 65. OWNERSHIP OF DRAWING

All Contract Documents furnished by City are City property. They are not to be used by Contractor or any subcontractor on other work nor shall Contractor claim any right to such documents. With exception of one complete set of Contract Documents, all documents shall be returned to City on request at completion of The Work.

SECTION 66. NOTICE OF TAXABLE POSSESSORY INTEREST

In accordance with Revenue and Taxation Code Section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which Contractor will be responsible.

END OF GENERAL CONDITIONS

SECTION 00750
SPECIAL CONDITIONS

SECTION 1. COVID-19 SAFETY MEASURES

1.1 Contractors shall comply with all applicable current and future federal, state, and local laws, regulations, statutes, ordinances, and orders. This includes, but is not limited to, applicable portions of any Orange County Health Officer orders and any future updates thereto.

1.2 Contractor shall implement, and require its subcontractors to implement, measures to protect employees, visitors, and anyone else related to the Project from COVID-19 and other infectious diseases. These measures shall include, but not be limited to, the following: Post all required notices at the worksite; update its Injury and Illness Prevention Plan, generate a worksite-specific COVID-19 prevention plan, designate a person at each worksite to implement the plans, provide training on preventing the spread of diseases, increase availability of handwashing stations, routinely disinfect common areas, enforce physical distancing, require cloth face coverings or PPE when otherwise required, encourage workers who are sick to stay at home, provide alcohol based wipes to clean tools before and after use, avoid carpooling, implement health screening programs (temperature checks and symptom screening) to ensure that employees showing up to work are healthy, and immediately separate employees with symptoms of COVID-19 from others and direct them to go home or to medical care as needed. In its implementation of COVID-19-related safety measures, Contractor shall be aware of and take into account the following guidance:

1.2.1 California Department of Public Health, *COVID-19 Industry Guidance: Construction*, https://covid19.ca.gov/pdf/guidance-construction.pdf

1.2.2 Cal/OSHA, *Interim General Guidelines on Protecting Workers from COVID-19*, https://www.dir.ca.gov/dosh/coronavirus/General-Industry.html

1.2.3 Cal/OSHA, *COVID-19 Infection Prevention in Construction*, https://www.dir.ca.gov/dosh/coronavirus/COVID-19-Infection-Prevention-in-Construction.pdf

1.2.4 OSHA, *Guidance on Preparing Workplaces for COVID-19* (OSHA 3990-03), https://www.osha.gov/Publications/OSHA3990.pdf

1.2.5 OSHA, *COVID-19 Guidance for the Construction Workforce* (OSHA 4000-04), https://www.osha.gov/Publications/OSHA4000.pdf

1.2.6 OSHA, *COVID-19 - Control and Prevention / Construction Work*, https://www.osha.gov/SLTC/covid-19/construction.html

1.2.7 CDC, *Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 (COVID-19)*, May 2020 https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html

1.2.8 CDC, *Symptoms of Coronavirus*, https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html

SECTION 2. PUBLIC CONTRACT CODE SECTION 3400

2.1 City has not made findings pursuant to Public Contract Code Section 3400(b) regarding the use of specific materials, products, things, and/or services that must be utilized for the Project.

SECTION 3. STORM WATER SPECIFICATIONS

3.1 City has not prepared a SWPPP or other storm water compliance plan for the Project site. Contractor shall be responsible for filing the NOI and for obtaining coverage under the Permit. This includes preparing and implementing a SWPPP for the Project site, and coordinating all submittals with the City's Legally Responsible Person and Authorized Signatory as those terms are defined in the Permit. Before any NOI, SWPPP, or other Permit related document may be submitted to the State Board or implemented on the Project site, it must first be reviewed and approved by the City. If the Project is less than one acre in size Contractor is still required to develop and implement an erosion and sediment control plan for the Work site. Contractor shall include all costs of compliance with specified requirements in the Contract amount.

END OF SPECIAL CONDITIONS

City of Aliso Viejo
AGENDA ITEM

DATE: May 4, 2022

TO: Mayor and City Council

FROM: Rose Rivera, Senior Planner

SUBJECT: ADOPTION OF THE FISCAL YEAR 2022-2023 ANNUAL ACTION PLAN FOR EXPENDITURES OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS

Recommended Actions:

1. Conduct a public hearing;

2. Declare the City Council finds the FY 2022-2023 Annual Action Plan is not subject to the California Environmental Quality Act ("CEQA") as the activity is not a project defined in Section 15378(b)(5) of the state CEQA Guidelines;

3. Approve and adopt the FY 2022-2023 Annual Action Plan ("Action Plan") for the use of Community Development Block Grant ("CDBG") funds (Attachment 1);

4. Authorize the City Manager to submit the Action Plan to the U.S. Department of Housing and Urban Development ("HUD"), which executes the HUD contract, and authorize the City Manager to submit all related documents with the implementation of the Action Plan.

Fiscal Impact:

HUD has not published FY 2022-2023 CDBG allocations; however, the City of Aliso Viejo anticipates receiving $217,000 in CDBG funds for Fiscal Year 2022-2023 from HUD. In addition to next year's allocation, the City has an additional $13,026 to allocate toward activities identified in the Action Plan. This additional funding source consists of unspent administration monies from the prior year's CDBG allocation. The proposed Action Plan allocates $3,500 for fair housing services, $7,500 for case management and supportive services for households residing in interim housing, and $175,626 for acquisition of a low-income housing unit, and $43,400 for program administration.

Background:

The 2018-2022 Consolidated Plan, as approved by the City Council on July 18, 2018, established a multi-year strategy for using CDBG funds in the community. CDBG funding supports the development of viable urban communities by supporting projects and activities that create or enhance the availability of decent housing, suitable living environments, and expansion of economic opportunities, principally for low- and moderate-income persons. The Annual Action Plan identifies specific projects and activities to be funded through CDBG for each year of the Consolidated Plan. The FY 2022-2023 Annual Action Plan is an expenditure plan using the upcoming year's CDBG allocation for activities outlined in the Consolidated Plan.

Discussion:

2022-2023 Annual Action Plan

The 2022-2023 Annual Action Plan proposes to use CDBG funding toward three priorities: public facilities and improvements, public services, and program administration. The following activities are identified in the Action Plan:

- **Public Facilities and Improvements: $175,626**

  Last fiscal year, the City exercised its first right of refusal option to purchase a low-income housing unit. The City utilized Affordable Housing In-lieu funds for this purchase. The City leased this unit to Family Assistance Ministries ("FAM"), which has managed the unit as supportive housing for a homeless family with children. The City has an opportunity to acquire one or two additional low-income units. The acquisition of real property for use as supportive housing is an eligible use of CDBG funds (i.e., public facility).

- **Public Services:**

  - **Fair Housing Services: $3,500**

    Fair housing services costs can be reimbursed through CDBG funds as a public service. Services include fair housing outreach, education, and enforcement services to reduce and eliminate impediments to fair access to housing opportunities.

  - **Case Management and Supportive Services: $7,500**

    As described above, the City has leased a unit to FAM for use as supportive housing for a homeless family with children. FAM will use CDBG public services funds to provide case management and support services for the resident family.

- **Administration: $43,400**

  Administration costs related to implementing approved CDBG projects are an allowable reimbursable expense. The City's allocation of administration funding will reimburse staff costs associated with program oversight and coordination, direct program costs, and CDBG program consulting services.

Since HUD has not announced FY 2022-2023 CDBG allocation, the draft FY 2022-2023 Action Plan indicates, and staff recommends, funding for activities listed above will be increased or decreased by a uniform percentage based on the final FY 2022-2023 CDBG grant.

Environmental:

Staff recommends the City Council find the proposed action is not a project as defined by the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Section 15378(b)(5). The action is an administrative activity of the City that involves a report to a federal agency on the potential use of CDBG funds. The report itself does not authorize any development or changes to land use; thus, the project would not result in any direct or indirect changes to the environment. Consequently, this action is not classified as a project under CEQA.

Public Notice:

Consistent with HUD and local requirements to provide a 30-day public review period, a 1/8-page public hearing notice was published in the *O.C. Register* on April 4, 2022. The City's draft Action Plan was posted on the City website and was available to the public at City Hall and the Aliso Viejo Public Library.

City Attorney:

The City Attorney reviewed and had no comments on this report.

Attachments:

1. FY 2022-2023 Annual Action Plan

2. Presentation

2022-2023 ANNUAL ACTION PLAN

Draft April 4, 2022

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Executive Summary

AP-05 Executive Summary - 24 CFR 91.200(c), 91.220(b)

1. Introduction

The 2022-2023 Annual Action Plan for the City of Aliso Viejo satisfies the requirements to receive Community Development Block Grant (CDBG) funds from the U.S. Department of Housing and Urban Development (HUD). The primary objective of the CDBG program is to develop viable urban communities by providing decent housing, a suitable living environment, and economic opportunities, principally for persons of low- and moderate-income.

