

AGENDA

ALISO VIEJO CITY COUNCIL REGULAR MEETING
WEDNESDAY, MARCH 18, 2015
7:00 P.M. PUBLIC MEETING / PUBLIC HEARINGS

City Hall
Council Chambers
12 Journey
Aliso Viejo, CA



Mayor William A. Phillips
Mayor Pro Tem Mike Munzing
Councilmember Ross Chun
Councilmember David C. Harrington
Councilmember Phillip B. Tsunoda

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

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

Regular meetings of the City Council are held on the first and third Wednesday of the month at the City Hall Council Chambers, 12 Journey, Aliso Viejo. Copies of the agenda are available in the lobby at City Hall on the Thursday preceding a regularly scheduled City Council meeting. Supplemental documents relating to specific agenda items are available for review in the City Clerk's office, 12 Journey, Aliso Viejo. For more information, please contact City Hall at (949) 425-2505.

DAVID A. DOYLE
CITY MANAGER

SCOTT C. SMITH
CITY ATTORNEY

MITZI ORTIZ
CITY CLERK

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

CALL TO ORDER: Convene Meeting to Open Session and Roll Call - 7:00 p.m.

PRESENT:

ABSENT:

PLEDGE OF ALLEGIANCE:

SPECIAL PRESENTATIONS

- A. [COUNCIL RECOGNITION TO CANYON VISTA ELEMENTARY SCHOOL
TEACH OF THE YEAR JULIE ROBERTSON](#)
- B. [SOUTH ORANGE COUNTY RELIABILITY ENHANCEMENT PRESENTATION
BY SAN DIEGO GAS & ELECTRIC](#)
- C. [PRESENTATION AND REQUEST FOR CITY PARTICIPATION IN UPCOMING
EVENT BY RELAY FOR LIFE](#)

ADDITIONS, DELETIONS, REORDERING TO THE AGENDA

CONSENT CALENDAR NOTICE: Any member of the public who wishes to discuss a Consent Calendar item should complete and submit to the City Clerk a "Request to Address City Council" form available at the entrance to the City Council Chambers. Speakers will be called at the appropriate time as their interested matter is heard. COMMENTS ARE LIMITED TO THREE MINUTES PER SPEAKER.

CONSENT CALENDAR ITEMS NOS. 1-6

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

- 1. [WAIVE THE READING OF ALL ORDINANCES AND RESOLUTIONS](#)

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

- 2. [APPROVAL OF MINUTES – MARCH 4, 2015 REGULAR MEETING AND
MARCH 6, 2015 SPECIAL MEETING](#)

RECOMMENDED ACTION: Approve the subject Minutes as submitted.

3. [ACCOUNTS PAYABLE](#)

RECOMMENDED ACTION:

1. Ratify accounts payable checks issued February 26, 2015 in the amount of \$106,498.79; and
2. Ratify accounts payable checks issued March 5, 2015 in the amount of \$77,454.46.

4. [AGREEMENT WITH PSG PROPERTY MANAGEMENT LLC FOR PROPERTY MANAGEMENT SERVICES AT 12 JOURNEY](#)

RECOMMENDED ACTION:

1. Approve the Agreement with PSG Property Management LLC for property management services at 12 Journey; and
2. Authorize the City Manager to execute the agreement with PSG Property Management LLC

5. [THIRD AMENDMENT TO AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES - FORMA](#)

RECOMMENDED ACTION: Approve a Third Amendment to the Professional Services Agreement with FORMA for planning consultant services pertaining to Aliso Viejo Town Center.

6. [RESOLUTION RELATED TO INCREASING ADMINISTRATIVE FINE AMOUNTS](#)

RECOMMENDED ACTION: Staff recommends the City Council approve the Resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, ADOPTING ADMINISTRATIVE FINE AMOUNTS FOR CERTAIN VIOLATIONS OF THE ALISO VIEJO MUNICIPAL CODE AND ADOPTED CODES.

END OF CONSENT CALENDAR

PUBLIC HEARING ITEM NOS. 7-8

7. [ORDINANCE CONFIRMING EXISTING PROHIBITION OF SHORT-TERM RENTALS IN RESIDENTIAL DISTRICTS](#)

RECOMMENDED ACTION: Staff recommends the City Council introduce and approve for first reading an Ordinance entitled:

AN ORDINANCE OF THE CITY COUNCIL OF ALISO VIEJO, CALIFORNIA AMENDING TITLE 15 OF THE ALISO VIEJO MUNICIPAL CODE BY AMENDING TABLE 15.10.020 OF SECTION 15.10.020, ADDING SECTION 15.14.165, AND AMENDING SECTION 15.94.020 TO PROHIBIT SHORT-TERM RENTALS IN RESIDENTIAL DISTRICTS – PA 15-002 (ZCA)

8. [RESOLUTION AUTHORIZING THE CITY OF ALISO VIEJO'S FISCAL YEAR 2015-2016 COMMUNITY DEVELOPMENT BLOCK GRANT \(CDBG\) ALLOCATION MAXIMUM OF \\$214,814 TO BE UTILIZED FOR AMERICAN DISABILITY ACT \(ADA\) IMPROVEMENTS AT FIFTY-FOUR \(54\) CURB RAMPS WITHIN ALISO VIEJO](#)

RECOMMENDED ACTION: Conduct the public hearing and adopt the resolution declaring the City's intent to utilize Fiscal Year 2015-2016 CDBG program funding for ADA improvements at fifty-four (54) curb ramps within Aliso Viejo.

DISCUSSION ITEMS NOS. 9-12

9. [ALISO VIEJO AQUATIC MANAGEMENT SERVICES AGREEMENT – PREMIER AQUATIC SERVICES](#)

RECOMMENDED ACTION: Consideration of the Management Services Agreement with Premier Aquatic Services for the management and operations of the City's Aquatic Center, in the amount of \$100,000 annual management fee and not to exceed \$50,000 for the Aquatic Center operational expenses.

10. [ANNUAL BUDGET DISCUSSION FOR FY 2015-16](#)

RECOMMENDED ACTION:

1. Receive updates on the financial trends impacting City revenues, including economic factors, Federal and State budget impacts, grant opportunities and Development Impact Fees;
2. Discuss priorities for the FY 2015-16 annual budget; and
3. Review the Strategic Initiatives and provide direction to staff for programs, projects and initiatives to be included in the FY 2015-16 annual budget

11. [COUNCIL APPOINTMENTS TO STANDING COMMITTEES](#)

RECOMMENDED ACTION: The Council shall establish Standing Committees with Capistrano Unified School District and Aliso Viejo Community Association and appoint two Councilmembers to serve on each of the Standing Committees.

12. [AB 201: LOCAL ORDINANCES RELATING TO SEX OFFENDERS - SUPPORT](#)

RECOMMENDED ACTION: Request from Councilmember Harrington to approve letter of support for AB 201: Local Ordinances Relating to Sex Offenders.

COMMUNITY INPUT

Members of the public wishing to address the City Council are requested to complete and submit to the City Clerk a "Request to Address City Council" form available at the entrance to the City Council Chambers. **IN COMPLIANCE WITH THE BROWN ACT, NO DISCUSSION OR ACTION MAY BE TAKEN ON COMMENTS RECEIVED AT THIS TIME, EXCEPT THE CITY COUNCIL MAY BRIEFLY RESPOND TO STATEMENTS MADE OR QUESTIONS POSED.** Comments are limited to three (3) minutes per speaker.

CITY MANAGER'S REPORT

ANNOUNCEMENTS / COUNCIL COMMENTS / COMMITTEE UPDATES

ADJOURNMENT: The next regularly scheduled meeting is April 1, 2015.

City of Aliso Viejo

Agenda Item



DATE: March 18, 2015

TO: Mayor and City Council

FROM: Kelly Tokarski, KT Community Relations

SUBJECT: COUNCIL RECOGNITION TO CANYON VISTA ELEMENTARY SCHOOL
TEACHER OF THE YEAR JULIE ROBERTSON

Recommended Action:

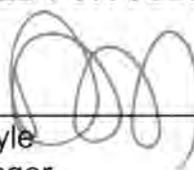
Present Julie with a certificate of appreciation.

Summary:

Julie Robertson, a 25-year teaching veteran, was recently named Canyon Vista Elementary School's Teacher of the Year. For the last 19 years, Julie has taught in the Capistrano Unified School District in Aliso Viejo schools. She began at Foxborough then taught at Wood Canyon Elementary School, and for the past five years, Canyon Vista Elementary students have known her as "Mrs. Robertson." During her career, Julie has taught kids as young as preschool up to 5th grade.

Over the last four years, 4th grade students have learned that her classroom is like a "family" and is a safe place for them to make mistakes, learn at their own pace and be loved. Julie has also been the advisor of the 4th and 5th grade Peer Assistance Leadership (PAL) students, which have been involved with school-wide, community and global projects.

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL



David Doyle
City Manager

CITY COUNCIL MEETING OF MARCH 18, 2015

PRESENTATIONS:

- B. SOUTH ORANGE COUNTY RELIABILITY ENHANCEMENT PRESENTATION
BY SAN DIEGO GAS & ELECTRIC – ORAL PRESENTATION ONLY.

CITY COUNCIL MEETING OF MARCH 18, 2015

PRESENTATIONS:

- C. PRESENTATION AND REQUEST FOR CITY PARTICIPATION IN UPCOMING EVENT BY RELAY FOR LIFE – ORAL PRESENTATION ONLY.

CITY OF ALISO VIEJO
CITY COUNCIL MINUTES
REGULAR MEETING
MARCH 4, 2015, 7:00 P.M.
Council Chambers, City Hall, 12 Journey
Aliso Viejo, California

CALL TO ORDER: Mayor Phillips called the Regular Meeting of the City Council of the City of Aliso Viejo to order at 7:03 p.m.

PRESENT: MAYOR WILLIAM A. PHILLIPS
MAYOR PRO TEM MIKE MUNZING
COUNCILMEMBER ROSS CHUN
COUNCILMEMBER DAVID C. HARRINGTON
COUNCILMEMBER PHILLIP B. TSUNODA

ABSENT: NONE

STAFF PRESENT: DAVID A. DOYLE, CITY MANAGER
SCOTT SMITH, CITY ATTORNEY
MITZI ORTIZ, CITY CLERK
GLENN YASUI, ADMINISTRATIVE SERVICES DIRECTOR
KAREN CROCKER, COMMUNITY SERVICES DIRECTOR
GINA THARANI, FINANCE DIRECTOR
SHAUN PELLETIER, PUBLIC WORKS DIRECTOR / CITY
ENGINEER
ALBERT ARMIJO, PLANNING DIRECTOR
ERICA ROESS, SENIOR PLANNER
LT. JOHN MACPHERSON, CHIEF OF POLICE SERVICES

PLEDGE OF ALLEGIANCE: Led by Eagle Scout Cole Kjellman, Troop 321.

SPECIAL PRESENTATIONS

A. COUNCIL RECOGNITION AND PRESENTATION TO KATHRYN PLUMMER AND LINDSEY RUDDINS FOR BEING NAMED CO-MVPS

Mayor Phillips presented Lindsey Ruddins with a Certificate of Recognition.

B. COUNCIL RECOGNITION AND PRESENTATION TO COLE RICHARD KJELLMAN FOR ACHIEVING THE RANK OF EAGLE

Mayor Phillips presented Cole Kjellman with a Certificate of Recognition.

ADDITIONS, DELETIONS, REORDERING TO THE AGENDA:

None.

CONSENT CALENDAR ITEMS NOS. 1-7

Mayor Phillips asked if any member of the City Council, staff or the public wished to remove an item from the Consent Calendar. There were no requests to remove items from the Consent Calendar.

MOTION: COUNCILMEMBER CHUN MOVED AND COUNCILMEMBER HARRINGTON SECONDED TO APPROVE CONSENT CALENDAR ITEMS 1 – 7, AS PRESENTED.

1. WAIVE THE READING OF ALL ORDINANCES AND RESOLUTIONS

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

2. APPROVAL OF MINUTES – FEBRUARY 18, 2015 REGULAR MEETING

Approved the subject Minutes as submitted.

3. ACCOUNTS PAYABLE

1. Ratified accounts payable checks issued February 12, 2015 in the amount of \$943,348.82; and
2. Ratified accounts payable checks issued February 19, 2015 in the amount of \$64,652.37.

4. TREASURER'S STATEMENT – JANUARY 2015

Approved the January 2015 Treasurer's Statement.

5. COOPERATIVE AGREEMENT FOR OCTA MS REGIONAL TRAFFIC SIGNAL SYNCHRONIZATION PROGRAM – LA PAZ ROAD CORRIDOR

Authorized Mayor to execute Cooperative Agreement C-4-1883 with the Orange County Transportation Authority (OCTA).

6. SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT WITH URBANUS GROUP LLC FOR PLANNING CONSULTANT SERVICES

Approved a Second Amendment to the Professional Services Agreement with the Urbanus Group LLC for planning consultant services.

7. CONSIDERATION OF COMMUNITY PHOTO CONTEST

Authorized staff to conduct a Community Photo Contest.

MOTION CARRIED UNANIMOUSLY

END OF CONSENT CALENDAR

PUBLIC HEARING ITEM NOS. 8-9

8. ORDINANCES RELATED TO PROHIBITION OF SHORT-TERM RENTALS IN RESIDENTIAL DISTRICTS AND THE RECOVERY OF HEARING OFFICER COSTS IN ADMINISTRATIVE APPEALS, AND RESOLUTIONS RELATED TO APPEALS FEES AND INCREASING ADMINISTRATIVE FINE AMOUNTS

City Manager David Doyle presented the staff report.

MOTION: MAYOR PRO TEM MUNZING MOVED AND COUNCILMEMBER HARRINGTON SECONDED TO CONTINUE THE PUBLIC HEARING TO MARCH 18, 2015.

MOTION CARRIED UNANIMOUSLY

9. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (HCD) ANNUAL PROGRESS REPORT - 2014

City Manager David Doyle introduced Senior Planner Erica Roess who presented the staff report. Mayor Phillips opened the public hearing. There were no speakers. Mayor Phillips closed the public hearing. No further action was taken.

DISCUSSION ITEMS NO. 10

10. TELEVISED COUNCIL MEETINGS

City Manager David Doyle introduced Administrative Services Director Glenn Yasui who presented the staff report. Staff responded to questions regarding retention of recordings, solicitation of quotes, installation and viewership tracking.

MOTION: COUNCILMEMBER HARRINGTON MOVED AND COUNCILMEMBER CHUN SECONDED TO APPROVE THE BROADCASTING OF COUNCIL MEETINGS ON CABLE TELEVISION AND WEB STREAMING ON THE INTERNET; AND DIRECTED STAFF TO SOLICIT PRICE QUOTATIONS RELATING TO THE ACQUISITION OF AN AUDIO / VISUAL SYSTEM.

MOTION CARRIED UNANIMOUSLY

COMMUNITY INPUT

1. Jim Gilchrist expressed appreciation to the City Council and Police Services for helping Aliso Viejo rank as the safest City of its size.

CITY MANAGER'S REPORT

City Manager David Doyle announced the Aquatic Center Swim Program Kickoff Party to be held from 11:00 a.m. to 1:00 p.m. on March 7, 2015 at the Aquatic Center.

ANNOUNCEMENTS / COUNCIL COMMENTS / COMMITTEE UPDATES

Councilmember Chun:

- Attended TCA Capital Improvements Meeting
- Attended TCA Joint Marketing Ad-Hoc Committee Meeting
- Attended meeting with Capistrano Unified School District Superintendent Kirsten Vital
- Requested formation of joint ad-hoc committee with Capistrano Unified School District Board of Trustees

Councilmember Harrington:

- Attended OCFA Board of Directors Meeting
- Attended South Orange County Economic Coalition Annual Report
- Attended ACC-OC Legislative Committee Meeting
- Attended meeting with Capistrano Unified School District Board Member Dr. Gary Pritchard

Councilmember Tsunoda: None

Mayor Pro Tem Munzing:

- Attended Orange County Business Council 2015 Annual Dinner
- Attended Aliso Viejo Little League Opening Day
- Attended Iglesia Park Ribbon Cutting Ceremony
- Participated in Tour of Mount San Jacinto Tunnel by Metropolitan Water District of Southern California

Mayor Phillips:

- Attended Aliso Viejo Little League Opening Day
- Attended Iglesia Park Ribbon Cutting Ceremony
- Attended meeting with Orange County Supervisor Lisa Bartlett
- Attended South Orange County Economic Coalition Annual Report
- Announced Meet the Mayor event to be held at 6:00 p.m. on March 10, 2015 at the Aliso Viejo Conference Center

ADJOURNMENT: Mayor Phillips adjourned the meeting at 7:45 p.m. to the next regularly scheduled meeting of March 18, 2015.

Respectfully submitted:

Approved by:

MITZI ORTIZ, MMC
CITY CLERK

WILLIAM A. PHILLIPS
MAYOR

CITY OF ALISO VIEJO
CITY COUNCIL MINUTES
SPECIAL MEETING
MARCH 6, 2015, 12:30 P.M.
Aliso Viejo Conference Center, 31 Santa Barbara
Aliso Viejo, California

CALL TO ORDER: Mayor Phillips called the Special Meeting of the City Council of the City of Aliso Viejo to order at 12:45 p.m.

PRESENT: MAYOR WILLIAM A. PHILLIPS
MAYOR PRO TEM MIKE MUNZING
COUNCILMEMBER ROSS CHUN
COUNCILMEMBER DAVID C. HARRINGTON

ABSENT: COUNCILMEMBER PHILLIP B. TSUNODA

STAFF PRESENT: DAVID A. DOYLE, CITY MANAGER
MITZI ORTIZ, CITY CLERK
GLENN YASUI, ADMINISTRATIVE SERVICES DIRECTOR
KAREN CROCKER, COMMUNITY SERVICES DIRECTOR
GINA THARANI, FINANCE DIRECTOR
SHAUN PELLETIER, PUBLIC WORKS DIRECTOR / CITY
ENGINEER
ALBERT ARMIJO, PLANNING DIRECTOR

DISCUSSION ITEM

1. **WORK PLAN SESSION**

The City Council discussed the following: a vision for the City; the City's assets, strengths, weaknesses and issues; and various projects.

ADJOURNMENT: Mayor Phillips adjourned the meeting at 4:46 p.m.

Respectfully submitted:

Approved by:

MITZI ORTIZ, MMC
CITY CLERK

WILLIAM A. PHILLIPS
MAYOR

City of Aliso Viejo

Agenda Item



DATE: March 18, 2015
TO: Mayor and City Council
FROM: Gina M. Tharani, Director of Financial Services
SUBJECT: ACCOUNTS PAYABLE

Recommended Action:

1. Ratify accounts payable checks issued February 26, 2015 in the amount of \$106,498.79 and
2. Ratify accounts payable checks issued March 5, 2015 in the amount of \$77,454.46.

Fiscal Impact:

Expenditures in the amount of \$183,953.25.

Background:

The City issues accounts payable checks on a bi-monthly basis and submits them to the City Council for review and approval prior to the creation of accounts payable checks. Special check runs are done on a weekly basis with the City Council ratification at its next regularly scheduled City Council Meeting.

Discussion:

The issued accounts payable checks were reviewed and approved for payment. The register is being presented to City Council for approval.

Gina M. Tharani
Director of Financial Services

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL

David Doyle
City Manager

Attachment: Accounts Payable Reports



Accounts Payable

2/27/2015

101 - GENERAL FUND

Vendor Name	Description (Item)	Amount
101 - GENERAL FUND		
CALPERS RETIREMENT	PERS PAY PERIOD 2	10,879.52
CALPERS HEALTH	MAR'15 HEALTH PREMIUM	12,952.95
ART HOVSEPIAN	P #73229 CANCELED PERMIT REFUND	90.12
ART HOVSEPIAN	P #73229 CANCELED PERMIT REFUND	13.86
COPOWER	MAR'15 DENTAL INSURANCE	1,586.59
COPOWER	MAR'15 VISION INSURANCE	306.80
AFLAC	PP 3 & 4 ACCT #CJ261	414.26
UNITED OF OMAHA LIFE INSURANCE CO.	MAR'15 LIFE INSURANCE	678.87
		26,922.97
ECONOMIC DEVELOPMENT		
DIAMOND STAR ASSOCIATES INC	JAN'15 ECONOMIC CONSULTANT	612.50
	ECONOMIC DEVELOPMENT TOTAL:	612.50
CITY CLERK		
CITY CLERKS ASSOC OF CA	M.O. - 2015 CCAC MEMBERSHIP RENEWAL	130.00
COUNTY OF ORANGE TREASURER-TAX COLLECTOR	2014 ELECTION COSTS	21,494.40
	CITY CLERK TOTAL:	21,624.40
FINANCE		
CALPERS HEALTH	MAR'15 ADMIN CHARGES	49.41
CSMFO	GT,RS - CSMFO OC MTG	60.00
ROBERT BARRY	JAN'15 FINANCIAL SUPPORT SVCS	3,018.75
COPOWER	L.L. - JAN-FEB'15 VISION INSURANCE ADJ	23.60
COPOWER	MAR'15 ADMIN CHARGES	15.00
	FINANCE TOTAL:	3,166.76
NON-DEPARTMENTAL		
ALISO VIEJO FLORIST	K.O. - 12/3/14 CITY COUNCIL MEETING	70.20
FEDEX OFFICE AND PRINT SERVICES INC	2/11/15 HOUSING&COMM DEVELOP DELIVERY	30.38
CINTAS CORP.	MAR'15 FIRST AID MAINTENANCE	140.30
NIEVES LANDSCAPE INC	FEB'15 AV RNCH LANDSCAPING	793.82
U.S. TELEPACIFIC CORP.	2/9-3/8/15 CH PHONE SERVICE	1,300.80
DOCUMEDIA GROUP	G.Y/T.H - BUSINESS CARDS	79.93
	NON-DEPARTMENTAL TOTAL:	2,415.43
C. S. ADMINISTRATION		
CALPERS HEALTH	MAR'15 HEALTH RETIRED	122.00
	C. S. ADMINISTRATION TOTAL:	122.00
IGLESIA PARK		
EL TORO WATER DISTRICT	1/13-2/9/15 MTR#4114 #3499	481.12
NIEVES LANDSCAPE INC	FEB'15 IGLESIA PARK LANDSCAPING	3,382.24
	IGLESIA PARK TOTAL:	3,863.36
IGLESIA BUILDING		
EL TORO WATER DISTRICT	1/13-2/9/15 MTR#1850	188.01
	IGLESIA BUILDING TOTAL:	188.01
PLANNING		
LARRY LAWRENCE	JAN'15 ZONING CODE	1,127.00
CALPERS HEALTH	MAR'15 HEALTH RETIRED	122.00
ROSENOW SPEVACEK GROUP INC	JAN'15 LOAN PROCESSING	225.00
ROSENOW SPEVACEK GROUP INC	JAN'15 ALEXANDER- ELIGIBILITY REVIEW	325.00
FORMA DESIGN INC	JAN-FEB'15 AVTC SPECIFIC PLAN	22,948.01
	PLANNING TOTAL:	24,747.01
LAW ENFORCEMENT-OTHER		
ALL CITY MANAGEMENT SERVICES	2/1-2/14/15 SCHOOL CROSSING GUARD SVCS	6,908.54
	LAW ENFORCEMENT-OTHER TOTAL:	6,908.54

Agenda Item 3-3

	Vendor Name	Description (Item)	Amount
CRIME PREVENTION			
	JULIA SMITH	J.S. - POLICE SERVICES TABLECLOTH CLEAN	35.00
		CRIME PREVENTION TOTAL:	35.00
		GENERAL FUND TOTAL:	90,605.98
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102 - GEN. FD-CITY HALL			
NON-DEPARTMENTAL			
	ACCESS LOCK SYSTEM INC	CYLINDERS REPLACEMENT & 7 KEYS	160.52
	PEAK LIGHTING & ELECTRIC INC	FEB'15 LIGHTING SERVICE	97.18
	CTJAMJT CORP.	FEB'15 PEST CONTROL SERVICE	100.00
	FOSTERS' GARDENS INC	FEB'15 CH PLANT MAINTENANCE	100.00
	JMG SECURITY SYSTEMS INC	2/12/15 CH FIRE ALARM SYS BATTERIES REPLACEMENT	149.04
	NIEVES LANDSCAPE INC	FEB'15 CITY HALL LANDSCAPING	427.26
	WESTCON ELEVATOR	FEB'15 CH ELEVATOR MAINTENANCE	115.00
		NON-DEPARTMENTAL TOTAL:	1,149.00
		GEN. FD-CITY HALL TOTAL:	1,149.00
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203 - GAS TAX			
STREET MAINTENANCE			
	EL TORO WATER DISTRICT	1/13-2/9/15 MTR #3335	55.47
	AT&T CALIFORNIA	FEB'15 TRAFFIC SIGNAL CONTROLLER ACCT #9167	172.78
	R F DICKSON CO INC	FEB'15 STREET SWEEPING	6,239.46
	NIEVES LANDSCAPE INC	FEB'15 MEDIAN LANDSCAPING	310.49
		STREET MAINTENANCE TOTAL:	6,778.20
		GAS TAX TOTAL:	6,778.20
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245 - DEVELOPMENT IMPACT			
GEN-DEVELOPMENT IMPACT			
	ROSENOW SPEVACEK GROUP INC	JAN'15 AFFORDABLE HOUSING SERVICE	4,813.75
	ROSENOW SPEVACEK GROUP INC	JAN'15 AFFORDABLE HOUSING SERVICE	157.50
		GEN-DEVELOPMENT IMPACT TOTAL:	4,971.25
		DEVELOPMENT IMPACT TOTAL:	4,971.25
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332 - STORM WATER			
DRAINAGE IMPROVEMENTS			
	LSA ASSOCIATES INC	COORDINATION WITH CLIENT AND LANDOWNER	700.00
	FEDEX OFFICE AND PRINT SERVICES INC	1/22/15 #91 SEC DELIVERY	24.61
		DRAINAGE IMPROVEMENTS TOTAL:	724.61
		STORM WATER TOTAL:	724.61
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711 - DEPOSIT ACCOUNTS FUND			
	LARRY LAWRENCE	JAN'15 PA14-034 SIGN PROG.	126.50
	FEDEX OFFICE AND PRINT SERVICES INC	1/13/15 #2187 TOWN APPLE VALLEY DELIVERY	30.75
	RJM DESIGN GROUP INC	#2185-VANTIS COMM. LANDSCAPE PLANCHECK	484.75
		DEPOSIT ACCOUNTS FUND TOTAL:	642.00
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721 - COMMUNITY TRUST			
TRUST FUND			
	GRACIELA DURAN	G.D. - SUPPLIES FOR FAMILY PICNIC/RIBBON CUTTING	312.75
		TRUST FUND TOTAL:	312.75
		COMMUNITY TRUST TOTAL:	312.75
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731 - CFD 2005-01			
TRUST FUND			
	THE BANK OF NEW YORK	FY14-15 CFD ADMIN FEE	1,000.00

Agenda Item 3-4

Vendor Name	Description (Item)	Amount
THE BANK OF NEW YORK	FY14-15 REQUISITION/DISBURSEMENT FEE	315.00
	TRUST FUND TOTAL:	<u>1,315.00</u>
	CFD 2005-01 TOTAL:	<u>1,315.00</u>
		GRAND TOTAL: <u><u>106,498.79</u></u>

Fund Summary

Fund	Expense Amount	Payment Amount
101 - GENERAL FUND	90,605.98	90,605.98
102 - GEN. FD-CITY HALL	1,149.00	1,149.00
203 - GAS TAX	6,778.20	6,778.20
245 - DEVELOPMENT IMPACT	4,971.25	4,971.25
332 - STORM WATER	724.61	724.61
711 - DEPOSIT ACCOUNTS FUND	642.00	642.00
721 - COMMUNITY TRUST	312.75	312.75
731 - CFD 2005-01	1,315.00	1,315.00
Grand Total:	<u>106,498.79</u>	<u>106,498.79</u>



