



AGENDA

Wednesday, January 19, 2022

5:00 P.M. Closed Session

6:30 P.M. Open Session

REGULAR MEETING

**CITY COUNCIL, AIRPORT COMMISSION,
MARINA ABRAMS B NON-PROFIT CORPORATION, PRESTON PARK SUSTAINABLE
COMMUNITY NON-PROFIT CORPORATION, SUCCESSOR AGENCY OF THE FORMER
MARINA REDEVELOPMENT AGENCY AND MARINA GROUNDWATER
SUSTAINABILITY AGENCY**

Council Chambers
211 Hillcrest Avenue
Marina, California

Zoom Meeting URL: <https://zoom.us/j/730251556>

Zoom Meeting Telephone Only Participation: 1-669-900-9128 - Webinar ID: 730 251 556

In accordance with California Government Code §54953(e)(1)(A) and (C) and the Proclamation of a State of Emergency issued by Governor Newsom on March 4, 2020, under the provisions of Government Code §8625 related to the COVID-19 (coronavirus) pandemic, consistent with recommendations by State and local health officials regarding social distancing and in order to prevent an imminent risk to the health and safety of attendees as determined in Resolution 2022-02, public participation in City of Marina City Council public meetings shall be electronic only and without a physical location for public participation until the earlier of February 10, 2022, or such time as the City Council may adopt a resolution in accordance with Government Code §54953(e)(3). This meeting is being broadcast “live” on Access Media Productions (AMP) Community Television Cable 25 and on the City of Marina Channel and on the internet at <https://accessmediaproductions.org/>

PARTICIPATION

You may participate in the City Council meeting in real-time by calling Zoom Meeting via the weblink and phone number provided at the top of this agenda. Instructions on how to access, view and participate in remote meetings are provided by visiting the City’s home page at <https://cityofmarina.org/>. Attendees can make oral comments during the meeting by using the “Raise Your Hand” feature in the webinar or by pressing *9 on your telephone keypad if joining by phone only. If you are unable to participate in real-time, you may email to marina@cityofmarina.org with the subject line “Public Comment Item#___” (insert the item number relevant to your comment) or “Public Comment – Non Agenda Item.” Comments will be reviewed and distributed before the meeting if received by 5:00 p.m. on the day of the meeting. All comments received will become part of the record. Council will have the option to modify their action on items based on comments received.

AGENDA MATERIALS

Agenda materials, staff reports and background information related to regular agenda items are available on the City of Marina’s website www.cityofmarina.org. Materials related to an item on this agenda submitted to the Council after distribution of the agenda packet will be made available on the City of Marina website www.cityofmarina.org subject to City staff’s ability to post the documents before the meeting

VISION STATEMENT

Marina will grow and mature from a small town bedroom community to a small city which is diversified, vibrant and through positive relationships with regional agencies, self-sufficient. The City will develop in a way that insulates it from the negative impacts of urban sprawl to become a desirable residential and business community in a natural setting. **(Resolution No. 2006-112 - May 2, 2006)**

MISSION STATEMENT

The City Council will provide the leadership in protecting Marina's natural setting while developing the City in a way that provides a balance of housing, jobs and business opportunities that will result in a community characterized by a desirable quality of life, including recreation and cultural opportunities, a safe environment and an economic viability that supports a high level of municipal services and infrastructure. **(Resolution No. 2006-112 - May 2, 2006)**

1. **CALL TO ORDER**



2. **ROLL CALL & ESTABLISHMENT OF QUORUM:** (City Council, Airport Commissioners, Marina Abrams B Non-Profit Corporation, Preston Park Sustainable Communities Nonprofit Corporation, Successor Agency of the Former Redevelopment Agency Members and Marina Groundwater Sustainability Agency)

Cristina Medina Dirksen, David Burnett, Lisa Berkley, Mayor Pro-Tem/Vice Chair Kathy Biala, Mayor/Chair Bruce C. Delgado

3. **CLOSED SESSION:** *As permitted by Government Code Section 54956 et seq., the (City Council, Airport Commissioners, Marina Abrams B Non-Profit Corporation, Preston Park Sustainable Communities Nonprofit Corporation, Successor Agency of the Former Redevelopment Agency Members and Marina Groundwater Sustainability Agency) may adjourn to a Closed or Executive Session to consider specific matters dealing with litigation, certain personnel matters, property negotiations or to confer with the City's Meyers-Milias-Brown Act representative.*

a. Real Property Negotiations (Govt. Code Section 54956.8)

(1) Property: Building 535
711 Neeson Road, APN 031-112-125
Negotiating Party: Light & Motions Industries, Inc
Negotiator(s): City Manager
Terms: Price and Terms.

(2) Property: Building 529
771 Neson Road, APN 031-112-039 (a portion)
Negotiating Party: Joby Aero, Inc.
Negotiator: City Manager
Terms: Price and Terms

b. Public Employment Appointment (Govt. Code Section 54957(b)(1):

Position: City Attorney

c. Conference with Labor Negotiator (Govt. Code Section 54957.6)

City's Designated Representative: City Manager

Unrepresented Employees:

Assistant City Manager
Public Works Director/City Engineer
Community Development Department Director
Finance Director
Police Chief
Fire Chief
Recreation & Cultural Services Director (vacant position)

6:30 PM - RECONVENE OPEN SESSION AND REPORT ON ANY ACTIONS TAKEN IN CLOSED SESSION

4. MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE (Please stand)
5. SPECIAL PRESENTATIONS:
 - a. Terry Siegrist Memorial Video
6. SPECIAL ANNOUNCEMENTS AND COMMUNICATIONS FROM THE FLOOR: *Any member of the Public or the City Council may make an announcement of special events or meetings of interest as information to Council and Public. Any member of the public may comment on any matter within the City Council's jurisdiction which is not on the agenda. Please state your name for the record. Action will not be taken on an item that is not on the agenda. If it requires action, it will be referred to staff and/or placed on a future agenda. City Council members or City staff may briefly respond to statements made or questions posed as permitted by Government Code Section 54954.2. In order that all interested parties have an opportunity to speak, please limit comments to a maximum of four (4) minutes. Any member of the public may comment on any matter listed on this agenda at the time the matter is being considered by the City Council.*
7. CONSENT AGENDA FOR THE SUCCESSOR AGENCY TO THE FORMER MARINA REDEVELOPMENT AGENCY: *Background information has been provided to the Successor Agency of the former Redevelopment Agency on all matters listed under the Consent Agenda, and these items are considered to be routine. All items under the Consent Agenda are normally approved by one motion. Prior to such a motion being made, any member of the public or the City Council may ask a question or make a comment about an agenda item and staff will provide a response. If discussion or a lengthy explanation is required, that item will be removed from the Consent Agenda for Successor Agency to the former Marina Redevelopment Agency and placed at the end of Other Action Items Successor Agency to the former Marina Redevelopment Agency.*
8. CONSENT AGENDA: *Background information has been provided to the City Council, Airport Commission, Marina Abrams B Non-Profit Corporation, and Redevelopment Agency on all matters listed under the Consent Agenda, and these items are considered to be routine. All items under the Consent Agenda are normally approved by one motion. Prior to such a motion being made, any member of the public or the City Council may ask a question or make a comment about an agenda item and staff will provide a response. If discussion or a lengthy explanation is required, that item will be removed from the Consent Agenda and placed at the end of Other Action Items.*
 - a. ACCOUNTS PAYABLE: None
 - b. MINUTES:
 - (1) December 7, 2021, Regular City Council Meeting
 - (2) December 14, 2021 Special City Council Meeting

c. CLAIMS AGAINST THE CITY:

- (1) City Council Rejection of Claim - staff recommends that the City Council reject the following claim and direct sending appropriate notice of rejection to claimant: Frank Lambert for a claim received on December 17, 2021.

d. AWARD OF BID:

- (1) City Council consider adopting Resolution No. 2022-, awarding a construction contract for the City of Marina Annual Street Resurfacing 2021 Phase 2 Project to Precision Grade Inc. of San Juan Bautista in the amount of \$1,742,295; and authorizing the City Manager or designee to expend up to an additional 10% of the contract amount for potential construction contingencies and to execute contract documents, subject to final review and approval by the City Attorney and construction change orders on behalf of the City; and authorizing the Finance Director to make necessary accounting and budgetary entries.
- (2) City Council consider adopting Resolution No. 2022-, awarding a construction contract for the Gloria Jean-Tate Park Site Improvements and Pump Track Project to Monterey Peninsula Engineering of Marina in the amount of \$982,700; and authorize the City Manager, or his designee, to expend up to an additional 10% of the contract amount for potential construction contingencies and to execute contract documents, subject to final review and approval by the City Attorney and construction change orders on behalf of the City; and authorize the Finance Director to make necessary accounting and budgetary entries.

e. CALL FOR BIDS: None

f. ADOPTION OF RESOLUTIONS:

- (1) City Council consider adopting Resolution No. 2022-, amending the Salary table for members of the Marina Public Safety Management (MPSMA); and authorize the Finance Director to make the necessary accounting entries.

g. APPROVAL OF AGREEMENTS:

- (1) City Council consider adopting Resolution No. 2022-, approving acceptance of \$45,086 from State of California, Department of Justice, Division of Operations, Tobacco Grant Program, and; authorize expenditure of said \$45,086 received from State of California, Department of Justice, Division of Operations, Tobacco Grant Program, and; authorize Finance Director to make necessary accounting and budgetary entries, and; authorize City Manager to execute grant documents on behalf of City subject to final review and approval by the City Attorney.
- (2) City Council consider adopting Resolution No. 2022-, approving the purchase of one (1) cloud-based Records Management System (RMS) platform in the amount of \$164,000.00 and four (4) years of recurring fees for updates and management in the amount of \$48,500.00 per year for years two through five, at a total cost of \$358,000.00 over a 5-year period from MARK43, New York, NY, and; consider waiving the City's formal bid process; finding that competitive bidding would be unavailing, would not produce an advantage and would not be in the public interest, and; authorize Finance Director to make necessary

accounting and budgetary entries, and; authorize City Manager to execute purchase agreement on behalf of City subject to final review by the City Attorney.

- (3) City Council consider adopting Resolution No. 2022-, approving the creation of public utility easements on City properties for utility improvements benefiting Airport Development subject to the technical approval of the legal descriptions by the City Engineer, and; authorizing the City Clerk to record a certified copy of the resolution and a public utility easement in the Monterey County office of the County Recorder.
- (4) City Council consider adopting Resolution No. 2022-, authorizing application for and acceptance of a 2021 American Rescue Plan Act Federal Aviation Administration Grant for the airport and authorizing City Manager to execute the application and grant agreement.
- (5) City Council consider adopting Resolution no. 2022-xx, authorizing the City Manager to execute a Memorandum of Understanding between the City of Marina and the Management Employees Association of Marina (MMEA); and, authorizing adjustments to the City's salary schedule and compensation plan and authorizing the Finance Director to make appropriate budget and accounting entries.
- (6) City Council consider adopting Resolution No. 2022-, approving a Conditional Airport Use Permit for Joby Aero, Inc. for use of ramp space in the aircraft operations area of the Marina Municipal Airport for aircraft flight testing activities and authorizing the City Manager and the Airport Services Manager to execute the Conditional Airport Use Permit on behalf of the City subject to final review and approval by the City Attorney.

h. ACCEPTANCE OF PUBLIC IMPROVEMENTS: None

i. MAPS: None

j. REPORTS: (RECEIVE AND FILE): None

k. FUNDING & BUDGET MATTERS:

l. APPROVE ORDINANCES (WAIVE SECOND READING): None

m. APPROVE APPOINTMENTS: None

9. PUBLIC HEARINGS: None

10. OTHER ACTIONS ITEMS OF THE SUCCESSOR AGENCY TO THE FORMER MARINA REDEVELOPMENT AGENCY: None *Action listed for each Agenda item is that which is requested by staff. The Successor Agency may, at its discretion, take action on any items. The public is invited to approach the podium to provide up to four (4) minutes of public comment.*

11. OTHER ACTION ITEMS: *Action listed for each Agenda item is that which is requested by staff. The City Council may, at its discretion, take action on any items. The public is invited to approach the podium to provide up to four (4) minutes of public comment.*

Note: No additional major projects or programs should be undertaken without review of the impacts on existing priorities (Resolution No. 2006-79 – April 4, 2006).

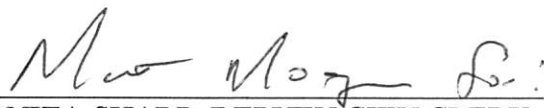
12. COUNCIL & STAFF INFORMATIONAL REPORTS:

- a. Monterey County Mayor's Association [Mayor Bruce Delgado]
- b. Council and staff opportunity to ask a question for clarification or make a brief report on his or her own activities as permitted by Government Code Section 54954.2.

13. ADJOURNMENT:

CERTIFICATION

I, Anita Sharp, Deputy City Clerk, of the City of Marina, do hereby certify that a copy of the foregoing agenda was posted at City Hall and Council Chambers Bulletin Board at 211 Hillcrest Avenue, Monterey County Library Marina Branch at 190 Seaside Circle, City Bulletin Board at the corner of Reservation Road and Del Monte Boulevard on or before 6:30 p.m., Friday, January 14, 2022.



ANITA SHARP, DEPUTY CITY CLERK

City Council, Airport Commission and Redevelopment Agency meetings are recorded on tape and available for public review and listening at the Office of the City Clerk and kept for a period of 90 days after the formal approval of MINUTES.

City Council meetings may be viewed live on the meeting night and at 12:30 p.m. and 3:00 p.m. on Cable Channel 25 on the Sunday following the Regular City Council meeting date. In addition, Council meetings can be viewed at 6:30 p.m. every Monday, Tuesday and Wednesday. For more information about viewing the Council Meetings on Channel 25, you may contact Access Monterey Peninsula directly at 831-333-1267.

Agenda items and staff reports are public record and are available for public review on the City's website (www.cityofmarina.org), at the Monterey County Marina Library Branch at 190 Seaside Circle and at the Office of the City Clerk at 211 Hillcrest Avenue, Marina between the hours of 10:00 a.m. 5:00 p.m., on the Monday preceding the meeting.

Supplemental materials received after the close of the final agenda and through noon on the day of the scheduled meeting will be available for public review at the City Clerk's Office during regular office hours and in a 'Supplemental Binder' at the meeting.

Members of the public may receive the City Council, Airport Commission and Successor Agency of the Former Redevelopment Agency Agenda at a cost of \$55 per year or by providing a self-addressed, stamped envelope to the City Clerk. The Agenda is also available at no cost via email by notifying the City Clerk at marina@cityofmarina.org

*ALL MEETINGS ARE OPEN TO THE PUBLIC. THE CITY OF MARINA DOES NOT DISCRIMINATE AGAINST PERSONS WITH DISABILITIES. Council Chambers are wheelchair accessible. meetings are broadcast on cable channel 25 and recordings of meetings can be provided upon request. to request assistive listening devices, sign language interpreters, readers, large print agendas or other accommodations, please call (831) 884-1278 or e-mail: marina@cityofmarina.org. requests must be made at least **48 hours** in advance of the meeting.*

Upcoming 2022 Meetings of the City Council, Airport Commission, Marina Abrams B Non-Profit Corporation, Preston Park Sustainable Community Nonprofit Corporation, Successor

Upcoming 2022 Meetings of the City Council, Airport Commission, Marina Abrams B Non-Profit Corporation, Preston Park Sustainable Community Nonprofit Corporation, Successor Agency of the Former Redevelopment Agency and Marina Groundwater Sustainability Agency
Regular Meetings: 5:00 p.m. Closed Session;
6:30 p.m. Regular Open Sessions

Tuesday, January 4, 2022 - Special
Redistricting Public Hearing
***Wednesday, January 19, 2022**

***Wednesday, July 6, 2022**
Tuesday, July 19, 2022

Tuesday, February 1, 2022
Tuesday, February 15, 2022

Tuesday, August 2, 2022
Tuesday, August 16, 2022

Tuesday, March 1, 2022
Tuesday, March 15, 2022

***Wednesday, September 7, 2022**
Tuesday, September 20, 2022

Tuesday, April 5, 2022
Tuesday, April 19, 2022

****Thursday, October 6, 2022**
Tuesday, October 18, 2022

Tuesday, May 3, 2022
Tuesday, May 17, 2022

Tuesday, November 1, 2022
Tuesday, November 15, 2022

Tuesday, June 7, 2022
Tuesday, June 21, 2022

Tuesday, December 6, 2022
Tuesday, December 20, 2022

* Regular Meeting rescheduled due to Monday Holiday

** Regular Meeting rescheduled due to Religious Holiday

NOTE: Regular Meeting dates may be rescheduled by City Council only.

CITY HALL 2022 HOLIDAYS (City Hall Closed)

New Year's Day (City observed) ----- Monday, January 3, 2022
Martin Luther King Jr. Birthday ----- Monday, January 17, 2022
Presidents' Day ----- Monday, February 21, 2022
Memorial Day ----- Monday, May 30, 2022
Independence Day (City Offices Closed) ----- Monday, July 4, 2022
Labor Day ----- Monday, September 5, 2022
Veterans Day ----- Friday, November 11, 2022
Thanksgiving Day ----- Thursday, November 24, 2022
Thanksgiving Break ----- Friday, November 25, 2022
Winter Break ----- Friday, December 23, 2022-Friday, December 30, 2022



DRAFT

Agenda Item: **8b(1)**
City Council Meeting of
January 19, 2022

MINUTES

Tuesday, December 7, 2021

5:00 P.M. Closed Session
6:30 P.M. Open Session

REGULAR MEETING
CITY COUNCIL, AIRPORT COMMISSION,
MARINA ABRAMS B NON-PROFIT CORPORATION, PRESTON PARK SUSTAINABLE
COMMUNITY NON-PROFIT CORPORATION, SUCCESSOR AGENCY OF THE FORMER
MARINA REDEVELOPMENT AGENCY AND MARINA GROUNDWATER
SUSTAINABILITY AGENCY

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1. **CALL TO ORDER**
2. **ROLL CALL & ESTABLISHMENT OF QUORUM:** (City Council, Airport Commissioners, Marina Abrams B Non-Profit Corporation, Preston Park Sustainable Communities Nonprofit Corporation, Successor Agency of the Former Redevelopment Agency Members and Marina Groundwater Sustainability Agency)

MEMBERS PRESENT: Cristina Medina Dirksen, David Burnett, Lisa Berkley, Mayor Pro-Tem/Vice Chair Kathy Biala, Mayor/Chair Bruce C. Delgado

3. **CLOSED SESSION:** *As permitted by Government Code Section 54956 et seq., the (City Council, Airport Commissioners, Marina Abrams B Non-Profit Corporation, Preston Park Sustainable Communities Nonprofit Corporation, Successor Agency of the Former Redevelopment Agency Members and Marina Groundwater Sustainability Agency) may adjourn to a Closed or Executive Session to consider specific matters dealing with litigation, certain personnel matters, property negotiations or to confer with the City's Meyers-Milias-Brown Act representative.*
 - a. Real Property Negotiations

- i. Property: The Dunes on Monterey Bay, Opportunity Phase 1A, Hotel Site
Negotiating Party: Dadwal Management Group
Negotiator(s): City Manager
Terms: Price and Terms
- ii. Property: Building 535, 711 Neeson Road, APN 031-112-125
Negotiating Party: Light & Motions Industries, Inc
Negotiator(s): City Manager
Terms: Price and Terms
- iii. Property Building 529 Marina Airport Restaurant 771 Neeson Road (APN 031-112-039, a portion
Negotiating Party: Joby Aero Inc.
Negotiator(s): City Manager
Terms: Price and Terms

6:30 PM - RECONVENE OPEN SESSION AND REPORT ON ANY ACTIONS TAKEN IN CLOSED SESSION

Robert Rathie, Assistant City Attorney reported our Closed Session: Council met in Closed Session at 5:00pm with regard to the matters listed. Council received information, gave direction and no reportable action was taken.

4. **MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE** (Please stand)

5. **SPECIAL PRESENTATIONS:**

- a **Jack Lundgren Retirement Proclamation**
- b **Recreation Announcements**

6. **SPECIAL ANNOUNCEMENTS AND COMMUNICATIONS FROM THE FLOOR:** *Any member of the Public or the City Council may make an announcement of special events or meetings of interest as information to Council and Public. Any member of the public may comment on any matter within the City Council's jurisdiction which is not on the agenda. Please state your name for the record. Action will not be taken on an item that is not on the agenda. If it requires action, it will be referred to staff and/or placed on a future agenda. City Council members or City staff may briefly respond to statements made or questions posed as permitted by Government Code Section 54954.2. In order that all interested parties have an opportunity to speak, please limit comments to a maximum of four (4) minutes. Any member of the public may comment on any matter listed on this agenda at the time the matter is being considered by the City Council.*

- Mike Owen – Thanked City Manager for responding to his questions relating to SB330, was under the impression that it only covered housing project. Commented on mayor pointed out at the last meeting all existing commission and committee positions unless they were filled within this last year are going to become vacant at the end of next month. Asked about accepting commission application to the Public Work, Tree and DRB since staff was available.
- Amy Warren – Asked for an update on the RFP process the contracting process for the Marina Equestrian Center. Commented that the Marina Equestrian Association (MEA) is operating in the dark and attempting to continue to operate a public park, as volunteers and with no communication from the city. Announced that the MEA had an amazing fall festival that had free pony rides carriage rides and a petting zoo with over 2000 participants.

- Brad Imamura – Appreciated the services Jack Lundgren has done for the City and wished his a happy and safe retirement. Commented on systemic racism and asked council if they thought systemic racism was within our government.
- Nichole Fisher – Provided updates to the Council and public on Marina Equestrian Center's (MEC) events and activities. Also announced that the MEC will be riding through the Dunes neighborhoods between 1:00-3:00pm caroling. Asked the about the status of the RFP process and looking a Chaparral's finances.
- Jasmine Ruvalcaba – Asked council and staff about on the no left hand turn sign at the Marina Vista Elementary school, is this on private property, if not can it be removed? Asked how one would request public records and what is the response time to that request?
- Nancy Amadeo – Commented on as article in the Weekly on the length of the Marina City Council meetings. Suggested that Council place on a future agenda a policy change going back to the three minutes for public comments and that council listen to community members prior to a motion being made.
- City Manager Long – Announced that the City Council meeting of December 21st has been cancelled due to this meeting being so close to the holidays and that a Special City Council meeting will be held on December 14th. Announced that the City's new Community Development Director will start on December 20th.
- Mayor Delgado – Asked if Locke Paddon Park restrooms would be open during the holiday break. Commented on the two cleanup event that were held over the last couple of weeks between Salinas Avenue and Reservation Road and thanked the volunteers and the Public Works crew for their continued help with the cleanups. Announced the next cleanup events to be held on Saturday December 11th from 10am to 12:30pm at Lapis Road. On December 12th from 9am to 1pm will be a gardening volunteer session, outside the Marina Library. Thanked Monterey Bay Moves for coming our Thanksgiving morning with all the supplies needed so that 12 residence could have an hour of exercise in a very creative diverse way. Commented on the Thanksgiving meals that went out to people in need throughout the community. Thanked the Chamber of Commerce for having their booth at the Farmer's Market, they were heralding all the things that they're planning on doing and making their presence known.
- Council Member Medina Dirksen – Announced the Friends of the Marina Library is having a Dad's Read Santa edition coming up on Saturday, December 11th at 10am. On Sunday, December 12th there will be a collection of new jackets and unwrapped toys for all in Monterey at the Los Arboles Middle school for those in need. Thanked all the volunteers who participated in the Thanksgiving Dinners. Thanked the Hindu Temple of Monterey Peninsula for their special turkey dinner and Adam's Tent who came from Carmel who help serve at that event. Thanked the Marina Equestrian Center for the lessons they provide. Commented on the Santa Parade going through Marina over the weekend and asked that next year more information be provided to the community in advance. Announced that Compass Church celebrated their 1st anniversary here in Marina.

7. **CONSENT AGENDA FOR THE SUCCESSOR AGENCY TO THE FORMER MARINA REDEVELOPMENT AGENCY:** *Background information has been provided to the Successor Agency of the former Redevelopment Agency on all matters listed under the Consent Agenda, and these items are considered to be routine. All items under the Consent Agenda are normally approved by one motion. Prior to such a motion being made, any member of the public or the City Council may ask a question or make a comment about an agenda item and staff will provide a response. If discussion or a lengthy explanation is required, that item will be removed from the Consent Agenda for Successor Agency to the former Marina Redevelopment Agency and placed at the end of Other Action Items Successor Agency to the former Marina Redevelopment Agency.*

8. **CONSENT AGENDA:** *Background information has been provided to the City Council, Airport Commission, Marina Abrams B Non-Profit Corporation, and Redevelopment Agency on all matters listed under the Consent Agenda, and these items are considered to be routine. All items under the Consent Agenda are normally approved by one motion. Prior to such a motion being made, any member of the public or the City Council may ask a question or make a comment about an agenda item and staff will provide a response. If discussion or a lengthy explanation is required, that item will be removed from the Consent Agenda and placed at the end of Other Action Items.*
 - a. **ACCOUNTS PAYABLE:**
 - (1) Accounts Payable Check Numbers 98810-98933, totaling \$597,139.64
Successor Agency Accounts Payable Check Number 76-77, totaling \$40,172.49
 - b. **MINUTES:**
 - (1) November 16, 2021, Regular City Council Meeting
 - c. **CLAIMS AGAINST THE CITY:** None
 - d. **AWARD OF BID:** None
 - e. **CALL FOR BIDS:** None
 - f. **ADOPTION OF RESOLUTIONS:**
 - (1) City Council consider adopting **Resolution No. 2021-121**, approving regular City Council meeting schedule for 2022 Calendar Year.
 - (2) City Council consider adopting **Resolution No. 2021-122**, accepting \$236,290 cash donation from the Annemarie Shein Living Trust, said Trust stipulated half of the \$236,290 (\$118,145) be directed to the Police Department, and half (\$118.145) be directed to the Fire Department, and; Appropriating the unanticipated revenues to the FY 2021-22 Police Department Budget and Fire Department Budget for purchase of equipment or program funding specific to the Marina Police Department and Fire Department to enhance City of Marina public safety, and; Authorizing Finance Director to make necessary accounting and budgetary entries.
 - (3) City Council consider adopting **Resolution No. 2021-123**, approving Mayor's 2022 recommendation for Mayor Pro Tem and City Council member assignments to various Committees/Commissions/Boards.
 - (4) City Council consider adopting **Resolution No. 2021-124**, approving Participation in the Nationwide Opioid Settlement Litigation with McKesson, Cardinal Health, AmerisourceBergen, and Janssen Pharmaceuticals, Inc.; and appointing the City Manager as the City's Authorized Representative and Authorizing the City Manager to Take All Reasonable and Necessary Actions.
 - (5) City Council consider adopting Resolution No. 2021-, authorizing expenditure of American Rescue Plan Act Funds. *Agenda item pulled by staff.*
 - (6) City Council consider adopting Resolution No. 2021-, authorizing city staff to send letter to Association of Monterey Bay Area Government (AMBAG) regarding Regional Housing Needs Allocation number.

g. APPROVAL OF AGREEMENTS:

- (1) City Council, Board of Directors Abrams B Non-Profit Corporation, and Board of Directors Preston Park Sustainable Community Non-Profit Corporation consider adopting **Resolution No. 2021-125, and Resolution No. 2021-05 (NPC)**, approving Amendment No. 3 to the Amended Management Agreement Between City of Marina, City of Marina Abrams B Non-Profit Corporation, and Greystar California, Inc. for Abrams B Housing Area, and authorizing City Manager/Executive Director to execute Amendment No. 3 to the Amended Management Agreement on Behalf of the City and the Non-Profit Corporation subject to final review and approval by the City Attorney/Non-Profit Corporation Legal Counsel; and adopting **Resolution No. 2021-126 and Resolution No. 2021-07 (PPSC-NPC)**, approving Amendment No. 3 to the Amended Management Agreement Between City of Marina, City of Marina Preston Park Sustainable Community Non-Profit Corporation, and Greystar California, Inc. for Preston Park Housing Area, and authorizing City Manager/Executive Director to execute Amendment No. 3 to the Amended Management Agreement on Behalf of the City and the Non-Profit Corporation subject to final review and approval by the City Attorney/Non-Profit Corporation Legal Counsel.
- (2) City Council consider adopting **Resolution No. 2021-127**, authorizing the City Manager to execute a Memorandum of Understanding between the City of Marina and the Marina Professional Fire Fighters Association (MPFFA); authorizing adjustments to the City's Salary Schedule and Compensation Plan, and; authorizing Finance Director to make appropriate accounting and budgetary entries.
- (3) City Council consider adopting **Resolution No. 2021-128**, authorizing the City Manager to execute a Memorandum of Understanding between the City of Marina and the Marina Public Safety Management Employees Association (MPSMA); authorizing adjustments to the City's Salary Schedule and Compensation Plan, and; authorizing Finance Director to make appropriate accounting and budgetary entries.

h. ACCEPTANCE OF PUBLIC IMPROVEMENTS:

- (1) City Council consider adopting **Resolution No. 2021-129**, accepting the dedication of Public Improvements as shown on the approved Junsay Oaks Improvement Plans, and; authorize the City Clerk to release bond securities, and; authorize the City Clerk to accept a warranty bond, and; authorize the City Clerk to record acceptance with Monterey County Recorder's Office.
- (2) City Council consider adopting **Resolution No. 2021-130**, accepting the completion of the City of Marina Annual Street Resurfacing 2021 Phase 1: Flower Circle Reconstruction Project as complete, and; authorizing the filing of a Notice of Completion with the Monterey County Recorder's Office.

i. MAPS: Nonej. REPORTS: (RECEIVE AND FILE):

- (1) City Council consider adopting **Resolution No. 2021-131**, receiving and filing the fiscal year 2020-2021 on the collection and use of mitigation fees for new development impacts.

- (2) City Council consider adopting **Resolution No. 2021-132**, receiving and filing the 2022 Information Report on the adjustment of mitigation fees for new development.

k. FUNDING & BUDGET MATTERS: None

l. APPROVE ORDINANCES (WAIVE SECOND READING):

m. APPROVE APPOINTMENTS: None

City Manager pulled agenda item 8f(5) from the agenda, to be heard on December 14, 2021; and gave a brief verbal update for agenda item 8(6).

Amir Chapel had questions for agenda item 8f(2), asked council to make sure police department did not make purchases from the 1033 Program.

Nancy Amadeo commented on 8f(3), noted that she really enjoys serving on the Mosquito Abatement District board hope Council will choose her again.

BERKLEY/BIALA: TO APPROVE THE CONSENT AGENDA MINUS AGENDA ITEM 8F(5), AND WITH CORRECTION TO 8(F) 3 APPOINTING NANCY AMADEO TO THE SALINAS VALLEY NORTHERN MOSQUITO ABATEMENT DISTRICT. 5-0-0-0 Motion Passes by Roll Call Vote

9. PUBLIC HEARINGS: None

10. OTHER ACTIONS ITEMS OF THE SUCCESSOR AGENCY TO THE FORMER MARINA REDEVELOPMENT AGENCY: *Action listed for each Agenda item is that which is requested by staff. The Successor Agency may, at its discretion, take action on any items. The public is invited to approach the podium to provide up to four (4) minutes of public comment.*

11. OTHER ACTION ITEMS: *Action listed for each Agenda item is that which is requested by staff. The City Council may, at its discretion, take action on any items. The public is invited to approach the podium to provide up to four (4) minutes of public comment.*

Note: No additional major projects or programs should be undertaken without review of the impacts on existing priorities (Resolution No. 2006-79 – April 4, 2006).

- a. City Council consider adopting **Resolution No. 2021-133**, authorizing the City Manager to give an option exercise notice to Marina Community Partners to acquire the Hotel Site portion of Opportunity Site 1A in accordance with the terms of the Operating Agreement between the City and Marina Community Partners.

Council Questions: None receive

Public Comments: None received

BIALA/BERKLEY: TO APPROVE RESOLUTION NO. 2021-133, AUTHORIZING THE CITY MANAGER TO GIVE AN OPTION EXERCISE NOTICE TO MARINA COMMUNITY PARTNERS TO ACQUIRE THE HOTEL SITE PORTION OF OPPORTUNITY SITE 1A IN ACCORDANCE WITH THE TERMS OF THE OPERATING AGREEMENT BETWEEN THE CITY AND MARINA COMMUNITY PARTNERS. 5-0-0-0 Motion Passes by Roll Call Vote

- b. City Council consider adopting Resolution No. 2021-, authorizing the City Manager to enter into a Hotel Development Agreement with Dadwal Management Group or its designee for the development of Hotels on Opportunity Site 1a in the Dunes Development.

Council Questions: Do we have the buyback for phase two, and what kind of formula that we would be having in it? What is the size of Phase II? Are we entering an agreement or are we entering negotiations? Will Mr. Dadwal be giving a presentation this evening? Subdividing the property, is there more value to property facing the ocean versus the backside? What are the boundaries of that, that subdivision of the property? If we approve the resolution tonight, does that mean that we cannot further engage on the scope of development section, or can we approve this resolution and then later. We can put in things about the sustainability things about the design, etc.? How was the property value of \$3.6 Million determined? Was there an appraisal? What were limitations in setting the purchase price of the property? Are we under any obligation to keep to this sale price? How did we arrive at selecting this development group? What kinds of financial considerations did we compare? By some strange reason there was a default on the second phase of this two-phase project, and the city were to take back some of the land that was slated for phase two, how are we going to make sure that it's a usable piece of property, and that the configuration of the two parcels isn't such that once phase one is done phase two is not left usable? Can the LEED program be part of a bilateral agreement in the scope of the development prior to, signing off on the hotel agreement? What will be said about unions if anything in either of these documents?

Public Comments:

- Nancy Amadeo – Asked if this will be coming before the Planning Commission for review on designs, site maps etc. and if so, if any of the things being discussed tonight will be included so that the Planning Commission when we review it, we know we're reviewing what the council expected in the agreement? Also asked if we're talking about subdividing the lot into two phases for two hotels.
- Doug Yount – Thanked staff for bringing this item forward and continuing to move it forward in terms of the hotel. Excited to be working with Mr. Dadwal. Clarified for the record Marina community partners, did actually spend significant amount of time and effort and energy over several years to bring a hotel developer as required by the Disposition and Development Agreement. Then of course in 2019-2020, when Covid hit unfortunately that Hotel Group lost his, its equity investors, and it split up, we immediately went out to the market. Noted that MCP was here to assist as we can as master developer.
- Surinder Rana – Been following this project and expressed my mind on this subject earlier and glad that we've reached this stage. This hotel is a very important project for the city. Commented that Harvey Dadwal was a local and understand the local's needs. Spoke in the positive for Harvey Dadwal.
- Agha Bilal – Expressed his love for this project. Spoke about the economic benefits to the community. Noted that this is "green project" and it's a job opportunity for the local student for our both University, and community colleges.

BERKLEY/BIALA: AUTHORIZE THE CITY MANAGER TO CONTINUE TO NEGOTIATE A HOTEL DEVELOPMENT AGREEMENT WITH DADWAL MANAGEMENT GROUP OR ITS DESIGNEE FOR THE DEVELOPMENT OF HOTELS ON OPPORTUNITY SITE 1A IN THE DUNES DEVELOPMENT AND RETURN A FINAL AGREEMENT, INCLUDING LEEDS PLATINUM AND A FORMULA REGARDING THE REPURCHASE OF PHASE 2, TO THE COUNCIL FOR CONSIDERATION FOR APPROVAL. 5-0-0-0 Motion Passes by Roll Call Vote

- c. City Council hold an informational and public input session regarding the Prioritization of Conservation and Development Areas to inform the development of a Mitigation Strategy for a City-Wide Incidental Take Permit for Monterey Gilia.
Continued from November 2, 2021

Council Questions: in the last slide you indicated that we are going to have some update or some language for the general plan, do you have that language available now? What might this update look like and if we've made any progress on that? What are the differences between the yellow and purple dots on the map? How prevalent is Sand Gilia in Marina? Does one dot on the map represent one plant? Are there other species that are really dependent on this threatened species, you know like, in the whole ecosystem that need this sand gilia or what, what is the relationship to the ecosystem that might be important? With the mitigation ratio 1:3 can we mitigate onsite or offsite of the area? Is it possible to move the sand gilia to another area like the Salinas River area where there aren't any now? Can we put mitigation areas in somebody's backyard for example? How many plants are there on average per acre? What have you found in other jurisdictions?

Public Comments:

- Fred Watson – Provided background information and history on the Sand Gilia plant which has been in Marina for a very long period. If you look at aerial photography from about 100 years ago you can clearly see patterns in the exposure of the sand that correlate exactly with where the plant is today, but hasn't moved, in the past 100 years ago. If you walk out to some of these populations that haven't been surveyed in 30 years, you'll see 30-year-old pin flags. That puts us in a situation where the best strategy for us is to try to preserve and protect in place, in perpetuity as much as possible with very few exceptions. If you just leave it alone it's extraordinarily resilient. Commented on the overall decline in the subspecies, and the specific problems with take permits and mitigation requirements.
- Jasmine Ruvalcaba – Express how much she would like this plant protected as much as possible and preserved. Asked if mitigation is needed would the city of Marina, be opened to restoring other habitats? Think we should try to conserve as much as we can, that we have.
- Nick Kite – Very interested in the mitigation of this. On the board local Disc Golf Club and our disc golf community are big environmentalist and care about our environment. Love to see the possibility of using some of these mitigated areas as multi use areas such as a disc golf course or bike trails that go through these areas but still protect them and let the community, enjoy them.
- Karen Andersen – Asked how successful have previous mitigation processes been in the city of Marina? Been out in the Salinas Avenue/Reservation Road area quite a bit and have seen those ancient pins Dr. Watson spoke about, but the issue is the people camping there are disrespectful and move the flags. Asked how is the city managing the ongoing disturbance happening in that particular spot?
- Tommy Bolea – Thinks you can develop property and still work around those native plants, especially the wildlife, it's a balancing act. Noted some areas should just be left open, kept natural.

BERKLEY/DELGADO: STAFF TO CONTINUE TO WORK WITH FRED WATSON AND TO COME BACK AND GIVE US A COUPLE OF OPTIONS FOR THE MOST EFFECTIVE WAY TO PROTECT THE GILIA, WHILE ALSO BEING ABLE TO DEVELOP IN THE AREAS WERE LOOKING TO DEVELOP.

- d. ~~City Council consider adopting Resolution No. 2021, receiving a presentation and providing comments on the updated draft report and financial analysis for the sports center.~~ *Continued to December 14, 2021*
- 12. COUNCIL & STAFF INFORMATIONAL REPORTS:
 - a. Monterey County Mayor's Association [Mayor Bruce Delgado]
 - b. Council and staff opportunity to ask a question for clarification or make a brief report on his or her own activities as permitted by Government Code Section 54954.2.
- 13. ADJOURNMENT: The meeting adjourned at 12:05 AM

Anita Sharp, Deputy City Clerk

ATTEST:

Bruce C. Delgado, Mayor



DRAFT

Agenda Item: **8b(2)**
City Council Meeting of
January 19, 2022

MINUTES

Tuesday, December 14, 2021

5:00 P.M. Closed Session

6:00 P.M. Open Session

SPECIAL MEETING

**CITY COUNCIL, AIRPORT COMMISSION,
MARINA ABRAMS B NON-PROFIT CORPORATION, PRESTON PARK SUSTAINABLE
COMMUNITY NON-PROFIT CORPORATION, SUCCESSOR AGENCY OF THE FORMER
MARINA REDEVELOPMENT AGENCY AND MARINA GROUNDWATER
SUSTAINABILITY AGENCY**

Council Chambers
211 Hillcrest Avenue
Marina, California

Zoom Meeting URL: <https://zoom.us/j/730251556>

Zoom Meeting Telephone Only Participation: 1-669-900-9128 - Webinar ID: 730 251 556

In accordance with California Government Code §54953(e)(1)(A) and (C) and the Proclamation of a State of Emergency issued by Governor Newsom on March 4, 2020, under the provisions of Government Code §8625 related to the COVID-19 (coronavirus) pandemic, consistent with recommendations by State and local health officials regarding social distancing and in order to prevent an imminent risk to the health and safety of attendees as determined in Resolution 2021-118, public participation in City of Marina City Council public meetings shall be electronic only and without a physical location for public participation until the earlier of December 16, 2021, or such time as the City Council may adopt a resolution in accordance with Government Code §54953(e)(3). This meeting is being broadcast "live" on Access Media Productions (AMP) Community Television Cable 25 and on the City of Marina Channel and on the internet at <https://accessmediaproductions.org/>

1. **CALL TO ORDER**

2. **ROLL CALL & ESTABLISHMENT OF QUORUM:** (City Council, Airport Commissioners, Marina Abrams B Non-Profit Corporation, Preston Park Sustainable Communities Nonprofit Corporation, Successor Agency of the Former Redevelopment Agency Members and Marina Groundwater Sustainability Agency)

MEMBERS PRESENT: Cristina Medina Dirksen, David Burnett, Mayor Pro-Tem/Vice Chair Kathy Biala, Mayor/Chair Bruce C. Delgado

MEMBERS ABSENT: Lisa Berkley (Excused)

3. **CLOSED SESSION:** *As permitted by Government Code Section 54956 et seq., the (City Council, Airport Commissioners, Marina Abrams B Non-Profit Corporation, Preston Park Sustainable Communities Nonprofit Corporation, Successor Agency of the Former Redevelopment Agency Members and Marina Groundwater Sustainability Agency) may adjourn to a Closed or Executive Session to consider specific matters dealing with litigation, certain personnel matters, property negotiations or to confer with the City's Meyers-Milias-Brown Act representative.*

- a. Conference with Legal Counsel – anticipated litigation, significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of CA Govt. Code sec. 54956.9 – one potential case.
- b. Conference with Legal Counsel – anticipated litigation, initiation of litigation pursuant to paragraph (4) of subdivision (d) of section 54956.9 – one potential case.
- c. Property: Building 535, 711 Neeson Road, APN 031-112-125
Negotiating Party: Light & Motions Industries, Inc
Negotiator(s): City Manager
Terms: Price and Terms

6:00 PM - RECONVENE OPEN SESSION AND REPORT ON ANY ACTIONS TAKEN IN CLOSED SESSION

Robert Rathie, Assistant City Attorney reported out Closed Session: The council met this evening and closed session on the matter is listed on the agenda three matters to matters of anticipate a litigation and one concerning real property. The council received information and provided direction on each one of those matters and there was no reportable action taken

It was with consensus of the council to hear agenda item 6a, Sports Center Update prior to the Consent Agenda.

