AGENDA

ALISO VIEJO CITY COUNCIL
WEDNESDAY, OCTOBER 19, 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/agendas
- Online via GoToWebinar at https://attendee.gotowebinar.com/register/1531913693516668943

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/1531913693516668943. Comments are limited to three minutes each.

WELCOME to the City of Aliso Viejo City Council meeting.

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. BUSINESS OF THE MONTH - ACRISURE OF CALIFORNIA
Certificate of Recognition

1.2. RECOGNITION OF OCFA DIVISION CHIEF MICHAEL CONTRERAS
Certificate of Recognition

1.3. PROCLAMATION - CYBERSECURITY AWARENESS MONTH
Proclamation

1.4. TRUSTED PARTNER RECOGNITION - PREMIER AQUATIC SERVICES
Certificate of Recognition

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/1531913693516668943. 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 October 5, 2022 Special Meeting and the October 5, 2022 Regular Meeting.

Draft Minutes - October 5, 2022 Special Meeting
Draft Minutes - October 5, 2022 Regular Meeting

4.4. SECOND READING AND ADOPTION OF AN ORDINANCE ENACTING LOCAL CAMPAIGN CONTRIBUTION LIMITS

Recommended Action: Conduct second reading and adopt Ordinance entitled: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, ADDING SECTION 2.04.150 TO CHAPTER 2.04 (CITY COUNCIL) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE ALISO VIEJO MUNICIPAL CODE

RELATING TO LOCAL ELECTION CAMPAIGN CONTRIBUTION LIMITS AND REGULATIONS.
Staff Report
Attachment 1 - Ordinance

4.5. ACCOUNTS PAYABLE
Recommended Action: Ratify accounts payable checks and electronic funds transfers issued September 29, 2022, in the amount of $295,766.13.
Staff Report
Attachment 1 - Accounts Payable Report

4.6. COMMUNITY FACILITIES DISTRICT NO. 2005-01 (GLENWOOD AT ALISO VIEJO) LOCAL AGENCY SPECIAL TAX AND BOND ACCOUNTABILITY ACT COMPLIANCE (SB 165) REPORT FOR FISCAL YEAR ENDED JUNE 30, 2022
Recommended Action: Accept and file the Community Facilities District No. 2005-01 (Glenwood at Aliso Viejo) Local Agency Special Tax and Bond Accountability Act Compliance ("SB 165") Report for Fiscal Year June 30, 2022.
Staff Report
Attachment 1 - CFD 2005-01 Annual Report

4.7. LEASE AGREEMENT WITH EFUEL, LLC
Recommended Action: Approve and authorize the City Manager to execute a temporary month-to-month lease agreement with EFUEL, LLC for the use of office space located at City Hall, within Suite 200.
Staff Report
Attachment 1 - Agreement

4.8. PROFESSIONAL SERVICES AGREEMENT WITH ADVANTAGE MAILING LLC FOR PRINTING AND MAILING SERVICES OF RECREATION BROCHURE
Recommended Action: Approve and authorize the City Manager to execute a Professional Services Agreement with Advantage Mailing LLC for the printing and mailing services of the quarterly Community Connection Recreation Brochure and Summer Camp Pocket Brochure.
Staff Report
Attachment 1 - Agreement

4.9. AGREEMENT WITH AMBER GREGG PLANNING + ENTITLEMENTS FOR THE 2021-2029 HOUSING ELEMENT
Recommended Action:
1. Approve an agreement in the amount of $105,000 to Amber Gregg Planning + Entitlements for the 2021-2029 Housing Element; and
2. Authorize the City Manager to execute the agreement with Amber Gregg Planning + Entitlements for the 2021-2029 Housing Element.

Staff Report
Attachment 1 - Agreement

4.10. AGREEMENT WITH DE NOVO PLANNING GROUP FOR ON-CALL CEQA SERVICES

Recommended Action:

1. Approve an agreement in the amount not to exceed $150,000 to De Novo Planning Group for on-call California Environmental Quality Act ("CEQA") services; and
2. Authorize the City Manager to execute the agreement with De Novo Planning Group for on-call CEQA services.

Staff Report
Attachment 1 - Agreement

4.11. AGREEMENT WITH UNITED BUILDING AND DEVELOPMENT SERVICES FOR THE ALISO VIEJO RANCH WOOD SEALING PROJECT

Recommended Action:

1. Approve an agreement in the amount of $66,750 with United Building and Development Services as the lowest responsible bidder for the Aliso Viejo Ranch wood sealing project; and
2. Authorize the City Manager to execute an agreement with United Building Development Services; and
3. Authorize City staff to make total compensation to United Building Development Services up to $66,750 plus $10,000 (15% of the agreement amount) to allow for contingencies, totaling $76,750.

Staff Report
Attachment 1 - Agreement

5. PUBLIC HEARINGS:

None.

6. DISCUSSION:

None.

7. CITY MANAGER' S REPORT:

8. ANNOUNCEMENTS / COUNCIL COMMENTS / COMMITTEE UPDATES:

9. ADJOURNMENT:

The next regularly scheduled City Council meeting is November 2, 2022.

Certificate of Recognition

Presented to

ACRISURE OF CALIFORNIA

Aliso Viejo
Business of the Month
October 2022

Presented this 19th day of October, 2022

Ross Chun, Mayor

Certificate of Recognition

Presented to

Michael Contreras

Aliso Viejo Fire Chief
August 2018 – October 2022

In honor of your dedication to the Aliso Viejo community and your 32 years of service with the Orange County Fire Authority. We wish you continued success!

Presented this 19th day of October, 2022

Ross Chun

Ross Chun, Mayor

Proclamation

Cybersecurity Awareness Month

WHEREAS, Cybersecurity Awareness Month, occurring annually in October, creates an ideal opportunity for every resident in Aliso Viejo to join citizens across the country in taking the proper steps to enhance cybersecurity in their homes, workplaces, and educational campuses; and

WHEREAS, the Cybersecurity and Infrastructure Security Agency announced the 2022 Cybersecurity Awareness Month theme of "See Yourself in Cyber," and

WHEREAS, the City of Aliso Viejo recognizes it plays a vital role in identifying, protecting and responding to cyber threats that may have a significant impact on security and privacy; and

WHEREAS, providing information and resources to the community ensures that all individuals and organizations make smart decisions and enable basic cyber hygiene practices at home, or the job, or at school; and

WHEREAS, as technology continues to progress, all digital citizens, as well as our information infrastructure, face an increasing threat of malicious cyber-attack and significant financial and personal privacy losses due to identity theft and fraud; and

WHEREAS, the City of Aliso Viejo participates in a campaign developed by the Center for Internet Security/Multi-State ISAC, the Council on Cybersecurity, U.S. Department of Homeland Security, and public and private sector entities to promote good cyber hygiene through actionable guidance for government and businesses, and to promote innovation, strengthen cybersecurity investment, and enhance resilience across all sectors; and

WHEREAS, all residents of Aliso Viejo are encouraged to take an active role in protecting against cyber threats; and

THEREFORE, BE IT RESOLVED, that the Aliso Viejo City Council does hereby declare October 2022 as Cybersecurity Awareness Month and encourages all residents, companies, and institutions to recognize the importance of cybersecurity, take steps to stay safe and secure online, and participate in this observance through events, training, and education to further our City's security and resilience.

Dated this 19th day of October, 2022

Ross Chun, Mayor

Certificate of Recognition

Presented to

PREMIER AQUATIC SERVICES

Trusted Partner Supporting the City of Aliso Viejo

October 2022

Presented this 19th day of October, 2022

Ross Chun, Mayor

City of Aliso Viejo
AGENDA ITEM

DATE: October 19, 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
OCTOBER 5, 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 6:00 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

PUBLIC COMMENTS:

None.

CLOSED SESSION:

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to Government Code section 54956.9(d)(2)
Number of potential cases: 1

CONFERENCE WITH LABOR NEGOTIATORS
Pursuant to Government Code Section 54957.6
Agency designated representative: City Manager
Unrepresented employee: All City Employees

PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Pursuant to Government Code Section 54957
Title: City Manager

CONFERENCE WITH LABOR NEGOTIATORS
Pursuant to Government Code section 54957.6
Agency designated representatives: Mayor and Mayor Pro Tem
Unrepresented employee: City Manager

REPORT FROM CLOSED SESSION:

City Attorney Scott Smith stated no reportable action was taken.

ADJOURNMENT: Mayor Chun adjourned the meeting at 6:45 p.m. to the October 5, 2022 Regular Council Meeting.

Respectfully submitted:

_____
MITZI ORTIZ, MMC
CITY CLERK

Approved by:

_____
ROSS CHUN
MAYOR

DRAFT

CITY OF ALISO VIEJO
CITY COUNCIL MINUTES
REGULAR MEETING
OCTOBER 5, 2022, 7:00 P.M.
Council Chambers, City Hall, 12 Journey
Aliso Viejo, California

CALL TO ORDER: Mayor Chun called the Regular Meeting of the City Council of the City of Aliso Viejo to order at 7:01 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
ANN EIFERT, FINANCIAL SERVICES DIRECTOR
SHAUN PELLETIER, PUBLIC WORKS DIRECTOR
SO KIM, COMMUNITY DEVELOPMENT DIRECTOR
LIZZY MENDOZA, RECREATION & COMMUNITY SERVICES MANAGER
ISAAC AZIZ, INFORMATION TECHNOLOGY MANAGER
CAPT. SCOTT MERRILL, CHIEF OF POLICE SERVICES

PLEDGE OF ALLEGIANCE: Mayor Chun led the pledge of allegiance.

REPORT FROM CLOSED SESSION:

City Attorney Scott Smith stated there was no reportable action.

1. SPECIAL PRESENTATIONS:

1.1. PROCLAMATION - FIRE PREVENTION WEEK

Mayor Chun presented the proclamation to OCFA Division Chief Michael Contreras. Chief Contreras expressed appreciation and commented on the importance of the designation.

2. ADDITIONS, DELETIONS, REORDERING TO THE AGENDA:

None.

3. COMMUNITY INPUT:

1. Don Beal expressed concern with noise impacts from events at Aliso Viejo Ranch.

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 Ackley seconded to approve the recommended actions. Motion carried 5-0.

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.

4.3. APPROVAL OF MINUTES

Recommended Action: Approve the Minutes as submitted for the September 21, 2022 Special Meeting and the September 21, 2022 Regular Meeting.

4.4. ACCOUNTS PAYABLE

Recommended Action: Ratify accounts payable checks and electronic funds transfers issued September 15, 2022, in the amount of $1,380,351.83.

4.5. TREASURER'S STATEMENT – AUGUST 2022

Recommended Action: Approve August 2022 Treasurer's Statement

DRAFT

4.6. FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT WITH RDA, LLC TO PROVIDE PLANNING CONSULTANT SERVICES

Recommended Action: Approve and authorize the City Manager to execute a First Amendment to the Professional Services Agreement with RDA, LLA for planning consultant services to increase the total compensation by an amount not to exceed $45,000.

4.7. VEHICLE PURCHASE AND ASSET EXPIRATION

City Manager David Doyle and Financial Services Director Ann Eifert responded to questions regarding vehicle depreciation and electric vehicle options.

Recommended Action:

1. Authorize staff to negotiate the purchase of vehicle for the new Streets Supervisor position;
2. Allocate $55,000 from Gas Tax reserves for vehicle and required safety accessories purchase; and
3. Authorize staff to negotiate the trade or sale of one existing fleet vehicle and expire the asset.

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

5. PUBLIC HEARINGS:

None.

6. DISCUSSION:

6.1. CONVENTIONAL AND URGENCY ORDINANCES ENACTING LOCAL CAMPAIGN CONTRIBUTION LIMITS

City Manager David Doyle introduced City Attorney Scott Smith, who provided an overview. Staff responded to questions regarding enforcement and existing limit. Council discussion ensued.

Recommended Action:

If Council desires to establish Local Campaign Contribution Limits that vary from the State's default limits, staff recommends that the Council do so by introducing the following Ordinance:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, ADDING SECTION 2.04.150 TO CHAPTER 2.04 (CITY COUNCIL) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE ALISO VIEJO MUNICIPAL CODE RELATING TO LOCAL ELECTION CAMPAIGN CONTRIBUTION LIMITS AND REGULATIONS

And consider adopting the following Ordinance, with additional urgency findings if Council deems them appropriate:

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, ADDING SECTION 2.04.150 TO CHAPTER 2.04 (CITY COUNCIL) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE ALISO VIEJO MUNICIPAL CODE RELATING TO LOCAL ELECTION CAMPAIGN CONTRIBUTION LIMITS AND REGULATIONS.

Motion: Mayor Pro Tem Hurt moved and Councilmember Ackley seconded to approve the introduction of the following Ordinance:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, ADDING SECTION 2.04.150 TO CHAPTER 2.04 (CITY COUNCIL) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE ALISO VIEJO MUNICIPAL CODE RELATING TO LOCAL ELECTION CAMPAIGN CONTRIBUTION LIMITS AND REGULATIONS,

as amended to establish a local campaign contribution limit of $1,000 per person, per election for City Council candidates with alleged violations to be filed by the complainant with the Orange County District Attorney for enforcement actions. Motion carried 4-1, with Councilmember Munzing dissenting.

6.2. LEAGUE OF CALIFORNIA CITIES – ORANGE COUNTY DIVISION BOARD OF DIRECTORS ELECTION RESULTS

Mayor Chun provided an overview. Mayor Pro Tem Hurt and City Manager David Doyle provided additional information.

Recommended Action: Receive and file.

No further action was taken.

7. CITY MANAGER' S REPORT:

City Manager David Doyle announced the Mobile Library to be held from 2:30 p.m. to 4:00 p.m. on October 13, 2022 at Iglesia Park Community Center; Health Fair and Flu Shot Clinic to be held from 9:00 a.m. to 11:00 a.m. on November 5, 2022 at Aliso Viejo Ranch; and encouraged residents to visit the City website for upcoming holiday events.

8. ANNOUNCEMENTS / COUNCIL COMMENTS / COMMITTEE UPDATES:

Councilmember Munzing:

- Attended Laguna Hills Heritage Day

Councilmember Harrington:

- Attended ACC-OC Leadership Conference

Councilmember Ackley:
- Attended ACC-OC Leadership Conference
- Met with Cub Scout Den 8

Mayor Pro Tem Hurt:
- Attended ACC-OC Leadership Conference
- Announced Teen Fest 2022 at Aliso Viejo Library

Mayor Chun:
- Attended Capistrano Unified School District College Fair 2022
- Commented on upcoming Community Engagement Fair at Dana Hills High School
- Met with Laura's House staff
- Announced Community Cup Golf Tournament
- Attended musical performance at Soka Performing Arts Center

9. **ADJOURNMENT:** Mayor Chun adjourned the meeting at 8:23 p.m. to the regularly scheduled meeting of October 19, 2022.

Respectfully submitted:

_____
MITZI ORTIZ, MMC
CITY CLERK

Approved by:

_____
ROSS CHUN
MAYOR

DRAFT

City of Aliso Viejo
AGENDA ITEM

DATE: October 19, 2022

TO: Mayor and City Council

FROM: Mitzi Ortiz, Director of Government Services

SUBJECT: SECOND READING AND ADOPTION OF AN ORDINANCE ENACTING LOCAL CAMPAIGN CONTRIBUTION LIMITS

Recommended Action:

Conduct second reading and adopt Ordinance entitled:

> AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, ADDING SECTION 2.04.150 TO CHAPTER 2.04 (CITY COUNCIL) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE ALISO VIEJO MUNICIPAL CODE RELATING TO LOCAL ELECTION CAMPAIGN CONTRIBUTION LIMITS AND REGULATIONS.

Discussion:

On October 5, 2022, the City Council approved the introduction and first reading of the subject Ordinance by a 4-1 vote, with amendments and setting the campaign contribution limit at $1,000 per person, per election.

Based on Council's deliberations and Council changes to the original draft ordinance at first reading, enforcement of the campaign contribution limits will be on a complaint-based basis by requests for prosecution to the Orange County District Attorney made directly by the complainant. Section H of the Ordinance (attachment 1) includes the modified text and also includes the clarification that City staff will have no role in any enforcement action. Responsibility for other election functions will remain as dictated by statute.

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 SECTION 2.04.150 TO CHAPTER 2.04 (CITY COUNCIL) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE ALISO VIEJO MUNICIPAL CODE RELATING TO LOCAL ELECTION CAMPAIGN CONTRIBUTION LIMITS AND REGULATIONS

WHEREAS, Assembly Bill No. 571 ("AB 571") imposed a default campaign contribution limit upon cities and counties effective January 1, 2021; and

WHEREAS, California Government Code Section 85702.5 permits the City of Aliso Viejo to act by either ordinance or resolution to establish its own campaign contribution limits that differ from those described in Government Code Sections 85301 and 83124; and

WHEREAS, transparency in local elections regarding financial contributions and influence are important to promoting the election process and to ensure a fair Council election process for all candidates; and

WHEREAS, in adopting this Ordinance, it is the City Council's intention to promote transparency and ensure a fair election process by setting local campaign contribution limitations and requiring reasonable campaign finance disclosure for City Council elections; and

WHEREAS, any and all other legal prerequisites relating to the adoption of this Ordinance have occurred.

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

SECTION 1. Incorporation of Recitals. The recitals above are each incorporated by reference and adopted as findings by the City Council as if fully set forth herein.

SECTION 2. CEQA. The City Council finds that the proposed amendments to the Aliso Viejo Municipal Code are exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

SECTION 3. Code Amendment. Section 2.04.150 is hereby added to the Aliso Viejo Municipal Code to read in full as follows:

CHAPTER 2.04 – CITY COUNCIL

2.04.150 – City Council Campaign Finance Limitations and Regulations.

A. Intent.

It is the intent of the City Council of the City of Aliso Viejo in enacting this section to place realistic and Constitutionally enforceable limits on the amount which may be contributed to candidates' political campaigns in City elections, for the purpose of preventing potential improper or undue influence over elected officials by campaign contributions, to develop a broader base of political efficacy within the community, to provide full and fair enforcement of all the provisions of this Section, and to encourage the public to participate as candidates in elections by simplifying the local regulations as much as possible in matters adequately regulated by State law. This Section is intended to supplement the Political Reform Act of 1974, as amended and in the event of a conflict between that Act and this Section, that Act shall prevail. This Section is enacted pursuant to Article XI, Section 7 of the Constitution of the State of California, and Section 81013 of the California Government Code.

B. Definitions.

1. "Candidate" means an individual who:

   a. is listed on the ballot;

   b. who has qualified to have write-in votes on that individual's behalf counted by election officials; or

   c. who has begun to circulate nominating petitions or authorized others to circulate nominating petitions on the individual's behalf for nomination for or election to any elective City office; or

   d. who receives a contribution or makes an expenditure or gives consent for any other person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election to any elective City office, whether or not the specific elective office for which the candidate will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not the candidate has announced the candidacy or filed a declaration of candidacy at such time.

   "Candidate" includes any individual running to replace an incumbent City officer who is the subject of a recall election but does not include any person within the meaning of Section 301(b) of the Federal Election Campaign Act of 1971. An individual who becomes a candidate retains status as a

candidate until such time as that status is terminated pursuant to the Political Reform Act of 1974 (Government Code Section 84214, or successor statute.

2. "City election" means any general or special election, including a vacancy or recall election held within the City for elective City office or on a City measure. Each general or special election is a separate election for purposes of this Section.

3. "City measure" means any proposition for the issuance of funding or refunding of bonds of the City, voter approval of local taxes or other revenue matters, or any other question or proposition submitted to the voters of the City at any election held throughout the entire City. "City measure" includes any measure which is submitted to a popular vote at an election by action of the City Council or which is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum, or recall procedure, whether or not it has qualified for the ballot.

4. "Person" means any individual or entity, including without limitation a firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, or any other organization or group of persons acting in concert.

Except as otherwise stated herein, the terms of this Section shall have those definitions provided in the Political Reform Act of 1974 ((Government code Section 81000, et. seq. or in the regulations adopted by the California Fair Political Practices Commission to implement the Act.

C. Campaign Finance Disclosure/Electronic Filing.

1. Each candidate and committee must file campaign statements, statements of economic interest, reports, or other documents in the time and manner required by the Political Reform Act of 1974, as amended (Government Code Section 84100, et seq.). Except as set forth herein, compliance with the requirements of the Act are deemed to be in compliance with this Section.

2. Reportable contributions shall include, without limitation, money paid, loaned, contributed, or otherwise furnished to the candidate or any committee for the use of such candidate or such committee in aid of the candidate's election, or for the qualification, passage, or defeat of any city measure. Said disclosure shall include the name of the contributing person or entity and all other information required to be disclosed by the Political Reform Act of 1974, as amended.

3. All candidates and committees required to file campaign statements, reports, or other documents as referenced herein shall do so for all campaign expenditures made, to aid or oppose, either directly or indirectly, a candidate's election or the qualification and/or passage of any city measure. Reportable

expenditures shall include, without limitation, expenditures made by a candidate, candidate-controlled committee, political party or independent expenditure committee.

4. Any elected officer, candidate, committee or other person required to file campaign statements, reports or other documents required by the Political Reform Act of 1974, as amended, shall file those statements, reports or other documents in person, online or electronically with the city clerk.

5. In any instance in which an original campaign statement, report or other document must be filed with the California Secretary of State or Fair Political Practices Commission and a copy of that statement, report or other document is required to be filed with the city clerk, the filer may, but is not required to, file the copy electronically.

