



Meeting Date: 04/09/13

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input checked="" type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Lou Balderrama, City Engineer Agenda Item No. 0-2

Reviewed By: City Manager [Signature] City Attorney [Signature] Finance [Signature] Public Works

DATE: March 26, 2013

TO: City Council

FROM: Rob Roshanian, Interim Public Works Director ^{W.S.R.}
 Public Works

SUBJECT: Agreement between the City and the Channel Islands Waterfront Homeowners' Association Concerning Repairs to Seawalls and Waterways

RECOMMENDATION

That City Council approve and authorize the Mayor to execute an Agreement between the City and the Channels Islands Waterfront Homeowners' Association for the repair of seawalls and waterways for an estimated expenditure of City general funds in an amount not to exceed \$500,000. (Agreement No. A-7581.)

DISCUSSION

On March 1, 2011, the City Council approved an agreement with the TranSystem Corporation to assess the condition and develop a work plan for the capital repairs and replacement of the seawalls located in the Mandalay Assessment District. TranSystem was selected as the most qualified firm to perform the services based on competitive proposals submitted by five firms that were reviewed by staff members of the Public Works/Capital Projects Management Division and members of the Mandalay Homeowners' Association

TranSystem's assessment of the seawalls reported large variations of reduced structural integrity between the walls. This initial phase or Phase A determined that the walls could be salvaged. The steel reinforcement in the walls had less corrosion than anticipated, but can degrade quickly if the concrete protecting it continues to deteriorate. This information coupled with the individual wall locations/orientation in the bay, and other pertinent data, provided a scaled evaluation of different wall sections allowing for a remediation plan designed to the specific wall-segment needs rather than a generic "one-size-fits-all" approach. All of the walls inspected had a reduction of structural integrity to a certain degree.

On February 7, 2012, the City Council approved the First Amendment to the agreement with TranSystem for Phase "B" a strategic investigation that allowed TranSystem to collect adequate samplings for the engineering assessment of all seawall exposure segments but excluding the evaluation of each individual property.

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The Phase “B” strategic investigation included:

- Visual and physical sampling of selected seawall exposure segments for rating conditions and identifying the highest priority segments for the first repair phase.
- Geotechnical investigation sampling the site and provide soils and seismic loading criteria.
- Wall stability analysis to determine the safety factor of each seawall exposure wall segment by comparison of the Demand load to the Capacity of the walls in their current condition.
- “Risk” and “timing” assessment.
- Comprehensive characterization of the walls and an engineered remediation plan will be developed after the proposed Phase B investigations are performed and analysis of the data is completed.

The strategic investigation by TranSystem identified certain repairs to be accomplished on a high-priority, medium-priority, low-priority and non-critical priority basis. TranSystem completed the Phase “B” strategic investigation on August 20, 2012.

TranSystem identified repairs to stabilize 200 linear feet along the seawall of Kingsbridge Way as the highest priority for an estimated cost of \$532,000. Other high-priority repairs include providing 125 linear feet of slope protection at six undermined locations (approx. cost \$175,000) and filling 240 linear feet of cutoff wall gaps with sand and grout (approx. cost \$30,000), and other recommended repairs not to exceed a total of \$1,000,000.

The repairs initially will be funded by assessments collected for maintenance of waterways and tracts 1904 and 2026. The City will reimburse the District on a rolling basis for 50% of the cost of repairs. It is anticipated that the monies will be spent on the identified repairs over the next six to twenty-four (6-24) months from the date of this Agreement. The City will take those steps necessary to secure environmental clearances, accomplish design work, and accomplish the expedited repairs. The details of the transactions and background are set forth in the attached agreement.

City and District will continue to explore ways to fund repairs on a long-term basis.

FINANCIAL IMPACT

The estimated cost not to exceed \$1,000,000 for high-priority seawall repairs is funded 50% by the Mandalay Waterway Maintenance Fund through a reimbursement by the City’s General Fund. The remaining 50% is funded by the property owners within the Mandalay Waterway Maintenance District. While assessments are collected for ongoing routine maintenance of seawalls and waterways there is insufficient funding for major repairs of seawalls of this magnitude.