4. **MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE** (Please stand)

5. **CONSENT AGENDA:** *Background information has been provided to the City Council, Airport Commission, Marina Abrams B Non-Profit Corporation, and Redevelopment Agency on all matters listed under the Consent Agenda, and these items are considered to be routine. All items under the Consent Agenda are normally approved by one motion. Prior to such a motion being made, any member of the public or the City Council may ask a question or make a comment about an agenda item and staff will provide a response. If discussion or a lengthy explanation is required, that item will be removed from the Consent Agenda and placed at the end of Other Action Items.*

a. **ADOPTION OF RESOLUTIONS:**

- (1) City Council to consider adopting **Resolution No. 2021-134**, regarding the Ralph M. Brown Act (California Government Code §§54950-54963, hereinafter the “Brown Act”) making certain findings, and authorizing the City to continue to implement remote teleconferenced public meetings of the City Council and its constituent bodies for the period December 14, 2021 through January 13, 2022.
- (2) City Council consider adopting **Resolution No. 2021-135**, authorizing expenditure of American Rescue Plan Act Funds. *Staff report to be provided Monday, December 13, 2021*

b. **APPROVAL OF AGREEMENTS:**

- (1) City Council consider adopting **Resolution No. 2021-136**, approving Amendment No. 1 to the agreement between City of Marina and Kimley-Horn and Associates, Inc. of Salinas, California, to provide design services during construction for the Imjin Parkway Improvement Project; authorize the Finance Director to make the necessary accounting and budgetary entries; authorize the City Manager to execute the amendment on behalf of the City subject to final review and approval by the City Attorney.

- (2) City Council consider adopting **Resolution No. 2021-137**, approving an agreement between City of Marina and Harris and Associates, Inc. of Salinas, California, to provide construction management services for the Imjin Parkway Improvement Project; authorize the Finance Director to make the necessary accounting and budgetary entries; authorize the City Manager to execute the agreements on behalf of the City subject to final review and approval by the City Attorney
- (3) City Council consider adopting **Resolution No. 2021-138**, approving a Conditional Airport Use Permit for Joby Aero, Inc. for use of the middle tarmac and runway at the Marina Municipal Airport for commercial aeronautical-related ground testing activities; and authorizing the City Manager, as the Airport Manager and the Airport Services Manager to execute the Conditional Airport Use Permit on behalf of the City subject to final review and approval by the City Attorney.

Council Member Burnett inquired about agenda item 5a(1), Remote Meetings and the need to do this....

Mayor Pro-Tem Biala 5b(1) asked if the contractor, Kimley-Horn and Associates could incorporate into their non-discriminatory section the same language that was very articulately and very thoroughly covered in the Harrison Associates contract

BIALA/MEDINA DIRKSEN: THAT WE ACCEPT THE CONSENT AGENDA AS PRESENTED WITH THE EXCEPTION OF INCORPORATING FURTHER LANGUAGE IN THE KIMBERLEY HORN CONTRACT ON THE NON-DISCRIMINATION CLAUSE. 4-0-1(Berkley)-0 Motion Passes by Roll Call Vote

6. **OTHER ACTION ITEMS:** *Action listed for each Agenda item is that which is requested by staff. The City Council may, at its discretion, take action on any items. The public is invited to approach the podium to provide up to four (4) minutes of public comment.*

Note: No additional major projects or programs should be undertaken without review of the impacts on existing priorities (Resolution No. 2006-79 – April 4, 2006).

- a. City Council consider adopting **Resolution No. 2021-139**, receiving a presentation and providing comments on the updated draft report and financial analysis for the sports center. ***Continued from December 7, 2021***

Council Questions: the revenue or the utilization projections, seem to me that the pavilion would have maybe a nine-month utilization not a 12 month? The timing of the buildings, could something be completed and utilized while construction started on another phase of it or would it have to be all completed before we can actually start having programs and getting revenue generated? Was there space for administration considered in this plan? Does the schedule include fitting in practices? What projections should be sued for skating? What are the costs for the Pavilion space in addition to the renovation? What numbers were used to come up with the skating figures? Did it also specifically include numbers from the skate leagues, the hockey team leagues, and the roller derby teams? Are there going to be any seats for spectators watching any of the activities? Could you address some infrastructure things that you're considering a for Covid, for example, high grade air ventilation in the system or automated doors for the, the bathrooms automated faucets flushing hand dryers etc.? What would be the maximum occupancy capacity for the whole facility? Is there enough walkway places for people to get to different venues? What about parking for both facilities, will they be synergetic? Refurbishing floors, how much does refurbishing the surface costs, and it will be covered by the amount of set aside that your

budget included? What is the status of taking care of the red-tagged items? What's the minimum amount of time that we could do minimal renovation, to allow previous users to continue until we get the Cadillac approach that we're talking tonight? You talked about getting going right away with the design for the sports and the aquatic, so can you clarify. If your proposal, concluding your presentation tonight was to exclude the design of the outdoor pavilion, and only, go ahead in the near term with design of that Sports Center and the Aquatic Center? Commercial kitchen, what does it take in space and dollars to upgrade to a commercial kitchen? Membership, did you do any attempt to budget in scholarships, discount rates, so that it's not costing \$450 bucks per family? We asked you to consider expanding the building standing today, to allow for more space did you consider that? Better public participation, what other outreach have you anticipated? Would this be something that the Planning Commission could maybe hold a charrette? If we proceed with this proposal on the Sports Center, but on the table, we still have sort of the open pavilion and Aquatic Center with a cost of about \$3.5 dollars for us to execute those plans, how do you see this? Is this an either or at the next level or do we have money for both, or do we only have one for money for one, and then five years to now we consider another one? Is it feasible that we should think about is not committing to anything with aquatic center but designing it as part of the design of the Sports Center? Do we have enough money to do a design plan for both buildings? If it was possible to get some kind of a private-public partnership on building the pavilion, then we would be a little bit closer to realizing it, is that feasible?

Public Comments:

- Chad Hutchins – Commented on the presentation and the funds needed to bring the building back up to code. Thought council directed staff to look at hockey and roller sports in their presentation. Commented that meteorologist or climatologist on staff when suggesting outdoor facilities. Climate plays a key roll in outdoor activities. Noted the city already has fitness locations on Second Avenue, not including CSUMB. Concerned the number seem optimistic for this. Would love to see some clarification and some solidification of what the plans for this really should be. Mentioned the on-line petition that was signed by 1000 people asking to keep the facility.
- Megan Stone Hutchins – Echoed husbands' comments on the lack of having a meteorologist or climatologist on staff. Commented on the comparison of Marina's climate to Irvine, Florida and Minnesota because their climates are nowhere even comparable to Marina or the Central Coast. Recommended that somebody engage with the National Weather Service, or with a professional genealogist to take a look and compute some numbers and determine if this is a feasible thing to do.
- Larry Moonan – Commented on the numbers and figure thrown out there for operations over 5-years. Previous operator did it for less than a hundred thousand over 5-years. Noted that roller hockey and roller derby has never really been promoted by the city. Noted that to my knowledge, there is no open-air pavilion in Northern California that hosts inline hockey. City needs to do more outreach and more engagement with its populous and maybe could come up with something workable, feasible and productive for the city of Marina, and the peninsula in general.
- Elizabeth Plante – Interesting presentation, pleased to see that this plan appeals to all demographics and the city. Lot of the comments are geared towards the outdoor skating rink system there but didn't talk a lot about the actual Sports Center. talked a lot about the actual Sports Center, if we were to build this Sports Center, the only limit would be our imagination. Asked if this was about the skate rink or the skating community or is this about the marina community and the marina residents in general? What is the percentage of Marina residents that are positively impacted by having this Sports Center and plan adopted versus saying no?
- Nancy Amadeo – Agrees that this is a phenomenal presentation because it offers many opportunities for the community. Commented that the fees for family membership is lower than most facilities and the ability for family members to do their activities at the same time at the same facility. Commented on the climate in Marina and suggested a drop-down canvass for the outdoor pavilion

or possibly plexiglass for the westside for the wind. Looks forward to seeing the council vote to move this forward. It's a fantastic opportunity for the entire community, to be together to enjoy recreating for people of all ages and all interests.

- Liesbeth Visscher – Wonderful presentation and the city, definitely should treat this as a business. The city no longer can afford not receiving any rent for such facility. It should be self-sustaining. Impressed with the reports about the sports center and Aquatic Center, from a couple of years ago, hopeful that it will be doable to change this existing building into a successful sports center that can be used for not only sports but so many other uses it for many people of all ages. Hopes some of the trees can be saved.
- Dessy Murphy – Echoed some of the sentiments earlier regarding an outdoor pavilion offered in this discussion. Concerns about year-round access for the roller sports activities. Humidity and roller sports don't agree with one another, it can be dangerous. Asked council to consider indoor roller sports into this plan.
- Greg Simmons – Commented that the sports center idea with the most number of users and different types of sports makes the most sense and seems like a reasonable compromise to have whatever fashion and skating in the outdoor pavilion with the cover. Believes the priority ought to be what do we get the most used for the most Marina residents.
- Jorge Melgoza – Excited to finally have a facility for public use for everyone. Wants to see the money stay in Marina. And what better way than to have a public facility instead of the money going to other cities.
- Tonja Roos – Spoke about Blue Zone Project and making healthy choices easier and more accessible to the community. Commented that the conceptual design of this Sports Center, Aquatic Center and the surrounding city park is, is going to make healthy, physical activity, natural movement and social cohesion much more accessible for the community. Read an excerpt from a letter that Dan Burton submitted to council earlier on the proposed sports center. Appreciate the broader vision with the bike and pedestrian trail connectivity within the city, the incorporation of the FORTAG trail and Tatum's garden. Urged the council to move the project forward this evening.
- Grace Silva-Santella – Thanked the design team, very excited about this presentation. Spoke about the new designs and all the activities this sports center will provide to the community. Likes the idea of an outdoor pavilion and the potential mixed uses for it. Made comments on the climate on the peninsula. Commented on the membership fees being reasonable compared to other areas. Asked if the membership fees in the presentation includes both the sports center and Aquatic Center when they are built out?
- Katelyn – Leads a walking group of all ages and who can enjoy this facility. Feels like the facility being discussed will bring together people who are interested in all different kinds of recreational opportunities. Grateful the city is putting this forward. See a huge need for a larger facility that is accessible to the whole community.
- Morgan – Spoke about the concerns or lack of concerns regarding an outdoor pavilion, it's just simply impossible to escape and humidity it's unsafe, the ground becomes slippery. Commented on the exercises and sports you can play outside that generate body heat but it's not easy on wheels. Spoke about Derby Dames Home bouts at current facility and relied on for profit, generated community engagement within the community. Does not see how the pavilion can be a viable option for roller sports year-round. Good that we can update facilities and have options for many sports, we're just asking that the roller sport community don't lose the space that we have relied on to exist for many years. Monterey Bay Roller Derby is an 11-year-old organization and has taken a hit in the past year.

DELGADO/BIALA: THAT WE PROCEED WITH THE CONSULTANT RECOMMENDATIONS. AND WE INCLUDE THESE THREE FOLLOWING POINTS THAT WE: (1) DIRECT STAFF AND THEIR NECESSARY PARTNERS TO BEGIN THE DESIGN OF ALL THREE FACILITIES. SPORTS CENTER OUTDOOR PAVILION, AND AQUATIC CENTER IN PREPARATION FOR A 2022 BOND; THAT THE PAVILION, BE DESIGNED TO BE AS WEATHER SAFE AS REASONABLE; AND (2) THAT WE PROCEED WITH SPENDING THE THREE AND A HALF MILLION DOLLARS WE HAVE BUDGETED TO DESIGN AND BUILD THE NEW SPORTS CENTER AND OTHER TWO BUILDINGS AND DO ALL THAT WE CAN TO START ACTUALLY CONSTRUCTION OF THE NEW SPORTS CENTER; AND (3) WE ASKED STAFF AND CONSULTANTS TO CONSIDER STRONGLY UPGRADING TO A COMMERCIAL KITCHEN.4-0-1(Berkely)-0 Motion passes by Roll Call Vote

7. ADJOURNMENT: The meeting adjourned at 9:20 PM

Anita Sharp, Deputy City Clerk

ATTEST:

Bruce C. Delgado, Mayor

8.C.

CITY OF MARINA

HUMAN RESOURCES & RISK DEPARTMENT

211 Hillcrest Avenue

Marina, CA 93933

Phone: 831.884.1283

Fax: 831.384.0860



CLAIM FORM

This form is provided pursuant to Government Code Section 910.4 and shall be used by any person presenting a claim to the City of Marina under Government Code Section 810 et seq., except as provided in Government Code Sections 905 and 905.1. If additional space is needed for any of the required information, please attach additional sheets and note your name, date of claim and City of Marina.

SECTION 1: CLAIMANT INFORMATION

Frank Lambert

[REDACTED]

[REDACTED]

[REDACTED]

SECTION 2: NOTICES

The person presenting this claim desires that notices be sent to the following address:

John R. Coniglio

Law Office of John R. Coniglio

490 Calle Principal

Monterey, CA 93940

831-373-3151

Telephone

Number

CA

93940

SECTION 3: CLAIM INFORMATION

Date of the occurrence/transaction which gave rise to the claim: September 23, 2021

Provide the location of the occurrence/transaction which gave rise to the claim. If applicable, include street address, city or county, highway number, mile post number and direction of travel:

Abrams Drive at intersection 52 feet east of Preston Avenue.

Explain the circumstances of the occurrence or transaction which gave rise to the claim. State all

facts that support your claim against the City of Marina and why you believe the City of Marina is

responsible for the alleged damage or injury.

See Attachment 3 -Claim Information attached hereto.

Attachment 3. Claim Information.

Explain the circumstances of the occurrence or transaction which gave rise to the claim. State all facts that support your claim against the City of Marina and why you believe the City of Marina is responsible for the alleged damage or injury.

This unfortunate incident occurred as follows:

On September 23, 2021 at approximately 11:36 a.m., my client Frank Lambert, a resident of Marina, was riding his bicycle westbound on Abrams Drive near Preston Drive. He had just turned from Imjin Road and was on his way home.

He had traveled that road many times over the years. Once near the bus bench by Preston Drive there was a bump in the road that wasn't able to be seen unless you were on top of it. A retired truck driver, he mentioned always scanning the road specifically for cars and when his front tire hit the bump he and the bicycle went flying causing him serious personal injury. He sustained significant facial injuries and a nasal fracture. He also sustained a significant degloving injury to his left hand with possible ligament injuries.

Provide the name(s) of the City of Marina employee(s) causing the injury, damage or lost, if known.

Provide the amount claimed if said amount totals less than ten thousand dollars (\$10,000.00) as of the date presentation of the claim (including the estimated amount of any prospective injury, damage, or lost, insofar as it may be known at the time of the presentation of the claim), together with the basis of computation of the amount claim.

Amount Claimed: \$ _____

Basis for computation: _____

If the amount claimed exceeds ten thousand dollars (\$10,000.00), do not provide the dollar amount of the claim. However, please indicate below whether the claim would be a limited civil case. A **Limited Civil Case** is one where the amount claimed does not exceed twenty-five thousand dollars (\$25,000.00). **Non-Limited Civil Case** is one where the amount may exceed twenty-five thousand dollars (\$25,000.00)

_____ Limited Civil Case

☒ Non-Limited Civil Case

SECTION 4: INSURANCE INFORMATION (OPTIONAL – MAY BE COMPLETE IF CLAIM INVOLVES A MOTOR VEHICLE)

Has a claim for the alleged damage/injury been filled or will it be filed with your insurance carrier?

☐ Yes (If marked, please provide information below.

☐ No

Name of Insurance Carrier

() _____
Telephone Number (include area code)

Mailing Address City State Zip Code

Policy Number: _____ Deductible: \$ _____

Name of registered owner(s) of the vehicle: _____

Vehicle Make: _____ Model: _____ Year: _____

SECTION 5: REPRESENTATIVE INFORMATION (OPTIONAL – MAY BE COMPLETED IF FILED BY ATTORNEY OR REPRESENTATIVE)

John R. Coniglio

831-373-3151

Name of Attorney/Representative

Law office of John R. Coniglio

490 Calle Principal

Monterey, CA 93940

Is the claim filed on behalf of minor? No

If yes, please indicate:

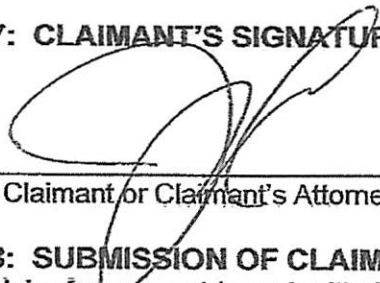
Month, Day & Year

Minor's date of birth:

Relationship to minor:

SECTION 6: ADVISORY - CONDITION OF A FELONY

Section 72 of the Penal Code provides that "every person who, with intent to defraud, presents for allowance or for payment to any State Board or Officer, or to any county, town, city, district, ward, or village, board or officer, authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher, or writing, is guilty of a felony."

SECTION 7: CLAIMANT'S SIGNATURE (OR REPRESENTATIVE)

Signature of Claimant or Claimant's Attorney /Representative

12-17-21
Date

SECTION 8: SUBMISSION OF CLAIM FORM

Completed claim forms must be submitted by personal delivery or by United States mail, postage paid, to the following address:

City of Marina
Attention: Risk Management Department
211 Hillcrest Avenue
Marina, CA 93933

This form must be completed in detail and provide pertinent information required to process the claim and avoid delays. Missing and incomplete information is necessary in order to advance your claim through the City's claims handling process in a timely manner.

You will receive a notification from Marina's Risk Manager regarding the initial handling of your claim. The Risk Management Department will provide a copy of your claim to the Claims Adjuster at MBASIA (Monterey Bay Area Self Insurance Authority), the City's Risk Management Authority. The Claims Adjuster will also notify you that your claim has been received and is being investigated. You may contact the Claims Adjuster, NAME, directly at PHONE NUMBER after you are notified your claim was received in that office.

January 7, 2022

Item No. **8d(1)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
January 19, 2021

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-,
AWARDING A CONSTRUCTION CONTRACT FOR THE CITY OF
MARINA ANNUAL STREET RESURFACING 2021 PHASE 2 PROJECT TO
PRECISION GRADE INC., IN THE AMOUNT OF \$1,742,295; AND
AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXPEND
UP TO AN ADDITIONAL 10% OF THE CONTRACT AMOUNT FOR
CONSTRUCTION CONTINGENCIES AND TO EXECUTE CONTRACT
DOCUMENTS SUBJECT TO FINAL REVIEW AND APPROVAL BY THE
CITY ATTORNEY AND ALL CONSTRUCTION CHANGE ORDERS ON
BEHALF OF THE CITY; AND AUTHORIZING THE FINANCE
DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY
ENTRIES**

RECOMMENDATION:

It is requested that the City Council consider adopting Resolution 2022- for the following action:

1. Awarding a construction contract for the City of Marina Annual Street Resurfacing 2021 Phase 2 Project to Precision Grade Inc. of San Juan Bautista in the amount of \$1,742,295; and
2. Authorizing the City Manager or designee to expend up to an additional 10% of the contract amount for potential construction contingencies and to execute contract documents, **EXHIBIT A**, subject to final review and approval by the City Attorney and construction change orders on behalf of the City; and
3. Authorizing the Finance Director to make necessary accounting and budgetary entries.

BACKGROUND:

At the regular meeting on May 21, 2019, the City Council of the City of Marina adopted Resolution No. 2019-54, receiving the proposed 2019-20 & 2020-21 Capital Improvement Program (CIP) budget, receiving staff presentation thereof, and providing direction towards the CIP budget adoption. As part of the staff presentation, the City's annual street resurfacing project was introduced with Senate Bill 1 Road Maintenance and Rehabilitation Account, Measure X and General Fund funding for roadway maintenance.

At the regular meeting on May 16, 2019, the Public Works Commission received a presentation on the scope of the 2-year Citywide Street Repair Program.

The City Annual Street Resurfacing Project for 2021 was divided into three phases as follows, Phase 1: Flower Circle Reconstruction (construction complete); Phase 2: Various Streets Microsurfacing and construction of American with Disability Act (ADA) compliant curb ramps on various streets (the project being considered for action on this agenda item) (**Exhibit B**); and Phase 3: Slurry Sealing various streets (construction nearing completion).

The proposed Phase 2 project scope is microsurfacing of various streets throughout the City as shown in **EXHIBIT B**. Phase 2 includes the construction of curb ramps, removal and replacement of conform curbs, gutters, sidewalks and deteriorated pavements, crack sealing, application of microsurfacing, and installation of pavement striping and markings.

EXHIBIT B shows the list of streets to receive microsurfacing at several locations throughout the City. The streets included in Phase 2 were selected by the pavement management program. During the preparation of bidding documents, the list of streets was further evaluated by visual inspection to verify if the recommended surface treatment is best for the street. Phase 2 is primarily for streets to receive microsurfacing treatment. These street segments show distress with a Pavement Condition Index (PCI) less than 70. The goal is for the city streets to be maintained a PCI greater than 70, indicating good street conditions.

Streets will be prepared to include replacing failed sections of asphalt with new asphalt, crack sealing, and removal of existing pavement striping and marking before application of a microsurfacing treatment. Microsurfacing is the application of a mixture of water, asphalt emulsion, aggregate, polymer, and chemical additives. Microsurfacing is similar to slurry sealing but has a faster curing rate and a longer life cycle of 7 to 10 years. The proposed work triggers compliance with Americans with Disabilities Act (ADA) requiring installation of curb ramps at the corners of the intersection where there are no existing curb ramps.

The Annual Street Resurfacing Part 2 Project includes the TAMC Safe Streets Pilot Program Cardoza Avenue Corridor Improvements Project. The project includes realigning the Cardoza Avenue and Abdy Way intersection and restriping Cardoza Avenue (from Reservation Road to the end) to better define lane lines and add bicycle lanes (**EXHIBIT C**).

ANALYSIS:

On December 21, 2021, seven (7) sealed bids were received, opened, and six (6) responsive bids were publicly read via live video feed for the City of Marina Annual Street Resurfacing 2021 Phase 2 Project. Following is the tabulation of bids received:

Name of Company and Address	Grand Total
Precision Grade Inc. San Juan Bautista, CA	\$1,742,295.00
Monterey Peninsula Engineering Marina City, CA	\$ 1,748,915.00
FBD Vanguard Livermore, CA	\$ 1,808,510.00
Graniterock Company San Jose, CA	\$ 1,859,656.00
Don Chapin Company Salinas, CA	\$ 1,952,505.00
Granite Construction Watsonville, CA	\$2,105,872.00
NorCal Contractors Salinas, CA	Non-Responsive

The revised Engineer's Opinion of Probable Construction Cost for this project is \$1,761,284.00. Staff reviewed the six responsive bids received and determined that the Precision Grade Inc. bid of \$1,742,295.00 is the lowest responsible and responsive bid. The prime contractor, Precision Grade Inc. has not work with City but has successfully completed similar projects with neighboring Cities with great reference reviews. The sub-contractors, Pavement Coatings and Chrisp Company, have successfully completed work with the City in the past.

FISCAL IMPACT:

Following is the estimated expenditure to execute the project to completion.

Estimated Expense	Amount
Construction Contract	\$1,761,284.00
Construction Contingency Allowance (10%)	\$ 176,128.40
Construction Management and Inspection Allowance	\$ 89,000.00
Total Estimated Expenditure	\$ 2,026,412.40

Capital Improvement Project funding, APR1801(FY 2019-2020 and FY 2020-2021) for the Annual Street Resurfacing has a balance to date amount of \$1,747,770.91. To award this contract \$278,641.49 from APR1801(FY 2022-2023) will be encumbered for the construction of this project. It is expected that two hundred thousand (\$200,000) from TAMC's Safe Street Pilot Program will be invoiced and reimbursed by TAMC upon successful completion of the Cardoza Avenue Corridor Improvements and unused construction contingency will be released for future street resurfacing project.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City of Marina Planning Division determined that this action, approving advertising and call for bids for the City of Marina Annual Street Resurfacing 2021 Phase 2 is Categorical Exempt under CEQA Guidelines per Article 19, Section 15301, Class 1 because the project consists of repair and maintenance of existing public structures and facilities with no expansion of use.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

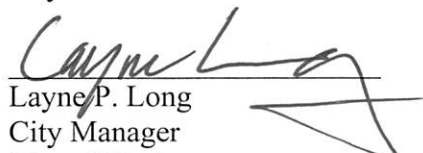
Respectfully submitted,

Elvie Morla-Camacho, P.E., QSD
Project Management Services
Wallace Group

REVIEWED/CONCUR:



Brian McMinn, P.E., P.L.S.
Public Works Director/City Engineer
City of Marina



Layne P. Long
City Manager
City of Marina

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
AWARDING A CONSTRUCTION CONTRACT FOR THE CITY OF MARINA
ANNUAL STREET RESURFACING 2021 PHASE 2 PROJECT TO PRECISION
GRADE INC., IN THE AMOUNT OF \$1,742,295; AND AUTHORIZING THE
CITY MANAGER OR HIS DESIGNEE TO EXPEND UP TO AN ADDITIONAL
10% OF THE CONTRACT AMOUNT FOR CONSTRUCTION CONTINGENCIES
AND TO EXECUTE CONTRACT DOCUMENTS SUBJECT TO FINAL REVIEW
AND APPROVAL BY THE CITY ATTORNEY AND ALL CONSTRUCTION
CHANGE ORDERS ON BEHALF OF THE CITY; AND AUTHORIZING THE
FINANCE DIRECTOR TO MAKE ANY NECESSARY ACCOUNTING AND
BUDGETARY ENTRIES.

WHEREAS, at the regular meeting of May 21, 2019, the City Council of the City of Marina adopted Resolution No. 2019-54, receiving the proposed 2019-20 & 2020-21 Capital Improvement Program (CIP) budget, receiving staff presentation thereof, and providing direction towards the CIP budget adoption. As part of the staff presentation, the City's annual street resurfacing project was introduced with Senate Bill 1 Road Maintenance and Rehabilitation Account, Measure X and General Fund funding for roadway maintenance; and

WHEREAS, at the regular meeting of May 16, 2019, the Public Works Commission received a presentation on the scope of the 2-year Citywide Street Repair Program; and

WHEREAS, the City Annual Street Resurfacing Project for 2021 was divided into three phases as follows, Phase 1: Flower Circle Reconstruction (construction complete); Phase 2: Various Streets Microsurfacing and construction of American with Disability Act (ADA) compliant curb ramps on various streets (the project being considered for action on this agenda item); and Phase 3: Slurry Sealing various streets (construction nearing completion); and

WHEREAS, the proposed Phase 2 project scope is microsurfacing of various streets throughout the City as shown in Exhibit B. Phase 2 includes the construction of curb ramps; removal and replacement of conform curbs, gutters, sidewalks and deteriorated pavement, crack sealing application of microsurfacing; and installation of pavement striping and markings; and

WHEREAS, The Annual Street Resurfacing Part 2 Project includes the TAMC Safe Streets Pilot Program Cardoza Avenue Corridor Improvements Project. The project includes realigning the Cardoza Avenue and Abdy Way intersection and restriping Cardoza Avenue (from Reservation Road to the end) to better define lane lines and add bicycle lanes (Exhibit C); and

WHEREAS, on December 21, 2021, seven (7) sealed bids were received, opened, and six (6) responsive bids were publicly read via live video feed for the City of Marina Annual Street Resurfacing 2021 Phase 2 Project; and

WHEREAS, staff reviewed the six responsive bids received and determined that Precision Grade Inc. bid of \$1,742,295.00 is the lowest responsible and responsive bid. The prime contractor, Precision Grade Inc. has not work with City but has successfully completed similar projects with neighboring Cities with great reference reviews. The sub-contractors, Pavement Coatings and Chrisp Company, have successfully completed work with the City in the past; and

WHEREAS, the estimated cost to complete the work is \$2,0264,412.40 This cost includes the construction cost of \$1,742,295.00; 10% construction contingency of \$174,229.40; and an allowance of \$89,000.00 for construction management and inspections; and

WHEREAS, Capital Improvement Project funding, APR1801(FY 2019-2020 and FY 2020-2021) for the Annual Street Resurfacing has a balance to date amount of \$1,747,770.91. To award this contract \$278,641.49 from APR1801(FY 2022-2023) will be encumbered for the construction of this project. It is expected that two hundred thousand (\$200,000) from TAMC's Safe Street Pilot Program will be invoiced and reimbursed by TAMC upon successful completion of the Cardoza Avenue Corridor Improvements and unused construction contingency will be released for future street resurfacing project; and

WHEREAS, the City of Marina Planning Division determined that this action, approving advertising and call for bids for the City of Marina Annual Street Resurfacing 2021 Phase 2 is Categorically Exempt under CEQA Guidelines per Article 19, Section 15301, Class 1 because the project consists of repair and maintenance of existing public structures and facilities with no expansion of use; and

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Award a construction contract for the City of Marina Annual Street Resurfacing 2021 Phase 2 to Precision Grade Inc. of San Juan Bautista in the amount of \$1,742,295; and
2. Authorize the City Manager or designee to expend up to an additional 10% of the contract amount for potential construction contingencies and to execute contract documents, Exhibit A, subject to final review and approval by the City Attorney and construction change orders on behalf of the City; and
3. Authorize the Finance Director to make necessary accounting and budgetary entries.

PASSED AND ADOPTED, at a regular meeting of the City Council of the City of Marina, duly held on the 19th day of January 2022, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ATTEST:

Bruce C. Delgado, Mayor

Anita Sharp, Deputy City Clerk

A9 FORM OF CONTRACT

FOR

City of Marina Annual Street Resurfacing 2021, Phase 2

THIS AGREEMENT, made and entered into this _____ 2022, by and between The City of Marina, a municipal corporation of the State of California, hereinafter called "City of Marina" or "City" and Precision Grade Inc. "Contractor,"

WITNESSETH:

FIRST: Contractor hereby covenants and agrees to furnish and provide all labor, materials, tools, appliances, equipment, plant and transportation, and all other things required or necessary to be furnished, provided or done, and build, erect, construct and complete the work at the time and in the manner provided, and in strict accordance with the plans and specifications therefore, for PROJECT adopted by the Council of the City of Marina on January 19, 2022.

SECOND: It is expressly understood and agreed that this contract consists of the following documents, all of which are incorporated into this agreement and made a part hereof as fully and completely as if set forth herein verbatim, to wit:

- a. Accepted Proposal(A3);
- b. Proposal Guaranty Bond(A6);
- c. Contract Agreement (A9);
- d. Performance Bond (A11);
- e. Bond for Labor and Material (A10);
- f. Proposal Supplement Including an Experience Statement and List of Proposed Subcontractors(A4& A5);
- g. These Plans and Specifications and addendum 1,2 and 3.
- h. The California State Standard Specifications and Standard Details 2018; and
- i. Insurance.

THIRD: That said Contractor agrees to receive and accept the following prices as full compensation for furnishing all materials and for doing all the work embraced and contemplated in this Agreement and as set forth in the Proposal adopted by the City of Marina, a true copy thereof hereto attached, also, for all loss or damage arising out of the nature of said work, or from the action of the elements or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until the acceptance thereof by the City of Marina and for all risk connected with the work, and for well and faithfully completing the work, and the whole thereof, in the manner and according to the said Plans and Specifications and the provisions of this Agreement, and the requirements of the Engineer under them, to wit: The prices as set forth in the Proposal of said Contractor for the work to be constructed and completed under this Agreement, which prices shall be considered as though repeated herein.

One Million Seven Hundred Forty-Two Thousand and Two Hundred Ninety-Five dollars

(\$ 1,742,295.00)



The undersigned Contractor further agrees to so plan the work and to prosecute it with such diligence that said work, and all of it, shall be completed on or before the expiration of the time specified in the Special Provisions after execution of the contract on behalf of the City of Marina and the receipt from the City of Marina of a notice to proceed with the work.

FOURTH: The City of Marina hereby promises and agrees with said Contractor to employ, and does hereby employ, said Contractor to provide the materials and to do the work according to the terms and conditions herein contained and referred to, for the price aforesaid, and hereby contracts to pay the same at the time, in the manner and upon the conditions set forth in the Specifications; and the said parties, for themselves, their heirs, executors, administrators, successors and assigns, do hereby agree to the full performance of the covenants herein contained.

FIFTH: No interest in this agreement shall be transferred by the Contractor to any other party, and any such transfer shall cause the annulment of this contract, so far as the City of Marina is concerned. All rights of action, however, for any breach of this contract are reserved to City.

SIXTH: Contractor shall keep harmless and indemnify the City of Marina, its officers and employees and agents, from all loss, damage, cost or expense that arises or is set up for infringement of patent rights of anyone for use by the City of Marina, its officers, employees or agents, of articles supplied by the Contractor under this contract, of which he is not entitled to use or sell. Contractor agrees to, at his own cost and expense, defend in court the City, its officers, agents and employees, in any action which may be commenced or maintained against them or any of them, on account of any claimed infringement of patent rights, arising out of this agreement.

SEVENTH: The Contractor agrees to immediately repair and replace all defective material and workmanship discovered within one year after acceptance of final payment by Contractor and to indemnify said City of Marina against all loss and damage occasioned by any such defect, discovered within said year, even though the damage or loss may not be ascertained until after the expiration thereof. Provided, however, that if such failure of the Contractor to perform should not, by reasonable diligence, be discoverable or discovered within said one year, then the obligation of the Contractor to repair and replace said defective material or workmanship shall continue until one year after the actual discovery thereof.

EIGHTH: The Contractor agrees at all times during the progress of the work to carry with insurance carriers approved by the City of Marina full coverage workmen's compensation and public liability insurance in the form and to the extent called for in Section 7-1.06 of the Standard Specifications, State of California, 2018 Edition. Such insurance policy shall contain an endorsement that the same shall not be canceled nor the amount of coverage be reduced until at least 30 days after receipt by the City of Marina by certified or registered mail of a written notice of such cancellation or reduction in coverage.

NINTH: Contractor agrees to comply with all applicable federal, state and municipal laws and regulations, including but not limited to California Labor Code Division 2, Part 7, Chapter 1 regarding Public Works and Public Agencies.

TENTH:

ATTORNEY'S FEES. In the event of any controversy, claim or dispute relating to this Agreement or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.



ELEVENTH:

COMPLIANCE WITH PROVISIONS OF LAW.

- a) The City is subject to laws relating to public agencies which are part of this contract as though fully set forth herein.
- b) Contractor shall comply with City of Marina Municipal Code Chapter 13.02 Local Hiring for Public Works.
- c) Contractor shall comply with laws relating to the work.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hands the year and date first above written.

CONTRACTOR

CITY OF MARINA

By: _____

By: Layne P. Long, City Manager

Print Name: _____

Date: _____

Address: _____

Date: _____

APPROVED AS TO FROM:

By: _____
Robert Wellington, City Attorney

By: _____

Date: _____

Date: _____

ATTESTED:

By: _____
Anita Shepherd-Sharp
Deputy City Clerk

Date: _____

Resolution No. 2022-_____



A10 PAYMENT BOND
(LABOR AND MATERIAL BOND)
(100% of Contract Amount)

Bond No.: _____

Premium: _____

WHEREAS, The City of Marina ("CITY") has awarded to Precision Grade Inc. designated as "PRINCIPAL" herein, a contract for the work described as the City of Marina Annual Street Resurfacing 2021, Phase 2 Project; and

WHEREAS, on or about _____, 2022, the PRINCIPAL entered into a Contract with the CITY for the construction of the work of improvement, which Contract and all Contract Documents set forth therein are incorporated herein and made a part hereof by this reference; and

WHEREAS, By the terms of the Contract, as well as California Civil Code Section 9550, the PRINCIPAL is required to furnish a bond guaranteeing payment of claims.

NOW, THEREFORE, PRINCIPAL and _____ ("SURETY"), a duly admitted surety insurer in the State of California as defined by California Code of Civil Procedure section 995.120, are held and firmly bound to the CITY for payment of the penal sum of _____ Dollars (\$_____) (the "Bonded Sum") in lawful money of the United States, for the payment of which sum PRINCIPAL and SURETY jointly and severally bind themselves and their heirs, executors, administrators, successors, and assigns.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT IF PRINCIPAL, his, her or its heirs, executors, administrators, successors or assigns or subcontractors shall fail to pay any of the persons referred to in California Civil Code Section 9100, amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or amount due the Franchise Tax Board as provided in California Civil Code Section 9554, that SURETY or sureties herein shall pay for the same, in amount not exceeding the Bonded Sum; otherwise this obligation shall be void.

The following terms and conditions shall apply with respect to this Bond:

1. In case suit is brought upon this Bond the said SURETY will pay reasonable attorney's fees and costs incurred by the CITY to be fixed by the Court in addition to the Bonded Sum;
2. No alternation, modification or supplement to the Contract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, alteration, or addition to the terms of the contract, or to the specifications accompanying the same, shall in any way affect the obligations of SURETY under this Bond, SURETY hereby waives notice of any alteration, modification, supplement or extension of time.
3. No settlement between the CITY and the PRINCIPAL shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.
4. Correspondence or claims relating to this Bond should be sent to the SURETY at the following address:



5. This Bond shall inure to the benefit of any persona named in California Civil Code Sections 8520, 8530, 9100 as to give a right of action to such persons or their assigns in any suit brought upon this Bond. Any such right of action shall be subject to the provisions of California Civil Code Section 8608 or 9566.

IN WITNESS WHEREOF, three (3) identical counterparts of this instrument, each of which shall for all purposes be deemed to be an original hereof, have been duly executed by PRINCIPAL and SURETY on the date set forth before the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body. PRINCIPAL and SURETY has caused this Bond to be duly executed and delivered this _____ day of _____ 2022.

[Signature page follows.]



Date: _____, 2022

PRINCIPAL: _____

Name: _____

Title: _____

Legal Address: _____

()
()
(Corporate)
(Seal)
()

Attest: _____
(Corporate Secretary)

Date: _____, 2022

SURETY: _____

Name: _____

Title: _____

Legal Address: _____

()
()
(Corporate)
(Seal)
()
()
()

Attach Attorney-In-Fact Certificate, Corporate Seal and Surety Seal

APPROVED AS TO SURETY AND PRINCIPAL AMOUNT:

City Engineer

APPROVED AS TO FROM:

City Attorney

Note: this Bond must be dated, sealed, executed in triplicate, (copies are not acceptable), all signatures on behalf of PRINCIPAL and SURETY must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached.



A11 PERFORMANCE BOND
(100% of Contract Amount)

Bond No.: _____
Premium: _____

WHEREAS, THE City of Marina ("CITY") has awarded to Precision Grade Inc, designated as the "PRINCIPAL" herein, a contract hereto annexed for the work described as the City of Marina Annual Street Resurfacing 2021, Phase 2 Project; and

WHEREAS, on or about _____, 2022, the PRINCIPAL entered into a Contract with the CITY for the construction of the work or improvement, which Contract and all Contract Documents set forth therein are incorporated herein and made a part hereof by this reference; and

WHEREAS, the PRINCIPAL is required to furnish a bond guaranteeing the faithful performance of its obligations under the Contract Documents concurrently with delivery to the City of the executed Contract.

NOW. THEREFORE, PRINCIPAL and _____ ("SURETY"), a duly admitted surety insurer in the State of California as defined by California Code of Civil Procedure section 995.120, are held and firmly bound to the CITY for payment of the penal sum of _____ Dollars (\$ _____) (the "Bonded Sum") in lawful money of the United States, for the payment of which sum PRINCIPAL and SURETY jointly and severally bind themselves and their heirs, executors, administrators, successors and assigns.

THE CONDITON OF THIS OBLIGATION IS SUCH THAT IF PRINCIPAL shall promptly and faithfully perform all of its obligations under the Contract Documents, including any and all amendments and supplements thereto, and shall furnish all tools, equipment, apparatus, facilities, transportation, labor and materials, other than materials to be furnished by the CITY, necessary to perform and complete, and to perform and complete in a good workmanlike manner in strict conformation with the terms and set forth in the Contract annexed hereto, and to guarantee acceptable performance of the work for a period of one year following the acceptance of the project; then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The following terms and conditions shall apply with respect to this Bond:

1. This bond specifically guarantees the performance of each of every obligation of the PRINCIPAL under the Contract Documents, as they may be amended and supplemented, including but not limit to its liability for liquidated damages and warranties as specified in the Contract Documents, up to but not exceeding the Bonded Sum.
2. The guarantees contained herein shall survive the final completion of the construction called for in the Contract Documents with respect to those obligations of PRINCIPAL which survive such final completion.
3. No alteration, modification, or supplement to the Contract Documents or the nature of the Work performed thereunder, including without limitation any extension of time for performance shall in any way affect the obligations of SURETY under this Bond. Surety hereby waives any notice of alterations, modification, supplement, or extension of time.



