



AGENDA

Tuesday, March 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 2022-32, 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 31, 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-Miliias-Brown Act representative.*

- a. Conference with Legal Counsel – Anticipated Litigation: Significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Govt. Code Section 54956.9: One potential case.
- b. Conference with Legal Counsel – Existing Litigation pursuant to paragraph (10 of Subdivision (d) of Govt. Code Section 54956.9: Marina Aviation, LLC, v. City of Marina, FAA Docket No. 16-21-12.
- c. 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

6:30 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 99412-99552, totaling \$903,287.32
Accounts Payable for Successor Agency Check Number 82, totaling \$1,780.00
 - b. MINUTES:
 - (1) February 23, 2022, Special City Council Meeting
 - (2) March 1, 2022, Regular City Council Meeting
 - c. CLAIMS AGAINST THE CITY:
 - (1) City Council Rejection of Claim - staff recommends that the City Council reject the following claim and direct sending appropriate notice of rejection to claimant: Mark Anthony Jiminez for a claim received on March 4, 2022.
 - d. AWARD OF BID:
 - e. CALL FOR BIDS: None
 - f. ADOPTION OF RESOLUTIONS:
 - (1) City Council consider adopting Resolution No. 2022-, regarding the Ralph M. Brown Act (California Government Code §§54950-54963, 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 April 1, 2022 through April 30, 2022.

- (2) City Council consider adopting Resolution No. 2022-, authorize the purchase of a Forcible entry prop for \$80,000.00 from Forcible Entry Equipment; and authorize the purchase of the Phenix TL-2 Firefighter helmets for \$30,000. From Allstar Fire Equipment; and authorize the Finance Director to make necessary accounting and budgetary entries.
- (3) City Council consider adopting Resolution No. 2022-, preliminarily approving the Fiscal Year 2022-23 Engineer's Report for the Cypress Cove II Landscape Maintenance Assessment District; declaring its intention to levy an assessment in fiscal year 2022-23 in that district; and calling a public hearing for April 5, 2022.
- (4) City Council consider adopting Resolution No. 2022-, preliminarily approving the Fiscal Year 2022-23 Engineer's Report for the Seabreeze Landscape Maintenance Assessment District; declaring its intention to levy an assessment in fiscal year 2022-23 in that district; and calling a public hearing for April 5, 2022.
- (5) City Council consider adopting Resolution No. 2022-, preliminarily approving the Fiscal Year 2022-23 Engineer's Report for the Monterey Bay Estates Lighting & Landscape Maintenance Assessment District; declaring its intention to levy an assessment in fiscal year 2022-23 in that district; and calling a public hearing for April 5, 2022.

g. APPROVAL OF AGREEMENTS:

- (1) City Council consider adopting Resolution No. 2022-, approving assignment of a Lease, Assumption of Assignment of Lease and consent to Assignment of Lease for 3240 Imjin Road (Building 510) between the City of Marina, Driven Performance, LLC and Joby Aero, Inc.; and authorizing City Manager to execute the Assignment of 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 assignment of a lease, assumption of assignment of lease and consent to assignment of lease for 791 Neeson Road (Building 521) between the City of Marina, Fort Ord Works, Inc and Joby Aero, Inc.; and authorizing City Manager to execute the Assignment of the Lease Agreement, on behalf of the City, subject to final review and approval by City Attorney.
- (3) City Council consider adopting Resolution No. 2022-, approving Amendment No. 2 to the Program Management Services between the City of Marina and Wallace Group (WG), to add to the scope of work for the program management services for multiple projects defined under the Capital Improvement Program (CIP) and Airport Capital Improvement Program (ACIP); Increase the contract limit amount by \$1,288,548.04 for a total contract limit of \$2,601,794.04; and authorizing the City Manager to execute the amendment on behalf of the City subject to final review and approval by the City Attorney.
- (4) City Council consider adopting Resolution No. 2022-, approving Amendment No. 1 to the On-Call Architectural Services agreement between the City of Marina and Jeff Katz Architecture (JKA) increasing the annual contract limit to \$900,000 for fiscal year 2022-2023; authorizing the City Manager to execute the amendment on behalf of the City subject to final review and approval by the City Attorney.

h. ACCEPTANCE OF PUBLIC IMPROVEMENTS: None

- i. MAPS: None
- j. REPORTS: (RECEIVE AND FILE):
- k. FUNDING & BUDGET MATTERS: None
- l. APPROVE ORDINANCES (WAIVE SECOND READING): None
- m. APPROVE APPOINTMENTS:
- 9. PUBLIC HEARINGS: None
- 10. OTHER ACTIONS ITEMS OF THE SUCCESSOR AGENCY TO THE FORMER MARINA REDEVELOPMENT AGENCY: *Action listed for each Agenda item is that which is requested by staff. The Successor Agency may, at its discretion, take action on any items. The public is invited to approach the podium to provide up to four (4) minutes of public comment.*
- 11. OTHER ACTION ITEMS: *Action listed for each Agenda item is that which is requested by staff. The City Council may, at its discretion, take action on any items. The public is invited to approach the podium to provide up to four (4) minutes of public comment.*

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

- a. City Council consider adopting Resolution No. 2022-, approving city to advertise and call for bids for the execution of the City Park Barracks and Cypress Knolls Buildings Blight Removal 2022 Project.
- b. City Council consider adopting Resolution No. 2022-, approving Vehicle Mile Traveled (VMT) as a threshold of significance for the purposes of assessing transportation impacts under the California Environmental Quality Act (CEQA); and find that the action is exempt from CEQA pursuant to Section 15308 of the CEQA Guidelines.
- 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, March 11, 2022.

ANITA SHARP, DEPUTY CITY CLERK

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

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

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

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

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

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

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

C I T Y H A L L 2 0 2 2 H O L I D A Y S
(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 24, 2022	July 14, 2022	September 8, 2022
April 14, 2022	July 28, 2022	September 22, 2022
April 28, 2022	August 8, 2022	October 13, 2022
May 12, 2022	August 22, 2022	October 27, 2022
May 26, 2022		November 10, 2022
June 9, 2022		
June 23, 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
April 21, 2022
May 19, 2022

June 16, 2022
July 21, 2022
August 18, 2022

September 15, 2022
October 20, 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

AP Check Register 03-04-22

Bank Account: 905 - Chase - Checking

Batch Date: 03/04/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: 905 - Chase - Checking						
Check	03/04/2022	99412	Accounts Payable	Ace Hardware		68.68
	Invoice		Date	Description		Amount
	081322		02/26/2022	Supplies for Station 2		24.40
	081263		02/20/2022	Materials to make rope barrier, for parking at Station 2		44.28
Check	03/04/2022	99413	Accounts Payable	Ace Hardware		29.46
	Invoice		Date	Description		Amount
	081295		02/23/2022	Traffic Signal Preventative Maintenance		18.55
	081278		02/22/2022	Batteries		10.91
Check	03/04/2022	99414	Accounts Payable	Advantage Gear		816.68
	Invoice		Date	Description		Amount
	50712-1		02/04/2022	Uniform for Carlos Vega		326.63
	50380-1		01/25/2022	Uniform shirts for Carlos Vega		310.30
	49414-1		12/21/2021	Uniform pants for RFF Ivo Jiminez		179.75
Check	03/04/2022	99415	Accounts Payable	Aramark Uniform Service		3,371.50
	Invoice		Date	Description		Amount
	511000206234		01/19/2022	Uniforms		70.51
	511000206229		01/19/2022	Uniforms		46.58
	511000206226		01/19/2022	Uniforms		40.87
	511000206232		01/19/2022	Uniforms		19.93
	511000210567		01/26/2022	Uniforms		19.93
	511000210564		01/26/2022	Uniforms		40.87
	511000210565		01/26/2022	Uniforms		46.58
	511000210568		01/26/2022	Uniforms		70.51
	511000215384		02/02/2022	Uniforms		19.93
	511000215382		02/02/2022	Uniforms		59.76
	511000215383		02/02/2022	Uniforms		46.58
	511000215385		02/02/2022	Uniforms		70.51
	511000222616		02/16/2022	Uniforms		8.53
	511000222614		02/16/2022	Uniforms		45.18
	511000222615		02/16/2022	Uniforms		46.58
	511000222617		02/16/2022	Uniforms		70.51

Marina, CA LIVE

AP Check Register 03-04-22

Bank Account: 905 - Chase - Checking
Batch Date: 03/04/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
	511000226455		02/23/2022	Uniforms		657.31
	511000226453		02/23/2022	Uniforms		45.18
	511000226454		02/23/2022	Uniforms		46.58
	511000226456		02/23/2022	Uniforms		70.51
	511000139447		10/06/2021	Uniforms		40.87
	511000139448		10/06/2021	Uniforms		46.05
	511000139449		10/06/2021	Uniforms		19.93
	511000139450		10/06/2021	Uniforms		54.21
	511000143736		10/13/2021	Uniforms		40.87
	511000143740		10/13/2021	Uniforms		46.05
	511000143742		10/13/2021	Uniforms		19.93
	511000143744		10/13/2021	Uniforms		54.21
	511000147640		10/20/2021	Uniforms		40.87
	511000147643		10/20/2021	Uniforms		46.05
	511000147646		10/20/2021	Uniforms		19.93
	511000147648		10/20/2021	Uniforms		70.51
	511000152569		10/27/2021	Uniforms		40.87
	511000152570		10/27/2021	Uniforms		46.05
	511000152571		10/27/2021	Uniforms		19.93
	511000152572		10/27/2021	Uniforms		70.51
	511000160459		11/10/2021	Uniforms		40.87
	511000160462		11/10/2021	Uniforms		43.13
	511000160463		11/10/2021	Uniforms		19.93
	511000160465		11/10/2021	Uniforms		70.51
	511000164689		11/17/2021	Uniforms		40.87
	511000164691		11/17/2021	Uniforms		43.13
	511000164693		11/17/2021	Uniforms		19.93
	511000164694		11/17/2021	Uniforms		70.51
	511000169337		11/24/2021	Uniforms		40.87
	511000169343		11/24/2021	Uniforms		295.82
	511000169347		11/24/2021	Uniforms		19.93
	511000169348		11/24/2021	Uniforms		70.51
	511000193336		12/29/2021	Uniforms		19.93
	511000197559		01/05/2022	Uniforms		40.87
	511000197565		01/05/2022	Uniforms		46.58

AP Check Register 03-04-22

Bank Account: 905 - Chase - Checking

Batch Date: 03/04/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	511000197573	01/05/2022	Uniforms			19.93
	511000202284	01/05/2022	Uniforms			70.51
	511000202286	01/12/2022	Uniforms			40.87
	511000202287	01/12/2022	Uniforms			46.58
	511000202289	01/12/2022	Uniforms			19.93
Check	03/04/2022	99416	Accounts Payable	ARC Document Solutions		70.51
	Invoice		Date	Description		282.96
	2527709	12/21/2021	ARC Invoice - Dec 2021			Amount
	03/04/2022	99417	Accounts Payable	AT & T		282.96
	Invoice		Date	Description		701.24
Check	02-14-22	02/14/2022	Phone Service	02/14/2022		Amount
	03/04/2022	99418	Accounts Payable	AT & T		701.24
	Invoice		Date	Description		183.51
	000017764209	02/13/2022	Phone Service	02/13/2022		Amount
	000017773380	02/15/2022	Internet Service	02/15/2022		166.16
Check	03/04/2022	99419	Accounts Payable	Bound Tree Medical		17.35
	Invoice		Date	Description		2,569.24
	84405755	02/15/2022	Medical Supplies - Oxygen Regulator, Hose Barb			Amount
	84403824	02/14/2022	Medical Supplies - Digital BP Monitor, Face Masks			139.82
	84405756	02/15/2022	Medical Supplies			627.61
Check	03/04/2022	99420	Accounts Payable	Branch's Janitorial		1,801.81
	Invoice		Date	Description		5,121.35
	228341	02/23/2022	Janitorial Services - City Wide			Amount
	228343	02/23/2022	Janitorial Service - Police/Fire/Airport February 2022			2,886.35
	03/04/2022	99421	Accounts Payable	Carmel Fire Protection Associates		2,235.00
Check	122041	02/05/2022	Plan Review & Inspection Sea Haven City Park Restroom			4,000.00
	122048	02/09/2022	Plan Review and Inspection at Joby Pilot Lounge			Amount
	122049	02/09/2022	Plan Review and Inspection at Joby Pilot Lounge			200.00
						200.00
						200.00

Marina, CA LIVE

AP Check Register 03-04-22

Bank Account: 905 - Chase - Checking

Batch Date: 03/04/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	122043		02/09/2022	Plan review and inspections at 422 Barcroft Way		200.00
	122044		02/09/2022	Plan review and inspections at 444 Barcroft Way		200.00
	122045		02/09/2022	Plan review and inspections at 446 Barcroft Way		200.00
	122046		02/09/2022	Plan review and inspections at 463 Russell Way		200.00
	122047		02/09/2022	Plan review and inspections at 440 Barcroft Way		200.00
	122056		02/12/2022	Plan review and inspections at 461 Russell Way		200.00
	122028		02/05/2022	Plan review and inspection at 3018 Minaret Way		200.00
	122029		02/05/2022	Plan review and inspection at 3016 Minaret Way		200.00
	122030		02/05/2022	Plan review and inspection at 3014 Minaret Way		200.00
	122031		02/05/2022	Plan review and inspection at 3012 Minaret Way		200.00
	122032		02/05/2022	Plan review and inspection at 3010 Minaret Way		200.00
	122033		02/05/2022	Plan review and inspection at 2998 Minaret Way		200.00
	122034		02/05/2022	Plan review and inspection at 2996 Minaret Way		200.00
	122035		02/05/2022	Plan review and inspection at 468 Lassen Way		200.00
	122036		02/05/2022	Plan review and inspection at 470 Lassen Way		200.00
	122037		02/05/2022	Plan review and inspection at 472 Lassen Way		200.00
	122038		02/05/2022	Plan review and inspection at 474 Lassen Way		200.00
Check	03/04/2022	99422	Accounts Payable	Carmel Roasters, Inc.		327.75
Check	Invoice		Date	Description		Amount
	63183		02/09/2022	FD Coffee - 4 boxes		327.75
	03/04/2022	99423	Accounts Payable	Central Valley Toxicology		78.00
Check	Invoice		Date	Description		Amount
	317151		12/27/2021	Toxicology MG2102336 12/27/2021		78.00
	03/04/2022	99424	Accounts Payable	Chaz Design		1,724.95
Check	Invoice		Date	Description		Amount
	3390		12/20/2021	Police Graphics - Unit 820		1,724.95
	03/04/2022	99425	Accounts Payable	Cheryl Kent		1,620.00
Check	Invoice		Date	Description		Amount
	2022-20		02/10/2022	Code Enforcement Investigations		540.00
	2022-25		02/24/2022	Code Enforcement Investigations		1,080.00
Check	03/04/2022	99426	Accounts Payable	Cintas Corporation		81.05

User: Monika Collier

Pages: 4 of 10

3/3/2022 9:35:06 AM

AP Check Register 03-04-22

Bank Account: 905 - Chase - Checking

Batch Date: 03/04/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	Invoice			Description		Amount
	4111165799	02/18/2022		Mat Service-Police/Fire 02/18/22		81.05
	03/04/2022	99427	Accounts Payable	City Of Monterey		750.00
Check	Invoice			Description		Amount
	95450	02/10/2022		Hazmat FRO RECERT Training (15)		750.00
	03/04/2022	99428	Accounts Payable	Clears, Inc.		50.00
Check	Invoice			Description		Amount
	02-17-22	02/17/2022		Membership 02/17/2022		50.00
	03/04/2022	99429	Accounts Payable	County of Santa Clara		998.13
Check	Invoice			Description		Amount
	1800080463	02/09/2022		COPLINK Sharing System 02/09/2022		998.13
	03/04/2022	99430	Accounts Payable	Critical Reach		330.00
Check	Invoice			Description		Amount
	2029	12/08/2021		APBnet Annual Support Fee		330.00
	03/04/2022	99431	Accounts Payable	CSG Consultants		12,154.00
Check	Invoice			Description		Amount
	41279	01/14/2022		Fire Inspection by CSG: Eric Rodewald		760.00
	41768	02/11/2022		Building Inspection Services thru 01/28/2022		11,394.00
Check	Invoice			Description		Amount
	03/04/2022	99432	Accounts Payable	Della Mora Heating, Inc.		2,775.00
	14706	02/16/2022		Public Safety Building HVAC Repair		2,775.00
Check	Invoice			Description		Amount
	03/04/2022	99433	Accounts Payable	Donna Crouse		250.00
	02-19-22 vd	02/19/2022		Rental Refund - Vince DiMaggio		250.00
Check	Invoice			Description		Amount
	03/04/2022	99434	Accounts Payable	Ergometrics & Applied Pers. Research		291.08
	141246	11/30/2021		Testing Materials & shipping charges		291.08
Check	Invoice			Description		Amount
	03/04/2022	99435	Accounts Payable	FedEx		60.74

AP Check Register 03-04-22

Bank Account: 905 - Chase - Checking

Batch Date: 03/04/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	Invoice			Description		Amount
	7-666-30801			Shipping 02/18/2022		33.81
	7-673-37283			Shipping 02/25/2022		26.93
	03/04/2022	99436	Accounts Payable	First Alarm		440.37
Check	Invoice			Description		Amount
	663607			Alarm Monitoring - Council Chambers Audio Room		97.20
	665996			Alarm Monitoring - 3200 Del Monte Blvd - VDP		156.09
	665997			Alarm 02/15/2021		187.08
Check	03/04/2022	99437	Accounts Payable	Home Depot Credit Service		324.24
	Invoice			Description		Amount
	02-22-22			Score Boards - Preston Park		75.15
	02-23-22			Corp Yard Kitchen Faucet		249.09
Check	03/04/2022	99438	Accounts Payable	Interstate Battery		285.94
	Invoice			Description		Amount
	120119711			2 - MTP-65HD Batteries - Boom Truck		285.94
	03/04/2022	99439	Accounts Payable	LC Action		2,427.05
Check	Invoice			Description		Amount
	435662			Firearm Equipment		2,427.05
	03/04/2022	99440	Accounts Payable	Liebert Cassidy Whitmore		8,479.00
	Invoice			Description		Amount
Check	212755			Case #MA130-00037		1,692.00
	212744			Case#MA130-00036		725.00
	212731			Case #MA130-00035		2,077.00
	212701			Claim # MA130-0031		234.00
Check	212004			Claim # MA130-00001		3,751.00
	03/04/2022	99441	Accounts Payable	Marina Coast Water District		2,968.30
	Invoice			Description		Amount
	000056041 123121			Utilities 12/31/2021		275.77
	000056045 021722			Water Charges		1,734.57
	000056046 021722			Water Charges		150.82

AP Check Register 03-04-22

Bank Account: 905 - Chase - Checking

Batch Date: 03/04/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	000056094	021722	02/17/2022	Water Charges		426.66
	012016000	021722	02/17/2022	Water Charges		36.77
	000056040	021722	02/17/2022	Water Charges		27.26
	000056006	021722	02/17/2022	Water Charges		47.72
	000056028	021722	02/17/2022	Water Charges		36.77
	000056042	021722	02/17/2022	Water Charges		89.02
	000056090	021722	02/17/2022	Water Charges		60.52
	000056061	021722	02/17/2022	Water Charges		82.42
	03/04/2022	99442	Accounts Payable	Monterey Bay Lovedpet		400.00
	Invoice		Date	Description		Amount
Check	2022-315726		02/23/2022	Freezer Cleanup		400.00
	03/04/2022	99443	Accounts Payable	Monterey County Peace Officers Association		420.00
Check	Invoice		Date	Description		Amount
	2022013R		02/21/2022	Shooting Range 02/21/2022		420.00
Check	03/04/2022	99444	Accounts Payable	Monterey Tire Service		1,517.43
	Invoice		Date	Description		Amount
Check	1-104563		02/25/2022	Tires, alignment and balancing for 5461		1,517.43
	03/04/2022	99445	Accounts Payable	Motorola Solutions, Inc.		818.33
Check	Invoice		Date	Description		Amount
	16173230		02/08/2022	Prof Svc - Other		818.33
Check	03/04/2022	99446	Accounts Payable	Office Depot		126.89
	Invoice		Date	Description		Amount
Check	210384924001		12/14/2021	Planning Office Supplies		12.77
	216258990001		12/22/2021	Building Dept Supplies		44.78
	218018279001		12/21/2021	Building Dept Supplies		69.34
	03/04/2022	99447	Accounts Payable	Office Depot		504.40
	Invoice		Date	Description		Amount
Check	205553527001		10/22/2021	Office Supplies 10/22/2021		50.90
	205553524001		10/22/2021	Office Supplies 10/22/2021		258.14
	205543367001		10/22/2021	Office Supplies 10/22/2021		23.69

Marina, CA LIVE
AP Check Register 03-04-22
 Bank Account: 905 - Chase - Checking
 Batch Date: 03/04/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	210384924001		12/14/2021	Office Supplies 12/14/2021		12.77
	210426991001		12/15/2021	Office Supplies 12/15/2021		44.78
	216258990001		12/22/2021	Office Supplies 12/22/2021		44.78
	218018279001		12/21/2021	Office Supplies 12/21/2021		69.34
	03/04/2022	99448	Accounts Payable	Pacific Gas & Electric		2,963.17
	Invoice		Date	Description		Amount
	767-2.FEB22		02/09/2022	Utilities 02/09/2022		94.41
	272-1.FEB22		02/16/2022	PG&E - 2862559272-1		41.57
	683-2.FEB22		02/16/2022	PG&E 6217294683-2		1,391.74
	362-9.FEB22		02/17/2022	PG&E - 5996678362-9		124.04
	172-2.FEB22		02/17/2022	PG&E - 5618207172-2		778.13
	533-8.FEB22		02/16/2022	PG&E - 2253666533-8		128.57
	795-7.FEB22		02/18/2022	PG&E - 4467294795-7		404.71
Check	03/04/2022	99449	Accounts Payable	Pinnacle Healthcare		1,510.00
	Invoice		Date	Description		Amount
	335600		02/08/2022	Pinnacle Healthcare - Pre Emp Px		202.00
	336890		02/10/2022	Pinnacle Healthcare - Pre Emp Px		252.00
	337540		02/15/2022	Pinnacle Healthcare - Pre Emp Px		202.00
	337280		02/14/2022	Pinnacle Healthcare - Pre Emp Px		202.00
	337770		02/16/2022	Pinnacle Healthcare - Pre Emp Px		652.00
	03/04/2022	99450	Accounts Payable	Quill Corporation		615.98
Check	Invoice		Date	Description		Amount
	22877474		02/07/2022	Office Supplies 02/07/2022		53.52
	22904884		02/07/2022	Office Supplies 02/07/2022		24.02
	23211693		02/18/2022	Supplies 02/18/2022		356.02
	23217098		02/21/2022	Office Supplies 02/21/2022		86.30
	23188865		02/18/2022	Office Supplies 02/18/2022		16.38
	23189691		02/18/2022	Office Supplies 02/18/2022		79.74
Check	03/04/2022	99451	Accounts Payable	Robert R. Wellington		7,263.00
	Invoice		Date	Description		Amount
	26082		02/18/2022	Cal Am Matters - January 2022		108.00
	26095		02/18/2022	The Dunes - January 2022		126.00

Marina, CA LIVE
AP Check Register 03-04-22
 Bank Account: 905 - Chase - Checking
 Batch Date: 03/04/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
	26083		02/18/2022	Code Enforcement Matters - January 2022		18.00
	26084		02/18/2022	Covid 19 Issues - January 2022		198.00
	26089		02/18/2022	Misc Litigation Matters - January 2022		54.00
	26094		02/18/2022	Tax & Finance Matters - January 2022		396.00
	26093		02/18/2022	Abrams Park-Marina Height-Sea Haven - January 2022		603.00
	26092		02/18/2022	Public Records Act Requests - January 2022		522.00
	26091		02/18/2022	Police Personnel Matters - January 2022		297.00
	26090		02/18/2022	Misc Personnel Matters - January 2022		1,181.00
	26088		02/18/2022	Marina Equestrian Center - January 2022		234.00
	26087		02/18/2022	Land Use & Operations - January 2022		1,545.00
	26085		02/18/2022	Election Matters - January 2022		558.00
	26061		01/07/2022	The Dunes - Dec 2021		261.00
	26014		12/15/2021	Marina Station - November 2021		423.00
	25978		11/19/2021	Marina Station - October 2021		603.00
	25912		10/01/2021	Marina Station - August 2021		18.00
	25135		03/12/2020	Marina Dunes RV Park - December 2019		56.00
	25875		08/24/2021	Marina Dunes RV Park - July 2021		30.00
	25179		03/24/2020	Marina Dunes RV Park - January 2020		16.00
	25408		08/11/2020	Marina Dunes RV Park - July 2020		16.00
Check	03/04/2022	99452	Accounts Payable	Ryan Ranch Printers		219.63
	Invoice		Date	Description		Amount
	22876		02/23/2022	Business Cards - Kathy Biala		103.79
	22898		02/28/2022	Postcards for Planning		115.84
Check	03/04/2022	99453	Accounts Payable	Shartsis Ffresse LLP		175,815.85
	Invoice		Date	Description		Amount
	5448150		12/23/2021	Professional Services - MPWSP - November 2021		175,815.85
Check	03/04/2022	99454	Accounts Payable	Sierra Springs & Alhambra		162.20
	Invoice		Date	Description		Amount
	7266038 021822		02/18/2022	Water Cooler Rental and Replacement Water		57.36
	14225799 021322		02/13/2022	5g Fresh Water Delivery Service Eng.		104.84
Check	03/04/2022	99455	Accounts Payable	SpeakWrite		505.47
	Invoice		Date	Description		Amount

