AGENDA

Tuesday, March 1, 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 2022-13, 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 March 3, 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. 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. Property Negotiations

      i. Property: Opportunity Phase 1C and D at The Dunes at Monterey Bay
      Negotiating Party: Marina Community Partners, LLP
      Property Negotiator: City Manager
      Terms: Price and Terms

      ii. Property: Storage 210 8Th Street, Marina, CA 93933
      Negotiating Party: Joby Aero, Inc
      Property Negotiator: City Manager
      Terms: Price and Terms

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: None

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:

      (1) Accounts Payable Check Numbers 99341-99411, totaling $158,623.87

   b. MINUTES:

      (1) February 15, 2022, 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. 2022-, recognizing a Local Emergency Persists, Re-Ratifying the Proclamation of a State of Emergency by Governor Newsom on March 4, 2020, and Re-Authorizing Remote Teleconference Meetings of the City Council of the City of Marina and its Constituent Bodies for the Period March 1, 2022, through March 31, 2022, pursuant to Brown Act Provisions.

      (2) City Council consider adopting Resolution No. 2022-, ordering the City Engineer to prepare and to file a report related to maintenance of the Cypress Cove II Landscape Maintenance Assessment District for Fiscal Year 2022-2023.

      (3) City Council consider adopting Resolution No. 2022-, ordering the City Engineer to prepare and to file a report related to maintenance of the Seabreeze Landscape Maintenance Assessment District for Fiscal Year 2022-2023.

(4) City Council consider adopting Resolution No. 2022-, ordering the City Engineer to prepare and to file a report related to maintenance of the Monterey Bay Estates Lighting and Landscape Maintenance Assessment District for Fiscal Year 2022-2023.

(5) City Council consider adopting Resolution No. 2022-, approving purchase of one (1) TruNarc Narcotic Handheld Narcotics Analyzer in the amount of $37,036.84 from Thermo Scientific Portable Analytical Instruments, Inc, of Tewksbury, Massachusetts, utilizing funds set aside in the Police Department FY 2021-2022 Budget for purchase of said equipment and warranty plan, and; consider waiving the City's formal bid process, without competitive bidding, finding that competitive bidding would be unavailing, would 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.

(6) City Council consider adopting Resolution No. 2022-, opposing Initiative 21-0042A1; and direct staff to email a copy of the adopted resolution to the League of California Cities.

(7) City Council consider adopting Resolution No. 2022-, approving a proposed job description, classification and salary schedule for Accounting Services Manager to Assistant Finance Director; authorizing the City Manager to make necessary adjustments to City's Classification and Compensation Plans; authorizing the Finance Director to make appropriate budgetary and accounting entries and adjustments.

g. APPROVAL OF AGREEMENTS:

(1) City Council consider adopting Resolution No. 2022-, approving a Lease Agreement between the City of Marina and Joby Aero, Inc. for 771 Neeson Road (Building 529) at the Marina Municipal Airport; and authorizing City Manager to execute the Lease Agreement, on behalf of the City, subject to final review and approval by City Attorney.

(2) City Council consider adopting Resolution No. 2022-, approving an agreement with Wellington Law Offices to provide legal services to the City of Marina; and authorize the Finance Director to make necessary accounting and budgetary entries.

h. ACCEPTANCE OF PUBLIC IMPROVEMENTS: None

i. MAPS: None

j. REPORTS: (RECEIVE AND FILE): None

k. FUNDING & BUDGET MATTERS: None

l. APPROVE ORDINANCES (WAIVE SECOND READING):

(1) City Council consider adopting Ordinance No. 2022-, adopting New Council District Boundaries for Four Council Districts Pursuant to CA Elections Code §§21621-21629 and CA Govt. Code §34871(c) & §34886

m. APPROVE APPOINTMENTS: None

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.*

    a. Successor Agency Board consider adopting Resolution No. 2022- (SA-MRA) that approves certain documents for property tax increment bond issues for the Marina Dunes project, pursuant to pre-existing enforceable obligations, and takes various other actions related thereto, and Direct the City Manager to return to the Board with the balance of the documents required to complete this transaction, including preliminary official statements and bond purchase contracts.

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. 2022-, authorizing adjustments to the City's salary schedule and compensation plan for Marina Directors; and, authorizing the City Manager to execute a Memorandum of Understanding between the City of Marina and the Marina Directors Employees; and, authorizing Finance Director to make appropriate accounting and budgetary entries; and, receiving an oral report on changes to the executive compensation plan in compliance with Government Code Section 54953(c)(3).

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, February 25, 2022.

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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.ciytofmarina.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 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, March 15, 2022

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

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

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

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

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

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

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

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

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

2022 COMMISSION DATES

Upcoming 2022 Meetings of Design Review Board
3rd Wednesday of every month. Meetings are held at the Council Chambers at 6:30 P.M.
** = Change in location due to conflict with Council meeting

March 16, 2022	June 15, 2022	September 21, 2022
April 20, 2022	July 20, 2022	October 19, 2022
May 18, 2022	August 17, 2022	November 16, 2022
		December 21, 2022

Upcoming 2022 Meetings of Economic Development Commission
3rd Thursday of every month. Meetings are held at the Council Chambers at 4:00 P.M.

March 17, 2022	June 16, 2022	September 15, 2022
April 21, 2022	July 21, 2022	October 20, 2022
May 19, 2022	August 18, 2022	November 17, 2022
		December 15, 2022 (Cancelled)

Upcoming 2022 Meetings of Planning Commission
2nd and 4th Thursday of every month. Meetings are held at the Council Chambers at 6:30 P.M.

March 10, 2022	June 9, 2022	September 8, 2022
March 24, 2022	June 23, 2022	September 22, 2022
April 14, 2022	July14, 2022	October 13, 2022
April 28, 2022	July 28, 2022	October 27, 2022
May 12, 2022	August 8, 2022	November 10, 2022
May 26, 2022	August 22, 2022	
		December 18, 2022

Upcoming 2022 Meetings of Public Works Commission
3rd Thursday of every month. Meetings are held at the Council Chambers at 6:30 P.M.

March 17, 2022	June 16, 2022	September 15, 2022
April 21, 2022	July 21, 2022	October 20, 2022
May 19, 2022	August 18, 2022	November 17, 2022
		December 15, 2022

Upcoming 2022 Meetings of Recreation & Cultural Services Commission

1st Wednesday of every quarter month. Meetings are held at the Council Chambers at 6:30 P.M.

April 6, 2022 September 1, 2022 December 1, 2022

Upcoming 2022 Meetings of Marina Tree Committee

2nd Wednesday of every quarter month as needed. Meetings are held at the Council Chambers at 6:30 P.M.

April 13, 2022 July 13, 2022 October 12, 2022

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AP Check Register 02-18-22

Bank Account: 905 - Chase - Checking
Batch Date: 02/18/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: 905 - Chase - Checking						
Check	02/18/2022	99341	Accounts Payable	Ace Hardware		29.48
	Invoice		Date	Description		Amount
	081215		02/12/2022	Saw blade for the 19-01		29.48
Check	02/18/2022	99342	Accounts Payable	Ace Hardware		47.23
	Invoice		Date	Description		Amount
	080974		01/14/2022	Batteries		5.45
	081056		01/24/2022	Tape		12.01
	081060		01/25/2022	Windshield Wiper Fluid & Bug Wash		29.77
Check	02/18/2022	99343	Accounts Payable	Ace Hardware		396.29
	Invoice		Date	Description		Amount
	080976		01/14/2022	Shop Keys - New Employee Sets		4.35
	080913		01/07/2022	Striping Supplies		14.17
	081013		01/19/2022	327 Reindollar		29.49
	081057		01/25/2022	327 Reindollar		34.88
	081042		01/24/2022	327 Reindollar		218.47
	081029		01/21/2022	327 Reindollar		45.82
	080956		01/13/2022	Ant Bait - Finance Dept.		8.73
	080750		12/15/2021	Anchors - Public Safety		6.54
	080759		12/16/2021	Sea Haven Sign Replacement		8.72
	080713		12/10/2021	Holiday Lights - VD Park		25.12
Check	02/18/2022	99344	Accounts Payable	Altec		530.10
	Invoice		Date	Description		Amount
	1218828		02/15/2022	AP Check Order		530.10
Check	02/18/2022	99345	Accounts Payable	Altius Medical		198.00
	Invoice		Date	Description		Amount
	17255		02/08/2022	Tri annual medical waste - 2/8/22 Station 1		99.00
	17257		02/08/2022	Tri annual medical waste - 2/8/22 Station 2		99.00
Check	02/18/2022	99346	Accounts Payable	Big Creek Lumber		3,327.50
	Invoice		Date	Description		Amount
	1663796		01/20/2022	327 Reindollar		1,139.40

AP Check Register 02-18-22

Bank Account: 905 - Chase - Checking
Batch Date: 02/18/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
	1644097		11/30/2021	materials		2,188.10
Check	02/18/2022	99347	Accounts Payable	California Department of Transportation		66.44
	Invoice		Date	Description		Amount
	SL220809		01/24/2022	Singals & Lighting (Reservation Road)		66.44
Check	02/18/2022	99348	Accounts Payable	California Diesel Compliance		645.00
	Invoice		Date	Description		Amount
	21-3100		01/11/2022	Fleet Smoke Testing - Diesel		645.00
Check	02/18/2022	99349	Accounts Payable	Capitol Barricade, Inc.		1,667.64
	Invoice		Date	Description		Amount
	141292		01/25/2022	(2) Keep Right Signs 24" x 30"		172.94
	141296		01/25/2022	(2) Signs R10-15R 30"		261.78
	141473		02/02/2022	(30) No Parking Anytime Signs		856.00
	141648		02/08/2022	100 SimiFast U-bolt assembly		376.92
Check	02/18/2022	99350	Accounts Payable	Chavan & Associates LLP		29,350.00
	Invoice		Date	Description		Amount
	C&A-17370		02/07/2022	City Audit 6/30/21		29,350.00
Check	02/18/2022	99351	Accounts Payable	City of Vacaville		300.00
	Invoice		Date	Description		Amount
	03-06-22B		02/14/2022	Training for Anthony Prado - Strike Team/Task Force Leader		300.00
Check	02/18/2022	99352	Accounts Payable	Comcast		74.45
	Invoice		Date	Description		Amount
	01-26-22		01/26/2022	Cable Service Police & Fire 02/04/22 to 03/03/22		74.45
Check	02/18/2022	99353	Accounts Payable	Consolidated Electrical Distributors, Inc.		208.43
	Invoice		Date	Description		Amount
	4914-1010634		12/02/2021	Street Light Photo Cells		208.43
Check	02/18/2022	99354	Accounts Payable	CSG Consultants		13,716.00
	Invoice		Date	Description		Amount
	41242		01/14/2022	Building Inspection Services thru 12/31/2021		13,716.00
Check	02/18/2022	99355	Accounts Payable	Della Mora Heating, Inc.		2,775.00

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Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
	Invoice		Date	Description		Amount
	14570		01/21/2022	HVAC Annual Maint. - City Wide		2,220.00
	14744		02/01/2022	HVAC - Public Safety Heater Repair		555.00
Check	02/18/2022	99356	Accounts Payable	Denise Duffy & Associates		11,559.50
	Invoice		Date	Description		Amount
	7835		02/08/2022	Professional Services - Habitat Management Plan - ITP Task 1&2		11,559.50
Check	02/18/2022	99357	Accounts Payable	East Bay Tire Co.		2,316.01
	Invoice		Date	Description		Amount
	1804009		01/27/2022	Tires PD Avenger LIC 1487593		2,316.01
Check	02/18/2022	99358	Accounts Payable	Epic Aviation		34,627.82
	Invoice		Date	Description		Amount
	7522489		01/26/2022	Airport_AVGAS/100LL Fuel Purchase		34,627.82
Check	02/18/2022	99359	Accounts Payable	Fastenal Company		124.10
	Invoice		Date	Description		Amount
	CASAL149006		01/10/2022	Shop Supplies - Hand Wipes & Hard Hat		124.10
Check	02/18/2022	99360	Accounts Payable	Gavilan Pest Control		164.00
	Invoice		Date	Description		Amount
	0143448		01/11/2021	Pest Control - 211 Hillcrest		82.00
	0144090		02/01/2022	Pest Control Svc @ Shoemaker & Locke Paddon Pond		82.00
Check	02/18/2022	99361	Accounts Payable	George T. Powell		1,200.00
	Invoice		Date	Description		Amount
	02012022		02/01/2022	Parking Rental Fees		1,200.00
Check	02/18/2022	99362	Accounts Payable	Goldfarb & Lipman		6,464.00
	Invoice		Date	Description		Amount
	143843		02/08/2022	The Dunes - January 2022		3,488.00
	143842		02/08/2022	Marina Heights - January 2022		2,656.00
	143841		02/08/2022	General File - January 2022		320.00
Check	02/18/2022	99363	Accounts Payable	It-Straps-On, Inc.		93.68
	Invoice		Date	Description		Amount

AP Check Register 02-18-22

Bank Account: 905 - Chase - Checking
Batch Date: 02/18/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
	48552		12/08/2021	(100) 201 SS Band 3/4" x .030		93.68
Check	02/18/2022	99364	Accounts Payable	Triston Jean		253.00
	Invoice		Date	Description		Amount
	03-13-22		02/08/2022	Per Diem		253.00
Check	02/18/2022	99365	Accounts Payable	Christopher Johnson		253.00
	Invoice		Date	Description		Amount
	04-03-22		02/08/2022	Per Diem		253.00
Check	02/18/2022	99366	Accounts Payable	Landscape Forms Inc.		273.13
	Invoice		Date	Description		Amount
	0000139138		12/01/2021	Trash Can Liner Replacement - Library		273.13
Check	02/18/2022	99367	Accounts Payable	Marina Backflow Co.		205.00
	Invoice		Date	Description		Amount
	1956		01/24/2022	(3) Backflow Annual Tests		205.00
Check	02/18/2022	99368	Accounts Payable	Marina Coast Water District		3,284.38
	Invoice		Date	Description		Amount
	000056049 013122		01/31/2022	Water Charges		185.18
	000056014 020322		02/03/2022	Water Charges		109.96
	000056034 020322		02/03/2022	Water Charges		60.52
	000056032 020322		02/03/2022	Water Charges		60.52
	000056030 020322		02/03/2022	Water Charges		36.77
	000056098 020322		02/03/2022	Water Charges		50.60
	000056015 020322		02/03/2022	Water Charges		60.52
	000056011 020322		02/03/2022	Water Charges		89.02
	000056084 020322		02/03/2022	Water Charges		27.26
	000056087 020322		02/03/2022	Water Charges		27.26
	000056097.123121		12/31/2021	Water Service_B507		467.61
	000056096.123121		12/31/2021	Water Service_B554		104.12
	000056043.123121		12/31/2021	Water Service_B524		154.53
	000056044.123121		12/31/2021	Water Service_B520		145.45
	000056051.123121		12/31/2021	Water Service_B533		376.49
	000056092.123121		12/31/2021	Water Service_B527		1,101.34

Marina, CA LIVE

AP Check Register 02-18-22

Bank Account: 905 - Chase - Checking

Batch Date: 02/18/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
	000057000.123121		12/31/2021	Water Service_B504		145.45
	000056086 020322		02/03/2022	Water Charges		27.26
	000056008 020322		02/03/2022	Water Charges		27.26
	000056085 020322		02/03/2022	Water Charges		27.26
Check	02/18/2022	99369	Accounts Payable	Microsoft		1,667.10
	Invoice		Date	Description		Amount
	E0700HOV05		02/11/2022	Citywide MS Office 365 - February 2022		5.00
	E0700HOV0W		02/11/2022	Citywide MS Office 365 - February 2022		1,175.00
	E0700HOUZ3		02/11/2022	Citywide MS Office 365 - February 2022		48.00
	E0700HOXPW		02/11/2022	Citywide MS Office 365 - February 2022		311.74
	E0700HOLE0		02/11/2022	Citywide MS Office 365 - February 2022		79.36
	E0700HOXQP		02/11/2022	Citywide MS Office 365 - February 2022		48.00
Check	02/18/2022	99370	Accounts Payable	Monterey Bay Lovedpet		250.00
	Invoice		Date	Description		Amount
	2021-969859		07/20/2021	Disposal 07/20/2021		250.00
Check	02/18/2022	99371	Accounts Payable	Monterey Bay Office Products		380.20
	Invoice		Date	Description		Amount
	464497254		02/03/2022	City Hall Copier Lease Payment - February 2022		380.20
Check	02/18/2022	99372	Accounts Payable	Monterey County Department of Health		35.00
	Invoice		Date	Description		Amount
	IN101371335		12/22/2021	Health Permit Fee - 3040 Lake Ct.		35.00
Check	02/18/2022	99373	Accounts Payable	Monterey County Mayors Association		1,500.00
	Invoice		Date	Description		Amount
	2022 215		02/10/2022	Monterey County Mayor's Assoc. 2022 Annual Dues		1,500.00
Check	02/18/2022	99374	Accounts Payable	Monterey One Water		564.30
	Invoice		Date	Description		Amount
	13-000144_010122		01/31/2022	Sewer Service_B507		24.20
	13-000145_010122		01/31/2022	Sewer Service_B514		40.30
	13-000148_010122		01/31/2022	Sewer Service_B520		40.30
	13-000149_010122		01/31/2022	Sewer Service_B521		24.20

AP Check Register 02-18-22

Bank Account: 905 - Chase - Checking
Batch Date: 02/18/2022

Type	Date	Number Source		Payee Name	EFT Bank/Account	Transaction Amount
	13-000152_010122		01/31/2022	Sewer Service_B527		24.20
	13-000153_010122		01/31/2022	Sewer Service_B529		24.20
	13-000157_010122		01/31/2022	Sewer Service_B533		161.20
	13-000158_010122		01/31/2022	Sewer Service_B535		40.30
	13-000159_010122		01/31/2022	Sewer Service_B524		185.40
Check	02/18/2022	99375 Accounts Payable		Monterey Signs, Inc.		1,988.35
	Invoice		Date	Description		Amount
	20440		01/06/2022	City Park Signs		1,988.35
Check	02/18/2022	99376 Accounts Payable		Monterey Tire Service		123.86
	Invoice		Date	Description		Amount
	1-104373		01/20/2022	Tire Service - PD 896		61.93
	1-104372		01/20/2022	Tire Service - PD 897		61.93
Check	02/18/2022	99377 Accounts Payable		My Chevrolet		151.75
	Invoice		Date	Description		Amount
	133631CVR		01/21/2022	PD 896		151.75
Check	02/18/2022	99378 Accounts Payable		NAPA Auto Parts		809.79
	Invoice		Date	Description		Amount
	874707		12/09/2021	ADP1438 - 612 Shop		5.78
	881812		01/13/2022	OIl, Cab, Air Filter - 360PR		62.22
	877595		12/22/2021	(7) 26" & (5) 20" Exactfit - PD 810		149.00
	872384		11/30/2021	Multi Fuse - Shop 612		16.22
	883293		01/20/2022	(6) Air Filter - Fleet 612		145.19
	877273		12/21/2021	AGM Battery - FD 5404		376.81
	886030		02/01/2022	1 gallon coolant		54.57
Check	02/18/2022	99379 Accounts Payable		Office Depot		1,011.11
	Invoice		Date	Description		Amount
	227064881-1		02/10/2022	Office Supplies		111.11
	226681957001		02/08/2022	20 Case of Copier Paper		900.00
Check	02/18/2022	99380 Accounts Payable		Pacific Gas & Electric		7,679.71
	Invoice		Date	Description		Amount

Marina, CA LIVE

AP Check Register 02-18-22

Bank Account: 905 - Chase - Checking

Batch Date: 02/18/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
	313-6.JAN22		01/26/2022	PG&E 6793435313-6		7,151.86
	582-7.FEB22		02/08/2022	PG&E - 8161432582-7		150.01
	148-6.FEB22		02/08/2022	PG&E - 5593414148-6		232.16
	353-7.FEB22		02/08/2022	PG&E - 9930567353-7		66.95
	943-2.FEB22		02/08/2022	PG&E - 6150212943-2		78.73
Check	02/18/2022	99381	Accounts Payable	Pacific Smog		303.25
	Invoice		Date	Description		Amount
	232		12/31/2021	(7) Smog Inspections Fleet		303.25
Check	02/18/2022	99382	Accounts Payable	Pacific Truck Parts		175.87
	Invoice		Date	Description		Amount
	1850067		09/28/2021	Alternator - 576		252.78
	1850513		10/04/2021	Alternator - 576 Core Charge		(76.91)
Check	02/18/2022	99383	Accounts Payable	Salinas Valley Ford		1,853.22
	Invoice		Date	Description		Amount
	86312		01/27/2022	Break Repair - 2007 Ford Ranger		1,678.22
	85280		12/14/2021	Starter Repair - 2008 Ford Expedition		175.00
Check	02/18/2022	99384	Accounts Payable	Salinas Valley Pro Squad		343.00
	Invoice		Date	Description		Amount
	319206		01/10/2022	Police Uniforms and Equipment		343.00
Check	02/18/2022	99385	Accounts Payable	Sentry Alarm Systems of America, Inc.		285.00
	Invoice		Date	Description		Amount
	2184444		02/15/2022	Fire Alarm Monitoring - 2800 2nd Ave - Sport Center		285.00
Check	02/18/2022	99386	Accounts Payable	Sierra Springs & Alhambra		122.10
	Invoice		Date	Description		Amount
	9696351 011522		01/15/2022	5g Fresh Water Delivery Service		43.43
	14225799 011322		01/13/2022	5g Fresh Water Delivery Service		78.67
Check	02/18/2022	99387	Accounts Payable	Stordok		60.00
	Invoice		Date	Description		Amount
	53545844		02/08/2022	Document Shredding Services - City Hall		60.00
Check	02/18/2022	99388	Accounts Payable	TechRx Technology Services		437.00

AP Check Register 02-18-22

Bank Account: 905 - Chase - Checking
Batch Date: 02/18/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
	Invoice		Date	Description		Amount
	9855		01/31/2022	Blink Cameras - Public Works		437.00
Check	02/18/2022	99389	Accounts Payable	Verizon Wireless		366.32
	Invoice		Date	Description		Amount
	9898131853		01/25/2022	FD Mobile Charges - Dec 26 - Jan 25, 2022		366.32
EFT	02/18/2022	2094	Accounts Payable	Richard B. Standridge	121042882 / 8312012522	3,895.00
	Invoice		Date	Description		Amount
	22-03		02/11/2022	Services 01-31/02-10-22		3,895.00

905 Chase - Checking Totals: Transactions: 50 $138,151.11

Checks:	49	$134,256.11
EFTs:	1	$3,895.00

Marina, CA LIVE

AP Check Register 02-25-22

Bank Account: 905 - Chase - Checking
Batch Date: 02/25/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: 905 - Chase - Checking						
Check	02/25/2022	99390	Accounts Payable	Ace Hardware		21.83
	Invoice		Date	Description		Amount
	081254		02/17/2022	Utility Flags		21.83
Check	02/25/2022	99391	Accounts Payable	Applied Real Estate Inspections		1,400.00
	Invoice		Date	Description		Amount
	22-63		02/15/2022	Limited Mold Screen		700.00
	22-64		02/15/2022	Limited Mold Screen		700.00
Check	02/25/2022	99392	Accounts Payable	ARC Document Solutions		186.56
	Invoice		Date	Description		Amount
	2547079		02/18/2022	Glory Jean Pump Track Plan Set		186.56
Check	02/25/2022	99393	Accounts Payable	AT & T		225.28
	Invoice		Date	Description		Amount
	02-13-22		02/13/2022	AT&T 831-582-9957		225.28
Check	02/25/2022	99394	Accounts Payable	AT & T		382.99
	Invoice		Date	Description		Amount
	000017764172		02/13/2022	CALNET3-9391023436 (239-461-6578)		70.16
	000017773386		02/15/2022	CALNET3-9391023485 (884-2573)		23.67
	000017773392		02/15/2022	CALNET3-9391023491 (884-9654)		83.50
	000017773415		02/15/2022	CALNET3-9391023435 (237-267-6922)		183.16
	000017773384		02/15/2022	CALNET3-9391023482 (884-0985)		22.50
Check	02/25/2022	99395	Accounts Payable	Bear Electrical Solutions, Inc.		1,830.00
	Invoice		Date	Description		Amount
	14854		01/28/2022	January 2022 Service		1,830.00
Check	02/25/2022	99396	Accounts Payable	Cintas Corporation		81.05
	Invoice		Date	Description		Amount
	4105724981		12/23/2021	Mat Service-Police/Fire 12/23/21		81.05
Check	02/25/2022	99397	Accounts Payable	CSG Consultants		2,488.40
	Invoice		Date	Description		Amount

AP Check Register 02-25-22

Bank Account: 905 - Chase - Checking

Batch Date: 02/25/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
	B220093		02/01/2022	Building Plan Reviews 1/1/2022-1/31/2022		2,488.40
Check	02/25/2022	99398	Accounts Payable	Ferguson Enterprise, Inc. # 1423		11.54
	Invoice		Date	Description		Amount
	9756690		02/09/2022	Public Safety Hose Bib		11.54
Check	02/25/2022	99399	Accounts Payable	Kelly-Moore Paint Co.,Inc		20.76
	Invoice		Date	Description		Amount
	802-00000796769		08/23/2021	Paint Sprayer o-rings		20.76
Check	02/25/2022	99400	Accounts Payable	L.N. Curtis & Sons		822.65
	Invoice		Date	Description		Amount
	INV566560		02/07/2022	Bubble cup nozzle w/shut off, FoamJet Attachment		822.65
Check	02/25/2022	99401	Accounts Payable	Language Line, LLC		247.09
	Invoice		Date	Description		Amount
	10438826		01/31/2022	Transcription 01/31/2022		247.09
Check	02/25/2022	99402	Accounts Payable	Marina Coast Water District		1,972.44
	Invoice		Date	Description		Amount
	000056005 021122		02/11/2022	Water Charges		89.02
	000056007 021122		02/11/2022	Water Charges		89.02
	000056025 021122		02/11/2022	Water Charges		69.16
	000056027 021122		02/11/2022	Water Charges		36.77
	000056022 021122		02/11/2022	Water Charges		44.07
	000056017 021122		02/11/2022	Water Charges		80.86
	000056019 021122		02/11/2022	Water Charges		1,033.93
	000056001 021122		02/11/2022	Water Charges		102.85
	000056024 021122		02/11/2022	Water Charges		89.02
	000056021 02112		02/11/2022	Water Charges		36.77
	000056016 021122		02/11/2022	Water Charges		36.77
	000056018 021122		02/11/2022	Water Charges		142.23
	000056020 021122		02/11/2022	Water Charges		121.97
Check	02/25/2022	99403	Accounts Payable	My Chevrolet		915.05
	Invoice		Date	Description		Amount

Marina, CA LIVE

AP Check Register 02-25-22

Bank Account: 905 - Chase - Checking

Batch Date: 02/25/2022

Type	Date	Number Source		Payee Name	EFT Bank/Account	Transaction Amount
	CVCS243800		02/15/2022	894 Check Engine Light		340.00
	CVCS243946		02/22/2022	899 Battery Replacement		575.05
Check	02/25/2022	99404 Accounts Payable		Pacific Gas & Electric		4,236.39
	Invoice		Date	Description		Amount
	562-0.FEB22		02/09/2022	PG&E - 4758891562-0		1,113.91
	085-2.FEB22		02/09/2022	PG&E - 5434906085-2		117.84
	202-3.FEB22		02/09/2022	PG&E - 6594070202-3		123.71
	720-0.FEB22		02/09/2022	PG&E - 0167505720-0		1,125.44
	608-2.FEB22		02/09/2022	Gas & Electric at Station 2		1,023.25
	210-0.FEB22		02/10/2022	PG&E - 3242976210-0		185.73
	827-8.FEB22		02/11/2022	PG&E - 0423929827-8		118.87
	535-3.FEB22		02/11/2022	PG&E - 6161832535-3		264.30
	851-0.FEB22		02/14/2022	PG&E - 3440977851-0		163.34
Check	02/25/2022	99405 Accounts Payable		Quill Corporation		480.67
	Invoice		Date	Description		Amount
	22780408		02/01/2022	Office Supplies 02/01/2022		258.90
	22840874		02/03/2022	Office Supplies 02/03/2022		208.02
	22832837		02/03/2022	Office Supplies 02/03/2022		13.75
Check	02/25/2022	99406 Accounts Payable		Scott Green		2,327.00
	Invoice		Date	Description		Amount
	02-07-2022		02/07/2022	Refund - 3033-3039 Marina Dr Landscape Agreement		2,327.00
Check	02/25/2022	99407 Accounts Payable		Sierra Springs & Alhambra		75.36
	Invoice		Date	Description		Amount
	9696351 021222		02/12/2022	Corp Yard Water Service 5g		75.36
Check	02/25/2022	99408 Accounts Payable		USA Towing Inc.		125.00
	Invoice		Date	Description		Amount
	175661		01/22/2022	Chevy Malibu Unit#812		125.00
Check	02/25/2022	99409 Accounts Payable		Verizon Wireless		661.70
	Invoice		Date	Description		Amount
	9895893556		12/25/2021	FD Mobile Charges - Nov 26 - Dec 25, 2021		368.41

Marina, CA LIVE

AP Check Register 02-25-22

Bank Account: 905 - Chase - Checking

Batch Date: 02/25/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
	9899206833		02/10/2022	Monthly Verizon Bill-308174766		293.29
Check	02/25/2022	99410	Accounts Payable	Marina Employees Association		125.00
	Invoice		Date	Description		Amount
	02-18-22		02/18/2022	24 - MEA Dues		125.00
Check	02/25/2022	99411	Accounts Payable	Marina Professional Fire Fighters Association		300.00
	Invoice		Date	Description		Amount
	02-18-22		02/18/2022	35 - MPFFA Dues		300.00
EFT	02/25/2022	2099	Accounts Payable	Marina Police Association-MPOA	322271627 / 901587928	240.00
	Invoice		Date	Description		Amount
	02-18-22		02/18/2022	23 - MPOA Dues		240.00
EFT	02/25/2022	2100	Accounts Payable	Police Officers Association - POA	322271627 / 901589106	1,296.00
	Invoice		Date	Description		Amount
	02-18-22		02/18/2022	25 - POA Dues		1,296.00

905 Chase - Checking Totals: Transactions: 24 $20,472.76

Checks:	22	$18,936.76
EFTs:	2	$1,536.00

DRAFT

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

MINUTES

Tuesday, February 15, 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 2022-13, 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 March 3, 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/

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. Conference with Legal Counsel, anticipated litigation, significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of CA Govt. Code §54956.9.

b. Property Negotiations

   i. Property: The Dunes on Monterey Bay, Opportunity Phase 1A, Hotel Site
   Negotiating Party: SJB Development L.P. (Dadwal Management Group, Inc., its General Partner)
   Property Negotiator: City Manager
   Terms: Price and Terms

6:50 PM - RECONVENE OPEN SESSION AND REPORT ON ANY ACTIONS TAKEN IN CLOSED SESSION

Robert Wellington reported out Closed Session: The Council came back from its closed session at 6:44, having taken up with regard to the items that are listed on the agenda for the closed session. An announcement was made prior to the closed session relative to the matter of anticipated litigation. The council received information and discussed matters with the city manager, its attorneys and negotiators, and no reportable action was taken.

Mayor Delgado announced that due to staff error the public hearing listed as 9a will be continued. The staff report with exhibits were not included in the online packet and therefore the public did not have advanced time to review it. The public hearing will be opened at 8:00pm and the public will be allowed to make comments now and again at the selected scheduled date and time.

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

5. SPECIAL PRESENTATIONS:

   a 2022 Central Coast Community Energy Annual Member Agency Presentation – Lena Williams

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 – Commented on Planning staff, Tree Committee and City Manager leadership in hiring new Community Development Director
- Karen Andersen – Commented on California Avenue at Imjin Parkway tree removal
- Audra Walton – Enjoyed the presentation from Central Coast Community Energy
- Denise Turley – Commented on weatherization of doors at Preston and Abrams Park
- Council Member Medina Dirksen – Commented on the recent traffic jam throughout the city due to overturned rick truck on freeway; redistricting maps can be found on her Facebook page.
- Mayor Delgado – Commented on roadside cleanup volunteers; Marina Library Community Garden planting on each Saturday from 9am-1pm; February 26th Live Music Planting Event at BLM; April 23rd Earth Day a Locke Paddon Park

- Brian McMinn – Announced that Food Waste pails can be picked up at 209 Cypress Ave.

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 98934-99340, totaling $3,476,624.45
Accounts Payable for Successor Agency Check Numbers 78-81, totaling $5,703.30

b. MINUTES:

(1) January 4, 2022-, Special City Council Meeting
(2) January 11, 2022, Special City Council Meeting
(3) January 19, 2022, Regular City Council Meeting
(4) January 25, 2022, Special City Council Meeting
(5) February 1, 2022, 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. 2022-14**, amending the Salary table for members of the Mid-Management Employee Association (MMEA); and authorize the Finance Director to make the necessary accounting entries.

(2) ~~City Council consider adopting Resolution No. 2022-, amending salary schedule (broadband range) for Directors; and authorize the Finance Director to make the necessary accounting entries~~. ***Pulled from agenda by staff***

(3) City Council consider adopting **Resolution No. 2022-15**, authorizing the release of a Request for Proposals (RFP) to qualified firms for program management, public communication, design, construction management, and construction inspection services needed to deliver pavement resurfacing and rehabilitation projects.

(4) City Council consider adopting **Resolution No. 2022-16**, authorizing submittal of application(s) for all CalRecycle Grants for which the City of Marina is eligible; and adopting **Resolution 2022-17**, for the following actions: (1) applying for CalRecycle SB 1383 Local Assistance Grant Program funds; and (2) authorizing the City Manager or his designee to execute all documents and submit all reports required by the grant; and (3) appropriating grant funds to be received in the current budget; and (4) authorizing the Finance Director to make the necessary accounting and budgetary entries.

g. APPROVAL OF AGREEMENTS:

(1) City Council consider adopting **Resolution No. 2022-18**, approving the Pavement Management Program Update 2022 Funding Agreement with the Transportation Agency for Monterey County (TAMC) for the City's Pavement Management Program; and authorize the City Manager to execute the Agreement on behalf of the City Council subject to final review and approval by the City Attorney.

(2) City Council consider adopting **Resolution No. 2022-19**, approving a contract amendment with Rincon Consulting to provide Urban Planning Services to complete the Downtown Specific Plan for an amount not to exceed $470,339; and authorize the Finance Director to make necessary accounting and budgetary entries; and authorize the City Manager to execute a contract amendment on behalf of City with Rincon Consulting subject to final review by the City Attorney.

(3) City Council consider adopting **Resolution No. 2022-20**, approving an amendment to the Memorandum of Understanding (MOU) regarding cooperative assistance to comply with Senate Bill 1383, Food Waste Reduction and Organics Recycling Regulations, incorporating changes necessary for the regional administration of SB 1383 Local Assistance Grant Program Funding; and authorizing the City Manager to execute the amended subject to final review and approval by the City Attorney.

h. ACCEPTANCE OF PUBLIC IMPROVEMENTS: None

i. MAPS: None

j. REPORTS: (RECEIVE AND FILE):

(1) City Council consider receiving Investment Reports for the City of Marina and City of Marina as Successor Agency to the Marina Redevelopment Agency for the quarter ended December 31, 2021.

(2) City Council consider adopting **Resolution No. 2022-21**, receive and file the Unanimous Approval of Annexation of property into the City's Community Facilities District No. 2015-1 (The Dunes).

k. FUNDING & BUDGET MATTERS: None

l. INTRODUCE ORDINANCE (READ BY TITLE ONLY AND WAIVE FURTHER READING):

(1) An Ordinance of the City of Marina Adopting New Council District Boundaries for Four Council Districts Pursuant to CA Elections Code §§21621-21629 and CA Govt. Code (c) & §34886. (Introduction to follow Item 9.a. Public Hearing.) ***Public Hearing continued to Wednesday, February 23, 2022, at 6:00PM***

m. APPROVE APPOINTMENTS:

(1) City Council consider appointing to Planning Commission: Nancy Amadeo, Audra Walton and Richard St. John. 3-seats expiring February 2024.

Brian McCarthy commented on agenda item 8g(2) and asked….

BIALA/BERKLEY: TO APPROVE THE CONSENT AGENDA MINUS 8(f2) and 8l(1). 5-0-0-0 Motion Passes by Roll Call Vote

9. PUBLIC HEARINGS:

a. City Council open public hearing and consider draft revised City Council district maps and the City Council's introduction of an Ordinance adopting a map establishing new City Council district boundaries and the sequence of district elections pursuant to the California Elections Code. ***Public Hearing continued to Wednesday, February 23, 2022, at 6:00PM***

DELGADO/BERKLEY: TO CONSIDER THIS ITEM ON FEBRUARY 23, 2022 AT 6:00 P.M. 3-0-2(Burnett, Berkley)-0 Motion Passes by Roll Call Vote

Mayor Delgado opened the public hearing

- Brian McCarthy – Commented on allowing additional public comment on this matter. Commented on the structure the map to be selected.
- Tommy Bolea – Asked where the maps could be viewed at and also about sequencing of the election.

Substitute Motion
Berkley/Delgado: that we do it on March 1, 2022, at the appropriate time per the demographer working with their schedule. 2-3(Medina Dirksen, Biala, Delgado)-0 Substitute Motion Fails by Roll Call Vote

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. 2022-22**, receiving a presentation on the location, landscape features, and amenities for the placement of the Martin Luther King sculpture donated to the city by the Paige family and providing direction to staff.

Council Questions: Is either one of these option, Site 1 or Site 2 more accessible for a ADA accessibility? What is the cost difference between Site 1 and Site 2 for the ADA? How do we handle the gopher holes as they are quite extensive? Was it taken into consideration for Site 1 if people wanted to have a rally to talk about injustices, or a meeting where they could dialogue what's troubling our society? Will the base of the statue be the same black marble as the facades with all the speeches on them? What are the liabilities of the statue height if children decided to climb on it? Would there be a possibility for more seating or some natural seating? Lighting of the sculpture wither electricity or solar but is there an option to have the words light up as well as you walk through? Regarding Site 1, you made a reference that the southern half leading to the south, that large drivable road that the police often control on that one there that it's a potential for sculptures what did you mean by that? Did you consider the potential for paths leading to sculptures in the oak Woodland Restoration area? Which of the 2 sites, do you think is more protected from wind? Did you get very far in considering other places within the site 1triangle to put the Martin Luther King Sculpture. Did you give much thought to placing this in the most norther corner of the Site? In the event that the sculpture is defaced, can we restore it again?

Public Comments:

- Karen Andersen – Fan of Site 2 due to access from inside library. Very challenging side to the library and suggested improving the pathway along shaded tree side. Loves both rendering and happy with either one.
- Denise Turley – How would one get to Site 2 if the library was closed? Is it intended that those places are only accessed while the gardens are open? Asked about emergency access to Site 1 or Site 2 in case there was an injury, what are your concerns there? Asked about webcam for virtual access to student around the county?
- Mike Owen – Agrees that Site 1 it's a better sense of place overall. Asked about grass or turf in the area.
- Brian McCarthy – Agrees that Site 2 is not the appropriate area for the statue. Spoke about the treatment of Locke Paddon Park and Marina not owning the Site 1 area. Asked if there was a signed agreement in place with the property owner that the statue will remain by easement or other mechanism in perpetuity? Concerned about the latest specific plan governing the park. Asked if funds are being allocation to update this specific plan?
- Jeff Markham – Likes the 5 goals. Proposed a design change that rather than repeating the words so much it would be good to challenge us in the last part of that walk to carry on this legacy. Commented on the walking access of the park.

BIALA/BERKLEY: TO APPROVE RESOLUTION NO. 2022-22, RECEIVING A PRESENTATION ON THE LOCATION, LANDSCAPE FEATURES, AND AMENITIES FOR THE PLACEMENT OF THE MARTIN LUTHER KING SCULPTURE DONATED TO THE CITY BY THE PAIGE FAMILY AND DIRECT STAFF TO:

1. **SECURE WRITTEN COMMITMENT FROM THE MPRPD TO PERMANENTLY RETAIN THIS SCULPTURE AT THIS SITE AND TO GIVE STAFF DIRECTION TO PROCEED TO DEVELOP THE SCULPTURE IN SITE ONE;**
2. **THAT WE ALSO ENSURE THAT WE HAVE WHATEVER DOCUMENTATION REGARDING LOCKE PADDON PARK TO ENSURE SOME KIND OF A PERMANENT AGREEMENT FROM THE PARK DISTRICT THAT THIS IS A PERMANENT OR THAT WE HAVE A PERMIT TO USE THAT THAT PARCEL OF LAND IN PERPETUITY; AND**
3. **STAFF TO LOOK INTO PROPER LIGHTING AND NATIVE DROUGHT RESISTANT PLANTS. 5-0-0-0 Motion Passes by Roll Call Vote**

b. City Council discussion and possible action on Acquisition of Dunes Hotel Site. *This item was not discussed.*

12. COUNCIL & STAFF INFORMATIONAL REPORTS:

a. Monterey County Mayor's Association [Mayor Bruce Delgado]

Announced at the last Mayor's Association meeting he was appointed to the Airport Land Use Commission.

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.

Council Member Medina Dirksen – would like to put on a future agenda a possible discussion on how to rally the State to return some surplus funds to us and other cities for infrastructure needs.

13. ADJOURNMENT: The meeting adjourned at 9:55 P.M.

____
Anita Sharp, Deputy City Clerk

ATTEST:

____
Bruce C. Delgado, Mayor

February 25, 2022 Item No. **8f(1)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of March 1, 2022

CITY COUNCIL CONSIDER ADOPTING RESOLUTION 2022-, RECOGNIZING A LOCAL EMERGENCY PERSISTS, RE-RATIFYING THE PROCLAMATION OF A STATE OF EMERGENCY BY GOVERNOR NEWSOM ON MARCH 4, 2020, AND RE-AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE CITY COUNCIL OF THE CITY OF MARINA AND ITS CONSTITUENT BODIES FOR THE PERIOD MARCH 1, 2022 THROUGH MARCH 31, 2022, PURSUANT TO BROWN ACT PROVISIONS.

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2022-, 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 March 1, 2022, through March 31, 2022.

BACKGROUND:

Government Code §54953(e) allows cities to continue to meet remotely during states of emergency proclaimed by the Governor under modified Brown Act requirements that are similar to but not identical to the rules and procedures established by the prior Executive Orders of Governor Newsom relating to the relaxation of certain Brown Act requirements during the COVID-19 pandemic.

Government Code §54953(e) authorizes local agencies to use teleconferencing without complying with teleconferencing requirement imposed by the Brown Act during a declared state of emergency when state or local health officials have imposed or recommended measures to promote social distancing during the proclaimed state of emergency or when the legislative body had determined by majority vote that meeting in person would present imminent risks to the health or safety of attendees.

At a special meeting held on October 5, 2021, the City Council adopted Resolution 2021-104 regarding the Brown Act making certain findings, and authorizing the City to implement remote teleconferenced public meetings of the City Council and its constituent bodies might be held without compliance with Government Code §54953(b)(3) for the period October 5, 2021 through November 4, 2021; subsequently on November 2, 2021, the Council adopted Resolution 2021-113 extending that period until December 2, 2021; on November 16, 2021, the Council adopted Resolution 2021-118 extending that period until December 16, 2021; on December 14, 2021, the Council adopted Resolution 2021-134 extending that period until January 13, 2022; and on January 11, 2022, the Council adopted Resolution 2022-02 extending that period to February 10, 2022; and on February 1, 2022, the Council adopted Resolution No. 2022-13, to extend the period during which remote teleconferenced public meetings of the City Council and its constituent bodies might be held without compliance with Government Code §54953(b)(3) to March 3, 2022

ANALYSIS:

On June 11, 2021, Governor Newsom issued Executive Order N-08-21 which among other things rescinded his prior Executive Order N-29-20 and set the date of October 1, 2021, for public agencies to transition back to public meetings held in full compliance with the Brown Act.

As the Delta variant surged in California, the legislature took action to extend the COVID-19 exemptions to the Brown Act's teleconference requirements, subject to some additional requirements. California and Monterey County are presently continuing to experience cases of the rapidly-spreading Omicron variant. Assembly Bill 361 amended Government Code §54953 and allowed a local agency to use teleconferencing in any of the following circumstances without complying with certain Brown Act provisions:

1. The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

2. The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

3. The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote taken at a meeting held for the purpose described in 2 above, that as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

A local agency that holds a meeting under any of these circumstances would be required to follow certain requirements listed in the attached Resolution, in addition to giving notice of the meeting and posting agendas as required under the Brown Act. These additional requirements are intended to protect the public's right to participate in the meetings of local agency legislative bodies. The City of Marina adheres to the listed requirements.

Government Code §54953(e)(3) provides that if the state of emergency remains active for more than 30 days, a local agency must make the following findings by majority vote every 30 days to continue using the exemption to the Brown Act teleconferencing requirements:

- The legislative body has reconsidered the circumstances of the emergency; and

- Either of the following circumstances exist: the state of emergency continue to directly impact the ability of members to meet safely in person or State or local officials continue to impose or recommend social distancing measures.

The goal of Government Code §54953 as revised by AB 361 is to improve and enhance public access to local agency meetings during the COVID-19 pandemic and future applicable emergencies by allowing broader access through teleconferencing options. The current version of Government Code §54953 became effective on September 16, 2021, with a sunset of the present version on January 1, 2024.

FISCAL IMPACT:

None identified.

CONCLUSION:

This request is submitted for City Council consideration and possible adoption of a resolution proclaiming a local emergency persists, re-ratifying the proclamation of a state of emergency by Governor Newsom on March 4, 2020, and re-authorizing remote teleconference meetings of the City Council of the City of Marina and its constituent bodies for the period March 1, 2022, through March 31, 2022, pursuant to Brown Act provisions.

Respectfully submitted,

____

Layne Long
City Manager
City of Marina

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA RECOGNIZING A LOCAL EMERGENCY PERSISTS, RE-RATIFYING THE PROCLAMATION OF A STATE OF EMERGENCY BY GOVERNOR NEWSOM ON MARCH 4, 2020, AND RE-AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE CITY COUNCIL OF THE CITY OF MARINA AND ITS CONSTITUENT BODIES FOR THE PERIOD MARCH 1, 2022 THROUGH MARCH 31, 2022, PURSUANT TO BROWN ACT PROVISIONS.

WHEREAS, the City of Marina is committed to preserving and nurturing public access and participation in meetings of the City Council and its constituent bodies; and

WHEREAS, all meetings of City of Marina's legislative bodies are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend, participate, and watch the City's legislative bodies conduct their business; and

WHEREAS, the Brown Act, Government Code section 54953(e), makes provision for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, a required condition is that a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

WHEREAS, a proclamation is made when there is an actual incident, threat of disaster, or extreme peril to the safety of persons and property within the jurisdictions that are within the City's boundaries, caused by natural, technological or human-caused disasters; and

WHEREAS, it is further required that state or local officials have imposed or recommended measures to promote social distancing, or, the legislative body meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, the City Council previously adopted Resolution No. 2021- 104 on October 5, 2021, Resolution 2021-113 on November 2, 2021, Resolution 2021-118 on November 16, 2021, Resolution 2021-134 on December 14, 2021, and Resolution 2022-02 on January 11, 2022, and Resolution 2022-13 on February 1, 2022 finding that the requisite conditions exist for the City Council and its constituent bodies to conduct remote teleconference meetings without compliance with paragraph (3) of subdivision (b) of section 54953 through March 3, 2022; and

WHEREAS, as a condition of extending the use of the provisions found in section 54953(e), the City Council must reconsider the circumstances of the state of emergency that exists in the City, and the City Council has done so; and

WHEREAS, emergency conditions persist in the City, specifically, the March 4, 2020, proclamation by the Governor of a state of emergency in the State of California due to COVID-19 and the March 13, 2020, proclamation of a state of emergency in the City of Marina by the City Manager, as the City's Director of Emergency Services, due to COVID-19 which was subsequently ratified by the City Council on March 17, 2020, and after having been supplemented twice, and both proclamations of states of emergency remain in effect; and

WHEREAS, on September 22, 2021, the County of Monterey Health Department issued a Recommendation Regarding Social Distancing Including Remote Meetings of Legislative Bodies, attached hereto as **Attachment 1**; and

WHEREAS, the City Council does hereby find that California and Monterey County are presently continuing to experience cases of the rapidly-spreading COVID-19 Omicron variant and as of February 23, 2022, the federal Centers for Disease Control and Prevention rated the risk level for community transmission of COVID-19 in Monterey County as high with 1,661 active cases currently reported in Monterey County with a case rate of 382.67 individuals per 100,000 persons; 1,519 cases of the dangerous Delta and Omicron variants of COVID-19 having been identified as of February 22, 2022, in Monterey County; and the California Department of Public Health reports 21.5% of staffed adult ICU beds are presently available in the Bay Area reporting region which includes Monterey County and this has caused, and will continue to cause, conditions of peril to the safety of persons within the City that are likely to be beyond the control of services, personnel, equipment, and facilities of the City, and desires to recognize and affirm a local emergency exists and re-ratify the proclamation of state of emergency by the Governor of the State of California and to recognize the County of Monterey Health Department's recommendation regarding social distancing; and

WHEREAS, as a consequence of the local emergency persisting, the City Council does hereby find that the City Council and its constituent bodies shall continue to conduct their meetings without compliance with paragraph (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that such legislative bodies shall continue to comply with the requirements to provide the public with access to the meetings as prescribed in paragraph (2) of subdivision (e) of section 54953; and

WHEREAS, the City of Marina will continue to implement the following measures for meetings of its City Council and its constituent bodies:

- Allow the public to access the meeting and require that the agenda provide an opportunity for the public to directly address the legislative body pursuant to the Brown Act's other teleconferencing provisions.

