Written materials relating to an item on this agenda that are distributed to the legislative bodies within 72 hours before the item is to be considered at its regularly scheduled meeting will be made available for public inspection at the City Clerk's Office, 300 West Third Street 4th Floor during customary business hours. Agenda reports are also on the City of Oxnard web site at www.oxnard.org.

CITY OF OXNARD CALIFORNIA

AGENDA
OXNARD CITY COUNCIL
PUBLIC WORKS AND TRANSPORTATION COMMITTEE
Council Chambers, 305 West Third Street
February 11, 2025
Regular Meeting - 6:45 to 8:15 PM

Zoom details to call-in for public comment during a meeting:

1. Dial Phone Number: (888) 475-4499
2. Enter Meeting ID: 831 5481 1359
3. Passcode: 779057

If you wish to speak during public comments or a particular item on the agenda, please sign-on by following the zoom call-in steps listed above. Once the presiding officer calls for public speakers, press *9 to raise your hand to inform the City Clerk you would like to speak during the public speaking section for that particular item on the agenda, while in the zoom waiting room. Press *6 when asked to unmute. Listen to the instructions provided virtually on the phone while on hold in the zoom waiting room. Please note that there is a slight time delay when viewing the meeting via television.

IN ACCORDANCE WITH ASSEMBLY BILL 2449, MEMBERS OF THE LEGISLATIVE BODY MAY MEET IN-PERSON OR REMOTELY. TO PARTICIPATE REMOTELY VISIT WWW.OXNARD.ORG.

To find out how you may provide public comment, please refer to the instructions below or at **www.https://www.oxnard.org/city-meetings/**.

The public may view the meeting from home on Spectrum channel 10, Frontier channel 35, or YouTube at Youtube.com/oxnardnews. Video recordings of the meeting are typically available online following the meeting at the City's website at www.oxnard.org/city-meetings.

*Please see the link for the Measure M pre-recorded presentation video for each item listed on this agenda.

YOU MAY PARTICIPATE IN THE MEETING IN THE FOLLOWING WAYS:

1. ATTEND THE MEETING AT THE LOCATION LISTED ABOVE: Submit a speaker card to the City Clerk.

2. EMAIL COMMENTS OR SIGN UP TO SPEAK REMOTELY BEFORE THE MEETING

    a. Submit a request to speak remotely by no later than 3 p.m. on the day of the meeting by using the form available at **www.oxnard.org/citymeetings**.
    b. Submit an email to **cityclerk@oxnard.org** no later than 3 p.m. on the day of the meeting (indicate the agenda item number in the subject line). All email correspondence will be forwarded to the legislative body prior to the start of the meeting and made part of the legislative record.
    c. Contact the City Clerk's Office at (805) 385-7803 to submit your request.

3. PROVIDING PUBLIC COMMENTS REMOTELY DURING THE MEETING

In compliance with the Americans with Disabilities Act, if you require special assistance to participate in a meeting, please contact the City Clerk's Office at 385-7803. Notice at least 72 hours prior to the meeting will enable the City to reasonably arrange for your accessibility to the meeting.

Agenda Item Time Estimates include: (Minutes for Presentation + Council Discussion + Public Comment)

a. To provide public comment during the meeting dial (888) 475-4499 and enter the Meeting ID and Passcode listed above as the Zoom details for this meeting. When the presiding officer announces the particular item on the agenda you want to speak on, press *9 to raise your hand while in the zoom waiting room. Once called on, press *6 to unmute your phone.
b. Public comments on agenda items will be taken following the announcement of the item. After the item is announced, members of the public may register or otherwise be recognized for the purpose of providing public comment.

Please review the Zoom instructions on the registration page to help ensure there are no technical difficulties during your comments and help you understand public comment procedures using Zoom. Detailed participation instructions can be found at www.oxnard.org/city-meetings.

In the event of a disruption which prevents a legislative body of the City of Oxnard from broadcasting a meeting using a call-in option or internet-based service option, or in the event of a disruption within the City's control which prevents members of the public from offering public comment using the call-in option or internet-based service option, the legislative body shall take no further action on items appearing on a meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. However, if any of the broadcast options are disrupted, but any of the other broadcast options is still available to the public, the legislative body may take further action on items appearing on a meeting agenda without waiting for the disrupted broadcast option(s) to be restored.

A. ROLL CALL, POSTING OF AGENDA, FLAG SALUTE
Consideration of Teleconference Participation pursuant to Assembly Bill 2449.

B. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA
A person may address the legislative body only on matters not appearing on the agenda and within the subject matter jurisdiction of the legislative body. Speaker requests shall be submitted as set forth on the first page of this agenda. Speakers are limited to three minutes. After 30 minutes, if all speakers have not had the opportunity to speak, the remaining speakers will be given an opportunity to speak prior to adjournment of the meeting. The legislative body cannot enter into a detailed discussion or take action on any items presented during public comments at this time. Such items may only be referred to the City Manager/Executive Director/Secretary for administrative action or scheduled on a subsequent agenda for discussion. Persons wishing to speak on public hearing items should do so at the time of the hearing.

C. CONSENT AGENDA

1. City Clerk Department
SUBJECT: Approval of Minutes.
RECOMMENDATION: That the Public Works & Transportation Committee approve the minutes of the January 28, 2025 regular meeting as presented.
Contact: Luly Lopez, (805) 385-7805

D. REPORTS

1. Public Works Department
SUBJECT: Agreement 32500401 with Blackpointe Group Construction & Management, Inc. for Catch Basin Cleaning Services. (10 minutes)
RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute an Agreement with Blackpointe Group Construction & Management, Inc. (Blackpointe) for an initial term of one year from March 5, 2025, to March 4, 2026, with the option for four consecutive one-year period extensions ending March 4, 2030, for a total contract amount not to exceed $1,750,000 for catch basin cleaning services.

Please click the following link to view the required Measure M pre-recorded presentation video: https://youtu.be/m5V4aJbsRlE
Contact: Michael Wolfe, (805) 385-8055

2. Public Works Department
SUBJECT: Annual Enterprise Pavement Impact Cost Reimbursement Study. (10 minutes)
RECOMMENDATION: That the Public Works and Transportation Committee recommend that the Annual Enterprise Pavement Impact Cost Reimbursement Study be forwarded to the City Council as a receive and file item.

Please click the following link to view the required Measure M pre-recorded presentation video: https://youtu.be/9wCx6P0hkI8
Contact: Michael Wolfe, (805) 385-8055

E. ITEMS FOR FUTURE AGENDAS

F. ADJOURNMENT

CITY OF OXNARD CALIFORNIA

PUBLIC WORKS AND TRANSPORTATION COMMITTEE AGENDA REPORT

CONSENT AGENDA
AGENDA ITEM NO. C.1

DATE: February 11, 2025

TO: Public Works and Transportation Committee

FROM: Luly Lopez, City Clerk, (805) 385-7805, luly.lopez@oxnard.org

SUBJECT: Approval of Minutes.

RECOMMENDATION

That the Public Works & Transportation Committee approve the minutes of the January 28, 2025 regular meeting as presented.

BACKGROUND

Approval of minutes.

STRATEGIC PRIORITIES

This agenda item is a routine operational item or does not relate to the five strategic priorities adopted by City Council on March 16, 2021.

FINANCIAL IMPACT

There is no financial impact.

Prepared by: Luly Lopez, City Clerk

ATTACHMENTS

1. Minutes of Public Works and Transportation Committee for January 28 2025

AGENDA
OXNARD CITY COUNCIL
PUBLIC WORKS AND TRANSPORTATION COMMITTEE
January 28, 2025

A. ROLL CALL, POSTING OF AGENDA, FLAG SALUTE

At 6:48 p.m., Chair Luis Mc Arthur called to order the regular meeting of the Oxnard City Council Public Works and Transportation Committee in the City Hall Council Chambers at 305 West Third Street, Oxnard, California. The City Clerk called the roll and announced the posting of the agenda. Chair Luis Mc Arthur, Member Gabriela Basua and Member Gabe Teran were present.

Member Basua led the pledge of allegiance followed by a moment of silence in honor of retired Police Officer Gino Rodriguez who passed away.

Staff members present were Alexander Nguyen, City Manager; Michelle McCarron, Assistant City Attorney; Michael Wolfe, Public Works Director; Steve Howlett, Assistant Public Works Director; Tim Beaman, Assistant Public Works Director; Jan Hauser, Wastewater Division Manager; Morgan Kessler, City Engineer; Ted Quiroz, Facilities Manager; and Lourdes A. López, City Clerk.

Consideration of Teleconference Participation pursuant to Assembly Bill 2449.

B. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

Public comments received from Benjamin Kromphardt (traffic signals).

C. CONSENT AGENDA

1. City Clerk Department
SUBJECT: Approval of Minutes.
RECOMMENDATION: That the Public Works & Transportation Committee approve the minutes of the December 10, 2024 regular meeting as presented.

No public comments were received.

It was moved by Member Teran, seconded by Member Basua, to approve the Information/Consent item as presented. VOTE: Basua, Teran, and Mc Arthur voted in favor; the motion passed 3-0.

D. REPORTS

1. Public Works Department
SUBJECT: Trade Service Agreement 32500297 with County First Fire, LLC (dba County Fire Protection) for Fire Extinguisher Services, Specification No. PW 25-46. (10 minutes)
RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute an Agreement with County First Fire, LLC (dba County Fire Protection) for a two-year term from February 5, 2025 to February 4, 2027, for a total contract amount not to exceed $200,000 for fire extinguisher services in various City facilities, vehicles, and equipment.
Steve Howlett, Assistant Public Works Director and Ted Quiroz, Facilities Manager presented and answered the Committee's questions. No public comments were received.

It was moved by Member Teran, seconded by Member Basua, to approve the recommended action as presented. VOTE: Teran, Basua, and Mc Arthur voted in favor, the motion carried 3-0.

2. Public Works Department
SUBJECT: Public Project Agreement 32500337 with Langkilde's Fire Protection Inc. for Maintenance, Inspections and On-Call Minor Repairs for Fire Suppression Systems, Specification No. PW 25-08R. (10 minutes)
RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute an Agreement with Langkilde's Fire Protection Inc. for a three-year term for a total contract amount not to exceed $700,000 for maintenance, inspections, and minor repairs to fire suppression systems at City-owned facilities.
Ted Quiroz, Facilities Manager presented and answered the Committee's questions. No public comments were received.

It was moved by Member Basua, seconded by Member Teran, to approve the recommended action as presented. VOTE: Basua, Teran, and Mc Arthur voted in favor, the motion carried 3-0.

3. Public Works Department
SUBJECT: Lease and License Agreement A-8566 with Oxnard Drainage District #1. (10 minutes)
RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute a Lease and License Agreement with Oxnard Drainage District No. 1 for an initial term of five years with additional five-year extension term provisions.

Jan Hauser, Wastewater Division Manager presented and answered the Committee's questions. No public comments were received.

It was moved by Member Teran, seconded by Member Basua, to approve the recommended action as presented. VOTE: Mc Arthur, Teran, and Basua voted in favor, the motion carried 3-0.

4. Public Works Department
SUBJECT: Purchase Order with Municipal Maintenance Equipment for VAC-CON for Wastewater Division. (10 minutes)
RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Purchasing Agent to execute a Purchase Order with Municipal Maintenance Equipment (MME) in the amount not to exceed $779,155.72 for the purchase of a VAC-CON sewer cleaning vehicle mounted on a Freightliner 114SD truck chassis for the Wastewater Division.

Jan Hauser, Wastewater Division Manager presented and answered the Committee's questions. No public comments were received.

It was moved by Member Teran, seconded by Member Basua, to approve the recommended action as presented. VOTE: Teran, Basua, and Mc Arthur voted in favor, the motion carried 3-0.

5. Public Works Department
SUBJECT: Multiple Agreements for On-Call Professional Engineering Services for Water, Wastewater, and Recycled Water Systems. (10 minutes)
RECOMMENDATION: That the Public Works and Transportation Committee recommend that the

City Council approve and authorize the Mayor to execute the following Agreements, each with an initial term of one year from February 5, 2025, to February 4, 2026, with an option for four consecutive one-year period extensions ending February 4, 2030, for on-call professional engineering services for Water, Wastewater, and Recycled Water Systems:

1. Agreement 32500306 AECOM Technical Services, Inc. for a total amount not to exceed $1,000,000;
2. Agreement 32500307 Brown & Caldwell for a total amount not to exceed $1,000,000;
3. Agreement 32500308 Carollo Engineers, Inc. for a total not-to-exceed amount of $1,000,000;
4. Agreement 32500309 Dudek for a total amount not to exceed $1,000,000;
5. Agreement 32500310 GHD, Inc. for a total amount not to exceed $1,000,000;
6. Agreement 32500311 Kennedy Jenks Consultants, Inc., for a total amount not to exceed $1,000,000;
7. Agreement 32500326 Michael K. Nunley & Associates, Inc. DBA MKN for a total amount not to exceed $1,000,000;
8. Agreement 32500328 MNS Engineers, Inc. for a total amount not to exceed $1,000,000;
9. Agreement 32500312 Stantec Consulting Services, Inc. for a total amount not to exceed $1,000,000; and
10. Agreement 32500313 Woodard & Curran for a total amount not to exceed $1,000,000.

Tim Beaman, Assistant Public Works Director presented and answered the Committee's questions. No public comments were received.

It was moved by Member Teran, seconded by Member Basua, to approve the recommended action as presented. VOTE: Teran, Basua, and Mc Arthur voted in favor, the motion carried 3-0.

6. Public Works Department

SUBJECT: Multiple Agreements for On-Call Geotechnical Engineering/Environmental Material Testing and Inspection Services Professional Engineering Services. (10 minutes)

RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute the following four Agreements, each with an initial term of one year, from February 19, 2025, to February 18, 2026, with options for exercising four consecutive one-year period extensions ending February 18, 2030, for on-call professional engineering geotechnical services:

1. Agreement 32500365 with Earth Systems Pacific for a total amount not to exceed $1,000,000;
2. Agreement 32500368 with Twining, Inc. for a total amount not to exceed $1,000,000;
3. Agreement 32500375 with Geocon West, Inc. for a total amount not to exceed $1,000,000; and
4. Agreement 32500379 with Shannon & Wilson, Inc. for a total amount not to exceed $1,000,000.

Morgan Kessler, City Engineer presented and answered the Committee's questions. No public comments were received.

It was moved by Member Basua, seconded by Member Teran, to approve the recommended action as presented. VOTE: Basua, Teran, and Mc Arthur voted in favor, the motion carried 3-0.

7. Public Works Department

SUBJECT: Multiple Agreements for On-Call Architectural Design Professional Engineering

Services. (10 minutes)
RECOMMENDATION: That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute the following Agreements, each with an initial term of two years from February 19, 2025, to February 18, 2027, with an option for three consecutive one-year period extensions ending February 18, 2030, for on-call professional engineering services for architectural design:

1. Agreement 32500354 with Black, O'Dowd and Associates, Inc. DBA BOA Architecture for a total amount not to exceed $750,000;
2. Agreement 32500359 with Jeff B. Zook, A Professional Architectural Corporation DBA Coastal Architects for a total amount not to exceed $750,000;
3. Agreement 32500364 with Roesling Nakamura Terada Architects, Inc. for a total amount not to exceed $750,000; and
4. Agreement 32500361 with Wallace Group, A California Corporation for a total amount not to exceed $750,000.

Michael Wolfe, Public Works Director presented and answered the Committee's questions. No public comments were received.

It was moved by Member Teran, seconded by Member Basua, to approve the recommended action as presented. VOTE: Mc Arthur, Teran, and Basua voted in favor, the motion carried 3-0.

E. ITEMS FOR FUTURE AGENDAS

No requests were made.

F. ADJOURNMENT

There being no further business on the agenda, and without objection, Chair Mc Arthur adjourned the meeting at 7:38 p.m.

_____
LOURDES A. LÓPEZ
City Clerk

_____
LUIS MC ARTHUR
Mayor

CITY OF OXNARD CALIFORNIA

PUBLIC WORKS AND TRANSPORTATION COMMITTEE AGENDA REPORT

REPORTS
AGENDA ITEM NO. D.1

DATE: February 11, 2025

TO: Public Works and Transportation Committee

FROM: Michael Wolfe, Public Works Director, (805) 385-8055, michael.wolfe@oxnard.org

SUBJECT: Agreement 32500401 with Blackpointe Group Construction & Management, Inc. for Catch Basin Cleaning Services. (10 minutes)

RECOMMENDATION

That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute an Agreement with Blackpointe Group Construction & Management, Inc. (Blackpointe) for an initial term of one year from March 5, 2025, to March 4, 2026, with the option for four consecutive one-year period extensions ending March 4, 2030, for a total contract amount not to exceed $1,750,000 for catch basin cleaning services.

Please click the following link to view the required Measure M pre-recorded presentation video: https://youtu.be/m5V4aJbsRIE

BACKGROUND

The City of Oxnard received its most recent Municipal Separate Storm Sewer System (MS4) permit in September 2021. The MS4 permit requires that trash and debris be removed from catch basins and disposed of properly. The City owns and maintains 2,435 catch basins that capture and convey stormwater to the ocean. As a consequence of normal operation, catch basins collect a variety of trash, leaves, and plastic (debris). Debris must be removed and disposed of periodically to prevent discharge to the environment and mitigate flooding.

The City must also comply with the statewide Trash Amendments by installing full capture trash devices in stormwater catch basins. There are currently 480 full capture devices installed within catch basins with an additional 450 currently being installed and planned for completion by the end of February. These stainless steel devices act as a barrier for trash and debris that may fall into the catch basin. These devices also require inspection and cleaning.

DISCUSSION

On November 12, 2024, the Purchasing Department released a Request for Proposal (RFP) PW 25-47 for Catch Basin Cleaning Services. The RFP was directly sent to three potential vendors and published on www.PublicPurchase.com as well as the City's Purchasing website. The solicitation closed on December 19, 2024, and a total of three proposals were received from Blackpointe, Downstream, and United Stormwater.

An evaluation team consisting of Wastewater staff (Sr. Environmental Specialist, Collections Manager, and Sr. Analyst) reviewed all proposals and determined Blackpointe to be the best value. The RFP process used the

"best value method" to ensure the selection of an ideal contractor capable of providing adequate staffing and meeting service requirements. Blackpointe stood out as both the most qualified and the lowest bidder. The selection was based on comprehensive scoring criteria, including proposal responsiveness, qualifications, experience, track record in providing the requested services, performance history, and cost. Additionally, the awarded contractor meets all required City contractual provisions, including possession of a City business tax certificate, insurance certificates, and corporate filing with the California Secretary of State.

Blackpointe currently holds this contract and has consistently provided satisfactory service. Through this new agreement, Blackpointe will provide catch basin inspection, cleaning and disposal of trash and debris, and storm drain placard replacement for the City's 2,435 catch basins. All trash and debris will be properly disposed of at a location that is permitted, regulated, and meets all federal, state, and local regulations. Removal of debris from catch basins greatly reduces unwanted waste from infiltrating waterways and also mitigates flooding during wet weather events.

Additionally, Blackpointe will use the City's GIS system to log and quantify all cleaning and inspection activities and will be required to adjust full capture stormwater devices, when required. Blackpointe shall photograph each catch basin before and after each inspection/cleaning event and provide disposal manifests with every bill. The cleaning schedule will be as follows:

Months	**Season**	**Catch Basins to Clean/ Inspect**
July - December	Rainy	2435
January - June	Dry	2435

STRATEGIC PRIORITIES

This agenda item supports the Infrastructure and Natural Resources strategy. The purpose of the Infrastructure and Natural Resources strategy is to preserve and improve our roads, utilities, parks, trees, water supply and natural resources through effective planning, prioritization, and an equitable and efficient use of available funding.

FINANCIAL IMPACT

The total cost for this Agreement with Blackpointe for catch basin cleaning services shall not exceed $1,750,000 over the five-year term if extended. Funding for this Agreement has been programmed and is available in the Fiscal Year 2024-25 Adopted Budget from the Stormwater Operating Fund (114). Billing will be done on a monthly basis and paid for the actual number of catch basins inspected and cleaned the previous month. Funding for subsequent fiscal years will be requested through the annual budget process.

Catch Basin Cleaning Estimated Spending Plan 1143501-53200						
FY 24-25 (4 Months)	**FY 25-26 (12 Months)**	**FY 26-27 (12 Months)**	**FY 27-28 (12 Months)**	**FY 28-29 (12 Months)**	**FY 29-30 (8 months)**	**TOTAL**
$100,000	$350,000	$350,000	$350,000	$350,000	$250,000	$1,750,000

Prepared by: Timothy Beaman, Assistant Public Works Director, Jan Hauser, Wastewater Division Manager, Luis Ortega, Management Analyst

ATTACHMENTS

1. Agreement 32500401
2. Presentation

GENERAL SERVICE AGREEMENT
BETWEEN
THE CITY OF OXNARD AND BLACKPOINTE GROUP CONSTRUCTION & MANAGEMENT, INC.

By This General Services Agreement ("Agreement"), the CITY of Oxnard ("City") agrees to engage the services of Blackpointe Group Construction & Management, Inc. ("Service Provider"), and Service Provider agrees to perform the services for City as herein described, for the compensation, during the term, and otherwise subject to the covenants and conditions herein set forth. City and Service Provider may be individually referred to as "Party" or collectively as the "Parties."

1. **[Intentionally Omitted]**

2. **SUMMARY DESCRIPTION OF SERVICES.**
   This Agreement is for the inspection, cleaning, debris hauling and disposal, data logging, and placement of catch basin placards for the City of Oxnard's catch basins and trash excluders. Inspection and cleaning of the catch basins is to occur twice per year.

   The Services to be performed pursuant to this agreement are described in the Scope of Services, attached hereto as Exhibit A. Service Provider may not be the exclusive provider of services to the City. The City does not guarantee a specified amount of work under this agreement.

3. **PARTIES.**

   City of Oxnard, a general law and municipal corporation of the State of California, located at 300 West Third Street, Oxnard California 93030

   Blackpointe Group Construction & Management, Inc., a corporation of the State of California, located at 11972 Hertz Ave, Moorpark CA 93021

4. **TERM OF AGREEMENT:** From: 3/5/25 To: 3/4/26

   A. Time is of the essence in this Agreement.
   B. The City shall have the option for (4) four consecutive (1) one-year extensions, in accordance with the scope of work and general terms and conditions of the On-Call General Services Agreement.
   C. This Agreement shall not exceed a total of five (5) years (including the initial term and any options to extend). The City in its sole discretion may exercise the option terms upon sixty (60) days written notice to the

Consultant (or any other time if the parties so agree) in accordance with Section 12 of this Agreement. The option term shall be commenced by an amendment to this agreement.

D. All services required of Service Provider under this Agreement shall be completed on or before the end of the term of the Agreement.

5. AGREEMENT AMOUNT NOT TO EXCEED: $1,750,000.00[1]

6. AGREEMENT EXHIBITS: The following documents memorialized below are the only exhibits to this agreement and are incorporated by reference as though fully set forth herein. In the event of a conflict between the Exhibits and this Agreement, the Agreement controls.

Exhibit A: Scope of Services
Exhibit B: Schedule of Compensation
Exhibit C: Insurance Requirements: City Insurance Exhibit INS-A
Exhibit D: [RESERVED]
Exhibit E: Living Wage Policy
Exhibit F: Prevailing Wage Policy
Exhibit G: Iran Contracting Certification

7. DESIGNATED REPRESENTATIVES. The Designated Representatives listed below shall be authorized to act on behalf of the named Party, be responsible for negotiations and contractual matters, and coordinate with each other to perform the services under this Agreement. Additionally, Service Provider's services shall be performed or immediately supervised by the Service Provider's Representative:

City Designated Representative	Service Provider Designated Representative
Name: Heather D'Anna Nichols Title: Sr. Wastewater Environmental Specialist Phone: 805-385-3961 Email: heather.d'anna@oxnard.org Address: 6001 Perkins Road Oxnard, CA 93030	Name: Victor Shittone Title: Director Phone: 818-749-8803 Email: victor@blackpointe.com Address: 11972 Hertz Ave Moorpark, CA 93021

8. CONTRACTUAL PREREQUISITES. This Agreement must first be executed by the Service Provider, after which the Agreement shall be approved as to form by the City

[1] This is not a guaranteed dollar amount. No services or work performed pursuant to a Task Order shall exceed the "Not to Exceed" Amount of the Contract or the agreed upon amount stated in the Task Order.

Attorney, then executed by the Mayor, or an authorized person on behalf of the City, and if executed by the Mayor shall also be executed by the City Clerk.

A. Service Provider is advised that any recommendation for Agreement award is not binding on the City until the Agreement is fully executed and approved by the City.
B. All proof of business license, insurance, and W-9 forms is required prior to execution of this Agreement.
C. Service Provider shall not perform any work under this Agreement until a proof of insurance has been provided to the City as required under Section 24 of this Agreement.

9. SERVICE PROVIDER'S SERVICES.

A. Service Provider shall perform only the type or category of services as set forth in the "Scope of Services," attached to and incorporated into this Agreement as "Exhibit A." Once this Agreement is executed, the Scope of Services may only be modified by written Amendment pursuant to Section 12 of this Agreement.
B. The Services shall be coordinated with the designated City Project Manager set forth in Exhibit A and are subject to the direction of the City Manager or Department Director. Service Provider hereby designates its Project Manager, as set forth in "Exhibit A" as the person responsible for the Services who shall coordinate with City's Project Manager in executing the scope of services under this Agreement.

10. COMPENSATION. City shall pay Service Provider for the services performed pursuant to the terms of this Agreement and based on the hourly rates and fees set forth in the "Schedule of Compensation," attached to and incorporated into this Agreement as "Exhibit B." Service Provider's compensation shall not to exceed amount stated in the Task Order. Under no circumstances shall the Service Provider perform work in excess of the amount stated in the Task Order or the not to exceed amount listed in Section 5 of this Agreement. Once this Agreement is executed, the Schedule of Compensation may only be modified by written Amendment pursuant to Section 13 of this Agreement, and may be subject to approval by the City Council.

