TO: HONORABLE MAYOR & CITY COUNCIL MEMBERS
FROM: CITY CLERK
DATE: APRIL 2, 2019

SUBJECT: ADDITIONS/REVISIONS AND AMENDMENTS TO AGENDA

Attached are revisions/additions and/or amendments to the agenda material presented for tonight’s meeting.

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description of Material</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Emails from: Jeff Calvagna; Bob Nelson; Daily Breeze article</td>
</tr>
<tr>
<td>2</td>
<td>Email from Mickey Rodich</td>
</tr>
</tbody>
</table>

**PLEASE NOTE: Materials attached after the color page(s) were submitted through Monday, April 1, 2019**.

Respectfully submitted,

Emily Colborn
I’m writing to express my deep concern regarding the revised wireless telecommunication facility (WTF) ordinance scheduled for the upcoming April 2nd City Council hearing. I recognize that urgency is required and, in general, believe the ordinance is well-drafted with regards to aesthetic requirements and location restrictions. I was happy to see that my concerns regarding our current local street restrictions and undergrounding requirements remained intact in the new ordinance.

However, the ordinance is deeply flawed it removes the Planning Commission from the small wireless facility approval process and returns that authority to City Staff. This is a monumental step backwards. One of the major reforms of our existing WTF ordinance is that the approval for these sites was placed with the Planning Commission rather than approved administratively by City employees. The intent of this change was that approval of these sites be made by city residents rather than by City Staff. The belief was that facilities that potentially have a large negative impact on aesthetics, neighborhood character, and property values must be by made by individuals with "skin in the game" (i.e. residents of our city) rather than by City employees unlikely to live in our community.

The logic for this decision is sound. I have attended countless Planning Commission hearings where City Staff recommended approval of a design/location that was ultimately rejected by the Planning Commission. City Staff are dedicated professionals and this is not meant as a criticism but as a factual observation; Staff have a demonstrated record of being far more permissive of intrusive installations than the Commission itself. In addition, prior to our existing ordinance (before Jan 2016) all WTF decisions were made by City Staff. During this period we saw completely out-of-control proliferation of wireless facilities with minimal aesthetic consideration. In fact, this experience was why residents insisted on Planning Commission approval and public hearings for all wireless facilities going forward.

In the Staff notes it is claimed that the shortened shot clocks will render Planning Commission approval as impractical thus requiring Staff administrative approval. I respectfully disagree. While it will certainly complicate the process it
is not impossible. It certainly does not warrant tossing aside a key reform that empowered the residents of our City and reigned in an out-of-control process. I urge you to direct Staff to remove this provision and retain discretionary Planning Commission authority for all new wireless facilities. Failing to do so will disenfranchise the people of Rancho Palos Verdes after a hard fought battle to ensure they have a say in the process. Placement of wireless facilities has a potentially huge impact on our resident's quality of life. Simply deeming Planning Commission involvement as “impractical” (without supporting evidence or argument) truly is unacceptable.

On another matter, I believe our City Attorney’s Office is far too readily accepting The FCC’s claim that is has the authority to strike down the Ninth Circuit’s interpretation of “effective prohibition” and the resulting “significant gap” doctrine. As an administrative agency of the Executive branch, the FCC has no constitutional or statutory authority to override this longstanding judicial branch interpretation. Only the Supreme Court or the Ninth Circuit itself have that authority, or Congress should they choose to change the basis for current law (the Telecommunication Act of 1996). That our City is readily accepting the FCC’s legally-suspect power grab has me deeply concerned.

If the City’s primary motivation is avoiding a lawsuit at any cost, then perhaps this change would be appropriate. However, I know from working with all of you and from our City’s history that this is not our community’s primary concern. I’m not an attorney so I’m not making a recommendation in this matter. However, there will almost certainly be much more to this going forward, as legal challenges to the rulemaking shake out. It is imperative that we monitor the legal situation, and be prepared to quickly reinstate this “significant gap” protection in our ordinance if you believe it is in the City’s best interests.

I hope you found these comments helpful and apologize for submitting them so late. Thank you for your service to our City and I look forward to seeing you at the April 2nd hearing.

Best regards,

Jeff Calvagna
Members of the City Council,

I apologize for sending this at such a late hour but I just received it myself. The attached document is from Mr. Bill Ross, a highly respected land use attorney who also serves as the City Attorney for several of the cities that have sued the FCC regarding the September rulemaking (i.e., the order allegedly driving the urgency for the proposed Wireless Ordinance). Mr Ross provided this to Palo Alto who are similarly considering a new ordinance, a contact of mine in Palo Alto sent it to me today.

In a nutshell, Mr. Ross’ position is that there is no risk to a city ignoring the FCC’s order until the (major) litigation has been decided. That litigation now sits in the Ninth Circuit, which is thought of as being favorable to the plaintiffs. Of course it is the Ninth Circuit's previous decisions that the FCC now dubiously claims it has the authority to overturn.

Please see the summary of Mr. Ross' position along with comprehensive details of the filed lawsuits.

I would also point out that although I disagreed with 95% of the claims made by Paul Arbritton (Verizon's attorney) sent to the City yesterday (4/1), Mr Arbritton openly wondered why the City feels compelled to pass an urgency ordinance at this time.

I hope you have the opportunity to consider these points before the hearing.

Best regards,

Jeff Calvagna
VIA ELECTRONIC TRANSMISSION

The Honorable Ed Lauing, Chair
and Member of the City of Palo Alto
Planning and Transportation Commission
250 Hamilton Avenue
Palo Alto, California 94306

Re: Agenda Item No. 4; Proposed Ordinance Amending Section 18.42.110 (Wireless Communication Facilities) of chapter 18.42 (Standards for Special Uses of Title 18 (Zoning of the Palo Alto Municipal Code (“PAMC”)) to Update the Code to Reflect recently Adopted FCC Regulations

Dear Chair, Lauing and Commission Members:

This communication submits authority as to why the proposed Ordinance advanced by Staff under Agenda Item No. 4 should not be considered until there is a further evaluation of the impact of the litigation challenges to the proposed (but not yet effective) FCC Declaratory Ruling and Third Report and Order, FCC 18-133, 83 Fed. Reg. 51,867 (Oct. 15, 2018) (“FCC Order No. 18-33” or “the Regulation”) and the recent rulemaking proceeding initiated by the California Public Utilities Commission (“PUC”) – Order instituting rulemaking to implement electric utility Wildfire Mitigation Plans pursuant to SB 901 (2018) issued October 25, 2018, No. 18-10-007 (PUC Rulemaking 18-10-007)\(^1\).

It should initially be acknowledged that this area of regulation of Small Antenna Facilities (“SAF”) and the interplay between local regulation and federal regulation has been the subject of extensive regulation at the state level, AB 649 and California Legislative efforts on this matter during the 2017 Legislative session.

\(^1\) A copy of the PUC Rulemaking Order concerning Wildfire Mitigation Plans is attached as Exhibit “A.”
December 12, 2018
Page 2

A significant number of local agencies and State Associations of Government have challenged the Regulation on several grounds. Initially, the challenge was instituted by the telecommunications entities themselves, such a Verizon (see Verizon Communication, Inc v. Federal Communications Commission, Tenth Circuit Federal Court of Appeal No. 19-9559566. However, a group known as the “San Jose Petitioners” also challenged the Regulation. Those Petitioners include Arcadia, California; Bellevue, Washington; Burien, Washington; Burlingame, California; City of Culver City, California; Town of Fairfax, California; City of Gig Harbor, Washington; City of Issaquah, Washington; City of Kirkland, Washington; City of Las Vegas, Nevada; City of Los Angeles, California; County of Los Angeles, California; City of Monterey, California; City of Ontario, California; City of Piedmont, California; City of Portland, Oregon; City of San Jacinto, California; City of Shafter, California; and City of Yuma, Arizona.

In addition, the League of Oregon Cities, the League of California Cities, the League of Arizona Cities and Towns; the City of Bakersfield, California; the City of Rancho Palos Verdes, California; and the cities of New York, New York; Seattle, Washington; and Tacoma, Washington have also challenged the Regulation.

The basis for the collective challenge deals with several aspects of the proposed Regulation – it’s supposed prohibition of all local regulation, the limitation of fees and the extent of aesthetic review.

The Staff Report on this matter indicates that:

The FCC adopted FCC-18-133 on September 26, 2018 and provided for it to become affective 90 days after it is published in the Federal Register on June 14, 2019. FCC-18-133 is binding on local governments, unless and until the Court orders otherwise (page 2).

No mention is made of the extensive litigation challenge just described.

If the proposed Ordinance is recommended for approval by the Commission, a factual position could be created whereby SAF facilities could go in only to be subject to removal because of the invalidation of the FCC Regulation or because of the Rulemaking proceeding before the PUC that bares directly on the public health, safety and welfare – consideration of requiring that above ground utility poles be undergrounded.

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2 A summary of the involved local agency challenges is contained in the enclosed Motion for Transfer of Proceeding to the Ninth Federal Circuit Court of Appeals, Exhibit “B.”
With respect to the collective challenge of the Legislation, which is now subject to a Motion to Transfer from the Federal Tenth Circuit Court of Appeals to the Ninth Circuit Court of Appeals (see, Exhibit “B” a motion not opposed by the United States Department of Justice) the issue should be addressed as to why there is no discussion of this challenge and why the City of Palo Alto chooses not to be a Petitioner challenging the Regulation.

One of the chief Petitioners is the City of San Jose, who through the implementation of several specific plans is proceeding on a development course ironically identical to that of the City of Palo Alto, i.e. office space for increased job demand in association with those industries typical of the Silicon Valley. Pragmatically, what is different between the City of San Jose and the City of Palo Alto?

The PUC rulemaking process is meant to implement SB 901, the post 2017 Napa/Sonoma Fire legislation which is meant to address and alleviate practices of publicly regulated utilities that contribute to the type of wildfires that occurred during 2017 and most recently with the Camp Fire in Paradise, California.

As an example, the Comments of the City of Laguna Beach\(^3\) are related to the proposed placement of any SAF facility as they maintain, as have other cities that Public Utilities Code Section 8386 as modified by SB 901 includes undergrounding utility poles as a method to “achieve the highest level of safety reliability and resiliency.”

Certainly, this prospective implementation of Public Utilities Code Section 8386 should at least be considered by the Commission prior to blindly approving what appears to be a ministerial amendment to Municipal Code Section 18.42.110.

Several City utility workers have indicated that PG&E lines (and joint utility lines) exist within the City, and especially in the area south of 280 where there are urban interface areas that are remarkably similar to the Silverado area of Napa which was destroyed in the 2017 fires.

Again, pragmatically, should not at least this PUC Rulemaking proceeding in conjunction with litigation over the Regulation be analyzed by Staff prior to making a recommendation to the City Council?

The proposed CEQA exemption for the proposed Ordinance should also be reevaluated. Presently, adoption of the proposed Ordinance is deemed to be exempt from the provisions of the California Environmental Quality Act under CEQA Guidelines Section 15061 because there is no possibility that the Ordinance will have significant effect.

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\(^3\) The Comments of the City of Laguna Beach are attached as Exhibit “C.”
on the environment (staff report page 11).

It is respectfully suggested that the two actions described in this communication – a good faith litigation challenge by local agencies, many of which employed private counsel had filed extensive preliminary pleadings to the actual principle of preemption of the Regulation and the rulemaking proceeding of the State PUC indicated precisely the opposite, there will be an effect on the physical environment. Continued placement of SAF facilities above ground as a basis to maintain utility poles above round clearly could have an impact on the physical environment if not the public health, safety, and welfare of both rate payers, property owners and business within the City because of their connection to wildfires.

Very truly yours,

William D. Ross

WDR:jf

Enclosures:

Exhibit A. Federal Motion to transfer to Ninth Circuit

Exhibit B. Order initiating Rulemaking, California Public Utilities Commission, Wildfire Mitigation Plans

Exhibit C. Comments by the City of Laguna Beach in the California PUC Rulemaking Proceeding re: Wildfire Mitigation Plans
EXHIBIT A
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

SPRINT CORPORATION,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION, et al.,

Respondents.

Case No. 18-9563 (MCP No. 155)

VERIZON COMMUNICATIONS, INC.,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION, et al.,

Respondents.

Case No. 18-9566 (MCP No. 155)

PUERTO RICO TELEPHONE COMPANY, INC.,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION, et al.,

Respondents.

Case No. 18-9567 (MCP No. 155)
THE CITY OF SAN JOSE, CALIFORNIA; et al.,

Petitioners,

v.

UNITED STATES OF AMERICA

and

FEDERAL COMMUNICATIONS COMMISSION

Respondents

Case No. 18-9568 (MCP No. 155)

CITY OF SEATTLE, WASHINGTON, et al.,

Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION, et al.,

Respondents.

Case No. 18-9571 (MCP No. 155)

CITY OF HUNTINGTON BEACH,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION, et al.,

Respondents.

Case No. 18-9572 (MCP No. 155)
MOTION TO TRANSFER

Pursuant to 28 U.S.C. § 2112(a)(5), Petitioners in City of San Jose v. F.C.C., Case No. 18-9568¹ (“San Jose Petitioners”) respectfully move this Court to transfer this case to the United States Court of Appeals for the Ninth Circuit. San Jose Petitioners in this case seek review of the FCC’s Declaratory Ruling and Third Report and Order, FCC 18-133, 83 Fed. Reg. 51,867 (Oct. 15, 2018). The San Jose Petitioners are local governments within the Ninth Circuit that originally filed a timely appeal of the FCC Order in that Circuit. However, pursuant to 47 C.F.R. § 1.13(a)(1), this case was transferred to this Court pursuant to 28 U.S.C. § 2112(a)(3) and the Rules of the Judicial Panel on Multidistrict Litigation.

Nonetheless, as explained below, San Jose Petitioners believe that the interests of justice and the plain language of 28 U.S.C. § 2112(a)(5) require that the matter be heard by the Ninth Circuit. The San Jose Petitioners have an interest in having this matter heard by the Ninth Circuit, and have been granted intervention in all of the cases before this Court that appeal the FCC’s order. They are filing an identical

¹ The “San Jose Petitioners” are San Jose, California; Arcadia, California; Bellevue, Washington; Burien, Washington; Burlingame, California; City of Culver City, California; Town of Fairfax, California; City of Gig Harbor, Washington; City of Issaquah, Washington; City of Kirkland, Washington; City of Las Vegas, Nevada; City of Los Angeles, California; County of Los Angeles, California; City of Monterey, California; City of Ontario, California; City of Piedmont, California; City of Portland, Oregon; City of San Jacinto, California; City of Shafter, California; and City of Yuma, Arizona.
Motion in all the cases as a matter of caution, since the cases are not yet consolidated.

Counsel for San Jose Petitioners has contacted counsel for the other parties listed in the docket of this case and is authorized to make the following representations. The following parties support the motion to transfer: the City of Seattle, Washington; the City of Tacoma, Washington; the City of Coconut Creek, Florida; the City of Lacey, Washington; the City of Turnwater, Washington; the Colorado Communications Alliance; Rainier Communications; the County of Thurston, Washington; the City of New York, New York; the City of Huntington Beach, California; the League of Oregon Cities; the League of California Cities; the League of Arizona Cities and Towns; the City of Bakersfield, California; the City of Rancho Palos Verdes, California; the City of Eugene, Oregon; the City of Huntsville, Alabama; the City of Bowie, Maryland; the City of Westminster, Maryland; and the County of Marin, California. The following parties oppose the motion to transfer: the FCC; Sprint Corporation; Verizon Communications, Inc.; CTIA; Puerto Rico Telephone Company, Inc.; and the Competitive Carriers Association. The Department of Justice takes no position on the transfer motion at this time.
Background

San Jose Petitioners are one of six groups seeking review of an FCC order released in September 2018: *In the Matter of Accelerating Wireless Broadband by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, FCC 18-133 (rel. Sep. 27, 2018) (“September Order”). The September Order was published in the Federal Register on October 15, 2018. *See* 83 Fed. Reg. 51867. Six petitions were filed in four different courts of appeals—three in the Ninth, and one each in the First, Second, and this Circuit—within ten days triggering the MDL lottery. The cases were filed on October 24 and 25, 2018 and received by the FCC on October 25, 2018. As a result of the lottery process, the case was consolidated in this Court.