- In each instance when the local agency provides notice of the teleconferenced meeting or posts its agenda, give notice for how the public can access the meeting and provide public comment.

- Identify and include in the agenda an opportunity for all persons to attend via a call-in or an internet-based service option; the legislative body need not provide a physical location for the public to attend or provide comments.

- Conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the public.

- Stop the meeting until public access is restored in the event of a service disruption that either prevents the local agency from broadcasting the meeting to the public using the call-in or internet-based service option or is within the local agency's control and prevents the public from submitting public comments (any action taken during such a service disruption could be challenged under the Brown Act's existing challenger provisions).

● Not require comments be submitted in advance (though the legislative body may provide that as an option) and provide the opportunity to comment in real time.

● Provide adequate time for public comment, either by establishing a timed public comment period or by allowing a reasonable amount of time to comment.

● If the legislative body uses a third-party website or platform to host the teleconference, and the third-party service requires users to register to participate, the legislative body must provide adequate time during the comment period for users to register and may not close the registration comment period until the comment period has elapsed.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARINA DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Affirmation that Local Emergency Persists. The City Council hereby reconsiders the conditions of the state of emergency in the City and proclaims that a local emergency persists throughout the City, and:

(a) On September 22, 2021, the County of Monterey Health Department issued a Recommendation Regarding Social Distancing Including Remote Meetings of Legislative Bodies; and

(b) California and Monterey County are presently continuing to experience cases of the rapidly-spreading COVID-19 Omicron variant and as of February 23, 2022, the federal Centers for Disease Control and Prevention rated the risk level for community transmission of COVID-19 in Monterey County as high with 1,661 active cases currently reported in Monterey County with a case rate of 382.67 individuals per 100,000 persons; 1,519 cases of the dangerous Delta and Omicron variants of COVID-19 have been identified as of February 22, 2022, in Monterey County; and the California Department of Public Health reports 21.5% of staffed adult ICU beds are presently available in the Bay Area reporting region which includes Monterey County and this has caused, and will continue to cause, conditions of peril to the safety of persons within the City that are likely to be beyond the control of services, personnel, equipment, and facilities of the City.

Section 3. Re-ratification of Governor's Proclamation of a State of Emergency. The City Council hereby reconsiders and re-ratifies the Governor of the State of California's Proclamation of State of Emergency, effective as of its issuance date of March 4, 2020.

Section 4. Remote Teleconference Meetings. The City Manager and legislative bodies of the City of Marina, the City Council and its constituent bodies, are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including, continuing to conduct open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

Section 5. Effective Date of Resolution. This Resolution shall take effect on immediately upon its adoption and shall be effective until the earlier of (i) March 31, 2022, or such time the City Council adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the City Council of the City of Marina and its constituent bodies may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting held this 1ST day of March 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

COUNTY OF MONTEREY
HEALTH DEPARTMENT

Elsa Mendoza Jimenez, Director of Health

Administration Animal Services Behavioral Health Clinic Services
Emergency Medical Services Environmental Health Public Administrator/Public Guardian Public Health

Recommendation Regarding Social Distancing Including Remote Meetings of Legislative Bodies

Issued: September 22, 2021

The Monterey County Health Department continues to recommend that physical and social distancing strategies be practiced in Monterey County, which includes remote meetings of legislative bodies of local agencies, to the extent possible.

Monterey County continues to experience transmission of COVID-19 locally. Physical and social distancing is still an effective measure to reduce the spread of COVID-19, especially when combined with use of face coverings, frequent hand washing, staying home when ill, testing, and vaccination with U.S. Food and Drug Administration approved or authorized COVID-19 vaccines.

Remote meetings of legislative bodies allow for the virtual participation of agency staff, presenters, and community members in safer environments, with less risk of exposure to SARS-CoV-2, the virus that causes COVID-19.

The Monterey County Health Officer will continue to monitor local metrics and the necessity of this recommendation.

February 9, 2022 Item No. **8f(2)**

Honorable Mayor and Members of the Marina City Council

City Council Meeting of March 1, 2022

CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-, ORDERING THE CITY ENGINEER TO PREPARE AND TO FILE A REPORT RELATED TO MAINTENANCE OF THE CYPRESS COVE II LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT FOR FISCAL YEAR 2022-2023

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2022-, ordering the City Engineer to prepare and to file a report related to maintenance of the Cypress Cove II Landscape Maintenance Assessment District for Fiscal Year 2022-2023

BACKGROUND:

At the regular meeting of June 16, 1987, the City Council adopted Resolution 1987-23, ordering the formation of the Cypress Cove II Landscape Maintenance Assessment District pursuant to Streets and Highway Code §22594 and the Landscaping and Lighting Act of 1972 to maintain certain improvements required of new development as a condition of the subdivision approvals.

The Landscaping and Lighting Act of 1972 requires an annual update report to be prepared, which includes the costs to maintain the improvements of the Cypress Cove II Landscape Maintenance Assessment District and what the proposed assessments will be to provide for that maintenance.

This first step in the annual update process is for the City Council to initiate the process by adopting a resolution ordering the City Engineer to prepare and file an Engineer's Report for the District.

ANALYSIS:

Funds must be provided to enable the District to continue operation during the 2022-2023 Fiscal Year. The Cypress Cove II Landscape Maintenance Assessment District encompasses 110 lots, a percolation basin (Lot 112) and an emergency access road (Lot 111) as illustrated on Exhibit “A” Map.

After initiation of the update process and preparation of the update report, the City Council will be requested to adopt a resolution of intention to set a Public Hearing. Lastly, a Public Hearing will be held at a subsequent City Council meeting where the Assessment District is approved and confirmed, resulting in the adoption of a resolution confirming the levy of assessment pursuant to the provisions of the Landscape and Lighting Act of 1972 of Part 2 of Division 15 of the Streets and Highways Code of the State of California.

FISCAL IMPACT:

For Fiscal Year 2022-2023, a total budget of $1,800 has been approved for the assessment engineering services needed for the Cypress Cove II Landscape Maintenance Assessment District.

CONCLUSION:

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

Respectfully submitted,

____

Saber Messhenas
Assistant Civil Engineer, Department of Public Works
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 CITY COUNCIL OF THE CITY OF MARINA
ORDERING THE CITY ENGINEER TO PREPARE AND TO FILE A REPORT
RELATED TO MAINTENANCE OF THE CYPRESS COVE II LANDSCAPE
MAINTENANCE ASSESSMENT DISTRICT FOR FISCAL YEAR 2022-2023

WHEREAS, at the regular meeting of June 16, 1987, the City Council adopted Resolution 1987-23, ordering the formation of the Cypress Cove II Landscape Maintenance Assessment District pursuant to Streets and Highway Code §22594 and the Landscaping and Lighting Act of 1972 to maintain certain improvements required of new development as a condition of the subdivision approvals, and;

WHEREAS, the Landscaping and Lighting Act of 1972 requires an annual update report to be prepared which includes the costs to maintain the improvements of the Cypress Cove II Landscape Maintenance Assessment District and what the proposed assessments will be to provide for that maintenance, and;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby order the City Engineer to prepare and to file a report related to maintenance of the Cypress Cove II Landscape Maintenance Assessment District for Fiscal Year 2022-2023 in accordance with the provisions of the Landscaping and Lighting Act of 1972 (Pursuant to §22622 of the California Streets and Highway Code).

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 1st day of March 2022, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

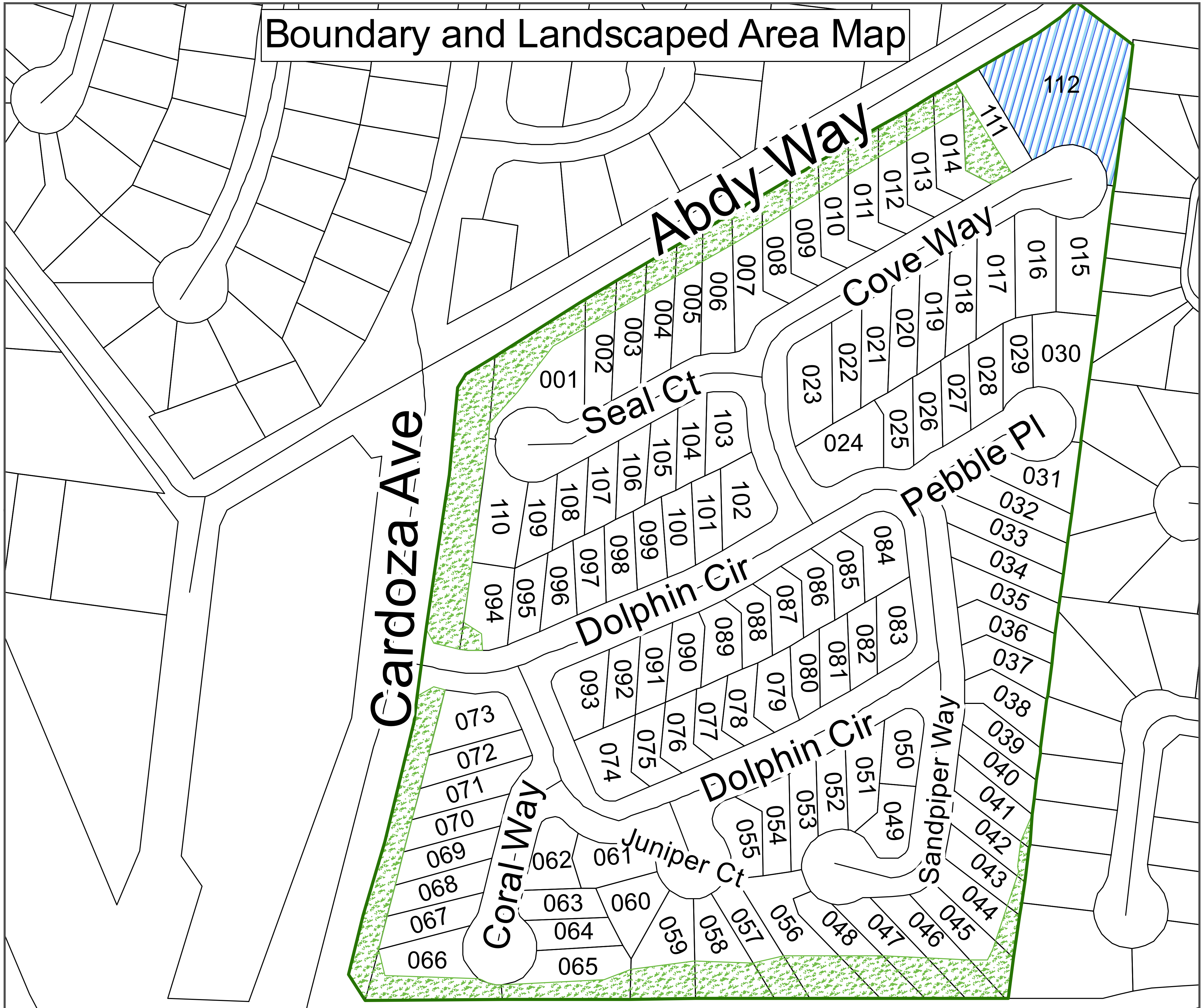
____
Bruce C. Delgado, Mayor

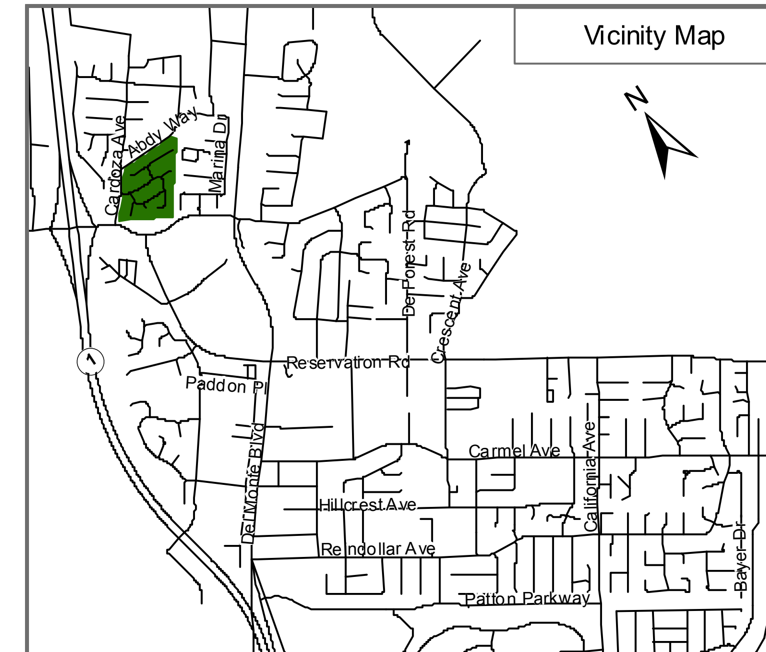
ATTEST:

____
Anita Sharp, Deputy City Clerk

EXHIBIT A

Cypress Cove II
Landscape Maintenance District





Legend

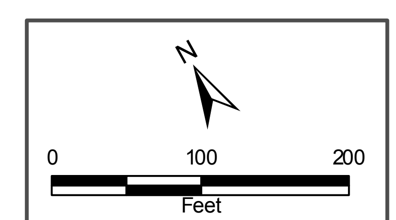
Cypress Cove II

- Boundary
- Landscaped Area **2.00 Acres**
- Parcels
- Percolation Lot
- Roads

Date: April 15th, 2009

Notes: The City of Marina assume no warranty or legal responsibility for the information contained on this map. Data and information represented on this map is subject to updates/modifications and may not be complete or appropriate for all purposes. The City of Marina and Monterey County GIS should be queried for the most current information. Parcel data is of mapping grade only and does not represent reliable locations or legal boundaries.

Sources: Monterey County GIS, City of Marina CDD
Map Projection: California State Plane Zone IV, NAD 83 (Feet)



February 9, 2022 Item No. **8f(3)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of March 1, 2022

CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-, ORDERING THE CITY ENGINEER TO PREPARE AND TO FILE A REPORT RELATED TO MAINTENANCE OF THE SEABREEZE LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT FOR FISCAL YEAR 2022-2023

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2022-, ordering the City Engineer to prepare and to file a report related to maintenance of the Seabreeze Landscape Maintenance Assessment District for Fiscal Year 2022-2023

BACKGROUND:

At the regular meeting of June 4, 1996, the City Council adopted Resolution No. 1996-62, ordering the formation of the Seabreeze Landscape Maintenance Assessment District pursuant to Streets and Highway Code §22594 and the Landscaping and Lighting Act of 1972 to maintain certain improvements required of new development as a condition of the subdivision approvals.

The Landscaping and Lighting Act of 1972 requires an annual update report to be prepared which includes the costs to maintain the improvements of the Districts and what the proposed assessments will be to provide for that maintenance.

This first step in the annual update process is for the City Council to initiate the process by adopting a resolution ordering the City Engineer to prepare and file an Engineer's Report for the District.

ANALYSIS:

Funds must be provided to enable the District to continue operation during the 2022-2023 Fiscal Year. The Seabreeze Landscape Maintenance Assessment District encompasses 37 lots and a percolation lot (Lot 38) as illustrated on Exhibit “A” Map.

After the initiation of the update process and preparation of the update report, the City Council will be requested to adopt a resolution of intention to set a Public Hearing. Lastly, a Public Hearing will be held at a subsequent City Council meeting where the Assessment District is approved and confirmed, resulting in the adoption of a resolution confirming the levy of assessment pursuant to the provisions of the Landscape and Lighting Act of 1972 of Part 2 of Division 15 of the Streets and Highways Code of the State of California.

FISCAL IMPACT:

For Fiscal Year 2022-2023, a total budget of $1,500 has been approved for the assessment engineering services needed for the Seabreeze Landscape Maintenance Assessment District.

CONCLUSION:
This request is submitted for City Council's approval.

Respectfully submitted,

____
Saber Messhenas
Assistant Civil Engineer, Department of Public Works
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 CITY COUNCIL OF THE CITY OF MARINA ORDERING THE CITY ENGINEER TO PREPARE AND TO FILE A REPORT RELATED TO MAINTENANCE OF THE SEABREEZE LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT FOR FISCAL YEAR 2022-2023

WHEREAS, at the regular meeting of June 4, 1996, the City Council adopted Resolution No. 1996-62, ordering the formation of the Seabreeze Landscape Maintenance Assessment District pursuant to Streets and Highway Code §22594 and the Landscaping and Lighting Act of 1972 to maintain certain improvements required of new development as a condition of the subdivision approvals, and;

WHEREAS, the Landscaping and Lighting Act of 1972 requires an annual update report to be prepared which includes the costs to maintain the improvements of the Seabreeze Landscape Maintenance Assessment District and what the proposed assessments will be to provide for that maintenance, and;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marina that the City Council does order the City Engineer to prepare and to file a report related to maintenance of the Seabreeze Landscape Maintenance Assessment District for Fiscal Year 2022-2023 in accordance with the provisions of the Landscaping and Lighting Act of 1972 (Pursuant to §22622 of the California Streets and Highway Code).

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 1st day of March 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

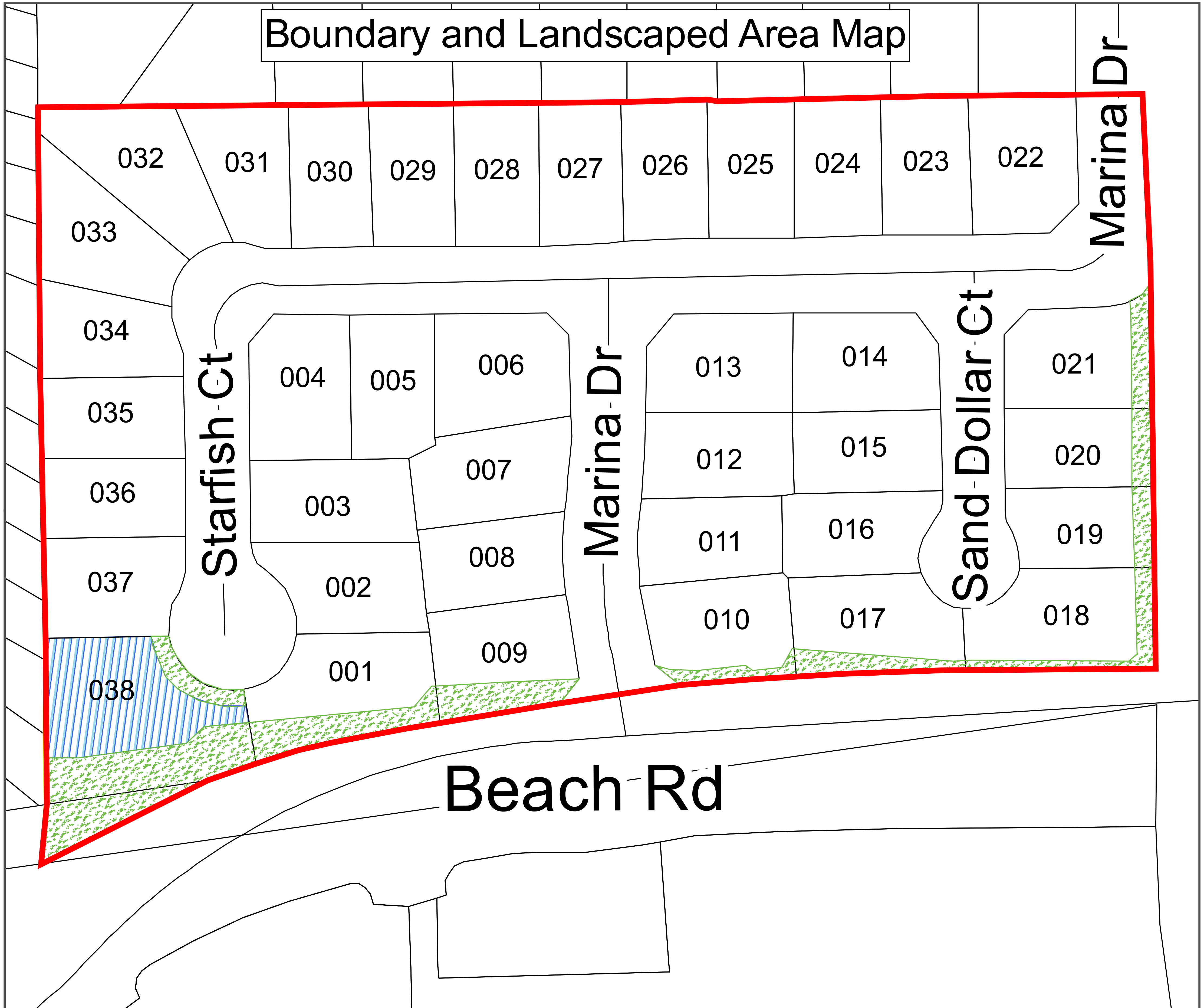
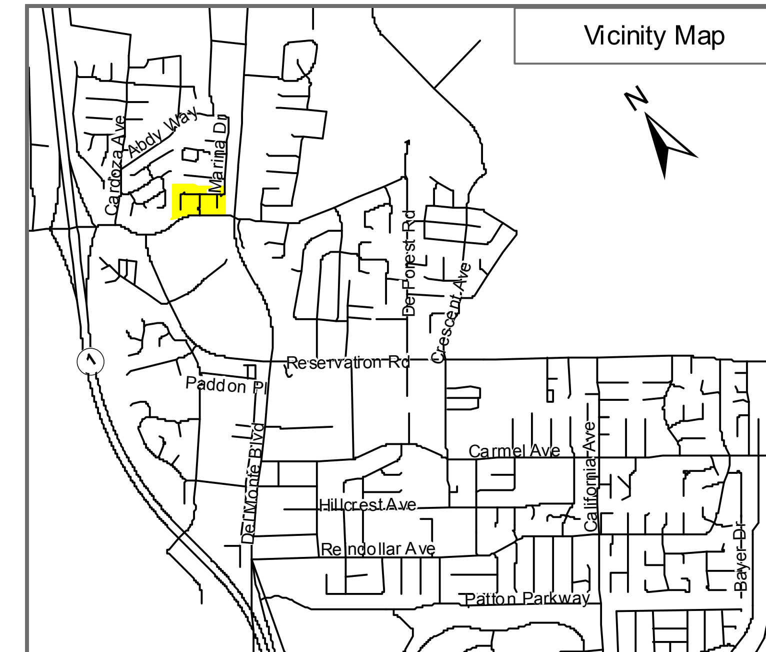


EXHIBIT A

Seabreeze
Landscape Maintenance District



Legend

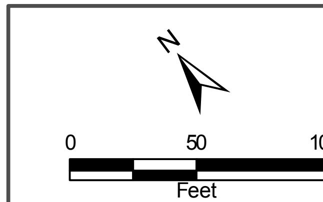
Seabreeze

- Boundary
- Landscaped Area **20,470 SQ FT**
- Parcels
- Percolation Lot
- Roads

Date: April 15th, 2009

Notes: The City of Marina assume no warranty or legal responsibility for the infomation contained on this map. Data and information represented on this map is subject to updates/modifications and may not be complete or appropriate for all purposes. The City of Marina and Monterey County GIS should be queried for the most current information. Parcel data is of mapping grade only and does not represent reliable locations or legal boundaries.

Sources: Monterey County GIS, City of Marina CDD
Map Projection: California State Plane Zone IV, NAD 83 (Feet)



February 9, 2022 Item No. **8f(4)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of March 1, 2022

CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-, ORDERING THE CITY ENGINEER TO PREPARE AND TO FILE A REPORT RELATED TO MAINTENANCE OF THE MONTEREY BAY ESTATES LIGHTING AND LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT FOR FISCAL YEAR 2022-2023

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2022-, ordering the City Engineer to prepare and to file a report related to maintenance of the Monterey Bay Estates Lighting and Landscape Maintenance Assessment District for Fiscal Year 2022-2023

BACKGROUND:

At the regular meeting of October 3, 1989, the City Council adopted Resolution No. 1989-62, ordering the formation of the Monterey Bay Estates Lighting and Landscape Maintenance Assessment District pursuant to Streets and Highway Code §22594 and the Landscaping and Lighting Act of 1972 to maintain certain improvements required of new development as a condition of the subdivision approvals.

The Landscaping and Lighting Act of 1972 requires an annual update report to be prepared which includes the costs to maintain the improvements of the Districts and what the proposed assessments will be to provide for that maintenance.

This first step in the annual update process is for the City Council to initiate the process by adopting a resolution ordering the City Engineer to prepare and file an Engineer's Report for the District.

ANALYSIS:

Funds must be provided to enable the District to continue operation during the 2022-2023 Fiscal Year. The Monterey Bay Estates Lighting and Landscape Maintenance Assessment District encompasses 162 lots, a percolation lot parcel and a park parcel as illustrated on Exhibit “A” Map.

After the initiation of the update process and preparation of the update report, the City Council will be requested to adopt a resolution of intention to set a Public Hearing. Lastly, a Public Hearing will be held at a subsequent City Council meeting where the Assessment District is approved and confirmed, resulting in the adoption of a resolution confirming the levy of assessment pursuant to the provisions of the Landscape and Lighting Act of 1972 of Part 2 of Division 15 of the Streets and Highways Code of the State of California.

FISCAL IMPACT:

For Fiscal Year 2022-2023, a total budget of $2,000 has been approved for the assessment engineering services needed for the Monterey Bay Estates Lighting and Landscape Maintenance Assessment District.

CONCLUSION:
This request is submitted for City Council's approval.

Respectfully submitted,

____
Saber Messhenas
Assistant Civil Engineer, Department of Public Works
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 CITY COUNCIL OF THE CITY OF MARINA
ORDERING THE CITY ENGINEER TO PREPARE AND TO FILE A REPORT
RELATED TO MAINTENANCE OF THE MONTEREY BAY ESTATES
LIGHTING AND LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT
FOR FISCAL YEAR 2022-2023

WHEREAS, at the regular meeting of October 3, 1989, the City Council adopted Resolution No. 1989-62, ordering the formation of the Monterey Bay Estates Lighting and Landscape Maintenance Assessment District pursuant to Streets and Highway Code §22594 and the Landscaping and Lighting Act of 1972 to maintain certain improvements required of new development as a condition of the subdivision approvals, and;

WHEREAS, the Landscaping and Lighting Act of 1972 requires an annual update report to be prepared which includes the costs to maintain the improvements of the Monterey Bay Estates Lighting and Landscape Maintenance Assessment District and what the proposed assessments will be to provide for that maintenance, and;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Marina that the City Council does order the City Engineer to prepare and to file a report related to maintenance of the Monterey Bay Estates Lighting and Landscape Maintenance Assessment District for Fiscal Year 2022-2023 in accordance with the provisions of the Landscaping and Lighting Act of 1972 (Pursuant to §22622 of the California Streets and Highway Code).

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 1st day of March 2022, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

____
Bruce C. Delgado, Mayor

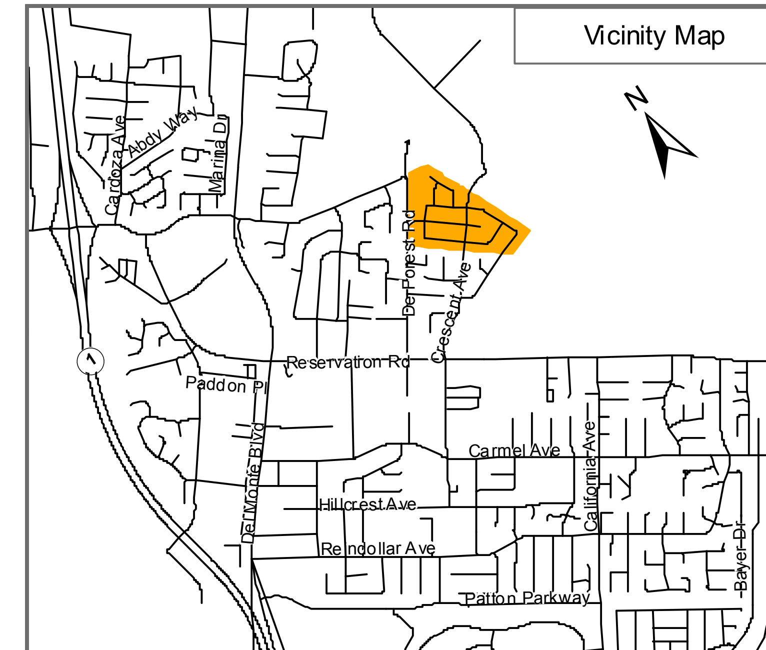
ATTEST:

____
Anita Sharp, Deputy City Clerk

Boundary and Landscaped Area Map

EXHIBIT A

Monterey Bay Estates
Lighting and Landscape
Maintenance District



Legend

Monterey Bay Estates

- Boundary
- Landscaped Area **2.14 Acres**

- Parcels
- Percolation Lot
- Roads

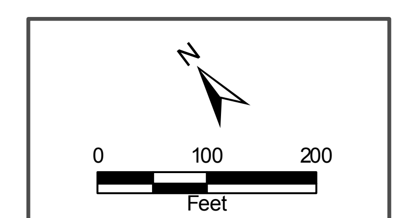
Maintained Street Lights

- Total 34 - 100W
- Total 7 - 200W

Date: April 15th, 2009

Notes: The City of Marina assume no warranty or legal responsibility for the information contained on this map. Data and information represented on this map is subject to updates/modifications and may not be complete or appropriate for all purposes. The City of Marina and Monterey County GIS should be queried for the most current information. Parcel data is of mapping grade only and does not represent reliable locations or legal boundaries.

Sources: Monterey County GIS, City of Marina CDD
Map Projection: California State Plane Zone IV, NAD 83 (Feet)



February 17, 2022 Item No. **8f(5)**

Honorable Mayor and Members of the Marina City Council

City Council Meeting of March 1, 2022

CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-, APPROVING PURCHASE OF ONE (1) TRUNARC HANDHELD NARCOTICS ANALYZER IN THE AMOUNT OF $37,036.84 FROM THERMO SCIENTIFIC PORTABLE ANALYTICAL INSTRUMENTS INC, OF TEWKSBURY, MASSACHUSETTS, UTILIZING FUNDS SET ASIDE IN THE POLICE DEPARTMENT FY 2021-2022 BUDGET FOR PURCHASE OF SAID EQUIPMENT AND WARRANTY PLAN, WAIVING 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 CITY MANAGER TO EXECUTE PURCHASE AGREEMENT ON BEHALF OF 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 purchase of one (1) TruNarc Narcotic Handheld Narcotics Analyzer in the amount of $37,036.84 from Thermo Scientific Portable Analytical Instruments, Inc, of Tewksbury, Massachusetts, utilizing funds set aside in the Police Department FY 2021-2022 Budget for purchase of said equipment and warranty plan, and;

2. Consider waiving the City's formal bid process, without competitive bidding, finding that competitive bidding would be unavailing, would 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 across the nation are experiencing incidents of officers being exposed to potentially dangerous illegal substances that can potentially be life threatening. The simple act of testing unknown substances is hazardous and potentially life threatening . Officers routinely test potentially illegal substances in the course of their duties and safety during these procedures is paramount.

In order to provide a safer substance testing procedure, the Police Department has been researching and searching for a system that can provide the needed safety and have the ability to identify many substances. The result of the search was the identification of the Thermo Scientific

Portable Analytical Instruments, TruNarc Narcotic Handheld Narcotics Analyzer. TruNarc offers the following advantages over the current testing method:

1. Tests for almost five-hundred substances, including narcotics, stimulants, depressants, hallucinogens, and analgesics.
2. TruNarc has a library of substances that can be tested, which is updated to include emerging drug threats.
3. Requires no direct contact by officers with most substances.
4. Delivers clear, real-time results for presumptive evidence.
5. Provides automated, tamper-proof records with scan results, including time-and-date stamps to help expedite prosecution.

There are fifty-six California law enforcement agencies who are currently utilizing the TruNarc system. Almost all of the agencies district attorney's offices consider TruNarc results as valid as testing done by departments of justice. As such, prosecution is faster, and fees charged to cities by departments of justice disappear as they are no longer needed.

Some of the other benefits of using TruNarc are that little known substances are being identified almost instantly, the need for officers to handle potentially lethal narcotics is greatly reduced and valuable department of justice lab time is freed up for higher priority cases.

The Police Department does not require any additional funding to purchase the TruNarc system as funding has been set aside in the Department's FY 2021-2022 Budget as a result of a donation made to the Department from the Annemarie Shein Trust, Resolution #2001-122.

ANALYSIS:

Staff extensively researched TruNarc and like systems. Staff found TruNarc is unique and able to provide the safety, services, and performance the Department requires. There is no other comparable system(s).

The cost of this project is $37,036.84 and includes an unlimited five-year warranty and the TruNarc Solution Kit for identification of heroin and other special narcotics. For more details of the sale, see the attached quote and Thermo Scientific Portable Analytical Instruments Inc – Terms and Conditions of Sale **("EXHIBIT A**").

The TruNarc warranty is advantageous in that it includes factory repair, loaner units when available and 24/7 technical support. Companion PC TruNarc admin. software, unlimited access to TruNarc eLearning course and free basic software updates to a core narcotics library are provided for the life of the instrument. The warranty also includes TruNarc on-site instructor led training for up to twelve students.

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.

The choice of using Thermo Scientific Portable Analytical Instruments Inc. as sole source provider is predicated on the fact that Thermo Scientific Portable Analytical Instruments Inc. is the only company that offers the services and products required by the Police Department.

For the City to use the competitive bidding process it is unlikely 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.

Based on the ease of implementation, police officer safety, and the lack of narcotic identification systems that offer the services and ease of use as Thermo Scientific Portable Analytical Instruments Inc, 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 of the TruNarc system and the five-year warranty will cost $37,036.84. No City funds are required to make this purchase as it will be paid for by a donation from the Annemarie Shein Trust, Resolution #2021-122. The Trust funds are located in the Police Department FY 2021-2022 Budget, Revenue Account #100.210.000.00-5870.700 – Contributions Police. The expenditure of funds to purchase the TruNarc system will be done through the FY 2021-2022 Police Department Budget, Expense Account #100.210.000.00-6400.740 – Material & Suppl Special Dept Suppl.

CONCLUSION:

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

Respectfully submitted,

____

Richard J. Janicki, Jr.
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 PURCHASE AGREEMENT BETWEEN THE CITY OF MARINA AND THERMO SCIENTIFIC PORTABLE ANALYTICAL INSTRUMENTS INC, OF TEWKSBURY, MASSACHUSETTS, FOR ONE (1) TRUNARC HANDHELD NARCOTICS ANALYZER AND WARRANTY PLAN IN THE AMOUNT OF $37,036.84 FOR MARINA POLICE DEPARTMENT, 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 identified the need to acquire a narcotics identification system that enhanced the safety of officers by limiting exposure to potentially dangerous illegal substances that can potentially be life threatening; and

WHEREAS: the Police Department identified the TruNarc Narcotic Handheld Narcotics Analyzer system produced by Thermo Scientific Portable Analytical Instruments, Inc, of Tewksbury, Massachusetts, as the system that provided the officer safety and narcotic testing capabilities required; and

WHEREAS, the TruNarc Handheld Narcotics Analyzer system offers an unlimited five year warranty, tests for almost five-hundred substances, including narcotics, stimulants, depressants, hallucinogens and analgesics: has a library of substances that can be tested, which is updated to include emerging drug threats; limits direct contact by officers with most substances; delivers clear, real-time results for presumptive evidence, and provides automated, tamper-proof records with scan results, including time-and-date stamps to help expedite prosecution; and

WHEREAS, the Thermo Scientific Portable Analytical Instruments agreement ("EXHIBIT A") also includes factory repair, loaner units when available and 24/7 technical support. Companion PC TruNarc admin. software, unlimited access to TruNarc eLearning course and free basic software updates to core narcotics library provided for the life of the instrument, and includes TruNarc on-site instructor led training for up to twelve students; 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) TruNarc Narcotic Handheld Narcotics Analyzer System and the TruNarc unlimited five-year warranty ("EXHIBIT A") in the amount of $37,036.84 from Thermo Scientific Portable Analytical Instruments, Inc, of Tewksbury, Massachusetts, in the amount of $37,036.84 without competitive bidding finding that competitive bidding would be unavailing, would not produce an advantage and would not be in the public interest; and

2. Approve expenditure of $37,036.84 from the adopted Police Department FY 2021-2022 Budget, Expense Account #100.210.000.00-6400.740 – "Material &Suppl Special Dept Suppl."; 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 1st day of March 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

Sales Quotation

Quote Number	Created Date	Exp. Delivery Terms	Page
00258945	12/09/2021	ARO	1 / 7
Contact:	**Phone**	**Payment Term**	**Valid To**
Geno Ferrera	(951) 326-0405	Net 30	03/25/2022
Inco Terms		**Shipping Method**	
FOB Origin - Tewksbury ma.		Fed Ex	

Thermo Scientific Portable Analytical Instruments Inc.

2 Radcliff Rd
Tewksbury, Massachusetts 01876
United States

Submitted To:

Tina Nieto
Marina Police Department
211 Hillcrest Ave
Marina, California 93933-3534
United States

Phone: (831) 884-1235
Email: tnieto@cityofmarina.org

THANK YOU FOR YOUR INTEREST IN THERMO SCIENTIFIC INSTRUMENTATION

To Place an Order:
Contact: Geno Ferrera
Phone: (951) 326-0405
Fax:
Email: geno.ferrera@thermofisher.com
Additional instructions, terms & conditions on last page

Pos.	Product Code	Product Name	Sales Price	Quantity	Total Price
1.00	800-01045-01	**TruNarc, Unlimited, Warranty - 5 Yrs, Train-12**	USD 33,300.00	1.00	USD 33,300.00
		TruNarc Unlimited Model with 5 years of warranty. Includes factory repair, loaner units when available and 24/7 technical support. Companion PC TruNarc admin software, unlimited access to TruNarc eLearning course and free basic software updates to core narcotics library are provided for the life of the instrument. Includes TruNarc on-site instructor led training for up to 12 students within the Continental United States (CONUS) - expires 9 months after date of purchase.			
2.00	810-01462-01	**TruNarc Solution Kit (Type H) - 100, English**	USD 601.00	1.00	USD 601.00
		TruNarc Solution Kit (Type H) for identification of Heroin and other special narcotics. Kit includes 100 Test Sticks and 100 Solution Vials with Ethanol. Note that because of the Ethanol, this product ships as a Hazardous Goods shipment. The shelf life for Type H-sticks is approximately one year from shipment.			

Subtotal:	**USD 33,901.00**
Tax:	**USD 3,135.84**
Total:	**USD 37,036.84**

Excludes Taxes and Import Fees

When applicable, commodities, technology, or software to be provided in furtherance of this order shall be exported from the United States in accordance with applicable U.S export laws or regulations. Diversion contrary to US law prohibited. Unless otherwise agreed to in writing, Thermo Scientific Portable Analytical Instruments Inc. terms and conditions shall apply and take precedence.

Fully Insured 2nd Day Federal Express delivery in U.S., Canada, and Puerto Rico

Important Note: Please issue POs to Thermo Scientific Portable Analytical Instruments Inc
Federal Tax ID No.: 01-0650031
CAGE CODE: 392A9
DUNS #: 11-289-3131
Bank of America ABA# for Wire Payments: 026 009 593
Bank of America ABA# for ACH Payments: 111 000 012
Beneficiary Account Number: 4426843850

Acceptance of Purchase

Quote: GF-00258945

By signing below, you (i) warrant that you are an authorized representative of your company, (ii) agree that the Thermo Scientific Portable Analytical Instruments Inc. Terms and Conditions of Sale attached hereto (the "Terms and Conditions") shall supersede any preprinted terms and conditions, in their entirety, contained in any purchase order that your company issues and (iii) the Terms and Conditions shall exclusively govern the transaction(s) contemplated hereby

Signature of authorized company representative	Date	Phone#
Print Name	Title	Email
Model #	Amount + S&H	Purchase Order Number

E-mail to: pai.sales.ops@thermofisher.com **Fax to: 1-877-680-2568**

Order Processing Address:
geno.ferrera@thermofisher.com
Thermo Scientific Portable Analytical Instruments Inc
2 Radcliff Road
Tewksbury, MA 01876

Remit check Payment To:
Thermo Scientific Portable Analytical Instruments Inc
PO Box 415918
Boston, MA 02241-415918

Payment Details

Method of Payment

- ☐ Net 30 (Attach Credit Application & Credit References)
- ☐ Credit Card
- ☐ Check
- ☐ Wire Transfer

Sales Tax Application

- ☐ Yes Apply Sales Tax
- ☐ No

- If no, you must provide a copy of your tax exemption certificate along with your purchase order.

****Please contact your customer service representative with your credit card information. (Do not send any credit card info via email or fax.)****

Address Verification

Please make corrections if necessary below:

Bill to:
Marina Police Department
211 Hillcrest Ave
Marina, California 93933-3534
United States

Ship to:
Marina Police Department
,

Additional Options / Accessories

Please use the space below to note any additional options and/or accessories you wish to add from the attached sheets that are not included in the above quotation.

When applicable, commodities, technology, or software to be provided in furtherance of this order shall be exported from the United States in accordance with applicable U.S export laws or regulations. Diversion contrary to US law prohibited. Unless otherwise agreed to in writing, Thermo Scientific Portable Analytical Instruments Inc. terms and conditions shall apply and take precedence.

THERMO SCIENTIFIC PORTABLE ANALYTICAL INSTRUMENTS INC – TERMS AND CONDITIONS OF SALE
Last revised November 2019
UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING, ALL SALES ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. GENERAL. Thermo Scientific Portable Analytical Instruments Inc ("Seller") hereby offers for sale to the buyer named on the face hereof ("Buyer") the products listed on the face hereof (the "Products") on the express condition that Buyer agrees to accept and be bound by the terms and conditions set forth herein. Any provisions contained in any document issued by Buyer are expressly rejected and if the terms and conditions in this agreement (the "Agreement") differ from the terms of Buyer's offer, this document shall be construed as a counter offer and shall not be effective as an acceptance of Buyer's document. Buyer's receipt of Products or Seller's commencement of the services provided hereunder will constitute Buyer's acceptance of this Agreement. This is the complete and exclusive statement of the contract between Seller and Buyer with respect to Buyer's purchase of the Products. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless in writing and signed by Seller and Buyer. Seller's failure to object to terms contained in any subsequent communication from Buyer will not be a waiver or modification of the terms set forth herein. All orders are subject to acceptance in writing by an authorized representative of Seller.

2. PRICE. All prices published by Seller or quoted by Seller's representatives may be changed at any time without notice. All prices quoted by Seller or Seller's representatives are valid for thirty (30) days, unless otherwise stated in writing. All prices for the Products will be as specified by Seller or, if no price has been specified or quoted, will be Seller's price in effect at the time of shipment. All prices are subject to adjustment on account of specifications, quantities, raw materials, cost of production, shipment arrangements or other terms or conditions, which are not part of Seller's original price quotation.

3. TAXES AND OTHER CHARGES. Prices for the Products exclude all sales, value added and other taxes and duties imposed with respect to the sale, delivery, or use of any Products covered hereby, all of which taxes and duties must be paid by Buyer. If Buyer claims any exemption, Buyer must provide a valid, signed certificate or letter of exemption for each respective jurisdiction. Buyer shall be solely responsible for obtaining any and all necessary licenses, registrations, certificates, permits, approvals or other authorizations required by federal, state or local statute, law or regulation pertaining to the use or possession of the products contemplated herein that include radioactive isotopes, or x-ray tubes if any.

Buyer shall pay Seller such surcharges, or other fees, in respect of the sale of Products hereunder as Seller deems necessary and appropriate (in Seller's sole, good-faith, reasonable discretion) to account for changes in the cost to product, develop, market, or sell the Products to Buyer hereunder (whether as the result of the imposition of tariffs or otherwise). All such surcharges must be paid by Buyer in accordance with the payment terms set forth herein. Buyer agrees that such surcharges, or other fees, or any termination thereof, shall take effect immediately upon written notice thereof by Seller to Buyer. In the event that Seller's quote and/or order acknowledgement set forth surcharges, those documents shall be considered adequate written notice to Buyer that said surcharges are Buyer's responsibility. Any such surcharges shall not constitute an increase in the Price(s) of any Products or Services sold under this Agreement

4. TERMS OF PAYMENT. Seller may invoice Buyer upon shipment for the price and all other charges payable by Buyer in accordance with the terms on the face hereof. If no payment terms are stated on the face hereof, payment shall be net thirty (30) days from the date of invoice. If Buyer fails to pay any amounts when due, Buyer shall pay Seller interest thereon at a periodic rate of one and one-half percent (1.5%) per month (or, if lower, the highest rate permitted by law), together with all costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) incurred by Seller in collecting such overdue amounts or otherwise enforcing Seller's rights hereunder. Seller reserves the right to require from Buyer full or partial payment in advance, or other security that is satisfactory to Seller, at any time that Seller believes in good faith that Buyer's financial condition does not justify the terms of payment specified. All payments shall be made in U.S. Dollars.

5. DELIVERY CANCELLATION OR CHANGES BY BUYER. The Products will be shipped to the destination specified by Buyer, F.O.B. shipping point. Seller will have the right, at its election, to make partial shipments of the Products and to invoice each shipment separately. Seller reserves the right to stop delivery of Products in transit and to withhold shipments in whole or in part if Buyer fails to make any payment to Seller when due or otherwise fails to perform its obligations hereunder. All shipping dates are approximate only, and Seller will not be liable for any loss or damage resulting from any delay in delivery or failure to deliver which is due to any cause beyond Seller's reasonable control. In the event of a delay due to any cause beyond Seller's reasonable control, Seller reserves the right to terminate the order or to reschedule the shipment within a reasonable period of time, and Buyer will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of such delay. Products as to which delivery is delayed due to any cause within Buyer's control may be placed in storage by Seller at Buyer's risk and expense and for Buyer's account. Orders in process may be canceled only with Seller's written consent and upon payment of Seller's cancellation charges. Orders in process may not be changed except with Seller's written consent and upon agreement by the parties as an appropriate adjustment in the purchase price therefor. Credit will not be allowed for Products returned without prior written consent of seller.

6. RETURN OF PRODUCTS/RESTOCKING CHARGE. Buyer must obtain permission from Seller prior to returning Products. The request must be received within ten (10) days of receipt of the Products. Older items, service parts, and discontinued items cannot be returned for credit. In order to obtain a RMA number, Buyer must contact Seller's customer support. Seller, in its discretion, may impose a twenty (20%) percent restocking charge of the price paid for any item authorized for return for credit

7. TITLE AND RISK OF LOSS. Notwithstanding the trade terms indicated above and subject to Seller's right to stop delivery of Products in transit, title to and risk of loss of the Products will pass to Buyer upon delivery of possession of the Products by Seller to the carrier irrespective of which Party's carrier is used for the transport or the manner of payment ascribed to the transport; provided, however, that title to any software incorporated within or forming a part of the Products shall at all times remain with Seller or the licensor(s) thereof, as the case may be.

8. WARRANTY. Seller warrants that the Products will operate or perform substantially in conformance with Seller's published specifications and be free from defects in material and workmanship, when subjected to normal, proper and intended usage by properly trained personnel, for the period of time set forth in the product documentation, published specifications or package inserts. If a period of time is not specified in Seller's product documentation, published specifications or package inserts, the warranty period shall be one (1) year from the date of shipment to Buyer for equipment and ninety (90) days for all other products (the "Warranty Period"). During the Warranty Period, Seller agrees, in its sole discretion, to repair or replace, Products and/or provide additional parts or services as reasonably necessary to cause the same to perform in substantial conformance with said published specifications; provided that Buyer shall (a) promptly notify Seller in writing upon the discovery of any defect, which notice shall include the product model and serial number (if applicable) and details of the warranty claim; and (b) after Seller's review, Seller will provide Buyer with service data and /or a Return Material Authorization ("RMA), which may include biohazard decontamination procedures and other product-specific handling instructions, then, if applicable, Buyer may return the defective Products to Seller with all costs prepaid by Buyer. Replacement parts may be new or refurbished, at the election of Seller. All replaced parts shall become

the property of Seller. Shipment to Buyer of repaired or replacement Products shall be made in accordance with the Delivery provisions of the Seller's Terms and Conditions of Sale. Consumables are expressly excluded from this warranty. If Seller elects to repair defective device instruments, Seller may, in its sole discretion, provide a replacement loaner instrument to Buyer as necessary for use while the instruments are being repaired. Notwithstanding the foregoing, Products supplied by Seller that are obtained by Seller from an original manufacturer or third party supplier are not warranted by Seller, but Seller agrees to assign to Buyer any warranty rights in such Product that Seller may have from the original manufacturer or third party supplier, to the extent such assignment is allowed by such original manufacturer or third party supplier. In no event shall Seller have any obligation to make repairs, replacements or corrections required, in whole or in part, as the result of (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) misuse, fault or negligence of or by Buyer, (iv) use of the Products in a manner for which they were not designed, (v) causes external to the Products such as, but not limited to, power failure or electrical power surges, (vi) improper storage and handling of the Products or (vii) use of the Products in combination with equipment or software not supplied by Seller. If Seller determines that Products for which Buyer has requested warranty services are not covered by the warranty hereunder, Buyer shall pay or reimburse Seller for all costs of investigating and responding to such request at Seller's then prevailing time and materials rates. If Seller provides repair services or replacement parts that are not covered by this Warranty shall pay Seller therefor at Seller's then prevailing time and materials rates.

ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN SELLER WITHOUT SELLER'S PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY SELLER, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS. THE OBLIGATIONS CREATED BY THIS WARRANTY STATEMENT TO REPAIR OR REPLACE A DEFECTIVE PRODUCT SHALL BE THE SOLE REMEDY OF BUYER IN THE EVENT OF A DEFECTIVE PRODUCT. EXCEPT AS EXPRESSLY PROVIDED IN THIS WARRANTY STATEMENT, SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER DOES NOT WARRANT THAT THE PRODUCTS ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

9. INDEMNIFICATION

9.1. By Seller. Seller agrees to indemnify, defend and save Buyer, its officer, directors, and employees from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorney's fees) ("Indemnified Items") for (i) injury to or death of persons or damage to property to the extent caused by the negligence or willful misconduct of Seller, its employees, agents or representatives or contractors in connection with the performance of services at Buyer's premises under this Agreement and (ii) claims that a Product infringes any valid United States patent, copyright or trade secret; provided, however, Seller shall have no liability under this Section to the extent any such Indemnified Items are caused by either (i) the negligence or willful misconduct of Buyer, its employees, agents or representatives or contractors, (ii) by any third party, (iii) use of a Product in combination with equipment or software not supplied by Seller where the Product would not itself be infringing, (iv) compliance with Buyer's designs, specifications or instructions, (v) use of the Product in an application or environment for which it was not designed or (vi) modifications of the Product by anyone other than Seller without Seller's prior written approval. Buyer shall provide Seller prompt written notice of any third party claim covered by Seller's indemnification obligations hereunder. Seller shall have the right to assume exclusive control of the defense of such claim or, at the option of the Seller, to settle the same. Buyer agrees to cooperate reasonably with Seller in connection with the performance by Seller of its obligations in this Section.

Notwithstanding the above, Seller's infringement related indemnification obligations shall be extinguished and relieved if Seller, at its discretion and at its own expense (a) procures for Buyer the right, at no additional expense to Buyer, to continue using the Product; (b) replaces or modifies the Product so that it becomes non-infringing, provided the modification or replacement does not adversely affect the specifications of the Product; or (c) in the event(a) and (b) are not practical, refund to Buyer the amortized amounts paid by Buyer with respect thereto, based on a five (5) year amortization schedule. THE FOREGOING INDEMNIFICATION PROVISION STATES SELLER'S ENTIRE LIABILITY TO BUYER FOR THE CLAIMS DESCRIBED HEREIN.

9.2. By Buyer. Buyer shall indemnify, defend with competent and experienced counsel and hold harmless Seller, its parent, subsidiaries, affiliates and divisions, and their respective officers, directors, shareholders and employees, from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys' fees and disbursements and court costs) to the extent arising from or in connection with (i) the negligence or willful misconduct of Buyer, its agents, employees, representatives or contractors; (ii) use of a Product in combination with equipment or software not supplied by Seller where the Product itself would not be infringing; (iii) Seller's compliance with designs, specifications or instructions supplied to Seller by Buyer; (iv) use of a Product in an application or environment for which it was not designed; or (v) modifications of a Product by anyone other than Seller without Seller's prior written approval

10. SOFTWARE. With respect to any software products incorporated in or forming a part of the Products hereunder, Seller and Buyer intend and agree that such software products are being licensed and not sold, and that the words "purchase", "sell" or similar or derivative words are understood and agreed to mean "license", and that the word "Buyer" or similar or derivative words are understood and agreed to mean "licensee". Notwithstanding anything to the contrary contained herein, Seller or its licensor, as the case may be, retains all rights and interest in software products provided hereunder. Seller hereby grants to Buyer a royalty-free, non-exclusive, nontransferable license, without power to sublicense, to use software provided hereunder solely for Buyer's own internal business purposes on the hardware products provided hereunder and to use the related documentation solely for Buyer's own internal business purposes. This license terminates when Buyer's lawful possession of the hardware products provided hereunder ceases, unless earlier terminated as provided herein. Buyer agrees to hold in confidence and not to sell, transfer, license, loan or otherwise make available in any form to third parties the software products and related documentation provided hereunder. Buyer may not disassemble, decompile or reverse engineer, copy, modify, enhance or otherwise change or supplement the software products provided hereunder without Seller's prior written consent. Seller will be entitled to terminate this license if Buyer fails to comply with any term or condition herein. Buyer agrees, upon termination of this license, immediately to return to Seller all software products and related documentation provided hereunder and all copies and portions thereof

11. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF SELLER UNDER THESE TERMS AND CONDITIONS (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE, BUT EXCLUDING LIABILITY OF SELLER FOR BREACH OF WARRANTY (THE SOLE REMEDY FOR WHICH SHALL BE AS PROVIDED UNDER SECTION 8 ABOVE)) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LESSER OF (A) THE TOTAL PURCHASE PRICE THERETOFORE PAID BY BUYER TO SELLER WITH RESPECT TO THE PRODUCT(S) GIVING RISE TO SUCH LIABILITY OR (B)

ONE MILLION DOLLARS ($1,000,000). NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER SELLER (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT

12. EXPORT RESTRICTIONS. Buyer acknowledges that each Product and any related software and technology, including technical information supplied by Seller or contained in documents (collectively "Items"), is subject to export controls of the U.S. government. The export controls may include, but are not limited to, those of the Export Administration Regulations of the U.S. Department of Commerce (the "EAR"), which may restrict or require licenses for the export of Items from the United States and their re-export from other countries. Buyer shall comply with the EAR and all other applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any Item. Buyer shall not, without first obtaining the required license to do so from the appropriate U.S. government agency; (i) export or re-export any Item, or (ii) export, re-export, distribute or supply any Item to any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. government. Buyer shall, if requested by Seller, provide information on the end user and end use of any Item exported by the Buyer or to be exported by the Buyer. Buyer shall cooperate fully with Seller in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold Seller harmless from, or in connection with, any violation of this Section by Buyer or its employees, consultants, or agents

13. HAZARDOUS MATERIALS. Some Products may require special packaging, labeling, marking and handling. Carriers may add additional freight charges for the handling or transporting of these materials. The consolidating of such material with other Products may be prohibited. Additional freight charges will be billed per Seller's shipping terms. Be sure to advise Seller of shipping instructions for these hazardous materials to reduce your freight costs

14. MISCELLANEOUS. (a) Buyer may not delegate any duties nor assign any rights or claims hereunder without Seller's prior written consent, and any such attempted delegation or assignment shall be void. (b) The rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Seller's manufacturing location, without reference to its choice of law provisions. Each party hereby irrevocably consents to the exclusive jurisdiction of the state and federal courts located in the county and state of Seller's manufacturing location, in any action arising out of or relating to this Agreement. (c) Both parties waive any right they may have under applicable law or otherwise to a right to a trial by jury. Any action arising under this Agreement must be brought within one (1) year from the date that the cause of action arose. (d) The application to this Agreement of the U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded. (e) In the event that any one or more provisions contained herein shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall remain in full force and effect, unless the revision materially changes the bargain. (f) Seller's failure to enforce, or Seller's waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision. (g) Unless otherwise expressly stated on the Product or in the documentation accompanying the Product, the Product is intended for non-clinical, non-diagnostic, non-therapeutic use only and is not to be used for any other purpose, including without limitation, unauthorized commercial uses, in vitro diagnostic uses, ex vivo or in vivo therapeutic uses, or any type of consumption by or application to humans or animals. (h) Buyer agrees that all pricing, discounts and technical information that Seller provides to Buyer are the confidential and proprietary information of Seller. Buyer agrees to (1) keep such information confidential and not disclose such information to any third party, and (2) use such information solely for Buyer's internal purposes and in connection with the Products supplied hereunder. Nothing herein shall restrict the use of information available to the general public. (i) Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received when personally delivered or three (3) business days after being sent by certified mail, postage prepaid, to a party at the address specified herein or at such other address as either party may from time to time designate to the other (j) Seller hereby rejects and disclaims any rights of Buyer contained, or obligations imposed upon Seller, in any document provided, referenced or otherwise submitted by Buyer, in each case, that Seller has not expressly included in these [terms and conditions] or a writing manually executed by Seller (including, without limitation, any rights of Buyer in respect of designs, specifications, source code or intellectual property, owned, created, developed or licensed, by Seller; any rights to items or services not specifically identified in Seller's quotation; any audit rights or financial offset rights of Buyer; any penalties or liquidated damages imposed upon Seller; any obligation by Seller to comply with Health Insurance Portability and Accountability Act of 1996 (as amended), Current Good Manufacturing Practice regulations (as amended), the requirements, as amended, of the Customs-Trade Partnership Against Terrorism or any code of conduct, quality program, information security program, background or drug screening program or other guidelines, programs or policies, in each case, promulgated or required by Buyer; any obligation that Seller comply with any law that, under law, would not otherwise apply to Seller in respect of the transaction(s) contemplated hereby; any right of Buyer to withhold all, or any portion, of the purchase price of any products or services provided hereunder for any period of time; any right of Buyer, itself or through any third party, to remediate any defects in, replace or re-perform, any products or services provided hereunder at Seller's cost or expense; any obligation of Seller to waive, or require its insurers to waive, any rights of subrogation; any obligation of Seller that would impair, restrict or prohibit Seller's ability to freely conduct any business with any person or in any geography or market; any early-payment, or other, discount; any obligation of Seller to maintain a supply of spares, or otherwise make any services available, for any particular period of time; any representation, warranty or other obligation of Seller to provide pricing comparable to, or more favorable than, the pricing that Seller provides to others; any restriction of, or prohibition on, Seller's ability to modify, change or discontinue any of its products, processes or services; or any waiver by Seller of any right to enforce any of the terms hereof).

15. SOFTWARE-AS-A-SERVICE TRANSACTIONS. IF YOU ARE PURCHASING ANY PRODUCTS PROVIDED BY SELLER HEREUNDER AND DESCRIBED IN THE RELEVANT QUOTATION OR PURCHASE ORDER AS A SUBSCRIPTION TO ANY THERMO FISHER SOFTWARE-AS-A-SERVICE OFFERING (ANY SUCH PRODUCT, HEREINAFTER, A "SUBSCRIPTION"),THEN IN RESPECT OF SUCH SUBSCRIPTION(S) ONLY

(a) The following terms and conditions of this Agreement shall not apply: Sections 6-7, 9.1, and 13.

(b) The following terms and conditions of this Agreement shall be modified as set forth below:

(i) Section 5 shall be replaced in its entirety with the following:
5. CANCELLATION OR CHANGES BY BUYER. Seller reserves the right to suspend or terminate the Buyer's Subscription(s), in whole or in part, if Buyer fails to make any payment to Seller when due, otherwise fails to perform its obligations hereunder, or fails to comply with the Seller's Terms of Use agreement agreed to by Buyer and governing Buyer's use of the Subscription(s), as in effect from time to time (the "Terms of Use"). Seller will not be liable for any loss or damage resulting from any delay in activation of the Subscription(s) or failure to activate the Subscription(s) which is due to any cause beyond Seller's reasonable control. In the event of a delay due to any cause beyond Seller's reasonable control, Seller reserves the right to terminate the order or to reschedule the activation of the Subscription(s) within a reasonable period of time, and Buyer will not be entitled to refuse payment or otherwise be relieved of any obligations as the result of such delay. Orders in process may be canceled only with Seller's written consent and upon

payment of Seller's cancellation charges. Orders in process may not be changed except with Seller's written consent and upon agreement by the parties as an appropriate adjustment in the purchase price therefor.

(ii) Section 8 shall be replaced in its entirety with the following:
8. WARRANTY. BUYER AGREES AND ACKNOWLEDGES THAT THE SUBSCRIPTIONS ARE SOLD "AS-IS", WITH NO WARRANTIES EXPRESSED OR IMPLIED. SELLER DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, ORAL OR WRITTEN, WITH RESPECT TO THE SUBSCRIPTIONS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

(iii) Section 10 shall be replaced in its entirety with the following:

10. SOFTWARE. This Agreement shall not be construed to grant to Buyer any patent license, know-how license or any other rights except as specifically provided herein. Buyer agrees and acknowledges that, by virtue of its purchase of the Subscriptions hereunder, it does not acquire any intellectual property rights (whether by license, assignment, or otherwise) of Seller, including without limitation any rights to the Subscriptions or related software or hardware systems (except for the limited right to use the Subscription subject to the terms and conditions set forth herein). Buyer shall not reverse engineer or copy the design, algorithms, or code, or any components thereof, of any information related to the Subscriptions for any purpose.

(iv) In Section 11, the language "ONE MILLION DOLLARS ($1,000,000)" shall be replaced with "TEN THOUSAND DOLLARS ($10,000)".

(c) The following additional terms and conditions shall apply
TERMS OF USE. Buyer hereby acknowledges and agrees that it shall comply with all terms and conditions of the Terms of Use, and that Buyer's use of the Subscription in violation of any such terms and/or conditions shall entitle Seller, without prejudice to any other remedies that may be available to Seller at law or in equity, to terminate Buyer's use of the Subscription(s) effective immediately. Buyer further agrees and acknowledges that it shall not be entitled to any refund of any portion of the purchase price paid in respect of Subscription(s) cancelled by Seller pursuant to Seller's rights under this Section and/or the Terms of Use. Buyer's rights to use these Subscription will begin upon Seller's transmission to Buyer of Subscription link and end 12 months from this date unless otherwise terminated by Seller. In the event of any conflict between this Agreement and the Terms of Use, the Terms of Use shall control.

March 1, 2022 Item No. **8f(6)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
March 1, 2022

CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-, OPPOSING INITIATIVE 21-0042A1; AND THAT WE DIRECT STAFF TO EMAIL A COPY OF THIS ADOPTED RESOLUTION TO THE LEAGUE OF CALIFORNIA CITIES AT BALLOTMEASURES@CALCITIES.ORG

RECOMMENDATION:

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

1. Adopt Resolution No. 2022-, opposing Initiative 21-0042A1; and direct staff to email a copy of the adopted resolution to the League of California Cities at ballotmeasures@calcities.org

BACKGROUND

In 2018, the "Tax Fairness, Transparency and Accountability Act" or AG# 17-0050 Amdt. #1, was being circulated to qualify for the November 2018 ballot. This initiative would have drastically limited local revenue authority. Through the successful work and advocacy of the League of California Cities and its coalition partners, the measure's proponents withdrew the initiative from the ballot in June 2018.

On January 4, 2022, the California Business Roundtable filed the Taxpayer Protection and Government Accountability Act or AG# 21-0042A1. This measure is far more detrimental to cities than the measure filed in 2018, because it would decimate vital local and state services to the benefit of wealthy corporations.

During its December 2-3, 2021, meeting, the League of California Cities Board of Directors voted unanimously to oppose Initiative 21-0026A1. Following the Board's unanimous decision, a coalition of public safety, labor, local government and infrastructure advocates have joined together to fight against this measure. With the Attorney General set to release the Title and Summary soon, the coalition announced their opposition in a media release that was sent out on Wednesday morning. The proponents will need to submit nearly 1 million signatures in order to qualify for the November 2022 ballot and the Secretary of State's recommended date to turn in signatures is only 3 months away, April 29, 2022.

ANALYSIS:

Local Government Taxes and Services Threatened - with regard to taxes, Initiative 21-0042A1:

- Prohibits advisory, non-binding measures as to use of tax proceeds on the same ballot.
  - Voters may be less informed and more likely to vote against measures.
- Eliminates the ability of special tax measures proposed by citizen initiative to be enacted by majority voter approval (Upland).
  - Because the case law regarding citizen initiative special taxes approved by majority vote (Upland) is so recent, it is unknown how common these sorts of measures might be in the future. This initiative would prohibit such measures after the effective date of the initiative.

Any such measures adopted after January 1, 2022, through November 8, 2022, would be void after November 9, 2023.

- Requires that tax measures include a specific duration of time that the tax will be imposed. This seems to require that all tax increases or extensions contain a sunset (end date).
  - This would require additional tax measures to extend previously approved taxes at additional cost to taxpayers.
- Requires that a tax or bond measure adopted after January 1, 2022, and before the effective date of the initiative (November 9, 2022) that was not adopted in accordance with the measure be readopted in compliance with the measure or will be void twelve months after the effective date of the initiative (November 9, 2023).
  - If past election patterns are an indication, dozens of tax and bond measures approving hundreds of millions of annual revenues may not be in compliance and would be subject to reenactment. Most will be taxes without a specific end date. Because there is no regularly scheduled election within the 12 months following the effective date of the initiative, measures not in compliance would need to be placed on a special election ballot for approval before November 9, 2023, or the tax will be void after that date. General tax measures would require declaration of emergency and unanimous vote of the governing board.

Exempt Charges (feed and charges that are not taxes) **and Services Threatened –** with regard to fees and charges adopted after January 1, 2022, Initiative 21-0042A1:

- Subjects new fees and charges for a product or service to a new "actual cost" test defined as "(i) the minimum amount necessary to reimburse the government for the cost of providing the service to the payor, and (ii) where the amount charged is not used by the government for any purpose other than reimbursing that cost. In addition, subjects these same charges to a new, undefined, "reasonable" standard.
- Subjects fees and charges for entrance to local government property; and rental and sale of local government property to a new, undefined, "reasonable" test.
- Subjects a challenged fee or charge to new, higher burdens of proof if legally challenged.
- Prohibits a levy, charge or exaction regulating or related to vehicle miles traveled, imposed as a condition of property development or occupancy.

FISCAL IMPACT:

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

Respectfully submitted,

____
Layne P. Long
City Manager
City of Marina

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA OPPOSING INITIATIVE 21-0042A1

WHEREAS, an association representing California's wealthiest corporations is behind a deceptive proposition aimed for the November 2022 statewide ballot; and

WHEREAS, the measure creates new constitutional loopholes that allow corporations to pay far less than their fair share for the impacts they have on our communities, including local infrastructure, our environment, water quality, air quality, and natural resources; and

WHEREAS, the measure includes undemocratic provisions that would make it more difficult for local voters to pass measures needed to fund local services and infrastructure, and would limit voter input by prohibiting local advisory measures where voters provide direction on how they want their local tax dollars spent; and

WHEREAS, the measure makes it much more difficult for state and local regulators to issue fines and levies on corporations that violate laws intended to protect our environment, public health and safety, and our neighborhoods; and

WHEREAS, the measure puts billions of dollars currently dedicated to state and local services at risk, and could force cuts to public schools, fire and emergency response, law enforcement, public health, parks, libraries, affordable housing, services to support homeless residents, mental health services, and more; and

WHEREAS, the measure would also reduce funding for critical infrastructure like streets and roads, public transportation, drinking water, new schools, sanitation, and utilities.

THEREFORE, BE IT RESOLVED that the Marina, opposes Initiative 21-0042A1.

THEREFORE, BE IT FURTHER RESOLVED, that the City of Marina will join the NO on Initiative 21-0042A1 coalition, a growing coalition of public safety, labor, local government, infrastructure advocates, and other organizations throughout the state and that we direct staff to email a copy of this adopted resolution to the League of California Cities at BallotMeasures@calcities.org.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 15th day of March 2022 by the following vote:

AYES, COUNCIL MEMBERS:
NOES, COUNCIL MEMBERS:
ABSTAIN, COUNCIL MEMBERS:
ABSENT, COUNCIL MEMBERS:

Bruce C. Delgado, Mayor

Anita Sharp, Deputy City Clerk

LEAGUE OF CALIFORNIA CITIES

The Taxpayer Protection and Government Accountability Act
Initiative No. 21-0042A1
January 21, 2022

Summary: The measure limits the voters' input, adopts new and stricter rules for raising taxes and fees, and makes it more difficult to hold state and local law violators accountable.

Limiting Voter Authority and Accountability

- Limits voter input. Prohibits local voters from providing direction on how local tax dollars should be spent by prohibiting local advisory measures.
- Invalidates Upland decision that allows majority of local voters to pass special taxes. Taxes proposed by the Initiative are subject to the same rules as taxes placed on the ballot by a city council. All measures passed between January 2022 and November 2022 would be invalidated unless reenacted within 12 months.

Restricting Local Fee Authority to Provide Local Services

- Franchise fees. Sets new standard for fees and charges paid for the use of local and state government property. The standard may significantly restrict the amount oil companies, utilities, gas companies, railroads, garbage companies, cable companies, and other corporations pay for the use of local public property. Rental and sale of local government property must be "reasonable" which must be proved by "clear and convincing evidence."
- Except for licensing and other regulatory fees, fees and charges may not exceed the "actual cost" of providing the product or service for which the fee is charged. "Actual cost" is the "minimum amount necessary." The burden to prove the fee or charge does not exceed "actual cost" is changed to "clear and convincing" evidence.

Restricting Authority of State and Local Governments to Issue Fines and Penalties for Violations of Law.

- Requires voter approval of fines, penalties, and levies for corporations and property owners that violate state and local laws unless a new, undefined adjudicatory process is used to impose the fines and penalties.

LEAGUE OF
CALIFORNIA
CITIES

Restricting Local Tax Authority to Provide Local Services

- Expanding existing taxes (e.g., UUT, use tax, TOT) to new territory (e.g., annexation) or expanding the base (e.g., new utility service) requires voter approval.
- City charters may not be amended to include a tax or fee.
- New taxes can be imposed only for a specific time period.
- Taxes adopted after January 1, 2022, that do not comply with the new rules, are void unless reenacted.
- All state taxes require majority voter approval.
- Prohibits any surcharge on property tax rate and allocation of property tax to state.

Other Changes

- No fee or charge or exaction regulating vehicle miles traveled can be imposed as a condition of property development or occupancy.

LEAGUE OF
CALIFORNIA
CITIES

Stop the Corporate Loopholes Scheme

Deceptive Proposition Allows Major Corporations to Avoid Paying their Fair Share and Evade Enforcement when they Violate Environmental, Health & Safety Laws

An association representing California's wealthiest corporations — including oil, insurance, banks and drug companies — is behind a deceptive proposition aimed for the November 2022 statewide ballot. Their measure would create major new loopholes that allow corporations to avoid paying their fair share for the impacts they have on our communities; while also allowing corporations to evade enforcement when they violate environmental, health, safety and other state and local laws. Here's why a broad coalition of local governments, labor and public safety leaders, infrastructure advocates, and businesses **oppose** the Corporate Loophole Scheme:

Gives Wealthy Corporations a Major Loophole to Avoid Paying their Fair Share - Forcing Local Residents and Taxpayers to Pay More

- The measure creates new constitutional loopholes that **allow corporations to pay far less than their fair share for the impacts they have on our communities**, including local infrastructure, our environment, water quality, air quality, and natural resources – shifting the burden and making individual taxpayers pay more.

Allows Corporations to Dodge Enforcement When They Violate Environmental, Health, Public Safety and Other Laws

- The deceptive scheme creates new loopholes that makes it much more difficult for state and local regulators to issue fines and levies on corporations that violate laws intended to protect our environment, public health and safety, and our neighborhoods.

Jeopardizes Vital Local and State Services

- This far-reaching measure **puts at risk billions of dollars currently dedicated to critical state and local services.**
- It could **force cuts** to public schools, fire and emergency response, law enforcement, public health, parks, libraries, affordable housing, services to support homeless residents, mental health services and more.
- It would also **reduce funding for critical infrastructure** like streets and roads, public transportation, drinking water, new schools, sanitation, utilities and more.

Opens the Door for Frivolous Lawsuits, Bureaucracy and Red Tape that Will Cost Taxpayers and Hurt Our Communities

- The measure will encourage **frivolous lawsuits, bureaucracy and red tape that will cost local taxpayers millions** — while significantly **delaying and stopping investments in infrastructure and vital services.**

LEAGUE OF
CALIFORNIA
CITIES

Undermines Voter Rights, Transparency, and Accountability

- This misleading measure changes our constitution to make it more difficult for local voters to pass measures needed to fund local services and local infrastructure.
- It also includes a hidden provision that **would retroactively cancel measures that were passed by local voters** — effectively undermining the rights of voters to decide for themselves what their communities need.
- It would **limit voter input** by prohibiting local advisory measures, where voters provide direction to politicians on how they want their local tax dollars spent.

Fiscal and Program Effects of Initiative 21-0042A1 on Local Governments

If Initiative 21-0042A1 is placed on the ballot and passed by voters, it will result in:

- Billions of local government fee and charge revenues placed at heightened legal peril. Related public service reductions across virtually every aspect of city, county, special district, and school services especially for transportation, and public facility use.
- Hundreds of millions of dollars of annual revenues from dozens of tax and bond measures approved by voters between January 1, 2022 and November 9, 2022 subject to additional voter approval if not in compliance with the initiative.
- Indeterminable legal and administrative burdens and costs on local government from new and more empowered legal challenges, and bureaucratic cost tracking requirements.
- The delay and deterrence of municipal annexations and associated impacts on housing and commercial development.
- Service and infrastructure impacts including in fire and emergency response, law enforcement, public health, drinking water, sewer sanitation, parks, libraries, public schools, affordable housing, homelessness prevention and mental health services.

1. <u>Local Government Taxes and Services Threatened</u>

With regard to taxes, Initiative 21-0042A1:

- Prohibits advisory, non-binding measures as to use of tax proceeds on the same ballot.
    - Voters may be less informed and more likely to vote against measures.
- Eliminates the ability of special tax measures proposed by citizen initiative to be enacted by majority voter approval (*Upland*).
    - Because the case law regarding citizen initiative special taxes approved by majority vote (Upland) is so recent, it is unknown how common these sorts of measures might be in the future. This initiative would prohibit such measures after the effective date of the initiative. Any such measures adopted after January 1, 2022 through November 8, 2022 would be void after November 9, 2023.
- Requires that tax measures include a specific duration of time that the tax will be imposed. This seems to require that all tax increases or extensions contain a sunset (end date).
    - This would require additional tax measures to extend previously approved taxes at additional cost to taxpayers.
- Requires that a tax or bond measure adopted after January 1, 2022 and before the effective date of the initiative (November 9, 2022) that was not adopted in accordance with the measure be readopted in compliance with the measure or will be void twelve months after the effective date of the initiative (November 9, 2023).
    - If past election patterns are an indication, dozens of tax and bond measures approving hundreds of millions of annual revenues may not be in compliance and would be subject to reenactment. Most will be taxes without a specific end date. Because there is no regularly scheduled election within the 12 months following the effective date of the initiative, measures not in compliance would need to be placed on a special election ballot for approval before November 9, 2023 or the tax will be void after that date. General tax measures would require declaration of emergency and unanimous vote of the governing board.

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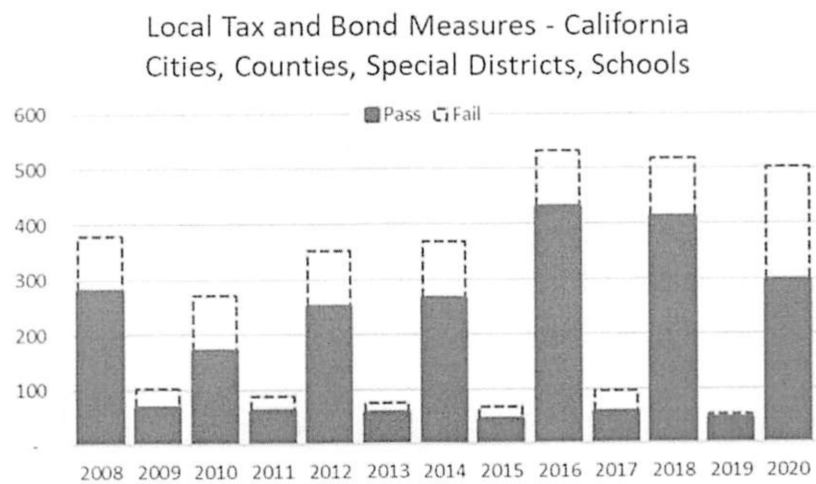
- Requires voter approval to expand an existing tax to new territory (annexations). This would require additional tax measures and would deter annexations and land development in cities.
  - If a tax is "extended" to an annexed area without a vote after January 1, 2022, it will be void 12 months later until brought into compliance. Because there is no regularly scheduled election within the 12 months following the effective date of the initiative, such extensions for general taxes would, under current law, each require unanimous vote of the agency board to be placed on a special election ballot or would be void after November 9, 2023.



1.a. Number of Measures and Value of Local Taxes at Risk[1]

In 2020, voters in California approved 293 local tax and bond measures for cities, counties, special districts and schools (95 in March and 198 in November). The approved measures enacted $3.85 billion in new annual taxes including $1.3 billion for cities, $302 million for counties, $208 million for special districts (fire, wastewater, open space and transit districts), and $2.037 billion for schools (including for school bonds).

Most tax measures go to the ballot during a presidential or gubernatorial primary or general election in an even year. However, some tax measures are decided at other times. During 2019, there were 45 approved tax and bond measures (24 city, 14 special district, 7 school) adopting $154.0 million in new annual taxes ($124.0 million city, $10.5 million special district and $19.2 million school).

Most tax and bond measures comply with the new rules in Initiative 21-0042Amdt#1 except:

- Dozens of taxes would require end dates. This would require additional measures in future years to extend the taxes further. Very few extensions of existing local taxes fail.
- Majority vote general tax measures could not be accompanied on the same ballot with an advisory, non-binding measure as to use of tax proceeds.
- Special taxes placed on the ballot via citizen initiative would require two-thirds voter approval.

Bond measures have fixed terms. Historically, about 20 percent of other tax measures have included specific durations (i.e. sunsets). Advisory measures as to use of revenues are uncommon. I do not expect the provisions of 21-0042A1 to have any substantial effect on passage rates. However, some 2022 approved measures would likely have to put back on the ballot.

Based on history, a reasonable estimate of the annualized tax revenues estimated to be approved by

[1] Source: Compilation and summary of data from County elections offices.

voters in 2022 and placed at risk by this initiative is at least **$1.5 billion, including $1.0 billion from cities and $500 million from counties and special districts.**[2]

1.b. Additional Costs and Public Service Effects of the Tax Provisions

In addition to service delays and disruption due to new tax revenues placed at greater legal risk, there will be substantial additional costs for legal defense. The deterrence of taxes for annexations will delay and deter municipal annexations.

2. "Exempt Charges" (fees and charges that are not taxes) and Services Threatened

With regard to fees and charges adopted after January 1, 2022, Initiative 21-0042A1:

- Subjects new fees and charges for a product or service to a new "actual cost" test defined as "(i) the minimum amount necessary to reimburse the government for the cost of providing the service to the payor, and (ii) where the amount charged is not used by the government for any purpose other than reimbursing that cost. In addition, subjects these same charges to a new, undefined, "reasonable" standard.
- Subjects fees and charges for entrance to local government property; and rental and sale of local government property to a new, undefined, "reasonable" test.
- Subjects a challenged fee or charge to new, higher burdens of proof if legally challenged.
- Prohibits a levy, charge or exaction regulating or related to vehicle miles traveled, imposed as a condition of property development or occupancy.

2.a. Value on New Local Government Fees and Charges at Risk[3]

Virtually every city, county, and special district must regularly (e.g., annually) adopt increases to fee rates and charges and revise rate schedules to accommodate new users and activities. Most of these would be subject to new standards and limitations under threat of legal challenge. Based on the current volume of fees and charges imposed by local agencies and increases in those fees simply to accommodate inflation, the amount of local government fee and charge revenue placed at risk is about **$1 billion per year including those adopted since January 1, 2022. Of this $1 billion, about $570 million is for special districts, $450 million is cities, and $260 million is counties.**[4]

Major examples of affected fees and charges are:

1. Nuisance abatement charges - such as for weed, rubbish and general nuisance abatement to fund community safety, code enforcement, and neighborhood cleanup programs.
2. Commercial franchise fees.
3. Emergency response fees - such as in connection with DUI.
4. Advanced Life Support (ALS) transport charges.
5. Document processing and duplication fees.
6. Transit fees, tolls, parking fees, public airport and harbor use fees.
7. Facility use charges, fees for parks and recreation services, garbage disposal tipping fees.

In addition to fees and charges, the measure puts fines and penalties assessed for the violation of state and

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[2] This does not include citizen initiative special tax approved by majority but not two-thirds. Because this approach is new, the number of these measures and amount of revenue involved cannot be estimated.

[3] Source: California State Controller Annual Reports of Financial Transactions concerning cities, counties and special districts, summarized with an assumed growth due to fee rate increases (not population) of 2 percent annually.

[4] School fees are also affected but the amount is negligible by comparison.

local law at risk, making them taxes subject to voter approval under certain circumstances.

2.b. Additional Costs and Public Service Effects of the Fee/Charge Provisions

In addition to service delays and disruptions due to fee and charge revenues placed at greater legal risk, there would be substantial additional costs for legal defense. The risk to fees and charges will make infrastructure financing more difficult and will deter new residential and commercial development.

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Honorable Mayor and Members City Council Meeting
of the Marina City Council of March 1, 2022

CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-, APPROVING A PROPOSED JOB DESCRIPTION, CLASSIFICATION AND SALARY SCHEDULE CHANGE FOR THE ACCOUNTING SERVICES MANAGER CLASSIFICATION TO ASSISTANT FINANCE DIRECTOR; AUTHORIZING THE CITY MANAGER TO MAKE NECESSARY ADJUSTMENTS TO CITY'S CLASSIFICATION AND COMPENSATION PLANS; AND AUTHORIZING THE FINANCE DIRECTOR TO MAKE APPROPRIATE BUDGETARY AND ACCOUNTING ENTRIES AND ADJUSTMENTS

REQUEST:
It is requested that the City Council consider:

1. Adopting Resolution No. 2022-, approving a proposed job description, classification and salary schedule for Accounting Services Manager to Assistant Finance Director;
2. Authorizing the City Manager to make necessary adjustments to City's Classification and Compensation Plans;
3. Authorizing the Finance Director to make appropriate budgetary and accounting entries and adjustments.

BACKGROUND:
Chapter 2.08.070 of the Marina Municipal Code vests the City Manager with the responsibility for the efficient administration of all affairs of the City and effect such administrative reorganization of offices, positions and units under his direction as are in the interest of efficient, effective and economical conduct of the City's business; and recommend to the City Council such measures as he considers necessary.

Pursuant to Personnel Manual definition of reclassification: reclassification or reallocation shall mean the reassignment or change in allocation of an individual position by raising it to a higher, reducing it to a lower, or moving it to another class of the same level on the basis of significant changes in the kind or difficulty of duties and responsibilities in such a position.

ANALYSIS:
In July 2016 council approved the funding of the Accounting Services Manager (ASM) position. The current vacancy in the position allows for a reassessment of the position and how it has and will continue to be important in meeting the City's needs.

The current job description (**"EXHIBIT A")** for ASM includes the following duties:

- Plan, supervise and implement accounting operations, including general ledger, accounts payable, purchase orders, payroll, accounts receivable, fixed assets and special accounting project studies and analyses.
- Supervise the preparation and maintenance of financial information, data and records; manage the automated financial system; and ensures the appropriate records management and retention systems.

- Perform technical and professional accounting and auditing; oversee accounting and financial reporting operations; conduct complex account analyses; oversee cash and bank reconciliations; monitor, approve and/or post journal entries and budget amendments.
- Ensure financial records are in compliance with laws, ordinances, regulations, grant agreements, contract obligations and Generally Accepted Accounting Principles (GAAP).
- Oversee City expenditures for budgetary and established policy compliance.
- Provide assistance, advise and consultation with Department Directors and staff on accounting, budget and finance related matters.
- Perform year-end reconciliations, adjustments and closing of financial records coordinate annual independent financial audit; prepare or supervise preparation of audit schedules.
- Prepare annual financial reports and perform periodic internal audits.
- Review, analyze, develop, and implement financial policies, procedures, and internal controls, and communicate to program staff and City employees.
- Conduct research, compile, analyze and interpret a wide variety of complex information and data, prepare a variety of complex and analytical documents and reports, and present information to individuals and groups, including public meetings and hearings.
- Participate in the development and preparation of the annual budget; coordinate the distribution of budget information; and consult with departments on budget issues.
- Supervise accounting personnel; assist in hiring; ensure training and staff development, monitor and evaluate performance and work products; recommend appropriate disciplinary action, and establish performance enhancement goals.
- Assist in the short and long-range planning of program and project goals and objectives; assists in forecasting needed funding, staffing needs, equipment, materials and supplies.
- Monitor and evaluates customer service and make recommendations.
- Prepare and review written reports, correspondence and other materials.
- Present complex financial information or reports to individuals, before groups, and at public meeting and hearings.
- Serve on various committees and attend meetings, as assigned.
- May serve as Acting Finance Director, as assigned.
- Perform related duties as assigned.

The current salary table for the ASM position is represented below.

Accounting Services Manager Salary Table

	Step A	Step B	Step C	Step D	Step E
Hourly Rate	$49.0841	$51.5383	$54.1153	$56.8210	$59.6621
Annual Rate	$102,095	$107,200	$112,560	$118,188	$124,097

Reclassification Discussion

The proposed changes contained in this reclassification request will provide for greater ability of the Finance Department to meet the needs of a city that is growing in operational and financial complexity. Since the ASM position was created, the City’s overall budget has more than doubled in size, largely due to more diverse revenue sources, more robust capital improvement programs and more complex financing structures. Consequently, this position has increased in its financial and operational leadership role. The position’s decision-making responsibilities, scope and complexity of work, required knowledge, skills, and abilities have increased. The reclassification of the ASM to an Assistant Finance Director classification ensures that day-to-day management and operations of the Finance Department are properly executed and complex finance projects are maintained and completed. This position will oversee the daily operations of the finance department, numerous independent audits, the submittal of numerous reporting obligations to State & Federal agencies and debt holders, all of which require in-depth institutional knowledge and efficiency. In addition to acting in the Finance Director’s absence, the Assistant Finance Director position will be essential in administering and expanding the city's enterprise resource planning system and ensuring internal financial controls, which mitigate errors and/or unauthorized activities. Additionally, the position upgrade will provide the City with sufficient resources to recruit and retain a qualified candidate in a very competitive labor market. Our market research has indicated that most local agencies of similar size or complexity employ an assistant finance director.

In order to better serve the needs of the Department and the City, staff suggests a reclassification of the ASM to Assistant Finance Director ("**EXHIBIT B"**) and the following job description duties:

- Plan, supervise, manage, and implement day-to-day finance operations, including general ledger, grant accounting, cost accounting, capital project accounting, enterprise fund accounting, purchasing, risk management, accounts payable, payroll, accounts receivable, treasury and fixed assets.
- Supervise the preparation and maintenance of financial information, data and records; manage and improve the automated financial system; and ensure the appropriate records management and retention systems.
- Perform technical and professional accounting and auditing; conduct complex account analyses and project studies; oversee cash and bank reconciliations; monitor, approve and/or post journal entries and budget amendments.
- Ensure financial records are in compliance with laws, ordinances, regulations, grant agreements, contract obligations and Generally Accepted Accounting Principles (GAAP).
- Review, analyze, develop, and implement financial policies, procedures, and internal controls, and communicate to program staff and City employees.
- Assist in the short and long-range planning of program and project goals and objectives; assists in forecasting needed funding, staffing needs, equipment, materials and supplies.
- Perform year-end reconciliations, adjustments and closing of financial records coordinate annual independent financial audit; prepare or supervise preparation of audit schedules.
- Provide assistance, advise and consult with Department Directors and staff on accounting, budget and finance related matters.
- Develop forecasts for City revenues, expenditures, and year-end fund balances.
- Plan and manage the City indebtedness including bonds, loans and interfund advances.
- Participate in the development, preparation, administration and oversight of the City operating and capital improvement program budgets.
- Analyze financial reports, contracts, leases, partnership agreements, development agreements and fee agreements and make recommendations to directors on courses of action.
- Prepare and analyze a variety of complex financial reports, statements and schedules; prepare periodic reports, including the State Controller's Report and Annual Comprehensive Financial Report (ACFR).
- Supervise accounting personnel; assist in hiring; ensure training and staff development, monitor and evaluate performance and work products; recommend appropriate disciplinary action, and establish performance enhancement goals.
- Maintain and reconcile a variety of ledgers, reports, and accounting records, analyses accounting transactions to ensure accuracy; approve journal entries to post transactions to accounting records; performs month-end, fiscal year-end, and calendar year-end accounting system processing.
- Monitor and evaluates customer service and make recommendations.
- Present complex financial information or reports to individuals, before groups, and at public meeting and hearings.
- Serve on various committees and attend meetings, as assigned.

- May serve as Acting Finance Director, as assigned.
- Perform related duties as assigned.

Staff performed a salary survey of our usual eight comparison agencies to ensure consistency with current policy. The survey concluded that the salary schedule contained below is the appropriate compensation for this proposed position.

Proposed Assistant Finance Director Salary Table

	Step A	Step B	Step C	Step D	Step E
Hourly Rate	$56.7578	$59.5957	$62.5755	$65.7043	$68.9895
Annual Rate	$118,056	$123,959	$130,157	$136,665	$143,498

FISCAL IMPACT:

The proposed salary range for the Assistant Finance Director is $118,056 to $143,498 annually. This salary is based upon the level of scope and responsibility of the position and comparison to similar positions in our market area. This proposed salary range will be an increase of $19,401 annually at Step E. The additional salary will be funded through General Fund revenues. The Finance Department budget has sufficient resources to absorb the additional cost in FY 2021-22 but is requesting an additional $20,000 in Salaries and Benefits appropriations for FY 2022-23.

CONCLUSION:

This request is submitted for City Council consideration and action.

Respectfully submitted,

Juan Lopez
Finance Director

REVIEWED/CONCUR:

____

Layne Long
City Manager
City of Marina

Exhibit A - Accounting Services Manager Job Description
Exhibit B – Assistant Finance Director Job Description

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING A PROPOSED JOB DESCRIPTION, CLASSIFICATION AND SALARY SCHEDULE CHANGE FOR THE ACCOUNTING SERVICES MANAGER CLASSIFICATION TO ASSISTANT FINANCE DIRECTOR; AUTHORIZING THE CITY MANAGER TO MAKE NECESSARY ADJUSTMENTS TO CITY'S CLASSIFICATION AND COMPENSATION PLANS; AND AUTHORIZING THE FINANCE DIRECTOR TO MAKE APPROPRIATE BUDGETARY AND ACCOUNTING ENTRIES AND ADJUSTMENTS

WHEREAS, Chapter 2.08.070 of the Marina Municipal Code vests the City Manager with the responsibility for the efficient administration of all affairs of the City and effect such administrative reorganization of offices, positions and units under his direction as are in the interest of efficient, effective and economical conduct of the City's business and recommend to the City Council such measures as he considers necessary; and,

WHEREAS, pursuant to Personnel Manual definition of reclassification: Reclassification or Reallocation shall mean the reassignment or change in allocation of an individual position by raising it to a higher, reducing it to a lower, or moving it to another class of the same level on the basis of significant changes in the kind or difficulty of duties and responsibilities in such a position; and,

WHEREAS, the current vacancy in the position of Accounting Services Manager position has allowed for a reassessment of the position to meet the City's needs; and,

WHEREAS, in order to better serve the needs of the Department and the City, staff has proposed a reclassification of the Accounting Services Manager to Assistant Finance Director; and,

WHEREAS, the proposed changes to the job description duties and responsibilities warrant a reclassification to the Assistant Finance Director classification (Exhibit "B"); and,

WHEREAS, the increase cost of the proposed reclassification is approximately $19,401 annually.

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

1. Adopt Resolution No. 2022-, approving a proposed job description, classification and salary schedule for Accounting Services Manager to Assistant Finance Director;
2. Authorize the City Manager to make necessary adjustments to City's Classification and Compensation Plans; and,
3. Authorize the Finance Director to make appropriate budgetary and accounting entries and adjustments.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 1st day of March 2022 by the following vote:

AYES, COUNCIL MEMBERS:
NOES, COUNCIL MEMBERS:
ABSENT, COUNCIL MEMBERS:
ABSTAIN, COUNCIL MEMBERS:

____
Bruce C. Delgado, Mayor

ATTEST:

____
Anita Sharp, Acting Deputy City Clerk

Department	Finance
Employee Association	Management Association
Resolution No./Established Date:	
Resolution No./Revision Date(s):	December 19, 2006
Salary Range:	Position Code
EEO Code	FSLA Exempt

ACCOUNTING SERVICES MANAGER

*Class specifications are intended to present a descriptive list of the range of duties performed by employees in the class. Specifications are **not** intended to reflect all duties performed within the job.*

DEFINITION
Under general direction, plans, organizes, supervises and manages a wide range of highly complex accounting activities, projects and programs; oversee the preparation and maintenance of financial records and reports; participate in the development, implementation and maintenance of policies, procedures and internal controls; supervise and coordinate external audits and the preparation of the annual financial reports; supervise and evaluate accounting staff, ensure customer service support to City department personnel; and perform other related duties as assigned.

SUPERVISION RECEIVED AND EXERCISED
Receive administrative direction from the Finance Director. Exercises direct supervision over accounting staff, including contracted personnel.

EXAMPLE OF ESSENTIAL AND IMPORTANT DUTIES
The following duties are typical for this classification. Incumbents may not perform all of the listed duties and/or may be required to perform additional or different duties from those set forth below to address business needs and changing business practices.

Duties may include, but are not limited to the following:

1. Plan, supervise and implement accounting operations, including general ledger, accounts payable, purchase orders, payroll, accounts receivable, fixed assets and special accounting project studies and analyses.
2. Supervise the preparation and maintenance of financial information, data and records; manage the automated financial system; and ensures the appropriate records management and retention systems.
3. Perform technical and professional accounting and auditing; oversee accounting and financial reporting operations; conduct complex account analyses; oversee cash and bank reconciliations; monitor, approve and/or post journal entries and budget amendments.
4. Ensure financial records are in compliance with laws, ordinances, regulations, grant agreements, contract obligations and Generally Accepted Accounting Principles (GAAP).
5. Oversee City expenditures for budgetary and established policy compliance.
6. Provide assistance, advise and consultation with Department Directors and staff on accounting, budget and finance related matters.
7. Perform year-end reconciliations, adjustments and closing of financial records coordinate annual independent financial audit; prepare or supervise preparation of audit schedules.

8. Prepare annual financial reports and perform periodic internal audits.
9. Review, analyze, develop, and implement financial policies, procedures, and internal controls, and communicate to program staff and City employees.
10. Conduct research, compile, analyze and interpret a wide variety of complex information and data, prepare a variety of complex and analytical documents and reports, and present information to individuals and groups, including public meetings and hearings.
11. Participate in the development and preparation of the annual budget; coordinate the distribution of budget information; and consult with departments on budget issues.

12. Supervise accounting personnel; assist in hiring; ensure training and staff development, monitor and evaluate performance and work products; recommend appropriate disciplinary action, and establish performance enhancement goals.
13. Assist in the short and long-range planning of program and project goals and objectives; assists in forecasting needed funding, staffing needs, equipment, materials and supplies.
14. Monitor and evaluates customer service and make recommendations.
15. Prepare and review written reports, correspondence and other materials.
16. Present complex financial information or reports to individuals, before groups, and at public meeting and hearings.
17. Serve on various committees and attend meetings, as assigned.
18. May serve as the Finance Director, as assigned.
19. Perform related duties as assigned.

QUALIFICATIONS

The following generally describes the knowledge and ability required to enter the job and/or be learned within a short period of time in order to successfully perform the assigned duties.

Knowledge of:

1. Legal, moral, ethical and professional standards of conduct.
2. Principles and techniques of supervision, including staffing, delegating, employee development, employee performance, discipline, and monitoring work assignments.
3. Generally Accepted Accounting Principles (GAAP) for government.
4. Auditing Standards.
5. Governmental budgeting, accounting and auditing and payroll methods and practices.
6. Grant and contract administration, including accounting and reporting requirements.
7. Current laws, ordinances, codes and regulations pertaining to government finance operations.
8. Automated financial systems, computers and related software applications.
9. Research techniques; and analytical and technical report writing.
10. Modern office practices, procedures, methods and equipment.
11. Political sensitivities, methods of conflict resolution and problem solving, and good public relations techniques.

Ability to:

1. Plan, organize, coordinate and manage complex and advanced accounting work.
2. Apply professional business ethics.
3. Develop, implement and evaluate accounting and budgeting policies, practices, systems and controls.
4. Perform professional analyses and interpretation of financial and accounting records and make concise, coherent and useful recommendations.