4. Whenever the PRINCIPAL shall be, and is declared by CITY to be, in default under the Contract Documents, provided that CITY is not then in material default thereunder, SURETY shall promptly: (a) remedy such default; (b) complete the Project in accordance with the terms and conditions of the Contract Documents then in effect; or (c) select a contractor(s) to complete all work for which a Notice to Proceed has been issued in accordance with the terms and conditions of the Contract Documents then in effect, use a procurement methodology approved by the CITY, arrange for a contract between such contractor(s) and CITY, and make available as work progresses sufficient funds to pay the cost of completion including other costs and damages for which the SURETY is liable hereunder, up to but not exceeding the Bonded Sum.
5. Correspondence or claims relating to the Bond shall be sent to the SURETY at the following address:

6. No right of action shall accrue on this Bond to or for the use of any entity other than CITY or its successors and assigns.
7. In the event any suit, action, or proceeding is instituted to recover on this Bond, said SURETY will pay, and does hereby agree to pay, CITY's reasonable attorney's fees and costs incurred, with or without suit, in addition to the Bonded Sum.

IN WITNESS WHEREOF, three (3) identical counterparts of this instrument, each of which shall for all purposes be deemed to be an original hereof, have been duly executed by PRINCIPAL and SURETY on the date set forth before the name of each corporate party being hereto affixed and these presents duly signed by its undersigned representative(s) pursuant to authority of its governing body. PRINCIPAL and SURETY has caused this Bond to be duly executed and delivered this _____ day of _____ 2022.

[Signature page follows.]



Date: _____, 2022

PRINCIPAL: _____

Name: _____

Title: _____

Legal Address: _____

(
(
(Corporate Seal)
(
(
()

Attest: _____
(Corporate Secretary)

Date: _____, 2022

SURETY: _____

Name: _____

Title: _____

Legal Address: _____

(
(
(Corporate Seal)
(
(
()

Attach Attorney-In-Fact Certificate, Corporate Seal and Surety Seal

APPROVED AS TO SURETY AND PRINCIPAL AMOUNT:

City Engineer

APPROVED AS TO FROM:

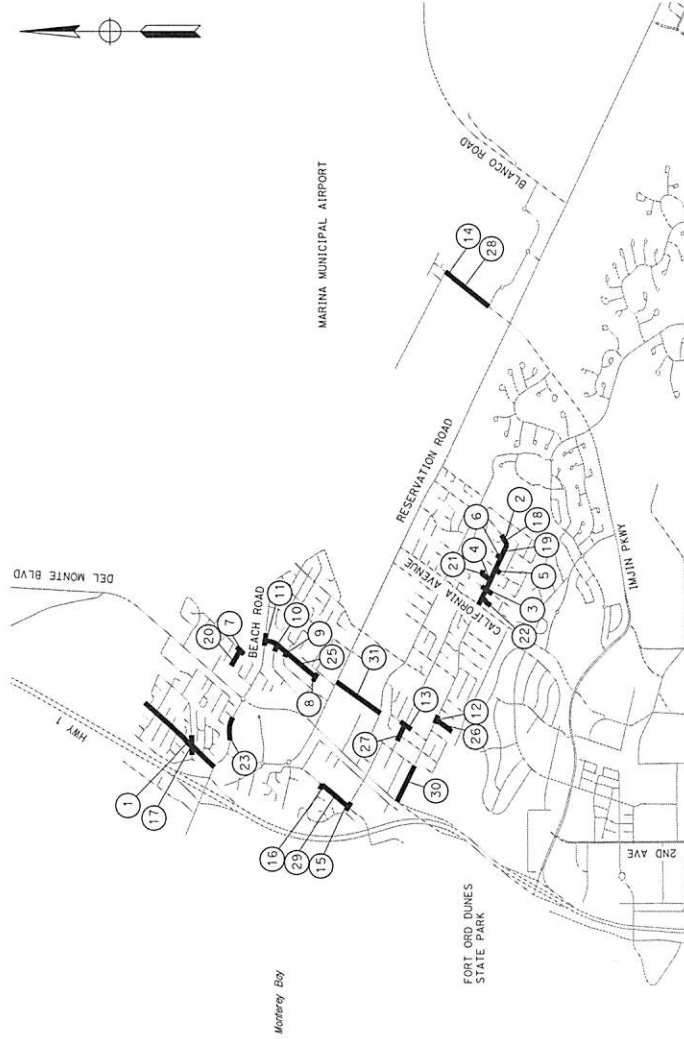
City Attorney

Note: this Bond must be dated, sealed, executed in triplicate, (copies are not acceptable), all signatures on behalf of PRINCIPAL and SURETY must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached.



CITY OF MARINA ANNUAL STREET RESURFACING 2021, PHASE 2
FOR THE
CITY OF MARINA

FOR USE IN CONJUNCTION WITH THE PROJECT SPECIFICATIONS, THE STANDARD DETAILS OF THE CITY OF MARINA AND THE STANDARD SPECIFICATIONS OF THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION DATED 2018



INDEX OF PLANS

1	T-1	TITLE SHEET
2	GN-1	GENERAL NOTES
3	K-1	KEY MAP
4-10	PC-1 TO PC-7	PROJECT CONTROL PLAN SHEETS
11-21	DM-1 TO DM-11	REMOVAL PLAN SHEETS
22-41	L-1 TO L-20	LAYOUT SHEETS
42-68	C-1 TO C-27	CONSTRUCTION DETAILS SHEETS

ADA IMPROVEMENT LOCATIONS

LOC NO. #	STREET	DESCRIPTION
1	CARDOZA AVE	5 RAMPS
2	BOSTICK AVE	3 RAMPS
3	EDDY STEDDY CIR	4 RAMPS
4	PHILLIPS CIR	2 RAMPS
5	SUNRISE AVE	2 RAMPS
6	MILDRED CT	2 RAMPS
7	MCCULLOCH CIR	2 RAMPS
8	PENINSULA DR	2 RAMPS
9	VISTA DEL CAMINO CIR	3 RAMPS
10	SUSAN AVE	2 RAMPS
11	BEACH RD	3 RAMPS
12	MAX CIR	2 RAMPS
13	HILLCREST AVE	3 RAMPS
14	IMJIN DR	1 RAMP
15	LAKE DR	1 RAMP
16	WESSINGER DR	2 RAMPS

STREET RESURFACING LOCATIONS

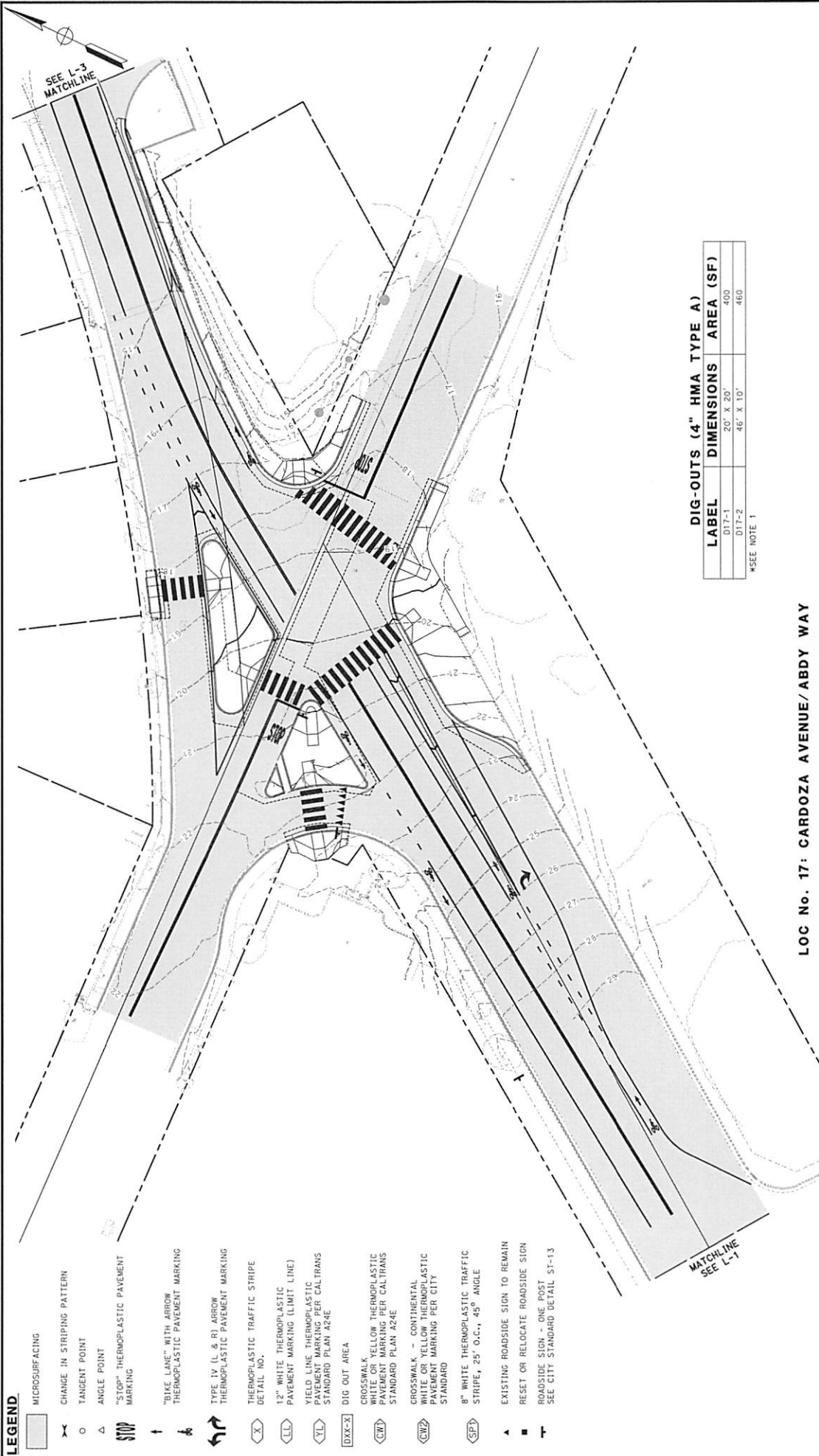
LOC NO. #	STREET	DESCRIPTION
17	CARDZO AVE	RESERVATION RD TO END
18	BOSTICK AVE	REINDOLLAR AVE TO 113' N/O LARSON CT
19	REINDOLLAR AVE	CALIFORNIA AVE TO BOSTICK AVE
20	MCCULLOCH CIR	MICHAEL DR TO END
21	PHILLIPS CIR	REINDOLLAR AVE TO END
22	WESTWOOD CT	REINDOLLAR AVE TO END
23	BEACH RD	435' W/O MARINA DR TO MARINA DR
24	MELANIE RD	PENINSULA DR TO BEACH RD
25	MAX CIR	REINDOLLAR AVE TO END
26	HILLCREST AVE	138' W/O OPEN AVE TO ZANETTA DR
27	IMAIN RD	UNIVERSITY DR TO WESSON DR
28	LAKE DR	PALM AVE TO MESSENGER DR
29	REINDOLLAR AVE	DEL MONTE BLVD TO SUNSET AVE
30	SEACREST AVE	CARMEL AVE TO RESERVATION RD
31		

[illegible]

Sevak Ruffman
PROJECT ENGINEER

October 26, 2021
PLANS APPROVAL DATE

	PUBLIC WORKS DIRECTOR/CITY ENGINEER _____ Date _____	
	SCALE: HORIZ AS SHOWN VERT ORIGINAL SCALE IN INCHES FOR REDUCED PLANS	



DIG-OUTS (4" HMA TYPE A)

LABEL	DIMENSIONS	AREA (SF)
D17-1	20' X 20'	400
D17-2	46' X 10'	460

*SEE NOTE 1

LOC No. 17: CARDOZA AVENUE/ABDY WAY

LEGEND

- MICROSURFACING
- CHANGE IN STRIPING PATTERN
- TANGENT POINT
- ANGLE POINT
- "STOP" THERMOPLASTIC PAVEMENT MARKING
- "BIKE LANE" WITH ARROW THERMOPLASTIC PAVEMENT MARKING
- TYPE IV (L & R) ARROW THERMOPLASTIC PAVEMENT MARKING
- THERMOPLASTIC TRAFFIC STRIPE DETAIL NO.
- 12" WHITE THERMOPLASTIC PAVEMENT MARKING (LIMIT LINE)
- YIELD LINE THERMOPLASTIC PAVEMENT MARKING PER CALTRANS STANDARD PLAN 424E
- DIG OUT AREA
- CROSSWALK
- WHITE OR YELLOW THERMOPLASTIC PAVEMENT MARKING PER CALTRANS STANDARD PLAN 424E
- CROSSWALK - CONTINENTAL
- WHITE OR YELLOW THERMOPLASTIC PAVEMENT MARKING PER CITY STANDARD
- 8" WHITE THERMOPLASTIC TRAFFIC STRIPE, 25' O.C., 45° ANGLE
- EXISTING ROADSIDE SIGN TO REMAIN
- RESET OR RELOCATE ROADSIDE SIGN
- ROADSIDE SIGN - ONE POST SEE CITY STANDARD DETAIL ST-13

SCALE: HORIZ 1" = 20'
VERT N/A
ORIGINAL SCALE IN INCHES
FOR REDUCED PLANS

CITY OF MARINA
DEPARTMENT OF PUBLIC WORKS

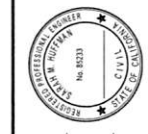


CIVIL AND TRANSPORTATION ENGINEERING
CONSTRUCTION MANAGEMENT
LANDSCAPE ARCHITECTURE
PLANNING
PUBLIC WORKS ADMINISTRATION
TRAFFIC ENGINEERING
WATER RESOURCES
#12 CLARION COURT
T 805 544-4011 F 805 544-4294
www.wallacegroup.us



NO.	BY	DATE	DESCRIPTION	APPROVED BY	DATE

PROJECT ENGINEER
October 26, 2021
PLANS APPROVAL DATE



CITY OF MARINA ANNUAL STREET
RESURFACING 2021, PHASE 2
LAYOUT
L-2
RECORDED BY: JPM/MLB
CHECKED BY: JPM/MLB
DATE: 11/05/2021
SHEET: 23 OF 68

January 7, 2022

Item No. **8d(2)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
January 19, 2022

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-,
AWARDING A CONSTRUCTION CONTRACT FOR THE GLORYA
JEAN-TATE PARK SITE IMPROVEMENTS AND PUMP TRACK
PROJECT TO MONTEREY PENINSULA ENGINEERING, IN THE
AMOUNT OF \$982,700; AND AUTHORIZING THE CITY MANAGER, OR
HIS DESIGNEE, TO EXPEND UP TO AN ADDITIONAL 10% OF THE
CONTRACT AMOUNT FOR CONSTRUCTION CONTINGENCIES AND
TO EXECUTE CONTRACT DOCUMENTS SUBJECT TO FINAL
REVIEW AND APPROVAL BY THE CITY ATTORNEY AND ALL
CONSTRUCTION CHANGE ORDERS ON BEHALF OF THE CITY; AND
AUTHORIZING THE FINANCE DIRECTOR TO MAKE NECESSARY
ACCOUNTING AND BUDGETARY ENTRIES**

RECOMMENDATION: City Council consider adopting Resolution 2021-, approving the following actions:

1. Award a construction contract for the Glorya Jean-Tate Park Site Improvements and Pump Track Project to Monterey Peninsula Engineering of Marina in the amount of \$982,700; and
2. Authorize the City Manager, or his designee, to expend up to an additional 10% of the contract amount for potential construction contingencies and to execute contract documents, attached hereto as "**EXHIBIT A**," subject to final review and approval by the City Attorney and construction change orders on behalf of the City; and
3. Authorize the Finance Director to make necessary accounting and budgetary entries.

BACKGROUND:

Several parks have been planned for development within Marina. On June 21, 2005 City Council passed Resolution 2005-159 Adopting a Negative Declaration and Parks and Recreation Facilities Master Plan. The Master Plan served as the basis for the preliminary planning for the city parks. At a regular meeting on May 1, 2019, the City Council approved the 2019-20 & 2020-21 Capital Improvement Program (CIP) budget. Construction of a pump track and improvements to the restrooms at Glorya Jean- Tate Park are included in the approved CIP, QLP 2006, for FY 2019-20 through FY 2020-21.

A community outreach for parks design was held on November 13, 2018. The design consultant team retained by the City, Verde Design, prepared parks concept plans that were presented to a joint Public Works Commission and Recreation and Cultural Services Commission on February 21, 2019. The Commissioners received the presentation, heard comments from the public, made recommendations for changes. Recommendations from the commissions were incorporated into the concept plans which were presented to the City Council on April 9, 2019. On March 16, 2021, staff presented the conceptual plans at a City Council meeting that incorporated input from Monterey Off Road Cycling Association (MORCA), a stakeholder, and the public. The purpose of the meeting was to receive input from the City Council and public to refine the design. City Council received presentations on the park concept plans and provided comments for changes at these meetings (City Council Resolution 2021-21). On November 2, 2021, the City Council adopted Resolution 2021-115 approving advertising and call for bids for the Glorya Jean-Tate Park Site Improvements and Pump Track.

CIP Project QLP 2006, Glorya Jean Tate Pump Track and Restroom Improvements Project, is being performed as two phases to facilitate construction; Phase 1 was the construction of the ADA improvements for the existing restrooms; and Phase 2 is the construction of the Pump Track and ADA improvements to the park. Phase 1 construction was completed in 2021 through the General Building Improvement On-Call Contract.

The construction documents attached hereto as “**EXHIBIT B**” incorporate the refinements outlined above. The plans includes furnishing new ADA parking stalls, concrete paths, bike pump track, site furnishings such as benches, picnic tables, and a drinking fountain, and limited landscaping. The plans also show additional work that could be awarded at the City’s discretion as the following enumerated additive alternative bid items:

1. Installation of pump track curved wall ride prefabricated riding features; and
2. Installation of the chain-link fencing at the building, bike racks, bike repair station, parking stall stripping, wheel stops, and the pump track entry signage as shown, and
3. Demolition and removal of the existing ball stop netting to the north, ADA parking stall stripping, scoreboard, infield fines, ADA parking sign poles, accessible curb ramp, and restoration of the removed pavement; and
4. Installation of mulch area, drip zone irrigation, and associated native planting; and
5. Maintenance of landscaping for one additional year.

ANALYSIS:

On January 4, 2022, three (3) sealed bids were received, opened, and publicly read via live video feed for the Glorya Jean-Tate Park Site Improvements and Pump Track Improvements Project. Following is the tabulation of bids received based upon the evaluation criteria of lowest responsive and responsible base bid plus additive alternate bid items 1 through 4 as described above.

Name of Company and Address	Ranking of Bids According to Base Bid Plus Additive Alternates 1 through 4
Monterey Peninsula Engineering Marina, CA	\$1,084,700
Silicon Valley Paving San Jose, CA	\$1,241,900
Granite Rock Company San Jose, CA	\$1,480,310

The Architect’s Opinion of Probable Construction Cost for the base bid plus additive alternates 1 through 4 for this project is \$1,239,276. Staff reviewed the bids received and determined that Monterey Peninsula Engineering bid of \$1,084,700 is the lowest responsive and responsive bid. The prime contractor, Monterey Peninsula Engineering, and the subcontractor constructing the pump track, Santa Cruz Mountains Trail Stewardship, have successfully completed similar projects with neighboring cities in the past.

The bidding documents allow the City to award any or none of the alternate bid items along with the base bid. Based upon analysis of the available funding, it is recommended that the City award a contract for the base bid and additive alternates 1 through 3 to Monterey Peninsula Engineering in the amount of \$982,700. As described below, this would allow for funds to be held in reserve as a contingency for potential change orders or, at the direction of the City Council, used near the end of the construction to award additional work as described in the additive alternate bid items 4 and 5.

FISCAL IMPACT:

The Capital Improvement Project QLP 2006 for the Gloria Jean-Tate Pump Track and Restroom Improvements has total available funds of \$1,577,952. This includes \$300,000 from FY 2019-20 Budget; \$1,100,000 approved as part of the FY 21- 22 and 22-23 budgets; and \$177,952 from the California State Parks Proposition 68 grant. Considering estimated costs of approximately \$163,000 for providing professional support services during construction, CIP QLP 2006 currently has approximately \$1,094,000 available for construction.

Therefore, awarding a contract for the base bid amount plus additive alternates 1 through 3 to Monterey Peninsula Engineering in the amount of \$982,700 would allow for a 10% contingency in the amount of \$98,270 and a reserve of approximately \$13,000. If an award is made for this project funding will come from QLP 2006.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City of Marina Planning Division determined that this action, awarding a construction contract for the Gloria Jean-Tate Park Site Improvements and Pump Track is Categorically Exempt under CEQA Guidelines per Article 19, Section 15304(b), Class 4 because the proposed improvements consist of minor alterations to land.

CONCLUSION:

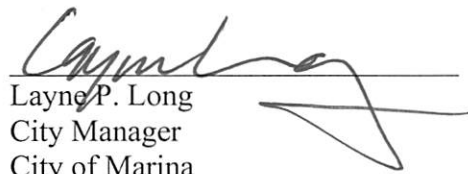
This request is submitted for City Council consideration and possible action.

Respectfully submitted,

Rick Riedl, P.E.
Project Management Services
Wallace Group

REVIEWED/CONCUR:

Brian McMinn, P.E., P.L.S.
Public Works Director/City Engineer
City of Marina



Layne P. Long
City Manager
City of Marina

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA AWARDING A CONSTRUCTION CONTRACT FOR THE GLORYA JEAN-TATE PARK SITE IMPROVEMENTS AND PUMP TRACK PROJECT TO MONTEREY PENINSULA ENGINEERING, IN THE AMOUNT OF \$982,700; AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXPEND UP TO AN ADDITIONAL 10% OF THE CONTRACT AMOUNT FOR CONSTRUCTION CONTINGENCIES AND TO EXECUTE CONTRACT DOCUMENTS SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY AND ALL CONSTRUCTION CHANGE ORDERS ON BEHALF OF THE CITY; AND AUTHORIZING THE FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES.

WHEREAS, on May 1, 2019, the City Council adopted Resolution No. 2019-54 adopting the Capital Improvement Program including the construction of a pump track and improvements to the restrooms at Glorya Jean Tate Park; and

WHEREAS, the design consultant team retained by the City, Verde Design, prepared preliminary plans based upon input from the city council, community survey, city staff, and stakeholder groups; and

WHEREAS, at the regular meeting of the City Council on March 16, 2021, the City Council received a presentation and gave direction on finalizing the plans (Resolution 2021-21); and

WHEREAS, construction documents including plans and specifications have been prepared based upon Council direction that includes demolition of fencing, irrigation, turf landscaping, and hardscape and includes furnishing new ADA parking stalls, concrete paths, bike pump track, site furnishings, irrigation, and landscaping; and

WHEREAS, the project may also include demolition of scoreboard and furnishing fabricated facilities, such as bike racks, bike repair station, riding features, additional landscaping and park entry sign through the award of additive alternate bid items; and

WHEREAS, on November 2, 2021, the City Council adopted Resolution 2021-115 approving advertising and call for bids for the Glorya Jean-Tate Park Site Improvements and Pump Track; and

WHEREAS, on January 4, 2022, three (3) sealed bids were received, opened, and publicly read via live video feed; and

WHEREAS, a tabulation of bids received based upon the evaluation criteria of lowest responsive and responsible base bid plus additive alternate bid items 1 through 4 revealed that Monterey Peninsula Engineering as the apparent low bidder; and

WHEREAS, Monterey Peninsula Engineering and the subcontractor constructing the pump track, Santa Cruz Mountains Trail Stewardship, have successfully completed similar projects with neighboring cities; and

WHEREAS, the bidding documents allow the City to award any or none of the alternate bid items along with the base bid; and

WHEREAS, the Capital Improvement Project Fund QLP 2006 for the Glorya Jean-Tate Park Pump Track and Restroom Improvements (#21) for FY 2019-20 is \$300,000; and

WHEREAS, grant funding in the amount of \$177,952 from the California State Parks increased available funds to \$477,952; and

WHEREAS, additional funding in the amount of \$1,100,000 was approved as part of the FY 21-22 and 22-23 budgets bringing the total project budget to \$1,577,952; and

WHEREAS, it is estimated that approximately \$163,000 is required for providing professional support services during construction; and

WHEREAS, CIP QLP 2006 has approximately \$1,094,000 available for construction; and

WHEREAS, awarding a contract for the base bid amount plus additive alternates 1 through 3 to Monterey Peninsula Engineering in the amount of \$982,700 would allow for a 10% contingency in the amount of \$98,270 and a reserve of approximately \$13,000; and

WHEREAS, the City of Marina Planning Division determined that this action, awarding a construction contract for the Glorya Jean-Tate Park Site Improvements and Pump Track is Categorically Exempt under CEQA Guidelines per Article 19, Section 15304(b), Class 4 because the proposed improvements consist of minor alterations to land.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby approve:

1. Awarding a construction contract for the Glorya Jean-Tate Park Site Improvements and Pump Track Project to Monterey Peninsula Engineering of Marina in the amount of \$982,700; and
2. Authorizing the City Manager, or his designee, to expend up to an additional 10% of the contract amount for potential construction contingencies and to execute contract documents, attached hereto as "**EXHIBIT A**," subject to final review and approval by the City Attorney and construction change orders on behalf of the City; and
3. Authorizing the Finance Director to make necessary accounting and budgetary entries.

PASSED AND ADOPTED, at a regular meeting of the City Council of the City of Marina, duly held on the 19th day of January 2022, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ATTEST:

Bruce C. Delgado, Mayor

Anita Sharp, Deputy City Clerk

January 7, 2022

Item No. **8f(1)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of January 19, 2022

**RECOMMENDATION TO CONSIDER ADOPTING RESOLUTION NO. 2022-,
AMENDING THE SALARY TABLE FOR MARINA PUBLIC SAFETY
MANAGEMENT (MPSMA) AND AUTHORIZE THE FINANCE DIRECTOR TO
MAKE THE NECESSARY ACCOUNTING ENTRIES**

RECOMMENDATION:

It is recommended that the City Council:

1. Consider adopting Resolution No. 2022-, amending the Salary table for members of the Marina Public Safety Management (MPSMA).
2. Authorize the Finance Director to make the necessary accounting entries.

BACKGROUND:

At the regular meeting of December 7, 2021, the City Council took action to adopt the MOU for MPSMA. Following adoption of the MOU it was later determined that due to rounding error, the salary table attached was incorrect for the Police Commanders. Additionally, it was intended that the present employee occupying the Division Chief position would be in a Y rated category to account for an inconsistency with the current payrate vs. the latest salary survey.

ANALYSIS:

The salary table of the adopted MPSMA MOU is incorrect and needs to be amended to conform with "EXHIBIT A" to reflect the correct wages.

FISCAL IMPACT:

The fiscal impact for this action is an increase of approximately \$30 per month in costs to the City.

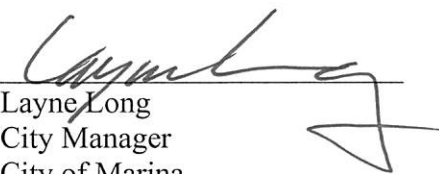
CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

Catrina Scharf
Human Resource Analyst
City of Marina

REVIEWED/CONCUR:



Layne Long
City Manager
City of Marina

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
AMENDING THE SALARY TABLE FOR MARINA PUBLIC SAFETY
MANAGEMENT (MPSMA) AND AUTHORIZE THE FINANCE DIRECTOR TO
MAKE THE NECESSARY ACCOUNTING ENTRIES

WHEREAS, at the regular meeting of December 7, 2021, the City Council took action to adopt the MPSMA's MOU; and

WHEREAS, following adoption of the MOU it was later determined that due to rounding error, the salary table attached was incorrect for the Police Commanders. Additionally, it was intended that the present employee occupying the Division Chief position would be in a Y rated category to account for an inconsistency with the current payrate vs. the latest salary survey; and,

WHEREAS, the salary table contained in Exhibit A reflects the correct pay rates for members of this bargaining unit.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Adopt Resolution No. 2022-, amending the Salary table for members of the Marina Public Safety Management (MPSMA).
2. Authorize the Finance Director to make the necessary accounting entries;

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on January 19, 2022, by the following vote:

AYES, COUNCIL MEMBERS:

NOES, COUNCIL MEMBERS:

ABSENT, COUNCIL MEMBERS:

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, City Clerk

EXHIBIT A

AMMENDED MONTHLY SALARY RANGES

Title	Step A	Step B	Step C	Step D	Step E	Y Rate
Commander	\$67.6521	\$71.0347	\$74.5865	\$78.3158	\$82.2316	
Div Chief	\$61.4749	\$64.5487	\$67.7761	\$71.1649	\$74.7232	\$76.0563

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-,
APPROVING ACCEPTANCE OF \$45,086 FROM STATE OF CALIFORNIA,
DEPARTMENT OF JUSTICE, DIVISION OF OPERATIONS, TOBACCO
GRANT PROGRAM, AUTHORIZING EXPENDITURE OF SAID \$45,086
RECEIVED FROM STATE OF CALIFORNIA, DEPARTMENT OF JUSTICE,
DIVISION OF OPERATIONS, TOBACCO GRANT PROGRAM, AUTHORIZING
FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND
BUDGETARY ENTRIES AND AUTHORIZING CITY MANAGER TO
EXECUTE GRANT DOCUMENTS ON BEHALF OF CITY SUBJECT TO FINAL
REVIEW AND APPROVAL BY THE CITY ATTORNEY**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2022-, approving acceptance of \$45,086 from State of California, Department of Justice, Division of Operations, Tobacco Grant Program, and;
2. Authorize expenditure of said \$45,086 received from State of California, Department of Justice, Division of Operations, Tobacco Grant Program, and;
3. Authorize Finance Director to make necessary accounting and budgetary entries, and;
4. Authorize City Manager to execute grant documents on behalf of City subject to final review and approval by the City Attorney.

BACKGROUND:

On April 7, 2021, the Police Department applied for the State of California, Department of Justice, Division of Operations, Tobacco Grant Program to receive funds for conducting police enforcement operations related to violations of California tobacco laws. Specifically, sales and procurement of tobacco products by minors and providing educational opportunities for those establishments that sell tobacco products. Operations will be conducted in areas where youth smoking is prevalent. The goal is to educate and or cite youth for using tobacco products while underage.

On November 22 2021, the Department received notification that it had been awarded a Tobacco Grant Program grant in the amount of \$45,086 ("**EXHIBIT A**"). There is no local cash match required of the City. Grant funds are for overtime use only and only to be used for overtime dedicated to grant operations and educational programs stipulated by the grant MOU ("**EXHIBIT B**"). Funds may not be used to supplant regular pay/and or salary. This two-year grant will begin December 1, 2021.

The grant requires the Department to perform specific types of educational programs and enforcement operations. The following are the stipulated grant areas required.

1. Tobacco Retailer Inspections
2. Minor Decoy Operations
3. Enforcement/Educational visitations of locations youth are present.
4. Public Information/Education Programs
5. Creation of tobacco retail licensing ordinance.

The grant also requires additional actions related to issuance of press releases, distribution of letters and flyers, submittal of quarterly reports and a final project summary at the end of the life of the grant as well as quarterly reimbursement requests.

The Police Department pursued this grant in to educate tobacco retailers and minors about California law restricting access to, and use of tobacco products by minors.

ANALYSIS:

Police Department staff identified the need to conduct enforcement operations and educational programs related to the sale of tobacco products to minors. As conducting enforcement operations and educational programs are difficult to do by officers assigned to Patrol Operations and the Investigations Bureau during their regularly scheduled shifts, utilization of overtime was determined to be the most effective way to properly conduct the operations and education programs needed to be effective.

The Department's Investigations Bureau will be facilitating grant operations, requirements. They will perform the enforcement operations and educational programs utilizing Investigations Bureau personnel as well as Patrol Operations officers as needed. As some enforcement operations will utilize underage decoys, the Department will rigorously screen, interview and train the decoys to determine their suitability for the operations.

Enforcement operations will be staffed by a minimum of three officers. When minor decoys are being utilized officers will be in close proximity to the decoys at all times to provide maximum safety. The use of "wirers" may be used to further monitor contacts.

The enforcement and educational programs to be utilized during the grant are:

1. Tobacco Retailer Inspections: Twelve (12) retailer inspections will be conducted over the life of the grant targeting those retailers who have been identified as being problematic. However, as many tobacco retailer locations will be visited as possible with the hope that the problematic ones will receive at least two visits during the grant period.
2. Minor Decoy Operations: Twelve (12) minor decoy operations will be conducted during the grant period. Establishments that tend to have a larger than normal amount of youth frequenting them will receive special attention.
3. Enforcement/Educational visitations of locations youth are present: Eight (8) operations will be conducted in areas within the City where youth smoking is prevalent. The goal of these operations is to educate youth on the dangers of smoking and the illegality of what they are doing. Citations may be issued if it is deemed necessary.
4. Public Information/Education Programs: The Department intends to create a youth and public education program facilitated by the Department's youth services officer. This program will utilize social and local media outlets. The Marina PAL Explorers Program has a media production program wherein they can produce high quality videos for media distribution during the life of the grant. The Explorers will be highly involved in this process, producing, editing, and providing support in all aspects of the video production. The Explorers will be provided support by the Police Department's PAL advisors cadre.
5. Creation of tobacco retail licensing ordinance: Working with the Monterey County Health Department and the Blue Zone Project, the Department will craft a tobacco retail ordinance. Department research has shown that an effective tobacco retail ordinance is appropriate to ensure that retailers comply with tobacco laws and business standards of the City. State law permits local governments to enact ordinances regarding the local licensing of tobacco retailers and allows for the suspension or revocation of a local license for violation of any State tobacco law.

The grant requires awardees submit quarterly reports as well as quarterly invoices and these are done electronically. A final report is due at the end of the grant's life. Police Department personnel will complete and submit all reports, requests for reimbursement and supply any other information the granting authority may request.

Receipt of this grant will provide a tool to effectively deter the use of tobacco products by youth and to educate retailers regarding laws surrounding the sale of tobacco products. The use of enforcement operations and educational programs is effective in combating the life altering effects tobacco products have on youth and their futures.

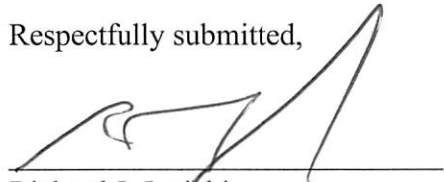
FISCAL IMPACT:

There will be no budgetary impact except for an inflow of funds from the grant in the amount of \$45,086, which will be received over the course of the two-year life of the grant. Should City Council approve this request a Tobacco Grant Program revenue account will be created in the Police Department FY 2021 - 2022 Budget.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

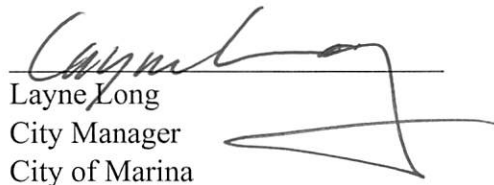


Richard J. Janicki
Management Analyst
Police Department
City of Marina

REVIEWED/CONCUR:



Tina Nieto
Chief of Police
City of Marina



Layne Long
City Manager
City of Marina

RESOLUTION NO 2022 –

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
APPROVING ACCEPTANCE OF \$45,086 FROM STATE OF CALIFORNIA,
DEPARTMENT OF JUSTICE, TOBACCO GRANT PROGRAM, AUTHORIZING
EXPENDITURE OF SAID \$45,086 RECEIVED FROM STATE OF CALIFORNIA,
DEPARTMENT OF JUSTICE, TOBACCO GRANT PROGRAM, AUTHORIZING FINANCE
DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES AND
AUTHORIZING CITY MANAGER TO EXECUTE GRANT DOCUMENTS ON BEHALF OF
THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

WHEREAS, the State of California, Department of Justice, Tobacco Grant Program has awarded a \$45,086 grant to the City of Marina (“**EXHIBIT B**”), and;

WHEREAS, the Tobacco Grant Program funds will be used for conducting police enforcement operations and educational programs related to tobacco laws regarding the sale of and procurement of tobacco products by youth, and;

WHEREAS: the Police Department will conduct tobacco retailer inspections, minor decoy operations, conduct operations enforcing tobacco laws in locations youth are likely present, create a public information/education program geared towards youth and parents, and create and implement a tobacco retail licensing ordinance to meet the requirement of the grant, and;

WHEREAS, funds received from the Tobacco Grant Program may only be used to fund officer overtime while they are conducting grant related activities, and grant funds may not be used to supplant officer salaries or purchase equipment or supplies, and;

WHEREAS, the Tobacco Grant Program does not require matching funds of the City, and;

WHEREAS, the City Council of the City of Marina accepts and approves the expenditure of funds received from the State of California, Department of Justice, Tobacco Grant Program in the amount of \$45,086.

NOW, THEREFORE IT BE RESOLVED, that the City Council of the City of Marina does hereby:

1. Approve acceptance of funds from the State of California, Department of Justice, Tobacco Grant Program in the amount of \$45,086, and;
2. Approve the expenditure of the funds received from the State of California, Department of Justice, Tobacco Grant Program in the amount of \$45,086 and;
3. Authorize Finance Director to make necessary accounting and budgetary entries, and;
4. Authorize City Manager to execute grant documents on behalf of City subject to final review and approval by the City Attorney.

Resolution No. 2022-
Page Two

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 19th day of January 2022, by the following vote:

AYES, COUNCIL MEMBERS:

NOES, COUNCIL MEMBERS:

ABSENT, COUNCIL MEMBERS:

ABSTAIN, COUNCIL MEMBERS:

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

“EXHIBIT A”

ROB BONTA
Attorney General

State of California
DEPARTMENT OF JUSTICE



DIVISION OF OPERATIONS
TOBACCO GRANT PROGRAM
P.O. BOX 160187
SACRAMENTO, CA 95816-0187
Telephone: (916) 210-6422
E-Mail Address: TobaccoGrants@doj.ca.gov

November 18, 2021

Bryan Whittaker, Sergeant
Marina Police Department
211 Hillcrest Avenue
Marina, CA 93933

Re: Tobacco Grant Award Notification FY 21/22

Dear Bryan Whittaker:

Congratulations! On behalf of the California Department of Justice, I am excited to inform you that your agency's grant application for funds authorized under the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 has been approved for Funding in the amount of \$45,086¹.

The California Department of Justice was excited to receive applications totaling over \$71 million to support local law enforcement agencies in educating minors about the harms of tobacco products, enforcing state and local tobacco laws, and conducting retailer enforcement. Consequently, some awards were approved with modifications.

In order to accept the award, your agency must, within 15 calendar days of the date of this letter, respond with a signed Letter of Intent (template attached) affirming either 1) your agency will seek a resolution to accept the award, if your agency has a governing body; or 2) no governing body exists and no resolution is required. The letter can be sent via email to TobaccoGrants@doj.ca.gov with subject line "FY 21-22_Letter of Intent_Marina Police Department" and/or hard copy to:

CA Department of Justice
Division of Operations
Tobacco Grant Program
P.O. Box 160187
Sacramento, CA 95816-0187

If the Letter of Intent is only being sent via hard copy, it must be postmarked within 15 days of the date of this letter. Upon receipt of the Letter of Intent, the Local Assistance Unit

¹Award amounts are subject to change due to appeals or declinations of awards.

November 18, 2021

Page 2

within the California Department of Justice will provide documents as part of your grant agreement (Memorandum of Understanding, Handbook, etc.).

Also provided with the electronic version of this letter are the Award Summary and approved Budget Detail which will reflect any necessary modifications. If you wish to realign the approved funds, please reference the attached instruction sheet and return your revised Budget Detail with your letter of intent.

If you have any questions about this process, please do not hesitate to contact me at (916) 210-7006 or at TobaccoGrants@doj.ca.gov.

Sincerely,

Stacy
Heinsen

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Heinsen
Date: 2021.11.17
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STACY HEINSEN
Manager, Tobacco Grant Program

For ROB BONTA
Attorney General

DOJ-PROP56-2021-22-1-040

MEMORANDUM OF UNDERSTANDING

PURPOSE

This Memorandum of Understanding (MOU) is entered into by the Department of Justice (hereinafter, “Department”) and the City of Marina Police Department (hereinafter, “Grantee”), to provide grant funds to Grantee for expenditure in compliance with the Grantee Handbook. The Grantee will expend funds for the purposes identified in the approved Summary of Award document to be funded under the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 (the “Act”), approved by the voters as Proposition 56.

The Request for Proposals, Grantee Handbook (dated March 2021), and Summary of Award document are hereby incorporated by reference into this MOU.

COST REIMBURSEMENT

The Department agrees to reimburse Grantee in arrears, for Grantee’s actual expenditures in performing the project or scope of work included in the approved Summary of Award document, upon receipt of invoices from Grantee and approval of the invoices by the Department, in accordance with the reimbursement procedures set forth in the Grantee Handbook.

BUDGET CONTINGENCY CLAUSE

It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under the agreement does not appropriate sufficient funds for this MOU, this MOU shall be of no further force and effect. In this event, the Department shall have no liability to pay any funds whatsoever to Grantee or to furnish any other considerations under this MOU and Grantee shall not be obligated to continue performing any provisions of this agreement for which it would have been reimbursed.

If funding for any fiscal year is reduced or deleted in the Budget Act for purposes of this MOU, the Department shall have the option to either cancel this MOU with no liability occurring to the Department, or offer an addendum to the Grantee to reflect the reduced amount.

ADMINISTRATION

Should Grantee fail to comply with this MOU, including any expenditures for purposes not permitted under the MOU, the Department may take one or more of the actions described under Noncompliance in the Grantee Handbook.

MISCELLANEOUS PROVISIONS

Addendum – No addendum or variation of the terms of this MOU is valid unless made in writing, and signed by the duly authorized representatives of the parties.

Assignment – This MOU is not assignable by Grantee in whole or in part.

Indemnification – Grantee agrees to indemnify and hold harmless the Department, its officers, agents and employees from all claims, liabilities, or losses in connection with the performance of this MOU.

Termination – The Department may terminate this MOU and be relieved of any obligation to provide grant funds to Grantee should Grantee fail to perform the scope of work at the time and in the manner provided in this MOU.