Currently pending in the Ninth Circuit and Eleventh Circuit are petitions for review of an FCC order arising from the same administrative docket, based upon the same record, and on which the FCC relies as legal foundation for the matter before this Court. In August 2018, the FCC issued *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Report and Order and Declaratory Ruling, FCC 18-111 (rel. Aug. 3, 2018) (“August Order”). The August Order was published in the Federal Register on September 14, 2018. *See* 83 Fed. Reg. 46812. No one sought judicial review of the August Order during the initial 10-day lottery period. On October 2, 2018, the
City of Portland, Oregon filed a petition for review of the August Order in the Ninth Circuit. *City of Portland v. FCC*, 9th Cir. 18-72689. On October 18, 2018, American Electric Power Service Corporation filed a petition for review in the Eleventh Circuit. *See American Electric Power Service Corp. v. FCC*, 11th Cir. No. 18-14408. The former appeal addressed the portion of the August Order concerning local and state authority to control the placement of wireline and wireless facilities. The latter addressed the unrelated issue of the terms and conditions under which companies may themselves perform “make-ready” work on FCC-regulated utility poles. On October 30, 2018, the FCC moved to transfer the Eleventh Circuit appeal to the Ninth Circuit pursuant to 28 U.S.C. § 2112(a)(5). That motion is currently pending before the Eleventh Circuit.

**Argument**

The Ninth Circuit is the proper venue for the six petitions currently pending before this Court. Pursuant to 28 U.S.C. § 2112(a)(1), when a petition for review is not filed within ten days after the issuance of an order, but instead filed after this ten-day window, the agency must “file the record in the court in which proceedings with respect to the order were first instituted.” If petitions for review of the “same order” are subsequently filed in other courts of appeal, those courts “shall transfer those proceedings to the court in which the record is so filed.” 28 U.S.C. § 2112(a)(5). Furthermore, petitions challenging different orders will be treated as
the “same order” if they “are associated with the same dockets, arise out of the same administrative proceeding, and govern aspects of a single agency undertaking to implement . . . provisions in the Telecommunications Act of 1996 . . . .” *Bell Atlantic Tel. Cos. v. FCC*, Nos. 96-1333, 96-1337, 1996 WL 734326, at *1 (D.C. Cir. Nov. 25, 1996). “The public policy underlying section 2112(a) requires that it be ‘be liberally applied to permit review by a single court of closely related matters where appropriate for sound judicial administration.’” *See American Civil Liberties Union*, 486 F.2d 411, 414 (quoting *Eastern Air Lines, Inc. v. C.A.B.*, 354 F.2d 507, 511 (D.C. Cir. 1965)).

Here, the August Order and September Order can be treated as the same order. Both orders are associated with the same dockets, arise out of the same administrative record,² and govern aspects of an agency undertaking intended to accelerate deployment of wireline and wireless infrastructure. “Any other construction would result in two courts reviewing at least some portions of the same administrative record.” *Bell Atlantic*, 1996 WL 734326, at *1; *see also American Civil Liberties Union v. FCC*, 486 F.2d 411, 414 (D.C. Cir. 1973) (holding petitions challenging different orders were to be treated as the “same order” for purposes of § 2112(a) because “the orders were issued during the course

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² The records, to the extent that they are different, are different because entities did file *ex parte* comments between the time of the adoption of the August and September Orders.
of the same proceeding and [we]re to be reviewed on the same record made in [the same docket].”). Because petitions challenging the August Order and the September Order may be treated as the same order for purposes of determining where the appeal should be heard, the Court must next look to see when these petitions were filed to determine where the agency must file the record and where all related petitions for judicial review must be transferred.

A review of the timing of the various filings shows that the Ninth Circuit is the proper venue. Portland’s petition in the Ninth Circuit was the first to be filed on October 2, 2018. The MDL wasn’t triggered until nearly three weeks later. Thus, because the Ninth Circuit was the court in which proceedings were “first instituted,” that is the Court in which the FCC must file the record from which both the August Order and September Order arise and this Court should accordingly transfer the petitions challenging the September Order to the Ninth Circuit. *See* 28 U.S.C. § 2112(a)(1); 28 U.S.C. § 2112(a)(5).

Furthermore, it will also be in the interests of the justice for this Court to transfer to the Ninth Circuit. First, the September Order under review in this Court expressly and repeatedly relies on the August Order. *See, e.g.*, August Order at pp. 17 n. 84, 18 n.87, 50 n.272. One of the purposes of the Hobbs Act is to vest “an appellate panel rather than a single district judge with the power of agency review,” and to allow a “uniform, nationwide interpretation of the federal statute
by the centralized expert agency . . . .” *Mais v. Gulf Coast Collection Bureau, Inc*, 768 F.3d 1110, 1119 (11th Cir. 2014). Transferring the cases ensures that the decision of the Ninth Circuit on the Third Report and Order and Declaratory Ruling and the decision on the Declaratory Ruling and Third Report and Order will be consistent.

One of the central issues presented in the petition lodged by the City of San Jose and in the *Portland* case is the meaning of the phrase “prohibit or have the effect of prohibiting,” which appears in 47 U.S.C. Section 253 and 47 U.S.C. Section 332(c)(7). In *NCTA v. Brand X*, 545 U.S. 967 (2005), the Supreme Court noted that a Court of Appeals “prior judicial construction of a statute trumps an agency construction otherwise entitled to Chevron deference only if the prior court decision holds that its construction follows from the unambiguous terms of the statute . . . .” *Id.* at 982. The Ninth Circuit adopted an interpretation of the phrase “prohibit or effectively prohibit” based on the unambiguous terms of the statutes in *Sprint Telephony PCS, L.P. v. County of San Diego*, 543 F.3d 571 (9th Cir. 2008), and that interpretation was ignored by the FCC in adopting the Order now before the Court. August Order at ¶¶ 34–35. The Ninth Circuit is in the best position to determine if (as we believe is clearly the case) the Order improperly ignored the binding interpretation of the Circuit in issuing the Order that is at issue here.
Finally, it is at least worth noting that, as to appeals before this Court, states and their subdivisions’ interests are far more affected by this Order than are the interests of other petitioners. We suspect that the arguments will center around the issues raised by local government petitioners, and those issues will substantially overlap those raised in *Portland*.

**Conclusion**

For the above stated reasons, San Jose Petitioners believe this Court must transfer all cases appealing the FCC’s September Order to the Ninth Circuit.

Respectfully submitted,

/s/ Joseph Van Eaton
Joseph Van Eaton
Best Best & Krieger LLP
2000 Pennsylvania Ave, N.W. Suite 5300
Washington, DC  20006
Phone: (202) 785-0600
Fax: (202) 785-1234

*Counsel for San Jose Petitioners*

November 29, 2018
CERTIFICATE OF WORD COUNT

Pursuant to Federal Rules of Appellate Procedure 27(d)(2)(A), this motion, produced using a computer, contains 1,822 words.
CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2018 I filed the foregoing Motion to
Transfer with the Clerk of the United States Court of Appeals for the Tenth Circuit
through the CM/ECF system. Participants in the cases are all registered CM/ECF
and will be served by the CM/ECF system.

Respectfully submitted,

/s/ Joseph Van Eaton
Joseph Van Eaton
Best Best & Krieger LLP
2000 Pennsylvania Ave, N.W.,
Suite 5300
Washington, DC 20006
Phone: (202) 785-0600
Fax: (202) 785-1234

Counsel for Petitioners

November 29, 2018
EXHIBIT B
BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA


FILED
PUBLIC UTILITIES COMMISSION
OCTOBER 25, 2018
SAN FRANCISCO, CALIFORNIA
RULEMAKING 18-10-007

ORDER INSTITUTING RULEMAKING

Summary

The Commission opens this Order Instituting Rulemaking (OIR) to implement the provisions of Senate Bill 901 related to electric utility wildfire mitigation plans. This OIR will provide guidance on the form and content of the initial wildfire mitigation plans, provide a venue for review of the initial plans, and develop and refine the content of and process for review and implementation of wildfire mitigation plans to be filed in future years.

1. Background

Devastating wildfires have become a regular occurrence in California. Senate Bill (SB) 901 starkly recites a litany of statistics showing that wildfires have grown larger and more intense over the last several decades, resulting in loss of life and property, ecological devastation, increases in future fire risk, and

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1 Stats. 2018, Ch. 626.
significant greenhouse gas emissions. In response, SB 901 attempts to address these changes by directing a variety of actions in multiple contexts.  

New provisions of Public Utilities Code Section 8386, enacted as part of SB 901, require all California electric utilities to prepare and submit wildfire mitigation plans that describe the utilities’ plans to prevent, combat and respond to wildfires affecting their service territories.  

This proceeding focuses on this requirement, and is the vehicle for the review and implementation of the electric utilities’ wildfire mitigation plans. 

The Commission-jurisdictional electric corporations that are required to participate in this proceeding are Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), Liberty Utilities/CalPeco Electric (Liberty), Bear Valley Electric Service, a division of Golden State Water Company (Bear Valley), and Pacific Power, a division of PacifiCorp (PacifiCorp). The Commission also invites the input of all stakeholders in guiding our approach. The Commission has long worked with the California Department of Forestry and Fire Protection (CAL FIRE) on improving wildfire mitigation, and based on that work and input from the parties, this rulemaking will include development of proposed guidance for what the electric utilities’ wildfire mitigation plans should contain.

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2 Many of the actions directed to be taken by SB 901 are outside the purview of this Commission, such as changes to timber harvest plans, and are not addressed in this Order Instituting Rulemaking (OIR).

3 The required elements of the wildfire mitigation plans under Section 8386 are set forth in Appendix A.

4 SB 901 included other Commission-related provisions in addition to the wildfire mitigation plans. Those provisions will be addressed in other proceedings.
The provisions of SB 901 relating to the Commission’s review and implementation of wildfire mitigation plans include short turnaround times for much of the necessary action by the Commission. Accordingly, at times this proceeding may move very quickly, with either shortened deadlines or fewer rounds of input. All parties should be prepared to act on short deadlines and be as cooperative and forthcoming as possible so we can meet the legislative mandate, consistent with due process.

This rulemaking is the first step in implementing one central aspect of the sweeping requirements of SB 901. Because of California’s recent experience that the wildfire season is beginning sooner and ending later, the Commission determines that it is important to have the initial set of electric utility wildfire mitigation plans approved as close to the beginning of summer 2019 as possible. The Commission does not expect to achieve perfection in the short time that will be available for the initial review and implementation of the first wildfire mitigation plans, but will work with the parties to make the best use of that time to develop useful wildfire mitigation plans. The Commission will also use this proceeding to further refine its approach to the review and implementation of subsequent electric utility wildfire mitigation plans.

2. Preliminary Scoping Memo  
The Commission will conduct this rulemaking in accordance with Article 6 of the Commission's Rules of Practice and Procedure, “Rulemaking.” As required by Rule 7.1(d), this OIR includes a preliminary scoping memo as set

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5 All references to “Rules” are to the Commission’s Rules of Practice and Procedure unless otherwise indicated.
forth below, and preliminarily determines the category of this proceeding and the need for hearing.

2.1. Issues

The scope of this proceeding is limited to only the wildfire mitigation plans of California’s electric utilities required by Section 8386 as modified by SB 901. The scope of this proceeding does not encompass the topic of wildfire mitigation measures generally, which is an issue much broader than the utilities’ wildfire mitigation plans, and involves non-utility actors and other federal, state, and local decision makers. The scope of this proceeding also does not include utility recovery of costs related to wildfire mitigation plans, which Section 8386 requires be addressed in general rate case applications. The Commission’s approval of wildfire mitigation plans in this proceeding is not a substitute – implicit or explicit – for the Commission’s review in a general rate case whether the associated costs are just and reasonable. The Commission will not consider or approve explicit expenditures in wildfire mitigation plans in this proceeding; however, in evaluating the proposed plans the Commission may weigh the potential cost implications of measures proposed in the plans. This proceeding is accordingly categorized as ratesetting.

The focus of this proceeding will be on the language in Public Utilities Code Section 8386, as modified by SB 901. The full text of amended Section 8386 is set forth in Appendix A. Section 8386 contains a detailed list of the required contents of the plans, and the items to be included in the plans are all within the scope of the proceeding. In this proceeding the Commission will consider,

6 “The commission shall consider whether the cost of implementing each electrical corporation’s plan is just and reasonable in its general rate case application.” (Section 8386(g).)
among other things, how to interpret and apply the statute’s list of required plan elements, as well as whether additional elements beyond those required in statute should be included in the wildfire mitigation plans. Parties will be asked for specific and detailed input on their interpretation of Section 8386, including their views on the meaning of the provisions listed for inclusion in wildfire mitigation plans. Other provisions of SB 901 that affect our consideration, interpretation, or approval of the wildfire mitigation plans may also be within the scope of this proceeding.7

Section 8386 contains a three-month window for Commission approval of the wildfire mitigation plans for all respondents. This timeframe is extremely ambitious for a matter of this magnitude and far shorter than typical deadlines applicable to Commission proceedings. The scope and schedule for this proceeding will reflect this short statutory deadline for approval of the plans. The initial wildfire mitigation plans will be filed in this proceeding, pursuant to a schedule and direction to be set forth in more detail in the Scoping Memo. An opportunity to comment on the directions for the wildfire mitigation plans will be provided after the Scoping Memo is issued. The respondent utilities are directed to work cooperatively with Commission staff to ensure that the filed plans are complete and clearly organized.

This proceeding is also the vehicle for development and refinement of guidance for the content of future wildfire mitigation plans. After the

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7 While SB 901 also addresses utilities’ compliance with their approved wildfire mitigation plans and penalties for non-compliance, those issues will not be addressed in this proceeding at this time, but are likely to be part of a separate proceeding. An issue that may be considered later in this proceeding is whether, and if so, how, the Commission may decide to stagger the compliance periods for each electric utility. (Section 8386(b).)
Commission approves the initial wildfire mitigation plans, the Commission will determine how it will address subsequent rounds of annual plans. We expect to learn from our experience addressing the initial set of plans filed in this proceeding, and use that experience to inform our approach to future plans. The categorization of future phases of this proceeding, including establishing rules for wildfire mitigation plans, may be revisited at a later date. Any statutory changes related to wildfire mitigation plans may also be considered in this proceeding.

3. **Categorization; Ex Parte Communications; Need for Hearing**

   Rule 7.1(d) of the Commission’s Rules of Practice and Procedure requires that an order instituting rulemaking preliminarily determine the category of the proceeding and the need for hearing. As a preliminary matter, we determine that this proceeding is categorized as ratesetting. Accordingly, *ex parte* communications are subject to the restrictions and reporting requirements set forth in Article 8 of the Rules.

   We are also required to preliminarily determine if hearings are necessary. We preliminarily determine that hearings are not necessary.