A. Annual Rate and Fees adjustments must be requested in writing and accompanied by information to substantiate the request for price adjustments. Adjustments are subject to approval by the City. Any allowable request for adjustment must be delivered to the City at least 30

days before the adjusted prices become effective. No price adjustment allowable under this Contract will be granted retroactively. The City must also be given the benefit of any decline in prices.

11. **PAYMENT & INVOICES.** City shall pay all undisputed portions of any applicable invoice within thirty (30) days after receipt of an invoice. In the event the City disputes one or more items in an invoice, the City shall, within thirty (30) days after receipt of such invoice, notify the Service Provider of the item(s) being disputed and the reason(s) therefore. The City may withhold payment for such disputed items until resolution of the dispute.

    A. Payment Request. Service Provider shall submit a payment request to City by the end of each calendar month listing the Services provided, costs of those Services, and total amount due for the month. Invoices may be emailed to: **pwinvoices@oxnard.org**.
    B. Non-Appropriation of Funds. Payments to be made to Service Provider by City for the Services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted and unencumbered appropriation of City. In the event City does not appropriate sufficient funds for payment of the Services beyond the current fiscal year, this Agreement shall cover payment for the Services only up to the conclusion of the last fiscal year in which City appropriated sufficient funds and shall automatically terminate at that fiscal year's conclusion.
    C. Service Provider's acceptance of final payment made pursuant to this Agreement shall constitute a release of City from all claims and liabilities for compensation to Service Provider for anything completed, finished or relating to the Services. City's payment shall not constitute nor be deemed a release of the responsibility and liability of Service Provider for the accuracy and competency of the information provided and/or the Services performed hereunder, nor shall such payment be deemed to be an assumption of responsibility or liability by City for any defect or error in the Services performed by Service Provider and its employees, agents and Subcontracted Service Providers.
    D. Service Provider shall provide City with a completed Request for Taxpayer Identification Number and Certification, as issued by the Internal Revenue Service. If any sales tax is due for the Services performed by Service Provider or materials or products provided to City by Service Provider, Service Provider shall pay the sales tax. City shall not reimburse Service Provider for sales taxes paid by Service Provider

12. **OPTION TO EXTEND AGREEMENT.** When in the City's best interest, this Agreement may only be extended, if the City, in its discretion, exercises an option term in accordance with Section 4 subparagraphs (B) and (C) of this Agreement. The initial term, plus any option to extend shall not exceed a total of five (5) years. **If no option to extend the Agreement appears in section 4(B), then this Agreement shall not be extended.**

13. **MODIFICATION OF AGREEMENT.** This Agreement may be amended, modified, or otherwise altered, or its provisions waived, only upon mutual consent of the Parties by written amendment. The City may request that the Service Provider perform Extra Services. As used herein, "Extra Services" means any services, which are determined by the 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 or any Task Order issued under this Agreement. A written amendment signed by both Parties shall be required to authorize performance of and payment for Extra Services under this Agreement or Task Order.

14. **TERMINATION OF AGREEMENT.** City may terminate this Agreement at any time, with or without cause and without penalty, upon fifteen (15) calendar days' prior written notice pursuant to Section 22 of this agreement. Such termination shall be effective on the date specified in the notice, or if no date is specified, then fifteen (15) calendar days from the date of the notice. City shall be liable to Service Provider only for work done by Service Provider up to and including the date of termination of this Agreement unless the termination is for cause, in which event Service Provider need be compensated only to the extent required by law. Service Provider may terminate this Agreement at any time during the term of the Agreement by giving the City sixty (60) calendar days' written notice.

15. **[RESERVED]**

16. **INDEPENDENT CONTRACTOR.** Service Provider is and shall at all times remain, as to City, a wholly independent contractor. Neither City nor any of its employees or agents shall have control over the conduct of Service Provider or any of its employees, except as stated in this Agreement. Service Provider has and shall retain the right to exercise full control over the employment, direction, means of performance, location, compensation and discharge of all persons assisting Service Provider. This Agreement shall not be interpreted to prevent or preclude Service Provider from rendering any services for Service Provider's own account or to any

other person or entity as Service Provider in its sole discretion shall determine; provided, however, that performing such services shall not materially interfere with the Services the Service Provider shall perform for the City. The City retains the right to provide general instructions to and observe the Service Provider in the performance of all services done on behalf of the City.

Service Provider and its employees, subcontractors, and agents have no authority, express or implied, to act on behalf of City in any capacity, to incur any debt, obligation or liability on behalf of City, bind City in any manner, or otherwise act on behalf of City as an agent. Service Provider and its employees are not employees of City. Service Provider and its employees are not entitled to receive from City any of the benefits or rights afforded employees of City, including but not limited to reserve leave, sick leave, vacation leave, holiday leave, compensatory leave, Public Employees Retirement System benefits, and health, life, dental, long-term disability and workers' compensation insurance benefits. Service Provider shall not, at any time or in any manner, represent that it or any of its agents, subcontractors, or employees are in any manner agents, subcontractors, or employees of City.

17. **LAWFUL PERFORMANCE.** Service Provider shall abide by all Federal, State, and Local Laws and Regulations as may be related to the performance of duties under this Agreement. Service Provider, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

18. **SAFETY REQUIREMENTS.** Service Provider shall not perform any services for the City when the Service Provider is impaired by alcohol or a controlled substance. When there is reasonable cause to believe that any person has violated this provision, that person shall be immediately removed from the premises and be subject to any applicable civil and/or criminal penalties under the City's Code and/or under state law. All work performed under this Agreement shall be performed in such a manner as to provide safety to the public. The City reserves the right to issue restraining or cease and desist orders to Service Provider when unsafe or harmful acts are observed or reported relative to the performance of the work under this Agreement. The acceptance of Service Provider 's work by City shall not operate as a release of the Service Provider from such standard of care and workmanship.

19. **OWNERSHIP OF SERVICE PROVIDER'S WORK PRODUCT, CONFIDENTIALITY & DISCLOSURE.** City shall be the owner of any and all technical documents and

records, including, computations, plans, correspondence, and/or other pertinent data and information, both hard copy and electronic, gathered or prepared by Service Provider in performance of this Agreement and shall be entitled to immediate possession of the same upon completion of the work under this Agreement, or at any earlier or later time when the same may be requested by City.

A. Ownership of Documents. Every report, draft, work product, map, record, and other document reproduced, prepared, or caused to be prepared by the Service Provider pursuant to or in connection with this Agreement shall be the exclusive property of the City.
B. Records and Inspections. The Service Provider shall maintain full and accurate records, with respect to all services and matters covered under this Agreement. The City shall have free access at all reasonable times to such records, both hard copy and electronic, and the right to examine and audit the same and to make transcripts therefrom, and to inspect all program data, documents, proceedings, and activities.
C. Deliverables. Service Provider shall deliver to the City the studies, plans, specifications, or other documents as are identified in the Scope of Services or Task Order; and Service Provider shall, upon completion of all work, submit to the City all information developed in the course of the Service Provider 's services. Service Provider shall, in such time and in such form as the City may require, furnish reports concerning the status of services required under this Agreement. Service Provider shall, upon request by City and upon completion or termination of this Agreement, deliver to the City all material furnished to Service Provider by the City.
D. Confidentiality. Information that is exempt from disclosure to the public is confidential. This includes information relating to the past, present, or future affairs of the City or information belonging to a third party whose information is in the City’s possession or control under obligations of confidentiality. Service Provider may be granted access to information that is exempt from disclosure to the public (Government Code Section 7920.505) and may contain “trade secrets” (see Government Code Section 7924.510(f)) when it is necessary for Service Provider to perform its obligations pursuant to this Agreement. If Service Provider is granted such access to confidential information, Service Provider shall not be considered to be a member of the public as that term is used in Government Code Section 7920.515.
E. Disclosure of Information. Service Provider shall not disclose, publish, or authorize others to disclose or publish, design data, drawings, specifications, reports, or other information pertaining to the projects

assigned to Service Provider by the City or other information to which the Service Provider has had access during the term of this Agreement without the prior written approval of the City's Designated Representative during the term of this Agreement and for a period of two (2) years after the termination of this Agreement.

F. No Warranty. Other than an obligation upon the City to deal in good faith, the City makes no warranties and shall bear no liability or responsibility for errors or omissions in any Confidential Information disclosed under this Agreement or for any business decisions made by Service Provider in reliance on any Confidential Information disclosed under this Agreement.

20. ASSIGNMENT. This Agreement is for the non-professional services of Service Provider. Any attempt by Service Provider to assign the benefits or burdens of this Agreement without the prior written approval of City shall be prohibited and shall be null and void. Service Provider 's services pursuant to this Agreement shall be provided by the Service Provider's Designated Representative or directly under his/her supervision, and Service Provider shall not assign another to supervise the Service Provider 's performance of this Agreement without the prior written approval of City, by and through the City's Designated Representative.

21. NOTICE OF BREACH AND OPPORTUNITY TO CURE. Neither Party will be in breach of this Agreement where the breach is capable of being cured, or until written notice of the breach is received from the non-breaching Party. The Party charged with breach will have fifteen (15) calendar days from the date of receiving such notice in which to cure the breach or otherwise respond. If the circumstances leading to the charge that the Agreement was breached have not been cured or explained to the satisfaction of the other Party within fifteen (15) days from the date on which the breaching Party received notice of breach, the non-breaching Party may terminate this Agreement. Notice shall be given in the manner set forth in section 22.

22. NOTICES. All notices given or required to be given pursuant to this Agreement shall be in writing and may be given by personal delivery or by first-class mail. Notice sent by mail shall be addressed to each Party's Designated Representative as set forth above in Section 7. When addressed in accordance with this Section, such notice shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices shall be deemed given at the time of actual delivery. Changes may be made in the names or addresses of persons to whom notices are to be given by giving notice in the manner prescribed in this Section.

23. COVENANTS AND CONDITIONS. Each term and each provision of this Agreement to be performed by Service Provider shall be construed to be both a covenant and a condition.

24. WAIVER. City's review or acceptance of, or payment for, work product prepared by Service Provider under this Agreement will not be construed to operate as a waiver of any rights City may have under this Agreement or of any cause of action arising from Service Provider's performance. A waiver by City of any breach of any term, covenant, or condition contained in this Agreement will not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement, whether of the same or different character.

25. INDEMNIFICATION, HOLD HARMLESS & DEFENSE.

A. As a separate and independent covenant from Service Provider's obligations under this section, Service Provider shall to the fullest extent permitted by law, immediately defend, indemnify, and hold harmless City, its legislative and advisory bodies, and the City's officials, directors, officers, employees, and agents (the "Indemnitees") from and against all liabilities regardless of nature, type, or cause, arising out of or resulting from Service Provider's negligence or willful misconduct in the performance of the services described in this Agreement or failure to comply with any of its obligations contained in this Agreement, Service Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. Service Provider's obligation to indemnify and defend applies unless it is proven such liabilities covered by this Section are the result of negligence or willful misconduct of any of the Indemnitees.

B. The duty to defend is a separate and distinct obligation from Service Provider's duty to indemnify. Service Provider shall be obligated to defend in all legal, equitable, administrative, or special proceedings, with counsel approved by the City Attorney, immediately upon tender to Service Provider of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation negligence or willful misconduct by any of the Indemnitees shall not relieve Service Provider from its separate and distinct obligation to defend the Indemnitees. The obligation to defend extends through final judgment,

including exhaustion of any appeals. The defense obligation includes the obligation to provide independent defense counsel if Service Provider asserts that liability is caused in whole or in part by the negligence or willful misconduct of the Indemnitees. If it is finally adjudicated that liability was caused by the negligence or willful misconduct of any of the Indemnitees, Service Provider may submit a claim to City for reimbursement of reasonable attorneys' fees and defense costs.

C. The review, acceptance or approval of Service Provider's work or work product by any of the Indemnitees shall not affect, relieve or reduce Service Provider's indemnification or defense obligations. Service Provider waives any right of contribution against City or any of City's officers, employees, agents, or volunteers arising out of such failure to inspect, review, monitor, or supervise the work performed by Service Provider pursuant to this Agreement. The provisions of this Section shall not be restricted by and do not affect the provisions of this Agreement relating to Section 26. The Service Provider's obligations under this Section of the Agreement shall survive the termination of the Agreement.

D. Service Provider agrees to pay all required taxes on amounts paid to Service Provider under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Service Provider shall be solely responsible for, and shall save City harmless from, all matters relating to the payment of Service Provider's subcontractors, material suppliers, directors, officers, employees, agents and representatives, including compliance with social security requirements, federal and State income tax withholding, and all other regulations governing employer-employee relations, as applicable. City shall have the right to offset against the amount of any compensation due to Service Provider under this Agreement any amount due to City from Service Provider as a result of its failure to promptly pay to City any reimbursement or indemnification arising under this Section.

26. INSURANCE. Service Provider shall obtain and maintain during the performance of any services under this Agreement the insurance coverages listed within "Exhibit C", which is attached hereto and incorporated herein by this reference, unless the Risk Manager waives, in writing, the requirement that Service Provider obtain and maintain such insurance coverages. Such insurance must be issued by a company satisfactory to the Risk Manager. Service Provider shall, before performance of any Services pursuant to this Agreement, file with the Risk Manager evidence of insurance coverage as specified in "Exhibit C". Maintenance of insurance coverages

by Service Provider is a material element of this Agreement. Service Provider's failure to maintain or renew insurance coverages or to provide renewal evidence shall be considered a material breach of this Agreement.

27. **LIVING WAGE REQUIREMENTS.** During the term of this Agreement, Service Provider understands and agrees that if Living Wages are applicable subject to the 2002 Oxnard City Council Living Wage Policy, attached as "Exhibit E" to this Agreement. Service Provider will pay and/or provide the wages and/or benefits required therein to all of its employees engaged in whole or in part in performing the services provided for by this Agreement. The duty to pay the correct wage is the responsibility of the Service Provider.

28. **PREVAILING WAGE REQUIREMENTS.** The payment of State prevailing wages as designated for Ventura County shall apply to public works projects. However, this section shall not apply to work performed on a public works project of twenty-five thousand dollars ($25,000) or less when the project is for construction, alteration, demolition, installation, or repair work; or to work performed on a public works project of fifteen thousand dollars ($15,000) or less when the project is for maintenance work. Prevailing wages are required to be paid to all workers, including subcontracted employees. For further information regarding Prevailing Wage Requirements please refer to Exhibit "F" attached to this Agreement.

    A. To determine if this Agreement is subject to compliance monitoring and enforcement, go to: https://www.dir.ca.gov/Public-Works/PublicWorksSB854FAQ.html
    B. It is unlawful to split, or separate into small portions, work orders, projects, purchases, or public works projects for the purpose of evading these prevailing wage requirements.
    C. In the event that there is a difference between the amount of wages to be paid under the City of Oxnard's local Living Wage requirements and the requirements of this provision, the wage rate that is the higher of the two shall be applicable to this Agreement. The duty to pay the correct wage is the responsibility of the Service Provider.

29. **CONFLICT OF INTEREST.** Service Provider covenants that it does not have any interest, nor shall it acquire any interest, directly or indirectly, which would conflict in any manner with the performance of Service Provider's services under this Agreement. Service Provider further covenants that in the performance of services under this Agreement, no officer, employee or agent of Service Provider having such interest shall be employed by it. In the event the City determines that Service

Provider must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests, Service Provider shall file such Form 700 with the City Clerk's Office pursuant to the written instructions provided by the City Clerk. Acquisition or maintenance of a conflicting interest by Service Provider may result in termination of this Agreement by the City.

30. **IRAN CONTRACTING ACT.** In accordance with the Iran Contract Act of 2010 (Public Contract Code sections 2200-2208) the City requires that any Consultant that submits a proposal or otherwise proposes to enter into or renew a contract with the City with respect to goods or Services of one million dollars ($1,000,000) or more, must certify, that the Consultant is not identified on a list created pursuant to subdivision (b) of Public Contract Code Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Public Contract Code Section 2202.5, or as a person described in subdivision (b) of Public Contract Code Section 2202.5, as applicable.

    A Consultant is ineligible to enter into any contract with the City for goods or Services of one million dollars ($1,000,000) or more if the Consultant engages in investment activities in Iran. Consultant must certify that it is not on the list of ineligible vendors prohibited from doing business with the State of California and shall complete the Iran Contract Act Certification attached as Exhibit G.

31. **SUBCONTRACTING.** If Service Provider requires the assistance of a subcontractor to render any services under this agreement, Consultant shall obtain prior written consent from the City before a subcontractor performs any service pursuant to this Agreement. All subcontractors shall be identified in the Scope of Work or Task Order attached to this Agreement as Exhibit A. Service Provider is fully responsible for satisfactory completion of all its subcontractors' work. All subcontractors shall be properly licensed and insured; and bonded, if applicable. Service Provider shall be responsible for all liabilities regardless of nature, type, or cause, arising out of or resulting from or in connection with subcontractors performance pursuant to this Agreement or subcontractors failure to comply with any of its obligations in connection with this Agreement.

32. **DISPUTES.** Except as otherwise provided in these provisions, any dispute concerning a question of fact arising under this Agreement, shall be decided by the City's Designated Representative, who shall reduce this decision to writing and mail a copy to the Service Provider. The decision of the City's Designated Representative shall be final and conclusive unless Service Provider requests mediation within ten (10) calendar days. Pending final decision of a dispute, the

Service Provider shall proceed diligently with the performance of the Agreement and in accordance with the decision of the City's Designated Representative.

33. **DISPUTE RESOLUTION.** Should an unresolved dispute arise out of this Agreement, any Party may request that it be submitted to mediation. The Parties shall meet in mediation within a reasonable time not to exceed forty-five (45) days of a request. The mediator shall be agreed to by the mediating Parties. In the absence of an agreement on a mediator, the Parties shall each submit one name from mediators listed by the American Arbitration Association, the California State Board of Mediation and Conciliation, or other agreed-upon service. The mediator shall be selected by a "blindfold" process. The cost of mediation shall be borne equally by both Parties. Neither Party shall be deemed the prevailing Party. No Party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the Parties but not more than sixty (60) calendar days, unless the maximum time is extended in writing by both Parties.

34. **AUDIT.** City shall have the option of inspecting, auditing and/or reproducing all records and other written materials: used by Service Provider in preparing its billings to CITY as a condition precedent to any payment to Service Provider; or for other purposes relating to the Agreement. Service Provider will promptly furnish all documents requested by City. Additionally, if this Agreement is in excess of $10,000, the State Auditor may examine and audit Service Provider for a period of 3 years after final payment under the Agreement. Regardless of whether a State audit is permitted, Service Provider shall maintain and preserve all such records for a period of at least 3 years after final payment under the Agreement or until an audit has been completed and accepted by City, whichever occurs later. Service Provider shall maintain all such records in City or to promptly reimburse City for all reasonable costs incurred in conducting the audit at a location other than in City, including but not limited to expenses for personnel, salaries, private auditor, travel, lodging, meals and overhead. Service Provider shall include a copy of this Section in all contracts with its subcontractors, and Service Provider shall be responsible for immediately obtaining those records or other written material from its subcontractors upon a request by the State Auditor and/or City.

35. **ADVERTISING AND PUBLICITY.** Service Provider shall not use the name of or refer to City directly or indirectly in any advertisement, news release, or professional or trade publication without prior written approval from the City Manager. This Section shall survive the termination of this Agreement.

36. **NONDISCRIMINATORY EMPLOYMENT.** Service Provider shall not unlawfully discriminate against any individual based on race, color, religion or religious creed, national origin, ancestry, ethnic group identification, primary language, physical disability, mental disability, medical condition, genetic information, marital status, gender, gender identity, gender expression, sex, sexual orientation, age, immigration status, citizenship or military and veteran status. Service Provider understands and agrees that it is bound by and will comply with all legal nondiscrimination mandates. For every subcontractor who will perform Services, Service Provider shall be responsible for such subcontractor's compliance with this Section.

37. **FORCE MAJEURE.** Neither the Service Provider nor the City shall be responsible for any delay caused by any contingency beyond their control, including, but not limited to, war or insurrection, walkouts by the Party's own employees, fires, natural calamities, riots, or demands or requirements of governmental agencies other than the City.

38. **GOVERNING LAW.** The terms of this Agreement shall be interpreted according to the laws of the State of California. Should litigation occur, venue shall be in the Superior Court of California, County of Ventura.

39. **SEVERABILITY.** If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement will continue in full force and effect and be enforceable.

40. **INTEGRATED AGREEMENT.** This Agreement and the attached exhibits referenced herein to this Agreement represent the entire understanding between the Parties. No verbal agreement or implied covenant shall be held to vary the provisions of this Agreement. This Agreement shall bind and inure to the benefit of the Parties to this Agreement and any subsequent successors and assigns.

41. **NO THIRD-PARTY BENEFICIARY.** This Agreement shall not be construed to be an agreement for the benefit of any third-party or parties, and no third party or parties shall have any claim or right of action under this Agreement.

42. **AUTHORITY TO EXECUTE.** Each Party hereto expressly warrants and represents that through its Designated Representative it has the authority to execute this Agreement on behalf of its corporation, partnership, business entity, or governmental

entity, and warrants and represents that the Designated Representative has the authority to bind each Party to the performance of its obligations hereunder.

43. **EXECUTION – COUNTERPARTS.** This Agreement may be executed in any number of counterparts and each such duplicate counterpart shall constitute an original, but they shall not be effective nor enforceable unless and until it is executed with the handwritten signature or electronic signature of an authorized representative of each of the relevant Parties. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterpart executed by the other Party to this Agreement is in the physical possession of the Party seeking enforcement thereof.

44. **INCONSISTENT OR CONFLICTING TERMS.** In the event of any contradictions or inconsistencies between any attached documents or exhibits incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control. Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City's Designated Representative unless specifically agreed to in writing, and initiated by City's Designated Representative, as to each additional contractual term or condition.

45. **ACKNOWLEDGEMENT.** By signing below, Service Provider acknowledges that it has reviewed the City's General Services Agreement terms and conditions and insurance requirements and that Service Provider hereby agrees to full compliance.

[Signatures on next page]

In witness whereof, the Parties have entered into this Agreement effective on the date as written in section 3 and upon signature of all Parties.

CITY OF OXNARD		**BLACKPOINTE GROUP CONSTRUCTION & MANAGEMENT, INC.**	
☐Luis Mc Arthur, Mayor[2]	Date	Victor Shittone, Director/Secretary	Date
☐Jennifer Yates,[3] Purchasing Manager			
		Laurel Shittone, CFO[4]	Date

ATTEST:

Lourdes A. López, CITY Clerk (only if Mayor signs) Date

APPROVED AS TO FORM:

Stephen M. Fischer, CITY Attorney (always required) Date

[2] The City Council must authorize and the Mayor must execute any agreement over $200,000.
[3] The Purchasing Agent may execute any authorized agreement up to $200,000.
[4] The City requires the following for any contract:

- For a corporation, the signatures of the Board President, CEO or Vice President and of the Board Secretary, Assistant Secretary, CFO or Assistant Treasurer;
- For an LLC, the signatures of at least two managers of the LLC (company directors, not lower-level managers); or
- For a partnership, the signature of a partner. If the partnership is a limited partnership, the signer must be a general partner.

If the company has a different structure, or if the above-listed persons are not the appropriate signers, please submit to the City Attorney legally-binding documentation stating who can sign and bind your company.

EXHIBIT A

GENERAL SERVICE AGREEMENT
(CITY of Oxnard and BLACKPOINTE GROUP CONSTRUCTION & MANAGEMENT, INC.)

SCOPE OF SERVICES

PROJECT MANAGER: Heather D'Anna, heather.d'anna@oxnard.org, 805-385-3961

The Contractor shall furnish all necessary labor, materials, equipment and other incidental and appurtenant Work to provide Catch Basin Cleaning Services for the City of Oxnard.

Inspection

- Contractor shall inspect every catch basin per the attached schedule and if needed clean catch basin inlets, trash excluders, underground vaults, catch basins, and concrete inlets of debris, sediment, and miscellaneous obstructions.
- Contractor shall photograph each catch basin before and after cleaning/ inspection.
- Prior to cleaning the catch basin, the Contractor shall identify the type of debris in the basin as well as quantify the amount of debris in the basin on a scale of 0-100% capacity.

Cleaning

- Catch basin structures shall be cleaned until all debris is removed from the side walls, bottom, and trash excluder screen if present.
- Services can be performed by hand, vacuum combination truck or by other methods as approved by the City.

Debris Hauling and Disposal

- Contractor shall provide transport and disposal of all debris generated as a result of catch basin cleaning. Contractor shall use a disposal site that is properly permitted, regulated, and meets all federal, state, and local guidelines.
- Contractor shall provide disposal manifests with every bill.

Data Logging

- The City will supply the contractor with a GIS application for capturing and storing project and catch basin information.
- Contractor shall purchase a yearly license use agreement to the City's GIS mapping system that will allow for upload of all necessary information of each catch basin as necessary.
- All debris quantities and related work shall be entered into a contractor owned tablet connected to the City's GIS Storm Drain Database.
- Contractor shall complete the survey form in its entirety for each catch basin

- Contractor shall note any trash excluder damage on the survey form and report any trash excluder damage to City personnel immediately.

Catch Basin Placards

- Contractor will be supplied with "No Dumping Drains to Ocean" placards and adhesive
- Contractor shall replace any missing or illegible placards

Safety

- Contractor shall develop, submit, and secure approved Traffic control plan for each location as necessary.
- The services of this nature are considered to be in a confined space. Contractor shall take all necessary precautions to ensure the safety of employees at all times.

Warranty

- Catch basins may be field checked by City staff within 1 week of notification of completion and shall be re-cleaned by contractor if debris removal is deemed unsatisfactory. The City will not be charged for this supplementary cleaning.

Invoicing

- Contractor shall provide a monthly summary of catch basin inspections, cleaning and tonnage along with waste manifests and placards replaced.

Scheduling

- The City requests that catch basins be cleaned twice per year, once prior to the rainy season and once after. Contractor is responsible for maintaining an appropriate level of staff to complete services and shall coordinate with the designated City Representative regarding the scheduling of inspections and cleanings of the catch basins prior to start of work.

