

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 Library, 251 South "A" Street and the City Clerk's Office, 300 West Third Street 4th Floor during customary business hours. Any materials to be presented at this meeting will be made available electronically 24 hours prior to the meeting, at the end of this agenda. The agenda reports are on the City of Oxnard web site at www.oxnard.org.



AGENDA
OXNARD CITY COUNCIL
OXNARD COMMUNITY DEVELOPMENT COMMISSION SUCCESSOR AGENCY
OXNARD FINANCING AUTHORITY
OXNARD HOUSING AUTHORITY
Council Chambers, 305 West Third Street
May 23, 2017
Regular Meeting - 6:00 PM
Closed Session - 4:30 PM

A. ROLL CALL/POSTING OF AGENDA

THE FOLLOWING LEGISLATIVE BODIES ARE MEETING: City Council.

B. PUBLIC COMMENTS ON CLOSED SESSION ITEMS

At this time, a person may address the legislative body only on matters appearing on the closed session agenda. The presiding officer shall limit public comments to three minutes

C. CLOSED SESSION (4:30 PM)

1. Conference with Legal Counsel – Potential Litigation

CC On the advice of the City Attorney, pursuant to Government Code section 54956.9(d)(4), based on existing facts and circumstances, the City Council shall decide whether to initiate litigation in two potential cases.

The City Attorney requested that these items be discussed in closed session under the Brown Act authorization for the City Council to confer with its legal counsel regarding potential litigation.

2. Conference with Legal Counsel – Labor Negotiations

CC Agency designated representatives: Steve Janice, Director of Human Resources; and Burke Dunphy, City's labor attorney. Employee organization: Oxnard Public Safety Management Employees' Association (Fire Unit).

The Human Resources Director requested that this item be discussed in closed session pursuant to Government Code section 54957.6(a). The purpose of the closed session is for the City Council to review the status of negotiations and to provide instructions to the City's negotiators regarding salaries, salary schedules and compensation paid in form of fringe benefits for

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.

City of Oxnard internet address: www.oxnard.org.

employees represented by the employee organization identified and other matters within the scope of representation for those represented employees.

D. OPENING CEREMONIES (6:00 PM)

Pledge of allegiance to the flag of the United States.

E. CEREMONIAL CALENDAR

1. SUBJECT: Presentation of a Resolution Commending Walter Fuller for Over 20 Years of Outstanding Volunteer Service to the City of Oxnard.

F. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

At this time, the legislative body will consider public comments for a maximum of thirty minutes. 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 cards will not be accepted after the beginning of the general public comment period. Based on the number of speaker cards submitted, the presiding officer may impose time limits per speaker. Typically, speakers are limited to three minutes, but shorter time may be established as deemed necessary. A person not able to address the legislative body at this time because the thirty minutes expires may do so just 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.

G. REPORT OF CITY MANAGER/EXECUTIVE DIRECTOR/SECRETARY

The City Manager/Executive Director/Secretary shall report on items of interest to the legislative body occurring since the last meeting. The legislative body cannot enter into detailed discussion or take action on any item presented during this report. Such items may only be referred to the City Manager/Executive Director/Secretary for administrative action or scheduled on a subsequent agenda for discussion.

H. CITY COUNCIL/HOUSING AUTHORITY/SUCCESSOR AGENCY/FINANCING AUTHORITY BUSINESS/COMMITTEE REPORTS

At this time, a member of the legislative body may make a brief announcement, or make a brief report on his or her activities. Further, members of the legislative body may request to schedule consideration of whether to place an item on a future agenda. The legislative body cannot enter into detailed discussion or take action on any item presented during this report. The member's report shall not exceed three minutes, unless additional time is granted by the presiding officer.

I. REVIEW OF INFORMATION/CONSENT AGENDA

The members of the legislative body will consider whether to remove Information/Consent Agenda items for discussion later during the meeting.

J. PUBLIC COMMENTS ON INFORMATION/CONSENT AGENDA

At this time, a person may address the legislative body only on matters appearing on the information/consent agenda. The presiding officer shall limit public comments to three minutes.

K. INFORMATION CONSENT AGENDA**City Clerk Department**

1. **SUBJECT:** Minutes of the May 16, 2017 Regular Meeting.
RECOMMENDATION: That the City Council approve the Minutes as presented.
Legislative Body: CC Contact: Michelle Ascencion Phone: 385-7805

City Manager Department

2. **SUBJECT:** Agreements for City Council Review
RECOMMENDATION: That City Council, pursuant to Ordinance No. 2835, and Resolution No. 13,932, approve and authorize the City Manager to execute the following agreements/contracts and change orders/amendments in amounts more than \$25,000 but no more than \$250,000:
 - A. Liebert Cassidy Whitmore (7876-17-CA) for attorney services regarding FLSA compliance issues (\$40,000).
 - B. Olivarez Madrugá Lemieux & O'Neill, LLP (7910-17-CA) for attorney services related to water and related utility issues (\$250,000).
 - C. NeoGov (7859-17-HR) for employee performance evaluation module (\$75,098).
 - D. Brownstein Hyatt Farber Schreck, LLP (5373-11-CA) for legal services in connection with the GREAT program and Regional Water Policy issues during transition to new special counsel (\$125,000).
 - E. Empathia Pacific, Inc. (6012-12-HR) for employee assistance program (\$70,000).
 - F. AllStar Fire Equipment, Inc. to purchase 26 turnouts pants and jackets for firefighter academy recruits (\$70,732).
 - G. U.S. Bank for purchase of compressed natural gas for refuse trucks and other vehicles (\$100,000).Legislative Body: CC Contact: Greg Nyhoff Phone: 385-7430

Cultural and Community Service Department

3. **SUBJECT:** Appointment of One Representative to the Ventura County Area Agency on Aging Advisory Council.
RECOMMENDATION: That City Council approve the recommendation from the Senior Services Commission and appoint Alice Sweetland to the Ventura County Area Agency on Aging Advisory Council.
Legislative Body: CC Contact: Ingrid Hardy Phone: 385-7993

Housing Department

4. **SUBJECT:** Resolution Commending Juliette Dang for Over Twenty-Three Years of Service
RECOMMENDATION: That City Council adopt a resolution commending Juliette Dang for over twenty-three years of exemplary service to the City of Oxnard.
Legislative Body: CC Contact: Greg Nyhoff Phone: 385-7430
5. **SUBJECT:** Emergency Solution Grant Policies
RECOMMENDATION: That the City Council approve and certify the attached Emergency Solutions Grant Policies and Procedures Manual and Emergency Solutions Grant Subrecipient Handbook for use in the City's Emergency Solutions Grant (ESG) program.
Legislative Body: CC Contact: Arturo Casillas Phone: 385-8094

Human Resources Department

6. **SUBJECT:** Fifth Amendment to Agreement – AppleOne Employment Services
RECOMMENDATION: That City Council approve and authorize the Mayor to execute a Fifth Amendment to Agreement No. 7379-16-HR with AppleOne Employment Services in the amount of \$14,776.53 to pay final invoices for short-term staffing for various City departments.
Legislative Body: CC Contact: Steve Janice Phone: 385-7947

Public Works Department

7. **SUBJECT:** Approve Plans and Specifications for Elevator Renovation at 305 W. Third Street (PW 17-34).
RECOMMENDATION: That City Council approve project plans, specifications and working details and authorize staff to solicit bids for the Elevator Renovation Project at 305 W. Third Street (PW 17-34).
Legislative Body: CC Contact: Daniel Rydberg Phone: 385-8055
8. **SUBJECT:** Approve Plans and Specifications for the Police Station Roof Replacement Project.
RECOMMENDATION: That City Council approve project plans, specifications and working details and authorize staff to solicit bids for the Police Station Roof Replacement Project (PW 17-33).
Legislative Body: CC Contact: Daniel Rydberg Phone: 385-8055
9. **SUBJECT:** Second Reading and Adoption of Ordinance No. 2917
RECOMMENDATION: That City Council waive the second reading and adopt Ordinance No. 2917, setting new wastewater rates.
That City Council direct the City Manager and the Public Works Director that \$500,000 per year in projected additional wastewater rate revenue be earmarked and placed into a "lock box" available only for unanticipated, unbudgeted and unscheduled emergency wastewater repairs each year over the next five year period.
Legislative Body: CC Contact: Daniel Rydberg Phone: 385-8055

10. SUBJECT: Second Amendment to Agreement No. 6676-14-CM with Jordan Gilbert & Bain Landscape Architect, Inc. for On-Call Landscape Architectural Design and Review Services
RECOMMENDATION: That City Council approve the Second Amendment to Agreement No. 6676-14-CM with Jordan, Gilbert & Bain Landscape Architect, Inc. for on-call landscape architectural design services and landscape plan review. This amendment is to extend the expiration date to June 30, 2020, and increase the agreement in an amount of \$300,000 for a total amount not to exceed amount of \$750,000.
Legislative Body: CC Contact: Daniel Rydberg Phone: 385-8055

L. PUBLIC HEARINGS

Development Services Department

1. SUBJECT: Appeal of Planning Commission Denial of a Special Use Permit (SUP) to Allow the Sale of Beer, Wine, and Distilled Spirits for Off-Site Consumption (ABC License Type 21 Off-Sale General) at a Proposed Liquor Store (Marina Liquor), Which Will be Located at 1601 South Victoria Avenue, Suite 120 (Seabridge Marina Center). (10/10/45)
RECOMMENDATION: As a result of the Applicant's refusal to accept two Police Department conditions of approval, uphold the Planning Commission's denial of Planning and Zoning Permit No. 16-510-02 (Special Use Permit), subject to certain findings.
Legislative Body: CC Contact: Ashley Golden Phone: 385-7882

M. REPORTS

Public Works Department

1. SUBJECT: Purchase of 15 Compressed Natural Gas Trucks (5/10/10)
RECOMMENDATION: That City Council approve and authorize the Mayor to execute Purchase Order #6034 in the amount of \$4,851,760 for the purchase of ten (10) residential refuse collection vehicles, two (2) commercial ("front-loader") collection vehicles, and three (3) industrial ("roll-off") collection vehicles from Velocity Truck Center.
Legislative Body: CC Contact: Daniel Rydberg Phone: 385-8055

Finance Department

2. SUBJECT: Landscape Maintenance District Contracts for FY 17-18, 18-19 and 19-20 (5/15/20)
RECOMMENDATION: That City Council approve and authorize the City Manager to execute the following:
1. Agreement A-7970 with Kaneko Landscaping, Inc. to provide landscape maintenance services to thirty seven (37) landscape maintenance districts (LMDs) in the total amount of \$1,516,680.00
 2. Agreement A-7971 with Garcia's Landscape Maintenance, Inc. to provide landscape maintenance services to three (3) LMDs in the total amount of \$108,000.

That City Council additionally approve the following:

3. A 10 percent contingency amount of \$151,668 for Agreement A-7970 for maintenance services with Kaneko Landscaping, Inc.

4. A 10 percent contingency amount of \$10,800 for Agreement A-7971 for maintenance services with Garcia's Landscape Maintenance, Inc.

Legislative Body: CC

Contact: Jim Throop

Phone: 385-7475

Human Resources Department

3. SUBJECT: Adoption of Successor Memoranda of Understanding and Amended Salary and Benefits Resolutions (15/15/10)

RECOMMENDATION:

That the City Council:

1) Adopt resolutions approving successor memoranda of understanding (MOU) with the following bargaining units:

a. International Union of Operating Engineers Local 501 (IUOE); and

b. Oxnard Mid-Managers Association (OMMA).

2) Adopt a resolution approving the side letter agreement between the City and Service Employees International Union, Local #721, CLC (SEIU).

3) Adopt a resolution repealing and replacing Resolution No. 14,883 establishing the salary and benefits for unrepresented Confidential Non-Managers, Confidential Mid-Managers, and Executive Employees.

Legislative Body: CC

Contact: Steve Janice

Phone: 385-7947

Public Works Department

4. SUBJECT: Blanket Purchase Order No. 6260 with Shell Fleet Card Services to Extend Agreement a Sixth Year for Gas Station Fuel and Car Wash Service for FY 2017-18 (5/5/5)

RECOMMENDATION: That City Council approve and authorize the Mayor to execute Blanket Purchase Order No. 6260 to extend the agreement a sixth and final year with Shell Fleet Card Services, contract administrator for Oxnard Airport Shell and MacValley Oil Company. The agreement period is from July 1, 2017, to June 30, 2018, in an amount not to exceed \$2,005,000. The blanket purchase order is for the purchase of gasoline, diesel, and car wash service at Shell stations through a fuel card system.

Legislative Body: CC

Contact: Daniel Rydberg

Phone: 385-8055

N. PUBLIC COMMENTS ON REPORTS

At this time, a person may address the legislative body only on matters appearing on the reports. The presiding officer shall permit a person to address the legislative body after the staff presentation on the report and before the consideration of the report by the legislative body. The presiding officer shall limit public comments to three minutes.

O. ADJOURNMENT

CITY COUNCIL OF THE CITY OF OXNARD
RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD
COMMENDING WALTER FULLER FOR HIS OVER 20 YEARS OF
EXEMPLARY VOLUNTEER SERVICE TO THE CITY OF OXNARD

WHEREAS, Walter Fuller has given over 20 years of exemplary volunteer service to the City of Oxnard at Ormond Beach; and

WHEREAS, Ormond Beach is considered by many wetland experts to be the largest and most important wetland restoration opportunity in Southern California, according to the California State Coastal Conservancy; and

WHEREAS, Ormond Beach hosts over 200 migratory bird species including the federally endangered California least tern and the federally threatened western snowy plover; and

WHEREAS, Mr. Fuller has demonstrated his dedication to the community of Oxnard through his devoted and tireless contribution as the volunteer caretaker and steward of Ormond Beach; and

WHEREAS, Mr. Fuller greets hundreds of visitors to Ormond Beach and provides education about its history, its wetlands, and its wildlife. He inspires visiting schoolchildren each year, hoping to pass along some of his commitment to protecting the wetlands and their inhabitants; and

WHEREAS, Mr. Fuller informs the public about the many benefits and economic values of the Ormond Beach wetlands including flood control, improving water quality and providing a critical habitat for threatened and endangered species; and

WHEREAS, Mr. Fuller has been committed to protecting the wildlife of Ormond Beach especially the migratory bird population. His presence helps reinforce the many conservation laws and regulations enacted to protect the area and its inhabitants; and

WHEREAS, Mr. Fuller was the recipient of the Community Recognition Award, 2014 Outstanding Senior as presented by the City of Oxnard’s Community Relations Commission on September 16, 2014, for his outstanding volunteer service to Ormond Beach; and

WHEREAS, Mr. Fuller has recently been honored with the Earth Charter Award for Ecological Integrity as presented by the Citizens for Peaceful Resolutions on October 8, 2016, for his volunteer work to protect and preserve the native bird habitat at Ormond Beach.

NOW, THEREFORE, the City Council of the City of Oxnard does hereby resolve to commend, recognize and extend its gratitude to Walter Fuller for his over 20 years of outstanding volunteer service to the City of Oxnard and wishes him much luck and success in all future endeavors.

PASSED AND ADOPTED THIS _____ day of _____, 2016, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Tim Flynn, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:

Stephen M. Fischer, City Attorney



**CITY COUNCIL
AGENDA REPORT**

TYPE OF ITEM: Info/Consent

AGENDA ITEM NO.: 1

DATE: May 23, 2017

TO: City Council

FROM: Michelle Ascencion
City Clerk

SUBJECT: Minutes of the May 16, 2017 Regular Meeting.

CONTACT: Michelle Ascencion, City Clerk
Michelle.Ascencion@oxnard.org, 385-7805

RECOMMENDATION:

That the City Council approve the Minutes as presented.

STRATEGIC PRIORITIES

This agenda item is a routine operational item that does not directly relate to the four strategic plans adopted by City Council on May 17, 2016. This agenda item does provide transparency of Council meetings to the public.

FINANCIAL IMPACT

There is no financial impact.

ATTACHMENTS:

Attachment A: Minutes 05.16.17 CC regular meeting

MINUTES
OXNARD CITY COUNCIL
Regular Meeting
May 16, 2017

A. ROLL CALL/POSTING OF AGENDA

At 5:07 p.m., the regular meeting of the Oxnard City Council was called to order by Mayor Pro Tem Ramirez in the Council Chambers. The City Clerk called the roll: Councilmembers Bryan A. MacDonald, Oscar Madrigal, Bert Perello, and Mayor Pro Tem Ramirez were present. Mayor Tim Flynn arrived at 5:09 p.m. The City Clerk stated that the agenda was posted May 11, 2017 at City Hall.

Staff members present were Greg Nyhoff, City Manager; Stephen Fischer, City Attorney; Jesús Nava, Assistant City Manager; Ruth Osuna, Assistant City Manager; Kymberly Horner, Economic Development Director; Phillip Molina, City Treasurer; George Iafrete, Computer Network Engineer III; and Michelle Ascencion, City Clerk.

B. APPOINTMENT ITEMS

1. SUBJECT: Oxnard Convention and Visitors Bureau Annual Update.
RECOMMENDATION: That City Council receive an annual update report dated May 16, 2017 from the Oxnard Convention and Visitors Bureau (“OCVB”).

The Economic Development Director introduced Josh Travers, Executive Director of the Oxnard Convention and Visitors Bureau, who gave a presentation and introduced the OCVB Board Members in attendance.

(Mayor Flynn arrived at this time.)

Public comments were received from Abel Magana and Lawrence Stein. Discussion ensued among the Council, staff, and Steve Buenger, Chair of the OCVB Board.

C. OPENING CEREMONIES

The flag salute, led by Anthony Martinez Sr., was followed by a moment of silence.

Additional staff members present at this time were Darwin Base, Fire Chief; Keith Brooks, Information Technology Director; Arturo Casillas, Housing Director; Daniel Rydberg, Public Works Director; James Throop, Chief Financial Officer; Scott Whitney, Police Chief; Raja Bamrungpong, Information Technology Manager; Kyron Johnson, Management Analyst; Shiri Klima, Assistant City Attorney; Karl Lawson, Housing Compliance Services Manager; Licette Maldonado, Utilities Finance Officer; Daniel Nahmias, Firefighter; Thien Ng, Wastewater Division Manager; and Jason Zaragoza, Deputy City Attorney.

D. CEREMONIAL CALENDAR

1. SUBJECT: Presentation of a Commendation to John Newton and Eduardo Germann for

Their Heroic Lifesaving Efforts; and Proclamation Designating the Week of May 22 - 29, 2017 as “Beach Safety Week.”

Mayor Flynn, the Fire Chief, and Firefighter Nahmias presented Mr. Germann and Mr. Newton with tokens of appreciation from the City. The man whose life was saved, Ryan Johnson, was also present and made a few remarks. Mayor Flynn read the proclamation and presented it to the Fire Chief.

2. SUBJECT: Presentation of a Proclamation Designating the Week of May 21 - 27, 2017 as “Public Works Week.”

Mayor Flynn read the proclamation and presented it to the Public Works Director, who made some remarks and introduced some of the Public Works staff in attendance.

E. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

Public comments were received from Anthony Martinez Sr. (Ride of Silence), Dale Dean (American Legion Post 38), Lawrence Stein (budget process), Larry Barbarine (student journalists), Marsha Cordes (Sister City Ocotlan annual visit), Pete Placencia (La Colonia Boxing Gym), Chad Carroll and Tiffany Lopez (Kiwanis “Tower to Tower” Fire Explorers fundraiser), Jack Villa (upcoming Neighborhood Council events), George Miller (sanctuary city issue), and Al Velasquez (sanctuary city issue).

(Mayor Flynn announced that Item L.1 would be heard next.)

L. REPORTS

City Manager Department

1. SUBJECT: 2017 and 2018 City of Oxnard License Agreement (# A-7972) with Blue Star Operations Services, LLC (Dallas Cowboys) for the Use of City Facilities at River Ridge for a Training Camp.
RECOMMENDATION: That City Council approve and authorize the Mayor to execute a two-year agreement with an additional two-year extension option with Blue Star Operations Services, LLC for a professional football training camp to be held at the City’s River Ridge Fields.

Assistant City Manager Nava gave a report. Discussion ensued among Council and staff.

It was moved by Councilman MacDonald, seconded by Mayor Pro Tem Ramirez, to approve staff’s recommendation as presented. VOTE: Flynn, MacDonald, Madrigal, Perello, and Ramirez voted in favor; the motion carried 5-0.

(Mayor Flynn announced that Item K.1 would be heard next.)

K. PUBLIC HEARINGS

Public Works Department

1. SUBJECT: Public Hearing Regarding and First Reading of Ordinance for Wastewater Rate Increase.

RECOMMENDATION: That City Council:

1. Holds a public hearing to receive public testimony and consider all protests concerning the adoption of an ordinance establishing wastewater user fees and charges;
2. Finds that, according to the CEQA exemption listed in 14 CCR section 15273, CEQA does not apply because this ordinance establishes rates, which the Council finds are for the purposes of: meeting operating expenses, including employee wage rates and fringe benefits; purchasing or leasing supplies, equipment, or materials; meeting financial reserve needs and requirements; and obtaining funds for capital projects, necessary to maintain wastewater service within existing service areas; and
3. Approves the introduction and first reading by title only and waive further reading of an ordinance establishing new wastewater system user fees and charges.

The City Clerk announced the affidavit of publication.

The City Manager, Assistant City Manager Osuna, and Alex Bugbee of Carollo Engineers gave a report.

Mayor Flynn opened the public testimony portion of the public hearing. Public comments were received from Nancy Pedersen, Charles Hamm, Aaron Starr, Alicia Percell, Lawrence Stein, Pat Brown, Vincent Ines, Al Velasquez, David Paulsen, Elva Lindsey, Brett Munoz, Steve Nash, Kimberly Villanueva, Juan Macias, Barbara Zahn, Gabriel Teran, and Edward Castillo.

Mayor Pro Tem Ramirez, seconded by Councilmember Perello, moved to close the public testimony portion of the public hearing; the Council approved unanimously.

Discussion ensued among the Council and staff. The City Clerk declared that, pursuant to Resolution No. 14,877, the number of written protests received was manifestly less than half of the parcels served by the City. Further discussion ensued.

It was moved by Councilmember Perello, seconded by Mayor Pro Tem Ramirez, to approve staff's recommendation as presented, with the inclusion of Council policy direction to the City Manager and Public Works Director that \$500,000 per year in projected additional wastewater rate revenue be earmarked and placed into a "lock-box" available only for unanticipated, unbudgeted and unscheduled emergency wastewater repairs each year over the next five year period. VOTE: Flynn, Madrigal, Perello, and Ramirez voted in favor; MacDonald voted against. The motion carried 4-1.

(Mayor Flynn announced that the Information/Consent agenda would be heard next.)

H. REVIEW OF INFORMATION/CONSENT AGENDA

Items J.1, J.3(C), and J.3(E) were pulled for discussion.

Regarding J.1: The Council and staff discussed clarification of the penalty fee, its equitable

application to all customers, and substituting the word “delinquent.”

Regarding J.3(C): The Information Technology Director gave a brief report on the features of OpenGov.

Regarding J.3(E): The Police Chief gave a brief report on the purchase and disposal of firearms.

I. PUBLIC COMMENTS ON INFORMATION/CONSENT AGENDA

Public comments were received from Lawrence Stein, Al Velasquez, Aaron Starr, Steve Nash, and Dan Pinedo.

J. INFORMATION/CONSENT AGENDA

City Attorney Department

1. SUBJECT: Adoption of Delinquent Utility Bill Payment Ordinance.
RECOMMENDATION: That City Council waive the second reading and **adopt Ordinance No. 2918** amending Chapters 19 and 22 of the Oxnard City Code to establish penalties to be assessed on delinquent utility service bill payments.

City Clerk Department

2. SUBJECT: Minutes of the May 9, 2017 Regular Meeting.
RECOMMENDATION: That the City Council approve the Minutes as presented.

City Manager Department

3. SUBJECT: Agreements for City Council Review.
RECOMMENDATION: That City Council, pursuant to Ordinance No. 2835, and Resolution No. 13,932, approve and authorize the City Manager to execute the agreements/contracts and change orders/amendments in amounts more than \$25,000 but no more than \$250,000:
 - A. SoftwareOne, Inc. for licensing and software maintenance (\$92,867).
 - B. TriTech Software for crime analysis and mapping software (\$43,642).
 - C. OpenGov application for publishing financial and operational data (\$32,775).
 - D. Selectron, Inc. for interactive voice response software used to schedule permit inspections and to pay utility bills by phone (\$27,375).
 - E. Adamson Police Products for purchase of 250 Sig Sauer P320 firearms (\$36,563).
 - F. CopQuest for the purchase of 250 Sig Sauer P320 holsters (\$28,055).

Public Works Department

4. SUBJECT: Solicit Bids for On-Call Street Maintenance and Repair Services.
RECOMMENDATION: That City Council authorizes staff to solicit bids for On-Call Street Maintenance and Repair Contract PW17-21.

It was moved by Councilman MacDonald, seconded by Councilmember Perello, to approve the

Information/Consent Agenda as presented. VOTE: Flynn, MacDonald, Madrigal, Perello, and Ramirez voted in favor; the motion carried 5-0.

L. REPORTS

Public Works Department

2. SUBJECT: Purchase of 15 Compressed Natural Gas Trucks.

(This item was postponed due to time.)

M. PUBLIC COMMENTS ON REPORTS (None)

N. ADJOURNMENT

There being no further business on the agenda, and without objection, Mayor Flynn adjourned the meeting at 10:41 p.m.

MICHELLE ASCENCION, CMC
City Clerk

TIM FLYNN
Mayor



**CITY COUNCIL
AGENDA REPORT**

TYPE OF ITEM: Info/Consent

AGENDA ITEM NO.: 2

DATE: May 23, 2017

TO: City Council

FROM: Greg Nyhoff
City Manager

SUBJECT: Agreements for City Council Review

CONTACT: Greg Nyhoff, City Manager
Greg.Nyhoff@oxnard.org, 385-7430

RECOMMENDATION:

That City Council, pursuant to Ordinance No. 2835, and Resolution No. 13,932, approve and authorize the City Manager to execute the following agreements/contracts and change orders/amendments in amounts more than \$25,000 but no more than \$250,000:

- A. Liebert Cassidy Whitmore (7876-17-CA) for attorney services regarding FLSA compliance issues (\$40,000).
- B. Olivarez Madruga Lemieux & O'Neill, LLP (7910-17-CA) for attorney services related to water and related utility issues (\$250,000).
- C. NeoGov (7859-17-HR) for employee performance evaluation module (\$75,098).
- D. Brownstein Hyatt Farber Schreck, LLP (5373-11-CA) for legal services in connection with the GREAT program and Regional Water Policy issues during transition to new special counsel (\$125,000).
- E. Empathia Pacific, Inc. (6012-12-HR) for employee assistance program (\$70,000).
- F. AllStar Fire Equipment, Inc. to purchase 26 turnouts pants and jackets for firefighter academy recruits (\$70,732).
- G. U.S. Bank for purchase of compressed natural gas for refuse trucks and other vehicles (\$100,000).

BACKGROUND

On November 16, 2010, the City Council approved changes to the City's Purchasing Procedures reducing the threshold for City agreements/contracts and change orders/amendments requiring

Agreements for City Council Review
May 23, 2017
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City Council approval to \$25,000. The agreements/contract and change orders/amendments described on the attached list involve amounts above \$25,000 and up to \$250,000.

FINANCIAL IMPACT

Funding information is included on the attached list.

NOTE: Copies of the agreement/contracts and change orders/amendments on the list are available in the City Clerk's Office prior to the Council meeting.

ATTACHMENTS:

Attachment A: City Manager Contract List for May 23, 2017

City Manager Contract List for 05/23/2017

Contracts from \$25,000 to \$250,000

K.2.a

A Attorney Services Agreement

Vendor: Liebert Cassidy Whitmore
Type: Original Agreement
Agreement No.: 7876-17-CA
Amendment No.: N/A
Purchase Order No.: TBD
Begin Date: 05/01/2017
End Date: 04/30/2018
Term: 1 year

Amount to be Approved: \$40,000
Current FY Amount: \$10,000
Total Contract Amount: \$40,000
Funding Source: General Fund
Vendor Selection Process: Negotiated Contract
of Bids/Proposals/Quotes: N/A
Project Manager: Stephen M. Fischer
Department: City Attorney
Telephone: 385-7483
Email: leanne.daly@oxnard.org

Purpose: Agreement for legal advice and services regarding compliance issues arising from the decision in Flores v. City of San Gabriel.

B Attorney Services Agreement

Vendor: Olivarez Madruga Lemieux & O'Neill LLP
Type: Original Agreement
Agreement No.: 7910-17-CA
Amendment No.: N/A
Purchase Order No.: TBD
Begin Date: 05/23/2017
End Date: 05/22/2019
Term: 2 years

Amount to be Approved: \$250,000
Current FY Amount: \$250,000
Total Contract Amount: \$250,000
Funding Source: Enterprise
Vendor Selection Process: Request for Qualifications (RFQ)
of Bids/Proposals/Quotes: N/A
Project Manager: Stephen M. Fischer
Department: City Attorney
Telephone: 385-7483
Email: leanne.daly@oxnard.org

Purpose: Agreement for legal advice and services related to water and related utility issues. A RFQ was sent out in January 2017, to 21 firms and published in Western City Magazine. Nine firms responded and four firms were interviewed. Staff determined that based on several factors, including levels of experience, proposed billing rate, proximity to the City, and ability to successfully complete the transition from long-standing special counsel, that the chosen firm was best qualified to serve as special counsel.

City Manager Contract List for 05/23/2017

Contracts from \$25,000 to \$250,000

K.2.a

C Annual License - Performance Evaluation Module

Vendor: NeoGov
Type: Original Agreement
Agreement No.: 7859-17-HR
Amendment No.: N/A
Purchase Order No.:
Begin Date: 06/01/2017
End Date: 06/01/2020
Term: 3 years

Amount to be Approved: \$75,098
Current FY Amount: \$29,366
Total Contract Amount: \$75,098
Funding Source: 101 - General Fund
Vendor Selection Process: Negotiated Contract
of Bids/Proposals/Quotes: N/A
Project Manager: Steve Janice
Department: Human Resources
Telephone: 385-7590
Email: steve.janice@oxnard.org

Purpose: Staff is requesting authorization to enter into an Agreement with NeoGov (7859-17-HR) in the amount of \$75,098 for employee performance evaluations (Perform Module).

In October 2016 staff entered into Agreement No. 7640-16-HR with GovernmentJobs.com, Inc. (dba "NEOGOV") for a subscription for online job application processing. The product provides recruitment, selection, applicant tracking, and reporting/analysis to streamline the hiring process. NEOGOV was selected on the basis of its ease-of-use and fully-integrated suite of human resources applications for government.

Staff has reviewed the Perform Module for employee performance evaluations and is seeking to enter into a 3-year agreement for a license for this module. This product will allow staff to automate year-end and probationary employee appraisals, allow for the replacement of manual systems, and provide for tracking of progress on measured organizational alignment and progress against goals. The module also assists with identifying competency and skill gaps using one-on-one and/or 360 feedback, self-ratings, and competency models, and will generate individual development plans and recommend training based on an employee's competency scores.

Staff selected NEOGOV on the basis of its unique product specifications tailored to government uses, and its integration with other modules used in Human Resources functions. No other software solution was found that contained the full range of features provided by the NEOGOV suite of products.

City Manager Contract List for 05/23/2017

Contracts from \$25,000 to \$250,000

K.2.a

D Sixth Amendment to Attorney Services Agreement

Vendor: Brownstein Hyatt Farber Schreck, LLP
Type: Amendment
Agreement No.: 5373-11-CA
Amendment No.: 6
Purchase Order No.: 3924
Begin Date: 06/01/2017
End Date: 05/31/2018
Term: 1 year

Amount to be Approved: \$125,000
Current FY Amount: \$180,000
Total Contract Amount: \$1,055,000
Funding Source: Enterprise Funds
Vendor Selection Process: Request for Qualifications (RFQ)
of Bids/Proposals/Quotes: N/A
Project Manager: Stephen M. Fischer
Department: City Attorney
Telephone: 385-7483
Email: stephen.fischer@oxnard.org

Purpose: Legal services in connection with the GREAT Program, participation in Regional Water Policy meetings and other development related water issues.

The term of the agreement expires on May 31, 2017. Extension is sought for one year, from June 1, 2017, through May 31, 2018, to cover the transition to new special counsel. The extended term necessitates an increase in compensation of \$125,000 for services during the transition period, although the goal is to make this transition period as brief as possible.

E Employee Assistance Program (EAP) Vendor

Vendor: Empathia Pacific Inc.
Type: Amendment
Agreement No.: 6012-12-HR
Amendment No.: 2
Purchase Order No.: 4366
Begin Date: 01/01/2017
End Date: 12/31/2017
Term: 1 year

Amount to be Approved: \$70,000
Current FY Amount: \$35,000
Total Contract Amount: \$210,000
Funding Source: 702 - Workers Compensation
Vendor Selection Process: Negotiated Contract
of Bids/Proposals/Quotes: N/A
Project Manager: Mike More
Department: Human Resources
Telephone: 385-7480
Email: mike.more@oxnard.org

Purpose: Staff is requesting authorization to enter into a Second Amendment with Empathia Pacific (6012-12-HR) for a one-year extension in the amount of \$70,000 for employee assistance program. Empathia Pacific, Inc. is the City's Employee Assistance Program (EAP) which provides employees with access to a variety of confidential professional assistance with life, work, family, and well-being concerns at no cost to the employee.

The original agreement was executed for calendar year 2013. Staff has been satisfied with the services provided by this vendor. For the upcoming renewal in 2018, staff will request proposals for these services.

City Manager Contract List for 05/23/2017

Contracts from \$25,000 to \$250,000

K.2.a

F Purchase 26 sets of turnouts (pants/jackets)

Vendor: AllStar Fire Equipment, Inc.
Type: Purchase Order
Agreement No.:
Amendment No.: N/A
Purchase Order No.: 6320
Begin Date:
End Date:
Term:

Amount to be Approved: \$70,732
Current FY Amount:
Total Contract Amount: \$70,732
Funding Source: General Fund - Academy budget 101-2209
Vendor Selection Process: Informal Bids
of Bids/Proposals/Quotes: 3
Project Manager: Darwin Base
Department: Fire Department
Telephone: 805-385-7708
Email: darwin.base@oxnard.org

Purpose: Staff is requesting authorization to purchase 26 turnout pants and jackets from AllStar Fire Equipment, Inc. in the amount of \$70,732 to outfit the academy recruits. The turnouts are required equipment for firefighter safety.

Pursuant the City's purchasing policy, three informal bids were obtained. AllStar Fire Equipment provided the lowest bid and is therefore the preferred vendor. Funding for academy personal protective equipment was approved by City Council on April 11, 2017 with budget appropriated in FY16/17 and FY17/18. This purchase will be paid in FY17/18.

City Manager Contract List for 05/23/2017

Contracts from \$25,000 to \$250,000

K.2.a

G Purchase CNG (Compressed Natural Gas) for CNG-Powered Refuse Trucks and Other Vehicles

Vendor: U.S. Bank Voyager
Type: Purchase Order
Agreement No.:
Amendment No.: N/A
Purchase Order No.: 6279
Begin Date: 07/01/2017
End Date: 06/30/2018
Term: 1 year

Amount to be Approved: \$100,000
Current FY Amount: \$0
Total Contract Amount: \$100,000
Funding Source: Internal Service Funds
Vendor Selection Process: Joint Purchase
of Bids/Proposals/Quotes: N/A
Project Manager: Joseph Rodriguez
Department: Public Works Department/Maintenance Services
Division/Fleet Services
Telephone: 385-8011
Email: Joseph.Rodriguez@oxnard.org

Purpose:

Staff is requesting authorization to purchase compressed natural gas (CNG) from U.S. Bank Voyager for the City's CNG-powered refuse trucks and other vehicles through a fuel card system. The City will piggyback on the State of California's agreement with U.S. Bank (State of California Participating Addendum No. 7-16-99-27, valid until December 31, 2018). This purchase order is for FY 2017-18 in an amount not to exceed \$100,000. The CNG fueling station is located at Southern California Gas-Oxnard Base at 1600 Patton Court, Oxnard.

In May 2004, the City of Oxnard began participation in the State of California's Master Contract with U.S. Bank Voyager for Fleet Fueling in order to purchase CNG for City vehicles at cooperative agreement rates. At that time, CNG purchases totaled less than \$500 per month. In FY 2016-17, with delivery of five (5) CNG-powered refuse trucks, purchases were estimated at \$100,000, and Purchase Order No. 5963 was approved by City Council on September 20, 2016. In FY 2017-18, staff anticipates CNG purchases to total \$100,000 again; hence, this request to piggyback on the State of California's current agreement with U.S. Bank. The agreement between the State of California and U.S. Bank allows for participation by local government agencies in the State's Fleet Card Program.



**CITY COUNCIL
AGENDA REPORT**

TYPE OF ITEM: Info/Consent

AGENDA ITEM NO.: 3

DATE: May 23, 2017

TO: City Council

THROUGH: Greg Nyhoff
City Manager

FROM: Ingrid Hardy
Cultural & Comm Services Director

SUBJECT: Appointment of One Representative to the Ventura County Area Agency on Aging Advisory Council.

CONTACT: Ingrid Hardy, Cultural & Comm Services Director
Ingrid.Hardy@oxnard.org, 385-7993

RECOMMENDATION:

That City Council approve the recommendation from the Senior Services Commission and appoint Alice Sweetland to the Ventura County Area Agency on Aging Advisory Council.

BACKGROUND

The Advisory Council of the Ventura County Area Agency on Aging (VCAAA) is a community-based body of advocates for persons age 60 and over. Members represent the Ventura County Board of Supervisors, local cities and service providers.

The objective of the Advisory Council is to involve the community in creating and sustaining programs that impact senior living and family caregivers. To achieve this goal members participate in outreach, grantee site visits, task force groups and issues of County concern.

At the May 9, 2017, Senior Services Commission meeting, the Commission voted to recommend Commissioner Alice Sweetland to represent the City of Oxnard for a two year term on the VCAAA's Advisory Council.

It is a requirement of the VCAAA Advisory Council that the recommendation be ratified by the

Appointment of One Representative to the Ventura County Area Agency on Aging Advisory
Council
May 23, 2017
Page 2

City Council.

STRATEGIC PRIORITIES

This agenda item supports the Quality of Life strategy. The purpose of the Quality of Life strategy is to build relationships and create opportunities within the community for safe and vibrant neighborhoods, which will showcase the promising future of Oxnard. This item supports the following goals and objectives:

Goal 3. Strengthen neighborhood development, and connect City, community and culture.

Objective 3b. Empower and connect our Inter-Neighborhood Council Organizations (INCOs), Community Advisory Groups (CAGs) and Neighborhood Watch Program.

FINANCIAL IMPACT

There is no fiscal impact with this appointment.



**CITY COUNCIL
AGENDA REPORT**

TYPE OF ITEM: Info/Consent

AGENDA ITEM NO.: 4

DATE: May 23, 2017

TO: City Council

FROM: Greg Nyhoff
City Manager

A handwritten signature in blue ink that reads "Greg Nyhoff".

SUBJECT: Resolution Commending Juliette Dang for Over Twenty-Three Years of Service

CONTACT: Greg Nyhoff, City Manager
Greg.Nyhoff@oxnard.org, 385-7430

RECOMMENDATION:

That City Council adopt a resolution commending Juliette Dang for over twenty-three years of exemplary service to the City of Oxnard.

ATTACHMENTS:

Attachment A: Resolution Juliette Dang

CITY COUNCIL OF THE CITY OF OXNARD

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD
 COMMENDING JULIETTE DANG FOR OVER TWENTY-THREE YEARS
 OF EXEMPLARY SERVICE TO THE CITY OF OXNARD

WHEREAS, Juliette Dang has given over twenty-three years of exemplary service as an employee of the City of Oxnard; and

WHEREAS, Juliette Dang began her career on April 5, 1993 with the City of Oxnard in the Housing Authority as an Accountant, then promoted to the Finance Department as a Grants Coordinator, and worked as Interim Grants Manager, a position she held for the remainder of her career; and

WHEREAS, throughout her career, Juliette Dang assisted low-income families and coordinated the entitlement grants of CDBG, HOME and ESG; and

WHEREAS, Juliette Dang will be sorely missed in the Housing Department, but will continue to live in Ventura County, from where she will continue to remain active.

NOW, THEREFORE, the City Council of the City of Oxnard does hereby resolve to commend, recognize and extend its gratitude to Juliette Dang for over twenty-three years of outstanding service to the City and extends best wishes for a fun and fulfilling retirement with family and friends.

PASSED AND ADOPTED this 23rd day of May, 2017 by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

 Tim Flynn, Mayor

ATTEST:

APPROVED AS TO FORM:

 Michelle Ascencion, City Clerk

 Stephen M. Fischer, City Attorney



**CITY COUNCIL
AGENDA REPORT**

TYPE OF ITEM: Info/Consent

AGENDA ITEM NO.: 5

DATE: May 23, 2017

TO: City Council

THROUGH: Greg Nyhoff
City Manager

A handwritten signature in blue ink, appearing to read "Greg Nyhoff".

FROM: Arturo Casillas
Housing Director

SUBJECT: Emergency Solution Grant Policies

CONTACT: Arturo Casillas, Housing Director
Arturo.Casillas@oxnard.org, 385-8094

RECOMMENDATION:

That the City Council approve and certify the attached Emergency Solutions Grant Policies and Procedures Manual and Emergency Solutions Grant Subrecipient Handbook for use in the City's Emergency Solutions Grant (ESG) program.

BACKGROUND

During the course of a FY 2016 (HUD) monitoring of the city's Fiscal Years 2011-2104 ESG program, United States Department of Housing and Urban Development four findings were identified and require a response from the City. Two of these findings have been addressed last year by the City in a May 24, 2016 response to HUD. Two findings that remain outstanding include revisions to the City's ESG Policies and Procedures Manual and the development of an ESG Subrecipient Handbook. Both of these documents have been prepared and are being presented to City Council for approval. Upon approval, these documents will be forwarded to HUD.

With regard to the two findings that have been addressed earlier, for recordkeeping, the City confirmed that effective FY 2012, it no longer provides direct ESG client services and hence does not maintain such records, instead opting to award ESG funds to subrecipient agencies that provide client services and maintain associated records and documentation. HUD also had

concerns related to the City's monitoring of ESG subrecipients. The City had already responded that this will be implemented and staff will be assigned to ensure ESG subrecipient's activities and expenditures are consistent with the regulatory intent of ESG funds. Monitoring has already been performed by City staff.

Two outstanding items identified in the HUD findings letter include revision, update and development of an ESG Policies and Procedures Manual and the development of an ESG Subrecipient Handbook.

The Policies and Procedures Manual addresses the City's process, policies and procedures for management and administration of its federal ESG funding. Contained in the manual is an overview of the annual calendar of activities associated with citizen participation and outreach, the funding award process, implementation, and recordkeeping monitoring and reporting. The ESG Subrecipient Handbook, provides detailed information concerning ESG eligible programs and activities and provides an overview of federal regulations and requirements for grants management and administration. City ESG subrecipients are expected to use the handbook as a reference guide for agency staff development and training.

Each of these documents provides assurance to HUD that the City is taking effective measures to implement best practices ensuring sound financial, management and administrative oversight of federal ESG funds that the City receives as part of its annual entitlement funding from HUD. HUD's prior correspondence recognized the City's progress in this regard as an April 28, 2016 correspondence to the City indicates: "...the City has taken steps to improve its performance and it continues to work through the process of establishing a fully-compliant program," including subrecipient monitoring.

With submittal to HUD and certificate of implementation by the City Housing Director, this action will address all findings identified in HUD's prior monitoring of city ESG funds.

STRATEGIC PRIORITIES

This agenda item supports the Quality of Life strategy. The purpose of the Quality of Life strategy is to build relationships and create opportunities within the community for safe and vibrant neighborhoods, which will showcase the promising future of Oxnard. This item supports the following goals and objectives:

Goal 2. Address homelessness through the development and implementation of a multi-tiered strategy.

FINANCIAL IMPACT

There is no financial impact associated with the recommended action.

Emergency Solution Grant Policies
May 23, 2017
Page 3

ATTACHMENTS:

Attachment A: City of Oxnard ESG Policies and Procedures

Attachment B: City of Oxnard ESG Subrecipient Handbook

DRAFT



Homeless Assistance Program

Grants Management Policies and Procedures Manual

Emergency Solutions Grant (ESG) Funding

Catalogue of Federal Domestic Assistance Number: 14.231

City of Oxnard Housing Department
Division of Homeless Services
435 South D Street
Oxnard, Ca 93030
www.oxnard.org

The following policies and procedures provide a framework, guidance and direction for the City of Oxnard (City) program, administrative and management oversight of federal Emergency Solutions Grant (ESG), funding provided to the City through the United States Department of Housing and Urban Development.

The ESG Program was amended and enacted into law on May 20, 2009, as The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act). Its principal intent is to provide funding for programs, services and activities which are targeted to address the needs of homeless persons and households in accordance with those rules and regulations established at 24 Code of Federal Regulations (CFR) Part 576.

Sections I and II provide an overview of the legislative basis of ESG as well as covering the overall objectives and goals of ESG funding, including requirements of regional planning through existing and evolving frameworks of the Continuum of Care planning process.

Section III addresses the City of Oxnard's processes, policies and procedures for receipt of federal funding, notification to the interested public of the availability of this funding for sub-awarding to qualified parties, and City communications and public outreach protocols in this regard. It also provides a general timeline for annual funding cycles, public hearings, the grant application and funding review process.

Section IV discusses the City's post-award processes, policies and procedures and includes discussion of the overarching federal regulatory overlays and Uniform Administrative Requirements that ESG-funded entities agree to adhere to during program and/or activity implementation. This section also addresses specific elements of the City's Subrecipient Agreements with funded-entities and mutual roles, responsibilities and obligations.

Section V outlines the process of program and /activity implementation once ESG funded entities have entered into formal subrecipient agreements with the City, including the process, policies and procedures for agency cost- reimbursement, associated supporting documentation confirming costs and program participant eligibility in accordance with 24 CFR Part 476, Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, and associated Office of Management and Budget (OMB) cost circulars, A -122 and A-87.

Section VI addresses the City's ESG subrecipient monitoring process, policies, procedures, recordkeeping and reporting requirements and associated timeframes for reporting on agency performance in the context of the specific ESG-eligible activity or program that agencies are implementing.

Sections VII covers the City's subrecipient financial systems and management, while Section VIII outlines other federal requirements that the City and subrecipients mutually agree to abide by and uphold in the course of managing federal ESG funds.

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Section VI:	City of Oxnard, ESG Performance Monitoring, Recordkeeping and Reporting	P.22
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List of Attachments and Reference Documents:

HEARTH Act: Emergency Solutions Grant Program, Definition of Homelessness

24 Code of Federal Regulations Part 576, Emergency Solutions Grant

2 CFR part 200, including Circular A-87

Office of Management and Budget (OMB), Circular A-133

Ventura County Regional Continuum of Care Coordinated Entry System Policies

Continuum of Care, ESG Monitoring Instrument

City of Oxnard Administrative Manual, Section E-26: Standard of Ethics

Section I: ESG Program Overview, Continuum of Care

This Section provides an overview of the City of Oxnard's Emergency Solutions Grant Program, (ESG), including discussion of the legal and legislative basis for ESG funding, its relationship to the Continuum of Care planning process, and a description of how the Consolidated Plan, Annual Action Plan and Consolidated Annual Performance Evaluation Report—CAPER, serve as a platform for local public outreach, needs assessment, planning, implementation, monitoring and reporting under ESG.

The 5-Year Consolidated Plan describes the needs, anticipated resources, and proposed activities to be undertaken with respect to City ESG funds, among other federal entitlement funds the City expects to receive.

The Annual Action Plan is a one-year plan that articulates how the City will expend federal ESG funds to address community needs identified in the Consolidated Plan, while the CAPER reports on City progress in terms of addressing and meeting these needs each operating year over the course of the 5-Year Consolidated Plan's implementation.

1) *Legislative Background for ESG*

ESG is designed to be the first step in a continuum of assistance to prevent homelessness and to enable homeless individuals and families to move toward independent living.

The ESG program was originally established by the Homeless Housing Act of 1986 as the Emergency Shelter Grant Program, in response to the growing issue of homelessness among men, women, and children in the United States. In 1987, the ESG program was incorporated into subtitle B of title IV of the Stewart B. McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371-11378).

The Emergency Shelter Grant Program was amended and enacted into law on May 20, 2009, as The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act). The HEARTH Act consolidated three of the separate homeless assistance programs administered by HUD under the McKinney-Vento Homeless Assistance Act into a single grant program under ESG.

The HEARTH Act also codified in law the Continuum of Care (CoC) planning process, long a part of HUD's application process to assist homeless persons, by providing greater coordination in responding to homeless individual and families' needs.

In Ventura County, the Regional CoC planning process is coordinated and overseen under the umbrella of the County Executive Office Community Development Division; however, **as an independent entitlement community, the City of Oxnard has historically received a formula allocation of ESG**, as well as Community Development Block Grant and HOME Investment Partnership funds.

While an active member and participant in the CoC regional planning process Executive Board and regional CoC sub-committees, the City of Oxnard has historically received a formula allocation of ESG directly from the federal government, and as such independently develops, allocates, implements, monitors and reports on its respective Consolidated Plan, Annual Action Plan(s) and CAPER(s) as a responsible Participating Jurisdiction.

2) ESG and the Continuum of Care, Planning Process

As the first step in a continuum of assistance, ESG funding is targeted to prevent homelessness and enable the homeless population to move towards independent living and greater self-sufficiency. This is based on the understanding that homelessness is not caused solely by a lack of shelter, but also involves a number of underlying, often complex and nuanced, individual and household needs.

In this context, the ideal approach for addressing and alleviating homelessness is through a community-based process that provides a comprehensive response to the diverse needs of homeless persons.

The fundamental components of a CoC system are:

- **Outreach** and assessment to identify a homeless person's needs;
- **Immediate (emergency) Shelter** as a safe, decent alternative to the streets;
- **Transitional housing** with appropriate supportive services to help people reach independent living and increase opportunity for self-sufficiency;
- Direct financial support through **Homeless Prevention** for individuals and families who imminently face lose their housing;
- Direct financial assistance through **Rapid Re-Housing** for individuals and families who may be experiencing short-term homelessness;
- **Permanent housing or permanent supportive housing** for homeless persons or households with disabling conditions of one form or another.

Under the CoC model, the City and its partner agencies employ a "**Housing First**" approach to addressing homelessness whenever conceivable, although recognizing that not all client needs are identical. Housing First seeks to provide housing first-and –foremost as a solution to homelessness, and is coupled with service provision tailored to enable homeless persons and households to retain their housing once acquired.

To assess local needs, determine the effectiveness in allocating ESG funding, and measure progress, the CoC provides:

- A process for assessing needs, setting goals, allocating resources, overseeing and/or managing funded projects and programs, monitoring and measuring performance and reporting;
- Implementation of a **Homeless Management Information System (HMIS)**, for data-collection across a common platform which serves as an assessment and evaluation tool while insuring secure and confidential recordkeeping and reporting;
- **A Coordinated Entry System, Pathways to Home**, in which participating ESG-funded entities coordinate, collaborate and communicate across a common platform. This provides assurance that necessary services made available to homeless persons are allocated efficiently so as to limit barriers for program participants. *Housing First* is the overarching goal when conceivable in this program model.
- In addition to other efforts at community outreach and information-gathering, HMIS also provides a platform for measuring progress in meeting Consolidated Plan goals and objectives and regional goals and objectives.

In Ventura County, regional Continuum of Care planning includes the City of Oxnard participating and informing the overall planning and local implementation. However, the City concurrently and independently manages its federal responsibilities and obligations in development, administration and implementation of the City's Consolidated Plan, Annual Action Plan and CAPER.

The City coordinates and collaborates with the Ventura County Regional Continuum of Care to ensure that ESG priorities, goals and objectives are in alignment and that broader federal goals and objectives, for example institutional discharge planning, resource coordination of state and federally –funded county services, behavioral health, public health, etc. - and related Point-in-Time counts, etc., which the City participates in and assists in informing.

Section II: ESG Program Objectives and Eligible Activities

This section provides an overview and discussion of the overall federal objectives under the ESG program as well as eligible funding activities.

1) ESG Program Objectives

The objectives of the ESG program are:

- a) To increase the number and quality of emergency shelters and transitional housing facilities for homeless individuals and families;
- b) To operate these facilities and provide essential social services;
- c) To help prevent homelessness and provide rapid re-housing resources to individuals and families who have recently experienced homelessness; and,
- d) To provide a means for assessing, measuring and reporting progress in meeting Consolidated Plan goals, objectives and outcomes.

2) ESG Program Eligible Activities

ESG-Eligible program activities include¹:

- Renovation, Rehabilitation, and Conversion of Buildings for Use as Emergency Shelters or Transitional Housing for the Homeless;
- Street Outreach and Provision of Essential Services;
- Emergency Shelter Operating Costs e.g., Maintenance, Insurance, Rent, etc.
- Homeless Prevention and Rapid Re-Housing- direct financial assistance;
- Homeless Management Information System (HMIS);
- ESG Program Administration

Local priorities for meeting these objectives as they relate to funding eligible activities and subsequent program implementation are identified in the City of Oxnard's 5-Year Consolidated Plan. These are in turn informed annually by submittal of Annual Action Plans to HUD for respective year's funding and associated projects and programs.

¹ For a comprehensive listing and greater detail of ESG-Eligible programs and activities related to the broad categories described above please refer to the ESG Code of Federal Regulations 24 CFR Part 576, and associated materials attached as reference.

These local priorities for City of Oxnard ESG funding include:

- 1) *Providing supportive housing and services for homeless persons and families, including street outreach and essential services.*
- 2) *Assisting homeless persons and families with emergency shelter, or moving from emergency shelter to housing.*
- 3) *Providing homeless prevention and rapid re-housing services to at-risk of becoming homeless persons and families.*
- 4) *Providing housing and supportive services to special needs populations homeless or at-risk of homelessness (elderly, disabled, persons and with mental problems, persons with AIDS/HIV, and transitional aged foster youth).*

The Consolidated Plan and associated Annual Action Plan(s), serve as formal grant applications for receipt and expenditure of ESG and other entitlement funds that the City may qualify for.

Section III: ESG Funding Award and Allocation Process

This section provides an overview of various facets of funding allocation for City of Oxnard ESG, including an overview of the annual federal funding award process to participating federal entitlement jurisdictions, as well as the City's process, policies and procedures for receipt, funding, expenditure, monitoring, reporting, and grant close-out.

1) Federal Entitlement Formula/Funding Process, Policies and Procedures

The ESG program is a federal formula grant program that allocates monies to qualifying, eligible jurisdictions such as the City of Oxnard. The formula grant mechanism of the ESG program gives grantees the authority to sub-grant ESG funds among their public and private recipients for eligible activities.

Each federal fiscal year, Congress approves the federal budget. From this, HUD is provided an overall budget for its various programs, including ESG. HUD applies a formula to this budgeted amount which it in turn allocates to qualifying participating jurisdictions such as the City of Oxnard. ***Only jurisdictions that have submitted and received approval of their Consolidated Plan are eligible to receive ESG entitlement funding through HUD.***

As the federal budget may vary from year-to-year, the allocation that each respective participating jurisdiction may expect to receive may also vary slightly from year-to-year. Some years a local jurisdictions amount may increase slightly and in other years it may slightly decrease.

Therefore, in conducting its own annual Request for Proposals (RFP), competitive funding review process, the ***City uses prior-year estimates for projecting the available ESG funds*** that may be expected to be available to sub-recipients, with provision that the amounts agreed to by respective funding review boards may be slightly adjusted upward- or downward based on final congressional and HUD allocations.

In consideration of this and with regard to final execution of program contracts, ***the City of Oxnard's administrative policy is not to enter into formal subrecipient agreements with non-profit and related funded entities who receive a preliminary allocation of ESG, until the City has received formal approval of the Annual Action Plan by HUD, and has entered into a formal Grant Agreement with HUD, that articulates with specificity the actual amount of ESG that the City will be receiving to in turn allocate to local programs and projects.***

2) *City of Oxnard Annual ESG Funding Review and Allocation Process/Cycle*

The City of Oxnard Grants Management Division is tasked with overall public outreach, scheduling and conduct of public hearings, needs assessment, Consolidated Plan development, Annual Action Plan development and submittal, preparation and submittal of the CAPER. ***Homeless assistance staff works in concert with grants management staff and other City departments and divisions, for example its Finance Department, to ensure consistency with all federal Uniform Administrative Requirements, programmatic, regulatory and financial management requirements related to ESG and other federal entitlement funds, e.g., CDBG and HOME.***

City of Oxnard Homeless Assistance Program staff and Grants Management Division serve as principal interface with the federal Treasury's Integrated Disbursement and Information System (IDIS), setting-up projects and programs, and conducting financial oversight, recordkeeping and reporting and grant close-out. ***In regard to interfacing with the federal Treasury IDIS the City maintains effective separation of duties and a system of internal controls related to IDIS access and permission based on staff's position and needs for program management and oversight.***

As one example, homeless assistance program staff has IDIS permission levels to set up and view ESG-funded, and CDBG as well for programs receiving homeless-related CDBG assistance, while grants management staff have higher levels of permission to produce vouchers and conduct drawdowns within IDIS.

As noted, staff's interface with the IDIS system is directly related to their level of involvement with ESG funded entities and programs, and separations of duties are in places that promote internal controls in regard to program and financial integrity.

1) *City of Oxnard Public Engagement, Outreach and Citizen Participation Plan*

In general terms, the City process involves public outreach at the front-end of the grant process including but not limited to, scheduling of public hearings in order to assess and identify emerging needs, provide technical assistance, address grievances, and receive and consider public comments.

This outreach and public engagement is governed under the City of Oxnard's Consolidated Plan Citizen Participation Plan, which was first adopted by the Oxnard City Council on October 18, 1994; it was also updated, amended and modified on July 25, 2000.

City staff works diligently to reach out and work with a broad-base of the community, including the non-profit sector, neighborhood councils, City Community Advisory Groups (CAG's), the City Commission on Homelessness-- as well through county-wide partnerships through participation in regional CoC planning groups. For example, City staff assists, participates and coordinates the annual Homeless Point-in-Time

Count, utilization and information related to the Homeless Management Information System, as well as other regionally-driven CoC efforts related to homelessness and planning.

The City also utilizes a number of affirmative outreach techniques and media platforms for informing the public of the availability of ESG funding and the process for participation. This may minimally include, *publishing public notices in the local print press- English and Spanish language- public service announcements in local radio stations, conducting focus-group meetings, coordination of public meetings, dissemination of program information and literature, as well as public access television and through the Internet on the City's website.*

The City encourages and supports participation of persons with disabilities in their public outreach process by informing the public of the availability of reasonable accommodations to enable their direct participation and to provide information related to the grant funding process or other ESG-related activities.

2) *ESG Funding Cycle*

Each year the City issues a Request for Proposal for ESG funding and invites applications from interested parties which provide services, programs and resources that advance City ESG goals in the 5-Year Consolidated Plan.

The funding cycle calendar of events follows the general annual timeline indicated below:

Calendar Year:

Early- December	City Council Public Hearing, ESG Needs Assessment
Mid-December	ESG and Other Entitlement Grant Funds Application Workshops
Mid-January	Completed Funding Applications Due to Housing Staff
Mid-February	Application Review Panel Convened; Applicants Present Proposals
Early April-Early May	30-Day Draft Annual Action Plan Public Comment Period
Early- May	Final Funding Recommendations to City Council; Annual Action Plan Public Hearing
Mid- May	Annual Action Plan submitted to HUD via IDIS for HUD Approval
July	Sub-Recipient Agreements Executed; Beginning of Program Operating Year ²
Continuing	Program/Activity Implementation
July-June	Ongoing- Planning, Coordination, Monitoring Review(s)

a) Public Hearings; Public Outreach

In early December of each calendar year, the City of Oxnard conducts a public hearing to conduct a needs assessment of any existing, new or emerging need(s) for ESG funding—as well as CDBG, HOME and other funding resources-- to inform and determine funding allocation prioritization and to adapt

² In the event that the City of Oxnard has not received final allocation figures from HUD pursuant to Congress passing a final federal budget, the City will not process subrecipient agreements prior to having final ESG allocation figures. In the interim, grantees may commence program activities using estimated figures.

evolving needs that may qualify programmatically under ESG regulations. Formal notification inviting public input and comment into ESG and other community needs is provided in the context of the Consolidated Plan *Citizen Participation Plan*.

b) Application Workshops; Completed Applications

Having conducted the needs assessment, *around mid-December, the City provides public notice and conducts application workshops that cover all City entitlement funding, including ESG. **Interested applicants are required to attend this mandatory workshop as it is a pre-condition for applying for ESG funding; this includes agencies and organizations that have received City ESG funding subawards in prior years.***

It is City policy to not accept applications for funding consideration from any group who has not participated in the mandatory application workshops, absent having conveyed prior a legitimate basis for being unable to attend. In consultation with the Housing Director and management, staff will consider written requests for such accommodations on a case-by-case basis depending on the conditions precedent to not having attended as well as any other potential extenuating circumstances.

Written requests for such consideration shall be provided no later than three (3), working days prior to the date of the workshop.

During the workshops, staff discuss the estimated amount of ESG funding the City anticipates receiving, review the application process and timelines, provide detail concerning eligible activities and related program funding caps, and address federal uniform administrative requirements, recordkeeping and reporting requirements, including documentation of homelessness.

The workshops also provide a forum for staff to provide informal guidance and technical assistance to potential applicants as well as to cover the application requirements thoroughly by going through the application and associated submittal requirements during the course of the workshop.

Around the third week of January of each calendar year, all applications for City entitlement funding are due. To ensure consistency, equity and fairness all applicants are required to meet minimum application threshold requirements; moreover, any applications submitted after published deadlines will not receive further review or consideration.

Applicants who contest staff's decision to not accept deficient and/or late applications may appeal in writing to the City Housing Director who will consider such requests on a case-by-case basis in reviewing the interested applicant's concerns as well as consultation with grants management staff.

Based upon the outcome of this final avenue of appeal, management and staff will respond accordingly. ***All appeals must be provided in writing and include the basis for re-consideration of the request as well as provide associated evidentiary documentation to support agency non-attendance or participation in the application workshops.***

c) The ESG Application Instrument

The City's standard ESG funding application requires interested agencies to demonstrate strong agency and resource capacity- internal and through effective community/collaborative partnerships- to

implement, manage and report on ESG grant funding expenditures, program participant eligibility, and associated program and/or activity criteria.

All applications must demonstrate the applicant's organizational capacity and track record in managing and administering ESG funding as well as experience in assisting and addressing the needs of the homeless populations(s) to be served. For first-time applicants for ESG funding, experience in serving similar populations and in managing ESG-like federal and/or state grant funds may be considered in capacity review. In this regard, staff reserves the right to seek additional agency information related to this experience in its review process.

In addition to the number of unduplicated clients (the "Target" population), that the program and/or project proposes to serve, the ESG funding application also requests information and detail concerning:

- How the agency will document status of "Homelessness," and hence, client eligibility in qualifying and certifying program beneficiaries;³
- Specific benefit(s) the program will provide to participants (either directly or through collaboration and inter-agency partnership);
- How the agency proposes to document program short-and long-term performance outcomes and measure program success, with a specific focus on Housing First when applicable;
- How the program proposes to collaborate and avoid duplication of effort by working with other agencies regarding service provision and through participating and coordinating with the CoC's Coordinated System of Entry, and Homeless Management Information System (HMIS), data collection and reporting;
- How the agency, in working through/with the broader CoC, will implement priorities, policies, goals and objectives that maximize the potential for homeless clients to achieve higher levels of self-sufficiency and income and provide greater opportunity for housing and/or permanent supportive housing;
- How the agency proposes to meet ESG matching funds requirements, including specifying sources and amounts of match in the project budget;
- *How the agency proposes to involve, to the maximum extent practicable, homeless individuals and families in all facets of those areas of ESG-eligible activities that the organization may receive City funding for;*
- How the agency will document and provide program, financial, agency, City and federal programmatic and reporting requirements related but not limited to, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards set forth in Code of Federal Regulations (CFR), 2 CFR, Part 200, and all other associated and related grant criteria under ESG regulations at 24 CFR 576.

d) Application and Funding Review Process

Once all applications have been accepted and reviewed for having met all submittal criteria, grants management staff convenes an Application Funding Review Panel in mid-February. This provides an opportunity for all applicants to present their new and/or renewal project proposals for ESG funding as

³ For a thorough listing of the federal definition of "homelessness" under the HEARTH Act as related to the Emergency Solutions Grant Program, please refer to HEARTH Act: Emergency Solutions Grant Program, Definition of Homelessness referenced and attached herein.

well as to provide the interview panel an opportunity to assess consistency with ESG and Consolidated Plan goals and objectives.

Applicants who submit an application for funding consideration but fail to show up to the application review committee meeting to represent their agency and present their proposed project/activity before the review committee, are subject to disqualification from any further consideration, pursuant to those grievance procedures in Section B above. City staff will provide written notification to disqualified applicants in this regard and the basis for this determination.

The City ESG Application Review Panel may consist of four (4) members of different City of Oxnard Community Advisory Groups, and three (3) City staff representing various City departments; however, this composition may vary from time-to-time based on City staff consult with Oxnard's Executive Management team and the Oxnard City Council through the public hearing process.

Projects brought before the review panel will be assessed rated, and ranked based on a number of factors utilizing a point system that aligns with the application for funding, ESG regulations, and consistency with goals and objectives of the broader regional Continuum of Care planning body. These rating factors may include:

1. Addressing Priorities & Needs Identified in the Consolidated Plan

- a. Does the Program meet a Consolidated Plan Priority?
- b. Does the Program meet a Consolidated Plan Need?
- c. How does the Program further the progress towards the goals in the 5-Year Consolidated Plan?

2. Program Goals and Accomplishments

- a. Does the Program benefit the Target Areas and Target Population?
- b. Are the funding dollars providing maximum community benefit?
- c. Does the Program demonstrate a high likelihood or track record of success?

3. Applicant Capacity Review

- a. Does the applicant possess the administrative and financial capacity to carry out the proposed program/activity?

4. Experience and Past Performance

- a. Does the applicant possess prior experience with ESG/ HESG?
- b. Does the applicant possess prior experience in the community?
- c. Does the applicant possess prior experience in the type of project/activity being proposed?

5. Contributions/Matching Funds

- a. Does the proposed program design include resource leveraging and sufficient additional contributions demonstrating that ESG Matching funds requirements will be met?

As ESG goals, objectives, and regulations may be subject to re-visitation, amendment and modification from time-to-time pursuant to congressional initiative, direction and policy, staff may accordingly modify the ranking and rating system criteria from year-to-year to reflect the new federal guidance.

While funding applications provide the basis for primary consideration, during the panel review process applicants are provided with the opportunity to present relevant information and detail concerning their agency, the proposed program, the need for funding, and any other related clarifying discussion. ***Each applicant is afforded a fair and open forum with adequate time to present the merits of their proposals with the review committee throughout the interview process.***

Accordingly, the funding review panel also has the opportunity to interact with the applicant and ask specific questions related to the proposed program for its own edification, deliberation and consideration.

In accordance with ***Americans with Disabilities Act provisions, staff reaches out to all potential applicants to assess and determine if reasonable accommodations of one form or another may be needed to assist with the application submittal and/or to conduct their presentations*** before the review committee.

Staff remains objective throughout the funding review process, however facilitate and coordinate the process, and also provide clarifying technical information and technical assistance related to program eligibility and funding criteria, or other related questions that either the applicant or Review Panel may request during the course of its interviews and deliberations.

As one example of staff's guidance to the review committee, staff will set forth the funding allocation ***expenditure caps pursuant to ESG*** that include assurance that the review committee is mindful of and adheres to:

- The 60% annual expenditure cap on ESG Outreach and Shelter Services (24 CFR 576.100)*;
- The 7.5 % allowance for ESG Administration from grant total for programs and activities (ibid*)
- Allowances for HMIS as component of Agency Budget and any associated caps therein;
- Other federal ESG criteria serving to inform program design, eligibility and expenditure.

In this context, staff provides a financial budget framework, analysis and criteria for Committee use during funding deliberations. As requests for funding are generally oversubscribed this is important information for committee consideration in allocating ESG subawards. Other issues, for example, specific discussion and clarification of ESG allowable programs and activities, rehabilitation, etc., and the relationship of these to the Consolidated Plan's priorities, goals and objectives may also be addressed.

Staff may also provide input to the funding review committee to inform their discussion and deliberation in terms of subrecipients that have received past allocations of ESG and have a demonstrated history of not expending program/activity funding timely, in accordance with federal policy and/or not fully expending an allocated award during the course of program operations.

Disclosure of this information is not intended to be punitive in nature, but rather, serves to inform effective allocation of funding to groups demonstrating strong program and financial capacity while

allocating and awarding ESG funds at reasonable levels consistent with and in consideration of agency's requests.

Upon completion of its application review and interviewing of all applicants for City entitlement funding - usually a two- to three-day process that includes Community Development Block Grant (CDBG), and Home Investment Partnership Act (HOME) project proposals -- ***the review committee proceeds to assess the merits of each application and, in consideration of the of available funds, may recommend allocating either the full request and/or reducing the requested amount***, with provision and agreement that these figures may be subject to yet further pro-rata revisions based on HUD final entitlement amounts.

The review committee uses an ordinal numbering system as basis for their discussion and qualifies this with additional detail received during the application review and agency interview to land at final estimated figures to recommend for preliminary funding.

For those applications recommended for some amount less than their full funding request, staff follows up with the applicants in writing, informing them of the review committee's determination and to request re- submittal of revised application materials to reflect this.

For example, project budgets, match requirement, and/or modifications to proposed number of services or number of beneficiaries to be served based on the revised amounts, might be suggested changes for re-consideration and submittal based on a slightly lesser amount of funding awarded than what had been requested.

Only those modifications and amendments requested by staff pursuant to review are considered to the proposals that were brought forward within the City's application and funding review process.

Substantial unsolicited program modifications and amendments of significance that may serve to alter program or activity delivery or design that are brought forward by funded applicants after the funding review process has been completed, depending on the nature and extent of proposed changes and/or modifications, may be considered as new applications and have to re-apply in future funding rounds and may in effect invalidate and disqualify the applicant recommended for initial funding.

This is not only in fairness and equity to all applicants who participated during the competitive funding process, but to ensure that applications meet minimal threshold requirements consistent with ESG activity and program funding, and all associated rules and regulations.

e) 30-Day Draft Annual Action Plan Public Comment Period

Including ESG, once Cty staff has finalized recommendations for all HUD entitlement funding, it compiles a draft Annual Action Plan for the respective program operating year. This draft plan is made available for public review and comment for a 30-day period covering early-April through Early-May of each calendar year. This public outreach and noticing is in accordance with the City's Citizen Participation Plan.

Copies of the Draft Annual Action Plan are made available to the general public during this timeframe and any written and/or other forms of comment are duly noted and considered by staff and responded

to in the context of the final action plan that is submitted to HUD pursuant to final review, approval and execution of a Grant Agreement.

The required 30-day review period provides an opportunity for the interested public to be informed of and weigh-in on the City's overall grants management process, policies and procedures related to how it allocates and awards federal funding to subrecipient organizations, as well as to address any other information and detail concerning the City's final funding recommendations contained in the draft Annual Action Plan prior to final submittal to HUD for its review and approval.

f) Commission on Homelessness, Oxnard City Council, Annual Action Plan Public Hearing

During the course of the Annual Action Plan 30-day public comment period, staff presents an item for the City's Commission on Homelessness apprising and informing the commission of the funding review committee's recommendations for ESG funding as well as other entitlement funding, for example, CDBG, that may be related to homeless programming and activities. As a local legislative body subject to the Brown Act, the meeting of the homeless commission provides additional opportunity for the public and/or interested agencies to comment on the funding recommendations as well as to address any related issues associated with the public process for City consideration.

At this time, the Commission on Homelessness as a body may take action advising City Council of its positions related to proposed funding recommendations as well as direct staff to convey this to City Council in advance of the City Council's its public meeting related to the Annual Action Plan. ***Staff does not disclose information related to projects proposed for funding at any time prior to the 30-day public comment period. In this fashion the information is made available to all interested parties on equal footing during the public review and comment process.***

After the 30-day Annual Action Plan public comment period has run its course around the first week of May staff prepares and presents an item for an Oxnard City Council public hearing related to submittal of the Annual Action Plan to HUD and to request formal authorization from council for City executive management to enter into future Grant Agreements and associated documentation required by HUD that serves to enable ESG and other federal entitlement funding.

During the public hearing, staff re-visits federal policy goals and objectives for each funding source, reviews the timeline and process for public outreach, application review and final determination of projects and amounts of funding that are incorporated into the Annual Action Plan.

The public hearing also provides additional opportunity for the interested public to comment as to the overall fund allocation process, and related matters, including providing feedback concerning specific funded projects and/or programs recommended for funding.

Upon completion of staff's presentation, public comment, and addressing any question or comments brought forward by City Council members, City Council takes action authorizing submittal of the Annual Action Plan. ***Oxnard's City Council's motions, decisions, determinations and authorizations pursuant to its public hearing affirm City Council as final arbiter of decisions related to federal entitlement funding, including ESG, in the context of the overall public outreach, application and funding recommendation process.***

Grants Management staff then proceeds to upload final document and associated materials, to HUD electronically via the Integrated Disbursement and Information System (IDIS).

g) Coordination of Effort with Ventura County Regional Continuum of Care (CoC)

Through the course of the public outreach and funding review process, as an independent ESG entitlement participating jurisdiction, the City of Oxnard participates, consults and coordinates its efforts so as to be in alignment with the regional CoC's Ten-Year Plan to End Homelessness goals and objectives.

This includes developing funding, policies and procedures for the administration and operation of the regional HMIS as well as developing performance standards and evaluating outcomes of projects and activities receiving assistance through City ESG funds. City Staff and a member of the Oxnard City Council sit on Ventura County CoC's Data, Performance and Evaluation Committee and Governance Board respectively; the former assesses and informs overall CoC performance evaluation while the latter policy development.

Moreover, all agencies receiving ESG funding provided through the City of Oxnard (and other homeless-related entitlement funds), must coordinate their efforts through the County Regional CoC's Coordinated System of Entry, Pathways to Home.

Pathways to Home provides assurance that agencies providing homeless services are working in tandem and that resources are being efficiently allocated to avoid duplication of effort while enabling coordination and integration of ESG assistance with other mainstream service and assistance programs targeted to benefit homeless people. These mainstream federal resources may include at a minimum: Temporary Assistance to Needy Families- TANF- Medicaid, Section 8/Housing Choice vouchers, health care, income supports, Food Stamps, Veterans benefits and other forms of assistance.

To further Pathways to Home goals and objectives, interested parties meet and confer weekly through participation in weekly Case Conferencing meetings, in which program participant's needs are discussed and common case-planning activities and resources can be coordinated accordingly. Moreover, it also ensures that clients are following through with accessing and acquiring resources to assist them and that any gaps or glitches are identified, collectively addressed and provided to the greatest extent feasible.

Through participation in Pathways to Home, subrecipients, in consult and collaboration with CoC partner agencies advance the performance goals and related objectives of the collaborative that include:

- Increasing the number of individuals and families moved from homelessness to stable housing in the most efficient, effective and customer-serviced focused manner with a Housing First focus ;
- Connecting clients with appropriate and needed services within the shortest time frame as possible;
- Improving the development of program participant case plans;
- Minimizing of duplication of services;
- Codifying needs versus services and resources available (gaps analysis).

To this end, as a condition of funding, all entities receiving an allocation of City ESG, and/or other homeless-related funding, must agree to participate in data-collection and reporting through the countywide HMIS under the auspices of the Ventura County Regional CoC—the Ventura County

Continuum of Care Alliance. Potential exceptions to this may include agencies providing resources and programming targeted to assist victims of domestic violence.

Moreover, all agencies participating in the Coordinated Entry System must also take all effective measures to ensure fair and equal access to and participation in services and housing, including making reasonable accommodations as feasible and necessary to this end.

As concerns housing resources proper, this includes adherence to Affirmatively Furthering Fair Housing Opportunity for all program participants accessing services through the Coordinated Entry System and involves ***"taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics."***

Protected classes include consideration of program participant's sex, color, race creed, religion, marital status, handicap, ancestry, or national origin. These protected classes serve as the "floor;" the state of California also has protected classes which may exceed federal protected class standards that program participants must also be mindful of and adhere to. Throughout its process of allocating resources and meeting goals and objectives of "Housing First" model, participating agencies uphold and promote fair housing opportunities for all program participants.

As HUD Community Planning and Development Department continues to develop, enhance and provide additional regulatory technical assistance and guidance relate to Coordinated Systems of Entry, in consultation with the regional Ventura County Continuum of Care Alliance, the City will follow-suit in terms of adoption of best practices and/or new or revised regulatory framework for incorporation into plans, policies and procedures, and implementation.

CoC Regional Planning Committee and Subcommittee Structure, City Participation

The City also participates and informs regional planning within the Ventura County Continuum of Care Alliance by sitting on various committees and subcommittees tasked with policy development, planning and implementation.

For example, as noted, on the leadership level, a member of Oxnard's City Council, pursuant to City Council support, endorsement and appointment, represents the City on the Regional CoC Governance Board. City staff also participates in regional sub-committee work such as the Data, Performance and Evaluation, Housing and Services and/or Public Information and Outreach committees among other regional planning and implementation initiatives under the umbrella of the CoC.

Participation of Homeless in Resources Planning and Development

The City and each subrecipient of ESG funding involve, to the maximum extent feasible, homeless individuals and families in program policy and procedure making decisions, in the maintenance and operations of facilities, and in the provision of services to residents of these facilities. (24 CFR 576.405)

At the policy and procedural level, this may include involvement of homeless persons in the process of resource development, for example, site research of emergency shelter and/or transitional housing facilities or program/activity development and/or needs assessment; involvement and participation in

City of Oxnard Homeless Commission's monthly meetings; as well as other means of inclusion and consideration, such as outreach.

From a program level, ESG-funded subrecipients that operate programs are also encouraged to include program participants in their day-to-day operations and activities. This may include participating in house duties, for example, cleaning, assisting with community meal preparation, or helping with community gardens etc., for those agencies providing transitional housing and/or emergency shelter.

One element of the funding application includes a description of what actions agencies are taken, where relevant, to include homeless in their programming and activity process and decisions. This involvement is of course dependent upon the nature of the program as well population being served, in consideration of their needs and any potential limiting conditions they may express.

These efforts on behalf of funded entities are with intent to enhance not supplant City obligations and efforts in terms of homeless outreach and inclusion in local planning and decision making.

Section IV: ESG Subrecipient Program Requirements and Responsibilities

Once the public needs assessment process, notice of funding availability, grant review, funding and award process has been completed and the City has received approval of the Annual Action Plan and entered into a Grant Agreement with HUD for the respective operating year of the 5-Year Consolidated Plan, the City in turn enters into ***ESG Subrecipient Agreements*** with community partners who have been recommended to receive an allocation of ESG funds.

As the City's fiscal calendar is effective July 1 through June 30 of each calendar year, subrecipient agreements reflect this timeframe for program implementation and operations. Although subrecipients are generally able to expend ESG funding during a one-year implementation timeframe, for ESG-funded activities the grant term is for a two-year operating period; this also allows for some leeway if for one reason or another the agency is unable to fully expend the program funds in the course of a one-year period.

Subrecipient agreements entered into by and between the City of Oxnard and entities selected to receive ESG funds articulate the amount of funding that the project will be receiving as well as a scope of services, consistent with their project proposals. This includes the proposed number of beneficiaries to be served and the nature and level of services to be provided. In turn this serves as basis for the City to measure agency performance in the context of advancing goals and objectives of the 5-Year Consolidated Plan and Annual Action Plan.

In accordance with federal requirements, City staff will enter into subrecipient agreements with funded entities no later than 180 days after the July 1st date of the City's fiscal year.

In this regard, should City staff request information from applicants necessary and required to inform and process the subrecipient agreement and the applicant does not provide this in a timely fashion in accordance with the 180-day provision, for purposes of timeliness, the City reserves the right to cancel the proposed funding award and re-program the funding to other projects and activities consistent with ESG rules and regulations that also may serve to advance goals and objectives of the 5-Year Consolidated Plan.

All actions of this nature will be based on written correspondence and documentation from the housing director, indicating the grounds and basis for the City decision. **Moreover, this decision also will have no bearing on the organization or act to prevent the organization from submitting new applications and being considered for future competitive ESG funding under Oxnard's annual ESG funding, review and award process.**

However, the City exercise due diligence and make every effort to reach out to the non-profits that propose to conduct work with the City and provide technical assistance and guidance through the process to ensure program and activity integrity and feasibility.

(b) Subrecipient Agreement Language:

All City of Oxnard ESG Subrecipient Agreements include and incorporate by reference relevant sections of the Code of Federal Regulation governing ESG programs and activities as well as citation of additional federal regulatory overlays, Section 3, Lead-Based Paint, etc.

As concerns formal execution of the subrecipient agreement, the City assigns an agreement number to the instrument and vets this internally through the project manager- Generally Homeless Assistance program staff- Grants Management, the City Housing Department Director, City Attorney, Budget Management, Risk Management and City Purchasing Agents. Depending on the level of funding considered in the agreement -\$25,000 is the current minimum threshold- the item will receive final review through the city's Contract Compliance Review Committee (CCRC).

Should the contract amount exceed the \$25,000 minimum threshold, final approval and authorization for execution will be provided by the Oxnard City Council in the context of action taken at one of its scheduled public meetings. Otherwise, the agreement may not require final vetting through CCCR but nonetheless be subject to council approval albeit through consent.

h) Subrecipient Agreements, Program Operating Year

Upon approval by HUD of the Annual Action Plan and the city entering into a Grant Agreement with HUD for ESG and other entitlement funding, the City then proceeds to enter into subrecipient agreements for entities selected to receive an allocation of ESG for program and/activity implementation.

The subrecipient agreement articulates that **grant proceeds are provided to subrecipient on a cost reimbursement basis, not more frequently than once per month nor less than quarterly**, for programs and activities for which services have been provided and documented and for which agency costs have been incurred and realized. Agency accounting systems must operate on a cost-accrual basis as the **City policy is to reimburse costs that have been accrued and realized.**

Consistent with ESG rules and regulations, the City exercises all due diligence in processing and remitting payment to subrecipients within 30 days of receipt of the request for reimbursement. However, any exceptions to this may be qualified based on subrecipients providing timely and thorough supporting documentation of eligible program expenditure and program participant eligibility, for those specific activities eligible and allocable to the subrecipient agreement scope of service; this includes confirmation of matching funds and any other supporting documentation for staff

review (e.g. program participant eligibility, income verification qualification as applicable, in addition to other related detail.

Among other important references that the subrecipient agreement language contains, two are worthy of note that ensure access, fairness and equity in programming while promoting program integrity, objectivity and transparency. The *Nondiscrimination* and *Conflict of Interest* citations as contained in City contracts follow:

Non Discrimination: “Subrecipient agrees not to discriminate against any person or class of persons by reasons of sex, color, race, creed, religion, marital status, handicap, ancestry, or national origin in its provision of services.”

Conflicts of Interest: “No member, official, or Employee of Oxnard shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affect his or her personal interests of the interests of any corporation, partnership or association in which he or she is directly or indirectly interested.

With respect to additional assurance under the umbrella of the City of Oxnard’s internal policies and procedures, the City’s Administrative Manual also contains Conflict of Interest provisions. (Please refer Item E-26, associated Enacting Resolution 11,166 and Revising Resolution 11,318, as excerpted from the City of Oxnard’s Administrative Manual concerning Standards of Ethics, Attached herein). The City also requires its covered employees to complete mandatory bi-annual Ethics Training.

As alluded to prior, an Exhibits to each subrecipient agreement, the City incorporates and references uniform federal requirements that each entity provided ESG funding certifies and agrees to comply with, including but not limited to:

- Civil Rights Act provisions of federal law;
- Section 3 rules and regulations pertaining to training and employment opportunities for low-income residents;
- Anti-lobbying;
- Prohibitions and restrictions against use of suspended or disbarred contractors;
- Drug Free Workplace;
- Recordkeeping and reporting requirements (include client confidentiality provisions);
- Monitoring Activities;
- Audit Requirements;
- Procurement requirements;

Subrecipient agreements allow for modest modifications and amendments to the amount of awarded funding based on either the need for adjusting the grant award amount based on timeliness of performance or other implementation issues, or to add additional funding to the grant- consistent with eligible and allocable programs and activities contained therein- for funding that may be re-programmed by the City during the course of the operating year(s). This may be considered where there is a demonstrated need for such funding as well as attention to timeliness of expenditure.

This subrecipient amendments process includes internal vetting and review by grants management staff, housing department leadership, City executive management, risk analysts, finance division as well as legal review, prior to execution and expenditure.

Any amendments to existing subrecipient agreements are subject to the same level of internal review and approval as the subrecipient agreement itself. This occurs through the City's internal contract/amendment/budget routing and review process under CCRC.

Section V: ESG Program/Project/Activity Implementation

Upon execution of the subrecipient agreement, entities receiving an allocation of City ESG funding may commence program and/or activity delivery in accordance with the approved budget, scope and level of services as well as all other terms and conditions precedent as articulated in the agreement. Subrecipient agreements generally reflect a July 1, commencement date, consistent with the beginning date of the City's annual operating budget.

As noted, subrecipients provide program services and incur costs for these services internal to their organization's financial resources and capacity which in turn are subject to City review and reimbursement based upon the subrecipient having submitted all supporting financial, program and reporting documentation associated with their agency's work.