Marina, CA LIVE

AP Check Register 03-04-22

Bank Account: 905 - Chase - Checking
Batch Date: 03/04/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	b37d4641		03/01/2022	Transcription 03/01/2022		505.47
	03/04/2022	99456	Accounts Payable	Taygeta Scientific, Inc.		2,000.00
	Invoice		Date	Description		Amount
Check	000423-R-0039		03/01/2022	Network Defense/Mar22		2,000.00
	03/04/2022	99457	Accounts Payable	United Way Monterey County		5,000.00
	Invoice		Date	Description		Amount
Check	07-20-21		07/20/2021	Financial Support for 211 Monterey County 2021/2022		5,000.00
	03/04/2022	99458	Accounts Payable	USA Towing Inc.		210.00
	Invoice		Date	Description		Amount
Check	175488		01/11/2022	Towing 01/11/2022		210.00
	03/04/2022	99459	Accounts Payable	Xerox Financial Services		239.26
	Invoice		Date	Description		Amount
Check	3105297		02/25/2022	FD Monthly Copier Charges - 02/17/22 - 03/16/22		239.26
	03/04/2022	99460	Accounts Payable	Zoom Imaging Solutions		284.84
	Invoice		Date	Description		Amount
EFT	IN2485326		02/23/2022	Toner/Meter Read 02/23/2022		284.84
	03/04/2022	2112	Accounts Payable	Richard B. Standridge	121042882 / 8312012522	3,182.50
	Invoice		Date	Description		Amount
EFT	22-04		02/25/2022	Services 02-14/02-24-22		3,182.50
	03/04/2022	2113	Accounts Payable	Wex Bank	071000288 / 4539508	267.76
	Invoice		Date	Description		Amount
	77702167		01/23/2022	Patrol Gas Cards		267.76
905 Chase - Checking Totals:						\$257,586.93
Transactions: 51						

Checks: 49 \$254,136.67
EFTs: 2 \$3,450.26

Marina, CA LIVE

AP Check Register 03-11-22

Bank Account: 905 - Chase - Checking
Batch Date: 03/11/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: 905 - Chase - Checking						
Check	03/11/2022	99461	Accounts Payable	Ace Hardware		27.29
	Invoice		Date	Description		Amount
	081384		03/03/2022	Station 2 Cleaning Supplies		7.64
	081387		03/03/2022	Stripper floor wax		19.65
Check	03/11/2022	99462	Accounts Payable	Ace Hardware		100.11
	Invoice		Date	Description		Amount
	081260		02/18/2022	key, handle & fasteners		35.72
	081290		02/23/2022	brush, snaps, rags & chain		64.39
Check	03/11/2022	99463	Accounts Payable	Anita Kerezsi		1,875.00
	Invoice		Date	Description		Amount
	Marina-22-2		02/28/2022	State Mandated Cost Claims FY21-22		1,875.00
Check	03/11/2022	99464	Accounts Payable	American Supply Co.		2,543.56
	Invoice		Date	Description		Amount
	0166727		02/22/2022	Janitorial Supplies		2,031.50
	0166349		02/07/2022	Janitorial Supplies		90.57
	0166726		02/22/2022	Trash Bags for Parks		421.49
Check	03/11/2022	99465	Accounts Payable	Andersen's Lock & Safe, Inc.		46.50
	Invoice		Date	Description		Amount
	42002		03/02/2022	Finance Office Desk Lock Repair		46.50
Check	03/11/2022	99466	Accounts Payable	Aramark Uniform Service		227.55
	Invoice		Date	Description		Amount
	511000230605		03/02/2022	Shop Rags		70.51
	511000230600		03/02/2022	Public Works Uniforms		112.88
	511000230597		03/02/2022	Public Works Uniforms		17.81
	511000230601		03/02/2022	Public Works Uniforms		26.35
Check	03/11/2022	99467	Accounts Payable	AT & T		276.72
	Invoice		Date	Description		Amount
	000017815252		02/27/2022	CALNET3-9391023477 (582-9803)		22.56
	000017815246		02/27/2022	CALNET3-9391023471 (582-0100)		47.80

Marina, CA LIVE

AP Check Register 03-11-22

Bank Account: 905 - Chase - Checking

Batch Date: 03/11/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	000017816987	02/28/2022		CALNET3-9391023466 (384-8477)		43.44
	000017816984	02/28/2022		CALNET3-9391023463 (384-7854)		22.56
	000017816960	02/28/2022		CALNET3-9391023441 (384-0888)		22.56
	000017816956	02/28/2022		CALNET3-9391023437 (384-0425)		72.59
	000017816989	02/28/2022		CALNET3-9391023468 (384-9148)		22.59
	000017816959	02/28/2022		CALNET3-9391023440 (384-0860)		22.62
Check	03/11/2022	99468	Accounts Payable	Bear Electrical Solutions, Inc.		9,925.00
Check	Invoice		Date	Description		Amount
	14983	03/02/2022		Pole Replacement - Vista Del Camino & Reservation		8,375.00
	14987	03/03/2022		Ped. Sign Replacement - Res and Del Monte		1,550.00
	03/11/2022	99469	Accounts Payable	Branch's Janitorial		2,059.47
	Invoice		Date	Description		Amount
	228342	02/23/2022		Custodial Services for February 2022		2,059.47
Check	03/11/2022	99470	Accounts Payable	Carlos Ramirez		250.00
Check	Invoice		Date	Description		Amount
	02-25-22 vd	02/25/2022		Rental Refund - Vince DiMaggio		250.00
	03/11/2022	99471	Accounts Payable	Cintas Corporation		131.99
	Invoice		Date	Description		Amount
	4112523015	03/04/2022		Mat Service-Police/Fire 03/04/22		81.05
	4112522971	03/04/2022		Mat Service City Hall		50.94
Check	03/11/2022	99472	Accounts Payable	Comcast		247.02
Check	Invoice		Date	Description		Amount
	02-14-22	02/14/2022		Teen Center Cable Fees		177.32
	02-26-22	02/26/2022		Cable Service Police & Fire 03/04/22 to 04/03/22		69.70
	03/11/2022	99473	Accounts Payable	Commercial Environment Landscape		2,900.00
	Invoice		Date	Description		Amount
	2796-0222	02/21/2022		Airport Landscape Services_Feb. 22		2,900.00
Check	03/11/2022	99474	Accounts Payable	CSG Consultants		5,703.00
Check	Invoice		Date	Description		Amount
	41376	01/14/2022		CSG Eng: Locke Paddon CFD		165.00

User: Monika Collier

Pages: 2 of 10

3/10/2022 9:36:18 AM

Marina, CA LIVE
AP Check Register 03-11-22
 Bank Account: 905 - Chase - Checking
 Batch Date: 03/11/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	41377		01/14/2022	CSG Eng: Cypress Cove LMD		753.00
	41378		01/14/2022	CSG Eng: (APR 1801) Annual Sts Resurfacing		1,650.00
	41383		01/14/2022	RWQCB		330.00
	41382		01/14/2022	Staff Augmentation		2,805.00
Check	03/11/2022	99475	Accounts Payable	Diablo Engineering Group		8,295.02
	Invoice		Date	Description		Amount
Check	2070		06/02/2021	2nd Ave Extension & Patton Pkwy (R5)		8,295.02
	03/11/2022	99476	Accounts Payable	Don Chapin Company, Inc.		14,434.78
Check	65703		02/16/2022	Measure X Capital Projects Annual Street		14,434.78
	03/11/2022	99477	Accounts Payable	Epic Aviation		24,988.75
Check	7531582		02/21/2022	Airport_Jet A Fuel Purchase		24,988.75
	03/11/2022	99478	Accounts Payable	Fastenal Company		6,380.73
Check	CASAL150056		02/15/2022	Staff Tools		1,140.62
	CASAL150220		02/23/2022	Staff Tools		2,422.82
	CASAL150348		02/28/2022	Staff Tools		2,087.87
	CASAL135463		02/08/2021	Supply Vending Machine		439.91
Check	03/11/2022	99479	Accounts Payable	First Alarm		289.51
	Invoice		Date	Description		Amount
Check	666378		02/17/2022	Service Call & Standby Battery - 209 Cypress Ave		133.25
	03/11/2022	99480	Accounts Payable	Gatzke Dillon & Ballance		2,891.00
Check	13780		02/17/2022	Airport - FAA Issues - January 1-31, 2022		Amount
	03/11/2022	99481	Accounts Payable	Goldfarb & Lipman		2,891.00
Check	143654		01/20/2022	General File - December 2021		10,300.00
	143655		01/20/2022	Marina Heights/Sea Haven - December 2021		Amount
						476.00
						3,712.00

AP Check Register 03-11-22

Bank Account: 905 - Chase - Checking

Batch Date: 03/11/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	143656		01/20/2022	The Dunes - December 2021		6,112.00
	03/11/2022	99482	Accounts Payable	Home Depot Credit Service		367.84
	Invoice		Date	Description		Amount
Check	02-24-22		02/24/2022	(2) Kitchen Faucets - Vince DiMaggio Park		216.32
	02-24-22B		02/24/2022	Paint - Preston Park Scoreboards		151.52
	03/11/2022	99483	Accounts Payable	Janice Griffin		350.00
	Invoice		Date	Description		Amount
Check	02-11-22		02/11/2022	event services		350.00
	03/11/2022	99484	Accounts Payable	Jasmine Do		250.00
	Invoice		Date	Description		Amount
Check	02-26-22 vd		02/26/2022	Vince DiMaggio Refund		250.00
	03/11/2022	99485	Accounts Payable	Keyser Marston Associates		2,087.50
	Invoice		Date	Description		Amount
Check	0036602		03/08/2022	FORA Bonds Administration		2,087.50
	03/11/2022	99486	Accounts Payable	Kimley-Horn & Associates		5,653.63
	Invoice		Date	Description		Amount
Check	20607318		01/31/2022	LRSP City CIP F462		5,653.63
	03/11/2022	99487	Accounts Payable	Lexis Nexis Risk Solutions		150.00
	Invoice		Date	Description		Amount
Check	1308841-20220228		02/28/2022	Monitoring Service 02/28/2022		150.00
	03/11/2022	99488	Accounts Payable	Marina Coast Water District		6,850.17
	Invoice		Date	Description		Amount
	000056044.113021		11/30/2021	Water Service_B520		145.45
	000056051.113021		11/30/2021	Water Service_B533		190.85
	000056092.113021		11/30/2021	Water Service_B527		1,061.20
	000056096.113021		11/30/2021	Water Service_B554		104.12
	000056097.113021		11/30/2021	Water Service_B507		413.85
	000056041.013122		01/31/2022	Water Service_B514		272.18
	000056043.013122		01/31/2022	Water Service_B524		155.54
	000056044.013122		01/31/2022	Water Service_B520		164.98

Marina, CA LIVE
AP Check Register 03-11-22
 Bank Account: 905 - Chase - Checking
 Batch Date: 03/11/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	000056051.01	3122	01/31/2022	Water Service_B533		225.59
	000056092.01	3122	01/31/2022	Water Service_B527		1,138.32
	000056096.01	3122	01/31/2022	Water Service_B554		107.88
	000056097.01	3122	01/31/2022	Water Service_B507		453.34
	000057000.01	3122	01/31/2022	Water Service_B504		179.14
	000056100	022822	02/28/2022	Water Charges		503.11
	000056036	022822	02/28/2022	Water Charges		171.02
	000056037	022822	02/28/2022	Water Charges		171.02
	000056095	022822	02/28/2022	Water Charges		171.02
	000056099	022822	02/28/2022	Water Charges		1,026.94
	000056049	022822	02/28/2022	Water Charges		194.62
	03/11/2022	99489	Accounts Payable	Marina Plumbing		220.00
	Invoice		Date	Description		Amount
	51295		12/22/2021	B520_Boiler Maintenance		220.00
Check	03/11/2022	99490	Accounts Payable	Mark43, Inc.		49,200.00
	Invoice		Date	Description		Amount
Check	INV0600		02/09/2022	RMS 02/09/2022		49,200.00
	03/11/2022	99491	Accounts Payable	Maynard Group Inc.		655.51
Check	Invoice		Date	Description		Amount
	IN2025044		03/01/2022	Phone System 03/03/22		655.51
Check	03/11/2022	99492	Accounts Payable	Monterey County - Emergency Communications		154,670.00
	Invoice		Date	Description		Amount
Check	03-02-22		03/02/2022	Monterey County Emergency Communication Quarter 4 Invoice 21/22		154,670.00
	03/11/2022	99493	Accounts Payable	Monterey County Petroleum-Sturdy Oil Co.		28,398.75
Check	Invoice		Date	Description		Amount
	28721A-IN		02/08/2022	Gasoline		7,544.13
	029324C-CM		02/07/2022	DEF (55 Gal) Refund		(327.75)
	28687A-IN		01/28/2022	Clear Diesel		2,101.71
	28686A-IN		01/28/2022	Gasoline		4,713.96
	27344A-IN		12/30/2021	Gasoline		2,662.49

AP Check Register 03-11-22

Bank Account: 905 - Chase - Checking

Batch Date: 03/11/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	27320A-IN		12/28/2021	Clear Diesel		942.46
	28429A-IN		12/16/2021	Gasoline		4,516.48
	28428A-IN		12/15/2021	Gasoline & Diesel		6,245.27
	03/11/2022	99494	Accounts Payable	Monterey Regional Waste Management District		20.00
	Invoice		Date	Description		Amount
Check	3558554		02/28/2022	Airport_Load of Trash and Old Lumber		20.00
	03/11/2022	99495	Accounts Payable	Monterey Tire Service		24.73
	Invoice		Date	Description		Amount
	1-105042		03/03/2022	PD Durango Flat Tire Repair		24.73
Check	03/11/2022	99496	Accounts Payable	Motorola Solutions, Inc.		676.97
	Invoice		Date	Description		Amount
	16174540		02/24/2022	Battery Camera Charging Station		676.97
	03/11/2022	99497	Accounts Payable	My Chevrolet		438.07
	Invoice		Date	Description		Amount
Check	CVCS243160		02/01/2022	6 Tire Checks 17 Caprice PD 4dr sedan		438.07
	03/11/2022	99498	Accounts Payable	Nextel Communications - Sprint		380.81
	Invoice		Date	Description		Amount
	866147022-234		02/22/2022	Dept Cell Phones		380.81
Check	03/11/2022	99499	Accounts Payable	NPM, Inc.		380.00
	Invoice		Date	Description		Amount
	183780		02/16/2022	Airport_Repair/Troubleshooting of Jet A Fuel Pump		380.00
	03/11/2022	99500	Accounts Payable	O'Reilly Auto Parts		27.30
	Invoice		Date	Description		Amount
Check	2631-154576		09/10/2021	Floor Mats		27.30
	03/11/2022	99501	Accounts Payable	Pacific Gas & Electric		46,368.60
	Invoice		Date	Description		Amount
	098-7.FEB22		02/09/2022	Utilities_B524		6,737.74
	103-6.FEB22		02/10/2022	Utilities_B507		13,358.00

AP Check Register 03-11-22

Bank Account: 905 - Chase - Checking

Batch Date: 03/11/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	288-5.FEB22		02/09/2022	Utilities_B520		575.25
	347-0.FEB22		02/08/2022	Utilities_B519		669.39
	415-6.FEB22		02/09/2022	Utilities_B504		232.45
	451-7.FEB22		02/08/2022	Utilities_B554		246.99
	694-1.FEB22		02/09/2022	Utilities_B533		1,932.87
	313-6.FEB22		02/25/2022	PG&E 6793435313-6		8,951.29
Check	483-6.FEB22		02/14/2022	PG&E - 3982644483-6		13,664.62
	03/11/2022	99502	Accounts Payable	Pitney Bowes		1,375.38
	Invoice		Date	Description		Amount
	3105347321		02/23/2022	Postage Meter Lease Payment		1,375.38
	03/11/2022	99503	Accounts Payable	Precision Mobile Testing, LLC		1,900.00
	Invoice		Date	Description		Amount
Check	24		03/07/2022	Spirometry test for FD Staff		1,900.00
	03/11/2022	99504	Accounts Payable	Pure H2O		202.08
	Invoice		Date	Description		Amount
	16629		03/01/2022	Water Cooler Service Police & Fire 03/01/22		202.08
	03/11/2022	99505	Accounts Payable	Robert R. Wellington		1,560.00
	Invoice		Date	Description		Amount
Check	26086		02/18/2022	Joby Aero Inc. - January 2022		585.00
	26081		02/18/2022	Marina Municipal Airport Matters_January 2022		975.00
	03/11/2022	99506	Accounts Payable	Ross Roofing and Construction, Inc.		8,305.00
	Invoice		Date	Description		Amount
	7426 Ret		02/27/2022	B510 New Roof - Payment of Retention		8,305.00
	03/11/2022	99507	Accounts Payable	Safety-Kleen Corp.		235.03
Check	Invoice		Date	Description		Amount
	88008821		01/21/2022	30G Parts Washer Solvent		235.03
	03/11/2022	99508	Accounts Payable	Salinas Valley Ford		769.91
	Invoice		Date	Description		Amount
	86827		02/04/2022	2015 Ford Expedition Air Bag Repair		769.91
	03/11/2022	99509	Accounts Payable	Scott Bell		250.00

Marina, CA LIVE
AP Check Register 03-11-22
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Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	Invoice			Description		Amount
	03-02-22 git		03/02/2022	Deposit Refund - Sports Field Use		250.00
	03/11/2022	99510	Accounts Payable	Shartsis Friesse LLP		198,285.89
Check	Invoice			Description		Amount
	5452206		02/28/2022	Professional Services - MPWSP - January 2022		198,285.89
	03/11/2022	99511	Accounts Payable	Target Solutions		2,110.00
Check	Invoice			Description		Amount
	IN43498		04/01/2022	TargetSolutions Premier Membership, Res & Career - Training		2,110.00
	03/11/2022	99512	Accounts Payable	Taygeta Scientific, Inc.		1,475.80
Check	Invoice			Description		Amount
	000335-R-0004		02/28/2022	2022 Inventory Control Software License Renewal		1,000.00
	000708-R-0012		03/01/2022	Barracuda Spam Firewall Monthly Subscription - March 2022		475.80
Check	Invoice			Description		Amount
	03/11/2022	99513	Accounts Payable	TechRx Technology Services		11,504.70
Check	Invoice			Description		Amount
	9943		03/01/2022	Veeam Virtual Backup Monthly Subscription - March 2022		380.00
	9927		03/01/2022	SSL Certificate of Logos- cityofmarina.org - March 2022		150.00
Check	Invoice			Description		Amount
	9937		03/01/2022	Ninite Monthly Subscription - March 2022		112.50
	9964		02/28/2022	IT Support - February 2022		8,160.00
Check	Invoice			Description		Amount
	9848		01/01/2022	TechRX - Guido's Computer		2,702.20
	03/11/2022	99514	Accounts Payable	Telemetrix		4,239.10
Check	Invoice			Description		Amount
	4015		02/10/2022	Purchase of Replacement Parts-Repair of Taxiway Light Controller		1,990.00
	4016		02/10/2022	Diagnose Taxiway Lights Outage and Perform Repairs		1,755.00
Check	Invoice			Description		Amount
	4017		02/10/2022	Clean/Repoint Airport Cameras & Replace UPS		494.10
	03/11/2022	99515	Accounts Payable	U.S. Bank Equipment Finance		1,243.07
Check	Invoice			Description		Amount
	466080702		02/23/2022	Contract 02/23/2022		1,243.07
	03/11/2022	99516	Accounts Payable	United Site Services		260.13
Check	Invoice			Description		Amount

AP Check Register 03-11-22

Bank Account: 905 - Chase - Checking

Batch Date: 03/11/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Check	114-12883388	02/25/2022		Bathroom Rental - Wendy Hill Park		260.13
	03/11/2022	99517	Accounts Payable	Verde Design, Inc.		1,170.00
	Invoice	Date	Description			Amount
	14-2012501	12/25/2021		Dec 25, 2021 thru Jan 25, 2022		1,170.00
Check	03/11/2022	99518	Accounts Payable	Verizon Wireless		4,698.71
	Invoice	Date	Description			Amount
	9899881287	02/18/2022		Cell Phone Bill		580.58
	9899806233	02/18/2022		Patrol Operations Cellular Phones		3,751.81
Check	9900384227	02/25/2022		FD Mobile Charges - Jan 26 - Feb 25, 2022		366.32
	03/11/2022	99519	Accounts Payable	Wallace Group, Inc.		790.50
	Invoice	Date	Description			Amount
	55486	01/24/2022		Wallace PM: Hayes Circle		790.50
Check	03/11/2022	99520	Accounts Payable	William A. Thayer Construction, Inc		5,830.43
	Invoice	Date	Description			Amount
	02-14-22	02/14/2022		Thayer Construction: Addition of One Exterior Door at B533		5,830.43
	03/11/2022	99521	Accounts Payable	Marina Employees Association		125.00
Check	Invoice	Date	Description			Amount
	03-04-22	03/04/2022		24 - MEA Dues		125.00
	03/11/2022	99522	Accounts Payable	Marina Professional Fire Fighters Association		300.00
	Invoice	Date	Description			Amount
EFT	03-04-22	03/04/2022		35 - MPFFA Dues		300.00
	03/11/2022	2127	Accounts Payable	Enterprise FM Trust	1010000019 / 208022067	6,627.04
	Invoice	Date	Description			Amount
	FBN423878	03/03/2022		Lease Payment/Mar22		6,627.04
EFT	03/11/2022	2128	Accounts Payable	Marina Police Association-MPOA	322271627 / 901587928	240.00
	Invoice	Date	Description			Amount
	03-04-22	03/04/2022		23 - MPOA Dues		240.00
	03/11/2022	2129	Accounts Payable	Police Officers Association - POA	322271627 / 901589106	1,296.00

Marina, CA LIVE

AP Check Register 03-11-22

Bank Account: 905 - Chase - Checking
Batch Date: 03/11/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Invoice						
	03-04-22			25 - POA Dues		Amount 1,296.00
905 Chase - Checking Totals:						
	Checks:	62				
	EFTs:	3				
				Transactions: 65		\$637,537.35 \$8,163.04 \$645,700.39

SA Check Register 03-11-22

Bank Account: 921 - Chase - Successor Agency

Batch Date: 03/11/2022

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: 921 - Chase - Successor Agency						
Check	03/11/2022	82	Accounts Payable	Keyser Marston Associates		1,780.00
	Invoice		Date	Description		Amount
	0036511		02/08/2022	Successor Agency Fiscal Services_Jan. 2022		1,780.00
921 Chase - Successor Agency Totals:						\$1,780.00
Checks: 1						\$1,780.00



DRAFT

Agenda Item: **8b(1)**
City Council Meeting of
March 15, 2022

MINUTES

Wednesday, February 23, 2022

6:00 P.M. Open Session

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

Council Chambers
211 Hillcrest Avenue
Marina, California

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

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

In accordance with California Government Code §54953(e)(1)(A) and (C) and the Proclamation of a State of Emergency issued by Governor Newsom on March 4, 2020, under the provisions of Government Code §8625 related to the COVID-19 (coronavirus) pandemic, consistent with recommendations by State and local health officials regarding social distancing and in order to prevent an imminent risk to the health and safety of attendees as determined in Resolution 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, Lisa Berkley, Mayor Pro-Tem/Vice Chair Kathy Biala, Mayor/Chair Bruce C. Delgado

MEMBERS ABSENT: David Burnett (excused)
3. INTRODUCE ORDINANCE (READ BY TITLE ONLY AND WAIVE FURTHER READING):
 - a. 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 §34871(c) & §34886. (Introduction to follow Item 4.a. Public Hearing.)

BIALA/BERKLEY: THAT THE CITY COUNCIL INTRODUCED AND READ BY TITLE ONLY AND WAVE FURTHER READING 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. 4-0-1(Burnett)-0 Motion Passes by Roll Call Vote

4. PUBLIC HEARINGS:

- a. City Council open public hearing at 6:00 P.M. 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.

Council Questions: Do we have to be in agreeance with what our community interests are? Dr. Tilton said that on one of the charts that there's no racial gerrymandering, in formulating these maps on the back of each map, you start off with racial breakup of each of the districts, how should we look at this issue of race across the districts? When you say majority minority, you're really talking about majority, white versus the other percentages of of any of the minority that adding those up? Is it true that the consultants team put together all the Map 500's?