Month	Season	# CB Inspect/ Clean
July – December	Rainy	2435
Jan – June	Dry	2435

EXHIBIT B

GENERAL SERVICE AGREEMENT
(CITY of Oxnard and BLACKPOINTE GROUP CONSTRUCTION & MANAGEMENT, INC.)
SCHEDULE OF COMPENSATION

Item No.	Description	Unit	Total
1	Inspection Only	Each catch basin	$23.00
2	Inspection & Cleaning Inlets Without Devices	Each catch basin	$71.17
3	Inspection & Cleaning Inlets with Full Trash Capture (FTC) Devices	Each catch basin	$71.17
4	Placard Installation	Each	$10.00
5	Hauling & Disposal of Non-Hazardous Catch Basin Waste	Per ton	$1.00
6	Hauling & Disposal of Hazardous Catch Basin Waste	Per ton	$1.00

EXHIBIT C

GENERAL SERVICES AGREEMENT
(CITY of Oxnard and BLACKPOINTE GROUP CONSTRUCTION & MANAGEMENT, INC.)

INSURANCE REQUIREMENTS

Prior to contract approval, CONSULTANT/SERVICE PROVIDER/SELLER/BIDDER (hereafter referred to as "SERVICE PROVIDER") must procure, agree to maintain and supply evidence of insurance at the levels listed and in accordance with the other provisions listed in this document.

[SEE NEXT PAGES]

INSURANCE REQUIREMENTS FOR CONSULTANTS
(WITH ERRORS AND OMISSIONS REQUIREMENT)

1. Consultant shall obtain and maintain during the performance of any services under this Agreement the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of services hereunder by Consultant, its agents, representatives, employees or subconsultants.

a. Commercial General Liability Insurance, including Contractual Liability, in an amount not less than $1,000,000 combined single limit for bodily injury and property damage for each claimant for general liability with coverage equivalent to Insurance Services Office Commercial General Liability Coverage (Occurrence Form CG 0001). If a general aggregate limit is used, that limit shall apply separately to the project or shall be twice the occurrence amount;

b. Business automobile liability insurance in an amount not less than $1,000,000 combined single limit for bodily injury and property damage for each claimant for automobile liability with coverage equivalent to Insurance Services Office automobile liability coverage (Occurrence Form CA0001) covering Code No. 1, "any auto;"

c. Professional liability/errors and omissions insurance appropriate to Consultant's profession to a minimum coverage of $1,000,000, with neither Consultant nor listed subconsultants having less than $500,000 individually. The professional liability/errors and omissions insurance must be project specific with at least a one year extended reporting period, or longer upon request.

d. Workers' compensation insurance in compliance with the laws of the State of California, and employer's liability insurance in an amount not less than $1,000,000 per claimant. Additionally, the workers' compensation policy shall include a waiver of all rights of subrogation which the insurer may have against the City.

2. Consultant shall, prior to performance of any services, file with the Risk Manager certificates of insurance with original endorsements effecting coverage required by this Exhibit INS-A. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on the attached forms or on other forms approved by the Risk Manager. All certificates and endorsements are to be received and approved by the Risk Manager before commencement of services. City reserves the right to require complete certified copies of all required insurance policies at any time. The certificates of insurance and endorsements shall be sent via email. If you have not received your request or are having difficulty with electronic upload, contact insurance@oxnard.org

3. Consultant agrees that all insurance coverages shall be provided by a California admitted insurance carrier with an A.M. Best rating of A:VII or better and shall be endorsed to state that coverage may not be suspended, voided, canceled, or reduced in coverage or limits without 30 days' prior written notice to the Risk Manager. The Risk Manager shall not approve or accept any endorsement if the endorsement contains "best effort" modifiers or if the insurer is relieved from the responsibility to give such notice.

4. Consultant agrees that the commercial general liability and business automobile liability insurance policies shall be endorsed to name City, its City Council, officers, employees, agents and volunteers as additional insureds as respects: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, its City Council, officers, employees, agents and volunteers. **The General Liability Special Endorsement Form and Automobile Liability Special Endorsement Form attached to this Exhibit INS-A or substitute forms containing the same information and acceptable to the Risk Manager shall be used to provide the endorsements (ISO form CG 2010 11/85 or if not available, CG 2010 with an edition date prior to 01/04 and CG 2037).**

5. The coverages provided to City shall be primary and not contributing to or in excess of any existing City insurance or self-insurance coverages (**this must be endorsed)**. Additionally, the workers' compensation policy shall include a waiver of all rights of subrogation which the insurer may have against the City. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its City Council, officers, employees and volunteers. The insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6. The insurer shall declare any deductibles or self-insured retentions to and be approved by the Risk Manager. At the option of the Risk Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its City Council, officers, employees and volunteers, or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

7. All insurance standards applicable to Consultant shall also be applicable to Consultant's subconsultants. Consultant agrees to maintain appropriate agreements with subconsultants and to provide proper evidence of coverage upon receipt of a written request from the Risk Manager.

1/25

INSTRUCTION FOR SUBMITTING INSURANCE CERTIFICATES AND ENDORSEMENT FORMS

Certificates of Insurance

The sample accord form on the following page is provided to facilitate your preparation and submission of certificates of insurance. You may use this or any industry form that shows coverage as broad as that shown on the attached sample. **Please note the certificate holder address must be as shown on the attached sample accord form with the contract number and insurance exhibit identification information completed.** Improperly addressed certificates may delay the contract start-up date because the City's practice is to return unidentifiable insurance certificates to the insured for clarification as to the contract number. **Cancellation provisions must be endorsed to the policy. Modifying the certificate does not change coverage or obligate the carrier to provide notice of cancellation.**

Endorsement Forms

Original endorsements are required for commercial general liability and business automobile liability insurance policies and must be attached to the applicable certificate of insurance. City preference is that the Consultant/insurer use the endorsement forms which are attached. Substitute forms will be accepted, however, as long as they include provisions comparable to the sample accord form.

INS-A.doc

ACORD CERTIFICATE OF INSURANCE

ISSUE DATE (MM/DD/YY)

PRODUCER	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
CODE SUB-CODE	**COMPANIES AFFORDING INSURANCE COVERAGE**
INSURED	COMPANY LETTER A SPECIFY COMPANY NAMES IN THIS SPACE
	COMPANY LETTER B

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	**GENERAL LIABILITY** [x] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS MADE [x] OCCUR. [x] OWNER'S & CONTRACTOR'S PROT.				GENERAL AGGREGATE $1,000,000 PRODUCTS COMP/OP AGG . $1,000,000 PERSONAL & ADV. INJURY $1,000,000 EACH OCCURRENCE $1,000,000 FIRE DAMAGE (Any one fire) $ MED. EXPENSE (Any one person) $
A	**AUTOMOBILE LIABILITY** [x] ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS GARAGE LIABILITY				COMBINED SINGLE LIMIT $1,000,000 BODILY INJURY (Per person) $ BODILY INJURY (Per accident) $ PROPERTY DAMAGE $
A	**EXCESS LIABILITY** UMBRELLA FORM OTHER THAN UMBRELLA FORM				EACH OCCURRENCE $ AGGREGATE $
A	**WORKERS' COMPENSATION** AND EMPLOYERS' LIABILITY				STATUTORY LIMITS EACH ACCIDENT $1,000,000 DISEASE-POLICY LIMIT $1,000,000 DISEASE-EACH EMPLOYEE $1,000,000
A	**OTHER** Errors and omissions insurance or malpractice insurance available for the insured's profession				Minimum coverage $1,000,000 Each consultant/ & listed sub-consultant $500,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/RESTRICTIONS/SPECIAL ITEMS

CERTIFICATE HOLDER	CANCELLATION
CITY OF OXNARD % Evident ID, Inc. **8520 Allison Pointe Blvd. Ste 223** **PMB 5210** **Indianapolis, Indiana 462500-4299 US**	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ~~ENDEAVOR TO~~ MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, ~~BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.~~ AUTHORIZED REPRESENTATIVE

GENERAL LIABILITY SPECIAL ENDORSEMENT FOR THE CITY OF OXNARD (the "City")

SUBMIT IN DUPLICATE

ENDORSEMENT NO.	ISSUE DATE (MM/DD/YY)

PRODUCER

Telephone:

NAMED INSURED

POLICY INFORMATION:
Insurance Company:
Policy No.:
Policy Period: (from) (to)
LOSS ADJUSTMENT EXPENSE ❒ Included in Limits ❒ In Addition to Limits

❒ Deductible ❒ Self-Insured Retention (check which) of $ _____
with an Aggregate of $_____ applies to _____
coverage. ❒ Per Occurrence ❒ Per Claim (which)

APPLICABILITY. This insurance pertains to the operations, products and/or tenancy of the named insured under all written agreements and permits in force with the City unless checked here ❒ in which case only the following specific agreements and permits with the City are covered

CITY AGREEMENTS/PERMITS

TYPE OF INSURANCE

GENERAL LIABILITY
❒ COMMERCIAL GENERAL LIABILITY ❒ Claims Made
❒ COMPREHENSIVE GENERAL LIABILITY Retroactive Date _____
❒ OWNERS & CONTRACTORS PROTECTIVE ❒ Occurrence

OTHER PROVISIONS

COVERAGES

	LIABILITY LIMITS IN THOUSANDS $	
	EACH OCCURRENCE	AGGREGATE
❒ GENERAL		
❒ PRODUCTS/COMPLETED OPERATIONS		
❒ PERSONAL & ADVERTISING INJURY		
❒ FIRE DAMAGE		
❒ _____		
❒ _____		

CLAIMS: Underwriter's representative for claims pursuant to this insurance.

Name: _____
Address: _____
_____
Telephone: (____) _____

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, insurance company agrees as follows:

INSURED. The City, its officers, agents, employees and volunteers are included as insureds with regard to liability and defense of suits arising from the operations, products and activities performed by or on behalf of the named insured.

CONTRIBUTION NOT REQUIRED. As respects: (a) work performed by the named insured for or on behalf of the City; or (b) products sold by the named insured to the City; or (c) premises leased by the named insured from the City, the insurance afforded by this policy shall be primary insurance as respects the City, its officers, agents, employees or volunteers; or stand in an unbroken chain of coverage excess of the named insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the City, its officers, agents, employees or volunteers shall be in excess of this insurance and shall not contribute with it.

SEVERABILITY OF INTEREST. This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the company's limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.

CANCELLATION NOTICE. With respect to the interests of the City, this insurance shall not be canceled, or materially reduced in coverage or limits except after thirty (30) days prior written notice by receipted delivery has been given to the City.

PROVISIONS REGARDING THE INSURED'S DUTIES. Any failure to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the City, its officers, agents, employees or volunteers.

SCOPE OF COVERAGE. This policy, if primary, affords coverage at least as broad as:

Insurance Services Office Commercial General Liability Coverage, "occurrence" form CG0001; or

If excess, affords coverage which is at least as broad as the primary insurance form CG0001.

Except as stated above nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

ENDORSEMENT HOLDER

CITY OF OXNARD % Evident ID, Inc.
8520 Allison Pointe Blvd. Ste 223
PMB 5210
Indianapolis, Indiana 462500-4299 US

AUTHORIZED REPRESENTATIVE

❒ Broker/Agent ❒ Underwriter ❒ _____

I _____ (print/type name), warrant that I have authority to bind the above-mentioned insurance company and by my signature hereon do so bind this company to this endorsement.

Signature _____
(original signature required)

Telephone: (____) _____ Date Signed: _____

Rev. 1/25 INS-A.doc

AUTOMOBILE LIABILITY SPECIAL ENDORSEMENT FOR THE CITY OF OXNARD (the "City")

SUBMIT IN DUPLICATE

ENDORSEMENT NO.	ISSUE DATE (MM/DD/YY)

PRODUCER

Telephone:

NAMED INSURED

POLICY INFORMATION:
Insurance Company:
Policy No.:
Policy Period: (from) (to)
LOSS ADJUSTMENT EXPENSE ❒ Included in Limits ❒ In Addition to Limits

❒ Deductible ❒ Self-Insured Retention (check which) of $ _____ with an Aggregate of $_____ applies to coverage. ❒ Per Occurrence ❒ Per Claim (which)

APPLICABILITY. This insurance pertains to the operations, products and/or tenancy of the named insured under all written agreements and permits in force with the City unless checked here ❒ in which case only the following specific agreements and permits with the City are covered:

CITY AGREEMENTS/PERMITS

TYPE OF INSURANCE

❒ COMMERCIAL AUTO POLICY
❒ BUSINESS AUTO POLICY
❒ OTHER

OTHER PROVISIONS

LIMIT OF LIABILITY

$ _____ per accident, for bodily injury and property damage.

CLAIMS: Underwriter's representative for claims pursuant to this insurance.
Name: _____
Address: _____
_____
Telephone: (_____) _____

In consideration of the premium charged and notwithstanding any inconsistent statement in the policy to which this endorsement is attached or any endorsement now or hereafter attached thereto, insurance company agrees as follows:

1. **INSURED.** The City, its officers, agents, volunteers and employees are included as insureds with regard to liability and defense of suits arising from the operations, products and activities performed by or on behalf of the named insured.

CONTRIBUTION NOT REQUIRED. As respects: (a) work performed by the named insured for or on behalf of the City; or (b) products sold by the named insured to the City; or (c) premises leased by the named insured from the City, the insurance afforded by this policy shall be primary insurance as respects the City, its officers, agents, employees or volunteers; or stand in an unbroken chain of coverage excess of the named insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the City, its officers, agents, employees or volunteers shall be in excess of this insurance and shall not contribute with it.

SEVERABILITY OF INTEREST. This insurance applies separately to each insured against whom claim is made or suit is brought except with respect to the company's limits of liability. The inclusion of any person or organization as an insured shall not affect any right which such person or organization would have as a claimant if not so included.

CANCELLATION NOTICE. With respect to the interests of the City, this insurance shall not be canceled, or materially reduced in coverage or limits except after thirty (30) days prior written notice by receipted delivery has been given to the City.

PROVISIONS REGARDING THE INSURED'S DUTIES. Any failure to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the City, its officers, agents, employees or volunteers.

SCOPE OF COVERAGE. This policy, if primary, affords coverage at least as broad as:

Insurance Services Office Automobile Liability Coverage, "occurrence" form CA0001, code ("any auto"); or

If excess, affords coverage which is at least as broad as the primary insurance form referenced in the preceding section (1).

Except as stated above nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.

ENDORSEMENT HOLDER

CITY OF OXNARD % Evident ID, Inc.
8520 Allison Pointe Blvd. Ste 223
PMB 5210
Indianapolis, Indiana 462500-4299 US

AUTHORIZED REPRESENTATIVE

❒ Broker/Agent ❒ Underwriter ❒ _____

I _____ (print/type name), warrant that I have authority to bind the above-mentioned insurance company and by my signature hereon do so bind this company to this endorsement.

Signature _____
(original signature required)

Telephone: ( ) Date Signed _____

EXHIBIT D

GENERAL SERVICES AGREEMENT
(CITY of Oxnard and BLACKPOINTE GROUP CONSTRUCTION & MANAGEMENT, INC.)

[RESERVED]

EXHIBIT E

GENERAL SERVICES AGREEMENT
(CITY of Oxnard and BLACKPOINTE GROUP CONSTRUCTION & MANAGEMENT, INC.)

LIVING WAGE POLICY

Pursuant to the Living Wage Policy adopted July 9, 2002 by the City Council and effective October 1, 2002, the City Manager and City Attorney are directed to include the following language in all standard trade services contracts and all unique trade services contracts governed by the Living Wage Policy.

A. Service Provider shall compensate any employee of Service Provider who provides services under this Agreement in accordance with the Living Wage Policy, attached hereto and incorporated herein by reference as the Living Wage Policy Exhibit. While this Agreement is in effect, Service Provider shall pay such employee no less than $19.51 per hour for each hour that such employee provides services under this Agreement. In addition, while this Agreement is in effect, Service Provider shall provide to such employee no less than 96 hours of paid leave per calendar year.
B. Service Provider agrees to post, at a location readily accessible to those employees providing services to the City, a copy of the Living Wage Policy adopted by City Council on July 9, 2002 and effective October 1, 2002.
C. If Service Provider fails to compensate such employee pursuant to the Living Wage Policy, the City Manager or designee shall terminate this Agreement on written notice to Service Provider, effective immediately.
D. In addition, if Service Provider fails to comply with the Living Wage Policy in any manner, Service Provider shall pay to City a fine of $500 and shall pay to any employee providing services under this Agreement a penalty of three times the amount or value of the compensation owed to such employee under the Living Wage Policy. Service Provider shall pay such fine and penalty within fifteen (15) calendar days after the City Manager or designee provides written notice to Service Provider of the amount owed.

EXHIBIT F

GENERALSERVICES AGREEMENT
(CITY of Oxnard and BLACKPOINTE GROUP CONSTRUCTION & MANAGEMENT, INC.)

PREVAILING WAGE

1. Service Provider acknowledges that the Project defined in the Agreement between Service Provider and CITY is a "public work" as defined in Division 2, Part 7, Chapter 1 of the California Labor Code ("Chapter 1"), and that this Agreement is subject to Chapter 1 and the rules and regulations established by the Director of Industrial Relations ("DIR") implementing such statutes. Service Provider shall perform the Project as a public work. Service Provider shall comply with and be bound by all the terms, rules and regulations described in Chapter 1 and the DIR's rules and regulations as though set forth in full herein.

2. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages for each craft, classification, or type of worker needed to perform the Agreement are on file at City Hall and will be made available to any interested party on request. Service Provider acknowledges receipt of a copy of the DIR determination of such prevailing rate of per diem wages, and Service Provider shall post such rates at each job site covered by this Agreement.

3. Service Provider is required to post job site notices, as prescribed by regulation. See Labor Code Section 1771.4(a)(2).

4. Service Provider shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. Service Provider shall, as a penalty to City, forfeit not more than $200 for each calendar day or portion thereof for each worker paid less than the DIR's determined prevailing rates for the work or craft in which the worker is employed pursuant to this Agreement by Service Provider or any subcontractor. The Labor Commissioner shall determine the amount of the penalty as described in Section 1775.

5. Service Provider shall comply with Labor Code Section 1776, which requires Service Provider and each subcontractor to (1) keep accurate payroll records and verify such records in writing under penalty of perjury, (2) certify and make such payroll records available for inspection, and (3) inform CITY of the location of the records.

6. Service Provider shall comply with Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Administrative Code Title 8, Section 200 et seq. concerning the employment of apprentices on public works projects for all apprenticeable occupations. Before commencing work under this Agreement, Service Provider shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within 60 days after concluding the Project, Service Provider and each of its subcontractors shall submit to City a verified statement of the journeyman and apprentice hours performed under this Agreement.

7. Service Provider may not be debarred or suspended throughout the Agreement Term pursuant to Labor Code Section 1777.1 or 1777.7. If he, she or it becomes debarred or suspended in the Agreement Term, Service Provider must immediately notify City.

8. Service Provider is not qualified to bid on, be listed in a Bid proposal, or engage in the performance of any contract for public work, as defined in Labor Code Sections 1720 through 1861, unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. Service Provider shall continue without interruption to stay registered and qualified to perform public work pursuant to Section 1725.5 for the duration of the term of this Agreement. This provision does not apply to construction, alteration, demolition, installation or repair work of $25,000 or less or to maintenance work of $15,000 or less.

9. Service Provider acknowledges that 8 hours labor constitutes a legal day's work. Service Provider shall comply with and be bound by Labor Code Section 1810.

10. Service Provider shall comply with and be bound by Labor Code Section 1813 concerning penalties for workers who work excess hours. Service Provider shall, as a penalty to City, forfeit $25 for each worker employed in the performance of this Agreement by Service Provider or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code Section 1815, work performed by Service Provider's employees in excess of 8 hours per day and 40 hours per week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 1 ½ times the basic rate of pay.

11. The Project listed in the Agreement is subject to compliance monitoring and enforcement by the DIR.

12. Service Provider shall be responsible for each and every one of its subcontractors' compliance with Chapter 1, the DIR's rules and regulations, and Labor Code Sections 1860 and 3700. Service Provider shall include in the written contract between it and each subcontractor a copy of, and a requirement that each subcontractor shall comply with, those statutory provisions. Service Provider shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractors' compliance, including without limitation, conducting a periodic review of the certified payroll records of each subcontractor, and upon becoming aware of the failure of the subcontractor to pay its workers the specified prevailing rate of wages, Service Provider shall diligently take corrective action to halt or rectify any failure.

13. To the maximum extent, Service Provider shall hold harmless, defend (with counsel approved by the City Attorney) and indemnify City, its legislative bodies, and its officials, officers, employees and agents from any demand or claim for damages, compensation, fines, penalties or other amounts arising out of or incidental to any acts or omissions listed above by any person or entity (including Service Provider, its subcontractors, and each of their officials, officers, employees and agents) in connection with any work undertaken or in connection with the Agreement, including without limitation the payment of all attorneys' fees and other related costs. All duties of Service Provider under this Section shall survive Agreement termination.

EXHIBIT G

GENERAL SERVICES AGREEMENT
(CITY of Oxnard and BLACKPOINTE GROUP CONSTRUCTION & MANAGEMENT, INC.)

IRAN CONTRACTING ACT CERTIFICATION
(TO BE EXECUTED AND SUBMITTED WITH THE AGREEMENT)
Public Contract Code Sections 2202-2208

Pursuant to Public Contract Code 2204.(a) A public entity shall require a person that is submits a bid or proposal to,or otherwise proposes to enter into or renew a contract with, a public entity with respect to a contract for goods or services of one million dollars ($1,000,000) or more to certify, at the time an Agreement is signed or renewed, that the person is not identified on a list created pursuant to subdivision (b) of Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Section 2202.5 or as a person described in subdivision 9b) of Section 2202.5, as applicable.

To comply with this requirement, please insert your company/entity and Federal ID number (if available) and complete **one** of the options below. Please note, California law established penalties for providing false certifications, including civil penalties equal to the greater of $250,000 or twice the amount of the contract for which the false certification was made, contract termination and three-year ineligibility to bid on contract in accordance with Public Contract Code section 2205.

OPTION No.1 – CERTIFICATION
I, the official named below, certify I am duly authorized to execute this certification on behalf of the company/entityidentified below, and the company/entity identified below is not on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars ($20,000,000) or more in credit to another person or entity, for 45 days or more, if that other person or company/entity will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engagedin investment activities in Iran created by DGS in accordance with subdivision
(b) of Public Contract Code 2203.

Company Name/Financial Institution (printed): Federal ID Number (or n/a):

By (Authorized Signature):

Printed Name & Title of Person Signing: Date Executed

Executed in the County of_____ in the State of

OPTION No.2 – EXEMPTION
Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a vendor/financial institutionengaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enters into or renews, a contract for goods and services. If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below and attach documentation demonstrating the exemption approval.

Company Name/Financial Institution (printed): Federal ID Number (or n/a):

By (Authorized Signature):

Printed Name & Title of Person Signing: Date Executed

Executed in the County of_____ in the State of

Agreement 32500401 with Blackpointe for Catch Basin Cleaning Services

Public Works and Transportation Committee
February 11, 2025

Tim Beaman, PE
Assistant Director of Public Works

CITY OF OXNARD CALIFORNIA

RECOMMENDATION

That the Public Works and Transportation Committee recommend that the City Council approve and authorize the Mayor to execute an Agreement with Blackpointe Group Construction & Management, Inc. (Blackpointe) for an initial term of one year from March 5, 2025, to March 4, 2026, with the option for four consecutive one-year period extensions ending March 4, 2030, for a total contract amount not to exceed $1,750,000 for catch basin cleaning services.

BACKGROUND

- The City of Oxnard operates under a Municipal Separate Storm Sewer System (MS4) permit issued by the State

- MS4 permit requires trash and debris:
  - Be reduced or eliminated from the stormwater system
  - Be disposed of properly

- Oxnard owns and maintains 2435 catch basins with 450 having full capture devices

Sturgis Road catch basin with full capture device

DISCUSSION

- The Purchasing Department released Request for Proposals (RFP) PW 25-47 for Catch Basin Cleaning Services
  - Released November 12, 2024
  - Due date December 19, 2024

- RFP PW 25-47 received a total of 3 proposals from the following vendors:

Blackpointe Construction & Management Group, Inc.	Downstream	United Stormwater

DISCUSSION

- The proposals were reviewed by:
  - Wastewater Collections Manager
  - Wastewater Senior Administrative Services Analyst
  - Wastewater Senior Environmental Specialist

- Blackpointe was determined to be the best value based on the scoring criteria:
  - Responsiveness to proposal
  - Qualifications
  - Experience
  - History providing requested services
  - Record of performance
  - Cost

DISCUSSION

- Under this agreement Blackpointe will provide
  - Catch Basin cleaning/ inspection
  - Trash/ debris hauling and disposal
  - Storm drain placard installation
- City's GIS system will be used to track all activity
- All catch basins to be cleaned/ inspected twice a year

Catch basin with full capture device increases trash capture

FINANCIAL IMPACT

- The total cost for this Agreement shall not exceed $1,750,000 over five years if extended

- Costs for these services are included in the Fiscal Year 2024-25 Adopted Budget for Stormwater Quality.
  - Subsequent fiscal year allocations will be requested during the annual budget process

CITY OF OXNARD CALIFORNIA

End of Presentation

CITY OF OXNARD CALIFORNIA

PUBLIC WORKS AND TRANSPORTATION COMMITTEE AGENDA REPORT

REPORTS
AGENDA ITEM NO. D.2

DATE: February 11, 2025

TO: Public Works and Transportation Committee

FROM: Michael Wolfe, Public Works Director, (805) 385-8055, michael.wolfe@oxnard.org

SUBJECT: Annual Enterprise Pavement Impact Cost Reimbursement Study. (10 minutes)

RECOMMENDATION

That the Public Works and Transportation Committee recommend that the Annual Enterprise Pavement Impact Cost Reimbursement Study be forwarded to the City Council as a receive and file item.