   **3.1. Preliminary Schedule**

   The preliminary schedule for initial activities in this proceeding is as follows:

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8 For example, the Commission could adopt a standardized template for wildfire mitigation plans.
## SCHEDULE

<table>
<thead>
<tr>
<th>EVENT</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comments on OIR filed and served</td>
<td>10 days from issuance of OIR</td>
</tr>
<tr>
<td>Prehearing conference</td>
<td>November 14, 2018, 10:30 a.m., Commission hearing room A, 505 Van Ness Avenue, San Francisco.</td>
</tr>
<tr>
<td>Scoping memo</td>
<td>December 2018</td>
</tr>
<tr>
<td>Comments on instructions for initial Plans</td>
<td>10 days after Scoping Memo issued</td>
</tr>
<tr>
<td>Wildfire mitigation plans filed</td>
<td>February 2019</td>
</tr>
<tr>
<td>Opening comments on initial wildfire</td>
<td>20 days after Plan filing</td>
</tr>
<tr>
<td>mitigation plans</td>
<td></td>
</tr>
<tr>
<td>Reply comments on initial wildfire</td>
<td>10 days after opening comments</td>
</tr>
<tr>
<td>mitigation plans</td>
<td></td>
</tr>
<tr>
<td>Decision on initial wildfire mitigation</td>
<td>Three months from Plan filing/service, unless extended pursuant to SB 901, Pub. Utils. Code § 8386(e)⁹</td>
</tr>
<tr>
<td>plans</td>
<td></td>
</tr>
</tbody>
</table>

The prehearing conference (PHC) will be held for the purposes of (1) taking appearances, (2) discussing schedule and process, and (3) informing the scoping memo. The PHC shall be held beginning at 10:30 a.m. on November 14, 2018 in the Commission Courtroom, 505 Van Ness Avenue, San Francisco, California.

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⁹ Section 8386(e) provides that “The commission shall approve each plan within three months of its submission, unless the commission makes a written determination, including reasons supporting the determination that the three-month deadline cannot be met and issues an order extending the deadline.”
The assigned Commissioner or the assigned Administrative Law Judge(s) (ALJ) may change the schedule to promote efficient and fair administration of this proceeding.

If there are any workshops or other public meetings in this proceeding, notice of such workshops will be posted on the Commission’s Daily Calendar to inform the public that a decision-maker or an advisor may be present at those meetings or workshops. Parties shall check the Daily Calendar regularly for such notices.

4. **Respondents**

   PG&E, SCE, SDG&E, Liberty, Bear Valley and PacifiCorp are named as respondents to this proceeding.

5. **Service of OIR**

   This OIR shall be served on all respondents.

   In addition, in the interest of broad notice, this OIR will be served on the official service lists for the following proceedings:

   - Rulemaking 15-05-006, Order Instituting Rulemaking to Develop and Adopt Fire-Threat Maps and Fire-Safety Regulations;


   - Application 15-09-010, Application of San Diego Gas & Electric Company for Authorization to Recover Costs Related to the 2007 Southern California Wildfires Recorded in the Wildfire Expense Memorandum Account (WEMA);
- Application 17-07-011, Application of Pacific Gas and Electric Company for Authority to Establish the Wildfire Expense Memorandum Account;

- Application 18-04-001, Application of Southern California Edison Company to Establish the Wildfire Expense Memorandum Account;

- Application 18-09-002, Application of Southern California Edison Company for Approval of Its Grid Safety and Resiliency Program; and


In addition, in the interest of broad notice, this OIR will be served on the following agencies named in SB 901, and organizations representing local governments:

- State Board of Forestry and Fire Protection (CAL FIRE)
- California Energy Commission
- State Air Resources Control Board
- California Office of Emergency Services
- California Department of Fish and Wildlife
- California Infrastructure and Economic Development Bank
- California Office of Planning and Research
- California Department of Parks and Recreation
- California State Association of Counties
- League of California Cities
- California Native American Heritage Commission
- California Municipal Utilities Association
Service of the OIR does not confer party status or place any person who has received such service on the Official Service List for this proceeding, other than respondents. Instructions for obtaining party status or being placed on the official service list are given below.

6. **Filing and Service of Comments and Other Documents**
   
   Filing and service of comments and other documents in the proceeding are governed by the Commission’s Rules of Practice and Procedure.

7. **Addition to Official Service List**
   
   Addition to the official service list is governed by Rule 1.9(f) of the Commission’s Rules of Practice and Procedure.

   Respondents are parties to the proceeding (see Rule 1.4(d)) and will be immediately placed on the official service list.

   Any person will be added to the “Information Only” category of the official service list upon request, for electronic service of all documents in the proceeding, and should do so promptly in order to ensure timely service of comments and other documents and correspondence in the proceeding. *(See Rule 1.9(f).)* The request must be sent to the Process Office by e-mail (process_office@cpuc.ca.gov) or letter (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California  94102). Please include the Docket Number of this rulemaking in the request.

   Persons who file comments on this OIR become parties to the proceeding (see Rule 1.4(a)(2)) and will be added to the “Parties” category of the official service list upon such filing. *In order to assure service of comments and other documents and correspondence in advance of obtaining party status, persons should*
promptly request addition to the “Information Only” category as described above; they will be removed from that category upon obtaining party status.

8. **Subscription Service**

Persons may monitor the proceeding by subscribing to receive electronic copies of documents in this proceeding that are published on the Commission’s website. There is no need to be on the official service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission’s website at http://subscribecpuc.cpuc.ca.gov/.

9. **Intervenor Compensation**

Intervenor Compensation is permitted in this proceeding. Any party that expects to claim intervenor compensation for its participation in this Rulemaking must file a timely notice of intent to claim intervenor compensation. (See Rule 17.1(a)(2).) Intervenor compensation rules are governed by §§ 1801 et seq. of the Public Utilities Code. Parties new to participating in Commission proceedings may contact the Commission’s Public Advisor.

10. **Public Advisor**

Any person or entity interested in participating in this rulemaking who is unfamiliar with the Commission’s procedures should contact the Commission’s Public Advisor in San Francisco at (415) 703-2074 or (866) 849-8390 or e-mail public.advisor@cpuc.ca.gov. The TTY number is (866) 836-7825.

Therefore, **IT IS ORDERED** that:

1. This Order Instituting Rulemaking is adopted pursuant to Senate Bill 901, Stats. 2018, Ch. 626 and Rule 6.1 of the Commission’s Rules of Practice and Procedure.

2. The preliminary categorization is ratesetting.
3. The preliminary determination is that a hearing is not needed.
4. The preliminarily scope of issues is as stated above.
5. A prehearing conference is set for 10:30 a.m. on November 14, 2018 at San Francisco, California.
6. The preliminary schedule for the proceeding is set forth in Section 3.1 above.
8. Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, Liberty Utilities (CalPeco Electric), Bear Valley Electric Service, a division of Golden State Water Company, and Pacific Power, a division of PacifiCorp shall, and any other person may, file and serve comments of not more than 20 pages responding to this Order Instituting Rulemaking (OIR) not later than 10 days from the issuance of this OIR.
9. Comments on this Order Instituting Rulemaking should address the scope and schedule of this proceeding, and its interaction with other related proceedings.
10. The Executive Director will cause this Order Instituting Rulemaking to be served on all respondents and on the service lists for the following Commission proceedings: Rulemaking (R.) 15-05-006, R.15-06-009, Application (A.) 15-09-010, A.17-07-011, A.18-04-001, and A.18-09-002, A.08-12-021. In addition, the Executive Director will cause this Order Instituting Rulemaking to be served on the following agencies and organizations: State Board of Forestry and Fire

11. Any party that expects to claim intervenor compensation for its participation in this Rulemaking must timely file its notice of intent to claim intervenor compensation. *(See Rule 17.1(a)(2).)*

This order is effective today.

Dated October 25, 2018, at San Francisco, California.

MICHAEL PICKER
President
CARLA J. PETERMAN
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
Commissioners
Appendix A

Amended Section 8386
Each electrical corporation shall construct, maintain, and operate its electrical lines and equipment in a manner that will minimize the risk of catastrophic wildfire posed by those electrical lines and equipment. Each electrical corporation shall annually prepare and submit a wildfire mitigation plan to the commission for review and approval, according to a schedule established by the commission, which may allow for the staggering of compliance periods for each electrical corporation. The Department of Forestry and Fire Protection shall consult with the commission on the review of each wildfire mitigation plan. Prior to approval, the commission may require modifications of the plans. Following approval, the commission shall oversee compliance with the plans pursuant to subdivision (h).

The wildfire mitigation plan shall include:

1. An accounting of the responsibilities of persons responsible for executing the plan.
2. The objectives of the plan.
3. A description of the preventive strategies and programs to be adopted by the electrical corporation to minimize the risk of its electrical lines and equipment causing catastrophic wildfires, including consideration of dynamic climate change risks.
4. A description of the metrics the electrical corporation plans to use to evaluate the plan’s performance and the assumptions that underlie the use of those metrics.
5. A discussion of how the application of previously identified metrics to previous plan performances has informed the plan.
6. Protocols for disabling reclosers and deenergizing portions of the electrical distribution system that consider the associated impacts on public safety, as well as protocols related to mitigating the public safety impacts of those protocols, including impacts on critical first responders and on health and communication infrastructure.
7. Appropriate and feasible procedures for notifying a customer who may be impacted by the deenergizing of electrical lines. The procedures shall consider the need to notify, as a priority, critical first responders, health care facilities, and operators of telecommunications infrastructure.
8. Plans for vegetation management.
10. A list that identifies, describes, and prioritizes all wildfire risks, and drivers for those risks, throughout the electrical corporation’s service territory, including all relevant wildfire risk and risk mitigation information that is part of Safety Model Assessment Proceeding and Risk Assessment Mitigation Phase filings. The list shall include, but not be limited to, both of the following:
(A) Risks and risk drivers associated with design, construction, operations, and maintenance of the electrical corporation’s equipment and facilities.
(B) Particular risks and risk drivers associated with topographic and climatological risk factors throughout the different parts of the electrical corporation’s service territory.

(11) A description of how the plan accounts for the wildfire risk identified in the electrical corporation’s Risk Assessment Mitigation Phase filing.

(12) A description of the actions the electrical corporation will take to ensure its system will achieve the highest level of safety, reliability, and resiliency, and to ensure that its system is prepared for a major event, including hardening and modernizing its infrastructure with improved engineering, system design, standards, equipment, and facilities, such as undergrounding, insulation of distribution wires, and pole replacement.

(13) A showing that the utility has an adequate sized and trained workforce to promptly restore service after a major event, taking into account employees of other utilities pursuant to mutual aid agreements and employees of entities that have entered into contracts with the utility.

(14) Identification of any geographic area in the electrical corporation’s service territory that is a higher wildfire threat than is currently identified in a commission fire threat map, and where the commission should consider expanding the high fire threat district based on new information or changes in the environment.

(15) A methodology for identifying and presenting enterprise-wide safety risk and wildfire-related risk that is consistent with the methodology used by other electrical corporations unless the commission determines otherwise.

(16) A description of how the plan is consistent with the electrical corporation’s disaster and emergency preparedness plan prepared pursuant to Section 768.6, including both of the following:
(A) Plans to prepare for, and to restore service after, a wildfire, including workforce mobilization and prepositioning equipment and employees.
(B) Plans for community outreach and public awareness before, during, and after a wildfire, including language notification in English, Spanish, and the top three primary languages used in the state other than English or Spanish, as determined by the commission based on the United States Census data.

(17) A statement of how the electrical corporation will restore service after a wildfire.

(18) Protocols for compliance with requirements adopted by the commission regarding activities to support customers during and after a wildfire, outage reporting, support for low-income customers, billing adjustments, deposit waivers, extended payment plans, suspension of disconnection and nonpayment fees, repair processing and timing, access to utility representatives, and emergency communications.
(19) A description of the processes and procedures the electrical corporation will use to do all of the following:
(A) Monitor and audit the implementation of the plan.
(B) Identify any deficiencies in the plan or the plan’s implementation and correct those deficiencies.
(C) Monitor and audit the effectiveness of electrical line and equipment inspections, including inspections performed by contractors, carried out under the plan and other applicable statutes and commission rules.
(20) Any other information that the commission may require.
(d) The commission shall accept comments on each plan from the public, other local and state agencies, and interested parties, and verify that the plan complies with all applicable rules, regulations, and standards, as appropriate.
(e) The commission shall approve each plan within three months of its submission, unless the commission makes a written determination, including reasons supporting the determination, that the three-month deadline cannot be met and issues an order extending the deadline. Each electrical corporation’s approved plan shall remain in effect until the commission approves the electrical corporation’s subsequent plan. At the time it approves each plan, the commission shall authorize the utility to establish a memorandum account to track costs incurred to implement the plan.
(f) The commission’s approval of a plan does not establish a defense to any enforcement action for a violation of a commission decision, order, or rule.
(g) The commission shall consider whether the cost of implementing each electrical corporation’s plan is just and reasonable in its general rate case application. Nothing in this section shall be interpreted as a restriction or limitation on Article 1 (commencing with Section 451) of Chapter 3 of Part 1 of Division 1.
(h) The commission shall conduct an annual review of each electrical corporation’s compliance with its plan as follows:
(1) Three months after the end of an electrical corporation’s initial compliance period as established by the commission pursuant to subdivision (b), and annually thereafter, each electrical corporation shall file with the commission a report addressing its compliance with the plan during the prior calendar year.
(2) (A) Before March 1, 2021, and before each March 1 thereafter, the commission, in consultation with the Department of Forestry and Fire Protection, shall make available a list of qualified independent evaluators with experience in assessing the safe operation of electrical infrastructure.
(B) (i) Each electrical corporation shall engage an independent evaluator listed pursuant to subparagraph (A) to review and assess the electrical corporation’s compliance with its plan. The engaged independent evaluator shall consult with, and operate under the direction of, the Safety and Enforcement Division of the commission. The independent evaluator shall issue a report on July 1 of each year
in which a report required by paragraph (1) is filed. As a part of the independent evaluator’s report, the independent evaluator shall determine whether the electrical corporation failed to fund any activities included in its plan.

(ii) The commission shall consider the independent evaluator’s findings, but the independent evaluator’s findings are not binding on the commission, except as otherwise specified.

(iii) The independent evaluator’s findings shall be used by the commission to carry out its obligations under Article 1 (commencing with Section 451) of Chapter 3 of Part 1 of Division 1.

(iv) The independent evaluator’s findings shall not apply to events that occurred before the initial plan is approved for the electrical corporation.

(3) The commission shall authorize the electrical corporation to recover in rates the costs of the independent evaluator.

(4) The commission shall complete its compliance review within 18 months after the submission of the electrical corporation’s compliance report.

(i) An electrical corporation shall not divert revenues authorized to implement the plan to any activities or investments outside of the plan.

(j) Each electrical corporation shall establish a memorandum account to track costs incurred for fire risk mitigation that are not otherwise covered in the electrical corporation’s revenue requirements. The commission shall review the costs in the memorandum accounts and disallow recovery of those costs the commission deems unreasonable.