5. Prepare financial statements in accordance with GAAP.
6. Understand, interpret, and apply laws, ordinances, codes, regulations, grant agreements, contract obligations and procedures relating to financial operations.
7. Provide professional advice, assistance, information and support to City staff for a wide variety of complex financial matters.
8. Select, train, direct, supervise and evaluate the work of accounting staff.
9. Organize and prioritize departmental work flow and accounting operations.
10. Research, interpret and apply complex information, issues, laws, regulations, policies and procedures.
11. Development, implement and monitor goals objectives, and work standards.
12. Facilitate meetings and discussions to achieve problem solving and solutions.
13. Participate, foster and encourage all members of the Finance Department to work as team members, and to establish and maintain cooperative work relationships with the department.
14. Prepare clear and concise reports, correspondence and other written materials and make clear oral presentations to individuals, before groups, and at public meeting and hearings.
15. Analyze complex operational and administrative problems, evaluate alternatives and recommend or adopt effective courses of action.
16. Exercise sound and consistent independent judgments.
17. Establish and maintain positive, cooperative and effective relationships with City staff, elected officials, the general public and others contacted in the course of business.
18. Communicate clearly and concisely, both orally and in writing.
19. Operate a variety of office machines including typewriter, ten-key calculator and automated financial applications, computers and software programs, and peripheral equipment.

TRAINING AND EXPERIENCE

Any combination of experience and education that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Education: Equivalent to Bachelor's degree from an accredited college or university in accounting, finance, or closely related field;

Experience: Four (4) years of increasingly responsible, professional accounting experience, including at least two (2) years in the public sector, and two (2) years of supervisory experience.
License and Certification: Possession of, or ability to obtain, a valid California drivers license.

TOOLS AND EQUIPMENT USED

Requires frequent use of personal computer, including word processing, database and spread-sheet programs, telephone, copy and fax machines, and all tools and equipment necessary to successfully perform the essential and important duties of the position.

PHYSICAL DEMANDS

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. On a continuous basis, sit at a desk and in meetings for long periods of time. Intermittently twist to reach equipment surrounding desk. Perform simple grasping and fine manipulation. Communicate extensively through the use of a telephone and communicate through written means. Attend evening meetings as required, and may be required to travel out of the City to attend meetings and/or conferences.

WORK ENVIRONMENT

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. The noise level in the work environment is usually moderately quiet.

Department	Finance
Employee Association	Unrepresented
Resolution No./Established Date:	2022-/March 1, 2022
Resolution No./Revision Date(s):	
Salary Range:	Position Code
EEO Code	FSLA Exempt

ASSISTANT FINANCE DIRECTOR

*Class specifications are intended to present a descriptive list of the range of duties performed by employees in the class. Specifications are **not** intended to reflect all duties performed within the job.*

DEFINITION

Under general direction, plans, organizes, coordinates, supervises and manages a wide range of highly complex accounting activities, projects and programs; performs professional accounting work to ensure compliance with governmental accounting standards and all other regulatory requirements; oversees the preparation and maintenance of financial and accounting records and reports; participates in the development, implementation and maintenance of policies, procedures and internal controls; supervises and coordinates external audits and the preparation of the annual financial reports; plans, organizes and directs the preparation, implementation and management of the City's operating and capital budgets; supervises and evaluates accounting staff, ensures customer service support to City department personnel; maintains and improves the City's accounting system; administers current and long-term planning activities; provides highly complex and responsible support to the Finance Director; and performs other related duties as assigned.

SUPERVISION RECEIVED AND EXERCISED

Receives general administrative direction from the Finance Director. Exercises direct supervision over professional, technical and accounting staff, including contracted personnel.

EXAMPLE OF ESSENTIAL AND IMPORTANT DUTIES

The following duties are typical for this classification. Incumbents may not perform all of the listed duties and/or may be required to perform additional or different duties from those set forth below to address business needs and changing business practices.

Duties may include, but are not limited to the following:

1. Plan, supervise, manage, and implement day-to-day finance operations, including general ledger, grant accounting, cost accounting, capital project accounting, enterprise fund accounting, purchasing, risk management, accounts payable, payroll, accounts receivable, treasury and fixed assets.
2. Supervise the preparation and maintenance of financial information, data and records; manage and improve the automated financial system; and ensure the appropriate records management and retention systems.
3. Perform technical and professional accounting and auditing; conduct complex account analyses and project studies; oversee cash and bank reconciliations; monitor, approve and/or post journal entries and budget amendments.

4. Ensure financial records are in compliance with laws, ordinances, regulations, grant agreements, contract obligations and Generally Accepted Accounting Principles (GAAP).
5. Review, analyze, develop, and implement financial policies, procedures, and internal controls, and communicate to program staff and City employees.
6. Assist in the short and long-range planning of program and project goals and objectives; assists in forecasting needed funding, staffing needs, equipment, materials and supplies.
7. Perform year-end reconciliations, adjustments and closing of financial records coordinate annual independent financial audit; prepare or supervise preparation of audit schedules.
8. Provide assistance, advise and consult with Department Directors and staff on accounting, budget and finance related matters.
9. Develop forecasts for City revenues, expenditures, and year-end fund balances.
10. Plan and manage the City indebtedness including bonds, loans and interfund advances.
11. Participate in the development, preparation, administration and oversight of the City operating and capital improvement program budgets.
12. Analyze financial reports, contracts, leases, partnership agreements, development agreements and fee agreements and make recommendations to directors on courses of action.
13. Prepare and analyze a variety of complex financial reports, statements and schedules; prepare periodic reports, including the State Controller's Report and Annual Comprehensive Financial Report (ACFR).
14. Supervise accounting personnel; assist in hiring; ensure training and staff development, monitor and evaluate performance and work products; recommend appropriate disciplinary action, and establish performance enhancement goals.
15. Maintain and reconcile a variety of ledgers, reports, and accounting records, analyses accounting transactions to ensure accuracy; approve journal entries to post transactions to accounting records; performs month-end, fiscal year-end, and calendar year-end accounting system processing.
16. Monitor and evaluates customer service and make recommendations.
17. Present complex financial information or reports to individuals, before groups, and at public meeting and hearings.
18. Serve on various committees and attend meetings, as assigned.
19. May serve as Acting Finance Director, as assigned.
20. Perform related duties as assigned.

QUALIFICATIONS

The following generally describes the knowledge and ability required to enter the job and/or be learned within a short period of time in order to successfully perform the assigned duties.

Knowledge of:

1. Legal, moral, ethical and professional standards of conduct.
2. Administrative principles and practices, including goal setting, program development, implementation, and project management.
3. Principles and practices of employee supervision, including work planning, employee development, training,, delegating, employee development, employee performance, discipline, and monitoring work assignments.
4. Principles and practices of public agency finance, including general and governmental accounting, principles and practices of GASB (Government Accounting Standards Board), Generally Accepted Accounting Principles (GAAP) for government, auditing and reporting

functions.

5. Auditing Standards.
6. Principles and practices of governmental budgeting development, accounting and auditing and payroll methods and practices.
7. Grant and contract administration, including accounting and reporting requirements.
8. Current laws, ordinances, codes and regulations pertaining to government finance operations.
9. Automated financial systems, computers and related software applications.
10. Research techniques; and analytical and technical report writing.
11. Modern office practices, procedures, methods and equipment.
12. Political sensitivities, methods of conflict resolution and problem solving, and good public relations techniques.
13. Legal, moral, ethical and professional standards of conduct.

Ability to:

1. Recommend and implement goals, objectives, and practices for providing effective services.
2. Plan, organize, coordinate and manage complex and advanced accounting work and projects.
3. Apply professional business ethics.
4. Develop, implement and evaluate accounting and budgeting policies, practices, systems and controls.
5. Perform professional analyses and interpretation of financial and accounting records and make concise, coherent and useful recommendations.
6. Prepare financial statements in accordance with GAAP.
7. Understand, interpret, and apply laws, ordinances, codes, regulations, grant agreements, contract obligations and procedures relating to financial operations.
8. Provide professional advice, assistance, information and support to City staff for a wide variety of complex financial matters.
9. Select, train, direct, supervise and evaluate the work of accounting staff.
10. Organize and prioritize departmental workflow and accounting operations.
11. Research, interpret and apply complex information, issues, laws, regulations, policies and procedures.
12. Development, implement and monitor goals objectives, and work standards.
13. Facilitate meetings and discussions to achieve problem solving and solutions.
14. Participate, foster and encourage all members of the Finance Department to work as team members, and to establish and maintain cooperative work relationships with the department.
15. Prepare clear and concise reports, correspondence and other written materials and make clear oral presentations to individuals, before groups, and at public meeting and hearings.
16. Analyze complex operational and administrative problems, evaluate alternatives and recommend or adopt effective courses of action.
17. Exercise sound and consistent independent judgments.
18. Establish and maintain positive, cooperative and effective relationships with City staff, elected officials, the general public and others contacted in the course of business.
19. Communicate clearly and concisely, both orally and in writing.
20. Operate a variety of office machines including typewriter, ten-key calculator and automated financial applications, computers and software programs, and peripheral equipment.

Skills to:

1. Exercise individual and innovative judgment and make difficult decisions.
2. Exhibit discretion and integrity when handling sensitive situations.

TRAINING AND EXPERIENCE

Any combination of experience and education that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Education: Equivalent to Bachelor's degree from an accredited college or university in accounting, finance, or closely related field;

Experience: Four (4) years of increasingly responsible, professional accounting experience, including supervisory experience; government experience preferred.

License and Certification: Possession of a valid California driver's license or ability to obtain one within one (1) month of starting is required. Possession of a Certified Public Accounting (CPA) designation is desirable.

TOOLS AND EQUIPMENT USED

Requires frequent use of personal computer, including word processing, database and spread-sheet programs, telephone, copy and fax machines, and all tools and equipment necessary to successfully perform the essential and important duties of the position.

PHYSICAL DEMANDS

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. On a continuous basis, sit at a desk and in meetings for long periods of time. Intermittently twist to reach equipment surrounding desk. Perform simple grasping and fine manipulation. Communicate extensively through the use of a telephone and communicate through written means. Attend evening meetings as required, and may be required to travel out of the City to attend meetings and/or conferences.

WORK ENVIRONMENT

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. The noise level in the work environment is usually moderately quiet.

February 23, 2022 Item No: **8g(1)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of March 1, 2022

CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-, APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF MARINA AND JOBY AERO, INC. FOR 771 NEESON ROAD (BUILDING 529) AT THE MARINA MUNICIPAL AIRPORT, AND AUTHORIZING CITY MANAGER TO EXECUTE THE LEASE AGREEMENT ON BEHALF OF THE CITY, SUBJECT TO FINAL REVIEW AND APPROVAL BY CITY ATTORNEY

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2022-, approving a Lease Agreement between the City of Marina and Joby Aero, Inc. for 771 Neeson Road (Building 529) at the Marina Municipal Airport; and
2. Authorizing City Manager to execute the Lease Agreement, on behalf of the City, subject to final review and approval by City Attorney.

BACKGROUND:

Building 529 consists of three single story former military buildings joined together totaling approximately 4,100 sq. ft – 2,700 square feet of interior space and 1,400 square feet of enclosed deck space. The building was vacant of a full-time tenant between 2008 and 2017. The Airport improved the building to prepare it for a previous potential tenant. The space is currently vacant and available for lease.

ANALYSIS:

The proposed Lease Agreement includes interior space consisting of approximately 4,100 square feet including 2,700 square feet of interior space and 1,400 square feet of enclosed deck, both on a single floor. The proposed Tenant wishes to use the space for food preparation and service activities. The exterior area of the leasehold includes an approximate 19,434 square feet parking lot located immediately to the west of and adjacent to Building Number 529, as shown on **EXHIBIT A**. The proposed Tenant will have a non-exclusive license to use and maintain the unpaved area located on the north side/rear of Building 529 as a dining area, outside the Tenant's leasehold, also shown on **EXHIBIT A**.

The proposed Lease Agreement provides for:

- Base Term of 5 years and one conditional City optional extension period of five years.
- Market Rate Base Rent consistent with lease rates for non-aviation general retail space off Airport property ($1.40 per square foot).
- Rent will increase annually by two and one-half percent (2.5%) annually.

The monthly rent payable for the first year of the Term of this Lease shall be $5,740 (at the rate of $1.40 per square foot for the interior space including the enclosed deck). Thereafter for the Term the monthly rent shall increase annually upon the anniversary of the Effective Date by two and one-half percent (2.5%) above the monthly rent payable in the prior year, rounded up to the nearest even dollar, as follows:

Rent for Year Two – $5,884
Rent for Year Three – $6,032
Rent for Year Four – $6,183
Rent for Year Five – $6,338

Rent for Year One of Optional Term – $6,497
Rent for Year Two of Optional Term – $6,660
Rent for Year Three of Optional Term – $6,827
Rent for Year Four of Optional Term – $6,998
Rent for Year Five of Optional Term – $7,1719

Tenant shall also pay every month as provided above, the utilities (water, sewer, and gas), trash collection and related assessments. All of Tenant's operating expenses including liability insurance premiums, permits and license fees and personal property taxes on Tenant's trade fixtures and property shall be paid by the Tenant as well.

Staff is recommending approval of the proposed Lease Agreement as it will create additional ongoing/reoccurring building lease revenue for the Airport and Joby Aero will continue to increase employment within the community.

FISCAL IMPACT:
Should the City Council approve this request, anticipated beginning annual rent revenue to the airport will be approximately $68,880.

Building lease rent revenue is recorded to FY 2022/23 Budget, Airport Operations Fund 555, Facilities Rents Building Rents, Account No. 555.000.000.00-5460.220.

CONCLUSION:
This request is submitted for the City Council consideration and approval

Respectfully submitted,

____
Matt Mogensen
Assistant City 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 APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF MARINA AND JOBY AERO, INC. FOR 771 NEESON ROAD (BUILDING 529) AT THE MARINA MUNICIPAL AIRPORT, AND AUTHORIZING CITY MANAGER TO EXECUTE THE LEASE AGREEMENT ON BEHALF OF THE CITY, SUBJECT TO FINAL REVIEW AND APPROVAL BY CITY ATTORNEY

WHEREAS, Building 529 located at 771 Neeson Road consists of three single story former military buildings joined together consisting of approximately 4,100 sq. ft – 2,700 square feet of interior space and 1,400 square feet of enclosed deck space; and,

WHEREAS, The building was vacant of a full-time tenant between 2008 and 2017. The Airport improved the building to prepare it for a previous potential tenant. The space is currently vacant and available for lease; and,

WHEREAS, Joby Aero, Inc. wishes to use the space for food preparation and service activities; and,

WHEREAS, the lease area includes interior space consisting of approximately 4,100 square feet including 2,700 square feet of interior space and 1,400 square feet of enclosed deck and exterior area which includes an approximate 19,434 square feet parking lot located immediately to the west of and adjacent to Building Number 529, as shown on **Exhibit A**.

WHEREAS, the lease area also includes a non-exclusive license to use and maintain the unpaved area located on the north side/rear of Building 529 as a dining area, outside the Tenant's leasehold, also shown on **Exhibit A**; and,

WHEREAS, the monthly rent payable for the first year of the Term of this Lease shall be $5,740 (at the rate of $1.40 per square foot for the interior space including the enclosed deck). Thereafter for the Term the monthly rent shall increase annually upon the anniversary of the Effective Date by two and one-half percent (2.5%) above the monthly rent payable in the prior year; and,

WHEREAS, the Tenant shall pay all utilities (water, sewer, and gas), trash collection and related assessments. All of its own operating expenses including liability insurance premiums, permits and license fees and personal property taxes on fixtures and property shall be paid by the Tenant as well; and,

WHEREAS, anticipated annual rent revenue to the airport will be approximately $68,880. Building lease rent revenue is recorded to FY 2018-19 Budget, Airport Operations Fund 555, Facilities Rents Building Rents, Account No. 555.000.000.00-5460.220.

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

1. Adopt Resolution No. 2022- , approving a Lease Agreement between the City of Marina and Joby Aero, Inc. for 771 Neeson Road (Building 529) at the Marina Municipal Airport; and

2. Authorize City Manager to execute the Lease Agreement, on behalf of the City, subject to final review and approval by City Attorney.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 1st day of March 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

Area for locating tables for employees or public. Area to be maintained by Joby.
Pedestrian Gate
Auto Access Gate
Airport Administration Building.
15 ft.
Neeson Rd
Neeson Rd
Neeson Rd
Neeson Rd
Cardinale Automotive Group
East
Google Earth
N
100 ft

MARINA MUNICIPAL AIRPORT

LEASE BETWEEN

THE CITY OF MARINA

AND

JOBY AERO, INC.
for

BUILDING 529

THE MARINA AIRPORT RESTAURANT

Recording Requested by and)
When recorded mail to:)
City Clerk)
City of Marina)
857 Cass Street, Suite D.)
Monterey, California 93940)
)
APN 031-112-039 (a portion))
____________________________)

LEASE

THIS LEASE (the "Lease"), made and entered into this ____day of ______________ 2022, by and between the **CITY OF MARINA**, a California municipal corporation ("City"), and **JOBY AERO, INC.,** a Delaware corporation ("Tenant"), as follows:

Recitals:

This Lease is entered into with reference to the following facts and circumstances, which are hereby found and determined by the parties:

A. City owns and operates the Marina Municipal Airport (the "Airport") located in the City of Marina. The Airport was formerly known and operated by the U.S. Army as Fritzsche Airfield and was part of the Fort Ord Military Reservation.

B. Tenant desires to lease a portion of the Airport real property, which includes a wooden-frame structure, formerly utilized by the U.S. Army for administrative and storage purposes and by a previous tenant of the City as a restaurant and bar, for use in the Tenant's non-aviation-related food preparation and service activity.

C. It is mutually agreed that this Lease is upon and subject to the following terms, covenants, conditions and provisions and Tenant covenants, as a material part of the consideration of this Lease, to keep, perform and comply with each and all of said terms, covenants, conditions and provisions to be kept, performed and complied with, and this Lease is made upon the condition of such performance and compliance.

<u>Terms and Conditions</u>

<u>Conditions Precedent</u>

1. Review of the terms and conditions of this non-aeronautical Lease by the Federal Aviation Administration (FAA).

2. Approval of this Lease by the City Council/Airport Commission of the City of Marina.

3. Tenant's receipt of a conditional use permit for issued by the City for the non-aviation-related food preparation and service activity on the Premises.

4. The occurrence of the Effective Date.

ARTICLE 1. LEASE OF PREMISES, EASEMENT AND RESERVATION, TERM

1.01 **Leased Premises**. City hereby leases to Tenant, and Tenant hereby leases from City, the following real property (APN 031-112-039, a portion) and premises (the "Premises"), being a portion of the Marina Municipal Airport, located within and around Building Number 529 located at 771 Neeson Road, Marina, County of Monterey, California, as shown on **Exhibit A**, attached hereto and made a part hereof. The interior space leased consists of approximately 4,100 square feet including 2,700 square feet of interior space and 1,400 square feet of enclosed deck, both on a single floor of Building 529. The Premises includes restroom facilities accessible to persons with disabilities ("ADA compliant restroom"). No use is permitted without compliance with requirements of the Americans with Disabilities Act (ADA) and in accordance with Section 8.03 herein. The exterior area includes the parking lot ("Tenant Parking Area") located immediately to the west of and adjacent and appurtenant to Building Number 529, consisting of approximately 19,434 square feet, including parking spaces for disabled persons, as shown on **Exhibit A**. Tenant shall have the right to use and allow others to use the Tenant Parking Lot. Tenant may, in a manner approved in advance and in writing by the City, mark or designate parking spaces for its use. An easement is granted for ingress to and egress from the leased Premises for vehicles and the following rights, appurtenances, and easements and no others:

(a) The exclusive use of the surrounding outdoor paved and unpaved areas as shown within the red line indicating the area of the leasehold on **Exhibit A**.

(b) Tenant shall have a non-exclusive license to use and maintain the unpaved area located on the north side/rear of Building 529, outside the Tenant's leasehold, as shown on **Exhibit A** ("Shared Space"). Tenant shall use the Shared Space only as a dining area for the convenience of Tenant's officers, employees, contractors and invitees. Tenant's use shall be in common with other tenants of the City and with members of the public and there shall be no charge for this use. Tenant shall have the right to install and secure equipment convenient or necessary to its use including, but not necessarily limited to, tables, seating, and portable heaters and to make or install non-structural improvements for Tenant's convenience or to provide cover and/or protection from the wind. Tenant shall be responsible to maintain the unpaved area in a safe and sanitary condition and all such equipment in a clean and safe condition and City shall have no responsibility for loss or damage to same. City shall have the right to reconfigure or modify or to require Tenant to reconfigure or modify the Shared Space in a reasonable manner that will not interfere with the Tenant's use. City assumes no responsibility for: (1) enforcing Tenant's rights from interference or use by any person; or (2) any equipment or improvements installed by Tenant on the Shared Space. The license granted herein is appurtenant to Tenant's leasehold interest in the Premises and may not be assigned or otherwise pledged or transferred, directly or indirectly, except in connection with any assignment of this Lease or a sublease of the Premises to which the City consents or is otherwise permitted under the Lease. In the event of a permitted assignment of the Lease, the license shall automatically be assigned thereby, and thereupon the assigning licensee shall have no further rights to use or access the Shared Space. Tenant acknowledges that its use of the Shared Space is non-exclusive and the Shared Space will be subject to the use of other tenants of the City and the public. Tenant acknowledges that it will be important for all such users to cooperate with each other.

(c) The furniture, furnishings, fixtures, and equipment, if any, to be set forth and shown in the Schedule of Property attached hereto as **Exhibit B** and made a part hereof.

The foregoing rights shall terminate simultaneously on expiration or sooner termination of this Lease.

1.02 **Easement and Reservation**. The following described easement and reservation is hereby reserved by the City:

(a) Avigation Easement. The leased Premises shall be subject to an easement and right of way for the unobstructed passage of aircraft in the airspace above the leased Premises, which is reserved by City for the benefit of itself and all members of the general public operating aircraft which land at or take off from the Airport. Concomitant and coextensive with said easement and right of way, City and general public shall have the further right to cause in all airspace above the surface of the leased Premises such noise, vibrations, fumes, dust, fuel particles, and other effects that may be caused by the operation of aircraft landing at or taking off from or otherwise operating at the Airport. In connection with this easement and right or way, Tenant agrees not to cause or permit any structure, natural growth, or other object on the leased Premises which extends into the airspace over the leased Premises more than 210 feet above mean sea level, and not to use or permit the use of the leased Premises in such a manner as to create electrical interference with radio communications between aircraft and the Airport, to make it difficult for flyers to distinguish between airport lights and other lights, to impair visibility in the vicinity of the Airport, or to otherwise endanger aircraft landing at or taking off from the Airport. Tenant further agrees that in the event it causes or permits any structure, natural growth, or other object on the leased Premises which extends into the airspace over the leased Premises more than 210 feet above mean sea level, or otherwise causes or permits any condition on the leased Premises which endangers aircraft landing at or taking off from the Airport, then City shall have the right to enter upon the leased Premises and to remove such structure, natural growth, object or condition endangering aircraft landing at of taking off from the Airport, all at Tenant's sole cost and expense.

(b) Fire Lanes and Public Utility Easements. The leased Premises shall be subject to the fire lanes and public utility easements as set forth in the Airport Master Plan. Such fire lanes and public utility easements, together with the right to enter thereon, for any purpose in connection with the construction or maintenance of improvements and facilities located thereon are hereby reserved by the City for the benefit of itself and for the benefit of all other persons or entities owning or leasing property at the Airport. In connection with the fire lanes, Tenant agrees that it will not cause of permit and vehicle or equipment to be parked within the boundaries of such fire lanes or use the fire lanes in a manner which would interfere with equipment and personnel traversing same in the course of fire suppression activities.

(c) Utility Reservation. City reserves the right to install, lay, construct, maintain, repair and operate such sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil and gas pipelines; telephone, telegraph and electrical power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across and along any and all portions of the leased Premises. No right reserved by the City in this clause shall be so exercised as to interfere unreasonably with Tenant's operations or to impair the security of any secured creditor of Tenant.

(d) Parking. The City reserves the right, with prior written notice to Tenant, to use the parking area in conjunction with special events held at the Airport (see 2.03 below). In making use of the parking area, City shall consider and make a good faith effort to alleviate adverse effects on Tenant's operations. City and Tenant agree to reasonably cooperate concerning the City's occasional use of the parking area.

1.04 **Term**. The term of this Lease ("Term") shall be effective on April 1, 2022, . The Term shall continue for five years following the Effective Date, to the "Expiration Date" unless terminated earlier as provided herein.

1.05 **Conditional Option to Extend**. City shall have the conditional option to renew and extend the term of this Lease ("Optional Term") by written amendment for an additional period of five years only, through the election and exercise of one five-year option following the Expiration Date in §1.04 hereof. One year prior to expiration of this Lease the City shall seek proposals from qualifying aviation-related users. If the City is unable to lease the site to such user within six months, the City shall offer to the Tenant to renew this Lease for an additional period of up to five years. The monthly rent to be paid by the Tenant for each year of the Optional Term is set forth in Section 4.03. The Optional Term is conditional upon FAA review and Tenant's acceptance of the terms of the lease amendment. This option may be exercised by the City by its giving written notice to the Tenant not less than 120 days before the expiration of the Term.

1.06 **Holding Over.** Any holding over after the expiration of the Term or the Optional Term of this Lease with the consent of the City shall be construed to be a tenancy from month-to-month at a monthly rental equal 125% of the monthly rental for final month of the previous term. Tenant's occupancy during any period of holding over shall otherwise be on the same terms and conditions herein specified so far as applicable.

1.07 **Tenant Option to Elect Early Termination**. Provided Tenant is in compliance with all terms and conditions of this Lease including, but not necessarily limited to the payment of rent and other charges, Tenant shall have the option to terminate this Lease on or after April 1, 2022 by giving written notice to the City of Tenant's election to terminate this Lease at least 180 days prior to the early termination date.

ARTICLE 2. USE OF LEASED PREMISES

2.01 **Use**. This Lease is made for the purpose of allowing the Tenant's commercial, non aeronautical, use of the leased Premises, subject to obtaining a conditional use permit from the City, and for granting Tenant certain rights and privileges to occupy Building 529 and to use the adjacent areas designated for parking for Tenant's non-aviation use as a facility to serve food and beverage to serve Tenant's officers, employees, contractors and invitees. The Premises shall not be open for food service or food and beverage sales to the general public, unless otherwise approved in writing by the City Manager. Tenant may use the Premises for such other non-aviation-related uses as may be permitted by the Conditional Use Permit issued by the City. There shall be no outdoor storage, except within fenced and screened areas approved in advance and in writing by the City, or for storage of hazardous materials approved in advance and in writing by the City's Fire Chief. Tenant shall not use the leased premises, or any part thereof, or permit them to be used for any purpose, including residential purposes, other than the purpose specified herein without the consent of the City, such consent not to be unreasonably withheld.

The Tenant by accepting this Lease agrees for itself, its successors and assigns that it will not make use of the leased Premises in any manner that might interfere with the landing and taking off of aircraft or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the City reserves the right to enter upon the Premises hereby leased and cause the abatement of such interference at the expense of the Tenant.

2.02 **Airport Rules & Regulations**. In making use of the leased Premises as specified in this Lease the Tenant shall, in common with all other users of the Airport, comply with the following rules and regulations:

(a) Tenant acknowledges that it has received and reviewed a copy of the City's Airport Operating Ordinance (Marina Municipal Code Chapter 13.22) and shall comply with the minimum operating standards or requirements as may be adopted now and in the future and promulgated by City and applicable to each of Tenant's activities on the Airport.

(b) Subject to the provisions of the California Code of Civil Procedure §731a, Tenant shall not do or permit to be done upon the Premises any act or thing which constitutes a nuisance, i.e., which may disturb the quiet enjoyment of City, any other tenant of City or private businesses on adjacent land or neighboring property. If City notifies Tenant that such a nuisance or disturbance exists, Tenant agrees, within 72 hours from receiving written notice by the City, to abate or otherwise cause said nuisance to be cured. In the event Tenant has not taken corrective action within 72 hours, the City may enter and abate said nuisance, including but not limited to entering the Premises and abating the nuisance or disturbance, at the expense of Tenant without any liability whatsoever to City for monetary loss of Tenant or others.

(c) Tenant shall have the right, at its expense, to place on the leased Premises a sign or signs identifying Tenant. Said sign or signs shall be of a size, shape and design, and at a location or locations, approved in advance by the City and in conformance with any overall directional graphics or sign program established by the City including section 17.28.060 of the City's Zoning Ordinance. Tenant shall expeditiously submit its application to the City Planning Department to process Tenant's request for a sign to be affixed to the Premises so as to be readily visible from Neeson Road and/or the air operations area of the Airport. City's approval shall not be delayed or withheld unreasonably. Notwithstanding any other provision of this Lease, any signs shall remain the property of Tenant. Tenant shall remove, at its own expense, all lettering, signs and placards so erected on the Premises upon termination of this Lease.

(d) Tenant shall have the right, at its expense, to place in or on the Premises trade fixtures, furnishings, personal property, equipment and materials necessary to perform any services provided for or authorized hereunder. Said trade fixtures, furnishings, personal property, equipment and materials shall remain the property of Tenant.

(e) Tenant shall comply with all federal, state and local laws, rules and regulations which may apply to the conduct of the business provided for and authorized hereunder, including, but not necessarily limited to, rules and regulations promulgated by the City and the County of Monterey County Health Department, and Tenant shall maintain in effect and post in a prominent place all necessary or required licenses or permits, including an Occupancy Permit obtained pursuant to Marina Municipal Code, Chapter 15.54 and a City business license pursuant to Marina Municipal Code Title 5, prior to commencing occupancy and operations. Tenant shall prepare an Emergency Action/Fire Protection Plan. Current plan shall be kept on file with the City's Fire Department.

(f) Tenant agrees at its own expense to keep and maintain on the leased Premises the ANSUL commercial fire suppression system which conforms to the City’s Fire Department regulations and portable fire extinguishers of such number, size and type as may be prescribed from time to time by the regulations of the City's Fire Department.

(g) Tenant shall be responsible for the maintenance and repair of the Premises as set forth in §10.02 of this Lease and shall keep and maintain the Premises in good condition, order and repair, and shall surrender same upon the expiration of this Lease in the condition in which they are required to be kept, reasonable wear and tear and damage by the elements not caused by Tenant's negligence excepted. Tenant, by this Lease, specifically waives the provisions of §§1941 and 1942 of the California Civil Code with respect to the landlord's obligations for the tenantability of leased Premises and the Tenant's right to make repairs and deduct the expenses of such repairs from rent.

(h) Tenant understands and agrees that its right to use the leased Premises for the purposes provided for by this Lease shall not be, and shall not be construed to be, exclusive of the right of any other person or firm to operate the same or a similar business at the Marina Municipal Airport and to lease premises at the Airport from the City for such purposes, within the meaning of §308A of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1349a). City reserves the right, at its sole discretion, to grant others certain rights and privileges upon the Airport which are identical in part or in whole to those granted to Tenant by this Lease, excepting any rights with respect to the use or possession of the leased Premises.

(i) At no additional cost to Tenant, Tenant shall, in good faith use its best efforts to efficiently utilize the facilities covered by this Lease in order to promote and aid the commerce of the Marina Municipal Airport and the use of its facilities.

2.03 **Special Events**. Tenant understands and acknowledges that the City will, from time to time, conduct special events at the Airport. City understands and acknowledges that the Tenant may have prior commitments which require its use of the Adjacent Parking Lot that are not subject to change or accommodation. City and Tenant agree to cooperate concerning these events (e.g. City use the Adjacent Parking Lot during weekends). City shall provide not less than 14 days' prior written notice to Tenant of any special event which is expected to have an impact on Tenant's operations or use of the property.

ARTICLE 3. USE AND MAINTENANCE OF AIRPORT FACILITIES

3.01 **Maintenance of Airport Facilities**. The City reserves the right, but shall not be obligated to the Tenant 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 Tenant in this regard.

3.02 **Aerial Approaches**. City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Tenant from erecting or permitting to be erected, any building or other structure on or adjacent to the Airport which, in the opinion of the City, would limit the usefulness of the Airport or constitute a hazard to aircraft.

3.03 **FAR Notification Requirements**. Tenant agrees to comply with the notification and review requirements set forth in the Federal Aviation Regulations in the event future construction of a building is planned for the leased Premises or in the event of any planned modification or alteration of any present or future building or structure situated on the leased Premises. This requires the submission of FAA Form 7460-1 *Notice of Construction or Alteration to the FAA.* The Tenant by accepting this Lease expressly agrees for itself, its successors and assigns that it will not erect nor permit the erection of any structure or building nor permit objects of natural growth or other obstructions on the land leased hereunder above a height as determined by the application of the requirements of Title 14 CFR Part 77. 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 Tenant.

3.04 **FAA Safety & Security Rules & Regulations**. Tenant will conform to Airport and FAA safety and security rules and regulations regarding use of the Airport operations area including runways, taxiways, and 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 Manager for violations of the Airport safety and security requirements.

ARTICLE 4. RENTS AND FEES

4.01 **Time and Place of Payment**. Tenant shall pay all rental charges and all other obligations due to the City under this Lease every month in advance on or before the first day of the month during the term of this Lease at the office of the City Finance Director, City Hall, 211 Hillcrest Avenue, Marina, California 93933. The rent for certain months of this Lease may be pro-rated. For purposes of calculating and pro-rating rents and other charges due, each month shall be considered to have 30 days, and each year of the initial or any extended term of this Lease to have 360 days.

4.02 **Rent: Initial Rent Amount**. The monthly rent payable for the first year of the Term of this Lease shall be $5,740 (at the rate of $1.40 per square foot for the interior space including the enclosed deck. Thereafter for the Term the monthly rent shall increase annually upon the anniversary of the Effective Date by two and one-half percent (2.5%) above the monthly rent payable in the prior year, rounded up to the nearest even dollar, as follows:

Rent for Year Two – $5,884
Rent for Year Three – $6,032
Rent for Year Four – $6,183-
Rent for Year Five – $6,338

Tenant shall also pay every month as provided above, the amounts described in Article 12 herein for utilities (water, sewer, and gas), trash collection and related assessments. All of Tenant's operating expenses including liability insurance premiums, permits and license fees and personal property taxes on Tenant's trade fixtures and property shall be for the Tenant's account. Rent and all net charges shall commence upon the Effective Date.

4.03 **Option to Extend – Rent Payable**. The monthly rent to be paid by the Tenant for each year of the Optional Term (§1.05) will be increased by two and one-half percent (2.5%) above the monthly rent payable in the previous year, rounded up to the nearest even dollar, as follows:

Rent for Year One of Optional Term – $6,497
Rent for Year Two of Optional Term – $6,660
Rent for Year Three of Optional Term – $6,827
Rent for Year Four of Optional Term – $6,998
Rent for Year Five of Optional Term – $7,1719

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4.04 **Delinquency Charge**. Tenant hereby acknowledges that late payment by Tenant of rent and other sums due hereunder will cause the City to incur costs not contemplated by this Lease, the exact amount will be extremely difficult to ascertain. Should any payments due under this Lease remain unpaid ten days after the due date of such payment, a penalty of 10% shall be added to any payments past due. City and Tenant 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 rent by the Tenant. Acceptance of any such late charge shall not constitute a waiver of Tenant'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 rents, charges and any penalty shall accrue at the rate of 1.5% per month thereafter until paid.

4.05 **Performance Deposit**. Upon execution of this Lease, Tenant will pay to the City the sum of $5,000.00, deposited with the City's funds as partial security of future rental and other payments due. The parties agree that these funds will remain on deposit with the City and shall be considered a performance deposit under this Lease. In the event the City is required to utilize this deposit or any portion thereof during the term of this Lease for the payment of rents, charges, or fees due, Tenant within thirty (30) days from such use of the deposit funds shall deposit with the City an additional sum sufficient to restore the performance deposit to the amount herein set forth. This performance deposit, or any remaining portion thereof, shall be returned to the Tenant at the termination of this Lease, without interest, after deduction of any amounts therefrom for payment of any obligation of Tenant due and owing to the City under any of the provisions of this Lease.

4.06 **Accord and Satisfaction**. No payment by Tenant or receipt by the City of a lesser amount of any sum due hereunder shall be deemed to be other than on account of the earliest due rent or payment, nor shall any endorsement or statement on any check or payment, or any letter accompanying any such check or payment, be deemed an accord and satisfaction, and the City may accept such check or payment and pursue any other remedy available in this Lease, at law or in equity. The City may accept any partial payment from Tenant without invalidation or any contractual notice require to be given herein (to the extent such contractual notice is required) and without invalidation of any notice required to be given pursuant to California Code of Civil Procedure section 1161 *et seq*., or any successor statute pertaining thereto.

4.07 **Commissions.** City shall not be liable for the payment of any brokerage commissions or fees associated with this Lease to engineers, contractors, or attorneys working on behalf of Tenant.

ARTICLE 5. TAXES AND ASSESSMENTS

5.01 **Payment**. Tenant shall meet all expenses and payments in connection with the use of the Premises and the rights and privileges herein granted including a **possessory interest tax** created by this Lease, permit, and license fees, it being understood by Tenant that although the public property is held in public ownership, **Tenant's interest therein will be taxable as a possessory interest** (California Revenue & Taxation Code §107.6). Tenant shall pay any personal property taxes levied on Tenant's inventory, furnishings, personal property or trade fixtures. Tenant may, at its sole expense and cost, contest any tax or fee. All taxes, fees, assessments, charges, etc., shall be paid prior to their delinquency date and satisfactory evidence that such taxes have been paid shall be furnished to the City upon written request.

5.02 **Joint Assessment**. If the Premises are not separately assessed, Tenant’s liability shall be an equitable portion of the possessory interest taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by the City from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

5.03 **Assessment by the Monterey County Water Resources Agency (MCWRA).** Tenant shall pay any assessment levied by the MCWRA. If the leased Premises are not separately assessed by MCWRA, Tenant's liability shall be an equitable portion of the MCWRA assessment for all of the land and improvements of which the Premises are a part included within the parcel(s) so assessed, such proportion to be determined by the City from the respective valuations assigned in the MCWRA's work sheets or such other information as may be reasonably available.

ARTICLE 6. SUBORDINATE TO FEDERAL A GREEMENT AND REGULATIONS

6.01 **Subordinate to Agreements with U.S**. This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between the City and the United States government or any department thereof relative to federal aid for the development and maintenance of the Airport or the development, operation or maintenance of the Airport. Failure of the Tenant or any occupant 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 Tenant's rights hereunder. Tenant acknowledges it has been given an opportunity to review the Deed of Conveyance for the leased Premises from the U.S. Army to the City and agrees to comply with all requirements pertinent to Tenant's activities contained in that document.

6.02 **War or National Emergency**. This Lease and all provisions hereof shall be subject to whatever right the United States government has affecting the control, operation, regulation and taking over of the Airport or the exclusive or non-exclusive use of the Airport by the United States during a time of war or national emergency.

6.03 **Conformance with Federal Aviation Administration Regulations**. Tenant agrees that Tenant's use of the leased Premises, including all future construction, modification or alteration thereon, shall comply with all applicable Federal Aviation Administration regulations now in force or that may be hereafter adopted by Federal authority. This Lease and Tenant's occupancy of the leased Premises is governed by and subject to the provisions set forth in the Federal Aviation Administration Assurances ("**Exhibit C**") attached hereto and incorporated herein by this reference and as they may be amended in the future. In the event of a conflict between the Federally Aviation Administration Assurances and the terms and conditions of this Lease, the Federally Aviation Administration Assurances shall prevail and control.

6.04 **Federal or State Grants**. City and Tenant agree to mutually cooperate in any application for such economic development grants and loans as may be available to City or Tenant for relocation, job training and economic development of the Airport.

ARTICLE 7. NON-DISCRIMINATION

7.01 **Non-Discrimination**.

(a) Tenant, for its personal representatives successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree "as a covenant running with the land" that in the event facilities are constructed, maintained, or otherwise operated on the leased Premises for a purpose for which a Department of Transportation (DOT) program or activity is extended or for another purpose involving the provision of similar services or benefits, Tenant shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(b) Tenant, for its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree "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 the leased Premises, (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 subjected to discrimination, (3) that Tenant shall use the leased 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.

(c) The Tenant assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, color, national origin, sex, age or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the Tenant or its transferee for the period during which Federal assistance is extended to the airport program, except where Federal assistance is to provide, or is in the form of, personal property or real property or interest therein or structures or improvements thereon. In these cases, this provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the City as the Airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the City as the Airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract.

(d) In the event of breach of any of the nondiscrimination covenants, City (through the City Manager/Airport Manager) shall have the right to terminate this Lease, and to re-enter the Premises, and hold the same as if this Lease had never been made or issued. This provision does not become effective until the procedures of 49 Code of Federal Regulations Part 21 are followed and completed including expiration of appeal rights.

7.02 **Compliance with Non Discrimination Covenants**. Without limiting the generality of any other terms or provisions of this Lease, noncompliance with Section 7.01 above shall constitute a material breach thereof and in the event of such noncompliance City (through the City Manager/Airport Manager) shall have the right to terminate this Lease and the estate hereby created without liability therefor or, at the election of the City of the United States, either or both said governments shall have the right to judicially enforce Sections 7.01 and 7.02 of this

Article 7.

7.03 **Covenants in Other Ancillary Agreements.** Tenant agrees that it shall insert the above two (2) provisions in any agreement, sublease, assignment or other agreement by which Tenant grants a right or privilege to any person, firm or corporation to render accommodations and/or non aeronautical services to the public on the Premises.

ARTICLE 8. CONDITION OF THE PREMISES

8.01 **Acceptance of Leased Premises**. Tenant understands that the leased Premises were formerly used by the federal government as part of an Army air base, that surrounding lands which were also part of such Army air base have, in the past been found to contain concentrations of volatile organic chemicals which exceed standards prescribed by the environmental agencies and the state and federal governments. Pursuant to Health & Safety Code §25359.7(a) Tenant is provided this notice that the structure may contain asbestos materials and lead-based paints. Tenant acknowledges that City has granted to Tenant the right to review all maps and records of the old Army air base presently on file in the office of the City's Planning Department as well as the right to inspect the leased Premises and perform any tests of the soils and improvements thereon or the groundwater thereunder, all in order to afford Tenant a full and complete opportunity to investigate and determine whether the leased Premises can be used for the purposes for which it is being leased.

8.02 **No Warranty**. Tenant further understands and agrees that no representation, statement, or warranty, express or implied, has been made by or on behalf of the City as to the condition of the leased Premises or the suitability of the Premises for its intended use, save and except for the representation and warranty that no City officer, employee, contractor, subcontractor, tenant, subtenant or agent has caused any condition of pollution or contamination which may now exist on the leased Premises. Such representation and warranty, however, shall not extend to any condition of pollution or contamination caused by the federal government. Upon entering into occupancy, Tenant also agrees to accept the leased Premises in its present condition and "as is", with respect to all conditions which may now exist on or under the leased Premises save and except for any condition of pollution or contamination caused by an officer, employee, or agent of City. Moreover, Tenant agrees to waive any claim or right of action against the City which Tenant now has or hereafter may acquire arising out of the condition of the leased Premises, its soils and/or the groundwater underlying the leased Premises, including but not limited to any claim of indemnity which Tenant may have by reason of costs incurred by Tenant arising out of the abatement or cleanup of any pollution or contamination condition discovered on the leased Premises hereinafter required under applicable state, federal or city laws or regulations save and except for a claim or right of action arising out of a condition of pollution or contamination caused by an officer, employee or agent of the City. Tenant is not responsible for the cost of environmental abatement, remediation or cleanup of pollution or contamination which is unrelated to the activities of the Tenant, or its officers, employees, agents, contractors or invitees, on the Premises.

8.03 **Americans with Disabilities Act (ADA)**. The Building 529 described in this Lease, and the real property of which it is a part, have not undergone inspection by a certified access specialist (CASp). Upon the Effective Date Building 529 will meet all applicable construction-related accessibility standards pursuant to California Civil Code Section 55.53. A CASp can inspect the premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of any CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises. Tenant is solely responsible for determining whether or not Tenant's intended use of Building 529 will be or is in compliance with the ADA. By entering into this Lease, unless otherwise agreed between the parties in a writing signed by the authorized representative of each party, City agrees to be responsible for all compliance with construction-related accessibility standards in accordance with the ADA, if applicable to the Tenant or the City.

8.04 **Disclosure to Sub Lessees and Assignees**. Tenant agrees that in the event Tenant subleases all or any portion of the Premises or assigns its interest in this Lease, Tenant shall indemnify and defend the City for, from and against any matters which arise as a result of Tenant's failure to disclose any relevant information about the Premises or the improvements to any subtenant or assignee. It is the intention of the City and Tenant that the immediately preceding sentence shall survive any release of Tenant by the City upon any assignment of this Lease by Tenant.

ARTICLE 9. LEASEHOLD IMPROVEMENTS

9.01 **Improvements to Leased Premises.** Prior to the Effective Date of this Lease the Tenant shall be responsible for: installing facilities as determined by Tenant for data and telephone communications; and repairing and installing other equipment necessary for Tenant's use of the Premises. With the prior written approval of the City Tenant may construct any improvements to the leased Premises in accordance with plans, specifications to be completed by Tenant and submitted to the City. The Plans must be approved by the City acting through the City Manager/Airport Manager or his or her designee(s). The Plans shall be reviewed and approved by the issuance of a building permit by the Building Division of the City's Public Works Department. Upon approval by the City, the Plans shall include a construction schedule ("Construction Schedule"). Tenant shall not make any other additions or alterations to the leased Premises other than as approved by the City and in accordance with Plans approved by the City, such approval not to be unreasonably conditioned, delayed or withheld. Moreover, upon receiving consent to make any other addition or alterations to the leased Premises, Tenant shall not commence work on the construction or installation of such added or altered improvements until plans and specifications for same have been submitted to and approved by the City and a building permit issued.

Tenant also shall provide, at Tenant's sole cost and expense, all furniture, trade fixtures and equipment necessary to operate the Premises in accordance with the approved use (Sec. 2.01).

9.02 **Title to Improvements.** Upon termination of this Lease or any extended periods thereof, all additions or alterations to the improvements on the leased Premises made by Tenant or its contractors or subcontractors shall become the property of the City without payment of any compensation therefor; provided, however, that upon termination of this Lease, City shall have the option to require Tenant to remove any or all added improvements or restore any altered improvement to the same condition as it was at the commencement of the term of this Lease, all at Tenant's sole cost and expense.

9.03 **Improvements by the City**. The City is not obligated to construct or install any improvements on or off of the leased Premises. The City shall have no obligation on account of any construction or installation of any improvement by Tenant to pay for all or any portion of the costs or expenses arising out of any such construction or installation.

9.04 **Right of Entry for Construction and Maintenance**. The City and Tenant each agree that the other shall be permitted to enter upon its property, as may reasonably be necessary in order for Tenant to make the improvements or do other work required by this Lease or in order for the City to fulfill its responsibilities to make improvements (see Section 9.03) and for maintenance as set forth in Section 10.01, and to maintain or repair the respective party's property. The right of each party to enter the other's property or the Premises shall extend to such party's lessees, and licensees and contractors. A party's exercise of its right of entry shall not unreasonably interfere with the other party's use of its property. Any interference shall be temporary and all work on the entering party's property shall proceed expeditiously as necessary to avoid or minimize any such interference. The City will provide reasonable advance notice prior to entry to the property and make reasonable efforts to do so during normal business hours. A party intending to exercise the right of entry shall first give to the other party reasonable prior written notice before commencement of any work on the other party's property. In the event a party's entry results in any damage to the other party's property, the same shall be repaired expeditiously at the entering party's expense.

9.05 **Prevailing Wage Required.**

(a) Prevailing Wage Standards.

(1) Basic Requirements. Tenant agrees that, with respect to any construction by Tenant at or on the Premises of the improvements which are "paid for in whole or in part out of public funds" as that term is defined in California Labor Code §1720 et seq., or for which construction is within the provisions of the Master Resolution adopted by the former Fort Ord Reuse Authority ("FORA Master Resolution") on March 14, 1997 as recorded in the Official Records of the Monterey County Recorder on April 14, 2020, Tenant (and its contractors and subcontractors) shall comply with the then current Public Works Prevailing Wage Requirements, as the same may be amended from time-to-time (collectively, the "Prevailing Wage Requirements"). The City makes no representations or warranties as to whether any such improvements are considered to be public works for purposes of prevailing wages under State law of the FORA Master Resolution.

(2) Additional Prevailing Wage Provisions. The following provisions of this Section apply only if, and to the extent that, the Prevailing Wage Requirements are applicable:

(a) The Prevailing Wage Requirements shall apply to the employees of any employer including Tenant and any Tenant's contractor(s) or subcontractor(s), including their successors and assignees, but shall not apply to supervisory or managerial personnel or to persons employed in the operation or maintenance of the Premises.

(b) Tenant shall cause the provisions of this Section to be incorporated into each contract and subcontract for each Tenant contractor and subcontractor which would be subject to this Section. In the event the provisions are not so incorporated, Tenant shall be liable to the worker in any action for the difference between the prevailing wage rate required to be paid under the Prevailing Wage Requirements and the amount actually paid to the worker, including costs and attorney fees, as if Tenant were the actual employer.

(c) Nothing in this Lease shall prevent the employment of any number of properly registered apprentices, as defined in Chapter 4, Division 3 of the California Labor Code. Every such apprentice shall be paid not less than the standard wage paid to apprentices under the regulations of the crafts or trade at which the apprentice is employed, and shall be employed only at the work of the craft or trade to which the apprentice is registered. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which the apprentice is in training. Tenant and Tenant's contractors and subcontractors shall be responsible for complying with Section 1777.5 of the California Labor Code concerning apprentice-able occupations, with respect to all work covered by that section.