Regulations governing the CDBG program require that each activity undertaken with CDBG funds must meet one of the three national objectives:

- Benefit low- and moderate-income persons,
- Aid in the prevention or elimination of slums and blight, or
- Meet a community development need having a particular urgency (i.e., federally declared disaster)

As a recipient of CDBG funds, the City must prepare a five-year strategic plan that identifies housing and community needs, prioritizes these needs, and develops a strategic plan to address priority needs. This document is called the Consolidated Plan. The City's current Consolidated Plan covers the fiscal years of 2018-2019 to 2022-2023. On an annual basis, the City prepares an expenditure plan that identifies the specific activities the City will undertake with its annual CDBG allocation to meet the priority needs identified in the Consolidated Plan. Fiscal Year (FY) 2022-2023 is the fifth year of the current Consolidated Plan cycle.

HUD has not announced CDBG funding levels for FY 2022-2023; however, the City anticipates receiving $217,000 in CDBG funds. A grant balance of $13,026 in prior year funds is also available for programming.

2. Summarize the objectives and outcomes identified in the Plan

The City's Consolidated Plan identifies activities to be carried out with CDBG funding over five years and identifies five-year goals and outcomes. A summary of these five-year goals and outcomes is listed below:

- Public Infrastructure Improvements: 12,000 City residents will benefit from the installation or rehabilitation of CDBG-funded public infrastructure improvements
- Public Facility Improvements: 6,000 City residents will benefit from the installation or rehabilitation of CDBG-funded public facilities such as community centers, parks, and other public and private facilities
- Single-Family Housing: assist 15 owner-occupied units with CDBG-funded program resources

- Homeless Services: Presently, the City uses general fund resources to assist agencies that provide housing and services to homeless individuals and individuals at risk of homelessness. In future years, CDBG funds could be used to assist up to 75 individuals
- Public Services: Presently, the City supports various social service programs that serve seniors, youths, victims of domestic violence, and other lower-income persons with City general funds. In future years, CDBG funds could be used to serve up to 750 lower-income individuals
- Fair Housing Services: HUD requires the City to eliminate impediments to fair housing choice. The City will use CDBG funding to support fair housing outreach, education, and enforcement services. An estimated 300 households will benefit from this CDBG-funded activity
- Program Administration: The City will provide resources to ensure oversight and coordination of the CDBG program

3. Evaluation of past performance

Attachment 1 summarizes Consolidated Plan accomplishments through FY 2020-2021, i.e., three years of the current Consolidated Plan cycle. Fiscal Year 2021-2022 is the fourth year of the City's current Consolidated Plan cycle and is not complete.

4. Summary of Citizen Participation Process and consultation process

Consistent with the City's Citizen Participation Plan, residents, local and regional organizations, and other stakeholders were encouraged to participate in preparing the City's 2022-2023 Annual Action Plan. It is important to note that COVID-19 public health concerns may have limited opportunities to meet with residents and local service providers; nonetheless, the City implemented the following measures to obtain public input:

- A 2022-2023 Action Plan draft was available for a 30-day public comment period from April 4 to May 3, 2022.
- The City Council adopted the Annual Action Plan after considering public comments received during a hearing on May 4, 2022.

5. Summary of public comments

See Attachment 2.

6. Summary of comments or views not accepted and the reasons for not accepting them

See Attachment 2.

7. Summary

The Consolidated Plan is a strategic plan that utilizes data and public input to determine priority housing and community needs. The Action Plan is a component of the Consolidated Plan that acts as the annual expenditure plan for using CDBG funds to address identified priority needs. To address priority needs,

Aliso Viejo will utilize $230,026 in CDBG funds during FY 2022-2023 to carry out several CDBG-eligible activities, including public services, public facility improvements (acquisition), and program administration.

PR-05 Lead & Responsible Agencies – 91.200(b)

1. Agency/entity responsible for preparing/administering the Consolidated Plan

Describe the agency/entity responsible for preparing the Consolidated Plan and those responsible for administration of each grant program and funding source.

Agency Role	Name	Department/Agency
City of Aliso Viejo	City of Aliso Viejo	Planning Services

Table 1 – Responsible Agencies

Narrative (optional)

The City's Planning Services Department is primarily responsible for preparing the Consolidated Plan, Annual Action Plan, performance reports, and the general administration of CDBG funds.

Consolidated Plan Public Contact Information

Ms. Rose Rivera, Senior Planner
Phone: (949) 425-2528 / Fax: (949) 425-3899 / rrivera@avcity.org

AP-10 Consultation – 91.100, 91.200(b), 91.215(l)

1. Introduction

The consolidated planning process (i.e., the Annual Action Plan process) requires that the City contact and consult with other public and private agencies when developing the plan. The plan itself must include a summary of the consultation process, including identifying the agencies that participated in the process. Below is a summary of the City's efforts to coordinate interaction with other public and private agencies.

Provide a concise summary of the jurisdiction's activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health and service agencies (91.215(l))

The City of Aliso Viejo works closely with the County of Orange Housing Authority (OCHA), which assists renter households with HUD-funded housing assistance vouchers and certificates. As housing development opportunities evolve, City staff works closely with developers to explore and create housing opportunities for lower-income residents. It is important to note that Aliso Viejo is a master-planned community and is built out. Limited opportunities exist to develop new housing units; however, the City encourages the development of affordable housing opportunities when possible. For example, a 200-unit senior housing development was completed during the current Consolidated Plan cycle. This project provides affordable housing opportunities to 148 low-income and 50 very low-income senior households. There is no plan to develop additional affordable housing units during FY 2022-2023; however, the City is negotiating to purchase housing units that are currently subject to affordability covenants to preserve long-term affordability. CDBG funds are allocated to assist with acquiring one or more units that will serve as city-owned interim housing (i.e., public facility), managed by a local community-based organization.

Additionally, through the annual City-funded Community Assistance grants allocation process, City staff can ascertain the services Aliso Viejo residents need (e.g., senior services, youth services) and develop partnerships with local agencies to deliver quality services.

Describe coordination with the Continuum of Care and efforts to address homeless persons' needs (particularly chronically homeless individuals and families, families with children, veterans, and unaccompanied youth) and persons at risk of homelessness.

The Orange County Continuum of Care (OC-CoC) is the regional coordinator of the homeless housing and support services delivery system. The OC-CoC is responsible for conducting the biennial Point In Time Survey of the County's homeless. The OC-CoC conducted the 2022 Point-In-Time Survey (PITS) in February 2022. The 2019 PITS is the most current homeless count; it identified one unsheltered homeless individual in the City.

The City will continue its relationships with local service providers to address the needs of the City's homeless and residents who are at risk of becoming homeless. The City will also continue to support OC-CoC efforts to address regional homeless issues. During FY 2022-2023, the City will allocate CDBG funds to support housing and services for homeless families. Additionally, the City will allocate general fund resources to regional homeless service providers to address local homeless issues.

Describe consultation with the Continuum(s) of Care that serves the jurisdiction's area in determining how to allocate ESG funds, develop performance standards for and evaluate outcomes of projects and activities assisted by ESG funds, and develop funding, policies and procedures for the operation and administration of HMIS

Aliso Viejo is not a recipient of Emergency Solutions Grant (ESG) funds; therefore, it does not help the OC-CoC determine ESG allocations, evaluate grant outcomes, or develop policies and procedures for the regional administration Homeless Management Information System (HMIS).

2. Describe Agencies, groups, organizations and others who participated in the process and describe the jurisdiction's consultations with housing, social service agencies and other entities (see Table 2)

Table 2 – Agencies, groups, organizations who participated

1	**Agency/Group/Organization**	**Fair Housing Foundation**
	Agency/Group/Organization Type	Service-Fair Housing
	What section of the Plan was addressed by Consultation?	Impediments to Fair Housing Strategy
	How was the Agency/Group/Organization consulted and what are the anticipated outcomes of the consultation or areas for improved coordination?	Agency provided data and information that helped identify the needs of households requiring fair housing services and provided input regarding the City's strategy to address impediments to fair housing
2	**Agency/Group/Organization**	**211 Orange County**
	Agency/Group/Organization Type	Services-homeless Regional organization
	What section of the Plan was addressed by Consultation?	Homelessness Strategy Homeless Needs - Chronically homeless Homeless Needs - Families with children Homelessness Needs - Veterans Homelessness Needs - Unaccompanied youth Homeless Management Information System (HMIS)
	How was the Agency/Group/Organization consulted and what are the anticipated outcomes of the consultation or areas for improved coordination?	Regional Continuum of Care coordinator and HMIS administrator – also provided information regarding regional and City homeless populations and shelter resources
3	**Agency/Group/Organization**	**Orange County Housing Authority**
	Agency/Group/Organization Type	Public Housing Authority
	What section of the Plan was addressed by Consultation?	Housing Need Assessment Homelessness Strategy