Attachment No. 1 – Agreement No. A-7581

AGREEMENT BETWEEN THE CITY OF OXNARD AND THE CHANNEL
ISLANDS WATERFRONT HOMEOWNERS' ASSOCIATION CONCERNING
REPAIRS TO SEAWALLS AND WATERWAYS

This agreement concerning repairs to seawalls and waterways ("Agreement") is by and between the City of Oxnard ("City") and the Channel Islands Waterfront Homeowners' Association ("CIWHA"). The Agreement is dated April 9, 2013. The Agreement is made with reference to the following facts and circumstances.

BACKGROUND

1. On or about September 26, 2012, CIWHA filed a Government Code claim with the City, claim number 2012-0142 (the "Claim").
2. The Claim pertains to tracts 1904-1, 1904-2, 1904-3 and tracts 2026-1, 2026-2 and 2062-3 (the "Tracts"). The Tracts are in the western portion of the City between Harbor Boulevard on the west, Victoria Avenue on the east, Channel Islands Boulevard on the south, and Wooley Road on the north.
3. The Tracts were developed beginning in 1968. The Tracts feature inland waterways. Seawalls separate the waterways from residential units located adjacent to the waterways.
4. The parties acknowledge that the seawalls are in need of repair.
5. In or about August, 2012, TranSystem Corporation ("TranSystem") prepared for the City a "Phase B Strategic Investigation" of the seawalls ("Strategic Investigation").
6. In that Strategic Investigation, TranSystem identified certain repairs to be accomplished on an expedited basis, as well as repairs to be accomplished on a high-priority, medium-priority, low-priority and non-critical basis.
7. A copy of the executive summary of the Strategic Investigation, with a summary of the recommended repairs is attached hereto as Exhibit 1. This Agreement is primarily concerned with the "Expedited Repairs" listed in the Strategic Investigation. Concurrent with providing the City with the Strategic Investigation, TranSystem provided the City with a more detailed and expanded price estimate for the work described as item (1) under the category "Expedited Repairs," which contained a revised estimate of \$532,420. A copy of the revised estimate is attached hereto as Exhibit 2.

8. In the claim, CIWHA contends that, the failure of the City to maintain the seawalls, which CIWHA contends are public improvements, is causing damage to or has the potential to cause damage to homes and property in the Tracts.

9. The City denies that any homeowners have been damaged and does not admit any contentions of the Claim. The City, however, recognizes that there are significant justiciable issues concerning the responsibility for repairs of the seawalls and that the City could be held responsible in the event that damage to adjacent properties were caused by the failure to maintain the seawalls.

10. On or about May 26, 1970, by Resolution No. 5,121, the City declared its intention to form an assessment district for maintenance of waterways in Tracts 1904 and 2026-1 (the "District"). On or about June 16, 1970, the City Council by Resolution No. 5,144 formed the District. On or about November 23, 1971, the City Council, by Resolution No. 5,487, included Tract 2026-2 into the District. Tract 2026-3 was later included in the District by Resolution No. 6830.

11. Pursuant to the District, the homeowners in the Tracts have been assessed and have paid monies into an account for the maintenance and repair of the waterways and seawalls.

12. While assessments have been collected and have been used by the City to maintain the waterways and seawalls and while funds in the present amount of approximately \$1.2 Million exist in the District accounts, these funds and funds collected on an ongoing basis are not sufficient to perform the repairs and to continue the routine maintenance obligations of the Districts.

13. Because of the adoption of Proposition 218 by the voters of the State of California in 1996, the City is precluded from raising the assessments for maintenance of the waterways and seawalls in the District, except in accordance with the notice and majority protest procedures set forth in Proposition 218 and statutes implementing Proposition 218.

14. Recognizing all of the foregoing, City staff and CIWHA have discussed the possibility of proceeding on a long term basis with a plan to provide shared funding mechanisms to provide for such repairs on an ongoing basis and have discussed several cost-sharing options.