6. If the city clerk's electronic system is not capable of accepting a particular type of statement, report or other document, an elected officer, candidate, committee or other person shall file that document with the city clerk in an alternative format.

D. Limits on Campaign Contributions

1. No person, other than the candidate, is permitted to make to a candidate or candidate-controlled committee, and no candidate-controlled committee treasurer may solicit or accept, any campaign contribution which will cause the total amount contributed by such person with respect to a single city election to exceed one thousand dollars ($1,000).

2. A candidate for elective office shall have no more than one candidate-controlled committee and one checking account into which all campaign contributions shall be deposited and out of which all expenditures shall be made. This paragraph shall not prohibit the establishment of savings accounts, but no qualified campaign expenditures shall be made out of these accounts.

3. A person may not make a contribution for any other person under an assumed name or under the name of any other person.

4. The limit in paragraph (1) shall not be deemed to prohibit contributions or loans from a candidate to his/her own candidate-controlled committee in accordance with State law or to limit the amount of his/her own money or property a candidate may contribute, loan to, or expend on behalf of the candidate’s own campaign. Contributions by the spouse of a candidate from such spouse’s separate property shall be subject to the limit set forth in paragraph (1).

5. The limit in paragraph (1) shall not apply to contributions made to a committee which is organized solely for the purpose of supporting or opposing the

qualification and/or passage of one or more city measures. However, the disclosure requirements for all committees set forth in Subsection (C) shall apply.

6. The limit in paragraph (1) shall not apply to contributions made to a committee which is organized solely for the purpose of supporting or opposing the recall of an incumbent City officer, but shall apply to all candidates and their controlled committees seeking election to replace the incumbent City officer. The disclosure requirements for all committees set forth in Subsection (C) shall apply.

7. The limit in paragraph (1) shall not apply to political contributions made to and expenditures made by an independent expenditure committee in support of or in opposition to a city measure, or in support of or opposition to the election of a candidate for city office, if the contributions and expenditures were not made at the direction or control of the candidate or his or her controlled committee. However, the disclosure requirements for all committees set forth in Subsection (C) shall apply.

8. The limit in paragraph (1) shall not apply to political contributions made prior to the effective date of this Section.

9. If a candidate or the treasurer of a candidate-controlled committee is offered a contribution which would violate this limitation, the candidate or treasurer must refuse the contribution. If, however, a contribution which is in violation of this section is deposited into the campaign trust account, the candidate or treasurer must report in writing within five days of the receipt of the contribution to the City Clerk the facts surrounding such payment or contribution and, to the extent permitted by applicable law, return the contribution.

E. Suppliers of goods and services – Disclosure of records required

No person who supplies goods or services or both goods and services to a candidate or any committee for use in connection with the campaign of a candidate or for or against a city measure may refuse to divulge or disclose to the enforcement authority that person's record of any expenditures made by the candidate or committee in payment for such goods or services or both.

F. Duties of the City Clerk

In addition to other duties required of the City Clerk under the terms of this Section, the City Clerk must:

1. Supply appropriate forms and manuals prescribed by the California Fair Political Practices Commission to implement the Political Reform Act of 1974, as amended. These forms and manuals must be furnished to all candidates and committees, and to all other persons required to report;

2. Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of State law and this Section;

3. Notify promptly all persons and known committees who have failed to file a document in the form and at the time required by State law and this Section;

4. Compile and maintain a current list of all statements or parts of statements filed with the city clerk's office pertaining to each candidate and each city measure.

G. Enforcement.

Allegations of violations of this Section may be referred to the District Attorney for criminal prosecution. No enforcement, referral, prosecution or legal action shall be subject to review or control of the City Council, city staff, or the City Attorney.

H. Penalties

1. Any person who knowingly or willfully violates any provisions of this Section is guilty of a misdemeanor.

2. If any person is found to have violated Subsection (D), whether by civil, criminal or administrative enforcement action, the amount of funds received constituting such violation shall be paid by the candidate or committee that received such funds to the City Manager for deposit into the City's general fund. If any person is found to have violated any other sub-chapter of this Section, the fine imposed in connection with such violation shall be in the amount of $250.00 for the first 30 days after said violation, $500.00 for the next 30 days after said violation and $1,000.00 for any period in excess of 60 days following said violation, and shall be paid to the City Manager for deposit into the City's general fund.

3. If any candidate is convicted of a violation of any provision of this Section by a court of competent jurisdiction, the court shall be authorized, to the maximum extent allowed by State law, to declare the candidate's election void or, if the candidate has already assumed office, to remove the candidate from office and declare such office vacant, to be filled in accordance with applicable State law. The Court shall also be authorized to declare the candidate/officer ineligible to hold any City office, up to the maximum amount of time allowed by State law for the offense.

I. Rules of Construction

This Section will be construed liberally in order to effectuate its purposes. No error, irregularity, informality, neglect or omission of any person in any procedure taken under this Section which does not directly affect the jurisdiction of the City to control campaign contributions and expenditures voids the effect of this Section."

SECTION 4. Publication. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once within 15 days of adoption in a newspaper of general circulation printed and published within the City of Aliso Viejo, 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 California Government Code, section 36933.

SECTION 5. Records. The documents and materials associated with this Ordinance that constitute the record of proceedings on which the City Council's findings and determinations are based are located at 12 Journey, Aliso Viejo, CA.

SECTION 6. Severability. If any provision of this Ordinance or its application to any person or circumstance is held 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 ordinance are severable. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any portion thereof.

SECTION 7. Effective Date. This Ordinance shall become effective 30 days after its adoption.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 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. ____ was duly passed and adopted by the City Council of the City of Aliso Viejo at their regular meeting held on the ___ day of _____, 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. ___ duly passed and adopted by the Aliso Viejo City Council at its regular meeting held _____, 2022, and that the Summary of the Ordinance was published on _____, 2022, and _____, 2022, in the Laguna Niguel News.

_____
MITZI ORTIZ, MMC
CITY CLERK

(SEAL)

City of Aliso Viejo
AGENDA ITEM

DATE: October 19, 2022

TO: Mayor and City Council

FROM: Ann Eifert, Director of Financial Services

SUBJECT: ACCOUNTS PAYABLE

Recommended Action:

Ratify accounts payable checks and electronic funds transfers issued September 29, 2022, in the amount of $295,766.13.

Fiscal Impact:

Expenditures in the amount of $295,766.13.

Background:

The City issues accounts payable checks and electronic funds 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 September 29, 2022, for $295,766.13 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 reviewed and deemed accurate by the Director of Financial Services.

Attachment:

1. Accounts Payable Report

Accounts Payable
09/29/2022

Vendor Name	Description (Item)	Amount
101 - GENERAL FUND		
CALPERS HEALTH	SEP'22 CALPERS HEALTH PREMIUM-EM	1,425.48
CALPERS HEALTH	OCT'22 CALPERS HEALTH PREMIUM	24,086.40
CALPERS HEALTH	OCT'22-COUNCIL-CALPERS HEALTH PREMIUM	3,247.69
SAGECREST PLANNING AND ENVIRONMENTAL, LLC	JUN'22- SPA 2022-001/AG CONSULTANT SRV	650.00
RJM DESIGN GROUP INC	JUL'22-SDP-2022-001/THE COMMONS LANDSCAPE	489.00
RJM DESIGN GROUP INC	AUG'22 ENG 2247/SUMMIT IV LANDSCAPING TRNSMTTAL	163.00
CHARLES ABBOTT ASSOC INC	JUL'22 CAA ENG 5051 CROWN CASTLE	50.38
CHARLES ABBOTT ASSOC INC	JUL'22 CAA ENG 5007 SDGE	100.75
CHARLES ABBOTT ASSOC INC	JUL'22 CAA ENG 5064 CLEAR THOUGHT CORP	151.13
CHARLES ABBOTT ASSOC INC	JUL'22 CAA ENG 5046 NX UTILITIES	201.50
CHARLES ABBOTT ASSOC INC	JUL'22 CAA ENG 5067 WEBBS GRAINWORKS	226.69
CHARLES ABBOTT ASSOC INC	JUL'22 CAA ENG 5003 COX	352.63
CHARLES ABBOTT ASSOC INC	JUL'22 CAA ENG 5005 SCE - SADDLEBACK	377.81
CHARLES ABBOTT ASSOC INC	JUL'22 CAA ENG 5004 MNWD	730.44
CHARLES ABBOTT ASSOC INC	JUL'22 CAA ENG 5002 AT&T	1,309.75
CHARLES ABBOTT ASSOC INC	JUL'22 CAA-7 COMPUTER STATIONS LEASE CREDIT	(350.00)
GRASON CONSTRUCTION	P#CD2022-00009-C&D REFUND-GRASON CONS/63 ENDLESS	500.00
PACIFIC CREST ROOFING	BLDR22-00218-C&D REFUND-PACIFIC CREST/WINDFLOWER	500.00
		34,212.65
CITY COUNCIL		
AT&T	JUL'22-5 CC PHONES	247.75
	CITY COUNCIL TOTAL:	**247.75**
CITY MANAGER		
CALPERS HEALTH	OCT'22-PG-HEALTH PREMIUM	149.00
AT&T	JUL'22-CITY MANAGER PHONE	251.56
AT&T	JUL'22-HR PHONE	49.55
	CITY MANAGER TOTAL:	**450.11**
ECONOMIC DEVELOPMENT		
HAULAWAY STORAGE CONTAINERS INC	8/5-9/1/22 TOWN CENTER STORAGE BIN RENTAL	92.40
ERIC WINTER	AUG'22-AV RANCH VOICE OVER & RE-EDITS	637.23
	ECONOMIC DEVELOPMENT TOTAL:	**729.63**
HUMAN RESOURCES		
SOUTH COAST MEDICAL GROUP	MAY-JUN'22 TB TESTS & EMPLOYEE EXAMS	460.00
SOUTH COAST MEDICAL GROUP	JUL-AUG'22-TB TESTS & EMPLOYEE EXAMS	555.00
	HUMAN RESOURCES TOTAL:	**1,015.00**
CITY CLERK		
CITY CLERK'S ASSOCIATION OF CALIFORNIA	MO-FY22-23 CCAC MEMBERSHIP DUES	200.00
	CITY CLERK TOTAL:	**200.00**
FINANCE		
CALPERS HEALTH	OCT'22 CALPERS ADMIN FEE	89.77
CALPERS HEALTH	OCT'22 CALPERS ADMIN FEE	10.72
PARS	JUL'22 PARS REP FEES	300.00
ROGERS ANDERSON MALODY & SCOTT LLP	FY20-21 SINGLE AUDIT	3,200.00
US BANK N.A. - CUSTODY	AUG'22 CUSTODIAN CHARGES	320.25
	FINANCE TOTAL:	**3,920.74**
INFORMATION TECHNOLOGY		
COX COMMUNICATIONS, INC	9/10-10/9/22 ACCT#0202-CH-TV/CABLE	173.87
AT&T	JUL'22- CH 4 MIFI	163.96
AT&T	JUL'22 EOC MIFI	160.96
AT&T	JUL'22-4 EOC PHONES	109.14
AT&T	JUL'22-CH FLEET COMPLETE	52.08
SHI INTERNATIONAL CORP	8/11/22-8/10/23 MANAGED ENGINE OS DEPLOYER SUBS	1,575.00
EATON CORPORATION	FY22-23 CH EATON UPS	3,310.00
	INFORMATION TECHNOLOGY TOTAL:	**5,545.01**

Vendor Name	Description (Item)	Amount
NON-DEPARTMENTAL		
CITY OF MISSION VIEJO	FY22-23 SOUTH COUNTY SPORTSZONE	9,405.00
NIEVES LANDSCAPE INC	AUG'22 VISTA PARK LANDSCAPING	1,028.96
VOYAGER FLEET SYSTEMS INC	AUG'22 CITY CAR FUEL	335.72
RK BRANDS, LLC	AUG'22-6.64 HRS PIO SERVICE	597.60
VIGICABI INC	AUG'22 - JULY 4TH BANNERS REMOVAL SRV	1,400.00
	NON-DEPARTMENTAL TOTAL:	**12,767.28**
C. S. ADMINISTRATION		
CALIFORNIA NEWSPAPERS PARTNERSHIP	REF0011555110 NOTICE INVITING PROP-REC BROCHURE	1,148.66
DP TRADING INC	2022 VETERANS LAPEL PINS	353.00
CALPERS HEALTH	OCT'22-HW-HEALTH PREMIUM	149.00
CALPERS HEALTH	OCT'22-DP-HEALTH PREMIUM	149.00
CA PARK & RECREATION SOCIETY DISTRICT X	FY22-23-REC DEPT-CPRS MEMBERSHIP RENEWAL	1,512.35
SOLINK INC	2022 VETERANS EVENT THANK YOU CARDS	139.00
SOLINK INC	100 VETERAN YARD SIGNS FOR VETERAN EVT GIVEAWAY	999.00
ERIC WINTER	8/6 PET FAIR SHOOT	360.50
CABCO YELLOW INC	AUG'22 SMP FUND TRANSPORTATION SRV	367.50
	C. S. ADMINISTRATION TOTAL:	**5,178.01**
IGLESIA PARK		
NIEVES LANDSCAPE INC	AUG'22 IGLESIA LANDSCAPING	6,846.00
SO CAL EDISON	AUG'22 ACCT#7997 IGLESIA PARK ELECTRICITY	211.52
	IGLESIA PARK TOTAL:	**7,057.52**
IGLESIA BUILDING		
ZAPP PEST MANAGEMENT	SEP'22 IGLESIA PEST CONTROL SRV	75.00
TEAM ONE MANAGEMENT SERVICES	SEP'22 IGLESIA JANITORIAL SERVICES	950.00
SO CAL EDISON	AUG'22 ACCT#7997 IGLESIA BUILDING ELECTRICITY	2,527.91
	IGLESIA BUILDING TOTAL:	**3,552.91**
PLANNING		
TYLER TECHNOLOGIES-INCODE DIVISION	3/1-10/31/22 ENERGOV ANNUAL MAINT/LICENSING FEES	8,353.33
TYLER TECHNOLOGIES-INCODE DIVISION	FY 22-23 ENERGOV DYNAMIC REPORTS MODIFICATIONS	5,000.00
CALPERS HEALTH	OCT'22-MF-HEALTH PREMIUM	149.00
REBECCA J CAHA	AUG'22 AFFORDABLE HOUSING PROFESSIONAL SRV	1,837.50
SAGECREST PLANNING AND ENVIRONMENTAL, LLC	JUN'22- AG PLNG CONSULTANT SERVICES	8,400.00
BRIAN JAMES CORNELIUS	7/2-8/1/22 AVTC PROFESSIONAL CONSULTATION SRV	16,160.00
STAPLES ADVANTAGE	PLNG-OFFICE SUPPLIES	50.19
	PLANNING TOTAL:	**39,950.02**
BUILDING		
ECS IMAGING INC	FY21-22 BUILDING SCANNING PLAN & PERMITS SERVICE	15,003.05
CHARLES ABBOTT ASSOC INC	JUL'22 CAA BUILDING SERVICES	44,208.95
STAPLES ADVANTAGE	BLDG-OFFICE SUPPLIES	229.54
STAPLES ADVANTAGE	BLDG-OFFICE SUPPLIES	48.35
	BUILDING TOTAL:	**59,489.89**
CODE ENFORCEMENT		
CHARLES ABBOTT ASSOC INC	JUL'22 CAA CODE ENFORCEMENT	6,293.21
	CODE ENFORCEMENT TOTAL:	**6,293.21**
ENGINEERING (GENERAL)		
AT&T	JUL'22-PW TABLETS	179.57
RICHARD FISHER ASSOCIATES	AUG'22 ON CALL LANDSCAPE & ARCHITECTURAL SERVICES	3,436.85
CHARLES ABBOTT ASSOC INC	JUL'22 CAA NPDES COSTS	16,176.71
CHARLES ABBOTT ASSOC INC	JUL'22 CAA SOLID WASTE	7,907.20
CHARLES ABBOTT ASSOC INC	JUL'22 CAA PW ENGINEERING-ADMIN	2,479.15
	ENGINEERING (GENERAL) TOTAL:	**30,179.48**
STREET MAINTENANCE		
CHARLES ABBOTT ASSOC INC	JUL'22 CAA STREET MAINTENANCE	8,906.12
	STREET MAINTENANCE TOTAL:	**8,906.12**
LAW ENFORCEMENT-OTHER		
AT&T	JUL'22-PALS PHONE	44.52
SEAVCO INC	LE-DEP.BAKER MOTORCYCLE BMW VIN#3962 -REPAIR & SRV	1,103.26
J&M TROPHIES INC	BRASS NAME BADGES-A.HERNANDEZ/J.CORAL/K.SIFUENTEZ	31.52

Vendor Name	Description (Item)	Amount
VOYAGER FLEET SYSTEMS INC	AUG'22 LE MOTORCYCLE FUEL & CAR WASHES	850.53
	LAW ENFORCEMENT-OTHER TOTAL:	**2,029.83**
	GENERAL FUND TOTAL:	**221,725.16**

102 - GEN. FD-CITY HALL

NON-DEPARTMENTAL

ZAPP PEST MANAGEMENT	SEP'22 CITY HALL PEST CONTROL SRV	75.00
TEAM ONE MANAGEMENT SERVICES	SEP'22 CITY HALL JANITORIAL SERVICES	3,330.00
GORM, INC	SEP'22 CITY HALL JANITORIAL SUPPLIES	439.81
FOSTERS' GARDENS INC	SEP'22 CITY HALL PLANT MAINTENANCE	115.00
NIEVES LANDSCAPE INC	AUG'22 CITY HALL LANDSCAPING	678.00
ALISO VIEJO COMMUNITY ASSOCIATION	OCT-DEC'22 35 PLAYA MASTER HOA FEES	104.64
ALISO VIEJO COMMUNITY ASSOCIATION	OCT-DEC'22 CITY HALL MASTER HOA FEES	1,503.39
	NON-DEPARTMENTAL TOTAL:	**6,245.84**
	GEN. FD-CITY HALL TOTAL:	**6,245.84**

103 - GF-AV RECREATION SERVICES

BLANCA AVILA	USER CREDIT CONVERSION-BLANCA AVILA	54.00
		54.00

RECREATION SERVICES

PRESS-TIGE ENTERPRISES INC	9/24 AVR DRY CLEANING SERVICES	84.67
SUNBELT RENTALS, IN	AUG'22 AV RANCH SCISSOR LIFT	909.54
ZAPP PEST MANAGEMENT	SEP'22 AV RANCH PEST CONTROL SRV	95.00
AT&T	JUL'22-4 REC PHONES	179.28
AT&T	JUL'22-REC TABLETS	40.24
DS SERVICES OF AMERICA, INC	8/24 & 8/31 AVR BOTTLED WATER SERVICES	123.99
CONSOLIDATED ELECTRICAL DISTRIBUTORS, INC	SEP'22 AVR REPLACEMENT LIGHT GLOBES	761.90
FOSTERS' GARDENS INC	SEP'22 AVR PLANT MAINTENANCE	110.00
US BANK PURCHASING CARD PROGRAM	NL-LEGOLAND BUS PARKING- DAY CAMP EXCURSION	35.00
US BANK PURCHASING CARD PROGRAM	NL-CITY DAY CAMP PENCIL SHARPENERS-AMAZON	5.38
US BANK PURCHASING CARD PROGRAM	NL- CITY DAY CAMP ORDER-SUBWAY	28.78
US BANK PURCHASING CARD PROGRAM	NL-KNOTT'S PARKING- DAY CAMP EXCURSION	30.00
US BANK PURCHASING CARD PROGRAM	NL-CITY DAY CAMP ORDER-SUBWAY	31.28
US BANK PURCHASING CARD PROGRAM	NL- RETURNED ITEM-WALMART	(18.30)
US BANK PURCHASING CARD PROGRAM	NL- STORAGE BIN-TARGET	7.75
US BANK PURCHASING CARD PROGRAM	NL- STORAGE BIN-WALMART	18.30
US BANK PURCHASING CARD PROGRAM	NL- HOSE RIG FOR FACILITY-AMAZON	107.93
NIEVES LANDSCAPE INC	AUG'22 AV RANCH LANDSCAPING	2,262.67
BETTER LIFE HEALTH INC	FALL 2022-AFS192 SENIOR CARDIO-3 PARTICIPANTS	180.00
WADORYU USA INC	FALL 2022-AFS093 KARATE-2 PARTICIPANTS	98.00
BREAKTHROUGH SPORTS LLC	FALL2022 AFS040 LITTLE HOOPERS-8 PARTICIPANTS	379.20
FITNESS WITH FLAVOR LLC	FALL2022-AFS237/221/280 KIDS HIP HOP-19 PART	552.00
EATON CORPORATION	FY22-23 AVR EATON UPS	5,000.00
	RECREATION SERVICES TOTAL:	**11,022.61**
	GF-AV RECREATION SERVICES TOTAL:	**11,076.61**

203 - GAS TAX

TRAFFIC ENGINEERING

HARTZOG & CRABILL INC	AUG'22 TRAFFIC SIGNAL MONITORING SRV	2,353.36
GMU GEOTECHNICAL INC	JUL'22 PAVEMENT EVALUATION PHASE II SRV	7,492.30
	TRAFFIC ENGINEERING TOTAL:	**9,845.66**