City staff require that funded subrecipients request reimbursement for incurred program or activity costs no less frequently than once per quarter of program operation, and no more frequently than once per month. Quarterly reports, including HMIS reports are provided as Exhibits to the subrecipient agreement and accompany requests for reimbursement. Incomplete submittals will not be considered nor payment remitted, until all required/supporting documentation has been received.

For all invoices submitted to the City for cost reimbursement, responsible management of the organization attest to review, approval and authorization of the request for reimbursement and supporting documentation by signing and affirming the following language in their submittal cover invoice:

"By signing this report, I certify to the best of my knowledge and belief that the report is true, complete and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties, for fraud, false statements, false claims or otherwise. "(U.S. Code Title 18, Section 101 and Title 31, Sections 3729-3730 and 3801-3812).

Homeless Assistance program staff conducts preliminary review of the submitted invoices and supporting documentation to confirm that costs are both eligible and allocable to those areas of ESG programs and activities articulated in the subrecipient agreement as well as consistent with program and/or activity purpose and intent.

During the course of its review, if homeless assistance program staff should have any questions or requests for clarification related to the invoice and associated detail, staff will confer with the subrecipient to ensure that the documentation supports client and program eligibility, cost eligibility and/or allocability, and other criteria depending on the nature of the program and/or activity being

provided. Staff makes every reasonable effort to ensure the completeness, validity and integrity of invoice's supporting documentation that is submitted.

Consistent with ESG program requirements, these efforts include, pursuant to due diligence review, remitting payment to the subrecipient within 30 days of receipt of request for reimbursement.

The only instances in which rare exceptions to this may occur, involve staff requests of the subrecipient for additional supporting documentation and/or clarifying information and this has not been provided timely for one reason or another. Staff confirms that costs are consistent with rules and regulations established legislatively and programmatically at 24 CFR 576 as well as Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, and associated Office of Management and Budget (OMB) cost circulars, A -122 and A-87.

In this regard, although certain costs may be eligible under ESG program regulations and related costs principles, if these costs are not allocable within the agency's budget provided to the City, they may not be allowed for cost reimbursement as they may in effect not be eligible under the agency's scope of services.

Should there appear to be need or desire to meet and confer related to program, financial and/or technical issues, staff avails themselves to the subrecipient in order to provide guidance as well as to ensure that policies and procedures are mutually understood and adhered to moving forward.

If a subrecipient requests or demonstrates the need for additional technical assistance in this regard, staff may reach out to its federal partners at the Los Angeles HUD Field offices for consult, direction and advisement as to resources to further assist local service providers that serve to promote, support and enhance agency capacity.

This may also include recommending that agency staff attend live trainings related to ESG or ESG-specific Program components provided directly by HUD technical assistance contractors, or should this be unavailable as an option for the agency for one reason or another, encouraging the agency to HUD-provided ESG webinars on HUD Community Planning and Development's website.

In terms of project ***matching requirements*** associated with ESG, for purposes of approving requests for payment, subrecipients also confirm and attest to having met this **dollar-for-dollar requirement** pursuant to the language derived from.

This includes reference to the amount(s) and source(s) of matching funds. Subject to those policies and procedures related to monitoring of subrecipients in Section VI that follows, staff will subsequently review this supporting and confirming documentation at this time in the future.

A listing of funds that may serve as project match for ESG-related programs and activities may be referenced at 24 CFR 576.201, attached herein. ESG Program income, to the extent that this is generated throughout the program operating year, is also allowable as consideration of matching funds.

Section VI: ESG Performance Monitoring, Reporting and Recordkeeping

This section describes the City of Oxnard's processes, policies and procedures for monitoring subrecipient performance. For consistency of practice and performance and evaluation pursuant to ESG, the City utilizes the Ventura County Continuum of Care subrecipient monitoring instrument and protocols; a copy of this instrument as reference is attached hereto.

ESG Performance Measures and Metrics

As all ESG subrecipients participate in HMIS, this serves a common platform for reporting and assessing performance. Overall, City ESG performance measures strive to: 1) reduce the length of time program participants experience homelessness; 2) reduce and minimize incidences of homelessness; and, 3) monitor capacity utilization of the inventory of transitional housing and emergency shelter beds in the City of Oxnard.

With regard to performance metrics applicable to all ESG-funded entities that serve as baseline for capacity review the City has identified the following minimal criteria that subrecipients should meet:

Emergency Shelter, Excluding seasonal winter shelters, emergency shelter providers must be able to document placement of a minimum of 10% of the homeless household served in the program operating year into transitional, permanent or permanent supportive housing; **(Note: Prohibition against involuntary family separation.** The age of a child under age 18 must not be used as a basis for denying any family's admission to an emergency shelter that uses ESG funding or services and provides shelter to families with children under age 18. (24 CR Part 576.102)

Transitional Housing, subrecipients must be able to document placement of a minimum of 50% of the households who completed the transitional housing program in the program year into permanent or permanent supportive housing;

Rapid Re-Housing, subrecipients must demonstrate continued housing of clients receiving assistance for at least three (3) months after having received assistance, and reflect that ongoing case management has been/is being provided, including related documentation and entry and exit in HMIS; (reference 24 CFR part 576.105 and 106)

Homeless Prevention, subrecipients must demonstrate housing of clients receiving assistance for a minimum of three (3) months after having received assistance and reflect that ongoing case management has been/is being provided, including related documentation and entry and exit in HMIS; (reference 24 CFR part 576.105 and 106)

HMIS, all program participants, with the exception of victims of domestic violence, must be entered into the regional HMIS within fifteen (15) days of receiving service(s) and exited from the system within thirty (30) days of program completion or termination.

Minimum Standards, subrecipients are expected to have taken steps to meet the minimum standards for ESG homeless programs within thirty (30) days of execution of the subrecipient agreement for each respective program operating year.

Written Standards, the City of Oxnard does not provide direct program participant benefit, however subrecipients must maintain written standards for providing ESG assistance. Although these standards may vary slightly from agency to agency, agency written standards must be in alignment and conformance with minimum standards as reflected in the regional Ventura County CoC's Coordinated Entry System, Pathways to Home. Grievance procedures must also be reflected in agency documentation.

Subrecipient Monitoring and Evaluation:

The City of Oxnard's monitoring of subrecipients begins at program inception and continues throughout the process of program and activity implementation. As noted, at the front-end of the grant review and funding process, staff and the funding review committee review all applications and interact with agencies as to their proposal's staffing, budget, scope of services, experience working with the population to be served, track record, agency capacity and related information.

During the course of program and/or activity implementation, the City also monitors performance in its review of program expenditure detail, program participant eligibility, cost eligibility, and progress in meeting quarterly goals and objectives. Although this does not supplant on-site monitoring that occurs during the course of program implementation or subsequent to grant close-out, it nonetheless provides for a forum for review and basis for dialogue should there be perception that any issues or areas of concern may need addressing.

For example, one instance of this may be not receiving request for payments well into the operating year despite having executed a subrecipient agreement with an ESG-funded agency; another may be invoices submitted for reimbursement may not be consistent with City records and how to reconcile this; yet another may be feedback from program participants as to perceived level of services being provided that may require discussion and clarification of one form or another between the program participant, agency and City homeless program staff.

In terms of more formal monitoring and agency audits this is conducted generally during the months of June/July through September/October. Due to the fact that by July of each calendar year, the City will be and/or has entered into subrecipient agreements, and programs are operational for the current year, this presents an opportunity for staff to review those programs and activities that have either closed their grants from prior years funding (in the event that they have received past funding) as well as to track and assess interim progress.

Fundamentally, the monitoring review is proactive and constructive in nature and intended to ensure that:

- ESG funds are used effectively to assist homeless individuals and families and that the basic ESG program goals are met;
- That ESG subrecipient program and activity delivery is consistent with funding applications, subrecipient agreements, program/activity budget(s), and any authorized and articulated program modifications and/or amendments;
- Compliance with ESG regulations and program requirements in the use of funds and in carrying out program activities are being addressed;

- Enhancement and development of management capacity of grantees/recipients is taking place and lines of communication are open and transparent;
- Opportunity for interacting with subrecipients at project sites is in place in order to assess emerging community/program needs and/or gaps in service; and
- To identify potential areas for process improvements which may improve collective service to partner agencies, the City, and, most importantly, program participants.

Monitoring may take many forms; however, in comprehensively reviewing and monitoring subrecipient performance the City will utilize a number of means, which in totality provide a holistic and detailed overview of ESG program and/or activity efficacy and effectiveness. This may include, but is not limited to, the following:

A Desk Audit, site visit, review of the agency's funding application and subrecipient agreement, review of related amendments and associated correspondence, review of program participant files, review of financial and administrative records and reports, phone consults and interviews with interested agency staff, conferral and consult with partner agencies with whom the agency may be collaborating with in program and service delivery and informal interviews with program participants.

The desk audit encompasses a review of internal documentation that has been received, reviewed and processed in accordance with City policy and procedures for agency submittal of requests for reimbursement. Depending on the nature of the services being provided, this may include personnel time sheets, activity logs and other associated documentation such as quarterly progress reports, HMIS reports, City payment schedules and IDIS review.

For programs providing direct client benefit through Homeless Prevention and/or Rapid Re-Housing, this may also include all of the above in addition to detailed information and documentation related to program participants and third-party sources such as employers or mainstream public benefit providers—unemployment insurance, social security, county services, etc., as well as external agencies, landlords, and others necessary to determine extent of client need and consistency with program qualifying criteria.

In regard to program participant information, the City's policy is that, in the event and to the extent that potentially identifying information sensitive in nature, for example, social security information and certain financial information and/or detail, relevant areas of the documentation provided to the City for cost reimbursement is redacted by the agency prior in order that this information not be breached or compromised.

However, in subsequent site visits and on-site monitoring staff may review complete, original files for confirmation of consistency with what has been submitted, accepted and reimbursed.

Agency Monitoring:

With regard to formal on-site agency monitoring, a desk audit may be a precursory level of review in preparation for this. Agency on site monitoring, however, provides a greater window of opportunity to review agency records, examine program delivery in real-time, as well as to interview and interact with

program participants to assess their level of satisfaction with services and resources being provided as well as to tour facilities for consistency with ESG-related rules and regulations in this regard.

Prior to the City conducting any on-site monitoring review of its subrecipient agencies, the City provides a minimum 30-day written advance notification to the agency of its intent. City correspondence identifies the ESG program and program year that will be subject to its review; the time and date of the review; that an entrance and exit interview will be conducted with interested management and staff at inception and completion of the monitoring review; what information the organization can forward to City staff prior, as well as what agency resources and information may be made available to staff during the course of its review.

Should the agency subject to on-site monitoring provide written response to the City that it is unable, for one reason or another, to accommodate staff's request, City staff in consultation with the agency as well as potentially, housing department management and grants management staff (depending on the nature of the monitoring), will consider alternative dates and times upon mutual agreement.

If an agency requests changing a mutually agreed upon on-site monitoring a third time, staff will confer with the Housing Director and related City management in this regard.

If there is a compelling reason and/or reasons to re-consider extending the on-site monitoring date a third time, this may be accommodated with provision that the agency substantively agree to coordinate in advance availability of responsible parties and access to requested files and records subject to review.

For the on-site monitoring, City staff may meet, confer and consult with, among potential others, agency program-level staff, agency fiscal and finance staff, agency management and executive management, as well as program participant and beneficiaries.

Concerning review of physical files review and related agency information and documentation, staff may request certain information, for example, agency policy and procedures manuals related to internal controls, budgeting and/or separation of duties, to ensure that protocols are sufficient to verify and confirm funding is spent in accordance with ESG rules and regulations as well as consistent with generally accepted accounting practices.

Moreover, this assessment may fundamentally support that agency records coincide and are consistent with what has been provided to the City for cost reimbursement subject to on-site visit advance desk review. As noted, staff will also review program participant files to confirm and ensure eligibility and, to the extent that it does not violate in any way program participant confidentiality and/or privacy, may also interview program participants in relation to provision and availability of programming and services.

Staff will review source documentation, depending on the nature of the program and services being provided, that may include in part:

Verification of participation and conferral with HMIS and Pathways to Home, the Ventura County CoC's regional Coordinated Entry System in which ESG-funded entities coordinate resources and programming to assist program participants holistically while minimizing/avoiding duplication of effort and advancing regional performance goals;

Client Eligibility: documentation of homelessness, or if homeless prevention funding is being provided, documentation supporting imminent homelessness (**please refer to Definitions of Homelessness Attachment to this document for specific programmatic detail in terms of sub-populations of homeless to be served under various ESG programs and /or activities**);

Income Eligibility Source documents: Do *program participant files and associated income certification calculations reflect that households having been provided rapid re-housing or homeless prevention funding qualify as earning at or below 30% of Area Median Income (very-low income for homeless prevention and no greater than 30% of Area Median Income, for the City of Oxnard Housing Market Area?*

Do client files have **supporting source documentation** that coincides with and establishes program participant sources of income, pay stubs, letters supporting receipt and amounts of mainstream benefit program that are considered as a source of income, bank statements and related confirming information?

Are these sources in accordance with the prioritization for acquiring such income information: 1) source documents provided by program participant directly to agency staff; 2) third-party written verification; 3) self-certification and or confirmation from social worker working with program participant as to form/source and projected amount of income. (24 CFR 576.500)

If so, does staff's analysis and calculation of household income based on this confirm projected household earning and client eligibility as consistent with ESG regulations?

Do the client files have confirming documentation of clients' facing imminent eviction in order to provide homeless prevention assistance (Notices to Quit, Evictions, etc.)?

Do the files reflect that payments are being processed for compensation to a third-party landlords or property management firms unrelated to the individual household, and, if so, do the files contain supporting documentation in terms of an effective lease agreement between program participant and the landlord? (24 CFR 576.106)

Do the files reflect that no "**double dipping**" may be occurring in regard to combining ESG with other federal/state or local forms of subsidy? As reflected in 24 CFR 576.106:

*"Except for a one-time payment of rental arrears on the **tenant's** portion of the rental payment, rental assistance cannot be provided to a **program participant** who is receiving **tenant-based rental assistance**, or living in a housing unit receiving **project-based rental assistance** or operating assistance, through other public sources", and "rental assistance may not be provided to a **program participant** who has been provided with replacement housing payments under the URA during the period of time covered by the URA payments."*

Is the amount of support being provided to households sufficient to meet their need to retain their housing and has the agency provided needed case management and follow-up to ensure that the program participant will retain their housing once having been provided assistance?

For projects providing essential service and outreach, are the levels of services attested to in the funding application and subrecipient agreement being provided? Also, are any collaborative service partnerships articulated in subrecipient's funding application in place and operational?

Does the organization have sign-in sheets or other forms of record of attendance and participation in program and service provision? Is this reflected in the HMIS system reports and records?

Are costs and services provided consistent with the application for funding, and, does program and activity review demonstrate that costs are eligible through ESG as well as allocable to the respective agency subrecipient agreement with the City?

Do agency files and associated source documentation confirm agency has met required ESG matching funds obligations? (24 CFR 576.201)

Are agency indirect cost allocations consistent with levels that are in-line with or below ESG program requirements?

This is a partial listing of those areas that City staff will review during the course of an agency's on-site monitoring process in the context of review and reference to rules and regulation[pursuant to 24 CFR Part 576 and associated cost circulars.

Based on the agency application for funding, subrecipient agreement and nature of ESG program and/or activity being provided, not all areas of the above may be subject to review. For example, an agency that provides shelter operations or essential services may not be reviewed with the same level of analysis for organizations which provide homeless prevention and/or rapid re-housing services.

In terms of financial monitoring of subrecipient agencies, staff will review systems of internal controls, including agency separation of duties, budget, etc. in accordance with cost principles set forth in Office of Management and Budget Circulars A-122 and A-87. With regard to internal controls, staff will assess and review:

- Agency budget controls, systems and procedures for monitoring expenses against the approved grant budget;
- Cash management controls and procedures;
- Accounting control systems and records that adequately identify the source(s) and application(s) of grant funds;
- Procurement policies governing acquiring supplies, equipment, and other goods and services;
- Agency Audits and other related financial considerations.

Once staff has completed its on-site review of the respective ESG subrecipient, an exit interview is conducted in which staff and subrecipient have preliminary discussion of the outcomes and assessment of the monitoring review and to alert subrecipient that formal notification as to status of its review will be forthcoming through written response to the subrecipient from the City indicating the scope and extent of those areas covered, and to outline any issues that need to be addressed in response to this.

In this regard the City will discuss its findings and concerns related to the program and/or activity being provided by the subrecipient. ***A finding is a deficiency in program performance based on statutory, regulatory or program requirement for which sanctions or other corrective actions are authorized. Respectively, a concern is a deficiency in program performance not based on a statutory, regulatory or other program requirement.***

The City provides written response to the agency within thirty (30) days of having conducted its agency monitoring. Pursuant to the City's written response, ESG subrecipients are afforded thirty (30) days to provide written response to the City concerning agency actions that that will be implemented to address any findings as well as responses to concerns in terms of either providing clarifying information as to practices and/or modifications to current practice that may better align agency process and procedures with ESG goals and objectives.

To the degree that the City does not receive a response from the subrecipient within the 30-day timeframe for this, the City will confer with and provide correspondence to the organization of their non-response and request that this information be provided within 7 days of notification of non-response.

Any requests for an extension to City practices in this regard must be made in writing to the Housing Director and include the basis for the extension as well as firm dates that the information can reasonably be expected to be received. ***If the subrecipient continues to fail to respond accordingly, the City may take actions as articulated in the subrecipient agreement, Section 6, Enforcement of Agreement/Termination of Agreement, Subsection 6.1 Events of Default.***

However all due diligence and effort will be made to work with the organization, up to and including reaching out to federal partners for advisement and consultation and/or technical assistance if necessary, to assist organizations in remaining viable community partners where interested parties express agreement and support.

Reporting and Recordkeeping:

This section describes the basic program requirements and responsibilities under the ESG program. As a subrecipient of ESG funding and a subrecipient through the City of Oxnard, subrecipients are responsible for demonstrating compliance with all of the program requirements and the HEARTH and ESG Regulations at 24 CFR Parts 91 and 576, respectively.

Maintaining accurate records is an important aspect of effective management of ESG projects. Measurement of project performance relies on the tracking of information related to service provision programs and activities. It is important therefore, that full and precise information related to program activities and services provided with ESG funds is consistently gathered, maintained and complied annually.

This can and should occur through a number of means, including physical and electronic files, as well as HMIS. Moreover, all efforts shall ensure adherence to program participant security and confidentiality particularly with regard to sensitive potentially identifying protected information, social security numbers bank account information, etc.

The City requires consistent reporting on the number of unduplicated program participants served, certain demographic data concerning subpopulations, expenditure of funds, program activities and measurable outcomes; as well as information related to meeting ESG matching funds requirements.

This data and information, including a brief narrative of program operations, is provided to the City by all ESG subrecipients no less than quarterly during the course of program operations, in accordance with

the following schedule; these are generally submitted with requests for reimbursements and if not provided, staff will inquire and receive these as a condition of processing reimbursement requests:

Operating Quarter	Reporting Period	Due Date
1	July-September	October 15
2	October-December	January 15
3	January-March	April 15
4	April-June	July 15

In order to report fully on program outcomes and activities, subrecipients should consistently gather demographic information on the population being served by the program and the types of activities being provided to participants; this should also be reflected in the HMIS system reports as well.

Subrecipient records, depending on the nature of the program and/or activity being provided with City of Oxnard ESG funds, should reflect, client and cost eligibility (in addition to being allocable to the particular subrecipient agreement program or activity), as well as confirmation of consistency and conformity with provisions reflected in 24 CFR 576 as attached.

Minimal recordkeeping requirements involve:

For program participant eligibility this shall include documentation of homeless status with, ***depending on the nature of the program and/or activity being implemented, the specific qualifying eligibility criteria for definitions of either “at-risk” of homelessness or “homeless” as set forth in 24 CFR Part 576.2;***

Evidence of agency participation, collaboration and coordination with the Ventura County Regional Coordinated Entry System—Pathways to Home, in providing ESG assistance;

For certain Homeless Prevention and Rapid Re-Housing program delivery, evidence of effective lease agreements between program participant and landlord and/or property management firm; (24 CFR 576.106)

Evidence that rental assistance being provided is consistent with local housing market area Fair Market Rents (FMR's) and rent reasonableness standards in alignment with local Housing Authority criteria (including Utility Allowance (UA), schedules where applicable); (24 CFR 576.106)

Evidence that the rental unit met with habitability standards pursuant to ESG rules and regulations; (24 CFR 576.403)

For programs providing shelter and/or transitional housing beds, records allowing for analysis and determination of resource capacity and utilization; and

All other criteria as defined related to particular subrecipient agreement as articulated in 24 CFR 576.500 and related federal governance pertaining to ESG.

In terms of record retention policies, all records pertaining to each fiscal year of ESG funds must be retained for the greater of 5 years or the period specified below. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records. However, agencies

must consult with the City prior to undertaking alternative forms of file retention for prior agreement, consent and approval. City may consult with its federal partners as well for concurrence and agreement as to nature and quality of agency records subject to retention policy.

For City records and use, all Quarterly Reports provided by each ESG subrecipients are retained in the physical project file, scanned electronically and saved as pdf files, and compiled and aggregated at the end of the program operating year for respective ESG grants.

These form the basis in part, as noted, for future subrecipient monitoring, staff data collection and input into IDIS, as well as informing production and submittal of the ESG element of City's Consolidated Annual Performance and Evaluation Report (CAPER) to HUD at the end of the each respective operating year (Annual Action Plan) of the City's 5-Year Consolidated Plan.

As noted, all of this information is also available for public edification, comment and review pursuant to the public outreach criteria established and articulated in the Consolidated Plan's Citizen Participation Plan.

As the City of Oxnard does not implement ESG program and activities directly, complete, thorough and comprehensive files pertaining to each program participant receiving benefit through ESG are maintained at each agency that receives funding through the City.

Depending on the nature for the program and/or activity, minus standard file requirements, e.g., supporting documentation of client eligibility, the context of agency's files may vary based on program design and program participant's specific need. As noted in the monitoring section of this document, these are subject to review by the City during the course of monitoring at any time the City should provide advance notice of requesting to review these files and associated content.

Section VII: ESG Financial Management

This section describes the City of Oxnard, process, policies and procedures for receipt and expenditure of funding related to ESG programs and activities, including discussion of internal controls, separation of duties and budget controls.

Accounts Receivable/Receipts:

For any receipts that Homeless Assistance staff receives, they will receive the remittance payment and prepare a deposit slip to the appropriate City account; accordingly staff will also make copies of this documentation and incorporate this into related project physical as well as electronic files.

Original copies of associated documentation are then forwarded to Grants Management staff who will process a deposit into related account(s). Related confirming copies of the deposit are then provided to homeless assistance staff by grants management for incorporation into project files.

Homeless assistance staff will confirm receipt of funds into referenced account in conducting a follow-up review of the City's internal financial system; this serves to ensure that the correct amounts of funds has been deposited and realized into the appropriate City ledger/fund/account.

If there are any discrepancies identified during this process, staff will confer with grants management as well as fiscal staff in order to resolve the nature of the discrepancies and institute appropriate means of internal controls to reconcile this, including related line item adjustments or fund transfer.

Accounts Payable/Reimbursements/Expenditures

The Oxnard City Council, pursuant to its entitlement fund Annual Action Plan hearing process, ultimately approves the project budget for each agency receiving ESG funding as well as the aggregate budget for ESG.

For agencies receiving funding for ESG programs and activities that have a fully-executed subrecipient agreement pursuant to the City having received prior an executed grant agreement with HUD for ESG funding, the City sets up an appropriate fund and line item account into its accounting system setting forth the project budget.

Subsequent to this as agency programs and activities are implemented and costs incurred and realized, requests for reimbursements and associated documentation is received from ESG-funded agencies. Homeless assistance program staff review and approve the agency requests for reimbursement and associated documentation and enter this as a purchase order into the City financial system, enabling payment to the agency.

Homeless assistance staff retains copies of this documentation and incorporate into the agency project files for that operating year of ESG funded programs and activities.

Original documentation is then forwarded on to grants management staff for review and subsequent approval for payment.

Prior to forwarding this documentation to grants management staff, homeless assistance program staff strip away from the submittal and/or redact any potentially identifying sensitive information that may be related to program participants in order to ensure security, confidentiality and privacy.

During the course of its review, grants management staff will ensure that there are adequate funds in the respective line-item account to remit payment under the associated service contract. If, for one reason or another, any discrepancies are identified grants management staff will confer with homeless assistance staff and fiscal staff to reconcile, address and resolve internally. Homeless assistance staff will also confer with the affected agency in terms of the resolution to apprise them of payment status during this timeframe.

In terms of interfacing with the federal treasury system, grants management also has draw-down authorization in this regard, while homeless assistance program staff has IDIS authorization appropriate to its level of input and functional involvement with IDIS. For program staff, this is principally for review and related program, input and editing functions. Staff will draw down from the federal treasury system those funds having been reimbursed by the City to the subrecipient no later than 30 days of having finalized internal payment processing.

One conceivable exception to this is related to the final quarter of annual ESG operations: in this instance grants management staff may draw the funding from IDIS once (quarterly) towards the end of the operating year. The reason for this is to allow agencies to compile their final billings and reports,

expend any outstanding funds prior to grant close-out, provide real-time cost and/or budget reconciliation and address questions, technical issues and potential discrepancies requiring clarification or adjustment.

Once the reimbursement/payment has been posted to the City General Ledger, this is confirmation to homeless assistance program staff that the funding has been processed and remitted to the ESG funded Agency.

As noted, minus any outstanding requests for clarification from agencies on behalf of the City that serve to confirm and validate program payment and or client eligibility, the City exercises all due diligence in remitting payment to organization within 30 days of receipt of such requests for reimbursement.

Field Purchase Orders:

The City also has internally processes related to issuing payments to vendors related to purchases and leases in amounts up to \$2,500.00. A Field Purchase Order (FPO), represents the City's financial accounting database and information system electronic equivalent of a check request form.

The FPO process involves (as examples):

- Payments to vendors for goods and/or services
- Qualifying Expense Claims
- Eligible Tuition Reimbursements
- Eligible Travel reimbursements
- Subscriptions/Certifications

This process may also be used to requests advance payment for eligible business-related expenses such as food, travel, lodging and conference fees.

FPO's provide an audit trail providing detail confirming, the individual who created the FPO, the individual who approved the FPO, and who invoiced and approved the FPO for payment. With regard to the Housing Department policy, this is in accordance with those policies and procedures as with processing of City Purchase Orders.

Requirements for using FPO's include: 1) limited to purchases of less than \$2,500; 2) that original invoices and backup documentation must be provided and forwarded to the City's Purchasing Department prior to any payment being processed; and 3) that all current, existing City purchasing policies be adhered to and followed.

With regard to ESG, FPO's may only be approved for those certain eligible and allocable costs as articulated in 24 CFR Part 576 as well as associated cost principles contained in 2 CFR Part 200. Any costs outside this purview will be paid through other City resources.

City Internal Audits

Consistent with federal *Office of Management and Budget (OMB) Circular a-133, Audits of State, Local, and Non-Profit organizations*, the City of Oxnard's Finance Department contracts with an independent

auditor who conducts a Single Audit of Federal Awards for each fiscal year of City operation; this includes the Oxnard Housing Department and related ESG, CEDG and HOME entitlement funds. Any material weaknesses of concern that are identified through the audit are responded to by Housing Department management in a timely fashion. Staff provides support and clarification to the Independent Auditor throughout the audit process. The City of Oxnard Housing Authority, which is also under the umbrella of the Housing Department, conducts its own independent audits given the specific nature of its management and operations under HUD public housing and rental assistance programs.

External/Third-Party Agency/Subrecipient Financial Review

In accordance with federal Office of Management and Budget (OMB), 2 CFR part 200—Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards-

subrecipients of City ESG funds are required to arrange for an independent financial and compliance audit annually for each fiscal year federal funds are received; these audits must be in compliance with those standards as codified in 2 CFR Part 200, and may be conducted by federal, state or local funding agencies.

The results of these independent audits must be submitted to the City within thirty (30) days of completion. With respect to any conditions or findings identified in the audit report, subrecipients shall provide written response to the City within thirty (30) days of addressing them.

Subrecipient responses must examine each condition, material weaknesses or concerns and provide explanation of proposed resolution(s), which includes a schedule for correcting identified deficiencies or areas for improvement. All such corrective actions shall be addressed and implemented within six (6) months of having received the audit report. The City and its authorized representatives shall at all times have access for the purpose and inspection to any and all books, documents, papers, records, property and premises of subrecipient. Subrecipient's staff shall fully cooperate with authorized auditors when conducting their agency review.

Should the audit identify misappropriation or misapplication of ESG funds eligible and allocable to the subrecipient agreement, this may cause the City to require a special audit, the cost of which will be encumbered and deducted from the subrecipient's grant award amount. If it subsequently determined that the special audit was not warranted, this encumbered amount will accordingly be restored to the agency's grant award.

If the special audit serves to confirm misappropriation of grant funds awarded to subrecipient, subrecipient shall promptly reimburse the City in an amount no less than equal to the amount of misappropriated or misapplied funds identified and articulated in the special audit findings. In the event that the City should utilize and employ judicial proceedings to recover misappropriated or misapplied funds, subrecipient's will be required to reimburse the City for associated legal fees and court costs incurred in recovering these funds.

In the event that there may be subject audit exceptions identified by appropriate federal agencies, the subrecipient of City ESG funds shall be required to comply with such exceptions and pay the City the full amount of the City's associated liability to HUD resulting from such audit exceptions that have been identified as legitimate during the process of the audit.

All such actions shall be precipitated with formal written notification from City executive management staff indicating the basis and substantive accounting for such costs having been incurred.

Agency Indirect Costs:

ESG may be used to pay indirect costs in accordance with OMB Circular A-87 (2 CFR part 225), or A-122 (2 CFR part 230), as applicable. Agencies utilizing indirect costs in their operating budgets must have in place an approved indirect cost allocation plan in order to receive reimbursement from the City for such costs.

Expenditure limits: The indirect costs charged to an activity subject to an expenditure limit under subsection 576.100 must be added to the direct costs charged for that activity when determining the total cost subject to expenditure limit.

Section VIII: ESG Other Federal Requirements

Environmental Review: For each and every program and/or activity receiving City ESG funding, Grants Management staff conducts relevant National Environmental Protection Act (NEPA) environmental review consistent with the level of review associated with each program or activity. Once completed in accordance with all public noticing, posting and/or other requirements, these environmental reviews (and any associate supporting documentation that may be required to accompany this) are incorporated into and retained in the City Housing Department's Grants Management Division's running Environmental Review Record (ERR), file.

Civil Rights: Subrecipients of City ESG funding agree to abide by and comply with provisions of the Civil Rights Act of 1964, as amended, and adhere to all related regulations applicable thereto.

Affirmatively Furthering Fair Housing Opportunities: Fair Housing. Under section 808(e)(5) of the Fair Housing Act, HUD has a statutory duty to affirmatively further fair housing. HUD requires the same of its funded sub-recipients who have a duty to affirmatively further fair housing opportunities for classes protected under the Fair Housing Act.

Affirmative outreach. The recipient or subrecipient must make known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis.

If it is unlikely that the procedures that the recipient or subrecipient intends to use to make known the availability of the facilities, assistance, and services will to reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for those facilities and services, the recipient or subrecipient must establish additional procedures that ensure that those persons are made aware of the facilities, assistance, and services.

The recipient and its subrecipients must take appropriate steps to ensure effective communication with persons with disabilities including, but not limited to, adopting procedures that will make available to interested persons information concerning the location of assistance, services, and facilities that are accessible to persons with disabilities.

Consistent with Title VI and Executive Order 13166, recipients and sub recipients are also required to take reasonable steps to ensure meaningful access to programs and activities for limited English proficiency (LEP) persons.

Drug Free Workplace: As noted, subrecipients must incorporate into their agency planning certification that it will provide and ensure a “Drug Free” workplace. Actions to this accomplish this end may include publishing statements that employees agree to abide by in their hiring practices, creating drug-free awareness programs at their place of employment, certain notification requirements to the City, and other good-faith efforts to meet the spirit and intent of this requirement.

Anti-Lobbying: Subrecipients of City ESG must certify that no federal funds will be paid to any person influencing or intending to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or any employee of a member of Congress, in connection with the awarding of any federal contract, the making of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of an federal contract, grant, loan, or cooperative agreement.

If any funds, other than federal funds, provided to the organization are used for purposes of lobbying, the subrecipient shall complete and submit to the City and HUD Standard Form-LLL- Disclosure Form to Report Lobbying in accordance with its instructions and content.

Uniform Relocation Assistance: for any projects funded through City ESG that may require relocation of tenants or resident of facilities receiving ESG assistance, subrecipients shall comply with those rules and regulations articulated in the federal Uniform Relocation Act as set forth in 24 CFR § 576.408.

Davis Bacon Labor Standards: Davis Bacon standards do not apply to ESG funded projects.

Section 3: Economic Opportunities for Low- and Very Low-income Persons. The SUBRECIPIENT shall ensure that employment and other economic opportunities generated by the Program shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing. Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and regulations at 24 CFR part 135 apply, except that homeless individuals have priority over other Section 3 residents in accordance with § 576.405(c).

Procurement of Recovered Materials. The recipient and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Faith Based Activities: *Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to receive ESG funds.* The City of Oxnard does not discriminate against an organization on the basis of the organization’s religious character or affiliation in allocation of its ESG funding.

Provisionally, however, organizations that are directly funded under the ESG program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as part of the

programs or services funded under ESG. ***If an organization conducts these activities, they agree that these activities must be offered separately, in time or location, from the programs or services funded under ESG, and participation must be voluntary for program participants.***

Religious organizations that receive City ESG funds retain their independence from Federal, State, and local governments, and may continue to carry out their mission, including the definition, practice, and expression of its religious beliefs. ***However, the religious organization may not use ESG funds to directly support any inherently religious activities, such as worship, religious instruction, or proselytization.***

Faith-based organizations may use space in their facilities to provide ESG-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, City ESG-funded religious organizations retain their authority over their internal governance, and may retain religious terms in their organization's name, select board members on a religious basis, and include religious references in the organization's mission statements and other governing documents.

An organization that receives ESG funds shall not, in providing ESG assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

ESG funds may not be used for the rehabilitation of structures to the extent that those structures are used for inherently religious activities. ESG funds may be used for the rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under the ESG program.

Where a structure is used for both eligible and inherently religious activities, ESG funds may not exceed the cost of those portions of the rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to ESG funds. Sanctuaries, chapels, or other rooms that an ESG-funded religious congregation uses as its principal place of worship, however, are ineligible for funded improvements under the program. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition.

If the recipient or a grantee that is a local government voluntarily contributes its own funds to supplement federally funded activities, the recipient or grantee has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

Americans with Disabilities Act (ADA). ESG subrecipients agree to comply with any federal regulations issued pursuant to compliance with the Americans with Disabilities Act which prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and Local government services, and public accommodations.

Suspension and Debarment: City ESG subrecipients agree to abide by federal provisions at 24 CDF Part 24 related to prohibition on employment engagement of services, awarding of contracts or funding of any contractors or subcontractors during any period of debarment, suspension or placement in ineligibility status.

Section IX: Additional Consideration Related to ESG and Property/Habitability Standards

Pursuant to CFR 576.403, Shelter and Housing Standards, ESG funded activities and projects providing housing and/or emergency shelter must conform to the following minimal housing standards:

(a) *Lead-based paint remediation and disclosure.*

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821- 4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851- 4856), and implementing regulations in 24 CFR part 35, subparts A, B, H, J, K, M, and R apply to all shelters assisted under ESG program and all housing occupied by program participants.

(b) *Minimum standards for emergency shelters.*

Any building for which Emergency Solutions Grant (ESG) funds are used for conversion, major rehabilitation, or other renovation, must meet state or local government safety and sanitation standards, as applicable, and the following minimum safety, sanitation, and privacy standards.

Any emergency shelter that receives assistance for shelter operations must also meet the following minimum safety, sanitation, and privacy standards. The recipient may also establish standards that exceed or add to these minimum standards.

- (1) *Structure and materials.*** The shelter building must be structurally sound to protect residents from the elements and not pose any threat to health and safety of the residents. Any renovation (including major rehabilitation and conversion) carried out with ESG assistance must use Energy Star and WaterSense products and appliances.
- (2) *Access.*** The shelter must be accessible in accordance with Section 504 of the Rehabilitation Act (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; the Fair Housing Act (42 U.S.C. 3601*et seq.*) and implementing regulations at 24 CFR part 100; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131*et seq.*) and 28 CFR part 35; where applicable.
- (3) *Space and security.*** Except where the shelter is intended for day use only, the shelter must provide each program participant in the shelter with an acceptable place to sleep and adequate space and security for themselves and their belongings.
- (4) *Interior air quality.*** Each room or space within the shelter must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.
- (5) *Water supply.*** The shelter's water supply must be free of contamination.
- (6) *Sanitary facilities.*** Each program participant in the shelter must have access to sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.
- (7) *Thermal environment.*** The shelter must have any necessary heating/cooling facilities in proper operating condition.
- (8) *Illumination and electricity.*** The shelter must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the shelter.

(9) **Food preparation.** Food preparation areas, if any, must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.

(10) **Sanitary conditions.** The shelter must be maintained in a sanitary condition.

(11) **Fire safety.** There must be at least one working smoke detector in each occupied unit of the shelter. Where possible, smoke detectors must be located near sleeping areas. The fire alarm system must be designed for hearing-impaired residents. All public areas of the shelter must have at least one working smoke detector. There must also be a second means of exiting the building in the event of fire or other emergency.

(c) **Minimum standards for permanent housing.** The recipient or subrecipient cannot use ESG funds to help a program participant remain or move into housing that does not meet the minimum habitability standards provided in this paragraph (c). The recipient may also establish standards that exceed or add to these minimum standards.

(1) **Structure and materials.** The structures must be structurally sound to protect residents from the elements and not pose any threat to the health and safety of the residents.

(2) **Space and security.** Each resident must be provided adequate space and security for themselves and their belongings. Each resident must be provided an acceptable place to sleep.

(3) **Interior air quality.** Each room or space must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.

(4) **Water supply.** The water supply must be free from contamination.

(5) **Sanitary facilities.** Residents must have access to sufficient sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.

(6) **Thermal environment.** The housing must have any necessary heating/cooling facilities in proper operating condition.

(7) **Illumination and electricity.** The structure must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the structure.

(8) **Food preparation.** All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.

(9) **Sanitary conditions.** The housing must be maintained in a sanitary condition.

(10) **Fire safety.**

(i) There must be a second means of exiting the building in the event of fire or other emergency.

(ii) Each unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each occupied level of the unit. Smoke detectors must be located, to the extent practicable, in a hallway adjacent to a bedroom. If the unit is occupied by hearing impaired persons, smoke detectors must have an alarm system designed for hearing-impaired persons in each bedroom occupied by a hearing-impaired person.

(iii) The public areas of all housing must be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

In addition, minimum use periods also apply for shelters that are rehabilitated pursuant to those terms and condition articulated at 24 CFR Part 576.102. related to The disposition of real property for which ESG funds are used for major rehabilitation, conversion, or other renovation under § 576.102 is governed by the minimum period of use requirements under § 576.102(c).

Other Considerations for Minimal Terms of Utilization Related to Emergency Shelter Renovation/Rehabilitation

Minimum period of use for:

Renovated buildings.

Each building renovated with ESG funds ***must be maintained as a shelter for homeless individuals and families for not less than a period of 3 or 10 years***, depending on the type of renovation and the value of the building. The ***“value of the building” is the reasonable monetary value assigned to the building, such as the value assigned by an independent real estate appraiser.***

The minimum use period must begin on the date the building is first occupied by a homeless individual or family after the completed renovation. A minimum period of use of 10 years, required for major rehabilitation and conversion, ***must be enforced by a recorded deed or use restriction.***

Major rehabilitation.

If the rehabilitation cost of an emergency shelter exceeds 75 percent of the value of the building before rehabilitation, the minimum period of use is 10 years.

Conversion.

If the cost to convert a building into an emergency shelter exceeds 75 percent of the value of the building after conversion, the minimum period of use is 10 years.

Renovation other than major rehabilitation or conversion.

In all other cases where ESG funds are used for renovation, the minimum period of use is 3 years.



Homeless Assistance Program
Subrecipient Handbook

United States Department of
Housing and Urban Development (HUD)
Emergency Solutions Grant (ESG)
(Catalogue of Federal Domestic Assistance Number: 14.231)

City of Oxnard Housing Department
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I: INTRODUCTION

This manual serves as a reference document for City of Oxnard subrecipients of federal Emergency Solutions Grant (ESG) entitlement program funds. ESG is administered by the US Department of Housing and Urban Development (HUD), and the funding is made available by the City of Oxnard to local non profits for eligible programs activities and services intended to address homelessness.

The City of Oxnard receives ESG entitlement funding directly from HUD and through an annual competitive Request for Proposal (RFP) process, sub-awards this funding to qualifying non-profits for subsequent program delivery and implementation. The City itself does not directly implement ESG-related programs, rather, serves as responsible agency for ESG funding allocation, administration, management and oversight.

This Guidebook addresses ESG rules and regulations and provides a framework for City of Oxnard non-profit ESG subrecipients to consider agency program design and activity eligibility, as well as administrative and financial management practices; it may also be used for purposes of staff development and training.

Each such participating agency is provided with this guidebook as a means to enhance their agency capacity, and ensure sound policy understanding and implementation practices. As such, this manual offers guidance to non-profit subrecipients of city ESG funding to enhance their understanding of complying with federal ESG rules, regulations and requirements in the context of locally established policies and procedures which the city has also adopted.

II: BACKGROUND OF EMERGENCY SHELTER GRANT FUNDING AND THE CONTINUUM OF CARE

The ESG program was originally established by the Homeless Housing Act of 1986 as the Emergency Shelter Grant Program, in response to the growing issue of homelessness among men, women, and children in the United States. In 1987, the ESG program was incorporated into subtitle B of title IV of the Stewart B. McKinney-Vento Homeless Assistance Act (42 U.S.C. 11371-11378).

The Emergency Shelter Grant Program was amended and enacted into law on May 20, 2009, as The Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009 (HEARTH Act). The HEARTH Act consolidated three of the separate homeless assistance programs administered by HUD under the McKinney-Vento Homeless Assistance Act into a single grant program under ESG. Under the HEARTH Act, the Emergency Shelter Grant was also re-named and is now referred to as the Emergency Solutions Grant program; however it is still remains commonly referred to as "ESG."

The HEARTH Act also codified in law the Continuum of Care (CoC) planning process, long a part of HUD's application process to assist homeless persons, by providing greater coordination in responding to homeless individual and families' needs.

In Ventura County, the Regional CoC planning process is coordinated and overseen under the umbrella of the County Executive Office Community Development Division; however, *as an independent entitlement community, the City of Oxnard has historically received a formula allocation of ESG*, as well as Community Development Block Grant and HOME Investment Partnership funds.

While an active member and participant in the CoC regional planning process Executive Board and regional CoC sub-committees, the City of Oxnard independently develops, allocates, implements, monitors and reports on its respective Consolidated Plan, Annual Action Plan(s) and CAPER(s) as a responsible Participating Jurisdiction under HUD entitlement programs.

However, in the context of HEARTH Act and ESG regulations, subrecipients of Oxnard ESG funding must collaborate and coordinate resources with other agency providers throughout Ventura County by participating in the countywide homeless Coordinated Entry System, Pathways to Home.

Key policy, statutory and regulatory changes attendant to current HEARTH Act and ESG regulations are addressed more specifically and spelled out in relevant areas of this Guidebook.

III: EMERGENCY SOLUTIONS GRANTS ELIGIBLE PROGRAM COMPONENTS

There are five (5) principal ESG-eligible program components as follows:

- 1) Street Outreach
- 2) Emergency Shelter
- 3) Homeless Prevention
- 4) Rapid Re-housing Assistance
- 5) Homeless Management Information System (HMIS).

In addition, certain administrative costs are also allowed under ESG; however, these are specifically reserved by the City of Oxnard for annual activities associated with staff oversight and management of grant funds as ESG lead agency.

The following summary provides an overview of each program component's key areas of focus.

1) Street Outreach:

ESG fund may be used for costs of providing essential services necessary to reach out to unsheltered homeless people; connect them with emergency shelter, housing, or critical services; and provide urgent, nonfacility-based care to unsheltered homeless people who are unwilling or unable to access emergency shelter, housing or an appropriate health facility. These essential services may include: engagement, case management, emergency health services, emergency

mental health services, and transportation-related expenses among others. These are subsequently discussed in greater detail in the relevant section on allowable ESG Shelter operations funding,

2) Emergency Shelter:

Emergency shelter means any facility, the primary purpose of which is to provide a temporary shelter for homeless people in general or for specific populations of homeless people and which does not require occupants to sign leases or occupancy agreements.

ESG may be used to operate the shelter or to provide a range of essential services to the residents. *Temporary hotel and motel stays are also permitted under this component under certain circumstances, for example, in the event that no appropriate emergency shelter is readily available and accessible for a homeless individual or family.*

3) Homelessness Prevention:

Homelessness prevention involves certain activities designed to keep households that are “at-risk” of losing their housing from becoming homeless. **Homelessness prevention services include housing relocation and stabilization services and/or short- and/or medium-term rental assistance** necessary to prevent an individual or family from having to move into an emergency shelter, a place not meant for human habitation, or another place described in “category one” of the homeless definition.

The definition of “at-risk of homelessness” is based on a combination of income, lack of supports, and recent conditions.

4) Rapid Re-Housing

Rapid re-housing involves certain activities designed to assist households that are “literally” homeless to return to permanent housing as quickly as possible. **Rapid re-housing services also include housing relocation and stabilization services and/or short- and/or medium-term rental assistance** as necessary to help individuals or families living in shelters or in places not meant for human habitation to achieve housing stability.

The principal difference between the rapid re-housing and homelessness prevention components involves the nature of the program participant being provided services.

When relocation and stabilization services are provided to individuals and families who are sleeping in emergency shelter, on the streets, or another place not meant for human habitation, the eligible component is rapid re-housing.

When the same services are provided to households that are not yet homeless but on the verge of homelessness, and the households meet the definition of being “at-risk of homelessness,” the eligible component is homelessness prevention.

Agencies should be mindful of this in implementing their programs and where there are questions confer with city of Oxnard Homeless Assistance Program staff or through the *Ventura County Coordinated Entry System, Pathways to Home*.

5) Homeless Management Information System

ESG funds may be used to pay for eligible costs of participation in the Ventura County Continuum of Care's Homeless Management Information System (HMIS). City of Oxnard ESG subrecipients must agree to participate in this common platform for data collection and reporting with certain exceptions afforded to service providers of victims of domestic violence.

IV. PROGRAM PARTICIPANT ELIGIBILITY

Prior to providing services to any individual or household, agencies must ensure and document that potential program participants are eligible for services. Moreover, depending on the nature of the program or service being provided to qualifying program participants, they must also meet specific definitions associated with that program (additional detail in this regard is addressed in Section V of this guidebook).

ESG regulations also require ESG subrecipients to collaborate within the Ventura County Coordinated Entry System, *Pathways to Home*, which utilizes a common assessment tool and connects potential participants to the most appropriate interventions. HMIS provides in part the basis for collaborating through *Pathways to Home*, but this may also involve partaking in weekly case-conferencing meetings/calls to discuss resource-leveraging pursuant to individual program participant's needs.

Each city ESG-funded program must conduct an initial evaluation to determine individual's or family's eligibility for ESG assistance and the amount and types of assistance the individual or family may require to regain stable permanent housing. These evaluations must be conducted in accordance with the centralized or coordinated assessment requirements. For programs that accept referrals from coordinated entry, the program should review any documentation provided to establish, confirm and document eligibility and need.

One note with respect to victims of domestic violence, certain victim service providers that are subrecipients of city ESG funding may elect not to participate in *Pathways to Home*, but are encouraged to provide data through program participant data through other means, which do not in any way jeopardize client confidentiality.

V. DEFINITION AND DETERMINATION OF HOMELESS STATUS

Eligibility for assistance under the ESG program depends on the housing or homeless status of program participants. All participants in ESG-funded programs must meet the applicable definition of homelessness or at-risk of homelessness. As noted, the specific status confirming eligibility to receive ESG assistance varies depending on the program component under which a program is operated.

Homeless status can be classified as one of three categories under the applicable HUD definition: “literally homeless,” “imminent risk of homeless,” or “fleeing/attempting to flee domestic violence” and/or may also include consideration of a fourth category, “Unaccompanied youth and families with children who are defined as homeless under other federal statutes and experience housing instability.” In regard to this category, agencies must consult with related federal agency program definitions in order to sufficiently qualify and document program participant eligibility. It is also advisable to consult with *Pathways to Home* in this regard prior to using any ESG directly to clients; this insures that qualifying eligibility and assistance have been thoughtfully researched, documented and addressed.

With respect to strict HUD definitions related to ESG, detailed descriptions informing program participant eligibility for homeless outreach, emergency shelter, homelessness prevention and rapid re-housing assistance are categorized below.

a) Literally homeless (Category 1)

Literally homeless is defined as an individual or family who lacks a fixed, regular, and adequate nighttime residence. This includes households with a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation (such as a car, park, abandoned building, bus or train station) or who are living in a supervised, publicly or privately operated shelter designed to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs). An individual who is exiting an institution where s/he resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution also qualifies.

b) Imminent risk of homeless (Category 2)

Imminent risk of homeless is defined as an individual or family who will imminently lose their primary nighttime residence. Qualifying under this criteria requires that the household’s primary nighttime residence will be lost within 14 days of the date of application for homeless assistance, no subsequent residence has been identified, and the individual or family lacks the resources or support networks (e.g. family, friends, faith-based or other social networks) needed to obtain other permanent housing.

c) Fleeing/attempting to flee domestic violence (Category 4)

Fleeing/attempting to flee domestic violence is defined as fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member that has either taken place within the individual’s or family’s primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence; has no other residence; and lacks the resources or support networks (e.g. family, friends, faith-based or other social networks) to obtain other permanent housing.

d) At-risk of homelessness

Homelessness prevention programs may serve those under Categories 2 or 4 above (with incomes below 30% of the area median income (AMI)) and are also allowed to serve households that meet the definition of “at-risk of homelessness.”

The definition of *at-risk of homelessness* is based on a combination of income, lack of supports, and recent conditions. In summary, at-risk of homelessness includes:

- Having an annual income below 30 percent of median family income for the area; and
- Lacking sufficient resources or support networks (e.g., family, friends, faith-based or other social networks) immediately available to prevent them from moving to an emergency shelter or a place not meant for human habitation; and
- Meeting at least one of a set of possible conditions including a history of frequent moves, living doubled up, facing a loss of housing within 21 days, living in a hotel or motel (not paid for by a non-profit or government agency), living in overcrowded conditions or residing in a publicly funded institution.

ESG-funded programs must document that the household would experience homelessness “*but for*” the ESG assistance, i.e. *a household would require emergency shelter or would otherwise become literally homeless in the absence of ESG assistance.*

In addition, a child or youth who does not qualify as “at-risk of homelessness” under this definition, but qualifies as “homeless” under the Runaway and Homeless Youth Act, the Head Start Act, the Violence Against Women Act of 1994, or the Food and Nutrition Act of 2008, is considered to meet the “at-risk” definition. A child or youth who does not qualify as “at-risk of homelessness” under this definition, but qualifies as “homeless” under the Educational section of the McKinney-Vento Homeless Assistance Act (which includes children and youth required to share housing to due loss of housing or economic hardship) also qualifies as “at-risk,” as does the parent(s) or guardian(s) of that child or youth if living with the child or youth.

The table below provides a summary of each of the above-referenced categories of homeless and at-risk status in the context of qualifying for each ESG eligible program component type.

Program Type	Category of Homelessness
Emergency Shelter	Category 1- Literally Homeless Category 2- Imminent Risk of Homeless Category 4- Fleeing/Attempting to Flee Domestic Violence
Rapid- Re-Housing	Category 1: Literally Homeless Category 4- Fleeing/Attempting to Flee Domestic Violence (where the individual or family also meets the criteria for Category 1)
Homeless Prevention	Category 2: Imminent Risk of Homeless (below 30% AMI) Category 4: Fleeing/Attempting to Flee Domestic Violence (must be below 30% AMI) Meet category of "At-Risk" of Homelessness

VI. GUIDANCE ON SERVING PERSONS WHO MAY BE UNDOCUMENTED IMMIGRANTS

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA; "Welfare Reform") imposes restrictions on providing federal public benefits to undocumented immigrants. ESG recipients or subrecipients that are government entities must comply with this law and its procedures specifying how the inquiry into a person's citizenship or immigration status is to be conducted (i.e., Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of PRWORA).

However, for the purposes of ESG, subrecipients that are nonprofit charitable organizations are not required to have these procedures in place. ESG subrecipients that are nonprofit charitable organizations need not ask with regard to citizenship or immigration status; however, if it is its policy to ask, this policy must be consistent with the above-cited procedures and applied uniformly.

Therefore, if the ESG subrecipient asks one potential program participant, it must ask all – and may not knowingly provide ESG assistance to an undocumented person, unless it is necessary for protection of life and safety.

With regard to ESG rental and/or financial assistance, even if a household has a member that is an undocumented immigrant, such assistance may be pro-rated based on the eligible persons in the household, as not all members of the household need be eligible for assistance (including the head of household).

Under no circumstances are ESG subrecipients to knowingly provide federal public benefits to undocumented immigrants. ESG emergency shelter activities, however, are exempt from the requirements of this law, as these activities are short-term shelter, non-cash services, and are not means-tested and thus do not constitute "benefits."

With respect to its federally funded activities, the City of Oxnard and its subrecipients currently have in place plans to affirmatively further the purposes of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968). Moreover, undocumented immigrants have the same fair housing protections as citizens and legal immigrants and are members of one of the protected classes of the Fair Housing Act (i.e., national origin). ***ESG subrecipients that are nonprofit charitable organizations are strongly encouraged to not inquire regarding citizenship or immigration status.***

VII. DOCUMENTATION OF HOMELESS/AT-RISK STATUS

Homeless or at-risk status must be documented to determine that an individual or family is eligible for assistance. The primary and preferred method of documentation is through “third-party” verification—whereby another individual or organization provides written documentation certifying their knowledge of the potential participants’ housing or homeless status. For example, such third-party documentation may come from an outreach worker or another program or shelter.

Secondly, in the event that third-party documentation may be unavailable, the intake worker’s observation may be used and should also be documented.

Finally, a program may accept self-certification from the person seeking assistance if no other documentation can be obtained.

While third-party documentation is preferred and should be sought whenever possible, lack of third-party documentation must not prevent an individual or family from being immediately admitted to emergency shelter, receiving street outreach services, or being immediately admitted to shelter or receiving services provided by a victim service provider.

Records contained in an HMIS or comparable database used by victim service or legal service providers are acceptable evidence of third-party documentation and intake worker observations.

VIII. INCOME ELIGIBILITY FOR HOMELESS PREVENTION AND RAPID RE-HOUSING

In addition to documenting homeless or at-risk status, households served in a homelessness prevention component must income-qualify to be at or below 30 percent of the area median income. This level of income is part of the definition of “at-risk” which qualifies most households for prevention services. If a participant qualifies under the “Imminent Risk of Homelessness” or “Fleeing/Attempting to Flee Domestic Violence” income eligibility must also be verified at the 30% AMI level.

The HUD protocol for calculating income is as follows:

a) Determining gross annual income

Annual income should include the total of all income received by any household member except children under the age of 18, and is estimated based on recent past income. The rental calculation, however, should be based on projected income to be received over the coming year; so, if a household's income has recently changed or is anticipated to change this should be taken into consideration.

Income should be calculated using the instructions below.

Gross income includes wages, disability benefits, unemployment benefits, social security or other retirement benefits, CalWORKs benefits, and County Assistance Programs, for example, general relief, as well as various other less common income sources.

Employment income is based on "gross" income prior to any payroll deductions and also includes any bonuses, tips, overtime pay or other compensation. **Note: *if an SSI/SSDI recipient is having money withheld due to an overpayment or other penalty, the amount of the grant before the deduction is the amount that should be used when calculating income.***

Program staff should also be mindful of *certain forms of income that are excluded in calculating projected gross income.* These may include:

- Lump sum retroactive SSI payments;
- Food Stamps and Women with Infants and Children (WIC) program benefits
- Income of a live-in aide;
- Temporary, non-recurring payments, e.g., one-time gifts and income that is not expected to be available in the future, seasonal employment, holiday employment, etc.;
- Income derived from job training programs or small stipends less than \$200 in value;
- Employment income by household members under the age of 18;
- Student Financial Aid as long as participant is in school and qualifies as full-time in accordance with school standards for meeting this criterion.

DOCUMENTING INCOME

For each adult program participant the program operator must maintain an income evaluation form and source documents (e.g., most recent wage statement, unemployment compensation statement, public benefits statement, bank statement) for all assets and income.

If source documents are unobtainable: Obtain a written statement by the relevant third party (e.g., employer, government benefits administrator) or written certification by the intake staff of oral verification by a third party of the income received.

If source documents and third-party verification are unobtainable: Obtain a written certification by the program participant of the amount of income that the program participant is reasonably expected to receive over the coming three-month period.

The following are examples of acceptable proof of income. This is not a complete list of all acceptable documentation types but describes many of the most common sources of income:

Bank statements – Two months of most current bank statements from all adult members of the household.

Public benefits (i.e. CalWORKs, SSI, SSDI, Child Support, Veterans benefits, etc.) – Verification letter/statement from a caseworker of the agency indicating the amount of benefits received, and the start date of the benefit. If out-of-date benefits income is a barrier to obtaining available housing, applications can be processed with SSI/SSDI income verification that is up to 12 months old.

Employment wages – Two months of most current consecutive paystubs.

New employment wages (if a participant recently started a new job and has not received at least one month of paystubs) – Employment verification letter from employer, stating gross wages and hours, overtime pay for this year, or annual salary.

Seasonal/irregular employment (if a participant is seasonally/irregularly employed) – Most current Federal Income Tax Return Form 1040; AND most current two months of paystubs for the employment; AND employment verification from employer, which indicates the period of the year that the participant will work as a seasonal employee, or discontinued employment.

Self-reporting income – For self-declaration income such as recycling, day labor, etc., most current Federal Income Tax Return Form 1040 with 1040 Schedule C and/or Form 8829 and self-declaration verification letter from customer/client or certified self-affidavit letter. For self-employment (i.e. housekeeping, child care, contract labor), a verification letter from customer/client to prove continuing, discontinued, or temporarily discontinued self-employment services.

Unemployment benefits – Unemployment benefits verification letter from EDD.

No income – All adults in the household who currently have no income must complete and sign a declaration that they have no form(s) of income.

Note that if a student age 18 and older is receiving financial aid, it is recommended that the provider obtain a current school schedule and school year financial aid letter. Although financial aid in the form of grants, school loans, work-study programs, etc., is not considered income as long as a participant is in school.

IX. PROHIBITION AGAINST INVOLUNTARY FAMILY SEPARATION-EMERGENCY SHELTER

Shelters that serve families with minor children under the age of 18 may not refuse to serve a family based on the age of children in the household.

IX. HOMELESS MANAGEMENT INFORMATION SYSTEMS (HMIS)

All projects funded with ESG funds, with the exception of certain victim services providers, must participate in the Homeless Management Information System (HMIS) under the umbrella of the Ventura County Continuum of Care. HMIS data is necessary to meet several federal reporting requirements.

All new project entries must be recorded in HMIS, ensuring that the date of entry corresponds correctly to the date that the participant was found to be eligible and admitted to the program in question.

Prior to entering any program participant information into HMIS staff must ensure that a completed consent form for collecting such data has been obtained for all adult members of the household before proceeding. ***If a client should decline to sign any related release forms, this should not be grounds for denial of services under ESG.***

In interfacing with HMIS, staff should also first conduct a search for the client in the database, and if the program participant already has a record in HMIS, update the information that has changed based on the HMIS intake form and enter the client into the program.

If the program participant does not have an HMIS record, create a new record for the client, including all information on the HMIS intake form, and enter the client into the appropriate program.

If the program participant's household consists of more than one person, all members of the household must be listed in the creation of the household for HMIS purposes. For each member of the household, make sure to check first to see if there is already an HMIS record for that person before creating a new one.

XI. PROGRAM PARTICIPANT INELIGIBILITY

ESG programs must keep records that not only demonstrate the eligibility of the participants that are served, but also the determination of ineligibility for any individual or family refused services. For each individual and family determined ineligible to receive ESG assistance, the record must include documentation of the reason for that determination.

XII. PROGRAM DIFFERENCES BETWEEN HOMELESSNESS PREVENTION AND RAPID RE-HOUSING

The primary difference between the rapid re-housing and homelessness prevention components is the initial housing status of households served.

When relocation and stabilization services are provided to individuals and families that are sleeping in emergency shelter, on the streets, or another place not meant for human habitation, the component is rapid re-housing.

When the same services are provided to households that are at imminent risk of homelessness, fleeing domestic violence and not living in a shelter, on the streets or another place not meant for human habitation, or to households that meet the definition of “at-risk of homelessness,” the component is homelessness prevention.

The housing or homeless status determined at eligibility governs whether the assistance provided is homelessness prevention or rapid re-housing. ***For the duration of time the participant is in the program, the assistance type will correspond to their housing/homeless status at entry.***

Under certain circumstances, some programs may serve both homeless and at-risk households and therefore may provide homelessness prevention or rapid re-housing, depending on the participant household composition. Documentation of qualifying homeless status under each category is as follows.

For Rapid Re-housing, eligible categories are:

- ***Category 1*** – Literally Homeless
- ***Category 4*** – Fleeing/Attempting to Flee Domestic Violence (where the individual or family also meets the criteria for Category 1)

For Homeless Prevention eligible categories are:

- ***Category 2*** – Imminent Risk of Homeless (must be below 30% AMI)
- ***Category 4*** – Fleeing/Attempting to Flee Domestic Violence (must be below 30% AMI)
- ***At-risk of Homelessness***

The costs of homelessness prevention are only eligible to the extent that the assistance is necessary to help the program participant regain stability in the program participant’s current permanent housing or move into other permanent housing and achieve stability in that housing. Eligibility documentation for homeless prevention assistance, described above, includes ensuring the household is below 30 percent of the area median income and does not have the resources or support networks necessary to remain housed without assistance.

2. Overview of Eligible Activities

ESG-funded homelessness prevention and rapid re-housing assistance consists of two primary categories of support: Rental Assistance, and Housing Relocation and Stabilization Services. Housing Relocation and Stabilization Services funding can be used for certain specified types of direct costs to support participants (Financial Assistance) and for the costs associated with staffing or contracting with other providers to provide services to program participants as reflected below.

For ***Rental Assistance eligible costs*** include:

- Short-term rental assistance
- Medium-term rental assistance

- Rental arrears

For ***Housing Relocation and Stabilization Services eligible costs*** include financial assistance and Services:

Financial Assistance may include,

- Rental application fees
- Security deposits (not to exceed two months' rent)
- Last month's rent
- Utility deposits
- Utility payment
- Moving costs

Services may include,

- Housing search and placement
- Housing stability case management
- Mediation
- Legal services
- Credit repair

Financial Assistance and Rental Assistance

ESG funds may be used to pay for a variety of housing-related expenses, both one-time costs and certain repeating costs, as necessary to secure and/or stabilize housing. As noted in the section on Requirements for Housing below, ***none of these costs should be incurred before it is determined that the program participant's housing meets habitability requirements as well as rent reasonableness and fair market rent (FMR) requirements where applicable.***

a) One-time financial assistance

ESG funds may be used to pay housing owners, utility companies, and other third parties for one-time costs that help the participant secure housing. ***All payments must be made to a third party, such as a landlord, moving company or utility company.***

Rental application fees – ESG funds may pay for the rental housing application fee that is charged by the owner to all applicants; programs must verify that this is a requirement of all applicants prior to making payment

Moving and storage costs – ESG funds may pay for moving costs, such as truck rental or hiring a moving company. This assistance may include payment of temporary storage fees for up to three (3) months, provided that the fees are accrued after the date the program participant begins receiving case management or other supportive services.

Payment of temporary storage fees in arrears is not eligible.

Under no circumstances may a program provide financial assistance directly to a program participant, even as reimbursement for expenses undertaken by the participant to secure housing.

b) Deposits and Last Month's Rent

- ***Security deposits*** – ESG funds may pay for a security deposit that is equal to no more than two months' rent (*Note: landlords may not charge additional fees for service animals, beyond a standard fee or security deposit that applies to all tenants who do not have pets; therefore, ESG funds may not be used for this type of expense.*)
- ***Utility deposits*** – ESG funds may pay for a standard utility deposit for gas, electric, water, or sewage (the deposit must be standard and required of all customers).

If a program participant leaves the program but remains in the unit for which the deposits were paid, the landlord will continue to hold the security deposit as provided in the lease, and the utility company will continue to hold any utility deposit as provided in the utility contract.

State or local law and the terms of the lease and utility contract will dictate what the landlord and utility company may do with their respective deposits when the tenant leaves the unit and the utility contract terminates.

Programs need not require that security or utility deposits be returned to the program when the participant leaves the program, or when the lease or utility contract terminates. Any repayment of a security or utility deposit is considered program income and must be used as match in accordance with match regulations; it must also be tracked in accordance with ESG recordkeeping requirements for match and program income.

- ***Last month's rent*** – If necessary to obtain housing for a program participant, the last month's rent may be paid from ESG funds to the owner of that housing at the time the owner is paid the security deposit and the first month's rent. ***This assistance must not exceed one month's rent and must be included in calculating the program participant's total rental assistance, which cannot exceed 24 months during any three-year period.***

c) Payment in Arrears. Back-Rent, Utilities

If participants owe back rent or utility payments ("arrears") and failure to pay will either cause them to lose their current housing and become homeless, or will make it impossible for them to move into new housing, payment of arrears is eligible under ESG. ***Arrears payment is capped at a maximum of six months, and partial payments for each month count as a full month.***

- ***Rental arrears*** – Payment of rental arrears must be a one-time payment, including any late fees on those arrears. Programs must have documentation and written evidence of the amount due.

- **Utility arrears** – *Arrears for unpaid gas, electric, water, and sewage may only be provided if the program participant or a member of the same household has an account in his or her name with a utility company or proof of responsibility to make utility payments.* Programs must have written evidence of the amount due and be able to demonstrate that the amount paid covers six months or less of arrears.

d) Recurring Financial or Rental Assistance

- **Monthly utility payments** – If needed to support housing stability, programs may use ESG funds to cover all or a portion of a participant's utility payments, provided these are not covered by another source.
- **Monthly rental assistance** – Rental assistance refers to rent payments made on behalf of an eligible participant for the rent on an eligible unit. *Rental assistance is considered "short-term" if it lasts for three (3) months or less, and "medium-term" if it lasts anywhere from between four (4) to 24 months in duration.*

Monthly financial or rental assistance is capped at a total of 24 months in three (3) years. This includes any payments made for arrears, and any advance payment of last month's rent.

e) Program Participant Share of Costs

ESG regulations allow the City to require program participants to share in the costs of rent or utilities. The City has established that ESG subrecipients may provide deep or shallow subsidies (under which participants pay a portion of the rental costs), pay 100 percent of the rental costs, a set dollar amount, or graduated or declining subsidies. *Agency policies in this regard must be included in the agency's ESG written standards.*

f) Maximum Assistance

Each ESG subrecipient may set a maximum number of months that a program participant may receive rental/financial assistance, or a maximum number of times that a program participant may receive rental/financial assistance. The total period for which any program participant may receive ESG assistance shall not exceed 24 months in three (3) years. In calculating maximum assistance, this 24-month total includes any payments for arrears and advance payment of last month's rent upon move in.

i) Changes in Household Composition

The limits on rental/financial assistance apply to the total assistance an individual may receive, either as an individual or as part of a family. For example, *a person who is a member of an assisted household and then leaves to form a new household is not eligible for additional assistance that would exceed the maximum time frame.*

ii) Prohibition on Use With Other Subsidies

Except for a one-time payment of rental arrears on the tenant's portion of the rental payment, *rental assistance cannot be provided to a program participant who is receiving tenant-based rental assistance, or living in a housing unit receiving project-based rental assistance or operating assistance, through other public sources, for example, Section 8 rental assistance payments or TBRA under HOME.*

Rental assistance may not be provided to a program participant who has been provided with replacement housing payments under the Uniform Relocation Act (URA) during the period of time covered by the URA payments.

Agencies should inquire and document that the program participant is not receiving other assistance for rental costs or costs otherwise eligible under financial assistance prior to providing any direct client benefit under ESG.

g) Conflict of Interest

Subrecipients may not require that an individual or family occupy housing owned by the City of Oxnard or the ESG subrecipient offering the assistance as a condition of receiving the assistance. *In addition, ESG subrecipients cannot provide homelessness prevention assistance for units owned by the subrecipient.*

4. Requirements for Housing

a) Habitability Standards

Programs may not use ESG funds to help a program participant remain or move into housing that does not meet minimum habitability requirements. In practice, this means that for all participants assisted, the unit they currently reside in if remaining there with homelessness prevention assistance, or the unit they will reside in, must be inspected for minimum habitability, and in most cases, the potential presence lead-based paint. Assessment of habitability standards is an ESG-eligible cost.

ESG habitability standards cover relevant areas of review to ensure that the housing is minimally habitable. These may minimally include:

Structure and materials – The structures must be structurally sound to protect residents from the elements and not pose any threat to the health and safety of the residents.

Space and security – Each resident must be provided adequate space and security for themselves and their belongings, and an acceptable place to sleep.

Interior air quality – Each room or space must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.

Water supply – The water supply must be free from contamination.

Sanitary facilities – Residents must have access to sufficient sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.

Thermal environment – The housing must have any necessary heating/cooling facilities in proper operating condition.

Illumination and electricity – The structure must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the structure.

Food preparation – All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.

Sanitary conditions – The housing must be maintained in a sanitary condition.

Fire safety – There must be a second means of exiting the building in the event of fire or other emergency.

In addition, each unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each occupied level of the unit. Smoke detectors must be located, to the extent practicable, in a hallway adjacent to a bedroom. If the unit is occupied by hearing impaired persons, smoke detectors must have an alarm system designed for hearing-impaired persons in each bedroom occupied by a hearing-impaired person.

With regard to public areas, all housing must be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

Habitability inspections must be conducted by a qualified ESG recipient or subrecipient staff or contractor. ***Potential program participants may not conduct inspections.***

h) Lead-based Paint Remediation and Disclosure

ESG regulations require programs to address potential lead-based paint hazards in HUD-assisted housing. The standards apply to any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling or SRO unit.

Properties that have been inspected according to HUD regulations and certified as having no lead-based paint and properties in which all lead-based paint was identified and removed according to HUD standards are also exempt.

If the program is providing rental assistance and the dwelling unit will be occupied by a child less than six years of age, the ESG subrecipient, or contractor must conduct a visual inspection in order to identify any deteriorated paint. If any hazards are identified the property owner must

stabilize any deteriorated paint, and the unit must be cleared for occupancy by a trained or certified inspector. Ongoing lead-based paint maintenance activities must be incorporated into regular building operations. Further actions are required if a child less than six is identified as having an environmental intervention blood-lead level.

In order to be qualified to conduct a visual inspection, staff must complete a 20-minute online training at www.hud.gov/offices/lead/training/visualassessment/h00101.htm.

ii) Habitability Versus HQS

Housing Quality Standards (HQS) is a standard used in many HUD programs. If the ESG-subrecipient conducts HQS, this inspection will be accepted. If another agency that is certified to conduct HQS inspects the unit, for example a local housing authority, and provides a copy of the inspection report to the ESG subrecipients, this is also acceptable as long as the inspection is conducted before assistance is offered. Also, if an ESG-funded program is providing deposit assistance for a VASH or Shelter Plus Care client, the program may accept the inspection from this agency as well if they should conduct one independently. This should be noted in the program file, however.

b) Additional Requirements when Providing Rental Assistance

All units must meet the habitability requirements described above. For participants to receive rental assistance, additional requirements regarding the rent and the terms of occupancy apply.

i) Unit location

A program participant who receives rental assistance may select a housing unit in which to live and may move to another unit or building and continue to receive rental assistance, as long as the participant continues to meet the program requirements, and the unit meets all of the requirements listed below.

City of Oxnard ESG permits programs to use ESG funds outside of Oxnard in other areas of Ventura County, as long as the use is considered to benefit Oxnard residents. If an Oxnard resident is eligible for rapid re-housing assistance but wants to live in an area within Ventura County that is outside Oxnard, ESG funds may be used outside the jurisdiction for this purpose.

ii) Fair Market Rents and Rent Reasonableness

ESG programs must ensure rents do not exceed the lesser of current Fair Market Rent as established for the City of Oxnard, or the rent reasonableness standard. ***If the gross rent for the unit exceeds either, ESG subrecipients are prohibited from using ESG funds for any portion of the rent, even if the household is willing and/or able to pay the difference.*** ESG programs must perform both a rent reasonableness determination and document that the rent falls at or below the applicable Fair Market Rent ***on every unit assisted with rental assistance***, whether for homelessness prevention or rapid re-housing. If a participant is provided with first month's rent

as part of move-in assistance, this payment is considered rental assistance and is subject to the rent reasonableness and FMR standards.

The FMR and rent reasonableness standard requirement does not apply when a program participant receives only financial assistance or services under housing stabilization and relocation services. This includes rental application fees, security deposits, an advance payment of last month's rent, utility payments/deposits, and/or moving costs, housing search and placement, housing stability case management, landlord-tenant mediation, legal services, and credit repair.

As a matter of practicality, however, if the household were also receiving ongoing rental assistance, the amount of the deposit and/or last month's would be limited based on these standards. Caution should be used when providing assistance that exceeds the standard for rental assistance even if used for one-time move-in assistance only, as the provider would be prohibited from providing additional assistance in the future if the household subsequently requires additional assistance.

Rent reasonableness means that the total rent charged for a unit must be reasonable in relation to the rents being charged during the same time period for comparable units in the private market and must not be in excess of rents being charged by the owner during the same time period for comparable units not being subsidized through rental assistance.

To make this determination, ***subrecipients should consider:***

- ***The location, quality, size, type, and age of the unit;*** and
- ***Any amenities, housing services, maintenance and utilities to be provided by the owner.***

Comparable rents can be checked by using a market study, by reviewing comparable units advertised for rent, or with a note from the property owner verifying the rents paid in other comparable units. Note that not every element in the suggested list of things to check for must be known to establish a comparable unit.

The ***Fair Market Rent (FMR)*** is a benchmark established by HUD for specific geographic regions. For ESG, the FMR is the maximum rent permitted even if other similar units rent for more.

Programs must ensure that they are using the FMRs in effect at the time of their determination. FMRs for each fiscal year can be found by visiting HUD's website at:

www.huduser.org/portal/datasets/fmr.html and clicking on the current "Individual Area Final FY20XX FMR Documentation" link.

The FMR used for a household in shared housing is the lower of the FMR for the family unit size or the pro-rata share of the FMR for the shared housing unit size. The pro-rata share is calculated by dividing the number of bedrooms available for occupancy by the assisted family by the total number of bedrooms in the unit. For example, in the case of a single person household renting

one room in a 4-bedroom house, the FMR used would be the lower of the 1-bedroom FMR or the pro-rata share of the 4-bedroom FMR (1/4 of the 4-bedroom FMR).

For purposes of calculating whether a rent is within the FMR, the rent is equal to the sum of the total monthly rent for the unit, any fees required for occupancy under the lease (other than late fees and pet fees) and, if the tenant pays separately for utilities, the monthly allowance for utilities established by the Public Housing Authority for the area in which the housing is located. Utilities include gas, electric, water, sewage and trash disposal but do not include the cost of a telephone line, Internet or cable television.

iii) Lease

Each program participant receiving rental assistance must have a legally binding, written lease for the rental unit, unless the assistance is solely for rental arrears. The lease must be between the owner and the program participant. If a program participant will be renting a bedroom in a single-family home, apartment, or rooming house, the participant must have a lease with the owner. ***Program participants are not permitted to receive ESG rental assistance if they are subleasing from another renter.***

In cases where a program participant is renting a room from a friend or family member, note that ***although ESG regulations do not prohibit renting a room in the house of a family member or friend with ESG funds, it may be difficult to demonstrate that the potential program participant has no other resources and support networks if they have a family member or friend with an extra room in their home.*** One key factor to consider is whether the family member or friend has been renting out the bedroom in the recent past.

Since this type of arrangement has a high potential for fraud, it is critical that the provider thoroughly document in the participant's case file that all eligibility requirements have been met.

Where the program is only providing assistance for rental arrears, an oral agreement may be accepted in place of a written lease, if the agreement gives the program participant an enforceable leasehold interest under state law and the agreement and rent owed are sufficiently documented by the owner's financial records, rent ledgers, or canceled checks.

iv) Rental Assistance Agreement

ESG subrecipients must enter into a rental assistance agreement with owners before making any rental assistance payments. The rental assistance agreement should ensure that the owner is apprised of the nature of the program, the anticipated support to be provided to the participant, and the manner in which the landlord may contact the program if there are concerns.

The rental assistance agreement must also notify the owner that, while the agreement is in effect, the owner must give the program a copy of any notice to the program participant to vacate the housing unit, or any complaint used under state or local law to commence an eviction action against the program participant.

v) Prohibition on using ESG for late payments

The program must make timely payments to each owner in accordance with the rental assistance agreement. The rental assistance agreement must contain the same payment due date, grace period, and late payment penalty requirements as the program participant's lease. ***The program is solely responsible for paying late payment penalties that it incurs with non-ESG funds.***

5. Housing Relocation and Stabilization Services – Services Costs

ESG funds may be used to provide specific supportive services to eligible households. These services may be provided with or without the provision of financial or rental assistance, for a maximum of 24 months.

a) Housing stability case management

ESG funds may be used to pay costs of assessing, arranging, coordinating, and monitoring the delivery of individualized services to facilitate housing stability for a program participant who resides in permanent housing, or to assist a program participant in overcoming immediate barriers to obtaining housing.

For rapid re-housing programs, case management assistance cannot exceed 30 days during the period the program participant is seeking permanent housing. Whether paid for with ESG funds or not, housing stability case management should be provided as needed to support households to regain housing stability and link them to other services in the community.

The program must, at minimum, develop a plan to assist the program participant to retain permanent housing after the ESG assistance ends, taking into account all relevant considerations, such as the program participant's current or expected income and expenses; other public or private assistance for which the program participant will be eligible and likely to receive; and the relative affordability of available housing in the area.

Case management services are intended to be flexible and respond to the participant's needs, while taking advantage of other services in the community as much as possible. ***During their enrollment in the program, participants must meet with a case manager not less than once per month to assist the program participant in ensuring long-term housing stability.***

Programs are exempt from this requirement if the Violence Against Women Act of 1994 or the Family Violence Prevention and Services Act prohibit the program from making housing conditional on the participant's acceptance of services.

b) Housing search and placement

For participants who need assistance finding or securing housing, ESG funds may support the services or activities necessary to assist them in locating, obtaining, and retaining suitable permanent housing. These may include:

- Assessment of housing barriers, needs, and preferences;
- Development of an action plan for locating housing;
- Housing search;
- Outreach to and negotiation with owners;
- Assistance with submitting rental applications and understanding leases;
- Assessment of housing for compliance with Emergency Solutions Grant (ESG) requirements for habitability, lead-based paint, and rent reasonableness/FMR as described above; assistance with obtaining utilities and making moving arrangements;
- Tenant counseling.

c) Mediation

ESG funds may pay for mediation between the program participant and the owner or person(s) with whom the program participant is living, *provided that the mediation is necessary to prevent the program participant from losing permanent housing in which the s/he currently resides.*

d) Credit repair

ESG funds may pay for credit counseling and other services necessary to assist program participants with critical skills related to household budgeting, managing money, accessing a free personal credit report, and resolving personal credit problems. *This assistance does not include the payment or modification of a debt.*

e) Legal services

ESG funds may pay for certain legal services, provided that the services are necessary to resolve a legal problem that prohibits the program participant from obtaining permanent housing or will likely result in the program participant losing the permanent housing in which the s/he currently resides. *ESG funds may be used only for these services to the extent that other appropriate legal services are unavailable or inaccessible within the community.*

- *Eligible subject matters* are landlord/tenant matters; child support; guardianship; paternity; emancipation; legal separation; orders of protection and other civil remedies for victims of domestic violence, dating violence, sexual assault, and stalking; appeal of veterans and public benefit claim denials; and the resolution of outstanding criminal warrants.
- *Eligible costs* are the hourly fees for legal advice and representation by attorneys licensed and in good standing with the bar association of the state in which the services are provided, and by person(s) under the supervision of the licensed attorney, regarding matters that interfere with the program participant's ability to obtain and retain housing.

Fees based on the actual service performed (i.e., fee for service) are also eligible, but only if the cost would be less than the cost of hourly fees. Filing fees and other necessary court costs are also eligible. If the subrecipient is a legal service provider and performs the services itself, the eligible costs are the subrecipient's employees' salaries and other costs necessary to perform the services. Component services or activities may include client intake, preparation of cases for trial, provision of legal advice, representation at hearings, and counseling.

Legal services for immigration and citizenship matters and issues relating to mortgages are ineligible costs. Retainer fee arrangements and contingency fee arrangements are ineligible costs.

6. Reevaluation

The purpose of the homelessness prevention and rapid re-housing components is to provide support to participants to achieve housing stability—but not to provide more support than is needed. Reevaluation of need and eligibility, also referred to as recertification, is a key aspect of both components: ***Homelessness prevention programs must reevaluate the program participant's eligibility and the types and amounts of assistance the program participant needs not less than once every three months. For rapid re-housing, the program must reevaluate at least annually but may do so more frequently.***

At a minimum, each reevaluation of eligibility must establish that:

- The homelessness prevention program participant does not have an annual income that exceeds 30 percent of median family income for the area, as determined by HUD; and
- The program participant lacks sufficient resources and support networks necessary to retain housing without ESG assistance

The program may require each program participant to notify it regarding changes in income or other circumstances (e.g., changes in household composition) that affect the participant's need for assistance under ESG. When notified of a relevant change, the program must reevaluate the program participant's eligibility and the amount and types of assistance the program participant needs.

Each reevaluation of eligibility must establish that the program participant has an annual income that for homeless prevention activities, does not exceed 30 percent of median family income for the area. If the reevaluation shows that the program participant is no longer eligible for ESG, assistance must be stopped at that time.

Annual Update in HMIS: At least annually, while a participant is enrolled in a program, information must be updated in HMIS. Information that must be included at the time of the update includes income, benefits receipt, and employment status. Other changes such as the development of a disabling condition or a change in household composition should be recorded at this time if not previously recorded.

D. ELIGIBLE ACTIVITIES AND PROGRAM REQUIREMENTS FOR EMERGENCY SHELTER

ESG funds may be used to provide essential services to families and individuals in emergency shelter and to operate emergency shelters.

1. Essential Services

The following service costs are eligible and considered to be essential services for persons who are living in emergency shelter.

i) Case management

Eligible costs include the cost of assessing housing and service needs as well as arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant. This includes the following activities:

- Using the required centralized or coordinated assessment system;
- Conducting the initial evaluation including verifying and documenting eligibility
- Counseling;
- Developing, securing and coordinating services and obtaining federal, state, and local benefits;
- Monitoring and evaluating program participant progress;
- Providing information and referrals to other providers;
- Providing ongoing risk assessment and safety planning with victims of domestic violence, dating violence, sexual assault and stalking; and
- Developing an individualized housing and service plan, including planning a path to permanent housing stability.

ii) Child care

The costs of child care for program participants, including providing meals and snacks, and comprehensive and coordinated sets of appropriate developmental activities, are eligible. The children must be under the age of 13, unless they are disabled. Disabled children must be under the age of 18. The child-care center must be licensed by the jurisdiction in which it operates in order for its costs to be eligible.

iii) Education services

When necessary for the program participant to obtain and maintain housing, the costs of improving knowledge and basic educational skills are eligible. Services include instruction or training in consumer education, health education, substance abuse prevention, literacy, English as a Second Language, and General Educational Development (GED). Component services or

activities are screening, assessment and testing; individual or group instruction; tutoring; provision of books, supplies and instructional material; counseling; and referral to community resources.

iv.) Employment assistance and job training

The costs of employment assistance and job training programs are eligible, including classroom, online, and/or computer instruction; on-the-job instruction; and services that assist individuals in securing employment, acquiring learning skills, and/or increasing earning potential. The cost of providing reasonable stipends to program participants in employment assistance and job training programs is an eligible cost.

Learning skills include those skills that can be used to secure and retain a job, including the acquisition of vocational licenses and/or certificates. Services that assist individuals in securing employment consist of employment screening, assessment, or testing; structured job skills and job-seeking skills; special training and tutoring, including literacy training and prevocational training; books and instructional material; counseling or job coaching; and referral to community resources.

v) Transportation

Eligible costs consist of the transportation costs of a program participant's travel to and from medical care, employment, child care, or other eligible essential services facilities. These costs may include the following:

- The cost of a program participant's travel on public transportation;
- If service workers use their own vehicles, mileage allowance for said workers to visit program participants;
- The cost of purchasing or leasing a vehicle for the program in which staff transport;
- program participants and/or staff serving program participants, and the cost of gas, insurance, taxes, and maintenance for the vehicle;
- The travel costs of program staff to accompany or assist program participants in using public transportation.

b) Additional services that are eligible if not otherwise available

The following additional services are also eligible to be covered with ESG funds for residents of an emergency shelter, but only to the extent that the services are not otherwise available or accessible within the community.

i) Legal services

Component services or activities may include client intake, preparation of cases for trial, provision of legal advice, representation at hearings, and counseling.