Mayor Delgado opened the public hearing for public comments:

- Peter Le – Commented on council decision at the last public hearing on moving Preston and Abrams away from the million-dollar homes. Concerned that council did not discuss concerns with other property such as the VTC and the 2nd Avenue apartments. Stated council violated the California Redistricting Guidelines when separated Sea Haven into two districts. Noted a lot of the maps dilute the population of Hispanics. Asked council to look at and consider Maps 202 and 208.
- Audra Walton – Who imposed the time frame to have this transition complete? Is there any way possible to move the date of completion to a later date? Can we have a different demographer, not satisfied with this one? Commented on communities of interest for fair and accurate representation.
- Brian McCarthy – Lot of good maps. Concerns about Preston and Abrams being lumped in with the Dunes and Sea Haven. Council needs to make sure that we don't disenfranchise too many folks that couldn't vote in the last election, and again will not be able to vote in this election.
- Paula Pelot – Commented that a couple of maps weren't scored correctly. Stated that Preston and Abrams shouldn't be split up as they share resources and should not be combined with Central Marina. Asked to eliminate several maps, they do not adequately represent the renter versus owner occupied houses in the city.

Mayor Closed the public hearing for comments.

BERKLEY/DELGADO: APPROVING RESOLUTION NO. 2022-23, ADOPTING THE INTRODUCTION OF AN ORDINANCE ADOPTING MAP 109, ESTABLISHING NEW CITY COUNCIL DISTRICT BOUNDARIES AND THE SEQUENCE OF DISTRICT ELECTIONS PURSUANT TO THE CALIFORNIA ELECTIONS CODE; AND THAT MAP, 109 WOULD BE REVISED TO DENOMINATE DISTRICT, 2 AS DISTRICT, 4, AND TO DENOMINATE DISTRICT 4 AS DISTRICT, 2 DISTRICT AND ONE WOULD STAY THE SAME, AND DISTRICT 3 DENOMINATED WOULD STAY THE SAME; AND DISTRICTS 1 AND DISTRICT 4. WE'LL BE ON THE BALLOT IN 2022, AND DISTRICT 2 AND DISTRICT 3 WOULD BE ON THE BALLOT IN 2024. 4-0-0-0 Motion Passes by Roll Call Vote

Public Comments:

- Les Martin – Likes and supports Map 109
- Brian McCarthy – Likes Maps 105, 109 and 508 but supports Map 109
- Karen Andersen – Favors Map 109 but mentioned that that district lines could be fine-tuned to balance populations, can this be done for Map109 to keep Kathy Baila in her current District?
- Paula Pelot – Supports Map 109
- Liesbeth Visscher – Likes Maps 105 and 109
- Audra Walton – Does not support Map 109, prefers Map 105 or amending City Charter and going back to at-large elections
- Connie Murray, League of Woman Voters – Congratulated Council on how prepared they were and how council made their points without borrowing one another. Can't wait to write her report to her committee.

Substitute Motion

Biala/Delgado: approving Resolution No. 2022-, adopting the introduction of an ordinance adopting map 105, establishing new city council district boundaries and the sequence of district elections pursuant to the California Elections Code. *Withdrawn by motion maker*

Robert Rathie, Assistant City Attorney - We did take a vote on introducing Map 109, as it was presented in the agenda packet this evening. We have now determined through Jeff's good offices that we need to change the denomination of the districts as per presented on map 109. So, a motion now would be in order by someone who voted in favor of that the introduction of the ordinance, which would be any one of you to rescind that action, there would be a second and a vote, and that action would therefore be rescinded, and we would reintroduce the ordinance making the change of the district swap call.

BIALA/BERKLEY: TO RESCIND THE ACTION OF 3a, INTRODUCING 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 §34871(C) & §34886. 4-0-0-0 Motion to rescind approved by Roll Call Vote

BIALA/BERKLEY: THAT THE CITY COUNCIL INTRODUCED AND READ BY TITLE ONLY AND WAVE FURTHER READING 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; AND MAKE THE FOLLOWING CHANGES TO THE DISTRICT DENOMINATIONS AS PRESENTED ON MAP 109 IN THE AGENDA PACKET, WHICH WOULD BE CHANGING THE DENOMINATED DISTRICT 2 TO BECOME DISTRICT 4 AND CHANGING THE DENOMINATED DISTRICT 4 TO BECOME DISTRICT 2. THE EFFECT OF THAT OF THAT WOULD BE DISTRICT 4 WOULD HAVE AN ELECTION COMING UP IN 2022, DISTRICT 2 WOULD HAVE AN ELECTION COMING UP IN 2024. DISTRICT 1 WOULD STAY AS DISTRICT 1 WITH AN ELECTION IN 2022 AND DISTRICT 3 WOULD STAY AS DISTRICT 3 WITH AN ELECTION 2024. 4-0-0-0 Motion Passes by Roll Call Vote

Layne Long, City Manager announced that the American Public Works Association held their annual banquet and Marina was highly recognized for many things. Brian McMinn, Public Works Director was recognized as the President during the last 2-years of Covid and Enda Gomez, Administrative Assistant were also recognized as the Administrative Assistant of the Year. We were also recognized for the Environmental Project of the year for under \$5,000,000, which was the a Stockade Project that

got that huge blight asbestos lead field project, and came in in under half a \$1,000,000 under budget; we got recognized for the project of the year, under 5,000,000 for our reservation road project that used recycled materials from the road put right back into the assault which saved a ton on greenhouse gas and debris to the landfills.

5. ADJOURNMENT: The meeting adjourned at 9:40 P.M.

Anita Sharp, Deputy City Clerk

ATTEST:

Bruce C. Delgado, Mayor



DRAFT

Agenda Item: **8b(2)**
City Council Meeting of
March 15, 2022

MINUTES

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/>

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/Chair Bruce C. Delgado

MEMBERS ABSENT: Mayor Pro-Tem/Vice Chair Kathy Biala (Excused)

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

- a. Conference with Legal Counsel, anticipated litigation, significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of CA Govt. Code sec. 54956.9 – one potential case.
- b. 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

Robert Wellington, City Attorney reported out Closed Session: The council went into closed session at 5 o'clock, and came out at about 5-minutes ago, having taken up the agenda items listed on the agenda for the 3 closed session matters Once one conference with legal counsel anticipated litigation and 2 matters of property negotiations as listed on the agenda The matters were discussed by the council and general direction given to the property negotiator No reportable action was taken.

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.*

- Brian McCarthy – Commented on the events taking place between Russia and Ukraine and how the County adopted a resolution condemning the actions of Russia. Asked city to consider stand in solidarity.
- Mike Owen – Commented about a letter council should have received asking for endorsement of a proposed ballot measure for the November election related to raising funding for affordable, quality childcare up to 5 years old. Hopes the city will officially endorse it when it comes before you in the summer.
- Tina Walsh – Announced on March 20th the Marina Tree and Garden Club will have their Cutting Day from 10:00am-2:00pm free to the public. Also announced on May 1st will be the Marina Garden Tour.
- Brian McMinn –Announced that the Monterey Bay Chapter of the American Public Works Association recognized the City of Marina with an award for the stockade project, it was the project of the year for environmental projects under 5,000,000. Also recognized was the

Reservation Road Code in Place Resource Recycling of Pavement, and that project received an award of merits. Although it wasn't a project of the year, it also did receive the TAMC transportation excellence award this year.

- Council Member Medina Dirksen – Commented on TAMC allocation for Marina. Wanted to give a kudos to our police department for stepping up and helping to cover City of Salinas or to supporting a fallen officer.
- Council Member Burnett – Asked if agenda item 8f(1) could be explained and how it relates to our public meetings.
- Mayor Delgado – Announced on April 23rd is Marina's Earth Day at Locke Paddon Park, upper portion by the library doors. Announced that every Saturday from 9:00am-1:00pm is the Community Garden Woodland Restoration Project. On March 12th is our monthly community clean-up of Del Monte Boulevard to Lapis Road from 10:00am-12:30pm. Announced that the Handcar Operators are looking to bring back to Marina the Handcars this summer and will be at the TAMC Executive meeting on March 2nd.

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. **Pulled by Mayor Delgado**~~

- (2) City Council consider adopting **Resolution No. 2022-24**, 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. 2022-25**, 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. 2022-26**, 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. 2022-27**, 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. 2022-28**, 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. 2022-29**, 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. 2022-30**, 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. 2022-31**, 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

1. APPROVE ORDINANCES (WAIVE SECOND READING):

- (1) City Council consider adopting **Ordinance No. 2022-01**, adopting New Council District Boundaries for Four Council Districts Pursuant to CA Elections Code §§21621-21629 and CA Govt. Code §34871(c) & §34886. ***Pulled by Attorney for separate vote***

m. APPROVE APPOINTMENTS: None

Mayor Delgado requested to pull agenda item 8f(1) for discussion

Delgado/Berkley: to approve the consent agenda minus 8f(1). 4-0-0-0 Motion Passes by Roll Call Vote

Robert Rathie, Assistant City Attorney stated that agenda item 8l(1) needed to be pulled for a separate vote.

Mayor Delgado motioned to reconsider the previous vote, Seconded by Council Member Medina Dirksen. 4-0-0-0 Motion to Reconsider Vote Passes by Roll Call Vote

DELGADO/BERKLEY: TO APPROVE THE CONSENT AGENDA MINUS 8f(1) AND 8l(1). 4-0-0-0 Motion Passes by Roll Call Vote

8f(1)

Council Questions: Why can't the City go to hybrid meeting and has Staff considered the logistics of how we might go hybrid at some point in the future? Since March 2020, has anything happened environmentally wise in the Council Chambers? Has the Chamber's carpeting, walls etc. been cleaned, disinfected? Has the Chambers been check for mold?

DELGADO/MEDINA DIRKSEN: TO APPROVE 8f(1) ADOPTING RESOLUTION NO. 2022-32, 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; AND DIRECT STAFF TO LOOK INTO THE OPTIONS OF VARIOUS ZOOM FORMATS AND TRYING TO GET; AND STAFF TO LOOK INTO YOU TUBE. 4-0-0-0 Motion Passes by Roll Call Vote

Public Comments:

- Brian McCarthy – Been advocating for remote meetings well, before Covid. This is something I would really encourage soliciting community input and support for possibly hybrid meetings. Thanked staff for putting the meetings on YouTube.
- Liesbeth Visscher – Likes the zoom and happy that city council is looking into this so please keep it.

8l(1)

DELGADO/MEDINA DIRKSEN: TO APPROVE AGENDA ITEM 8l(1), ADOPTING ORDINANCE NO. 2022-01, ADOPTING NEW COUNCIL DISTRICT BOUNDARIES FOR FOUR COUNCIL DISTRICTS PURSUANT TO CA ELECTIONS CODE §§21621-21629 AND CA GOVT. CODE §34871(C) & §34886. 3-1(Burnett)-0-0 Motion Passes by Roll Call Vote

9. PUBLIC HEARINGS: None
10. OTHER ACTIONS ITEMS OF THE SUCCESSOR AGENCY TO THE FORMER MARINA REDEVELOPMENT AGENCY: *Action listed for each Agenda item is that which is requested by staff. The Successor Agency may, at its discretion, take action on any items. The public is invited to approach the podium to provide up to four (4) minutes of public comment.*
 - a. Successor Agency Board consider adopting **Resolution No. 2022-01 (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.

Board Questions: It was stated that Marina Community Partners had submitted invoices, has anyone reviewed the invoice(s) for accuracy? Is it correct that they have only received 15,000,000 towards that \$98,000,000 to date? Was this the first opportunity for them to come to us for a bond issuance? the original deal was that they would be able to get reimbursed by this method that we're talking about tonight. of up to 105,000,000, is that 105,000,000 even important these days? And is that 114,000,000 the replacement for the \$105,000,000 figure? The affordable housing units you mentioned there's 140 coming starting this year and so some of this money is going to have new bonds issued to cover that or part of what they're doing tonight is to cover the infrastructure costs or other costs related to those affordable housing in the future? If the redevelopment agency process and itself the agency itself wasn't shut down by Governor Brown back in 2011 2012 if we hadn't, made this deal with the developers before that that they could get these tax increment reimbursements would we have been prevented from using from ourselves? keeping and using this tax increment money? When the bonds get issued, what will the certificate say? How will the bonds be described?

BURNETT/BERKLEY: TO APPROVE RESOLUTION NO. 2022-01 (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. 4-0-0-0
Motion Passes by Roll Call Vote

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. 2022-33**, 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).

Council Questions: Is there a retroactive component to this compensation that you've outline?

DELGADO/BERKLEY: TO APPROVE RESOLUTION NO. 2022-33, 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)4-0-0-0 Motion Passes by Roll Call Vote

Public Comments:

- Brian McCarthy – Was there ever some statistics that were published on how that number was reached and if so, where might one find those?

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

Robert Rathie, Assistant City Attorney announced that AB481 was adopted at the 2021 session this legislation requires that the police department obtained the Count's permission through the adoption of an ordinance, including a policy regarding the city's use of military and military type equipment which is defined in the legislation, and will be addressed in the ordinance and the policy. The policy will be provided soon to the council, and it must be in accordance with AB481 available online on the department's website and this has to be done 30 days prior to any public hearing on the ordinance, and the public hearing would be held in conjunction with the introduction of the ordinance, which we probably expect will be now at the April fifth Council meeting.

Tina Nieto, Police Chief provided further information on AB481.

Mayor Delgado announced that LAFCO refused to reconsider Monterey Peninsula Water Management District's application to open up their latent powers and allow them to potentially acquire Cal-Am, buy out Cal-Am. Also spoke about Waste Management District hiring consultant to assist in designing new bins for apartments/multi-family and businesses for kitchen scrap waste.

13. ADJOURNMENT: The meeting adjourned in honor of Salinas Police Officer Alvarado at 8:07 P.M.

Anita Sharp, Deputy City Clerk

ATTEST:

Bruce C. Delgado, Mayor

March 15, 2022

CITY OF MARINA

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

**CLAIM FORM**

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

SECTION 1: CLAIMANT INFORMATION

Mark Anthony Jiminez

Name of Claimant

()

Telephone Number (include area code)

Mailing Address

City

CA

Zip Code

SECTION 2: NOTICES

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

H. Gavin Long, Esq.

Name of Claimant

(949) 752-2999

Telephone Number (include area code)

Bisnar|Chase, LLP 1301 Dove St., Suite 120, Newport Beach, CA

92660

Mailing Address

City

CA

Zip Code

SECTION 3: CLAIM INFORMATION

Date of the occurrence/transaction which gave rise to the claim:

September 7, 2021

Month, Day & Year

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

Intersection of Imjin Parkway and Third Avenue, Marina, California. East side of intersection,
 in the crosswalk across Imjin Parkway

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

Please see attachment "A".

Provide a general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim.

claimant has suffered significant bodily injuries, including severely broken leg, roadrash abrasions and lacerations, internal injuries, and other injuries. He has received medical treatment for those injuries with a value of at least \$100,000, to date.

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

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

Amount Claimed: \$ _____

Basis for computation: _____

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

_____ Limited Civil Case ☒ Non-Limited Civil Case

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

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

☐ Yes (If marked, please provide information below. ☒ No

Name of Insurance Carrier ()
Telephone Number (include area code)

Mailing Address City State Zip Code

Policy Number: _____ Deductible: \$ _____

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

Vehicle Make: _____ Model: _____ Year: _____

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

H. Gavin Long, Esq. (949) 752-2999
Name of Attorney/Representative Telephone Number (include area code)

Bisnar|Chase 1301 Dove St., Suite 120 Newport Beach CA 92660
Mailing Address City State Zip Code

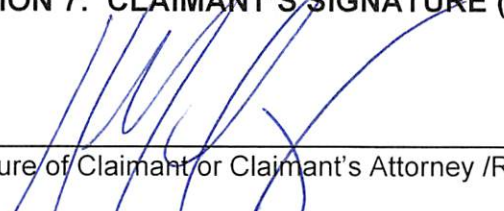
Is the claim filed on behalf of minor? ☐ Yes ☒ No If yes, please indicate:

Relationship to minor: _____ Minor's date of birth: _____
Month, Day & Year

SECTION 6: ADVISORY - CONDITION OF A FELONY

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

SECTION 7: CLAIMANT'S SIGNATURE (OR REPRESENTATIVE)



Signature of Claimant or Claimant's Attorney /Representative

March 3, 2022

Date

SECTION 8: SUBMISSION OF CLAIM FORM

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

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

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

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

In re the Claim of:

Claimant:

Mark Anthony Jimenez

vs.

Governmental Entity:

CITY OF MARINA, CALIFORNIA

Attachment A.

MARK ANTHONY JIMENEZ was injured as the result of an auto vs pedestrian collision on September 7, 2021. The site of the accident, being the intersection of Imjin Parkway and 3rd Avenue, in the City of Marina, Monterey County, State of California, is hereinafter referred to as "the SUBJECT ROADWAY". The serious injuries to MARK ANTHONY JIMENEZ, and the damages resulting because of those injuries, were legally and proximately caused by a dangerous condition of public property that was caused or created by the unsafe design, evaluation, engineering, approval, construction, inspection, evaluation, review, maintenance, management, repair, re-evaluation, and other roadway operations by employees of the CITY OF MARINA relating to the SUBJECT ROADWAY, or which independently existed but was not repaired, replaced, guarded against, or adequately warned about to users of the Subject Roadway by employees of the CITY OF MARINA despite their knowledge or their actual or constructive notice of the existence of the dangerous condition of the SUBJECT ROADWAY. The identities of the specific employees or parties responsible for the actions of the CITY OF MARINA regarding the dangerous condition of the SUBJECT ROADWAY are presently unknown to Claimant.

At or about the time of the SUBJECT ACCIDENT, the CITY OF MARINA was responsible for the condition of the public property identified herein as the SUBJECT ROADWAY. At that time, the SUBJECT ROADWAY was in a dangerous and defective condition, due to the At or about the time of the SUBJECT ACCIDENT, the SUBJECT ROADWAY was in a dangerous and defective condition. Due to the CITY's improper design, construction, inspection, management, maintenance, and/or repair of the SUBJECT ROADWAY, such that when traffic approached the SUBJECT ROADWAY before or near the site of the accident, the driver would face sudden unsafe traffic conditions without adequate warning. Due to improper design, creation, construction, inspection, re-inspection, evaluation, monitoring, maintenance, management, realignment, diversion, and/or repair of the SUBJECT ROADWAY by the CITY, and its employees, agents, and others working on its behalf, a dangerous and defective condition existed in the public property for which they are and were responsible, given that:

A. The unsafe and dangerous condition of the SUBJECT ROADWAY, as a result of improper or inadequate design, construction, maintenance, repair, inspection, lack of or inadequate warning signs or devices, or other action. If adequate design, construction, maintenance, repair, inspection, warning devices, or other action or function regarding the surface and area of the SUBJECT ROADWAY the accident which resulted in the damages which are the subject matter of this claim would not have occurred. The existence of this dangerous or defective condition was known, or should have been discovered, by as-yet unidentified employees or agents of the City of Marina, California, and the lack, or inadequacy, of action to correct the dangerous or defective condition despite this knowledge or notice was a

breach of the duty of due care which the City of Marina owes to the pedestrians, bicyclists, and other members of the public foreseeably using the SUBJECT ROADWAY, including MARK ANTHONY JIMENEZ;

B. The absence of required, adequate or any roadway markings, controls, signs or overhead lighting to warn drivers of the presence of bicyclists, pedestrians, skateboarders, and other vehicles ahead of them which need to move into the path of the oncoming vehicle;

C. Improper, unsafe, incomplete, non-conforming, and negligent planning, designing, constructing, owning, possessing, controlling, operating, maintaining, servicing, inspecting, repairing, and monitoring the SUBJECT ROADWAY, including but not limited to the geometric design, design controls, access controls, traffic controls, striping and other road surface markings, warning devices, topography, construction zones, and physical features;

D. The absence of any required or adequate warnings of the aforementioned conditions, including but not limited to reflective paint or other cover to the crosswalk and other areas of the roadway, visual cues for drivers, and other warnings;

E. Improper, unsafe, incomplete, non-conforming, and negligent supervising, controlling, contracting, inspecting, repairing, maintaining, monitoring, management, lay-out, realignment, and working on or at the SUBJECT ROADWAY with regard to design configurations, geometric design, sight distances, operation of roadway overhead lighting, absence of traffic control devices and warning devices, the presence of certain topography, soils conditions, appurtenances, and physical features, on, and adjacent to the SUBJECT ROADWAY which created a dangerous condition and "trap" that was not reasonably apparent to prudent motorists using due care; and

F. Conducting themselves with reference to the SUBJECT ROADWAY in some other manner so as to proximately and legally cause the injuries sustained by Claimant and resulting damages.

THE CITY, and its employees, agents, and other agencies, knew, or should have known, in the exercise of ordinary care, that the SUBJECT ROADWAY was in a dangerous and defective condition, and that the SUBJECT ROADWAY had become more dangerous and unsafe as a result of substantially increased serious and fatal traffic accidents, and that as a result of such substantially increased accidents, the CITY and each of them had been placed on actual as well as constructive notice of the dangerousness and unsafe condition of the SUBJECT ROADWAY and that the conditions of and for the use of the SUBJECT ROADWAY which had changed from the time the SUBJECT ROADWAY was designed, built, and last modified, and had a reasonable time to obtain the funds and carry out the necessary remedial work to conform the property to a reasonable design or plan, but willfully and deliberately failed and refused to follow and adhere to their own adopted measures binding on the CITY so as to use such funds for other purposes at the expense of public safety, and further unreasonably failed in the interim, to have attempted to provide adequate warnings of such dangers and unsafe conditions of the SUBJECT ROADWAY.

1 **PROOF OF SERVICE BY FEDERAL EXPRESS DELIVERY SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF ORANGE

3 I am a resident of and employed in the aforesaid county, State of California; I am over the
4 age of eighteen years and not a party to the within action; my business address is 1301 Dove St.,
5 Suite 120, Newport Beach, California.

6 On March 3, 2022, I served the foregoing **GOVERNMENT CLAIM FOR PERSONAL**
7 **INJURIES** on the interested parties **BY OVERNIGHT PRIORITY MAIL WITH NEXT DAY**
8 **DELIVERY GUARANTEED** by placing a true copy thereof, in a sealed envelope to the
9 addressee(s) below, and depositing the same into the FEDERAL EXPRESS mail drop at the
10 address located set forth hereinabove, with carriage pre-paid:

11 **CITY CLERK**
12 Human Resources & Risk Department
13 **CITY OF MARINA**
 211 Hillcrest Avenue
 Marina, CA 93933

14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct.

16 Dated: March 3, 2022

Edward Spilsbury

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of March 15, 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 APRIL 1, 2022
THROUGH APRIL 30, 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 April 1, 2022, through April 30, 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, extending that period until March 3, 2022; and on March 1, 2022 Council adopted Resolution No. 2022-32 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 31, 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 April 1, 2022, through April 30, 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 APRIL 1, 2022 THROUGH APRIL 30, 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 the Council adopted Resolution No. 2022-13, extending that period until March 3, 2022; and on March 1, 2022 Council adopted Resolution No. 2022-32 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 31, 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 low with 485 active cases currently reported in Monterey County with a case rate of 111.74 individuals per 100,000 persons; and the California Department of Public Health reports 26,0% 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 March 3, 2022, the federal Centers for Disease Control and Prevention rated the risk level for community transmission of COVID-19 in Monterey County as low with 485 active cases currently reported in Monterey County with a case rate of 111.74 individuals per 100,000 persons; and the California Department of Public Health reports 26.0% 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) April 30, 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 15th 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.

March 8, 2022

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

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of March 15, 2022

RECOMMENDATION TO CONSIDER ADOPTING RESOLUTION NO. 2022-, AUTHORIZING THE PURCHASE OF A FORCIBLE ENTRY PROP FROM FORCIBLE ENTRY EQUIPMENT FOR \$80,000 AND THE PURCHASE OF THE PHENIX TL-2 HELMETS FROM ALLSTAR FIRE EQUIPMENT FOR \$30,000 UTILIZING THE FUNDS RECEIVED FROM THE ANNEMARIE SHEIN LIVING TRUST AND AUTHORIZING THE FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES

REQUEST:

It is requested that the City Council:

1. Authorize the purchase of a Forcible entry prop for \$80,000.00 from Forcible Entry Equipment and;
2. Authorize the purchase of the Phenix TL-2 Firefighter helmets for \$30,000. From Allstar Fire Equipment and;
3. Authorize the Finance Director to make necessary accounting and budgetary entries.

BACKGROUND:

At the regularly scheduled City Council Meeting held on December 7, 2021, the City Council approved Resolution 2021-122 which authorized the acceptance of a donation from the Annemarie Shein Living Trust. A total of \$236,290 was received with half going to the Police Department and half going to the Fire Department. The trust paperwork received did not specify how or for what purpose the funds were to be spent, only that the funds were directed to the Police and Fire Departments.

ANALYSIS:

The Fire Department has conducted an internal review of equipment needs focusing on equipment that would benefit both personnel and operations. We solicited input from all members and came to a consensus on the equipment that would be most beneficial. The equipment we have identified not only benefits the Firefighters but helps us improve the service we provide to the public. This equipment is a Forcible Entry Training Prop and new improved Firefighter Helmets. This equipment meets the criteria of the donation and will enhance Firefighter safety and operations.

A Forcible Entry Training Prop provides realistic forcible entry training for all skill levels. The Prop is solid and built to last inside of a 40' shipping container. Critical fire ground operations such as forcible entry are high risk and seldom used skills that need to be accomplished in a timely manner. Forcible Entry is one of those skills that are vital when searching and rescuing fire victims and invaluable for Firefighters to use when escaping potentially life and death situations.