Please click the following link to view the required Measure M pre-recorded presentation video: https://youtu.be/9wCx6P0hkI8

BACKGROUND

The City has approximately 1,037 lane miles of streets, or roughly 95.5 million square feet, with an estimated replacement value of $989 million. Three of the City's enterprise funds (solid waste, water, and wastewater) that operate within the city limits utilize the City's streets for portions of their operations to varying degrees. Consistent with a 2014 Enterprise Fund Allocation Study ("2014 IUF Study"), the City had been transferring funds from utility accounts to the General Fund referred to as an Infrastructure Use Fee (IUF) transfer.

The City was party to a lawsuit, Court Case 56-2017-00494475-CU-WM-VTA ("Court Case"), in which the validity of the City's IUF transfer from enterprise accounts to the General Fund was questioned. In the Court Case, the 2014 IUF Study was deemed inadequate via a judgment entered into on July 13, 2021 ("Judgment"), which is attached for reference. As such, subsequent to the Judgement, the City took measures to reduce the utility rates associated with the three enterprise funds, removing the IUF component, effective September 2021 (see attached staff report for reference). Additionally, the City provided ratepayers credits on utility bills and the General Fund reimbursed the utility funds.

The Judgement states, "...[the] ruling is without prejudice to the City's establishment of an IUF transfer methodology which reasonably represents the actual cost to the City's public safety, governmental agency, and streets and roadways maintenance funds of providing water, wastewater, and solid waste disposal services to property owners." The Judgement further states, "Article XIII D does not prevent City from charging an IUF to cover such indirect costs."

City staff originally anticipated the need to take an updated IUF study back to the judge pursuant to the interpretation of the language in the Judgement. However, at a Case Management Conference in November 2024, the judge indicated that an updated IUF study did not need to be returned for review/action.

DISCUSSION

The activities of the water, wastewater, and environmental resources enterprise funds damage the City's streets in a way that may be isolated and quantified. As such, consistent with the Judgement, the City is authorized to account for these costs in an updated IUF. The Judgment states:

> "The Court's findings and conclusion above are without prejudice to the City, at some point going forward, creating a credible and reasonable means of itemizing or estimating the indirect costs of providing public safety, general governmental, and streets and roadways maintenance services attributable to its provisions of water, wastewater and solid waste disposal utility services. The most rudimentary understanding of accounting leads to the conclusion that both direct and indirect costs are capable of being calculated or estimated reasonably. The Court's conclusion that the City failed to do so in this action should in no way be construed as a barrier to City doing so in the future."

The City hired a consultant (Bartle Wells Associates) to prepare an updated IUF study. Attached is the final IUF study, titled Annual Enterprise Pavement Impact Cost Reimbursement Study ("Study"). The focus of this Study is to analyze and quantify the annual damages to the City's streets caused by the utilities and to determine the annual compensation the City should receive through a transfer to the General Fund. The annual damage to the City's streets that is caused by the utilities each year is connected to the respective enterprises' use of the streets. The water and wastewater enterprises damage the streets while installing and making infrastructure repairs. The solid waste enterprise causes excessive damage by its constant use of heavy equipment on roadways that are not designed and constructed to handle its vehicles.

This Study focuses on quantifiable impacts with supporting data on the damages to the City's roadways caused by the uniquely impactful use of the City's roadways by the water, wastewater, and solid waste enterprises for the benefit of utility customers. Unlike the 2014 IUF Study, this new report does not include an analysis of public safety or governmental facilities.

Here is a summary of the roadway analysis:

Water and Wastewater - This Study quantifies the portion of roadway degradation caused by the water and wastewater enterprises by using the results of a field survey of City streets to calculate the actual reduction in the Pavement Condition Index (PCI) attributable to the visible trench patches made by the water and wastewater enterprises. When the water and wastewater enterprises access their underground infrastructure in the streets, their repair method includes utility patches in the asphalt, which in turn reduces the durability and structural integrity of the roadway asphalt.

Solid Waste - The solid waste enterprise's damage to the streets is quantified by 1) identifying the actual amount of vehicle wear the City streets are designed to withstand, then 2) calculating the portion of that damage caused by the solid waste enterprise based on the actual weight of solid waste trucks, the actual area impacted by solid waste routes, and frequency of solid waste collections.

The Study was peer-reviewed by a third-party consultant, specifically Debaroti Ghosh, PhD and Margot Yapp, PE with Nichols Consulting Engineers (NCE). The peer-review team concluded that the process presented in the Study represents a conservative yet valid approach to present the financial damage to the City's street.

STRATEGIC PRIORITIES

This agenda item supports the Infrastructure and Natural Resources strategy. The purpose of the Infrastructure and Natural Resources strategy is to preserve and improve our roads, utilities, parks, trees, water supply and natural resources through effective planning, prioritization, and an equitable and efficient use of available funding.

FINANCIAL IMPACT

There is no fiscal impact associated with receiving and filing this report. The Study estimates the total amount of the new Infrastructure Use Fee (IUF) at approximately $2.1 million per year, with the following breakdown by enterprise funds: Water – $55,859; Wastewater – $35,713; and Solid Waste – $2,048,468. The solid waste rates approved by the City Council in April 2024 include an IUF component, while the water rates approved in May 2023 did not. Staff recommends incorporating the IUF into the next analysis of water rates. Currently, staff and a third-party consultant are reviewing the wastewater rates, and the updated IUF from the Study will be included in that analysis. Any necessary budget adjustments will be addressed through the annual budgeting process.

Prepared by: Michael Wolfe, Public Works Director

ATTACHMENTS

1. Final Judgment
2. September 7, 2021 Council Agenda Report-IUF Refund and Utility Rate Reduction
3. IUF_Final Oxnard Enterprise Impact Study
4. Peer Review-Oxnard_Memorandum
5. Presentation

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TELEPHONE NO.: 619-369-5252 FAX NO. *(Optional)*: 619-369-5253
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ATTORNEY FOR *(Name)*: Petitioner Aaron Starr, an individual

FOR COURT USE ONLY

Electronically
FILED
by Superior Court of California
County of Ventura
07/20/2021
Brenda L. McCormick
Executive Officer and Clerk
Cristal Alvarez
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Ventura
STREET ADDRESS: 800 South Victoria Ave.
MAILING ADDRESS: 800 South Victoria Ave.
CITY AND ZIP CODE: Ventura, CA 93009
BRANCH NAME: Hall of Justice

PLAINTIFF/PETITIONER: Aaron Starr, an individual
DEFENDANT/RESPONDENT: City of Oxnard, a general law city

NOTICE OF ENTRY OF JUDGMENT OR ORDER

CASE NUMBER:
56-2017-00494475-cu-wm-vta

(Check one): ☑ **UNLIMITED CASE** (Amount demanded exceeded $25,000) ☐ **LIMITED CASE** (Amount demanded was $25,000 or less)

TO ALL PARTIES :

1. A judgment, decree, or order was entered in this action on *(date)*: ~~July 14, 2021~~ July 13, 2021

2. A copy of the judgment, decree, or order is attached to this notice.

Date: July 20, 2021

Eric J. Benink, Esq.
(TYPE OR PRINT NAME OF ☑ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

Form Approved for Optional Use
Judicial Council of California
CIV-130 [New January 1, 2010]

NOTICE OF ENTRY OF JUDGMENT OR ORDER

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PLAINTIFF/PETITIONER: Aaron Starr, an individual DEFENDANT/RESPONDENT: City of Oxnard, a general law city	CASE NUMBER: 56-2017-00494475-CU-WM-VTA

PROOF OF SERVICE BY FIRST-CLASS MAIL
NOTICE OF ENTRY OF JUDGMENT OR ORDER

(NOTE: You cannot serve the* Notice of Entry of Judgment or Order *if you are a party in the action. The person who served the notice must complete this proof of service.)

1. I am at least 18 years old and **not a party to this action.** I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify):*

   8885 Rio San Diego Drive, Suite 207
   San Diego, CA 92108

2. I served a copy of the *Notice of Entry of Judgment or Order* by enclosing it in a sealed envelope with postage fully prepaid and *(check one):*
   a. ☐ deposited the sealed envelope with the United States Postal Service.
   b. ☑ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Entry of Judgment or Order* was mailed:
   a. on *(date):* July 20, 2021
   b. from *(city and state):* San Diego, CA

4. The envelope was addressed and mailed as follows:

   a. Name of person served: Holly O. Whatley, Esq. / Jon R. Di Cristina, Esq.
   Street address: 790 E. Colorado Blvd., Ste. 850
   City: Pasadena,
   State and zip code: CA 91101-2109

   c. Name of person served:
   Street address:
   City:
   State and zip code:

   b. Name of person served:
   Street address:
   City:
   State and zip code:

   d. Name of person served:
   Street address:
   City:
   State and zip code:

   ☐ Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

5. Number of pages attached 36.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: July 20, 2021

Robin Griffin
(TYPE OR PRINT NAME OF DECLARANT)

Robin Griffin
(SIGNATURE OF DECLARANT)

RECEIVED
VENTURA SUPERIOR COURT
06/21/21

VENTURA
SUPERIOR COURT
FILED
JUL 13 2021
BRENDA L. McCORMICK
Executive Officer and Clerk
By:_____, Deputy
ELIZABETH MULLER

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

AARON STARR, an individual; Petitioner and Plaintiff, v. CITY OF OXNARD, a general law city; and DOES 1-10, Respondent and Defendant.	Case No.: 56-2017-00494475-CU-WM-VTA *Assigned for all purposes to Hon. Matthew P. Guasco* **~~[PROPOSED]~~ SECOND AMENDED FINAL JUDGMENT** Complaint Filed: March 27, 2017 Dept.: 20

This matter came before the Court on October 1, 2020 at 8:20 a.m. in Department 20 of the Superior Court of California, for the County of Ventura, the Honorable Matthew P. Guasco presiding, as a hearing on a Petition for Writ of Mandate and Prohibition ("Petition") of Petitioner and Plaintiff Aaron Starr ("Starr") and against Respondent City of Oxnard ("City"). The Court also heard Starr's causes of action for declaratory relief and injunctive relief. Appearing for Starr was Eric J. Benink, Esq. and appearing for the City was Holly O. Whatley, Esq. On December 28, 2020, the Court issued a Tentative Decision and Proposed Statement of Decision and Judgment. On January 14, 2021, the Court issued a Final Statement of Decision and Judgment ("Statement of Decision") and on March 23, 2021, the Court entered an Amended Final Judgment.

On May 13, 2021, the Court heard the City's Motion to Amend Judgment. On June

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14, 2021, the Court issued a ruling granting, in part, the motion.

The Court, having carefully reviewed and considered the pleadings, the evidence presented by the parties, the matters subject to judicial notice, and the arguments of counsel, and based on the Findings of Fact and Conclusions of Law set forth in the Final Statement of Decision and incorporated by reference herein, hereby ORDERS, ADJUDGES, and DECLARES that JUDGMENT is entered as follows:

(1) The Court hereby enters JUDGMENT in favor of Starr and against City on the Petition to the extent set forth in the Findings of Fact and Conclusions of Law in the Final Statement of Decision filed on January 14, 2021, a true and correct copy of which is attached hereto as Exhibit A.

(2) The Court hereby enters its JUDGMENT GRANTING Starr's Petition for Writ of Mandamus and/or Prohibition against City to the extent set forth in the Findings of Fact and Conclusions of Law in the Final Statement of Decision.

(3) The Court hereby enters its WRIT OF PROHIBITION directing City to immediately cease and desist imposing the embedded Infrastructure Use Fees ("IUF") in the rates paid by water, waste water, and solid waste disposal ratepayers, WITHOUT PREJUDICE to City developing and implementing a credible and reasonable means of complying with California Constitution, article XIII D, section 6, subdivisions (b)(1), (2), and (5) of the California Constitution which rectifies the errors and omissions set forth in the Findings of Fact and Conclusions of Law in the Final Statement of Decision.

(4) The Court hereby enters its WRIT OF PROHIBITION directing City to immediately cease and desist transfers of IUFs from the water, waste water, and solid waste disposal utility operating budgets to City's General Fund, Street Maintenance Fund, or any other fund controlled by City, WITHOUT PREJUDICE to City developing and implementing a credible and reasonable means of complying with article XIII D, section 6, subdivisions (b)(1),(2), and (5), which rectifies the errors and omissions set forth in the Findings of Fact and Conclusions of Law in the Final Statement of Decision. (See *Citizens for Fair REU Rates v. City of Redding* (2018) 6 Cal.5th 1, 237 Cal.Rptr.3d 179, 424 P.3d268.)

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(5) The Court hereby enters its WRIT OF MANDATE directing City to reimburse to the water, waste water, and solid waste disposal utility operating budgets the total sum of all IUF transfers made to the General Fund and Street Maintenance Fund for fiscal years 2014-2015 (beginning March 27, 2014), 2015-2016, 2016-2017, 2017-2018, 2018-2019, 2019-2020, and 2020-2021. The Court intends this aspect of its writ of mandamus and prohibition to restore the status quo ante as to IUF transfers beginning no earlier than March 27, 2014. For the reasons set forth in the Court's June 14, 2021 ruling, a true and correct copy of which is attached hereto as Exhibit B and incorporated herein by reference, the City shall reimburse $36,470,697 to the water, waste water, and solid waste disposal utility operating budgets from the City's General Fund and Street Maintenance Fund on the following schedule:

(a) Fiscal Year 2021-2022: A total of $12 million over four equal quarterly installments to be made on the first date of the beginning of each quarter.

(b) Fiscal Year 2022-2023: A total of $12 million over four equal quarterly installments to be made on the first date of the beginning of each quarter.

(c) Fiscal Year 2023-2024: A total of $12,470,697 over four equal quarterly installments to be made on the first date of the beginning of each quarter.

The issuance of this WRIT OF MANDATE is WITHOUT PREJUDICE to City developing and implementing a credible and reasonable means of complying with article XIII D, section 6, subdivisions (b)(1), (2), and (5), which rectifies the errors and omissions set forth in the Findings of Fact and Conclusions of Law in the Final Statement of Decision. (See *Citizens for Fair REU Rates v. City of Redding, supra,* 6 Cal.5th 1, 237 Cal.Rptr.3d 179, 424 P.3d 268.)

(6) The Court issues its ORDER of PERMANENT INJUNCTION consistent with the WRITS OF MANDATE AND PROHIBITION set forth above. This PERMANENT INJUNCTION is WITHOUT PREJUDICE to City developing and implementing a credible and reasonable means of complying with article XIII D, section 6, subdivisions (b)(1), (2), and (5), which rectifies the errors and omissions set forth in the Findings of Fact and Conclusions

of Law in the Final Statement of Decision. (See *Citizens for Fair REU Rates v. City of Redding, supra,* 6 Cal.5th 1,237Cal.Rptr.3d 179, 424 P.3d 268.)

(7) The Court hereby enters its DECLARATORY JUDGMENT in favor of Starr and against City as follows:

(a) The IUF embedded charges and transfers at issue here violate article XIII D, section 6, subdivisions (b)(1) and (2), which prohibit "use fees or charges that exceed the funds required to provide the property related service" and that are "used for any purpose other than that for which the fee or charge was imposed."

(b) The IUFs violate article XIII D, section 6, subdivision (b)(5), because they are and have been used "for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners."

(8) The Court hereby awards costs of suit to Starr and against City in an amount to be determined by a timely served and filed cost memorandum in conformity with the Code of Civil Procedure and the California Rules of Court.

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The Court reserves jurisdiction to enforce, modify, or vacate the above JUDGMENT, WRIT OF MANDATE AND PROHIBITION, and PERMANENT INJUNCTION. This reservation of jurisdiction includes, but is not limited to, a later evidentiary hearing and adjudication, if necessary, concerning the extent to which, if at all, City rectifies the errors and omissions set forth in the above Findings of Fact and Conclusions of law concerning implementation of IUFs and IUF transfers, as well as concerning anynecessary adjustments or modifications to the WRIT OF MANDATE directing reimbursement of IUFs to the respective utility services funds in compliance with article XIII D, section 6, subdivisions (b) (1), (2), and (5). Any such later evidentiary hearing and adjudication shall be upon noticed motion in conformity with the Code of Civil Procedure and the Rules of Court.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

DATED: JUL 11 2021

Hon. Matthew P. Guasco
Judge of the Superior Court

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EXHIBIT A

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VENTURA
SUPERIOR COURT
FILED
JAN 14 2021
MICHAEL D. PLANET
Executive Officer and Clerk
BY: Deputy
D. ARREOLA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

AARON STARR, an individual, Petitioner and Plaintiff, vs. CITY OF OXNARD, a general law city; and DOES 1-10, Respondent and Defendant.	Case No.: 56-2017-00494475-CU-WM-VTA **FINAL STATEMENT OF DECISION AND JUDGMENT**

On October 1, 2020, at 8:20 a.m., the matter came before the Court for a hearing on the Petition for Writ of Mandamus and Prohibition of petitioner, Aaron Starr ("Starr'), against respondent, the City of Oxnard ("City"), challenging the establishment and use of so-called Infrastructure Use Fees ("IUF"s) embedded in the rates City charges its residents for water, waste water (sewer), and solid waste disposal ("Environmental Resources" or garbage/trash) utility services operated by City. The Petition is brought pursuant to Propositions 13, 26, and 218, as embodied in California Constitution, articles XIII C and XIII D. The central issue in this action is whether the IUFs constitute a prohibited tax (which may be implemented only upon a vote of City's residents) or a permitted fee for utility services (which is not subject to the vote requirement).

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The parties appeared as set forth in the Clerk's minutes. The record consists of the declarations and exhibits submitted in support of and opposition to the petition, including matters as to which the Court takes judicial notice. The Court received and considered briefing and oral arguments in support of and opposition to the Petition. The parties timely made an oral request for a Statement of Decision. At the conclusion of the arguments, the Court took the matter under submission.

On December 28, 2020, and pursuant to Code of Civil Procedure section 632, the Court entered its Tentative Decision and Proposed Statement of Decision in this matter. The Court directed that the Tentative Decision and Proposed Statement of Decision shall become the Court's Final Statement of Decision and Judgment in this case, subject to the parties' rights to timely object and make further proposals concerning same pursuant to California Rules of Court, rule 3.1590. The Court has not received any objections or proposals concerning the Proposed Statement of Decision within the time set forth in rule 3.1590. Accordingly, the Court adopts its Proposed Statement of Decision as its Final Statement of Decision and Judgment, with the exception of the correction of a minor clerical error at section (5) of the Judgment, page 21, line 27, to page 22, line 1.[1]

INTRODUCTION

Propositions 13, 26, and 218 collectively amend the California Constitution to prohibit municipalities from enacting special taxes in the guise of use fees or surcharges without voter approval. Thus, a municipality may charge its residents a use fee only if it does not exceed the sum required to provide property-related services. Additionally, revenues derived from a use fee shall not be used for any purpose other than that for which the fee is imposed. Municipalities may not impose use fees to subsidize general government services, including police, fire,

[1] The Court changes "March 27, 2017" to "March 27, 2014,"as well as adding "2017-2018," to conform to the Court's findings, conclusions concerning the earliest date upon which IUFs and IUF transfers began for purposes of the Court's Judgment.

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ambulance, or streets and roads, where the services are available to the public at large to the same extent as they are to property owners. Use fees must reflect the reasonable cost to the municipality for the property-related services provided. Municipalities are permitted broad leeway in reasonably estimating the actual cost of providing services to property owners for purposes of substantiating constitutionally-permissible use fees. Use fees which do not meet these constitutional standards are invalid unless they were approved by the voters.

Here, Starr, a resident and taxpayer of City, brings a petition for writ of mandamus and/or prohibition alleging that City has violated articles XIII C and XIII D of the California Constitution by charging residents with a use fee – the IUF at issue – for water, waste water, and solid waste disposal services. The IUFs were not approved by a vote of City's residents. Starr argues that the IUFs exceed the reasonable sum associated with providing the respective services to property owners. Further, Starr argues that City has transferred IUF fees from the utility services' budgets to City's general fund in sums exceeding the reasonable cost City bears in subsidizing the utility services.

The period during which these constitutional violations are alleged to have occurred is beginning in the 2014-2015 fiscal year through June 30, 2017, as to IUF transfers to the public safety and governmental agency funds, and from the 2014-2015 fiscal year to the present as to IUF transfers to the streets and roadways maintenance fund. Starr challenges over $34 million in IUF transfers made from the water, waste water, and solid waste disposal budgets to the public safety, governmental agency, and streets and roadways maintenance funds.

City argues that its methodology for calculating and implementing the IUF transfers is sound and reasonably represents the cost to the public safety, governmental agency and streets and roadways maintenance budgets associated with providing residents with water, waste water, and solid waste disposal utility services. City relies principally on a cost-of-service study provided by a consultant in 2012 to support City's calculation of the percentages upon which the IUF transfers are premised.

For the reasons stated below, the Court finds in favor of Starr and against City on the Petition. The Court finds City has failed to meet its burden of proving that the IUF transfers

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reasonably represent the cost to City's public safety, governmental agency and streets and roadways maintenance budgets of providing water, waste water and solid waste disposal utility services to property owners. Accordingly, the Court GRANTS Starr's Petition for Writ of Mandate and Prohibition IN PART: the Court enters its Writ of Prohibition enjoining City from transferring IUF revenue to its public safety, governmental agency, and streets and roadway maintenance funds based upon the current methodology. Further, the Court enters its Writ of Mandamus directing City to restore to the respective utility funds all IUF monies transferred to the public safety, governmental agency, and streets and roadway funds for the period from fiscal year 2014-2015 (beginning March 27, 2014) through and including the current fiscal year. The Court enters its Declaratory Judgment that the IUFs violate Article XIII D, section 6, subdivisions (b) (1), (2), and (5). The Court enters its Permanent Injunction to the extent consistent with the Courts issuance of its Writs of Mandate and Prohibition.

The above ruling is without prejudice to City's establishment of an IUF transfer methodology which reasonably represents the actual cost to City's public safety, governmental agency, and streets and roadways maintenance funds of providing water, waste water and solid waste disposal services to property owners. It is possible there are indirect costs incurred by City providing these services which are attributable to City's providing water, waste water, and solid waste disposal utility services to property owners which are not paid for by rate revenue. Article XIII D does not prevent City from charging an IUF to cover such indirect costs. The Court simply finds that City has failed to prove its current method of calculating IUF transfers complies with Article XIII D.

The Court DENIES the Petition IN PART to the extent of Starr's claims for rescission of City's ordinances establishing the IUF transfer process and the Vehicle Code claim. The Court finds these claims are not supported by the law or the evidence. In particular, while the Court can declare City's ordinances to be unconstitutional to the limited extent identified above, the Court is without any authority to rescind City's duly enacted ordinances. Further, for reasons stated below, the Court finds the IUF transfers do not implicate or violate Vehicle Code section 9400.8.

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The Court exercises its discretion to decline to bifurcate the issue of remedies contrary to the tentative indication the Court gave the parties at the hearing on the Petition. After further thought and reflection, including a careful review of the record and the parties' arguments, the Court concludes there is no need for a further hearing concerning the appropriate remedy(ies) in light of the Court's Orders granting the Petition in part and issuing its Declaratory Judgment and Writs of Mandate and Prohibition, including the entry of a Permanent Injunction.

REQUEST FOR JUDICIAL NOTICE

The Court GRANTS Starr's request for judicial notice of public records reflecting City's fiscal year 2019-2020 annual budget. (Evid. Code, § 452, subd. (c) and (h).)

EVIDENTIARY OBJECTIONS

The Court SUSTAINS Starr's objections 1 and 2 to the declaration of Christine Williams and accompanying Exhibit A to City's Compendium of Exhibits in Support of Opposition to the Petition. The documents comprising Exhibit A are hearsay without any identifiable exception or foundation.

STARR'S OBJECTION TO OPINION TESTIMONY OF JOHN FARNKOPF, P.E.

Starr objects to the Court's consideration of expert opinions by John Farnkopf, P.E., the principal consultant who created the IUF transfer methodology which is the sole basis upon which City opposes the Petition. A timely demand for the exchange of expert witness information occurred in this action. Accordingly, each party was required to timely exchange expert witness information in conformity with Code of Civil Procedure section 2034.260. City did not designate Farnkopf as an expert witness.

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The Court finds that the methodology Farnkopf and his team created for City to use in implementing the IUF transfer process at issue consists of information and concepts well beyond the common understanding of lay persons. Accordingly, Farnkopf's opinions as reflected in the consultant's report at issue, as well as those stated in his declaration and deposition testimony, constitute expert opinion within the meaning of Evidence Code section 801.

The Court, therefore, SUSTAINS Starr's objection to Farnkopf's expert opinion testimony in support of City's defense to the Petition. (Code of Civ. Proc., §2034.300.) The Court GRANTS Starr's motion to exclude that opinion testimony from the Court's consideration of the evidence offered by City. Additionally, the Court excludes from its consideration the consultant's report upon which the IUF methodology is premised. (Pet. Ex. 9, HF&H, "Enterprise Fund Allocation Study") ("HF&H Report") The HF&H Report is hearsay without any exception, and no other witness testified by declaration, deposition or otherwise concerning the foundation or methodology reflected therein. The Court does, however, receive and consider the HF&H Report for the limited purpose of describing and explaining the basis of City's calculation of the IUF transfers to explain what City has done and why it has done it. The Court does not receive the HF&H report for the truth of the facts and opinions stated therein.

STATUTE OF LIMITATIONS

The Court finds that this Proposition 218 petition is governed by the three-year statute set forth in Code of Civil Procedure section 338, subdivision (a). Plainly, this is an "action upon a liability created by statute, other than a penalty or forfeiture." This phrase has been construed to mean a statutory obligation which did not exist at common law at the time the statute was enacted. (*Gardner v. Basich Bros. Constr. Co.* (1955) 44 Cal.2d 191, 194, 281 P.2d 521; *Winick Corp. v. General Ins. Co.* (1986) 187 Cal.App.3d 142, 145, 231 Cal.Rptr. 606.) A constitutional provision surely is afforded the same status as a statute for purposes of construing section 338; the former authorizes and enables the latter. Section 338, subdivision (a)'s three-year limitations

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period frequently has been applied by courts in mandamus proceedings. (*Pena v. City of Los Angeles* (1970) 8 Cal.App.3d 257, 262, 87 Cal.Rptr. 326.)