Accounts Payable

3/5/2015

101 - GENERAL FUND

Vendor Name	Description (Item)	Amount
ECONOMIC DEVELOPMENT		
JEANNIE FILAR	CASE#14-12-22-113 ADMIN CITATION REFUND	100.00
		<u>100.00</u>
ECONOMIC DEVELOPMENT		
KELLY TOKARSKI	FEB'15 ECONOMIC DEVELOPMENT	110.00
	ECONOMIC DEVELOPMENT TOTAL:	<u>110.00</u>
FINANCE		
HDL COMPANIES	FY14-15 SALES TAX CONTRACT	1,050.00
HDL COMPANIES	FY14-15 SALES TAX AUDITS	1,456.11
ROBERT HALF INTERNATIONAL INC	TEMP FINANCIAL SVCS	366.32
ROBERT HALF INTERNATIONAL INC	TEMP FINANCIAL SVCS	405.57
ROBERT HALF INTERNATIONAL INC	TEMP FINANCIAL SVCS	366.32
ROBERT HALF INTERNATIONAL INC	TEMP FINANCIAL SVCS	366.32
SHEAKLEY PENSION ADMINISTRATION INC	JAN'15 ADMIN & ACH FEES	67.00
	FINANCE TOTAL:	<u>4,077.64</u>
NON-DEPARTMENTAL		
ARROWHEAD	WATER AND COFFEE SERVICE	231.82
KELLY TOKARSKI	MAYOR OUTREACH	288.75
KELLY TOKARSKI	COMMUNITY RELATIONS	3,437.50
TOWNSEND PUBLIC AFFAIRS INC	CONSULTING SERVICES	5,000.00
ALISO VIEJO SELF STORAGE	OFF SITE STORAGE	370.00
COX COMMUNICATIONS ORANGE COUNTY	FY14-15 INTERNET SERVICE #3302 JUL'14-JUN'15	79.20
	NON-DEPARTMENTAL TOTAL:	<u>9,407.27</u>
C. S. ADMINISTRATION		
PV MAINTENANCE INC	SNOW FEST - PVM	772.00
GRACIELA DURAN	G.D. - FEB'15 MILEAGE REIMBURSEMENT	31.87
COMMUNITY SERVICES NETWORK INC	ADVERTISING IN MAGAZINE -AVX	1,450.00
FRIENDS OF THE ALISO VIEJO LIBRARY	FRIENDS OF THE LIBRARY	4,500.00
	C. S. ADMINISTRATION TOTAL:	<u>6,753.87</u>
IGLESIA PARK		
PV MAINTENANCE INC	PAVERS AND PLAYGROUND WASHING/CLEANING	985.55
	IGLESIA PARK TOTAL:	<u>985.55</u>
IGLESIA BUILDING		
TMR SECURITY & PATROL SERVICES INC	SECURITY PATROL	160.00
	IGLESIA BUILDING TOTAL:	<u>160.00</u>
PLANNING		
CENTER FOR SUSTAINABLE ENERGY	GREEN PROGRAM EDUCATION	989.55
RK ENGINEERING GROUP INC	PROFESSIONAL SERVICES	2,285.00
RK ENGINEERING GROUP INC	FEB'15 AV RANCH GENERAL SVCS AGREEMENT	3,555.00
AMERICAN PLANNING ASSOCIATION	J.L. - APA MEMBERSHIP DUE 4/1/15-3/31/16	350.00
PLANNING DIRECTORS ASSN OF OC	A.A. - 3/12/15 PDAO MEETING	20.00
	PLANNING TOTAL:	<u>7,199.55</u>
STREET MAINTENANCE		
PV MAINTENANCE INC	PVM STREET MAINTENANCE	4,498.29
	STREET MAINTENANCE TOTAL:	<u>4,498.29</u>
LAW ENFORCEMENT-OTHER		
STACY CAMARENA	S.C. - GREEN TDU PANTS	48.70
MONOGRAM MAGIC	TAC LITE POLO SHIRTS	129.56
	LAW ENFORCEMENT-OTHER TOTAL:	<u>178.26</u>
CRIME PREVENTION		
JULIA SMITH	J.S. - 2/26-2/27/15 CPTED CLASS	260.99

Agenda Item 3-6

Vendor Name	Description (Item)	Amount
MONOGRAM MAGIC	POLICE SERVICE BLACK JACKET	68.02
	CRIME PREVENTION TOTAL:	329.01
	GENERAL FUND TOTAL:	33,799.44

102 - GEN. FD-CITY HALL

NON-DEPARTMENTAL

ORANGE COUNTY FIRE PROTECTION	FIRE EXTINGUISHER MAINTENANCE/SVCS	77.00
PACIFIC PARK II ASSOCIATION	HOA ASSESSMENT	329.40
SONITROL GOLD COAST LP	SECURITY SYSTEM	269.96
	NON-DEPARTMENTAL TOTAL:	676.36
	GEN. FD-CITY HALL TOTAL:	676.36

203 - GAS TAX

TRAFFIC ENGINEERING

HARTZOG & CRABILL INC	TRAFFIC SIGNAL MONITORING	918.00
	TRAFFIC ENGINEERING TOTAL:	918.00

STREET MAINTENANCE

PV MAINTENANCE INC	PVM STREET MAINTENANCE	34,617.25
	STREET MAINTENANCE TOTAL:	34,617.25
	GAS TAX TOTAL:	35,535.25

711 - DEPOSIT ACCOUNTS FUND

ROBERT BARRY	FEB'15 FINANCIAL SUPPORT SERVICES	2,118.75
LOWES HOME IMPROVEMENT	PA14-029 REFUNDABLE DEPOSIT	587.50
GLENWOOD MAINTENANCE CORP	PA14-024 REFUNDABLE DEPOSIT	1,597.50
ROBERT HALF INTERNATIONAL INC	TEMP FINANCIAL SVCS	157.00
ROBERT HALF INTERNATIONAL INC	TEMP FINANCIAL SVCS	173.82
ROBERT HALF INTERNATIONAL INC	TEMP FINANCIAL SVCS	157.00
ROBERT HALF INTERNATIONAL INC	TEMP FINANCIAL SVCS	157.00
SIGMANET INC.	CONFERENCE CENTER WIFI - MERAKI WIFI PARTS	2,494.84
	7,443.41	
	DEPOSIT ACCOUNTS FUND TOTAL:	7,443.41

GRAND TOTAL: 77,454.46

Fund Summary

Fund	Expense Amount	Payment Amount
101 - GENERAL FUND	33,799.44	33,799.44
102 - GEN. FD-CITY HALL	676.36	676.36
203 - GAS TAX	35,535.25	35,535.25
711 - DEPOSIT ACCOUNTS FUND	7,443.41	7,443.41
Grand Total:	77,454.46	77,454.46

City of Aliso Viejo

Agenda Item



DATE: March 18, 2015

TO: Mayor and City Council

FROM: Glenn Yasui, Director of Administrative Services

SUBJECT: AGREEMENT WITH PSG PROPERTY MANAGEMENT LLC FOR
PROPERTY MANAGEMENT SERVICES AT 12 JOURNEY

Recommendation:

- (1) Approve the Agreement between PSG Property Management LLC and the City of Aliso Viejo for property management services at 12 Journey.
- (2) Authorize the City Manager to execute the Agreement with PSG Property Management LLC.

Fiscal Impact:

The City compensates PSG Property Management LLC based on a monthly fee of 5% of the gross rent per month for revenues actually received by the City. The total compensation is not to exceed \$57,000 for property management services from July 1, 2015 to June 30, 2018. Annual funding will be included in the proposed 2015-16 budget.

Background:

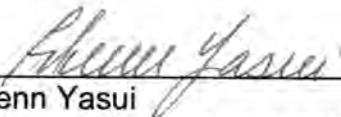
On August 15, 2006, the City of Aliso Viejo purchased the office building located at 12 Journey. As the owner of the property, the City has responsibility for the operation and maintenance of the building. From the inception of the building in 2000, the previous owner utilized PSG Property Management LLC to perform property management services which includes responding to requests for janitorial service, lighting, landscaping, pest control, heating and air conditioning systems as well as invoicing tenants for their monthly lease payments.

PSG Property Management LLC is a professional property management company with 34 years of property management experience. Moreover, PSG Property Management LLC has extensive knowledge of the property at 12 Journey and considerable experience working with the various contractors performing building maintenance and

repairs. PSG Property Management LLC has proven to be a valuable resource to the City in working with tenants to address maintenance and repair issues.

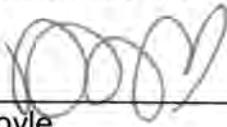
Discussion

In light of PSG Property Management LLC's quality service, Staff recommends that the City enter into a new Agreement to continue having PSG Property Management LLC provide service. The proposed Agreement has a three-year term covering the period of July 1, 2015 – June 30, 2018 with the City having the unilateral option to renew the Agreement for up to two additional one-year terms. The proposed Agreement caps the total compensation with a not to exceed amount of \$19,000 per year (\$57,000 for the three-year term).



Glenn Yasui
Director of Administrative Services

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL



David Doyle
City Manager

Attachments: Agreement for Property Management Services

**CITY OF ALISO VIEJO
PROFESSIONAL SERVICES AGREEMENT
FOR
PROPERTY MANAGEMENT SERVICES**

1. PARTIES AND DATE.

This Agreement is made and entered into this ____ day of _____, 2015, by and between the City of Aliso Viejo, a municipal organization organized under the laws of the State of California with its principal place of business at 12 Journey, Suite 100, Aliso Viejo, California 92656 ("City") and PSG Property Management, LLC with its principal place of business at 4940 Campus Drive, Suite D, Newport Beach, CA 92660 ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties".

2. RECITALS.

2.1 Consultant.

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

2.2 Project.

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

3. TERMS.

3.1 Scope of Services and Term.

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

3.1.2 Term. The term of this Agreement shall be from July 1, 2015 to June 30, 2018, unless earlier terminated as provided herein. The City Manager shall have the unilateral option, at its sole discretion, to renew this Agreement annually for no more than two additional

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

3.2 Responsibilities of Consultant.

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

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

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

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

3.2.5 City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all

purposes under this Contract. The City Manager hereby designates **Glenn Yasui, Director of Administrative Services** or his or her designee, as the City's contact for the implementation of the Services hereunder. Consultant shall not accept direction or orders from any person other than the City's Representative or his or her designee.

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

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

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

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

3.2.10 Insurance.

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

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

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

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

- (b) **Automobile Liability Insurance:** Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1) with minimum limits of \$1,000,000 each accident.
- (c) **Workers' Compensation:** Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 per accident for bodily injury and disease.

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

(A) The policy or policies of insurance required by Section 3.2.10.2 (a) Commercial General Liability shall be endorsed to provide the following:

- (1) **Additional Insured:** The City, its officials, officers, employees, agents, and volunteers shall be additional insureds with regard to

liability and defense of suits or claims arising out of the performance of the Agreement.

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

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

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

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

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

- (1) Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.
- (2) Cancellation: Required insurance policies shall not be canceled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

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

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

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

3.2.10.7 Evidence of Insurance. The Consultant, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

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

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

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

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

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

3.2.12 Verification of Funds. Pursuant to City Council Policy 300-5, if the Services are for an applicant-initiated project for which a deposit account has been established with the City, Consultant shall verify with the City's Representative that sufficient funds are available in City's deposit account for that project before the commencement of any work or services and periodically as the Services progress.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. The total compensation shall not exceed **Fifty-Seven Thousand Dollars (\$57,000.00)** ("Total Compensation") without written approval of City Manager. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

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

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

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City. The City Manager may approve Extra Work not to exceed a total contract amount of twenty five thousand dollars (\$25,000). Any Extra Work which causes the total contract amount to exceed twenty five thousand dollars (\$25,000) shall be approved by the City Council.

3.3.5 Rate Increases. In the event that this Agreement is renewed pursuant to Section 3.1.2, the rates set forth in Exhibit "C" may be adjusted each year at the time of renewal as set forth in Exhibit "B."

3.3.6 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the

Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4 Accounting Records.

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

3.5 General Provisions.

3.5.1 Termination of Agreement.

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

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

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

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

Consultant: PSG Property Management, LLC
 4940 Campus Drive, Suite D
 Newport Beach, CA 92660
 Attn: Kristofer Wilks

City: City of Aliso Viejo
 12 Journey, Suite 100
 Aliso Viejo, CA 92656
 Attn: Glenn Yasui

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

3.5.3 Ownership of Materials and Confidentiality.

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

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

3.5.3.3 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the Release Notice to give City

written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

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

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

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

3.5.7 Indemnification.

3.5.7.1 Scope of Indemnity. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant.

3.5.7.2 Additional Indemnity Obligations. Consultant shall defend, with Counsel of City's choosing and at Consultant's own cost, expense and risk, any and all claims,

suits, actions or other proceedings of every kind covered by Section 3.5.7.1 that may be brought or instituted against City or its directors, officials, officers, employees, volunteers and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, volunteers and agents as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse City for the cost of any settlement paid by City or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Consultant shall reimburse City and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents, or volunteers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.6 Subcontracting.

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

[Signatures on following page.]

IN WITNESS WHEREOF, the parties have executed this Professional Services Agreement for property management services on this ____ day of _____, 2015.

CITY OF ALISO VIEJO

PSG ENTERPRISES, INC.

By: _____
David Doyle
City Manager

By: _____

Name: _____

Title: _____

Attest:

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

By: _____
Mitzi Ortiz, MMC
City Clerk

By: _____

Name: _____

Approved as to Form:

Title: _____

BEST BEST & KRIEGER LLP

By: _____
Best Best & Krieger LLP
City Attorney

Approved as to Compliance with Budget:

By: _____
Gina Tharani
Director of Financial Services

CITY OF ALISO VIEJO

DECLARATION OF POLITICAL CONTRIBUTIONS

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

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

City/County/State

Date

Name of Business

Print Name

Signature

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

EXHIBIT "A"

SCOPE OF SERVICES

General Conditions

Retention of Consultant – City hereby appoints and employs a Consultant as the sole and exclusive managing agent to manage the building. The professional building is located at 12 Journey, Aliso Viejo, CA 92656.

Status of Consultant – Consultant shall be an agent acting on behalf of the City as a disclosed principal with respect to the matters covered by this Contract. The City has directed that the Consultant shall have no authority to execute nor enter into contracts on behalf of City unless specifically directed to do so by City.

Role of Consultant – Consultant shall assist City in the management, operation and administration of the building. Consultant shall use its best efforts to perform its duties under this Contract in accordance with the rules and regulations and other duly enacted policies and procedures of City. Consultant shall be available at reasonable times to confer with City and its representatives regarding the performance of the services set forth herein.

General Administration

Consultant shall perform the following routine general administration services which include:

Record and File Maintenance – Consultant shall maintain the records and files relating to the operation and management of the building in such manner as City may direct.

Emergency Services – Consultant shall provide after-hour answering and/or emergency assistance service as may be necessary for the health, safety and well being of the occupants of the building.

Rules of Enforcement – Consultant shall assist City in enforcing the Rules and Regulations.

Office Hours – Consultant shall maintain normal business office hours Monday through Friday (except holidays) for communications related to building business, and shall provide a 24-hour emergency telephone number.

Duties of Consultant Property Management Services

Consultant shall assist City in the creation, implementation and administration of a maintenance and preventative maintenance program covering the entire complex.

Ordinary Maintenance/Repair of Common Area – Consultant shall schedule and monitor maintenance and repair of the common areas, including the following: common area structures, streets, walks and gutters; security lighting; painting; plumbing; trash collection; landscape.

Major Repairs/Alterations of Common Area -Any repairs, structural changes, alterations or additions to the common area, or any portion thereof, that requires an expenditure of more than \$1,000.00 shall be

deemed major repairs/alterations and require specific authorization, except under such circumstances as Consultant shall deem to be an emergency. Consultant will notify City, as soon as is practical, as to the emergency expenditure.

Specification/Bid Preparation for Major Repairs – Consultant, at the request of City, shall obtain bids for the work and submit them to City. City shall then decide which company or professional to hire to do major repairs. Consultant shall coordinate and monitor the work in progress.

Financial Management

Assessment Collection – Consultant shall prepare and mail monthly invoice billing statements to the tenants. Consultant shall collect and, as necessary, receipt for all monthly rental fees.

Disbursements – City shall regularly disburse from City operating accounts all expenses and obligations.

Delinquency Follow-up – Consultant shall be responsible for collecting delinquent rent payments. Consultant shall maintain delinquent assessment records and submit to City a monthly aged delinquent aging report/list each month.

Consultant shall act as liaison between City and retained counsel and/or a collection service to provide the information and records necessary to pursue collection of delinquent rent payments. Consultant may charge an additional fee for attention to filing and releasing liens, and for costs associated with participating in any collection action.

Invoice Approval – Consultant shall review and approve for payment invoices for budget items and other approved expenditures, and shall promptly report to City all discrepancies or irregularities in invoices or building expenditures that come to Consultant's attention.

Budget Preparation – Consultant shall assist in the preparation of a pro forma operating budget so that it is available to City not less than thirty (30) days prior to the beginning of the fiscal year of July 1st to June 30th.

Contracting Policies

Administration of Contracts - City shall select all contractors, vendors and service providers unless Consultant is instructed by City to make the selection. After selection and retention, Consultant shall schedule and monitor the activities of the contractor, vendor or service provider, including, without limitation, the obtaining of contract documents, certificates of insurance, copies of bonds, warranties, releases of liens and other necessary or prudent documentation. Consultant shall monitor the work in progress and keep City apprised of its status. Consultant shall also cooperate and assist professional consultants retained by City for specialized functions such as legal, accounting, and other services.

EXHIBIT "B"

SCHEDULE OF SERVICES

Consultant shall perform services on an as needed basis as determined by City Staff.

In the event that this Agreement is renewed pursuant to Section 3.1.2, the first renewal period shall be from July 1, 2018 to June 30, 2019. The second renewal period shall be from July 1, 2019 to June 30, 2020.

EXHIBIT "C"

COMPENSATION

For those routine services specified in Exhibit "A", City shall compensate Consultant a monthly fee of 5% of the gross rent per month for space actually leased by City to tenants. For space occupied by City and not leased to tenants, compensation to Consultant shall be based on the total square footage actually occupied by the City multiplied by the average base rent per square foot of current tenants each month. Consultant shall not receive compensation for unoccupied space.

City shall be billed on a monthly basis by Consultant for special or extra services performed by Consultant as set forth below:

A.	<u>General Service</u>	<u>Cost Impact</u>
	1. Registered/Certified Mail	Actual Incurred
	2. Special mailing, postage and materials (i.e. special notices, violation letters, Newsletter)	Actual Incurred
	3. Photocopying Fee	Included in Base
	4. Secretarial & clerical services for special services	\$35.00 per hour

B. Hourly Rate for Special Services

Special service, including, but not limited to the following, in accordance with City request, shall be billed monthly to City at a rate of \$65.00 per hour.

1. Taking part in special projects, extensive research, data compilation, court attendance and/or other legal activity.

In the event that this Agreement is renewed pursuant to Section 3.1.2, the rates set forth above shall be adjusted each year at the time of renewal described in Exhibit "B" in accordance with the Consumer Price Index, All Urban Consumers, Los Angeles-Riverside-Orange Counties.

City of Aliso Viejo

Agenda Item



DATE: March 18, 2015

TO: Mayor and City Council

FROM: Albert Armijo, Director of Planning Services

SUBJECT: **THIRD AMENDMENT TO AGREEMENT FOR PROFESSIONAL CONSULTANT SERVICES – FORMA**

Recommendation

Approve a Third Amendment to the Professional Services Agreement between the City of Aliso Viejo and FORMA for planning consultant services pertaining to Aliso Viejo Town Center.

Fiscal Impact

The Third Amendment to the Professional Services Agreement would increase the contract cumulative amount by \$33,000 to a not-to-exceed amount of \$198,000. The requested increase amount was included in the FY 2014-2015 budget mid-year augmentation.

Staff anticipated this additional cost and/or re-designation of funds in the FY 2014-2015 budget was likely to provide for completion of a supplemented Work Program based on potential changes to the Vision and Opportunities Plan. Potential changes could include additional gross leasable area (beyond the already-contemplated 140,000 square feet, multi-family residential opportunities within a mixed-use design, and additional parking opportunities.

Background

On December 4, 2013, the Council approved the original Professional Services Agreement ("Agreement") with FORMA in the amount of Seventy Five Thousand Dollars (\$75,000). The First Amendment to the Professional Services Agreement pertained only to an extension of term through June 30, 2015, and did not increase the original contract cumulative amount of \$75,000. The Council approved the Second Amendment to the Professional Services Agreement on August 20, 2014. The Second Amendment pertained to a supplemented Scope of Services and cumulative compensation increase of \$90,000, which brought the total contract amount to \$165,000.

Discussion

The attached Third Amendment to the Agreement includes a not-to-exceed cumulative amount as noted above and a supplemented Scope of Services that would include the following: continued modifications to various Town Center Concept Plan (Concept Plan) alternatives; synthesis of Concept Plan alternatives into a "Preferred Plan"; preparation of 40-scale graphics of Concept Plan alternatives and of the Preferred Plan; preparation of final draft Concept Plan

alternatives for Council consideration and action; calculation of additional data pertaining to the final draft Alternatives and Preferred Plan; preparation of a 3-D model and "Walk-Through" video of Preferred Plan; preparation of Park and Plaza Plans; and, development of a GIS model of the Council-selected Preferred Plan. This would enable completion of the draft Aliso Viejo Town Center Specific Plan according to the schedule provided previously to the Council (October 1).

The proposed Third Amendment to the Agreement, the Second Amendment to the Agreement, the First Amendment to the Agreement and the original Agreement are attached to this Staff Report.



Albert Armijo
Director of Planning Services

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL



David A. Doyle
City Manager

Attachments

- A. Third Amended Professional Services Agreement
- B. Second Amended Professional Services Agreement
- C. First Professional Services Agreement
- D. Original Professional Services Agreement

CITY OF ALISO VIEJO
THIRD AMENDMENT TO
AGREEMENT FOR PLANNING CONSULTANT SERVICES
PERTAINING TO ALISO VIEJO TOWN CENTER

1. PARTIES AND DATE.

This Third Amendment to the Agreement for Planning Consultant Services ("Third Amendment") is entered into on the 18th day of March, 2015, by and between the City of Aliso Viejo (hereinafter referred to as the "City") and FORMA, a California corporation (hereinafter referred to as "FORMA" or as the "Consultant"). City and Consultant are sometimes collectively referred to herein as the "Parties."

2. RECITALS.

2.1 Agreement. The Parties entered into that certain Agreement for Planning Consultant Services dated December 4, 2013 ("Agreement").

2.2 First Amendment. The Parties entered into a First Amendment to the Agreement for Planning Consultant Services on June 4, 2014 to extend the term of service only.

2.3 Second Amendment. The Parties entered into a Second Amendment to the Agreement for Planning Consultant Services on August 20, 2014, to amend the Scope of Services and Compensation.

2.4 Third Amendment. The Parties now desire to amend the Agreement to increase the total compensation under the Agreement by Thirty-Three Thousand Dollars (\$33,000), for a cumulative amount not to exceed One Hundred Ninety-Eight Thousand Dollars (\$198,000) and to augment the scope of services as presented herein.

3. TERMS.

3.1 Scope of Services. This Third Amendment supplements the original scope of services, as set forth in Exhibit "A," attached hereto and incorporated herein by reference.

3.2 Compensation. The Parties now desire to amend Section 3.3.1 of the original Agreement to increase the total compensation by Thirty-Three Thousand Dollars (\$33,000) for a cumulative amount not to exceed One Hundred Ninety-Eight Thousand Dollars (\$198,000). Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Third Amendment at rates set forth in Exhibit "B" attached hereto and incorporated herein by reference.

3.3 Extra Work. Section 3.3.4 of the original Agreement enables the City Manager to approve Extra Work amounting to not more than 10% of the Compensation amount in Section 3.3.1. Because the total compensation has been increased to \$198,000, the maximum amount of Extra Work under the authority of the City Manager is hereby revised from \$16,500 to \$19,800.

3.4 Term of Service. The term of this Agreement shall remain from July 1, 2014 through June 30, 2015.

3.5 Remaining Provisions of Agreement. Except as otherwise specifically set forth in this Third Amendment, the remaining provisions of the Agreement shall remain in full force and effect.

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

IN WITNESS WHEREOF, the parties have executed this Second Amendment to Agreement for Planning Consultant Services on this 18th day of March, 2015.

CITY OF ALISO VIEJO

FORMA

By: _____
David A. Doyle
City Manager

By: _____
Van Stephens, Principal

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

Attest:

By: _____
Mitzi Ortiz, MMC
City Clerk

By: _____
Name: _____
Title: _____

Approved as to Form:

By: _____
Best Best & Krieger LLP
City Attorney

Approved as to Compliance with Budget:

By: _____
Gina Tharani
Director of Financial Services

CITY OF ALISO VIEJO

DECLARATION OF POLITICAL CONTRIBUTIONS

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

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

City/County/State

Date

Name of Business

Print Name

Signature

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

EXHIBIT "A"

TO THIRD AMENDMENT TO AGREEMENT FOR PLANNING CONSULTANT SERVICES
PERTAINING TO ALISO VIEJO TOWN CENTER

SCOPE OF SERVICES

(Additional Services in bold type)

- ~~Prepare draft and final Aliso Viejo Town Center Specific Plan (Specific Plan) graphics, and 2035 General Plan and City Zoning Map graphics relating to Aliso Viejo Town Center as requested by Director of Planning Services~~
- **Continued modifications to various Concept Plan alternatives, as directed by City Director of Planning Services and/or City Council**
- **Synthesize Concept Plan alternatives into Preferred Plan, as directed by City Director of Planning Services**
- **Preparation of 40-scale graphics of various Concept Plan alternatives and of Preferred Plan, as directed by City Director of Planning Services**
- **Prepare Intensification Alternatives (i.e. final draft Concept Plan Alternatives 1 and 2) graphics**
- **Calculate land use intensities and additional data, as requested by the City Director of Planning Services, for four Alternatives final draft Concept Plan Alternatives 1 and 2**
- **Prepare a 3-D Model and "Walk Through" video of Preferred Plan**
- **Preparation of Park and Plaza Plans**
- **Develop GIS model of Preferred Plan**
- Prepare Visual Simulations for preferred Specific Plan land use, structural elevations, street scene and Festival Plaza exhibits for use in City Council Hearings, meetings with stakeholders, and meetings with community
- Prepare graphics for identified Specific Plan "Opportunity Areas"
- Prepare Power Point presentations/exhibits for Planning Director meetings with stakeholders and community and for Economic Development consultants' meetings with stakeholders
- Prepare Power Point presentation(s) for City Council Hearing(s)
- Assist Director of Planning Services with Specific Plan narrative as requested
- Attend meetings with Planning Department staff, consulting staff and stakeholders
- Attend community workshops and City Council Study Sessions and Hearing(s) as ~~directed~~ requested

EXHIBIT "B"
COMPENSATION

Consultant's total compensation shall not exceed One Hundred Ninety-Eight Thousand Dollars (\$198,000) and according to the following Rates.

FORMA STANDARD TERMS OF AGREEMENT

Hourly Rates:

Fees for service as described above are based on our standard hourly rates in effect. Rates are subject to adjustment:

Senior Director	\$ 150/hour
Director	\$ 150/hour
Sr. Planner/Sr. Designer/Sr. Landscape Architect/Sr. Project Manager	\$ 150/hour
Senior GIS Technician/Programmer	\$ 150/hour
Planner/Designer/Landscape Architect/Project Manager	\$ 150/hour
Studio Staff	\$ 150/hour

Reimbursable Expenses:

1. Out-of-pocket expenses (travel, telephone, messenger services etc.) at cost.
2. Subcontractors will be charged at cost.
3. Blueprint, reproduction and photographic services shall be billed at cost. Reproduction orders over \$500.00 shall be C.O.D.
4. Photocopies: Ten (\$0.10) cents per page.

CITY OF ALISO VIEJO

**SECOND AMENDMENT TO
AGREEMENT FOR PLANNING CONSULTANT SERVICES
PERTAINING TO ALISO VIEJO TOWN CENTER**

1. PARTIES AND DATE.

This Second Amendment to the Agreement for Planning Consultant Services ("Second Amendment") is entered into on the 20th day of August, 2014, by and between the City of Aliso Viejo (hereinafter referred to as the "City") and FORMA, a California corporation (hereinafter referred to as "FORMA" or as the "Consultant"). City and Consultant are sometimes collectively referred to herein as the "Parties."

2. RECITALS.

2.1 Agreement. The Parties entered into that certain Agreement for Planning Consultant Services dated December 4, 2013 ("Agreement").

2.2 First Amendment. The Parties entered into a First Amendment to the Agreement for Planning Consultant Services on June 4, 2014 to extend the term of service only.

2.2 Second Amendment. The Parties now desire to amend the Agreement to amend the Scope of Services and Compensation.

3. TERMS.

3.1 Scope of Services. This Second Agreement supplements the original scope of services, as set forth in Exhibit "A," attached hereto and incorporated herein by reference.

3.2 Compensation. The Parties now desire to amend Section 3.3.1 of the original Agreement to increase the total compensation by Ninety Thousand Dollars (\$90,000) for a cumulative amount not to exceed One Hundred Sixty Five Thousand Dollars (\$165,000). Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Second Amendment at rates set forth in Exhibit "B" attached hereto and incorporated herein by reference.

3.3 Extra Work. Section 3.3.4 of the original Agreement enables the City Manager to approve Extra Work amounting to not more than 10% of the Compensation amount in Section 3.3.1. Because the total compensation has been increased to \$165,000, the maximum amount of Extra Work under the authority of the City Manager is hereby revised from \$7,500 to \$16,500.

3.4 Term of Service. The term of this Agreement shall remain from July 1, 2014 through June 30, 2015.

3.5 Remaining Provisions of Agreement. Except as otherwise specifically set forth in this First Amendment, the remaining provisions of the Agreement shall remain in full force and effect.

3.6 Declaration of Political Contributions. Prior to the City's approval of this Amendment, Consultant shall submit to City a statement in writing declaring any political contributions of money, in-kind services, or loan made to any member of the City Council within the previous twelve-month period by the Consultant and all of Consultant's employees, including

any employee(s) that Consultant intends to assign to perform Services described in this Agreement.

3.7 Remaining Provisions of Agreement. Except as otherwise specifically set forth in this First Amendment, the remaining provisions of the Agreement shall remain in full force and effect.

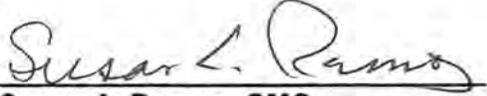
IN WITNESS WHEREOF, the parties have executed this Second Amendment to Agreement for Planning Consultant Services on this 20th day of August, 2014.