STREET MAINTENANCE

BEAR ELECTRICAL SOLUTIONS INC	AUG'22 PACIFIC PARK/LA PAZ SPLICE BOX INSTALLATION	3,125.00
BEAR ELECTRICAL SOLUTIONS INC	AUG'22 TRAFFIC SIGNAL MONITORING-REPONSE	11,421.05
BEAR ELECTRICAL SOLUTIONS INC	AUG'22 TRAFFIC SIGNAL MONITORING-ROUTINE	3,162.60
NIEVES LANDSCAPE INC	AUG'22 MEDIANS LANDSCAPING	1,586.00
SO CAL EDISON	DOC#7590450676 UPGRADE LUMINAIRE ST LGHTS	172.00
SO CAL EDISON	AUG'22 GS1 MEDIANS ELECTRICITY	74.21
	STREET MAINTENANCE TOTAL:	**19,540.86**
	GAS TAX TOTAL:	**29,386.52**

Vendor Name	Description (Item)	Amount
204 - MEASURE M		
GEN-MEASURE M		
CABCO YELLOW INC	AUG'22 SMP M2 FUND TRANSPORTATION SRV	1,470.00
	GEN-MEASURE M TOTAL:	**1,470.00**
	MEASURE M TOTAL:	**1,470.00**
215 - PUBLIC SAFETY GRANTS		
LAW ENFORCEMENT-OTHER		
COUNTY OF ORANGE	JUL-SEP'22 800MHZ COST ALLOCATION	5,244.00
COUNTY OF ORANGE	AUG'22 AFIS	1,904.00
	LAW ENFORCEMENT-OTHER TOTAL:	**7,148.00**
	PUBLIC SAFETY GRANTS TOTAL:	**7,148.00**
225 - INTEGRATED WASTE MGMT FD		
GEN-BEV CONTAINER RECYCLE		
UNITED BUILDING AND DEVELOPMENT SERVICES LLC	AUG'22 CH DRINKING WATER FOUNTAINS INSTALLTION	3,895.00
	GEN-BEV CONTAINER RECYCLE TOTAL:	**3,895.00**
	INTEGRATED WASTE MGMT FD TOTAL:	**3,895.00**
241 - TECHNOLOGY FUND		
GEN-TECHNOLOGY GRANTS		
ERIC WINTER	AUG'22 CC MTGS & AV SITE VISITS	545.90
	GEN-TECHNOLOGY GRANTS TOTAL:	**545.90**
	TECHNOLOGY FUND TOTAL:	**545.90**
251 - FEDERAL GRANTS		
GEN-FEDERAL GRANT		
THERESA DOBBS	DEC'21-JUN'22 CDBG-CV BUSINESS GRANT	1,620.00
THERESA DOBBS	JUL-AUG'22 CDBG-CV BUSINESS GRANT	675.00
	GEN-FEDERAL GRANT TOTAL:	**2,295.00**
	FEDERAL GRANTS TOTAL:	**2,295.00**
261 - CITY FAC.-AQUATIC CENTER		
GEN-AQUATIC CENTER		
ZAPP PEST MANAGEMENT	SEP'22 AQ CTR PEST CONTROL SRV	75.00
TEAM ONE MANAGEMENT SERVICES	SEP'22 AQ CTR JANITORIAL SERVICES	2,100.00
NIEVES LANDSCAPE INC	AUG'22 AQ CTR LANDSCAPING	912.48
ALARM CONNECTIONS, LLC	OCT-DEC'22 AQC FIRE ALARM MONITORING SRV	152.88
	GEN-AQUATIC CENTER TOTAL:	**3,240.36**
	CITY FAC.-AQUATIC CENTER TOTAL:	**3,240.36**
311 - STREET IMPROVEMENTS		
TRAFFICE SAFETY		
HARTZOG & CRABILL INC	AUG'22 #130 ALISO CREEK TRAFFIC SIGNAL SYNC	1,472.44
	TRAFFICE SAFETY TOTAL:	**1,472.44**
STREETS & HIGHWAYS		
ENGINEERING RESOURCES OF SOUTHERN CALIFORNIA	AUG'22 #128ENTERPRISE REHAB- ACR TO AVP DESIGN	7,265.30
	STREETS & HIGHWAYS TOTAL:	**7,265.30**
	STREET IMPROVEMENTS TOTAL:	**8,737.74**
	GRAND TOTAL:	**295,766.13**

City of Aliso Viejo
AGENDA ITEM

DATE: October 19, 2022

TO: Mayor and City Council

FROM: Ann Eifert, Director of Financial Services/Treasurer

SUBJECT: COMMUNITY FACILITIES DISTRICT NO. 2005-01 (GLENWOOD AT ALISO VIEJO) LOCAL AGENCY SPECIAL TAX AND BOND ACCOUNTABILITY ACT COMPLIANCE (SB 165) REPORT FOR FISCAL YEAR ENDED JUNE 30, 2022

Recommended Action:

Accept and file the Community Facilities District No. 2005-01 (Glenwood at Aliso Viejo) Local Agency Special Tax and Bond Accountability Act Compliance ("SB 165") Report for Fiscal Year June 30, 2022.

Fiscal Impact:

There is no fiscal impact to accept and file the report.

Background:

Community Facilities District No. 2005-01(Glenwood at Aliso Viejo) ("CFD No. 2005-01") was formed by the City on March 16, 2005, for the purpose of financing the acquisition and/or construction of certain public improvements to be owned by the City, the County of Orange and Moulton Niguel Water District. On December 6, 2007, the City issued the CFD No. 2005-01 (Glenwood at Aliso Viejo) 2007 Special Tax Bonds (the "2007 Bonds") in the amount of $34,070,000. Proceeds of the Bonds were used to finance the acquisition and construction of the authorized public facilities. On February 13, 2014, the City issued for CFD No. 2005-01 the 2014 Special Tax Refunding Bonds in the aggregate amount of $32,270,000 ("Refunding Bonds").

Discussion:

The Senate Bill (SB) 165 Report includes information prepared in compliance with the Local Agency Special Tax and Bond Accountability Act ("Accountability Act"). The Accountability Act was enacted by California State Legislature through Senate Bill 165 to provide accountability measures for any local special tax and/or bond measure subject to voter approval on or after January 1, 2001. According to the requirements of the

Accountability Act (Sections 50075.1 and 53410 of the Government Code of the State of California), an annual report must be filed by the local agency levying the special tax and or issuing a bond measure and shall contain a description of the following:

(1) The amount of funds collected and expended.
(2) The status of any project required or authorized to be funded by the special tax and/or bond measure.

The SB 165 Report includes information regarding the amount of annual Special Taxes collected and the authorized expenditures for fiscal year 2021-22. A total of $2,151,682 was collected and $2,138,170 was expended on debt service and transfers to the reserve fund.

Environmental:

None

Attachment:

1. Community Facilities District No. 2005-01 (Glenwood at Aliso Viejo) LOCAL AGENCY SPECIAL TAX AND BOND ACCOUNTABILITY ACT COMPLIANCE (SB 165) REPORT FOR FISCAL YEAR ENDED JUNE 30, 2022

MUNICIPALITIES | SCHOOL DISTRICTS | CITIES | COUNTIES | PARK & RECREATION | WATER DISTRICTS | MUNICIPALITIES | SCHOOL DISTRICTS | COMMUNITIES



ALISO VIEJO
Live Life Inspired

CITY OF ALISO VIEJO
COMMUNITY FACILITIES DISTRICT NO. 2005-01
(GLENWOOD AT ALISO VIEJO)

LOCAL AGENCY SPECIAL TAX AND BOND ACCOUNTABILITY ACT COMPLIANCE (SB 165) REPORT
FISCAL YEAR ENDED JUNE 30, 2022

CITY OF ALISO VIEJO
12 JOURNEY, SUITE 100
ALISO VIEJO, CA 92656-5335
T. 949.425.2500

KOPPEL & GRUBER
PUBLIC FINANCE

334 VIA VERA CRUZ, SUITE 256
SAN MARCOS
CALIFORNIA 92078

T. 760.510.0290
F. 760.510.0288

City of Aliso Viejo

David A. Doyle, City Manager
Ann Eifert, Director of Financial Services/City Treasurer
City of Aliso Viejo
12 Journey, Suite 100
Aliso Viejo, CA 92656-5335
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Bond Counsel

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Special Tax Administrator

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Koppel & Gruber Public Finance
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SECTION I. BACKGROUND

The Local Agency Special Tax and Bond Accountability Act ("Accountability Act") was enacted by California State Legislature through Senate Bill 165 to provide accountability measures for any local special tax and/or bond measure subject to voter approval on or after January 1, 2001. According to the requirements of the Accountability Act *(Sections 50075.1 and 53410 of the Government Code of the State of California)*, an annual report must be filed by the local agency levying a special tax and/or issuing a bond measure on or before each January 1, commencing January 1, 2002, and shall contain a description of the following:

(1) The amount of funds collected and expended to fund authorized facilities.
(2) The status of any project required or authorized to be funded by the special tax and/or bond measure.

The information contained in this Section has been compiled and is being presented pursuant to an in accordance with the requirements outlined in the Accountability Act for Fiscal Year 2021/22.

SECTION II. BOND PROCEEDS

The Refunding Bonds were issued in the aggregate principal amount of $32,270,000. A portion of the proceeds of the Refunding Bonds, together with certain existing funds on hand, were used to defease and refund the 2007 Bonds. Approximately $30,000 remaining in the improvement fund established for the 2007 Bonds was transferred to the Improvement Fund under the FAA to finance remaining obligations for the construction of the City's aquatic center facilities. The table below summarizes the application of the Refunding Bond proceeds:

FUND/ACCOUNT/SUBACCOUNT	BOND PROCEEDS
Improvement Fund	$30,000.00
Reserve Fund	2,992,500.00
Costs of Issuance Fund	202,566.45
Administrative Expense Fund	18,363.76
Escrow Fund[1]	35,829,122.50
TOTAL[2]	**$39,072,552.71**

[1] Monies deposited into the Escrow Fund were used to redeem the 2007 Bonds on March 1, 2014.

[2] The difference between the Refunding Bond issue amount of $32,070,000 and the total Bond proceeds deposited is the Original Issue Premium less the Underwriter's Discount plus funds on hand from the 2007 Bonds.

SECTION III. COLLECTION OF SPECIAL TAXES

In accordance with the FAA, all Special Taxes collected by the City shall be deposited into the Special Tax Fund. The table below provides a summary of the Special Taxes deposited, interest accrued, transfers, and other transactions within the special tax fund established for the 2007 Bonds and the Special Tax Fund established under the FAA for fiscal year ended June 30, 2022.

ITEM	BALANCE
BEGINNING BALANCE AS OF JULY 1, 2021	**$1,491,117.79**
Sources of Funds	
Special Tax Receipts	$2,151,682.45
Interest Accrued	840.18
Miscellaneous Transfers In	0.00
Subtotal: Sources	*$2,152,522.63*
Uses of Funds	
Transfers to Administrative Expense Fund	($0.00)
Transfers to Bond Fund (Debt Service)	(2,119,850.00)
Miscellaneous Transfers (Out)[1]	(18,320.36)
Subtotal: Uses	*($2,138,170.36)*
ENDING BALANCE AS OF JUNE 30, 2022	**$1,505,470.06**

[1] Represents a transfer to the Reserve Fund.

SECTION IV. AUTHORIZED FACILITIES

CFD No. 2005-01 is authorized to finance the acquisition and construction of certain facilities to be owned by the City, the County of Orange, and the Moulton Niguel Water District (the "Facilities"). The authorized facilities are summarized in Attachment 4 of this Report.

SECTION V. EXPENDITURES TO FUND AUTHORIZED FACILITIES

The improvement fund established for the 2007 Bonds to pay for authorized facilities (the "2007 Improvement Fund") had a balance remaining of approximately $662,337 at June 30, 2013. Approximately $30,000 of the total amount remaining in the 2007 Improvement Fund was transferred to the Improvement Fund under the FAA to finance remaining obligations for the construction of the City's aquatic center facilities. The net amount, plus interest, following the transfer of funds to the Improvement Fund, was combined with other sources of funding and used to defease and fully refund the 2007 Bonds.

The following table shows the amount deposited in the Improvement Fund, interest accrued, transfers and expenditures made to fund the authorized facilities from bond issuance. The final expenditures were paid from the Improvement Fund during the fiscal year ended June 30, 2015 and the fund was subsequently closed.

ITEM	BALANCE
Sources of Funds	
Deposit into the Improvement Fund[1]	$30,000.00
Interest Accrued	5.52
Total Sources	***$30,005.52***
Expenditures	
Aquatic Center Improvements	($21,386.23)
Transfer to Bond Fund[2]	(8,619.29)
Total Expenditures	***($30,005.52)***

[1] Transferred from the 2007 Improvement Fund.
[2] Transferred remaining balance to Bond Fund.

City of Aliso Viejo
AGENDA ITEM

DATE: October 19, 2022

TO: Mayor and City Council

FROM: Ann Eifert, Director of Financial Services/City Treasurer

SUBJECT: LEASE AGREEMENT WITH EFUEL, LLC

Recommended Action:

Approve and authorize the City Manager to execute a temporary month-to-month lease agreement with EFUEL, LLC for the use of office space located at City Hall, within Suite 200.

Fiscal Impact:

The lease agreement will provide the City with $553.50 per month in rental income.

Background:

EFUEL is an independent wholesale distributor of gasoline, diesel, and other refined petroleum products with its corporate and sales headquarters located in the City of Aliso Viejo. In 2016, the City entered into an Operating Covenant Agreement with EFUEL, LLC, to provide monetary incentives to remain and generate sales tax revenue for the City. EFUEL is one of the City's largest sales tax generators for the City.

Discussion:

EFUEL's current leasing agreement for their corporate office is terminating at the end of October 2022 and as a result is seeking a new location within the City.

The City currently has unused office space located within Suite 200 of City Hall. EFUEL and staff discussed the potential for a temporary lease of office space until a permanent location is identified or until the space is needed for City use. The proposed month-to-month lease agreement will provide EFUEL with approximately 225 square feet of office space at a monthly rent of $553.50 for a period of up to six months. The rate and terms of the agreement is consistent with other tenants in the building.

Attachment:

1. Lease Agreement

LEASE
City of Aliso Viejo with EFUEL, LLC
12 Journey, Suite 200, Aliso Viejo, CA 92656

CITY OF ALISO VIEJO, herein called "Lessor," leases to EFUEL, LLC, a California limited liability company, herein called "Lessee," the property described below upon the following terms and conditions:

1. **Recitals**.

   (a) Lessor owns property commonly known as 12 Journey, Aliso Viejo, CA 92656 (**"Property"**). The office building (**"Building"**) located on the Property is used by Lessor as its administrative headquarters.

   (b) Lessee desires to lease office space from Lessor within the Property and Lessor is willing to lease such office space to Lessee upon the terms and conditions described herein.

2. **Description**. Lessor hereby leases to Lessee, and Lessee leases from Lessor that portion of the Property consisting of the use of Suite 200A and non-exclusive use of associated common areas, walkways, restrooms, driveways, parking spaces and other areas appurtenant thereto (collectively the **"Premises"**). The Premises are a self-contained area within the Property, located on the second floor in the southeast quadrant of Suite 200, and comprising of approximately 225 square feet of office space.

3. **Use**.

   (a) The Premises shall be used by Lessee solely for business office purposes and during normal business hours.

   (b) The Premises includes unreserved parking for Lessee's employees and a reasonable number of visitors. Lessee will not use the parking lot in such a way as to impair Lessor's ability to park and hold events.

   (c) The Premises shall not be used for any purpose other than General Office purposes without first obtaining the written consent of Lessor, which consent Lessor may grant or withhold in its sole discretion.

4. **Term**. The Term of this Lease shall be on a month-to-month basis, beginning on November 1, 2022, for a duration of no more than six (6) months, through April 30, 2023. This Lease shall automatically expire on April 30, 2023. Notwithstanding the foregoing, either party may, in it is sole and absolute discretion, with or without cause, terminate this Lease by providing 30 days' written notice to the other party of its intent to terminate.

   At the termination of the Lease, Lessee shall remove all of its personal property and restore the Premises to substantially the same condition as it was at the beginning of the Lease, wear and tear excepted.

5. **Rent**. Lessee shall pay the sum of Five Hundred Fifty-Three Dollars and Fifty cents ($553.50) per month to Lessor as rent for use of the Premises. Rent shall be payable, in advance, on the first day of the month.

6. **Payments.** The first payment will be due on October 31, 2022, and payments will continue to be due on the 1st day of each month in the amount described in Paragraph 5 and continue throughout the remainder of the term.

7. **Tenant Improvements/Office Furniture and Equipment.** The Premises are provided in "As-Is" condition, with no additional improvements, furniture, or equipment provided by Lessor.

8. **Custodial Services**. Lessor shall be responsible for all routine custodial services within the Property, including the Premises. Custodial services will be provided to the level of quality required by Lessor. If Lessee requests additional service beyond this level, the provisions of Paragraph 15 will apply.

9. **Building Systems Maintenance and Services**. Lessor shall maintain all core building services such as plumbing, electrical and HVAC in the Building and the Premises. Lessee shall be responsible if any required maintenance or repair of core building systems is a result of misuse by Lessee. Lessee shall also be responsible for any additional services such as maintenance of individual cooling for computer/server technology closet or other systems that result from Lessee improvements to the Premises. Services will be provided to the level of quality required by Lessor. If Lessee requests additional service beyond this level, the provisions of Paragraph 15 will apply.

10. **HVAC Operation.** HVAC for the Premises is integrated with HVAC for the entire Building, and as such, has limitations on ability for it to operate independently. Lessor and Lessee will define acceptable temperature ranges for the Premises, and Lessor will be responsible for all management of the system.

11. **Building Maintenance/Repairs**. Except as otherwise set forth herein, Lessor shall maintain the exterior (including the roof and exterior surfaces) of the Building in good working order and repair and shall maintain interior surfaces of the Premises unless such maintenance is required as a result of misuse by Lessee. Services will be provided to the level of quality required by Lessor. If Lessee requests additional service beyond this level, the provisions of Paragraph 15 will apply.

12. **Site Maintenance and Services**. Lessor shall maintain all site landscaping, including parking and property facilities.

13. **Utilities**. Lessee shall provide and pay for telephone, communication, and data services. Lessor shall provide and pay for electrical, natural gas, refuse, water, and sewer service.

14. **Security/Access**. Lessor shall be responsible for site security and access to the Building. Lessee shall provide Lessor a master key for any door locks re-keyed by Lessee for the purpose of serving the Premises. Lessor will further provide access to the Building and the

Premises through an electronic access control system. Lessee will comply with all security requirements established by Lessor during the term of the Lease.

15. **Support Effort.** At no cost to Lessee, Lessor will provide reasonable support to Lessee during initial occupancy period including setting up security, training of audio-visual systems, etc. Thereafter, Lessee may request technical, administrative, or other support of Lessor staff, contractors, or agents for various purposes. Lessor will provide those services on a "time and materials" cost basis. Lessor staff time will be based on labor plus overhead rates established by Lessor. Other costs will be established by cost of materials (for example, replacement keys or badges) or cost for vendors (special requests or projects). Such services/support after hours will be billed at overtime rates. Lessor retains the right to prioritize and schedule response to requests as Lessor deems appropriate.

16. **Rights of Lessor**. Lessor, through its authorized representatives, shall have the right to enter the Premises for the purpose of inspecting, monitoring and evaluating the obligations of Lessee hereunder and for the purpose of doing any and all things which it is obligated or has a right to do under this Lease. Lessor shall have the right to enter the Premises and show the Premises to prospective tenants; provided, however, that such right of entry will occur during normal business hours and upon prior notice to and coordination with Lessee.

17. **Insurance**. Lessee shall during the term of this Lease:

(a) Procure and maintain Workers' Compensation Insurance as prescribed by the laws of the State of California.

(b) Procure and maintain comprehensive general liability, and coverage that shall protect Lessee from claims for damages for personal injury, including, but not limited to, accidental and wrongful death, as well as from claims for property damage, which may arise from Lessee's use of the Premises or the performance of its obligations hereunder, whether such use or performance be by Lessee, by any subcontractor, or by anyone employed directly or indirectly by either of them. Such insurance shall name Lessor, its officers, agents, employees, representatives, and City-designated volunteers, as Additional Insureds with respect to this Lease and the obligations of Lessee hereunder. Such insurance shall provide for limits of not less than $1,000,000.00 per occurrence.

(c) Cause its insurance carriers to furnish Lessor by direct mail with certificate(s) of Insurance showing that such insurance is in full force and effect, and that Lessor is named as an Additional Insured with respect to this Lease and the obligations of Lessee hereunder. Further, said Certificate(s) shall contain the covenant of the insurance carrier(s) that thirty (30) days' written notice shall be given to Lessor prior to modification, cancellation or reduction in coverage of such insurance. In the event of any such modifications, cancellation or reduction in coverage and on the effective date thereof, Lessor shall have the right to cancel this Lease with thirty (30) days' advanced notice in writing to Lessee, unless Lessor receives prior to such effective date another certificate from an insurance carrier of Lessee's choice that the insurance required herein is in full force and effect.

18. **Hold Harmless**.

(a) Indemnification by Lessee. Lessee shall indemnify and hold Lessor, its officers, agents, employees, and independent contractors free and harmless from any claim or liability whatsoever, based or asserted upon any alleged act or omission of Lessee, its trustees, officers and agents, employees, volunteers, subcontractors, or independent contractors, for property damage, bodily injury or death, or any other element of damage of any kind or nature, occurring in the performance of this Agreement; and Lessee shall defend at its expense, including attorney fees, Lessor, its officials, agents, employees, and independent contractor in any legal action of any kind based upon such alleged acts or omissions. This indemnification shall survive the termination of this Lease.