(d) Tenant agrees that to the extent that Tenant and its contractors and subcontractors are required to comply with the Prevailing Wage Requirements. Tenant shall assure that all workers are paid the prevailing rate of per diem wages, and travel and subsistence payments (defined in applicable collective bargaining agreements filed in accordance with the California Labor Code), in effect at the time the work is performed. Copies of the applicable prevailing rate of per diem wages are on file at the City's Building Division office and will be made available to any interested party on request. Tenant agrees to post a copy of the prevailing rate of per diem wages at the leased Premises.

(e) Except where the context otherwise requires, the definitions of terms and phrases contained in the California prevailing wage law, Sections 1720 et seq. of the California Labor Code, and in the implementing administrative regulations, shall apply to the same terms and phrases which are used in the Prevailing Wage Requirements of this Section 9.04.

(f) In the event a civil wage and penalty assessment is served by the Labor Commissioner, acting through the Division of Labor Standards Enforcement, on the City, the Tenant, or any contractor or subcontractor of the Tenant, as a result of the failure of Tenant or any of its contractors or subcontractors to comply with this Section 9.05, Tenant shall withhold from amounts due to the contractor or subcontractor sufficient funds to satisfy the assessment and, if the assessment becomes final, Tenant shall pay as a penalty to the City the amount determined by the Labor Commissioner in accordance with California Labor Code §1775,as the penalty assessment payable for each worker for each day, or portion thereof, such worker was paid less than the applicable prevailing wage rates for such work or craft in which such worker was employed. Further, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Tenant or by Tenant's contractor or subcontractor. Tenant, and each affected contractor and subcontractor, shall have the right to request a review by the Labor Commissioner of the civil wage and penalty assessment served by the Labor Commissioner by transmitting a written request for review to the Labor Commissioner, with a copy of such request provided to the City, within sixty days after service of the assessment, and Tenant and its contractors and subcontractors shall not be obligated to pay the civil wage and penalty assessment to the City until a final written decision affirming, modifying or dismissing the assessment is issued by the Labor Commissioner.

(g) The prevailing wage requirements of this Section 9.05 will be monitored and enforced by the City's Building Division. In addition to any other rights provided by California law to recover compensation, a worker that has been paid less than the prevailing wage rates shall have a right to commence an action or proceeding against the employer of the worker for the difference between the prevailing wage rates and the amount paid to such worker for each calendar day or portion thereof for which the worker was paid less than the compensation required to be paid under the provisions of this subsection. No issue other than that of the liability of the employer for the amount of unpaid wages allegedly due shall be determined in such action or proceeding, and the burden shall be on the employer to establish that the amounts demanded are not due. A worker recovering any or all of the wages claimed to be due shall recover his costs and attorney fees in securing such recovery. Nothing in this Section shall preclude its enforcement by the California Division of Labor Standards Enforcement.

(h) Tenant agrees to keep or cause to be kept by each contractor and subcontractor an accurate payroll record for each worker employed on work covered by this Section showing all of the information specified in subsection (a) of Section 1776 of the California Labor Code. All such payroll records shall be certified, available for inspection and filed in accordance with the procedures specified in subsections (b)-(e) inclusive of Section 1776 of the California Labor Code. In addition, copies of such certified payroll records shall be filed with the City within a reasonable time not to exceed thirty days from close of payroll by the respective employer. In the event Tenant or its contractor or subcontractor fails to make the certified payroll records available for inspection within ten days of a written request made by the Labor Commissioner, acting through the Division of Labor Standards Enforcement, and a penalty assessment is served or levied by the Labor Commissioner arising out of such failure, Tenant shall forfeit as a penalty to the City the penalty per calendar day, or portion thereof, for each worker determined in accordance with California Labor Code §1776, not otherwise paid to the City by the contractor or subcontractor who failed to comply with California Labor Code §1776. In accordance with California Labor Code §1813, in the event Tenant or its contractor or subcontractor requires or permits a worker to work in violation of California Labor Code Division, 2, Part 7, Chapter 1, Article 3 (payment for work in excess of eight hours in one calendar day and forty hours in one calendar week), Tenant shall forfeit as a penalty to the City the sum of Twenty-five Dollars ($25.00) for each worker so employed, provided such penalty is not otherwise collected from the contractor or subcontractor who permitted its worker(s) to work in violation of such California Labor Code provisions.

(i) It is understood and agreed that all documents that Tenant is required to submit to or file with the City under this Section shall constitute public records that shall be available to any member of the public for review or copying in accordance with the California Public Records Act.

(j) Tenant shall indemnify, defend (with counsel approved by the City) and hold the City, its officers, officials, employees, and agents harmless from and against all claims which directly or indirectly in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to the payment or requirement of payment of prevailing wages (including without limitation, all claims that may be made by contractors, subcontractors or other third party claimants pursuant to Labor Code Sections 1726 and 1781) or the requirement of competitive bidding, the failure to comply with any state or federal labor laws, regulations or standards in connection with the Lease, including but not limited to the Prevailing Wage Laws, or any act or omission of Tenant related to this Lease with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such claims. It is further agreed that City does not and will not waive any rights against Tenant that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or deposit by Tenant to City of any of the insurance policies described in this Lease. The provisions of this subsection survive the expiration or earlier termination of this Lease. The indemnification obligations of Tenant as set forth in this section shall not apply to claims arising from the gross negligence or willful misconduct of the City, its officials, officers, employees or agents.

(k) Contractors or subcontractors shall not be qualified to perform work on improvements, or be listed in a bid proposal for such work, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for the work, unless currently registered and qualified to perform public work pursuant to Section 1725.5 of the Labor Code.

9.06 **Security Concerning Improvements – Performance and Labor and Material Bonds.** Before the commencement of any construction work hereunder, the City may require that Tenant, or its contractors, at no cost or expense to the City, furnish to the City the following security concerning improvements to be constructed by or on behalf of Tenant and covering any obligation of Tenant under the Prevailing Wage requirements provisions of this Lease:

(a) Performance Bond. A bond in cash, or securities satisfactory to the City in its sole discretion, or issued by a surety company licensed to transact business in the State of California and satisfactory to the City, in a sum of not less than 100% of any construction contract (or in the event Tenant serves as its own general contractor, 100% of the anticipated construction costs of the improvements) for the proposed improvements, payable to the City and conditioned upon full, faithful and satisfactory performance by Tenant its contractor(s) of the such improvements within the period of time specified in the construction schedule. Upon Tenant's or its contractor(s) full, faithful and satisfactory performance and completion of such improvements, said bond shall be cancelled or returned to Tenant or contractor, as the case may be; otherwise, such part of the amount of the bond as shall be required to complete such improvements shall be payable to or retained by the City, as the case may be. In the event that said bond shall be in cash, the City shall have the right to invest and reinvest the same as it shall see fit, and any interest earned thereon during the time it is so held by the City shall accrue to and belong to the City, and Tenant or contractor shall have no interest in or claim thereto.

(b) Labor and Material Bond. A bond in cash or securities satisfactory to the City in its sole discretion, or issued by a surety company licensed to transact business in the State of California and satisfactory to the City with Tenant or its' contractor(s) as principal(s), in a sum not less than 100% of any construction contract (or in the event Tenant serves as its own general contractor, 100% of the anticipated construction costs of the improvements) for the proposed improvements as such costs are set forth in the estimated improvement completion costs, guaranteeing the payment for all materials, provisions, provender, supplies and equipment used in, upon, for or about the performance of said work or labor done thereon of any kind whatsoever and protecting the City from any liability, losses or damages arising therefrom.

(c) General. In the event and to the extent that Tenant obtains from Tenant's contractor(s) the bonds required hereunder which are satisfactory to the City, the City, upon application by Tenant and upon naming the City as an additional obligee of Tenant's principal and surety under such bond or bonds, shall release Tenant from and consent to the cancellation of the bond or bonds originally furnished by Tenant. It is understood and agreed that any bond which, as to the City as obligee, is conditioned upon Tenant making all necessary payments to the contractor shall not be satisfactory to the City. A combination performance and labor and material bond shall satisfy the foregoing requirements of this Section.

9.07 **No Right to Demolish**. Notwithstanding any other provisions of this Article, Tenant has no right to demolish the improvements, once built, or to remove any improvements, equipment or items provided or financed by the City, in whole or in part, unless Tenant has received the prior written approval of the City.

9.08 **Insurance**. Before commencing any construction work and during the course of construction, Tenant agrees to obtain, and cause its contractor(s) to be obtain, with a responsible insurance carrier authorized under the laws of the State of California to insure employees against liability for compensation under the Workers Compensation Insurance and Safety Act, compensation insurance covering full liability for compensation under said Act, for any person injured while performing any work or labor incidental to the work in or on the leased Premises. During the course of construction, Tenant shall, at its cost, keep in full force and effect a policy of builder's risk and liability insurance, including installation floater coverage, in a sum equal, from time to time, to the agreed full replacement cost of Building 529 prior to completion of the improvements in the amount of Nine Hundred Thousand Dollars ($900,000) plus the amount to be expended for construction of the improvements. All risk of loss or damage to the improvements during the course of construction shall be on Tenant with the proceeds from insurance thereon payable to Tenant. The City and Tenant's general contractor, shall be additional named insureds on Tenant's builder's risk and liability insurance.

ARTICLE 10. MAINTENANCE AND REPAIR

10.01 **City's Obligation under this Lease**. The City warrants that on the Effective Date the roof, electrical systems, plumbing systems, parking lot lighting, and heating system for the Premises will be in good working order. During the Term and any Optional Term City shall be responsible for the following maintenance and repair of Building 529 for the initial and any extended term of this Lease:

(a) Maintaining and repairing, with the exception of painting, all structural elements of the building's exterior walls, surfaces and foundations.

(b) Maintaining the watertight integrity of the building's exterior walls.

(c) Maintain, repair, or replace as required roof coverings, gutters and drains.

(d) Maintain and repair all exterior underground plumbing, drains and utility connections.

(e) Maintaining in compliance with applicable law, regulations and codes, the interior fire alarm system. Any damage to the interior fire alarm system resulting from tenant misuse or negligence shall be repaired or replaced by the Tenant.

10.02 **Tenant's Obligations under this Lease**. Tenant shall be responsible for the following maintenance and repair of Tenant’s leased Premises within Building 529 for the initial and any extended term of this Lease.

(a) Maintenance, repair or replacement of interior systems and components for the electrical, plumbing, heating and ventilation, and mechanical systems.

(b) Interior and exterior glass, glazing, if any, and doors damaged by Tenant or its invitees.

(c) Maintaining the landscaping along the southern-facing side (front) of the building within the leasehold boundary and the landscaping in and around the perimeter of the parking lot as shown on **Exhibit A**.

(d) Maintaining the Shared Space.

(e) Maintaining the parking lot including lighting. City shall review the need to seal-coat the parking lot upon the extension of an option, if any, to Tenant to extend the term of this Lease. Should the City determine such seal-coating to be necessary, the City will notify Tenant whereupon Tenant will have the option of reimbursing the City for the City’s expense in seal-coating the parking lot or Tenant may hire its own contractor to seal-coat the parking lot at its expenses. If option to extend is not extended by the City or is not accepted by the Tenant, Tenant shall have no obligation for seal-coating the parking lot.

(f) All interior walls, ceiling, floors, bathrooms, drains and other structures or components, if any.

(g) All air conditioning systems and components, if any.

(h) All communication systems and components.

(i) The grease trap.

(j) The fire suppression systems.

(k) All security alarm systems and components, if any.

(l) Maintenance, sweeping and keeping clear, clean-up and removal of refuse, regular trash, debris, and waste removal.

(m) General maintenance and upkeep of the trash enclosure

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10.03 **Surrender**. On the last day of this Lease, Tenant shall surrender the leased Premises to the City in the same condition as when received, broom clean, ordinary wear and tear excepted. Tenant shall repair any damage to the leased Premises occasioned by the removal of Tenant's trade fixtures, furnishings and equipment which repair shall include the patching and filling of holes and repair of structural damage.

ARTICLE 11. DAMAGE OR DESTRUCTION OF IMPROVEMENTS

11.01 **Destruction or Substantial Damage of Premises.**

(a) If, during the initial or any extended term of this Lease, any of the insured improvements now or hereafter located on the leased Premises are substantially damaged or destroyed by a fire or other casualty (excluding earthquake or flood) beyond Tenant's control, City shall proceed with reasonable diligence to restore the leased Premises substantially to the condition thereof immediately prior to such damage or destruction; provided, however, that either party may elect to terminate this Lease by giving written notice of such election to the other party prior to commencement of restoration and not later than 30 days after the date of loss, if the necessary restoration work would reasonably require a period longer than 90 working days to complete, or City may elect to terminate within 30 days of the date of loss if the total of the necessary restoration work would reasonably require the expenditure of more than fifteen thousand dollars ($15,000.00) in excess of the available insurance proceeds. In no event will City be required to repair or replace Tenant's stock in trade, fixtures, improvements, furniture, furnishings and equipment.

(b) If, during the initial or any extended term of this Lease, any substantial damage or destruction occurs to the leased Premises and the cost to repair the damage or destruction that is not covered by insurance exceeds fifteen thousand dollars ($15,000.00), the City may terminate this Lease upon giving thirty (30) days prior written notice to the Tenant; provided, however, that the Tenant shall have the right to elect to pay the difference between the cost of repairing or restoring the damaged or destroyed improvements and fifteen thousand dollars ($15,000), in which case this Lease shall remain in full force and effect, and City shall proceed with reasonable diligence to restore the Premises.

(c) In no event will the City be required to make repairs for any damage caused by the willful acts or negligence of Tenant or Tenant's employees, agents, subtenants or invitees, which damage Tenant shall promptly repair, replace or restore at Tenant's sole cost and expense. Upon any termination of this Lease under this section, City and Tenant shall be released thereby without further obligation to each other, except for obligations which have theretofore accrued and are then unpaid or unperformed.

(d) In the event that restoration is made pursuant to this section, this Lease shall remain in full force and effect, and City shall be entitled to and shall have possession of the necessary parts of the leased Premises for such purposes, and if there is any substantial interference with Tenant's business on account of such repairs, Tenant shall be entitled to a proportionate reduction of rent during the time that said repairs are being made from the date on which such damage occurred until the City completes repairs computed on the basis of the relation which the gross square foot area of space rendered untenantable bears to the total square footage of the Premises and the extent to which the Premises are unusable by Tenant. Should any dispute arise over the reduction of rent to which Tenant is entitled, such dispute shall be resolved according to the provisions of §17.04 of this Lease.

11.02 **Waiver**. Except as otherwise specifically provided in this section, Tenant specifically waives the provisions of §§1932 and 1933 of the California Civil Code with respect to the termination of the hiring of a thing by virtue of the perishing or destruction of the thing being hired.

ARTICLE 12. UTILITIES, GARBAGE COLLECTION & ASSESSMENT

12.01 **Provision of Utilities**. Tenant shall have the right to use the utility service facilities serving the Premises at the commencement of the Term of this Lease. The City will use its best efforts to continue all utility services, but it cannot and does not guarantee that there will be no interruptions of service and Tenant hereby waives any rights or claims it may have resulting from temporary interruptions of service. To the extent it has knowledge the City will provide notice of any work scheduled which may interrupt the utility service to the leased Premises. If City is unable to provide utility service facilities due to the imposition of any limit on consumption or on the construction of additional utility facilities, or the allocation or curtailment of utility facilities or services by law or regulation, it shall have no obligation hereunder.

12.02 **Payment of Utilities**. Tenant agrees upon entering into occupancy of the Premises to pay directly to the utility providers for all utility services provided under the terms of any contract between the Tenant and the utility provider and to the City for all utility services provided under the terms of any contract between the City and a utility provider serving the premises through existing lines and connections. Tenant shall be responsible to provide and pay for all new connection equipment and any fees required. Tenant shall pay all utility charges within twenty (20) days of receipt of invoice and shall provide evidence of payment when requested to do so in writing by the City. In the event Tenant fails to pay any utility bill when due, the City may, at its option, pay the same and collect from Tenant's performance deposit the amounts so disbursed, plus interest at the rate of 1½% per month or fraction thereof.

12.03 **Telephone / Internet Connectivity**. Tenant shall be responsible for providing and paying directly to the provider for telephone and internet connection to the Premises.

12.04 **Garbage/Trash Collection.** Tenant agrees upon entering into occupancy of the leased Premises to pay for garbage and trash collection and removal services. Tenant shall arrange and pay for the disposal of all hazardous waste in accordance with all applicable local, state and federal laws and regulations. In the event Tenant fails to pay any bill when due, the City may, at its option, pay the same and collect from Tenant's performance deposit the amounts so disbursed, plus interest at the rate of 1½% per month or fraction thereof.

12.05 **Compliance with Regulations of Local Agencies.** It shall be the responsibility of the Tenant under this Lease to contact, consult and comply with any regulation applicable to Tenant's activities at the Airport which are now or may be promulgated by a local public or private utility provider or regulator having jurisdiction over activities or utility services at the Airport, including, but not limited to, Monterey One Water, Marina Coast Water District, Monterey Reginal Waste Management District, Pacific Gas & Electric Company and the Monterey Bay Unified Air Pollution Control District and the Monterey County Water Resources Agency and Monterey County Health Department.

ARTICLE 13. INSURANCE & INDEMNIFICATION

13.01 **Liability Insurance to be provided by the Tenant**. The Tenant shall obtain insurance coverage, naming the City, its council, boards, commissions and members thereof, its officers, employees, volunteers and agents as an additional insured, and maintain same continuously in effect at all times during the term of this Lease:

(a) **Commercial General Liability Insurance** (primary) shall be provided on ISO-CGL form No. CG 00 01 11 85 or 88 or a form approved by the City Attorney including contractual liability, independent contractors, broad form property damage, sudden and accidental pollution, personal injury and products and completed operations. Policy limits shall be no less than one million dollars per occurrence (i.e., non aggregate program) for all coverage and two million aggregate. City and its Council, boards, commissions, officers, employees, volunteers and agents shall be added as additional insureds using ISO form GC 20 10 11 85 or a form approved by the City Attorney. 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 employee or agent of the City and must include a severability of interest (cross liability) provision, that is, it shall act as though a separate policy were written for each insured and additional insured named in the policy.

Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Coverage shall contain no contractor's limitation endorsement. There shall be no endorsement or modification limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage or employment-related practices.

(b) **Umbrella Liability Insurance** (over primary) is required and shall apply to bodily injury/property damage, personal injury/advertising injury, contractual and products and completed operations 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 provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion and no contractor's limitation endorsement. Policy limits shall be not less than one million dollars per occurrence and in the aggregate, above any limits required in the underlying policies. The policy shall have starting and ending dates concurrent with the underlying coverages.

(c) **Workers' Compensation/Employer's Liability** shall provide workers' compensation statutory benefits as required by law. Employer's liability limits shall be no less than one million dollars per accident or disease. Employer's liability coverage shall be scheduled under any umbrella policy described above. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects the City, its Council, boards, commissions, officers, employees or agents.

(d) **Business Auto Coverage** If Tenant uses or causes to be used vehicles in connection with its use of the leased property, it shall obtain comprehensive or business automobile liability insurance with limits not less than $1,000,000.00 each occurrence combined single limit for bodily injury and property damage, including owned, non-owned and hired vehicles. Coverage shall be written on ISO Business Auto Coverage form CA 00 01 06 92 including symbol 1 (Any Auto) or on a form approved by the City Attorney. Limits shall be no less than one million dollars per accident. This policy shall be scheduled as underlying insurance to any umbrella policy required above for a total limit of no less than $2,000,000.00 each accident.

13.02 **Fire insurance**. The City shall obtain and maintain continuously in effect at all times during the term of this Lease, the following insurance coverage:

(a) Fire and extended coverage insurance (excluding smoke pollution, or damage occasioned by earthquake or flood) on the structure and fixed improvements located on the Premises; with deductibles to be paid by the City for insured losses, in an amount to be determined by the City in its sole discretion during the term of this Lease. The proceeds of any such insurance may be used for rebuilding or repairing permanent improvements, subject to the provisions of Article 11 of this Lease.

(b) Tenant shall reimburse the City for the full cost, if any, of all additional insurance assessments required by City's insurer due to any hazardous activities by Tenant on the leased property.

(c) Tenant hereby agrees to maintain, at its own cost and expense, during the entire term of this Lease or as said term may be extended, a policy or policies of insurance against loss or damage upon its furnishings, fixtures, inventory, personal property and equipment. A certificate or certificates of Tenant's current insurance coverage must be filed with the City Manager.

13.03 **Tenant and the City further agree as follows:**

(a) This Article supersedes all other sections and provisions of this Lease to the extent that any other section or provision conflicts with or impairs the provisions of this section.

(b) The insurance requirements set forth in this Article are intended to be separate and distinct from any other provision in this Lease and shall be interpreted as such.

(c) All insurance coverage and limits provided pursuant to this Lease shall apply to the full extent of the policies involved, available or applicable. Nothing contained in this Lease or any other agreement relating to the City or its operations limits the application of such insurance coverage. Nothing contained in this Article is to be construed as affecting or altering the legal status of the parties to this Lease.

(d) For purpose of insurance coverage only, this Lease will 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 Lease.

(e) Requirements of specific coverage features or limits contained in this Article 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.

(f) All general or auto liability insurance coverage provided pursuant to this Lease or any other agreements pertaining to the performance of this Lease, shall not prohibit Tenant and Tenant's employees, or agents, from waiving the right of subrogation prior to a loss. Tenant waives its right or subrogation against the City.

(g) Unless otherwise approved by the City, Tenant's insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best's" Insurance Guide rating of "A:VII." Self-insurance will not be considered to comply with these requirements.

(h) In the event any policy of insurance required under this Lease does not comply with these requirements or is canceled and not replaced, the City has the right but not the duty to obtain insurance it deems necessary and any premium paid by City will be promptly reimbursed by Tenant.

(i) Tenant agrees to provide evidence of the insurance required herein, satisfactory to the City prior to taking any steps in furtherance of this Lease and annually upon renewal of the Tenant's business license, consisting of certificate(s) of insurance evidencing all of the coverages required and an additional insured endorsement to Tenant's general liability, auto and umbrella policies using ISO form CG 20 10 1 85 or a form approved by the City Attorney. Certificate(s) are to reflect that the insurer will provide 30 days notice of any cancellation of coverage. Tenant 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. Tenant agrees to provide complete certified copies of policies to City within 10 days of City's request for said copies.

(j) Tenant shall provide proof that policies of insurance required herein expiring during the term of this Lease have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished within 72 hours of the expiration of the coverages.

(k) 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 Lease in no way waives any right or remedy of City or any additional insured, in this or any other regard.

(l) Tenant agrees to require all contractors, subcontractors or other parties hired to perform work on the leased Premises to provide general liability insurance naming as additional insureds all parties to this Lease. Tenant agrees to obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required here. Tenant agrees to require that no contract used by any contractor or subcontractor, will reserve the right to charge back to City the cost of insurance required by this Lease. Tenant agrees that upon request, all agreements with contractors or subcontractors or others with whom contractor contracts with will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, its Council, commissions, officers, employees and agents.

(m) Tenant agrees to provide immediate notice to City of any claim or loss against Tenant or its contractors or subcontractors that includes City as a defendant or a responsible party. 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.

n) In the event of any loss that is not insured due to the failure of Tenant to comply with these requirements, Tenant agrees to be responsible for any and all losses, claims, suits damages, defense obligations and liability of any kind attributed to City, or City's employees as a result of such failure.

(o) Coverage will not be limited to the specific location or individual or entity designated as the address of the leased Premises.

(p) Tenant agrees not to attempt to avoid its defense and indemnity obligations to City and its Council, commissions, boards, employees, agents, officials and servants by using as a defense Tenant's statutory immunity under workers compensation and similar statutes.

(q) Tenant agrees to require all contractors, subcontractors or parties, including architects or others, with which it enters into contracts or hires pursuant to or related in any way with the performance of this Lease, to provide insurance covering the operations contracted for and naming as additional insureds all parties to this Lease. Tenant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided as required here.

(r) Tenant agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and that there will be no cross liability exclusions that preclude coverage for suits between the Tenant and City or between City and any other insured or Named Insured under the policy, or between City and any party associated with Tenant or its employees.

(s) Insurance requirements shall be applied uniformly to all Tenants engaged in similar-type operations at the Airport, and such requirements shall be consistent with industry standards.

13.04 **Approval of Insurance Coverage**. Upon execution of this Lease, a copy of the insurance policy or policies required herein or, in lieu thereof, the face page of such policy or policies and any endorsements which limit or otherwise affect the coverage provided therein shall be delivered by Tenant to the City Manager, or his or her designee, for approval as to form and sufficiency. When such insurance policy or policies have been so approved, Tenant may substitute for same a certificate of insurance issued by the respective insurance company or companies certifying that such insurance policies are in full force and effect and that all liabilities arising out of this lease or Tenant's possession and use of the leased property are covered by such insurance policy or policies and a current copy of such certificate shall be provided to the City annually upon renewal of Tenant's business license. Notwithstanding any provisions to the contrary contained herein, Tenant shall not have the right to take possession of the leased property until such insurance policy or policies are filed with and approved by the City Manager.

13.05 **Review of Insurance Coverage**. City shall have the right at any time during the term of this Lease to review the type, form and coverage limits of the insurance requirements. If in the opinion of the City, the insurance provisions of this Lease are not sufficient to provide adequate protection for the City and the members of the public using the Airport, the City may require Tenant to maintain insurance sufficient to provide such adequate protection. Insurance requirements shall be applied uniformly to all Tenants engaged in similar-type operations at the Airport, and such requirements shall be consistent with industry standards. City shall notify Tenant in writing of any changes in the insurance provisions necessary to provide adequate protection. If Tenant does not deposit acceptable certificates evidencing valid insurance policies acceptable in form and content to the City, incorporating such changes, within 60 days of receipt of such notice, this Lease shall be in default. The procuring of such policy of insurance shall not be construed to be a limitation upon Tenant's liability nor as a full performance of its part of the indemnification provisions of this Lease; Tenant's obligation being, notwithstanding said policy or policies of insurance, the full and total amount of any damage, injury or loss caused by the negligence or neglect connected with the operation under this Lease.

13.06 **Indemnification**. Tenant and the City agree that City, its 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, attorney's fees, litigation costs, defense costs, court costs or any other cost arising out of or in any way related to the matters set forth below.

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. Tenant acknowledges that City would not enter into this Lease in the absence of the commitment from Tenant to indemnify and protect City as set forth here.

To the full extent permitted by law, Tenant shall defend, indemnify and hold harmless the City, its 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, actual attorney fees incurred by the City, court costs, interest, defense costs, including expert witness fees and any other costs or expenses of any kind whatsoever without restriction or limitation incurred in relation to, as a consequence of or arising out of or in any way attributable actually, allegedly or impliedly, in whole or in part to (i) the intentional act or negligence of Tenant or Tenant's employees, agents, contractors, subcontractors or invitees, (ii) any breach or default in performance of any obligation to be performed by Tenant under this Lease, or (iii) the occupancy of the Premises by Tenant and the operation of Tenant's business thereon. All obligations under this provision are to be paid by Tenant upon receipt of notice by Tenant from the City that the City has suffered or incurred the same.

Without affecting the rights of the City under any provision of this Lease or this section, Tenant shall not be required to indemnify, defend or hold harmless City as set forth above to the extent liability is attributable to the sole negligence, gross negligence or willful misconduct of City, or officers, employees, agents, contractors, subcontractors, tenants, subtenants or volunteers of the City, provided such is determined by agreement between 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 or grossly negligent or to have engaged in willful misconduct and not in instances where Tenant is solely at fault, or in instances where City's fault account for only a percentage of the liability involved. In those instances, the obligation of Tenant will be for that portion of the liability not attributable to the City's gross negligence or willful misconduct.

Notwithstanding the above, or anything in the Lease, the City shall not in any event, including, without limitation, the sole or gross negligence or willful misconduct of the City or any person for whom it is responsible in law, be in any way liable or responsible to the Tenant for any consequential, indirect, special, punitive or incidental loss, injury or damages of any nature whatsoever (including, without limitation, loss of income or revenue or business interruption) that may be suffered or sustained by the Tenant or its representatives, customers or any other person for whom the Tenant is responsible in law.

Tenant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this Article from any assignee, contractor, subcontractor or any other person or entity involved by, for, with or on behalf of Tenant in the performance of Tenant's obligations under this Lease. In the event Tenant fails to obtain such indemnity from such third parties, as required here, Tenant 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 and assigns of Tenant and shall survive the termination of this Lease or this Article.

ARTICLE 14. LIENS & CLAIMS

14.01 **Liens and Claims**. Tenant shall not suffer or permit to be enforced against City's title to the leased Premises, or any part thereof, any lien, claim or demand arising from any work of construction, repair, restoration, maintenance or removal as herein provided, or otherwise arising (except liens, claims or demands suffered by or arising from the actions of City).

14.02 **Tenant to Pay Liens & Claims**. Tenant shall pay all such liens, claims and demands before any action is brought to enforce same against said land; and Tenant agrees to hold City and said land free and harmless from all liability for any and all such liens, claims or demands, together with all costs and expenses in connection therewith.

14.03 **Payment of Liens & Claims by City.** Should Tenant fail or refuse to pay any lien, claim, or demand arising out of the construction, repair, restoration maintenance and use of said Premises and the buildings and improvements thereon, or any other claim, charge or demand which Tenant has agreed to pay under the covenants of this lease, Tenant or its authorized encumbrancers, if any, shall, within 30 days written notice from City to Tenant of its said encumbrance, pay and discharge the same or shall furnish to City, in a form satisfactory to City, sufficient security for such lien, claim or demand and all costs and expenses in connection therewith. Should Tenant or its said encumbrancer within said 30 day period, not pay and discharge said lien, claim or demand, or not provide said security to City, then City may, at its option, either treat such failure or refusal as a breach of or default under this Lease, or may pay any such lien, claim, charge or demand, or settle or discharge any action therefore or judgment thereon, and all costs, expenses and other sums incurred or paid by City in connection therewith shall be repaid to City by Tenant upon written demand, together with interest thereon at the rate of 10%, per annum from the date of payment until repaid, and any default in such repayment shall constitute a breach of the covenants and conditions of this Lease.

ARTICLE 15. TRANSFERS & ENCUMBRANCES

15.01 **Sales, Assignments, Transfers, Subleases, and Encumbrances**. Tenant shall not sell, assign, transfer, or encumber this lease, any interest of Tenant in and to the leased Premises, nor sublease the leased Premises, in whole or in part, except with the consent of City, which consent shall not be unreasonably withheld. Tenant acknowledges and understands that the leased Premises are restricted to aviation/aeronautical-related uses unless a non-aviation/non aeronautical use is approved by both the City and the Federal Aviation Administration. Neither shall this Lease, nor any interest of Tenant in and to the leased Premises be subject to an involuntary sale, assignment or transfer, or sale, assignment or transfer by operation of law in any manner whatsoever. Any such sale, assignment, transfer, encumbrance or sublease, whether voluntary or involuntary shall be void and of no effect and shall be a default which entitles City to terminate this Lease, Tenant's rights in and to the leased Premises, in the manner hereinafter provided by this lease.

15.02 **Tenant Affiliate.** Notwithstanding the provisions of §15.01, the Tenant may assign or sublet the Premises, or any portion thereof, with the City's consent to any corporation which controls, is controlled by or is under common control with the Tenant, or to any corporation resulting from the merger or consolidation with Tenant, or to any person or entity which acquires all the assets of Tenant as a going concern of the business that is being conducted on the Premises, provided that said assignee assumes, in full, the obligations of Tenant under this Lease. Any such assignment shall not, in any way, affect or limit the liability of Tenant under the terms of this lease even if after such assignment or subletting the terms of this Lease are materially changed or altered without the consent of Tenant, the consent of whom shall not be necessary.

15.03 **No Release of Tenant**. Regardless of City's consent, no subletting or assignment shall release Tenant of Tenant's obligation or alter the primary responsibility of Tenant to pay the rent and to perform all other obligations to be performed by Tenant under this Lease. The acceptance of rent by the City shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee of Tenant or any successor of Tenant in the performance of any of the terms hereof, City may proceed directly against Tenant without the necessity of exhausting remedies against said assignee. City may consent to subsequent assignments or subletting of this Lease or amendments or modifications to this Lease with assignees of Tenant without notifying Tenant, and without obtaining his consent thereto and such action shall not relieve Tenant of liability under this Lease.

ARTICLE 16. HAZARDOUS SUBSTANCES

16.01 **Hazardous Materials Study**. Prior to, or following its occupancy of the Premises, Tenant may, at its sole cost and expense, arrange for a hazardous materials study of the leased property. City shall provide Tenant any documents, drawings and data in its possession relating to environmental analysis of the leased property. Tenant and City agree that, upon occupancy, the City shall have no further obligation under this Lease to remove any hazardous materials in or on the leased property, including any required repairs identified in any study Tenant may chose to make, prior to, or after Tenant’s occupancy of the leased Premises.

16.02 **Hazardous Substances**. Pursuant to Health and Safety Code §25359.7(b), Tenant shall notify City in writing within a reasonable time, of any material release of hazardous substances and of any hazardous substances that have come to be located beneath the Marina Municipal Airport.

16.03 **Removal**. Prior to the expiration of this Lease, Tenant shall at its sole expense, remove all items of personal property, including but not limited to all flammable substances and hazardous materials and wastes as defined by state or federal law at the time of the expiration of this lease.

16.04 **Inspection of Records**. Tenant shall make available for inspection to the City, all records relating to the maintenance, release, mitigation and cleanup for any hazardous substances on the Premises.

16.05 **Compliance**. Tenant shall comply with all federal, state and local laws and regulations relating to hazardous materials and wastes, and shall timely comply with the orders of any governmental agencies relating thereto.

16.06 **Notice**. Upon execution of this Lease, Tenant shall provide the City's Fire Department with a complete list of all hazardous substances used or to be used or stored on the Premises with total quantities of each hazardous substance. Tenant shall notify City of changes in quantity of type within five days of change.

16.07 **Right to Inspect**. The City, in its proprietary capacity, agrees to give reasonable notice in accordance with the general laws of the City, prior to entering upon and inspecting the Premises at any time.

ARTICLE 17. GENERAL PROVISIONS

17.01 **Additional Rules & Regulations**. The City Manager/Airport Manager shall have the power to establish in writing such additional rules and regulations respecting operation of the Airport as are not inconsistent with provisions of this Lease or any applicable ordinances or laws, providing such rules and regulations are found to be necessary or convenient by the City Manager/Airport Manager for the operation of the Airport or the enforcement of the provisions of this Lease, the provisions of any and all applicable laws and ordinances, and the preservation of the public peace, health, safety and welfare; and Tenant shall comply with any and all such rules and regulations adopted in writing by the City Manager/Airport Manager. Tenant may within ten days of Tenant's receipt of any additional rule or regulation established in writing by the City Manager/Airport Manager appeal such rule or regulation to the City Council/ Airport Commission, such appeal to be heard within thirty days. The decision of the City Council/ Airport Commission shall be final.

17.02 **Compliance with Laws; Permits and Licenses**. Tenant's business shall be conducted and maintained in strict compliance with all applicable laws, ordinances, regulations, and other requirements of federal, state, county, city or other governmental agencies having jurisdiction over the operation of Airports. Similarly, Tenant will obtain and pay for any necessary permits, licenses and other consents for the operation of Tenant's business including a City of Marina Business License. Tenant represents and warrants that it has full power and authority to enter into this Lease and perform hereunder, and holds all permits and licenses which are required by law or regulation for complete performance in accordance with the terms of this Lease.

17.03 **Independent Status**. Tenant is an independent entity. Tenant is solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing in this Lease shall be construed as creating a partnership or joint venture between City and Tenant. Neither Tenant nor its officers, employees, agents or subcontractors shall obtain any rights to retirement or other benefits which accrue to City employees.

17.04 **Dispute Resolution**. The parties agree that if any dispute arises over the interpretation or performance of this Lease, the parties will first attempt to negotiate any such dispute informally. If such informal negotiation fails, and if the parties mutually agree at the time, the parties may then submit the dispute for formal mediation to the American Arbitration Association (AAA) or the Judicial Arbitration and Mediation Services (JAMS), or such other mediation service as the parties may mutually agree upon. Expenses of such mediation shall be shared equally between the parties.

17.05 **Confidentiality**. To the extent allowed by law, the City shall not disclose Tenant's financial statement or confidential financial condition. Tenant acknowledges that the City is a municipal corporation, is subject to the California Public Records Act (CA Government Code §6250 et seq.) and accordingly has limited powers to withhold information from the public.

17.06 **Attorney's Fees and Costs**. Should the dispute of the parties not be resolved by negotiation or mediation, and in the event it should become necessary for either party to enforce or interpret any of the terms and conditions of this Lease 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 Lease 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.

17.07**Litigation Involving Lease**. In the event the City is made a party to any litigation concerning this Lease or the leased Premises by reason of any act or omission by Tenant, Tenant shall hold the City harmless from all loss or liability, including reasonable attorney's fees, incurred by the City in such litigation. In case suit shall be brought for an unlawful detainer of said Premises, for the recovery of any rent due under the provisions of this Lease, or because of the breach of any other covenant or provision herein contained on the part of Tenant to be kept or performed, and the City prevails therein, Tenant shall pay to the City a reasonable attorney's fee, which shall be fixed by the court.

17.08 **Bankruptcy and Insolvency**. If Tenant shall, at any time during the term of this Lease, become insolvent, or if proceedings in bankruptcy shall be instituted by or against Tenant, or if Tenant shall be adjudged bankrupt or insolvent by any court, or if a receiver or trustee in bankruptcy or a receiver of any property of Tenant shall be appointed in any suit or proceeding brought by or against Tenant, or if Tenant shall make any assignment for the benefit of creditors, then in each and every case, this Lease and the rights and privileges granted hereunder shall immediately cease, terminate and be forfeited and canceled; provided, however, that if Tenant shall, within six days after the filing and service on Tenant of any involuntary petition in bankruptcy or for appointment of a receiver, commence proper proceedings to dismiss or deny the petition or vacate the receivership and shall expeditiously pursue and diligently exhaust all proper remedies toward that end, the bankruptcy or receivership shall not constitute a default until the entry of a final determination adverse to Tenant.

17.09 **Eminent Domain**. In the event of a total or partial taking of the leased Premises or any interest therein by a public authority under the power of eminent domain, including but not limited to any taking of Tenant's leasehold estate by City under City's power of eminent domain, then the rights of the Tenant with respect to the term, rent, and the just compensation awarded in such eminent domain proceeding shall be in accordance with the law in effect when such taking occurs.

17.10 **No Relocation Benefits**. Tenant is hereby informed and acknowledges the following: by entering into this Lease and becoming a Tenant of City, Tenant may become entitled to receipt of “relocation assistance benefits” (“Relocation Benefits”) pursuant to the Federal Uniform Relocation Assistance Act (42 U.S.C. §§ 4601 et seq.) and/or the California Relocation Assistance Law (Cal. Gov. Code, §§ 7260 et seq.) (collectively the “Relocation Statutes”), should City at some time make use of the Premises in such a way as to “displace” Tenant from the Premises. Pursuant to the Relocation Statutes, City may then become obligated to make such payments to Tenant even where such displacement of Tenant does not otherwise constitute a breach or default by City of its obligations pursuant to this Lease. Under the Relocation Statutes in effect as of the Effective Date of this Lease, Relocation Benefits may include payment to such a “displaced person” of (i) the actual and reasonable expense of moving himself or herself and a family, business, or farm operation, including personal property, (ii) the actual direct loss of reestablishing a business or farm operation, but not to exceed Ten Thousand Dollars ($10,000), or (iii) payment in lieu of moving expenses of not less than One Thousand Dollars ($1,000) or more than Twenty Thousand Dollars ($20,000).

In consideration of City’s agreement to enter into this Lease, Tenant hereby waives any and all rights it may now have, or may hereafter obtain, to Relocation Benefits arising out of the City’s assertion or exercise of its contractual rights to terminate this Lease pursuant to its terms, whether or not such rights are contested by Tenant or any other entity, and releases City from any liability for payment of such Relocation Benefits; provided, however, that Tenant does not waive its rights to Relocation Benefits to the extent that Tenant’s entitlement thereto may arise out of any condemnation or pre-condemnation actions taken by the City or any other public agency with respect to the Premises. Tenant shall in the future execute any further documentation of the release and waiver provided hereby as City may reasonably require.

17.11 **Force Majeure; Waiver**. Tenant shall not be in default under this Lease in the event that the activities of Tenant are temporarily interrupted for any of the following reasons: riots; war or national emergency declared by the President or Congress and affecting the City of Marina; sabotage; civil disturbance; insurrection; explosion; natural disasters such as floods, earthquakes, landslides and fires; strikes, lockouts and other labor disturbances; or other catastrophic events which are beyond the reasonable control of Tenant. "Other catastrophic events" does not include the financial ability of Tenant to perform or failure of Tenant to obtain any necessary permits or licenses from other governmental agencies or the right to use facilities of any public entity where such failure occurs because Tenant has failed to exercise reasonable diligence.

17.12 **Abandonment**. Tenant shall not vacate or abandon the leased Premises or any part thereof at any time during the term of this Lease. If Tenant shall abandon, vacate or surrender the leased Premises or be dispossessed by process of law or otherwise, any property belonging to

Tenant and left on the leased Premises shall be deemed, at the option of City, to be abandoned. Upon relinquishing possession, Tenant shall be in default of this Lease and City shall be entitled to terminate this lease, Tenant's rights in and to the leased Premises in the manner hereinafter provided by this Lease.

17.13 **Default**. Tenant shall be deemed in default under this Lease:

(a) Upon breach of any of the covenants and conditions of this Lease with respect to discrimination on the grounds of race, creed, color, national origin, or sex; with respect to economic discrimination; with respect to the sale, assignment, transfer, encumbrance, or subletting of the leased Premises which is the subject matter of this Lease; with respect to the bankruptcy or insolvency of Tenant; or, with respect to any other covenant or condition of this Lease, which breach cannot be cured, immediately upon being given notice thereof by City.

(b) Upon failure to pay any rent or any other consideration required under this Lease to be paid by Tenant to City within 10 days following the date those obligations are due.

(c) Upon failure to provide written evidence of the insurance when due, within 14 days after being given notice thereof by City.

(d) Upon the breach of any of Tenant's other duties and obligations under this Lease, which breach can be cured, if such breach is not cured within 30 days after being given written notice thereof by City.

17.14 **Remedies on Default.**

(a) City's Right to Terminate Lease. Upon Tenant's default of this lease, City shall have the right, without further notice, to terminate this Lease as well as Tenant's rights in and to the leased Premises, to enter upon and retake possession of the leased Premises, including all improvements thereon and facilities appurtenant thereto, by legal proceedings or otherwise, and to recover from Tenant, at the time of such termination, the excess, if any, of the amount of rent to be paid by Tenant under this Lease for the balance of the lease term over the then reasonable rental value of the leased Premises for the same period. For the purposes of this section, City and Tenant agree that the "reasonable rental value" shall be the amount of rent which City can obtain as rent for the balance of the lease term.

(b) City's Right to Repossess, Operate, or Relet the Leased Premises for Tenant's Account. Upon Tenant's default under this Lease, City shall also have the right, without further notice and without terminating this Lease, to enter upon and retake possession of the leased Premises, including all improvements thereon and fixtures appurtenant thereto, by legal proceedings or otherwise, and to take, operate, or relet the same in whole or in part for the account of Tenant at such rental, on such conditions, and to such Tenant or Tenants as City, in good faith, may deem proper, for a term not exceeding the unexpired period of the full term of this Lease. City shall receive all proceeds from rent accruing from such operating or reletting of the leased Premises and shall apply the same first to the payment of all costs and expenses incurred by City in the operation or reletting of the leased Premises and any alterations or repairs reasonably necessary to enable City to operate or relet the leased Premises, and then to the payment of all such amounts as may be due or become due under the provisions of this Lease, and the balance remaining, if any, at the expiration of the full term of this Lease or on the sooner termination thereof, by written notice of termination given by City to Tenant, shall be paid over to Tenant. In the event proceeds from rentals received by City under the provisions of this section are insufficient to pay all costs and expenses and all amounts due and becoming due hereunder, Tenant shall pay to City, on demand by City, such deficiency as may from time-to-time occur or exist. Notwithstanding any such operation or reletting without terminating this Lease, City may, at any time thereafter, elect to terminate this lease in the event that Tenant remains in default hereunder at such time.

(c) City's Right to Perform. Notwithstanding any provisions as to notice of default in this Lease to the contrary, if, in City's judgment, a continuance of any default by Tenant for the full period of the notice otherwise provided for will jeopardize the leased Premises, including any improvements thereon or facilities appurtenant thereto, or the rights of City, City may, without notice, elect to perform those acts in respect of which Tenant is in default at Tenant's expense and Tenant shall thereupon reimburse City, with interest at the rate of 10% per annum, upon 30 days' written notice by City to Tenant.

(d) Other Remedies. All rights, options, and remedies of City contained in this Lease shall be construed and held to be cumulative and not one of them shall be exclusive of the other, and City shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided for by law, whether or not stated in this lease.

17.15 **Waiver of Default**. Any waiver by City of a default of this Lease arising out of the breach of any of the covenants, conditions, or restrictions of this Lease shall not be construed or held to be a waiver of any succeeding or preceding default arising out of a breach of the same or any other covenant, condition, or restriction of this Lease.

17.16 **City's Right of Entry**. Tenant shall permit City and any agents and employees of City to enter in and upon the leased Premises at all reasonable times for the purpose of inspecting the same, or for the purpose of posting notices of non-responsibility for improvements, alterations, additions, or repairs, without any rebate of rent and without any liability to Tenant for any loss of occupation or quiet enjoyment of the leased Premises thereby occasioned.

17.17 **Notices**. All notices required or permitted to be given under this Lease shall be in writing and shall be personally delivered or sent by facsimile or by United States certified mail, postage prepaid, return receipt requested, addressed as follows:

To City: City of Marina
City Hall
Attention: City Manager & Airport Services Manager
211 Hillcrest Avenue
Marina, California 93933
Fax Number: (831) 384-9148

To Tenant:

Joby Aero, Inc.
2155 Delaware Avenue, Suite #225
Santa Cruz, CA 95060
Attn: Legal Department
Fax Number (831) 417-4411

or to such other address as either party may from time-to-time designate by notice to the other given in accordance with this section. Notice shall be deemed effective on the date personally served or sent by facsimile or, if mailed, three business days from the date such notice is deposited in the United States mail.

17.18 **Corporate Authority**. If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the Bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms. If Tenant is a corporation, Tenant shall, within 30 days after execution of this Lease, deliver to the City a certified copy of a resolution of the Board of Directors or said corporation authorizing or ratifying the execution of this Lease. If Tenant is, or at any time during the initial or any extended term of this lease becomes a limited liability company, Tenant shall provide City with a certified copy of Tenant's LLC-1 articles of organization together with a certificate of the status certified by the Secretary of State. If Tenant is a general partnership, Tenant shall provide the City with a copy of the recorded statement of partnership.

17.19 **Amendment or Modification**. This Lease may be amended, altered or modified only by a writing specifying such amendment, alteration or modification, executed by authorized representatives of both of the parties hereto. 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 Lease, Tenant agrees to consent in writing upon the request of the City to such reasonable amendments, modifications, revisions, supplements or deletions of any of the terms, conditions, or requirements of the Lease as may be reasonable required to enable City to obtain FAA funds, provided that in no event shall such changes materially impair the rights of Tenant hereunder. A failure by Tenant to so consent shall constitute a breach of this Lease.

17.20 **Construction of Lease**. Whenever the singular number is used in this Lease and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders. If there shall be more than one Tenant designated in or signatory to this Lease, the obligations hereunder imposed upon Tenant shall be joint and several; and the term "Tenant" as used herein shall refer to each and every of said signatory parties, severally as well a jointly.

17.21 **Covenant & Condition**. Each term and provision of this Lease performable by Tenant shall be construed to be both a covenant and a condition.

17.22 **Time**. Time is and shall be of the essence of each term and provision of this Lease.

17.23 **Material Breach**. Each and every term, condition, covenant and provision of this Lease is and shall be deemed to be a material part of the consideration for the City's entry into this Lease, and any breach hereof by Tenant shall be deemed to be a material breach.

17.24 **Heirs, Successors and Assigns**. All of the covenants, agreements, conditions and undertakings herein contained shall, subject to the provisions as to assignments, apply to and bind the representatives, heirs, executor, administrators, successors or assigns of all the parties hereto; and all the parties hereto shall be jointly and severally liable hereunder.

17.25 **Further Actions**. Each of the parties agree to execute and deliver to the other such documents and instruments, and to take such actions, as may reasonably be required to give effect to the terms and conditions of this Lease.

17.26 **Interpretation**. This Lease has been negotiated by and between the representatives of both parties. Accordingly, any rule of law (including Civil Code §1654) or legal decision that would require interpretation of any ambiguities in this Lease against the party that has drafted it is not applicable and is waived. The provisions of this Lease shall be interpreted in a reasonable manner to affect the purpose of the parties and this Lease.