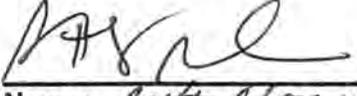
CITY OF ALISO VIEJO

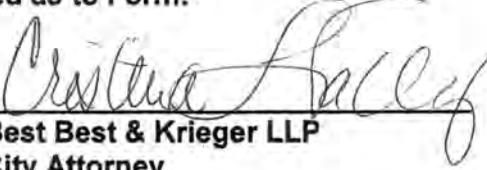
By: 
David A. Doyle
City Manager

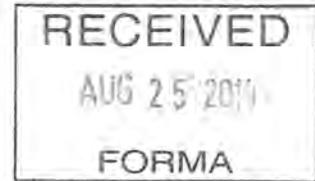
 **FORMA**
By: Van Stephens, Principal

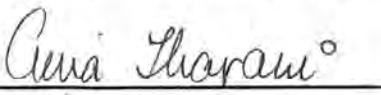
[If Corporation, TWO SIGNATURES, President OR Vice President AND Secretary, AND CORPORATE SEAL OF CONTRACTOR REQUIRED]

Attest:
By: 
Susan A. Ramos, CMC
City Clerk

By: 
Name: Anita Palomares
Title: Secretary

Approved as to Form:
By: 
Best Best & Krieger LLP
City Attorney



Approved as to Compliance with Budget:
By: 
Gina Tharani
Director of Financial Services

CITY OF ALISO VIEJO

DECLARATION OF POLITICAL CONTRIBUTIONS

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

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

COSTA MESA / ORANGE / CA
City/County/State

Date

FORMA DESIGN, INC.
Name of Business

Print Name


Signature

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

EXHIBIT "A"

**TO SECOND AMENDMENT TO AGREEMENT FOR PLANNING CONSULTANT SERVICES
PERTAINING TO ALISO VIEJO TOWN CENTER**

SCOPE OF SERVICES

*Updated and/or Supplemented Service

- Prepare draft and final Aliso Viejo Town Center Specific Plan (Specific Plan) graphics, and 2035 General Plan and City Zoning Map graphics relating to Aliso Viejo Town Center as requested by Director of Planning Services
- Prepare Intensification Alternatives graphics*
- Calculate land use intensities for four Alternatives*
- Prepare Visual Simulations for preferred Specific Plan land use, structural elevations, street scene and Festival Plaza exhibits for use in City Council Hearings, meetings with stakeholders, and meetings with community*
- Prepare graphics for identified Specific Plan "Opportunity Areas"*
- Prepare Power Point presentations/exhibits for Planning Director meetings with stakeholders and community and for Economic Development consultants' meetings with stakeholders*
- Prepare Power Point presentation(s) for City Council Hearing(s)
- Assist Director of Planning Services with Specific Plan narrative as requested
- Attend meetings with Planning Department staff, consulting staff and stakeholders
- Attend community workshops and City Council Study Sessions* and Hearing(s) as directed

EXHIBIT "B"
COMPENSATION

Consultant's total compensation shall not exceed One Hundred Sixty Five Thousand Dollars (\$165,000) and according to the following Rates.

FORMA STANDARD TERMS OF AGREEMENT

Hourly Rates:

Fees for service as described above are based on our standard hourly rates in effect. Rates are subject to adjustment:

Senior Director	\$ 150/hour
Director	\$ 150/hour
Sr. Planner/Sr. Designer/Sr. Landscape Architect/Sr. Project Manager	\$ 150/hour
Senior GIS Technician/Programmer	\$ 150/hour
Planner/Designer/Landscape Architect/Project Manager	\$ 150/hour
Studio Staff	\$ 150/hour

Reimbursable Expenses:

1. Out-of-pocket expenses (travel, telephone, messenger services etc.) at cost.
2. Subcontractors will be charged at cost.
3. Blueprint, reproduction and photographic services shall be billed at cost. Reproduction orders over \$500.00 shall be C.O.D.
4. Photocopies: Ten (\$0.10) cents per page.

CITY OF ALISO VIEJO

FIRST AMENDMENT TO
AGREEMENT FOR PLANNING CONSULTANT SERVICES
PERTAINING TO ALISO VIEJO TOWN CENTER

1. PARTIES AND DATE.

This First Amendment to the Agreement for Planning Consultant Services ("First Amendment") is entered into on the 4th day of June, 2014, by and between the City of Aliso Viejo (hereinafter referred to as the "City") and FORMA, a California corporation (hereinafter referred to as "FORMA" or as the "Consultant"). City and Consultant are sometimes collectively referred to herein as the "Parties."

2. RECITALS.

2.1 Agreement. The Parties entered into that certain Agreement for Planning Consultant Services dated December 4, 2013 ("Agreement").

2.2 First Amendment. The Parties now desire to amend the Agreement to extend the term of service only.

3. TERMS.

3.1 Scope of Services. The Agreement includes the original scope of services, as set forth in Exhibit "A," attached hereto and incorporated herein by reference.

3.2 Compensation. The total compensation for Services provided pursuant to this First Amendment remains as specified in the original Agreement and shall not exceed Seventy Five Thousand Dollars (\$75,000) without written approval of the City Manager. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this First Amendment at rates set forth in Exhibit "B" attached hereto and incorporated herein by reference.

3.3 Term of Service. The term of this Agreement shall be extended to cover the period from July 1, 2014 through June 30, 2015.

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

3.5 Remaining Provisions of Agreement. Except as otherwise specifically set forth in this First Amendment, the remaining provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this First Amendment to Agreement for Planning Consultant Services on this 4th day of June, 2014.

CITY OF ALISO VIEJO

FORMA

By: _____
David Doyle
City Manager

By: _____
Van Stephens, Principal

Attest:

By: _____
Susan A. Ramos, CMC
City Clerk

Approved as to Form:

By: _____
Best Best & Krieger LLP
City Attorney

Approved as to Compliance with Budget:

By: _____
Gina Tharani
Director of Financial Services

CITY OF ALISO VIEJO

DECLARATION OF POLITICAL CONTRIBUTIONS

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

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

City/County/State

Date

Name of Business

Print Name

Signature

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

EXHIBIT "A"

**TO FIRST AMENDMENT TO AGREEMENT FOR PLANNING CONSULTANT SERVICES
PERTAINING TO ALISO VIEJO TOWN CENTER**

SCOPE OF SERVICES

- Prepare Specific Plan, 2035 General Plan, and City Zoning Map graphics as requested by Director of Planning Services
- Prepare Power Point presentation/exhibits for meetings with stakeholders and community
- Prepare Power Point presentation for City Council Hearing(s)
- Assist Director of Planning Services with Specific Plan narrative as requested
- Attend meetings with Planning Department staff and stakeholders, community workshops and City Council Hearing(s) as directed

EXHIBIT "B"
COMPENSATION

Consultant's total compensation shall not exceed Seventy Five Thousand Dollars (\$75,000)

**CITY OF ALISO VIEJO
PROFESSIONAL SERVICES AGREEMENT
FOR
CONSULTANT SERVICES PERTAINING TO THE TOWN CENTER SPECIFIC PLAN**

1. PARTIES AND DATE.

This Agreement is made and entered into this 4th day of December, 2013, by and between the City of Aliso Viejo, a municipal organization organized under the laws of the State of California with its principal place of business at 12 Journey, Suite 100, Aliso Viejo, California 92656 ("City") and FORMA, a California corporation, with its principal place of business at 3050 Pullman Street, Costa Mesa, CA 92626 ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for provision of professional planning consultant services pertaining to the Aliso Viejo Town Center Specific Plan required by the City on terms and conditions set forth in this Agreement. Consultant represents it is experienced in providing professional consultant services required by the City, is licensed in the State of California, and is familiar with plans of City.

2.2 Project.

City desires to engage Consultant to render such services for providing assistance to City staff in developing the Aliso Viejo Town Center Specific Plan ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

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

3.1.2 Term. The term of this Agreement shall be from December 4, 2013, through June 30, 2014, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor.

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

3.2.2 Schedule of Services. Consultant shall perform Services expeditiously within the term of this Agreement. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such condition.

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

3.2.4 Substitution of Personnel. Any personnel of Consultant or its sub-consultant who fails or refuses to perform Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to adequate or timely completion of the Project or a threat to safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City, and shall not be re-employed to perform any of the Services or to work on the Project.

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

3.2.5.1 Consultant's Representative. Consultant hereby designates Van Stephens and Gene Shieh, or their designee, to act as its representatives for the performance of this Agreement ("Consultant's Representatives"). Consultant's Representatives shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representatives shall supervise and direct the Services, using their best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

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

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

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

3.2.9 Insurance.

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

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

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

The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for

claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

- (b) **Automobile Liability Insurance:** Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1) with minimum limits of \$1,000,000 each accident.
- (c) **Professional Liability:** Professional Liability insurance with minimum limits of \$1,000,000. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.).

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

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

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

- (A) Policy or policies of insurance required by Section 3.2.9.2(a) Commercial General Liability shall be endorsed to provide the following:

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

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

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

(B) Policy or policies of insurance required by Section 3.2.9.2(b) Automobile Liability and (c) Professional Liability shall be endorsed to provide the following:

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

(C) Policy or policies of insurance required by Section 3.2.9.2(d) Workers' Compensation shall be endorsed to provide the following:

- (1) Waiver of Subrogation: A waiver of subrogation stating the insurer waives all rights of subrogation against the indemnified parties.
- (2) Cancellation: Required insurance policies shall not be canceled or coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

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

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

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

3.2.9.7 Evidence of Insurance. The Consultant, concurrently with execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of required policies, or original certificates and endorsements on forms approved by the City. Certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15 days) prior to expiration of any such policy, evidence of insurance showing such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

3.2.9.8 Failure to Maintain Coverage. Consultant agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City

shall have the right to withhold any payment due Consultant until Consultant has fully complied with the insurance provisions of this Agreement.

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

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

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

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at rates set forth in Exhibit "B" attached hereto and incorporated herein by reference. The total compensation shall not exceed Seventy-Five Thousand Dollars (\$75,000) without written approval by the City Council. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within 30 days of receiving such statement, review the statement and pay all approved charges thereon.

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

3.3.4 Extra Work. At any time during the term of this Agreement, City may request Consultant perform Extra Work. As used herein, "Extra Work" means any work determined by City necessary for proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City. The City Manager may approve Extra Work, provided the cost of the Extra Work does not exceed ten percent (10%) of the Total Compensation as set forth in Section 3.3.1, for a total increase of Seven Thousand Five-Hundred Dollars (\$7,500). Any Extra Work in excess of this amount shall be approved by the City Council.

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

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

3.4 Accounting Records.

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

3.5 General Provisions.

3.5.1 Termination of Agreement.

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

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

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

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

Consultant:

FORMA
3050 Pullman Street
Costa Mesa, CA 92626

City:

City of Aliso Viejo
 12 Journey, Suite 100
 Aliso Viejo, CA 92656
 Attn: Director of Planning Services

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

3.5.3 Ownership of Materials and Confidentiality.

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

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

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

3.5.3.4 Fraud Policy. Consultant shall provide a copy of the City's Fraud Prevention Policy to each of its employees assigned to perform the tasks under this Agreement. Consultant shall submit to the City's Representative a statement signed by Consultant and by each of its employees who are assigned to perform the Services under this Agreement certifying receipt of and that they have read the City's Fraud Prevention Policy. A

finding by the City that Consultant or any of Consultant's employees have committed fraud against the City or have violated the City's Fraud Prevention Policy shall be grounds for appropriate discipline, up to and including such employee's removal from performance of this Agreement at City's request and/or termination of this Agreement. Consultant shall reimburse the City for any costs and expenses associated with fraud against the City.

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

3.5.5 Indemnification.

3.5.5.1 Scope of Indemnification. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death in any manner arising out of, pertaining to, or incident to any alleged acts, errors, omissions of Consultant, its officials, officers, employees, agents, subcontractors and sub-consultants in connection with the performance of the Services, the Project or this Agreement, including without limitation all consequential damages, expert witness fees and attorneys fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to negligence, recklessness, or willful misconduct of the Consultant.

3.5.5.2 Additional Indemnity Obligations. Consultant shall defend, with counsel of City's choosing, at Consultant's own cost, expense and risk, any and all claims, actions or other proceedings of every kind covered by Section 3.5.5.1 that may be brought or instituted against City, its directors, officials, officers, employees, volunteers and agents. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, volunteers and agents, in any such claim, suit, action or other proceeding. Consultant shall also reimburse City for cost of any settlement paid by City or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Consultant shall reimburse City and its directors, officials, officers, employees, agents and volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall survive expiration or termination of this Agreement and shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents or volunteers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.6 Subcontracting.

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

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Professional Services Agreement for planning, development, design, and architectural consultant services on this 4th day of Dec, 2013.

CITY OF ALISO VIEJO

By: [Signature]
John Whitman
Interim City Manager

Attest:

By: [Signature]
Susan Ramos
City Clerk 12/13/13

Approved as to Form:

BEST BEST & KRIEGER LLP

By: [Signature]
Scott C. Smith
City Attorney

Approved as to Compliance with Budget:

By: [Signature]
Gina Tharani
Director of Financial Services

FORMA Design Inc

By: [Signature]

Name: H. Gene Hsieh

Title: Vice President

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

By: [Signature]

Name: Anita Adriano

Title: Secretary

CITY OF ALISO VIEJO

DECLARATION OF POLITICAL CONTRIBUTIONS

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

0

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

Costa Mesa, Orange, CA
City/County/State

12/11/13
Date

FORMA Design Inc
Name of Business

Amata Adriano
Print Name

[Signature]
Signature

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

EXHIBIT "A"

SCOPE OF SERVICES

- Prepare Specific Plan, 2035 General Plan, and City Zoning Map graphics as requested by Director of Planning Services
- Prepare Power Point presentation/exhibits for meetings with stakeholders and community
- Prepare Power Point presentation for City Council Hearing(s)
- Assist Director of Planning Services with Specific Plan narrative as requested
- Attend meetings with Planning Department staff and stakeholders, community workshops and City Council Hearing(s) as directed

EXHIBIT "B"
COMPENSATION

Consultant's total compensation shall not exceed Seventy-Five Thousand Dollars (\$75,000).



City of Aliso Viejo
CITY COUNCIL
AGENDA ITEM

DATE: March 18, 2015
TO: Mayor and City Council
FROM: City Attorney
SUBJECT: RESOLUTION RELATED TO INCREASING ADMINISTRATIVE FINE AMOUNTS

RECOMMENDED ACTIONS

Staff recommends the City Council take the following actions:

- 1) Approve the following Resolution:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, ADOPTING ADMINISTRATIVE FINE AMOUNTS FOR CERTAIN VIOLATIONS OF THE ALISO VIEJO MUNICIPAL CODE AND ADOPTED CODES (Attachment 1).

FISCAL IMPACT

Additional revenue may be generated if the City increases administrative fine amounts for certain Code violations.

ENVIRONMENTAL:

The Resolution is not subject to environmental review under the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activities will not result in a direct or reasonably foreseeable indirect physical change in the environment), and 15060(c)(3) (the activities are not "projects" as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because they have no potential for resulting in physical change to the environment, directly or indirectly.

BACKGROUND

During the course of some code enforcement proceedings, staff became aware that the City's fine schedule lacks fines for certain violations or contains penalties that might be considered "the cost of doing business" for some code violations. This agenda item includes a resolution increasing the administrative fine amounts for certain AVMC

violations that especially threaten the public health, safety, welfare, or otherwise harm the City's community, including building code violations and violations of the proposed short-term rental ordinance (if enacted).

DISCUSSION

Increase in Administrative Fine Amounts

To support the enforcement of the AVMC and other adopted regulations, the City has enacted an administrative citation procedure, codified in AVMC Chapter 1.06. Currently, AVMC section 1.06.120 provides that the administrative citation fine amounts are \$100 for a first violation, \$200 for a second violation of the same code provision, ordinance, or permit condition within one year from the date of the first violation, and \$500 for each additional violation of the same code provision, ordinance, or permit condition within one year from the date of the first violation. To further deter code violations, the City desires to increase administrative citation fine amounts for violations that especially threaten the public health, safety, welfare, or otherwise harm the City's community. Specifically, this resolution would increase administrative fines for: (1) the construction, reconstruction, installation, erection, moving, or alteration of any building or structure without a permit, in violation of AVMC section 13.02.010; (2) short-term rentals in residential districts (if the City Council adopts an applicable ordinance establishing a prohibition or regulatory scheme); and (3) the maintenance of unsafe buildings and other structures, as addressed in AVMC section 8.24.010.

The attached Resolution (Attachment 1) would increase the administrative citation fine amounts to deter construction without a permit, short-term rentals, and the maintenance of unsafe buildings and other structures in the City.

CONCLUSIONS

Staff recommends the City Council adopt the proposed Resolution.

Prepared by:

for 

Scott C. Smith
City Attorney

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL



David A. Doyle

City Council Agenda Item XX
XX.XX.XX
Page 3

City Manager

Attachments:

1. Proposed Resolution increasing administrative fine amounts for certain Code violations

RESOLUTION NO. 2015-___

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF ALISO VIEJO, CALIFORNIA, ADOPTING
ADMINISTRATIVE FINE AMOUNTS FOR CERTAIN
VIOLATIONS OF THE ALISO VIEJO MUNICIPAL CODE
AND ADOPTED CODES**

WHEREAS, Article 11, Section 7 of the California Constitution authorizes the City of Aliso Viejo ("City") to make and enforce within its limits all ordinances and regulations not in conflict with general laws; and

WHEREAS, the Aliso Viejo City Council believes that enforcement of the Aliso Viejo Municipal Code, other ordinances that the City has adopted, conditions of entitlements and terms and conditions of City agreements approved under the provisions of the Aliso Viejo Municipal Code serves important public purposes; and

WHEREAS, to support the enforcement of the City's Code and other adopted regulations, the City enacted an administrative citation procedure, codified in Aliso Viejo Municipal Code ("AVMC") Chapter 1.06; and

WHEREAS, the administrative citation procedure, which is authorized under Government Code section 53069.4, allows the City to impose fines on responsible persons who violate any provision of the AVMC and other adopted City regulations; and

WHEREAS, AVMC section 1.06.120 provides that the administrative citation fine amounts are \$100 for a first violation, \$200 for a second violation of the same code provision, ordinance, or permit condition within one year from the date of the first violation, and \$500 for each additional violation of the same code provision, ordinance, or permit condition within one year from the date of the first violation; and

WHEREAS, however, AVMC section 1.06.120 also authorizes the City Council to specify, by resolution, the administrative citation fine amounts for specific violations of the AVMC and other adopted codes; and

WHEREAS, the City Council has identified several Code violations that especially threaten the public health, safety, or welfare, or otherwise harm the Aliso Viejo community; and

WHEREAS, the construction, reconstruction, installation, erection, moving, or alteration of any building or structure without a permit, as addressed in the

2013 California Building Code section 1.8.4.1, as adopted by AVMC section 13.02.010, especially threatens the public health, safety, or welfare because such unpermitted and unregulated construction may include structural issues that could physically harm members of the public; and

WHEREAS, as addressed in the proposed ordinance enacting a prohibition or regulatory scheme applicable to short-term rentals in residential districts, short-term vacation rentals particularly harm residents because short-term rentals are often associated with excessive noise, parking problems, trash, and degradation of a neighborhood's residential character; and

WHEREAS, the maintenance of unsafe buildings and other structures, as addressed in AVMC section 8.24.010, subdivision (G), also poses a significant, health and safety risk to residents' physical well-being; and

WHEREAS, the Council desires to increase the administrative citation fine amounts to further deter construction without a permit, short-term rentals, and the maintenance of unsafe buildings and other structures in the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, DOES HEREBY RESOLVE, DETERMINE, FIND AND ORDER AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The foregoing recitals are true and correct and are hereby incorporated and made an operative part of this Resolution.

SECTION 2. Amount of Administrative Fines.

A. Administrative fines shall be assessed for violations of the 2013 California Building Code section 1.8.4.1, as adopted by AVMC section 13.02.010, as follows:

1. A fine not exceeding two hundred dollars (\$200.00) for a first violation.
2. A fine not exceeding five hundred dollars (\$500) for a second violation of the same code provision within one year from the date of the previous violation.
3. A fine not exceeding seven hundred dollars (\$700.00) for each additional violation of the same code provision within one year from the date of the first violation.

B. If and when the City adopts an ordinance prohibiting or regulating short-term vacation rentals in residential districts, administrative fines shall be assessed for violations of that ordinance, as follows:

1. A fine not exceeding five hundred dollars (\$500.00) for a first violation.
2. A fine not exceeding seven hundred dollars (\$700) for a second violation of the same code provision within one year from the date of the previous violation.
3. A fine not exceeding one thousand dollars (\$1000.00) for each additional violation of the same code provision within one year from the date of the first violation.

C. Administrative fines shall be assessed for violations of AVMC section 8.24.010, subdivisions (G)(1)-(10) and (12), as follows:

1. A fine not exceeding two hundred dollars (\$200.00) for a first violation.
2. A fine not exceeding five hundred dollars (\$500) for a second violation of the same code provision within one year from the date of the previous violation.
3. A fine not exceeding seven hundred dollars (\$700.00) for each additional violation of the same code provision within one year from the date of the first violation.

SECTION 3. Remaining Provisions of Ordinance. Except as otherwise specifically set forth in this Resolution, the remaining provisions of Aliso Viejo Municipal Code Chapter 1.06 shall remain in full force and effect as to violations of the 2013 California Building Code section 1.8.4.1, as adopted by AVMC section 13.02.010, AVMC section 15.14.165, and AVMC section 8.24.010, subdivision (G)(1)-(10) and (12).

SECTION 4. CEQA. The City Council finds that this Resolution is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

SECTION 5. Severability. The provisions of this Resolution are severable and if any provision of this Resolution is held invalid, that provision shall be severed from the Resolution and the remainder of this Resolution shall continue in full force and effect, and not be affected by such invalidity.

SECTION 6. Effective Date. This Resolution shall take effect thirty (30) days after its adoption.

SECTION 7. Certification. The Mayor shall sign this Resolution and the City Clerk shall certify to the adoption thereof.

PASSED, APPROVED AND ADOPTED this _____, 2015 by the following vote, to wit:

WILLIAM A. PHILLIPS, MAYOR

ATTEST:

MITZI ORTIZ, MMC
CITY CLERK

APPROVED AS TO FORM:

SCOTT C. SMITH
CITY ATTORNEY

Resolution No. 2015-__

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS
CITY OF ALISO VIEJO)

I, Mitzi Ortiz, City Clerk of the Aliso Viejo , California, do hereby certify that the foregoing Resolution No. 2015-_____ was duly passed and adopted at a regular meeting of the Aliso Viejo City Council on the _____ day of _____, 2015 by the following vote, to wit:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:

MITZI ORTIZ, MMC
CITY CLERK



City of Aliso Viejo
CITY COUNCIL
AGENDA ITEM

DATE: March 18, 2015

TO: Mayor and City Council

FROM: City Attorney

SUBJECT: ORDINANCE CONFIRMING EXISTING PROHIBITION OF SHORT-TERM RENTALS IN RESIDENTIAL DISTRICTS

RECOMMENDED ACTION:

Staff recommends the City Council introduce and approve for first reading an Ordinance entitled:

AN ORDINANCE OF THE CITY COUNCIL OF ALISO VIEJO, CALIFORNIA AMENDING TITLE 15 OF THE ALISO VIEJO MUNICIPAL CODE BY AMENDING TABLE 15.10.020 OF SECTION 15.10.020, ADDING SECTION 15.14.165, AND AMENDING SECTION 15.94.020 TO PROHIBIT SHORT-TERM RENTALS IN RESIDENTIAL DISTRICTS – PA 15-002 (ZCA) (Attachment 1).

FISCAL IMPACT

None.

ENVIRONMENTAL

The Ordinance is not subject to environmental review under the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activities will not result in a direct or reasonably foreseeable indirect physical change in the environment), and 15060(c)(3) (the activities are not “projects” as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because they have no potential for resulting in physical change to the environment, directly or indirectly.

BACKGROUND

The City of Aliso Viejo (“City”) has received complaints about residents leasing their residential properties to travelers for short-term vacation rentals. Complainants assert that the rentals degrade the quality of their neighborhoods by generating excessive noise, parking problems, and trash. The Aliso Viejo Municipal Code (“AVMC”) does not address short-term rental uses, but it generally prohibits commercial uses in residential zones, and vice versa. Because the AVMC does not expressly prohibit short-term

rentals, the issue of the Code's intent is often disputed by violators. Therefore, our office was directed to prepare an ordinance that prohibits short-term rentals in residential neighborhoods for the Council's consideration.

DISCUSSION

Short-Term Rental Ban

The proliferation of online vacation rental websites such as Airbnb.com and Homeaway.com have encouraged and enabled City property owners, tenants, and occupants to rent their local residential properties on a short-term basis to travelers and transients. These short-term rentals, generally numbering less than 30 days, are often associated with excessive noise, parking problems, trash, and degradation of a neighborhood's residential character. Because of those nuisance issues, the City has received a number of complaints regarding residents renting their properties out as short-term vacation rentals. In short, City staff has found that vacationers using a home for a few days can approach neighborhood harmony and civility very differently from persons residing the neighborhood for a long time.

The AVMC does not expressly address short-term rentals in residential districts. Rather, AVMC Section 15.10.020, Table 15.10.020 "Permitted Uses in Residential Districts" lists uses that are permitted within each residential district. Section 15.10.020, subdivision (C) provides, in part, "If a use or structure is not listed as permitted [in Table 15.10.020], it is prohibited unless specifically determined to be permitted in accordance with AVMC section 15.06.050." (AVMC § 15.10.020(C), emphasis added.) Table 15.10.020 does not expressly permit short-term rentals in any residential district, and therefore that kind of use is prohibited in all residential districts. The City currently enforces these provisions by administratively citing violators on a case-by-case basis.

In an effort to more clearly define permitted uses within residential districts, the City directed staff to draft a proposed Ordinance that expressly prohibits short-term rentals. Under this alternative, rather than relying on the implied interrelationship and reading of the general Code provisions described above, the City Council would adopt specific Code provisions clarifying that short-term rentals are barred in residential zones. This would ease considerably the prosecutorial burden of proving Code violations, but would not, in effect, alter the Code's underlying characterization of these uses as inconsistent with the City's residential land use regulations. This is a common approach. Many cities have banned homesharing, enforcing laws that make it illegal for property owners to rent their homes periods of less than 30 days.

The attached Ordinance (Attachment 1) would amend Title 15 of the AVMC to expressly prohibit short-term rentals in residential districts to preserve the residential character of City neighborhoods and stem the negative, secondary effects caused by those uses.

Prepared by:

for Cristiana Kelly

for Scott C. Smith
City Attorney

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL

David A. Doyle

David A. Doyle
City Manager

ORDINANCE NO. 2015-_____

AN ORDINANCE OF THE CITY COUNCIL OF ALISO VIEJO, CALIFORNIA AMENDING TITLE 15 OF THE ALISO VIEJO MUNICIPAL CODE BY AMENDING TABLE 15.10.020 OF SECTION 15.10.020, ADDING SECTION 15.14.165, AND AMENDING SECTION 15.94.020 TO PROHIBIT SHORT-TERM RENTALS IN RESIDENTIAL DISTRICTS – PA 15-002 (ZCA)

WHEREAS, the proliferation of online vacation rental websites such as Airbnb.com and Homeaway.com have encouraged and enabled City of Aliso Viejo (“City”) property owners, tenants, and occupants to rent their local, residential properties on a short-term basis to travelers or transients; and

WHEREAS, these short-term rentals, generally numbering less than 30 days, are often associated with excessive noise, parking problems, trash, and degradation of a neighborhood’s residential character; and

WHEREAS, the City has received numerous complaints from residents about the negative secondary effects of short-term rental uses in their residential neighborhoods; and

WHEREAS, the Aliso Viejo Municipal Code (“AVMC”) does not expressly address short-term rentals in residential districts. However, because short-term rentals are not expressly permitted in residential districts under the AVMC, such transient uses are prohibited; and

WHEREAS, the City Council desires to amend the City’s Zoning Code to expressly prohibit short-term rentals in residential districts to preserve the residential character of City neighborhoods and stem the negative, secondary effects caused by those uses; and

WHEREAS, AVMC section 15.78.050 authorizes the City Council to initiate and adopt zoning code amendments, pursuant to the Council making certain findings related to the public welfare and General Plan consistency; and

WHEREAS, notice of the public hearing on this proposed Zoning Code Amendment was published in a 1/8 page display ad in the Aliso Viejo News on January 8, 2015, and public hearing notices were posted at the Aliso Viejo City Hall, the Aliso Viejo Library, and the Aliso Viejo Sheriff Substation pursuant to California Government Code sections 65853 *et seq.*; and

WHEREAS, the City Council held a duly-noticed public hearing on March 18, 2015 to consider first reading of this Ordinance and public testimony and recommendations presented by staff in its staff report and oral presentation.

THE CITY COUNCIL OF THE CITY OF ALISO VIEJO HEREBY ORDAINS AS FOLLOWS:

Section 1. CEQA. This Ordinance enacts changes to the City's Zoning Code in order to promote health, safety, comfort and general welfare in the community. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") because the activity is not a project as defined in Section 15378 of the State CEQA Guidelines. Even if the Ordinance constituted a "project" within the meaning of CEQA, the activity is exempt under State CEQA Guidelines section 15061 for the reasons set forth in this Ordinance and the corresponding staff report. The Ordinance does not have the potential for resulting in physical change to the environment, directly or indirectly.