- **Eligible subject matters** are child support; guardianship; paternity; emancipation; legal separation; orders of protection and other civil remedies for victims of domestic violence, dating violence, sexual assault, and stalking; appeal of veterans and public benefit claim denials; and the resolution of outstanding criminal warrants.
- **Eligible costs** are the hourly fees for legal advice and representation by attorneys licensed and in good standing with the bar association of the state in which the services are provided, and by person(s) under the supervision of the licensed attorney, regarding matters that interfere with the program participant's ability to obtain and retain housing. Fees based on the actual service performed (i.e., fee for service) are also eligible, but only if the cost would be less than the cost of hourly fees. Filing fees and other necessary court costs are also eligible. If the subrecipient is a legal services provider and performs the services itself, the eligible costs are the programs employees' salaries and other costs necessary to perform the services.

Legal services for immigration and citizenship matters and issues relating to mortgages are ineligible costs. Retainer fee arrangements and contingency fee arrangements are ineligible costs.

ii) Outpatient health services

Eligible treatment consists of assessing a program participant's health problems and developing a treatment plan; assisting program participants to understand their health needs; providing directly or assisting program participants to obtain appropriate medical treatment, preventive medical care, and health maintenance services, including emergency medical services; providing medication and follow-up services; and providing preventive and non-cosmetic dental care.

Eligible costs are for the direct outpatient treatment of medical conditions and are provided by licensed medical professionals.

iii) Life skills training

The costs of teaching critical life management skills that may never have been learned or have been lost during the course of physical or mental illness, domestic violence, substance use, and homelessness are eligible costs. ***These services must be necessary to assist the program participant to function independently in the community.***

Component life skills training are budgeting resources, managing money, managing a household, resolving conflict, shopping for food and needed items, improving nutrition, using public transportation, and parenting.

iv) Mental health services

Mental health services are the application of therapeutic processes to personal, family, situational, or occupational problems in order to bring about positive resolution of the problem or improved individual or family functioning or circumstances. Problem areas may include family

and marital relationships, parent-child problems, or symptom management. Eligible treatment consists of crisis interventions; individual, family, or group therapy sessions; the prescription of psychotropic medications or explanations about the use and management of medications; and combinations of therapeutic approaches to address multiple problems.

Eligible costs are the direct outpatient treatment by licensed professionals of mental health conditions.

v) Substance abuse treatment services

Eligible substance abuse treatment services are designed to prevent, reduce, eliminate, or deter relapse of substance abuse or addictive behaviors and are provided by licensed or certified professionals. Eligible treatment consists of client intake and assessment, and outpatient treatment for up to 30 days.

Group and individual counseling and drug testing are eligible costs. *Inpatient detoxification and other inpatient drug or alcohol treatment are not eligible costs.*

c) Services for special populations

ESG funds may be used to provide services for homeless youth, victim services, and services for people living with HIV/AIDS, so long as the costs of providing these services are otherwise eligible under one of the categories above.

The term *victim services* means services that assist program participants who are victims of domestic violence, dating violence, sexual assault, or stalking, including services offered by rape crisis centers and domestic violence shelters, and other organizations with a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

iii) Shelter Operations

a) Activities associated with the running of a shelter housing homeless people are eligible

Eligible costs are the costs of maintenance (including minor or routine repairs), rent, security, fuel, equipment, insurance, utilities, food, furnishings, and supplies necessary for the operation of the emergency shelter.

b) Hotel or motel vouchers

Where no appropriate emergency shelter is available for a homeless family or individual, eligible costs may also include a hotel or motel voucher for that family or individual.

d) Serving Young Children

The Early Childhood Self-Assessment Tool for Family Shelters, developed by the Administration for Children and Families at the U.S. Department of Health and Human Services

(HHS), is intended to help shelter staff ensure their facilities are safe and appropriate for the development of young children. This tool includes recommendations and information on how the shelter environment, programming, policies, and staff can support early childhood safety and development.

This may be found at:

https://www.acf.hhs.gov/sites/default/files/eecd/ech_family_shelter_self_assessment_tool_120114_final.pdf

e) **Maximum length of stay**

The maximum length of stay will be no longer than six months, unless the ESG subrecipient determines, on a case-by-case basis, that a longer stay is appropriate. The basis for the exception to the six-month maximum should be documented in the case file. *No persons who are facing or suspect they may face a threat of violence should be discharged into an unsafe condition.*

iv) **Habitability Standards for Emergency Shelters**

a) **Minimum standards**

Any emergency shelter that receives assistance for shelter operations must also meet the following minimum safety, sanitation, and privacy standards. The recipient may also establish standards that exceed or add to these minimum standards.

- **Structure and materials** – The shelter building must be structurally sound to protect residents from the elements and not pose any threat to the health and safety of the residents. Any renovation (including major rehabilitation and conversion) carried out with ESG assistance must use ENERGY STAR and WaterSense products and appliances.
- **Access** – The shelter must be accessible in accordance with Section 504 of the Rehabilitation Act (29 USC. 794) and implementing regulations at 24 CFR part 8 the Fair Housing Act (42 USC. 3601 et seq.) and implementing regulations at 24 CFR part 100; and Title II of the Americans with Disabilities Act (42 USC. 12131 et seq.) and 28 CFR part 35; where applicable. See sections in this manual regarding fair housing and Section 504 for additional information.
- **Space and security** – Except where the shelter is intended for day use only, the shelter must provide each program participant with an acceptable place to sleep and adequate space and security for themselves and their belongings.
- **Interior air quality** – Each room or space within the shelter must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.
- **Water supply** – The shelter's water supply must be free of contamination.

- **Sanitary facilities** – Each program participant in the shelter must have access to sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.
- **Thermal environment** – The shelter must have any necessary heating/ cooling facilities in proper operating condition.
- **Illumination and electricity** – The shelter must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the shelter.
- **Food preparation** – Food preparation areas, if any, must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.
- **Sanitary conditions** – The shelter must be maintained in a sanitary condition.
- **Fire safety** –

There must be at least one working smoke detector in each occupied unit of the shelter. Where possible, smoke detectors must be located near sleeping areas.

- The fire alarm system must be designed for hearing-impaired residents.
- All public areas of the shelter must have at least one working smoke detector.
- There must also be a second means of exiting the building in the event of fire or other emergency.

b) Lead-based paint remediation and disclosure

Certain federal requirements related to lead-based paint apply to all shelters assisted under ESG programs. These facilities must be inspected to determine the possible presence of lead-based paint hazards to children and if hazards are present, remedial action must be taken.

Emergency shelters that fall under the definition of zero-bedroom dwellings are exempt under the statute. If the shelter does not qualify for the zero-bedroom exemption, it is covered by the regulation. A zero-bedroom dwelling is defined as “any residential dwelling in which the living areas are not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory or single-room occupancy housing, military barracks, and rentals of individual rooms in residential dwellings.”

If a program receives funds for a shelter with units having one or more bedrooms, for more than 100 days, it is required that it adopt and implement a policy that assures that the child-occupied spaces are lead safe.

6) COORDINATION AND LINKAGE REQUIREMENTS FOR ALL ESG-FUNDED PROGRAMS

ESG-funded programs are expected to maximize the use of their resources and assist participants to meet a range of needs by integrating services and supports with other homeless-targeted and mainstream programs as much as possible. ESG funded agencies should consult and confer with the Ventura County Continuum of Care Coordinated Entry System, *Pathways to Home*, to ensure that resources are being effectively and efficiently allocated to reduce duplication of effort and costs.

1. Coordination with Other Targeted Homeless Services

ESG subrecipients must coordinate and integrate, as much as possible, ESG-funded activities with other programs targeted to homeless people in the area covered by the Continuum of Care or area over which the services are coordinated to provide a strategic, community-wide system to prevent and end homelessness for that area. Federal programs of this type may include:

- CoC-funded programs including those formerly known as Shelter Plus Care and Supportive Housing Program;
- HUD—Veterans Affairs Supportive Housing (HUD-VASH);
- Education for Homeless Children and Youth Grants for State and Local Activities
- Healthcare for the Homeless;
- Programs for Runaway and Homeless Youth (RHY);
- Projects for Assistance in Transition from Homelessness (PATH);
- Services in Supportive Housing Grants;
- Emergency Food and Shelter Program (EFSP);
- Transitional Housing Assistance Grants for Victims of Sexual Assault, Domestic Violence, Dating Violence, and Stalking Program;
- Homeless Veterans Reintegration Program (HVRP);
- Domiciliary Care for Homeless Veterans Program;
- VA Homeless Providers Grant and Per Diem Program (GPD);
- Homeless Veterans Dental Program;
- Supportive Services for Veteran Families Program (SSVF); and
- Veteran Justice Outreach Initiative.

Additional state and local programs that may also be considered include:

- State of California Emergency Housing Assistance Program, (EHAP);
- Veterans Homeless and Housing Program (VHHP); and
- Local programs providing direct assistance to clients.

2. Coordination with Mainstream Resources

Subrecipients must coordinate and integrate, to the maximum extent practicable, ESG-funded activities with mainstream housing, health, social services, employment, education, and youth

programs for which families and individuals at-risk of homelessness and homeless individuals and families may be eligible. Examples of these programs may include:

- Public housing programs;
- Housing programs receiving tenant-based or project-based assistance under Section 8;
- Supportive Housing for Persons with Disabilities (Section 811);
- HOME Investment Partnerships Program;
- Temporary Assistance for Needy Families (TANF) – known as CalWORKs;
- Health-related Programs, for example Health Care for the Homeless;
- State Children’s Health Insurance Program (S-CHIP);
- Head Start;
- Mental Health and Substance Abuse Block Grants; and
- Services funded under the Workforce Investment Act (Ventura County Workforce Investment Board, WIB).

3. Participant Linkages

Programs funded with ESG must assist each program participant, as needed, to obtain the following.

a) Appropriate supportive services, including assistance in obtaining:

- permanent housing;
- medical health treatment;
- mental health treatment;
- counseling supervision; and
- other services essential for achieving independent living.

b) Other federal, state, local, and private assistance available to assist the program participant in obtaining housing stability, including:

- Medi-Cal
- Supplemental Nutrition Assistance Program (CalFRESH)
- Women, Infants and Children (WIC)
- Federal-State Unemployment Insurance Program
- Social Security Disability Insurance (SSDI)
- Supplemental Security Income (SSI)
- Child and Adult Care Food Program

4. Documentation of Coordination

For the coordination and linkages described in 1, 2, and 3 above, programs are encouraged to document formal relationships with other programs in the form of MOUs or other agreements,

and to record in participant files and case notes the referrals made and services received from the above mainstream programs.

7) EXIT REQUIREMENTS

1. HMIS Exit

When a participant leaves an ESG program, for any reason, the HMIS record must be updated to reflect their exit from the project, including the date that the participant was no longer enrolled in the project, and their destination. As with the entry, the required information must be entered for all members of a household. For adults, the record must also reflect their income, employment, and benefit receipt status at the time of the exit.

2. Termination

If a program participant violates program requirements, the program may terminate the assistance in accordance with a formal process established by the subrecipient that recognizes the rights of individuals affected. The program must exercise judgment and examine all extenuating circumstances in determining when violations warrant termination so that a program participant's assistance is terminated only in the most severe cases.

a) Ability to provide further assistance

Termination under this section does not bar the program from providing further assistance at a later date to the same family or individual.

b) Additional requirements for rapid re-housing or homelessness prevention

To terminate rental assistance or housing relocation and stabilization services to a program participant, the required formal process, at a minimum, must consist of:

- Written notice to the program participant containing a clear statement of the reason(s) for termination;
- A review of the decision, in which the program participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and
- Prompt written notice of the final decision to the program participant.

d) Termination of rental assistance

The rental assistance agreement with the owner must terminate and no further rental assistance payments under that agreement may be made if:

- The program participant moves out of the housing unit for which the program participant has a lease;
- The lease terminates and is not renewed; or

- The program participant becomes ineligible to receive ESG rental assistance.

8) ALLOWABLE COSTS

Emergency Solutions Grants (ESG) funds can be used to provide a wide range of services and supports under four program components: (1) Homelessness Prevention, (2) Rapid Re-housing, (3) Emergency Shelter and (4) HMIS. Certain administrative activities are also eligible.

1. General Information Regarding Eligible Costs

Employee compensation (including fringe benefits such as holiday, vacation, sick leave) and other overhead costs directly related to carrying out activities eligible under an ESG component are eligible costs. Determining how these staff costs should be allocated will depend on the type of assistance being provided to the program participant.

To allocate these costs, first determine the program component under which these costs fall, then allocate the costs to an activity within the component. For example, staff time expended on processing checks for utility payments for program participants could be eligible under the rapid re-housing component or the homelessness prevention component; the activity would be housing relocation and stabilization services.

For the salaries and related costs of staff that are not fully dedicated to a particular component, staff costs should be reimbursed in proportion to the actual hours worked on each ESG component. A staff position that is not fully dedicated to ESG cannot be paid solely through ESG funds.

For example, if an accountant spends 100 percent of his/her time tracking rental assistance or security deposits for homelessness prevention activities, then paying for this time is allowable under the homelessness prevention component as the accountant's time is only spent working on a single component. Alternatively, the cost for an accountant to process checks for both the homelessness prevention and rapid re-housing components must be prorated by each component.

Also, the accountant's time preparing an invoice to obtain ESG funds from the City (or, for the City, a staff member's time drawing funds in IDIS) would be an administrative cost. Therefore, the City or subrecipients must break out the accountant's time based on the activities performed.

Other overhead costs, such office costs for rental space, a photocopier, lighting and utilities for an office, could be eligible either as a direct cost charged to one or more components, depending on the activities delivered by that office, or could be charged as an indirect cost if part of an indirect cost allocation plan that City of Oxnard Homeless Assistance Program staff have reviewed and approved prior in accordance with relevant Office of Management and Budget cost circulars.

Additionally, please be aware of the following:

If any of these cost items is part of an indirect cost allocation plan, they must not be billed directly to any activity when more than one ESG component or other programs are operated from the same office, the costs and the rationale used to determine the portion of the costs assigned to each component and/or program must be carefully documented

The exact methodology for tracking the time that staff worked on federal grants, and on components and activities within a federal grant, is at the discretion of the City. However, subrecipients must be able to sufficiently document the actual time charged to federal grants and the methodology used, which must be reasonable and justifiable.

The Office of Management and Budget (OMB) guidance does not require that recipients track actual time by ESG component and activity, but there must be a methodology in place to estimate time allocated to components because of the statutory caps in place on street outreach and emergency shelter, and administration.

Additionally, because of the Consolidated Annual Performance and Evaluation Report (CAPER) reporting requirements, there must be a methodology in place to estimate time allocated to activities within a component. While actual time is preferred, any estimates must be a realistic reflection of actual time spent across ESG components and activities.

Timesheets that capture actual time spent on specific programs are the most straightforward way to meet time reporting requirements. However, other approaches may be acceptable as long as they meet the guidelines established in the Omni-Circular at 2 CFR Part 200, as applicable.

2. Eligible Costs by Component

a) Eligible costs for homelessness prevention and rapid re-housing

Homelessness prevention and rapid re-housing programs have two areas of eligible costs: (1) Housing Relocation and Stabilization Services, and (2) Rental Assistance. The included activities or items and the associated costs that are permitted in each category are as follows.

i) Housing relocation and stabilization services

Housing relocation and stabilization services include two sub-categories of expense: (1) financial assistance and (2) services costs. *Financial assistance consists of those expenses that are paid to a third-party such as a housing owner or utility company on behalf of a program participant.*

Financial Assistance - Housing Relocation/Stabilization Services

Eligible expenses may include:

Rental application fees The charge to apply for rental housing that is made by an owner to all applicants.

Security deposits A deposit to cover any damages to a unit rented by a program participant, which is equal to not more than 2 months' rent.

Last month's rent One month's rent, in addition to first and deposit which may be paid if necessary to obtain housing for the program participant.

Utility deposits The deposit required of all customers initiating service with a gas, electric, water, or sewage utility provider.

Utility payments A partial or complete payment of a utility bill from a provider of gas, electric, water, or sewage. *The program participant or a member of the participant household's name must be on the account or the program has proof of responsibility to make the payment. Payments are limited to not more than 24 months during any three-year period.*

Moving costs Reasonable costs to rent a truck or hire a moving company for a program participant to move into an eligible unit. This assistance may include payment of temporary storage fees for up to 3 months, provided that the fees are accrued after the date the program participant begins receiving assistance and before the program participant moves into permanent housing. *Payment of temporary storage fees in arrears is not eligible.*

These housing relocation and stabilization services sub-categories are not subject to the requirements above restricting allowable rental assistance to Rent Reasonableness and Fair Market Rent standards. As a matter of practicality, however, if the household were also receiving ongoing rental assistance, the amount of the deposit and/or last month's would be limited based on these standards.

Caution should be used when providing assistance that exceeds the standard for rental assistance even if used for one-time move-in assistance only, as the provider would be prohibited from providing additional assistance in the future if the household subsequently requires additional assistance.

Note also that the payment of last month's rent counts towards the maximum number of months of rental assistance for which a household is eligible.

Services - Housing Relocation/Stabilization Services

Housing search and placement Program costs to provide eligible services using program staff or through subcontracts that cover costs or fees for the services provided, in accordance with applicable financial and cost standards.

Housing stability case management Housing stability case management may not be provided for more than 30 days during the period the program participant is seeking housing.

Mediation/Legal Services Eligible costs are the hourly fees for legal advice and representation by attorneys licensed and in good standing with the bar association of the state in which the services are provided, and by person(s) under the supervision of the licensed attorney, regarding matters that interfere with the program participant's ability to obtain and retain housing. Fees based on the actual service performed (i.e., fee for service) are also eligible, but only if the cost would be less than the cost of hourly fees. Filing fees and other necessary court costs are also eligible. If the subrecipient is a legal services provider and performs the services itself, the eligible costs are the programs employees' salaries and other costs necessary to perform the services.

Only the above supportive services are under these components. All other services, including those permitted under the emergency shelter component, are ineligible for homelessness prevention and rapid re-housing. Programs that see a need for these services for their participants are encouraged to make relationships with other providers of services.

ii) Rental assistance

Homelessness prevention and rapid re-housing programs may provide a program participant with up to 24 months of rental assistance during any three-year period. This assistance may be short-term, medium-term, payment of rental arrears, or a combination of this assistance

Short-term rental assistance Short-term rental assistance is assistance for up to 3 months of rent.

Medium-term rental assistance Medium-term rental assistance is assistance for more than 3 months but not more than 24 months of rent.

Rental assistance payments may only be made to an owner with whom the program has entered into a rental assistance agreement and with whom the program participant holds a lease.

ESG funds may not be used to cover late fees for rental assistance.

Rental arrears Rental arrears consist of a one-time payment for up to 6 months of rent in arrears, including any late fees on those arrears. An oral agreement may be accepted in place of a written lease, if the agreement gives the program participant an enforceable leasehold interest under state law and the agreement and rent owed are sufficiently documented by the owner's financial records, rent ledgers, or canceled checks.

All rental assistance, including the payment of arrears, is subject to the requirements above restricting allowable rental assistance to Rent Reasonableness and Fair Market Rent standards.

b) Emergency shelter component

Emergency shelter means any facility, the primary purpose of which is to provide a temporary shelter for the homeless in general or for specific populations of the homeless and which does not require occupants to sign leases or occupancy agreements. Eligible costs for the emergency shelter component include (1) essential services and (2) shelter operations.

Eligible Cost – Essential Services

Case management The cost of assessing, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant is eligible.

Child care The costs of child care for program participants, including providing meals and snacks, and comprehensive and coordinated sets of appropriate developmental activities, are eligible. The children must be under the age of 13, unless they are disabled. Disabled children must be under the age of 18. The child-care center must be licensed by the jurisdiction in which it operates in order for its costs to be eligible.

Education The costs of improving knowledge and basic educational skills are eligible. Component services or activities are screening, assessment and testing; individual or group instruction; tutoring; provision of books, supplies and instructional material; counseling; and referral to community resources.

Employment and job training The costs of employment assistance and job training programs are eligible, including classroom, online, and/or computer instruction; on-the-job instruction; and services that assist individuals in securing employment, acquiring learning skills, and/or increasing earning potential. The cost of providing reasonable stipends to program participants in employment assistance and job training programs is an eligible cost.

Outpatient health services* Eligible costs are for the direct outpatient treatment of medical conditions and are provided by licensed medical professionals. Eligible treatment consists of assessing a program participant's health problems and developing a treatment plan; assisting program participants to understand their health needs; providing directly or assisting program participants to obtain appropriate medical treatment, preventive medical care, and health maintenance services, including emergency medical services; providing medication and follow-up services; and providing preventive and noncosmetic dental care.

Legal services* Eligible costs are the hourly fees for legal advice and representation by attorneys licensed and in good standing with the bar association of the state in which the services are provided, and by person(s) under the supervision of the licensed attorney, regarding matters that interfere with the program participant's ability to obtain and retain housing. Fees based on the actual service performed (i.e., fee for service) are also eligible, but only if the cost would be less than the cost of hourly fees. Filing fees and other necessary court costs are also eligible. If the subrecipient is a legal services provider and performs the services itself, the eligible costs are the subrecipient's employees' salaries and other costs necessary to perform the services. Legal

services for immigration and citizenship matters and issues relating to mortgages are ineligible costs. Retainer fee arrangements and contingency fee arrangements are ineligible costs.

Life skills The costs of teaching critical life management skills that may never have been learned or have been lost during the course of physical or mental illness, domestic violence, substance use, and homelessness are eligible costs. These services must be necessary to assist the program participant to function independently in the community. Component life skills training are budgeting resources, managing money, managing a household, resolving conflict, shopping for food and needed items, improving nutrition, using public transportation, and parenting.

Mental health services* Eligible costs are the direct outpatient treatment by licensed professionals of mental health conditions. Eligible treatment consists of crisis interventions; individual, family, or group therapy sessions; the prescription of psychotropic medications or explanations about the use and management of medications; and combinations of therapeutic approaches to address multiple problems.

Substance abuse treatment services* Eligible substance abuse treatment services are designed to prevent, reduce, eliminate, or deter relapse of substance abuse or addictive behaviors and are provided by licensed or certified professionals. Eligible treatment consists of client intake and assessment, and outpatient treatment for up to 30 days. Group and individual counseling and drug testing are eligible costs. Inpatient detoxification and other inpatient drug or alcohol treatment are not eligible costs.

Transportation Eligible costs consist of a program participant's travel costs to and from medical care, employment, child care, or other eligible essential services facilities. These include:

- Travel on public transportation
- Mileage allowance for service workers using their own vehicles to visit program participants
- Purchasing or leasing a vehicle in which staff transport program participants and/or staff serving program participants, and the cost of gas, insurance, taxes, and maintenance for the vehicle, and
- The travel costs of staff to accompany or assist program participants in using public transportation

**All service categories indicated with an asterisk are only eligible to the extent that they are unavailable or inaccessible in the community.*

ESG funds may be used to provide services for homeless youth, victim services, and services for people living with HIV/AIDS, so long as the costs of providing these services are eligible under the above categories.

iii) Shelter operations

Eligible Cost – Shelter Operations

- Shelter maintenance and repairs
- Security
- Fuel
- Equipment
- Insurance
- Utilities
- Food
- Furnishings
- Supplies
- *Motel and Hotel Vouchers: Where no appropriate emergency shelter is available for a homeless family or individual, eligible costs may also include a hotel or motel voucher for that family or individual.*

c) HMIS component

Homeless Management Information System (HMIS) means the information system designated by the Continuum of Care to comply with the HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to homeless individuals and families and persons at-risk of homelessness.

Eligible HMIS costs include the cost for a program that does not run the HMIS to cover the costs of contributing data to the HMIS, and for the HMIS lead agency to operate the HMIS. Victim services and legal providers may also receive funds under this component to operate a comparable database to the HMIS.

Eligible Costs - HMIS

Eligible HMIS costs for a program receiving ESG funding that is **not the HMIS Lead** include:

- Purchasing or leasing computer hardware;
- Purchasing software or software licenses;
- Purchasing or leasing equipment, including telephones, fax machines, and furniture;
- Obtaining technical support;
- Leasing office space;
- Paying charges for electricity, gas, water, phone service, and high-speed data transmission necessary to operate or contribute data to the HMIS;
 - *Paying salaries for operating HMIS, including:*
- Completing data entry;
- Monitoring and reviewing data quality;
- Completing data analysis;
 - *Reporting to the HMIS Lead including:*

- Training staff on using the HMIS or comparable database;
- Implementing and complying with HMIS requirements;
- Paying costs of staff to travel to and attend HUD-sponsored and HUD-approved training on HMIS and programs authorized by Title IV of the McKinney-Vento Homeless Assistance Act;
- Paying staff travel costs to conduct intake; and
- Paying participation fees charged by the HMIS Lead, if the recipient or subrecipient is not the HMIS Lead.

In addition to the above, if the recipient is the HMIS Lead it may use ESG funds for other costs needed to maintain and administer the HMIS system

Victim services provider or legal services provider ESG funds may be used to establish and operate a comparable database that collects client-level data over time (i.e., longitudinal data) and generates unduplicated aggregate reports based on the data. Information entered into a comparable database must not be entered directly into or provided to an HMIS.

d) Indirect costs

For an Agency to bill for reimbursement of indirect costs, they must have an approved indirect costs allocation plan that conforms to OMB cost circulars pursuant to ESG funding as well as be consistent with ESG regulations at 24 CFR Part 576. Details regarding allowable indirect costs are included in each individual subrecipient agreement with the City of Oxnard. However, the City strongly encourages subrecipients to charge principally and foremost to direct cost line items for simplicity and consistency of grant, budget and management oversight.

9) MATCH REQUIREMENTS

ESG subrecipients must make matching contributions to supplement the City's ESG program in an amount that equals the amount of ESG funds provided by the City to them. In other words, for every dollar provided through the ESG program, subrecipients must contribute a dollar from another source to eligible ESG activities within the same funded programs. The City requires its subrecipients to make matching contributions to help meet its overall ESG matching funds requirement.

Matching contributions may be obtained from any source, including any federal source other than the ESG program, as well as state, local, and private sources. However, the following requirements apply to matching contributions from a federal source of funds:

- ESG Subrecipients must ensure the laws governing any funds to be used as matching contributions do not prohibit those funds from being used to match Emergency Solutions Grant (ESG) funds.
- If ESG funds are used to satisfy the matching requirements of another federal program, then funding from that program may not be used to satisfy the matching requirements under this section.

1. Recognition of Matching Contributions

In order to meet the matching requirement, the matching contributions must meet all requirements that apply to the ESG funds provided by HUD.

- *The matching contributions must be provided after the date that HUD signs the grant agreement.*
- For cash match, “provided” means when the funds are expended (or when the allowable cost is incurred).
- For in-kind match, it is the date the service (or other in-kind match source) is actually provided to the program or project.
- To count toward the required match for the recipient’s fiscal year grant, cash contributions must be expended for eligible activity costs within 24 months after the date HUD signs the grant agreement with the City of Oxnard.
- Contributions used to match a previous ESG grant may not be used to match a subsequent ESG grant.
- Contributions that have been or will be counted as satisfying a matching requirement of another federal grant or award may not count as satisfying the matching requirement of this section.

2. Eligible Types of Matching Contributions

The matching requirement may be met by one or both of the following:

- **Cash contributions** – Cash expended for allowable costs of the recipient or subrecipient, as defined in the Omni-Circular (2 CFR §200).
- **Noncash contributions** – The value of any real property, equipment, goods, or services contributed to the recipient’s or subrecipient’s ESG program, provided that if the recipient or subrecipient had to pay for them with grant funds, the costs would have been allowable. Noncash contributions may also include the purchase value of any donated building.

3. Calculating the Amount of Noncash Contributions

To determine the value of any donated material or building, or of any lease, the recipient must use a method reasonably calculated to establish the fair market value.

Services provided by individuals must be valued at rates consistent with those ordinarily paid for similar work in the City’s or subrecipient’s organization. If the City or subrecipient does not have employees performing similar work, the rates must be consistent with those ordinarily paid by other employers for similar work in the same labor market.

Some noncash contributions are real property, equipment, goods, or services that, if the recipient or subrecipient had to pay for them with grant funds, the payments would have been indirect costs.

3. Costs Paid by Program Income

Costs paid by program income shall count toward meeting the recipient's matching requirements, provided the costs are eligible ESG costs that supplement the recipient's ESG program.

ESG GRANT ADMINISTRATION

The policies described below reflect HUD requirements related to grant administration for subrecipients of ESG funding.

Confidentiality and Access to Records

a) Confidentiality

Programs must have written procedures to ensure:

- All records containing personally identifying information (as defined by HUD's standards for participation, data collection, and reporting in a local HMIS) of any individual or family who applied for and/or received ESG assistance will be kept secure and confidential;
- The address or location of any domestic violence, dating violence, sexual assault, or stalking shelter project assisted under ESG will not be made public, except with written authorization of the person responsible for the operation of the shelter; and
- The address or location of any housing of a program participant will not be made public, except as provided under a preexisting privacy policy of the City or the program, and consistent with state and local laws regarding privacy and obligations of confidentiality.

b) Federal government rights

Notwithstanding the confidentiality requirements above, HUD, the HUD Office of the Inspector General, and the Comptroller General of the United States, or any of their authorized representatives, must have the right of access to all books, documents, papers, or other records of the City and its subrecipients that are pertinent to the ESG grant in order to make audits, examinations, excerpts, and transcripts. These rights of access are not limited to the required retention period (i.e., five years from the grant closeout date) but last as long as the records are retained.

Matching credit for these contributions must be given only if the recipient or subrecipient has

c) Public rights

The City must provide citizens, public agencies, and other interested parties with reasonable access (consistent with state and local laws regarding privacy and obligations of confidentiality and the confidentiality requirements in this part) to records regarding any uses of ESG funds the recipient received during the preceding five years.

1. Recordkeeping Requirements

Sufficient records must be established and maintained by ESG subrecipients and provided to the City and/or HUD upon request in order to determine whether ESG requirements are being met. All records pertaining to each fiscal year of ESG funds must be retained for five years after the expenditure of all funds from the grant under which the program participant was served (i.e., five years from the date of grant closeout). Copies made by microfilming, photocopying, or similar methods may be substituted for the original records. If ESG funds are used for emergency shelter renovation or conversion, different recordkeeping requirements apply.

2. Reporting Requirements

Programs receiving ESG funding must report to the City of Oxnard on activities and expenditures as specified in the RFP under which the funding was awarded, and in the contract between the City and subrecipient. Additional reporting to the Continuum of Care may be required and City staff will inform subrecipients of any requirements in this regard.

a) Enforcement/Performance reviews

HUD requires City of Oxnard homeless assistance program staff to monitor their subrecipient's performance to ensure adequacy and compliance with all applicable regulations. This is accomplished thorough review of quarterly reports and periodic site visits. Additional detail regarding monitoring and the corrective action process is including in the City of Oxnard ESG Policies and Procedures Manual.

If a program fails to demonstrate to the city's satisfaction that the activities were carried out in compliance with ESG program requirements, HUD regulations allow the city to take remedial actions or apply sanctions. Sanctions can include:

- Instructing the recipient to submit and comply with proposals for action to correct, mitigate, and prevent noncompliance with ESG requirements.
- Suspending payments to the extent the city deems it necessary to preclude the further expenditure of funds for affected activities.
- Denying matching credit for all or part of the cost of the affected activities and requiring the recipient to make further matching contributions to make up for the contribution determined to be ineligible.
- Requiring the subrecipient to reimburse the City in an amount equal to the funds used for the affected activities.

- Reducing or terminating the remaining grant of a recipient and reallocating those funds to other subrecipients.
- Conditioning a future grant.
- Taking other remedies that are legally available.

III. GENERAL PROVISIONS

A. FINANCIAL MANAGEMENT OF GRANTS

1. Guiding Statutes, Regulations and Circulars

Financial management of federal grant programs, including HUD's homeless programs, is governed by a set of requirements that are contained in the following:

- Provisions in law, as set out in statutes;
- Regulations, which interpret and amplify the statute and are set out in the Code of Federal Regulations (CFR); and
- Office of Management and Budget (OMB) Circulars, which in some cases have been reissued as part of the CFR.

2. Accounting Controls

Having accurate and comprehensive documentation of revenue and expenses is a regulatory requirement, and it is also a necessary part of an agency's organizational responsibilities. Accounting controls consist of procedures that enable the City and its subrecipients of federal funds to maintain accounting records that sufficiently identify the source and application of funds that flow through the agency and, thereby, meet applicable standards. Most important of all, accounting records must be supported by source documentation.

3. Regulatory standards

HUD standards for *accounting records* require that the city and its subrecipients:

- Maintain records that adequately identify the source and application of funds provided for financially assisted activities; and
- Assure that these records contain complete and accurate information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

Per HUD standards for *source documentation*, accounting records must be supported by source documentation such as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

4. Basic elements of accounting records

To meet these regulatory requirements, an organization's accounting system should include at least the following elements:

Chart of accounts – A list of account names and the numbers assigned to each.

Cash receipts journal – A chronological listing of when funds were received, in what amounts, and from what sources.

Cash disbursements journal – A chronological listing of how much was paid, when and to whom payment was made.

Payroll journal – A chronological listing of payroll amounts, benefits, and payroll taxes.

General journal – A record of all non-cash transactions.

General ledger – A comprehensive depiction, with details by account, of the activities recorded in each account of an organization. Entries transferred to the general ledger are cross-referenced to the applicable subsidiary journal or supporting documentation to permit the tracing of any financial transaction, thereby creating what is called an 'audit trail.'

5. Basic elements of source documentation

Accounting records must be supported by source documentation that shows that all costs charged against the relevant HUD program were:

- Incurred during the effective period of the agreement between the subrecipient and the city;
- Incurred for eligible items;
- Approved by the appropriate official(s) within the organization;
- Expended (i.e., have proof of actual payment); and
- Not reimbursed by another funding source.

Adequate documentation will vary depending on the specific activity. Basic documentation would include the following:

- **Client eligibility** – Proof of homeless status, as well as household income and composition (updated as required by statute and contract agreement).
- **Rental assistance** – Annual income determination, annual rent calculation, housing inspection, lease, rent standard, cancelled checks to landlord.
- **Facility-based housing** – Documentation of adequate services, rent calculation, leases, records supporting operating costs (e.g., utility bills, lease, or mortgage payments).
- **Supportive services** – Documentation fitting with type of service (e.g., transportation, case management), that service was delivered, timesheets, client participation records.

- **Agency operating costs** – Maintenance cost records, bills or invoices for utilities, insurance, and taxes, travel reimbursement records, office space leases, documentation for materials (paper, computers, phones) related to project, indirect cost documentation.
- **Grant administration** – Administrative time and activity reports, indirect cost documentation.

6. Fund and cost accounting

i) Fund accounting

Fund accounting is a method of recording financial information that groups resources into funds based on their source and the use of those resources. In fund accounting, each grant and source of cash match is unique, has its own fund, own chart of accounts, and own specific list of eligible activities. *Incurring costs are only eligible for federal reimbursement when those costs are allocated to the specific fund source based on proper supporting documentation.*

Some subrecipients concurrently receive funds through multiple federal, state, and local grants, as well as funds from private philanthropy and other sources of cash. The costs incurred by such an organization must be properly allocated to each fund/grant source. *Any organization that operates programs that receive multiple grants or relies on a single federal grant along with other distinct funding sources will need to use fund accounting practices in order to meet the financial management requirements associated with the federal award.*

ii) Cost accounting

Cost accounting is the process of tracking, recording, and analyzing individual costs associated with an organization's activities. Cost accounting is a critical tool that allows an organization to determine the full cost of each of its activities by identifying each element of cost contributing to the activity. Cost accounting allows organizations to turn financial data into knowledge that is useful for the following:

- Understanding what it actually costs to deliver an activity;
- Tracking the adherence of the activity to its budgeted cost;
- Setting clear fundraising goals needed to ensure continuation of the activity;
- Evaluating the cost effectiveness of existing activities; and,
- Evaluating the cost of expanding a program or savings that come with reducing an activity.

Case Management Activities and Cost Accounting

For example, the full cost of providing case management services to a client would include a number of cost categories in addition to the case manager's salary. Among the other costs are: additional elements of compensation (fringe benefits, retirement contributions, and other authorized personnel costs); related costs of space, support staff, and supervision; and organizational costs such as accounting and human resources.

7. Documenting ESG matching funds

To be in compliance with HUD Match Documentation requirements, subrecipients are expected to implement operating policies and procedures sufficient to assure that:

- Cash match funding is tracked through the agency's financial system;
- In-kind match funding is tracked, and the valuation of donated goods and services is documented;
- Match funding is **from** eligible funding sources;
- Match funding is **used** for eligible activities only. Expenditures are supported by documentation (e.g. personnel activity reports, invoices, and receipts).

8. Audit requirements

Recipients and subrecipients must comply with the audit requirements described in the Code of Federal Regulations (2 CFR §200.500 – Subpart F).

B. COST ALLOCATION

1. Basics of Cost Allocation

Cost principles are those common principles that help organizations determine the costs for specific activities and the costs that are chargeable to grants, awards, and other agreements. Although the cost principles for the federal government, local governments, and nonprofit organizations are similar, they are not identical. Subrecipients of City ESG funds, should ensure they are using the appropriate Office of Management and Budget (OMB) guidance and are in compliance with all applicable state and local requirements, detailed in **2 CFR §200.400 (Subpart E–Cost Principles)**. The information that follows describes how costs are classified, what is required to receive reimbursement, and how both direct and indirect costs are allocated. OMB identifies three specific attributes related to costs:

- Cost Allowability
- Cost Reasonableness
- Allocability of Cost

a) Allowable costs

To be allowable, a cost must meet **all** of the following requirements:

- Be included within the description of eligible activities in the applicable HUD regulations;
- Be incurred directly or indirectly for the benefit of an eligible HUD client;
- Comply with any limitations or exclusions set forth in these principles or as specified in the HUD grant award process (and codified in the grant agreement);

- Be treated consistently, determined in accordance with generally accepted accounting principles (GAAP) and documented adequately;
- Be determined to be necessary, reasonable, allocable to the HUD grant, and otherwise in conformance with the general criteria for allowable costs set forth in 2 CFR Subpart E; and,
- Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in the current year or prior periods.

b) Reasonable costs

Costs are considered 'reasonable' if they do not exceed what a prudent person would incur under similar circumstances. All costs must pass the 'rational person' test by meeting **all** of the following criteria:

- The cost is recognized as ordinary and necessary for the operation of the organization and/or project;
- The cost is in accordance with market prices for comparable goods or services as evidenced by cost estimates and documentation;
- The individuals responsible for incurring the cost acted with prudence and for the benefit of the organization and its activities; and,
- The cost has been incurred after following the established practices of the organization, and in accordance with the terms and conditions of the award.

c) Allocable costs

Costs must meet federal guidelines for allocability in order to be reimbursed through a federal grant or contract. To be allocable, a cost must meet **one** of the following requirements:

- Benefits both the federal award and other activities and can be distributed in proportions that may be approximated using reasonable methods;
- Is incurred specifically for the funded program (i.e., direct costs);
- Proves necessary to the overall operation of the organization, even though a direct relationship to any particular program activity cannot be readily shown (i.e., indirect costs); and,
- The cost may benefit both the funded program activities and other activities, in which case it must be assigned to the respective activities in reasonable proportion to the benefits received.

A simple aid in determining what is eligible for reimbursement and why it is eligible, as well as how to document compliance with financial management standards so that costs charged are limited only to those that are allowable and reimbursable, is the so-called 'RADAR Test.' When costs are: Reasonable, Allowable, Documented and Allocable, then they are Reimbursable.

2. The Cost Allocation Process

The purpose of cost allocation is to divide shared costs in such a way that the appropriate amount, based on the relative proportion of total resources used, is charged to each applicable program and funding source. Of course, costs defined as ineligible by OMB—or explicitly excluded by HUD or a local funder—can never be reimbursed by a federal grant. One important outcome of the process is the assurance that the same cost is never charged to more than one funding source.

a) Defining direct and indirect costs

All costs can be classified as either ‘direct’ or ‘indirect,’ and the cost type governs how they are allocated:

i) Direct costs

“There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the federal award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect cost in order to avoid possible double-charging of federal awards.”

Direct costs are those that can be specifically identified with a particular award or activity relatively easily with a high degree of accuracy. Identification with the federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs of federal awards. *Examples of direct costs are the salary and benefits paid to a case manager, a rental assistance check paid directly to a landlord, and mileage reimbursement for staff making home visits.*

ii) Indirect costs

Indirect costs are those that have been incurred for ‘shared’ or ‘joint’ objectives and cannot be readily identified with any particular activity. Typical examples of these costs include:

- Rent, utility, insurance, maintenance, and other expenditures related to shared space;
- Administrative and executive team functions that support multiple program areas; and,
- Purchases, transportation, and staff expenses that benefit multiple program areas.

Due to the diverse characteristics and accounting practices of non-profit organizations, it is not possible to specify the types of cost that may be classified as indirect cost in all situations. *However, a cost may not be allocated as an indirect cost if any similar costs have been assigned as a direct cost. Moreover, an agency must have an approved indirect cost allocation plan in place in order to assign any ESG reimbursement requests to this cost area; in the absence of this staff will not approve such requests for reimbursements.*

b) Documenting direct personnel costs

One of the most important aspects of allocating direct costs that benefit more than one grant or program area is the documentation of the cost, regardless of whether it is a personnel or non-personnel cost. Correct allocation of personnel costs, however, often requires more extensive protocols than non-personnel costs.

The amount charged for staff time supporting both HUD-funded activities and non-HUD-funded activities must be prorated according to the degree to which the activities benefit the HUD grant. In addition, personnel costs can be attributed to different activities such as program, fundraising, or management and general functions. ***If there is no record to support the staff time spent and its relationship to the approved grant activities, it is as though it did not happen and those staff costs cannot be paid with HUD funds.***

i) Cost reasonableness

Cost reasonableness as it applies to personnel costs is typically established in an organization's Human Resources records that establish pay ranges and job descriptions.

- These documents need to demonstrate that the pay scales and benefits for each position are within the range of similar positions in the labor market area and therefore are reasonable; and,
- For nonprofit organizations, assistance in establishing and evaluating pay ranges can be obtained from other local nonprofits or from associations of nonprofit organizations that exist in many areas of the country.

ii) Personnel costs

Personnel costs (i.e., staff salaries and benefits) are reimbursable under a HUD grant when staff time is spent conducting HUD-funded and approved activities and providing services to grant-eligible clients (and only to that portion of total clients served).

- This requires an effective time-recording system that not only supports the personnel costs charged to HUD, but also divides the time among the separate program categories required for reporting.
- ***Note that just because a staff member works exclusively on a HUD grant, 100 percent of his or her time may not be reimbursable under the grant.*** This is because staff members typically also spend time in internal agency meetings, conducting staff reviews, and other non-HUD-related activities. The time and costs incurred for these functions are not part of an allowable HUD cost.

For Example, a program director may spend 10 percent of their time providing case management to ESG clients, 40 percent supervising ESG program case managers, and 50 percent supervising case managers seeing non-ESG clients.

In this instance **their \$60,000 annual salary** would be allocated as follows:

ESG:	ESG Case Management (10%)	$(\$60,000 \times .10 = \$6,000)$
	+ ESG Supervision (40%)	$(\$60,000 \times .40 = \$24,000) = \mathbf{\$30,000}$

Non-ESG (50%): $\$60,000 \times .50 = \mathbf{\$30,000}$

Total program director salary: **\$60,000**

ii) After-the-fact time and activity reporting

In order to comply with financial management requirements, City ESG subrecipients should be able to document all staff time that is paid from the HUD grant. To document the division of costs between funding sources, staff are expected to record actual time spent on each HUD or non-HUD activity to provide the basis for how much of his or her salary (and related fringe benefit costs) will be allocated to the various funding sources.

According to OMB, time and activity records must be prepared at least monthly, but keeping records on a daily or weekly basis is much more practical and efficient. The recording may take place after the fact. Because it is difficult to reconstruct the time spent on activities with any degree of accuracy many days after the fact, it should occur as soon as possible, preferably the same day or first thing the next.

Optimally, the timekeeping procedures an organization implements require effective supervision by managers to ensure on a regular basis that employees are keeping records accurately. Such systems help establish an unbroken thread from the work performed by an individual staff person to the eligible HUD activity in an approved grant, contract, or agreement.

iii) Supplemental documentation of staff activities

For costs to be 'allowable' expenditures, the time that staff spends delivering services to those clients — and only those clients — can be charged to the grant. This demonstrates that the costs are 'allocable' costs. Recording hours, however, is not sufficient by itself.

An adequate time and activity system will have additional documentation that explains how the staff person spent the time on eligible clients and activities, such as the following:

Case notes – Case managers should keep case notes about the issues and topics that were covered in their sessions with clients and have a justification for the frequency or infrequency of meetings.

For instance, one client may have a steady job, be successfully managing their symptoms, and have a stable coping strategy and family support. Such a client might only require monthly check-ins with a case manager.

Another client may have more significant obstacles to housing stability or be going through a crisis. This client might require daily counseling sessions.

General service plan – At the point of intake, the case manager will work with each client to create a general service plan that will include the areas that the client will work on, the goals to achieve, and the service delivery schedule. This service plan forms the backbone for scheduling and providing services and should be kept on file for that client.

Case notes will indicate progress towards the goals and changes in the client's circumstances.

Activities log – Other staff, such as maintenance personnel, might keep a time log and file by housing unit. The log would document the time and activities spent on HUD-funded units and the file would contain forms like maintenance request forms.

Together these documents are used to verify subrecipients' efforts to ensure that clients receive appropriate services as well as verify the work case managers conduct with their clients. This documentation is the foundation for the timesheet submitted and approved to charge time to HUD or other funding sources. This type of supporting documentation should also be available to respond to monitoring reviews or the test of transactions in an audit.

c) Direct charge of non-personnel costs

Non-personnel direct costs are allocated through associating each cash outlay with a particular activity and fund source. For example, rent payments are charged to the appropriate funding source. Supplies and resources purchased for a specific program are recorded as direct expenses at the time of payment, based on purchase order requests or other such authorizing documentation.

d) Allocating shared non-personnel costs

Non-personnel "shared" direct costs can include the purchase of supplies, food, and other materials used or consumed directly by clients. In this case, subrecipients would employ standardized procedures for documenting the proportion of each purchase to be associated with appropriate grant sources and program activities, such as purchase order requests or supply requisition forms.

Other non-personnel "shared" direct costs can include a portion of office space, utilities or transportation costs, for which the costs of rent (or vehicle maintenance) may be prorated according to the percentage of ESG-funded clients served, building square footage used by associated program staff, or miles driven.

For organizations without an approved federal indirect rate, the ***Direct Allocation Method*** is the most common method used for handling shared non-personnel costs. It treats almost all indirect costs as direct costs. The basis for prorating indirect costs as direct costs is supported by documentation that demonstrates the relative benefit of the particular cost to the grant's activities.

Using this method, all costs are limited to three basic categories:

- Program activities, including those performed under federal grants.
- Management functions and general expenses.
- ***Fundraising, which, under the OMB regulations, is never eligible for HUD-reimbursement.***

Shared (or indirect) costs, such as insurance, depreciation, facilities, copier, other equipment and phone/Internet expenses are prorated as though they are direct costs and are assigned to one of the three categories above using a base appropriate to each particular cost type.

- To accurately reflect each program area's share of the organization's total operational expenses, management and general expenses may be further allocated to each program area.
- Detailed instructions for implementing an item-by-item allocation methodology should be contained in each subrecipient's Cost Allocation Plan. Please note, however, that HUD regulations do not allow for any reimbursement of 'administrative' expenses as a direct expense. Examples of cost allocation methodologies are described below.

Example A

Agency A has 1,000 square feet of space for its program activities (plus an additional 400 for administration and fundraising). Within the program space, it operates a HUD ESG program and several non-HUD programs staffed by five full-time workers.

Each month all staff members complete time sheets and project activity reports that document how they spent their time during that month.

The portion of total rent and utility costs associated with the 1,000 square feet for program staff—and to be charged each applicable funding source—is calculated by:

First, applying the proportion of 'program' to total space (1,000/1,400 sq. ft.) = 5/7 of the total cost of \$3,500 per month = \$2,500.

Then applying the ratio of program-related personnel costs calculated for each funding source and activity. There are 5.0 FTE staff: 2 ESG case managers, 2 non-ESG case managers, and 1 supervisor who spends 60% of her time on ESG-related activities and 40% on non-ESG activities.

This ratio is determined based on the proportion of hours charged by staff to each fund source and activity in the monthly staff time and activity reports, e.g. –

2.6 FTE staff for ESG activities = $2.6/5 \times \$2,500 = \$1,300$ in ESG rent cost

2.4 FTE staff for non-ESG activities = $2.4/5 \times \$2,500 = \$1,200$ in non-ESG rent

Example B

Agency B utilizes a 9-passenger van to assist clients to get to medical appointments. Only the ESG-funded Rapid Re-housing contract recognizes this as a reimbursable activity. Thus, for every trip, the van operator keeps track of each client, which program s/he is associated with, and the miles driven on behalf of that client.

The amount eligible for ESG reimbursement is determined by calculating the ESG-eligible portion of total person-miles driven and applying that ratio to the total costs for that trip.

e) Defining administrative costs for HUD purposes

Because HUD programs have specific limits on the amount of funds spent on grant administration, separating program costs from administrative costs is essential for financial management compliance. For the ESG program, administrative costs include the costs of overall program management, budgeting, coordination, monitoring, reporting, and evaluation.

This includes salaries and benefits for personnel engaged in these activities, as well as the costs of administrative services performed under third-party contracts or agreements, including general legal services, accounting services, and audit services. It can also include the costs of goods and services required for program administration, including the rental or purchase of equipment, insurance, utilities, office supplies, and the rental and maintenance (but not purchase) of office space. *The City of Oxnard is the only entity realizing administration-related expenses in its oversight and management of city-ESG funds.*

E. FAITH-BASED ACTIVITIES

1. Equal Treatment

Organizations that are religious or faith-based are eligible to participate in the ESG program. ESG subrecipients must not discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

2. Separation of Activities

Subrecipients of ESG funds that engage in explicitly religious activities such as worship, religious instruction, or proselytization, must offer these services separately, in time or location, from the programs or services funded through ESG. Participation in any such explicitly religious activities must be voluntary for ESG program participants.

3. Religious Identity

A faith-based organization that is a subrecipient of ESG program funds may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct program funds to support or engage in any explicitly

religious activities. Faith-based organizations may use space in their facilities to provide program-funded services, without removing or altering religious art, icons, scriptures, or other religious symbols.

In addition, ESG regulations explicitly specify that religious organizations retain authority over internal governance. The organization may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

F. FAIR HOUSING

ESG recipients must implement programs in a manner that affirmatively furthers fair housing, which means that the recipient must:

- Affirmatively market their housing and supportive services to eligible persons regardless of race, color, national origin, religion, sex, age, familial status, or handicap. Marketing should target those least likely to apply without special outreach, and records should be maintained of all marketing activities;
- Where a recipient encounters a condition or action that impedes fair housing choice for current or prospective program participants, provide such information to the city homeless assistance program staff and management; and
- Provide program participants with information on rights and remedies available under applicable federal, state and local fair housing and civil rights laws.

Subrecipients must take appropriate steps to ensure effective communication with persons with disabilities including, but not limited to, adopting procedures that will make information available regarding the services and facilities that are accessible to persons with disabilities.

ESG Subrecipients are also required to take reasonable steps to ensure meaningful access to programs and activities for limited English proficiency (LEP) persons. The City and ESG subrecipients must comply with the accessibility requirements of the Fair Housing Act (24 CFR part 100), Section 504 of the Rehabilitation Act of 1973 (24 CFR part 8), and Titles II and III of the Americans with Disabilities Act, as applicable (28 CFR parts 35 and 36) as summarized below.

1. Minimum Accessibility Requirements

In addition to its general non-discrimination requirements, the Fair Housing Act requires that new multifamily housing with four or more dwelling units built for first occupancy after March 13, 1991, be designed and built to contain minimum accessibility features for persons with disabilities. This includes accessible public and common use areas, doors that are wide enough for wheelchairs, kitchens and bathrooms that allow a person using a wheelchair to maneuver, and other adaptable features within the units. These accessibility requirements are in addition to those required under Section 504 (see below). Sleeping rooms that share kitchen facilities and dormitory style housing are subject to these requirements.

2. Inquiries Related to Disability

Although the Fair Housing Act places limitations on the ability of housing providers to inquire about the nature and severity of an applicant's disability, it is permissible for a housing provider that offers housing serving persons with disabilities to inquire whether an applicant meets the program's eligibility requirements.

Thus, a provider whose housing is limited to serving residents with disabilities may inquire whether an applicant has a qualifying disability. In addition, service providers connected with the housing program may make inquiries necessary to determine the service needs of residents. Housing providers may also ask applicants and residents whether they need units with special features or if they have special needs related to communication, but they should make these inquiries of all program participants.

3. Equal Access

Housing shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status. No recipient or subrecipient of HUD funds may inquire about the sexual orientation or gender identity of an applicant for, or occupant of, HUD-assisted housing for the purpose of determining eligibility for the housing or otherwise making such housing available. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity.

This prohibition on inquiries does not prohibit lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided to the individual is temporary emergency shelter that involves the sharing of sleeping areas or bathrooms, or inquiries made for the purpose of determining the number of bedrooms to which a household may be entitled.

4. Fair Housing Act Prohibitions on Discrimination Based On Sex

In general, the Fair Housing Act prohibits housing providers from limiting access to their housing program based upon sex. However, housing may be limited to one sex where, because of the physical limitations or configuration of the housing facility, considerations of personal privacy or personal safety would make it inappropriate for the facility to be made available to members of both sexes. For example, it would not be a violation of the Fair Housing Act for units with shared bathing or sleeping facilities to be limited to one sex.

5. Discrimination Based Upon Religion

The Fair Housing Act prohibits discrimination based upon religion. The City and its ESG subrecipients may not restrict housing or services to persons of a particular religion or religious denomination, nor may they require a particular religious belief or activity as a condition of receiving benefits or participating in program activities. If providers allow tenants to use the public and common spaces for religious services, it must make those public and common spaces available for all types of religious services requested by the tenants.

In addition to the Fair Housing Act prohibitions on discrimination based upon religion, there are other HUD requirements relating to use of federal funds by faith-based organizations.

6. Title VI of the Civil Rights Act of 1964

Title VI prohibits all recipients of federal financial assistance from discriminating based on race, color, or national origin. Title VI applies to any program or activity receiving federal financial assistance, not just housing. In housing, Title VI and the Fair Housing Act apply to many of the same types of activities. However, HUD has broader investigative authority in complaints related to violations of Title VI and the authority to impose different types of remedies than it does in cases involving violations of the Fair Housing Act.

Title VI regulations require that recipients have an affirmative obligation to take reasonable steps to remove or overcome any discriminatory practice or usage that subjects individuals to discrimination based on race, color, or national origin. The regulations also require that, even in the absence of prior discrimination, recipients should take affirmative steps to overcome the effects of conditions that result in limiting participation by persons of a particular race, color, or national origin. Title VI regulations also require that owners maintain racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federal financial assistance.

Under Title VI, recipients may be required to provide language assistance to persons who, as a result of their national origin, are limited in their English proficiency, in order to improve access to their programs and activities.

7. American with Disabilities Act (ADA)

Title II of the Americans with Disabilities Act (ADA) prohibits discrimination against persons with disabilities in all programs, activities, and services of a public entity (i.e., state or local government; or department, agency, special purpose district, or other instrumentality of a state, or states, or local government). The prohibitions against discrimination under Title II of the ADA are essentially the same as those in Section 504, except they apply to all programs, activities, and services of the public entity, not just those funded with federal financial assistance.

Title III of the ADA prohibits discrimination on the basis of disability in public accommodations and commercial facilities. These do not include housing, but do include emergency overnight shelters or social service facilities. For more information about the ADA and its requirements, see the Department of Justice website at: www.ada.gov.

ESG subrecipients must ensure that their program's housing and supportive services are provided in the most integrated setting appropriate to the needs of persons with disabilities.

8. Age Discrimination Act of 1975

The Age Discrimination Act prohibits discrimination based upon age in federally assisted and funded programs or activities, except in limited circumstances. It is not a violation of the Age Discrimination Act to use age as a screening criterion in a particular program if age distinctions are permitted by statute for that program or if age distinctions are a factor necessary for the normal operation of the program or the achievement of a statutory objective of the program or activity.

G. DEFINITION OF FAMILY AND EQUAL ACCESS

The Fair Housing Act prohibits discrimination based upon familial status, defined as families and individuals with children under 18, as well as pregnancy, and families and individuals in the process of securing legal custody of individuals under 18. Discrimination against families with children is prohibited, regardless of the ages of the children, or the number of children in a household.

Notwithstanding the prohibition against discrimination on the basis of familial status, state and local governments do have the right to apply reasonable restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

In general, absent special circumstances, HUD's position is that a maximum of two persons in a bedroom is a reasonable occupancy standard. Bedroom size, unit size, age of children, and other circumstances might affect the reasonableness of a two person per bedroom occupancy rule. A family can include any group of persons presenting for assistance together with or without children regardless of marital status, actual or perceived sexual orientation, or gender identity. A child who is temporarily away from the home because of placement in foster care is considered a member of the family.

What this means is that any group of people that present together for assistance and identify themselves as a family, regardless of age or relationship or other factors, is considered to be a family and must be served together as such. Further, a recipient or subrecipient receiving funds under the ESG program cannot discriminate against a group of people presenting as a family based on the composition of the family (e.g., adults and children or just adults), the age of any member's family, the disability status of any members of the family, marital status, actual or perceived sexual orientation, or gender identity.

1. Equal Access

Housing that is assisted by HUD shall be made available without regard to actual or perceived sexual orientation, gender identity, or marital status.

2. Prohibition of Inquiries on Sexual Orientation or Gender Identity

No owner or administrator of HUD-assisted housing, nor any recipient or subrecipient of HUD funds, may inquire about the sexual orientation or gender identity of an applicant for, or

occupant of, HUD-assisted housing for the purpose of determining eligibility for the housing. This prohibition on inquiries regarding sexual orientation or gender identity does not prohibit any individual from voluntarily self-identifying sexual orientation or gender identity.

This prohibition on inquiries does not prohibit lawful inquiries of an applicant or occupant's sex where the housing provided or to be provided to the individual is temporary emergency shelter that involves the sharing of sleeping areas or bathrooms, or inquiries made for the purpose of determining the number of bedrooms to which a household may be entitled.

Below are two examples of how this might apply:

Example A: A rapid re-housing program that serves families.

A rapid re-housing program that serves families must serve all types of families and cannot discriminate against any family based on marital status, actual or perceived sexual orientation of the family members, or gender identities of the family members. Therefore, if two adults present together as a family, the recipient or subrecipient must serve the two adults as a family and may not require proof of marriage and may not limit assistance to couples in a heterosexual relationship.

Example B: An emergency shelter that serves households with children.

While it is acceptable for a shelter or housing program to limit assistance to households with children, it may not limit assistance to only women with children. An exception may be made for shelters that provide targeted services to women who are victims of domestic violence. Such a shelter must also serve the following family types, should they present, in order to be in compliance with the Equal Access rule:

- Single male head of household with minor child(ren); and
- Any household made up of two or more adults, regardless of sexual orientation, marital status, or gender identity, presenting with minor child(ren).

In this example, the emergency shelter or housing program would not be required to serve families composed of only adult members and could deny access to these types of families provided that all adult-only families are treated equally, regardless of sexual orientation, marital status, or gender identity.

H. SECTION 504 REQUIREMENTS

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based upon disability in all programs or activities operated by recipients of federal financial assistance, regardless of whether the programs involve provision of housing or non-housing services or benefits. While Section 504 overlaps with the disability discrimination prohibitions of the Fair Housing Act, it also imposes broad affirmative obligations on recipients to make their programs, as a whole, accessible to persons with disabilities.

These obligations include the following:

1. Affirmative Accessibility Requirements

Section 504 regulations establish affirmative physical accessibility requirements when federal financial assistance is used for new construction or rehabilitation of housing. The regulations require five percent (5%) of units to be made accessible to persons with mobility disabilities and an additional two percent (2%) to be made accessible to persons with communication disabilities. In addition, the regulations require accessible public and common use areas. Units and public and common use areas that meet the requirements of the Uniform Federal Accessibility Standards (UFAS) are deemed to be fully accessible under Section 504.

The Section 504 accessibility requirements are in addition to the requirements imposed by the Fair Housing Act for newly constructed multifamily housing. Units that only meet the Fair Housing Act design and construction standards do not comply with UFAS. A copy of UFAS can be obtained at <http://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards/ufas>. Services provided to participants in SHP programs must also be provided in accessible settings.

2. Site Selection

The Section 504 regulations require that recipients consider physical accessibility in determining the site or location of a federally assisted facility. The regulations state that it is discriminatory for recipients to select sites which have the purpose or effect of excluding qualified persons with disabilities from participating in, or denying the benefits of, any program or activity that receives federal financial assistance. For example, an ESG subrecipient should not lease a building that has steps at the entrance and cannot be ramped to allow persons with mobility impairments to access the building.

3. Effective Communication

The Section 504 regulations require recipients to take appropriate steps to ensure effective communication with applicants, residents, and the public with communication disabilities. Providers should ensure that their application and admissions process and the services offered are accessible and understandable by persons with disabilities. This may include providing necessary auxiliary aids and services such as sign language interpreters and written materials in alternative formats.

I. REASONABLE ACCOMMODATION

The Fair Housing Act requires owners of housing facilities to provide reasonable accommodations to persons with disabilities. Under the Fair Housing Act, reasonable accommodations are changes, exceptions, or adjustments to a program, service, or procedure that will allow a person with a disability to have equal enjoyment of the housing program.

There must be an identifiable relationship between the requested accommodation and the person's disability. ***Reasonable accommodations need not be provided if they would constitute an undue financial and administrative burden, or if they would be a fundamental alteration of the provider's program.***

The Fair Housing Act does not require owners and homeowner associations to make and pay for structural modifications to dwellings. Instead, it requires owners and homeowners to allow tenants with disabilities to make reasonable access-related modifications to their private living space and common use spaces. However, recipients of federal financial assistance such as ESG grantees should be mindful that they are subject to Section 504's more stringent requirements that they make and pay for structural modifications to dwellings and public and common use areas that are needed as a reasonable accommodation for persons with disabilities unless providing that accommodation would constitute a fundamental alteration of the program or an undue financial and administrative burden.

Like the Fair Housing Act, Section 504 requires that recipients provide reasonable accommodations to persons with disabilities by making changes to policies, practices, procedures, and structures if needed to allow applicants or tenants with disabilities to have access to or participate in the program. A particular reasonable accommodation need not be provided if doing so would constitute an undue financial and administrative burden or a fundamental alteration of the program.

The requirements for reasonable accommodations related to policies, practices, and procedures are the same under Section 504 and the Fair Housing Act. However, the Section 504 reasonable accommodation obligation is broader than the obligation under the Fair Housing Act with respect to requests for structural changes to facilities because ***Section 504 requires that recipients of federal financial assistance make and pay for physical changes to dwelling units and public and common use spaces if needed as a reasonable accommodation unless it is an undue financial and administrative burden or a fundamental alteration of the program.***

Recipients are allowed to verify the existence of the disability and the need for the requested accommodation.

Examples of reasonable accommodations under Section 504 include:

- Making an exception to a rule that prohibits animals in a dwelling to accommodate a person with a disability who uses an assistance animal;
- Providing and paying for a ramp to the entrance of a unit which would allow a tenant in a wheelchair to access the unit;
- Providing accessible transportation for a trip for program participants where transportation is being provided for nondisabled residents;
- Providing a first floor unit to an applicant or a transfer to a first floor unit for a resident who cannot climb stairs to a second floor unit; and,
- Allowing a resident to have a personal refrigerator to store medications in a development that does not normally provide refrigerators in sleeping units.

HUD strongly recommends that providers have written, reasonable accommodation policies and that applicants and residents be advised of the existence of their right to reasonable accommodation at admission and during tenancy.

10) LIVE-IN AIDES

One type of reasonable accommodation request is a request to have a live-in aide in HUD-funded housing. HUD regulations define a live-in aide as, “A person who resides with one or more elderly persons or near-elderly persons or persons with disabilities and who:

- Is determined to be essential to the care and well-being of the persons;
- Is not obligated for the support of the persons; and
- Would not be living in the unit except to provide the necessary supportive services.

When requesting information to verify the necessity of a live-in aide, HUD limits the type of information that can be requested. A provider may not seek the individual’s specific diagnosis, nor may the provider seek information regarding the nature, severity, or effects of the individual’s disability.

1. Determining the Residence of the Live-in Aide

HUD regulations seek to distinguish between a household member who would normally be expected to live in the unit and provide supports to a person with a disability—such as a spouse or parent—and an individual who has joined the household solely for purposes of caretaking. *A provider is permitted to ask a participant and aide to demonstrate that the provision of care is an ‘arm’s length transaction’ or that an aide was not a household member prior to becoming the helper.*

2. Relatives as Live-In Aides

Although relatives are not automatically excluded as eligible live-in aides, they must meet the definition stated above. Generally, pre-existing household members will not be able to qualify as a live-in aide. It is more complicated when a child moves into a unit to assist an ailing parent or vice versa, or when a live-in aide becomes a boyfriend or girlfriend after moving into the unit.

Some examples include:

Example A

A husband and wife are current tenants and are receiving rental assistance through a homelessness prevention program. The husband has a stroke and as a result of the stroke, can no longer walk independently without assistance. *Although the wife would continue to live in the unit as a member of the household, she would not qualify as a live-in aide because she was a member of the household prior to the stroke. Her income would not be excluded from the income calculation.*

Example B

An elderly person is residing in a unit assisted with rental assistance under a rapid re-housing program. *They have a stroke and as a result, can no longer walk independently without assistance. They hire and pay someone to live with them to help them with household chores and personal care. The person they hired to help them qualifies as a live-in aide; therefore, their income would also be excluded from consideration in calculating household income.*

Example C

A 30-year old woman is residing in a unit assisted with rental assistance under a rapid re-housing program. She is in a car accident and as a result, can no longer walk independently without assistance. *Her nephew comes to live with her to assist her with household chores and personal care. The nephew may or may not be a live-in aide depending on the situation. For example, if the nephew rents his own apartment in the community and gives up his apartment in order to live with his aunt to assist her with household chores and personal care, he may qualify as a live-in aide; therefore, his income would also be excluded from consideration in calculating household income.*

3. Eligibility and Screening

Once the housing provider has determined that the participant is eligible for a live-in-aide and that the aide would not otherwise be living with the participant, the housing provider should determine whether the specific individual is eligible to live in the unit. It is important to note that aides who do not live on the premises are not subject to any type of review by any housing agency.

Live-in aides are not subject to income or credit checks. However, since the aide will be living on the premises, the housing agency is permitted to conduct background checks to determine suitability. This may include a review of past tenancy and criminal behavior. Housing agencies can refuse to accept individuals as live-in aides based on the results of this screening.

4. Income Exclusions

In all HUD-funded housing programs, the income of an approved live-in aide is excluded when calculating a household's income and the amount the household must pay toward rent. Since the live-in aide is an occupant and not a tenant in the unit, as noted, it is not appropriate to include their income in these calculations. In addition, if the participant is paying the live-in aide directly and receives funds specifically to cover the cost of these services (e.g., from health or long-term care insurance coverage including Medicaid or Medicare funds), this income must be excluded as well when calculating the household's share of the rent.

5. Bedroom Size

HUD regulations require that a housing agency must include any approved live-in aide when determining the family unit size. For example, a single person who has a disability is generally eligible for a studio or a one-bedroom unit. If that same individual is determined eligible for a live-in aide, they are eligible for a two-bedroom unit. Note in this second scenario, the individual is eligible for either a two-bedroom unit or a one-bedroom unit.

If the individual is homeless, for example, or in a precarious housing situation and the wait for a two-bedroom unit is longer than a one-bedroom unit, the individual may choose to live in a one-bedroom unit with the live-in aide using a pull-out sofa in the living area in order to secure housing more quickly. The request cannot violate HUD's Housing Quality Standards (HQS), which states that the dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

6. Occupancy

A live-in aide is considered an occupant of the unit but is not a tenant and does not have the rights of tenancy. The name of the approved live-in aide may be listed as an occupant of the unit on the lease but should not be a signatory on the lease. *If the participant determines they want to change aides, and if the aide is a tenant of the unit, the participant might be required to evict the aide, a lengthy and problematic process, potentially placing the participant's housing at-risk while the aide stays in place.*

Providers are encouraged to use a lease addendum providing the right to evict a live-in aide who violates any of the house rules. This same lease addendum also clarifies that the aide does not qualify for continued occupancy when the participant is no longer a tenant—regardless of the reason why.

11) CONFLICT OF INTEREST

HUD requires that the City and its ESG subrecipients implement and document procedures in order to ensure that no conflicts of interest emerge.

1. Procurement

a) Procurement of property (goods, supplies or equipment) and services

For the procurement of property (goods, supplies or equipment) and services, the City and ESG subrecipients must use their own written and competitive procurement procedures. All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.

Procurement requirements fall essentially into two categories—'small purchases' and 'substantial goods, services and property':

- Most recipients and subrecipients use grant funds to procure ***small purchases*** such as office equipment or janitorial services. These purchases require fairly simple procurement procedures and documentation. The organization needs to obtain and compare price or rate quotations from more than one qualified source, such as a service provider or supply catalog. It is important to refer to 24 CFR 85.36 to discern when a sealed bid competition is required and when a non-competitive procurement is acceptable.
- For more ***substantial contracts for services or goods***, procurement procedures must follow more rigorous standards. For example, grantees (and sponsors) need to adhere to requirements for procurement methods such as competitive and non-competitive bids. They need to include various contract provisions such as compliance with equal employment opportunity requirements, termination for cause, reporting requirements, etc. They also need to determine whether bidders are on the federal list of parties that are barred from receiving federal funds, and they are not allowed to enter into contract agreements that are considered ‘cost plus’ contracts.

The City and its ESG subrecipients must use the applicable procurement process to secure a contract with an entity that will provide goods or perform specific tasks. However, the entity itself is not further subject to the federal procurement rules as it carries out its work to provide the contracted goods or services. Appropriate contract management, nevertheless, is necessary to ensure that the work is performed as contracted at a reasonable cost and that the contractor follows any and all stipulations that are part of the contract.

For both small purchases and more substantial procurements, subrecipients must have written policies and procedures that describe how their organizations will procure goods and services, what information they will require when receiving a price or rate quote, and who will have approval authority.

Additionally, subrecipients of ESG funds must have regular in-house trainings and a written code of standards for employees who award and administer contracts. An employee, officer or agent of the City or subrecipient organization should not participate in awarding a contract if any of the following people have an interest—financial or otherwise—in a firm that might be selected:

- The employee, officer, or agent;
- Any member of their immediate family or a partner; and,
- An organization that employs, or is about to employ, any of the above.

The board of directors and program staff should identify potential conflicts of interest. The board should review these situations, using the organization’s own procedure for addressing conflicts of interest. Independent auditors of a recipient or subrecipient organization’s finances will typically also review the organization’s policies and activities for potential conflicts of interest.

Procurements are also subject to the following standards:

- Subrecipients should avoid purchasing unnecessary items.
- Where appropriate, an analysis should be made of lease and purchase alternatives to determine the most economical and practical procurement.
- Solicitations for goods and services should provide a clear and accurate description of the technical requirements for the material, product or service; requirements to be fulfilled by the bidder; and description of features, dimensions and functions to be performed including the minimum acceptable standards.
- Positive efforts shall be made to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible.
- Records must be kept that describe the basis for contractor selection and the basis for the award cost or price.
- In competitive procurements, descriptions shall not contain features that unduly restrict competition.
- Preference shall be given, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient. Procurement for item(s) expected to exceed \$10,000 over the fiscal year must also, to the extent practicable, contain the highest percentage of recovered material.
- Subrecipients must establish an affirmative procurement program for the procurement of recovered materials as identified in EPA guidelines.

b) Codes of Conduct

ESG subrecipients must maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. *No employee, officer, or agent should participate in funding decisions nor solicit or accept gratuities, favors, or anything of monetary value from contractors, or parties to subrecipients.* However, subrecipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must include disciplinary actions to be applied for violations.

c) Contract provisions

All contracts awarded by a recipient, including small purchases, shall contain provisions requiring compliance with Equal Employment Opportunity requirements, the Copeland "Anti-Kickback" Act, the Contract Work Hours and Safety Standards Act, the Clean Air Act, the Byrd Anti-Lobbying Amendment, Debarment and Suspension rules, and Drug-Free Workplace Requirements.

3. Organizational Conflict

An organizational conflict of interest arises when, because of their relationship with a recipient or subrecipient, an individual is unable or potentially unable to remain impartial and objective. For example, *a board member cannot participate in the decision of the award of a grant to the organization that such member represents. It would also arise when an employee of the City or subrecipient participates in making rent reasonableness determinations and housing quality inspections of property owned by the City, subrecipient, or a related entity.*

a) Persons covered by these requirements include:

- Employees;
- Agents;
- Consultants;
- Officers; and,
- Elected/appointed officials of the City or subrecipient.

All contractors of the City or ESG subrecipient must comply with the same requirements.

c) *No person or organization who is currently or previously involved in the activities funded by the ESG grant or participating in a decision-making process may:*

- Have a financial interest or benefit in any contract, subcontract, or agreement with respect to a funded ESG activity; or
- Have a financial interest in the proceeds derived, either for themselves, their family, or those with whom they have business ties during their tenure or the one-year period following.

3. Exceptions

Upon the written request of the recipient, HUD may grant an exception to the provisions of this section on a case-by-case basis. HUD will consider an exception only after the City or subrecipient has provided the following documentation:

- Disclosure of the nature of the conflict and if the recipient is a private nonprofit organization, assurance that the conflict has been disclosed in accordance with the agency's written code of conduct or other conflict-of-interest policy, and
- An opinion of the recipient's attorney that the interest for which the exception is sought would not violate state or local law and that the exception would not violate the organization's internal policies.

a) Factors to be considered for exceptions

HUD must conclude that the exception will serve to further the purposes of the ESG program and the effective and efficient administration of the City's or subrecipient's project. Factors considered include:

- A significant cost benefit or an essential degree of expertise;
- An opportunity for open competitive bidding;
- Withdrawal from the decision-making process regarding activity in question;
- Presence of the interest or benefit prior to the affected person's role in the relevant position;
- Hardship to the City, the subrecipient, or the person affected, outweighs the public interest served by avoiding the conflict;

If the person affected is a potential beneficiary of the funded activity, the exception will permit him/her to receive generally the same amount or type of benefit as others eligible for funded activity.

4. ESG Organizational Conflict

The provision of any type or amount of ESG assistance may not be conditioned on an individual's or family's acceptance or occupancy of emergency shelter or housing owned by the City, the subrecipient, or a parent or subsidiary of the subrecipient. *No subrecipient may, with respect to individuals or families occupying housing owned by the subrecipient, or any parent or subsidiary of the subrecipient, carry out the initial evaluation required to determine eligibility for ESG programs or administer homelessness prevention assistance.*

L. GENERAL RECORDKEEPING AND CONFIDENTIALITY

1. Confidentiality

In addition to meeting the specific confidentiality and security requirements for HMIS data, the recipient and its subrecipients must develop and implement written procedures to ensure:

- All records containing protected identifying information of any individual or family who applies for and/or receives assistance will be kept secure and confidential;
- The address or location of any family violence project assisted will not be made public, except with written authorization of the person responsible for the operation of the project; and
- The address or location of any housing of a program participant will not be made public, except as provided under a preexisting privacy policy of the recipient or subrecipient and consistent with state and local laws regarding privacy and obligations of confidentiality.

2. Period of Record Retention

All records pertaining to each fiscal year of ESG funds must be retained for five (5) years after the expenditure of all funds from the grant under which the program participant was served.

Copies made by microfilming, photocopying, or similar methods may be substituted for the original records. If ESG funds are used for emergency shelter renovation or conversion, different recordkeeping requirements apply.

12) OTHER FEDERAL REQUIREMENTS

Use of assistance must comply with the following federal requirements.

1. **Subawards :** All federal requirements apply to subrecipients performing work under an ESG award.
2. **Davis-Bacon Act:** The provisions of the Davis-Bacon Act do not apply to ESG.
3. **Section 3 of the Housing and Urban Development Act**

Employment and other economic opportunities generated by federal assistance should, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance housing. Notice of this requirement, including the name and location of the person(s) taking applications for each of the positions and the anticipated start date, must be sent to the labor organization or representative of workers with which the contractor has a collective bargaining agreement, and made visible at the work site. Every subcontract must include this employment targeting language. Positions may be filled by persons over the low-income limit only after attempts to meet this requirement have been made. Homeless individuals have priority over other Section 3 residents.

4. Uniform Administrative Requirements

The requirements of 24 CFR part 84—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations—apply to all recipients and subrecipients. These regulations provide additional detail regarding financial management requirements, property and equipment standards, procurement standards, reporting requirements, termination, enforcement, and close-out.

5. Debarment and Suspension

Rule that restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs or activities apply.

6. Drug- Free Workplace

Recipients must provide drug-free workplaces in accordance with the Drug-Free Workplace Act of 1988. This includes publishing a statement that illegal drug use, possession, sales, or manufacture is prohibited and the actions that will be taken for violations. This statement must be given to all employees and must inform employees that they must notify the employer within five days of any conviction for a violation of a criminal drug statute occurring in the workplace. Employers are required to provide this information to HUD within ten calendar days along with the intended action, which can include requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program. The Act also requires the establishment of a drug-free awareness program.

7. Anti-Lobbying

Grant recipients cannot use federal funds to pay a person to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

8. Equipment Records

Equipment records shall be maintained that include a description of all equipment purchased with federal funds, serial numbers, acquisition dates and costs, and disposition information. A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. A control system must be in place to insure adequate safeguards to prevent loss, damage, or theft of the equipment and any loss, theft or damage should be investigated and documented.

9. Disposition of Equipment and Supplies

If supplies or equipment valued at more than \$5,000 remain in the possession of the recipient or subrecipient upon termination or completion of the project, the recipient or subrecipient may be required to compensate the Federal Government for its share

10. Relocation

In the event that ESG funds are used for acquisition and rehabilitation, certain requirements apply related to the displacement and relocation of individuals and households.



**CITY COUNCIL
AGENDA REPORT**

TYPE OF ITEM: Info/Consent

AGENDA ITEM NO.: 6

DATE: May 23, 2017

TO: City Council

THROUGH: Greg Nyhoff
City Manager

FROM: Steve Janice
Director of Human Resources

SUBJECT: Fifth Amendment to Agreement – AppleOne Employment Services

CONTACT: Steve Janice, Director of Human Resources
Steve.Janice@oxnard.org, 385-7947

RECOMMENDATION:

That City Council approve and authorize the Mayor to execute a Fifth Amendment to Agreement No. 7379-16-HR with AppleOne Employment Services in the amount of \$14,776.53 to pay final invoices for short-term staffing for various City departments.

BACKGROUND

In February 2016, the City entered into an initial agreement for \$25,000 with AppleOne Employment Services to provide temporary staffing to several City departments. The agreement was amended in June 2016 and September 2016 for an additional \$50,000 and \$175,000, respectively, for a total of \$250,000. In January 2017, a fourth amendment was processed for time only to extend the expiration to March 31, 2017. The cumulative value of the agreement after the execution of the Fifth Amendment will be \$264,776.53.

This Fifth Amendment is necessary in order to: (1) process invoices received for work incurred during the agreement term, and (2) to extend the agreement through June 2017 in order to process the final payment. No additional work is being performed under this agreement.

This agenda item is a routine operational item or does not relate to the four strategic plans

Fifth Amendment to Agreement – AppleOne Employment Services

May 23, 2017

Page 2

adopted by City Council on May 17, 2016.

FINANCIAL IMPACT

None. The final payment will be covered through existing operating budgets of various City departments.

ATTACHMENTS:

Attachment A: Fifth Amendment (Apple One)

Agreement No. 7379-16-HR

FIFTH AMENDMENT TO AGREEMENT FOR CONSULTING SERVICES

This Fifth Amendment ("Fifth Amendment") to the Agreement for Consulting Services ("Agreement") is made and entered into in the County of Ventura, State of California, this 31st day of March 2017, by and between the City of Oxnard, a municipal corporation ("City"), and Howroyd-Wright Employment Agency, Inc. dba Apple One Employment Services ("Vendor"). This Fifth Amendment amends the Agreement entered into on April 20, 2016, by City and Vendor. The Agreement previously has been amended on June 30, 2016, by a First Amendment, August 23, 2016 by a Second Amendment, October 10, 2016 by a Third Amendment, and January 1, 2017 by a Fourth Amendment.

City and Consultant agree as follows:

1. The first sentence of Paragraph 4 shall be amended to read as follows:

"City shall pay Contractor an amount not to exceed \$264,776.53 for services performed during the term of this Agreement."
2. In Section 3 of the Agreement, the date "March 31, 2017" is deleted and replaced with the date "June 30, 2017"
3. As so amended, the Agreement remains in full force and effect.

CITY OF OXNARD

APPLE ONE EMPLOYMENT SERVICES

Tim Flynn, Mayor



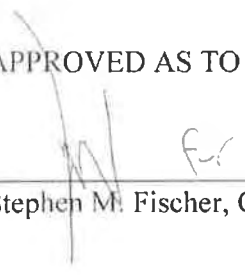
Michael A. Hoyal, CFO

Attest:

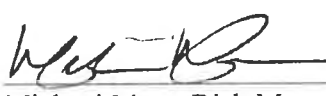
Michelle Ascencion, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO INSURANCE:



Stephen M. Fischer, City Attorney



Michael More, Risk Manager



**CITY COUNCIL
AGENDA REPORT**

TYPE OF ITEM: Info/Consent

AGENDA ITEM NO.: 7

DATE: May 23, 2017

TO: City Council

THROUGH: Greg Nyhoff
City Manager

FROM: Daniel Rydberg
Public Works Director

SUBJECT: Approve Plans and Specifications for Elevator Renovation at 305 W. Third Street (PW 17-34).

CONTACT: Daniel Rydberg, Public Works Director
Daniel.Rydberg@oxnard.org, 385-8055

RECOMMENDATION:

That City Council approve project plans, specifications and working details and authorize staff to solicit bids for the Elevator Renovation Project at 305 W. Third Street (PW 17-34).

BACKGROUND

This project involves the upgrade and modernization of the hydraulic passenger elevator located in the east wing of the Civic Center facility. This elevator is the original elevator which was installed in 1969, when the building was constructed. Over the years parts have been replaced, components have been upgraded and regular maintenance and repairs have been performed. It is now necessary to address the elevator's internal components for safety and regulatory compliance. This project will be a complete renovation, focusing on a new energy efficient control system, new hydraulic cylinder and improvements to the interior finishes. This project will not only bring this elevator up to modern building standards, it will also bring this elevator into compliance with current ADA requirements and State code.

STRATEGIC PRIORITIES

This agenda item supports the Infrastructure and Natural Resources strategy. The purpose of the

Approve Plans and Specifications for Elevator Renovation at 305 W. Third Street

May 23, 2017

Page 2

Infrastructure and Natural Resources strategy is to establish, preserve and improve our infrastructure and natural resources through effective planning, prioritization, and efficient use of available funding. This item supports the following goals and objectives:

Goal 4. Ensure proper construction and maintenance of infrastructure to provide maximum benefit with lowest life cycle cost following CIP plans.

Objective 4b. Catch up on deferred maintenance for City facilities.

FINANCIAL IMPACT

This Project will be funded through Measure O funds, as appropriated in the FY2016-17 budget for facility maintenance repairs. After the project bids are received and evaluated, staff will return to City Council to recommend awarding the contract to the lowest responsive bidder for the project.

Note: Plans and specifications will be available for review at the City of Oxnard Public Works, 305 West Third Street, Third Floor, East Wing, Oxnard, CA 93030, after 8:00 a.m. on Thursday prior to the City Council Meeting.



**CITY COUNCIL
AGENDA REPORT**

TYPE OF ITEM: Info/Consent

AGENDA ITEM NO.: 8

DATE: May 23, 2017

TO: City Council

THROUGH: Greg Nyhoff
City Manager

FROM: Daniel Rydberg
Public Works Director

SUBJECT: Approve Plans and Specifications for the Police Station Roof Replacement Project.

CONTACT: Daniel Rydberg, Public Works Director
Daniel.Rydberg@oxnard.org, 385-8055

RECOMMENDATION:

That City Council approve project plans, specifications and working details and authorize staff to solicit bids for the Police Station Roof Replacement Project (PW 17-33).

BACKGROUND

This project is the removal, repair and replacement of the City's Public Safety Building (Police Station) roof located at 251 South C Street. This building was originally constructed 1975. The building's roof was last replaced in 1989. Over its lifetime the roof has been repaired, patched, and mended, however it has now reached the end of its serviceable life. Working with roofing consultants and City staff, a plan is in place to remove the heavy wood/plaster equipment screen, remove the existing roof, repair any sub-roof damage, add insulation, new equipment screen and new flashing and install a new 20-year Title 24 Energy Efficient Code compliant built-up asphalt roof system.

