



CITY COUNCIL Agenda

Sept. 22, 2020, 3 p.m.

Council Chamber
1200 Carlsbad Village Drive
Carlsbad, CA 92008

Welcome to Your City Council Meeting

We welcome your interest and involvement in the city's legislative process. This agenda includes information about topics coming before the City Council and the action recommended by city staff. You can read about each topic in the staff reports, which are available on the city website and in the Office of the City Clerk. The City Clerk is also available to answer any questions you have about City Council meeting procedures.

How to watch



City cable channel

Charter Spectrum channel 24
AT&T U-verse channel 99.



City website

carlsbadca.gov/news/cityty.asp

Virtual meeting format

- Per California Executive Order N-29-20, and in the interest of public health and safety, we are temporarily taking actions to prevent and mitigate the effects of the COVID-19 pandemic by holding City Council and other public meetings online only.
- All public meetings will comply with public noticing requirements in the Brown Act and will be made accessible electronically to all members of the public seeking to observe and address the City Council.

How to participate

- **By phone:** Sign up at <https://www.carlsbadca.gov/cityhall/clerk/meetings/default.asp> by 2 p.m. the day of the meeting to provide comments live by phone. You will receive a confirmation email with instructions about how to call in.
- **In writing:** Email comments to clerk@carlsbadca.gov. Comments received by 2 p.m. the day of the meeting will be shared with the City Council prior to the meeting. When e-mailing comments, please identify in the subject line the agenda item to which your comments relate. All comments received will be included as part of the official record. **Written comments will not be read out loud.**
- These procedures shall remain in place during the period in which state or local health officials have imposed or recommended social distancing measures.

Reasonable accommodations

Persons with a disability may request an agenda packet in appropriate alternative formats as require by the Americans with Disabilities Act of 1990. Reasonable accommodations and auxiliary aids will be provided to effectively allow participation in the meeting. Please contact the City Manager's Office at 760-434-2821 (voice), 711 (free relay service for TTY users), 760-720-9461 (fax) or manager@carlsbadca.gov by noon on the Monday before the meeting to make arrangements.

IN THE EVENT A QUORUM OF THE CITY COUNCIL LOSES ELECTRICAL POWER OR SUFFERS AN INTERNET CONNECTION OUTAGE THAT IS NOT CORRECTED WITHIN 15 MINUTES, THE MEETING WILL AUTOMATICALLY BE ADJOURNED. ANY ITEMS NOTICED AS PUBLIC HEARINGS WILL BE CONTINUED TO THE NEXT REGULARLY SCHEDULED MEETING OF THE CITY COUNCIL. ANY OTHER AGENDA ITEMS THE COUNCIL HAS NOT TAKEN ACTION ON WILL BE PLACED ON A FUTURE AGENDA.

More information about City Council meeting procedures can be found at the end of this agenda and in the Carlsbad Municipal Code chapter 1.20. PLEASE NOTE: AS A RESULT OF THE WAIVERS IN EXECUTIVE ORDER N-29-20, THE BROWN ACT PERMITS FULL PARTICIPATION BY OFFICIALS IN MEETINGS THROUGH VIDEO OR AUDIO TELECONFERENCE.

The City Council also sits as the Carlsbad Municipal Water District Board, Public Financing Authority Board, Community Development Commission and Successor Agency to the Redevelopment Agency. When considering items presented to the Carlsbad Municipal Water District Board, each member receives an additional \$100 per meeting (max \$300/month). When considering items presented to the Community Development Commission each member receives an additional \$75 per meeting (max \$150/month).

CALL TO ORDER:

ROLL CALL:

ANNOUNCEMENT OF CONCURRENT MEETINGS: None.

INVOCATION:

PLEDGE OF ALLEGIANCE:

APPROVAL OF MINUTES:

Minutes of the Regular Meeting held Aug. 18, 2020

Minutes of the Regular Meeting held Aug. 25, 2020

Minutes of the Special Meeting held Aug. 27, 2020

PRESENTATIONS:

Public Safety Month Proclamation

PUBLIC REPORT OF ANY ACTION TAKEN IN CLOSED SESSION:

PUBLIC COMMENT: *In conformance with the Brown Act and California Executive Order No. N-29-20, a total of 15 minutes is provided so members of the public participate in the meeting by submitting comments as provided on the front page of this agenda. The City Council will receive comments as requested up to a total of 15 minutes. All other comments will trail until the end of the meeting. In conformance with the Brown Act, no Council action can occur on these items.*

CONSENT CALENDAR: *The items listed under Consent Calendar are considered routine and will be enacted by one motion as listed below. There will be no separate discussion on these items prior to the time the Council votes on the motion unless members of the Council, the City Manager, or the public request specific items be discussed and/or removed from the Consent Calendar for separate action.*

WAIVER OF ORDINANCE TEXT READING: None.

This is a motion to waive the reading of the text of all ordinances and resolutions at this meeting.

ORDINANCES FOR INTRODUCTION:

1. **REPEAL AND REPLACEMENT OF CARLSBAD MUNICIPAL CODE CHAPTER 6.16 NUISANCE – 1)**
Introduction of an ordinance repealing and replacing Title 6, Chapter 6.16 of the Carlsbad Municipal Code concerning public nuisances and property maintenance that either provides for the City Council to authorize and hear challenges to nuisance abatement actions or provides for the city manager to authorize and hear challenges to nuisance abatement actions. (Staff contact: Marissa Kawecki, City Attorney's Office)

City Manager's Recommendation: Introduce the ordinance.

ORDINANCES FOR ADOPTION: None.

PUBLIC HEARINGS: None.

DEPARTMENTAL AND CITY MANAGER REPORTS:

2. COVID-19 ACTIONS AND EXPENDITURES REPORT – Receive a report on recent actions and expenditures related to the city’s response to the COVID-19 pandemic and provide direction as appropriate. (Staff contact: Geoff Patnoe, City Manager Department)

City Manager’s Recommendation: Receive the report and provide direction as appropriate.

3. FACIAL COVERING REQUIREMENTS AND ENHANCED ENFORCEMENT OF THE COUNTY HEALTH ORDER FOR BEACH BOARDWALKS, STAIRCASES, GATHERINGS AND BUSINESSES – 1) Consider adoption of a resolution issuing an emergency order mandating face coverings in certain high-traffic pedestrian areas of the City of Carlsbad; or
Alternatively, consider adoption of a resolution approving the appropriation of \$69,210 from the general fund to the Police Department’s FY21 operating budget for police officers to provide enhanced education and enforcement of the County Health Order’s face mask requirements at the beach; and
2) Provide further direction to staff on what additional face covering requirements for gatherings and businesses the City Council would like. (Staff contact: Allegra Frost, City Attorney Department, Pete Pascual, Police Department)

City Manager’s Recommendation: Consider adopting the resolution and provide staff with further direction.

4. UPDATE ON WORK TO BUILD THE CITY’S DIGITAL INFORMATION NETWORK – Receive a report on the status of the implementation of a robust digital information network. (Staff contact: Maria Callander and Joe Stephenson, Administrative Services Department)

City Manager’s Recommendation: Receive the report.

5. AWARD OF CONTRACT TO SD REMODELING, INC., FOR NEW VILLAGE ARTS BUILDING ROOF AND EXTERIOR REFURBISHMENT PROJECT – Adoption of a resolution accepting bids, awarding a contract to SD Remodeling, Inc. and authorization for additional appropriation for construction of the New Village Arts Building Roof and Exterior Refurbishment Project, CIP Project No. 4739. (Staff contact: John Maashoff, Public Works)

City Manager’s Recommendation: Adopt the resolution.

6. AWARD OF CONTRACT TO BARNHART-REESE CONSTRUCTION, INC. FOR DESIGN-BUILD CONTRACT FOR THE FIRE STATION NO. 2 REPLACEMENT PROJECT – Adoption of resolution accepting the proposals received, authorizing award of a design-build contract to Barnhart-Reese Construction, Inc. to provide design-build services for the Fire Station No. 2 Replacement Project, CIP Project No. 4060, for an amount not to exceed \$11,222,472, authorizing additional appropriation in an amount of \$1,433,883, and denying AMG & Associates, Inc.’s appeal. (Staff contact: Steven Stewart, Public Works and Michael Calderwood, Fire Department)

City Manager’s Recommendation: Adopt the resolution.

7. APPOINT ONE MEMBER TO THE BEACH PRESERVATION COMMISSION – Adoption of resolution appointing one member to the Beach Preservation Commission. (Staff contact: Tammy McMinn, City Clerk Department)

City Manager’s Recommendation: Adopt the resolution.

COUNCIL COMMENTARY AND REQUESTS FOR CONSIDERATION OF MATTERS:

City Council Regional Assignments (Revised 4/7/20)

Matt Hall

Mayor

North County Mayors and Managers
City/School Committee
Chamber of Commerce Liaison (primary)
Clean Energy Alliance JPA (alternate)
San Diego County Water Authority
San Diego Regional Economic Development Corporation Board of Directors
City Council Legislative Subcommittee
Economic Revitalization Subcommittee
Ad-Hoc City Council North County Homeless Action Plan Subcommittee

Keith Blackburn

Mayor Pro Tem

Buena Vista Lagoon JPC
Encina Wastewater Authority/JAC Board of Directors
North County Dispatch Joint Powers Authority
Chamber of Commerce Liaison (alternate)
SANDAG (1st alternate)
North County Transit District (alternate)
Carlsbad Municipal Code and City Council Policy Update Subcommittee

Priya Bhat-Patel

Council Member – District 3

SANDAG (2nd alternate)
North County Transit District (primary)
City/School Committee
League of California Cities – SD Division
Encina Wastewater Authority/JAC Board of Directors (alternate)
City Council Legislative Subcommittee
Economic Revitalization Subcommittee
Ad-Hoc City Council North County Homeless Action Plan Subcommittee

Cori Schumacher

Council Member – District 1

SANDAG (primary)
Buena Vista Lagoon JPC
Clean Energy Alliance JPA (primary)
Encina Wastewater Authority/JAC Board of Directors
North County Dispatch Joint Powers Authority (alternate)
Carlsbad Municipal Code and City Council Policy Update Subcommittee

Vacant – At-Large

Council Member

PUBLIC COMMENT: Continuation of the Public Comments

This portion of the agenda is set aside for continuation of public comments, if necessary, due to exceeding the total time allotted in the first public comments section. In conformance with the Brown Act, no Council action can occur on these items.

ANNOUNCEMENTS:

This section of the Agenda is designated for announcements to advise the community regarding events that Members of the City Council have been invited to, and may participate in.

CITY MANAGER COMMENTS:

CITY ATTORNEY COMMENTS:

ADJOURNMENT:

City Council Meeting Procedures *(continued from page 1)*

Written Materials

Written materials related to the agenda that are submitted to the City Council after the agenda packet has been published will be available for review prior to the meeting during normal business hours at the City Clerk's office, 1200 Carlsbad Village Drive and on the city website. To review these materials during the meeting, please see the City Clerk

Visual Materials

Visual materials, such as pictures, charts, maps or slides, are allowed for comments on agenda items, not general public comment. Please contact the City Manager's Office at 760-434-2820 or manager@carlsbadca.gov to make arrangements in advance. All materials must be received by the City Manager's Office no later than noon the day before the meeting. The time spent presenting visual materials is included in the maximum time limit provided to speakers. All materials exhibited to the City Council during the meeting are part of the public record. **Please note that video presentations are not allowed.**

Decorum

All participants are expected to conduct themselves with mutual respect. Loud, boisterous and unruly behavior can interfere with the ability of the City Council to conduct the people's business. That's why it is illegal to disrupt a City Council meeting. Following a warning from the presiding officer, those engaging in disruptive behavior are subject to law enforcement action.

City Council Agenda

The City Council follows a regular order of business that is specified in the Carlsbad Municipal Code. The City Council may only make decisions about topics listed on the agenda.

Presentations

The City Council often recognizes individuals and groups for achievements and contributions to the community. Well-wishers often fill the chamber during presentations to show their support and perhaps get a photo. If you don't see an open seat when you arrive, there will likely be one once the presentations are over.

Consent Items

Consent items are considered routine and may be enacted together by one motion and vote. Any City Council member may remove or "pull" an item from the "consent calendar" for a separate vote. Members of the public may pull an item from the consent calendar by requesting to speak about that item. A speaker request form must be submitted to the clerk prior to the start of the consent portion of the agenda.

Public Comment

Members of the public may speak on any city related item that does not appear on the agenda. State law prohibits the City Council from taking action on items not listed on the agenda. Comments requiring follow up will be referred to staff and, if appropriate, considered at a future City Council meeting. Members of the public are also welcome to provide comments on agenda items during the portions of the meeting when those items are being discussed. In both cases, a request to speak form must be submitted to the clerk in advance of that portion of the meeting beginning.

Public Hearing

Certain actions by the City Council require a "public hearing," which is a time within the regular meeting that has been set aside and noticed according to different rules.

Departmental Reports

This part of the agenda is for items that are not considered routine and do not require a public hearing. These items are usually presented to the City Council by city staff and can be informational in nature or require action. The staff report about each item indicates the purpose of the item and whether or not action is requested.

Other Reports

At the end of each meeting, City Council members and the city manager, city attorney and city clerk are given an opportunity to share information. This usually includes reports about recent meetings, regional issues, and recent or upcoming meetings and events.

City Council Actions

Resolution

A resolution is an official statement of City Council policy that directs administrative or legal action or embodies a public City Council statement. A resolution may be introduced and adopted at the same meeting. Once adopted, it remains City Council policy until changed by subsequent City Council resolution.

Ordinance

Ordinances are city laws contained in the Carlsbad Municipal Code. Enacting a new city law or changing an existing one is a two-step process. First, the ordinance is “introduced” by city staff to the City Council. If the City Council votes in favor of the introduction, the ordinance will be placed on a subsequent City Council meeting agenda for “adoption.” If the City Council votes to adopt the ordinance, it will usually go into effect 30 days later.

Motion

A motion is used to propose City Council direction related to an item on the agenda. Any City Council member may make a motion. A motion must receive a “second” from another City Council member to be eligible for a City Council vote.



CITY COUNCIL
Minutes

Council Chamber
1200 Carlsbad Village Drive
Carlsbad, CA 92008

August 18, 2020 3 p.m.

CALL TO ORDER: 3 p.m.

ROLL CALL: Hall, Blackburn, Bhat-Patel, Schumacher.

ANNOUNCEMENT OF CONCURRENT MEETINGS: Mayor Hall announced that the City Council is serving as the Carlsbad Municipal Water District Board of Directors on Consent Calendar Item No. 4.

PLEDGE OF ALLEGIANCE: Mayor Pro Tem Blackburn led the Pledge of Allegiance.

INVOCATION: None.

APPROVAL OF MINUTES:

Minutes of the Regular Meeting held June 16, 2020
Minutes of the Special Meeting held June 23, 2020
Minutes of the Regular Meeting held June 23, 2020
Minutes of the Special Meeting held July 14, 2020
Minutes of the Regular Meeting held July 14, 2020
Minutes of the Regular Meeting held July 21, 2020
Minutes of the Special Meeting held July 28, 2020

Motion by Mayor Pro-Tem Blackburn, seconded by Council Member Bhat-Patel, to approve the minutes as presented. Motion carried unanimously, 4/0.

PRESENTATIONS: None.

PUBLIC COMMENT:

The following individuals called into the City Council Meeting and voiced their comments for the record:

Leonardo DiMedio spoke about the need to have eviction protections for residential properties.

Joseph Raffa spoke about a potential conflict of interest with Council Member Schumacher and the Clean Energy Alliance Committee.

Mary Lucid spoke about issues she experienced at the Senior Center, including meal delivery problems and staff complaints.

Anthony Bona thanked the Carlsbad Police Department and expressed his concern with Council Member Schumacher and some comments that were made about the police.

PUBLIC REPORT OF ACTION TAKEN IN CLOSED SESSION: No reportable action.**CONSENT CALENDAR:**

Motion by Mayor Pro Tem Blackburn, seconded by Council Member Bhat-Patel, to approve Consent Calendar Item Nos. 1 through 3. Motion carried unanimously, 4/0.

1. REPORT ON CITY INVESTMENTS AS OF JUNE 30, 2020 – Accepted and filed a report on city investments as of June 30, 2020. (Staff contact: Craig Lindholm and Laura Rocha, Administrative Services)
2. EXTENSION OF LICENSE AGREEMENT WITH COX COMMUNICATIONS CALIFORNIA, LLC TO ALLOW THE CONTINUED USE OF THE PUBLIC RIGHT-OF-WAY WITHIN THE CITY TO PROVIDE SERVICES TO THE PALOMAR AIRPORT INDUSTRIAL AREA – Adoption of Resolution No. 2020-171 authorizing the city manager or his designee to extend the license agreement between the City of Carlsbad and Cox Communications California, LLC. (Staff contact: Maria Callander, Administrative Services)
3. REJECTION OF ALL BIDS RECEIVED FOR THE CALAVERA HILLS COMMUNITY PARK GATEWAY IMPROVEMENTS PROJECT – Adoption of Resolution No. 2020-172 rejecting all bids received for the Calavera Hills Community Park Gateway Improvements Project (Capital Improvement Project No. 4601). (Staff contact: Kyle Lancaster, Parks & Recreation)

This item was pulled for discussion by Council Member Schumacher.

4. APPROVE THE EXECUTION OF MASTER SERVICE AGREEMENTS FOR AS-NEEDED CONSTRUCTION MANAGEMENT, INSPECTION AND MATERIALS TESTING SERVICES – 1) Adoption of a resolution approving the execution of master service agreements with the City of Carlsbad for as-needed horizontal construction management and inspection services with Kleinfelder Construction Services, Inc., Infrastructure Engineering Corporation, Harris & Associates, Inc., and Valley CM Inc. dba Valley Construction Management; as-needed vertical construction management and inspection services with SchneiderCM, Inc., Griffin Structures, Inc., Kitchell/CEM, Inc., and Anser Advisory Management, LLC dba Anser Advisory; and as-needed materials testing services with Atlas Technical Consultants LLC (formerly SCST, Inc.), Leighton Consulting, Inc., Twining, Inc., and Barnett Quality Control Services dba Nova Services, Inc.; and
2) Adoption of a Carlsbad Municipal Water District (CMWD) resolution approving the execution of master service agreements with CMWD for as-needed horizontal construction management and inspection services with Kleinfelder Construction Services, Inc., Infrastructure Engineering Corporation, Harris & Associates, Inc., and Valley CM, Inc. dba Valley Construction Management; as-needed vertical construction management and inspection services with SchneiderCM, Inc., Griffin Structures, Inc., Kitchell/CEM, Inc., and Anser Advisory Management, LLC dba Anser Advisory; and as-needed materials testing services with Atlas Technical Consultants LLC (formerly SCST, Inc.), Leighton Consulting, Inc., Twining, Inc., and Barnett Quality Control Services dba Nova Services, Inc. (Staff contact: Babaq Taj, Public Works)

CONSENT CALENDAR ITEM PULLED FOR DISCUSSION:

This item was pulled for discussion by Council Member Schumacher.

4. **APPROVE THE EXECUTION OF MASTER SERVICE AGREEMENTS FOR AS-NEEDED CONSTRUCTION MANAGEMENT, INSPECTION AND MATERIALS TESTING SERVICES** – 1) Adoption of Resolution No. 2020-173 approving the execution of master service agreements with the City of Carlsbad for as-needed horizontal construction management and inspection services with Kleinfelder Construction Services, Inc., Infrastructure Engineering Corporation, Harris & Associates, Inc., and Valley CM Inc. dba Valley Construction Management; as-needed vertical construction management and inspection services with SchneiderCM, Inc., Griffin Structures, Inc., Kitchell/CEM, Inc., and Anser Advisory Management, LLC dba Anser Advisory; and as-needed materials testing services with Atlas Technical Consultants LLC (formerly SCST, Inc.), Leighton Consulting, Inc., Twining, Inc., and Barnett Quality Control Services dba Nova Services, Inc.; and
2) Adoption of Carlsbad Municipal Water District (CMWD) Resolution No. 1644 approving the execution of master service agreements with CMWD for as-needed horizontal construction management and inspection services with Kleinfelder Construction Services, Inc., Infrastructure Engineering Corporation, Harris & Associates, Inc., and Valley CM, Inc. dba Valley Construction Management; as-needed vertical construction management and inspection services with SchneiderCM, Inc., Griffin Structures, Inc., Kitchell/CEM, Inc., and Anser Advisory Management, LLC dba Anser Advisory; and as-needed materials testing services with Atlas Technical Consultants LLC (formerly SCST, Inc.), Leighton Consulting, Inc., Twining, Inc., and Barnett Quality Control Services dba Nova Services, Inc. (Staff contact: Babaq Taj, Public Works)

In response to an inquiry from Council Member Schumacher, Deputy City Manager of Public Works Paz Gomez explained that the fund amounts listed in the agreements are as needed and are not retainers.

Motion by Council Member Schumacher, seconded by Mayor Pro Tem Blackburn, to adopt Resolution No. 2020-173 and CMWD Resolution No. 1644. Motion carried unanimously, 4/0.

ORDINANCES FOR INTRODUCTION: None.

ORDINANCE FOR ADOPTION:

5. **ADOPTION OF ORDINANCE NO. CS-379** – Adoption of Ordinance No. CS-379 amending the Carlsbad Corporate Plaza Specific Plan (SP 23(H)) to remove the 6,000 square-foot limitation on medical office use for existing office buildings located at 6183-6185 Paseo del Norte within the Mello II segment of the city's Local Coastal Program and Local Facilities Management Zone 3. (Case Name: Carlsbad Corporate Plaza Parking Structure; Case No.: AMEND 2019-0002). (Staff contact: Faviola Medina, City Clerk Department)

City Manager's Recommendation: Adopt Ordinance No. CS-379.

City Attorney Celia Brewer titled the ordinance.

Motion by Mayor Pro Tem Blackburn, seconded by Council Member Bhat-Patel, to adopt Ordinance No. CS-379. Motion carried unanimously, 4/0.

PUBLIC HEARINGS: None.

DEPARTMENTAL AND CITY MANAGER REPORTS:

6. **COVID-19 ACTIONS AND EXPENDITURES REPORT** – Receive a report on recent actions and expenditures related to the city’s response to the COVID-19 pandemic and provide direction as appropriate. (Staff contact: Geoff Patnoe, City Manager Department)

City Manager’s Recommendation: Receive the report and provide direction as appropriate.

City Manager Scott Chadwick, Assistant Director of Emergency Services David Harrison, Deputy City Manager of Community Services Gary Barberio, Police Chief Neil Gallucci, Senior Program Manager Holly Nelson, Fire Chief Michael Calderwood, Chief Innovation Officer David Graham and Deputy City Manager of Administrative Services Laura Rocha presented the report and reviewed a PowerPoint presentation (on file in the Office of the City Clerk).

The following individual called into the City Council Meeting and voiced their comment for the record:

Sharon McKeeman spoke to thank the City Council on their decision regarding face masks.

Council received the report.

In response to an inquiry from Council Member Schumacher, Deputy City Manager of Community Services Gary Barberio explained that four businesses had requested expansion of outdoor retail into the parking lots at the Shoppes at Carlsbad including a COVID-19 testing site, two retail tenants, and a pop-up drive-in theatre.

Minute Motion by Council Member Schumacher, seconded by Council Member Bhat-Patel, to direct staff to bring back options with cost-prohibitive administrative fees to the City Council for expanding outdoor retail into the parking lots at the Shoppes at Carlsbad. Motion carried unanimously, 4/0.

Minute Motion by Mayor Pro Tem Blackburn, seconded by Council Member Bhat-Patel, to direct staff to bring back options to the City Council on a continuing partnership with the Oceanside Kitchen Collaborative. Motion carried unanimously, 4/0.

7. ECONOMIC RECOVERY AND REVITALIZATION INITIATIVE UPDATES AND ACTIONS – 1) Adoption of Resolution No. 2020-174 approving further implementation of the economic recovery and revitalization initiative and modifications to the COVID-19 Small Business Loan Program, and
2) Provide additional direction based upon a report out by the Ad Hoc City Council Economic Revitalization Subcommittee. (Staff contact: David Graham, Administrative Services)

City Manager's Recommendation: Adopt the resolution and provide additional direction.

Chief Innovation Officer David Graham presented the report and reviewed a PowerPoint presentation (on file in the Office of the City Clerk).

In response to an inquiry from Mayor Pro Tem Blackburn, Chief Innovation Officer David Graham explained that the Center for Disease Control is recommending a FICO credit score of at least 640 to qualify for the program due to the impacts that COVID-19 has had on businesses and the decision for the program to be as inclusive as possible.

Motion by Mayor Pro Tem Blackburn, seconded by Council Member Bhat-Patel, to adopt Resolution No. 2020-174. Motion carried unanimously, 4/0.

Minute Motion by Council Member Bhat-Patel, seconded by Mayor Hall, to place on a future agenda for City Council discussion, a permit fee holiday period which would provide economic relief for temporary activation and permanent use of public property for business operations from March 1, 2020, through February 28, 2021, or until the end of the health emergency, whichever is later; and establish the Gift Carlsbad program, which would provide value-added gift-cards for restaurants, retailers and personal service providers. Motion carried unanimously, 4/0.

8. REVIEW OF JULY 23, 2020 CLEAN ENERGY ALLIANCE JOINT POWERS AUTHORITY SPECIAL MEETING AGENDA ITEM 5 – CLEAN ENERGY ALLIANCE INCLUSIVE & SUSTAINABLE WORKFORCE POLICY – Review and discuss the July 23, 2020 Clean Energy Alliance Joint Powers Authority Board of Directors Special Meeting Agenda Item 5 – Clean Energy Alliance Inclusive & Sustainable Workforce Policy. (Staff contact: Jason Haber, City Manager Department)

The following individuals called into the City Council Meeting and voiced their comments for the record:

Anthony Bona spoke about a potential conflict of interest existing with Council Member Schumacher serving on the Clean Energy Alliance Committee.

Eric Fehrs spoke in support of the Clean Energy Alliance and the mission of the project.

Lollie McIntire spoke in support of the Clean Energy Alliance and the importance of supporting a strong, local workforce.

Mary Hassing spoke about the need to adopt strong, inclusive language in the CEA workforce policy to ensure uniform wages, benefits, overtime pay and proper working conditions for workers.

Tracy Carmichael spoke about a potential conflict of interest existing with Council Member Schumacher serving on the Clean Energy Alliance Committee.

Eric Christen spoke about a potential conflict of interest with Council Member Schumacher and the Clean Energy Alliance Committee.

Micah Mitrosky spoke in support of a strong CEA workforce policy to protect local workers.

Mayor Hall explained the reason he asked for the City Council to discuss this agenda item was because he sees the CEA trying to jump a hurdle that they do not have to jump for two to three years. He added that if they try to force this issue, it will highly compromise many of the other agencies that they have had discussions with over the last year.

9. PRESENTATION ON POLICE USE OF FORCE AND POLICE OFFICERS BILL OF RIGHTS AND DISCUSSION ON CITIZENS REVIEW COMMITTEE ON POLICE PRACTICES AND PROCEDURES – Receive a presentation on police use of force and Police Officers Bill of Rights and discuss background information regarding the formation of citizens review committees on police practices and procedures. (Staff contact: Celia Brewer, City Attorney Department; Mickey Williams, Police Department; Judy von Kalinowski, Human Resources Department; and Sheila Cobian, City Manager Department)

City Manager’s Recommendation: Receive the presentation and discuss the item.

Deputy City Attorney Allegra Frost, Assistant Police Chief Mickey Williams, Assistant to the City Manager Sheila Cobian and Partner at Burke, Williams & Sorensen Timothy L. Davis presented the report and reviewed a PowerPoint presentation (on file in the Office of the City Clerk).

The following individuals called into the City Council Meeting and voiced their comments for the record:

Keyrollos Ibrahim spoke about past issues he experienced with the Carlsbad Police Department. He also encouraged additional police departmental reform.

Philip Urbina spoke about his concern of talks of defunding and disbanding police departments in other cities. He also encouraged the City Council to take a measured and long-term approach to suggest changes to the police department and to not act on pure emotion.

Council received the report.

Minute Motion by Council Member Bhat-Patel, seconded by Council Member Schumacher, to direct staff to return to City Council with no date certain, a staff report regarding a citizens review committee on police practices and procedures detailing the three types of civilian oversight (auditor/monitor, review-focused and investigation-focused), that includes a staff recommendation on which type might be best suitable for Carlsbad. Motion carried, 3/1 (Hall – No).

COUNCIL REPORTS AND COMMENTS:

Council Member Schumacher thanked the City Clerk's office for their work on the Council meeting minutes. She also stated that she was recently appointed to the League of California Cities General Resolutions Committee.

CITY MANAGER COMMENTS:

City Manager Scott Chadwick announced that the State of the City will take place on August 21, 2020, and that the video presentation will be shown at the next City Council meeting on August 25, 2020.

CITY ATTORNEY COMMENTS: None.

CITY CLERK COMMENTS: None.

ANNOUNCEMENTS: None.

ADJOURNMENT: Mayor Hall adjourned the duly noticed Meeting at 6:45 p.m.

Hector Gomez
Deputy City Clerk



CITY COUNCIL
Minutes

Council Chamber
1200 Carlsbad Village Drive
Carlsbad, CA 92008

Aug. 25, 2020, 3 p.m.

CALL TO ORDER: 3 p.m.

ROLL CALL: Hall, Blackburn, Bhat-Patel, Schumacher.

ANNOUNCEMENT OF CONCURRENT MEETINGS: None.

PLEDGE OF ALLEGIANCE: Mayor Pro Tem Blackburn led the Pledge of Allegiance.

INVOCATION: None.

APPROVAL OF MINUTES:

Minutes of the Special Meeting held Aug. 18, 2020

Motion by Mayor Pro-Tem Blackburn, seconded by Council Member Bhat-Patel, to approve the minutes as presented. Motion carried unanimously, 4/0.

PRESENTATIONS:

State of the City Video Presentation & City Council Comments.

Mayor Hall introduced the video and each Council Member made comments.

The following individual called into the City Council Meeting and voiced their comment for the record:

Josiah Hass spoke regarding his right to be able to play basketball during COVID-19.

PUBLIC COMMENT:

The following individuals called into the City Council Meeting and voiced their comment for the record:

Tony Bona spoke regarding Council Member Schumacher's quote on Twitter.

Tracy Carmichael spoke regarding Council Member Schumacher's lack of transparency of campaign contributions and unethical conduct.

Larry Posner spoke regarding the July 23, 2020 Clean Energy Alliance meeting and the division amongst board members regarding the project labor agreement changes.

PUBLIC REPORT OF ACTION TAKEN IN CLOSED SESSION: No reportable action.

CONSENT CALENDAR:

Motion by Mayor Pro Tem Blackburn, seconded by Council Member Bhat-Patel, to approve Consent Calendar Item Nos. 1, 2 and 4. Motion carried unanimously, 4/0.

1. ADVERTISE FOR BIDS FOR THE CARLSBAD CITY LIBRARY PARKING LOT RENOVATION, CIP PROJECT NO. 4744 – Adoption of Resolution No. 2020-175 approving the plans and specifications and authorizing the city clerk to advertise for bids for the Carlsbad City Library Parking Lot Renovation, Capital Improvement Program Project No. 4744. (Staff contact: Steven Stewart, Public Works and Suzanne Smithson, Library and Cultural Arts)
2. AGREEMENT WITH URBAN CORPS OF SAN DIEGO FOR CITYWIDE PRESSURE-WASHING SERVICES – Adoption of Resolution No. 2020-176 approving a professional services agreement with Urban Corps of San Diego County for citywide pressure-washing maintenance services in an amount not to exceed \$213,970 for the first two years of the agreement. (Staff contact: Michael O’Brien, Public Works)

This item was returned to staff to return to Council with a date uncertain.

3. ADVERTISE FOR BIDS FOR THE FISCAL YEAR 2020-21 PAVEMENT OVERLAY, CIP PROJECT NO. 6001-200L – Adoption of a resolution approving the plans and specifications and authorizing the city clerk to advertise for bids for the fiscal year 2020-21 Pavement Overlay, CIP Project No. 6001-200L. (Staff contact: Emad Elias, Public Works)
4. ACQUISITION OF 2649 HANCOCK CIRCLE – Adoption of Resolution No. 2020-177 authorizing the deputy city manager, administrative services to appropriate \$250,000 from the Community Development Block Grant Special Revenue Fund and authorizing the city manager to execute all required documents to complete the acquisition of 2649 Hancock Circle, Carlsbad, California, an affordable housing resale unit, expending Community Development Block Grant funds in the amount of up to \$250,000. (Staff contact: David de Cordova, Community Development)

ORDINANCES FOR INTRODUCTION: None.

5. WAIVER OF ADJUSTMENTS TO CITY COUNCIL COMPENSATION FOR 2019 AND 2020 – Introduction of Ordinance No. CS-380 permanently waiving City Council compensation adjustments for 2019 and 2020. (Staff contact: Cindie K. McMahon, City Attorney’s Department)

City Manager’s Recommendation: Introduce the ordinance.

Motion by Mayor Pro Tem Blackburn, seconded by Council Member Bhat-Patel, to introduce Ordinance No. CS-380. Motion passed unanimously, 4/0.

ORDINANCES FOR ADOPTION: None.

PUBLIC HEARINGS:

6. CARLSBAD TOURISM BUSINESS IMPROVEMENT DISTRICT 2020-21 ANNUAL REPORT ASSESSMENT RATE MODIFICATION – 1) Adoption of Resolution No. 2020-178 approving the modified annual report of the Carlsbad Tourism Business Improvement District (CTBID) and continuing the CTBID programs and assessments for fiscal year 2020-21; and

2) Introduction of Ordinance No. CS-381 amending Carlsbad Municipal Code Section 3.37.050 to modify the assessment for the Carlsbad Tourism Business Improvement District. (Staff Contact: Cheryl Gerhardt, Administrative Services Department)

City Manager's Recommendation: Take public input, close the public hearing, adopt the resolution and introduce the ordinance.

Finance Manager Cheryl Gerhardt introduced consultants Gina Reed with Civitas Advisors and Tim Stripe with Grand Pacific Resorts who presented the report and reviewed a PowerPoint presentation (on file in the Office of the City Clerk).

In response to Council Member Schumacher, Ms. Reed explained how the project was noticed and that five protest letters were received.

City Attorney Celia Brewer titled the Ordinance.

Motion by Mayor Pro Tem Blackburn, seconded by Council Member Bhat-Patel, to adopt Resolution No. 2020-178 and introduce Ordinance No. CS-381. Motion passed unanimously, 4/0.

DEPARTMENTAL AND CITY MANAGER REPORTS:

7. THE CROSSINGS AT CARLSBAD GOLF COURSE AUDIT AND UPDATE – Receive a presentation on the results of the internal audit of The Crossings at Carlsbad and an update on audit activities. (Staff contact: Laura Rocha and Brigid Okyere, Administrative Services)

City Manager's Recommendation: Receive the presentation.

Deputy City Manager of Administrative Services Laura Rocha and Internal Auditor Brigid Okyere presented the report and reviewed a PowerPoint presentation (on file in the Office of the City Clerk).

Council received the report.

In response to Council Member Schumacher, Internal Auditor Okyere highlighted the timing of when the budgeting for the golf course transitioned to a fiscal year budget in 2013 which then included the golf course budget in the city's budget process instead of an annual separate budget.

COUNCIL REPORTS AND COMMENTS:

Minute Motion by Council Member Schumacher, seconded by Council Member Bhat-Patel, to direct staff to bring back to City Council the Parks & Recreation Department's Memorial Program for review and potential action. Motion passed unanimously, 4/0.

Council Member Schumacher stated that she has been meeting with residents and the NAACP.

Council Member Bhat-Patel thanked the firefighters on the front line of the many wildfires happening around the state.

CITY MANAGER COMMENTS: City Manager Chadwick apologized for the communication sent out regarding the fee holiday being presented at the Aug. 25 agenda. He explained that it will be presented at the Sept. 1 Council Meeting instead.

CITY ATTORNEY COMMENTS: None.

CITY CLERK COMMENTS: None.

ANNOUNCEMENTS: None.

ADJOURNMENT:

Mayor Hall adjourned the duly noticed Meeting at 4:31 p.m.

Tamara R. McMinn, CPMC, CMC
Senior Deputy City Clerk



Minutes

August 27, 2020, 3:00 P.M.

CALL TO ORDER: 3:00 p.m.

ROLL CALL: Hall, Blackburn, Bhat-Patel, Schumacher.

ANNOUNCEMENT OF CONCURRENT MEETINGS: None.

PLEDGE OF ALLEGIANCE: Mayor Pro Tem Blackburn led the Pledge of Allegiance.

INVOCATION: None.

APPROVAL OF MINUTES: None.

PRESENTATIONS: None.

PUBLIC REPORT OF ANY ACTION TAKEN IN CLOSED SESSION: None.

PUBLIC COMMENT: None.

DEPARTMENTAL AND CITY MANAGER REPORTS:

1. PROPOSED METHODOLOGIES FOR CHOOSING LOCATIONS FOR FUTURE HOUSING IN CARLSBAD AS A PART OF REQUIRED UPDATE TO THE HOUSING ELEMENT OF THE GENERAL PLAN – 1) Receive a report on proposed methods for selecting potential housing sites to meet Carlsbad’s share of the region’s future housing needs; and
2) Provide direction to staff, as needed, on any changes or additions to the proposed methods; and
3) Allocate additional funds not to exceed \$55,000 to cover costs for outside legal counsel to assist in the legal review of the city’s Housing Element Update (Project Name: Housing Element Update 2021-2029; Project No.: GPA 2019-0003 (PUB 2019-0009)). (Staff contact: Scott Donnell, Community Development)

City Manager’s Recommendation: Receive the report, provide direction to staff and appropriate funds.

Community Development Director Jeff Murphy and Senior Planner Scott Donnell presented the report and reviewed a PowerPoint presentation (on file in the Office of the City Clerk).

The following individuals called into the City Council Meeting and shared their comments for the record:

Ted Lohman spoke in support of repurposing the Shoppes at Carlsbad and the surrounding parking lots into a housing density site.

Lani Lutar spoke in support of repurposing some industrial sites into housing density sites.

Michael VanDuker spoke in support of repurposing the Shoppes at Carlsbad and the surrounding parking lots into a housing density site.

Council Member Schumacher expressed that previously developed vacant industrial properties, specifically medical and business offices, should be focused on for future housing density. She added that properties along Palomar Airport Road should be focused on as well for future housing density.

Council Member Bhat-Patel expressed that industrial and commercial spaces that are vacant should be focused on for future housing density.

In response to an inquiry from Mayor Pro Tem Blackburn, Senior Planner Scott Donnell responded that building apartments near hotel districts could benefit employees who work at those properties.

Mayor Hall expressed that properties along Palomar Airport Road should be focused on for future housing density. He added that properties along El Camino Road and Tamarack Avenue could be potential candidates for repurposing for housing density.

Motion by Mayor Pro Tem Blackburn, seconded by Council Member Bhat-Patel, to authorize the additional allocation of funds not to exceed \$55,000 to cover costs for outside legal counsel to assist in the legal review of the city's Housing Element Update 2021-2029. Motion carried unanimously, 4/0.

COUNCIL REPORTS AND COMMENTS: None.

CITY MANAGER COMMENTS: None.

CITY ATTORNEY COMMENTS: None.

CITY CLERK COMMENTS: None.

ANNOUNCEMENTS: None.

ADJOURNMENT: Mayor Hall adjourned the duly noticed Special Meeting at 4:11 p.m.

Hector Gomez
Deputy City Clerk



CITY COUNCIL Staff Report

Meeting Date: Sept. 22, 2020

To: Mayor and City Council

From: Scott Chadwick, City Manager

Staff Contact: Marissa Kawecki, Deputy City Attorney
Marissa.Kawecki@carlsbadca.gov

Subject: Repeal and Replacement of Carlsbad Municipal Code Chapter 6.16 - Nuisances

Recommended Action

1. Introduce the ordinance in Exhibit 1 to repeal and replace Carlsbad Municipal Code Chapter 6.16, Nuisances, which provides for the city council to authorize and hear challenges to nuisance abatement actions.
2. Alternatively, introduce the ordinance in Exhibit 3 to repeal and replace Carlsbad Municipal Code Chapter 6.16, Nuisances, which provides for the city manager to authorize and hear challenges to nuisance abatement actions.

Executive Summary

On May 23, 2017, the City Council directed staff to commence work on a comprehensive update to the Carlsbad Municipal Code. On July 23, 2019, the city council created the ad hoc Carlsbad Municipal Code and City Council Policy Update Subcommittee comprised of Council Members Blackburn and Schumacher to assist staff from the City Attorney's Office and the City Clerk's Office with recommendations for the update. As part of the update, the subcommittee reviewed Carlsbad Municipal Code Chapter 6.16 - Nuisances, and recommends the City Council repeal and replace Chapter 6.16 with either the ordinance in Exhibit 1 or the ordinance in Exhibit 3.

Both ordinances clarify the definition of a public nuisance, enumerate specific conditions constituting a public nuisance and establish the city's authority to abate and recover costs. The difference between the ordinances is that the ordinance in Exhibit 1 provides for the City Council to authorize and hear challenges to nuisance abatement actions while the ordinance in Exhibit 3 provides for the city manager to have this authority. The subcommittee did not have a preference for either choice and recommended that both choices be presented to the city council.

Discussion

The purpose of repealing and replacing Chapter 6.16 is to provide a comprehensive and transparent method to identify public nuisances within the City of Carlsbad, encourage compliance where a public nuisance violation exists and establish the city's authority to abate

and recover the costs of abatement when the responsible party and/or property owner fails to comply.

The chapter is separated into three articles: (I) General, (II) Summary Abatement, and (III) Property Maintenance. Some highlights of these articles are discussed below. The differences in the two proposed ordinance versions fall within Article I, sections 6.16.040 through 6.16.110.

Article I. General

The new Section 6.16.015 sets forth specific conditions constituting a public nuisance. These include serious or blight-causing conditions, such as fire-damaged structures, that particularly require abatement. By specifically identifying these conditions by ordinance, property owners, code enforcement officers and the city manager or City Council can more easily determine whether a specific property's conditions constitute a nuisance and whether they warrant an order for abatement. This increased transparency may result in less contentious legal challenges to a potential nuisance abatement action.

Other features of Article I include a broader definition of public nuisance to include the California Civil Code definition (Section 6.16.010), designation of violations as strict liability offenses, authorization of misdemeanor charges for specified violations of a nuisance abatement order, expansion of procedural due process rights for property owners, and articulation of the Fourth Amendment limitations to private property access (that is, requiring consent, an administrative warrant or an exception to the warrant requirement, such as exigent circumstances, to justify city staff's entry onto private property to conduct abatement activities).

The two proposed ordinance versions diverge in Article I, sections 6.16.040 through 6.16.110, depending on whether the City Council or city manager would authorize and hear challenges to nuisance abatement actions.

Here is an overview of the two options:

Option 1 - City Council authority version

Section 6.16.040 Failure to abate nuisance

If a declaration of a public nuisance is not appealed within 10 days and is not abated on or before the deadline in the notice of violation, the city manager (or designee will issue a notice of nuisance abatement hearing. A public hearing will take place before the city council to determine if a public nuisance exists and if abatement is appropriate.

Sections 6.16.050 and 6.16.060 Noticing of nuisance abatement hearings

Describes the form of notice for nuisance abatement hearings and how to post and serve such notices.

Section 6.16.070 Hearing by City Council

Requires the City Council to hear and consider all relevant evidence, objections or protests, and receive relevant testimony from owners, witnesses, city personnel, and interested persons relative to the alleged public nuisance and to the proposed rehabilitation, repair or demolition of the premises.

Sections 6.16.080 and 6.16.090 Decision of City Council, abatement order

At the end of the hearing, the City Council will determine whether a public nuisance exists. If the City Council finds that a public nuisance exists and that there is sufficient cause to rehabilitate, demolish, or repair the premises, the City Council shall adopt a resolution (“abatement order”) with its findings and an order requiring abatement of the nuisance through rehabilitation, repair or demolition within the time period, in the manner and by the means described in the resolution. The abatement order will also authorize the city to abate the nuisance if the City Council determines that immediate abatement by the city is warranted. The decision and resolution of the City Council is final.

Section 6.16.100 Service of abatement order

- A. Describes how the abatement order shall be served; indicates that property owner can rehabilitate, repair, or demolish the buildings/structures in accordance with the abatement order if done prior to the expiration of the abatement period contained in the abatement order. Property abatement action will terminate the abatement proceedings.
- B. However, if a nuisance is not completely abated by the owner within the designated abatement period, then the city manager (or designee) is authorized and directed to cause the nuisance to be abated by the city.
- C. Any parties authorized by the city manager (or designee) to perform the abatement work may enter upon the subject property only after assuring compliance with the Fourth Amendment, i.e., with the property owner’s consent, after issuance of a judicially authorized inspection warrant, or upon a determination by the City Attorney’s Office that an exception to the inspection warrant requirement applies.

Section 6.16.110 Nuisance abatement violation, penalty

Outlines circumstances in which violations of a nuisance abatement order or contributing to a public nuisance is chargeable as a misdemeanor; clarifies that this chapter can also be enforced under Chapter 1.08, which allows for an infraction or misdemeanor citations for violations of certain sections of the Carlsbad Municipal Code. Criminal prosecution may proceed in spite of abatement of the violation(s).

Option 2 - City manager authority version

Section 6.16.040 Failure to abate nuisance; abatement order

The following provisions apply to the failure to abate a public nuisance:

- A. If a public nuisance is not appealed within 10 days and is not abated on or before the deadline in the notice of violation, the city manager may authorize and direct the abatement of the nuisance.
- B. Describes service of the nuisance abatement order.
- C. Any parties authorized by the city manager (or designee) to perform the abatement work may enter upon the subject property only after assuring compliance with the Fourth Amendment, i.e., with the property owner’s consent, after issuance of a judicially authorized inspection warrant, or upon a determination by the City

Attorney's Office that an exception to the inspection warrant requirement applies. Abatement activities cannot significantly alter structures on the property or the nature or character of the property, nor can any structures be demolished, without a judicially authorized inspection warrant or other judicial order.

D through I: Outlines the circumstances in which violations of a nuisance abatement order or contributing to a public nuisance is chargeable as a misdemeanor and clarifies that this chapter can also be enforced under Chapter 1.08, which allows for an infraction or misdemeanor citations for violations of certain sections of the Carlsbad Municipal Code. Criminal prosecution may proceed in spite of abatement of the violation(s).

In most of the city's code enforcement cases in which a public nuisance notice of violation is issued, the responsible party appeals the notice in a timely manner, resulting in the matter being resolved before an independent administrative hearing officer with no need for either city manager or city council involvement. There are historically few public nuisance cases that are not appealed and not abated by the property owner in a timely manner in the City of Carlsbad. In the past three years, the city manager has issued approximately three such nuisance abatement orders, including one summary abatement order. All of these orders were unchallenged and swiftly resolved by the property owner without the need for city abatement action, except in the case of the one summary abatement action in which the city expended less than \$1,000 for the cost of abatement. In rare instances, staff has sought to initiate a receivership action through the court, rather than the administrative nuisance abatement process, to resolve extremely dangerous, uninhabitable health and safety conditions on a property.

Both proposed ordinance versions provide for cost abatement hearings to be heard by the City Council at which the responsible parties can challenge the city's proposed abatement cost reports. The subcommittee believed that having such decisions made by the City Council will provide independent review of the city manager's determination, rather than allowing the city manager to retain authority to review his or her own abatement cost reports.

Article II. Summary abatement

Article II would provide the city manager the authority to immediately cause the abatement of certain public nuisances classified as "exigent circumstances" in the context of Fourth Amendment search and seizure law. Summary abatement does not require pre-abatement notice or a pre-abatement hearing and no warrant is necessary to allow legal access to the property so long as the nuisance condition poses an immediate risk to health, safety, or public welfare. However, Article II makes clear the city will attempt to contact the responsible party and property owner before proceeding with summary abatement. Moreover, the city will only use the minimum level of correction or abatement necessary to eliminate the hazard. Summary abatement actions are historically rare in the City of Carlsbad, and staff anticipates this trend to continue going forward.

Article II also sets forth summary abatement procedures, cost report guidelines and cost collection remedies similar to those set forth in Article I. Article II also allows the public to challenge a summary abatement cost report through a summary abatement hearing before the City Council.

Article III. Property Maintenance

The new Article III stems from an increase in community complaints related to plant growth and other materials, such as retaining walls, that obstruct public streets, sidewalks or the right of way throughout the City of Carlsbad. Corrective measures are needed to address these hazardous obstructions to pedestrians, cyclists and motorists. The California Government Code authorizes municipalities to require and provide for the removal of dirt, rocks, weeds, plant growth, waste or other obstructing materials from buildings, grounds, sidewalks, parking strips and streets. The Government Code also allows cities to impose a lien on properties for the cost to remove weeds, rubbish or other nuisance-causing materials.

The key provision in this Article is Section 6.16.290(A), “Duty to maintain property.” This provision makes it unlawful for a responsible party to “to place or maintain dirt, rocks, plant growth, waste or other materials on or about adjacent sidewalks, parking strips, alleys, streets, or other public property *in a manner that is either dangerous or injurious* to neighboring property or the health, safety, or welfare of residents in the vicinity; or in a manner that *unreasonably interferes with or unreasonably obstructs* the use of public rights-of-way” (emphasis added).

Violations of this section are deemed a public nuisance and can be administratively abated or resolved through an injunction granted by a court. Most abatement and cost assessment procedures are contained in Article I. However, Article III grants certain city department directors limited authority to abate property maintenance-related nuisances by taking such measures as erecting fences to discourage illegal dumping on a particular property.

Fiscal Analysis

The existing fiscal year 2019-2020 budgets for the City Attorney’s Office and City Clerk’s Office include sufficient funding for the cost of repealing and replacing Chapter 6.16.

Next Steps

The city clerk will prepare the selected ordinance for adoption at the next regular City Council meeting. Once adopted, the city clerk will publish the ordinance or a summary of the ordinance in a newspaper of general circulation within 15 days. The ordinance will be effective 30 days following its adoption.

Environmental Evaluation (CEQA)

This action does not constitute a “project” within the meaning of the California Environmental Quality Act under Public Resources Code section 21065 in that it has no potential to cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and therefore does not require environmental review.

Public Notification and Outreach

Public notice of this item was posted in keeping with the Ralph M. Brown Act and it was available for public viewing and review at least 72 hours before the scheduled meeting date.

Exhibits

1. Ordinance version 1 for Chapter 6.16, granting the City Council authority to pursue nuisance abatement actions
2. Proposed ordinance version 1 with revisions highlighted

3. Ordinance version 2 for Chapter 6.16, granting city manager authority to pursue nuisance abatement actions
4. Proposed ordinance version 2 with revisions highlighted
5. Previous Chapter 6.16

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD,
CALIFORNIA, REPEALING AND REPLACING TITLE 6, CHAPTER 6.16 OF
THE CARLSBAD MUNICIPAL CODE CONCERNING PUBLIC NUISANCES
AND PROPERTY MAINTENANCE

WHEREAS, on May 23, 2017, the City Council of the City of Carlsbad, California (City Council) determined the Carlsbad Municipal Code (Code) requires revisions and amendments and a comprehensive update to the Code is necessary to improve clarity and consistency as well as to reflect current legal and professional best practices; and

WHEREAS, on May 23, 2017, the City Council adopted Resolution 2017-095 authorizing the Code update; and

WHEREAS, on July 23, 2019, the City Council adopted Resolution 2019-133 creating the ad hoc Carlsbad Municipal Code and City Council Policy Update Subcommittee (Subcommittee) to assist with the update and expanding the update to include both the Code and City Council Policies; and

WHEREAS, the City of Carlsbad has a responsibility to its residents and business owners to promote conditions that are beneficial to the health, safety, and welfare of the entire community, The existence of public nuisances has a detrimental effect on persons or property as well as the overall aesthetic quality of the city, and the abatement of these conditions is in the best interest of the city, its residents, and its business owners; and

WHEREAS, the purpose of this update to Chapter 6.16 of the Code is to provide comprehensive and transparent procedures to identify public nuisances within the City of Carlsbad, encourage compliance where a public nuisance violation exists, and establish the authority to abate and recover costs of abatement when the responsible party and/or property owner fails to comply; and

WHEREAS, the provisions adopted in this Chapter shall not be exclusive but shall be cumulative and complementary to any other provisions of the Code and county, state, and federal laws; this Chapter shall not be construed to limit any existing right or power of the city to pursue abatement of and/or abate any and all public nuisances; and

WHEREAS, the provisions of this chapter are authorized by California Constitution, Article 11, Section 7, California Civil Code Section 3491, California Code of Civil Procedure Section 731, California Government Code Sections 25485, 38771, 38773.5, and California Penal Code Section 372; and

WHEREAS, with regard to Chapter 6.16, Article III "Property Maintenance," the City of Carlsbad has a history and reputation for well-kept properties that do not endanger the public; the property

values and the general welfare of this community are founded, in part, upon the appearance and maintenance of properties; and

WHEREAS, dirt, rocks, plant growth, waste, or other materials which are either dangerous or injurious to neighboring property or to the health and welfare of residents in the vicinity or which unreasonably interfere with the use of the public rights-of-way are public nuisances; these obstructions impede the use of public streets, sidewalks, or rights-of-way, can compromise the safety of motorists, bicyclists, and pedestrians and impose a liability on the City; and

WHEREAS, the Code does not specifically regulate the maintenance of property with regard to dirt, rocks, plant growth, waste, or other materials to the extent that they obstruct public streets, sidewalks, or rights-of-way or otherwise constitute a public nuisance, and the City seeks to remedy the public safety hazards presented by same; and

WHEREAS, California Government Code Sections 39501 and 39502 authorize municipalities to regulate property maintenance and remove dirt, rocks, plant growth, waste, or other materials which obstruct public property or are otherwise dangerous or injurious to neighboring property or to the health or welfare of residents in the vicinity; and California Government Code Section 39502 allows a municipality to impose a lien on the abutting property for the cost of removal of the aforementioned obstructions.

NOW, THEREFORE, the City Council of the City of Carlsbad, California, does ordain as follows:

1. The above recitations are true and correct.
2. Carlsbad Municipal Code, Title 6, Chapter 6.16 is hereby repealed and replaced as follows:

Chapter 6.16

PUBLIC NUISANCES AND PROPERTY MAINTENANCE

Sections:

Article I. General

- 6.16.005 Declaration of purpose and statutory authority.**
- 6.16.010 Public nuisance defined.**
- 6.16.015 Specific conditions constituting a public nuisance.**
- 6.16.020 Determination of nuisance on real property.**
- 6.16.030 Right to appeal notice of violation.**
- 6.16.040 Failure to abate nuisance.**
- 6.16.050 Form and notice of nuisance abatement hearing.**
- 6.16.060 Posting and service of notice of nuisance abatement hearing.**

- 6.16.070 Hearing by city council.
- 6.16.080 Decision of city council; abatement order.
- 6.16.090 Limitation of filing judicial action.
- 6.16.100 Service of abatement order.
- 6.16.110 Nuisance abatement violation—penalty.
- 6.16.120 Account of cost of abatement to be kept.
- 6.16.130 Copies of abatement cost report to be served.
- 6.16.140 Challenges to abatement cost report.
- 6.16.150 Hearing on abatement cost report; abatement cost order.
- 6.16.160 Abatement cost to be lien against property.
- 6.16.170 Collection of cost of abatement.
- 6.16.180 Strict liability offense.
- 6.16.190 No mandatory duty.
- 6.16.200 Alternative means of enforcement.

Article II. Summary Abatement

- 6.16.210 General.
- 6.16.220 Determination of summary abatement.
- 6.16.230 Summary abatement cost report.
- 6.16.240 Summary abatement hearing.
- 6.16.250 Collection of cost of summary abatement.

Article III Property Maintenance

- 6.16.260 Declaration of purpose and statutory authority.
- 6.16.270 Definitions.
- 6.16.280 Enforcement authority.
- 6.16.290 Duty to maintain property.
- 6.16.300 Violations.
- 6.16.310 Administrative abatement procedure.
- 6.16.320 Abatement lien.
- 6.16.330 Severability.

Article I. General

6.16.005 Declaration of purpose and statutory authority.

The purpose of this chapter is to establish comprehensive and transparent procedures for the administrative and summary abatement of public nuisances and code violations, including public nuisances related to property maintenance. The procedures established in these sections are in addition to any other legal remedy, criminal or civil, established by law which may be pursued to address municipal code or applicable state code violations.

The provisions of this chapter are authorized by California Constitution, Article 11, Section 7, California Civil Code Section 3491, California Code of Civil Procedure Section 731, California Government Code Sections 25485, 38771, 38773.5, and California Penal Code Section 372.

6.16.010 Public nuisance defined.

- A. "Public nuisance" means any condition caused, maintained, or in existence which constitutes a threat to the public's health, safety, and welfare or to the environment, or which significantly obstructs, injures, or interferes with the reasonable or free use of property in a neighborhood, community, or to any considerable number of persons, or which constitutes a public nuisance under California Civil Code Sections 3479-3480.
- B. "Public nuisance" also means real property which is maintained in such a defective, unsightly, dangerous, or deteriorated condition, or state of disrepair, that the property will or may cause harm to persons, or will be materially detrimental to property or improvements located in the immediate vicinity of the property.

6.16.015 Specific conditions constituting a public nuisance.

The existence of any of the following conditions on any property is a public nuisance:

- A. Conditions related to property maintenance, as set forth in Article III of this chapter.
- B. Any obstruction to the free flow of drainage water in a natural drainage course, such as streams, rivers, and creeks.
- C. Land that is in a state to cause or contribute to erosion, subsidence, or surface water drainage impacting adjacent public properties.
- D. Buildings which are abandoned, partially destroyed, or remain unreasonably in a state of partial construction with no observable work performed for a period of six months or longer.
- E. Buildings, walls, and other structures which have been damaged by fire, decay, or otherwise to such an extent they cannot be repaired so as to conform to the requirements of the building code in effect in this city. Buildings which have been partially destroyed or demolished by these causes and which remain in such a state for a period of six months or longer shall also be a violation of this subsection.
- F. The failure to close, by means acceptable to the building official, all doorways, windows, and other openings into vacant structures.
- G. Any condition, instrument, or machine on real property that is unsafe and unprotected and consequently dangerous to minors by reason of their inability to appreciate its peril, and which may be reasonably expected to attract minors to the property and thus risk injury to them by their playing with, in, or on it (i.e., attractive nuisances).

- H. Graffiti on any public or privately owned structures within the city. For purposes of this chapter, “graffiti” means any form of painting, writing, inscription, or carving on any surface, regardless of the content or the nature of the material used in the commission of the act, which was not authorized in advance by the owner of the surface.
- I. All other conditions deemed to be a “nuisance” or “public nuisance” as defined throughout this Code.
- J. Property upon which any violation of this Code or any applicable state, county, or local law exists, or property which is used in violation of this Code or any applicable state, county, or local law.

6.16.020 Determination of nuisance on real property.

Whenever the enforcement officer, as that term is defined in Section 1.10.010, determines that there exists on any real property in the city a public nuisance, the enforcement officer may serve upon the property owner and responsible party, as that term is defined in Section 1.10.010, a notice of violation under Section 1.10.030 setting forth the nature of the public nuisance. The notice shall be served in accordance with Section 1.10.040.

6.16.030 Right to appeal notice of violation.

The property owner and/or responsible party may appeal the notice of violation of public nuisance within 10 calendar days from the date of service of the notice of violation by filing a written request to appeal as required by Section 1.10.120. The administrative appeal procedures shall follow those set forth in Section 1.10.130.

6.16.040 Failure to abate nuisance.

If a public nuisance noticed pursuant to Section 6.16.020 is not appealed within 10 calendar days, and is not abated on or before the date described in the notice of violation, the city manager or designee shall cause to be issued a separate notice of nuisance abatement hearing, in accordance with Sections 6.16.050 and 6.16.060, for the holding of a public hearing before the city council to determine whether a public nuisance exists and whether abatement is appropriate.

6.16.050 Form and notice of nuisance abatement hearing.

Notice of the time and place of hearing before the city council shall be titled, "NOTICE OF NUISANCE ABATEMENT HEARING," in letters not less than three-fourths of an inch in height and shall be substantially in the following form, as approved by the city attorney:

NOTICE OF HEARING TO DETERMINE EXISTENCE OF PUBLIC NUISANCE AND TO ABATE IN WHOLE OR PART.

