

*STAFF REPORT**CITY OF OCEANSIDE*

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DATE: June 25, 2014

TO: Honorable Mayor and City Councilmembers

FROM: City Manager's Office  
City Attorney's Office

SUBJECT: Memorandum of Understanding between the City of Oceanside and the Veterans Association of North County

**SYNOPSIS**

The item before the City Council is the approval of a Memorandum of Understanding ("MOU") between the City of Oceanside and the Veterans Association of North County ("VANC") to provide a capital funding match for Phase 3 construction at the City-owned building located at 1617 Mission Avenue; and authorization for the City Manager to execute the MOU.

**BACKGROUND**

On May 28, 2014, the City Council directed the City Manager to return to Council within thirty days to provide a capital funding match for Phase 3 construction at the Veterans Association facility in Oceanside. VANC leases the facility from the City. Phase 3 involves construction of the banquet room and kitchen as well as furniture, fixtures and equipment. The total cost of Phase 3 is estimated at \$1,200,000.

The City Attorney has prepared an MOU with VANC to memorialize the City's offer of capital matching funds. Under the MOU, the City will provide an amount not to exceed \$600,000 exclusively for the improvements set forth in Exhibit A to the MOU. The City Manager will authorize payment in increments of no less than \$25,000 upon the submission of evidence of matching contributions received by VANC. The City will make matching funds available through December of 2015. VANC is required to comply with City Council Policy 200-09 which includes quarterly reports and a year end audit to document the use of City funds.

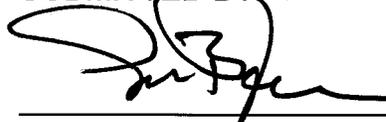
PREPARED BY:



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John P. Mullen  
City Attorney

SUBMITTED BY:



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Steven R. Jepsen  
City Manager

## **MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF OCEANSIDE AND THE VETERANS ASSOCIATION OF NORTH COUNTY**

This Memorandum of Understanding (“MOU”) is entered into by and between the City of Oceanside (“City”) and the Veterans Association of North County (“VANC”) to memorialize the City’s offer to provide financial assistance for the construction of improvements, and acquisition and installation of furniture, fixtures and equipment, at the City-owned structure located at 1617 Mission Avenue (hereinafter, “the Improvements”). VANC and the City are collectively referred to as the “Parties.”

### **RECITALS**

1. The City and VANC are parties to that certain Property Lease Agreement (“Lease”) dated April 16, 2008 for a 10,000 square foot portion of the Building located at 1617 Mission Avenue in the City of Oceanside. The Building is the former location of the City’s police station and was vacant prior to the approval of the original Lease. Following approval of the Lease, the City implemented capital improvements at a cost of approximately \$1,000,000 retrofitting the entire 13,500 square feet of the Building. The City retained the front 3,500 square feet of the Building for potential city use.
2. On March 14, 2012, the City Council approved Amendment 1 to the Lease allowing VANC the use of the 3,500 square feet of the of office space in the front of the Building for the sole purpose of conducting job placement classes for veterans. Under Amendment 1, VANC was provided a first right of refusal to lease the front 3,500 square feet of the Building.
3. On November 28, 2012, the City Council approved Amendment 2 to the Lease to specify the terms and conditions for the lease of the front 3,500 square feet of the Building. The City has not charged any rent for the original Lease, Amendment 1, or Amendment 2. Rather, the consideration for the Lease, as amended, is the programs, services and activities provided by VANC. Moreover, VANC is responsible for payment of all maintenance and utilities costs for the Building and VANC must maintain the City’s standard insurance requirements over the term of the Lease, as amended.
4. VANC has completed approximately two-thirds of the Improvements required under the Lease, as amended. VANC is in the midst of a capital funding campaign to raise necessary funds to complete the final one-third of the Improvements that remain to be constructed. A copy of the Improvements that are the subject of the ongoing funding campaign is set forth as Exhibit A to this MOU. Exhibit A also includes a timeline for construction of the remaining Improvements. The complete implementation of the Improvements is necessary for VANC to provide essential

services to veterans in North San Diego, including job placement, family resources, the coordination of social services and scholarships. VANC estimates that completion of the Improvements identified in Exhibit A will cost \$1.2 million. Absent a contribution by the City, VANC believes it will take an additional seven years to raise the funds to complete the Improvements.

5. VANC has requested that the City provide financial assistance in the form of a capital funding match to VANC on the condition that VANC raise at least \$600,000 in funds toward the completion of the Improvements identified in Exhibit A.

**NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

1. **CITY MATCHING FUNDS.** Subject to the appropriation of necessary funds in the City general fund budget, the City agrees to provide capital funding match to VANC in an amount not to exceed \$600,000. Prior to the approval of a City appropriation, VANC shall provide evidence satisfactory to the City Manager that it has received funds earmarked exclusively for the Phase 3 Improvements in Exhibit A. VANC agrees that it shall use the City matching funds solely and exclusively for the Improvements set forth in Exhibit A. No City funds shall be used for any improvement not specifically referenced in Exhibit A and no funds shall be used for the construction of the proposed bar/lounge area for the facility.