The Court concludes that Starr's petition is not governed by the one-year statute of limitations associated with an action subject to the Government Claims Act ("GCA"). (Govt. Code, § 911.2.) Starr's action is subject to the exception noted in Government Code section 905, subdivision (a), for claims related to "any tax, assessment, fee, or charge." Application of this exception to the one-year limitations period is not merely "arguable," as the City puts it; it is undisputed. Further, Starr's petition is not governed by the GCA at all: it does not seek relief in the form of money or damages. (Govt. Code, § 905.)

The Court further concludes that City's Municipal Code section 2-183 does not apply here; Starr's petition does not seek a refund of taxes or assessments. The Petition seeks relief in the form of mandamus, prohibition, injunction, and a declaratory judgment concerning violations of Proposition 218. Starr has not prayed for a refund of any IUF monies he has paid personally or that other taxpayers have paid individually or collectively.

Starr filed the Petition on March 27, 2017. The Petition raises Proposition 218 claims concerning IUF fund transfers for a period beginning no earlier than March 27, 2014, and encompassing fiscal years 2014-2015 through and including the present. Since the three-year statute of limitations applies here, Starr's Petition is not time-barred.

LEGAL PRINCIPLES

The parties largely agree on the legal standards governing this Court's review and determination of this Proposition 218 petition, with a minor dispute discussed below. The Court summarizes the framework of Proposition 218 actions, the standard of the Court's review of Starr's Petition, and the burden of proof governing this proceeding.

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A. PROPOSITION 218 – HISTORICAL BACKGROUND

By the initiative process, the citizens of California enacted Propositions 13, 26 and 218. These legislative enactments made sweeping changes to the California Constitution the effect of which is to limit the authority of municipalities to enact general taxes, special taxes, and fees and assessments.

California Constitution, Article XIII C, section 2, states the following:

"(a) All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

(b) No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

(c) Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b).

(d) No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved."

Article XIII C, section 1, provides in pertinent part as follows:

"(e) As used in this article, "tax" means any levy, charge, or exaction of any kind imposed by a local government, except the following:

(1) A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.

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(2) A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.

(3) A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

(4) A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.

(5) A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.

(6) A charge imposed as a condition of property development.

(7) Assessments and property-related fees imposed in accordance with the provisions of Article XIII D.

The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity."

Article XIII D, section 2, subdivision (b), defines an "[a]ssessment" as being ". . . any levy or charge upon real property by an agency for a special benefit conferred upon the real property. 'Assessment' includes, but is not limited to, 'special assessment,' 'benefit assessment,' 'maintenance assessment' and 'special assessment tax.'"

Article XIII D, section 2, subdivision (e), defines a "[f]ee" or "charge" as ". . . any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service."

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Article XIII D, section 3, provides as follows:

"(a) No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:

(1) The ad valorem property tax imposed pursuant to Article XIII and Article XIII A.

(2) Any special tax receiving a two-thirds vote pursuant to Section 4 of Article XIII A.

(3) Assessments as provided by this article.

(4) Fees or charges for property related services as provided by this article.

(b) For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership."

Article XIII D, section 6, provides the following:

"(a) Procedures for New or Increased Fees and Charges. An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:

(1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.

(2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.

(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

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(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.

(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners. Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.

(c) Voter Approval for New or Increased Fees and Charges. Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision.

(d) Beginning July 1, 1997, all fees or charges shall comply with this section."

It is undisputed that the IUFs at issue here fall within the exception of Article XIII D, section 6, subdivision (c), exempting sewer, water, and refuse collection services from the requirement of a vote of City's residents prior to adoption. As is explained more fully below, Starr's challenge to the IUFs here implicates Article XIII D, section 6, subdivisions (b) (1), (2), and (5).

"Proposition 218, approved by voters in 1996, is one of a series of voter initiatives restricting the ability of state and local governments to impose taxes and fees." (*Plantier v. Ramona Municipal Water Dist.* (2019) 7 Cal.5th 372, 380, 247 Cal.Rptr.3d 619, 441 P.3d 870.) "The first of these measures was Proposition 13, adopted in 1978, which limited ad valorem property taxes to 1 percent of a property's assessed valuation and limited annual increases in valuation to 2 percent without a change in ownership." (*Ibid.*) "To prevent local governments from increasing special taxes to offset restrictions on ad valorem property taxes, Proposition 13 prohibited counties, cities, and special districts from imposing special taxes without a two-thirds vote of the electorate." (*Ibid.*)

"But local governments were able to circumvent Proposition 13's limitations by relying on *Knox v. City of Orland* (1992) 4 Cal.4th 132, 141, 14 Cal.Rptr.2d 159, 841 P.2d 144, which held a 'special assessment' was not a 'special tax' within the meaning of Proposition 13." (*Id.*, 7 Cal.5th at p. 381, 247 Cal.Rptr.3d 619, 441 P.3d 870.) "Consequently, without voter approval, local governments were able to increase rates for services by labeling them fees, charges, or assessments rather than taxes." (*Ibid.*)

"To address these and related concerns, voters approved Proposition 218, known as the "Right to Vote on Taxes Act," which added Articles XIII C and XIII D to the California Constitution." (*Ibid.*) "Article XIII C concerns voter approval for many types of local taxes other than property taxes. Article XIII D addresses property-based taxes and fees." (*Ibid.*)

"Article XIII D allows only four types of local property taxes: (1) an ad valorem tax, (2) a special tax, (3) an assessment, and (4) a property-related fee. (Art. XIII D, § 3, subd. (a).) Proposition 218 supplements Proposition 13's limitations on ad valorem and special taxes by placing similar restrictions on assessments and property-related fees. [citation]" (*Ibid.*)

"Article XIII D imposes distinct procedural and substantive limitations. (§§ 4, 6.) The procedures an agency must follow before 'imposing or increasing any fee or charge' are found in subdivision (a) of article XIII D, section 6.8. An agency seeking to impose or increase a property-related fee must hold a hearing and send written notice of the hearing to the owner of each affected parcel. (Art. XIII D, § 6, subd. (a)(1).) The notice must specify the amount of the

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proposed fee, the basis of calculation, and the reason for the fee. It must note the date, time, and location of the public hearing. [citation] At that hearing, 'the agency shall *consider all protests* against the proposed fee or charge.'" ([citation],§ 6, subd. (a)(2), italics added.) In addition to mandating that the agency 'consider' all protests, Proposition 218 establishes a majority protest remedy. 'If *written* protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.' ([citation]., italics added.) Article XIII D does not define the term 'protest' or explain what form a written protest must take." (*Id.*, 7 Cal.5th at pp. 381-82, 247 Cal.Rptr.3d 619, 441 P.3d 870.)

"Even when an agency is generally authorized to impose or modify fees, so long as it complies with the notice and hearing requirements, Proposition 218 places other substantive limitations on the agency. Those substantive limitations on property-related fees appear in subdivision (b) of article XIII D, section 6. Under these limitations: (1) revenues derived from the fee may not exceed the cost of providing the property-related service (id., § 6, subd. (b)(1)); (2) those revenues may not be used for any purpose other than the one for which the fee was imposed (id., § 6, subd. (b)(2)); (3) the amount of the fee 'shall not exceed the proportional cost of the service attributable to the parcel' (id., § 6, subd. (b)(3), italics added); (4) a fee may not be imposed for a service unless that service is available to the property owner (id., § 6, subd. (b)(4)); and (5) a fee may not be imposed upon property owners for a general governmental service, like fire protection, if the service is available to the general public in substantially the same manner as it is to property owners (id., § 6, subd. (b)(5))." (*Id.*, 7 Cal.5th at p. 382, 247 Cal.Rptr.3d 619, 441 P.3d 870.)

B. STANDARD OF REVIEW

The Legislature (that is, the people through the initiative process) clearly expressed their intent that Proposition 218 should be liberally, not strictly, construed to make it harder, not easier, for local governments to implement taxes in the form of user fees without voter approval. (*Silicon Valley Taxpayers' Assn. v. Santa Clara County* (2008) 44 Cal.4th 431, 443-449, 79

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Cal.Rptr.3d 312, 187 P.3d 37 ("*Silicon Valley*").) "Accordingly, courts should exercise their independent judgment in reviewing whether assessments that local agencies impose violate article XIIID." (*Id.*, 44 Cal.4th at p. 450, 79 Cal.Rptr.3d 312, 187 P.3d 37.) Contrary to City's argument, the Supreme Court made crystal clear in *Silicon Valley* that this Court shall not defer whatsoever to City's decisions adopting and implementing the IUF calculation and transfer methodology. This Court must exercise its independent judgment based upon the record presented to it in deciding whether City's creation and implementation of the IUF transfers violates article XIII D, section 6, subdivisions (1), (2), and (5).

C. BURDEN OF PROOF

City bears the burden of proving by a preponderance of the evidence that the IUF transfers do not violate article XIII D, section 6, subdivisions (b) (1), (2), and (5). (Art. XIII D, sect. 6, subd. (b) ["In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.]; *Capistrano Taxpayers Assn., Inc. v. City of San Juan Capistrano* (2015) 235 Cal.App.4th 1493, 1506-1507, 186 Cal.Rptr.3d 362; *Morgan v. Imperial Irrigation Dist.* (2014) 223 Cal.App.4th 892, 914, 167 Cal.Rptr.3d 687.)

City does not dispute it bears the burden of justifying the IUF transfers as permitted fees rather than prohibited taxes. Instead, City argues that Starr bears the initial burden of proving a prima facie case of a violation before City's burdens of production and proof are triggered. This contention is not settled in the law governing Proposition 218 challenges. The authorities upon which City relies for this contention leave the Court with little confidence in the accuracy of City's argument.

For example, the decision in *Morgan v. Imperial Irrigation Dist.*, *supra*, 223 Cal.App.4th 892, 167 Cal.Rptr.3d 687, does not address the question of whether a Proposition 218 petitioner bears any initial burden of production or proof before the municipality's burden of justifying a use fee is triggered. The decision in *California Farm Bureau Federation v. State Water Resources Control Board* (2011) 51 Cal.4th 421, 121 Cal.Rptr.3d 37, 247 P.3d 112, did not

address a Proposition 218 challenge, but instead involved a contested water rights fee which the Court held was outside the scope of Proposition 13's prohibition on ad valorem real property taxes. The decision in *California Building Industry Association v. State Water Resources Control Board* (2018) 4 Cal.5th 1032, 232 Cal.Rptr.3d 64, 416 P.3d 53, involved a water use fee alleged to have been in violation of article XIII A, not a Proposition 218 challenge under article XIII D, section 6, subdivision (b).

Thus, the Court concludes that the decisions relied upon by City in support of its argument that Starr bears the initial burden of production and proof of a prima facie Proposition 218 violation are inapposite. To the extent Starr has any initial burden in this action, he has met it: the evidence in support of the Petition identifies IUFs embedded in water, waste water, and solid waste disposal utility user fees, which are transferred by City to its public safety, governmental agency, and streets and roadways maintenance funds. Starr has met any initial burden the law places upon him. City's burden of producing evidence and proving that the IUFs and transfers comply with Proposition 218 is triggered.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Based upon the totality of the evidence presented, and all reasonable inferences which may be drawn therefrom, the Court makes the following findings of fact and conclusions of law:

(1) The evidence is undisputed that, since before fiscal year 2014-2015, City has charged its residents user fees to provide water, waste water (sewer), and solid waste disposal (trash and garbage) utility services. City has operating budgets into which these user fees are deposited and from which costs of providing these services are paid.

(2) As is relevant to the instant Petition, since March 27, 2014, in addition to the user fees charged to residents for water, waste water, and solid waste disposal, City has added IUFs, the purpose of which is to capture the indirect costs to City of providing public safety, governmental agency, and streets and roadways maintenance services to water ratepayers. The IUFs are embedded surcharges. Once the IUFs are paid by utility ratepayers, they are swept or

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transferred to City's General fund (for public safety and governmental agency services), and the Street Maintenance Fund (for streets and roadways maintenance services) on a monthly basis.

(3) Since fiscal year 2014-2015, City has swept or transferred a total of $34,431,058 in IUFs from the water, waste water and solid waste disposal utility operating funds to the General Fund and the Street Maintenance Fund. The IUF transfers to the General Fund ceased in fiscal year 2017. The IUF transfers to the Street Maintenance Fund have continued uninterrupted to this date.

(4) For the following reasons, the Court finds City has failed to meet its burden of production of evidence and proof that the embedded IUFs and IUF transfers from the water, waste water, and solid waste disposal utility operating funds to the General Fund and the Street Maintenance Fund comply with article XIII D, section 6, subdivisions (b) (1), (2), and (5):

(a) As mentioned previously, the Court has excluded the testimony of John Farnkopf, one of the principal authors of the HF&H Report, in the form of his deposition testimony and declarations, except the Court has received it for the limited purpose of explaining how City came up with the IUF embedded surcharge and fund transfer methodology (that is, its rationale for doing so). City's other expert, Mr. Joe Sbranti, was designated properly and deposed. Mr. Sbranti, however, did not participate in and offered no foundational testimony or other opinions about the research, analysis and methodology of the HF&H Report. Thus, no expert witness has offered any opinion testimony (in the form of a declaration, deposition or otherwise), based upon admitted evidence of foundational facts, to explain the complex methodology of assigning to the water, waste water, and solid waste disposal utilities the estimated reasonable, indirect costs to City's public safety, general governmental and streets and roadways maintenance budgetary units attributable to those utilities. The methodology employed by the HF&H Report, and upon which City pins its defense of the IUF transfers, can only be understood and justified by expert testimony; the HF&H Report's methodology and conclusions are well beyond the realm of lay opinion or common knowledge.

(b) Even if Farnkopf's opinion testimony and the HF&H Report were admissible, City has not produced any admissible evidence concerning the factual foundation upon which the

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HF&H report is premised. City's attorneys have argued at some length about the foundational facts. The arguments of counsel, however, are not evidence. (*Beagle v. Vasold* (1966) 65 Cal.2d 166, 181, 53 Cal.Rptr. 129, 417 P.2d 673.) Many documents containing budgetary information were submitted by City without any foundational testimony to explain the circumstances of their creation, their authenticity, their accuracy or their reliability. This record is bereft of any evidentiary foundation of the facts which serve as the premise of the HF&H Report. Since the HF&H Report and Farnkopf's testimony have not been received as evidence, the City's defense of the IUF transfers evaporates.

(c) The Court finds that the HF&H Report's conclusion that a fixed, flat percentage attributable to the provision of water, waste water and solid was disposal should be assigned as the indirect cost to City of providing public safety, general governmental, and streets and roadways maintenance services appears to be arbitrary, capricious, unsupported by any foundational facts, and entirely speculative. The Ottawa and Seattle studies upon which the streets and roadways maintenance percentage is premised do not bear any factual connection to the actual cost to City of street and roadway maintenance attributed to water, waste water, and/or solid waste disposal services and activities. City could have but elected not to present any evidence of the fact, frequency, and expense of demolishing and repairing its streets and roadways to operate underground water and sewer lines. City likewise failed to present any evidence of the frequency and pattern of solid waste disposal truck traffic on its streets and roadways. The HF&H Report and Farnkopf's opinions simply create IUF percentages without any showing of their factual connection to the reasonable estimated indirect cost to City's streets and roadways maintenance budget caused by operation of the water, waste water, and solid waste disposal utilities' services.

(d) City's argument that the total of the IUF transfers can be covered substantially by non-rate revenue is not supported by any admissible evidence.

(e) City has not presented any evidence concerning the actual costs it has incurred from fiscal year 2014-2015 to the present for the provision of public safety, general governmental, and streets and roadways maintenance services directly or indirectly attributable

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to the provision of water, waste water, and solid waste disposal utility services. It appears to the Court that City has not even attempted to make such an actual itemization or a reasonably reliable estimation. The parties submitted substantial financial information concerning the revenues, expenditures, and budgets of the utilities, and non-utility agencies at issue. None of this mass of information hints at an attempt by City to itemize or reasonably estimate the actual costs of public safety, general governmental, and streets and roadways maintenance services attributable to City's providing the three utility services at issue.

(f) Assuming for the sake of argument that the HF&H Report and Farnkopf's opinion testimony were admitted into evidence other than on the limited basis noted above, the methodology of calculating the IUF transfer percentages for the public safety and governmental agency budgetary units is entirely lacking in foundation, speculative and deeply flawed. The IUF percentages as to these budgetary categories are culled from the ratio of utility employees to the total of City's employees, the ratio of office space occupied by utility employees to all office space at City's governmental center complex, and a ratio derived from the respective budgets of the utilities and the general governmental services and public safety budgetary units. This methodology appears to meticulously have avoided making an actual calculation or a reasonable estimate of the general governmental services and public safety services indirectly connected to City's provision of water, waste water and solid waste disposal utility services to ratepayers. As to that aspect of the IUF which depends on the ratio of utility office employees and office space to the whole of the office space and employees at the main governmental center complex, the evidence suggests that the utilities have office space entirely separate from the civic center complex. No evidence was presented of any services performed by employees at the civic center complex which can be directly or indirectly attributed to providing water, waste water and/or solid waste disposal services. The resulting IUF transfer percentages are the definition of arbitrary; they do not bear a reasonable or meaningful connection to the actual cost to City of providing public safety, general governmental or streets and roadways maintenance services directly or indirectly connected to providing water, waste water and/or solid waste disposal services.

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(g) The Court finds that the IUF transfer fees have remained remarkably consistent in successive fiscal years, even though the budgets of the respective City services as to which the IUF percentages calculated by the HF&H Report are premised fluctuate substantially. This strongly suggests that the IUF transfer fees are not connected to the actual cost or a reasonable estimate of the actual cost to City of providing public safety, general governmental and streets and roadways maintenance services directly or indirectly connected to providing water, waste water and solid waste disposal services. This creates a strong inference the IUFs are an improper use fee subsidizing general governmental services available to all of City's residents to the same extent as its utility ratepayers.

(5) Thus, the Court concludes that the IUF embedded charges and transfers at issue here violate article XIII D, section 6, subdivisions (b) (1) and (2) because City has failed to meet its burden of proving that the charges and transfers do "not exceed the funds required to provide the property related service" and that "[r]evenues derived from the fee or charge [are] not be used for any purpose other than that for which the fee or charge was imposed."

(6) Moreover, the Court concludes that City has failed to meet its burden of proving that the IUFs have not been used "for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners." (Art. XIII D, sect. 6, subd. (b)(5).) In fact, it is undisputed that the IUFs have been and are used for general governmental services which are available to the public at large in substantially the same manner as to property owners. City's attempt to justify these general governmental surcharges on property owners through the unfounded and speculative methodology outlined by the HF&H Report is unavailing for the reasons stated above.

(7) The Court's findings and conclusions above are without prejudice to the City, at some point going forward, creating a credible and reasonable means of itemizing or estimating the indirect costs of providing public safety, general governmental, and streets and roadways maintenance services attributable to its provision of water, waste water and solid waste disposal utility services. The most rudimentary understanding of accounting leads to the conclusion that

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both direct and indirect costs are capable of being calculated or estimated reasonably. The Court's conclusion that City has failed to do so in this action should in no way be construed as a barrier to City doing so in the future.

(8) To the extent of the above findings and conclusions, the Court finds in favor of Starr and against City on the Petition.

(9) The Court finds against Starr on the Petition's claim that Vehicle Code section 9400.8 bars the IUF transfers to the Street Maintenance Fund. The Court finds the IUFs here are not prohibited fees or charges for hauling legal loads on streets. (See *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1622, 27 Cal.Rptr.3d 28.) They are an unconstitutional attempt to capture the alleged reasonable, actual indirect cost to City of providing streets and roadways maintenance services attributed to water, waste water, and solid waste disposal utility services. There is a reasonable possibility City could impose such an indirect cost-based use fee without offending article XIII D, section 6, subdivision (b). Any such constitutional use fee would not violate Vehicle Code section 9400.8.

(10) The Court finds against Starr on the Petition's prayer for prejudgment interest. Starr has not been awarded monetary damages. The Court's Judgment on the Petition directs that City reimburse its utility service budgets in the full amount of the IUF transfers from March 27, 2014, to the present without prejudice to an accounting adjustment later in the event that City develops a credible and reasonable means of calculating or estimating the actual direct or indirect unreimbursed costs to its public safety, general governmental and/or streets and roadways maintenance budgets attributable to providing water, waste water and solid waste disposal utility services. Thus, Starr is not entitled to prejudgment interest. (Civ. Code, § 3287.)

(11) The Court finds against Starr on the Petition's claim for rescission of City's ordinances enacting the IUFs and transfers. The Court has no authority to rescind a duly enacted municipal ordinance.

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JUDGMENT

Based upon the above findings of fact and conclusions of law, the Court hereby ORDERS, ADJUDGES, and DECREES the following:

(1) The Court hereby enters JUDGMENT in favor of Starr and against City on the Petition to the extent set forth in the above Findings of Fact and Conclusions of Law.

(2) The Court hereby enters its JUDGMENT GRANTING Starr's Petition for Writ of Mandamus and/or Prohibition against City to the extent set forth in the above Findings of Fact and Conclusions of Law.

(3) The Court hereby enters its WRIT OF PROHIBITION directing City to immediately cease and desist imposing the embedded IUF in the rates paid by water, waste water, and solid waste disposal ratepayers, WITHOUT PREJUDICE to City developing and implementing a credible and reasonable means of complying with article XIII D, section 6, subdivisions (1), (2), and (5) which rectifies the errors and omissions set forth in the above Findings of Fact and Conclusions of Law.

(4) The Court hereby enters its WRIT OF PROHIBITION directing City to immediately cease and desist transfers of IUFs from the water, waste water, and solid waste disposal utility operating budgets to City's General Fund, Street Maintenance Fund, or any other fund controlled by City, WITHOUT PREJUDICE to City developing and implementing a credible and reasonable means of complying with article XIII D, section 6, subdivisions (1), (2), and (5), which rectifies the errors and omissions set forth in the above Findings of Fact and Conclusions of Law. (See *Citizens for Fair REU Rates v. City of Redding* (2018) 6 Cal.5th 1, 237 Cal.Rptr.3d 179, 424 P.3d 268.)

(5) The Court hereby enters its WRIT OF MANDATE directing City to immediately reimburse to the water, waste water, and solid waste disposal utility operating budgets the total sum of all IUF transfers made to the General Fund and Street Maintenance Fund for fiscal years 2014-2015 (beginning March 27, 2014), 2015-2016, 2016-2017, 2017-2018, 2018-2019, and 2019-2020. The Court intends this aspect of its writ of mandamus and prohibition to restore the

status quo ante as to IUF transfers beginning no earlier than March 27, 2014. The issuance of this WRIT OF MANDATE is WITHOUT PREJUDICE to City developing and implementing a credible and reasonable means of complying with article XIII D, section 6, subdivisions (1), (2), and (5), which rectifies the errors and omissions set forth in the above Findings of Fact and Conclusions of Law. (See *Citizens for Fair REU Rates v. City of Redding, supra*, 6 Cal.5th 1, 237 Cal.Rptr.3d 179, 424 P.3d 268.)

(6) The Court issues its ORDER of PERMANENT INJUNCTION consistent with the WRITS OF MANDATE AND PROHIBITION set forth above. This PERMANENT INJUNCTION is WITHOUT PREJUDICE to City developing and implementing a credible and reasonable means of complying with article XIII D, section 6, subdivisions (1), (2), and (5), which rectifies the errors and omissions set forth in the above Findings of Fact and Conclusions of Law. (See *Citizens for Fair REU Rates v. City of Redding, supra*, 6 Cal.5th 1, 237 Cal.Rptr.3d 179, 424 P.3d 268.)

(7) The Court hereby enters its DECLARATORY JUDGMENT in favor of Starr and against City as follows:

(a) The IUF embedded charges and transfers at issue here violate article XIII D, section 6, subdivisions (b) (1) and (2), which prohibit "use fees or charges that exceed the funds required to provide the property related service" and that are "used for any purpose other than that for which the fee or charge was imposed."

(b) The IUFs violate article XIII D, section 6, subdivision (b)(5), because they are and have been used "for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners."

(8) The Court hereby awards costs of suit to Starr and against City in an amount to be determined by a timely served and filed cost memorandum in conformity with the Code of Civil Procedure and the California Rules of Court.

The Court reserves jurisdiction to enforce, modify, or vacate the above JUDGMENT, WRIT OF MANDATE AND PROHIBITION, and PERMANENT INJUNCTION.

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This reservation of jurisdiction includes, but is not limited to, a later evidentiary hearing and adjudication, if necessary, concerning the extent to which, if at all, City rectifies the errors and omissions set forth in the above Findings of Fact and Conclusions of law concerning implementation of IUFs and IUF transfers, as well as concerning any necessary adjustments or modifications to the WRIT OF MANDATE directing reimbursement of IUFs to the respective utility services funds in compliance with article XIII D, section 6, subdivisions (b) (1), (2), and (5). Any such later evidentiary hearing and adjudication shall be upon noticed motion in conformity with the Code of Civil Procedure and the Rules of Court.

The Clerk shall give notice of this Final Statement of Decision and Judgment. The Court directs counsel of record for Starr to serve and file a proposed Order, Judgment, and Writs consistent with the Court's Final Statement of Decision and Judgment in conformity with the Code of Civil Procedure and the Rules of Court.

Dated: January 14, 2021

MATTHEW P. GUASCO
Judge of the Superior Court

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EXHIBIT B

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA

MINUTE ORDER

DATE: 06/14/2021 TIME: 04:00:00 PM DEPT: 20

JUDICIAL OFFICER PRESIDING: Matthew P. Guasco
CLERK: Denise Arreola
REPORTER/ERM:

CASE NO: **56-2017-00494475-CU-WM-VTA**
CASE TITLE: **Starr vs. CITY OF OXNARD**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT TYPE: Ruling on Submitted Matter

APPEARANCES

The Court, having previously taken the Motion to Amend and Motion to Implement Judgment under submission, now rules as follows:

On May 13, 2021, at 8:20 a.m., in Courtroom 20, the matter came before the Court for a hearing on the motion of respondent, City of Oxnard ("City"), to amend the Amended Final Judgment, and regarding implementation of said judgment, in favor of petitioner, Aaron Starr ("Starr"), entered by this Court on March 23, 2021. The parties appeared as set forth in the Clerk's Minutes. The Court received and considered the pleadings, declarations, exhibits, and arguments of counsel submitted by each of the parties. At the conclusion of the arguments, the Court took the matter under submission. The following is the Court's ruling on that submitted matter.