Notice is hereby given that on the ____ day of _____, 20____, at the hour of _____, the City Council of Carlsbad will hold a public hearing in the Council Chambers, located at 1200 Carlsbad Village Drive, Carlsbad, California, to ascertain whether certain premises situated in the City of Carlsbad, State of California, more particularly described as:

[provide assessor’s parcel number and legal description]

constitute a public nuisance subject to abatement by the rehabilitation of the premises or by the repair or demolition of buildings or structures situated on the premises. If the premises, in whole or part, are found to constitute a public nuisance as defined by Chapter 6.16 of the Carlsbad Municipal Code, and if the premises are not promptly abated by the owner, the nuisances may be abated by municipal authorities and/or their contractors or agents, and the rehabilitation, repair, or demolition will be assessed upon the premises and the cost will constitute a lien or special assessment against the land until paid. The alleged violations consist of the following:

[describe public nuisance violations]

The methods of abatement available are:

[describe methods]

All persons having any objection to, or interest in this matter are hereby notified to attend a meeting of the City Council of the City of Carlsbad to be held on the ____ day of _____, 20____, at the hour of _____ when their testimony and evidence will be heard and given due consideration.

DATED: _____

City Manager of the City of Carlsbad (or title of designee)

6.16.060 Posting and service of notice of nuisance abatement hearing.

- A. The city manager or designee shall cause to be served upon the property owner and any mortgagee and/or beneficiary under any recorded deed of trust of the affected premises a copy of a notice of nuisance abatement hearing as set forth in Section 6.16.050, and shall cause a copy to be conspicuously posted on the affected premises.
- B. Notice shall be served as required by Section 1.10.040 at least 15 calendar days before the time fixed for the hearing. If any owner's address is unknown, this shall be stated in the notice and the notice shall be sent to the owner in care of the San Diego County Tax Assessor. Proof of posting and service of the notices shall be made by an affidavit or declaration that shall be filed with the city clerk certifying the time and manner in which the notice was given, along with any registered or certified mail receipt cards which may have been returned to the city acknowledging receipt of said mail.
- C. Prior to the hearing before the city council, a second notice shall be issued in the same manner as described above at least 5 calendar days before the time fixed for such hearing. The service is complete at the time of such deposit.
- D. "Owner," as used in this section, means any person in possession and also any person having or claiming to have any legal or equitable interest in the affected premises, including, but not limited to, a mortgagee and/or beneficiary, as disclosed by a current title search from any accredited title company. The failure of any person to receive the hearing notice does not affect the validity of the proceedings under this chapter.

6.16.070 Hearing by city council.

At the time stated in the hearing notice, the city council shall hear and consider all relevant evidence, objections or protests, and shall receive relevant testimony from owners, witnesses, city personnel, and interested persons relative to the alleged public nuisance and to the proposed rehabilitation, repair, or demolition of the premises. The hearing may be continued from time to time.

6.16.080 Decision of city council; abatement order.

Upon or after the conclusion of the nuisance abatement hearing, the city council shall, based upon the hearing, determine whether the premises, or any part of it, as maintained, constitutes a public nuisance as defined in this chapter. If the city council finds that a public nuisance exists and that there is sufficient cause to rehabilitate, demolish, or repair the premises, the city council shall adopt a resolution ("abatement order") setting forth its findings and ordering the owner or other person having charge or control of the premises to abate the nuisance by having the premises, buildings, or structures rehabilitated, repaired, or demolished within the period specified in the resolution, which shall not be less than 30 calendar days after the adoption of the resolution, in the manner and by the means specifically set forth in the resolution. The abatement order shall also contain authorization for the city to abate the nuisance pursuant to this chapter if, in the city council's discretion, it is determined that immediate abatement by the city in whole or in part is warranted. The decision and resolution of the city council shall be final and conclusive.

6.16.090 Limitation of filing judicial action.

Any owner or other interested person having any objections or feeling aggrieved at any proceeding taken by the city council in ordering the abatement of any public nuisance under this chapter must bring an action to contest the decision in a court of competent jurisdiction within the time period specified in Section 1.16.020.

6.16.100 Service of abatement order.

- A. Within 5 calendar days of the adoption of the abatement order, the city shall post a copy of the abatement order conspicuously on the premises, buildings, or structures declared to be a nuisance and serve another copy to the parties as required by Section 1.10.040. The abatement order shall contain a detailed list of needed corrections and abatement methods. Any property owner has the right to have the premises rehabilitated or to have the buildings or structures demolished or repaired in accordance with the abatement order and at the owner's own expense, provided the rehabilitation, demolition, or repair is done prior to the expiration of the abatement period set forth in the abatement order. Upon abatement in full by the owner, the proceedings under this chapter shall terminate.
- B. If a nuisance is not completely abated by the owner within the designated abatement period, then the city manager or designee is authorized and directed to cause the nuisance to be abated by city agents, employees or by private contract. Upon request of the designated official, other city departments shall cooperate fully and shall render reasonable assistance in abating the nuisance.
- C. Any parties authorized by the city manager or designee to perform the abatement work may enter upon the subject property only after: (1) receiving written consent of the property owner or his/her

authorized agent, (2) the issuance of a judicially authorized inspection warrant, or (3) a determination by the City Attorney's Office that an exception to the inspection warrant requirement applies.

6.16.110 Nuisance abatement violation—penalty.

- A. The owner or other person having charge or control of a buildings or premises who violates any abatement order issued under this chapter, or under state law where applicable, is guilty of a misdemeanor.
- B. Any occupant or lessee in possession of a building or structure who fails to vacate the building or structure in accordance with an order issued under this chapter is guilty of a misdemeanor.
- C. Any person who removes any notice or order posted under this chapter is guilty of a misdemeanor.
- D. No person shall obstruct, impede, or interfere with any representative of the city council or with any representative of a city department or with any person who owns or holds any estate or interest in a building which has been ordered to be vacated, repaired, rehabilitated, or demolished and removed, or with any person to whom the building has been lawfully sold pursuant to the provisions of this Code, whenever the representative of the city council, representative of the city, purchaser, or person having any interest or estate in the building is engaged in vacating, repairing, rehabilitating, or demolishing and removing the building under the provisions of this chapter, or in performing any necessary act preliminary to or incidental to such work as authorized or directed under this chapter.
- E. The provisions of this chapter are also enforceable, and violations are punishable, under Chapter 1.08. Chapter 1.08 allows for the issuance of infraction or misdemeanor citations for violations of certain sections of this Code. Criminal prosecution shall not preclude nor be precluded by abatement of the violation or violations.
- F. It is unlawful and a misdemeanor for any person to do any act or thing upon the property of another that is declared to be a public nuisance under any provision of this Code, or to do anything or act upon the property of another that results in the declaration of a public nuisance, without the express consent of the owner of the property.

6.16.120 Account of cost of abatement to be kept.

- A. The city manager or designee shall keep an account of the cost of abatement and of rehabilitating, demolishing, or repairing any premises, buildings, or structures, including any related salvage value and administrative costs. Upon completion of this work, the city manager or designee shall authorize a written abatement cost report stating these costs.
- B. For purposes of this chapter, "administrative costs" includes, without limitation, the actual expenses and costs of the city in preparing, printing, and mailing notices, specifications and contracts and in inspecting the work.

6.16.130 Copies of abatement cost report to be served.

The city manager or designee shall cause a copy of the abatement cost report to be served on the property owner and the responsible party per Section 1.10.040.

6.16.140 Challenges to abatement cost report.

The property owner and/or responsible party may dispute the abatement cost report within 10 calendar days from the date of service of the abatement cost report by filing a written dispute with the city clerk. The property owner and/or responsible party shall set forth the basis of the dispute and submit relevant documentation in support of their dispute.

6.16.150 Hearing on abatement cost report; abatement cost order.

- A. If a property owner and/or responsible party timely challenges the abatement cost report, the city council shall set the matter for hearing to determine the correctness or reasonableness, or both, of such costs.
- B. A copy of the abatement cost report and notice of hearing shall be served upon the property owner and/or responsible party challenging the report in accordance with Section 1.10.040, at least 5 calendar days prior to the date of the city council hearing.
- C. Proof of service of the abatement cost report and notice of hearing shall be made by affidavit or declaration, under penalty of perjury, filed with the city clerk at least 5 calendar days prior to the date of the city council hearing.
- D. At the time and place fixed for receiving and considering the report, the city council shall hear and pass upon the report of the costs of abatement, together with any objections, protest, or documentation submitted by the property owner and/or responsible party. By resolution, the city council shall adopt an abatement cost order that:
 1. Determines the correct cost of abatement and related administrative costs.
 2. If necessary, modifies the abatement cost report to conform to such corrected abatement and administrative costs.
 3. Confirms the abatement cost report as presented or modified.
 4. States the date of the final abatement cost report.
 5. Determines and states the correct legal description of the subject property, the correct county assessor's parcel number, the street address, and the name and address of the recorded owner based on the last equalized assessment roll or the supplemental roll, whichever is more current.

The decision of the city council shall be final and conclusive.

6.16.160 Abatement cost to be lien against property.

The cost of abatement and related administrative costs, as determined, shall be a:

- A. Personal obligation of the person creating, causing, committing, or maintaining the nuisance abated;
- B. Personal obligation of the property owner of the subject property; and
- C. Special assessment against the subject property or a lien against the subject property.

6.16.170 Collection of cost of abatement.

The cost of abatement and any related administrative costs, as confirmed, may be collected by the city by the following means or any other lawful means:

- A. Nuisance abatement lien. The city manager or designee may authorize recordation of a nuisance abatement lien in the office of the county recorder, along with an acknowledged copy of the abatement cost report(s), abatement cost order (if applicable), and the abatement order.
 - 1. Prior to recordation, a notice of lien shall be served on the owner of record, based on the last equalized assessment roll or the supplemental roll, whichever is more current.
 - 2. The notice shall be served in the same manner as a summons in a civil action in accordance with California Code of Civil Procedure Section 415.10 et seq. If the owner of record after diligent search cannot be found, the notice may be served by posting a copy in a conspicuous place upon the property for a period of 10 calendar days and publishing it in a newspaper of general circulation in San Diego County pursuant to California Government Code Section 6062.
 - 3. The nuisance abatement lien authorized by this section shall be in a form approved by the City Attorney substantially as follows:

[Name and address of the recorded owner of the parcel]

NOTICE OF LIEN - CLAIM OF CITY OF CARLSBAD

Pursuant to the authority vested by the provisions of Chapter 6.16 of the Carlsbad Municipal Code, the city manager or designee of the City of Carlsbad did on or about the ____ day of _____, 20____, cause the premises hereinafter described to be rehabilitated, or the building or structure on the real property hereinafter described to be repaired or demolished, in order to abate a public nuisance; and the city manager/City Council of the City of Carlsbad (circle one) did on the ____ day of _____, 20____, assess the cost of such rehabilitation, repair or demolition upon said real property hereinafter described; and the same has not been paid nor any part thereof; and that the City of Carlsbad does hereby claim a lien on such rehabilitation, repair or demolition in the amount of said assessment, to wit: the sum of \$_____, and the same shall be a lien upon said real property until the same has been paid in full and discharged of record. The real property hereinbefore mentioned, and upon which a lien is claimed, is that certain parcel of land lying and being in the City of Carlsbad, County of San Diego,

State of California, and more particularly described as follows: [Assessor Parcel Number and legal description]

DATED:

City Manager of the City of Carlsbad

4. From the date of recording, the nuisance abatement lien shall have the force, effect, and priority of a judgment lien and may be foreclosed by an action brought by the city for a money judgment.
 5. The city may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.
 6. In the event that the lien is discharged or released or satisfied, either through payment or foreclosure, notice of the discharge (“release of lien”) containing the information contained in paragraph 3 of this subsection shall be recorded in the county recorder’s office. A courtesy copy shall also be provided to the recorded property owner consistent with the service methods in Section 1.10.040.
- B. Special Assessment. As an alternative to the recordation of a nuisance abatement lien, the city manager or designee may make the cost of abatement of a nuisance a special assessment against that parcel, using the following procedures:
1. The city manager or designee shall file an acknowledged copy of the abatement cost report(s), abatement cost order (if applicable), and the abatement order with the auditor of the county, who shall enter the assessment on the county tax roll opposite the subject property.
 2. Prior to the filing with the auditor of the county in accordance with paragraph (B)(1) above, the property owner, if his/her identity can be determined from the county assessor’s or county recorder’s records, should be provided a notice of special assessment by certified mail, similar in form to the notice of lien described in Section 6.16.170(A)(3). The notice of special assessment shall include as an attachment an acknowledged copy of the abatement cost report, abatement cost order (if applicable), and the abatement order. The notice shall be given at the time of imposing the assessment and shall specify that the property may be sold after three years by the tax collector for unpaid delinquent assessments. The tax collector’s power of sale shall not be affected by the failure of the property owner to receive notice.
 3. The amount of the assessment may be collected at the time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes.
 4. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches on the real property prior to the date on

which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

- 5. If the city imposes an assessment pursuant to this section, it may, subject to the requirements applicable to the sale of property pursuant to California Revenue and Taxation Code Section 3691, conduct a sale of vacant residential developed property for which the payment of that assessment is delinquent.
- C. Civil action by the city.
- D. In addition to any other costs of abatement under this chapter, upon the entry of a second or subsequent civil or criminal judgment within a two-year period in which the owner of real property is responsible for a condition that may be abated under this chapter, except for conditions under the State Housing Law (see California Health and Safety Code Section 17980), a court may order the property owner to pay triple the costs of the abatement.

6.16.180 Strict liability offense.

Violations of this chapter shall be treated as strict liability offenses regardless of intent.

6.16.190 No mandatory duty.

Nothing in this chapter is intended to create a mandatory duty on behalf of the city or its employees under the Government Claims Act (California Government Code Section 900 et seq.) and no cause of action against the city or its employees is created by this chapter that would not arise independently of the provisions of this chapter.

6.16.200 Alternative means of enforcement.

This chapter is not the exclusive regulation of nuisance code violations. It shall supplement and be in addition to other regulatory codes, statutes, and ordinances enacted by the state or any other legal entity or agency having jurisdiction. Nothing in this chapter shall be deemed to prevent the city from authorizing the City Attorney to commence any other available civil or criminal proceedings to abate a public nuisance under applicable provisions of state law as an alternative to proceedings set forth in this chapter.

Article II. Summary Abatement

6.16.210 General.

A nuisance may be summarily abated without notice, hearing, or a warrant when immediate action is necessary to preserve or protect the public health and safety. Summary abatement actions are not subject to all of the requirements of Article I of this chapter, but instead shall be subject to the following requirements:

6.16.220 Determination of summary abatement.

- A. The city manager or designee shall make a determination that a public nuisance exists that poses an immediate risk to the health, safety, or welfare of the public, persons in the city, or the environment.
- B. Whenever possible, the city shall attempt to contact the responsible party and property owner, as defined in Section 1.10.010, to request abatement of the nuisance prior to the city proceeding with summary abatement. If the responsible party and property owner are not available, or are incapable, or unwilling to abate the nuisance, the city may proceed with summary abatement using the minimum level of correction or abatement as necessary to eliminate the immediacy of the hazard.
- C. Notwithstanding the requirement in subsection (B), the city manager or designee may exercise the following powers without prior notice to the responsible party and property owner:
 - 1. Order the immediate vacation of any tenants and prohibit occupancy until all repairs are completed.
 - 2. Post the premises as unsafe, substandard, or dangerous.
 - 3. Board, fence, or secure the building or site.
 - 4. Raze and grade that portion of the building or site to prevent further collapse and remove any hazard to the general public.
 - 5. Make any minimal emergency repairs as necessary to eliminate any imminent life safety hazard.
 - 6. Take any other action as reasonably appropriate under the circumstances of an immediate hazard.
 - 7. Exercise any of the summary abatement powers listed in this subsection to remove items placed or stored on city property, sidewalks, or public rights-of-way.
 - 8. Pursue any administrative or judicial remedy to abate any remaining public nuisance.

6.16.230 Summary abatement cost report.

- A. The city manager or designee shall maintain the following records and shall prepare a report of summary abatement that contains the following:
 - 1. A description of the time, duration, type, and extent of the nuisance;
 - 2. An evaluation of the risks to the health, safety, and welfare of the public and/or the environment caused by allowing the nuisance to continue;
 - 3. Steps taken to contact the responsible party and property owner;

4. All costs associated with the investigation and summary abatement of the nuisance, including the costs of personnel, equipment, facilities, materials, and other external resources.
- B. Within 10 business days after the determination is made by the city manager or designee to summarily abate the nuisance, a notice of determination and a copy of the report of summary abatement shall be served on the responsible party, the owner of record of the parcel of land where the nuisance originated, and all persons known to have any legal interest in the property. The city may charge the responsible party or the property owner with the full costs of investigation and summary abatement of the nuisance.

6.16.240 Summary abatement hearing.

- A. A hearing to assess abatement costs and affirm whether immediate action was necessary to preserve or protect the health, safety, and/or welfare of the public, persons in the city and/or the environment shall be conducted before the city council at the request of the responsible party and/or the property owner.
- B. The responsible party and/or the property owner must file a written request for a hearing with the city clerk within 30 calendar days of receipt of the notice of determination and report of summary abatement.
- C. The hearing shall be scheduled before the city council within 60 calendar days of receipt of the request for a hearing.
- D. Within 30 calendar days of receipt of the notice of determination and the report of summary abatement, and at least 30 calendar days prior to the scheduled hearing date, the responsible party and/or property owner may file a request with the city clerk for any and all evidence and objections regarding the need for summary abatement and/or the abatement costs.
- E. The hearing and consideration may be continued from time to time and upon its conclusion, the city council shall, by resolution:
 1. Determine whether the nuisance posed an immediate risk to the health, safety, or welfare of the public, persons in the city, and/or the environment.
 2. Determine whether the responsible party was unavailable, incapable, and/or unwilling to abate the nuisance.
 3. Determine the correct abatement cost.
 4. If necessary, modify the report of summary abatement to conform to such findings as indicated above.
 5. Confirm the report of summary abatement as presented or modified.
 6. State the date of the summary abatement order.

7. Determine and state the correct legal description of the subject property, the correct county assessor’s parcel number, the street address, and the name and address of the recorded owner based on the last equalized assessment roll or the supplemental roll, whichever is more current.

F. The decision of the city council shall be final.

6.16.250 Collection of cost of summary abatement.

In addition to any other applicable procedures, the cost of summary abatement may be collected in accordance with Section 6.16.170 or become a lien or special assessment against the property in accordance with Section 6.16.160.

Article III Property Maintenance

6.16.260 Declaration of purpose and statutory authority.

Every person has the duty to maintain real property under the person’s control free from dirt, rocks, weeds, plant growth, waste, or other materials which are either dangerous or injurious to neighboring property or to the health or welfare of residents in the vicinity or which interfere with the use of public rights-of-way. There continues to be a need for further emphasis on maintaining unobstructed rights-of-way, particularly as to plant growth. Unless corrective measures are taken to alleviate the existing conditions and to avoid future problems in this regard, the public health, safety, and general welfare and the property values and social and economic standards of this community will be depreciated.

The purpose and intent of this article is to establish standards to identify and enforce private property maintenance to the ensure plant growth, waste, and other materials do not present a public nuisance by obstructing public streets, sidewalks, or rights-of-way. This article is also intended to provide for procedures to administratively abate public nuisances caused by plant growth, waste, or other materials obstructing public streets, sidewalks, or rights-of-way.

This article is authorized by California Government Code sections 39501 and 39502.

6.16.270 Definitions.

For purposes of this article the following definitions apply:

“Liquid waste” includes oil, other petroleum products, paint, chemicals, and hazardous waste or materials.

“Litter” means small quantities of waste matter carried on or about the person including, but not limited to, beverage containers and closures, packaging wrappers, wastepaper, newspapers, magazines, or the contents of containers, closures, or wrappers.

“Littering” means the act of discarding, dropping, scattering, or disposing of litter in a location or container which is not used for the proper disposal of waste.

“Parking strip” means the portion of property between a public street and private property.

“Plant growth” means any flora, vegetation, or herbage.

“Property” means any real property, or improvements on real property, including that portion of any lot abutting a public street over which the city has an easement for right-of-way or utility service.

“Public property” means any property interest owned by, or otherwise granted to, the City of Carlsbad.

“Rubbish” means non-functional, non-usable, or abandoned material or matter. Rubbish includes ashes, paper, cardboard, tin cans, dirt, cut brush, yard and garden clippings or trimmings, wood, glass, bedding, cloth, clothing, crockery, plastic, rubber by-products, litter, machinery, vehicle parts, junk, and other similar items.

“Solid waste” means rubbish, broken concrete or asphalt, piles of rock, dirt, and other noncombustible materials and earth fill material not otherwise authorized by permit or ordinance for land development.

“Waste” means material of any nature that constitutes rubbish, solid waste, liquid waste, or medical waste. Waste may include abandoned or unidentified personal property that is left unattended on public sidewalks and rights-of-way or other public property. Waste does not include compost piles, composting, or recyclable material properly contained and disposed of in a timely fashion.

6.16.280 Enforcement authority.

The directors of community development or environmental management, and any other director or equivalent authority, authorized by the city manager or designee (collectively, “Directors”) are authorized to administer and enforce the provisions of this article. The Directors or their designated enforcement officers may exercise any enforcement powers as provided in Chapter 1.10 of this Code.

6.16.290 Duty to maintain property.

- A. It is unlawful for any property owner or responsible party, as defined in Section 1.10.010, to place or maintain dirt, rocks, plant growth, waste, or other materials on or about adjacent sidewalks, parking strips, alleys, streets, or other public property in a manner that is either dangerous or injurious to neighboring property or the health, safety, or welfare of residents in the vicinity; or in a manner that unreasonably interferes with or unreasonably obstructs the use of public rights-of-way. Any violation of this section is a public nuisance and, as such, may be abated or enjoined from further existence or operation within the city, pursuant to the procedures set forth in Article I of this chapter, except as set forth in subsections (B) and (C) below.
- B. The Director may require a property owner or responsible party to erect fences, barriers, berms, or other suitable means to discourage access to the property for littering or illegal dumping. This may include the posting of signs that prohibit littering and illegal dumping.
- C. The Director may authorize the collection or abatement of waste from small business enterprises that abut public property under the following circumstances:
 1. At the request of the affected property owner, if the Director determines that reasonable efforts were made to comply with subsections (A) or (B) listed above; or

2. When public health or safety requires such measures.

D. The Director is authorized to assess costs against affected property owners for the abatement services performed by the city or its agents pursuant to Article I of this chapter. The Director's cost assessment report may be challenged pursuant to the procedures in Article I of this chapter.

6.16.300 Violations.

Violations of this article may be chargeable as an infraction. The Directors may also seek injunctive relief or civil penalties in the Superior Court, or pursue any administrative penalties under Chapter 1.10 of this Code.

6.16.310 Administrative abatement procedure.

Any abatement action allowed by this article shall follow the procedures set forth in Article I of this chapter, except as provided in subsections 6.16.290(B) and (C).

6.16.320 Abatement lien.

The cost of removal and abatement of a property maintenance public nuisance may be assessed against the abutting or adjacent property owner and may become a lien as authorized in California Government Code Section 39502. Designated enforcement officers shall follow the procedures in Article I of this chapter for assessment, execution, and collection of the lien. Enforcement of the lien may include sale of the property.

6.16.330 Severability.

If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, the decision shall not affect the validity of the remaining portions of this chapter. The city council declares that it would have adopted this chapter, and each and every section, subsection, sentence, clause, and phrase of the chapter not declared invalid or unconstitutional, without regard to whether any portion of the chapter would be subsequently declared invalid or unconstitutional.

Chapter 6.16

PUBLIC NUISANCES*,** AND PROPERTY MAINTENANCE

Sections:

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- 6.16.005 Declaration of purpose and statutory authority.
- ~~6.16.010~~ ~~Nuisance defined.~~
- ~~6.16.020~~ ~~Determination of nuisance on real property.~~
- ~~6.16.030~~ ~~Right to appeal notice of violation.~~
- 6.16.010 Public nuisance defined.
- 6.16.015 Specific conditions constituting a public nuisance.
- 6.16.020 Determination of nuisance on real property.
- 6.16.030 Right to appeal notice of violation.
- 6.16.040 Failure to abate nuisance.
- ~~6.16.050~~ ~~Account _____ Form and notice of cost of nuisance abatement to be kept hearing.~~
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- ~~6.16.070~~ ~~Determination of _____ Hearing by city council.~~
- 6.16.080 Decision of city council; abatement cost order.
- ~~6.16.080~~ ~~Abatement cost to be lien against property.~~
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Article II. Obstructing Drainage Course

- ~~6.16.120~~ ~~Declared nuisance.~~
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- ~~6.16.140~~ ~~No mandatory duty.~~

Article III. Summary Abatement

- 6.16.120 Account of cost of abatement to be kept.
- 6.16.130 Copies of abatement cost report to be served.
- 6.16.140 Challenges to abatement cost report.
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- 6.16.160 Abatement cost to be lien against property.
- 6.16.170 Collection of cost of abatement.
- 6.16.180 Strict liability offense.
- 6.16.190 No mandatory duty.
- 6.16.200 Alternative means of enforcement.

Article II. Summary Abatement

- 6.16.210 General.
- 6.16.220 Determination of summary abatement.
- 6.16.230 Summary abatement cost report.

* For provisions regarding animal nuisances, see Section 7.04.010.

** Prior ordinance history: Ord. Nos. 1261, NS-86, NS-144, NS-426, NS-625, 8084, NS-676, and CS-164.

~~Article I. Generally~~

~~6.16.005~~ 240 Summary abatement hearing.

~~6.16.250~~ Collection of cost of summary abatement.

Article III Property Maintenance

6.16.260 Declaration of purpose and statutory authority.

~~The council finds that its~~ 6.16.270 Definitions.

6.16.280 Enforcement authority.

6.16.290 Duty to maintain property.

6.16.300 Violations.

6.16.310 Administrative abatement procedure.

6.16.320 Abatement lien.

6.16.330 Severability.

Article I. General

6.16.005 Declaration of purpose in adopting and statutory authority.

The purpose of this chapter is to establish comprehensive and transparent procedures for the administrative and summary abatement of public nuisances and code violations, including public nuisances related to property maintenance. The procedures established in these sections are in addition to any other legal remedy, criminal or civil, established by law which may be pursued to address municipal code or applicable state code violations.

~~6.16.010 — Nuisance defined.~~

~~The existence of real property, whether public or private, within the city:~~

- ~~A. In a condition which is adverse or detrimental to public peace, health, safety, the environment, or general welfare; or~~
- ~~B. Any condition caused, maintained, or permitted to exist in violation of any provision of the municipal code or applicable state codes which constitute a public nuisance may be abated by the city pursuant to the procedures set forth in this chapter; or~~
- ~~C. Which is~~ The provisions of this chapter are authorized by California Constitution, Article 11, Section 7, California Civil Code Section 3491, California Code of Civil Procedure Section 731, California Government Code Sections 25485, 38771, 38773.5, and California Penal Code Section 372.

6.16.010 Public nuisance defined.

- A. "Public nuisance" means any condition caused, maintained, or in existence which constitutes a threat to the public's health, safety, and welfare or to the environment, or which significantly obstructs, injures, or interferes with the reasonable or free use of property in a neighborhood, community, or to any considerable number of persons, or which constitutes a public nuisance under California Civil Code Sections 3479-3480.

B. “Public nuisance” also means real property which is maintained so as to permit the same to become so in such a defective, unsightly, dangerous, or in a deteriorated condition of deterioration, or state of disrepair so, that the same property will, or may cause harm to persons, or which will be materially detrimental to property or improvements located in the immediate vicinity of such the property.

6.16.015 Specific conditions constituting a public nuisance.

The existence of any of the following conditions on any property is a public nuisance:

- A. Conditions related to property maintenance, as set forth in Article III of this chapter.
- B. Any obstruction to the free flow of drainage water in a natural drainage course, such as streams, rivers, and creeks.
- C. Land that is in a state to cause or contribute to erosion, subsidence, or surface water drainage impacting adjacent public properties.
- D. Buildings which are abandoned, partially destroyed, or remain unreasonably in a state of partial construction with no observable work performed for a period of six months or longer.
- E. Buildings, walls, and other structures which have been damaged by fire, decay, or otherwise to such an extent they cannot be repaired so as to conform to the requirements of the building code in effect in this city. Buildings which have been partially destroyed or demolished by these causes and which remain in such a state for a period of six months or longer shall also be a violation of this subsection.
- F. The failure to close, by means acceptable to the building official, all doorways, windows, and other openings into vacant structures.
- A.G. Any condition, instrument, or machine on real property, constitutes a public nuisance, that is unsafe and unprotected and consequently dangerous to minors by reason of their inability to appreciate its peril, and which may be reasonably expected to attract minors to the property and thus risk injury to them by their playing with, in, or on it (i.e., attractive nuisances).

6.16.020 Determination of nuisance on real property.

- H. Graffiti on any public or privately owned structures within the city. For purposes of this chapter, “graffiti” means any form of painting, writing, inscription, or carving on any surface, regardless of the content or the nature of the material used in the commission of the act, which was not authorized in advance by the owner of the surface.
- I. All other conditions deemed to be a “nuisance” or “public nuisance” as defined throughout this Code.
- J. Property upon which any violation of this Code or any applicable state, county, or local law exists, or property which is used in violation of this Code or any applicable state, county, or local law.

6.16.020 Determination of nuisance on real property.

Whenever the enforcement officer, as that term is defined in Section ~~4.10.010(A)~~, 1.10.010, determines that there exists on any real property in the city a public nuisance ~~as defined in Section 6.16.040~~, the enforcement officer may serve upon the property owner and responsible ~~person~~party, as that term is defined in Section ~~4.10.010(A)~~, 1.10.010, a notice of violation ~~per Section 4.10.030 under Section 1.10.030~~ setting forth the nature of the public nuisance. ~~Said~~The notice shall be served in accordance with Section ~~4.10.040~~, 1.10.040.

~~6.16.030 Right to appeal notice of violation.~~

6.16.030 Right to appeal notice of violation.

The property owner and/or responsible ~~person~~party may appeal the notice of violation of public nuisance within 10 calendar days from the date of service of the notice of violation by filing a written request to appeal ~~to the city clerk. Upon receiving a written request to appeal a notice of violation, the city manager shall follow the same~~as required by Section 1.10.120. The administrative ~~enforcement hearing appeal~~ procedures ~~for administrative citations shall follow those~~ set forth in Section ~~4.10.130~~, 1.10.130.

6.16.040 Failure to abate nuisance.

~~The following provisions will apply for failure to abate~~ If a nuisance:

A. ~~In the event such~~ public nuisance noticed pursuant to Section 6.16.020 is not appealed within 10 calendar days, and is not abated on or before the date described in the notice of violation, the city manager ~~may authorize and direct the abatement thereof~~ designee shall cause to be issued a separate notice of nuisance abatement hearing, in accordance with Sections 6.16.050 and 6.16.060, for the holding of a public hearing before the city council to determine whether a public nuisance exists and whether abatement is appropriate.

6.16.050 Form and notice of nuisance abatement hearing.

Notice of the time and place of hearing before the city council shall be titled, "NOTICE OF NUISANCE ABATEMENT HEARING," in letters not less than three-fourths of an inch in height and shall be substantially in the following form, as approved by the city attorney:

NOTICE OF HEARING TO DETERMINE EXISTENCE OF PUBLIC NUISANCE AND TO ABATE IN WHOLE OR PART.

Notice is hereby given that on the _____ day of _____, 20____, at the hour of _____, the City Council of Carlsbad will hold a public hearing in the Council Chambers, located at 1200 Carlsbad Village Drive, Carlsbad, California, to ascertain whether certain premises situated in the City of Carlsbad, State of California, more particularly described as:

[provide assessor’s parcel number and legal description]

constitute a public nuisance subject to abatement by the rehabilitation of the premises or by the repair or demolition of buildings or structures situated on the premises. If the premises, in whole or part, are found to constitute a public nuisance as defined by Chapter 6.16 of the Carlsbad Municipal Code, and if the premises are not promptly abated by the owner, the

nuisances may be abated by municipal authorities and/or their contractors or agents, and the rehabilitation, repair, or demolition will be assessed upon the premises and the cost will constitute a lien or special assessment against the land until paid. The alleged violations consist of the following:

[describe public nuisance violations]

The methods of abatement available are:

[describe methods]

All persons having any objection to, or interest in this matter are hereby notified to attend a meeting of the City Council of the City of Carlsbad to be held on the _____ day of _____, 20____, at the hour of _____ when their testimony and evidence will be heard and given due consideration.

DATED:

City Manager of the City of Carlsbad (or title of designee)

6.16.060 Posting and service of notice of nuisance abatement hearing.

- A. The city manager or designee shall cause to be served upon the property owner and any mortgagee and/or beneficiary under any recorded deed of trust of the affected premises a copy of a notice of nuisance abatement hearing as set forth in Section 6.16.050, and shall cause a copy to be conspicuously posted on the affected premises.
- B. Notice shall be served as required by Section 1.10.040 at least 15 calendar days before the time fixed for the hearing. If any owner's address is unknown, this shall be stated in the notice and the notice shall be sent to the owner in care of the San Diego County Tax Assessor. Proof of posting and service of the notices shall be made by an affidavit or declaration that shall be filed with the city clerk certifying the time and manner in which the notice was given, along with any registered or certified mail receipt cards which may have been returned to the city acknowledging receipt of said mail.
- C. Prior to the hearing before the city council, a second notice shall be issued in the same manner as described above at least 5 calendar days before the time fixed for such hearing. The service is complete at the time of such deposit.
- D. "Owner," as used in this section, means any person in possession and also any person having or claiming to have any legal or equitable interest in the affected premises, including, but not limited to, a mortgagee and/or beneficiary, as disclosed by a current title search from any accredited title company. The failure of any person to receive the hearing notice does not affect the validity of the proceedings under this chapter.

6.16.070 Hearing by city council.

At the time stated in the hearing notice, the city council shall hear and consider all relevant evidence, objections or protests, and shall receive relevant testimony from owners, witnesses, city personnel, and interested persons relative to the alleged public nuisance and to the proposed rehabilitation, repair, or demolition of the premises. The hearing may be continued from time to time.

6.16.080 Decision of city council; abatement order.

Upon or after the conclusion of the nuisance abatement hearing, the city council shall, based upon the hearing, determine whether the premises, or any part of it, as maintained, constitutes a public nuisance as defined in this chapter. If the city council finds that a public nuisance exists and that there is sufficient cause to rehabilitate, demolish, or repair the premises, the city council shall adopt a resolution (“abatement order”) setting forth its findings and ordering the owner or other person having charge or control of the premises to abate the nuisance by having the premises, buildings, or structures rehabilitated, repaired, or demolished within the period specified in the resolution, which shall not be less than 30 calendar days after the adoption of the resolution, in the manner and by the means specifically set forth in the resolution. The abatement order shall also contain authorization for the city to abate the nuisance pursuant to this chapter if, in the city council’s discretion, it is determined that immediate abatement by the city in whole or in part is warranted. The decision and resolution of the city council shall be final and conclusive.

6.16.090 Limitation of filing judicial action.

Any owner or other interested person having any objections or feeling aggrieved at any proceeding taken by the city council in ordering the abatement of any public nuisance under this chapter must bring an action to contest the decision in a court of competent jurisdiction within the time period specified in Section 1.16.020.

6.16.100 Service of abatement order.

- A. Within 5 calendar days of the adoption of the abatement order, the city shall post a copy of the abatement order conspicuously on the premises, buildings, or structures declared to be a nuisance and serve another copy to the parties as required by Section 1.10.040. The abatement order shall contain a detailed list of needed corrections and abatement methods. Any property owner has the right to have the premises rehabilitated or to have the buildings or structures demolished or repaired in accordance with the abatement order and at the owner’s own expense, provided the rehabilitation, demolition, or repair is done prior to the expiration of the abatement period set forth in the abatement order. Upon abatement in full by the owner, the proceedings under this chapter shall terminate.
- B. If a nuisance is not completely abated by the owner within the designated abatement period, then the city manager or designee is authorized and directed to cause the nuisance to be abated by city agents, employees or by private contract, ~~and in connection therewith such city agents or employees, or such private contractors and their employees.~~ Upon request of the designated official, other city departments shall cooperate fully and shall render reasonable assistance in abating the nuisance.
- C. Any parties authorized by the city manager or designee to perform the abatement work may enter upon the subject property ~~to abate the nuisance only after:~~ (1) receiving written consent of the

property owner or his/her authorized agent, (2) the issuance of a judicially authorized inspection warrant, or (3) a determination by the City Attorney’s Office that an exception to the inspection warrant requirement applies.

~~B. Notwithstanding any other provision of this code, failure to abate such public nuisance on or before the date described in the notice of~~

6.16.110 Nuisance abatement violation, when — penalty.

A. The owner or other person having charge or control of a buildings or premises who violates any abatement order issued under this chapter, or under state law where applicable, is guilty of a misdemeanor.

B. Any occupant or lessee in possession of a building or structure who fails to vacate the building or structure in accordance with an order issued under this chapter is guilty of a misdemeanor.

C. Any person who removes any notice or order posted under this chapter is guilty of a misdemeanor.

~~A.D. No person shall obstruct, impede, or interfere with any representative of the city council or with any representative of a city department or with any person who owns or holds any estate or interest in a building which has been ordered to do so in accordance with~~ be vacated, repaired, rehabilitated, or demolished and removed, or with any person to whom the building has been lawfully sold pursuant to the provisions of this Code, whenever the representative of the city council, representative of the city, purchaser, or person having any interest or estate in the building is engaged in vacating, repairing, rehabilitating, or demolishing and removing the building under the provisions of this chapter, or state law where such state law is applicable, is a misdemeanor. in performing any necessary act preliminary to or incidental to such work as authorized or directed under this chapter.

6.16.050 Account of cost of abatement to be kept.

E. The provisions of this chapter are also enforceable, and violations are punishable, under Chapter 1.08. Chapter 1.08 allows for the issuance of infraction or misdemeanor citations for violations of certain sections of this Code. Criminal prosecution shall not preclude nor be precluded by abatement of the violation or violations.

F. It is unlawful and a misdemeanor for any person to do any act or thing upon the property of another that is declared to be a public nuisance under any provision of this Code, or to do anything or act upon the property of another that results in the declaration of a public nuisance, without the express consent of the owner of the property.

6.16.120 Account of cost of abatement to be kept.

The city manager or designee shall ~~cause to be kept~~ keep an account of the cost of ~~such abatement and abatement and of rehabilitating, demolishing, or repairing any premises, buildings, or structures, including any related salvage value and administrative costs, and upon.~~ Upon completion thereof of this work, the city manager or designee shall ~~write~~ authorize a ~~report stating the cost thereof.~~

A. **6.16.060** ~~Copies of report of~~ written abatement cost ~~to be served.~~ report stating these costs.

B. For purposes of this chapter, “administrative costs” includes, without limitation, the actual expenses and costs of the city in preparing, printing, and mailing notices, specifications and contracts and in inspecting the work.

6.16.130 Copies of abatement cost report to be served.

The city manager or designee shall cause a copy ~~or copies~~ of ~~such~~ the abatement cost report ~~mentioned in Section 6.16.050 to be served~~ to be served on the property owner and the responsible ~~person~~ party per Section ~~1.10.040~~ 1.10.040.

~~6.16.070 Determination of abatement cost.~~

6.16.140 Challenges to abatement cost report.

The property owner and/or responsible ~~person~~ party may dispute the abatement cost report within 10 calendar days from the date of service of the abatement cost report by filing a written dispute ~~to~~ with the ~~cost report~~ city clerk. The property owner and/or responsible ~~person~~ party shall set forth the basis of the dispute and submit relevant documentation in support of their dispute. ~~The city manager or designee shall consider the comments and documentation submitted by the responsible person, and shall:~~

~~A. Determine the correct~~

6.16.150 Hearing on abatement cost; report; abatement cost order.

A. If a property owner and/or responsible party timely challenges the abatement cost report, the city council shall set the matter for hearing to determine the correctness or reasonableness, or both, of such costs.

B. A copy of the abatement cost report and notice of hearing shall be served upon the property owner and/or responsible party challenging the report in accordance with Section 1.10.040, at least 5 calendar days prior to the date of the city council hearing.

~~C. B.~~ Proof of service of the abatement cost report and notice of hearing shall be made by affidavit or declaration, under penalty of perjury, filed with the city clerk at least 5 calendar days prior to the date of the city council hearing.

D. At the time and place fixed for receiving and considering the report, the city council shall hear and pass upon the report of the costs of abatement, together with any objections, protest, or documentation submitted by the property owner and/or responsible party. By resolution, the city council shall adopt an abatement cost order that:

1. Determines the correct cost of abatement and related administrative costs.

2. If necessary, ~~modify such~~ modifies the abatement cost report to conform to such ~~correct~~ corrected abatement ~~cost~~ and administrative costs.

~~C. Confirm~~ 3. Confirms the abatement cost report as presented or modified;

~~D. State~~ 4. States the date of the final abatement ~~order~~ cost report.

~~E. Determine~~^{5. Determines} and ~~state~~^{states} the correct legal description of the subject property, the correct county assessor’s parcel number, the street address, and the name and address of the recorded owner based on the last equalized assessment roll or the supplemental roll, whichever is more current.

The decision of the city ~~manager or designee~~^{council} shall be final ~~and conclusive~~.

~~6.16.080 — Abatement cost to be lien against property.~~

6.16.160 — Abatement cost to be lien against property.

The cost of abatement and related administrative costs, as determined, shall be a:

- A. Personal obligation of the person creating, causing, committing, or maintaining the nuisance abated;
- B. Personal obligation of the property owner of the subject property; and
- C. Special assessment against the subject property or a lien against the subject property.

~~6.16.090 — Collection of cost of abatement.~~

6.16.170 — Collection of cost of abatement.

The cost of abatement and any related administrative costs, as confirmed, may be collected by the city by ~~any or all of~~ the following means or any other lawful means:

- A. ~~Recordation~~^{Nuisance abatement lien. The city manager or designee may authorize recordation of a nuisance abatement lien in the office of the county recorder of a certified, along with an acknowledged copy of such resolution confirming such the abatement cost report so as to give notice of the lien(s), abatement cost order (if applicable), and the abatement order.}
 - 1. Prior to recordation, a notice of lien shall be served on the owner of record, based on the last equalized assessment roll or the supplemental roll, whichever is more current.
 - 2. The notice shall be served in the same manner as a summons in a civil action in accordance with ~~Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of the California~~ Code of Civil Procedure ~~Section 415.10 et seq.~~ If the owner of record after diligent search cannot be found, the notice may be served by posting a copy ~~thereof~~ in a conspicuous place upon the property for a period of 10 calendar days and ~~publication thereof~~^{publishing it} in a newspaper of general circulation in San Diego County pursuant to California Government Code Section 6062.
 - 23. The nuisance abatement lien authorized by this section shall be ~~recorded~~ in a form approved by the county recorder’s office City Attorney substantially as follows:

[Name and from address of the recorded owner of the parcel]

NOTICE OF LIEN - CLAIM OF CITY OF CARLSBAD

Pursuant to the authority vested by the provisions of Chapter 6.16 of the Carlsbad Municipal Code, the city manager or designee of the City of Carlsbad did on or about the _____ day of _____, 20____, cause the premises hereinafter described to be rehabilitated, or the building or structure on the real property hereinafter described to be repaired or demolished, in order to abate a public nuisance; and the city manager/City Council of the City of Carlsbad (circle one) did on the _____ day of _____, 20____, assess the cost of such rehabilitation, repair or demolition upon said real property hereinafter described; and the same has not been paid nor any part thereof; and that the City of Carlsbad does hereby claim a lien on such rehabilitation, repair or demolition in the amount of said assessment, to wit: the sum of \$ _____, and the same shall be a lien upon said real property until the same has been paid in full and discharged of record. The real property hereinbefore mentioned, and upon which a lien is claimed, is that certain parcel of land lying and being in the City of Carlsbad, County of San Diego, State of California, and more particularly described as follows: [Assessor Parcel Number and legal description]

DATED:

City Manager of the City of Carlsbad

4. From the date of recording, the nuisance abatement lien shall have the force, effect, and priority of a judgment lien and may be foreclosed by an action brought by the city for a money judgment.

35. The city may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.

46. In the event that the lien is discharged or released or satisfied, either through payment or foreclosure, notice of the discharge ("release of lien") containing the amount of the lien, the date information contained in paragraph 3 of the abatement order, the street address, legal description, assessor's parcel number, and the name and address of the recorded owner this subsection shall be recorded in the county recorder's office. A courtesy copy shall also be provided to the recorded property owner consistent with the service methods in Section 1.10.040.

B. Civil action by the city. B. Special Assessment. As an alternative to the recordation of a nuisance abatement lien, the city manager or designee may make the cost of abatement of a nuisance a special assessment against that parcel, using the following procedures:

1. The city manager or designee shall file an acknowledged =

~~C. Filing a certified copy of such resolution confirming such the abatement cost report(s), abatement cost order (if applicable), and the abatement order with the auditor of the county, who shall enter the assessment on the county tax roll opposite the subject property.~~

2. Prior to the filing with the auditor of the county in accordance with paragraph (B)(1) above, the property owner, if his/her identity can be determined from the county assessor's or county recorder's records, should be provided a notice of special assessment by certified mail, similar in form to the notice of lien described in Section 6.16.170(A)(3). The notice of special assessment shall include as an attachment an acknowledged copy of the abatement cost report, abatement cost order (if applicable), and the abatement order. The notice shall be given at the time of imposing the assessment and shall specify that the property may be sold after three years by the tax collector for unpaid delinquent assessments. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice.

3. The amount of the assessment shall may be collected at the time and in the same manner of as ordinary municipal taxes. If delinquent, the amount is are collected, and shall be subject to the same penalties and procedures of foreclosure the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. The legislative body may determine that in lieu of collecting the entire assessment at the time and in the manner of ordinary municipal taxes, such assessment of \$50.00 or more may be made in annual installments in any event not to exceed five, and collected one installment at a time and in the manner of ordinary municipal taxes in successive years. If any installment is delinquent, the amount thereof is subject to the same penalties and procedure for foreclosure and sale provided for ordinary municipal taxes. The payment of assessments so deferred shall bear interest on the unpaid balance at the rate of six percent per year.

4. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches on the real property prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.

5. If the city imposes an assessment pursuant to this section, it may, subject to the requirements applicable to the sale of property pursuant to California Revenue and Taxation Code Section 3691, conduct a sale of vacant residential developed property for which the payment of that assessment is delinquent.

C. Civil action by the city.

D. In addition to any other costs of abatement under this chapter, upon the entry of a second or subsequent civil or criminal judgment within a two-year period in which the owner of real property is responsible for a condition that may be abated under this chapter, except for conditions under the State Housing Law (~~Health and Safety Code~~ see California Health and Safety Code Section 17980), a court may order the property owner to pay triple the costs of the abatement.

Article II. Obstructing Drainage Course

6.16.120 — Declared nuisance.

~~Any obstruction to the free flow~~**180 Strict liability offense.**
~~Violations of drainage water in a natural drainage course in the city is declared to constitute a nuisance.~~

6.16.130 — Procedure for abatement.

~~The procedure for the abatement of such a nuisance~~**this chapter shall be treated as follows: strict liability offenses regardless of intent.**

- ~~A. — Once such a nuisance is alleged to exist on certain property, the city council shall cause a written notice thereof to be mailed to the person to whom such property is assessed in the last assessment roll available on the date of mailing, of the time and place for hearing objections and testimony and determination of whether or not such a nuisance exists. Such notice shall be mailed at least five days prior to the time of hearing;~~
- ~~B. — At the time and place stated in the notice, the council shall hear and consider all objections and testimony regarding whether or not such a nuisance exists, and following such hearing shall decide such question. The hearing may be continued from time to time;~~
- ~~C. — If the council decides that such a nuisance does exist, it may cause the abatement thereof and the cost of such abatement shall be a special assessment or a lien against the property on which it is maintained and a personal obligation against the property owner, and may be collected pursuant to the provisions of Government Code Sections 38773, 38773.1, 38773.5 and other applicable statutes.~~

6.16.140 — No mandatory duty.

6.16.190 — No mandatory duty.

Nothing in this chapter is intended to create a mandatory duty on behalf of the city or its employees under the Government Tort Claims Act ([California Government Code Section 900 et seq.](#)) and no cause of action against the city or its employees is created by this chapter that would not arise independently of the provisions of this chapter.

Article III. Summary Abatement

6.16.150 — Summary abatement.

6.16.200 — Alternative means of enforcement.

~~This chapter is not the exclusive regulation of nuisance code violations. It shall supplement and be in addition to other regulatory codes, statutes, and ordinances enacted by the state or any other legal entity or agency having jurisdiction. Nothing in this chapter shall be deemed to prevent the city from authorizing the City Attorney to commence any other available civil or criminal proceedings to abate a public nuisance under applicable provisions of state law as an alternative to proceedings set forth in this chapter.~~

Article II. Summary Abatement

6.16.210 General.

A nuisance may be summarily abated without notice, hearing, or a warrant when immediate action is necessary to preserve or protect the public health and safety. Summary abatement actions are not subject to all of the requirements of Article I of this chapter, but instead shall be subject to the following requirements:

6.16.220 Determination of summary abatement.

- A. The city manager or designee shall make a determination that a public nuisance exists that poses an immediate risk to the health, safety, or welfare of the public ~~or~~ persons in the city, or the environment.
- B. Whenever possible, the city shall attempt to contact the responsible party and ~~or~~ property owner, as defined in Section 1.10.010, to request abatement of the nuisance prior to the city proceeding with summary abatement. If the ~~property owner and/or~~ responsible party, ~~as defined in Section 1.10.010(A)(6)~~, is and property owner are not available, or are incapable, or unwilling to abate the nuisance, the city may proceed with summary abatement using the minimum level of correction or abatement as necessary to eliminate the immediacy of the hazard.
- C. Notwithstanding the requirement in subsection (B), the city manager or designee may exercise the following powers without prior notice to the responsible party and property owner:
1. Order the immediate vacation of any tenants and prohibit occupancy until all repairs are completed.
 2. Post the premises as unsafe, substandard, or dangerous.
 3. Board, fence, or secure the building or site.
 4. Raze and grade that portion of the building or site to prevent further collapse and remove any hazard to the general public.
 5. Make any minimal emergency repairs as necessary to eliminate any imminent life safety hazard.
 6. Take any other action as reasonably appropriate under the circumstances of an immediate hazard.
 7. Exercise any of the summary abatement powers listed in this subsection to remove items placed or stored on city property, sidewalks, or public rights-of-way.
 8. Pursue any administrative or judicial remedy to abate any remaining public nuisance.

6.16.230 Summary abatement cost report.

- A. The city manager or designee shall maintain the following records and shall prepare a report of summary abatement ~~summarizing that contains~~ the ~~records~~ following:

1. A description of the time, duration, type, and extent of the nuisance;
2. An evaluation of the risks to the health, safety, and welfare of the public and/or the environment caused by allowing the nuisance to continue;
3. Steps taken to contact the responsible party and/or property owner;
4. All costs associated with the investigation and summary abatement of the nuisance, including the costs of personnel, equipment, facilities, materials, and other external resources.

~~DB.~~ Within 10 workingbusiness days after the determination is made by the city manager or designee to summarily abate the nuisance, a notice of determination and a copy of the report of summary abatement shall be served on the responsible party, the owner of record of the parcel of land where the nuisance originated, and all persons known to have any legal interest in the property. The city may charge the responsible party ~~shall be charged~~ or the property owner with the full costs of investigation and summary abatement of the nuisance.

E6.16.240 Summary abatement hearing.

- A. A hearing to assess abatement costs and affirm whether immediate action was necessary to preserve or protect the public health ~~and,~~ safety, and/or welfare of the public, persons in the city and/or the environment shall be conducted before the city council at the request of the responsible party. ~~Within 30~~ and/or the property owner.
- B. The responsible party and/or the property owner must file a written request for a hearing with the city clerk within 30 calendar days of receipt of the notice of determination and ~~the~~ report of summary abatement, ~~the responsible party.~~
- C. The hearing shall be scheduled before the city council within 60 calendar days of receipt of the request for a hearing.
- D. Within 30 calendar days of receipt of the notice of determination and the report of summary abatement, and at least 30 calendar days prior to the scheduled hearing date, the responsible party and/or property owner may file a request with the city clerk for any and all evidence and objections regarding the need for summary abatement and/or the abatement costs. ~~The hearing and consideration may be continued from time to time and upon the conclusion thereof, the council shall, by resolution:~~
- E. The hearing and consideration may be continued from time to time and upon its conclusion, the city council shall, by resolution:
 1. Determine whether the nuisance posed an immediate risk to the health, safety, or welfare of the public ~~or,~~ persons in the city, and/or the environment.
 2. Determine whether the responsible party was unavailable, incapable, and/or unwilling to abate the nuisance.

3. Determine the correct abatement cost;_
4. If necessary, modify the report of summary abatement to conform to such findings as indicated above;_
5. Confirm the report of summary abatement as presented or modified;_
6. State the date of the summary abatement order;_
7. Determine and state the correct legal description of the subject property, the correct county assessor’s parcel number, the street address, and the name and address of the recorded owner based on the last equalized assessment roll or the supplemental roll, whichever is more current.

F. The decision of the city council shall be final.

F.

6.16.250 Collection of cost of summary abatement.

In addition to any other applicable procedures, the cost of summary abatement may be collected in accordance with Section ~~6.16.080~~ 6.16.170 or become a lien or special assessment against the property in accordance with Section ~~6.16.090~~ 6.16.160.

Article III Property Maintenance

6.16.260 Declaration of purpose and statutory authority.

Every person has the duty to maintain real property under the person’s control free from dirt, rocks, weeds, plant growth, waste, or other materials which are either dangerous or injurious to neighboring property or to the health or welfare of residents in the vicinity or which interfere with the use of public rights-of-way. There continues to be a need for further emphasis on maintaining unobstructed rights-of-way, particularly as to plant growth. Unless corrective measures are taken to alleviate the existing conditions and to avoid future problems in this regard, the public health, safety, and general welfare and the property values and social and economic standards of this community will be depreciated.

The purpose and intent of this article is to establish standards to identify and enforce private property maintenance to the ensure plant growth, waste, and other materials do not present a public nuisance by obstructing public streets, sidewalks, or rights-of-way. This article is also intended to provide for procedures to administratively abate public nuisances caused by plant growth, waste, or other materials obstructing public streets, sidewalks, or rights-of-way.

This article is authorized by California Government Code sections 39501 and 39502.

6.16.270 Definitions.

For purposes of this article the following definitions apply:

“Liquid waste” includes oil, other petroleum products, paint, chemicals, and hazardous waste or materials.

“Litter” means small quantities of waste matter carried on or about the person including, but not limited to, beverage containers and closures, packaging wrappers, wastepaper, newspapers, magazines, or the contents of containers, closures, or wrappers.

“Littering” means the act of discarding, dropping, scattering, or disposing of litter in a location or container which is not used for the proper disposal of waste.

“Parking strip” means the portion of property between a public street and private property.

“Plant growth” means any flora, vegetation, or herbage.

“Property” means any real property, or improvements on real property, including that portion of any lot abutting a public street over which the city has an easement for right-of-way or utility service.

“Public property” means any property interest owned by, or otherwise granted to, the City of Carlsbad.

“Rubbish” means non-functional, non-usable, or abandoned material or matter. Rubbish includes ashes, paper, cardboard, tin cans, dirt, cut brush, yard and garden clippings or trimmings, wood, glass, bedding, cloth, clothing, crockery, plastic, rubber by-products, litter, machinery, vehicle parts, junk, and other similar items.

“Solid waste” means rubbish, broken concrete or asphalt, piles of rock, dirt, and other noncombustible materials and earth fill material not otherwise authorized by permit or ordinance for land development.

“Waste” means material of any nature that constitutes rubbish, solid waste, liquid waste, or medical waste. Waste may include abandoned or unidentified personal property that is left unattended on public sidewalks and rights-of-way or other public property. Waste does not include compost piles, composting, or recyclable material properly contained and disposed of in a timely fashion.

6.16.280 Enforcement authority.

The directors of community development or environmental management, and any other director or equivalent authority, authorized by the city manager or designee (collectively, “Directors”) are authorized to administer and enforce the provisions of this article. The Directors or their designated enforcement officers may exercise any enforcement powers as provided in Chapter 1.10 of this Code.

6.16.290 Duty to maintain property.

A. It is unlawful for any property owner or responsible party, as defined in Section 1.10.010, to place or maintain dirt, rocks, plant growth, waste, or other materials on or about adjacent sidewalks, parking strips, alleys, streets, or other public property in a manner that is either dangerous or injurious to neighboring property or the health, safety, or welfare of residents in the vicinity; or in a manner that unreasonably interferes with or unreasonably obstructs the use of public rights-of-way. Any violation of this section is a public nuisance and, as such, may be abated or enjoined from further existence

or operation within the city, pursuant to the procedures set forth in Article I of this chapter, except as set forth in subsections (B) and (C) below.

- B. The Director may require a property owner or responsible party to erect fences, barriers, berms, or other suitable means to discourage access to the property for littering or illegal dumping. This may include the posting of signs that prohibit littering and illegal dumping.
- C. The Director may authorize the collection or abatement of waste from small business enterprises that abut public property under the following circumstances:
1. At the request of the affected property owner, if the Director determines that reasonable efforts were made to comply with subsections (A) or (B) listed above; or
 2. When public health or safety requires such measures.
- D. The Director is authorized to assess costs against affected property owners for the abatement services performed by the city or its agents pursuant to Article I of this chapter. The Director's cost assessment report may be challenged pursuant to the procedures in Article I of this chapter.

6.16.300 Violations.

Violations of this article may be chargeable as an infraction. The Directors may also seek injunctive relief or civil penalties in the Superior Court, or pursue any administrative penalties under Chapter 1.10 of this Code.

6.16.310 Administrative abatement procedure.

Any abatement action allowed by this article shall follow the procedures set forth in Article I of this chapter, except as provided in subsections 6.16.290(B) and (C).

6.16.320 Abatement lien.

The cost of removal and abatement of a property maintenance public nuisance may be assessed against the abutting or adjacent property owner and may become a lien as authorized in California Government Code Section 39502. Designated enforcement officers shall follow the procedures in Article I of this chapter for assessment, execution, and collection of the lien. Enforcement of the lien may include sale of the property.