Provided VANC satisfies the conditions in this Section 1, the City shall provide its capital funding match in increments of not less than \$25,000 each up to the maximum of \$600,000. The last payment shall be no later than December 31, 2015. The City shall have no obligation to provide any capital funding match payments after December 31, 2015.

2. **RECORDS/AUDIT** VANC shall retain records satisfactory to the City's Financial Services Director documenting that all expenditures of City funds fully complies with this MOU. Moreover, VANC shall comply with City Council Policy 200-09 entitled "Financial Reporting Requirements for Non-Profit Organizations", a copy of which is attached hereto and incorporated by reference. The Council Policy requires that non-profit organizations receiving funding from the City must submit quarterly financial reports in the format provided by the Financial Services Department and shall demonstrate at a minimum how the City funds were expended. All receipts must be retained for a period of at least four years. VANC shall also submit a year-end report along with an independent audit performed by a third party certified public accounting firm. Neither the members of the Board of Directors of VANC nor any or its employees or agents shall be financially interested in the any agreement funded in whole or part by City funds. VANC's failure to comply with this section and City Council policy 200-09 shall be a basis for termination of this MOU.

3. **NO AGENCY CREATED.** VANC shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation whatsoever, unless specifically authorized in writing by the City. VANC shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this MOU.
4. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, VANC hereby certifies that is 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 VANC will comply with such provisions, and provide certification of such compliance as a part of this MOU.
5. **LIABILITY INSURANCE.** VANC shall maintain all insurance required by the Lease Agreement as well as Amendments 1 and 2.
6. **VANC'S INDEMNIFICATION OF THE CITY.** To the greatest extent allowed by law, VANC shall defend, indemnify, and hold harmless the City and its officers, agents and employees against all claims for damages to persons or property arising out of the negligent acts, errors or omissions or wrongful acts or conduct of VANC, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this MOU, except for those claims arising from the willful misconduct, sole negligence or active negligence of the City, its officers, agents, or employees. VANC's indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the City, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, VANC at its own expense shall, upon written request by the City defend any such suit or action brought against the City, its officers, agents, or employees resulting or arising from the conduct, tortious acts or omissions of the VANC.

VANC's indemnification of City shall not be limited by any prior or subsequent declaration by VANC.

7. **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this MOU and the timing requirements for completion of the Improvements in Exhibit A shall be strictly adhered to unless otherwise modified in writing.
8. **ENTIRE AGREEMENT.** This MOU comprises the entire integrated understanding between the City and VANC concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.

9. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the MOU shall be governed by and construed under the laws of the State of California.

VANC shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein in the construction of the Improvements set forth in Exhibit A.

Should any provision herein be found or deemed to be invalid, the MOU shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this MOU are severable.

10. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.
11. **TERMINATION OF AGREEMENT.** The City may terminate this MOU for any reason by providing thirty (30) days written notice to VANC.

12. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this MOU on behalf of the respective legal entities of the City and VANC.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have MOU to be executed by setting hereunto their signatures on the dates set forth below.

VETERANS ASSOCIATION OF NORTH  
SAN DIEGO

CITY OF OCEANSIDE

By: Chuck Latham, President/  
Name/Title Founder

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
Name/Title

APPROVED AS TO FORM:  
John P. Hall  
City Attorney

\_\_\_\_\_  
Employer ID No.

**NOTARY ACKNOWLEDGMENTS OF VANC MUST BE ATTACHED.**

State of California            )  
  ) ss  
County of San Diego         )

On June 18, 2014, before me, **AUTUMN BICOY**, Notary Public, personally appeared **CHARLES ATKINSON**, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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.

  
\_\_\_\_\_  
NOTARY PUBLIC



EXHIBIT A



**Estimate Budget for Final Phase**

10 March 2014

**Construction**

Banquet Room Completion 3/2015	\$ 335,000
Kitchen Build Out Completion 11/2015	<u>\$ 315,000</u>
Total Construction Cost	\$ 650,000

**Furniture, Fixtures, and Equipment**

Conference & Class Rooms tables, chairs, video/ audio, projectors Completion 4/2015	\$ 151,000
Banquet Room tables, chairs, & carts, video/ audio, projectors Completion 11/2015	\$ 162,000
Kitchen wear Completion 11/2015	\$ 20,000
Cleaning equipment Completion 2/2015	\$ 7,000
Office computers, file cabinets, desk, table phone systems Completion 2/2015	<u>\$ 60,000</u>
Total Furniture, Fixtures & Equipment Cost	\$ 400,000

**Contingency**

\$ 150,000

Total Final Phase Cost

\$ 1,200,000