

CITY OF LAGUNA NIGUEL

AGENDA ITEM

CITY COUNCIL

DECEMBER 15, 2015

TO: Honorable Mayor and Council Members

FROM: Daniel Fox, Assistant City Manager

SUBJECT: Memorandum of Understanding between the County of Orange and City of Laguna Niguel Related to Cost Sharing for Preparation of Environmental Analysis for the “AGORA Arts District Downtown Laguna Niguel” Development Project.

SUMMARY: On November 3, 2015, the City Council approved the Professional Services Agreement with PlaceWorks to prepare an Environmental Impact Report (EIR) for the General Plan Amendment and Zone Change related to the residential component of the AGORA Arts District Downtown Laguna Niguel mixed-use project. At that time, County of Orange agreed in writing to initially reimburse the City for 50% of the cost of the EIR and other related environmental documents, and reimburse the City for the remaining costs within 30-days of the first residential unit Certificate of Occupancy for the project. The County has now proposed a Memorandum of Understanding (MOU) to memorialize the terms of the cost reimbursement arrangement which is consistent with the Council’s previous actions. It is recommended that the City Council approve the Memorandum of Understanding between the County and City.

BACKGROUND:

On November 3, 2015, the City Council approved the Professional Services Agreement with PlaceWorks to prepare the EIR at a cost of \$244,804. As part of the EIR, a Water Supply Assessment (WSA) to be prepared by Moulton Niguel Water District would also be required at an additional cost estimated at \$25,000 to \$35,000. As part of the Council’s action on November 3, 2015, the County of Orange committed in writing to:

1. Initially reimburse the City for 50% of the cost to prepare the EIR and WSA; and
2. Reimburse the City for the balance of the costs within 30 days of issuance of the first residential Certificate of Occupancy.

The County has now proposed a formal MOU to be approved by the County and City memorializing the terms of reimbursement. The MOU has been reviewed by the City Attorney

and is consistent with the Council’s previous actions and understanding of the terms for reimbursement approved at the November 3, 2015 Council meeting. On December 8, 2015 the County Board of Supervisors approved the subject MOU.

FISCAL IMPACT:

None.

RECOMMENDATION:

That the City Council:

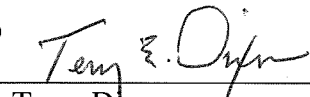
- a. Approve the Memorandum of Understanding between the County of Orange and the City of Laguna Niguel related to reimbursement of costs for processing the General Plan Amendment/Zone Change for the AGORA development project; and
 - b. Authorize the Mayor to execute said Memorandum of Understanding.
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**PREPARED
BY:**



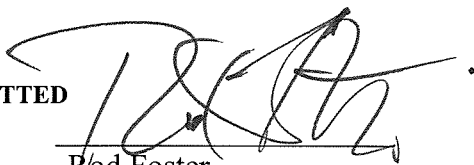
Daniel Fox
Assistant City Manager

**REVIEWED
BY:**



Terry Dixon
City Attorney

**SUBMITTED
BY:**



Rod Foster
City Manager

Attachments:

- A. Memorandum of Understanding; County of Orange
- B. City Council Meeting Minutes; November 3, 2015

ATTACHMENT A

**MEMORANDUM OF UNDERSTANDING BETWEEN
CITY OF LAGUNA NIGUEL AND THE COUNTY OF ORANGE
FOR PROCESSING OF GPA/ZC FOR THE ‘AGORA
ARTS DISTRICT DOWNTOWN LAGUNA NIGUEL’**

This Memorandum of Understanding Between the City of Laguna Niguel and the County of Orange for Processing of GPA/ZC for the ‘AGORA Arts District Downtown Laguna Niguel’ (“**MOU**”) is made _____, 2015, (“**Effective Date**”) by and between the COUNTY OF ORANGE, a political subdivision of the State of California (“**County**”), and the CITY OF LAGUNA NIGUEL, a municipal corporation duly organized under the Constitution and laws of the State of California (“**City**”). The County and the City also be referred to collectively herein as the “**Parties**” or individually as a “**Party**.”

RECITALS

A. The County is the owner of that certain property generally bounded by Crown Valley Parkway, Alicia Parkway, and Pacific Island Drive (APN 656-242-18) in the City, formerly known as the South County Justice Center and shown on Exhibit A, attached hereto (“**Property**”).

B. On November 25, 2014, the County selected the Agora Project development team (“**Agora**”) as the developer for the Property under an anticipated Master Lease for the Property. The County and Agora have executed an Option Agreement for an Option on the Master Lease of the Property.

C. Agora has proposed the “AGORA Arts District Downtown Laguna Niguel” on the Property, which is planned to be a mixed use project comprised of approximately 280,000 square feet of commercial uses and up to 200 multi-family residential units (“**Project**”).