6.16.330 Severability.

If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, the decision shall not affect the validity of the remaining portions of this chapter. The city council declares that it would have adopted this chapter, and each and every section, subsection, sentence, clause, and phrase of the chapter not declared invalid or unconstitutional, without regard to whether any portion of the chapter would be subsequently declared invalid or unconstitutional.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD,
CALIFORNIA, REPEALING AND REPLACING TITLE 6, CHAPTER 6.16 OF
THE CARLSBAD MUNICIPAL CODE CONCERNING PUBLIC NUISANCES
AND PROPERTY MAINTENANCE

WHEREAS, on May 23, 2017, the City Council of the City of Carlsbad, California (City Council) determined the Carlsbad Municipal Code (Code) requires revisions and amendments and a comprehensive update to the Code is necessary to improve clarity and consistency as well as to reflect current legal and professional best practices; and

WHEREAS, on May 23, 2017, the City Council adopted Resolution 2017-095 authorizing the Code update; and

WHEREAS, on July 23, 2019, the City Council adopted Resolution 2019-133 creating the ad hoc Carlsbad Municipal Code and City Council Policy Update Subcommittee (Subcommittee) to assist with the update and expanding the update to include both the Code and City Council Policies; and

WHEREAS, the City of Carlsbad has a responsibility to its residents and business owners to promote conditions that are beneficial to the health, safety, and welfare of the entire community, the existence of public nuisances has a detrimental effect on persons or property as well as the overall aesthetic quality of the city, and the abatement of these conditions is in the best interest of the city, its residents, and its business owners; and

WHEREAS, the purpose of this update to Chapter 6.16 of the Code is to provide comprehensive and transparent procedures to identify public nuisances within the City of Carlsbad, encourage compliance where a public nuisance violation exists, and establish the authority to abate and recover costs of abatement when the responsible party and/or property owner fails to comply; and

WHEREAS, the provisions adopted in this Chapter shall not be exclusive but shall be cumulative and complementary to any other provisions of the Code and county, state, and federal laws; this Chapter shall not be construed to limit any existing right or power of the city to pursue abatement of and/or abate any and all public nuisances; and

WHEREAS, the provisions of this chapter are authorized by California Constitution, Article 11, Section 7, California Civil Code Section 3491, California Code of Civil Procedure Section 731, California Government Code Sections 25485, 38771, 38773.5, and California Penal Code Section 372; and

WHEREAS, with regard to Chapter 6.16, Article III "Property Maintenance," the City of Carlsbad has a history and reputation for well-kept properties that do not endanger the public; the property

values and the general welfare of this community are founded, in part, upon the appearance and maintenance of properties; and

WHEREAS, dirt, rocks, plant growth, waste, or other materials which are either dangerous or injurious to neighboring property or to the health and welfare of residents in the vicinity or which unreasonably interfere with the use of the public rights-of-way are public nuisances; these obstructions impede the use of public streets, sidewalks, or rights-of-way, can compromise the safety of motorists, bicyclists, and pedestrians and impose a liability on the City; and

WHEREAS, the Code does not specifically regulate the maintenance of property with regard to dirt, rocks, plant growth, waste, or other materials to the extent that they obstruct public streets, sidewalks, or rights-of-way or otherwise constitute a public nuisance, and the City seeks to remedy the public safety hazards presented by same; and

WHEREAS, California Government Code Sections 39501 and 39502 authorize municipalities to regulate property maintenance and remove dirt, rocks, plant growth, waste, or other materials which obstruct public property or are otherwise dangerous or injurious to neighboring property or to the health or welfare of residents in the vicinity; and California Government Code Section 39502 allows a municipality to impose a lien on the abutting property for the cost of removal of the aforementioned obstructions.

NOW, THEREFORE, the City Council of the City of Carlsbad, California, does ordain as follows:

1. The above recitations are true and correct.
2. Carlsbad Municipal Code, Title 6, Chapter 6.16 is repealed and replaced as follows:

Chapter 6.16

PUBLIC NUISANCES AND PROPERTY MAINTENANCE

Sections:

Article I. General

- 6.16.005 Declaration of purpose and statutory authority.**
- 6.16.010 Public nuisance defined.**
- 6.16.015 Specific conditions constituting a public nuisance.**
- 6.16.020 Determination of nuisance on real property.**
- 6.16.030 Right to appeal notice of violation.**
- 6.16.040 Failure to abate nuisance; abatement order.**
- 6.16.050 Account of cost of abatement to be kept.**
- 6.16.060 Copies of abatement cost report to be served.**
- 6.16.070 Challenges to abatement cost report.**

- 6.16.080 Hearing on abatement cost report; abatement cost order.
- 6.16.090 Abatement cost to be lien against property.
- 6.16.100 Collection of cost of abatement.
- 6.16.110 Strict liability offense.
- 6.16.120 No mandatory duty.
- 6.16.130 Alternative means of enforcement.

Article II. Summary Abatement

- 6.16.140 General.
- 6.16.150 Determination of summary abatement.
- 6.16.160 Summary abatement cost report.
- 6.16.170 Summary abatement hearing.
- 6.16.180 Collection of cost of summary abatement.

Article III Property Maintenance

- 6.16.190 Declaration of purpose and statutory authority.
- 6.16.200 Definitions.
- 6.16.210 Enforcement authority.
- 6.16.220 Duty to maintain property.
- 6.16.230 Violations.
- 6.16.240 Administrative abatement procedure.
- 6.16.250 Abatement lien.
- 6.16.260 Severability.

Article I. General

6.16.005 Declaration of purpose and statutory authority.

The purpose of this chapter is to establish comprehensive and transparent procedures for the administrative and summary abatement of public nuisances and code violations, including public nuisances related to property maintenance. The procedures established in these sections are in addition to any other legal remedy, criminal or civil, established by law which may be pursued to address municipal code or applicable state code violations.

The provisions of this chapter are authorized by California Constitution, Article 11, Section 7, California Civil Code Section 3491, California Code of Civil Procedure Section 731, California Government Code Sections 25485, 38771, 38773.5, and California Penal Code Section 372.

6.16.010 Public nuisance defined.

- A. "Public nuisance" means any condition caused, maintained, or in existence which constitutes a threat to the public's health, safety, and welfare or to the environment, or which significantly obstructs, injures, or interferes with the reasonable or free use of property in a neighborhood, community, or to any considerable number of persons, or which constitutes a public nuisance under California Civil Code Sections 3479-3480.

- B. “Public nuisance” also means real property which is maintained in such a defective, unsightly, dangerous, or deteriorated condition, or state of disrepair, that the property will or may cause harm to persons, or will be materially detrimental to property or improvements located in the immediate vicinity of the property.

6.16.015 Specific conditions constituting a public nuisance.

The existence of any of the following conditions on any property is a public nuisance:

- A. Conditions related to property maintenance, as set forth in Article III of this chapter.
- B. Any obstruction to the free flow of drainage water in a natural drainage course, such as streams, rivers, and creeks.
- C. Land that is in a state to cause or contribute to erosion, subsidence, or surface water drainage impacting adjacent public properties.
- D. Buildings which are abandoned, partially destroyed, or remain unreasonably in a state of partial construction with no observable work performed for a period of six months or longer.
- E. Buildings, walls, and other structures which have been damaged by fire, decay, or otherwise to such an extent they cannot be repaired so as to conform to the requirements of the building code in effect in this city. Buildings which have been partially destroyed or demolished by these causes and which remain in such a state for a period of six months or longer shall also be a violation of this subsection.
- F. The failure to close, by means acceptable to the building official, all doorways, windows, and other openings into vacant structures.
- G. Any condition, instrument, or machine on real property that is unsafe and unprotected and consequently dangerous to minors by reason of their inability to appreciate its peril, and which may be reasonably expected to attract minors to the property and thus risk injury to them by their playing with, in, or on it (i.e., attractive nuisances).
- H. Graffiti on any public or privately owned structures within the city. For purposes of this chapter, “graffiti” means any form of painting, writing, inscription, or carving on any surface, regardless of the content or the nature of the material used in the commission of the act, which was not authorized in advance by the owner of the surface.
- I. All other conditions deemed to be a “nuisance” or “public nuisance” as defined throughout this Code.
- J. Property upon which any violation of this Code or any applicable state, county, or local law exists, or property which is used in violation of this Code or any applicable state, county, or local law.

6.16.020 Determination of nuisance on real property.

Whenever the enforcement officer, as that term is defined in Section 1.10.010, determines that there exists on any real property in the city a public nuisance, the enforcement officer may serve upon the property owner and responsible party, as that term is defined in Section 1.10.010, a notice of violation under Section 1.10.030 setting forth the nature of the public nuisance. The notice shall be served in accordance with Section 1.10.040.

6.16.030 Right to appeal notice of violation.

The property owner and/or responsible party may appeal the notice of violation of public nuisance within 10 calendar days from the date of service of the notice of violation by filing a written request to appeal as required by Section 1.10.120. The administrative appeal procedures shall follow those set forth in Section 1.10.130.

6.16.040 Failure to abate nuisance; abatement order.

The following provisions apply to the failure to abate a public nuisance:

- A. In the event a public nuisance noticed under Section 6.16.020 is not abated on or before the date specified in the notice of violation and is not appealed within 10 calendar days of the date of issuance of the notice of violation, the city manager may authorize and direct the abatement of the nuisance by city agents, employees, or by private contract through a written abatement order.
- B. The city manager or designee shall cause a copy of the abatement order to be served on the property owner and the responsible party per Section 1.10.040, in addition to posting a copy of the abatement order prominently on the property to be abated.
- C. Any parties authorized by the city manager or designee to perform the abatement work may enter upon the subject property only after: (1) receiving written consent of the property owner or an authorized agent, (2) the issuance of a judicially authorized inspection warrant, or (3) a determination by the City Attorney's Office that an exception to the inspection warrant requirement applies. Any abatement activity that would significantly alter structures on the property or the nature or character of the property, or that would require demolition of structures on the property, shall not be performed without a judicially authorized inspection warrant or other judicial order.
- D. The owner or other person having charge or control of buildings or premises who violates any abatement order issued under this chapter, or under state law where applicable, is guilty of a misdemeanor.
- E. Any occupant or lessee in possession of a building or structure who fails to vacate the building or structure in accordance with an order issued under this chapter is guilty of a misdemeanor.
- F. Any person who removes any notice or order posted under this chapter is guilty of a misdemeanor.
- G. No person shall obstruct, impede, or interfere with any representative of the city council or with any representative of a city department or with any person who owns or holds any estate or

interest in a building which has been ordered to be vacated, repaired, rehabilitated, or demolished and removed, or with any person to whom the building has been lawfully sold pursuant to the provisions of this Code, whenever the representative of the city council, representative of the city, purchaser, or person having any interest or estate in the building is engaged in vacating, repairing, rehabilitating, or demolishing and removing the building under the provisions of this chapter, or in performing any necessary act preliminary to or incidental to such work as authorized or directed under this chapter.

- H. The provisions of this chapter are also enforceable, and violations are punishable, under Chapter 1.08. Chapter 1.08 allows for the issuance of infraction or misdemeanor citations for violations of certain sections of this Code. Criminal prosecution shall not preclude nor be precluded by abatement of the violation or violations.
- I. It is unlawful and a misdemeanor for any person to do any act or thing upon the property of another that is declared to be a public nuisance under any provision of this Code, or to do anything or act upon the property of another that results in the declaration of a public nuisance, without the express consent of the owner of the property.

6.16.050 Account of cost of abatement to be kept.

- A. The city manager or designee shall keep an account of the cost of abatement and of rehabilitating, demolishing, or repairing any premises, buildings, or structures, including any related salvage value and administrative costs. Upon completion of this work, the city manager or designee shall authorize a written abatement cost report stating these costs.
- B. For purposes of this chapter, “administrative costs” includes, without limitation, the actual expenses and costs of the city in preparing, printing, and mailing notices, specifications and contracts and in inspecting the work.

6.16.060 Copies of abatement cost report to be served.

The city manager or designee shall cause a copy of the abatement cost report to be served on the property owner and the responsible party per Section 1.10.040.

6.16.070 Challenges to abatement cost report.

The property owner and/or responsible party may dispute the abatement cost report within 10 calendar days from the date of service of the abatement cost report by filing a written dispute with the city clerk. The property owner and/or responsible party shall set forth the basis of the dispute and submit relevant documentation in support of their dispute.

6.16.080 Hearing on abatement cost report; abatement cost order.

- A. If a property owner and/or responsible party timely challenges the abatement cost report, the city council shall set the matter for hearing to determine the correctness or reasonableness, or both, of such costs.

- B. A copy of the abatement cost report and notice of hearing shall be served upon the property owner and/or responsible party challenging the report in accordance with Section 1.10.040, at least 5 calendar days prior to the date of the city council hearing.
- C. Proof of service of the abatement cost report and notice of hearing shall be made by affidavit or declaration, under penalty of perjury, filed with the city clerk at least 5 calendar days prior to the date of the city council hearing.
- D. At the time and place fixed for receiving and considering the report, the city council shall hear and pass upon the report of the costs of abatement, together with any objections, protest, or documentation submitted by the property owner and/or responsible party. By resolution, the city council shall adopt an abatement cost order that:
 - 1. Determines the correct cost of abatement and related administrative costs.
 - 2. If necessary, modifies the abatement cost report to conform to such corrected abatement and administrative costs.
 - 3. Confirms the abatement cost report as presented or modified.
 - 4. States the date of the final abatement cost report.
 - 5. Determines and states the correct legal description of the subject property, the correct county assessor's parcel number, the street address, and the name and address of the recorded owner based on the last equalized assessment roll or the supplemental roll, whichever is more current.

The decision of the city council shall be final and conclusive.

6.16.090 Abatement cost to be lien against property.

The cost of abatement and related administrative costs, as determined, shall be a:

- A. Personal obligation of the person creating, causing, committing, or maintaining the nuisance abated;
- B. Personal obligation of the property owner of the subject property; and
- C. Special assessment against the subject property or a lien against the subject property.

6.16.100 Collection of cost of abatement.

The cost of abatement and any related administrative costs, as confirmed, may be collected by the city by the following means or any other lawful means:

- A. Nuisance abatement lien. The city manager or designee may authorize recordation of a nuisance abatement lien in the office of the county recorder, along with an acknowledged copy of the abatement cost report(s), abatement cost order (if applicable), and the abatement order.

1. Prior to recordation, a notice of lien shall be served on the owner of record, based on the last equalized assessment roll or the supplemental roll, whichever is more current.
2. The notice shall be served in the same manner as a summons in a civil action in accordance with California Code of Civil Procedure Section 415.10 et seq. If the owner of record after diligent search cannot be found, the notice may be served by posting a copy in a conspicuous place upon the property for a period of 10 calendar days and publishing it in a newspaper of general circulation in San Diego County pursuant to California Government Code Section 6062.
3. The nuisance abatement lien authorized by this section shall be in a form approved by the City Attorney substantially as follows:

[Name and address of the recorded owner of the parcel]

NOTICE OF LIEN - CLAIM OF CITY OF CARLSBAD

Pursuant to the authority vested by the provisions of Chapter 6.16 of the Carlsbad Municipal Code, the city manager or designee of the City of Carlsbad did on or about the ____ day of _____, 20__ , cause the premises hereinafter described to be rehabilitated, or the building or structure on the real property hereinafter described to be repaired or demolished, in order to abate a public nuisance; and the city manager/City Council of the City of Carlsbad (circle one) did on the ____ day of _____, 20____, assess the cost of such rehabilitation, repair or demolition upon said real property hereinafter described; and the same has not been paid nor any part thereof; and that the City of Carlsbad does hereby claim a lien on such rehabilitation, repair or demolition in the amount of said assessment, to wit: the sum of \$_____, and the same shall be a lien upon said real property until the same has been paid in full and discharged of record. The real property hereinbefore mentioned, and upon which a lien is claimed, is that certain parcel of land lying and being in the City of Carlsbad, County of San Diego, State of California, and more particularly described as follows: [Assessor Parcel Number and legal description]

DATED:

City Manager of the City of Carlsbad

4. From the date of recording, the nuisance abatement lien shall have the force, effect, and priority of a judgment lien and may be foreclosed by an action brought by the city for a money judgment.
5. The city may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.
6. In the event that the lien is discharged or released or satisfied, either through payment or foreclosure, notice of the discharge ("release of lien") containing the information contained in paragraph 3 of this subsection shall be recorded in the county recorder's office. A courtesy copy

shall also be provided to the recorded property owner consistent with the service methods in Section 1.10.040.

- B. Special Assessment. As an alternative to the recordation of a nuisance abatement lien, the city manager or designee may make the cost of abatement of a nuisance a special assessment against that parcel, using the following procedures:
1. The city manager or designee shall file an acknowledged copy of the abatement cost report(s), abatement cost order (if applicable), and the abatement order with the auditor of the county, who shall enter the assessment on the county tax roll opposite the subject property.
 2. Prior to the filing with the auditor of the county in accordance with paragraph (B)(1) above, the property owner, if his/her identity can be determined from the county assessor's or county recorder's records, should be provided a notice of special assessment by certified mail, similar in form to the notice of lien described in Section 6.16.170(A)(3). The notice of special assessment shall include as an attachment an acknowledged copy of the abatement cost report, abatement cost order (if applicable), and the abatement order. The notice shall be given at the time of imposing the assessment and shall specify that the property may be sold after three years by the tax collector for unpaid delinquent assessments. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice.
 3. The amount of the assessment may be collected at the time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes.
 4. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches on the real property prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.
 5. If the city imposes an assessment pursuant to this section, it may, subject to the requirements applicable to the sale of property pursuant to California Revenue and Taxation Code Section 3691, conduct a sale of vacant residential developed property for which the payment of that assessment is delinquent.
- C. Civil action by the city.
- D. In addition to any other costs of abatement under this chapter, upon the entry of a second or subsequent civil or criminal judgment within a two-year period in which the owner of real property is responsible for a condition that may be abated under this chapter, except for conditions under the State Housing Law (see California Health and Safety Code Section 17980), a court may order the property owner to pay triple the costs of the abatement.

6.16.110 Strict liability offense.

Violations of this chapter shall be treated as strict liability offenses regardless of intent.

6.16.120 No mandatory duty.

Nothing in this chapter is intended to create a mandatory duty on behalf of the city or its employees under the Government Claims Act (California Government Code Section 900 et seq.) and no cause of action against the city or its employees is created by this chapter that would not arise independently of the provisions of this chapter.

6.16.130 Alternative means of enforcement.

This chapter is not the exclusive regulation of nuisance code violations. It shall supplement and be in addition to other regulatory codes, statutes, and ordinances enacted by the state or any other legal entity or agency having jurisdiction. Nothing in this chapter shall be deemed to prevent the city from authorizing the City Attorney to commence any other available civil or criminal proceedings to abate a public nuisance under applicable provisions of state law as an alternative to proceedings set forth in this chapter.

Article II. Summary Abatement

6.16.140 General.

A nuisance may be summarily abated without notice, hearing, or a warrant when immediate action is necessary to preserve or protect the public health and safety. Summary abatement actions are not subject to all of the requirements of Article I of this chapter, but instead shall be subject to the following requirements:

6.16.150 Determination of summary abatement.

- A. The city manager or designee shall make a determination that a public nuisance exists that poses an immediate risk to the health, safety, or welfare of the public, persons in the city, or the environment.
- B. Whenever possible, the city shall attempt to contact the responsible party and property owner, as defined in Section 1.10.010, to request abatement of the nuisance prior to the city proceeding with summary abatement. If the responsible party and property owner are not available, or are incapable, or unwilling to abate the nuisance, the city may proceed with summary abatement using the minimum level of correction or abatement as necessary to eliminate the immediacy of the hazard.
- C. Notwithstanding the requirement in subsection (B), the city manager or designee may exercise the following powers without prior notice to the responsible party and property owner:
 1. Order the immediate vacation of any tenants and prohibit occupancy until all repairs are completed.
 2. Post the premises as unsafe, substandard, or dangerous.

3. Board, fence, or secure the building or site.
4. Raze and grade that portion of the building or site to prevent further collapse and remove any hazard to the general public.
5. Make any minimal emergency repairs as necessary to eliminate any imminent life safety hazard.
6. Take any other action as reasonably appropriate under the circumstances of an immediate hazard.
7. Exercise any of the summary abatement powers listed in this subsection to remove items placed or stored on city property, sidewalks, or public rights-of-way.
8. Pursue any administrative or judicial remedy to abate any remaining public nuisance.

6.16.160 Summary abatement cost report.

- A. The city manager or designee shall maintain the following records and shall prepare a report of summary abatement that contains the following:
 1. A description of the time, duration, type, and extent of the nuisance;
 2. An evaluation of the risks to the health, safety, and welfare of the public and/or the environment caused by allowing the nuisance to continue;
 3. Steps taken to contact the responsible party and property owner;
 4. All costs associated with the investigation and summary abatement of the nuisance, including the costs of personnel, equipment, facilities, materials, and other external resources.
- B. Within 10 business days after the determination is made by the city manager or designee to summarily abate the nuisance, a notice of determination and a copy of the report of summary abatement shall be served on the responsible party, the owner of record of the parcel of land where the nuisance originated, and all persons known to have any legal interest in the property. The city may charge the responsible party or the property owner with the full costs of investigation and summary abatement of the nuisance.

6.16.170 Summary abatement hearing.

- A. A hearing to assess abatement costs and affirm whether immediate action was necessary to preserve or protect the health, safety, and/or welfare of the public, persons in the city and/or the environment shall be conducted before the city council at the request of the responsible party and/or the property owner.
- B. The responsible party and/or the property owner must file a written request for a hearing with the city clerk within 30 calendar days of receipt of the notice of determination and report of summary abatement.

- C. The hearing shall be scheduled before the city council within 60 calendar days of receipt of the request for a hearing.
- D. Within 30 calendar days of receipt of the notice of determination and the report of summary abatement, and at least 30 calendar days prior to the scheduled hearing date, the responsible party and/or property owner may file a request with the city clerk for any and all evidence and objections regarding the need for summary abatement and/or the abatement costs.
- E. The hearing and consideration may be continued from time to time and upon its conclusion, the city council shall, by resolution:
 - 1. Determine whether the nuisance posed an immediate risk to the health, safety, or welfare of the public, persons in the city, and/or the environment.
 - 2. Determine whether the responsible party was unavailable, incapable, and/or unwilling to abate the nuisance.
 - 3. Determine the correct abatement cost.
 - 4. If necessary, modify the report of summary abatement to conform to such findings as indicated above.
 - 5. Confirm the report of summary abatement as presented or modified.
 - 6. State the date of the summary abatement order.
 - 7. Determine and state the correct legal description of the subject property, the correct county assessor's parcel number, the street address, and the name and address of the recorded owner based on the last equalized assessment roll or the supplemental roll, whichever is more current.
- F. The decision of the city council shall be final.

6.16.180 Collection of cost of summary abatement.

In addition to any other applicable procedures, the cost of summary abatement may be collected in accordance with Section 6.16.170 or become a lien or special assessment against the property in accordance with Section 6.16.160.

Article III Property Maintenance

6.16.190 Declaration of purpose and statutory authority.

Every person has the duty to maintain real property under the person's control free from dirt, rocks, weeds, plant growth, waste, or other materials which are either dangerous or injurious to neighboring property or to the health or welfare of residents in the vicinity or which interfere with the use of public rights-of-way. There continues to be a need for further emphasis on maintaining unobstructed rights-of-way, particularly as to plant growth. Unless corrective measures are taken to alleviate the existing conditions and to avoid

future problems in this regard, the public health, safety, and general welfare and the property values and social and economic standards of this community will be depreciated.

The purpose and intent of this article is to establish standards to identify and enforce private property maintenance to the ensure plant growth, waste, and other materials do not present a public nuisance by obstructing public streets, sidewalks, or rights-of-way. This article is also intended to provide for procedures to administratively abate public nuisances caused by plant growth, waste, or other materials obstructing public streets, sidewalks, or rights-of-way.

This article is authorized by California Government Code sections 39501 and 39502.

6.16.200 Definitions.

For purposes of this article the following definitions apply:

“Liquid waste” includes oil, other petroleum products, paint, chemicals, and hazardous waste or materials.

“Litter” means small quantities of waste matter carried on or about the person including, but not limited to, beverage containers and closures, packaging wrappers, wastepaper, newspapers, magazines, or the contents of containers, closures, or wrappers.

“Littering” means the act of discarding, dropping, scattering, or disposing of litter in a location or container which is not used for the proper disposal of waste.

“Parking strip” means the portion of property between a public street and private property.

“Plant growth” means any flora, vegetation, or herbage.

“Property” means any real property, or improvements on real property, including that portion of any lot abutting a public street over which the city has an easement for right-of-way or utility service.

“Public property” means any property interest owned by, or otherwise granted to, the City of Carlsbad.

“Rubbish” means non-functional, non-usable, or abandoned material or matter. Rubbish includes ashes, paper, cardboard, tin cans, dirt, cut brush, yard and garden clippings or trimmings, wood, glass, bedding, cloth, clothing, crockery, plastic, rubber by-products, litter, machinery, vehicle parts, junk, and other similar items.

“Solid waste” means rubbish, broken concrete or asphalt, piles of rock, dirt, and other noncombustible materials and earth fill material not otherwise authorized by permit or ordinance for land development.

“Waste” means material of any nature that constitutes rubbish, solid waste, liquid waste, or medical waste. Waste may include abandoned or unidentified personal property that is left unattended on public sidewalks and rights-of-way or other public property. Waste does not include compost piles, composting, or recyclable material properly contained and disposed of in a timely fashion.

6.16.210 Enforcement authority.

The directors of community development or environmental management, and any other director or equivalent authority, authorized by the city manager or designee (collectively, "Directors") are authorized to administer and enforce the provisions of this article. The Directors or their designated enforcement officers may exercise any enforcement powers as provided in Chapter 1.10 of this Code.

6.16.220 Duty to maintain property.

- A. It is unlawful for any property owner or responsible party, as defined in Section 1.10.010, to place or maintain dirt, rocks, plant growth, waste, or other materials on or about adjacent sidewalks, parking strips, alleys, streets, or other public property in a manner that is either dangerous or injurious to neighboring property or the health, safety, or welfare of residents in the vicinity; or in a manner that unreasonably interferes with or unreasonably obstructs the use of public rights-of-way. Any violation of this section is a public nuisance and, as such, may be abated or enjoined from further existence or operation within the city, pursuant to the procedures set forth in Article I of this chapter, except as set forth in subsections (B) and (C) below.
- B. The Director may require a property owner or responsible party to erect fences, barriers, berms, or other suitable means to discourage access to the property for littering or illegal dumping. This may include the posting of signs that prohibit littering and illegal dumping.
- C. The Director may authorize the collection or abatement of waste from small business enterprises that abut public property under the following circumstances:
1. At the request of the affected property owner, if the Director determines that reasonable efforts were made to comply with subsections (A) or (B) listed above; or
 2. When public health or safety requires such measures.
- D. The Director is authorized to assess costs against affected property owners for the abatement services performed by the city or its agents pursuant to Article I of this chapter. The Director's cost assessment report may be challenged pursuant to the procedures in Article I of this chapter.

6.16.230 Violations.

Violations of this article may be chargeable as an infraction. The Directors may also seek injunctive relief or civil penalties in the Superior Court, or pursue any administrative penalties under Chapter 1.10 of this Code.

6.16.240 Administrative abatement procedure.

Any abatement action allowed by this article shall follow the procedures set forth in Article I of this chapter, except as provided in subsections 6.16.290(B) and (C).

6.16.250 Abatement lien.

The cost of removal and abatement of a property maintenance public nuisance may be assessed against the abutting or adjacent property owner and may become a lien as authorized in California Government

Code Section 39502. Designated enforcement officers shall follow the procedures in Article I of this chapter for assessment, execution, and collection of the lien. Enforcement of the lien may include sale of the property.

6.16.260 Severability.

If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, the decision shall not affect the validity of the remaining portions of this chapter. The city council declares that it would have adopted this chapter, and each and every section, subsection, sentence, clause, and phrase of the chapter not declared invalid or unconstitutional, without regard to whether any portion of the chapter would be subsequently declared invalid or unconstitutional.

Chapter 6.16

PUBLIC NUISANCES*, ** AND PROPERTY MAINTENANCE

Sections:

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- 6.16.005 Declaration of purpose and statutory authority.
- ~~6.16.010 Nuisance defined.~~
- ~~6.16.020 Determination of nuisance on real property.~~
- ~~6.16.030 Right to appeal notice of violation.~~
- 6.16.010 Public nuisance defined.
- 6.16.015 Specific conditions constituting a public nuisance.
- 6.16.020 Determination of nuisance on real property.
- 6.16.030 Right to appeal notice of violation.
- 6.16.040 Failure to abate nuisance.
- ~~6.16.050 Account of cost of; abatement to be kept order.~~
- ~~6.16.060 Copies of report of abatement cost to be served.~~
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- 6.16.060 Copies of abatement cost report to be served.
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- ~~6.16.150 Summary abatement cost report.~~

* For provisions regarding animal nuisances, see Section 7.04.010.

** Prior ordinance history: Ord. Nos. 1261, NS-86, NS-144, NS-426, NS-625, 8084, NS-676, and CS-164.

~~Article I. Generally~~

- 6.16.170 Summary abatement hearing.

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Article III 005 Property Maintenance

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The council finds that its 6.16.200 Definitions.

6.16.210 Enforcement authority.

6.16.220 Duty to maintain property.

6.16.230 Violations.

6.16.240 Administrative abatement procedure.

6.16.250 Abatement lien.

6.16.260 Severability.

Article I. General

6.16.005 Declaration of purpose in adopting and statutory authority.

The purpose of this chapter is to establish comprehensive and transparent procedures for the administrative and summary abatement of public nuisances and code violations, including public nuisances related to property maintenance. The procedures established in these sections are in addition to any other legal remedy, criminal or civil, established by law which may be pursued to address municipal code or applicable state code violations.

~~6.16.010 Nuisance defined.~~

~~The existence of real property, whether public or private, within the city:~~

- ~~A. In a condition which is adverse or detrimental to public peace, health, safety, the environment, or general welfare; or~~
- ~~B. Any condition caused, maintained, or permitted to exist in violation of any provision of the municipal code or applicable state codes which constitute a public nuisance may be abated by the city pursuant to the procedures set forth in this chapter; or~~
- ~~C. Which is~~ The provisions of this chapter are authorized by California Constitution, Article 11, Section 7, California Civil Code Section 3491, California Code of Civil Procedure Section 731, California Government Code Sections 25485, 38771, 38773.5, and California Penal Code Section 372.

6.16.010 Public nuisance defined.

- A. "Public nuisance" means any condition caused, maintained, or in existence which constitutes a threat to the public's health, safety, and welfare or to the environment, or which significantly obstructs, injures, or interferes with the reasonable or free use of property in a neighborhood, community, or to any considerable number of persons, or which constitutes a public nuisance under California Civil Code Sections 3479-3480.
- B. "Public nuisance" also means real property which is maintained so as to permit the same to become so in such a defective, unsightly, dangerous, or in a deteriorated condition of deterioration, or state of disrepair so, that the same property will, or may cause harm to persons, or which will be materially detrimental to property or improvements located in the immediate vicinity of such the property.

6.16.015 Specific conditions constituting a public nuisance.

The existence of any of the following conditions on any property is a public nuisance:

- A. Conditions related to property maintenance, as set forth in Article III of this chapter.
- B. Any obstruction to the free flow of drainage water in a natural drainage course, such as streams, rivers, and creeks.
- C. Land that is in a state to cause or contribute to erosion, subsidence, or surface water drainage impacting adjacent public properties.
- D. Buildings which are abandoned, partially destroyed, or remain unreasonably in a state of partial construction with no observable work performed for a period of six months or longer.
- E. Buildings, walls, and other structures which have been damaged by fire, decay, or otherwise to such an extent they cannot be repaired so as to conform to the requirements of the building code in effect in this city. Buildings which have been partially destroyed or demolished by these causes and which remain in such a state for a period of six months or longer shall also be a violation of this subsection.
- F. The failure to close, by means acceptable to the building official, all doorways, windows, and other openings into vacant structures.
- ~~A.G.~~ Any condition, instrument, or machine on real property, ~~constitutes a public nuisance.~~ that is unsafe and unprotected and consequently dangerous to minors by reason of their inability to appreciate its peril, and which may be reasonably expected to attract minors to the property and thus risk injury to them by their playing with, in, or on it (i.e., attractive nuisances).

6.16.020 ~~Determination of nuisance on real property.~~

- H. Graffiti on any public or privately owned structures within the city. For purposes of this chapter, "graffiti" means any form of painting, writing, inscription, or carving on any surface, regardless of the content or the nature of the material used in the commission of the act, which was not authorized in advance by the owner of the surface.
- I. All other conditions deemed to be a "nuisance" or "public nuisance" as defined throughout this Code.
- J. Property upon which any violation of this Code or any applicable state, county, or local law exists, or property which is used in violation of this Code or any applicable state, county, or local law.

6.16.020 Determination of nuisance on real property.

Whenever the enforcement officer, as that term is defined in Section ~~4.10.010(A)~~, 1.10.010, determines that there exists on any real property in the city a public nuisance ~~as defined in Section 6.16.010~~, the enforcement officer may serve upon the property owner and responsible ~~person~~party, as that term is

defined in Section ~~1.10.010(A), 1.10.010,~~ a notice of violation ~~per Section 1.10.030 under~~ Section 1.10.030 setting forth the nature of the public nuisance. ~~Said~~The notice shall be served in accordance with Section ~~1.10.040, 1.10.040.~~

~~6.16.030~~ Right to appeal notice of violation.

~~6.16.030~~ Right to appeal notice of violation.

The property owner and/or responsible ~~person~~party may appeal the notice of violation of public nuisance within 10 calendar days from the date of service of the notice of violation by filing a written request to appeal ~~to the city clerk. Upon receiving a written request to appeal a notice of violation, the city manager shall follow the same~~ as required by Section 1.10.120. The administrative enforcement hearing appeal procedures for administrative citations shall follow those set forth in Section ~~1.10.130, 1.10.130.~~

6.16.040 Failure to abate nuisance; abatement order.

The following provisions ~~will~~ apply ~~to~~ the failure to abate a ~~nuisance:~~

~~A. In the event such~~ public nuisance:

A. In the event a public nuisance noticed under Section 6.16.020 is not abated on or before the date described specified in the notice of violation and is not appealed within 10 calendar days of the date of issuance of the notice of violation, the city manager may authorize and direct the abatement thereof of the nuisance by city agents, employees, or by private contract, and in connection therewith such city agents or employees, or such private contractors through a written abatement order.

B. The city manager or designee shall cause a copy of the abatement order to be served on the property owner and their employees, the responsible party per Section 1.10.040, in addition to posting a copy of the abatement order prominently on the property to be abated.

~~A.C.~~ Any parties authorized by the city manager or designee to perform the abatement work may enter upon the subject property to abate the nuisance only after: (1) receiving written consent of the property owner or an authorized agent, (2) the issuance of a judicially authorized inspection warrant, or (3) a determination by the City Attorney’s Office that an exception to the inspection warrant requirement applies. Any abatement activity that would significantly alter structures on the property or the nature or character of the property, or that would require demolition of structures on the property, shall not be performed without a judicially authorized inspection warrant or other judicial order.

~~B.D.~~ B. Notwithstanding any The owner or other provision of this code, failure to abate such public nuisance on or before the date described in the notice of violation, when ordered to do so in accordance with the provisions of this person having charge or control of buildings or premises who violates any abatement order issued under this chapter, or under state law where such state law is applicable, is guilty of a misdemeanor.

6.16.050 ~~Account of cost of abatement to be kept.~~

- E. Any occupant or lessee in possession of a building or structure who fails to vacate the building or structure in accordance with an order issued under this chapter is guilty of a misdemeanor.
- F. Any person who removes any notice or order posted under this chapter is guilty of a misdemeanor.
- G. No person shall obstruct, impede, or interfere with any representative of the city council or with any representative of a city department or with any person who owns or holds any estate or interest in a building which has been ordered to be vacated, repaired, rehabilitated, or demolished and removed, or with any person to whom the building has been lawfully sold pursuant to the provisions of this Code, whenever the representative of the city council, representative of the city, purchaser, or person having any interest or estate in the building is engaged in vacating, repairing, rehabilitating, or demolishing and removing the building under the provisions of this chapter, or in performing any necessary act preliminary to or incidental to such work as authorized or directed under this chapter.
- H. The provisions of this chapter are also enforceable, and violations are punishable, under Chapter 1.08. Chapter 1.08 allows for the issuance of infraction or misdemeanor citations for violations of certain sections of this Code. Criminal prosecution shall not preclude nor be precluded by abatement of the violation or violations.
- I. It is unlawful and a misdemeanor for any person to do any act or thing upon the property of another that is declared to be a public nuisance under any provision of this Code, or to do anything or act upon the property of another that results in the declaration of a public nuisance, without the express consent of the owner of the property.

6.16.050 ~~Account of cost of abatement to be kept.~~

- A. The city manager or designee shall ~~cause to be kept~~keep an account of the cost of ~~such abatement and abatement and of rehabilitating, demolishing, or repairing any premises, buildings, or structures, including any related salvage value and administrative costs, and upon.~~ Upon completion thereof of this work, the city manager or designee shall write authorize a written abatement cost report stating the cost thereof these costs.

6.16.060 ~~Copies of report of abatement cost to be served.~~

- B. For purposes of this chapter, "administrative costs" includes, without limitation, the actual expenses and costs of the city in preparing, printing, and mailing notices, specifications and contracts and in inspecting the work.

6.16.060 ~~Copies of abatement cost report to be served.~~

The city manager or designee shall cause a copy or copies of such the abatement cost report mentioned in Section 6.16.050 to be served to on the property owner and the responsible person party per Section 1.10.040. 1.10.040.

6.16.070 ~~Determination of abatement cost.~~

6.16.070 Challenges to abatement cost report.

The property owner and/or responsible person may dispute the abatement cost report within 10 calendar days from the date of service of the abatement cost report by filing a written dispute ~~to~~with the ~~cost report~~city clerk. The property owner and/or responsible person shall set forth the basis of the dispute and submit relevant documentation in support of their dispute. ~~The city manager or designee shall consider the comments and documentation submitted by the responsible person, and shall:~~

~~A. Determine the correct~~

6.16.080 Hearing on abatement cost; report; abatement cost order.

~~B.A.~~ If a property owner and/or responsible party timely challenges the abatement cost report, the city council shall set the matter for hearing to determine the correctness or reasonableness, or both, of such costs.

B. A copy of the abatement cost report and notice of hearing shall be served upon the property owner and/or responsible party challenging the report in accordance with Section 1.10.040, at least 5 calendar days prior to the date of the city council hearing.

C. Proof of service of the abatement cost report and notice of hearing shall be made by affidavit or declaration, under penalty of perjury, filed with the city clerk at least 5 calendar days prior to the date of the city council hearing.

D. At the time and place fixed for receiving and considering the report, the city council shall hear and pass upon the report of the costs of abatement, together with any objections, protest, or documentation submitted by the property owner and/or responsible party. By resolution, the city council shall adopt an abatement cost order that:

1. Determines the correct cost of abatement and related administrative costs.

2. If necessary, ~~modify such~~ modifies the abatement cost report to conform to such ~~correct~~corrected abatement cost; and administrative costs.

~~C. Confirm~~3. Confirms the abatement cost report as presented or modified;

~~D. State~~4. States the date of the final abatement order; cost report.

~~E. Determine~~5. Determines and states the correct legal description of the subject property, the correct county assessor's parcel number, the street address, and the name and address of the recorded owner based on the last equalized assessment roll or the supplemental roll, whichever is more current.

The decision of the city ~~manager or designee~~council shall be final ~~and conclusive~~.

6.16.080 Abatement cost to be lien against property.

6.16.090 Abatement cost to be lien against property.

The cost of abatement and related administrative costs, as determined, shall be a:

- A. Personal obligation of the person creating, causing, committing, or maintaining the nuisance abated;
- B. Personal obligation of the property owner of the subject property; and
- C. Special assessment against the subject property or a lien against the subject property.

~~6.16.090 — Collection of cost of abatement.~~

6.16.100 Collection of cost of abatement.

The cost of abatement ~~and any related administrative costs~~, as confirmed, may be collected by the city by ~~any or all of the following means~~ or any other lawful means:

A. ~~Recordation~~ Nuisance abatement lien. The city manager or designee may authorize recordation of a nuisance abatement lien in the office of the county recorder ~~of a certified, along with an acknowledged copy of such resolution confirming such the abatement cost report so as to give notice of the lien(s), abatement cost order (if applicable), and the abatement order.~~

- 1. Prior to recordation, a notice of lien shall be served on the owner of record, based on the last equalized assessment roll or the supplemental roll, whichever is more current.
- 2. The notice shall be served in the same manner as a summons in a civil action in accordance with ~~Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of the California Code of Civil Procedure. Section 415.10 et seq.~~ If the owner of record after diligent search cannot be found, the notice may be served by posting a copy ~~thereof~~ in a conspicuous place upon the property for a period of 10 calendar days and ~~publication thereof~~ publishing it in a newspaper of general circulation in San Diego County pursuant to California Government Code Section 6062.
- 23. The nuisance abatement lien authorized by this section shall be recorded in a form approved by the county recorder's office City Attorney substantially as follows:

[Name and ~~from~~ address of the recorded owner of the parcel]

NOTICE OF LIEN - CLAIM OF CITY OF CARLSBAD

Pursuant to the authority vested by the provisions of Chapter 6.16 of the Carlsbad Municipal Code, the city manager or designee of the City of Carlsbad did on or about the _____ day of _____, 20____, cause the premises hereinafter described to be rehabilitated, or the building or structure on the real property hereinafter described to be repaired or demolished, in order to abate a public nuisance; and the city manager/City Council of the City of Carlsbad (circle one) did on the _____ day of _____, 20____, assess the cost of such rehabilitation, repair or demolition upon said real property hereinafter described; and the same has not been paid nor any part thereof; and that the City of Carlsbad does hereby claim a lien on such rehabilitation, repair or demolition in the amount of said assessment, to wit: the sum of \$ _____, and the same shall be a lien upon said real property until the same has been paid in full and discharged of record. The real property hereinbefore mentioned, and upon which a lien is claimed, is that certain parcel of land lying and being in the City of Carlsbad, County of San Diego,

State of California, and more particularly described as follows: [Assessor Parcel Number and legal description]

DATED:

City Manager of the City of Carlsbad

4. From the date of recording, the nuisance abatement lien shall have the force, effect, and priority of a judgment lien and may be foreclosed by an action brought by the city for a money judgment.
- ~~35.~~ The city may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.
46. In the event that the lien is discharged or released or satisfied, either through payment or foreclosure, notice of the discharge ("release of lien") containing the amount of the lien, the date information contained in paragraph 3 of the abatement order, the street address, legal description, assessor's parcel number, and the name and address of the recorded owner this subsection shall be recorded in the county recorder's office. A courtesy copy shall also be provided to the recorded property owner consistent with the service methods in Section 1.10.040.

BB. Special Assessment. As an alternative to the recordation of a nuisance abatement lien, the city manager or designee may make the cost of abatement of a nuisance a special assessment against that parcel, using the following procedures:

1. The city manager or designee shall file an acknowledged ~~Civil action by the city.~~
- ~~C. Filing a certified copy of such resolution confirming such~~ the abatement cost report(s), abatement cost order (if applicable), and the abatement order with the auditor of the county, who shall enter the assessment on the county tax roll opposite the subject property.
2. Prior to the filing with the auditor of the county in accordance with paragraph (B)(1) above, the property owner, if his/her identity can be determined from the county assessor's or county recorder's records, should be provided a notice of special assessment by certified mail, similar in form to the notice of lien described in Section 6.16.170(A)(3). The notice of special assessment shall include as an attachment an acknowledged copy of the abatement cost report, abatement cost order (if applicable), and the abatement order. The notice shall be given at the time of imposing the assessment and shall specify that the property may be sold after three years by the tax collector for unpaid delinquent assessments. The tax collector's power of sale shall not be affected by the failure of the property owner to receive notice.
3. The amount of the assessment shall ~~may~~ be collected at the time and in the same manner ~~of~~ as ordinary municipal taxes. ~~If delinquent, the amount is~~ are collected, and shall be subject to the same penalties and ~~procedures of foreclosure~~ the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. The legislative body may determine that in lieu of

~~collecting the entire assessment at the time and in the manner of ordinary municipal taxes, such assessment of \$50.00 or more may be made in annual installments in any event not to exceed five, and collected one installment at a time and in the manner of ordinary municipal taxes in successive years. If any installment is delinquent, the amount thereof is subject to the same penalties and procedure for foreclosure and sale provided for ordinary municipal taxes. The payment of assessments so deferred shall bear interest on the unpaid balance at the rate of six percent per year.~~

4. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches on the real property prior to the date on which the first installment of the taxes would become delinquent, then the cost of abatement shall not result in a lien against the real property but instead shall be transferred to the unsecured roll for collection.
5. If the city imposes an assessment pursuant to this section, it may, subject to the requirements applicable to the sale of property pursuant to California Revenue and Taxation Code Section 3691, conduct a sale of vacant residential developed property for which the payment of that assessment is delinquent.

C. Civil action by the city.

- D. In addition to any other costs of abatement under this chapter, upon the entry of a second or subsequent civil or criminal judgment within a two-year period in which the owner of real property is responsible for a condition that may be abated under this chapter, except for conditions under the State Housing Law (~~Health and Safety Code~~ see California Health and Safety Code Section 17980), a court may order the property owner to pay triple the costs of the abatement.

Article II. Obstructing Drainage Course

6.16.110 Strict liability offense.

~~120 **Declared nuisance.**~~

Any obstruction to the free flow ~~of drainage water in a natural drainage course in the city is declared to constitute a nuisance.~~ ~~Strict liability offense.~~

~~6.16.130 **Procedure for abatement.**~~

~~The procedure for the abatement of such a nuisance this chapter shall be treated as follows: strict liability offenses regardless of intent.~~

- A. ~~Once such a nuisance is alleged to exist on certain property, the city council shall cause a written notice thereof to be mailed to the person to whom such property is assessed in the last assessment roll available on the date of mailing, of the time and place for hearing objections and testimony and determination of whether or not such a nuisance exists. Such notice shall be mailed at least five days prior to the time of hearing;~~

- B. ~~At the time and place stated in the notice, the council shall hear and consider all objections and testimony regarding whether or not such a nuisance exists, and following such hearing shall decide such question. The hearing may be continued from time to time;~~
- C. ~~If the council decides that such a nuisance does exist, it may cause the abatement thereof and the cost of such abatement shall be a special assessment or a lien against the property on which it is maintained and a personal obligation against the property owner, and may be collected pursuant to the provisions of Government Code Sections 38773, 38773.1, 38773.5 and other applicable statutes.~~

~~6.16.140 — No mandatory duty.~~

6.16.120 — No mandatory duty.

Nothing in this chapter is intended to create a mandatory duty on behalf of the city or its employees under the Government Tort Claims Act ([California Government Code Section 900 et seq.](#)) and no cause of action against the city or its employees is created by this chapter that would not arise independently of the provisions of this chapter.

Article III. Summary Abatement

~~6.16.150 — Summary abatement.~~

6.16.130 — Alternative means of enforcement.

This chapter is not the exclusive regulation of nuisance code violations. It shall supplement and be in addition to other regulatory codes, statutes, and ordinances enacted by the state or any other legal entity or agency having jurisdiction. Nothing in this chapter shall be deemed to prevent the city from authorizing the City Attorney to commence any other available civil or criminal proceedings to abate a public nuisance under applicable provisions of state law as an alternative to proceedings set forth in this chapter.

Article II. Summary Abatement

6.16.140 — General.

A nuisance may be summarily abated without notice, hearing, or a warrant when immediate action is necessary to preserve or protect the public health and safety. Summary abatement actions are not subject to all of the requirements of Article I of this chapter, but instead shall be subject to the following requirements:

6.16.150 — Determination of summary abatement.

- A. The city manager or designee shall make a determination that a public nuisance exists that poses an immediate risk to the health, safety, or welfare of the public ~~or~~ persons in the city, or the environment.
- B. Whenever possible, the city shall attempt to contact the responsible party and ~~or~~ property owner, as defined in Section 1.10.010, to request abatement of the nuisance prior to the city proceeding with summary abatement. If the ~~property owner and/or responsible party, as defined in Section 1.10.010(A)(6), is~~ and property owner are not available, or are incapable, or unwilling to abate the

nuisance, the city may proceed with summary abatement using the minimum level of correction or abatement as necessary to eliminate the immediacy of the hazard.

C. Notwithstanding the requirement in subsection (B), the city manager or designee may exercise the following powers without prior notice to the responsible party and property owner:

1. Order the immediate vacation of any tenants and prohibit occupancy until all repairs are completed.
2. Post the premises as unsafe, substandard, or dangerous.
3. Board, fence, or secure the building or site.
4. Raze and grade that portion of the building or site to prevent further collapse and remove any hazard to the general public.
5. Make any minimal emergency repairs as necessary to eliminate any imminent life safety hazard.
6. Take any other action as reasonably appropriate under the circumstances of an immediate hazard.
7. Exercise any of the summary abatement powers listed in this subsection to remove items placed or stored on city property, sidewalks, or public rights-of-way.
8. Pursue any administrative or judicial remedy to abate any remaining public nuisance.

6.16.160 Summary abatement cost report.

A. The city manager or designee shall maintain the following records and shall prepare a report of summary abatement summarizing that contains the records following:

1. A description of the time, duration, type, and extent of the nuisance;
2. An evaluation of the risks to the health, safety, and welfare of the public and/or the environment caused by allowing the nuisance to continue;
3. Steps taken to contact the responsible party and/or property owner;
4. All costs associated with the investigation and summary abatement of the nuisance, including the costs of personnel, equipment, facilities, materials, and other external resources.

~~D.B.~~ Within 10 working business days after the determination is made by the city manager or designee to summarily abate the nuisance, a notice of determination and a copy of the report of summary abatement shall be served on the responsible party, the owner of record of the parcel of land where the nuisance originated, and all persons known to have any legal interest in the property. The city may charge the responsible party ~~shall be charged~~ or the property owner with the full costs of investigation and summary abatement of the nuisance.

6.16.170 Summary abatement hearing.

- A. A hearing to assess abatement costs and affirm whether immediate action was necessary to preserve or protect the ~~public health and~~ safety, and/or welfare of the public, persons in the city and/or the environment shall be conducted before the city council at the request of the responsible party. ~~Within 30~~ and/or the property owner.
- B. The responsible party and/or the property owner must file a written request for a hearing with the city clerk within 30 calendar days of receipt of the notice of determination and the report of summary abatement, the responsible party.
- C. The hearing shall be scheduled before the city council within 60 calendar days of receipt of the request for a hearing.
- D. Within 30 calendar days of receipt of the notice of determination and the report of summary abatement, and at least 30 calendar days prior to the scheduled hearing date, the responsible party and/or property owner may file a request with the city clerk for any and all evidence and objections regarding the need for summary abatement and/or the abatement costs. The hearing and consideration may be continued from time to time and upon the conclusion thereof, the council shall, by resolution:
- E. The hearing and consideration may be continued from time to time and upon its conclusion, the city council shall, by resolution:
1. Determine whether the nuisance posed an immediate risk to the health, safety, or welfare of the public ~~or~~ persons in the city, and/or the environment.
 2. Determine whether the responsible party was unavailable, incapable, and/or unwilling to abate the nuisance;
 3. Determine the correct abatement cost;
 4. If necessary, modify the report of summary abatement to conform to such findings as indicated above;
 5. Confirm the report of summary abatement as presented or modified;
 6. State the date of the summary abatement order;
 7. Determine and state the correct legal description of the subject property, the correct county assessor's parcel number, the street address, and the name and address of the recorded owner based on the last equalized assessment roll or the supplemental roll, whichever is more current.
- F. The decision of the city council shall be final.

F.—

6.16.180 Collection of cost of summary abatement.

In addition to any other applicable procedures, the cost of summary abatement may be collected in

accordance with Section ~~6.16.080~~ 6.16.170 or become a lien or special assessment against the property in accordance with Section ~~6.16.090~~ 6.16.160.

Article III Property Maintenance

6.16.190 Declaration of purpose and statutory authority.

Every person has the duty to maintain real property under the person's control free from dirt, rocks, weeds, plant growth, waste, or other materials which are either dangerous or injurious to neighboring property or to the health or welfare of residents in the vicinity or which interfere with the use of public rights-of-way. There continues to be a need for further emphasis on maintaining unobstructed rights-of-way, particularly as to plant growth. Unless corrective measures are taken to alleviate the existing conditions and to avoid future problems in this regard, the public health, safety, and general welfare and the property values and social and economic standards of this community will be depreciated.

The purpose and intent of this article is to establish standards to identify and enforce private property maintenance to the ensure plant growth, waste, and other materials do not present a public nuisance by obstructing public streets, sidewalks, or rights-of-way. This article is also intended to provide for procedures to administratively abate public nuisances caused by plant growth, waste, or other materials obstructing public streets, sidewalks, or rights-of-way.

This article is authorized by California Government Code sections 39501 and 39502.

6.16.200 Definitions.

For purposes of this article the following definitions apply:

"Liquid waste" includes oil, other petroleum products, paint, chemicals, and hazardous waste or materials.

"Litter" means small quantities of waste matter carried on or about the person including, but not limited to, beverage containers and closures, packaging wrappers, wastepaper, newspapers, magazines, or the contents of containers, closures, or wrappers.

"Littering" means the act of discarding, dropping, scattering, or disposing of litter in a location or container which is not used for the proper disposal of waste.

"Parking strip" means the portion of property between a public street and private property.

"Plant growth" means any flora, vegetation, or herbage.

"Property" means any real property, or improvements on real property, including that portion of any lot abutting a public street over which the city has an easement for right-of-way or utility service.

"Public property" means any property interest owned by, or otherwise granted to, the City of Carlsbad.

“Rubbish” means non-functional, non-usable, or abandoned material or matter. Rubbish includes ashes, paper, cardboard, tin cans, dirt, cut brush, yard and garden clippings or trimmings, wood, glass, bedding, cloth, clothing, crockery, plastic, rubber by-products, litter, machinery, vehicle parts, junk, and other similar items.

“Solid waste” means rubbish, broken concrete or asphalt, piles of rock, dirt, and other noncombustible materials and earth fill material not otherwise authorized by permit or ordinance for land development.

“Waste” means material of any nature that constitutes rubbish, solid waste, liquid waste, or medical waste. Waste may include abandoned or unidentified personal property that is left unattended on public sidewalks and rights-of-way or other public property. Waste does not include compost piles, composting, or recyclable material properly contained and disposed of in a timely fashion.

6.16.210 Enforcement authority.

The directors of community development or environmental management, and any other director or equivalent authority, authorized by the city manager or designee (collectively, “Directors”) are authorized to administer and enforce the provisions of this article. The Directors or their designated enforcement officers may exercise any enforcement powers as provided in Chapter 1.10 of this Code.

6.16.220 Duty to maintain property.

- A. It is unlawful for any property owner or responsible party, as defined in Section 1.10.010, to place or maintain dirt, rocks, plant growth, waste, or other materials on or about adjacent sidewalks, parking strips, alleys, streets, or other public property in a manner that is either dangerous or injurious to neighboring property or the health, safety, or welfare of residents in the vicinity; or in a manner that unreasonably interferes with or unreasonably obstructs the use of public rights-of-way. Any violation of this section is a public nuisance and, as such, may be abated or enjoined from further existence or operation within the city, pursuant to the procedures set forth in Article I of this chapter, except as set forth in subsections (B) and (C) below.
- B. The Director may require a property owner or responsible party to erect fences, barriers, berms, or other suitable means to discourage access to the property for littering or illegal dumping. This may include the posting of signs that prohibit littering and illegal dumping.
- C. The Director may authorize the collection or abatement of waste from small business enterprises that abut public property under the following circumstances:
1. At the request of the affected property owner, if the Director determines that reasonable efforts were made to comply with subsections (A) or (B) listed above; or
 2. When public health or safety requires such measures.
- D. The Director is authorized to assess costs against affected property owners for the abatement services performed by the city or its agents pursuant to Article I of this chapter. The Director’s cost assessment report may be challenged pursuant to the procedures in Article I of this chapter.

6.16.230 Violations.

Violations of this article may be chargeable as an infraction. The Directors may also seek injunctive relief or civil penalties in the Superior Court, or pursue any administrative penalties under Chapter 1.10 of this Code.

6.16.240 Administrative abatement procedure.

Any abatement action allowed by this article shall follow the procedures set forth in Article I of this chapter, except as provided in subsections 6.16.290(B) and (C).

6.16.250 Abatement lien.

The cost of removal and abatement of a property maintenance public nuisance may be assessed against the abutting or adjacent property owner and may become a lien as authorized in California Government Code Section 39502. Designated enforcement officers shall follow the procedures in Article I of this chapter for assessment, execution, and collection of the lien. Enforcement of the lien may include sale of the property.

6.16.260 Severability.

If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, the decision shall not affect the validity of the remaining portions of this chapter. The city council declares that it would have adopted this chapter, and each and every section, subsection, sentence, clause, and phrase of the chapter not declared invalid or unconstitutional, without regard to whether any portion of the chapter would be subsequently declared invalid or unconstitutional.

Chapter 6.16

NUISANCES*, **

Sections:

Article I. Generally

- 6.16.005 Declaration of purpose.**
- 6.16.010 Nuisance defined.**
- 6.16.020 Determination of nuisance on real property.**
- 6.16.030 Right to appeal notice of violation.**
- 6.16.040 Failure to abate nuisance.**
- 6.16.050 Account of cost of abatement to be kept.**
- 6.16.060 Copies of report of abatement cost to be served.**
- 6.16.070 Determination of abatement cost.**
- 6.16.080 Abatement cost to be lien against property.**
- 6.16.090 Collection of cost of abatement.**

Article II. Obstructing Drainage Course

- 6.16.120 Declared nuisance.**
- 6.16.130 Procedure for abatement.**
- 6.16.140 No mandatory duty.**

Article III. Summary Abatement

- 6.16.150 Summary abatement.**

* For provisions regarding animal nuisances, see Section 7.04.010.

** **Prior ordinance history:** Ord. Nos. 1261, NS-86, NS-144, NS-426, NS-625, 8084, NS-676, and CS-164.

Article I. Generally

6.16.005 Declaration of purpose.

The council finds that its purpose in adopting this chapter is to establish procedures for the administrative and summary abatement of public nuisances and code violations. The procedures established in these sections are in addition to any other legal remedy, criminal or civil, established by law which may be pursued to address municipal code or applicable state code violations.

6.16.010 Nuisance defined.

The existence of real property, whether public or private, within the city:

- A. In a condition which is adverse or detrimental to public peace, health, safety, the environment, or general welfare; or
- B. Any condition caused, maintained, or permitted to exist in violation of any provision of the municipal code or applicable state codes which constitute a public nuisance may be abated by the city pursuant to the procedures set forth in this chapter; or
- C. Which is maintained so as to permit the same to become so defective, unsightly, dangerous, or in a condition of deterioration or disrepair so that the same will, or may cause harm to persons, or which will be materially detrimental to property or improvements located in the immediate vicinity of such real property, constitutes a public nuisance.

6.16.020 Determination of nuisance on real property.

Whenever the enforcement officer, as that term is defined in Section 1.10.010(A), determines that there exists on any real property in the city a public nuisance as defined in Section 6.16.010, the enforcement

officer may serve upon the responsible person, as that term is defined in Section 1.10.010(A), a notice of violation per Section 1.10.030 setting forth the nature of the public nuisance. Said notice shall be served in accordance with Section 1.10.040.

6.16.030 Right to appeal notice of violation.

The responsible person may appeal the notice of violation of public nuisance within 10 calendar days from the date of service of the notice of violation by filing a written request to appeal to the city clerk. Upon receiving a written request to appeal a notice of violation, the city manager shall follow the same administrative enforcement hearing procedures for administrative citation set forth in Section 1.10.130.

6.16.040 Failure to abate nuisance.

The following provisions will apply for failure to abate a nuisance:

- A. In the event such public nuisance is not abated on or before the date described in the notice of violation, the city manager may authorize and direct the abatement thereof by city agents, employees or by private contract, and in connection therewith such city agents or employees, or such private contractors and their employees, may enter upon the subject property to abate the nuisance.
- B. Notwithstanding any other provision of this code, failure to abate such public nuisance on or before the date described in the notice of violation, when ordered to do so in accordance with the provisions of this chapter, or state law where such state law is applicable, is a misdemeanor.

6.16.050 Account of cost of abatement to be kept.

The city manager or designee shall cause to be kept an account of the cost of such abatement and related administrative costs, and upon completion thereof, the city manager or designee shall write a report stating the cost thereof.

6.16.060 Copies of report of abatement cost to be served.

The city manager or designee shall cause a copy or copies of such report mentioned in Section 6.16.050 to be served to the responsible person per Section 1.10.040.

6.16.070 Determination of abatement cost.

The responsible person may dispute the abatement cost report within 10 calendar days from the date of service of the abatement cost report by filing a written dispute to the cost report. The responsible person shall set forth the basis of the dispute and submit relevant documentation in support of their dispute. The city manager or designee shall consider the comments and documentation submitted by the responsible person, and shall:

- A. Determine the correct abatement cost;
- B. If necessary, modify such report to conform to such correct abatement cost;
- C. Confirm the report as presented or modified;
- D. State the date of the abatement order;
- E. Determine and state the correct legal description of the subject property, the correct county assessor's parcel number, the street address and the name and address of the recorded owner based on the last equalized assessment roll or the supplemental roll, whichever is more current.

The decision of the city manager or designee shall be final.

6.16.080 Abatement cost to be lien against property.

The cost of abatement, as determined, shall be a:

- A. Personal obligation of the person creating, causing, committing or maintaining the nuisance abated;

- B. Personal obligation of the property owner of the subject property; and
- C. Special assessment against the subject property or a lien against the subject property.