The Forcible Entry Training Prop features a modular mounting Grid System that allows the instructor to set up for many different scenarios within the container. The different props we are looking to have built in the container include: a window prop with window bar, commercial door cutting prop, hinge prop, rebar tree, lock breaking mounts, roll up door prop and a interior wall breach prop + metal slot framing.

The Fire Department has also identified a need to replace our Helmets. We have been evaluating different Helmets and designs for over a year. After a comprehensive research effort, we have concluded that for the Marina Fire Department, the Phenix FL-2 helmet is the best helmet that we can purchase for Firefighter Safety and durability. This helmet is a leather helmet and is the lightest, strongest, and most comfortable helmet on the market. The helmet meets all NFPA and OSHA standards. As our current helmets are at end of life, we will replace the helmets for all ranks.

The Phenix leather helmet has a soft and flexible design that will stand as much or more abuse than the early leather helmets, and even more than many of today's finest modern composites. The Phenix TL-2 uses modern vegetal tanning techniques to add a degree of flexibility to the longer, rear brim so it will flex when hit by falling objects rather than snap the firefighter's neck and because the raised crossover beams are more resilient, they also provide added protection when struck from above and keeps the leather from cracking.

FISCAL IMPACT:

The Forcible Entry Prop is eighty thousand dollars (\$80,000.) with delivery and taxes. The Phenix Helmets cost thirty thousand dollars (\$30,000.) including delivery and taxes. The funds used to pay for these items will be the \$118,000.00 funding received from the Annemarie Shein Living Trust and not out of the General Fund for the Fire Department budget. Both the Forcible Entry Prop and the Phenix Helmets have been put out to bid and vetted for price through the cooperative purchasing process.

CONCLUSION:

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

Respectfully submitted,

Doug McCoun
Fire Chief
City of Marina

REVIEWED/CONCUR:

Layne Long
City Manager
City of Marina

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA AUTHORIZING THE PURCHASE OF A FORCIBLE ENTRY PROP FROM FORCIBLE ENTRY EQUIPMENT FOR \$80,000 AND THE PURCHASE OF THE PHENIX TL-2 HELMETS FROM ALLSTAR FIRE EQUIPMENT FOR \$30,000 UTILIZING THE FUNDS RECEIVED FROM THE ANNEMARIE SHEIN LIVING TRUST AND AUTHORIZING THE FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES

WHEREAS, the Marina Fire Department has received a cash donation from the Annemarie Shein Living Trust in the amount of \$118.145 and said funds are to be used exclusively by the Fire Department, and;

WHEREAS, the Fire Department will utilize the donated funds for the purchase of equipment and/or support of program funding, and;

WHEREAS, the Fire Department has conducted an internal needs assessment and has determined that a Forcible Entry Prop and the Phenix TL-2 Helmets will support firefighter training and safety which will help the safety of the residents, businesses, and visitors of the City of Marina.

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

1. Authorize the purchase of a Forcible entry prop for \$80,000.00 from Forcible Entry Equipment and;
2. Authorize the purchase of the Phenix TL-2 Firefighter helmets for \$30,000. From Allstar Fire Equipment and;
3. Authorize the Finance Director to make any necessary accounting and budgetary entries.

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

AYES, COUNCIL MEMBERS:

NOES, COUNCIL MEMBERS:

ABSENT, COUNCIL MEMBERS:

ATTEST:

Bruce C. Delgado, Mayor

Anita Sharp, Deputy City Clerk

March 10, 2022

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

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of March 15, 2022

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-,
PRELIMINARILY APPROVING THE FISCAL YEAR 2022-23
ENGINEER'S REPORT FOR THE CYPRESS COVE II LANDSCAPE
MAINTENANCE ASSESSMENT DISTRICT; DECLARING ITS
INTENTION TO LEVY AN ASSESSMENT IN FISCAL YEAR 2022-23 IN
THAT DISTRICT; AND CALLING A PUBLIC HEARING FOR APRIL 5,
2022**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2022-, preliminarily approving the Fiscal Year 2022-23 Engineer's Report for the Cypress Cove II Landscape Maintenance Assessment District; declaring its intention to levy an assessment in fiscal year 2022-23 in that district; and calling a public hearing for April 5, 2022.

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.

The 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. 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's levy amount 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.

At the regular meeting of March 1, 2022, the City Council adopted Resolution No. 2022-24, 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 2022-23.

ANALYSIS:

Staff has prepared an Engineer's Report for the Cypress Cove II Maintenance Assessment District for FY 2022-23 and filed the report with the City Clerk. Staff is proposing assessment amounts as follows:

	<u>Current FY 2021-22</u>	<u>Proposed FY 2022-23</u>
Cypress Cove II (110 parcels)	\$180.78	\$180.78

During the public hearing for the FY 21/22 assessment, residents requested a review of proposed improvement costs and whether an increase in the special tax assessment was needed to fund construction of those improvements. In November 2021, staff met with the District's contract landscape maintenance contractor (New Image Landscape) to evaluate the current costs for proposed improvements that residents have provided input to the City.

On February 22, 2022, City staff conducted two public outreach forums to present the cost proposals for the following improvements: new irrigation backflow preventer, four (4) new cypress trees, temporary irrigation improvements to establish the new trees, and replacement of the existing irrigation pedestal. The City also received comments from District residents for any additional improvements for the District. Upon review by legal counsel, staff has concluded that the cost of proposed improvements at this time do not warrant increasing the special tax assessment.

Staff is requesting that the City Council approve setting a public hearing for April 5, 2022 to hear concerns on levying and collection of the proposed assessment on this district. Staff will mail notices to all affected property owners upon City Council approval of the public hearing.

Once the hearing is completed and the levy approved, the City has until August 1, 2022 to file a certified copy of the diagram and assessment with the Monterey County Auditor-Controller.

FISCAL IMPACT:

Adequate funding for providing notices for the public hearing has been appropriated in the FY 21/22 budget account for Cypress Cove II. There is no fiscal impact to preliminarily approving the Engineer's Report and setting a public hearing.

CONCLUSION:

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

Respectfully submitted,

Saber Messhenas
Assistant Civil Engineer/Public Works Department
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 PRELIMINARILY APPROVING THE FISCAL YEAR 2022-23 ENGINEER'S REPORT FOR THE CYPRESS COVE II LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT; DECLARING ITS INTENTION TO LEVY AN ASSESSMENT IN FISCAL YEAR 2022-23 IN THAT DISTRICT; AND CALLING A PUBLIC HEARING FOR APRIL 5, 2022

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 City Engineer, on the direction of the City Council, has filed with the City Clerk a report with respect to the Fiscal Year 2022-23 levy of the assessment in connection with the Assessment District (the "Report"); and

WHEREAS, the Report is on file in the Office of the City Clerk, available for public inspection, and incorporated herein by reference; and

WHEREAS, the Report recommends that the assessment rate remain at \$180.78 per parcel; and

WHEREAS, the City Council desires to proceed with the process for levying the Fiscal Year 2022-23 levy of assessments in connection with the Assessment District prior to the August 1, 2022 deadline with the Monterey County Auditor-Controller.

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

1. The Report is hereby preliminarily approved as filed.
2. The Council declares its intention to levy and collect assessments in the Assessment District for Fiscal Year 2022-23 as described in the Report.
3. Reference is made to the Report for a full and detailed description of (i) the improvements to be operated and maintained in connection with the Assessment District; (ii) the boundaries of the Assessment District; and (iii) the proposed assessments upon assessable lots and parcels of land within the Assessment District. The Report describes, among other things, each affected parcel of real property and the amount of the assessments for each such affected parcel for Fiscal Year 2022-23. The Assessment District generally includes all residential parcels in the Cypress Cove II subdivision. The amount of the assessment and the general nature of the improvements are not proposed to change from the prior year.
4. A public hearing on the levy of assessments in Fiscal Year 2022-23 in connection with each of the Districts is scheduled for Tuesday, April 5, 2022, at 6:30 P.M. or as soon thereafter as the matter may be heard in conformance with Governor Newsom's Executive Order N.29-20 and City Council Resolution 2020-29 ratifying the Proclamation of a Local Emergency by the City Manager/Director of Emergency Services related to the COVID-19 (coronavirus) pandemic. Public participation in the City of Marina City Council and other public meetings shall be electronic only and without a physical location for public participation, until further notice in compliance with California state guidelines on social distancing. Information on the broadcasting and Public Participation during this meeting will be posted on the Meeting Agenda.

5. Staff is directed to give notice of the public hearing pursuant to Section 22626(a) of the Act.

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:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ATTEST:

Bruce Delgado, Mayor

Anita Sharp, Deputy City Clerk



**CITY OF MARINA
MONTEREY COUNTY
CALIFORNIA**

CYPRESS COVE II LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT

ENGINEER'S REPORT

FY 2022-2023

Council Members:

B. DELGADO, MAYOR

**L. BERKLEY
K. BIALA**

**D. BURNETT
C. MEDINA DIRKSEN**

**LAYNE LONG
ANITA SHEPHERD-SHARP
ROBERT WELLINGTON
BRIAN MCMINN**

**City Manager
Deputy City Clerk
City Attorney
Public Works Director/City Engineer**

**Prepared By
City of Marina
Public Works Department**

CYPRESS COVE II
LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT

FY 2022-2023

This report concerns the Cypress Cove II Landscape Maintenance Assessment District.

The Assessment District consists of the Cypress Cove II Subdivision located in the westerly portion of the City of Marina just east of the Highway I and Reservation Road interchange. The subdivision is bounded on three sides by Abdy Way, Cardoza Avenue, and Beach Road, contains 110 lots, a percolation pond parcel (Parcel B), and an emergency access road (Parcel C).

The subdivision consists of 110 single family homes complete with underground utilities, water and wastewater facilities, street and drainage improvements, and landscaping. The Assessment District has been formed for the purpose of maintaining the exterior boundary landscaping and retaining walls, installed and paid for by the developer.

This report has been prepared pursuant to Sections 22565 through 22574 of the Streets and Highways Code (Landscaping and Lighting Act of 1972).

The existing improvements to be maintained which are the subject of this report, are briefly described as follows:

All exterior landscaping elements located adjacent to the subdivision boundaries along Abdy Way, Cardoza Avenue, and Beach Road and outside the chain link fence on Parcel B are considered as the improvements included in the Assessment District. Landscaping elements consist of hydroseeded areas, groundcover, shrubs, trees, irrigation pipelines, controllers, valves, sprinklers, masonry retaining walls, and electrical service. Plans and specifications showing these existing improvements which are to be maintained are on file in the City of Marina Public Works Division.

This report includes the following attached exhibits:

EXHIBIT A - An assessment diagram and boundary map showing all of the parcels of the real property within the Assessment District. The diagram is keyed to Exhibit C by the separate "Assessment Number".

EXHIBIT B - Spreadsheet showing estimated costs for FY 2021-2022 and estimated costs for FY 2022-2023 and FY 2023-2024.

EXHIBIT C - An assessment roll showing the amount proposed to be assessed against each parcel of real property within this Assessment District. In addition to the Assessor's Parcel Number each parcel has been assigned a separate "Assessment Number" which corresponds to that parcels lot number.

Page Two
Engineer's Report
Cypress Cove II Landscape Maintenance Assessment District

EXHIBIT D - Method of determination of assessment spread.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'B. McMinn', is positioned above a horizontal line.

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

March 2022



EXHIBIT B
CYPRESS COVE II LANDSCAPE MAINTENANCE DISTRICT

Summary	Estimates FY 2021-2022	Estimates FY 2022-2023	Estimates FY 2023-2024
Beginning Cash Balance, July 1st	\$ 3,763	\$ 6,424	\$ 5,184
(a) Total Assessment Revenues (110 Parcels)	\$ 19,886	\$ 19,886	\$ 19,886

Expenditures

Contractor Services			
^(b) Landscape Maintenance Contract	\$ 6,360	\$ 6,551	\$ 6,747
Utilities	\$ 925	\$ 925	\$ 1,000
Large Tree Trimming	\$ 3,640	\$ -	\$ 3,000
Extraordinary Maintenance	\$ -	\$ 8,650	\$ 2,880
Tree/Plant Replacement	\$ -	\$ -	\$ 775
Administrative Services			
Supervision	\$ -	\$ -	\$ -
Administration (Incl. Engineers Report)	\$ 3,000	\$ 2,000	\$ 2,000
Cost Allocation Plan Charges	\$ 2,750	\$ 2,750	\$ 2,750
Legal Advertising	\$ 550	\$ 250	\$ 250
Total Expenditures	\$ 17,225	\$ 21,126	\$ 19,402

(c) Net Change in Fund Balance	\$ 2,661	\$ (1,240)	\$ 484
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(d) Ending Fund Balance, June 30th	\$ 6,424	\$ 5,184	\$ 5,667
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^(a) Maximum Assessment per Prop 218 is \$180.78 per parcel. The assessment amount for FY22-23 is consistent with FY21-22 at \$180.78 per parcel. Final total assessment revenue includes interest income totals.

^(b) Maintenance Costs are shown as increasing per fiscal year by an estimated Consumer Cost Index (CPI) of 3% as allowed by the Contract Specifications.

^(c) Net Change in Fund Balance equals the Total Expenditures subtracted from Total Assessment Revenue for that Fiscal Year.

^(d) End Fund Balance equals the Net Change in Fund Balance plus the Beginning Cash Balance of that Fiscal Year.

EXHIBIT C

CYPRESS COVE II
LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT
ASSESSMENT ROLL
FOR FISCAL YEAR 2022-2023

DIAGRAM & ASSESSMENT NO.	ASSESSOR'S PARCEL NUMBER	NET ASSESSMENT
1	33-076-01	\$180.78
2	33-076-02	\$180.78
3	33-076-03	\$180.78
4	33-076-04	\$180.78
5	33-076-05	\$180.78
6	33-076-06	\$180.78
7	33-076-07	\$180.78
8	33-076-08	\$180.78
9	33-076-09	\$180.78
10	33-076-10	\$180.78
11	33-076-11	\$180.78
12	33-076-12	\$180.78
13	33-076-13	\$180.78
14	33-076-14	\$180.78

CYPRESS COVE II
LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT ASSESSMENT ROLL
FOR FISCAL YEAR 2022-2023

DIAGRAM & ASSESSMENT NO.	ASSESSOR'S PARCEL NUMBER	NET ASSESSMENT
15	33-076-15	\$180.78
16	33-076-16	\$180.78
17	33-076-17	\$180.78
18	33-076-18	\$180.78
19	33-076-19	\$180.78
20	33-076-20	\$180.78
21	33-076-21	\$180.78
22	33-076-22	\$180.78
23	33-076-23	\$180.78
24	33-076-24	\$180.78
25	33-076-25	\$180.78
26	33-076-26	\$180.78
27	33-076-27	\$180.78
28	33-076-28	\$180.78
29	33-076-29	\$180.78
30	33-076-30	\$180.78
31	33-076-31	\$180.78
32	33-076-32	\$180.78

CYPRESS COVE II
LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT ASSESSMENT ROLL
FOR FISCAL YEAR 2022-2023

DIAGRAM & ASSESSMENT NO.	ASSESSOR'S PARCEL NUMBER	NET ASSESSMENT
33	33-076-33	\$180.78
34	33-076-34	\$180.78
35	33-076-35	\$180.78
36	33-076-36	\$180.78
37	33-076-37	\$180.78
38	33-076-38	\$180.78
39	33-076-39	\$180.78
40	33-076-40	\$180.78
41	33-076-41	\$180.78
42	33-076-42	\$180.78
43	33-076-43	\$180.78
44	33-076-44	\$180.78
45	33-076-45	\$180.78
46	33-076-46	\$180.78
47	33-076-47	\$180.78
48	33-076-48	\$180.78
49	33-076-49	\$180.78
50	33-076-50	\$180.78

**CYPRESS COVE II
LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT ASSESSMENT ROLL
FOR FISCAL YEAR 2022-2023**

DIAGRAM & ASSESSMENT NO.	ASSESSOR'S PARCEL NUMBER	NET ASSESSMENT
51	33-076-51	\$180.78
52	33-076-52	\$180.78
53	33-076-53	\$180.78
54	33-076-54	\$180.78
55	33-076-55	\$180.78
56	33-076-56	\$180.78
57	33-076-57	\$180.78
58	33-076-58	\$180.78
59	33-076-59	\$180.78
60	33-076-60	\$180.78
61	33-076-61	\$180.78
62	33-076-62	\$180.78
63	33-076-63	\$180.78
64	33-076-64	\$180.78
65	33-076-65	\$180.78
66	33-076-66	\$180.78
67	33-076-67	\$180.78
68	33-076-68	\$180.78

CYPRESS COVE II
LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT ASSESSMENT ROLL
FOR FISCAL YEAR 2022-2023

DIAGRAM & ASSESSMENT NO.	ASSESSOR'S PARCEL NUMBER	NET ASSESSMENT
69	33-076-69	\$180.78
70	33-076-70	\$180.78
71	33-076-71	\$180.78
72	33-076-72	\$180.78
73	33-076-73	\$180.78
74	33-075-01	\$180.78
75	33-075-02	\$180.78
76	33-075-03	\$180.78
77	33-075-04	\$180.78
78	33-075-05	\$180.78
79	33-075-06	\$180.78
80	33-075-07	\$180.78
81	33-075-08	\$180.78
82	33-075-09	\$180.78
83	33-075-10	\$180.78
84	33-075-11	\$180.78
85	33-075-12	\$180.78
86	33-075-13	\$180.78

**CYPRESS COVE II
LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT ASSESSMENT ROLL
FOR FISCAL YEAR 2022-2023**

DIAGRAM & ASSESSMENT NO.	ASSESSOR'S PARCEL NUMBER	NET ASSESSMENT
87	33-075-14	\$180.78
88	33-075-15	\$180.78
89	33-075-16	\$180.78
90	33-075-17	\$180.78
91	33-075-18	\$180.78
92	33-075-19	\$180.78
93	33-075-20	\$180.78
94	33-076-74	\$180.78
95	33-076-75	\$180.78
96	33-076-76	\$180.78
97	33-076-77	\$180.78
98	33-076-78	\$180.78
99	33-076-79	\$180.78
100	33-076-80	\$180.78
101	33-076-81	\$180.78
102	33-076-82	\$180.78
103	33-076-83	\$180.78
104	33-076-84	\$180.78

CYPRESS COVE II
LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT ASSESSMENT ROLL
FOR FISCAL YEAR 2022-2023

DIAGRAM & ASSESSMENT NO.	ASSESSOR'S PARCEL NUMBER	NET ASSESSMENT
105	33-076-85	\$180.78
106	33-076-86	\$180.78
107	33-076-87	\$180.78
108	33-076-88	\$180.78
109	33-076-89	\$180.78
110	33-076-90	\$180.78
111		EXEMPT
112		EXEMPT

EXHIBIT D

METHOD OF DETERMINATION OF ASSESSMENT SPREAD

The maintenance of the subdivision exterior boundary landscaping benefits the Assessment District as a whole. Therefore, the assessment spread should be based on the number of building sites or lots contained within the district.

Assessments shall be spread over the 110 lots indicated on the Assessment Diagram (Exhibit A).

March 7, 2022

Item No. **8f(4)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of March 15, 2022

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-,
PRELIMINARILY APPROVING THE FISCAL YEAR 2022-23
ENGINEER'S REPORT FOR THE SEABREEZE LANDSCAPE
MAINTENANCE ASSESSMENT DISTRICT; DECLARING ITS
INTENTION TO LEVY AN ASSESSMENT IN FISCAL YEAR 2022-23 IN
THAT DISTRICT; AND CALLING A PUBLIC HEARING FOR APRIL 5,
2022**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2022-, preliminarily approving the Fiscal Year 2022-23 Engineer's Report for the Seabreeze Landscape Maintenance Assessment District; declaring its intention to levy an assessment in fiscal year 2022-23 in that district; and calling a public hearing for April 5, 2022.

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.

The 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. 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.

At the regular meeting of March 1, 2022, the City Council adopted Resolution No. 2022-25, ordering the City Engineer to prepare and to file a report related to maintenance of the Seabreeze Landscape Maintenance Assessment District for Fiscal Year 2022-23.

ANALYSIS:

Staff has prepared an Engineer's Report for the maintenance district for FY 2022-23 and filed the report with the City Clerk. Staff is proposing assessment amounts as follows:

	<u>Current FY 2021-22</u>	<u>Proposed 2022-23</u>
Seabreeze (37 parcels)	\$182.42	\$182.42

Staff has been coordinating with various District homeowners to discuss further beautification and improvements to the District. Due to public safety concerns, sound wall reconstruction began in Fiscal Year 2021-22. Staff is recommending the continued assessment of \$182.42 in order to obtain the required fund balance to continue these improvements.

Staff is requesting that the City Council approve setting a public hearing for April 5, 2022 to hear concerns on levying and collection of the proposed assessment on this district. Staff will mail notices to all affected property owners upon City Council approval of the public hearing.

Once the hearing is completed and the levy approved, the City has until August 1, 2022 to file a certified copy of the diagram and assessment with the Monterey County Auditor-Controller.

FISCAL IMPACT:

Adequate funding for providing notices for the public hearing has been appropriated in the FY 21/22 budget account for the Seabreeze Landscape Maintenance Assessment District. There is no fiscal impact to preliminarily approving the engineer's report and setting a public hearing.

CONCLUSION:

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

Respectfully submitted,

Edrie Delos Santos, P.E.
Senior Engineer
Public Works Department
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 PRELIMINARILY APPROVING THE FISCAL YEAR 2022-23 ENGINEER'S REPORT FOR THE SEABREEZE LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT; DECLARING ITS INTENTION TO LEVY AN ASSESSMENT IN FISCAL YEAR 2022-23 IN THAT DISTRICT; AND CALLING A PUBLIC HEARING FOR APRIL 5, 2022

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 City Engineer, on the direction of the City Council, has filed with the City Clerk a report with respect to the Fiscal Year 2022-23 levy of the assessment in connection with the Assessment District (the "Report"); and

WHEREAS, the Report is on file in the Office of the City Clerk, available for public inspection, and incorporated herein by reference; and

WHEREAS, the Report recommends that the assessment rate remain at \$182.42 per parcel; and

WHEREAS, the City Council desires to proceed with the process for levying the Fiscal Year 2022-23 levy of assessments in connection with the Assessment District prior to the August 1, 2022 deadline with the Monterey County Auditor-Controller.

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

1. The Report is hereby approved as filed.
2. The Council declares its intention to levy and collect assessments in the Assessment District for Fiscal Year 2022-23 as described in the Report.
3. Reference is made to the Report for a full and detailed description of (i) the improvements to be operated and maintained in connection with the Assessment District; (ii) the boundaries of the Assessment District; and (iii) the proposed assessments upon assessable lots and parcels of land within the Assessment District. The Report describes, among other things, each affected parcel of real property and the amount of the assessments for each such affected parcel for Fiscal Year 2022-23. The Assessment District generally includes all residential parcels in the Seabreeze subdivision. The amount of the assessment and the general nature of the improvements are not proposed to change from the prior year.
4. A public hearing on the levy of assessments in Fiscal Year 2022-23 in connection with each of the Districts is scheduled for Tuesday, April 5, 2022, at 6:30 P.M. or as soon thereafter as the matter may be heard in conformance with Governor Newsom's Executive Order N.29-20 and City Council Resolution 2020-29 ratifying the Proclamation of a Local Emergency by the City Manager/Director of Emergency Services related to the COVID-19 (coronavirus) pandemic. Public participation in the City of Marina City Council and other public meetings shall be electronic only and without a physical location for public participation, until further notice in compliance with California state guidelines on social distancing. Information on the broadcasting and Public Participation during this meeting will be posted on the Meeting Agenda.

5. Staff is directed to give notice of the public hearing pursuant to Section 22626(a) of the Act.

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:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ATTEST:

Bruce Delgado, Mayor

Anita Sharp, Deputy City Clerk



**CITY OF MARINA
MONTEREY COUNTY
CALIFORNIA**

**SEABREEZE LANDSCAPE
MAINTENANCE
ASSESSMENT DISTRICT

ENGINEER'S REPORT**

FY 2022-2023

Council Members:

B. DELGADO, MAYOR

**L. BERKLEY
K. BIALA**

**D. BURNETT
C. MEDINA DIRKSEN**

**LAYNE LONG
ANITA SHEPHERD-SHARP
ROBERT WELLINGTON
BRIAN MCMINN**

**City Manager
Deputy City Clerk
City Attorney
Public Works Director/City Engineer**

**Prepared By
City of Marina
Public Works Department**

Page Two
Engineer's Report
Seabreeze Landscape Maintenance Assessment District

EXHIBIT D - Method of determination of assessment spread.