17.27 **Captions**. Titles or captions of articles and sections contained in this Lease are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Lease or the intent of any provision of it.

17.28 **Severability**. If any of the provisions of this Lease are determined to be invalid or unenforceable, those provisions shall be deemed severable from the remainder of this Lease and shall not cause the invalidity or unenforceability of the remainder of this Lease, unless this Lease without the severed provisions would frustrate a material purpose of either party in entering into this Lease.

17.29 **Waiver**. No waiver of any right or obligation of either party hereto shall be effective unless made in writing, specifying such waiver and executed by the party against whom such waiver is sought to be enforced. A waiver by either party of any of its rights under this Lease on any occasion shall not be a bar to the exercise of the same right on any subsequent occasion or of any other right at any time.

17.30 **Counterparts**. This Lease may be executed in two counterparts, each of which shall be deemed an original, but both of which shall be deemed to constitute one and the same instrument.

17.31 **Exhibits Incorporated**. All exhibits reference in this Lease and attached to it are hereby incorporated in it by this reference. In the event there is a conflict between any of the terms of this Lease and any of the terms of any exhibit to the lease, the terms of the Lease shall control the respective duties and liabilities of the parties.

17.32 **Entire Agreement**. This Lease constitutes the entire and complete agreement between the parties regarding the subject matter hereof, and supersedes all prior or contemporaneous negotiations, understandings or agreements of the parties, whether written or oral, with respect to the subject matter.

IN WITNESS WHEREOF, this Lease has been executed by the duly authorized officers or representatives of each of the parties on the date first shown above.

CITY OF MARINA, a municipal corporation	JOBY AERO, INC a Delaware corporation
By:______________________ Bruce C. Delgado, Mayor	By:____________________________ Name: Its:
Dated: ______________________	Dated: ________________________

(Pursuant to Reso. 2022-_____)

ATTEST:

____
City Clerk

APPROVED AS TO FORM:

____
City Attorney

EXHIBITS

(To be added)

EXHIBIT A

A PLAT OF THE AIRPORT REAL PROPERTY
INCLUDING AREAS FOR PARKING

EXHIBIT B

SCHEDULE OF CITY-OWNED PROPERTY

EXHIBIT C

FAA ASSURANCES

Exhibit A

Area for locating tables for employees or public. Area to be maintained by Joby.
Pedestrian Gate
Auto Access Gate
Airport Administration Building.
15 ft.
Neeson Rd
Neeson Rd
Neeson Rd
Neeson Rd
Cardinale Automotive Group
Google Earth
100 ft
N

EXHIBIT B

SCHEDULE OF CITY-OWNED PROPERTY

1. Kitchen Exhaust Hood

EXHIBIT C
FEDERAL AVIATION ADMINISTRATION ASSURANCES

A. COMPLIANCE WITH SPONSOR'S FEDERAL GRANT ASSURANCES: To the extent applicable, Tenant shall comply with all Federal Aviation Administration (FAA) assurances below:

1. The Tenant 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 Lessee 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 Tenant 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 Tenant 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 Lease and to reenter and repossess said land and the facilities thereon, and hold the same as if said Lease 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. Tenant 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 Tenant 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 Lease 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. Tenant agrees that it shall insert the above five provisions in any Lease by which said Tenant grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the premises herein leased.

7. The Tenant 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 Tenant 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 Tenant assures that it will require that its covered sub organizations provide assurances to the Tenant that they similarly will undertake affirmative action programs and that they will require assurances from their sub organizations, 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 Tenant and without interference or hindrance.

9. The City of Marina reserves the right, but shall not be obligated to the Tenant 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 Tenant in this regard.

10. This Lease 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 leased. 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. Tenant 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 Leased premises, or in the event of any planned modification or alteration of any present of future building or structure situated on the Leased premises.

13. The Tenant by accepting this expressly agrees for itself, its successors and assigns that it will not erect nor Lease 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 Leased hereunder and to remove the offending structure or object, all of which shall be at the expense of the Tenant.

14. The Tenant by accepting this Lease agrees for itself, its successors and assigns that it will not make use of the Leased 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 Leased and cause the abatement of such interference at the expense of the Tenant.

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 Lease 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.

February 25, 2022 Item No. **8g(2)**

Honorable Mayor and Members City Council Meeting
of the Marina City Council of March 1, 2022

CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-, APPROVING AN AGREEMENT FOR LEGAL SERVICES WITH WELLINGTON LAW OFFICES; AUTHORIZE THE CITY MANAGER TO EXECUTE THE AGREEMENT AND AUTHORIZE THE FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES.

RECOMMENDATION: City Council consider:

1. Adopt Resolution No. 2022-, approving an agreement with Wellington Law Offices to provide legal services to the City of Marina; and
2. Authorize the Finance Director to make necessary accounting and budgetary entries.

BACKGROUND:
In November 2021, the Wellington Law Offices provided notice to the Mayor and City Council that they would be resigning as the City of Marina's City Attorney and Assistant Attorney effective March 1, 2022. Rob Wellington has been serving as Marina's City Attorney since the City incorporated in November 1975.

The City has been reviewing the scope of services for the new City Attorney and is developing an RFP to release and anticipates being able to hire a new City Attorney in the next couple months. In the interim, there is a need for continued legal services and Wellington Law Offices has agreed to continue to provide these needed legal services.

ANALYSIS:
Under the proposed agreement, Wellington Law Offices will provide, consulting, representational and legal services pertaining to local governmental matters, including conferring and consulting with the officers and administrative staff of the City, preparing and reviewing legal documents, representation in negotiations and administrative proceedings, and unless otherwise unavailable, attending all meetings as requested by the City or otherwise required by law. **(EXHIBIT A)**

The agreement is based on a hourly rate of Two Hundred Dollars ($200.00) per hour for services performed including reasonable travel time and includes reimbursement for necessary costs and expenses incurred by Attorneys on behalf of the City.

FISCAL IMPACT:
The current budget for Fiscal Year 2021/22 and 2022/23 includes funding for city attorney and legal services and no additional budget adjustments are needed.

Layne Long
City Manager
City of Marina

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
APPROVING AN AGREEMENT FOR LEGAL SERVICES WITH WELLINGTON LAW OFFICES
AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, the Wellington Law Offices has served as Marina's City Attorney since 1975 and has notified the City they will be resigning effective March 1, 2022, and

WHEREAS, the City has continued need for legal services while it is recruiting for a new City Attorney, and the Wellington Law Offices is willing to enter into an agreement to continue providing legal services to the City of Marina on an hourly basis, and

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

1. Approve an agreement for Legal Services with Wellington Law Offices; and
2. Authorize the City Manager to execute the agreement; and
3. Authorize the Finance Director to make necessary accounting and budgetary entries, and

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 1st of March 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

AGREEMENT FOR LEGAL SERVICES

This Agreement is entered into on March 1, 2022, between the WELLINGTON LAW OFFICES ("Attorneys") and the CITY OF MARINA, a municipal corporation ("City").

1. Conditions

This Agreement will not take effect, and Attorneys will have no obligation to provide services, until City returns a properly signed and executed copy of this Agreement.

2. Attorney's Services

Attorneys agree to provide City with consulting, representational and legal services pertaining to local governmental matters, including conferring and consulting with the officers and administrative staff of City, preparing and reviewing legal documents, representation in negotiations and in administrative proceedings, and unless otherwise unavailable attending all meetings as requested by City or otherwise required by law.

3. Fees, Costs, Expenses

City agrees to pay Attorneys the sums billed monthly for time spent by Attorneys in providing the services, including reasonable travel time.

The current hourly rate for Attorneys' time is Two Hundred Dollars ($200.00). Attorneys will provide the City with advance written notification of any adjustment in the range of rates. Attorneys bill time in minimum units of one-tenth of an hour.

City agrees to reimburse Attorneys for necessary costs and expenses incurred by Attorneys on behalf of City. Attorneys bill photocopying charges at Fifteen Cents ($0.15) per page.

Payment by City against monthly billings is due upon receipt of statements, and is considered delinquent if payment is not received within thirty (30) days of the date of the invoice.

4. Professional Liability Insurance

The California Business & Professions Code requires us to inform you whether we maintain errors and omissions insurance coverage applicable to the services to be rendered to you. We hereby confirm that the firm does maintain such insurance coverage.

5. Arbitration of Professional Liability or Other Claims

If a dispute between City and Attorneys arises over fees charged for services, the controversy will be submitted to binding arbitration in accordance with the rules of the California State Bar Fee Arbitration Program, set forth in California Business and Professions Code, sections 6200 through 6206. The arbitrator or arbitration panel shall have the authority to award to the prevailing party attorneys' fees, costs and interest incurred. Any arbitration award may be served by mail upon either side and personal service shall not be required.

If a dispute arises between City and Attorneys over any other aspect of the attorney-client relationship, including, without limitation, a claim for breach of professional duty, that dispute will also be resolved by arbitration. It is understood that any dispute as to any alleged breach of professional duty (that is, as to whether any legal services rendered under this agreement were allegedly unnecessary, unauthorized, omitted entirely, or were improperly, negligently or incompetently rendered) will be determined by submission to arbitration as provided by California law, and not by a lawsuit or resort to court process except as California law provides for judicial review of arbitration proceedings. **Both parties to this agreement, by entering into it, are giving up their constitutional right to have any such dispute decided in a court of law before a jury, and instead are accepting the use of arbitration.** Each party is to bear its own attorney's fees and costs.

6. File Retention

After services by Attorneys conclude, Attorneys will, upon City's request, deliver any files for pending matters to City, along with any funds or property of City in Attorneys' possession. If City requests a file for any matter, Attorneys will retain a copy of the file at the City's expense. If City does not request a file for any pending matter, Attorneys will retain it for a period of seven (7) years after the matter is closed. If City does not request delivery of the files before the end of the seven- year period, Attorneys will have no further obligation to retain the file and may, at their discretion, destroy it without further notice to City. At any point during the seven- year period, City may request delivery of the file.

7. Assignment

This Agreement is not assignable without the written consent of City.

8. Independent Contractor

It is understood and agreed that Attorneys, while engaged in performing the terms of this Agreement, arean independent contractor and not an employee of City.

9. Authority

The signators to this Agreement represent that they are authorized to execute this Agreement on behalf of their respective parties and to bind their respective parties hereto.

10. Term

This Agreement is effective March 1, 2022, and may be modified by mutual written agreement of the parties. This Agreement shall be terminable by either party with or without cause, upon fifteen (15) days' advance written notice.

11. Modification

No amendment, modification, other alteration of this Agreement shall be valid unless in writing and signed by both of the parties hereto.

12. Entire Agreement

This Agreement contains the entire agreement of the parties hereto, No other agreement, statement or promise made on or before the effective date of this Agreement will be binding on the parties hereto.

WELLINGTON LAW OFFICES	CITY OF MARINA, A Municipal Corporation
By: ________________________	By: ________________________
Name: Robert R. Wellington	Name: Layne Long
	Title: City Manager
Date: ________________________	Date: ________________________

ORDINANCE NO. 2022 - ______

AN ORDINANCE OF THE CITY OF MARINA ADOPTING NEW COUNCIL DISTRICT BOUNDARIES FOR FOUR COUNCIL DISTRICTS PURSUANT TO CALIFORNIA ELECTIONS CODE §§21621-21629 AND CALIFORNIA GOVERNMENT CODE § 34871(c) & 34886

WHEREAS, the City of Marina supports the full participation of all residents in electing members of the City Council; and

WHEREAS, Section 2.06.010 of Chapter 2 of the Marina Municipal Code provides that that the general municipal election in the City shall be held on the same date as the statewide general election in November of even-numbered years; and

WHEREAS, in an election held on November 8, 2016, the voters approved the addition to the City Charter of Section 1.04 of Article 6 to provide for the direct election of the mayor, who is also a member of the City Council, to serve a term of four years; and

WHEREAS, California Government Code section 34871 (c) provides for the election of members of the legislative body of a city by districts in four districts with a separately elected mayor; and

WHEREAS, at an adjourned regular meeting on September 5, 2019, the City Council adopted Resolution 2019-96 declaring its intention to transition from at-large to by-district elections for members of the City Council members elections pursuant to Elections Code Section 10010; and

WHEREAS, at a regular meeting on December 17, 2019, the City Council adopted Ordinance 2019-04 establishing Council district boundaries as set forth on Map 109 C attached to Ordinance 2019-04 for four Council districts while retaining the separately elected office of mayor; and

WHEREAS, in adopting Ordinance 2019-04 the City Council declared the change in the method of electing members of the City Council of the City of Marina made by Ordinance 2019-04 was to implement the guarantees of Section 7 of Article I and of Section 2 of Article II of the California Constitution as set forth in California Elections Code section 14031 of the California Voting Rights Act of 2001; and

WHEREAS, in a by-district election system a candidate for City Council must reside in the district which he or she wishes to represent and only the voters of that district are entitled to vote to decide who their representative will be; and

WHEREAS, at the 2020 General Municipal Election conducted on November 3, 2020, Members of the City Council were elected in Council District 2 and Council District 3. Marina Municipal Code Section 2.06.030 B. provides for the election of Members of the City Council from Council District 1 and Council District 4 beginning at the General Municipal Election to be conducted on November 8, 2022; and

WHEREAS, California Elections Code Section 21621 requires that following each decennial federal census, and using that census as a basis, the City Council shall, by ordinance or resolution adjust the boundaries of any or all of the Council districts of the City so that the districts shall be as nearly equal in population as may be and shall comply with the applicable provision of Public Law 94-171 as amended, the United States Constitution, the California Constitution and the federal Voting Rights Act of 1965. In establishing the boundaries of the districts the City Council shall give consideration to the following criteria in order of priority: (a) geographic continuity, (b) geographic integrity of local neighborhoods or communities of interest, (c) ease of identification and understandability by residents through use of natural and artificial barriers as boundaries, and (d) geographical compactness; and

WHEREAS, due to delays caused by the COVID-19 pandemic the 2020 federal census was not published until August 2, 2021; and

WHEREAS, recently amended state law, California Elections Code section 21621(a), requires that redistricting be conducted using census data that are adjusted by the California Statewide Database to reassign incarcerated persons back to their last known place or residence prior to incarceration; and

WHEREAS, the California Statewide Database published the final version of those adjusted census data on September 27, 2021, and provided the City of Marina with an official population estimate of 22,422 residents; and

WHEREAS, California Elections Code Sections 21621-21629 set forth the procedures the City of Marina is to follow to determine and redetermine Council district boundaries; and

WHEREAS, City staff and the City's consultants, National Demographics Corporation, Inc., as the provider of professional demographer services, and Tripepi, Smith & Associates, Inc., as the provider of professional public outreach services, commenced facilitating revision of the Council district map in June 2021; and

WHEREAS, public hearings were held on July 6 and September 21, 2021, prior to the release of draft maps, to identify neighborhoods and communities of interest and secondary areas of consideration and to review the use of mapping tools; and

WHEREAS, community workshops were held on November 19 and November 20, 2021, to review the redistricting process and the official census date, to discuss neighborhoods and communities of interest and secondary areas of consideration and to provide demonstrations and instructions on the use of mapping tools; and

WHEREAS, public hearings were held on January 4, February 15, and February 23, 2022, to discuss and revise draft maps, discuss election sequencing, and to identify maps for consideration; and

WHEREAS, the City maintains and will maintain for ten years a comprehensive website for its redistricting process at www.mapmarina.org on which the City provided a general explanation of the redistricting process in English and other languages, information on how to participate in the process, the schedule for all public hearings and the community workshops, the notice and agenda for each public hearing and workshop, each draft map considered by the City Council at a public hearing, and online tools for members of the public to submit proposed maps for consideration and other useful information; and

WHEREAS, a varied outreach program to the public was conducted in English, Spanish, Vietnamese and Korean languages and via the City of Marina's social media accounts, its website at www.cityofmarina.org, direct email, newsflash announcement, announcements of City Council meetings and workshops and newspaper advertisements, press releases and public hearing notices; and

WHEREAS, throughout the foregoing process the City of Marina and the City Council engaged in a significant amount of public outreach and engagement required by California Elections Code section 21500 et sq, "the Fair and Inclusive Redistricting for Municipalities and Political Subdivisions (FAIR MAPS Act); and

WHEREAS, the purpose of this Ordinance is to enact, pursuant to California Government Code section 34886 and California Elections Code section 21621 an ordinance providing for the election of the members of the City Council of the City of Marina by district in four single-member districts while retaining a separately elected office of mayor.

NOW, THEREFORE, the City Council of the City of Marina does find and ordain as follows:

Section 1

The City Council finds the City is in substantial compliance with the procedural requirements of the City Charter, the Marina Municipal Code, and California Elections Code sections 21621-21629 and the proposed new Council district boundaries in the map attached as **Exhibit A** are in accord with the criteria set forth in the FAIR MAPS Act.

Section 2.

The City Council hereby adopts as the official Council District Map of the City of Marina the map attached hereto as **Exhibit A** and directs that the map be published on the City's websites at www.cityofmarina.org and www.mapmarina.com.

Section 3.

Chapter 2.06 of the Marina Municipal Code, entitled "Municipal Elections" is hereby amended by replacing Subsection 2.06.020. B.(1) in its entirety and replacing it with the following:

"2.06.020. B. (1) Beginning with the general municipal election in November 2022, councilmembers shall be elected in the electoral districts whose boundaries and district numbers are reflected on the map contained in **Exhibit A** attached hereto and incorporated herein by this reference and as subsequently reapportioned as provided by State law. Elections shall take place on a by-district basis as that term is defined in California Government Code section 34871, meaning one member of the City Council shall be elected from each district, by the voters of that district alone, except for the Mayor, who shall be elected citywide. In accordance with the general law and the City Charter, each councilmember and the Mayor, shall serve a four-year term until his or her successor has qualified."

Section 4

If necessary to facilitate the implementation of this Ordinance, the City Manager or his or her designee is authorized to make technical adjustments to the district boundaries that do not substantively affect the populations in the districts, the eligibility of candidates, or the residence of elected officials within any district. The City Manager shall consult with the City Attorney concerning any technical adjustments deemed necessary and shall advise the City Council of any such adjustments required in the implementation of the districts.

Section 5.

The City Council finds that the proposed amendments to the Marina Municipal Code are exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations, Section 15061 (b)(3) in that it is not a project which has the potential for causing a significant effect on the environment.

Section 6.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 7

This Ordinance shall be in full force and effect thirty (30) days after its final passage, and the Ordinance shall be posted within fifteen (15) days after the adoption.

Section 8

The Council districts adopted herein shall be used for the November 2022 general municipal election and each election thereafter until such time as the districts may be modified again in accordance with the Charter, the Municipal Code and the California Elections Code.

Section 9

The Deputy City Clerk is hereby directed to provide a certified copy of this Ordinance and **Exhibit A** to the Monterey County Registrar of Voters for use in subsequent City of Marina City Council elections.

THE FOREGOING ORDINANCE was introduced following a public hearing held at a special meeting of the City Council of the City of Marina on February 23, 2022, and will come for adoption as an Ordinance of the City of Marina at a regular meeting of the Council to be held on March 1, 2022.

AYES, COUNCIL MEMBERS:
NOES, COUNCIL MEMBERS:
ABSENT, COUNCIL MEMBERS:
ABSTAIN, COUNCIL MEMBERS:

Bruce C. Delgado, Mayor

ATTEST:

Anita Sharp, Deputy City Clerk

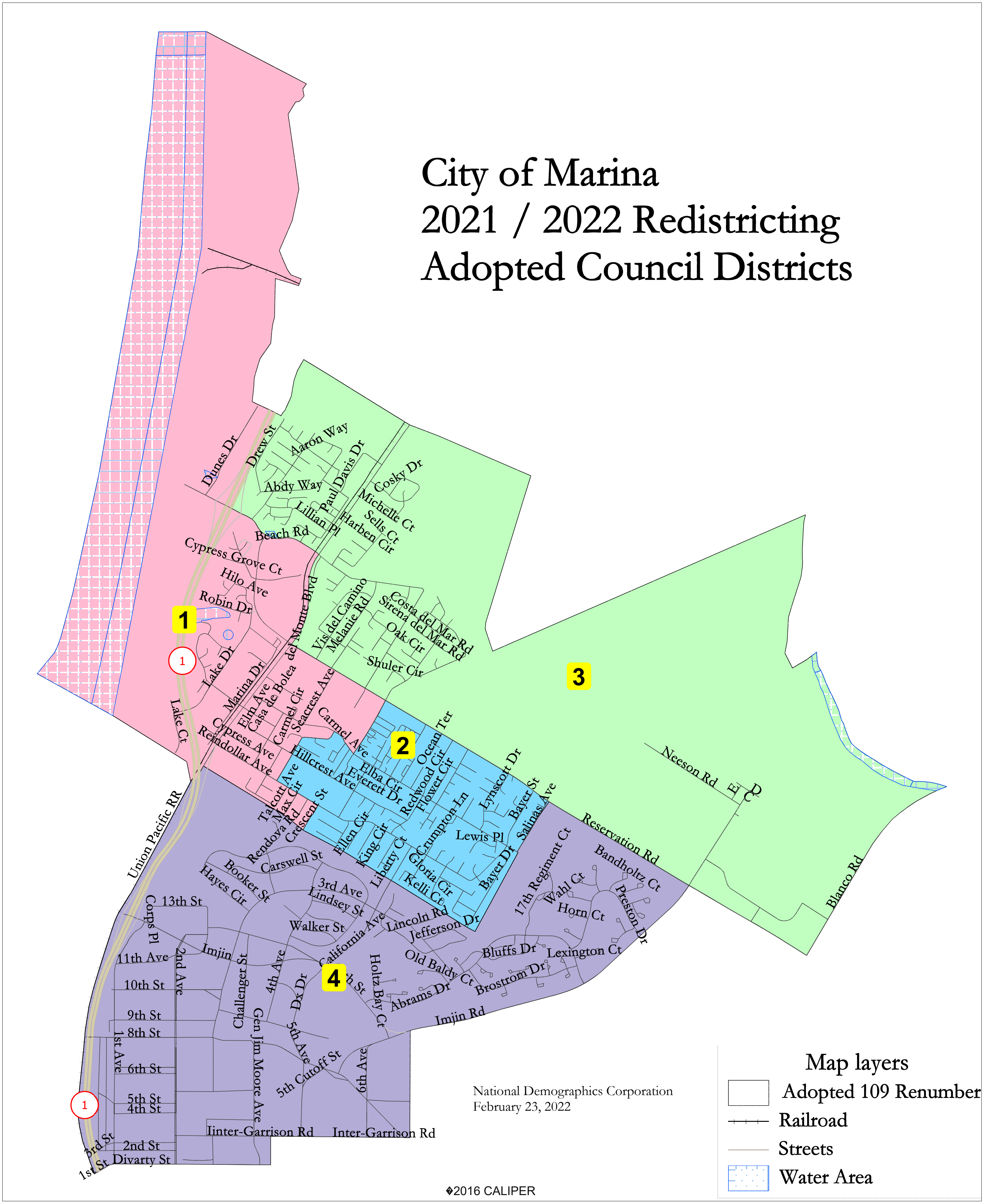
City of Marina
2021 / 2022 Redistricting
Adopted Council Districts
1
2
3
4
Dunes Dr
Drew St
Aaron Way
Abdy Way
Paul Davis Dr
Cosky Dr
Lillian Pl
Michelle Ct
Sells Ct
Harben Cir
Beach Rd
Cypress Grove Ct
Hilo Ave
Robin Dr
Lake Dr
Lake Ct
Marina Dr
Elm Ave
Casa de Bolea
del Monte Blvd
Vis del Camino
Melanie Rd
Costa del Mar Rd
Sirena del Mar Rd
Oak Cir
Shuler Cir
Carmel Cir
Seacrest Ave
Cypress Ave
Reindollar Ave
Carmel Ave
Ocean Ter
Hillcrest Ave
Elba Cir
Everett Dr
Redwood Cir
Flower Cir
Lynscott Dr
Bayer St
Salinas Ave
Neeson Rd
Reservation Rd
Talcott Ave
Max Cir
Rendova Rd
Crescent St
Ellen Cir
King Cir
Liberty Ct
Crumpton Ln
Lewis Pl
Gloria Cir
Kelli Ct
Bayer Dr
17th Regiment Ct
Wahl Ct
Horn Ct
Bandholtz Ct
Preston Dr
Blanco Rd
Union Pacific RR
Carswell St
Booker St
Hayes Cir
3rd Ave
Lindsey St
13th St
Corps Pl
Walker St
Lincoln Rd
Jefferson Dr
California Ave
Imjin
11th Ave
2nd Ave
10th St
Challenger St
4th Ave
Dix Dr
Holtz Bay Ct
Old Baldy Ct
Bluffs Dr
Lexington Ct
Brostrom Dr
Abrams Dr
Imjin Rd
9th St
8th St
1st Ave
Gen Jim Moore Ave
5th Ave
5th Cutoff St
6th Ave
6th St
5th St
4th St
2nd St
3rd St
1st St
Divarty St
Iinter-Garrison Rd
Inter-Garrison Rd
National Demographics Corporation
February 23, 2022
Map layers
Adopted 109 Renumber
Railroad
Streets
Water Area
©2016 CALIPER

Exhibit A

Adopted 109 Renumbered						
District		1	2	3	4	Total
	Total Pop	5,630	5,817	5,632	5,343	22,422
	Deviation from ideal	24	211	26	-263	474
	% Deviation	0.43%	3.76%	0.46%	-4.69%	8.46%
Total Pop	% Hisp	40.7%	30%	27%	31%	32%
	% NH White	27%	34%	35%	35%	33%
	% NH Black	6%	5%	7%	8%	7%
	% Asian-American	20%	23%	23%	19%	21%
Citizen Voting Age Pop	Total	3,539	4,351	3,946	2,974	14,811
	% Hisp	24%	12%	23%	27%	21%
	% NH White	35%	56%	43%	41%	45%
	% NH Black	9%	4%	9%	12%	8%
	% Asian/Pac.Isl.	27%	21%	20%	19%	22%
Voter Registration (Nov 2020)	Total	2,939	3,877	3,446	1,985	12,247
	% Latino est.	29%	25%	21%	21%	24%
	% Spanish-Surnamed	26%	23%	19%	19%	22%
	% Asian-Surnamed	9%	10%	9%	9%	9%
	% Filipino-Surnamed	3%	4%	4%	3%	4%
	% NH White est.	49%	59%	57%	51%	55%
	% NH Black	12%	4%	11%	16%	10%
Voter Turnout (Nov 2020)	Total	2,305	3,151	2,821	1,600	9,877
	% Latino est.	28%	24%	19%	19%	23%
	% Spanish-Surnamed	25%	22%	18%	18%	21%
	% Asian-Surnamed	8%	9%	8%	8%	8%
	% Filipino-Surnamed	3%	4%	4%	3%	3%
	% NH White est.	51%	62%	58%	53%	57%
	% NH Black	12%	4%	11%	15%	10%
Voter Turnout (Nov 2018)	Total	1,439	2,136	2,008	804	6,387
	% Latino est.	25%	19%	17%	17%	19%
	% Spanish-Surnamed	23%	17%	15%	16%	18%
	% Asian-Surnamed	7%	7%	6%	6%	7%
	% Filipino-Surnamed	3%	3%	3%	2%	3%
	% NH White est.	55%	67%	63%	54%	61%
	% NH Black est.	12%	4%	12%	17%	10%
ACS Pop. Est.	Total	5,636	6,388	5,789	4,415	22,228
Age	age0-19	25%	24%	27%	38%	28%
	age20-60	54%	49%	54%	47%	51%
	age60plus	20%	26%	19%	15%	21%
Immigration	immigrants	28%	27%	18%	18%	23%
	naturalized	53%	49%	54%	60%	53%
Language spoken at home	english	50%	69%	65%	68%	63%
	spanish	28%	14%	22%	19%	21%
	asian-lang	18%	13%	11%	9%	13%
	other lang	4%	3%	2%	5%	3%
Language Fluency	Speaks Eng. "Less than Very Well"	26%	15%	12%	13%	17%
Education (among those age 25+)	hs-grad	44%	47%	46%	42%	45%
	bachelor	19%	16%	21%	19%	19%
	graduatedegree	8%	13%	9%	10%	10%
Child in Household	child-under18	32%	28%	30%	43%	32%
Pct of Pop. Age 16+	employed	71%	62%	68%	61%	65%
Household Income	income 0-25k	19%	24%	12%	17%	18%
	income 25-50k	22%	15%	18%	19%	19%
	income 50-75k	26%	19%	16%	20%	20%
	income 75-200k	30%	36%	47%	40%	38%
	income 200k-plus	3%	5%	7%	4%	5%
Housing Stats	single family	29%	74%	66%	43%	54%
	multi-family	71%	26%	34%	57%	46%
	rented	73%	40%	44%	89%	57%
	owned	27%	60%	56%	11%	43%

Total population data from the 2020 Decennial Census.

Surname-based Voter Registration and Turnout data from the California Statewide Database.

Latino voter registration and turnout data are Spanish-surname counts adjusted using Census Population Department undercount estimates. NH White and NH Black registration and turnout counts estimated by NDC. Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2015-2019 American Community Survey and Special Tabulation 5-year data.

February 25, 2022 Item No. **10a**

Honorable Board Members
of the Successor Agency to the Marina Redevelopment Agency

Successor Agency Meeting of
March 1, 2022

THE CITY COUNCIL OF THE CITY OF MARINA, ACTING AS THE GOVERNING BOARD OF THE SUCCESSOR AGENCY TO THE MARINA REDEVELOPMENT AGENCY, ADOPTING RESOLUTION NO. 2022- (SA-MRA), APPROVING THE ISSUANCE OF BONDS IN ORDER TO MAKE PAYMENTS ON AN ENFORCEABLE OBLIGATION WITH MARINA COMMUNITY PARTNERS, LLC, APPROVING A SECOND SUPPLEMENTAL INDENTURE OF TRUST RELATING THERETO, REQUESTING THE CONSOLIDATED OVERSIGHT BOARD APPROVAL OF THE ISSUANCE OF THE BONDS, AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO

REQUEST:

It is requested that the Marina City Council, acting as the Governing Board of the Successor Agency to the former Redevelopment Agency:

1. Adopt a Resolution No. 2022- (SA-MRA), that approves certain documents for property tax increment bond issues for the Marina Dunes project, pursuant to pre-existing enforceable obligations, and takes various other actions related thereto, and
2. Direct the City Manager to return to the Board with the balance of the documents required to complete this transaction, including preliminary official statements and bond purchase contracts.

BACKGROUND:

Prior to its dissolution, the Marina Redevelopment Agency entered into a number of agreements with Marina Community Partners, LLC (the Developer) in connection with the Marina Dunes project. These agreements included a Disposition and Development Agreement, two Implementation Agreements, and a Tax Increment Plan and Agreement (the Agreements). The Disposition and Development Agreement, which has been placed on the Successor Agency's Recognized Obligation Payment Schedules (ROPS) and approved by the State Department of Finance, committed the former Agency to make certain payments to the Developer from tax increment generated by the Dunes project (and with respect to the housing bonds, the Sea Haven Project as well) and, at the Developer's request, to issue tax increment bonds secured by these payments. The Successor Agency previously issued bonds in 2018 and in 2020, both at the request of the Developer. Proceeds were used to partially reimburse the Developer for certain eligible expenses including construction of new infrastructure and costs associated with the construction of the affordable housing. Based on growth in assessed value since issuance of the 2020 Bonds, which supports issuance of additional bonds, the Developer has requested that the Successor Agency proceed with two new bond issues in a letter attached as **EXHIBIT A**.

State law adopted after the dissolution of redevelopment authorizes a successor agency to issue bonds for purposes of refunding debt of the former agency and for a limited set of other purposes, including to make payments on obligations such as the Agreements entered into by the former Agency with the Developer. The Developer has requested that the Successor Agency proceed with these bond issues, and the attached resolution initiates that process.

The Resolution takes a number of actions:

- Recognizes the Successor Agency's obligation to issue the bonds under the terms of the DDA and approves their issuance in an amount not to exceed $17,000,000;

- Approves in substantial form a supplemental bond indenture (**EXHIBIT B**), which supplements the previously approved indenture for the 2018 Bonds and 2020 Bonds to provide for two additional bond issues. The indenture is the basic legal document governing the bonds. The supplemental indenture must be approved prior to seeking approval of the State Department of Finance (DOF);

- Requests that the Monterey Consolidated Oversight Board approve the bond issues and make certain required determinations;

- Appoints the members of the financing team;

- Authorizes the City Manager to take additional actions as necessary to obtain DOF approval and complete the necessary bond documentation for Successor Agency approval.

The Successor Agency submitted a Recognized Obligation Payment Schedule (ROPS) for the upcoming 2022-23 fiscal year to the DOF at the end of January which includes a potential payment to the Developer from the proceeds of the two new bond issues. The payment identified on the ROPS would only be made to the extent bonds are authorized by the Successor Agency, the Consolidated Oversight Board, the DOF, and are subsequently issued. DOF has stated it will only approve the payment on the ROPS if bonds are first authorized by the Consolidated Oversight Board. Approval by the Successor Agency must occur before seeking the approval of the Consolidated Oversight Board. The Successor Agency is seeking approval from the Consolidated Oversight Board prior to the DOF's deadline for finalizing its review of the ROPS.

ANALYSIS:

The former Marina Redevelopment Agency entered into a Disposition and Development Agreement with the Developer to undertake a multi-phased mixed-use development on former lands of the Fort Ord Army base located in the City, which was subsequently amended by the First and Second Implementation Agreements. The Second Implementation Agreement committed the former Agency to pay to the Developer the tax increment generated by the Dunes Project as well as a portion of the tax increment generated by the Sea Haven project (formerly Marina Heights) to reimburse the Developer for infrastructure costs and costs associated with the development of affordable housing. As part of the Second Implementation Agreement, the former Agency and the Developer entered into a Tax Increment Financing Plan and Agreement that specified the terms of the tax increment payments to the Developer. The Tax Increment Financing Plan and Agreement provides that the Developer may, from time to time, request that the Agency issue bonds secured by the pledged tax increment otherwise to be paid to the Developer. The Agency is required to act reasonably and in good faith to issue such bonds. The Successor Agency has succeeded to the former Agency's obligation under the Agreements, including the Tax Increment Financing Plan and Agreement. The Successor Agency previously issued bonds in 2018 in the total amount of $13,490,000 and in 2020 in the total amount of $9,740,000 as required under the Agreements. Each issuance was done in two series, one funding the nonhousing infrastructure costs and the other funding affordable housing costs. The Developer is now requesting that the Successor Agency proceed with two additional bond issues in accordance with the requirements of the Tax Increment Financing Plan and Agreement, supported by additional assessed value added by new construction occurring since the issuance of the 2020 bonds.

City staff has assembled a financing team to assist the Successor Agency in meeting its obligation under the Tax Increment Financing Plan and Agreement. The team, which also assisted with the 2018 and 2020 issuances consists of KNN Public Finance as municipal advisor for assisting in managing the bond issue, Keyser Marston Associates as fiscal consultant tasked with preparing a report on the project area as required by investors, Quint & Thimmig, LLP, as bond and disclosure counsel, who will prepare the various legal and disclosure documents for the bond issues, and Stifel, Nicolaus & Company Incorporated to underwrite the bond issues and market it to investors. This team has worked with City staff and its counsel, Goldfarb & Lipman, to develop a plan of finance and to prepare the initial documents. Approval of the resolution, its various findings and a form of supplemental bond indenture, and the subsequent approval by the Consolidated Oversight Board, will allow the transaction to be submitted to the DOF for its approval, as required by State law. During the 65-day period that the DOF has to approve the financing, the additional documentation required for the transaction, such as preliminary official statements, continuing disclosure agreements, and bond purchase agreements, will be drafted for submittal to the Governing Board of the Successor Agency for its approval.

Based on projections of available tax increment revenue and using the assumptions set forth in the Tax Increment Financing Plan and Agreement, it is recommended that up to $17 million in two series of bonds be authorized. The actual amount of bonds that will be issued will depend on a number of factors that cannot be determined until closer to the actual sale, including whether the bonds will all bear taxable interest rates or a combination of taxable and tax-exempt rates, the actual interest rate market at the time of sale, and the amount of tax-increment that can be pledged to the bonds. The bonds will have a minimum term of 20-years as required by the Tax Increment Financing Plan and Agreement.

The proceeds of the bonds will be used to reimburse the Developer for costs incurred related to the development of the Dunes. The Developer previously submitted to the Former Agency invoices for infrastructure costs in the amount of $98.7 million and $15.6 million for costs related to affordable housing. To date, the Developer has received a total of $15.9 million for infrastructure costs and $15.6 million for costs related to affordable housing. The Developer has stated that an additional invoice for affordable housing costs will be submitted prior to issuance of the bonds.

TONIGHT'S ACTION – The adoption of the attached resolution will approve the initial steps required prior to seeking Consolidated Oversight Board approval and submitting the transaction to the State Department of Finance.

The balance of the bond documents will be presented to the Successor Agency in the coming months.

FISCAL IMPACT:

There is no direct impact on the City or the General Fund from issuing the bonds in that costs associated with issuance of the bonds are expected to be paid out of bond proceeds and debt service on the bonds will be paid from the portion of the property tax increment that is currently being paid to the Developer as required by the DDA and the Second Implementation Agreement. Proceeding with the bond issue is a key implementation step that will help to facilitate continued progress on Phase 2 and 3 of the project and completion of an additional 140 affordable units within the project.

CONCLUSION:

This request is submitted for Successor Agency to the Marina Redevelopment Agency consideration and possible action.

Respectfully submitted

____

Layne Long
City Manager [and Executive Director]
City of Marina [and Successor Agency of the Marina Redevelopment Agency]

Exhibit A – Letter from Marina Community Partners Requesting Issuance of Bonds
Exhibit B – Supplemental Indenture

RESOLUTION NO. 2022-___ (SA-MRA)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA, ACTING AS THE SUCCESSOR AGENCY TO THE MARINA REDEVELOPMENT AGENCY, APPROVING THE ISSUANCE OF BONDS IN ORDER TO MAKE PAYMENTS ON AN ENFORCEABLE OBLIGATION, APPROVING THE EXECUTION AND DELIVERY OF A SECOND SUPPLEMENTAL INDENTURE OF TRUST RELATING THERETO, REQUESTING CONSOLIDATED OVERSIGHT BOARD APPROVAL OF THE ISSUANCE OF THE BONDS, REQUESTING CERTAIN DETERMINATIONS BY THE CONSOLIDATED OVERSIGHT BOARD, AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO

WHEREAS, pursuant to section 34172(a) of the California Health and Safety Code (unless otherwise noted, all section references hereinafter being to such Code), the Marina Redevelopment Agency (the “Former Agency”) has been dissolved and no longer exists as a public body, corporate and politic, and pursuant to section 34173, the Successor Agency to the Marina Redevelopment Agency (the “Successor Agency”) has become the successor entity to the Former Agency;

WHEREAS, prior to the dissolution of the Former Agency, the Former Agency entered into a Disposition and Development Agreement, dated as of May 31, 2005 (the “DDA”), between the Former Agency and Marina Community Partners, LLC (the “Developer”), and in furtherance of certain provisions of the DDA, the Former Agency and the Developer entered into an Implementation Agreement dated as of September 9, 2006, a Second Implementation Agreement dated as of August 5, 2008 and a Tax Increment Financing Plan and Agreement, dated as of August 5, 2008 (the “Financing Plan,” and together with the DDA, the “Former Agency Obligation”);

WHEREAS, the Former Agency Obligation includes an obligation of the Successor Agency to make payments from certain Available Non-Housing Tax Increment Funds for Eligible Project Costs and to make payments from certain Available LMIHF Funds for Eligible LMIHF Costs, as such capitalized terms are defined in the Financing Plan;

WHEREAS, the Former Agency Obligation has been included on Recognized Obligation Payment Schedules prepared for the Successor Agency pursuant to section 34177, and has been recognized by the Successor Agency, the Oversight Board of the Successor Agency to the Marina Redevelopment Agency (the “Oversight Board”), and the California Department of Finance as an “Enforceable Obligation” of the Former Agency, as such term is defined in section 34171(d);

WHEREAS, section 34177.5(a)(4) authorizes the Successor Agency to issue bonds to make payments under enforceable obligations when the enforceable obligations include the irrevocable pledge of property tax increment, formerly tax increment revenues prior to the effective date of section 34177.5, and the enforceable obligations also include the obligation to issue bonds secured by that pledge, and the Former Agency Obligation includes such an irrevocable pledge and obligation to issue bonds;

WHEREAS, pursuant to Section 6 of Part 1 and Section 6 of Part 2 of the Financing Plan, in 2017 the Developer requested that the Successor Agency issue bonds to make payments on the Former Agency Obligation;

WHEREAS, in response to the Developer's request: (a) on October 3, 2017, the governing board Successor Agency adopted Resolution No. 2017-07 (SA-MRS) approving the issuance of bonds (the "2018 Bonds") in order to make payments on the Former Agency Obligation; (b) on November 2, 2017, the governing board of the Oversight Board adopted Resolution No. 2017-08 (OB) approving the issuance of the 2018 Bonds by the Successor Agency (the "2017 OB Resolution"); (c) the State of California Department of Finance delivered a letter dated February 9, 2018 to the Successor Agency approving portions of the 2017 OB Resolution, including the portion that approved the issuance of the 2018 Bonds by the Successor Agency; (d) on July 26, 2018, the Successor Agency issued the 2018 Bonds pursuant to an Indenture of Trust, dated as of July 1, 2018 (the "Original Indenture"), between the Successor Agency and MUFG Union Bank, N.A., as trustee (the "Original Trustee"), including the Successor Agency's Tax Allocation Bonds, Series 2018A (the "2018A Bonds") in the initial principal amount of $6,905,000 and the Successor Agency's Housing Tax Allocation Bonds, Series 2018B (the "2018B Bonds") in the initial principal amount of $6,585,000; and (e) the net proceeds of the 2018A Bonds were used to reimburse the Developer for Eligible Project Costs and the net proceeds of the 2018B Bonds were used to reimburse the Developer for the Eligible LMIHF Costs, all in satisfaction of portions of the Former Agency Obligation;

WHEREAS, pursuant to Section 6 of Part 1 and Section 6 of Part 2 of the Financing Plan, in 2020 the Developer requested that the Successor Agency issue two new series of bonds to make additional payments on the Former Agency Obligation;

WHEREAS, in response to the Developer's request: (a) on February 19, 2020, the governing board Successor Agency adopted Resolution No. 2020-01 (SA-MRS) approving the issuance of bonds (the "2020 Bonds") in order to make additional payments on the Former Agency Obligation; (b) on February 27, 2020, the governing board of the Consolidated Oversight Board Successor Agency for the County of Monterey, State of California (the "Consolidated Oversight Board") adopted Resolution No. 2020-10 (OB) approving the issuance of the 2020 Bonds by the Successor Agency (the "2020 OB Resolution"); (c) the State of California Department of Finance delivered a letter dated April 15, 2020 to the Successor Agency approving portions of the 2020 OB Resolution, including the portion that approved the issuance of the 2020 Bonds by the Successor Agency; (d) on September 2, 2020, the Successor Agency issued the 2020 Bonds pursuant to the Original Indenture, as amended and supplemented by a First Supplemental Indenture of Trust, dated as of September 1, 2020 (the "First Supplement"), between the Successor Agency and the Original Trustee, including the Successor Agency's Tax Allocation Bonds, Series 2020A (the "2020A Bonds") in the initial principal amount of $4,790,000 and the Successor Agency's Housing Tax Allocation Bonds, Series 2020B (the "2020B Bonds") in the initial principal amount of $4,950,000; and (e) the net proceeds of the 2020A Bonds were used to reimburse the Developer for Eligible Project Costs and the net proceeds of the 2020B Bonds were used to reimburse the Developer for the Eligible LMIHF Costs, all in satisfaction of portions of the Former Agency Obligation;

WHEREAS, the Developer has now sent the Successor Agency a request pursuant to Section 6 of Part 1 and Section 6 of Part 2 of the Financing Plan, dated February 8, 2022, that the Successor Agency issue two new series of bonds to make additional payments on the Former Agency Obligation;

WHEREAS, in light of the foregoing, the Successor Agency desires at this time to authorize the issuance of two series of additional bonds (collectively, the “2022 Bonds”), with one such series to be secured on a parity with the 2018A Bonds and the 2020A Bonds and the other series to be secured on a parity with the 2018B Bonds and the 2020B Bonds, each under the Indenture (as defined below), and to use the proceeds of the 2022 Bonds to make payments to the Developer under the Former Agency Obligation, with the 2022 Bonds to be issued pursuant to the Original Indenture as amended and supplemented by the First Supplement and by a second supplemental indenture of trust (the Original Indenture, as so amended and supplemented, is referred to in this Resolution as the “Indenture”);

WHEREAS, the Successor Agency is now requesting that the Consolidated Oversight Board direct the Successor Agency to undertake the proceedings to issue the 2022 Bonds to make payments under the Former Agency Obligation and to approve the issuance of the 2022 Bonds pursuant to this Resolution and the Indenture;

WHEREAS, the Successor Agency further requests that the Consolidated Oversight Board make certain determinations described below on which the Successor Agency will rely in undertaking the proceedings to issue the 2022 Bonds to make payments under the Former Agency Obligation and the issuance of the 2022 Bonds;

WHEREAS, the Successor Agency has determined to sell the 2022 Bonds to Stifel, Nicolaus & Company, Incorporated (the “Underwriter”) pursuant to the terms of a bond purchase contract to be entered into by the Successor Agency and the Underwriter; and

WHEREAS, following approval by the Consolidated Oversight Board of the issuance of the 2022 Bonds by the Successor Agency and upon submission of this Resolution and a resolution of approval of the Consolidated Oversight Board (the “2022 OB Resolution”) to the California Department of Finance, the Successor Agency will, with the assistance of its disclosure counsel, its municipal advisor and its fiscal consultant, cause to be prepared a form of official statement for each series of the 2022 Bonds describing the respective series of the 2022 Bonds and containing material information relating to the Successor Agency and the respective series of the 2022 Bonds, the preliminary forms of which will be submitted to the Successor Agency for approval for distribution by the Underwriter to persons and institutions interested in purchasing 2022 Bonds, and counsel to the Underwriter will prepare a bond purchase contract relating to the sale by the Successor Agency of the 2022 Bonds to the Underwriter, the form of which also will be submitted to the Successor Agency for approval.

NOW, THEREFORE, THE SUCCESSOR AGENCY TO THE MARINA REDEVELOPMENT AGENCY hereby resolves as follows:

1. Determination of Need to Issue 2022 Bonds. The Developer has requested that the Successor Agency issue the 2022 Bonds pursuant to the Successor Agency’s obligations under the Former Agency Obligation. The Successor Agency has determined that the Former Agency Obligation is an enforceable obligation for purposes of section 34177.5(a)(4), and the Successor Agency acknowledges that it has an irrevocable obligation under the Former Agency Obligation to issue the 2022 Bonds, subject to the applicable provisions of the Former Agency Obligation, including Sections 6 of Part 1 and Section 6 of Part 2 of the Financing Plan.

2. Approval of Issuance of the 2022 Bonds. The Successor Agency hereby authorizes and approves the issuance of the 2022 Bonds in the aggregate principal amount of not to exceed $17,000,000.

3. Approval of Second Supplement. The Successor Agency hereby approves the Second Supplemental Indenture of Trust to be executed by the Successor Agency and U.S. Bank Trust Company, National Association, as trustee (the "Second Supplement") prescribing the terms and provisions of the 2022 Bonds and the application of the proceeds of the 2022 Bonds, in the form on file with the Secretary of the Successor Agency. The City Manager of the City of Marina (the "City Manager"), on behalf of the Successor Agency, is hereby authorized and directed to execute and deliver the Second Supplement in such form, together with such changes therein, deletions therefrom and additions thereto as the City Manager shall approve, such approval to be conclusively evidenced by the execution and delivery by the City Manager of the Second Supplement. The Successor Agency hereby authorizes the delivery and performance of the Second Supplement.

4. Municipal Bond Insurance and Surety Bond. The City Manager is hereby authorized and directed to take all actions necessary to obtain a municipal bond insurance policy for one or both series of the 2022 Bonds and reserve account bond insurance policy for one or both series of the 2022 Bonds from a municipal bond insurance company if it is determined by the City Manager, upon consultation with the municipal advisor to the Successor Agency and the Underwriter, that such municipal bond insurance policy and/or reserve account bond insurance policy will reduce the interest cost with respect to the applicable series of the 2022 Bonds.

5. Approval of Official Statements; Underwriter and Bond Purchase Contract. (a) Following approval by the Consolidated Oversight Board of the issuance of the 2022 Bonds by the Successor Agency and upon submission of this Resolution and the 2022 OB Resolution to the California Department of Finance, the Successor Agency will, with the assistance of its disclosure counsel, its fiscal consultant and its municipal advisor, cause to be prepared a form of official statement for each series of the 2022 Bonds describing the respective series of the 2022 Bonds to which it pertains and containing material information relating to the Successor Agency and the respective series of the 2022 Bonds, the preliminary forms of which will be submitted to the Successor Agency for approval for distribution by the Underwriter to persons and institutions interested in purchasing the 2022 Bonds.