6.16.090 Collection of cost of abatement.

The cost of abatement, as confirmed, may be collected by the city by any or all of the following or any other lawful means.

- A. Recordation in the office of the county recorder of a certified copy of such resolution confirming such report so as to give notice of the lien:
 1. Prior to recordation, a notice of lien shall be served on the owner of record in the same manner as a summons in a civil action in accordance with Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of the Code of Civil Procedure. If the owner of record after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of 10 days and publication thereof in a newspaper of general circulation in San Diego County.
 2. The lien shall be recorded in the county recorder's office and from the date of recording shall have the force, effect and priority of a judgment lien and may be foreclosed by an action brought by the city for a money judgment.
 3. The city may recover from the property owner any costs incurred regarding the processing and recording of the lien and providing notice to the property owner as part of its foreclosure action to enforce the lien.
 4. In the event that the lien is discharged or released or satisfied, either through payment or foreclosure, notice of the discharge containing the amount of the lien, the date of the abatement order, the street address, legal description, assessor's parcel number, and the name and address of the recorded owner shall be recorded in the county recorder's office.
- B. Civil action by the city.
- C. Filing a certified copy of such resolution confirming such report with the auditor of the county who shall enter the assessment on the county tax roll opposite the subject property. The amount of the assessment shall be collected at the time and in the manner of ordinary municipal taxes. If delinquent, the amount is subject to the same penalties and procedures of foreclosure and sale provided for ordinary municipal taxes. The legislative body may determine that in lieu of collecting the entire assessment at the time and in the manner of ordinary municipal taxes, such assessment of \$50.00 or more may be made in annual installments in any event not to exceed five, and collected one installment at a time and in the manner of ordinary municipal taxes in successive years. If any installment is delinquent, the amount thereof is subject to the same penalties and procedure for foreclosure and sale provided for ordinary municipal taxes. The payment of assessments so deferred shall bear interest on the unpaid balance at the rate of six percent per year.
- D. In addition to any other costs of abatement under this chapter, upon the entry of a second or subsequent civil or criminal judgment within a two-year period in which the owner of real property is responsible for a condition that may be abated under this chapter, except for conditions under the State Housing Law (Health and Safety Code Section 17980), a court may order the property owner to pay triple the costs of the abatement.

Article II. Obstructing Drainage Course

6.16.120 Declared nuisance.

Any obstruction to the free flow of drainage water in a natural drainage course in the city is declared to constitute a nuisance.

6.16.130 Procedure for abatement.

The procedure for the abatement of such a nuisance shall be as follows:

- A. Once such a nuisance is alleged to exist on certain property, the city council shall cause a written notice thereof to be mailed to the person to whom such property is assessed in the last assessment roll available on the date of mailing, of the time and place for hearing objections and testimony and determination of whether or not such a nuisance exists. Such notice shall be mailed at least five days prior to the time of hearing;
- B. At the time and place stated in the notice, the council shall hear and consider all objections and testimony regarding whether or not such a nuisance exists, and following such hearing shall decide such question. The hearing may be continued from time to time;
- C. If the council decides that such a nuisance does exist, it may cause the abatement thereof and the cost of such abatement shall be a special assessment or a lien against the property on which it is maintained and a personal obligation against the property owner, and may be collected pursuant to the provisions of Government Code Sections 38773, 38773.1, 38773.5 and other applicable statutes.

6.16.140 No mandatory duty.

Nothing in this chapter is intended to create a mandatory duty on behalf of the city or its employees under the Government Tort Claims Act and no cause of action against the city or its employees is created by this chapter that would not arise independently of the provisions of this chapter.

Article III. Summary Abatement

6.16.150 Summary abatement.

A nuisance may be summarily abated without notice, hearing or a warrant when immediate action is necessary to preserve or protect the public health and safety. Summary abatement actions are not subject to the requirements of this chapter, but shall be subject to the following requirements:

- A. The city manager shall make a determination that a public nuisance exists that poses an immediate risk to the health, safety or welfare of the public or persons in the city.
- B. Whenever possible, the city shall attempt to contact the responsible party and/or property owner to request abatement of the nuisance prior to the city proceeding with abatement. If the property owner and/or responsible party, as defined in Section 1.10.010(A)(6), is not available, incapable or unwilling to abate the nuisance, the city may proceed with summary abatement.
- C. The city manager shall maintain the following records and shall prepare a report of abatement summarizing the records:
 1. A description of the time, duration, type and extent of the nuisance;
 2. An evaluation of the risks to health, safety and welfare of the public and/or environment caused by allowing the nuisance to continue;
 3. Steps taken to contact the responsible party and/or property owner;
 4. All costs associated with the investigation and abatement of the nuisance including the costs of personnel, equipment, facilities, materials and other external resources.
- D. Within 10 working days after the determination is made by the city manager to summarily abate the nuisance, notice of determination and a copy of the report of abatement shall be served on the responsible party, the owner of record of the parcel of land where the nuisance originated, and all persons known to have any legal interest in the property. The responsible party shall be charged with the full costs of investigation and abatement of the nuisance.
- E. A hearing to assess abatement costs and affirm whether immediate action was necessary to preserve or protect the public health and safety, shall be conducted at the request of the responsible party.

Within 30 days of receipt of the notice of determination and the report of abatement, the responsible party may file a request with the city clerk for any and all evidence and objections regarding the need for abatement and/or the abatement costs. The hearing and consideration may be continued from time to time and upon the conclusion thereof, the council shall, by resolution:

1. Determine whether the nuisance posed an immediate risk to the health, safety or welfare of the public or persons in the city;
2. Determine whether the responsible party was unavailable, incapable and/or unwilling to abate the nuisance;
3. Determine the correct abatement cost;
4. If necessary, modify the report of abatement to conform to such findings as indicated above;
5. Confirm the report of abatement as presented or modified;
6. State the date of the abatement order;
7. Determine and state the correct legal description of the subject property, the correct county assessor's parcel number, the street address and the name and address of the recorded owner based on the last equalized assessment roll or the supplemental roll, whichever is more current.

The decision of the council shall be final.

- F. In addition to any other applicable procedures, the cost of abatement may be collected in accordance with Section 6.16.080 or become a lien against the property in accordance with Section 6.16.090.



CITY COUNCIL
Staff Report

Meeting Date: Sept. 22, 2020
To: Mayor and City Council
From: Scott Chadwick, City Manager
Staff Contact: Geoff Patnoe, Assistant City Manager
Geoff.patnoe@carlsbadca.gov, 760-434-2820
Subject: COVID-19 Actions and Expenditures Report

Recommended Action

Receive a report on recent actions and expenditures related to the city's response to the COVID-19 pandemic and provide direction as appropriate.

Executive Summary/Discussion

The City Council voted unanimously April 7, 2020, to direct staff to return to the City Council with financial expenditure reports relating to the city's response to the COVID-19 pandemic. The city manager further committed to provide a bi-weekly update to the City Council on recent actions and expenditures related to the city's response to the pandemic. For these updates, staff from the following major service areas will provide verbal reports on current statistics, data, programming and relevant communications:

- City Manager's Office
- Emergency Operations
- Community Services
- Police
- Fire
- Economic Revitalization and Recovery
- Administrative Services

Fiscal Analysis

None.

Next Steps

Staff will continue to provide the reports bi-weekly until the end of the emergency.

Environmental Evaluation (CEQA)

This action does not constitute a project within the meaning of the California Environmental Quality Act under California Public Resources Code Section 21065 in that it has no potential to cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and therefore does not require environmental review.

Public Notification

Public notice of this item was posted in keeping with the Ralph M. Brown Act and it was available for public viewing and review at least 72 hours before the scheduled meeting date.

Exhibits

None



CITY COUNCIL
Staff Report

Meeting Date: September 22, 2020

To: Mayor and City Council

From: Celia Brewer, City Attorney
Scott Chadwick, City Manager

Staff Contact: Allegra Frost, Deputy City Attorney
allegra.frost@carlsbadca.gov, 760-573-1125
Pete Pascual, Captain, Carlsbad Police Department
pete.pascual@carlsbadca.gov, 760-931-2152

Subject: City of Carlsbad Facial Covering Requirements and Enhanced Enforcement of the County Health Order for Beach Boardwalks, Staircases, Gatherings and Businesses

Recommended Action

Boardwalks and staircases: Consider adopting a resolution that would require people to wear facial coverings on beach boardwalks and staircases on Fridays, Saturdays, Sundays and holidays from sunrise to sunset. Alternatively, consider appropriating funds for two additional police officers to patrol the beach boardwalk area to provide enhanced education and enforcement of the San Diego County public health order's face covering requirements.

Gatherings and businesses: Provide further direction to staff on what additional face covering requirements for gatherings and businesses the City Council would like.

Executive Summary

The City Council approved a minute motion on July 28, 2020, directing staff to draft a Carlsbad-specific face-covering ordinance that includes time, place and manner restrictions on boardwalks, staircases, gatherings and businesses.

Based on the City Council's request, the resolution attached as Exhibit 1 would require everyone to wear a face covering along the west side of Carlsbad Boulevard from Pine Avenue to Cannon Road, including the upper and lower seawall, and on all beach access ramps and staircases from the Rue de Chateaux beach access point on Ocean Street to the bridge south of Tamarack Avenue on Fridays, Saturdays, Sundays and holidays, between sunrise and sunset. (See map in Exhibit 3). The only exemptions would be for people who are under the age of 2, who have a medical condition, mental health condition or disability that prevents wearing a face covering, or who are hearing impaired, or communicating with a person who is hearing impaired.

Another option to consider is allocating funding for two additional Carlsbad police officers to patrol the beach boardwalk areas on an overtime basis to implement an enhanced face-covering education and enforcement campaign. This option would expand on the work the Carlsbad Police Department conducted over the summer to encourage voluntarily compliance the face-covering requirements. That work included increased bike, lagoon and beach patrol contacts to distribute face coverings and educate the public about the face covering requirements.

Staff is also requesting direction on what time, place, and manner restrictions the City Council would wish to see imposed on gatherings and businesses.

Discussion

Background

Public health officials say wearing facial coverings when encountering people outside one's household is an effective means of slowing the spread of COVID-19. In response, the state and the county issued public health orders requiring people to wear face coverings in certain high-risk situations. The county health order includes several exceptions that make it very challenging for a law enforcement officer to tell whether someone not wearing a facial covering in a public area is in violation of the county health order. (See Exhibit 2, Summary of county health order's face-covering requirements.)

The City of Carlsbad, like other cities in San Diego County, has focused much of its pandemic response on encouraging people to use face coverings when they leave their homes and cannot maintain the physical distance required to slow the spread of this disease. Del Mar, Solana Beach and Encinitas have each implemented public education and enforcement campaigns very similar to what Carlsbad is already doing.

Although several cities in Los Angeles County have adopted more restrictive facial covering requirements than their respective county's public health order, no other city within San Diego County has done so.¹ Staff is not aware of any city that has eliminated the exemption for people who have a medical reason for not wearing a face covering.²

To adopt requirements that are more restrictive than the county health order, the city would need to demonstrate the additional requirements:

- Bear a real and substantial relationship to protecting the public from the spread of COVID-19
- Are not arbitrary and do not go beyond what is necessary to accomplish this purpose
- Do not plainly and palpably invade any constitutional rights.³

The City Council's July 28, 2020, minute motion directed staff to prepare a "face-covering ordinance that includes time, place, and manner restrictions on boardwalks, staircases,

¹ Before the state or county implemented mandatory face-covering requirements, National City mandated face coverings be worn inside essential businesses but did not impose a penalty. The current face-covering requirements in the county health order are broader than what was initially implemented in National City.

² The face-covering order in the City of Calabasas does not expressly state that persons with a medical disability preventing them from wearing a face covering are exempt, but Calabasas explained that they interpret the order as including a medical exemption.

³ See, e.g., *Jacobson v. Commonwealth of Massachusetts* (1905) 197 U.S. 11, 26, 38.

gatherings, and businesses.” The phrase “time, place and manner restrictions” is generally used in connection with a legal analysis of a government regulation on public forums and the conduct of activities protected by the First Amendment. However, staff understood the City Council’s minute motion as intending that face coverings be worn more frequently along the city’s beach boardwalk and staircases.

Staff was uncertain what additional face-covering-related requirements the City Council intends to impose on gatherings or businesses. In addition, there are substantial legal issues related to expanding restrictions on gatherings, as explained below. For these reasons, face covering restrictions on gatherings and businesses were not included in the resolution, and staff is seeking further direction on those two items. If the City Council provides direction on what additional face-covering restrictions it would like imposed on gatherings and businesses, or provides general direction about what problems related to gatherings and businesses it would like to solve, staff will return with an option or options to implement that direction.

Boardwalks and staircases

The resolution attached as Exhibit 1 would require everyone to wear a face covering on Fridays, Saturdays, Sundays and state and federal holidays, between sunrise and sunset, when present in the following locations:

- On the sidewalk, walkways and the upper and lower seawall located along the west side of Carlsbad Boulevard from Pine Avenue to Cannon Road
- On all beach access ramps and staircases located along Carlsbad Boulevard and Ocean Street, from the Rue de Chateaux beach access point located at 2427 Ocean Street to the bridge on Carlsbad Boulevard south of Tamarack Avenue (See Exhibit 3, map)

The only exemptions would be for persons who are under the age of 2, who have a medical condition, mental health condition, or a disability that prevents wearing a face covering, or who are hearing impaired, or communicating with a person who is hearing impaired. This would have the effect of requiring people to wear a face covering even if they are walking with members of their own household or are running, unless they are under the age of 2 or are exempt due to a medical condition or disability.

These additional restrictions may be supported by evidence showing that it is difficult or impractical to maintain six feet of physical distance from non-household members in these areas, as required by the county health order, due to the narrowness of the walkways and the frequent large crowds in this area. These sidewalks and staircases are also the access points for Carlsbad’s most popular beaches and are frequently crowded. The average widths of the seven beach access staircases located along Ocean Street range from four to twelve feet. The lower seawall is an average of nine feet wide. Excluding the viewing spots and plazas, the pathways along the upper sea wall range from six to nine feet wide. There are also significantly larger crowds at the beaches on Fridays, Saturdays, Sundays and holidays, as shown in Exhibit 5, which makes it hard or impossible for everyone to consistently maintain the required six feet of physical distance along the narrow walkways in this area. However, the data provided in Exhibit 5 is from August. As fall and winter approach, the crowds, and therefore the evidence in support of the expanded face covering requirement, might decrease.

Staff initially considered recommending the expanded restrictions apply 24 hours a day, seven days per week, out of concern that a more limited timeframe could be confusing to the public and because crowding sometimes occurs during weekdays. However, the City Attorney's Office recommends limiting any expansion of the face covering requirements to Fridays, Saturdays, Sundays and holidays, from sunrise to sunset, in order to narrowly tailor the requirements and ensure that there is evidence to support the expansion beyond the county health order's requirements. For example, staff has not provided evidence to support a requirement that everyone wear face coverings at night, when there are generally few people in the beach areas. The attached resolution includes the limited timeframes recommended by the City Attorney's Office.

The City Attorney's Office also recommends adopting these restrictions through a resolution under the city's emergency powers, rather than an ordinance, because a resolution is better suited to temporary actions.

Violations of the resolution would be enforceable by citation under Carlsbad Municipal Code Section 6.04.130, Emergency Services - Punishment of violations. A violation would constitute a misdemeanor, punishable by a fine of not to exceed \$500 or by incarceration for not to exceed six months. Violations could be downgraded to an infraction by the City Attorney's Office. Violations may also be cited as an administrative citation under Carlsbad Municipal Code Chapter 1.10 with graduated fines starting at \$100 for a first offense, \$200 for a second offense and \$500 for a third or more offense within the same year.

Even if the resolution is adopted, enforcement would continue to be a challenge because of the legal and practical challenge of determining whether a person is exempt from the face-covering requirement due a medical condition or disability that prevents wearing a face covering. However, the proposed emergency resolution could be useful to encourage all members of the public to comply with the face-covering requirement.

As an alternative to the Carlsbad-specific face-covering requirements, the resolution attached as Exhibit 4 would appropriate funds for two additional police officers to patrol the beach boardwalk areas on Fridays, Saturdays, Sundays and holidays up to eight hours a day for 12 weeks, as needed, on an overtime basis. The officers would hand out face coverings and identify opportunities to teach members of the public about the importance of face coverings. This is similar to the approach taken by Del Mar, Solana Beach and Encinitas, which contract with the county Sheriff's Department for law enforcement services. Increasing patrols in these areas instead of adopting Carlsbad-specific face-covering requirements has the benefit of remaining consistent with the state, county and other North County coastal cities and providing the public with consistent messaging and less legal risk. This alternative would represent an expansion of the existing police department efforts to distribute face coverings and educate the public about the face covering requirements through increased bike, lagoon and beach patrol contacts.

Gatherings

As noted above, staff requests direction on what additional face-covering requirements the City Council would like to see imposed on gatherings. the county health order currently prohibits all public or private gatherings. Gatherings are defined as any event that brings together more

than one person in a single room or single indoor or outdoor space at the same time. A gathering does not include:

1. A gathering consisting only of members of a single family or household
2. Operations at airports, public transportation or other spaces where persons in transit are able to practice social distancing
3. Operations at essential and reopened businesses and where other requirements of the county health order are followed
4. A religious service or cultural ceremony including a wedding ceremony which is allowed, provided the state guidance is followed; wedding receptions are not allowed
5. Outdoor protests in which participants maintain social distancing and wear face coverings at all times

The state's restrictions on protests and religious gatherings have faced, and continue to face, significant legal challenges. In May, the U.S. Supreme Court denied a request to halt enforcement of California's restrictions on the size of public gatherings to slow the spread of COVID-19.⁴ However, litigation in that case and other similar cases is still ongoing. The governor and the state public health officer have chosen to balance the need to protect public health and First Amendment protections by allowing outdoor faith-based services and protests to resume statewide provided face coverings are worn and physical distancing is maintained.⁵

Because of the many potential legal issues, the City Attorney's Office would need time to carefully review any proposed Carlsbad-specific restrictions on gatherings, including restrictions on protests or faith-based services. As previously explained, in order to adopt requirements that are more restrictive than the county health order, additional requirements the city must provide evidence that the added requirements bear a real and substantial relation to the protection of public health from the spread of COVID-19. The requirements also cannot be not arbitrary or go beyond what is necessary to accomplish this purpose and may not plainly and palpably invade any constitutional rights.

Businesses

Staff also requests further guidance on what additional face-covering requirements the City Council would like to see placed on businesses. It would also help staff to understand what problem or problems related to businesses the City Council is trying to address and whether education or enforcement is the preferred remedy.

The county health order currently requires all non-exempt individuals to wear a face covering when inside of, or in line to enter, any indoor public space. However, people may remove face coverings inside a restaurant while they are seated and eating or drinking, if they are able to maintain a distance of at least six feet away from persons who are not members of the same household or residence. Reopened businesses are required to complete and post a safe reopening plan, in accordance with which they must operate.⁶ The safe reopening plan, which

⁴ *South Bay United Pentecostal Church v. Newsom* (2020) 140 S. Ct. 1613.

⁵ Indoor faith-based services are currently allowed in San Diego County with modifications and capacity restrictions, including limiting attendance to 25 percent of capacity or 100 people, whichever is less.

⁶ San Diego Food Facility, Restaurant, Bar, Winery, Brewery Operating Protocol:
<https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/covid19/>

must be posted on each public entrance, informs all employees and customers of the county health order’s requirements for face coverings.

Since the July 28, 2020, City Council meeting, the County of San Diego has also implemented the Safe Reopening Compliance Team to help businesses comply with the county health order and increase enforcement. Most issues with businesses operating in violation of the county health order are resolved through education. To date, staff is only aware of four Carlsbad businesses for which an elevated response was needed. In these cases, the Police Department provides the county with evidence of the violations and the county issues a cease and desist order. The Police Department also investigates all potential health order violations that are reported to the department. Finally, the City of Carlsbad has also developed the “Stay Safe, Stay Open” public education campaign, which includes signs that businesses can post encouraging people to wear face coverings.⁷

Because the city and county have already implemented additional compliance efforts targeted at businesses, staff requests direction as to whether there are other requirements or enforcement tools the City Council would like, and if so, what those are.

Fiscal Analysis

The cost of implementing and enforcing Carlsbad specific face-covering requirements is uncertain but would depend on how many new or additional signs are needed.

The alternate proposal for two officers to patrol the beach areas up to eight hours per day, three days per week, for 12 weeks, on an as-needed basis, is estimated to cost up to \$69,210.24. If City Council selects this option, staff recommends that the City Council authorize the deputy city manager to appropriate \$69,210.24 from the General Fund to the Police Department’s operating budget for the additional patrols to be conducted as needed.

	Hourly	Overtime	8 hours OT	2 officers	3 days a week	12 weeks
Police officer	\$ 81.58	\$ 109.74	\$ 877.92	\$ 1,755.84	\$ 5,767.52	\$ 69,210.24

Next Steps

If the council approves the resolution in Exhibit 1, staff will take the appropriate measures to implement it, such as posting signs and taking other steps to inform the public of the new rules.

If the Council approves the resolution in Exhibit 4, the deputy city manager of administrative services will appropriate \$69,210.24 from the General Fund to the Police Department’s operating budget. Up to two police officers will be assigned to patrol the beach boardwalk area up to three days per week, and up to eight hours a day over the next twelve weeks, as needed, to hand out face coverings and educate the public about the face covering requirements.

Staff may also conduct further research on potential restrictions on gatherings and businesses if directed to do so by the council.

Community_Sector_Support/BusinessesandEmployers/SafeReopeningPlanTemplate.pdf; Restaurants: https://www.sandiegocounty.gov/content/dam/sdc/deh/fhd/food/pdf/covid19srestaurantoperatingprotocol_en.pdf.

⁷ Stay Safe, Stay Open campaign examples: <https://cityadmin.carlsbadca.gov/civicax/filebank/blobdload.aspx?BlobID=45264>.

Environmental Evaluation (CEQA)

This action is statutorily exempt from the California Environmental Quality Act under California Public Resources Code Section 21080, subdivision (b)(4), applicable to specific actions necessary to prevent or mitigate an emergency.

Public Notification and Outreach

Public notice of this item was posted in keeping with the Ralph M. Brown Act and it was available for public viewing and review at least 72 hours before the scheduled meeting date.

Exhibits

1. Resolution - Carlsbad specific face covering requirements
2. Summary of San Diego County public health order's face-covering requirements
3. Map of mandatory face coverings zones
4. Resolution - Additional police patrols for face covering violations
5. August 2020 beach staircase usage

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, ISSUING AN EMERGENCY ORDER MANDATING FACE COVERINGS IN CERTAIN HIGH-TRAFFIC PEDESTRIAN AREAS OF THE CITY OF CARLSBAD.

WHEREAS, international, national, state, and local health and governmental authorities have declared a public health emergency due to an outbreak of a highly transmittable respiratory disease, referred to as COVID-19; and

WHEREAS, COVID-19 symptoms include fever, cough, shortness of breath, nausea, loss of smell or taste and many other wide-ranging symptoms; and those who have been afflicted have experienced a wide spectrum of severity in symptoms ranging from asymptomatic to death; and

WHEREAS, on February 14, 2020, the San Diego County Health Officer declared a Local Health Emergency as a result of the spread of COVID-19, which was ratified by the San Diego County Board of Supervisors on February 19, 2020; and

WHEREAS, on March 4, 2020, the Governor of the State of California declared a state of emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the State prepare for broader spread of COVID-19; and

WHEREAS, on March 11, 2020, the World Health Organization began characterizing COVID-19 as a pandemic; and

WHEREAS, on March 13, 2020, the President of the United States declared a national emergency as a result of the spread of COVID-19; and

WHEREAS, on March 17, 2020, the City Council of the City of Carlsbad passed a resolution ratifying a declaration of local emergency to provide the city with more flexibility and greater access to resources as it responds to the COVID-19 public health emergency; and

WHEREAS, effective May 1, 2020, the San Diego County Health Order (“County Health Order”) and all revised versions since this date have required, among other health and safety precautions, that “all persons two years old and older who are present in the county shall have possession of a face covering described in California Department of Public Health Face Covering Guidance issued on April 1, 2020, when they leave their home or place of residence and shall wear the face covering whenever

they are in a business or within six feet of another person who is not a member of their family or household;” an exemption was made for persons with a medical or mental health condition or developmental disability that prevents wearing a face covering; and

WHEREAS, on June 18, 2020, the California Department of Public Health issued Guidance for the Use of Face Coverings mandating the use of cloth face coverings by the general public under specified circumstances when outside the home including when inside of, or in line to enter, any indoor space and while outdoors in public spaces when maintaining a physical distance of 6 feet from persons who are not members of the same household or residence is not feasible; and

WHEREAS, beginning on June 28, 2020, in light of rates of disease transmission in some counties and the need to reduce non-essential gatherings where mixing and disease spread occur, the California Department of Public Health created a COVID-19 county monitoring list and ordered the closure of certain high-risk businesses in various counties statewide, including bars, brewpubs, breweries, and pubs not offering sit-down, dine-in meals; and

WHEREAS, on July 15, 2020, the County Health Order slightly revised its face covering requirement to more closely reflect the state’s face covering guidance: “All persons two years of age or older who are present in the county shall have possession of a face covering when they leave their home or place of residence and shall wear the face covering as described and required in California Department of Public Health Face Covering Guidance issued on June 17, 2020, (available at: https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID19/Guidance-for-Face-Coverings_06-18-2020.pdf);” and

WHEREAS, the most recent County Health Order effective September 10, 2020, provides for a face covering requirement that mirrors that of the state: “Face coverings shall be worn as described and required in California Department of Public Health Face Covering Guidance issued on June 18, 2020, (available at: https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID19/Guidance-for-Face-Coverings_06-18-2020.pdf);” and

WHEREAS, the Carlsbad City Council, the Director of Emergency Services, and city staff including the Carlsbad Police Department have urged residents to follow the orders of the San Diego County Health Officer, including the requirements to stay home except to take care of essential needs or go to

an essential place of business and limited other exceptions, the wearing of face coverings, social distancing, and avoidance of gatherings, among other precautions; and

WHEREAS, despite the mandates of the County Health Orders, the efforts of the city to urge voluntary compliance with the face covering requirements, many persons within the City of Carlsbad continue to fail to comply with the face covering requirements of the County Health Order, thereby placing themselves and others at risk of contracting COVID-19; and

WHEREAS, the transmission of COVID-19 continues to increase in the State of California and in San Diego County and the City of Carlsbad, and there is a significant risk of widespread transmission of COVID-19 in the County of San Diego and the City of Carlsbad without the adoption of stricter measures to slow its spread; and

WHEREAS, as of September 17, 2020 the City of Carlsbad has had a cumulative total of 670 confirmed cases of COVID-19, with an estimated 43 active cases; as of September 15, 2020, the County of San Diego has had a cumulative total of 43,445 confirmed cases of COVID-19; and

WHEREAS, the City of Carlsbad experiences a high volume of pedestrian traffic near the Carlsbad Village beach access areas, making it difficult to continuously maintain adequate social distancing as required by the County Health Order, specifically along the westerly sidewalks and walkways of Carlsbad Boulevard, between Pine Avenue and Cannon Road, inclusive of the upper and lower Sea Wall walkways; and

WHEREAS, beach access ramps and stairwells located along Carlsbad Boulevard and Ocean Street, between the Ocean Street beach access point located at 2427 Ocean Street and the intersection of Cannon Road, also experience a considerable volume of pedestrian traffic and are narrow in width, many ranging from 4 to 12 feet, such that it is often difficult to maintain adequate social distancing as required by the County Health Order; during the month of August the access stairwells along Ocean Street averaged approximately 406 persons per day with the Carlsbad Village Drive stairwell averaging 655 persons per day; and

WHEREAS, the City of Carlsbad experiences a steady but sometimes unpredictably high flow of pedestrian traffic near the above-mentioned beach access areas between the hours of sunrise and sunset, with data supporting the highest volume of pedestrian traffic occurring on Fridays, Saturdays, Sundays, and state and federal holidays; and

WHEREAS, numerous and reputable scientific studies suggest that social distancing, avoidance of public or private gatherings (as defined in the most recent County Health Order), and the use of cloth face coverings by the public may help reduce COVID-19 disease transmission by reducing the release of infectious particles into the air when someone speaks, coughs, or sneezes, especially in the case of asymptomatic and pre-symptomatic persons or those with mild symptoms who do not realize that they are infectious and contagious; and

WHEREAS, California Government Code section 8634 empowers the City to promulgate orders and regulations necessary to provide for the protection of life and property during a local emergency, and Health and Safety Code section 120175.5 (b) provides that all governmental entities in the county shall take necessary measures within the governmental entity's control to ensure compliance with the County Health Order; and

WHEREAS, the City Council of the City of Carlsbad, California has determined that in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, it is necessary and prudent to adopt a local face covering requirement more strict than that of the County of San Diego's most recent County Health Order with an option for local administrative enforcement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Carlsbad, California, as follows:

1. That the above recitations are true and correct.
2. That the City Council of the City of Carlsbad hereby finds that an emergency order is necessary to protect the residents, visitors, and general public of Carlsbad in order to keep them safe and healthy and to slow the spread of COVID-19.
3. The definitions in the most recent County Health Order apply to the words and phrases used in this Order unless context dictates otherwise.
4. The City Council of the City of Carlsbad hereby issues an Emergency Order pursuant to subsections 6.04.100(A)(6)(a) and 6.04.100(A)(6)(e) of the Carlsbad Municipal Code mandating that all pedestrians, subject to the exceptions outlined in subsections (a) through (c) below, wear a face covering on Fridays, Saturdays, Sundays, and state and federal holidays between the hours of sunrise and sunset while present along the westerly sidewalks and walkways of Carlsbad Boulevard, between Pine Avenue and

Cannon Road, inclusive of the upper and lower Sea Wall walkways; and also while using beach access ramps and stairwells located along Carlsbad Boulevard and Ocean Street, between the Rue de Chateaux beach access point located at 2427 Ocean Street and the bridge south of Tamarack Avenue located on Carlsbad Boulevard. The following persons are exempt from this Emergency Order:

- a. Younger than 2 years old;
 - b. With a medical condition, mental health condition, or disability that prevents wearing a face covering. This includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance;
 - c. Who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication;
5. The Director of Emergency Services or designee may promulgate regulations to implement the provisions of this Order. No person shall fail to comply with any such regulation.
 6. The Director of Emergency Services or designee is authorized to deputize additional persons to issue administrative citations for violations of this Order, as amended from time to time, pursuant to sections 1.10.010 and 1.10.020 of the Carlsbad Municipal Code.
 7. The Director of Emergency Services or designee is authorized to enter into any contracts related to the enforcement of this Order, as amended from time to time.
 8. Should the directives of the State's Face Covering Guidance, the County Health Order, this Order, or any regulations promulgated thereunder conflict, the stricter regulation shall apply.
 9. Section 4 of this Order and any regulations promulgated under Section 5 of this Order shall be enforceable by: (a) the Carlsbad Police Department and any city officer or employee granted authority to issue written notices to appear pursuant to Carlsbad Municipal Code section 1.08, to be charged as a misdemeanor pursuant to Government Code section 8665 or Carlsbad Municipal Code section 6.04.130, with the option of

downgrading such charges to an infraction; or (b) any enforcement officer as defined in Carlsbad Municipal Code section 1.10.010, through the issuance of an administrative citation under Carlsbad Municipal Code section 6.04.130, in accordance with Chapter 1.10 of the Carlsbad Municipal Code. The issuance of a Notice of Violation is not necessary prior to issuing an administrative citation, and all corrective actions shall be immediately required. Pursuant to section 1.10.100(A) of the Carlsbad Municipal Code, the amount of the administrative penalty for a violation of any provision of, or any regulations issued under, this Order shall be as authorized in California Government Code sections 36900(b)-(d) and 53069.4(a)(1). As of the date of this Order, these penalty amounts are \$100 for the first violation; \$200 for a second violation committed within one year for the first violation; and \$500 for a third violation or subsequent violations committed within one year of the first violation. Each day or portion of a day that any person violates or continues to violate any provision of, or any regulations issued under, this Order constitutes a separate violation and may be charged and punished separately.

10. Pursuant to Carlsbad Municipal Code section 1.10.110(B), the failure of any person to pay an administrative penalty or late fee within the time specified on the administrative citation without the filing of an appeal will result in the assessment of an additional late fee. The amount of the late fee is 100% of the total amount of the administrative penalty and will be assessed independent of whether the violation has subsequently been corrected.
11. This Order shall take effect immediately and, unless extended or expressly superseded by a duly enacted Ordinance of the City Council or by a further Order by the Director of Emergency Services shall remain in effect until the expiration of the City's declaration of local emergency.
12. If any section, subsection, sentence, clause, or phrase of this Order is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Order. The City Council hereby declares that it would have adopted this Order, and any Supplement thereto, and each and every section, subsection, sentence, clause, or phrase not

declared invalid or unconstitutional without regard to whether any portion of the resolution would be subsequently declared invalid or unconstitutional.

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the ___ day of _____, 2020, by the following vote, to wit:

AYES:

NAYS:

ABSENT:

MATT HALL, Mayor

BARBARA ENGLESON, City Clerk

(SEAL)

Summary of San Diego County Public Health Order's Face-Covering Requirements

The San Diego County Public Health Order (County Health Order) effective September 1, 2020 states, "Face coverings shall be worn as described and required in California Department of Public Health Face Covering Guidance issued on June 18, 2020."¹

The California Department of Public Health Face Covering Guidance requires everyone in California to wear a face covering when they are in the following high-risk situations:

1. When inside of, or in line to enter, any indoor public space
2. When obtaining services from the healthcare sector
3. When waiting for or riding public transportation, in a taxi, a private car service, or a ride-sharing vehicle
4. While working, if the person is also:
 - Interacting in-person with any member of the public
 - In any space visited by members of the public
 - In any space where food is prepared or packaged for others
 - In common areas, such as hallways, stairways, elevators, and parking facilities
 - In any room or enclosed area where other people (except members of the person's household or residence) are present, when unable to physically distance
5. When driving or operating any public transportation or paratransit vehicle, taxi, or private car service or ride-sharing vehicle when passengers are present
6. When outdoors in public spaces, if maintaining a physical distance of 6 feet from persons who are not members of the same household or residence is not feasible

The County Health Order exempts eight categories of people from the face-covering requirement. These include people:

1. Younger than 2 years old
2. With a medical condition, mental health condition, or disability that prevents wearing a face covering. This includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance
3. Who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication
4. For whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines
5. Obtaining a service involving the nose or face for which temporary removal of the face covering is necessary to perform the service
6. Seated at a restaurant or other establishment that offers food or beverage service while eating or drinking, if they can maintain a distance of at least six feet away from persons who are not members of the same household or residence

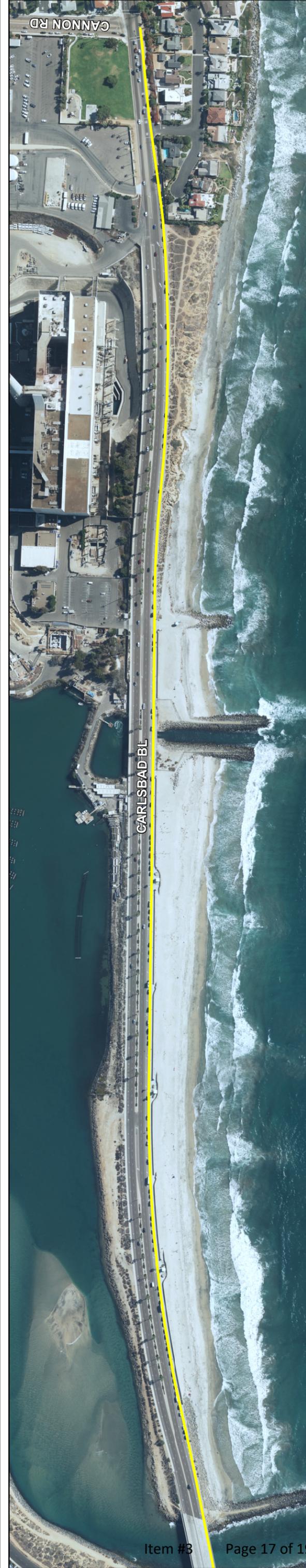
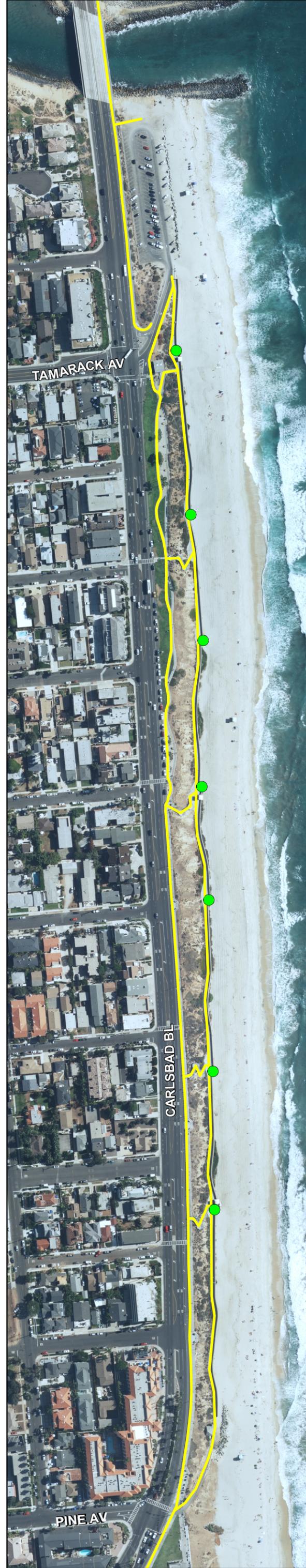
¹ The state face covering protocols are available at:
https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Guidance-for-Face-Coverings_06-18-2020.pdf

7. Engaged in outdoor work or recreation such as swimming, walking, hiking, bicycling or running, when alone or with household members, and when they can maintain a distance of at least six feet from others
8. Who are incarcerated

Persons exempted from wearing a face covering due to a medical condition who are employed in a job involving regular contact with others should wear a non-restrictive alternative, such as a face shield with a drape on the bottom edge, if their condition permits it.



Sept. 22, 2020



Legend

- Seawall Beach Access
- Sidewalk & Seawall
- Pedestrian Paths

Exhibit 3 – Facial Covering Requirement Areas



J:\Requests\March2017_15 City Attorney\RM0019456_20

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING THE APPROPRIATION OF \$69,210 FROM THE GENERAL FUND TO THE POLICE DEPARTMENT’S FY21 OPERATING BUDGET FOR POLICE OFFICERS TO PROVIDE ENHANCED EDUCATION AND ENFORCEMENT OF THE COUNTY HEALTH ORDER’S FACE MASK REQUIREMENTS AT THE BEACH.

WHEREAS, the City Council of the City of Carlsbad, California has determined that it is in the best interest of the city for police officers to patrol the beach areas to provide enhanced education and enforcement of the San Diego County Public Health Order’s face covering requirements; and

WHEREAS, the Chief of Police will designate two police officers working up to eight hours per day, three days per week for 12 weeks on an as needed basis; and

WHEREAS, the cost is estimated to be up to \$69,210 in overtime.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Carlsbad, California, as follows:

1. That the above recitations are true and correct.
2. The Deputy City Manager of Admin services will appropriate \$69,210 from the General Fund to the Police Department’s FY21 operating budget.

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the __ day of _____, 2020, by the following vote, to wit:

AYES:

NAYS:

ABSENT:

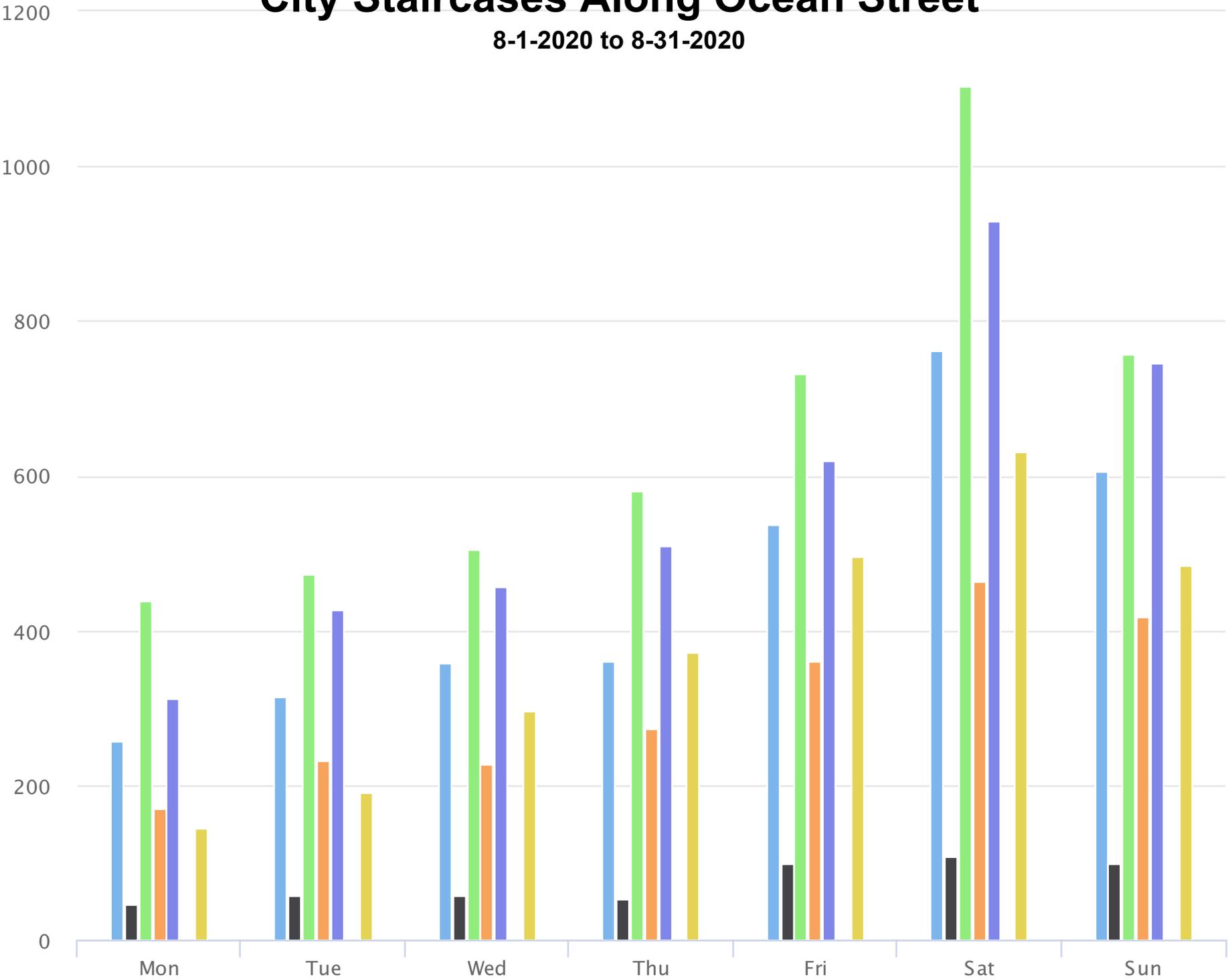
MATT HALL, Mayor

BARBARA ENGLESON, City Clerk

(SEAL)

Daily Pedestrian Counts for City Staircases Along Ocean Street

8-1-2020 to 8-31-2020



Site Name	Average	Median	STDV	Min	Max
Beech & Ocean St-B.A. (IR) (D)	456.7	361.3	169.2	257.2	761.6
Christiansen & Ocean St-B.A. (IR) (D)	74.0	57.8	24.0	46.4	107.6
CVD & Ocean St- B.A.(IR) (D)	655.9	580.3	216.2	438.0	1,104.6
Cypress & Ocean St.-B.A. (IR) (D)	306.4	273.8	100.8	170.8	463.6
Grand & Ocean St-B.A.(IR) (D)	571.3	509.0	194.8	312.3	929.0
Oak & Ocean St-B.A. (IR) (D)	0.0	0	0.0	0.0	0.0
Rue Des Chateaux-B.A. (IR) (D)	373.4	370.8	162.9	145.4	632.0



CITY COUNCIL
Staff Report

Meeting Date: Sept. 22, 2020

To: Mayor and City Council

From: Scott Chadwick, City Manager

Staff Contact: Maria Callander, Information Technology Director
maria.callander@carlsbadca.gov 760-602-2454

Joe Stephenson, Information Technology Manager
joe.stephenson@carlsbadca.gov 760-602-2789

Subject: Update on Work to Build City's Digital Information Network

Recommended Action

Receive a report on the status of the implementation of a robust digital information network.

Executive Summary

The City Council approved an agreement on December 17, 2019, that took advantage of a pre-existing agreement with Crown Castle Communications to build a new enterprise information network for the City of Carlsbad utilizing unused fiber-optic cable already installed around the city. The proposal also included equipment and services from Logicalis, Inc. This network has become known as the Carlsbad digital information network.

The Information Technology Department is pleased to report that this project is on schedule and the primary business network should be moved over to the new system before the end of calendar year 2020. This will be immediately followed by making the interconnections to the traffic signal network in early 2021. Full completion will still be well within the timeline staff gave to the City Council. Additionally, there have been no major unexpected issues or costs.

The COVID-19 pandemic caused only a two-week delay because of a necessary pause to reevaluate any potential impact. Staff were successfully able to make the necessary adjustments to the project plan to keep the work on track. This included shifting some tasks to virtual meetings and collaboration sessions and making sure that all onsite work was conducted in line with county health department guidelines. Communications is deemed an "Essential Critical Infrastructure Sector" so construction work was able to continue. Vendors took appropriate steps for personal protection of all staff.

Discussion

Crown Castle, Logicalis and city staff have been working hard toward completion of this project. This has included onsite installation of the required fiber-optic equipment at the four main city locations: City Hall, Faraday Center, Safety Center, and the Carlsbad City Library on Dove Lane.

Crown Castle has also completed fiber-optic cable installation at 21 of the 24 locations specified in the contract, which include a range of city facilities.

Installation of fiber and network equipment was not significantly hindered by the COVID-19 pandemic because, as noted above, Crown Castle and Logicalis and their sub-contractors are in the communications sector, which was designated as an essential critical service by the federal and state governments. Although there were some shipping delays as the carriers had to make modifications to their internal processes, our project plan allowed us to focus on other project tasks while waiting for equipment. Crown Castle only had to briefly pause to make sure its staff and subcontractors were able to meet necessary safety guidelines when working in public.

The Information Technology Department has received excellent support from all city departments in this project. Facilities and Construction Management & Inspections in the Public Works Branch has been key in approving designs in physical plant installations and ensuring necessary power is available for all equipment. This included new circuit installations at all four sites and the addition of a new uninterruptible power supply device at City Hall. Public works staff have also been available to oversee and inspect work conducted by Crown Castle. The transportation director's support of the project has ensured coordination among information technology and traffic staff and the city's outside consultants in making the appropriate connections to the traffic system.

Community development staff swiftly helped define a process for determining the necessary permit types and providing design guidance in conjunction with Crown Castle. This project will eventually require over 130 permits, so this assistance has been essential. The city's Parks & Recreation Department has also provided critical oversight of work to make sure there is no impact to landscaping or disruption to some of the limited activities that have been allowed during the pandemic.

Crown Castle still has some work to do, including the completion of the fiber-optic cabling for installations at three traffic signals, Carlsbad Boulevard at Carlsbad Village Drive, El Camino Real at Palomar Airport Road and Rancho Santa Fe Road at La Costa Avenue. Scheduling the installation at the final three traffic signals will require greater coordination with the Transportation Department and third-party traffic consultants to make sure traffic operations are unaffected.

Crown Castle also needs to complete the necessary fiber-optic cable connections in the public right of way and deliver the contracted internet service to the Faraday Center. All fiber installation and certification activities Crown Castle are required to perform are currently scheduled to be completed by the end of October 2020.

Information technology staff are currently working with partners at Logicalis to implement the Cisco software that will ultimately be used to operate the new network and allow for easy configuration and high security. As staff reported to the City Council last December, this includes a new software-based network architecture. This work should be completed by the end of September, but cannot be fully tested until all the fiber-optic cabling has been completed. That testing is scheduled to occur in the early part of November, which would allow the migration to the new network to occur in December.

Detailed planning for the city’s move from the old network to the new one and the network’s overall implementation is currently underway. There will likely be a transitional weekend in which digital services at locations such as parks and libraries will be unavailable. This public impact is unavoidable because of the magnitude of this change, but staff will work to minimize any impacts and to let the public know about any potential disruptions in service ahead of time.

As this project nears completion, the Information Technology Department is planning for the next phase of the process of building the city’s new robust, multi-service network. City staff will be engaging in a master planning agreement to continue efforts in completing the other phases necessary to provide a network that is reliable, responsive and services all city departments. An item will be brought to the City Council at a future meeting for consideration on this topic.

Fiscal Analysis

The following is a summary of the project’s financing so far:

	<u>Budgeted</u>	<u>Expenditures</u>	<u>Encumbrance</u>	<u>Remaining</u>
<u>Council-approved project costs</u>				
Innovation Fund				
Logicalis agreement	\$ 4,446,793	\$ 3,822,934	\$ 623,858	\$ -
Magellan agreement	78,791	44,308	34,483	-
Total council-approved operating cost	\$ 4,525,584	\$ 3,867,242	\$ 658,341	\$ -
Council-approved operating cost				
IT Dep't Operating Fund				
Crown Castle agreements	\$ 396,000			
Logicalis agreements	70,653			
Total council-approved operating cost	\$ 466,653			

If needed and as noted in the staff report presented to the City Council on Dec. 17, 2019, funding for additional expenditures for minor equipment and services are available in the Innovation Fund. To date, \$54,380 has been expensed or encumbered for these minor costs. There may be short periods during the project in which both the old and new networks will need to run in parallel. The costs of operating both networks simultaneously are to be paid from the Innovation Fund.

Next Steps

Staff will continue work on this project based on the established schedule and will report back to the City Council upon the project’s completion early next year.

Environmental Evaluation (CEQA)

Pursuant to Public Resources Code Section 21065, this action does not constitute a “project” within the meaning of CEQA in that it has no potential to cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and therefore does not require environmental review.

Public Notification and Outreach

This item was noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to scheduled meeting date.

Exhibits

None



CITY COUNCIL
Staff Report

Meeting Date: Sept. 22, 2020
To: Mayor and City Council
From: Scott Chadwick, City Manager
Staff Contact: John Maashoff, Public Works Manager
John.maashoff@carlsbadca.gov, 760-802-7807
Subject: Acceptance of Bids, Award of Contract to SD Remodeling, Inc., and Additional Appropriation of Funding for the New Village Arts Building Roof and Exterior Refurbishment Project

Recommended Action

Adopt a resolution accepting bids, awarding a contract to SD Remodeling, Inc. in an amount not to exceed \$177,800 and authorizing additional appropriation in an amount of \$60,000 for construction of the New Village Arts Building Roof and Exterior Refurbishment Project, Capital Improvement Program Project No. 4739.

Executive Summary

This project will replace the asphalt shingle roof and exterior siding on the west wall of the city-owned property at 2787 State Street. The city currently leases the building to New Village Arts, a nonprofit theater group that has operated a theater in the city-owned property since 2006.

Carlsbad Municipal Code sections 3.28.080(C) and 3.28.080(I)(6) require the City Council to award all formally bid contracts when the value exceeds \$200,000. The construction contract, including authorized contingency, is in an amount not to exceed \$227,800, so this project is subject to this requirement.

Staff recommends accepting these bids and awarding a contract to SD Remodeling, Inc.

Discussion

The building roof consists of a flat built-up roof and a pitched asphalt shingle roof. A 2012 assessment of the building's condition done by the Faithful+Gould consulting firm recommended the city schedule replacing the flat built-up roof in 2014 and the pitched asphalt shingle roof and skylights in 2020. The flat built-up roof was refurbished in 2016, and the pitched asphalt shingle roof was last refurbished around 1995.

Recent roof leaks during rain storms and recent annual roof inspections and condition assessments performed by Weatherproofing Technologies, Inc. under contract with the city confirmed the existing asphalt shingle roof has reached the end of its useful life and needs replacement.

The City Council approved plans and specifications for the project on July 28, 2020, and authorized staff to formally offer it for bids. The request for bids was posted on July 31, 2020, and a mandatory pre-bid meeting was held on Aug. 11, 2020. On Aug. 31, 2020, the bid closing date, staff received nine bids from prospective contractors. Staff have completed review of the

bid documents and determined that SD Remodeling, Inc. is the lowest responsive and responsible bidder. SD Remodeling’s bid meets the requirements of the bidding documents and the company submitted a list of similar projects to show its capability and qualification to perform the specified work.

The contract documents for construction contain general performance standards and reference technical specifications, which if not met, allow the city to withhold payment. The contract documents also require the contractor to provide the city with a one-year warranty period for the work performed.

Fiscal Analysis

A summary of estimated construction costs and available funds is shown below:

NEW VILLAGE ARTS BUILDING ROOF AND EXTERIOR REFURBISHMENT, CIP PROJECT NO. 4739	
Project appropriation to date - Infrastructure Replacement Fund	\$253,626
Project expenditures/encumbrances to date	\$49,570
TOTAL AVAILABLE FUNDING - CIP PROJECT NO. 4739	\$204,056
Construction contract	\$177,800
Construction contingency (estimated)	\$50,000
Construction management, inspection, material testing and communications services (estimated)	\$36,256
TOTAL ESTIMATED CONSTRUCTION COSTS - CIP PROJECT NO. 4739	\$264,056
PROJECT ESTIMATED REMAINING BALANCE	(\$60,000)
ADDITIONAL APPROPRIATION NEEDED	\$60,000

Staff anticipates an additional \$60,000 will be needed to complete the project. These additional funds will pay for construction costs and consultant services in construction management, inspection, materials testing, engineering and associated staff support. This additional funding is available in the Infrastructure Replacement Fund.

Next Steps

Once contract documents are fully executed, staff will issue a purchase order, schedule a pre-construction meeting with SD Remodeling and issue a notice to proceed with construction of the project. Construction is scheduled to begin in late fall 2020. The duration of the construction contract is 60 working days, exclusive of rain days and change orders that may extend the contract duration. Construction will be coordinated with New Village Arts’ performance schedule, as necessary.

Environmental Evaluation (CEQA)

The Project is exempt from the California Environmental Quality Act under State CEQA Guidelines Section 15301(a), which exempts projects involving negligible or no expansion of use including exterior alterations.

Public Notification

Public notice of this item was posted in keeping with the Ralph M. Brown Act and it was available for public viewing and review at least 72 hours before the scheduled meeting date.

Before the start of construction, the public will be notified of construction activities through signage, email messages, the city's website and other city communication channels. The construction contractor will also be required to notify the public of construction activities via door hangers, as necessary.

Exhibits

1. Resolution
2. Location map

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, ACCEPTING BIDS, AWARDING A CONTRACT TO SD REMODELING, INC., AND AUTHORIZATION FOR ADDITIONAL APPROPRIATION FOR CONSTRUCTION OF THE NEW VILLAGE ARTS (NVA) BUILDING ROOF AND EXTERIOR REFURBISHMENT PROJECT, CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECT NO. 4739 (PROJECT).

WHEREAS, the City Council of the City of Carlsbad, California, has determined it necessary, desirable and in the public interest to construct the Project; and

WHEREAS, on July 28, 2020, the City Council adopted Resolution No. 2020-160 approving plans and specifications and authorizing advertisement for bids for construction of the Project; and

WHEREAS, on Aug. 31, 2020, nine sealed bids were received for construction of the Project; and

WHEREAS, SD Remodeling, Inc., submitted the lowest responsive and responsible bid to construct the Project in an amount of \$177,800; and

WHEREAS, the anticipated construction costs exceed the project amount currently appropriated and an additional appropriation in the amount of \$60,000 is necessary to complete the Project; and

WHEREAS, Carlsbad Municipal Code Sections 3.28.040(C)(5) and 3.28.090(B) authorize the city manager to approve change orders in an amount equal to the contingency set at the time of Project award; and

WHEREAS, the Project is exempt from the California Environmental Quality Act (CEQA) per State CEQA Guidelines Sections 15301(a) which exempts projects involving negligible or no expansion of use including exterior alterations.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Carlsbad, California, as follows:

1. That the above recitations are true and correct.
2. That the low bid of \$177,800 submitted by SD Remodeling, Inc., for construction of the Project, is accepted and the mayor is hereby authorized to execute a contract for the Project.
3. That the Project is exempt from the California Environmental Quality Act (CEQA) per State CEQA Guidelines Sections 15301(a) which exempts projects involving negligible or no expansion of use including exterior alterations.

4. That the deputy city manager, administrative services, or designee, is hereby authorized and directed to appropriate additional funds to the Project in the amount of \$60,000.
5. That the city manager or designee is hereby authorized to approve construction change orders up to the amount of \$50,000 for the Project.
6. That the award of this contract is contingent upon SD Remodeling, Inc., executing the required contract and submitting the required bonds and insurance policies, as described in the contract, within 20 days of adoption of this Resolution. The city manager may grant reasonable extensions of time.