TERMS

Grant Duration: 12/1/2021 – 6/30/2025

Award Amount				
Category of Expenditure	Budget FY 2021-2022	Budget FY 2022-2023	Budget FY 2023-2024	Budget FY 2024-2025
Personal Services	\$22,543	\$22,543	\$0	\$0
Operating Expenses and Equipment	\$0	\$0	\$0	\$0
Administrative Costs (Not to Exceed 5%)	\$0	\$0	\$0	\$0
TOTAL AWARD AMOUNT	\$45,086			

The time limit for reimbursements against this award ends 6/30/2025. Requests received after 7/15/2025 cannot be reimbursed by the Department.

GRANTEE CONTACT INFORMATION

Name and Title

Agency Name, Department/Unit

Mailing Address

Phone Number

E-Mail

AUTHORIZATION

The Department and Grantee, by their duly authorized officials, have executed this MOU on the respective dates indicated below. This MOU and any future addendums shall be mailed to the Division of Operations, Local Assistance Unit, Tobacco Grant Program, and will become fully executed upon completion of signatures from all parties.

Layne Long, City Manager
City of Marina

Date

Tina Nieto, Chief of Police
Police Department
City of Marina

Date

STACY HEINSEN, GRANT MGR.
Division of Operations
California Department of Justice

Date

CHRIS RYAN, CHIEF
Division of Operations
California Department of Justice

Date

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of January 19, 2022

CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-, APPROVING PURCHASE OF ONE (1) CLOUD-BASED RECORDS MANAGEMENT SYSTEM (RMS) PLATFORM FROM MARK43, INC, OF NEW YORK, NEW YORK, IN THE AMOUNT OF \$164,000.00 AND FOUR (4) YEARS OF RECURRING FEES FOR UPDATES AND MANAGEMENT IN THE AMOUNT OF \$48,500.00 PER YEAR FOR YEARS TWO THROUGH FIVE AT A TOTAL COST OF \$358,000.00. WAIVING THE CITY'S FORMAL BID PROCESS, WITHOUT COMPETITIVE BIDDING, FINDING THAT COMPETITIVE BIDDING WOULD BE UNAVAILING, WOULD NOT PRODUCE AN ADVANTAGE AND WOULD NOT BE IN THE PUBLIC INTEREST, AUTHORIZE FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

RECOMMENDATION:

It is recommended that the City Council:

1. Consider adopting Resolution No. 2022-, Approving the purchase of one (1) cloud-based Records Management System (RMS) platform in the amount of \$164,000.00 and four (4) years of recurring fees for updates and management in the amount of \$48,500.00 per year for years two through five, at a total cost of \$358,000.00 over a 5-year period from MARK43, New York, NY, and;
2. Consider waiving the City's formal bid process; finding that competitive bidding would be unavailing, would not produce an advantage and would not be in the public interest, and;
3. Authorize Finance Director to make necessary accounting and budgetary entries, and;
4. Authorize City Manager to execute purchase agreement on behalf of City subject to final review by the City Attorney.

BACKGROUND:

Police Departments nationwide utilize Records Management Systems (RMS). The current RMS system in use at the Marina PD, TracNet, was purchased in 2001 and is well passed its technological usefulness and service life. The technology is outdated and makes keeping up with current reporting laws difficult and time consuming. TracNet is a small company that is lacking the high-tech depth to keep up with current needs. Most law enforcement agencies on the Monterey Peninsula that utilized the TracNet RMS system have or are taking steps to implement a new RMS system. Pacific Grove and Monterey Police Departments are underway with the implementation of the Mark43 cloud-based RMS system. Integrating the Mark43 RMS system within the Marina Police Department will allow for the ability to engage in information sharing with all departments who utilize the MARK43 RMS system. Currently over 50 California cities use this system.

As part of the Marina Police Department's FY 2021/2022 approved budget was the inclusion of the new Mark43 RMS system.

The acquisition of an updated RMS system is vital to conducting the day-to-day operations of the Marina Police Department to keep up with mandated reporting, citizen needs, investigations, and evidence tracking.

ANALYSIS:

Staff researched various Records Management Systems (RMS) and was invited to attend a specific presentation for the Mark43 RMS system by the Pacific Grove Police Department. Most agencies on the Monterey Peninsula use the TracNet RMS system. This system is twenty years old, is unable to keep up with current needs due to outdated technology and has met its life expectancy.

The other RMS systems examined did not possess the features and management support that Mark43 does. As such, Mark43 was the only RMS system that meets the needs of the Department.

Staff found that Mark43 is a modern platform build for current and future service needs. The Mark43 RMS system is complete, connected and an extensible platform that provides the agency a foundation for the future that is powered by cloud-native technology, built to work on and with all devices and can integrate with the latest advances in public safety. An important feature of the Mark43 is that it has data exchange capabilities that allow departments to query federal, state, and local databases like NCIS and seamlessly attach results to an active event or subsequent report.

The Mark43 RMS system is recommended based on staff research and the ability to utilize one company rather than multiple ones. This RMS system has the capability for future expansion to include more advance applications. With over three hundred configurable fields and features that allow the department to determine how data is to be collected, accessed, and currently shared and as needs evolve.

The Mark43 Software License and Services Agreement (“**EXHIBIT A**”) lists the quote/cost for replacement and totals \$358,000.00 which includes four years of updates and management. First year costs are \$164,000.00 with \$48,500.00 due from year two through five. This project is a budgeted item in the FY 2021-2022 Police Department Budget.

Marina Municipal Code Chapter 3.16, Section 3.16.040, Bidding Required – Exceptions provides that bidding procedures shall be dispensed with when the City Council finds by resolution that competitive bidding would be unavailing, would not produce an advantage and would not be in the public interest.

For the City to use the competitive bidding process it is unlikely that it would significantly lower the price and it would result in a delay of two (2) to three (3) months from City Council approval to call for bids, item bid document specification preparation, bid advertising, opening, City Council awarding of bids, et cetera.

The choice of using Mark43 as a sole source provider is predicated on the City’s ability to realize monetary savings as the Mark43 RMS system is compatible with existing platforms. Additionally, a cost savings was secured by using the SLA pricing that was vetted by the Pacific Grove Police Department.

Based on the monetary savings, outdated and end of use TracNet RMS system, a competitive bidding process would be unavailing, would not produce an advantage and would not be in the public interest.

FISCAL IMPACT:

Should Council approve this request, the purchase will cost \$358,000.00 over a five-year period. A first-year payment \$164,000.00 with recurring fees of 48,500.00 per year for years two through five. The funds being set aside for this project are found in the General Fund and an account will be created for the transactions needed.

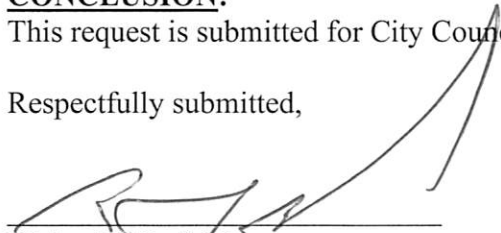
Funding for the purchase (\$358,000.00) is as follows:

Year	Details of Payments and Due Dates	Amount Due
1	Year 1 Payment, due according to the following schedule:	\$164,000.00
	- Effective Date	\$49,200.00
	- Project Kickoff	\$32,800.00
	- Workflow Validation	\$32,800.00
	- Training Complete	\$32,800.00
	- Cutover/Go Live	\$16,400.00
2	Year 2 Payment, due on the first anniversary of the Effective Date.	\$48,500.00
3	Year 3 Payment, due on the second anniversary of the Effective Date.	\$48,500.00
4	Year 4 Payment, due on the third anniversary of the Effective Date.	\$48,500.00
5	Year 5 Payment, due on the fourth anniversary of the Effective Date.	\$48,500.00
	5 YEAR TOTAL	\$358,000.00

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

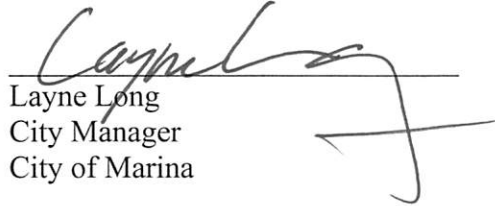


Richard J. Janicki
Management Analyst
Police Department
City of Marina

REVIEWED/CONCUR:

A handwritten signature in black ink, appearing to be 'Tina M. Nieto', written over a horizontal line.

Tina M. Nieto
Chief of Police
City of Marina

A handwritten signature in black ink, appearing to be 'Layne Long', written over a horizontal line.

Layne Long
City Manager
City of Marina

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
APPROVING PURCHASE AGREEMENT BETWEEN THE CITY OF MARINA
AND MARK43 OF NEW YORK, NEW YORK, FOR (1) MARK43 CLOUD-BASED RECORDS
MANAGEMENT SYSTEM PLATFORM IN THE AMOUNT OF \$164,000.00 AND FOUR (4)
YEARS OF RECURRING FEES IN THE AMOUNT OF \$48,500.00 PER YEAR FOR YEARS TWO
THROUGH FIVE AT A TOTAL COST OF \$358,000.00. WAIVING THE CITY'S FORMAL BID
PROCESS, WITHOUT COMPETITIVE BIDDING, FINDING THAT COMPETITIVE BIDDING
WOULD BE UNAVAILING, WOULD NOT PRODUCE AN ADVANTAGE AND WOULD NOT
BE IN THE PUBLIC INTEREST, AUTHORIZE FINANCE DIRECTOR TO MAKE NECESSARY
ACCOUNTING AND BUDGETARY ENTRIES AND AUTHORIZE THE CITY MANAGER TO
EXECUTE THE AGREEMENT ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW
AND APPROVAL BY THE CITY ATTORNEY

WHEREAS, the Marina Police Department's current Records Management System, TracNet, was implemented in 2001 and has now become outdated, obsolete, and is unable to keep up with the increased mandates in records management and reporting., and:

WHEREAS, the Marina Police Department has identified that MARK43 of New York, New York, possesses a Records Management System that meets evidentiary, security, risk management, technological and functionality needs of the Police Department that is cloud-based in nature and allows direct access and communicates with other California law enforcement agencies, and;

WHEREAS: replacement of the TracNet Records Management System is vital to Police Department operations, and will necessitate the purchase of one (1) MARK43 cloud-based RMS platform and implementation of (4) years of recurring licensing and program updates, and;

WHEREAS: a cost savings is realized via purchase through MARK43 of New York, New York, due to the vetting process of the City of Pacific Grove and no other records management systems offer the features and savings the Police Department requires, and;

WHEREAS: Municipal Code section 3.16.040 provides an exception to the requirement for competitive bidding when the City Council finds by resolution that competitive bidding would be unavailing, would not produce an advantage and would not be in the public interest.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Approve the purchase of one (1) Mark43 cloud-based Records Management System platform in the amount of \$164,000.00 and Four (4) years of recurring fees in the amount of \$48,500.00 per year for years two through five, at a total cost of \$358,000.00 over a 5-year period from MARK43, New York, New York.
2. Approves waiving the City's formal bid process; finding that competitive bidding would be unavailing, would not produce an advantage and would not be in the public interest, and;
3. Authorizes Finance Director to make necessary accounting and budgetary entries, and;
4. Authorize City Manager to execute purchase agreement on behalf of City subject to final review by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 19th of January 2022 by the following vote:

AYES, COUNCIL MEMBERS:

NOES, COUNCIL MEMBERS:

ABSENT, COUNCIL MEMBERS:

ABSTAIN, COUNCIL MEMBERS:

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

EXHIBIT A

SOFTWARE LICENSE AND SERVICES AGREEMENT

This Software License and Services Agreement (this “**Agreement**”) is effective as of _____, 2021 (the “**Effective Date**”) by and between Mark43, Inc. (“**Mark43**”), with a place of business at 250 Hudson Street, 3rd Floor, New York, NY 10013, and the City of Marina (“**Subscriber**”), with a place of business at _____.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS.

- 1.1 “**Affiliate**” means, with respect to any entity, any other entity who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.
- 1.2 “**Affiliated Agency**” means any other government agency to which Subscriber is legally or contractually bound to share information.
- 1.3 “**Applicable Law(s)**” means, with respect to any party, any federal, state or local statute, law, ordinance, rule, administrative interpretation, regulation, order, writ, injunction, directive, judgment, decree or other requirement of any international, federal, state or local court, administrative agency or commission or other governmental or regulatory authority or instrumentality, domestic or foreign, applicable to such party or any of its properties, assets or business operations.
- 1.4 “**Applications**” means the applications purchased by Subscriber as described in **Schedule A**.
- 1.5 “**Authorized Users**” means employees of Subscriber and any Affiliated Agency who are authorized to access and use the Applications through the applicable security designation(s), pursuant to which full or limited access to the applicable Applications may be granted.
- 1.6 “**Documentation**” means the user guides and user manuals for the SaaS Services that Mark43 provides to Subscriber.
- 1.7 “**Go Live**” means the date of cutover to each respective Mark43 Application.
- 1.8 “**Integrated Application**” means a third-party product, database or application requested by Subscriber and approved by Mark43 that will be installed, linked or enabled by Subscriber for use in connection with the SaaS Services (e.g. NCIC).
- 1.9 “**Integrated Application Data**” means all data, information, content and other materials stored on an Integrated Application.
- 1.10 “**Integrated Application Provider**” means any third party, including other vendors, state agencies and local agencies, that control products and/or databases with which Mark43 SaaS Services are to be interfaced.
- 1.11 “**Intellectual Property Rights**” means all intellectual and industrial property rights, whether now existing or existing in the future, including without limitation, (i) all patent rights, including any rights in pending patent applications and any related rights; (ii) all copyrights and other related rights throughout the world in works of authorship, including all registrations and applications therefor; (iii) all trademarks, service marks, trade dress or other proprietary trade designations, including all registrations and applications therefor (iv) all rights throughout the world to proprietary know-how, trade secrets and other confidential information, whether arising by law or pursuant to any contractual obligation of non-disclosure; and (v) all other rights covering industrial or intellectual property recognized in any jurisdiction.
- 1.12 “**Professional Services**” means any implementation, training, project management, consulting and other services (outside the scope of the Support Services) that are described in a Statement of Work.
- 1.13 “**SaaS Services**” means the Applications, Software, and related software-as-a-service, hosting, maintenance and/or support services made available by Mark43 for remote access and use by Subscriber, including any Documentation thereto.
- 1.14 “**Services**” means the services provided or required to be provided by or through Mark43, including without limitation, SaaS Services and Professional Services.

- 1.15 “**Software**” means the object code version of Mark43’s computer software and all Updates made available by Mark43 to Subscriber under this Agreement.
- 1.16 “**Statement of Work**” means a detailed plan of work to be agreed by the Parties in conjunction with this Agreement.
- 1.17 “**Subscriber Data**” means all data, information, content and other materials stored or transmitted by Subscriber and any Authorized User through the SaaS Services (i) in their user accounts; and (ii) on any Integrated Application, excluding any Third-Party Data and any Mark43 Data.
- 1.18 “**Term**” means the Initial Term and any Renewal Terms.
- 1.19 “**Third-Party Component**” means a third-party application incorporated in, integrated with or accessed through the SaaS Services (e.g. a mapping provider).
- 1.20 “**Third-Party Data**” means any data, information, content and other materials made available by any third party, including without limitation through a Third-Party Component.
- 1.21 “**Updates**” means any and all new releases, new versions, patches and other updates for the SaaS Services that Mark43 makes generally available without additional charge to its other subscribers of the SaaS Services.
- 1.22 “**Website**” means any Internet website through which Mark43 provides the SaaS Services under this Agreement.

2. **PROVISION OF THE SERVICES AND SOFTWARE.**

- 2.1 **SaaS Services.** Subject to the terms of this Agreement, and during the Term, Mark43 hereby grants a non-exclusive, non-transferable, non-sublicensable license to Subscriber and its Authorized Users to access and use the SaaS Services through the Website for Subscriber’s internal purposes and in accordance with the terms and conditions of this Agreement. Mark43 will be responsible for hosting the Website, and Subscriber and its Authorized Users will be responsible for obtaining internet connections and other third-party software, hardware and services necessary for it to access the Website through the Internet, including without limitation as set forth in **Schedule D**. Subscriber will be responsible to Mark43 for compliance with the restrictions on use and other terms and conditions of this Agreement by any of its Authorized Users.
- 2.2 **Professional Services.** Mark43 offers Professional Services in connection with the SaaS Services as further described on **Schedule A** and the Statement of Work. To the extent any Professional Services involve the development of any customization or configuration to the SaaS Services, all Intellectual Property Rights to such customization or configuration will be solely owned by Mark43 and will be deemed to be included in the definition of SaaS Services and licensed to Subscriber on the terms set forth herein.
- 2.3 **Access to Documentation.** Mark43 will provide Subscriber via the Website or other means with access to the Documentation, as may be updated from time to time. Subscriber may print copies of, use, and permit its Authorized Users to use, the Documentation solely in connection with the use of the SaaS Services.
- 2.4 **Support Services.** Subject to the terms and conditions of this Agreement, Mark43 will provide to Subscriber the support services detailed on **Schedule B** (the “**Support Services**”).
- 2.5 **Restrictions on Use.** Subscriber and its Authorized Users will not (and will not permit any third party to): (i) share Subscriber’s or any Authorized User’s login credentials; (ii) reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code, underlying ideas, algorithms, file formats, or interface protocols of the SaaS Services or of any files contained in or generated by the SaaS Services; (iii) copy, modify, adapt or translate the SaaS Services or the Third-Party Data, or otherwise make any use, resell, distribute or sublicense the SaaS Services or the Third-Party Data other than in connection with this Agreement; (iv) make the SaaS Services available on a “service bureau” basis or allow any third parties to use the SaaS Services; (v) disclose the SaaS Services or any of its components to third parties; (vi) remove or modify any proprietary marking or restrictive legends placed on the SaaS Services or the Third-Party Data; (vii) use the SaaS Services or the Third-Party Data in violation of any Applicable Law; (viii) create or augment any mapping-related dataset including a mapping or navigation dataset, business listings database, mailing list, or telemarketing list) for use in an implementation that is not connected to the Services; (ix) introduce into the Services any viruses, worms, defects, Trojan horses, malware, or any items of a destructive nature; (x) use the Services to post advertising or listings; (xi) use the Services to defame, abuse, harass, stalk, or threaten others; (xii) permit access or use of the Services by any individual outside the United States; (xiii) hide or obscure any Authorized User’s location; (xiv) permit access or use of the Services, for any activities other than to enhance Subscriber’s own services, where reliance solely on, or failure to use, the Services could lead to death, personal injury, or property damages. Subscriber and its Authorized Users will not access the SaaS Services if in direct competition with Mark43, and will not allow access to the SaaS Services by any party who is in direct competition with Mark43, except with Mark43’s prior written

consent. Subscriber shall comply with additional restrictions on use of the Services in accordance with the Third-Party Component Terms.

- 2.6 Security Obligations.** Subscriber agrees it and its Authorized Users shall securely manage their respective password(s) for access to the SaaS Services. Subscriber agrees it shall notify Mark43 promptly in the event it becomes aware of any unauthorized access or use of the SaaS Services, or of any of its or its Authorized Users passwords or accounts. Unless expressly stated otherwise in this Agreement, a single username or password may not be used by more than one (1) Authorized User. In addition, Authorized Users may log into the SaaS Services from only one location at any given time; concurrent usage (or sign in) under a single username is prohibited, unless Subscriber has a business justification for concurrent usage, in which case Subscriber is responsible for providing approval for such usage to the applicable Authorized Users. Subscriber is responsible for all activities conducted within user accounts in use of the SaaS Services. Subscriber shall comply with all applicable local, state, federal and regional or other laws and regulations applicable in connection with use of the SaaS Services, including all those related to data privacy and the transmission of technical or personal data. Subscriber agrees to (a) provide true, accurate, current and complete registration data for each account it creates via the SaaS Services, and (b) maintain and promptly update the registration data to keep it true, accurate, current and complete.
- 2.7 Changes to Services.** Mark43 may make changes and Updates to its Services, provided that it does not materially derogate the overall quality of the Services. Mark43 does not guarantee that the Services are or will remain compatible with any particular third-party software or equipment, and may, upon written notice, terminate its support for, any software or equipment of Subscriber that Mark43 determines are incompatible with the operation of the Services.
- 2.8 Data Sharing.** Mark43 will allow Subscriber to grant other agencies specified levels of access to Subscriber Data pursuant to an executed data-sharing agreement between agencies, and with permissions subject to the parameters laid out in the relevant data-sharing agreement. Subscriber shall provide Mark43 with a copy of the executed data-sharing agreement prior to allowing any such data-sharing. As between Mark43 and Subscriber, Subscriber will be solely responsible for any liabilities that arise as a result of such data-sharing.

3. PROPRIETARY RIGHTS; SUBSCRIBER DATA.

- 3.1 Ownership of Subscriber Data.** As between Mark43 and Subscriber, Subscriber owns the Subscriber Data. Mark43 will have, and Subscriber hereby grants and agrees to grant to Mark43, a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use the Subscriber Data to configure and/or provide the SaaS Services, Software, Support Services and Professional Services to Subscriber, and/or to prevent or address service or technical problems, in accordance with this Agreement and the Documentation, or otherwise in accordance with Subscriber's requests or instructions. Mark43 may also use Subscriber Data in anonymized and/or aggregated form to develop analytics that may be used to provide products and services to Subscriber and/or to other Mark43 customers, provided that: (a) Mark43 makes available to Subscriber functionality and services based on anonymized data obtained from other Mark43 customers that are similar to the functionality and services provided to such other customers based on the anonymized data; and (b) Mark43 may not sell or offer for sale any Subscriber Data, whether in Subscriber identifiable, or anonymized and aggregated form. Mark43 shall comply with its obligations under all Applicable Laws in its provision of the Services and use of Subscriber Data.
- 3.2 Ownership and Reservation of Rights to Mark43 Intellectual Property.** As between Mark43 and Subscriber, Mark43, its Affiliates and/or its licensors own all right, title and interest in and to the Services, Software, Work Product and all related technology and Intellectual Property Rights. Subject to the limited rights expressly granted hereunder, and except with respect to Third-Party Components, Mark43 reserves all rights, title and interest in and to the Services, Software, and Work Product, including all related technology and Intellectual Property Rights. No rights are granted to Subscriber hereunder other than as expressly set forth in this Agreement or as required by Applicable Law.
- 3.3 Subscriber Feedback.** Subscriber and its Authorized Users may elect to provide Mark43 with suggestions, enhancement requests, recommendations and other feedback concerning the SaaS Services, Software, Support Services or Professional Services (the "**Subscriber Feedback**"). Subscriber hereby assigns and agrees to assign all Subscriber Feedback to Mark43 without lien or encumbrance and agrees that Subscriber Feedback will be the sole property of Mark43 and that Mark43 may use Subscriber Feedback in its discretion without obligation to Subscriber. Mark43 has no obligation to make Subscriber Feedback an improvement. For the avoidance of doubt, Subscriber Feedback does not constitute Confidential Information of Subscriber hereunder.
- 3.4 Usage Data.** Mark43 may collect certain information in connection with Subscriber's access to or use of the Services, such as access records, date and time stamps, transaction and activity records and system performance data ("**Usage Data**"). Mark43 may use Usage Data to deliver and manage its products and services, perform maintenance and support, and develop, test, analyze, and improve the Services and other Mark43 products and services, and generate statistical data

about usage of its products and services. As between Mark43 and Subscriber, Mark43 owns the Usage Data.

- 3.5 **Data Security.** Terms applicable to the privacy and security of Subscriber Data are set forth in the Data Processing Addendum attached as Schedule F hereto (the "**Data Processing Addendum**").

4. **THIRD-PARTY COMPONENTS AND INTEGRATED APPLICATIONS.**

- 4.1 **Third-Party Components.** Third-Party Components may be made available to Subscriber through the SaaS Services. In connection with the functionality provided by and/or through Third-Party Components, Subscriber hereby accepts and agrees to be bound by the terms and conditions set forth in Schedule E, which may be updated from time to time upon notice to Subscriber (the "**Third-Party Component Terms**"). In the event of any inconsistency or conflict between the Third-Party Component Terms and the terms of this Agreement, the Third-Party Component Terms shall govern with respect to Subscriber's access to and use of the applicable Third-Party Component.
- 4.2 **Integrated Applications.** To the extent Subscriber installs, links to or enables any Integrated Application for use with the SaaS Services, Subscriber grants and agrees to grant (and will cause the applicable Integrated Application Provider to grant) to Mark43 permission to access, retrieve, view, store, copy, modify and process Integrated Application Data from Subscriber's existing account(s) on each such Integrated Application to the extent necessary to facilitate the interoperation of such Integrated Application with the SaaS Services. To the extent Subscriber requires an Integrated Application Provider's assistance to install, link to or enable any Integrated Application for use with the SaaS Services, Subscriber shall separately contract with each such Integrated Application Provider for any such assistance. In no event will Mark43 be responsible for any Integrated Application or Integrated Application Data, or for any failure of an Integrated Application to properly interoperate with the Mark43 Solution; provided, however, to the extent that Mark43 creates, pursuant to the Statement of Work, an interface for an Integrated Application hereunder, Mark43 shall be responsible for such interface only, subject to the terms and conditions of this Agreement and the applicable Statement of Work. Mark43 may at any time, in its sole reasonable discretion, including upon the request of an Integrated Application Provider or due to an actual or potential security threat, disable any connection between an Integrated Application and the Applications, and any access, retrieval and viewing of Integrated Application Data via the Applications. For the avoidance of doubt, Subscriber's access to and use of Integrated Applications and Integrated Application Data shall be subject to the terms and conditions of Subscriber's agreement(s) with the applicable Integrated Application Provider.

5. **FEES AND PAYMENT TERMS.**

- 5.1 **Fees for the Services.** Subscriber will pay Mark43 fees as stated in Schedule A (the "**Fees**") attached hereto in accordance with the payment schedule set forth in Schedule A. All Fees due hereunder will be due and payable by Subscriber within thirty (30) days of the invoice date. All payments of Fees are non-refundable. All amounts stated in this Agreement or on any invoice are in U.S. dollars, and all payments will be made in U.S. dollars.
- 5.2 **Overdue Payments.** Any payment not received from Subscriber by the due date shall accrue late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by Applicable Law, whichever is lower, from the date such payment was due until the date paid.
- 5.3 **Taxes.** Subscriber will pay all taxes, including sales, use, excise, and other governmental fees, duties, and charges (and any penalties, interest, and other additions thereto) that are imposed on Subscriber or Mark43 with respect to the transactions and payments under this Agreement (excluding taxes based on Mark43's income or employment) ("**Indirect Taxes**"). All Fees are exclusive of Indirect Taxes. If any such taxes are required to be withheld on any payment, Subscriber will pay such additional amounts as are necessary so that the net amount received by Mark43 is equal to the amount then due and payable under this Agreement.

6. **TERM AND TERMINATION.**

6.1 **Term.**

- (a) Initial Term. The initial term of this Agreement begins on the Effective Date and will continue for the period set forth on Schedule A, unless and until terminated in accordance with Section 6.2 (the "**Initial Term**").
- (b) Renewal Terms. Upon expiration of the Initial Term or any Renewal Term, this Agreement will automatically renew for successive periods as set forth on Schedule A (each, a "**Renewal Term**") at the rates set forth on Schedule A, unless either party provides the other with written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current term.

6.2 **Temporary Suspension and Termination.**

- (a) Termination for Breach by Either Party. Either party may terminate this Agreement upon written notice to the other party, if the other party breaches a material term of this Agreement and such breach remains uncured for thirty (30) days after the other party's receipt of such notice.

- (b) Suspension of Services. To the extent permitted by Applicable Law, in addition to any other rights or remedies it may have under this Agreement or by Applicable Law, Mark43 may immediately suspend provision of the Services without liability to Subscriber: (a) if Subscriber's account is more than sixty (60) days past due, until paid in full; (b) if Subscriber breaches Section 2.5 (Restrictions on Use) or Section 2.6 (Security Obligations); (c) to avoid harm or liability to Mark43, its Affiliates or its other customers, including in the case of denial of service attacks or other disruptions; or (d) if required by Applicable Law or requested by a governmental authority. Subscriber shall remain liable for any fees and other amounts payable under this Agreement during any period of suspension. Mark43 will use commercially reasonable efforts to restore Subscriber's rights to use and access those portions of the Services or accounts that gave rise to the suspension promptly after Subscriber has resolved the problem giving rise to the suspension.
 - (c) Termination for Non-Appropriation. Subscriber's payment obligation under this Agreement extends only to funds appropriated annually by Subscriber or Subscriber's governing body for the purpose of this Agreement. For each succeeding fiscal period covered by this Agreement, Subscriber or other applicable agency or department responsible for this Agreement agrees to include in its budget request appropriations sufficient to cover the annual financial obligations under this Agreement. If Subscriber is appropriated insufficient funds to continue annual payments under this Agreement, Subscriber may terminate this Agreement by giving Mark43 not less than thirty (30) days' prior written notice. Upon termination under this paragraph, Mark43 shall be entitled to compensation for all Services rendered prior to the effective termination date, plus any prepaid Fees, as well as reimbursement for reasonable costs actually incurred in closing out this Agreement.
- 6.3 Effect of Termination.** In the event of any termination or expiration of this Agreement,
- (a) Subscriber will pay Mark43 all amounts payable hereunder as of the termination or expiration date;
 - (b) All rights and licenses granted hereunder to Subscriber (as well as all rights granted to any Authorized Users of Subscriber) will immediately cease, including but not limited to all use of the SaaS Services; and
 - (c) Mark43 will provide records to Subscriber in accordance with its transition assistance services ("**Transition Assistance**") as set forth in Schedule C.
 - (d) Subscriber will, upon written request of Mark43, either return to Mark43 or provide Mark43 with written certification of the destruction of, all documents, computer files and other materials containing any Confidential Information of Mark43 that are in Subscriber's possession or control.
- 6.4 Survival.** The following provisions will survive any termination or expiration of this Agreement: Section 3.1 ("Ownership of Subscriber Data"), Section 4 ("Third-Party Components and Applications"), Section 6.3 ("Effect of Termination"), Section 7 ("Confidentiality"), Section 8.2 ("Disclaimer"), Section 9 ("Limitation of Liability"), Section 10 ("Indemnification"), Section 11 ("Miscellaneous"), Schedule C ("Transition Assistance") and this Section 6.4 ("Survival").

7. CONFIDENTIALITY.

- 7.1 Definition of Confidential Information.** For the purposes of this Agreement, "**Confidential Information**" means: (a) with respect to Mark43, the SaaS Services, and any and all source code relating thereto, as well as Documentation and non-public information or material regarding Mark43's legal or business affairs, financing, customers, properties or data, and (b) with respect to Subscriber, any non-public information or material regarding Subscriber's legal or business affairs, financing, customers, properties or data. Notwithstanding any of the foregoing, Confidential Information does not include information which: (i) is or becomes public knowledge without any action by, or involvement of, the party to which the Confidential Information is disclosed (the "**Receiving Party**"); (ii) is documented as being known to the Receiving Party prior to its disclosure by the other party (the "**Disclosing Party**"); (iii) is independently developed by the Receiving Party without reference or access to the Confidential Information of the Disclosing Party and is so documented; or (iv) is obtained by the Receiving Party without restrictions on use or disclosure from a third person who did not receive it, directly or indirectly, from the disclosing party.
- 7.2 Use and Disclosure of Confidential Information.** The Receiving Party will, with respect to any Confidential Information disclosed by the Disclosing Party before or after the Effective Date: (i) use such Confidential Information only in connection with the Receiving Party's performance of this Agreement; (ii) subject to Section 7.4 below, restrict disclosure of such Confidential Information within the Receiving Party's organization to only those of the Receiving Party's employees and independent contractors who have a need to know such Confidential Information in connection with the Receiving Party's performance of this Agreement and (iii) except as provided herein, not disclose such Confidential Information to any third party unless authorized in writing by the Disclosing Party to do so.

- 7.3 Protection of Confidential Information.** The Receiving Party will protect the confidentiality of any Confidential Information disclosed by the Disclosing Party using at least the degree of care that it uses to protect its own confidential information (but no less than a reasonable degree of care).
- 7.4 Employee and Independent Contractor Compliance.** The Receiving Party will, prior to providing any employee or independent contractor access to any Confidential Information of the Disclosing Party, inform such employee or independent contractor of the confidential nature of such Confidential Information and require such employee or independent contractor to comply with the Receiving Party's obligations hereunder with respect to such Confidential Information.
- 7.5 Compelled Disclosure.** A disclosure by one party of Confidential Information of the other party to the extent required by Applicable Law will not be considered a breach of this Agreement, provided the party so compelled promptly provides the other party with prior notice of such compelled disclosure (to the extent legally permitted) and provides reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure.
- 7.6 Public Records.**
- (a) For purposes of this Section 7 (Confidentiality), the term "**Public Records Request**" shall mean any request for the disclosure of records pursuant to the State of California Public Records Act law, federal Freedom of Information Act or other comparable law.
 - (b) To the extent Subscriber is subject to a Public Records Request that seeks the disclosure of any information or materials provided by Mark43 to Subscriber prior to or during the Term of this Agreement. The Subscriber shall, prior to any disclosure, promptly notify Mark43 of such Public Records Request (to the extent legally permitted to do so) and provide reasonable assistance, at Mark43's cost, if Mark43 wishes to contest the disclosure. Subscriber shall also identify for Mark43 the information or materials it intends to disclose, and provide Mark43 at least ten (10) days to review prior to disclosure, or if such time is not available or permitted under Applicable Law, at least as much time as would be reasonable to allow Mark43 to meaningfully review and seek appropriate relief. For the avoidance of doubt, and without limiting the foregoing, Subscriber hereby acknowledges that Mark43 shall have no implicit or explicit obligation to challenge, oppose or defend against any request described herein.
 - (c) Public Records Requests for Subscriber Data maintained in the Mark43 system (such as Case Reports and Forms) are not subject to the provisions of this Section 7.6. Mark43 may charge Subscriber for all reasonable time spent by Mark43 personnel assisting Subscriber in responding to a Public Records Request seeking the disclosure of any Subscriber Data or other information collected or maintained by Mark43 in connection with the SaaS Services.
- 7.7 CJIS Standards; Employee Background Checks.**
- (a) Subscriber understands and agrees that Mark43 utilizes third-party vendors (each, a "**Hosting Provider**") to host the SaaS Services. As of the Effective Date of this Agreement, Mark43 utilizes Amazon Web Services (AWS) as its Hosting Provider for the SaaS Services.
 - (b) Subscriber may request reasonable records from Mark43 from time to time to assess Mark43's adherence to requirements of the applicable CJIS Security Policy promulgated by the FBI. For the avoidance of doubt, Subscriber may need the consent of Hosting Provider to obtain any records or information from Hosting Provider.
 - (c) Subscriber, or if Subscriber is located in the State of California, Mark43's CLETS host agency, will have the opportunity to run background checks on Mark43 employees that will have direct access to Subscriber Data in the production environment (such employees, the "**Covered Employees**"), provided that Mark43 may assume that a Covered Employee has been cleared by Subscriber if Mark43 does not receive an adverse response from Subscriber within thirty (30) days of a submission of a background check request.

8. REPRESENTATIONS AND WARRANTIES.

- 8.1 Power and Authority.** Each party represents and warrants that it has the full right, power and authority to enter into this Agreement and to discharge its obligations hereunder and that the person signing this Agreement on behalf of the party has the authority to bind that party. Subscriber represents and warrants that it has obtained, and shall have, all necessary approvals, consents, and authorizations necessary for procurement under this Agreement and that its obligations under this Agreement do not, and shall not, exceed any budget authority limitations, during the Term of this Agreement.
- 8.2 Disclaimer.** USE OF THE APPLICATIONS IS NOT, AND IS NOT INTENDED TO BE, A SUBSTITUTE FOR THE PROFESSIONAL JUDGMENT OF AUTHORIZED PARTIES, INCLUDING DISPATCHERS, LAW ENFORCEMENT OFFICERS, INVESTIGATORS OR FIRST RESPONDERS. THE APPLICATIONS ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY AND THE DATA PROVIDED BY MARK43 THEREIN (INCLUDING ANY THIRD-PARTY DATA) SHOULD NOT REPLACE OTHER EMERGENCY INFORMATION AND SHOULD NOT BE

EXCLUSIVELY RELIED-UPON IN AN EMERGENCY SCENARIO. SUBSCRIBER SHALL BE RESPONSIBLE FOR ALL ITS OWN ACTIONS OR FAILURE TO ACT IN CONNECTION WITH THE APPLICATIONS, INCLUDING WITH RESPECT TO COMPLIANCE WITH APPLICABLE LAWS, AND MARK43 ASSUMES NO RESPONSIBILITY OR RISK FOR SUBSCRIBER'S USE OR MISUSE OF, OR FAILURE TO USE, THE INFORMATION PROVIDED THROUGH THE APPLICATIONS. CUSTOMER ACKNOWLEDGES THAT THE APPLICATIONS DO NOT PROVIDE LEGAL ADVICE.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MARK43 MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE APPLICATION. MARK43 DOES NOT WARRANT THAT THE SERVICE WILL BE ERROR FREE OR UNINTERRUPTED OR THAT SUBSCRIBER DATA WILL BE SECURE OR NOT LOST OR DAMAGED. THE LIMITED WARRANTIES PROVIDED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED TO SUBSCRIBER IN CONNECTION WITH THE PROVISION OF THE SERVICES. MARK43 SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE ITS REASONABLE CONTROL, INCLUDING ANY HARM OR DAMAGES CAUSED BY ITS HOSTING PROVIDERS. MARK43 MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO ANY THIRD-PARTY DATA, THIRD-PARTY COMPONENT, INTEGRATED APPLICATION, OR ON BEHALF OF ANY INTEGRATED APPLICATION PROVIDER.

9. LIMITATION OF LIABILITY.

- 9.1 Liability Exclusion.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR FOR ANY OTHER DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE FURNISHING, PERFORMANCE, OR USE, OR FAILURE OF THE SERVICES, THE THIRD-PARTY COMPONENTS OR THE THIRD-PARTY DATA PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, PERSONAL INJURY, DEATH, DAMAGE TO PROPERTY, ENVIRONMENTAL DAMAGE, LOSS OF PROFITS, REVENUES, ANTICIPATED SAVINGS, CUSTOMERS, OPPORTUNITIES, DAMAGE TO PRIVACY, REPUTATION OR GOODWILL OR UNAVAILABILITY OF THE SERVICES, REGARDLESS OF WHETHER THE PARTY LIABLE OR ALLEGEDLY LIABLE WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.
- 9.2 Limitation of Damages.** MARK43'S MAXIMUM LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER, REGARDLESS OF THE CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY OR OTHERWISE), WILL NOT EXCEED THE AGGREGATE AMOUNT OF THE FEES PAID AND PAYABLE TO MARK43 BY SUBSCRIBER DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM ARISES. MARK43 SHALL HAVE NO LIABILITY ARISING OUT OF OR RELATING TO THE THIRD-PARTY COMPONENTS OR THE THIRD-PARTY DATA.
- 9.3 Exceptions.** NOTWITHSTANDING THE FOREGOING, THE EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN SECTION 9.1 AND SECTION 9.2 SHALL NOT APPLY TO DAMAGES ARISING FROM EITHER PARTY'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT OR EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

10. INDEMNIFICATION.

- 10.1 Indemnification by Mark43.** Mark43 shall indemnify, defend, and hold harmless Subscriber, and its employees, officers, and directors from and against any and all third-party claim alleging that Subscriber's use of the Services in the form provided by Mark43 and when used in accordance with the Documentation and in compliance with this Agreement infringes that third party's U.S. copyright, U.S. patent issued as of the Effective Date, or U.S. trademark, and shall pay the amount of any adverse final judgment or settlement to which Mark43 consents. Mark43 shall have no obligation or liability under this Section 10.1 (Indemnification by Mark43) to the extent the third party claim arises from: (a) Subscriber's or its Affiliates' failure to incorporate a software or other update or upgrade made available by Mark43 that would have avoided the alleged infringement; (b) modification of the Services, any Application, Software or Hardware by anyone other than Mark43; (c) specifications, instructions, features, functions or designs or other elements provided by or requested by Subscriber or its Affiliates; (d) use of the Services, any Application or Software in combination with any other product, service, process or material not provided by Mark43 (including, without limitation, Third-Party Applications, Third-Party Data and Subscriber Data); or (e) use of the Services, any Application or Software in a manner not contemplated by this Agreement. If the Services are (or Mark43 believes are likely to become) the subject of a claim for which Mark43 would be obligated to defend and indemnify pursuant to this Section, then Mark43 may, at its sole option, obtain for Subscriber the right to continue use of the Services or replace or modify the

Services, as applicable, provided there is no material loss of functionality. If neither of the foregoing options is reasonably available to Mark43, in its judgment, then use of the Services may be terminated at the option of Mark43 and Mark43's sole liability will be to refund any prepaid fees for the Services applicable to periods following the effective date of termination. The remedies provided in this Section 10.1 (Indemnification by Mark43), are Subscriber's sole and exclusive remedies for any third-party claims of infringement or misappropriation of Intellectual Property Rights by the Services.

10.2 Indemnification by Subscriber. To the extent consistent with Applicable Law, Subscriber shall indemnify, defend, and hold harmless Mark43, its Affiliates, and their respective employees, officers, and directors from and against any and all third-party claim arising out of or related to (a) Subscriber's breach of Section 2.5 (Restrictions on Use), Section 2.6 (Security Obligations) or Section 3.2 (Ownership and Reservation of Rights to Mark43 Intellectual Property); (b) Third-Party Applications or Subscriber Data, including any third-party claim alleging that Subscriber Data infringes or misappropriates the rights of a third party or violates any Applicable Law, and shall pay the amount of any adverse final judgment or settlement to which Subscriber consents; and (c) Mark43's disabling a connection to a Third-Party Application at Subscriber's request.