	How was the Agency/Group/Organization consulted and what are the anticipated outcomes of the consultation or areas for improved coordination?	Provided information regarding the number and type of households receiving rental assistance, and the number of households requesting housing assistance
4	**Agency/Group/Organization**	**City of Aliso Viejo**
	Agency/Group/Organization Type	Other government - Local
	What section of the Plan was addressed by Consultation?	Housing Need Assessment Homelessness Strategy Non-Homeless Special Needs Economic Development Market Analysis
	How was the Agency/Group/Organization consulted and what are the anticipated outcomes of the consultation or areas for improved coordination?	Various City departments and City Council provided community-based data and information - also played a crucial role in identifying priorities and the allocation of CDBG funds
5	**Agency/Group/Organization**	**Family Assistance Ministries**
	Agency/Group/Organization Type	Services-homeless
	What section of the Plan was addressed by Consultation?	Homelessness Strategy Homeless Needs - Families with children Homelessness Needs – Veterans
	How was the Agency/Group/Organization consulted and what are the anticipated outcomes of the consultation or areas for improved coordination?	Helped identify the housing and service needs of persons at risk of becoming homeless and those already homeless

6	**Agency/Group/Organization**	**Laura's House**
	Agency/Group/Organization Type	Services-Victims of Domestic Violence
	What section of the Plan was addressed by Consultation?	Non-Homeless Special Needs
	How was the Agency/Group/Organization consulted and what are the anticipated outcomes of the consultation or areas for improved coordination?	Agency helped identify the needs of victims of domestic violence
7	**Agency/Group/Organization**	**Camino Health Center**
	Agency/Group/Organization Type	Services-Health
	What section of the Plan was addressed by Consultation?	Anti-poverty Strategy
	How was the Agency/Group/Organization consulted and what are the anticipated outcomes of the consultation or areas for improved coordination?	Agency helped identify the medical and dental needs of lower-income persons and households
8	**Agency/Group/Organization**	**Age Well Senior Services**
	Agency/Group/Organization Type	Services-Elderly Persons
	What section of the Plan was addressed by Consultation?	Non-Homeless Special Needs
	How was the Agency/Group/Organization consulted and what are the anticipated outcomes of the consultation or areas for improved coordination?	Agency helped identify the needs of senior and frail elderly persons and households

9	**Agency/Group/Organization**	**South County Outreach**
	Agency/Group/Organization Type	Services-homeless
	What section of the Plan was addressed by Consultation?	Homelessness Strategy Homeless Needs - Families with children Anti-poverty Strategy
	How was the Agency/Group/Organization consulted and what are the anticipated outcomes of the consultation or areas for improved coordination?	Helped identify the housing and service needs of persons at risk of becoming homeless and those already homeless

Identify any Agency Types not consulted and provide rationale for not consulting

The City had an open consultation process; no agency was prevented from participating.

Local government consultation with broadband internet service providers engaged in narrowing the digital divide: The City of Aliso Viejo consulted with BroadbandNow, a web-based organization dedicated to providing information regarding internet service. BroadbandNow's stated mission is to help ensure broadband internet is available to all Americans. To this end, the organization created a database of internet providers and the availability and cost of services. BroadbandNow reports that as of April 2021, approximately 78% of Americans, 96% of Californians, and 98% of Orange County residents have access to broadband internet service. Furthermore, approximately 93% of Aliso Viejo residents have access to two or more broadband service providers, with 7% of households limited to one provider or no broadband access.

AT&T Internet and Cox Communications are Aliso Viejo's most widely available wired broadband options. For lower-income residents, the cost of internet service can be cost-prohibitive. AT&T's Access program offers internet connections for qualified low-income customers for $5 to $10 per month. All installation and equipment fees are waived for eligible households, that is, a home where at least one person receives food stamps. Cox Communication's Connect2Compete program provides internet service for $9.95 per month. Families are eligible for the program if at least one child in kindergarten through 12th-grade qualifies for the reduced-price school lunch program.

The Federal Communications Commission implemented the Emergency Broadband Benefit program to help households struggling to afford internet service during the COVID-19 pandemic. This program provides a discount of up to $50 per month towards broadband service for eligible households. Eligible households can also receive a one-time discount of up to $100 to purchase a laptop, desktop computer, or tablet.

Consultation with agencies primary responsibilities for the management of flood-prone areas, public land or water resources, and emergency management agencies: The City's current General Plan includes a Safety Element, which contains an assessment of certain hazards, including:

- Seismically induced conditions including ground shaking, surface rupture, ground failure, and tsunami
- Slope instability leading to mudslides and landslides
- Subsidence (e.g., sinkholes) and other geologic hazards
- Flooding
- Wildland and urban fires
- Evacuation routes, water supply requirements, and design standards for new development related to fire, seismic, and geologic hazards

Respective assessments were developed in consultation with national, state, regional, and local agencies such as the State Geologist, Orange County Fire Authority, and the City's Emergency Operations Plan. The City's Safety Element is slated for updating within two years.

Other local/regional/state/federal planning efforts considered when preparing the Plan

Name of Plan	Lead Organization	How do the goals of your Strategic Plan overlap with the goals of each plan?
Continuum of Care	Orange County 211	Helped the City analyze the needs of Aliso Viejo homeless. Includes regional 2019 Point-In-Time Survey and 10-Year Plan to End Homelessness (including Discharge Plan)
City of Aliso Viejo Housing Element	City of Aliso Viejo	Provided housing priorities and program goals
City of Aliso Viejo 5 Year Strategic Plan Fiscal Years 2015-2020	City of Aliso Viejo	Multi-year capital improvement plan helped identify priority capital projects that may be CDBG-eligible
5-Yr. & 1-Yr. PHA Plan	Orange County Housing Authority	Identified OCHA resources to address the housing needs of lower-income renter householders in the City
Orange County Analysis of Impediments to Fair Housing	Orange County and Orange County cities	Countywide document identifies impediments to fair housing within participating cities and outlines a plan to address impediments

City of Aliso Viejo Safety Element	City of Aliso Viejo	Addresses natural conditions and human activities that can potentially threaten public health and safety

Table 3 – Other local / regional / federal planning efforts

Narrative (optional)

AP-12 Participation – 91.105, 91.200(c)

1. Summary of citizen participation process/Efforts made to broaden citizen participation
Summarize citizen participation process and how it impacted goal-setting

COVID-19 public health protocols have limited some traditional means of obtaining public input; nonetheless, the City implemented the following efforts to obtain public input during the preparation of the Action Plan:

Notices/Website: The City published notices in a local newspaper of general circulation (*Orange County Register*). The City also posted the draft Action Plan on its website for public review and comment. A copy for public review was also available at City Hall and the library during the required 30-day public comment period (see Attachment 2).

Public Hearings: Consistent with HUD's regulations, the City Council held a public hearing at a regularly noticed and scheduled meeting (May 4, 2022) to obtain public input regarding the draft Annual Action Plan and authorize staff to submit the document to HUD. Attachment 2 includes a summary of public comments.

Citizen Participation Outreach

Sort Order	Mode of Outreach	Target of Outreach	Summary of response/attendance	Summary of comments received	Summary of comments not accepted and reasons	URL (If applicable)
1	Newspaper Ad	Non-targeted/broad community	30-day public comment period and public hearing notice	TBD	TBD	Not Applicable
2	Public Hearing	Non-targeted/broad community	5/4/22: Public hearing to approve the 2022-2023 Action Plan and to authorize submission of the Action Plan to HUD	TBD	TBD	Not Applicable

Table 4 – Citizen Participation Outreach

Expected Resources

AP-15 Expected Resources – 91.220(c)(1,2)

Introduction

HUD has not announced CDBG allocations for FY 2022-2023; however, for planning purposes, the City anticipates it will receive $217,000 in CDBG funds for FY 2022-2023. An additional $13,026 in prior year funds is also available. The City will use CDBG funds for public services, property acquisition, and program administration. The table below summarizes anticipated resources that will be available during FY 2022-2023.

In addition to CDBG funding, housing voucher/certificate resources (via OCHA) and "Community Assistance Grants" (i.e., social service grants from the City's General Fund) will be available to carry out activities that support the goals of the City's Consolidated Plan. Past housing development activity generated significant In-lieu Affordable Housing Fee resources; however, this resource has been exhausted.

Anticipated Resources

Program	Source of Funds	Uses of Funds	Expected Amount Available Year 5				Expected Amount Available Remainder of ConPlan $	Narrative Description
			Annual Allocation: $	Program Income: $	Prior Year Resources: $	Total: $		
CDBG	public - federal	Acquisition Admin and Planning Economic Development Housing Public Improvements Public Services	$217,000	$0	$13,026	$230,026	$0	Annual CDBG allocation

Table 5 - Expected Resources – Priority Table

Explain how federal funds will leverage those additional resources (private, state and local funds), including a description of how matching requirements will be satisfied

The City has identified other resources that will be available to carry out activities that address the goals of the Consolidated Plan:

- OCHA reports that as of January 2022, 127 Aliso Viejo households received rental assistance. The City anticipates that a similar number of households will be assisted during FY 2022-2023.
- The City allocates General Fund resources to support various community social service programs annually. Funded services include homelessness prevention and interim housing for homeless families with children and services for victims of domestic violence. The City allocates approximately $10,000 per year for these social services.
- Prior condo conversions and new housing development activities have generated affordable housing resources. These activities generated approximately $2.5 million in Affordable Housing In-lieu fees. These funds have been used to develop affordable housing or preserve existing housing affordability.

CDBG does not require matching funds.