1. Procedural Background and Context of Pending Proceeding

On March 23, 2021, the Court entered its Amended Final Judgment granting in part Starr's petition for writ of mandamus and prohibition in this Proposition 218 taxpayer action (See Cal. Const., Art. XIIID). The judgment is in the form of the Court's writs of mandamus and prohibition, with a concomitant and coextensive permanent prohibitory and mandatory injunction, directing City to (a) cease charging an Infrastructure Use Fee ("IUF") which is added to rates paid by City residents for water, sewer, and solid waste disposal utility services; and (b) transfer back to the respective utility budgets ("Enterprise Funds") the IUF fees which had been transferred to City's General Fund, Public Safety Fund, and Streets Maintenance Fund for the period March 27, 2014, through and including the date of entry of the Amended Final Judgment, a sum which the parties agree now totals approximately $36.5 million.

During the proceedings attending finalization of the Statement of Decision and the Judgment, the issue of determining the date of return of the writs of mandate and prohibition arose. City raised the concern that it is not in the financial position to make the required fund transfers (which are between funds controlled by City in different agency and enterprise budgetary units) all at once or within a period of 90 days. The Court invited City to bring this present motion, which seeks to amend the Amended Final Judgment to permit City's compliance with and the filing of the return on the writs over a longer period of time. Starr and City each have submitted briefing and evidence, including requests for judicial notice, to the Court. The Amended Final Judgment expressly reserves the Court's jurisdiction to hear and

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determine this motion.

City takes the position that, pursuant to provisions of the Government Claims Act (Govt. Code, § 900, et seq.) ("GCA"), the writ of mandate and mandatory injunction compelling City to transfer the $36.5 million in IUF fees back to the Enterprise Fund is a "money judgment," thus entitling City to pay it in installments over a period not exceeding 10 years. (See Govt. Code, § 970.6.) Starr disagrees, arguing the fund transfer directive is not a money judgment, thus negating any requirement of compliance with the installment judgment provisions of the GCA. The parties, however, agree the Court's equitable powers in fashioning writ relief are more than broad enough to permit City the opportunity to complete the fund transfers over time to avoid undue hardship. The parties disagree about whether City has, in fact, demonstrated undue hardship justifying a seven-year period in which to complete the fund transfers.

2. Requests for Judicial Notice

The Court GRANTS each party's request for judicial notice. The Court has considered the ballot measure materials produced by City. The Court has considered the legislative history materials produced by Starr.

3. The Writ of Mandate and Mandatory Injunction Directing the Fund Transfers Do Not Create a "Money Judgment" Subject to the Provisions of Government Code, § 970, set seq.

The parties are unable to point to any published judicial authorities addressing the question of whether, in a Proposition 218 mandamus proceeding, a trial court order essentially undoing and reversing unconstitutional transfers of user fees to a municipality's general fund constitutes a "money judgment" for purposes of the installment provisions of Government Code section 970, et seq. The Court has carefully reviewed the published decisions concerning Proposition 218 mandamus proceedings for guidance on this question without success.

It turns out that the answer to this question lies in the published decisions which discuss whether a mandamus proceeding against a municipality is a claim for money or damages subject to the GCA. "In determining whether the [GCA] applies, the critical question is whether the recovery of money or damages was the primary purpose of [the plaintiff's] claims." (*Canova v. Trustees of Imperial Irrigation Dist. Employee Pension Plan* (2007) 150 Cal.App.4th 1487, 1493, 59 Cal.Rptr.3d 587 ("*Canova*").) "Where the primary purpose of a mandamus action is monetary relief, the mandatory requirements of the [GCA] apply." (*Ibid.*) "In contrast, mandamus actions seeking to compel performance of a mandatory duty, statutory duty or ministerial act may not be subject to the [GCA] if they do not seek money or damages." (*Ibid.*)

While a writ of mandamus, ". . . if granted, may ultimately result in money being transferred . . . , such relief does not render the request a claim for money or damages that requires the filing of a government claim." (*Id.*, 150 Cal.App.4th at p. 1498, 59 Cal.Rptr.3d 587.) In *Canova*, the appellate court held that a trial court mandamus writ compelling a municipality to cease a pension rollover practice and transfer funds from one pension-related account to another was not a claim or judgment subject to the GCA. (150 Cal.App.4th at p. 1493, 59 Cal.Rptr.3d 587.) Instead, the fund transfer compelled by the writ of mandamus directed the municipality to perform a mandatory duty, statutory duty, and/or a ministerial act. (*Ibid.*) The *Canova* court pointed to other cases reaching the same conclusion concerning writs of mandamus compelling municipalities and other governmental agencies to make certain fund transfers in compliance with mandatory duties, statutory duties, and/or ministerial acts. (See *Board of Administration v. Wilson* (1997) 52 Cal.App.4th 1109, 1125-26, 61 Cal.Rptr.2d 207 [mandatory duty regarding future funding of retirement system]; *County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 587-88, 159 Cal.Rptr. 1 [disbursement of funds in manner required by Medi-Cal statutes]; *Forde v. Cory* (1977) 66 Cal.App.3d 434, 436-38, 135 Cal.Rptr. 903 [disbursement of lump sum death benefit pursuant to express statutory duty].)

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Here, Starr's writ petition sought to compel City to comply with its mandatory constitutional duty to not use IUFs "for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners" without first obtaining voter approval. (Art. XIII D, sect. 6, subd. (b)(5).) The Court's Final Statement of Decision contains the Court's findings of fact and conclusions of law to the effect that City's IUF transfers violated Art. XIII D, section 6, subdivision (b)(5). The Amended Final Judgment, therefore, includes this Court's declaratory judgment to the same effect, as well as the Court's writ of mandamus directing City to correct this unconstitutional misuse of IUFs by transferring the $36.5 million in IUFs from the Public Safety Fund, General Fund, and Streets Maintenance Fund, back into the Enterprise Funds. City is not being directed to pay $36.5 million to petitioner or the taxpayers or the property owners who pay utilities use fees. This Court's writ of mandamus simply directs City to redistribute these monies among funds it wholly controls.

Thus, this mandamus action compels City to perform a mandatory, constitutional duty; it cannot reasonably or accurately be described as asserting a claim for money or damages subject to the GCA. The statutes relied upon by City in support of its argument that it is entitled to accomplish these fund transfers in installments over a course of years – Government Code sections 970.1, 970.4, 970.5, and 970.6 – apply to money judgments arising from claims governed by the GCA. These statutes are set forth in Chapter 2 of the GCA, entitled, "Payments of Judgments Against Local Entities." None of these statutes purport to overrule or affect the line of judicial authority typified by *Canova* differentiating between mandamus actions compelling the performance by a municipality of mandatory or statutory duties, as opposed to mandamus proceedings which are effectively claims for money or damages against governmental entities. Government Code sections 970.1-970.6, therefore, do not apply to the fund transfers at issue in this case. This conclusion is consistent with the legislative history produced by the parties in this proceeding.

Accordingly, City's motion to amend the judgment to permit installments pursuant to Government Code sections 970.1-970.6 is DENIED.

4. Even if Government Code sections 970.1-970.6 Apply Here, City Has Failed to Meet Its Burden of Proving That the Fund Transfers Create an Undue Hardship

Assuming for the sake of argument that the GCA's installment judgment provisions apply to this Court's writ of mandamus directing City to transfer back to the Enterprise Funds the IUFs which had been improperly transferred to the Public Safety, General and Streets Maintenance Funds, City has failed to meet its burden of producing evidence and persuading the Court that City is entitled to such statutory relief.

Government Code section 970.6 provides the following in pertinent part:

"(a) The court which enters the judgment shall order that the governing body pay the judgment, with interest thereon, in not exceeding 10 equal annual installments if both of the following conditions are satisfied:

(1) The governing body of the local public entity has adopted an ordinance or resolution finding that an unreasonable hardship will result unless the judgment is paid in installments.

(2) The court, after hearing, has found that payment of the judgment in installments as ordered by the court is necessary to avoid an unreasonable hardship."

Government Code section 970.6 has been described by at least one appellate court in the following terms:

"In sum, the Government Code expressly and specifically requires a local public entity to pay the full

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amount of any judgment, with interest. The entity is required to pay the judgment out of any unrestricted funds it has for the fiscal year in which the judgment was entered, and if any amount remains unpaid, is required to obtain funds and pay that amount the following fiscal year. The only exception is that the entity can in some cases obtain a court order allowing it to pay the judgment, with interest, in annual installments for a period up to 10 years. (§ 970.6.)" (*Joseph v. San Francisco Housing Authority* (2005) 127 Cal.App.4th 78, 82, 25 Cal.Rptr.3d 179.)

It is undisputed that City has complied with subdivision (a)(1): the City Council adopted a resolution finding that an unreasonable hardship will result unless the judgment is paid in installments. There are several reasons why the evidentiary record presented to the Court, however, does not support a finding that the requested installment payment plan is necessary to avoid an unreasonable hardship to City.

First, City's systematic disregard of Proposition 218's unambiguous prohibition against using IUFs "for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners" without first obtaining voter approval (Art. XIII D, sect. 6, subd. (b)(5)) over the course of multiple fiscal years was illegal and unreasonable. Unduly delaying the fund transfers compelled by this Court's writ of mandamus and mandatory injunction which simply restores the status quo ante as if City had not violated its mandatory constitutional duty would be no less unreasonable.

Second, the Amended Final Judgment does not direct the payment of monies from City's funds to a non-City recipient (e.g., a tort claimant). Instead, the Amended Final Judgment directs City to redistribute monies as between funds it wholly controls and manages for the benefit of its taxpayers, property owners and residents. The revenue and cash side of City's overall budget will not be substantially affected whatsoever. The monies tasked to each of City's budgetary units will change in the amount of the reallocation required by the fund transfers. That circumstance is not an unreasonable hardship.

Third, City effectively seeks to continue to benefit from its unlawful diversion of IUFs for general governmental purposes by unreasonably delaying restoration of the IUF transfers to the Enterprise Funds. City created this "hardship" for several fiscal years after being notified by Starr of the unconstitutional nature of the IUF transfers. Essentially, City claims it spent the monies it should not have transferred from the Enterprise Funds into the Public Safety, General, and Streets Maintenance Funds. City's request to delay the IUF transfers for seven years would be an unreasonable judicial response to address the hardship City itself created.

Fourth, as pointed out by Starr and supported by the Law Revision Commission Report concerning Government Code section 970.6, City's evidentiary showing falls short of demonstrating that City will incur an unreasonable hardship based upon all sources of available funding. (See 15 Cal. Law Rev. Com. Rpt. (1980), p. 1264.) City has produced partial and conclusory evidence about the financial logistics and effects of transferring back to the Enterprise Funds the $36.5 million in IUF transfers City made from the Enterprise Funds to the Public Safety, General and Streets Maintenance Funds. City admits that it has available funds in the form of its cash reserves as well as revenues from two recently-passed local measures, all of which exceeds the $36.5 million in IUF transfers to the Enterprise Funds which must be made to comply with Proposition 218 and the Amended Final Judgment. City has priorities for the expenditure of these funds which differ from and would delay compliance with this Court's Amended Final Judgment correcting City's violation of Proposition 218. The Court finds that City's declaration of competing priorities for these monies does not demonstrate an unreasonable hardship within the meaning of Government Code section 970.6.

Additionally, City admits that borrowing in the form of the issuance of bonds is another available source of money to accomplish the IUF transfers to the Enterprise Funds. Again, City's chief financial officer has declared a preference to avoid the interest expense and credit effects of doing this, but that expression of City's priorities does not amount to an unreasonable hardship within the meaning of

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Government Code section 970.6.

Finally, there is no hint in City's evidentiary showing that the IUF transfers to the Enterprise Funds will force City to file for bankruptcy protection. (See *Sutter Health v. Eden Township Healthcare Dist.* (2016) 6 Cal.App.5th 60, 66, 25 Cal.Rptr.3d 179.) City's showing presents a financial picture very different than the type of distress which would make bankruptcy likely in the event that City transfers $36.5 million from its Public Safety, General, and Streets Maintenance Funds to the Enterprise Funds. City's net financial position remains the same; the $36.5 million simply is being reallocated among City's budgetary units. In fact, City's evidentiary showing demonstrates that it has the present financial ability to complete the IUF transfers ordered by the Amended Final Judgment from unrestricted revenue and existing funds from a variety of available sources.

The Court, therefore, DENIES City's motion to amend the judgment to permit installment payments under Government Code sections 970.1-970.6 for this reason as well.

5. The Court's Exercise of Its Equitable Powers

For the following reasons, the Court GRANTS City's motion to amend the Amended Final Judgment to delay the return on the writ of mandamus and permit completion of the IUF transfers over time IN PART.

The parties agree the Court has the broad equitable authority to permit City's requested relief. The writs of mandamus and prohibition, as well as the injunctive relief, contained in the Amended Final Judgment invoke the equitable authority of the Court. The following succinctly summarizes the breadth of the Court's equitable powers concerning City's motion:

"Trial courts have broad equitable power to fashion any appropriate remedies. (*Zarrahy v. Zarrahy* (1988) 205 Cal.App.3d 1, 4, 252 Cal.Rptr. 20.) In doing so, they may consider any unjust or harsh results, and adopt means to avoid them. (See, e.g., *Casas v. Thompson* (1986) 42 Cal.3d 131, 141, 228 Cal.Rptr. 33, 720 P.2d 921.) 'Equitable relief is by its nature flexible, and the maxim allowing a remedy for every wrong (Civ.Code, § 3523) has been invoked to justify the invention of new methods of relief for new types of wrongs. (11 Witkin, Summary of Cal. Law (9th ed. 1990) Equity, § 3, p. 681.) In actions founded on contract, courts have available for use in appropriate cases, in addition to specific performance, equitable remedies based on reformation, excuse of conditions and rescission (1 Witkin, Summary of Cal. Law (9th ed. 1987) Contracts, §§ 382, 772, 883–885, pp. 347–348, 697, 791–794), as well as quasi-specific performance by constructive trust (11 Witkin, Summary of Cal. Law, supra, Equity, § 28, pp. 706–707), and indirect enforcement of a covenant by negative decree (id., § 61, pp. 737–38).' (*Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362, 390, 36 Cal.Rptr.2d 581, 885 P.2d 994.)" (*Shapiro v. Sutherland* (1998) 64 Cal.App.4th 1534, 1552, 76 Cal.Rptr.2d 101.)

The Court has considered the totality of the evidence and arguments presented for and against granting City's request for relief concerning the $36.5 million in IUF transfers required by the Court's Final Amended Judgment. While, in the preceding section of this ruling, the Court finds City has failed to demonstrate unreasonable hardship within the meaning of Government Code section 970.6, subdivision (a), there are equities favoring City's request to restore the $36.5 million in IUF transfers back to the Enterprise Funds over a course of more than one fiscal year. Although City's revenues and reserves make a lump sum transfer feasible, the budgetary impact of requiring a $36.5 million transfer in that fashion would create potentially severe, short-term negative effects on the services City provides to its residents and taxpayers. In balancing the evidence, equities and circumstances presented in support of and opposition to the motion, the Court finds that City's request to complete the transfer of $36.5 million back to the Enterprise Funds over a course of time exceeding one fiscal year is fair, reasonable and just.

The Court, therefore, enters its ORDER that the $36.5 million in IUF transfers back to the Enterprise Funds required by the Amended Final Judgment shall occur according to the following transfer completion schedule:

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(a) Fiscal Year 2021-2022: Complete transfer of $12 million, plus statutory attorney's fees and costs per stipulation of the parties. The transfer shall be completed in four equal quarterly installments to be made on the first date of the beginning of each quarter, with the stipulated attorney's fees and costs to be added to the First Quarter installment.

(b) Fiscal Year 2022-2023: Complete transfer of $12 million. The transfer shall be completed in four equal quarterly installments to be made on the first date of the beginning of each quarter.

(c) Fiscal Year 2023-2024: Complete transfer of balance of the IUF transfers ordered by the Amended Final Judgment. The transfer shall be completed in four equal quarterly installments to be made on the first date of the beginning of each quarter.

The Court hereby enters its ORDER amending the Amended Final Judgment to the extent of the above ruling. The Court further enters its ORDER that Starr promptly shall file a partial return of the writ of mandamus upon receiving written verification by City of each quarterly transfer having been made. Upon receiving written verification by City that the last and final transfer installment has been made, Starr promptly shall file a final return on the writ of mandamus.

In light of the Court's findings and conclusions set forth above, the Court finds the IUF transfers required by the Amended Final Judgment do not constitute a money judgment within the meaning of the Code of Civil Procedure or the GCA. Accordingly, the IUF transfers are not subject to the accrual of interest under either the Code of Civil Procedure or the GCA pending full compliance with the Amended Final Judgment. The Court makes no express or implied finding or order about whether the IUF transfers required by the Amended Final Judgment, as amended by the above ruling, are subject to the accrual of interest under some other provision of law.

The Clerk shall give notice of this ruling. Counsel for Starr shall serve and file a proposed order and a proposed Second-Amended Final Judgment consistent with the above and in conformity with the Code of Civil Procedure and the California Rules of Court. A copy of this ruling may be attached and incorporated by reference in any such proposed order or judgment in lieu of quoting same verbatim in the body of the proposed order or judgment.

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CITY OF OXNARD CALIFORNIA

CITY COUNCIL AGENDA REPORT

REPORT OF CITY MANAGER/EXECUTIVE DIRECTOR/SECRETARY
AGENDA ITEM NO. G.2

DATE: September 7, 2021

TO: City Council

FROM: Alexander Nguyen, City Manager, (805) 385-7430, alexander.nguyen@oxnard.org

SUBJECT: Infrastructure Use Fee Refund and Utility Rate Reduction.

RECOMMENDATION

That the City Council receive a report regarding the Infrastructure Use Fee (IUF) credit and utility rate reduction, and approve and authorize the following:

1. The refund of IUF funds totaling $7,112,897 paid by Oxnard utility customers during the period of January 1, 2020 through August 31, 2021, with Water customers receiving a credit totaling $3,208,214, Wastewater customers receiving a credit totaling $2,015,000, and Environmental Resources customers receiving a credit totaling $1,889,683;

2. The reduction of utility rates by a combined estimated total of $3,556,448 (a 3.2 percent reduction) for the period September 1, 2021 through June 30, 2022 to reflect the elimination of the IUF for this time period. Water rates will be reduced by an estimated $1,604,106, Wastewater rates by an estimated $1,007,500, and Environmental Resources rates by an estimated $944,842;

3. In Fiscal Year 2022-23 and beyond, the City's full and continued compliance with the Second Amended Final Judgment filed July 13, 2021 regarding utility rates and a new IUF consistent with this judgment. (Case No.: 56-2017-00494475-CU-WM-VTA); and

4. The Chief Financial Officer or designee to approve administrative budget adjustment for the impacted revenue reductions in the Water, Wastewater and Environmental Resources funds for Fiscal Year 2021-22.

BACKGROUND

The City currently has between approximately 40,000 and 47,000 customer accounts, which varies based upon the specific utility. The average customer, across all classes, was billed $274 per month, or $5,480 over the 20-month period for all three utilities combined.

As part of the rate studies previously conducted to develop rates for the three utilities (Water, Wastewater and Environmental Resources), an IUF was incorporated into the rate models. Including the IUF resulted in an increase in total expenditures for each utility, thereby increasing the rates to a level that was higher than would have otherwise been calculated.

Consistent with the Court's order and pursuant to the recommended actions, the City will remove the IUF from the City's rate structure by reducing utility rates by a combined 3.2%, or an estimated $3,556,448 million effective September 1, 2021 through June 30, 2022. These reductions are estimated to reduce the rates for Water by $1,604,106, Wastewater by $1,007,500, and Environmental Resources by $944,842. The reduced rates will remain in effect until the City completes and adopts new IUF study(ies) and/or new rate study(ies). The total annual impact of the rate reductions is an estimated $4,267,738. The actual reduction for each customer will depend on the usage of water and wastewater services, and the

type of Environmental Resources services that each customer receives from the City.

In addition, pursuant to the recommended action, all existing residential and commercial utility customers will receive a one-time credit in September that will appear on their October 2021 utility bill. This means that all existing customers will be credited for 20 months of IUF payments (January 2020 through August 2021) on their October 2021 utility bill. The City will credit a total of $7,112,897 to its residential and commercial ratepayers of the three utilities. (Water - $3,208,214, Wastewater - $2,015,000, Environmental Resources - $1,889,683). **The specific amount of the one-time credit will be calculated based on each customer's actual Water, Wastewater and Environmental Resources charges from January 2020 to August 2021.**

For former utility customers, one of three options will apply:

1. If a customer moved out and terminated their utility account between January 2020 and August 2021 and left their account balance at $0 (i.e., paid the utility accounts in full), then the amount of one-time credit will be posted to their closed utility account, the account will show a credit balance, and a refund check will be mailed to the former customer at the mailing address on file.

2. If a customer moved out and terminated their utility account between January 2020 and August 2021 and left an outstanding balance, then the amount of the one-time credit will be posted to their closed utility account and the credit will be applied against the outstanding balance. If the credit amount is larger than the balance owed, the account will end up with a refund. A refund check will be mailed to the former customer at the mailing address on file.

3. If a customer moves out and terminated their utility account on or after September 1, 2021, the customer would have received the one-time credit and was charged the reduced rate prior to closing the account. No further refund would be due.

STRATEGIC PRIORITIES

This agenda item supports the Infrastructure and Natural Resources strategy. The purpose of the Infrastructure and Natural Resources strategy is to preserve and improve our roads, utilities, parks, trees, water supply and natural resources through effective planning, prioritization, and an equitable and efficient use of available funding.

FINANCIAL IMPACT

This action involves authorizing the one-time credit of $7,112,897, and reducing ongoing utilities rates by a combined 3.2% for FY 2021-22, resulting in a revenue decrease in FY 2021-22.

Each of the three (3) utilities has sufficient funding in their respective fund balances to fund both the one-time credit and to absorb the impact to revenues of the current rate reduction in FY 2021-22.

COMMITTEE OUTCOME

This item did not originate in Committee.

Prepared by: Kenneth Rozell, Chief Assistant City Attorney, Juanita Guzman, Administrative Services Manager

ATTACHMENTS
None

Annual Enterprise Pavement Impact Cost Reimbursement Study

February 21, 2024

BARTLE WELLS ASSOCIATES
INDEPENDENT PUBLIC FINANCE ADVISORS

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Glossary of Terms

Terms	Descriptions
Alley	Secondary access to buildings
Arterials	Primary conduits for mobility through metropolitan areas
BWA	Bartle Wells Associates
City	The City of Oxnard
Collectors	Collect traffic from residential streets and guide traffic to arterial streets
Dry Utility	Telecommunications, Electricity, Gas
ESAL	Equivalent Single Axle Load
IUF	Infrastructure Use Fee
PCI	Pavement Condition Index
Residential Street	Primary access to residences
Roadway	Arterials, collectors, residential streets, and alley maintained by the City
Wastewater Enterprise	Wastewater service provided by the City
Solid Waste Enterprise	Garbage service provided by the City
TI	Traffic Index
UI	Underground Infrastructure
Water Enterprise	Water service provided by the City

ES Executive Summary

Study Overview

The City of Oxnard (the "City") is the largest city within Ventura County, California. The City is home to over 200,000 residents and maintains a street network of over 1,034 Lane Miles of city streets. The activities of the City's solid waste, water, and wastewater enterprises damage the City's streets in a way which may be isolated and quantified. The solid waste enterprise sends heavy collection trucks over the majority of the City's streets, especially residential streets, multiple times per week causing the streets to degrade. The water and wastewater enterprises have infrastructure under the streets. When the water and wastewater enterprises cut into the streets to access their infrastructure, damage is caused to the City's streets.

The objective of this study is, first, to analyze and quantify the annual damages to the City's streets caused by the water, wastewater, and solid waste enterprises and, second, to determine how much the enterprises should compensate the City for the cost of the damages through a transfer to the General Fund.

The annual damage to the City's streets that is caused by the water, wastewater, and solid waste enterprises each year is factually connected to the respective enterprises' use of the streets. The water and wastewater enterprises damage the streets while installing and making infrastructure repairs. The solid waste enterprise causes excessive damage by its constant use of heavy equipment on roadways that are not designed and constructed to handle its vehicles.

The following study describes the fact-based approach and methodology used to quantify the annual damages to the City's streets caused by the water, wastewater, and solid waste enterprise operations and provides the findings and recommendations of the project team.

Methodology Overview

2014 Study Methodology Overview

In 2014 the City had an Enterprise Fund Allocation Study performed. The 2014 study allocated the impact to roadways between surface and subsurface activities. First, the total construction and maintenance costs associated with surface and subsurface activities were totaled. Second, these totals were allocated amongst the City's utilities.

The surface cost allocated to the solid waste enterprise was based on a general estimate of the percentage of equivalent single axle load (ESAL) generated by solid waste enterprise vehicles on all the City's roadways out of the City's general traffic load.

The solid waste enterprise was allocated only a portion of surface costs and the water and wastewater enterprises were allocated a portion of the subsurface costs. Because water and wastewater utilities have pipelines that generally are responsible for any damage caused to the subsurface, the 2014 study allocated all subsurface construction and maintenance costs to the water and wastewater enterprises, and then allocated those costs between the two enterprises based on an inventory of pipelines used by each enterprise.

Overview of Methodology Used in This Study

This study focuses on quantifiable impacts with supporting data of the damages to the City's roadways caused by the uniquely impactful use of the City's roadways by the water, wastewater and solid waste enterprises for the benefit of utility customers.