10.3 Procedures. Each party shall give the other party prompt notice of any claim to which an indemnification obligation under this Section 10 (Indemnification) may apply and shall reasonably cooperate with the indemnifying party, at its expense, in the defense or settlement of any claim. An indemnifying party's payment obligations under this Section 10 (Indemnification) will be diminished to the extent that it is materially prejudiced by the indemnified party's non-compliance with the foregoing procedures.

11. MISCELLANEOUS.

11.1 Notices. Unless otherwise specified herein, all notices and other communications between the parties required or permitted by this Agreement or by Applicable Law, will be deemed properly given, if given by (i) personal service, (ii) registered or certified mail, postage prepaid, return receipt requested, or (iii) nationally recognized private courier service, to the respective addresses of the parties set forth below or such other addresses as the respective parties may designate by like notice from time to time. Notices so given will be effective upon (a) receipt by the party to which notice is given; or (b) on the fifth (5th) business day following mailing, whichever occurs first:

If to Mark43:

Mark43, Inc.
250 Hudson Street
3rd Floor
New York, NY 10013
Attn: David Jochim
Email: dave@mark43.com

If to Subscriber:

Copy to:

Copy to:

Mark43, Inc.
250 Hudson Street
3rd Floor
New York, NY 10013
Attn: General Counsel
Email: contractnotices@mark43.com

11.2 Assignment. Neither party may assign or otherwise transfer any of its rights or obligations under this Agreement without the prior, written consent of the other party; provided, however, that a party may, without the consent of the other party, assign or otherwise transfer this Agreement to any of its Affiliates or to an entity with or into which it is merged or consolidated or to which it sells its stock or other equity interests or all or substantially all of its assets. Any assignment or other transfer in violation of this section will be null and void. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

11.3 Governing Law. This Agreement will be governed by the laws of the State of California, and any disputes between the parties may be resolved in a state or federal court of competent jurisdiction within the State of California. EACH PARTY HEREBY WAIVES ANY RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY ACTION OR LITIGATION IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT.

11.4 Dispute Resolution. Prior to the initiation of any legal proceeding other than one for equitable relief as described in subsection (d) below, the parties shall first attempt to resolve their dispute informally, as follows:

- (a) Within five (5) business days following the written request of a party, designated individual(s) from Mark43 and Subscriber shall meet to resolve such dispute.
 - (b) The representatives referred to in paragraph (a) shall meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter at issue that the parties believe to be appropriate and germane in connection with its resolution. The representatives shall discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of formal legal proceedings. The specified format for the discussions will be left to the discretion of the designated representatives, but may include the preparation of agreed upon statements of fact or written statements of position.
 - (c) If the representatives referred to in paragraph (a) above are unable to resolve the dispute within thirty (30) business days after the dispute is escalated to them, then either party may escalate the dispute to the Chief Operating Officer of Mark43 and the Chief of Police or City Manager, or comparable Subscriber official, for their review and resolution.
 - (d) The provisions of this Section 11.4 shall not be construed to prevent a party from instituting, and a party is authorized to institute, judicial or other proceedings either to (i) seek injunctive relief or (ii) avoid the expiration of any applicable legal or contractual limitations period.
- 11.5 Force Majeure.** Except with respect to failure to pay any amount due under this Agreement, nonperformance of either party will be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts that are not caused by or within the control of the nonperforming party, orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.
- 11.6 No Waiver.** The failure of either party to enforce at any time for any period any provision hereof will not be construed to be a waiver of such provision or of the right of such party thereafter to enforce each such provision, nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver of any rights is to be charged against any party unless such waiver is in writing signed by an authorized representative of the party so charged.
- 11.7 Amendment.** No modification, change or amendment to this Agreement shall be effective unless in writing signed by Subscriber and Mark43. No term included in any invoice, estimate, confirmation, acceptance, purchase order or any other similar document in connection with this Agreement will be effective unless expressly stated otherwise in a separate writing signed by Subscriber and Mark43.
- 11.8 Relationship of the Parties.** The relationship of the parties established by this Agreement is that of independent contractors and nothing contained herein will be construed to (a) give any party any right or authority to create or assume any obligation of any kind on behalf of any other party or (b) constitute the parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking.
- 11.9 Subcontractors.** Mark43 may draw on the resources of (and subcontract to) its Affiliates and third-party contractors and subcontractors, within or outside of the United States (each, a "**Mark43 Vendor**") for internal, administrative and compliance purposes or in connection with the hosting or provision of the Service and other products and services to be provided by Mark43 pursuant to this Agreement. Subscriber agrees that Mark43 may provide information, data and materials that Mark43 receives in connection with this Agreement (including Subscriber Data) to the Mark43 Vendors for such purposes. Mark43 shall be permitted to subcontract its obligations under this Agreement to the Mark43 Vendors identified on Schedule E as "Subcontractors" or such other subcontractors as approved in advance by Subscriber (each, a "**Subcontractor**"). Mark43 shall be responsible in accordance with the terms of this Agreement for performance failures by such Subcontractors that cause Mark43 to breach its obligations under this Agreement.
- 11.10 Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction will, to the extent the economic benefits conferred thereby to the parties remain substantially unimpaired, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions or affecting the validity or enforceability of any of such terms or provisions in any other jurisdiction.
- 11.11 Headings.** The titles and headings contained in this Agreement are for reference purposes only and shall not in any manner limit the construction or interpretation of this Agreement.
- 11.12 Counterparts.** This Agreement may be executed, including by electronic signature, in two or more counterparts, each of which shall be an original and all such counterparts together shall constitute one and the same instrument. Electronically executed or electronically transmitted (including via facsimile transmission) signatures have the full force and effect of original signatures.

- 11.13 Cumulative Remedies.** All remedies for breach of this Agreement are cumulative, and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 11.14 Export Compliance.** In connection with this Agreement, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control.
- 11.15 Compliance with Laws.** Each party shall comply with all Applicable Laws relating or pertaining to the use of the Services. Subscriber shall ensure that its use of all Subscriber Data complies with all Applicable Laws relating to the privacy of third parties or the protection of their personal data promulgated by any governmental, municipal, or legal authority having jurisdiction over Subscriber or the Subscriber Data covered by this Agreement. Each party shall comply with local anti-bribery laws as well as the U.S. Foreign Corrupt Practices Act, as well as any other Applicable Laws and regulations. In connection with its performance under this Agreement, neither party shall directly or indirectly: (A) offer, pay, promise to pay, or authorize the payment of any money, gift or other thing of value to any person who is an official, agent, employee, or representative of any government or instrumentality thereof or to any candidate for political or political party office, or to any other person while knowing or having reason to believe that all or any portion of such money, gift or thing of value will be offered, given, or promised, directly or indirectly, to any such official, agent, employee, or representative of any government or political party, political party official or candidate; (B) offer, promise or give any person working for, or engaged by, the other party a financial or other advantage to (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; or (C) request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement. Each party represents and warrants that it shall be responsible for compliance with this provision by all third parties engaged by it to perform services related to this Agreement and shall require that such third parties agree to comply with all legal requirements required of such party under this Agreement.
- 11.16 Entire Agreement.** This Agreement supersedes all previous understandings, agreements and representations between the parties, written or oral and constitutes the entire agreement and understanding between the parties with respect to the subject matter thereof and incorporates all representations, warranties, covenants, commitments and understandings on which they have relied in entering into this Agreement, and, except as provided for herein, neither party makes any covenant or other commitment concerning its future action nor does either party make any promises, representations, conditions, provisions or terms related thereto.
- 11.17 Supporting Documents.**

The following documents are, by this reference, expressly incorporated into this Agreement and are collectively referred to herein as the "Supporting Documents:"

- Schedule A: Services Schedule
- Schedule B: Support Services
- Schedule C: Transition Assistance
- Schedule D: Technical Requirements
- Schedule E: Third-Party Component Terms / Subcontractors
- Schedule F: Data Processing Addendum

This Agreement and the Supporting Documents shall be construed to be mutually complementary and supplementary whenever possible. In the event of a conflict that cannot be resolved, the provisions of this Agreement itself shall control over any conflicting provisions in any of the Supporting Documents.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

MARK43, INC.

By: _____

Name: _____

Title: _____

Date: _____

SUBSCRIBER

By: _____

Name: Layne Long

Title: City Manager

Date: Tina Nieto

By: _____

Name: _____

Title: Chief of Police

Date: _____

By: _____

Name: _____

Title: City Attorney

Date: _____

SCHEDULE A

Services Schedule

1. **Services.** The Services covered by this Agreement consists of the following:

a. **Professional Services:** Professional Services are detailed in the Statement of Work.

b. **SaaS Services:**

i. The Applications to be provided are as follows:

A. ANALYTICS (ANA) SKUs:

ANA 1: ANALYTICS BI SUITE VIEWER

Mark43's Analytics BI Suite Viewer includes the following capabilities:

- Interactive dashboards that update visualizations based on filters and legends.
- Drill into data points on visualizations for additional details and analysis.
- Mark43 RMS clients will be able to link from the interactive dashboards directly to Mark43 RMS reports and cases.
- Segment (Pivot) and Filter by any available data explorer field to narrow down queries.
- Visualize lat/long coordinates with pin and heat mapping functionality.
- Visualize data with tables, column graphs, bar graphs, scatter plots, line graph, area graph, pie chart, single value, funnel, timeline and donut graphics.
- Save dashboards for future access.
- Share dashboards with other Analytics Viewer and Explorer users at the department.
- Export data into a variety of formats (Text, Excel, CSV, JSON, HTML, Markdown and PNG).
- Data from RMS/CAD modules is available in near-real-time
- Analytics Viewer licenses provide licensees the ability to view and export business intelligence (BI) dashboards that are either (a) provided in Mark43's default BI suite or (b) created and shared by an Analytics Explorer of Subscriber. The number of user licenses for Analytics Viewers will be specified below.

ANA 1 SPECIFICATIONS/FEATURES:

- View/export business intelligence dashboards provided by Mark43
- View/export business intelligence dashboards created and shared by a Subscriber Analytics Explorer user.

ANA 2: ANALYTICS BI SUITE EXPLORER

Mark43's Analytics BI Suite (Explorer) includes the following capabilities:

- Interactive dashboards that update visualizations based on filters and legends.
- Drill into data points on visualizations for additional details and analysis.
- Mark43 RMS clients will be able to link from the interactive dashboards directly to Mark43 RMS reports and cases.
- Segment (Pivot) and Filter by any available data explorer field to narrow down queries.
- Visualize lat/long coordinates with pin and heat mapping functionality.
- Visualize data with tables, column graphs, bar graphs, scatter plots, line graph, area graph, pie chart, single value, funnel, timeline and donut graphics.
- Save dashboards for future access.
- Share dashboards with other Analytics Viewer and Explorer users at the department.
- Export data into a variety of formats (Text, Excel, CSV, JSON, HTML, Markdown and PNG).
- Data from RMS/CAD modules is available in near-real-time
- Analytics Explorer licenses provide licensees the ability to perform all the actions of a Analytics View user plus the ability to create, modify and delete business intelligence dashboards. Analytics Explorer users can share their business intelligence dashboards with all of the Analytics Viewer and Analytics Explorer users of Subscriber. Analytics Explorer users can explore the data from any Data Explorer based Dashboard. The number of user licenses for Analytics Explorer Users will be specified below.

ANA 2 SPECIFICATIONS/FEATURES:

- Analytics Explorer users can perform all the actions of an Analytics View user plus the ability to create, modify and delete business intelligence dashboards.
- Analytics Explorer users can share their business intelligence dashboards with all of the Analytics Viewer and Analytics Explorer users of Subscriber.

- Analytics Explorer users can explore the data from any Data Explorer based Dashboard.

Subscriber understands and agrees that third-party service providers may impose additional license, warranty and other terms on Subscriber. Subscriber agrees to enter into additional agreements as reasonably required by such third parties and Mark43, including, without limitation, a different warranty/SLA addressing uptime and maintenance.

B. COMPUTER AIDED DISPATCH (CAD) SKUs

N/A

C. DATA EXCHANGE (DEX) SKUs

N/A

D. DATA LAKE (DLK) SKUs

N/A

E. RECORDS MANAGEMENT SYSTEM (RMS) SKUs

RMS 1: RMS CORE

Mark43 Core Platform supports advanced functionality around report writing; data sharing; locations, persons, and entity management; and field-based reporting. RMS Core includes Mark43 Records Compliance functionality, which enables records personnel to efficiently generate compliance-related information required by governing LE authorities. The Records Compliance module seamlessly generates the Federal NIBRS, California CIBRS and SRS validations for officers, enabling workflows that ensure low error rates for submission, keep track of submissions, and generate the submission file from the data within the RMS.

RMS 1 PRODUCT SPECIFICATIONS/FEATURES:

- Arrest Reporting
- Case Management
- Case Supplemental Reporting
- Configurable Fields, Codes, and Validation Rules
- Field-Based Reporting
- Field Interviews / Racial profiling reporting
- File Attachments and Multimedia
- Gang Tracking
- Incident Reporting
- Location Verification / Resolution
- Master Entities / Name Index (Locations, Persons, Property, Organizations, and Vehicles)
- Missing Persons Reporting
- Multi-Agency Data Sharing
- Notifications and Agency-wide BOLO/Alerts
- PDF and CSV Exports
- Quick Search / Advanced Search
- Records Privacy (Sealing, Purging, and Expunging)
- Shapefile Management
- System Auditing
- Use of Force Reporting
- Tow / Impound Vehicle Reporting
- User Management
- Compliance code mapping for automated data capture
- View and create queue of reports needing records review
- Data validation during report submission to ensure compliant reporting
- Configurable fields and validation rules
- Ability for administrators to override automated SRS or NIBRS/CIBRS coding
- Automatically generate monthly SRS and NIBRS/CIBRS submissions
- Task & Request Tracking
- Records without a REN
- Behavior Crisis Report
- Flexible Report Configurations for custom report types (e.g. Permits, Registrations, False Alarm Reports, etc.)
- Media and Arrest Logs pursuant to the California Public Records Act

- NIBRS/CIBRS workspace features:
 - View history of previous NIBRS/CIBRS submissions and re-download previous submissions
 - Submission summary statistics to understand number of reports, number of reports with errors, and current error rates
 - Interactive dashboard allowing users to directly access reports that contain submission errors and require updates
 - Customized error message for improved usability and step-by-step instructions for resolving errors

RMS 2: RMS CASE MANAGEMENT MODULE

The Mark43 Case Management module enables detectives to seamlessly use the RMS to manage their cases. Incidents that require further investigation or follow-up may be referred to an investigator before they are closed or submitted to the prosecutor for a charging decision. Depending on the department's size and policies, the assignment may be made to a patrol officer, generally the officer who responded to the original incident, or the department's investigative unit. Functionality of this module requires RMS 1: RMS Core.

RMS 2 PRODUCT SPECIFICATIONS/FEATURES:

- View and create case assignment and routing queues
- Assign lead investigator, supervisors, and assigned unit
- Configurable case due dates and reminders
- Create and assign tasks and set due dates
- Create case notes for internal activity tracking
- View and download case associated files and multimedia
- Export case information to PDF
- Search and sort cases by a number of criteria, including date, assignee, investigative unit, status, and more
- Configurable case type templates
- Configurable role-based Case Management permissions and abilities
- Robust audit logs and activity tracking
- View case history from initial assignment through final disposition
- Separate statuses for compliance reporting (UCR/NIBRS/CIBRS) and internal case status tracking
- Seamless integration between Case Management and RMS reporting and master entity profiles modules
- Availability of Case Management data in Analytics BI Suite for robust reporting capabilities
- Case review and approval workflows
- Automated triggered notifications and alerts
- Link related cases to one another

RMS 3: RMS PROPERTY AND EVIDENCE MANAGEMENT MODULE

Mark43 Property and Evidence Management Module and accompanying mobile application that supports the intake, management, auditing, and dispositioning of in-custody property and evidence. Includes: barcode and label generation; tracking chain-of-custody; configuration of storage locations; configuration of chain-of-custody workflows; configuration of retention policies; ability to integrate with signature pads. Functionality of this module requires RMS 1: RMS Core.

RMS 3 PRODUCT SPECIFICATIONS/FEATURES:

- Seamless integration and data transfer between Property and Evidence Management Module with RMS reporting and master entity profiles
- Robust property and vehicle data collection including NIBRS/CIBRS and UCR mapped fields
- Cross-reference existing property and vehicles during data collection
- Item thermal label printing and barcode scanning for property and storage locations
- Chain-of-custody tracking and workflows
- Bulk evidence movement and processing
- Mobile evidence application for barcoding scanning, chain-of-custody updates, inventory/auditing, and more (Android and iOS supported)
- Signature pad hardware integration, as well as electronic signature capture through mobile evidence application
- Audit and inventory tools and reporting across storage locations and responsible personnel
- Configurable retention policies based on linked offense codes and reason for police custody of property

- Automated disposition requests upon retention policy expiration and release timers
- Automated triggered notifications and alerts
- Configurable notification routing for disposition requests and approvals
- Split items while maintaining integrity of chain-of-custody
- Property staff remarks
- Search and sort evidence across a variety of criteria
- Configurable storage location schema with up to ten layers of sub-locations
- Configurable role-based evidence permissions and abilities
- Support for unlimited property file and multimedia attachments
- Configurable evidence label export format
- CSV and PDF template exports available including receipts and pull-sheets

RMS 5: RMS HANDHELD MOBILE COLLECTION

RMS module that enables warrant administrators to actively log and track warrants within the Mark43 RMS. Functionality of this module requires RMS 1: RMS Core.

RMS 5 PRODUCT SPECIFICATIONS/FEATURES:

- Touch ID and Face ID login
- Capture and view photos
- Create notes using speech-to-text
- Scan driver's licenses (select State support)
- Set current location on map using phone GPS
- Search and view integrated master entity profiles (Persons, Property, Organizations, and Vehicles)
- Search and view RMS reports
- Archive capability
- Seamless sync of data between mobile and web RMS applications
- Create and pre-fill RMS report using mobile collection data

RMS 7: RMS FILLABLE PDFS

The Mark43 Fillable PDFs feature enables an agency to create a custom, fillable PDF template that populates information mapped from supported fields in a standard Mark43 RMS report type. Requires department license to Adobe Pro.

RMS 7 PRODUCT SPECIFICATIONS/FEATURES:

- Export custom, fillable PDF template based on non-Mark43 templates
- Populate the fillable PDF template with the information entered in the linked Mark43 report type
- Configure which supported fields populate the fillable PDF using Adobe Pro
- Support export templates that are not natively supported in the Mark43 RMS

RMS 8: QUICKCRASH REPORTING

Mark43's QuickCrash Reporting module allows for seamless and mobile data collection, documentation and reporting on vehicle collisions.

RMS 8 PRODUCT SPECIFICATIONS/FEATURES:

- MMUCC (Model Minimum Uniform Crash Criteria) Compliant Data Capture
- License Scanning
- Drag and Drop Diagram Builder
- Crash Data Sharing and Syncing between Devices
- License Plate Lookup
- Satellite Map with GPS Coordinates
- Narrative/Templates
- Narrative Dictation
- Media/Photos Section
- In-App Messaging
- PDF Rendering (email, send print)
- In-App Feedback
- Integrated with Mark43 RMS
- Ability to generate Statewide Integrated Traffic Reporting System (SWITRS) export file

2. **Initial Term.** The Initial Term is the five (5) year period commencing on the Effective Date.
3. **Renewal Terms.** Any Renewal Terms shall be for a period of one (1) year.

4. **Fees:** Pricing reflects City of Pacific Grove, CA RFP No. 2020-12-PG unit prices. For the Initial Term, the following Fees will apply:

Recurring Fees:

<i>Mark43 SaaS Services Recurring Fees</i>	Qty (if applicable)	List Price	Price to Subscriber
ANA 1: Analytics BI Suite Viewer	Not to exceed 7 licenses	\$840.00	\$840.00
ANA 2: Analytics BI Suite Explorer	Not to exceed 3 licenses	\$1,440.00	\$1,440.00
RMS 1: RMS Core	Not to exceed 29 sworn	\$34,800.00	\$24,360.00
RMS 2: RMS Case Management	Not to exceed 29 sworn	\$13,920.00	\$3,480.00
RMS 3: RMS Property and Evidence Management	Not to exceed 29 sworn	\$13,920.00	\$3,480.00
RMS 5: Mobile Field Collection	Not to exceed 29 sworn	\$13,920.00	\$0.00
RMS 7: RMS Fillable PDFs	Included	\$7,000.00	\$4,900.00
RMS 8: QuickCrash Reporting	Not to exceed 29 sworn	\$3,480.00	\$0.00
DLK 1: Base	1	\$10,000.00	\$10,000.00
Subtotal - Mark43 SaaS Services		\$99,320.00	\$48,500.00
<i>Partner Products and Services Recurring Fees</i>	Qty (if applicable)	List Price	Price to Subscriber
No Partner Products or Services Included	-	-	-
Subtotal - Partner Products and Services		-	-
Total Recurring Fees		\$99,320.00	\$48,500.00*

*For the avoidance of doubt, this is the recurring fee that will serve as the baseline for the recurring fees to be charged during any Renewal Term. Additional increases may be applied at any time during the Initial Term if required quantities increase.

One-Time Fees:

<i>Mark43 Professional Services – One-Time Fees</i>	Qty (if applicable)	List Price	Price to Subscriber
Implementation Tenant: provisioning environments for configuration, testing, and training during the implementation period	N/A	\$99,320.00	\$48,500.00
DCM 8: RMS with Evidence – Standard	1 source	\$90,000.00	\$75,000.00
IMP 1: Implementation Services	N/A	\$30,000.00	\$30,000.00
Interface Development: Monterey County 911 - CST CAD (one-way)	n/a	\$15,000.00	\$10,500.00
Interface Development: Crossroads Citations (standard one-way)	n/a	\$0.00	\$0.00
Subtotal - Professional Services		\$234,320.00	\$164,000.00

<i>Partner Products and Services – One-Time Fees</i>	<i>Qty (if applicable)</i>	<i>List Price</i>	<i>Price to Subscriber</i>
No Partner Products and Services Included	-	-	-
Subtotal - Partner Products and Services		-	-
Total One-Time Fees		\$234,320.00	\$164,000.00

Mark43 will notify Subscriber of any changes to the fees for any Renewal Term at least forty-five (45) days prior to the start of the Renewal Term.

Optional Post-Go Live Interface:

For a period of twelve (12) months from Go Live, Subscriber shall have the option to add "Interface Development: Axon Evidence.com" to the Professional Services detailed above at no additional cost to Subscriber. This option would include the development of a standard interface between the RMS Application and Evidence.com, and up to ten (10) hours of project management services for the implementation of the interface. Additional project management costs would be assessed based on a rate of \$120.00 per hour.

5. Payment Schedule.

- a. Initial Term: Subscriber will pay the Fees detailed in Section 4 above according to the following schedule during the Initial Term.

Year	Details of Payments and Due Dates	Amount Due
1	Year 1 Payment, due according to the following schedule:	\$164,000.00
	- Effective Date	\$49,200.00
	- Project Kickoff	\$32,800.00
	- Workflow Validation	\$32,800.00
	- Training Complete	\$32,800.00
	- Cutover/Go Live	\$16,400.00
2	Year 2 Payment, due on the first anniversary of the Effective Date.	\$48,500.00
3	Year 3 Payment, due on the second anniversary of the Effective Date.	\$48,500.00
4	Year 4 Payment, due on the third anniversary of the Effective Date.	\$48,500.00
5	Year 5 Payment, due on the fourth anniversary of the Effective Date.	\$48,500.00
	5 YEAR TOTAL	\$358,000.00

- b. Renewal Term: Fees for any Renewal Term will be paid in full in advance on the first day of the Renewal Term.

SCHEDULE B
Support Services

1. Support Services.

a. Error Reporting

When reporting a failure of the Services to perform substantially in conformance with the Agreement (an "Error"), Subscriber shall use the phone number, email address, or Mark43 Support Portal URL identified in the Agreement (or otherwise provided to Subscriber by Mark43 from time to time, including by email) during the hours of support set forth herein.

Subscriber personnel submitting support requests must be reasonably trained in the use and functionality of the Services and familiar with the Agreement and, before submitting a support request to Mark43 hereunder, must use reasonable efforts to ensure a perceived Error is not due to a problem with Subscriber's (or its other third party providers') equipment, systems, software or connectivity or due to improper, non-conforming or unauthorized use of the Services by or on behalf of Subscriber.

Subscriber will include with each support request, further detailed in Section D below: (i) Subscriber's initial assessment of the Response Priority (including identification of the Error and the approximate percentage of Authorized Users impacted); (ii) sufficient information to enable Mark43 to identify and replicate the Error; and (iii) contact information for Subscriber personnel familiar with the Error who will be available to Mark43 to assist with resolution of the Error on an ongoing basis until the Error is resolved.

b. Response Priority Determination

Mark43 will validate Subscriber's Response Priority designation, or notify Subscriber of its Response Priority designation if it is different than Subscriber's. If requested, Mark43 will provide Subscriber with the basis of its determination. In the event of a conflict regarding the appropriate Response Priority designation, each party shall promptly escalate such conflict for resolution by the parties' management, during which time the parties shall continue to handle the support issue in accordance with the Mark43 Response Priority designation. In the rare case that a conflict requires a management discussion, both parties shall be available within one hour of the escalation.

c. First Response, Resolution, and Updates

Upon notification by Subscriber of an Error in accordance with this Schedule and subject to Mark43's identification and replication of the Error, Mark43 will respond to each case in accordance with the First Response Times and Communication Commitments described in the charts below. First Response Time is the period from the time the Error was logged with the Mark43 Support Team until Mark43 responds to Subscriber (and escalates within Mark43, if appropriate). A first response is defined as a non-automatic means where an agent will reach out to gather additional details and may not include a solution or workaround. Because of the widely varying nature of issues, it is not possible to provide specific resolution commitments. Actual resolution time will depend on the nature of the case and the resolution itself. Resolution methods are defined below. A resolution may consist of a fix, workaround, delivery of information, or other commercially reasonable solutions to the issue.

d. Subscriber's Obligations

Mark43's provision of the support services described in this Schedule is subject to Subscriber cooperating fully and on a timely basis with reasonable requests of Mark43 for accurate information and access to Subscriber personnel with sufficient availability and knowledge to enable Mark43 to provide the support services, including accurate information and assistance reasonably required to detect, replicate, and correct Errors. In the event Mark43's response, resolution, or update times are negatively impacted by delayed responses by Subscriber personnel or Subscriber's failure to otherwise comply with its obligations under this Schedule, timeframes will be extended.

First Response Commitment

Red	Orange	Yellow
1 hour 24/7	2 hours 8am - 8pm EST, 7 days	8 hours 8am - 8pm EST M-F

Communication Commitment

	Red	Orange	Yellow
Status page updates	A status update will be posted as soon as Mark43 is notified and updated every 30 minutes thereafter until resolved.	n/a	n/a
Email/phone updates	After initial Mark43 response, within 1 hour of any additional client questions about the same issue until resolved.	After initial Mark43 response, within 1 business day of any additional client questions until issue is resolved. Client will receive notification via email once the issue fix has been scheduled and again when the issue has been fixed.	After initial Mark43 response, within 2 business days of any additional client questions until issue is resolved. Client will receive notification via email once the issue has been fixed.

Priority Definitions

- *Red* - An Error due to Mark43's systems that results in the inoperability or substantial impairment of a core function for the majority of Subscriber's Authorized Users, provided there is no feasible workaround. Examples include: Authorized Users cannot access the Application; CAD units cannot be dispatched; reports cannot be created.
- *Orange* - An Error due to Mark43's systems that results in the inoperability or substantial impairment of a critical workflow for the majority of Subscriber's Authorized Users, provided there is no feasible workaround. Examples include: significant lagging/slowness; inability to process persons in custody; inability to export reports or cases for same or next day court deadlines; inability to submit reports.
- *Yellow* - An Error due to Mark43's systems for which a reasonable workaround is available.
- *None* - There are a number of low-impact issues, how-to questions, and feature requests that do not fall into one of the categories above and are not subject to the outlined First Response or Communication Commitments.

Issue Escalation & Resolution Methods: Customer-reported issues are escalated within Mark43 by a well-defined internal process. Mark43 works to resolve issues based on the issue severity/impact, by employing one or more of the following methods:

- Providing client with a reasonable workaround
- Adjusting system/hosting configurations or setup
- Direct database modifications
- Releasing a fix out-of-cycle (patching)
- Releasing a fix as part of the regular release cycle
- Other commercially reasonable solution

Subscriber will be notified of status changes either through Mark43's status page and/or via email updates in a support ticket.

2. **Service Level Agreement.** Mark43 shall provide the Applications in accordance with the following service levels ("SLA").

a. **Monthly Uptime Commitment.**

Following Cutover to the applicable In-Scope Mark43 Application, Mark43 will use commercially reasonable efforts to make the In-Scope Mark43 Application available with the Monthly Uptime Percentage corresponding to that Application (the "**Uptime Commitment**"), as follows:

- *RMS Application:* Mark43 will use commercially reasonable efforts to achieve a Monthly Uptime Percentage for the Mark43 RMS Application of no less than 99.90% in any calendar month.
- *CAD Application:* Mark43 will use commercially reasonable efforts to achieve a Monthly Uptime Percentage for the Mark43 CAD Application of no less than 99.95% in any calendar month.

For each In-Scope Mark43 Application, the "Monthly Uptime Percentage" is calculated as set forth below by subtracting from 100 percent the percentage of minutes during the month in which the In-Scope Mark43 Application experienced Downtime.

Monthly Uptime Percentage = $(100) - ((\text{minutes of Downtime} * 100) / (\text{total minutes in month}))$

b. **Service Credit Calculation.**

Subject to the SLA Exclusions, if Mark43 does not achieve the Uptime Commitment in any given month due to Downtime, Subscriber may be eligible for credits as described herein (the "**Service Credits**"), as follows:

- *RMS Application:* If Mark43 does not achieve the Uptime Commitment for the RMS Application, Subscriber will (to the extent legally permitted) be eligible pursuant to the terms of this SLA to receive a credit equal to 10 times the amount paid for the RMS Application in respect of the period in which the actual RMS Downtime for the month exceeded the RMS Downtime allowable within the Uptime Commitment, up to a maximum credit of 25% of one month's subscription fee paid in consideration for the RMS Application, as illustrated here:

$$\text{RMS Service Credit} = (10) * ((1/12) * \text{annual subscription fee}) * ((\% \text{ of Downtime}) - (0.10\%))$$

- *CAD Application:* If Mark43 does not achieve the Uptime Commitment for the CAD Application, Subscriber will (to the extent legally permitted) be eligible pursuant to the terms of this SLA to receive a credit equal to 10 times the amount paid for the CAD Application in respect of the period in which the actual CAD Downtime for the month exceeded the CAD Downtime allowable within the Uptime Commitment, up to a maximum credit of 25% of one month's subscription fee paid in consideration for the CAD Application, as illustrated here:

$$\text{CAD Service Credit} = (10) * ((1/12) * \text{annual subscription fee}) * ((\% \text{ of Downtime}) - (0.05\%))$$

c. **Requesting Service Credits.**

In order to receive a Service Credit, Subscriber must notify Mark43 in writing at 250 Hudson Street, 3rd Floor, New York, NY 10013, Attn: Accounting, with a copy to accounting@mark43.com, or such other address provided by Mark43 from time to time, within fifteen (15) days following the end of the month in which the Downtime occurred. Claims must include the words "SLA Credit Request" in the subject line; the dates and times of each Downtime incident that Subscriber is claiming occurred; and any documentation to corroborate Subscriber's claim of Downtime, ensuring removal or redaction of any confidential or sensitive information in these logs. All claims are subject to review and verification by Mark43 prior to any Service Credits being granted. Mark43 will acknowledge requests for Service Credits within fifteen (15) business days of receipt and will inform Subscriber whether such claim request is approved or denied.

If Mark43 confirms that the Uptime Commitment has not been met in the applicable calendar month, Subscriber will be issued a Service Credit within one billing cycle following the month in which Subscriber's request is confirmed by Mark43. Subscriber's failure to provide the request and other information as required above will disqualify Subscriber from receiving a Service Credit. Service Credits will not entitle Subscriber to any refund or other payment from Mark43 and are non-transferable. The parties acknowledge and agree that Service Credits are intended as genuine pre-estimates of loss that may be suffered as a result of any failure to achieve Uptime Commitments and will not be deemed to be penalties. To the extent legally permitted, the issuance of a Service Credit by Mark43 hereunder is Subscriber's sole and exclusive remedy for any failure by Mark43 to satisfy the Uptime Commitment.

d. **Additional Definitions.**

"**Downtime**" with respect to any single In-Scope Application means time in which the Application is not accessible or available to Subscriber for reasons other than those resulting directly or indirectly from an SLA Exclusion. For the avoidance of doubt, slow performance does not constitute lack of accessibility or availability and shall not count as Downtime, unless there is a total loss of ability for the substantial majority of Authorized Users to perform any one of the In-Scope Application Features so as to constitute a total loss of service of that Application, in each case in Mark43's reasonable discretion. The concurrent loss of service of two or more In-Scope Application Features within the same Application will count as a single Downtime event. At the end of each month, Mark43 adds "Downtime" periods together to calculate the overall monthly "Downtime."

"**In-Scope Mark43 Application**" means the web-accessible Applications identified in subsection (a) above, provided that Subscriber has purchased a subscription for the Applications and signed a valid agreement with Mark43. Under no circumstance shall any reference to an Application that Subscriber has not purchased a subscription and signed an agreement for be construed to entitle Subscriber to use such Application. For the avoidance of doubt, In-Scope Mark43 Applications do not include mobile versions or Applications that are in beta testing.

"**In-Scope Application Features**" means, in each case:

- For RMS Application: (i) the ability to login to the Mark43 RMS; (ii) the ability to view and edit reports and names, property, and vehicles; (iii) the ability to view and edit cases; and (iv) the ability to search for entities within the RMS.
- For CAD Application: (i) the ability to login to the Mark43 CAD; (ii) the ability to view / edit / clear events; (iii) the ability to view and edit units; (iv) the ability to search for CAD tickets; and (v) the ability to receive real-time updates when actively connected to an internet-enabled network.

"Monthly Uptime Percentage" has the meaning set forth in Section 1 of this SLA.

"Scheduled Maintenance" means scheduled work related to the Mark43 Application or the hosting environment, which may cause inaccessibility or unavailability of the Mark43 Application. Except as set forth below, Mark43 shall provide at least seven (7) days' advance notice of Scheduled Maintenance whenever practicable, and in no circumstances less than three (3) days' advance notice. In the event that Mark43 determines it is appropriate to perform emergency work related to the Mark43 Application or emergency work is performed related to the hosting environment, such work will be deemed Scheduled Maintenance, provided Mark43 uses reasonable efforts under the circumstances to provide Subscriber with notice at least 24 hours prior to such emergency work. Notice of Scheduled Maintenance may be provided by email and, in the case of emergency work, may also be provided by telephone. The total amount of Scheduled Maintenance for the CAD Application shall not exceed 60 minutes during any 30-day period.

e. **SLA Exclusions.** The Uptime Commitment does not apply to any inaccessibility or unavailability of an Application (the **"SLA Exclusions"**):

- That is not an In-Scope Mark43 Application;
- That occurs prior to Cutover;
- That results from Scheduled Maintenance;
- That results from a suspension or remedial action, as described in the Agreement;
- Caused by factors outside of Mark43's reasonable control, including any force majeure event, Internet access, or problems beyond the demarcation point of the Mark43 cloud environment;
- That results from actions or inactions of Subscriber or any third party;
- That is attributable to Subscriber's own computer equipment or devices, or failure of any software, hardware or service not supplied by Mark43 pursuant to the Agreement, including, without limitation, issues related to network connectivity, internet connectivity or network performance issues at any Subscriber locations, server downtime related to connectivity issues resulting from third-party-managed VPN access to a hosted server or Subscriber's internal network problems, or Software (including interfaces) that is not supplied or maintained by Mark43;
- That results from any Integrated Application, Third-Party Data, or any Subscriber-provided application or program; or
- That results from the failure by Subscriber, its Affiliates, or any Authorized User to incorporate a Software or Service update or upgrade made available by Mark43.

SCHEDULE C
Transition Assistance

1. Preparation.

- a. Subscriber will provide the desired cutoff date of the SaaS Services (the “**Cutoff Date**”) to Mark43, at which time all existing user accounts will be terminated.
- b. For one (1) year following the Cutoff Date, Mark43 will provide one (1) transition account for Subscriber to access the Applications and retrieve all Subscriber Data as further detailed below

2. Content.

- a. Upon Subscriber’s request, Mark43 will deliver and make available Subscriber Data to Subscriber within four (4) weeks of the Cutoff Date. Subscriber Data will be delivered as follows:
 - Searchable PDFs: Mark43 will create searchable PDFs of each record (each, a “**Record**”) and provide them to the Subscriber for download. Subscriber may request, and Mark43 will consider, other formats in which to create the Records, but the final format of all Records will be determined in Mark43’s sole discretion. Records can be uploaded to Subscriber’s new system by the Subscriber or its new vendor.
 - Database Export: Subscriber Data will be provided to Subscriber as an export of Mark43’s Microsoft SQL Server Data Lake database. To use the data, Subscriber will need to have access to its own Microsoft SQL Server database.
 - Document/File Export: Documents/file attachments stored within the Mark43 system will be provided to the Subscriber in a zipped folder. Within the folder the Subscriber will find all files with a unique ID appended to the filename. A csv file will be provided to relate the unique file ID with the attached entity type and Mark43 ID.
- b. If files are too large for practical internet transmission, an encrypted hard drive will be provided.

3. Support.

- a. Mark43 will maintain Subscriber Data in the Mark43 Applications for up to one (1) year following the Cutoff Date.
- b. Mark43 will resolve any issues it deems to be the result of errors in the Mark43 platform or export process for a period of six (6) months after the Cutoff Date.
- c. No less than two (2) years after the Cutoff Date, Mark43 will delete Subscriber Data from all Mark43 online systems (e.g. primary database, replica databases, search databases, application caches, etc.) other than database backups, audit logs and server system logs.
- d. Within six (6) months from the date of deletion of Subscriber Data from all Mark43 online systems, all Subscriber Data will be erased from database backups.
- e. Notwithstanding the foregoing, Mark43 reserves the right to retain Subscriber Data on audit logs and server system logs and in support tickets, support requests and direct communications with Mark43.

4. Additional Services.

- a. Ongoing Web Access: Subscriber may elect to purchase a read-only tenant of the Mark43 system. This service enables Subscriber to utilize a single user log-in to view and access data entered into the Mark43 system up to the date of termination or expiration of this Agreement. Under this service, Subscriber will not have permission to change, modify or update any Subscriber Data.
- b. Additional Professional Services: If the Subscriber requires additional Professional Services, these will be billed according to the current market rate for such Services.

5. Fees. In the event that any Fees have not been paid as required under this Agreement, Mark43 may decline to provide the support outlined in this Schedule C until such Fees are paid in full.

SCHEDULE D

Technical Requirements

This Schedule lists the minimum technical requirements required for Mark43's RMS, CAD, Evidence Management and Data Exchange applications. This also describes the requirements for Mark43 interface servers. Integrated Application Providers and subcontractors may have additional requirements that are not listed here.

1. MARK43 RMS

1.1 RMS Workstation Requirements

Item	Minimum	Recommended
Operating System	Windows 7+, Mac OS X 10.X	Windows 10, Mac OS 10.X
Processor	1x dual-core processor	1x quad-core processor or greater
Architecture	x64 / x86	x64
Memory	4 GB	6 GB+
Network Card	1x 2 Mbps+ NIC	1x 10 Mbps+ NIC
Display(s)	1x 1024x768	1x 1920x1080
Hard Drive	1 GB available space	5 GB available space
Graphics Card	N/A	N/A
Bandwidth	2 Mbps	5 Mbps+

1.2 RMS Workstation Site Internet Requirements

Mark43 RMS operates as a single-page application where most of the heavy download load is needed only on initial page load for each user. For RMS, Mark43 recommends an overall internet bandwidth connection of 1+ Mbps per concurrent user using that connection. Actual performance and usage may vary depending on user usage of other internet-connected applications and your ISP.

1.3 RMS Mobile Data Terminal Requirements

Item	Minimum	Recommended
Operating System	Windows 7+, Mac OS X 10.X	Windows 10, Mac OS 10.X
Processor	1x dual-core processor	1x dual-core processor or greater
Architecture	x64 / x86	x64
Memory	2 GB	4 GB+
Network Card	2 Mbps (4G LTE)	5 Mbps+ (4G LTE)
Display(s)	1x 1024x768	1x 1024x768+
Hard Drive	1 GB available space	5 GB available space
Graphics Card	N/A	N/A
Bandwidth	2 Mbps (4G LTE)	5 Mbps+ (4G LTE)

1.4 RMS Browser Requirements

Mark43 RMS is web-based and requires a modern web browser to access the system. Mark43 RMS supports the following browser versions that receive technical support and security updates from the browser vendor.

- Google Chrome (latest)
- Microsoft Edge (latest)
- Mozilla Firefox (latest)

1.5 RMS Smartphone Mobile Application Requirements

The Mark43 RMS Smartphone Mobile Application is available on iOS.

Item (iOS)	Supported	Recommended
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Operating System	Apple iOS 10, 11, 12	Apple iOS 12
Device	iPhone 6, 6 Plus, 6S, 6S Plus iPhone SE iPhone 7, 7 Plus iPhone 8, 8 Plus iPhone X, XS, XS Max, XR iPad Air 2, 3rd gen iPad Mini 3, 4, 5th gen iPad Pro 1st gen, 2nd gen, 3rd gen iPad 5th gen, 6th gen	iPhone XS iPad gen 6

1.6 Evidence Smartphone Mobile Application Requirements

The Mark43 Evidence Smartphone Mobile Application is available on iOS and Android and requires network connectivity.