(b) The specified insurance limits required in Paragraph 17, above, shall in no way limit or circumscribe Lessee's obligations to indemnify and hold Lessor free and harmless herein.

19. **Assignment**. Lessee shall not assign, sublet, mortgage, hypothecate or otherwise transfer in any manner any of its rights, duties or obligations hereunder to any person or entity without the written consent of Lessor being first obtained, which consent shall be in the absolute discretion of Lessor. In the event of any such transfer, Lessee shall remain liable with respect to any and all of the Lessee obligations and duties contained in this Lease.

20. **Free from Liens**. Lessee shall pay, when due, all sums of money that may become due for any labor, services, material, supplies, or equipment, alleged to have been furnished or to be furnished to Lessee, in, upon, or about the Premises, and which may be secured by a mechanics', materialman's or other lien against the Premises, the Property or Lessor's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by such lien matures or becomes due; provided, however, that if Lessee desires to contest any such lien, it may do so, but notwithstanding any such contest, if such lien shall be reduced to final judgment, and such judgment or such process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed, and said stay thereafter expires, then and in such event, Lessee shall forthwith pay and discharge said judgment.

21. **Employees and Agents of Lessee**. All persons hired or engaged by Lessee shall be considered to be employees or agents of Lessee and not of Lessor.

22. **Binding on Successors**. Lessee, its permitted assigns and successors in interest, shall be bound by all the terms and conditions contained in this Lease, and all of the parties thereto shall be jointly and severally liable hereunder.

23. **Waiver of Performance**. No waiver by Lessor at any time of any of the terms and conditions of this Lease shall be deemed or construed as a waiver at any time thereafter of the same or of any other terms and conditions contained herein or of the strict and timely performance of such terms and conditions.

24. **Severability**. The invalidity of any provision in this Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

25. **Venue**. Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Lease shall be tried in a court of competent jurisdiction in the County of Orange, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

26. **Attorneys' Fees**. In the event of any action between Lessee and Lessor to enforce any of the provisions of this Lease or any right of either party hereto, the unsuccessful party to such action agrees to pay to the successful party all costs and expenses, including reasonable attorneys' fees, incurred therein by the successful party, all of which shall be included in and as a part of the judgment or award rendered in such action.

27. **Notices**. Any notices required or desired to be served by either party upon the other shall be addressed to the respective parties as set forth below:

Lessor/Rent:	**Lessee**:
City of Aliso Viejo Attn: City Manager 12 Journey, Suite 100 Aliso Viejo, CA 92656	EFUEL, LLC Attn: Don Harper 4605 E Vine Ave Fresno, CA 93725

28. **Lessor's and Lessee's Representative**. Lessor hereby appoints the City Manager as its authorized representative to administer this Lease. Lessee hereby appoints Don Harper as its authorized representative to administer this Lease.

29. **Entire Lease**. This Lease is intended by the parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous leases, agreements, and understandings, oral or written, in connection therewith. This Lease may be changed or modified only upon the written consent of the parties hereto.

30. **Approval**. This Lease shall not be binding or consummated until its approval by the Lessor's City Council and Lessee's CEO.

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

EFUEL, LLC

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

By: Don Harper
Don Harper (Oct 6, 2022 09:28 PDT)

Its: Chief Executive Officer
Printed Name: Don Harper

By:

Its:

Printed Name:_____

EFUEL lease agreement

Final Audit Report 2022-10-06

Created:	2022-10-05
By:	Ann Eifert (AEifert@avcity.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAQ5F5XNm-yn7zQrMoOwv2VxUEt012c2-s

"EFUEL lease agreement" History

Document created by Ann Eifert (AEifert@avcity.org)
2022-10-05 - 11:22:47 PM GMT

Document emailed to donharper@efuelco.com for signature
2022-10-05 - 11:23:51 PM GMT

Email viewed by donharper@efuelco.com
2022-10-06 - 4:28:14 PM GMT

Signer donharper@efuelco.com entered name at signing as Don Harper
2022-10-06 - 4:28:39 PM GMT

Document e-signed by Don Harper (donharper@efuelco.com)
Signature Date: 2022-10-06 - 4:28:41 PM GMT - Time Source: server

Agreement completed.
2022-10-06 - 4:28:41 PM GMT

City of Aliso Viejo
AGENDA ITEM

DATE: October 19, 2022

TO: Mayor and City Council

FROM: Lizzy Mendoza, Recreation & Community Services Manager

SUBJECT: PROFESSIONAL SERVICES AGREEMENT WITH ADVANTAGE MAILING LLC FOR PRINTING AND MAILING SERVICES OF RECREATION BROCHURE

Recommended Action:

Approve and authorize the City Manager to execute a Professional Services Agreement with Advantage Mailing LLC for the printing and mailing services of the quarterly Community Connection Recreation Brochure and Summer Camp Pocket Brochure.

Fiscal Impact:

The fiscal impact is $369,099 for three years. There is a cost savings of $13,366 for FY 2022-23 for the printing of the remaining Community Connection Recreation Brochures and Summer Camp Pocket Brochure. Funds are available in the adopted FY 2022-23 budget.

Background:

Staff prepared a Request for Proposals (RFP), including specifications and requirements for the printing and mailing services of the quarterly Community Connection Recreation Brochure and the Summer Camp Pocket Brochure. Companies were requested to provide their cost for printing and mailing services of the Recreation Brochures detailing available activities, classes, special events, and City news. Up to 25,500 copies of each quarterly Community Connection Recreation Brochure and Summer Camp Pocket Brochure may be printed, with approximately 21,340 copies delivered to residents and businesses in Aliso Viejo. Westamerica Communications has provided the printing and mailing services of the quarterly Community Connection Recreation Brochure and the Summer Camp Pocket Brochure since 2019.

The RFPs were advertised on the City website and OC Register.

On September 13, 2022, staff received proposals for the printing and mailing services of the quarterly Community Connection Recreation Brochure and the Summer Camp Pocket

Brochure from Advantage Mailing LLC, Westamerica Communications, and The Dot. Staff reviewed the proposals for completeness, work plan, references, capabilities of the company, and cost.

Discussion:

Rankings based upon the required criteria are as follows, along with the proposed cost of sheet-fed printing services for 3 years.

1. Advantage Mailing LLC - $470,007
2. Westamerica Communications - $561,673
3. The Dot - $479,371

During the negotiation process with Advantage Mailing LLC, it was determined that web-based printing would be used for the printing and mailing services of the quarterly Community Connection Recreation Brochure and Summer Camp Pocket Brochure due to the additional cost savings of $100,908 for the 3-year term totaling $369,099. The web press printing method feeds off a large roll of paper and prints larger quantities faster while still resulting in high-quality printing. Westamerica Communications does not have the capability to print using the web press printing method. The final bidder, The Dot did not meet expectations and submitted an incomplete proposal.

Staff recommends Advantage Mailing LLC to perform the printing and mailing services of the quarterly Community Connection Recreation Brochure and Summer Camp Pocket Brochure. They have over 25 years of experience with printing and mailing services, and they are one of the largest mailers in the state, processing nearly 2,000,000 postal pieces each day. Advantage Mailing LLC received positive reviews during the reference check on their customer service, experience, and ability to meet deadlines, and complete projects. Additionally, Advantage Mailing LLC provides printing and mailing services to several other Orange County cities, including; Laguna Beach, Yorba Linda, and Lake Forest.

Staff recommends City Council approve a three-year agreement with Advantage Mailing LLC, with an option to renew the agreement for two additional one-year terms, for the printing and mailing services of the quarterly Community Connection Recreation Brochures and Summer Camp Pocket Brochure.

Attachment:

1. Agreement

CITY OF ALISO VIEJO
PROFESSIONAL SERVICES AGREEMENT
FOR
COMMUNITY CONNECTION RECREATION BROCHURE
PRINTING AND MAILING SERVICES

1. PARTIES AND DATE.

This Agreement is made and entered into this _____ day of _____, 20___, 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 **ADVANTAGE MAILING LLC** a **LIMITED LIABILITY COMPANY**, with its principal place of business at **1600 N. KRAEMER BLVD. ANAHEIM CA 92806** ("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 **PRINTING AND MAILING SERVICES** 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 **PRINTING AND MAILING SERVICES** 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 **ALISO VIEJO COMMUNITY CONNECTION RECREATION BROCHURE** 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 **PRINTING AND MAILING 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 **OCTOBER 19, 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 one-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: **TOM LING AND SCOTT OGLE**

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 **LIZZY MENDOZA, 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 **TOM LING** 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) 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 **THREE HUNDRED SIXTY-NINE THOUSAND NINETY-NINE DOLLARS ($369,099)** ("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:

ADVANTAGE MAILING LLC
1600 N. KRAEMER BLVD.
ANAHEIM, CA 92806
TOM LING, MANAGING MEMBER

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 ADVANTAGE MAILING LLC

IN WITNESS WHEREOF, the parties have executed this Professional Services Agreement on this ____ day of _____, 202__.

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:_____
Ann Eifert
Director of Financial Services

ADVANTAGE MAILING LLC
TOM LING, MANAGING MEMBER

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

By:_____

Its:_____

Printed Name: TOM LING

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:

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

Anaheim Orange, CA — City/County/State
10-6-22 — Date
Advantage Mailing, LLC — Name of Business
Tom Lucas — 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.

Advantage Marketing LLC — Name of Business

Tom Liss — Print Name

Signature

10-06-22 — Date

EXHIBIT "A"

SCOPE OF SERVICES

Provide printing and mailing services of the Community Connection Recreation Brochure up to four (4) times a year plus a Summer Camp Pocket Brochure once (1) time a year that are delivered to approximately 21,340 postal customers and remaining print copies delivered to City facilities. Up to 25,500 copies of the quarterly brochures and summer camp brochure may be printed

FREQUENCY
The City currently requires one (1) issue per quarter for a total of four (4) issues plus the summer pocket brochure totaling five (5) projects per calendar year. Quarters include: Winter (January – April), Spring (April-June), Summer (June – August), Fall (August – December).

QUANTITY
Up to 25,500 brochures per quarter. (Quantity will vary as City population fluctuates or needs change).

PRINTING
Web-based printing or sheet-fed printing depending on project.

PAGES
Each brochure shall include up to forty pages (40) pages plus cover with the exception of the Summer Brochure and Summer Camp Pocket Brochure, which shall have up to forty-four (44) pages plus cover. Page quantity may vary as needs change.

PAPER STOCK
Seventy (70) pound White Endurance Gloss Book or similar.

COVER STOCK
One-hundred (100) pound White Endurance Gloss Book or similar.

BROCHURE SIZE
Shall be between 8.5 inches wide and between 11 inches high.

POCKET BROCHURE SIZE
Shall be between 5.5 inches wide and between 8.5 inches high.

PROOFS
Contractor shall provide the City with a digital proof of the entire brochure. Additional proofs are required within twenty-four (24) hours until approved corrections are made.

BINDERY
Contractor shall trim, fold, in-house saddle stitch, and prepare for mailing.

MAILING
The selected printing company must have in-house mailing capabilities and cannot be sourced out. Contractor shall utilize Every Door Direct Mail (EDDM) to mail brochure to Postal Local Customers in the City. Contractor must also have access to residential mailing list/routes for zip code 92656.

POSTAGE

Contractor shall obtain precise postage pricing (for each issue) from the United States Postal Service (USPS), based on weight and exact quantities required for mailing to every resident and business address in the City. City shall deposit funds into City's USPS permit prior to brochures being mailed to City Residents. Contractor shall be responsible for picking up previously issued surplus brochures and recycle responsibly.

DELIVERY

Deliver the respective number of Aliso Viejo Community Connection Recreation Brochures to USPS for delivery to City Residents which includes an approximate amount of +/- 21,340 brochures per issue (quantity will vary as City population fluctuates). All brochures shall meet the USPS standards for bulk rate mail. Contractor shall file the necessary paperwork with the USPS for receipt and delivery. Contractor shall also deliver +/- 3,500 brochures to various City facilities, per issue. Printing and delivery of the brochure should be no later than the fourteenth day after getting final approval of the proof from the City. Proof of delivery to USPS is required.

PROJECT SCHEDULE

A calendar of deadlines will be provided to the Contractor annually. The approximate USPS delivery dates are:

- Fall Community Connection Brochure: Printed in July
- Winter Community Connection Brochure: Printed in November
- Summer Camp Brochure: Printed in January/February
- Spring Community Connection Brochure: Printed in February/March
- Summer Community Connection Brochure: Printed in May

EXHIBIT "B"

SCHEDULE OF SERVICES

A CALENDAR OF DEADLINES WILL BE PROVIDED TO THE CONTRACTOR ANNUALLY. PRINTING AND MAILING SERVICES OF THE COMMUNITY CONNECTION RECREATION BROCHURE AND SUMMER CAMP POCKET BROCHURE ARE PROVIDED QUARTERLY. A SAMPLE SCHEDULE IS PROVIDED BELOW:

- Fall Community Connection Brochure: Printed in July
- Winter Community Connection Brochure: Printed in November
- Summer Camp Brochure: Printed in January/February
- Spring Community Connection Brochure: Printed in February/March
- Summer Community Connection Brochure: Printed in May

THE ACTUAL SCHEDULE OF PRINTING AND MAILING SERVICES WILL BE NEGOTIATED QUARTERLY BASED ON CITY REGISTRATION DATES AND MAILING NEEDS.

EXHIBIT "C"

COMPENSATION

The pricing below includes all direct costs, indirect costs, mailing, and delivery services for sheet-fed printing. Postage will be estimated at time of project and presented as a separate fee. As the City's Community Connection Recreation Brochure and Summer Camp Pocket Brochure is a quarterly publication, it is not subject to sales tax.

	QUARTER	MAILING & DELIVERY SERVICES	PRINTING UNIT PRICE (per brochure)	Estimated Quantity	Total
YEAR 1	Winter (40 pgs. plus cover)	$862.42	$ .9055	25,500	$ 23,952.35
	Spring (40 pgs. plus cover)	$ 862.42	$ .9055	25,500	$ 23,952.35
	Summer (44 pgs. plus cover)	$ 862.42	$ 1.0419	25,500	$ 27,429.94
	Summer Camp Pocket Brochure (44 pgs. plus cover)	$862.42	$ .8240	25,500	$20,127.70
	Fall (40 pgs. plus cover)	$ 862.42	$ .7555	25,500	$ 23,952.35
				TOTAL=	$ 119,414.69
YEAR 2	Winter (40 pgs. plus cover)	$ 905.54	$ .9320	25,500	$ 24,670.92
	Spring (40 pgs. plus cover)	$ 905.54	$ .9320	25,500	$ 24,670.92
	Summer (44 pgs. plus cover)	$ 905.54	$ 1.0707	25,500	$ 28,252.84
	Summer Camp Pocket Brochure (44 pgs. plus cover)	$ 905.54	$ .7775	25,500	$ 20,731.53
	Fall (40 pgs. plus cover)	$ 905.54	$ .9320	25,500	$ 24,670.92
				TOTAL=	$ 122,997.13
YEAR 3	Winter (40 pgs. plus cover)	$950.82	$ .9592	25,500	$ 25,411.05
	Spring (40 pgs. plus cover)	$950.82	$ .9592	25,500	$ 25,411.05
	Summer (44 pgs. plus cover)	$950.82	$ 1.074	25,500	$ 29,100.43
	Summer Camp Pocket Brochure (44 pgs. plus cover)	$950.82	$.8001	25,500	$ 21,353.48
	Fall (40 pgs. plus cover)	$950.82	$ .9592	25,500	$ 25,411.05
				TOTAL=	$ 126,687.06
YEAR 4 (Option)	Winter (40 pgs. plus cover)	$ 1,045.90	$1.0053	25,500	$ 26,681.60
	Spring (40 pgs. plus cover)	$ 1,045.90	$ 1.0053	25,500	$ 26,681.60
	Summer (44 pgs. plus cover)	$ 1,045.90	$ 1.1572	25,500	$ 30,055.45
	Summer Camp Pocket Brochure (44 pgs. plus cover)	$1,045.90	$ .8382	25,500	$ 22,421.15
	Fall (40 pgs. plus cover)	$ 1,045.90	$ 1.0053	25,500	$26,681.60
				TOTAL=	$ 133,021.40

YEAR 5 (Option)	Winter (40 pgs. plus cover)	$ 1,150.49	$1.0535	25,500	$ 28,015.68
	Spring (40 pgs. plus cover)	$ 1,150.49	$ 1.0535	25,500	$ 28,015.68
	Summer (44 pgs. plus cover)	$ 1,150.49	$ 1.213	25,500	$ 32,083.22
	Summer Camp Pocket Brochure (44 pgs. plus cover)	$ 1,150.49	$ .8781	25,500	$ 23,542.21
	Fall (40 pgs. plus cover)	$ 1,150.49	$ 1.0535	25,500	$ 28,015.68
				TOTAL=	$ 139,672.47

City of Aliso Viejo
AGENDA ITEM

DATE: October 19, 2022

TO: Mayor and City Council

FROM: So Kim, Director of Community Development

SUBJECT: AGREEMENT WITH AMBER GREGG PLANNING + ENTITLEMENTS FOR THE 2021-2029 HOUSING ELEMENT

Recommended Actions:

1. Approve an agreement in the amount of $105,000 to Amber Gregg Planning + Entitlements for the 2021-2029 Housing Element; and

2. Authorize the City Manager to execute the agreement with Amber Gregg Planning + Entitlements for the 2021-2029 Housing Element.

Fiscal Impact:

The cost for the services provided under the agreement is not to exceed $105,000. Funds for this project are available in the adopted FY 2022-23 budget.

Background:

On March 18, 2020, the City Council approved an agreement with JHD Planning LLC ("JHD") to prepare the 2021-2029 Housing Element ("HE") and related CEQA documentation. Staff worked with JHD and prepared the HE for City Council's consideration.

On January 19, 2022, the City Council adopted the 2021-2029 Housing Element, which was subsequently submitted to the Department of Housing and Community Development ("HCD") for certification. On April 1, 2022, HCD sent a letter to the City notifying that the 2021-2029 Housing Element requires revisions for certification.

Recently, Staff reached out to JHD to prepare the HCD required revisions to the HE. JHD notified Staff that they do not have the capacity to proceed with the work at this time. As a result, Staff publicly advertised a Request for Proposals ("RFP") in August 2022 and received two proposals in response.

Discussion:

In reviewing the two proposals received, Amber Gregg Planning + Entitlements ("AG") demonstrates a better understanding of the project scope and has personnel available with extensive experience in preparing HEs. Staff is recommending that the City Council approve the agreement with AG in the amount of $105,000 to prepare a revised HE for HCD certification. The agreement amount is already budgeted in the adopted FY 2022-23 budget and no additional appropriation is required. Staff expects the actual end cost to be lower as a portion of the revisions will be prepared in-house, in partnership with AG.

Attachment:

1. Agreement

CITY OF ALISO VIEJO
PROFESSIONAL SERVICES AGREEMENT
FOR
2021-2029 HOUSING ELEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this _____ day of _____, 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 Amber Gregg Planning + Entitlements, a corporation, with its principal place of business at 34818 Calle Del Sol, Capistrano Beach, CA 92624 ("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 planning 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 planning 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 2021-2029 Housing Element ("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 planning 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 October 20, 2022 to December 31, 2023, unless earlier terminated as provided herein. 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 Form W-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 Tasks set forth in Exhibit "A" 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: Amber Gregg, Leslea Meyerhoff, Mary P. Wright, and Edith D. Medina Huarita.

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 the Community Development Director, 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 Amber Gregg, 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) 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 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 "A" attached hereto and incorporated herein by reference. The total compensation shall not exceed ONE HUNDRED AND FIVE THOUSAND DOLLARS ($105,000) ("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:

Amber Gregg Planning + Entitlements
34818 Calle Del Sol
Capistrano Beach, CA 92624
Attn: Amber Gregg

City:

City of Aliso Viejo
12 Journey, Suite 100
Aliso Viejo, CA 92656
Attn: Community Development Director

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 [INSERT NAME]

IN WITNESS WHEREOF, the parties have executed this Professional Services Agreement on this ____ day of _____, 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:_____
Ann Eifert
Director of Financial Services

Amber Gregg Planning + Entitlements

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

By:_____

Its:_____

Printed Name:_____

By:_____

Its:_____

Printed Name:_____

EXHIBIT "A"

SCOPE OF SERVICES AND COMPENSATION

AMBER GREGG
PLANNING + ENTITLEMENTS

PROPOSAL & STATEMENT OF QUALIFICATIONS FOR

ON-CALL PLANNING SERVICES

HOUSING SPECIALIST & ASSOCIATED CALIFONIA ENVIROMENTAL QUALITY ACT (CEQA) COMPLIANCE

FOR THE CITY OF ALISO VIEJO

SUBMITTED TO:

CITY OF ALISO VIEJO
ATTN: SO KIM
COMMUNITY DEVELOPMENT DIRECTOR
12 Journey, Suite 100
Aliso Viejo, CA 92656

September 16, 2022

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CITY OF ALISO VIEJO

SUMMARY SHEET

Firm Name: Amber Gregg, Planning & Entitlements

Firm Parent or Ownership: Amber Gregg, Inc

Firm Address: 34818 Calle Del Sol, Capistrano Beach, CA 92624

Firm Telephone Number: (949) 565-5484

Firm Fax Number:

Number of years in existence: 5 years

Management Contact (person responsible for direct contact with the City of Aliso Viejo and auditing services required for this Request for Proposals):

Name: Amber Gregg Title: CEO, Founder

Telephone Number: (949) 565-5484 Fax: N/A

Email: ambergregginc@gmail.com

Project Manager (Person responsible for managing the audit at the client site and preparation of the audit work papers):

Name: Amber Gregg Title: CEO, Founder

Telephone Number: (949)565-5484 Fax: N/A

Email: ambergregginc@gmail.com

Types of services provided by the firm:

Urban Planning Consulting Firm

	Amber Gregg Nicholas	CEO, Founder
Signature	Print Name	Title

This executed form must be submitted with the Proposal.