Section 2. Findings. After receiving public testimony, reviewing the evidence submitted by staff, and discussing the proposed Ordinance, the City Council hereby finds that the amendments to the Zoning Code relating to the ban of short-term rentals in residential districts are supported by the following findings:

A. Public Welfare. Approval of the Code amendment will not create conditions materially detrimental to the public health, safety, and general welfare. Rather, the amendments are enacted to further protect residential uses by banning short-term rentals in residential districts and curbing the negative, secondary effects of such transient use, including excessive noise, parking problems, trash, and degradation of a neighborhood's residential character; and

B. General Plan Consistency. The Code amendment is consistent with the goals, objectives, and policies of the City's General Plan and any applicable specific plan. Specifically, residential housing was developed to encourage a diversity of housing types and provide affordability levels within Aliso Viejo to meet the needs of community residents. (General Plan Goals H1, p. H-6). When residential property is used for short-term rentals for travelers and transients, less long-term housing is available for community residents. The zoning amendment seeks to preserve housing for long-term residents who will invest in their neighborhoods and communities. Moreover, the amendment encourages safe and aesthetically pleasing neighborhoods, and provides adequate housing to meet the needs of all household types and income groups. (General Plan Goal H2, p. H-7). Prohibiting short-term rentals preserves the character of residential neighborhoods by minimizing the parking, traffic, and noise issues associated with short-term rentals. Further, short-term rentals in solely residential areas are not an expressly permitted use in any of the applicable specific plans, and therefore, are prohibited. (See, e.g., Glenwood Specific Plan, Table 5-22-A; Ventana Ridge Specific Plan, p. 2-1; The Commons at Aliso Viejo Town Center Specific Plan, p. IV-10; Vantis Specific Plan, pp. 2-3 to 2-4.)

Section 3. Zoning Code Amendment. Table 15.10.020 of Section 15.10.020 of Title 15 of the Aliso Viejo Municipal Code is hereby amended, pursuant to Ordinance No. 2015-_____, to add the following reference:

**TABLE 15.10.020:
PERMITTED USES IN RESIDENTIAL DISTRICTS**

	RL Low Density Residential	RM Med. Density Residential	RH High Density Residential	RVH Very High Density Res.
RESIDENTIAL USES:				
Short-term rentals, subject to AVMC 15.14.165	NP	NP	NP	NP

Section 4. Zoning Code Amendment. Section 15.14.165 is hereby added to Title 15 of the Aliso Viejo Municipal Code, pursuant to Ordinance No. 2015-_____, to read as follows:

“15.14.165 Short-term Rental Uses Prohibited.

A. Prohibition. Short-term rental uses such as transient bed and breakfast, hostel, hotel, inn, lodging, motel, resort and other transient lodging uses for remuneration are prohibited in all residential districts, except as otherwise permitted by the Municipal Code.

B. Liability and Enforcement. Any property owner, tenant, subtenant, occupant, person acting as agent, real estate broker, real estate agent, property manager, reservation service or otherwise who arranges or negotiates for the short-term use of residential property in violation of the provisions of this section shall be liable pursuant to the provisions of Chapter 1.06 of the Municipal Code.”

Section 5. Zoning Code Amendment. Section 15.94.020 of Title 15 of the Aliso Viejo Municipal Code is hereby amended, pursuant to Ordinance No. 2015-_____, to add the following definitions:

“Occupancy, Short-term’ for purposes of Section 15.14.165, means the use or possession, or the right to the use or possession, of any portion of any room or rooms offered for remuneration for dwelling, lodging or sleeping purposes, regardless of the purpose for which such rooms are rented.

‘Remuneration’ means compensation, money, rent, or other bargained for consideration given in return for occupancy, possession, or use of real property.

‘Transient’ means any person who exercises occupancy or is entitled to occupancy in exchange for remuneration for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. In determining whether a person is a transient, an uninterrupted period of time extending both prior and subsequent to the effective date of the ordinance codified in this chapter may be considered.”

Section 6. Conflicting Regulations. Upon the effective date of this Ordinance, all former ordinances or parts thereof conflicting or inconsistent with the provisions of this Ordinance are hereby repealed and declared to be of no further force and effect.

Section 7. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

Section 8. Effective Date. This Ordinance shall take effect thirty (30) days after its adoption.

Section 9. Publication. The City Clerk shall publish this Ordinance within fifteen (15) days of its adoption in accordance with California Government Code Section 36933.

Section 10. Notice of Exemption. The City Council hereby directs staff to prepare, execute and file with the Orange County Clerk a Notice of Exemption within five (5) working days of first reading of this Ordinance.

Section 11. Location and Custodian of Records. The documents and materials associated with this Ordinance that constitute the record of proceedings on which these findings are based are located at Aliso Viejo City Hall, 12 Journey, Aliso Viejo, California 92656. The Director of Planning Services is the custodian of the record of proceedings.

[Signatures on Following Page]

PASSED, APPROVED AND ADOPTED this _____ day of _____ 2015.

William A. Phillips
Mayor

ATTEST:

Mitzi Ortiz, MMC
City Clerk

APPROVED AS TO FORM:

Scott C. Smith
City Attorney

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

I, Mitzi Ortiz, City Clerk of the City of Aliso Viejo, California, do hereby certify that the foregoing Ordinance was adopted at a regular meeting of the City Council of the City of Aliso Viejo held on the _____day of _____ 2015, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

Mitzi Ortiz, MMC
City Clerk

City of Aliso Viejo

CITY COUNCIL

AGENDA ITEM



DATE: March 18, 2015

TO: Mayor and City Council

FROM: Shaun Pelletier, Director of Public Works/City Engineer

SUBJECT: RESOLUTION AUTHORIZING THE CITY OF ALISO VIEJO'S FISCAL YEAR 2015-2016 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ALLOCATION MAXIMUM OF \$214,814 TO BE UTILIZED FOR AMERICAN DISABILITY ACT (ADA) IMPROVEMENTS AT FIFTY-FOUR (54) CURB RAMPS WITHIN ALISO VIEJO

RECOMMENDED ACTION

Conduct the public hearing and adopt the above referenced resolution declaring the City's intent to utilize Fiscal Year 2015-2016 CDBG program funding for ADA improvements at fifty-four (54) curb ramps within Aliso Viejo.

FISCAL IMPACT

Of the \$214,814 total CDBG allocation, 10% (\$21,481) is allocated to the County of Orange for administration, and 10% (\$21,481) is allocated for City administration. The City's administration will be utilized to reimburse the Director of Public Works/City Engineer's, Assistant City Engineer's, and Public Works Inspector's administration and inspection time for the project. Additionally, a one-time payment of \$3,300 for the production of the HUD-required, Five Year Consolidated Plan for FY July 1, 2015 – June 30, 2020, and a one-time payment of \$350 towards the cost of producing the five year update to the HUD-required, "Analysis of Impediments Fair Housing" would go to the County of Orange. This leaves a remaining City administration budget of \$17,831.

Upon subtracting the 20% administration, a total of \$171,852 remains for the project. The actual project amount for the fifty-four (54) curb ramps, broken out under "Analysis," is for \$171,737.50, a difference of \$114.50 of the allowable maximum.

PUBLIC NOTICE

A 1/8 display public hearing notice was published in the Aliso Viejo News on March 5, 2015.

ENVIRONMENTAL

Staff recommends the City Council find the proposed project categorically exempt from the California Environmental Quality Act (CEQA) pursuant to a Class 2 exemption for activities involving replacement or reconstruction of existing facilities, structures, or other property where the new facility or structure will be located on the same site as the replaced or reconstructed facility or structure and will have substantially the same purpose and capacity as the replaced or reconstructed facility or structure (State CEQA Guidelines, section 15302). The exemption identified under Class 2 applies to the project given that this project includes the reconstruction or retrofitting of fifty-four (54) curb ramps in Aliso Viejo.

BACKGROUND

On July 16, 2014, the City Council accepted status as a CDBG entitlement grantee and authorized the City Manager to enter into a joint agreement with the County of Orange to administer the funds. At the time, the preliminary CDBG allocation was \$219,500.

On January 7, 2015, the County of Orange requested that City staff submit a "Metro City Information Form" identifying the proposed use of the FY 2015-2016 CDBG funds and return it back to County staff by February 11, 2015. This form is almost identical to the applications submitted by staff to the County in the past, however this time, the City did not need to compete for the funds with other urban participating cities. One of the requirements of the "Metro City Information Form" is a "City Council Minute Action" for authorization to proceed with the identified utilization of CDBG funds. Given the one-month turnaround and the need for a public hearing, County staff agreed to allow staff to prepare the item for a March City Council date.

On February 10, 2015, HUD announced the definitive allocation of \$214,814 to the City of Aliso Viejo. This did not affect the project staff identified in the "Metro City Information Form," only the administration maximum.

ANALYSIS

The CDBG program requires that all activities meet one of the following criteria: benefit low- and moderate-income persons, prevent or eliminate slums or blight, or address community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community for which other funding is not available. Seniors and severely disabled adults are generally presumed low- and moderate income (LMI) per HUD regulations, and the reconstruction and retrofit of curb ramps to make them accessible is considered a benefit to seniors and severely disabled adults. Curb ramps provide pedestrian access between the sidewalk and roadway for people using wheelchairs, strollers, walkers, crutches, handcarts, bicycles, and pedestrians who have trouble stepping up and down high curbs. Curb ramps are crucial to full transit network and to pedestrian safety. Without

curb ramps in place, people with mobility disabilities are often forced to travel in the street with traffic in order to move around the City.

As identified in the attached maps (Attachment 1, Exhibit "A"), there are fifty-four (54) curbs that staff has identified in need of improvements. Of those fifty-four (54) curbs, the scope of work consists of the construction of forty-six (46) Americans with Disabilities Act (ADA) curb ramps and retrofitting eight (8) curb ramps in the City of Aliso Viejo. Construction includes building new curb ramps at locations lacking curb ramps and removal and replacement of existing curb ramps with current, up to date curb ramps per Caltrans 2010 Revised Standard Plan A88A. Retrofitting includes installing truncated domes at existing curb ramp locations. A breakdown of the projects costs is as follows:

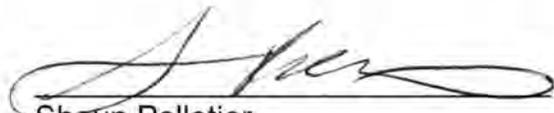
Item	Description	Quantity	Units	Unit Price	Total Cost
1	Remove & Replace Existing Curb Ramp – Case C – Caltrans Standard Plan No. A88A	14	Each	\$2,700.00	\$37,800.00
2	Remove & Replace Existing Curb Ramp – Case C – Caltrans Standard Plan No. A88A (Adjacent to Cross Gutter)	18	Each	\$3,200.00	\$57,600.00
3	Remove & Replace Existing Curb Ramp – Case A – Caltrans Standard Plan No. A88A	8	Each	\$3,500.00	\$28,000.00
4	Remove & Replace Existing Curb Ramp – Case A – Caltrans Standard Plan No. A88A (Adjacent to Cross Gutter)	6	Each	\$4,125.00	\$24,750.00
5	Retrofit Existing Curb Ramp – Cast-In-Place Detectable Warning Surface (truncated Domes) – Caltrans Standard Plan No. A88A	8	Each	\$750.00	\$6,000.00
6	Traffic Control Plan	1	Lump Sum	\$7,000.00	\$7,000.00
7	Water Pollution Control Plan – Best Management Practices	1	Lump Sum	\$3,750.00	\$3,750.00
8	Mobilization (5% max of subtotal)	1	Lump Sum	\$6,837.50	\$6,837.50
TOTAL					\$171,737.50

The City administration budget is as follows:

Construction Personnel	Management	Hourly Rate	Days	Portion of Day	Amount
Engineer Inspection (Norm Meyer)		\$89.00	35	35%	\$8,722.00
Inspection (Chris Tanio)		\$86.00	35	20%	\$4,816.00
Resident Engineer (Shaun Pelletier)		\$137.00	40	10%	\$4,384.00
TOTAL					\$17,922.00

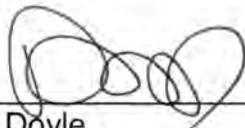
The City's administrative costs can be reimbursed up to \$17,831.00 (\$21,481.00 is the 10% limit minus one-time payment of \$3,650 for County documents = \$17,831.00).

Staff anticipates advertising and awarding the project between April and June 2015, depending on when the County authorizes it. Construction will begin between July and August 2015, and the project is anticipated to be completed by September 2015.



Shaun Pelletier
 Director of Public Works / City Engineer

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL



David A. Doyle
 City Manager

Attachment 1: Resolution with Exhibit "A" Location Maps

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, AUTHORIZING THE CITY OF ALISO VIEJO'S FISCAL YEAR 2015-2016 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) ALLOCATION MAXIMUM OF \$214,814 TO BE UTILIZED FOR AMERICAN DISABILITY ACT (ADA) IMPROVEMENTS AT FIFTY-FOUR (54) CURB RAMPS WITHIN ALISO VIEJO

WHEREAS, on August 22, 1974, the President of the United States signed into law the Housing and Community Development Act of 1974; and

WHEREAS, the primary goals of Title 1 of the Act are the development of viable urban communities by providing decent housing and a suitable living environment, public facility improvements, and expanding economic opportunities, principally for persons of low- and moderate-income; and

WHEREAS, the City of Aliso Viejo desires to receive federal CDBG funds to further the attainment of these goals during Fiscal Year 2015-2016 by reconstructing or retrofitting fifty-four (54) curbs with ADA improvements in the City of Aliso Viejo; and

WHEREAS, the City conducted a public hearing on March 18, 2015 to solicit comments and suggestions from the community for the utilization of these funds.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. Recitals. The above recitals are incorporated herein by reference.

SECTION 2. CEQA Compliance. The City hereby finds and determines that the proposed project categorically exempt from the California Environmental Quality Act (CEQA) pursuant to a Class 2 exemption for activities involving replacement or reconstruction of existing facilities, structures, or other property where the new facility or structure will be located on the same site as the replaced or reconstructed facility or structure and will have substantially the same purpose and capacity as the replaced or reconstructed facility or structure (State CEQA Guidelines, section 15302). The exemption identified under Class 2 applies to the project given that this project includes the reconstruction or retrofitting of fifty-four (54) curb ramps in Aliso Viejo.

SECTION 3. Location of Documents. The documents and materials that constitute the record of proceedings have been based are located at the City of Aliso Viejo, 12 Journey, Suite 100, Aliso Viejo CA 92656. The custodian for these records is the Director of Public Works.

SECTION 4. Notice of Exemption. Within five (5) working days after the passage and adoption of this Resolution, the City Council hereby authorizes and directs staff to prepare, execute and file with the Orange County Clerk a Notice of Exemption for the approval.

SECTION 5. Approval. The City Council hereby approves the utilization of CDBG funds to reconstruct or retrofit fifty-four (54) curbs with ADA improvements in the locations identified attached to this Resolution as Exhibit A.

SECTION 6. City Manager Action. The City Manager or his designee is hereby directed to prepare and submit documentation required for the approval and implementation for FY 2015-2016 CDBG Program project. Additionally, the City Manager or his designee is hereby authorized to perform modifications to approved projects as required to conform with CDBG requirements, and to provide for the expedient expenditure of funds.

SECTION 7. Effective Date. This Resolution shall become effective upon its adoption.

PASSED, APPROVED AND ADOPTED this 18th day of March 2015.

William A. Phillips
Mayor

ATTEST:

Mitzi Ortiz, MMC
City Clerk

APPROVED AS TO FORM:

Scott C. Smith
City Attorney

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

I, MITZI ORTIZ, City Clerk of the City of Aliso Viejo, California, DO HEREBY CERTIFY that foregoing Resolution No. 2015-XXX was duly passed and adopted by the City Council of the City of Aliso Viejo at their regular meeting held on the 18th day of March 2015, by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

MITZI ORTIZ, MMC
CITY CLERK

(SEAL)

I hereby certify that the foregoing is the original of Resolution No. 2015-XXX duly passed and adopted by the Aliso Viejo City Council at its regular meeting held March 18, 2015.

(SEAL)

EXHIBIT "A"

CURB RAMP RECONSTRUCTION AND RETROFIT LOCATION MAPS





City of Aliso Viejo

Agenda Item



DATE: March 18, 2015

TO: Mayor and City Council

FROM: Karen Crocker, Community Services Director

SUBJECT: Aliso Viejo Aquatic Management Services Agreement – Premier Aquatic Services

Recommended Action:

Consideration of the Management Services Agreement with Premier Aquatic Services for the management and operations of the City's Aquatic Center, in the amount of a \$100,000 annual management fee and not to exceed \$50,000 for the Aquatic Center operational expenses.

Fiscal Impact:

The agreement provides for compensation of a management fee to Premier Aquatic Services in the amount not to exceed \$500,000 for a five year contract (\$100,000 annually). In addition to the management fee, the City will incur up to \$250,000 in operational expenses for a five year contract (not to exceed \$50,000 annually). Total cost not to exceed \$750,000 for a five year contract (annual cost of \$150,000) to manage and operate the Aquatic Center. The current net loss budgeted for general fund FY 2014-15 is \$130,694. The Management Services Agreement term also allows renegotiating revenue sharing on an annual basis, when the revenue exceeds the budgeted amount at the end of each fiscal year or when losses exceed \$150,000.

Background:

Premier Aquatic Services has been providing the swim programs at the Aquatic Center for the past three (3) seasons as a contractor under Kemper Sports who the City contracts to provide management and operational services of the Conference and Aquatic Center. At the January 7, 2015 City Council meeting an amendment was approved between the City of Aliso Viejo and Kemper Sports to separate the Aquatic Center operations from the Conference Center operations.

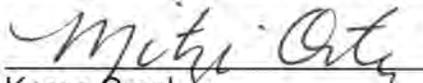
Discussion:

This is the sixth season that the Aquatic Center has been in operation. At the request of residents, an expansion of the aquatic operations was approved by City Council and has been in effect for the past three seasons. The expansion includes providing weekday after school swim, swim lessons/swim team and adult lap swim, during the months of May and September as well as swim lessons and swim team during the months of April and October.

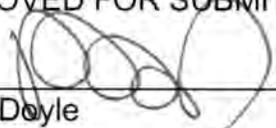
Within the past six years, there has been an annual increase of attendance, pool parties and seasonal passes sold. Attendance has grown from 12,901 during the 2010 season to 17,515 in the past 2014 season. The City continues to receive requests from residents for an expanded year round Aquatic program that offers adult programs and lap swim during the morning hours, in addition to afterschool swim lessons, swim team, aquatic classes and recreational swim.

As a result of increased attendance, demand of expanded aquatic services, Premier Aquatic Services has submitted a proposal to manage and operate the Aquatic Center on a twelve (12) month basis opposed to a five (5) month season with programs being offered in the mornings and afternoons. Programs to include lap swim, Aqua fitness, Aqua Zumba and a Masters Swim Team offered to adults and seniors during the morning hours. Programs also include private and group swim lessons; youth swim team, recreational swim, pool party rentals and special activities such as teen night swim, movie nights and social recreation events for families. Staff has been extremely satisfied with the quality of swim programs that Premier Aquatic Services has been providing our residents for the past three seasons. The growth in attendance and program participation is a direct correlation between customer satisfaction.

The cost to operate a full service aquatic program during the first year of the contract will be an additional \$20,000 from the prior year in which the pool was only open for five month. During current FY 2014-15 the City is budgeted to offset the aquatic operations by \$130,694 for a five (5) month program. This new contract would be a community benefit to our residents by offering programs mornings and afternoons, seven days per week for a twelve month period with the months of November and December having limited or no swim programs due to the Holidays. Attached is the proposed contract to manage and operate the Aquatic Center.


for Karen Crocker
Community Services Director

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL


David Doyle
City Manager

**MANAGEMENT SERVICES AGREEMENT
ALISO VIEJO AQUATIC CENTER**

This MANAGEMENT SERVICES AGREEMENT is made and entered into this ____ day of _____, 20___, by and between the City of Aliso Viejo, a municipal organization organized under the laws of the State of California with its principal place of business at 12 Journey, Suite 100, Aliso Viejo, California 92656 ("City") and **Premier Aquatic Services**, a Limited Liability Company, with its principal place of business at 36 Argonaut, Suite 130, Aliso Viejo, CA 92656 ("Manager"). City and Manager are sometimes individually referred to herein as "Party" and collectively as "Parties."

RECITALS

WHEREAS, City is the owner of that certain real property commonly known as the Aliso Viejo Aquatic Center located at 29 Santa Barbara, Aliso Viejo, California (the "Aquatic Center"); and

WHEREAS, City desires to have Manager provide services related to the management, operation, maintenance and marketing of the Aquatic Center and Manager is willing to provide such services in accordance with the terms and conditions contained in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, City and Manager hereby agree as follows:

ARTICLE I DEFINITIONS

SECTION 1.1 **Definitions.** As used in this Agreement, the following terms shall have the respective meanings indicated below:

A. **"Affiliate"** means any and all corporations, partnership, trusts and other entities directly or indirectly controlled by, controlling, or subject to direct or indirect common control of an entity or person.

B. **"Capital Improvements"** means any alteration, addition, improvement, repair, replacement, rebuilding, or renovation to the Aquatic Center, the cost of which exceeds Ten Thousand Dollars (\$10,000).

C. **"Capital Improvement Plan"** means the annual plan prepared by Manager for City review and approval pursuant to Section 3.9 that includes Manager's recommendation and estimated costs of Capital Improvement projects for the next Operating Year.

D. **"City Council"** means the City Council of the City of Aliso Viejo.

E. “City Manager” means the person holding the position of City Manager of the City of Aliso Viejo, or his or her authorized designee.

F. “Conditional Use Permit” means any use permit, by whatever name, for the Aquatic Center approved by and issued by the City in accordance with the Aliso Viejo Zoning Code.

G. “Aquatic Center Accounts” means the bank accounts established by the City pursuant to Section 5.1 (A) to receive all cash, coin, checks, credit card charges and other negotiable instruments paid to or received by Manager for the Aquatic Center and (ii) from which City shall pay all expenses (other than incidental out-of-pocket expenses for which Manager shall be reimbursed by the City) incurred under and pursuant to this Agreement.

H. “Aquatic Center Expenses” means the total of (a) all expenses specifically identified as “Operating Expenses” in Section 5.2(A) below and elsewhere in this Agreement, and (b) all other expenses incurred by Manager in connection with the Aquatic Center under this Agreement, which expenses were not reasonably anticipated by the parties or otherwise provided for this Agreement; provided that, except for emergency expenditures as described in Section 3.3(T) below, any such unplanned expense which exceeds One Thousand Dollars (\$1,000.00) must have prior written approval from the City Manager, which approval shall not be unreasonably withheld. Except as otherwise set forth herein, Aquatic Center Expenses shall not include any expenses of Manager’s corporate office, or any services rendered by Manager’s corporate offices for Aquatic Center or the management thereof, or the compensation of any corporate or regional employee of Manager.

I. “Cost of Sales” means all monies expended for the purchase of items to be sold or used at the Aquatic Center.

J. “Employee Compensation” means the salaries and wages paid to or accruing for the benefit of the management staff and all other persons employed by Manager at the Aquatic Center, together with all fringe benefits payable to or accruing for the benefit of such employees, including employer’s contribution under the Federal Insurance Contributions Act (“FICA”), unemployment compensation, or other employment taxes, pension fund contributions, worker’s compensation, group life and accident and health insurance premiums, profit sharing, retirement, disability and other similar benefits, as determined by Manager and as set forth in the approved Operating Budget. Employee Compensation also shall include expenses incidental to processing Employee Compensation payroll, including without limitation, payroll service bureau fees attributable to such Employee Compensation.

K. “Environmental Laws” means all current and future federal, state, and local statutes, regulations, ordinances, and rules relating to (i) the emission, discharge, release, or threatened release of a Hazardous Material into the air, surface water, groundwater, or land; (ii) the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation, or investigation of a Hazardous Material; or (iii) the protection of human health, safety, or the indoor or outdoor environment, including, without limitation, the Clean Air Act, the Federal Water Pollution Control Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act,

the Occupational Safety and Health Act, all amendments thereto, all regulations promulgated thereunder, and their state or local statutory and regulatory counterparts.

L. “Furnishings and Equipment” means all furniture, furnishings, trade fixtures, apparatus and equipment, including, without limitation, office equipment, computers, copy machines, facsimile machines, telephone systems (not including pay telephones), and other personal property used in or held in storage for use in the operation of the Aquatic Center, other than Operating Inventory.

M. “Gross Revenues” means all receipts related to or derived from the operation of the Aquatic Center from cash or credit transactions occurring during the Management Term, computed on an accrual basis, including, but not limited to, rental or use fees, the amount of all sales (wholesale or retail) of food, beverages, goods, wares, or merchandise on, at, or from the Aquatic Center, or for services of any nature performed on, at, or from the Aquatic Center, determined in accordance with generally accepted accounting principles applied on a consistent basis. Gross Revenues shall be reduced by any refunds, rebates, discounts, and credits of a similar nature given, paid, or returned by Manager or City in the course of obtaining such Gross Revenues.

Gross Revenues shall not include:

1. Applicable gross receipts taxes, admission, excise, sales, and use taxes, or similar governmental charges collected directly from customers or their guests or as a part of the sales price of any goods or services;
2. Service charges, which are defined to mean percentage gratuities added to Aquatic Center;
3. Proceeds of borrowings by City;
4. Proceeds paid as a result of an insurable loss, unless paid for the loss or interruption of business, to the extent such sums are used to remedy said loss;
5. Any interest or investment income earned on distributed positive net cash flow to City or Manager pursuant to the terms of the Agreement;
6. Any Advances (as defined in Section 5.1(C) below);
7. Sale of capital assets; or
8. Bad debts.

N. “Hazardous Material” means any solid, liquid, or gaseous substance, chemical, compound, product, byproduct, waste, or material that is or becomes regulated, defined, or designated by any applicable federal, state, or local governmental authority or by any Environmental Law as hazardous, extremely hazardous, imminently hazardous, dangerous, or toxic, or as a pollutant or contaminant, and shall include, without limitation, asbestos, polychlorinated biphenyls, and oil, petroleum, petroleum products and petroleum byproducts.

O. “Impositions” means all taxes and assessments (including without limitation real property taxes and assessments, possessory interest taxes, and personal property taxes), water, sewer or other similar rents, rates and charges, levies, license fees, permit fees, inspection fees and other authorization fees and charges, which at any time may be assessed, levied, confirmed or imposed on the Aquatic Center or the operation of the Aquatic Center.

P. “Index” means “Consumer Price Index” which is defined as the Revised Consumer Price Index for all Urban Consumers (CPI-U) published by the Bureau of Labor Statistics of the United States Department of Labor for Los Angeles-Riverside-Orange County, All Items (1982-84=100) and utilizing March as the reference month or, if this Index is discontinued, any other renamed national index covering the Aliso Viejo metropolitan areas or any other successor or substitute index appropriately adjusted.

Q. “Insurance Requirements” means all requirements of each insurance policy, and all orders, rules, regulations and other requirements of the City and of National Board of Fire Underwriters (or any other body exercising similar functions), applicable to the Aquatic Center or the operation of the Aquatic Center.

R. “Legal Requirements” means all laws, statutes, ordinances, orders rules, regulations, permits, licenses, authorizations, directives and requirements of governments and governmental authorities, which now or hereafter may be applicable to the Aquatic Center or the operation of the Aquatic Center.

S. “Net Revenues” means the amount calculated by subtracting the Aquatic Center Expenses from the Gross Revenues for a given period of time.

T. “Operating Budget” means the annual operating budget prepared by Manager for City review and approval that includes all forecasted revenues and expenses of the Aquatic Center for the Operating Year, including without limitation the Operating Expenses.

U. “Operating Inventory” means consumable items used in or held in storage for use in the operation of the Aquatic Center, including, without limitation, food and beverage inventory, aquatic equipment, restroom supplies, towels, cleaning materials, employee uniforms, pool chemicals, first aid equipment and supplies, office supplies, and other similar items.

V. “Operating Year” means a twelve (12) month period during the term of this Agreement commencing on July 1 and continuing through and including the following June 30.

ARTICLE II TERM OF AGREEMENT

SECTION 2.1 **Management Term**. The term of this Agreement shall commence as of March 4, 2015 (“Commencement Date”) and shall continue until June 30, 2020 (“Management Term”), unless earlier terminated as provided herein, Article X. Section 10.1. The Management Term may be extended one (1) additional five (5) year term upon mutual agreement of the City and Manager.

SECTION 2.2 **Internal Revenue Code**. Manager acknowledges that the Aquatic Center has been financed with the proceeds of tax exempt bonds (the “Bonds”) under Section 103 of the

Internal Revenue Code of 1986, as amended (the "Code"). The Code imposes certain limitations on the Manager's use of the Aquatic Center in order for the interest on the Bonds to remain exempt from federal income taxation. In general, Section 141 of the Code and the applicable Treasury Department Regulations thereunder (the "Regulations") would generally prohibit the use of the Aquatic Center on any basis except for use on the same basis as the general public for parties with similar usage attributes (i.e., day of week, time of day, time of year, size of event, etc.), and obligations associated with their usage. The Regulations provide that use under an arrangement that conveys priority rights or other preferential benefits are not used on the same basis as the general public. Manager therefore hereby covenants to comply with the Code and the Regulations as such relate to the tax exempt status of the Bonds in its management of the Aquatic Center unless Manager obtains a written opinion of a nationally recognized bond counsel that a proposed deviation from the Code and the Regulations will not adversely affect the tax exempt status of the Bonds.

SECTION 2.3 **Management Fee.** The management fee can be re-negotiated on an annual basis.

ARTICLE III - AQUATIC CENTER OPERATIONS AND MANAGEMENT

SECTION 3.1 **Management of the Aquatic Center by Manager.** City hereby retains and contracts with Manager, during the Management Term, to manage, maintain, operate and promote the Aquatic Center pursuant to the terms of this Agreement, and Manager hereby agrees to manage, maintain, operate and promote the Aquatic Center in such manner. City agrees it shall cooperate with Manager to permit and assist Manager to carry out its duties under this Agreement. Subject to the terms of this Agreement and Scope of Services in "Exhibit B" and further subject to the approved Operating Budget, Manager shall have authority and responsibility to:

- A. Use commercially reasonable efforts to implement the policies, standards and guidelines for the Aquatic Center communicated in writing from time to time by City to Manager.
- B. Manage and supervise all day-to-day operations of the Conference and Aquatic Center including, but not limited to, providing a point of contact, as necessary, for visitors to the Aquatic Center, facility reservations, food and beverage service, and administration/management.
- C. Subject to Section 3.5(B), collect rental or user fees and other fees and charges for other uses and items charged to Aquatic Center customers.
- D. Hire, train and supervise all employees required to carry out Manager's responsibilities under this Agreement.
- E. Acquire all Operating Inventory necessary to carry out Manager's responsibilities under this Agreement.