Respectfully submitted



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

March 2022

EXHIBIT B
SEABREEZE LANDSCAPE MAINTENANCE DISTRICT

Summary	Estimates FY 2021-2022	Estimates FY 2022-2023	Estimates FY 2023-2024
Beginning Cash Balance, July 1st	\$ 2,691	\$ 3,496	\$ 4,227
(a) Total Assessment Revenues (37 Parcels)	\$ 6,750	\$ 6,750	\$ 6,750

Expenditures

Contractor Services			
(b) Landscape Maintenance Contract	\$ 2,470	\$ 2,544	\$ 2,620
Utilities	\$ -	\$ -	\$ -
Large Tree Trimming	\$ -	\$ -	\$ -
Extraordinary Maintenance	\$ -	\$ -	\$ -
Plant Replacement	\$ -	\$ -	\$ -
Administrative Services			
Administration (Incl. Engineers Report)	\$ 1,500	\$ 1,500	\$ 1,500
Cost Allocation Plan Charges	\$ 1,740	\$ 1,740	\$ 1,740
Legal Advertising	\$ 235	\$ 235	\$ 235
Total Expenditures	\$ 5,945	\$ 6,019	\$ 6,095

(c) Net Change in Fund Balance	\$ 805	\$ 731	\$ 655
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(d) Ending Fund Balance, June 30th	\$ 3,496	\$ 4,227	\$ 4,882
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(a) Maximum Assessment per Prop 218 is \$182.42 per parcel. The assessment amount for FY22-23 is consistent with FY21-22 at \$182.42 per parcel.

(b) Maintenance Costs are shown as increasing per fiscal year by an estimated Consumer Cost Index (CPI) of 3% as allowed by the Contract Specifications.

(c) Net Change in Fund Balance equals the Total Expenditures subtracted from Total Assessment Revenue for that Fiscal Year.

(d) End Fund Balance equals the Net Change in Fund Balance plus the Beginning Cash Balance of that Fiscal Year.

SEABREEZE LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT
ASSESSMENT ROLL FOR
FISCAL YEAR 2022-2023

DIAGRAM AND ASSESSMENT NO.	ASSESSOR'S NET PARCEL NUMBER	ASSESSMENT
18	033-082-018	\$182.42
19	033-082-019	\$182.42
20	033-082-020	\$182.42
21	033-082-021	\$182.42
22	033-082-022	\$182.42
23	033-082-023	\$182.42
24	033-082-024	\$182.42
25	033-082-025	\$182.42
26	033-082-026	\$182.42
27	033-082-027	\$182.42
28	033-082-028	\$182.42
29	033-082-029	\$182.42
30	033-082-030	\$182.42
31	033-082-031	\$182.42
32	033-082-032	\$182.42
33	033-082-033	\$182.42
34	033-082-034	\$182.42

EXHIBIT D

METHOD OF DETERMINATION OF ASSESSMENT SPREAD

The maintenance of the landscaped areas within the Assessment District benefits the Assessment District as a whole. Therefore, the assessment should be equally apportioned over the 37 residential building sites or lots contained within the district as indicated on the Assessment Diagram (Exhibit A).

March 7, 2022

Item No. **8f(5)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of March 15, 2022

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-,
PRELIMINARILY APPROVING THE FISCAL YEAR 2022-23
ENGINEER'S REPORT FOR THE MONTEREY BAY ESTATES
LIGHTING & LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT;
DECLARING ITS INTENTION TO LEVY AN ASSESSMENT IN FISCAL
YEAR 2022-23 IN THAT DISTRICT; AND CALLING A PUBLIC
HEARING FOR APRIL 5, 2022**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2022-, preliminarily approving the Fiscal Year 2022-23 Engineer's Report for the Monterey Bay Estates Lighting & Landscape Maintenance Assessment District; declaring its intention to levy an assessment in fiscal year 2022-23 in that district; and calling a public hearing for April 5, 2022.

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.

The 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. 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.

At the regular meeting of March 1, 2022, the City Council adopted Resolution No. 2022-26, 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 Fiscal Year 2022-23.

ANALYSIS:

Staff has prepared an Engineer's Report for the Monterey Bay Estates Lighting & Landscape Maintenance Assessment District for FY 2022-23 and filed the report with the City Clerk. Staff is proposing assessment amounts as follows:

	<u>Current FY 2021-22</u>	<u>Proposed FY 2022-23</u>
Monterey Bay Estates (162 parcels)	\$77.14	\$77.14

Staff has been coordinating with various District residents to discuss further beautification and improvements to the District. An uplifting of sidewalk due to roots from trees maintained by the District is planned for removal and replacement with planned further beautification under review. Regular monthly maintenance of the existing District will continue.

Staff is requesting that the City Council approve setting a public hearing for April 5, 2022 to hear concerns on levying and collection of the proposed assessment on this district. Staff will mail notices to all affected property owners upon City Council approval of the public hearing.

Once the hearing is completed and the levy approved, the City has until August 1, 2022 to file a certified copy of the diagram and assessment with the Monterey County Auditor-Controller.

FISCAL IMPACT:

Adequate funding for providing notices for the public hearing has been appropriated in the FY 21/22 budget account for the Monterey Bay Estates Lighting & Landscape Maintenance Assessment District. There is no fiscal impact to approving the engineer's report and setting a public hearing.

CONCLUSION:

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

Respectfully submitted,

Edrie Delos Santos, P.E.
Senior Engineer
Public Works Department
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 PRELIMINARILY APPROVING THE FISCAL YEAR 2022-23 ENGINEER'S REPORT FOR THE MONTEREY BAY ESTATES LIGHTING & LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT; DECLARING ITS INTENTION TO LEVY AN ASSESSMENT IN FISCAL YEAR 2022-23 IN THAT DISTRICT; AND CALLING A PUBLIC HEARING FOR APRIL 5, 2022

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 City Engineer, on the direction of the City Council, has filed with the City Clerk a report with respect to the Fiscal Year 2022-23 levy of the assessment in connection with the Assessment District (the "Report"); and

WHEREAS, the Report is on file in the Office of the City Clerk, available for public inspection, and incorporated herein by reference; and

WHEREAS, the Report recommends that the assessment rate remain at \$77.14 per parcel; and

WHEREAS, the City Council desires to proceed with the process for levying the Fiscal Year 2022-23 levy of assessments in connection with the Assessment District prior to the August 1, 2022 deadline with the Monterey County Auditor-Controller.

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

1. The Report is hereby approved as filed.
2. The Council declares its intention to levy and collect assessments in the Assessment District for Fiscal Year 2022-23 as described in the Report.
3. Reference is made to the Report for a full and detailed description of (i) the improvements to be operated and maintained in connection with the Assessment District; (ii) the boundaries of the Assessment District; and (iii) the proposed assessments upon assessable lots and parcels of land within the Assessment District. The Report describes, among other things, each affected parcel of real property and the amount of the assessments for each such affected parcel for Fiscal Year 2022-23. The Assessment District generally includes all residential parcels in the Monterey Bay Estates subdivision. The general nature of the improvements is not proposed to change from the prior year.
4. A public hearing on the levy of assessments in Fiscal Year 2022-23 in connection with each of the Districts is scheduled for Tuesday, April 5, 2022, at 6:30 P.M. or as soon thereafter as the matter may be heard in conformance with Governor Newsom's Executive Order N.29-20 and City Council Resolution 2020-29 ratifying the Proclamation of a Local Emergency by the City Manager/Director of Emergency Services related to the COVID-19 (coronavirus) pandemic. Public participation in the City of Marina City Council and other public meetings shall be electronic only and without a physical location for public participation, until further notice in compliance with California state guidelines on social distancing. Information on the broadcasting and Public Participation during this meeting will be posted on the Meeting Agenda.

5. Staff is directed to give notice of the public hearing pursuant to Section 22626(a) of the Act.

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:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ATTEST:

Bruce Delgado, Mayor

Anita Sharp, Deputy City Clerk



**CITY OF MARINA
MONTEREY COUNTY
CALIFORNIA**

MONTEREY BAY ESTATES LIGHTING AND LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT

ENGINEER'S REPORT

FY 2022-2023

Council Members:

B. DELGADO, MAYOR

**L. BERKLEY
K. BIALA**

**D. BURNETT
C. MEDINA DIRKSEN**

**LAYNE LONG
ANITA SHEPHERD-SHARP
ROBERT WELLINGTON
BRIAN MCMINN**

**City Manager
Deputy City Clerk
City Attorney
Public Works Director/City Engineer**

**Prepared By
City of Marina
Public Works Department**

MONTEREY BAY ESTATES
LIGHTING AND LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT

FY 2022-2023

This report concerns the Monterey Bay Estates Lighting and Landscape Maintenance District.

The Assessment District consists of the Monterey Bay Estates Subdivision located in the northeasterly portion of the City of Marina. The subdivision contains 162 lots, a percolation pond parcel, and a park parcel.

The subdivision consists of 162 single family homes complete with underground utilities, water and wastewater facilities, public lighting facilities, street and drainage improvements, and landscaping. The Assessment District has been formed for the purpose of maintaining and servicing both the landscaping areas and public lighting facilities within the subdivision. The landscaping areas to be maintained and serviced are those in the percolation pond parcel and the street rights-of-way of De Forest Road and Quebrada Del Mar adjacent thereto; in and adjacent to the Crescent Avenue right-of-way, installed and paid for by the developer. The public lighting facilities to be maintained and serviced include all the public lighting facilities within the subdivision installed and paid for by the developer.

This report has been prepared pursuant to Sections 22500 through 22679 of the Streets and Highway Code (Landscaping and Lighting Act of 1972).

The improvements to be maintained which are the subject of this report, are briefly described as follows:

Landscaping elements within the percolation pond parcel and the street rights-of-way of De Forest Road and Quebrada Del Mar adjacent thereto, and landscaping elements within and adjacent to the Crescent Avenue right-of-way (See Exhibit A) are considered as the landscaping improvements included in the Assessment District. Landscaping elements consist of hydroseeded areas, groundcover, shrubs, trees, irrigation pipelines, controllers, valves, sprinklers, water and electrical service, and freestanding concrete block walls.

Public Lighting facilities within the street right-of-way of De Forest Road, Costa Del Mar Road, Sirena Del Mar Road, Tallmon Street, Quebrada Del Mar Road, Isla Del Sol Way, Estrella Del Mar Way and Crescent Avenue all within the boundary of the Monterey Bay Estates Subdivision (Tract no. 1102) are considered as the public lighting improvements included in the Assessment District, see Exhibit A. The public lighting facilities consist of electroliers, mast arm, ballast, electrical service, wiring and lamps.

Page Two
Engineer's Report
Monterey Bay Estates Lighting and Landscape Maintenance District

This report includes the following exhibits:

EXHIBIT A - An assessment diagram and boundary map showing all of the parcels of the real property within the Assessment District. The diagram is keyed to Exhibit C by the separate "Assessment Number".

EXHIBIT B - Spreadsheet showing estimated maintenance costs for FY 2021-2022, FY 2022-2023 and FY 2023-2024.

EXHIBIT C - An assessment roll showing the amount proposed to be assessed against each parcel of real property within this Assessment District. In addition to the Assessor's Parcel Number each parcel has been assigned a separate "Assessment Number" which corresponds to that parcel's lot number.

EXHIBIT D- A statement of the method by which the undersigned determined the amount to be assessed against each parcel based on the benefits to be derived by each parcel, respectively, from the improvements.

Respectfully submitted,



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

March 2022

Boundary and Landscaped Area Map

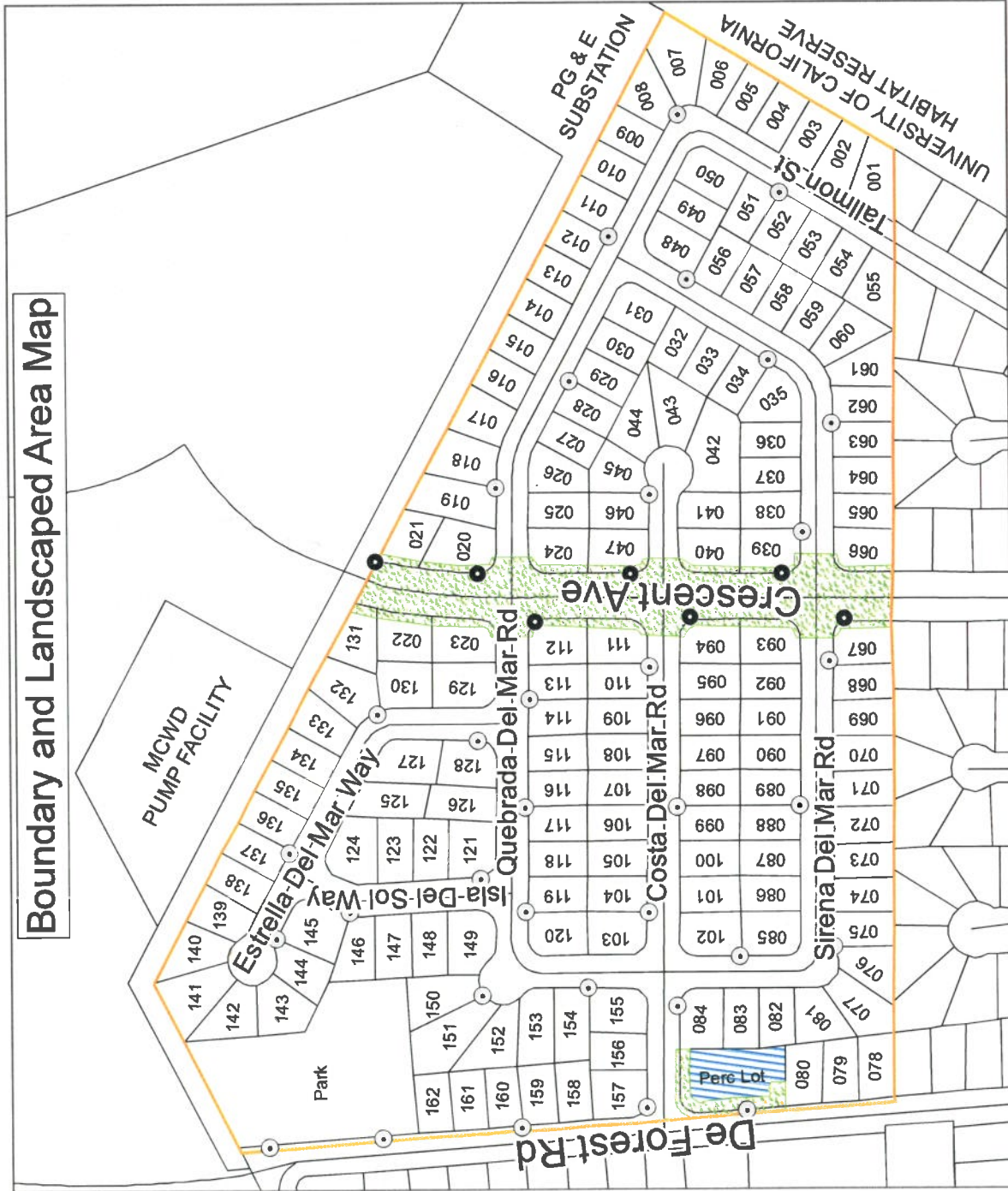


EXHIBIT B
MONTEREY BAY ESTATES LIGHTING & LANDSCAPE MAINTENANCE DISTRICT

Summary	Estimates FY 2021-2022	Estimates FY 2022-2023	Estimates FY 2023-2024
Beginning Cash Balance, July 1st	\$ 8,833	\$ 7,252	\$ 7,002
(a) Total Assessment Revenues (162 Parcels)	\$ 12,497	\$ 12,497	\$ 12,497

Expenditures

Contractor Services			
(b) Landscape Maintenance Contract	\$ 5,616	\$ 5,784	\$ 5,958
Utilities	\$ 151	\$ 151	\$ 151
Large Tree Trimming	\$ -	\$ -	\$ -
Extraordinary Maintenance	\$ 3,000	\$ 1,500	\$ -
Plant/Tree Removal/Replacement	\$ -	\$ -	\$ -
Administrative Services			
Administration (Incl. Engineers Report)	\$ 2,000	\$ 2,000	\$ 2,000
Cost Allocation Plan Charges	\$ 2,871	\$ 2,871	\$ 2,871
Legal Advertising	\$ 440	\$ 440	\$ 440
Total Expenditures	\$ 14,078	\$ 12,746	\$ 11,420

(c) Net Change in Fund Balance	\$ (1,581)	\$ (250)	\$ 1,077
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(d) Ending Fund Balance, June 30th	\$ 7,252	\$ 7,002	\$ 8,079
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(a) Maximum Assessment per Prop 218 is \$77.14 per parcel. The assessment amount for FY22-23 is consistent with FY21-22 at \$77.14 per parcel.

(b) Maintenance Costs are shown as increasing per fiscal year by an estimated Consumer Cost Index (CPI) of 3% as allowed by the Contract Specifications.

(c) Net Change in Fund Balance equals the Total Expenditures subtracted from Total Assessment Revenue for that Fiscal Year.

(d) End Fund Balance equals the Net Change in Fund Balance plus the Beginning Cash Balance of that Fiscal Year.

EXHIBIT C

MONTEREY BAY ESTATES
LIGHTING AND LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT
ASSESSMENT ROLL FOR
FISCAL YEAR 2022-2023

DIAGRAM AND ASSESSMENT NO.	ASSESSOR'S NET PARCEL NUMBER	ASSESSMENT
1	032-541-01	\$77.14
2	032-541-02	\$77.14
3	032-541-03	\$77.14
4	032-541-04	\$77.14
5	032-541-05	\$77.14
6	032-541-06	\$77.14
7	032-541-07	\$77.14
8	032-541-08	\$77.14
9	032-541-09	\$77.14
10	032-541-10	\$77.14
11	032-541-11	\$77.14
12	032-541-12	\$77.14
13	032-541-13	\$77.14
14	032-541-14	\$77.14
15	032-541-15	\$77.14
16	032-541-16	\$77.14
17	032-541-17	\$77.14
18	032-541-18	\$77.14

MONTEREY BAY ESTATES
LIGHTING AND LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT
ASSESSMENT ROLL FOR
FISCAL YEAR 2022-2023

DIAGRAM AND ASSESSMENT NO.	ASSESSOR'S NET PARCEL NUMBER	ASSESSMENT
19	032-541-19	\$77.14
20	032-541-20	\$77.14
21	032-541-21	\$77.14
22	032-555-38	\$77.14
23	032-555-02	\$77.14
24	032-542-01	\$77.14
25	032-542-02	\$77.14
26	032-542-03	\$77.14
27	032-542-04	\$77.14
28	032-542-05	\$77.14
29	032-542-06	\$77.14
30	032-542-07	\$77.14
31	032-542-08	\$77.14
32	032-542-09	\$77.14
33	032-542-10	\$77.14
34	032-542-11	\$77.14
35	032-542-12	\$77.14
36	032-542-13	\$77.14

MONTEREY BAY ESTATES
LIGHTING AND LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT
ASSESSMENT ROLL FOR
FISCAL YEAR 2022-2023

DIAGRAM AND ASSESSMENT NO.	ASSESSOR'S NET PARCEL NUMBER	ASSESSMENT
37	032-542-14	\$77.14
38	032-542-15	\$77.14
39	032-542-16	\$77.14
40	032-542-17	\$77.14
41	032-542-18	\$77.14
42	032-542-25	\$77.14
43	032-542-26	\$77.14
44	032-542-21	\$77.14
45	032-542-22	\$77.14
46	032-542-23	\$77.14
47	032-542-24	\$77.14
48	032-543-01	\$77.14
49	032-543-02	\$77.14
50	032-543-03	\$77.14
51	032-543-04	\$77.14
52	032-543-05	\$77.14
53	032-543-06	\$77.14
54	032-543-07	\$77.14
55	032-543-08	\$77.14

MONTEREY BAY ESTATES
LIGHTING AND LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT
ASSESSMENT ROLL FOR
FISCAL YEAR 2022-2023

DIAGRAM AND ASSESSMENT NO.	ASSESSOR'S NET PARCEL NUMBER	ASSESSMENT
56	032-543-09	\$77.14
57	032-543-10	\$77.14
58	032-543-11	\$77.14
59	032-543-12	\$77.14
60	032-543-13	\$77.14
61	032-543-14	\$77.14
62	032-543-15	\$77.14
63	032-543-16	\$77.14
64	032-543-17	\$77.14
65	032-543-18	\$77.14
66	032-543-19	\$77.14
67	032-551-01	\$77.14
68	032-551-02	\$77.14
69	032-551-03	\$77.14
70	032-551-04	\$77.14
71	032-551-05	\$77.14
72	032-551-06	\$77.14
73	032-551-07	\$77.14
74	032-551-08	\$77.14

MONTEREY BAY ESTATES
LIGHTING AND LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT
ASSESSMENT ROLL FOR
FISCAL YEAR 2022-2023

DIAGRAM AND ASSESSMENT NO.	ASSESSOR'S NET PARCEL NUMBER	ASSESSMENT
75	032-551-09	\$77.14
76	032-551-10	\$77.14
77	032-551-11	\$77.14
78	032-551-12	\$77.14
79	032-551-13	\$77.14
80	032-551-14	\$77.14
81	032-551-15	\$77.14
82	032-551-16	\$77.14
83	032-551-17	\$77.14
84	032-551-18	\$77.14
85	032-552-01	\$77.14
86	032-552-02	\$77.14
87	032-552-03	\$77.14
88	032-552-04	\$77.14
89	032-552-05	\$77.14
90	032-552-06	\$77.14
91	032-552-07	\$77.14
92	032-552-08	\$77.14
93	032-552-09	\$77.14

MONTEREY BAY ESTATES
LIGHTING AND LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT
ASSESSMENT ROLL FOR
FISCAL YEAR 2022-2023

DIAGRAM AND ASSESSMENT NO.	ASSESSOR'S NET PARCEL NUMBER	ASSESSMENT
94	032-552-10	\$77.14
95	032-552-11	\$77.14
96	032-552-12	\$77.14
97	032-552-13	\$77.14
98	032-552-14	\$77.14
99	032-552-15	\$77.14
100	032-552-16	\$77.14
101	032-552-17	\$77.14
102	032-552-18	\$77.14
103	032-553-01	\$77.14
104	032-553-02	\$77.14
105	032-553-03	\$77.14
106	032-553-04	\$77.14
107	032-553-05	\$77.14
108	032-553-06	\$77.14
109	032-553-07	\$77.14
110	032-553-08	\$77.14

MONTEREY BAY ESTATES
LIGHTING AND LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT
ASSESSMENT ROLL FOR
FISCAL YEAR 2022-2023

DIAGRAM AND ASSESSMENT NO.	ASSESSOR'S NET PARCEL NUMBER	ASSESSMENT
111	032-553-09	\$77.14
112	032-553-10	\$77.14
113	032-553-11	\$77.14
114	032-553-12	\$77.14
115	032-553-13	\$77.14
116	032-553-14	\$77.14
117	032-553-15	\$77.14
118	032-553-16	\$77.14
119	032-553-17	\$77.14
120	032-553-18	\$77.14
121	032-554-01	\$77.14
122	032-554-02	\$77.14
123	032-554-03	\$77.14
124	032-554-04	\$77.14
125	032-554-05	\$77.14
126	032-554-06	\$77.14
127	032-554-07	\$77.14
128	032-554-08	\$77.14
129	032-555-03	\$77.14

MONTEREY BAY ESTATES
LIGHTING AND LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT
ASSESSMENT ROLL FOR
FISCAL YEAR 2022-2023

DIAGRAM AND ASSESSMENT NO.	ASSESSOR'S NET PARCEL NUMBER	ASSESSMENT
130	032-555-39	\$77.14
131	032-555-05	\$77.14
132	032-555-06	\$77.14
133	032-555-07	\$77.14
134	032-555-08	\$77.14
135	032-555-09	\$77.14
136	032-555-10	\$77.14
137	032-555-11	\$77.14
138	032-555-12	\$77.14
139	032-555-13	\$77.14
140	032-555-14	\$77.14
141	032-555-15	\$77.14
142	032-555-16	\$77.14
143	032-555-17	\$77.14
144	032-555-18	\$77.14
145	032-555-19	\$77.14
146	032-555-20	\$77.14
147	032-555-21	\$77.14

MONTEREY BAY ESTATES
LIGHTING AND LANDSCAPE MAINTENANCE ASSESSMENT DISTRICT
ASSESSMENT ROLL FOR
FISCAL YEAR 2022-2023

DIAGRAM AND ASSESSMENT NO.	ASSESSOR'S NET PARCEL NUMBER	ASSESSMENT
148	032-555-22	\$77.14
149	032-555-23	\$77.14
150	032-555-24	\$77.14
151	032-555-25	\$77.14
152	032-555-26	\$77.14
153	032-555-27	\$77.14
154	032-555-28	\$77.14
155	032-555-29	\$77.14
156	032-555-30	\$77.14
157	032-555-31	\$77.14
158	032-555-32	\$77.14
159	032-555-33	\$77.14
160	032-555-34	\$77.14
161	032-555-35	\$77.14
162	032-555-36	\$77.14

EXHIBIT D

METHOD OF DETERMINATION OF ASSESSMENT SPREAD

The maintenance of the landscaping surrounding percolation pond and Crescent Avenue landscaping together with maintenance and service of the public lighting facilities benefits the Assessment District as a whole. The tentative subdivision map approval was conditioned on the formation of this Maintenance District. Since the creation of the lots was so conditioned, each lot equally benefits from the District. Therefore, the assessment spread is based on the number of building sites or lots contained within the district as indicated on the Assessment Diagram (Exhibit A).