If appropriate, describe publicly owned land or property located within the jurisdiction that may be used to address the needs identified in the plan

Aliso Viejo is a nearly built-out city with limited remaining vacant land. The City's current Housing Element identifies vacant and underutilized sites suitable for housing development - one of the sites is developed (i.e., Vantis Apartments). The Housing Element also identifies two parcels zoned for business park development but suitable for high-density Mixed-Use residential. These two sites were rezoned and subsequently developed (i.e., Vintage Aliso and Liberty at Aliso). An additional location (The Commons) is zoned currently zoned for housing. This project is in the early predevelopment stages; however, no development is contemplated for at least two years.

During the current fiscal year, the City may exercise its first-right of refusal option to purchase one or two condominiums that are subject to first-time homebuyer resale restrictions. The City will lease units to Family Assistance Ministries (FAM). FAM will operate the unit as interim supportive housing for a homeless family with children. FAM will also provide case management and support services for the resident family – the City has allocated CDBG funds to assist with the acquisition and supportive services.

Discussion

The City anticipates receiving $217,000 in CDBG funds from HUD for FY 2022-2023. The City will also carry forward $13,026 in prior year funds to undertake activities in FY 2022-2023. The City will continue to support OCHA's efforts to secure new rental assistance resources. The City will also continue to support social service programs serving City residents with Community Assistance Grants for the foreseeable future. As outlined above, an inventory of vacant and underutilized land suitable for housing development has been prepared, but no projects are slated for construction during FY 2022-2023.

Annual Goals and Objectives

AP-20 Annual Goals and Objectives

Goals Summary Information

Sort Order	Goal Name	Start Year	End Year	Category	Geographic Area	Needs Addressed	Funding	Goal Outcome Indicator
1	Public Facility Improvements	2022	2023	Non-Housing Community Development	Citywide	Public Improvements	CDBG: $175,626	Public Facility or Infrastructure Activities for Low/Moderate Income Housing Benefit: 2 Households Assisted
2	Fair Housing Services	2022	2023	Public Services	Citywide	Public Services	CDBG: $3,500	Other: 62 Other
3	Homeless Services	2022	2023	Public Services	Citywide	Public Services	CDBG: $7,500	Public service activities other than Low/Moderate Income Housing Benefit: 8 Persons Assisted
4	Program Administration	2022	2023	Administration	Citywide	Administration	CDBG: $43,400	Other: 1 Other

Table 6 – Goals Summary

Goal Descriptions

1	**Goal Name**	Public Facility Improvements
	Goal Description	Improvements to eligible public facilities and non-public facilities that primarily benefit low- and moderate-income residents
2	**Goal Name**	Fair Housing Services
	Goal Description	Fair housing outreach, education, and enforcement services

3	**Goal Name**	Homeless Services
	Goal Description	Homeless housing and support services, including homelessness prevention services
4	**Goal Name**	Program Administration
	Goal Description	CDBG program oversight and coordination

Table 7 – Goal Descriptions

Estimate the number of extremely low-income, low-income, and moderate-income families to whom the jurisdiction will provide affordable housing as defined by HOME 91.215(b)

The City is not a HOME program participating jurisdiction.

Projects

AP-35 Projects – 91.220(d)

Introduction

For FY 2022-2023, the City is allocating CDBG funding for the activities listed in Table 8. Note that allocations will be adjusted by a factor equal to the difference between the anticipated and actual 2022 CDBG allocated to the City by HUD.

Projects

#	Project Name
1	Public Facility Acquisition
2	Fair Housing Foundation
3	Family Assistance Ministries
4	CDBG Program Administration

Table 8 - Project Information

Describe the reasons for allocation priorities and any obstacles to addressing underserved needs

The City recognizes that households with extremely low-income and special needs populations are more likely to become homeless because they have limited incomes and issues that may require housing and supportive services. The City considers supportive services for these populations a high priority, and supportive services are also considered a top priority in the OC-CoC.

The City anticipates that the greatest obstacle to meeting the underserved needs of extremely low-income and special needs populations will be a lack of financial resources for supportive services and housing. (A common need reported by service providers is affordable housing.) To this end, the City will support OCHA's efforts to obtain additional Housing Choice Vouchers and Certificates, encourage affordable housing development, and fund activities to assist at-risk and homeless families.

AP-38 Project Summary

Project Summary Information

Table 9 – Project Summary

1	**Project Name**	**Public Facility Acquisition**
	Target Area	Citywide
	Goals Supported	Public Facility Improvements
	Needs Addressed	Public Improvements
	Funding	CDBG: $175,626
	Description	Acquisition of interim housing for lower-income households
	Target Date	6/30/2023
	Estimate the number and type of families that will benefit from the proposed activities	1 housing unit
	Location Description	TBD
	Planned Activities	CDBG funds to assist with the acquisition of residential property to be used as interim housing for families with children exiting rapid rehousing
2	**Project Name**	**Fair Housing Foundation**
	Target Area	Citywide
	Goals Supported	Fair Housing Services
	Needs Addressed	Public Services
	Funding	CDBG: $3,500

	Description	Fair housing outreach, education, and enforcement services to reduce and eliminate impediments to the fair access to housing opportunities
	Target Date	6/30/2023
	Estimate the number and type of families that will benefit from the proposed activities	62 individuals
	Location Description	Citywide
	Planned Activities	Fair housing outreach, education, and enforcement services, including landlord, tenant, and property management fair housing training
3	**Project Name**	**Family Assistance Ministries**
	Target Area	Citywide
	Goals Supported	Homeless Services
	Needs Addressed	Public Services
	Funding	CDBG: $7,500
	Description	Interim housing (6 to 12 months) and support services for families with children experiencing homelessness
	Target Date	06/30/2023
	Estimate the number and type of families that will benefit from the proposed activities	8 individuals
	Location Description	Citywide
	Planned Activities	Case management and support services such as financial counseling, linkages to healthcare, and food assistance for families that are experiencing homelessness

4	**Project Name**	**CDBG Program Administration**
	Target Area	Citywide
	Goals Supported	Program Administration
	Needs Addressed	Administration
	Funding	CDBG: $43,400
	Description	CDBG program oversight and coordination
	Target Date	6/30/2023
	Estimate the number and type of families that will benefit from the proposed activities	Not applicable
	Location Description	City Hall: 12 Journey, Suite 100 Aliso Viejo, CA
	Planned Activities	CDBG program administration, including preparation of required applications and reports

AP-50 Geographic Distribution – 91.220(f)

Description of the geographic areas of the entitlement (including areas of low-income and minority concentration) where assistance will be directed

All activities slated for CDBG-funding during FY 2022-2023 are available on a citywide basis. These activities include public facilities acquisition, public services, and program administration. Future activities may be limited to specific areas of the City (i.e., Block Groups) where a significant percentage of residents meet HUD's program income limits. **Attachment 3** is a map of the City's current CDBG-Eligible Areas.

Geographic Distribution

Target Area	Percentage of Funds
CDBG census tracts	0
Citywide	100

Table 10 - Geographic Distribution

Rationale for the priorities for allocating investments geographically

The City's primary intent is to serve lower-income households regardless of where they live in the City; therefore, CDBG funding is primarily distributed on a citywide basis.

Discussion

As indicated above, CDBG funds are focused on programs that serve lower-income residents regardless of where they live in the City.

Affordable Housing

AP-55 Affordable Housing – 91.220(g)

Introduction

The City's only HUD funding resource is CDBG. HUD regulations limit CDBG funding to specific housing activities (i.e., acquisition and rehabilitation). As outlined in the Consolidated Plan, the City may consider implementing a home improvement program in the future; however, for FY 2022-2023, CDBG funds are allocated for public facilities acquisition (housing to be used as interim housing).

One Year Goals for the Number of Households to be Supported	
Homeless	1
Non-Homeless	0
Special-Needs	0
Total	**1**

Table 11 - One Year Goals for Affordable Housing by Support Requirement

One Year Goals for the Number of Households Supported Through	
Rental Assistance	0
The Production of New Units	0
Rehab of Existing Units	0
Acquisition of Existing Units	1
Total	**1**

Table 12 - One Year Goals for Affordable Housing by Support Type

Discussion

For FY 2022-2023, the City will use CDBG funds to assist with acquiring a housing unit (public facility) that will be preserved as long-term affordable housing. The City will also support OCHA's implementation of the federal rental assistance voucher and certificate program in Aliso Viejo. An estimated 130 Aliso Viejo households may benefit from this program.

AP-60 Public Housing – 91.220(h)

Introduction

The City does not own or manage public housing.

Actions planned during the next year to address the needs to public housing

Not applicable.

Actions to encourage public housing residents to become more involved in management and participate in homeownership

Not applicable.

If the PHA is designated as troubled, describe the manner in which financial assistance will be provided or other assistance

Not applicable.

Discussion

The City does not own or manage public housing.

AP-65 Homeless and Other Special Needs Activities – 91.220(i)

Introduction

As outlined in the Consolidated Plan, the City's homeless strategy emphasizes preventing homelessness. According to HUD's *Strategies for Preventing Homelessness*, "Homelessness prevention is an essential element of any effort to end homelessness either locally or nationwide." This HUD report indicates that keeping a household housed in place is less expensive and disruptive.