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the __ day of _____, 2020, by the following vote, to wit:

AYES:

NAYS:

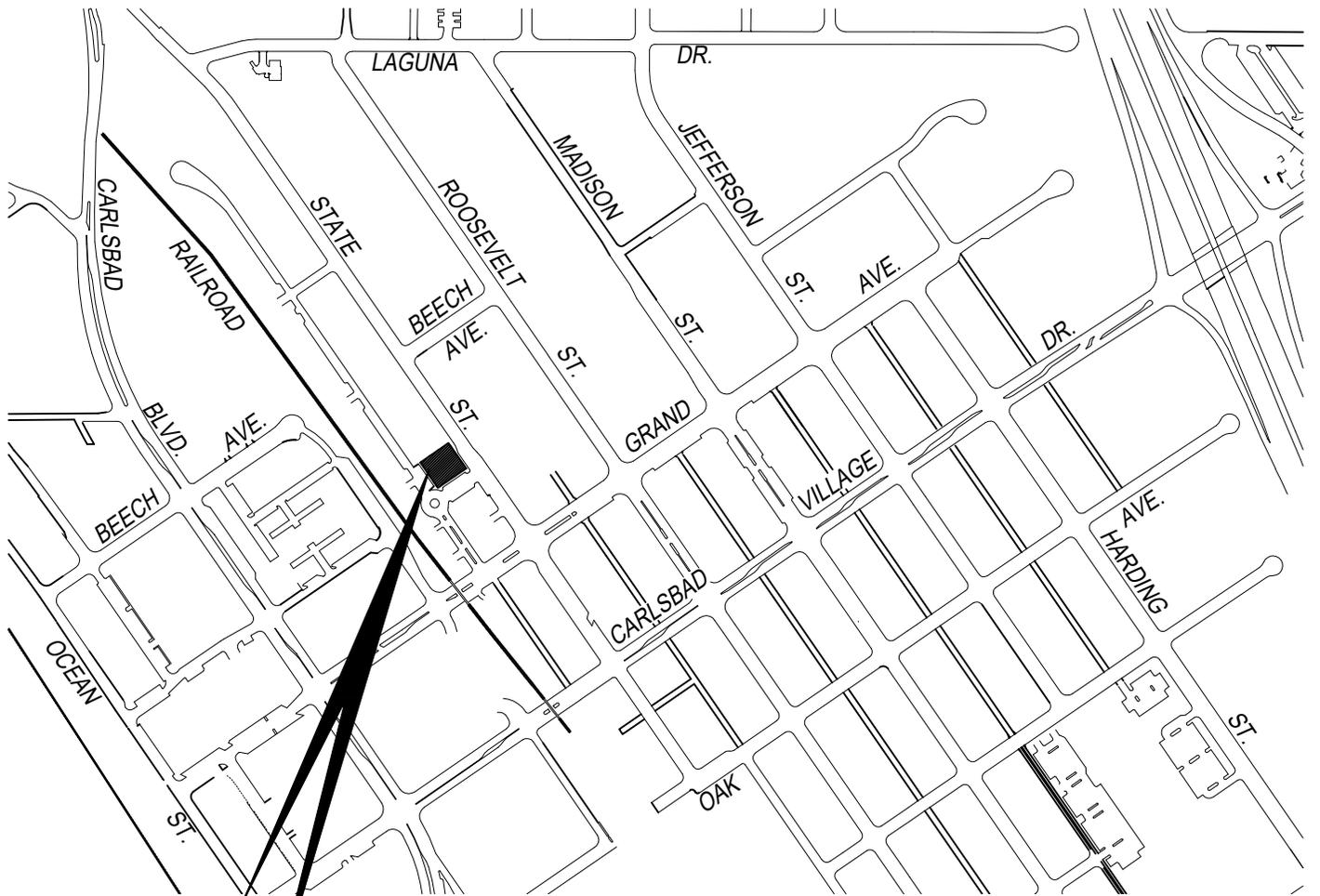
ABSENT:

MATT HALL, Mayor

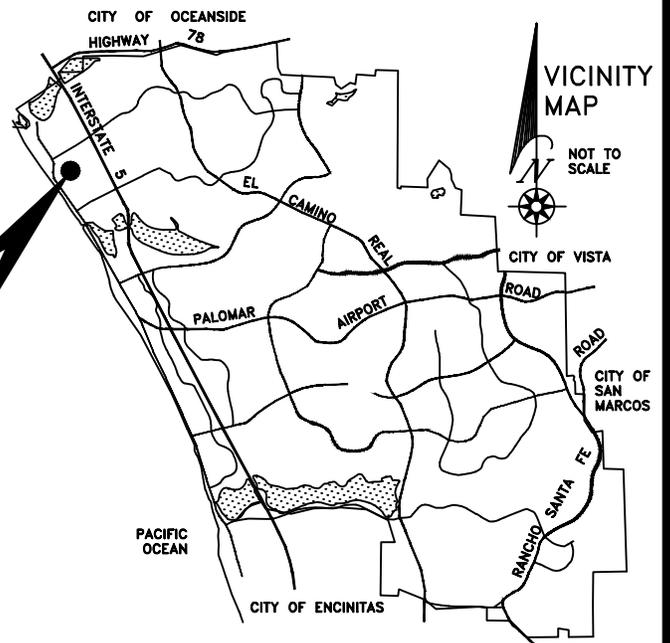
BARBARA ENGLESON, City Clerk

(SEAL)

LOCATION MAP



SITE



VICINITY MAP

NOT TO SCALE



SITE

PROJECT NAME **NEW VILLAGE ARTS ROOF AND EXTERIOR REFURBISHMENT PROJECT**

PROJECT NUMBER **4739**

EXHIBIT **2**



CITY COUNCIL
Staff Report

Meeting Date: Sept. 22, 2020

To: Mayor and City Council

From: Scott Chadwick, City Manager

Staff Contact: Steven Stewart, Municipal Projects Manager
Steven.Stewart@carlsbadca.gov, 760-602-7543
Michael Calderwood, Fire Chief
michael.calderwood@carlsbadca.gov, 760-931-2141

Subject: Accepting the Proposals Received, Authorizing Award of a Design-Build Contract, Authorizing Additional Appropriation in an Amount of \$1,433,883 and Denying an Appeal for the Fire Station No. 2 Replacement Project

Recommended Action

Adopt a resolution accepting the proposals received, authorizing award of a design-build contract to Barnhart-Reese Construction, Inc. to provide design-build services for the Fire Station No. 2 Replacement Project, Capital Improvement Program Project No. 4060, for an amount not to exceed \$11,222,472, authorizing additional appropriation in an amount of \$1,433,883, and denying AMG & Associates, Inc.'s appeal.

Executive Summary

The project includes replacement of Fire Station No. 2 and construction of a temporary station one mile away in the Carlsbad City Library parking lot on Dove Lane. Carlsbad voters approved the replacement of Fire Station No. 2 in 2016.

On April 21, 2020, the City Council adopted Resolution No. 2020-065 approving the preliminary design plans and specifications for the project and authorizing the city clerk to advertise for a design-build proposal solicitation.

Accordingly, a request for qualifications was advertised on the city website on April 22. Staff received four statements to review and found all four design-build teams to be qualified for the work based on the criteria published in the request, according to Carlsbad Municipal Code Section 3.28.085(E). Staff then issued a request for proposals to the four qualified firms.

On Aug. 5, 2020, staff received and evaluated two proposals as outlined in Municipal Code Section 3.28.085(F). Staff recommends award of a design-build contract to Barnhart-Reese based on its proposal, which was the lowest responsive and responsible proposal received.

The City Council's authorization and award of this contract is required under Municipal Code Section 3.28.080(I) because the estimated value of this contract is greater than \$200,000.

Discussion

History of the project

November 2016 - 71% of City of Carlsbad voters approved Measure O, which authorized the use of general fund money to replace Fire Station No. 2.

July 11, 2017 - The City Council adopted Resolution No. 2017-134, which authorized an agreement with Domusstudio Architecture, Inc. to develop preliminary design plans and specifications for replacement of Fire Station No. 2 and construction of a temporary fire station.

July 12, 2018 - The preliminary design plans and specifications were completed and submitted to the City of Carlsbad for review, approval and permitting.

Nov. 26, 2019 - City staff completed their review and approval of the plans and specifications and permit applications and submitted the documents to the State of California, as required by the California Environmental Quality Act, Chapter 2.6, Section 21091(B) for public review before the Planning Commission hearing date.

Feb. 19, 2020 - The Planning Commission adopted Resolution No. 7360, which approved the conditional use permit, special use permit and variance required for the new fire station, and Resolution No. 7361, which approved the conditional use permit and coastal development permit for the temporary fire station.

April 21, 2020 - The City Council adopted Resolution No. 2020-065 approving the preliminary design plans and specifications for the project and authorizing the city clerk to advertise for a design-build proposal solicitation.

Required criteria

Carlsbad Municipal Code Section 3.28.085 sets forth the criteria to be used for design-build proposal solicitations. Paragraph E in this section relates to prequalification criteria and paragraph F relates to selection criteria. The first two options in paragraph F allow for a best value selection, using basic project information outlined only by either performance specifications and criteria, or program requirements, performance specifications and project requirements. In both options, the proposal price is only one consideration.

The third option in paragraph F allows for a selection based solely on the lowest responsible and reliable proposal price. This third option is to be used in a procurement with much more specific program and design detail. Given the specific program and design detail in the construction documents for this project, staff used this third option, Municipal Code Section 3.28.085, paragraph (F)(3).

Proposals and selection

On April 22, 2020, a request for qualifications was advertised on the city website. The city received four responses to this solicitation on June 10, 2020, and staff found all four respondents to be qualified for the work of the project based on the criteria published in the request and in keeping with CMC Section 3.28.085(E).

Staff issued a request for proposals to the four qualified firms on June 19, 2020. Two firms withdrew from the competition. The city received proposals from the two remaining firms on Aug. 5, 2020, and staff evaluated them in keeping with Section 3.28.085(F)(3). The proposal values obtained are presented in the table below:

Design-build firm	Proposal value
Barnhart-Reese Construction, Inc., Delawie Architects, Inc.	\$11,222,472
AMG & Associates, Inc., LPA, Inc.	\$12,137,000
ECC Constructors, Inc., Jeff Katz Architecture, Inc.	No proposal provided
Erickson-Hall Construction, Inc., WLC Architects, Inc.	No proposal provided

Barnhart-Reese Construction, Inc and Delawie Architects is the apparent lowest price proposer.

Appeal letter

On Aug. 21, 2020, an appeal letter was received (Exhibit 3) from AMG & Associates, the company with the second lowest proposal price. The letter stated several objections, including an objection to the way the total proposal value was submitted. AMG argues that its written proposal value, presented as its total proposed lump sum price, was less than the value of Barnhart-Reese Construction’s proposal, and should be accepted on that basis.

However, the request for proposals states in paragraph 13.1.10.2, that “... the sum of all lump sum line items will govern over the ‘Total Proposed Lump Sum Price’ line item.” Staff added the lump sum line items for each bidder and found that AMG had made a calculation error, resulting in a discrepancy in the value of its proposal. Specifically, the sum of AMG’s line items (\$12,137,000) is greater than those of Barnhart-Reese (\$11,222,472). Staff also noted that Addendum No. 4 to the request for proposals, which was issued July 29, 2020, instructed both companies to write on their proposal forms, on the line above Temporary Station, a \$50,000 allowance for potential SDG&E design fees and to make sure this value was included in their proposals. Barnhart-Reese Construction wrote in this value, but AMG did not.

Staff reviewed AMG’s appeal letter and researched the issue. The contract documents clearly detail the method for calculating the total proposed lump sum price. Staff has also explained to AMG the bid discrepancy and staff’s resulting recommendation to the City Council. Moreover, case law requires the city use the mathematically correct sum of all AMG’s line items. A bid that “substantially conforms to a call for bids may, though it is not strictly responsive, be accepted if the variance cannot have affected the amount of the bid or given a bidder an advantage or benefit not allowed other bidders or, in other words, if the variance is inconsequential.” (1996) *Ghilotti Construction Co. v. City of Richmond*, 45 Cal.App.4th 897, 904-05.

AMG’s mathematical error directly affects the amount of its bid. AMG would gain an unfair advantage over Barnhart-Reese if the City awarded the design-build contract to AMG because the dollar amount of AMG’s bid, when calculated pursuant to section 13.1.10.2 of the RFP, is actually greater than the dollar amount of Barnhart-Reese’ bid.

This mathematical discrepancy also provides AMG another benefit unavailable to other bidders – the “Relief of Bidders” section, beginning at section 5100 of the Public Contract Code. If the

city awarded AMG the design-build contract, AMG could pursue relief under this section given its line item discrepancy and its failure to include the \$50,000 SDG&E allowance. However, this remedy would likely be unavailable to Barnhart-Reese given the absence of mathematical discrepancies in its bid.

Following section 13.1.10.2 of the request for proposal resolves much of the ambiguity presented in AMG's bid. By basing its analysis on the total of AMG's line items (\$12,137,000), the city thereby complies with the Legislature's intent in enacting the Public Contract Code, which includes "ensuring full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds," "providing all qualified bidders with a fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound fiscal practices," and "eliminating favoritism, fraud, and corruption in the awarding of public contracts." (2000) *Kajima/Ray Wilson v. Los Angeles County Metropolitan Transp. Authority*, 23 Cal.4th 305, 314

Staff's recommendation

Staff recommends award of a design-build contract to Barnhart-Reese Construction because it was the responsive and responsible company providing the lowest proposal price for this project. Staff also recommends that the city manager, or designee, be authorized to approve construction change orders up to \$1,122,247. Accordingly, staff recommends denying AMG's appeal as described in its August 21, 2020 letter.

City Council authorization of this contract is required under CMC Section 3.28.080(I) because the estimated value of this project is greater than \$200,000. The city manager has recommended in writing the use of design-build procurement for this project as required by CMC Section 3.28.085.

Fiscal Analysis

The contract with Barnhart-Reese Construction, Inc. is for an amount not to exceed \$11,222,472. General capital construction funding has been previously appropriated for the project as shown in the table below. However, there is an insufficient amount in general capital construction funds appropriated to the project, and an additional \$1,433,883 is needed for completion. Staff is recommending that the additional appropriation of \$1,433,883 be funded with infrastructure replacement funds, as the General Capital Construction Fund cannot absorb this increase without receiving a transfer from the General Fund.

City of Carlsbad Fire Station No. 2 Replacement, Capital Improvement Program Project No. 4060	
Total appropriation to date – General Capital Construction Fund	\$13,000,000
Total expenditures and encumbrances to date	\$954,579
Current project account balance – CIP Project No. 4060	\$12,045,421
Design-build construction contract	\$11,222,472
Construction contingency (estimated)	\$1,122,247
Construction management, inspection, material testing and other support services (estimated)	\$1,134,585
Total estimated project costs	\$13,479,304
Remaining balance after CIP Project No. 4060	(\$1,433,883)
Additional appropriation needed – Infrastructure Replacement Fund	\$1,433,883

Next Steps

Once contract documents are fully executed and a purchase order is issued, staff will schedule a pre-construction meeting with Barnhart-Reese and issue a notice to proceed. The duration of the construction contract is 550 calendar days, excluding rain days and change orders that may extend the contract duration.

Environmental Evaluation (CEQA)

The project has been reviewed under the terms of the California Environmental Quality Act and the Environmental Protection Ordinance (Title 19) of the Carlsbad Municipal Code. The environmental impact assessment prepared in conjunction with the project identified potentially significant impacts to cultural resources, as well as exposure of people to noise. Mitigation measures have been incorporated into the preliminary design of the project or have been placed as conditions of approval so that all potentially significant impacts have been mitigated to below a level of significance. Consequently, a notice of intent to adopt a mitigated negative declaration and mitigation monitoring and reporting program was published by the city planner on Feb. 19, 2020.

Public Notification and Outreach

Public notice of this item was posted in keeping with the Ralph M. Brown Act and it was available for public viewing and review at least 72 hours before the scheduled meeting date.

The public will be notified of construction activities before construction begins with signage, email notices, website postings and messages on other city communication channels. The construction contractor will also be required to notify the public of construction activities via door hangers, as necessary.

Exhibits

1. Resolution
2. Location map
3. AMG & Associates' appeal to City Council

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, ACCEPTING THE PROPOSALS RECEIVED, AUTHORIZING AWARD OF A DESIGN-BUILD CONTRACT TO BARNHART-REESE CONSTRUCTION, INC. TO PROVIDE DESIGN-BUILD SERVICES FOR THE FIRE STATION NO. 2 REPLACEMENT PROJECT, CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECT NO. 4060 (PROJECT), FOR AN AMOUNT NOT TO EXCEED \$11,222,472, AUTHORIZING ADDITIONAL APPROPRIATION IN AN AMOUNT OF \$1,433,883, AND DENYING AMG & ASSOCIATES, INC.'S APPEAL.

WHEREAS, in November 2016, City of Carlsbad voters approved Measure O to rebuild Fire Station No. 2; and

WHEREAS, City Council has appropriated a total of \$13,000,000 from the General Capital Construction Fund for the Project by adopting Resolutions No. 2016-130, 2017-108, 2018-093 and 2019-092 approving the CIP for fiscal years (FY) 2016-17 (\$50,000), FY 2017-18 (\$1,000,000), FY 2018-19 (\$9,500,000) and FY 2019-20 (\$2,450,000), respectively; and

WHEREAS, on Feb. 19, 2020, the Planning Commission adopted Resolution No. 7360, approving the conditional use permit, special use permit and variance required for the new fire station, and Resolution No. 7361 approving the conditional use permit and coastal development permit for the temporary fire station in the Carlsbad City Library parking lot on Dove Lane; and

WHEREAS, on April 21, 2020, City Council adopted Resolution No. 2020-065 approving the preliminary design plans and specifications and authorizing the city clerk to advertise for a design-build proposal solicitation; and

WHEREAS, on April 22, 2020, in accordance with California Municipal Code (CMC) Section 3.28.085, staff posted a Request for Qualifications (RFQ) on the city website for solicitation of qualifications from prospective design-build firms and received four responses; and

WHEREAS, on June 19, 2020, in accordance with CMC Section 3.28.085, staff posted a Request for Proposals (RFP) on the city website for the four qualified design-build firms and subsequently received two proposals; and

WHEREAS, staff has reviewed the RFP responses and found that Barnhart-Reese Construction, Inc. (BRC) submitted the lowest responsive and responsible proposal price for the Project in an amount of \$11,222,472; and

WHEREAS, the second lowest bidder, AMG & Associates, Inc., has filed an appeal letter objecting to the City's application of section 13.1.10.2 of the RFP in response to a mathematical error in the second lowest bidder's bid; and

WHEREAS, staff has reviewed the appeal letter and the second lowest bidder's bid. The mathematical error directly affects the amount of its bid. Contrary to the principles described in the case of *Ghilotti Construction Co. v. City of Richmond*, 45 Cal.App.4th 897, the second lowest bidder would gain an unfair advantage over BRC if the City awarded the design-build contract to the second lowest bidder because the dollar amount of that bid, when calculated pursuant to section 13.1.10.2 of the RFP, is greater than the dollar amount of BRC's bid; and

WHEREAS, applying section 13.1.10.2 of the RFP to resolve this ambiguity complies with the Legislature's intent in enacting the Public Contract Code as described in the case of *Kajima/Ray Wilson v. Los Angeles County Metropolitan Transp. Authority*, 23 Cal.4th 305, 314; and

WHEREAS, staff recommends that the bid appeal letter by the second lowest bidder be denied; and

WHEREAS, an additional appropriation of \$1,433,883 in funding is required and has been approved from the Infrastructure Replacement Fund and authorized for the Project; and

WHEREAS, CMC Sections 3.28.040(C)(5) and 3.28.090(B) authorize the city manager to approve change orders in an amount equal to the contingency set at the time of Project award (\$1,122,247); and

WHEREAS, on Feb. 19, 2020, the city planner reviewed the Project pursuant to the California Environmental Quality Act and the Environmental Protection Ordinance (Title 19) of the CMC and published a Notice of Intent to adopt a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Carlsbad, California, as follows:

1. That the above recitations are true and correct.
2. That the bid appeal letter by the second low bidder (AMG & Associates, Inc.) is denied.
3. That the lowest proposal value of \$11,222,472 submitted by BRC for the Project is accepted, and the mayor is hereby authorized to execute a design-build contract for the Project (attached as Attachment A).
4. That the city manager or designee is hereby authorized to approve construction change orders up to the amount of \$1,122,247 for the Project.
5. That the deputy city manager, administrative services, or designee, is hereby authorized and directed to appropriate additional funding from the Infrastructure Replacement Fund to the Project in the amount of \$1,433,883.
6. That the city planner has reviewed the Project pursuant to the California Environmental Quality Act and the Environmental Protection Ordinance (Title 19) of the Carlsbad

Municipal Code and published a Notice of Intent to adopt a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.

7. That the award of this contract is contingent upon BRC executing the required contract and submitting the required bonds and insurance policies as described in the contract, within 20 days of adoption of this Resolution. The city manager may grant reasonable extensions of time to execute the contract and assemble the required bonds and insurance policies.

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the __ day of _____, 2020, by the following vote, to wit:

AYES:

NAYS:

ABSENT:

MATT HALL, Mayor

BARBARA ENGLESON, City Clerk

(SEAL)

ATTACHMENT K

**CONTRACT WITH DESIGN-BUILD AGREEMENT, SUPPLEMENTAL CONDITIONS
AND GENERAL PROVISIONS**

ATTACHED AS A SEPARATE DOCUMENT IN PLANET BIDS



CITY OF CARLSBAD

**San Diego County,
California**

CONTRACT DOCUMENTS

FOR

**FIRE STATION NO. 2 REPLACEMENT AND
TEMPORARY STATION**

CONTRACT NO. RFP20-1124FAC

June 19, 2020

PROJECT INFORMATION

PROJECT NAME: Fire Station No. 2 Replacement and Temporary Station

PROJECT NUMBER: 4060

PROJECT MANAGER:

Name: Mr. Steven Stewart
Address: 1635 Faraday Avenue, Carlsbad, CA 92008
Phone Number: 760-602-7543
Email: steven.stewart@carlsbadca.gov

All questions or requests for information of a technical nature should be directed to the Project Manager.

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NOTICE INVITING PROPOSALS

NAME OF PROJECT: Fire Station No. 2 Replacement and Temporary Station

CONTRACT NO.: RFP20-1124FAC

RECEIPT OF PROPOSALS: Until 4:00 PM on July 29, 2020, the City shall accept electronic proposals on the City of Carlsbad PlanetBids portal (<https://www.planetbids.com/portal/portal.cfm?CompanyID=27970>), for performing the work as follows:

SCOPE OF WORK: The project scope involves design and permitting for each station with separate sets of design drawings and technical project specifications. Drawings must be comprehensive in architectural and engineering detail, showing project site improvements, underground utilities, foundations for new construction, building envelope construction and interior construction details, all reflecting the character and design intent of the 20% design development bridging documents in Attachment B. Other project elements include: cooperation with city's consultant construction manager, site survey work; city permits; procurement of Sprung Structure and temporary station trailer, repackaging of Sprung Structure; disconnection of utilities and trailer assembly for transportation and transportation to another city site designated by the city's construction manager following use; Title 24 form completion and submission for each design; underground utility access via necessary trenching, connections thereto, disconnections therefrom and pavement replacement; restoration of temporary station site to pre-construction conditions; construction material re-use and waste monitoring to track recyclable content and disposal quantities; Best Management Practices (BMPs) and implementation of QA/QC and Safety protocols. Contractor to retain original Sprung Structure packaging for properly repackaging the structure following use and return to the city. The project also entails coordinating the design, construction and startup of newly installed systems with the city's construction manager and the city's Facilities Engineering and Information Technology Divisions. The Design-Build Contractor will also be responsible for the installation coordination of all systems furniture purchased and installed by the city under separate contract.

LOCATION OF WORK: Temporary station – 1775 Dove Lane, Carlsbad.
Permanent station – 1906 Arenal Road, Carlsbad

ENGINEER'S ESTIMATE: \$10,543,173

CONTRACT TIME: 425 calendar days from Notice to Proceed to Date of Substantial Completion

LIQUIDATED DAMAGES: \$1,000 per consecutive calendar day, following date of Substantial Completion

PRE-PROPOSAL MEETING: A pre-proposal/bid meeting will be held on July 1, 2020 at 10:00AM.

QUESTION DEADLINE: The deadline for submitting requests for interpretations of the Contract Documents is July 24, 2020.

OBTAINING CONTRACT DOCUMENTS: Proposers may obtain a copy of the Contract Documents from City of Carlsbad PlanetBids portal (<https://www.planetbids.com/portal/portal.cfm?CompanyID=27970>). To the extent required by section 20103.7 of the Public Contract Code, upon request from a contractor plan room service, the City shall provide an electronic copy of the Contract Documents at no charge to the contractor plan room. It is the responsibility of each prospective Proposer to download and print all Proposal Documents for review and to verify the completeness of Proposal Documents before submitting a Proposal. All Addenda will be posted on PlanetBids. It is the responsibility of each prospective Proposer to check PlanetBids on a daily basis through the close of the bidding period for any applicable addenda. The City does not assume any liability or responsibility for any defective or incomplete copying, excerpting, scanning, faxing, downloading or printing of the Proposal Documents. Information on PlanetBids may change without notice to prospective Proposers. The Contract Documents shall supersede any information posted or transmitted by PlanetBids. No time extensions or other consideration will be given for non-receipt or other circumstance associated with the review or acquisition of Contract Documents. Proposals must be submitted on the City's Proposal Forms in the Contract Documents.

PROPOSER QUALIFICATIONS: Proposers shall be a licensed contractor pursuant to sections 7000 et seq. of the Business and Professions Code under the classification of GENERAL ENGINEERING CONTRACTOR (CLASS A) as of the date of submittal of the Proposal Documents and shall maintain such license until final acceptance of the work. The Proposer shall have on its project team California licensed architects and engineers of relevant disciplines responsible for the design for the project. Additional qualifications are included in the Contract Documents.

SELECTION PROCESS: The City is issuing this Request for Proposals to the short-listed Design-Build Contractors from a qualifications process. The City's established Nomination Panel will review the Proposals received and may interview each proposing Design-Build Contractor. The Panel will rank the Proposals based on the criteria in the City of Carlsbad Municipal Code, Title 3 Revenue and Finance, Chapter 3.28 Purchasing, Section 3.28.085 Design-Build Contracts and the criteria set forth in the Request for Proposals. The Panel Chair will forward its ranked listing to the Director or designee with a recommendation to award to the Design-Build Contractor presenting the lowest proposal cost. The City Council or designee has final authority for selection.

PERIOD FOR AWARD: A period of ninety (90) calendar days from the time of Proposal opening may be required to award contract. No Proposer may withdraw her/his Proposal or Proposal guarantee during this period. Proposers shall assume full responsibility for their Proposal Price during this period and shall make certain that such delay does not restrict the price guarantee.

PROPOSAL GUARANTEE: Each Proposal shall be accompanied by cash, a certified or cashier's check or Proposal Bond secured from a surety company satisfactory to the City, the amount of which shall not be less than ten percent (10%) of the submitted Total Proposal Price, made payable to the City as proposal security. The proposal security shall be provided as a guarantee that within ten (10) working days after the City provides the successful proposer the Notice of Award, the successful Proposer will enter into a contract and provide the necessary bonds and certificates of insurance. The proposal security will be declared forfeited if the successful Proposer fails to comply within said time. No interest will be paid on funds deposited with the City.

The successful Proposer will be required to furnish a Faithful Performance Bond and a Labor and Material Bond each in an amount equal to one hundred percent (100%) of the Contract Price. Each bond shall be in the forms set forth in the Contract Documents, shall be secured from a surety company that meets all State of California bonding requirements, as defined in California Code of Civil Procedure Section 995.120, and that is a California admitted surety insurer. Pursuant to Section 22300 of the Public Contract Code of the State of California, the successful Proposer may substitute certain securities for funds withheld by District to ensure its performance under the contract.

PREVAILING WAGE RATES AND LABOR COMPLIANCE: This project is subject to prevailing wages and labor compliance per California Labor Code. To this end, Proposer shall sign and submit with its Proposal the Public Works Contractor Registration Certification on the form provided. Failure to submit this form may render the proposal non-responsive. In addition, each Proposer shall provide the registration number for each listed subcontractor in the space provided in the Proposed Subcontractors form. In bidding this Project, it shall be the Proposer's sole responsibility to evaluate and include the cost of complying with all labor compliance requirements under this contract and applicable law in its Proposal. A copy of the prevailing wage rates may be obtained via the internet at: www.dir.ca.gov/dlsr/.

INSTRUCTIONS TO PROPOSERS

(All language in this section referring to Bidders, shall be understood as applying to pre-qualified respondents to the Request for Proposal and language referring to Bids shall be understood as applying to Proposals)

1. SECURING CONTRACT DOCUMENTS.

Proposals must be submitted to the City on the Proposal Forms which are a part of the Contract Documents for the Project. The Contract Documents may be obtained from the City of Carlsbad PlanetBids portal (<https://www.planetbids.com/portal/portal.cfm?CompanyID=27970>). Prospective proposers are encouraged to telephone in advance to determine the availability of Contract Documents.

Addenda will be posted on PlanetBids. Failure to acknowledge all addenda may make a proposal nonresponsive and not eligible for award of the contract.

2. EXAMINATION OF SITE AND CONTRACT DOCUMENTS.

At its own expense and prior to submitting its Proposal, each Proposer shall visit the site of the proposed work and fully acquaint itself with the conditions relating to the construction and labor required so that the Proposer may fully understand the work, including but not limited to, difficulties and restrictions attending the execution of the Work under the Contract. Each Proposer shall carefully examine the Drawings, and shall read the Specifications, Contract, and all other documents referenced herein. Each Proposer shall also determine the local conditions which may in any way affect the performance of the work, including local tax structure, contractors' licensing requirements, availability of required insurance, the prevailing wages and other relevant cost factors, shall familiarize itself with all federal, state and local laws, ordinances, rules, regulations and codes affecting the performance of the work, including the cost of permits and licenses required for the work, and shall make such surveys and investigations, including investigations of subsurface or latent physical conditions at the site or where work is to be performed as may be required. Proposers are responsible for consulting the standards referenced in the Contract. The failure or omission of any Proposer to receive or examine any contract documents, forms, instruments, addenda, or other documents, or to visit the site and acquaint itself with conditions there existing shall in no way relieve any Proposer from any obligation with respect to its Proposal or to the contract and no relief for error or omission will be given except as required under State law. The submission of a Proposal shall be taken as conclusive evidence of compliance with this Article.

3. INTERPRETATION OF DRAWINGS AND DOCUMENTS.

Prospective Proposers unclear as to the true meaning of any part of the Drawings, Specifications or other parts of the Contract Documents, or finds discrepancies in or omissions from the Drawings and Specifications, may submit to the City a written request for interpretation, clarification, or correction. The prospective Proposer submitting the request is responsible for prompt delivery.

Interpretation, clarification, or correction of the Drawings, Specifications or other parts of the Contract Documents will be made only by a written addendum duly issued and a copy of such addenda will be posted on PlanetBids for each prospective Proposer who has downloaded a set of Contract Documents. The City will not be responsible for any other explanation or interpretations of the proposed documents. If a Prospective Proposer becomes aware of any errors or omissions in any part of the Contract Documents, it is the obligation of the Prospective Proposer to promptly bring it to the attention of the City.

No oral response will be made to such inquiry. Prior to the award of the contract, no addition to, modification of, or interpretation of any provision in the Contract Documents, will be given by any agent, employee or contractor of the City of Carlsbad except as specified in these Instructions to Proposers. No proposer may rely on directions given by any agent, employee or contractor of the City of Carlsbad except as specified in these Instructions to Proposers.

4. QUESTIONS.

Questions regarding this Project may be submitted through PlanetBids. Questions shall be definite and certain, and shall reference applicable drawing sheets, notes, details or specification sections. The deadline to submit questions is identified in the Notice Inviting Proposals. Questions received after the deadline will not be answered. Responses to questions submitted during the bidding period will be published in an addendum and provided to those bidding on the project no later than the date specified in the Notice Inviting Proposals.

No other members of the City's staff or City Council should be contacted about this procurement during the bidding process. Any and all inquiries and comments regarding this Proposal must be communicated in writing, unless otherwise instructed by the City. The City may, in its sole discretion, disqualify any Proposer who engages in any prohibited communications.

5. PRE-PROPOSAL CONFERENCE.

If a pre-proposal conference is to be held, whether mandatory or not, it shall be stated in the Notice Inviting Proposals. Proposals will not be accepted from any proposer who did not attend a Mandatory Pre-Proposal Conference. The conference will commence at the specified start time and the site visit will begin at the conclusion of the conference. Prospective Proposers who arrive late may be disqualified from the bidding process.

Representatives of the City and its consultants, if any, will be present to the extent possible. Questions asked by Proposers at the Pre-Proposal Conference not specifically addressed within the Contract Documents shall be answered in writing and shall be sent to all Proposers present at the Pre-Proposal Conference.

A Pre-Proposal conference may include a project site visit. Personal Protective Equipment (PPE) is required of all Job Walk attendees. Attendees are required to wear closed toe shoes, long pants, no sleeveless shirts, safety glasses (may be prescription with side shields if in process areas), safety vests and hard hats. Only those possessing such attire will be allowed on the Job Site. City will not provide personal protective equipment to attendees.

6. ADDENDA.

The City reserves the right to revise the Contract Documents prior to the Proposal submission date. Revisions, if any, shall be made by written Addenda. All Addenda issued by the City shall be acknowledged by the Proposer on PlanetBids and is made part of the Contract Documents.

Pursuant to Public Contract Code Section 4104.5, if the City issues an Addendum which includes material changes to the Project less than 72 hours prior to the deadline for submission of Proposals, the City will extend the deadline for submission of Proposals. The City may determine, in its sole discretion, whether an Addendum warrants postponement of the Proposal submission date. Addenda will be posted on PlanetBids.

Proposers are responsible for the receipt of all Addenda. The Proposer shall acknowledge the Addenda via PlanetBids prior to bidding. Failure to acknowledge all Addenda may be sufficient cause for rejecting the Proposal.

7. COMPLETION OF PROPOSAL FORMS.

Proposals shall only be prepared using the Proposal Forms which are included in the Contract Documents. The use of substitute Proposal Forms other than clear and correct photocopies of those provided by the City will not be permitted. Proposals shall be executed by an authorized signatory as described in these Instructions to Proposers. In addition, Proposers shall fill in all blank spaces (including inserting "N/A" where applicable), and initial all interlineations, alterations, or erasures to the Proposal Forms. Proposers shall neither delete, modify, nor supplement the printed matter on the Proposal Forms nor make substitutions thereon. USE OF BLACK OR BLUE INK, INDELIBLE PENCIL, OR

A TYPEWRITER IS REQUIRED. Deviations from these instructions may result in the Proposal being deemed non-responsive.

The following documents must be completed and properly executed including notarization, where indicated, and submitted as a part of the complete Proposal Package:

1. Proposal Form
2. Proposal Bond or Proposal Security with check/cash
3. Proposed Subcontractors Form
4. Proposer Information and Experience Form
5. Non-Collusion Affidavit
6. Public Works Contractor Registration Certification
7. Certificate of Insurance
8. Statement of Redebarment
9. Disclosure of Discipline Record
10. Acknowledgement of ALL Addenda on PlanetBids.
11. Escrow agreement, as applicable

All proposals are to be computed on the basis of the given estimated quantities of work, as indicated in the Proposal, times the unit price as submitted by the Proposer. In case of a discrepancy between words and figures, the words shall prevail. In case of an error in the extension of a unit price, the corrected extension shall be calculated and the proposals will be computed as indicated above and compared on the basis of the corrected totals.

All prices must be in ink or typewritten. Changes or corrections may be crossed out and typed or written in with ink and must be initialed in ink by a person authorized to sign for the Contractor.

8. GOVERNING PROVISIONS AND CONDITIONS

The specifications contained in City of Carlsbad General Provisions Design-Build take precedence over the specification language contained in the Standard Specifications for Public Works Construction, "The GREENBOOK" latest edition and all errata. This specification addresses the unique conditions in the City of Carlsbad that are not addressed in The GREENBOOK. Therefore, if there is a conflict, the City of Carlsbad General Provisions Design-Build shall control.

The GREENBOOK may be purchased at Proposer's/Contractor's local technical bookstore or directly from the publisher. The City of Carlsbad General Provisions Design-Build is available only for download from PlanetBids with Contract Documents. The City does not provide hard copies.

When used in the Contract Documents, statement or command phrases (active voice and imperative mood) refer to and are directed at the "Bidder" or "Proposer" or "Contractor" or "Design Builder" as applicable. The specifications are written to the "Bidder" or "Proposer" before award and the "Contractor" or "Design Builder" after award. Before award, interpret sentences written in the imperative mood as starting with "The Proposer shall". Interpret the term "you" as "the Proposer" and interpret the term "your" as "the Proposer's". After award, interpret sentences written in the imperative mood starting with "The Contractor shall" or "The Design Builder shall". Interpret the term "you" as "the Contractor" or "the Design Builder" and interpret the term "your" as "the Contractor's" or "the Design Builder's".

9. MODIFICATIONS OF PROPOSALS.

Each Proposer shall submit its Proposal in strict conformity with the requirements of the Contract Documents. Unauthorized additions, modifications, revisions, conditions, limitations, exclusions or provisions attached to a Proposal may render it non-responsive and may cause its rejection. Proposers shall not delete, modify, or supplement the printed matter on the Proposal Forms, or make substitutions thereon. Oral, telephonic and electronic modifications will not be considered.

10. PROPOSAL GUARANTEE (BOND).

Each proposal shall be accompanied by: (a) cash; or, (b) a certified or cashier's check made payable to City of Carlsbad; or, (c) a Proposal Bond secured from a surety company satisfactory to the City Council, the amount of which shall not be less than ten percent (10%) of the Total Proposal Price, made payable to City of Carlsbad as proposal security. Personal sureties and unregistered surety companies are unacceptable. The surety insurer shall be a California admitted surety insurer, as defined in Code of Civil Procedure Section 995.120. The proposal security shall be provided as a guarantee that within ten (10) working days after the City provides the successful proposer the Notice of Award, the successful proposer will enter into a contract and provide the necessary bonds and certificates of insurance. The proposal security will be declared forfeited if the successful proposer fails to comply within said requirements, and City may enter into a contract with the next lowest, responsive, responsible proposer, or may call for new proposals. No interest shall be paid on funds deposited with the City.

The proposer's security of the second and third next lowest responsive proposers may be withheld until the Contract has been fully executed. The security submitted by all other unsuccessful proposers shall be returned to them, or deemed void, within ten (10) days after the Contract is awarded. City will return the security accompanying the proposals of all unsuccessful proposers no later than 90 calendar days after award of the Contract.

The proceeds of this check shall also become the property of the City if the undersigned shall withdraw his or her proposal within the period of fifteen (15) days after the date set for the opening thereof, unless otherwise required by law, and notwithstanding the award of the Contract to another proposer. The Proposer shall submit Proposal Bond or Proposal Security with check/cash with the Proposal Package.

11. LABOR AND MATERIAL BOND, AND PERFORMANCE AND WARRANTY BOND REQUIREMENTS.

The successful proposer will be required to furnish a Labor and Material Payment Bond and a Performance and Warranty Bond, each in an amount equal to one hundred percent (100%) of the contract price. Each bond shall be secured from a surety company that meets all State of California bonding requirements, as defined in California Code of Civil Procedure Section 995.120 and is admitted by the State of California, and whose assets exceed their liabilities in an amount equal to or in excess of the amount of the bond. Each bond shall be accompanied, upon the request of City, with all documents required by California Code of Civil Procedure Section 995.660 to the extent required by law. All bonding and insurance requirements shall be completed and submitted to City within ten (10) working days from the date the City provides the successful proposer with the Notice of Award.

These bonds shall be kept in full force and effect during the course of this project, and shall extend in full force and effect and be retained by the City until they are released as stated in the Contract. The bonds are to be accompanied by an original, or a certified copy, of the unrevoked appointment, power of attorney, by laws, or other instrument entitling or authorizing the person who executed the bond to do so.

12. SUBSTITUTION OF SECURITY.

The Contract Documents call for monthly progress payments based upon the percentage of the Work completed. The City will retain a percentage of each progress payment as provided by the Contract Documents. At the request and expense of the successful Proposer, the City will substitute securities for the amount so retained in accordance with Public Contract Code Section 22300.

13. OPTIONAL ESCROW FOR SECURITY DEPOSIT.

Pursuant to the provisions of law (Public Contract Code section 10263), appropriate securities may be substituted for any obligation required by this notice or for any monies withheld by the City to ensure performance under this Contract. Section 10263 of the Public Contract Code requires monies or securities to be deposited with the City or a state or federally chartered bank in California as the escrow

agent. The escrow agent shall maintain insurance to cover negligent acts and omissions of the agent in connection with the handling of retentions under this section in an amount not less than \$100,000 per contract.

If the Contractor intends to utilize the escrow agreement included in the Contract Documents in lieu of the percentage retained from each payment (as specified in the Contract Documents), these documents must be completed and submitted with the signed Contract. The escrow agreement may not be substituted at a later date.

14. INSURANCE REQUIREMENTS

Prior to commencing work, the successful proposer shall purchase and maintain insurance as set forth in the General Provisions Design-Build. If the proposal is accepted, the City may require copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance pursuant to Article 10 (commencing with section 900) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, within 10 calendar days of the insurer's receipt of a request to submit the statements.

In accordance with the provisions of Labor Code Section 3700, Contractor shall secure the payment of compensation to its employees. Contractor shall sign and file with the City the following certificate prior to performing the work under this Contract:

I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

The form of such Certificate of Insurance shall be submitted as a part of the Proposal Package. A certified copy of the certificate of authority of the insurer issued by the insurance commissioner is required. If the Proposal is accepted, the City may require copies of the insurer's most recent annual statement and quarterly statement filed with the Department of Insurance pursuant to Article 10 (commencing with section 900) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, within 10 calendar days of the insurer's receipt of a request to submit the statements.

Insurance is to be placed with insurers that:

- 1) Have a rating in the most recent Best's Key Rating Guide of at least A-VII;
- 2) Are admitted and authorized to transact the business of insurance in the State of California by the Insurance Commissioner; And
- 3) Otherwise meet the City's policy for insurance as stated in City Council Policy # 70.

Auto policies offered to meet the specification of this contract must:

- 1) Meet the conditions stated above for all insurance companies.
- 2) Cover any vehicle used in the performance of the Contract, used onsite or offsite, whether owned, non-owned or hired, and whether scheduled or non-scheduled.

Workers' compensation insurance required under this Contract must be offered by a company meeting the above standards. Any exceptions to the requirements listed in these Instructions to Proposers must meet City Council Policy #70. The City does accept policies issued by the State Compensation Fund meeting the requirement for workers' compensation insurance.

The Contractor shall be required to maintain insurance as specified in the Contract. Any additional cost of said insurance shall be included in the proposal price.

15. LICENSING REQUIREMENTS.

Pursuant to Business and Professions Code Section 7028.15 and Public Contract Code Section 3300, all proposers must possess proper licenses for performance of this Contract. Subcontractors must possess the appropriate licenses for each specialty subcontracted. Pursuant to Business and Professions Code

Section 7028.5, the City shall consider any proposal submitted by a contractor not currently licensed in accordance with state law and pursuant to the requirements found in the Contract Documents to be nonresponsive, and the City shall reject the Proposal. The City shall have the right to request, and Proposers shall provide within ten (10) calendar days, evidence satisfactory to the City of all valid license(s) currently held by that Proposer and each of the Proposer's subcontractors, before awarding the Contract.

Notwithstanding anything contained herein, if the Work involves federal funds, the Contractor shall be properly licensed by the time the Contract is awarded, pursuant to the provisions of Public Contract Code section 20103.5.

16. SUBCONTRACTORS.

Proposer shall set forth the name, address of the place of business, and contractor license number of each subcontractor who will perform work, labor, furnish materials or render services to the proposer on said contract and each subcontractor licensed by the State of California who, under subcontract to proposer, specially fabricates and installs a portion of the Work described in the Drawings and Specifications in an amount in excess of one-half of one percent (0.5%) of the total proposal price, and shall indicate the portion of the work to be done by such subcontractor in accordance with Public Contract Code Section 4104.

Proposer shall submit Proposed Subcontractors Form with the Proposal Package. This form will be used by the City to determine the percentage of work that the Proposer proposes to perform. Proposers are cautioned that failure to provide complete and correct information may result in rejection of the Proposal as non-responsive. Any Proposal that proposes performance of more than 50 percent of the work by subcontractors or otherwise to be performed by forces other than the Proposer's own organization will be rejected as non-responsive. Specialty items of work that may be so designated on the Proposed Subcontractors Form "Contractor's Proposal" will not be included in computing the percentage of work proposed to be performed by the Proposer.

Suppliers of materials from sources outside the limits of work are not subcontractors. The value of materials and transport of materials from sources outside the limits of work, as shown on the plans, shall be assigned to the Contractor or the Subcontractor, as the case may be, that the Proposer proposes as installer of said materials. The value of material incorporated in any Subcontractor-installed proposal item that is supplied by the Proposer shall be included as a part of the work that the Proposer proposes to be performed by the Subcontractor installing said item.

When a Subcontractor has a Carlsbad business license, the number must be entered on the proper form. If the Subcontractor does not have a valid business license, enter "NONE" in the appropriate space.

When the Proposer proposes to use a Subcontractor to construct or install less than 100 percent of a proposal item, the Proposer shall attach an explanation sheet to the Proposed Subcontractor Form. The explanation sheet shall clearly apprise the City of the specific facts that show the Proposer proposes to perform no less than fifty percent (50%) of the work with its own forces.

Determination of the subcontract amounts for purposes of award of the Contract shall be determined by the City Council in conformance with the provisions of the Contract Documents. The decision of the City Council shall be final.

Contractor is prohibited from performing any Work on this Project with a subcontractor who is ineligible to perform work on a public works project pursuant to Labor Code Sections 1771.1 or 1777.7.

The Prime Contractor shall be responsible for insuring compliance with provisions of section 1777.5 of the Labor Code and section 4100 et seq. of the Public Contracts Code, "Subletting and Subcontracting Fair Practices Act." The City Engineer is the City's "duly authorized officer" for the purposes of section 4107 and 4107.5.

Proposers shall make copies of the disclosure forms as may be necessary to provide the required information to subcontractors. The page number and total number of additional form pages shall be entered in the location provided on each type of form so duplicated.

17. PROPOSER INFORMATION AND EXPERIENCE FORM.

Each Proposer shall complete the questionnaire provided herein and shall submit the questionnaire along with its Proposal. Failure to provide all information requested within the questionnaire along with the Proposal may cause the Proposal to be rejected as non-responsive. The City reserves the right to reject any Proposal if an investigation of the information submitted does not satisfy the City that the Proposer is qualified to properly carry out the terms of the Contract. The Proposer shall submit Proposer Information Form with the Proposal Package.

18. NON-COLLUSION AFFIDAVIT.

Proposers on all public works contracts are required to submit an affidavit of non-collusion with their proposal. This form (Non-Collusion Affidavit) is included with the Proposal Package and must be signed and dated under penalty of perjury.

19. PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION.

Pursuant to Labor Code Section 1773, the City has obtained the prevailing rate of per diem wages and the prevailing wage rate for holiday and overtime work applicable in San Diego County from the Director of the Department of Industrial Relations for each craft, classification, or type of worker needed to execute this contract. A copy of these prevailing wage rates may be obtained via the internet at www.dir.ca.gov/dlsr/.

In addition, a copy of the prevailing rate of per diem wages is available at the City and shall be made available to interested parties upon request. The successful Proposer shall post a copy of the prevailing wage rates at each job site. It shall be mandatory upon the Proposer to whom the Contract is awarded, and upon any subcontractors, to comply with all Labor Code provisions, which include but are not limited to the payment of not less than the said specified prevailing wage rates to all workers employed by them in the execution of the Contract, employment of apprentices, hours of labor and debarment of contractors and subcontractors.

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to Proposal on, be listed in a Proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No proposal will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. If awarded the Contract, the Proposer and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the Project.

This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. In bidding on this Project, it shall be the Proposer's sole responsibility to evaluate and include the cost of complying with all labor compliance requirements under this Contract and applicable law in its Proposal.

To this end, Proposer shall sign and submit with its Proposal the Public Works Contractor Registration Certification on the form provided, attesting to the facts contained therein. Failure to submit this form may render the Proposal non-responsive. In addition, each Proposer shall provide the registration number for each listed subcontractor in the space provided in the Proposed Subcontractors Form.

20. PREVAILING WAGES.

The City has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages in the locality in which this work is to be performed for each craft or type of worker needed to execute the Contract. These rates are available at the City or may be obtained online

at <http://www.dir.ca.gov>. Proposers are advised that a copy of these rates must be posted by the successful Proposer at the job site(s).

The Contractor to whom the Contract is awarded shall not pay less than the said specified prevailing rates of wages to all workers employed by him or her in the execution of the Contract. The general prevailing rate of wages for each craft or type of worker needed to execute the Contract shall be those as determined by the Director of Industrial Relations pursuant to the sections 1770, 1773, and 1773.1 of the Labor Code. Pursuant to section 1773.2 of the Labor Code, a current copy of applicable wage rates is on file in the Office of the City Engineer.

The provisions of Part 7, Chapter 1, of the Labor Code commencing with section 1720 shall apply to the Contract for Work. A contractor or subcontractor shall not be qualified to propose on, be listed in a proposal, subject to the requirements of Section 4104 of the Public Contract Code or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Section 1725.5. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

The Prime Contractor and all subcontractors shall comply with Section 1776 of the Labor Code, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Contractor shall require all subcontractors to comply with Section 1776.

21. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS.

In accordance with the provisions of the Labor Code, contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code Sections 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid to a debarred subcontractor by the Contractor for the Project shall be returned to the City. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

The City may disqualify a contractor or subcontractor from participating in bidding when a contractor or subcontractor has been debarred by the City or another jurisdiction in the State of California as an irresponsible proposer.

22. SIGNING OF PROPOSALS.

All Proposals submitted shall be executed by the Proposer or its authorized representative. Proposers may be asked to provide evidence in the form of an authenticated resolution of its Board of Directors or a Power of Attorney evidencing the capacity of the person signing the Proposal to bind the Proposer to each Proposal and to any Contract arising therefrom.

If a Proposer is a joint venture or partnership, it may be asked to submit an authenticated Power of Attorney executed by each joint venturer or partner appointing and designating one of the joint venturers or partners as a management sponsor to execute the Proposal on behalf of Proposer. Only that joint venturer or partner shall execute the Proposal. The Power of Attorney shall also: (1) authorize that particular joint venturer or partner to act for and bind Proposer in all matters relating to the Proposal; and (2) provide that each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of Proposer assumed under the Proposal and under any Contract arising therefrom. The Proposal shall be executed by the designated joint venturer or partner on behalf of the joint venture or partnership in its legal name.

23. SUBMISSION OF SEALED PROPOSALS.

Once the Proposal and supporting documents have been completed and signed as set forth herein, they shall be placed, along with other required materials, via PlanetBids before the time and day set

for the receipt of Proposals. The Proposal Guarantee shall be submitted in a sealed envelope, addressed and delivered or mailed, postage prepaid, to the City before the time and day set for the receipt of Proposals. No oral or telephonic Proposals will be considered. No forms transmitted via the internet, e-mail, facsimile, or any other electronic means will be considered unless specifically authorized by the City as provided herein. Proposals received after the time and day set for the receipt of Proposals will not be accepted.

Only where expressly permitted in the Notice Inviting Proposals may Proposers submit their proposals via electronic transmission pursuant to Public Contract Code sections 1600 and 1601. Any acceptable method(s) of electronic transmission shall be stated in the Notice Inviting Proposals. City may reject any Proposal not strictly complying with City's designated methods for delivery.

24. OPENING OF PROPOSALS.

Proposals submitted on PlanetBids will be reviewed by the City. City shall consider contract award to the lowest, responsive, responsible Proposer as determined by the City from the base Proposal alone. The City reserves the right to reject any or all Proposals or to waive any irregularities or informalities in any Proposals or in the Bidding process.

The Proposal and the terms of the Contract Documents constitute an irrevocable offer that shall remain valid and in full force for a period of 90 days and such additional time as may be mutually agreed upon by the City and the Proposer.

25. WITHDRAWAL OF PROPOSAL.

Any proposal may be withdrawn via written letter, incurring no penalty, at any time prior to the scheduled closing time for receipt of Proposals. Requests to withdraw Proposals shall be worded so as not to reveal the amount of the original Proposal. Withdrawn Proposals may be resubmitted until the time and day set for the receipt of Proposals, provided that resubmitted Proposals conform to the instructions herein.

Proposals may be withdrawn after proposal opening only by providing written notice to City within five (5) working days of the proposal opening and in compliance with Public Contract Code Section 5100 et seq., or as otherwise may be allowed with the consent of the City.

26. PROPOSERS INTERESTED IN MORE THAN ONE PROPOSAL.

No Proposer shall be allowed to make, file or be interested in more than one Proposal for the same work unless alternate Proposals are specifically called for. A person, firm or corporation that has submitted a sub-proposal to a Proposer, or that has quoted prices of materials to a Proposer, is not thereby disqualified from submitting a sub-proposal or quoting prices to other Proposers. No person, firm, corporation, or other entity may submit a sub-proposal to a Proposer, or quote prices of materials to a Proposer, when also submitting a prime Proposal on the same Project.

27. SALES AND OTHER APPLICABLE TAXES, PERMITS, LICENSES, AND FEES.

Contractor and its subcontractors performing work under this Contract will be required to pay California sales tax and other applicable taxes, and to pay for permits, licenses and fees required by the agencies with authority in the jurisdiction in which the Work will be located, unless otherwise expressly provided by the Contract Documents.

28. PERMIT AND INSPECTION FEE ALLOWANCE.

Notwithstanding anything contained herein, the Proposal Form contains an allowance for the Contractor's cost of acquiring traffic control permits and for construction inspection fees that may be charged to the Contractor by the Agency of Jurisdiction. The allowance is included within the Proposal Form to eliminate the need by proposers to research or estimate the costs of traffic control permits and construction inspection fees prior to submitting a proposal. The allowance is specifically intended to account for the costs of traffic control permits and construction inspection fees charged by the local

Agency of Jurisdiction only. No other costs payable by Contractor to the Agency of Jurisdiction are included within said allowance.

If such cost is not contained or specified in the Proposal Form, the Contractor shall include the costs in the other proposal items on the Proposal Form.

29. FILING OF PROPOSAL PROTESTS.

Proposers may file a "protest" of a Proposal with the City. In order for a Proposer's protest to be considered valid, the protest must:

1. Be filed in writing within five (5) calendar days after the proposal opening date;
2. Clearly identify the specific irregularity or accusation;
3. Clearly identify the specific City staff determination or recommendation being protested;
4. Specify in detail the grounds for protest and the facts supporting the protest; and
5. Include all relevant, supporting documentation with the protest at time of filing.

If the protest does not comply with each of these requirements, the City may reject the protest without further review. If the protest is timely and complies with the above requirements, the City shall review the protest, any response from the challenged Proposer(s), and all other relevant information. The City will provide a written decision to the protestor.

The procedure and time limits set forth in this Section 29 are mandatory and are the sole and exclusive remedy in the event of a Proposal protest. Failure to comply with these procedures shall constitute a failure to exhaust administrative remedies and a waiver of any right to further pursue the Proposal protest, including filing a Government Code Claim or legal proceedings.

30. BASIS OF AWARD; BALANCED PROPOSAL.

The City shall award the Contract to the lowest responsible Proposer submitting a responsive Proposal. The lowest Proposal will be determined on the basis of the Total Proposal Price. The City reserves the right to reject any or all Proposals and to waive any minor irregularity or informality in such Proposals.

The City may reject any Proposal which, in its opinion when compared to other Proposals received or to the City's internal estimates, does not accurately reflect the cost to perform the Work. The City may reject as non-responsive any Proposal which unevenly weights or allocates costs, including but not limited to overhead and profit to one or more particular proposal items.

31. AWARD PROCESS.

Once all Proposals are opened and reviewed to determine the lowest responsive and responsible Proposer, the City Council may award the contract. The apparent successful Proposer should begin to prepare the following documents: (1) the Labor and Materials Bond; (2) the Performance and Warranty Bond; and (3) the required insurance certificates and endorsements. Once the City notifies the Proposer of the award, the Proposer will have ten (10) working days from the date of this notification to execute the Contract and supply the City with all of the required documents and certifications or the Proposer may forfeit the proposal security and the City may pursue award of the Contract to the next lowest, responsive, responsible Proposer. Once the City receives all the properly drafted and executed documents and certifications from the Proposer, the City shall issue a Notice to Proceed to that Proposer.

32. EXECUTION OF CONTRACT.

As required herein, the Proposer to whom an award is made shall execute the Contract in the amount determined by the Contract Documents. The City may require appropriate evidence that the persons executing the Contract are duly empowered to do so. The Contract and bond forms to be executed by the successful Proposer are included within these Specifications and shall not be detached.

33. BUSINESS LICENSE.

The prime contractor and all subcontractors are required to have and maintain a valid City of Carlsbad Business License for the duration of the Contract.

34. NON-DISCRIMINATION.

There shall be no discrimination in employment practices on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation, or any other protected class under applicable law. The City hereby affirmatively ensures that minority, or women business enterprises will be afforded full opportunity to submit proposals in response to this notice and proposers will not be discriminated against on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation, or any other protected class under applicable law.

35. PARTICIPATION OF MINORITY AND WOMEN-OWNED BUSINESSES.

The City encourages the participation of minority and women-owned businesses.

36. USE OF RECYCLED MATERIALS.

The City encourages proposers, suppliers, manufacturers, fabricators and contractors to utilize recycled and recyclable materials when available, appropriate and approved by the City's Engineer. The Contractor shall keep a record of recycled and reused construction material and provide monthly updates to City's construction manager or designee.

37. DESIGN-BUILD SPECIAL REQUIREMENTS

This section clarifies the roles and responsibilities for each entity in the Design-Build Project and explains the definitions of services during the Bidding Phase and onwards. If the terms in this Section 37 of these Instructions to Bidders conflict with any terms of the Contract, the terms of the Contract shall govern.

The City and Design-Builder commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under the Contract.

1. Design-Builder's Services and Responsibilities

Design Services. Design-Builder shall, consistent with applicable state licensing laws, provide design services, including architectural, engineering and other design professional services, required by this Contract. Such design services shall be provided through qualified, licensed design professionals who are either (i) employed by Design-Builder, or (ii) procured by Design-Builder from independent sources. Nothing in the Contract is intended to create any legal or contractual relationship between City and any independent design professional.

Preliminary Services. The City shall provide Design-Builder with City's Project Criteria describing City's program requirements and objectives for the Project. City's Project Criteria shall include City's use, space, price, time, site, performance and expandability requirements. City's Project Criteria may include conceptual documents, design specifications, design performance specifications and other technical materials and requirements prepared by or for City.

If City's Project Criteria have not been developed prior to the execution of the contract, Design-Builder will assist the City in developing City's Project Criteria, with such service deemed to be an Additional Service. If the City has developed City's Project Criteria prior to executing the Contract, Design-Builder shall review and prepare a written evaluation of such criteria, including recommendations to the City for different and innovative approaches to the design and construction of the Project. The parties shall meet to discuss Design-Builder's written

evaluation of City's Project Criteria and agree upon what revisions, if any, should be made to such criteria.

Schematic Design Documents. Design-Builder shall prepare Schematic Design Documents based on City's Project Criteria, as may be revised. The Schematic Design Documents shall include design criteria, drawings, diagrams and specifications setting forth the requirements of the Project. The parties shall meet to discuss the Schematic Design Documents and agree upon what revisions, if any, should be made. Design-Builder shall perform such agreed-upon revisions.

Proposal. Based on City's Project Criteria, the Schematic Design Documents, as each may be revised as described in this Section 37, and any other Basis of Design Documents upon which the parties may agree, Design-Builder shall submit a proposal to City (the "Proposal"), which shall include the following unless the parties mutually agree otherwise:

1. A proposed Contract Price for the design and construction of the Project, which price shall be in the form of a lump sum, broken down by general conditions and specification section categories;
2. A schedule and date of Substantial Completion of the Project upon which the Contract Price for the Project is based;
3. All other information necessary for the parties to enter into Contract; and
4. The time limit for acceptance of the Proposal.

Review of Proposal. Design-Builder and the City shall meet to discuss and review the Proposal. If City has any comments regarding the Proposal or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If Design-Builder finds the revisions acceptable, Design-Builder shall, upon receipt of City's notice, adjust the Proposal.

Completion of the Contract. Design-Builder's services under the Contract shall be deemed completed upon meeting with City to discuss the Proposal and making those revisions to the Proposal, if any, Design-Builder finds acceptable.

Additional Services. Design-Builder shall perform the Additional Services set forth in a separate exhibit to the Contract. The cost for such services shall be as mutually agreed upon by the City and Design-Builder, with the Contract Price for the Contract, being adjusted accordingly.

2. City's Services and Responsibilities

Timely Performance. The City shall throughout the performance of the Contract cooperate with Design-Builder. The City shall perform its responsibilities, obligations and services, including its reviews and approvals of Design-Builder's submissions, in a timely manner so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract.

City's Project Criteria. The City shall provide Design-Builder with City's Project Criteria. If the City desires that Design-Builder assist the City in developing such criteria as an Additional Service (described in this Section 37), the City shall provide Design-Builder with its objectives, limitations and other relevant information regarding the Project.

City Provided Information. The City shall provide, at its own cost and expense, for Design-Builder's information and use, the following, all of which Design-Builder is entitled to rely upon in performing its obligations hereunder:

1. Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

2. Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;
3. Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use or necessary to permit the proper design and construction of the Project;
4. A legal description of the Site;
5. To the extent available, as built and record drawings of any existing structures at the Site; and
6. To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including, but not limited to, Hazardous Conditions, in existence at the Site.

PROPOSAL FORM

NAME OF PROJECT Fire Station No. 2 Replacement and Temporary Station

NAME OF PROPOSER: Barnhart-Reese Construction, Inc.

The City Council
City of Carlsbad
1635 Faraday Ave, Carlsbad, CA 92008

The undersigned hereby declare that we have carefully examined the location of the proposed Work, and have read and examined the Contract Documents, including all plans, specifications, and addenda, if any, for the above-mentioned Project. The undersigned has acknowledged receipt, understanding, and full consideration of ANY and ALL addenda to the Contract Documents via PlanetBids.

We hereby propose to furnish all labor, materials, equipment, tools, transportation, and services, and to discharge all duties and obligations necessary and required to perform and complete the Project, as described and in strict conformity with the Drawings, and these Specifications for TOTAL PROPOSAL PRICE.

- Attached is the required Proposal Bond or Proposal Security in the amount of not less than 10% of the Total Proposal Price.
- Attached is the completed Proposed Subcontractors form.
- Attached is the completed Proposer Information and Experience form.
- Attached is the fully executed Non-collusion Affidavit.
- Attached is the completed Public Works Contractor Registration Certification form.
- Attached is the completed Certificate of Insurance form.
- Attached is the Statement of Redebarment form.
- Attached is the Disclosure of Discipline Record.
- Attached is the Optional Escrow agreement (if applicable).