March 3, 2022

Item No: **8g(1)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of March 15, 2022

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-,
APPROVING ASSIGNMENT OF A LEASE, ASSUMPTION OF
ASSIGNMENT OF LEASE AND CONSENT TO ASSIGNMENT OF
LEASE FOR 3240 INJIM ROAD (BUILDING 510) BETWEEN THE CITY
OF MARINA, DRIVEN PERFORMANCE, LLC AND JOBY AERO, INC.,
AND AUTHORIZING CITY MANAGER TO EXECUTE THE
ASSIGNMENT OF THE LEASE 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 assignment of a Lease, Assumption of Assignment of Lease and consent to Assignment of Lease for 3240 Imjin Road (Building 510) between the City of Marina, Driven Performance, LLC and Joby Aero, Inc.; and
2. Authorizing City Manager to execute the Assignment of the Lease Agreement, on behalf of the City, subject to final review and approval by City Attorney.

BACKGROUND:

On March 28, 2017, the City and Driven Performance Manufacturing, LLC entered into a certain Lease Agreement (**EXHIBIT “A”**) for a City owned building on the Marina Municipal Airport, located at 3240 Imjin Road (Building 510). The Lease had a delayed effective date pending certain repairs by the City to the building. The repairs were completed, and the Lease term became effective on December 1, 2019. The term of the Lease is 5 years with a City option to extend another 5 years. The space consists of 21,542 square feet of hangar, office and miscellaneous space. The initial Lease rate was \$.21 per square foot with an annual escalator of 5% throughout the term. The uses permitted by the Lease include aviation related manufacturing, assemblage or engineering, tooling, testing, manufacturing and the sale of composite aircraft components.

ANALYSIS:

On January 31, 2022, the City received a letter from Joe Johnson, CEO of Fort Ord Works, Inc. (**EXHIBIT “B”**) requesting that the Lease for Building 521 be transferred to Joby Aero, Inc. for the remainder of the initial term and option period.

The initial 5 years of the Lease will conclude on December 1, 2024, after which the City will need to consent to an addition 5-year term to continue the lease. The current monthly rent for year 2 of the term is \$5,181 per month (\$.24 per s.f.). The Lease rate will continue to increase by 5% annually for the remainder of the term and will include the following monthly rents:

Rent for Year Three – \$5,440
Rent for Year Four – \$5,712
Rent for Year Five – \$5,997

Rent for Year One of Optional Term – \$6,297
Rent for Year Two of Optional Term – \$6,612
Rent for Year Three of Optional Term – \$6,943
Rent for Year Four of Optional Term – \$7,290
Rent for Year Five of Optional Term – \$7,694

Tenant also pays 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 are paid by the Tenant as well.

The Assignment of the Lease to Joby Aero, Inc. requires the consent of the City. Approval of the attached resolution will allow the City Manager to sign the Assignment of a Lease, Assumption of Assignment of Lease and Consent to Assignment of Lease (**EXHIBIT "C"**) as the representative of the City.

FISCAL IMPACT:

There are no new fiscal impacts to the City as a result of this action.

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 ASSIGNMENT OF A LEASE, ASSUMPTION OF ASSIGNMENT OF LEASE AND CONSENT TO ASSIGNMENT OF LEASE FOR 3240 IMJIN ROAD (BUILDING 510) BETWEEN THE CITY OF MARINA, DRIVEN PERFORMANCE MANUFACTURING, LLC AND JOBY AERO, INC., AND AUTHORIZING CITY MANAGER TO EXECUTE THE ASSIGNMENT OF THE LEASE ON BEHALF OF THE CITY, SUBJECT TO FINAL REVIEW AND APPROVAL BY CITY ATTORNEY

WHEREAS, Building 510 located at 3240 Imjin Road consists of 21,542 square feet of hangar, office and miscellaneous space; and,

WHEREAS, on March 28, 2017, the City and Driven Performance Manufacturing, LLC entered into a Lease Agreement for a City owned building at the Marina Municipal Airport. The Lease had a delayed effective date pending certain repairs by the City to the building. The repairs were completed, and the Lease term became effective on December 1, 2019; and,

WHEREAS, the uses permitted by the Lease includes aviation related manufacturing, assemblage or engineering, tooling, testing, manufacturing and the sale of composite aircraft components; and,

WHEREAS, the current monthly rent for year 2 of the term is \$5,181 per month (\$.24 per s.f.). The Lease rate will continue to increase by 5% annually for the remainder of the term; and,

WHEREAS, on January 31, 2022, the City received a letter from Joe Johnson, CEO of Fort Ord Works, Inc. requesting that the Lease for Building 510 be transferred to Joby Aero, Inc. for the remainder of the initial term and option period; and,

WHEREAS, Article 15 of the Lease provides for the assignment of the Lease to another party with the written consent of the City; and,

WHEREAS, the Assignment of a Lease, Assumption of Assignment of Lease and Consent to Assignment of Lease between the City of Marina, Driven Performance Manufacturing, LLC and Joby Aero, Inc. attached herein provides the City's written consent to assignment of the Lease to Joby Aero, Inc. under the same terms as provided in said Lease; and,

WHEREAS, under the terms of the Lease the initial 5-year term will conclude on December 1, 2024, after which the City will need to consent to an addition 5-year term to continue the lease.

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

1. Adopting Resolution No. 2022-, approving assignment of a lease, assumption of assignment of lease and consent to assignment of lease for 3240 Imjin Road (Building 510) between the City of Marina, Driven Performance Manufacturing, LLC and Joby Aero, Inc.; and,
2. Authorizing City Manager to execute the Assignment of 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 15th day of March 2022, by the following vote:

AYES, COUNCIL MEMBERS:

NOES, COUNCIL MEMBERS:

ABSENT, COUNCIL MEMBERS:

ABSTAIN, COUNCIL MEMBERS:

ATTEST:

Bruce C. Delgado, Mayor

Anita Sharp, Deputy City Clerk

MARINA MUNICIPAL AIRPORT

LEASE BETWEEN

THE CITY OF MARINA

AND

DRIVEN PERFORMANCE MANUFACTURING, LLC

for

BUILDING 510

Recording Requested by and)
 When recorded mail to:)
 City Clerk)
 City of Marina)
 857 Cass Street, Suite D.)
 Monterey, California 93940)
)
 APN 031-112-007)
 _____)

LEASE

THIS LEASE (the "Lease"), made and entered into this 28th day of March 2017, by and between the **CITY OF MARINA**, a California municipal corporation ("City"), and **DRIVEN PERFORMANCE MANUFACTURING, LLC**, a California limited liability company, dba Fort Ord Works ("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 structure formerly utilized by the U.S. Army as an aircraft hangar and office facility, for use in the Tenant's aviation-related business of developing, designing, engineering, tooling, testing, manufacturing and the sale of composite aircraft components.
- C. As the lease of an existing public structure this Lease is categorically exempt from the California Environmental Quality Act (CEQA) in accordance with CEQA Categorical Exemption 15301.
- D. 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.

Terms and Conditions

Conditions Precedent

1. Approval 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 of the City of Marina.
3. Tenant's receipt of a conditional use permit issued by the City for the non aviation-related use of the premises, if any.
4. Approval by the City Manager/Airport Manager and the Airport Commission and by the City's Community Development and Public Works Departments of Tenant's plans and specifications for construction of the improvements to be made to the leased premises and its improvements.

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 and premises (the "Premises"), being a portion of the Marina Municipal Airport, located within and around Building Number 510 (the "Building" or "Building 510") located at 3240 Imjin 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 21,452 square feet including 18,026 square feet of hangar, office and miscellaneous use space located on the ground floor and the mezzanine of Building 510 as outlined and designated on the floor plan attached hereto as **Exhibit B** and made a part hereof. The Premises includes one restroom facility, located on the ground floor, accessible to persons with disabilities ("ADA compliant restroom"). No use of the mezzanine space (approximately 3,426 square feet) is permitted without compliance with requirements of the ADA as set forth in the report prepared by the certified access specialist (CAsp) referenced in Section 8.03 herein (the "CAsp Report"), and the prior written consent of the City. The exterior area includes the area shown on **Exhibit A**. 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 paved areas and parking lots as shown on **Exhibit A**. City reserves the right to designate alternate parking areas for Tenant's use. Tenant may, in a manner approved in advance and in writing by the City, mark or designate parking spaces for its use.

b) The furniture, furnishings, fixtures, and equipment, if any, to be set forth in the Schedule of Property attached hereto as **Exhibit C** 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 of 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 or taking off from the Airport, all at Tenant's sole cost and expense.

b) **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.

c) **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 upon the date the City completes the repairs specified in Section 9.08 (the "Effective Date"). . City shall confirm the Effective Date of this Lease in writing to the Tenant. The Term shall continue for five years following the Effective Date, to the "Expiration Date" five years hence unless terminated earlier as provided herein.

1.05 Conditional Option to Extend. City shall have the conditional right and option to renew and extend the term of this Lease 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. This option is conditional upon FAA approval and Tenant's acceptance of the terms of the lease amendment. This option may be exercised by the City by its giving written notice of its intent to extend s this option to the Tenant not sooner than 210 nor less than 180 days before the expiration of the Term.

1.06 Option to Extend – Rent Payable. The monthly rent to be paid by the Tenant for the conditional five-year option will be increased by five percent (5.0%) above the monthly rent payable in the final year of the Term as follows:

Rent for Year One of first option to extend =	\$6,297.00 per month.
Rent for Year Two of first option to extend =	\$6,612.00 per month.
Rent for Year Three of first option to extend =	\$6,943.00 per month.
Rent for Year Four of first option to extend =	\$7,290.00 per month.
Rent for Year Five of first option to extend =	\$7,654.00 per month.

1.07 Holding Over. Any holding over after the expiration of the initial or extended 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.

ARTICLE 2. USE OF LEASED PREMISES

2.01 Use. This Lease is made for the purpose of allowing Tenant's commercial, non aeronautical, use of the leased Premises and for granting Tenant certain rights and privileges to occupy Building 510 and to use the adjacent areas designated for parking for Tenant's use. Tenant may use the Premises in its business of aviation-related manufacturing, assemblage or research and aviation-based services, supplies or retail including developing, designing, engineering, tooling, testing, manufacturing and the sale of composite aircraft components. Subject to obtaining a conditional use permit from the City, Tenant may use the Premises for such other non aviation-related uses as may be permitted by the conditional use permit. Tenant shall limit the number of its employees to no more than ten employed upon the Premises at any one time unless and until a second ADA compliant restroom is available within Building 510. 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 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 or anticipated profits of Tenant or others.

c) Tenant shall have the right, at its expense, to place in 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 or signs to be affixed to the leased Premises, to be readily visible from Imjin Road. 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 rules and regulations promulgated by the City, 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 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) Semi trucks and trailers delivering materials and shipping finished products shall not do so within the Airport operations area.

i) 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.

j) 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. Tenant agrees to cooperate with the City concerning these events (e.g. allowing the City to use the Premises Parking Area 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 covered in 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 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 six months of this Lease shall be \$4,505.00 (at the rate of \$0.21 per square foot). The rent payable for months seven through twelve of this Lease shall be \$4,934.00 (at the rate of \$0.23 per square foot). Thereafter for the initial term the rent shall increase annually by five percent (5.0%) above the monthly rent payable in the prior year as follows:

Rent for Year Two =	\$5,181.00 per month.
Rent for Year Three =	\$5,440.00 per month.
Rent for Year Four =	\$5,712.00 per month.
Rent for Year Five =	\$5,997.00 per month.

Tenant shall also pay as additional rent, every month as provided above, the amounts set forth in Article 12 herein for utilities (water, sewer, and gas), trash collection and assessments. The rent payable under this Lease shall be triple net (*i.e.*, Tenant shall pay all of its operating expenses, insurance premiums and taxes including possessory interest tax). Rent and all net charges shall commence upon the Effective Date.

4.03 Allowance for Building Improvements. The City may extend a rental credit to Tenant up to an amount not to exceed One Hundred Thousand Dollars (\$100,000) based on the costs incurred by Tenant related to the, repair, replacement, construction or installation of building improvements approved in advance by the City in accordance with a written amendment to this Lease, which shall include: (i) an estimate for the cost of the work; and (ii) an amortization schedule for reimbursing the Tenant in accordance with this section, which the City Manager, acting as the Airport Manager, shall have the authority to enter into on behalf of the City. The City's contribution shall be known as the "Tenant Allowance" and shall be effected by means of a credit against the monthly rent to be paid by Tenant as provided herein as set forth in the lease amendment. Any work of improvement for which the Tenant receives a Tenant Allowance shall be a "public work" as that term is defined buy California Labor Code §§1720-1720.6. The total agreed Tenant Allowance for building improvements payable by the City shall be supported by written documentation provided to and approved by the City, acting through the City Manager/Airport Manager, and be paid to Tenant as a credit against the monthly rent taken in monthly installments amortized over thirty-six months or through the Expiration Date of the Lease, whichever is shorter following inspection of the improvements and approval of the City Manager/Airport Manager of the improvements which are the subject of the lease amendment and Tenant's documentation submitted for work done to construct or install the building improvements (the "Proration Period") which are the subject of the Lease amendment(s). The monthly credit so calculated shall be taken until the Tenant Allowance has been credited in full with the final credit against monthly rent taken in the 36th month after inspection and approval of the improvements and approval by the City Manager/Airport Manager of Tenant's documentation or the final month of the Term, so as to be in such amount as required to fully deplete the Tenant Allowance for the improvements which are the subject of the lease amendment. In no event will the City be responsible to reimburse Tenant for improvements constructed by Tenant in any manner other than by a Tenant Allowance and Tenant will be solely responsible for any amounts expended in excess of the proposed amortization schedule to be made a part of the lease amendment. For example, if the final agreed Tenant Allowance under a lease amendment is Thirty Thousand Dollars (\$30,000) Tenant could receive a monthly credit against rent in the amount of Eight Hundred Thirty-three Dollars (\$833.00) for thirty-five (35) months of this Lease, and a credit against rent in the amount of Eight Hundred Seventy-four Dollars and Sixty-two Cents (\$874.62) in the thirty-sixth (36th) month. If there were less than thirty-six months remaining the final proposed amortization schedule included with the lease

amendment would be structured to provide for complete amortization of the Tenant Allowance by the Expiration Date and accordingly for payment by Tenant of a reduced rent during the term of the amortization as agreed by the parties in the lease amendment.

4.04 City Inspection of Building Improvements. Notwithstanding any other provisions of this Lease, the City will have no obligation to reimburse Tenant or to credit the Tenant Allowance to Tenant's rent payment due for any month for building improvements until the City has conducted a final inspection of the improvements to the Premises made in accordance with the Plans and, if necessary, issued a Certificate of Occupancy for the Premises.

4.05 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.

4.06 Performance Deposit. Upon execution of this Lease, Tenant will pay to the City the sum of \$15,000.00, 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, 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.

4.07 Accord and Satisfaction. No payment by Tenant or receipt by the City or 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 require to be given pursuant to California Code of Civil Procedure section 1161 *et seq.*, or any successor statute thereto.

4.08 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.

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. The City's reasonable determination thereof, in good faith, shall be conclusive.

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. The City's reasonable determination thereof, in good faith, shall be conclusive provided, however, Tenant may appeal the City's determination of the proration of any MCWRA assessments to the City Council, whose decision shall be final. In the event Tenant fails to pay any assessment when due, the City may, at its option, pay the same and collect from Tenant's performance deposit (see Section 4.06) the amounts so disbursed, plus interest at the rate of 10% per annum or fraction thereof.

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.

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 7.02 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. The City has provided to the Tenant an asbestos survey report prepared by the U.S. Army Corps of Engineers for Building 510, which is attached hereto as **Exhibit D**. 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 510 described in this Lease and the real property of which it is a part has undergone inspection by a certified access specialist (CASP) and has been determined not to meet all applicable construction-related accessibility standards pursuant to California Civil Code Section 55.53. There have been no modifications or alterations completed or commenced between the date of the inspection and the date of this Lease which have impacted the subject of the Premises compliance with construction-related accessibility standards. Prior to execution of this Lease the Tenant was provided with a copy of the CASp Report in accordance with a written agreement between the City and the Tenant per California Civil Code section 1938(b). Tenant understands and acknowledges that, with the exception of: (1) an ADA compliant path of travel from the public way to inside the building, including common area restroom facility; and the ADA compliant restroom on the first floor of the Building, the City makes no representation concerning the premises compliance with the ADA. 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 the 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 510 will be or is in compliance with the ADA. Tenant acknowledges that certain portions of Building 510 remain inaccessible for some disabled individuals. 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 Eligible for a Tenant Allowance. Tenant may construct improvements including the building improvements eligible for a Tenant Allowance per Section 4.03 (the "Tenant Allowance-Eligible Improvements") to the leased Premises in accordance with plans, specifications, and an estimate of the final cost (the "Plans") to be completed by Tenant and submitted to the City with a required lease amendment. 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, together with the lease amendment including a construction schedule ("Construction Schedule") shall be entered into by both parties. Tenant Allowance-Eligible Improvements shall be structural or building system-related improvements to the Premises including, but not necessarily limited to, those: (1) required for compliance with an applicable federal, state or local regulations or codes, including, but not limited to, the codes adopted by the City in Title 15 of the Marina Municipal Code ("Buildings and Construction"), as same may be amended from time to time; or (2) to provide for the addition, repair or restoration, installation, or replacement of a permanent structural improvement or interior system which will thereby enhance the Building's overall value or increase its useful life, including, but not limited to, the parking areas, mechanical including the overhead crane and compressor, electrical, plumbing, or ventilation systems, as well architectural, engineering, planning and design services and certain other costs, shall be eligible for treatment as a Tenant Allowance for which Tenant will receive the credit against the monthly rent payable under this Lease as per Section 4.03. Tenant Allowance-Eligible Improvements shall be as agreed by the City and Tenant and set forth in the lease amendment. Nothing herein shall alter the intent of the parties that Tenant shall be fully and completely responsible for all aspects pertaining to the construction of the Tenant Allowance-Eligible Improvements on the leased Premises and for the payment of all costs associated therewith, subject to Tenant's right to the credit against monthly rent set forth in Section 4.03 hereof and the City's obligations under Section 9.08 below.

9.02 Tenant Allowance Eligible-Improvements by the Tenant.

(a) Tenant covenants and agrees and it is an express condition of this Lease that Tenant shall conduct its due diligence, at its own cost and expense and commence to construct upon the Premises the Tenant Allowance-Eligible Improvements in compliance with the Plans, and shall thereafter diligently prosecute to completion the Tenant Allowance-Eligible Improvements in compliance with the Construction Schedule set forth in the lease amendment. 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). At least two (2) weeks before the last date Tenant accepts initial bids for any construction for Tenant Allowance-Eligible Improvements, Tenant shall file with the City a written list of the name of all contractors to whom Tenant has submitted a request for bids. In addition, Tenant shall file with the City the name of each contractor with whom Tenant proposes to contract, together with the name of the subcontractors of all tiers, at least five (5) business days before Tenant enters into a final contract with any contractor. Tenant shall promptly provide the City with written notice of the contractor(s) to whom Tenant has awarded any bid. The call for bids and contract documents shall specify that the project for construction of Tenant Allowance-Eligible Improvements is subject to compliance monitoring and enforcement by the California Department of Labor Standards Enforcement. Tenant's failure to strictly comply with this provision shall be a material breach of this Lease. The above provisions are intended to provide the City with notice of the contractor(s) that Tenant may engage to construct the Tenant Allowance-Eligible Improvements but are not intended to give the City the right to approve or disapprove the contractor(s) engaged by Tenant.

In connection with the Tenant Allowance-Eligible Improvements, the following conditions shall apply (collectively, "Basic Conditions"):

(1) The Tenant Allowance-Eligible Improvements may not weaken the structural integrity of the Premises and/or other improvements.

(2) Tenant must, prior to constructing, erecting or making any Tenant Allowance-Eligible Improvement, submit to the City (collectively, "Submissions") (i) complete copies of any and all architectural plans, drawings and specifications, including engineering, mechanical, structural and electrical working drawings, design calculations of and other documents ("Construction Drawings") pertaining to the proposed Tenant Allowance-Eligible Improvements, in form reasonably satisfactory to the City and consistent with all Plans previously delivered to and approved by the City, (ii) complete copies of any and all authorizations or approval from any governmental agency or authority as may be required under applicable law, rules or regulations, including, without limitation, all applicable environmental laws, (iii) a complete list (including contact information) of all Tenant's representatives (including contractors, architects, engineers and other consultants) and all subcontractors, that may perform work or services related to the proposed Tenant Allowance-Eligible Improvements, which must all be licensed and bonded professionals in the State of California, to the extent required under applicable law ("Tenant

Contractors”), (iv) a final Construction Schedule, and (v) complete copies of the certificates of insurance required.

(3) Tenant must, prior to constructing, erecting or making any Tenant Allowance-Eligible Improvement, procure and pay for all necessary permits and authorizations, and must comply with all applicable federal, state and local laws and regulations, including the conditions under such necessary permits during the construction and installation of the Tenant Allowance-Eligible Improvements.

(4) The Tenant Allowance-Eligible Improvements must be of new and first quality materials and all related work shall be in a proper, professional and good and workmanlike manner and conducted with all due diligence.

(5) If any such work related to the Tenant Allowance-Eligible Improvements involves the replacement of fixtures or parts thereto, all replacement fixtures or parts shall have a value and useful life equal to the value and useful life on the replacement date of the fixtures being replaced.

(6) All work related to the Tenant Allowance-Eligible Improvements shall be expeditiously completed in compliance with the approved schedule of completion and with all applicable laws, including those regarding disabled or handicapped persons, including without limitation the ADA.

(7) The Tenant Allowance-Eligible Improvements shall strictly conform to the Plans and the final Construction Schedule.

(8) City will require Tenant or Tenant’s general contractor, at Tenant’s sole cost and expense, to furnish bonds or letters of credit in accordance with Sections 9.04 to assure diligent and faithful performance of all work related to the Tenant Allowance-Eligible Improvements.

(9) If any Tenant Allowance-Eligible Improvement impacts the structure or mechanical systems of the Premises to an extent greater than *de minimis*, or if Tenant otherwise has plans prepared for same, Tenant shall deliver “as-built” plans, including all mechanical systems (prepared using AutoCAD), to the City upon completion of the Improvements.

(10) Subject to Article 14, Tenant shall promptly discharge, remove or contest all liens filed against the Premises arising out of the construction of the Tenant Allowance-Eligible Improvements.

(11) All Tenant Allowance-Eligible Improvements shall be subject to this Lease. The Tenant Allowance-Eligible Improvements shall become the property of the City upon the date their cost has been fully amortized and reimbursed to the Tenant by the City in accordance with Section 4.03. The remaining Tenant Allowance-Eligible Improvements shall become the property of the City as of the termination date of this Lease, unless otherwise agreed upon by Tenant and the City, and Tenant shall execute and deliver to the City any document requested by

the City evidencing the assignment to the City of all estate, right, title and interest (other than the interest created under this Lease).

(12) Tenant shall be responsible for the repair of any City or other facilities which are damaged as a result of Tenant's or its contractors, subcontractors or agents construction of the Tenant Allowance-Eligible Improvements.

(13) Tenant shall coordinate the timing of the Tenant Allowance-Eligible Improvements with the City so that the Improvements will not in any material respect interfere with or cause a delay in any other construction activities authorized by the City.

(14) Tenant shall give the City at least seven (7) calendar days' notice prior to the commencement of construction of any Tenant Allowance-Eligible Improvement so that the City may post appropriate notices of non-responsibility and agrees that such notices may remain posted until the Improvements are complete.

(15) Tenant shall comply with the City's waste reduction and recycling programs, as the same may be amended from time to time.

(16) Tenant shall comply with the Prevailing Wage Requirements, if applicable, and the other provisions under Section 9.10.

(17) Tenant shall pay all applicable fees under applicable the City ordinances and resolutions.

(18) Tenant shall be responsible for the repair of any City or other facilities which are damaged in connection with the construction of the Tenant Allowance-Eligible Improvements.

(19) Tenant shall comply with any and all mitigation measures and conditions to approval applicable to the construction of the Tenant Allowance-Eligible Improvements.

9.03 Improvements to Leased Premises – Not Eligible for Tenant Allowance. During the initial or any extended term of this Lease Tenant or its contractors or subcontractors shall not make any additions or alterations to the improvements on the leased Premises which attach to, alter, or in any way affect the structural integrity of the Premises, and for which the Tenant will not seek a Tenant Allowance, without the prior written consent of the City, such consent not to be unreasonably delayed or withheld. Moreover, upon receiving consent to make an addition or alteration to the improvements on the leased Premises which attach to, alter or in any way affect any structural element of Building 510, Tenant or its contractors or subcontractors shall not commence work on the construction or installation of such added or altered improvement until plans and specifications for same have been submitted to and approved by the City's review processes and a building permit issued. During the initial or any extended term of this Lease, Tenant may make or cause to be made improvement which do not attach to, alter or in any way affect the structural integrity of the Premises and are required for Tenant's use. In making any such improvement Tenant shall obtain all required permits and be solely responsible for any

damage to the Premises. Prior to making any improvements that do not attach to, alter or in any way affect the structural integrity of the Premises Tenant shall notify the Airport Manager in writing concerning the improvement and obtain his or her concurrence. The Airport Manager shall have ten calendar days to object. If the Airport Manager lodges an objection to the improvement the Airport Manager and Tenant shall work in good faith to achieve the Tenant's goal.