D. The development of the Project by Agora will require a General Plan Amendment and Zone Change by the City to allow for the residential component of the Project (“**GPA/ZC**”).

E. The City has agreed to initiate the GPA/ZC and has determined that an Environmental Impact Report (“**EIR**”) will be necessary for compliance with the California Environmental Quality Act (“**CEQA**”).

F. The City has selected PlaceWorks to prepare the EIR and related studies, with an anticipated cost of \$244,804.

G. The Moulton Niguel Water District (“**MNWD**”) has determined that a water supply assessment (“**WSA**”) will need to be prepared as part of the environmental review of the Project and MNWD has estimated a potential cost ranging between \$25,000 and \$35,000 for preparing the WSA for the Project.

H. The County, as more fully set forth herein, has agreed to reimburse the City for both 50% of the cost of the EIR within fifteen (15) days of execution of this MOU and 50% of the cost of the WSA within fifteen (15) days of the cost being paid by the City and to reimburse (or

have reimbursed by Agora) the City for both the remaining 50% of the cost of the EIR and 50% of the cost of the WSA within thirty (30) days of the first residential unit Certificate of Occupancy for the Project (each reimbursement may be referred to herein as a “**County Payment**”).

A G R E E M E N T

NOW, THEREFORE, in consideration of the above and the mutual covenants herein, City and County agree as follows:

1. RECITALS. The Recitals above are incorporated herein.
2. CITY OBLIGATIONS. Pursuant to this MOU the City shall:
 - a. Enter into a Professional Services Agreement with PlaceWorks to complete the EIR for the GPA/ZC for the Project and initiate the process with MNWD for the completion of the WSA for the Project.
 - b. Initiate, process and consider the GPA/ZC for the Project in the City’s normal and customary land use/planning process.
 - c. Reasonably cooperate with the County in the processing of the GPA/ZC.
 - d. Process and consider any additional permits or approvals for the project developer that might be necessary for the development of the Project, the costs for which shall be borne by the developer, who will be the applicant for such permits or approvals, through the City’s normal and customary land use/planning process.
3. COUNTY OBLIGATIONS. Pursuant to this MOU the County shall:
 - a. Reimburse the City \$122,402 within fifteen (15) days of the execution of this MOU and pay the City 50% of the cost of the WSA within fifteen (15) days after the cost is paid by the City to MNWD (“**First County Payment**”).
 - b. Reimburse the City for both an additional \$122,402 and an additional 50% of the cost of the WSA within thirty (30) days of issuance of the first residential unit Certificate of Occupancy for the Project (“**Second County Payment**”). The Parties understand that the County intends that the ultimate developer of the Project will make this Second County Payment, and that the County will provide as such in the Master Lease with such developer.
 - c. Reasonably cooperate with the City in the processing of the GPA/ZC.
4. CITY AND COUNTY OBLIGATIONS.
 - a. In the event that the cost of preparing the EIR and the WSA is less than the First County Payment, the City shall reimburse the County the difference within fifteen (15) days of approval of the EIR.
 - b. If the cost of preparing the EIR is less than the anticipated cost of \$244,804, then the cost savings shall be divided equally between the County and City and the Second County Payment to City for cost of the EIR will be adjusted accordingly.
 - c. If the cost of preparing the EIR will exceed \$244,804, the City shall review this matter with County and County shall decide whether the additional cost should be incurred (which may require County Board of Supervisors approval), and if it concurs, the County shall pay City 50% of the increase within fifteen (15) days of it being paid by City and

the County shall reimburse the City for the City's 50% with the Second County Payment as set forth in paragraph 3.b.

5. TERM. This MOU will remain in effect through the first to occur of: (a) the denial of the GPA/ZC for the Project by the City, or (b) issuance of the first Certificate of Occupancy for a residential unit the Project and payment of the second County Payment.
6. TERMINATION. This MOU will continue in effect until both Parties agree in writing to its termination or until the occurrence of one of the events in Section 4, above.
7. NOTICES. All notices, transmittals of documentation and other writings required or permitted to be delivered or transmitted to either of the parties under this MOU shall be personally served or deposited in a United States mail depository, first class postage prepaid, and addressed as follows:

City:
City Manager
City of Laguna Niguel
30111 Crown Valley Parkway
Laguna Niguel, CA 92677
Attn: City Manager

County:
County Executive Office/Real Estate
County of Orange
333 W Santa Ana Blvd
Santa Ana, CA 92701
Attn: Chief Real Estate Officer

or such other addresses any party may direct to the other party in writing. All such notices and communications shall be deemed to have been duly given when delivered by hand, if personally delivered. Except where service is by registered or certified mail, return receipt requested, service of any instrument or writing shall be deemed completed forty-eight (48) hours after deposit in the United States mail depository.