PROPOSAL FORM

PROPOSAL SCHEDULE

General Conditions / General Requirements / Bonds	\$ 1,100,322
Construction – Mobilization / Demobilization	\$ 100,000
Construction – Mobile Office Trailers / Bathhouse	\$ 50,000
Allowance for SDG&E Fees (per Addendum 4)	\$ 50,000
Temporary Station	
Design, Professional and Consulting Services and Permitting	\$ 120,000
Right-of-Way work	\$ 200,000
Sprung structure and trailer procurement/installation	\$ 500,000
Site fencing, lighting, temporary furnishings and certificate of occupancy	20,000
Restoration of site with new slurry seal and restriping	\$ 95,000
Permanent Station	
Design, Professional and Consulting Services and Permitting	\$ 1,060,000
Bus stop relocation and site fencing	\$ 25,000
Utility connections	\$ 50,000
Hazardous materials abatement and fumigation	\$ 30,000
Demolition and site clearing	\$ 175,000
Survey and elevation monitoring	\$ 25,000
Construction – concrete and masonry	\$ 1,250,000
Construction – building shell and roof framing	\$ 1,732,150
Construction – mechanical/electrical/plumbing /IT infrastructure	\$ 2,400,000
Construction – interior finishes	\$ 1,100,000
Site landscaping and final clean up	\$ 350,000
Coordination with commissioning agent, FF&E, and certificate of occupancy	40,000
Right-of-Way and intersection modifications	\$ 750,000
TOTAL PROPOSED LUMP SUM PRICE	\$ 11,222,472

Proposed changes to mechanical, electrical, plumbing, security, finishes, or other systems and associated lump sum price impacts: None

Proposed ideas to enhance the facility in terms of operation, maintenance, lifecycle cost / total cost of ownership and associated lump sum price impacts: TBD

Other: _____

PROPOSAL FORM

The costs for any Work shown or required in the Contract Documents, but not specifically identified as a line item are to be included in the related line items and no additional compensation shall be due to Contractor for the performance of the Work.

TOTAL PROPOSAL PRICE

The TOTAL PROPOSAL PRICE on Proposal Schedule:

Total Proposal Price in Numbers: \$11,222,472

Total Proposal Price in Written Form: Eleven Million, Two Hundred Twenty Two Thousand, Four Hundred Seventy Two Dollars

In case of discrepancy between the written price, the numerical price, or the price as submitted via PlanetBids, the PlanetBids price shall prevail.

The undersigned agrees that this Proposal Form constitutes a firm offer to the City which cannot be withdrawn for ninety (90) calendar days from and after the Proposal opening, or until a Contract for the Work is fully executed by the City and the lowest responsible proposer, whichever is later.

The Undersigned has carefully checked all of the above figures and understands that the City will not be responsible for any error or omission on the part of the Undersigned in preparing this Proposal.

RECITALS

The successful Proposer hereby agrees to sign the contract and furnish the necessary bonds and certificates of insurance within ten (10) working days after the City issues the Notice of Award to the successful Proposer.

The Undersigned agrees that in case of failure to execute the required Contract with necessary bonds and insurance policies within said time period, the City may pursue to award the contract to the next lowest responsible Proposer and the Proposal Security of the lowest Proposer may be forfeited.

Upon receipt of the signed contract and other required documents, the City will proceed to execute the contract and issue the Notice to Proceed. The time of completion shall commence on the date of the Notice to Proceed, unless otherwise specified. The undersigned agrees to begin the Work within ten (10) working days of the date of the Notice to Proceed, unless otherwise specified.

The Undersigned is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code and agrees to comply with such provisions before commencing the performance of the work of this Contract and continue to comply until the contract is complete.

The Undersigned is aware of the provisions of the Labor Code, Part 7, Chapter 1, Article 2, relative to the general prevailing rate of wages for each craft or type of worker needed to execute the Contract and agrees to comply with its provisions.

The Undersigned Proposer declares, under penalty of perjury, that the undersigned is licensed to do business or act in the capacity of a contractor within the State of California and that this statement is true

PROPOSAL FORM

and correct and has the legal effect of an affidavit. The following are the Proposer's applicable license number(s), with their expiration date(s) and class of license(s):

912130 | Class A, B | expiration date 03/31/2022

If the Proposer is a joint venture, each member of the joint venture must include the required licensing information.

A Proposal submitted to the City by a Contractor who is not licensed as a contractor pursuant to the Business and Professions Code shall be considered nonresponsive and shall be rejected by the City. In all contracts where federal funds are involved, no Proposal submitted shall be invalidated by the failure of the Proposer to be licensed in accordance with California law. However, at the time the contract is awarded, the contractor shall be properly licensed.

The Undersigned Proposer hereby represents as follows:

1. That no Council member, officer agent, or employee of the City of Carlsbad is personally interested, directly or indirectly, in this Contract, or the compensation to be paid hereunder; that no representation, oral or in writing, of the City Council, its officers, agents, or employees has inducted Proposer to enter into this Contract, excepting only those contained in this form of Contract and the papers made a part hereof by its terms; and
2. That this Proposal is made without connection with any person, firm, or corporation making a Proposal for the same work, and is in all respects fair and without collusion or fraud.

Accompanying this Proposal is Proposal Bond Form
(Cash, Certified Check, Proposer's Bond or Cashier's Check) for ten percent (10%) of the amount Proposal, payable to City of Carlsbad as Proposal Security and which is given as a guarantee that the undersigned will enter into a contract and provide the necessary bonds and certificates of insurance if awarded the Contract.

Organized under the laws of the State of California, the Proposer is: (check one)

- an individual
- a partnership
- a corporation

PROPOSAL FORM

IF A CORPORATION, SIGN HERE:

I hereby certify under penalty of perjury under the laws of the State of California that all of the information submitted in connection with this Proposal and all of the representations made herein are true and correct.

1 Name under which business is conducted

Barnhart-Reese Construction, Inc.

2 Signature (given and surname and Title)
(Note: Signature must be made by a someone who can bind the corporation)



Printed/ typed Name

Tamela Barnhart Reese, President

3 Place of Business
(Full Address: street, number, city, state, zip)

10805 Thornmint Road, Suite 200

San Diego, CA 92127

4 Telephone Number

(858) 592-6500

5 Email

TReese@BarnhartReese.com

NOTARIAL ACKNOWLEDGMENT OF EXECUTION BY ALL SIGNATORIES MUST BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

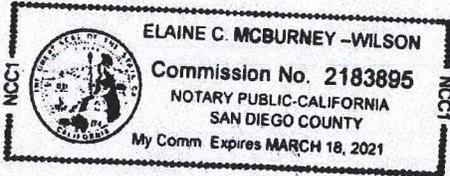
A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of Sacramento }

On July 27, 2020, before me, Elaine C. McBurney-Wilson, Notary Public, personally appeared
Tamela Barnhart Reese

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity(ies), and that by her signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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



WITNESS my hand and official seal.

SIGNATURE Elaine C. McBurney-Wilson

PLACE NOTARY SEAL ABOVE

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

Description of attached document

Proposal Form - Carlsbad
Title or type of document: Fire Station 2 Replacement Document Date: July 27, 2020
Number of Pages: 7 Signer(s) other than named above: None
Capacity(ies) Claimed by Signer(s)

Signer's Name: Tamela Barnhart Reese

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

Signer is representing: Barnhart-Reese Construction, Inc.

PROPOSAL FORM

List below names of president, vice president, secretary and assistant secretary, if a corporation; if a partnership, list names of all general partners, and managing partners:

Corporate Officers:

Tamela Barnhart Reese, President

Nancy Jane Barnhart, Secretary

West Reese, CEO

Douglas E. Barnhart, Chairman

PROPOSAL FORM

Approved as to form this _____ day of _____ 20_____.

Attorney for City of Carlsbad

END OF SECTION

PROPOSAL SECURITY FORM

(Note: This form is required when cash, certified check or cashier's check, accompanies proposal. If Proposal Bond is being provided, use form Proposal Bond)

NAME OF PROJECT: _____

NAME OF PROPOSER: _____

Accompanying this proposal is a Certified / Cashiers check payable to the order of City of Carlsbad, in the sum of _____ dollars (\$ _____), this amount being ten percent (10%) of the total amount of the proposal. The proceeds of this check shall become the property of the City, provided this proposal shall be accepted by the City through action of its legally constituted contracting authorities and the undersigned shall fail to execute a contract and furnish the required Performance, Warranty and Payment Bonds and proof of insurance coverage within the stipulated time; otherwise, the check shall be returned to the undersigned. The proceeds of this check shall also become the property of the City if the undersigned shall withdraw his or her proposal within the period of fifteen (15) days after the date set for the opening thereof, unless otherwise required by law, and notwithstanding the award of the contract to another proposer.

PROPOSER

Required Attachments:

- Certified Check or Cashiers Check

END OF SECTION

PROPOSAL BOND FORM

(Note: This form is not required when other form of Proposer's Security, e.g. cash, certified check or cashier's check, accompanies proposal. In that case, use form Proposal Security)

NAME OF PROJECT: Fire Station No. 2 Replacement and Temporary Station
NAME OF PROPOSER: Barnhart-Reese Construction, Inc.

The makers of this bond are, Barnhart-Reese Construction, Inc., as Principal, and Federal Insurance Company, as Surety and are held and firmly bound unto the City of Carlsbad, hereinafter called the City, in the penal sum of TEN PERCENT (10%) OF THE TOTAL PROPOSAL PRICE of the Principal submitted to City for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the accompanying proposal dated July 29, 2020.

If the Principal does not withdraw its Proposal within the time specified in the Contract Documents; and if the Principal provides all required documents to the City and is awarded the Contract; then this obligation shall be null and void. Otherwise, this bond will remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents shall affect its obligation under this bond, and Surety does hereby waive notice of any such changes.

In the event a lawsuit is brought upon this bond by the City and judgment is recovered, the Surety shall pay all litigation expenses incurred by the City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and expenses.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this 21st day of July, 2020, the name and corporate seal of each corporation.

PRINCIPAL:
Barnhart-Reese Construction, Inc.
(Name of Principal)

Executed by SURETY
this 21st day of July, 2020.

By:

(sign here)
West Reese
(Print name here)
CEO, Barnhart-Reese Const.
(Title and Organization of Signatory)

SURETY:
Federal Insurance Company
(name of Surety)

By:

(sign here)

555 South Flower Street, 3rd Floor
Los Angeles, CA 90071
(address of Surety)
(213) 612-5511
(telephone number of Surety)

PROPOSAL BOND FORM

Tamela Barnhart Reese
(Print name here)

President, Barnhart-Reese Const.
(Title and Organization of Signatory)

By: Heather Saltarelli
(signature of Attorney-in-Fact)

Heather Saltarelli
(printed name of Attorney-in-Fact)

Required Attachments:

- Corporate resolution showing current power of attorney.
- Proper notarial acknowledgment of execution by PRINCIPAL.
- Proper notarial acknowledgment of execution by SURETY.
- President or vice-president and secretary or assistant secretary must sign for corporations. If only one officer signs, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering that officer to bind the corporation.

END OF SECTION

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California)
County of Orange)
On JUL 21 2020 before me, Le-Kim H. Luu, Notary Public,
Date Here Insert Name and Title of the Officer
personally appeared Heather Saltarelli
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer -- Title(s): _____
 Partner -- Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer -- Title(s): _____
 Partner -- Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Power of Attorney

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company

Westchester Fire Insurance Company | ACE American Insurance Company

Know All by These Presents, that FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, PACIFIC INDEMNITY COMPANY, a Wisconsin corporation, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY corporations of the Commonwealth of Pennsylvania, do each hereby constitute and appoint Rhonda C. Abel, Jeri Apodaca, Reece Joel Diaz, Kim Luu, Michael D. Parizino, Rachelle Rheault, Heather Saltarelli and James A. Schaller of Newport Beach, California -----

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY have each executed and attested these presents and affixed their corporate seals on this 25th day of March, 2020.

Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

Stephen M. Haney

Stephen M. Haney, Vice President



STATE OF NEW JERSEY

County of Hunterdon

ss.

On this 25th day of March, 2020 before me, a Notary Public of New Jersey, personally came Dawn M. Chloros and Stephen M. Haney, to me known to be Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros and Stephen M. Haney, being by me duly sworn, severally and each for herself and himself did depose and say that they are Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY and know the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that their signatures as such officers were duly affixed and subscribed by like authority.

Notarial Seal



KATHERINE J. ADELAAR
NOTARY PUBLIC OF NEW JERSEY
No. 2316685
Commission Expires July 16, 2024

Katherine J. Adelaar

Notary Public

CERTIFICATION

Resolutions adopted by the Boards of Directors of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY on August 30, 2016; WESTCHESTER FIRE INSURANCE COMPANY on December 11, 2006; and ACE AMERICAN INSURANCE COMPANY on March 20, 2009:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
- (2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.
- (3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
- (5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Dawn M. Chloros, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY (the "Companies") do hereby certify that

- (i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
- (ii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this

JUL 21 2020



Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

IN THE EVENT YOU WISH TO VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:
Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

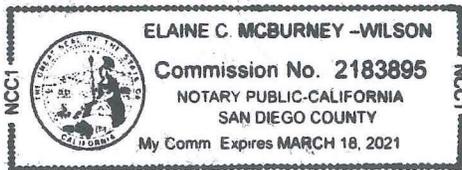
A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of Sacramento }

On July 24, 2020, before me, Elaine C. McBurney-Wilson, Notary Public, personally appeared
West Reese and Tamela Barnhart Reese

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity(ies), and that by their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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



WITNESS my hand and official seal.

SIGNATURE 

PLACE NOTARY SEAL ABOVE

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

Description of attached document

Title or type of document: Proposal Bond Form
Carlsbad Fire Station 2 Replacement Document Date: July 21, 2020
Number of Pages: 2 Signer(s) other than named above: Heather Saltarelli
Capacity(ies) Claimed by Signer(s)

Signer's Name(s): Tamela Barnhart Reese | West Reese

- Corporate Officer – Title(s): President | CEO
 Partner – Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____

Signer is representing: Barnhart-Reese Construction, Inc.

BARNHART REESE CONSTRUCTION, INC.

RESOLUTION OF THE BOARD OF DIRECTORS

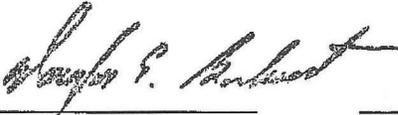
BE IT RESOLVED THAT: Douglas E. Barnhart
West A. Reese
Tamela Barnhart Reese

"Whose signatures appear below, of this corporation are hereby authorized, from time to time, in the name of this corporation to execute Contract Documents as often as may seem advisable to such persons."

"The authority herein conferred shall continue in full force and effect until written notice of its revocation shall be received by said holder of the above described executed prior to any such revocation."

Authorized to Sign: Douglas E. Barnhart, Chairman
West A. Reese
Tamela Barnhart Reese

Directors

 11-2-2013
Douglas E. Barnhart Date

 11-2-2013
West A. Reese Date

 11-2-2013
Tamela Barnhart Reese Date

 11-2-2013
Nancy J. Barnhart Date

PROPOSED SUBCONTRACTORS FORM

NAME OF PROJECT: Fire Station No. 2 Replacement and Temporary Station

NAME OF PROPOSER: Barnhart-Reese Construction, Inc.

In compliance with the Subletting and Subcontracting Fair Practices Act Chapter 4 (commencing at Section 4100), Part 1, Division 2 of the Public Contract Code of the State of California and any amendments thereof, Proposer shall set forth below: (a) the name and the location of the place of business, (b) the California contractor license number, (c) the DIR public works contractor registration number, and (d) the portion of the work which will be done by each subcontractor who will perform work or labor or render service to the Proposer in or about the construction of the work or improvement to be performed under this Contract in an amount in excess of one-half of one percent (0.5%) of the Proposer's Total Proposal Price. Notwithstanding the foregoing, if the work involves the construction of streets and highways, then the Proposer shall list each subcontractor who will perform work or labor or render service to the Proposer in or about the work in an amount in excess of one-half of one percent (0.5%) of the Proposer's Total Proposal Price or \$10,000, whichever is greater. No additional time shall be granted to provide the below requested information.

If a Proposer fails to specify a subcontractor or if a contractor specifies more than one subcontractor for the same portion of work, then the Proposer shall be deemed to have agreed that it is fully qualified to perform that portion of work and that it shall perform that portion itself. No changes in the subcontractors listed work will be made without the prior approval of the Agency.

Attach additional pages as required.



(signature of Proposer)

PROPOSED SUBCONTRACTORS FORM

Name of Subcontractor	Location of Business	CSLB Contractor License No.	DIR Registration Number	Work to be done by Subcontractor	% of Work
Pacific Homes	San Marcos	n/a	n/a	mod temp station	2%
Minshew	Lakeside	677945	1000005496	Steel/deck rebar	4.9% ^{N.R.} 5.6%
Spooners	Poway	672108	1000004870	Casework	1.3%
Byron Epp	Laguna Hills	433078 ^{MI} 433078	1000014101	Four Fold Doors	1%
DA Whitacre	El Cajon	468758	1000008639	Rough Carpentry	1%
RAP ^{en.} Engineering United Paving	San Marcos ^{MI} San Marcos ^{MI} Corona	865828 880956 885828 ^{MI}	1000002968 1000002563	Asphalt Asphalt	.75% ^{MI} .6%
Simmons & Wood	Lakeside	272910	1000000488	Paint	.75%

PROPOSED SUBCONTRACTORS FORM

Name of Subcontractor	Location of Business	CSLB Contractor License No.	DIR Registration Number	Work to be done by Subcontractor	% of Work
Shasta Landscaping	1340 Descanso Ave. San Marcos, CA 92069	433293	100000 1811	Landscaping	.86%
Janus	1226 Keystone Way Vista, CA 92081	572682	1000000 894	Hazmat	.74%
Whillock BTS Equip.	La Mesa 13465 Camino Canada, El Cajon, CA 92021	572217 901111	1767 100000 23815	Demo, grading Demo, hazmat	1.47%
Perry Electric HMS Construction	Santee Vista, CA	747931 765590	1000012332 1000000 923	Signals Signals	4.9% 5.9%
Velocity Glazing	Escondido, CA	1016618	10000 41885	Windows	1.7%
Niche Builders	Irvine, CA	807348		Sprung Structure	3.8% 2.5%
Pavers Plus	Downey, CA	934121	100000 2585	Pavers	.57%

PROPOSED SUBCONTRACTORS FORM

Name of Subcontractor	Location of Business	CSLB Contractor License No.	DIR Registration Number	Work to be done by Subcontractor	% of Work
Berg Electric	Los Angeles Carlsbad	85046	1000000611 1000000 328	Fire Station Alerting/Comms	1.2%
APS Purification Systems	San Diego	621360	1000030031	Plymount System	1.3%
WR Robbins	Oceanside	890971	1000004711	HVAC	3.2%
Cacy Electric	El Cajon	780158	1000001728	Electric/Solar	8%
Fence Corp	Riverside	886544	1000000850	Fence	1.5%

PROPOSED SUBCONTRACTORS FORM

Name of Subcontractor	Location of Business	CSLB Contractor License No.	DIR Registration Number	Work to be done by Subcontractor	% of Work
Standard Drywall	San Diego	444328	100000269	Drywall Framing	4.5%
EL Hobbs	El Cajon	777073	1000004428	Plaster	3%
New Dimension Masonry	San Diego	630794	1000001513	Concrete Tile Veneer Masonry	2.75%
Construction Design Hardware Hardware	Pomona Los Angeles	515824 842952	1000000757 1000008483	Doors / Frames Doors & Frames	1.4% 1.86%
Christian Bros	Lakeside	939936	1000008042 1000010042	Tile, Flooring.	1.38%
Atlas Sheet Metal	Irvine	742488	1000012265	Sheet Metal	.92
Paul J Construction Pipe Trades	Jamez San Diego	865017 998580	1000053348 1000011653	Plumbing Plumbing / Site Utilities	2.19 3.65%

PROPOSER INFORMATION FORM

NAME OF PROJECT: Fire Station No. 2 Replacement and Temporary Station

NAME OF PROPOSER: Barnhart-Reese Construction, Inc.

1. INFORMATION ABOUT PROPOSER

(Indicate not applicable ("N/A") where appropriate.)

NOTE: Where Proposer is a joint venture, pages shall be duplicated and information provided for all parties to the joint venture.

1. Name of Proposer: Barnhart-Reese Construction, Inc.

2. Type, if Entity: S Corporation

3. Proposer Address: 10805 Thornmint Road, #200, San Diego, CA 92127

a. Facsimile Number (858) 592-1410

b. Telephone Number (858) 592-6500

c. Email Address WReese@BarnhartReese.com

4. How many years has Proposer's organization been in business as a Contractor? 12 years

5. How many years has Proposer's organization been in business under its present name?

9 years

a. Under what other or former names has Proposer's organization operated?

J. Reese Construction, Inc. – License #912130 (2007 – 2011)

Douglas E. Barnhart, Inc. / Barnhart, Inc. – License #439407 (1983 – 2007)

6. If Proposer's organization is a corporation, answer the following:

a. Date of Incorporation: August 22, 2007

b. State of Incorporation: California

c. President's Name: Tamela Barnhart Reese

d. Vice-President's Name(s): None

PROPOSER INFORMATION FORM

e. Secretary's Name: Nancy Jane Barnhart

f. Treasurer's Name: Tamela Barnhart Reese

7. If an individual or a partnership, answer the following:

a. Date of Organization: N/A

b. Name and address of all partners (state whether general or limited partnership):

N/A

8. If other than a corporation or partnership, describe organization and name principals:

N/A

9. List other states in which Proposer's organization is legally qualified to do business.

None

10. What type of work does the Proposer normally perform with its own forces?

Barnhart-Reese has concrete crews, as well as staff laborers and drywall teams for drywall hanging, acoustical ceiling and light cage framing work. The laborer staff is capable of door and hardware installation, accessory installation, installation of any barricade apparatuses required to shield the public and staff from the construction area, and perform daily site cleaning.

11. Has Proposer ever failed to complete any work awarded to it? If so, note when, where, and why:

PROPOSER INFORMATION FORM

No.

12. Within the last five years, has any officer or partner of Proposer's organization ever been an officer or partner of another organization when it failed to complete a contract? If so, attach a separate sheet of explanation:

No.

13. List Trade References:

Tom Brown, Sierra Pacific West, 2125 La Mirada Drive, Vista, CA 92081 (760) 599-0755

Sam Passanisi, Neal Electric, 13250 Kirkham Way, Poway, CA 92064, (858) 531-2525

Mr. Bob Caya, Standard Drywall, 9902 Channel Rd., Lakeside, CA 92040, (619) 443-7034

14. List Bank References (Bank and Branch Address):

US Bank / Mr. Gordon Boerner, Senior VP & Private Banking Manager

4747 Executive Drive, Suite 1300, San Diego, CA 92121

(858) 334-0756

15. Name of Bonding Company and Name and Address of Agent:

Chubb Group of Insurance Companies/Federal

555 S. Flower Street, 3rd Floor, Los Angeles, CA 90071

Mike Parizino, 1301 Dove Street, #200, Newport Beach, CA 92660

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PROPOSER INFORMATION FORM

2. PERSONNEL ASSIGNMENT

The Proposer shall identify the key personnel to be assigned to this project in a management, construction supervision or engineering capacity. Add additional pages to identify ALL Key personnel.

Proposer agrees that personnel named in this Proposal will remain on this Project until completion of all relevant Work, unless substituted by personnel of equivalent experience and qualifications approved in advance by the City.

Job Title Name % time on this project	Specialized Education	Years of construction experience relevant to the project	Summarize the experience
Executive-in-Charge Douglas E. Barnhart 5%	BS, Civil Engineering Texas Tech University	46	Extensive experience in building fire stations and critical infrastructure projects.
Project Principal West Reese 5%	Bachelor of Arts, University of California, San Diego	15	Principal for many D-B projects & fire stations including Bayside Fire Station #2
Sr. Project Manager Chuck McArthur 75%	BS, Construction Eng. & Technology, Louisiana Tech University	29	Sr. PM for numerous D-B projects for civic & military in San Diego County.
General Superintendent Shawn Fisher 100%	Maraine Valley CC and Certified Construction Manager (CCM)	23	Superintendent for award-winning Bayside Fire Station #2 for City of San Diego.
Project Engineer Shane Liberty 100%	Turner School of Construction Management	11	Project Engineer for Bayside Fire Station #2 & Carlsbad's Pine Ave Community Center
Architect PIC Mike Asaro 20%	BS, Design Arizona State University	33	30+ architect experience including D-B fire station experience with BRC
Architect Project Mgr Brad Kerr 80%	Bachelor of Architecture University of Cincinnati	19	2 decades of architectural experience including project management of D-B fire station with BRC.

3. VERIFICATION AND EXECUTION

These Proposal Forms shall be executed only by a duly authorized official of the Proposer:
I declare under penalty of perjury under the laws of the State of California that the foregoing information is true and correct:

Name of Proposer _____ See signature on next page

Signature _____

Name _____

Title _____

Date _____

END OF SECTION

PROPOSER INFORMATION FORM

2. PERSONNEL ASSIGNMENT

The Proposer shall identify the key personnel to be assigned to this project in a management, construction supervision or engineering capacity. Add additional pages to identify ALL Key personnel.

Proposer agrees that personnel named in this Proposal will remain on this Project until completion of all relevant Work, unless substituted by personnel of equivalent experience and qualifications approved in advance by the City.

Job Title Name % time on this project	Specialized Education	Years of construction experience relevant to the project	Summarize the experience
Dir. of Interior Design Adel Smith-Chapman 40%	Bachelor of Arts, Environmental & Interior Design, SDSU	40	40+ years of Interior Design experience including D-B fire station with BRC
Civil Sr. Project Mgr Nolan Huelsman 5%	Bachelor of Science, Civil Engineering SDSU	15	Experienced Civil Engineer; many Public Sector projects including fire stations.
Structural PIC Mehdi Rashti 15%	Bachelor of Science, Civil Engineering, Univ. of Sussex	41	40+ years of experience teaming w/BRC & Delawie including fire stations.
Structural Eng of Record Farzad Hedari 75%	Master of Science, Structural Eng., Polytechnic Univ.	25	Extensive experience as EOR with project team including fire station & other D-B projects.
Structural QC Manager Hung Nguyen 10%	Bachelor of Science, Civil Engineering SDSU	24	Extensive experience providing QC mgmt. for team including fire station & D-B projects.
Electrical Engineer Anton Nathanson 50%	Bachelor of Science, Civil Engineering, Texas Tech University	15	Experience on 8 fire station projects in CA including Encinitas Fire Station #4.
Mechanical PIC Chris Deck 33%	BSME, Mechanical Engineering, SDSU	29	Decades of public works exp. including 150+ projects & many years' experience with BRC/Delawie team.

3. VERIFICATION AND EXECUTION

These Proposal Forms shall be executed only by a duly authorized official of the Proposer:
I declare under penalty of perjury under the laws of the State of California that the foregoing
information is true and correct:

Name of Proposer _____ See signature on next page

Signature _____

Name _____

Title _____

Date _____

END OF SECTION

PROPOSER INFORMATION FORM

2. PERSONNEL ASSIGNMENT

The Proposer shall identify the key personnel to be assigned to this project in a management, construction supervision or engineering capacity. Add additional pages to identify ALL Key personnel.

Proposer agrees that personnel named in this Proposal will remain on this Project until completion of all relevant Work, unless substituted by personnel of equivalent experience and qualifications approved in advance by the City.

Job Title Name % time on this project	Specialized Education	Years of construction experience relevant to the project	Summarize the experience
Sr. Electrical PM/Design Kevin Sheppard 30%	Universal Technical Inst. Assoc. Degree in Circuit Board Design Architecture	19	2 decades of electrical design & project mgmt. experience including fire stations.
Landscape Architect Stephanie Hatton 15%	Master of Landscape Architecture, University of AZ, Tuscon	25	Extensive experience with public sector design and D-B project experience.

3. VERIFICATION AND EXECUTION

These Proposal Forms shall be executed only by a duly authorized official of the Proposer:
I declare under penalty of perjury under the laws of the State of California that the foregoing
information is true and correct:

Name of Proposer Barnhart-Reese Construction, Inc.

Signature 

Name West Reese

Title CEO

Date July 29, 2020

END OF SECTION

CERTIFICATE OF INSURANCE FORM

NAME OF PROJECT: Fire Station No. 2 Replacement and Temporary Station

NAME OF PROPOSER: Barnhart-Reese Construction, Inc.

Proposer must **attach either** of the following to this page.

- Certificates of insurance showing conformance with the requirements herein for each of:
- a. Comprehensive General Liability
 - b. Automobile Liability
 - c. Workers Compensation
 - d. Employer's Liability
- Statement with an insurance carrier's notarized signature stating that the carrier can, and upon payment of fees and/or premiums by the Proposer, will issue to the Proposer Policies of Insurance for Comprehensive General Liability, Automobile Liability, Workers Compensation and Employer's Liability in conformance with the requirements herein and Certificates of insurance to the Agency showing conformance with the requirements herein.

END OF SECTION



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
9/10/2020

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 have ADDITIONAL INSURED provisions or 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 Alliant Insurance Services, Inc. 1301 Dove Street, Suite 200 Newport Beach CA 92660-2436	CONTACT NAME: Amanda Vezzani PHONE (A/C No, Ext): 949-660-5958 E-MAIL ADDRESS: avezzani@alliant.com	FAX (A/C No):
	INSURER(S) AFFORDING COVERAGE	
INSURED Barnhart-Reese Construction, Inc. 10805 Thornmint Road #200 San Diego CA 92127	INSURER A : Executive Risk Indemnity Inc NAIC # 35181	
	INSURER B : Federal Insurance Company 20281	
	INSURER C : Travelers Property Casualty Co of Amer 25674	
	INSURER D :	
	INSURER E :	
INSURER F :		

COVERAGES **CERTIFICATE NUMBER:** 235109916 **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	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	Y	Y	54303191	8/1/2020	8/1/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPIOP AGG \$ 2,000,000 Deductible \$ 5,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	54303190	8/1/2020	8/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED \$ RETENTION \$			ZUP61M8248420NF	8/1/2020	8/1/2021	EACH OCCURRENCE \$ 8,000,000 AGGREGATE \$ 8,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y	54303192	8/1/2020	8/1/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: Fire Station #2
The City of Carlsbad, its officials, employees and volunteers are named as additional insured per the attached endorsements. Waiver of subrogation applies per the attached endorsements. Excess Liability policy follows form to underlying general liability and auto policies.

CERTIFICATE HOLDER

CANCELLATION 30

City of Carlsbad Public Works Contract Administration 1635 Faraday Avenue CA 92008	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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EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)
9/10/2020

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

AGENCY Alliant Insurance Services, Inc. 1301 Dove St Ste 200 Newport Beach, CA 92660		PHONE (A/C, No, Ext):	COMPANY	
FAX (A/C, No): 949-756-2713		E-MAIL ADDRESS:	License#: 0C36861	
CODE:	SUB CODE:			
AGENCY CUSTOMER ID #:		LOAN NUMBER		POLICY NUMBER CSN0009761
INSURED Barnhart-Reese Construction 10805 Thornmint Rd Ste200 San Diego, CA 92127		EFFECTIVE DATE 10/01/2020	EXPIRATION DATE 04/04/2022	<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED
THIS REPLACES PRIOR EVIDENCE DATED:				

PROPERTY INFORMATION

LOCATION/DESCRIPTION
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.

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 EVIDENCE OF PROPERTY INSURANCE 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.

COVERAGE INFORMATION	PERILS INSURED	BASIC	BROAD	SPECIAL	AMOUNT OF INSURANCE	DEDUCTIBLE
Builder's Risk					\$11,222,472	\$10,000

REMARKS (Including Special Conditions)
Re: Fire Station No. 2 Replacement - 1906 Arenal Road, Carlsbad, CA 92009

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

NAME AND ADDRESS City of Carlsbad Public Works Contract Administration 1635 Faraday Avenue, CA 92008	ADDITIONAL INSURED	LENDER'S LOSS PAYABLE	<input type="checkbox"/> LOSS PAYEE
	MORTGAGEE		
	LOAN #		
AUTHORIZED REPRESENTATIVE 			

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
Where required by written contract	Where required by written contract
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
Where required by written contract	Where required by written contract
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED –
MORTGAGEE, ASSIGNEE OR RECEIVER**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Person(s) Or Organization(s)	Designation Of Premises
Where required by written contract	Where required by written contract
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of the premises by you and shown in the Schedule.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
 2. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY INSURANCE FOR SCHEDULED ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Additional Insured:

As required by written contract

Location Of Covered Operations:

As required by written contract

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

With respect only to the Additional Insured and at the Location Of Covered Operations shown in the Schedule, the following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, Paragraph 4. Other Insurance** and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to the Additional Insured with respect to the Location Of Covered Operations shown in the Schedule under this policy provided that:

- (1) The Additional Insured is a named insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the Additional Insured.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**DESIGNATED CONSTRUCTION PROJECT(S)
GENERAL AGGREGATE LIMIT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

<p>Designated Construction Project(s): where required by written contract</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>

- A.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage **A**, and for all medical expenses caused by accidents under Section I – Coverage **C**, which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
 2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage **C** regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
 3. Any payments made under Coverage **A** for damages or under Coverage **C** for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
 4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.

- B.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage **A**, and for all medical expenses caused by accidents under Section I – Coverage **C**, which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. Any payments made under Coverage **A** for damages or under Coverage **C** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
 2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
- C.** When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.
- D.** If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E.** The provisions of Section III – Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. 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.

8. Transfer Or Waiver Of Rights Of Recovery Against Others To Us

We will waive the right of recovery we would otherwise have had against another person or organization, for loss to which this insurance applies, provided the insured has waived their rights of recovery against such person or organization in a contract or agreement that is executed before such loss.

To the extent that the insured's rights to recover all or part of any payment made under this Coverage Part have not been waived, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

This condition does not apply to Coverage C.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

- 1. "Advertisement" means an electronic, oral, written or other notice, about goods, products or services, designed for the specific purpose of attracting the general public or a specific market segment to use such goods, products or services.

"Advertisement" does not include any e-mail address, Internet domain name or other electronic address or metalanguage.

- 2. "Advertising injury" means injury, other than "bodily injury", "property damage" or "personal injury", sustained by a person or organization and caused by an offense of infringing, in that particular part of your "advertisement" about your goods, products or services, upon their:

- a. Copyrighted "advertisement"; or
- b. Registered collective mark, registered service mark or other registered trademarked name, slogan, symbol or title.

- 3. "Asbestos" means asbestos in any form, including its presence or use in any alloy, by-product, compound or other material or waste. Waste includes materials to be recycled, reconditioned or reclaimed.

- 4. "Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

- 5. "Bodily injury" means physical:

- a. Injury;
- b. Sickness; or
- c. Disease;

sustained by a person, including resulting death, humiliation, mental anguish, mental injury or shock at any time. All such loss shall be deemed to occur at the time of the physical injury, sickness or disease that caused it.

- 6. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or
- c. All other parts of the world if the injury or damage arises out of:

- (1) Goods or products made or sold by you in the territory described in Paragraph a. above;
- (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or
- (3) "Advertising injury" or "personal injury" offenses that take place through the Internet or similar electronic means of communication

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**DESIGNATED CONSTRUCTION PROJECT(S)
GENERAL AGGREGATE LIMIT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

<p>Designated Construction Project(s): where required by written contract</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>

- A.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A, and for all medical expenses caused by accidents under Section I – Coverage C, which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
 2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage C regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
 3. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
 4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.

- B.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A, and for all medical expenses caused by accidents under Section I – Coverage C, which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
 2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
- C.** When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.
- D.** If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E.** The provisions of Section III – Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL AUTOMOBILE BROAD FORM ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

This endorsement modifies the Business Auto Coverage Form.

1. EXTENDED CANCELLATION CONDITION

Paragraph A.2.b. - CANCELLATION - of the COMMON POLICY CONDITIONS form IL 00 17 is deleted and replaced with the following:

- b. 60 days before the effective date of cancellation if we cancel for any other reason.

2. BROAD FORM INSURED

A. Subsidiaries and Newly Acquired or Formed Organizations As Insureds

The Named Insured shown in the Declarations is amended to include:

- 1. Any legally incorporated subsidiary in which you own more than 50% of the voting stock on the effective date of the Coverage Form. However, the Named Insured does not include any subsidiary that is an "insured" under any other automobile policy or would be an "insured" under such a policy but for its termination or the exhaustion of its Limit of Insurance.
2. Any organization that is acquired or formed by you and over which you maintain majority ownership. However, the Named Insured does not include any newly formed or acquired organization:
(a) That is an "insured" under any other automobile policy;
(b) That has exhausted its Limit of Insurance under any other policy; or
(c) 180 days or more after its acquisition or formation by you, unless you have given us written notice of the acquisition or formation.

Coverage does not apply to "bodily injury" or "property damage" that results from an "accident" that occurred before you formed or acquired the organization.

B. Employees as Insureds

Paragraph A.1. - WHO IS AN INSURED - of SECTION II - LIABILITY COVERAGE is amended to add the following:

- d. Any "employee" of yours while using a covered "auto" you don't own, hire or

borrow in your business or your personal affairs.

C. Lessors as Insureds

Paragraph A.1. - WHO IS AN INSURED - of SECTION II - LIABILITY COVERAGE is amended to add the following:

- e. The lessor of a covered "auto" while the "auto" is leased to you under a written agreement if:
(1) The agreement requires you to provide direct primary insurance for the lessor; and
(2) The "auto" is leased without a driver. Such leased "auto" will be considered a covered "auto" you own and not a covered "auto" you hire.
However, the lessor is an "insured" only for "bodily injury" or "property damage" resulting from the acts or omissions by:
1. You;
2. Any of your "employees" or agents; or
3. Any person, except the lessor or any "employee" or agent of the lessor, operating an "auto" with the permission of any of 1. and/or 2. above.

D. Persons And Organizations As Insureds Under A Written Insured Contract

Paragraph A.1 - WHO IS AN INSURED - of SECTION II - LIABILITY COVERAGE is amended to add the following:

- f. Any person or organization with respect to the operation, maintenance or use of a covered "auto", provided that you and such person or organization have agreed under an express provision in a written "insured contract", written agreement or a written permit issued to you by a governmental or public authority to add such person or organization to this policy as an "insured".
However, such person or organization is an "insured" only:

- (1) with respect to the operation, maintenance or use of a covered "auto"; and
- (2) for "bodily injury" or "property damage" caused by an "accident" which takes place after:
 - (a) You executed the "insured contract" or written agreement; or
 - (b) The permit has been issued to you.

3. FELLOW EMPLOYEE COVERAGE

EXCLUSION B.5. - FELLOW EMPLOYEE - of SECTION II - LIABILITY COVERAGE does not apply.

4. PHYSICAL DAMAGE - ADDITIONAL TEMPORARY TRANSPORTATION EXPENSE COVERAGE

Paragraph A.4.a. - TRANSPORTATION EXPENSES - of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to provide a limit of \$50 per day for temporary transportation expense, subject to a maximum limit of \$1,000.

5. AUTO LOAN/LEASE GAP COVERAGE

Paragraph A. 4. - COVERAGE EXTENSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to add the following:

c. Unpaid Loan or Lease Amounts

In the event of a total "loss" to a covered "auto", we will pay any unpaid amount due on the loan or lease for a covered "auto" minus:

1. The amount paid under the Physical Damage Coverage Section of the policy; and
2. Any:
 - a. Overdue loan/lease payments at the time of the "loss";
 - b. Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
 - c. Security deposits not returned by the lessor;
 - d. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and
 - e. Carry-over balances from previous loans or leases.

We will pay for any unpaid amount due on the loan or lease if caused by:

1. Other than Collision Coverage only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";
2. Specified Causes of Loss Coverage only if the Declarations indicate that Specified Causes of Loss Coverage is provided for any covered "auto"; or
3. Collision Coverage only if the Declarations indicate that Collision Coverage is provided for any covered "auto".

6. RENTAL AGENCY EXPENSE

Paragraph A. 4. - COVERAGE EXTENSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to add the following:

d. Rental Expense

We will pay the following expenses that you or any of your "employees" are legally obligated to pay because of a written contract or agreement entered into for use of a rental vehicle in the conduct of your business:

MAXIMUM WE WILL PAY FOR ANY ONE CONTRACT OR AGREEMENT:

1. \$2,500 for loss of income incurred by the rental agency during the period of time that vehicle is out of use because of actual damage to, or "loss" of, that vehicle, including income lost due to absence of that vehicle for use as a replacement;
2. \$2,500 for decrease in trade-in value of the rental vehicle because of actual damage to that vehicle arising out of a covered "loss"; and
3. \$2,500 for administrative expenses incurred by the rental agency, as stated in the contract or agreement.
4. \$7,500 maximum total amount for paragraphs 1., 2. and 3. combined.

7. EXTRA EXPENSE - BROADENED COVERAGE

Paragraph A.4. - COVERAGE EXTENSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE is amended to add the following:

e. Recovery Expense

We will pay for the expense of returning a stolen covered "auto" to you.

8. AIRBAG COVERAGE

Paragraph B.3.a. - EXCLUSIONS - of SECTION III - PHYSICAL DAMAGE COVERAGE does not apply to the accidental or unintended discharge of an airbag. Coverage is excess over any other collectible insurance or warranty specifically designed to provide this coverage.

9. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT - BROADENED COVERAGE

Paragraph C.1.b. - LIMIT OF INSURANCE - of SECTION III - PHYSICAL DAMAGE is deleted and replaced with the following:

- b. \$2,000 is the most we will pay for "loss" in any one "accident" to all electronic equipment that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:
 - (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
 - (2) Removable from a permanently installed housing unit as described in Paragraph 2.a. above or is an integral part of that equipment; or
 - (3) An integral part of such equipment.

10. GLASS REPAIR - WAIVER OF DEDUCTIBLE

Under Paragraph D. - DEDUCTIBLE – of SECTION III – PHYSICAL DAMAGE COVERAGE the following is added:

No deductible applies to glass damage if the glass is repaired rather than replaced.

11. TWO OR MORE DEDUCTIBLES

Paragraph D.- DEDUCTIBLE – of SECTION III – PHYSICAL DAMAGE COVERAGE is amended to add the following:

If this Coverage Form and any other Coverage Form or policy issued to you by us that is not an automobile policy or Coverage Form applies to the same "accident", the following applies:

1. If the deductible under this Business Auto Coverage Form is the smaller (or smallest) deductible, it will be waived; or
2. If the deductible under this Business Auto Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

12. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

Paragraph A.2.a. - DUTIES IN THE EVENT OF AN ACCIDENT, CLAIM, SUIT OR LOSS of SECTION IV - BUSINESS AUTO CONDITIONS is deleted and replaced with the following:

- a. In the event of "accident", claim, "suit" or "loss", you must promptly notify us when the "accident" is known to:
 - (1) You or your authorized representative, if you are an individual;
 - (2) A partner, or any authorized representative, if you are a partnership;
 - (3) A member, if you are a limited liability company; or
 - (4) An executive officer, insurance manager, or authorized representative, if you are an organization other than a partnership or limited liability company.

Knowledge of an "accident", claim, "suit" or "loss" by other persons does not imply that the persons listed above have such knowledge. Notice to us should include:

- (1) How, when and where the "accident" or "loss" occurred;
- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons or witnesses.

13. WAIVER OF SUBROGATION

Paragraph A.5. - TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US of SECTION IV – BUSINESS AUTO CONDITIONS is deleted and replaced with the following:

5. We will waive the right of recovery we would otherwise have against another person or organization for "loss" to which this insurance applies, provided the "insured" has waived

their rights of recovery against such person or organization under a contract or agreement that is entered into before such "loss".

To the extent that the "insured's" rights to recover damages for all or part of any payment made under this insurance has not been waived, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them. At our request, the insured will bring suit or transfer those rights to us and help us enforce them.

14. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

Paragraph B.2. – CONCEALMENT, MISREPRESENTATION or FRAUD of SECTION IV – BUSINESS AUTO CONDITIONS - is deleted and replaced with the following:

If you unintentionally fail to disclose any hazards existing at the inception date of your policy, we will not void coverage under this Coverage Form because of such failure.

15. AUTOS RENTED BY EMPLOYEES

Paragraph B.5. - OTHER INSURANCE of SECTION IV – BUSINESS AUTO CONDITIONS - is amended to add the following:

- e. Any "auto" hired or rented by your "employee" on your behalf and at your direction will be considered an "auto" you hire. If an "employee's" personal insurance also applies on an excess basis to a covered "auto" hired or rented by your "employee" on your behalf and at your direction, this insurance will be primary to the "employee's" personal insurance.

16. HIRED AUTO – COVERAGE TERRITORY

Paragraph B.7.b.(5). - POLICY PERIOD, COVERAGE TERRITORY of SECTION IV – BUSINESS AUTO CONDITIONS is deleted and replaced with the following:

- (5) A covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 45 days or less; and

17. RESULTANT MENTAL ANGUISH COVERAGE

Paragraph C. of - SECTION V – DEFINITIONS is deleted and replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by any person, including mental anguish or death as a result of the "bodily injury" sustained by that person.

4. Loss Payment – Physical Damage Coverages

At our option, we may:

- a. Pay for, repair or replace damaged or stolen property;
- b. Return the stolen property, at our expense. We will pay for any damage that results to the "auto" from the theft; or
- c. Take all or any part of the damaged or stolen property at an agreed or appraised value.

If we pay for the "loss", our payment will include the applicable sales tax for the damaged or stolen property.

5. Transfer Of Rights Of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

B. General Conditions

1. Bankruptcy

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of any obligations under this Coverage Form.

2. Concealment, Misrepresentation Or Fraud

This Coverage Form is void in any case of fraud by you at any time as it relates to this Coverage Form. It is also void if you or any other "insured", at any time, intentionally conceals or misrepresents a material fact concerning:

- a. This Coverage Form;
- b. The covered "auto";
- c. Your interest in the covered "auto"; or
- d. A claim under this Coverage Form.

3. Liberalization

If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

4. No Benefit To Bailee – Physical Damage Coverages

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this Coverage Form.

5. Other Insurance

a. For any covered "auto" you own, this Coverage Form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Covered Autos Liability Coverage this Coverage Form provides for the "trailer" is:

- (1) Excess while it is connected to a motor vehicle you do not own; or
- (2) Primary while it is connected to a covered "auto" you own.

b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Covered Autos Liability Coverage is primary for any liability assumed under an "insured contract".

d. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

6. Premium Audit

a. The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.

b. If this policy is issued for more than one year, the premium for this Coverage Form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY

WC 99 03 04 (Ed. 7- 08)

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT— CALIFORNIA

This endorsement changes the policy to which it is attached effective on the inception date of the policy unless a different date is indicated below.

(The following "attaching clause" need to be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective on 8/1/2020 at 12:01 A. M. standard time, forms a part of
(DATE)

Policy No. 54303192 of the Federal Insurance Comapny
(NAME OF INSURANCE COMPANY)

issued to Barnhart-Reese Construction, Inc.

Endorsement No.



Authorized Representative

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 the person or organization named in the Schedule. The additional premium for the blanket waiver offered by this endorsement shall be 0.00 % of total California premium.

Schedule

Person or Organization

Job Description

Where required by written contract

Where required by written contract

FOR THE BOARD OF DIRECTORS OF THE UNIVERSITY OF CALIFORNIA

RESOLUTION NO. 1000

APPROVED BY THE BOARD OF DIRECTORS OF THE UNIVERSITY OF CALIFORNIA

IT IS THE POLICY OF THE UNIVERSITY OF CALIFORNIA TO SUPPORT AND ENHANCE THE RESEARCH AND SCHOLARSHIP OF ITS FACULTY AND STUDENTS.

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APPROVED BY THE BOARD OF DIRECTORS OF THE UNIVERSITY OF CALIFORNIA

DATE: _____

BY: _____

IT IS THE POLICY OF THE UNIVERSITY OF CALIFORNIA TO SUPPORT AND ENHANCE THE RESEARCH AND SCHOLARSHIP OF ITS FACULTY AND STUDENTS.

APPROVED BY THE BOARD OF DIRECTORS OF THE UNIVERSITY OF CALIFORNIA

DATE: _____

APPROVED BY THE BOARD OF DIRECTORS OF THE UNIVERSITY OF CALIFORNIA

DATE: _____

Endorsement No. 8

Effective Date: 05/01/2020 @12:01 a.m. Standard Time at the address of the **Named Insured**

Policy Number: CM004315-01-2020

Insured Name: Barnhart-Reese Construction, Inc.

Issuing Company: AXIS Surplus Insurance Company

Additional (Return) Premium: \$0

If the Endorsement Effective Date is blank, then the effective date of this Endorsement is the Inception Date of the Policy.

ADDITIONAL INSURED (PRIMARY/NON-CONTRIBUTORY) ENDORSEMENT

THIS ENDORSEMENT MODIFIES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies the:

C-PRO PLUS - CONTRACTOR'S PROFESSIONAL AND POLLUTION LIABILITY POLICY WITH SUBGAP INDEMNITY COVERAGE

In consideration of the premium charged, it is agreed that:

The persons or organizations listed below shall be considered an additional **Insureds** under this Policy, but solely as set forth in Section III. DEFINITIONS, Paragraph N.5:

Schedule of Additional Insureds:

As required by written contract in effect prior to any related **Claim**

It is further agreed that for the additional **Insureds** listed in the Schedule of Additional **Insureds** above, Section V. GENERAL CONDITIONS AND LIMITATIONS, Paragraph O. Other Insurance is amended by adding the following:

Solely as respects Coverage B – Contractor's Pollution Liability, this insurance is primary and non-contributory where required by a written contract or written agreement executed prior to the commencement of any associated **Pollution Condition** giving rise to a **Claim** made against an **Insured** designated in the Schedule of Additional **Insureds**. When this insurance is primary and non-contributory, our obligations are not affected by any other insurance carried directly by such additional **Insured** whether it is stated to be primary or excess coverage.

However, regardless of the provisions above, we will not extend any insurance coverage to such an additional **Insured** person or organization:

- (1) That is not available to you under the terms of this Policy; or
- (2) That is broader than required by the written contract or written agreement referred to above.

Nothing in this endorsement shall operate to increase the Limits of Liability of this Policy as shown on the DECLARATIONS.

All other terms and conditions of the Policy shall apply and remain unchanged.

R. Severability

Misrepresentations, concealment, breach of condition or violation of any duty under this Policy by one **Insured** shall not prejudice the interest or coverage of another **Insured** under this Policy.

S. Subrogation and Recovery

In the event of any payment under this Policy, we will be subrogated to all of your rights of recovery therefore against any person or organization, and you shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. You shall do nothing to prejudice such rights.

We will have no rights of subrogation against any **Insured** hereunder, or against your clients if prior to the **Claim**, a waiver of subrogation was so required and accepted under a specific written contractual undertaking by you for such client.

Any recoveries shall be applied first to us up to the amount we have paid for **Damages, Loss and Claim Expense**; then, to you as recovery of Self Insured Retention amounts paid as **Damages, Loss and Claim Expense**.

END OF SECTION

STATEMENT OF DEBARMENT

NAME OF PROJECT: Fire Station No. 2 Replacement and Temporary Station

NAME OF PROPOSER: Barnhart-Reese Construction, Inc.

1. Have you or any of your subcontractors ever been debarred as an irresponsible proposer by another jurisdiction in the State of California?
 YES
 NO
2. If yes, what was/were the name(s) of the agency(ies) and what was/were the period(s) of debarment(s)? Attach additional copies of this page to accommodate more than two debarments.

<u>party debarred</u>	<u>party debarred</u>
<u>agency</u>	<u>agency</u>
<u>period of debarment</u>	<u>period of debarment</u>

BY CONTRACTOR:

By: *West Reese*
(sign here)

West Reese, CEO
(print name/title)

Page 1 of 1 pages of this Redebarment form

END OF SECTION

DISCLOSURE OF DISCIPLINE RECORD

NAME OF PROJECT: Fire Station No. 2 Replacement and Temporary Station

NAME OF PROPOSER: Barnhart-Reese Construction, Inc.

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License board, P.O. Box 26000, Sacramento, California 95826.

1. Have you ever had your contractor's license suspended or revoked by the California Contractors' State license Board two or more times within an eight year period?

YES

NO

2. Has the suspension or revocation of your contractor's license ever been stayed?

YES

NO

3. Have any subcontractors that you propose to perform any portion of the Work ever had their contractor's license suspended or revoked by the California Contractors' State license Board two or more times within an eight year period?

YES

NO

4. Has the suspension or revocation of the license of any subcontractor's that you propose to perform any portion of the Work ever been stayed?

YES

NO

Page 1 of 2 pages of this Disclosure of Discipline form

DISCLOSURE OF DISCIPLINE RECORD

5. If the answer to either of 1. or 3. above is yes fully identify, in each and every case, the party disciplined, the date of and violation that the disciplinary action pertain to, describe the nature of the violation and the disciplinary action taken therefore.

N/A

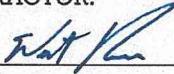
(If needed attach additional sheets to provide full disclosure.)

6. If the answer to either of 2. or 4. above is yes fully identify, in each and every case, the party who's discipline was stayed, the date of the violation that the disciplinary action pertains to, describe the nature of the violation and the condition (if any) upon which the disciplinary action was stayed.

N/A

(If needed attach additional sheets to provide full disclosure.)

BY CONTRACTOR:

By: 
(sign here)

West Reese, CEO
(print name/title)

Page 2 of 2 pages of this Disclosure of Discipline form

END OF SECTION

NON COLLUSION AFFIDAVIT

NAME OF PROJECT: Fire Station No. 2 Replacement and Temporary Station

NAME OF PROPOSER: Barnhart-Reese Construction, Inc.

The undersigned declares:

I am the CEO of Barnhart-Reese Construction, the party making the foregoing Proposal.

The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Proposal is genuine and not collusive or sham. The Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham proposal. The Proposer has not directly or indirectly colluded, conspired, connived, or agreed with any Proposer or anyone else to put in a sham proposal, or to refrain from bidding. The Proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Proposal Price of the Proposer or any other Proposer, or to fix any overhead, profit, or cost element of the Proposal Price, or of that of any other Proposer. All statements contained in the Proposal are true. The Proposer has not, directly or indirectly, submitted his or her Proposal Price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham proposal, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed July 28, 2020 at San Diego [city], California [state].

Signature 

Name West Reese Title CEO

END OF SECTION

PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

NAME OF PROJECT: Fire Station No. 2 Replacement and Temporary Station

NAME OF PROPOSER: Barnhart-Reese Construction, Inc.

Proposer hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.

Name of Proposer: Barnhart-Reese Construction, Inc.

DIR Registration Number: 1000000044

DIR Registration Expiration: June 30, 2021

Proposer further acknowledges:

1. Proposer shall maintain a current DIR registration for the duration of the project.
2. Proposer shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of proposal opening and maintain registration status for the duration of the project.
3. Failure to submit this form or comply with any of the above requirements may result in a finding that the proposal is non-responsive.

Signature  Date July 28, 2020

Name West Reese Title CEO

END OF SECTION

DESIGN BUILD AGREEMENT FORM

NAME OF BIDDER: Barnhart-Reese Construction, Inc.

This Contract No. RFP20-1124FAC is made and entered into this _____ day of _____, 2020, by and between the City of Carlsbad, a municipal

corporation hereinafter called "City," and Barnhart-Reese Construction, Inc. (hereinafter called "Design-Builder"), whose principal place of business is 10805 Thornmint Road, Suite 200, San Diego, CA 92127. The term "Design-Builder" includes his or her agents, representatives, employees, or subcontractors of any tier.

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

SCOPE OF WORK.

The Design-Builder shall perform all work within the time stipulated in the Contract, and shall provide all labor, materials, equipment, tools, utility services, and transportation to complete all of the work required in strict compliance with the Contract Documents for the following:

NAME OF PROJECT: Fire Station No. 2 Replacement and Temporary Station ("Project")

The Design-Builder and its surety shall be liable to the City for any damages arising as a result of the Design-Builder's failure to comply with this obligation.

TIME OF COMPLETION.

Time is of the essence in the performance of the Work. The Work shall be commenced on the date stated in the City's Notice to Proceed. The Design-Builder shall complete all Work required by the Contract Documents within **425 calendar** days from the commencement date stated in the Notice to Proceed. The phrase "calendar day" as used here in the Contract has the meaning of consecutive days. The phrase "working day" as used in this Contract, shall have the same meaning as otherwise defined in Section 6-7.2 of the General Provisions. By its signature hereunder, Design-Builder agrees the time for completion set forth above is adequate and reasonable to complete the Work.

CONTRACT PRICE.

The City shall pay to the Design-Builder as full compensation for the performance of the Contract, subject to any additions or deductions made in accordance with the Contract Documents, and including all applicable taxes and costs, the sum of Eleven Million, Two Hundred Twenty-Two Thousand, Four Hundred Seventy Two Dollars and Zero Cents

Dollars (\$ 11,222,472.00). Payment shall be made as set forth in Section 9 of the General Provisions.

The Engineer will close the estimate of work completed for progress payments on the last working day of each month. The City shall withhold retention as required by Public Contract Code section 9203.

LIQUIDATED DAMAGES.

In accordance with Government Code section 53069.85, it is agreed that the Design-Builder will pay the City the sum of \$1,000 for each and every consecutive calendar day of delay beyond the time of completion prescribed in the Contract, as Liquidated Damages and not as a penalty or forfeiture. If this is not paid, the Design-Builder agrees the City may deduct that amount from any money due or that may become due the Design-Builder under the Contract. This Article does not exclude recovery of other damages specified in the Contract Documents.

CONTRACT DOCUMENTS

The "Contract Documents" includes the following:

DESIGN BUILD AGREEMENT FORM - 45
Document Version: 1.0

Fire Station No. 2 Replacement and Temporary Station
Current Update: June 19, 2020
Document Date: April 14, 2020

DESIGN BUILD AGREEMENT FORM

- Notice Inviting Bids
- Instructions to Bidders
- Bid Form
- Bid Bond or Bid Security
- Proposed Subcontractors
- Bidder Information
- Certificate of Insurance
- Statement of Non-debarment
- Disclosure of Discipline Record
- Non-Collusion Affidavit
- Public Works Contractor Registration Certification
- Contract
- All Addenda
- Labor and Materials Bond
- Faithful Performance and Warranty Bond
- Optional Escrow Agreement (if applicable)
- City of Carlsbad General Provisions – Design-Build
- Project Criteria
- Technical Specifications for the project
- Plans and Drawings
- Permits
- City of Carlsbad, “Standard Specifications and Drawings,” as last revised
- Standard Specifications for Public Works Construction “Greenbook”, latest edition and including all errata
 - Part 1 General Provisions
 - Part 2 to Part 8 (Construction Materials, Construction Methods, Existing Improvements, Pipeline System Rehabilitation, Temporary Traffic Control, Street Lighting and Traffic Signal Systems, Landscaping and Irrigation)
- Standard Plans for Public Works Construction, latest edition and including all errata
- Applicable Local Agency Standards and Specifications, as last revised
- Approved and fully executed change orders
- Any other documents contained in or incorporated by reference into the Contract Documents

The Design-Builder shall complete the Work in strict accordance with the Contract Documents as indicated, specified, and implied. The requirements of the various sections or documents comprising the Contract Documents are intended to be complementary. Work required by one of the Contract Documents and not by others shall be done as if required by all. Any items of Work not indicated or specified, but which are essential to the completion of the Work, shall be provided at the Design-Builder's expense to fulfill the intent of said documents. In all instances through the life of the Contract, the City will be the interpreter of the intent of the Contract Documents, and the City's decision relative to said intent will be final and binding. Failure of the Design-Builder to apprise subcontractors and materials suppliers of this condition of the Contract will not relieve responsibility of compliance. This Contract shall supersede any prior agreement of the parties.

PAYMENT

For all compensation for Design-Builder's performance of Work under this Contract, City shall make payment to the Design-Builder per the General Provisions of this Contract. The Engineer will close the

DESIGN BUILD AGREEMENT FORM

estimate of Work completed for progress payments on the last working day of each month. The City shall withhold retention as required by Public Contract Code section 9203.