(b) Stifel, Nicolaus & Company, Incorporated is hereby approved as the Underwriter for the 2022 Bonds. Following approval by the Consolidated Oversight Board of the issuance of the 2022 Bonds by the Successor Agency and upon submission of this Resolution and the 2022 OB Resolution to the California Department of Finance, the Underwriter will cause to be prepared a form of bond purchase contract, the preliminary form of which will be submitted to the Successor Agency for approval.

6. Consolidated Oversight Board Approval of the Issuance of the 2022 Bonds. The Successor Agency hereby requests that the Consolidated Oversight Board, as authorized by section 34177.5(f), direct the Successor Agency to undertake the proceedings to issue the 2022 Bonds, and as authorized by section 34177.5(f) and section 34180, to approve the issuance of the 2022 Bonds pursuant to section 34177.5(a)(4), this Resolution and the Indenture.

7. Determinations by the Consolidated Oversight Board. The Successor Agency requests that the Consolidated Oversight Board make the following determinations upon which the Successor Agency will rely in undertaking the proceedings for the issuance of the 2022 Bonds:

(a) The Successor Agency is authorized, as provided in section 34177.5(f), to recover its costs related to the issuance of the 2022 Bonds from the proceeds of the 2022 Bonds, including the cost of reimbursing its administrative staff for time spent with respect to the authorization, issuance, sale and delivery of the 2022 Bonds;

(b) The application of the proceeds of the 2022 Bonds by the Successor Agency to make payments on the Former Agency Obligation, as well as the payment by the Successor Agency of costs of issuance of the 2022 Bonds, including municipal bond insurance and reserve fund bond insurance premiums, shall be implemented by the Successor Agency promptly upon sale and delivery of the 2022 Bonds, notwithstanding section 34177.3 or any other provision of law to the contrary, without the approval of the Consolidated Oversight Board, the California Department of Finance, the Monterey County Auditor-Controller or any other person or entity other than the Successor Agency; and

(c) The Successor Agency shall be entitled to receive its full Administrative Cost Allowance under section 34171 without any deductions with respect to continuing costs related to the 2022 Bonds, such as trustee's fees, auditing and fiscal consultant fees and continuing disclosure and rating agency costs (collectively, "Continuing Costs of Issuance"), and such Continuing Costs of Issuance shall be payable from property tax revenues pursuant to section 34183. In addition and as provided by section 34177.5(f), if the Successor Agency is unable to complete the issuance of the 2022 Bonds for any reason, the Successor Agency shall, nevertheless, be entitled to recover its costs incurred with respect to the proceedings for the funding of payments on the Former Agency Obligation from such property tax revenues pursuant to section 34183 without reduction in its Administrative Cost Allowance.

8. Filing of Resolution. The Secretary of the Successor Agency is hereby authorized and directed to file a certified copy of this Resolution with the Consolidated Oversight Board, and, as provided in section 34180(j) with the Monterey County Administrative Officer, the Monterey County Auditor-Controller and the California Department of Finance.

9. Agreements With Consultants. The firm of KNN Public Finance is hereby designated as municipal advisor to the Successor Agency for the 2022 Bonds, the firm of Keyser Marston Associates, Inc. is hereby designated as fiscal consultant to the Successor Agency for the 2022 Bonds, and the firm of Quint & Thimmig LLP is hereby designated as Bond Counsel and as Disclosure Counsel to the Successor Agency for the 2022 Bonds. The City Manager, on behalf of the Successor Agency, is hereby authorized and directed to execute and deliver agreements with such firms for their services related to the 2022 Bonds, each such agreement to be in a form acceptable to the City Manager.

10. Official Actions. Any and all officers of the Successor Agency are hereby authorized and directed, for and in the name and on behalf of the Successor Agency, to do any and all things and take any and all actions, which they, or any of them, may deem necessary or advisable in obtaining the requested approvals by the Consolidated Oversight Board and the California Department of Finance and in the issuance, sale and delivery of the 2022 Bonds. Whenever in this Resolution the City Manager is directed to execute any document or take any action, such execution or action may be taken on behalf of the City Manager by any person designated by the City Manager to act on his behalf in the case he is absent or unavailable.

11. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

PASSED AND ADOPTED by the City Council of the City of Marina acting as the governing board of the Successor Agency to the Marina Redevelopment Agency at a regular meeting duly held on the 1st day of March 2022, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

____
Bruce C. Delgado, Chair

ATTEST:

____
Anita Sharp, Board Secretary

EXHIBIT A

MARINA COMMUNITY PARTNERS, LLC

February 8, 2022

City of Marina
And Successor Agency to
Former Marina Redevelopment Agency
211 Hillcrest Ave.
Marina, CA 93933

Dear Mr. Long,

Re: Issuance of Tax Increment Bonds for 2022

Marina Community Partners, LLP ("MCP") respectfully requests that the City and Successor Agency approve a request for the issuance of bonds by the Successor Agency in a total principal amount of up to $20,000,000, pursuant to the 2005 Disposition and Development Agreement, and Section Part I, Section 6 and Part II, Section 6 of the Tax Increment Financing Plan and Agreement, dated August 5, 2008. If approved by the Successor Agency, MCP understands that this request for bond issuance shall be submitted to the Consolidated Oversight Board for the County of Monterey for its consideration and then reviewed by the state Department of Finance.

The prior bonds issued in 2020 for the Dunes Project expressly contemplated the subsequent issuance of parity bonds from time to time as the Project is developed, and it is our objective to have such parity bonds issued as soon as possible, following approval of the Oversight Board and Department of Finance.

Thank you for your consideration of this request. We request that the Successor Agency and City consider this request at their next available meetings.

Very truly yours,

Douglas A. Yount
Project Director

Cc: Don Hofer, Shea Homes
Gary Teunissen, Shea Homes
Jeff Crechriou, City of Marina
David Doezma, Keyser Marston Associates

110 10th Street Marina, CA 93933 831.384.1018 TheDunesonMontereyBay.com

SECOND SUPPLEMENTAL INDENTURE OF TRUST

by and between the

SUCCESSOR AGENCY TO THE MARINA REDEVELOPMENT AGENCY

and

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee

Dated as of ____________ 1, 2022

Relating to:
$____________
Successor Agency to the Marina Redevelopment Agency
Tax Allocation Bonds, Series 2022A
and
$____________
Successor Agency to the Marina Redevelopment Agency
Housing Tax Allocation Bonds, Series 2022B

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SECOND SUPPLEMENTAL INDENTURE OF TRUST

THIS SECOND SUPPLEMENTAL INDENTURE OF TRUST (this "Second Supplement"), dated as of ____________ 1, 2022, is by and between the SUCCESSOR AGENCY TO THE MARINA REDEVELOPMENT AGENCY, a public entity organized and existing under the laws of the State of California (the "Successor Agency"), and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as trustee (the "Trustee"). Capitalized terms used in this Second Supplement and not otherwise defined herein have the meanings given to such terms in the Indenture of Trust, dated as of July 1, 2018, as amended and supplemented by the First Supplemental Indenture of Trust, dated as of September 1, 2020, each between the Successor Agency and MUFG Union Bank,, N.A., as trustee (together, the "Amended Indenture").

R E C I T A L S:

WHEREAS, pursuant to Section 34173 of the California Health and Safety Code, the Successor Agency has become the successor to the former Marina Redevelopment Agency (the "Former Agency");

WHEREAS, prior to the dissolution of the Former Agency, the Former Agency entered into the DDA and the Financing Plan with Marina Community Partners, LLC (the "Developer"), and the Former Agency delivered the Promissory Notes to the Developer (the DDA, the Financing Plan and the Promissory Notes being collectively referred to herein as the "Former Agency Obligation");

WHEREAS, the Former Agency Obligation has been included on Recognized Obligation Payment Schedules prepared for the Successor Agency pursuant to section 34177 of the Community Redevelopment Law of the State of California (the "Law"), and has been recognized by the Successor Agency, the Oversight Board of the Successor Agency to the Marina Redevelopment Agency and the California Department of Finance as an "Enforceable Obligation" of the Former Agency, as such term is defined in section 34171(d) of the Law;

WHEREAS, section 34177.5(a)(4) of the Law authorizes the Successor Agency to issue bonds to make payments under enforceable obligations when the enforceable obligations include the irrevocable pledge of property tax increment, formerly tax increment revenues prior to the effective date of section 34177.5 of the Law, and the enforceable obligations also include the obligation to issue bonds secured by that pledge, and the Former Agency Obligation includes such an irrevocable pledge and obligation to issue bonds;

WHEREAS, pursuant to Section 6 of Part 1 and Section 6 of Part 2 of the Financing Plan, in 2017 the Developer requested that the Successor Agency issue bonds to make payments on the Former Agency Obligation;

WHEREAS, in response to the Developer's request: (a) on October 3, 2017, the governing board Successor Agency adopted Resolution No. 2017-07 (SA-MRS) approving the issuance of bonds in order to make payments on the Former Agency Obligation; (b) on November 2, 2017, the governing board of the Oversight Board of the Successor Agency to the Marina Redevelopment Agency adopted Resolution No. 2017-08 (OB) approving the issuance of bonds by the Successor Agency (the "2017 OB Resolution"); (c) the State of California Department of Finance delivered a letter dated February 9, 2018 to the Successor Agency approving portions of the 2017 OB Resolution, including the portion that approved the issuance of the 2018 Bonds by the Successor Agency; (d) on July 26, 2018, the Successor Agency issued the 2018A Bonds and the 2018B Bonds pursuant to the Original Indenture; (e) the net proceeds of the 2018A Bonds were deposited to the Eligible Project Costs Account and the net proceeds of the 2018B Bonds were deposited to the Eligible LMIHF Account, each established under the Original Indenture; and (f) all amounts in the Eligible Project Costs Account and the Eligible LMIHF Account have been transferred to the Developer in satisfaction of portions of the Former Agency Obligation;

WHEREAS, pursuant to Section 6 of Part 1 and Section 6 of Part 2 of the Financing Plan, in 2020 the Developer requested that the Successor Agency issue two new series of bonds to make additional payments on the Former Agency Obligation;

WHEREAS, in response to the Developer's request: (a) on February 19, 2020, the governing board Successor Agency adopted Resolution No. 2020-01 (SA-MRS) approving the issuance of bonds in order to make additional payments on the Former Agency Obligation; (b) on February 27, 2020, the governing board of the Consolidated Oversight Board Successor Agency for the County of Monterey, State of California (the "Consolidated Oversight Board") adopted Resolution No. 2020-10 (OB) approving the issuance of bonds by the Successor Agency (the "2020 OB Resolution"); (c) the State of California Department of Finance delivered a letter dated April 15, 2020 to the Successor Agency approving portions of the 2020 OB Resolution, including the portion that approved the issuance of the 2020 Bonds by the Successor Agency; (d) on September 2, 2020, the Successor Agency issued the 2020A Bonds and the 2020B Bonds pursuant to the Amended Indenture; (e) the net proceeds of the 2020A Bonds were deposited to the Eligible Project Costs Account and the net proceeds of the 2020B Bonds were deposited to the Eligible LMIHF Account, each established under the Original Indenture; and (f) all amounts in the Eligible Project Costs Account and the Eligible LMIHF Account have been transferred to the Developer in satisfaction of portions of the Former Agency Obligation;

WHEREAS, on ____________, 202__, U.S. Bank National Association became the successor to MUFG Union Bank, N.A. under the Amended Indenture, and subsequently U.S. Bank Trust Company, National Association became the successor in interest to U.S. Bank National Association, as trustee under the Amended Indenture;

WHEREAS, on February 8, 2022, the Developer sent the Successor Agency another request pursuant to Section 6 of Part 1 and Section 6 of Part 2 of the Financing Plan, that the Successor Agency issue two new series of bonds to make additional payments on the Former Agency Obligation;

WHEREAS, in response to the Developer's request on March 1, 2022, the Successor Agency adopted Resolution No. 2022-___ (SA-MRA) authorizing the issuance of its Successor Agency to the Marina Redevelopment Agency Tax Allocation Bonds, Series 2022A (the "2022A Bonds") and its Successor Agency to the Marina Redevelopment Agency Housing Tax Allocation Bonds, Series 2022B (the "2022B Bonds"), and the Successor Agency approved and authorized the execution of this Second Supplement;

WHEREAS, on ____________, 2022, the Consolidated Oversight Board adopted Resolution No. 2022-___ (the "2022 Consolidated Oversight Board Resolution") pursuant to which it approved the issuance of the 2022A Bonds and the 2022B Bonds by the Successor Agency for the purpose of making funds available to make additional payments in respect of the Former Agency Obligation;

WHEREAS, on ____________, 2022, the California Department of Finance provided a letter to the Successor Agency approving the 2022 Consolidated Oversight Board Resolution;

WHEREAS, Section 7.01(c) of the Amended Indenture authorizes the Successor Agency to enter into Supplemental Indentures, as defined therein, in connection with the issuance of Parity Debt, as defined therein;

WHEREAS, the Successor Agency now desires to proceed with the issuance of the 2022A Bonds as Series A Parity Debt and the 2022B Bonds as Series B Parity Debt pursuant to (and as such capitalized terms are defined in) Section 3.04 of the Amended Indenture, as amended by this Second Supplement, and it is intended that this Second Supplement constitute a "Supplemental Indenture," as such term is used in the Amended Indenture;

WHEREAS, in providing for the issuance of the 2022A Bonds and the 2022B Bonds, the Successor Agency has determined that it is necessary to amend the Amended Indenture, as more particularly provided in Sections 1 and 2 hereof, as such amendments are authorized by Section 7.01 of the Amended Indenture (including Section 7.01(c) thereof); and

WHEREAS, the Successor Agency has determined that all acts and proceedings required by law necessary to make the 2022A Bonds and the 2022B Bonds, when executed by the Successor Agency, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal special obligations of the Successor Agency, and to constitute the Amended Indenture, as amended and supplemented by this Second Supplement, a valid and binding agreement for the uses and purposes herein and therein set forth in accordance with its terms, have been done or taken.

A G R E E M E N T :

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

SECTION 1. Supplement to Amended Indenture. In accordance with the provisions of Section 7.01(c) of the Amended Indenture, the Amended Indenture is hereby amended by adding two new articles to be designated as Article XII and Article XIII. Such Article XII and Article XIII shall read in their entity as follows:

ARTICLE XII

2022A BONDS

Section 12.01. Definitions. Unless the context otherwise requires, the terms defined in this Section 12.01 shall, for all purposes of this Article XII but not for any other purposes of this Indenture, have the respective meanings specified in this Section 12.01. All terms defined in Section 1.02 of this Indenture and not otherwise defined in this Section 12.01 shall, when used in this Article XII, have the respective meanings given to such terms in such section.

"Article XII" means this Article XII which has been incorporated in and made a part of this Indenture pursuant to the Second Supplemental Indenture of Trust, dated as of ____________ 1, 2022, by and between the Successor Agency and the Trustee, together with all amendments of and supplements to this Article XII entered into pursuant to the provisions of Section 7.01.

"Closing Date" means ____________, 2022, being the date upon which there was a physical delivery of the 2022A Bonds in exchange for the amount representing the purchase price of the 2022A Bonds by the Original Purchaser.

"Continuing Disclosure Certificate" means that certain Continuing Disclosure Certificate of the Successor Agency pertaining to the 2022A Bonds dated as of the Closing Date, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

"Original Purchaser" means Stifel, Nicolaus & Company, Incorporated, the first purchaser of the 2022A Bonds upon their delivery by the Trustee on the Closing Date.

"Series 2022A Costs of Issuance" means all items of expense directly or indirectly payable by or reimbursable to the Successor Agency relating to the authorization, issuance, sale and delivery of the 2022A Bonds, including but not limited to printing expenses, operating expenses, rating agency fees, filing and recording fees, initial fees and charges and first annual administrative fee of the Trustee and fees and expenses of its counsel, fees, charges and disbursements of attorneys, municipal advisors, fiscal consultants, accounting firms, consultants and other professionals, fees and charges for preparation, execution and safekeeping of the 2022A Bonds, and any other cost, charge or fee in connection with the original issuance of the 2022A Bonds.

"Series 2022 Costs of Issuance Fund" means the fund by that name established and held by the Trustee pursuant to Section 12.07.

"*Series 2022A Proceeds Fund*" means the fund by that name established and held by the Trustee pursuant to Section 12.06.

Section 12.02. Authorization of 2022A Bonds. The Successor Agency has reviewed all proceedings heretofore taken with respect to the 2022A Bonds and has found, as a result of such review, and hereby finds and determines that all things, conditions and acts required by law to exist, happen or be performed precedent to and in connection with the issuance of the 2022A Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the Successor Agency is now duly empowered, pursuant to each and every requirement of law, including the Refunding Bond Law, to issue the 2022A Bonds in the manner and form provided in this Indenture.

2022A Bonds in the aggregate principal amount of ___________ Million ___________ Thousand Dollars ($___________) are hereby authorized to be issued by the Successor Agency as Series A Parity Debt under this Indenture, for the purpose of making deposits to the Eligible Project Costs Account of the Developer Payment Fund, to the Series 2022A Reserve Account and to the Series 2022A Costs of Issuance Fund; and the Trustee shall authenticate and deliver the 2022A Bonds to the Original Purchaser upon receipt of a request of the Successor Agency with respect thereto. The 2022A Bonds shall be authorized and issued under, and shall be subject to the terms of, this Indenture and the Law. This Indenture constitutes a continuing agreement with the Owners of all of the 2022A Bonds issued hereunder and then Outstanding to secure the full and final payment of principal of and interest on all 2022A Bonds which may from time to time be executed and delivered hereunder, subject to the covenants, agreements, provisions and conditions herein contained. The 2022A Bonds shall be designated the "Successor Agency to the Marina Redevelopment Agency Tax Allocation Bonds, Series 2022A."

Section 12.03. Terms of 2022A Bonds. (a) The 2022A Bonds shall be issued in fully registered form without coupons in denominations of $5,000 or any integral multiple thereof. The 2022A Bonds shall be dated the Closing Date, and shall mature and become payable in the following principal amounts on September 1 in the following years, and shall bear interest at the following interest rates (based on a 360-day year comprised of twelve 30-day months):

Maturity Date (September 1)	Principal Amount	Interest Rate

(b) Interest on the 2022A Bonds (including the final interest payment upon maturity or earlier redemption) shall be payable on each Interest Payment Date, commencing March 1, 2021, to the person whose name appears on the Registration Books as the Owner thereof as of the Record Date immediately preceding each such Interest Payment Date, such interest to be paid by check of the Trustee mailed by first class mail, postage prepaid, on the Interest Payment Date, to such Owner at the address of such Owner as it appears on the Registration Books as of such Record Date; provided however, that payment of interest may be by wire transfer to an account in the United States of America to any Owner of 2022A Bonds in the aggregate principal amount of $1,000,000 or more who shall furnish written wire instructions to the Trustee on or before the applicable Record Date. Such instructions shall remain in effect until rescinded in writing by the Owner. Principal of and redemption premium (if any) on any 2022A Bond shall be paid upon presentation and surrender thereof, at maturity or redemption, at the Principal Corporate Trust Office. Both the principal of and interest and premium (if any) on the 2022A Bonds shall be payable in lawful money of the United States of America.

(c) The 2022A Bonds shall be dated as of their date of delivery and each 2022A Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless (i) it is authenticated after a Record Date and on or before the following Interest Payment Date, in which event it shall bear interest from such Interest Payment Date; or (ii) it is authenticated on or before ____________ 15, 202__, in which event they shall bear interest from the Closing Date; provided, however, that if, as of the date of authentication of the 2022A Bonds, interest thereon is in default, the 2022A Bonds shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

(d) The 2022A Bonds shall be subject to the provisions of Sections 2.06 (Transfer of Bonds), 2.07 (Exchange of Bonds), 2.09 (Temporary Bonds) and 2.10 (Bonds Mutilated, Lost, Destroyed or Stolen) of this Indenture.

(e) CUSIP numbers shall appear on the 2022A Bonds, subject to the provisions of Section 2.11 of this Indenture. The Successor Agency shall promptly notify the Trustee in writing of any change in CUSIP numbers assigned to the 2022A Bonds.

(f) The 2022A Bonds shall be subject to the Book-Entry Only System, as set forth in Section 2.12 of this Indenture, and to the provisions of Section 2.13 of this Indenture.

Section 12.04. Redemption of 2022A Bonds.

(a) Optional Redemption of 2022A Bonds. The 2022A Bonds maturing on or before September 1, ____, are not subject to optional redemption prior to maturity. The 2022A Bonds maturing on or after September 1, ____, are subject to redemption, at the option of the Successor Agency, but only with the prior written consent of the Developer to the extent required under the Financing Plan, on any date on or after September 1, ____, as a whole or in part, among such maturities as shall be determined by the Successor Agency (and, in lieu of such determination, pro rata among maturities), and by lot within a maturity, from any available source of funds, at the following redemption prices expressed as a percentage of the principal amount thereof to be redeemed, together with accrued interest to the date fixed for redemption:

Redemption Date	Redemption Price
September 1, ____ to August 31, ____	%
September 1, ____ to August 31, ____	
September 1, ____ to August 31, ____	
September 1, ____ and thereafter	

The Successor Agency shall be required to give the Trustee written notice of its intention to redeem 2022A Bonds under this subsection 12.04(a) with a designation of the maturities of the 2022A Bonds to be redeemed at least forty-five (45) days prior to the date fixed for such redemption, or such lesser number of days as shall be agreed to by the Trustee.

(b) Mandatory Sinking Payment Redemption. (i) The 2022A Bonds maturing on September 1, ____ ("2022A Term Bonds"), are subject to mandatory redemption from Sinking Account payments set forth in the following schedule on September 1, ____, and on each September 1 thereafter, to and including September 1, ____, at a redemption price equal to the principal amount thereof to be redeemed (without premium), together with interest accrued thereon to the date fixed for redemption; provided, however, that if some but not all of the 2022A Term Bonds have been redeemed pursuant to subsection (a) above, the total amount of Sinking Account payments to be made subsequent to such redemption shall be reduced in an amount equal to the principal amount of the 2022A Term Bonds so redeemed by reducing each such future Sinking Account payment on a pro rata basis (as nearly as practicable) in integral multiples of $5,000, as shall be designated pursuant to written notice filed by the Successor Agency with the Trustee.

Redemption Date (September 1)	Principal Amount

(c) Notice of Redemption. The Trustee on behalf and at the expense of the Successor Agency shall mail (by first class mail, postage prepaid) notice of any redemption at least thirty (30) but not more than sixty (60) days prior to the redemption date, to (i) the Owners of any 2022A Bonds designated for redemption at their respective addresses appearing on the Registration Books, and (ii) the Securities Depositories and to the Information Services designated in a Written Request of the Successor Agency filed with the Trustee at the time the Successor Agency notifies the Trustee of its intention to redeem 2022A Bonds; *provided, however,* that such mailing shall not be a condition precedent to such redemption and neither failure to receive any such notice nor any defect therein shall affect the validity of the proceedings for the redemption of such 2022A Bonds or the cessation of the accrual of interest thereon. Such notice shall state the redemption date and the redemption price, shall designate the CUSIP number of the 2022A Bonds to be redeemed, shall state the individual number of each Series 2022A Bond to be redeemed or state that all 2022A Bonds between two stated numbers (both inclusive) or shall state that all of the 2022A Bonds Outstanding of one or more maturities are to be redeemed, and shall require that such 2022A Bonds be then surrendered at the Principal Corporate Trust Office of the Trustee for redemption at the said redemption price, giving notice also that further interest on the 2022A Bonds to be redeemed will not accrue from and after the date fixed for redemption.

Notwithstanding the foregoing, in the case of any optional redemption of the 2022A Bonds under Section 12.04(a) above, the notice of redemption may state that the redemption is conditioned upon receipt by the Trustee of sufficient moneys to redeem the 2022A Bonds on the anticipated redemption date, and that the optional redemption shall not occur if, by no later than the scheduled redemption date, sufficient moneys to redeem the 2022A Bonds have not been deposited with the Trustee. In the event that the Trustee does not receive sufficient funds by the scheduled optional redemption date to so redeem the 2022A Bonds to be optionally redeemed, such event shall not constitute an Event of Default; the Trustee shall send written notice to the Owners promptly following the proposed redemption date, such notice to be given in the same manner as the notice of redemption and otherwise to the effect that the redemption did not occur as anticipated, and the 2022A Bonds for which notice of optional redemption was given shall remain Outstanding for all purposes of this Indenture.

Upon the payment of the redemption price of 2022A Bonds being redeemed, each check or other transfer of funds issued for such purpose shall, to the extent practicable, bear the CUSIP number identifying, by maturity, the 2022A Bonds being redeemed with the proceeds of such check or other transfer.

(d) Partial Redemption of 2022A Bonds. In the event only a portion of any Series 2022A Bond is called for redemption, then upon surrender thereof the Successor Agency shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Successor Agency, a new Series 2022A Bond or 2022A Bonds of the same interest rate and maturity, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Series 2022A Bond to be redeemed.

(e) Effect of Redemption. From and after the date fixed for redemption, if funds sufficient for the payment of the redemption price of and interest on the 2022A Bonds so called for redemption shall have been duly deposited with the Trustee, such 2022A Bonds so called shall cease to be entitled to any benefit under this Indenture other than the right to receive payment of the redemption price and accrued interest to the redemption date, and no interest shall accrue thereon from and after the redemption date specified in such notice.

(f) Manner of Redemption. Whenever provision is made in this Indenture for the redemption of less than all of the 2022A Bonds, the Trustee will select 2022A Bonds for redemption in such order of maturity as shall be designated to the Trustee in writing by the Successor Agency in its discretion, and the Trustee shall select the 2022A Bonds within a maturity to be redeemed by lot in any manner which the Trustee in its reasonable judgment shall deem appropriate. Notwithstanding the foregoing, if for any reason the Successor Agency fails to provide the Trustee with such written direction as to the maturities to be redeemed, the Trustee shall select the 2022A Bonds to be redeemed pro rata among maturities.

Section 12.05. Form of 2022A Bonds; Authentication and Delivery. The 2022A Bonds, the form of Trustee's certificate of authentication, and the form of assignment to appear thereon, shall be substantially in the respective forms set forth in Exhibit E attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture.

The 2022A Bonds shall be executed on behalf of the Successor Agency by the signature of its Chair and the signature of its Board Secretary who are in office on the Closing Date or at any time thereafter. Either or both of such signatures may be made manually or may be affixed by facsimile thereof. If any officer whose signature appears on any Series 2022A Bond ceases to be such officer before the Closing Date, such signature shall nevertheless be as effective as if the officer had remained in office until the Closing Date. Any Series 2022A Bond may be signed and attested on behalf of the Successor Agency by such persons as at the actual date of the execution of such Series 2022A Bond shall be the proper officers of the Successor Agency, duly authorized to execute debt instruments on behalf of the Successor Agency, although on the date of such Series 2022A Bond any such person shall not have been such officer of the Successor Agency.

Only such of the 2022A Bonds as shall bear thereon a certificate of authentication in the form set forth in Exhibit E to this Indenture (which is Exhibit A to the Second Supplemental Indenture of Trust, dated as of ____________ 1, 2022, between the Successor Agency and the Trustee), manually executed and dated by the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Trustee shall be conclusive evidence that such 2022A Bonds have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

Section 12.06. Application of Proceeds of Sale of 2022A Bonds. Upon the receipt of the proceeds of the sale of the 2022A Bonds on the Closing Date of $____________ (being the principal amount of the 2022A Bonds of $____________, less an underwriter's discount of $____________, plus (less) an original issue premium (discount) of $____________), the Trustee shall deposit the proceeds of sale thereof in the Series 2022A Proceeds Fund which the Trustee shall establish and hold in trust hereunder, and the Trustee shall transfer amounts in the Series 2022A Proceeds Fund as follows:

(a) The Trustee shall deposit in the Series 2022 Costs of Issuance Fund $____________;

(b) The Trustee shall deposit $____________ in the Series 2022A Reserve Account of the Series A Debt Service Fund;

(c) The Trustee shall deposit $____________ in the Eligible Project Costs Account of the Developer Payment Fund; and

(d) The Trustee shall deposit $____________ in the 2022 Capitalized Interest Fund.

Following the transfers described in subparagraphs (a), (b), (c) and (d) above, the Trustee shall close the Series 2022A Proceeds Fund. The Trustee may, in its discretion, establish a temporary fund or account in its books and records, as needed, to facilitate transfers required under this Section 12.06.

Section 12.07. Series 2022 Costs of Issuance Fund. There is hereby established a separate fund to be known as the "Series 2022 Costs of Issuance Fund", which shall be held by the

Trustee in trust. The Trustee shall deposit in the Series 2022 Costs of Issuance Fund the amounts specified in Section 12.06(a) and Section 13.06(a). The moneys in the Series 2022 Costs of Issuance Fund shall be used and withdrawn by the Trustee from time to time to pay the Series 2022A Costs of Issuance and Series 2022B Costs of Issuance upon submission of a Written Request of the Successor Agency stating (a) the person to whom payment is to be made, (b) the amount to be paid, (c) the purpose for which the obligation was incurred, (d) that such payment is a proper charge against the Series 2022 Costs of Issuance Fund, and (e) that such amounts have not been the subject of a prior request of the Successor Agency. On the earlier of (i) the date which is six months following the Closing Date, or (ii) the date of receipt by the Trustee of a Written Request of the Successor Agency therefor, all amounts (if any) remaining in the Series 2022 Costs of Issuance Fund shall be withdrawn therefrom by the Trustee and transferred as follows: (a) up to the first $____________ of any such funds to the Interest Account of the Series B Debt Service Fund, with any remaining amount, (b) ______% to the Interest Account of the Series A Debt Service Fund, and (c) ______% to the Interest Account of the Series B Debt Service Fund. Following the transfers referred to in the preceding sentence, the Trustee shall then close the Series 2022 Costs of Issuance Fund.

Section 12.08. Deposit and Investment of Moneys in Funds. Moneys in the funds and accounts held by the Trustee under this Article XII shall be invested by the Trustee in Permitted Investments pursuant to Section 6.07 of this Indenture.

Section 12.09. Security for 2022A Bonds. The 2022A Bonds shall be Parity Debt which shall be secured in the manner and to the extent set forth in Article IV and in this Article XII.

Section 12.10. Tax Covenants. The Successor Agency hereby acknowledges that the term "Bonds" in subsections 5.01(m) (i), (ii), (iii) and (iv) include the 2022A Bonds, and the provisions of subsection 5.01(m)(v) apply to the 2022A Bonds to the same extent that they apply to the 2018A Bonds, the 2018B Bonds, the 2020A Bonds and the 2020B Bonds.

Section 12.11. Continuing Disclosure. The Successor Agency hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Indenture, failure of the Successor Agency to comply with the Continuing Disclosure Certificate shall not be considered an Event of Default; however, any owner of 2022A Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Successor Agency to comply with its obligations under this Section.

Section 12.12. Effect of this Article XII. Except as in this Article XII expressly provided or except to the extent inconsistent with any provision of this Article XII, the 2022A Bonds shall be deemed to be "Series A Parity Debt" under and within the meaning of Section 3.04, and every term and condition contained in this Indenture shall apply to the 2022A Bonds with full force and effect, with such omissions, variations and modifications thereof as may be appropriate to make the same conform to this Article XII.

ARTICLE XIII

2022B BONDS

Section 13.01. Definitions. Unless the context otherwise requires, the terms defined in this Section 13.01 shall, for all purposes of this Article XIII but not for any other purposes of this Indenture, have the respective meanings specified in this Section 13.01. All terms defined in Section 1.02 of this Indenture and not otherwise defined in this Section 13.01 shall, when used in this Article XIII, have the respective meanings given to such terms in such section.

"Article XIII" means this Article XIII which has been incorporated in and made a part of this Indenture pursuant to the Second Supplemental Indenture of Trust, dated as of ____________ 1, 2022, by and between the Successor Agency and the Trustee, together with all amendments of and supplements to this Article XIII entered into pursuant to the provisions of Section 7.01.

"Closing Date" means ____________, 2022, being the date upon which there was a physical delivery of the 2022B Bonds in exchange for the amount representing the purchase price of the 2022B Bonds by the Original Purchaser.

"Continuing Disclosure Certificate" means that certain Continuing Disclosure Certificate of the Successor Agency pertaining to the 2022B Bonds dated as of the Closing Date, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

"Original Purchaser" means Stifel, Nicolaus & Company, Incorporated, the first purchaser of the 2022B Bonds upon their delivery by the Trustee on the Closing Date.

"Series 2022B Costs of Issuance" means all items of expense directly or indirectly payable by or reimbursable to the Successor Agency relating to the authorization, issuance, sale and delivery of the 2022B Bonds, including but not limited to printing expenses, operating expenses, rating agency fees, filing and recording fees, initial fees and charges and first annual administrative fee of the Trustee and fees and expenses of its counsel, fees, charges and disbursements of attorneys, municipal advisors, fiscal consultants, accounting firms, consultants and other professionals, fees and charges for preparation, execution and safekeeping of the 2022B Bonds, and any other cost, charge or fee in connection with the original issuance of the 2022B Bonds.

"*Series 2022B Proceeds Fund*" means the fund by that name established and held by the Trustee pursuant to Section 13.06.

Section 13.02. Authorization of 2022B Bonds. The Successor Agency has reviewed all proceedings heretofore taken with respect to the 2022B Bonds and has found, as a result of such review, and hereby finds and determines that all things, conditions and acts required by law to exist, happen or be performed precedent to and in connection with the issuance of the 2022B Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the Successor Agency is now duly empowered, pursuant to each and every requirement of law, including the Refunding Bond Law, to issue the 2022B Bonds in the manner and form provided in this Indenture.

2022B Bonds in the aggregate principal amount of ____________ Million ____________ Thousand Dollars ($____________) are hereby authorized to be issued by the Successor Agency as Series B Parity Debt under this Indenture, for the purpose of making deposits to the Eligible LMIHF Costs Account of the Developer Payment Fund, to the Series 2022B Reserve Account and to the Series 2022B Costs of Issuance Fund; and the Trustee shall authenticate and deliver the 2022B Bonds to the Original Purchaser upon receipt of a request of the Successor Agency with respect thereto. The 2022B Bonds shall be authorized and issued under, and shall be subject to the terms of, this Indenture and the Law. This Indenture constitutes a continuing agreement with the Owners of all of the 2022B Bonds issued hereunder and then Outstanding to secure the full and final payment of principal of and interest on all 2022B Bonds which may from time to time be executed and delivered hereunder, subject to the covenants, agreements, provisions and conditions herein contained. The 2022B Bonds shall be designated the "Successor Agency to the Marina Redevelopment Agency Tax Allocation Bonds, Series 2022B."

Section 13.03. Terms of 2022B Bonds. (a) The 2022B Bonds shall be issued in fully registered form without coupons in denominations of $5,000 or any integral multiple thereof. The 2022B Bonds shall be dated the Closing Date, and shall mature and become payable in the following principal amounts on September 1 in the following years, and shall bear interest at the following interest rates (based on a 360-day year comprised of twelve 30-day months):

Maturity Date (September 1)	Principal Amount	Interest Rate

(b) Interest on the 2022B Bonds (including the final interest payment upon maturity or earlier redemption) shall be payable on each Interest Payment Date, commencing March 1, 2021, to the person whose name appears on the Registration Books as the Owner thereof as of the Record Date immediately preceding each such Interest Payment Date, such interest to be paid by check of the Trustee mailed by first class mail, postage prepaid, on the Interest Payment Date, to such Owner at the address of such Owner as it appears on the Registration Books as of such Record Date; provided however, that payment of interest may be by wire transfer to an account in the United States of America to any Owner of 2022B Bonds in the aggregate principal amount of $1,000,000 or more who shall furnish written wire instructions to the Trustee on or before the applicable Record Date. Such instructions shall remain in effect until rescinded in writing by the Owner. Principal of and redemption premium (if any) on any 2022B Bond shall be paid upon presentation and surrender thereof, at maturity or redemption, at the Principal Corporate Trust Office. Both the principal of and interest and premium (if any) on the 2022B Bonds shall be payable in lawful money of the United States of America.

(c) The 2022B Bonds shall be dated as of their date of delivery and each 2022B Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless (i) it is authenticated after a Record Date and on or before the following Interest Payment Date, in which event it shall bear interest from such Interest Payment Date; or (ii) it is authenticated on or before ____________ 15, 202__, in which event they shall bear interest from the Closing Date; provided, however, that if, as of the date of authentication of the 2022B Bonds, interest thereon is in default, the 2022B Bonds shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

(d) The 2022B Bonds shall be subject to the provisions of Sections 2.06 (Transfer of Bonds), 2.07 (Exchange of Bonds), 2.09 (Temporary Bonds) and 2.10 (Bonds Mutilated, Lost, Destroyed or Stolen) of this Indenture.

(e) CUSIP numbers shall appear on the 2022B Bonds, subject to the provisions of Section 2.11 of this Indenture. The Successor Agency shall promptly notify the Trustee in writing of any change in CUSIP numbers assigned to the 2022B Bonds.

(f) The 2022B Bonds shall be subject to the Book-Entry Only System, as set forth in Section 2.12 of this Indenture, and to the provisions of Section 2.13 of this Indenture.

Section 13.04. Redemption of 2022B Bonds.

(a) Optional Redemption of 2022B Bonds. The 2022B Bonds maturing on or before September 1, ____, are not subject to optional redemption prior to maturity. The 2022B Bonds maturing on or after September 1, ____, are subject to redemption, at the option of the Successor Agency, but only with the prior written consent of the Developer to the extent required under the Financing Plan, on any date on or after September 1, ____, as a whole or in part, among such maturities as shall be determined by the Successor Agency (and, in lieu of such determination, pro rata among maturities), and by lot within a maturity, from any available source of funds, at the following redemption prices expressed as a percentage of the principal amount thereof to be redeemed, together with accrued interest to the date fixed for redemption:

Redemption Date	Redemption Price
September 1, ____ to August 31, ____	%
September 1, ____ to August 31, ____	
September 1, ____ to August 31, ____	
September 1, ____ and thereafter	

The Successor Agency shall be required to give the Trustee written notice of its intention to redeem 2022B Bonds under this subsection 13.04(a) with a designation of the maturities of the 2022B Bonds to be redeemed at least forty-five (45) days prior to the date fixed for such redemption, or such lesser number of days as shall be agreed to by the Trustee.

(b) Mandatory Sinking Payment Redemption. (i) The 2022B Bonds maturing on September 1, ____ ("2022B Term Bonds"), are subject to mandatory redemption from Sinking Account payments set forth in the following schedule on September 1, ____, and on each September 1 thereafter, to and including September 1, ____, at a redemption price equal to the principal amount thereof to be redeemed (without premium), together with interest accrued thereon to the date fixed for redemption; provided, however, that if some but not all of the 2022B Term Bonds have been redeemed pursuant to subsection (a) above, the total amount of Sinking Account payments to be made subsequent to such redemption shall be reduced in an amount equal to the principal amount of the 2022B Term Bonds so redeemed by reducing each such future Sinking Account payment on a pro rata basis (as nearly as practicable) in integral multiples of $5,000, as shall be designated pursuant to written notice filed by the Successor Agency with the Trustee.

Redemption Date (September 1)	Principal Amount

(c) Notice of Redemption. The Trustee on behalf and at the expense of the Successor Agency shall mail (by first class mail, postage prepaid) notice of any redemption at least thirty

(30) but not more than sixty (60) days prior to the redemption date, to (i) the Owners of any 2022B Bonds designated for redemption at their respective addresses appearing on the Registration Books, and (ii) the Securities Depositories and to the Information Services designated in a Written Request of the Successor Agency filed with the Trustee at the time the Successor Agency notifies the Trustee of its intention to redeem 2022B Bonds; *provided, however*, that such mailing shall not be a condition precedent to such redemption and neither failure to receive any such notice nor any defect therein shall affect the validity of the proceedings for the redemption of such 2022B Bonds or the cessation of the accrual of interest thereon. Such notice shall state the redemption date and the redemption price, shall designate the CUSIP number of the 2022B Bonds to be redeemed, shall state the individual number of each Series 2022B Bond to be redeemed or state that all 2022B Bonds between two stated numbers (both inclusive) or shall state that all of the 2022B Bonds Outstanding of one or more maturities are to be redeemed, and shall require that such 2022B Bonds be then surrendered at the Principal Corporate Trust Office of the Trustee for redemption at the said redemption price, giving notice also that further interest on the 2022B Bonds to be redeemed will not accrue from and after the date fixed for redemption.

Notwithstanding the foregoing, in the case of any optional redemption of the 2022B Bonds under Section 13.04(a) above, the notice of redemption may state that the redemption is conditioned upon receipt by the Trustee of sufficient moneys to redeem the 2022B Bonds on the anticipated redemption date, and that the optional redemption shall not occur if, by no later than the scheduled redemption date, sufficient moneys to redeem the 2022B Bonds have not been deposited with the Trustee. In the event that the Trustee does not receive sufficient funds by the scheduled optional redemption date to so redeem the 2022B Bonds to be optionally redeemed, such event shall not constitute an Event of Default; the Trustee shall send written notice to the Owners promptly following the proposed redemption date, such notice to be given in the same manner as the notice of redemption and otherwise to the effect that the redemption did not occur as anticipated, and the 2022B Bonds for which notice of optional redemption was given shall remain Outstanding for all purposes of this Indenture.

Upon the payment of the redemption price of 2022B Bonds being redeemed, each check or other transfer of funds issued for such purpose shall, to the extent practicable, bear the CUSIP number identifying, by maturity, the 2022B Bonds being redeemed with the proceeds of such check or other transfer.

(d) Partial Redemption of 2022B Bonds. In the event only a portion of any Series 2022B Bond is called for redemption, then upon surrender thereof the Successor Agency shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Successor Agency, a new Series 2022B Bond or 2022B Bonds of the same interest rate and maturity, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Series 2022B Bond to be redeemed.

(e) Effect of Redemption. From and after the date fixed for redemption, if funds sufficient for the payment of the redemption price of and interest on the 2022B Bonds so called for redemption shall have been duly deposited with the Trustee, such 2022B Bonds so called shall cease to be entitled to any benefit under this Indenture other than the right to receive payment of the redemption price and accrued interest to the redemption date, and no interest shall accrue thereon from and after the redemption date specified in such notice.

(f) Manner of Redemption. Whenever provision is made in this Indenture for the redemption of less than all of the 2022B Bonds, the Trustee will select 2022B Bonds for redemption in such order of maturity as shall be designated to the Trustee in writing by the Successor Agency in its discretion, and the Trustee shall select the 2022B Bonds within a maturity to be redeemed by lot in any manner which the Trustee in its reasonable judgment shall deem appropriate. Notwithstanding the foregoing, if for any reason the Successor Agency fails to provide the Trustee with such written direction as to the maturities to be redeemed, the Trustee shall select the 2022B Bonds to be redeemed pro rata among maturities.

Section 13.05. Form of 2022B Bonds; Authentication and Delivery. The 2022B Bonds, the form of Trustee's certificate of authentication, and the form of assignment to appear thereon, shall be substantially in the respective forms set forth in Exhibit F attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture.

The 2022B Bonds shall be executed on behalf of the Successor Agency by the signature of its Chair and the signature of its Board Secretary who are in office on the Closing Date or at any time thereafter. Either or both of such signatures may be made manually or may be affixed by facsimile thereof. If any officer whose signature appears on any Series 2022B Bond ceases to be such officer before the Closing Date, such signature shall nevertheless be as effective as if the officer had remained in office until the Closing Date. Any Series 2022B Bond may be signed and attested on behalf of the Successor Agency by such persons as at the actual date of the execution of such Series 2022B Bond shall be the proper officers of the Successor Agency, duly authorized to execute debt instruments on behalf of the Successor Agency, although on the date of such Series 2022B Bond any such person shall not have been such officer of the Successor Agency.

Only such of the 2022B Bonds as shall bear thereon a certificate of authentication in the form set forth in Exhibit F to this Indenture (which is Exhibit B to the Second Supplemental Indenture of Trust, dated as of ____________ 1, 2022, between the Successor Agency and the Trustee), manually executed and dated by the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Trustee shall be conclusive evidence that such 2022B Bonds have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

Section 13.06. Application of Proceeds of Sale of 2022B Bonds. Upon the receipt of the proceeds of the sale of the 2022B Bonds on the Closing Date of $____________ (being the principal amount of the 2022B Bonds of $____________, less an underwriter's discount of $____________, plus (less) an original issue premium (discount) of $____________), the Trustee shall deposit the proceeds of sale thereof in the Series 2022B Proceeds Fund which the Trustee shall establish and hold in trust hereunder, and the Trustee shall transfer amounts in the Series 2022B Proceeds Fund as follows:

(a) The Trustee shall deposit in the Series 2020 Costs of Issuance Fund $____________;

(b) The Trustee shall deposit $____________ in the Series 2022B Reserve Account of the Series B Debt Service Fund; and

(c) The Trustee shall deposit $____________ in the Eligible LMIHF Costs Account of the Developer Payment Fund.

Following the transfers described in subparagraphs (a), (b) and (c) above, the Trustee shall close the Series 2022B Proceeds Fund. The Trustee may, in its discretion, establish a temporary fund or account in its books and records, as needed, to facilitate transfers required under this Section 13.06.

Section 13.07. Security for 2022B Bonds. The 2022B Bonds shall be Parity Debt which shall be secured in the manner and to the extent set forth in Article IV and in this Article XIII.

Section 13.08. Continuing Disclosure. The Successor Agency hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. Notwithstanding any other provision of this Indenture, failure of the Successor Agency to comply with the Continuing Disclosure Certificate shall not be considered an Event of Default; however, any owner of 2022B Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Successor Agency to comply with its obligations under this Section.

Section 13.09. Tax Covenants. The Successor Agency hereby acknowledges that the term "Bonds" in subsections 5.01(m) (i), (ii), (iii) and (iv) include the 2022B Bonds, and the provisions of subsection 5.01(m)(v) apply to the 2022B Bonds to the same extent that they apply to the 2018A Bonds, the 2018B Bonds, the 2020A Bonds and the 2020B Bonds.

Section 13.10. Effect of this Article XIII. Except as in this Article XIII expressly provided or except to the extent inconsistent with any provision of this Article XIII, the 2022B Bonds shall be deemed to be "Series B Parity Debt" under and within the meaning of Section 3.04, and every term and condition contained in this Indenture shall apply to the 2022B Bonds with full force and effect, with such omissions, variations and modifications thereof as may be appropriate to make the same conform to this Article XIII.

SECTION 2. Additional Amendments to Amended Indenture.

(a) The following terms are hereby added to Section 1.02 of the Amended Indenture:

"*Reserve Requirement*" means, with respect to the 2022A Bonds and as of any date of calculation, an amount equal to the least of (a) Maximum Annual Debt Service on the 2022A Bonds for the then current or every subsequent Bond Year, (b) 125% of average Annual Debt Service on the 2022A Bonds for the then current and every subsequent Bond Year, and (c) 10% of the original principal amount of the 2022A Bonds.

"*Reserve Requirement*" means, with respect to the 2022B Bonds and as of any date of calculation, an amount equal to the least of (a) Maximum Annual Debt Service on the 2022B Bonds for the then current or every subsequent Bond Year, (b) 125% of average Annual Debt Service on the 2022B Bonds for the then current and every subsequent Bond Year, and (c) 10% of the original principal amount of the 2022B Bonds.

"2022 Capitalized Interest Fund" means the fund by that name established and held by the Trustee pursuant to Section 4.05.

"*2022A Bonds*" means the Successor Agency to the Marina Redevelopment Agency Tax Allocation Bonds, Series 2022A, authorized by and at any time Outstanding pursuant to this Indenture.

"*Series 2022A Reserve Account*" means the account by that name within the Series A Debt Service Fund established and held by the Trustee pursuant to Section 4.03(a).

"*2022B Bonds*" means the Successor Agency to the Marina Redevelopment Agency Housing Tax Allocation Bonds, Series 2022B, authorized by and at any time Outstanding pursuant to this Indenture.

"*Series 2022B Reserve Account*" means the account by that name within the Series B Debt Service Fund established and held by the Trustee pursuant to Section 4.03(b).

(b) The following terms defined in Section 1.02 of the Amended Indenture are hereby amended as follows:

(i) The term "Parity Debt" is hereby amended by adding thereto, as a new last sentence thereof, the following: "It is hereby acknowledged that the 2022A Bonds are Parity Debt with respect to the Series 2018A Bonds and the Series 2020A Bonds, and the 2022B Bonds are Parity Debt with respect to the 2018B Bonds and the 2020B Bonds."

(ii) Subsection (d) of the definition of the term "Permitted Investments" is hereby amended to exclude money market funds with a floating net asset value.

(iii) The term "Pledged Non-Housing Funds" is hereby amended by adding thereto at the end thereof, the following "and the 2022A Bonds."

(iv) The term "Term Bonds" is hereby amended by adding thereto, as a new last sentence thereof, the following: "It is hereby acknowledged that the 2022A Bonds maturing on September 1, ____ are Term Bonds and the 2022B Bonds maturing on September 1, ____ are Term Bonds."