8. LIABILITY. The Parties each agree to assume sole responsibility to defend against any and all claims property which may arise, in whole or in part, from the imposition of legal liability for the acts, omissions and conduct of the City on the one hand or County on the other, and specifically agree that neither City nor County shall be obligated to defend or indemnify the other for claims which create potential legal liability arising out of the acts, omissions or conduct of the other party to this MOU regarding the actions taken by the Parties pursuant to this MOU.
9. AMENDMENTS. Amendments to this MOU shall be made in writing by City and County.
10. ASSIGNMENT. This MOU may not be assigned, conveyed, or otherwise transferred by either party.
11. INTERPRETATION; GOVERNING LAW. This MOU shall be construed as if prepared by both Parties. This MOU shall be construed, interpreted and governed by the laws of the State of California and the laws of the United States of America prevailing in California.
12. ATTORNEYS' FEES. In the event of any legal action or other proceeding between the Parties regarding this MOU, each Party shall be responsible for its own attorneys' fees, court costs and litigation expenses.

13. FURTHER ASSURANCES. Each Party will, whenever and as often as it shall be requested to do so by the other Party, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all such further conveyances, assignments, approvals, consents and any and all other documents and do any and all other acts as may be necessary to carry out the intent and purpose of this MOU.
14. TIME OF THE ESSENCE. Time is of the essence for this MOU and each and every term and provision hereof.
15. HEADINGS. The headings in this MOU are for convenience of reference only, and shall not limit or otherwise affect the meaning of this MOU.
16. COUNTERPART ORIGINALS. This MOU may be executed by City and County in multiple counterparts, all of which together shall constitute a single MOU.
17. EXHIBITS. The Following Exhibits are attached to this MOU and made a part hereof:
 - a. Exhibit A – Depiction of Property

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IN WITNESS WHEREOF, the Parties hereto have caused this MOU to be executed on the date first above written.

CITY

APPROVED AS TO FORM:

CITY OF LAGUNA NIGUEL

By _____
City Attorney

By: _____
Mayor

APPROVED AS TO FORM:

COUNTY

OFFICE OF COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

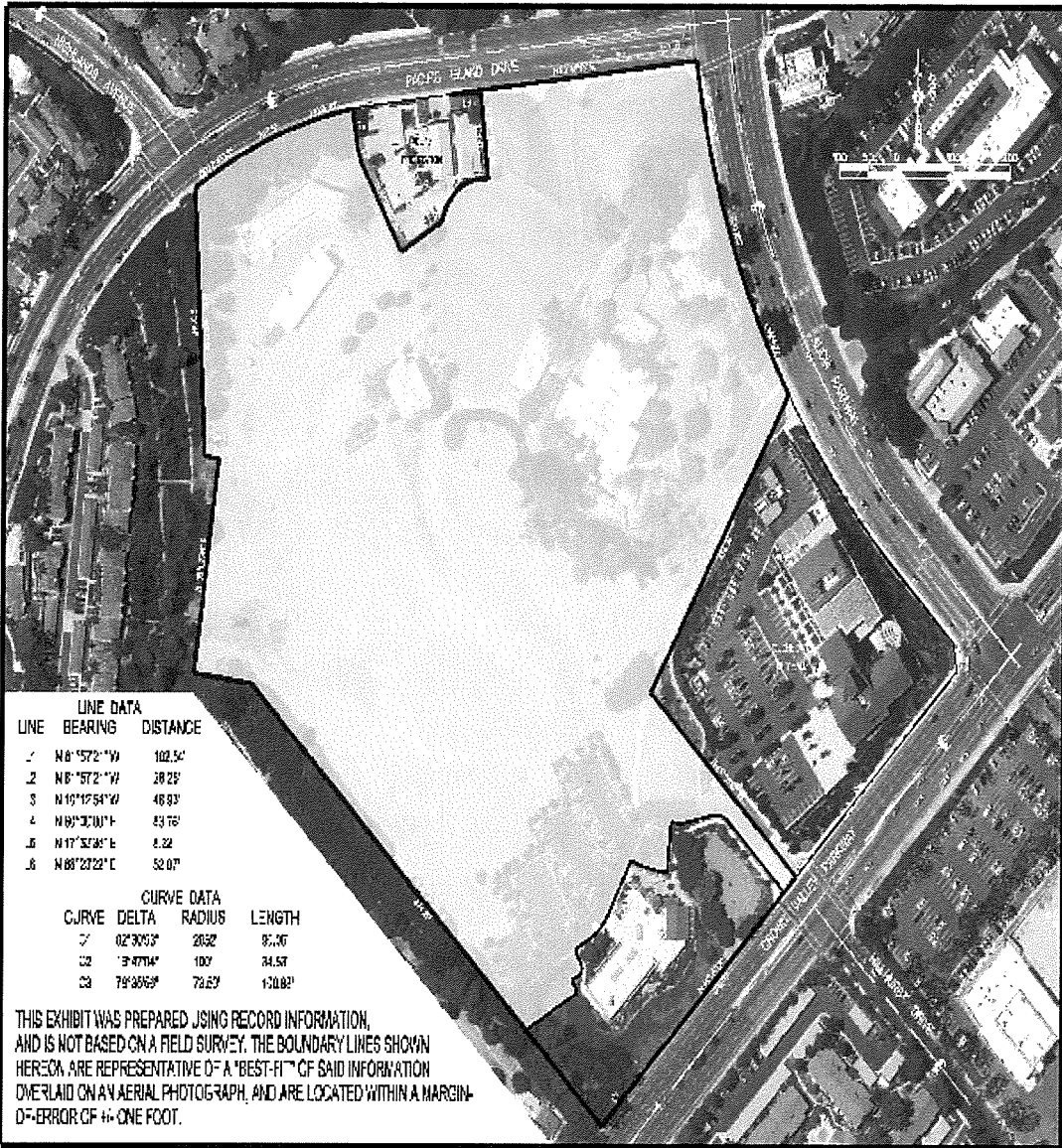
COUNTY OF ORANGE

By _____
Deputy

Scott Mayer, Chief Real Estate Officer
Orange County, California

EXHIBIT A

PROPERTY DEPICTION



LINE DATA		
LINE	BEARING	DISTANCE
1	N 81°57'21" W	102.54'
2	N 6°57'21" W	28.25'
3	N 15°17'54" W	46.83'
4	N 82°32'00" E	23.76'
5	N 17°52'36" E	2.22'
6	N 88°23'22" E	52.07'

CURVE DATA			
CURVE	DELTA	RADIUS	LENGTH
1	02°30'57"	2652'	97.26'
2	3°47'04"	100'	34.57'
3	79°05'59"	73.67'	120.82'

THIS EXHIBIT WAS PREPARED USING RECORD INFORMATION, AND IS NOT BASED ON A FIELD SURVEY. THE BOUNDARY LINES SHOWN HEREON ARE REPRESENTATIVE OF A "BEST-FIT" OF SAID INFORMATION OVERLAIN ON AN AERIAL PHOTOGRAPH, AND ARE LOCATED WITHIN A MARGIN OF ERROR OF +/- ONE FOOT.

EXHIBIT A

RIN 2016-002

SCA. E. : 1" = 200'

OC PUBLIC WORKS
OC SURVEY
RIGHT-OF-WAY SERVICES

PROJECT : SOUTH COLONY CIVIC CENTER



ATTACHMENT B

COMMUNITY DEVELOPMENT

1. Professional Services Agreement with PlaceWorks to Prepare an Environmental Impact Report (EIR) for the General Plan Amendment and Zone Change (GPA/ZC) for the AGORA Arts District Downtown Laguna Niguel (AGORA) Project

Planning Manager John Morgan provided information as stated in the staff report. He stated that PlaceWorks is recommended for selection based on a series of considerations, including their experience with large-scale mixed use and downtown redevelopment projects and their demonstration of a clear understanding of the scope of services requested by the City.

Council Member Minagar suggested a review of the traffic study to see if the number of traffic signals and roadways could be reduced.

Planning Manager Morgan stated that the reason for the number of traffic signals to be studied is that it mimics the number of intersections and roadways that were studied previously for the South County Courthouse expansion.

Assistant City Manager Fox stated that staff would contact the traffic consultant to review the scope of work. He stated that staff took a conservative approach based upon input received from the community.

Discussion ensued regarding the cost of the traffic study and the funding of the environmental consulting services.

A MOTION was made by Mayor Pro Tem Davies, seconded by Council Member Gennaway, to:

- a. Approve an appropriation of \$279,804 from the General Fund Capital Asset Replacement Reserve to the Community Development/Planning – Planning Professional Services Account to cover the costs to prepare the EIR and WSA;
- b. Approve the Professional Services Agreement with PlaceWorks to prepare an EIR specifically and exclusively for the AGORA mixed-use project by LAB Holding as has been publicly discussed and detailed in Figure 1 of this report (200 residential units maximum) for an amount not to exceed \$244,804;
- c. Authorize the City Manager to execute the Professional Services Agreement between the City and PlaceWorks upon receipt of the initial 50% payment of \$122,402 from the County of Orange; and,
- d. Authorize the Community Development Director to submit a WSA application to the MNWD upon receipt of the initial 50% payment of the cost proposal to prepare the WSA from the County of Orange.

Motion carried 5-0.