STRATEGIC PRIORITIES

This agenda item supports the Infrastructure and Natural Resources strategy. The purpose of the Infrastructure and Natural Resources strategy is to establish, preserve and improve our

Approve Plans and Specifications for the Police Station Roof Replacement Project

May 23, 2017

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infrastructure and natural resources through effective planning, prioritization, and efficient use of available funding. This item supports the following goals and objectives:

Goal 4. Ensure proper construction and maintenance of infrastructure to provide maximum benefit with lowest life cycle cost following CIP plans.

Objective 4b. Catch up on deferred maintenance for City facilities.

FINANCIAL IMPACT

This Project will be funded through Measure O funds, as appropriated in the 2016-17 fiscal year budget for facility maintenance repairs. After the project bids are received and evaluated, staff will return to City Council to recommend awarding the contract to the lowest responsive bidder for the project.

Note: Plans and specifications will be available for review at the City of Oxnard Public Works, 305 West Third Street, Third Floor, East Wing, Oxnard, CA 93030, after 8:00 a.m. on Thursday prior to the City Council Meeting.



**CITY COUNCIL
AGENDA REPORT**

TYPE OF ITEM: Info/Consent

AGENDA ITEM NO.: 9

DATE: May 23, 2017

TO: City Council

THROUGH: Greg Nyhoff
City Manager

FROM: Daniel Rydberg
Public Works Director

A handwritten signature in dark ink that reads "Daniel Rydberg".

SUBJECT: Second Reading and Adoption of Ordinance No. 2917

CONTACT: Daniel Rydberg, Public Works Director
Daniel.Rydberg@oxnard.org, 385-8055

RECOMMENDATION:

1. That City Council waive the second reading and adopt Ordinance No. 2917, setting new wastewater rates.
2. That City Council direct the City Manager and the Public Works Director that \$500,000 per year in projected additional wastewater rate revenue be earmarked and placed into a "lock box" available only for unanticipated, unbudgeted and unscheduled emergency wastewater repairs each year over the next five year period.

BACKGROUND

On May 16, 2017, as required by Proposition 218, the City held a public hearing regarding new wastewater rates. Though not a majority of property owners and ratepayers presented written protests, the City Council did consider all protests against the proposed rates.

Councilmember Perello, who made a motion to approve the introduction and first reading of the Ordinance, added a contingency that the Council direct the City Manager and the Public Works Director that \$500,000 per year in projected additional wastewater rate revenue be earmarked and placed into a "lock box" available only for unanticipated, unbudgeted and unscheduled

Second Reading and Adoption of Ordinance to Set New Wastewater Rates

May 23, 2017

Page 2

emergency wastewater repairs each year over the next five year period. The Council approved the introduction and first reading of Ordinance number 2917, including Councilmember Perello's contingency. In accordance with Council's direction, staff will review and propose changes as necessary to the financial policy in Resolution No. 14,887 to add the "lock box" requirement.

Staff has received no additional comments on the ordinance since its introduction other than those heard at the public protest hearing. If adopted by Council on May 23, 2017, the ordinance will take effect in thirty days. The new rates will be implemented starting on July 1, 2017.

FINANCIAL IMPACT

If approved, the rate increase will provide an estimated \$1.5 million for wastewater services in FY 2017-18.

ATTACHMENTS:

Attachment A: Ordinance No. 2917 Wastewater Rates

CITY COUNCIL OF THE CITY OF OXNARD

ORDINANCE NO. 2917

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
OXNARD ESTABLISHING NEW WASTEWATER SYSTEM
USER FEES AND CHARGES

WHEREAS, the regulations of the federal Environmental Protection Agency (EPA) and the California State Water Resources Control Board (SWRCB) Revenue Program Guidelines require that the wastewater service charges of the City of Oxnard (City) conform to grant specifications for fair and equitable user fees;

WHEREAS, the EPA and SWRCB revenue programs require the City to conduct periodic rate adjustment studies and to implement the recommendations thereof, to keep municipal wastewater services on a self-supporting basis;

WHEREAS, pursuant to Chapter 19 of the Oxnard City Code, Ordinance No. 2860 was adopted the 18th of September, 2012, to set forth the City's wastewater system fees, charges, and user rates in accordance with the provisions of the City Code and EPA/SWRCB guidelines;

WHEREAS, the City's Public Works Department prepared a Cost of Services Study in 2015 (2015 Rate Study). The 2015 Rate Study assessed the Wastewater Enterprise operation, maintenance, repair, replacement, and capital improvement program budgets and requirements, which collectively were incorporated into the recommended rates of Ordinance No. 2901, so that the proportional cost of providing wastewater treatment and disposal service to the City's various customer classes were allocated consistently with all applicable legal requirements. The 2015 Rate Study and all the studies, plans and documents relied upon and incorporated in the 2015 Rate Study provided the basis for the rates and charges set forth in Ordinance No. 2901;

WHEREAS, Ordinance No. 2901 reflected the 2015 Rate Study to provide updated supplemental fees and charges for certain special services available upon request throughout the City;

WHEREAS, pursuant to Chapter 19 of the Oxnard City Code, Ordinance No. 2901 was adopted the 26th of January, 2016, to set forth the City's wastewater system fees, charges, and user rates in accordance with the provisions of the City Code and EPA/SWRCB guidelines;

WHEREAS, Measure M, which intended to repeal Ordinance No. 2901, passed at the November 2016 elections;

WHEREAS, the City's Public Works Department prepared a Cost of Services Study recently (2017 Rate Study). The 2017 Rate Study assesses the Wastewater Enterprise operation, maintenance, repair, replacement, and capital improvement program budgets and requirements, which collectively are incorporated into the recommended rates provided in this ordinance, so that the proportional cost of providing wastewater treatment and disposal service to the City's various customer classes are allocated consistently with all applicable legal requirements. The 2017 Rate Study and all the studies, plans and documents relied upon and incorporated in the 2017 Rate Study provide the basis for the rates and charges set forth herein;

WHEREAS, this ordinance reflects the 2017 Rate Study to provide updated supplemental fees and charges for certain special services available upon request throughout the City;

WHEREAS, notice was sent by mail to all property owners and wastewater utility ratepayers on March 30, 2017, which meets the legal requirement of sending notice at least 45 days before the public protest hearing;

WHEREAS, this ordinance includes a provision for the automatic adjustment of rates based on changes in certain third-party costs if these exceed the projection in the Cost of Service Study. The proposed rates displayed as effective beginning July 1, 2017, show the pre-authorized rates applicable July 1, 2017. However, the actual rates effective July 1, 2017, may vary based on the implementation of any automatic rate adjustments as may be authorized in any prior ordinance before the effective date of this ordinance; and

WHEREAS, Public Resources Code Section 21080(b)(8) and Section 15273 of the California Environmental Quality Act (CEQA) Guidelines provide that CEQA does not apply to the modification of public agency rates and other charges which the public agency finds are intended for certain purposes.

NOW, THEREFORE, the City Council of the City of Oxnard does hereby find as follows:

1. The adoption of this ordinance is exempt from CEQA because the fees adopted herein are for the following purposes:
 - a. Meeting operating expenses, including the increased cost of chemicals and energy sources, biosolids management, more stringent regulatory requirements, debt service, and Wastewater Division employee wages and fringe benefits; and
 - b. Purchasing and leasing supplies, equipment, and materials associated with the provision of wastewater service; and
 - c. Meeting financial reserve needs and requirements; and
 - d. Obtaining funds for capital projects necessary to maintain wastewater service within the City service area, including repair and replacement of the extensive collection and disposal systems and treatment plant; and
 - e. Obtaining funds necessary to maintain those intracity transfers as are authorized.
2. The basis for the foregoing claim of exemption is found in the 2017 Rate Study.

[Continued on next page]

NOW, THEREFORE, the City Council of the City of Oxnard does ordain as follows:

Part 1. Section 19-133 is added to Division 11 of Article I of Chapter 19 and shall state as follows:

“SEC. 19-133. WASTEWATER RATES.

(A) The rates charged for all wastewater collected by the City shall be established by ordinance of the City Council. Each customer receiving wastewater service is liable for payment for such service at the rates so established.

(B) Pursuant to Government Code section 53756, and after notice is provided as required by law, the adopted rates shall automatically adjust over a five-year period for inflation in the cost of operating the City’s wastewater system. If the actual inflation in natural gas and electricity rates paid by the City since the effective date of the rates exceeds the Rate Study’s cumulative forecast for inflation in utility costs for that same period, the rates will be automatically adjusted to recover the difference between the two. For example, if in year three of these rates the actual inflation in natural gas and electricity rates paid by the City since the effective date of the rates is 8.75 percent and the Rate Model estimates a cumulative increase of 7.5 percent over that same time period, then the inflation adjustment for that year would be 1.25 percent. On the other hand, if the actual inflation in natural gas and utility rates for this example time period is 7.5 percent, then no inflation adjustment would be made for that year as the actual inflation would equal the estimated inflation in the Rate Model. The City shall issue the adjustments no more than once per calendar year, and these adjustments will be effective at least 60 calendar days thereafter.

(C) When the City Council declares the existence of a water shortage condition pursuant to City Code Section 22-154, the wastewater treatment rates and charges provided herein that are based on water use shall be adjusted to reflect the level of severity and corresponding mandatory water conservation percentage reflected in the water shortage condition declaration. For example, if the Council declares a Stage 2 water shortage condition with a mandatory water use reduction goal of 20%, then the rates provided herein that are based on water use, shall be concurrently adjusted upward by the same percentage – 20%. This adjustment shall be initiated as of the effective date of the water shortage declaration and terminate as of the date of the termination of that water shortage declaration.”

[Continued on next page]

Part 2. Section 19-134 is added to Division 11 of Article I of Chapter 19 and shall state as follows:

“SEC. 19-134. FEES AND CHARGES.

The fees, charges and rates set forth below shall be charged and collected for the use of and for other privileges and services relating to the Regional Wastewater Treatment System of the City of Oxnard:

(A) [reserved]

(B) City of Oxnard User Charge for Wastewater System

The rate for City user classes or individual users of the wastewater system shall be calculated by the “City of Oxnard User Charge Formula” (the Oxnard Formula) as follows:

$$\text{OMUC} = p (\text{Vm}) + q (\text{Bm}) + r (\text{Sm})$$

Where:

OMUC = Oxnard monthly user charge in dollars

Vm = monthly wastewater discharge in millions of gallons

Bm = monthly BOD discharge in thousands of pounds

Sm = monthly SS discharge in thousands of pounds

p, q and r are unit cost coefficients established as follows:

Service		Effective July 1, 2017	Effective January 1, 2018	Effective January 1, 2019	Effective January 1, 2020	Effective January 1, 2021
Monthly Wastewater Discharge/Millions of Gallons	p =	\$3,061.50	\$3,222.23	\$3,391.40	\$3,569.45	\$3,756.85
Monthly BOD Discharge/Thousands of Pounds	q =	\$697.59	\$734.22	\$772.77	\$813.35	\$856.06
Monthly SS Discharge/Thousands of Pounds	r =	\$551.70	\$580.67	\$611.16	\$643.25	\$677.03

(1) Formula Users (Industrial & Commercial)

The monthly user charge for formula users shall be calculated using the Oxnard Formula. Industrial and commercial users billed by Oxnard Formula shall be those so designated by the Public Works Director. For those formula users that do not provide metered wastewater flow data, the wastewater flow shall be assumed to be 90% of water consumed. For those users that provide engineering data acceptable to the Public Works Director showing a different percentage, the wastewater flows will be based on that data.

(2) Non-Formula Users (Industrial, Commercial & Governmental)

The monthly user charge for non-residential users of the system that are not classified as formula users by the Public Works Director shall be as follows. The rate per hundred cubic feet (HCF) of water used is based on the assumption that a percent of the water consumed is returned to the wastewater system. The applicable percentage differs based on customer class. The percentage return is included for each customer class in the tables below. The Public Works Director shall have the authority to review the water consumption of any metered user of the wastewater system and to adjust the rate based on the average water consumption over a reasonable period of time:

(a) Commercial/School Wastewater Use (Percentage Wastewater Return = 85%):

Tier	Usage	Effective July 1, 2017	Effective January 1, 2018	Effective January 1, 2019	Effective January 1, 2020	Effective January 1, 2021
1	0 to 50 HCF/Month	\$3.49	\$3.68	\$3.88	\$4.09	\$4.31
2	> 50 to 930 HCF/Month	\$4.36	\$4.59	\$4.84	\$5.10	\$5.37
3	> 930 HCF/Month	\$8.72	\$9.18	\$9.67	\$10.18	\$10.72

(b) Restaurant Wastewater Use (Percentage Wastewater Return = 80%):

Tier	Usage	Effective July 1, 2017	Effective January 1, 2018	Effective January 1, 2019	Effective January 1, 2020	Effective January 1, 2021
1	0 to 20 HCF/Month	\$3.49	\$3.68	\$3.88	\$4.09	\$4.31
2	> 20 to 160 HCF/Month	\$4.36	\$4.59	\$4.84	\$5.10	\$5.37
3	> 160 HCF/Month	\$8.72	\$9.18	\$9.67	\$10.18	\$10.72

(c) Laundry/Laundromat Wastewater Use (Percentage Wastewater Return = 90%):

Tier	Usage	Effective July 1, 2017	Effective January 1, 2018	Effective January 1, 2019	Effective January 1, 2020	Effective January 1, 2021
1	0 to 105 HCF/Month	\$3.49	\$3.68	\$3.88	\$4.09	\$4.31
2	> 105 to 525 HCF/Month	\$3.86	\$4.07	\$4.29	\$4.52	\$4.76
3	> 525 HCF/Month	\$4.81	\$5.07	\$5.34	\$5.63	\$5.93

(3) Non-Formula Users - Residential

Residential wastewater service is deemed to begin when water service begins. Monthly residential user charges by type of dwelling units are as follows. The rate per hundred cubic feet

(HCF) of water used is based on the assumption that a percentage of the water consumed is returned to the wastewater system. The applicable percentage differs based on customer class. The percentage return is included for each customer class in the tables below. The Public Works Director shall have the authority to review the water consumption of any metered user of the wastewater system and to adjust the rate based on the average water consumption over a reasonable period of time:

(a) Single Family Residential Wastewater Use (Percentage Wastewater Return = 80%):

Tier	Usage	Effective July 1, 2017	Effective January 1, 2018	Effective January 1, 2019	Effective January 1, 2020	Effective January 1, 2021
1	0 to 9 HCF/Month	\$1.95	\$2.06	\$2.17	\$2.29	\$2.42
2	> 9 to 18 HCF/Month	\$2.17	\$2.29	\$2.42	\$2.55	\$2.69
3	> 18 HCF/Month	\$3.03	\$3.19	\$3.36	\$3.54	\$3.73

(b) Single Family Residential Wastewater Use; Large Lots (lot size of over 7,000 square feet) (Percentage Wastewater Return = 60%):

Tier	Usage	Effective July 1, 2017	Effective January 1, 2018	Effective January 1, 2019	Effective January 1, 2020	Effective January 1, 2021
1	0 to 16 HCF/Month	\$1.95	\$2.06	\$2.17	\$2.29	\$2.42
2	> 16 to 25 HCF/Month	\$2.17	\$2.29	\$2.42	\$2.55	\$2.69
3	> 25 HCF/Month	\$3.03	\$3.19	\$3.36	\$3.54	\$3.73

(c) Multi-Family, Multi-Unit Residential Wastewater Use (Percentage Wastewater Return = 90%). Tiers for Multi-Family and Multi-Unit Residential are variable and are determined by multiplying each tier allotment by the number of dwelling units:

Tier	Usage	Effective July 1, 2017	Effective January 1, 2018	Effective January 1, 2019	Effective January 1, 2020	Effective January 1, 2021
1	0 to 6 HCF/Month	\$1.58	\$1.67	\$1.76	\$1.86	\$1.96
2	> 6 to 12 HCF/Month	\$1.77	\$1.87	\$1.97	\$2.08	\$2.19
3	> 12 HCF/Month	\$2.47	\$2.60	\$2.74	\$2.89	\$3.05

(4) Monthly Base Rates

In addition to monthly rates based on water use (per HCF) as set forth above, the following customer classes shall pay monthly meter rates:

Service		Effective July 1, 2017	Effective January 1, 2018	Effective January 1, 2019	Effective January 1, 2020	Effective January 1, 2021
Single Family		\$29.95	\$31.53	\$33.19	\$34.94	\$36.78
Multi-family/Unit:	1 to 6 Units	\$21.91	\$23.07	\$24.29	\$25.57	\$26.92
	7+ Units	\$10.92	\$11.50	\$12.11	\$12.75	\$13.42

(5) Minimum Monthly Fees

The following customer classes shall pay the greater of the applicable monthly rates set forth in the table below, or the monthly rates based on the actual water use (per HCF) as set forth above:

Service	Effective July 1, 2017	Effective January 1, 2018	Effective January 1, 2019	Effective January 1, 2020	Effective January 1, 2021
Commercial	\$19.90	\$20.95	\$22.05	\$23.21	\$24.43
Restaurant	\$18.46	\$19.43	\$20.46	\$21.54	\$22.68
Laundry/Laundromat	\$91.57	\$96.38	\$101.44	\$106.77	\$112.38
School	\$69.85	\$73.52	\$77.38	\$81.45	\$85.73

(6) Non-metered Water Users

Except as provided in subsection B3 for residential water users, other non-metered water users, including commercial and industrial users, shall pay a monthly rate as determined by the Public Works Director based upon the monthly rate charged a metered water user of comparable size and character of use, provided, however, that the minimum monthly charge shall be the same as that charged for a multi-family dwelling unit. In lieu of specifically calculated rates, non-metered customers will be charged the following:

Service	Effective July 1, 2017	Effective January 1, 2018	Effective January 1, 2019	Effective January 1, 2020	Effective January 1, 2021
Non-Metered Customers	\$51.42	\$54.12	\$56.97	\$59.97	\$63.12

(7) Wastewater System Rate for Wastewater Treated by Another Agency

Where wastewater is collected by the City and is accepted by another agency for transmission, treatment and disposal, the monthly wastewater rates shall be equal to the rate charged by such agency for transmission, treatment and disposal of such wastewater, anything to the contrary herein notwithstanding.

(8) Additional Charges for Outside the City Users of City Wastewater System

Those outside the City users of the Las Posas sewer line shall be charged a monthly rate for wastewater service as follows. Wastewater service is deemed to begin when water service begins. The rate per hundred cubic feet (HCF) of water used is based on the assumption that 85 percent of commercial and 60 percent of residential water consumed is returned to the wastewater system. The Public Works Director shall have the right to review the water consumption of any metered user of the wastewater system and to adjust the rate based on the average water consumption over a reasonable period of time:

(a) Monthly Rates for User Charge Formula – Outside City

Service	Effective July 1, 2017	Effective January 1, 2018	Effective January 1, 2019	Effective January 1, 2020	Effective January 1, 2021
Single Family Residential per	\$79.72	\$83.32	\$87.04	\$90.96	\$95.11
Multi-family Residential per	\$55.66	\$58.18	\$60.79	\$63.55	\$66.38

(b) Monthly Rates for Las Posas Commercial/Institutional Wastewater Use

Tier	Service	Effective July 1, 2017	Effective January 1, 2018	Effective January 1, 2019	Effective January 1, 2020	Effective January 1, 2021
1	0 to 50 HCF/Month	\$6.57	\$6.87	\$7.17	\$7.48	\$7.81
2	> 50 to 930 HCF/Month	\$8.21	\$8.56	\$8.94	\$9.33	\$9.73
3	> 930 HCF/Month	\$16.42	\$17.12	\$17.86	\$18.62	\$19.43

(C) Industrial and Liquid Waste Sampling, Analysis and Flow Measurement

Dischargers whose wastewater charges are individually calculated using the Oxnard Formula shall be responsible for costs of required sampling, analysis and flow measurement associated therewith as provided in Chapter 19 of the Oxnard City Code. If sampling, analysis and flow data are not provided to the City as required, the Public Works Director shall cause monitoring to be performed or an estimate made to enable charges to be rendered. The discharger shall be billed for these extra costs.

(D) Charges for Unusual or Non-Compatible Wastewater

A charge for unusual or non-compatible waste constituents of such quality or character as to impose upon the City unusual operation and/or maintenance or capital costs whether or not related to total flow volume, biochemical oxygen demand, or suspended solids, shall be set by the Public Works Director and paid by the discharger. These charges shall be reasonably calculated to defray costs attributable to such wastes.

(E) Fee for Appeal

For each appeal to the City Council of a ruling by the Public Works Director a fee of \$100 will be charged.

(F) Industrial Wastewater Discharge Permits

The Industrial Wastewater Discharge Permits (permit) specified in Chapter 19 of the Oxnard City Code shall be granted for a specific time period, not to exceed five years. Application for permit and permit renewal shall be made in accordance with Chapter 19. All users classified as significant industrial wastewater users according to Chapter 19 shall be assessed a fee of \$2,500 per year per permit. All other industrial users shall be assessed a fee of \$100 per year per permit. In addition to the permit fee, new applicants for a permit shall be assessed a one time new application processing fee of \$100.

(G) Billing Procedure for Monthly Service Charge for Use of City Wastewater System

Bills shall be computed according to the rates then in effect and the number of days in the service period at each rate.”

Part 3. The provisions of this ordinance shall be applicable to all service provided or charges incurred on and after July 1, 2017.

Part 4. Upon the effective date of this ordinance, Ordinance No. 2860, if not already repealed, is repealed. Likewise, upon the effective date of this ordinance, Ordinance No. 2901 is repealed.

Part 5. If for any reason this ordinance is held invalid or unenforceable, the City Council intends that the ordinance provisions which would have been repealed by this ordinance shall remain in effect as if this ordinance had not been adopted.

Part 6. Pursuant to Government Code Section 36933(c)(1), the City Attorney was designated to prepare, and the City Clerk published, a summary of this ordinance, and a certified copy of the ordinance was posted in the Office of the City Clerk a minimum of five days before the City Council’s adoption of the ordinance.

Part 7. The City Clerk shall certify as to the adoption of this ordinance and shall cause the summary thereof to be published within fifteen calendar (15) days of the adoption and shall post a certified copy of this ordinance, including the vote for and against the same, in the office of the City Clerk, in accordance with Government Code Section 36933. Ordinance No. 2917 was first read on May 16, 2017, finally adopted on May 23, 2017, to become effective thirty (30) days thereafter.

[Continued]

APPROVED AND ADOPTED this 23rd day of May, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Tim Flynn, Mayor

ATTEST:

APPROVED AS TO FORM:

Michelle Ascencion, City Clerk

Stephen M. Fischer, City Attorney



**CITY COUNCIL
AGENDA REPORT**

TYPE OF ITEM: Info/Consent

AGENDA ITEM NO.: 10

DATE: May 23, 2017

TO: City Council

THROUGH: Greg Nyhoff
City Manager

FROM: Daniel Rydberg
Public Works Director

SUBJECT: Second Amendment to Agreement No. 6676-14-CM with Jordan Gilbert & Bain Landscape Architect, Inc. for On-Call Landscape Architectural Design and Review Services

CONTACT: Daniel Rydberg, Public Works Director
Daniel.Rydberg@oxnard.org, 385-8055

RECOMMENDATION:

That City Council approve the Second Amendment to Agreement No. 6676-14-CM with Jordan, Gilbert & Bain Landscape Architect, Inc. for on-call landscape architectural design services and landscape plan review. This amendment is to extend the expiration date to June 30, 2020, and increase the agreement in an amount of \$300,000 for a total amount not to exceed amount of \$750,000.

BACKGROUND

On April 3, 2014, the City (Public Works Department) issued a competitive request for proposals (RFP) for on-call landscape architectural *design services*. On May 5, 2014, two firms responded with proposals. Based on the qualifications stated in the proposals, City staff selected the most qualified firm for these services. The agreement was approved by City Council on June 17, 2014, in amount of \$250,000 for a term from June 30, 2014, to June 30, 2016. On July 19, 2016, City Council approved the first amendment in the amount of \$200,000 for a not-to-exceed total of \$450,000 with an expiration date of June 30, 2018.

Second Amendment to A-6676-14-CM with Jordan, Gilbert & Bain Landscape Architect, Inc.
May 23, 2017
Page 2

On February 3, 2017, the City (Development Services Department) sent a Request for Qualifications (RFQ) to 19 architects and firms for landscape architecture review and inspection services associated with development projects. Three firms submitted written responses to the RFQ. Development Services staff reviewed the proposals and selected two firms: Jordan, Gilbert & Bain (JGB) and Broderon Associates Landscape Architecture. These two firms were selected based on their familiarity with landscape architecture review for municipal clients, their qualifications met the requirements specified in the RFQ, and their understanding of the City's Development Advisory Committee (DAC) review process.

The Public Works and Development Services Departments are seeking to extend the agreement until June 30, 2020. Additionally, the Public Works Department wishes to increase the \$450,000 contract amount by \$250,000, and the Development Services Department would like to increase the amount by \$50,000. Thus, the contract would not exceed \$750,000. Work under this agreement will be assigned by task order for individual projects that are critical to the various projects during both the design and construction phase. These design services are comprised of developing plans and specifications for park improvements and general landscape areas maintained by the City as well as design review, plan check and inspection services for development proposals. The task orders specific for development proposals are reimbursable by developers.

Currently, there is no City staff available to provide these services. A quote will be obtained for each assigned service and each task order will be approved per current City standard practices. This agreement is Citywide and available for all City departments.

STRATEGIC PRIORITIES

This agenda item is a routine operational item or does not relate to the four strategic plans adopted by City Council on May 17, 2016.

FINANCIAL IMPACT

Funding sources for this agreement are performed by task order assigned to the projects within the budgets of the department requesting the services. Costs associated with landscape architectural review services for development projects will be completely recovered through planning fees.

ATTACHMENTS:

Attachment A - Second Amendment to Agreement No. 6676-14-CM

Agreement No. 6676-14-CM

SECOND AMENDMENT TO AGREEMENT FOR PROFESSIONAL SERVICES

This Second Amendment ("Second Amendment") to the Agreement for Professional Services ("Agreement") is made and entered into in the County of Ventura, State of California, this _____ day of _____, 2017, by and between the City of Oxnard, a municipal corporation ("City"), and Jordan, Gilbert & Bain Landscape Architects, Inc. ("Consultant"). This Second Amendment amends the Agreement entered into on June 30, 2014, by City and Consultant. The Agreement previously has been amended on July 19, 2016, by a First Amendment.

City and Consultant agree as follows:

1. Section 1 of the Agreement is deleted in its entirety and replaced with the following:

"Scope of Services

Consultant shall furnish City with professional consulting services for the general on-call landscape design, as more particularly the City will request and assign work scopes per Exhibit A and A-1, both of which are attached hereto and incorporated herein by this reference, and as such work becomes available. Each of these assignments are incorporated by this reference in full herein. Consultant shall perform, with its own organization, Contract work amounting to at least 50 percent of the Contract Price per scope assigned."

2. Section 9 of the Agreement is deleted in its entirety and replaced with the following:

"Principal in Charge

Consultant hereby designates Paul Jordan and Michael C. Gilbert as its principals-in-charge and persons responsible for necessary coordination with Manager."

3. In Section 12 of the Agreement, the date "June 30, 2018," is deleted and replaced with the date "June 30, 2020."

4. Section 14(a) is deleted in its entirety and replaced with the following:

"City shall pay Contractor a not to exceed amount of \$700,000 in consideration of the Services provided to the Public Works Department, and a not to exceed amount of \$50,000 in consideration of the services provided to the Community Development Department. In no case may funding from one Department be used to pay for Services rendered for the other Department. Both Departments shall pay at rates provided in Exhibit B, which is attached hereto and incorporated herein by this reference."

5. Section 15(a) of the Agreement is deleted in its entirety and replaced with the following:

“City agrees to pay Consultant monthly upon satisfactory completion of the Services and upon submission by Consultant of invoices delineating the Services performed, in a form satisfactory to Managers. The invoices shall identify the appropriate Department and the Services by project as specified by Managers. Consultant must issue separate invoices to each Department.”

6. Section 36 of the Agreement is deleted in its entirety and replaced with the following:

“Counterparts

City and Consultant agree that this Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be one and the same agreement or document. A signed copy of this Agreement transmitted by facsimile, email, or other means of electronic transmission, shall be deemed to have the same legal effect as delivery of an original, executed copy of this Agreement for all purposes.”

7. Section 40(b) of the Agreement is deleted in its entirety and replaced with the following:

“Any notices to City may delivered personally or by mail addressed to City of Oxnard at the following addresses:

For Public Works Department: City of Oxnard, Public Works Department, 305 West Third Street, Oxnard, CA 93030, Attn: Ralph Alamillo

For Development Services Department: City of Oxnard, Planning Division, 214 South C Street, Oxnard, CA 93030, Attn: Kathleen Mallory.”

8. As so amended, the Agreement remains in full force and effect.

[Signatures on next page]

IN WITNESS WHEREOF, the parties hereto have executed the Agreement on the date first written above.

CITY OF OXNARD

JORDAN, GILBERT & BAIN
LANDSCAPE ARCHITECTS, INC.

Tim Flynn, Mayor

Paul Jordan, President

ATTEST:

Michelle Ascencion, City Clerk

John J. Bain III, Secretary

APPROVED AS TO FORM:

Stephen M. Fischer, City Attorney

APPROVED AS TO INSURANCE:

Mike More, Risk Manager

APPROVED AS TO CONTENT:

Daniel Rydberg, P.E. Public Works Director

Ashley Golden, Development Services Director

APPROVED AS TO AMOUNT:

Greg Nyhoff, City Manager

Ruth Osuna, Assistant City Manager

EXHIBIT A

SCOPE OF WORK
GENERAL ON-CALL LANDSCAPE ARCHITECT SERVICES

The proposal for each Task Order shall identify a concise description of the on-call services scope of the task order work and how the consultant will complete work that is being assigned by the task order. It is up to the consultant to determine the best and most cost-effective method to complete each individual task order work so that an assigned project can be constructed to the satisfaction of the City of Oxnard. The Consultant will provide an initial lump sum amount for the Task Order being assigned based on the Fee Schedule in Exhibit B and this may be adjusted should the Task Order work evolve and expand in scope. Task Orders may include but not be limited to the following types of services:

- a. Meet with or communicate with and determine required scope of task order assignment.
- b. Prepare quote for task order and submit for approval.
- c. Prepare design plans, construction cost estimate and technical specifications as required.
- d. Obtain approval of all required permits, City, County, and State or other.
- e. Complete Design services for all individual projects as assigned by task order.
- f. Assist the City in obtaining all required permits.
- g. Provide quality control.
- h. Perform cost estimates for each milestone or overall task order.
- i. Perform a constructability analysis as may be required for task order assignment.
- j. Construction Services – Review RFI (request for information), submittal, and shop drawings for individual task order assignment.
- k. Maintain good record keeping.
- l. Provide a schedule of each task; and overall design schedule and construction by task.
- m. Schedule any meetings as necessary during task order design.
- n. Provide value engineering recommendations to City staff members.
- o. Keep communication as required with City staff and subconsultants for task orders assigned.
- p. Other duties as may be required by City staff related to these on-call services.

EXHIBIT A-1 SCOPE OF SERVICES

Consultant will perform the following services:

I. Design Review

- Review landscape plans associated with development proposals;
- Participate as an active member of the Development Advisory Committee (DAC) (including the potential to attend up to approximately three DAC meetings each month) to provide timely review and written comments on proposed development applications. Such review will be at the direction of the Planning Division, and will include review of Conceptual Landscape Plans. Such review may include compliance with application submittal requirements, conformance with the City of Oxnard Landscape Standards, Water Efficient Landscape Ordinance, applicable specific plan requirements, adopted streetscape plans, and appropriateness of proposed design to surrounding developments including, but not limited to:
 - Review of plant and tree selections
 - Relocation or removal of existing landscaping
 - Conflicts of plant material/trees with existing or proposed utilities, bio-swales, detention areas
 - Review of hardscape and landscape features (walkways, fountains, pools, etc.) and outdoor site furniture and recreational amenities.
- Provide conditions of approval to Planning staff for development projects;
- Provide written comments on landscape plans as requested by City staff;
- Be available, as needed, to participate in meetings with Development Services staff and/or General Services staff to review and comment on conceptual or long-range planning studies (which may include specific plans, master plans, transportation plans, landscape and tree ordinances) as requested by City staff;
- Under the direction of the Planning Division, attend pre-development, community, and citizen meetings; respond to questions and concerns from the general public, including tree removal on private property or the public right of way and Home Owner Associate requests; provide information as is appropriate and resolve complaints related landscape issues;
- Under the direction of the Planning Division, confer with applicants, contractors, builders, and the general public in the field and office; explain and interpret requirements and restrictions; keep records and prepare reports as necessary;
- Under the direction of the Planning Division, assist with revisions or creation of City of Oxnard Landscape Standards, water efficient ordinances, parkway design, tree programs and ordinances, or similar projects;
- Perform other necessary tasks, as assigned, to support the scope.

II. Plan Check

- Review civil drawing, and landscape plans for development projects, including alterations to existing developments, and specifications to ensure compliance with underlying Planning Permits and Conditions of Approval, applicable zoning, environmental, and landscape standards and including codes and regulations of the City, County, State, and Federal agencies;
- Verify compliance with the Water Efficient Landscape Ordinance;
- Assist in the preparation and coordination of non-complying cases for prosecution; testify in court as required;
- Confer with architects, contractors, builders and the general public in the field and office; explain and interpret Planning and Landscape requirements and restrictions;
- Keep computerized schedules and records and prepare reports and correction lists, as required.

III. Inspection Services

- Inspect landscaping and irrigation systems at various stages of construction, alteration, and repair; ensure compliance with zoning, environmental, and landscape standards;
- Perform field inspections for finished landscape improvements, including alterations to existing landscape and irrigation systems, as required;
- Ensure compliance with underlying Planning Permits and Conditions of Approval, applicable zoning, environmental, and landscape standards, including codes and regulations of City, County, State, and Federal agencies;
- Make field review of plans and specifications for inspection clearance;
- Inspect irrigation and landscape installation as required during construction; perform re-inspections on previously failed inspections;
- Assist in the preparation and coordination of non-complying cases for prosecution; testify in court as required;
- Confer with architects, contractors, builders and the general public in the field and office; explain and interpret Planning and Landscape requirements and restrictions;
- Keep computerized schedules and records and prepare reports and correction lists, as required.

EXHIBIT B FEE SCHEDULES

JORDAN, GILBERT & BAIN LANDSCAPE ARCHITECTS, INC.

Principal Landscape Architect	\$120.00/hr
Associate Landscape Architect	\$ 95.00/hr
Drafter/CAD	\$ 65.00/hr
Certified Arborist	\$ 65.00/hr
Clerical	\$ 35.00/hr

SUBCONSULTANTS

PENFIELD & SMITH

Engineering Technician	\$ 85.00/hr
Associate Technician	\$ 95.00/hr
Senior Technician	\$105.00/hr
Designer	\$125.00/hr
Assistant Engineer I	\$105.00/hr
Assistant Engineer II	\$125.00/hr
Assistant Engineer	\$145.00/hr
Senior Engineer I	\$160.00/hr
Senior Engineer II	\$170.00/hr
Principal Engineer	\$190.00/hr

MOON ENGINEERING

Principals	\$135.00/hr
Professional Engineers	\$125.00/hr
Engineering Designers	\$115.00/hr
Drafters	\$ 65.00/hr
Clerical Staff	\$ 40.00/hr

BULDOG & ASSOCIATES

Principal/Partners	\$155.00/hr
Expert Witness/Forensic Engineering	\$325.00/hr.
Project Manager/Senior Engineer	\$135.00/hr
Senior Designer/Architect	\$135.00/hr
Designer	\$125.00/hr
Senior CAD	\$ 95.00/hr
Drafter/CAD	\$ 80.00/hr
Clerical	\$55.00/hr

FOUNTAINHEAD ARCHITECTS

Principal Architect	\$125.00/hr
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LARRY HAUER STRUCTURAL ENGINEER

Principal Engineer	\$170.00/hr
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REIMBURSABLE EXPENSES

Printing Fees	Actual + 15%
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CERTIFICATE OF LIABILITY INSURANCE

 DATE (MM/DD/YYYY)
 1/19/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Dealey, Renton & Associates 199 S Los Robles #540 Pasadena, CA 91101 Lic #0020739	CONTACT NAME: Marie Swaney PHONE (A/C, No, Ext): 626-844-3070 FAX (A/C, No): E-MAIL ADDRESS: mswaney@dealeyrenton.com <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 70%;">INSURER(S) AFFORDING COVERAGE</th> <th style="width: 30%;">NAIC #</th> </tr> <tr> <td>INSURER A: Travelers Property Casualty Co of A</td> <td>25674</td> </tr> <tr> <td>INSURER B: Hartford Accident & Indemnity</td> <td>22357</td> </tr> <tr> <td>INSURER C: Travelers Casualty & Surety Co. Ame</td> <td>31194</td> </tr> <tr> <td>INSURER D: Travelers Indemnity Co. of Connecti</td> <td>25682</td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Travelers Property Casualty Co of A	25674	INSURER B: Hartford Accident & Indemnity	22357	INSURER C: Travelers Casualty & Surety Co. Ame	31194	INSURER D: Travelers Indemnity Co. of Connecti	25682	INSURER E:		INSURER F:	
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INSURED JORDAGILB Jordan, Gilbert & Bain, Landscape Arch. 459 N. Ventura Ave Ventura, CA 93001 805-642-3641															

COVERAGES
CERTIFICATE NUMBER: 1611984639

REVISION NUMBER:

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.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ Contractual Liab ☒ XCU Included GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:	Y	Y	8802795L081	7/15/2016	7/15/2017	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$
D	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ☒ NON-OWNED AUTOS ☒ NoOwned Auto	Y	Y	BA4603L568	7/15/2016	7/15/2017	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$0	Y	Y	CUP6770Y233	7/15/2016	7/15/2017	EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	57WEGGF5053	9/1/2016	9/1/2017	☒ PER STATUTE ☐ OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Professional Liab Claims Made Form			105385416	1/18/2017	1/18/2018	\$1,000,000 per claim \$2,000,000 Annual Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Insured owns no company vehicles; therefore hired/non-owned auto is the maximum coverage that applies. Umbrella Policy is follow-form to underlying GL/AUTO/Employers Liability Policies. AM Best's Rating on all policies above: A/XII or greater.

Re: Ref #6676-14 - CM, On-Call Services -- The City of Oxnard, its officers, agents, employees, and volunteers are named as additional insured as respects to general & hired/non-owned auto liability for claims arising from the operations of the named insured. Primary & See Attached...

CERTIFICATE HOLDER
CANCELLATION 30 day NOC/10 day for nonpay of prem

City of Oxnard* Attn: Patricia Friend 1080 Pacific Ave Bldg 3 Oxnard CA 93030	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	---

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AGENCY CUSTOMER ID: JORDAGILB

LOC #:



ADDITIONAL REMARKS SCHEDULE

Page 1 of 1

AGENCY Dealey, Renton & Associates		NAMED INSURED Jordan, Gilbert & Bain, Landscape Arch. 459 N. Ventura Ave Ventura, CA 93001 805-642-3641
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

non-contributory wording and waivers of subrogation apply per policy endorsement forms attached as required by contract or agreement. Blanket SEVERABILITY OF INTERESTS applies to GL: Separation of Insureds - Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each Insured against whom claim is made or suit is brought.

POLICY NUMBER: BA4603L568

COMMERCIAL AUTO
CA 20 48 10 13**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****DESIGNATED INSURED FOR
COVERED AUTOS LIABILITY COVERAGE**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: Jordan, Gilbert & Bain, Landscape Arch.**Endorsement Effective Date:** 7/15/2016**SCHEDULE****Name Of Person(s) Or Organization(s):** Re: Ref#6676-14-CM, On-Call Services -for- *The
City of Oxnard, its officers, agents, employees,
and volunteers --

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph A.1. of Section II - Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph D.2. of Section I - Covered Autos Coverages of the Auto Dealers Coverage Form.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED (ARCHITECTS, ENGINEERS AND SURVEYORS)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following is added to WHO IS AN INSURED (Section II):

Any person or organization that you agree in a "contract or agreement requiring insurance" to include as an additional insured on this Coverage Part, but only with respect to liability for "bodily injury", "property damage" or "personal injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- a. In the performance of your ongoing operations;
- b. In connection with premises owned by or rented to you; or
- c. In connection with "your work" and included within the "products-completed operations hazard".

Such person or organization does not qualify as an additional insured for "bodily injury", "property damage" or "personal injury" for which that person or organization has assumed liability in a contract or agreement.

The insurance provided to such additional insured is limited as follows:

- d. This insurance does not apply on any basis to any person or organization for which coverage as an additional insured specifically is added by another endorsement to this Coverage Part.
- e. This insurance does not apply to the rendering of or failure to render any "professional services".
- f. The limits of insurance afforded to the additional insured shall be the limits which you agreed in that "contract or agreement requiring insurance" to provide for that additional insured, or the limits shown in the Declarations for this Coverage Part, whichever are less. This endorsement does not increase the limits of insurance stated in the **LIMITS OF**

INSURANCE (Section III) for this Coverage Part.

B. The following is added to Paragraph a. of 4. Other Insurance in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

However, if you specifically agree in a "contract or agreement requiring insurance" that the insurance provided to an additional insured under this Coverage Part must apply on a primary basis, or a primary and non-contributory basis, this insurance is primary to other insurance that is available to such additional insured which covers such additional insured as a named insured, and we will not share with the other insurance, provided that:

- (1) The "bodily injury" or "property damage" for which coverage is sought occurs; and
- (2) The "personal injury" for which coverage is sought arises out of an offense committed;

after you have entered into that "contract or agreement requiring insurance". But this insurance still is excess over valid and collectible other insurance, whether primary, excess, contingent or on any other basis, that is available to the insured when the insured is an additional insured under any other insurance.

C. The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us in COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV):

We waive any rights of recovery we may have against any person or organization because of payments we make for "bodily injury", "property damage" or "personal injury" arising out of "your work" performed by you, or on your behalf, under a "contract or agreement requiring insurance" with that person or organization. We waive these rights only where you have agreed to do so as part of the "contract or agreement requiring insurance" with such person or organization entered into by you before, and in effect when, the "bodily

COMMERCIAL GENERAL LIABILITY

injury" or "property damage" occurs, or the "personal injury" offense is committed.

D. The following definition is added to DEFINITIONS (Section V):

"Contract or agreement requiring insurance" means that part of any contract or agreement under which you are required to include a person or organization as an additional insured on this Cov-

erage Part, provided that the "bodily injury" and "property damage" occurs, and the "personal injury" is caused by an offense committed:

- a. After you have entered into that contract or agreement;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WORKERS' COMPENSATION BROAD FORM ENDORSEMENT EXTENDED OPTIONS

Policy Number: 57WEGGF5053

Endorsement Number:

Effective Date: 09/01/2016 Effective hour is the same as stated on the Information Page of the policy.

Named Insured and Address:
Jordan, Gilbert & Bain, Landscape Arch.
3350 Loma Vista Rd
Ventura, CA 93003

Section I of this endorsement expands coverage provided under WC 00 00 00.

Section II of this endorsement provides additional coverage usually only provided by endorsement.

Section III of this endorsement is a Schedule of Covered States.

You may use the index to locate these coverage features quickly:

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PART - THREE	2	E. West Virginia	3
02 How This Insurance Works	2	EXTENDED OPTIONS	4
PART - SIX	2	01 Employers' Liability Insurance	4
03 Transfer of Your Rights and Duties	2	02 Unintentional Failure to Disclose	4
04 Liberalization	2	Hazards	
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SECTION I

PARTS ONE and TWO

1. WE WILL ALSO PAY

D. We Will Also Pay of Part One (WORKERS' COMPENSATION INSURANCE); and

E. We Will Also Pay of Part Two (EMPLOYERS' LIABILITY INSURANCE) is replaced by the following:

We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. reasonable expenses incurred at our request, **INCLUDING** loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this law; and
5. expenses we incur.

PART THREE

2. How This Insurance Applies

Paragraph 4. of A. **How This Insurance Applies** of Part 3 (Other States Insurance) is replaced by the following:

4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within **sixty** days.

PART SIX

3. Transfer Of Your Rights and Duties

C. Transfer Of Your Rights and Duties of Part 6 (Conditions) is replaced by the following:

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within **sixty** days after your death, we will cover your legal representative as insured.

4. Liberalization

If we adopt a change in this form that would broaden the coverage of this form without extra charge, the broader coverage will apply to this policy. It will apply when the change becomes effective in your state.

SECTION II

VOLUNTARY COMPENSATION AND EMPLOYERS' LIABILITY COVERAGE

5. Voluntary Compensation Insurance

A. How This Insurance Applies

This insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must be sustained by any officer or employee not subject to the workers' compensation law of any state shown in Item 3.A. of the Information Page.
2. The bodily injury must arise out of and in the course of employment or incidental to work in a state shown in Item 3.A. of the Information Page.

3. The bodily injury must occur in the United States of America, its territories or possessions, or Canada, and may occur elsewhere if the employee is a United States or Canadian citizen, or otherwise legal resident, and legally employed, in the United States or Canada and temporarily away from those places.

4. Bodily injury by accident must occur during the policy period.
5. Bodily injury by disease must be caused or aggravated by the conditions of the

officer's or employee's employment. The officer's or employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

B. We Will Pay

We will pay an amount equal to the benefits that would be required of you as if you and your employees were subject to the workers' compensation law of any state shown in Item 3.A. of the Information Page. We will pay those amounts to the persons who would be entitled to them under the law.

C. Exclusion

This insurance does not cover:

1. any obligation imposed by workers' compensation or occupational disease law or any similar law.
2. bodily injury intentionally caused or aggravated by you.
3. officers or employees who have elected not to be subject to the state workers' compensation law.
4. partners or sole proprietors not covered under the Standard Sole Proprietors, Partners, Officers and Others Coverage Endorsement.

D. Before We Pay

Before we pay benefits to the persons entitled to them, they must:

1. Release you and us, in writing, of all responsibility for the injury or death.
2. Transfer to us their right to recover from others who may be responsible for the injury or death.
3. Cooperate with us and do everything necessary to enable us to enforce the right to recover from others.

If the persons entitled to the benefits of this insurance fail to do those things, our duty to pay ends at once. If they claim damages from you or from us for the injury or death, our duty to pay ends at once.

E. Recovery From Others

If we make a recovery from others, we will keep an amount equal to our expenses of recovery and the benefits we paid. We will pay the balance to the persons entitled to it.

If the persons entitled to the benefits of this insurance make a recovery from others, they must reimburse us for the benefits we paid them.

F. Employers' Liability Insurance

Part Two (Employers' Liability Insurance) applies to bodily injury covered by this endorsement as though the State of Employment was shown in Item 3.A. of the Information Page.

This provision 5. does not apply in New Jersey or Wisconsin.

EMPLOYERS' LIABILITY STOP GAP COVERAGE

6. Employers' Liability Stop Gap Coverage

- A. This coverage only applies in Montana, North Dakota, Ohio, Washington, West Virginia and Wyoming.
- B. Part One (Workers' Compensation Insurance) does not apply to work in states shown in Paragraph A above.
- C. Part Two (Employers' Liability Insurance) applies in the states, shown in Paragraph A., as though they were shown in Item 3.A. of the Information Page.
- D. Part Two, Section C. **Exclusions** is changed by adding these exclusions.

This insurance does not cover;

5. bodily injury intentionally caused or aggravated by you or in Ohio bodily injury resulting from an act which is determined by an Ohio court of law to have been committed by you with the belief that an injury is substantially certain to occur. However, the cost of defending such claims or suits in Ohio is covered.
13. bodily injury sustained by any member of the flying crew of any aircraft.
14. any claim for bodily injury with respect to which you are deprived of any defense or defenses or are otherwise subject to penalty because of default in premium under the provisions of the workers' compensation law or laws of a state shown in Paragraph A.
- E. This insurance applies to damages for which you are liable under West Virginia Code Annot. S 23-4-2.

EXTENDED OPTIONS

1. Employers' Liability Insurance

Item 3.B. of the Information Page is replaced by the following:

B. Employers' Liability Insurance:

1. Part Two of the policy applies to work in each state listed in Item 3.A.

The Limits of Liability under Part Two are the higher of:

Bodily Injury by Accident	<u>\$500,000</u>	<u>Each Accident</u>
Bodily Injury by Disease	<u>\$500,000</u>	<u>Policy Limit</u>
Bodily Injury by Disease	<u>\$500,000</u>	<u>Each Employee</u>

OR

2. The amount shown in the Information Page.

This provision 1 of **EXTENDED OPTIONS** does not apply in New York because the Limits Of Our Liability are unlimited.

In this provision the limits are changed from \$500,000 to \$1,000,000 in California.

2. Unintentional Failure to Disclose Hazards

If you unintentionally should fail to disclose all existing hazards at the inception date of your policy, we shall not deny coverage under this policy because of such failure.

3. Waiver of Our Right To Recover From Others

- A. We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against any person or organization for whom you perform work under a written contract that requires you to obtain this agreement from us.

This agreement shall not operate directly or indirectly to benefit anyone not named in the agreement.

- B. This provision 3. does not apply in the states of Pennsylvania and Utah.

4. Foreign Voluntary Compensation and Employers' Liability Reimbursement

A. How This Reimbursement Applies

Form WC 99 03 03 B Printed in U.S.A. (Ed. 8/00)

This reimbursement provision applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must be sustained by an officer or employee.
2. The bodily injury must occur in the course of employment necessary or incidental to work in a country not listed in Exclusion C.1. of this provision.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The officer or employee's last exposure to those conditions of your employment must occur during the policy period.

B. We Will Reimburse

We will reimburse you for all amounts paid by you whether such amounts are:

1. voluntary payments for the benefits that would be required of you if you and your officers or employees were subject to any workers' compensation law of the state of hire of the individual employee.
2. sums to which Part Two (Employers' Liability Insurance) would apply if the Country of Employment were shown in Item 3.A. of the Information Page.

C. Exclusions

This insurance does not cover:

1. any occurrences in the United States, Canada, and any country or jurisdiction which is the subject of trade or economic sanctions imposed by the laws or regulations of the United States of America in effect as of the inception date of this policy.
2. any obligation imposed by a workers' compensation or occupational disease law, or similar law.
3. bodily injury intentionally caused or aggravated by you.

4. liability for any consequence, whether direct or indirect, of war, invasion, act of Foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power. No endorsement now or subsequently attached to this policy shall be construed as overriding or waiving this limitation unless specific reference is made thereto.

D. Before We Pay

Before we reimburse you for the benefits to the persons entitled to them, you must have them:

1. release you and us, in writing, of all responsibility for the injury or death,
2. transfer to us their right to recover from others who may be responsible for their injury or death,
3. cooperate with us and do everything necessary to enable us to enforce the right to recover from others.

If the persons entitled to the benefits paid fail to do these things, our duty to reimburse ends at once. If they claim damages from us for the injury or death, our duty to reimburse ends at once.

E. Recovery From Others

If we make a recovery from others, we will keep an amount equal to our expenses of recovery and the benefits we reimbursed. We will pay the balance to the persons entitled to it. If persons entitled to the benefits make a recovery from others, they must repay us for the amounts that we have reimbursed you.

F. Reimbursement for Actual Loss Sustained

This endorsement provides only for reimbursement for the loss you actually sustain. In order for you to recover loss or expenses under this reimbursement you must:

1. actually sustain and pay the loss or expense in money after trial, or
2. secure our consent for the payment of the loss or expense.

G. Repatriation

Our reimbursement includes the additional expenses of repatriation to the United States

of America necessarily incurred as a direct result of bodily injury.

Our reimbursement shall be limited as follows:

1. to the amount by which such expenses exceed the normal cost of returning the officer or employee if in good health, or
2. in the event of death, to the amount by which such expenses exceed the normal cost of returning the officer or employee if alive and in good health.

In no event shall our reimbursement exceed the bodily injury by accident limit shown in Item 3.B. of the Information Page as respects any one such officer or employee whether dead or alive.

H. Endemic Disease

The word "disease" includes any endemic diseases.

The coverage applies as if endemic diseases were included in the provisions of the workers' compensation law.

5. Longshore and Harbor Workers' Compensation Act Coverage

General Section C. Workers' Compensation Law is replaced by the following:

C. Workers' Compensation Law

Workers' Compensation Law means the workers or workers' compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page and the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950). It includes any amendments to those laws that are in effect during the policy period. It does not include any other federal workers or workers' compensation law, other federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

Part Two (Employers' Liability Insurance), C. Exclusions, exclusion 8, does not apply to work subject to the Longshore and Harbor Workers' Compensation Act.

This coverage does not apply to work subject to the Defense Base Act, the Outer Continental Shelf Lands Act, or the Nonappropriated Fund Instrumentalities Act.

Policy Number: BA4603L568

COMMERCIAL AUTO

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET WAIVER OF SUBROGATION

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

The following replaces Paragraph A.5., **Transfer of Rights Of Recovery Against Others To Us**, of the **CONDITIONS** Section:

5. Transfer Of Rights Of Recovery Against Others To Us

We waive any right of recovery we may have against any person or organization to the extent

required of you by a written contract executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of the operations contemplated by such contract. The waiver applies only to the person or organization designated in such contract.



**CITY COUNCIL
AGENDA REPORT**

TYPE OF ITEM: Public Hearing
AGENDA ITEM NO.: 1

DATE: May 23, 2017

TO: City Council

THROUGH: Greg Nyhoff
City Manager

FROM: Ashley Golden
Development Services Director

SUBJECT: Appeal of Planning Commission Denial of a Special Use Permit (SUP) to Allow the Sale of Beer, Wine, and Distilled Spirits for Off-Site Consumption (ABC License Type 21 Off-Sale General) at a Proposed Liquor Store (Marina Liquor), Which Will be Located at 1601 South Victoria Avenue, Suite 120 (Seabridge Marina Center). (10/10/45)

CONTACT: Ashley Golden, Development Services Director
Ashley.Golden@oxnard.org, 385-7882

RECOMMENDATION:

As a result of the Applicant's refusal to accept two Police Department conditions of approval, uphold the Planning Commission's denial of Planning and Zoning Permit No. 16-510-02 (Special Use Permit), subject to certain findings.

BACKGROUND

On April 6, 2017, as a result of the Applicant's refusal to accept two Police Department conditions of approval (see Attachment A), the Planning Commission adopted a Resolution denying a request for approval of a Special Use Permit (SUP) to allow the sale of beer, wine, and distilled spirits for off-site consumption (ABC License Type 21 Off-Sale General) at a proposed liquor store (Marina Liquor). The project site is located at 1601 South Victoria Avenue, Suite 120 (Seabridge Marina Center) (see Attachment B and C – Staff Report and Minutes, respectively). Prior to the Planning Commission hearing, a Community Workshop meeting was held on January 9, 2017. The Applicant sent 1,465 public notices and 18 members of the community attended this meeting. All but one member expressed opposition to the request.

Marina Liquor's Appeal of PC Denial to Allow the Sale of Beer, Wine, and Distilled Spirits(10/10/45)
 May 23, 2017
 Page 2

The two conditions of approval in contest by the Applicant are as follows:

1. Police Department Standard Condition No. 16 – Other than specialty beers and micro brews, beer, malt beverages and wine coolers, in containers of 40 oz. in volume or less, cannot be sold by single containers, but must be sold in manufacturer pre-packaged multi-unit quantities. The sale of mass-produced, low priced beer or malt liquor in single servings is prohibited.
2. Police Department Special Condition No. 4 – The sale of single servings of distilled spirits (375 ml. or less) is prohibited.

At this hearing, the Applicant's attorney (Richard Nyznyk) proposed alternative condition language for the two Police conditions (see Attachment D). The Police Department and the Commission were ultimately not in support of the alternative language. The suggested language to replace Police Department condition of approval numbers 16 and 4 (summarized above) was as follows:

“In the interest of alleviating the Police's apparent concerns, the Applicants considered that an “end of the night” restriction on the sales of those particular items identified in the above conditions might reasonably address the concerns of the police department while allowing the store to meet its business plan needs to successfully remain in business.

Applicant therefore proposed that, to the extent it alleviates the concerns which motivate these two conditions in this particular location, Marina Liquor will agree to reframe from selling the identified beverages for the last 90 minutes the store remains open at night.

Applicant also proposed that this restriction be a temporary one year restriction only, subject to automatic withdrawal in the absence of a noticed public hearing where the matter and issues may be heard and discussed and the restrictions may be continued in place if so determined”.

Five members of the public spoke in opposition to the Special Use Permit at the April 6, 2017 hearing. Comments were broad but generally as follows:

1. Illegal parking;
2. Increase in litter;
3. Transient activity; and
4. Potential increase in crime.

Marina Liquor's Appeal of PC Denial to Allow the Sale of Beer, Wine, and Distilled Spirits(10/10/45)
May 23, 2017
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On April 24, 2017, the Applicant submitted a timely appeal of the Commission's action (see Attachment E).

On May 1, 2017, the City Police Chief submitted a memorandum (see Attachment F) expressing concern with the removal of the two conditions of approval and the suggested alternative condition language proposed by the Applicant. Key points summarized from this memo are as follows:

1. Conditions restricting single servings of beer, wine and distilled spirits at Off-Sale alcohol outlets has been a standard for more than a decade in Oxnard and we have had very few complaints or evidence that these restrictions significantly impact the overall success or profitability of the businesses. The police department believes conditions like these help to greatly reduce the negative impact that the sale and availability of alcohol can have on our community. There are many studies which indicate that the easy availability of alcohol can have a direct impact on crime and violence unless those communities employ preventative strategies like the ones proposed.
2. The California Department of Alcoholic Beverage Control (ABC) lists restricting the single service of alcohol as one of their "Best Practice" strategies in the Model Store Policy handout given to newly proposed outlets (see Attachment G).
3. The police conditions were designed to function together collectively to reduce risks and provide the police department with many tools to use in case problems do arise. The conditions the Applicant has requested to modify are perhaps the single most effective tools the police department can use to reduce the likelihood that the current problems related to loitering will increase. To allow the suggested changes would be to ignore the existing circumstances (e.g., loitering and transient activity) and take the risk of increasing nuisance behavior such as drinking in public and other illegitimate activities. For these many reasons, the police department strongly opposes any changes to the original language of the standard and special conditions or that City Council uphold the Planning Commission's decision to deny the application.

Marina Liquor's Appeal of PC Denial to Allow the Sale of Beer, Wine, and Distilled Spirits(10/10/45)
May 23, 2017
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STRATEGIC PRIORITIES

This agenda item supports the Quality of Life strategy. The purpose of the Quality of Life strategy is to build relationships and create opportunities within the community for safe and vibrant neighborhoods, which will showcase the promising future of Oxnard. This item supports the following goals and objectives:

Goal 1. Improve community safety and quality of life through a combination of prevention, intervention, and suppression efforts that address crime and underlying issues.

Objective 1a. Create a renewed focus on police/community relations with underserved communities and youth population.

Objective 1c. Highlight our continued efforts to address Domestic Violence.

Objective 1d. Examine options for long term sustainability of public safety services to ensure an efficient and effective public safety service delivery model.

Objective 3a. Create a renewed focus on establishing a positive outlook and orientation of our City, neighborhoods and overall community.

FINANCIAL IMPACT

None.

ATTACHMENTS:

Attachment A: March 1, 2017 Letter

Attachment B: April 6, 2017 PC Staff Report

Attachment C: April 6, 2017 Draft PC Minutes

Attachment D: April 6, 2017 note to PC

Attachment E: April 24, 2017 Letter

Attachment G - ABC-620-B, Model Store Policies

Attachment H - Marina Liquor Resolution

Attachment F - May 1, 2017 Police Chief Memo



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 PHILIP ERICKSON
 (1959-2005)

March 1, 2017

Via Email: john.kessler@oxnard.org
 And Via United States Mail

John Kessler, Assistant Planner
 City of Oxnard Planning Division
 214 South C Street
 Oxnard, CA 93030

Re: Our Client: Essam Salameh et.al.
 Application No.: 16-510-02

Dear Mr. Kessler:

Please be advised that, on behalf your applicant, Essay Salami, and related to the request for the project known and identified as 'Marina Liquor' at the premises located at 1601 S. Victoria Ave., Suite 120, Oxnard, CA 93035, the applicant has and hereby raises objections to the Oxnard Police Department restrictions set forth in their letter of December 7, 2016.

Specifically, the applicants object to standard condition #16 and special condition #4 related to size by volume and single serve restrictions. #16 limits the sale (excepting specialty beers and micro brews) of beer, malt liquor or wine in single containers. #4 prohibits the sale of single servings of distilled spirits of 375 ml or less.

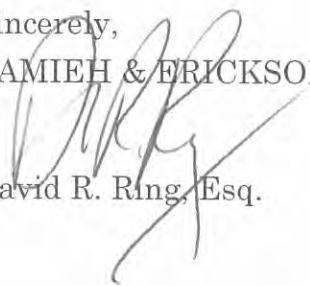
These requirements/restrictions are objectionable because they limit the business opportunities of the applicant to the point they cannot operate a profitable business. This is based upon their accumulated experience in this type of business.

Mr. John Kessler
City of Oxnard Planning Division
March 1, 2017
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These objections are submitted while reserving all other rights or other objections which may be raised at the hearing of the matter.

If you have questions, please do not hesitate to contact this office directly.

Sincerely,
BAMIEH & ERICKSON, PLC



David R. Ring, Esq.



PLANNING COMMISSION STAFF REPORT

TO: Planning Commission

FROM: John Kessler, Assistant Planner

DATE: April 6, 2017

SUBJECT: Planning and Zoning Permit No. 16-510-02 (Special Use Permit)
Property located at 1601 South Victoria Avenue, Suite 120.

- 1) Recommendation:** As a result of the Applicant's refusal to accept two Police Department conditions of approval, that the Planning Commission adopt a resolution denying Planning and Zoning Permit No. 16-510-02 (Special Use Permit), subject to certain findings.

Alternatively, if it is the desire of the Planning Commission to approve Planning and Zoning Permit No. 16-510-02 (Special Use Permit), it is recommended that the Commission approve the Special Use Permit, subject to certain findings and the imposition of all conditions of approval, including the two Police Department conditions that the Applicant opposes.

- 2) Project Description and Applicant:** The Applicant is seeking approval of a Special Use Permit (SUP) to allow the sale of beer, wine, and distilled spirits for off-site consumption (ABC License Type 21 Off-Sale General) at a proposed 1,200 square-foot liquor store (Marina Liquor), which will be located at 1601 South Victoria Avenue, Suite 120 (Seabridge Marina Center). For the purposes of this Staff Report, the foregoing project description shall be referred to as the "**Project.**" Filed by Essam S. Salameh, 3730 Avondale Lane, Oxnard, California 93036, ("**Applicant**"), on behalf of property owners Seabridge Partners, L.P.

- 3) Existing & Surrounding Land Uses:** The Seabridge Marina Center (herein "**Shopping Center**") which is 2.59 acres and consists of a multi-tenant building is located adjacent to the intersection of Leeward Way and Windward Way. The nearest residences are condominiums located roughly 20 feet to the north and north east of the Project site. The nearest school is McAulliffe Elementary School, located approximately a half-mile from the Project site. The following table identifies the existing and surrounding land uses, zoning, and General Plan designations (see Attachment A):

Location	Zoning	General Plan	Existing Land Use
Project Site	Coastal Planned Community (CPC)	Planned Unit Development (PUD)	Seabridge Marina Center

PZ: 16-510-02; Marina Liquor ABC (Type-21)

Planning Commission Date: April 6, 2017

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Location	Zoning	General Plan	Existing Land Use
North	(CPC)	(PUD)	Condominium Residential Units
South	(CPC)	(PUD)	Seabridge Marina Center
East	Garden Apartment – Planned Development (R- 3-PD)	Residential Medium (RM)	Apartment buildings
West	(CPC)	(PUD)	200-foot wide water channel (Easement)

- 4) Background Information:** Coastal Development Permit (CDP) A-4-oxN-03-014 was approved by the Coastal Commission to allow construction of the Seabridge planned community on 135 acres within the Mandalay Bay Specific Plan area. A tentative subdivision map (Tract No. 5266) and development agreement were also approved in conjunction with the CDP. The approved Tentative Subdivision Map for Tract No. 5266 (PZ 00-5-85) was determined to be consistent with goals and policies of the General Plan, Local Coastal Plan, and zoning requirements for this site. The CDP established the Coastal Neighborhood Commercial (CNC) zone for uses within the Seabridge Marina Center. The Seabridge Marina Center development was approved with Minor Modification No. 12 (PZ 06-140-04) to Tract Map No. 5266 on November 28, 2006. Subsequent minor modification permits have been approved by the Planning Manager for exterior changes to the approved elevations, including the creation of a parking management plan (PZ 09-140-59).

The parking management plan (approved February 24, 2010) established the Seabridge Marina Center property owners K&G/Seabridge II, LLC and Rocklin Covenant Group, LP (K&G) including successor parties, the responsibility to manage the Shopping Centers parking with an ongoing parking management program to provide maximum feasible customer and employee parking, providing marina user access for loading and unloading, and maintaining required public safety accessibility. The parking management plan is also intended to provide parking for commercial customers, employees, marina users, and envisioned to ensure public safety and accessibility to the waterways. K&G's parking plan is outlined in their letter dated December 8, 2009, on file with the Planning Division. The Shopping Center is private property and meets City parking code requirements and is consistent with the approved Parking Management Plan. There have been concerns with the number of parking spaces and parking assumptions for the Seabridge Marina Shopping Center. To address these concerns, the property owners have implemented a number of improvements including parking lot redesign and free valet parking.

Although parking is not an issue for consideration as part of the SUP request, the Police Department is concerned that the proposed SUP use will exacerbate parking problems. Parking

PZ: 16-510-02; Marina Liquor ABC (Type-21)

Planning Commission Date: April 6, 2017

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codes are based upon specific uses within each tenant spaces gross floor area and do not guarantee adequate parking for all possible combinations of tenants and their various peak customer periods. Beyond ensuring public safety, the City has limited authority to condition or deny the property owners approvals for new businesses or uses that are permitted within established zoning regulations. The City will continue to monitor the parking area to ensure public safety and will work with the property owners and successor parties to review and consider off-site parking arrangements, should that need arise.

5) Environmental Determination: Pursuant to Article 19, Section 15301 (Existing Facilities) of the California Environmental Quality Act (CEQA) Guidelines, projects involving no expansion of an existing use may be found to be exempt from the requirements of CEQA. As the Project proposes to permit the sale of alcoholic beverages at an existing tenant space within an existing tenant space at an existing Shopping Center, staff has determined that there is no substantial evidence that the Project will have a significant effect on the environment. Should the Planning Commission approve the SUP, staff will file the attached Notice of Exemption (see Attachment B).

6) Analysis:

a) General Discussion: Marina Liquor is seeking City approval of an SUP to allow the sale of beer, wine, and distilled spirits for off-site consumption (ABC License Type 21 Off-Sale General) at a proposed 1,200 square-foot tenant space. The store proposes to operate Monday through Friday, from 8:00 a.m. to 11:00 p.m. and Saturday and Sunday from 8:00 a.m. to 12:00 a.m. The store will employ a minimum of 3 people and maximum of 4 people, in 2-shifts. The proposed use will primarily function as a liquor store, with ancillary sales of pre-packed foods and non-alcoholic beverages. The floor plan identifies the proposed alcohol display area, in accordance with Police Department conditions of approval (see Attachment C). The Project was submitted on March 22, 2016, and deemed complete for processing on April 14, 2016. Since this time, staff has been working with the Police Department to finalize the required Alcohol Report. Senior Alcohol Compliance Officer Waer performed a detailed analysis of the request, corresponded with the Applicant, sought community input, and prepared the required Police Department Alcohol Report. Receipt of the required Alcohol Report was received on December 7, 2016. From January to March 2017, staff responded to community inquiries regarding the Project, discussed, and evaluated options with the Applicant. On March 1, 2017, staff received a correspondence from the Applicant objecting to two specific conditions of approval (see Attachment D).

b) General Plan & Zoning Consistency: The subject site is zoned Coastal Planned Community, with a 2030 General Plan designation of Planned Unit Development. The proposed retail use within the existing Shopping Center is consistent with the General Plan and zoning designations. Pursuant to Section 16-136(A)(19) of the Municipal Code, the proposed sales of alcoholic beverages requires approval of an SUP.

c) **Basis for Police Department Review:** City Council Resolution No. 11,896 requires that the Planning Commission consider a Police Department Alcohol analysis Report, as well as any other relevant evidence, in determining whether granting the SUP for alcohol is detrimental to adjacent uses or buildings or to the public health, safety or general welfare (see Attachment E). Before making a determination, the Planning Commission must find that the proposal will not result in or add to an undue concentration of establishments selling alcoholic beverages for off-site consumption within 350 feet of the location. The resolution states that there is a presumption of undue concentration if an establishment with the same type of license already exists within 350 feet; and that a presumption of undue concentration does not exist if an establishment with the same type of license does not exist within 350 feet. However, either presumption may be rebutted by a preponderance of the evidence, based on the facts of a particular case and typically with the inclusion of all recommended conditions of approval.

d) **Police Department Review:** The Police Department's analysis of the proposed alcohol request (see Attachment F) provides information regarding the number of incidents which require police response, whether there is a presumption of undue concentration of establishments selling alcoholic beverages, and whether approval of the SUP is likely to significantly aggravate policing problems. The table below summarizes the findings of the Police Department's Report:

Store location	Same type within 350 feet?*	Same type within 1,000 feet?*	Likely to cause Police problems?	Undue Concentration as defined in Resolution 11,896?
1601 South Victoria Avenue, Suite 120	No	Yes	No	No

*Measurement is from physical doors of the establishment

The Police Report includes four sections: concentration of alcohol outlets; crime statistics review; police and community input; and conclusion.

a) **Concentration of Alcohol Outlets:** There are no establishments of the same type located within 350 feet of the subject location, however there are four on-sale establishments located within 350 feet of the subject location, two of which sell beer and wine (Pizza Man Dan's and Sushi House) and two of which sell beer, wine, and distilled spirits (Yolanda's Restaurant and Fresco II Restaurant). There is one similar type establishment located within 1,000 feet of the subject location (Vons Grocery Store). These establishments are outlined on Pages 1 and 2 of the Police Report.

b) **Crime Statistic Review:** This section of the Police Report analyzes the average number of Part I crimes and Part II crimes that occur per reporting district (grid) during a selected twelve month period. The citywide average base number of Part I

and Part II crimes per grid is currently 125 (“aka” crime average). For reference, Part I crimes include: murder, rape, robbery, theft, burglary, auto theft, assault, and arson. Part II crimes include: vandalism, weapons possession, other sex offenses, drug abuse violations, driving under the influence, liquor laws, drunkenness, and disorderly conduct.

The average number of Part I and II crimes in the Applicant’s reporting district and all other districts within 1,000 feet of the subject SUP location is 84 during the same twelve month time period. This is 32% lower than the average crime rate citywide, which is unusually low for commercial centers of this size.

Police calls for service to the entire Shopping Center south of Leeward Avenue during the last year totaled 86. The Police Department commented that this number is also low, compared to most retail centers in Oxnard. A total of 22 of those calls were disturbance-related, most of which were associated with two restaurants to the south of the proposed site with only one of those calls resulting in an arrest. The Police Department also noted only four of the calls for service involved theft-related incidents.

The Police Department evaluated the total number *calls for service* to the Seabridge Marina Center with other large and medium retail centers in the vicinity. The following table illustrates the proposed Project is well below the average for other commercial centers:

Shopping Center Name	Total calls for service	Theft related	Disturbance related
Seabridge Marina Center (Project Site)	86	4	22
Shopping at the Rose	817	186	218
Centerpoint Mall	812	191	133
Freemont	676	62	225
Esplanade	457	133	124
Crossroads Shopping Center	310	59	62
The Palms	301	27	56
Trolley Plaza	247	39	36

- c) **Police & Community Input:** The Police Department reported the area surrounding the site is generally not a policing problem. There is a “drop-in” storefront located in the complex behind the proposed site, along the meandering walkway near the water channel. Officers working the area did mention that there has been an issue with transients loitering throughout the Shopping Center but the issue has been

manageable and no serious incidents have occurred.

The Police Department visited the site several times to speak with tenants and visitors. During visits, the Police Department observed the on-going parking problem, even though the property owners have implemented various strategies to help mitigate the problem. The Police Department is convinced that adding a liquor store in this same area may aggravate the parking issues and increase congestion. The Police Report notes that generally parking issues are not a major factor that the Police Department considers when making a recommendation to the Planning Commission, unless it is likely to create an unsafe condition. The Police Department has included recommended special conditions of approval to ensure that there are no hazardous conditions created by existing uses or the proposed use and that access lanes remain clear at all times.

The Police Department solicited community input from every business within the Shopping Center. The Police Report notes that virtually every person contacted shared similar concerns regarding the existing parking problems and the availability of alcohol may increase transient activity. The Police Department also solicited community input from many residents of the condominium complex to the north and north east of the proposed Project. The Police Report states while a few of the residents were indifferent, most were opposed to the proposed use adding the liquor store would not be a good “fit” for the retail center and may take away from the serene environment of being near the marina.

- d) **Conclusion:** The statistical analysis within the Police Report identified that the area has a rather low crime rate as compared to citywide averages and generally not considered to be a policing problem. The Police Department did note a few concerns including an on-going parking problem, an increase in transient population that could take advantage of having alcohol nearby, and the existing issue of loitering, which is often associated with the smoke shop next door to the proposed Project. The Police Department considers these concerns minor and currently manageable from a crime and safety perspective. Several conditions of approval are recommended in order to mitigate Police Department concerns and in order to reduce the risk for potential policing problems.

Notable conditions include:

1. The prohibition of the sales of single-serve containers, other than specialty beers and micro brews (Police Standard Condition of Approval No. 16).
2. The prohibition of the sales of single-serve distilled spirits that are 375ml. or less (Police Special Condition of Approval No. 4).

When properly regulated through the imposition of and compliance with conditions of approval, it is the Police Department's experience that the proposed license (Type 21 - Off-Sale General) will not aggravate policing issues.

On March 1, 2017 the Applicant's attorney (Bamieh & Erickson Law Corporation) submitted a correspondence opposing Police Standard Condition of Approval No. 16 and Police Special Condition of Approval No. 4.

Staff's recommendation to the Planning Commission is based upon compliance with all of the Police Department recommended conditions of approval. Given that the Applicant has refused to accept Police Department Standard Condition of Approval No. 16 and Police Department Special Condition of Approval No. 4, an adverse negative impact would occur as a result of approval of this SUP at the subject location.

The Applicant was advised of staff's unfavorable recommendation. Despite this information, the Applicant advised they would like to proceed with consideration by the Planning Commission. Staff has prepared the attached resolution of denial (see Attachment G).

Alternatively, if the Commission determines the findings can be made to approve the SUP with imposition of all of the Police Department's recommended conditions of approval, staff has prepared an alternative resolution of approval (see Attachment H).

- 7) Community Workshop:** A Community Workshop was conducted on January 9, 2017. On December 21, 2016, the Applicant mailed 1,465 public notices of the Community Workshop meeting to all property owners within the Channel Islands neighborhood, all property owners within 300 feet of the Project site, and to all five of the City of Oxnard's School Districts. A public notice sign was also posted on the Project site with a brief description of the SUP's request and contact information for City staff and the Applicant.

Eighteen members of the public attended the meeting regarding the SUP request. All but one member expressed opposition of the request citing various concerns. Specific concerns included but were not limited to: illegal parking, potential increase in crime and transient population, lack of adequate lighting, potential denigration to property values, disservice to the community, lack of security, overall decrease in quality of life, and hours of operation.

Since the Community Workshop and Public Hearing on-site posting, staff has received a number of phone calls and written correspondences (see Attachment I) objecting to operation of the facility at the subject location. Numerous emails and phone calls have been received, many from the same members who attended the Community Workshop meeting wanting clarification of the hearing date and further expressing opposition citing similar concerns.

PZ: 16-510-02; Marina Liquor ABC (Type-21)

Planning Commission Date: April 6, 2017

Page 8

- 8) Appeal Procedure:** In accordance with Section 16-545 of the Municipal Code, the Planning Commission's action may be appealed to the City Council within 18 days after the decision date. Appeal forms may be obtained from the City Clerk and must be submitted with the appropriate fee before the end of the appeal period.

Attachments:

- A. Maps (Vicinity, General Plan, Zoning, Aerial)
- B. Notice of Exemption
- C. Reduced Project Plans
- D. March 1, 2017 Correspondence from Bamieh & Erickson Law Corporation
- E. City Council Resolution No. 11,896
- F. Police Department Report
- G. Resolution of Denial
- H. Resolution of Approval
- I. Correspondence Received on Project

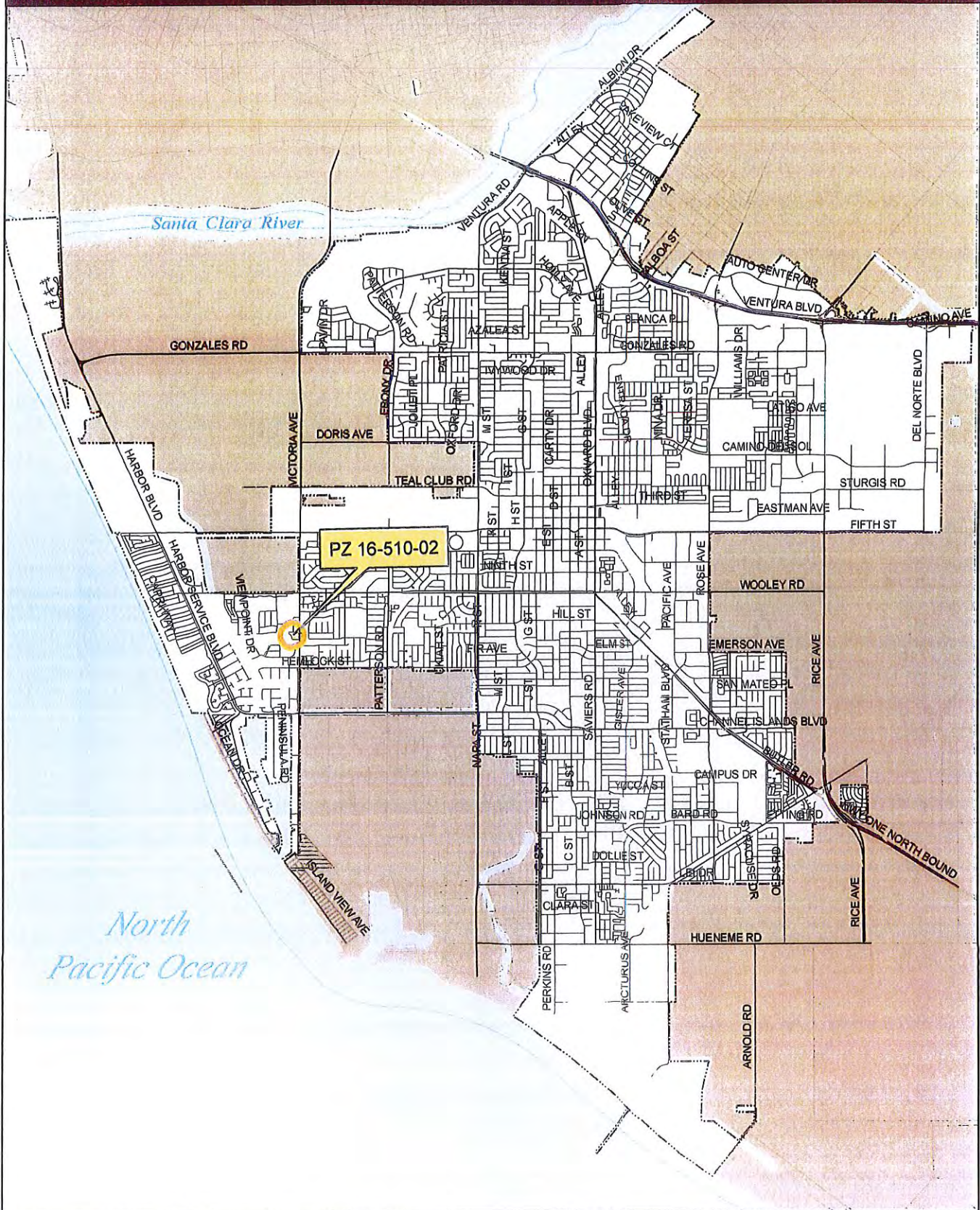
Prepared by: JK
JK

Approved by: KM
KM

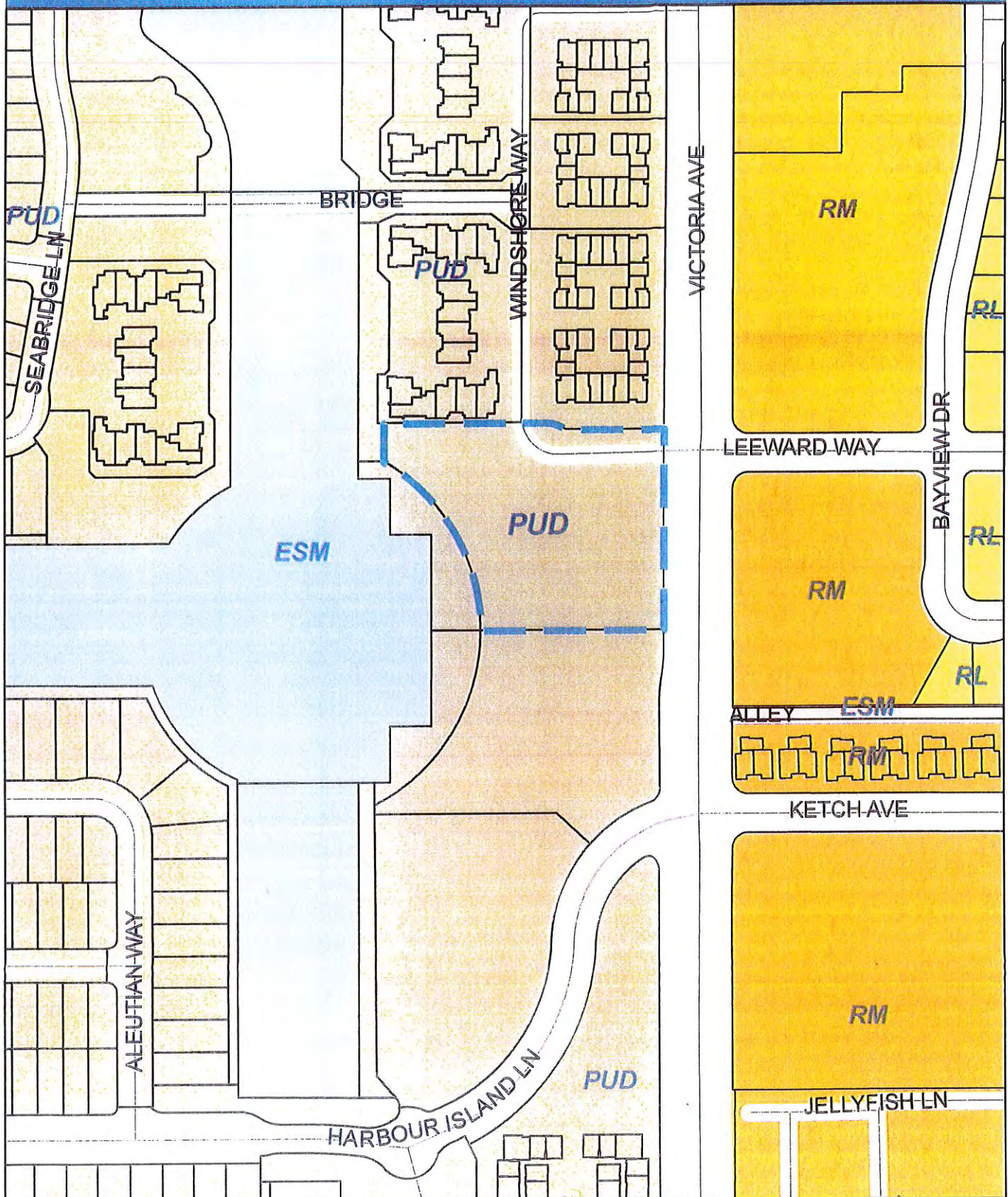
ATTACHMENT “A”

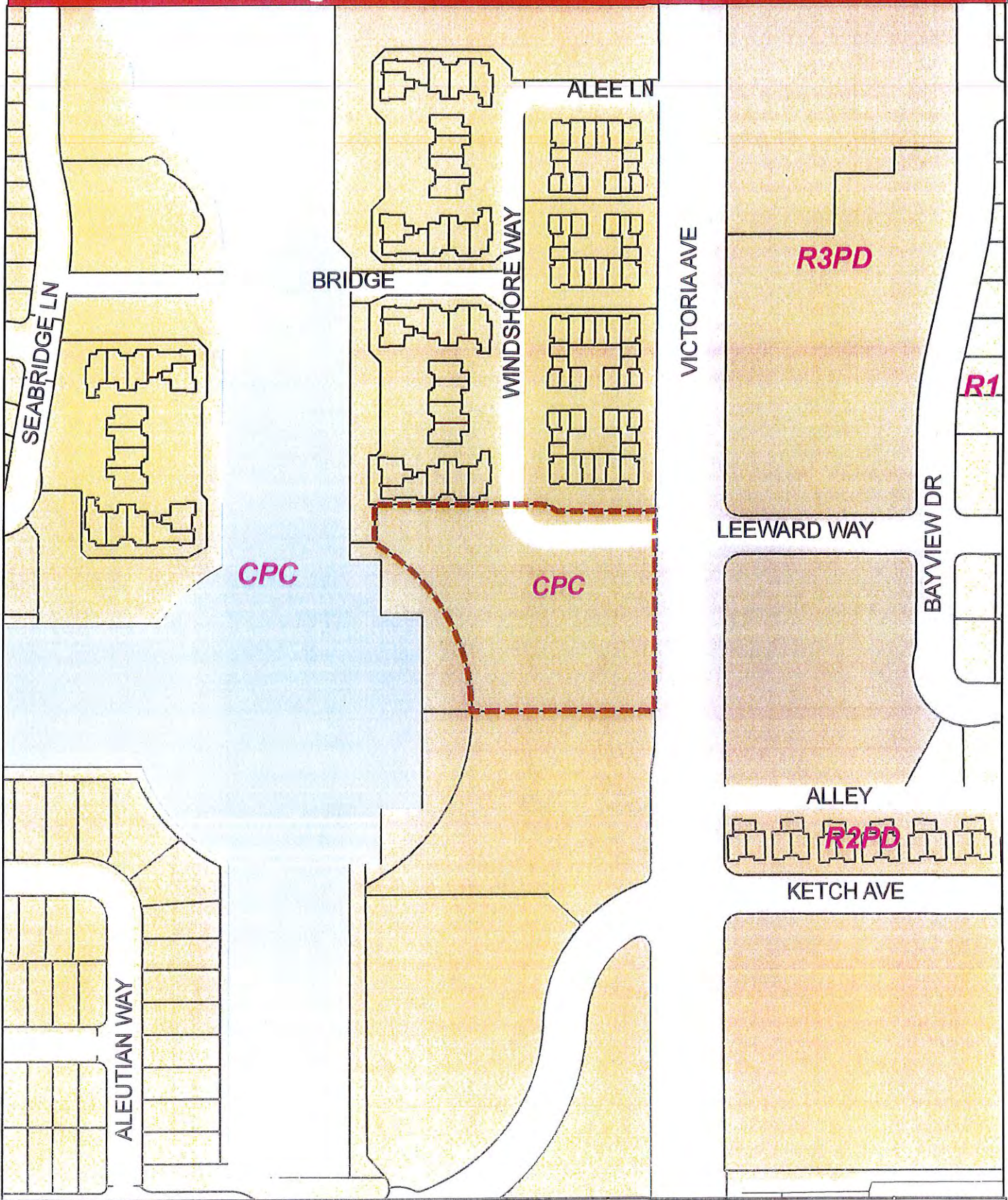
Maps (Vicinity, General Plan, Zoning, Aerial)

Vicinity Map



2030 General Plan Land Use Map



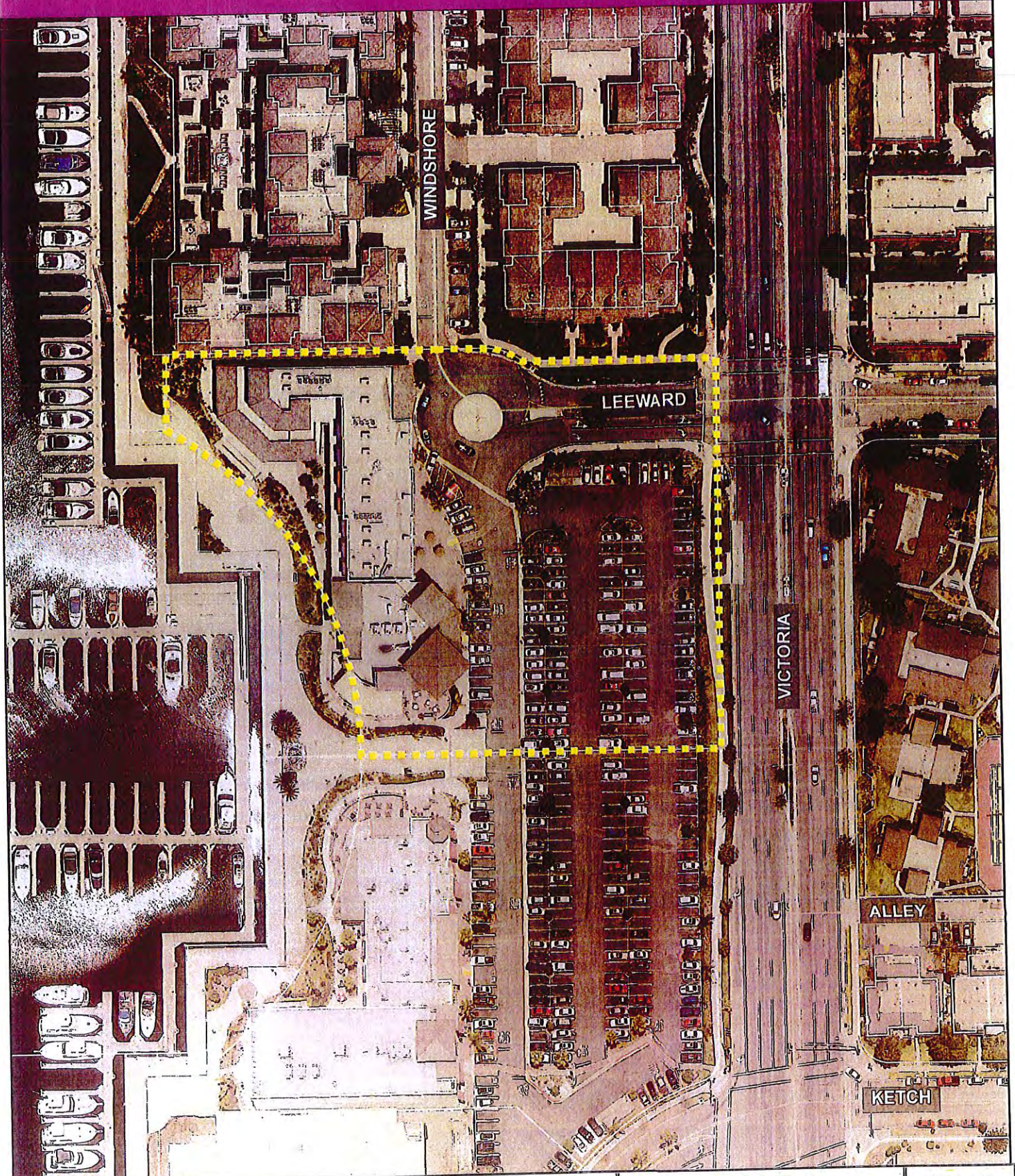


CITY OF
OXNARD
CALIFORNIA
Oxnard Planning
December 8, 2016

PZ 16-510-02
Location: 1601 S Victoria Av
APN: 1880272205
Marina Liquor
0 50 100 200 300 400 Feet

Zoning/Specific Plan Map

1:2,500



CITY OF
OXNARD
CALIFORNIA
Oxnard Planning
December 8, 2016

PZ 16-510-02
Location: 1601 S Victoria Av
APN: 1880272205
Marina Liquor

0 25 50 100 150 200 Feet

Aerial Map

2015 Aerial



ATTACHMENT “B”

Notice of Exemption

NOTICE OF EXEMPTION

Project Description:

PLANNING AND ZONING PERMIT NO. 16-510-02 (Special Use Permit)
A request to allow the sale of beer, wine, and distilled spirits for off-site consumption (ABC License Type 21 – Off-Sale General) at 1601 South Victoria Avenue, Suite 120.