September 16, 2022

City of Aliso Viejo
Attention: So Kim, Community Development Director
12 Journey, Suite 100
Aliso Viejo, CA 92656

RE: Proposal & Statement of Qualifications for On-Call Planning Services.

Dear Mrs. Kim,

Thank you for the opportunity to provide our Statement of Qualifications (SOQ) to support you and the Planning Division of the City of Aliso Viejo in preparing your housing and California Environmental Quality Act (CEQA) documents, on an on-call basis. This proposal includes the following sections: (1) Personnel, (2) Project Approach, (3) Scope of Work, (4) Experience (5) Aliso Viejo Additional Forms, (6) Cost Proposal, and (6) References.

Amber Gregg, Inc. has a team of housing professionals including key technical staff specializing in demographic evaluation, affirmatively furthering fair housing (AFFH), site inventory analysis, and GIS analytics. In addition, we have a full-service team of environmental professionals, including key technical staff for air quality, greenhouse gas, biology, cultural, noise and traffic studies to support the review and preparation of CEQA documents.

Amber Gregg, Inc. is committed to providing outstanding client service. We welcome the opportunity to work with you and look forward to supporting you and the City of Aliso Viejo with your housing and CEQA compliance services.

Please do not hesitate to contact me at (949) 565-5484 or ambergregginc@gmail.com, if I can answer any questions or provide you with any additional information.

Sincerely,



Amber Gregg, CEO

KEY PERSONNEL

INTRODUCTION TO AMBER GREGG, INC

Amber Gregg, Inc. offers a strong combination of project management skills, housing element development, technical understanding, significant experience working with California cities and other public agencies, expertise with State and Federal regulations, and established working relationships with key regulatory agencies.

We are highly experienced, and dedicated to, assisting public agency clients in all phases of project development including land use and policy planning, environmental report preparation, and regulatory permitting while functioning as an extension of staff. Our clients rely on us for assistance in navigating complex regulations and related challenges because of our responsive nature and the proven results of our team.

Our regulatory expertise in Land Use and Planning, California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA), combined with our responsiveness and strategic advocacy for our client's needs, enables us to effectively navigate complex regulations and provide effective solutions to project challenges.

We are known for our abilities to expedite work as required to meet client needs. We understand time and budget go hand-in-hand and are focused on working effectively and efficiently. We are committed to remaining a small consulting practice leader in the region, and to bringing a highly qualified team of technical professionals to respond to every task assigned by our clients.

We offer expertise in a wide range of professional services highlighted below:

HOUSING REGULATION COMPLIANCE

- Housing Element assessment with compliance with state laws and regulations including:
  - Housing Opportunities and Constraints
  - RHNA impact assessment and compliance
  - Affirmatively Furthering Fair Housing (AFFH) assessment and compliance
  - Development of Housing Plan and Policies

ENVIRONMENTAL IMPACT ASSESSMENT

- CEQA & NEPA impact assessments and compliance

LAND USE PLANNING ENVIRONMENTAL IMPACT ASSESSMENT

- CEQA & NEPA impact assessments and compliance
- Land Use Planning and Development Laws and Regulations
- Project Application Review and Environmental Determinations

Extension of Staff and Project Management Services

- Extension of Staff/Adjunct Staff Services
- Project Management Services
- Local and Regional Permitting Requirements

Amber Gregg, will be the primary point of contact with the City. Ms. Gregg will provide project management and project oversight. As needed, Amber Gregg, Inc will assemble a technical team based on specific technical skill sets and experiences, strong record of accomplishment of professional successes, and demonstrated capabilities within the respective discipline. All of our technical specialists have substantial experience and a strong record of accomplishment of past performance in successfully completing compliance requirements for public and private projects in California. Key personnel will participate in staff meetings, progress review meetings, and other meetings as needed to effectively support the City.

Our commitment to the City will be consistently demonstrated through proactive, direct, and timely communications with the City. Second, we will act as an extension of, and in collaboration with, City Staff and will operate from the perspective of the best interests of the City. Third, we will look for the simplest solutions first and will not "reinvent the wheel" where standard practices, analytical methodologies and mitigation measures can be effectively utilized to get the job done. Fourth, we will keep City goals and objectives as the focus of our work effort. Fifth, we will initiate the contract with a comprehensive approach to obtaining necessary approval to support timely implementation of the project.

For the duration of the contract, we will coordinate with the City on a regular basis either in person or via telephone calls or via email. Key staff will participate in status meetings/calls relevant to individual assignments for each deliverable and will be available for the duration of the project. City Staff will be invited to participate in the weekly coordination of Project activities.

Primary lines of communication will be coordinated through Mr. Gregg directly with the City. For specialized work for which subconsultant support is required, we will serve as the liaison between the City and the subconsultant. If a preference is expressed by the City to have direct communications with our sub-contractors for effectiveness or efficiency, subconsultants will be authorized to communicate directly with designated City Staff. If direct communication occurs in an electronic format, communications will include a copy to Amber Gregg. If communication occurs verbally, sub-contractors will be requested to provide a detailed overview of the nature and scope of the communication and any action item that is a result of the communication. Our integrated approach is designed to ensure effective project management and timely responses to all City data requests.

The Amber Gregg, Inc. Team is comprised of recognized and respected professionals with experience throughout the region. Amber Gregg, Inc. will be supported by the following specialized subconsultants, on an as-needed basis, to supplement City needs for technical peer review services and/or for the preparation of new or supplemental technical studies for project compliance documentation.

- Civic Solutions: Subconsultant for AFFH and Housing resources
- Summit Environmental Group: Subconsultant for CEQA Compliance

Civic Solutions is recognized as a leading Planning firm providing services to over 50 municipalities throughout Southern California. Civic Solutions provides a large range of services including community plans, community outreach, comprehensive project planning services, and staff support. Headquartered in Orange County, their leadership team is comprised of leading planning expertise with extensive experience working with Orange County municipalities.

Summit Environmental Group produces science-based solutions through technical excellence and focused work efforts. They collaborate with clients to attain their key objectives and advocate for their interests. Clients rely on the Summit team to assist in navigating complex environmental regulations and business challenges and to provide technical and management expertise tailored to their projects.

AMBER GREGG
PRINCIPAL



Ms. Gregg is a positive and collaborative community development professional with a "work smarter not harder" philosophy dedicated to improving the quality of life of communities, with a focus on exceptional customer service. Ms. Gregg is a coastal municipal land use and environmental planner with 20 years of professional experience. Working her way up the professional levels to Planning Manager, Ms. Gregg understands the challenges and opportunities local public agencies encounter and how to address them. Ms. Gregg has strong current and long-range planning skills with poised community outreach and presentation skills.

Extensive experience in complex planning regulation documents including General Plan updates, housing element updates, LCP processing, specific plan development/amendments, and legislative updates for consistency with State and Federal requirements. In addition to specializing in coastal communities, Ms. Gregg has extensive experience in Affordable Housing/CDBG, Historic Preservation, Economic Development, Entitlement Processing, and CEQA.

Recognized as a housing expert in the industry, Amber Gregg has assisted multiple agencies with their housing element updates including City of San Clemente, City of Glendora, City of Rolling Hills Estates, and City of Bell Gardens. In addition, Ms. Gregg has served as a housing expert for a number of agencies for their community outreach efforts and public hearing meetings.

Education

- B.S. Business Administration & Minor in Communication, CSU San Marcos
- Certificate in Land Use and Environmental Planning, UC Riverside
- Continued education on legislative updates, planning trends, & best practices

Professional Experience

- Amber Gregg, Inc Planning and Entitlements, Founder and Principal
- City of San Clemente, City Planner (Planning Manager)
- City of San Clemente, Associate/Senior Planner
- City of Fontana, Assistant Planner

Certifications / Affiliations / Awards

- Member of : APA, AEP, Urban Land Institute, League of Women in Government, and California Preservation Foundation
- California APA 2022 Conference Co-Chair
- California APA, State Legislative Review Team 2018-present
- Orange County APA Board Member – Legislative CO-Chair 2018-present
- Orange County Leadership Tomorrow Board Member
- PierPride Foundation Board Member

Leslea Meyerhoff, M.A., AICP
Principal & Senior Project Manager, CEQA



Ms. Meyerhoff is a certified land use and environmental planner with 20+ years of professional experience as a planning practitioner representing a variety of public agencies throughout California. Ms. Meyerhoff has managed the development of local coastal programs, primary infrastructure projects including water supply projects, power stations, and shoreline management and beach restoration projects. Ms. Meyerhoff has experience working with cities and special districts and has served as the Project Manager for numerous complex projects. She has spent the majority of her career as a land use planning consultant and early on worked as a legislative aide for state and local officials on land use and environmental policy development. Ms. Meyerhoff places special emphasis on a commitment to consistently providing the highest levels of client service and functioning as an extension of public agency staff.

Education

- M.A. Environmental Analysis & Policy. UCLA
- B.A. Government and Environmental Studies. CSU, Sacramento

Professional Experience

- Summit Environmental Group, Inc. Founder and Principal
- Harvey Meyerhoff Consulting Group, Inc. Principal and Senior Project Planner
- Greystone Environmental Consultants, Southern California Regional Manager
- Hofman Planning Associates, Senior Project Manager
- Michael Brandman Associates, Project Manager
- Los Angeles City Council - Legislative Aide
- California State Assembly - Legislative Aide

Certifications / Affiliations / Awards

- American Institute of Certified Planners: AICP certification obtained in 1993
- American Planning Association, San Diego Section Director Pro-Tem 2001-2003
- American Planning Association, San Diego Section Legislative Chair 2003-2005
- American Shore & Beach Preservation Association, Director, 2012-2014
- California Coastal Coalition, Friend of the Coast Award, 2013
- California Chapter, APA Legislative Review Team 2004-2006
- California Chapter, APA, State Water Plan Review Team 2008



Mary P. Wright
Principal Planner

Ms. Wright is a planning professional with over 30 years of planning and environmental experience in Southern California. As Vice President of Civic Solutions, she helps manage the company with an emphasis on maintaining the highest professional standards. She is also a working principal, responsible for managing complex projects and performing high-level urban planning consulting services for the company's clients. Ms. Wright manages the preparation of general plans, housing elements, zoning ordinances, and special studies. She is adept at formulating work plans that meet the scope and budget parameters of the jurisdiction and creating visionary plans that are tailored to local issues and needs. Ms. Wright served as the project manager for the Jurupa Valley General Plan, that young city's first general plan since incorporation in 2011, and was acknowledged for creating a comprehensive plan that truly reflects community goals and aspirations. Ms. Wright is a skilled facilitator and knows how to engage diverse community members in meaningful discussions on the future of their area.

Key projects include:

- City of Buellton, 6th Cycle Housing Element, Buellton, California
- City of Jurupa Valley 6th Cycle Housing Element, Jurupa Valley, California
- Jurupa Valley 2017 General Plan, Jurupa Valley, California
- Inglewood Environmental Justice Element, Inglewood, California
- Downey Biomedical Overlay Zone, Downey, California
- City of Malibu Planning Services, Malibu, California
- City of Lake Forest Planning Services, Lake Forest, California
- City of Oceanside Planning Services, Oceanside, California
- City of Huntington Beach Community Development Department Organizational Assessment, Huntington Beach, California
- City of Carlsbad Planning Services, Carlsbad, California
- City of Fountain Valley Planning and Building Department Organizational Assessment, Fountain Valley, California
- City of La Habra Heights Planning Services, La Habra Heights, California
- South Glendale Community Plan Land Use Analysis, Glendale, California
- Barrio Logan Community Plan, San Diego California
- Otay Mesa Community Plan*, San Diego California
- North Park Community Plan, San Diego, California
- Uptown Community Plan, San Diego, California
- Golden Hill Community Plan, San Diego, California
- Mid-City Transit Interchanges Project, San Diego, California
- Mid-City Communities Plan, San Diego, California
- Central Urbanizing Planned District Ordinance, San Diego, California

*Denotes award-winning project

Expertise

- Leadership
- Project Management
- Quality Control
- General Plans
- Zoning Ordinances
- Policy Planning
- Development Review
- Strategic Land Use Planning
- Organizational Effectiveness
- Entitlements
- Public Facilitation

Education

Master of City Planning, with Distinction, San Diego State University, San Diego, California

Bachelor of Arts, Geography, San Diego State University, San Diego, California

Professional Experience

City of San Diego Planning Department, San Diego, California, 1986-2012; Deputy Director, 2007-2012

Edith D. Medina Huarita, MPP, Ph.D.



Expertise

- Housing Policy
- Land Use Planning
- Entitlement Processing
- Research and Analysis
- Zoning Review
- Project Design Review
- Project Management
- Advance Planning
- Public Presentations
- Developing Surveys
- Data Analysis

Education

PhD, Urban and Environmental Planning and Policy, University of California, Irvine, CA

Master in Public Policy, University of California, Los Angeles, CA

Bachelor of Arts, Conflict Studies Major, DePauw University, Greencastle, IN

Affiliations

American Planning Association, California Chapter

Urban Affairs Association

Association of Collegiate Schools of Planning

Technical Skills

R and STATA

ATLAS.ti

ESRI ArcMap

Qualtrics

Canva

Dr. Medina is a highly motivated, results-driven professional with a successful track record as a policy and urban planning researcher with special emphasis in housing policy, landlord-tenant relations, immigrant communities, poverty and inequality. She is bilingual in English and Spanish.

Civic Solutions, Inc., Associate Planner, 2021 to Present

Dr. Medina provides housing policy, and planning research and analysis services to public agency clients. She is responsible for performing complex research and analysis on existing housing legislation, develops surveys to solicit public input from agencies and stakeholders, and analyzes data to assess and determine housing streamlining needs and useful tools to aid in the implementation of recent housing legislative changes. She prepared educational materials, templates, handouts, applications, and resources on adminstrative streamlining, housing policies, laws, and legislative updates. She is also responsible for performing complex research and analysis regarding land use, housing policy development, and legal requirements. Conducts analysis on housing, economic, population trends, and conducts AFFH analysis for housing elements and RHNA plans. She also serves as an adjunct staff and prepares and makes presentations to planning commissions, and other public bodies.

University of California, Irvine, Research Fellow, Fall 2020 to Fall 2021

Dr. Medina assisted in an "Adminigration" research project. She reviewed literature to remain current with new procedures, determined the best methods of data collection, and performed qualitative data analysis.

University of California, Irvine, Research Assistant, Summer 2020

Dr. Medina reviewed and provided summaries on literature and research available related to the recent legistative changes to the 6th Cycle Housing Element and implementation challenges for local agencies.

City of Pico Rivera, Consultant, Winter 2019/2020 to Fall 2020

Dr. Medina conducted research and analysis regarding homelessness prevention in the City and delivered project requirements and solutions, designed survey instruments for data, and conducted focus group meetings.

Various Employers, Legal Research Assistant, 2009 to 2014

Served as a legal researcher for various employers regarding eviction and mass/class action cases against slumlords. Drafted motions, briefs, and other correspondence. Performed legal research and developed jury presentations, and exhibits.

Various Educational Institutions, Faculty/Instructor/Lecturer, Fall 2015 to Present

Performs instructional and supportive functions in the fields of planning, public policy, public administration, and Latinx studies. Institutions include the University of California, Irvine, California State University, Long Beach, Occidental College, and California State Polytechnic University, Pomona.

UNDERSTANDING APPROACH AND METHODOLOGY

The City of Aliso Viejo, Community Development Department, is currently processing an update to their Housing Element for the 6th planning cycle. The City is seeking to supplement its in-house planning staff with additional Housing and CEQA technical support staff on an on-call or as-needed basis for Housing Element and CEQA compliance services. The additional support will enable the City to obtain Housing Element certification and meet CEQA compliance needs.

The Request for Proposals from Aliso Viejo is for Housing Specialist and CEQA services. For the purposes of this proposal Amber Gregg, Inc. is submitting for Housing Specialist and CEQA compliance for the Housing Element only. It is not our intent to submit for general on-call CEQA services.

Specific tasks that we are able to assist with are listed below:

- Conduct preliminary review of the adopted 6th cycle Housing Element
- Conduct research and prepare all statutory requirements of the Housing Element including:
    - Community Profile
    - Housing Constraints
    - Housing Opportunity Resources
    - Housing Plan
    - Review of previous Housing Element (2013-2021)
- Organize and facilitate community outreach events
- Provide various GIS services and graphics
- Advise and assist staff with questions related to the projects
- Complete all CEQA documents and analysis
- Prepare Staff Reports, Resolutions, and Powerpoint Presentations
- Prepare and file all documents with HCD on the City's behalf

For preparation of all compliance documents, Principal and Senior Project Manager Amber Gregg, will be the task manager and primary point of contact with the City. Ms. Gregg will oversee and coordinate all project tasks required for this compliance effort, including project team and subconsultant coordination (if required), internal schedule and budget tracking, and quality assurance/quality control for final documents.

A kickoff meeting (or teleconference) will be held for each new project. The purpose of this meeting will be to get a full understanding of the project, schedule goals, status update of any/all technical reports and background on key issues for the project. Our deliverable schedule will be discussed and agreed to at the start of each project. We will initiate work on each project following the kickoff meeting and receipt of project-related materials and technical reports provided by the City.

PROJECT COORDINATION

Ms. Gregg will attend project kickoff meetings, site visits, and project coordination meetings. Other technical staff or subconsultants will attend meetings on an as-needed basis. Ms. Gregg will remain available throughout the project to support City Staff and answer questions related to applicable projects. This task will include general project coordination via email, phone calls, and conference calls, as needed. During our initial coordination meeting, we will establish communication protocols and preferred methods of communication with City Staff, as well as review the proposed project schedule and any available project technical information available to our team.

Amber Gregg, Inc's completion schedule for each project will be developed in coordination with the City at the start of each project and will reflect City goals, preferences and priorities. Potential variables that are anticipated to affect the schedule will include the size, nature and complexity of the project, the number of required technical studies prepared, need for additional data, coordination with applicant (if required) or changes to the project description.

PREPARATION OF PUBLIC NOTICES

If desired by the City, Amber Gregg, Inc. will work with the City to compile a list of agencies, organizations, and individuals that will receive copies of all notices and/or draft and final documents. If desired by the City, we will also prepare related public meeting/hearing notices that are required during the project's CEQA review process.

PREPARATION OF THE ADMINISTRATIVE DRAFT DOCUMENTS

Amber Gregg will prepare two screencheck draft (one administrative draft and one screencheck draft) submittals of prepared reports. Drafts will be submitted to the City according to the schedule mutually agreed upon at the start of each project and will allow for adequate internal review periods. A second final draft will be provided to the City, which will incorporate all of the City's requested changes in redline/strikeout format.

A key first task for each individual project will be to review the project description and all available technical studies prepared under the direction of the City. We will identify any data gaps or other deficiencies or needed technical reports beyond those identified or provided, and if necessary, work with the City to prepare the additional studies or request that these studies be prepared. We will draft all housing documents to be consistent with the current State regulations and the City's preparation format and guidelines.

Our internal review draft submittals will be transmitted electronically to the City or uploaded to our sharefile site if there are file size constraints to sending the files electronically. We can also accommodate the City with hard copies if desired.

PREPARATION OF FINAL DOCUMENTS

We will finalize documents in coordination with City Staff. If desired, we will assist the City in preparing a PowerPoint presentation for the public hearing and will participate in the public hearing when the City considers approving the revised Housing Element. Ms. Gregg will remain available throughout the project to support City Staff and answer questions on the process on an as-needed basis.

QUALITY ASSURANCE AND QUALITY CONTROL

Amber Gregg, Inc. believes that a successful Quality Assurance and Quality Control (QA/QC) Program involves support from the entire project team. The QA/QC Program will be managed and led by Ms. Gregg and will be coordinated with each team member for each task throughout the contract. All subconsultant work will be thoroughly reviewed and edited prior to submittal to the City.

Our team integrates a peer review process that ensures high-level quality control for all documentation and client deliverables. Our formal QA/QC process includes four major elements, with senior level review for:

1. Conformance to contract scope of work specifications;
2. Technical accuracy;
3. Legal adequacy for meeting requirements of CEQA and related environmental regulatory requirements; and
4. Proofreading for spelling, composition, readability, and presentation.

SCOPE OF WORK

Working collaboratively with staff, the following is the approach Amber Gregg, Inc. recommends to achieving a certified housing element:

- Conduct preliminary review of the draft Housing Element and identify all sections that need additional analysis to address HCD comments.
- Coordinate meeting with City staff to review efforts undertaken since receipt of the HCD letter dated April 1, 2022.
- Categorize sections into minor edits, major edits and potential rewrites, additional technical analytics needed, and HCD guidance.
- Coordinate meeting with HCD staff to review approach and obtain additional information and clarification on identified topics, as well as discuss HCD review times for pending resubmittal.
- Conduct RHNA analysis based on current proposed densities and opportunity sites to enable RHNA goals to be achieved for the 6th cycle. This includes a density buffer to meet no net loss requirements. Pending results of the analysis up zoning or rezoning of parcels maybe necessary to meet requirements.
- Review current AFFH information included in the draft Housing Element and provided additional analysis and document as needed to comply with AFFH requirements.
- Work with staff to identify if additional public workshops or informational need to be completed to meet public participation requirements for the Housing Element.
- Prepare revised draft Housing Element for staff review.
- Schedule follow up meeting with HCD prior to submittal to review modifications and approach to HCD Comments.
- Determine necessary CEQA document and complete CEQA requirements.
- Coordinate with staff to determine it the revised draft Housing Element is required to be amended prior to resubmittal to HCD.
- Submit final draft document to HCD for review and certification.
- Schedule meeting with HCD staff prior to completion of their review period to answer any questions or concerns.