(End of Appendix A)
EXHIBIT C
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA


Rulemaking 18-10-007 (Filed 10/25/18)

COMMENTS OF CITY OF LAGUNA BEACH
TO RULEMAKING 18-10-007

David L. Huard
Lilly B. McKenna
Manatt, Phelps & Phillips, LLP
One Embarcadero Center, 30th Floor
San Francisco, CA 94111
Tel: (415) 291-7400
DHuard@manatt.com
LMckenna@manatt.com

Attorneys for City of Laguna Beach

Dated: November 5, 2018
COMMENTS OF CITY OF LAGUNA BEACH TO RULEMAKING 18-10-007

I. INTRODUCTION


II. COMMENTS

The Commission opened this Rulemaking to implement the provisions of Senate Bill (SB) 901 related to electric utility wildfire mitigation plans. Section 8386 of the Public Utilities Code, as modified by SB 901, requires electrical corporations to annually prepare and submit a wildfire mitigation plan to the Commission for review and approval.1 The Rulemaking will provide guidance on the form and content of the initial wildfire mitigation plans, provide a venue for review of the initial plans, and develop and refine the content of and process for review and implementation of wildfire mitigation plans to be filed in future years.2

Section 8386 requires that wildfire mitigation plans include “A description of the actions the electrical corporation will take to ensure its system will achieve the highest level of safety, reliability, and resiliency, and to ensure that its system is prepared for a major event, including hardening and modernizing its infrastructure with improved engineering, system design, standards, equipment, and facilities, such as undergrounding, insulation of distribution wires, and pole replacement.”

The City of Laguna Beach encourages the Commission to ensure that the wildfire mitigation plans include electrical undergrounding as a mitigation measure to be implemented, and not simply used as a measuring stick for other less effective mitigation measures. Undergrounding is a crucial fire prevention tool that, while costly, can in certain locales provide

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1 All further section references are to the Public Utilities Code unless otherwise noted.
the only reliable mitigation tool that will prevent significant loss of life and property from wildfire risk. California is facing an increasing number of fatal wildfires and an extended wildfire “season”, and undergrounding can no longer be discounted as a measure that is too costly to implement.

A. Laguna Beach’s Interest in the Proceeding

Since 2007, there have been at least four fires caused by overhead electrical utilities in Laguna Beach. These fires were in or adjacent to 16,000 acres of wildland open space. Indeed, one downed power line effectively closed Laguna Canyon Road to traffic during the annual Pageant of the Masters, effectively stranding thousands of visitors within the City.

Luckily, due to weather conditions and fast Fire Department response, none of these fires resulted in a disaster similar to the 1993 wildfire which destroyed 441 homes and over 14,000 acres. However, the recurrent fire history shows Laguna Beach’s particular vulnerability to wildfire risk. Existing measures such as tree trimming or hardening infrastructure have proved inadequate in eliminating the severe fire threat to the Laguna Beach Community. Because of this fire history, the City of Laguna Beach has been pursuing placing electrical utilities underground as the ultimate solution to mitigate against electrical caused fires.

B. The Public Utilities Code Section 8386, as Modified by SB 901 Includes Undergrounding as a Method to “…. Achieve the Highest Level of Safety, Reliability, and Resiliency…..”

The City of Laguna Beach is concerned that the wildfire mitigation plans submitted and reviewed through this proceeding will not include electrical undergrounding as a mitigation measure that will be implemented as part of the plan, but that instead undergrounding will be discussed in the plan as a mere measuring stick for other less effective mitigation measures.

The language of Public Utilities Code Section 8386, as modified by SB 901 in section c (12) states that the wildfire mitigation plan must provide “A description of the actions the electrical corporation will take to ensure its system will achieve the highest level of safety, reliability, and resiliency, and to ensure that its system is prepared for a major event, including hardening and modernizing its infrastructure with improved engineering, system design, standards, equipment, and facilities, such as undergrounding, insulation of distribution wires, and pole replacement.”

The City of Laguna Beach strongly encourages the Commission to review the mitigation plans for mitigation measures that will achieve the highest level of safety, reliability and resiliency. The City of Laguna Beach believes that in many instances electrical undergrounding achieves the highest level of safety.

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3 The 1993 wildfire was not caused by electrical sources. The fire details were obtained from a report to the Laguna Beach City Council on March 22, 2016.
4 R.18-10-007, Appendix A Section 8386 excerpt from c (12).
C. Undergrounding Evaluation Should Consider Other Value-Added Factors

The City of Laguna Beach believes that electrical undergrounding is the ultimate mitigation measure for protecting the electrical system from wildfire while also protecting the electrical system from igniting wildfires that are caused by wind, downed utility poles and wires, contact with trees, limbs, flying debris, accidental vehicle contact, among other issues with overhead lines.

The City of Laguna Beach encourages the Commission to analyze additional benefit factors for undergrounding including: eliminating pole failure, eliminating accidental vehicle contact, eliminating pole mounted equipment failure, eliminating downed poles and wires from blocking emergency response vehicles and evacuation routes, and other safety benefits such as a new underground system would not require future Public Safety Power Shutoff (PSPS) protocol. These additional benefits would provide additional safety on a daily basis and not just during wildfire or extreme weather events.

If costs are used as a factor in the analysis, the City of Laguna Beach encourages the Commission to evaluate life cycle costs such as the benefits of operating a brand new underground system versus hardening an aging overhead system, and the cost to the community of a PSPS event. It also goes without saying that any cost analysis will inevitably fail to capture the immeasurable loss of lives that have resulted from several of California’s recent wildfires, including the Carr and Tubbs fire in 2018 and 2017. The Commission, and the electrical corporations, must take a bigger picture review when considering the costs and utility of undergrounding electrical infrastructure.

III. CONCLUSION

In summary, the City of Laguna Beach encourages the Commission to:

i. Verify that the mitigation plans include electrical undergrounding as a mitigation measure to be implemented and not simply used as a measuring stick for other less effective mitigation measures;

ii. Review the mitigation plans for achieving the highest level of safety, reliability, and resiliency;

iii. Evaluate the mitigation plans based upon holistic factors that include the many other benefits of electrical undergrounding such as downed lines not blocking emergency response or emergency evacuation routes, and that an underground system will not require a PSPS event.
November 5, 2018

Respectfully submitted,

MANATT, PHELPS & PHILLIPS, LLP

By: /s/ David L. Huard

David L. Huard
Lilly B. McKenna
Manatt, Phelps & Phillips, LLP
One Embarcadero Center, 30th Floor
San Francisco, CA 94111
(415) 291-7400
DHuard@manatt.com
LMcKenna@manatt.com

Attorneys for City of Laguna Beach
VERIFICATION

I am the attorney for the City of Laguna Beach herein; said party is absent from the County of San Francisco, California, where I have my office, and I make this verification for said party for that reason. The statements in the foregoing document, and in the Comments of The City of Laguna Beach to Rulemaking 18-10-007, dated November 5, 2018, are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

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

Executed on November 5, 2018 at San Francisco, California.

/s/ David L. Huard

David L. Huard
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Approval of Its Grid Safety and Resiliency Program.

Application 18-09-002
(Filed 9/10/18)

PROOF OF SERVICE

COMMENTS OF CITY OF LAGUNA BEACH TO RULE MAKING 18-10-007

November 5, 2018

David L. Huard
Lilly B. McKenna
Manatt, Phelps & Phillips, LLP
One Embarcadero Center, 30th Floor
San Francisco, CA 94111
Tel: (415) 291-7400
Fax: (415) 291-7474
dhuard@manatt.com
lmckenna@manatt.com

Attorneys for City of Laguna Beach
PROOF OF SERVICE

I, Christopher J. McClintock, declare as follows:

I am employed in San Francisco County, San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is MANATT, PHELPS & PHILLIPS, LLP, One Embarcadero Center, 30th Floor, San Francisco, California 94111. On November 5, 2018 I served the within:

COMMENTS OF CITY OF LAGUNA BEACH TO RULE MAKING 18-10-007

on the interested parties in this action addressed as follows:

SEE ATTACHED SERVICE LIST

☑ (BY PUC E-MAIL SERVICE) By transmitting such document electronically from Manatt, Phelps & Phillips, LLP, San Francisco, California, to the electronic mail addresses listed below. I am readily familiar with the practice of Manatt, Phelps & Phillips, LLP for transmitting documents by electronic mail, said practice being that in the ordinary course of business, such electronic mail is transmitted immediately after such document has been tendered for filing. Said practice also complies with Rule 1.10(b) of the Public Utilities Commission of the State of California and all protocols described therein.

☑ (BY U.S. MAIL) By placing such document(s) in a sealed envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Manatt, Phelps & Phillips, LLP, San Francisco, California following ordinary business practice. I am readily familiar with the practice at Manatt, Phelps & Phillips, LLP for collection and processing of correspondence for mailing with the United States Postal Service, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on November 5, 2018, at San Francisco, California.

/s/ Christopher J. McClintock
Christopher J. McClintock
CALIFORNIA PUBLIC UTILITIES COMMISSION
Service Lists

PROCEEDING: R1810007 - OIR WILDLIFE MITIGAT
FILER: CPUC
LIST NAME: LIST
LAST CHANGED: NOVEMBER 5, 2018

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Back to Service Lists Index

Parties

RUSSELL G. WORDEN                         KEITH SWITZER
DIR - REGULATORY OPERS.                   BEAR VALLEY ELECTRIC SERVICE
SOUTHERN CALIFORNIA EDISON COMPANY        630 EAST FOOTHILL BLVD.
8631 RUSH STREET / PO BOX 800             SAN DIMAS, CA  91773
ROSEMEAD, CA  91770                       FOR: BEAR VALLEY ELECTRIC SERVICE, DIV
FOR: SOUTHERN CALIFORNIA EDISON COMPANY   OF GOLDEN STATE WATER COMPANY

KIRSTIE C. RAAGAS                         ERIK B. JACOBSON
REGULATORY COUNSEL                        REGULATORY RELATIONS
SAN DIEGO GAS & ELECTRIC COMPANY          PACIFIC GAS AND ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP32F            77 BEALE ST., MC B23A
SAN DIEGO, CA  92123                      SAN FRANCISCO, CA  94177
FOR: SAN DIEGO GAS & ELECTRIC COMPANY     FOR: PACIFIC GAS AND ELECTRIC COMPANY

DANIEL MARSH                              CYNTHIA HANSEN MIFSUD
MGR - RATES & REGULATORY AFFAIRS          ASSIST. GEN. COUNSEL
LIBERTY UTILITIES (CALPECO ELECTRIC) LLC   PACIFICORP
933 ELOISE AVENUE                         825 NE MULTNOMAH ST., STE. 1800
SOUTH LAKE TAHOE, CA  96150               PORTLAND, OR  97232
FOR: LIBERTY UTILITIES (CALPECOELECTRIC)  FOR: PACIFIC POWER, A DIV OF PACIFICORP

Information Only

JESSIE CROZIER                            JOAN WEBER
LUMINUS MANAGEMENT                        CALIF PUBLIC UTILITIES COMMISSION
1700 BROADWAY, 26TH FL.                   OFFICE OF THE SAFETY ADVOCATE
NEW YORK, NY  10019                      320 West 4th Street Suite 500
                                             Los Angeles, CA  90013
CALIFORNIA ENERGY MARKETS
425 DIVISADERO ST., STE 303
SAN FRANCISCO, CA  94117

PO BOX 770000; MC B23A
SAN FRANCISCO, CA  94177

RACHEL JONES
EAST BAY MUNICIPAL UTILITY DISTRICT
375 ELEVENTH STREET
OAKLAND, CA  94607

SAJI THOMAS PIERCE
EAST BAY MUNICIPAL UTILITY DISTRICT
375 11TH STREET
OAKLAND, CA  94607-4240

GREGG MORRIS
DIRECTOR
THE GREEN POWER INSTITUTE
2039 SHATTUCK AVE., SUITE 402
BERKELEY, CA  94704

PAUL SCHULMAN
SR RESEARCH FELLOW
CTR FOR CATASTROPHIC RISK MGNT
MILLS COLLEGE
UNIVERSITY OF CALIFORNIA
BERKELEY, CA  94720

AMY WARSHAUER
MGR - GOV'T & EXTERNAL AFFAIRS
FRONTIER COMMUNICATIONS
1201 K STREET, SUITE 1980
SACRAMENTO, CA  95814

AUDRA HARTMANN
PRINCIPAL
SMITH, WATTS & HARTMANN
925 L STREET, SUITE 220
SACRAMENTO, CA  95814

CHARLIE BORN
FRONTIER COMMUNICATIONS
1201 K STREET, STE. 1980
SACRAMENTO, CA  95814

NICK CRONENWETT
LEGISLATIVE ANALYST
CALIFORNIA STATE ASSOC. OF COUNTIES
1100 K STREET, STE 101
SACRAMENTO, CA  95814

STACI HEATON
REGULATORY AFFAIRS ADVOCATE
REGIONAL COUNCIL OF RURAL COUNTIES
1215 K ST., STE. 1650
SACRAMENTO, CA  95814

LYNN HAUG
ATTORNEY
ELLISON SCHNEIDER HARRIS & DONLAN LLP
2600 CAPITOL AVE., STE. 400
SACRAMENTO, CA  95816

JOY MASTACHE
SR. ATTORNEY - OFF. OF GEN. COUNSEL
SACRAMENTO MUNICIPAL UTILITY DISTRICT
6301 S STREET, MS A311
SACRAMENTO, CA  95817

KAREN NOREEN MILLS
SR. ATTORNEY
CALIFORNIA FARM BUREAU FEDERATION
2300 RIVER PLAZA DRIVE
SACRAMENTO, CA  95833

SARBJIT BAGRI
CALIF PUBLIC UTILITIES COMMISSION
OFFICE OF THE SAFETY ADVOCATE
180 Promenade Circle, Suite 115
Sacramento, CA  95834

CATHIE ALLEN
DIRECTOR, REGULATORY AFFAIRS
PACIFICORP
825 N. E. MULTNOMAH, SUITE 300
PORTLAND, OR  97232

HEIDEMARIE CASWELL
PACIFICORP
825 NE MULTNOMAH, STE. 1700
From: Robert Nelson <robert.nelson@rpvca.gov>
Sent: Tuesday, April 2, 2019 1:14 PM
To: Ara Mihranian <AraM@rpvca.gov>; Elias Sassoon <esassoon@rpvca.gov>; CC <CC@rpvca.gov>; PC <PC@rpvca.gov>
Subject: CC Mtn 4/2: Reg Bus #1 (Wireless Ordinance)

Ara, Elias, Mayor Duhovic, Mayor Pro-Tem Cruikshank, Council members, Planning Commission

As a member of our PC I have read Jeff's comments, read the staff report, read the proposed ordinance and briefly comment.

1. We employ two consultant atty firms re cell tower items and two wireless consultants (one of the east coast and one here who presents the item). I assume they have seen, reviewed and put their holy water on this ordinance. They are, after all, in their roles, our city's cell tower professional consultants; their comments and blessings would lend significant credulence to our new ordinance.

2. I would hope our attorneys produce a checkoff list for this ordinance, starting with itemization of what goes into the application and the internal steps from submittal to turn on. Otherwise I fear staff will go down the rabbit hole of the what do we do next, a maze that will unnecessarily occupy vital shock clock time. Just a thought.

3. Eliminating our Commission from these cell tower applications. Agree with Jeff’s comments totally but also understand the expediency Public Works would bring as they pride themselves on fast response times with minimum delays. Also, I do recognize our Commission has had its mission statement significantly reduced over the past two years and this continues that. As you know, we had to dig to find an item for any meeting in April, otherwise both dates were blank!

4. I would hope you balance expediency with experience. Your Commission has two years of cell tower application / approval experience, carving out an excellent relationship with CCI, obtaining design changes and locations to benefit community aesthetics; further, items you will face could (and will) become, as staff says, your ‘emergency sessions,’ sessions we could remove from your palette.

5. However, obviously a great deal of your time and thought has gone into developing our city's new ordinance and I’ll go with your vote tonight.

6. I do hope at least our consultant attys have blessed this ordinance - not that ours didn't hit a home run; its just more eyes here will promote community confidence in what will happen now in their neighborhood.

Thank you and good luck!

Bob Nelson
Telecom giant sues city over permit denial

Crown Castle says city is violating federal law, needs to install equipment to pave way for 5G network

By Bradley Bermont

Correspondent

A telecom giant has filed a lawsuit against Torrance, arguing the city violated federal law when it denied five permits last year for new small cell installations.