9.04 Performance Bond. Tenant shall cause to be made, executed and delivered to City, prior to the date of commencement of any work in or on the leased area which attach to, alter or in any way affect any structural element of Building 510, performance bonds approved as to form and as to surety by the City, with Tenant or Tenant's contractor as principal, and the City specifically named as an additional insured, each in the sum of one hundred percent (100%) of the amount of the contract for all work costing in excess of \$5,000.00 for a) the said required work in accordance with the approved plans and specifications and b) to provide that if Tenant or its contractor or contractors fail to pay for any materials, provisions or other supplies, used in or upon, for or about the performance of the work to be done, or for any work or labor thereon of any kind, that the surety will pay the same, in an amount not exceeding the sum specified in the bond, and also, in case suit is brought upon the bond, a reasonable attorney's fee as set by the court.

9.05 Insurance. Before commencing any work which attaches to, alters, or in any way affects any structural element of Building 510 which work will be performed by Tenant or its contractors and/or subcontractors engaged by the Tenant, Tenant agrees to obtain, or cause to be obtained, 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.

9.06 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 which are not subject to amortization as Tenant Allowance-Eligible Improvements 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.

9.07 Prevailing Wages. Tenant shall abide by the regulations promulgated by the Fort Ord Reuse Authority in the FORA Master Resolution regarding the payment of prevailing wages for construction and/or improvement projects on former Fort Ord properties including the requirement that Tenant, any contractor, and any subcontractor performing work on the Premises be registered with the DIR in accordance with California Labor Code 1725.5.

9.08 Improvements by the City. Except as otherwise expressly set forth in this Lease, 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 such construction or installation, excepting the City's obligation to provide the credits against rent contemplated by Section 4.03 of this Lease. Notwithstanding the above, the City shall be responsible for: (i) installing and/or upgrading the fire sprinkler system to a "wet pipe" system from the current "deluge" fire suppression system; and (ii) installing and/or upgrading the electrical system from 208 volt service to 480 volt service as agreed in a prior writing between City Manager and Tenant and ensuring electrical systems are functional, safe, and code compliant prior to the Effective Date; (iii) any construction-related accessibility improvements required by the CASp Report including but not necessarily limited to: (a) required push bars on doors; (b) entry doors; (c) the restroom facilities located on the ground floor. All improvements that are the responsibility of the City shall be expeditiously completed with first quality materials in a proper, professional and good and workmanlike manner in compliance with any approved schedule of completion of the improvements by the Tenant and all applicable federal, state and local laws, rules, regulations and ordinances.

9.09 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 9.08) 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. 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.

9.10 Prevailing Wage Required.

(a) **Prevailing Wage Standards.**

(1) **Basic Requirements.** Tenant agrees that, with respect to any construction at or on the Premises of the Tenant Allowance-Eligible Improvements for which Tenant is to receive a Tenant Allowance as a credit against rent in accordance with Section 4.03, 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").

(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 9.10.

(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 9.10, 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 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 9.10 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 monthly in accordance with the procedures specified in subsections (b)-(e) inclusive of Section 1776 and Section 1771.4 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) In the event of repetitive breach of the requirements of this Section by Tenant, the City shall be entitled, in addition to all other remedies hereunder for breach of this Lease, to appoint at Tenant's expense a special monitor to oversee Tenant's compliance. Fees for said special monitor shall be billed to Tenant, which fees Tenant agrees to pay as Additional Rent within ten days after Tenant's receipt of such bill.

(k) 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.

(l) Contractors or subcontractors shall not be qualified to perform work on Tenant Allowance-Eligible Improvements eligible for a Tenant Allowance, 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.

9.11 Security Concerning Tenant Allowance-Eligible Improvements – Performance and Labor and Material Bonds. Before the commencement of any construction work hereunder for Tenant Allowance-Eligible Improvements, the City will 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 Tenant Allowance-Eligible Improvements) for the proposed Tenant Allowance-Eligible Improvements, payable to the City and conditioned upon full, faithful and satisfactory performance by Tenant its contractor(s) of the such Tenant Allowance-Eligible 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 the such Tenant Allowance-Eligible 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 Tenant Allowance-Eligible 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's 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 Tenant Allowance-Eligible Improvements) for the proposed Tenant Allowance-Eligible Improvements as such costs are set forth in the estimated Tenant Allowance-Eligible 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.

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

9.13 Accounting for Tenant Allowance-Eligible Improvements; Final Agreed Tenant Allowance; Title to Improvements. Tenant and its contractors and agents shall maintain

records and receipts of all costs incurred by Tenant with respect to the Tenant Allowance-Eligible Improvements. Tenant shall provide to the City a copy of all such records and receipts, and such records, once in the possession of the City, shall constitute public records. The final agreed Tenant Allowance shall be in an amount equal to the final cost to the Tenant of the Tenant Allowance-Eligible Improvements, as supported by records and receipts required by this Section 9.13; provided that the total of all Tenant Allowance(s) shall not exceed One Hundred Thousand Dollars (\$100,000). All Improvements for which the Tenant receives a Tenant Allowance as reimbursement for the costs incurred to construct the same in accordance with Section 4.03, shall become the property of the City at such time as their cost has been fully credited against the rent payable by Tenant under this Lease.

9.10 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 Buildings 510 prior to completion of the improvements in the amount of (To be determined by MBASIA) (\$ 1,000,000.00) 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.

9.11 Tenant Responsible for Additional Improvement Costs. All costs incurred by Tenant in connection with the construction of the Tenant Allowance-Eligible Improvements in excess of the final, agreed total estimated cost of the Tenant Allowance-Eligible Improvements provided as a Tenant Allowance, as set forth in a lease amendment in accordance with Section 4.03 of this Lease subject to the City's obligation to provide the credit against monthly rent set forth in Section 4.03 or for improvements for which the Tenant will not receive a Tenant Allowance, shall be the sole responsibility of Tenant. All costs that are determined to be non-reimbursable under this Lease are the sole responsibility of Tenant.

ARTICLE 10. MAINTENANCE AND REPAIR

10.01 City's Obligation under this Lease. The City shall be responsible for the following maintenance and repair of Building 510 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.
- f) Maintenance of the large, aircraft hangar doors on the eastern and western facing sides of Building 510.

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 510 for the initial and any extended term of this Lease.

- a) Maintenance, repair or replacement of interior systems and components for the electrical, plumbing, ventilation, and mechanical systems including the overhead crane and the air compressor. The cost for repair, replacement or installation of interior systems or components shall be eligible for treatment as a Tenant Allowance per Section 4.03. Tenant understands the heating boiler for Building 510 is inoperable and will not be repaired.
- b) Interior and exterior glass, glazing, if any, and doors damaged by Tenant or its invitees.
- c) All interior walls, ceiling, floors, bathrooms, drains and other structures or components, if any.
- d) All air conditioning systems and components, if any.
- e) All communication systems and components.
- f) The "wet pipe" fire suppression system.
- g) All security alarm systems and components, if any.
- h) Maintenance, sweeping and keeping clear of refuse, regular trash and waste removal, repair or replacement of sidewalks, driveways and asphalt parking areas as well as any damage to the building structure or components or paved surfaces caused by Tenant or its invitees.
- i) General maintenance and upkeep of the trash enclosure.

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) including 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 Tenant 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 untenable 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 Monterey County Water Resources Agency (MCWRA) Assessment. Tenant agrees to pay its pro rata share of assessments levied by the MCWRA. Tenant's liability shall be an equitable portion of the MCWRA assessment for all of the land and improvements included within the parcel 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. The City's reasonable determination thereof, in good faith, shall be conclusive. Charges will be due and payable within fifteen (15) days of the date of the invoice. Provided, however, Tenant may appeal the City's determination of the proration of MCWRA assessments to the City's Airport Commission, whose decision shall be final. In the event Tenant fails to pay any assessment 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.

12.06 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, the Fort Ord Reuse Authority, Monterey Regional Water Pollution Control Agency, Marina Coast Water District, Pacific Gas & Electric Company and the Monterey Bay Unified Air Pollution Control District and the Monterey County Water Resources Agency.

ARTICLE 13. INSURANCE & INDEMNIFICATION

13.01 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's Risk Manager including contractual liability, independent contractors, board 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's Risk 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 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. 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 personally 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 or partially at fault, or in instances where City's fault account for only a percentage of the liability involved. In those instances, the obligation of 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 Tenants 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.

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 and 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 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.

17.11 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.

17.12 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 thirty days after being given written notice thereof by City.

17.13 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 thirty 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.

17.14 **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.

17.15 **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.

17.16 **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 Manager
211 Hillcrest Avenue
Marina, California 93933
Fax Number: (831) 384-0425

Copy to: City Attorney
City of Marina
Law Offices of Robert R. Wellington
857 Cass Street, Suite D.
Monterey, California 93940
Fax Number: (831) 373-7106

To Tenant: Driven Performance Manufacturing, LLC
 dba Fort Ord Works
 3240 Imjin Road
 Marina, California 93933
 Fax Number () _____

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.

17.17 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.

17.18 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.

17.19 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.

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

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

17.22 **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.

17.23 **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.

17.24 **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.

17.25 **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.

17.26 **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.

17.27 **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.

17.28 **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.

17.29 **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.

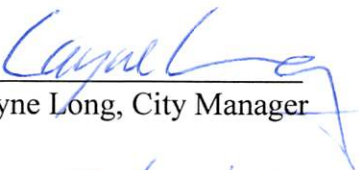
17.30 **Exhibits Incorporated.** All exhibits reference in this Lease and attached to it are hereby incorporated in it by this reference. In the event there is a conflict between any of the terms of this Lease and any of the terms of any exhibit to the lease, the terms of the Lease shall control the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

17.31 **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

DRIVEN PERFORMANCE MANUFACTURING
a California Limited Liability Company

By: 
Layne Long, City Manager

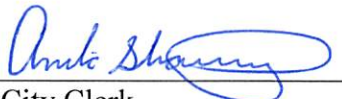
By: 
Joe Johnson, President/Majority Owner

Dated: 3/28/17

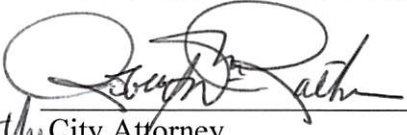
Dated: 03/23/17

(Pursuant to Reso. 2017- 20)

ATTEST:


City Clerk

APPROVED AS TO FORM:


for the City Attorney

EXHIBITS

(To be added)

EXHIBIT A

**A PLAT OF THE AIRPORT REAL PROPERTY
INCLUDING AREAS FOR PARKING**

EXHIBIT B

A FLOOR PLAN OF THE LEASED PREMISES

EXHIBIT C

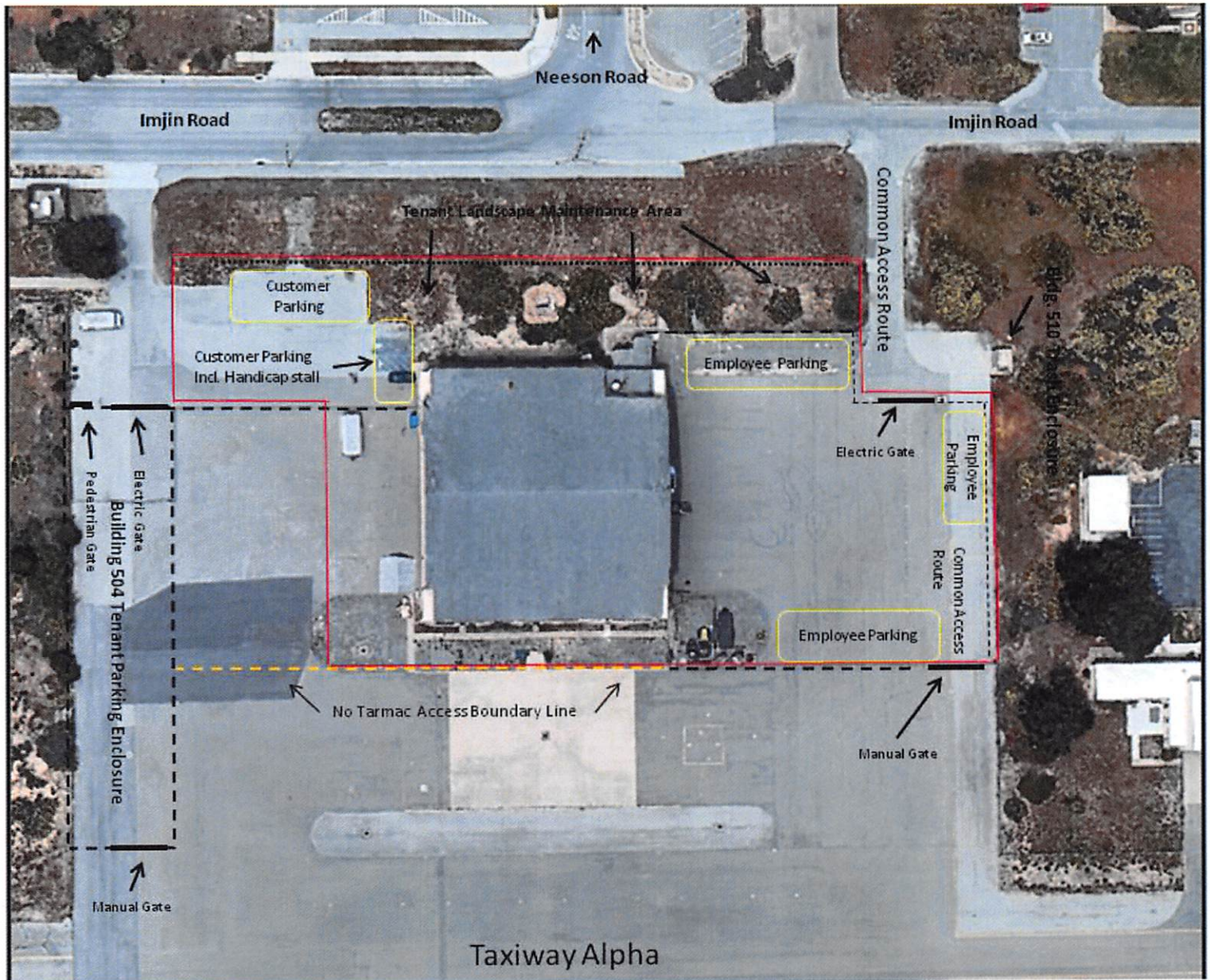
SCHEDULE OF CITY-OWNED PROPERTY

EXHIBIT D

ASBESTOS SURVEY FOR BUILDING 510

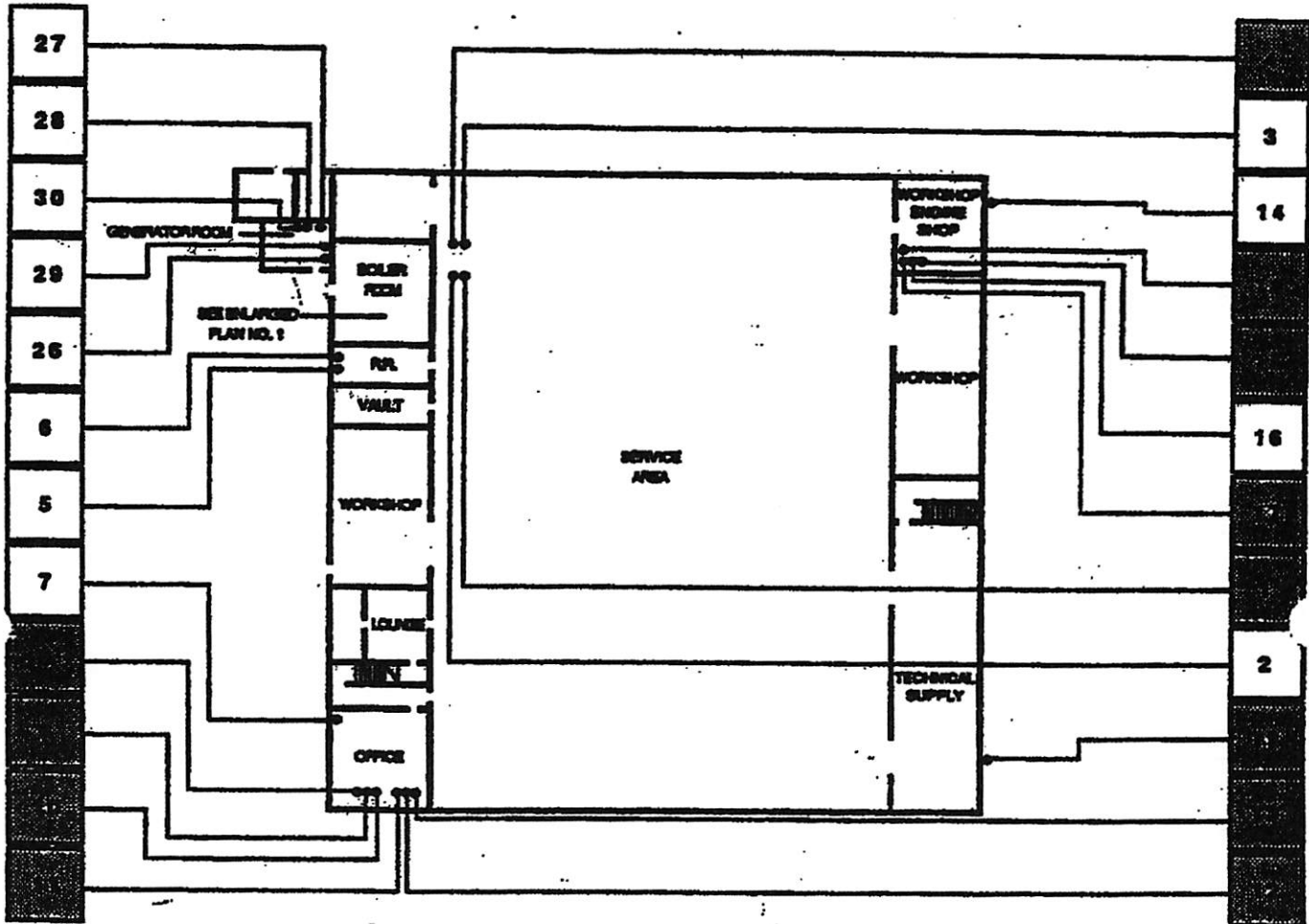
EXHIBIT A

PLAT OF THE AIRPORT REAL PROPERTY INCLUDING AREAS FOR PARKING



RED LINE IS THE BOUNDARY OF THE LEASEHOLD

ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION



BUILDING P00510
FIRST FLOOR PLAN
NOT TO SCALE

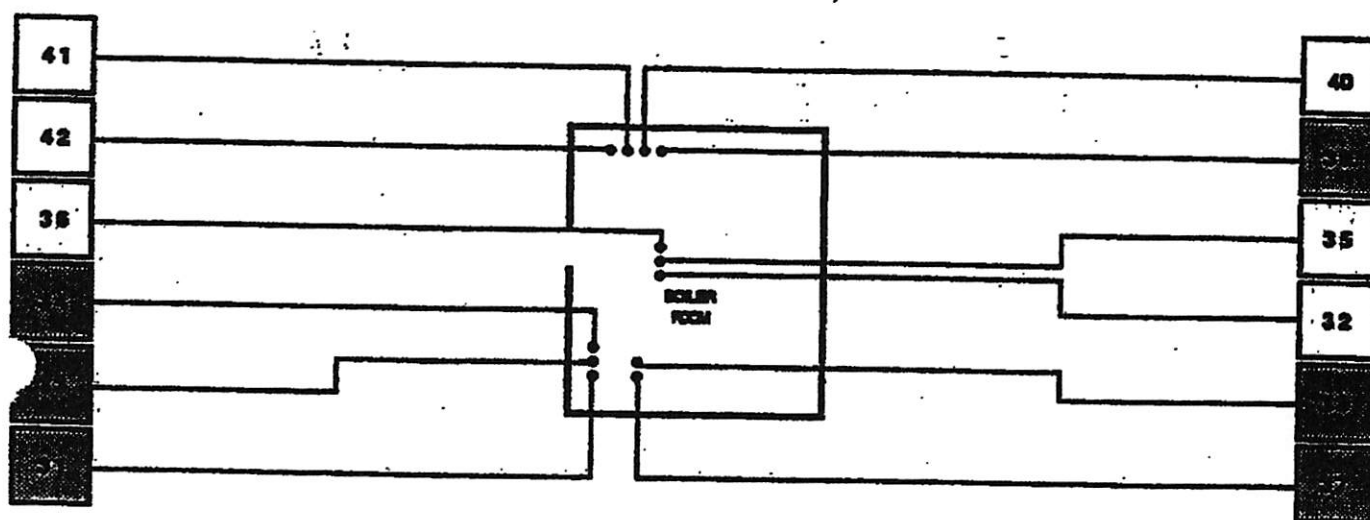


BULK SAMPLE ASBESTOS CONTENT  = >0.1%  = NONE DETECTED

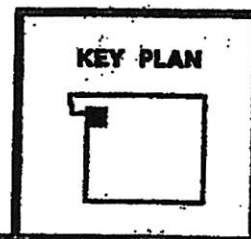
DIAGNOSTIC ENGINEERING INC.

PROJECT NO. 1A2141AB00

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION**



**BUILDING P00510
FIRST FLOOR PLAN
ENLARGED PLAN NO. 1
NOT TO SCALE**

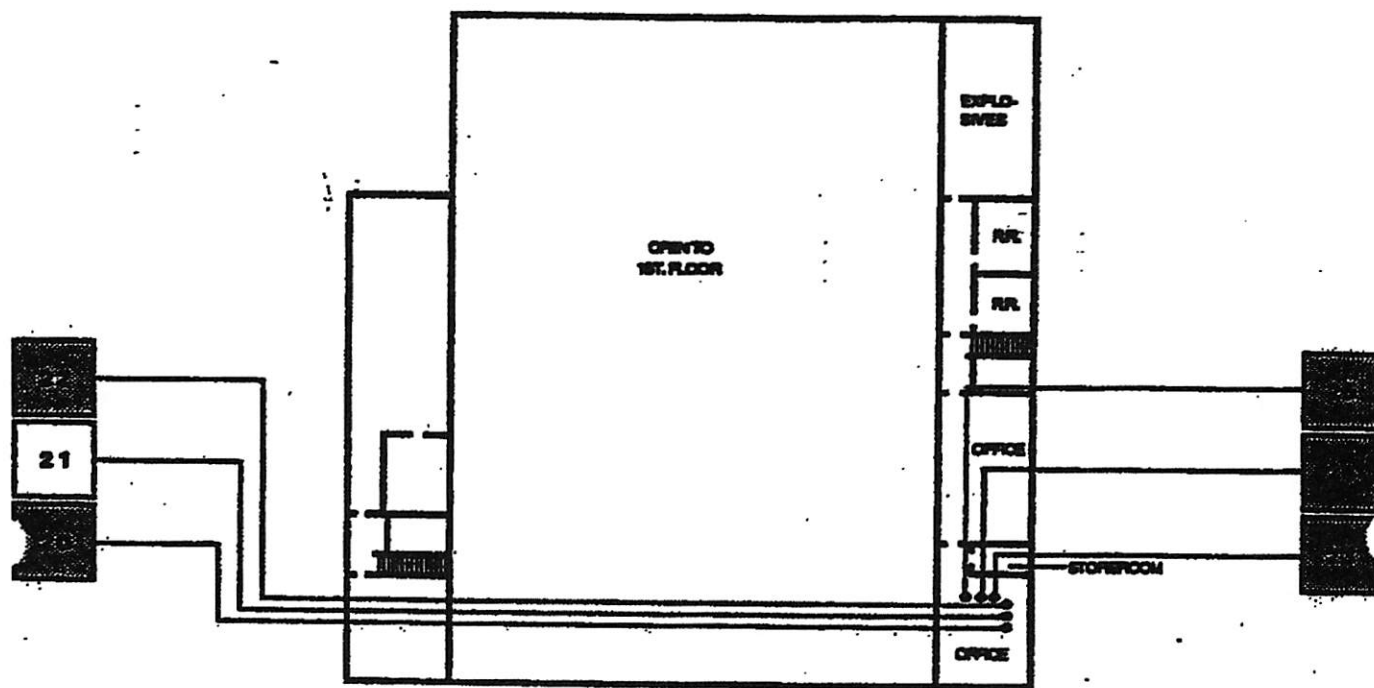


BULK SAMPLE ASBESTOS CONTENT ■ = >0.1% □ = NONE DETECTED

INOSTIC ENGINEERING INC.