Item (iOS)	Supported	Recommended
Operating System	Apple iOS 10, 11, 12	Apple iOS 12
Device	iPhone 6, 6 Plus, 6S, 6S Plus iPhone SE iPhone 7, 7 Plus iPhone 8, 8 Plus iPhone X, XS, XS Max, XR iPad Air 2, 3rd gen iPad Mini 3, 4, 5th gen iPad Pro 1st gen, 2nd gen, 3rd gen iPad 5th gen, 6th gen	iPhone XS iPad gen 6

Item (Android)	Supported	Recommended
Operating System	Android 5+	Android 9
Device	Samsung Galaxy S7+	Samsung Galaxy S10

1.7 Evidence Barcode Printer Requirements

The Mark43 RMS Property and Evidence module requires a barcode printer to optimize the evidence management process. Mark43 integrates seamlessly with Zebra barcode printing hardware and requires the following printer:

- ZD420 model number ZD42043-C01E00EZ
- 2000T label
- 5095 Premium Resin ribbon (05095CT11007)
 - o Ribbon roll-only (05095GS11007)

Deviating from this hardware configuration will lead to smeared, stretched or otherwise incorrectly printed barcode labels. For departments with multiple printers, Mark43 recommends purchasing the same model for all locations.

1.8 Evidence Printer Server Requirements

In order for Mark43 RMS to communicate with the barcode printers, an intermediate server to route printing requests is required. This machine can be the same machine as the Interface Servers specified below or standalone in which case it will need the following specifications:

Item	Minimum	Recommended
Processor	2x 2.0+ GHz processors	2x 2.0+ GHz processors
Memory	2 GB	4 GB+
Hard Drive	32 GB HDD storage	64 GB HDD storage

1.9 RMS Fillable PDF Software Requirements

In order for the Subscriber to utilize Mark43 RMS 7 (RMS Fillable PDFs), the Subscriber must have at least one (1) Adobe Professional license.

2. **MARK43 CAD**

2.1 CAD Call Taker / Dispatcher Workstations

Mark43 recommends solely using the Mark43 CAD installed desktop application for CAD call takers and dispatchers. The installed application allows for multi-window functionality and a more seamless user experience for power-users of the CAD application.

Item	Minimum	Recommended
Operating System	Windows 8+	Windows 10
Processor	1x dual-core processor	2x quad-core processor or greater
Architecture	x64	x64
Memory	8 GB	16 GB+
Network Card	1x 5 Mbps+ NIC	1x 10 Mbps+ NIC
Display(s)	1x 1024x768 monitor	2x+ 1920x1080 monitors
Hard Drive	10 GB available space	20 GB available space
Graphics Card	Dedicated video card with 128MB+ memory	2x 512MB NVIDIA Quadro NVS 310, 4 MON
Bandwidth	2 Mbps per concurrent dispatcher	5 Mbps+ per concurrent dispatcher

2.2 CAD Call Taker / Dispatcher Workstation Site Internet Requirements

For CAD, Mark43 recommends an overall internet bandwidth connection of 2+ Mbps per concurrent user using that connection and a backup ISP connection with automatic failover. Actual performance and usage may vary depending on user usage of other internet-connected applications and your ISP.

2.3 CAD First Responder Mobile Data Terminal Requirements

Item	Minimum	Recommended
Operating System	Windows 8+	Windows 10
Processor	1x dual-core processor	1x dual-core processor or greater
Architecture	x64	x64
Memory	2 GB	4 GB+
Network Card	2 Mbps (4G LTE)	5 Mbps+ (4G LTE)
Display(s)	1x 1024x768	1x 1024x768+
Hard Drive	10 GB available space	20 GB available space
Graphics Card	128MB of video memory	256MB+ video memory
Bandwidth	2 Mbps+ (4G LTE)	5 Mbps+ (4G LTE)

Mark43 CAD also requires installing a Windows Service on First Responder MDTs to query message switches, track GPS, monitor performance, and more. This Windows Service requires:

- Powershell installed with Windows 8+
- .NET Core v2.1+
- .NET Framework v4.5+
- A service account with "Log in as service" and administrative permissions
- Completion of all recommended Windows Updates from Microsoft

2.4 CAD Browser Requirements

Mark43 CAD is also web-based and requires a modern web browser to access the system. Mark43 CAD is only supported on the latest version of Google Chrome.

2.5 GPS Tracking

Mark43 CAD First Responder MDTs support tracking GPS from the following hardware:

- Getac machines with internal GPS (BAUD rate of 96k)
- BU-353S4 receivers that plug in

- Cradlepoint routers

GPS Tracking also requires:

- GPS Receiver using NMEA standard (e.g. \$GPxxx messages)
- Dedicated COM port on machines that use external USB GPS devices
- External Antenna strongly recommended
- DIS (a windows service that can capture GPS data in the following formats: a) Sent over a COM port in the NMEA 1 format or b) via UDP in the NMEA 1 format

3. **MARK43 ANALYTICS**

3.1 Data Lake Requirements

Mark43 Data Lake is a Microsoft SQL Server Database and requires a database client that receives technical support and security updates from the vendor. Mark43 recommends using Microsoft SQL Server Management Studio.

3.2 Business Intelligence Suite Requirements

Mark43 Business Intelligence Suite runs embedded within Mark43 RMS and therefore has the same browser requirements as Mark43 RMS.

4. **MARK43 DATA EXCHANGE**

The Mark43 Data exchange functionality is enabled through either the RMS or CAD applications. Additional interface servers may be required to support Mark43 Data Exchange data flows, depending on the department's size and complexity.

5. **MARK43 INTERFACE SERVERS**

5.1 Server Requirements

Interface servers are on-premise servers that Mark43 uses to run interfaces developed by Mark43. These servers allow Mark43 interfaces to access on-premise Subscriber systems and/or run custom interfaces developed by Mark43. Mark43 supports these servers from the VM up and ensures that interfaces running on these servers are maintained and monitored. The table below outlines Mark43's minimum required and recommended server specifications for an interface server setup.

Item	Minimum	Recommended
Number of servers	1	2+
Operating System	Ubuntu 20.04 LTS, CentOS 8, or Red Hat Enterprise Linux 8	Ubuntu 20.04 LTS
Processor	1x quad-core processor	2x quad-core processor
Architecture	x64	x64
Memory	8 GB	16 GB+
Network Card	1x 100 Mbps NIC	2x 1 Gbps+ NICs
Display(s)	N/A	N/A
Disk	128 GB available space	128 GB available space
Graphics Card	N/A	N/A
Bandwidth	10 Mbps	100+ Mbps

5.2 Support

Subscriber provisions these servers and maintains them from hardware/VM up to and including the operating system. Mark43 will maintain the application software installed on this server, which consists of:

- Docker, which runs all the application software in an easily manageable way

- Kubernetes, a container orchestration technology, which allows Mark43 to deploy, update, and monitor the Docker containers running the application software

Subscriber may choose to install other software (e.g. monitoring software) on this server as long as it does not interfere with the operation of the Mark43 provided applications.

5.3 Releases

The Docker containers running on the interface servers are updated as part of the normal Mark43 release cycle. This is to apply updates to interface application code and ensure compatibility with any API changes made to the internal Mark43 API.

5.4 Maintenance

If Subscriber needs to apply patches to the interface server this can be done safely by rotating servers in and out. Subscriber does not need to notify Mark43 when this happens, unless the interface servers are expected to be down for more than 15 minutes, or if Subscriber has only one interface server.

5.5 Networking/Firewall Setup

Inbound:

SSH / Port 22	Originating from within the Subscriber's VPN For Mark43 SSH access
HTTPS / Port 443	Originating from within the Subscriber's VPN For Kubernetes API server communication and evidence labeling printing software (if applicable for Subscriber)
TCP Port 6443	Originating from within the Subscriber's VPN For Kubernetes API server communication
TCP Port 10250	Originating from within the Subscriber's VPN For Kubernetes node metrics

* All IPs and ports inbound from the public internet should be closed.

Outbound:

HTTPS / Port 443	To all network interfaces – 0.0.0.0/0
TCP Port 6443	Originating from within the Subscriber's VPN For Kubernetes API server communication

VPN:

- Mark43 will SSH to this server over the Subscriber VPN to install Docker and Kubernetes, and perform any troubleshooting actions or maintenance tasks that can't be completed via the normal release process

User Accounts:

- Mark43 will need a service account with sudo access on the interface servers

Assigning Static IP Addresses:

- Subscriber will need to take the following steps:
 1. Log in to the server with the username and password.
 2. Enter the following command `sudo nano /etc/network/interfaces`
 3. Delete the line `iface eno1 inet dhcp`
 4. Add the following lines. Replace the text in <> with your network appropriate information. If no on-site DNS servers are available, we recommend using 8.8.8.8 and 8.8.4.4 for your DNS server:


```

iface eno1 inet static
address <IP address>
netmask <subnet mask>
gateway <default gateway>
dns-search <DNS search domain>

```

dns-nameservers <DNS server> <optional secondary DNS server>

5. Type *control+x* to exit
6. Press *y* to save
7. Press *enter* to confirm the name */etc/network/interfaces*.
8. Type *sudo reboot* to restart the server.

SCHEDULE E

Third-Party Component Terms / Subcontractors

Google: Users are bound by the Google Maps/Google Earth Additional Terms of Service (including the Google Privacy Policy), available by following these links:

Google Maps Terms: https://maps.google.com/help/terms_maps.html

Google Privacy Policy: <https://policies.google.com/privacy?hl=en&gl=us>

Acceptable Use: https://enterprise.google.com/maps/terms/universal_aup.html

Amazon:

Universal Service Terms: <https://aws.amazon.com/service-terms/>

Acceptable Use: <https://aws.amazon.com/aup/>

Auth0 (if elected):

Acceptable Use: <https://cdn.auth0.com/website/legal/files/aup-19.pdf>

RapidSOS (if elected): Subscriber must sign up and accept the terms contained within the following link:

<https://info.rapidsos.com/rapidsos-integrations-signup>

CommSys (if elected): Subscriber must enter into an end user license agreement directly with CommSys.

Subcontractors (if any):

SCHEDULE F

Data Processing Addendum

1. **Definitions.** For purposes of this this Data Processing Addendum (“DPA”), “Subprocessor” means a Mark43 Affiliate or other third party engaged by Mark43 for the purpose of hosting, storing or otherwise processing Subscriber Data as authorized by the Agreement or otherwise in writing by Subscriber. Terms not otherwise defined in this DPA have the meaning set out in this Agreement.
2. **Subscriber Data.** The obligations in this Schedule apply to Subscriber Data in the custody or control of Mark43 and its Subprocessors. They do not apply to Subscriber Data in the custody or control of any other party, including Subscriber Data under Subscriber’s custody or control outside of the Services or Subscriber Data maintained by an Integrated Application Provider or transmitted or accessed on or through an Integrated Application.
3. **Disclosure.** Mark43 will not disclose Subscriber Data to any third party except: (i) to Authorized Users; (ii) as permitted under the Agreement; (iii) to its Subprocessors, provided that each Subprocessor agrees to protect Subscriber Data in a manner substantially in accordance with this DPA; or as provided by this DPA with respect to any Disclosure Request. Notwithstanding the foregoing or anything in this DPA to the contrary, Subscriber acknowledges and agrees that (a) Mark43 utilizes major providers of cloud-based services for processing certain Subscriber Data through the Services (each, a “Cloud Provider”) (including, as of the Effective Date of the Agreement, Amazon Web Services for hosting and Google for mapping and geolocation services), (b) each Cloud Provider has its own data protection practices that are applicable to its delivery of services to its customers, and (c) Cloud Providers will not agree to separate data protection practices on a customer-by-customer basis; therefore, Cloud Providers will not be required to comply with the obligations in this DPA to the extent that they are inconsistent with each Cloud Provider’s own data protection practices, but Mark43 will use reasonable efforts to assess that each Cloud Provider complies with its own data protection practices, which may include periodic examination of SOC 2 reports or comparable reports made available by Cloud Provider.
4. **Information Security Program.** Mark43 will implement and maintain a written information security program that contains reasonable administrative, technical and physical safeguards intended to protect Subscriber Data from unauthorized access, disclosure, use, modification, loss or destruction.
5. **Access.** Mark43 will maintain appropriate access controls to Subscriber Data, including limiting access to Subscriber Data only to personnel who require such access in order for Mark43 to provide Services to Subscriber or to otherwise exercise Mark43’s rights or perform Mark43’s obligations under the Agreement. Mark43 will require its personnel to protect Subscriber Data in accordance with the requirements of this DPA and will provide its personnel with appropriate information security training.
6. **Information Security.**
 - a. Mark43 maintains its information security program and applicable safeguards at all Mark43 sites at which an information system that stores or otherwise processes Subscriber Data is located.
 - b. Mark43 maintains network security using commercially available equipment and industry standard techniques, including firewalls, router access control lists, intrusion detection and/or prevention systems, penetration testing, vulnerability scanning, and patch management tools.
 - c. Mark43 will encrypt, using industry-standard encryption tools, all Subscriber Data that Mark43: (i) transmits or sends wirelessly or across public networks; (ii) stores on laptops or removable storage media; and (iii) stores on portable devices. Mark43 will safeguard the confidentiality and availability of all encryption keys associated with encrypted Subscriber Data.
 - d. Mark43 installs and maintains endpoint security measures such as anti-virus and malware protection software intended to protect Subscriber Data from malicious code.
 - e. Mark43 undertakes appropriate logging and monitoring to enable recording of information security-related actions and identification of anomalous events.
 - f. Mark43 develops software used to deliver the Services in accordance with secure software development principles.
7. **Security Incident Management.** Unless otherwise prohibited by law, Mark43 will notify Subscriber promptly (and in any event within 72 hours) in the event Mark43 reasonably believes that there has been any unauthorized access, acquisition, disclosure, use, modification, loss or destruction of Subscriber Data (“Security Incident”). Mark43 will promptly investigate the Security Incident, will take necessary steps to eliminate or contain the exposure of Subscriber Data, and will keep Subscriber informed of the status of the Security Incident. Mark43 will provide reasonable assistance and cooperation requested by Subscriber or Subscriber’s designated representatives to correct, remediate, or investigate the Security Incident or to mitigate potential damage resulting from it, including any notification that Subscriber may determine appropriate to send to affected individuals, regulators or third parties.

8. **Business Continuity.** Mark43 implements appropriate disaster recovery and business continuity plans and reviews and updates such plans regularly. Back-up copies of critical business information and software are created regularly and tested to verify their integrity.
9. **Audits.** Upon Subscriber's request, Mark43 will make available to Subscriber up to once per year a copy of a third-party assessment, such as a SOC 2 report or comparable report ("**Third-Party Report**"), if Mark43 has obtained such a Third-Party Report for the Services; or if Mark43 has not obtained a Third-Party Report for the Services, Subscriber may provide to Mark43 a security assessment questionnaire related to the Services, which Mark43 will accurately and promptly complete. Such a questionnaire must be reasonable in scope and may include questions seeking verification of compliance with the terms and conditions of this DPA. All Third-Party Reports or information accessed by or otherwise disclosed to Subscriber in connection with any such review will be considered Confidential Information of Mark43.
10. **Return/Disposal.** Upon termination or expiration of the Agreement, Mark43 will cease handling Subscriber Data and will take reasonable steps to return or destroy Subscriber Data according to the timeframes set out in Schedule C of the Agreement. If Mark43 has any legal obligation to retain Subscriber Data beyond the periods otherwise specified by Schedule C, Mark43 will notify Subscriber in writing of that obligation, to the extent permitted by applicable law, and will return or destroy the Subscriber Data in accordance with this DPA as soon as possible after that legally required retention period has ended. If Mark43 disposes of any paper, electronic or other record containing Subscriber Data, Mark43 will take all reasonable steps to do so by: (a) shredding; (b) permanently erasing and deleting; (c) degaussing; or (d) otherwise modifying Subscriber Data in such records to make it unreadable, unreconstructable and indecipherable.
11. **Location of Subscriber Data.** Subscriber Data stored or transmitted through the SaaS Services in Subscriber's user accounts shall be hosted by a Cloud Provider in the United States. Mark43 currently uses AWS Govcloud region as Cloud Provider to host Subscriber Data. Information about AWS' commitment to support customers' CJIS compliance requirements is available here:
<https://aws.amazon.com/compliance/cjis/>.

January 5, 2022

Item No. **8g(3)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of January 19, 2022

**RECOMMENDATION TO CONSIDER ADOPTING RESOLUTION NO. 2022-,
APPROVING THE CREATION OF PUBLIC UTILITY EASEMENTS ON CITY
PROPERTIES FOR UTILITY IMPROVEMENTS BENEFITING MARINA
AIRPORT DEVELOPMENT SUBJECT TO THE TECHNICAL APPROVAL OF
THE LEGAL DESCRIPTIONS BY THE CITY ENGINEER, AND;
AUTHORIZING THE CITY CLERK TO RECORD A CERTIFIED COPY OF
THE RESOLUTION IN THE MONTEREY COUNTY OFFICE OF THE
COUNTY RECORDER**

RECOMMENDATION:

It is recommended that the City Council:

1. Consider adopting Resolution No. 2022-, approving the creation of public utility easements on City properties (shown on **EXHIBIT A**) for utility improvements benefiting Airport Development subject to the technical approval of the legal descriptions by the City Engineer, and;
2. Authorizing the City Clerk to record a certified copy of the resolution in the Monterey County office of the County Recorder.

BACKGROUND:

At the regularly scheduled meeting of December 17, 2019, the City Council adopted Resolution No. 2019-138, approving a ground lease agreement between the City of Marina and Joby Aero, Inc., for a five-acre portion of the developed south tarmac with two options totaling 250 acres located at 3200-C Imjin Road. The site improvements to the areas under the agreement require expansion and improvement to the existing utility infrastructure.

ANALYSIS:

Pacific Gas & Electric (PG&E) has provided notice to City staff regarding improvements to the electrical utilities at the Airport lease area. Electrical improvements require a connection to existing infrastructure on Abrams Drive that is not within the City Right of Way. In order to provide the utility improvements and connections needed for development at the Airport, new easements are required within City-owned parcels (shown on **EXHIBIT A**). At this time, PG&E requesting a public utility easement for access to connection points where improvements are intended.

FISCAL IMPACT:

None. Exhibit A was prepared by PG&E at their expense.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

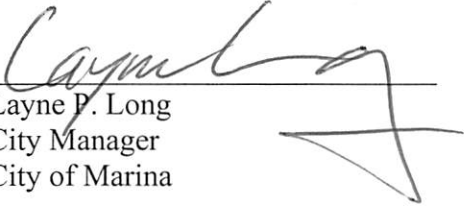
Respectfully submitted,

Edrie Delos Santos, P.E.
Senior Engineer, Engineering Division
City of Marina

REVIEWED/CONCUR:



Brian McMinn, P.E., P.L.S.
Public Works Director/City Engineer
City of Marina



Layne P. Long
City Manager
City of Marina

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY OF MARINA APPROVING THE CREATION
OF PUBLIC UTILITY EASEMENTS ON CITY PROPERTIES FOR UTILITY
IMPROVEMENTS BENEFITING MARINA AIRPORT DEVELOPMENT
SUBJECT TO THE TECHNICAL APPROVAL OF THE LEGAL
DESCRIPTIONS BY THE CITY ENGINEER, AND; AUTHORIZING THE
CITY CLERK TO RECORD A CERTIFIED COPY OF THE RESOLUTION IN
THE MONTEREY COUNTY OFFICE OF THE COUNTY RECORDER

WHEREAS, at the regularly scheduled meeting of December 17, 2019, the City Council adopted Resolution No. 2019-138, approving a ground lease agreement between the City of Marina and Joby Aero, Inc., for a five-acre portion of the developed south tarmac with two options totaling 250 acres located at 3200-C Imjin Road. The site improvements to the areas under the agreement require expansion and improvement to the existing utility infrastructure, and;

WHEREAS, Pacific Gas & Electric (PG&E) has provided notice to City staff regarding improvements to the electrical utilities at the Airport lease area. Electrical improvements require a connection to existing infrastructure on Abrams Drive that is not within the City Right of Way. In order to provide the utility improvements and connections needed for development at the Airport, new easements are required within City-owned parcels (shown on **Exhibit A**). At this time, PG&E requesting a public utility easement for access to connection points where improvements are intended.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marina that:

1. Approving the creation of public utility easements on City properties (shown on Exhibit A) for utility improvements benefiting Airport Development subject to the technical approval of the legal descriptions by the City Engineer, and;
2. Authorize the City Clerk to record a certified copy of the Resolution in the Monterey County office of the County Recorder.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 19th day of January 2022, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Bruce Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

**EXHIBIT A to
Staff Report**

RECORDING REQUESTED BY AND RETURN TO:

PACIFIC GAS AND ELECTRIC COMPANY
Salinas Land Department
356 E. Alisal Street
Salinas, California 93901

Location: City of Marina

Recording Fee \$ _____

Document Transfer Tax \$ 0

☒ This is a conveyance where the consideration and Value is less than \$100.00 (R&T 11911).

☐ Computed on Full Value of Property Conveyed, or

☐ Computed on Full Value Less Liens & Encumbrances Remaining at Time of Sale

☐ Exempt from the fee per GC 27388.1 (a) (2); This document is subject to Documentary Transfer Tax

(SPACE ABOVE FOR RECORDER'S USE ONLY)

Signature of declarant or agent determining tax

LD 2214-02-10023

PUBLIC UTILITY EASEMENT

(APN 031-271-009, 031-271-014)

**A RESOLUTION OF THE CITY OF MARINA APPROVING
THE CREATION OF PUBLIC UTILITY EASEMENTS ON CITY-OWNED PARCELS**

The City of Marina, a municipal corporation of the State of California, does hereby approve the creation of Public Utility Easements (PUEs), described and shown on Exhibits A, B, C, and D attached hereto and made a part hereof, for public utility purposes including electric, gas, communication facilities and all other public utility purposes; together with any and all appurtenances thereto, including the right from time to time to trim and to cut down and clear away or otherwise control any trees or brush. The PUEs hereby created and approved are to be kept open and free of buildings, structures and wells of any kind.

Dated _____, 20____.

City of Marina, a municipal corporation
of the State of California,

By _____
Name
Title

I hereby certify that a resolution was adopted on the _____ day of _____, 20____, by the _____ authorizing the foregoing.

By _____

Title _____

EXHIBIT "A"
Legal Description
Public Utility Easement
Lands of Fort Ord Military Reservation
APN 031-271-009

An easement for public utility purposes over that portion of land described as Parcels L5.6.1, L5.6.2, E4.3.2.1, & E4.6.1 and conveyed by Marina Redevelopment Agency, a public body, corporate and politic, of the State of California to the City of Marina, a municipal corporation by Quitclaim Deed recorded November 6, 2012, as Document No. 2012068033, Monterey County Records, and being also a portion of "Abrams I" as it is shown on that certain map recorded in Volume 25 of Surveys at Page 26, in the City of Marina, County of Monterey, State of California, more particularly described as follows:

COMMENCING at a found $\frac{3}{4}$ " iron pipe, tagged LS 5992 as shown on Corner Record No. 1732, being also the southerly terminus of the West line of Parcel B as shown on that Record of Survey, recorded on September 27, 1996, in Volume 20 of Surveys, at page 73, Monterey County Records;

- (a) thence South 48°14'49" West, a distance of 177.26 feet to a point of intersection thereof with the northerly line of Parcel 1 as shown on that Record of Survey, recorded on November 8, 1996, in Volume 20 of Surveys, at page 91, Monterey County Records, said point also being the **POINT OF BEGINNING**;
- (1) thence along said northerly line of Parcel 1, South 60°59'30" West, a distance of 32.17 feet;
- (2) thence leaving said northerly line of Parcel 1, North 14°26'44" West, a distance of 129.11 feet to the beginning of a tangent curve, concave southwesterly;
- (3) thence northwesterly, along the arc of said tangent curve, with a radius of 149.21 feet, through a central angle of 15°31'57", an arc distance of 40.45 feet to a point of reverse curvature;
- (4) thence northwesterly, along the arc of a reverse curve, concave northeasterly, with a radius of 178.50 feet, through a central angle of 15°49'05", an arc distance of 49.28 feet to the beginning of a tangent line;
- (5) thence along said tangent line, North 14°09'36" West, a distance of 169.59 feet to the beginning of a tangent curve, concave easterly;
- (6) thence northerly, along the arc of last said tangent curve, with a radius of 243.50 feet, through a central angle of 11°46'20", an arc distance of 50.03 feet to a point of reverse curvature;
- (7) thence northerly, along the arc of a reverse curve, concave westerly, with a radius of 208.50 feet, through a central angle of 15°20'57", an arc distance of 55.86 feet to the beginning of a compound curve;

- (8) thence northwesterly, along the arc of said compound curve, concave southwesterly, with a radius of 1,387.50 feet, through a central angle of $3^{\circ}25'05''$, an arc distance of 82.77 feet to the beginning of a non-tangent curve, concave southwesterly, with a radial bearing of North $69^{\circ}00'31''$ East;
- (9) thence northwesterly, along the arc of said non-tangent curve, with a radius of 1,141.50 feet, through a central angle of $15^{\circ}11'39''$, and an arc distance of 302.71 feet to the beginning of a compound curve;
- (10) thence northwesterly, along the arc of last said compound curve, concave southwesterly, with a radius of 527.50 feet, through a central angle of $27^{\circ}49'10''$, an arc distance of 256.12 feet to the beginning of a tangent line;
- (11) thence along said tangent line, North $64^{\circ}00'18''$ West, a distance of 8.17 feet to the beginning of a tangent curve, concave southerly;
- (12) thence westerly, along the arc of last said tangent curve, with a radius of 66.50 feet, through a central angle of $36^{\circ}32'59''$, an arc distance of 42.42 feet to a point of intersection thereof with the easterly line of Parcel D as shown on Tract No. 1465, Marina Heights, Phase 1 recorded on June 13, 2006, in Volume 23 of Cities and Towns Maps, at page 29, Monterey County Records, being also a non-tangent line;
- (13) thence along said easterly and non-tangent line, North $14^{\circ}14'55''$ East, a distance of 38.00 feet;
- (14) thence South $74^{\circ}23'07''$ East, a distance of 30.07 feet;
- (15) thence South $71^{\circ}30'29''$ East, a distance of 17.28 feet to the beginning of a non-tangent curve, concave southwesterly, with a radial bearing of North $27^{\circ}21'13''$ East;
- (16) thence southeasterly, along the arc of last said non-tangent curve, with a radius of 915.57 feet, through a central angle of $10^{\circ}04'44''$, an arc distance of 161.06 feet to a non-tangent line;
- (17) thence along last said non-tangent line, South $52^{\circ}38'44''$ East, a distance of 30.90 feet;
- (18) thence, South $48^{\circ}47'46''$ East, a distance of 24.23 feet to the beginning of a non-tangent curve, concave southwesterly, with a radial bearing of North $44^{\circ}44'10''$ East;
- (19) thence southeasterly, along the arc of last said non-tangent curve, with a radius of 548.50 feet, through a central angle of $16^{\circ}02'02''$, an arc distance of 153.49 feet to the beginning of a tangent line;
- (20) thence along last said tangent line, South $29^{\circ}13'48''$ East, a distance of 121.94 feet;
- (21) thence South $25^{\circ}03'21''$ East, a distance of 66.21 feet to the beginning of a tangent curve, concave westerly;

- (22) thence southerly, along the arc of last said tangent curve, with a radius of 199.90 feet, through a central angle of 21°22'22", an arc distance of 74.57 feet to a point of reverse curvature;
- (23) thence southerly, along the arc of last said reverse curve, concave easterly, with a radius of 51.50 feet, through a central angle of 11°51'15", an arc distance of 10.66 feet to the beginning of a tangent line;
- (24) thence along last said tangent line, S15°32'14"E, a distance of 54.58 feet to the beginning of a non-tangent curve, concave southeasterly, with a radial bearing of North 51°35'19" West;
- (25) thence southerly, along the arc of last said non-tangent curve, with a radius of 21.50 feet, through a central angle of 52°49'27", an arc distance of 19.82 feet to the beginning of a tangent line;
- (26) thence along last said tangent line, South 14°24'46" East, a distance of 301.96 feet to the beginning of a tangent curve, concave northeasterly;
- (27) thence southeasterly, along the arc of last said tangent curve, with a radius of 1,068.50 feet, through a central angle of 08°09'09", an arc distance of 152.03 feet to the **POINT OF BEGINNING**.

Containing an area of 40,709 square feet / 0.94 acres, more or less.

The above described Public Utility Easement is graphically depicted on the attached Exhibit "B" and made a part of this description by reference thereto.

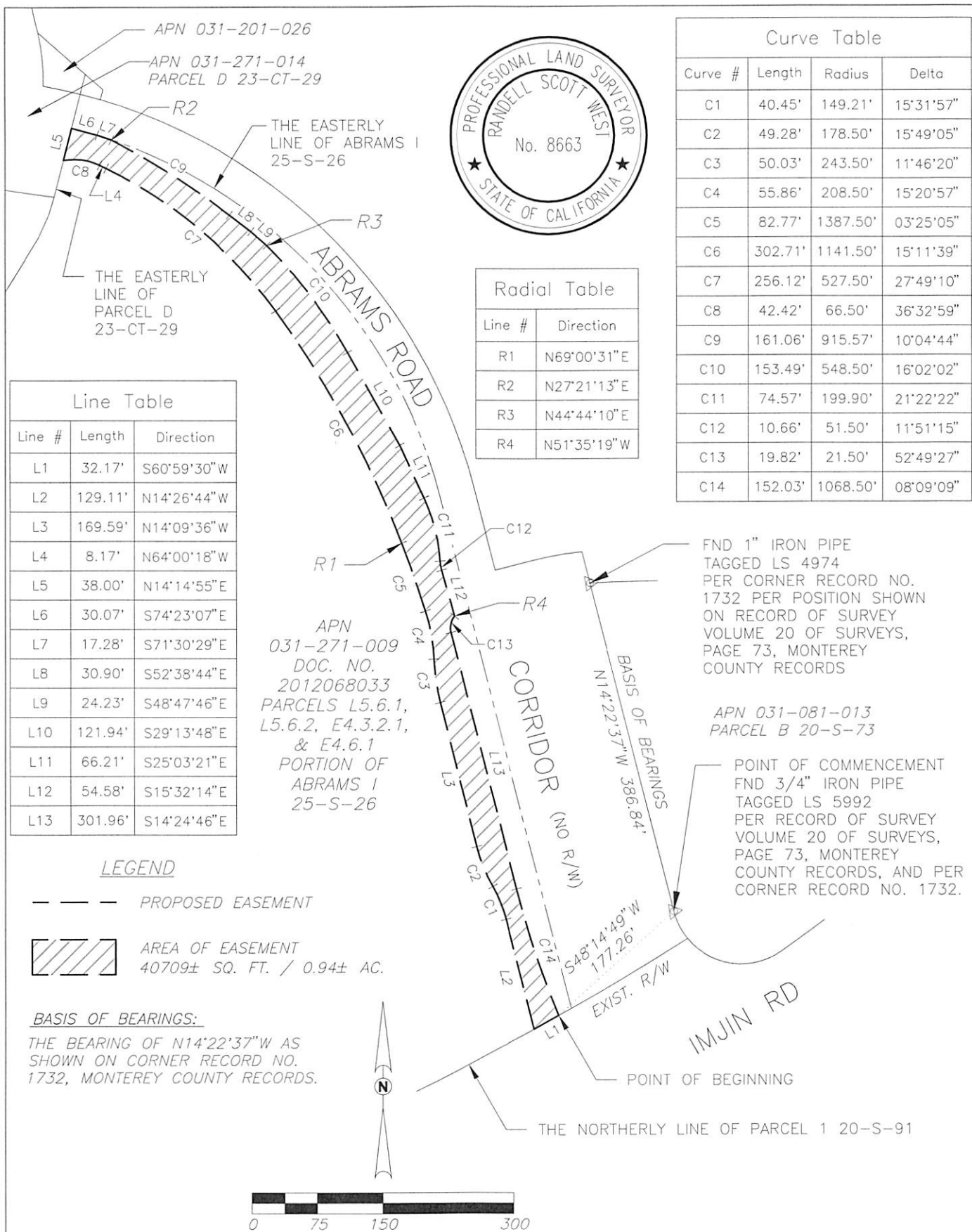
END DESCRIPTION

This legal description was prepared by me, or under my direction, in accordance with the Professional Land Surveyor's Act.

Randell Scott West, PLS 8663

November 19, 2021
Date





	CONSULTANT Blair, Church & Flynn Consulting Engineers 451 Clovis Avenue, Suite 200 Clovis, California 93612 Tel (559) 326-1400 Fax (559) 326-1500	EXHIBIT "B"—PLAT TO ACCOMPANY LEGAL DESCRIPTION			
		PUBLIC UTILITY EASEMENT LANDS OF FORD ORD MILITARY RESERVATION APN: 031-271-009		APPROVED BY CITY ENGINEER	
		DR. BY: DRG	CH. BY: RSW	DATE: 11/19/2021	SCALE: AS NOTED PAGE 4 OF 4

EXHIBIT "C"
Legal Description
Public Utility Easement
Lands of Fort Ord Military Reservation
APN 031-271-014

An easement for public utility purposes over that portion of Parcel D as shown on Tract No. 1465, Marina Heights, Phase 1 recorded on June 13, 2006, in Volume 23 of Cities and Towns Maps, at page 29, Monterey County Records, in the City of Marina, County of Monterey, State of California, more particularly described as follows:

COMMENCING at a found $\frac{3}{4}$ " iron pipe, tagged LS 5992 as shown on Corner Record No. 1732, being also the southerly terminus of the West line of Parcel B as shown on that Record of Survey, recorded on September 27, 1996, in Volume 20 of Surveys, at page 73, Monterey County Records;

- (a) thence North 39°12'31" West, a distance of 1107.16 feet to a point of intersection thereof with the easterly line of said Parcel D, and the **POINT OF BEGINNING**;
- (1) thence North 75°45'05" West, a distance of 39.24 feet to the beginning of a non-tangent curve, concave westerly, with a radial bearing of South 69°17'43" East;
- (2) thence northerly, along the arc of said non-tangent curve, with a radius of 235.00 feet, through a central angle of 18°50'01", an arc distance of 77.25 feet to the beginning of a non-tangent curve, concave southerly, with a radial bearing of North 10°17'02" East;
- (3) thence easterly, along the arc of last said non-tangent curve, with a radius of 625.00 feet, through a central angle of 03°57'53", an arc distance of 43.25 feet to a point of intersection thereof with the easterly line of said Parcel D, and a non-tangent line;
- (4) thence along said easterly and non-tangent line, South 14°14'55" West, a distance of 78.29 feet to the **POINT OF BEGINNING**.

Containing an area of 3,047 square feet / 0.07 acres, more or less.

The above described Public Utility Easement is graphically depicted on the attached Exhibit "D" and made a part of this description by reference thereto.

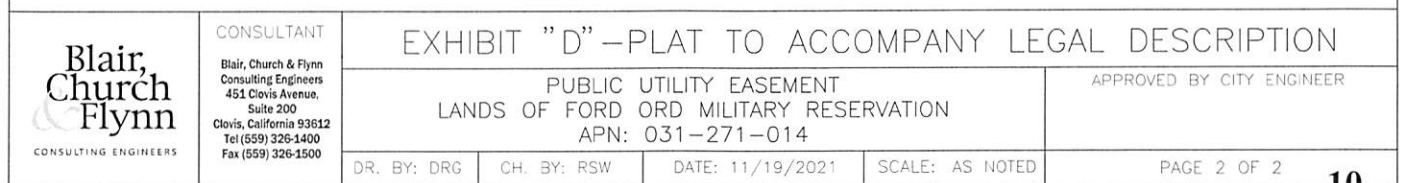
END DESCRIPTION

This legal description was prepared by me, or under my direction, in accordance with the Professional Land Surveyor's Act.

Randell Scott West, PLS 8663

November 19, 2021
Date





January 14, 2022

Item No. 8.g.4

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of January 19, 2022

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-,
AUTHORIZING APPLICATION FOR AND ACCEPTANCE OF A 2021
AMERICAN RESCUE PLAN ACT FEDERAL AVIATION
ADMINISTRATION GRANT FOR THE AIRPORT AND AUTHORIZING
CITY MANAGER TO EXECUTE THE APPLICATION AND GRANT
AGREEMENT**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2022-, authorizing application for and acceptance of a 2021 American Rescue Plan Act Federal Aviation Administration Grant for the Airport, and;
2. Authorizing City Manager to execute the application and grant agreement.

BACKGROUND:

The American Rescue Plan (ARP) Act, as announced by the Federal Secretary of Transportation on June 22, 2021, will provide funds to provide economic relief to airports in response to the COVID-19 pandemic. The Federal Aviation Administration (FAA) will distribute these grant funds under the Airport Rescue Grant Program (ARGP).

ANALYSIS:

Based on the ARP Act formulas, the Marina Municipal Airport is eligible for a maximum grant distribution of \$32,000. This grant offer requires no local match and the grant may be open for up to four years, however, FAA is encouraging airports to expend the funds expeditiously.

This ARGP Grant is provided in accordance with the ARP Act to provide eligible airports with funding for costs related to operations, personnel, cleaning, sanitation, janitorial services, combating the spread of pathogens at the airport, and debt service payments.

The FAA will reimburse sponsors for operational and maintenance expenses directly related to the airport incurred on or after January 20, 2020. Operational expenses are those expenses necessary to operate, maintain, and manage an airport. They include expenses such as payroll, utilities, service contracts, and items generally having a useful life of less than one year, including personal protective equipment and cleaning supplies.

FISCAL IMPACT:

Should the City Council approve this request, the airport can receive reimbursement for operational and maintenance expenses directly related to the airport incurred on or after January 20, 2020 of up to \$32,000. Grant reimbursement funds will be recorded to FY 2021-22 Budget, Airport Operations Fund 555, Federal Grant - Oper ARGP FAA, Account No. 555.000.000.00-5550.502.

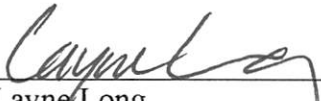
CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

Jeff Crechriou
Airport Services Manager
City of Marina

REVIEWED/CONCUR:



Layne Long
City Manager
City of Marina



RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
AUTHORIZING APPLICATION FOR AND ACCEPTANCE OF A 2021 AMERICAN
RESCUE PLAN ACT FEDERAL AVIATION ADMINISTRATION GRANT FOR THE
AIRPORT AND AUTHORIZING CITY MANAGER TO EXECUTE THE APPLICATION
AND GRANT AGREEMENT

WHEREAS, the American Rescue Plan (ARP) Act, as announced by the Federal Secretary of Transportation on June 22, 2021, will provide funds to provide economic relief to airports in response to the COVID-19 pandemic. The Federal Aviation Administration (FAA) will distribute these grant funds under the Airport Rescue Grant Program (ARGP), and;

WHEREAS, based on the ARP Act formulas, the Marina Municipal Airport is eligible for a maximum grant distribution of \$32,000. This grant offer requires no local match and the grant may be open for up to four years, however, FAA is encouraging airports to expend the funds expeditiously, and;

WHEREAS, this ARGP Grant is provided in accordance with the ARP Act to provide eligible airports with funding for costs related to operations, personnel, cleaning, sanitation, janitorial services, combating the spread of pathogens at the airport, and debt service payment, and;

WHEREAS, the airport can receive reimbursement for operational and maintenance expenses directly related to the airport incurred on or after January 20, 2020 of up to \$32,000. Grant reimbursement funds will be recorded to FY 2021-22 Budget, Airport Operations Fund 555, Federal Grant - Oper ARGP FAA, Account No. 555.000.000.00-5550.502.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Authorize application for and acceptance of a 2021 American Rescue Plan Act Federal Aviation Administration Grant for the Airport, and;
2. Authorize City Manager to execute the application and grant agreement.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 19th day of January 2022, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ATTEST:

Bruce C. Delgado, Mayor

Anita Sharp, Deputy City Clerk

EXHIBIT A

3-06-0367-018-2022



U.S. Department
of Transportation
Federal Aviation
Administration

AIRPORT RESCUE GRANT

GRANT AGREEMENT

Part I - Offer

Federal Award Offer Date December 20, 2021

Airport/Planning Area Marina Municipal Airport

Airport Rescue Grant No. 3-06-0367-018-2022

Unique Entity Identifier 004948444

TO: City of Marina

(herein called the "Sponsor")

FROM: The United States of America (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA an Airport Rescue Grant Application dated June 28, 2021, for a grant of Federal funds at or associated with the Marina Municipal Airport, which is included as part of this Airport Rescue Grant Agreement;

WHEREAS, the Sponsor has accepted the terms of FAA's Airport Rescue Grant offer;

WHEREAS, in consideration of the promises, representations and assurances provided by the Sponsor, the FAA has approved the Airport Rescue Grant Application for the Marina Municipal Airport, (herein called the "Grant" or "Airport Rescue Grant") consisting of the following:

WHEREAS, this Airport Rescue Grant is provided in accordance with the American Rescue Plan Act ("ARP Act", or "the Act"), Public Law 117-2, as described below, to provide eligible Sponsors with funding for costs related to operations, personnel, cleaning, sanitization, janitorial services, combating the spread of pathogens at the airport, and debt service payments. Airport Rescue Grant amounts to specific airports are derived by legislative formula (See Section 7102 of the Act).

WHEREAS, the purpose of this Airport Rescue Grant is to prevent, prepare for, and respond to the coronavirus pandemic. Funds provided under this Airport Rescue Grant Agreement must be used only for purposes directly related to the airport. Such purposes can include the reimbursement of an airport's operational expenses or debt service payments in accordance with the limitations prescribed in the Act.

Airport Rescue Grants may be used to reimburse airport operational expenses directly related to Marina Municipal incurred no earlier than January 20, 2020.