Finding:

The Planning Division of the Development Services Department of the City of Oxnard has reviewed the above proposed project and found it to be exempt from the provisions of the California Environmental Quality Act (CEQA).

- ☐ Ministerial Project
- ☒ Categorical Exemption
- ☐ Statutory Exemption
- ☐ Emergency Project
- ☐ Quick Disapproval [CEQA Guidelines, 14 Cal. Code of Regs. 15270]
- ☐ No Possibility of Significant Effect [CEQA Guidelines, 14 Cal. Code of Regs. 15061(b)(3)]

Supporting Reasons:

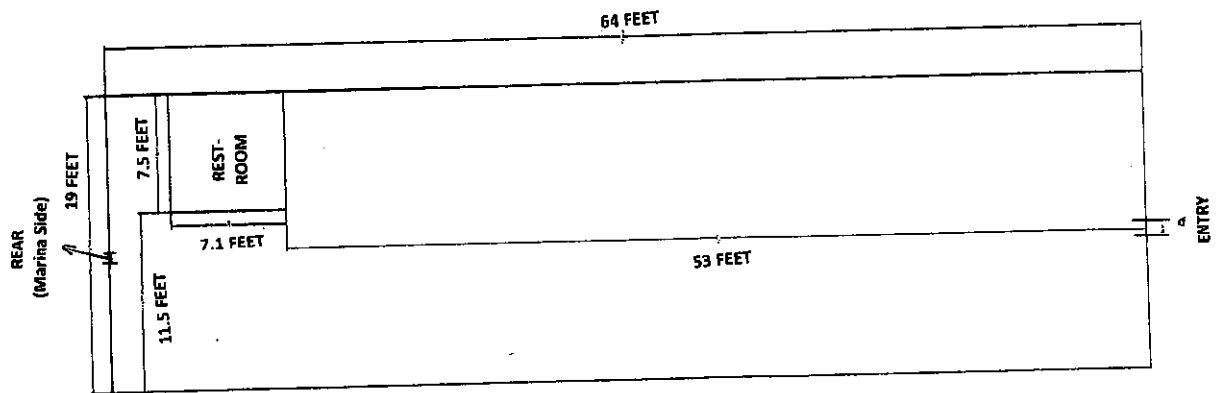
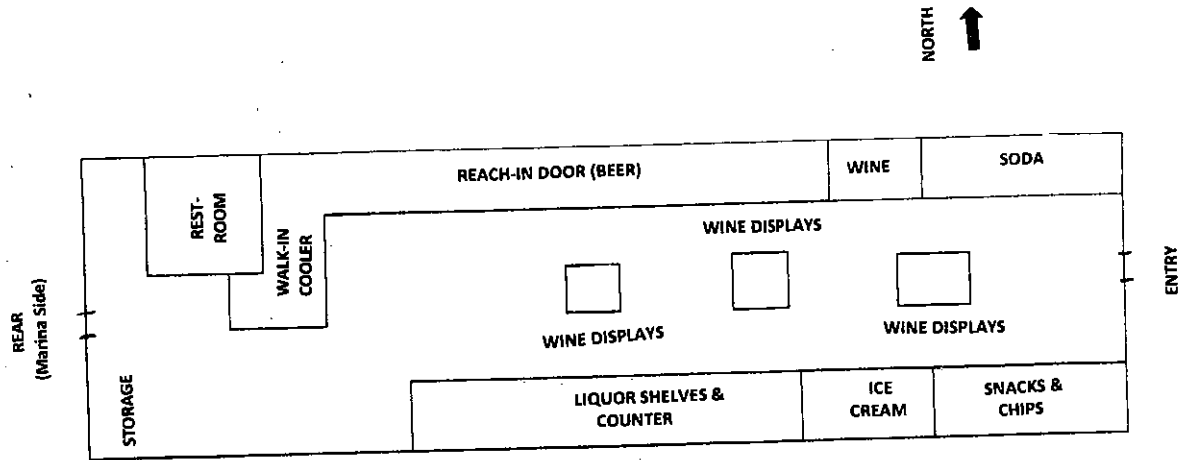
In accordance with Section 15301 (Existing Facilities) of the State of California Environmental Quality Act (CEQA), projects involving no expansion of an existing use may be found exempt from the requirements of CEQA. As this project proposes to permit the sale of alcohol at an existing tenant space within an existing shopping center, staff has determined that there is no substantial evidence that the project may have a significant effect on the environment.

Date

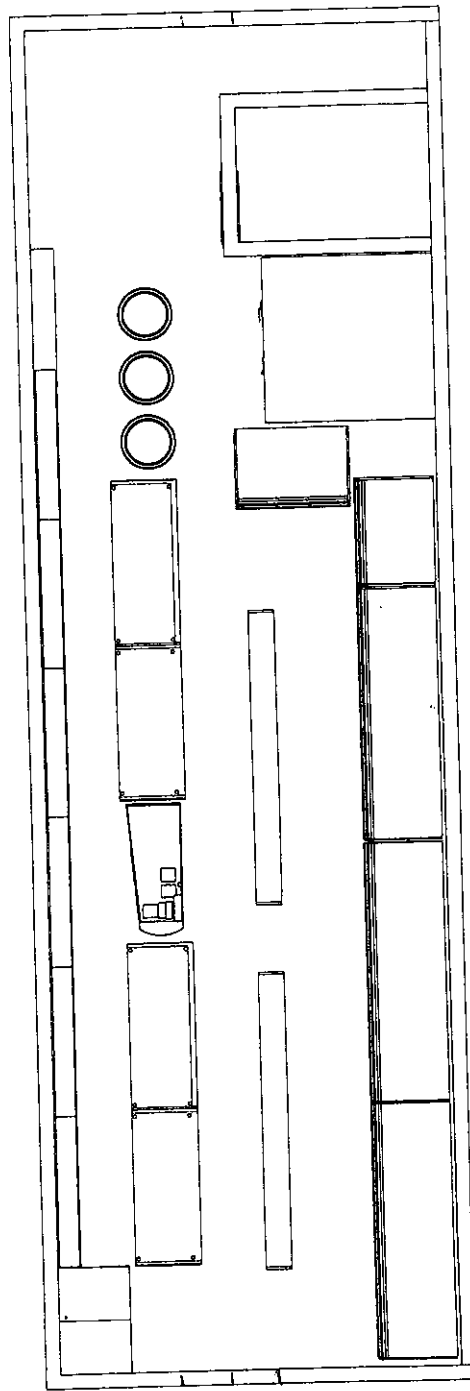
Kathleen Mallory, AICP
Planning Manager

ATTACHMENT “C”

Reduced Project Plans

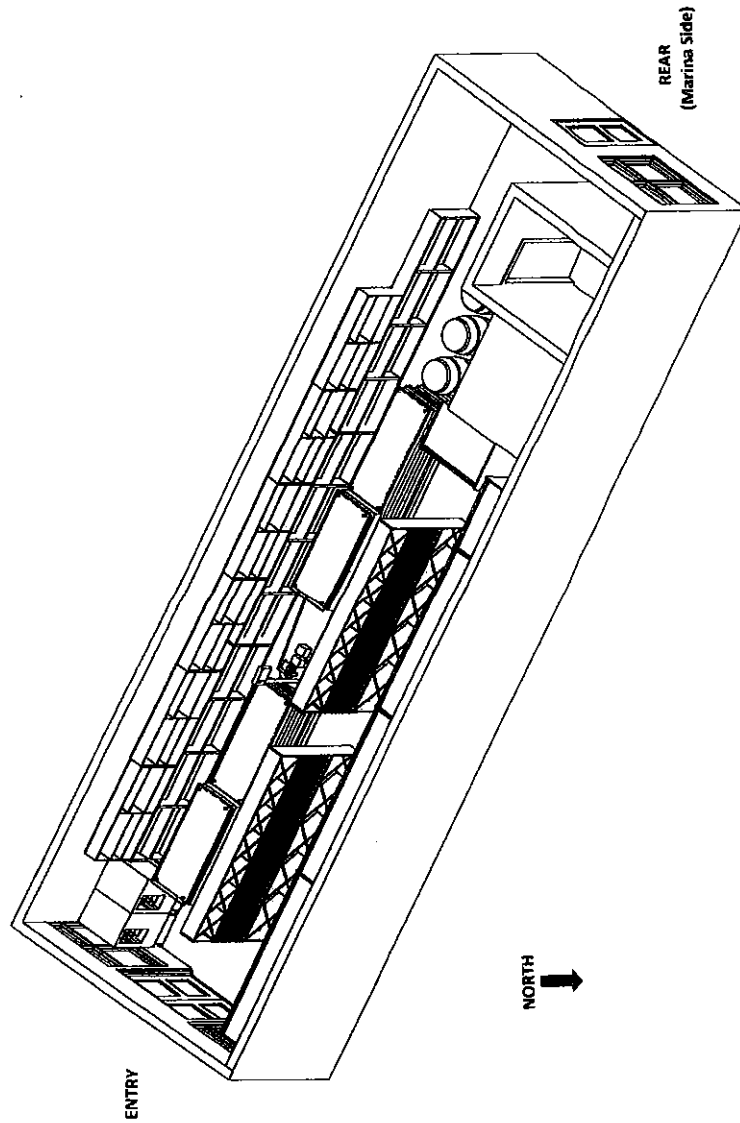


REAR
(Marina Side)



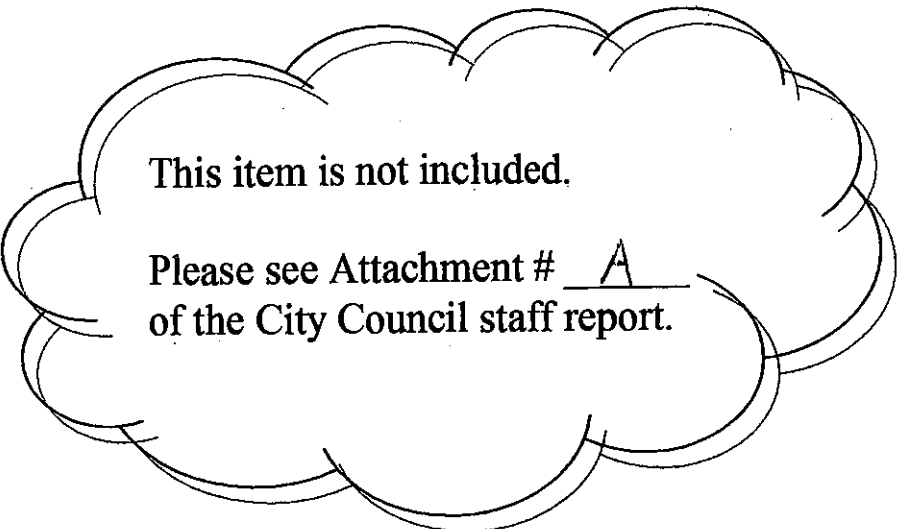
ENTRY

NORTH
→



ATTACHMENT "D"

March 1, 2017 Correspondence from
Bamieh & Erickson Law Corporation



This item is not included.

Please see Attachment # A
of the City Council staff report.

ATTACHMENT “E”

City Council Resolution No. 11,896

CITY COUNCIL OF THE CITY OF OXNARD

RESOLUTION NO. 11,896RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF OXNARD ADOPTING STANDARDS FOR
DETERMINING APPLICATIONS FOR SPECIAL USE
PERMITS TO SELL ALCOHOLIC BEVERAGES

WHEREAS, any person wishing to sell alcoholic beverages in the State of California must obtain a license to do so from the Department of Alcoholic Beverage Control; and

WHEREAS, Business and Professions Code Section 23790 provides that the Department of Alcoholic Beverage Control shall not issue a retail license "for any premises which are located in any territory where the exercise of the rights and privileges conferred by the license is contrary to a valid zoning ordinance of any county or city"; and

WHEREAS, the City of Oxnard has enacted zoning ordinances restricting the sale of alcoholic beverages to certain zones and requiring that a person wishing to sell alcoholic beverages in such zones first obtain a special use permit; and

WHEREAS, section 34-147 of the Oxnard City Code provides in part:

"Before a special use permit may be granted, the applicant must show and the planning commission must find that the proposed use is in conformance with the general plan and other adopted standards and that the following conditions are met:

"(a) The nature, condition and development of adjacent uses, buildings and structures shall be considered, and no proposed special use permit shall be granted where the commission finds such use will adversely affect or be materially detrimental to such adjacent uses, buildings or structures or to the public health, safety or general welfare."

WHEREAS, based on the experience of the Police Department that there is a relationship between crime and the consumption of alcohol and that establishments selling alcohol are incompatible with certain adjacent uses, the City Council wishes to adopt standards for determining when granting applications for special use permits to sell alcoholic beverages would adversely affect or be materially detrimental to adjacent uses, buildings or structures or to the public health, safety and general welfare; and

WHEREAS, this resolution applies only to the determination required by subsection (a) of section 34-147 of the City Code, and does not dispense with the requirement that in order to grant a special use permit to sell alcoholic beverages the application must satisfy the remainder of section 34-147; and

WHEREAS, in accordance with the California Environmental Quality Act, the Planning and Environmental Services Manager provided public notice of the intent of the City to adopt a negative declaration for the adoption of this resolution ("the project"), and the City Council has considered the proposed negative declaration, together with any comments received during the public review process, finds on the basis of the initial study and any comments received that there is no substantial evidence that the project will have a significant effect on the environment, further finds that the mitigated negative declaration reflects the independent judgment of the City, and approves the negative declaration.

NOW, THEREFORE, the City Council of the City of Oxnard resolves:

1. City Council Resolution No. 8597 is repealed.
2. The Planning and Environmental Services Division of the Development Services Department shall refer to the Police Department applications for special use permits to sell alcoholic beverages at retail. The Police Department shall prepare and submit to the secretary of the Planning Commission, at least ten calendar days before the date set for hearing on the special use permit, a written report on the following matters:
 - (a) The name and address and a description of the type of all establishments selling alcoholic beverages within 1,000 feet of the location for which the special use permit is applied. As used in this resolution, "the type" refers to the nature of the business (e.g., grocery store, liquor store, bar or restaurant), not to the type of State Alcoholic Beverage Control license issued to or sought for the business.
 - (b) The annual number of incidents involving police responses within 1,000 feet of the location for which the special use permit is applied and how this number compares to the City average of police responses.
 - (c) The likelihood that granting the application will create or significantly aggravate police problems at or near the subject location.
 - (d) A list of conditions recommended for inclusion in the special use permit to minimize police problems if the application is granted. One such condition shall be that the applicant provide Responsible Beverage Sales and Service (RBSS) training to all operators and employees of the establishment within 30 days of their employment. The applicant may apply to the Police Department for a waiver of RBSS training for temporary or short-term employees.
3. The Planning Commission shall consider the report, as well as any other relevant evidence, in determining whether, under subsection (a) of section 34-147 of the City Code, granting an application for a special use permit to sell alcoholic beverages at retail would adversely affect or be materially detrimental to adjacent uses, buildings or structures or to the

Resolution No. 11,896

Page 3

public health, safety or general welfare. Before making such determination, the Planning Commission shall make the following findings, as well as any other relevant findings:

(a) The proposed use is not likely to create or significantly aggravate police problems within 1000 feet of the location for which the special use permit is applied; and

(b) The proposed use will not result in or add to an undue concentration of establishments selling alcoholic beverages at retail within 1000 feet of the location for which the special use permit is applied. For purposes of making this determination, there is a presumption that an undue concentration will result or be added to if the establishment for which the special use permit is applied will be located less than 350 feet from another establishment of the same type, and there is a presumption that an undue concentration will not result or be added to if the establishment for which the special use permit is applied will be located 350 feet or more from another establishment of the same type. However, either presumption may be rebutted by a preponderance of the evidence, based on the facts of the particular case.

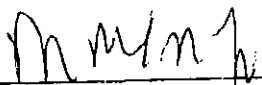
4. All of the procedures and other matters contained in section 34-146 et seq. of the City Code apply to applications for special use permits to sell alcoholic beverages at retail.

PASSED AND ADOPTED this 6th day of February, 2001, by the following vote:

AYES: Councilmembers Maulhardt, Pinkard, Zaragoza, Holden and Lopez.

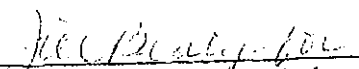
NOES: None.

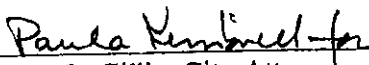
ABSENT: None.


Dr. Manuel M. Lopez, Mayor

APPROVED AS TO FORM:

ATTEST:


Daniel Martinez, City Clerk


Gary L. Gillig, City Attorney

ATTACHMENT “F”

Police Department Report



Police Department

Scott Whitney, Chief of Police

Date: December 7, 2016

To: John Kessler, Assistant Planner

From: Cliff Waer, Alcohol Compliance Coordinator

Subject: 1601 S. Victoria Avenue (Marina Liquor)

PZ 16-510-02

Site Information: This business is part of a moderate-sized commercial center known as Seabridge and is located at the south west corner of Leeward Way and Victoria Avenue. The space is currently unoccupied and is situated near the entrance to the shopping center on the north side. The front doors face east toward a roundabout and the shared parking lot. There are rear doors on the west side that face the marina.

The site is generally surrounded by residential to the north, commercial to the south, Victoria Avenue to the east and the marina to the west. Nearby businesses include a smoke shop, restaurants, beauty shops and a large gym. There are no similar Off-Sale ABC licensed establishments located within 350 feet of the proposed business. The nearest residences are approximately 75 feet to the north where there is a large condominium complex. The Permittee has proposed the business to be a liquor store and market and is requesting a "Type-21" ABC license which allows for the sale of beer, wine and distilled spirits.

Alcohol outlets located within 350 feet of the establishment include:

BUSINESS NAME	LOCATION	LICENSE TYPE	LICENSE TITLE	LICENSE DESCRIPTION	ALCOHOL ALLOWED
1. Pizza Man Dan's	1601 S. Victoria Ave	Type-40	On-Sale Beer and Wine	Restaurant	Beer and Wine
2. Yolanda's Restaurant	1601 S. Victoria Ave.	Type-41	On-Sale General	Restaurant	Beer, Wine and Spirits
3. Fresco II	1651 S. Victoria Ave.	Type-41	On-Sale General	Restaurant	Beer, Wine and Spirits
4. Sushi House	1651 S. Victoria Ave.	Type-40	On-Sale Beer and Wine	Restaurant	Beer and Wine

Alcohol outlets located within 1000 feet of the establishment include:

BUSINESS NAME	LOCATION	LICENSE TYPE	LICENSE TITLE	LICENSE DESCRIPTION	ALCOHOL ALLOWED
1. Von's	1291 S. Victoria Ave	Type-21	Off-Sale General	Grocery Store	Beer, Wine and Spirits

Crime Statistic Review:

For comparison purposes the Police Department calculates the average number of part I and II crimes that occur per reporting district (grid) during a selected 12-month period. Currently, the average City-wide, per grid base number of Part I and II crimes is 125.

For reference, the category of Part I crimes include: murder, rape, robbery, theft, burglary, auto theft, assault, and arson. Part II crimes include: vandalism, weapons possession, other sex offenses, drug abuse violations, driving under the influence, liquor laws, drunkenness, and disorderly conduct. Any references to "police calls for service" include any type of police response to the area, in addition to those classified as Part I or II. Such calls may include general disturbance type calls, suspicious activity, domestic disputes or even parking violations.

The average number of Part I and II crimes in the applicant's reporting district and all other districts within 1000 feet of the applicant is 84 during the most recent 12-month time period. This is 32% lower than the average Part I/II crime rate citywide which is unusually low for commercial centers of this size. The Police Department's experience is that busy retail centers are generally more likely to have a higher-than-average crime rate, as there is a significant amount of activity that creates opportunities and targets for criminals to take advantage. The types of police calls in the applicant's reporting district are consistent with citywide trends.

Police calls for service to the entire shopping center south of Leeward during the last year totaled 86. Again, this is low compared to most retail centers in Oxnard. A total of 22 of those calls were disturbance-related which is within the average for other sites. Only one of those calls resulted in an arrest and most were associated with two restaurants south of the proposed site where there is often late night lively activity. Only four of the calls for service involved theft-related incidents.

The Police Department compared the total calls at Seabridge to other retail centers in the City of Oxnard. The results show the proposed site to be well below the average for other commercial settings. Both large and medium retail centers are included for comparison:

Commercial Center Name	Total Calls for Service	Theft Related	Disturbance Related
Shopping at the Rose	817	186	218
Centerpoint Mall	812	191	133
Fremont Center	676	62	225
Esplanade	457	133	124

Commercial Center Name	Total Calls for Service	Theft Related	Disturbance Related
500-700 S. Ventura Road (CVS...)	310	59	62
The Palms	301	27	56
Trolley Plaza (400 S. Ventura)	247	39	36
Seabridge (South)	86	4	22

Police Department Input:

The area Beat Coordinator and District Supervisor was contacted regarding this proposal and said that the area immediately surrounding the site is not generally considered to be a policing problem. There is a police storefront located in the complex behind the proposed site along the meandering walkway near the marina. This drop-in storefront is the base of operations for the district officers assigned to the area and it is regularly in use. This allows for the officers to maintain a strong presence in the area with frequent use of bike patrols to monitor activity. While the two large restaurants accounted for several disturbance calls, neither location is considered a nuisance. Officers working the area did mention that there has been an issue with transients loitering throughout the commercial center and using various locations to camp for the day or sleep overnight. So far, this issue has been manageable and no serious incidents have occurred. The Police Department also noted there is a breezeway on the north end of the shopping center that separates Seabridge from the nearby condominium complex. The space is fairly narrow and has limited natural surveillance abilities. Our experience is that these spaces can be an inviting location for illegitimate activities such as loitering and drinking in public. Some of the feedback we received from the nearby businesses is that it is not uncommon for transients to loiter in this area. Others also said that the smoke shop customers often remain in the area after a purchase to enjoy their product. The Police Department has included language in the recommended conditions that should help minimize problems of drinking in public and loitering by requiring appropriate signage and prohibiting the sale of single servings of beer, wine, malt liquors and distilled spirits.

As part of the review for the proposed use, the Police Department visited the site several times to speak with tenants and visitors to get a clear picture of the activity taking place. This shopping center has long been challenged by a parking problem (lack of adequate parking) and the property owners have implemented several strategies to help reduce these issues. This includes free valet parking among others. The Police Department's observation was that the lack of parking still persists, especially during peak hours and there were times that we could not find a place to park in order to conduct our investigation.

The proposed site is located along a roundabout near the entrance to the retail center directly next to a "smoke shop" that is currently operated by the same applicant for this proposal. These spaces along the traffic circle are a little farther away from the main parking lot than most other businesses south of them. This creates an even more significant parking challenge as typical visitors to the smoke shop and a potential liquor store make small, quick purchases where convenience is a necessity. What we observed is that virtually all of the customers entering the

smoke shop parked directly in front of the business where the curb is painted red and within the boundaries of the traffic circle at the intersection of Windshore Way and the Seabridge center. Many others parked in a nearby loading zone instead of further out in the parking lot. The Police Department is convinced that adding a liquor store in this same area will only aggravate the random parking issues and increase congestion. It should be noted that the red curb is not an approved fire lane and not enforceable by the Police Department.

Parking issues are generally not a major factor that the Police Department considers when making a recommendation to the Planning Commission for an alcohol proposal unless it is likely to create an unsafe or condition. These types of concerns are generally left to the property owners to work out with their tenants as long as it is not a hazard. Typically, we focus on crime, safety and existing problems that would likely be aggravated by the proposed use. Our observations are included to ensure all of the relative information is shared with the Planning Commission to make an informed decision. The Police Department has included a special condition that requires the applicant and property owner to ensure there are no hazardous conditions created by the existing uses or the proposed use and that access lanes remain clear at all times.

Community Input: The Police Department contacted every business within the Seabridge commercial center and solicited their input regarding this proposal. Virtually every person we spoke to shared similar concerns regarding the existing problems with parking and the increased transient activity that could be aggravated with the availability of alcohol. A few added that some smoke shop customers already loiter in the area and that adding alcohol could increase problems.

The Police Department also spoke with guests of the shopping center as well as seeking out many residents of the condominium complex north of the proposed site. While a few were indifferent, most were opposed to such a use for many of the same reasons pointed out by the other tenants of the commercial center. Even those not familiar with any problems said a liquor store would not be a good “fit” for the retail center and may take away from the serene environment of being near the marina.

Conclusion: The crime rate in the area surrounding the proposed site is below city-wide averages and the area is not generally considered to be a policing problem. There are no similar alcohol outlets within 350 feet of the proposed site so there is no local presumption of undue concentration. There is one similar alcohol outlet within 1000 feet of the proposed site and four On-Sale outlets within 350 feet.

There are a few concerns of the Police Department including an ongoing parking situation that could get worse, an increasing presence of a transient population that could take advantage of having alcohol nearby and the existing issue of loitering which is often associated with the smoke shop next door to the proposed site. While these issues are relatively minor and currently manageable from a crime and safety perspective, the nearly unanimous negative feedback from the public is troubling. The Police Department has included several recommended conditions to address these issues and reduce the likelihood for problems.

We believe these conditions, if closely adhered to and effectively enforced, should minimize the potential negative impact that the availability of alcohol at this site may cause. These conditions include no sales of single servings of beer, wine, fortified wines and distilled spirits.

The Police Department's experience is that the proposed license (Type 21- Off-Sale General), when properly regulated through conditions imposed by the Planning Commission, does not normally aggravate policing issues, as long as the establishment complies with these regulations and operates responsibly. Listed below are the Police Department's recommended operating conditions for the Resolution.

Police Standard Conditions

(Off-Sale Alcohol Establishments)

- 1) All managers or supervisors who are responsible for the daily coordination, supervision or managing of employees, shall complete an approved course in Responsible Beverage Service (RBS) within sixty days of license granting and/or date of employment. Training can be arranged through the Oxnard Police Department. (PL/PD)
- 2) There shall be no advertising of alcoholic beverages visible from the outside of the establishment, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. (PL/PD)
- 3) The Police Chief or designee may immediately suspend operation of the uses approved by this permit pending a hearing on the revocation of this permit if the Chief finds that there have been significant violations of the use permit conditions and/or ABC permit, or there is a single serious violent crime or single significant incident to which multiple police units or multiple police jurisdictions respond associated with the operation of this use, which the Chief determines, after due process that shall include communication with the owner, is detrimental to the public safety or health. The Chief shall immediately inform the Planning and Environmental Services Manager of the suspension and the Manager shall schedule a hearing on the revocation of the permit by the Planning Commission to be held no more than 30 days after the suspension begins. (PD)
- 4) Any signs, advertisements or decorations placed upon the windows shall not exceed 20% of the overall window area. Additionally, there shall be no other obstructions placed near the windows that exceed 20% of the overall viewing area including display racks, stored products, shades or blinds. (PD)
- 5) Upon any individual transfer (person-to-person) of the subject Alcoholic Beverage Control License, or if the business is ever deemed a nuisance as defined by Oxnard City Code, the Police Department may initiate Planning Commission review of the existing SUP and the Planning Commission may apply or remove conditions as appropriate to mitigate existing or potential problems. (PD)
- 6) Any graffiti painted or marked upon the premises or on any adjacent area under the control of the Permittee shall be removed or painted over within twenty-four (24) hours of being applied. (PL/PD)
- 7) Permittee shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control. This includes the rear of the business. (PL/PD)
- 8) Any rear door of the premises shall be equipped on the inside with an automatic locking device, shall be closed at all times, and shall not be used as a means of access by patrons to and from the licensed premises. Temporary use of these doors for delivery of supplies or disposal of trash does not constitute a violation. (PD)

- 9) Employees involved in the sale or service of alcoholic beverages shall not be allowed to consume alcoholic beverages at any time during their shift. Employees shall not report to work with evidence of having consumed any intoxicants such as alcohol, illegal drugs or controlled substances. (PD)
- 10) The parking lot and adjacent areas of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernable the appearance and conduct of all persons on or about the area. This includes the rear of the business. (PL/PD)
- 11) There shall be no pay phones installed inside the premises nor shall there be any pay phones installed outside within 100 feet of the premises. (PL/PD)
- 12) Permittee shall regularly police the area under Permittee's reasonable control (including the rear of the business) and shall not permit the loitering of persons about the premises. (PL/PD)
- 13) In the areas surrounding the business the Permittee shall post prominent, permanent signs indicating that loitering, open containers and the consumption of alcoholic beverages is prohibited. This includes the parking lot and other adjacent areas under Permittee's reasonable control. (PD)
- 14) Coolers or displays containing alcoholic beverages shall be positioned so as to allow maximum visibility to cashiers, clerks, associates or employees. Alcohol displays shall not be positioned near customer entry/exit doors, nor shall they be in a location that allows for an easy and unobstructed path to any entry or exit. It is recommended that the alcohol displays or coolers be positioned where employees have a clear view from their normal work stations of the activity of persons in the alcohol isle. (PD)
- 15) There shall be no amusement machines or video devices maintained on the premises at any time. (PD)
- 16) Other than specialty beers and micro brews, beer, malt beverages and wine coolers, in containers of 40oz in volume or less, cannot be sold by single containers, but must be sold in manufacturer pre-packaged multi-unit quantities. The sale of mass-produced, low priced beer or malt liquor in single servings is prohibited (PD)
- 17) No wine (typically referred to as fortified wines) shall be sold with an alcoholic content of greater than 15% by volume except for "Dinner Wines" which have been aged two years or more and maintained in corked bottles (Port, Sherry, Saki, Marsala, Madiera, Muscat and Vermouth are permitted). (PD)
- 18) Prominent signs shall be posted stating, in effect, "No persons under 21 will be served alcoholic beverages" and "Valid ID is required to purchase alcoholic beverages". These signs shall, at a minimum, be posted at each point of sale and near any alcohol display or areas. (PD)

- 19) No open floor displays of alcoholic beverages are allowed, including but not limited to “beer mountains” and portable coolers. (PD)
- 20) No temporary or permanent open displays of alcoholic beverages are permitted near customer entry/exits. This includes stacked boxes or cases containing alcoholic beverages, portable coolers, promotional displays or any other alcohol displays where there is a clear, easy or unobstructed path to any entry or exits. (PD)
- 21) Alcoholic beverages shall not be sold between the hours from 12:00 midnight and 8:00 AM. (PD)
- 22) There shall be no self-service displays of any type of tobacco product including, but not limited to cigarettes, cigars and smokeless tobacco. (PD)
- 23) Security cameras shall be installed to monitor the premises and be positioned to monitor at minimum the entry/exit, all points of sale, alcohol displays and the areas immediately surrounding the exterior of the business. The camera system shall comply with the following minimum standards: (PD)
 - a. The cameras shall be color cameras, made by a reputable manufacturer and maintained to current industry standards. They shall have low light capability and be capable of identifying persons conducting transactions at the stores’ registers or entering/exiting the business.
 - b. The system shall utilize a Digital Video Recorder (DVR). The use of videocassette recorders (VHS and other formats) is prohibited. The DVR shall allow recording, live viewing and playback of recorded video for a period of least 30 days. DVR shall perform all recording, viewing (local and remote), playback (local and remote), queries and backup functions simultaneously, with no interruption of any other function.
- 24) Permittee shall establish responsible cash handling procedures to reduce the likelihood of robberies and thefts. (PD)
- 25) Permittee shall bolt down or otherwise secure all cash registers to service counters in order to prevent the entire device from being stolen during a burglary or robbery. This includes during off hours. (PD)
- 26) Permittee shall have drop-safes installed or establish other responsible cash handling procedures to allow employees to deposit daily receipts throughout the day as the amounts exceed allowable levels in the register (typically \$50-200). (PD)
- 27) When used, Permittee shall install signage which indicates that employees do not possess keys to safes and that minimal levels of cash are available in register. (PD)

- 28) Permittee shall install height gauges at all exit doors. (PD)
- 29) During hours the business is closed, there shall be an electronic intrusion detection system (burglary alarm) activated that detects portal openings, glass break, and interior motion. (PD)
- 30) Permittee shall equip each point of sale with a silent robbery alarm that complies with Oxnard City Ordinance No. 2601 or develop and implement critical incident protocols that provide an efficient method for alerting police and others to a potential threat without unnecessarily putting the employees at risk. (PD)
- 31) A copy of these conditions must be maintained on the premises and made available upon the demand of any peace officer at all times. (PL/PD)

Police Special Conditions

- 1) The use of self-checkout for alcoholic beverages is prohibited. (PD)
- 2) Permittee shall not disrupt or disturb neighboring uses with any nuisance behavior such as excessive noise, loitering, unauthorized or illegal parking. (PD)
- 3) Permittee and property owner shall ensure that all drive aisles remain unobstructed and clear for through traffic or emergency vehicles at all times. (PD)
- 4) The sale of single servings of distilled spirits (375 ml. or less) is prohibited. (PD)

ATTACHMENT “G”

Resolution of Denial

RESOLUTION NO. 2017 – XX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF OXNARD DENYING PLANNING AND ZONING PERMIT NO. 16-510-02 (SPECIAL USE PERMIT), TO ALLOW THE SALES OF BEER, WINE, AND DISTILLED SPIRITS FOR OFF-SITE CONSUMPTION (ABC LICENSE TYPE 21 – OFF-SALE GENERAL) IN A PROPOSED 1,200 SQUARE-FOOT LIQUOR STORE, LOCATED AT 1601 SOUTH VICTORIA AVENUE, SUITE 120, SUBJECT TO CERTAIN FINDINGS. FILED BY ESSAM S. SALAMEH, 3730 AVONDALE LANE, OXNARD, CALIFORNIA, 93036, ON BEHALF OF PROPERTY OWNERS, SEABRIDGE PARTNERS, L.P.

WHEREAS, on March 22, 2016, Essam S. Salameh, (the “**Applicant**”) on behalf of property owners Seabridge Partners, L.P., submitted a request to allow the sale of beer, wine, and distilled spirits for off-site consumption within a 1,200 square-foot commercial tenant space to be occupied by Marina Liquor, at 1601 South Victoria Avenue, Suite 120 (the “**Project**”); and

WHEREAS, on March 1, 2017 the Applicant’s attorney (Barnieh & Erickson Law Corporation) submitted a correspondence opposing Police Standard Condition of Approval No. 16, related to the prohibition of the sales of single-serve containers, other than specialty beers and micro brews and Police Special Condition of Approval No. 4, related to the prohibition of the sales of single-serve distilled spirits that are 375ml. or less; and

WHEREAS, on April 6, 2017, the Planning Commission of the City of Oxnard (“**Planning Commission**”) conducted a duly noticed public hearing to consider Applicant’s request for approval of Planning and Zoning Permit No. 16-510-02 (Special Use Permit), in accordance with Section 16-530 through 16-553 of the Oxnard City Code and City Council Resolution No. 11,896; and

WHEREAS, the Planning and Environmental Services Division has completed a preliminary environmental assessment of the Project in accordance with the California Environmental Quality Act (CEQA) and determined that the Project is subject to a categorical exemption.

NOW, THEREFORE, the Planning Commission of the City of Oxnard finds as follows:

1. The denial of this permit will not affect the preservation and enjoyment of substantial property rights of the applicant in that the denial does not preclude the existing uses of the subject property.
2. Community input solicited by the Police Department has indicated that the proposed use may increase transient activity, and would not be a good fit for the Commercial Center.
3. Without the imposition of proposed Police Department Standard Condition of Approval No. 16 and Police Department Special Condition of Approval No. 4, related to the prohibition of single-serve containers, other than specialty beers and micro brews and the

prohibition of single-serve distilled spirits that are 375ml. or less, respectively, granting of this special use permit would, under the circumstances of this particular case, adversely affect or be materially detrimental to adjacent uses, buildings, or structures, to the health or safety of persons residing in or working in the neighborhood, and to the general welfare.

4. As indicated in the Police Department's Report regarding the subject application, the Police Department has recommended several conditions of approval to address Police Department and community issues and concerns, of which the applicant has expressed objection in a letter from the Law Offices of Bamieh & Erickson, dated March 1, 2017. Without the imposition of these conditions, the public health, safety, and welfare would be adversely affected.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Oxnard hereby denies this permit subject to the findings contained herein. The decision of the Planning Commission is final unless appealed in accordance with the provisions of Section 16-545 of the Oxnard City Code.

PASSED AND ADOPTED by the Planning Commission of the City of Oxnard on this 6th day of April, 2017, by the following vote:

Deirdre Frank, Chair

I hereby certify that the foregoing is a true copy of a Resolution adopted by the Planning Commission of the City of Oxnard at a meeting held on the 6th day of April, 2017, and carried by the following vote:

AYES: Commissioner(s):

NOES: Commissioner(s):

ABSENT: Commissioner(s):

ABSTAIN: Commissioner(s):

Kathleen Mallory, Secretary

ATTACHMENT “H”

Resolution of Approval

RESOLUTION NO. 2017 – XX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF OXNARD APPROVING PLANNING AND ZONING PERMIT NO. 16-510-02 (SPECIAL USE PERMIT), TO ALLOW THE SALES OF BEER, WINE, AND DISTILLED SPIRITS FOR OFF-SITE CONSUMPTION (ABC LICENSE TYPE 21 – OFF-SALE GENERAL) IN A PROPOSED 1,200 SQUARE-FOOT LIQUOR STORE, LOCATED AT 1601 SOUTH VICTORIA AVENUE, SUITE 120, SUBJECT TO CERTAIN FINDINGS. FILED BY ESSAM S. SALAMEH, 3730 AVONDALE LANE, OXNARD, CALIFORNIA, 93036, ON BEHALF OF PROPERTY OWNERS, SEABRIDGE PARTNERS, L.P.

WHEREAS, on March 22, 2016, Essam S. Salameh, (the “**Applicant**”) on behalf property owners Seabridge Partners, L.P., submitted a request to allow the sale of beer, wine, and distilled spirits for off-site consumption within a 1,200 square-foot commercial tenant space to be occupied by Marina Liquor at 1601 South Victoria Avenue, Suite 120 (the “**Project**”); and

WHEREAS, on April 6, 2017, the Planning Commission of the City of Oxnard (“**Planning Commission**”) conducted a duly noticed public hearing to consider Applicant’s request for approval of Planning and Zoning Permit No. 16-510-02 (Special Use Permit), in accordance with Section 16-530 through 16-553 of the Oxnard City Code and City Council Resolution No. 11,896; and

WHEREAS, the Planning and Environmental Services Division has completed a preliminary environmental assessment of the Project in accordance with the California Environmental Quality Act (CEQA) and determined that the Project is subject to a categorical exemption.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF OXNARD:

SECTION 1. Based on the entire record before the Planning Commission and all written and oral evidence presented, including the Planning Commission Staff Report and all attachments thereto, the Planning Commission finds:

- (1) **The proposed use is in conformance with the City of Oxnard 2030 General Plan and the elements thereof and other adopted standards.**

The subject site is zoned Coastal Planned Community, with a 2030 General Plan designation of Planned Unit Development. The proposed retail use within an existing shopping center is consistent with the General Plan and zoning designation. The proposed sales of alcoholic beverages would be consistent with retail/commercial zoning, subject to approval of a special use permit per Section 17-15 of the Oxnard City Code.

- (2) **The proposed use will not adversely affect or be materially detrimental to the adjacent uses, buildings or structures or to the public health, safety or general welfare.**

The Project will allow the sale of beer, wine, and distilled spirits for off-site consumption within an existing tenant space at an existing shopping center. The Project will not result in a presumption of undue concentration according to local guidelines, as long as the establishment complies with all recommended regulations, and operates responsibly.

- (3) **The site for the proposed use is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and all items required by the conditions of approval.**

The proposed use will be located within an existing shopping center. No exterior improvements or lot size changes are proposed as part of this permit and therefore, by definition, the site is adequate in size and shape to accommodate the non-existent improvements.

- (4) **The site for the proposed use will be served by highways adequate in width and improved as necessary to carry the kind and quantity of traffic such use will generate.**

The Project will be adequately served by all existing infrastructure for the existing shopping center, which includes South Victoria Avenue, a major arterial with adequate capacity to handle any *de minimis* changes in traffic patterns that may result because of the issuance of a permit to sell alcoholic beverages.

- (5) **The site for the proposed use will be provided with adequate sewerage, water, fire protection and storm drainage facilities.**

The Project will be served by existing water and sewer connections for the existing shopping center and the connections are sufficient and fully operational.

- (6) **The proposed use will not result in or add to an undue concentration of off-site consumption establishments selling alcoholic beverages within 350 feet of the subject location.**

There are no similar outlets within 350 feet of the Project site; therefore there is no presumption of undue concentration by local standards.

- (7) **The proposed use is not likely to create or significantly aggravate police problems within 1,000 feet of the location for which the special use permit is applied.**

There is one existing similar outlet within 1,000 feet of the Project site; however the Project is not expected to aggravate policing issues so long as the establishment complies with all regulations, conditions, and operates responsibly.

SECTION 2. The Planning Commission, in accordance with the California Environmental Quality Act (CEQA), determines that the Project will not have a significant impact on the environment and is categorically exempt from CEQA pursuant to Article 19, Section 15301 (Existing Facilities) of the State CEQA Guidelines. This section pertains to projects not involving any expansion of existing uses. The Planning and Environmental Services Division is hereby authorized and directed to file a Notice of Exemption with the Ventura County Clerk pursuant to Section 15602 of the State CEQA Guidelines within five (5) working days of passage, approval and adoption of this Resolution.

SECTION 3. Based on the findings set forth herein, the Planning Commission hereby approves Planning and Zoning Permit 16-510-02 (Special Use Permit), subject to the attached conditions of approval.

SECTION 4. The decision of the Planning Commission shall be final unless an appeal of the action is filed in accordance with the provisions of Section 16-545 of the Oxnard City Code.

SECTION 5. The Secretary shall certify the adoption of this Resolution.

STANDARD CONDITIONS OF APPROVAL FOR LAND USE PERMITS

Note:

The abbreviations below identify the City department or division responsible for determining compliance with these standard conditions. The first department or division listed has responsibility for compliance at plan check, the second during inspection and the third at final inspection, prior to issuance of a certificate of occupancy, or at a later date, as specified in the condition. If more than one department or division is listed, the first will check the plans or inspect the project before the second confirms compliance with the condition. The italicized code at the end of each condition provides internal information on the source of each condition: Some are standard permit conditions (e.g. *G-1*) while some are taken from environmental documents (e.g. *MND-S2*).

DEPARTMENTS AND DIVISIONS			
CA	City Attorney	PL	Planning Division
DS	Dev Services/Eng Dev/Inspectors	TR	Traffic Division
PD	Police Department	B	Building Plan Checker
SC	Source Control	FD	Fire Department
PK	Landscape Design	CE	Code Compliance

GENERAL PROJECT CONDITIONS

1. This permit is granted for the property described in the application on file with the Planning Division, and may not be transferred from one property to another. (PL, *G-1*).

2. This permit is granted for the plans dated April 14, 2016, (“the **plans**”) on file with the Planning Division. The Project shall conform to the plans, except as otherwise specified in these conditions, or unless a minor modification to the plans is approved by the Planning and Environmental Services Manager (“**Planning Manager**”) or a major modification to the plans is approved by the Planning Commission. A minor modification may be granted for minimal changes or increases in the extent of use or size of structures or of the design, materials or colors of structures or masonry walls. A major modification shall be required for substantial changes or increases in such items. (PL, G-2)
3. All required off-site and on-site improvements for the Project, including structures, paving, and landscaping, shall be completed prior to occupancy unless the Development Services Manager allows Applicant to provide security or an executed agreement approved by the City Attorney to ensure completion of such improvements. (DS, G-4)
4. By commencing any activity related to the Project or using any structure authorized by this permit, Applicant accepts all of the conditions and obligations imposed by this permit and waives any challenge to the validity of the conditions and obligations stated therein. (CA, G-5)
5. Applicant agrees, as a condition of adoption of this resolution, at Applicant’s own expense, to indemnify, defend and hold harmless the City and its agents, officers and employees from and against any claim, action or proceeding to attack, review, set aside, void or annul the approval of the resolution or any condition attached thereto or any proceedings, acts or determinations taken, done or made prior to the approval of such resolution that were part of the approval process. (CA, G-6)
6. Any covenants, conditions, and restrictions (CC&Rs) applicable to the Project property shall be consistent with the terms of this permit and the City Code. If there is a conflict between the CC&Rs and the City Code or this permit, the City Code or this permit shall prevail. (CA, G-7)
7. Applicant shall complete the “Notice of Land Use Restrictions and Conditions” form, using the form provided by the City, for recording with the Ventura County Recorder. Before the City issues building permits, Applicant shall submit the original completed, signed and notarized document, together with the required fees to the Planning Manager. (PL, G-8)
8. Before placing or constructing any signs on the Project property, Applicant shall obtain a sign permit from the City. Except as provided in the sign permit, Applicant may not change any signs on the Project property. (PL/B, G-10)
9. Applicant shall not permit any combustible refuse or other flammable materials to be burned on the Project property. (FD, G-12)
10. Applicant shall not permit any materials classified as flammable, combustible, radioactive, carcinogenic or otherwise potentially hazardous to human health to be handled, stored or used on the Project property, except as provided in a permit issued by the Fire Chief. (FD, G-13)

11. If Applicant, owner or tenant fails to comply with any of the conditions of this permit, the Applicant, owner or tenant shall be subject to a civil fine pursuant to the Oxnard City Code. (CA, G-14)
12. Prior to issuance of building permits, Applicant shall correct all violations of the Oxnard City Code existing on the Project property for which the Code Compliance Division has open cases. (PL, G-15).

PLANNING DIVISION STANDARD CONDITIONS

13. Applicant may not modify any use approved by this permit unless the Planning Manager determines that Applicant has provided the parking required by the Oxnard City Code for the modified use. (PL, PL-7)

PLANNING DIVISION SPECIAL CONDITIONS

14. This permit shall automatically be void 12 months from the date of issuance, unless the Applicant has received a Type 21 Off-Sale General license from the State Department of Alcoholic Beverage Control to sell alcoholic beverages on the Project property. (PL)

POLICE DEPARTMENT STANDARD CONDITIONS

15. All managers or supervisors who are responsible for the daily coordination, supervision or managing of employees, shall complete an approved course in Responsible Beverage Service (RBS) within sixty days of license granting and/or date of employment. Training can be arranged through the Oxnard Police Department. (PL/PD)
16. There shall be no advertising of alcoholic beverages visible from the outside of the establishment, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. (PL/PD)
17. The Police Chief or designee may immediately suspend operation of the uses approved by this permit pending a hearing on the revocation of this permit if the Chief finds that there have been significant violations of the use permit conditions and/or ABC permit, or there is a single serious violent crime or single significant incident to which multiple police units or multiple police jurisdictions respond associated with the operation of this use, which the Chief determines, after due process that shall include communication with the owner, is detrimental to the public safety or health. The Chief shall immediately inform the Planning and Environmental Services Manager of the suspension and the Manager shall schedule a hearing on the revocation of the permit by the Planning Commission to be held no more than 30 days after the suspension begins. (PD)
18. Any signs, advertisements or decorations placed upon the windows shall not exceed 20% of the overall window area. Additionally, there shall be no other obstructions placed near the windows that exceed 20% of the overall viewing area including display racks, stored products, shades or blinds. (PD)

19. Upon any individual transfer (person-to-person) of the subject Alcoholic Beverage Control License, or if the business is ever deemed a nuisance as defined by Oxnard City Code, the Police Department may initiate Planning Commission review of the existing SUP and the Planning Commission may apply or remove conditions as appropriate to mitigate existing or potential problems. (PD)
20. Any graffiti painted or marked upon the premises or on any adjacent area under the control of the Permittee shall be removed or painted over within twenty-four (24) hours of being applied. (PL/PD)
21. Permittee shall be responsible for maintaining free of litter the area adjacent to the premises over which they have control. This includes the rear of the business. (PL/PD)
22. Any rear door of the premises shall be equipped on the inside with an automatic locking device, shall be closed at all times, and shall not be used as a means of access by patrons to and from the licensed premises. Temporary use of these doors for delivery of supplies or disposal of trash does not constitute a violation. (PD)
23. Employees involved in the sale or service of alcoholic beverages shall not be allowed to consume alcoholic beverages at any time during their shift. Employees shall not report to work with evidence of having consumed any intoxicants such as alcohol, illegal drugs or controlled substances. (PD)
24. The parking lot and adjacent areas of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernable the appearance and conduct of all persons on or about the area. This includes the rear of the business. (PL/PD)
25. There shall be no pay phones installed inside the premises nor shall there be any pay phones installed outside within 100 feet of the premises. (PL/PD)
26. Permittee shall regularly police the area under Permittee's reasonable control (including the rear of the business) and shall not permit the loitering of persons about the premises. (PL/PD)
27. In the areas surrounding the business the Permittee shall post prominent, permanent signs indicating that loitering, open containers and the consumption of alcoholic beverages is prohibited. This includes the parking lot and other adjacent areas under Permittee's reasonable control. (PD)
28. Coolers or displays containing alcoholic beverages shall be positioned so as to allow maximum visibility to cashiers, clerks, associates or employees. Alcohol displays shall not be positioned near customer entry/exit doors, nor shall they be in a location that allows for an easy and unobstructed path to any entry or exit. It is recommended that the alcohol displays or coolers be positioned where employees have a clear view from their normal work stations of the activity of persons in the alcohol isle. (PD)

29. There shall be no amusement machines or video devices maintained on the premises at any time. (PD)
30. Other than specialty beers and micro brews, beer, malt beverages and wine coolers, in containers of 40oz in volume or less, cannot be sold by single containers, but must be sold in manufacturer pre-packaged multi-unit quantities. The sale of mass-produced, low priced beer or malt liquor in single servings is prohibited (PD)
31. No wine (typically referred to as fortified wines) shall be sold with an alcoholic content of greater than 15% by volume except for "Dinner Wines" which have been aged two years or more and maintained in corked bottles (Port, Sherry, Saki, Marsala, Madiera, Muscat and Vermouth are permitted). (PD)
32. Prominent signs shall be posted stating, in effect, "No persons under 21 will be served alcoholic beverages" and "Valid ID is required to purchase alcoholic beverages". These signs shall, at a minimum, be posted at each point of sale and near any alcohol display or areas. (PD)
33. No open floor displays of alcoholic beverages are allowed, including but not limited to "beer mountains" and portable coolers. (PD)
34. No temporary or permanent open displays of alcoholic beverages are permitted near customer entry/exits. This includes stacked boxes or cases containing alcoholic beverages, portable coolers, promotional displays or any other alcohol displays where there is a clear, easy or unobstructed path to any entry or exits. (PD)
35. Alcoholic beverages shall not be sold between the hours from 12:00 midnight and 8:00 AM. (PD)
36. There shall be no self-service displays of any type of tobacco product including, but not limited to cigarettes, cigars and smokeless tobacco. (PD)
37. Security cameras shall be installed to monitor the premises and be positioned to monitor at minimum the entry/exit, all points of sale, alcohol displays and the areas immediately surrounding the exterior of the business. The camera system shall comply with the following minimum standards: (PD)
 - a. The cameras shall be color cameras, made by a reputable manufacturer and maintained to current industry standards. They shall have low light capability and be capable of identifying persons conducting transactions at the stores' registers or entering/exiting the business.

- b. The system shall utilize a Digital Video Recorder (DVR). The use of videocassette recorders (VHS and other formats) is prohibited. The DVR shall allow recording, live viewing and playback of recorded video for a period of least 30 days. DVR shall perform all recording, viewing (local and remote), playback (local and remote), queries and backup functions simultaneously, with no interruption of any other function.
38. Permittee shall establish responsible cash handling procedures to reduce the likelihood of robberies and thefts. (PD)
 39. Permittee shall bolt down or otherwise secure all cash registers to service counters in order to prevent the entire device from being stolen during a burglary or robbery. This includes during off hours. (PD)
 40. Permittee shall have drop-safes installed or establish other responsible cash handling procedures to allow employees to deposit daily receipts throughout the day as the amounts exceed allowable levels in the register (typically \$50-200). (PD)
 41. When used, Permittee shall install signage which indicates that employees do not possess keys to safes and that minimal levels of cash are available in register. (PD)
 42. Permittee shall install height gauges at all exit doors. (PD)
 43. During hours the business is closed, there shall be an electronic intrusion detection system (burglary alarm) activated that detects portal openings, glass break, and interior motion. (PD)
 44. Permittee shall equip each point of sale with a silent robbery alarm that complies with Oxnard City Ordinance No. 2601 or develop and implement critical incident protocols that provide an efficient method for alerting police and others to a potential threat without unnecessarily putting the employees at risk. (PD)
 45. A copy of these conditions must be maintained on the premises and made available upon the demand of any peace officer at all times. (PL/PD)

POLICE DEPARTMENT SPECIAL CONDITIONS

46. The use of self-checkout for alcoholic beverages is prohibited. (PD)
47. Permittee shall not disrupt or disturb neighboring uses with any nuisance behavior such as excessive noise, loitering, unauthorized or illegal parking. (PD)
48. Permittee and property owner shall ensure that all drive aisles remain unobstructed and clear for through traffic or emergency vehicles at all times. (PD)
49. The sale of single servings of distilled spirits (375 ml. or less) is prohibited. (PD)

PASSED, APPROVED, AND ADOPTED by the Planning Commission of the City of Oxnard on this 6th day of April, 2017.

Deirdre Frank, Chair

I hereby certify that the foregoing is a true copy of a Resolution adopted by the Planning Commission of the City of Oxnard at a meeting held on the 6th day of April, 2017, and carried by the following vote:

AYES: Commissioner(s):

NOES: Commissioner(s):

ABSENT: Commissioner(s):

ABSTAIN: Commissioner(s):

Kathleen Mallory, Secretary

ATTACHMENT “I”

Correspondence Received on Project

Lewis Charles Carr
1502 Windshore Way
Oxnard, California
93035



March 12, 2017

Ms. Kathleen Mallory, AICP
Planning Division
214 South C Street
Oxnard, California
93030

Dear Ms. Mallory:

I am writing to convey my concerns regarding the community safety risks associated with the potential issuance of a Special Use Permit-Alcohol Type, for the 1601 South Victoria Avenue, Suite 120 location referenced in the enclosed letter from your office.

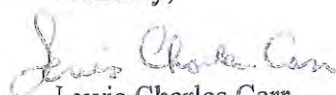
I have enclosed a photograph taken at approximately 7:00pm on Friday, March 10, 2017 which is consistent with my concerns for parking density related escalations of driving safety risks and risks to pedestrians in and around the rotary proximate to the proposed liquor store location.

I have also enclosed a summary of research pertaining to risks for violence associated with a density increase in terms of the number of places which sell alcohol in a concentrated community setting per findings of the Pacific Institute for Research and Evaluation.

I will be unable to attend the March 16th hearing due to unalterable prior commitments; however, I will appreciate the inclusion of my written and pictorial statements of concern during any deliberations regarding the potential issuance of a Special Use Permit-Alcohol Type, for the 1601 South Victoria Avenue, Suite 120 location referenced in the enclosed letter from your office.

Thank you for your consideration.

Sincerely,


Lewis Charles Carr





Pacific Institute
FOR RESEARCH AND EVALUATION

PIRE

Translating Science into Practice

How Alcohol Outlets Affect Neighborhood Violence

Kathryn Stewart



Prevention Research Center
PACIFIC INSTITUTE FOR RESEARCH AND EVALUATION

www.resources.prev.org

Pacific Institute for Research and Evaluation is one of the nation's preeminent independent, nonprofit organizations merging scientific knowledge and proven practice to create solutions that improve the health, safety and well-being of individuals, communities, nations, and the world.

Introduction

Neighborhoods where bars, restaurants and liquor and other stores that sell alcohol are close together suffer more frequent incidences of violence and other alcohol-related problems, according to recent research by the Prevention Research Center and others. The strong connection between alcohol and violence has been clear for a long time – but now we know that this connection also relates to the location of places that sell alcohol.

Government agencies with authority over land-use and/or liquor licenses can help fight crime and blight and improve quality of life by controlling licenses to sell alcohol and the location of licensees. Governments can make rules that set minimum distances between alcohol outlets; they can limit new licenses for areas that already have outlets too close together; they can stop issuing licenses when a particular location goes out of business; and they can permanently close outlets that repeatedly violate liquor laws.

This paper presents some of the questions and answers about alcohol sales outlets and alcohol problems – especially the relationship between outlet location and violence.

What is the relationship between outlet density and violence?

A number of studies have found that in and near neighborhoods where there is a high density of places that sell alcohol, there is a higher rate of violence. That is, when bars, liquor stores, and other businesses that sell alcohol are close together, more assaults and other violent crimes occur.

Some of the important findings about outlet density and violence are described below.

- In a study of Camden, New Jersey, neighborhoods with alcohol outlet density had more violent crime (including homicide, rape, assault, and robbery). This association was strong even when other neighborhood characteristics such as poverty and age of residents were taken into account.¹
- In a study of 74 cities in Los Angeles County, California, a higher density of alcohol outlets was associated with more violence, even when levels of unemployment, age, ethnic and racial characteristics and other community characteristics were taken into account.²
- In a six-year study of changes in numbers of alcohol outlets in 551 urban and rural zip code areas in California, an increase in the number of bars and off-premise places (e.g., liquor, convenience

and grocery stores) was related to an increase in the rate of violence. These effects were largest in poor, minority areas of the state, those areas already saturated with the greatest numbers of outlets.³

- Violence committed by youth was more common in minority neighborhoods where there are many outlets that sell alcohol for consumption off the premises (such as liquor and convenience stores).⁴ This finding makes sense because underage drinkers are more likely to purchase alcohol in a store than in a bar or restaurant.
- In neighborhoods where there are many outlets that sell high-alcohol beer and spirits, more violent assaults occur.⁵
- Large taverns and nightclubs and similar establishments that are primarily devoted to drinking have higher rates of assaults among customers.⁶

A larger number of alcohol outlets and a higher rate of violence might be expected in poorer neighborhoods or in neighborhoods with a larger population young people. But as the research described above shows, even when levels of poverty and the age and the ethnic background of residents are taken into account, a high density of outlets is strongly related to violence regardless of a neighborhood's economic, ethnic or age status.

All of the characteristics of alcohol outlet location can be important. It is easy to see that a town with many bars, restaurants, and stores that sell alcohol could be different from one that has fewer outlets. It is also easy to see that a neighborhood that has a bar on each corner and a liquor store on each block has a completely different environment than one that has few outlets or none at all. Other characteristics of the environment make a difference, too. For example, a strip of bars near a college campus presents a different environment from a similar density of bars in an upscale city center and also different from a similar density in a poor neighborhood. But in each case, some form of increased violence would be expected as compared to comparable areas with fewer alcohol outlets. A study of changes in outlet density over time as related to violence in California found that regardless of other neighborhood characteristics, an increase in outlets increased violence. In neighborhoods with a high minority population and low incomes, the effect was more than four times greater than for the statewide sample of communities.

What accounts for the relationship between outlet density and violence?

The research that has been done so far cannot pinpoint exactly why having more outlets in a small area seems to result in more violence. Various explanations have been proposed. One is that alcohol outlets can be a source of social disorder. A liquor store parking lot full of people drinking in their cars or on the curb and broken bottles littering the area outside a bar may send a message that this is a neighborhood in which normal rules about orderly behavior are not enforced. Another possible explanation is that a neighborhood with a large number of outlets acts as a magnet for people who are more inclined to be violent or more vulnerable to being assaulted. It is also possible that a high number of outlets results in a large number of people under the influence of alcohol – which makes them both more likely to be violent and less able to defend themselves.⁷ It is most probable that all of these factors come into play.

What is the relationship of outlet density to other alcohol problems?

The density of alcohol outlets has also been found to be related to other alcohol problems such as drinking and driving, higher rates of motor vehicle-related pedestrian injuries, and child abuse and neglect.⁸⁹

How do governments regulate outlet density?

States and communities can regulate the number of bars, restaurants, and stores that sell alcohol in a given area. Sometimes the number and location of alcohol outlets is not limited at all. In some jurisdictions, the number of alcohol outlets is limited based on the population of the area – only so many outlets per thousand residents, for example. In other cases, the location of outlets is regulated – for example, some states or communities set minimum distances from schools or churches. Research increasingly finds, however, that geographic density is the key aspect of outlet location – that is, the distance between outlets. Where over-concentrations of outlets occur, greater problems arise.

Governments can use their regulatory powers to reduce violence by:

- Making rules that set minimum distances between alcohol outlets;
- Limiting new licenses for areas that already have outlets too close together;
- Not issuing a new license when a particular location goes out of business;
- Permanently closing outlets that repeatedly violate liquor laws (such as by selling alcohol to minors or to intoxicated persons or allowing illicit drug sales or prostitution on the premises).

What implications do these findings have for state and local licensing policies?

The research strongly suggests that limits on outlet density may be an effective means of reducing alcohol problems, especially violence. States and communities can use controls on the number and location of alcohol outlets as a tool for reducing violence, creating a safer and healthier alcohol environment, and improving the quality of life of a community.

What other alcohol policies are important?

Alcohol is a legal and widely consumed commodity; but it is also a commodity that can create a variety of serious health and social problems. Alcohol policies are an important tool for preventing these problems. Every day, states and communities make decisions about the sale of alcohol: who can sell it, when and where it can be sold, who it can be sold to. State and local laws and policies control many aspects of the system by which alcohol is manufactured, marketed, sold, purchased, and consumed.

Regulations serve a variety of purposes, for example, they help ensure that tax revenues are collected. But the regulation of the business of selling alcohol goes beyond economic concerns. Each element of the regulatory system provides opportunities for creating a healthier social environment with respect to alcohol. For example, regulations can prevent unsafe sales practices – such as prohibiting all-you-can-drink specials that encourage intoxication. Regulations can control advertising and promotion that appeals to minors and establish the minimum age and training qualifications for people who sell and serve alcohol. Each type of regulation has the potential to ensure that alcohol is consumed in a safe and healthy manner.

What aspects of alcohol availability can be regulated?

The regulation of alcohol sales can have an impact on the availability of alcohol – that is, how easy and convenient it is to buy. Some states and communities try to make alcohol less available by selling it only in limited places – for example, state liquor stores. Other communities sell it more freely – making it available in grocery stores, convenience stores, gas stations, laundromats, drive-through windows, and so forth. States and communities can also limit the hours and days of sale, and other aspects of the conditions of sale. The regulation of availability is important because research generally shows that when alcohol is more easily available, people drink more and more alcohol problems occur.

References

- ¹ Gorman, D., Speer, P., Gruenewald, P., and Labouvie, E. (2001) *Journal of Studies on Alcohol*, 62: 628-636.
- ² Scribner, R. et al. (1995) The risk of assaultive violence and alcohol availability in LA County, *American Journal of Public Health*, 85:335-340.
- ³ Gruenewald, P.J. and Remer, L. Changes in outlet densities affect violence rates. In review, *Alcoholism: Clinical and Experimental Research*, 2004.
- ⁴ Alaniz, M., Cartmill, R., and Parker, R. (1998) Immigrants and violence, *Hispanic Journal of Behavioral Sciences*, 20, 155-174.
- ⁵ Stevenson, R., Lind., B. and Weatherburn, D. (1999). The relationship between alcohol sales and assault in New South Wales, Australia, *Addiction*, 94(3):397-410.
- ⁶ Stockwell, T. et al. (1992) Levels of drunkenness of customers leaving licensed premises in Perth, Western Australia: a comparison of high and low "risk" premises. *British Journal of Addiction*, 87: 873-881.
- ⁷ Gorman, et al. (2001).
- ⁸ Freisthler, B., Midanik, L.T. and Gruenewald, P.J. Alcohol outlets and child physical abuse and neglect: Applying routine activities theory to the study of child maltreatment. *Journal of Studies on Alcohol*, 65, 586-592, 2004.
- ⁹ Stockwell, T. and Gruenewald, P. (2001) Controls on Physical Availability of Alcohol, in Heather, N., Peters, T., and Stockwell, T. (eds.), *International Handbook of Alcohol Dependence and Problems*, John Wiley and Sons, Ltd.

DRAFT

MINUTES
OXNARD PLANNING COMMISSION
REGULAR MEETING
April 6, 2017

A. ROLL CALL

At 7:00 p.m., the regular meeting of the Oxnard Planning Commission convened in the Council Chambers. Chair Deirdre Frank, Commissioners Stephen Huber, James Fuhring, Wilfredo Chua, Robert Sanchez and Vincent Stewart were present. Commissioner Orlando Dozier was absent. Staff members present were Kathleen Mallory, Planning Manager, Ken Rozell, Assistant City Attorney, John Kessler, Assistant Planner, and Dee Lai, Recording Secretary. Consultants present were Chris Williamson and Amy Sinsheimer. Chair Deirdre Frank presided and called the meeting to order.

B. PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES

Commissioner Huber led the pledge of allegiance.

C. PUBLIC COMMENTS – Items not on the Agenda

Public comments were received from Walter Hagedohm regarding Short Term Rentals.

D. READING OF AGENDA

Planning Manager Kathleen Mallory reviewed the agenda.

E. CONSENT AGENDA

1. APPROVAL OF MINUTES – March 2, 2017 and March 16, 2017

Ken Rozell stated that since Commissioner Dozier is absent, there were not enough Commissioners for a quorum to vote on March 2, 2017 minutes and that it will be continued to the next Planning Commission meeting.

MOTION The question was called and the motion carried 6:0:1:0, to approve the minutes of March 16, 2017 as presented. Commissioner Dozier was absent.

F. PUBLIC HEARING

1. PLANNING AND ZONING PERMIT No. 16-510-02 (Special Use Permit – Alcohol) A request for a Special Use Permit for the sale of beer, wine, and distilled spirits for off-site consumption (Type-21) at a proposed 1,200 square-foot liquor store (Marina Liquor) located at 1601 South Victoria Avenue, Suite 120. The site is located within the Seabridge Marina Center. The project site is zoned Coastal Planned Community (CPC), within the City's Coastal Zone. The proposed project is categorically exempt from environmental review pursuant to State California Environmental Quality Act (CEQA) Guidelines Section 15301, Class 1 (Existing Facilities). Filed by designated agent, Essam S. Salameh, 3730 Avondale Lane, Oxnard, CA 93036
Project Planner: John Kessler

Project Planner John Kessler provided a powerpoint presentation outlining the request for the sale of beer, wine, and distilled spirits for off-site consumption at a proposed 1,200 square-foot liquor store located at 1601 South Victoria Avenue, Suite 120. John presented staff's recommendation which was for the Planning Commission to adopt a resolution denying the Special Use Permit subject to the findings and conditions of approval.

The Planning Commission discussed several topics, including: parking issues; illegal parking; red curb fire lane; narrow dark sidewalk on the marina side that is out of view and has no cameras; lighting in the shopping center; vacancy of the center; transient in the area; community workshop notification for neighborhood council; lack of security and high definition cameras for the outside area of the store; standard condition of approval number 16 and special condition of approval number 4; traffic problems and congestion; percentage of liquor sales for the proposed liquor store and the percentage of single serve liquor sales; store's close proximity to the surrounding residences; demographic of the neighborhood area; and locations of other liquor stores owned by applicant.

The applicant Essam Salameh stated to the Planning Commission that the standard police condition number 16 and special police condition number 4 would render his business unsuccessful.

The applicant's attorney Richard Nyznyk stated that single serve liquor is the driver of their business and that half of their business is based on this. Richard stated that police conditions number 16 and 4 would kill their business. Richard presented to the Planning Commission a proposed mitigation regarding the standard condition number 16 and special condition number 4. In this amended condition Marina Liquor will agree to refrain from selling the identified beverages in the conditions number 16 and 4 for the last 90 minutes that the store remains open at night from Sunday through Thursday. The applicant also proposes that this restriction be a temporary one year restrictions only.

All Commissioners questions and concerns were addressed.

Chair Frank opened the public testimony.

Public comments in opposition of the project were received from Roger Myers, Helene Goodman, Greg Hughes, Roger Hunt, and Brian Scollick. The public speakers opposed the project and expressed their concerns on several issues, including: illegal parking; graffiti; litter; frequency of transients; landscape maintenance; and concern with the applicant not following the rules and police conditions. Roger Hunt presented to the Planning Commission some photos showing parking issues in front of the Marina liquor store.

Chair Frank closed the public testimony.

MOTION Commissioner Huber moved and Commissioner Stewart seconded a motion to adopt a resolution denying PZ 16-510-02 (Special Use Permit – Alcohol), subject to certain findings and conditions. The question was called and the motion carried 6:0:1:0. Commissioner Dozier was absent.

2. PLANNING AND ZONING PERMIT NO. 15-500-04 (Special Use Permit): A request to construct two detached residential units on a vacant 7,000 square-foot lot located on South “B” Street between West First Street and West Second Street (APN: 202-0-054-100). The Project is categorically exempt from environmental review pursuant to State CEQA Guidelines Section 15303 (Small Structures). Filed by Eddie Alvarado, 229 E Birch Street, Oxnard, CA 93033.

Project Planner: Vince Acuna

Planning Manager Kathleen Mallory provided a powerpoint presentation outlining the request to construct two detached residential units on a vacant 7,000 square-foot lot located on South “B” Street. Kathleen presented staff’s recommendation which was for the Planning Commission to adopt a resolution approving the Special Use Permit, subject to the certain findings and conditions of approval.

The Planning Commission discussed several topics, including: questions pertaining to the application processing time frame; the project is zoned C2 for affordable housing; lawn size too small in comparison to house size; the developer’s requirement to improve the alley and the sidewalk in front of the house; and visitor parking location to ensure that it’s not blocking the rear entrance.

The applicant Eddie Alvarado stated that he agreed to all the conditions of approval.

All the Commissioners questions and concerns were addressed.

Chair Frank opened the public testimony.

There was no public testimony.

Chair Frank closed the public testimony.

MOTION Commissioner Huber moved and Commissioner Chua seconded a motion to adopt a resolution approving PZ 15-500-04 (Special Use Permit), subject to certain findings and conditions. The question was called and the motion carried 6:0:1:0. Commissioner Dozier was absent.

G. STUDY SESSION/REPORTS

1. City of Oxnard Mid-Cycle Housing Element Study Session

Consultant Chris Williamson and Amy Sinsheimer provided a powerpoint presentation outlining: the Overview of Housing Element; Adoption, Zoning Code Amendment, and HCD Certification; HCD-Required Mid-Cycle Review; Prioritizing Programs; and Public Outreach and Tentative Schedule.

Chair Frank opened the public comments before the Planning Commission discussion.

Public comments were received from Luis Calderon, Barbara Macri-Ortiz, and Sal Gonzalez.

Chair Frank closed the public comments.

The Planning Commission discussed several topics, including: Commissioner Fuhring question on what additional outreach methods or channels we have other than the City's website; Commissioner Stewart commented that programs addressing homelessness and transient issues are priority for him; Commissioner Huber commented that Zoning Code Amendments, Farmworker Housing Program, and Inclusionary Housing are priority for him; Chair Frank commented that Zoning Code, Local Coastal Plan, Accessory Dwelling Unit, homelessness, and transient issues are priority for her; and Commissioner Chua inquired as to which prioritizing programs will have an immediate effect.

Kathleen Mallory commented that additional public outreach methods included: distribution to the INCO to share with their communities; a flyer at the Planning office public counter; flyers to 65 different housing advocacy groups and developers; and distribution through the Public Information Office (PIO). Kathleen also commented that the results from the Housing Element Program rankings will be summarized for the Planning Commission at a later date.

H. PLANNING COMMISSION BUSINESS

Commissioner Huber provided a copy of the Executive Summary of the Naval Base Ventura County Joint Land Use Study brochure to Planning that is also available online. Commissioner Huber also commented that during the ethics training, he was made aware that the Planning Commissioners should know the current lobbyist for the City of Oxnard. He requested a list of the current registered lobbyist. He also commented that the three new Commissioners did not get an opportunity to introduce themselves at the last meeting and recommended that they do so. Chair Frank stated that since there is hardly anybody watching, the new Commissioners can do that at the beginning of the next meeting when there are more people watching.

I. PLANNING MANAGER COMMENTS

Planning Manager Kathleen Mallory provided an overview of the agenda items for the Planning Commission meeting of May 4, 2017 that includes the Habitat for Humanity, the two-story mixed used development project on Cooper Rd., the CEQA guidelines study session, and the Short Term Rental (STR) information updates. Chair Frank stated that it's a heavy agenda for one night and recommended that the STR item not be on the agenda for May 4, 2017.

1. Chair Frank stated that since all of the Planning Commissioners have already attended the ethics training on March 27, 2017 in which the Brown Act was extensively discussed, they do not have to stay for agenda item II, Brown Act and Conflict of Interest presentation by the Assistant City Attorney.

MOTION Chair Frank moved and Commissioner Huber seconded a motion to adjourn the meeting without the agenda item II. The question was called and the motion carried 6:0:1:0. Commissioner Dozier was absent.

J. ADJOURNMENT

At 9:43 p.m., the Planning Commission concurred to adjourn.

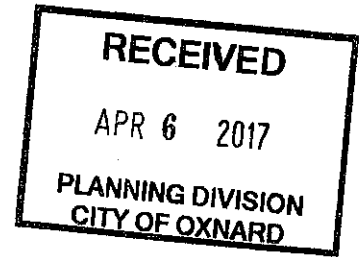
SIGNATURES ON NEXT PAGE

Deirdre Frank, Chair

ATTEST:

Kathleen Mallory, Planning Manager

AGENDA ITEM F 1
Oxnard Planning Commission - April 6, 2017



Proposed Mitigation regarding Standard Police Condition #16 and
Special Police Condition #4:

In the interests of alleviating the Police's apparent concerns, the Applicants considered that an "end of the night" restriction on the sales of those particular items identified in the above conditions might reasonably address the concerns of the police department while allowing the store to meet its business plan needs to successfully remain in business.

Applicants therefore propose that, to the extent it alleviates the concerns which motivate these two conditions in this particular location, Marina Liquor will agree to refrain from selling the identified beverages for the last 90 minutes the store remains open at night.

Applicants also propose that this restriction be a temporary one year restriction only, subject to automatic withdrawal in the absence of a noticed public hearing where the matter and issues may be heard and discussed and the restriction may be continued in place if so determined.

*Applicant submitted
at P.C. meeting 4/6/17*

Received
Oxnard City Clerk

B&E ORIGINAL

2017 APR 24 PM 4:35

LAW OFFICES

RON BAMIEH
DAVID R. RING
DANIELLE DE SMETH
ANZAC JACOBS
CHAD NICHOLS

BAMIEH & ERICKSON
A PROFESSIONAL LAW CORPORATION
692 E. THOMPSON BOULEVARD
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mail@bamieherickson.com
PHILIP ERICKSON
(1959-2005)

209 E. ANAPAMU,
SANTA BARBARA, CA 93101

April 24, 2017

City Clerk
City of Oxnard
300 W. Third Street, 4th Floor
Oxnard, CA 93030

Re: Appeal of Denial of Conditional Use Permit
Our Client: Essam Salameh et.al.
Application No.: 16-510-02

Greetings:

Our offices represent applicants, Essam Salameh, George C. Telli and Rawad Touma (jointly, the "Applicants") related to their application for Special Use Permit to operate a liquor store business under the name of 'Marina Liquor' at 1601 S. Victoria Avenue, #120, Oxnard, California 93035.

This letter is submitted by the Applicants to appeal the Planning Commission's April 6, 2017 denial of their Special Use Permit ("SUP").

This APPEAL is submitted to you in this form because the undersigned has been unable to confirm any other process or form by which the Applicants can appeal the Planning Commission's denial of their SUP. To the extent there is some additional or other format by which Applicants should make this APPEAL, please contact the undersigned forthwith so that such forms may be completed and submitted to the City without further delay.

The Oxnard Planning Commission, on April 6, 2017, denied Applicants' SUP application, and the Applicants hereby APPEAL that denial. A copy of the application that was denied is attached hereto for your reference and is incorporated by this reference. This letter APPEALS the denial of that application.

The basis for this APPEAL is that the findings and decision were not supported by the evidence submitted at that hearing.

First: Staff recommendation as to the application was to deny the application based upon objections to police department conditions of approval raised by the applicants, but to recommend approval if those conditions were accepted. The Applicants offered mitigation regarding these conditions but the planning commission denied the application anyway.

Secondly, the application appears to have been denied upon public sentiment and not established rules and regulations which are in effect within the shopping center as previously approved by the City of Oxnard and now found, as practiced and enforced, to be a hindrance to the neighbors' quiet enjoyment and the operation of the applicant's proposed business and others nearby. Specifically, the parking and access/egress routes into the center and specifically into where applicant's business would be operated were previously approved at the inception of the shopping center project, and those approved access points and parking are now being cited as a reason for denial of the application alleging that there are no appropriate parking spaces to accommodate this business.

The previously known and approved shopping center design flaws are not an appropriate basis for denial of these individual Applicants' application. Public policy dictates against allowing a City to approve a master project and then to deny use that fits all zoning and planning requirements, AND PASSES as EXEMPT from CEQA, because of a parking issue that is unrelated to the application or the use itself. Staff itself notes in its analysis that "...parking is not an issue for consideration as part of" this request, yet parking concerns prevented the approval of Applicants' SUP. Moreover, the Commission's denial is in contradiction with the Oxnard Police Department findings that approved the application upon intensive and lengthy investigation and review with conditions as noted above.

Thirdly, there is no clear supporting evidence for the claims of increased vandalism, breaking and entry into garages, increased night time activity in the neighborhood, safety concerns for pedestrian and vehicular traffic, noise, parking and traffic issues, suspicious activity, illegal parking, roundabout congestion, negative effect on home values and substantial and material interference with the quiet enjoyment of the residents, owners, tenants and guests, the testimony of whom was relied upon by the Commission in making its decision. To the contrary, the police report does not show any increase in these areas. These complaints were made by the public without supporting evidence, and were relied upon as true.

For these reasons, applicants hereby appeal the Oxnard Planning Commission's denial of their SUP to the City Council. If there are more appropriate forms than this to letter to effectuate this appeal, I will happily file them forthwith, based on today's filing date. If you have questions, please do not hesitate to contact this office directly.

BAMIEH & ERICKSON, PLC

By: David R. Ring, Esq.



LAND USE APPLICATION FORM

APPLICATIONS ARE ACCEPTED BY APPOINTMENT ONLY - PLEASE TYPE OR WRITE LEGIBLY

Type of Permit Requested

- | | | |
|--|--|---|
| ☐ Annexation
☐ Coastal Admin Modification to CDP, DRP
☐ Coastal Development Permit (CDP)
☐ CBD Design Review Permit
☐ Development Design Review Permit (DDR)
☐ Final Parcel Map
☐ Final Subdivision Map | ☐ General Plan Amendment
☐ Lot Line Adjustment
☐ Major Modification to SUP or PD
☐ Minor Modification to SUP or PD
☐ Planned Development Permit (PD)
☐ Pre-Application
☐ Special Use Permit (SUP) | ☐ Specific Plan Review/Amendment
☐ Tentative Parcel Map
☐ Tentative Subdivision Map
☐ Zone Change
☐ Zone Variance
☒ Other <u>CUP/Liquor</u> |
|--|--|---|

Description of Proposed Project

(Include type of development, number of residential units, number of affordable units/request for payment of in-lieu fee, parcel size, square feet of building area, etc. If this application is for a modification, describe the requested change. Attach more pages if required.)