Officials for Crown Castle, which has the largest footprint of any telecom infrastructure company in the nation, have said the small cell nodes are necessary to bolster the city's cellphone networks; the company's goal is to ultimately install thousands of the cell nodes across Los Angeles County and tens of thousands nationwide. Oscar Martinez, a planning associate for the city who oversaw the application process, told Southern California News Group that Crown Castle repeatedly submitted incomplete applications.

After a year of revisions and appeals, the permits were ultimately denied by the City Council at the end of last year. The areas Crown Castle wanted to build in already had adequate cell service, according to the Telecom Law Firm, an outside consulting company the city used to review telecom applications.

The lawsuit, filed in February, is still in its early stages, and no trial date has been set.

In years past, a situation like this would have likely been hashed out in closed-door negotiations with the city; Crown Castle has been operating in Torrance for more than 19 years and owns a significant number of the city's cell towers and fiber connections, which it rents out to providers like AT&T and Verizon.

But a September ruling by the Federal Communications Commission has made it significantly easier for companies like Crown Castle to sue local municipalities. Right now, Torrance is one of a dozen cities around the country that have been sued by the company following the FCC's ruling.

All of them are related to new small cell nodes, which Crown Castle says it needs to create a 5G network. 5G will be able to handle significantly more traffic and at faster speeds than its predecessors.

Unlike typical cellphone towers — the bulky, tree-like structures littering the skyline — small cell nodes...
come encased in metal containers about the size of a mini-fridge. These containers attach to electrical poles or streetlamps. But while traditional cell towers can service areas dozens of miles away, small cell nodes only have a range of a few city blocks. The strategy for Crown Castle and other telecom infrastructure companies is to eventually install thousands of nodes within a city, which they say will create a more robust and reliable network while laying the groundwork for 5G services.

Prior to the ruling, under Torrance’s own regulations, city officials had 150 days, not including appeals, to process permit applications, depending on the type of project.

But the FCC’s ruling gives cities at most 90 days, and in some cases only 60 days, to process applications, including any appeals. After that, telecom companies can sue those cities.

Jonathan Kramer, founder and principal attorney for Telecom Law Firm, warned the Torrance council in January that this could disrupt the city’s process.

“The result of all of this is that we’re not going to be able to have public hearings,” he told the council, “because there really isn’t an effective way to do that in 60 days and still meet the obligation.”

Kramer, at the city’s request, declined to comment on this report, citing ongoing litigation with Crown Castle.

At the same January meeting, however, Kramer pointed out that the FCC is promoting 5G with this act — something the federal agency acknowledged when it passed the ruling. Crown Castle has argued the same point in its suit against Torrance, stating the project was “necessary to provide critical 5G wireless service to consumers.”

But in an interview with Southern California News Group, a representative for Crown Castle acknowledged that the small cell nodes aren’t being used for 5G yet.

“ When we build (small cell nodes) now, it’s being used for 4G and 4G LTE,” said Crown Castle spokesman Mark Guillen. “Upgrades will need to happen to the radios that are in the small cells that will be used to build out the 5G network.”

In the lawsuit, the company also argued that the permit rejections were effectively denying Torrance residents cell service.

The city and its independent consultants disagreed when they denied the permits, noting that there already was service in the areas Crown Castle wanted to cover. But Crown Castle argued the new cell nodes would be necessary to bolster the network in those areas.

These are complicated issues, said Arthur Scott, associate legislative director for the National Association of Counties, which led a campaign against the FCC’s ruling and is now working with dozens of counties to challenge it in court.

"Under the FCC ruling, local governments are going to face crippling litigation,” he said, expressing further concern about the fee-capping policy that came into effect with this ruling.

In Torrance, fees for most telecommunication permits range from $ 2,000 to more than $ 4,000.

For small cell permits, under the FCC’s ruling, the cost of permit applications across the country are capped at $ 100 unless a city can justify the additional fees. The goal of this is
to save the industry billions of dollars, which will come out of municipal governments’ pocketbooks, Kramer said.

"Your staff doesn’t even get to the point where they send us the projects without burning through a hundred dollars of staff time," he said. "It’s just completely unrealistic.

For Torrance, all of this has made Martinez’s job significantly harder. He’s one of four city employees who handle all of the telecom permits.

Days before the FCC’s ruling went into effect, Torrance passed an ordinance that would require appointments for telecom companies to submit permit applications. It was a move meant to insulate Martinez and others from a flood of applications.

Torrance saw 35 applications for small cell nodes in 2017. That number jumped to more than 50 last year.

And, if industry projections hold, it’s likely to increase from there.

By Kramer’s conservative estimation, Torrance will require at least 2,000 small cell nodes to cover the entire city. That’s why it’s important to try to tackle these issues now before it gets out of hand, he said.

Jay Brown, the CEO of Crown Castle, told investors earlier this year that the company plans to deploy 10,000 to 15,000 small cell nodes across the country this year.

"The demand is growing so much, and it’s continuing to grow," Guillen said, noting that Crown Castle has contracts with AT&T and Verizon to build 22 small cell nodes across Torrance. "I’m sure the number of permits going through the city of Torrance will continue to increase and not decrease."

And that’s what the FCC order was meant to address, he said.

"To streamline the process for those permits," Guillen added, "so it’s easy on a municipality and easier for someone like us to get them processed."

Although Martinez believes that the FCC order caused Crown Castle and others to speed up small cell deployment, Guillen denied it.

"We’ve had difficulty up until this time, and now that the FCC order is in place, it has established certain legal rights," he said. "All we’re doing is invoking our legal right in order to deploy.

"It’s nothing out of the ordinary," he continued. "We just use the tools that we’re given."

But Arthur Scott, associate director of the National Association of Counties, is afraid that telecom companies may soon have more tools at their disposal to overrule local municipalities: A piece of legislation winding its way through the U.S. Senate, he said, is similar to the FCC order. But rather than allowing litigation after the 60- to 90-day period, those permits would instead receive automatic approval.

"At the end of the day, we all want the same thing," Scott said. "You’d be hard-pressed to find a local government who doesn’t want the next generation of technology in their towns, but painting local governments as trying to regulate telecoms is a bit of a distracter from the real situation."
The real issue, for Scott, is the complex landscape of telecom infrastructure, which is different for every city. The one-size-fits-all model doesn’t work on a local level, he said; he’d like to see more power vested with local governments.

But, for the nationwide Crown Castle, navigating a unique set of circumstances for every permit is a time-consuming process — untenable, the company says, to its business model.

“There is a great need for small cells to address the growing demand for data and access to the internet,” Guillen said. “We’re committed to working with the city of Torrance and any other municipality to make sure that we address that growing demand.”
In the staff report, the City reported a net pension liability for its proportionate share of the net pension liability of the Miscellaneous Plan as of June 30, 2018, in the amount of $11,124,689. These costs, as stated in the staff report, are very misleading. They don't show the complete picture. There are a number of missing items, not included in this report, that could show that the City's total costs are much higher. How does retiring Tier #1 employees save RPV money??

The following is a list of items that could substantially increase the City's pension liability,

- The staff report lists the percentage that each employee should pay toward their pension. Tier #1, for example, shows that these employees 'Normal cost rate' is 10.110%. Does every employee pay their full percentage each year? If they don't, does RPV make up the difference?
- Recently CalPERS announced reducing their discount rates to 7% which increases RPV debt. They have also said publicly that they expect their real return rate to average 6.2% this year which further increases debt. Their average return on investment (discount rate) is only 5% over the last 15 years. Each year that CalPERS misses their mark, they just add it to RPV debt.
• RPV pays CalPERS 'minimum' monthly payments that do not even include the entire interest rate, and none of the principal, so the missing interest payment is also added to RPV debt.
• The $11,124,689 is at least 9 months old and that has to be adjusted as well.

If all of the above items were included in this report, RPV's debt would be much higher.

I have been told that RPV has a management tool called GovInvest, that is not used, but paid for. I have never seen any results released to the public. It is a management tool that can give RPV a more accurate answer of current debt as well as many more debt management tools.

It also will provide RPV with:

• A free consultant that advises you on pensions.
• The creation of multiple compliance reports available at no additional cost.
• Current debt.
• Projected growth in the future.
• Projected debt growth in the future.
• Projected 'minimum' payments in the future.
• What-if scenarios

It would seem that RPV should not be involved in the CalPERS pension program and should look to remove itself from this program. There are better alternative cost effective options than CalPERS for providing retirement benefits to RPV employees. CalPERS debt just increases and is uncontrollable due to their sub standard returns that don't come close to their lofty projections. No one knows RPV's true actual pension debt, but use of the GovInvest program will give RPV a much more accurate estimate of where they stand. Instead RPV should put their employees in a 401k plan. Only then will RPV know what their retirement plan actually costs.
Attached are revisions/additions and/or amendments to the agenda material received through Monday afternoon for the Tuesday, April 2, 2019 City Council meeting:

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Description of Material</th>
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<tbody>
<tr>
<td>E</td>
<td>Updated Attachment A (Agreement with Geo-Logic Associates)</td>
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<tr>
<td>1</td>
<td>Email from Paul Albritton</td>
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<tr>
<td>4</td>
<td>Email from Sunshine</td>
</tr>
</tbody>
</table>

Respectfully submitted,

[Signature]
Emily Colborn
CONTRACT SERVICES AGREEMENT

By and Between

CITY OF RANCHO PALOS VERDES

and

GEO-LOGIC ASSOCIATES, INC.
AGREEMENT FOR CONTRACT SERVICES
BETWEEN THE CITY OF RANCHO PALOS VERDES AND
GEO-LOGIC ASSOCIATES, INC.

THIS AGREEMENT FOR CONTRACT SERVICES (herein “Agreement”) is made and entered into this _________ day of _____________ 2019 by and between the City of Rancho Palos Verdes, a California municipal corporation (“City”) and Geo-Logic Associates, Inc., a California corporation (“Consultant”). City and Consultant may be referred to, individually or collectively, as “Party” or “Parties.”

RECITALS

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Article 1 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Rancho Palos Verdes’ Municipal Code, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. SERVICES OF CONSULTANT

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the “Scope of Services” attached hereto as Exhibit “A” and incorporated herein by this reference, which may be referred to herein as the “services” or “work” hereunder. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be both of good quality as well as fit for the purpose intended. For purposes of this Agreement, the phrase “highest professional standards” shall mean those
standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Consultant's Proposal.

The Scope of Service shall include the Consultant's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 California Labor Law.

If the Scope of Services includes any "public work" or "maintenance work," as those terms are defined in California Labor Code section 1720 et seq. and California Code of Regulations, Title 8, Section 16000 et seq., and if the total compensation is $1,000 or more, Consultant shall pay prevailing wages for such work and comply with the requirements in California Labor Code section 1770 et seq. and 1810 et seq., and all other applicable laws, including the following requirements:

(a) Public Work. The Parties acknowledge that some or all of the work to be performed under this Agreement is a "public work" as defined in Labor Code Section 1720 and that this Agreement is therefore subject to the requirements of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works contracts and the rules and regulations established by the Department of Industrial Relations ("DIR") implementing such statutes. The work performed under this Agreement is subject to compliance monitoring and enforcement by the DIR. Contractor shall post job site notices, as prescribed by regulation.

(b) Prevailing Wages. Contractor shall pay prevailing wages to the extent required by Labor Code Section 1771. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at City Hall and will be made available to any interested party on request. By initiating any work under this Agreement, Contractor acknowledges receipt of a copy of the Department of Industrial Relations (DIR) determination of the prevailing rate of per diem wages, and Contractor shall post a copy of the same at each job site where work is performed under this Agreement.

(c) Penalty for Failure to Pay Prevailing Wages. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty to the City, forfeit two hundred dollars ($200) for each calendar
day, or portion thereof, for each worker paid less than the prevailing rates as determined by the
DIR for the work or craft in which the worker is employed for any public work done pursuant to
this Agreement by Contractor or by any subcontractor.

(d) Payroll Records. Contractor shall comply with and be bound by the
provisions of Labor Code Section 1776, which requires Contractor and each subcontractor to:
keep accurate payroll records and verify such records in writing under penalty of perjury, as
specified in Section 1776; certify and make such payroll records available for inspection as
provided by Section 1776; and inform the City of the location of the records.

(e) Apprentices. Contractor shall comply with and be bound by the provisions
of Labor Code Sections 1777.5, 1777.6, and 1777.7 and California Code of Regulations Title 8,
Section 200 et seq. concerning the employment of apprentices on public works projects.
Contractor shall be responsible for compliance with these aforementioned Sections for all
apprenticeable occupations. Prior to commencing work under this Agreement, Contractor shall
provide City with a copy of the information submitted to any applicable apprenticeship program.
Within sixty (60) days after concluding work pursuant to this Agreement, Contractor and each of
its subcontractors shall submit to the City a verified statement of the journeyman and apprentice
hours performed under this Agreement.

(f) Eight-Hour Work Day. Contractor acknowledges that eight (8) hours labor
constitutes a legal day’s work. Contractor shall comply with and be bound by Labor Code
Section 1810.

(g) Penalties for Excess Hours. Contractor shall comply with and be bound by
the provisions of Labor Code Section 1813 concerning penalties for workers who work excess
hours. The Contractor shall, as a penalty to the City, forfeit twenty-five dollars ($25) for each
worker employed in the performance of this Agreement by the Contractor or by any
subcontractor for each calendar day during which such worker is required or permitted to work
more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week
in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code.
Pursuant to Labor Code section 1815, work performed by employees of Contractor in excess of
eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public
work upon compensation for all hours worked in excess of 8 hours per day at not less than one
and one-half (1½) times the basic rate of pay.

(h) Workers’ Compensation. California Labor Code Sections 1860 and 3700
provide that every employer will be required to secure the payment of compensation to its
employees if it has employees. In accordance with the provisions of California Labor Code
Section 1861, Contractor certifies as follows:

“I am aware of the provisions of Section 3700 of the Labor Code which require
every employer to be insured against liability for workers’ compensation or to
undertake self-insurance in accordance with the provisions of that code, and I will
comply with such provisions before commencing the performance of the work of
this contract.”
Contractor's Responsibility for Subcontractors. For every subcontractor who will perform work under this Agreement, Contractor shall be responsible for such subcontractor's compliance with Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, and shall make such compliance a requirement in any contract with any subcontractor for work under this Agreement. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a review of the certified payroll records of the subcontractor on a periodic basis or upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any such failure by any subcontractor.

1.5 Licenses, Permits, Fees and Assessments.

Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant’s performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

1.6 Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at Consultant’s risk until written instructions are received from the Contract Officer.

1.7 Care of Work.

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.
1.8 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.9 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum for the actual costs of the extra work, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to ten percent (10%) of the Contract Sum or $25,000, whichever is less; or, in the time to perform of up to one hundred eighty (180) days, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors. No claims for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

1.10 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the “Special Requirements” attached hereto as Exhibit “B” and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit “B” and any other provisions of this Agreement, the provisions of Exhibit “B” shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the “Schedule of Compensation” attached hereto as Exhibit “C” and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed $121,086 (One Hundred Twenty One Thousand Eighty Six Dollars) (the “Contract Sum”), unless additional compensation is approved pursuant to Section 1.9.
2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion; (ii) payment in accordance with specified tasks or the percentage of completion of the services, less contract retention; (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained, and (c) the Contract Sum is not exceeded; or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall contain all information specified in Exhibit “C”, and shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and subcontractor contracts. Sub-contractor charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3, City will use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by City for any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

2.5 Waiver.

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.
ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the “Schedule of Performance” attached hereto as Exhibit “D” and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer’s determination shall be final and conclusive upon the parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant’s sole remedy being extension of the Agreement pursuant to this Section.