Following resubmittal, HCD has the ability to provide additional comments on the draft Housing Element, or certify the document. The HCD letter dated April 1, 2022, was quite extensive and requested a potentially significant amount of new information to meet statutory requirements. Amber Gregg, Inc. will work hard to address all comments identified in the HCD letter to obtain certification. However, it should be noted that due to the additional information that will be provided to HCD to address their concerns and meet statutory requirements, HCD may have comments on the new information contained in the resubmitted document. If this should happen Amber Gregg, Inc will review the edits and work with staff to address any comments expeditiously.

EXPERIENCE

When taking on the endeavor of developing a compliant Housing Element experience is key. Amber Gregg, Inc. has had the pleasure of working with the following agencies to provide housing services:

City of Rolling Hills Estates, 2020-Present
Jeannie Naughton, Planning Manager, (310)377-1577x115
Services include: Drafting Housing Element for the 6th Cycle, attended associated public hearings and workshops.

City of Glendora, 2020-Present
Jeff Kugel, Community Development Director, (626) 914-8215
Services include: Drafting Housing Element for the 6th Cycle, attended associated public hearings and workshops.

City of Bell Gardens, 2020-Present
Veronica Tam, (626) 304-0440x1
Services include: Drafting Housing Element for the 6th Cycle, attended associated public hearings and workshops.

Veronica Tam and Associates, 2020-Present
Veronica Tam, (626) 304-0440x1
Provided Subconsultant Services, drafted multiple housing elements for various cities in CA, and served as a housing expert on multiple informational workshops and meetings.

City of Laguna Niguel, 2021-Present
Jonathan Orduna, Community Development Director (949)362-4315
Drafted ADU zoning amendment, attended associated public hearings. Developed an ADU handbook and subsequent guidelines document including floor plans and corresponding CAD files for public use.

City of San Clemente , 2006-2018
Cecilia Gallardo-Daily, Community Development Director, (949)361-6100
Services include, development and project management of the 4th and 5th Cycle Housing Elements, public workshops, drafting of staff report and resolutions, and attended associated public hearings.

SERVICE RATE SCHEDULE

The City may decide to work collaboratively with staff on an hourly bases as opposed to a task bases. The requested services may need various levels of planning professionals. Below is our current service rate schedule. Invoices will be submitted monthly, and the invoice will include a detailed accounting of staff time. Amber Gregg, Inc. is a fully insured corporation and can provide proof of all required insurance at the time of contract approval. As an independent contractor we comply with all federal, state, and local regulations and can provide documentation of compliance with state law AB 5 upon request.

2022 Service Rate Schedule

Principal	$200
Senior Project Manager	$190
Principal Planner	$175
Environmental Scientist	$150
Senior Planner	$150
GIS Specialist	$125
Associate Planner	$110
Assistant Planner	$95
Production Staff / Clerical;	$65

Direct expenses, including subconsultants billed at cost.

The following is a cost estimate broken down by task and anticipated time to complete:

Task	Hours
Review existing housing element and corresponding HCD letter	15
Prepare for and attend kick off meeting with staff	5
Prepared review matrix Categorize sections into minor edits, major edits and potential rewrites, additional technical analytics needed, and HCD guidance.	40
Coordinate meeting with HCD staff to review approach and obtain additional information and clarification on identified topics, as well as discuss HCD review times for pending resubmittal.	5
Conduct RHNA analysis based on current proposed densities and opportunity sites to enable RHNA goals to be achieved for the 6th cycle. This includes additional hours for various zone change configurations.	120
Review current AFFH information included in the draft Housing Element and provided additional analysis and document as needed to comply with AFFH requirements.	120
Work with staff to identify if additional public workshops or informational need to be completed to meet public participation requirements for the Housing Element. -If required time to attend an prepare (assumed two workshops)	35
Incorporate an revisions and prepare revised draft Housing Element for staff review.	160
Schedule follow up meeting with HCD prior to submittal to review modifications and approach to HCD Comments	5
Determine necessary CEQA document and complete CEQA requirements. -This will depend on the CEQA level of review needed. Assumption is currently based on Exemption based on adopted condition	20
Submit final draft document to HCD for review and certification.	10
Schedule meeting with HCD staff prior to completion of their review period to answer any questions or concerns.	5
-Additional edits from HCD	
TOTAL HOURS	**525**

Based on the above the total hours anticipated are 525 staff hours. Based on the previous rate schedule the anticipated estimated cost is $105,000 to complete the certified Housing Element.

REFERENCES

Please feel free to contact the following professionals listed below who can attest to Amber Gregg's strong work ethic, professional capabilities, current and past performance, and high level of integrity.

Ms. Pamela Passow
Deputy Director, OC Parks
(562) 904-7238

Ms. Cecilia Gallardo-Daly
Director of Community Development, City of San Clemente
(949) 361-6106

Mr. Brent Panas
Chief Departmental Operations - Code Compliance, County of San Diego
(858) 495-5352

Mr. Jonathan Orduna
Director of Community Development, City of Laguna Niguel
(949) 362-4357

Ms. Brenda Wisneski
Development Services Director, City of Dana Point
(949) 248-3560

Ms. Veronica Tam
Veronica Tam and Associates
(626) 304-0440

Ms. Mary Vondrak
Senior Management Analyst, City of Laguna Beach
(949) 497-0378

City of Aliso Viejo
AGENDA ITEM

DATE: October 19, 2022

TO: Mayor and City Council

FROM: So Kim, Director of Community Development

SUBJECT: AGREEMENT WITH DE NOVO PLANNING GROUP FOR ON-CALL CEQA SERVICES

Recommended Action:

1. Approve an agreement in the amount not to exceed $150,000 to De Novo Planning Group for on-call California Environmental Quality Act ("CEQA") services; and

2. Authorize the City Manager to execute the agreement with De Novo Planning Group for on-call CEQA services.

Fiscal Impact:

The cost for the services provided under the agreement is not to exceed $150,000. The cost is primarily offset by the entitlement projects with deposit accounts from which the City is reimbursed.

Background:

The Community Development Department ("CDD") does not have in-house resources to prepare and/or peer review CEQA compliant environmental documents for projects. There are currently several projects in the pipeline that will require environmental review and CDD needs a specialized consultant available to help with this effort. For that reason, on August 31, 2022, Staff publicly advertised a Request for Proposals ("RFP") and received three proposals in response.

Discussion:

After reviewing the three proposals, Staff selected the most qualified firm and is requesting that the City Council authorize the City Manager to enter into a Professional Services Agreement (Attachment 1) with De Novo Planning Group ("Consultant"). Staff recommends that the City Council approve a three-year agreement with the Consultant in the amount not to exceed $150,000 for on-call CEQA services.

Attachment:

1. Professional Services Agreement with De Novo Planning Group

CITY OF ALISO VIEJO
PROFESSIONAL SERVICES AGREEMENT
FOR
ON-CALL CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) SERVICES

1. PARTIES AND DATE.

This Agreement is made and entered into this _____ day of _____, 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 **DE NOVO PLANNING GROUP**, **A CALIFORNIA S-CORPORATION**, with its principal place of business at: **180 E. MAIN STREET, SUITE 108, TUSTIN, CA 92780** ("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 **ON-CALL CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA") SERVICES** required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing professional **ON-CALL CEQA 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 **ON-CALL CEQA SERVICES** 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 **ON-CALL CEQA 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 **OCTOBER 5, 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 one-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 is **STARLA BARKER**.

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 **COMMUNITY DEVELOPMENT DIRECTOR**, 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 **STARLA BARKER**, 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 reemployed 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) 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 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 FIFTY THOUSAND DOLLARS** (**$150,000**) ("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; provided, however, that if funds deposited with City by an applicable **PROJECT APPLICANT** are insufficient to pay such monthly statement, payment to Consultant shall not be made until such time as funds have been deposited with City by an applicable **PROJECT APPLICANT** to pay Consultant's monthly statement.

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:

DE NOVO PLANNING GROUP
180 E. MAIN STREET, SUITE 108
TUSTIN, CA 92780
ATTN: STARLA BARKER

City:

City of Aliso Viejo
12 Journey, Suite 100
Aliso Viejo, CA 92656
Attn: **COMMUNITY DEVELOPMENT 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 workdays. 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 DE NOVO PLANNING GROUP

IN WITNESS WHEREOF, the parties have executed this Professional Services Agreement on this ____ day of _____, 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:_____
Ann Eifert
Director of Financial Services

DE NOVO PLANNING GROUP

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

By:_____

Its:_____

Printed Name:_____

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:

_____

_____

_____

_____

_____

_____

_____

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.

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.

Name of Business	Print Name
Signature	
Date	

EXHIBIT "A"

SCOPE OF SERVICES

E. SCOPE OF WORK

The De Novo team has provided environmental documentation and technical studies for a diverse range of development projects, as well as regulatory/policy documents, such as General Plans and zoning ordinances. We are proud of our history of working with local agencies on an on-call basis. We will work with the City to prepare a detailed and accurate scope of work tailored for the project being proposed at that time. Our scope of work will identify the specific tasks the De Novo team will undertake from project initiation to project closeout. The work program, including technical studies and level of analysis, will vary depending upon a project's location and characteristics. All technical studies and environmental documents will be completed in accordance with the adopted CEQA Guidelines and NEPA requirements.

Typical on-call contracts follow a standard protocol to assess project requirements, including but not necessarily limited to project initiation/kick-off; data review and research; project description; and technical studies and environmental analysis. Working with the City as an extension of staff, De Novo will be responsible for preparation of draft and final environmental documents, including all supporting documentation such as the Notice of Preparation, Initial Study, Notice of Intent to Adopt, Notice of Availability, Response to Comments, Findings and Facts, Statement of Overriding Considerations, Mitigation Monitoring and Reporting Program, and Notice of Determination. We will circulate environmental documents for public review and participate in community meetings and public hearings, as needed.

Deliverables are anticipated to include electronic Word and PDF files for each Administrative Draft and Review Draft document. Electronic copies of the kick-off meeting agenda and minutes, draft project description, schedule, and required notices will also be provided. We will coordinate with the City on any needed hard copies. De Novo will be responsible for submitting the Public Review Draft documents and notices to the State Clearinghouse through the CEQA Submit portal and filing CEQA notices with the County.

De Novo's project management team has a long history of working with local agencies on an on-call basis. Our staff can mobilize quickly and efficiently, meeting project schedules while ensuring our environmental documents are accurate, legally defensible, and cost-effective. We understand the environmental review may be in the form of a variety of documents. We have provided the following conceptual work programs for preparation of an Environmental Impact Report, Initial Study/Mitigated Negative Declaration, Environmental Assessment, and Third Party Peer Review Services. Regardless of the environmental compliance document needed, the De Novo team will serve as an extension of City staff in all aspects of the environmental review process. The De Novo team also has experience and capabilities in providing paleontological monitoring, assistance in preparing grant applications for CEQA studies, and attending meetings and providing in-house trainings on CEQA.

Technical studies can be prepared as stand-alone studies, but often are prepared to support an environmental document, including, but not limited to, an Initial Study, Negative Declaration, Mitigated Negative Declaration, Environmental Assessment, Environmental Impact Report (Project, Program, Supplemental, Addendum, etc.) or Environmental Impact Statement. The De Novo team has the experience and capacity to prepare the technical studies and analysis typically required for any project. The approach to preparation of technical studies and environmental review documents is described below.

CONCEPTUAL WORK PROGRAM

Conceptual Work Program – Environmental Impact Report

The following is a typical scope of work for preparation of an Environmental Impact Report. All technical studies and environmental documents will be completed by the De Novo team in accordance with the adopted CEQA Guidelines. The work program, including necessary technical studies and level of analysis, will vary depending upon a project's location and characteristics. Upon receipt of future RFPs from the City, we will provide a project-specific scope of work tailored for the project being proposed at that time.

1.0 PROJECT SCOPING

1.1 PROJECT KICK-OFF MEETING

The work program will be initiated with a kickoff meeting with City representatives and the Applicant team (if appropriate) to discuss the project features in greater detail. This initial meeting will be a key milestone to confirm the parameters of the analysis, project construction program, buildout conditions, scheduling, and overall communications. Prior to the kickoff meeting, De Novo will distribute an agenda and detailed memorandum, which will identify information needs. Upon completion of the kickoff meeting, De Novo will prepare meeting minutes that detail action items for the team.

1.2 CEQA INITIAL STUDY/ASSESSMENT

De Novo will prepare the Initial Study in accordance with the CEQA Guidelines. The Initial Study will include detailed explanations of all checklist determinations and discussions of potential environmental impacts. The analysis will be in accordance with Public Resources Code Section 21080(c) and CEQA Guidelines Section 15063. The impact analysis will be in a consistent order of environmental factors, as presented in the recently updated Appendix G of the CEQA Guidelines.

The Administrative Draft Initial Study will be provided to the City for review. De Novo will revise the Initial Study, providing the City with a Second Administrative Draft Initial Study with revisions in tracked changes for ease of review. De Novo will also prepare the Notice of Preparation (NOP) for review by City staff. Upon acceptance by the City, De Novo will finalize the Initial Study/Notice of Preparation for public distribution.

1.3 SCOPING MEETING

A public scoping meeting is anticipated to occur during the NOP public review period. De Novo will prepare presentation materials and facilitate the meeting. The scoping meeting will include an overview of the project and the environmental review process, as well as identification of environmental issues that will be addressed in the EIR by De Novo. Although the format of the meeting may vary, typically it is a presentation, open house, or hybrid approach. After completion of the scoping meeting, De Novo will provide a summary of environmental issues raised.

2.0 ADMINISTRATIVE DRAFT EIR

2.1 EXECUTIVE SUMMARY

This section will provide a concise description of the project, the potential areas of controversy, issues to be resolved, project alternatives, and a summary of impacts and mitigation measures.

2.2 INTRODUCTION AND PURPOSE

The Introduction will serve as an overview of the EIR, describing its purpose and relevant environmental review procedures, the document organization, and the methodology used.

2.3 PROJECT DESCRIPTION

The Project Description is a critical element of the environmental review and establishes the foundation for the technical analysis. The Project Description will detail the project location and environmental setting, project characteristics (construction and operation), project objectives, phasing, discretionary actions, and required permits and approvals based on available information. Exhibits will identify the regional and local site vicinity. Project plans and details, provided by the Applicant, will also be graphically depicted and referenced. De Novo will submit the Project Description to the City for review and approval prior to initiating technical analysis.

2.4 THRESHOLDS OF SIGNIFICANCE

Within each environmental topic subsection, a comprehensive description of the thresholds of significance for the environmental analysis will be described. The significance threshold criteria will provide the basis for conclusions of significance.

2.5 CUMULATIVE PROJECTS/ANALYSIS

De Novo will analyze the environmental impacts of the project when viewed in combination with other known, approved, or reasonably foreseeable projects in the region, determined in coordination with the City. The cumulative analysis will address each topic covered in the environmental analysis and will identify appropriate mitigation measures, if applicable.

2.6 ENVIRONMENTAL ANALYSIS

The Draft EIR will be prepared consistent with the requirements of CEQA, the CEQA Guidelines, and relevant case law. The Environmental Analysis section will address each environmental topical area determined to have the potential to result in a significant impact. Environmental issues raised during the scoping process (NOP responses, Public Scoping Meeting, and any other relevant and valid informative sources) will also be considered. The Environmental Analysis section will thoroughly discuss the existing conditions for each environmental issue area, identify short-term construction and long-term operational environmental impacts associated with the project, and their associated levels of significance. For each environmental topical area, the impact analysis subsection will begin with a list of all thresholds contained in CEQA Guidelines Appendix G and the thresholds for significance shall be identified for every environmental issue. For each environmental issue requiring analysis, the EIR will state the level of significance, and then provide the analysis discussion, mitigation measures specific to this environmental issue, and level of significance after mitigation.

The environmental factors and typical scope of analysis is provided below. De Novo will tailor the scope of the analysis based upon project-specific characteristics and environmental conditions.

A. Aesthetics

The existing aesthetic environment, including any scenic vistas or scenic resources will be identified. Photographs will be used to illustrate the visual character of a site and surrounding area. The analysis of construction activities will focus on the potential for sensitive uses to be impacted as a result of visible construction activities, including staging areas and construction vehicles. Potential visual impacts to scenic vistas and the potential for a project to result in substantial damage to scenic resources within a state scenic highway will be identified. If a project site is in a non-urbanized area, the potential for the project to substantially degrade the existing visual character or quality of public views of a site and its surroundings will be analyzed. The analysis will consider the proposed land use(s), overall design, including building form, mass, and height, and potential building materials as compared to the surrounding area. If

a site is located within an urbanized area, the potential for a project to conflict with applicable zoning and other regulations, including the City's design guidelines, governing scenic quality will be reviewed and analyzed.

In the event the project warrants preparation of visual simulations, De Novo's in-house urban designers will prepare visual simulations using specific building designs provided to us by the project architect/engineer. The visual simulations would be created using state-of-the-art equipment including GPS georeferencing, ACAD, 3D modeling software, and the Adobe Suite. We will provide visual simulations from public vantage points to be determined in coordination with City staff. The intent of the visual simulations is to provide a photo-realistic representation of what the site would look like under a before and after scenario from each vantage point.

The potential for a project to create a new source of substantial light or glare to the area will also be addressed. The existing environment as it pertains to light and glare will be identified. The analysis will discuss the potential for a project to impact sensitive uses from new light sources such as interior and exterior lighting, security lighting, parking lot lighting, and vehicle headlights associated with the development. Potential building materials and their ability to create glare which could adversely affect daytime views will also be considered.

Depending upon the location and nature of the project, a shade and shadow analysis may be conducted. De Novo can create shadow diagrams overlaid on a base map that show the building footprints of the project and the surrounding buildings. The intent of this work is to illustrate any change in shadow patterns that would be directly attributable to the project, and to visually demonstrate the effect of these shadows on surrounding land uses, particularly any adjacent residential or other sensitive uses.

B. Agriculture and Forestry Resources

Per the California Department of Conservation's Important Farmland Finder, there is no Prime, Unique, or Important Farmland located within the City. Additionally, there are no sites within the City that are zoned for forest land, timberland, or timberland zoned Timberland Production. The analysis in this section would document that agricultural and timber resources do not occur within the City.

C. Air Quality

De Novo will utilize our in-house environmental scientists to prepare an Air Quality analysis for the project. The analysis will be prepared consistent with South Coast Air Quality Management District (SCAQMD) and State and Federal guidelines using the latest version of CalEEMod software. The analysis will include a comparison of the proposed project's construction and operational emissions with SCAQMD's air quality thresholds of significance for criteria pollutants, consistent with SCAQMD's Guidance for Assessing and Mitigating Air Quality Impacts. De Novo will also analyze the potential for health risk and odor impacts on nearby receptors. The section will include the methodology for calculating emissions, an analysis of the proposed project's air quality impacts, a cumulative impact analysis, and a discussion of feasible mitigation measures that should be implemented to reduce impacts on air quality.

An assessment of toxic air contaminates (TAC) impacts (i.e., a Health Risk Assessment [HRA]) may be warranted depending on the potency, toxicity, quantity of emissions, and proximity of TACs to sensitive receptors such as hospitals, daycare centers, schools, work sites, and residences. De Novo's in-house air quality specialists will prepare an HRA, including an exposure assessment and risk calculations. The exposure assessment includes estimating the emission rates of TACs and running an air dispersion model

to calculate the concentration of TACs at each location in the modeling domain. We will calculate the residential (70 year) cancer, workplace cancer, and non-cancer (i.e. acute and chronic) health risks using the HARP Air Dispersion Modeling & Risk Tool (ADMRT). The resulting cancer and non-cancer risks will be plotted on the base map. Both the quantitative and visual results of the analysis will be incorporated into the HRA and summarized.

D. Biological Resources

Depending upon the location and nature of the project site, De Novo's in-house biologists will prepare a biological resources assessment for the project. The California Natural Diversity Database (CNDDB) and California Native Plant Society (CNPS) Electronic Inventory of Rare and Endangered Vascular Plants of California will be used to conduct record searches of sensitive biological resources known to occur on and within the general vicinity of the project site. Additional information sources will be consulted including the California Department of Fish and Wildlife (CDFW), United States Fish and Wildlife Service (USFWS), and historic/current aerial photographs, as appropriate, to define the habitat requirements for sensitive species potentially occurring on-site. Topographic maps, soil surveys, flood maps, hydrology/climate information, and watershed data will also be reviewed.

A site visit will be conducted by qualified biologists in order to document the presence/absence of special-status biological resources, or to determine the potential for occurrence of such resources that may not be detectable when the literature review is conducted. The location of any special-status biological resources (i.e., plants, plant communities, drainage features, wildlife), if present on-site, will be documented. Additionally, the suitability of the vegetation on and surrounding the proposed project site will be surveyed for their ability to provide suitable avian nesting opportunities. Notes will be taken on all plant and wildlife species observed on-site during the survey. This survey will provide an understanding of the overall project setting and biological resources occurring in the area. This data will be used to devise an appropriate clearance/conservation strategy for implementation of the proposed project.