The City will continue to use CDBG-Coronavirus (CDBG-CV) funds to provide rental and utility assistance to Aliso Viejo households impacted by COVID-19 and CDBG funds to support safety-net services. The City will also support local agencies with General Fund resources that provide various services for lower-income households. These services include food banks and housing, and services for victims of domestic violence. These programs may help households maintain their current housing situation and prevent homelessness.

Describe the jurisdictions one-year goals and actions for reducing and ending homelessness including:

Reaching out to homeless persons (especially unsheltered persons) and assessing their individual needs

The City of Aliso Viejo does not use CDBG to fund homeless outreach services; however, the City supports agencies that work directly with sheltered and unsheltered homeless populations. Agencies such as Family Assistance Ministries conduct extensive outreach and vulnerability assessments throughout Aliso Viejo and neighboring communities. Other agencies conduct similar outreach and assessment services for specific homeless populations, such as domestic violence victims. The City will continue the partnership with the Orange County Sheriff for homeless street outreach services.

Addressing the emergency shelter and transitional housing needs of homeless persons

The City will not allocate FY 2022-2023 CDBG funding to support emergency housing services; however, it will partner with Family Assistance Ministries (FAM) to support its interim housing program. In addition to leasing a housing unit to FAM to provide interim/bridge housing (housing for six to 12 months), the City will also provide CDBG funds to assist with the cost of case management.

Helping homeless persons (especially chronically homeless individuals and families, families with children, veterans and their families, and unaccompanied youth) make the transition to permanent housing and independent living, including shortening the period of time that individuals and families experience homelessness, facilitating access for homeless individuals

and families to affordable housing units, and preventing individuals and families who were recently homeless from becoming homeless again

The City will use a portion of CDBG resources for homeless services during FY 2022-2023. Significant CDBG funding is allocated to assist with acquiring a housing unit that will provide interim housing opportunities for families with children recovering from homelessness. Community Assistance Grants (funded with City General Funds) may be available to local nonprofits that provide housing and supportive services. The City will continue to provide referrals to public assistance programs offered by other agencies to prevent homelessness. It will also continue to support OCHA and its efforts to secure additional Veterans Affairs Supportive Housing (VASH) vouchers, Shelter Plus Care (homeless) housing vouchers, and rental assistance vouchers and certificates for lower-income special need populations.

Helping low-income individuals and families avoid becoming homeless, especially extremely low-income individuals and families and those who are: being discharged from publicly funded institutions and systems of care (such as health care facilities, mental health facilities, foster care and other youth facilities, and corrections programs and institutions); or, receiving assistance from public or private agencies that address housing, health, social services, employment, education, or youth needs.

The City's strategy is to help a household at risk of becoming homeless to stay housed. The City supports regional homeless planning efforts, including the OC-CoC's Discharge Plan, which aims to prevent individuals from leaving institutions, hospitals, etc., from becoming homeless. As of January 2022, OCHA reports that three households that receive federal rental assistance were homeless when they entered the program. Additionally, as previously outlined, the City will partner with FAM to provide interim supportive housing for homeless families with children.

Discussion

The City's homeless strategy is to prevent homelessness and support local service providers' efforts to assist regional and local homeless populations. For FY 2022-2023, the City will allocate CDBG resources to help acquire additional housing and support services for homeless families. City General Funds will also support local agencies that provide homelessness prevention, housing, and supportive services.

AP-75 Barriers to affordable housing – 91.220(j)

Introduction:

Barriers to affordable housing and actions to overcome the obstacles are listed in the City's Housing Element and are reflected in the City's Consolidated Plan.

Actions it planned to remove or ameliorate the negative effects of public policies that serve as barriers to affordable housing such as land use controls, tax policies affecting land, zoning ordinances, building codes, fees and charges, growth limitations, and policies affecting the return on residential investment

Notwithstanding the limitation of available land for development, *Chapter 15.58* of the City's Zoning Code, entitled "Affordable Housing Incentives," establishes the City's plan to address barriers to affordable housing development. The chapter aims to "… provide incentives for the production of housing for very low, lower, and moderate-income, or senior households in accordance with California Government Code." Provisions outlined in the Zoning Code are intended to facilitate affordable housing development and implement the goals, objectives, and policies of the City's Housing Element. Incentives for the production of housing delineated in the Housing Element include the following:

- A density bonus with the possibility of additional waivers or modifications to development standards provided the waiver/modification does not adversely impact health, safety, or the physical environment.
- An additional density bonus is possible for a residential development project that includes affordable housing.
- A reduction in development standards (e.g., coverage, setback, zero lot line and/or reduced parcel sizes, and/or parking requirements).
- Approval of mixed-use zoning for housing projects if the nonresidential land uses will reduce the housing project cost.
- Other regulatory incentives or concessions that are proposed by the applicant or the City that will result in identifiable cost reductions.
- Direct financial incentives include providing publicly owned land, fee waivers, or the waiver of dedication requirements.

There is no local tax that may act as a barrier to affordable housing.

Discussion:

The City's Housing Element outlines a comprehensive plan to address affordable housing barriers - the Consolidated Plan mirrors this plan. While incentives are available to developers, there are no housing projects slated for construction during FY 2022-2023 that will take advantage of these incentives.

AP-85 Other Actions – 91.220(k)

Introduction:

Outlined below are the actions the City will implement during FY 2022-2023 to address the sub-strategies of the Consolidated Plan.

Actions planned to address obstacles to meeting underserved needs

During FY 2022-2023, the City will encourage and support OCHA's efforts to obtain additional rental assistance funding, especially for senior and very low-income households. CDBG-funded is allocated to assist homeless families with children to regain self-sufficiency. Fair housing services will ensure households have access to safe and decent housing that they can afford, regardless of race, color, religion, gender, sexual orientation, disability, age, source of income, or other characteristics protected by laws.

Actions planned to foster and maintain affordable housing

As previously outlined, the City will use CDBG funds to support families transitioning from homelessness to self-sufficiency. The City will also continue supporting OCHA's administration of HUD's voucher and certificate rental assistance program. Additionally, the City will monitor properties and housing units subject to covenants to preserve affordability.

Actions planned to reduce lead-based paint hazards

Most of the City's housing stock was constructed after 1980; nonetheless, the City will continue to make information available to community residents regarding the health impacts of lead-based hazards, especially for young children.

Actions planned to reduce the number of poverty-level families

According to the U.S. Census Bureau, approximately 5.2% of the City's population live below the poverty level, including 5.2% of children under 18 and 7.5% of seniors (age 65 and older). The City will support several activities that aim to reduce the number of households living in poverty:

- Fair housing services will help ensure lower-income residents and "protected class" households have access to housing in a fair, non-discriminatory manner.
- OCHA's administration of rental assistance programs for very low-income renters.
- Social service programs that provide free or reduced-cost services to lower-income households.
- Social service programs that assist households at risk of becoming homeless and those that are homeless.

Actions planned to develop institutional structure

The City has initiated efforts to build an institutional structure to help identify and access resources to improve and serve the community. Through the League of Orange County Cities and the City Managers'

Association, the City participates in finding long-term solutions for the region's homeless issues. The City will continue to assist OCHA in implementing its Five-year Public Housing Authority (PHA) Plan to provide rental assistance vouchers and certificates. The City will also join other CDBG grantee communities to explore and participate in regional planning and program initiatives. Additionally, the City will seek to build stronger working relationships with community-based organizations that address lower-income Aliso Viejo residents' needs.

Actions planned to enhance coordination between public and private housing and social service agencies

The City of Aliso Viejo does not operate public housing. OCHA provides rental assistance in the community. Federal legislation requires that the Housing Authority prepare five-year and one-year plans highlighting its mission, goals, and objectives related to public and assisted housing programs. The City will review the Authority's plans and allow OCHA to review and consult with the City regarding its Consolidated Plan and Annual Action Plan. This cross-consultation aims to provide consistent and coordinated housing services for City residents.

Aliso Viejo has developed positive working relationships with local nonprofits and will continue expanding its CDBG program to provide public service grant funding to support the efficient and effective use of limited public resources.

Discussion:

HUD-funded grant recipients must not discriminate in housing or services directly or indirectly based on race, color, religion, sex, national origin, age, familial status, or disability. Grant recipients such as Aliso Viejo are required to: (1) examine and attempt to alleviate housing discrimination within their jurisdiction; (2) promote fair housing choices for all persons; (3) provide opportunities for all persons to reside in any given housing development, regardless of race, color, religion, sex, disability, familial status, national origin, and other personal or familial attributes; (4) promote housing that is accessible to and usable by persons with disabilities; (5) and comply with the non-discrimination requirements of the Fair Housing Act. HUD encourages jurisdictions to consult with one another and initiate region-wide area fair housing planning. The **Analysis of Impediments (AI) to Fair Housing Choice** is the primary document utilized for this purpose. In addition to identifying impediments, a strategy to overcome barriers must be developed and implemented - accomplishments are reported annually. The City participated in developing a county-wide AI, which the City Council adopted in May 2020. A summary of impediments to fair housing and the action steps the City will take during FY 2022-2023 are found in Attachment 4.