3.4 Term.

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one year from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit “D”). City, in its sole discretion, may extend the Term for one additional one-year term.

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Consultant.

The following principals of Consultant (“Principals”) are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:
It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Consultant.

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be Ron Dragoo, City Engineer, or Nasser Razepoor, Associate Civil Engineer, or such person as may be designated by the City Manager. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.
4.4 **Independent Consultant.**

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

4.5 **Prohibition Against Subcontracting or Assignment.**

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

**ARTICLE 5. INSURANCE AND INDEMNIFICATION**

5.1 **Insurance Coverages.**

Without limiting Consultant's indemnification of City, and prior to commencement of any services under this Agreement, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

(a) **General liability insurance.** Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than $1,000,000 per occurrence, $2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO “insured contract” language will not be accepted.

(b) **Automobile liability insurance.** Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury...
and property damage for all activities of the Consultant arising out of or in connection with Services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than $1,000,000 combined single limit for each accident.

(c) **Professional liability (errors & omissions) insurance.** Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of $1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this Agreement.

(d) **Workers’ compensation insurance.** Consultant shall maintain Workers’ Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least $1,000,000).

(e) **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

(f) **Additional Insurance.** Policies of such other insurance, as may be required in the Special Requirements in Exhibit "B".

5.2 **General Insurance Requirements.**

(a) **Proof of insurance.** Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers’ compensation. Insurance certificates and endorsements must be approved by City’s Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

(b) **Duration of coverage.** Consultant shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services hereunder by Consultant, its agents, representatives, employees or subconsultants.

(c) **Primary/noncontributing.** Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City’s own insurance or self-insurance shall be called upon to protect it as a named insured.
(d) City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(e) Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or that is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

(f) Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(g) Enforcement of contract provisions (non-estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

(h) Requirements not limiting. Requirements of specific coverage features or limits contained in this section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

(i) Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

(j) Additional insured status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.
(k) **Prohibition of undisclosed coverage limitations.** None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

(l) **Separation of insureds.** A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

(m) **Pass through clause.** Consultant agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Consultant, provide the same minimum insurance coverage and endorsements required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with Consultants, subcontractors, and others engaged in the project will be submitted to City for review.

(n) **Agency's right to revise specifications.** The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

(o) **Self-insured retentions.** Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.

(p) **Timely notice of claims.** Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

(q) **Additional insurance.** Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its protection and prosecution of the work.

5.3 **Indemnification.**

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, whether judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or
entity for which Consultant is legally liable ("indemnitors"), or arising from Consultant's or indemnitors' reckless or willful misconduct, or arising from Consultant's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Consultant shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Consultant shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make
records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant’s business, custody of the books and records may be given to City, and access shall be provided by Consultant’s successor in interest. Notwithstanding the above, the Consultant shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

6.2 Reports.

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the “documents and materials”) prepared by Consultant, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City’s sole risk and without liability to Consultant, and Consultant’s guarantee and warranties shall not extend to such use, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have the right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom. Moreover, Consultant with respect to any documents and materials that may qualify as “works made for hire” as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed “works made for hire” for the City.

6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such
information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney’s fees, caused by or incurred as a result of Consultant’s conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of Los Angeles, State of California.

7.2 Disputes; Default.

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the
invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary
provision herein, Consultant shall file a statutory claim pursuant to Government Code Sections 905 et seq. and 910 et seq., in order to pursue a legal action under this Agreement.

7.7 **Liquidated Damages.**

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of zero dollars ($0) as liquidated damages for each working day of delay in the performance of any service required hereunder. The City may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

7.8 **Termination Prior to Expiration of Term.**

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.9 **Termination for Default of Consultant.**

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 **Attorneys' Fees.**

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such
action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Consultant, 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 the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects her/his financial interest or the financial interest of any corporation, partnership or association in which (s)he is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry or other protected class.
8.4 Unauthorized Aliens.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C. §1101 et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys’ fees, incurred by City.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer (with her/his name and City title), City of Rancho Palos Verdes, 30940 Hawthorne Blvd., Rancho Palos Verdes, California 90275 and in the case of the Consultant, to the person(s) at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereeto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.
9.5 **Severability.**

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 **Warranty & Representation of Non-Collusion.**

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5. Consultant warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Consultant further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Consultant is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Consultant's Authorized Initials  

9.7 **Corporate Authority.**

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) that entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF RANCHO PALOS VERDES, a municipal corporation

ATTEST:

Jerry V. Duhovic, Mayor

Emily Colborn, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

William W. Wynder, City Attorney

CONSULTANT:

GEO-LOGIC ASSOCIATES, INC.

By: 
Name: James A. Kelsey, P.G.
Title: Senior Vice President

By: 
Name: John Hower
Title: Secretary

Address: 3150 Bristol Street, Suite 210
Costa Mesa, California 92626

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF NEW MEXICO
COUNTY OF BERNALILLO

On April 1, 2019 before me, Deborah J. Salvato, personally appeared James A. Kelsey, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of New Mexico that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: [Signature]

OPTIONAL
Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

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</table>

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

01203.0006/541532.6
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:
CITY OF RANCHO PALOS VERDES, a municipal corporation

ATTEST:

Emily Colborn, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

William W. Wynder, City Attorney

CONSULTANT:
GEO-LOGIC ASSOCIATES, INC.

By: ___________________________
Name: James A. Kelsey, P.G.
Title: Senior Vice President

By: ___________________________
Name: John Hower
Title: Secretary

Address: 3150 Bristol Street, Suite 210
Costa Mesa, California 92626

Two corporate officer signatures required when Consultant is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONSULTANT’S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT’S BUSINESS ENTITY.
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

On ____________, 2019 before me, ________________, personally appeared ________________, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

[Signature: ____________________________]

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

| ☐ | INDIVIDUAL |
| ☐ | CORPORATE OFFICER |
| ☐ | PARTNER(S) | ☐ | LIMITED |
| ☐ | GENERAL |
| ☐ | ATTORNEY-IN-FACT |
| ☐ | TRUSTEE(S) |
| ☐ | GUARDIAN/CONSERVATOR |
| ☐ | OTHER |

TITLE(S): ____________________________

DESCRIPTION OF ATTACHED DOCUMENT

| ☐ | TITLE OR TYPE OF DOCUMENT |
| ☐ | NUMBER OF PAGES |
| ☐ | DATE OF DOCUMENT |

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES)) ____________________________

SIGNER(S) OTHER THAN NAMED ABOVE ____________________________

01203.0006/541532.6
ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Bernardino

On 4/1/19 before me, Jessica Renee Ferre
(personally appeared)
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (Seal)
EXHIBIT “A”

SCOPE OF SERVICES

I. Consultant will perform the following Services: Consultant shall complete the design of the realignment of Palos Verdes Drive South from the east end of the boundary of the Portuguese Bend Landslide and Klondike Landslide, to approximately 800 feet west of the east end of the landslide. Consultant shall be required to produce full design for realignment of the roadway, including conceptual design, Civil drawings including plan and profile, striping, construction notes and specifications, with a detailed construction cost estimate. Furthermore, Consultant shall provide a hydraulic and hydrology analysis, and a structural analysis and design of an under roadway drainage culvert which will allow currently trapped area drainage to be conveyed to the south (ocean side) of the road. The design shall take into consideration the need for a geotechnical report and recommendations, survey, environmental clearance, and any required City approval and permitting. The specific tasks to be performed as a part of the Services shall be as follows:

A. Task 1 – Survey and Document Review

To establish a basis for geotechnical evaluation and preliminary design, Consultant shall commission an as-built and topographic survey for the relevant segment of Palos Verdes Drive South. The survey, which will evaluate locations of existing City right-of-way, visible utilities, traffic lanes, extents of pavement, and embankment topography, will be performed under the supervision of a California registered Land Surveyor. The survey will include location of selected existing survey monuments in the area and will establish deformation monitoring.

Concurrent with the surveying portion of the project, Consultant shall review existing records (to be provided by City). Consultant anticipates such records will include construction plans, traffic plans, stormwater drainage and other utility plans (e.g., sanitary sewer, potable water, etc.), and land records (e.g., property lines for right-of-way and adjoining parcels). Records received from City will be provided to the surveyor for inclusion in the project base map.

B. Task 2 Geotechnical and Environmental Field Services

Consultant shall perform a geotechnical field exploration to evaluate existing subgrade soil conditions at selected locations along the existing alignment and proposed realignment. Consultant shall coordinate with City’s Contract Officer and City approved subcontractors as needed to plan and execute the field work. Field exploration will not be performed in the existing roadway, and traffic control will not be performed.

Consultant shall perform a subsurface exploration with a duration of one working day. The field exploration will consist of drilling, logging, and sampling of up to 3 small-
diameter borings along the proposed realignment to a depth of up to approximately 30 feet below the ground surface, or refusal, whichever is shallower. The borings will be logged by Consultant’s field representative. Bulk samples and driven samples (i.e., split-spoon sampler) will be obtained at selected intervals from the borings. The borings will be backfilled with on-site soils. Selected soil samples will be delivered to Consultant’s laboratory for testing. The planned laboratory testing includes R-value, sieve analysis, and in-situ moisture content and density.

Consultant shall commission a biological survey and report of the area to be impacted by the proposed realignment of Palos Verdes Drive South. The biological survey will document the general biological conditions as well as the location and extent of visible covered species and/or habitat covered under the Rancho Palos Verdes Natural Community Conservation Plan and Habitat Conservation Plan (NCCP/HCP). The report of this biological survey will include an impact analysis to document the extent of covered species and habitat that might be impacted by the proposed road realignment and identify relevant Habitat Impact Avoidance and Minimization Measures from the NCCP/HCP.

C. Task 3 - Conceptual Design and Geotechnical Evaluation

Consultant shall develop conceptual sketches of the proposed realignment during preparation of its proposal. Key features of the current design concept include an alignment arcing to the north of the existing centerline and a lateral expansion of the existing roadway embankment. The realignment and lateral expansion is intended to provide increased flexibility to City for accommodating the ongoing movement of the Portuguese Bend Landslide until further mitigation measures may be implemented. Additionally, the embankment design may incorporate geosynthetic products to improve deformation characteristics and/or reduce the loads imparted to the embankment.

Upon completion of the as-built and topographic survey, Consultant shall develop one set of preliminary plan sheets (i.e., demolition plan, grading plan, paving plan, and striping plan), at a 1" = 20’ scale, showing the realignment design concept. Such plans shall not include relocation of existing utilities, such as the sanitary sewer along the south side of Palos Verdes Drive South. This preliminary plan set, corresponding to approximately 60% design completion, will be submitted to City’s Contract Officer for approval. Design and engineering evaluation will be halted pending City’s Contract Officer’s approval of the 60% design concept and receipt of written City-requested revisions to be incorporated in subsequent submittals.

After receipt of City’s approval of the preliminary design concept, Consultant shall proceed with geotechnical engineering evaluations for the proposed realignment. Evaluations will be limited to analysis of local slope stability of the new embankment using a two-dimensional (2D) slope stability model. Effects of the new embankment construction on global stability of the Portuguese Bend Landslide will not be considered in this evaluation. Consultant notes that the Factor of Safety (FS) of the existing Portuguese Bend Landslide configuration (i.e., before addition of new roadway...
embankment) is likely in the vicinity of 1.0 (i.e., the existing landslide is in or near a state of failure, resulting in the observed ongoing movement) and that construction of the new roadway embankment, in the most favorable scenario, will have negligible impact on global stability of the Portuguese Bend Landslide (i.e., Consultant does not anticipate that the roadway realignment will provide a benefit with respect to landslide stabilization). As movement of the landslide is anticipated to continue after realignment of the roadway segment, impacts of the ongoing movement on the realigned roadway segment will be addressed through regular maintenance performed by City. To assist City in evaluating landslide movement and its effects on the realigned roadway segment, Consultant shall provide recommendations for instrumentation and monitoring within the realigned segment.

Consultant shall also prepare one geotechnical design report, which will document the engineering evaluations performed. This letter report will be prepared under the supervision of a Consultant’s California registered Geotechnical Engineer and will be internally peer-reviewed in accordance with Consultant’s peer review policy.

D. Task 4 – Detailed Design and Engineer’s Estimate

Based on the results of Consultant’s engineering evaluations, Consultant shall prepare one set of full-size construction plans (22 inches x 34 inches), as well as a package of technical specifications and special provisions, for the proposed realignment measures. Key features of the design (i.e., demolition plan, grading plan, paving plan, striping plan, construction notes, technical specifications, and special provisions) will be developed to approximately 90 percent completion level and submitted to City’s Contract Officer for review, comment, and approval. In addition, the detailed design shall include stormwater drainage design for the realigned roadway segment. This drainage design will include evaluation of the quantity of stormwater potentially impounded north of the realigned roadway segment and will provide recommendations for conveyance of this potentially impounded stormwater (e.g., civil and structural design of a culvert below the realigned roadway segment, if such an option is selected by City’s Contract Officer). Following comment at the 90 percent level, Consultant shall finalize these plans, notes, specifications, and special provisions.

The final design package shall be signed and stamped by a California registered Professional Engineer. The package shall be delivered to the City in printed and electronic formats (PDF and DWG, as applicable).

Consultant shall develop an engineer’s estimate for the proposed realignment during preparation of the 90% design construction plans, including construction quantities and construction quality assurance program costs. This will be an “order-of-magnitude” cost estimate for planning purposes and will be developed based on a combination of Consultant in-house cost data for recent similar construction projects, publicly available data (e.g., Caltrans, FHWA), and discussions with one or more contractors.
E. **Task 5 – Bid and Permitting Support**

Upon City’s Contract Officer’s acceptance of the 100% design stage plans, technical specifications, and special provisions, Consultant shall provide support to City for development of a bid package. City will provide an example bid document package and will provide front-end Technical Specifications (including the format for the Notice to Bidders, Table of Contents, General Provisions, Special Provisions, and format for Bid and Contract sections). Consultant shall develop the Special Provisions section of the bid package by combining project-specific special provisions with City’s Special Provisions. Project Plan Sheets will be referenced in the Bid Documents as an attachment. The assembled Bid Document Package will be provided to City’s Contract Officer in electronic format (i.e., PDF, Microsoft Word, and AutoCAD, as appropriate). Consultant shall also provide support during Bid process, including responses to Requests for Information (RFI) from prospective bidders.

Consultant shall also provide limited assistance to City for obtaining a Take Authorization. The realignment of Palos Verdes Drive South is one of the Covered Activities included in the NCCP/HCP. Consultant shall commission a subconsultant to evaluate consistency of the project with the relevant habitat and species conservation goals and requirements, and to document applicable impact limits and Habitat Impact Avoidance and Minimization Measures. Consultant shall address comments from City’s Contract Officer, and will provide assistance, to a reasonably practicable extent, to City in responding to inquiries from community residents.

F. **Task 6 – Meetings**

Consultant shall attend, in person or by teleconference, up to four 4-hour meetings (including travel time) during the design, pre-bid, bid, and permitting phases of the project. Such meetings shall include one pre-design kickoff meeting and up to 3 committee and progress meetings as requested by City’s Contract Officer. Any additional time for meeting attendance, including travel time, beyond the four-hour duration assumed will be billed on a time-and-materials basis in accordance with Consultant’s project fee schedule provided in Exhibit “C-1”.