INDEPENDENT INVESTIGATION

Design-Builder has made an independent investigation of the jobsite, the soil conditions at the jobsite, and all other conditions that might affect the progress of the Work and is aware of those conditions. The Contract price includes payment for all Work that may be done by Design-Builder, whether anticipated or not, in order to overcome underground conditions. Any information that may have been furnished to Design-Builder by City about underground conditions or other job conditions is for Design-Builder's convenience only, and City does not warrant that the conditions are as thus indicated. Design-Builder is satisfied with all job conditions, including underground conditions and has not relied on information furnished by City.

HAZARDOUS WASTE AND OTHER UNUSUAL CONDITIONS

If the Contract involves digging trenches or other excavations that extend deeper than four feet below the surface Design-Builder shall promptly, and before the following conditions are disturbed, notify City, in writing, of any:

- A. **Hazardous Waste.** Material that Design-Builder believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
- B. **Differing Conditions.** Subsurface or latent physical conditions at the site differing from those indicated.
- C. **Unknown Physical Conditions.** Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

Design-Builder acknowledges review and receipt of the Hazardous Building Materials Survey, attached to the RFP as Attachment H. Design-Builder shall abate all hazardous materials identified in Attachment H, and other hazardous waste identified at the Project, consistent with all applicable law. Regarding those conditions unrelated to Attachment H, the City shall promptly investigate those conditions. City shall issue a change order under the procedures described in this Contract if City finds that the conditions:

- 1. do materially differ from those conditions referenced in Attachment H, or
- 2. do involve other hazardous waste unrelated to Attachment H, and
- 3. such discovery causes a decrease or increase in Design-Builder's costs of, or the time required for, performance of any part of the Work.

If a dispute arises between City and Design-Builder whether the conditions (1) materially differ from those identified in Attachment H, or (2) involve additional hazardous waste unrelated to Attachment A, or (3) cause a decrease or increase in the Design-Builder's cost of, or time required for, performance of any part of the Work, Design-Builder shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. Design-Builder shall retain any and all rights provided either by this Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

IMMIGRATION REFORM AND CONTROL ACT

Design-Builder certifies it is aware of the requirements of the Immigration Reform and Control Act of 1986 (8 USC sections 1101-1524) and has complied and will comply with these requirements, including,

DESIGN BUILD AGREEMENT FORM

but not limited to, verifying the eligibility for employment of all agents, employees, subcontractors, and consultants that are included in this Contract.

PREVAILING WAGES.

Pursuant to the California Labor Code, the director of the Department of Industrial Relations has determined the general prevailing rate of per diem wages in accordance with California Labor Code, section 1773. A copy of a schedule of said general prevailing wage rates is available at <http://www.dir.ca.gov>, on file in the office of the City Engineer and is incorporated by reference in this Contract. Pursuant to California Labor Code, section 1774, Contractor shall pay prevailing wages. Contractor shall post copies of all applicable prevailing wages on the job site. Contractor shall comply with California Labor Code, section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Contractor shall require all subcontractors to comply with Section 1776.

INDEMNIFICATION.

For that portion of the Work governed by Civil Code section 2782.8:

- A. Design-Builder shall assume the defense of, pay all expenses of defense that do not exceed the Design-Builder's proportionate percentage of fault, and indemnify and hold harmless the City, and its officers and employees, from all claims, loss, damage, injury and liability related to Design-Builder's negligence, recklessness, or willful misconduct, directly or indirectly arising from or in connection with the performance of the Contract or Work; or from any failure or alleged failure of Design-Builder's negligence, recklessness, or willful misconduct to comply with any applicable law, rules or regulations including those relating to safety and health; except for loss or damage caused by the sole or active negligence or willful misconduct of the City. The expenses of defense include all costs and expenses including attorneys' fees for litigation, arbitration, or other dispute resolution method that do not exceed the Design-Builder's proportionate percentage of fault.

Design-Builder shall also defend and indemnify the City against any challenges to the award of the Contract to Design-Builder to the extent such challenges relate to Design-Builder's negligence, recklessness, or willful misconduct, and Design-Builder will pay all costs, including defense costs for the City that do not exceed the Design-Builder's proportionate percentage of fault. Defense costs include the cost of separate counsel for City, if City requests separate counsel.

Design-Builder shall also defend and indemnify the City against any challenges to the award of the Contract to Design-Builder, arising in whole or in part from alleged inaccuracies or misrepresentation by the Design-Builder to the extent such challenges relate to Design-Builder's negligence, recklessness, or willful misconduct, and Design-Builder will pay all costs, including defense costs for the City that do not exceed the Design-Builder's proportionate percentage of fault. Defense costs include the cost of separate counsel for City, if City requests separate counsel.

For that portion of the Work not governed by Civil Code section 2782.8:

- B. Design-Builder shall assume the defense of, pay all expenses of defense, and indemnify and hold harmless the City, and its officers and employees, from all claims, loss, damage, injury and liability of every kind, nature and description, directly or indirectly arising from or in connection with the performance of the Contract or work; or from any failure or alleged failure of Design-Builder to comply with any applicable law, rules or regulations including those relating to safety and health; and from any and all claims, loss, damages, injury and liability, howsoever the same may be caused, resulting directly or indirectly from the nature of the work covered by the Contract, except for loss or damage caused by the sole or active negligence or

DESIGN BUILD AGREEMENT FORM

willful misconduct of the City. The expenses of defense include all costs and expenses including attorneys' fees for litigation, arbitration, or other dispute resolution method. Design-Builder shall also defend and indemnify the City against any challenges to the award of the contract to Design-Builder, and Design-Builder will pay all costs, including defense costs for the City. Defense costs include the cost of separate counsel for City, if City requests separate counsel.

Design-Builder shall also defend and indemnify the City against any challenges to the award of the contract to Design-Builder, arising in whole or in part from alleged inaccuracies or misrepresentation by the Design-Builder, whether intentional or otherwise, and Design-Builder will pay all costs, including defense costs for the City. Defense costs include the cost of separate counsel for City, if City requests separate counsel.

INSURANCE

Design-Builder shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the Work hereunder by the Design-Builder, his or her agents, representatives, employees or subcontractors. Said insurance shall meet the City's policy for insurance as stated in City Council Policy # 70.

A. Coverages and Limits: Design-Builder shall maintain the types of coverages and minimum limits indicated herein:

1. **Commercial General Liability (CGL) Insurance:** Insurance Services Office (ISO) Form CG 00 01 covering CGL written on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$5,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Business Automobile Liability Insurance:** \$5,000,000 combined single limit per accident for bodily injury and property damage. In addition, the auto policy must cover any vehicle used in the performance of the Contract, used onsite or offsite, whether owned, non-owned or hired, and whether scheduled or non-scheduled.
3. **Workers' Compensation and Employers' Liability Insurance:** Workers' compensation limits as required by the Labor Code of the State of California and Employers' Liability limits of \$1,000,000 per incident. Workers' compensation offered by the State Compensation Insurance Fund is acceptable to the City.
4. **Professional Errors and Omissions Insurance:** Throughout the duration of this Contract and four (4) years thereafter, the Design Engineer shall maintain professional errors and omissions insurance (professional liability) for Work performed in connection with this Contract in the minimum amount of five million dollars (\$5,000,000). Design-Builder shall provide evidence of compliance with these insurance requirements by providing a Certificate of Insurance.
5. **Builders Risk (Course of Construction):** Throughout the design-build period until final completion of the Project, a Project specific Builder's Risk (Course of Construction) insurance policy, covering all Work other than design (including testing and commissioning) at the Project site, while in transit and at any temporary off-site location; all materials supplies, machinery, fixtures and equipment intended to become a permanent part of the Project or for permanent use in the Project or incidental to the

DESIGN BUILD AGREEMENT FORM

construction; all temporary structures that are to be used in or incidental to the fabrication, erection, testing, or completion of the Project to the extent the cost thereof is included in the Work upon which the contract price is based, while on or about the Project site awaiting or during construction. The Builder's Risk policy:

- a) shall be written on a completed value basis in an amount not less than the full replacement value of the Project (\$13,000,000);
- b) shall be written on an "All Risk" (Special Perils) coverage form, including reinstatement of limit after loss and no coinsurance penalty provisions;
- c) shall specifically cover loss or damage arising out of faulty workmanship or materials or design error;
- d) shall include coverage for delay costs to a maximum amount of \$1,000 per day to include loss of revenue, loss of investment income, continued payment of debt service, and the costs of Project redesign if a covered loss ensues as a result of a design error.

The City shall provide information as reasonably requested by the Design-Builder or insurance company, where necessary to complete insurance applications. The Builder's Risk insurance policy shall extend until final completion of the Project.

6. **Pollution/Environmental Impairment Liability:** \$2,000,000 per loss and annual aggregate applicable to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically damaged or destroyed; clean-up costs, including first party cleanup of the City's property and third party cleanup, and bodily injury costs if Project pollutants impact other properties; and defense, including costs, fees and expenses incurred in the investigation, defense, or resolution of claims. Coverage shall include completed operations and shall apply to sudden and non-sudden pollution conditions. Coverage shall apply to construction activities and to acts, errors or omissions arising out of, or in connection with, Design-Builder's scope of work under this Contract. Coverage shall also apply to non-owned deposit sites or "NODS" that shall protect against, for example, claims regarding bodily injury, property damage, or cleanup costs involving NODS. Coverage may be arranged under a Design-Builder's Pollution Liability policy, as part of a Professional Liability policy, by any combination thereof, or by other insurance meeting the requirements of Section 12, if pollution liability coverage is provided for both construction activities and professional services. Coverage shall include transport and disposal of contaminants (including asbestos and lead) and shall include liability assumed under contract. Coverage is preferred by the City to be occurrence based. However, if provided on a claims-made basis, Design-Builder warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract, and that continuous coverage shall be maintained or an extended discovery period will be exercised for a period of five (5) years beginning from the time Work under this Contract is completed.

DESIGN BUILD AGREEMENT FORM

- B. Additional Provisions:** Design-Builder shall ensure that the policies of insurance required under this Contract with the exception of Workers' Compensation, Pollution Liability and Business Automobile Liability Insurance contain, or are endorsed to contain, the following provisions:
1. The City, its officials, employees, and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the Design-Builder; products and completed operations of the Design-Builder; premises owned, leased, hired or borrowed by the Design-Builder. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers. All additional insured endorsements must be evidenced using separate documents attached to the certificate of insurance; one for each company affording general liability, and employers' liability coverage.
 2. The Design-Builder's insurance coverage shall be primary insurance as respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be in excess of the Design-Builder's insurance and shall not contribute with it.
 3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees or volunteers.
 4. Coverage shall state that the Design-Builder's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- C. Notice of Cancellation:** Each insurance policy required by this Contract shall be endorsed to state that coverage shall not be nonrenewed, suspended, voided, canceled, or reduced in coverage or limits except after ten (10) days' prior written notice has been sent to the City by certified mail, return receipt requested.
- D. Deductibles and Self-Insured Retention (S.I.R.) Levels:** Any deductibles or self-insured retention levels must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention levels as respects the City, its officials and employees; or the Design-Builder shall procure a bond guaranteeing payment of losses and related investigation, claim administration and defense expenses.
- E. Waiver of Subrogation:** All policies of insurance required under this Contract shall contain a waiver of all rights of subrogation the insurer may have or may acquire against the City or any of its officials, employees, or volunteers.
- F. Subcontractors:** Design-Builder shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. Coverages for subcontractors shall be subject to all requirements stated in this Section 12.
- G. Acceptability of Insurers:** Insurance must be placed with insurers admitted to conduct the business of insurance in the State of California that have a rating in Best's Key Rating Guide of at least A-: VII, or with a surplus line carrier appearing on the List of Approved Surplus Line Insurers, ("LASLI") with a Best's Key Rating Guide of at least A: X. Insurers, and corresponding policies required by this Section, must also comply with all other aspects of City Council Policy # 70.

DESIGN BUILD AGREEMENT FORM

- H. **Verification of Coverage:** Design-Builder shall furnish the City with certificates of insurance and original endorsements affecting coverage required by this Contract. The certificates and endorsements for each insurance policy required by the Contract must be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements must be in forms approved by the City and must be received and approved by the City before the Contract is executed by the City.
- I. **Cost of Insurance:** The Cost of all insurance required under this Contract shall be included in the Design-Builder's bid.
- J. **Errors and Omissions:** If the City determines that the Design-Builder's negligence, misconduct, errors or omissions in the performance of Work under this Contract has resulted in expense to City greater than would have resulted if there were no such negligence, errors or omissions in the plans or Contract specifications, Design-Builder shall reimburse City for all additional expenses incurred by the City, including engineering, construction or restoration expense. Nothing in this Contract is intended to limit City's rights under any other section of the Contract Documents.

CLAIMS AND LAWSUITS.

All claims by Design-Builder shall be resolved in accordance with Public Contract Code section 9204. In addition, all claims by Design-Builder for \$375,000 or less shall be resolved in accordance with the provisions in the Public Contract Code, Division 2, Part 3, Chapter 1, Article 1.5 (commencing with section 20104). If a conflict arises between section 9204 and Article 1.5, section 9204 shall apply. Notwithstanding the provisions of this section of the Contract, all claims shall comply with the Government Tort Claims Act (section 900 *et seq.*, of the California Government Code) for any claim or cause of action for money or damages prior to filing any lawsuit for breach of this Contract.

- i. **Assertion of Claims.** Design-Builder hereby agrees that any contract claim submitted to the City must be asserted as part of the contract process as set forth in this Contract and not in anticipation of litigation or in conjunction with litigation.
- ii. **False Claims.** Design-Builder acknowledges that if a false claim is submitted to the City, it may be considered fraud and the Design-Builder may be subject to criminal prosecution.
- iii. **Government Code.** Design-Builder acknowledges that California Government Code section 12650 *et seq.*, and the False Claims Act, provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of the information.
- iv. **Penalty Recovery.** If the City of Carlsbad seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorney's fees.
- v. **Debarment for False Claims.** Design-Builder hereby acknowledges that the filing of a false claim may subject the Design-Builder to an administrative debarment proceeding wherein the Design-Builder may be prevented from further bidding on public contracts for a period of up to five years.

DESIGN BUILD AGREEMENT FORM

- vi. **Carlsbad Municipal Code.** The provisions of Carlsbad Municipal Code sections 3.32.025, 3.32.026, 3.32.027 and 3.32.028 pertaining to false claims are incorporated herein by reference.
- vii. **Debarment from Other Jurisdictions.** Design-Builder hereby acknowledges that debarment by another jurisdiction is grounds for the City of Carlsbad to disqualify the Design-Builder or subcontractor from participating in future contract bidding.
- viii. **Jurisdiction.** Design-Builder agrees and hereby stipulates that the proper venue and jurisdiction for resolution of any disputes between the parties arising out of this Contract is San Diego County, California.

MAINTENANCE OF RECORDS.

Design-Builder shall maintain and make available at no cost to the City, upon request, records in accordance with sections 1776 and 1812 of Part 7, Chapter 1, Article 2, of the Labor Code. If the Design-Builder does not maintain the records at Design-Builder's principal place of business as specified above, Design-Builder shall so inform the City by certified letter accompanying the return of this Contract. Design-Builder shall notify the City by certified mail of any change of address of such records.

LABOR CODE PROVISIONS.

The provisions of Part 7, Chapter 1, commencing with section 1720 of the Labor Code are incorporated herein by reference.

SECURITY.

Securities in the form of cash, cashier's check, or certified check may be substituted for any monies withheld by the City to secure performance of this Contract for any obligation established by this Contract. Any other security that is mutually agreed to by the Design-Builder and the City may be substituted for monies withheld to ensure performance under this Contract.

UNFAIR BUSINESS PRACTICES.

In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Design-Builder or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Design-Builder, without further acknowledgment by the parties.

PROVISIONS REQUIRED BY LAW AND DESIGN-BUILDER COMPLIANCE.

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and included herein. If, through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then upon application of either party, the Contract shall forthwith be physically amended to make such insertion or correction. The Design-Builder shall comply with all requirements of applicable federal, state and local laws, rules and regulations, including, but not limited to, the provisions of the California Labor Code and California Public Contract Code which are applicable to the Work.

BIDDER'S BOND CONDITIONS.

DESIGN BUILD AGREEMENT FORM

- A. If the City shall accept the bid or proposal of the Design-Builder within the time specified in the request for proposals ("Proposal"), or within such time period as may be agreed to by the City and Design-Builder, the Design-Builder shall:
1. Enter into a Contract with the City in accordance with the terms of such Proposal.
 2. Provide the City with such performance and payment bonds required by the request for proposals, with a corporate surety admitted in the jurisdiction of the Project and otherwise acceptable to the City.
- B. If Design-Builder fails without cause to perform the obligations of the Bond, then Design-Builder shall pay to the City the difference, not to exceed the amount of the Bond, between the amount specified in the Proposal and such larger amount for which the City may in good faith contract with another party to perform the work covered by said Proposal.
1. Payment of the Bond Amount is the extent of the Surety's liability to the City for default under the Bond.
- C. If Design-Builder shall perform the obligations, then this obligation shall be null and void, otherwise to remain in full force and effect.
- D. The Design-Builder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the City in the Bond Amount set forth above, as provided herein.
- E. Upon default of Design-Builder of the Bond, payment shall be due and payable to the City within thirty (30) calendar days of receipt by both the Design-Builder and Surety of written Notice of Default from the City. The notice shall be given by the City with reasonable promptness, identifying the Bond and the Project and including a statement of the amount due and the basis for such calculation.
- F. The Surety waives notice of, and any defenses based on or arising out of, any time extension to issue Notice of Award agreed to in writing by the City and Design-Builder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed ninety (90) days from the date the Proposal was due. Any further extension of time requires the Surety's written consent.
- G. No suit or action shall be commenced under the Bond prior to thirty (30) calendar days after the Notice of Default required above is received by Design-Builder and Surety and in no case later than one (1) year after Proposal due date.
1. If the Design-Builder declares bankruptcy, the Surety agrees that the Design-Builder is not a necessary or indispensable party to any suit or action by the City against the Surety to enforce the Surety's obligations under the Bond.
- H. If the Bond has been furnished to comply with a statutory requirement in the location where the Project is located, then any provision in the Contract that conflicts with a statutory requirement shall be deemed deleted and replaced by provisions conforming to such statutory requirement. The intent is that the Bond shall be construed as a statutory bond conforming to the applicable statutes.
- I. No right of action shall accrue on the Bond to any person or entity other than the City or its executors, administrators, or successors, unless some other party is named in the Bond as a dual obligee.
- J. Unless otherwise noted on the Bond, written notice under the Bond to Surety, the City or Design-Builder shall be mailed or delivered to the address shown on the first page of the Bond.
- K. The Surety represents that it is admitted to act as an authorized corporate surety in the State of California. Surety and Design-Builder, intending to be legally bound hereby, subject to the

DESIGN BUILD AGREEMENT FORM

terms of the Contract, do each cause the Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

- L. If the Bond is issued in connection with a subcontractor's proposal to a Design-Builder, the term Design-Builder in the Bond shall be deemed to be Subcontractor and the term the City shall be deemed to be Design-Builder.

LABOR AND MATERIALS BOND CONDITIONS.

- A. The Design-Builder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay for labor, services, materials and equipment furnished by Claimants for use in the performance of the Design-Build Contract.
- B. If the Design-Builder promptly makes payment of all sums for all labor, services, materials, and equipment furnished for use in the performance of the Design-Build Contract, then the Surety's obligations under this Bond are null and void. Otherwise the Surety's obligations shall remain in full force and effect.
- C. Every Claimant who has not been paid in full before the expiration of a period of ninety (90) days after such Claimant provided or performed the last of the work, services or labor, or furnished the last of the materials or equipment for which said claim is made, may have a right of action on this Bond.
 - 1. Claimants shall provide written notice to the Surety and send a copy, or notice thereof, to City and Design-Builder, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim, and the last date such work, services or labor were performed, or the last materials or equipment were furnished in furtherance of the Design-Build Contract.
 - 2. If Claimant does not have a direct contract with Design-Builder, the notice shall identify the person or entity with whom Claimant contracted and who has not made payment to Claimant.
- D. When a Claimant has satisfied the conditions above, the Surety shall promptly take the following actions at the Surety's expense:
 - 1. Send an answer to that Claimant, with a copy to the City and Design-Builder, within sixty (60) days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any disputed portions or amounts.
 - 2. Pay or arrange for payment of any undisputed amounts.
- E. The Surety's total obligation shall not exceed the Bond Amount, plus the amount of reasonable attorney's fees provided for in the Contract.
 - 1. If the Surety fails to discharge its obligations under Section 20(D) above, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to successfully recover any sums found to be due and owing to the Claimant. If Claimant does not recover the entire amount claimed in its notice under Section 20(C) above, then such attorney's fees shall be reduced in proportion to the amount actually recovered.
 - 2. The Surety shall not be liable to the City, Claimants or others for obligations of the Design-Builder that are unrelated to the Design-Build Contract, and the Contract Balance shall not be reduced or set off on account of any such unrelated obligations.
- F. The Surety hereby waives notice of changes to the Design-Build Contract, including changes within the general scope, or of time or price, or to related subcontracts or purchase orders.
- G. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the State in which the Project is located. Such suit or action must be

DESIGN BUILD AGREEMENT FORM

filed within one (1) year from the date: a) on which the Claimant sent a claim to the Surety; or, b) on which the Claimant last performed labor or services or furnished materials or equipment on the Project, whichever occurs first. If the provisions are prohibited by law, the minimum period of limitation available to sureties in the jurisdiction in which the Project is located shall be applicable.

1. If the Design-Builder declares bankruptcy, the Surety agrees that the Design-Builder is not a necessary or indispensable party to any legal action by any party against the Surety to enforce the Surety's obligations under this Bond.
- H. If this Bond has been furnished to comply with a statutory requirement in the location where the Project is located, then any provision herein that conflicts with a statutory requirement shall be deemed deleted and replaced by provisions conforming to such statutory requirement. The intent is that this Bond shall be construed as a statutory bond conforming to the applicable statutes.
- I. Upon written request of any person or entity appearing to be a potential Claimant on this Bond, Design-Builder shall promptly furnish a copy of this Bond or shall permit a copy to be made.
- J. A Claimant is any individual or entity having a direct contract with the Design-Builder or having a contract with a subcontractor that has a direct contract with the Design-Builder to furnish services, labor, materials or equipment for use in the performance of the Design-Build Contract.
 1. A Claimant may include amounts owed by the Design-Builder for design and other professional services furnished or performed by Claimant regardless of whether such services might form the basis for a mechanic's lien under applicable State law.
- K. Unless otherwise noted below, written notice under this Bond to Surety, City or Design-Builder shall be mailed or delivered electronically or by hard mail to the contact information on this Contract.
- L. If this Bond is issued for a Contract between the Design-Builder and a subcontractor, the term Design-Builder in this Bond shall be deemed to be the bonded subcontractor and the term City shall be deemed to be Design-Builder.
- M. The Surety represents that it is admitted to act as an authorized corporate surety in the state in which the Project is located. Surety and Design-Builder, intending to be legally bound hereby, subject to the terms set out above, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

PERFORMANCE AND WARRANTY BOND CONDITIONS.

- A. The Design-Builder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the City for the performance of the Design-Build Contract.
- B. If the Design-Builder performs its obligations under the Design-Build Contract, then the Surety's obligations under this Bond are null and void, except to participate in meetings.
- C. The Surety hereby waives notice of changes to the Design-Build Contract, including changes within the general scope, or of time or price, or to related subcontracts or purchase orders.
- D. If there is no default in the City obligations under the Design-Build Contract, then the Surety's obligation under this Bond shall arise after the following steps have been taken by the City, as a condition precedent to a Bond claim:
 1. The City has first provided written notice to the Design-Builder and Surety, that the City is considering declaring the Design-Builder in default and has requested and

DESIGN BUILD AGREEMENT FORM

attempted to arrange a meeting with the Design-Builder and Surety, to be held not later than fourteen (14) days after receipt of City's notice, to discuss methods of performing the Design-Builder's obligations under the Design-Build Contract. If the City, Design-Builder and Surety agree, the Design-Builder shall be allowed a reasonable time to perform its obligations under the Design-Build Contract, but such an agreement shall not waive the City's right, if any, subsequently to declare the Design-Builder in default;

2. The City declares the Design-Builder to be in default, terminates the Design-Build Contract and notifies the Surety in writing; and
 3. The City has agreed to pay the balance remaining under the Design-Build Contract (i.e., the total amount payable by the City to the Design-Builder thereunder less amounts properly paid by the City to the Design-Builder, the "Contract Balance") to:
 1. The Surety, in accordance with the terms of the Design-Build Contract; or
 2. Another design-builder selected pursuant to requirements below to perform the remaining obligations under the Design-Build Contract.
- E. When the City has satisfied the conditions of Section 21(D) above, the Surety shall promptly take one of the following actions, at the Surety's expense:
1. Arrange for the Design-Builder to perform and complete the remaining obligations under the Design-Build Contract, with consent of the City;
 2. Undertake to perform and complete the remaining obligations under the Design-Build Contract itself, through its agents or through independent contractors;
 3. Obtain bids or negotiated proposals from qualified design-builders acceptable to the City for a contract for performance and completion of the Design-Build Contract, arrange for a contract to be prepared for execution by the City and a design-builder selected with the City's concurrence, to be secured by performance and payment bonds equivalent to those for the Design-Build Contract, issued by a qualified surety.
- The Surety shall:
1. make available as work progresses sufficient funds to pay the cost of completion of the Design-Build Contract; and,
 2. pay to the City the amount of damages as described in Section 21(G) below;
 4. Waive its right to complete the work under Section 21(D) above, and reimburse the City the amount of its reasonable costs to complete the Work; or
 5. Deny liability, in whole or in part, and notify the City in writing, citing reasons therefor.
- F. If the Surety does not proceed as provided in Section 21(E) with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven (7) days after receipt of an additional written notice from the City to the Surety demanding that the Surety perform its obligations under this Bond and stating that the City shall be entitled to enforce any remedy available to the City. If the Surety proceeds as provided in Section 21(E)(4) above, and the City refuses the payment, or the Surety has denied liability, in whole or in part, under Section 21(E)(5) above, the City shall be entitled without further notice to enforce any remedy available to it.
- G. In any event, the Surety's obligations to the City, and the City's obligations to the Surety, shall not be greater than those of the City and Design-Builder to each other, respectively, under the Design-Build Contract. Subject to commitment by the City to payment of the Contract Balance, the Surety is obligated without duplication for:

DESIGN BUILD AGREEMENT FORM

1. The responsibilities of Design-Builder for correction of defective Work and completion of the Project;
 2. Additional legal, design professional and delay costs resulting from Design-Builder's default, and resulting from the actions or failure to act of Surety under Section 21(E); and
 3. Liquidated damages, or if no liquidated damages are specified in the Design-Build Contract, actual damages caused by delayed performance or non-performance of Design-Builder.
- H. If the Surety elects to act under Section 21(E), the Surety's total liability shall not exceed the Bond Amount.
1. The Surety shall not be liable to the City or others for obligations of the Design-Builder that are unrelated to the Design-Build Contract, and the Contract Balance shall not be reduced or set off on account of any such unrelated obligations.
- I. No right of action shall accrue on this Bond to any person or entity other than the City or its heirs, executors, administrators, or successors, unless some other party is named in this Bond as a dual obligee.
- J. All lawsuits regarding this Bond shall be filed pursuant to Section 13.
1. Any lawsuit filed pursuant to Section 13 shall be commenced within two (2) years after:
 - a) the City declares the Design-Builder in default under Section 21(D); or,
 - b) Substantial Completion of the Project, whichever occurs first. If the provisions of this Section 21(J) are prohibited by law, the minimum period of limitation available to sureties in the jurisdiction in which the Project is located shall be applicable.
 2. If the Design-Builder declares bankruptcy, the Surety agrees that the Design-Builder is not a necessary or indispensable party to any legal action by the City against Surety to enforce the Surety's obligations under this Bond.
- K. Unless otherwise noted below, written notice under this Bond to Surety, the City or Design-Builder shall be mailed or delivered electronically or by hard mail to the contact information on the Contract.
- L. If this Bond has been furnished to comply with a statutory requirement in the location where the Project is located, then any provision herein that conflicts with a statutory requirement shall be deemed deleted and replaced by provisions conforming to such statutory requirement. The intent is that this Bond shall be construed as a statutory bond conforming to the applicable statutes.
- M. The Surety's obligations to the City for warranties of the Design-Builder shall be the same as those required of the Design-Builder under the Design-Build Contract, subject to the time limitation in Section 21(J). Unless otherwise stated below, the Surety's obligation for such warranties excludes:
1. products, materials or equipment covered by a manufacturer's separate warranty; and
 2. claims by the City first noticed to Surety in writing more than one year after the effective date of such warranty as specified under the Design-Build Contract.
- N. The Surety represents that it is admitted to act as an authorized corporate surety in the state in which the Project is located. Surety and Design-Builder, intending to be legally bound

DESIGN BUILD AGREEMENT FORM

hereby, subject to the terms set out above, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent, or representative

NOTARIAL ACKNOWLEDGMENT OF EXECUTION BY ALL SIGNATORIES MUST BE ATTACHED

(CORPORATE SEAL)

CONTRACTOR/ DESIGN-BUILDER:

CITY OF CARLSBAD, in the State of California

Barnhart-Reese Construction, Inc. By: _____
(name of Contractor/ Design-Builder)

ATTEST:

By: [Signature]
(sign here)

Secretary

Tamela Reese, President
(print name and title)

By: [Signature]
(sign here)

West Reese, CEO
(print name and title)

President or vice-president and secretary or assistant secretary must sign for corporations. If only one officer signs, the corporation must attach a resolution certified by the secretary or assistant secretary under the corporate seal empowering that officer to bind the corporation.

Approved as to form this _____ day of _____ 20_____.

Attorney for City of Carlsbad

END OF CONTRACT

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

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

State of California }
County of Sacramento }

On August 26, 2020, before me, Elaine C. McBurney-Wilson, Notary Public, personally appeared Tamela Barnhart Reese and West Reese

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity(ies), and that by her signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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



WITNESS my hand and official seal.

SIGNATURE _____

PLACE NOTARY SEAL ABOVE

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

Description of attached document

Title or type of document: Design-Build Agreement Form Document Date: August 26, 2020

Number of Pages: 15 Signer(s) other than named above: None

Capacity(ies) Claimed by Signer(s)

Signer's Name: Tamela Barnhart Reese | West Reese

Corporate Officer – Title(s): President | CEO

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer is representing: Barnhart-Reese Construction, Inc.

LABOR AND MATERIAL BOND

KNOW ALL PERSONS BY THESE PRESENTS THAT

WHEREAS, the City of Carlsbad (hereinafter designated as the "City"), by action taken or a resolution passed on _____, 20_____, has awarded to Barnhart-Reese Construction, Inc. _____ hereinafter designated as

the "Principal," a contract for the work described as follows: Contract No. RFP20-1124FAC

Name of Project: Fire Station No. 2 Replacement and Temporary Station (the "Project"); and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and Federal Insurance Company as Surety, are held and firmly bound unto the City in the penal sum of Eleven Million Two Hundred Twenty-Two Thousand Four Hundred Seventy Two and no/100 Dollars (\$ 11,222,472.00), for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, her/his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Civil Code Section 9100, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and her/his subcontractors pursuant to Revenue and Taxation Code Section 18663, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 9100 so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or

LABOR AND MATERIAL BOND

modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore,

nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond,

nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond,

nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Civil Code Section 9100, and has not been paid the full amount of her/his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

In the event that Principal is an individual, it is agreed that the death of any such Principal shall not exonerate the Surety from its obligations under this bond.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

LABOR AND MATERIAL BOND

Executed by CONTRACTOR this 25th
day of August, 2020.

Executed by SURETY this 21st day
of August, 2020.

CONTRACTOR:
Barnhart-Reese Construction, Inc.
(name of Contractor)

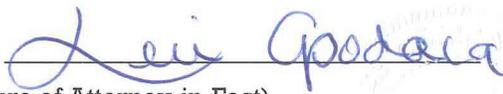
SURETY:
Federal Insurance Company
(name of Surety)
555 South Flower Street, 3rd Floor, Los Angeles, CA 90071

By: 
(sign here)
Tamela Reese

(address of Surety)
(213) 612-5511

(print name here)
President
(title and organization of signatory)

(telephone number of Surety)

By: 
(signature of Attorney-in-Fact)
Jeri Apodaca, Attorney in Fact

By: _____
(sign here)

(print name here)

(title and organization of signatory)

(printed name of Attorney-in-Fact)
(attach corporate resolution showing current
power of attorney)

(Proper notarial acknowledgment of execution by CONTRACTOR and SURETY must be attached.)
(President or vice-president and secretary or assistant secretary must sign for corporations. If only
one officer signs, the corporation must attach a resolution certified by the secretary or assistant
secretary under corporate seal empowering that officer to bind the corporation.)

APPROVED AS TO FORM:

General Counsel

By: _____
Deputy General Counsel

END OF LABOR AND MATERIALS BOND

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

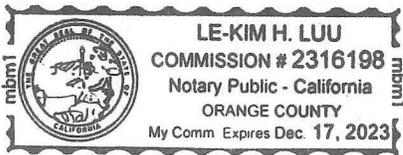
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Orange)
On AUG 21 2020 before me, Le-Kim H. Luu, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Jeri Apodaca
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer -- Title(s): _____
 Partner -- Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer -- Title(s): _____
 Partner -- Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Power of Attorney

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company
Westchester Fire Insurance Company | ACE American Insurance Company

Know All by These Presents, that FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, PACIFIC INDEMNITY COMPANY, a Wisconsin corporation, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY corporations of the Commonwealth of Pennsylvania, do each hereby constitute and appoint Rhonda C. Abel, Jeri Apodaca, Reece Joel Diaz, Kim Luu, Michael D. Parizino, Rachelle Rheault, Heather Saltarelli and James A. Schaller of Newport Beach, California

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY have each executed and attested these presents and affixed their corporate seals on this 25th day of March, 2020.

Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

Stephen M. Haney

Stephen M. Haney, Vice President



STATE OF NEW JERSEY
County of Hunterdon ss.

On this 25th day of March, 2020 before me, a Notary Public of New Jersey, personally came Dawn M. Chloros and Stephen M. Haney, to me known to be Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros and Stephen M. Haney, being by me duly sworn, severally and each for herself and himself did depose and say that they are Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY and know the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that their signatures as such officers were duly affixed and subscribed by like authority.

Notarial Seal



KATHERINE J. ADELAAR
NOTARY PUBLIC OF NEW JERSEY
No. 2316685
Commission Expires July 16, 2024

[Signature]
Notary Public

CERTIFICATION

Resolutions adopted by the Boards of Directors of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY on August 30, 2016; WESTCHESTER FIRE INSURANCE COMPANY on December 11, 2006; and ACE AMERICAN INSURANCE COMPANY on March 20, 2009:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
(2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.
(3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
(4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
(5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Dawn M. Chloros, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY (the "Companies") do hereby certify that

- (i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
(ii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this

AUG 21 2020



Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

IN THE EVENT YOU WISH TO VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT: Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

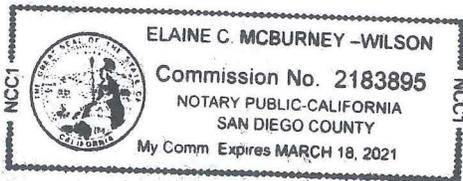
A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of Sacramento }

On August 25, 2020, before me, Elaine C. McBurney-Wilson, Notary Public, personally appeared Tamela Barnhart Reese

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity(ies), and that by her signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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



WITNESS my hand and official seal.

SIGNATURE Elaine C. McBurney-Wilson

PLACE NOTARY SEAL ABOVE

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

Description of attached document

Title or type of document: Labor and Material Bond - Carlsbad
Fire Station No. 2 Replacement Document Date: August 21, 2020
Number of Pages: 3 Signer(s) other than named above: Jeri Apodaca, Attorney-in-Fact
Capacity(ies) Claimed by Signer(s)

Signer's Name: Tamela Barnhart Reese

Corporate Officer – Title(s): President

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer is representing: Barnhart-Reese Construction, Inc.

FAITHFUL PERFORMANCE AND WARRANTY BOND

KNOW ALL PERSONS BY THESE PRESENTS That

WHEREAS, the City of Carlsbad (hereinafter designated as the "City"), by action taken or a resolution passed on _____, 20_____, has awarded to Barnhart-Reese Construction, Inc. hereinafter designated as the

"Contractor," a contract for the work described as follows: Contract No. RFP20-1124FAC
Name of Project: Fire Station No. 2 Replacement and Temporary Station (the "Project"); and

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance and warranty of said Contract Documents.

NOW THEREFORE, we, Barnhart-Reese Construction, Inc. the undersigned Contractor and Federal Insurance Company as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of Eleven Million Two Hundred Twenty-Two Thousand Four Hundred Seventy Two and no/100 dollars, (\$ 11,222,472.00), said sum being not less than one hundred percent (100%) of the total

amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, her/his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning; and shall indemnify and save harmless the City, its Council, members of the Council, employees, and authorized volunteers, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall

FAITHFUL PERFORMANCE AND WARRANTY BOND

continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure Section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

- i. Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- ii. Obtain a proposal or proposals for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible proposer, arrange for a Contract between such proposer, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.
- iii. Permit the City to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a proposal from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project.

In the event that Contractor is an individual, it is agreed that the death of any such Contractor shall not exonerate the Surety from its obligations under this bond.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

FAITHFUL PERFORMANCE AND WARRANTY BOND

Executed by CONTRACTOR this 25th
day of August, 2020.

Executed by SURETY this 21st day
of August, 2020.

CONTRACTOR:
Barnhart-Reese Construction, Inc.
(name of Contractor)

SURETY:
Federal Insurance Company
(name of Surety)
555 South Flower Street, 3rd Floor, Los Angeles, CA 90071
(address of Surety)
(213) 612-5511
(telephone number of Surety)

By: [Signature]
(sign here)
Tamela Reese
(print name here)
President
(title and organization of signatory)

By: [Signature]
(signature of Attorney-in-Fact)
Jeri Apodaca, Attorney in Fact
(printed name of Attorney-in-Fact)

By: _____
(sign here)

(print name here)

(title and organization of signatory)

(attach corporate resolution showing current
power of attorney)

(Proper notarial acknowledgment of execution by CONTRACTOR and SURETY must be attached.)
(President or vice-president **and** secretary or assistant secretary must sign for corporations. If only
one officer signs, the corporation must attach a resolution certified by the secretary or assistant
secretary under corporate seal empowering that officer to bind the corporation.)

APPROVED AS TO FORM:

General Counsel
By: _____
Deputy General Counsel

END OF PERFORMANCE AND WARRANTY BOND

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

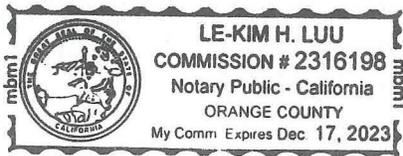
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Orange)
On AUG 21 2020 before me, Le-Kim H. Luu, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Jeri Apodaca
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer -- Title(s): _____
 Partner -- Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer -- Title(s): _____
 Partner -- Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Power of Attorney

Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company
Westchester Fire Insurance Company | ACE American Insurance Company

Know All by These Presents, that FEDERAL INSURANCE COMPANY, an Indiana corporation, VIGILANT INSURANCE COMPANY, a New York corporation, PACIFIC INDEMNITY COMPANY, a Wisconsin corporation, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY corporations of the Commonwealth of Pennsylvania, do each hereby constitute and appoint Rhonda C. Abel, Jeri Apodaca, Reece Joel Diaz, Kim Luu, Michael D. Parizino, Rachelle Rheault, Heather Saltarelli and James A. Schaller of Newport Beach, California

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

In Witness Whereof, said FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY have each executed and attested these presents and affixed their corporate seals on this 25th day of March, 2020.

Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

Stephen M. Haney

Stephen M. Haney, Vice President



STATE OF NEW JERSEY
County of Hunterdon ss.

On this 25th day of March, 2020 before me, a Notary Public of New Jersey, personally came Dawn M. Chloros and Stephen M. Haney, to me known to be Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY, the companies which executed the foregoing Power of Attorney, and the said Dawn M. Chloros and Stephen M. Haney, being by me duly sworn, severally and each for herself and himself did depose and say that they are Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY and know the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that their signatures as such officers were duly affixed and subscribed by like authority.

Notarial Seal



KATHERINE J. ADELAAR
NOTARY PUBLIC OF NEW JERSEY
No. 2316685
Commission Expires July 16, 2024

Katherine J. Adelaar

Notary Public

CERTIFICATION

Resolutions adopted by the Boards of Directors of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY on August 30, 2016; WESTCHESTER FIRE INSURANCE COMPANY on December 11, 2006; and ACE AMERICAN INSURANCE COMPANY on March 20, 2009:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

- (1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.
(2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.
(3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
(4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.
(5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Dawn M. Chloros, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY (the "Companies") do hereby certify that

- (i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
(ii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this

AUG. 21 2020



Dawn M. Chloros

Dawn M. Chloros, Assistant Secretary

IN THE EVENT YOU WISH TO VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT: Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

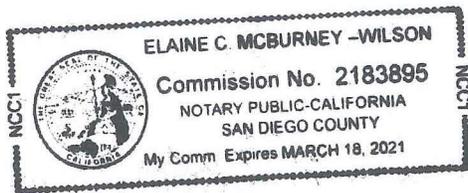
A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of Sacramento }

On August 25, 2020, before me, Elaine C. McBurney-Wilson, Notary Public, personally appeared Tamela Barnhart Reese

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity(ies), and that by her signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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



WITNESS my hand and official seal.

SIGNATURE Elaine C. McBurney-Wilson

PLACE NOTARY SEAL ABOVE

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

Description of attached document

Title or type of document: Faithful Performance & Warranty Bond - Carlsbad
Fire Station No. 2 Replacement Document Date: August 21, 2020
Number of Pages: 3 Signer(s) other than named above: Jeri Apodaca, Attorney-in-Fact
Capacity(ies) Claimed by Signer(s)

Signer's Name: Tamela Barnhart Reese

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

Signer is representing: Barnhart-Reese Construction, Inc.

OPTIONAL ESCROW AGREEMENT

NAME OF PROJECT: Fire Station #2 Replacement and Temporary Station

NAME OF PROPOSER: Barnhart-Reese Construction, Inc.

This Escrow Agreement for Security Deposits in Lieu of Retention is made and entered into by and between the City of Carlsbad, a municipal corporation, whose address is 1635 Faraday Ave, Carlsbad, California, 92008, hereinafter called "City" and Barnhart-Reese Construction, Inc.

whose address is 10805 Thornmint Road, #200 San Diego, CA 92127 hereinafter called "Contractor" and U.S. Bank

whose address is 4747 Executive Drive, 3rd Floor San Diego, CA 92121

hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the City, Contractor and Escrow Agent agree as follows:

1. Pursuant to section 22300 of the Public Contract Code of the State of California, the Contractor has the option to deposit securities with the Escrow Agent as a substitute for retention earnings required to be withheld by the City pursuant to the Construction Contract entered into between the City and Contractor for in the amount of \$11,222,472.00 dated August 25, 2020 (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the City shall make payments of the retention earnings directly to the Escrow Agent. When the Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the City within 10 days of the deposit. The market value of the securities at the time of the substitution shall be a least equal to the cash amount then required to be withheld as retention under the terms of the contract between the City and Contractor. Securities shall be held in the name of the City and shall designate the Contractor as the beneficial owner.
2. The City shall make progress payments to the Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.
3. When the City makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until such time as the escrow created under this contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the City pays the Escrow Agent directly.
4. The Contractor shall be responsible for paying all fees for the expenses incurred by the Escrow Agent in administering the Escrow Account and all expenses of the City. These expenses and payment terms shall be determined by the City, Contractor and Escrow Agent.
5. The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the City.

OPTIONAL ESCROW AGREEMENT

- 6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from City to the Escrow Agent that the City consents to the withdrawal of the amount sought to be withdrawn by Contractor.
- 7. The City shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the Escrow Agent from the City of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the City.
- 8. Upon receipt of written notification from the City certifying that the Contract is final and complete and that the Contractor has complied with all requirements and procedures applicable to the Contract, the Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.
- 9. The Escrow Agent shall rely on the written notifications from the City and the Contractor pursuant to sections (1) to (8), inclusive, of this agreement and the City and Contractor shall hold Escrow Agent harmless from Escrow Agent's release, conversion and disbursement of the securities and interest as set forth above.
- 10. The names of the persons who are authorized to give written notices or to receive written notice on behalf of the City and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

For City
(Finance
Director) Title _____
Name _____
Signature _____
Address 10805 Thornmint Road, #200 San Diego, CA 92127

For Contractor Title President
Name Tamela Barnhart-Reese
Signature  _____
Address _____

For Escrow
Agent Title _____
Name _____

OPTIONAL ESCROW AGREEMENT

Signature _____

Address _____

At the time the Escrow Account is opened, the City and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

For City Title _____

Name _____

Signature _____

Address _____

For Contractor Title President

Name Tamela Barnhart-Reese

Signature 

Address 10805 Thornmint Road, #200 San Diego, CA 92127

For Escrow Agent Title _____

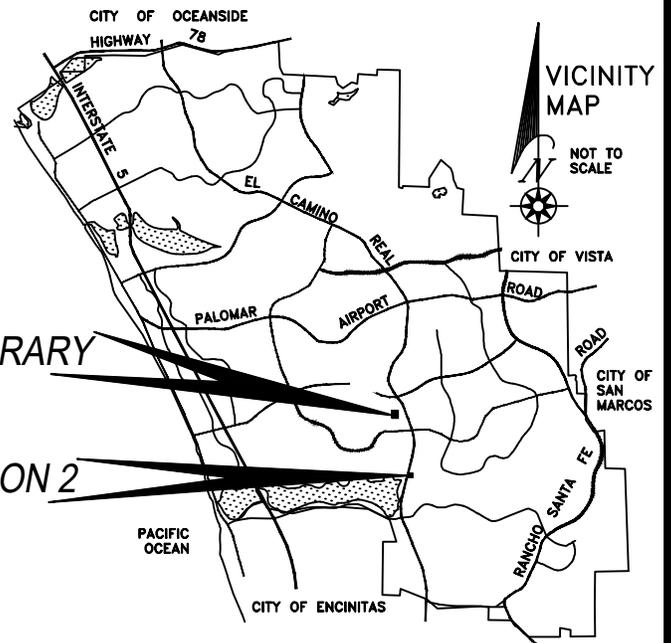
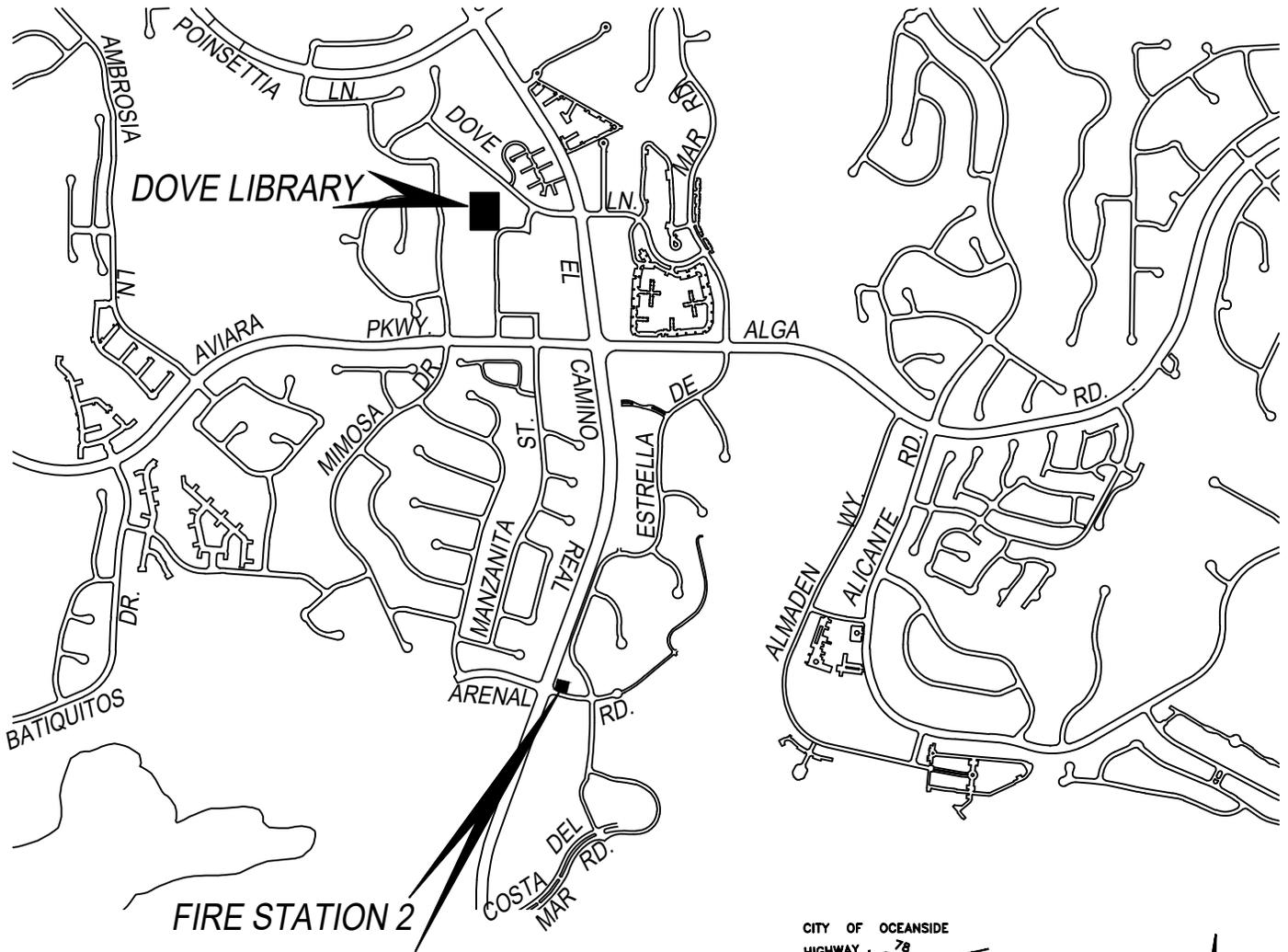
Name _____

Signature _____

Address _____

END OF OPTIONAL ESCROW AGREEMENT

LOCATION MAP



PROJECT NAME

FIRE STATION 2 REPLACEMENT

EXHIBIT

2

FROM THE DESK OF:
ALBERT M. GIACOMAZZI
PRESIDENT

August 21, 2020
VIA E-MAIL AND FED EX

clerk@carlsbadca.gov

City of Carlsbad
City Council Members
c/o Barbara Engelson
Office of the City Clerk
1200 Carlsbad Village Drive
Carlsbad, CA 92008

RE: **City of Carlsbad Fire Station No. 2 Replacement Design-Build Contract
RFP20-1124FAC – Project No. 4060 (“Project”)**

Subject: AMG & Associates, Inc.’s Appeal of City’s Calculation of AMG’s Total Proposed
Lump Sum Price

Dear Council Members and Ms. Engelson,

Please be advised that AMG & Associates, Inc. (AMG) is appealing to the City Council to review the overall outcome for the award of the Design – Build Fire Station No. 2 Replacement project. This letter and attached documents will summarize AMG’s position regarding this matter.

Pursuant to the City’s Municipal Code Section 3.28.085.F, the City has three options for awarding a design-build contract: 1) best value based on RFP criteria; 2) best value based on technical criteria and methodology including price; or 3) lowest responsible and reliable bid. The City’s RFQ and RFP documents clearly state that the basis for award would be the **lowest bid** (See RFP Step 1 of 2 Section 7.2.2 and 7.2.3 and RFP Step 2 of 2 Section 14.2). On August 5, 2020, AMG & Associates (“AMG”) submitted its total lump sum price proposal in words and in numerals, of \$10,837,000 for the design-build Project.

On August 14, 2020 at 7:28 PM, the City’s Public Works Department advised AMG that the “corrected” price of \$12,137,000 that staff calculated (based on a bid form that was for informational purposes only) would be the price registered as the “correct price being received by AMG for subject proposal”. On August 17, 2020, AMG submitted its written objection to the staff’s decision to ignore the clear and unambiguous amount of AMG’s bid (\$10,837,000.00), a copy of AMG’s letter is attached hereto as **Exhibit A**. On August 19, 2020, Public Works staff informed AMG by e-mail (**Exhibit 1**) that it would use a different method of calculating AMG’s total bid price than was indicated in the City’s RFP document and would continue to use the incorrect inflated price as AMG’s bid. Thus, it appears that staff is attempting to fabricate a basis to stray from the codified basis for award to the proposer submitting the lowest bid for the design-build Project.

For Council Members purposes and understanding of how the City of Carlsbad is being affected, the bid summary is as follows:

- Barnhart – Reese bid amount: \$11,222,472.00
- AMG & Associates, Inc. bid amount: \$10,837,000.00
- **City of Carlsbad cost savings: \$385,472.00**

Your purchasing department is recommending that AMG’s bid amount be increased to \$12,137,000.00, which would cost the City of Carlsbad an additional \$385,472.00 by awarding the project to Barnhart – Reese, which is contrary to the guidelines set forth in your Municipal Code and RFP documents.

AMG strenuously objects to the improper and false inflation of its bid price by \$1,300,000.00 and appeals to the City Council to enforce its Municipal Code Section 3.28.020, to ensure the fair and equitable treatment of AMG, to prevent a waste of public funds, and to safeguard the quality and integrity of the purchasing system should staff recommend award of the contract for the Project to anyone other than AMG.

California’s competitive bidding laws exist to protect against the waste of public funds and to obtain the best economic result for the public.¹ In this case, the City’s suggested recalculation of AMG’s bid could potentially result in evaluation of AMG’s bid at a price \$1,300,000.00 greater than that actually bid by AMG. Even more concerning, any attempt to recalculate AMG’s price could result in award to another bidder at a price higher than AMG’s bid of \$10,837,000. Please consider this correspondence a bid protest if there’s a recommendation for award to another bidder with a higher bid price.

The RFP documents, when read as a whole, use the **singular** terms “Total Proposed Lump Sum Price,” “Total Proposal Price,” and “lowest proposal price” to indicate the basis for award of the contract. The Proposal Schedule (which includes 22-line item prices) is **not** used to determine the lowest price proposal.

In fact, the City’s RFP documents make **no mention of the purpose of the Proposal Schedule**, which appears, instead, to be used for the purpose of comparing, not disqualifying, proposals and to ensure bidders included all major categories of work in the “Total Proposed Lump Sum Price”. The City cannot use this informational document to prevent award to AMG as the proposer submitting the lowest bid.

There is no discrepancy in AMG’s Total Proposal Lump Sum Price on the City’s proposal form uploaded to the Planet-Bids website.

¹ See Graydon v. Pasadena Redevelopment Agency (1980) 104 Cal.App.3d 631.

AMG listed the “Total Proposed Lum Sum Price/Total Proposal Price” as \$10,837,000 and Ten Million, Eight Hundred and Thirty-Seven Thousand, consistently in figures and words in three (3) separate places (**Exhibit 2**), therefore the second sentence of Section 13.1.10.2, cannot be taken out of context and used to improperly increase the amount of AMG’s clear and unambiguous Total Proposal Price Form.

In closing, AMG is a highly qualified, responsive, and responsible bidder on this project. AMG’s principals have more than 75 years combined experience in public works construction, we have completed more than \$1 billion in successfully completed public works projects throughout our careers. Additionally, AMG has successfully completed eight (8) fire station facilities with one of them being the Battalion Headquarters in Santa Clarita. Our design-build team with LPA Architects recently completed the Buena Park Fire Station. AMG’s stands ready, willing, and able to perform the work set forth in its bid proposal.

Furthermore, for the reasons set forth herein, it is clear that the City should not recalculate to improperly increase AMG’s total price to a number that is contrary to our written bid amount of \$10,837,000 as reflected in our proposal form. In closing, with the ongoing COVID – 19 issues, I’m confident the City of Carlsbad has numerous needs that could be put to good use by utilizing the \$385,472.00 cost savings provided by AMG on this project.

Your thoughtful consideration in this matter is genuinely appreciated. Please contact me directly if you have any questions or concerns that you would like to discuss further.

Sincerely,



Albert M. Giacomazzi
President

Exhibit 1 – City of Carlsbad e-mail to AMG

Exhibit A – AMG’s August 17, 2020 Letter Objection to City’s Public Works Department

Exhibit 2 – AMG’s Bid Proposal Documents

cc: Anthony Traverso; AMG Vice-President

From: Eleida Felix Yackel <Eleida.FelixYackel@carlsbadca.gov>
Date: August 14, 2020 at 7:28:29 PM PDT
To: Albert Giacomazzi <albert@amgassociatesinc.com>, "dgilmore@lpadesignstudios.com" <dgilmore@lpadesignstudios.com>
Cc: Steven Stewart <Steven.Stewart@carlsbadca.gov>
Subject: City of Carlsbad Fire Station No. 2 Replacement (Second Step Process; RFP20-1124FAC

August 14, 2020

Contractor:

AMG & Associates, Inc.
26535 Summit Circle
Santa Clarita, CA 91350

Albert M. Giacomazzi, President

albert@amgassociatesinc.com

(661) 251-7401

Architect:

LPA, Inc.
1600 National Avenue
San Diego, CA 92113

David Gilmore, Principal-in-Charge

dgilmore@lpadesignstudios.com

(619) 929-3939

Dear Design-Build Team:

Subject: City of Carlsbad Fire Station No. 2 Replacement (Second Step Process; RFP20-1124FAC – Price Proposal Form

The City of Carlsbad (City) has completed review of the proposals received for subject project. It is concluded that the price proposal's computation contains errors. Per section 13, Proposal Contents, subsection 13.1 states the following:

"Proposals submitted in response to this RFP shall include the following information in the

order presented below. Failure to provide all required information may result in the proposal being considered non-responsive and ineligible for further consideration."

In addition, section 13.1.10 states the following:

*"13.1.10. The Price Proposal Form in **Attachment K** shall be included in accordance with the requirements of this solicitation.*

13.1.10.1. The Price Proposal Form shall be signed by an individual or individuals authorized to execute legal documents on behalf of the DBT.

*13.1.10.2. In the event of any discrepancies, written numbers (e.g., fifty, hundred) will govern over numerical numbers (e.g., 50, 100) **on the Price Proposal Form. Also, the sum of all lump sum line items will govern over the "Total Proposed Lump Sum Price" line item.***

The correct sum of all lump sum line items of the price proposal form equals to \$12,137,000 and not \$10,837,000. As specified in section 13.1.10.2, the sum of all lump sum line items will govern over the total. The corrected price of \$12,137,000 will be the price registered as the correct price being received for subject proposal.

Should you have any questions, please feel free to contact me.

Sincerely,

Eleida Felix Yackel
Senior Contract Administrator

FROM THE DESK OF:
ALBERT M. GIACOMAZZI
PRESIDENT

August 17, 2020
VIA E-MAIL AND FED EX

Eleida.FelixYackel@carlsbadca.gov

City of Carlsbad
Eleida Felix Yackel
Senior Contract Administrator
Public Works Contract Administration Department
1635 Faraday Avenue
Carlsbad, CA 92008

RE: City of Carlsbad Fire Station No. 2 Replacement Design-Build Contract
RFP20-1124FAC – Project No. 4060 (“Project”)

Subject: AMG & Associates, Inc.’s Objection to City’s Calculation of AMG’s Total Proposed Lump Sum Price

Dear Eleida,

We are in receipt of, and responding to, your e-mail on behalf of the City of Carlsbad (“City”) dated Friday, August 14, 2020 at 7:28 PM, but not received by our office until after normal business hours that day, wherein you suggest that there was a computational error in AMG’s bid, and according to Section 13.1.10.2 of the City’s RFP documents, that the “corrected” price of \$12,137,000 will be the price registered as the correct price being received for subject proposal.

Contrary to your assertion, there is no computational error in AMG’s & Associates (“AMG”) total lump sum price proposal in words or in numerals, and therefore, there are no grounds for the City to recalculate AMG’s total proposed lumps sum price of \$10,837,000 for the Project. Before addressing the specifics of your e-mail, we want to highlight a few relevant principles of California’s competitive bidding laws.