This study quantifies the portion of roadway degradation caused by the water and wastewater enterprises by using the results of a survey of City streets to calculate the actual reduction in the Pavement Condition Index (PCI) score attributable to the visible trench patches made by the water and wastewater enterprises. When the water and wastewater enterprises access their underground infrastructure in the streets, their repair method includes utility patches in the asphalt, which in turn reduces the durability and structural integrity of the roadway asphalt. The water and wastewater enterprise portion of the overall PCI score reduction of City roadways is then applied to planned annual capital and operating costs to derive the infrastructure use fee (IUF). The City uses the PCI score of its roadways, updated by annual surveys, to help determine its capital spending plan. Since the water and wastewater IUF is based on annual survey data as well as planned capital and operating costs, it will change as the City's street condition changes.

The solid waste enterprise's damage to the streets is quantified by 1) identifying the actual amount of vehicle wear the City streets are designed to withstand; then 2) calculating the portion of that damage caused by the solid waste enterprise based on the actual weight of solid waste trucks, the actual area impacted by solid waste routes, and frequency of solid waste collections; and finally 3) applying the portion of degradation to planned capital and operating costs. As with the water and wastewater IUF, the solid waste IUF will change periodically as the data for these factors change.

Study Findings

The results from the analysis performed in this study demonstrate that the activities of the City's water, wastewater, and solid waste enterprises cause annual degradation to the City's roadways.

Table 1 below provides a summary of the current projected annual cost for FY 2022/23 of the impact to the roadways by enterprise fund. Table 2 provides an updated estimate of the costs between 2014 and 2021 to address issues raised in recent litigation over the City's IUF.[1]

Table 1 – Summary of Annual IUF by Enterprise

Annual IUF	Amount
Water	$55,859
Sewer	$35,713
Solid Waste	$2,048,468
Total IUF	**$2,140,040**

[1] *Starr v. City of Oxnard*, Ventura County Superior Court, Case No. 56-2017-00494475.

Table 2 – Summary of Retroactive Application of IUF From 2014 through 2021

Enterprise Fund	Amount
Water	$210,085
Sewer	$134,317
Solid Waste	$9,208,572
Total Annual Improvement Costs	**$9,552,974**

1. Study Objectives & Background

Bartle Wells Associates (BWA) was engaged by the City of Oxnard (the "City") to perform an Infrastructure Use Fee Study. The objective of this study is to 1) use the best available data, specific to the City, to quantify the proportion of pavement degradation on the City's streets and alleys reasonably attributable to use by the water, wastewater, and solid waste enterprises, and then 2) apply the calculated proportions to actual past spending and projected future spending on street maintenance. This process requires incorporation of the City's financial data, pavement management system data, pavement design criteria, and results from an Oxnard pavement survey performed in 2022.

Legal Environment

Utility rates are subject to the procedural and substantive requirements as set forth in Proposition 218. Since utility rates may pay to the City's General Fund an amount equal and proportional to the cost of street damages by the utility, the amount transferred must comply with Proposition 218.

Proposition 218 was adopted by California voters in 1996 and added Articles XIII C and XIII D to the California Constitution. Article XIII D, Section 6 governs property-related charges which, as the California Supreme Court subsequently ruled, includes ongoing utility service charges such as water and wastewater charges. Article XIII D, Section 6 establishes: 1) procedural requirements for imposing or increasing property-related charges, and 2) substantive requirements for those charges. Article XIII D also requires voter approval for new or increased property-related charges but exempts from this voting requirement rates for water, wastewater, and refuse collection services. The substantive requirements of Article XIII D, Section 6(b) require the City's utility rates to meet the following conditions:

1. Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.
2. Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.
3. The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.
4. No fee or charge may be imposed for a service unless that service is used by, or immediately available to, the owner of the property in question.
5. No fee or charge may be imposed for general governmental services, such as police or fire services, where the service is available to the public at large in substantially the same manner as it is to property owners.

City of Oxnard Streets

The City maintains a street network of 1,034 lane miles of roadway comprised of arterials, collectors, residential streets, and alleys.

Arterials serve as the primary conduits for mobility and circulation through metropolitan areas. They serve the major activity centers, tie into larger circulation elements like freeways, carry the highest traffic volumes, and typically have the greatest number of travel lanes. Arterials will generally try to connect and provide continuity throughout the urban corridor and area, both locally and regionally.

Collectors serve a critical role as they 'collect' traffic from local and residential streets and guide traffic to arterial streets. These will generally have lower traffic volumes and travel lanes compared to arterials. Collectors will typically connect residential and commercial areas at greater distances and traffic volumes compared to residential streets.

Residential streets serve as the primary access to residences. Multiple residential streets will connect to a collector or arterial as a means of reaching other sections of the metropolitan area. These roads generally have low traffic volumes, less travel lanes, and lower posted speed limits.

Alleys are located between or behind buildings, serve as an access to private property and have the lowest traffic volumes.

Pavement Deterioration

Pavement deteriorates from two processes: fatigue and aging. The processes occur simultaneously. In a well-designed and constructed pavement, the two processes result in the need to rehabilitate the pavement at approximately the same time. This is called the design life. The design life for most new pavements is approximately twenty years, based upon many factors. Each aging process has its own set of pavement defects that are related to the process.

Fatigue

The first deterioration process is fatigue from axle loads. Roads generally consist of an asphalt concrete layer, base, and sub-base layers. Asphalt concrete is composed of aggregates bound by asphalt cement and may include other binders or add-mixtures. The base and sub-base layers consist of aggregates of different thickness. As the pavement structure flexes or bends from wheel loads, the asphalt concrete layer's ability to flex is consumed. With enough bending, the asphalt concrete layer begins to break at the bottom. These cracks progress upward until they reach the surface and appear as alligator cracking.

Aging

The major element of the pavement structure that ages is the asphalt concrete layer. To a minor extent, aggregate bases can age if contaminated by fine soil particles or water, which are transported from the subsoil into the aggregate base. Asphalt concrete is composed of aggregates bound by asphalt cement. The aggregates experience some breakdown over time. Aggregate aging problems can be addressed in maintenance procedures. The asphalt concrete binder (asphalt adhesive) ages as well. As the asphalt binder ages, it loses volume through the loss of volatile components in the asphalt. As the volume decreases, the pavement will progressively crack from the resulting tensile strain in the layer. Normally, these cracks first show up as transverse cracks. They also show up in weak areas, such as paving joints. These cracks widen and increase over time until the pavement has a checkerboard appearance. The aging process also causes the pavement to become more brittle. The increased stiffness results in additional

cracking from loaded vehicles. This load induced cracking from the brittleness of the asphalt concrete is very similar to fatigue cracking in appearance. The major agent for deterioration of the asphalt concrete binder is oxygen. The carrier of the oxygen is water. Water enters the pavement either from the surface or as water vapor from underneath due to leaks or breaks in the underground water or wastewater infrastructure.

2. Water and Wastewater Infrastructure Use Fees

The underground infrastructure (UI) of the City's water and wastewater utilities impose ongoing wear on the streets above the UI. There are many ways the presence of UI causes the pavement above to degrade including gradual leaks causing added moisture, subsidence around the UI, utility trench patches (both visible and covered pavement resurfacing) as a result of accessing the UI, and points of weakness caused by UI access points (manholes, valves, etc.).

The City estimates that approximately 90 percent of its roadways have some kind of UI underneath them. However, this study focuses only on the impact from visible utility trench patches because visible utility trench patches are the only cause of pavement degradation that can currently be directly quantified. Visible utility trench patches are captured in the street survey used to update the pavement management system, which impacts the overall PCI score of the City streets. The PCI score is the basis of the City's pavement capital spending budget and informs the type and quantity of pavement projects performed by the City.

In short, this study's estimates of the impacts from water and wastewater UI are very conservative, as they omit factors that are undisputable but also difficult to quantify.

Pavement Management

The City tracks the condition and maintenance requirements of its streets using a pavement management system. The pavement management system is updated annually with data collected from street condition surveys. Based on the street condition data, the pavement management system calculates the Pavement Condition Index (PCI) score of the City's streets, which reflects the condition of the streets. The score is on a scale from 0 (worst) to 100 (best). The current PCI score drives the projected capital spending budget produced by the pavement management system. The City surveys the conditions of one third of its streets every year, completing a full survey of its streets every three years.

Utility Trench Patching

Occasionally a utility will need to access its UI. To access the UI, the utility will cut out a section of the street and dig a trench down to the buried UI. When the project is completed, the utility fills in the trench and patches over the road. Damage to the street occurs because the UI repair lowers the structural integrity of the roadway asphalt. The opening of the trench reduces the lateral support of the pavement, creating a zone of weakened pavement and reducing the lifespan of the pavement. Improperly backfilled and compacted trenches create sagging or slumping, also reducing the lifespan of the pavement. Additionally, introducing cuts to the pavement will lead to water intrusion, resulting in the loss of fine materials from the underlying backfill material, which reduces pavement strength and the life of the pavement.

Because trenches negatively impact pavement, visible trench patches are one of the types of pavement degradation that are noted in the pavement condition survey. The presence of a trench patch will reduce the PCI score of the pavement segment being measured. The PCI score reduction will vary depending on the size and severity of the trench patch and the overall PCI of the roadway segment.

The following photos show a utility trench and trench patch.

Figure 1 – Utility Trench and Trench Patch

Portion of Street Wear Attributable to Utility Trench Patching

The City engaged its pavement management consultant to specifically identify the visible trench patches above water and wastewater UI in the recent pavement condition survey and then calculate the PCI of those segments both with and without the visible trench patch included in the calculation.

The consultant surveyed a representative sample of the City's roadways, comprising more than 20 million square feet of pavement. Of the roadways surveyed, the consultant found 3.96% of the area was impacted by visible trench patches over water and wastewater infrastructure.

Table 3 – Survey Results: Area Impacted by Visible Trench Patches

Total Area (SqFt) Reviewed:	20,170,387
Total Area (SqFt) with Visible Underground Utility Trenches:	720,744
Percentage of Total Area with Visible Underground Utility Trenches:	**3.57%**

The pavement management consultant then calculated the weighted average PCI score (PCI score weighted by area) of the segments with visible trench patches for the total sample area (shown in the following table).

Table 4 – Survey Results: Average Weighted PCI Score

Average Weighted PCI Score of Roadway Area Reviewed:	**66.9**
Weighted Average PCI of Sections with Visible Underground Utility Trench:	**45.7**

The consultant then broke the sample area into tiers based on PCI score and calculated the weighted average impact of visible trench patches on the PCI within those tiers. The "Weighted Average PCI Score Impact" in Table 5 is the difference between the PCI score with the impact from visible trench patches included and the PCI score without the impact from the visible trench patches included. This is the impact attributable to the visible utility trench patches.

Table 5 – Survey Results: Average Weighted PCI Score

Category Condition	Area (SqFt)	Patch (SqFt)	Weighted Average PCI Score Impact
Excellent (100-91)	0	0	**N/A**
Fair (90-71)	0	0	**N/A**
Fair (70-51)	377,185	1,701	**-1.67**
Poor (50-31)	246,014	2,607	**-3.69**
Failed (30-0)	176,170	1,310	**-0.90**

This breakdown by tier is important because the impact from trenching differs based on the preexisting PCI score: A given trench will have a greater impact on a stretch of road with an "Excellent" PCI score than that same trench will have on a stretch of road in the "Fair" PCI tier (See Table 6). To normalize the impact from visible trenches, therefore, this study looks at the "average of the average," applying the average impact of trenches on the PCI tier where the average trench is located. The weighted average PCI score of the sections surveyed with visible trench patches (PCI score of 45.7) fell in the poor category condition (PCI score of 50 – 31). The average PCI reduction due to the presence of visible trench patches for street segments in the poor category condition range was 3.69, making that figure the reasonable average impact from visible utility trench patches.

To verify the results, the pavement management consultant also ran a simulation to see the average impact of utility patches to the PCI score. Specifically, they looked at data for a street segment with a four-foot (4') patch of low severity running along the length of the segment as compared to the same street segment without the patch. The results of this simulation are shown in the following table. The simulation confirms that there will be an impact and shows a visible trench patch having a greater impact than the impact found from the survey. The impact to the poor category condition from the simulation of 3.76 closely aligns with the impact identified in the survey of 3.69.

Table 6 – Trench Patch PCI Score Impact Simulation

Condition Category	Number of Sections	Area (SqFt)	Average Difference
Excellent (100-91)	280	13,157,391	-15.07
Good (90-71)	983	37,925,648	-7.89
Fair (70-51)	594	23,168,188	-5.40
Poor (50-31)	266	10,317,564	-3.76
Failed (30-0)	373	6,828,507	-1.72
Total	**2496**	**91,397,298**	**-6.74**

The average PCI score of all the sections surveyed was 66.9. A street with no degradation would have a PCI score of 100. The average deterioration can be represented by subtracting the average PCI score from 100. (100 – 66.9 = 33.1 points of degradation have occurred). The 3.69-point reduction attributable to the trench patches represents 11.15% of the deterioration of the City's pavement (3.69 / 33.1 = 11.15%).

To calculate the overall impact that trench patches have on all the City's roadways, the percent of the roadways impacted by utility trench patches needs to be multiplied by the amount of deterioration attributable to the trench patches (3.57% x 11.15% = .40%) The portion of the total systemwide degradation attributable to visible trench patches is .40%. These calculations are also shown in the following table.

Table 7 – Impact on Visible Water and Wastewater Trench Patches on Oxnard's Roadways

Column	Visible Water and Wastewater Utility Trench Patch Portion of Pavement Wear	Amount
A	Average PCI Score of Street Sections Surveyed	66.9
B	PCI Score Reduction Due to Visible Underground Utility Trench	3.69
C	Wear on Street Sections with Utility Trenches (100-A)	33.1
D	Percent of Wear Due to Utility Trenches (B/C)	11.15%
E	Percent of Total Area (SqFt) Surveyed with Visible Underground Utility Trenches	3.57%
F	**Portion of Total PCI Reduction Due to Underground Utility Trenches (D*E)**	**0.40%**

Annual Infrastructure Use Fee Derivation

The following Water and Wastewater IUFs reflect the water and wastewater portion of total pavement degradation applied to the average annual planned capital spending and the annual street repair operating budget. This is the same methodology a utility would use to determine rates for the next five years. The Water and Wastewater IUFs are derived by 1) identifying the projected average annual pavement spending, 2) multiplying the projected average annual spending amount by the portion of degradation attributable to visible trench patches, and 3) multiplying this product by the portion of total underground infrastructure attributable to the water enterprise and to the wastewater enterprise. Table 8 reflects steps 1) and 2) described above. Table 9 and Table 10 reflect step 3).

Table 8 – Water and Wastewater IUF Derivation

Column	Water and Wastewater Infrastructure Use Fee	Amount
A	Ten Year Projected CIP Spending*	$193,600,000
B	Average Annual CIP Spending (A/10)	$19,360,000
C	Annual Projected Street Maintenance Spending**	$3,533,035
D	Total Projected Annual Costs (B+C)	$22,893,035
E	Portion of Total PCI Reduction Due to Underground Utility Trenches	0.40%
F	**Water and Sewer Underground Utility Trench Portion of Pavement CIP (D*E)**	**$91,572**

* Projected capital spending (Pavement Engineering Inc., 2021)
** Projected annual street maintenance spending excludes all costs that are not asphalt, street striping and pavement repairs costs. The projected amount is also based on the 2023 budget which reflects a full year of the addition of a new street maintenance crew added in 2022.

The water and wastewater IUF then need to be split between the water and wastewater enterprises. The split is based on each enterprise's portions of the total length of the water and wastewater underground infrastructure.

Table 9 – Water and Wastewater Portion of Underground Infrastructure

Water and Wastewater Underground Infrastructure	Length, ft	Portion of Underground Infrastructure
Water Pipe	3,240,359	**61%**
Wastewater Mains	2,052,803	**39%**
Total	5,293,162	

Each enterprise's portion of the total water and wastewater underground infrastructure is then multiplied by the water and wastewater IUF to derive the Water IUF and the Wastewater IUF.

Table 10 – Water and Wastewater IUF

Enterprise Infrastructure Use Fee (IUF) Derivation	Portion of Underground Infrastructure	Annual Enterprise IUF
Total Water and Wastewater IUF		$91,572
Water IUF	61%	$55,859
Wastewater IUF	39%	$35,713

Retroactive Application of Annual Water and Wastewater Infrastructure Use Fee Methodology

The City is currently required to refund the entirety of the IUF paid by the water and wastewater enterprises from 2014 through 2021. The following table applies the methodology described in this section to the actual capital and operating costs paid by the City for pavement repair and replacement from 2014 through 2021. It is important to note that these amounts are significantly lower than projected spending because the City only recently approved a much more aggressive Capital Plan to significantly improve the average pavement condition of its streets.

Table 11 – Retroactive Application of Water and Wastewater IUF Methodology

Fiscal Year	Actual Pavement Expenditures	Water and Wastewater Impact on Pavement	Water and Wastewater Portion of Pavement Expenditures
	A	**B**	**A x B**
2014	$2,834,169	0.40%	$11,337
2015	$6,552,205	0.40%	$26,209
2016	$12,470,126	0.40%	$49,881
2017	$5,597,925	0.40%	$22,392
2018	$16,490,042	0.40%	$65,960
2019	$14,626,086	0.40%	$58,504
2020	$9,136,324	0.40%	$36,545
2021	$18,393,589	0.40%	$73,574
Total	**$86,100,465**		**$344,402**
Water Portion		**61%**	**$210,085**
Wastewater Portion		**39%**	**$134,317**

3. Solid Waste Collection Infrastructure Use Fee

Residential streets and alleys in the City are designed to support light residential traffic and are generally designated as "light traffic streets" by the City. Because light traffic streets are not designed to support heavy vehicles, the City restricts commercial vehicles weighing more than five tons from traveling on light traffic streets except in specific circumstances[2]. One of the exceptions to the restriction of heavy commercial vehicles traveling on light traffic streets is the collection of solid waste. Solid waste collection vehicles have an average weight of about twenty tons and make a minimum of three collection passes per week to collect different types of waste from customers receiving solid waste service. The following section of this report quantifies the cost of the wear that heavy, solid waste collection vehicles place on light traffic streets for the benefit of property owners receiving solid waste collection service.

Solid Waste Collection in the City of Oxnard

The City provides weekly solid waste collection and disposal service using a three bin system. Each bin contains a different type of waste and is collected separately. This means that solid waste vehicles pass each customer three times per week. Residential customers place their bins in the street or in the alley, depending on the customer's location. Solid waste for residential customers is performed by side-loading trucks making passes on both sides of the street or alley.

A side-loading solid waste truck collecting a customer's bin on a residential street.

Impacts of Vehicle Traffic on Roadways

Every time a vehicle travels, it causes the pavement to deteriorate. The impact of a vehicle passing over pavement is measured in equivalent 18,000-pound axle loads (ESALs). Each roadway in the City is designed to withstand a certain number of ESALs over a twenty-year period. The total ESALs are linked to pavement design specifications by design Traffic Index (TI) numbers. For example, a design TI of 5 is equal to 7,160 ESALs while a design TI of 8 is equal to 371,676 ESALs[3]. The pavement with a design TI of 5 will have different design specifications, such as a thinner layer of asphalt, from the pavement with a design TI of 8.

The portion of the total residential street and alley wear in the City reasonably attributable to solid waste collection is determined by 1) identifying the percentage of the total area of the City's residential streets and alleys where solid waste collection vehicles travel, 2) identifying the percent use of, or wear and tear upon, those streets and alleys that is done by the City's solid waste collection vehicles, and 3) multiplying the two percentages together. Table 12 and Table 13 identify the percentage of the total area traveled by solid waste vehicles. Table 14, Table 15, and Table 16 identify the percentage of the wear and tear in that area inflicted by the solid waste vehicles. Table 17 and Table 18 multiply the percentages in the previous tables together and apply them to the total cost of maintaining the roadways. Importantly, because this study looks only at the impact on residential streets and alleys, it omits the solid waste utility's impact on arterials and collectors, even though its vehicles must use those roads to access residential neighborhoods. As with the calculations for the water and wastewater utilities, therefore, the calculations here are conservative.

[2] City of Oxnard City Code, SEC. 8-3. LIGHT TRAFFIC STREETS DESIGNATED; HEAVY TRUCKS PROHIBITED

[3] Pavement Engineering, Inc. 2021.

Residential Street and Alley Area Impacted Solid Waste Collection

The following tables show the area of the residential streets and alleys served by solid waste collection vehicles as a percentage of the total area of the residential streets and alleys.

Table 12 – Residential Street Impact Area by Solid Waste Collection

Column	Solid Waste Collection Residential Street Impact Area	Amount
A	Linear Miles Served by Solid Waste Collection	315.88
B	Linear Feet (A x 5,280)	1,667,846
C	Center Line Feet (two lanes, B / 2)	833,923
D	Width (ft.)	37.77
E	**Solid Waste Collection Route Residential Street Impact Area (SF) (C x D)**	**31,497,279**
F	Total Residential Street Area (SF)	49,347,106
G	**Solid Waste Route Portion of Total Residential Street Collection Area (E / F)**	**63.83%**

Table 13 – Alley Impact by Solid Waste Collection

Column	Solid Waste Collection Alley Impact Area	Amount
A	Linear Miles Served by Solid Waste Collection	29.52
B	Linear Feet (A x 5280)	155,866
C	Center Line Feet (one lane, B = C)	155,866
D	Width (ft.)	18.87
E	**Solid Waste Collection Route Alley Impact Area (SF) (C x D)**	**2,941,184**
F	Total Alley Area (SF)	7,383,148
G	**Solid Waste Route Portion of Total Alley Collection Area (E / F)**	**39.84%**

ESALs Utilized by Solid Waste Collection

Solid waste vehicles cause a substantial amount of wear to residential streets. Streets are designed to withstand a total number of equivalent single axle loads over their twenty-year lives. The ESAL rating for an automobile is about .001 while the ESAL rating for the City's solid waste collection vehicles are more than 1,000 times greater. To derive the portions of the total annual residential street and alley ESALs used by solid waste vehicles, streets and alleys are considered separately. To calculate the total ESALs that the City's residential streets can bear annually, the lifetime ESALs of the street pavement (determined by the TI of the pavement) is divided by its useful life, yielding ESALs per year. According to the City's pavement engineers, the average TI of the City's residential streets is 6. A street with a TI of 6 is designed to support 33,136 ESALs over a 20-year period.

The next step is to determine the annual ESALs attributable to the solid waste collection vehicles by multiplying the vehicle ESAL by the number of passes it makes on a street per week and then again by the number of weeks in a year (52). As mentioned previously, side-loader trucks serve the City's residential customers. The calculation of the portion of the annual residential street and alley ESAL used by solid

waste vehicles is shown in the following tables. The city's side-loader trucks have a calculated average ESAL of 1.26[4].

The calculation in Table 14 estimates that solid waste vehicles use 23.72% of the annual ESAL of the residential streets on which they travel.

Table 14 – Solid Waste Vehicles' Portion of Annual Residential Street ESAL

Solid Waste Vehicles' Portion of Annual Residential Street ESAL	Amount
Residential Street TI	6
Residential Street Lifetime ESALs	33,136
Residential Street Useful Life (Years)	20
Residential Street ESALs Per Year	**1,656.8**
Side-Loader ESALs	1.26
Weekly Side-Loader Passes	6.00
Annual Side-Loader ESALs	**392.92**
Solid Waste Vehicles' Portion of Annual Residential ESAL	**23.72%**

The City's alleys are currently largely paved with asphalt and built to a design TI of 5. However, the alley pavement is in the process of being replaced by concrete which has a TI of 6. Concrete has a longer design life than asphalt and the design TI of 6 for concrete is based on a life of 35 years. The following table calculates the weighted average annual ESAL for the City's alleys.

Table 15 – Weighted Average, Annual Alley ESAL

Solid Waste Vehicles' Portion of Annual Alley ESAL	Percent of Alley Area	TI	ESALs	Useful Life	ESALs per Year
Asphalt Alleys	92.93%	5	7,160	20	358.0
Concrete Alleys	7.07%	6	45,000	35	1,285.7
Weighted Average					**423.6**

As calculated above for the City's streets, the annual ESAL borne by the City's alleys that is attributable to the side-loading trucks is calculated by multiplying the vehicle ESAL by the number of passes it makes on an alley per week and then again by the number of weeks in a year (52). The calculation estimates that side-loading solid waste vehicles use 92.77% of the annual ESAL of the alleys on which they travel.

[4] The average ESAL calculation for each vehicle type is included in the appendix.

Table 16 – Solid Waste Vehicles' Portion of Annual Alley ESAL

Solid Waste Vehicles' Portion of Annual Alley ESAL	Amount
Alley ESALs Per Year	**423.6**
Side-Loader ESAL	1.26
Weekly Side-Loader Passes	6.00
Annual Side-Loader ESALs	**392.92**
Solid Waste Vehicles' Portion of Annual Alley ESAL	**92.77%**

Derivation of Annual Solid Waste Infrastructure Use Fee

The following Solid Waste IUF reflects the solid waste portion of residential street and alley degradation applied to the average annual planned capital spending and the annual street repair operating budget. This is the same methodology a utility would use to determine rates for the next five years. The Solid Waste IUF is derived by 1) identifying the projected average annual spending on residential streets and alleys, 2) multiplying the projected average annual spending amount by the percent of the roadways impacted by solid waste as calculated above in Table 12 and Table 13, and 3) multiplying this product by the solid waste portion of the annual ESAL as calculated in Table 14, Table 15, and Table 16.

Table 17 – Solid Waste Annual Residential Street IUF Derivation

Column	Solid Waste Share of Annual Residential Street Capital Costs	Amount
A	10 Year Residential Street CIP *	$95,810,147
B	Average Annual Residential Street CIP (A / 10)	$9,581,015
C	Annual Maintenance Spending **	$1,828,140
D	Total Annual Cost (B + C)	$11,409,154
E	Solid Waste Route Portion of Total Residential Street Collection Area	63.83%
F	Average Annual Residential Street Cost for Solid Waste Routes (D x E)	$7,282,463
G	Solid Waste Vehicles' Portion of Annual Residential ESAL Load	23.72%
H	**Solid Waste Portion of Annual CIP Costs (F x G)**	**$1,727,400**

* Projected residential street capital spending (Pavement Engineering Inc., 2021)

** Projected annual street maintenance spending excludes all costs that are not asphalt, street striping and pavement repairs costs. The projected amount is also based on the 2023 budget which reflects a full year of the addition of a new street maintenance crew added in 2022. Projected annual street maintenance spending also adjusted to reflect residential street portion of total street and alley area.