F. Acquire and maintain all necessary licenses and permits for the operation of the Aquatic Center including, but not limited to, all licenses, permits and certifications related to the preparation and service of food and beverages.

G. Create, implement and manage all marketing and promotional activities and customer service relations.

H. Manage accounting and payroll procedures and functions, including, without limitation, employee paychecks and payroll tax payments, for the Aquatic Center.

I. Submit to City, for payment by City, invoices for all Aquatic Center Expenses from accounts established pursuant to Article V of this Agreement.

J. Prepare such annual and other plans and reports as required by this Agreement.

SECTION 3.2 Operating Budget.

A. Preparation and Approval. Manager shall submit to the City Manager, annually on or before March 10 of each year, the Operating Budget for the Aquatic Center for the next Operating Year. The Operating Budget shall contain Manager's reasonable and good faith estimates of all Gross Revenues and Aquatic Center Expenses for the next Operating Year, based on what Manager believes to be reasonable assumptions and projections. Manager shall not be deemed to have made any guarantee or warranty in connection with the results of operations or performance set forth in the Operating Budget and the parties acknowledge that the Operating Budget is based solely upon Manager's judgment and the facts and circumstances known by Manager at the time of preparation.

The parties agree that they shall use commercially reasonable efforts to limit the increase in total Aquatic Center Expenses during the term of this Agreement to the increase in the Index or increases due to increases in Gross Revenues. Any increase in excess of the increase in the Index shall be documented in the Operating Budget. The parties understand that, as provided in Section 3.9 of this Agreement, recommendations and budgets for Capital Improvements will be treated separately and will not form part of the Operating Budget. Manager and the City agree to develop by March 10 of each year an Operating Budget that can be forwarded to the City Council for approval.

It is contemplated by the parties that the Operating Budget will be agreed upon by Manager and the City Council not later than ninety (90) days following delivery of the Operating Budget by Manager to the City Council. If the City Council fails to either approve the Operating Budget within said 90-day period or to advise Manager in writing of its objections to the Operating Budget within such period, then the City Council shall be deemed to have disapproved the Operating Budget as submitted.

In the event of a dispute with regard to the Operating Budget, pending the resolution of such dispute, Manager shall use commercially reasonable efforts to continue to manage and operate the Aquatic Center in accordance with the standards set forth in this Agreement at a level of expenditures comparable to those of the preceding Operating Year subject to increases in Aquatic Center Expenses commensurate with the Index or due to increases in Gross Revenues.

B. Compliance; Unanticipated Expenditures and Reallocation of Funds. Manager shall comply, to the extent reasonably and commercially practicable, with the applicable Operating Budget. However, City agrees that the approved Operating Budget is intended to be a reasonable estimate, and accordingly, Manager shall be entitled to request revisions to the Operating Budget to cover any expenditures that were unanticipated at the time of preparation of the Operating Budget but are reasonable and necessary to carry out the provisions of this Agreement. Manager is authorized to take all action reasonably deemed necessary by Manager to implement, perform, or cause the performance of the items set forth in the Operating Budget. City acknowledges that the Operating Budget is intended to set forth objectives and goals based upon Manager’s judgment and the facts and circumstances known by Manager at the time of preparation. Manager shall be required to obtain prior written consent of the City Council, which consent shall not be unreasonably withheld or delayed, if Manager anticipates that the actual amount expended per Operating Year for Aquatic Center Expenses will be greater than the amount budgeted for that Operating Year in the Operating Budget, unless Net Revenues for such Operating Year are equal to or exceed the Operating Budget for such Operating Year.

C. Review of Operating Budget. The City and Manager shall meet periodically to discuss the operating results of Aquatic Center, and they shall agree in writing on any necessary amendments or revisions to the Operating Budget to take into consideration variables or events that did not exist, or could not be anticipated by Manager or City, at the time the Operating Budget was prepared.

D. Five Year Forecast. Manager shall submit to the City a five year forecast to coincide with the City’s financial forecast. Manager shall provide analysis and trend lines to support the data submitted. City shall provide Manager with a budget calendar and adequate time to prepare the forecast.

SECTION 3.3 Responsibilities of Manager. Without in any way limiting Manager’s right to manage and operate the Aquatic Center in accordance with the terms of this Agreement, Manager shall, in addition to other obligations and responsibilities set forth in this Agreement, perform the following services, or cause the same to be performed at the Aquatic Center, subject to the approved Operating Budget and Capital Improvement Plan and the other terms and conditions set forth in this Agreement, and all expenditures of Manager and costs and expenses incurred by Manager in performing these services, including the “Management Fees” (as defined in Section 4.1), shall be Aquatic Center Expenses:

A. Manage and market the Aquatic Center and use commercially reasonable efforts to achieve and comply with the approved Operating Budget;

B. Maintain sufficient, qualified personnel at the Aquatic Center to operate the Aquatic Center in a manner reasonably believed by Manager to be efficient and consistent with the Operating Budget (which activities shall including, hiring, training and termination of personnel);

C. Consummate arrangements with concessionaires, vendors, licensees, guests, customers or other intended users of the Aquatic Center;

D. Develop and implement programs and activities, including, but not limited to, recreational and lap swimming, swim lessons, water aerobics, water safety, water sports and other programs necessary to meet the needs of the community and/or generate revenue;

E. Coordinate with Conference Center Operator for swim meets and hours of operation for the Oasis Café. The Conference Center Operator will prepare and serve food and beverages, including banquet meal service for parties, events, meetings, etc. at the Aquatic Center. The Aquatic Center Operator will be allowed to serve drinks and snacks when the Conference Center Operator is unavailable or chooses not to provide food and drinks in the Oasis Snack Bar.

F. The Conference Center Operator will operate, manage, maintain and incur expenses associated with the Oasis Snack bar which is located at the Aquatic Center.

G. The Aquatic Center Operator will maintain a master calendar of the outdoor fireplace grass area. The area is to be shared with the Conference Center Operator and be used for weddings and other events through the Conference Center Operations. The Aquatic Center Operator is to accommodate within reason the master calendar for the Conference Center to host weddings and events at the outdoor fireplace grass area. If there is a conflict in scheduling, then the City will make the final decision determining who will utilize the facility on such certain date. The hosting Operator, either the Conference Center or Aquatic Center will receive the revenue and incur expenses associated with the use of the outdoor fireplace grass area.

H. The Aquatic Center Operator will be allowed to sell sundries type merchandise such as goggles, sunscreen, and water bottles, swim gear, etc. as a convenience to attendees, not as a resale store.

I. Provide for the set-up and tear down of chairs, tables and any other decorations and amenities as necessary for pool party rentals, special events and activities scheduled at the Aquatic Center;

J. Subject to the City's purchasing and bidding requirements and in accordance with the Operating Budget and the terms and provisions of this Agreement, negotiate contracts for all goods, supplies and services for the Aquatic Center. All contracts shall be in City's name and Manager shall have the administrative authority to enter into agreements on behalf of the City; provided that no single agreement shall involve cumulative amounts in excess of \$5,000. Agreements involving amounts of \$5,000 or more shall be submitted to the Community Services Director or his/her designee for prior review and approval. Manager shall provide to the City copies of all contracts and agreements entered into by Manager on behalf of City pertaining to the Aquatic Center;

K. Make all repairs and replacements to the Aquatic Center as shall be reasonably necessary for maintenance of the Aquatic Center in good order, condition and repair, subject to the terms of this Agreement, the Operating Budget and the Capital Improvement Plan. Manager shall properly maintain all furniture, fixtures, equipment located in, on or around the Aquatic Center in a clean, safe and sanitary condition, free from rubbish, refuse, food scraps, garbage, dust, dirt, offensive or unclean materials, roaches and other insects, rodents and vermin, in

accordance with the best sanitary practices. Manager shall act in full compliance with all applicable County and State Health Department regulations. Manager's obligations also include, but are not limited to, routine maintenance, repairs and preventative maintenance of the plumbing, mechanical, pool equipment, HVAC, telecommunications, audio visual and the electrical systems. Manager shall arrange for janitorial service for the Aquatic Center, including the cleaning of windows, shower mats as necessary. Notwithstanding the foregoing, nothing in this Section 3.3(K) shall be deemed to impose additional responsibilities or obligations on the Manager beyond those set forth in the Operating Budget and Capital Improvement Plan;

L. Submit invoices and backup information to the City for payment of Aquatic Center Expenses as identified in the Operating Budget;

M. Maintain a level of Operating Inventory deemed appropriate by Manager for supplying the needs of the Aquatic Center and its customers;

N. Apply for, and use commercially reasonable efforts to obtain and maintain, all licenses and permits required of Manager by any City, County, State and Federal governmental authority in connection with the operation and management of the Aquatic Center, including, without limitation, all licenses, permits and certifications related to the operation of the pools and splash pad area. City agrees to execute any and all applications and such other documents as shall be reasonably required and to otherwise cooperate, in all reasonable respects, with Manager in the application for, and obtaining and maintenance of, such licenses and permits;

O. Use commercially reasonable efforts to do, or cause to be done, all such acts and things in and about the Aquatic Center as shall be reasonably necessary to comply with all Insurance Requirements and Legal Requirements, except for actions which the City or City's separate contractors are obligated to perform. In the event, at any time during the Management Term, repairs, additions, changes, or corrections in the Aquatic Center of any nature shall be required by reason of any Legal Requirements, Manager shall notify City and request City's consent to take all reasonable steps and to make all reasonable expenditures necessary to repair and correct any such repairs, additions, changes, or corrections. If necessary, adjustments to the Operating Budget shall be submitted to the City for City Manager approval and shall be included as Aquatic Center Expenses. If City does not approve such Operating Budget adjustment, Manager shall not be liable for any failure of the Aquatic Center to be in compliance with such Legal Requirements;

P. Provide City with 30-days advance notice of the due date for the payment of all Impositions and insurance premiums when due;

Q. Develop and implement an annual marketing, advertising, and promotional plan for the Aquatic Center and submit to the City for approval at the same time as the Operating Budget;

R. Subject to the Capital Improvement Plan and Operating Budget, purchase or replace Furnishings and Equipment necessary to operate and maintain the Aquatic Center in the manner provided in this Agreement;

S. Defend and settle claims, lawsuits, and demands relating to the Aquatic Center and Aquatic Center personnel (as further provided in and subject to Section 3.11 below), and retain legal counsel on behalf of City (and pay legal fees and costs) who under the direction of Manager will represent City, Manager, and Aquatic Center on all questions relating to Legal Requirements, will defend any claims or actions brought against Manager or City relating to the Aquatic Center or Aquatic Center personnel, and will institute and defend any and all legal actions or proceedings as shall be reasonably necessary to collect charges, rent or other income for the Aquatic Center to dispossess tenants or other persons in possession from all or any portion of the Aquatic Center, to cancel or terminate any lease, license or concession agreement on the grounds of default by the tenant, licensee, or concessionaire, or to contest property taxes. Manager shall use commercially reasonable efforts to notify City of any claims or lawsuits relating to the Aquatic Center within three (3) business days after Manager receives notice of such claims or lawsuits. Any legal fees paid by Manager and charged as an Aquatic Center Expense shall be for legal services directly related to the Aquatic Center and shall not include any Manager corporate overhead or administrative fee or charge. The City Manager shall have the right to pre-approve any legal counsel retained by Manager to defend the City, and to approve all legal bills incurred in such defense;

T. During the Management Term, Manager shall: (i) maintain all books, records, and other data associated with the financial activities of the Aquatic Center, (ii) prepare all operating budgets, cash flow budgets, and other financial projections and forecasts, and (iii) be responsible for the day-to-day financial affairs of the Aquatic Center, including payment of all taxes as a result of propriety actions such as the sale of goggles and other items at the Aquatic Center.

U. Throughout the Management Term, if Manager becomes aware of the presence of any Hazardous Material in a quantity sufficient to require remediation or reporting under any Environmental Law in, on or under the Aquatic Center or if Manager, City or the Aquatic Center becomes subject to any order of any federal, state or local agency to investigate, remove, remediate, repair, close, detoxify, decontaminate or otherwise clean up the Aquatic Center, Manager shall, at City's sole expense, use all commercially reasonable efforts to carry out and complete any required investigation, removal, remediation, repair, closure, detoxification, decontamination or other cleanup of the Aquatic Center; provided that such remediation activities shall be at Manager's expense if such activities are required as a direct consequence of Hazardous Material being present in, on or under the Aquatic Center solely as a result of grossly negligent actions undertaken by Manager. City acknowledges and agrees that City shall be solely responsible for any legal or other liability arising out of the presence of any Hazardous Material in, on or under the Aquatic Center, except to the extent such Hazardous Material is present in, on or under the Aquatic Center solely as a result of grossly negligent actions undertaken by Manager;

V. Notwithstanding anything else in this Agreement to the contrary, in the event, at any time during the Management Term, a condition should exist in, on, or about the Aquatic Center of an emergency nature which, in Manager's sole and absolute discretion, requires immediate action to preserve and protect the Aquatic Center, to better assure the Aquatic Center's continued operation, or to protect the Aquatic Center's customers, guests, or employees, Manager is authorized to take all steps and to make all reasonable expenditures necessary to repair and correct any such condition. City shall be notified of the need for, and estimated

amount of, any such emergency expenditures as soon as reasonably practical, and a budget adjustment shall be prepared by Manager and transmitted to City for approval;

W. Manager shall use commercially reasonable efforts to perform any act that is necessary to operate and manage the Aquatic Center during the Management Term, subject to the terms and conditions hereof. In fulfilling its operational responsibilities hereunder, Manager shall have all rights ordinarily accorded to an operator of an aquatic center in the ordinary course of business, including, without limitation, the collection of proceeds from the operation of the Aquatic Center and the approval and payment of obligations. Manager shall not be obligated to advance any of its own funds to or for the account of City nor to incur any liability, unless City shall have furnished Manager with funds necessary for the full discharge thereof. However, if for any reason Manager shall have advanced funds in payment of any reasonable expense in connection with the maintenance and operation of the Aquatic Center, City shall reimburse Manager within 30 days or receipt of proper documentation sufficient to justify the expense in the determination of the City; and

X. If applicable, Manager will assist the City to effect an orderly transition of the management of the Aquatic Center from the current operator (Kemper Sports Management.) to Manager.

SECTION 3.4 Personnel.

A. General. Manager shall employ all of the employees of the Aquatic Center. Manager also shall engage, on behalf of City and in accordance with the Operating Budget, such independent contractors as Manager shall deem necessary or advisable to assist Manager in the performance of its duties under this Agreement. Such independent contractors shall not be deemed employees of Manager or Aquatic Center. Manager shall recruit, hire, train, discharge, promote and supervise the management staff of the Aquatic Center and Manager shall supervise through the management staff the recruiting, hiring, training, discharge, promotion and work of all other employees and Lifeguard staff of the Aquatic Center and the engagement and management of all independent contractors. All employees and Lifeguard staff of the Aquatic Center shall be properly qualified for their position. The compensation of the management staff and all other Aquatic Center employees and any payments to independent contractors shall be an Aquatic Center Expense.

B. Pension and Benefit Plans. Manager shall have the right to provide eligible employees of the Aquatic Center with pensions and other employee retirement benefits and disability, health and welfare benefits, and other benefit plans now or hereafter available to employees of other aquatic facilities, country clubs, or similar facilities operated by Manager, and the employer share of such employee benefits shall be an Aquatic Center Expense.

C. Temporary Assignment of Other Manager Personnel. If the position of any key management positions of the Aquatic Center are not filled for whatever reason, Manager may temporarily assign to these positions the staff of other Premier Aquatic Services operated facilities; provided, however, that said temporary assignment shall not exceed ninety (90) days without the written approval of the Community Services Director. During such time as these employees are temporarily assigned to the Aquatic Center, all such employees will be paid their

regular Employee Compensation, and the pro-rata share of such Employees' Compensation equal to the actual time such employees worked at the Aquatic Center shall be an Aquatic Center Expense.

D. Management Staff. Manager shall provide an Aquatic Director (or similar management staff), who shall be responsible for the day-to-day management and operation of the Aquatic Center. The name and telephone number (both home and business) of the general manager shall be provided, in writing, to the Community Services Director and shall be current at all times. The Aquatic Director shall be reasonably available during normal working hours to meet with the Community Services Director. Manager shall ensure that substitute personnel are available to cover the duties of the Aquatic Director and other key management employees in the event of illness or vacation. The Community Services Director shall have the right to approve the individuals who Manager intends to hire to fill the positions of Aquatic Director (regardless of the title given for such position by Manager) and other key management staff, which approval shall not be unreasonably withheld or delayed. Any personnel who fail or refuse to perform the services required by this Agreement in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the services required by this Agreement or a threat to the safety of persons or property, shall be promptly removed by the Manager at the request of the City; provided, however, that any such removal complies with applicable federal and state employment laws.

SECTION 3.5 Specific Operating Procedures. In addition to the more general responsibilities of Manager as manager of the Aquatic Center as provided in this Article III, Manager shall operate and manage the Aquatic Center in accordance with the following operating procedures consistent with the Operating Budget:

A. Aquatic Center Hours of Operation. Except upon the occurrence of the events described in Article X of this Agreement, the Aquatic Center shall be open during such times as approved in advance by the City, on a daily basis, including holidays, if necessary. The Aquatic Center shall be kept open during all hours necessary to adequately serve the public utilizing the Aquatic Center, except for instances in which normal maintenance requires temporary closure. The Manager shall be available at the Aquatic Center as necessary for scheduled events and activities. Manager understands and acknowledges that, due to the nature of promoting and scheduling events at the Aquatic Center, it will be necessary for Manager to make itself available other than normal business hours to attend community or city meetings and meet the needs of users and potential users of the Aquatic Center.

B. Fees and Charges. Manager shall set all fees, rates and charges for the Aquatic Center consistent with the Aquatic Center's market position for similar facilities in the greater Orange County area; provided that all such fees, rates and charges shall be subject to the approval of the City Manager. All fees, charges, and prices at the Aquatic Center shall be comparable to and competitive with comparable facilities, as mutually identified from time to time by Manager and City Manager.

C. Food and Beverage Operations. The Aquatic Center has a quality kitchen to provide food and beverage services for events and activities at the Aquatic Center. While it is anticipated that all food and beverages for events at the Aquatic Center will be provided by the

Conference Center Operator, the City reserves the right to use outside caterers for City sponsored events and other community group and/or nonprofit organization events. The Conference Center Operator will be responsible for all food and beverage operations at the Aquatic Center (the cost of which shall be a Conference Center Expense). The Conference Center Operator shall use commercially reasonable efforts to comply with all applicable health laws and regulations as existing or as may be established by the federal, state, county and city governmental agencies to sell food and/or snacks and food preparation. Manager shall at all times be in material compliance with applicable regulations of the Orange County Health Department

D. The Aquatic Manager shall comply with all applicable health laws and regulations as existing or as may be established by the federal, state, county and city governmental agencies to sell food and/or snacks and food preparation. Manager shall at all times be in material compliance with applicable regulations of the Orange County Health Department.

E. Office Operations. Manager shall employ sufficient administrative staff at the Aquatic Center to permit Manager to competently perform Manager's obligations under this Agreement. Upon City's written request, Manager shall provide the Community Services Director with a written job description for each management position at the Aquatic Center. Manager shall maintain at the Aquatic Center copies of all Manager corporate policies and procedures, as such may be changed from time to time.

F. Safety and Security. The Aquatic Center shall comply with all applicable safety regulations of federal, state, local governmental agencies, including without limitation, any requirements imposed by California Labor Code Section 6300 et. seq., and regulations promulgated with respect thereto, and applicable federal occupational, health, and safety laws and regulations. Manager shall use commercially reasonable efforts to protect the safety of all Aquatic Center employees and customers. The Aquatic Center shall contain appropriate security and alarm systems. The alarm system at the Aquatic Center shall be tied into an offsite monitoring station. Manager shall keep for seven (7) days computer back-up tapes of data recorded in connection with such monitoring systems, if any. Manager shall arrange for security guard services, as necessary, for any events as deemed appropriate by Manager to protect the public health, safety and welfare.

G. Public Use. Manager acknowledges that use of the Aquatic Center shall at all times be in a manner commensurate with and appropriate with the public use of publicly owned property. Manager shall not authorize, allow or tolerate any use of the Aquatic Center for any unlawful or illegal purpose.

H. Use of Aquatic Center at City Direction. The City shall have the right to use the Aquatic Center or any part thereof, upon reasonable advance notice and subject to availability, for such purposes as meetings, seminars, training classes or other uses without the payment of any rental or use fee, except that direct out-of-pocket expenses incurred in connection with such uses, including, without limitation, the cost of providing, preparing and serving food and beverages, shall be paid by the City. At the direction of the City Manager, upon reasonable advance notice and subject to availability, Manager shall permit use of the Aquatic Center or any part thereof to civic, special interest groups and nonprofit organizations without the payment of any rental or use fee or at a reduced rate, except that direct out-of-pocket expenses incurred in

connection with such uses shall be paid by the City or such civic, special interest groups and nonprofit organizations. The City shall not schedule use of the Aquatic Center pursuant to this subsection if such use will conflict with paying events booked by Manager and shall in all instances be subordinate thereto in terms of priority of use of the Conference and Aquatic Center.

I. Signs. Manager shall not erect, construct or place any signs or advertisements in or on any portion of the Aquatic Center without the express prior written permission of the City.

J. Contact Information. When away from the Aquatic Center, a designated liaison for Manager shall use commercially reasonable efforts to return calls from authorized City representatives within four (4) hours. Manager may maintain a twenty-four (24) hour contact number (answering service or regularly monitored answering machine) for this purpose.

K. Customer Evaluation Forms. Forms shall be available to customers of the Aquatic Center to present their comments or complaints regarding the Aquatic Center. Completed forms shall be collected on a weekly basis and retained by Manager at the Aquatic Center for not less than one (1) year and made available to the City upon request.

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

SECTION 3.6 Alterations to Buildings. Manager shall not make any substantial alterations, additions, or changes to the exterior appearance or the structural nature of the Aquatic Center without the prior written consent of the City Manager.

SECTION 3.7 Operations and Maintenance Standards. The parties acknowledge and agree that the Aquatic Center shall be operated, maintained and managed as a first class facility. Within ninety (90) days of the effective date of this Agreement, the parties shall create an evaluation form to be used to assess the Manager's performance relating to operating, maintaining and managing the Aquatic Center. The City shall have the right, at all reasonable times, to enter the Aquatic Center for the purpose of inspection, repair and determination of Manager's compliance with this Agreement, and for any other reasonable purpose including the protection of City's property. Such entry may be made without the knowledge or consent of the Manager and may be conducted at any reasonable time. During any such visit by the City, City shall use its best efforts not to unreasonably interfere with events scheduled at and the general operation of the Aquatic Center.

SECTION 3.8 Manager Purchases. In connection with any purchases made by Manager or an Affiliate of Manager for the account of City, it is understood that Manager or

such Affiliate may perform services as a representative of the manufacturer to secure the benefits of lower costs, and that any resulting savings shall be passed on to City, including representatives' fees. In addition, all trade discounts, rebates and refunds pertaining directly to purchases for the Aquatic Center shall accrue to the benefit of City. If any purchases of goods or services for the Aquatic Center are made from or through an Affiliate of Manager, the charges to the Aquatic Center for such goods or services shall be on the same terms as those made to other aquatic facilities and country clubs operated by Manager and such charges shall not exceed the market prices for such goods and services.

SECTION 3.9 Capital Improvements.

A. Capital Improvement Plans. During the Management Term, Manager shall submit on or before April 1 of each year, a Capital Improvement Plan for the Aquatic Center for the next Operating Year, which shall include Manager's recommendation of Capital Improvement projects for the next Operating Year and the estimated costs of such Capital Improvement projects.

B. Implementation of Capital Improvement Projects. The parties acknowledge and agree that all Capital Improvement projects are in City's sole control and discretion, and all costs and expenses of Capital Improvement projects shall be paid from the Capital Improvement Account. The costs and expenses of Capital Improvement projects shall not be considered Operating Expenses. Notwithstanding anything to the contrary herein, the parties acknowledge and agree that this Agreement imposes no responsibilities or obligations on the part of Manager with respect to any aspect of a Capital Improvement project, including design, construction or supervision.

SECTION 3.10 Insurance During Management Term.

A. Coverage. Manager agrees to procure and maintain, during the Management Term, as an Aquatic Center Expense, at a minimum the following insurance (except where otherwise indicated that the City shall procure such insurance at City expense):

1. Comprehensive general liability insurance against claims for bodily injury, death, or property damage occurring on, in, or about the Aquatic Center, and excess coverage in amounts equal to \$5,000,000.00 per occurrence and \$5,000,000.00 in the aggregate, with a \$5,000.00 deductible or such other deductible amount as is mutually agreeable between City and Manager, and extended protection coverage for the following: (i) Contractual Liability coverage, (ii) Personal Injury Liability coverage, and Advertising Injury Liability insurance, (iii) Premises Medical Payments coverage, (iv) Broad Form Property Damage Liability coverage (including Completed Operations), (v) Additional Persons Insured, (vi) Incidental Medical Malpractice Liability coverage, (vii) Damage to Premises restricted to your coverage up to \$50,000.00, (viii) Extended Bodily Injury coverage, (ix) Automatic coverage, (x) Watercraft Liability coverage, and (xi) Limited Worldwide Liability coverage. The Products and Completed Operations exclusion shall not apply.

2. Automobile liability coverage covering “Any Auto,” including, without limitation, coverage for owned, hired and non-owned vehicles, with minimum limits of \$1,000,000.00 per occurrence and \$1,000,000.00 in the aggregate.

3. Workers’ compensation and employer’s liability insurance as may be required under applicable laws, containing USL&H Jones Act Endorsements, where applicable, with Alternate Employer Endorsement, Voluntary Compensation Endorsement, and Employer’s Liability Coverage Endorsement, covering all employees of Manager included in the operation of the Aquatic Center, with such deductible limits as are generally established by Manager and agreed to by City, written on state approved policy form and providing statutory benefits as required by law with employer’s liability limits no less than \$1,000,000.00 per accident or disease.

4. Coverage for employee dishonesty, loss inside and outside the Aquatic Center, and other such endorsements as normally provided, in minimum amount of \$500,000.00 per occurrence and in the aggregate with reasonable deductibles to be determined by City and Manager covering all employees in job classifications normally bonded in the United States or as otherwise required by law.

Manager shall have the right to increase (but not to decrease without the prior written consent of the City Manager) the minimum amount of any insurance to be maintained by Manager with respect to the Aquatic Center under this Section in order to make such coverage comparable to the amount of insurance carried with respect to other aquatic facilities and country clubs operated by Manager, taking into account the size, character and location of the Aquatic Center. The types of insurance and the coverage amounts specified in this Section are the requirements of City in connection with the operation of the Aquatic Center. City acknowledges and understands that Manager has made no representation or warranties that such insurance is adequate to protect City. Except for losses, damages, liability or expenses covered under Section 13.2, any losses, damages, liability, or expenses that are not required to be covered by any of the insurance specified in this Section shall be an Aquatic Center Expense. In its sole discretion, City may elect to procure and maintain at one or more times and from time to time, some or all of the policies of insurance set forth in subparagraphs (1), (2), (3), and (4) above that Manager is required to procure and maintain, and in such case the City Manager shall notify Manager in writing (i) that Manager is temporarily relieved from the obligation of procuring and maintaining the policy(ies) of insurance specified by City in its written notice to Manager, and (ii) of the period of time during which Manager’s obligation to procure and maintain the policy(ies) specified in City’s written notice is suspended.

B. Policies. All insurance coverages required under this Section 3.10, shall be secured through policies issued by insurance companies of good reputation and of sound and adequate financial responsibility having a general policy holder’s rating of not less than “A-” and a financial rating of not less than Class VIII in the most current edition of Best’s Rating Guide, unless such requirement is waived in writing by the City Manager. Such insurance companies shall be qualified to do business and in good standing in California. Within thirty (30) days after the Effective Date, Manager shall deliver to the City certificates of insurance and endorsements, as applicable, with respect to all of the policies of insurance required to be procured and maintained pursuant to this Section 3.10. All certificates of insurance shall be signed by a person

authorized by the insurance company to bind coverage on its behalf. In the event any subcontractors perform work for Manager under this Agreement, Manager shall include such subcontractors as insureds under the policies of insurance to be maintained by Manager pursuant to this Section 3.10, or in the alternative, Manager shall obtain from such subcontractors separate certificates of insurance that satisfy the requirements of this Section 3.10 unless otherwise waived by the City Manager. Neither the procuring of insurance pursuant to this Section 3.10, nor the delivery of certificates of insurance evidencing such insurance coverages, shall be construed as a limitation of either party's indemnity obligations under Section 13.2. All insurance required under this Section 3.10 shall name both City and Manager as named insureds. All policies of insurance required under this Section 3.10 shall have attached thereto an endorsement that such policy shall not be canceled or materially changed without at least thirty (30) days prior written notice to City and Manager. All insurance coverages provided by Manager shall be endorsed to state that they are primary and any other insurance, deductible, or self-insurance maintained by City shall not contribute with this primary insurance.