1200 Square foot Liquor Store

Property Information

Name of Project Marina LIQUOR
(optional)
 Property Location 1601 S. Victoria Ave.
OXNARD, CA 93035 Ste 120
 Assessor's Parcel Number(s) 188-0-272-205
 Additional Info _____
 Current Zoning CPC Proposed Zoning _____
 Current General Plan PUD Proposed GP _____

Designated Agent (Attorney-in-Fact)

Designation of Agent (Attorney-in-Fact)

☒ _____
(property owner)

hereby designate ESSAM SALAMEH
 (agent) as the Attorney-in-Fact for the Property Owner for all
 purposes of processing this application with the City of Oxnard.

Signature _____

For multiple property owners, use additional Land Use Application forms.

Primary Contact/Designated Agent (Attorney-in-Fact)

Name ESSAM S. SALAMEH
 Address 3730 Avondale, In
oxnard - ca - 93036
 Tel (805) 984-0123 / 485-4694
 Signature Essam Salameh
 Email _____

Other Persons to be Notified:

Cell: 7/10/16 (805) 607-5583
(Sam)

Property Owner Information

Name Seabridge Partners, LP
 Address 1901 Wilshire Blvd
Suite 360 E Beverly Hills
 Phone 213-614-9999 90212
 Email AFSHANE@yehoo.com

I hereby certify that I am the owner of record of the subject
 project property(ies) described on this application and that I
 approve of the action requested herein.

Signature _____

For additional property owners & properties, please use the back of this form and additional sheets if necessary.

OFFICE USE ONLY

Fees	Amount	Date Received <u>3/22/16</u>	Related / Concurrent Permits
Permit Fee <u>2782.58</u>		Permit No. <u>16-510-02</u>	
Env. Fees		Env Det./No.	
Total <u>2782.58</u>		Final Action	
Verified By <u>JF</u>		Expiration Date	
		Rec'd By <u>JLE</u>	
		Assigned to: <u>JK</u>	

ADDITIONAL PROPERTY OWNERS

Assessor's Parcel Number _____

Name _____

Address _____

Daytime Phone Number _____

I hereby certify that I am the owner of record of the subject property(ies) described on this application and that I approve of the action requested by this permit application.

Signature *[Signature]*

IF ADDITIONAL PERSONS OR CORPORATIONS OWN PROPERTY COVERED BY THIS APPLICATION, PLEASE ATTACH ADDITIONAL PAGES.

NOTES

PERMIT NO. _____

DATE REC'D _____

MISCELLANEOUS
RECEIPT FORMCITY OF OXNARD
FINANCE DEPARTMENT

444840

BSE, PLC				April 24 2017 \$ 704 ⁹¹	
by Sam Salameh				Rec'd. of Sam Salameh	
Appeal of Conditional Use Permit				Address	
# 16 510-08		Cash	Check	# 704 ⁹¹ Dollars	
Account No. (s)			Amount Rec'd		
Appeal Acct #			\$ 704 91		
101-4101-555-281					
Pymt Code: AF				Received by Dnane Kojul	

TREASURER COPY

BAMIEH & ERICKSON, PLC		Ojai Community Bank	22435
692 E. THOMPSON BLVD.		402 West Ojai Avenue, Ste. 102, Ojai, CA 93023	
VENTURA, CALIFORNIA 93001		805-646-9909	
PH. (805) 643-5555		90-4391/1222	4/24/17
PAY TO THE ORDER OF City of Oxnard		\$ 704 ⁹¹	
Seven Hundred Four + 91/100			DOLLARS
MEMO Sam Salameh		AUTHORIZED SIGNATURE	
⑈022435⑈ ⑆122243910⑆ 011006608⑈			

STATE OF CALIFORNIA
Department of Alcoholic Beverage Control

Model Store Policies

*A Guide to Developing Responsible Business
Practices for Off-Sale Licensees*



Introduction

Your business is very important. It is valuable to you, your community, and to the State's economy. You have invested your time, energy and financial resources. Your business offers a place that meets local shopping needs and provides jobs. And did you know the 72,000 liquor licenses in California make up about 7% of the State's one million businesses? Sales and excise taxes on alcoholic beverages generate over \$500 million a year in State revenues!

The best way to protect your valued business is through responsible business practices. Responsible business practices can help reduce your risk of criminal or ABC charges, and civil lawsuits. They also promote profitability and ensure a comfortable and safe environment for customers.

You should document your responsible business practices in the form of written store policies. If you have none, each employee may have his or her own idea about what the rules are, what they mean, and when they should be applied.

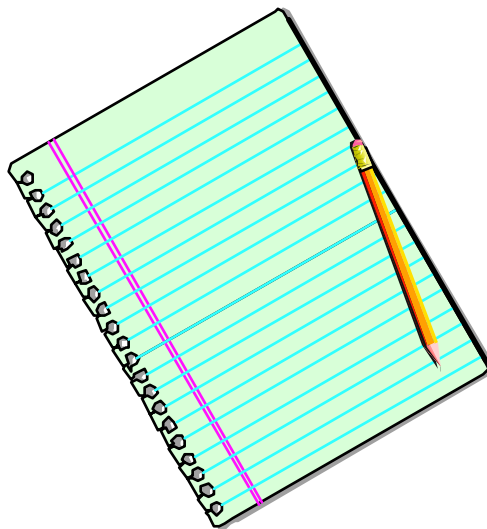
This pamphlet will assist you in developing your own store policies. You may want to use our "Model Store Policies" or adapt them to fit your needs. In the long term, the responsible business will build a strong and loyal customer base.



Guidelines for Writing Policies

- You may have any company policy that does not conflict with existing laws (for example, no discrimination).
- It is always good to obtain ideas from your managers and employees when writing new policies. They will be more supportive of policies they helped to create.
- Make sure policies are clear and specific.
- Provide all employees with a copy of the policies.
- To ensure that employees understand their duties, have them sign an Employee Responsibility Statement (see sample on last page). Keep this in each employee's personnel file.
- Reinforce policies by giving regular training to employees.
- Between trainings, hold regular staff meetings. At the meetings, discuss the rules, recent problem situations, and ways to prevent future problems.
- Advise employees that you will spot check their compliance with the policies. Give them a regular performance review.
- Reward employees who do a good job. Provide rewards to those who engage in anti-drug events.

Remember: Written policies, good communication, and a supportive environment will go a long way toward the success of your business.



To: All Employees
From: Management
Subject: Store Policies

Minors

- *It is everyone's job to ensure customers who are buying alcohol are at least 21 years of age.*
- We will request proof of age (I.D.) from any customer who appears 30 years of age or younger. To help employees do their job, managers will post the following sign in the business:

"NOTICE: Our employees request I.D. from any customer who appears to be under age 30. Thank you for your cooperation."

- We may accept the following as proof of age:

- California driver's license
- California I.D. card

We may also accept the following documents as I.D., but only if we know what they look like.

- Other state-issued driver's license or state-issued identification card

- We have the right to, and will, refuse service to any customer who does not have proper I.D.
- We will use a pre-printed age chart as a quick way to figure age. The age chart says, "To Buy or Consume Alcohol, You Must Have Been Born on or Before [date]."

Alcohol Sales

- *Management and supervisors will support employee's decisions to refuse service to any customer. If they don't, employees might not act so responsibly in the future.*
- We will not sell alcohol to any person who looks or acts intoxicated, even if they are not driving. This includes regular customers who may "always act that way."
- Drinking alcohol during your shift, after your shift, or at closing time is not allowed.

- We will not sell high-risk beverages, including fortified wines, wine coolers, 40 oz. beers, or malt liquor. If we do sell these products, we will keep them in sight of the cashier and away from exits to prevent "grab and runs."
- We will not sell single units of alcohol because this promotes the portable drinking of alcohol. It also makes it easier for teens to purchase alcohol.
- We will display wine coolers with other alcohol products.

Safe Rides

- If a customer is intoxicated we will ask the person if they are driving and help them get a safe ride. If the customer refuses, the employee should call 1-800-TELL-CHP to report the drunk driver.

Good Neighbor Policies

- As required by law, we will abide by the Retail Operating Standards (Form ABC-569) and keep a copy on the premises.
- We will keep our trash receptacles properly covered and emptied regularly (state how often).
- Burned-out light bulbs will be replaced by (state by whom and how soon).

Signage

- We will maintain posted signage as required by State and local laws.
- Windows closest to the cash register will be clear of signage.

Interior

- We will keep interior lighting adequate and bulbs working.
- Merchandise will be neatly and safely displayed and away from exits.
- Countertops will be clear of merchandise clutter.
- Aisles will be free of debris and litter; stock area clean; deli area clean.
- We will not display adult materials (e.g., magazines) to children.

Staffing

- All staff will be trained in responsible beverage sales.
- All staff will be continually updated by management (meetings, memos, etc.).
- We will provide extra training for employees who need practice in selling alcohol.
- All alcohol sellers will read and sign a Clerk's Affidavit, as required by law.
- There will be a manager present during peak purchase hours.
- We will have cashiers over the age of 21 on Friday and Saturday nights.
- Staff will be trained in handling emergencies if the manager/owner is not present.

Security

- *We will allow free access to all law enforcement officers. This includes ABC investigators, police officers, and sheriff deputies, all of whom may be wearing uniforms or plainclothes.*
- Register areas will be kept clear of tall displays that may block the employee's view of the store.
- We will have enough employees on duty. This will help us watch beverage sales and customers. We will advise management when more staff is needed.
- We will not tolerate problem customers. If needed we will call the police or sheriff for help. We will permanently refuse to admit any chronic problem customer.
- We will record any serious problem (such as fights, injuries, or vandalism) in our Incident Log for future reference.
- We will maintain a close working relationship with the police or sheriff. We will maintain emergency numbers (police, fire, store owner/manager) posted near the telephone.
- We will maintain fire extinguishers, properly mounted and readily accessible; properly charged.
- We will keep our street number visible from the road.
- We will keep bushes/trees trimmed to not obstruct view of the store.
- We will keep cash register visible from the outside.
- We will maintain our central alarm system working.

- We will keep surveillance cameras working and review the tapes often.
- We will maintain convex mirrors to view large areas.

Community Relations

- Management will meet often with local law enforcement or ABC officials to stay current on ABC laws and enforcement problems.
- We will have a person assigned to community relations.
- Our community relations person will meet with local patrons and/or groups to determine their shopping needs and concerns.

Drug-Free Workplace

- We will not sell any product knowing it will be used for drug purposes. For example, selling cigarette papers knowing they will be used for rolling marijuana cigarettes; selling small plastic baggies or balloons knowing they will be used for packaging drugs; or selling pipes and screens knowing they will be used for smoking drugs.
- We will not tolerate illicit drug use or sales by customers or employees.
- It is a violation of company policy to possess, sell, trade, or offer illegal drugs for sale or engage in the illegal use of drugs on the job.
- It is a violation of company policy to use or be under the influence of illegal drugs or alcohol at anytime while on or using company property, conducting company business or otherwise representing the company.
- Violations of this policy are subject to (letter of reprimand/suspension from work without pay/dismissal).

Some Good Resources for a Drug-Free Workplace:

- **ONTRACK At Work:** 1-888-900-4288;
Free help for small businesses in the State of California.
Includes help for policy development, management/supervisory training, and employee awareness information. Funded by the California Department of Alcohol & Drug Programs.
www.ontrackatwork.com
- U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance: (202) 366-3784.
- Employee Assistance Professionals Association, Inc.:
(703) 522-6272. Provides contact information for local employee assistance professionals.
- Workplace Helpline: 1-800-WORKPLACE. Provides individualized technical assistance to businesses and unions in the development of workplace substance abuse programs.
- Substance Abuse Program Administrators Association:
1-800-672-7229. Represents professional administrators of workplace drug and alcohol programs.



Employee Responsibility Statement

Employee: Read and Sign

I understand that our business is dedicated to the safe and responsible sale and service of alcohol.

I will not knowingly serve alcohol to an underage or obviously intoxicated person. I will report any signs of illegal drug activity to management.

I have read and understand our policies. I understand that if I follow these policies, management will fully support my decisions.

I also recognize that my failure to follow these policies may result in job probation, suspension, loss of hours, or termination from this employment.

Employee Signature

Date

INCIDENT LOG**Instructions: Complete an Incident Log for each patron involved.****If you see a drunk driver, call 1-800-TELL-CHP**

INCIDENT DATE

INCIDENT TIME

PATRON INFORMATION

1. PATRON'S NAME (First, middle, last)		PATRON'S PHONE NUMBER	
ADDRESS (Street number and name, city, state, zip code)		PATRON'S EMPLOYER	
2. PATRON WAS INJURED ☐ YES ☐ NO	IF YES, ON WHAT PART OF BODY	MEDICAL ATTENTION WAS GIVEN ☐ YES ☐ NO	HOSPITALIZATION REQUIRED ☐ YES ☐ NO
3. PATRON WAS A MINOR ☐ YES ☐ NO	IDENTIFICATION WAS CHECKED ☐ YES ☐ NO	DESCRIPTION OF IDENTIFICATION SHOWN	
4. WHERE WAS PATRON BEFORE YOUR PLACE			
5. HOW DID PATRON CONTRIBUTE TO HIS/HER INJURY			

EMPLOYEE INFORMATION

6. EMPLOYEE'S NAME (First, middle, last)	EMPLOYEE'S PHONE NUMBER
ADDRESS (Street number and name, city, state, zip code)	
7. EMPLOYEE'S NAME (First, middle, last)	EMPLOYEE'S PHONE NUMBER
ADDRESS (Street number and name, city, state, zip code)	

INCIDENT INFORMATION

8. ALCOHOLIC BEVERAGE RELATED INCIDENT ☐ YES ☐ NO		9. DRINK(S) SERVED (Number and type)		
10. POLICE WERE NOTIFIED ☐ YES ☐ NO	IF YES, BY WHOM	WHAT POLICE AGENCY	DATE OF CALL	TIME OF CALL
11. HOW WAS INCIDENT BROUGHT TO YOUR ATTENTION				
12. DESCRIBE INCIDENT (Including action you took to prevent or control the incident)				

☐ Continued on reverse**WITNESS INFORMATION**

13. WITNESS' NAME(First, middle, last)		WITNESS' PHONE NUMBER	
ADDRESS (Street number and name, city, state, zip code)		WITNESS' EMPLOYER	
14. WITNESS' NAME(First, middle, last)		WITNESS' PHONE NUMBER	
ADDRESS (Street number and name, city, state, zip code)		WITNESS' EMPLOYER	
15. SIGNATURE OF PERSON MAKING REPORT X	PERSON'S TITLE	REPORT DATE	

CITY COUNCIL OF THE CITY OF OXNARD

RESOLUTION NO. XXXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD UPHOLDING THE PLANNING COMMISSION'S DENIAL OF PLANNING AND ZONING PERMIT NO. 16-510-02 (SPECIAL USE PERMIT), SEEKING APPROVAL OF A SPECIAL USE PERMIT FOR THE SALE OF BEER, WINE, AND DISTILLED SPIRITS FOR OFF-SITE CONSUMPTION (ABC LICENSE TYPE 21 – OFF-SALE GENERAL) IN A LIQUOR STORE PROPOSED TO BE LOCATED AT 1601 SOUTH VICTORIA AVENUE, SUITE 120

WHEREAS, on March 22, 2016, Essam S. Salameh submitted a request for a special use permit (Planning and Zone Permit No. 16-510-02) to allow the sale of beer, wine, and distilled spirits for off-site consumption (ABC License Type 21) at a proposed 1,200 square-foot liquor store, located at 1601 South Victoria Avenue, Suite 120; and

WHEREAS, on April 6, 2017, the Planning Commission adopted Resolution No. 2017-06 and thereby denied Planning and Zoning (PZ) Permit No. 16-510-02; and

WHEREAS, on April 24, 2017, the Planning Commission's decision was appealed to the City Council; and

WHEREAS, in a May 1, 2017 memo, Police Chief Scott Whitney outlined the negative impacts that would occur with the removal of any condition of approval or the inclusion of suggested alternative language as proposed by the Applicant at the April 6, 2017 Planning Commission meeting; and

WHEREAS, the City Council has carefully reviewed the Planning Commission decision, which denied the application for PZ No. 16-510-02, the staff report, the minutes of testimony at the April 6, 2017 Planning Commission public hearing, and the May 1, 2017 memo from Police Chief Scott Whitney; and

WHEREAS, on May 23, 2017, the City Council conducted a public hearing and received evidence in favor of and opposed to the application for PZ No. 16-510-02, to allow sell beer, wine, and distilled spirits for off-site consumption at the property located at 1601 South Victoria Avenue, Suite 120; and

WHEREAS, the proposed location at 1601 South Victoria Avenue, Suite 120 is adjacent to a residential neighborhood; and

WHEREAS, residents of the adjacent neighborhood and adjacent business owners within the Seabridge Marina Center objected to granting the application based upon aggravation of additional transient activity; and

Resolution No. XXXX

Page 2 of 3

WHEREAS, based upon the record in this matter and on the presentations and public testimony received at the public hearing on this matter, the City Council determines that there is sufficient evidence to uphold the Planning Commission's denial of the special use permit (PZ No. 16-510-02).

NOW, THEREFORE, the City Council of the City of Oxnard does hereby resolve, determine, find and order as follows:

SECTION 1. The Recitals set forth above are incorporated herein by this reference.

SECTION 2. The City Council hereby finds that, without the imposition of proposed Police Department Standard Condition of Approval No. 16 and Police Department Special Condition of Approval No. 4, related to the prohibition of single-serve containers (other than specialty beers and micro brews and the prohibition of single-serve distilled spirits that are 375ml. or less, respectively), granting of this special use permit would adversely affect or be materially detrimental to adjacent uses, buildings, or structures, to the health or safety of persons residing in or working in the neighborhood, and to the general welfare, within the meaning of Oxnard City Code Section 16-531.

SECTION 3. The City Council finds that, based upon the record and the testimony at the public hearing in this matter, the proposed use would adversely affect and be materially detrimental to the public health, safety and general welfare.

SECTION 4. The City Council hereby upholds the Planning Commission's decision to deny Planning and Zoning Permit No. 16-510-02.

Resolution No. XXXX
Page 3 of 3

PASSED AND ADOPTED this 23rd day of May 2017, by the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

Tim Flynn, Mayor

Michelle Ascencion, City Clerk

APPROVED AS TO FORM:

Stephen Fischer, City Attorney



Police Department

Scott Whitney, Chief of Police

Date: May 1, 2017

To: Kathleen Mallory, Planning and Environmental Services Manager

From: Scott Whitney, Chief of Police

Subject: Appeal of Planning Commission ruling for PZ 16-510-02 (Marina Liquor)

The Oxnard Police Department recently completed a thorough review of an alcohol Special Use Permit for a proposed liquor store (Marina Liquor) to be located at 1601 S. Victoria Avenue. Police department staff participated in the Planning Commission hearing on April 6, 2017 where the Commission ruled to deny the application based partially upon the Applicant's objection to certain police conditions.

During the hearing, the police department became aware that the applicant was proposing alternative language for two of the conditions related to the single servings of beer, malt liquor and distilled spirits. Specifically, the Applicant cited Police Standard Condition #16 and Police Special Condition #4 which read as follows:

- 16) Other than specialty beers and micro brews, beer, malt beverages and wine coolers, in containers of 40oz in volume or less, cannot be sold by single containers, but must be sold in manufacturer pre-packaged multi-unit quantities. The sale of mass-produced, low priced beer or malt liquor in single servings is prohibited.
- 4) The sale of single servings of distilled spirits (375 ml. or less) is prohibited.

The applicant has proposed to modify both of these conditions by including language that the restriction on the service of the identified products should only be required within the final 90 minutes that the business remains open. Basically, the store would be able to sell all of the listed items for the entirety of the business day except for the last 1-1/2 hours. The Applicant has also recommended that there be a one year limit to these conditions and they would expire automatically in the absence of another hearing.

The police department is opposed to these changes and strongly recommends that the originally proposed language remains intact. Conditions restricting single servings of beer, wine and distilled spirits at Off-Sale alcohol outlets has been a standard for more than a decade in Oxnard and we have had very few complaints or evidence that these restrictions significantly impact the overall success or profitability of the businesses. The

police department believes conditions like these help to greatly reduce the negative impact that the sale and availability of alcohol can have on our community. There are many studies which indicate that the easy availability of alcohol can have a direct impact on crime and violence unless those communities employ preventative strategies like the ones proposed. The California Department of Alcoholic Beverage Control (ABC) even lists restricting the single service of alcohol as one of their “Best Practice” strategies in the Model Store Policy handout given to newly proposed outlets.

Additionally, a study by the National Institution on Alcohol Abuse and Alcoholism (NIAAA) found that communities that employ strategies which include reducing alcohol availability and portability showed a reduction in alcohol related crashes by as much as 22%. This supports the police department’s experience that a person buying a single serving of alcohol is much more likely to consume that product on the property, nearby or even while driving.

Perhaps the most significant factor in keeping these two regulations included in the permit is that there is already evidence of transient activity and persons loitering on the property. Not only have officers noted this behavior, the police department spoke at length with nearby businesses, customers and residents who virtually all confirmed that the transient activity is a concern. The design of the property also contributes to a few areas that lack adequate natural surveillance and can be attractive spaces for illegitimate activity. These quality of life issues can be difficult to quantify but often have a distressing effect on the surrounding area whether in a neighborhood or a shopping center. The police department believes that the addition of an alcohol outlet will likely increase this nuisance activity, especially with easily available single servings.

As stated in the Police Department’s original review for the Planning Commission staff report, “Officers working the area did mention that there has been an issue with transients loitering throughout the commercial center and using various locations to camp for the day or sleep overnight. So far, this issue has been manageable and no serious incidents have occurred. The Police Department also noted there is a breezeway on the north end of the shopping center that separates Seabridge from the nearby condominium complex. The space is fairly narrow and has limited natural surveillance abilities. Our experience is that these spaces can be an inviting location for illegitimate activities such as loitering and drinking in public. Some of the feedback we received from the nearby businesses is that it is not uncommon for transients to loiter in this area. Others also said that the smoke shop customers often remain in the area after a purchase to enjoy their product. The Police Department has included language in the recommended conditions that should help minimize problems of drinking in public and loitering by requiring appropriate signage and prohibiting the sale of single servings of beer, wine, malt liquors and distilled spirits.”

As part of our review for each new alcohol Special Use Permit, the police department is tasked with making a determination whether the addition of the proposed use will be likely to “significantly aggravate existing policing problems”. And if so, can those concerns be effectively mitigated with preventative conditions. The determination by the

police department in this case was that in order to prevent the likelihood for increased policing problems, all of the proposed conditions should be included in the final resolution.

The police conditions were designed to function together collectively to reduce risks and provide the police department with many tools to use in case problems do arise. The conditions the Applicant has requested to modify are perhaps the single most effective tools the police department can use to reduce the likelihood that the current problems related to loitering will increase. To allow the suggested changes would be to ignore the existing circumstances and take the risk of increasing nuisance behavior such as drinking in public and other illegitimate activities. For these many reasons, the police department strongly opposes any changes to the original language of the standard and special conditions or that City Council uphold the Planning Commission's decision to deny the application.



CITY COUNCIL
AGENDA REPORT

TYPE OF ITEM: Report

AGENDA ITEM NO.: 1

DATE: May 23, 2017

TO: City Council

THROUGH: Greg Nyhoff
City Manager

FROM: Daniel Rydberg
Public Works Director

SUBJECT: Purchase of 15 Compressed Natural Gas Trucks (5/10/10)

CONTACT: Daniel Rydberg, Public Works Director
Daniel.Rydberg@oxnard.org, 385-8055

RECOMMENDATION:

That City Council approve and authorize the Mayor to execute Purchase Order #6034 in the amount of \$4,851,760 for the purchase of ten (10) residential refuse collection vehicles, two (2) commercial (“front-loader”) collection vehicles, and three (3) industrial (“roll-off”) collection vehicles from Velocity Truck Center.

BACKGROUND

On April 28, 2015 the City Council approved the purchase of five CNG refuse trucks to begin phasing out existing diesel powered trucks that have exceeded their useful life and continue to require an increasing high level of maintenance. The Environmental Resources Division (ER) requests approval to purchase an additional fifteen (15) CNG powered refuse collection trucks to continue the ER fleet upgrade process.

The ER fleet is currently comprised of vehicles with an average age of over 12 years. According to the Organizational Assessment and Audit of Corporate Support, Accountability and Value Systems received by Council on March 17, 2015, many of the vehicles are beyond their prescribed, serviceable life. While safe to operate, down-times and maintenance costs to keep these vehicles on the road safely are continually increasing as the vehicles age.

Purchase of 15 Compressed Natural Gas Trucks (5/10/10)

May 23, 2017

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With the exception of five (5) recently-acquired CNG collection vehicles now in service, the remaining ER collection fleet vehicles are diesel. The cost of diesel fuel can be up to three times as high as CNG fueled vehicles; the exact ratio of diesel to CNG varies with oil prices and market conditions. Most solid waste, refuse and organic collection agencies in California (public and private) and high-density urban environments nationwide are in the process of converting, or have completely converted their diesel fleets to CNG or other alternative fuel vehicles. This is now recognized as a fundamental Best Management Practice (BMP) in the industry. Further, CNG fuel is a much cleaner alternative to diesel and greatly reduces a vehicle's effect on the environment by reducing greenhouse emissions by up to 90%. CNG is also domestically produced and its use reduces dependence on foreign oil.

In order to continue the fleet modernization and CNG conversion process, staff evaluated the operational needs after incorporating the five (5) new CNG vehicles into ER's overall operation. Currently, the vehicles most in need of replacement are ten (10) residential refuse collection vehicles. Additionally, two (2) commercial ("front-loader") collection vehicles and three (3) industrial ("roll-off") collection vehicles; are needed. ER and Fleet Division staff worked together to develop specifications for the fifteen (15) proposed CNG replacement vehicles.

CNG vehicles are approximately 10% more costly initially to purchase than diesel equivalents, but the difference is quickly offset by lower fuel and maintenance costs and the community's appreciation of the improved air quality. Additional safety and diagnostic items also contribute more to the unit cost of each vehicle. These items include cameras, maintenance software, GPS systems and fire suppression apparatus. The efficiencies and risk reductions submit to offsetting the initial costs of these devices. Staff consulted with other public and private collection agencies to ensure that industry standards were included in the specifications. All of the essential and accessory items on these vehicles are accepted in the industry as fundamental BMPs. A determination was also made to replace diesel vehicles with CNG not only due to the cost and environmental factors, but also due to the potential to fuel these vehicles in the future with gas produced by the Del Norte facility through the conversion of organic waste.

Staff recommends to piggy back on a bid issued by the City of Los Angeles on August 12, 2014 for fifteen (15) CNG powered refuse collection vehicles in lieu of issuing a formal request for bid. The City will acquire the fifteen (15) new CNG trucks with competitive pricing previously vetted through a public agency competitive bid process completed by the City of Los Angeles. Velocity Truck Center is a local vendor, located at 2501 Camino Del Sol in Oxnard. Velocity Truck Center will honor the City of Los Angeles piggy back bid. The proximity of Velocity Truck Center to the Del Norte Facility and the City of Oxnard Fleet Garage provides quicker response times for maintenance and warranty work not provided by the City's Fleet Division.

The cost of the fifteen (15) refuse collection vehicles is \$4,851,760. A Master Lease Agreement with Bank of America provides financing at low interest rates allowing the Environmental Resources Enterprise Fund to efficiently utilize working capital, thereby adding to ratepayer value while upgrading the fleet. The estimated annual interest rate is 2.1% for a five (5) year term. The estimated \$529,327 payment will be scheduled and budgeted semi-annually.

Purchase of 15 Compressed Natural Gas Trucks (5/10/10)

May 23, 2017

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STRATEGIC PRIORITIES

This agenda item is a routine operational item or does not relate to the four strategic plans adopted by City Council on May 17, 2016. However, this item does address findings of the Organizational Assessment and Audit Corporate Support, Accountability, and Value System received by the Council on March 17, 2015.

FINANCIAL IMPACT

The funding for these vehicles will be part of the FY2017-18 Environmental Resources budget. Current user rates will be sufficient to cover the annual lease/purchase expense of approximately \$530,000, and will be budgeted annually for five years. The vehicles will be purchased at the end of the lease for \$1.00 and title of the vehicles will transfer to the City of Oxnard.

ATTACHMENTS:

Attachment A: Velocity Vehicle PO 6304 (1)



PURCHASE ORDER
CITY OF OXNARD
300 WEST 3RD STREET
OXNARD, CA 93030

**PURCHASE
ORDER NO.
006304**

DATE: 5/1/2017

VENDOR PHONE: (562)447-1260

VENDOR FAX: () -

VENDOR #: 19164

VENDOR ADDRESS: VELOCITY TRUCK CENTER OF VC
P.O. BOX 101284
PASADENA, CA 91189-1284

SHIP TO: ENVIRONMENTAL RESOURCES
DEL NORTE RECYCLING CTR.
111 DEL NORTE BLVD.
OXNARD, CA 93030

Our P.O. # MUST Appear on ALL Invoices, Packages and Correspondence

DELIVER BY		REQUISITION #	REQUISITION DATE	CONFIRMED BY	
06/30/2017		0000003221	04/28/2017	FORMELY BIG T'S	
FOB		ACCOUNT NUMBER		AUTHORIZED BY	
		63163078918606		MARISELA HART	
ITEM #	QUANTITY/ UNIT	DESCRIPTION ARTICLE OR SERVICE		UNIT COST	EXTENDED COST

1	PURCHASE OF FIFTEEN (15) COMPRESSED	
1.00 / DL	NATURAL GAS	1.0000
		4,851,760.00.00
	(CNG) POWERED REFUSE COLLECTION TRUCKS	

TOTAL PURCHASE AMOUNT

\$4,851,760.00.00

**In order to receive payment, email all invoices to:
invoices@oxnard.org**

**In the subject line, reference the Purchase
Order number above.**

AUTHORIZED SIGNATURE. _____

By acceptance of this purchase order, you agree to the attached terms and conditions of the City of Oxnard

PURCHASE ORDERS
TERMS AND CONDITIONS

The City Purchasing Officer and the Vendor agree as follows:

1. Vendor shall furnish to City the labor, materials, equipment, supplies and/or services described in the Purchase Order preceding this page.
2. City shall pay to Vendor the price, or prices, specified in the Purchase Order upon delivery of the labor, materials, equipment, supplies and/or services, and acceptance thereof by the City Purchasing Officer, or upon the completion of the services to be performed and acceptance thereof.
3. If the Purchase Order is continuing in nature, City shall pay to Vendor the amount due Vendor for labor, materials, equipment or supplies furnished, or services completed and accepted.
4. Vendor shall deliver the labor, materials, equipment or supplies, or cause the services to be performed, within the time and in the manner specified in the Purchase Order. Vendor shall be excused in performance for delays resulting from causes beyond the control of Vendor.
5. If services are performed or labor furnished to City under the Purchase Order, Vendor agrees to indemnify, hold harmless and defend City, its City Council, and each member thereof, and every officer, employee, representative or agent of City, from any and all liability claims, demands, actions, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses and fees of litigation or arbitration, that arise directly or indirectly from any acts or omissions related to this Agreement performed by Vendor or its agents, employees, subcontractors, consultants and other persons acting on Vendor's behalf. This agreement to indemnify, hold harmless and defend shall apply whether such acts or omissions are the product of active negligence, passive negligence, willfulness or acts for which Vendor or its agents, employees, subcontractors, consultants and other persons acting on Vendor's behalf would be held strictly liable. Vendor's obligation to defend shall arise when a claim, demand or action is made or filed, whether or not such claim, demand or action results in a determination of liability or damages as to which Vendor is obligated to indemnify and hold harmless.
6. Insurance
 - a) Vendor shall obtain and maintain during the performance of any services under this Agreement the following insurance coverage issued by a company satisfactory to the Risk Manager, unless the Risk Manager waives, in writing, the requirement that Vendor obtain and maintain such insurance coverage.
 - i. Commercial general liability insurance, including a contractual liability endorsement, 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 CG0001ED, November 1988);
 - ii. 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 Auto Liability Insurance Services Office coverage (Occurrence Form CA000TED, June 1992) covering Code No. 1, "any auto";
 - iii. Workers' compensation insurance in compliance with the laws of the State of California, including employer's liability insurance in an amount not less than \$1,000,000 per claimant.
7. Vendor, in the performance of any services or the furnishing of any labor under this Purchase Order, shall be considered an independent contractor, and Vendor and Vendor's agents and employees shall not be considered officers or employees of the City.
8. Vendor, without the written consent of the City Purchasing Officer, shall not:
 - a) Assign the Purchase Order, or any interest therein, or any money due thereunder; or
 - b) Make any changes, alterations or variations in the terms of the Purchase Order.
9. The cost of inspection on deliveries, or offers to make deliveries that do not meet specifications, will be paid by Vendor or deducted by City from amounts due Vendor.
10. Vendor shall indemnify and hold harmless City, its officers and employees, from liability, claims, loss or expense of any kind or nature on account of any copyrighted or uncopyrighted composition, patented or unpatented process or invention, article or appliance furnished or used under this Purchase Order.
11. Vendor shall comply with all applicable federal, state and local ordinance, laws and regulations and shall obtain and pay for all required licenses and permits, including a City of Oxnard business license.
12. Return or exchange of materials, equipment or supplies will not be permitted without written approval by the City Purchasing Officer.
13. All materials, supplies and equipment furnished under the Purchase Order shall, where applicable, be in full compliance with the Safety Orders and Regulations of the Division of Industrial Safety of the State of California and the Williams-Steiger Federal Occupational Health and Safety Act of 1970.
14. City may terminate this Purchase Order at any time by giving written notice of termination to Vendor. If termination is for cause, termination shall become effective on the date of the notice or at a later date, specified in the notice. If termination is without cause, termination shall become effective five days after the date of the notice or at a later date specified in the notice.
15. Vendor shall comply with all applicable equal employment opportunity requirements of the California Department of Fair Employment and Housing in performing or contracting for any services under this Purchase Order.
16. For public projects, Vendor shall pay prevailing wages in accordance with Labor Code Sections 1720 et seq.

ADDITIONAL REQUIREMENTS FOR GRANT-FUNDED PROJECTS

17. The following requirements apply to any Purchase Order funded in whole or in part by federal grant funds.
 - a) Upon expiration of the time specified on the reverse side, this Purchase Order shall terminate unless City and Vendor have mutually agreed in writing to an extension of time.
 - b) If legal action is brought by either party because the other has failed to comply with terms or conditions of this Purchase Order, the prevailing party shall be awarded its attorney's fees and costs in addition to its damages and/or equitable relief.
 - c) Vendor shall comply with all applicable requirements of Executive Order 11246 as amended by Executive Order 11375 and the regulations adopted pursuant thereto (41 CFR Chapter 60), which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin.
 - d) Vendor shall insure that the grantee (City), the Federal Grantor Agency, the Comptroller General of the United States, or any duly authorized representative, shall have access to any books, records, documents and papers, specifically relating to this Purchase Order, for the purpose of making audit, examination, excerpts and transcriptions for not less than three years after completion of the project and/or until the completion of the final project audit as required by the Federal Grants Agency.



CITY COUNCIL
AGENDA REPORT

TYPE OF ITEM: Report

AGENDA ITEM NO.: 2

DATE: May 23, 2017

TO: City Council

THROUGH: Greg Nyhoff
City Manager

FROM: Jim Throop
Chief Financial Officer

Jim Throop

SUBJECT: Landscape Maintenance District Contracts for FY 17-18, 18-19 and 19-20
(5/15/20)

CONTACT: Jim Throop, Chief Financial Officer
Jim.Throop@oxnard.org, 385-7475

RECOMMENDATION:

That City Council approve and authorize the City Manager to execute the following:

1. Agreement A-7970 with Kaneko Landscaping, Inc. to provide landscape maintenance services to thirty seven (37) landscape maintenance districts (LMDs) in the total amount of \$1,516,680.00
2. Agreement A-7971 with Garcia's Landscape Maintenance, Inc. to provide landscape maintenance services to three (3) LMDs in the total amount of \$108,000.

That City Council additionally approve the following:

3. A 10 percent contingency amount of \$151,668 for Agreement A-7970 for maintenance services with Kaneko Landscaping, Inc.
4. A 10 percent contingency amount of \$10,800 for Agreement A-7971 for maintenance services with Garcia's Landscape Maintenance, Inc.

The LMDs have landscaping improvements that add value and enhance the aesthetic qualities of the districts. All parcels within these districts are assessed for the annual cost of maintenance.

LMD Contracts for Fiscal Years 17-18, 18-19 and 19-20 (5/15/20)

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City staff re-vamped the maintenance contract to incorporate stricter standards and requirements with which vendors must comply. Once the contract was prepared, staff initiated a pre-qualification process in March 2017 to ensure only the bidders who provide the high quality work the LMDs desire could bid. As a result, four vendors pre-qualified: Mariposa Landscapes, Landscape Development, Inc., Kaneko Landscaping, Inc. and Garcia's Landscape Maintenance, Inc.

Staff released a request for bids in March 2017. The bid sheets required each bidder to provide prices per district at each of the five (5) service levels listed below:

	Service Levels				
	A	B	C	D	F
Mowing, edging	Weekly	Every 2 weeks	Every 3 weeks	None	None
Clearing sprinklers	Weekly	Every 2 weeks	Every 3 weeks	Monthly	Quarterly
Aerating	3 times/year		Annually		None
Dethatching	Annually				None
Fertilizing turf	Quarterly	Biannually	Annually	None	None
Fertilizing shrubs	Monthly	Quarterly	Biannually	Annually	None
Trash and debris removal	Daily	2 times/week	Weekly	Monthly	As required
Plant pest and weed control	Consistently neat	Monthly	Bi-monthly	Quarterly	As required
Removal of graffiti	Daily	Weekly	Every 2 weeks	Monthly	When reported
Irrigation inspections	Weekly	Every 2 weeks	Monthly	Quarterly	When reported
Pruning and trimming	Consistently neat	Semi-annually	Annually	When reported	As needed to prevent hazards

(The chart above does not list all tasks.)

Of the four (4) pre-qualified vendors, two (2) submitted bids. The lowest bidder was determined per LMD so each district would get the best deal. Kaneko Landscaping, Inc. was the lowest bidder for 37 districts, and Garcia's Landscape Maintenance, Inc. was the lowest bidder for three

LMD Contracts for Fiscal Years 17-18, 18-19 and 19-20 (5/15/20)

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(3) districts.

Additionally, City staff hosted two town halls on April 7 and 8, 2017 to discuss the bid results, desired service levels, and to obtain feedback and answer questions regarding the overall maintenance program. As a result of feedback received from residents along with the bid results and available funding by district, the following are the districts and service levels selected according to the lowest bidder. All contracts are for a three year term.

PLEASE NOTE: Due to size, the contracts are not included, but are available at the City Clerk's office, online and at the City Council Meeting.

District Name	Contractor	Service Level
RiverRidge - 3	Kaneko	B
Mandalay Bay/ Beach Main - MAD 4	Kaneko	F
Strawberry Fields - 9	Kaneko	D
Country Club - 10	Kaneko	B
St. Tropaz - 11	Kaneko	One Time*
Standard Pacific - 12	Kaneko	B
Le Village - 13	Kaneko	F
California Cove - 14	Kaneko	F
Pelican Pointe - 15	Kaneko	B
California Lighthouse - 16	Kaneko	One Time
Greystone - 23	Kaneko	One Time
Vineyards - 24	Kaneko	One Time
The Pointe - 25	Garcia's	B
Rose Island - 27	Kaneko	D
Harborside - 28	Kaneko	B
HAAS - 30	Kaneko	B
Rancho de la Rosa - 31	Kaneko	C
Oak Park - 32	Kaneko	B
El Paseo - 33	Kaneko	B
Sunrise Pointe - 34	Kaneko	B
Villa Santa Cruz/Carmel - 36	Kaneko	B
Pacific Breeze - 37	Kaneko	B
Aldea del Mar - 38	Kaneko	B
El Sueno/Promesa - 39	Kaneko	B
DR Horton - 39	Kaneko	B
Cantada - 40	Kaneko	B
Pacific Cove - 41	Kaneko	B
Cantabria/Coronado - 42	Kaneko	B
Greenbelt - 43	Kaneko	B

LMD Contracts for Fiscal Years 17-18, 18-19 and 19-20 (5/15/20)

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Daily Ranch - 46	Kaneko	B
Sycamore Place - 47	Kaneko	B
Cameron Ranch - 49	Kaneko	B
PV Senior Housing - 50	Kaneko	B
Pfeiler - 51	Kaneko	B
Wingfield - 52	Kaneko	B
Huff Court - 53	Kaneko	One Time
Meadow Crest - 54	Kaneko	B
Wingfield West - 55	Garcia's	B
Westwind - 58	Garcia's	B
Artisan - 60	Kaneko	B

* The "One Time" service level denotes that the district cannot afford an A, B, C, D or F service level, so staff will send Kaneko there as needed.

STRATEGIC PRIORITIES

This agenda item supports the Quality of Life strategy. The purpose of the Quality of Life strategy is to build relationships and create opportunities within the community for safe and vibrant neighborhoods, which will showcase the promising future of Oxnard. This item supports the following goals and objectives:

Objective 3c. Improve our methods of communicating with residents, businesses and neighborhoods (e.g. leverage social media and tools like Nextdoor).

FINANCIAL IMPACT

The cost for these agreements will be paid directly by the individual LMD's as follows:

District Name	Account	Total Contract Amount
RiverRidge - 3	124-5702-804-8209	\$45,000
Mandalay Bay/ Beach Main - MAD 4	125-5702-804-8209	\$36,000
Strawberry Fields - 9	126-5702-804-8209	\$3,600
Country Club - 10	128-5702-804-8209	\$13,500
St. Tropaz - 11	129-5702-804-8209	\$2,775
Standard Pacific - 12	131-5702-804-8209	\$16,200
Le Village - 13	134-5702-804-8209	\$3,600
California Cove - 14	132-5702-804-8209	\$36,000
Pelican Pointe - 15	135-5702-804-8209	\$2,700
California Lighthouse - 16	133-5702-804-8209	\$24,300
Greystone - 23	143-5702-804-8209	\$10,200

LMD Contracts for Fiscal Years 17-18, 18-19 and 19-20 (5/15/20)

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Vineyards - 24	144-5702-804-8209	\$21,750
The Pointe - 25	145-5702-804-8209	\$28,800
Rose Island - 27	147-5702-804-8209	\$34,200
Harborside - 28	148-5702-804-8209	\$61,200
HAAS - 30	151-5702-804-8209	\$47,700
Rancho de la Rosa - 31	152-5702-804-8209	\$75,600
Oak Park - 32	153-5702-804-8209	\$17,820
El Paseo - 33	154-5702-804-8209	\$35,100
Sunrise Pointe - 34	156-5702-804-8209	\$56,700
Villa Santa Cruz/Carmel - 36	157-5702-804-8209	\$102,600
Pacific Breeze - 37	158-5702-804-8209	\$17,820
Aldea del Mar - 38	159-5702-804-8209	\$95,400
El Sueno/Promesa - 39	160-5702-804-8209	\$114,882
DR Horton - 39	161-5702-804-8209	\$41,718
Cantada - 40	162-5702-804-8209	\$46,800
Pacific Cove - 41	163-5702-804-8209	\$18,000
Cantabria/Coronado - 42	164-5702-804-8209	\$127,800
Greenbelt - 43	165-5702-804-8209	\$95,400
Daily Ranch - 46	170-8003-899-8209	\$115,200
Sycamore Place - 47	170-8004-899-8209	\$21,600
Cameron Ranch - 49	170-8006-899-8209	\$10,620
PV Senior Housing - 50	170-8007-899-8209	\$25,020
Pfeiler - 51	170-8008-899-8209	\$95,400
Wingfield - 52	170-8009-899-8209	\$13,500
Huff Court - 53	170-8010-899-8209	\$1,275
Meadow Crest - 54	170-8012-899-8209	\$5,400
Wingfield West - 55	170-8013-899-8209	\$36,000
Westwind - 58	170-8016-899-8209	\$43,200
Artisan - 60	170-8018-899-8209	\$24,300



**CITY COUNCIL
AGENDA REPORT**

TYPE OF ITEM: Report

AGENDA ITEM NO.: 3

DATE: May 23, 2017

TO: City Council

THROUGH: Greg Nyhoff
City Manager

FROM: Steve Janice
Director of Human Resources

SUBJECT: Adoption of Successor Memoranda of Understanding and Amended Salary and Benefits Resolutions (15/15/10)

CONTACT: Steve Janice, Director of Human Resources
Steve.Janice@oxnard.org, 385-7947

RECOMMENDATION:

That the City Council:

- 1) Adopt resolutions approving successor memoranda of understanding (MOU) with the following bargaining units:
 - a. International Union of Operating Engineers Local 501 (IUOE); and
 - b. Oxnard Mid-Managers Association (OMMA).
- 2) Adopt a resolution approving the side letter agreement between the City and Service Employees International Union, Local #721, CLC (SEIU).
- 3) Adopt a resolution repealing and replacing Resolution No. 14,883 establishing the salary and benefits for unrepresented Confidential Non-Managers, Confidential Mid-Managers, and Executive Employees.

BACKGROUND

The agreements with bargaining units listed represent two and a half years of negotiations during which the City has faced significant fiscal challenges. These agreements include net reductions in employee take home pay for the initial year due to employees ramping up their contribution towards their CalPERS pensions. This is consistent with the City's goal as set forth in this fiscal year's budget message of balancing our need to remain competitive for quality employees with

Adoption of Successor MOU's (15/15/10)

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our need to stay within our financial parameters to ensure that the City remains on the road to fiscal health.

One of the City's key goals through these negotiations was for employees to begin paying a portion of their pension costs. The City participates in the California Public Employees' Retirement System ("CalPERS") to provide pension benefits for its employees. CalPERS issues valuations each year which detail the annual contributions that the City and its employees are required to make towards pension costs. For "classic" miscellaneous employees, the required employee contribution is 7% of pensionable income. Although these are referred to as "employee contributions," the City and its bargaining units negotiated for the City to pay these amounts on behalf of employees years ago. Currently, the City pays 100% of the employee share of CalPERS costs for employees hired before January 1, 2013 in the IUOE, OMMA, Confidential Non-Managers and Confidential Mid-Managers bargaining units. In 2016 the Executive Group began paying 5% of the 7% employee contribution. Employees hired on or after January 1, 2013 are required under the Public Employee Pension Reform Act ("PEPRA") to pay fifty percent (50%) of the normal cost, which is set by CalPERS each year as part of its annual valuation.

The agreements that the City has negotiated with three of its bargaining units, along with the amended salary resolution covering unrepresented employees, achieve the goal of employees paying their share of their retirement. As summarized in greater detail below, each agreement includes a net savings during FY2017-18 through pickup of a portion of the employee share of pension costs by employees. The most recent salary increase received by employees in the impacted bargaining units was in 2014. By the time employees receive a net increase under the proposed agreements, most will have gone over four years without a salary increase. Employees will realize net increases in compensation beginning in FY2018-19, with contracts expiring during FY2019-20. By the end of the contract terms – which effectively covers four to five years, employees in all units will have received a net 3.5% across-the-board wage increase (or 0.7% per year) and they will have picked up 100% of the employee share of their pension.

The City's employees have shared the burden of the financial troubles the City has been dealing with over the past three fiscal years. They previously agreed to modification of their leave benefits, have worked to improve the organization and have gone without salary increases for more than three years, while their colleagues in neighboring jurisdictions began to realize wage and benefit increases as the economy recovered. The successor contracts that the City is presenting to the City Council represent a continuation of this shared burden, with employees making contributions towards their pension costs while at the same time receiving modest wage increases that result in even more modest net increases over the term of the contracts. Adoption of these agreements by the City Council will allow both the City and its employees to continue our progress towards a more stable and bright fiscal future for all.

SUMMARY OF MODIFICATIONS

IUOE/Confidential Non-Managers:

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- Term: Contract expires/Resolution effective through September 30, 2019
- Pension Contribution: Classic employees will pay 100% of the employee contribution by the end of the contract
 - Effective following City Council adoption: 3% pension contribution
 - Effective January 2018: 1% pension contribution
 - Effective July 2019: 3% pension contribution
- Salary: Wage increases of 10.5% over contract term
 - Effective following City Council adoption: 2% wage increase
 - Effective January 2018: 2% wage increase
 - Effective July 2018: 2% wage increase
 - Effective July 2019: 3% wage increase
 - Effective September 30, 2019: 1.5% (Applies to SEIU as well)
- Miscellaneous Terms (applicable only to IUOE):
 - Clarify language related to limited benefit employees (Articles 1 and 33)
 - Incorporate and modify language from 2011 side letter regarding evaluations (Article 8)
 - Exclude standby pay from the definition of overtime (Article 10)
 - Clarify language related to callback pay (Article 12)
 - Provide that tuition reimbursement provisions may be applied to job-related certifications and licensures in addition to course work (Article 17)
 - Update tool allowance provisions to include MRF mechanics (Article 20)
 - Modify mileage reimbursement to refer to IRS standard, not City Manager's discretion (Article 21)
 - Reduction in health benefits to limited benefit employees, consistent with prior Council authority (Article 23)
 - Modify vacation leave cash out provision to provide for pay period by pay period enforcement effective January 2019, eliminate bilingual pay from severance pay, and incorporate language from 2011 side letter regarding scheduling process (Article 24)
 - Allow employees to use up to two days of vacation leave when employees must travel out of town to attend a funeral (Article 27)
 - Streamline jury duty provisions, add provision for employees whose jury duty only requires a half day of participation and expand to apply to court appearances related to City job duties (Article 29)
 - Addition of one floating holiday in each year of the MOU, to be used within the calendar year in which it is granted and which shall have no cash value for employees (Article 32)
 - Add language related to employee resignation and rights upon reinstatement (Article 38)

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May 23, 2017

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- Streamline labor management committee process and add language establishing parameters for negotiations team and caucus time (Article 42)
- Streamline and clarify grievance process (Article 43)
- Miscellaneous Terms that apply only to SEIU and confidential non-managers
 - Add two additional ½ day holidays on Christmas Eve and New Year's Eve, and one additional holiday that being the day after Thanksgiving to make holiday provision consistent with City-wide holiday calendar.

OMMA/Confidential Mid-Managers

- Term: Contract expires/Resolution effective through September 30, 2019
- Pension Contribution: Classic employees will pay 100% of the employee contribution by July 2019
 - Effective following City Council adoption: 3% pension contribution
 - Effective January 2018: 1% pension contribution
 - Effective July 2019: 3% pension contribution
- Salary: Wage increases of 10.5% over contract term
 - Effective following City Council adoption: 2% wage increase
 - Effective January 2018: 2% wage increase
 - Effective July 2018: 2% wage increase
 - Effective July 2019: 3% wage increase
 - Effective September 30, 2019: 1.5%
- Miscellaneous Terms (applicable only to OMMA with the exception of merit increases):
 - Employees will be eligible annually for a 3% merit increase based on satisfactory performance (Article 3(2))
 - Add language regarding temporary upgrade pay consistent with provisions applicable to unrepresented employees (Article 3(8)-(9))
 - Cap tuition reimbursement at \$5,000 annually (Article 5(6))
 - Update language regarding wellness program to include definition of eligible expenses and current \$500 annual benefit (Article 4(2))
 - Allow parties to re-open contract if the City reinstates the thrift plan (Article 6(3))
 - Add two additional ½ day holidays on Christmas Eve and New Year's Eve, and the day after Thanksgiving to make holiday provision consistent with Citywide holiday calendar (Article 7(1))
 - Update annual leave and reserve leave provisions to eliminate obsolete language and to provide for redemption in both July and December, subject to a single annual cap (Article 7(3)-(5))
 - Clarify process related to City's flex time policy (Article 8)
 - Modify grievance procedure to involve Human Resources Director (Article 10)

Adoption of Successor MOU's (15/15/10)

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- Add language:
 - Related to employee resignation and rights upon reinstatement (Article 13)
 - Establishing parameters for negotiations team and release time (Article 18(1))
 - Regarding process for updating job descriptions consistent with legal obligations (Article 18(2))
 - Regarding association security (Article 18(3))
 - Providing that City may modify personnel rules and its administrative manual subject to any legal obligation to meet and confer over such changes and eliminating language incorporating those documents into the contract by reference (Article 19(1)-(3))
- Modify language related to scope of contract and ability to modify terms of contract with mutual agreement (Article 19(5))

Executive Team:

- Term: Resolution expires September 30, 2019
- Pension Contribution: Classic employees will pay 100% of the employee contribution by July 2019. Executives began picking up 5% of employee contribution in January 2016
 - Effective July 2019: 2% pension contribution
- Salary: Wage increases of 10.5% over contract term
 - Effective following City Council adoption: 2% wage increase
 - Effective January 2018: 2% wage increase
 - Effective July 2018: 2% wage increase
 - Effective July 2019: 3% wage increase
 - Effective September 30, 2019: 1.5%
- Miscellaneous Terms:
 - Consistent with other bargaining units, employees will be eligible annually for a 3% merit increase based on satisfactory performance
 - Add two additional ½ day holidays on Christmas Eve and New Year's Eve, and one additional holiday that being the day after Thanksgiving to make holiday provision consistent with City-wide holiday calendar.

STRATEGIC PRIORITIES

This agenda item is a routine operational item or does not relate to the four strategic plans adopted by City Council on May 17, 2016.

FINANCIAL IMPACT

Adoption of Successor MOU's (15/15/10)

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The MOU agreements will result in an increase in salary expenses and benefits of approximately \$421,000 for all funds above the current 10-year forecast. The City currently forecasts with an annual 2% increase for salary and benefits. This allows the City to better plan for the future by adding any potential increases. Should a salary increase not occur in any particular year(s), those funds would remain within the General Fund, Enterprise Funds, or any other fund that may have staffing costs or could be appropriated for other city needs.

The following is a breakdown by labor group of the proposed increases, for the entire three year period:

	<u>Costs vs. Baseline</u>	<u>Costs vs. Forecast</u>
IUOE	\$1,429,000	(\$181,000)
OMMA/Confidential	\$1,543,000	\$544,000
Confidential Managers	\$122,000	(\$18,000)
SEIU	\$332,000	(\$145,000)
Department Heads*	<u>\$480,000</u>	<u>\$221,000</u>
<u>Total Costs</u>	<u>\$3,906,000</u>	<u>\$421,000</u>

* Dept Heads picked up 5% of the 7% of PERS in January 2016, with no additional wage increase.

Though the baseline costs reflect an approximately \$4 million increase over a three-year period, these increases have already been reflected in the City's 10-year forecast, such that only \$421,000 is the cost above the current forecast. This additional cost will be able to be absorbed by all associated funds with the proposed staffing expense.

ATTACHMENTS:

Attachment 1 MOU Resolution IUOE

Attachment 2 IUOE MOU 2017

Attachment 3 MOU Resolution OMMA

Attachment 4 OMMA MOU 2017

Attachment 5 Sideletter SEIU Resolution

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Attachment 6 SEIU Side Letter

Attachment 7 Unrepresented Salary and Benefit Resolution

CITY COUNCIL OF THE CITY OF OXNARD

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD APPROVING THE
SUCCESSOR MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF
OXNARD AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS AND
AUTHORIZING THE CITY MANAGER OR DESIGNEE TO TAKE THE NECESSARY
ADMINISTRATIVE ACTIONS TO IMPLEMENT THE AGREEMENT

WHEREAS, the International Union of Operating Engineers is the recognized representative for employees occupying positions in the classifications specified as comprising the Maintenance, Operations and Repair Unit within the City of Oxnard; and

WHEREAS, the City's memoranda of understanding with the International Union of Operating Engineers expired November 23, 2014; and

WHEREAS, representatives of the City met and conferred in good faith with representatives of International Union of Operating Engineers concerning wages, hours, terms, and conditions of employment for employees in the bargaining unit consistent with their obligations under the Meyers-Milias-Brown Act; and

WHEREAS, the City has reached agreement with the International Union of Operating Engineers attached hereto as Exhibit A of this resolution (the "Memorandum of Understanding") which sets forth the modified terms and conditions of employment for this bargaining unit.

NOW, THEREFORE, the City Council of the City of Oxnard resolves that the Memorandum of Understanding is adopted and the City Manager and/or his designee is directed to perform all acts necessary to implement its terms, including but not limited to executing the Memorandum of Understanding on behalf of the City.

PASSED AND ADOPTED this 23rd day of May, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Tim Flynn, Mayor

ATTEST:

Michelle Ascencion, City Clerk

APPROVED AS TO FORM:

Stephen Fischer, City Attorney

ATTACHMENT 2 Exhibit A
IUOE MOU

DRAFT

MEMORANDUM OF UNDERSTANDING
between
CITY OF OXNARD
and

INTERNATIONAL UNION OF OPERATING ENGINEERS
LOCAL NO. 501, AFL-CIO

~~October 31, 2009 through November 23, 2014~~

November 24, 2014 through September 30, 2019

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PREAMBLE

This Memorandum of Understanding (MOU) is entered into by and between the City of Oxnard (City) and the International Union of Operating Engineers AFL-CIO, Local No. 501 (IUOE Local 501), and represents the full and complete agreement of City and IUOE Local 501 for the term hereof concerning wages, hours, and terms and conditions of employment.

A R T I C L E 1

IMPLEMENTATION

City staff agrees to recommend to the City Council and IUOE Local 501 representatives agree to recommend to its members the adoption and approval, respectively, of this MOU. City and IUOE Local 501 agree that this MOU shall not be binding, either in whole or in part, unless and until approved by the membership of IUOE Local 501 and duly ratified by the City Council.

A R T I C L E 2

RECOGNITION

This MOU shall apply only to regular full-time, regular part-time and ~~accrued~~ to those limited benefits employees ("**LBEs**") to the extent provided for in Article 33, herein, occupying positions in the classifications specified as comprising the Maintenance, Operations and Repair Unit as per Attachment "A" (Unit Employee Schedule).

A R T I C L E 3

CITY RIGHTS

IUOE Local 501 recognizes that City has and will continue to retain, whether exercised or not, the unilateral and exclusive right to operate, administer and manage its municipal services and workforce performing those services in all respects, subject to this MOU. IUOE Local 501 recognizes that the City Manager and department directors have and will continue to retain exclusive decision-making authority on matters not expressly modified by specific provisions of this MOU. IUOE Local 501 recognizes that the exclusive rights of City shall include, but not be limited to, the right to determine the organization of City government and the purpose and mission of its constituent agencies, to set standards of services to be offered to the public, and, through its City Manager and department directors to exercise control and discretion over its organization and operations, to establish and implement administrative regulations and employment rules and regulations consistent with law and the specific provisions of this MOU, to direct employees, to classify and reclassify positions, to take disciplinary action for just cause, to relieve employees from duty because of lack of work or for other legitimate reasons, to determine whether goods or services shall be made, purchased or contracted for, to determine the methods, means and numbers and kinds of personnel by which City's services are provided, including the right to schedule and assign work and overtime, and to otherwise act in the interest of efficient service to the community.

ARTICLE 4

IUOE Local 501 RIGHTS

1. Release Time for Stewards

City agrees that the stewards of IUOE Local 501 have the right to paid release time for the time spent representing a Unit employee under the grievance procedure and the disciplinary action procedure herein subject to the following:

a) IUOE Local 501 may designate one (1) Unit employee as Chief Steward and up to eleven (11) additional Unit employees as stewards and shall notify in writing the City Manager of such designations. There shall be no obligation on City to change or adjust normal department scheduling or assignments of employees as a result of such designations. Such designations shall be made from among employees regularly working at the work sites within the proximate geographic area where the grievance procedure or disciplinary action procedure shall be conducted.

b) One (1) such steward may, when IUOE Local 501 is designated in writing by a Unit employee as his/her representative, attend mutually scheduled grievance or disciplinary action meetings, scheduled hearings, or meetings with department directors, gather information, interview the subject employee or witness and prepare a presentation without loss of pay or benefits. These stewards may not use in excess of two (2) hours of work time per grievance or disciplinary action process with the exception of attendance at hearings. IUOE Local 501 Chief Steward may continue to use a reasonable amount of release time, to the extent authorized pursuant to past practice, to interview Unit employees in order to facilitate resolving or processing employee grievances.

2. IUOE Local 501 Staff Representatives

IUOE Local 501 staff representatives shall be admitted to the buildings and grounds of City during working hours for the purpose of assisting in the resolution of grievances or disciplinary actions, so long as such admittance will not interfere with any work operation or the safety and security of any work site. Such staff representatives will check in with a designated department director and will be required to conform ~~with~~ to the operational and safety regulations and procedures as directed by the department director.

3. List of Unit Employees

Upon reasonable request, City shall provide IUOE Local 501 with a list of Unit employees, their membership status, their classifications and departments, and updates as to transfers, promotions, new City employees, and separations from service within the Unit. The City shall notify IUOE Local 501 of all new appointments of persons occupying classifications in the Unit within thirty (30) days of appointment.

4. Payroll Deductions/Membership Dues

a) The City shall deduct from the biweekly paycheck of IUOE Local 501 members the regular periodic IUOE Local 501 membership dues (as certified in writing to the City Manager by an authorized official of IUOE Local 501), and the cost of regular periodic IUOE Local 501-sponsored insurance benefits pursuant to the City's deduction authorization form, duly completed and signed by the Unit employee. City shall transmit such deductions biweekly to the IUOE Local 501.

b) City shall deduct representation service fees from the paychecks of those employees subject to Section 5 herein and transmit promptly those fees to IUOE Local 501. City shall make these deductions within a reasonable period of time following the date the employee completes the required probationary period.

c) Such deductions shall be made only when the Union member's earnings for a pay period are sufficient after other legally required deductions are made.

d) City and IUOE Local 501 agree that the City assumes no liability on account of any actions taken or not taken pursuant to this section.

5. Agency Shop

a) Pursuant to an election of Unit employees on December 12, 1989, City and IUOE Local 501 have implemented an agency shop provision in conformance with California Government Code Section 3502.5, and as provided in this Section 5.

b) The term "regular full-time employees" used in this Section 5 includes all full-time Unit employees who have attained regular status after successfully passing their entry level probationary period.

c) All regular full-time employees, who are not members of IUOE Local 501, shall pay to IUOE Local 501, as a condition of employment, a representation service fee that represents such employee's proportionate share of the IUOE Local 501's cost of legally authorized representational services on behalf of Unit employees in their labor and employee relations with City. Such representation service fee shall in no event exceed the regular, periodic membership dues paid by Unit employees who are members of the IUOE Local 501.

d) Annually, IUOE Local 501 agrees to provide Unit employees with the financial information required by applicable law. IUOE Local 501 agrees to promptly provide City with written notice of compliance with this subsection 5(d).

e) Within thirty (30) days after written notice to City by IUOE Local 501 that the required financial information has been provided to Unit employees, regular full-time unit employees who have attained such status since the last written notice to City by IUOE Local 501 and who are not members of IUOE Local 501 shall be required to pay the representation service fee.

f) IUOE Local 501 shall make available to Unit employees required to pay a representation service fee under this Section 5, at its expense, an administrative appeals

*Memorandum of Understanding - Maintenance, Operations and Repair Unit International Union of Operating Engineers, Local 501, Term October 31, 2009 through November 23, 2014 **November 24, 2014 through September 30, 2019** Page #3*

procedure, which complies with the requirements of applicable law, for challenging the amount of the representation service fee.

g) A member of a bona fide religion, body or sect which has historically held conscientious objections to financially supporting employee organizations shall not be required to financially support IUOE Local 501 as a condition of employment. Such employee, in lieu of a representation service fee, shall instruct the City, in writing, with a copy to IUOE Local 501, to deduct and pay a sum equal to the representation service fee to a nonreligious, non-labor charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code selected by such employee, or in the absence of selection, as agreed upon by IUOE Local 501 and the employee.

h) IUOE Local 501 agrees to fully indemnify the City and its officers, employees and agents against any and all claims, proceedings and liability arising, directly or indirectly, out of any actions taken or not taken by or on behalf of the City under this Section 45, and to reimburse the City for its costs in defending against any such claims, proceedings or liability.

6. Meeting Locations

a) Upon request of IUOE Local 501, City may provide IUOE Local 501 with a location for a meeting to occur outside working hours of the attendees, provided such space is available and IUOE Local 501 complies with all City and department rules, policies, and directions. Such meetings shall not interfere with City operations. Requests for use of City facilities will be made in advance to the City Manager's Office and will indicate the date, time, and general purpose of the meeting for which the facilities are requested.

b) IUOE Local 501 understands and agrees that the City Manager may deny the request based on his/her judgment that the purpose of the meeting makes such use inappropriate.

7. Bulletin Boards

City agrees that IUOE Local 501 may use designated bulletin boards or portions of boards in each work location or shop in which Unit employees work. City and IUOE Local 501 shall jointly identify bulletin board space. Materials to be posted would include notices of IUOE Local 501 appointments and results of IUOE Local 501 elections, and notices of IUOE Local 501 meetings. A copy of all material to be displayed upon bulletin board shall be provided to the affected division manager or his/her designated representative. If the division manager objects to the contents of such material, he/she shall notify IUOE Local 501 staff or the steward. In such event, the materials shall not be placed on the bulletin board, based upon the division manager's objections, and, if an agreement cannot be reached between IUOE Local 501 and the division manager, the matter shall be referred to the Human Resources Director for resolution. IUOE Local 501 is responsible for posting and removal of material upon the designated bulletin board and for the neat and orderly maintenance thereof.

8. Distribution of IUOE Local 501 Materials

IUOE Local 501 may distribute materials on City premises, at locations designated by the City Manager, before and after scheduled working hours or in non-work areas during scheduled

*Memorandum of Understanding - Maintenance, Operations and Repair Unit International Union of Operating Engineers, Local 501, Term October 31, 2009 through November 23, 2014 **November 24, 2014 through September 30, 2019** . Page #4*

working hours provided that both the employee distributing and the employee receiving such material are not on City time and so that such distribution shall not interfere with City operations.

ARTICLE 5

EMPLOYEE RIGHTS - PERSONNEL FILES

1. Review of Personnel Actions

No evaluation of a Unit employee performance, salary action, resolution of grievance, or disciplinary action shall be placed in the personnel file of such employee without such employee being afforded a reasonable opportunity to read and to receive a copy of such material. The Unit employee must acknowledge that he/she has read such material by affixing his/her signature to it. City understands that such signature does not necessarily indicate agreement by such employee of the content of the material. If the Unit employee refuses to sign, the material shall be placed in his/her personnel file with an appropriate notation by the person filing the material.

2. Personnel File Inspection

With the exception of confidential materials, such as letters of reference, examination rating sheets, and employment background investigations, a Unit employee shall have the right to inspect the contents of his/her personnel file, or he/she may designate in writing a steward or IUOE Local 501 staff to inspect his/her file.

ARTICLE 6

PERS/WAGES

1. Definition of Base Wages

Base wages shall mean the hourly rate of pay earned by a Unit employee within a salary range assigned by City to the classification occupied by the employee. Base wages do not include longevity pay, educational incentive award, overtime pay, standby pay, bilingual pay, cafeteria plan monies or other additional payments earned by a Unit employee pursuant to this MOU.

2. Increase in Base Wages

a.) **Effective the first full pay period following ratification by IUOE Local 501 and adoption by the City Council, all Unit employees shall receive a two percent (2.0%) increase in base wages.** ~~There shall be no adjustment in the base wages of bargaining unit employees for fiscal years 2008-2009, 2009-2010 and 2010-11.~~

b.) **Effective the first full pay period of January 2018, all Unit employees shall receive a two percent (2.0%) increase in base wages.** ~~By 30 January 2011, the parties will meet regarding a wage re-opener, as well as three (3) non-economic Articles contained in this collective bargaining agreement.~~

c.) Effective the first full pay period of July 2018, all Unit employees shall receive a two percent (2.0%) increase in base wages.

d.) Effective the first full pay period of July 2019, all Unit employees shall receive a three percent (3.0%) increase in base wages.

e.) Effective September 30, 2019, all Unit employees shall receive a one and a half percent (1.5%) increase in base wages. ~~Employee base wages shall be increased by two (2%) percent effective the first pay period beginning in January 2012. By 30 January 2012, the parties will meet regarding a wage re-opener, as well as three (3) non-economic Articles contained in this collective bargaining agreement.~~

d.) ~~Employee base wages shall be increased by three (3%) percent effective the first pay period beginning in January 2013. By 30 January 2013, the parties will meet regarding a wage re-opener, as well as three (3) non-economic Articles contained in this collective bargaining agreement.~~

e.) ~~Employee base wages shall be increased by three (3%) percent effective the first pay period beginning in January 2014. By 30 January 2014, the parties will meet regarding a wage re-opener, as well as three (3) non-economic Articles contained in this collective bargaining agreement.~~

3. Payment of Unit Employee's PERS Contribution Pension Benefits

a) "Classic" PERS members, defined as employees (i) hired on or before December 31, 2012 or (ii) who were hired on or after January 1, 2013 and enrolled in the 2@55 retirement plan shall make contributions towards the required employee contribution to PERS costs as set forth below:

- 1) Effective the first full pay period following ratification by IUOE Local 501 and adoption by the City Council, "classic" PERS members shall pay three percent (3.0%) of pensionable compensation towards the required employee contribution to PERS. The employee contribution, as determined by CalPERS, is presently set at seven percent (7.0%) of pensionable compensation. The City shall pay the remaining four percent (4.0%) of the required employee contribution. Employees shall pay their share of the employee contribution by pre-tax payroll deduction pursuant to Section 414(h)(2) of the Internal Revenue Code.
- 2) Effective the first full pay period of January 2018, "classic" PERS members will contribute an additional one percent (1.0%) of pensionable compensation towards the required employee contribution to PERS, for a total of four percent (4.0%) in employee contributions to PERS. The City shall pay the remaining three percent (3.0%) of the required employee contribution. Employees shall pay their share of the employee contribution by pre-tax payroll deduction pursuant to Section 414(h)(2) of the Internal Revenue Code.

- 3) Effective the first full pay period of July 2019, “classic” PERS members will contribute an additional three percent (3.0%) of pensionable compensation towards the required employee contribution to PERS, for a total of seven percent (7.0%) in employee contributions to PERS. Employees shall pay their share of the employee contribution by pre-tax payroll deduction pursuant to Section 414(h)(2) of the Internal Revenue Code.

b) Employees hired on or after January 1, 2013, who are “new members” as that term is defined in the Public Employee Pension Reform Act (“PEPRA”; Government Code section 7522 et seq.) shall be subject to the provisions thereof, including but not limited to the following:

- 2% at age 62 retirement formula;
- Retirement benefit based on highest 36 consecutive months;
- Employees will pay a “membership contribution” to PERS at the rate established by PERS, which in FY2016-17 is 6.00% of payroll, and which may change from year to year. This shall be paid by the employee by payroll deduction. No portion of the member contribution shall be paid by the City;
- New members shall receive the 4th level survivor benefit and Military Service Credit.

~~City shall pay that portion of each Unit employee’s contribution to the Public Employees Retirement System (PERS) equal to seven percent of the wages upon which retirement contributions are computed. (This section applies to employees in y-rated positions.) This payment shall not be considered salary by City but shall be made pursuant to Section 414(h)(2) of the Internal Revenue Code.~~

4. Payment of Unit Employee’s PARS Contribution

a) Effective November 24, 2006, City shall pay that portion of each Unit employee’s contribution to the Public Agency Retirement System (PARS) equal to 5.25% of wages upon which retirement contributions are computed.

b) This payment shall not be considered salary by City but shall be made pursuant to Section 414(h)(2) of the Internal Revenue Code. The Unit employee shall contribute to PARS 5.3% of base wages from November 24, 2006, until amended by a new or revised MOU. Any fluctuation on the rate charged by PARS in the future will be reflected in the rate paid by the City.

c) Employees hired on or after January 1, 2013, including (i) “new members” as defined in PEPRA and (ii) “classic” employees coming from another CalPERS jurisdiction, shall not be eligible to receive any PARS benefits.

ARTICLE 7

SALARY PLAN

1. Original Appointment of Unit Employee

City agrees that the beginning base wages of a Unit employee upon original appointment to a classification within the Unit shall be no less than the minimum designated base wages for that classification.

2. Adjustment in Base Wages

If the original appointment to a position is at the "A" step, a Unit employee shall be eligible for advancement to the "B" step twenty-six (26) weeks after original appointment date and to the "C," "D," "E," "F" and "G" steps fifty-two (52) weeks thereafter, respectively, conditioned upon satisfactory performance. Such periods may be extended when, due to a lengthy absence of such employee, a department director does not have a sufficiently reliable basis for evaluating such employee's performance. Such advancement shall be made unless the department director recommends and the City Manager approves withholding such advancement. Unpaid leave in excess of five (5) consecutive work days shall not be considered for purposes of satisfying these time periods.

3. Effective Date of Adjustment

The effective date of the step increase beyond the "A" step shall be determined as follows:

a) When the step advancement date is between the first (1st) and seventh (7th) days inclusive of a biweekly pay period, the step advancement shall be effective as of the beginning of the biweekly pay period.

When the step advancement date is between the eighth (8th) and fourteenth (14th) days of a biweekly pay period, the step advancement shall be effective as of the beginning of the next biweekly pay period.

4. Merit Increases for Exceptional Performance

When the City Manager determines, based on a department director's recommendation, that a Unit employee has demonstrated an exceptional level of job performance and efficiency in his/her position, the City Manager may increase the base wages for that employee (and may exceed the top of the salary range established for the classification).

5. Payroll Period - Biweekly

Unit employees shall accrue sick leave and vacation leave pay and be paid base wages on a biweekly basis. The payroll checks for each pay period shall customarily be issued to authorized representatives of City departments/divisions not later than the Friday following the end of each biweekly pay period. However, in cases where the Friday payday falls on a holiday, payroll checks shall be issued before the end of the prior work day.

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6. Pay on Separation from Service

When a Unit employee is separated from service, all wages and benefits then due such person from City service shall be paid in accordance with the regular payroll processing upon completion by the Unit employee of the required check-out process. City agrees to make reasonable effort to pay such employee all earned leave balances and outstanding salary within two weeks from the date of separation from the City, and in no event later than three weeks from the date of separation from the City.

7. Effective Date of Adjustments

The effective date of any increase in a Unit employee's base wages shall occur at the beginning of a pay period.

ARTICLE 8

PROMOTIONS/PROBATIONARY PERIODS

1. New Hires

- a. All new hires are subject to probationary periods, the length of which is defined by the classification they occupy. While on probation, an employee is at-will. At-will means the employee's employment with the City can be terminated by management without reason or review.
- b. Probationary employees will be evaluated, in writing, at least once, at or near the midpoint of their probationary period. The evaluation does not change the probationary status of the employee.
- c. At the City's discretion, a new hire probation employee's probation may be extended for a period not to exceed three (3) months and only if the probationary employee received an evaluation as required by subsection (b) above prior to such extension.

~~1-2.~~ Promotions

a. Process

- i. The parties agree that it is within the City's sole discretion to determine if a job posting shall be 'closed promotional' or open to the public.
- ii. If the job posting is open to the public, internal applicants shall receive primary consideration ONLY if they meet the following criteria:

- a. All internal applicants must have fulfilled and completed their probation in the job they hold prior to making an application for a promotional position;
- b. All internal applicants must meet the minimum qualifications for the posted position and their application must provide evidence of these qualifications; and
- c. All internal applicants must be an employee in good standing. Within the meaning of this article good standing is when the applicant does not have any open discipline and has not been disciplined within the past twelve (12) months.
- iii. All internal applicants must successfully complete every phase required for the posted position, including, but not limit to background screenings, objective testing, medical testing, panel interviews and department level interviews.
- iv. The parties agree when the City posts a job that is open to the public, those internal candidates scoring the highest on whatever initial testing is required by the City, shall be placed above external applicants in this order: regular full-time employees and limited benefit employees.

b. Probationary Period

- i. Employees who are promoted are on probation, the length of which is defined by the classification they occupy. If the employee is released from the promotional position prior to completion, the employee has a reversion right to the employee's former position.
- ii. Promotional probationary employees will be evaluated, in writing, at least once, at or near the midpoint of their probationary period. The evaluation does not change the probationary status of the employees.

c. 2. — Salary Upon Promotions

In the event that a Unit employee is promoted from one classification to another, such employee's beginning base wages shall be at least five percent (5.0%) greater in amount than such employee's current base wages. However, the new base wages shall in no event be greater in amount than the maximum base wages of the higher classification to which the Unit employee is promoted, regardless of percentage of increase. For purposes of step increases thereafter, the promoted employee's advancement date shall be based on the date of the step increase received upon promotion.

ARTICLE 9

LONGEVITY PAY

Unit employees who have completed five (5) regular full-time years of service shall be paid a sum equal to one percent (1.0%) of the base wages paid to the employee. Unit employees who have completed ten (10) regular full-time years of service shall be paid an additional one percent (1.0%), making a total of two percent (2.0%) of the base wages paid to such employee. Unit employees who have completed fifteen (15) regular full-time years of service shall be paid a sum equal to an additional one percent (1.0%), making a total of three percent (3.0%) of the base wages paid to the employee. The additional payment for longevity of service shall be made at each time any installment of base wages is made to such employee.

ARTICLE 10

OVERTIME COMPENSATION

1. Entitlement to Compensation

When a Unit employee is assigned and works beyond forty (40) hours per designated one hundred sixty-eight (168) consecutive hours work period, such employee is entitled to overtime compensation.

2. Leave as Time Worked for Overtime Compensation

Duly authorized paid holiday leave, vacation leave, sick leave and jury duty leave shall be considered as time worked for the purposes of determining a Unit employee's eligibility for overtime compensation. All other duly authorized paid leave time shall not be considered as time worked for the purposes of determining a Unit employee's eligibility for overtime compensation.

3. Authorization of Overtime Work

A Unit employee shall be compensated for overtime work only if assigned to such work by an authorized representative of City.

4. Offer of Overtime

City agrees to offer overtime work to regular, full-time Unit employees before offering overtime work to temporary (non-benefitted) employees to fill in for positions that are customarily filled by regular, full-time employees. City shall maintain a list indicating the offers of overtime to regular, full-time Unit employees. The list shall include the name of the regular, full-time employee, the date, time, and reason given for the rejection of overtime by the regular full-time employee. City reserves the right to offer overtime to regular (benefitted) employees to fill in positions that are customarily filled by non-benefitted employees.

5. Regular and Overtime Compensation

- a) A Unit employee's regular rate of pay shall include base wages, longevity pay, educational incentive award, bilingual pay, and shift differential pay ~~and standby pay~~.
- b) A Unit employee shall be compensated for overtime work at one and one-half (1.5) times the employee's regular rate of pay to the nearest tenth of an hour.
- c) In lieu of cash payment for overtime hours worked, a Unit employee may request to accrue compensatory time-off credits at the rate of one and one-half (1.5) hours credit for each overtime hour worked, up to a maximum accumulation of one hundred hours (100), subject to the approval of the City Manager. The request for compensatory time-off credits must be made at the time the overtime is worked.
- d) City shall pay the Unit employee the value of compensatory time-off credits accumulated in excess of eighty (80) hours during the last pay period in the City fiscal year.
- e) Use of compensatory time-off credits in excess of forty (40) hours are subject to the Unit employee providing his or her division manager with a seven calendar day advance notice.
- f) A Unit employee use of compensatory time-off credits shall be subject to approval and scheduling by the division manager.

6. Meal Allowance

Unit employees assigned to work double or back-to-back shifts shall be paid a ten-dollar (\$10.00) meal allowance per extra shift.

ARTICLE 11

STANDBY PAY

1. Controlled Standby

- a) When a regular full-time Unit employee is required and assigned to remain at home for immediate emergency callback at times that such employee is not otherwise scheduled to be nor is on duty, such employee shall be compensated for such standby hours that he or she remained at home at the applicable minimum wage, or such other minimum wage as required by the Fair Labor Standards Act (FLSA).
- b) For purposes of this Section 1 and compliance with the FLSA, controlled standby shall mean standby time during which the Unit employee is required to remain at the employee's home (or to leave a telephone number where the employee can be reached) and the Unit employee is expected to report to work within thirty minutes or less. If judicial and/or Department of Labor interpretation determines that controlled standby reporting time is more or less than that specified above, such time limit shall be adjusted accordingly.

c) Notwithstanding anything else to the contrary, a Unit employee on standby on a holiday under Article 32 of this MOU shall receive eight **(8)** hours straight-time pay during his/her normal shift hours for being “on duty” plus eight **(8)** hours added to his/her vacation balance. Further, if a Unit employee on standby works on a holiday, the employee shall receive the straight-time pay and vacation leave set forth herein and shall be paid one-half **(0.5)** times pay for all time worked.

2. Uncontrolled Standby

a) Except as provided for in Section 1, above, when a regular full-time Unit employee is assigned to be available for callback at times that such employee is not otherwise scheduled to be nor is on duty, the Unit employee shall be compensated for such standby hours that he/she remained available at one dollar and twenty-five cents (\$1.25) per hour.

b) Notwithstanding anything else to the contrary, a Unit employee on standby on a holiday under Article 32 of this MOU shall receive eight **(8)** hours straight-time pay during his/her normal shift hours for being “on duty” plus eight **(8)** hours added to his/her vacation leave balance. Further, if a Unit employee on standby works on a holiday, such employee shall receive the straight-time pay and vacation leave set forth herein and shall be paid one-half **(0.5)** times pay for all time worked.

ARTICLE 12

CALLBACK PAY

1. Unscheduled

A Unit employee called back to work after leaving work from a shift or called back to work while on standby shall be entitled to a minimum of two **(2)** hours of overtime compensation, or two **(2)** hours of compensatory time credits subject to the provisions of Article 10, Section 4(c). **Should another callback be made within the same two (2) hours, the employee will be paid additional compensation only for time worked beyond the initial two (2) hours and will be paid overtime consistent with the MOU. In no event shall an employee be paid the minimum two (2) hours of overtime if they are already working and receiving overtime.** ~~During these times the Unit employee is entitled to pay under this Article, he/she shall not be credited with standby pay under Article 11.~~

2. Scheduled

A Unit employee scheduled for overtime which requires such employee to return to work after going home from a shift shall be entitled to a minimum of one **(1)** hour of overtime compensation, or one **(1)** hour of compensatory time credits subject to the provisions of Article 10 Section 4(c).

3. **No Standby Pay While on Callback**

During the times the Unit employee is entitled to pay under this Article, he/she shall not be credited with standby pay under Article 11.

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ARTICLE 13

COMPENSATION FOR NIGHT WORK

1. Five Percent Increase

Those regular full-time Unit employees who work fifty percent (50.0%) or more of their work shift between 6:00 p.m. and 7:00 a.m. shall receive a five percent (5.0%) increase in base wages for the entire shift worked. If a Unit employee works into the next shift, the Unit employee shall be paid this five percent (5.0%) increase in base wages for those additional hours worked.

2. Ten Percent Increase

Those regular full-time Unit employees who work fifty percent (50.0%) or more of their work shift between 12:00 a.m. and 6:00 a.m. shall receive a ten percent (10%) increase in base wages for the entire shift worked. If a Unit employee works into the next shift, the Unit employee shall be paid this ten percent (10%) increase in base wages for those additional hours worked.

ARTICLE 14

BILINGUAL PAY

1. Rate of Bilingual Pay

Effective December 29, 2007, a regular, full-time Unit employee shall receive bilingual pay at the rate of thirty dollars (\$30.00) biweekly to the extent such employee is required to provide bilingual services as determined by the City Manager.

2. Conditions for Receipt

Bilingual pay shall be paid subject to a Unit employee satisfying the following conditions:

a) The Unit employee's position has been designated by the City Manager as one qualifying for bilingual pay on the basis that:

- 1) The predominant and primary focus of the position is to communicate in person or by telephone with members of the public in connection with providing City services and the Unit employee on a regular ongoing basis in the course of carrying out usual job duties, is called upon to utilize Spanish in communicating with the members of the public, or
- 2) On a regular, daily basis the Unit employee is called upon by the City to provide Spanish/English interpretation or translation services for other City employees in connection with the performance of the usual job duties of such other employees.

b) The Unit employee is determined by the City Manager to be fluent in both Spanish and English and such employee possesses and displays a sensitivity for the cultural needs of the City's Spanish-speaking population.

ARTICLE 15
OUT-OF-CLASS PAY

1. Conditions for Receipt

A Unit employee who is temporarily required to serve in a regular authorized position in a classification with a higher salary range (higher classification) than such employee currently serves in shall be compensated higher base wages in accordance with the following terms and conditions:

- a) The Unit employee must assume the responsibilities of the higher classification.
- b) The Unit employee's time worked in a higher classification shall not be counted toward the completion of probationary requirements in the higher classification.

2. Conditions for Non-Authorization

Out-of-class pay is not authorized, for example, if the organization of a division is such that each Unit employee carries on his/her usual job duties during the temporary absence of a division manager, without the direction which the division manager would provide on a longer term basis.

3. Limits on Out-of-Class Pay

A Unit employee satisfying the terms and conditions of this Article shall be compensated at the minimum base wages established for the higher classification or five percent (5.0%) above such employee's current base wages, whichever is greater. However, in no event shall such employee receive an amount greater than the base wages for the maximum step for the higher classification or more than ten percent (10.0%) above the Unit employee's current base wages.

4. Temporary Promotion Time Limits

A temporary promotion will not exceed one hundred and eighty (180) days unless an extension is mutually agreed to by the City Manager and IUOE Local 501.