15. Such discussions have not reached the stage of agreement or City Council action, however the City and CIWHA recognize a need to immediately proceed with a portion of the expedited repairs and enter this Agreement to provide funding to accomplish those repairs.

16. In order to accomplish certain expedited repairs described in TranSystem's Report, the parties agree as follows:

AGREEMENT

1. The City will use existing funds in the District to complete the most urgent repairs for Kingsbridge. The parties contemplate that the repairs will include tie-back for 200 linear feet of failing wall on Kingsbridge Way (approx. cost \$532,000), as well as providing 125 linear feet of slope protection at six undermined locations (approx. cost \$175,000) and filling 240 linear feet of cutoff wall gaps with sand and grout (approx. cost \$30,000), and other recommended repairs not to exceed a total of \$1,000,000.00. It is anticipated that the monies will be spent on the identified repairs over the next six to twenty-four (6-24) months from the date of this Agreement. City will take those steps necessary to secure environmental clearances, accomplished design work, and accomplish the expedited repairs.

2. The City will, within twelve (12) months of each expenditure of funds, on a "rolling basis" replace in the District accounts one-half (50%) of the funds taken from the District accounts to accomplish the repairs. The City's reimbursement to the District accounts will come from City funds and not be the responsibility of the property owners within the Districts, except that property owners may be residents of the City.

3. The CIWHA and City will continue to explore mechanisms to finance remaining repairs identified in the Strategic Investigation.

4. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of CIWHA and City.

5. CIWHA and City agree that neither City nor CIWHA shall be responsible for delays or failures in performance resulting from acts beyond the control of either party. Such acts shall include, but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations imposed after this Agreement was executed, fire communication line failures, earthquakes or other disasters.

6. City and CIWHA agree that no waiver of a breach of any provision of this Agreement by either CIWHA or City shall constitute a waiver of any other breach of the same provision or any other provision of this Agreement. Failure of either City or CIWHA to enforce at any time, or from time to time, any provision of this Agreement, shall not be construed as a waiver of such provision or breach.

7. City and CIWHA agree that this Agreement may be executed in two or more counterparts, each of which shall be deemed an original.

8. City acknowledges that the person executing this Agreement has been duly authorized by the City Council to do so on behalf of City.

9. CIWHA acknowledges that the person executing this Agreement has been duly authorized by CIWHA to do so on behalf of CIWHA.

10. This Agreement does not fully and finally resolve the Claim filed by CIWHA, but is intended to resolve the issue of funding for the expedited repairs, as described in Paragraph 1 of this Agreement.

11. Any notices to CIWHA may be delivered personally or by mail addressed to The Law Office of K.M. Neiswender, 255 Maple Court, Suite 212, Ventura, California 93003, Attention: Kate Neiswender.


12. Any notices to City may be delivered personally or by mail addressed to the Oxnard City Attorney's Office, 300 West Third Street, Suite 300, Oxnard, California, 93030, Attention: City Attorney. Plus an additional copy to the Oxnard City Manager's Office, 300 West Third Street, Fourth Floor, Oxnard, California 93030, Attention: City Manager.

13. City and CIWHA agree that this Agreement constitutes the entire Agreement of the parties regarding the subject matter described herein and supersedes all prior communications, agreements and promises, either oral or written.

CITY OF OXNARD

CHANNEL ISLANDS WATERFRONT HOMEOWNERS' ASSOCIATION

Tim Flynn, Mayor




William Clark, President

ATTEST:

APPROVED AS TO INSURANCE:

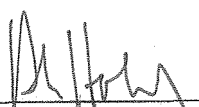
Daniel Martinez, City Clerk



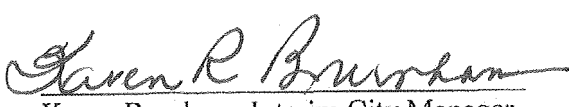
James Cameron, Risk Manager

APPROVED AS TO FORM:

APPROVED AS TO AMOUNT:



Alan Holmberg, City Attorney



Karen Burnham, Interim City Manager