C. Blanket Policies. Any insurance policies provided by Manager under this Section 3.10 may be affected under policies of blanket insurance which cover other properties in addition to the Aquatic Center, and in such case an allocable portion of the premiums for such blanket policies of insurance shall be considered an Aquatic Center Expense.

D. Workers Compensation Insurance. Not later than the Effective Date and as a condition to the effectiveness of this Agreement, Manager shall deliver to the City Manager a certificate of workers compensation insurance indicating that such insurance complies with all requirements of California law. Manager shall require all subcontractors performing work for Manager under this Agreement to maintain workers compensation insurance covering such subcontractor's employees.

City shall not be responsible for any claims in law or equity occasioned by the failure of Manager to comply with this Section 3.10 as it pertains to worker's compensation insurance, or with the provisions of the law relating to workers compensation insurance.

E. Waiver of Subrogation. Neither Manager nor City shall assert against the other, and Manager and City hereby waive with respect to each other, any claims and rights of recovery for any losses, damages, liability or expenses (including attorney's fees) incurred or sustained by either of them on account of injury to persons or damage to property arising out of the ownership, operation and maintenance of the Conference and Aquatic Center to the extent that the same are covered by the insurance required under this Section 3.10. City and Manager hereby grant to each other, on behalf of any insurance company providing insurance covering the Aquatic Center, a waiver of any right of subrogation which any insurer or party may acquire against the other party by virtue of payment of any loss under any insurance policy. City and Manager shall give notice to the insurance companies providing insurance under this Agreement of the mutual waiver of subrogation contained in this Section 3.10 which shall survive the expiration of this Agreement.

F. Insurance Maintained by Manager. Any insurance required and maintained by Manager under this Section 3.10 may contain deductible provisions and self-insurance or self-assumption provisions in such amounts as are maintained by Manager for other

conference/community centers of a similar quality level operated by Manager. City understands and agrees that with respect to all policies of insurance required under this Section 3.10, the portion of any claim, loss, or damage subject to a deductible amount or a self-insurance or self-assumption amount shall be an Aquatic Center Expense. Manager shall notify City in writing at least thirty (30) days prior to any increase in the deductible amount or self-insured or self-assumed amounts for the insurance coverage maintained by Manager under this Section 3.10.

SECTION 3.11 **Handling of Claims.** Manager shall be responsible for handling all claims, demands, and lawsuits for any losses, damages, liability, and expenses (including without limitation personal injury and property damage claims) arising out of the operation and management of the Aquatic Center (“Claims”), whether or not such Claims are covered by the insurance required under Section 3.10. Handling such Claims shall include, without limitation, responding to such Claims, investigating such Claims, retaining legal counsel on behalf of the City to defend such Claims, settling such Claims, and paying any losses, damages and expenses relating to such Claims. All costs and expenses relating to the handling of such Claims as set forth in the preceding sentence, including, without limitation, attorney’s fees and costs for Manager’s in-house counsel and for outside legal counsel, shall be an Aquatic Center Expense. The City Manager shall have the right to approve any legal counsel retained by Manager to defend the City, and to approve all legal bills incurred in such defense.

ARTICLE IV - MANAGEMENT FEES.

SECTION 4.1 **Forms of Manager Compensation.** Manager shall receive as compensation for its services during the Management Term, a management fee as described in (A) below (the “Management Fee”).

A. **Management Fee.** The Management Fee shall be an annual fee of One Hundred Thousand Dollars (\$100,000). The Management Fee shall be paid in equal monthly installments, less the retention funds, described below. The Fixed Management Fee shall be prorated for any partial calendar month occurring during the Management Term. Each year, the Fixed Management Fee shall be increased or decreased by the rate of the Index for such year.

B. **Retention Funds.** The Management Fee shall be paid in equal monthly installments less fifteen percent (15%) which shall be retained by the City until completion of the True Up Process.

C. **True Up Process.**

- 1) Thirty (30) days following the end of each fiscal year of the Term, City and Manager shall audit the budgeted Aquatic Center expenses and Aquatic Center Expenses. To the extent the Aquatic Center Expenses exceed the budgeted Aquatic Center expenses (“Expense Overage”), Manager’s Management Fee shall be reduced by 50% of the Expense Overage. If the Manager’s portion of the Expense Overage exceeds the Retention Funds, Manager shall pay the City an amount equal to the Manager’s portion of the remaining Expense Overage.
- 2) City and Manager shall not later than December 31 of each year review all Aquatic Center Expenses and Gross Revenues for the current fiscal year. Should

said review demonstrate that the Manager’s share of the Expense Overage is reasonably likely to exceed the Retention Funds amount at the end of the fiscal year, the amount retained monthly shall be increased to such percentage to ensure the City shall retain sufficient funds to meet, but not exceed, Manager’s projected share of the Expense Overage.

- 3) Following the True Up at the end of each fiscal year, Manager shall be paid any Retention Funds not applied to the Expense Overage within 30 days of completion of the True Up Process.

**ARTICLE V - ACCOUNTS: WORKING FUNDS;
DISBURSEMENT OF FUNDS; RECORDS AND REPORTS**

SECTION 5.1 Aquatic Center Accounts.

A. Aquatic Center Account Requirements. City shall establish, an operating expense account (the “Operating Expense Account” and together with the Capital Improvement Account, the “Aquatic Center Accounts”). All Gross Revenues of the Aquatic Center shall be collected, received, and deposited by Manager exclusively through the Operating Expense Account in accordance with the terms of this Agreement. All Employee Compensation for the Aquatic Center shall be handled and expended exclusively through the Operating Expense Account. Manager shall also be entitled to maintain funds in reasonable amounts in “cash register banks” or in petty cash funds at the Aquatic Center; provided the amount of such funds does not exceed \$500 in aggregate at any measurement period. All revenues from the Aquatic Center are the sole property of the City, held in trust by Manager for the City for application as provided in this Agreement.

B. Responsibility for Aquatic Center Expenses. City acknowledges that it is solely responsible for all Aquatic Center Expenses and Capital Improvement expenditures required for or on behalf of the Aquatic Center provided that such Aquatic Center Expenses and Capital Improvements are made in accordance with the terms of this Agreement. City shall be responsible for up to \$50,000 in annual operational costs for the first year of the term. City also shall be responsible for all other expenditures and obligations in connection with the Aquatic Center, including without limitation, all federal, state and local taxes and all principal and interest payments on indebtedness.

C. Operating Expense Account. City shall maintain a minimum balance in the Operating Expense Account equal to the Operating Expense Minimum. On a monthly basis, Manager shall provide City with a statement describing the anticipated source and use of funds for the Aquatic Center for the next monthly period. Manager shall submit to the City original receipts for all expenses to be paid by the City for the operations of the Aquatic Center from the pay the Operating Expense Account as incurred in accordance with the approved Operating Budget. All Aquatic Center funds held by Manager, whether the Advances or monies held by Manager in “cash register banks” or petty cash funds at the Aquatic Center shall be owned by the City.

D. No Commingling of Funds. Manager shall not allow any funds withdrawn from or to be deposited in the Aquatic Center Accounts to be commingled with any other funds or bank accounts of Manager.

SECTION 5.2 Additional Aquatic Center Expenses Provisions.

A. "Operating Expenses" shall include all operating expenses of the Aquatic Center other than expenses or expenditures in connection with Capital Improvements, the Percentage Management Fee payable pursuant to Section 4.1(A) and any expenses relating to personnel of Manager based in Manager's corporate headquarters or its regional field locations, in each case incurred or paid on behalf of City during the Management Term as approved by City through the Operating Budget, computed on an accrual basis. Operating Expenses, include, but are not limited to, the following items:

1. Employee Compensation;
2. Marketing, advertising, and promotional expenses;
3. Purchase and replacement, as necessary, of Operating Inventory;
4. Purchase and replacement, as necessary, of office supplies, computers, printers, facsimile machines, photocopiers, postage, printing and routine office expenses, and accounting services incurred in the on-site operation of the Aquatic Center;
5. The costs of IT third party consultants and other third party consultants utilized for the Aquatic Center for hardware and software that is not owned by Manager;
6. Accrual on the Aquatic Center balance sheet of a reserve for insurance (including workers' compensation) each month in an amount or at a rate that is sufficient to pay such insurance premiums when they become due and payable;
7. Insurance premiums, to the extent not provided for in the reserve established therefor;
8. Accounts receivable previously included within Gross Revenues, to the extent they remain unpaid sixty (60) days after the first billing;
9. Costs incurred for utilities, including, but not limited to, all electric, gas and water costs, and any other private utility charges incurred in connection with the operation of the Aquatic Center.
10. Janitorial and cleaning expenses, including cashier window and carpet cleaning expenses;
11. Ordinary maintenance and repairs, exclusive of any Capital Improvements or capital replacements, which are hereby excluded;

12. Subject to Section 13.2, expenses, including legal fees, damage or other costs, involved in defending discrimination, harassment or other employment related lawsuits, charges or claims involving personnel of the Aquatic Center;

13. All out-of-pocket expenses, including travel, air express, costs of recruitment (including applicable agent's fee) and other incidental expenses as set forth in the approved Operating Budget incurred for the direct operation of the Aquatic Center.

14. Amounts expended to procure and maintain permits and licenses;

15. Amounts expended to provide services at the Aquatic Center snack bar, when the Conference Center Operator is not providing food and non-alcoholic beverages;

16. Landscape maintenance, pest control, lighting repair and replacement, and other building and ground maintenance expenses, provided that the City will contract for these services as part of its maintenance of other City-owned facilities and the costs of such services, as they pertain to the Aquatic Center, will be invoiced to the Aquatic Center; and

17. All other customary and reasonable expenses incurred in the operation of the Conference and Aquatic Center in accordance with the Operating Budgets.

B. Out-of-Pocket Expenses. In addition to all other fees and expenses recited herein payable to Manager, but without duplication, and subject to City's approval, it is agreed that City shall reimburse Manager within thirty (30) days of invoice for all actual and reasonable out-of-pocket expenses incurred by Manager in the performance of this Agreement. Out-of-pocket expenses shall include, but shall not be limited to, reasonable travel, air express, costs of recruitment (including applicable agent's fees), and other incidental expenses. Reimbursement for such out-of-pocket expenses will be made at actual cost and be made directly from the Operating Expense Account.

C. Additional Expenses. Manager shall pay all of the following items from the Operating Expense Account, provided they are included in the approved Operating Budget: (i) major items of furniture, fixtures, and equipment not otherwise included as part of the Capital Improvement Plan provided such contracts are approved by City in writing, (ii) the Fixed and Percentage Management Fees, and (iii) any other expenses which do not constitute Operating Expenses.

D. Accounting Management. Manager shall provide for all accounting and financial reporting functions set forth on Exhibit A.

SECTION 5.3 Remaining Funds. Upon the expiration or earlier termination of this Agreement, Manager shall return the Advances and any and all funds held in possession of Manager or its agents that are derived from Gross Revenues or in any way related to the Aquatic Center; provided that Manager shall not be required to return to City any Advances relating to Employee Compensation unless and until all obligations for the payment of Employee Compensation arising out of or related to this Agreement have been satisfied in full. After termination of this Agreement, City shall pay to Manager any monies due to Manager under this Agreement, but unpaid as of the date of termination, within forty-five (45) days.

SECTION 5.4 **Books and Records.** Manager shall keep accurate account and such other records as are necessary to reflect the results of the operation of the Aquatic Center. All books and records for the Aquatic Center shall be located either at the Aquatic Center or at Manager's corporate office. All such books, records, and reports shall be maintained separately from other facilities operated by Manager. Manager agrees to maintain reasonably appropriate accounting, operating, and administrative controls relating to the financial aspects of the Aquatic Center. The cash registers and any other equipment used by Manager to record Aquatic Center operations shall be approved by the City and is Payment Card Industry (PCI) compliant, where applicable. Manager shall surrender all on-site books, reports, and records to City upon expiration or termination of this Agreement and shall retain all financial data and records at the corporate office for a period of at least three (3) years after the expiration or earlier termination of this Agreement. City shall have the right to inspect and audit financials and records during such period as provided in Section 5.5 below.

SECTION 5.5 **Inspection.** Upon reasonable notice and during normal business hours, City shall have the right during the term of this Agreement to review, inspect, audit, and copy the financials, records, invoices, deposit receipts, and other accounting and financial information maintained by Manager in connection with the operation of the Conference and Aquatic Center. All such books and records shall be made available to City or its authorized agents, auditors or representatives at the Aquatic Center unless City and Manager agree upon another location. City, at its own expense, shall have the right to retain an independent nationally recognized accounting firm to audit the books and records of the Aquatic Center on an annual basis. Such inspection right shall not extend to any inspection of records located at Manager's corporate offices that are not related to the Aquatic Center. If any such audit demonstrates that the Gross Revenues or Aquatic Center Expenses reflected in any financial statements prepared by Manager are understated (in the case of Aquatic Center Expenses) or overstated (in the case of Gross Revenues), in either case by more than five percent (5%), Manager shall pay to the City the reasonable cost of such audit and shall promptly refund to the City any portion of the Percentage Management Fee that is attributable to the overstatement or understatement, as the case may be.

SECTION 5.6 **Reports to City.** Manager shall deliver to the Director of Financial Services of the City the following financial statements, in a form reasonably acceptable to City:

A. Within fifteen (15) days after the end of each calendar month, detail reports and all supporting documentation delineating all Revenues, Revenue categories, deposits at the bank and a reconciliation statement reflecting any transit activity. In addition, reports should include sufficient detail to reflect all Gross Revenues, Employee Compensation, Operating Expenses, Fixed Management Fee, Percentage Management Fee (if applicable) and Capital Improvement Funds; and,

B. Within thirty (30) days after the end of each Operating Year, detail reports and all supporting documentation delineating all Revenues, Revenue categories, deposits at the bank, and a reconciliation statement reflecting any transit activity. In addition, reports should include sufficient detail to reflect all Gross Revenues, Employee Compensation, Operating Expenses, Fixed Management Fee, Percentage Management Fee (if applicable) and Capital Improvement Funds. If requested by City, and at the sole expense of City, these financial statements shall be certified by an independent certified public accountant acceptable to City.

C. Within thirty (30) days after the end of each calendar quarter, a report detailing the federal, state, local and sales taxes paid by Manager on behalf of City and amounts accrued by Manager for estimated federal, state, local and sales tax liabilities relating to the Aquatic Center, in each case arising during such calendar quarter.

SECTION 5.7 **Manager Accounting Software.** The parties acknowledge and understand if Manager owns and/or licenses software used at the Aquatic Center, City shall have no rights or interests in such software. Upon the expiration or earlier termination of this Agreement, Manager shall remove software owned and/or licensed by Manager from Conference and Aquatic Center. All software that is used for Aquatic Center reservations and accounting purposes, shall not be removed until the data has been converted, for use by another software program, if feasible, and printed. Aquatic Center maintenance software shall not be removed until all maintenance records have been printed. If City owns and/or licenses the software used at the Aquatic Center, Manager shall have no rights or interests in such software.

ARTICLE VI - AQUATIC CENTER NAME

The Aquatic Center shall be known by such trade name and/or trademark or logo as may from time to time be determined by City. The parties acknowledge and understand that the names, logos, and designs used in the operation of the Aquatic Center together with appurtenant goodwill, are the exclusive property of City. Manager may identify the Aquatic Center as an Aquatic Center managed and operated by Manager, provided, however, that any display of any Manager Logo or other corporate identification shall first be approved in writing by the City in its sole discretion.

ARTICLE VII - ENVIRONMENTAL MATTERS

In performing its responsibilities under this Agreement, Manager shall comply with all applicable Environmental Laws.

ARTICLE VIII - EVENTS OF DEFAULT

The occurrence of any one or more of the following events which is not cured within the specified cure period, if any, shall constitute a default under this Agreement (hereinafter referred to as an "Event of Default"):

SECTION 8.1 **Failure to Pay Sums Due.** Either party's failure to pay any sums payable under this Agreement when and as the same shall become due and payable and such failure shall continue for a period of five (5) days after written notice (specifying the item not paid) thereof from the other party to the defaulting party.

SECTION 8.2 **Failure to Comply.** Either party's material failure to comply with any of the covenants, agreements, terms, or conditions contained in this Agreement and such failure shall continue for a period of thirty (30) days after written notice thereof from the other party to the defaulting party specifying in detail the nature of such failure. Notwithstanding the foregoing, in the event any such failure cannot with due diligence be cured within such 30-day period, if the defaulting party proceeds promptly and diligently to cure the same and thereafter

diligently prosecutes the curing of such failure, the time within which the failure may be cured shall be extended for such period as may be necessary for the defaulting party to cure the failure.

SECTION 8.3 **Bankruptcy.** If either party (i) applies for or consents to the appointment of a receiver, trustee, or liquidator of itself or any of its property, (ii) is unable to pay its debts as they mature or admits in writing its inability to pay its debts as they mature, (iii) makes a general assignment for the benefit of creditors, (iv) is adjudicated as bankrupt or insolvent, or (v) files a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors, or taking advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or admits the material allegations of a petition filed against it in any proceedings under any such law, or if any action shall be taken by said party for the purpose of effecting any of the foregoing (collectively, an “Insolvency Proceeding”).

SECTION 8.4 **Reorganization; Receiver.** An order, judgment, or decree is entered without the application, approval, or consent of either party by any court of competent jurisdiction approving a petition seeking reorganization of said party or appointing a receiver, trustee, or liquidator of said party, or of all or a substantial part of any of the assets of said party, and such order, judgment, or decree remains unstayed and in effect for a period of ninety (90) days from the date of entry thereof.

ARTICLE IX - REMEDIES

SECTION 9.1 **City’s Remedies.** Upon the occurrence of an Event of Default by Manager, City may:

- A. Seek specific performance of Manager’s obligations or injunctive relief, as applicable;
- B. Demand payment of all amounts due City under the terms of this Agreement and demand the payment of all costs, damages, expenses, and reasonable attorney’s fees arising due to Manager’s Event of Default;
- C. Proceed to remedy the Event of Default, and in connection with such remedy, City may pay all expenses and employ legal counsel. All sums so expended or obligations incurred by City in connection therewith shall be paid by Manager to City upon demand by City, and on failure of such reimbursement, City may, at City’s option, deduct all costs and expenses incurred in connection with remedying the Event of Default from the next sums becoming due to Manager from City under the terms of this Agreement; and
- D. Terminate this Agreement by written notice of termination to Manager. Upon proper termination of this Agreement, Manager shall surrender occupancy of the Aquatic Center to City, including all keys that have been issued to Manager.

No remedy granted to City is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity, or by statute. No delay or omission by

City to exercise any right accruing upon an Event of Default shall impair City's exercise of any right or shall be construed to be a waiver of any Event of Default or acquiescence thereto.

IN NO EVENT SHALL MANAGER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT OR PERFORMANCE OR NON-PERFORMANCE HEREUNDER (INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST BUSINESS AND LOSS OF GOODWILL) EVEN IF ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

SECTION 9.2 **Manager Remedies**. Upon the occurrence of an Event of Default by City, Manager may:

- A. Seek specific performance of City's obligations or injunctive relief, as applicable;
- B. Demand payment of all amounts due Manager under the terms of this Agreement and demand the payment of all costs, damages, expenses, and reasonable attorneys' fees of Manager due to City's Event of Default;
- C. Proceed to remedy the Event of Default, and in connection with such remedy, Manager may pay all expenses and employ legal counsel. All sums so expended or obligations incurred by Manager in connection therewith shall be paid by City to Manager, upon demand by Manager, and on failure of such reimbursement, Manager may, at Manager's option, deduct all costs and expenses incurred in connection with remedying the Event of Default from the next sums becoming due to City from Manager under the terms of this Agreement; and
- D. Terminate this Agreement by Manager's written notice of termination to City.

No remedy granted to Manager is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity, or by statute. No delay or omission by Manager to exercise any right accruing upon an Event of Default shall impair Manager's exercise of any right or shall be construed to be a waiver of any Event of Default or acquiescence thereto.

ARTICLE X TERMINATION RIGHTS

SECTION 10.1 **Events of Termination**. This Agreement shall terminate upon the occurrence of any of the events set forth below:

- A. For causes other than an Event of Default by Manager, and City sends to Manager a notice of termination for cause (after the expiration of any applicable cure period);
- B. For causes other than an Event of Default by City, and Manager sends to City a notice of termination for cause (after the expiration of any applicable cure period);
- C. Both parties agree in writing to terminate this Agreement; and

D. Upon the expiration or termination of this Agreement according to its terms.

SECTION 10.2 **Payments Upon Termination**. Upon expiration or termination of this Agreement, all sums owed by either party to the other shall be paid within ten (10) days of the effective date of such termination.

SECTION 10.3 **Employee and Other Obligations Upon Termination**.

A. **City's Obligations**. Upon a termination or expiration of this Agreement for any reason, City shall remain responsible for payment of obligations relating to or arising out of the performance by Manager of this Agreement through the effective date of termination (including all Aquatic Center Expenses and all out of pocket expenses). Such obligations shall include all amounts to become due and owing to the terminated staff of Manager at the Aquatic Center through the effective date of termination. City shall pay all accrued wages for the terminated staff through such termination date and shall reimburse and/or hold harmless Manager for workers compensation insurance and other employee benefits paid or accrued by Manager on behalf of City to the terminated staff as of the termination date. Additionally, City shall be responsible for the payment of any earned and accrued vacation owed or due to the terminated staff as a result of the termination as well as any manual adjustments of wages and any unclaimed wages due the terminated staff accruing prior to the termination date and shall, if requested by Manager, reimburse Manager for any such payments made by Manager. Any amounts owed to Manager pursuant to this Section shall be paid to Manager within five (5) business days of written request therefor.

B. Upon a termination or expiration of this Agreement for any reason, Manager shall use commercially reasonable efforts to transfer to the City or its designated agent, to the extent transferable, all licenses and permits then held by Manager from any city, county, State and Federal governmental authority in connection with the operation and management of the Aquatic Center. The costs, if any, to transfer such license and permits shall be paid by City; provided that City shall not be required to pay a separate fee or charge to Manager for the transfer of such permits.

ARTICLE XI - TITLE MATTERS; ASSIGNMENT

SECTION 11.1 **Ownership of Improvements and Personal Property**. All improvements to the Aquatic Center made during the term of this Agreement and all Furnishings and Equipment and Operating Inventory purchased by Manager during the term of this Agreement shall be considered property owned by City at such time as the improvements are made or the Furnishings and Equipment or Operating Inventory are purchased. Manager shall not create, incur or allow any liens or obligations of any nature or kind whatsoever to be imposed upon the Aquatic Center or any of its Furnishings and Equipment.

SECTION 11.2 **Assignment or Subcontracting**. Except for temporary independent contractors retained by Manager on behalf of the City to provide non-supervisory services in connection with pool and recreational activities, Manager shall not assign this Agreement, or subcontract any work, without the prior written consent of the City. Any assignment by Manager (other than the engagement of temporary independent contractors to provide non-

supervisory services in connection with pool and recreational activities), whether or not requiring the prior consent of the City, shall not be effective unless and until Manager and such assignee execute an assignment and assumption in a form acceptable to the City Attorney. It is understood and agreed that any consent granted by the City to any such assignment by Manager shall not be deemed a waiver of any consent required under this Section as to any future assignment. Any assignment by Manager of this Agreement in violation of the provisions of this Agreement shall be null and void and shall result in the termination of this Agreement. In addition to any other remedies available to the parties, the provisions of this Section shall be enforceable by injunctive proceeding or by suit for specific performance.

SECTION 11.3 **Successors and Assigns.** Subject to Section 11.2, this Agreement shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns.

**ARTICLE XII - DAMAGE OR DESTRUCTION; EMINENT DOMAIN;
FORCE MAJEURE EVENTS**

SECTION 12.1 **Damage or Destruction.** Should the Aquatic Center be destroyed or substantially damaged by fire, flood, acts of God, or other casualty, City, by written notice to Manager given within sixty (60) days following the occurrence of such event, shall have the right to terminate this Agreement on the basis that City does not choose to rebuild or restore the Aquatic Center, and in such event neither party shall have any further obligation to the other party under this Agreement, except with respect to liabilities accruing, or based upon events occurring, prior to the effective date of such termination (or, with respect to amounts due Manager, after such date if it is reasonably necessary to incur additional expenses in the wind-down of operations of the Aquatic Center). For the purpose of this Section, the Aquatic Center shall be deemed to have been substantially damaged if the estimated length of time required to restore the Aquatic Center substantially to its condition and character just prior to the occurrence of such casualty shall be in excess of six (6) months, as indicated by an architect's certificate or other evidence reasonably satisfactory to Manager. If this Agreement is not terminated in the event of damage to the Aquatic Center either because (i) the damage does not amount to substantial damage as described above, or (ii) notwithstanding destruction of or substantial damage to the Aquatic Center, City elects to restore the Aquatic Center, then City shall proceed, at City's own expense, with all due diligence to commence and complete restoration of the Aquatic Center to its condition and character just prior to the occurrence of such casualty. If as a result of any damage or destruction to the Aquatic Center as provided in this Section, the responsibilities of Manager under this Agreement are substantially changed, then the parties shall meet and discuss in good faith appropriate modifications to this Agreement including the Fixed and Percentage Management Fees.

SECTION 12.2 **Condemnation.** In the event all or a substantial portion of the Aquatic Center is taken in any eminent domain, condemnation, compulsory acquisition, or similar proceeding by any competent authority for any public or quasi-public use or purpose, or a sale of the Aquatic Center takes place in lieu of same, then Manager may terminate this Agreement upon written notice to the City given within ninety (90) days thereafter. In the event a portion of the Aquatic Center shall be so taken or is affected on a temporary basis, and the result is not to make it unreasonable to continue to operate the Aquatic Center for the purposes contemplated by

this Agreement, Manager shall have no right to terminate this Agreement and this Agreement shall not terminate; however, so much of any award granted to the City for any such partial taking, condemnation, or sale as shall be necessary to render the Aquatic Center equivalent to its condition prior to such event shall be used for such purpose and the balance of such award (less the costs of obtaining such award) shall be included as Gross Revenue (but in no event shall such award be included in Gross Revenues for purposes of calculating the Percentage Management Fee).

SECTION 12.3 **Force Majeure Events**. As used in this Agreement, the term “Force Majeure Event” means a disruption in the operation of the Aquatic Center due to, or the cause of the failure to perform by a party hereto due to, declared or undeclared war, sabotage, riot or acts of civil disobedience, acts or omissions of governmental agencies (except acts of governmental agencies including but not limited to the City taken in accordance with this Agreement), accidents, fires, explosions, floods, earthquakes, or other acts of God, strikes, labor disputes, shortages of or inability to obtain labor or materials, or any other event not within the control of Manager and not caused by the gross negligence or intentional wrongful conduct of Manager. For purposes of this Section, any disruption to the operation of the Aquatic Center caused by a Capital Improvement project shall also constitute a Force Majeure Event. If as a result of the occurrence of a Force Majeure Event, the responsibilities of Manager under this Agreement are substantially changed, then the parties shall meet and discuss in good faith appropriate modifications to this Agreement including the Fixed and Percentage Management Fees. Notwithstanding anything contained herein to the contrary, the provisions of this Section shall not be applicable to either party’s obligation to pay any sums, monies, costs, charges, or expenses required to be paid pursuant to the terms of this Agreement.

ARTICLE XIII - GENERAL PROVISIONS

SECTION 13.1 **Contract Administration**. City has designated the **Community Services Director** as the individual who is responsible for administering this Agreement on behalf of City. Manager has designated **Dan Berzansky** as the individual who is responsible for administering this Agreement on behalf of Manager. Manager shall notify in writing if another individual has replaced the foregoing designated person as the person responsible for administering this Agreement on behalf of Manager. The parties acknowledge that except as otherwise expressly provided herein:

A. The Community Services Director has the authority to approve or consent to those matters identified in this Agreement as requiring City’s approval or consent and to make all other decisions on behalf of City regarding the administration of this Agreement (except where City Council approval is expressly required herein). City’s management direction to Manager shall be given by the Community Services Director.

B. Manager’s foregoing designated person or such other individual designated by Manager in writing to City has the authority to approve or consent to those matters identified in this Agreement as requiring Manager’s approval or consent and to make all other decisions on behalf of Manager regarding the administration of this Agreement.

SECTION 13.2 **Indemnities**.

A. **Manager’s Indemnification.** Except as provided in Section 3.10(E), Manager agrees to defend, indemnify and hold harmless City and City’s officers, officials, members, employees, agents, representatives, and volunteers (the “City Parties”) from and against any and all claims, demands, actions, lawsuits, proceedings, damages, liabilities, judgments, penalties, fines, expert witness fees, reasonable attorneys’ fees, costs and expenses, which results from or is connected with any act or omission by Manager or any shareholder, director, officer or employee of Manager in connection with Manager’s performance under this Agreement that constitutes negligence or willful misconduct, except to the extent such acts or omissions were directed or approved by City, or such liabilities were caused by City’s willful or criminal misconduct, gross negligence or fraud. Notwithstanding anything else contained herein, City acknowledges that Manager shall not be responsible for any damage to property under City’s care, custody and control and that City shall ensure that all such damage is covered by appropriate insurance coverage.