Following completion of background research and field surveys, De Novo would summarize the results of these studies in a Biological Resources Assessment report. The report would identify the existing biological resources, potential project impacts on those resources, and proposed avoidance, minimization, and mitigation measures to minimize impacts. The report would also outline any future biological surveys, protected species consultations, and/or other anticipated regulatory agency requirements to obtain project approvals and/or environmental permits.

E. Cultural Resources

The analysis will address the potential for a project to cause a substantial adverse change in the significance of a historical, archaeological, or paleontological resource (although addressed here, paleontological resources will be discussed in Geology/Soils). Additionally, the potential for a project to disturb human remains will be discussed.

De Novo teams with experts specializing in cultural resources to prepare the technical analysis to support the environmental document. The specific nature of the report and work program will vary depending upon a site's location and conditions. Typical work efforts for assessing archaeological and paleontological resources include the following:

Cultural and Paleontological Resources Records Search. A records search for cultural resources within a 0.5-mile radius of the project area will be conducted A review of all relevant archival records (e.g., historic

maps and aerials) will be conducted, and all site records will be obtained. Local historical societies will be contacted. A Sacred Lands File search from the NAHC will also be requested. Project information letters will be sent to those individuals or entities provided by the NAHC that have not already been contacted through AB 52 consultation. A records search for paleontological resources will be requested and research to develop brief contexts for cultural and paleontological resources will be conducted.

Cultural Resources Survey. A cultural resources specialist will conduct a pedestrian survey of the proposed project site. The cultural resources specialist will inspect the project site for evidence of cultural resources that may be impacted by the proposed project. The survey will be conducted using transects spaced no greater than 10 meters apart with accuracy maintained by a hand-held GPS unit. Photographs will be taken of the project site and adjacent properties.

Cultural and Paleontological Resources Assessment Report. A cultural and paleontological resources assessment report will be prepared. The report will characterize the results of the records searches, consultation efforts to determine baseline conditions, assess potential impacts to cultural and paleontological resources resulting from the project, and make appropriate recommendations to avoid or minimize any potentially significant impacts.

If necessary, a determination of if any properties on a project site qualify as historical resources as defined by CEQA will be prepared. Historical resources in the vicinity of a project site will be identified and described, and the potential direct and indirect impacts the project may have on the identified historical resources will be assessed.

Records Search. A records search will be conducted to determine if the subject properties are currently listed under national, state, or local landmark or historic district programs or previously evaluated as eligible for listing in a historic resources survey of an area. The National Register of Historic Places, California Register of Historic Places, and local register (if applicable) will also be consulted to identify designated and previously surveyed historical resources in the vicinity.

Field Survey. A field survey will be conducted of the vicinity to photograph designated and previously surveyed historical resources. The physical integrity of buildings within the project site will be documented.

Research. General research will be conducted to determine the context(s) in which the subject properties should be evaluated. Property specific research will be conducted to determine the potential significance of the associated individuals such as owners, residents, builders, and architects.

Draft Report. The Historical Resources Technical Report will identify the criteria for determining historic significance and integrity under national, state, and local landmark and historic district programs; provide a brief history and description of each property and buildings; and evaluate each property for listing under national, state, and local landmark and historic district programs according to National Park Service, California Office of Historic Preservation, and local (if applicable) criteria. A summary of the designated and previously surveyed historical resources in the vicinity will be provided and the impact the project may have on the identified historical resources will be analyzed. If the project will have an impact on historical resources, the De Novo team will work with the City/Applicant to modify the project to avoid such an impact. Mitigation measures will be recommended, if necessary.

F. Energy

This section will identify the energy demand associated with the project and identify whether there is a potential environmental impact due to wasteful, inefficient or unnecessary use of energy during project construction or operation. The analysis will also assess the project's consistency with state or local plans for renewable energy or energy efficiency.

G. Geology and Soils

Utilizing existing resources and any previously prepared studies for a project site or surrounding area, the analysis will identify existing regional and local geology and soils constraints (such as compressible soils, landslide hazards, disruptions, displacements, compaction, or over-covering of the soil, and areas subject to subsidence) and seismic hazards. A project will be evaluated for its potential to expose people or structures to potential substantial adverse effects involving fault rupture, strong seismic ground shaking, seismic-related ground failure, and landslides. The potential for a project to destroy a unique paleontological resource will also be discussed.

H. Greenhouse Gas Emissions

De Novo's in-house environmental scientists will prepare a Greenhouse Gas Emissions analysis pursuant to the requirements of Executive Order S-3-05 and The Global Warming Solutions Act of 2006 (AB 32). The analysis will meet all of the requirements of CEQA Guidelines Section 15064.4. The discussion and analysis will include quantification of GHGs generated by the project using the latest version of the CalEEMod computer model as well as a quantitative analysis of the project's consistency with any applicable state and local plans, including all applicable City of Aliso Viejo General Plan policies and the Aliso Viejo Municipal Code. The discussion will provide a quantitative and qualitative analysis of the project's sustainability features. The De Novo team will work with City staff to implement a methodology and mitigation strategy that meets all legal requirements and is consistent with current City policies and preferences.

I. Hazards and Hazardous Materials

The hazardous materials analysis will include a summary of the existing regulatory conditions per the State Cortese Database Listing. Potentially hazardous materials conditions within a project site will be considered based on available resources, including any previous studies. The above referenced research will be used to analyze potential project-related impacts, as they pertain to hazards and hazardous materials per the CEQA thresholds of significance. Potential accidental conditions involving hazardous materials during construction and operations will be identified. If a project site is located within an airport land use plan or within two miles of an airport, the potential for excessive noise conditions will be discussed. Project emergency access and potential exposure to wildland fires will also be considered.

J. Hydrology and Water Quality

Existing and proposed hydrology and water quality data will be reviewed for a project area based upon available reference documents, including available information from the City and Applicant. This section will evaluate water quality conditions and identify water quality (National Pollutant Discharge Elimination System [NPDES]) techniques/structures in accordance with local, State, and Federal requirements. The potential for a project to degrade water quality, interfere with groundwater recharge or expose people to water-related hazards will be identified. The section will also address alteration of drainage conditions, potential for substantial erosion or siltation, potential for flooding, and the ability of a project to result in runoff that exceed the capacity of the storm drain system. The analysis will consider the potential for a

project to conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan, as applicable.

K. Land Use and Planning

A proposed project will be reviewed for consistency with City standards and policies, as well as careful consideration of adjacent uses. Existing and proposed General Plan land use and zoning designations will be identified; any proposed amendments to the land use and zoning for a site will be assessed. A proposed project will be reviewed in the context of land use plans, policies, and regulations adopted for the purpose of avoiding or mitigating an environmental impact. The potential for the project to conflict with these plans, policies or regulations will be assessed.

L. Mineral Resources

According to the State of California, Department of Conservation, the majority of the City is located in Mineral Resource Zone 1 (MRZ-1), which indicates areas where no significant mineral deposits are present or where little likelihood exists for their presence. Portions of the City are also located in Mineral Resource Zone 3 (MRZ-3), which indicates areas containing mineral deposits the significance of which cannot be evaluated from available data. The analysis will document whether the specific site is located within a MRZ and the potential for impacts.

M. Noise

A technical noise analysis is prepared to determine project compliance with City noise standards and associated potential noise impacts based on the following approach:

The site plan, preliminary grading plans, and trip information for the project will be reviewed from an acoustical standpoint. The De Novo team will discuss with the City the potential noise impacts and determine noise measurement locations. Short-term and/or 24-hour noise measurements will be performed to determine the existing noise environment. Utilizing the FHWA Construction noise model and SoundPlan 3D Modeling software, the short-term construction noise and vibration impacts from the project during construction will be determined. The exterior noise impact to the surrounding adjacent properties will be assessed and mitigation measures to alleviate any potential significant noise impact will be identified, if necessary. Utilizing a version of the FHWA Noise Prediction Model the roadway noise impacts for existing and build-out scenarios will be determined and compared to the City's noise standards. This will help determine any change in the roadway noise level as a result of the project. The roadway noise impacts to the project site will be calculated. Potential stationary noise impacts from the project site will also be calculated. If necessary, mitigation measures will be identified to comply with City's limits. The results of the analysis will be summarized in a noise impact study that will address the noise impacts from the project for both short-term and long-term noise impacts.

N. Population and Housing

The analysis will consider the potential for a project to directly or indirectly induce substantial unplanned population growth in the area and the potential to displace a substantial number of people or housing, resulting in the need for replacement housing elsewhere. The section will identify population and housing projections for an area, including the anticipated and planned growth as identified in the City of Aliso Viejo General Plan and regional growth projections.

O. Public Services

Public service departments/agencies will be contacted to confirm existing service conditions and potential project impacts associated with a proposed development. The discussion will focus on the increased demand on services based on the proposed land uses and the potential alteration of existing facilities, extension or expansion of new facilities. The ability of a project to receive adequate service based on applicable standards will be evaluated. If necessary, mitigation measures to reduce impacts associated with providing new or altered facilities will be identified.

P. Recreation

Existing recreation facilities will be identified and the ability for these facilities to serve a proposed project will be assessed. The discussion will focus on the potential for the physical deterioration of existing facilities or potential adverse physical effects associated with the provision of new facilities proposed by the project.

Q. Transportation

With the implementation of Senate Bill (SB) 743, vehicle miles traveled (VMT) will be the required analysis metric to assess the potential for significant transportation impacts associated with proposed projects. The De Novo team will work with the City of Aliso Viejo to determine the scope of the transportation analyses in accordance with the City's adopted VMT Guidelines and other policies and procedures.

The analysis will also address any potential conflicts with the City's programs, plans, ordinances or policies addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities, potential of a project to increase hazards due to a geometric design feature or incompatible use, or result in inadequate emergency access.

R. Tribal Cultural Resources

The De Novo team will provide AB 52 Native American consultation assistance. It is assumed that the City maintains a list of contacts for consultation under AB 52, but the De Novo team may request an AB 52 consultation list from the NAHC on behalf of the City should the City choose to request such a list from the NAHC. The De Novo team will prepare AB 52 letter templates and provide checklists, detailed instructions to ensure meaningful consultation with interested Native American groups in accordance with AB 52. If an assessment of tribal cultural resources is needed, De Novo will involve our cultural resources teaming partner to provide these services; refer to the Cultural Resources discussion above.

S. Utilities and Service Systems

Utility/service system providers will be contacted to confirm existing service conditions and potential project impacts associated with a proposed development. The discussion will focus on the increased demand and/or generation of utilities/service systems based on the proposed land uses and if capacity and supplies are available to support the increased demand and/or generation. The analysis will also consider the potential physical effects associated with the relocation or construction of new or expanded facilities, if applicable.

T. Wildfire

According to Cal Fire, the City is located within and immediately adjacent to a very high fire hazard severity zone within a Local Responsibility Area (LRA) and State Responsibility Area (SRA). The discussion will identify whether a project site is in or near state responsibility areas or lands classified as very high fire hazard severity zones. If located within a wildfire area, the analysis will address factors that could expose

people or structures to fire or post-fire flooding or landslides, risk or impair emergency response, or require infrastructure that could exacerbate fire risk.

2.7 GROWTH INDUCEMENT

This section will discuss ways in which a proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment. The analysis addresses growth-inducing impacts in terms of whether a project influences the rate, location, or amount of growth.

2.8 ALTERNATIVES TO THE PROPOSED ACTION

The EIR will identify a reasonable range of alternatives which could attain most of a project's objectives but would avoid or substantially lessen any of the significant events of a project. The range of alternatives is anticipated to include a No Project Alternative, as required under CEQA, and additional alternatives focused on reducing the potential environmental impacts. The alternatives analysis will compare the environmental impacts for each alternative for the environmental topical areas analyzed in the EIR. The advantages and disadvantages of each alternative and the reasons for rejecting or recommending the respective alternative will be discussed; an environmentally superior alternative will be identified. A summary matrix will compare the impacts for each alternative environmental topical area and whether the alternative involves greater, reduced, or equivalent impacts when compared to a project.

2.9 ADDITIONAL SECTIONS

Additional EIR sections to meet CEQA and City requirements will be prepared and include the following: Significant Irreversible Environmental Changes That Would Be Involved In the Proposed Action Should It Be Implemented; Effects Found Not To Be Significant; Inventory of Unavoidable Adverse Impacts; and Organizations and Persons Consulted/Bibliography will be provided.

2.10 GRAPHIC EXHIBITS

The EIR will include exhibits to enhance the written text and clarify a proposed project's environmental impacts.

2.11 MITIGATION MONITORING AND REPORTING PROGRAM

A Mitigation Monitoring and Reporting Program (MMRP) will be prepared to identify appropriate monitoring steps/procedures and provide a basis for monitoring such measures during and upon project implementation. The Checklist will identify the mitigation measure outlined in the EIR, the Mitigation Measure/Condition of Approval, the Monitoring Milestone (what agency/department is responsible for verifying implementation of the measure), Method of Verification (documentation, field checks, etc.), and a verification section.

2.12 ADMINISTRATIVE DRAFT EIR SUBMITTAL

The previous tasks will result in the Administrative Draft EIR, which will be provided to City staff for review and comment.

3.0 DRAFT ENVIRONMENTAL IMPACT REPORT

3.1 SECOND ADMINISTRATIVE DRAFT EIR

De Novo will respond to one complete set of comments from City staff on the Administrative Draft EIR. The Second Administrative Draft EIR will be provided to City staff with all revisions made in track changes to assist in review of the document.

3.2 COMPLETION OF THE DRAFT EIR

De Novo will respond to a second review of the Administrative Draft EIR. Upon approval, De Novo will prepare the Draft EIR for the required 45-day public review period. In addition, the Notice of Completion (NOC) and Notice of Availability (NOA) will be prepared for submittal to the State Clearinghouse and the County Clerk, and for distribution to the City-approved distribution list. De Novo will file the notices with the State Clearinghouse and County Clerk.

4.0 FINAL ENVIRONMENTAL IMPACT REPORT

4.1 RESPONSE TO COMMENTS

At the conclusion of the Draft EIR public review period, the De Novo team will respond to written comments received by the City, as well as oral comments received during community meetings and public hearings. The Draft Responses to Comments will be prepared for review by City staff. De Novo will address one complete set of comments from City staff on the Draft Responses to Comments and will provide the revisions in track changes for ease of review. De Novo will respond to a second set of comments and finalize this section for inclusion in the Final EIR.

4.2 FINAL EIR COMPLETION

The Final EIR will consist of the Draft EIR and Response to Comments. Any revisions to the Draft EIR will be shown as an excerpt demarcated with underline for new text and strikethrough for deleted text.

4.3 FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS

CEQA Findings of Fact/Statement of Overriding Considerations (Findings) will be prepared that identify each potentially significant and significant impact, describe mitigation for the impact, and the resultant level of significance after mitigation. The Findings will identify each alternative and, if the alternative was not selected as the proposed project, identify why the alternative was not feasible and considerations for not selecting the alternative. For each significant and unavoidable impact, the Findings will identify economic, legal, social, technical, or other defensible reasons why the project should be approved in light of the significant effects of the project. De Novo will submit the Draft Findings for City review and will respond to one complete set of City comments.

4.4 NOTICE OF DETERMINATION

De Novo will prepare and file a Notice of Determination (NOD) with the County Clerk and State Clearinghouse within five days of EIR certification.

5.0 PROJECT MANAGEMENT AND MEETINGS

5.1 PROJECT MANAGEMENT

Ms. Barker will direct preparation of and review the environmental document for compliance with CEQA requirements and guidelines and City CEQA procedures. Ms. Barker will coordinate with City staff and/or other stakeholder representatives as well as internal technical staff, support staff and word processing toward the timely completion of the environmental document, serving as an extension of City throughout the duration of the project. In addition to weekly status updates, monthly progress reports will be included with invoices identifying the tasks accomplished, deliverables submitted, anticipated tasks/progress for the next month, and any pending issues. Any modifications/ updates to the project schedule based on progress meetings and activities will also be provided. Monthly invoices will include total contract amount;

all costs (by task) incurred for the period (actual and percentage); all costs (by task) incurred to date (actual and percentage); estimated completion percentage for each task; and accounting by individual working on each task for that billing period.

5.2 MEETINGS AND HEARINGS

Close coordination with City staff is essential. The De Novo Project Manager will participate in progress/project conference calls and/or meetings with City staff, the Applicant, and stakeholder representatives, as necessary to identify issues, assess impacts, and define mitigation. The De Novo team will participate in public hearings and make presentations, as necessary. De Novo Principals, Project Manager, and technical staff, as well as subconsultant team members will be available, as necessary, to provide expert testimony before decision-making bodies, including describing the environmental review process, analysis and findings, and responding to questions.

Conceptual Work Program – Initial Study/Mitigated Negative Declaration

The following is a typical scope of work for preparation of an Initial Study/Mitigated Negative Declaration. As with preparation of an EIR, the work program, including necessary technical studies and level of analysis, will vary depending upon a project's location and characteristics. Typical scopes of work for technical studies have been provided under Conceptual Work Program – Environmental Impact Report, above. Upon receipt of future RFPs from the City, the De Novo team will provide a project-specific scope of work tailored for the project being proposed at that time.

1.0 PROJECT INITIATION

The work program will be initiated with a kickoff meeting with City representatives and the Applicant team (if appropriate) to discuss the project features in greater detail. This initial meeting will be a key milestone to confirm the parameters of the analysis, project construction program, buildout conditions, scheduling, and overall communications. Prior to the kickoff meeting, De Novo will distribute an agenda and detailed memorandum, which will identify information needs. Upon completion of the kickoff meeting, De Novo will prepare meeting minutes that detail action items for the team.

2.0 CEQA INITIAL STUDY/ASSESSMENT

De Novo will prepare the Initial Study in accordance with the CEQA Guidelines. The Initial Study will include detailed explanations of all checklist determinations and discussions of potential environmental impacts. The analysis will be in accordance with Public Resources Code Section 21080(c) and CEQA Guidelines Section 15063. The impact analysis will be in a consistent order of environmental factors, as presented in the recently updated Appendix G of the CEQA Guidelines and as described in the conceptual EIR work program, above. The determination page will conclude the appropriate CEQA action based upon the environmental analysis.

3.0 ADMINISTRATIVE DRAFT INITIAL STUDY

The Administrative Draft Initial Study will be provided to the City for review and will include a Mitigation Monitoring and Reporting Program (MMRP) to identify appropriate monitoring steps/procedures and provide a basis for monitoring such measures during and upon project implementation. De Novo will revise the Initial Study, providing the City with a Second Administrative Draft Initial Study with revisions in tracked changes for ease of review.

4.0 PUBLIC REVIEW DRAFT INITIAL STUDY/MITIGATED NEGATIVE DECLARATION

With a conclusion in the Initial Study that no significant environmental effects will occur as a result of implementation of the project, a Mitigated Negative Declaration will be prepared for the 30-day public review period. De Novo will prepare the Notice of Intent to Adopt a Negative Declaration (ND)/Mitigated Negative Declaration (MND) for public review. De Novo will file all necessary notices with the County Clerk and State Clearinghouse.

5.0 FINAL INITIAL STUDY/MITIGATED NEGATIVE DECLARATION

5.1 RESPONSES TO COMMENTS

Upon completion of the public review period, De Novo will prepare a written response to the public comments for review by the City.

5.2 FINAL INITIAL STUDY/MITIGATED NEGATIVE DECLARATION

Where necessary, the appropriate revisions will be made to the IS/MND text. Any additional text will be marked in underline format and any deleted text will be marked in strikeout format. The Draft Final IS/MND will be provided to the City for review and approval. We will make any additional revisions as directed by the City and prepare a Final Initial Study MND for consideration. The Final Initial Study will include a Mitigation Monitoring and Reporting Program, and any other information necessary for the City's staff report to the Planning Commission and/or City Council.

5.3 NOTICE OF DETERMINATION

De Novo will prepare and file a Notice of Determination (NOD) with the County Clerk and State Clearinghouse within five days of IS/MND adoption.

6.0 PROJECT MANAGEMENT AND MEETINGS

As provided in 5.0, Project Management and Meetings, under Conceptual Work Program – Environmental Impact Report, above, Ms. Barker will be responsible for management and supervision of the Project Team. The De Novo Project Manager will participate in progress/project conference calls and/or meetings with City staff, the Applicant, and stakeholder representatives, as necessary to identify issues, assess impacts, and define mitigation. The De Novo team will participate in public hearings and make presentations, as necessary. De Novo Principals, Project Manager, and technical staff, as well as subconsultant team members will be available, as necessary, to provide expert testimony before decision-making bodies, including describing the environmental review process, analysis and findings, and responding to questions.

Conceptual Work Program – Environmental Assessment

The following is a typical scope of work for preparation of a NEPA Environmental Assessment. It should be noted that the format and requirements of an Environmental Assessment will vary depending upon the NEPA Lead Agency. Additionally, the work program, including necessary technical studies and level of analysis, will vary depending upon a project's location and characteristics. Upon receipt of future RFPs from the City, the De Novo team will provide a project-specific scope of work tailored for the project being proposed at that time.