Table 18 – Solid Waste Annual Alley IUF Derivation

Column	Solid Waste Share of Annual Alley Capital Costs	Amount
A	10 Year Alley CIP*	$5,951,796
B	Average Annual Alley CIP (A / 10)	$595,180
C	Annual Maintenance Spending**	$273,520
D	Total Annual Cost (B + C)	$868,700
E	Solid Waste Route Portion of Total Alley Collection Area	39.84%
F	Average Annual Alley Cost for Solid Waste Routes (D x E)	$346,090
G	Solid Waste Vehicles' Portion of Annual Alley ESAL Load	92.77%
H	**Solid Waste Portion of Annual CIP Costs (F x G)**	**$321,068**

* Projected alley capital spending (Pavement Engineering Inc., 2021)

** Projected annual street maintenance spending excludes all costs that are not asphalt, concrete, street striping and pavement repairs costs. The projected amount is also based on the 2023 budget which reflects a full year of the addition of a new street maintenance crew added in 2022. Projected annual street maintenance spending is also adjusted to reflect alley portion of total street and alley area.

Table 19 – Total Solid Waste Annual IUF Derivation

Annual Solid Waste IUF	Amount
Solid Waste Portion of Annual Residential Street Spending	$1,727,400
Solid Waste Portion of Annual Alley Spending	$321,068
Annual Solid Waste IUF	**$2,048,468**

Retroactive Application of Annual Solid Waste Collection Infrastructure Use Fee Methodology

The City is currently required to refund the entirety of the IUF paid by the solid waste enterprise from 2014 through 2021. The following table applies the methodology described in this section to the actual capital and operating costs paid by the City for street and alley repair and replacement from 2014 through 2021. The residential street and alley impacts are adjusted to reflect their portion of the overall roadway area in the City. The portion of total area is shown in Appendix A.

Table 20 – Retroactive Application of Annual Solid Waste Collection IUF Methodology

Retroactive IUF Application

Impact Percentage	Solid Waste Res. Streets	Solid Waste Alleys
Total City Pavement Area (SF)[5]	95,367,462	95,367,462
Impacted Area (SF)	31,497,279	2,941,184
Portion of Total Area Impacted (SF)	33.03%	3.08%
Solid Waste Impact	23.72%	92.77%
Impact from Solid Waste on Total Paved Area	**7.83%**	**2.86%**

Fiscal Year	Actual Maintenance and Capital Expenditures	Solid Waste Res. Streets	Solid Waste Other (Alley)	Solid Waste Total
2014	$2,834,169	$222,031	$81,088	$303,119
2015	$6,552,205	$513,304	$187,464	$700,768
2016	$12,470,126	$976,918	$356,780	$1,333,698
2017	$5,597,925	$438,545	$160,161	$598,706
2018	$16,490,042	$1,291,842	$471,793	$1,763,634
2019	$14,626,086	$1,145,818	$418,464	$1,564,281
2020	$9,136,324	$715,746	$261,397	$977,143
2021	$18,393,589	$1,440,967	$526,255	$1,967,221
Total		$6,745,172	$2,463,400	$9,208,572

[5] Includes all arterials, collectors, residential streets, and alleys.

4. Summary and Recommendations

The results from the analysis performed in this study demonstrate that the activities of the City's water, wastewater, and solid waste enterprises cause annual degradation to the City's roadways. The analysis in this study conservatively estimated the magnitude of annual roadway degradation by focusing only on directly quantifiable roadway degradation from solid waste collection vehicle loads and visible utility trench patching. The project team believes the cost of the actual annual damage attributable to the City's water, wastewater, and solid waste enterprises is greater that the amounts represented in Tables 21 and 22.

Nonetheless, Table 21 below provides a summary of the projected annual cost of the impact to the roadways grouped by water, wastewater, and solid waste enterprise funds for FY 2023/24. Table 22 applies the same methodology to actual costs from 2014 through 2021.

Table 21 – Summary of Annual IUF by Enterprise

Annual IUF	Amount
Water	$55,859
Sewer	$35,713
Solid Waste	$2,048,468
Total IUF	**$2,140,040**

Table 22 – Summary of Retroactive Application of IUF From 2014 through 2021

Enterprise Fund	Amount
Water	$210,085
Sewer	$134,317
Solid Waste	$9,208,572
Total Annual Improvement Costs	**$9,552,974**

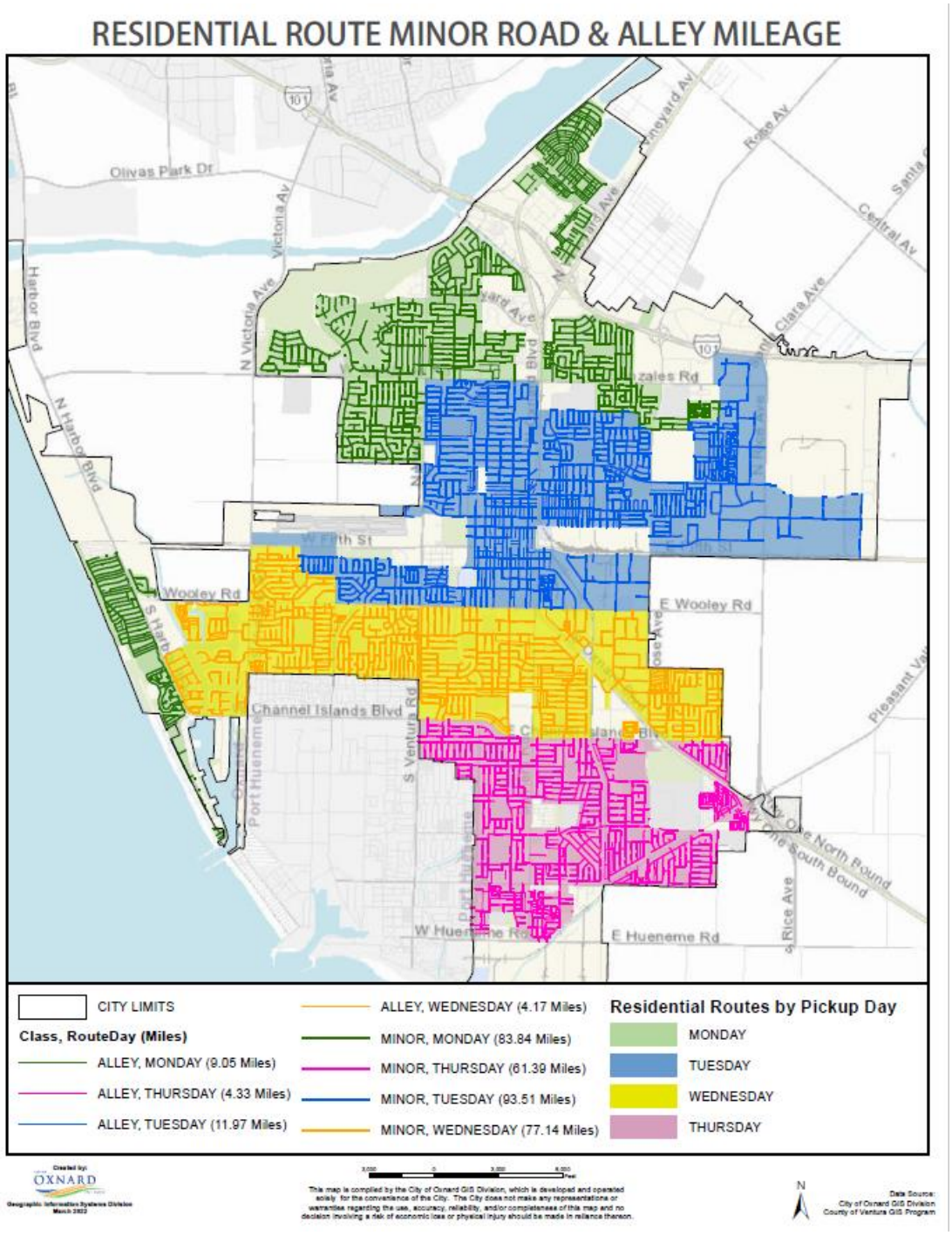
Recommendations

- Annual transfer should be no more than the amounts identified in Table 22 above. These amounts should be increased annually by a cost index such as the Engineering News Record Construction Cost Index, as the underlying CIP costs are in today's dollars and will therefore also increase due to inflation.

- Review transfer amount periodically as street conditions and projected maintenance costs change. The project team recommends a period of around five years, although factors specific to the City over the next few years may of course make a shorter or longer period more appropriate.

Appendix A

Solid Waste Collection Routes



Solid Waste Collection Vehicle Weight - Side-Loader

AMREP

WEIGHT DISTRIBUTION TABLE

GENERAL INFO	
CUSTOMER	CITY OF OXNARD
CHASSIS	AUTOCAR ACX
WHEELBASE (WB)	210
CAB TO AXLE/TANDEM (CA/CT)	185
CHASSIS FRONT AXLE WEIGHT	10410
CHASSIS REAR AXLE WEIGHT	6285
BODY TYPE	ASL
AXLES	3
BODY WEIGHT	15500
BODY CG LOCATION	125
PAYLOAD CG	210
AXLE SPREAD (in)	210
AXLE SPREAD (ft)	18
GVWR	51,500

FUEL	
FUEL TYPE	CNG.BODGE
FUEL MOUNT LOCATION	ROOF MOUNT
FUEL WEIGHT	1,500
FUEL CG LOCATION	70.00

FRONT AXLE CAPACITY	20000

REAR AXLE GROUP CAPACITY	
SINGLE REAR AXLE CAP	0
TANDEM AXLE CAP	36000
TAG AXLE CAP	0
PUSHER AXLE CAP	0

TAG AXLE WEIGHT	0
PUSHER AXLE WEIGHT	0

MAX PAYLOAD	17,805

	FRONT AXLE		REAR AXLE GROUP		TOTAL
AXLE RATING (GAWR)	20,000		36,000		
CHASSIS	10,410		6,285		16,695
PUSHER/TAG AXLE	0		0		0
FUEL	1,000		500		1,500
CHASSIS WEIGHT SUBTOTAL	11,410		6,785		18,195
AMREP BODY WEIGHT	6,274		9,226		15,500
TARE	17,684		16,011		33,695
MAX PAYLOAD (BRIDGE LAW)	21		17,784		17,805
MAX PAYLOAD (AXLE CAP.)	2,316		19,989		22,305
MAX PAYLOAD (ACTUAL)	21		17,784		17,805
GROSS WEIGHT	17,705		33,795		51,500

City of Oxnard Street Area by Functional Class

Functional Class	Surface Type	Lane Miles	Pavement Area/ Square Feet
Arterial	AC	133.8	12,243,465
	AC/AC	71.0	6,666,656
	PCC	1.8	138,050
Collector	AC	31.3	3,404,902
	AC/AC	12.5	1,177,261
Major Collector	AC	42.1	4,264,961
	AC/AC	24.5	2,573,937
Minor Arterial	AC	47.1	4,173,926
	AC/AC	44.6	3,917,730
	PCC	0.7	76,320
Other	AC	117.0	6,614,992
	AC/AC	5.3	284,075
	PCC	9.3	484,081
Residential/Local	AC	424.3	41,984,477
	AC/AC	66.8	6,880,665
	PCC	4.3	481,964
Grand Total:		1,036.4	95,367,462

	Residential SF	49,347,106
	Residential %	**51.74%**
	Other	7,383,148
	Other %	**7.74%**

Solid Waste Vehicle Weight and ESAL Calculation

The City uses side-loader trucks for residential collection on streets and alleys. The tare weight of a collection truck is the weight while it has no waste load. The average load weight is the weight of the load (loaded truck weight – tare weight) when a truck returns to drop off a full load. This was based on a survey of a load for a two-week period. The average load weight is half of the final load. This reflects the average weight from the beginning to the end of collecting a load. The tare weight plus average load weight of a solid waste truck is the projected average load plus the tare weight of the truck. The ESAL of a solid waste truck is calculated by applying the average weight per axle to the ESAL formula and then taking the sum of the calculated ESAL of each axle. Tandem axles spread the weight of a load over two axles.

Calculation of Solid Waste Collection Truck Equivalent Single Axle Loads (ESALs)

Side Loader Solid Waste Truck Characteristics	Tare Weight	Final Load Weight	Average Load Weight	Tare Weight + Average Load Weight	Average ESALs[1,2]
	LBS	*LBS*	*LBS*	*LBS*	*ESALs*
Front Axle	17,684	17.5	9	17,693	0.93
Rear Axle (Tandem[3])	16,011	14,832.0	7,416	23,427	0.33
Total	33,695	14,850	7,425	41,120	1.26

[1]Equivelant Single Axle Loads (ESALs)

[2]ESALs = ((axle load)/18,000)^4.2

[3]Tandem Axle ESAL Formula = ((tandem axle load/2)/18,000)^4.2 x 2

MEMORANDUM

Date:	01/08/2024	Project Number:	1360.55.2301
To:	Juanita C. Guzman - Administrative Services Manager, City of Oxnard		
From:	Debaroti Ghosh, PhD and Margot Yapp, PE		
Subject:	Peer Review of City of Oxnard's Pavement Impact Cost Study		

Background

The purpose of this project was to carry out a peer review of a study performed by Bartle Wells Associates (Study) ("Annual Enterprise Pavement Impact Cost Reimbursement Study" dated May 5, 2023, which is attached as Appendix A) on the pavement impact costs caused by water, wastewater and solid waste utilities and included the following:

- An assessment of the submitted information and a determination of whether the proposed methods are consistent with standard engineering practices and/or applicable regulations/codes.
- A technical memorandum summarizing NCE's findings.

It is NCE's understanding that the Courts invalidated the entire Infrastructure Use Fee (IUF) due to the absence of supporting methodology demonstrating the quantified wear and tear on City streets and its correlation to the fee charged against the enterprise funds. The Study was in response to the Court's ruling. NCE's directive was to identify any technical issues or concerns associated with the fees proposed in the Study.

Peer Review

The objectives of the Study were to first analyze and quantify the annual damage to the City's streets caused by the water, wastewater, and solid waste enterprises and, second, to determine how much these enterprises should compensate the City for the cost of the damages through a transfer to the General Fund. The study has two parts:

- Impact of Water and Wastewater Utility Cuts on Pavements
- Impact of Solid Waste Enterprise on Pavements

As part of the peer review process, NCE reviewed the Study (Appendix A) and subsequently formulated a questionnaire addressing various technical aspects and topics in need of clarification. Upon receiving the City's responses (included in Appendix B), NCE finalized this technical memorandum.

Impact of Water and Wastewater Utility Cuts on Pavements

The analysis was based on a field evaluation of 705 sections. Out of 705 sections, only 21 sections had utility cuts which represented approximately 4% (by area) of the total sections. The PCI of the sections with cuts varied between 0 and 70 and had an area-weighted average PCI of 47.7. Furthermore, an evaluation was performed on the same 21 sections after excluding the cuts, and the PCI reduction was determined based on condition categories (Table 5 from the report in Appendix A).

Since the average PCI of 21 sections with cuts was observed to be 47.7, ("Poor" condition category), only the PCI reduction from this condition category was used to calculate the overall impact and Infrastructure Use Fee (Tables 7 and 8 from Appendix A).

Technical Concerns

1. The City has an average network PCI of 60, and this includes pavements in all condition categories (ranging from 0 to 100). However, the study assessed only 21 sections with cuts with a PCI ranging from 13 to 66. No sections with cuts from the "Good" condition category were assessed. However, new streets or streets with high PCI (Good Condition) typically will undergo more damage due to utility cuts compared to the streets in poorer condition categories. The analysis should include a sample set that is more representative of the city's network.
2. The study examined a total of 705 sections of which 21 sections had cuts. The sample size of 705 sections included only the collectors and residential streets located in the Rotation B area, which is part of the City's normal rotation for its Pavement Management Program field review. The Study did not indicate if the Rotation B area is representative of the City's network.
3. The selected 21 sections represented approximately 3.96% of the total area. No statistical analysis was conducted to check if the impact of the cuts on the pavement was significant or not. Because of the small sample size, this is a critical step before developing any impact fees.
4. In the Study, only sections in the "Poor" condition category were used to calculate their impact on pavements and attendant fees. However, the impacts of cuts are different on streets with different condition categories. Notably, the impact tends to be more pronounced on new streets or those with high PCIs as compared to older streets or those with lower PCIs. The Study's approach will tend to underestimate the impact fees as a consequence.

   It is NCE's understanding that this was the direction provided by the City to Bartle Wells, but it is NCE's recommendation that pavements in all condition categories should have been considered to estimate the overall impacts more accurately.
5. The size of the cut is a pivotal consideration when evaluating impacts. A full-block longitudinal trench cut is expected to have more substantial influence on the pavement compared to a smaller cuts, such as a 4-foot by 4-foot cut. The study did not take into account the impacts caused by cuts of different sizes.
6. Residential streets are usually constructed with thinner pavement sections compared to arterials/collectors due to different traffic volumes and loads. Consequently, the impact of cuts is expected to be higher on residentials compared to arterials/collectors. The study did not consider the impact of cuts on different functional classes.
7. A decrease in the PCI leads directly to a reduction in the pavement's service life, which is the major concern in assessing pavement performance. However, the study did not assess the impact on pavement service life; it solely concentrated on PCI reduction. To enhance the study's technical rigor and support fee development, it would be advantageous to include data showcasing the reduction in pavement service life resulting from cuts.

Recommendations

To fully understand the impact of utility cuts on pavements, NCE recommends investigating both the structural and functional deterioration of pavements due to utility cuts. The impact of the cuts can be evaluated using two approaches: a historical evaluation using the PMS database and a field evaluation testing actual sites. This will result in a more robust and defensible analysis.

- Historical evaluation includes analysis of functional damage on the pavement due to cuts using past pavement distress inspection data and rehabilitation history from the StreetSaver database. This analysis involves comparing the PCI of pavement sections with and without cuts, categorized by various functional classes, PCI groups, or age groups. Subsequently, the percentage reduction in the remaining service life of the pavement is computed based on the PCI, using deterioration curves to estimate the influence of cuts on the pavement's overall service life. A tiered fee schedule can then be developed that will more accurately assess the impacts.
- Field evaluation includes the analysis of both functional and structural damage on pavement caused by cuts based on the existing site with cuts for varying functional classes and PCI-groups or age-groups. Deflection testing using a falling weight deflectometer would assess loss of structural capacity due to cuts at the sites. A PCI survey would assess the functional damage of the testing sites.

While the historical evaluation includes analysis of hundreds of data points, the field evaluation includes analysis of approximately 24-30 data points based on present existing sites with cuts. Marrying these two evaluation approaches yields a robust fee schedule that accounts for both functional and structural damage based on past and present circumstances.

1. Since the City maintains a StreetSaver database and inspects the network regularly, NCE recommends using this database for historical evaluation. This would include streets across all condition categories.
2. The Study evaluated 21 sites with utility cuts and focused only on functional deterioration. NCE recommends investigation of structural deterioration as well.
3. The study tested 21 actual sites with cuts. Testing paired sections (section with and without cuts) from each of 21 sites with similar traffic level and environmental factors for functional and structural damage will provide a more realistic approach and robust background for fee development.
4. A statistical analysis is recommended to establish confidence in the analysis and development of the fee schedule.
5. NCE recommends a tiered fee approach which would include functional class, pavement condition (PCI-groups or age-groups) and size of the cut.

Impact of Solid Waste Enterprise on Pavements

The impact of solid waste enterprise was analyzed on the residential streets and alleys in the City in terms of Equivalent Single Axle Load (ESALs). The street wear was determined by identifying the percentage of the total area of the City’s residential streets and alleys where solid waste collection vehicles travel, identifying the percentage use of wear and tear upon those streets and alleys from solid waste collection vehicles, and multiplying the two percentages together.

Technical Concerns

1. The study did not analyze the impact on major streets (arterials/collectors) which can be considerable. It is NCE’s understanding that direction provided by the City was to focus only on residentials and alleys;

nonetheless, it is our recommendation that a fuller picture of the impacts should include major streets as these streets are used to access the residentials/alleys and the dumpsites.

2. According to the 1993 AASHTO Guide for Design of Pavement Structures, the Load Equivalent Factor (LEF) of vehicle axles needed to calculate the number of ESALs depends on structural number and serviceability index. The structural capacity of flexible (asphalt concrete [AC]) pavement structures is represented by a Structural Number (SN), which is a metric that identifies the ability of the pavement to sustain existing or design traffic loads. It includes consideration of the combination of layer types, thicknesses, drainage, and condition, with values typically ranging from 1 to 7. A rating of 7 represents the stiffest or strongest combination or the highest structural capacity. Serviceability is another way of representing pavement condition in terms of ride quality and associated distress conditions and is quantified in terms of the Present Serviceability Index (PSI). The PSI varies between 5 (best) and 0 (worst). In practical terms, pavements with a PSI of 4.5 is the maximum, and pavements with a PSI of 1.5 or less are considered relatively unsafe to traverse and in need of reconstruction.

   A City's pavement network is usually comprised of pavements in all condition categories. Consequently, the Equivalent Single Axle Loads (ESALs) capacity of the entire pavement network depends on the current condition category breakdown. The ESAL capacity of pavements in "Good" condition is higher than that for pavements in "Fair" or "Poor" condition. The ESAL capacity is considered zero for the pavements in "Failed" condition.

   The impact on pavement is determined by dividing demand in ESALs by capacity in ESALs. When the pavement condition or structure undergoes changes, both capacity (denominator) and the impact of traffic demand (numerator) change, and this transformation is non-linear. Consequently, the impact will not shift linearly, as both the denominator and numerator are contingent on the breakdown of the city's pavement condition category.

   If a truck runs on a new pavement, the impact is higher compared to a truck running on an old and distressed pavement. Similarly, if a truck runs on a thicker pavement, the impact is lower compared to the truck running on thinner pavement. If the variables are combined (new or old thick pavement vs new or old thin pavement), the impact of the traffic demand on the pavement is not linear and changes with structure and condition. Consequently, a detailed analysis is recommended which would consider all these factors to be checked for the vehicle impact.

   It is NCE's understanding that the approach of analyzing impacts only on new pavement was based on numerous discussions between City staff and the consultant.

3. If the City's annual maintenance is insufficient to maintain the pavement condition, the pavement will deteriorate, and the impact of heavy vehicles will change as pavement condition changes. Thus, it is important to analyze the vehicle impact each year over the analysis period to capture the actual impact and develop a realistic fee. This interactive analysis was not performed to assess the pavement deterioration over a 5-year period.

Recommendations

1. Since the City manages a robust PMS database, NCE recommends using the StreetSaver software to perform a budget analysis for the next 5 or 10 years (analysis period to be determined) to obtain PCI projection and condition category breakdown for future years. Following this, the ESALs of heavy vehicles and City's pavement ESAL capacity should be calculated based on each year's projected PCI or condition in order to develop a fee that is more reflective of the City's conditions.

2. Heavy vehicles use arterials/collectors (major streets) to access the residentials and alleys and get to the dump sites. The impact on the major streets can be as significant as on the residential streets. While NCE

understands that the Study was directed to be conservative (i.e. err on under-recovery of impact fees), NCE recommends that the analysis include the impacts on major streets and consider the development of a separate fee structure specifically for these major streets.

Concluding Remarks

Overall, the analysis process presented in the report represents a valid approach to present the financial damage to the City's street. However, due to the reasons above, the estimated fee for impacts of water and wastewater utility cuts on pavement was underestimated as it did not include the impact of cuts on pavements in "Good" or "Fair" condition. The impact of solid waste enterprise vehicles on pavements also under-estimated the damage fee as it only considered residential streets and alleys.

Annual Enterprise Pavement Impact Cost Reimbursement Study

Michael L. Wolfe, PE
Director of Public Works

Public Works and Transportation Committee, February 11, 2025
City Council, March 4, 2025

CITY OF OXNARD CALIFORNIA

RECOMMENDATION - PWTC

That the Public Works and Transportation Committee recommend that the Annual Enterprise Pavement Impact Cost Reimbursement Study be forwarded to the City Council as a receive and file item.

RECOMMENDATION - City Council

That the City Council receive and file the Pavement Impact Cost Reimbursement Study.

BACKGROUND

- Enterprise Funds (Water, Wastewater, Solid Waste)

- Infrastructure Use Fee Transfer
  - Transfer $ from Enterprise funds to General Fund
  - Enterprise Fund Allocation Study (HF&H report 2014)
  - Calculates Enterprise's share of three areas
    - Public Safety (police/fire)
    - Governmental facilities
    - Right-of-way maintenance (pavement maintenance)

- Lawsuit
  - 2014 based IUF transfer violates CA constitution (Article XIII D)
  - 2021 judgement - cease IUF (forward; back reimbursement)
  - 2021 reduced water, wastewater, and solid waste rates

BACKGROUND - Continued

- Judgement
  - Without prejudice for future IUF

The Judgement states, "...[the] ruling is without prejudice to the City's establishment of an IUF transfer methodology which reasonably represents the actual cost to the City's public safety, governmental agency, and streets and roadways maintenance funds of providing water, waste water and solid waste disposal services to property owners."

The Judgement further states, "Article XIII D does not prevent City from charging an IUF to cover such indirect costs."

DISCUSSION

- City hired a consultant for new IUF report
  - Excludes public safety and governmental facilities
- New report focus - street paving
  - quantifiable data (e.g. PCI, solid waste routes, truck weights)
  - includes info from field inspections
  - Identifies damage by utilities on street pavement
- Methodologies are summarized in the staff report
- Peer-reviewed
  - Conservative, valid approach

FINANCIAL IMPACT

- There is no fiscal impact to receive/file this report
- The new IUF is approximately $2.1M/year
  - Water $55,859; Wastewater $35,713; and Solid Waste $2,048,468
- Water rates (approved May 2023) no IUF component
  - Staff will recommend IUF in next rate case analysis
- Solid waste rates (approved April 2024); IUF included Jan 2025
- Wastewater rates actively in review
  - Staff will recommend IUF in next rate case analysis

CITY OF OXNARD CALIFORNIA

End of Presentation