B. **City’s Indemnification.** Except as provided in Section 3.10(E), City agrees to defend, indemnify and hold harmless Manager and Manager’s affiliated corporations, and each of their shareholders, officers, directors, employees, agents, representatives and volunteers, from and against any and all claims, demands, actions, lawsuits, proceedings, damages, liabilities, judgments, penalties, fines, expert witness fees, reasonable attorneys’ fees, costs and expenses, which results from or is connected with one or more of the following:

1. any act or omission by Manager in connection with the management and operation of the Aquatic Center (i) that is expressly authorized by this Agreement, or (ii) that is within the scope of Manager’s duties under this Agreement, or (iii) that is within Manager’s delegated authority under this Agreement, or (iv) that was either at the written direction of City or with the written approval of City; unless such act or omission constitutes gross negligence or willful misconduct (and was neither at the written direction of City nor with the written approval of City) in which event Manager shall not be indemnified under this Section;
2. any act or omission constituting gross negligence or willful misconduct by City or any officer, official, member, employee, agent, representative or volunteer of City;
3. City’s failure to make any payment to Manager hereunder to which Manager is entitled pursuant to the terms of this Agreement (after the expiration of any applicable cure period); or
4. the ownership, leasing, organization, development or construction of the Aquatic Center, Hazardous Materials or other conditions existing at the Aquatic Center, the use by Manager of Aquatic Center trade names, trademarks, logos or other intellectual property used in connection with the Aquatic Center.

C. **Survival.** The defense and indemnification obligations contained in this Section 13.2 shall survive the expiration or termination of this Agreement for any reason.

SECTION 13.3 **Cumulative Rights and Remedies.** All rights and remedies of both parties here enumerated shall be cumulative and none shall exclude any other right or remedy

allowed by law. Likewise, the exercise by either party of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

SECTION 13.4 **Notices.** Unless expressly otherwise provide elsewhere in this Agreement, any election, notice or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged) or three (3) days after mailing the same (by certified mail, return receipt required) with proper postage prepaid, or when sent by a national commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery, to be confirmed in writing by such courier, at such Party's address set forth below or at such other address as a Party may designate by written notice given to the other in accordance with the foregoing.

For purposes of Notices hereunder, the address of City shall be:

City of Aliso Viejo
12 Journey, Suite 100
Aliso Viejo, CA 92656-5335
Attention: Community Services Director

For purposes of Notices hereunder, the address of Manager shall be:

Premier Aquatic Services
36 Argonaut, Suite 130
Aliso Viejo, CA 92656
Attention: Dan Berzansky, Owner/President

Each party shall have the right to designate a different address by the giving of notice in conformity with this Section.

SECTION 13.5 **Independent Contractor.** Manager shall at all times be considered an independent contractor under this Agreement. Nothing contained in this Agreement shall be construed to be or create a partnership or joint venture between City and its successors and assigns, on the one part, and Manager and its successors and assigns, on the other part.

SECTION 13.6 **Proprietary Information.** Subject to applicable state law, all specifically identifiable information developed by Manager for City at the expense of City shall be the property of both Manager and City and neither party shall disclose or grant any rights to such information to any third party without the consent of the other party. All information developed by Manager at Manager's expense, including, without limitation, all promotional, marketing, sales and operating strategies, programs, software (specifically the software described in Section 5.7), technology, and similar confidential or proprietary information, shall be the exclusive property of Manager and neither City nor any of its affiliates or successors may use or disclose such proprietary information without the advance written consent of Manager. The

obligations and restrictions contained in this Section 13.6 shall survive the expiration or termination of this Agreement for any reason.

SECTION 13.7 **Modification and Changes**. This Agreement may be amended or modified only by a writing signed by both parties.

SECTION 13.8 **Entire Understanding and Agreement**. This Agreement constitutes the entire understanding and agreement between the parties to the subject matter hereof, and supersedes all prior representations, agreements and understandings, oral or written, related to such subject matter.

SECTION 13.9 **Headings**. The Article, Section, and Subsection headings contained in this Agreement are for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

SECTION 13.10 **Consents**. Each party agrees that it will not unreasonably withhold any consent or approval requested by the other party pursuant to the terms of the Agreement, and that any such consent or approval shall not be unreasonably delayed or qualified, except where such consent is expressly stated as within the party's sole and absolute discretion. Similarly, each party agrees that any provision of this Agreement which permits such party to make requests of the other party shall not be construed to permit the making of unreasonable requests.

SECTION 13.11 **Survival of Covenants**. Any covenant, term, or provision of this Agreement which in order to be effective must survive the termination of this Agreement shall survive any such termination.

SECTION 13.12 **Third Parties**. None of the obligations under this Agreement of either party shall run to or be enforceable by or establish any rights of any party other than the party to this Agreement or by a party deriving rights under this Agreement as a result of an assignment permitted pursuant to the terms of this Agreement.

SECTION 13.13 **Waivers**. No waiver by City or Manager at any time of any of the terms, conditions, covenants, or leases of this Agreement, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or lease herein contained, nor of the strict and prompt performance thereof. No delay or failure of either party to exercise any right, power, privilege or option arising from any default shall impair any such right, power, privilege or option or be construed to be a waiver of any such default, relinquishment thereof, or acquiescence therein, while such default is continuing. No notice by Manager or by City shall be required to restore or revive time as of the essence hereof after waiver by Manager or by City of default in one or more instance. No option, right, power, remedy or privilege of Manager or City shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options, or remedies given to Manager and to City by this Agreement are cumulative and no one of them shall be exclusive of the other exclusive of any remedies provided by law, and that the exercise of one right, power, option, or remedy by Manager or by City shall not impair its right to any other right, power, option, or remedy. Notwithstanding the foregoing, either party may, in writing, (i) extend the time for performance of any of the obligations of the other, (ii) waive any

inaccuracies and representations by the other contained in this Agreement, (iii) waive compliance by the other with any of the covenants contained in this Agreement, and (iv) waive the satisfaction of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Agreement.

SECTION 13.14 **Applicable Law**. This Agreement calls for performance and shall be performable in Aliso Viejo, California and shall be governed by, and construed and enforced in accordance with, the laws of the State of California (without giving effect to principles of conflicts of law thereof).

SECTION 13.15 **Interpretation**. City and Manager agree that this Agreement has been freely negotiated by both parties and that any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Agreement or any of its terms or conclusion. There shall be no inference, presumption, or conclusion drawn whatsoever against other party by virtue of that party having drafted this Agreement or any portion thereof.

Words of gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires.

SECTION 13.16 **Enforceability of Any Provision**. If any term, condition, covenant or obligation of this Agreement shall be determined to be unenforceable, invalid, or void, such determination shall not affect, impair, invalidate, or render unenforceable any other term, condition, covenant, or obligation of this Agreement.

SECTION 13.17 **United States Currency**. All amounts payable pursuant to this Agreement shall be paid in lawful money of the United States of America.

SECTION 13.18 **Counterparts; Facsimile Signatures**. This Agreement and any amendment may be executed in counterparts, and upon all counterparts being so executed each such counterpart shall be considered as an original of this Agreement or any amendment and all counterparts shall be considered together as one agreement. Facsimile signatures shall be as effective as an original signature.

SECTION 13.19 **Attorneys' Fees**. In the event of a dispute involving the nonperformance by a party hereto of its obligations under this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and all other expenses (including expert witness fees and fees and costs related to discovery and appeal) reasonably incurred in connection with such dispute, whether or not litigation is commenced, in addition to all other relief to which the party is entitled. If the successful party recovers judgment in any legal action or proceeding, the attorneys' fees and all other expenses of litigation shall be included in and made a part of any such judgment.

SECTION 13.20 **Publicity**. Any commercial advertisements, press releases, articles, or other media information using either party's name shall be subject to the prior approval of the other party, which approval shall be given or withheld in the other party's sole and absolute discretion.

SECTION 13.21 **Covenants Against Discrimination.** Manager agrees that in connection with its performance under this Agreement, there shall be no discrimination by Manager against any person on account of race, color, creed, religion, sex, marital status, national origin or ancestry. Manager agrees to include a provision similar to this Section in all subcontracts entered into by Manager in connection with work being performed under this Agreement.

SECTION 13.22 **Non-liability of City Officers and Employees.** No officer, official, employee, agent, representative, or volunteer of the City shall be personally liable to Manager, or any successor in interest, in the event of any default or breach by the City, or for any amount which may become due to Manager or any successor, or for breach of any obligation of the terms of this Agreement.

SECTION 13.23 **Time of the Essence.** Time is of the essence of this Agreement. The parties understand that the time for performance of each obligation has been the subject of negotiation by the parties.

SECTION 13.24 **Exhibits and Attachments Incorporated.** All exhibits and attachments to this Agreement are incorporated herein and made a part hereof.

SECTION 13.25 **Authority; Covenants and Representations.**

A. Each party makes the following covenants and representations to the other party:

1. Such party is duly organized and validly existing,
2. The person or persons executing this Agreement on behalf of such party is/are duly authorized to execute and deliver this Agreement on behalf of such party,
3. By so executing this Agreement, such party is formally bound to the terms and provisions of this Agreement, and
4. Neither the execution of this Agreement nor the party's performance of any obligation hereunder (i) shall constitute a violation of any law, ruling, regulation, or order to which the party is subject, or (ii) shall constitute a default of any term or provision or shall cause an acceleration of the performance required under any other agreement or document (a) to which the party is bound, or (b) in the case of the City, to which the Aquatic Center or any part thereof is subject.

B. Additionally, City makes the following covenants and representations to Manager:

1. City has and will retain the property interests in the Aquatic Center necessary to enable Manager to perform its duties pursuant to this Agreement peaceably and quietly. City represents and warrants that Manager's performance of the services required by this Agreement shall not violate the property rights or interests of any other party; and

2. If necessary to carry out the intent of this Agreement, City agrees to execute and provide to Manager, on or after the Management Term Commencement Date, any and all other instruments, documents, conveyances, assignments, and agreements which Manager may reasonably request in connection with the operation of the Aquatic Center.

SECTION 13.26 **Restrictions as to Employees.** During the Management Term and for a period of two (2) years after the end of the Management Term, it is agreed that City or its agents and contractors shall not seek to contact, entice, or discuss employment with any Key Employee of Manager nor shall City employ or seek to employ any such employee, without first obtaining the written consent of Manager. For purposes hereof, a “Key Employee” of Manager shall mean the aquatic director of the Aquatic Center or any employee of Manager’s corporate office.

SECTION 13.27 **Outside Business.** Nothing contained in this Agreement shall be construed to restrict or prevent, in any manner, any party or any party’s affiliates, parent corporations, or representatives or principals from engaging in any other businesses or investments, nor shall City or Manager have any right to share or participate in any such other businesses or investments of the other party.

SECTION 13.28 **Authorization to Manager.** In addition to such other authorizations granted to Manager in this Agreement to act on behalf of City, Manager shall have the authority, in the event of a dispute with any party other than the City involving the interpretation of the terms and provisions of this Agreement, to reasonably interpret the terms and provisions of this Agreement on behalf of City.

SECTION 13.29 **Possessory Interest.** Pursuant to California Revenue and Taxation Code Section 107.6, City hereby informs Manager that this Agreement may create a possessory interest subject to property taxation, and in such event Manager may be subject to the payment of property taxes levied on such interest.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the day and year first written above.

CITY OF ALISO VIEJO

By: _____
Name: _____
Title: _____

Attest:

PREMIER AQUATIC SERVICES

By: _____
Name: _____
Title: _____

Attest:

EXHIBIT "A"

ACCOUNTING SERVICES

Manager shall provide the following services as stipulated in Article V of this Agreement including but not limited to the following:

1. Financial Reports. Manager shall review, provide oversight of the preparation of financial statements and provide the City with reports for each accounting period, as well as annual financial statements and reports. Reports are due within fifteen days (15) of month end thirty days (30) of each fiscal quarter and thirty days (30) of year end. Reports include but are not limited to:
 - (a) Current Month and Year End Reports
 - Detailed Revenue Report – Aquatic Center
 - Detailed Deposit Report – Aquatic Center
 - All Bank Deposit Receipts – Aquatic Center
 - Reconciliation Statement – Aquatic Center
 - Budget to Actual Variance Reports and Analysis
 - (b) Other Reports
 - Pool Revenue – Detailed listing by category
 - Event logs/Booking Reports
 - Operations monthly client letter to include reporting on revenues, expenditures, ratios & events
 - Cash Flow Summary – Quarterly

2. Budgets for the Facilities.
 - (a) Operating Budget – Aquatic Center
 - (b) Capital Improvement Plan
 - (c) 5 Year Forecast

3. Financial management.
 - (a) Annual audit at City’s discretion
 - (b) Establish and monitor accounts receivable procedures
 - (c) Monitor contract/lease compliance
 - (d) Monitor internal controls, policies and procedures
 - (e) Prepare and file all federal, state income, franchise tax returns and any other applicable reports for the entity
 - (f) Provide fixed asset/inventory reporting consistent with the City’s policies and procedures
 - (g) City shall have ownership of all financial data for history purposes

EXHIBIT "B"**SCOPE OF SERVICES****Aquatics Facility**

Premier will operate the City Aquatics Center (AVAC), and all of its staffing, services, programs, and facilities. These services include all staffing, basic facility upkeep, and management of all programs, including but not limited to a precompetitive recreational swim team, swim instruction for private and group swim lessons, Parent and Me classes, Senior Aqua Fit classes, Group Learn to Swim programs, public lap swim, health and safety classes (lifeguarding, cpr, etc.), public and private aquatics events, and a masters swim team.

Premier agrees to furnish all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately provide the above mentioned services, and any programs offered the AVAC. All services shall be performed by Premier staff. Premier will determine the means, methods, and details of performing the Services subject to the requirements described herein.

Premier is an independent contractor and not as an employee. Premier retains the right to perform similar or different services for other communities and city programs during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Premier shall not be employees of City and shall at all times be under Premier's exclusive direction and control. Premier shall pay all wages, salaries, and other amounts due to such personnel in connection with their performance of Services and as required by law unless otherwise specified. Premier shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

Premier shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Premier represents and maintains that it is skilled in the professional calling necessary to perform the Services. Premier warrants that all employees and sub consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Premier represents that it, its employees, and its sub consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services and that such licenses and approvals shall be maintained throughout the term of this Agreement.

Premier shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Services, including all Cal/OSHA requirements, and shall give all notices required by law.

Lifeguard Services

Premier will provide lifeguards and gate monitors for Aquatic Facility at the expense of Premier.

Lifeguards will be certified by the American Red Cross and fully trained by Premier to monitor the entire Aquatic Facility during all business hours.

Lifeguards will be responsible for the safety of guests in the facility, as well as enforcing facility rules. Lifeguards and aquatics staff will be required to wear Premier aquatics staff uniforms, which will include staff shorts and t-shirts. Staff uniforms will help members and residents easily identify them at all times. Premier lifeguard uniforms will be printed with "Lifeguard" on the back of the shirt. Shirts will be white with red writing and shorts will be red. Lifeguards will undergo in-service training weekly to remain current on all safety procedures required by the American Red Cross and Premier, as well as to continue to stay current on facility specific Emergency Action Plans (EAP). In-service trainings will be conducted daily to ensure that all staff is up to date on skills.

Supervision of Lifeguards

Premier will hire and train, professional individuals as lifeguard staff.

Premier will provide direct supervision in order to maintain the high standard of service at all times. To provide daily (7 days a week) supervision of our staff in the form of unannounced visits, written evaluations, and constant communication. This supervision will be in the form of a dedicated Aquatics Director at the Aquatics Facility.

Private Swim Lessons

Premier will provide qualified swim instructors trained by Premier management staff to meet the needs of residents and guests. Swim instructors are required to be certified in CPR, first aid, and lifeguarding by the American Red Cross. Premier has developed its own swim lesson curriculum which will be utilized.

Aqua Fitness/ Senior Aqua Fit Classes

Premier will facilitate and run a Senior Aqua Fit class and Aqua Zumba class which will be offered 3 days per week. These programs will be taught by experienced aqua fitness instructors to ensure that each class is run properly.

Progressive Learn to Swim Program

The Premier Progressive Learn to Swim program follows Premier's innovative approach to swim

development. The program will operate on a schedule determined by Premier and approved by COAV. Premier's Progressive Learn to Swim lessons are offered in sessions of 8 lessons over two weeks (Monday through Thursday) at 30 minutes each in length. Lessons will be taught with a maximum of 6 students per instructor. The only exception is "Parent and Me" classes, which can accommodate up to 10 students with the support of parent involvement. All classes are grouped by age and ability.

Youth Swim Team

Premier will operate the Precompetitive Recreational Swim Team, also known as the "Aliso Viejo Flying Fish." The name Aliso Viejo Flying Fish or other name designated for the swim team shall be the sole and exclusive property of the City. Responsibilities included are coaching of swim team members, scheduling and organizing of swim meets and practice dates and times, and the supply of all apparel to swim team participants. Premier will also be responsible for all expenses incurred in the hiring and training of swim coaches. Premier commits to keeping all swim team apparel in stock. This will ensure that all customers receive swim team apparel upon registration.

Swim Team Philosophy

Premier will provide experienced swim coaches to run the swim team program and train the swim team participants.

The Premier philosophy on training is that every practice throughout spring and summer sessions will include specified stroke technique development and stamina building sets with coaches in the water during appropriate practices.

Masters Swim Team

Premier will offer a daily (Monday through Saturday) masters swim team workout. This workout will focus on adult and senior participants, with an additional focus on triathletes and adult aged competitors.

Facility Memberships and Daily Entry Fees

Entry fees will be collected by Premier for all visitors. Program participants may enter the aquatics facility 15 minutes prior to their scheduled class time, and remain onsite for 15 minutes after their scheduled class time ends, but only in the designated area in which such programs take place. The remainder of the aquatics facility will be reserved for daily facility guests and annual pass holders. Any program participants, who wish to stay past the allotted 15 minutes, will be required to pay the general entry fee. In addition to daily entry fees, Premier will offer a yearly membership to residents who would like to participate in daily lap swim hours and families that

wish to utilize the facility on a more regular basis.

Private Events and Birthday Parties

Premier will offer daytime birthday parties for residents of Aliso Viejo. These parties will be available during convenient times, as to not take away from daily participant experiences. The staff at Premier will create a professional and recreational experience for birthday party or celebration.

Retail

Premier will offer a full service aquatics retail shop, stocked with swim wear, goggles, kickboards, fins, snorkels, towels, and caps. This space will be small and unobtrusive.

Health and Safety

Premier will continue to offer the full array of health and safety classes, including CPR/AED courses, Lifeguarding, Professional Rescuer Courses, and WSI through at AVAC.

General Staffing Information

All instructors and coaches will be required to be certified in CPR, Lifeguarding, and First Aid by the American Red Cross. Premier has in-house American Red Cross instructors that will run all training programs for our staff. Premier will only hire employees that will complete the required Live Scan background check for the Department of Justice and Federal Bureau of Investigation.

Staffing

Aquatic Director

Premier to provide a full time staff member, dedicated only to programming and staffing at the Aliso Viejo Aquatic Center. This staff member will supervise all staff, including the Head Lifeguard, the Lead Instructors, the Head Swim Coach, and the Deck Manager. The management team will oversee all part time staff per staff organizational chart.

GENERAL STAFF ORGANIZATIONAL CHART

	Lifeguard Services	Swim Lesson Services	Swim Team Services	Camp Services
Level 4: Team Member	Lifeguard Manager	Aquatics Program Manager		Camp Services Manager
Level 3: Team Member	Loop Supervisor/ Facility Manager	Deck Supervisor	Head Swim Coach	Camp Director
Level 2: Team Member	Head Lifeguard	Lead Instructor/ Admin	Asst. Head Coach	Group Leader
Level 1: Team Member	Lifeguard	Swim Instructor	Swim Coach	Camp Counselor

Proposed Staffing Budget

As per this agreement, Premier will be responsible for the hiring and payroll of all staff. In addition, Premier will be responsible for providing comprehensive workers compensation plans, as well providing eligible employees with health and retirement benefits.

Administration

Premier will focus a large amount of attention on administering a smooth and organized aquatics program for the City. Dependent on the time of year, Premier will provide the following administrative positions and services for the aquatic facility and participants.

- Deck Hosts (checking in program families, updating rosters and enrollments, quality control checks, and evaluations of instructors and coaches).
- Customer Service/Call Center: Responsible for answering and returning calls and emails, enrolling clients, updating rosters and enrollments, processing payments in real time)
- Customer service liaison on staff at front window during all operating hours.
- One point person (Aquatics Director).
- Premier to provide an online registration system, which will allow customers to register for classes and schedule specific swim lessons with specific instructors.

Operational/Marketing Commitments

Premier to have the following marketing plan for the City of Aliso Viejo's Aquatic Facility.

Marketing

- Press (Aliso Viejo Patch, OC Register, OC Family, etc.)- Articles highlighting the summer program
- Events (a booth at ALL City Special Events) - a presence at ALL city programs during the spring and summer season which will work to inform all AV residents of the programs being offered at AVAC.
- Local and area marketing pieces- mailers to every home in Aliso Viejo. Eblasts to all of last year's participants, and flyers in Town Center stores and restaurants.
- Public School/Private School/Preschool/ Day Cares/Local sports groups (other than water sports) - target marketing with the goal of gaining new client base.
- Partnership with Boys and Girls Club/Boys and Girl Scouts- teaching water safety for each group.
- City Water Safety Program in schools to promote learn to swim
- Street signs at all major cross streets in Aliso Viejo promoting the AVAC.

City to approve all marketing material before printing and distribution, provided that such approval shall not be unreasonably withheld. All events attended by Premier or a third party representative to promote and/or market services provided at the aquatic facility must be pre-planned and approved by City, provided that such approval shall not be unreasonably withheld.

Failure to respond within fourteen (14) business days of submitting advertising materials for approval shall be deemed approved as is.

EXHIBIT "C"

CITY OF ALISO VIEJO

ACKNOWLEDGMENT OF RECEIPT OF FRAUD POLICY

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

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

Name of Business

Print Name

Signature

Date

EXHIBIT "D"

CITY OF ALISO VIEJO

DECLARATION OF POLITICAL CONTRIBUTIONS

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

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

City/County/State

Date

Name of Business

Print Name

Signature

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

City of Aliso Viejo

Agenda Item



DATE: March 18, 2015
TO: Mayor and City Council
FROM: Gina M. Tharani, Dir. Of Financial Services/City Treasurer
SUBJECT: ANNUAL BUDGET DISCUSSION FOR FY 2015-16

Recommended Action:

1. Receive updates on the financial trends impacting City revenues, including economic factors, Federal and State budget impacts, grant opportunities, and Development Impact Fees;
2. Discuss priorities for the FY 2015-16 annual budget;
3. Review the Strategic Initiatives and provide direction to staff for programs, projects, and initiatives to be included in the FY 2015-16 annual budget.

Fiscal Impact:

None.

Background:

On June 18, 2014, the Council adopted the FY 2014-15 Annual Budget, which was then re-evaluated at mid-year to accommodate fluctuations in revenues and adjustments to appropriations. The mid-year budget was adopted on February 4, 2015 and included updates to projects and programs that will be completed by the end of the 2014-15 fiscal year.

The City estimates year-end operations for FY 2014-15 will result in a positive cash flow to the General Fund in the amount of \$629,444. The fund balance in the General Fund is estimated at \$20.8 million at the end of FY 2014-15, of which \$16.2 million is assigned for reserves.

Discussion:

Staff will be presenting information on the City's fiscal condition, revenue outlook, Federal and State Budget impacts, and grant opportunities. Preliminary revenue estimates and the Strategic Initiatives will be presented for the purpose of seeking direction on desired projects and programs to be included in the City's FY 2015-16

Budget. This discussion and prioritization of projects and goals for the coming fiscal year will assist staff in developing a draft budget that reflects the priorities of the Council and of the City.

National Economic Outlook

The national economy is expected to grow at an estimated rate of 3% per year until at least 2017 according to a report recently released by the Congressional Budget Office (CBO). The Gross Domestic Product grew by 2.2% in the fourth quarter of 2014. This increase is attributed to increases in personal consumption expenditures, exports and state and local government spending. The fourth quarter rate was lower than the third quarter's 5.0% growth due to reductions in federal government spending and a reduction in exports. The CBO's report also expects the unemployment rate to continue to decline slowly over that same period. The unemployment rate for January, 2015 was 5.7% down slightly from prior months. The Federal Reserve continues to maintain interest rates at near-zero levels. The Federal Reserve has now stated that it expects to increase interest rates sometime in late 2015 and it has now ended its stimulus programs.

California Economic Outlook

The California economy has shown dramatic improvement over the last few years. Proposition 30, which was implemented by the State in January of 2013, temporarily increases revenues by increasing the state's portion of sales tax by 0.25% and increasing the income tax rate on high-income earners through the end of 2018. The State is expected to have an overall budget surplus for FY 2014-15. The governor's proposed budget for FY 2015-16 has sufficient funds to provide funding for the ongoing State programs and it includes a transfer to the State's rainy day fund and an amount to be used to reduce the outstanding balance on the Economic Recovery Bonds.

Economic forecasts predict the state's unemployment rate will continue to trend lower through 2015. According to the most recent available data from the California Employment Development Department, California's unemployment rate for January 2015 was estimated at 7.0%, down from 8.1% at the same time last year.

Orange County Economic Outlook

The unemployment rate in Orange County for December 2014 was estimated at 4.4%, the lowest in Southern California, down from 5.8% a year prior. Increases in the trade, transportation and utilities sectors are showing the strongest gains. The continuing growth in the County's employment base is expected to help sustain the recovery occurring in the housing market.

Aliso Viejo

Residential construction in Shea Homes' Vantis development was completed this past year. Construction recently began on the 129-room upscale extended-stay hotel and it is expected to be ready for occupancy in late 2015. The request for building permits for the 435 unit luxury apartment complex is expected to be received in the spring of 2015. In addition, construction of a 202 unit affordable senior apartment project is scheduled to begin in the spring of 2015.

The median selling price of a home for sale in Aliso Viejo was \$487,500 for the three months of October 2014 to January 2015. This was an increase of 6% from the prior year. The local housing market continues to recover and is nearing the pre-recession levels. However, the vacancy rate for industrial property in the City increased slightly signaling a possible slowing in that market.

Given the aforementioned economic conditions and Federal Reserve practices, the current investment environment will likely be sustained through 2015. City staff routinely assesses current interest rates to verify that investment decisions are made in accordance with the City's Investment Policy and are providing the best returns while still adhering to the appropriate levels of safety, liquidity and yield. Due to the current market conditions and instruments available for investment, the City has elected to maintain its portfolio in the Local Agency Investment Fund (LAIF) while continually monitoring the market for suitable investment options. With the passage of Proposition 1A, the State does not have the ability to borrow from funds invested in LAIF. Any public funds invested outside of LAIF would be fully collateralized by the financial institution in accordance with government codes.

FY 2015-16 Revenues

The preliminary revenue forecasts for FY 2015-16 were prepared using conservative estimates and projections provided by the State, other agencies and/or City consultants. Overall, General Fund revenues are expected to increase by \$631,041 or 4.2% above FY 2014-15 Mid-Year Budget estimates.

Revenue estimates for property taxes are based on projections provided by the County of Orange and HdL, the City's tax consultant. Overall, property taxes in FY 2015-16 are expected to increase by \$121,485 or 1.8% when compared to FY 2014-15. Although the Proposition 13 CPI adjustment for FY 2015-16 is a maximum of 2% for each property, some recapturing of previous Proposition 8 reductions are likely since property values have continued to rise and home sales are occurring resulting in higher assessed values. Offsetting these increases is a reduction in the amount of Prior Year taxes collected as more property owners pay their taxes prior to incurring penalties. Other property tax categories are estimated to remain the same in FY 2015-16 as in the prior fiscal year. The appreciation in housing values also directly impacts Property Taxes in Lieu, a component of property taxes. The Property Tax in Lieu category is expected to increase by \$82,980, or 2.0%, based on higher assessed values provided

by the County. Property transfer taxes, which are also included in the property taxes category, are expected to stay in line with FY 2014-15 based on recent housing market sales activity.

Sales tax revenue forecasts provided by HdL indicate an increase of \$106,300, or 2.2% from FY 2014-15. This increase assumes the local economy continues to grow, personal incomes increase, and consumer spending rises. Aliso Viejo's diverse tax base is expected to remain strong in the coming year. It should be noted that the "triple flip" implemented by the State will be ending in FY 2015-16. This will result in the increase currently projected for sales tax in FY 2015-16 being slightly larger than it would have been due to the "catch up" of the 3 month lag in the "triple flip" payments.

Franchise Fees overall are expected to increase by \$35,000 or 2.4%, entirely due to a projected increase in franchise fees received for cable television. Other franchise fees are estimated to be flat in the coming fiscal year.

Transient Occupancy Tax (TOT) is estimated to increase \$50,000, or 5.8%, over FY 2014-15. Recent data in the tourism and hospitality industries reflect positive trends in occupancy rates as well as continued growth in business travel. The new hotel within the Vantis development is expected to open late in the fiscal year resulting in a small estimated impact on TOT revenues in FY 2015-16.

Licenses and Permits and Current Service Charges are expected to increase by approximately \$200,000, or 30% due to increases in the Building Permits and Plan Check Fees categories. This increase is the result of several new projects that are anticipated to begin the approval process next year. These projects include the new hotel and apartment project in the Vantis development, the 200 unit apartment and 300,000 square feet office space project at 4 Liberty, the 202 unit senior apartment project at 2C Liberty and the Renaissance Hotel expansion. Current Service Charges also include Housing Administration fees, which are collected when affordable units within the Glenwood and Vantis projects are sold. All affordable units from the completed phases of these developments have sold.

The estimated budget for Fines and Forfeitures, which includes Vehicle Code Fines and Parking Citations, was increased by \$60,000 or 21.4%. The increase is primarily in the Parking Citations category to reflect current collection trends due to increased patrolling and enforcement.

Investment earnings are expected to increase slightly in FY 2015-16. Interest rates have been stagnant for many years and are finally expected to begin to rise. Lease agreements for units above City Hall are negotiated at competitive market rates to keep pace with the local rental market. This category is estimated to show no increase in the coming fiscal year and all units are expected to remain occupied.