California’s competitive bidding laws exist to protect against the waste of public funds and to obtain the best economic result for the public.¹ In this case, the City’s suggested recalculation of AMG’s bid could potentially result in the award of the project to AMG at a price \$1,300.00 greater than that bid by AMG. Even more concerning, any attempt to recalculate AMG’s price could result in award to another bidder at a price higher than AMG’s bid of

¹ See Graydon v. Pasadena Redevelopment Agency (1980) 104 Cal.App.3d 631.

\$10,870,000. AMG will protest any recommendation for award to another bidder with a higher bid price. The City has not yet released the pricing of the other proposer for this Project.

As one California Court has stated:

“It would certainly be a disservice to the public if a losing bidder were to be permitted to comb through the bid proposal or license application of the low bidder after the fact, and cancel the low bid on a minor technicality, with the hope of securing acceptance of is, higher bid. Such construction would be adverse to the best interests of the public and contrary to public policy.”²

This is exactly would occur, albeit based on the City’s actions, not that of a losing bidder, if the City were to improperly recalculate AMG’s total proposed lump sum price. Moreover, California courts have held that an awarding body cannot reject a bid on the basis of arbitrary or unwritten policies. Monterey Mechanical Co. v. Sacramento Reg’l County Sanitation District, 44 Cal. App. 4th 1391 (1996). The City cannot circumvent competitive bidding requirements by arbitrarily changing the bidding requirements after the bid deadline and awarding a contract on the basis of that change. Obviously, it is unfair to bidders to change the basis for award after bids have been received.

With the foregoing in mind, AMG now turns to its attention to the specifics of your e-mail. City’s RFP documents, (Step 2 of 2) provides:

“13.1.10.2 In the event of any discrepancies, written numbers (e.g., fifty, hundred) will govern over numerical numbers (e.g., 50, 100) on the Price Proposal Form. Also, the sum of all lump sum line items will govern over the “Total Proposed Lump Sum Price” line item.”

This provision addresses the circumstance when there is a discrepancy between the written numbers and the numerical numbers entered on the proposal form. **The second sentence applies only in the event there is a discrepancy to be resolved.** This is supported by the text of the proposal form itself, which provides:

TOTAL PROPOSAL PRICE

The TOTAL PROPOSAL PRICE on Proposal Schedule:

Total Proposal Price in Numbers: _____

Total Proposal Price in Written Form: _____

In case of discrepancy between the written price, the numerical price, or the price as submitted via PlanetBids, the PlanetBids price shall prevail.

The RFP documents, when read as a whole, use the **singular** terms “Total Proposed Lum Sum Price,” “Total Proposal Price,” and “lowest proposal price” to indicate the basis for award

² MCM Construction v. City and County of San Francisco (1998) 66 Cal.App.4th 359, 370.

of the contract. The Proposal Schedule (which includes 22 line item prices) is **not** used determine the lowest price proposal. In fact, the City's RFP documents make **no mention of the purpose of the Proposal Schedule**, which appears, instead, to be used for the purpose of comparing, not disqualifying, proposals and to ensure bidders included all major categories of work in the "Total Proposed Lump Sum Price".

There is no discrepancy in AMG's Total Proposal Lump Sum Price on the City's proposal form uploaded to the PlanetBids website. AMG listed the "Total Proposed Lump Sum Price/Total Proposal Price" as \$10,837,000 and Ten Million, Eight Hundred and Thirty-Seven Thousand, consistently in figures and words in three (3) separate places, See attached **Exhibit 1**, pages, 3 and 4, therefore the second sentence of Section 13.1.10.2, cannot be taken out of context and used to improperly increase the amount of AMG's clear and unambiguous Total Proposal Price Form.

In closing, AMG is a highly qualified, responsive and responsible bidder on this project. AMG's principals have more than 70 years combined experience in public works construction, with more than \$One billion in successfully completed public works projects throughout their careers. Many of these successfully completed projects have been fire station facilities. AMG's stands ready, willing and able to perform the work set forth in its bid proposal.

Further, for the reasons set forth herein, it is clear that the City should not recalculate or otherwise improperly increase AMG's total price proposal.

Please contact me directly if you require any additional information regarding this matter.

Sincerely,



Albert M. Giacomazzi
President

Exhibit 1 – AMG's bid forms uploaded to PlanetBids (26 pages)

cc:

Anthony Traverso; AMG Vice-President

Proposal Form

PROPOSAL FORM

NAME OF PROJECT City of Carlsbad, Fire Station No. 2 Replacement

NAME OF PROPOSER: AMG & Associates, Inc.

The City Council
City of Carlsbad
1635 Faraday Ave, Carlsbad, CA 92008

The undersigned hereby declare that we have carefully examined the location of the proposed Work, and have read and examined the Contract Documents, including all plans, specifications, and addenda, if any, for the above-mentioned Project. The undersigned has acknowledged receipt, understanding, and full consideration of ANY and ALL addenda to the Contract Documents via PlanetBids.

We hereby propose to furnish all labor, materials, equipment, tools, transportation, and services, and to discharge all duties and obligations necessary and required to perform and complete the Project, as described and in strict conformity with the Drawings, and these Specifications for TOTAL PROPOSAL PRICE.

- Attached is the required Proposal Bond or Proposal Security in the amount of not less than 10% of the Total Proposal Price.
- Attached is the completed Proposed Subcontractors form.
- Attached is the completed Proposer Information and Experience form.
- Attached is the fully executed Non-collusion Affidavit.
- Attached is the completed Public Works Contractor Registration Certification form.
- Attached is the completed Certificate of Insurance form.
- Attached is the Statement of Redebarment form.
- Attached is the Disclosure of Discipline Record.
- Attached is the Optional Escrow agreement (if applicable).

PROPOSAL FORM

PROPOSAL SCHEDULE

General Conditions / General Requirements / Bonds	\$ 1,200,000
Construction – Mobilization / Demobilization	\$ 50,000
Construction – Mobile Office Trailers / Bathhouse	\$ 50,000
Temporary Station	
Design, Professional and Consulting Services and Permitting	\$ 114,000
Right-of-Way work	\$ 100,000
Sprung structure and trailer procurement/installation	\$ 250,000
Site fencing, lighting, temporary furnishings and certificate of occupancy	948,000
Restoration of site with new slurry seal and restriping	\$ 45,000
Permanent Station	
Design, Professional and Consulting Services and Permitting	\$ 735,000
Bus stop relocation and site fencing	\$ 100,000
Utility connections	\$ 100,000
Hazardous materials abatement and fumigation	\$ 70,000
Demolition and site clearing	\$ 150,000
Survey and elevation monitoring	\$ 30,000
Construction – concrete and masonry	\$ 600,000
Construction – building shell and roof framing	\$ 3,075,000
Construction – mechanical/electrical/plumbing /IT infrastructure	\$ 1,600,000
Construction – interior finishes	\$ 900,000
Site landscaping and final clean up	\$ 90,000
Coordination with commissioning agent, FF&E, and certificate of occupancy	30,000
Right-of-Way and intersection modifications	\$ 600,000
TOTAL PROPOSED LUMP SUM PRICE	\$ 10,837,000

Proposed changes to mechanical, electrical, plumbing, security, finishes, or other systems and associated lump sum price impacts: Locate condensing unit on the ground; relocate and enlarge electrical room to accommodate required switchgear and panels, and reduce feeder lengths; additional BMPs to address WQMP requirements; reduce rated glazing at Pole 116 room; omit wall tile in App Bay, provide epoxy paint over abuse resistant gyp.

Proposed ideas to enhance the facility in terms of operation, maintenance, lifecycle cost / total cost of ownership and associated lump sum price impacts: Utilize shear walls in lieu of brace frames for lateral resisting system; revise second floor wall and floor framing to wood; increase width of section door 105D.

Other: N/A

PROPOSAL FORM

The costs for any Work shown or required in the Contract Documents, but not specifically identified as a line item are to be included in the related line items and no additional compensation shall be due to Contractor for the performance of the Work.

TOTAL PROPOSAL PRICE

The TOTAL PROPOSAL PRICE on Proposal Schedule:

Total Proposal Price in Numbers: \$ 10,837,000

Total Proposal Price in Written Form: Ten Million, Eight Hundred and Thirty-seven Thousand

In case of discrepancy between the written price, the numerical price, or the price as submitted via PlanetBids, the PlanetBids price shall prevail.

The undersigned agrees that this Proposal Form constitutes a firm offer to the City which cannot be withdrawn for ninety (90) calendar days from and after the Proposal opening, or until a Contract for the Work is fully executed by the City and the lowest responsible proposer, whichever is later.

The Undersigned has carefully checked all of the above figures and understands that the City will not be responsible for any error or omission on the part of the Undersigned in preparing this Proposal.

RECITALS

The successful Proposer hereby agrees to sign the contract and furnish the necessary bonds and certificates of insurance within ten (10) working days after the City issues the Notice of Award to the successful Proposer.

The Undersigned agrees that in case of failure to execute the required Contract with necessary bonds and insurance policies within said time period, the City may pursue to award the contract to the next lowest responsible Proposer and the Proposal Security of the lowest Proposer may be forfeited.

Upon receipt of the signed contract and other required documents, the City will proceed to execute the contract and issue the Notice to Proceed. The time of completion shall commence on the date of the Notice to Proceed, unless otherwise specified. The undersigned agrees to begin the Work within ten (10) working days of the date of the Notice to Proceed, unless otherwise specified.

The Undersigned is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code and agrees to comply with such provisions before commencing the performance of the work of this Contract and continue to comply until the contract is complete.

The Undersigned is aware of the provisions of the Labor Code, Part 7, Chapter 1, Article 2, relative to the general prevailing rate of wages for each craft or type of worker needed to execute the Contract and agrees to comply with its provisions.

The Undersigned Proposer declares, under penalty of perjury, that the undersigned is licensed to do business or act in the capacity of a contractor within the State of California and that this statement is true

PROPOSAL FORM

and correct and has the legal effect of an affidavit. The following are the Proposer's applicable license number(s), with their expiration date(s) and class of license(s):

License Number 881824; Expiration Date: 7-31-2022

Class A - General Engineering

Class B - General Building

If the Proposer is a joint venture, each member of the joint venture must include the required licensing information.

A Proposal submitted to the City by a Contractor who is not licensed as a contractor pursuant to the Business and Professions Code shall be considered nonresponsive and shall be rejected by the City. In all contracts where federal funds are involved, no Proposal submitted shall be invalidated by the failure of the Proposer to be licensed in accordance with California law. However, at the time the contract is awarded, the contractor shall be properly licensed.

The Undersigned Proposer hereby represents as follows:

1. That no Council member, officer agent, or employee of the City of Carlsbad is personally interested, directly or indirectly, in this Contract, or the compensation to be paid hereunder; that no representation, oral or in writing, of the City Council, its officers, agents, or employees has inducted Proposer to enter into this Contract, excepting only those contained in this form of Contract and the papers made a part hereof by its terms; and
2. That this Proposal is made without connection with any person, firm, or corporation making a Proposal for the same work, and is in all respects fair and without collusion or fraud.

Accompanying this Proposal is Proposer's Bond
(Cash, Certified Check, Proposer's Bond or Cashier's Check) for ten percent (10%) of the amount Proposal, payable to City of Carlsbad as Proposal Security and which is given as a guarantee that the undersigned will enter into a contract and provide the necessary bonds and certificates of insurance if awarded the Contract.

Organized under the laws of the State of California, the Proposer is: (check one)

- an individual
- a partnership
- a corporation

PROPOSAL FORM

IF A SOLE OWNER OR SOLE CONTRACTOR SIGN HERE: N/A

I hereby certify under penalty of perjury under the laws of the State of California that all of the information submitted in connection with this Proposal and all of the representations made herein are true and correct.

- 1 Name under which business is conducted _____

- 2 Signature (given and surname) of proprietor _____
Printed/ typed Name _____

- 3 Place of Business
(Full Address: street, number, city, state, zip) _____

- 4 Telephone Number _____

- 5 Email _____

NOTARIAL ACKNOWLEDGMENT OF EXECUTION BY ALL SIGNATORIES MUST BE ATTACHED

PROPOSAL FORM

IF A PARTNERSHIP, SIGN HERE: N/A

I hereby certify under penalty of perjury under the laws of the State of California that all of the information submitted in connection with this Proposal and all of the representations made herein are true and correct.

1 Name under which business is conducted

2 Signature (given and surname and role)
(Note: Signature must be made by a general partner)

Printed/ typed Name

3 Place of Business
(Full Address: street, number, city, state, zip)

4 Telephone Number

5 Email

NOTARIAL ACKNOWLEDGMENT OF EXECUTION BY ALL SIGNATORIES MUST BE ATTACHED

PROPOSAL FORM

IF A CORPORATION, SIGN HERE:

I hereby certify under penalty of perjury under the laws of the State of California that all of the information submitted in connection with this Proposal and all of the representations made herein are true and correct.

- 1 Name under which business is conducted

AMG & Associates, Inc.

- 2 Signature (given and surname and Title)

(Note: Signature must be made by a someone who can bind the corporation)



Printed/ typed Name

Albert M. Giacomazzi II

- 3 Place of Business
(Full Address: street, number, city, state, zip)

26535 Summit Circle

Santa Clarita, CA

91350

- 4 Telephone Number

(661) 251-7501

- 5 Email

albert@amgassociatesinc.com

NOTARIAL ACKNOWLEDGMENT OF EXECUTION BY ALL SIGNATORIES MUST BE ATTACHED

****Please see attached notary statement at end of proposal.**

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California)
County of Los Angeles)

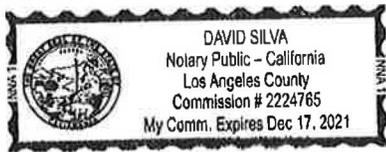
On Aug. 5, 2020 before me, David Silva, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Albert M. Giacomazzi
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/it~~ executed the same in his/~~her/its~~ authorized capacity(ies), and that by his/~~her/its~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Proposal Form - Fire Station No 2 Document Date: No Date

Number of Pages: 2 Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer(s)

Signer's Name: Albert M. Giacomazzi

Corporate Officer — Title(s): President

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: AMG & Associates, Inc

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

PROPOSAL FORM

List below names of president, vice president, secretary and assistant secretary, if a corporation; if a partnership, list names of all general partners, and managing partners:

Albert M. Giacomazzi, President

Anthony R. Traverso, Vice President/Secretary

PROPOSAL FORM

Approved as to form this 29th day of July 2020.

Attorney for City of Carlsbad

END OF SECTION

PROPOSAL SECURITY FORM

(Note: This form is required when cash, certified check or cashier's check, accompanies proposal. If Proposal Bond is being provided, use form Proposal Bond) **Please see Proposal Bond Form on next page

NAME OF PROJECT: _____

NAME OF PROPOSER: _____

Accompanying this proposal is a Certified / Cashiers check payable to the order of City of Carlsbad, in the sum of _____

dollars (\$ _____), this amount being ten percent (10%) of the total amount of the proposal. The proceeds of this check shall become the property of the City, provided this proposal shall be accepted by the City through action of its legally constituted contracting authorities and the undersigned shall fail to execute a contract and furnish the required Performance, Warranty and Payment Bonds and proof of insurance coverage within the stipulated time; otherwise, the check shall be returned to the undersigned. The proceeds of this check shall also become the property of the City if the undersigned shall withdraw his or her proposal within the period of fifteen (15) days after the date set for the opening thereof, unless otherwise required by law, and notwithstanding the award of the contract to another proposer.

PROPOSER

Required Attachments:

- Certified Check or Cashiers Check

END OF SECTION

PROPOSED SUBCONTRACTORS FORM

NAME OF PROJECT: City of Carlsbad, Fire Station No. 2 Replacement

NAME OF PROPOSER: AMG & Associates, Inc.

In compliance with the Subletting and Subcontracting Fair Practices Act Chapter 4 (commencing at Section 4100), Part 1, Division 2 of the Public Contract Code of the State of California and any amendments thereof, Proposer shall set forth below: (a) the name and the location of the place of business, (b) the California contractor license number, (c) the DIR public works contractor registration number, and (d) the portion of the work which will be done by each subcontractor who will perform work or labor or render service to the Proposer in or about the construction of the work or improvement to be performed under this Contract in an amount in excess of one-half of one percent (0.5%) of the Proposer's Total Proposal Price. Notwithstanding the foregoing, if the work involves the construction of streets and highways, then the Proposer shall list each subcontractor who will perform work or labor or render service to the Proposer in or about the work in an amount in excess of one-half of one percent (0.5%) of the Proposer's Total Proposal Price or \$10,000, whichever is greater. No additional time shall be granted to provide the below requested information.

If a Proposer fails to specify a subcontractor or if a contractor specifies more than one subcontractor for the same portion of work, then the Proposer shall be deemed to have agreed that it is fully qualified to perform that portion of work and that it shall perform that portion itself. No changes in the subcontractors listed work will be made without the prior approval of the Agency.

Attach additional pages as required. ****Please see 3 pages of Subcontractors Form attached.**


_____ (signature of Proposer)
Albert M. Giacomazzi

PROPOSED SUBCONTRACTORS FORM

Name of Subcontractor	Location of Business	CSLB Contractor License No.	DIR Registration Number	Work to be done by Subcontractor	% of Work
DMC Enterprises	Vista	967973	1000428670	Earthwork / Demo	1%
Enkay	Fountain Valley	509785	1000009004	Abatement	.5%
Ramirez	Azusa	1019358	1000045372	Concrete	4%
Afakori, Inc.	Lake Elsinore	858004	1000001585	Structural Steel	4
Abdellatif Enterprise	Laguna Hills	662128	1000001544	Rough Carpentry	4
New Star Construction	Carlsbad	1037776	1000056859	Casework	1
A Good Roofer	Lakeside	685015	1000000746	Roofing	.5

PROPOSED SUBCONTRACTORS FORM

Name of Subcontractor	Location of Business	CSLB Contractor License No.	DIR Registration Number	Work to be done by Subcontractor	% of Work
Slater Glass	Arcadia	893323	1000004146	Storefront Glazing	2
Byron Epp	Laguna Hills	433078	1000014101	Four-Fold Glazed Doors	1
Platinum Construction	Stanton	870864	1000006755	Plaster / Drywall	5
Continental Marble & Tile	Corona	394	1000002594	Tile	1
Pennsylvania Coatings	Temecula	986689	1000010832	Painting	1
Pipetrades	San Diego	998580	1000011653	Plumbing and Site Utilities	3
WR Robbins	Oceanside	890971	1000004711	HVAC	4

END OF SECTION

PROPOSED SUBCONTRACTORS FORM

Name of Subcontractor	Location of Business	CSLB Contractor License No.	DIR Registration Number	Work to be done by Subcontractor	% of Work
APS Purification Systems	San Diego	621360	1000030031	Vehicle Exhaust	1
MAC GC-Electric	San Diego	911785	1000050902	Electrical	8
Crosstown Electrical	Irwindale	756309	1000000155	Traffic Signal	3
Pacific Manufactured Homes	San Marcos	N/A	1000587801	Temp. Living Quarters	1

PROPOSER INFORMATION FORM

NAME OF PROJECT: City of Carlsbad, Fire Station No. 2 Replacement

NAME OF PROPOSER: AMG & Associates, Inc.

1. INFORMATION ABOUT PROPOSER

(Indicate not applicable ("N/A") where appropriate.)

NOTE: Where Proposer is a joint venture, pages shall be duplicated and information provided for all parties to the joint venture.

1. Name of Proposer: AMG & Associates, Inc.

2. Type, if Entity: S-Corporation

3. Proposer Address: 26535 Summit Circle, Santa Clarita, CA 91350

a. Facsimile Number (661) 251-7405

b. Telephone Number (661) 251-7401

c. Email Address albert@amgassociatesinc.com

4. How many years has Proposer's organization been in business as a Contractor? 15 years

5. How many years has Proposer's organization been in business under its present name?

15 years

a. Under what other or former names has Proposer's organization operated?

N/A

6. If Proposer's organization is a corporation, answer the following:

a. Date of Incorporation: 4-14-2005

b. State of Incorporation: California

c. President's Name: Albert M. Giacomazzi

d. Vice-President's Name(s): Anthony R. Traverso

PROPOSER INFORMATION FORM

e. Secretary's Name: Anthony R. Traverso

f. Treasurer's Name: Anthony R. Traverso

7. If an individual or a partnership, answer the following:

a. Date of Organization: N/A

b. Name and address of all partners (state whether general or limited partnership):

N/A

8. If other than a corporation or partnership, describe organization and name principals:

N/A

9. List other states in which Proposer's organization is legally qualified to do business.

N/A

10. What type of work does the Proposer normally perform with its own forces?

We can self perform the following work: general supervision, CPM and Short Interval Scheduling, Storm Water Pollution Prevention, surveying temp. services, cast-in-place concrete, rough carpentry, finish carpentry, and final clean-up.

11. Has Proposer ever failed to complete any work awarded to it? If so, note when, where, and why:

PROPOSER INFORMATION FORM

N/A

12. Within the last five years, has any officer or partner of Proposer's organization ever been an officer or partner of another organization when it failed to complete a contract? If so, attach a separate sheet of explanation:

N/A

13. List Trade References:

1. Butch Pope Engineering (805) 343-6897

2. Kern Steel Fabrication (661) 327-9588

3. Premier Drywall (805) 928-3397

14. List Bank References (Bank and Branch Address):

Citizens Business Bank

3695 Main Street, Riverside, CA 92501

Jason Gould, VP Center Manager, (951) 683-2112

15. Name of Bonding Company and Name and Address of Agent:

Travelers Casualty & Surety Company of America

Bonding Agent: Don Chambers / Chambers & Co.

751 Daily Drive, Suite 230, Camarillo, CA 93010

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PROPOSER INFORMATION FORM

2. PERSONNEL ASSIGNMENT

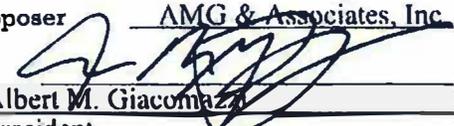
The Proposer shall identify the key personnel to be assigned to this project in a management, construction supervision or engineering capacity. Add additional pages to identify ALL Key personnel. ****Please see resumes of AMG-LPA Team attached on next several pages.**

Proposer agrees that personnel named in this Proposal will remain on this Project until completion of all relevant Work, unless substituted by personnel of equivalent experience and qualifications approved in advance by the City.

Job Title Name % time on this project	Specialized Education	Years of construction experience relevant to the project	Summarize the experience

3. VERIFICATION AND EXECUTION

These Proposal Forms shall be executed only by a duly authorized official of the Proposer: I declare under penalty of perjury under the laws of the State of California that the foregoing information is true and correct:

Name of Proposer AMG & Associates, Inc.
 Signature 
 Name Albert M. Giacomazzi
 Title President
 Date July 29, 2020

END OF SECTION

Bid Bond

PROPOSAL BOND FORM

(Note: This form is not required when other form of Proposer's Security, e.g. cash, certified check or cashier's check, accompanies proposal. In that case, use form Proposal Security)

NAME OF PROJECT: Fire Station No. 2 Replacement and Temporary Station

NAME OF PROPOSER: AMG & Associates, Inc.

The makers of this bond are, AMG & Associates, Inc., as Principal, and Travelers Casualty and Surety Company of America, as Surety and are held and firmly bound unto the City of Carlsbad, hereinafter called the City, in the penal sum of TEN PERCENT (10%) OF THE TOTAL PROPOSAL PRICE of the Principal submitted to City for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the accompanying proposal dated July 29th, 2020.

If the Principal does not withdraw its Proposal within the time specified in the Contract Documents; and if the Principal provides all required documents to the City and is awarded the Contract; then this obligation shall be null and void. Otherwise, this bond will remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents shall affect its obligation under this bond, and Surety does hereby waive notice of any such changes.

In the event a lawsuit is brought upon this bond by the City and judgment is recovered, the Surety shall pay all litigation expenses incurred by the City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and expenses.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this 27th day of July, 2020, the name and corporate seal of each corporation.

PRINCIPAL:

Executed by SURETY

AMG & Associates, Inc.
(Name of Principal)

this 27th day of

July, 2020.

By:


(sign here)

SURETY:

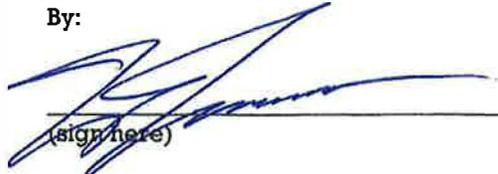
Travelers Casualty and Surety Company of America
(name of Surety)

Albert M. Giacomazzi
(Print name here)

President
(Title and Organization of Signatory)

21688 Gateway Center Drive, Diamond Bar, CA 91765
(address of Surety)

By:

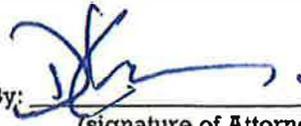

(sign here)

909.612.3270
(telephone number of Surety)

PROPOSAL BOND FORM

Anthony R. Traverso
(Print name here)

Vice President AMG+Associates Inc.
(Title and Organization of Signatory)

By: 
(signature of Attorney-in-Fact)

Don Chambers
(printed name of Attorney-in-Fact)

Required Attachments:

- Corporate resolution showing current power of attorney.
- Proper notarial acknowledgment of execution by PRINCIPAL.
- Proper notarial acknowledgment of execution by SURETY.
- President or vice-president and secretary or assistant secretary must sign for corporations. If only one officer signs, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering that officer to bind the corporation.

END OF SECTION

ACKNOWLEDGMENT

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

State of California
County of Ventura

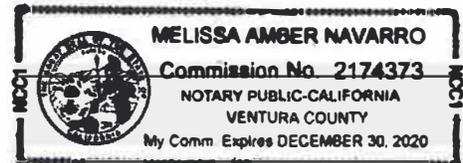
On July 27, 2020 before me, Melissa Amber Navarro, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature Melissa Amber Navarro (Seal)





**Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company**

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Don Chambers**, of **Camarillo, California**, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **3rd** day of **February**, 2017.



State of Connecticut

City of Hartford ss.

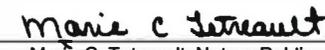
By: 
Robert L. Raney, Senior Vice President

On this the **3rd** day of **February**, 2017, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, 2021




Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

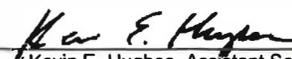
FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary; any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this 27th day of July, 2020




Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.**

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

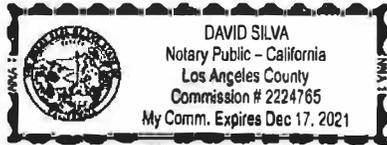
State of California)
County of Los Angeles)

On Aug 5, 2020 before me, David Silva, Public Notary
Date Here Insert Name and Title of the Officer
personally appeared Albert M. Giacomazzi and Anthony R. Traverso
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~was~~ are subscribed to the within instrument and acknowledged to me that ~~was~~ they executed the same in ~~his~~ their authorized capacity(ies), and that by ~~his~~ their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Signature David Silva
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Proposal Bond - City of Carlsbad Document Date: July 27, 2020
Number of Pages: 5 Signer(s) Other Than Named Above: Don Chambers

Capacity(ies) Claimed by Signer(s)

Signer's Name: Albert M. Giacomazzi
 Corporate Officer — Title(s): President
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: AMG & Associates Inc

Signer's Name: Anthony R. Traverso
 Corporate Officer — Title(s): VP, Secretary
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: AMG & Associates, Inc

Proposal Form

PROPOSAL FORM

NAME OF PROJECT City of Carlsbad, Fire Station No. 2 Replacement

NAME OF PROPOSER: AMG & Associates, Inc.

The City Council
City of Carlsbad
1635 Faraday Ave, Carlsbad, CA 92008

The undersigned hereby declare that we have carefully examined the location of the proposed Work, and have read and examined the Contract Documents, including all plans, specifications, and addenda, if any, for the above-mentioned Project. The undersigned has acknowledged receipt, understanding, and full consideration of ANY and ALL addenda to the Contract Documents via PlanetBids.

We hereby propose to furnish all labor, materials, equipment, tools, transportation, and services, and to discharge all duties and obligations necessary and required to perform and complete the Project, as described and in strict conformity with the Drawings, and these Specifications for TOTAL PROPOSAL PRICE.

- Attached is the required Proposal Bond or Proposal Security in the amount of not less than 10% of the Total Proposal Price.
- Attached is the completed Proposed Subcontractors form.
- Attached is the completed Proposer Information and Experience form.
- Attached is the fully executed Non-collusion Affidavit.
- Attached is the completed Public Works Contractor Registration Certification form.
- Attached is the completed Certificate of Insurance form.
- Attached is the Statement of Redebarment form.
- Attached is the Disclosure of Discipline Record.
- Attached is the Optional Escrow agreement (if applicable).

PROPOSAL FORM

PROPOSAL SCHEDULE

General Conditions / General Requirements / Bonds	\$ 1,200,000
Construction – Mobilization / Demobilization	\$ 50,000
Construction – Mobile Office Trailers / Bathhouse	\$ 50,000
Temporary Station	
Design, Professional and Consulting Services and Permitting	\$ 114,000
Right-of-Way work	\$ 100,000
Sprung structure and trailer procurement/installation	\$ 250,000
Site fencing, lighting, temporary furnishings and certificate of occupancy	948,000
Restoration of site with new slurry seal and restriping	\$ 45,000
Permanent Station	
Design, Professional and Consulting Services and Permitting	\$ 735,000
Bus stop relocation and site fencing	\$ 100,000
Utility connections	\$ 100,000
Hazardous materials abatement and fumigation	\$ 70,000
Demolition and site clearing	\$ 150,000
Survey and elevation monitoring	\$ 30,000
Construction – concrete and masonry	\$ 600,000
Construction – building shell and roof framing	\$ 430,000
Construction – mechanical/electrical/plumbing /IT infrastructure	\$ 1,600,000
Construction – interior finishes	\$ 900,000
Site landscaping and final clean up	\$ 90,000
Coordination with commissioning agent, FF&E, and certificate of occupancy	30,000
Right-of-Way and intersection modifications	\$ 600,000
TOTAL PROPOSED LUMP SUM PRICE	\$ 10,837,000

Proposed changes to mechanical, electrical, plumbing, security, finishes, or other systems and associated lump sum price impacts: Locate condensing unit on the ground; relocate and enlarge electrical room to accommodate required switchgear and panels, and reduce feeder lengths; additional BMPs to address WQMP requirements; reduce rated glazing at Pole 116 room; omit wall tile in App Bay, provide epoxy paint over abuse resistant gyp.

Proposed ideas to enhance the facility in terms of operation, maintenance, lifecycle cost / total cost of ownership and associated lump sum price impacts: Utilize shear walls in lieu of brace frames for lateral resisting system; revise second floor wall and floor framing to wood; increase width of section door 105D.

Other: N/A

PROPOSAL FORM

The costs for any Work shown or required in the Contract Documents, but not specifically identified as a line item are to be included in the related line items and no additional compensation shall be due to Contractor for the performance of the Work.

TOTAL PROPOSAL PRICE

The TOTAL PROPOSAL PRICE on Proposal Schedule:

Total Proposal Price in Numbers: \$10,837,000

Total Proposal Price in Written Form: Ten Million, Eight Hundred and Thirty-seven Thousand

In case of discrepancy between the written price, the numerical price, or the price as submitted via PlanetBids, the PlanetBids price shall prevail.

The undersigned agrees that this Proposal Form constitutes a firm offer to the City which cannot be withdrawn for ninety (90) calendar days from and after the Proposal opening, or until a Contract for the Work is fully executed by the City and the lowest responsible proposer, whichever is later.

The Undersigned has carefully checked all of the above figures and understands that the City will not be responsible for any error or omission on the part of the Undersigned in preparing this Proposal.

RECITALS

The successful Proposer hereby agrees to sign the contract and furnish the necessary bonds and certificates of insurance within ten (10) working days after the City issues the Notice of Award to the successful Proposer.

The Undersigned agrees that in case of failure to execute the required Contract with necessary bonds and insurance policies within said time period, the City may pursue to award the contract to the next lowest responsible Proposer and the Proposal Security of the lowest Proposer may be forfeited.

Upon receipt of the signed contract and other required documents, the City will proceed to execute the contract and issue the Notice to Proceed. The time of completion shall commence on the date of the Notice to Proceed, unless otherwise specified. The undersigned agrees to begin the Work within ten (10) working days of the date of the Notice to Proceed, unless otherwise specified.

The Undersigned is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code and agrees to comply with such provisions before commencing the performance of the work of this Contract and continue to comply until the contract is complete.

The Undersigned is aware of the provisions of the Labor Code, Part 7, Chapter 1, Article 2, relative to the general prevailing rate of wages for each craft or type of worker needed to execute the Contract and agrees to comply with its provisions.

The Undersigned Proposer declares, under penalty of perjury, that the undersigned is licensed to do business or act in the capacity of a contractor within the State of California and that this statement is true

PROPOSAL FORM

and correct and has the legal effect of an affidavit. The following are the Proposer's applicable license number(s), with their expiration date(s) and class of license(s):

License Number 881824; Expiration Date: 7-31-2022

Class A - General Engineering

Class B - General Building

If the Proposer is a joint venture, each member of the joint venture must include the required licensing information.

A Proposal submitted to the City by a Contractor who is not licensed as a contractor pursuant to the Business and Professions Code shall be considered nonresponsive and shall be rejected by the City. In all contracts where federal funds are involved, no Proposal submitted shall be invalidated by the failure of the Proposer to be licensed in accordance with California law. However, at the time the contract is awarded, the contractor shall be properly licensed.

The Undersigned Proposer hereby represents as follows:

1. That no Council member, officer agent, or employee of the City of Carlsbad is personally interested, directly or indirectly, in this Contract, or the compensation to be paid hereunder; that no representation, oral or in writing, of the City Council, its officers, agents, or employees has inducted Proposer to enter into this Contract, excepting only those contained in this form of Contract and the papers made a part hereof by its terms; and
2. That this Proposal is made without connection with any person, firm, or corporation making a Proposal for the same work, and is in all respects fair and without collusion or fraud.

Accompanying this Proposal is Proposer's Bond
(Cash, Certified Check, Proposer's Bond or Cashier's Check) for ten percent (10%) of the amount Proposal, payable to City of Carlsbad as Proposal Security and which is given as a guarantee that the undersigned will enter into a contract and provide the necessary bonds and certificates of insurance if awarded the Contract.

Organized under the laws of the State of California, the Proposer is: (check one)

- an individual
- a partnership
- a corporation

PROPOSAL FORM

IF A SOLE OWNER OR SOLE CONTRACTOR SIGN HERE: N/A

I hereby certify under penalty of perjury under the laws of the State of California that all of the information submitted in connection with this Proposal and all of the representations made herein are true and correct.

1 Name under which business is conducted

2 Signature (given and surname) of proprietor

Printed/ typed Name

3 Place of Business
(Full Address: street, number, city, state, zip)

4 Telephone Number

5 Email

NOTARIAL ACKNOWLEDGMENT OF EXECUTION BY ALL SIGNATORIES MUST BE ATTACHED

PROPOSAL FORM

IF A PARTNERSHIP, SIGN HERE: N/A

I hereby certify under penalty of perjury under the laws of the State of California that all of the information submitted in connection with this Proposal and all of the representations made herein are true and correct.

1 Name under which business is conducted

2 Signature (given and surname and role)
(Note: Signature must be made by a general partner)

Printed/ typed Name

3 Place of Business
(Full Address: street, number, city, state, zip)

4 Telephone Number

5 Email

NOTARIAL ACKNOWLEDGMENT OF EXECUTION BY ALL SIGNATORIES MUST BE ATTACHED

PROPOSAL FORM

IF A CORPORATION, SIGN HERE:

I hereby certify under penalty of perjury under the laws of the State of California that all of the information submitted in connection with this Proposal and all of the representations made herein are true and correct.

- 1 Name under which business is conducted

AMG & Associates, Inc.

- 2 Signature (given and surname and Title)

(Note: Signature must be made by a someone who can bind the corporation)



Printed/ typed Name

Albert M. Giacomazzi II

- 3 Place of Business
(Full Address: street, number, city, state, zip)

26535 Summit Circle

Santa Clarita, CA

91350

- 4 Telephone Number

(661) 251-7501

- 5 Email

albert@amgassociatesinc.com

NOTARIAL ACKNOWLEDGMENT OF EXECUTION BY ALL SIGNATORIES MUST BE ATTACHED

****Please see attached notary statement at end of proposal.**

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California)
County of Los Angeles)

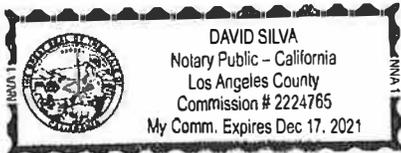
On Aug. 5, 2020 before me, David Silva, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Albert M. Giacomazzi
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/it~~ executed the same in his/~~her/its~~ authorized capacity(ies), and that by his/~~her/its~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Proposal Form - Fire Station No 2 Document Date: No Date

Number of Pages: 2 Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer(s)

Signer's Name: Albert M. Giacomazzi

Corporate Officer — Title(s): President

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: AMG & Associates, Inc

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

PROPOSAL FORM

List below names of president, vice president, secretary and assistant secretary, if a corporation; if a partnership, list names of all general partners, and managing partners:

Albert M. Giacomazzi, President

Anthony R. Traverso, Vice President/Secretary

PROPOSAL FORM

Approved as to form this 29th day of July 20 20.

Attorney for City of Carlsbad

END OF SECTION

PROPOSAL SECURITY FORM

(Note: This form is required when cash, certified check or cashier's check, accompanies proposal. If Proposal Bond is being provided, use form Proposal Bond) ****Please see Proposal Bond Form on next page**

NAME OF PROJECT: _____

NAME OF PROPOSER: _____

Accompanying this proposal is a Certified / Cashiers check payable to the order of City of Carlsbad, in the sum of _____

dollars (\$ _____), this amount being ten percent (10%) of the total amount of the proposal. The proceeds of this check shall become the property of the City, provided this proposal shall be accepted by the City through action of its legally constituted contracting authorities and the undersigned shall fail to execute a contract and furnish the required Performance, Warranty and Payment Bonds and proof of insurance coverage within the stipulated time; otherwise, the check shall be returned to the undersigned. The proceeds of this check shall also become the property of the City if the undersigned shall withdraw his or her proposal within the period of fifteen (15) days after the date set for the opening thereof, unless otherwise required by law, and notwithstanding the award of the contract to another proposer.

PROPOSER

Required Attachments:

- Certified Check or Cashiers Check

END OF SECTION

Bid Bond

PROPOSAL BOND FORM

(Note: This form is not required when other form of Proposer's Security, e.g. cash, certified check or cashier's check, accompanies proposal. In that case, use form Proposal Security)

NAME OF PROJECT: Fire Station No. 2 Replacement and Temporary Station

NAME OF PROPOSER: AMG & Associates, Inc.

The makers of this bond are, AMG & Associates, Inc., as Principal, and Travelers Casualty and Surety Company of America, as Surety and are held and firmly bound unto the City of Carlsbad, hereinafter called the City, in the penal sum of TEN PERCENT (10%) OF THE TOTAL PROPOSAL PRICE of the Principal submitted to City for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the accompanying proposal dated July 29th, 2020.

If the Principal does not withdraw its Proposal within the time specified in the Contract Documents; and if the Principal provides all required documents to the City and is awarded the Contract; then this obligation shall be null and void. Otherwise, this bond will remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents shall affect its obligation under this bond, and Surety does hereby waive notice of any such changes.

In the event a lawsuit is brought upon this bond by the City and judgment is recovered, the Surety shall pay all litigation expenses incurred by the City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and expenses.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this 27th day of July, 2020, the name and corporate seal of each corporation.

PRINCIPAL:

Executed by SURETY

AMG & Associates, Inc.
(Name of Principal)

this 27th day of

July, 2020.

By:


(sign here)

SURETY:

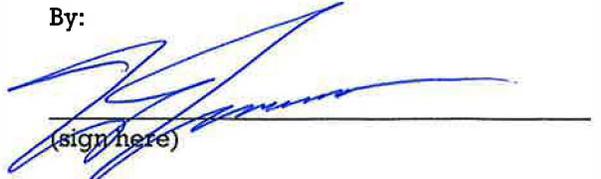
Travelers Casualty and Surety Company of America
(name of Surety)

Albert M. Giacomazzi
(Print name here)

President
(Title and Organization of Signatory)

21688 Gateway Center Drive, Diamond Bar, CA 91765
(address of Surety)

By:


(sign here)

909.612.3270
(telephone number of Surety)

PROPOSAL BOND FORM

Anthony R. Traverso
(Print name here)

Vice President, AMG+Associates, Inc.
(Title and Organization of Signatory)

By: 
(signature of Attorney-in-Fact)

Don Chambers
(printed name of Attorney-in-Fact)

Required Attachments:

- Corporate resolution showing current power of attorney.
- Proper notarial acknowledgment of execution by PRINCIPAL.
- Proper notarial acknowledgment of execution by SURETY.
- President or vice-president and secretary or assistant secretary must sign for corporations. If only one officer signs, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering that officer to bind the corporation.

END OF SECTION

ACKNOWLEDGMENT

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

State of California
County of Ventura)

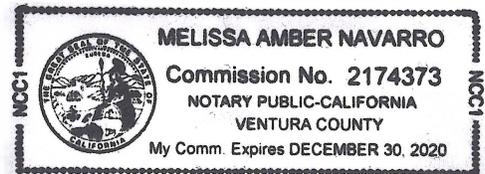
On July 27, 2020 before me, Melissa Amber Navarro, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature Melissa Amber Navarro (Seal)





**Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company**

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Don Chambers, of Camarillo, California**, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **3rd** day of **February**, 2017.



State of Connecticut

City of Hartford ss.

By:
Robert L. Raney, Senior Vice President

On this the **3rd** day of **February**, 2017, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, 2021



Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this 27th day of July, 2020



Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.**

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California)
County of Los Angeles)

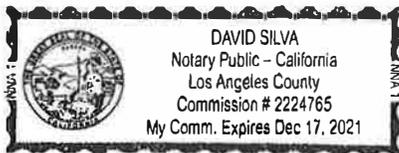
On Aug 5, 2020 before me, David Silva, Public Notary
Date Here Insert Name and Title of the Officer

personally appeared Albert M. Giacomazzi and Anthony R. Traverso
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~was~~ are subscribed to the within instrument and acknowledged to me that ~~was~~ they executed the same in ~~his~~ their authorized capacity(ies), and that by ~~his~~ their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Signature David Silva
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Proposal Bond - City of Carlsbad Document Date: July 27, 2020
Number of Pages: 5 Signer Other Than Named Above: Don Chambers

Capacity(ies) Claimed by Signer(s)

Signer's Name: Albert M. Giacomazzi
 Corporate Officer — Title(s): President
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: AMG & Associates Inc

Signer's Name: Anthony R. Traverso
 Corporate Officer — Title(s): VP, Secretary
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: AMG & Associates, Inc

PROPOSED SUBCONTRACTORS FORM

NAME OF PROJECT: City of Carlsbad, Fire Station No. 2 Replacement

NAME OF PROPOSER: AMG & Associates, Inc.

In compliance with the Subletting and Subcontracting Fair Practices Act Chapter 4 (commencing at Section 4100), Part 1, Division 2 of the Public Contract Code of the State of California and any amendments thereof, Proposer shall set forth below: (a) the name and the location of the place of business, (b) the California contractor license number, (c) the DIR public works contractor registration number, and (d) the portion of the work which will be done by each subcontractor who will perform work or labor or render service to the Proposer in or about the construction of the work or improvement to be performed under this Contract in an amount in excess of one-half of one percent (0.5%) of the Proposer's Total Proposal Price. Notwithstanding the foregoing, if the work involves the construction of streets and highways, then the Proposer shall list each subcontractor who will perform work or labor or render service to the Proposer in or about the work in an amount in excess of one-half of one percent (0.5%) of the Proposer's Total Proposal Price or \$10,000, whichever is greater. No additional time shall be granted to provide the below requested information.

If a Proposer fails to specify a subcontractor or if a contractor specifies more than one subcontractor for the same portion of work, then the Proposer shall be deemed to have agreed that it is fully qualified to perform that portion of work and that it shall perform that portion itself. No changes in the subcontractors listed work will be made without the prior approval of the Agency.

Attach additional pages as required. ****Please see 3 pages of Subcontractors Form attached.**



Albert M. Giacomazzi (signature of Proposer)

PROPOSED SUBCONTRACTORS FORM

Name of Subcontractor	Location of Business	CSLB Contractor License No.	DIR Registration Number	Work to be done by Subcontractor	% of Work
DMC Enterprises	Vista	967973	1000428670	Earthwork / Demo	1%
Enkay	Fountain Valley	509785	1000009004	Abatement	.5%
Ramirez	Azusa	1019358	1000045372	Concrete	4%
Afakori, Inc.	Lake Elsinore	858004	1000001585	Structural Steel	4
Abdellatif Enteriprise	Laguna Hills	662128	1000001544	Rough Carpentry	4
New Star Construction	Carlsbad	1037776	1000056859	Casework	1
A Good Roofer	Lakeside	685015	1000000746	Roofing	.5

PROPOSED SUBCONTRACTORS FORM

Name of Subcontractor	Location of Business	CSLB Contractor License No.	DIR Registration Number	Work to be done by Subcontractor	% of Work
Slater Glass	Arcadia	893323	1000004146	Storefront Glazing	2
Byron Epp	Laguna Hills	433078	1000014101	Four-Fold Glazed Doors	1
Platinum Construction	Stanton	870864	1000006755	Plaster / Drywall	5
Continental Marble & Tile	Corona	394	1000002594	Tile	1
Pennsylvania Coatings	Temecula	986689	1000010832	Painting	1
Pipetrades	San Diego	998580	1000011653	Plumbing and Site Utilities	3
WR Robbins	Oceanside	890971	1000004711	HVAC	4

END OF SECTION

PROPOSED SUBCONTRACTORS FORM

Name of Subcontractor	Location of Business	CSLB Contractor License No.	DIR Registration Number	Work to be done by Subcontractor	% of Work
APS Purification Systems	San Diego	621360	1000030031	Vehicle Exhaust	1
MAC GC-Electric	San Diego	911785	1000050902	Electrical	8
Crosstown Electrical	Irwindale	756309	1000000155	Traffic Signal	3
Pacific Manufactured Homes	San Marcos	N/A	1000587801	Temp. Living Quarters	1

PROPOSER INFORMATION FORM

NAME OF PROJECT: City of Carlsbad, Fire Station No. 2 Replacement

NAME OF PROPOSER: AMG & Associates, Inc.

1. INFORMATION ABOUT PROPOSER

(Indicate not applicable ("N/A") where appropriate.)

NOTE: Where Proposer is a joint venture, pages shall be duplicated and information provided for all parties to the joint venture.

1. Name of Proposer: AMG & Associates, Inc.

2. Type, if Entity: S-Corporation

3. Proposer Address: 26535 Summit Circle, Santa Clarita, CA 91350

a. Facsimile Number (661) 251-7405

b. Telephone Number (661) 251-7401

c. Email Address albert@amgassociatesinc.com

4. How many years has Proposer's organization been in business as a Contractor? 15 years

5. How many years has Proposer's organization been in business under its present name?

15 years

a. Under what other or former names has Proposer's organization operated?

N/A

6. If Proposer's organization is a corporation, answer the following:

a. Date of Incorporation: 4-14-2005

b. State of Incorporation: California

c. President's Name: Albert M. Giacomazzi

d. Vice-President's Name(s): Anthony R. Traverso

PROPOSER INFORMATION FORM

e. Secretary's Name: Anthony R. Traverso

f. Treasurer's Name: Anthony R. Traverso

7. If an individual or a partnership, answer the following:

a. Date of Organization: N/A

b. Name and address of all partners (state whether general or limited partnership):

N/A

8. If other than a corporation or partnership, describe organization and name principals:

N/A

9. List other states in which Proposer's organization is legally qualified to do business.

N/A

10. What type of work does the Proposer normally perform with its own forces?

We can self perform the following work: general supervision, CPM and Short Interval Scheduling, Storm Water Pollution Prevention, surveying temp. services, cast-in-place concrete, rough carpentry, finish carpentry, and final clean-up.

11. Has Proposer ever failed to complete any work awarded to it? If so, note when, where, and why:

PROPOSER INFORMATION FORM

N/A

12. Within the last five years, has any officer or partner of Proposer’s organization ever been an officer or partner of another organization when it failed to complete a contract? If so, attach a separate sheet of explanation:

N/A

13. List Trade References:

1. Butch Pope Engineering (805) 343-6897

2. Kern Steel Fabrication (661) 327-9588

3. Premier Drywall (805) 928-3397

14. List Bank References (Bank and Branch Address):

Citizens Business Bank

3695 Main Street, Riverside, CA 92501

Jason Gould, VP Center Manager, (951) 683-2112

15. Name of Bonding Company and Name and Address of Agent:

Travelers Casualty & Surety Company of America

Bonding Agent: Don Chambers / Chambers & Co.

751 Daily Drive, Suite 230, Camarillo, CA 93010

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

PROPOSER INFORMATION FORM

2. PERSONNEL ASSIGNMENT

The Proposer shall identify the key personnel to be assigned to this project in a management, construction supervision or engineering capacity. Add additional pages to identify ALL Key personnel. ****Please see resumes of AMG-LPA Team attached on next several pages.**

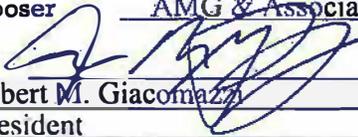
Proposer agrees that personnel named in this Proposal will remain on this Project until completion of all relevant Work, unless substituted by personnel of equivalent experience and qualifications approved in advance by the City.

Job Title Name % time on this project	Specialized Education	Years of construction experience relevant to the project	Summarize the experience

3. VERIFICATION AND EXECUTION

These Proposal Forms shall be executed only by a duly authorized official of the Proposer:
I declare under penalty of perjury under the laws of the State of California that the foregoing information is true and correct:

Name of Proposer AMG & Associates, Inc.

Signature 

Name Albert M. Giacomazzi

Title President

Date July 29, 2020

END OF SECTION



CITY COUNCIL
Staff Report

Meeting Date: Sept. 22, 2020

To: Mayor and City Council

From: Scott Chadwick, City Manager

Staff Contact: Tammy McMinn, Deputy City Clerk
Tammy.McMinn@carlsbadca.gov, 760-434-2953

Subject: Appoint One Member to the Beach Preservation Commission

Recommended Action

Adopt a resolution appointing one member to the Beach Preservation Commission.

Executive Summary

In July 2020, the Mayor, with the approval of the City Council, appointed Marcelo Kim to fill the expiring term of Commissioner Brian Colby for a term ending in June 2024. Mr. Kim was unable to accept the appointment to the Beach Preservation Commission because he would soon not meet the Carlsbad residency requirement, so a vacancy still exists on the Beach Preservation Commission. Mr. Colby is eligible for reappointment to a four-year term and has since expressed his interest in being reappointed to the Commission.

Ten applications were received by the City Clerk's Office. In keeping with City Council Policy No. 88, the mayor has recommended the following two residents who wish to serve on the Beach Preservation Commission to be interviewed by the full City Council:

- Brian Colby – District 3
- Steve Richards – District 3

Exhibit 2 includes applications for both residents.

Discussion

The Maddy Act (California Government Code Section 54970 et seq.) requires that on or before December 31 of each year the legislative body shall prepare a Local Appointments List containing the appointive terms of Board and Commission members expiring in the next calendar year. The name of the incumbent appointee, the date of appointment and the term expiration date is also included on the list. Based on the prepared list, the City Clerk's Office accepts applications (available on the city's website and in the City Clerk's Office) for any upcoming vacancies.

City of Carlsbad Resolution No. 8596 states that the Beach Preservation Commission shall consist of seven members appointed by the Mayor with the approval of the City Council.

The current members of the Beach Preservation Commission are:

- Jennifer Bradley, District 1
- Fred Briggs, District 1
- Tim O'Malley, District 4
- John Prietto, District 1
- Kathleen Steindlberger, District 1
- Chris Woolsey, District 2

Members of the Beach Preservation Commission are subject to the provisions of the Political Reform Act, and must file a Statement of Economic Interest.

Fiscal Analysis

None.

Next Steps

Following the appointment of one member to the Beach Preservation Commission, the City Clerk's Office will update the commission roster and coordinate the oath of office, the filing of the appointee's statement of economic interest and ethics training certificate.

Environmental Evaluation (CEQA)

This action does not constitute a "project" within the meaning of the California Environmental Quality Act under California Public Resources Code Section 21065 in that it has no potential to cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and therefore does not require environmental review.

Public Notification

Public notice of this item was posted in keeping with the Ralph M. Brown Act and it was available for public viewing and review at least 72 hours before the scheduled meeting date.

Exhibits

1. Resolution
2. Applications received from residents wishing to serve on the Beach Preservation Commission

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPOINTING ONE MEMBER TO THE BEACH PRESERVATION COMMISSION

WHEREAS, Commissioner Brian Colby was initially appointed to the Beach Preservation Commission in June 2018 to fill the unexpired term of Commissioner Pion-Goreau; and

WHEREAS, Commissioner Colby’s term expired in June 2020 and he is eligible for reappointment; and

WHEREAS, in July 2020, the Mayor, with the approval of the City Council, appointed Marcelo Kim to fill the expiring term of Commissioner Brian Colby for a term ending in June 2024; and

WHEREAS, Mr. Kim was unable to accept the appointment to the Beach Preservation Commission because he would soon not meet the Carlsbad residency requirement; and

WHEREAS, a scheduled vacancy on the Beach Preservation Commission exists.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Carlsbad, California, as follows:

1. That the above recitations are true and correct.
2. That the following Carlsbad resident is hereby appointed to serve on the Beach Preservation Commission, for a term ending in June 2024.

PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the __ day of _____, 2020, by the following vote, to wit:

AYES:

NAYS:

ABSENT:

MATT HALL, Mayor

BARBARA ENGLESON, City Clerk

(SEAL)

RECEIVED

AUG 04 2020

CITY OF CARLSBAD
CITY CLERK'S OFFICE



**Boards, Commissions and Committees
Application for Appointment**

Arts Commission	<input type="checkbox"/>	Housing Commission	<input type="checkbox"/>	Planning Commission	<input type="checkbox"/>
Beach Preservation Committee	<input checked="" type="checkbox"/>	Library Board of Trustees	<input type="checkbox"/>	Senior Commission	<input type="checkbox"/>
Historic Preservation Commission	<input type="checkbox"/>	Parks and Recreation Commission	<input type="checkbox"/>	Traffic & Mobility Commission	<input type="checkbox"/>
Tourism Business Improvement District	<input type="checkbox"/>	Golf Lodging Business Improvement District	<input type="checkbox"/>	Agricultural Mitigation Fee Committee	<input type="checkbox"/>
Housing Element Advisory Committee	<input type="checkbox"/>				

If applying for more than one, please indicate order of preference.

Personal Information

Name Brian J Colby		Date of Birth:
Home Address		<i>Required for Voter Registration Verification</i> District Number 3
City Carlsbad	ZIP 92011	
Home Phone	Mobile	
E-mail		
Occupation Realtor		
Employer Sand & Sea Investments		
Employer Address 3142 Tiger Run Court, Suite 117		
City Carlsbad	ZIP 92010	
Work Phone	Mobile	

JMD

Acknowledgements

	Yes	No
I am a resident of the City of Carlsbad.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I am a registered voter in Carlsbad.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Are you currently or have you ever been an officer of or employed by the City of Carlsbad? If yes, please explain below.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Are you currently or have you ever been under contract with the City of Carlsbad? If yes, please explain below.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
I am a Citizens Academy graduate.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I am familiar with the responsibilities of the board/commission/committee(s) on which I wish to serve.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I am willing to be interviewed regarding my qualifications for appointment by the City Council or at the request of an individual Council member.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I am willing to file financial disclosure statements, if required.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I am willing to complete two hours of state mandated ethics training every two years, if required.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Explanations

I am seeking reappointment to serve on the Beach Preservation Commission.

Please describe your educational background

2003 BS Arizona State University

Please describe relevant experience

Previously appointed to Beach Preservation Commission. Seeking reappointment as term ended.

Please describe your current or past community involvement

City of Carlsbad Beach Preservation Commission
Carlsbad Boys and Girls Club Board Member
Hi-Noon Rotarian

Please list all service on boards, commissions or committees, private or public agencies, (including non-profit organizations)

City of Carlsbad Beach Preservation Commission
Carlsbad Boys and Girls Club Board Member
Hi-Noon Rotarian

Additional information or comments

I look forward to the opportunity to continue serving on the Beach Preservation Commission.

Submittal Information

Please select the submit button below to electronically submit application. If you prefer to print, please select "print form" button, sign and mail to:

City of Carlsbad
City Clerk's Office
1200 Carlsbad Village Drive
Carlsbad, CA 92008.

Signature member: 1439EBAF-0A21-4763-8D84-47624F082AFF
90AC6176-FE45-45FF-861F-DB2A6C39F9F5
Digitally signed by member: 1439EBAF-0A21-4763-8D84-47624F082AFF
90AC6176-FE45-45FF-861F-DB2A6C39F9F5
Date: 2020.08.04 10:00:03 -07'00' **Date** 8/4/2020

* Only required to sign if submitting paper form; if submitting electronically your submittal via e-mail is considered acknowledgement.

Clear form

Print form

Submit form



Boards, Commissions and Committees Application for Appointment

RECEIVED

AUG 31 2020

CITY OF CARLSBAD
CITY CLERK'S OFFICE

Arts Commission	<input type="checkbox"/>	Housing Commission	<input type="checkbox"/>	Planning Commission	<input type="checkbox"/>
Beach Preservation Committee	<input checked="" type="checkbox"/>	Library Board of Trustees	<input type="checkbox"/>	Senior Commission	<input type="checkbox"/>
Historic Preservation Commission	<input type="checkbox"/>	Parks and Recreation Commission	<input type="checkbox"/>	Traffic & Mobility Commission	<input type="checkbox"/>
Tourism Business Improvement District	<input type="checkbox"/>	Golf Lodging Business Improvement District	<input type="checkbox"/>	Agricultural Mitigation Fee Committee	<input type="checkbox"/>
Housing Element Advisory Committee	<input type="checkbox"/>				

If applying for more than one, please indicate order of preference.

Personal Information

Name Steve Richards		Date of Birth:
Home Address		Required for Voter Registration Verification <u>District Number 3</u>
City Carlsbad	ZIP 92011	
Home Phone n/a	Mobile	
E-mail		
Occupation Realtor		
Employer Realty One Group		
Employer Address 5901 Priestly dr		
City Carlsbad	ZIP 92010	
Work Phone	Mobile	

Acknowledgements

	Yes	No
I am a resident of the City of Carlsbad.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I am a registered voter in Carlsbad.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Are you currently or have you ever been an officer of or employed by the City of Carlsbad? If yes, please explain below.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Are you currently or have you ever been under contract with the City of Carlsbad? If yes, please explain below.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
I am a Citizens Academy graduate.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
I am familiar with the responsibilities of the board/commission/committee(s) on which I wish to serve.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I am willing to be interviewed regarding my qualifications for appointment by the City Council or at the request of an individual Council member.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I am willing to file financial disclosure statements, if required.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
I am willing to complete two hours of state mandated ethics training every two years, if required.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Explanations

Please describe your educational background

Masters in Business Administration With an emphasis in Human Resources
Certified Public Manager designation from Arizona State University

Please describe relevant experience

I spent 20 years working in City Government as a firefighter. My last position held was as a member of senior management as a Battalion/Deputy Chief. I have been involved with numerous community groups and other departments within City Government.

Please describe your current or past community involvement

- Volunteer youth sports coach for 8 years
- Community fundraiser for 2 years
- Founder of www.icarecarsbad.com
- Volunteer for community charity organizations
- Youth leadership counsler for at risk youth
- Burn Camp Counsler for burn victims

Please list all service on boards, commissions or committees, private or public agencies, (including non-profit organizations)

Past member of Desert Cancer Foundation, Mesa Association of Hispanic Citizns (AZ), NAACP

Additional information or comments

I am looking for an opportunity to give back to my community

Submittal Information

Please select the submit button below to electronically submit application. If you prefer to print, please select "print form" button, sign and mail to:

City of Carlsbad
City Clerk's Office
1200 Carlsbad Village Drive
Carlsbad, CA 92008.

Signature  **Date** 8/28/2020

* Only required to sign if submitting paper form; if submitting electronically your submittal via e-mail is considered acknowledgement.

Clear form

Print form

Submit form