Program Specific Requirements

AP-90 Program Specific Requirements – 91.220(l)(1,2,4)

Introduction:

Each HUD program covered by the Consolidated Plan regulations must address certain program-specific requirements. Below are the requirements for the CDBG program as prescribed by the Annual Action Plan template.

Community Development Block Grant Program (CDBG)
Reference 24 CFR 91.220(l)(1)

Projects planned with all CDBG funds expected to be available during the year are identified in the Projects Table. The following identifies program income that is available for use that is included in projects to be carried out.

1. The total amount of program income that will have been received before the start of the next program year and that has not yet been reprogrammed	0
2. The amount of proceeds from section 108 loan guarantees that will be used during the year to address the priority needs and specific objectives identified in the grantee's strategic plan	0
3. The amount of surplus funds from urban renewal settlements	0
4. The amount of any grant funds returned to the line of credit for which the planned use has not been included in a prior statement or plan.	0
5. The amount of income from float-funded activities	0
Total Program Income	**0**

Other CDBG Requirements

1. The amount of urgent need activities	0
2. The estimated percentage of CDBG funds that will be used for activities that benefit persons of low and moderate income. Overall Benefit - A consecutive period of one, two or three years may be used to determine that a minimum overall benefit of 70% of CDBG funds is used to benefit persons of low and moderate income. Specify the years covered that include this Annual Action Plan.	100.00%

Discussion:

The City will meet the overall 70% benefit low- and moderate-income requirement of the CDBG program during the three years of Program Years 2020, 2021, and 2022.

SUMMARY OF 2018-2022 CONSOLIDATED PLAN PAST PERFORMANCE

3-YEAR TOTAL (FY 18-19 TO FY 20-21)

ConPlan Goal	Unit of Measure	Expected 5 Yr. ConPlan Goal	3-Year Actual	3-Year Percent Complete	Expected FY 20-21 Program Year	Actual FY 20-21 Program Year	1 Yr. Percent Complete
Fair Housing Services	Persons Assisted	300	132	44.00%	60	44	73.33%
Homeless Services	Households Assisted	75	0	0.00%	0	0	0.00%
Program Administration	Other	5	3	60.00%	1	1	100.00%
Public Facility Improvements	Persons Assisted	6,000	3,392	56.53%	3,392 *	3,392	100.00%
Public Infrastructure Improvements	Persons Assisted	12,000	0	0.00%	0	0	0.00%
Public Services	Persons Assisted	500	0	0.00%	0	0	0.00%
Housing Assistance	Household Housing Unit	15	0	0.00%	0	0	0.00%

* Figure represents completion of Aliso Viejo Ranch ADA Improvements. The project received 3 years of funding – completed in FY 20-21.

The Orange County Register
1771 S. Lewis Street
Anaheim, CA 92805
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CITY CLERK
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AFFIDAVIT OF PUBLICATION

STATE OF CALIFORNIA, } **SS.**

County of Orange

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of The Orange County Register, a newspaper of general circulation, published in the city of Santa Ana, County of Orange, and which newspaper has been adjudged to be a newspaper of general circulation by the Superior Court of the County of Orange, State of California, under the date of November 19, 1905, Case No. A-21046, that the notice, of which the annexed is a true printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

04/04/2022

I certify (or declare) under the penalty of perjury under the laws of the State of California that the foregoing is true and correct:

Executed at Anaheim, Orange County, California, on Date: April 04, 2022.

Sandra Campos

Signature

PROOF OF PUBLICATION

Legal No. **0011526584**

CITY OF ALISO VIEJO
NOTICE OF CITY COUNCIL
PUBLIC HEARING
AND PUBLIC REVIEW PERIOD

NOTICE IS HEREBY GIVEN that on Wednesday, May 4, 2022, at 7:00 pm (or as soon thereafter as possible), the City Council of the City of Aliso Viejo will conduct a public hearing to consider the following:

CONSIDERATION OF THE CITY OF ALISO VIEJO'S ADOPTION OF THE 2022-2023 ANNUAL ACTION PLAN FOR EXPENDITURES OF COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)

Hearing Location: City Hall Council Chambers, 12 Journey, Suite 150, Aliso Viejo, CA 92656 (Unless otherwise noted in the advisory below.)

Novel Coronavirus, COVID-19 Advisory: On March 4, 2020, Governor Newsom proclaimed a State of Emergency in California as a result of the threat of COVID-19. Effective October 1, 2021, Assembly Bill 361 allows for the City Council and members of the public to attend and participate in City Council meetings virtually. Virtual meetings may be viewed live via GoToWebinar, Cox Communications Channel 851, AT&T U-Verse Channel 99, and online at www.avcity.org.

INVITATION TO BE HEARD: All interested persons will be given an opportunity to provide comment on this item during the public hearing. In the event this City Council meeting is held virtually, members of the public may provide comments during the public hearing via GoToWebinar by following the instructions listed on the meeting agenda. Comments may also be submitted before the hearing via email to community-input@avcity.org, or by calling (949) 425-2509 to leave a recorded message by 4:00 pm on the day of the meeting. Please reference the hearing title and date of hearing in any correspondence. The review period will begin April 4, 2022, and end on May 3, 2022. The draft document will be available on the City of Aliso Viejo website at www.avcity.org.

2022-2023 Action Plan

HUD has not published Fiscal Year 2022-2023 CDBG allocations; however, for planning purposes, the City anticipates it will receive $217,000 in CDBG funds for Fiscal Year 2022-2023. The City will also use $13,026 in prior year funds to carry out planned activities. The proposed use of CDBG funds includes the following:

Proposed Activity	CDBG Allocation
• Public services for lower-income persons	$11,000
• Housing Acquisition	$175,626
• CDBG program administration	$43,400

2018-2022 Consolidated Plan Amendment

The minor amendment to the Consolidated Plan will redefine the existing goal of "Single Family Housing Rehabitation" to "Housing Assistance" described as "Loans or grants to assist qualified low- and moderate-income homeowners to improve a primary residence, and other forms of assistance to expand the supply of affordable housing." No additional modifications to the Consolidated Plan are proposed.

If you wish to challenge the above projects in court, the challenge will be limited only to those issues you or someone else raised at the public hearing or in written correspondence delivered to the City at or before the public hearing as described in this notice. The agenda materials pertaining to this item will be available for public review at the City and on the City's website at www.avcity.org by approximately 5:30 pm on April 28, 2022. Please contact Mitzi Ortiz, MMC, City Clerk, at (949) 425-2505 if you have any questions regarding the agenda materials.

It is the intention of the City of Aliso Viejo to comply with the Americans with Disabilities Act (ADA). If you require special assistance beyond what is normally provided, the City will attempt to accommodate you in every reasonable manner. Please contact the City Clerk's Office at (949) 425-2505 at least 48 hours before the meeting to inform us of your particular needs.