Projected revenues for Development Impact fees have been updated with the most recent revisions to the Vantis Development Agreement. A total of \$911,085 is expected

from the Vantis project. The majority of these funds are expected to be received in FY 2014-15 with the balance in FY 2015-16. The Vantis project includes 435 luxury apartment units and a 129-room hotel. Included in the fees are \$561,800 in Housing in Lieu fees and \$250,000 in Community Enhancement with the balance designated for street and traffic improvements. The final installment of \$245,125 of Housing in Lieu monies is expected in FY 2015-16.

Fees received for all projects to date total \$10.1 million. The following table details which fees have been collected to date, which remain outstanding, and how much has been spent to date for City projects and programs:

Development Impact Fees	Collected To Date (as of 1/12/15)	FY 2014-15	FY 2015-16		Spent to Date (as of 1/12/15)	FY 2014-15 Budgeted Expenditures	Available (Coll. less Spent/Budget)
		Balance of Budgeted Revenues Vantis	Forecast Vantis	Total			
Housing in Lieu Fee	1,967,116	245,125	245,125	2,457,366	40,005	-	1,927,111
Traffic Mitigation	716,788	-	-	716,788	-	-	716,788
Community Enhancement	6,322,526	-	-	6,322,526	1,483,163	702,405	4,136,958
Parks/Trails/Open Space	209,196	-	-	209,196	-	-	209,196
Median Improvement	777,750	-	-	777,750	-	-	777,750
Art in Public Places	6,000	-	-	6,000	-	-	6,000
Crossing Guard (General Fund)	164,435	-	-	164,435	164,435	-	-
	10,163,811	245,125	245,125	10,654,061	1,687,603	702,405	7,773,803

* Includes Foxborough Park Lighting Improvements reserve of \$421,684 and \$50,000 for the Gallery.

Highway Users Tax, also known as the Gas Tax, is expected to decrease by approximately \$200,000, or 13.8%, from FY 2014-15 based on recent projections provided by the State. This projection reflects the anticipated effects of falling gasoline prices and consumption from the prior year. The 2010 Fuel Tax Swap eliminated the general fund portion of the sales and use tax on motor vehicle fuel and raised the excise tax. The "fuel tax swap" laws require the State Board of Equalization to adjust the excise tax by an amount to offset changes in sales tax to ensure "revenue neutrality" on an annual basis. In February of this year, the Board of Equalization approved a decrease of 6.0 cents to the excise tax, reducing it to 30.0 cents per gallon effective July 1, 2015. Both sales tax and excise tax on gasoline are allocated according to the complicated gas tax formulas, which include a small portion for cities.

Measure M2 was approved by voters in March 2011 and is a major revenue source for the City's streets and roads projects. The most recent Measure M revenue estimates provided by the Orange County Transportation Authority (OCTA) indicate an increase in the "Fair Share" portion of 7.5% compared to the FY 2014-15 Mid-Year Budget. Measure M "Fair Share" funding in the amount of \$671,550 is expected in FY 2015-16. The City has also secured a Measure M2 Comprehensive Transportation Funding Programs (CTFP) grant in the total amount of \$568,100 for the Dairy Fork Wetlands Project. The total cost of this project is estimated at \$874,000 and will be funded by the grant mentioned above, contributions from neighboring cities totaling \$155,100 and by Aliso Viejo's portion of \$150,800. Senior Mobility grant funds are also expected, totaling \$24,300 in FY 2015-16. The Senior Mobility program began in 2013-14 and provides door-to-door bus service for any senior citizen residing in Aliso Viejo to attend programs at nearby senior centers.

Other special revenue funds including the Public Safety grants, AQMD AB2766 Subvention funds, and Integrated Waste Management grants are expected to be about the same as in FY 2014-15. These grant funds are collected every year and provide for various programs and projects that otherwise would have to be supported by the General Fund. A federal grant for CDBG projects has been awarded and is expected to be received in FY 2015-16 in the amount of \$193,220. This grant will be used to fund ADA improvements.

Starting FY 2015-16, the City will have two management contracts, one for the Conference Center and one for the Aquatic Center. Initial estimates for FY 2015-16 indicate the Aquatic Center revenues will be up 48% when compared with year-end projections for FY 2014-15. This large increase is the result of the center being open year-round instead of just four months as in the past and due to more classes being offered by the new operator. Net cost of operations for FY 2015-16 are estimated to be \$150,000.

The City and Kemper Sports continue to develop marketing programs and improve outreach to prospective clients for the Conference Center. Estimated revenues in FY 2015-16 for the Conference Center are approximately \$65,000 higher than FY 2014-15 year-end projections due to an increase in the food and beverage categories. Starting with the new fiscal year the operator of the Conference Center will be providing food and beverage services at the Aquatics Center. This change in operations is the major contributor to the increase. Initial estimates provided by the current operator reflect a net increase to the fund balance in the amount of \$18,250 as targeted operations are refined and revenue generating activities stabilize at the facility. These estimations could change as staff is currently reviewing Request for Proposals (RFPs) to select an operator for the facility. The new contract will be effective July 2015.

A Capital Improvement Project schedule for FY 2015-16 is also being developed in preparation for the Draft Budget workshop in May. Proposed street projects include rehabilitation of Pacific Park Road from Chase to the 73 and the annual slurry seal project, both funded with Measure M2 "Fair Share" funds. The budget for Capital

projects includes construction of wayfinding signs, welcome to Aliso Viejo signs at the toll road off ramps, both of which will be funded with Community Enhancement funds and ADA improvements which will be funded with a CDBG grant. The Stormwater Improvement Fund includes funding for the Dairy Fork Wetlands project. This project will be funded partially with Measure M grant funds, contributions from neighboring cities and the City's match portion from the General Fund.

Expenditures

The County of Orange has provided their first estimate of the Law Enforcement Service contract for FY 2015-16. The total estimated cost for next fiscal year is \$7,872,322 and maintains current service and staffing levels. The estimate is \$767,636 higher than the final adjusted contract total for FY 2014-15. This is a 10.8% increase and is primarily due to higher estimates for salaries and benefits, overtime, division and county overhead, and training costs. The City Manager and staff are in discussions with the County and other cities impacted by these estimates to evaluate and research options. In addition, the City will also expend \$157,650 from the General Fund to fund the purchase and upgrade of the 800 MHz Countywide Coordinated Communication System.

Fund Balance for the General Fund

The fund balance in the General Fund is projected to be approximately \$20.8 million at the end of the 2014-15 fiscal year. In accordance with the City's Fund Balance Policy, fund balance in the amount of \$16.2 million has been assigned as follows:

- \$9.5 million for asset replacement
- \$4.4 million for contingencies/potential revenue losses due to State actions
- \$1.5 million for emergencies or unanticipated CIP projects
- \$0.6 million as self-insurance for future benefit obligations
- \$0.2 million for the 800 MHz upgrade and replacement costs.

The remainder of \$4.6 million is unassigned and can be used for any governmental purpose.

Five Year Strategic Plan

The purpose of the City's Five Year Strategic plan is to assess the General Fund and Special Revenue Funds' ability to achieve the following over the next five years:

- Deliver necessary service levels
- Maintain the City's low crime rate
- Develop community awareness and involvement through enhanced community participation and partnerships
- Maintain and improve the City's infrastructure and streets
- Implement traffic safety and school safety projects

- Preserve the City's long-term fiscal stability by aligning operating revenues and costs and maintaining the fund balance at established levels.

The plan includes fund balance, expenditure and revenue projections as well as goals and objectives allowing the City to focus its efforts on feasible initiatives, including funding for necessary infrastructure, maintenance and capital needs without compromising the City's financial future. Staff has initiated the preparation of the report and will present it to the City Council at the May 6, 2015 meeting.

Conclusion:

Overall, General Fund revenues are estimated to increase by 4.2% when compared to the FY 2014-15 Mid-Year Budget. The overall budget will be dependent upon the specific assumptions made on revenues and expenditures. Appropriations for FY 2015-16 are currently being reviewed and will be discussed in detail at the next budget workshop scheduled for May 6, 2015.

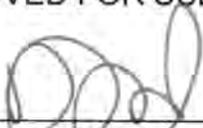
The preliminary revenue estimates and Strategic Initiatives are attached for the Council's review. Staff is seeking Council direction on projects, programs, and initiatives to include in the draft FY 2015-16 Budget that will be presented to the City Council in May. Staff continues to work with Townsend Public Affairs in its efforts to identify outside funding opportunities for projects that are either unfunded or underfunded.

Staff anticipates the draft FY 2015-16 Budget will once again demonstrate stable revenues, balanced appropriations, and healthy reserves. Revenue projections and the current economic outlook demonstrate a stable growth pattern for Aliso Viejo. The combination of strong reserves and sound fiscal policies enables the City to fully support the community as it thrives and preserves the community as a premier place to Live, Work, Learn, Shop, and Play.



Gina M. Tharani
Director of Financial Services/City Treasurer

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL



David A. Doyle, City Manager

Attachments: FY 2014-15 Preliminary Revenue Estimates
Capital Improvement Plan
Strategic Initiatives

CITY OF ALISO VIEJO
RESOURCES AND APPROPRIATIONS BY FUND
FY 2015-16 DRAFT BUDGET

	2012-2013 Actual	FY 2013-14 Actual	FY 2014-15 Mid-Year Budget	FY 2015-16 Estimated Revenues
RESOURCES				
101 General Fund	14,812,482	14,893,561	15,181,739	15,812,780
203 Gas Tax	1,116,805	1,552,451	1,267,200	1,061,740
204 Measure M	749,394	802,350	651,450	1,266,360
215 Public Safety Grants	100,065	103,319	110,100	100,100
221 AQMD Air Quality	59,792	63,336	61,900	62,900
225 Integrated Waste Management	13,416	13,262	13,325	13,300
231 Other Grants	-	282,424	56,950	-
241 Technology Grant	3,300	6,600	6,600	6,600
245 Development Impact	355,137	992,783	753,460	245,125
251 Federal Grants	897	-	-	193,220
260/1 City Facilities	1,134,678	1,262,838	1,265,610	1,267,410
311 Street Improvements	1,292,463	1,521,698	1,547,000	1,634,000
331 Capital Improvements	1,139	197,417	1,112,000	-
332 Storm Water	100,544	200,251	64,050	792,005
Total Estimated Resources	19,740,111	21,892,290	22,091,384	22,455,540
APPROPRIATIONS				
101 General Fund	13,334,437	20,638,155	14,552,295	TBD
203 Gas Tax	1,639,121	1,600,821	1,755,100	TBD
204 Measure M	343,436	780,370	875,650	TBD
215 Public Safety Grants	91,104	76,126	177,755	TBD
221 AQMD Air Quality	-	39,847	669,685	TBD
225 Integrated Waste Management	16,709	15,048	30,000	TBD
231 Other Grants	409,557	303,914	56,950	TBD
241 Technology Grant	35,582	27,348	197,000	TBD
245 Development Impact	247,822	236,385	778,500	TBD
251 Federal Grants	897	-	-	TBD
260/1 City Facilities	1,141,721	1,264,538	1,265,610	TBD
311 Street Improvements	1,292,463	1,521,698	1,547,000	TBD
331 Capital Improvements	1,139	197,417	1,112,000	TBD
332 Storm Water	100,544	200,251	64,050	TBD
Total Estimated Appropriations	18,654,533	26,901,918	23,081,595	TBD
NET CHANGE IN FUND BALANCE	1,085,578	(5,009,628)	(990,211)	
Beginning Fund Balance	38,479,638	38,604,460	32,425,353	
Long Term Financing	(960,760)	(1,169,479)	-	
PROJECTED ENDING FUND BALANCE	38,604,460	32,425,353	31,435,142	

CITY OF ALISO VIEJO
GENERAL FUND RESOURCES AND APPROPRIATIONS
FY 2015-16 DRAFT BUDGET

	2012-2013 Actual	FY 2013-14 Actual	FY 2014-15 Mid-Year Budget	FY 2015-16 Estimated Revenues
ESTIMATED RESOURCES				
Taxes	13,332,295	13,629,326	13,894,415	14,239,350
Licenses & Permits	482,730	377,459	463,915	567,890
Fines & Forfeitures	327,173	271,644	280,000	340,000
Rev-Use of Money & Property	69,260	72,178	60,000	66,000
Intergovernmental Revenue	41,961	33,495	34,030	12,500
Current Services Charges	267,695	296,641	203,229	299,560
Other Revenue	63,070	49,055	42,700	84,030
General Fund Sub-Total	14,584,184	14,729,797	14,978,289	15,609,330
City Hall-Rental Income	228,299	163,764	203,450	203,450
Rental Income Sub-Total	228,299	163,764	203,450	203,450
Total Estimated Resources	14,812,482	14,893,561	15,181,739	15,812,780
ESTIMATED APPROPRIATIONS				
Administration & Support	2,466,874	2,583,293	2,879,270	TBD
Community Services	785,512	866,052	912,540	TBD
Community Development	888,891	1,004,912	914,445	TBD
Building & Safety	502,298	489,030	506,000	TBD
Public Works	1,089,988	1,083,707	1,161,200	TBD
Public Safety	6,560,734	6,938,599	7,481,635	TBD
Transfer-Out Other Funds	892,060	7,119,990	551,305	TBD
General Fund Sub-Total	13,186,356	20,085,582	14,406,395	TBD
City Hall	148,081	552,573	168,300	TBD
City Hall Sub-Total	148,081	552,573	168,300	TBD
Total Estimated Appropriations	13,334,437	20,638,155	14,574,695	
NET CHANGE IN FUND BALANCE	1,478,045	(5,744,594)	607,044	
Beginning Fund Balance	24,424,794	25,902,841	20,158,247	
COPS Payoff				
PROJECTED ENDING FUND BALANCE	25,902,841	20,158,247	20,765,291	

*FY 2014-15 Mid-Year Budget includes subsequent budget amendments approved by Council.

FISCAL YEAR 2015-16 BUDGET

Project/Program	Total Project Cost	Funding Source	Description	Status/Comments
MEDIAN CONSTRUCTION				
Median Construction Aliso Creek #038	\$790,000	Gas Tax for Design, Construction funding TBD	SR 73 to Windsong.	Design completed. Staff currently seeking grant funding opportunities for Construction costs.
Median Construction Aliso Creek #039	\$2,560,000	TBD	El Toro to Glenwood.	Staff continuing efforts to identify possible funding sources.
Aliso Viejo Parkway Median (Grand to Enterprise) #048	\$1,000,000	Gas Tax for Design, \$597,217 collected in Developer Funds, other TBD	Landscape median consisting of curbs, plantings, irrigations and monuments.	Design work completed in FY 2008-09 and FY 2009-10 was funded by Gas Tax. Development Impact fees received from the Vantis developer total \$230,625 for median construction and \$366,592 in Traffic Impact funds. Staff is working to identify other funding sources for remaining estimated costs. This project is part of the Complete Street project.
Aliso Viejo Parkway Median (Pacific Park to Grand) #050	\$1,100,000	Design funded by Measure M & Gas Tax, Construction funding TBD	Landscape median consisting of curbs, plantings, irrigations and monuments.	Design completed. Staff continuing efforts to identify possible funding sources for construction. This project is part of the Complete Street project.
Aliso Creek Median (SR73 to Enterprise) #059	\$725,000	Developer Fees	Construct roadway median including curb, landscape and irrigation improvements.	Project pending developer fees.
Glenwood Drive Median (Aliso Creek Rd to Da Vinci)	\$1,405,000	Collected \$470,250 in Developer Funds, other TBD	Landscape median consisting of curbs, plantings, irrigations and monuments.	Development Impact fees received from the Glenwood developer for median construction total \$470,250.
Pacific Park - AV Pkwy to Wood Canyon	TBD	TBD		
Enterprise-Aliso Creek to Town Center Drive	TBD	TBD		

FISCAL YEAR 2015-16 BUDGET

Project/Program	Total Project Cost	Funding Source	Description	Status/Comments
STREET REHABILITATION				
Pacific Park Rehabilitation - Chase to SR 73	\$884,000	Measure M Fairshare and General Fund	Rehabilitation of roadway, including full depth replacement of failed areas, pavement grinding, and asphalt overlay. Project Length: 4,000 LF	Recommended funding sources
Glenwood Rehabilitation - SR73 to Moulton Parkway	\$1,551,000	Measure M Fairshare and General Fund	Rehabilitation of roadway, including full depth replacement of failed areas, pavement grinding, and asphalt overlay. Project Length 6,200 LF	Recommended funding sources
Aliso Creek Road Rehabilitation - Aliso Viejo Parkway to City Limits	\$1,250,000	Measure M Fairshare and General Fund	Rehabilitation of roadway, including full depth replacement of failed areas, pavement grinding, and asphalt overlay. Project length: 4,500 LF.	Recommended funding sources
Alicia Parkway Rehabilitation - Pacific Park to City Limits	\$1,065,000	Gas Tax, Measure M Fairshare and General Fund	Rehabilitation of roadway including full depth replacement of failed areas, pavement grinding and asphalt overlay. Project length 3,600 LF	Recommended funding sources
Aliso Viejo Parkway Rehabilitation - Enterprise to City Limits	\$1,088,000	Gas Tax, Measure M Fairshare and General Fund	Rehabilitation of roadway including full depth replacement of failed areas, pavement grinding and asphalt overlay. Project length 3,500 LF	Recommended funding sources
Aliso Viejo Parkway Rehabilitation - Cedarbrook to Moulton Parkway	\$602,000	Measure M Fairshare and General Fund	Rehabilitation of roadway including full depth replacement of failed areas, pavement grinding and asphalt overlay. Project length 3,500 LF	Recommended funding sources
Aliso Creek Road Rehabilitation - Enterprise to Aliso Viejo Parkway	\$1,024,000	Measure M Fairshare and General Fund	Rehabilitation of roadway including full depth replacement of failed areas, pavement grinding and asphalt overlay. Project length 4,500 LF	Recommended funding sources

FISCAL YEAR 2015-16 BUDGET

Project/Program	Total Project Cost	Funding Source	Description	Status/Comments
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URBAN TRAIL SYSTEM				
Town Center Loop Trail Phase III	\$400,000	TBD	Additional features including bus stops, public art and landscaping.	Staff developing funding strategies to present to Council for further direction. \$45,000 spent to date
Vista Trail	\$4,500,000	TBD	All elements of a 10 mile loop trail along Glenwood/Pacific Park and Aliso Creek Regional Park.	TBD
Canyon Trail	\$3,100,000	TBD	All elements of a 7.0 mile trail along Wood Canyon and Aliso Creek connecting across Aliso Viejo Pkwy.	TBD
Ranch Trail	\$3,500,000	TBD	All elements of an 8.0 mile trail following the Edison easement from El Toro Rd easterly to Aliso Creek and ending at the ranch site.	TBD

PEDESTRIAN BRIDGES				
Pedestrian Bridge	TBD	TBD	Vantis to Commons - Across Enterprise.	TBD
Pedestrian Bridge	TBD	TBD	Aliso Creek by AV Middle School and AV Ranch to Alicia Pkwy.	TBD
Aliso Niguel High School to Laguna Niguel Skate Park (across Aliso Creek)	\$750,000	TBD		\$60,000 spent to date

FISCAL YEAR 2015-16 BUDGET

Project/Program	Total Project Cost	Funding Source	Description	Status/Comments
SR 73 ENHANCEMENTS				
SR 73 Park-N-Ride #031	\$40,000	TBD	Investigate sites for constructing a Park-N-Ride facility.	Park-N-Ride would be constructed utilizing existing parking facilities within the City. Possible sites will be determined by transit routes identified in the Go Local Project. This project is to be included with the Town Center project.
Aliso Creek at SR73 Traffic Islands #037	\$165,925	TBD	Location is between the On-Off ramps of the North/Southbound SR73 @ Aliso Creek Road. Project includes design, construction & landscaping within the traffic islands.	Concept redesigned to address Caltrans' concerns. Staff will continue to seek out grant opportunities to cover project costs.
Aliso Creek Interchange	\$2,200,000	TBD		
El Toro Road Interchange	\$2,880,000	TBD		
Glenwood/Pacific Park Interchange	\$2,018,000	TBD		
La Paz Road Interchange	\$1,400,000	TBD		
West Side of SR73 (1000' north of Pacific Park; east side of SR 73, 500' south of Aliso Creek off ramp)	\$560,000	TBD		
Right-of-way from Aliso Viejo Pkwy to Aliso Creek Rd (east and west side of SR73)	\$1,200,000	TBD		
SR 73 right-of-way from Pacific Park to Aliso Viejo Pkwy (east and west side of SR 73)	\$700,000	TBD		
SR 73 right-of-way from Alicia Pkwy to Aliso Creek Rd	\$2,500,000	TBD		
SR 73 projects				
- underpass at La Paz	TBD	TBD		
- SR 73 at Glenwood	TBD	TBD		
- SR 73 at El Toro Road	TBD	TBD		

FISCAL YEAR 2015-16 BUDGET

Project/Program	Total Project Cost	Funding Source	Description	Status/Comments
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Recreation Ad Hoc Projects				
Dog Park	TBD	TBD	Alicia & Pacific Park Location.	AVCA's board voted in 2012 to proceed with the planned Dog Park and subsequently approved plans and a contractor for the project. Funds will be expended from AVCA's existing Park Improvement Funds. AVCA submitted an application for a conditional use permit; staff expects AVCA to submit plans soon.

Local Sustainability				
Dairy Fork Wetland Project	\$874,000	OCTA Tier 2 Enviro. Cleanup/ Habitat Cons/ Prop 84 Grants	Natural treatment to remove water pollutants from urban runoff draining from AV and surrounding cities at Dairy Fork area (AV Pkwy & Moulton).	OCTA staff has recommended the project for funding and award is anticipated by April 2014. Design work could commence in FY 2014-15 with construction completed in FY 2015-16.
Local Shuttle System	TBD	OCTA Grant, Private Funding	Implementation of the Shuttle system analyzed in Phase II of the Go Local project.	Grant funding not feasible due to the low level of projected ridership.
AWMA Bridge	TBD	TBD	The AWMA Bridge was modified to allow only westbound traffic in December 2010 due to safety concerns raised by SOCWA regarding bridge loading and pedestrian access. Two way traffic was restored in May 2012 after minor repairs.	Agreement between South Orange County Wastewater Authority (SOCWA) and Orange County is schedule for the Board of Supervisors meeting on March 3, 2015. If approved, the County will take over ownership and maintenance responsibilities. If not approved the bridge will be closed.

City of Aliso Viejo

Agenda Item



DATE: March 18, 2015
TO: Mayor and City Council
FROM: David A. Doyle, City Manager
SUBJECT: COUNCIL APPOINTMENTS TO STANDING COMMITTEES

Recommendation:

The Council shall establish Standing Committees with Capistrano Unified School District (CUSD) and Aliso Viejo Community Association (AVCA) and appoint two Council Members to serve on each of the Standing Committees.

Fiscal Impact:

There is no direct fiscal impact associated with the recommended action.

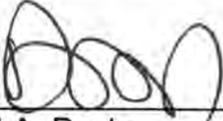
Background:

In previous years, the City established Committees with outside organizations to address issues of mutual interest. At the March 4, 2015 Council Meeting, the Council provided direction to engage CUSD and AVCA through the Committee process.

Discussion:

In order to proceed, it is recommended that the Council establish Standing Committees with CUSD and AVCA and appoint two Council Members to serve on each of the Committees. The Committee Members shall perform their duties in accordance with the attached Council Policy 400-4, "*City Council Member Appointments and Conduct on Regional Boards, Agencies, Committee, and Ad Hoc Working Groups of the City Council*". Staff will provide support in terms of facilitating communications, scheduling meetings and preparing pertinent information.

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL



David A. Doyle
City Manager



City of Aliso Viejo

COUNCIL POLICY

SUBJECT	RES. NO.	POLICY NO.	EFF. DATE	PAGE
City Council Member Appointments and Conduct on Regional Boards, Agencies, Committees, and Ad Hoc Working Groups of the City Council	2005-056	400-4	10/19/2005	1 of 2

BACKGROUND

On September 18, 2001, City Council adopted a policy regarding conduct and attendance for Appointees to various Regional Boards, Agencies, Committees and Ad Hoc Working Groups.

PURPOSE

To provide the method of appointment of City Council Members to Regional Boards, Agencies, Committees and Ad Hoc Working Groups of the City Council where such appointment is for the purpose of representing the City of Aliso Viejo or the City Council of the City of Aliso Viejo.

POLICY

- A. Appointments to Regional Boards, Agencies, Committees and Ad Hoc Working Groups of the City Council where a City Council Member represents the City of Aliso Viejo will be made by the City Council at a Regular or Special City Council Meeting.
- B. When speaking or writing to community groups, the media, or other members of the public, individual City Council members should recognize that their statements may be perceived as reflecting the views and positions of the entire City Council. City Council members have a responsibility to identify personal viewpoints as such and not as the viewpoint of the City Council.
- C. All public statements, either oral or in writing, authorized to be made on behalf of the City Council shall be made by the Mayor or, if appropriate, by the City Manager or other designated representative.
- D. All correspondence sent by individual members of the City Council on City letterhead stationery shall be prepared by City staff as designated by the City Manager, with copies of all such correspondence maintained at City Hall.
- E. Attendance by Primary/Alternate Representative. A member of the City Council who is appointed to serve as the primary representative on any Regional Board, Commission or Committee of which the City of Aliso Viejo is a member shall have the primary responsibility for attending any meeting of such Board, Commission or Committee. In the event that the primary representative is unable to attend any meeting, he or she shall make arrangements for the



City of Aliso Viejo

COUNCIL POLICY

SUBJECT	RES. NO.	POLICY NO.	EFF. DATE	PAGE
City Council Member Appointments and Conduct on Regional Boards, Agencies, Committees, and Ad Hoc Working Groups of the City Council	2005-056	400-4	10/19/2005	2 of 2

member of the City Council who is appointed to serve as the alternate representative on such Regional Board, Commission or Committee to attend that meeting.

- F. **Unexcused Absences by Primary Representative.** If a member of the City Council who is appointed to serve as the primary representative on any Regional Board, Commission or Committee of which the City of Aliso Viejo is a member fails to attend a meeting of such Board, Commission or Committee on three (3) separate occasions and fails to make arrangements for the alternate representative to attend such meetings, such member shall be automatically removed from serving as the primary representative to that board, commission or committee. In the event that the primary representative is removed pursuant to this policy, the alternate representative will assume the position of primary representative and the City Council will designate another member of the City Council to serve as the alternate representative to the Board, Commission or Committee.
- G. **Unexcused Absences by Alternate Representative.** If a member of the City Council who is appointed to serve as the alternate representative on any Regional Board, Commission or Committee of which the City of Aliso Viejo is a member and who has agreed to attend a meeting of such board, commission or committee in the place of the primary representative fails to attend such meetings on three (3) separate occasions, such member shall be automatically removed from serving as the alternate representative to that Board, Commission or Committee. In the event that the alternate representative is removed pursuant to this policy, the City Council will designate another member of the City Council to serve as the alternate representative to that Board, Commission or Committee.
- H. **Removal and/or replacement of appointees to Regional Boards, Agencies, Committees and Ad Hoc Committees of the City Council** pursuant to the terms of this policy shall be voted on by the City Council.

Reference: Agenda Item dated September 18, 2001
 Resolution No. 2003 – 021
 Resolution No. 2003 – 025

City of Aliso Viejo

AGENDA ITEM



DATE: March 18, 2015

TO: Mayor and City Council

FROM: City Manager

SUBJECTS: AB 201: LOCAL ORDINANCES RELATING TO SEX OFFENDERS -
SUPPORT

RECOMMENDED ACTIONS

Request from Councilmember Harrington to approve letter of support for AB 201: Local Ordinances Relating to Sex Offenders.

BACKGROUND

Councilmember Harrington is requesting City Council consideration of the attached letter of support for AB 201: Local Ordinances Relating to Sex Offenders.

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL

David A. Doyle
City Manager



"EXPERIENCE IT ALL"
**ALISO
VIEJO**

MAYOR

WILLIAM A. PHILLIPS

MAYOR PRO TEM

MIKE MUNZING

COUNCIL MEMBERS

ROSS CHUN

DAVE HARRINGTON

PHILIP B. TSUNODA

CITY MANAGER

DAVID A. DOYLE

CITY ATTORNEY

SCOTT C. SMITH

CITY CLERK

MITZI ORTIZ, MMC

CITY OF ALISO VIEJO
INCORPORATED JULY 1, 2001

12 JOURNEY • SUITE 100
ALISO VIEJO
CALIFORNIA 92656-5335

WWW.CITYOFALISOVIEJO.COM

PHONE
949.425.2500
FAX
949.425.3899

February 6, 2015

The Honorable Bill Brough
California State Assembly
California State Capitol, Room 2174
Sacramento, CA 95814

SUBJECT: AB 201: Local Ordinances relating to sex offenders - SUPPORT

Dear Assemblyman Brough,

The City of Aliso Viejo SUPPORTS your bill, AB 201, giving communities the authority to enact local ordinances relating to sex offenders.

Recent case decisions have usurped local control relating to the regulation regarding sex offenders. The impact of these decisions have left local municipalities unable to protect our parks from the worst kind of predators. Public safety is the primary responsibility of local government; AB 201 is an important step toward fulfilling that obligation.

We believe that local municipalities have the best ability to govern their regions on most matters, especially pertaining to sex offenders. Localities are within their rights to pass ordinances for the benefit of their individual jurisdictions. A recent court decision invalidated ordinances in many cities and counties leaving them vulnerable for costly lawsuits.

AB 201 clarifies state law by stating local municipalities are not preempted by the State from taking action to protect children from registered sex offenders.

Please do not hesitate to contact our office with any questions you may have.

Sincerely,

William Phillips
Mayor, City of Aliso Viejo