(c) A new last sentence of Section 3.06 of the Amended Indenture is hereby added, to read as follows:

"It is hereby acknowledged that the Trustee closed the Developer Payment Fund following the foregoing transfers; however, in connection with the issuance of the 2022A Bonds and the 2022B Bonds, the Trustee shall (i) reopen the Developer Payment Fund and the Eligible Project Costs Account and the Eligible LMIHF Account therein on the Closing Date, as defined in Section 12.01 and 13.01, respectively, (ii) make deposits to such accounts as provided in Sections 12.06(c) and 13.06(c), (iii) on such Closing Date, transfer all amounts deposited to such accounts to the Developer via the wire instructions in the preceding paragraph, and (d) following such transfers, close the Developer Payment Fund."

(d) The first paragraph of Section 4.01 of the Amended Indenture is hereby amended by deleting the last sentence thereof in its entirety and by inserting therein, in lieu thereof, the following:

"The 2022A Bonds (exclusive of the 2018A Bonds and the 2020A Bonds or any related Parity Debt) are also secured by an exclusive pledge of, security interest in and lien on amounts in the Series 2022A Reserve Account within the Series A Debt Service Fund. Except for the Pledged Non-Housing Funds and amounts in the accounts described in the first sentence of this Section 4.01, and amounts in the Reserve Account within the Series A Debt Service Fund, no funds or properties of the Successor Agency shall be pledged to, or otherwise liable for, payment of the principal of or interest or redemption premium (if any), on the 2018A Bonds. Except for the Pledged Non-Housing Funds and amounts in the accounts described in the first sentence of this Section 4.01, and amounts in the Reserve Account within the Series A Debt Service Fund, no funds or properties of the Successor Agency shall be pledged to, or otherwise liable for, payment of the principal of or interest or redemption premium (if any), on the 2020A Bonds. Except for the Pledged Non-Housing Funds and amounts in the accounts described in the first sentence of this Section 4.01, and amounts in the 2022 Capitalized

Interest Fund and in the Series 2022A Reserve Account within the Series A Debt Service Fund, no funds or properties of the Successor Agency shall be pledged to, or otherwise liable for, the payment of principal of or interest or redemption premium (if any) on the 2022A Bonds."

(e) The second paragraph of Section 4.01 of the Amended Indenture is hereby amended by deleting the last sentence thereof in its entirety and by inserting therein, in lieu thereof, the following:

"The 2022B Bonds (exclusive of the 2018B Bonds or any related Parity Debt) are also secured by an exclusive pledge of, security interest in and lien on amounts in the Series 2022B Reserve Account within the Series B Debt Service Fund. Except for the Available LMIHF Funds and amounts in the accounts described in the first sentence of this paragraph, and amounts in the Reserve Account within the Series B Debt Service Fund, no funds or properties of the Successor Agency shall be pledged to, or otherwise liable for, payment of the principal of or interest or redemption premium (if any), on the 2018B Bonds. Except for the Available LMIHF Funds and amounts in the accounts described in the first sentence of this paragraph, and amounts in the Reserve Account within the Series B Debt Service Fund, no funds or properties of the Successor Agency shall be pledged to, or otherwise liable for, payment of the principal of or interest or redemption premium (if any), on the 2020B Bonds. Except for the Available LMIHF Funds and amounts in the accounts described in the first sentence of this paragraph, and amounts in the Series 2022B Reserve Account within the Series B Debt Service Fund, no funds or properties of the Successor Agency shall be pledged to, or otherwise liable for, the payment of principal of or interest or redemption premium (if any) on the 2022B Bonds."

(f) The first sentence of the first paragraph of Section 4.03(a) of the Amended Indenture is hereby amended by adding thereto, after the words "the Series 2020A Reserve Account" therein, the following: ", the Series 2022A Reserve Account."

(g) The first sentence of subparagraph (i) of Section 4.03 of the Amended Indenture is hereby amended by adding thereto, after the words "contained in the Interest Account on that date" therein, the following: "and any amount to be transferred from the 2022 Capitalized Interest Fund to the Interest Account pursuant to Section 4.05 for that date."

(h) The first sentence of the first paragraph of Section 4.03(b) of the Amended Indenture is hereby amended by adding thereto, after the words "the Series 2020B Reserve Account" therein, the following: ", the Series 2022B Reserve Account."

(i) Section 4.04 of the Amended Indenture is hereby amended by adding thereto, as new subsections (e) and (f) thereof, the following:

"(e) *Series 2022A Reserve Account of the Series A Debt Service Fund*. If, on any Interest Payment Date, the moneys available in the Interest Account, Principal Account and/or the Sinking Account of the Series A Debt Service Fund do not equal the amount of the principal and interest on the 2022A Bonds (not including the 2018A Bonds, the 2020A Bonds or any Parity Debt) then coming due and payable, the Trustee shall apply any moneys available in the Series 2022A Reserve Account of the Series A Debt Service Fund to make up the delinquent amounts with respect to the 2022A Bonds (not including the 2018A Bonds, the 2020A Bonds or any Parity Debt) by transferring the amount necessary for this purpose to the Interest Account, the Principal Account and/or the Sinking Account of the Series A Debt Service Fund and using the amount so transferred to make payments then due on the 2022A Bonds.

Amounts in the Series 2022A Reserve Account of the Series A Debt Service Fund shall be used and withdrawn by the Trustee solely for the purpose of making transfers to the Interest Account, the Principal Account and the Sinking Account of the Series A Debt Service Fund as described in the preceding paragraph or for the retirement of all the 2022A Bonds then Outstanding, except that so long as no Event of Default has occurred and is then continuing hereunder, any amount in the Series 2022A Reserve Account of the Series A Debt Service Fund in excess of the Reserve Requirement for the 2022A Bonds (as determined by the Trustee based upon a valuation of investments held in such account performed in accordance with Section 6.07) shall be withdrawn from the Series 2022A Reserve Account of the Series A Debt Service Fund semiannually on or before the second Business Day preceding each Interest Payment Date by the Trustee and deposited in the Interest Account of the Series A Debt Service Fund. All amounts in the Series 2022A Reserve Account of the Series A Debt Service Fund on the second Business Day preceding the final Interest Payment Date shall be withdrawn from the Series 2022A Reserve Account of the Series A Debt Service Fund and shall be transferred either (i) to the Interest Account, the Principal Account and the Sinking Account of the Series A Debt Service Fund, in such order, to the extent required to make the deposits required to be made on such Interest Payment Date pursuant to Section 4.03(a)(i), (ii) and (iii), or (ii) if the Successor Agency shall have caused to be transferred to the Trustee an amount sufficient to make such deposits required by Section 4.03(a)(i), (ii) and (iii), then, at the Written Request of the Successor Agency, to the Successor Agency to be applied by the Successor Agency as provided in the Former Agency Obligation (or, upon expiration or satisfaction in full of the Former Agency Obligation, as provided in the Law).

(f) *Series 2022B Reserve Account of the Series B Debt Service Fund*. If, on any Interest Payment Date, the moneys available in the Interest Account, Principal Account and/or the Sinking Account of the Series B Debt Service Fund, do not equal the amount of the principal and interest on the 2022B Bonds (not including the 2018B Bonds, the 2020B Bonds or any Parity Debt) then coming due and payable, the Trustee shall apply any moneys available in the Reserve Account of the Series B Debt Service Fund to make up the delinquent amounts with respect to the 2022B Bonds (not including the 2018B Bonds, the 2020B Bonds or any Parity Debt) by transferring the amount necessary for this purpose to the Interest Account, the Principal Account and/or the Sinking Account of the Series B Debt Service Fund and using the amount so transferred to make payments then due on the 2022B Bonds.

Amounts in the Series 2022B Reserve Account of the Series B Debt Service Fund shall be used and withdrawn by the Trustee solely for the purpose of making transfers to the Interest Account, the Principal Account and the Sinking Account of the Series B Debt Service Fund as described in the preceding paragraph or for the retirement of all the 2022B Bonds then Outstanding, except that so long as no Event of Default has occurred and is then continuing hereunder, any amount in the Series 2022B Reserve Account of the Series B Debt Service Fund in excess of the Reserve Requirement for the 2022B Bonds (as determined by the Trustee based upon a valuation of investments held in such account performed in accordance with Section 6.07) shall be withdrawn from the Series 2022B Reserve Account of the Series B Debt Service Fund semiannually on or before the second Business Day preceding each Interest Payment Date by the Trustee and deposited in the Interest Account of the Series B Debt Service Fund. All amounts in the Series 2022B Reserve Account of the Series B Debt Service Fund on the second

Business Day preceding the final Interest Payment Date shall be withdrawn from the Series 2022B Reserve Account of the Series B Debt Service Fund and shall be transferred either (i) to the Interest Account, the Principal Account and the Sinking Account of the Series B Debt Service Fund, in such order, to the extent required to make the deposits required to be made on such Interest Payment Date pursuant to Section 4.03(b)(i), (ii) and (iii), or (ii) if the Successor Agency shall have caused to be transferred to the Trustee an amount sufficient to make such deposits required by Section 4.03(b)(i), (ii) and (iii), then, at the Written Request of the Successor Agency, to the Successor Agency to be applied by the Successor Agency as provided in the Former Agency Obligation (or, upon expiration or satisfaction in full of the Former Agency Obligation, as provided in the Law)."

(j) The Amended Indenture is hereby amended by deleting Section 4.05 thereof, and by inserting therein, in lieu thereof, the following:

"Section 4.05. 2022 Capitalized Interest Fund. There is hereby established as a separate fund to be known as the "2022 Capitalized Interest Fund," which shall be held by the Trustee in trust. On the Closing Date (as defined in Section 12.01), the Trustee shall deposit in the 2022 Capitalized Interest Fund the amount set forth on Section 12.06(d). The Trustee shall transfer to the Interest Account of the Series A Debt Service Fund on the second Business Day prior to ____________ 1, ____, all amounts then on deposit in the 2022 Capitalized Interest Fund, to be used to pay a portion of the interest on the Series 2022A Bonds due on __________ 1, ____, and following such transfer the Capitalized Interest Fund shall be closed by the Trustee."

(k) The first sentence of Section 6.07 of the Amended Indenture is hereby amended by adding thereto, after the words "Costs of Issuance Fund" therein, the following: ", the 2022 Capitalized Interest Fund."

(l) Subparagraph (c) of the first paragraph of Section 6.07 of the Amended Indenture is hereby amended by adding thereto, after the words "Series 2020B Reserve Account" therein, the following: ", or moneys in the Series 2022A Reserve Account or the Series 2022B Reserve Account,."

(m) Subparagraph (c) of the first paragraph of Section 6.07 of the Amended Indenture is hereby further amended by adding thereto at the end thereof, the following: ", or to replenish the Series 2022A Reserve Account or the Series 2022B Reserve Account."

(n) The first paragraph of Section 6.07 of the Amended Indenture is hereby amended by adding thereto a new subparagraph (e) thereof, to read in its entirety as follows: "(e) Moneys in the 2022 Capitalized Interest Fund shall be invested in obligations that by their term mature on or before ____________ 1, ____."

SECTION 3. U.S.A. Patriot Act. The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

SECTION 4. Attachment of Exhibit E. The Amended Indenture is hereby further amended by incorporating therein an Exhibit E setting forth the form of the 2022A Bonds, which shall read in its entirety as set forth in Exhibit A attached hereto and by this reference made a part hereof.

SECTION 5. Attachment of Exhibit F. The Amended Indenture is hereby further amended by incorporating therein an Exhibit F setting forth the form of the 2022B Bonds, which shall read in its entirety as set forth in Exhibit B attached hereto and by this reference made a part hereof.

SECTION 6. Partial Invalidity. If any section, paragraph, sentence, clause or phrase of this Second Supplement shall for any reason be held illegal, invalid or unenforceable, such holding shall not affect the validity of the remaining portions of this Second Supplement. The Successor Agency hereby declares that it would have entered into this Second Supplement and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issue of the 2022A Bonds and the 2022B Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences. clauses, or phrases of this Second Supplement may be held illegal, invalid or unenforceable.

SECTION 7. Execution in Counterparts. This Second Supplement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. The exchange of copies of this Second Supplement and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Second Supplement Indenture as to the parties hereto and may be used in lieu of the original Second Supplement and signature pages for all purposes.

SECTION 8. Governing Law. This Second Supplement shall be construed and governed in accordance with the laws of the State of California applicable to contracts made and performed in such State.

IN WITNESS WHEREOF, the SUCCESSOR AGENCY TO THE MARINA REDEVELOPMENT AGENCY has caused this Second Supplemental Indenture of Trust to be signed in its name by the City Manager of the City of Marina, California, and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, in token of its acceptance of the trusts created hereunder, has caused this Second Supplemental Indenture of Trust to be signed in its corporate name by its officer thereunto duly authorized, all as of the day and year first above written.

SUCCESSOR AGENCY TO THE MARINA REDEVELOPMENT AGENCY

By: ______________________________

Layne Long
City Manager of the
City of Marina, California

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee

By: ______________________________

Sonia N. Flores
Vice President

13068.04:J18130

EXHIBIT A TO SECOND SUPPLEMENTAL INDENTURE OF TRUST

EXHIBIT E
FORM OF SERIES 2022A BOND

No. _________ $____________

UNITED STATES OF AMERICA
STATE OF CALIFORNIA
COUNTY OF MONTEREY

SUCCESSOR AGENCY TO THE MARINA REDEVELOPMENT AGENCY
TAX ALLOCATION BOND, SERIES 2022A

RATE OF INTEREST:	MATURITY DATE:	DATED DATE:	CUSIP:
	September 1, ____	____________, 2022	568061 B___

REGISTERED OWNER:

PRINCIPAL AMOUNT: DOLLARS

The SUCCESSOR AGENCY TO THE MARINA REDEVELOPMENT AGENCY, a public body, corporate and politic, duly organized and existing under the laws of the State of California (the "Successor Agency"), for value received, hereby promises to pay (but only out of the Tax Revenues and other moneys hereafter referred to) to the Registered Owner identified above or registered assigns (the "Registered Owner"), on the Maturity Date identified above, the Principal Amount identified above in lawful money of the United States of America; and to pay interest thereon at the Rate of Interest identified above in like lawful money from the date hereof, which date shall be the Interest Payment Date (as hereinafter defined) next preceding the date of authentication of this Bond (unless this Bond is authenticated on or before an Interest Payment Date and after the fifteenth calendar day of the month preceding such Interest Payment Date (a "Record Date"), in which event it shall bear interest from such Interest Payment Date, or unless this Bond is authenticated on or prior to ____________ 15, ____, in which event it shall bear interest from the Dated Date identified above; *provided, however,* that if, at the time of authentication of this Bond, interest is in default on this Bond, this Bond shall bear interest from the Interest Payment Date to which interest hereon has previously been paid or made available for payment), payable semiannually on March 1 and September 1 in each year, commencing ____________ 1, ____ (the "Interest Payment Dates") until payment of such Principal Amount in full.

The Principal Amount hereof is payable upon presentation hereof at the Principal Corporate Trust Office (as defined in the Indenture) of U.S. Bank Trust Company, National Association, as trustee (the "Trustee"), or at such other place as is designated by the Trustee. Interest hereon is payable by check of the Trustee mailed by first class mail on each Interest Payment Date to the Registered Owner hereof at the address of such Registered Owner as it appears on the registration books of the Trustee as of the preceding Record Date; provided that at the written request of the owner of at least $1,000,000 aggregate principal amount of Bonds which written request is on file with the Trustee as of any Record Date, interest on such Bonds shall be paid on the succeeding Interest Payment Date by wire transfer to such account as shall be specified in such written request.

This Bond is one of a duly authorized issue of bonds of the Successor Agency designated as the "Successor Agency to the Marina Redevelopment Agency Tax Allocation Bonds, Series 2022A" (the "Bonds") of an aggregate principal amount of ____________ Million ____________ Thousand Dollars ($____________), all of like tenor and date (except for such variation, if any, as may be required to designate varying numbers, maturities, interest rates or redemption provisions) and all issued pursuant to the provisions of Section 34177.5 of the California Health and Safety Code and pursuant to Resolution No. 2022-___ (SA-MRA) of the Successor Agency, adopted on March 1, 2022, and Resolution No. 2022-___ adopted by the Consolidated Oversight Board Successor Agency for the County of Monterey, State of California, on __________, 2022, and pursuant to an Indenture of Trust, dated as of July 1, 2018, by and between the Successor Agency and the Trustee, as amended by a First Supplemental Indenture of Trust, dated as of September 1, 2020, each between the Successor Agency and MUFG Union Bank, N.A., as predecessor trustee to the Trustee, and by a Second Supplemental Indenture of Trust, dated as of __________ 1, 2022, between the Successor Agency and the Trustee (as so amended, the "Indenture"). Additional bonds or other obligations may be issued by the Successor Agency secured under the Indenture on a parity with the Bonds and the 2018A Bonds ("Parity Debt"), but only subject to the terms of the Indenture. Reference is hereby made to the Indenture (copies of which are on file at the Principal Corporate Trust Office of the Trustee) and all supplements thereto for a description of the terms on which the Bonds are issued, the provisions with regard to the nature and extent of the Tax Revenues, as that term is defined in the Indenture, and the rights thereunder of the owners of the Bonds and the rights, duties and immunities of the Trustee and the rights and obligations of the Successor Agency thereunder, to all of the provisions of which the Registered Owner of this Bond, by acceptance hereof, assents and agrees.

The Bonds have been issued by the Successor Agency to (a) provide funds to make payments on the Former Agency Obligation (as defined in the Indenture), (b) pay certain expenses of the Successor Agency in issuing the Bonds, (c) fund the Series 2022A Reserve Account established under the Indenture as security for the Bonds, and (d) to make a deposit to a Capitalized Interest Fund for the Bonds.

The Bonds are limited obligations of the Successor Agency and this Bond and the interest hereon and on all other Bonds and the interest thereon (to the extent set forth in the Indenture), are payable from, and are secured by a pledge of, security interest in and lien on the Pledged Non-Housing Funds deposited from time to time in the Redevelopment Obligation Retirement Fund established pursuant to the Indenture, as described below.

There has been created and will be maintained by the Successor Agency, the Redevelopment Obligation Retirement Fund (as defined in the Indenture) into which Pledged Non-Housing Funds shall be deposited and from which the Successor Agency shall transfer Available Non-Housing Tax Increment Funds to the Trustee for payment of the principal of and the interest and redemption premium, if any, on the Bonds, the 2018A Bonds, the 2020A Bonds and any Parity Debt when due. As and to the extent set forth in the Indenture, Pledged Non-Housing Funds are exclusively and irrevocably pledged to and constitute a trust fund, in accordance with the terms hereof and the provisions of the Indenture and the Law, for the security and payment or redemption of, including any premium upon early redemption, and for the security and payment of interest on, the Bonds, the 2018A Bonds, the 2020A Bonds and any Parity Debt. In addition, the Bonds shall be secured at all times by a first and exclusive pledge of, security interest in and lien upon all of the moneys in the 2022 Capitalized Interest

Fund and in Series 2022A Reserve Account of the Series A Debt Service Fund, and the Bonds, the 2018A Bonds, the 2020A Bonds and any Parity Debt shall be additionally secured at all times by a first and exclusive pledge of, security interest in and lien upon all of the moneys in the Interest Account, the Principal Account, Sinking Account and the Redemption Account of the Series A Debt Service Fund (as such terms are defined in the Indenture). Except for the Pledged Non-Housing Funds and moneys in the Series A Debt Service Fund and the accounts therein, no funds or properties of the Successor Agency shall be pledged to, or otherwise liable for, the payment of principal of or interest or redemption premium, if any, on the Bonds.

The Bonds maturing on or before September 1, ____, are not subject to optional redemption prior to maturity. The Bonds maturing on or after September 1, ____, are subject to redemption, at the option of the Successor Agency, but only with the prior written consent of the Developer to the extent required under the Financing Plan, on any date on or after September 1, ____, as a whole or in part, among such maturities as shall be determined by the Successor Agency (and, in lieu of such determination, pro rata among maturities), and by lot within a maturity, from any available source of funds, at the following redemption prices expressed as a percentage of the principal amount thereof to be redeemed, together with accrued interest to the date fixed for redemption:

Redemption Date	Redemption Price
September 1, ____ to August 31, ____	%
September 1, ____ to August 31, ____	
September 1, ____ to August 31, ____	
September 1, ____ and thereafter	

The Bonds maturing on September 1, ____, are subject to mandatory redemption from Sinking Account payments set forth in the following schedule on September 1, ____, and on each September 1 thereafter, to and including September 1, ____, at a redemption price equal to the principal amount thereof to be redeemed (without premium), together with interest accrued thereon to the date fixed for redemption.

Redemption Date (September 1)	Principal Amount

As provided in the Indenture, notice of redemption shall be mailed by the Trustee by first class mail not less than thirty (30) nor more than sixty (60) days prior to the redemption date to the respective Owners of any Bonds designated for redemption at their addresses appearing on the Bond registration books of the Trustee, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for redemption.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

If an Event of Default, as defined in the Indenture, shall occur, the principal of all Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture, but such declaration and its consequences may be rescinded and annulled as further provided in the Indenture.

The Bonds are issuable as fully registered Bonds without coupons in denominations of $5,000 and any integral multiple thereof. Subject to the limitations and conditions and upon payment of the charges, if any, as provided in the Indenture, Bonds may be exchanged for a like aggregate principal amount of Bonds of other authorized denominations and of the same maturity.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at the Principal Corporate Trust Office of the Trustee, but only in the manner and subject to the limitations provided in the Indenture, and upon surrender and cancellation of this Bond. Upon registration of such transfer a new fully registered Bond or Bonds, of any authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor. The Trustee may refuse to transfer or exchange (a) any Bonds during the fifteen (15) days prior to the date established for the selection of Bonds for redemption, or (b) any Bonds selected for redemption.

The Successor Agency and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Successor Agency and the Trustee shall not be affected by any notice to the contrary.

The rights and obligations of the Successor Agency and the registered owners of the Bonds may be modified or amended at any time in the manner, to the extent and upon the terms provided in the Indenture, but no such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the Successor Agency to pay the principal, interest or redemption premiums (if any) at the time and place and at the rate and in the currency provided herein of any Bond without the express written consent of the Owner of such Bond, (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification or (c) without its written consent thereto, modify any of the rights or obligations of the Trustee.

This Bond is not a debt of the City of Marina, the State of California, or any of its political subdivisions, and neither said City, said State, nor any of its political subdivisions is liable hereon, nor in any event shall this Bond be payable out of any funds or properties other than those of the Successor Agency. The Bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

It is hereby certified that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist, have happened or have been performed in due and regular time, form and manner as required by the Law and the laws of the State of California and that the amount of this Bond, together with all other indebtedness of the Successor Agency, does not exceed any limit prescribed by the Law or any laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Trustee for registration of transfer, exchange or payment, and any Bond issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER,

PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the Owner hereof, Cede & Co., has an interest herein.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until the certificate of authentication hereon endorsed shall have been signed by the Trustee.

IN WITNESS WHEREOF, the Successor Agency to the Marina Redevelopment Agency has caused this Bond to be executed in its name and on its behalf with the facsimile signature of its Chair and attested to by the facsimile signature of its Board Secretary, all as of the date of issuance of the Bonds.

SUCCESSOR AGENCY TO THE MARINA
REDEVELOPMENT AGENCY

By: ____________________________________
Chair

ATTEST:

By: ____________________________________
Board Secretary

CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within-mentioned Indenture.

Authentication Date: ____________________

U.S. BANK TRUST COMPANY,
NATIONAL ASSOCIATION, as Trustee

By: ____________________________________
Authorized Signatory

ASSIGNMENT

For value received the undersigned hereby sells, assigns and transfers unto

____

____

____

(Name, Address and Tax Identification or Social Security Number)

the within-mentioned registered Bond and hereby irrevocably constitute(s) and appoint(s) ____ attorney, to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: ________________________

Signatures Guaranteed:

____

Note: Signature(s) must be guaranteed by an eligible guarantor.

____

Note: The signatures(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

EXHIBIT B TO SECOND SUPPLEMENTAL INDENTURE OF TRUST

EXHIBIT F
FORM OF SERIES 2022B BOND

No. _________ $___________

UNITED STATES OF AMERICA
STATE OF CALIFORNIA
COUNTY OF MONTEREY

SUCCESSOR AGENCY TO THE MARINA REDEVELOPMENT AGENCY
HOUSING TAX ALLOCATION BONDS, SERIES 2022B

RATE OF INTEREST:	MATURITY DATE:	DATED DATE:	CUSIP:
	September 1, ____	___________, 2022	568061 ____

REGISTERED OWNER:

PRINCIPAL AMOUNT: DOLLARS

The SUCCESSOR AGENCY TO THE MARINA REDEVELOPMENT AGENCY, a public body, corporate and politic, duly organized and existing under the laws of the State of California (the "Successor Agency"), for value received, hereby promises to pay (but only out of the Tax Revenues and other moneys hereafter referred to) to the Registered Owner identified above or registered assigns (the "Registered Owner"), on the Maturity Date identified above, the Principal Amount identified above in lawful money of the United States of America; and to pay interest thereon at the Rate of Interest identified above in like lawful money from the date hereof, which date shall be the Interest Payment Date (as hereinafter defined) next preceding the date of authentication of this Bond (unless this Bond is authenticated on or before an Interest Payment Date and after the fifteenth calendar day of the month preceding such Interest Payment Date (a "Record Date"), in which event it shall bear interest from such Interest Payment Date, or unless this Bond is authenticated on or prior to ___________ 15, ____, in which event it shall bear interest from the Dated Date identified above; *provided, however*, that if, at the time of authentication of this Bond, interest is in default on this Bond, this Bond shall bear interest from the Interest Payment Date to which interest hereon has previously been paid or made available for payment), payable semiannually on March 1 and September 1 in each year, commencing ___________ 1, ____ (the "Interest Payment Dates") until payment of such Principal Amount in full.

The Principal Amount hereof is payable upon presentation hereof at the Principal Corporate Trust Office (as defined in the Indenture) of U.S. Bank Trust Company, National Association, as trustee (the "Trustee"), or at such other place as is designated by the Trustee. Interest hereon is payable by check of the Trustee mailed by first class mail on each Interest Payment Date to the Registered Owner hereof at the address of such Registered Owner as it appears on the registration books of the Trustee as of the preceding Record Date; provided that at the written request of the owner of at least $1,000,000 aggregate principal amount of Bonds which written request is on file with the Trustee as of any Record Date, interest on such Bonds shall be paid on the succeeding Interest Payment Date by wire transfer to such account as shall be specified in such written request.

This Bond is one of a duly authorized issue of bonds of the Successor Agency designated as the "Successor Agency to the Marina Redevelopment Agency Tax Allocation Bonds, Series 2022B" (the "Bonds") of an aggregate principal amount of ___________ Million ___________ Thousand Dollars ($___________), all of like tenor and date (except for such variation, if any, as may be required to designate varying numbers, maturities, interest rates or redemption provisions) and all issued pursuant to the provisions of Section 34177.5 of the California Health and Safety Code and pursuant to Resolution No. 2022-___ (SA-MRA) of the Successor Agency, adopted on March 1, 2022, and Resolution No. 2022-___ adopted by the Consolidated Oversight Board Successor Agency for the County of Monterey, State of California on __________, 2022, and pursuant to an Indenture of Trust, dated as of July 1, 2018, by and between the Successor Agency and the Trustee, as amended by a First Supplemental Indenture of Trust, dated as of September 1, 2020, each between the Successor Agency and MUFG Union Bank, N.A., as predecessor trustee to the Trustee, and by a Second Supplemental Indenture of Trust, dated as of __________ 1, 2022, between the Successor Agency and the Trustee (as so amended, the "Indenture"). Additional bonds or other obligations may be issued by the Successor Agency secured under the Indenture on a parity with the Bonds and the 2018B Bonds ("Parity Debt"), but only subject to the terms of the Indenture. Reference is hereby made to the Indenture (copies of which are on file at the Principal Corporate Trust Office of the Trustee) and all supplements thereto for a description of the terms on which the Bonds are issued, the provisions with regard to the nature and extent of the Tax Revenues, as that term is defined in the Indenture, and the rights thereunder of the owners of the Bonds and the rights, duties and immunities of the Trustee and the rights and obligations of the Successor Agency thereunder, to all of the provisions of which the Registered Owner of this Bond, by acceptance hereof, assents and agrees.

The Bonds have been issued by the Successor Agency to (a) provide funds to make payments on the Former Agency Obligation (as defined in the Indenture), and (b) pay certain expenses of the Successor Agency in issuing the Bonds, and (c) fund the Series 2022B Reserve Account established under the Indenture as security for the Bonds.

The Bonds are limited obligations of the Successor Agency and this Bond and the interest hereon and on all other Bonds and the interest thereon (to the extent set forth in the Indenture), are payable from, and are secured by a pledge of, security interest in and lien on the Available LMIHF Funds deposited from time to time in the Redevelopment Obligation Retirement Fund established pursuant to the Indenture, as described below.

There has been created and will be maintained by the Successor Agency, the Redevelopment Obligation Retirement Fund (as defined in the Indenture) into which Available LMIHF Funds shall be deposited and from which the Successor Agency shall transfer Available LMIHF Funds to the Trustee for payment of the principal of and the interest and redemption premium, if any, on the Bonds, the 2018B Bonds, the 2020B Bonds and any Parity Debt when due. As and to the extent set forth in the Indenture, all such Available LMIHF Funds are exclusively and irrevocably pledged to and constitute a trust fund, in accordance with the terms hereof and the provisions of the Indenture and the Law, for the security and payment or redemption of, including any premium upon early redemption, and for the security and payment of interest on, the Bonds and any Parity Debt. In addition, the Bonds, the 2018B Bonds, the 2020B Bonds shall be secured at all times by a first and exclusive pledge of, security interest in and lien upon all of the moneys in the Series 2022B Reserve Account of the Series B Debt Service Fund, and the Bonds, the 2018B Bonds, the 2020B Bonds and any Parity Debt shall be additionally secured at all times by a first and exclusive pledge of, security interest in and lien upon all of the moneys in the Interest Account, the Principal Account, Sinking Account and the Redemption Account of the Series B Debt Service Fund (as such terms are defined in the Indenture). Except for the Available LMIHF Funds and moneys in the Series B Debt Service Fund and the accounts therein, no funds or properties of the Successor Agency shall be pledged to, or otherwise liable for, the payment of principal of or interest or redemption premium, if any, on the Bonds.

The Bonds maturing on or before September 1, ____, are not subject to optional redemption prior to maturity. The Bonds maturing on or after September 1, ____, are subject to redemption, at the option of the Successor Agency, but only with the prior written consent of the Developer to the extent required under the Financing Plan, on any date on or after September 1, ____, as a whole or in part, among such maturities as shall be determined by the Successor Agency (and, in lieu of such determination, pro rata among maturities), and by lot within a maturity, from any available source of funds, at the following redemption prices expressed as a percentage of the principal amount thereof to be redeemed, together with accrued interest to the date fixed for redemption:

Redemption Date	Redemption Price
September 1, ____ to August 31, ____	%
September 1, ____ to August 31, ____	
September 1, ____ to August 31, ____	
September 1, ____ and thereafter	

The Bonds maturing on September 1, ____, are subject to mandatory redemption from Sinking Account payments set forth in the following schedule on September 1, ____, and on each September 1 thereafter, to and including September 1, ____, at a redemption price equal to the principal amount thereof to be redeemed (without premium), together with interest accrued thereon to the date fixed for redemption.

Redemption Date (September 1)	Principal Amount

As provided in the Indenture, notice of redemption shall be mailed by the Trustee by first class mail not less than thirty (30) nor more than sixty (60) days prior to the redemption date to the respective Owners of any Bonds designated for redemption at their addresses appearing on the Bond registration books of the Trustee, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for redemption.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

If an Event of Default, as defined in the Indenture, shall occur, the principal of all Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture, but such declaration and its consequences may be rescinded and annulled as further provided in the Indenture.

The Bonds are issuable as fully registered Bonds without coupons in denominations of $5,000 and any integral multiple thereof. Subject to the limitations and conditions and upon payment of the charges, if any, as provided in the Indenture, Bonds may be exchanged for a like aggregate principal amount of Bonds of other authorized denominations and of the same maturity.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at the Principal Corporate Trust Office of the Trustee, but only in the manner and subject to the limitations provided in the Indenture, and upon surrender and cancellation of this Bond. Upon registration of such transfer a new fully registered Bond or Bonds, of any authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor. The Trustee may refuse to transfer or exchange (a) any Bonds during the fifteen (15) days prior to the date established for the selection of Bonds for redemption, or (b) any Bonds selected for redemption.

The Successor Agency and the Trustee may treat the Registered Owner hereof as the absolute owner hereof for all purposes, and the Successor Agency and the Trustee shall not be affected by any notice to the contrary.

The rights and obligations of the Successor Agency and the registered owners of the Bonds may be modified or amended at any time in the manner, to the extent and upon the terms provided in the Indenture, but no such modification or amendment shall (a) extend the maturity of or reduce the interest rate on any Bond or otherwise alter or impair the obligation of the Successor Agency to pay the principal, interest or redemption premiums (if any) at the time and place and at the rate and in the currency provided herein of any Bond without the express written consent of the Owner of such Bond, (b) reduce the percentage of Bonds required for the written consent to any such amendment or modification or (c) without its written consent thereto, modify any of the rights or obligations of the Trustee.

This Bond is not a debt of the City of Marina, the State of California, or any of its political subdivisions, and neither said City, said State, nor any of its political subdivisions is liable hereon, nor in any event shall this Bond be payable out of any funds or properties other than those of the Successor Agency. The Bonds do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

It is hereby certified that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist, have happened or have been performed in due and regular time, form and manner as required by the Law and the laws of the State of California and that the amount of this Bond, together with all other indebtedness of the Successor Agency, does not exceed any limit prescribed by the Law or any laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Trustee for registration of transfer, exchange or payment, and any Bond issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the Owner hereof, Cede & Co., has an interest herein.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until the certificate of authentication hereon endorsed shall have been signed by the Trustee.

IN WITNESS WHEREOF, the Successor Agency to the Marina Redevelopment Agency has caused this Bond to be executed in its name and on its behalf with the facsimile signature of its Chair and attested to by the facsimile signature of its Board Secretary, all as of the date of issuance of the Bonds.

SUCCESSOR AGENCY TO THE MARINA
REDEVELOPMENT AGENCY

By: ___________________________________
Chair

ATTEST:

By: ___________________________________
Board Secretary

CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within-mentioned Indenture.

Authentication Date: ____________________

U.S. BANK TRUST COMPANY,
NATIONAL ASSOCIATION, as Trustee

By: ___________________________________
Authorized Signatory

ASSIGNMENT

For value received the undersigned hereby sells, assigns and transfers unto

____

____

____

(Name, Address and Tax Identification or Social Security Number)

the within-mentioned registered Bond and hereby irrevocably constitute(s) and appoint(s) ____ attorney, to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: __________________________

Signatures Guaranteed:

____

Note: Signature(s) must be guaranteed by an eligible guarantor.

____

Note: The signatures(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

Date February 23, 2022 | Item No: **11a**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of March 1, 2022

CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-, AUTHORIZING ADJUSTMENTS TO THE CITY'S SALARY SCHEDULE AND COMPENSATION PLAN FOR MARINA DIRECTORS, AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MARINA AND THE MARINA DIRECTORS, AUTHORIZING THE FINANCE DIRECTOR TO MAKE APPROPRIATE BUDGET AND ACCOUNTING ENTRIES AND RECEIVING AN ORAL REPORT ON CHANGES TO EXECUTIVE COMPENSATION IN COMPLIANCE WITH GOVERNMENT CODE SECTION 54953(C)(3)

REQUEST:

It is requested that the City Council consider adopting Resolution No. 2022-:

1. Authorizing adjustments to the City's salary schedule and compensation plan for Marina Directors; and,

2. Authorizing the City Manager to execute a Memorandum of Understanding between the City of Marina and the Marina Directors Employees; and,

3. Authorizing Finance Director to make appropriate accounting and budgetary entries; and,

4. Receiving an oral report on changes to the executive compensation plan in compliance with Government Code Section 54953(c)(3).

BACKGROUND:

The City of Marina City Council has delegated all hiring authority to the City Manager including director positions of Assistant City Manager, Police Chief, Fire Chief, Finance Director, Public Works Director, Community Development Director and Recreation Director. The salary ranges, benefits, terms and conditions of employment are included in the Director's Memorandum of Understanding (MOU). In addition, the directors have specific contracts which are based on the MOU. When a new director is hired, he or she is hired within the broadband salary range dependent on his or her position, experience, skills and abilities.

Government Code section 54953(c)(3) requires that, before taking final action, the Board of Directors must orally report a summary of the recommendation regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executives.

ANALYSIS:

The Director MOU lapsed January 1, 2021. Consistent with the employee MOU's recently approved, it is recommend that the Directors be provided a 2.5% cost of living adjustment for FY 21/22 and a variable cost of living adjustment for FY 22/23 based upon the April 2022 SF/Oakland CPI, but not less than 2% and not more than 3.5%. The FY 21/22 cost of living adjustment to be effective the first full pay period in July 2021.

The 2.5% cost of living adjustment to the City's current Director's broadband salary range results in the changes demonstrated in Table 1 below.

Table 1. Director's Monthly Broadband Salary Range

Position	Current Monthly Broadband Range	Proposed Monthly Broadband Range with 2.5 % COLA
Assistant City Manager Community Development Director Finance Director Fire Chief Police Chief Recreation Director Public Works Dir/City Engineer	$10,535 to $17,985	$10,798 to $18,435

The attached MOU documents the salary adjustments noted above and will be effective as of July 1, 2021 through June 30, 2023. There are no changes to benefits or other compensations as a result of the cost-of-living adjustment.

Executive Compensation Changes

Government Code section 54953(c)(3) requires that, before taking final action, the Board of Directors must orally report a summary of the recommendation regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of local agency executives. Below in Table 2 is a list of employees who constitute local agency executives in the Marina Directors group.

Assistant City Manager
Community Development Director
Finance Director
Fire Chief
Police Chief
Recreation Director
Public Works Dir/City Engineer

Effective July 1, 2021, all positions listed above and in the attached resolution, will receive a cost-of-living increase to their salaries, in the amount of 2.5%.

In addition, the following positions will receive an equity increase at the following rates, effective February 28, 2022:

a. Fire Chief will receive a 14.5% equity increase;
b. Police Chief will receive a 12.0% equity increase;

Executive Compensation Summary

The Marina Directors group actual salaries as a result of the above compensation changes are summarized in Table 2 below.

Table 2. Executive Compensation Summary

Position	Monthly Salary
Assistant City Manager	$16,628
Community Development Director	$14,819
Finance Director	$13,495
Fire Chief	$16,405
Police Chief	$16,984
Recreation Director	Currently vacant
Public Works Dir/City Engineer	$15,307

FISCAL IMPACT:

The annual costs of the above-described changes to the executive compensation schedule are approximately $75,000 a year.

CONCLUSION:

This report is presented for Council's consideration.

Respectfully submitted,

____

Catrina Scharf
Human Resource Analyst
City of Marina

REVIEWED/CONCUR:

____

Layne Long
City Manager
City of Marina

RESOLUTION No. 2022-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA AUTHORIZING ADJUSTMENTS TO THE CITY'S SALARY SCHEDULE AND COMPENSATION PLAN FOR MARINA DIRECTORS, AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MARINA AND THE MARINA DIRECTORS, AUTHORIZING THE FINANCE DIRECTOR TO MAKE APPROPRIATE BUDGET AND ACCOUNTING ENTRIES AND RECEIVING AN ORAL REPORT ON CHANGES TO EXECUTIVE COMPENSATION IN COMPLIANCE WITH GOVERNMENT CODE SECTION 54953(C)(3)

WHEREAS, the City employs directors to manage the various departments of the City; and,

WHEREAS, these directors have a collective Memorandum of Understanding (MOU) and employment agreements (Contracts); and,

WHEREAS, the Director MOU lapsed January 1, 2021; and,

WHEREAS, the City Council has review various indicators of the cost of living, including the San Francisco June CPI which was up more than 2.5% from the year prior; and,

WHEREAS, consistent with the employee MOU's recently approved, the City wishes to increase the Directors broadband salary schedule by 2.5% for FY 21/22 and a variable cost of living adjustment for FY 22/23 based upon the April 2022 SF/Oakland CPI, but not less than 2% and not more than 3.5%; and,

WHEREAS, the 2.5% cost of living increase to the Directors broadband salary schedule results in the an increase in the range from $10,535 - $17,985 per month to $10,798 - $18,434 per month, as shown in Table 1 of **Exhibit "A"**; and,

WHEREAS, the Marina Directors group actual salaries as a result of the above compensation changes are summarized in Table 2 of **Exhibit "A"**; and,

WHEREAS, the Director's MOU contains salary ranges, benefits, terms and conditions of employment and is addition, the Directors individual Contracts which are based on the MOU. The MOU included as **Exhibit "B"** updates the Broadband Salary Range and will be effective as of July 1, 2021 through June 30, 2023.

WHEREAS, effective July 1, 2021, all positions listed above and in the attached resolution, will receive a cost-of-living increase to their salaries, in the amount of 2.5%; and,

WHEREAS, the following positions will receive an equity increase at the following rates, effective February 28, 2022:

a. Fire Chief will receive a 14.5% equity increase;
b. Police Chief will receive a 12.0% equity increase;

WHEREAS, the annual cost of the salary increases is approximately $75,000 a year.

WHEREAS, Government Code section 54953(c)(3) requires that, before taking final action, the Board of Directors must orally report a summary of the recommendation regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executives; and, WHEREAS, on March 1, 2022, the City Council received an oral report on the changes to executive compensation and approved this comprehensive memorializing the changes.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARINA DOES HEREBY RESOLVE AS FOLLOWS:

1. Authorize adjustments to the City's salary schedule and compensation plan for Marina Directors; and,

2. Authorize the City Manager to execute a Memorandum of Understanding between the City of Marina and the Marina Directors Employees; and,

3. Authorize Finance Director to make appropriate accounting and budgetary entries; and,

4. Receive the executive compensation report in compliance with Government Code Section 54953(c)(3).

PASSED and ADOPTED by the City Council of the City of Marina at a regular meeting duly held on this 1st day of March 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

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EXHIBIT A

Director Salary Broadband Effective 7/5/2021

Table 1. Director's Monthly Broadband Salary Range

Position	Monthly Broadband Range
Assistant City Manager Community Development Director Finance Director Fire Chief Police Chief Recreation Director Public Works Dir/City Engineer	$10,798 to $18,435

Table 2. Executive Compensation Summary

Position	Monthly Salary
Assistant City Manager	$16,628
Community Development Director	$14,819
Finance Director	$13,495
Fire Chief	$16,405
Police Chief	$16,984
Recreation Director	Currently vacant
Public Works Dir/City Engineer	$15,307

EXHIBIT B

Marina Directors
Memorandum of Understanding
Benefit Description

1. Directors Broadband Salary Range

Position	Monthly Broadband Range
Assistant City Manager Community Development Director Finance Director Fire Chief Police Chief Recreation Director Public Works Dir/City Engineer	$10,798 to $18,435

2. Medical, Dental & Vision, Flexible Benefit Plan

A. The City of Marina will contribute 70% of the low-cost health plan's premium offered by CalPERS towards whatever plan the employee selects.

B. The City shall pay Dental insurance premium per month as follows:

Dental Plan	Employee Only	Employee + 1	Employee + 2 or more
Premier Access	$9.67	$24.00	$29.00

C. The City shall pay vision insurance premium per month as follows:

Vision Plan	Employee Only	Employee + 1	Employee + 2 or more
Vision Service Plan	$20.00	$20.00	$20.00

D. Flexible Benefit Plan: The City shall implement a Section 125 Flexible Benefit Plan for the members of the Association, as follow"

E. City shall provide an allowance of $575 per month to each member for medical insurance and voluntary programs such as Dental insurance, Vision insurance and Long-Term Disability Insurance, Term Life Insurance, Medical Expense Reimbursement Account and Dependent Care Reimbursement account.

F. The allowance must be applied toward payment of monthly premium for the PERS Health plan, previously described to all members for members and their families except a member may decline coverage for the member and/or a member's family if the member provides proof satisfactory to the City that the person for whom coverage is declined is covered under a qualifying group health insurance policy from another source.

G. City shall offer Dental insurance, Vision insurance, Term Life insurance, Medical Expense Reimbursement and Dependent Care Reimbursement on a voluntary basis. At the members election, the cost of these benefits may be paid from any portion of the allowance described above or an offset to the members salary, if the combined cost of the benefits exceeds the allowance.

H. If the allowance is in excess of the cost of all benefits, the difference may be taken in cash. Any amounts taken in cash will be paid out in a bi-monthly payment. It is expressly understood that any future limit on the amount of cash and deferred compensation shall be subject to the meet-and-confer process.

I. City will provide a Medical Expense Reimbursement Account into which a member may pay any amount not to exceed $2,160 annually ($180 per month). A member may also pay into the Dependent Care Reimbursement Account which member may pay any amount not to exceed $5,000 annually ($416.66 per month). City shall prepare a Flexible Benefit Plan worksheet for distribution to all members, which shall reflect the premiums for each element of the plan.

J. City shall pay up to $60.00 per member for the cost of setting up the Flexible Benefit Plan

K. City shall pay up to $6.00 per member per month for the administrative fee Flexible Benefit Plan

3. **<u>Life Insurance</u>**: City will provide on behalf of the employee $100,000.00 life insurance coverage at a cost not to exceed $45.00 per month.

4. **<u>Retirement:</u>** The City shall provide retirement benefits the employee under the Public Employees' Retirement System (PERS), as follows:

A. **Retirement Plans**

1. For non-public safety employee:

   a. Tier 1 – CalPERS 2%@ 55 provided to all miscellaneous member employees hired prior to December 31, 2012 or considered Classic members.
   b. Tier 2 – CalPERS 2% @ 62 plan will be provided to all miscellaneous members hired on or after January 1, 2013 who are new members as defined under the PEPRA.

2. For sworn public safety employee:

   a. Tier 1 – CalPERS 3%@ 50 provided to all members hired prior to December 31, 2012 or are considered Classic members.
   b. Tier 2 – CalPERS 2.7% @ 57 plan will be provided to all members hired on or after January 1, 2013 who are new members as defined under the PEPRA

B. **Contributions**

a. Effective January 1, 2013 Tier 1 members will pay the full member contribution rate required by CalPERS

b. Effective January 1, 2013, Tier 2 members shall pay 50% of the normal cost of the retirement plan as identified annually by CalPERS. This contribution may change annually as required by the PEPRA

5. Survivor Benefits

A. The City will amend the PERS contract to include 1959 Survivors Benefit Level four for the Association. The employee cost will be $2.00 per month.

6. Holiday Schedule

A. For each member of the group the following holiday schedule shall apply

- Martin Luther King Jr. Birthday (3rd Monday of January)
- Presidents Day (3rd Monday of February)
- Memorial Day (Last Monday of May)
- Independence Day (July 4)
- Labor Day (First Monday of September)
- Veterans Day (November 11)
- Thanksgiving Day and the next day (4th Thursday and next Friday of November)
- Winter Break (December 24 – January 1)

B. When one of the above designated holidays falls on a weekend, then the weekday nearest that day will be considered as that holiday.

7. Leaves: The employee's leave shall accrue and be administered, as follows:

A. **Administrative Leave**: Employee shall receive two hundred (200) hours' yearly Administrative Leave, earned in a lump sum on July 1st of each year. Unused Administrative Leave to be paid at current salary upon termination of employment to a maximum of one hundred and sixty (160) hours.

Cash-out Unless otherwise specified in the Director's Contract, the City will pay employee at their request a maximum amount of one hundred (100) hours of administrative leave each fiscal year, at the employee's individual regular rate of pay.

B. **Personal Leave Time:** Employee shall accrue Personal Leave Time as in lieu of Sick and Vacation time. The accrual rate will be as follows.

First Through Fifth Year of Service. Twenty-two (22) working days per year.

Sixth Through Fifteenth Year of Service. Twenty-seven (27) working days per year.

Sixteenth Year of Service and On. Twenty (32) working days per year.

Personal Leave Time shall not accrue in excess of 960 hours. Upon resignation, employee shall receive compensation for unused Personal Leave Time to a maximum of 300 hours. Upon retirement, employee shall receive compensation for unused Personal Leave Time to a maximum of 800 hours.

Cash-out: The City will pay employee at their request a maximum amount of eighty (80) hours of personal leave each fiscal year, at the employee's individual regular rate of pay.

Emergency Compensation: For Personal Leave Time. Upon a written request certifying and explaining a health-related emergency, the City Manager may authorize Employee to receive compensation for Personal Leave Time for a maximum of 80 hours.

8. Physicals:

A. City shall pay up to $300.00 for the cost of a physical examination for the Employee, on an annual basis.

9. Training Day:

A. City shall budget $500.00 for the Employee as Department Director Training Day

10. Educational Programs:

A. The City will pay the tuition cost for educational programs in which the Employee participates, subject to the prior approval of the City Manager, provided the training is determined to be relevant to the Employee's job. The annual aggregate cost for tuition shall not exceed $2,000.00.

11. Longevity Compensation:

A. After ten (10) years of accumulated service with the City, the employee shall receive an additional five percent (5%) in salary.

B. An advancement in longevity pay from 10 years to 9 years would go to employees who had an overall rating of “highly competent” on their most recent evaluation.

12. Business Expense Allowance: Employee shall receive a business expense allowance of $50.00 per month.

13. Non-Covered Items. Items not covered in this agreement are governed by the City’s Employee Handbook.