/s/_____
Mitzi Ortiz, MMC
City Clerk

SUMMARY OF PUBLIC COMMENTS

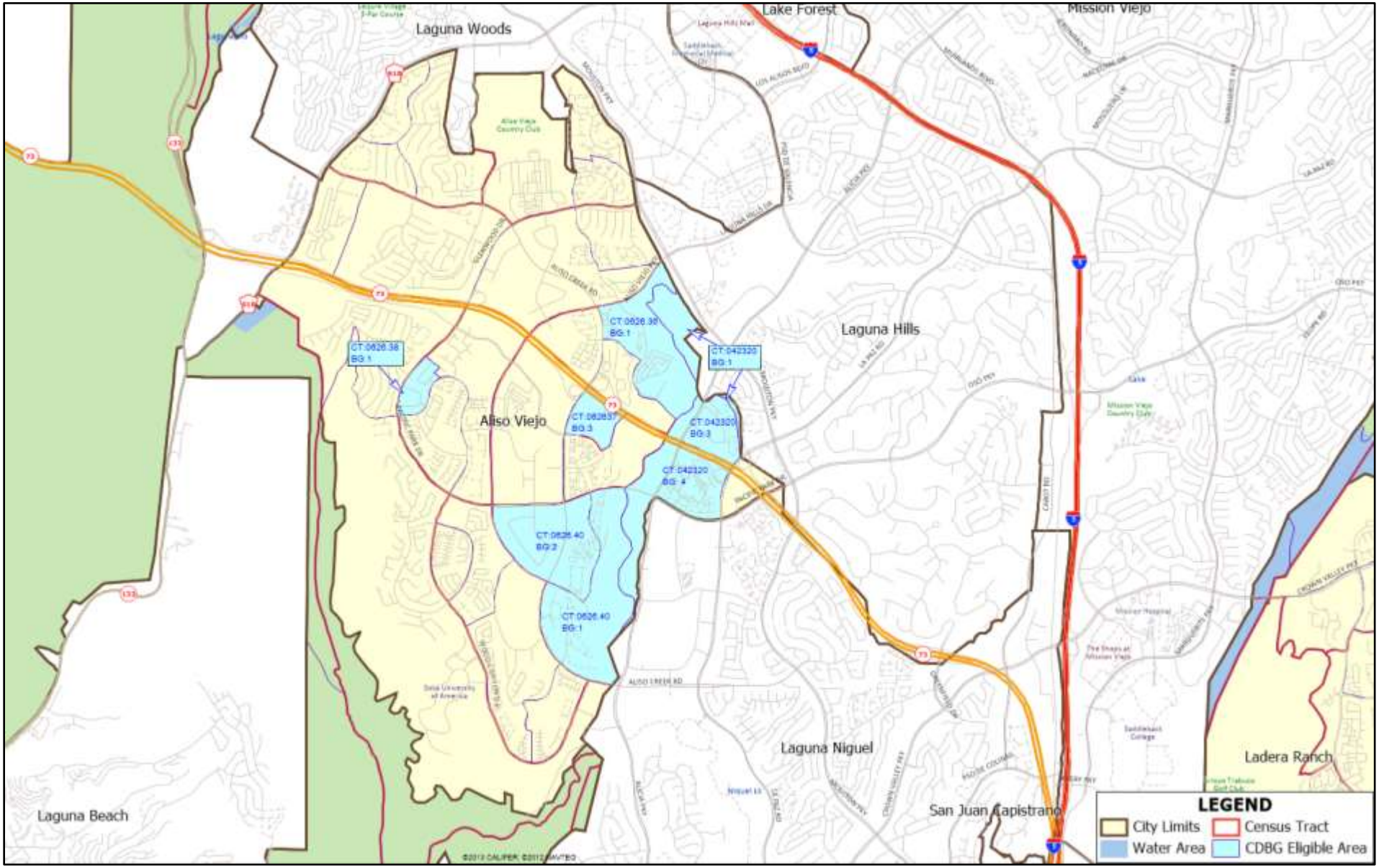
30-DAY PUBLIC COMMENT PERIOD

TBD

MAY 4, 2022, PUBLIC HEARING

TBD

CITY OF ALISO VIEJO - MAP OF CDBG ELIGIBLE AREAS



Regional Proposed AI Goals and Strategies

To address the contributing factors described above, the AI plan proposes the following goals and actions: Regional Goals and Strategies"

Goal 1: Increase the supply of affordable housing in high opportunity areas [1]

Strategies:

1. Explore the creation of a new countywide source of affordable housing.
2. Using best practices from other jurisdictions, explore policies and programs that increase the supply of affordable housing, such as linkage fees, housing bonds, inclusionary housing, public land set-aside, community land trusts, transit-oriented development, and expedited permitting and review.
3. Explore providing low-interest loans to single-family homeowners and grants to homeowners with household incomes of up to 80% of the Area Median Income to develop accessory dwelling units with affordability restrictions on their property.
4. Review existing zoning policies and explore zoning changes to facilitate the development of affordable housing.
5. Align zoning codes to conform to recent California affordable housing legislation.

Goal 2: Prevent displacement of low- and moderate-income residents with protected characteristics, including Hispanic residents, Vietnamese residents, other seniors, and people with disabilities

Strategies:

1. Explore piloting a Right to Counsel Program to ensure legal representation for tenants in landlord-tenant proceedings, including those involving the application of new laws like A.B. 1482.

Goal 3: Increase community integration for persons with disabilities

Strategies:

1. Conduct targeted outreach and provide tenant application assistance and support to persons with disabilities, including individuals transitioning from institutional settings and individuals who are at risk of institutionalization. As part of that assistance, maintain a database of housing that is accessible to persons with disabilities.
2. Consider adopting the accessibility standards adopted by the City of Los Angeles, which require at least 15 percent of all new units in city-supported Low-Income Housing Tax Credit (LIHTC) projects to be ADA-

[1] The term "high opportunity areas" generally means locations where there are economic and social factors and amenities that provide a positive impact on a person's life outcome. This is described in more detail in Section iii, Disparities in Access to Opportunity.

accessible with at least 4 percent of total units to be accessible for persons with hearing and/or vision disabilities.

Goal 4: Ensure equal access to housing for persons with protected characteristics, who are disproportionately likely to be lower-income and to experience homelessness

Strategies:

1. Reduce barriers to accessing rental housing by exploring eliminating application fees for voucher holders and encouraging landlords to follow HUD's guidance on the use of criminal backgrounds in screening tenants.
2. Consider incorporating a fair housing equity analysis into the review of significant rezoning proposals and specific plans.

Goal 5: Expand access to opportunity for protected classes

Strategies:

1. Explore the voluntary adoption of Small Area Fair Market Rents or exception payment standards in order to increase access to higher opportunity areas for Housing Choice Voucher holders.
2. Continue implementing a mobility counseling program that informs Housing Choice Voucher holders about their residential options in higher opportunity areas and provides holistic support to voucher holders seeking to move to higher opportunity areas.
3. Study and make recommendations to improve and expand Orange County's public transportation to ensure that members of protected classes can access jobs in employment centers in Anaheim, Santa Ana, and Irvine.
4. Increase support for fair housing enforcement, education, and outreach.

City of Aliso Viejo Proposed AI Goals and Strategies

1. In collaboration with the Orange County Housing Authority (OCHA):
   a. Attend quarterly OCHA Housing Advisory Committee to enhance the exchange of information regarding the availability, procedures, and policies related to the Housing Assistance Voucher program and regional housing issues.
   b. Support OCHA's affirmative fair marketing plan and de-concentration policies by providing five-year and annual PHA plan certifications.
   c. In coordination with OCHA and fair housing services provider, conduct landlord education campaign to educate property owners about State law prohibiting discrimination based on household income.

2. Through the City's fair housing contractor:
   a. Provide fair housing education and information to apartment managers and homeowner associations on why denial of reasonable modifications/accommodations is unlawful.
   b. Conduct multi-faceted fair housing outreach to tenants, landlords, property owners, realtors, and property management companies. Methods of outreach may include workshops, informational booths, presentations to community groups, and the distribution of multi-lingual fair housing literature.

ALISO VIEJO

Community Development Block Grant (CDBG)

2022 – 2023 Annual Action Plan of Expenditures

City Council
May 4, 2022

2022 – 2023 CDBG Funding

- Fiscal Year 2022-2023 Allocation: Department of Housing and Urban Development (HUD) awarded the City **$217,000** in CDBG funds

- Additionally, the City has **$13,026** of unused funding from prior year's allocation

2022 – 2023 Annual Action Plan of Expenditures

- **Public Facilities and Improvements: $175,626**
  - Acquisition of low-income units for use as supportive housing
- **Public Services:**
  - Fair Housing Services: **$3,500**
    - Fair housing outreach, education, and enforcement services to reduce/eliminate impediments to fair access of housing
  - Case Management and Supportive Services: **$7,500**
    - Family Assistance Ministries to provide case management and support services for households residing in interim housing
- **Administration: $43,400**
  - Reimbursable administrative expenses

Staff Recommendation to City Council

1. Conduct a public hearing;
2. Declare the City Council finds the FY 2022-2023 Annual Action Plan is not subject to the California Environmental Quality Act ("CEQA") as the activity is not a project defined in Section 15378(b)(5) of the state CEQA Guidelines;
3. Approve and adopt the FY 2022-2023 Annual Action Plan ("Action Plan") for the use of Community Development Block Grant ("CDBG") funds; and
4. Authorize the City Manager to submit the Action Plan to the U.S. Department of Housing and Urban Development ("HUD"), which executes the HUD contract and authorize the City Manage to submit all related documents with the implementation of the Action Plan.

ALISO VIEJO

Community Development Block Grant (CDBG)

2022 – 2023 Annual Action Plan of Expenditures

City Council
May 4, 2022

City of Aliso Viejo
AGENDA ITEM

DATE: May 4, 2022

TO: Mayor and City Council

FROM: David Doyle, City Manager

SUBJECT: AMENDMENT TO CITY'S PUBLIC AGENCY RETIREMENT SYSTEM (PARS) DEFINED CONTRIBUTION PLAN TO COMPLY WITH INTERNAL REVENUE SERVICE (IRS) REGULATIONS

Recommended Action:

Adopt a Resolution approving an amendment to the City's PARS Plan to:

1. Conform the contribution rate to the City Council's intent at the time the plan was adopted;
2. Correct Schedule A regarding employee contributions to the Plan; and
3. Eliminate Tier II of the Plan disallowing any future contributions.

Fiscal Impact:

There is no fiscal impact to amend the City's PARS Plan.

However, in reviewing the Plan, it was identified that the employer contribution rates for part-time employees hired between April 1, 2018, and February 29, 2020, were inadvertently adjusted. As part of the corrective measures to comply with IRS regulations, the City will adjust payment contributions on behalf of specific employees identified by the IRS for a total cost of $13,415.87.

Background:

In 2015 the City adopted a Public Agency Retirement System (PARS) Defined Contribution Plan for the benefit of certain employees, mostly part-time employees. At the time, part-time and temporary City employees were forced to participate in Social Security. Social Security requires employer and employee contributions. In the case of the employee contribution, the City's part-time employees were required to pay 7% of their pay into the Social Security System.