Airport Rescue Grants also may be used to reimburse a Sponsor's payment of debt service where such payments occur on or after March 11, 2021. Funds provided under this Airport Rescue Grant Agreement will be governed by the same principles that govern "airport revenue." New airport development projects not directly related to combating the spread of pathogens may not be funded with this Grant. Funding under this Grant for airport development projects to combat the spread of pathogens will be reallocated using an addendum to this Agreement for identified and approved projects.

NOW THEREFORE, in accordance with the applicable provisions of the ARP Act, Public Law 117-2, the representations contained in the Grant Application, and in consideration of (a) the Sponsor's acceptance of this Offer; and, (b) the benefits to accrue to the United States and the public from the accomplishment of the Grant and in compliance with the conditions as herein provided,

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay 100% percent of the allowable costs incurred as a result of and in accordance with this Grant Agreement.

Assistance Listings Number (Formerly CFDA Number): 20.106

This Offer is made on and **SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is \$32,000, allocated as follows:
 - \$32,000 ARPA KW2022
2. **Grant Performance.** This Airport Rescue Grant Agreement is subject to the following Federal award requirements:
 - a. The Period of Performance:
 1. Shall start on the date the Sponsor formally accepts this agreement, and is the date signed by the last Sponsor signatory to the agreement. The end date of the period of performance is 4 years (1,460 calendar days) from the date of acceptance. The period of performance end date shall not affect, relieve, or reduce Sponsor obligations and assurances that extend beyond the closeout of this Grant Agreement.
 2. Means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods. (2 Code of Federal Regulations (CFR) § 200.1)
 - b. The Budget Period:
 1. For this Airport Rescue Grant is 4 years (1,460 calendar days). Pursuant to 2 CFR § 200.403(h), the Sponsor may charge to the Grant only allowable costs incurred during the budget period.
 2. Means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which the Sponsor is authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to § 200.308.
 - c. Close out and Termination.

1. Unless the FAA authorizes a written extension, the Sponsor must submit all Grant closeout documentation and liquidate (pay-off) all obligations incurred under this award no later than 120 calendar days after the end date of the period of performance. If the Sponsor does not submit all required closeout documentation within this time period, the FAA will proceed to close out the Grant within one year of the period of performance end date with the information available at the end of 120 days. (2 CFR § 200.344)
2. The FAA may terminate this Airport Rescue Grant, in whole or in part, in accordance with the conditions set forth in 2 CFR § 200.340, or other Federal regulatory or statutory authorities as applicable.
3. **Unallowable Costs.** The Sponsor shall not seek reimbursement for any costs that the FAA has determined to be unallowable under the ARP Act.
4. **Indirect Costs - Sponsor.** The Sponsor may charge indirect costs under this award by applying the indirect cost rate identified in the Grant Application as accepted by the FAA, to allowable costs for Sponsor direct salaries and wages only.
5. **Final Federal Share of Costs.** The United States' share of allowable Grant costs is 100%.
6. **Completing the Grant without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the Grant without undue delays and in accordance with this Airport Rescue Grant Agreement, the ARP Act, and the regulations, policies, standards, and procedures of the Secretary of Transportation ("Secretary"). Pursuant to 2 CFR § 200.308, the Sponsor agrees to report to the FAA any disengagement from funding eligible expenses under the Grant that exceeds three months or a 25 percent reduction in time devoted to the Grant, and request prior approval from FAA. The report must include a reason for the stoppage. The Sponsor agrees to comply with the attached assurances, which are part of this agreement and any addendum that may be attached hereto at a later date by mutual consent.
7. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.
8. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs unless this offer has been accepted by the Sponsor on or before December 31, 2021, or such subsequent date as may be prescribed in writing by the FAA.
9. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner, including uses that violate this Airport Rescue Grant Agreement, the ARP Act, or other provision of applicable law. For the purposes of this Airport Rescue Grant Agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor that were originally paid pursuant to this or any other Federal grant agreement(s). The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share require advance approval by the Secretary.
10. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or relate to this Airport Rescue

Grant Agreement, including, but not limited to, any action taken by a Sponsor related to or arising from, directly or indirectly, this Airport Rescue Grant Agreement.

11. System for Award Management (SAM) Registration and Unique Entity Identifier (UEI).

- a. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in SAM until the Sponsor submits the final financial report required under this Grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
- b. Unique entity identifier (UEI) means a 12-character alpha-numeric value used to identify a specific commercial, nonprofit or governmental entity. A UEI may be obtained from SAM.gov at <https://sam.gov/SAM/pages/public/index.jsf>.

12. Electronic Grant Payment(s). Unless otherwise directed by the FAA, the Sponsor must make each payment request under this agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.

13. Air and Water Quality. The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this Agreement.

14. Financial Reporting and Payment Requirements. The Sponsor will comply with all Federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.

15. Buy American. Unless otherwise approved in advance by the FAA, in accordance with 49 United States Code (U.S.C.) § 50101, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured goods produced outside the United States to be used for any project for which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract.

16. Audits for Sponsors.

PUBLIC SPONSORS. The Sponsor must provide for a Single Audit or program-specific audit in accordance with 2 CFR Part 200. The Sponsor must submit the audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. Upon request of the FAA, the Sponsor shall provide one copy of the completed audit to the FAA.

17. Suspension or Debarment. When entering into a "covered transaction" as defined by 2 CFR § 180.200, the Sponsor must:

- a. Verify the non-Federal entity is eligible to participate in this Federal program by:
 1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if the non-Federal entity is excluded or disqualified; or
 2. Collecting a certification statement from the non-Federal entity attesting the entity is not excluded or disqualified from participating; or

3. Adding a clause or condition to covered transactions attesting the individual or firm is not excluded or disqualified from participating.
- b. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions (e.g., subcontracts).
- c. Immediately disclose to the FAA whenever the Sponsor (1) learns the Sponsor has entered into a covered transaction with an ineligible entity, or (2) suspends or debar a contractor, person, or entity.

18. Ban on Texting While Driving.

- a. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
 1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to this Airport Rescue Grant or subgrant funded by this Grant.
 2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - A. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - B. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- b. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts, and subcontracts funded by this Airport Rescue Grant.

19. Trafficking in Persons.

- a. You as the recipient, your employees, subrecipients under this Airport Rescue Grant, and subrecipients' employees may not –
 1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 2. Procure a commercial sex act during the period of time that the award is in effect; or
 3. Use forced labor in the performance of the award or subawards under the Airport Rescue Grant.
- b. The FAA as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity –
 1. Is determined to have violated a prohibition in paragraph a. of this Airport Rescue Grant Agreement term; or
 2. Has an employee who is determined by the agency official authorized to terminate the Airport Rescue Grant Agreement to have violated a prohibition in paragraph a. of this Airport Rescue Grant term through conduct that is either –
 - A. Associated with performance under this Airport Rescue Grant; or

- B. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," as implemented by the FAA at 2 CFR Part 1200.
- c. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a. of this Grant condition during this Airport Rescue Grant Agreement.
- d. Our right to terminate unilaterally that is described in paragraph a. of this Grant condition:
 - 1. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. § 7104(g)), and
 - 2. Is in addition to all other remedies for noncompliance that are available to the FAA under this Airport Rescue Grant.

20. Employee Protection from Reprisal.

- a. Prohibition of Reprisals —
 - 1. In accordance with 41 U.S.C. § 4712, an employee of a grantee or subgrantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph (a)(2) of this Grant condition, information that the employee reasonably believes is evidence of:
 - a. Gross mismanagement of a Federal grant;
 - b. Gross waste of Federal funds;
 - c. An abuse of authority relating to implementation or use of Federal funds;
 - d. A substantial and specific danger to public health or safety; or
 - e. A violation of law, rule, or regulation related to a Federal grant.
 - 2. Persons and bodies covered: The persons and bodies to which a disclosure by an employee is covered are as follows:
 - a. A member of Congress or a representative of a committee of Congress;
 - b. An Inspector General;
 - c. The Government Accountability Office;
 - d. A Federal employee responsible for oversight or management of a grant program at the relevant agency;
 - e. A court or grand jury;
 - f. A management official or other employee of the Sponsor, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct; or
 - g. An authorized official of the Department of Justice or other law enforcement agency.
 - 3. Submission of Complaint — A person who believes that they have been subjected to a reprisal prohibited by paragraph a. of this Airport Rescue Grant Agreement may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.
 - 4. Time Limitation for Submittal of a Complaint — A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.

5. Required Actions of the Inspector General — Actions, limitations, and exceptions of the Inspector General's office are established under 41 U.S.C. § 4712(b).
6. Assumption of Rights to Civil Remedy — Upon receipt of an explanation of a decision not to conduct or continue an investigation by the Office of Inspector General, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c).
21. **Limitations.** Nothing provided herein shall be construed to limit, cancel, annul, or modify the terms of any Federal grant agreement(s), including all terms and assurances related thereto, that have been entered into by the Sponsor and the FAA prior to the date of this Airport Rescue Grant Agreement.
22. **Face Coverings Policy.** The sponsor agrees to implement a face-covering (mask) policy to combat the spread of pathogens. This policy must include a requirement that all persons wear a mask, in accordance with Centers for Disease Control (CDC) and Transportation Security Administration (TSA) requirements, as applicable, at all times while in all public areas of the airport property, except to the extent exempted under those requirements. This special condition requires the airport sponsor continue to require masks until Executive Order 13998, Promoting COVID-19 Safety in Domestic and International Travel, is no longer effective.

SPECIAL CONDITIONS FOR USE OF AIRPORT RESCUE GRANT FUNDS

CONDITIONS FOR EQUIPMENT -

1. **Equipment or Vehicle Replacement.** The Sponsor agrees that when using funds provided by this Grant to replace equipment, the proceeds from the trade-in or sale of such replaced equipment shall be classified and used as airport revenue.
2. **Equipment Acquisition.** The Sponsor agrees that for any equipment acquired with funds provided by this Grant, such equipment shall be used solely for purposes directly related to combating the spread of pathogens at the airport.
3. **Low Emission Systems.** The Sponsor agrees that vehicles and equipment acquired with funds provided in this Grant:
 - a. Will be maintained and used at the airport for which they were purchased; and
 - b. Will not be transferred, relocated, or used at another airport without the advance consent of the FAA.

The Sponsor further agrees that it will maintain annual records on individual vehicles and equipment, project expenditures, cost effectiveness, and emission reductions.

CONDITIONS FOR UTILITIES AND LAND -

4. **Utilities Proration.** For purposes of computing the United States' share of the allowable airport operations and maintenance costs, the allowable cost of utilities incurred by the Sponsor to operate and maintain airport(s) included in the Grant must not exceed the percent attributable to the capital or operating costs of the airport.
5. **Utility Relocation in Grant.** The Sponsor understands and agrees that:
 - a. The United States will not participate in the cost of any utility relocation unless and until the Sponsor has submitted evidence satisfactory to the FAA that the Sponsor is legally responsible for payment of such costs;

- b. FAA participation is limited to those utilities located on-airport or off-airport only where the Sponsor has an easement for the utility; and
- c. The utilities must serve a purpose directly related to the Airport.

The Sponsor's acceptance of this Offer and ratification and adoption of the Airport Rescue Grant Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor. The Offer and Acceptance shall comprise an Airport Rescue Grant Agreement, as provided by the ARP Act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to this Grant. The effective date of this Airport Rescue Grant Agreement is the date of the Sponsor's acceptance of this Offer.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

Dated December 20, 2021

**UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION**

Laurie J. Suttmeier

Laurie J. Suttmeier (Dec 20, 2021 08:23 PST)

(Signature)

Laurie J. Suttmeier

(Typed Name)

Manager, SFO-ADO

(Title of FAA Official)

Part II - Acceptance

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Airport Rescue Grant Application and incorporated materials referred to in the foregoing Offer under Part I of this Airport Rescue Grant Agreement, and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Airport Rescue Grant Application and all applicable terms and conditions provided for in the ARP Act and other applicable provisions of Federal law.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

I declare under penalty of perjury that the foregoing is true and correct. ¹

Dated December 20, 2021

City of Marina

(Name of Sponsor)

Layne Long

Layne Long (Dec 20, 2021 12:52 EST)

(Signature of Sponsor's Designative Official/Representative)

By: Layne Long

(Type Name of Sponsor's Designative Official/Representative)

Title: City Manager

(Title of Sponsor's Designative Official/Representative)

¹ Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

CERTIFICATE OF SPONSOR'S ATTORNEY

I, _____, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of California. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the ARP Act. The Sponsor understands funding made available under this Grant Agreement may only be used for costs related to operations, personnel, cleaning, sanitization, janitorial services, and combating the spread of pathogens at the airport incurred on or after January 20, 2020, or for debt service payments that are due on or after March 11, 2021. Further, it is my opinion the foregoing Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Please read the following information: By signing this document, you are agreeing that you have reviewed the following consumer disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

Dated at _____

By: _____

(Signature of Sponsor's Attorney)

AIRPORT RESCUE GRANT ASSURANCES

AIRPORT SPONSORS

A. General.

1. These Airport Rescue Grant Assurances are required to be submitted as part of the application by sponsors requesting funds under the provisions of the American Rescue Plan Act of 2021 ("ARP Act," or "the Act"), Public Law 117-2. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
2. Upon acceptance of this Airport Rescue Grant offer by the sponsor, these assurances are incorporated into and become part of this Airport Rescue Grant Agreement.

B. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this Airport Rescue Grant that:

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Airport Rescue Grant including but not limited to the following:

FEDERAL LEGISLATION

- a. 49 U.S.C. Chapter 471, as applicable
- b. Davis-Bacon Act — 40 U.S.C. 276(a), et. seq.
- c. Federal Fair Labor Standards Act — 29 U.S.C. 201, et. seq.
- d. Hatch Act — 5 U.S.C. 1501, et. seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et. seq.
- f. National Historic Preservation Act of 1966 — Section 106 — 16 U.S.C. 470(f).
- g. Archeological and Historic Preservation Act of 1974 — 16 U.S.C. 469 through 469c.
- h. Native Americans Grave Repatriation Act — 25 U.S.C. Section 3001, et. seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 — Section 102(a) — 42 U.S.C. 4012a.
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f)).
- m. Rehabilitation Act of 1973 — 29 U.S.C. 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin).
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 — 42 U.S.C. 6101, et. seq.

- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968 — 42 U.S.C. 4151, et. seq.
- s. Power plant and Industrial Fuel Use Act of 1978 — Section 403- 2 U.S.C. 8373.
- t. Contract Work Hours and Safety Standards Act — 40 U.S.C. 327, et. seq.
- u. Copeland Anti-kickback Act — 18 U.S.C. 874.1.
- v. National Environmental Policy Act of 1969 — 42 U.S.C. 4321, et. seq.
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- x. Single Audit Act of 1984 — 31 U.S.C. 7501, et. seq.²
- y. Drug-Free Workplace Act of 1988 — 41 U.S.C. 702 through 706.
- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

EXECUTIVE ORDERS

- a. Executive Order 11246 – Equal Employment Opportunity
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12699 – Seismic Safety of Federal and Federally Assisted New Building Construction
- f. Executive Order 12898 – Environmental Justice
- g. Executive Order 14005 – Ensuring the Future Is Made in All of America by All of America's Workers.

FEDERAL REGULATIONS

- a. 2 CFR Part 180 – OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.^{3, 4}
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment.
- d. 28 CFR Part 35 – Discrimination on the Basis of Disability in State and Local Government Services.
- e. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- f. 29 CFR Part 1 – Procedures for predetermination of wage rates.¹
- g. 29 CFR Part 3 – Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.¹

- h. 29 CFR Part 5 – Labor standards provisions applicable to contracts covering Federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).¹
- i. 41 CFR Part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally assisted contracting requirements).¹
- j. 49 CFR Part 20 – New restrictions on lobbying.
- k. 49 CFR Part 21 – Nondiscrimination in Federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- l. 49 CFR Part 23 – Participation by Disadvantage Business Enterprise in Airport Concessions.
- m. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Program.
- n. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.¹
- o. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- p. 49 CFR Part 30 – Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- q. 49 CFR Part 32 – Government-wide Requirements for Drug-Free Workplace (Financial Assistance).
- r. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- s. 49 CFR Part 41 – Seismic safety of Federal and Federally assisted or regulated new building construction.

FOOTNOTES TO AIRPORT RESCUE GRANT ASSURANCE B

- ¹ These laws do not apply to airport planning sponsors.
- ² These laws do not apply to private sponsors.
- ³ Cost principles established in 2 CFR Part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.
- ⁴ Audit requirements established in 2 CFR Part 200 subpart F are the guidelines for audits.

SPECIFIC ASSURANCES

Specific assurances required to be included in grant agreements by any of the above laws, regulations, or circulars are incorporated by reference in this Grant Agreement.

1. Purpose Directly Related to the Airport

It certifies that the reimbursement sought is for a purpose directly related to the airport.

2. Responsibility and Authority of the Sponsor.

a. Public Agency Sponsor:

It has legal authority to apply for this Grant, and to finance and carry out the proposed grant; that an official decision has been made by the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing

and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this Grant and to finance and carry out the proposed Grant and comply with all terms, conditions, and assurances of this Grant Agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Good Title.

It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.

4. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Grant Agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish, or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.
- b. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with this Grant Agreement.
- c. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations, and the terms and conditions of this Grant Agreement.

5. Consistency with Local Plans.

Any project undertaken by this Grant Agreement is reasonably consistent with plans (existing at the time of submission of the Airport Rescue Grant application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

6. Consideration of Local Interest.

It has given fair consideration to the interest of communities in or near where any project undertaken by this Grant Agreement may be located.

7. Consultation with Users.

In making a decision to undertake any airport development project undertaken by this Grant Agreement, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

8. Pavement Preventative Maintenance.

With respect to a project undertaken by this Grant Agreement for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed, or repaired with Federal financial assistance at the airport, including Airport Rescue Grant funds provided under this Grant Agreement. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

9. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all Grant accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this Grant, the total cost of the Grant in connection with which this Grant is given or used, and the amount or nature of that portion of the cost of the Grant supplied by other sources, and such other financial records pertinent to the Grant. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this Grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a Grant or relating to the Grant in connection with which this Grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

10. Minimum Wage Rates.

It shall include, in all contracts in excess of \$2,000 for work on the airport funded under this Grant Agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

11. Veteran's Preference.

It shall include in all contracts for work on any airport development project funded under this Grant Agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

12. Operation and Maintenance.

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, State and local agencies for maintenance and

operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for:

1. Operating the airport's aeronautical facilities whenever required;
 2. Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
 3. Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

13. Hazard Removal and Mitigation.

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

14. Compatible Land Use.

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft.

15. Exclusive Rights.

The sponsor shall not grant an exclusive right to use an air navigation facility on which this Grant has been expended. However, providing services at an airport by only one fixed-based operator is not an exclusive right if—

- a. it is unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide the services; and
- b. allowing more than one fixed-based operator to provide the services requires a reduction in space leased under an agreement existing on September 3, 1982, between the operator and the airport.

16. Airport Revenues.

- a. This Grant shall be available for any purpose for which airport revenues may lawfully be used to prevent, prepare for, and respond to coronavirus. Funds provided under this Airport Rescue Grant Agreement will only be expended for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport(s) subject to this agreement and all applicable addendums for costs

related to operations, personnel, cleaning, sanitization, janitorial services, combating the spread of pathogens at the airport, and debt service payments as prescribed in the Act.

- b. For airport development, 49 U.S.C. § 47133 applies.

17. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 - 1. all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 - 2. all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

18. Land for Federal Facilities.

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

19. Airport Layout Plan.

- a. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, it will keep up to date at all times an airport layout plan of the airport showing:
 - 1. boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
 - 2. the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;
 - 3. the location of all existing and proposed non-aviation areas and of all existing improvements thereon; and
 - 4. all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan

as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

- b. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, if a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

20. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this Grant.

- a. Using the definitions of activity, facility, and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR Part 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by or pursuant to these assurances.
- b. Applicability
 - 1. Programs and Activities. If the sponsor has received a grant (or other Federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
 - 2. Facilities. Where it receives a grant or other Federal financial assistance to construct, expand, renovate, remodel, alter, or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
 - 3. Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of, real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.
- c. Duration

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

 - 1. So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
 - 2. So long as the sponsor retains ownership or possession of the property.
- d. Required Solicitation Language

It will include the following notification in all solicitations for bids, Requests for Proposals for work, or material under this Grant and in all proposals for agreements, including airport concessions, regardless of funding source:

"The City of Marina, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

e. Required Contract Provisions.

1. It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT Acts and regulations.
2. It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
3. It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
4. It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
 - A. For the subsequent transfer of real property acquired or improved under the applicable activity, grant, or program; and
 - B. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, grant, or program.
 - C. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
 - D. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

21. Foreign Market Restrictions.

It will not allow funds provided under this Grant to be used to fund any activity that uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

22. Policies, Standards and Specifications.

It will carry out any project funded under an Airport Rescue Grant in accordance with policies, standards, and specifications approved by the Secretary including, but not limited to, current FAA Advisory Circulars for AIP projects, as of June 28, 2021.

23. Access By Intercity Buses.

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

24. Disadvantaged Business Enterprises.

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

25. Acquisition Thresholds.

The FAA deems equipment to mean tangible personal property having a useful life greater than one year and a per-unit acquisition cost equal to or greater than \$5,000. Procurements by micro-purchase means the acquisition of goods or services for which the aggregate dollar amount does not exceed \$10,000, unless authorized in accordance with 2 CFR § 200.320. Procurement by small purchase procedures means those relatively simple and informal procurement methods for securing goods or services that do not exceed the \$250,000 threshold for simplified acquisitions.

Current FAA Advisory Circulars Required for Use in AIP Funded and PFC Approved Projects

View the most current Series 150 Advisory Circulars (ACs) for Airport Projects at
http://www.faa.gov/airports/resources/advisory_circulars and
http://www.faa.gov/regulations_policies/advisory_circulars

CITY OF MARINA

HUMAN RESOURCES & RISK DEPARTMENT
211 Hillcrest Avenue
Marina, CA 93933
Phone: 831.884.1283
Fax: 831.384.0860



CLAIM FORM

This form is provided pursuant to Government Code Section 910.4 and shall be used by any person presenting a claim to the City of Marina under Government Code Section 810 et seq., except as provided in Government Code Sections 905 and 905.1. If additional space is needed for any of the required information, please attach additional sheets and note your name, date of claim and City of Marina.

SECTION 1: CLAIMANT INFORMATION

Frank Lambert

[REDACTED]

SECTION 2: NOTICES

The person presenting this claim desires that notices be sent to the following address:

John R. Coniglio

Law Office of John R. Coniglio

490 Calle Principal

Monterey, CA 93940

831-373-3151

Telephone

Number

CA

93940

SECTION 3: CLAIM INFORMATION

Date of the occurrence/transaction which gave rise to the claim: September 23, 2021

Provide the location of the occurrence/transaction which gave rise to the claim. If applicable, include street address, city or county, highway number, mile post number and direction of travel:

Abrams Drive at intersection 52 feet east of Preston Avenue.

Explain the circumstances of the occurrence or transaction which gave rise to the claim. State all

facts that support your claim against the City of Marina and why you believe the City of Marina is

responsible for the alleged damage or injury.

See Attachment 3 -Claim Information attached hereto.

Attachment 3. Claim Information.

Explain the circumstances of the occurrence or transaction which gave rise to the claim. State all facts that support your claim against the City of Marina and why you believe the City of Marina is responsible for the alleged damage or injury.

This unfortunate incident occurred as follows:

On September 23, 2021 at approximately 11:36 a.m., my client Frank Lambert, a resident of Marina, was riding his bicycle westbound on Abrams Drive near Preston Drive. He had just turned from Imjin Road and was on his way home.

He had traveled that road many times over the years. Once near the bus bench by Preston Drive there was a bump in the road that wasn't able to be seen unless you were on top of it. A retired truck driver, he mentioned always scanning the road specifically for cars and when his front tire hit the bump he and the bicycle went flying causing him serious personal injury. He sustained significant facial injuries and a nasal fracture. He also sustained a significant degloving injury to his left hand with possible ligament injuries.

Provide the name(s) of the City of Marina employee(s) causing the injury, damage or lost, if known.

Provide the amount claimed if said amount totals less than ten thousand dollars (\$10,000.00) as of the date presentation of the claim (including the estimated amount of any prospective injury, damage, or lost, insofar as it may be known at the time of the presentation of the claim), together with the basis of computation of the amount claim.

Amount Claimed: \$ _____

Basis for computation: _____

If the amount claimed exceeds ten thousand dollars (\$10,000.00), do not provide the dollar amount of the claim. However, please indicate below whether the claim would be a limited civil case. A **Limited Civil Case** is one where the amount claimed does not exceed twenty-five thousand dollars (\$25,000.00). **Non-Limited Civil Case** is one where the amount may exceed twenty-five thousand dollars (\$25,000.00)

_____ Limited Civil Case

☒ Non-Limited Civil Case

SECTION 4: INSURANCE INFORMATION (OPTIONAL – MAY BE COMPLETE IF CLAIM INVOLVES A MOTOR VEHICLE)

Has a claim for the alleged damage/injury been filled or will it be filed with your insurance carrier?

☐ Yes (If marked, please provide information below.

☐ No

Name of Insurance Carrier

() _____
Telephone Number (include area code)

Mailing Address _____ City _____ State _____ Zip Code _____

Policy Number: _____ Deductible: \$ _____

Name of registered owner(s) of the vehicle: _____

Vehicle Make: _____ Model: _____ Year: _____

SECTION 5: REPRESENTATIVE INFORMATION (OPTIONAL – MAY BE COMPLETED IF FILED BY ATTORNEY OR REPRESENTATIVE)

John R. Coniglio

831-373-3151

Name of Attorney/Representative

Law office of John R. Coniglio

490 Calle Principal

Monterey, CA 93940

Is the claim filed on behalf of minor? No

If yes, please indicate:

Month, Day & Year

Minor's date of birth:

Relationship to minor:

SECTION 6: ADVISORY - CONDITION OF A FELONY

Section 72 of the Penal Code provides that "every person who, with intent to defraud, presents for allowance or for payment to any State Board or Officer, or to any county, town, city, district, ward, or village, board or officer, authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account, voucher, or writing, is guilty of a felony."

SECTION 7: CLAIMANT'S SIGNATURE (OR REPRESENTATIVE)

Signature of Claimant or Claimant's Attorney /Representative

12-17-21
Date

SECTION 8: SUBMISSION OF CLAIM FORM

Completed claim forms must be submitted by personal delivery or by United States mail, postage paid, to the following address:

City of Marina
Attention: Risk Management Department
211 Hillcrest Avenue
Marina, CA 93933

This form must be completed in detail and provide pertinent information required to process the claim and avoid delays. Missing and incomplete information is necessary in order to advance your claim through the City's claims handling process in a timely manner.

You will receive a notification from Marina's Risk Manager regarding the initial handling of your claim. The Risk Management Department will provide a copy of your claim to the Claims Adjuster at MBASIA (Monterey Bay Area Self Insurance Authority), the City's Risk Management Authority. The Claims Adjuster will also notify you that your claim has been received and is being investigated. You may contact the Claims Adjuster, NAME, directly at PHONE NUMBER after you are notified your claim was received in that office.

January 14, 2022

Item No. 8(9)5

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of January 19, 2021

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-xx,
AUTHORIZING THE CITY MANAGER TO EXECUTE A
MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF
MARINA AND THE MANAGEMENT EMPLOYEES ASSOCIATION OF
MARINA (MMEA); AND, AUTHORIZING ADJUSTMENTS TO THE
CITY'S SALARY SCHEDULE AND COMPENSATION PLAN AND
AUTHORIZING THE FINANCE DIRECTOR TO MAKE APPROPRIATE
BUDGET AND ACCOUNTING ENTRIES**

REQUEST:

It is recommended that the City Council consider:

1. Adopting Resolution No. 2022- authorizing the City Manager to execute a Memorandum of Understanding between the City of Marina and the Management Employees Association of Marina (MMEA); and,
2. Authorizing adjustments to the City's Salary Schedule and Compensation Plan, and;
3. Authorizing Finance Director to make appropriate accounting and budgetary entries.

BACKGROUND:

The City has been bargaining with several of its units for some time. The general pattern has been to consider both competitive market considerations and appropriate cost of living adjustments. City management and the Management Employees Association of Marina (MMEA) have come to agreement on proposals that are within the parameters the City Council has authorized staff. Final approval is now before the City Council.

ANALYSIS:

The MMEA MOU lapsed June 30, 2020. The City and bargaining unit have been meeting since early 2021, however, the MOU was not able to finalized until agreement was reached.

The MMEA MOU will be effective as of July 1, 2021 through June 30, 2023. The amended terms and conditions of the MOU are as follows:

- The proposed Equity Salary Survey Adjustments

	COLA	Eq. Adj.
Chief Building Official	2.5%	4.8%
PW Superintendent	2.5%	6.7%
Airport Services Manager	2.5%	4.5%
Human Resource Analyst	2.5%	
Accounting Services Manager	2.5%	
Planning Services Manager	2.5%	
Senior Planner	2.5%	
Management Analyst	2.5%	9.2%

- General Salary Increase in Second Year: In the second year of the agreement, starting with the first full pay period after July 1, 2022, all unit classifications shall have their classifications increased by the April 2022 San Francisco/Oakland Consumer Price Index, but the increase will be no less than 2% and no more than 3.25%
- Currently members of this unit can accrue vacation hours to a maximum of 200 hours. As proposed, members in this unit may accrue vacation leave up to the following maximum leave balance based upon years of service as follows:
 - 0 to 9 years - 200 hours
 - 10 or more years - 300 hours
- Cash out of administrative leave cap payouts at separation will increase from 200 to 240 hours. Administrative leave buy back will increase from 40 to 60 hours annually. Annual accruals will only be granted up to a maximum of 240 hours. Any current employee with admin leave in excess of the 240 hours will not lose any leave but will not be granted any additional leave until their balances fall below 240 hours.

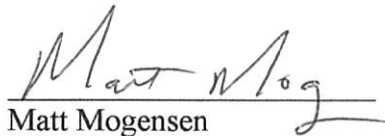
MPFFA MOU fiscal impact:

The estimated cost of all salary and benefit adjustments in the MOU for fiscal year 21/22, is approximately \$42,380. For fiscal year 22/23, the agreement will add an additional annual cost of approximately \$23,170. The two-year cost of the contract is approximately \$65,550.

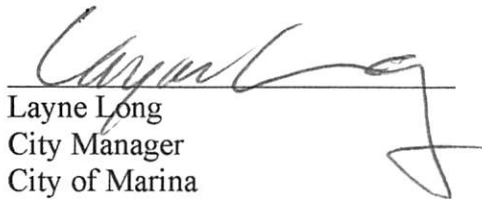
CONCLUSION:

This request is submitted for City Council consideration and approval.

Respectfully submitted,



Matt Mogensen
Assistant City Manager



Layne Long
City Manager
City of Marina

RESOLUTION NO. 2022-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MARINA AND THE MANAGEMENT EMPLOYEES ASSOCIATION OF MARINA (MMEA)

WHEREAS, the existing Memorandum of Understanding between the City of Marina and the Management Employees Association of Marina expired on June 30, 2020; and

WHEREAS, the City of Marina and the Management Employees Association of have met and conferred in good faith and have reached a tentative agreement to approve a new Memorandum of Understanding; and

WHEREAS, the term of the new Memorandum of Understanding will expire on June 30, 2023, and;

WHEREAS, the estimated cost of all salary and benefit adjustments in the MOU for fiscal year 21/22, is approximately \$42,380. For fiscal year 22/23, the agreement will add an additional annual cost of approximately \$23,170. The two-year cost of the contract is approximately \$65,550; and;

WHEREAS, the cost of the proposed salary and benefit adjustments can be funded from on-going revenues from the General Fund.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Marina do hereby:

1. Adopt Resolution No. 2022- authorizing the City Manager to execute a Memorandum of Understanding between the City of Marina and the Management Employees Association of Marina (MMEA); and,
2. Authorize adjustments to the City's Salary Schedule and Compensation Plan, and;
3. Authorize Finance Director to make appropriate accounting and budgetary entries.

PASSED AND ADOPTED, by the City Council of the City of Marina at a regular meeting duly held on the 19th day of January 2022, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

Bruce C. Delgado, Mayor
ATTEST:

Anita Sharp, Deputy City Clerk

Revised Salary Schedules

Salary Effective 7/5/2021:

Title	Step A	Step B	Step C	Step D	Step E
Chief Building Official	\$55.1384	\$57.8953	\$60.7901	\$63.8296	\$67.0211
PW Superintendent	\$47.1698	\$49.5282	\$52.0047	\$54.6049	\$57.3351
Airport Services Manager	\$45.8468	\$48.1392	\$50.5461	\$53.0734	\$55.7271
Human Resources Analyst	\$37.3367	\$39.2035	\$41.1637	\$43.2219	\$45.3830
Accounting Service Manager	\$49.0841	\$51.5383	\$54.1153	\$56.8210	\$59.6621
Planning Services Manager	\$52.6720	\$55.3056	\$58.0709	\$60.9744	\$64.0231
Senior Planner	\$46.0328	\$48.3344	\$50.7511	\$53.2887	\$55.9531
Management Analyst	\$55.5885	\$36.3201	\$38.1362	\$40.0430	\$42.0451

MMEA
Offer to City, January 11, 2022

1. Term:

Expires June 30, 2023, effective July 1, 2021, if ratified by the City Council on January 19, 2022.

2. General Salary Increase in First Year:

2.5% general salary increase starting with the first full pay period after July 1, 2021

3. Equity Salary Survey Adjustments

	Survey	COLA	Eq. Adj.
Chief Building Official	7.3%	2.5%	4.8%
PW Superintendent	9.2%	2.5%	6.7%
Airport Services Manager	18.2%	2.5%	4.5%
Human Resource Analyst		2.5%	
Accounting Services Manager		2.5%	
Planning Services Manager		2.5%	
Senior Planner		2.5%	
Management Analyst	11.7%	2.5%	9.2%

4. General Salary Increase in Second Year:

In the second year of the agreement, starting with the first full pay period after July 1, 2022, all unit classifications shall have their classifications increased by the April 2022 San Francisco/Oakland Consumer Price Index, but the increase will be no less than 2% and no more than 3.25%

5. Vacation Leave:

Members in this unit may accrue vacation leave up to the following maximum leave balance based upon years of service as follows:

- A) 0 to 9 years - 200 hours
- B) 10 or more years - 300 hours

6. Admin Leave:

- Cash out of administrative leave cap payouts at separation will increase from 200 to 240 hours.
- Administrative leave buy back (Cash-Out) will increase from 40 to 60 hours annually.
- Annual accruals will only be granted up to a maximum of 240 hours.

- Any current employee with accrued administrative leave in excess of the 240 hours will not lose any leave but will not be granted any additional leave until their balance falls below 240.

MOU Language for Leaves if offer approved by the Council:

Leaves: Leave for Mid-Management members shall accrue and be administered, as follows:

- A. **Administrative Leave:** Members shall receive one hundred (100) hours yearly Administrative Leave, earned in a lump sum on July 1st of each year. Maximum Administrative Leave Accrual for Members of this Association will be two hundred forty 240 hours. Unused Administrative Leave Accrual shall be paid at current salary upon termination of employment to a maximum of two hundred forty (240) hours.
- B. **Cash-out:** The City will pay each Member at their request a maximum amount of sixty (60) hours of administrative leave each fiscal year, at the Member's individual regular rate of pay upon 30 days notice to payroll.
- C. **Vacation:** Vacation time shall be accrued as described in the City Personnel Rules. Maximum Vacation Accrual for Members of this Association will be as follows: A) 0 to 10 years of service – two hundred (200) hours B) 10 or more years of service – three hundred (300) hours. Unused Vacation Accrual shall be paid at the current salary upon termination of employment to a maximum of three hundred (300) hours of vacation leave.
 1. **Emergency Cash Draws on Vacation.** Under extreme financial need, caused by either a death or medical emergencies in the family, at the request of the member, the City Manager with approval of the City Council may grant up to eighty (80) hours of cash draw on accrued vacation time if such a practice is not precluded by law or regulation.
- D. **Sick Leave:** All members of the Association shall accrue Sick Leave at the rate of 3.69 hours per pay period (12 days per year). A maximum of 1,440 hours may be accumulated at retirement, 35% of the hours accumulated, to a maximum of 504 hours, will be paid to the employee upon termination of employment.

January 14, 2022

Item No. 89 (6)

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of January 19, 2022

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-,
APPROVING A CONDITIONAL AIRPORT USE PERMIT FOR JOBY
AERO, INC. FOR USE OF RAMP SPACE IN THE AIRCRAFT
OPERATIONS AREA OF THE MARINA MUNICIPAL AIRPORT FOR
AIRCRAFT FLIGHT TESTING ACTIVITIES AND AUTHORIZING THE
CITY MANAGER AND THE AIRPORT SERVICES MANAGER TO
EXECUTE THE CONDITIONAL AIRPORT USE PERMIT ON BEHALF
OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY
THE CITY ATTORNEY**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2022-, approving a Conditional Airport Use Permit for Joby Aero, Inc. for use of ramp space in the aircraft operations area of the Marina Municipal Airport for aircraft flight testing activities; and
2. Authorizing the City Manager, as the Airport Manager and the Airport Services Manager to execute the Conditional Airport Use Permit on behalf of the City subject to final review and approval by the City Attorney.

BACKGROUND:

Joby Aero, Inc., a Delaware corporation authorized to conduct business in California (“Joby”), is a tenant at the Marina Municipal Airport. Joby is seeking to conduct aircraft flight testing activities, including aircraft system tests, and manned and unmanned hover tests using the Joby S4 aircraft. The testing activity would take place in the Aircraft Operations Area of the Airport on open ramp space which would be dedicated to the testing activities when taking place and include locating a ground control system (GCS) trailer and an antenna next to the identified ramp space.

The Joby S4 aircraft has been found airworthy by the FAA as indicated by issuance of a Special Airworthiness Certificate for the aircraft. When operated by a remote pilot operation, the Joby S4 is governed by a Certificate of Waiver or Authorization (COA), FAA Form 7711-1. This COA specifies the Operating Area, Special Provisions, Safety of Flight, Notices to Airmen, Airspace, Air Traffic Control procedures and limitations.

The airworthiness and COA are specific to the S4 and are developed in cooperation with Joby as well as other branches of the FAA including Air Traffic Control and Airways.

ANALYSIS:

Joby desires to utilize dedicated ramp space for flight testing activities. The Conditional Airport Use Permit (CAUP) identifies the ramp space location for flight tests, the GCS and antenna locations (“**EXHIBIT A**”).

The Term of the CAUP is January 20, 2022 through June 30, 2023. The CAUP lists Conditions of Approval which apply to conducting flight tests within the dedicated ramp space and contains an Operational Safety Plan (OSP) which provides specific direction to be followed when conducting flight tests within the dedicated ramp space.

Joby personnel will monitor and communicate with air traffic to direct aircraft and/or vehicles to navigate around the dedicated ramp space when the hover testing activity is taking place and will not otherwise interfere with aircraft moving to or from the fuel farm on the ramp or nearby taxilane. Flight testing activities may occur between civil morning twilight and civil evening twilight subject to wind, weather and lighting conditions and would be conducted intermittently throughout various days each month during the term of this permit.

Joby will be responsible for all permits, safety, personnel, and coordination of all safety issues with the Airport Services Manager and Marina Police and Fire Departments, as set forth in the Use Permit conditions and OSP. Joby will notify the Airport Services Manager prior to conducting flight testing activities and will be holding two informational meetings to inform the hangar tenants/pilots about this use.

FISCAL IMPACT:

Should the City Council approve this request, Joby Aero, Inc. will pay \$500.00 per month for any month during which testing takes place and \$200.00 per month for any month during which the ground control system (GCS) trailer is located in the designated area. These revenues will be recorded in the Airport Enterprise Fund 555, Lic & Permits, Account No. 555.000.000.5200.010.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

Jeff Crechriou
Airport Services Manager
City of Marina

REVIEWED/CONCUR:

Layne Long
City Manager/Airport Manager
City of Marina

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
APPROVING A CONDITIONAL AIRPORT USE PERMIT FOR JOBY AERO,
INC. FOR USE OF RAMP SPACE IN THE AIRCRAFT OPERATIONS AREA
OF THE MARINA MUNICIPAL AIRPORT FOR AIRCRAFT FLIGHT
TESTING ACTIVITIES AND AUTHORIZING THE CITY MANAGER AND
THE AIRPORT SERVICES MANAGER TO EXECUTE THE CONDITIONAL
AIRPORT USE PERMIT ON BEHALF OF THE CITY SUBJECT TO FINAL
REVIEW AND APPROVAL BY THE
CITY ATTORNEY

WHEREAS, Joby Aero, Inc. a Delaware corporation authorized to conduct business in California ("Joby"), is a tenant at the Marina Municipal Airport; and

WHEREAS, Joby is seeking to conduct aircraft flight testing activities, including aircraft system tests, and manned and unmanned hover tests using the Joby S4 aircraft. The testing activity would take place in the Aircraft Operations Area of the Airport on open ramp space which would be dedicated to the testing activities when taking place and include locating a ground control system (GCS) trailer and an antenna next to the identified ramp space; and

WHEREAS, the Joby S4 aircraft has been found airworthy by the FAA as indicated by issuance of a Special Airworthiness Certificate for the aircraft. When operated by a remote pilot operation, the Joby S4 is governed by a Certificate of Waiver or Authorization (COA), FAA Form 7711-1. This COA specifies the Operating Area, Special Provisions, Safety of Flight, Notices to Airmen, Airspace, Air Traffic Control procedures and limitations. The airworthiness and COA are specific to the S4 and are developed in cooperation with Joby as well as other branches of the FAA including Air Traffic Control and Airways; and

WHEREAS, Joby desires to utilize dedicated ramp space for flight testing activities. The Conditional Airport Use Permit (CAUP) identifies the ramp space location for flight tests, the GCS and antenna locations ("**EXHIBIT A**"); and

WHEREAS, the Term of the CAUP is January 20, 2022 through June 30, 2023. The CAUP lists Conditions of Approval which apply to conducting flight tests within the dedicated ramp space and contains an Operational Safety Plan (OSP) which provides specific direction to be followed when conducting flight tests within the dedicated ramp space; and

WHEREAS, Joby personnel will monitor and communicate with air traffic to direct aircraft and/or vehicles to navigate around the dedicated ramp space when the hover testing activity is taking place and will not otherwise interfere with aircraft moving to or from the fuel farm on the ramp or nearby taxilane. Flight testing activities may occur between civil morning twilight and civil evening twilight subject to wind, weather and lighting conditions and would be conducted intermittently throughout various days each month during the term of this permit; and

WHEREAS, Joby will be responsible for all permits, safety, personnel, and coordination of all safety issues with the Airport Services Manager and Marina Police and Fire Departments, as set forth in the Use Permit conditions and OSP; and

WHEREAS, having Joby at the Marina Municipal Airport is in furtherance of the present and future aeronautical use of the Airport and its facilities; and

WHEREAS, staff has determined that the findings for approval of the CAUP can be made, in that the proposed project as conditioned will not be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working at the Marina Municipal Airport or be detrimental or injurious to property and improvements near the Marina Municipal Airport or to the general welfare of the City or be detrimental to or interfere with aviation activity at the Marina Municipal Airport; and

WHEREAS, Joby Aero, Inc. will pay \$500.00 per month for any month during which testing takes place and \$200.00 per month for any month during which the ground control system (GCS) trailer is located in the designated area. These revenues will be recorded in the Airport Enterprise Fund 555, Lic & Permits, Account No. 555.000.000.5200.010; and

WHEREAS, the Conditional Airport Use Permit is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines, Section 15301 (Class 1 – operation, repair, maintenance, or minor alteration of existing structures or facilities not expanding existing uses).