G. **Project Cost Assumptions**

1. Pavement design will not be performed, as City has provided guidance on the preferred pavement section.

2. Two sets each of City’s Contract Officer’s comments will be addressed for the 30% and 60% submittal stages; and one set each of City’s Contract Officer’s comments will be addressed for the 90% and 100% submittal stages. Comments from other entities (e.g., agencies, general public, etc.) and/or additional City comments will be addressed on a time and materials basis for an additional fee.
3. One design concept will be developed to the approximately 30% design level and discussed with City’s Contract Officer before moving forward with further design development. In consultation with City’s Contract Officer at the 30% design level, the design concept will be substantially fixed with respect to alignment and embankment configuration, and this design concept will be developed to subsequent levels of completion. The design concept will be developed 60% design level (and adjusted to final design stage), without substantial modification of the geometry and configuration after the 60% design submittal (e.g., 60% complete design will not be discarded in favor of another design concept, multiple design concepts will not be developed in parallel, etc.). Substantial rework of the selected design concept and/or development of additional design concepts will be performed on a time-and-materials basis for additional fee.

4. Consultant shall not be responsible for differences, regardless of magnitude, between construction cost estimates prepared as a part of the proposed project and bids received in response to the bid package.

5. Consultant shall address review comments from City’s Contract Officer and will provide assistance, to a reasonably practicable extent, to City’s Contract Officer in responding to occasional inquiries from local residents. Except as explicitly provided for in this Agreement, permitting and regulatory support (e.g., response to agency comments unforeseen at the time of this proposal, etc.) will be provided on a time and materials basis for an additional fee.

6. Consultant and its subconsultants and subcontractors will be able to access the proposed exploration and improvement locations during standard working hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.). Access to fenced areas of the site will be granted, if needed, by City personnel. Work will not be conducted during inclement weather.

7. Monitoring of survey monuments (e.g., to evaluate landslide-related deformation) is not included in this scope of services.

8. Surveyor will not file a Record of Survey. If, in performing the boundary survey, material discrepancies are found between the field conditions and the “record” conditions, and/or if any of the boundary lines being established are not shown on any previously recorded Subdivision Map, Official Map, or Record of Survey, then the surveyor may be required to file a Record of Survey. The preparation and filing of a Record of Survey will be performed on a time-and-materials basis for an additional fee.

9. Consultant will not provide traffic control during field exploration, surveying, environmental survey, or other services related to this proposal.

10. Consultant will be provided with plans showing the locations of existing utilities, if available. Consultant will not be responsible for utilities not shown on the plans nor marked out by on-site personnel or DigAlert/Underground Service Alert (collectively, “DigAlert”).
11. DigAlert markings will not be removed when the work is complete. Removal of DigAlert markings, if requested, will be performed on a time and materials basis for additional fee.

12. Consultant’s borings will be backfilled with on-site materials. Slurry backfill, grout backfill, hot-mix asphalt concrete patching, and/or other surface patching will not be required.

13. Construction observation and testing are not included.

14. Consultant’s evaluation will not include any sampling, testing, or chemical analysis of soil, groundwater, surface water, or other materials for the purpose of evaluating possible hazards or risks.

II. In addition to the requirements of Section 6.2, during performance of the Services, Consultant shall keep the City appraised of the status of performance by delivering the following status reports:

   A. Consultant shall work with City's Contract Officer throughout the project to prepare and submit documents, images, and maps, meeting notes, progress reporting, communications, event timelines, etc., suitable for upload to the City website for public review. Consultant shall prepare the website updates on at least a monthly basis for the duration of the project including submittals after public meetings and outreach events.

   B. Project status summary reports (weekly)

   C. Updated design project schedule

III. All work product is subject to review and acceptance by the City. Consultant must make a reasonable effort to revise documents not found satisfactory to the City, in accordance with subsection 2 of Section 1.G (Project Cost Assumptions), above. Any further revisions required by City will be accomplished by Consultant on a time and materials basis until found satisfactory and accepted by City.

IV. Consultant shall utilize the following personnel to supervise the design team:

   A. N. Matasovic, Principal-in-Charge
EXHIBIT "B"

SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

Added text is indicated in bold italics, and deleted text is indicated in strikethrough.

I. Section 1.2, Consultant's Proposal, is deleted in its entirety.

II. Section 1.5, License, Permits, Fees and Assessments, is amended to read:

15 Licenses, Permits, Fees and Assessments.

Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement, namely a City business license, and one Los Angeles County well permit. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

III. Section 4.5, Prohibition Against Subcontracting or Assignment.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. The following subcontracts are deemed approved by the City: (a) for drilling, Gregg Drilling and Testing, 2R Drilling, ABC Liovin Drilling, and Martini Drilling; (b) for surveying, Cal Vada Surveying and McGee Surveying Consulting; (c) for environmental services (if applicable), Envicom Corporation. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.
IV. Section 5.3, Indemnification, is amended to read:

5.3 Indemnification.

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable ("indemnitors"), or arising from Consultant's or indemnitors' reckless or willful misconduct, or arising from Consultant's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith. Provided that, Consultant will not be responsible for any movement of the Portuguese Bend landslide complex, or any landslides in the vicinity, that is not proximately caused by Consultant's sole gross negligence under this Agreement, or any loss or damage resulting therefrom.

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Consultant shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities.
arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.
EXHIBIT “C”

SCHEDULE OF COMPENSATION

I. Consultant shall perform the Services in accordance with the bid schedule attached herewith as Exhibit “C-1”, Schedule of Compensation by Task.

II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services.

NOT APPLICABLE

III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.9.

IV. The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:

   A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.

   B. Line items for all materials and equipment properly charged to the Services.

   C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.

   D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

V. The total compensation for the Services shall not exceed the Contract Sum as provided in Section 2.1 of this Agreement.

VI. The Consultant’s billing rates for all personnel are provided in Exhibit “C-1”, Schedule of Compensation by Task.
EXHIBIT "C-1"

SCHEDULE OF COMPENSATION BY TASK
## Cost Summary
City of Rancho Palos Verdes  
Engineering Analysis, Evaluation, and Design  
Palos Verdes Drive South Realignment  
March 14, 2019

### Cost Summary by Task

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<td>Geotechnical and Environmental Field Services</td>
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<td>3</td>
<td>Conceptual Design and Geotechnical Evaluation</td>
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**Total:** $121,086
**Task 1: Survey and Document Review**

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**EXPENSES**

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Total Direct Cost: $10,780.00
Markup on third party services: $850.00

**TASK 1 SUBTOTAL:** $11,630.00

**TASK 1 TOTAL:** $11,630.00
**Cost Estimate**

**Client Name:** City of Rancho Palos Verdes  
**Project Name:** Engineering Analysis, Evaluation, and Design  
**Project Number:** SO19-1062.PR  
**Terms:** per agreement  
**City of Rancho Palos Verdes Engineering Analysis, Evaluation, and Design**

**Task 2**  
**Geotechnical and Environmental Field Services**

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<tr>
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Subtotal: 22 $3,890.00

- **Drilling Subcontractor**  
  10% LS 4,500.00 1 4,500.00
- **Geotechnical Drilling**  
  10% LS 7,500.00 1 7,500.00
- **Enviscor Corporation**  
  10% LS 378.00 1 378.00
- **Environmental Survey**  
  10% LS  
- **Los Angeles County Well Permit**

Subtotal: $12,378.00

**Total Direct Cost** $16,268.00

Markup on third party services $1,237.80

**TASK 2 SUBTOTAL** $17,505.80

**TASK 2 TOTAL** $17,505.80

**NOTES:**
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Subtotal: 152 $27,448.00

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Subtotal: $0.00

Total Direct Cost $27,448.00

Markup on third party services 0.00

**TASK 3 SUBTOTAL** $27,448.00

**TASK 3 TOTAL** $27,448.00

NOTES:
# Geo-Logic ASSOCIATES

**Client Name:** City of Rancho Palos Verdes  
**Project Name:** Engineering Analysis, Evaluation, and Design  
**Project Number:** SO19.1062.PR  
**Terms:** per agreement  
**Estimator:** Withoeft  
**Prepared by:** Withoeft/Matasevic  
**Approved by:** Withoeft/Matasevic  
**Date:** March 14, 2019  
**Project Manager:** Witthoeft

---

## Task 4 Detailed Design and Engineer’s Estimate

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Subtotal: $42,980.20

## EXPENSES

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Subtotal: $0.00

Total Direct Cost: $42,980.20

**Markup on third party services:** $0.00

**TASK 4 SUBTOTAL:** $42,980.20

**TASK 4 TOTAL:** $42,980.20

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NOTES:
### Task 5 Bid and Permitting Support

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### EXPENSES

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Subtotal: $7,500.00

Total Direct Cost: $14,420.00

Markup on third party services: $750.00

**TASK 5 SUBTOTAL: $15,170.00**

**TASK 5 TOTAL: $15,170.00**

NOTES:
# Geo-Logic ASSOCIATES

**Client Name:** City of Rancho Palos Verdes  
**Project Name:** Engineering Analysis, Evaluation, and Design  
**Project Number:** S019.1062.PR  
**Date:** March 14, 2019  
**Estimator:** Witthoeft  
**Project Manager:** Witthoeft  
**Prepared by:** Witthoeft/Matasovic  
**Approved by:** Witthoeft/Matasovic

## Task 6

### Meetings

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</tr>
<tr>
<td>CADD/GIS/Data Base II</td>
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Subtotal: 32 $6,352.00

## EXPENSES

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<th>UNIT FEE</th>
<th>QUANTITY</th>
<th>COST</th>
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Subtotal: $0.00

**Total Direct Cost**  
$6,352.00

**Markup on third party services**  
$0.00

**TASK 6 SUBTOTAL**  
$6,352.00

**TASK 6 TOTAL**  
$6,352.00

### NOTES:

A-44
EXHIBIT “D”

SCHEDULE OF PERFORMANCE

I. Consultant shall perform all Services timely in accordance with the following schedule (dates are subject to change subject to Contract Officer approval):

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<th>Task</th>
<th>Description</th>
<th>Days to Perform</th>
<th>Deadline Date</th>
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<tr>
<td>A.</td>
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<tr>
<td>B.</td>
<td>Task 2 Geotechnical and Environmental Field Services</td>
<td>10 Days</td>
<td>5/15/19</td>
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<td>C.</td>
<td>Task 3 Conceptual Design and Geotechnical Evaluation</td>
<td>10 Days</td>
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<td>D.</td>
<td>Task 4 Detailed Design and Engineer’s Estimate</td>
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<td>E.</td>
<td>Task 5 Bid and Permitting Support</td>
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<td>F.</td>
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II. Consultant shall deliver the following tangible work products to the City by the following dates (dates are subject to change subject to Contract Officer approval).

- A. Deliverables (work products that will, per State DCA requirements, be stamped/sealed by PE, GE, CEG, and or PG) include:
  - B. Survey/Environmental/Geotechnical Report: Draft by 4/30/19; and Final by 5/15/19.
  - C. Design Package by 6/30/19.
  - D. Technical Specifications: 90% by 5/30/19; and 100% by 6/30/19.
  - E. Design Drawings: 30% by 4/30/19; 60% by 5/30/19; 90% by 6/15/19; and 100% by 6/30/19.
  - F. Special Provisions: 90% by 6/15/19; and 100% by 6/30/19.
  - G. Engineer’s Estimate: 90% by 6/15/19; and 100% by 6/30/19.
H. Bid Package: Draft by 6/30/19; and Final by 7/15/19

I. Project construction schedule by 7/15/19.

J. Project cost estimate by 7/15/19.

K. Responses to RFIs during the construction bid process within 2 business days.

III. The City Council may approve extensions for performance of the services in accordance with Section 3.2.
Dear Councilmembers,

attached please find our comments prepared on behalf of Verizon Wireless regarding the draft ordinance regulating wireless facilities in the right-of-way to be heard tomorrow evening.

We urge the Council to decline adoption and direct staff to make needed revisions to avoid conflict with state and federal law.

Thank you.

Paul

Paul Albritton
Mackenzie & Albritton LLP
155 Sansome Street, Suite 800
San Francisco, California 94104
(415) 288-4000
pa@mallp.com
April 1, 2019

VIA EMAIL

Mayor Jerry V. Duhovic  
Mayor Pro Tem John Cruikshank  
Councilmembers Eric Alegria,  
Susan M. Brooks and Ken Dyda  
City Council  
City of Rancho Palos Verdes  
30940 Hawthorne Boulevard  
Rancho Palos Verdes, California 90275

Re: Draft Ordinance, Wireless Telecommunications Facilities  
in the Public Right-of-Way  
Council Regular Business Agenda Item 1, April 2, 2019

Dear Mayor Duhovic, Mayor Pro Tem Cruikshank and Councilmembers:

We write on behalf of Verizon Wireless regarding the draft ordinance regulating wireless facilities in the right-of-way (the “Draft Ordinance”). While Verizon Wireless appreciates administrative approval of small cells, the draft regulations pose several conflicts with the recent Federal Communications Commission (“FCC”) order addressing appropriate small cell approval criteria. Subjective design standards, public notice and comment windows contradict the FCC’s direction to evaluate small cells under objective criteria. Requirements to place equipment underground or enclosed within replacement poles are unreasonable, as small cells pose little visual impact among other right-of-way utility infrastructure. Several provisions contradict state law granting telephone corporations the right to use any right-of-way, notably the residential location restrictions.

Small cells pose no pressing threat to public peace, health or safety that warrant an urgency ordinance. Small cells pose little impact, and the potential filing of small cell applications does not constitute an emergency. We urge the Council to defer action on the Draft Ordinance, and direct staff to work with industry on revisions required to avoid conflict with federal and state law.

To expedite deployment of small cells and new wireless technology, the FCC adopted its September order to provide guidance on appropriate approval criteria for
small cells. See Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order, FCC 18-133 (September 27, 2018) (the “Small Cells Order”). Among other topics, the FCC addressed aesthetic criteria for approval of qualifying small cells, concluding that they must be: “(1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance.” Id., ¶ 86. “Reasonable” standards are “technically feasible” and meant to avoid “out-of-character deployments.” Id., ¶ 87. “Objective” standards must “incorporate clearly-defined and ascertainable standards, applied in a principled manner.” Id., ¶ 88.

To allow for flexibility as technology advances, the Council should consider moving all small cell design and location criteria to a separate standards document adopted and regularly updated by the Public Works Director. Draft Ordinance § 12.18.040(A)(2-3).

As we explain, several requirements of the Draft Ordinance contradict the FCC’s directives or state law, and those must be removed or revised. Our comments are as follows.

Subjective Requirements Cannot Apply to Small Cells.

The Draft Ordinance requires public notice and a 10-day comment window for small cell applications. Draft Ordinance §§ 12.18.040(A)(8), 12.18.050(B)(8)(g), 12.18.060(D). Soliciting public comment introduces subjectivity and the illusory impression that personal concerns would override objective standards, frustrating both the public and decision-makers. The public’s subjective personal concerns simply cannot be addressed by decision-makers implementing what must be an objective process. We suggest striking notice requirements for small cells in Draft Ordinance Sections 12.18.040(A)(8), 12.18.050(B)(8)(g) and 12.18.060(D). At most, notice should be provided to any adjacent property owners for informational purposes only.