ARTICLE 16
DEFERRED COMPENSATION

Unit employees shall continue to have the right to participate in a deferred compensation program so long as such program is offered by the City.

ARTICLE 17

TUITION REIMBURSEMENT

1. Amount of Reimbursement/Conditions

City shall pay up to fifty percent (50.0%) of the costs of tuition, registration fees, laboratory fees, and books related to approved certifications and licensure for occupationally related school courses, workshops and seminars satisfactorily completed on the employee's own time up to a maximum of five hundred dollars (\$500.00) per Unit employee per City fiscal year ~~for work-related courses presented by accredited academic institutions~~, subject to the following conditions:

a) Only full-time Unit employees shall be eligible for reimbursement.

b) Courses that qualify for this reimbursement are those that directly relate to the Unit employee's duties with the City or that directly relate to and are part of a planned course of study being actively pursued for promotion within City service;

c) In the case of school courses for which a letter grade is given, such classes must be ~~that are~~ presented by an accredited high school, college, university or other accredited institution, and ~~that are~~ be satisfactorily completed with a grade of "C" or higher.

d) Courses that do not qualify for this reimbursement are those taken to bring unsatisfactory job performance up to an acceptable level, those duplicating in-service training or other training such employee has already received, and those for which such employee received reimbursement from any other source.

e) There shall be no obligation for City to reschedule the work hours of any Unit employee to facilitate attendance at any course of study.

2. Limits on City's Obligations

City assumes no obligations other than those expressly provided for in this Article, nor does City assume any liability that might relate to a Unit employee's voluntarily pursuing course work which may entitle him/her to reimbursement under this Article.

ARTICLE 18

PERSONAL PROPERTY REIMBURSEMENT 1.

Conditions for Reimbursement

Through no fault of their own, when Unit employees have an item of personal property damaged or stolen while in the performance of City duties, and when that item is necessarily worn, carried or required as part of the job, the Unit employee may submit a claim for reimbursement to the Human Resources Director. Such claim must be filed within five (5) working days after the loss occurred.

2. Amount of Claim

The minimum claim shall be for ten dollars (\$10.00) per loss. Claims of under ten dollars (\$10.00) shall not be paid. The maximum amount City shall pay a Unit employee who is eligible to receive Tool Allowance (Article 20) is five hundred dollars (\$500.00) in one (1) calendar year. The maximum amount City shall pay any other Unit employee is two hundred fifty dollars (\$250.00) in one (1) calendar year.

3. Level of Reimbursement

a) Reimbursement will be based on the depreciated value of the item at the time of the loss or damage, or cost of repair, whichever is less, after offset for any insurance reimbursement the Unit employee receives.

b) The amount of reimbursement for glasses, hearing aids or other personal prosthesis will be replacement cost or the repair cost of items that are repairable, whichever is less, less any insurance payment the Unit employee receives. The amount of reimbursement shall not include the cost of fittings or examinations and will be subject to the ten dollar (\$10.00) minimum claim limit and the annual maximum of two hundred fifty dollars (\$250.00).

c) Stolen or damaged watches required by employment will be reimbursed at their functional value, (i.e., minus their jewelry value) to the annual maximum of two hundred fifty dollars (\$250.00). A Unit employee shall be reimbursed for such stolen or damaged watches subject to a ten-dollar (\$10.00) deductible.

4. Exclusions

The damage or theft of jewelry, automobiles or automobile equipment, and tools and uniform items covered by a City allowance will not be reimbursable.

ARTICLE 19

EDUCATIONAL INCENTIVE AWARD

1. Compensation

City agrees to continue its educational incentive award program for all Unit employees, except classifications requiring a Bachelor's Degree that complete thirty (30) work-related college semester units above the minimum education requirements for the position. The educational incentive shall consist of a two and one-half percent (2.5%) increase in base wages.

2. License and Certification

City agrees to continue existing reimbursements to Unit employees for the cost of obtaining or renewing licenses/certifications required for the Unit employee to perform his/her duties. Reimbursement shall include test fees and renewal costs. City through its City Manager agrees to maintain the ~~management labor~~ joint labor/management committee, to address various labor management issues covered under this MOU.

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ARTICLE 20

TOOL ALLOWANCE

City shall provide the following tool allowances to regular Unit employees assigned to the classifications listed below. The tool allowance shall be paid in lump sum as part of such employee's first (1st) pay period beginning in October each year. A pro-rata portion of the tool allowance shall be paid to a Unit employee upon separation from service if the separation occurs before October of each year. Unit employees with less than a full year's service in the classification in October of each year shall receive a pro-rata portion of the tool allowance.

Classifications	Amount
Fleet Services Mechanic I/II	\$600.00
Fleet Services Maintenance Worker	\$600.00
MRF Mechanic	\$600.00
Senior Fleet Services Mechanic	\$600.00

ARTICLE 21

MILEAGE COMPENSATION

1. Reimbursement Required

When Unit employees are required by City to use their personal vehicles to perform their assigned duties for City, and they so utilize their own vehicles in traveling directly and uninterruptedly from one (1) assigned work location to another assigned work location, City shall compensate such employee as provided herein.

2. Claim Procedure

Unit employees shall make claims for mileage compensation in accordance with a periodic schedule specified by City. The Unit employee shall submit the claim to the division manager on the designated City form, duly completed and signed by such employee.

3. Insurance for Regular Users

Unit employees who are "regular users of personal vehicles" shall be compensated at the mileage rate determined by the City Manager authorized by the Internal Revenue Service, and shall have in effect and have submitted to City a copy of a certificate of automobile insurance confirming that the insurance policy provides no less than one hundred thousand dollars (\$100,000) public liability/property damage coverage, and that the policy names City as an additional insured. "Regular users of personal vehicles" means Unit employees who are required by City, in the performance of their duties, to drive their own personal vehicles on a regular, continuing and usual basis, and in fact so use their vehicle.

4. Reimbursement for Other than Regular Users

Unit employees who are not regular users of personal vehicles but otherwise qualify under Section 1, and meet the provisions of this Article, shall be compensated at the mileage rate authorized by the Internal Revenue Code.

ARTICLE 22

UNIFORM ALLOWANCE

1. Designated Employees

City shall provide uniforms, or portions of uniform costs, or uniform service, to each Unit employee required by the City to be “uniformed.” Unit employees designated as “uniformed” are those required to wear uniforms and/or safety shoes as a condition of employment. In addition, City will provide legally required safety equipment, and pay the cost for repairing uniforms damaged in the course and scope of employment without negligence by such employee.

2. PERS Reporting

City shall report to PERS the cost of uniforms, excluding safety equipment, for Unit employees required by the City to be uniformed. The cost of uniforms for reporting purposes shall be averaged by classification and shall fall into one of the following three amounts: seventy-five dollars (\$75.00), one hundred and fifty dollars (\$150.00) or two hundred and fifty dollars (\$250.00).

ARTICLE 23

INSURANCE

1. Health Insurance Statutory Contribution

City shall continue to contribute the amount required under California Government Code section 22892 towards the payment of premiums under City’s health insurance plan on behalf of each Unit employee and, to the extent required by law, each eligible retiree. Each Unit employee shall have the option to enroll in one of the health insurance plans offered by City.

2. Life Insurance

City shall continue to pay one hundred percent (100.0%) of the current premium for employee-only coverage under the existing level of benefits for life insurance.

3. Dental Insurance

City shall continue to provide one or more family dental insurance plans. Unit employees may be enrolled in a dental insurance program provided by the City. Unit employees shall be eligible to enroll in the Delta Premier Care Program, the Delta Care Program, Goldenwest Dental HMO or other dental programs offered by the City.

4. Cafeteria Plan

a) City shall maintain an insurance Cafeteria Plan for Unit employees. A full-time Unit employee shall have credited to his/her account the sum of one hundred sixty-nine dollars and eight cents **(\$169.08)** biweekly until the enrollment of the Unit employee in the dental insurance program set forth in Section 3 above at which time the City shall contribute to the Cafeteria Plan the sum of one hundred ninety-nine dollars and ninety-one cents **(\$199.91)**. Effective November 23, 2008, City shall contribute to the Cafeteria Plan the sum of two hundred seventeen dollars and eight cents **(\$217.08)** biweekly.

b) Cafeteria Plan monies shall be earned and payable on a biweekly basis as reimbursement for biweekly premiums paid by Unit employees for City and/or IUOE Local 501-sponsored health, dental, long-term disability and life insurance premiums. To the extent legally possible all deductions for insurance premiums will not be taxable in accordance with Section 125 of Internal Revenue Service Regulations. Any monies not used by Unit employees to pay for City and/or IUOE Local 501-sponsored insurance programs shall be reimbursed to Unit employees biweekly.

c) Cafeteria Plan monies shall be subject to State and federal taxes, but shall not be considered wages for retirement purposes or retirement calculations.

5. Vision Plan

If IUOE Local 501 makes available to Unit employees a IUOE Local 501-sponsored vision insurance plan, City shall make cafeteria plan deductions from the Unit employee's compensation in accordance with Article 4, Section 4 of this MOU.

6. Flexible Savings Plan

Unit employees are eligible to participate in the City flexible spending account as provided under Section 125 of the Internal Revenue Tax Code.

7. Limited Benefit Employees

For LBEs meeting the definition of a "Full-Time" employee as defined by the Affordable Care Act (ACA), the City will contribute the minimally required contribution as set forth in the ACA. LBEs presently receiving a higher health care allowance than required by the ACA will receive the minimally required contribution amount as soon as administratively possible following adoption of this Agreement by the City Council but no earlier than the first full pay period following adoption of this Agreement by the City Council.

ARTICLE 24

VACATION LEAVE

1. Accrual

Effective December 29, 2007, full-time Unit employees shall earn vacation leave for each biweekly pay period of service or major fraction thereof, as set forth in the following table:

Years of Service	Vacation Credit For Full-Time Service Hours Per Biweekly Period	No. of Hours of Vacation Earned for 26 Pay Periods
Less than 5	4.08	106.14
5 but less than 6	4.69	122.00
6 but less than 7	5.00	130.06
7 but less than 8	5.31	138.12
8 but less than 9	5.62	146.18
9 but less than 10	5.92	153.98
10 but less than 11	6.23	162.04
11 but less than 12	6.54	170.10
12 but less than 13	6.85	178.16
13 but less than 14	7.15	185.96
14 but less than 15	7.46	194.02
15 or more	7.77	202.08

2. Scheduling

Accrued vacation leave may be taken at one time, or it may be taken several days at a time. The vacation leave is to be scheduled between the Unit employee and the ~~ed~~Division ~~nn~~Manager in such a manner that such employee's absence will not impair ~~ed~~Division operations.

- a) All requests must be made by the employee, in writing, using a City form.
- b) Vacation leave requests must be submitted to their Division Manager or designee, who will not be a Lead Worker nor Senior.
- c) The Division Manager or designee will return the request form to the employee no later than four (4) business days from when the request was made.
- d) All vacation leave requests will be granted, on a first submitted basis, unless two or more forms are handed in on the same day, in which case, the most senior employee's request will be granted.

3. Carrying Forward

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Ordinarily, vacation leave shall be taken as earned or within the calendar year following the year that vacation time is accrued. However, vacation time may be carried forward to the following calendar year in accordance with the following provisions:

a) The maximum amount of vacation leave a Unit employee may carry forward as of the last complete pay period in the calendar year shall not exceed twice the number of hours of vacation leave that such employee currently earns in twenty-six (26) biweekly pay periods. **Effective January 1, 2019, this maximum accrual cap shall be enforced every pay period.**

b) The City Manager may waive the maximum amount of vacation leave authorized to be carried forward under extraordinary circumstances, subject to such conditions as the City Manager may deem appropriate.

4. Redemption

a) After five (5) years of regular full-time service, a Unit employee may receive pay in lieu of up to forty (40) hours of vacation leave. The employee may seek to cash out the forty (40) hours two (2) times per year, i.e. twenty (20) hours in July and twenty (20) hours in December.

b) After ten (10) years of regular full-time service, a Unit employee may receive pay in lieu of up to eighty (80) hours of vacation leave. The employee may seek to cash out the eighty (80) hours two (2) times per year, i.e. twenty (20) hours in July and sixty (60) hours in December.

c) After fifteen (15) years of regular full-time service, a Unit employee may receive pay in lieu of up to one hundred twenty (120) hours of vacation leave. The employee may seek to cash out the one hundred twenty (120) hours two (2) times per year, i.e. twenty (20) hours in July and one hundred (100) hours in December.

d) All requests must be made by the employee, in writing, using a City form and, said requests must be submitted to Human Resources during the months of July and December for the employee to receive the redemption.

5. Severance Pay

Any Unit employee who leaves the service of the City shall be paid for accrued vacation leave to which such employee is otherwise entitled at his/her then current base wages plus any longevity pay, **and** educational incentive pay, **and bilingual pay** being earned as of the effective date of separation from City service.

6. Illness or Sickness During Vacation Leave

When a Unit employee is injured or becomes sick while on authorized vacation leave and is committed to a hospital or confined to a bed by a physician, such employee may exchange sick leave on an equal time basis for vacation leave in accordance with the following provisions:

a) Upon such injury or sickness, or as soon thereafter as is reasonably practical, the Unit

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employee must notify the department director of the injury or sickness.

b) The Unit employee must, upon return to work, provide to the City a declaration from the attending medical provider confirming the injury or sickness that must include a notation as to the number of days that such employee would have been unable to work.

c) If the Unit employee's injury or sickness continues, or is expected to continue, beyond the currently approved vacation leave, the employee shall notify the division manager as soon as he/she has knowledge of the need for sick leave beyond the end of the vacation leave. In any event, the Unit employee shall notify the division manager no later than the start of the shift on the day such employee is scheduled to return to work from the vacation leave.

ARTICLE 25

SICK LEAVE

1. Accrual

Full-time Unit employees earn three and seven-tenths (3.7) hours of sick leave for each biweekly pay period of service or major fraction thereof.

2. Maximum Limit

A Unit employee may accumulate sick leave without maximum limit but in no event shall City have any liability for cash-out or conversion of hours in excess of six hundred (600) except as otherwise provided below.

3. Sick Leave Conversion to Vacation Leave

After five (5) years of regular full-time service, at the end of the last complete pay period of each calendar year, any of that calendar year's accrued but unused sick leave in excess of the six hundred (600) hour authorized maximum sick leave accumulation may be converted by a Unit employee in accordance with Article 24, Section 3, to vacation leave, effective the first pay period of the next calendar year on a 1:1 ratio.

4. Notification to Division Manager

a) If a Unit employee is absent because of injury or sickness, he/she is required to notify the division manager of such injury or sickness at least thirty (30) minutes before the shift begins, or within one-half (0.5) hour after the start of the shift if there is not a scheduled employee designated to take the call before the start of the shift.

b) Sick leave requests for absence beyond three (3) days may require documentation by a licensed physician or other means of verification acceptable to certify the appropriateness of leave.

c) When absences are properly scheduled with the division manager, leaves of absence for necessary dental, optical, or other medical attention shall be considered as sick leave.

5. Pregnancy

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The benefits of this Article apply to disability caused by pregnancy.

6. Uses

Accumulated sick leave may be used for illness or off-duty injury which causes the Unit employee to be disabled and unable to perform his or her usual duties or for properly scheduled medical appointments as per Section 4 above.

7. Penalty for Abuse

Sick leave is a Unit employee's privilege and not an absolute right. Violations of sick leave privilege will result in disciplinary action including loss of pay.

A employee shall be counseled by the employee's supervisor, regarding the employee's absence(s), if any of the following occur:

- a) The employee exceeds ninety-six and two tenths (96.2) hours of absence, for any reason, during one (1) fiscal year;
- b) There is a pattern of absences by the employee such as, but not limited to, on days before or after holidays, or on days before or after weekends; or
- (c) The employee's supervisor reasonably believes the employee is misusing sick leave.

Such counseling shall take place to help the employee's supervisor understand the circumstances surrounding the absence(s) and/or to assist the Unit employee as needed.

8. Payment Upon Separation from Service

City will redeem fifty percent (50.0%) of accumulated, unused or unredeemed sick leave, not to exceed six hundred (600) hours, upon death, retirement or separation from service to those Unit employees with a minimum of five (5) years regular full-time service. The Unit employee shall be paid for these sick hours at such employee's then current base wages plus any longevity pay, educational incentive award, and bilingual pay being earned as of the effective date of separation from City service.

9. Temporary Modified Duty

The City may assign Temporary Modified Duty (TMD) to an employee who has been released to work with restrictions by a medical doctor. In order for an employee to be placed on in a TMD assignment, the work must be available and the employee must be qualified to perform the essential functions of the assignment with or without reasonable accommodation.

The Human Resources Department shall contact Department Directors to determine whether a TMD assignment exists that fits within the employee's restrictions and limitations as defined by the employee's physician. The Human Resources Department may be notified of existing TMD assignments by employees other than the City's Department Directors. The Human Resources Department shall contact the TMD-eligible employee if an assignment exists that falls

within the employee's work restrictions.

TMD assignments shall be for ninety (90) days. Five (5) days prior to the conclusion of the assignment, the Human Resources Department shall determine if any other TMD-eligible employees are waiting for a TMD assignment. If there is a TMD-eligible employee waiting to be assigned and no other assignment is available, except the work being done by the employee concluding the ninety (90) day assignment, that employee will conclude the TMD assignment. If there is no TMD-eligible employee waiting for an assignment or there are additional assignments available, the employee occupying the assignment shall be extended on a week-to-week basis as work remains available, not to exceed an additional ninety (90) days.

At no time shall any TMD assignment be considered a regular permanent assignment, to which the employee is entitled.

ARTICLE 26

LEAVE OF ABSENCE WITHOUT PAY

City shall provide leaves of absence without pay under the current policy and shall endeavor to return the absent Unit employee to his/her former position upon such employee's return to work.

ARTICLE 27

BEREAVEMENT LEAVE

1. Conditions

The division manager may grant up to three (3) shifts leave of absence with pay to any eligible Unit employee on the death of any member of such employee's immediate family. Immediate family shall include only the following individuals related to the Unit employee or such employee's spouse by reason of blood line, marriage, adoption, or foster care: parents, grandparents, spouse, brother(s), sister(s), child(ren), son(s)-in-law, daughter(s)-in-law, grandchild(ren), great grandchild(ren), and any blood relative(s) living in the immediate household.

2. Notice to Division Manager

The Unit employee immediately on return from bereavement leave shall furnish to the division manager some evidence of the death, e.g., a newspaper clipping, obituary notice, funeral card, or other record of death. If such evidence is not provided, the bereavement leave shall be converted to leave without pay.

3. Hours of Bereavement Leave

City agrees to grant a Unit employee a maximum of three (3) work days of bereavement leave. The number of hours granted as bereavement leave for any given day will be based on such employee's customary work schedule. **In the event an employee is required to travel out of state to attend services for his or her deceased family member, the City may allow the use**

of up to two (2) days of accrued vacation leave to supplement the three (3) working days provided for in this section.

ARTICLE 28

FAMILY AND MEDICAL CARE LEAVE

1. Rights and Obligations

To the extent not already provided for under current leave policies and provisions, City will provide family and medical care leave for eligible Unit employees as required by State and federal law. The following provisions set forth certain of the rights and obligations with respect to such leave. Rights and obligations which are not specifically set forth below are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 ("FMLA") and the regulations of the California Family Rights Act ("CFRA") (Government Code Section 112945.2). Unless otherwise provided by this Article, "Leave" shall mean leave pursuant to the FMLA and CFRA.

2. Eligibility

A Unit employee is eligible for family and medical care leave only if he/she has been employed for at least twelve **(12)** months and has worked at least **twelve hundred and fifty (1250)** hours during the twelvemonth period immediately preceding the commencement of leave.

3. Leave Period

An eligible Unit employee is entitled to a total of **twelve (12)** work weeks of leave during a **twelve (12)** month period calculated from January to December. The City shall designate the start of the leave as the first **(1st)** day that the employee is absent from work.

4. Exhaustion of Accrued Leaves

If a Unit employee requests leave for any reason permitted under the FMLA or CFRA, he/she must exhaust all accrued leaves (except sick leave) during the FMLA or CFRA leave period. If a Unit employee requests leave for his/her own serious health condition, in addition to exhausting other accrued leaves, such employee shall also concurrently exhaust sick leave.

ARTICLE 29

COURT APPEARANCES & JURY DUTY

1. Conditions

~~If a Unit employee is called for jury, he/she shall be granted a leave of absence with pay provided that:~~

~~a) The division manager has been notified by the Unit employee of the jury duty summons.~~

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b) ~~The division manager could not obtain an excuse for the Unit employee from serving on the jury, in those instances where the employee could not be conveniently spared from his/her City duties at the time.~~

e) ~~The Unit employee refunds to the City fees received for jury duty service except travel and actual expense reimbursement as follows:~~

1) ~~A Unit employee summoned for and assigned jury duty for five days or less may retain the jury service fee paid for jury service.~~

2) ~~A Unit employee summoned for and assigned jury duty for five days or less may decline payment of the jury service fee.~~

3) ~~A Unit employee summoned for and assigned jury duty for six or more days is required to accept the payment for jury service and to refund to the City Treasurer all fees for jury service except travel reimbursement.~~

d) ~~City agrees that during jury service, Unit employees ordinarily assigned to afternoon and night shift shall be temporarily assigned to the day shift. City also agrees that the number of hours granted as jury/witness leave for any given day will be based on the Unit employee's customary work schedule.~~

e) ~~City agrees that while the Unit employee is on jury duty, the time paid to the Unit employee as jury duty leave shall be considered as time worked for overtime purposes.~~

An employee, other than a provisional or temporary employee, shall be permitted authorized absence from duty for an appearance in court because of jury service, in obedience to a subpoena or by direction of proper authority, in accordance with the following provisions:

- a. **Employees must notify their department head and direct supervisor of their jury duty summons or subpoena, as applicable.**
- b. **Said absence from duty including necessary travel time will be for actual hours served on jury duty or testifying as a witness in a criminal case, other than as a defendant. This shall include the time from when the employee is ordered to appear until the time the employee is released from the court. ~~As a condition of receiving such pay, the employee must remit to the City, through the employee's department head, within fifteen (15) calendar days after receipt, all fees except those specifically allowed for mileage and expenses.~~**
- c. **If an employee is required to appear for a morning court session and is sent home before noon and not required to return in the afternoon, the employee will be expected to work his or her regular afternoon schedule. Such employee shall arrive at the work site as soon as reasonably possible following his or her release from jury service or other court appearance.**
- d. **The City agrees that during jury service or while testifying as a witness in a criminal case, other than as a defendant, Unit employees ordinarily assigned to afternoon and night shift shall be temporarily assigned to the day shift.**

- e. Said absence from duty will be without pay when the employee appears in a private litigation to which the City is not a party.
- f. As a condition of receiving jury duty pay, the employee must remit to the City, through the employee's department head, within fifteen (15) calendar days after receipt, all fees except those specifically allowed for mileage and expenses. Any fees allowed, except for reimbursement of expenses incurred, shall be remitted to the City through the employee's department head.
- g. Notwithstanding the foregoing, attendance in court in connection with an employee's official duties or on behalf of the City of Oxnard in connection with a case in which the City is a party, together with travel time necessarily involved, shall not be considered absent from duty within the meaning of this MOU.

ARTICLE 30

MILITARY LEAVE

Unit employees shall be entitled at a minimum to the military leave benefits as provided in the California Military and Veterans Code or as otherwise enhanced by City Council action.

ARTICLE 31

INDUSTRIAL DISABILITY COMPENSATION

1. Entitlement

A Unit employee incapacitated from work because of an injury or sickness arising out of and suffered in the course of City employment is entitled to City industrial disability compensation as provided herein.

2. Amount

During the period that any Unit employee is temporarily disabled, such employee shall receive City industrial disability compensation equal to seventy-five percent (75.0%) of his/her base wages plus any longevity pay, educational incentive award, and bilingual pay for the period of his/her temporary disability, but not to exceed a total period of twenty-six (26) weeks for any one (1) injury or sickness nor twenty-six (26) weeks per twelve (12) consecutive months for all injuries or sickness.

3. Condition of Eligibility

As a condition of receiving such industrial disability compensation, a Unit employee shall assign to City all temporary disability payments for industrial disability compensation or rehabilitation. A Unit employee who is temporarily disabled shall not be considered to be in a City service status for the purpose of accruing paid leave benefits.

4. Cessation of Benefits

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Industrial disability compensation shall cease when the City Manager determines on the basis of medical evidence that the Unit employee is no longer temporarily disabled. The Unit employee shall have the right to submit written medical evidence secured by such employee to the City Manager for the City Manager's consideration before the City Manager makes such determination; so long as such submission is made by the Unit employee on a timely basis as determined by the City Manager. City assumes no expense or liability in connection with such voluntary submission by a Unit employee. The City Manager's determination shall be adjusted to conform to any decision of the Workers' Compensation Appeals Board as to when the injury becomes permanent and stationary.

5. Conversion of Other Leave

If a Unit employee is temporarily disabled and unable to return to work on account of such temporary disability after the maximum period provided for in Section 2 above, such employee may elect to convert accumulated sick leave, accumulated vacation leave, or both, into supplementary industrial disability compensation. The amount of leave that may be converted is that amount which will provide supplementary disability indemnity benefits to afford a combined total amount equal to the Unit employee's base wages plus any longevity pay, educational incentive award, and bilingual pay during the period of temporary disability.

6. Report of Injury or Sickness

In the event of injury or sickness occurring at work, a report of the injury or sickness must be made by the Unit employee to his/her department director without delay. Report of an injury or sickness is mandatory for eligibility to receive benefits provided in this section. When the Unit employee returns to work, a copy of a medical provider's release must be submitted to the division manager.

ARTICLE 32

HOLIDAY LEAVE

1. Designation of Holidays

For Unit employees, City shall observe the following holidays:

- New Year's Day (January 1st)
- Martin Luther King's Birthday (the third Monday in January)
- Presidents' Day (the third Monday in February)
- Cesar Chavez Birthday (March 31st)
- Memorial Day (the last Monday in May)
- Independence Day (July 4th)
- Labor Day (the first Monday in September)
- Veterans' Day (November 11th)
- Thanksgiving Day (by Presidential proclamation, usually the fourth Thursday in November)
- The day after Thanksgiving

Christmas Eve, ½ shift (December 24th)
 Christmas Day (December 25th)
 New Year's Eve, ½ shift (December 31st)

2. Holiday Leave Hours

Unit employees shall be credited with holiday leave hours for all City observed holidays based upon the assigned customary daily work schedule of the Unit employee sufficient to compensate the Unit employee for all hours regularly worked by such employee.

3. Holidays on Weekends

a) City-observed holidays which fall on Sunday shall be observed on the following Monday. City-observed holidays which fall on a Saturday shall be observed on the preceding Friday.

b) Unit employees who are in paid status on the day that a holiday occurs shall be granted time off, or compensatory time off, or overtime compensation as appropriate.

c) Unit employees required to work on a City-observed holiday shall be paid one and one-half (1.5) their regular rate of pay for hours actually worked, or accrue compensatory time credits at one and one-half (1.5) hours for each hour actually worked, in addition to receiving straight time pay for said holiday.

d) For ~~these~~ those Unit employees working an alternate work schedule (4/10 or 9/80), when a holiday is observed on such employee's day off, the City may adjust such employee's work schedule for the week of the holiday.

4. Floating Holiday

a) In addition to the holidays listed in Section 1, effective following ratification of this agreement by IUOE Local 501 and adoption by the City Council, and January 1st of each year thereafter, each permanent, full-time employee covered under the terms of this MOU shall be granted floating holiday leave hours equivalent to the employee's standard daily work schedule. This provision shall sunset at the end of this contract but employees will have until December 31, 2019 to utilize the floating holiday granted during calendar year 2019.

b) For employees on a 9/80 work schedule, such holiday leave shall be equivalent to the work schedule for the day of the holiday. If an employee works a variable schedule, then hours shall be granted based on an average daily work schedule. Hours granted under this section shall in no case exceed twelve (12) hours.

c) Such leave with pay may be taken, subject to management approval, no later than December 31 of the year in which it was granted. Leave granted pursuant to this provision shall have no cash value beyond that provided herein and shall be lost without benefit of compensation if not taken by December 31 as described above.

Leave granted pursuant to this provision may be taken as one (1) full day or two (2) one-half day increments.

DRAFT

ARTICLE 33

PART-TIME EMPLOYEES

a) Part-time Unit employees shall be entitled to the wages and benefits (including paid leaves) provided for in this MOU in a pro-rated amount of one-half **(0.5)** or three-quarters **(0.75)**, based on such proportion of full-time service as is specified by City for the part-time position. However, part-time Unit employees are not entitled to any benefits under Article 9, Longevity Pay; Article 14, Bilingual Pay; and Article 19, Educational Incentive Award Program. Under Article 7, Section 2, Adjustment in Rate of Base Wages, the required periods for advancement shall be extended so as to equate to the hours worked factors specified for full-time employees. Part-time Unit employees shall receive a pro-rated Cafeteria Plan amount specified in Article 23, Section 4, less the amount previously provided for dental insurance (\$30.83 biweekly). In addition, part-time Unit employees shall not be eligible for any benefits under Article 23, Insurance, for which they are not eligible due to the conditions of City's insurance plan (such as dental coverage).

b) The parties agree that all employees currently designated as "Limited Benefit Employees" (LBEs) who perform any IUOE Local 501 bargaining unit work shall be accreted ~~immediately~~ into the IUOE Local 501 bargaining unit. ~~Starting immediately,~~ IUOE Local 501 shall represent all the above-described LBEs **who perform IUOE Local 501 bargaining unit work** on all matters covered within the scope of bargaining as defined in the Meyers Milias Brown Act.

The current collective bargaining agreement shall not apply to the accreted employees described above. The parties shall commence negotiations at times and places agreed upon mutually, but in no event later than January 2, 2010, regarding the accreted employees described above, as it applies to the terms and conditions of their employment with the scope of bargaining as defined in the Meyers Milias Brown Act.

Except as set forth herein, ~~the~~ terms and conditions of the Limited Benefit Employees employment shall not change or be altered from their current status, but shall be subject to collective bargaining heretofore.

~~e) For limited benefited employees ONLY in the following Divisions/Departments: Housing, Fleet Services, Facilities Maintenance, Recreation, Water and Waste Water, the City shall endeavor to provide opportunities for these employees to become regular full-time employees by December 2011.~~

Commented [MT3]: Since this was from 2008, should "immediately" be eliminated?

Commented [MT4]: Since this was from 2008, should "Starting immediately" be eliminated?

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ARTICLE 34

AMERICANS WITH DISABILITIES ACT

The City shall take all actions necessary to comply with the Americans with Disabilities Act (ADA).

ARTICLE 35

HOURS OF WORK

The work schedule for regular full-time Unit employees shall consist of eighty **(80)** hours during a fourteen **(14)** day pre-established pay period. Unit employees shall be given five **(5)** working days' notice before a change in shift. City agrees to schedule Unit employees for consecutive days off whenever feasible.

ARTICLE 36

TRANSFER

1. Conditions

For purposes of this Article, "transfer" means a change from one position to another position having substantially the same salary range. Transfer shall not be used to effectuate a promotion, demotion, or to impose disciplinary action. However, a Unit employee may be transferred for the purpose of facilitating a more satisfactory level of performance by such employee. Upon approval of the City Manager, and after notice to the affected Unit employee, such employee may be transferred at any time. There shall be no change in the Unit employee's step advancement date upon transfer.

2. Probationary Period After Transfer

If a transfer is effected at the request of a Unit employee, the City Manager may, as a condition of approving the transfer, require that such employee serve a probationary period in the new position, unless the Unit employee previously held permanent status in the position transferred to.

ARTICLE 37

SENIORITY

a) City shall use seniority for a full-time Unit employee within any classification to determine a shift assignment, driving routes, days of work, vacation leave and compensatory time off.

b) When operational requirements override the use of seniority for a shift assignment or duty assignment, City shall furnish the affected Unit employee with a written description of these operational requirements. Seniority shall not be the sole basis for rotational lead assignments or working out-of-class assignments.

ARTICLE 38

RESIGNATION

1. Advance Notice

A Unit employee may resign from City service at any time. A Unit employee resigning from City service, however, shall give a minimum of two (2) weeks' notice to his/her division manager, unless otherwise agreed to by the City and the employee, in order to enable City to make proper provisions for filling his/her position. If the Unit employee fails to provide at least two (2) weeks' notice and the parties have not agreed to a shorter notice period, the City may enter on such employee's service record the statement, "Released with Prejudice."

2. Forfeiture of Privileges

Upon resignation, the Unit employee shall forfeit all seniority and employment privileges allowed by this MOU and other applicable City policies. Any person resigning may, at the discretion of the City Manager, be reinstated in accordance with Section 3.

3. Reinstatement

Any Unit employee who has resigned from City service voluntarily and not then subject to a pending investigation or disciplinary action may apply for reinstatement within one (1) year by means of a written request. If, in his/her sole discretion, the City Manager determines that the reinstatement request should be granted, the applicant may be reemployed in the same job classification as occupied upon resignation. The Unit employee will have no other rights, privileges, or benefits accrued by him/her in his/her previous employment. This section will not apply to reinstatement after military service.

ARTICLE 39

REDUCTION IN FORCE

1. Definitions

a) For purposes of this Article, "City Length of Service" is defined as the Unit employee's total continuous service in regular City employment.

b) For purposes of this Article, "Displacement Rights" is defined as those rights accruing to regular Unit employees only. These rights, commonly referred to as "bumping rights," allow a laid off Unit employee to displace another Unit employee currently occupying a position in a classification previously held by the laid off Unit employee in the manner specified under the section entitled "Displacement Rights" and contained in this Article.

2. Alternatives to Reduction in Force

The City Manager may, after consultation with IUOE Local 501 as required by law, consider alternative actions in order to minimize reductions in force.

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3. Procedure for Reduction in Force

The City Manager will identify those classifications within programs to be reduced which will minimize the impact on the continued effectiveness of that department and will meet the necessary reduction in force requirements as determined by the City Manager.

4. Notification

a) All Unit employees to be laid off will be given written notice by the City Manager of the effective layoff date no less than thirty (30) working days before the effective date of the layoff. Such notice will be hand-delivered or sent by certified mail, return receipt requested.

b) The written notice shall inform the Unit employee of his/her displacement rights and reinstatement or reemployment rights.

5. Order of Layoff

Once the classifications to be reduced have been identified, the City Manager shall determine the Unit employee(s) in the identified classification(s) to be laid off in the following order: Flex-staffed classifications shall be considered as one **(1)** classification for the purpose of reduction in force.

a) Employees who are non-benefited.

b) Employees in limited-term positions in reverse order of their City Length of Service.

c) Unit Employees serving an initial probationary period with the least continuous City Length of Service.

d) Unit Employees who within the twenty-six **(26)** pay periods immediately prior to the date of receipt of notice of layoff received disciplinary action amounting to a suspension of more than forty **(40)** hours, or a demotion.

e) A Unit employee who within the twenty-six **(26)** pay periods immediately prior to the date of receipt of notice of layoff has had his/her merit increase withheld for reasons of unsatisfactory job performance.

f) Unit employees serving a promotional probationary period with the least continuous City Length of Service.

g) Unit employees with the least continuous City Length of Service.

h) If there are two **(2)** or more employees who have identical continuous City Length of Service, the order of layoff shall be determined by lottery.

6. Displacement Rights

Regular Unit employees who are designated to be laid off and have previously held regular status in another classification may displace Unit employees occupying positions in the

previously held classification provided that the Unit employee exercising the displacement privilege has greater continuous City Length of Service than the Unit employee currently in the classification to which the Unit employee is seeking a position. If the Unit employee did not complete a probationary period in the previously held classification, then no displacement rights accrue to that employee for that classification. Conditions which affect displacement rights are as follows:

a) A Unit employee's displacement rights shall be calculated to each previously held classification in reverse of the order in which such employee was employed until a displacement right is determined or the City Manager determines that no displacement right exists. A Unit employee does not have displacement rights to a classification if such employee vacated the classification as a result of disciplinary action.

b) The Unit employee exercising the displacement right will displace Unit employees in previously held classifications in the same order as specified in Section 6. However, a Unit employee identified to be laid off as a result of Section 5d or 5e criteria and who exercises displacement rights shall not have Section 5d or 5e criteria applied to them for the same offense in a subsequent reduction in force involving a new classification.

c) A Unit employee must exercise his/her displacement right within five (5) working days after receipt of the notice of layoff, by written request to the City Manager. If the displacement right is not exercised within the specified time period, the right is automatically forfeited.

7. Demotion

a) Upon request of a Unit employee, and with the approval of the City Manager, a Unit employee who has not held regular status in a classification may be allowed to demote to a vacant authorized position in the same department if he/she meets all the requirements of the classification as determined by the City Manager.

b) All Unit employees who are demoted will be paid at the same base wages as prior to demotion, if, and only if, the base wage is within the salary range of the classification that the Unit employee occupies after the demotion. If this is not the case, the base wage to be paid shall be within the salary range of the demoted to classification which is closest to the Unit employee's base wage prior to demotion.

c) Any Unit employee subject to a demotion who has not previously completed the probationary period in the classification to which such employee is demoted shall serve the applicable probationary period without credit for the earlier service in classification.

8. Transfer

a) The City Manager may transfer a Unit employee to a vacant authorized classification if such employee is qualified and technically capable of performing the duties as determined by the City Manager.

b) A Unit employee who is transferred will be paid base wages equal to such employee's base wages prior to transfer. Any such employee who does not accept a transfer within five

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(5) working days after notice of transfer is given will have automatically forfeited his/her ability to transfer to that classification.

c) Any Unit employee subject to a transfer who has not previously completed the probationary period in the classification to which such employee is transferred shall serve the applicable probationary period without credit for the earlier service in classification.

9. Reinstatement of Employees Demoted as a Result of a Reduction in Force

A Unit employee who is demoted as a result of a reduction in force shall have his/her name placed on a classification reinstatement list, in the order of their City Length of Service. Vacant positions within a classification series shall be first offered to Unit employees on this reinstatement list.

10. Reemployment of Unit Employees Laid Off as a Result of a Reduction in Force

A Unit employee who is laid off and who held regular Unit employee status at the time of a layoff shall have his/her name placed on a reemployment list for classifications in which such employee previously held regular status and for classifications at the same or lower salary range for which such employee qualifies in the order of the City Length of Service. Vacant positions in such classifications will be offered to Unit employees on the reemployment list after Unit employees on the reinstatement list have been reinstated, and prior to an open or promotional recruitment to fill vacant positions in that classification.

11. Duration of Reinstatement and Reemployment Lists

The Unit employee's name shall remain on the reinstatement list and reemployment list for a period of two (2) years from the date of demotion or layoff. A Unit employee not responding to written certified, receipt return requested, notification of an opening within ten (10) working days shall have his/her name removed from either the reemployment list or reinstatement list.

12. Restoration of Benefits Upon Reemployment Following a Reduction in Force

Upon reemployment following a layoff due to a reduction in force, an individual will have the following benefits restored:

a) Prior sick leave accruals unless compensated for sick leave accruals in accordance with Article 25, Section 8.

b) Seniority at time of layoff for purposes of determining merit increases, vacation leave accrual and future layoff priority.

c) Base wages paid to a Unit employee who is reemployed in the same classification he/she held at time of layoff shall be the base wages then in effect for the salary range and step such employee held at the time of layoff, or the new rate in that step, whichever is greater. If the Unit employee chooses to be reemployed in a classification which has a salary range lower than the classification from which he/she was laid off, then the base wages shall be those at the step in *Memorandum of Understanding - Maintenance, Operations and Repair Unit International Union of Operating Engineers, Local 501, Term October 31, 2009 through November 23, 2014* **November 24, 2014 through September 30, 2019**. Page #37

the lower salary range that is closest to his/her base wages immediately prior to layoff, then such employee shall receive the maximum base wages provided in such salary range.

d) City desires to have contained in the reduction in force procedure a consideration of a Unit employee's performance as a criteria in determining the order of layoffs. Therefore, upon the request of City, IUOE Local 501 agrees to meet and confer with City staff in good faith to negotiate the inclusion of a Unit employee's performance as a criteria in the reduction in force policy. The fact that such negotiations may occur during the period in which a memorandum of understanding between any of the parties is in effect shall not affect the parties' obligation to meet and confer.

13. No Credit for Earlier Service in Classification

Under any circumstances, a Unit employee subject to a demotion or transfer who has not previously completed the probationary period in the classification to which such employee is demoted or transferred shall serve the applicable probationary period for the classification to which such employee is demoted or transferred without credit for the earlier service in the Unit employee's prior classification.

ARTICLE 40

NO STRIKES OR LOCKOUTS

1. No Strike Commitment

IUOE Local 501 agrees that City services directed by City shall be maintained unimpaired. IUOE Local 501 shall not cause, condone, counsel or permit its members, or Unit employees, or any of them, to strike, fail to fully and faithfully perform duties, slow down, disrupt, impede or otherwise impair the customary functions and procedures of the City's operations.

2. Notification of Breach

Should any Unit employees represented by IUOE Local 501, during the term of this MOU, breach this obligation, the City Manager shall immediately notify IUOE Local 501 that a prohibited action is in progress.

3. Return to Work Order

IUOE Local 501 shall forthwith in good faith, through its executive officers and other authorized representatives, disavow the strike or other prohibited action, shall order its members orally and in writing to immediately return to work and/or cease the prohibited activity, and provide the City Manager with a copy of its order, with a declaration as to service on such employee(s); or, alternatively, accept the full responsibility for the strike or other prohibited activity.

4. Actions Against Employees/Remedies

The City Manager reserves the right to take actions against Unit employees who violate this Article. Such actions may include discipline up to and including discharge, loss of all wages and

benefits, including seniority, during the period of such prohibited activity, and any other available administrative and legal actions. Should IUOE Local 501, during the term of this MOU, breach its obligations or any of them under this Article, IUOE Local 501 agrees that City Manager may invoke all legal and administrative remedies available.

5. No Lockouts

City agrees not to lockout Unit employees.

ARTICLE 41

OTHER-THAN-CITY EMPLOYMENT

1. Purpose

The purpose of this Article is to regulate the practice of employment other than City employment by Unit employees, particularly where there exists a potential that such employment would impair an employee's ability to perform his/her City duties.

2. Prohibiting Conditions

Unit employees are prohibited from holding employment or occupations other than City service when the following conditions may result:

- a) The employment or occupation has the potential for interfering with satisfactory service due to physical or mental fatigue; or
- b) The other-than-City employment or occupation is deemed by the department director to be inconsistent with or detrimental to City service.

3. Authorization

A written request on designated City form duly completed must be provided by the Unit employee to the department director for approval of other-than-City employment. Such employment may not be undertaken without prior approval of the department director of such request.

4. Limitation

In no event shall other-than-City employment exceed twenty (20) hours per week.

5. Order to Cease Working

A department director may order a Unit employee to cease other-than-City employment if the employment violates any of the provisions of this Article.

6. Employee Appeal Process

If the Unit employee is not satisfied with the response of the department director concerning outside employment, or if the Unit employee receives an order to cease working other than City employment as described in Section 5, the Unit employee may appeal the department director's decision to the City Manager or the City Manager's designee for final decision.

ARTICLE 42

LABOR-MANAGEMENT COMMITTEE/NEGOTIATIONS

1. Composition

~~City and IUOE Local 501 agree to two Labor Management Committees consisting of representatives appointed by IUOE Local 501 and representatives appointed by the City Manager.~~

2. Purpose

a) ~~Work Rules Committee~~

~~City and IUOE Local 501 agree to establish a Labor Management Work Rules Committee (L MWRC) consisting of one representative of IUOE Local 501 and one representative of a department director (which representatives may vary based upon the particular program being reviewed), and chaired by a representative of the City Manager. The L MWRC function shall be to reduce the current departmental rules that are within the scope of representation into written form and to discuss methods of disseminating these rules to the Unit affected employees. The function of the L MWRC shall be to address current rules only, and not to establish new rules, or modify or eliminate existing rules.~~

b) ~~Working Conditions Committee~~

~~City and IUOE Local 501 agree to establish a Labor Management Working Conditions Committee (L MWCC) consisting of up to four representatives of IUOE Local 501 and up to four representatives of the City Manager. The purpose of this L MWCC shall be to discuss and resolve issues which affect Unit employees' working conditions and other matters of mutual concern. The L MWCC operating procedures, including frequency and scheduling meetings, shall be determined by the members. Agreements reached by the members shall be reduced to writing, signed off by the IUOE Local 501 business representative, and be binding on City and IUOE Local 501. The purpose of the L MWCC is to facilitate positive ongoing labor management relationships between City and IUOE Local 501 by providing an informal forum for the free exchange of views, and discussions of mutual concerns and problems, as distinguished from meeting and conferring.~~

~~e) The parties agree to enter into discussions for the purposes of developing and formalizing an employee cross training program for employees covered under the terms of this collective bargaining agreement.~~

~~The parties agree that implementation of the agreed upon program shall begin no later than July~~

2010.

3. Meetings

The L MWRC and L MWCC shall meet as necessary on any issues introduced and unresolved during the meet and confer process which developed this MOU. L MWRC and L MWCC shall explore the needs for the workforce in the 2000s and beyond, including, but not limited to, how the current workforce is trained/prepared to meet those needs. Either IUOE Local 501 business representatives, or City Manager representatives may request the L MWRC or L MWCC to convene. The L MWCC will, during the term of this MOU, conduct a survey of the Water Division's classifications to determine if any adjustments are necessary and financially reasonable. The members may agree to meet within ten days of any request.

4. Chair

The L MWCC shall select the chair of the L MWCC. The members shall, in advance of a mutually scheduled meeting, provide the meeting's chair with proposed agenda items, and the chair shall, therefore, establish and provide the members with the meeting agenda in advance of the meeting.

5. No Loss of Pay or Benefits

Representatives of IUOE Local 501 on the L MWRC and L MWCC who are Unit employees shall not lose pay or benefits for meetings mutually scheduled during such employee's work time up to a maximum of three hours per employee per meeting.

1. Joint Labor/Management Committee

Recognizing the value of a committee where issues of common concern or where issues affecting the represented bargaining unit may be discussed, a Joint Labor/Management Committee has been established.

The Joint Labor/Management Committee may convene as often as needed but not less than once quarterly and not more than once a month for the term of this agreement. Either IUOE Local 501 or management (or a management designated individual) shall submit to the other party a written request to meet at least ten (10) days prior to the date of the requested meeting and such meeting request shall include an agenda. Such meeting(s) shall be scheduled to minimize disruptions to the delivery of City Services.

The Committee shall be composed of (i) all IUOE Local 501 designated stewards and business agent and (ii) up to an equal number of City management representatives, but in no event less than two (2) City management representatives. Additionally, the meeting space will be supplied by the City.

Representatives of IUOE Local 501 attending such meetings shall not lose pay or benefits as a consequence of their attendance. Such meetings shall be scheduled on regular City working days between 8 am and 6 pm for a maximum of three (3) hours.

The Committee has no authority to amend or modify the current MOU.

2. Negotiations

- a. Upon reasonable notice, but not less than seventy-two (72) hours in advance, IUOE Local 501 may request to hold a negotiation caucus meeting occurring during City business hours outside of the normal negotiation session and the City agrees not to unreasonably deny such request, subject to operational or other business needs. IUOE Local 501 will inform the City of the date and time of the caucus meeting, including proposed start and end times, prior to the meeting occurring. IUOE Local 501 will inform the City of the list of attendees at least forty-eight (48) hours in advance. IUOE Local 501 agrees that meetings convened under this section will be held only when necessary to develop proposals for the City or respond to substantive City proposals and will not be of excessive length.
- b. For meetings that occur during an employee's regular work shift, employees will be paid for this meeting time but not for meeting time beyond their regular shift (for example, if a meeting runs from 1 pm to 4 pm but the employee's regular shift ends at 3 pm, he or she will be not be paid for time spent at the meeting after 3 pm). Employees who attend meetings outside of their regular shift will not be paid for attending such meetings. No overtime will be paid as a result of attending a meeting under this section.
- c. For purposes of the actual MOU negotiations, each party will be allowed up to four (4) persons plus an IUOE Local 501 or Management spokesperson/lead negotiator. IUOE Local 501 will be allowed to have an alternative available to attend the negotiation session(s) if one of the originally selected four (4) persons cannot attend. Additional IUOE Local 501 and management representatives may participate as subject matter experts when necessary to ensure Department representation on Department specific issues or to provide technical information. The number of additional representatives shall be mutually agreed to by the parties.

ARTICLE 43

GRIEVANCE PROCEDURE

1. Definitions of Grievance

- a) "Day" means any business day.

b) ~~A "Grievance" for purposes of this section, is a dispute between (i) the City and (ii) of one (1) or more employees and/or a dispute between one or more employees and IUOE Local 501 and the City involving the interpretation, application or enforcement of the provisions of the MOU, or such of the Personnel Rules and Regulations that are within the statutory scope of representation, and for which there is no specific method of review provided by federal, State or local law.~~

A grievance is also a claim by a Unit employee that a letter of reprimand was issued to him/her by City without legitimate cause.

c) **“Immediate Supervisor” means the individual who has been designated by the department head as the person responsible for first step grievances.**

2. **Time Limits**

Grievances must be presented within ten (10) days from the date the employee knew or reasonably should have known of the event giving rise to the grievance.

If any employee fails to take any action discussed in this procedure, including submission of the initial grievance or appeal from one step to the next step, within the time limitation established in the grievance procedure, the grievance shall be considered settled on the basis of the last decision and grievance shall not be subjected to further appeal or reconsideration.

If the grievant does not receive a response within the prescribed time limits, the grievance automatically goes on to the next step.

Any level of review or any time limits may be waived or extended by mutual written agreement of the parties concerned.

3. **Procedure**

Informal Resolution

~~The responsibility of a Unit employee with a bona fide grievance concerning terms and conditions of employment is to promptly inform and discuss the grievance with the department director or his/her designee in order to, in good faith, endeavor to resolve the matter expeditiously and informally.~~

~~a) If such informal discussion does not resolve the grievance to the Unit employee's satisfaction, such employee may file a formal grievance in accordance with the procedure set forth in this section.~~

a) **Informal Conference**

The employee shall first discuss the matter in an informal conference with the employee's immediate supervisor within ten (10) days from the date the employee knew or reasonably should have known of the event giving rise to the grievance.

~~3. Procedure~~

~~a) The Unit employee shall reduce his/her grievance to writing by signing and completing all parts of the grievance form provided by the City, and submit it to his/her immediate non-Unit supervisor within ten calendar days of the initial commencement of the occurrence being grieved. The supervisor shall further consider and discuss the grievance with the Unit employee and such employee's designated representative as he/she deems appropriate,~~

and shall, within ten calendar days of having received the written grievance, submit his/her response thereto in writing to the employee.

b) ~~If the written response of the immediate non Unit supervisor does not result in a resolution of the grievance, the Unit employee may appeal the grievance by signing and completing the City grievance form and presenting it to his/her department director within five calendar days of such employee's receipt of the supervisor's response. The department director may investigate the grievance and may set a meeting with the Unit employee, such employee's designated representative and such other persons as he/she deems appropriate to consider the grievance. Within ten calendar days of the meeting, the department director shall submit his/her response to the grievance to the Unit employee and such employee's representative.~~

a) ~~If the response by the department director does not result in resolution of the grievance, the Unit employee may appeal the grievance by signing and completing the City grievance form and presenting it to a designated representative of the City Manager's Office within five calendar days of the employee's receipt of the department director's response. The City Manager or designated representative may set a meeting with the Unit employee, such employee's designated representative and such other persons as he/she deems appropriate, to consider the grievance. Within ten calendar days of the meeting, the City Manager or designated representative shall submit his/her response to the Unit employee and such employee's representative.~~

b) Formal Process

i. Step One: Written Grievance

If the matter is not resolved at the informal conference, the employee may, within ten (10) days after the informal conference, present the grievance in writing to the employee's immediate supervisor. The immediate supervisor, upon conferral with the employee's department head, will answer the employee's grievance in writing within ten (10) days after receipt of the grievance.

ii. Step Two: Appeal to Department Head

If the matter is not resolved in Step 1, the employee may, within ten (10) days after the immediate supervisor's written answer, appeal the grievance to the employee's department head. The department head will answer the grievance within ten (10) days after receipt of the grievance.

iii. Step Three: Appeal to Human Resources Director

If the employee does not accept the decision at Step 2, the employee may, within ten (10) days of the department head's written answer, present the grievance in writing to the Human Resources Director or his/her designee.

The Human Resources Director or his/her designee may discuss the grievance with the employee, the employee's representative, and other appropriate persons as necessary. The Human Resources Director or his/her designee shall render a decision in writing to the employee within ten (10) days after receiving the grievance.

iv. **Step Four: Appeal to Arbitrator**

If the grievance is not resolved at Step 3 and if the grievance was not related to an appeal of a letter of reprimand, the employee may, within ten (10) days after receipt of the Human Resource Director's or his/her designee's written answer, appeal the grievance to advisory arbitration by signing and completing the City form and presenting it to the City Manager.

b) ~~If the response of the City Manager does not result in resolution of the grievance and if the grievance was not related to an appeal of a letter of reprimand:~~

- ~~1) The Unit employee and IUOE Local 501 may jointly appeal the grievance to advisory arbitration by signing and completing the City form and presenting it to the City Manager within five calendar days of the Unit employee's receipt of the City Manager's response to the grievance.~~

a. Selection of Arbitrator

The City and IUOE Local 501 shall agree on an arbitrator, and if they are unable to agree on an arbitrator within a reasonable time, either City or IUOE Local 501 may request the State Mediation and Conciliation Service to submit to them a list of seven arbitrators who have had experience in the municipal sector. The City and IUOE Local 501 shall select the arbitrator by alternately striking names from a list until one **(1)** name remains. Such person shall then become the arbitrator.

b. Arbitrator Findings and Recommendations

The arbitrator ~~so selected~~ shall hold a hearing as expeditiously as possible at a time and place convenient to the parties, and shall be bound by the following

- i. The arbitrator shall be bound by the language of the MOU and City and departmental rules and regulations consistent therewith in considering any issue properly before the arbitrator.
- ii. The arbitrator shall expressly confine himself/herself to the precise issues submitted to him/her and shall have no authority to consider any other issue not so submitted to arbitrator.
- iii. The arbitrator shall be bound by federal, State and local law.
- iv. The arbitrator may not recommend changes in established wages or benefits, nor recommend the payment of back wages or benefits to a date prior to ten (10) days before the grievance was timely filed.
- v. Upon conclusion of the hearing, the arbitrator shall submit findings and an advisory recommendation to the employee and to the City Manager.
- vi. The City Manager shall, within ten calendar days of the receipt of the written findings and advisory recommendation, make the final determination of the grievance and submit it in writing to the employee and his/her designated representative.

- vii. The cost of the arbitrator and other mutually incurred costs shall be borne equally by the parties.

The written findings and recommendations of the arbitrator shall be executed within ten (10) days after the hearing, shall be made public, and shall be certified to the City Manager.

c) **Review by the City Manager**

The arbitrator's recommendations shall be subject to review by the City Manager in his/her sole discretion. The decision of the City Manager to approve or reject the arbitrator's recommendations shall be final.

4. Rights of Representation

A grievant may be accompanied by a representative at any step of the grievance process.

4. Time Limits

~~Failure of City representatives to comply with time limits specified in Section 3 shall entitle the Unit employee to appeal to the next level of review. Failure of the Unit employee to comply with the time limits shall constitute abandonment of the grievance, except however, that the parties may extend time limits by mutual written agreement in advance of expiration of the established time limit.~~

ARTICLE 44

DISCIPLINARY ACTION PROCEDURE

1. Definition of Disciplinary Action

A "Disciplinary Action" is any suspension, demotion, or discharge of regular, non-probationary Unit employees taken for punitive reasons.

2. Opportunity to Respond and Appeal

A Unit employee, within five **(5)** working days of receipt of an intent to impose disciplinary action to be taken against him/her, shall be accorded a prompt opportunity to respond orally or in writing to the person proposing the disciplinary action and to the charges constituting the bases for the action.

3. Advisory Arbitration

a) The Unit employee and IUOE Local 501 jointly, within ten **(10)** calendar days of the receipt of a notice imposing a disciplinary action, may file an appeal to advisory arbitration.

b) City and IUOE Local 501 shall agree on an arbitrator, and if they are unable to agree on an arbitrator within a reasonable time, either City or IUOE Local 501 may request the State Mediation and Conciliation Service to submit to them a list of seven **(7)** arbitrators who have had experience in the municipal sector. City and IUOE Local 501 shall select the arbitrator by

alternatively striking names from a list until one **(1)** name remains. Such person shall then become the arbitrator.

c) The arbitrator so selected shall hold a hearing as expeditiously as possible at a time and place convenient to the parties, and shall be bound by the following:

- 1) The arbitrator shall be bound by the language of the MOU and City and department rules and regulations consistent therewith in considering any issue properly before the arbitrator.
- 2) The arbitrator shall expressly confine himself/herself to the precise issues submitted to him/her and shall have no authority to consider any other issue not so submitted to the arbitrator.
- 3) The arbitrator shall be bound by federal, State and local law.
- 4) The arbitrator may not recommend changes in established wages or benefits, nor recommend the payment of back wages of benefits to a date prior to ten days before the grievance was timely filed.
- 5) Upon conclusion of the hearing, the arbitrator shall submit findings and an advisory recommendation to the employee and to the City Manager.
- 6) The City Manager shall within ten calendar days of the receipt of the written findings and advisory recommendation, make the final determination of the grievance and submit it in writing to the employee and his/her designated representative.
- 7) The decision of the arbitrator shall be final and binding only in the case of appeals from disciplinary actions involving discharge.
- 8) The cost of the arbitrator and other mutually incurred costs shall be borne equally by the City and IUOE Local 501.

4. Time Limits

The parties agree that verbal warnings, verbal reprimands and written reprimands are NOT discipline. Documentation evidencing a verbal warning, a verbal reprimand or a written reprimand shall be removed from an employee's personnel file after one (1) year.

If an employee receives a suspension, all documentation relating to that suspension will be removed from the employee's personnel file two (2) years after the suspension has been served.

If an employee is placed on a last chance agreement (LCA), the length of the LCA shall not exceed two (2) years.

Nothing in this Article shall preclude the City from referencing prior discipline in performance evaluations or subsequent discipline.

*Memorandum of Understanding - Maintenance, Operations and Repair Unit International Union of Operating Engineers, Local 501, Term October 31, 2009 through November 23, 2014 **November 24, 2014 through September 30, 2019** Page #47*

ARTICLE 45

TERM OF MEMORANDUM OF UNDERSTANDING

1. Term

This MOU shall be effective ~~October 31, 2009~~ **November 24, 2014**, and shall remain in full force and effect through ~~November 23, 2014~~ **September 30, 2019**.

2. Supersession of Other Documents

This MOU contains all covenants, stipulations, and provisions agreed upon by the City staff and representatives of IUOE Local 501, and is intended to supersede all prior memorandums of understanding, or contrary provisions of the Personnel Rules and Regulations.

3. Correction of Errors

IUOE Local 501 and City staff shall, prior to **June 30, 2017** ~~December 29, 2009~~, review the contents of this MOU for the express purpose of ascertaining whether any terms, articles, sections, or items that City staff and representatives of IUOE Local 501 had agreed be included in this MOU were inadvertently omitted. If, following this review, City staff and representatives of IUOE Local 501 agree that any terms, articles, sections, or items have been erroneously omitted, then City staff shall recommend to the City Council and IUOE Local 501 shall recommend to its members that this MOU be modified or revised to include such terms, articles, sections, or items.

4. Revisions to Personnel Rules and Regulations

If City proposes revisions to its Personnel Rules and Regulations, with respect to any such proposed revisions that fall within the required scope of meeting and conferring, City shall promptly upon the request of IUOE Local 501, meet and confer on such subjects.

5. No Meet and Confer Requirement

Except as expressly provided in this MOU, City or IUOE Local 501 shall not be required to meet and confer during its term.

6. Complete Agreement

This MOU constitutes the total and entire agreement between City staff and representatives of IUOE Local 501 and no verbal statement shall supersede any of the MOU's provisions.

7. Successor Memorandum of Understanding

During the period between ~~May/July 1~~ and ~~May/July 31, 2014~~ **2019**, IUOE Local 501 will notify City of any modifications, additions or deletions IUOE Local 501 wishes to incorporate in a successor memorandum of understanding and the City Manager shall on or about August 15, Memorandum of Understanding - Maintenance, Operations and Repair Unit International Union of Operating Engineers, Local 501, Term ~~October 31, 2009 through November 23, 2014~~ **November 24, 2014 through September 30, 2019**. Page #48

~~2014~~2019, notify IUOE Local 501 of any modifications, additions or deletions the City Manager wishes to incorporate in such successor memorandum of understanding. City staff and representatives of IUOE Local 501 shall then meet and confer concerning those modifications, additions or deletions proposed by the City Manager and IUOE Local 501 as are within the statutory scope of meeting and conferring and in accordance with the Oxnard City Code.

ARTICLE 46

NO REPRISALS

City shall not impose or threaten to impose reprisals by discriminating or threatening to discriminate against a Unit employee, or otherwise interfering with, restraining, or coercing a Unit employee.

ARTICLE 47

SAVINGS CLAUSE

In the event that the implementation of any article or section of this MOU shall be frustrated on account of the operation of law or by any tribunal of competent jurisdiction, or if compliance with any article or section would be frustrated or restrained by such law or tribunal, City staff and representatives of IUOE Local 501 shall, if possible, meet and confer for the purpose of endeavoring to agree on a replacement for such article or section.

CITY OF OXNARD
ENGINEERS OF LOCAL 501

INTERNATIONAL UNION OF OPERATING

~~Karen Burnham, Assistant~~ ~~Greg Nyhoff, City Manager~~ ~~Christopher A. Brown,~~ ~~Gavin Koon,~~
~~Ed Curly, Business Manager~~

~~Michelle Téllez,~~ ~~Steve Janice~~ Human Resources Director ~~Ronald Frease~~ ~~Tom O'Mahar,~~
President

~~Sal Tardibuono, Business Representative~~ ~~Gavin Koon, Business Representative~~

Blair Brim, Business Representative

Roger Brooks, Chief Steward

~~Walt Seymour~~ David Harper ~~David Hart~~,
Steward

Mike Salinas, Steward

~~Richard Acosta~~, Ray Trevino, Steward

~~Cris Colon~~ David Hart, Steward

~~Ramon Izaguirre~~, ~~Steward~~

~~David Harper~~, Steward

Dated: _____

CITY COUNCIL OF THE CITY OF OXNARD

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD APPROVING THE SUCCESSOR MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF OXNARD AND THE OXNARD MID-MANAGERS ASSOCIATION AND AUTHORIZING THE CITY MANAGER OR DESIGNEE TO TAKE THE NECESSARY ADMINISTRATIVE ACTIONS TO IMPLEMENT THE AGREEMENT

WHEREAS, the Oxnard Mid-Managers Association is the recognized representative for the Oxnard Mid-Managers within the City of Oxnard; and

WHEREAS, the City's memoranda of understanding with the Oxnard Mid-Managers Association expired June 30, 2015; and

WHEREAS, representatives of the City met and conferred in good faith with representatives of Oxnard Mid-Managers Association concerning wages, hours, terms, and conditions of employment for employees in the bargaining unit consistent with their obligations under the Meyers-Milias-Brown Act; and

WHEREAS, the City has reached agreement with the Oxnard Mid-Managers Association attached hereto as Exhibit A of this resolution (the "Memorandum of Understanding") which sets forth the modified terms and conditions of employment for this bargaining unit.

NOW, THEREFORE, the City Council of the City of Oxnard resolves that the Memorandum of Understanding is adopted and the City Manager and/or his designee is directed to perform all acts necessary to implement its terms, including but not limited to executing the Memorandum of Understanding on behalf of the City.

PASSED AND ADOPTED this 23rd day of May, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Tim Flynn, Mayor

ATTEST:

Michelle Ascencion, City Clerk

APPROVED AS TO FORM:

Stephen Fischer, City Attorney

Attachment 6 Exhibit A OMMA MOU

MEMORANDUM OF UNDERSTANDING
BETWEEN
CITY OF OXNARD
AND
OXNARD MID MANAGER'S ASSOCIATION

JULY 1, 20154 – SEPTEMBER~~JUNE~~ 30, 20195

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PREAMBLE

This Memorandum of Understanding (MOU) is entered into by the City of Oxnard (City) and Oxnard Mid-Managers Association (“Association”) as a result of meeting and conferring in good faith concerning wages, hours and other terms and conditions of employment, pursuant to the City’s Employer-Employee Relations Ordinance and the Meyers-Milias-Brown Act (MMBA), California Government Code Section 3500 *et. seq.*

It is the intent of this MOU to establish and maintain fair, equitable, competitive, and sustainable wages, hours and other terms and conditions of employment that recognize the unique duties and organization context of mid-managers within the City’s workforce.

ARTICLE 1 Recognition

This MOU shall apply to all City employees occupying or exercising duties in the City’s “M” classification, listed in Attachment “A,” including any further additions.

The term “members” hereinafter shall refer to bargaining unit members, unless otherwise designated.

ARTICLE 2 Term

This MOU shall be effective July 1, 201~~5~~⁴ and shall remain in full force and effect through ~~June-September~~ 30, 201~~5~~⁵.

ARTICLE 3 Salaries and Compensation

1. Cost of Living Adjustment

Effective the first full pay period following ratification of this MOU by the Association and adoption by the City Council ~~commencing on October 11th, 2014,~~ the City shall implement a ~~three percent (3%)~~two percent (2%) pay increase for all members.

Effective the first full pay period following January 1, 2018, the City shall implement a two percent (2.0%) pay increase for all members.

Effective the first full pay period following July 1st, 2018, the City shall implement a two percent (2.0%) pay increase for all members.

Effective the first full pay period following July 1, 2019, the City shall implement a three percent (3.0%) pay increase for all members.

Effective September 30, 2019, the City shall implement a one and a half percent (1.5%) pay increase for all members.

2. Advancement within the Salary Range

Effective beginning January 2018, employees who receive a satisfactory performance evaluation during the preceding calendar year will be eligible for a three percent (3.0%) merit increase within that employee's salary range unless the employee is less than three percent (3.0%) from the top of the range and in such a case, the increase shall be to the top of the salary range. No advancement shall be given to any member whose most recent performance evaluation rating was "unsatisfactory," or "needs improvement."

Eligible employees will receive their annual merit increase effective the first full pay period of January. Newly hired employees or employees who promote into the bargaining unit during the preceding calendar year will have their merit increase prorated based on their service during the calendar year (for example, an eligible employee with six months of service in the OMMA bargaining unit in calendar year 2018 will receive a 1.5% merit increase in January 2019.)~~No advancement shall be given to any member whose most recent performance evaluation rating was "unsatisfactory" or "needs improvement."~~

2.3. Payroll Period - Biweekly

Wages are paid on a biweekly basis. The payroll checks or direct-deposit stubs for each pay period shall be issued to authorized representatives of City departments not later than the second Friday following the end of each biweekly pay period.

However, in cases where the Friday payday falls on a holiday, payroll checks shall be issued before the last workday prior to the holiday.

3.4. Payment Upon Separation

All wages and applicable leave accruals due upon separation shall be paid by the end of the pay period after the member's separation.

4.5. Promotions

The beginning base wage for promotions shall be at least five percent (5%) greater than the member's rate of pay prior to promotion, or, shall place the member at the bottom of the range of the position into which the member is promoted if five percent (5%) does not place the member into the range of the promotional position.

5.6. Merit Increases

When the City Manager determines, based upon a Department Director's recommendation, that a member has demonstrated an exceptional level of job performance and efficiency, the City Manager may increase the base wages for that employee.

This increase may exceed the top of the salary matrix established for the classification. The member understands and recognizes that any increase or portion that exceeds the salary plan range will not be PERSable.

6.7. Interim Appointments

Upon recommendation by the department head and approval by the Human Resources Director, a member may be assigned to a higher classification to fill a vacancy caused by an approved leave of absence or any other valid vacancy. The member will receive the minimum of the new pay/salary range, or ten percent (10%) over their present pay, whichever is greater and which will not exceed the new pay/salary range maximum. The change in pay/salary related to the appointment shall be effective the first day of the new pay period following such appointment. The member shall not receive any other benefit assigned to the higher classification that they are not already receiving.

7.8. Out of Class Pay

A member who is assigned to assume the majority of duties and responsibilities of a higher classification shall receive additional compensation while such duties are performed. The member shall be compensated at the minimum base salary established for the higher classification, or five percent (5%) above the member's present pay, whichever is greater, and which will not exceed the new pay/salary range maximum. The change in pay/salary related to the assignment shall be effective the first day of the new pay period following such appointment, once the member has performed such duties for at least forty hours (40) in any one calendar year. The member shall then continue to receive the additional pay for the duration of the assignment. The member shall not receive any other benefit assigned to the higher classification that they are not already receiving. The member's time worked performing the duties of the higher classification shall not count toward the completion of probationary requirements in the higher classification.

8.9. Bilingual Pay

A Department Director may request that certain eligible members receive bilingual pay. A member shall be certified by the City as possessing the skills necessary to communicate effectively with the public in English and a second language for the purpose of conducting City business.

A. Level I - Written and/or Conversational Bilingual. Members proficient in a second language must meet the following criteria:

- (i) The member must pass the bilingual competency test administered by the City, and

- (ii) The member shall provide basic oral translations as part of their regular job duties.

Members shall receive twenty-five dollars (\$25) per pay period for Level I competency.

- B. Level II - Bilingual Translators. Members who pass a skills-based test administered by the City to demonstrate competency in written translation and oral interpretation.

- (i) The member shall provide advanced oral communication and translation, as well as written translations, as part of their regular job duties, including, but not limited to, writing and reviewing translated documents for distribution to City residents (i.e. City mailers, press releases, inserts in City utility bills, surveys, etc.).

Members shall receive fifty dollars (\$50) per pay period for Level II competency.

ARTICLE 4 Reimbursements - Mileage, Tuition, and Damaged Personal Property

1. Mileage

When members are required by City to use their personal vehicle to perform their assigned duties for City, and they so utilize their own vehicles in traveling directly and uninterruptedly from one assigned work location to another assigned work location, City shall compensate the employee as provided herein:

- A. Members shall make claims for mileage compensation that are consistent with current IRS rates on City designated forms.

2. Tuition

A. Amount of Reimbursement/Conditions

City shall pay for seventy five (75%) percent of tuition, registration fees, laboratory fees, campus parking fees and books, up to a maximum of \$5,000 per City fiscal year for work-related courses provided by accredited academic institutions, subject to the following conditions:

Only full-time members shall be eligible for reimbursement. To be eligible, a member must complete and submit the tuition reimbursement pre-approval form to the Human Resources Department.

Courses that qualify for reimbursement are those that directly relate to the member's duties with the City or that directly relate to and are part of a planned course of study being actively pursued for promotion within City service, that are presented by an accredited high school, college, university or other accredited institution, and that are satisfactorily completed with a grade of "C" or higher.

Courses that do not qualify for reimbursement are those taken to bring unsatisfactory job performance up to an acceptable level, those duplicating in-service training or other training the member has already received, and those for which the member received reimbursement from any other source.

To receive reimbursement, the member must submit acknowledgement of a "C" or better to the Human Resources Department within thirty (30) days of completion of the course of study.

There shall be no obligation for City to re-schedule the work hours of any member to facilitate attendance at any course of study.

3. Personal Property

A. Conditions for Reimbursement

When, through no fault of their own, members have an item of personal property damaged or stolen while in the performance of City employment, and when that item is necessarily worn, carried or required as part of the job, the employee may submit a claim for reimbursement to the Human Resources Department. Such claim must be filed within five (5) working days after the loss occurred.

B. Amount of Claim

The minimum claim shall be for ten dollars (\$10) per loss. Claims of fewer than ten dollars (\$10) shall not be paid. The maximum amount City shall pay any employee is two hundred fifty (\$250) dollars in one calendar year.

C. Level of Reimbursement

Reimbursement will be based on the depreciated value of the item at the time of the loss or damage, or cost of repair, whichever is less, after offset for any insurance reimbursement the employee receives.

The amount of reimbursement for glasses, hearing aids or other personal prosthesis will be replacement cost or the repair cost of items that are repairable, whichever is less, less any insurance payment the employee receives.

The amount of reimbursement shall not include the cost of fittings or examinations and will be subject to the ten dollar (\$10) minimum claim limit and the annual maximum payment of two hundred fifty (\$250) dollars.

Stolen or damaged watches required by employment will be reimbursed at their functional value, (i.e., minus their jewelry value) to the annual maximum of two hundred fifty (\$250) dollars. An employee shall be reimbursed for such stolen or damaged watches subject to a ten dollar (\$10) deductible.

D. Exclusions

The damage or theft of jewelry, automobiles or automobile equipment, as well as tools and uniform items covered by a City allowance, will not be reimbursable.

ARTICLE 5 Insurance, Health & Wellness

1. Health Insurance

The City will provide current active employees with a cafeteria payment as provided below:

~~During the term of this MOU, the City shall contribute~~ two hundred dollars (\$200.00) bi-weekly per member towards the ~~employee~~member's cafeteria plan allocation.

The City offers affordable health coverage that meets minimum value standards under the Patient Protection and Affordable Care Act (PPACA) to all eligible members. An eligible member is one who qualifies under the Look Back Measurement Safe Harbor (average of 30 hours per week), as adopted by Resolution and implemented under the City's implementation plan.

2. Dental Insurance

The City shall contribute the sum of thirty dollars and eighty three cents (\$30.83) biweekly to the member's dental insurance cafeteria plan for dental programs provided by the City. Regular full time members that are employees for more than ninety (90) days that "opt-out" will receive \$30.83 bi-weekly additional taxable income.

3. Life Insurance

The City shall continue to pay 100% of the premiums for Mid Management employee-only coverage as Basic Life Coverage (\$5,000) + 1x annual salary under the existing level of benefits for life insurance. The member may purchase additional life insurance coverage from the carrier at a discounted rate.

4. Long Term Disability Insurance

The City provides employees a long-term disability insurance program with coverage equal to 66 2/3% of basic monthly earnings up to \$6,000. The City shall contribute the monthly premium calculated for the member. The City shall provide each member under this program with a certificate of coverage upon request.

5. Flex Spending Plan

Members may participate in the voluntary Flex Spending Plan so long the plan is offered by the City and permitted under IRS rules and regulations.

6. Wellness Program

Members may participate in the City's Wellness Program set forth in Administrative Manual Section E-19. Members will be reimbursed for all eligible health and wellness expenses, including, but not limited to: preventative medical examinations (minus any amount paid by a private insurance plan), health club or gym memberships, licensed weight loss facility memberships, physical therapy sessions, and smoking cessation programs up to a maximum of \$500 per fiscal year. Changes to the Wellness Program – including to the \$500 fiscal year reimbursement cap – are subject to mutual agreement by the parties.

ARTICLE 6 Retirement

1. CalPERS Defined Benefit Pension Plan

The Public Employees' Pension Reform Act of 2013 ("PEPRA") defines "Classic" and "New" Members.

"Classic" Members include employees hired prior to January 1, 2013, and those who are hired on or after that date who were already members of CalPERS or a public retirement system/plan with reciprocity with CalPERS and are hired by the City within six (6) months of separation from their prior CalPERS or such prior employment.

"New" Members are those employees who become members of a public retirement system for the first time on or after January 1, 2013 and who do not otherwise meet the tests for being defined as a "Classic" Member.

Benefits for “Classic” Members.

- A. The City’s contract with CalPERS provides for the two percent (2%) at age fifty-five (55) retirement formula.
- B. The City’s contract with CalPERS provides for the "Single Highest Year" retirement benefit.
- C. City shall pay the 7% percent member contribution directly to CalPERS. This payment shall not be considered wages by the City, but shall be made pursuant to Section 414(h) (2) of the Internal Revenue Code.
- D. Effective the first full pay period following ratification of this MOU by the Association and adoption by the City Council, classic members shall pay three percent (3.0%) of their salary to CalPERS towards the employee costs of the retirement benefit. This will be paid through a pre-tax payroll deduction. The City shall pay the remaining four percent (4.0%) of the member contribution directly to CalPERS. This City contribution shall not be considered wages by the City. Payments shall be made pursuant to Section 414(h)(2) of the Internal Revenue Code on a pre-tax basis.
- E. Effective the first full pay period in July 2017 following January 1, 2018, classic members shall pay an additional one percent (1.0%) of their salary to CalPERS towards the employee costs of the retirement benefit. This will be paid through a pre-tax payroll deduction. The City shall pay the remaining three percent (3.0%) of the member contribution directly to CalPERS. This City contribution shall not be considered wages by the City. Payments shall be made pursuant to Section 414(h)(2) of the Internal Revenue Code on a pre-tax basis.
- F. Effective the first full pay period following July 1, 2019, classic members shall pay an additional three percent (3.0%) of their salary to CalPERS towards the employee costs of the retirement benefit. This will be paid through a pre-tax payroll deduction. Payments shall be made pursuant to Section 414(h)(2) of the Internal Revenue Code on a pre-tax basis.
- D-G. City shall report to PARS as compensation earnable the City’s payment of required employee retirement contributions to PERS.
- E-H. City shall report to PERS as compensation earnable pursuant to California Government Code section 20636(c)(4) the City's payment of required employee retirement contributions to PERS.

Benefits for “New” Members.

- A. New Members are covered by the two percent (2%) at age sixty two (62) retirement formula.
- B. New Members retirement benefit will be based on the highest 36 consecutive months of compensation earnable.
- C. New Members will pay a member contribution to PERS at the rate of fifty percent (50%) of the total “normal cost” of the plan (currently set at 6.75% for FY2015-16 and 6.00% for FY2016-17), as defined by CalPERS. This will be paid through a payroll deduction.
- D. The City has adopted the CalPERS resolution in accordance with IRS Code section 414(h)(2) to ensure that the employee contribution is made on a pre-tax basis.

The City’s contract with CalPERS contains the Fourth Level Survivor Benefit and Military Service Credit for all members.

2. PARS Supplemental Retirement Benefit Plan

City shall provide to all members hired prior to January 1, 2013 PARS supplemental retirement benefits to include the three percent (3%) at age sixty (60) supplemental retirement formula and the highest consecutive twelve-month period retirement formula.

The City's total contribution to PARS on behalf of members shall be equal to 5.63% of the wages upon which the member’s retirement contributions are computed. Members’ contribution is equal to 5%.

New employees hired on or after January 1, 2013, are not eligible to receive any PARS benefit.

3. Deferred Compensation

Members may participate in a deferred compensation program so long as such program is offered by the City.

The parties may re-open this MOU for the limited purpose of reinstating the City’s former “Thrift Plan” (401(a) accounts) which is currently under review.

ARTICLE 7 Leaves

1. Holiday Leave

- A. Observed Holidays Include:

New Year's Day (January 1st)
 Martin Luther King's Day (the third Monday in January)
 Presidents' Day (the third Monday in February)
 Cesar Chavez Day
 Memorial Day (the last Monday in May)
 Independence Day (July 4th)
 Labor Day (the first Monday in September)
 Veterans' Day (November 11th)
 Thanksgiving Day
Day after Thanksgiving
Christmas Eve Day (December 24th) - ½ day
 Christmas Day (December 25th)
New Years Eve Day (December 31st) - ½ day

B. Leave Hours

Members shall be credited with holiday leave hours for all City observed holidays based upon the assigned customary daily work schedule of the member sufficient to compensate the member for all hours regularly worked by such employee.

~~C. Day After Thanksgiving 2014~~

~~City will be closed on the day after Thanksgiving Day 2014.~~

~~D.C.~~ Holidays on Weekends

City observed holidays that fall on Sunday shall be observed on the following Monday. City observed holidays that fall on Saturday shall be observed on the preceding Friday.

2. Promotion into the Bargaining Unit

Upon promotion into the bargaining unit, the member shall begin accruing annual leave pursuant to this Article.

3. Annual Leave

Annual leave is provided to all members in this unit. Members shall earn annual leave for each biweekly pay period of service or major fraction thereof, as set forth in the table below.

Years of Svc	Months of Svc	Biweekly Accrual	Annual Accrual	Max Accrual
Less than 5	0-59	6.24	162.24	324.48

5-6	60-71	7.47	194.22	388.44
6-7	72-83	7.78	202.28	404.56
7-8	84-95	8.09	210.34	420.68
8-9	96-107	8.40	218.40	436.80
9-10	108-119	8.70	226.20	452.40
10-11	120-131	9.54	248.04	496.08
11-12	132-143	9.85	256.10	512.20
12-13	144-155	10.16	264.16	528.32
13-14	156-167	10.46	271.96	543.92
14-15	168-179	10.77	280.02	560.04
More than 15	180+	11.78	306.28	612.56

Annual leave can be taken as earned. Annual leave may be carried forward ~~to future calendar years~~ in accordance with the following provisions.

- A. The maximum amount of annual leave a member may carry forward from pay period to pay period as of the last completed pay period in the calendar year shall not exceed twice the number of hours of annual leave that the employee currently earns in twenty-six (26) biweekly pay periods.
- B. The City Manager may waive the maximum amount of annual leave authorized to be carried forward under extraordinary circumstances, subject to such conditions as the City Manager may deem appropriate.
- ~~C. Members who have accrued leave beyond the maximum allowable cap will have until March 14, 2015 to bring their accruals below the cap. During this period only, members will continue to accrue annual leave.~~
- ~~D.~~
- ~~E. Beginning on March 15, 2015, members who have accrued annual leave in excess of the applicable cap shall immediately cease any additional accruals until they fall below the cap.~~
- ~~F.~~
- ~~G.C.~~ G.C. Beginning on March 15, 2015, ~~m~~Members shall cease accrual of any additional leave hours beyond the maximum cap, beginning the pay period in which the member exceeds the maximum amount of leave, until the member's accrued leave is brought under the maximum allowable cap.
- ~~H.D.~~ H.D. Members may elect to convert accrued and unused annual leave or vacation leave into cash for transfer into a City-sponsored Section 457(k) deferred compensation plan ~~during calendar year 2015~~. The amount of annual leave and/or vacation leave that may be transferred shall be limited to either the redemption amounts specified herein or the contribution amountscaps set forth in the Internal Revenue Code, whichever is lower. A member electing to transfer annual leave and/or vacation leave into the deferred compensation plan must enroll in the plan before any leave can be

transferred. Members must request a transfer using the City-approved form, which is available from the City's payroll department. ~~This provision shall sunset as of June 30, 2015 and shall be subject to future negotiations between the parties.~~

~~I.E.~~ Prior to separation, members may elect to convert accrued and unused annual leave or vacation leave into cash for transfer into a City-sponsored Section 457(k) deferred compensation plan in their final year of employment with the City. The amount of annual leave and/or vacation leave that may be transferred shall be limited to the contribution ~~caps~~ amounts set forth in the Internal Revenue Code. A member electing to transfer annual leave and/or vacation leave into the deferred compensation plan must enroll in the plan before any leave can be transferred. Members must request a transfer using the City-approved form, which is available from the City's payroll department.

4. ~~Grandfathered~~ Reserve Leave Fund ("RLF") & Excess Leave Accounts.

~~The previously existing Reserve Leave Bank ("RLB") Program, including provisions that allow for the transfer of annual leave into RLB, is eliminated effective January 1, 2015.~~

Members ~~who established a RLB prior to January 1st, 2015, and members who have excess leave hours as defined herein, shall have such leave with~~ "grandfathered" leave in their ~~as a Reserve Leave Fund ("RLF") in accordance with~~ and/or their excess leave accounts are subject to the following terms:-

A. Reserve Leave Fund: Members may use their RLF balance to cover leaves of absence, consistent with the terms governing the use of annual leave, as set forth in this Article. Members may not transfer any additional accrued leave into their RLFs and employees who join the bargaining unit after February 24, 2015 shall not have the right to create a RLF.

~~B. Members shall not be permitted to transfer any additional accrued leave into their RLFs, subject to the following one-time exception:~~

~~1. Members with excess leave hours may establish a RLF and transfer those excess leave hours into their RLFs on a one-time basis within thirty days of adoption of this MOU. "Excess leave hours" are hours which the City transferred into excess leave banks on or about November 11, 2014, and which remain in the member's excess leave bank at the time of adoption of the MOU. This one-time transfer of excess leave hours is subject to the previously allowable RLB cap of 1,560 hours.~~

C.B. Excess Leave Account: Excess leave hours ~~that remain after this one-time transfer into RLF (i.e. that remain after maxing the allowable 1,560 hour RLF cap),~~ are subject to the following terms.

1. ~~80% of the remaining excess leave will be placed in a bank called "80% grandfathered excess leave bank account;"~~ This leave is available for use and has cash value as set forth in this paragraph. Members may use this leave as paid time off, on an hour for hour basis, while employed. Upon separation, the remaining balance, if any, will be cashed-out. The cash value is calculated at the member's pay rate as of December 4, 2014.
2. ~~20% of the remaining excess leave will be placed in a bank called "20% grandfathered excess leave bank account;"~~ This leave is available to use but will not have cash value. Members may use this leave as paid time off, on an hour for hour basis, while employed. Upon separation, the remaining balance will not be cashed out and instead will be forfeited.

C. Prior to taking leave, members shall inform the City which account the City shall charge leave to. In the absence of any designation, the City shall charge leave to Annual Leave.

5. Redemption

Members may cash out leave ~~once a year in July or December~~ as follows:

After five (5) regular full-time years of service, a member may receive pay in lieu of up to forty (40) hours of accrued leave.

After ten (10) regular full-time years of service, a member may receive pay in lieu of up to eighty (80) hours of accrued leave.

Leave may be cashed out twice annually during the months of July and December. Members may cash out leave during either month, or both months, but shall be subject to the total redemption amounts specified above in any one calendar year.