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Approve a Conditional Airport Use Permit for Joby Aero, Inc. for use of ramp space in the aircraft operations area of the Marina Municipal Airport for aircraft flight testing activities; and
2. Authorize the City Manager, as the Airport Manager and the Airport Services Manager to execute the Conditional Airport Use Permit on behalf of the City subject to final review and approval by the City Attorney.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 19th day of January 2022, by the following vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ATTEST:

Bruce C. Delgado, Mayor

Anita Shepherd- Sharp, Deputy City Clerk

EXHIBIT A

MARINA MUNICIPAL AIRPORT CONDITIONAL AIRPORT USE PERMIT FOR THE USE OF THE RAMP FOR FLIGHT TESTING ACTIVITIES BY JOBY AERO, INC.

THIS IS TO CERTIFY THAT, the City of Marina City Council at a regular meeting held on January 19, 2022, considered the following request, following notice and a public hearing held on that date. The City Council at that meeting then approved this Conditional Airport Use Permit (“Permit”) for the use of the ramp at the Marina Municipal Airport (“Airport”) under authority provided by the Airport Operating Ordinance Number 96-01, dated March 7, 1996 (Marina Municipal Code Chapter 13.22) and subject to the following conditions and restrictions.

REQUEST:

Request by on behalf of JOBY AERO, INC., a Delaware corporation registered to do business in California, (“Permittee”) for permission to use the ramp at the Airport. Permittee is a co-tenant in Building 524 and conducts aeronautical commercial activities at the Airport. Joby is seeking to conduct commercial aviation-related flight testing activities, including aircraft system tests, propeller tests, and manned and unmanned hover tests using the Joby S4 aircraft (the “Aircraft”). The Permit shall go into effect on January 20, 2022 and remain in effect until June 30, 2023.

BACKGROUND:

The members of the City Council serve as members of the Airport Commission. The Airport Commission is authorized to enact policies and regulations governing operations and the conduct of business on the Airport subject to the approval of the City Council. In order to keep the administrative record of the Airport Commission separate from the action of the City Council, the Commission’s role is to recommend to the Council approval or disapproval of a request.

COUNCIL ACTION:

The City Council adopted the following findings in justification of granting this Permit and granted the Permit as described herein subject to each of its Conditions of Approval and authorized the City Manager to execute same as described herein.

FINDINGS:

The City Council finds that, under strict conditions of approval:

1. The use of the ramp area for testing of the Aircraft and Permittee’s use of the ramp with intermittent closure, will not be detrimental to health, safety, peace or general welfare of the City, the Airport, the surrounding properties or the community-at-large.

2. The testing of the Aircraft is a related aeronautical use which will not, with proper advanced notice, be detrimental or injurious to the efficiency and utility of the Airport or to Airport property and improvements.
3. Testing, if conducted in accordance with the conditions of this Permit, will be consistent with the Environmental Guidelines, the General Plan, the Airport Master Plan, the Airport Layout Plan, the Airport Operating Ordinance and the Zoning Ordinance of the City.
4. Testing, done in accordance with the conditions of this Permit, will not present or create a safety hazard to the normal operations of aircraft arriving or departing from the Airport.
5. The permitted activities can be safely maintained within the boundaries of the Airport.
6. Reasonable time periods can be and are herein designated for use of the ramp with intermittent closure by the Permittee for testing.
7. The charge established for the proposed use of the ramp is reasonable.
8. The form and amount of liability insurance required herein, naming the City and the Airport as additional insured parties to be obtained from the Permittee are reasonably related to the Airport's liability exposure and are not unjustly discriminatory. Any previous editions of these forms shall be modified to indicate the business name of the Permittee: Joby Aero, Inc. It is further found that, because these insurance requirements are appropriate under the unique characteristics of the proposed use, this finding shall not be construed to indicate a precedent for insurance requirements for any other use.

TERM OF PERMIT:

January 20, 2022 through June 30, 2023.

[Permit continues]

CHARGE:

The Permittee shall pay to the City a charge for the use of the ramp equal to the amount of \$500.00 per month for any month during which testing takes place. In addition, Permittee will pay to the City a charge for the placement of the ground control system trailer next to the ramp of \$200.00 per month for any month during which the ground control system (GCS) trailer is located in the area designated "GCS Location" on Exhibit A or elsewhere as approved in advance by the Airport Services Manager. Payment shall be made to the "City of Marina", 781 Neeson Road, Marina, California 93933, attention: Airport Services Manager.

Permittee acknowledges that late payment of the fee will cause the City to incur costs not contemplated by this Permit; the exact amount will be extremely difficult to ascertain. Permittee's operations may, at the discretion of the Airport Services Manager, be suspended until such time as the entire payment due under this Permit is remitted to the City. Should any payment due under this Permit remain unpaid ten days after the due date of such payment, a penalty of ten percent shall be added to any payments past due and owing. City and Permittee agree that this late charge represents a fair and reasonable estimate of costs that the City will incur by reason of the late payment of the fee by the Permittee. Acceptance of any such late charge shall not constitute a waiver of Permittee's default with respect to the overdue amount, nor prevent the City from exercising any of the other rights and remedies available to it by reason of such default. Interest on any unpaid fees, charges and any penalty shall accrue at the rate of one and one-half percent per month thereafter until paid.

BUSINESS LICENSE:

Permittee must obtain and keep current a business license issued by the City's Finance Department. Permit does not go into effect until the business license is obtained.

CONDITIONS OF APPROVAL:

This Permit is issued by the City and is accepted by Permittee upon the following terms, covenants and conditions, and the breach of any said terms, covenants or conditions may be deemed sufficient cause for the suspension or termination of the Permit. Such suspension of the Permit shall be by the Airport Services Manager.

I. Operational

- A. Permittee shall provide the Airport Services Manager of planned test activities and when possible, will provide 24 hours' notice. Notifications to the Airport Services Manager will be emailed to jcrechriou@cityofmarina.org.
- B. The activities for the testing of the Aircraft shall be confined to the ramp areas as shown in "**Exhibit A**" with intermittent closure of those areas during designated testing periods. The activities for tests shall be pursuant to the Operational Safety Plan shown in "**Exhibit B**". In the event of a conflict between the Operational Safety Plan and this Permit, the terms of the Permit will control. Permittee, by its acceptance of this Permit, acknowledges and understands the use of the ramp is designated by the City as a temporary use and location for: (1) a temporary antenna; (2) a temporary Ground Control Station; and (3) a tethered pad within the ramp area and that this Permit does not contain, and may not be construed to

convey, any vested right in Permittee to use another area of the Airport in connection with Permittee's activities.

- C. The ramp including the tethered pad and the Ground Control Station is to be maintained by Permittee to Airport standards to the satisfaction of the Airport Services Manager. The temporary antenna installed shall be fenced to protect it from damage and from damaging vehicles or aircraft. When required, maintenance and any repairs of the ramp should be made in a timely manner and at the Permittee's cost. Prior to and after conducting any test operations, Permittee must examine the condition of the ramp used during the test to determine if it is in a safe condition to use as a testing site. Any unsafe condition should be reported in a timely manner to the Airport Services Manager and/or Airport Maintenance personnel. Permittee shall at all times cooperate and coordinate with the City prior to and in the maintenance and repair of the ramp.
- D. The City shall maintain the ramp to Airport standards, and at all times free of any structures, vehicles (except for the Aircraft and other related Permittee vehicles), debris, trash, fencing, etc. Prior to and after conducting any test operations, Permittee must examine the condition of the ramp used during the test to determine if it is in a safe condition to use as a testing site and/or for aircraft operations. Any unsafe condition should be immediately reported to the Airport Services Manager and/or Airport Maintenance personnel. Should any maintenance, including sweeping, or repairs of the ramp be required as determined by the Airport Services Manager, the Permittee shall perform the necessary maintenance or reimburse the associated cost to the Airport to perform the necessary maintenance. Permittee shall at all times cooperate and coordinate with the City prior to and in the possible maintenance and repair of the ramp.
- E. In the event of any damages resulting from the Permittee's activities as determined by the City/Airport Services Manager, the responsible party(s) must pay for and repair all damages to Airport facilities in a timely manner. If Permittee's activities on the site damages, for example, the ramp due to a fuel spill and the ramp softens or otherwise becomes unusable, Permittee shall be responsible for the cost of repairs to the damaged ramp.
- F. Prior to the conducting any testing activities, Permittee shall provide to the Airport Services Manager a current list of names and contact information, including cell phone number, for principal persons who are responsible for the conduct of the activities and who should be contacted in the event of an emergency.
- G. Permittee shall adhere to any applicable FAA regulations and conduct all test operations in accordance with the City of Marina Municipal Code Chapter 13.22 "Operating Ordinance for Marina Municipal Airport" and any FAA regulations that may be in force or promulgated during the period in which the Permit is in force.
- H. Testing operations may be conducted on the ramp from Civil Morning Twilight to Civil Evening Twilight subject to wind, weather and lighting conditions. The City may require Permittee to temporarily cease its use of the ramp to

accommodate special activities permitted by the City at the Airport. City will use its best efforts to notify Permittee within a reasonable time period prior to issuing such a requirement.

- I. Permittee shall not allow any vehicles or equipment associated with the testing activities to travel on or across the runway, taxiways or ramps without proper flag or lighting and radio equipment, powered up and tuned to frequency 122.7 or such frequency as the FAA or Airport Services Manager shall designate in writing.
- J. Radio equipment and use requirements shall be consistent with FAA Regulations. The frequency used should comply with the frequency identified in the Letter of Agreement with NORCAL TRACON. Frequency 122.7 shall be used for all ground and air activities associated with testing. Permittee is responsible to ensure that the radio frequency(s) used to communicate between the GCS and Aircraft are at all times free from any interference and cannot be used during testing activities by anyone other than the Permittee.
- K. Parking spaces for vehicles not associated with testing shall be located in the general public parking areas at the Airport. There shall be no overnight parking or camping in any vehicle on Airport property per Municipal Code 10.40.150. All vehicles associated with Permittee's activities including customers, visitors, employees, and owners shall be parked in the general public parking areas at the Airport. Any vehicles parked in non-approved areas may be removed.
- L. No persons shall possess or consume any alcoholic beverage or illegal drug in or around any areas when testing activities are taking place. No person employed by or providing services to Joby Aero, Inc. shall possess, consume and/or have in his or her system any alcoholic beverage or illegal drug in or around any areas where testing activities are taking place. In addition, operators of the aircraft shall not possess or have in his or her systems any legal drug that impairs or could impair their ability to operate an aircraft (including on the runway, taxiways and the designated ramp area, in or around any associated vehicles, or anywhere on the Airport).
- M. If Permittee operates fuel servicing or charging equipment, that equipment must fully meet safety requirements as determined by the City's Risk Manager, Fire Department and Airport Manager and must be clearly labeled as to the type of fuel contained or power capacity being supplied. Fuel servicing or charging equipment shall be withdrawn from use and removed from the Airport during any period of deficiency. Surfaces upon which fuel servicing or charging equipment is parked, in accordance with the Airport Master Plan and Airport Manager, and any adjacent areas must be kept clear of accumulation of oil, grease, fuel and debris which are potential fire and safety hazards. Equipment used for fueling or charging of aircraft shall be insured to the satisfaction of the City's Risk Manager; insurance may include but is not necessarily limited to liability for sudden and accidental pollution and coverage for property damage and bodily injury arising out of the operation of the fuel equipment. Any equipment used for fueling or charging of aircraft shall be inspected by the City's Fire Department prior to being brought onto the Airport by Permittee.

- N. Permittee shall cooperate with the City/Airport in notifying pilots, users and tenants of the Airport about the Permittee's activities and explaining how these activities will affect the Airport and airport operations.
- O. Operational-related notifications of a non-emergency nature, which do not constitute reportable events (as set forth below), should be made to the Airport administrative staff, either in person or by telephone (831-241-8628 and 831-717-7058). For occasions when the Airport administrative staff may not be available and the matter requires immediate attention, the Police Department Watch Commander may be contacted (831-384-7575).
- P. Permittee in accepting this Permit acknowledges that it has received and shall abide by the rules and regulations set forth in the Airport Operating Ordinance (Marina Municipal Code Chapter 13.22) and shall conduct its activities in accordance with applicable federal and state statutory and decisional laws, County of Monterey and City of Marina ordinances, rules and regulations and the requirements of any other duly authorized government agency.

II. Reportable Events

- A. Permittee, within 24-hours from the time of an accident, incident or reportable event which violates the regulations identified in Section I of this Permit, or which results in the injury or death of any person or damage to any property belonging to the City or to third parties., shall provide a written report of the incident to the Airport Services Manager using the attached Incident Report Form, as shown in **"Exhibit C"**. The Airport Services Manager shall acknowledge receipt of the form including the date and time received and shall provide a response to Permittee within 72 hours of receipt. The Airport Services Manager shall provide written notice to Permittee of an accident or incident or reportable event. Permittee shall acknowledge receipt of the form including the date and time received and shall provide a response to the Airport Services Manager within 72 hours of receipt.
- B. Tests of the Aircraft outside of the designated test areas and any conflict caused with aircraft are defined as a reportable event under this Permit.
- C. Permittee must immediately, and no later than one hour, by phone or in person, contact the Airport Services Manager (831-241-8628) or Police or Fire Department duty officers to report any accident as required by these provisions and a copy of any written report shall be provided to the City. Any situation observed that might constitute a hazard to aircraft or is not in the interest of good safety practice at the Airport must be reported immediately to a City official or officer, as described above, by telephone, in person, or using the Incident Report Form.

III. Insurance and Indemnification Required.

- A. Insurance. Permittee agrees to provide insurance in accordance with the requirements set forth herein. Specifically, such insurance shall: (1) protect City as an additional insured for commercial general and business auto liability; (2)

provide City at least thirty days written notice of cancellation, material reduction in coverage or reduction in limits and ten days written notice for non-payment of premium; and (3) be primary with respect to City's insurance program. Permittee's insurance is not expected to respond to claims that may arise from the acts or omissions of the City. Proof of insurance coverage shall be provided to the City upon request. If Permittee uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein,

Permittee agrees to amend, supplement or endorse the existing coverage to do so. The following coverages set forth below in clauses (C), (D), and (E) be provided by Permittee and any other entities under which the corporation shall do business, shown as having been issued the policies of insurance required herein and which must be maintained on behalf of the City in accordance with the requirements set forth herein.

- B. Cancellation, Reduction, Change. In the event of cancellation, reduction of or change in coverage, or a substantial premium increase (in excess of \$500.00) of the City's airport liability insurance as a result, in whole or in part, of the operations allowed by this Permit, this Permit shall be suspended effective as of the date of any such change. Upon receipt of notice of any such change in coverage City shall promptly notify Permittee.
- C. Commercial General Liability/Umbrella Insurance. Primary insurance shall be provided on ISO-CGL form No. CG 00 01 . Total limits shall be no less than two million dollars per occurrence for coverage including products and completed operations, property damage, bodily injury and personal and advertising injury. It a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit The City, its Airport, Council, boards and commissions, officers, employees, agents and volunteers must be added as additional insured's using ISO additional insured endorsement form at least as broad as ISO Form CG 10, CG 11 85 or both CG 20 10, CG 2026, CG 20 33, or CG 20 38 and CG 20 27 forms if later revisions used. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to the City or any agent of City. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Umbrella Liability Insurance (over primary) in the amount of two million dollars shall apply to bodily injury/property damage, personal injury/advertising injury, at a minimum, and shall include a "drop down" provision providing primary coverage above a maximum \$25,000.00 self-insured retention for liability not covered by primary policies but covered by the umbrella policy. Coverage shall be following form to any underlying coverage. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross-liability exclusion. Policies shall have concurrent starting and ending dates.
- D. Aircraft Liability. For any aircraft owned, used, leased to or under the control of Permittee and used in connection with the testing activities on the Airport, Permittee shall provide evidence of insurance coverage, satisfactory to the Risk Manager of the City and consistent with the requirements of the Monterey Bay

Area Self Insurance Authority, in the minimum amount of one million dollars, single limit, excluding passengers and occupants bodily injury combined each occurrence. The City of Marina shall be added as an additional insured using an additional insured endorsement form approved by the City.

- E. Auto Insurance. Primary coverage must include all vehicles used in relation to the testing activities on the Airport shall be written on a commercial or business auto coverage form ISO CA 0001 including hired auto liability for bodily injury and property damage. Limits shall be no less than one million dollars per accident. Starting and ending dates shall be concurrent. The City of Marina shall be added as an additional insured using an additional insured endorsement form approved by the City.
- F. Workers' Compensation/Employers' Liability. This shall be written on a policy form providing workers' compensation statutory benefits as required by law. Employers' liability limits shall be no less than one million dollars per accident or disease. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects the City, its Airport, Council, boards and commissions, officers, employees, agents and volunteers.
- G. Cancellation. In the event of cancellation, reduction of or change in coverage, or a substantial premium increase (in excess of \$500.00) of the City's airport liability insurance as a result, in whole or in part, of the operations allowed by this Permit, this Permit shall be suspended effective as of the date of any such change. Upon receipt of notice of any such change in coverage, City shall promptly notify Permittee.
- H. Indemnification. Permittee and City agree that City, its Airport, Council, boards and commissions, officers, employees, agents, and volunteers, should to the extent permitted by law, be fully protected from any loss, injury, damage, claim, lawsuits, cost, expense, reasonable and documented attorney's fees, litigation costs, defense costs, court costs or any other cost arising out of the activities permitted by this Permit. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the fullest protection possible under the law to the City. Permittee acknowledges that City would not grant this Permit in the absence of the commitment from Permittee to indemnify and protect City as set forth here.

To the full extent permitted by law, Permittee shall immediately defend, indemnify and hold harmless City, its Airport, Council, boards and commissions, officers, employees, agents, and volunteers, from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, reasonable and documented attorney fees incurred by City, court costs, interest, defense costs including expert witness fees arising out of the activities governed by this Permit. All obligations under this provision are to be paid by Permittee as they are incurred by the City.

Without affecting the rights of the City under any provision of law, this Permit or this section, Permittee shall not be required to indemnify and hold harmless City

as set forth above for liability attributable to the sole fault of City, provided such sole fault is determined by written agreement of the parties or the findings of a court of competent jurisdiction. This exception will apply only in instances where the City is shown to have been solely at fault and not in instances where Permittee are solely or partially at fault or in instances where City's fault account for only a percentage of the liability involved. In those instances, the obligation of Permittee will be all inclusive and City will be indemnified for all liability incurred, even though a percentage of the liability is attributable to conduct of the City.

Permittee acknowledges that its obligation pursuant to this section extends to liability attributable to the City, if that liability is less than the Sole fault of City. Permittee shall have no obligation under this Permit for liability proven in a court of competent jurisdiction or by written agreement between the parties to be the sole fault of the City.

The obligations of Permittee under this or any other provision of this Permit shall not be limited by the provisions of any workers' compensation act or similar act. Permittee expressly waives its statutory immunity under such statutes or laws as to City, its Airport Council, boards and commissions, officers, employees, agents, and volunteers.

Permittee agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section from any assignee, subcontractor or any other person or entity involved by, for, with or on behalf of Permittee in the performance of the subject matter of this Permit. In the event Permittee fails to obtain such indemnity obligations from others as required here, Permittee agrees to be fully responsible according to the terms of this section.

Failure of the City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth herein is binding on the successors, assigns, or heirs of Permittee and shall survive the termination of this Permit or this section.

G. **Other Agreements.** Permittee and City further agree as follows:

1. Insurance provisions supersede all other sections and provisions of this Permit to the extent that any other section or provision conflicts with or impairs the provisions of those sections.
2. Nothing contained in the insurance provisions is to be construed as affecting or altering the legal status of the parties to this Permit. The insurance requirements set forth in this Permit are intended to be separate and distinct from any other provision in this Permit and shall be interpreted as such.
3. All insurance coverage and limits provided pursuant to this Permit shall apply to the full extent of the policies involved, available or applicable.

Nothing contained in this Permit or any other Permit relating to the City or its operations limits the application of such insurance coverage.

4. Requirements of specific coverage features or limits contained in the insurance provisions 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 and is not intended by any party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.
5. For purposes of insurance coverage only, this Permit shall be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Permit.
6. All general or auto liability insurance coverage provided pursuant to this Permit shall not prohibit Permittee, Permittee's employees, or agents from waiving the right of subrogation prior to a loss. Permittee hereby waives all rights of subrogation against the City.
7. Unless otherwise approved by City, Permittee's insurance shall be written by insurers authorized to do business in the State of California with a minimum "Best's" Insurance Guide Rating of "A:VII."
8. In the event any policy of insurance required under this Permit does not comply with these requirements 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 Permittee.
9. Permittee agrees to provide evidence of the insurance required herein, satisfactory to City, consisting of certificate(s) of insurance evidencing all of the coverage's required and an additional endorsement to Permittee's general liability and umbrella liability policies using ISO endorsements described in the foregoing Certificate(s) are to reflect that the insurer shall provide 30 days notice of any cancellation of coverage. Permittee agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions. Permittee agrees to provide complete copies of policies to City upon request.
10. Permittee shall provide proof that policies of insurance required herein expiring during the term of this Permit have been renewed or replaced with other policies providing at least the same coverage. Such proof shall be furnished at least two weeks prior to the expiration of the coverage's.
11. Any actual or alleged failure on the part of the City or any other additional insured under these requirements to obtain proof of insurance required under this Permit in no way waives any right or remedy of City or any additional insured, in this or any other regard.

12. Permittee agrees to require all subcontractors or other parties hired for this project to provide general liability insurance naming as additional insured's all parties to this Permit. Permittee agrees to obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required here. Permittee agrees to require that no contract used by any subcontractor, or contracts Permittee enters into on behalf of City, shall reserve the right to charge back to City the cost of insurance required by this Permit. Failure of City to request copies of such contracts shall not impose any liability on City, its Airport, Council, boards and commissions, officers, employees, agents and volunteers.
13. If any of Permittee's dba entities are or should become lawfully constituted as a Limited Liability Company, general liability coverage must be amended so that the Limited Liability Company and its Managers, Affiliates, employees, agents and other persons necessary or incidental to its operation are insured's.
14. Permittee agrees to provide immediate notice to City of any claim or loss against Permittee that includes City as a defendant. City assumes no obligation or liability by such notice but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.

IV. Enforcement, Suspension, and Termination

- A. The conditions of this Permit may be enforced by any means and methods by which the City may secure compliance with the provisions of its Municipal Code. These include but are not necessarily in order of or limited to the following: warning notices, administrative citations, civil or criminal enforcement or injunctive relief. Multiple enforcement remedies may be used to achieve compliance with respect to persons who commit continuing violations.
- B. In lieu of or in conjunction with enforcement remedies, this Permit may be immediately suspended at any time for a violation of any of the conditions of approval as set forth herein. Written notice of suspension shall be given to Permittee, or that person then in-charge of conducting Permittee activities on the Airport, by the Airport Services Manager. The notice shall set forth the specific violation for which the immediate suspension is imposed. Permittee agrees that, upon receipt of written notice of suspension from the Airport Services Manager it will immediately cease and suspend its use of the ramp.
- C. The Airport Services Manager agrees to cooperate with Permittee in its efforts to remedy or to address a cited violation or notice of violation for which this Permit has been suspended. If and when such violation has been addressed to the satisfaction of the Airport Services Manager, immediate verbal notice of Permit reinstatement followed within not more than 24-hours by a written notice of Permit reinstatement shall be given to Permittee.

- D. This Permit may be suspended by action of the Airport Services Manager or the Airport Manager and terminated by action of the City Council or the Airport Commission.
- E. In the event it should become necessary for either party to enforce or interpret any of the terms and conditions of this Permit by means of court action or administrative enforcement the laws of the State of California shall govern the interpretation of the terms and conditions of this Permit and such action shall be brought in a court of proper jurisdiction in Monterey County, the prevailing party, in addition to any other remedy at law or in equity available to such party, shall be awarded all reasonable costs and reasonable attorney's fees in connection therewith, including the fees and costs of experts reasonable consulted by the attorneys for the prevailing party.
- G. In the event of a request or action by the Federal Aviation Administration (FAA) to cease or terminate the activities as set forth in this conditional use permit, such permit shall become immediately null and void without requirement of any further action by the City Council. To the extent applicable, Permittee shall comply with all FAA Assurances as shown on "**Exhibit D**" attached hereto and made a part hereof. In the event of a conflict between Exhibit D and Section VI of this Permit, Exhibit D shall control

V. Non-Transferability, No Exclusive Right, No Right to Lease

- A. This Permit is non-transferable.
- B. This permit shall not be construed or interpreted as an "exclusive right" within the provisions of section 308a of the FAA Act of 1958, as amended.
- C. This Permit is not, and may not be, construed as a lease of any City property, nor does it convey any right to such a lease.

VI. Grant Agreement Covenants

Permittee acknowledges that City is subject to Federal grant agreement obligations as a condition precedent to granting of funds for the improvement of the Airport, and, accordingly agrees to, and agrees to be bound by, the following covenants provided by the FAA as they may apply to Permittee:

Permittee, by accepting this Permit expressly agrees for itself, its successors and assigns that it will not make use of the premises in any manner which might interfere with the landing and taking off of aircraft from Marina Municipal Airport or otherwise constitutes a hazard. In the event this covenant is breached, City reserves the right to enter upon the premises and cause the abatement of such interference at the expense of Permittee. There is hereby reserved to City, its successors and assigns, for the use and benefit of the public, a right for the passage of aircraft in the airspace above the surface of the premises. The public right of flight shall include the right to cause in the airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking from, or operation on the Airport

Permittee for itself and its personal representatives, successors in interest, and assigns as part of the consideration hereto, does hereby covenant and agree that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said premises. (2) that in the construction of any improvement on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participating in, denied the benefits of, or otherwise be subject to discrimination; (3) that the Permittee shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21 Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, the City (through the City Manager) shall have the right to terminate this Permit, and to re-enter and repossess the premises and hold the same as if this Permit had never been made or issued.

City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or views of Permittee, and without interference or hindrance. The City reserves the right, but shall not be obligated to Permittee, to maintain and keep in repair the landing area of the Airport and all publicly owned facilities of the Airport together with the right to direct and control all activities of Permittee in this regard. The Permittee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the premises or in the event of any planned modification or alteration of any present or future building or structure situated on the premises. This requires the submission of FAA Form 7460-1, Notice of Construction or Alteration to the FAA.

The Permittee by accepting this Permit expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or building nor permit object of natural growth or other obstruction on the land leased hereunder above a height as determined by the application of the requirements of Title 14 CFR Part 77 or above mean sea level elevation of 210 feet. In the event the aforesaid covenants are breached,

the City reserves the right to enter upon the land hereunder and to remove the offending structure or object or cut the offending natural growth, all of which shall be at the expense of the Permittee.

The Permittee will furnish services on a reasonable and not unjustly discriminatory basis to all users and charge reasonable and not unjustly discriminatory prices for each unit or service, provided that the Permittee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. In the event of breach of the above covenant, the City (through the City Manager) shall have the right to terminate this Permit, and to re-enter and repossess the premises and hold the same as if this Permit had never been made or issued.

The Permit will conform to airport and Federal Aviation Administration safety and security rules and regulations regarding use of the Airport operations area including runways, taxiways, aircraft aprons by vehicles, employees, customers, visitors, etc. in order to prevent security breaches and avoid aircraft incursions and vehicle/pedestrian deviations; will complete and pass airfield safe driving instruction program when offered or required by the Airport; and will be subject to penalties as prescribed by the airport for violations of the airport safety and security requirements.

This Permit is subordinate to the City's obligations to the federal government under existing and future agreements for federal aid for the development and maintenance of the Airport.

This Permit shall be subordinate to the provisions and requirements of any existing or future agreement between the City and the United States, relative to the development, operation, or maintenance of the Airport. Failure of the Permittee to comply with the requirements of any existing or future agreement between the City and the United States, which failure shall continue after reasonable notice to make appropriate corrections, shall be cause for immediate termination of Permittee's rights hereunder.

VII. Modifications for Granting FAA Funds

In the event that the FAA requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this Permit, Permittee agrees to consent in writing upon the request of City to such reasonable amendments, modifications, revisions, supplements or deletions of any of the terms, conditions, or requirements of this Permit as may be reasonably required to enable the City to obtain FAA funds. A failure by Permittee to so consent shall constitute termination of this Permit.

VIII. Authority

The individual executing this Permit on behalf of Joby Aero, Inc. represents and warrants that he or she is duly authorized to execute and deliver this Permit on behalf of the corporation and that this Permit is binding upon the corporation in accordance with its terms.

IX. Notice

All notices and other communications required to be given under this Permit shall be in writing and shall be delivered at the addresses set out herein. Notice may be given by personal delivery, recognized overnight courier, by United States mail, by facsimile transmission, or by e-mail, in the manner set forth below. Notice shall be deemed to have been duly given: (a) if by personal delivery, on the first to occur of the date of actual receipt or refusal of delivery by any person at the intended address; (b) if by overnight courier, on the first business day after being delivered to a recognized overnight courier; (c) if by mail, on the third business day after being deposited in the United States mail, certified or registered mail, return receipt requested, postage prepaid; (d) if by facsimile transmission, the next business day after being transmitted, as evidenced by the confirmation slip generated by the sender's facsimile machine; or (e) if by e-mail, the business day after being transmitted, as evidenced by the confirmation generated by the sender's e-mail, addressed as follows (or to such other address as either party may from time to time specify as its address for the receipt of notices hereunder):

To the City of Marina:

Airport Services Manager
City Hall
211 Hillcrest Avenue
Marina, California 93933
Phone: 831-384-2901
Mobile: 831-241-8628
Facsimile: 831-582-0104
E-mail: jcrechriou@cityofmarina.org

With a copy to:

City Attorney – City of Marina
Wellington Law Offices
857 Cass Street, Suite D
Monterey, California 93940
Phone: 831-373-8733
Facsimile: 831-373-7106
E-mail: attys@wellingtonlaw.com

To Joby Aero, Inc.:

Joby Aero, Inc.
2155 Delaware Avenue, Suite #225
Santa Cruz, California 95060
Phone: 831-201-6700
Facsimile: (831) 417-4411
E-mail: legal@jobyaviation.com

THIS CERTIFICATE IS TO NOTIFY Joby Aero, Inc. that the above described Conditional Airport Use Permit was approved by the City of Marina City Council with their action and to become effective as specified in the Permit. However, requesters are notified that should any aggrieved party wish to appeal the decision of the City Council, a written appeal must be filed with the City Clerk no later than the end of the first workday which is at least ten calendar (10) days from the issuance of this Certificate, no later than 5:00 P.M. on Monday, January 31, 2022. Such appeal must set forth specifically the points at issue, the reasons for the appeal and describe why the person appealing the decision believes there was an error or abuse of discretion by the City Council. Should no appeal be filed within this time limit, this Certificate shall be valid as written. Any action for judicial review of this decision must be brought within the time limits specified in the California Code of Civil Procedure Section 1094.6.

Dated: January 31, 2022 at Marina, California

APPROVED/ATTEST

Layne Long
City Manager/Airport Manager
City of Marina

Jeff Crechriou
Airport Services Manager
City of Marina

Date: _____ 2022

Date: _____ 2022

I HAVE READ, UNDERSTAND AND ACKNOWLEDGE AND AGREE TO THE CONDITIONS SET FORTH IN THIS PERMIT:

Nik Whiting
Facilities Operations Lead
Joby Aero, Inc.

Date: _____ 2022

Attest: Pursuant to Resolution No. 2022-__

Anita Shepherd-Sharp, Deputy City Clerk

APPROVED AS TO FORM:

City Attorney

ATTACHMENTS:

EXHIBIT A Site Plan for Test Operations
EXHIBIT B Operational Safety Plan
EXHIBIT C Incident Report Form
EXHIBIT D FAA Assurances

EXHIBIT A

SITE PLAN FOR TEST OPERATIONS



EXHIBIT B
Operational Safety Plan

Marina Municipal Airport

Operational Safety Plan
for Conducting Testing by Joby Aviation
(Revised January [], 2022)

Compliance with the following. Refer to Site Plan (Exhibit A) for location and other pertinent information.

General Requirements and Restrictions:

1. Testing to occur between morning civil twilight and evening civil twilight.
2. Each operation shall be staffed with a Test Conductor (TC), provided by the Company. This individual is tasked with:
 - A. All required communications to the airport.
 - B. Safety and security during the event including set up and take down of delineation.
 - C. Control of all testing equipment, vehicles, and personnel, and airport perimeter security.
 - D. Ground radio frequency monitoring and communications.
 - E. Cleanliness and condition of airport pavements after each test event.
3. The Marina Airport air-band radio frequency is 122.70. The TC shall have an air-band radio tuned to that frequency and shall be trained in radio communications.
4. Airband radio for use communicating to aircraft / pilots. Do not use for communication between testing crew and TC, or between crews.
5. The TC shall position themselves in a vantage point to observe and control all aspects of the test.
6. Enter and exit airport from the Joby lease site/building.
7. Staff performing test-related work shall do so under the direction of the TC. Test staff shall refrain from migrating beyond the test area, and beyond the point-to-point route between lease and test site.
8. Airport management reserves the right to request permanent off-airport removal of any individual whom, in the sole opinion of the airport, is behaving in an unsafe, erratic, or illogical manner. Dispute of any such removal by the Company may result in permanent termination of on-airport testing operations authority.
9. Airport management holds authority to suspend or terminate on-airport testing operations authority at any time.

Procedures for test operations within Test Area:

1. Comply with all General Requirements and Restrictions.
2. Set up for testing:
 - A. Testing crew, equipment, and vehicles to position themselves at the Ground Control Station (GCS)
 - B. TC to move to the GCS for duration of testing operations.
 - C. Appropriate test site delineation shall be moved into place.
3. After all testing is complete:
 - A. When complete, all materials, delineation, equipment, vehicles, return to Hangar 524.
 - B. When organized and ready, inspect the Test Area for FOD and perform a sweep of Test Area, removing all FOD if necessary.

continues on next page

Emergency Response:

1. Call 911 first.
2. Inform 911 operator the emergency is within the secured fence of the Marina Municipal Airport.
3. Instruct the operator to enter the airport through Gate 18, with direct access off of Imjin Road.
4. Direct two team members in two vehicles to mobilize to Gate 18, operate and hold the gate in the open position, and gain the attention of emergency response when they arrive. Presuming emergency response arrives in 2 waves, each staff member to escort emergency responders into the airport through Gate 18 to the incident.
5. Call airport management and inform them of the incident.
6. After the incident has cleared, be prepared to address any issues raised by airport staff regarding duration of occupancy of facilities due to disabled equipment or vehicles, facility integrity, FOD removal, pavement sweeping, etc.
7. Should the incident occur on Runway 11-29 and occupancy expected to extend beyond 30 minutes, be prepared to assist airport staff in the placement of temporary runway closure crosses, and removal of same after all materials have been removed and the site has been deemed acceptable and safe for public use.

EXHIBIT C

Incident Report Form

INCIDENT REPORT FORM – FOR OFFICIAL USE ONLY

Date of Incident _____ Pilot in Command _____

Total Passengers _____ Name of Ground Observer _____

Name of Person(s) Involved: _____

Explanation: _____

Report Prepared by _____ Date _____

Received by _____ Date / Time _____

MARINA MUNICIPAL AIRPORT

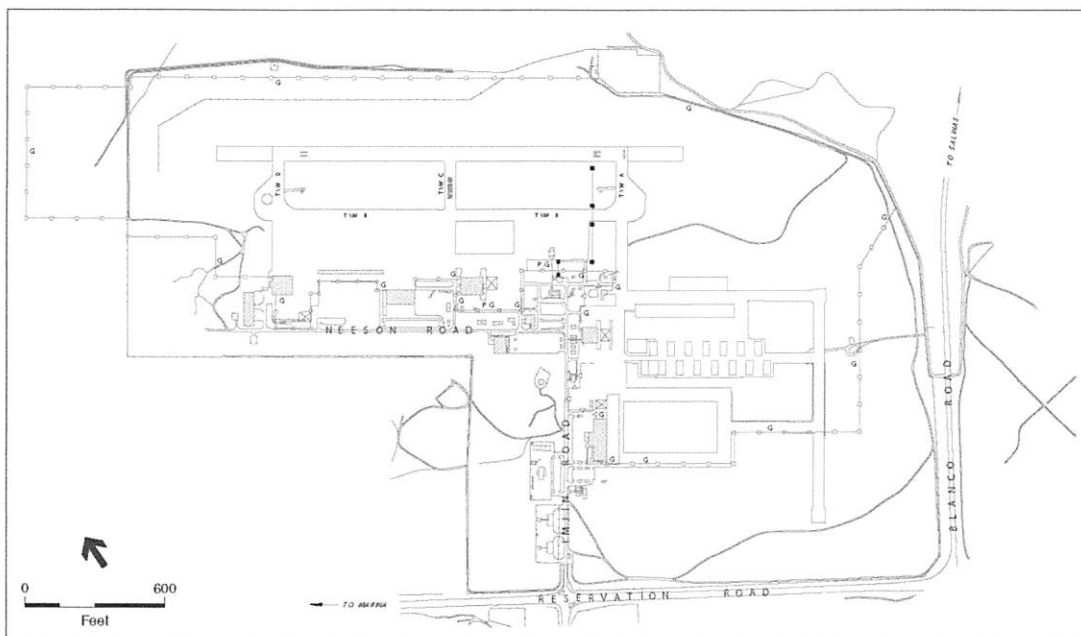


EXHIBIT D
FEDERAL AVIATION ADMINISTRATION ASSURANCES

A. COMPLIANCE WITH FEDERAL GRANT ASSURANCES: To the extent applicable, Permittee shall comply with all Federal Aviation Administration (FAA) assurances below:

1. The Permittee for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenants and agree that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Permittee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, COT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
2. The Permittee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (in the case of leases add "as a covenant running with the land") that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination, (3) that the Permittee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
3. That in the event of breach of any of the above nondiscrimination covenants, the City of Marina shall have the right to terminate the permit and to reenter and repossess said land and the facilities thereon, and hold the same as if said permit had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are followed and completed including expiration of appeal rights.
4. Permittee shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, THAT the Permittee may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers.

5. Non-compliance with Provision 4 above shall constitute a material breach thereof and in the event of such non-compliance the City of Marina shall have the right to terminate this permit and the estate hereby created without liability therefore or at the election of the City of Marina or the United States either or both said Governments shall have the right to judicially enforce Provisions.

6. Permittee agrees that it shall insert the above five provisions in any permit by which said Permittee grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the premises herein permitted.

7. The Permittee assures that it will undertake an affirmative action program as required by 14 CFR Par 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Permittee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Permittee assures that it will require that its covered suborganizations provide assurances to the Permittee that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR 152, Subpart E, to the same effort.

8. The City of Marina reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of the Permittee and without interference or hindrance.

9. The City of Marina reserves the right, but shall not be obligated to the Permittee to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport together with the right to direct and control all activities of the Permittee in this regard.

10. This permit shall be subordinate to the provisions and requirements of any existing or future agreement between the City of Marina and the United States, relative to the development, operation or maintenance of the airport.

11. There is hereby reserved to the City of Marina, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein permitted. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the Marina Municipal Airport.

12. Permittee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event future construction of a building is planned for the permitted premises, or in the event of any planned modification or alteration of any present of future building or structure situated on the permitted premises.

13. The Permittee by accepting this expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or object above the mean sea level elevation of 210 feet.

In the event the aforesaid covenants are breached, the City reserves the right to enter upon the land permitted hereunder and to remove the offending structure or object, all of which shall be at the expense of the Permittee.

14. The Permittee by accepting this permit agrees for itself, its successors and assigns that it will not make use of the permitted premises in any manner which might interfere with the landing and taking off of aircraft from the Marina Municipal Airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the owner reserves the right to enter upon the premises hereby permitted and cause the abatement of such interference at the expense of the Permittee.

15. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308a of the Federal Aviation Act of 1958 (49 U.S.C. 1349a).

16. This permit and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said airport or the exclusive or non-exclusive use of the airport by the United States during the time of war or national emergency.