While administrative approval of small cells is appropriate, and referral to the Planning Director is reasonable, appeals and the option to forward to the Planning Commission for a public hearing would introduce subjectivity to the process. Draft Ordinance §§ 12.18.040(B)(3), 12.18.060(E)(3), 12.18.060(F)(1). The FCC requires objective review of small cells, and the FCC’s “substantial change” criteria for evaluating eligible facilities requests are likewise objective. 47 C.F.R. § 1.6100(b)(7). Under objective standards, the Commission or Council should reach the same conclusions as the Director, but public concerns could lead to an inappropriate discretionary decision and unwarranted denial. Draft Ordinance Sections 12.18.040(B)(3) and 12.18.060(F)(1) should be stricken. Section 12.18.060(E)(3) should be revised to eliminate any appeal reference for small cells. The City may consider allowing appeals of minor permits to the City Manager, with the scope of review limited to confirming whether a proposal complies with reasonable, objective criteria.
The draft regulations generally provide objective standards, but a few subjective requirements cannot apply to small cells. While the City may require compliance with codified health and safety regulations, “welfare” is an indefinite, subjective finding that could be used to deny small cells that otherwise meet objective aesthetic criteria. We recommend deleting “welfare” from the finding of Draft Ordinance Section 12.18.060(C)(1)(b).

Several small cell design standards are entirely subjective and should be deleted, including “least visible means,” “compatible with support structure/surroundings” and as “unobtrusive as possible.” We recommend deleting these subjective criteria from Draft Ordinance Sections 12.18.070(A)(1), 12.18.070(A)(8) and 12.18.070(A)(11).

The Draft Ordinance includes subjective “concealment” requirements, with a definition and criteria referencing indefinite criteria for “camouflaging” and “techniques that integrate...into the surrounding natural and/or built environment,” with reference to an “average, untrained observer.” Draft Ordinance §§ 12.18.020, 12.18.070(A)(10). The Draft Ordinance must be scrubbed of any such subjective criteria for small cells. Further, several of the “concealment” options may pose complications for future modifications submitted as eligible facilities requests under federal law. Requirements to minimize size and integrate facilities into existing infrastructure may be infeasible and will be preempted by the FCC’s objective substantial change thresholds for height and protrusion. 47 C.F.R. § 1.6100(b)(7). Mandating new, matching infrastructure ignores the rights of telephone corporations to use the right-of-way, including use of existing joint utility poles. The City cannot limit the cumulative volume of antennas (e.g., six cubic feet) as the FCC definition of “small wireless facility” simply specifies that each antenna is limited to three cubic feet with no other restriction. The City does not have unlimited discretion over “concealment elements” under either the Small Cells Order or FCC rules for eligible facilities requests. The subjective criteria of the “concealment” definition should be eliminated, and Items (d), (e), (f) and (j) should be stricken from Draft Ordinance Section 12.18.070(A)(10).

Location Preferences Should Be Revised to Encourage Small Cells in All Rights-of-Way and on Existing Utility Poles.

The list of preferred right-of-way locations could eliminate numerous stretches of right-of-way from consideration in conflict with state law. Draft Ordinance § 12.18.080(A)(2). Public Utilities Code Section 7901 grants telephone corporations such as Verizon Wireless the right to place their equipment along any public road or highway, and it does not favor certain types of roads (such as arterial roads or commercial and institutional zones) over others (such as collector/local roads or residential zones). Further, the list ignores local roads in residential zones and disfavors siting anywhere within 250 feet of residential structures, which could exclude large areas, constituting a prohibition of service in violation of the Telecommunications Act. 47 U.S.C. §§ 253(a), 332(c)(7)(B)(i)(II); Small Cells Order, ¶¶ 37-40. We suggest, at a minimum, revising
Draft Ordinance Section 12.18.080(A)(2) to strike the prohibitive residential setback of Item (i) and to include local roads in residential zones.

The firm requirement to avoid siting adjacent to occupied building or windows could eliminate many pole options, contradicting state and federal law as discussed. We suggest restating Draft Ordinance Section 12.18.080(A)(1)(c) as a preference, and allowing such locations if there is no technically feasible option within 200 feet.

The right-of-way structure preferences should not favor street light poles over wood utility poles. Draft Ordinance § 12.18.080(A)(3). If strictly applied, the top preference for street light poles owned by Southern California Edison or the City would contradict California Government Code Section 65964(c) which bars local governments from limiting wireless facilities to sites owned by particular parties. Also, Verizon Wireless has the right to place its telephone equipment on joint utility poles as a member of the Southern California Joint Pole Committee. The right-of-way structure preferences should be relaxed to accommodate use of joint utility poles where they are found along the right-of-way, giving them a preference equal with street light poles. Small cell equipment is not “out-of-character” on utility poles, given existing utility infrastructure, and structure preferences used to deny this option would be unreasonable. We suggest that Draft Ordinance Section 12.18.080(A)(3) simply favor the existing structures in the list over new poles.

Undergrounding Requirements are Unreasonable, and the City Should Allow Small Cell Equipment on the Side of a Pole.

The FCC determined that undergrounding requirements, similar to aesthetic requirements, must be reasonable, non-discriminatory and objective. Small Cells Order, ¶¶ 86, 90. The Draft Ordinance requires placement of small cell accessory equipment underground or fully enclosed within replacement poles unless technically infeasible. Draft Ordinance § 12.18.070(A)(11-12). This standard is unreasonable. With respect to feasibility, Southern California Edison (“SCE”) allows only a few designs on its street light poles—generally small radio units on the side, not enclosed. Wood utility poles cannot be structurally modified to integrate equipment within. Undergrounding is generally infeasible due to sidewalk space constraints and undue environmental and operational impacts for required active cooling and dewatering equipment.

Feasibility aside, this requirement is also unreasonable because small equipment boxes on the side of a pole are not “out-of-character” among typical utility infrastructure in the right-of-way, particularly on wood utility poles. There is no reason to require undergrounding of small pole-mounted equipment components which pose little visual impact. The City must allow small cell accessory equipment on the side of a pole.

For street lights, the City cannot impose its own standards and specifications on SCE’s poles. Draft Ordinance § 12.18.070(A)(13). To be reasonable, the City should
consult with wireless carriers and SCE to determine street light pole designs acceptable to all parties to serve as the basis for objective standards.

Utility poles offer ideal sites for small cells by consolidating new equipment on existing utility infrastructure. Small cell equipment on utility poles is not “out-of-character” compared to typical infrastructure such as transformers or cable boxes. To accommodate typical small cell equipment required for service, we suggest modifying Draft Ordinance Section 12.18.070(A)(14) to allow up to nine cubic feet of accessory equipment on the side of a utility pole before any undergrounding is considered.

Requiring new utility connections to be placed underground is unreasonable with respect to utility poles. Draft Ordinance § 12.18.070(A)(20). New aerial utility lines are not “out-of-character” where there are existing electrical and/or communication lines between poles. Draft Ordinance Section 12.18.070(A)(20) must be revised to allow new aerial lines where there are existing aerial lines connected to poles.

**Height Limits May Lead to Additional Small Cells.**

The Draft Ordinance limits antennas in the right-of-way to four feet above either a pole itself or any separation distance required by Public Utilities Commission General Order 95 (six feet over electric supply conductors); further, height is limited to 10 percent or 10 feet over adjacent zone height limits. Draft Ordinance § 12.18.070(A)(9). These height limits contradict the height allowances included in the FCC’s definition of small cell, which are no less than 50 feet. 47 C.F.R. § 1.6002(1)(1).

For the right-of-way, the height limit is unreasonable as it would prohibit use of typical four-foot antennas on utility poles. Antennas above utility poles require a mount underneath the antenna that attaches the antenna to the pole or pole-top extension. Antenna mounts are conical in shape, one to two feet in height, and conceal cables. As elements associated with antennas, the mounts are also subject to separation requirements of General Order 95 Rule 94. The proposed four-foot limit will not accommodate four-foot antennas and their mounts, limiting wireless carriers to two-foot antennas which generally have a smaller coverage footprint. This will lead to the unintended consequence of more facilities required to serve an area.

Utility poles vary in height and often exceed zone height limits, which are arbitrary as applied to utilities in the right-of-way. Taller utility poles can elevate antennas well above right-of-way sight lines. For street light poles, a four-foot height limit may not accommodate an antenna, mounting hardware, and small network components within a tapered shroud. We suggest revising Draft Ordinance Section 12.18.070(A)(9) to eliminate the zone height reference, with a modest expansion of the four foot limit to six feet.
Design Standards Must Be Revised to Accommodate Typical Small Cells Required for Service.

For new poles in the right-of-way, the City cannot require Verizon Wireless to install a street light fixture or other non-wireless apparatus. Draft Ordinance § 12.18.070(A)(16). This clearly contradicts Verizon Wireless’s right under Public Utilities Code Section 7901 to erect new poles in the right-of-way solely to elevate telephone equipment. The City’s limited aesthetic review extends to wireless facility equipment, but lighting is not a functional requirement for wireless service. The alternate integrated pole option is technically infeasible given the limited 12- and 16-inch diameter pole and base sizes. Remote radio units, other Verizon Wireless network equipment and mounting hardware cannot fit within these dimensions. As described, pole-mounted equipment components are not “out-of-character” in the right-of-way. Draft Ordinance Section 12.18.070(A)(16) must be revised to strike lighting requirements, and it should allow new poles with radio boxes mounted to the side of the pole. The City should consult with wireless carriers regarding new designs for stand-alone small cell poles to serve as the basis for objective standards.

New poles should be allowed if there are no existing pole options within a reasonable distance (e.g., 200 feet). Draft Ordinance § 12.18.080(A)(1)(d). Referring to a “service area” is inconsistent with the Small Cells Order which explains that small cells are needed to densify wireless networks and introduce new services, while disfavoring dated “coverage gap” approaches to service needs. Small Cells Order, ¶¶ 37-40. We suggest revising this standard to allow a new pole if there is no existing infrastructure within 200 feet along the subject right-of-way that is available and technically feasible to support a small cell.

Antenna shrouds may impede frequencies that Verizon Wireless recently licensed from the FCC for new wireless technology, rendering them technically infeasible and the shrouding requirements unreasonable. Antenna standards for right-of-way facilities must accommodate new higher-frequency facilities that integrate antennas and radios in one small box, and they cannot impose shrouding which inhibits signal propagation. While the Draft Ordinance provides a blanket exemption from standards for technical infeasibility, the shrouding provisions in particular should address that. We suggest revising Draft Ordinance Section 12.18.070(A) Subsections (10), (13), (14) and (16) to excuse antenna shrouding requirements if technically infeasible for signal propagation.

The prohibition of strand-mounted antennas contradicts federal law. Draft Ordinance § 12.18.080(A)(4)(a). Small strand-mounted antennas are not “out-of-character” compared to cable splice units or other apparatus suspended between poles, and the prohibition is unreasonable. Further, the City cannot dictate the type of technology used by wireless providers, as this would intrude on the exclusive federal authority over the technical and operational aspects of wireless technology. See New York SMSA Ltd. Partnership v. Town of Clarkstown, 612 F.3d 97, 105-106 (2nd Cir.)
As it violates federal law, Draft Ordinance Section 12.18.080(A)(4)(a) must be stricken.

Application Procedures Must Be Revised To Avoid Conflict with Federal Law.

The Draft Ordinance requires applicants to provide notice of the Shot Clock date before 20 days prior to expiration, perhaps an attempt to thwart a deemed-approval remedy under Government Code Section 65964.1. Draft Ordinance § 12.18.060(G). However, the Telecommunications Act places responsibility with local governments to act on applications within a reasonable period of time, and the FCC’s Shot Clock rules reinforce this. The FCC recently emphasized this by codifying Shot Clock rules pursuant to the Small Cells Order. See 47 C.F.R. § 1.6003. The City is responsible for adhering to the Shot Clock, and applicants should not be obligated to do the City’s work. Draft Ordinance Section 12.18.060(G) should be stricken.

The City cannot terminate an application if an applicant does not respond to a notice of incomplete within 30 days (or any period of time). Draft Ordinance § 12.18.050(G). The FCC’s newly-codified rules for small cells plainly state that the Shot Clock restarts or resumes running on the date an applicant fully responds to a timely notice. 47 C.F.R. §§ 1.6003(d)(1), 1.6003(d)(3)(ii). The FCC’s rules do not allow for early, unilateral termination. Draft Ordinance Section 12.18.050(G) is preempted by federal regulation and must be stricken.

Draft Ordinance Section 12.18.050(I) errs in allowing the Director to “reject” incomplete applications. The City cannot deny incomplete applications where Shot Clock rules clearly provide a remedy for applicants. We suggest revising this provision to eliminate the word “rejected” in favor of “deemed incomplete.”

Where the Draft Ordinance limits batching of applications to five facilities of similar design, the FCC does not limit the number of small cells or the specific designs that can be batched under one application, and Shot Clock rules contemplate a mix of existing and new structures under one batch application. Draft Ordinance 12.18.050(A)(4); 47 C.F.R. § 1.6003(c)(2). This section contradicts federal regulations and must be stricken.

As noted, Verizon Wireless has a right to use utility poles, as it is a member of the joint pole authority. Authorization for pole use is provided in a form circulated to pole members. We suggest revising Draft Ordinance Section 12.18.050(B)(5) to specify that for utility poles, only a joint pole authorization is required.

The Draft Ordinance requires concurrent submittal of fiber or cable connections with any right-of-way facility application. Draft Ordinance § 12.18.050(A)(5). However, wireless facility permittees should be responsible for only the installations that they will build and maintain. Fiber backhaul connections are generally provided by a
different company that will build and maintain its fiber lines under distinct permits. Fiber networks are beyond the scope of a “small wireless facility” as defined by the FCC and the Draft Ordinance. The City cannot subject Verizon Wireless to permit conditions of a different entity, such as indemnity and insurance. *We suggest replacing Draft Ordinance Section 12.18.050(A)(5) with a requirement to submit a brief verbal description of any communications backhaul option anticipated for an application.*

The Draft Ordinance requires revisions to comply with new FCC regulations addressing small cell approval criteria and state law granting telephone corporations the right to use the right-of-way. The Council should decline action on the Draft Ordinance and direct staff to make needed revisions.

Very truly yours,

Paul B. Albritton

cc: Lona Laymon, Esq.
Amy Seeraty
Ara Mihranian
MEMO

DATE: March 31, 2019

FROM: SUNSHINE, RPV resident, 310-377-8761

TO: RPV City Council

RE: April 2, 2019 City Council Regular Business Item 4, renaming Shoreline Park

All one needs to read is the Agenda Description, Staff's recommendation and the letter from Allen Franz, PVPLA President, Page E-1 in order to make this decision. I support his recommendation and agree with the facts in all four of his bullet items.

AGENDA DESCRIPTION: Consideration and possible action to rename Shoreline Park as Gateway Park.

RECOMMENDED COUNCIL ACTION: (1) Consider renaming Shoreline Park as Ocean Trails Reserve to align with the name of this subarea of the City's Palos Verdes Nature Preserve; (2) Name the beach accessible from Shoreline Park as Ocean Trails Beach; and, (3) If these name suggestions are deemed acceptable, direct Staff to bring back a resolution memorializing these new names.

The Title and the Recommendation don't match. 13 pages of this 15 page Agenda Report are not germane to the narrow focus of this Agenda Item Description. Naming a beach is just "slipped in". The text points out an issue which deserves a Public Hearing.

The US Geologic Service and the State of California have policies and procedures for naming and changing the name of landmarks/geologic features. In December of 2012, the City Council got to "sort-of"
discuss a Citizen Advisory Committee's recommended policy for trail naming. The City Manager needs to bring the "big picture" to Council before Staff complains about the lack of direction any further.

Does the City even have a map of our parks which is as specific as this Agenda Report page D-1? And, what a pitiful document that is. No date. No credit to the maker. No City logo.

Please eliminate the name Shoreline Park, let these 50+ acres remain, as shown, as a part of the Ocean Trails Reserve and add a "task" to whatever you are now calling the 2019 Strategic Action Plan Goals to pull together all of the scattered naming policies. We, The People, would like to know what is where, as do the Feds and Google Earth.