6. Payment Upon Separation

Any member who leaves City service shall be paid at the time of separation the then current cash value of all accrued and unused leave.

7. Administrative Leave

The job requirements of exempt management employees may require them to work more than forty (40) hours per designated work week and the time worked frequently is in addition to their regular work schedule. ~~In the FY14-15, each member shall accrue fifty six (56) hours of Administrative Leave. Employees in this bargaining unit shall be granted forty (40) hours of administrative leave at the beginning of each fiscal year. Administrative leave balances shall be capped at forty (40) hours per fiscal year. The ability of members to accrue Administrative Leave beyond forty (40) hours shall sunset on June 30th, 2015 and shall be subject to future negotiations between the parties. In consideration of the City agreeing to continue this language until a subsequent MOU is negotiated after June 30, 2015, OMMA agrees to drop its Agency Shop Demand for the term of this contract.~~

Use of administrative leave is subject to operational necessity but shall not be unreasonably denied.

~~Additional administrative leave may be approved at the Department Director's discretion.~~

Administrative leave cannot be carried over to the next fiscal year, has no cash value and cannot be cashed out if unused at the end of the fiscal year in which it was granted or upon separation.

This benefit shall be pro-rated for new members during the first year of hire or promotion.

8. Bereavement Leave

The Department Director/ Division Supervising Manager may grant up to three (3) days leave of absence with pay to any eligible employee on the death of any member of the member's immediate family.

Immediate family shall include the following individuals related to the member or the member's spouse by reason of blood line, marriage, adoption or foster care: parents, grandparents, spouse, spouse's parents, brother(s), sister(s), child(ren), son(s)-in-law, daughter(s)-in-law, grandchild(ren), great grandchild(ren), registered domestic partner, and any blood relative(s) living in the immediate household.

Immediately upon return from bereavement leave, the member shall furnish to the Department Director/ Division Supervising Manager some evidence of the death, e.g., a newspaper clipping, obituary notice, funeral card, or other record of death. If such evidence is not provided, the bereavement leave shall be converted to leave without pay.

9. Industrial Disability Leave

Injury or illnesses arising out of and occurring in the course of employment will be administered under the Workers' Compensation Laws of the State of California.

Members may coordinate industrial disability leave with accrued leave balances to obtain full salary while on leave.

10. Leave Without Pay

The City shall provide leaves of absence without pay under the current policy and shall endeavor to return the absent member to his/her former position upon the member's return to work.

A member absent on authorized leave may return to work prior to expiration of the period of authorized leave upon written notice to the City Manager.

11. Jury Duty & Witness Leave

Jury Duty – if a member is called for jury duty, the member shall be granted a leave of absence with pay.

Witness Leave – if a member is called as a witness to testify in litigation as to matters arising out of or in the course of the scope of the member's employment, the member shall be granted a leave of absence with pay.

12. Military Leave

The City complies with the California Military and Veterans Code, the Uniformed Services Employment and Reemployment Rights Act (USERRA), and the Oxnard City Council resolutions and policies applicable to City employees who are members of the Armed Forces of the United States.

ARTICLE 8 Fair Labor Standards Act

The City defines all members as "exempt employees" under the Fair Labor Standards Act.

Exempt employees are not eligible to receive overtime pay, but they do receive Administrative Leave as specified above. but

Exempt employees may also flex their time with supervisor approval, consistent with Chapter 9 of the City's Personnel Rules and Regulations. A flex schedule is not intended to be an hour-for-hour trade of time for exempt employees, but rather is intended to provide some flexibility in instances where management employees have worked an extraordinary amount of hours within a pay period. Such flexing of the schedule will occur within the same pay period or the pay period after the one in which the additional hours were worked. The additional hours worked should be reflected on the time sheet so that at a minimum,

the time sheet accurately depicts a minimum of forty (40) hours worked for each of two (2) payroll periods that includes the current and subsequent pay periods.

Employees who violate or abuse the City's flex time policy or who have an attendance or tardiness problem may be denied eligibility for this flex time policy at the discretion of the employee's supervisor.

ARTICLE 9 Labor/Management Committee

The City agrees to establish a Labor/Management Committee to discuss issues of mutual concern, including salary compaction. Meetings shall be held periodically at mutually agreed times and dates within fourteen (14) calendar days of any request, dependent upon availability of the parties.

ARTICLE 10 Grievances

Every effort should be made to resolve the grievance at the lowest possible level.

1. Definition

A "Grievance" is an allegation by a member claiming that the member has been affected adversely by a violation of the specific express terms of this MOU, and for which there is no specific method of review provided by Federal, State or local law.

2. Time Limits

Failure of City representatives to comply with time limits specified below shall entitle the employee to appeal to the next level of review. Failure of the employee to comply with the time limits shall constitute abandonment of the grievance, except, however, the parties may, in writing, extend time limits by mutual written agreement in advance of expiration of the established time limit.

3. Informal Resolution

A member with a bona fide grievance concerning terms and conditions of employment shall informally discuss the grievance with the Department Director/ Division Supervising Manager or designee within twenty-one (21) business days from the date of the action causing the complaint, or from the date the incident is first discovered, in order to, in good faith, endeavor to resolve the matter expeditiously and informally.

4. Formal Grievance Procedure

If informal discussion does not resolve the grievance to the member's satisfaction, the member may file a formal grievance. The member, or a representative, shall reduce the grievance to writing and submit it to the member's Department Director/ Division Supervising Manager within ten (10) business days of receipt of the answer from the informal resolution procedure. The Department Director/ Division

Supervising Manager shall further consider and discuss the grievance with the member and/or the member's representative, and shall, within ten (10) business days of having received the written grievance, submit a response in writing to the member.

5. Formal Grievance Appeal

If the written response does not result in a resolution of the grievance, the member may appeal the formal grievance by presenting it to the ~~member's~~ Department Human Resources Director or his/her designee within ten (10) business days of receipt of the written response to the formal grievance. The ~~Department Human Resources~~ Director or his/her designee may investigate the grievance and may set a meeting with the member, the member's designated representative and such other persons as deemed appropriate to consider the grievance. Within ten (10) business days of the meeting, the ~~Department Human Resources~~ Director or his/her designee shall submit a response to the grievance to the member and the member's representative.

6. Administrative Appeal of a Formal Grievance

If the response by the ~~Department Human Resources~~ Director or his/her designee does not result in resolution of the formal grievance, the member may appeal the grievance to the City Manager's Office within ten (10) business days of the member's receipt of the ~~Department Human Resources~~ Director's or his/her designee's response. The City Manager may set a meeting with the member, the member's designated representative, and such other persons as deemed appropriate to consider the grievance. Within twenty-one (21) business days of receipt of the formal grievance, the City Manager will submit a response to the member and the member's representative.

ARTICLE 11 Discipline

1. Definition of Disciplinary Action

A "Disciplinary Action" is any suspension, demotion, or discharge of regular non-probationary members taken for disciplinary reasons.

2. Pre-Deprivation Due Process - Notice of Intent

Within ten (10) working days of receipt of a notice of intent to impose disciplinary action, a member may respond orally or in writing. The member may also request a meeting with the person proposing the disciplinary action.

In accordance with state law, the notice of intent shall include, at a minimum, the notice of the proposed action, the reasons therefore, a copy of the charges and materials upon which the action is based, and the right to respond orally or in writing, to the authority initially imposing discipline.

3. Post Deprivation Due Process - Advisory Arbitration

Within ten (10) working days of the receipt of a notice imposing a disciplinary action, a member may file an appeal to advisory arbitration.

The parties, or their designated representatives, in good faith shall attempt to agree on an arbitrator. If they are unable to agree on an arbitrator within a reasonable time, either party may request the State Mediation and Conciliation Service to submit a list of seven (7) arbitrators. The parties shall select the arbitrator by alternately striking names from a list until one name remains. Such person shall then become the arbitrator.

The arbitrator so selected shall hold a hearing as expeditiously as possible at a time and place convenient to the parties, and shall be bound by the following:

- A. The relevant MOU language and applicable City rules and regulations,
- B. The precise issue(s) submitted, including what is the remedy, and
- C. Federal, State and local law.

The arbitrator may not recommend changes in established wages or benefits, nor recommend the payment of back wages or benefits to a date prior to ten working days before the notice of intent was issued and/or the member was placed on administrative leave, whichever is earlier.

The arbitrator shall issue a decision within thirty (30) calendar days unless additional time is granted by the parties. The decision shall be submitted to the City Manager with copies to all parties. The City Manager may adopt, reject, or modify the arbitrator's decision. The City Manager's determination shall be rendered in writing within twenty-one (21) calendar days of receipt of the arbitrator's decision. The City Manager's determination constitutes a final administrative action by the City subject to judicial review pursuant to Code of Civil Procedure §1094.5.

If the employee is represented by an Association, the cost of the arbitrator shall be borne equally by the parties. If the employee is not represented by an Association, the arbitrator's charges shall be borne by the City.

ARTICLE 12 Reduction in Force

1. Definitions

For purposes of this Article, "City Length of Service" is defined as the member's total continuous service in regular City employment.

2. Impact Bargaining

The City shall promptly notify the Association of the proposed RIF and extend meaningful opportunity for the Association to meet and confer over the negotiable effects of the proposed action.

3. Procedure

The City shall identify those classifications within departments to be reduced.

4. Notification

All members to be laid off shall be given written notice no less than thirty (30) calendar days before the effective date of the layoff.

The written notice shall specify the member's displacement (bumping) rights, if any, as well as state the member's reinstatement and/or reemployment rights.

5. Order

Once the classifications to be reduced have been identified, the City shall determine the employee(s) in the identified classification(s) to be laid off in the following order, if there is more than one (1) employee in a classification designated for layoff:

- A. Employees who are temporary
- B. Employees in limited-term positions in reverse order of their City Length of Service
- C. Employees serving an initial probationary period with the least continuous City Length of Service.
- D. Employees serving a promotional probationary period with the least continuous City Length of Service.
- E. Employees with the least continuous City Length of Service.
- F. If there are two (2) or more employees who have identical continuous City Length of Service, their order of layoff shall be randomly determined by the City.

6. Displacement Rights

Members who are designated to be laid off and have previously held regular status in another classification may displace members occupying positions in the previously held classification provided that the member exercising the displacement privilege has greater continuous City Length of Service than the member currently in the classification to which the member is seeking a position.

If the member did not complete a probationary period in the previously held classification, then no displacement rights accrue to that member for that classification.

Conditions which affect displacement rights are as follows:

- A. A member's displacement rights shall be calculated to each previously held classification in reverse of the order in which the member was employed until a displacement right is determined or the City determines that no displacement right exists. A member does not have displacement rights to a classification if the employee vacated the classification as a result of a disciplinary action.
- B. The member exercising the displacement right will displace members in previously held classifications in the same order as specified herein.
- C. A member must exercise the member's displacement right within nine (9) working days after receipt of the notice of layoff, by written request to the City. If the displacement right is not exercised within the specified time period, the right is forfeited.

7. Demotion in lieu of Displacement

- A. Upon request of a member and with the City's approval, a regular full time member, not in a probationary status, may be permitted to demote into a vacant authorized position within this bargaining unit, only if the City establishes that the member meets all the requirements of the classification.
- B. All members who are demoted within this bargaining unit will be paid at the same base wages as prior to demotion, if, and only if, the base wage is within the salary range of the classification that the member occupies after the demotion. If this is not the case, the base wage to be paid shall be within the salary range of the demoted to classification which is closest to the member's base wage prior to demotion.
- C. Any member subject to a demotion who has not previously completed the probationary period in the classification to which the member is demoted shall serve the applicable probationary period without credit for the earlier service in classification.

8. Transfer

- A. The City may transfer a regular member in non-probationary status to a vacant authorized classification within this bargaining unit if the City has established that the member is qualified and technically capable of

performing the duties of the classification.

- B. A member who is transferred will be paid base wages equal to the member's base wages prior to transfer. Any such member who does not accept a transfer within five (5) working days after notice of transfer is given will have forfeited the member's ability to transfer to that classification.
- C. Any member subject to a transfer who has not previously completed the probationary period in the classification to which the member is transferred shall serve the applicable probationary period without credit for the earlier service in classification.

9. Reinstatement

A member who is demoted as a result of a reduction in force shall have the member's name placed on a classification reinstatement list, in the order of the City Length of Service. Vacant positions within a classification shall be first offered to members on this reinstatement list.

10. Reemployment

A member who has been laid off shall have the member's name placed on a reemployment list for classifications in which the member previously held and for classifications at the same or lower salary range for which the member qualifies in the order of the City Length of Service.

Vacant positions in such classifications will be offered to members on the reemployment list after members on the reinstatement list have been reinstated, and prior to an open or promotional recruitment to fill vacant positions in that classification.

11. Duration of Lists

The member's name shall remain on the reinstatement list and reemployment list for a period of two (2) years from the date of demotion or layoff.

A member not responding to written notification of an opening within nine (9) working days shall have the member's name removed from either the reemployment list or reinstatement list.

12. Restoration of Benefits

A member will have the following benefits restored if re-employed by the City within 2 years of separation due to a reduction in force:

- A. Seniority at time of layoff for purposes of determining step increases, vacation leave accrual, and future layoff priority.
- B. Base wages paid to a member who is reemployed in the same classification he/she held at time of layoff shall be the base wages then in effect for the salary range and step the member held at the time of layoff. If the member chooses to be reemployed in a classification which has a salary range lower than the classification from which the member was laid off, then the base wages shall be those at the step in the lower salary range that is closest to the member's base wages immediately prior to layoff, then the member shall receive the maximum base wages provided in such salary range.

13. No Credit for Earlier Service in Classification

Under any circumstances, a member subject to a demotion or transfer who has not previously completed the probationary period in the classification to which the member is demoted or transferred shall serve the applicable probationary period for the classification to which the member is demoted or transferred without credit for the earlier service in the member's prior classification.

14. Severance

Members who are laid off will be offered the following severance package:

- A. One (1) week of salary for each year of service, plus one additional week with a maximum benefit of thirteen (13) weeks of salary. A partial year of service will be rounded up to the next whole year.
- B. Six (6) months of the average monthly Cafeteria Payment provided to all employees, to allow for continuation of health insurance coverage.
- C. One (1) month of access to professional outplacement services.

ARTICLE 13 Resignation

1. Advance Notice

A member may resign from City service at any time. A member resigning from City service, however, shall give a minimum of two (2) weeks' notice to the member's Department Director/ Division Supervising Manager in order to enable City to make proper provisions for filling the member's position. This notice period may be shortened by mutual agreement between the member and the City. If the member fails to provide at least two (2) weeks' notice and the parties have not mutually agreed to a shorter notice period, the City may enter a notation of that fact in the member's personnel file.

2. Forfeiture of Privileges

Upon resignation, the member shall forfeit all seniority and employment privileges allowed by this MOU and applicable City policies. Any person resigning may, at the discretion of the City Manager, be reinstated in accordance with Section 3.

3. Reinstatement

A member who has resigned from City service in good standing (i.e. not under threat of termination) may apply for reinstatement within one year by means of a written request. If ~~in~~ the City Manager approves reinstatement, the applicant may be reemployed in the same job classification as occupied upon resignation.

ARTICLE 14 Outside Employment

1. Purpose

The purpose of this Article is to regulate the practice of employment other than City employment (outside employment) by members, particularly where there is a potential that such employment would impair a member's ability to perform the member's City duties.

2. Prohibiting Conditions

Members are prohibited from holding employment or occupations other than City service when the following conditions may result:

- A. The employment or occupation has the potential for interfering with satisfactory service due to physical or mental fatigue; or
- B. The other-than-City employment or occupation is deemed by the City Manager to be inconsistent with or detrimental to City service.

3. Authorization

A written request on the designated City form duly completed must be provided by the employee to the Department Director for approval of any other-than-City employment. Such employment may not be undertaken without prior written approval of the Department Director of such request.

4. Limitation

In no event shall other-than-City employment exceed twenty (20) hours per week.

5. Order to Cease Working

A Department Director may order an employee to cease other-than-City employment if the employment violates any of the provisions of this Article.

ARTICLE 15 No Strikes

1. The Association, its officers, agents, representatives, and/or members agree that during the term of this Agreement, they will not cause or condone any unlawful strike, walkout, slowdown, sick-out, or any other unlawful job action by withholding or refusing to perform services.
2. Any employee who participates in any conduct prohibited in Section 1 above shall be subject to termination by the City.
3. In addition to any other lawful remedies or disciplinary actions available to the City, if the Association fails, in good faith, to perform all responsibilities listed below in Section 1, above, the City may suspend any and all of the rights, privileges, accorded to the Association under the Employer-Employee Relations Resolution in this MOU, including but not limited to suspension of the Grievance Procedure and dues deduction.
4. In the event that the Association, its officers, agents, representatives, or members engage in any of the conduct prohibited in Section 1, above, the Association shall immediately instruct any persons engaging in such conduct that their conduct is in violation of this MOU and unlawful, and they must immediately cease engaging in conduct prohibited in Section 1 above, and return to work.

ARTICLE 16 City Rights

1. The City reserves, retains, and is vested with, solely and exclusively, all rights of management which have not been expressly abridged by specific provisions of this MOU or by law to manage the City, as such rights existed prior to the execution of this MOU. The City may exercise its management rights unilaterally without the obligation to meet and confer on the decision to exercise such rights. However the City shall meet and confer on the impact thereof pursuant to Section 2 of this Article. The sole and exclusive rights of management, as they are not abridged by this MOU or by law shall include, but not be limited to, the following rights:
 - A. To manage the City generally and to determine the issues of policy;
 - B. To determine the existence or nonexistence of facts which are the basis of the management decision;
 - C. To determine the necessity of organization of any service or activity conducted by the City and expand or diminish services;
 - D. To determine the nature, manner, means and technology and extent of services to be provided to the public;
 - E. Methods of financing;
 - F. Types of equipment or technology to be used;

- G. To determine and/or change the facilities, methods, technological means, and size of the work force by which the City operations are to be conducted;
 - H. To determine and change the number of locations, relocations and type of operations, processes and materials to be used in carrying out all City functions including, but not limited to, the right to contract or subcontract any work or operation of the City to the extent permitted by law;
 - I. To assign work to and schedule employees in accordance with requirements as determined by the City and to establish and change work schedules and assignments upon reasonable notice;
 - J. To establish and modify productivity and performance program and standards;
 - K. To relieve employees from duties for lack of work, or funds, or similar non-disciplinary reasons;
 - L. To discharge, suspend, demote, or otherwise discipline classified non at will employees for proper cause;
 - M. To determine job classification and to reclassify employees;
 - N. To hire, transfer, promote and demote employees for non-disciplinary reasons;
 - O. To determine and administer policies, procedures and standards for selection, training, and promotion of employees;
 - P. To establish employee performance standards including, but not limited to, qualification and quantity standards and to require compliance therewith;
 - Q. To maintain order and efficiency in its facilities and operations;
 - R. To establish and promulgate and/or modify Rules and Regulations to maintain order and safety in the City which are not in contravention with this MOU;
 - S. To take any and all necessary action to carry out the mission of the City in emergencies.
2. Except in emergencies, or where the City is required to make changes in its operations because of the requirements by law, whenever the exercise of management's rights shall impact on employees of the Association, the City agrees to meet and confer with representatives of the Association regarding the impact of the exercise of such rights. By agreeing to meet and confer with the Association as to the impact of the exercise of any of the foregoing City rights, management's discretion in the exercise of these rights shall not be diminished.

ARTICLE 17 Association Rights

- 1. Release Time for Representatives

City agrees that association representatives have the right to paid release time for the time spent representing a member under the grievance procedure and the disciplinary action procedure herein subject to the following:

- A. Association may designate up to eight (8) members as Representatives and shall in writing notify the City Manager and Human Resources Director of such designations. City has no obligation to change or adjust normal program scheduling or assignments of members as a result of such designations.
- B. One such designated representative may, without loss of pay or benefits, attend mutually scheduled grievance or disciplinary action meetings and hearings with Department Directors or other non-bargaining association management staff; gather information; or interview the subject member or witnesses. Attendance is subject to permission of the representative's Manager. Denial of attendance at meetings, hearings, or other member related activities shall be based upon operational needs and shall not unreasonably be denied.

C. Up to eight (8) such designated representatives may, without loss of pay or benefits, attend meet and confer sessions related to negotiations of successor MOUs and any other meet and confer sessions regarding proposed changes in terms and conditions of employment. Requests for release time under this paragraph shall not be unreasonably denied and such denial shall be based upon operational needs.

~~C.D.~~ Representatives and/or officers, with immediate supervisor approval, may leave to attend employer-employee relations seminars. Such approval shall not be unreasonably denied. The representatives and/or officers may elect to use accrued leave to be paid for the absence.

2. Job Classifications

The City shall provide to OMMA representatives:

- (i) Written notice related to new job classifications, or modifications to existing job classifications, including any changes to salary ranges, class specifications, or job descriptions; and
- (ii) An opportunity to request meet and confer over such changes, and good faith negotiations within a reasonable time period thereafter;

Each to the extent required under the Meyers Milias Brown Act.

3. Association Security

- A. All Unit employees who ~~on the effective date of the MOU~~ are employed in classifications set forth on Attachment B on the effective date of the MOU who are members of OMMA and all such employees who thereafter voluntarily become members of OMMA shall maintain their membership in OMMA, subject to the right to resign from membership during the period thirty (30) days prior to the expiration of this MOU and to pay a representation service fee in lieu of membership.
- B. All Unit employees who are employed in classifications set forth on Attachment B and who are not current members of the OMMA on the effective date of the MOU, and those who choose not to become members of OMMA after the effective date of this MOU, shall be required to pay to OMMA a representation service fee. The representation service fee represents the employee's proportionate share of OMMA's cost of legally authorized representation services on behalf of Unit employees in their labor relations with the City.
- Such representation service fee shall in no event exceed the regular, periodic membership dues paid by Unit employees who are members of OMMA. OMMA shall provide affected Unit employees with the financial information required by applicable law. ~~Unit~~ employees who are employed in represented classifications other than those listed in Attachment B shall not be required to pay the representation service fee, consistent with section 3502.5(e) of the California Government Code.
- C. Pursuant to Government Code Section 3502.5, any employee who is a member of a bona fide religion, body or sect that has historically held conscientious objections to joining or financially supporting public employee organizations shall not be required to join or financially support OMMA, but must, in lieu of dues or agency shop fees, pay a sum equal to the agency shop fee to one of the following non-religious, non-labor charitable organizations: United Way, American Cancer Society, American Red Cross.
- D. If an employee is on leave without pay, no agency fee deduction shall be made for that period.
- E. The representation service fee arrangement provided by this section may be rescinded by majority vote of all employees represented by OMMA provided that:
- a) A request for such vote is supported by petition containing the signatures of at least thirty percent (30%) of the employees represented by OMMA.
 - b) In no event shall there be more than one vote taken during any open contract year. The sufficiency of petitions shall be determined, and the election conducted by the State Conciliation Service.

F. OMMA agrees that it has a duty to provide fair and non-discriminatory representation to all employees in this bargaining unit, regardless of their status as members or agency fee payers. OMMA shall make available to Unit employees required to pay a representation service fee under this section, at its expense, an escrow and administrative appeals procedure for challenging the amount of that fee in compliance with the requirements of applicable law.

G. OMMA agrees to fully indemnify the City and its officers, employees and agents against any and all claims, proceedings and liability arising, directly or indirectly, out of any actions taken by or on behalf of the City under this section.

H. Association Sponsored Deductions:

In the event OMMA wishes to utilize a new payroll deduction code for an Association sponsored activity, OMMA shall make a request of the Payroll Division. Existing codes and changes shall be processed without cost to the Association. Activating new codes is subject to availability and may require a cost to OMMA. The City and OMMA agree that both parties shall be saved, indemnified, and held harmless from any liability due to errors and omissions arising out of the other party's use of the OMMA sponsored deductions codes.

2.4. List of Members

Upon request, not to exceed once each calendar quarter, the City shall provide association with a list of members, their membership status, their address and telephone number, their classifications and departments, and updates as to transfers, promotions, new City employees, and separations from service within the Association.

The City shall notify the Association of all new appointments of persons to the bargaining unit, whether said appointment or assignment is on a permanent basis or on an interim or other temporary or non-permanent basis. Notice shall be as soon as reasonably practicable, but not to exceed sixty (60) days from the date of appointment.

3.5. Payroll Deductions & Membership Dues

- A. Members may execute a written authorization for dues deduction. City shall deduct dues from their paychecks and transmit promptly those dues to the Association.
- B. City shall deduct from the biweekly paycheck of members the regular periodic membership dues (as certified in writing to the City Manager by an authorized official of association), and the cost of regular periodic association-sponsored benefits or other voluntary deductions, pursuant to receipt of the City's deduction authorization form, duly completed

and signed by the members. City shall transmit such deductions biweekly to the association.

- C. Dues deductions shall be made only when the association member's earnings for a pay period are sufficient after other legally required deductions are made.
- D. City and Association agree that City assumes no liability on account of any actions taken or not taken pursuant to this section.

4.6. Meeting Locations

- A. Upon request, City may provide association with a location for a meeting to occur outside working hours of the attendees, provided the space is available and association complies with all City and department rules, policies, and directions.
- B. Meetings shall not interfere with City operations. Requests for use of City facilities will be made in advance to the City Manager or designee, and will indicate the date, time and general purpose of the meeting for which the facilities are being requested.
- C. Association understands and agrees that the City Manager or designee may deny the request when the purpose of the meeting makes such use inappropriate.

5.7. Distribution of Association Materials

A. Bulletin Boards

City agrees that association may use designated bulletin boards or portions of boards in each work location in which members work. City and association shall jointly identify bulletin board space. Posted materials may include notices of association meetings, association news, and appointments and results of elections or ratification votes.

A copy of all material to be displayed upon bulletin board shall be provided to the Director of Human Resources upon request. If the Director objects to the material, the Director shall notify association staff. In such event, the materials shall not be placed on the bulletin board, based upon the Director's objections. Association is responsible for posting and removal of material on the designated bulletin board and for the neat and orderly maintenance thereof.

B. City Email

Association shall, with the approval of the City Manager or designee, have the use of the City email for the purpose of communication of association business including, but not limited to, scheduling joint meetings and appointments and informing members of possible tentative agreements.

ARTICLE 18 Employee Rights

1. Review of Personnel Actions

Employees shall have the opportunity to review their performance evaluations with their Manager. If, after review, the employee disagrees with the Manager's assessment, the employee may provide a written response within thirty (30) days of the meeting, explaining the difference of fact or opinion. The employee's response shall then be attached to the performance evaluation.

2. Personnel File Inspection

A member shall have the right to inspect the contents of the member's personnel file, or may designate in writing a representative to inspect the member's file.

3. Non-Interference in Administrative Affairs.

Except to respond to inquiries, a member shall not be required to carry out orders directly from a City Councilmember. Instead, the member must consult and follow the direction of the City Manager or department head. All communications from Council members about the administration of the City must only be made through the City Manager. A member shall be free from coercion or influence by a City Councilmember in respect to any contract, purchase of supplies or any other administrative action.

ARTICLE 19 Miscellaneous Terms

1. Personnel Rules & Regulations

The City's Personnel Rules and Regulations are available from the City's Human Resources Department. Where the Personnel Rules and Regulations are inconsistent with this MOU, the terms of this MOU shall govern. The City agrees to meet and confer with the Association over any proposed changes to the Personnel Rules and Regulations which pertain to wages, hours, and other terms and conditions of employment, as required by the MMBA. This MOU incorporates by reference the City's Personnel Rules & Regulations, except insofar as it is superseded specifically by this MOU. Any inconsistency between the Personnel Rules & Regulations and this MOU shall be interpreted in favor of this MOU.

2. Administrative Manual

The City's Administrative Manual is available from the City's Human Resources Department. Where the Administrative Manual is inconsistent with this MOU, the terms of this MOU shall govern. The City agrees to meet and confer with the Association over any proposed changes to the Administrative Manual which pertain to wages, hours, and other terms and conditions of employment, as required by the MMBA. This MOU incorporates by reference the City's Administrative Manual, except insofar as it is superseded specifically by this MOU. Any inconsistency between the Admin Manual and this MOU shall be interpreted in favor of this MOU.

3. Prior Documents

This MOU contains all covenants, stipulations, and provisions agreed upon by the City and ~~the a~~ Association. It is intended to supersede all prior MOUs, ~~or~~ and any contrary provisions of the Administrative Manual and/or Personnel Rules & Regulations.

~~Any benefits contemplated by the Administrative Manual and/or Personnel Rules & Regulations, in addition to the benefits in the MOU, are incorporated by reference under section 2 and section 3 above.~~

4. No Meet and Confer Requirement

Except as expressly provided in this MOU, by law, or by mutual agreement, neither the City nor the association shall be required to meet and confer during the term of this MOU on subjects within the scope of representation.

Nothing in this MOU shall release the City from the meet and confer process as required by State law on issues not addressed in the MOU, or regarding matters subject to impact bargaining if requested by the association.

5. Complete Agreement

Except as otherwise specifically provided herein, this MOU fully and completely incorporates the understanding of the parties hereto. The parties agree that this MOU shall supersede the terms of all prior MOUs and other written agreements, if any. The parties retain the right to change the terms of this MOU by mutual agreement. This MOU constitutes the total and entire agreement between the City and association. No verbal statement shall supersede any of the MOU's provisions.

6. Savings Clause

If the implementation of any article or section of this MOU shall be frustrated on account of the operation of law or by any tribunal of competent jurisdiction, or if compliance with any article or section would be frustrated or restrained by such law or tribunal, the City and association shall, if possible, meet and confer for the purpose of endeavoring to agree on a replacement for such article or section.

7. Successor MOU

Either party shall notify the other, in writing, of its desire to negotiate a successor MOU. Within 7 days of receipt of notice, the parties and/or their representatives shall coordinate the scheduling of negotiation sessions. Both parties agree “writing” includes email communications. The City and association shall then commence meet and confer concerning modifications, additions revisions, and/or deletions proposed by the parties as are within the statutory scope of meet and confer and in accordance with State law and the Oxnard City Code.

Dated _____ of ~~February~~[insert month] ____, 2017~~5~~

For the City of Oxnard

For the Oxnard Mid Managers Association

Approved as to Form:

City Attorney

Attachment A**Represented Classifications**

<u>Classification Title</u>	<u>Class Code</u>	<u>Salary Range</u>
Accounting Manager	7208	M48
Assistant City Clerk	1402	M11
Assistant City Treasurer/Revenue Account Manager	7309	M48
Budget Manager	7210	M62
Chief Operator	20137	M32
City Surveyor	5110	M34
Code Compliance Manager	13240	M40
Communications Manager	14147	M36
Community Affairs Manager	14126	M38
Community Outreach & Prod. Spec.	2108	M22
Community Services Manager	15124	M29
Compliance Services Manager	9214	M29
Construction & Maintenance Engineer	17117	M66
Construction Project Manager	13227	M29
Controller	7211	M62
Cultural Arts Supervisor	2205	M11
CUPA Coordinator	14313	M44
Custodial Supervisor	6120	M14
Deputy Building Official	13247	M74
Deputy Housing Director	9160	M66
Design & Construction Services Manager	4542	M83
Development Services Manager	4518	M87
Disaster Preparedness Coordinator	14315	M44
Emergency Medical Services Coordinator	14312	M44
Environmental Resources/MRF Manager	16129	M87
Environmental Resources Supervisor	16122	M19
Facilities Maintenance Supervisor	6159	M19
Financial Analyst I	7126	M14
Financial Analyst II	7129	M22
Financial Analyst III	7132	M29
Financial Services Manager	7202	M48
Fleet Services Manager	17219	M44
Fleet Services Mechanic Supervisor	17212	M16
Fleet Services Operations Manager	17215	M19
Geographic Info Systems Coordinator	3113	M51

<u>Classification Title</u>	<u>Class Code</u>	<u>Salary Range</u>
Grants Coordinator	7134	M36
Homeless Assistance Program Coordinator	9150	M29
Housing Financial Officer	9160	M48
Housing Maintenance Superintendent	9123	M38
Housing Maintenance Supervisor	9121	M14
Housing Modernization Superintendent	9118	M38
Housing Program Supervisor	9132	M29
Housing Programs Manager	9208	M51
Housing Rehabilitation Program Manager	9202	M38
Laboratory Supervisor	20127	M26
Legislative Affairs Manager	1204	M40
Leisure and Recreation Supt	15126	M48
Library Circulation Supervisor	10116	M14
Library Services Supervisor	10127	M26
Maintenance Services Manager	4543	M85
Management Accountant/Auditor	7136	M29
Management Analyst I	1544	M14
Management Analyst II	1547	M22
Management Analyst III	1550	M29
Network Services Coordinator	3110	M14
Parks Maintenance Supervisor	15223	M14
Parks Manager	15230	M44
Planning & Environmental Services Manager	13119	M81
Police Finance & Grants Financial Manager	14118	M6248
Police Records Manager	14115	M40
Police Records Supervisor	14117	M11
Principal Planner	13114	M44
Project Manager	13230	M40
Public Information Officer	2125	M38
Public Safety Information Technician Manager	3111	M62
PW Construction Project Manager	13221	M38
Recreation Supervisor	15123	M19
Recycling Manager	16128	M36
Redevelopment Project Manager	4201	M40
Redevelopment Services Manager	4205	M74
Senior Planner	13111	M32
Special Asst. to the City Manager	1206	M66
Streets Manager	17115	M44

<u>Classification Title</u>	<u>Class Code</u>	<u>Salary Range</u>
Supervising Building Inspector	13210	M40
Supervising Civil Engineer	5136	M74
Systems Administrator	3103	M62
Systems Analyst I	3107	M29
Systems Analyst II	3109	M40
Systems Analyst III	3112	M51
Technical Services Manager	19149	M44
Traffic Engineer	18129	M59
Treasury Supervisor	7312	M11
Wastewater Collections Supervisor	19110	M14
Wastewater Maintenance Manager	19169	M32
Wastewater Maintenance Supervisor	19170	M19
Wastewater Operations Manager	19172	M32
Wastewater Operations Supervisor	19171	M19
Wastewater Superintendent	4541	M66
Water Resources Manager	20138	M66

Attachment B

Classifications Subject to Association Security Provision

- Assistant City Clerk
- Chief Operator
- City Surveyor
- Community Outreach & Prod. Spec.
- Construction & Maintenance Engineer
- Construction Project Manager
- Controller
- Cultural Arts Supervisor
- CUPA Coordinator
- Custodial Supervisor
- Deputy Building Official
- Disaster Preparedness Coordinator
- Emergency Medical Services Coordinator
- Environmental Resources Supervisor
- Facilities Maintenance Supervisor
- Financial Analyst I
- Financial Analyst II
- Financial Analyst III
- Fleet Services Mechanic Supervisor
- Geographic Info Systems Coordinator
- Grants Coordinator
- Homeless Assistance Program Coordinator
- Housing Maintenance Supervisor
- Housing Program Supervisor
- Housing Rehabilitation Program Manager
- Laboratory Supervisor
- Library Circulation Supervisor
- Library Services Supervisor
- Management Accountant/Auditor
- Management Analyst I
- Management Analyst II
- Management Analyst III
- Network Services Coordinator
- Parks Maintenance Supervisor
- Police Records Supervisor

- Principal Planner
- Project Manager
- Public Information Officer
- Recreation Supervisor
- Senior Planner
- Special Assistant to the City Manager
- Streets Manager
- Supervising Building Inspector
- Supervising Civil Engineer
- Systems Administrator
- Systems Analyst I
- Systems Analyst II
- Systems Analyst III
- Telecommunications Coordinator
- Traffic Engineer
- Treasury Supervisor
- Wastewater Collections Supervisor
- Wastewater Maintenance Supervisor
- Wastewater Operations Supervisor

Attachment 8 Exhibit A SEIU Side Letter

**City of Oxnard and SEIU
Letter of Agreement Amending MOU
May 1, 2017**

The City of Oxnard (the "City") and the Service Employees International Union CTW, CLC, Local 721 ("SEIU Local 721") have agreed to the following changes in terms and conditions of the current memorandum of understanding between the City and SEIU Local 721 (the "MOU"):

- 1) The following language shall be incorporated as Article 6(4)(e):

Effective September 30, 2019, all unit employees shall receive a one and one half percent (1.5%) increase in base wages.

- 2) Article 29(1)(a) of the MOU shall be amended as follows:

1. Designation of Holidays

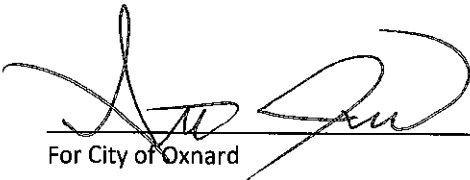
- a) City shall observe the following holidays:

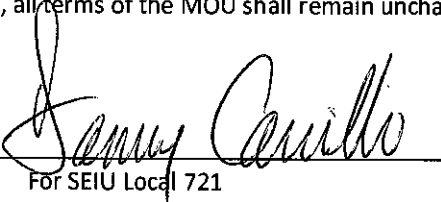
New Year's Day (January 1st)
 Martin Luther King's Day (the third Monday in January)
 Presidents' Day (the third Monday in February)
 Cesar Chavez Day
 Memorial Day (the last Monday in May)
 Independence Day (July 4th)
 Labor Day (the first Monday in September)
 Veterans' Day (November 11th)
 Thanksgiving Day (by Presidential proclamation, usually the fourth Thursday in November)
The day after Thanksgiving
 Christmas Eve (1/2 day)
 Christmas Day (December 25th)
 New Year's Eve (1/2 day)

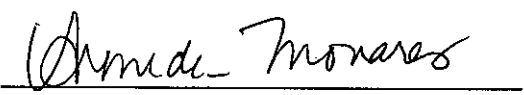
- 3) Article 39(1) shall be amended as follows:

This MOU shall be effective January 1, 2013, and shall remain in full force and effect through ~~June~~ September 30, 2019.

- 4) Except as modified by the terms of this Agreement, all terms of the MOU shall remain unchanged.


 For City of Oxnard


 For SEIU Local 721


 For SEIU Local 721

CITY COUNCIL OF THE CITY OF OXNARD
RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD ESTABLISHING
RULES FOR THE APPLICATION OF COMPENSATION RATES AND BENEFIT LEVELS
FOR UNREPRESENTED EXECUTIVE, UNREPRESENTED MID-MANAGEMENT AND
UNREPRESENTED CONFIDENTIAL EMPLOYEES THROUGH SEPTEMBER 2019

RESOLVED, by the City Council of the City of Oxnard, as follows:

Section I. Applicability

- A. General. The provisions of this Resolution shall be applicable to both classified and unclassified services of the City of Oxnard, provided, however, that if any provisions of a Memorandum of Understanding or employment contract adopted and approved by the City Council under chapter 3, Article II, sections 3-50 and 3-76 of the Code of the City of Oxnard, California (the "City Code") and currently in effect are clearly and specifically in conflict with any rule contained in this resolution, the provision in such Memorandum of Understanding or employment contract shall prevail.

- B. Council Authority Necessary to Amend Resolution. Any exception to these provisions must be authorized by the City Council prior to the action, or in the case of a bona fide emergency, at the next scheduled City Council meeting following the action. Actions are submitted through the agenda process by the City Manager or the Human Resources Director, as applicable, in open session or through the City Attorney in closed session as permitted under the Brown Act and ultimately placed on the City Council's open agenda prior to final approval. California Constitution Article XI incorporates the concept derived from principles of public accountability that government employees should not be paid for time not worked, for services not performed or authorized due to the need to be accountable to the taxpayers for the expenditure of public funds. (Contravention of this provision is referred to as a "gift of public funds.") Therefore, the City, as a subdivision of the State, must abide by the provisions of this Section in its compensation policies and practices.

- C. Unrepresented Employees. Sections III through XII of this Resolution apply only to Unrepresented Executive Employees, Unrepresented Mid-Management Employees, Unrepresented Confidential Employees and/or all other positions not represented by any recognized employee organization. "Unrepresented Executive Employee(s)" shall have the same meaning as the term "Employee, Management" in chapter 3, Article II sections 3-37(E) and 3-63(E) of the City Code. "Unrepresented Confidential Employee(s)" shall have the same meaning as the term "Employee, Confidential" in chapter 3, Article II sections 3-37(D) and 3-63(D) of the City Code. "Unrepresented Mid-Management Employee(s)" shall be defined as employees falling within the definition of "Unrepresented Confidential Employee(s)" whose job classifications are listed on Exhibit 2 to this Resolution. The term "employees" as used in Sections III through XII of this Resolution shall be defined to include Unrepresented Confidential Employees, Unrepresented Mid-Management Employees and Unrepresented Executive Employees.

Section II. Hours of Work

A. Core Business Hours

- i. The City's core business hours are 9:00 a.m. to 5:00 p.m., Monday through Friday, with City offices being closed on alternating Fridays. Employees who work in departments with 24-hour operations shall be excluded from this section. Employees subject to this section are expected to be on-site during core business hours, regardless of their status as exempt or non-exempt employees.

B. Work Schedules

- i. The City work schedules include 3/12, 4/10, and 9/80. The City shall establish and modify work schedules for all employees based on operational necessity to provide services to the public.

- C. Full time employees are employees who are regularly scheduled to work forty (40) hours per workweek. Part time employees are employees who are regularly scheduled to work less than forty (40) hours per workweek.

Section III. Salaries

- A. Salary ranges for Unrepresented Confidential Employees, Unrepresented Mid-Management Employees, and Unrepresented Executive Employees are set forth on Exhibits 1, 2 and 3 respectively. The rates in Exhibit 1 are listed in dollars per hour. The rates in Exhibits 2 and 3 are listed in dollars per hour, as well as bi-weekly, monthly and annual rates.

- i. Effective the first full pay period following adoption of this Resolution by the City Council, Unrepresented Confidential Employees, Unrepresented Confidential Mid-Management Employees and Unrepresented Executive Employees shall receive a two percent (2.0%) increase in base wages.
- ii. Effective the first full pay period following January 1, 2018, Unrepresented Confidential Employees, Unrepresented Confidential Mid-Management Employees and Unrepresented Executive Employees shall receive a two percent (2.0%) increase in base wages.
- iii. Effective the first full pay period following July 1, 2018, Unrepresented Confidential Employees, Unrepresented Confidential Mid-Management Employees and Unrepresented Executive Employees shall receive a two percent (2.0%) increase in base wages.
- iv. Effective the first full pay period following July 1, 2019, Unrepresented Confidential Employees, Unrepresented Confidential Mid-Management Employees and Unrepresented Executive Employees shall receive a three percent (3.0%) increase in base wages.

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- v. Effective September 30, 2019, Unrepresented Confidential Employees, Unrepresented Confidential Mid-Management Employees and Unrepresented Executive Employees shall receive a one and one half percent (1.5%) increase in base wages.

B. Salary ranges for represented employee groups are listed in their respective memoranda of understanding.

C. Wages for Temporary and Part-Time Employees

- i. Temporary and part-time employees shall be paid on an hourly basis for hours actually worked, subject to the provisions of section III.E and/or the Fair Labor Standards Act, which provides for overtime compensation for hours worked in excess of forty (40) per workweek.
- ii. Unrepresented temporary and/or part-time employees who are employed in classifications that are represented shall be paid on the same salary scale as listed for the represented employee in the same class.
- iii. Any such employee in a class having a monthly salary rate shall be paid an hourly rate that is converted from the monthly salary for that class.

D. Pay Periods

- i. Each pay period shall cover fourteen (14) consecutive calendar days and there shall be twenty-six pay periods per calendar year.

E. Exempt Employees

- i. Employees in classes that have been deemed "exempt" shall not be entitled to payment or compensatory time off for overtime as provided for in the rules and regulations of the Fair Labor Standards Act.
- ii. In accordance with the rules and regulations of the Fair Labor Standards Act, the base salary of exempt employees shall not be reduced due to variations in the quality or quantity of the work performed. Any reduction in wages that are a result of discipline will comply with the Fair Labor Standards Act.
- iii. Employees exempt from overtime are subject to the requirements related to recording of time worked and time spent on paid leave.

F. Merit Increases

- i. Effective beginning January 2018, Unrepresented Confidential Mid-Management Employees and Unrepresented Executive Employees who receive a satisfactory performance evaluation during the preceding calendar year will be eligible for a merit increase of not less than three percent (3.0%) within that employee's salary range. Notwithstanding the foregoing, if an employee is less than three percent (3.0%) from the top of the range, the increase shall be to the top of the salary range.

- ii. When the City Manager determines that an Unrepresented Confidential Mid-Management Employee or an Unrepresented Executive Employee has demonstrated an exceptional level of job performance and efficiency, the City Manager may grant a merit increase in excess of three percent (3.0%). Such an increase must be based upon the applicable Department Director's recommendation for Unrepresented Confidential Mid-Management Employees. No merit increase shall cause an employee's salary to exceed the top of the salary matrix established for the classification. No advancement shall be given to any member whose most recent performance evaluation rating was "unsatisfactory." or "needs improvement."
- iii. Eligible employees will receive their annual merit increase effective the first full pay period of January. Newly hired employees or employees who promote into the bargaining unit during the preceding calendar year will have their merit increase pro-rated based on their service during the calendar year (for example, an eligible employee with six months of service in a classification in calendar year 2018 will receive not less than a 1.5% merit increase in January 2019.)

G. Salary Upon Employment

- i. When an appointment is made to a budgeted position, the starting pay will normally be the minimum rate set forth in the applicable salary range and advancement to rates greater than the minimum rate shall be within the limits of the salary range for the applicable classification.
- ii. In exceptional cases after reasonable effort has been made to obtain employees for a particular class at the minimum rate, employment of individuals who possess special qualifications higher than the minimum qualifications prescribed for the particular class may be authorized at a higher rate than the minimum upon recommendation from the Department Head with the approval of the City Manager. In no event shall an individual's salary rate exceed the maximum limit of the salary range for the applicable classification.

H. Salary Upon Reinstatement Following Voluntary Separation

- i. An Unrepresented Confidential Employee or an Unrepresented Mid-Management Employee who has resigned from City service in good standing may apply for reinstatement within one year of his or her resignation to the position he or she left, if vacant, by means of a written request. If the City Manager approves reinstatement, the applicant may be reemployed in the same job classification as occupied upon resignation at the same or in a lower salary range as paid at the time of resignation. Such employee will have no other rights, privileges, or benefits accrued by him/her in his/her previous employment. This section will not apply to reinstatement after military service.
- ii. This provision shall not apply to Unrepresented Executive Employees or any other employee who is employed on an "at will" basis.

I. Salary and Benefits Upon Restoration or Reemployment Following Reduction in Force

- i. An Unrepresented Confidential Employee or an Unrepresented Mid-Management Employee who is demoted as a result of a reduction in force shall have the employee's name placed on a classification reinstatement list, in the order of the City Length of Service. Vacant positions within a classification shall be first offered to employees on this reinstatement list.

An Unrepresented Confidential Employee or an Unrepresented Mid-Management Employee who has been laid off shall have his or her name placed on a reemployment list for classifications in which the employee previously held and for classifications at the same or lower salary range for which the employee qualifies in the order of the City Length of Service. Vacant positions in such classifications will be offered to employees on the reemployment list after employees on the reinstatement list have been reinstated, and prior to an open or promotional recruitment to fill vacant positions in that classification.

- ii. Upon reemployment following a layoff due to a reduction in force, an individual will have the following benefits restored:
 - a. Seniority at time of layoff for purposes of determining step increases, annual leave accrual and future layoff priority.
 - b. Base wages paid to an employee who is reemployed in the same classification he/she held at time of layoff shall be the base wages then in effect for the salary range and step the employee held at the time of layoff. If the employee chooses to be reemployed in a classification which has a salary range lower than the classification from which he/she was laid off, then the base wages shall be those at the step in the lower salary range that is closest to his/her base wages immediately prior to layoff, then the employee shall receive the maximum base wages provided in such salary range.
- iii. This provision shall not apply to Unrepresented Executive Employees or any other employee who is employed on an "at will" basis.

J. Duration of Lists

- i. The name of an Unrepresented Confidential Employee or an Unrepresented Mid-Management Employee shall remain on the reinstatement list and reemployment list for a period of two (2) years from the date of demotion or layoff. Such an employee who does responding to written notification of an opening within nine (9) working days shall have the employee's name removed from either the reemployment list or reinstatement list.
- ii. This provision shall not apply to Unrepresented Executive Employees or any other employee who is employed on an "at will" basis.

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K. Salary Upon Promotion

- i. The beginning base wage for promotions shall be the next highest step on the applicable step range or, shall place the employee at the bottom of the range of the position into which the employee is promoted.

L. Salary Upon Temporary Promotion

- i. A qualified employee, as determined and approved by the Director of Human Resources, may be assigned to a higher classification to fill a vacancy caused by an approved leave of absence or any other valid vacancy.
- ii. Upon temporary promotion, an employee will receive either the minimum of the new pay/salary range or ten percent (10%) over their present rate of pay, whichever is greater and which will not exceed the new pay/salary range maximum. The change in pay/salary related to the promotion shall be effective at the start of the first full pay period following such promotion. The temporarily promoted employee shall not receive any other benefit assigned to the higher classification that they are not already receiving.

M. Interim/Acting Department Head Assignment Pay

- i. An employee who has been designated by the City Manager as Interim/Acting Department Head shall vacate the current classification and assume the higher classification for the duration of the assignment, and shall receive an assignment pay of ten percent (10%) above his/her present rate of pay. In no case shall such pay/salary adjustment place the employee beyond the pay/salary range of the position to which they have been temporarily promoted.

The change in pay/salary related to the assignment of Interim/Acting Department Head shall be effective at the start of the first full pay period following such assignment by the City Manager. The Interim/Acting Department Head shall not receive any other benefit assigned to the higher classification that they are not already receiving.

N. Automobile Allowance

- i. Employees holding top management positions will be provided a biweekly automobile allowance as follows:

a. Assistant City Manager	\$184.62
b. Department Head:	\$161.54
- ii. Eligible employees who receive approval to use a City vehicle instead of receiving an automobile allowance shall have computations of other benefits/compensation calculated as if they received an allowance.

- iii. Mileage reimbursement for local in County travel will not be reimbursed if the employee receives a car allowance. Mileage reimbursement shall be approved for out of area business travel at a rate equivalent to the standard mileage rate established by proclamation of the Internal Revenue Service.

Section IV. Overtime and Compensatory Time Off for Unrepresented Confidential Employees

- A. Unrepresented Confidential Employees who are not designated as "exempt" for purposes of the Fair Labor Standards Act shall be eligible to receive overtime payment if an employee is required by his or her supervisor to work in excess of forty (40) hours in a single FLSA work period. Overtime compensation shall be paid at one-and-one half times his or her regular rate of pay, which includes base wages, bilingual pay, longevity pay, confidential pay and educational incentive pay, as applicable.
- B. Unrepresented Confidential Employees who are not designated as "exempt" for purposes of the Fair Labor Standards Act may elect to receive compensatory time off in lieu of payment for overtime worked. Such employees shall accrue compensatory time off at the rate of one and one half hours for each overtime hour worked, up to a maximum accumulation of eighty (80) hours. The request for compensatory time off in lieu of payment for overtime worked shall be made at the time the overtime is worked. The City shall automatically cash out any compensatory time off accruals in excess of eighty (80) hours during the month of July.

Section V. Other Compensation Provisions

A. Mileage for Travel Outside City Limits

- i. When employees are required by City to use their personal vehicle to perform their assigned duties for City, and they so utilize their own vehicles in traveling directly and uninterruptedly from one assigned work location to another assigned work location, at least one of which is located outside of the City limits, City shall compensate the employee. Employees shall make claims for mileage compensation that are consistent with current IRS rates on City designated forms.

B. Confidential Pay

- i. Unrepresented Confidential Employees shall be entitled to a specialty pay equal to 5% of their base wages.

C. Bilingual Pay

- i. Rate of Bilingual Pay
 - a. A regular, full-time Unrepresented Confidential Employee may receive bilingual pay at the rate of twenty dollars (\$20.00) biweekly to the extent the employee is required to provide bilingual services as determined by the City Manager or designee.
- ii. Conditions for Receipt

- a. Bilingual pay shall be paid subject to the employee satisfying the following conditions:
 1. The employee's position has been designated by the City Manager or designee as one qualifying for bilingual pay on the basis that:
 - i. The predominant and primary focus of the position is to communicate in person or by telephone with members of the public in connection with providing City services and the employee on a regular ongoing basis in the course of carrying out usual job duties, is called upon to utilize a language other than English in communicating with the members of the public, or
 - ii. On a regular, daily basis the employee is called upon by the City to provide a language other than English interpretation or translation services for other City employees in connection with the performance of the usual job duties of such other employees; or
 - iii. The employee is determined by the City Manager or designee to be fluent in a language other than English and the employee possesses and displays a sensitivity for the cultural needs of the City's other than English speaking population.

D. Longevity Pay

- i. Unrepresented Confidential Employees who have completed five (5) regular full-time years of service shall be paid a sum equal to one percent (1%) of the base wages paid to the employee. Unrepresented Confidential Employees who have completed ten (10) regular full-time years of service shall be paid a sum equal to an additional one percent (1%), making a total of two percent (2%) of the base wages paid to the employee. Unrepresented Confidential Employees who have completed fifteen (15) regular full-time years of service shall be paid a sum equal to an additional one percent (1%), making a total of three percent (3%) of the base wages paid to the employee. The additional payment for longevity of service shall be made at each time any installment of base wages is made to the employee.

Section VI. Holidays

A. Observed holidays include:

New Years Eve (1/2 day)
New Year's Day (January 1st)
Martin Luther King's Day (the third Monday in January)
Presidents' Day (the third Monday in February)
Cesar Chavez Day (March 31)
Memorial Day (the last Monday in May)

Independence Day (July 4th)
 Labor Day (the first Monday in September)
 Veterans' Day (November 11th)
 Thanksgiving Day
 The day after Thanksgiving
 Christmas Eve (1/2 day)
 Christmas Day (December 25th)

Employees shall be entitled to holiday pay if an observed holiday falls on an employee's regularly scheduled workday and if the employee is in paid status on the day before or the day after an observed holiday.

B. Work on Holidays

- i. Unrepresented Confidential Employees required to work on a City-observed holiday shall be paid one and one-half their regular rate of pay for hours actually worked, or receive compensatory time off, subject to the accrual cap set forth in Section VII, at the rate of one and one half times hours actually worked on the holiday, in addition to receiving straight time pay for said holiday. In order for such an employee to qualify for overtime pay under this section, such employee's regularly scheduled workday must fall on the day before and/or the day after such holiday.

C. Holidays on Weekends

- i. City observed holidays that fall on Sunday shall be observed on the following Monday. City observed holidays that fall on Saturday shall be observed on the preceding Friday.

Section VII. Paid Leaves

A. Annual Leave

- i. Accrual Levels

Unrepresented Confidential Employees and Unrepresented Mid-Management Employees will accrue annual leave based on the following schedule:

Years of Service	Months of Service	Biweekly Accruals	Annual Accrual	Maximum Accrual
<5	0-59	6.24	162.24	324.48
5-6	60-71	7.47	194.22	388.44

6-7	72-83	7.78	202.28	404.56
7-8	84-95	8.09	210.34	420.68
8-9	96-107	8.40	218.40	436.80
9-10	108-119	8.70	226.20	452.40
10-11	120-131	9.54	248.04	496.08
11-12	132-143	9.85	256.10	512.20
12-13	144-155	10-16	264.16	528.32
13-14	156-167	10.46	271.96	543.92
14-15	168-179	10.77	280.02	560.04
15+	180+	11.78	306.28	612.56

Unrepresented Executive Employees will accrue annual leave based on the following schedule:

Years of Service	Months of Service	Biweekly Accruals	Annual Accrual	Maximum Accrual
<2	0-23	7.16	186.16	372.34
2-5	24-59	9.62	250.12	500.24
5	60+	12.08	314.08	628.16

ii. Usage

- a. Accrued annual leave may be taken at one day at a time, or it may be taken several days at a time. The annual leave is to be scheduled between the employee and his or her supervisor in such a manner that such employee's absence will not impair division operations.

iii. Maximum Annual Leave Accrual

- a. Once an employee reaches his or her maximum annual leave accrual, he or she will not be permitted to accrue any additional annual leave until he or she uses sufficient annual leave so as to bring his or her annual leave balance below the applicable cap. Accrual will recommence in the following pay period.

iv. Redemption

- a. After five (5) years of regular full-time service, an Unrepresented Confidential Employee or an Unrepresented Mid-Management Employee may receive pay in lieu of up to forty (40) hours of annual leave provided that funds are allocated to cover these costs in the employee's department's budget and that such employee has taken at least forty (40) hours of annual leave in the preceding twelve (12) months.
- b. After ten (10) years of regular full-time service, an Unrepresented Confidential Employee or an Unrepresented Mid-Management Employee may receive pay in lieu of up to eighty (80) hours of annual leave provided that funds are allocated to cover these costs in the employee's department's budget and that such employee has taken at least eighty (80) hours of annual leave in the preceding twelve (12) months.
- c. Effective December 15, 2015, any Unrepresented Executive Employee, regardless of full-time years of service, may receive pay for redemption of up to one hundred (120) hours of annual leave during each calendar year.
- d. All requests for annual leave redemption must be made by the employee, in writing, using a City form and, said requests must be submitted to the City's payroll department during the months of July and December for the employee to receive the redemption.
- e. Pay under this subsection shall be calculated based on base wages, longevity pay, educational incentive pay, confidential pay, and bilingual pay, as applicable.
- v. **Payment Upon Separation**
 - a. Any employee who leaves the service of the City shall be paid for accrued annual leave to which such employee is otherwise entitled at his/her then current base wages plus longevity pay, educational incentive pay, confidential pay, and bilingual pay, as applicable, as of the effective date of separation from City service.
- vi. **Discontinuance of Reserve Leave Program and Treatment of Accrued Reserve Leave.**
 - a. If an employee were previously permitted to create and maintain a reserve leave bank, such employee's reserve leave bank balance will remain available for use by employees as annual leave, subject to the conditions for use set forth in this section. Employees will no longer be permitted to add additional hours to their reserve leave banks and new employees will not be permitted to create reserve leave banks.

B. Administrative Leave

- i. Full time Unrepresented Mid-Management Employees in permanent positions who classified as "exempt" for purposes of the Fair Labor Standards Act, such that they are not eligible for payment of overtime or an equivalent amount of compensatory time off shall be granted administrative leave. At the start of each fiscal year, such employees

will be granted forty (40) hours of administrative leave.

- ii. Full time Unrepresented Executive Employees in permanent positions who classified as "exempt" for purposes of the Fair Labor Standards Act, such that they are not eligible for payment of overtime or an equivalent amount of compensatory time off shall be granted administrative leave. At the start of each fiscal year, such employees will be granted eighty (80) hours of administrative leave.
- iii. Administrative leave not taken during the fiscal year in which it is granted shall not be carried over to the subsequent fiscal year; employees shall not be permitted to maintain an administrative leave balance in excess of forty (40) hours for Unrepresented Mid-Management Employees or eighty (80) hours for Unrepresented Executive Employees. Administrative Leave has no cash value and cannot be cashed out if unused at the end of the fiscal year in which it was granted or upon separation.
- iv. Administrative leave shall be scheduled at the convenience of the employee's department and must be approved by the employee's supervisor prior to its use.
- v. This benefit may be pro-rated for new employees during the first year of hire or promotion.

C. Bereavement Leave

- i. The Department Director/ Division Supervising Manager may grant up to three (3) days' leave of absence with pay to any eligible employee on the death of any member of the employee's immediate family.
- ii. Immediate family shall include the following individuals related to the employee or the employee's spouse by reason of blood line, marriage, adoption or foster care: parents, grandparents, spouse, spouse's parents, brother(s), sister(s), child(ren), son(s)-in-law, daughter(s)-in-law, grandchild(ren), great grandchild(ren), registered domestic partner, and any blood relative(s) living in the immediate household.
- iii. Immediately upon return from bereavement leave, the employee shall furnish to the Department Director/ Division Supervising Manager some evidence of the death, e.g., a newspaper clipping, obituary notice, funeral card, or other record of death. If such evidence is not provided, the bereavement leave shall be converted to leave without pay.

D. Workers' Compensation

- i. Employees who are injured or become ill in the course of employment shall be paid in accordance with the applicable workers' compensation laws of the State of California.

E. Military Leave

- i. Employees shall be entitled to the military leave benefits as provided in the California Military and Veterans Code, or as otherwise enhanced by City Council action.

F. Jury Duty and Court Appearances Within Scope of Duties

i. Conditions

If an employee is called for jury duty or is subpoenaed as a witness in litigation as a result of the employee's official duties with the City, he/she shall be granted a leave of absence with pay provided that:

- a. The employee's supervisor has been notified by the employee of the jury duty summons or witness subpoena.
- b. The employee refunds to City fees received for jury duty or witness service except travel and actual expense reimbursement as follows:
 1. An employee summoned for and assigned jury duty for five (5) days or less may retain the jury service fee paid for jury service.
 2. An employee summoned for and assigned jury duty for five days or less may decline payment of the jury service fee.
 3. An employee summoned for and assigned jury duty for six (6) or more days is required to accept the payment for jury service and to refund to the City Treasurer all fees for jury service except travel reimbursement.

ii. Amount Limited

- a. The leave of absence with pay for witness duty is limited to twenty-four (24) hours in any calendar year.

Section VIII. Health and Welfare BenefitsA. Health Insurance

- i. The City offers affordable health coverage that meets minimum value standards under the Patient Protection and Affordable Care Act (PPACA) to all eligible employees. An eligible employee is one who qualifies under the Look Back Measurement Safe Harbor (average of 30 hours per week), as adopted by Resolution and implemented under the City's implementation plan.
- ii. The City offers health coverage under the Public Employees' Medical and Hospital Care Act ("PEMHCA"). In accordance with the requirements of PEMHCA, the City shall make a direct contribution of \$128 per month towards active employees' health care costs in calendar year 2017. This amount is equal to the statutory minimum contribution set by CalPERS and is subject to change as further required by CalPERS.
- iii. In addition to the direct PEMHCA contribution described above, the City will make an additional contribution towards a cafeteria plan for active employees. The City's cafeteria plan contribution for Unrepresented Executive Employees shall equal

\$242.31 per bi-weekly pay period and shall equal \$200.00 per bi-weekly pay period for Unrepresented Confidential Employees and Unrepresented Mid-Management Employees.

B. Dental Insurance

- i. The City shall contribute the sum of thirty dollars and eighty three cents (\$30.83) biweekly to the employee's dental insurance cafeteria plan for dental programs provided by the City. Regular full time employees that are employees for more than ninety (90) days and who "opt-out" of dental coverage will receive \$30.83 bi-weekly additional taxable income.

C. Flex Spending Plan

- i. Employees may participate in the voluntary Flex Spending Plan so long the plan is offered by the City and permitted under IRS rules and regulations.

D. Wellness Program

- i. Employees may participate in the City wellness program as described in the Personnel Policies which includes an annual reimbursement cap of \$500 for eligible expenses.

Section IX. Term Life Insurance

- A. The City shall provide a term life insurance policy to all employees covered by this Resolution in the amount of five thousand dollars (\$5,000). Additionally, Mid-Managers and Unrepresented Executive Employees will be provided a term life insurance policy of one time their annual salary. City-provided life insurance coverage is only in effect as long as the employee is employed by the City. Additional group term life insurance may be purchased by the individual employee.

Section X. Deferred Compensation

- A. Employees shall be permitted to participate in the City's section 457 deferred compensation plan for as long as such a plan is maintained by the City. Unrepresented Confidential Employees and Unrepresented Mid-Management Employees will also have the option to convert up to forty (40) hours of accrued vacation or annual leave for deposit into a section 457 deferred compensation plan each calendar year. Unrepresented Executive Employees will have the option to convert up to eighty (80) hours of accrued vacation or annual leave for deposit into a section 457 deferred compensation plan each calendar year.
- B. The City shall make a non-elective employer contribution of three percent (3%) of employee base pay/salary to the City-sponsored and designated deferred compensation plan for all permanent Unrepresented Executive Employees.

Section XI. Family and Medical Leave

Employees shall be permitted to request leave pursuant to, and consistent with, the Family and Medical Leave Act and any applicable City policy.

Section XII. Retirement

A. CalPERS Retirement for Miscellaneous Employees Hired before January 1, 2013

- i. The City's contract with CalPERS provides for the two percent (2%) at age fifty-five (55) retirement formula.
- ii. The City's contract with CalPERS provides for the "Single Highest Year" retirement benefit.
- iii. For permanent miscellaneous Unrepresented Executive Employees:
 - a. Effective January 2, 2016, the City shall pay two percent (2%) of pensionable compensation directly to CalPERS as an Employer Paid Member Contribution ("EPMC"). The City shall report the same percent value to CalPERS as compensation earnable, pursuant to California Government Code Section 20636(c)(4), the City's payment of the EPMC. Miscellaneous Unrepresented Executive Employees shall be responsible for paying the remaining five percent (5%) of the employee share of CalPERS costs through payroll deductions.
 - b. Effective the first full pay period following July 1, 2019, miscellaneous Unrepresented Executive Miscellaneous Employees shall pay an additional two percent (2.0%) of pensionable compensation towards the employee share of CalPERS costs for a total of seven percent (7.0%).
- iv. For Unrepresented Confidential Employees and Unrepresented Mid-Management Employees:
 - a. Effective the first full pay period following City Council adoption of this Resolution, employees shall pay three percent (3.0%) of pensionable compensation towards the required employee contribution to PERS. The employee contribution, as determined by CalPERS, is presently set at seven percent (7.0%) of pensionable compensation. The City shall pay the remaining four percent (4.0%) of the required employee contribution. The City shall report the same percent value to CalPERS as compensation earnable, pursuant to California Government Code section 20636(c)(4), the City's payment of the EPMC.
 - b. Effective the first full pay period following January 1, 2018, employees shall pay an additional one percent (1.0%) of pensionable compensation to CalPERS towards the employee costs of the retirement benefit for a total of four percent (4.0%). The City shall pay the remaining three percent (3.0%) of the member contribution directly to CalPERS. The City shall report the same percent value to CalPERS as compensation earnable, pursuant to California Government Code section 20636(c)(4),

the City's payment of the EPMC.

- c. Effective the first full pay period following July 1, 2019, employees shall pay an additional three percent (3.0%) of pensionable compensation to CalPERS toward the employee costs of the retirement benefit for a total of seven percent (7.0%).
- v. The City has adopted the CalPERS resolution in accordance with IRS Code section 414(h)(2) to ensure that the employee contribution is made on a pre-tax basis.

B. CalPERS Retirement for Miscellaneous Employees Hired on or after January 1, 2013

- i. "New Members", as defined by the Public Employees' Pension Reform Act ("PEPRA") are covered by the two percent (2%) at age sixty two (62) retirement formula.
- ii. New Members' retirement benefit will be based on the highest 36 consecutive months of compensation earnable.
- iii. New Members will pay an employee contribution to CalPERS at the rate of fifty percent (50%) of the total "normal cost" of the plan as defined by CalPERS. This amount may change from year to year, as determined by CalPERS. This employee contribution will be paid through a payroll deduction.
- iv. The City has adopted the CalPERS resolution in accordance with IRS Code section 414(h)(2) to ensure that the employee contribution is made on a pre-tax basis.
- v. The City's contract with CalPERS contains the Fourth Level Survivor Benefit and Military Service Credit for all employees.

C. CalPERS Retirement for Safety Employees Hired before January 1, 2013

- i. The City's contract with CalPERS provides for the three percent (3%) at age fifty (50) retirement formula.
- ii. The City's contract with CalPERS provides for the "Single Highest Year" retirement benefit.
- iii. For permanent safety Unrepresented Executive Employees:
 - a. Effective January 2, 2016, the City shall pay four percent (4%) of the employee normal contribution directly to CalPERS as an Employer Paid Member Contribution ("EPMC"). The City shall report to CalPERS as compensation earnable pursuant to California Government Code section 20636(c)(4) the City's payment of required employee retirement contributions to CalPERS. Unrepresented Top Management Safety Employees shall be responsible for paying the remaining five percent (5%) normal contribution through payroll deductions.

- b. Effective the first full pay period following July 1, 2019, safety Unrepresented Executive Employees shall pay an additional four percent (4.0%) of pensionable compensation towards the employee share of CalPERS costs.
- iv. The City has adopted the CalPERS resolution in accordance with IRS Code section 414(h)(2) to ensure that the employee contribution is made on a pre-tax basis.

D. CalPERS Retirement for Safety Employees Hired on or after January 1, 2013

- i. The City's contract with CalPERS provides for the two point seven percent (2.7%) at age fifty-seven (57) retirement formula.
- ii. New Members retirement benefit will be based on the highest 36 consecutive months of compensation earnable.
- iii. New Members of the City's police retirement plan will pay an employee contribution to PERS at the rate of fifty percent (50%) of the total "normal cost" of the plan as defined by CalPERS. This amount may change from year to year, as determined by CalPERS. This employee contribution will be paid through a payroll deduction.

E. PARS Contribution

- i. City shall provide to all miscellaneous Unrepresented Confidential Employees, miscellaneous Unrepresented Mid-Management Employees and miscellaneous Unrepresented Executive Employees Public Agency Retirement System (PARS) supplemental retirement benefits to include the three percent (3%) at age sixty (60) supplemental retirement formula and the highest consecutive twelve-month period retirement formula.
- ii. The employees' contribution to PARS shall be eight percent (8%) of the wages upon which the employee's retirement contributions are computed. The City shall pay three percent (3%) of the employee contribution for Unrepresented Mid-Management Employees, in addition to the actuarially calculated employer contribution. Unrepresented Mid-Management Employees shall contribute the remaining five percent (5%). The City shall pay two point five percent (2.5%) of the employee contribution for Unrepresented Confidential Employees, in addition to the actuarially calculated employer contribution. Unrepresented Confidential Employees shall contribute the remaining five point five percent (5.5%).
- iii. City shall report to PARS as compensation earnable pursuant to California Government Code section 20636(c)(4) the City's payment of the required employee retirement contributions to PERS.
- iv. Employees hired on or after January 1, 2013, who are "new members" as defined in PEPR, including "classic" employees coming from another CalPERS jurisdiction, shall not be eligible to receive any PARS benefit.

Section XIII. City Rights

The City has and will continue to retain, whether exercised or not, the unilateral and exclusive right to operate, administer and manage its municipal services and workforce performing those services in all respects. The exclusive rights of City shall include, but not be limited to, the right to determine the organization of City government and the purpose and mission of its constituent agencies, to set standards of services to be offered to the public, and, through its City Manager and department directors to exercise control and discretion over its organization and operations, to establish and implement administrative regulations and employment rules and regulations consistent with law, to direct employees, to classify and reclassify positions, to take disciplinary action for just cause, to relieve employees from duty because of lack of work or for other legitimate reasons, to determine whether goods or services shall be made, purchased or contracted for, to determine the methods, means and numbers and kinds of personnel by which City's services are provided, including the right to schedule and assign work and overtime, and to otherwise act in the interest of efficient service to the community.

Section XIV. Severability

It is understood and agreed that this Resolution is subject to all current and future applicable Federal and State laws and regulations and the current provisions of the City Municipal Code. If any part or provision of this Resolution is in conflict or inconsistent with such applicable provisions of those Federal, State, or City enactments or is otherwise held to be invalid or unenforceable by any court of competent jurisdiction, such part or provisions shall be suspended and superseded by such applicable law or regulations, and the remainder of this Resolution shall not be affected. If any part or provision of this Resolution is suspended or superseded part or provision with the understanding that the total compensation to employees under this Resolution shall not be reduced or increased as a result of this Section.

Section XV. Conflicting Resolutions

All resolutions, parts of resolutions, or City policies and procedures in conflict with this resolution, except as such resolutions or parts thereof approve a Memorandum of Understanding, are hereby repealed. This resolution hereby supersedes Resolution No. 14,883 adopted by the City Council on December 15, 2015.

Section XVI. Effective Date

This resolution shall become effective following adoption by the City Council in accordance with the Brown Act. This resolution shall remain in full force and effect unless and until amended, repealed or otherwise modified by the City Council in accordance with the Brown Act.

Section XVII. Classifications Solely Contained in this Resolution

Positions in the City service designated as confidential are provided the benefits contained in this resolution commensurate with the classification group most like the positions classification.

Confidential Non-Management

Administrative Legal Assistant
Executive Assistant I/II
Human Resource Technician
Paralegal
Administrative Services Assistant
Sr. Human Resources Coordinator
Sr. Benefits Coordinator

Confidential, Unrepresented Mid Management

Assistant City Attorney
Assistant Director of Development Services
Assistant Director of Human Resources
Assistant Director of Public Works
Deputy City Attorney I/II/III
Human Resources Analyst I/II
Human Resources Manager
Law Office Manager
Management Analyst III
Principal Human Resources Analyst
Public Relations & Community Affairs Manager
Risk Manager
Sr. Human Resources Analyst

Top Management

Assistant Chief Financial Officer
Assistant City Manager
Chief Financial Officer
City Attorney
City Clerk
City Manager
City Treasurer
Cultural & Community Services Director
Deputy City Manager
Development Services Director
Economic Development Director
Fire Chief
Housing Director
Human Resources Director
Information Technology Director
Police Chief
Public Works Director

PASSED AND ADOPTED this 23rd day of May, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Tim Flynn, Mayor

ATTEST:

Michelle Ascencion, City Clerk

APPROVED AS TO FORM:

Stephen Fischer, City Attorney



**CITY COUNCIL
AGENDA REPORT**

TYPE OF ITEM: Report

AGENDA ITEM NO.: 4

DATE: May 23, 2017

TO: City Council

THROUGH: Greg Nyhoff
City Manager

A handwritten signature in blue ink, appearing to read "Greg Nyhoff".

FROM: Daniel Rydberg
Public Works Director

SUBJECT: Blanket Purchase Order No. 6260 with Shell Fleet Card Services to Extend Agreement a Sixth Year for Gas Station Fuel and Car Wash Service for FY 2017-18 (5/5/5)

CONTACT: Daniel Rydberg, Public Works Director
Daniel.Rydberg@oxnard.org, 385-8055

RECOMMENDATION:

That City Council approve and authorize the Mayor to execute Blanket Purchase Order No. 6260 to extend the agreement a sixth and final year with Shell Fleet Card Services, contract administrator for Oxnard Airport Shell and MacValley Oil Company. The agreement period is from July 1, 2017, to June 30, 2018, in an amount not to exceed \$2,005,000. The blanket purchase order is for the purchase of gasoline, diesel, and car wash service at Shell stations through a fuel card system.

BACKGROUND

The Fleet Services Division of the Public Works Department is responsible for providing maintenance, repair, and fuel for the City's fleet of vehicles and equipment.

In September 2012, Request for Bids No. FS13-01 was posted on the City's website and advertised through *Vida* newspaper. Three vendors responded by the September 27, 2012, deadline: DeWitt Petroleum, Silvas Oil Company, and a combined bid from Oxnard Airport Shell and MacValley Oil Company. Silvas Oil Company was awarded the contract, but the company cancelled the contract in November 2012 due to disputes with the City regarding Silvas

Blanket PO No. 6260 with Shell Fleet Card Services for FY 2017-2018 (5/5/5)

May 23, 2017

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Oil Company's remediation plan for an underground fuel spill at their Fifth Street fueling station. The contract was then awarded to Oxnard Airport Shell and MacValley Oil Company, which had submitted a joint bid. They were the second lowest bidder among the three bidders. This contract with their contract administration, Shell Fleet Card Services, has been extended annually since 2012. Fleet Services and the City Attorney's office are working together to draft a new bid packet so that staff can bid this out in 2018, but in the interim, this Blanket Purchase Order is needed.

Shell Fleet Card Services was selected by Fleet Services as the lowest responsive bidder. The MacValley Oil Shell located at 100 Del Norte Blvd. is designated by the State of California Office of Emergency Services as a State emergency site and is equipped with backup generator power and fuel delivery trucks in the event of an emergency. All unleaded and diesel fuel purchases made at locally designated fuel stations throughout the City receive a per gallon purchase discount. The average monthly total per gallon discount savings is approximately \$5,000. This discount will remain in effect for the duration of this extended agreement. Monthly review of Shell Fuel Card statements by Fleet Services staff confirms that discounts are being applied per the agreement. There are a number of Shell fuel sites throughout the City, which minimize employee travel time to and from fuel sites.

Several factors, in addition to pricing, were also considered during the bid review. Additional criteria included the number of fueling locations and accessibility for large City equipment such as refuse collection vehicles and semi tractor-trailers; fuel transaction data integration into the City's fleet management program; electronic (e-mail) notifications, billing, and online access to account information; emergency operations support including equipment to provide fuel; current client relationships/references; and company's experience, financial resources, and compliance with laws and regulations.

Market pricing of fuel can typically fluctuate a few cents per gallon daily with one provider being priced slightly lower than the competition on a particular day. Shell Oil has demonstrated competitive pricing that is comparable to other nationally recognized fuel providers such as Chevron, Texaco, Unocal, and Exxon/Mobil. This category of fuel provider also distributes Top Tier fuels which provide an extra level of assurance that there is minimal chance for fuel contamination, which could lead to costly repair and equipment downtime.

Lower priced fueling locations typically provide lower tier fuel and do not provide fleet card services which enable the City to accurately account for individual fuel transactions. Fleet Services did not receive a bid response from a vendor in this category.

Currently the City pays five cents per gallon below the stated pump price on all diesel purchases and two cents per gallon below the stated pump price on all gasoline purchases. Shell Fleet Card Services has provided excellent customer service with a two-day turnaround time on fuel card requests; access to Shell gasoline stations nationwide; car wash service using the Shell fuel card; electronic access to fuel transactions, invoices, and reports from the Shell website; and immediate access to a dedicated customer service representative via phone or e-mail. As you can

Blanket PO No. 6260 with Shell Fleet Card Services for FY 2017-2018 (5/5/5)

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see with the table below that fuel charges fluctuate on an annual basis:

Fuel Charges FY2014-18					
	FY14	FY15	FY16	FY17 Estimate	FY18 Proposed
Budget	2,173,910.00	2,171,910.00	1,986,900.00	2,068,000.00	2,005,000.00
Exp	2,325,484.92	2,162,828.61	1,815,299.08	1,721,000.00	-
Diff	(151,574.92)	9,081.39	171,600.92	347,000.00	-

This is the sixth and final year of this contract. Staff will be bidding this contract. The contract will bid out in FY 2017-2018.

STRATEGIC PRIORITIES

This agenda item is a routine operational item or does not relate to the four strategic plans adopted by City Council on May 17, 2016.

FINANCIAL IMPACT

The \$2,005,000 will be included in the FY 2017-18 budget.

ATTACHMENTS:

Attachment A - Shell Blanket P.O. 6260



BLANKET ORDER
CITY OF OXNARD
300 WEST 3RD STREET
OXNARD, CA 93030

**PURCHASE
ORDER NO.
006260**

DATE: 4/26/2017

VENDOR PHONE: (800)377-5150

VENDOR FAX: () -

VENDOR #: 8990

VENDOR ADDRESS: SHELL FLEET CARD SERVICES
P.O. BOX 183019
COLUMBUS, OH 43218-3019

SHIP TO: FLEET SERVICES
1060 PACIFIC AVE, BLDG 1
OXNARD, CA 93030

*Our P.O. # **MUST** Appear on **ALL** Invoices, Packages and Correspondence*

DELIVER BY		REQUISITION #	REQUISITION DATE	CONFIRMED BY	
04/06/2017			00/00/0000		
FOB		ACCOUNT NUMBER		AUTHORIZED BY	
				MARISELA HART	
ITEM #	QUANTITY/ UNIT	DESCRIPTION ARTICLE OR SERVICE		UNIT COST	EXTENDED COST

GAS STATION FUEL AND CAR WASH SERVICE

Effective date: 07/01/2017

Expiration date: 06/30/2018

Not to exceed: 2,005,000.00

GAS STATION FUEL AND CAR WASH SERVICE
SIXTH YEAR OF SIX YEAR BLANKET PURCHASE ORDER
VALUE OF THE ORIGINAL BLANKET PURCHASE ORDER
PLUS RENEWALS TOTAL \$16,485,000

TOTAL PURCHASE AMOUNT

\$0.00

In order to receive payment, email all invoices to:
invoices@oxnard.org

In the subject line, reference the Purchase
Order number above.

AUTHORIZED SIGNATURE. _____

By acceptance of this purchase order, you agree to the attached terms and conditions of the City of Oxnard

PURCHASE ORDERS
TERMS AND CONDITIONS

The City Purchasing Officer and the Vendor agree as follows:

1. Vendor shall furnish to City the labor, materials, equipment, supplies and/or services described in the Purchase Order preceding this page.
2. City shall pay to Vendor the price, or prices, specified in the Purchase Order upon delivery of the labor, materials, equipment, supplies and/or services, and acceptance thereof by the City Purchasing Officer, or upon the completion of the services to be performed and acceptance thereof.
3. If the Purchase Order is continuing in nature, City shall pay to Vendor the amount due Vendor for labor, materials, equipment or supplies furnished, or services completed and accepted.
4. Vendor shall deliver the labor, materials, equipment or supplies, or cause the services to be performed, within the time and in the manner specified in the Purchase Order. Vendor shall be excused in performance for delays resulting from causes beyond the control of Vendor.
5. If services are performed or labor furnished to City under the Purchase Order, Vendor agrees to indemnify, hold harmless and defend City, its City Council, and each member thereof, and every officer, employee, representative or agent of City, from any and all liability claims, demands, actions, damages (whether in contract or tort, including personal injury, death at any time, or property damage), costs and financial loss, including all costs and expenses and fees of litigation or arbitration, that arise directly or indirectly from any acts or omissions related to this Agreement performed by Vendor or its agents, employees, subcontractors, consultants and other persons acting on Vendor's behalf. This agreement to indemnify, hold harmless and defend shall apply whether such acts or omissions are the product of active negligence, passive negligence, willfulness or acts for which Vendor or its agents, employees, subcontractors, consultants and other persons acting on Vendor's behalf would be held strictly liable. Vendor's obligation to defend shall arise when a claim, demand or action is made or filed, whether or not such claim, demand or action results in a determination of liability or damages as to which Vendor is obligated to indemnify and hold harmless.
6. Insurance
 - a) Vendor shall obtain and maintain during the performance of any services under this Agreement the following insurance coverage issued by a company satisfactory to the Risk Manager, unless the Risk Manager waives, in writing, the requirement that Vendor obtain and maintain such insurance coverage.
 - i. Commercial general liability insurance, including a contractual liability endorsement, 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 CG0001ED, November 1988);
 - ii. 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 Auto Liability Insurance Services Office coverage (Occurrence Form CA000TED, June 1992) covering Code No. 1, "any auto";
 - iii. Workers' compensation insurance in compliance with the laws of the State of California, including employer's liability insurance in an amount not less than \$1,000,000 per claimant.
7. Vendor, in the performance of any services or the furnishing of any labor under this Purchase Order, shall be considered an independent contractor, and Vendor and Vendor's agents and employees shall not be considered officers or employees of the City.
8. Vendor, without the written consent of the City Purchasing Officer, shall not:
 - a) Assign the Purchase Order, or any interest therein, or any money due thereunder; or
 - b) Make any changes, alterations or variations in the terms of the Purchase Order.
9. The cost of inspection on deliveries, or offers to make deliveries that do not meet specifications, will be paid by Vendor or deducted by City from amounts due Vendor.
10. Vendor shall indemnify and hold harmless City, its officers and employees, from liability, claims, loss or expense of any kind or nature on account of any copyrighted or uncopyrighted composition, patented or unpatented process or invention, article or appliance furnished or used under this Purchase Order.
11. Vendor shall comply with all applicable federal, state and local ordinance, laws and regulations and shall obtain and pay for all required licenses and permits, including a City of Oxnard business license.
12. Return or exchange of materials, equipment or supplies will not be permitted without written approval by the City Purchasing Officer.
13. All materials, supplies and equipment furnished under the Purchase Order shall, where applicable, be in full compliance with the Safety Orders and Regulations of the Division of Industrial Safety of the State of California and the Williams-Steiger Federal Occupational Health and Safety Act of 1970.
14. City may terminate this Purchase Order at any time by giving written notice of termination to Vendor. If termination is for cause, termination shall become effective on the date of the notice or at a later date, specified in the notice. If termination is without cause, termination shall become effective five days after the date of the notice or at a later date specified in the notice.
15. Vendor shall comply with all applicable equal employment opportunity requirements of the California Department of Fair Employment and Housing in performing or contracting for any services under this Purchase Order.
16. For public projects, Vendor shall pay prevailing wages in accordance with Labor Code Sections 1720 et seq.

ADDITIONAL REQUIREMENTS FOR GRANT-FUNDED PROJECTS

17. The following requirements apply to any Purchase Order funded in whole or in part by federal grant funds.
 - a) Upon expiration of the time specified on the reverse side, this Purchase Order shall terminate unless City and Vendor have mutually agreed in writing to an extension of time.
 - b) If legal action is brought by either party because the other has failed to comply with terms or conditions of this Purchase Order, the prevailing party shall be awarded its attorney's fees and costs in addition to its damages and/or equitable relief.
 - c) Vendor shall comply with all applicable requirements of Executive Order 11246 as amended by Executive Order 11375 and the regulations adopted pursuant thereto (41 CFR Chapter 60), which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin.
 - d) Vendor shall insure that the grantee (City), the Federal Grantor Agency, the Comptroller General of the United States, or any duly authorized representative, shall have access to any books, records, documents and papers, specifically relating to this Purchase Order, for the purpose of making audit, examination, excerpts and transcriptions for not less than three years after completion of the project and/or until the completion of the final project audit as required by the Federal Grants Agency.