1.0 PROJECT INITIATION

The work program will be initiated with a kickoff meeting with City representatives and the Applicant team (if appropriate) to discuss the project features in greater detail. This initial meeting is vital to the success of the CEQA process and will be a key milestone to confirm the parameters of the analysis, project construction program, buildout conditions, scheduling, and overall communications. Prior to the kickoff meeting, De Novo will distribute an agenda and detailed memorandum, which will identify information needs. Upon completion of the kickoff meeting, De Novo will prepare meeting minutes that detail action items for the team. Based upon the detailed project information obtained at the project kickoff meeting, De Novo will draft a preliminary Project Description and project schedule for review and approval by City staff.

2.0 NEPA ENVIRONMENTAL ASSESSMENT PREPARATION

The evaluation and associated Environmental Assessment will be prepared in accordance with the U.S. Department of Housing and Urban Development (HUD) recommended format and in accordance with HUD Title 24, Code of Federal Regulations Part 58. The NEPA document will be no longer than necessary to concisely address required contents, will describe why some resources are not significant and focus on the significant resources and impacts, and will be written so that the lay person can understand the document. Where applicable, the EA will utilize any environmental documents or technical studies prepared for the project.

This EA is required to incorporate the assessment into an official Environmental Review Record (ERR) at the completion of the process. The ERR is the documentation of the process followed and the actions taken during the environmental review. It contains the various documents which result from the process. The following are the contents for the EA to file for an ERR. The process will be fully documented and procedures for notifications, compliances and the determinations or decisions will be carefully followed. The contents shown below apply to any EA where a FONSI is made. The following are the primary sections of the EA:

2.1 PURPOSE AND NEED

This section will summarize the City's purpose and need for the project.

2.2 PROJECT DESCRIPTION

The Project Description section will detail the project location and setting, characteristics, and construction and phasing program based on available information. Exhibits depicting the regional and site vicinity will be included in this section. As required, this section will include details regarding estimated cost of the project and total Federal funding to be utilized.

2.3 EXISTING CONDITIONS AND TRENDS

This section will provide a detailed description of existing conditions at the project site. Details such as topography, improvements, infrastructure, and existing access will also be provided. An inventory of surrounding uses will be incorporated to provide a description of conditions in the project area. Development trends likely to continue in the absence of the project will also be discussed.

2.4 STATUTORY CHECKLIST

The Statutory Checklist provides an analysis of project impacts under the NEPA Statutes. This section includes determinations for project impacts under each statute, executive order, or regulation. A listing

of project conditions and/or mitigation measures are provided, which is considered as part of the consistency/compliance determination. Analysis will be provided to adequately respond to and support the determination, as appropriate.

2.5 ENVIRONMENTAL ASSESSMENT CHECKLIST

This section analyzes the significance of project impacts on the character, features, and resources of the project area. A listing of project conditions and/or mitigation measures are provided, which is considered as part of the consistency/compliance determination. Analysis will be provided to adequately respond to and support the determination, as appropriate. Included here will be any documentation of coordination, consultation, permit procedures, or reviews carried out in accordance with any of the relevant statutes.

2.6 ALTERNATIVES TO THE PROPOSED ACTION

This section will consist of a brief discussion and comparison of alternatives considered. Typical alternatives that are considered consist of an alternative use, alternative location, and alternative development components. A No Action Alternative, where the project is not implemented, is also discussed.

The EA will also include several HUD-required summary sections, including a summary of mitigation measures, additional studies performed, and list of sources, agencies, and persons consulted.

3.0 ADMINISTRATIVE DRAFT ENVIRONMENTAL ASSESSMENT

De Novo will submit the Administrative Draft Environmental Assessment for review and comment by the City. De Novo will respond to a consolidated set of comments from City staff on the Administrative Draft Environmental Assessment. De Novo will provide the Second Administrative Draft Environmental Assessment with all revisions made in track changes to assist City staff's review of the document.

4.0 PUBLIC REVIEW DRAFT ENVIRONMENTAL ASSESSMENT

With a conclusion in the Environmental Assessment that no significant environmental effects will occur as a result of implementation of the project, a Notice of Intent to Request Release of Funds (NOIRROF)/FONSI will be prepared. The NOIRROF/FONSI will be subject to a 15-day objection period.

At a minimum, the City must send the NOIRROF/FONSI to the local newspaper of general circulation, to individuals and groups known to be interested in its activities; to appropriate local State and Federal agencies; to the Headquarters and appropriate Regional Office of the Environmental Protection Agency.

5.0 FINAL ENVIRONMENTAL ASSESSMENT

5.1 RESPONSES TO COMMENTS

If necessary, De Novo will respond to comments received on the Draft Environmental Assessment during the public review period.

5.2 COMPLETION OF THE FINAL ENVIRONMENTAL ASSESSMENT

If required, De Novo will prepare an Errata to the Public Review Draft Environmental Assessment for City review and approval. The Errata will be a stand-alone document identifying any revised text in strikethrough and underline, as necessary to address comments received on the Draft document.

6.0 PROJECT MANAGEMENT AND MEETINGS

6.1 PROJECT MANAGEMENT

Ms. Barker will be responsible for management and supervision of the Project Team. As Project Manager, Ms. Barker will direct preparation of and review the Environmental Assessment for compliance with NEPA requirements and guidelines. Ms. Barker will coordinate with City staff and/or other stakeholder representatives as well as internal technical staff, support staff and word processing toward the timely completion of the environmental document, serving as an extension of City throughout the duration of the project.

In addition to weekly status updates, monthly progress reports will be included with invoices identifying the tasks accomplished, deliverables submitted, anticipated tasks/progress for the next month, and any pending issues. Any modifications/ updates to the project schedule based on progress meetings and activities will also be provided. Monthly invoices will include total contract amount; all costs (by task) incurred for the period (actual and percentage); all costs (by task) incurred to date (actual and percentage); estimated completion percentage for each task; and accounting by individual working on each task for that billing period.

6.2 MEETINGS AND HEARINGS

Close coordination with City staff is essential. The De Novo Project Manager and/or Co-Project Manager will participate in progress/project conference calls and/or meetings with City staff, the Applicant, and stakeholder representatives, as necessary to identify issues, assess impacts, and define mitigation. The De Novo team will participate in public hearings and make presentations, as necessary.

Conceptual Work Program – Third Party Peer Review

In addition to preparing technical analysis and environmental compliance documentation, the De Novo team is often called upon to provide third party peer review services for our clients. Our approach to conducting peer reviews involve the following considerations: 1) compliance with the CEQA/NEPA Guidelines; 2) technical accuracy of analysis in support of conclusions and findings of significance; and 3) internal consistency of the document. CEQA/NEPA and technical specialists will conduct the review, with a Principal and/or Project Manager serving as the primary CEQA/NEPA reviewer. Our reviews will result in a memorandum providing a determination of compliance, along with any suggested edits or noted deficiencies in the document. Following revisions to the draft technical studies and/or environmental compliance documents, De Novo will review the revised documents to ensure the comments provided in the third-party peer review have been adequately addressed and resolved. The De Novo team will also be available to participate in conference calls or in-person meetings, as necessary, to discuss any issues of concern, approach to analysis, and third-party peer review comments. De Novo Principals, Project Manager, and technical staff, as well as subconsultant team members will be available, as necessary, to provide expert testimony before decision-making bodies, including describing our review and findings, and responding to questions.

EXHIBIT "B"

SCHEDULE OF SERVICES

TIMELINE

Following is a typical schedule for preparation of an EIR, IS/ND or IS/MND, and peer review of applicant-prepared technical studies and third-party peer review of environmental documents. The schedule for preparation of an EIS is similar to the timing of an EIR and preparation of an EA is similar to the timing of an IS/MND. The timing for peer review of applicant-prepared technical studies and third-party peer review of environmental documents can vary depending on the number and complexity of the technical studies and the environmental topical areas addressed in the environmental document.

Typical EIR Schedule	
Project Kick-off	Month 1
Notice of Preparation/Initial Study	Month 1
NOP 30-Day Public Review	Month 2
Prepare Technical Studies	Months 1 – 3
EIR Scoping Meeting	Month 2
De Novo Prepares Administrative Draft EIR	Months 2 – 5
City Review of Administrative Draft EIR	Month 6
De Novo Prepares Second Administrative Draft EIR	Month 7
City Review of Second Administrative Draft EIR	Month 7
De Novo Completes, Publishes, and Circulates Draft EIR	Month 8
EIR 45-Day Public Review Period	Months 8 – 9
Hearing during the Draft EIR Review to Receive Comments	Month 9
De Novo prepares Responses to Comments	Month 10
City Reviews Responses to Comments	Months 10 – 11
De Novo Prepares Administrative Final EIR	Months 11
City Reviews Administrative Final EIR	Month 11
De Novo Completes, Publishes, and Circulates Final EIR	Month 12
Certification Hearings	TBD

Typical IS/ND or IS/MND Schedule	
Project Kick-off	Week 1
De Novo drafts Project Description	Week 1
City Reviews/Approves Project Description	Week 2
Preparation of Technical Studies	Weeks 1 – 8
De Novo Prepares Administrative Draft IS/ND or IS/MND	Weeks 2 – 10
City Reviews Administrative Draft IS/ND or IS/MND	Week 11
De Novo Completes Draft IS/ND or IS/MND	Week 12
City Reviews Check Copy Draft IS/ND or IS/MND	Week 13
De Novo Distributes Public Review IS/ND or IS/MND	Week 14
IS/ND or IS/MND 30-Day Public Review	Weeks 14 – 18
De Novo Prepares Final IS/ND or IS/MND	Week 19
De Novo Prints and Distributes Final IS/ND or IS/MND	Week 20
Hearing	TBD

Typical Technical Study Peer Review Schedule	
De Novo Conducts Peer Review	Completed within 2 – 3 weeks of receipt
De Novo Conducts Review of Revised Technical Studies	Completed within 1 – 2 weeks of receipt

EXHIBIT "C"

COMPENSATION

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%).

De Novo Planning Group

A Land Use Planning, Design, and Environmental Firm

2021-2022 Schedule of Hourly Rates – Standard

Effective January 1, 2021

Below are the billing rates for all De Novo staff levels. Direct costs are limited to charges for document printing and shipping, and we do not mark these charges up.

Staff Level	Hourly Rate
Principal	$175
Principal Planner	$150
Senior Planner	$115
Associate Planner	$105
Assistant Planner	$90
GIS Analyst	$95

MAT Engineering, Inc.
17192 Murphy Avenue #14902
Irvine, CA 92623
at@matengineering.com
(949) 344-1828

MAT Engineering, Inc. Billing Rates

Position	Hourly Rate
President	$180.00
Principal	$170.00
Associate Principal	$160.00
Senior Associate	$160.00
Associate	$150.00
Senior Engineer / Senior Planner / Senior Designer	$150.00
Engineer / Planner / Designer III	$120.00
Engineer / Planner / Designer II	$115.00
Engineer / Planner / Designer I	$110.00
Assistant Engineer / Assistance Planner / Assistant Designer	$80.00
Technician III	$75.00
Technician II	$65.00
Technician I	$55.00
Engineering Aide	$50.00
Administrative Assistant	$55.00

Notes:

PDF report copies of report are included in the fees. Printed reports charged at a minimum of $100.

For overtime work the above rates may be increased by 50 percent.

Client payment is not contingent upon client receiving payment from other parties.

Billing statements for work will be submitted monthly. Statements are payable within thirty (30) days of statement date. Any statement unpaid after thirty (30) days shall be subject to interest at the maximum permitted by law

Rates can be subject to change.

Rev. January 2022

Appendix A

Billing Rates for MD Acoustics, LLC

Compensation for Services

The Consultants Billing rates for services are as follows:

Position	Hourly Rate
Principal Consultant	$ 195.00
Sr. Acoustical Consultant	$ 160.00
Sr. Vibration Consultant	$ 160.00
Air Quality Specialist	$ 160.00
Environmental Specialist	$ 160.00
Acoustical Consultant	$ 140.00
Mechanical Engineer	$ 160.00
COMSOL Expert & Modeling	$ 360.00
ANSYS Expert & Modeling	$ 350.00
Engineering Technician I	$ 110.00
Engineering Aide	$ 80.00
Administrative Assistant	$ 75.00
Administrative Aide	$ 65.00
Clerical Aide	$ 60.00
Principal Controls & Vibration Engineer	$ 215.00
Senior Scientist Noise & Vibration	$ 190.00
Design Consultant	$ 145.00
Expert Witness	$ 525.00
Automobile Mileage	$ IRS rate/mile

General

(1) Billing statements for work will be submitted monthly. Statements are payable Net 15 upon receipt by client of statement. Any statement unpaid after ninety (90) days shall be subject to interest at the maximum permitted by law.

(2) These rates are valid for 3 year.

Rev. March 1, 2022

cogstone
PALEONTOLOGY - ARCHAEOLOGY - HISTORY



COGSTONE 2022 FULL FEE SCHEDULE

Labor Classification	Hourly Rate	OT*	DT*
Technician/Monitor I/II	$70.00	$105.00	$140.00
Technician/Monitor III/IV	$75.00	$112.50	$150.00
Night Monitor	$85.00	$127.50	$170.00
SOI Monitor**	$85.00	$127.50	$170.00
SOI Night Monitor**	$105.00	$157.50	$210.00
Architectural Historian	$90.00	$135.00	$180.00
Supervisor/GIS Specialist	$95.00	$142.50	$190.00
Field Director	$95.00	$142.50	$190.00
Administrative Assistant	$80.00	Exempt	Exempt
Senior Administrator	$100.00	Exempt	Exempt
Technical Editor	$105.00	Exempt	Exempt
Principal Investigator I/ Task Manager	$105.00	Exempt	Exempt
Principal Investigator II/ Task Manager	$120.00	Exempt	Exempt
Principal Investigator III/ Task Manager	$140.00	Exempt	Exempt
Program Director	$155.00	Exempt	Exempt

Other Direct Costs	Unit
Mileage	Current IRS Rate
Expendable Supplies	Actual Cost
Outside Services	Actual Cost

Disciplines Available:
Archaeology
Paleontology
Architectural History
GIS
Geoarchaeology
Faunal Identification and Analysis
Human Skeletal Identification and Analysis
Fossil Identification and Analysis
Paleobotanical Identification and Analysis
Ceramic Identification and Analysis
Lithic Identification and Analysis

* Hours 9-12 per day are Overtime (x1.5), Hours over 12 per day are Double Time (x2)
** SOI monitor meets the guidelines set forth by the Secretary of the Interior's (SOI) *Standards and Guidelines for Archaeology and Historic Preservation* (36 CFR Part 61).

1518 West Taft Avenue
Orange, CA 92865
Office (714) 974-8300

Field Offices
San Diego • Riverside • Morro Bay • Sacramento • Arizona

cogstone.com
Toll free 888-333-3212

Federal Certifications WOSB, EDWOSB, SDB
State Certifications DBE, WBE, UDBE

GLENN LUKOS ASSOCIATES

Regulatory Services

SCHEDULE OF FEES AND CHARGES

Valid through December 31, 2022

Title	**Hourly Labor Rates**
Technical Director	$210-235
Principal-in-Charge	$175-205
Project Manager	$95-170
Habitat Restoration Specialist	$95-170
Biologist	$95-170
GIS Technician	$85-140
Assistant Project Manager	$75-120
Field Assistant	$75-115
Clerical	$60-$75

p:2021-22 FEE-general_T&M

1940 E Deere Avenue, Suite 250 • Santa Ana, California 92705 • 949.837.0404

City of Aliso Viejo
AGENDA ITEM

DATE: October 19, 2022

TO: Mayor and City Council

FROM: Shaun Pelletier, Public Works Director

SUBJECT: AGREEMENT WITH UNITED BUILDING AND DEVELOPMENT SERVICES FOR THE ALISO VIEJO RANCH WOOD SEALING PROJECT

Recommended Actions:

1. Approve an agreement in the amount of $66,750 with United Building and Development Services as the lowest responsible bidder for the Aliso Viejo Ranch wood sealing project; and

2. Authorize the City Manager to execute an agreement with United Building Development Services; and

3. Authorize City staff to make total compensation to United Building Development Services up to $66,750 plus $10,000 (15% of the agreement amount) to allow for contingencies, totaling $76,750.

Fiscal Impact:

Total fiscal impact this year will be approximately $76,750 including construction ($66,750) and contingency ($10,000). The FY 2022-2023 Capital Improvement Project budget includes funds for the work.

Background:

The City requested informal bids through May 2022. Six contractors submitted bids. The total amounts for each of the bids received are as follows:

	Contractor	Base bid
1.	United Building & Dev. Services	$66,750.00
2.	Yoda Painting, Inc	$78,000.00
3.	Dana Pacific	$86,638.74
4.	Astro Painting Co. Inc.	$88,800.00
5.	Dale Hector Painting	$136,500.00
6.	Color New Co.	$142,000.00

City staff has reviewed the bid from United Building and Development Services and the bid appears to be responsive and complete. United Building Development Services recently completed painting projects for the City of San Juan Capistrano and the City of San Clemente with favorable references.

This project is exempt from the CEQA process since it is maintaining existing facilities.

Discussion:

The City's engineer estimate for this base bid work was about $90,000. The average bid cost was under the engineers estimate. Wood needs to be sealed to protect it from the elements and to maximize the longevity of the wood's integrity. Wood Seal application is recommended every 2-5 years. Although the property has only been open for just over 1 year, the wood installations were completed about 2 years ago. This work will include all fencing, light posts, tables, and other wood surfaces outside of the buildings. Additional efforts will be made on the light post base below grade to help prevent excessive moisture from damaging the posts.

Staff requests authorization for payments to United Building and Development Services up to 76,750 (15% above the agreement amount) to cover for contingencies such as overages on quantities and additional work requested by the City. The 15% contingency amount will allow for removal and replacement of any rotten and cracked wood posts.

Attachment:

1. Agreement

CITY OF ALISO VIEJO
PROFESSIONAL SERVICES AGREEMENT
FOR
THE ALISO VIEJO RANCH WOOD SEALING PROJECT

1. PARTIES AND DATE.

This Agreement is made and entered into this 6 day of October, 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 **United Building and Development Services**, a **Limited Liability Company,** with its principal place of business at **27762 Antonio Parkway L1-643, Ladera Ranch, CA 92694** ("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 **Wood Sealing** 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 **Wood Sealing** 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 **Aliso Viejo Ranch Wood Sealing 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 **Wood Sealing** 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 **October 19th, 2022** to **June 30th, 2023**, 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 one-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: **René Cortez.**

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 **Kyle Bolender**, 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 **René Cortez** 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 **SEVENTY-SIX THOUSAND SEVEN HUNDRED FIFTY DOLLARS ($76,750.00)** ("Total Compensation") without written approval of 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:

René Cortez

United Building and Development Services LLC

27762 Antonio Parkway L1-643

Ladera Ranch CA 92694

City:

City of Aliso Viejo
12 Journey, Suite 100
Aliso Viejo, CA 92656
Attn: **Kyle Bolender, Department of Public Works**

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 UNITED BUILDING AND DEVELOPMENT SERVICES

IN WITNESS WHEREOF, the parties have executed this Professional Services Agreement on this ____ day of _____, 202__.

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:_____
Ann Eifert
Director of Financial Services

United Building & Development Services

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

By:_____

Its: Owner

Printed Name: René Cortez

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:

N/A

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

SJC Orange CA
City/County/State

10-6-22
Date

United Building & Deve Ser
Name of Business

René Cortez
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.

United Building & Dev. Ser
Name of Business

Renie Cortez
Print Name

Signature

10-6-22
Date

EXHIBIT "A"

SCOPE OF SERVICES

Provide the following service for the following City Facilities:

Aliso Viejo Ranch

The City is seeking a contractor to provide wood sealing services on an as-needed basis upon request by the City. The contractor shall furnish all necessary labor, equipment, and materials to complete the work. The specific services to be performed are described below:

1. Perform work to address wood sealing issues identified by the City
2. All fencing, light posts, tables, and other wood surfaces outside of the buildings must be sealed.
3. Additional efforts must be made on the light post base below grade to help prevent excessive moisture from damaging the posts.
4. Contingency to allow for removal and replacement of any rotten and cracked wooden posts.
5. Additional services may be performed on an as-needed basis as directed by the City
6. Service shall be performed during normal business hours which are Monday-Thursday 7:30 AM to 5:30 PM, and every other Friday 7:30 AM to 4:30 PM. During emergencies, work may be required outside of normal business hours.

If at any time there is determined to be additional wood sealing repair work outside of the above scope of services, the City shall be notified and a quotation issued before beginning work.

EXHIBIT "B"

SCHEDULE OF SERVICES

All services described in Exhibit A are to be conducted on an as-needed basis.

EXHIBIT "C"

COMPENSATION

Total Project Cost: $66,750.00

Contingency: $10,000.00

See attached on next page the vendor provided estimate.

United Building & Development Services LLC
27762 Antonio Pkwy L1-643
Ladera Ranch, CA. 92694

Estimate

Date	Estimate #
5/10/2022	399

Name / Address
City of Aliso Viejo 12 Journey Aliso Viejo, CA. 92656

Project

Description	Qty	Rate	Total
Aliso Viejo Ranch Scope of Work Seal all exterior wood, pressure wash wood to remove dirt and open wood pores, apply with hand sparer Penofin sealer to wood: railing, fences, gates, benches under trees, fence around garden area, trellises One coat as per manufactures specs. Replace damaged wood up to budgeted amount Prevailing wages apply			
Seal wood as per scope of work Labor and materials included		59,600.00	59,600.00
AV Ranch Scope of Work Remove dirt around 52 wood posts approx 12" deep and 8" around, provide and install concrete around posts from base of exposed post to grade level and cover with existing wood bark Not all wood can be sealed due to vegetation growth on wood		7,146.00	7,146.00
		Total	$66,746.00