Social Security does not allow the employer to contribute on behalf of the employee. For the benefit of the City's part-time employees, the City enacted the PARS alternative retirement system. PARS allows the City to contribute the employee and employer

contribution, similar to how the City funds PERS, its retirement system for full-time employees. The additional benefit of PARS to part-time and temporary employees is that upon separation from the City, the employee has the option of cashing out the balance of their plan.

Discussion:

While performing a review of the City's PARS Plan, it was determined that the City's Plan may have been out of compliance with the latest IRS rules and regulations. At that time, the City availed itself of the IRS program to voluntarily initiate corrective measures without penalty.

Working with the City Attorney's Office, the City and the IRS have developed a corrective action program to bring the Plan into compliance. By adopting the attached Resolution, the City will be in compliance with IRS rules.

Attachments:

1. Resolution

RESOLUTION NO. 2022-___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, APPROVING AN AMENDMENT TO THE CITY OF ALISO VIEJO PUBLIC AGENCY RETIREMENT SYSTEM (PARS) DEFINED CONTRIBUTION PLAN

WHEREAS, the City of Aliso Viejo ("Employer") adopted the City of Aliso Viejo Public Agency Retirement System (PARS) Defined Contribution Plan ("Plan") for the benefit of certain eligible employees, effective as of September 1, 2015; and

WHEREAS, the Employer desires to amend the Plan to: (1) conform the contribution rate for Tier I participants to the City Council's intent at the time the Plan was initially adopted; (2) correct Schedule A; and (3) freeze Tier II.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALISO VIEJO AS FOLLOWS:

Section 1: Incorporation of Recitals. The City Council finds and determines that the foregoing Recitals are true and correct and incorporates the Recitals herein.

Section 2: Amendment to Public Agency Retirement System (PARS) Defined Contribution Plan. The City Council hereby approves the amendment to the Plan set forth in Attachment 1, attached hereto and incorporated herein by reference, and authorizes the City Manager to execute the Plan amendment.

Section 3: Certification. The Mayor shall sign this Resolution and the City Clerk shall certify the adoption thereof.

PASSED, APPROVED AND ADOPTED this 4th day of May, 2022.

_____
Ross Chun
Mayor

APPROVED AS TO FORM:

_____
Scott Smith
City Attorney

ATTEST:

_____
Mitzi Ortiz, MMC
City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF ALISO VIEJO)

I, MITZI ORTIZ, City Clerk of the City of Aliso Viejo, California, DO HEREBY CERTIFY that foregoing Resolution No. 2022-___ was duly passed and adopted by the City Council of the City of Aliso Viejo at their regular meeting held on the 4th day of May 2022, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

_____
MITZI ORTIZ, MMC
CITY CLERK

(SEAL)

ATTACHMENT 1

AMENDMENT
TO THE CITY OF ALISO VIEJO
PUBLIC AGENCY RETIREMENT SYSTEM (PARS)
DEFINED CONTRIBUTION PLAN

WHEREAS, the City of Aliso Viejo ("Employer") adopted the City of Aliso Viejo Public Agency Retirement System (PARS) Defined Contribution Plan ("Plan") for the benefit of certain eligible employees, effective as of September 1, 2015; and

WHEREAS, the Employer desires to amend the Plan to: (1) conform the contribution rate for Tier I participants to the City Council's intent at the time the Plan was initially adopted; (2) correct Schedule A; and (3) freeze Tier II.

WHEREAS, the Employer has the right to amend the Plan in accordance with Section 7.3 of the Plan.

NOW THEREFORE, BE IT RESOLVED, that the Plan is hereby amended as follows effective as of the dates indicated below:

1. Effective as of September 1, 2015, the first paragraph, "Tier I," of Section 2.1, "Amount of Employer Contributions," of Article II, "Contributions," of the Plan is amended in its entirety to read as follows:

Tier I:

> There is hereby created and established and shall be maintained by the Plan Administrator the Employer Contribution Account. For each day that an Employee remains a Participant under Tier I of this Plan, the Employer shall make a contribution to the Plan in an amount equal to the applicable percentage of Compensation. For purposes of this Section 2.1, the term "applicable percentage" shall refer to the percentage equal to the employer normal cost rate, as set forth in the CalPERS actuarial valuation prepared for the Employer on an annual basis, plus the required normal member contribution for classic employees in effect each Plan Year. Such contribution shall be based on Compensation paid on or after August 1, 2015. This amount shall be credited to the Employer Contribution Account, and shall be made no later than the close of the Plan Year. Employer Contributions will be allocated to each Participant in the ratio that such Participant's compensation bears to the compensation of all Participants. Employer contributions are subject to change at the discretion of the Employer.

2. Effective as of September 1, 2015, Schedule A to the Plan is hereby amended in its entirety to read as set forth in Schedule A to this amendment, incorporated herein by reference.

3. Effective as of July 28, 2021 the second paragraph, "Tier II," of Section 2.2, "Amount of Employee Contributions," of Article II, "Contributions," of the Plan is amended by adding the following at the end of the section:

Tier II shall be frozen and no Employee will make mandatory contributions to the Plan based on a percentage of his or her Compensation. In addition Schedule A is deleted.

4. All other terms and conditions under the Plan remain unchanged.

IN WITNESS THEREOF, this amendment to the City of Aliso Viejo Public Agency Retirement (PARS) Defined Contribution Plan is hereby executed as of the _____ day of _____, 2022.

CITY OF ALISO VIEJO

By: _____

APPROVED AS TO FORM AND CONTENT:

BEST BEST & KRIEGER LLP

By:_____
Attorneys for Employer

AMENDMENT
TO THE CITY OF ALISO VIEJO
PUBLIC AGENCY RETIREMENT SYSTEM (PARS)
DEFINED CONTRIBUTION PLAN

WHEREAS, the City of Aliso Viejo ("Employer") adopted the City of Aliso Viejo Public Agency Retirement System (PARS) Defined Contribution Plan ("Plan") for the benefit of certain eligible employees, effective as of September 1, 2015; and

WHEREAS, the Employer desires to amend the Plan to: (1) conform the contribution rate for Tier I participants to the City Council's intent at the time the Plan was initially adopted; (2) correct Schedule A; and (3) freeze Tier II.

WHEREAS, the Employer has the right to amend the Plan in accordance with Section 7.3 of the Plan.

NOW THEREFORE, BE IT RESOLVED, that the Plan is hereby amended as follows effective as of the dates indicated below:

1. Effective as of September 1, 2015, the first paragraph, "Tier I," of Section 2.1, "Amount of Employer Contributions," of Article II, "Contributions," of the Plan is amended in its entirety to read as follows:

Tier I:

> There is hereby created and established and shall be maintained by the Plan Administrator the Employer Contribution Account. For each day that an Employee remains a Participant under Tier I of this Plan, the Employer shall make a contribution to the Plan in an amount equal to the applicable percentage of Compensation. For purposes of this Section 2.1, the term "applicable percentage" shall refer to the percentage equal to the employer normal cost rate, as set forth in the CalPERS actuarial valuation prepared for the Employer on an annual basis, plus the required normal member contribution for classic employees in effect each Plan Year. Such contribution shall be based on Compensation paid on or after August 1, 2015. This amount shall be credited to the Employer Contribution Account, and shall be made no later than the close of the Plan Year. Employer Contributions will be allocated to each Participant in the ratio that such Participant's compensation bears to the compensation of all Participants. Employer contributions are subject to change at the discretion of the Employer.

2. Effective as of September 1, 2015, Schedule A to the Plan is hereby amended in its entirety to read as set forth in Schedule A to this amendment, incorporated herein by reference.

3. Effective as of July 28, 2021 the second paragraph, "Tier II," of Section 2.2, "Amount of Employee Contributions," of Article II, "Contributions," of the Plan is amended by adding the following at the end of the section:

Tier II shall be frozen and no Employee will make mandatory contributions to the Plan based on a percentage of his or her Compensation. In addition Schedule A is deleted.

4. All other terms and conditions under the Plan remain unchanged.

IN WITNESS THEREOF, this amendment to the City of Aliso Viejo Public Agency Retirement (PARS) Defined Contribution Plan is hereby executed as of the _____ day of _____, 2022.

CITY OF ALISO VIEJO

By: _____

APPROVED AS TO FORM AND CONTENT:

BEST BEST & KRIEGER LLP

By:_____
Attorneys for Employer

SCHEDULE A

Employee contributions to the Plan shall be based on the following schedule established by the Employer. The Employee shall contribute a percentage of his or her base salary to the Plan based on his or her participation in one of the following tiers. The percentage of the Employee contribution shall be fixed permanently and shall only be subject to change by a Plan amendment adopted by the Employer.

Schedule A shall be amended from time to time for the purpose of adding or deleting Employees from the schedule based on changes in their employment status.

Employee contributions (0-20% per pay period)

0% Contribution	11% Contribution
1% Contribution	12% Contribution
2% Contribution	13% Contribution
3% Contribution	14% Contribution
4% Contribution	15% Contribution
5% Contribution	16% Contribution
6% Contribution	17% Contribution
7% Contribution	18% Contribution
8% Contribution	19% Contribution
9% Contribution	20% Contribution