PROJECT NO. 1A2141AB001

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION**



**BUILDING P00510
MEZZANINE FLOOR PLAN
NOT TO SCALE**

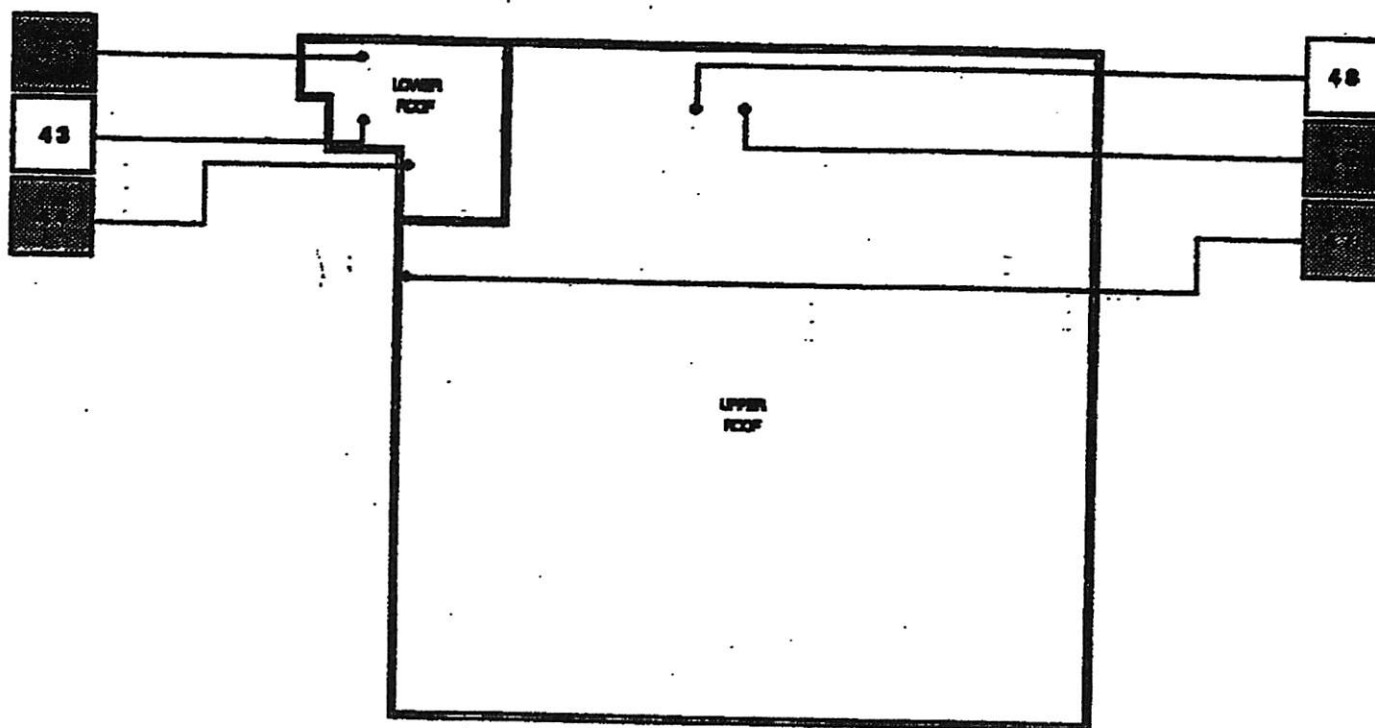


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AGNOSTIC ENGINEERING INC.

PROJECT NO. 1A2141AB001

ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION



BUILDING P00510
ROOF PLAN
NOT TO SCALE



BULK SAMPLE ASBESTOS CONTENT  = >0.1%  = NONE DETECTED

ANOSTIC ENGINEERING INC.

PROJECT NO. 1A2141AB001

EXHIBIT C

SCHEDULE OF CITY-OWNED PROPERTY

There is no City owned property remaining in the building that is not a part of (attached) the building or not a system of the building.

EXHIBIT D

ASBESTOS SURVEY FOR BUILDING 510

To be inserted.

ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00510

BUILDING SUMMARY

BUILDING P00510

Date(s) of Survey 1/13/92
Estimated Date of Construction 1959
Building Usage Maintenance Hangar Aviation
Total Gross Square Footage 21,947 Sq. Ft.
Building Type Cinderblock/Metal
Number of Levels 1
Estimated Cost of Recommended Work Items for Asbestos-Containing Materials (CWE) \$10,977
Total Estimated Cost Including Additive Items (CWE) \$168,082
• Cost per Square Foot Including Additive Items (CWE) \$7.57
Friable Asbestos-Containing Materials Pipe Fitting Insulation, Pipe Run Insulation
Nonfriable Asbestos-Containing Materials Res Floor Tile, Floor Tile Mastic, Pipe Fitting Ins Lagging, Pipe Run Ins Lagging, Roof Pen Mastic, Roofing Mastic, Window Putty

WORK ITEM INVENTORY

BLDG./	DEI	CONSTR.	TYPE OF	ESTIMATED	DESCRIPTION			CONTRACTOR
WORK	RATING	YEAR	MATERIAL	QUANTITY	LOCATION	FRIABILITY	ACTION	COST
P00510 1	8	1993	Pipe Run and Fitting Insulation and Lagging	913 LF	1st Flr Various Locations	Friable/Nonfriable	Repair	\$8,400
FINDINGS: Asbestos-containing friable pipe run and fitting insulation and nonfriable lagging throughout the first floor, primarily along the interior perimeter of the building, were in generally good condition with spot damage noted. These materials are accessible to maintenance personnel but are generally out of reach to building users who enter the building frequently. The materials in the boiler room are also accessible, but this room is entered infrequently by maintenance personnel. Asbestos fibers released by damaged lagging or insulation may be distributed to other areas of the building by natural air movement. [Bulk Sample(s) 1, 4, 31, 33, 34, 37, 38, 39] RECOMMENDATIONS: Repair this material using asbestos-free materials, and clean up any visible debris. Prohibit any disturbance of this material by maintenance personnel or other building occupants. Once repairs are completed, inspect this material periodically as part of the O&M. See work item No. 2 for O&M action.								

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00510**

WORK ITEM INVENTORY

AS/	WORK	DE	CONSTR.	TYPE OF	ESTIMATED	DESCRIPTION	FRAILITY	ACTION	CONTRACTOR
ITEM	RATING	YEAR	MATERIAL	QUANTITY	LOCATION				COST
P00510 2	12	N/A	Pipe Run and Fitting Ins and Lagging	913 LF	1st Fir Various Locations	Friable/Nonfriable	O&M		\$0
FINDINGS: Asbestos-containing friable pipe run and fitting insulation and nonfriable lagging throughout the first floor, primarily along the interior perimeter of the building, were in generally good condition with spot damage noted. These materials are accessible to maintenance personnel but are generally out of reach to building users, who enter the building frequently. The materials in the boiler room are also accessible, but this room is entered infrequently by maintenance personnel. Asbestos fibers released by damaged lagging or insulation may be distributed to other areas of the building by natural air movement. [Bulk Sample(s) 1, 4, 31, 33, 34, 37, 38, 39] RECOMMENDATIONS: Inspect these materials annually as part of the O&M. Prohibit any disturbance of these materials by maintenance personnel or other building occupants. Should these materials be removed, delete this work item from the O&M. Any replacement should be performed with asbestos-free materials. See work item No. 1 for repair. Additive cost for optional removal and replacement of this material is \$42,453.									
P00510 3	13	N/A	Resilient Floor Tile and Mastic	1,805 SF	1st Fir/Mezz Various Locations	Nonfriable	O&M		\$0
FINDINGS: Nonfriable asbestos-containing 9" x 9" green, 9" x 9" beige, 9" x 9" brown, and 9" x 9" black resilient floor tile (some forming checkerboard patterns) and associated floor tile mastic in the first floor office, lounge and room west of the lounge and the mezzanine south office, storeroom and southwest mezzanine area were in good condition. The floor tile, which protects the mastic in all locations, is accessible to building users. These materials do not pose a risk of contamination as long as they do not become damaged or deteriorated in such a way that they could release asbestos fibers into the air. [Bulk Sample(s) 8-13, 15, 17, 18, 20, 22-25] RECOMMENDATIONS: Inspect these materials biannually as part of the O&M. Prohibit any disturbance to these materials including sanding, chipping or the use of corrosive cleaning chemicals which may cause the generation of airborne asbestos fibers. Should these materials be removed, delete this work item from the O&M. Any replacement should be performed with asbestos-free materials. Additive cost for optional removal and replacement of this material is \$25,181.									

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00510**

WORK ITEM INVENTORY

LOG/	WORK	DE	CONSTR.	TYPE OF	ESTIMATED	DESCRIPTION	FEASIBILITY	ACTION	CONTRACTOR
ITEM	RATING	YEAR	MATERIAL	QUANTITY	LOCATION				COST
P00510 4	13	N/A	Window Putty	4,260 LF	1st Flr Exterior Wall	Nonfriable	O&M		\$0
FINDINGS: Nonfriable asbestos-containing window putty was in good condition. This material is accessible to building users but does not pose a risk of contamination as long as it does not become damaged or deteriorated in such a way that it could release asbestos fibers into the air. [Bulk Sample(s) 19] RECOMMENDATIONS: Inspect this material biannually as part of the O&M. Prohibit disturbance to this material including sanding, chipping or the use of corrosive cleaning chemicals which may cause generation of airborne asbestos fibers. Should this material be removed, delete this work item from the O&M. Any replacement should be performed with asbestos-free materials. Additive cost for optional removal and replacement of this material is \$40,257.									
P00510 5	13	N/A	Roofing Mastic	700 LF	Roof	Nonfriable	O&M		\$0
FINDINGS: Nonfriable asbestos-containing roofing mastic located at the perimeters of the upper and lower roofs was in good condition. This material is exposed but does not pose a risk of contamination as long as it does not become damaged or deteriorated in such a way that it could release asbestos fibers into the air. [Bulk Sample(s) 44, 47] RECOMMENDATIONS: Inspect this material biannually as part of the O&M. Prohibit any disturbance to this material which may cause the generation of airborne asbestos fibers. For any repair, removal or O&M activities, materials associated with the roofing mastic must be considered asbestos-contaminated. Should this material be removed, delete this work item from the O&M. Any replacement should be performed with asbestos-free materials. Additive cost for optional removal and replacement of this material is \$9,975.									

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00510**

WORK ITEM INVENTORY

..00./ WORK ITEM	DATE RATING	CONSTR. YEAR	TYPE OF MATERIAL	ESTIMATED QUANTITY	DESCRIPTION LOCATION	FEASIBILITY	ACTION	CONTRACTOR COST
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P00510 6	13	N/A	Roof Penetration Mastic	40 E	Roof	Nonfriable	O&M	\$0
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FINDINGS: Nonfriable asbestos-containing roof penetration mastic located on the roof in association with vents was in good condition. This material is accessible to maintenance personnel but does not pose a risk of contamination as long as it does not become damaged or deteriorated in such a way that it could release asbestos fibers into the air. [Bulk Sample(s) 45, 46]

RECOMMENDATIONS: Inspect this material biannually as part of the O&M. Prohibit any disturbance to this material which may cause the generation of airborne asbestos fibers. For any repair, removal or O&M activities, materials associated with the roof penetration mastic must be considered asbestos-contaminated. Should this material be removed, delete this work item from the O&M. Any replacement should be performed with asbestos-free materials.

Additive cost for optional removal and replacement of this material is \$825.

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00510**

WORK ITEM INVENTORY

NO.	WORK	DATE	CONSTR.	TYPE	OF	ESTIMATED	QUANTITY	LOCATION	REMARKS	PRIORITY	ACTION	CONTRACTOR	COST
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**WORK ITEM SUMMARY
BUILDING P00510**

The work items are listed below in numerical (and DEI Rating) order, and their estimated costs have been totaled.

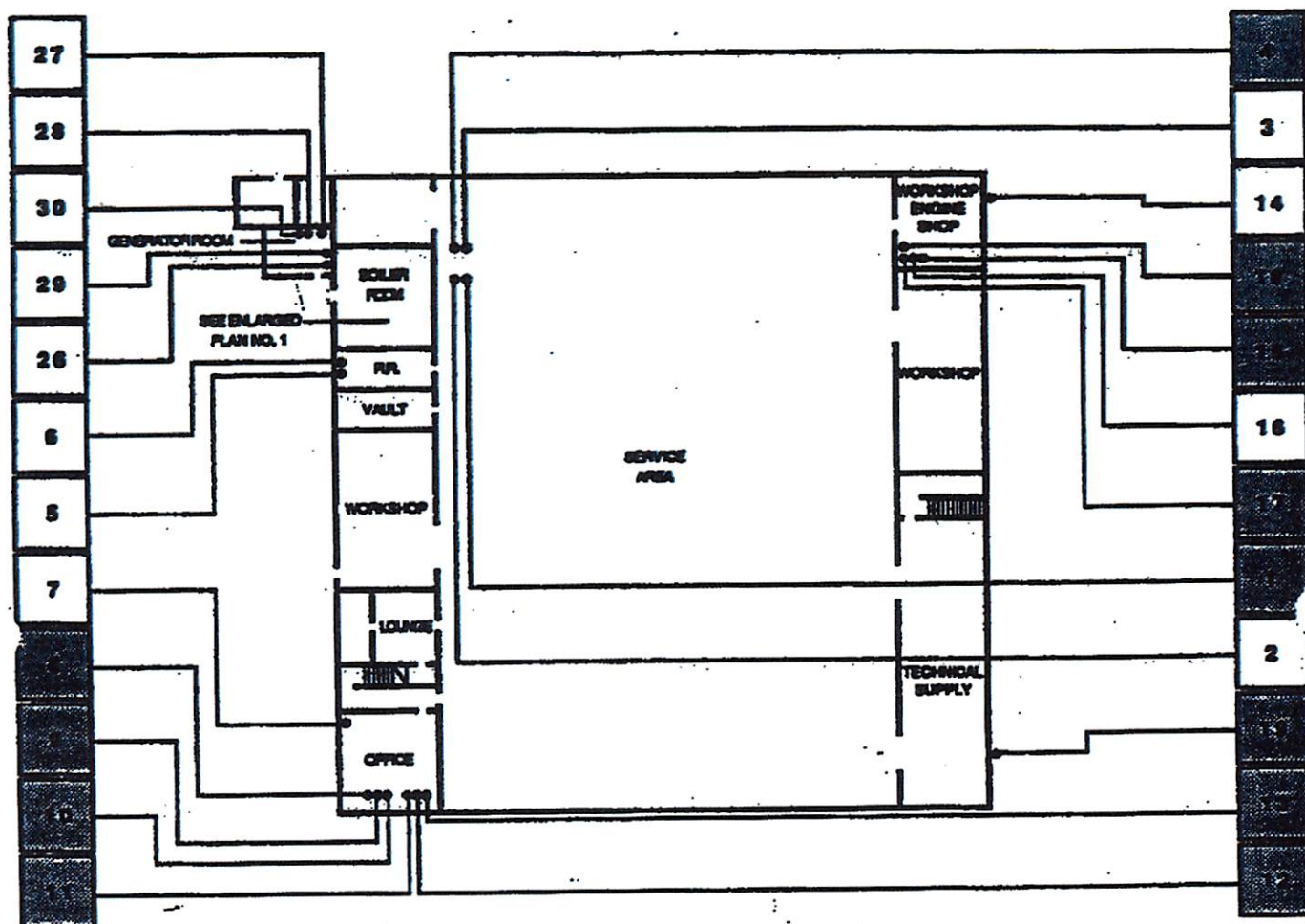
P00510	8 1993	Pipe Run and Fitting	913 LF	1st Flr Various Locations	Frable/Nontable	Repair	\$8,400
P00510	12 N/A	Pipe Run and Fitting	913 LF	1st Flr Various Locations	Frable/Nontable	O&M	\$0
P00510	13 N/A	Resilient Floor Tile and Mastic	1,805 SF	1st Flr/Mezz Various Locations	Nontable	O&M	\$0
P00510	13 N/A	Window Putty	4,260 LF	1st Flr Exterior Wall	Nontable	O&M	\$0
P00510	13 N/A	Roofing Mastic	700 LF	Roof	Nontable	O&M	\$0
P00510	13 N/A	Roof Penetration Mastic	40 E	Roof	Nontable	O&M	\$0

DIAGNOSTIC ENGINEERING INC.

12/78

PROJECT NO. 1A2141AB001

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION**



**BUILDING P00510
FIRST FLOOR PLAN
NOT TO SCALE**

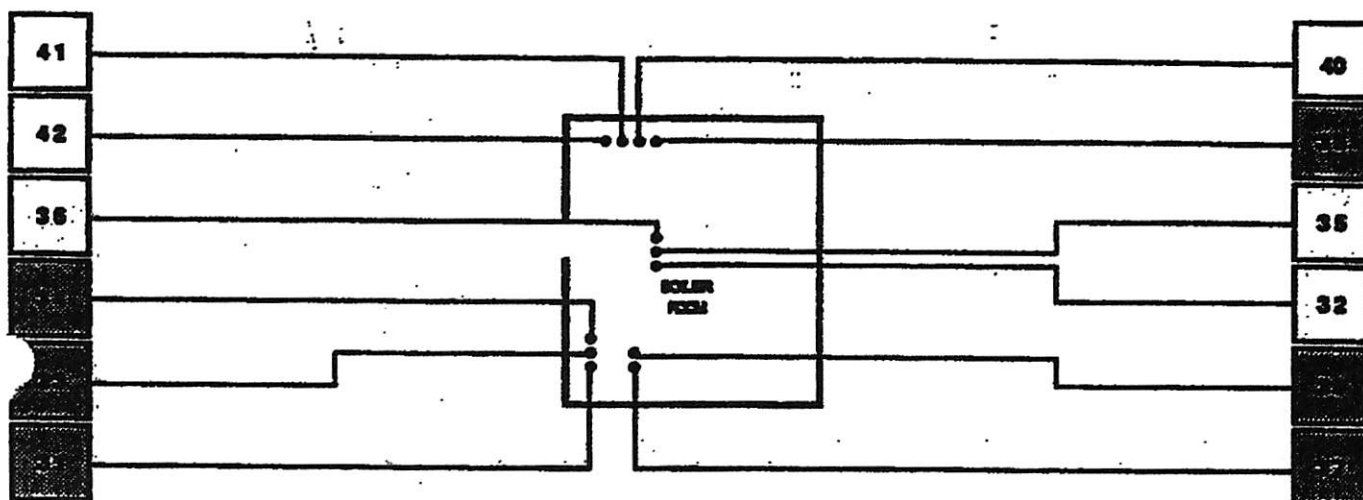


BULK SAMPLE ASBESTOS CONTENT  = >0.1%  = NONE DETECTED

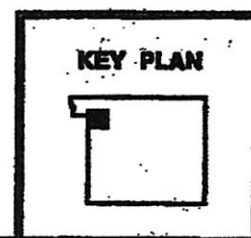
AGNOSTIC ENGINEERING INC.

PROJECT NO. 1A2141AB00

ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION



BUILDING P00510
FIRST FLOOR PLAN
ENLARGED PLAN NO. 1
NOT TO SCALE

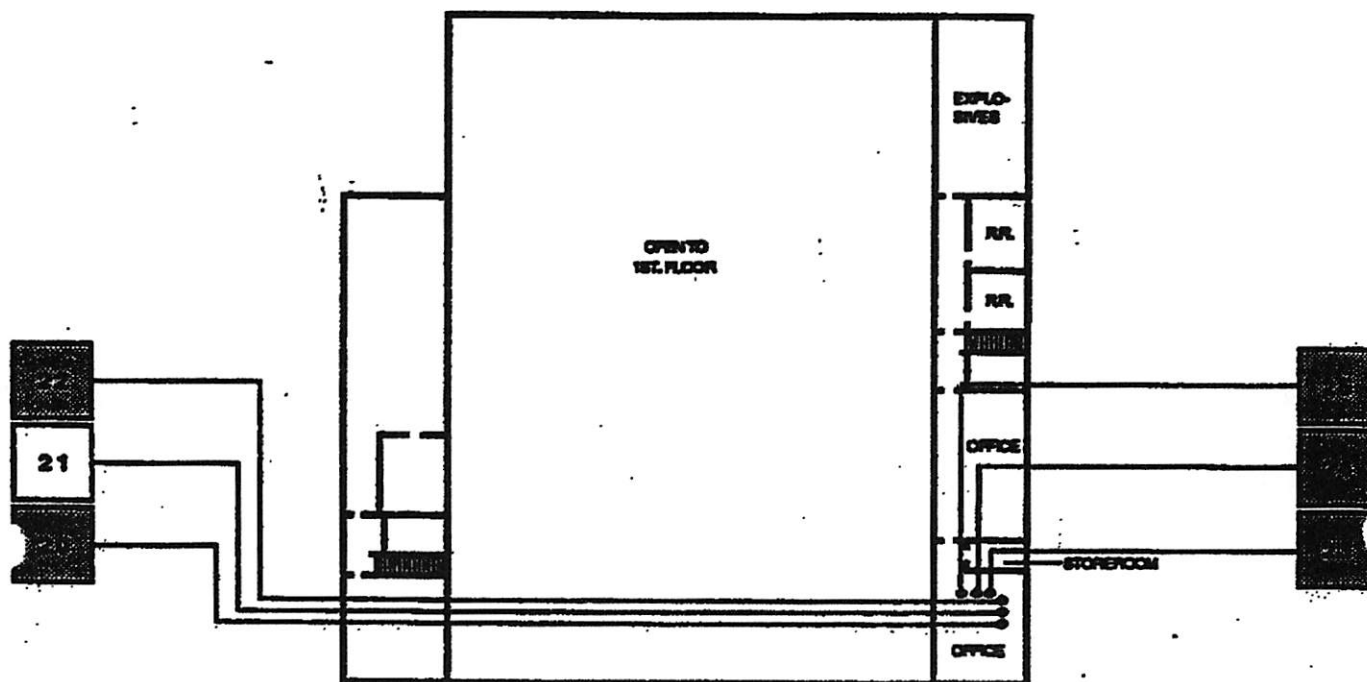


BULK SAMPLE ASBESTOS CONTENT ■ = >0.1% □ = NONE DETECTED

INOSTIC ENGINEERING INC.

PROJECT NO. 1A2141AB001

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION**



**BUILDING P00510
MEZZANINE FLOOR PLAN
NOT TO SCALE**

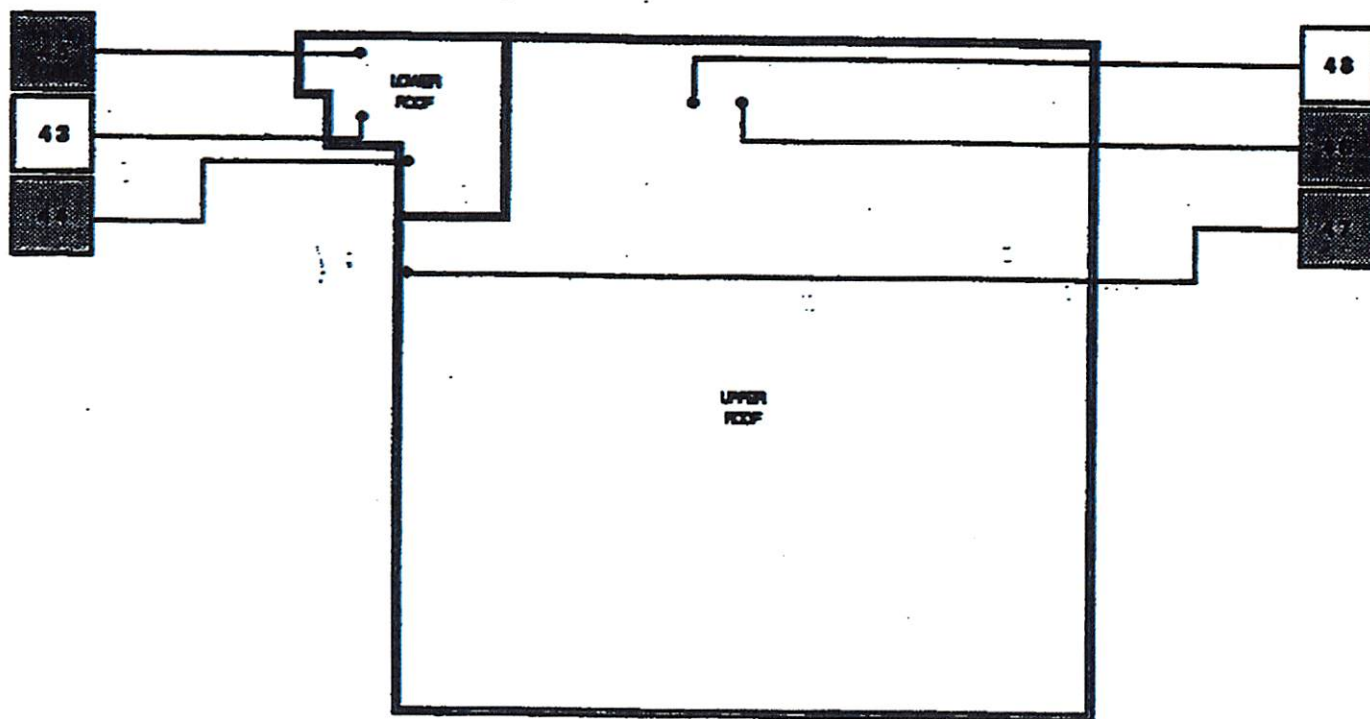


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DIAGNOSTIC ENGINEERING INC.

PROJECT NO. 1A2141AB001

ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION



BUILDING P00510
ROOF PLAN
NOT TO SCALE



BULK SAMPLE ASBESTOS CONTENT ■ = >0.1% □ = NONE DETECTED

ANOSTIC ENGINEERING INC.

PROJECT NO. 1A2141AB001

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00510**

BULK SAMPLE LOG

BUILDING NO.	SAMPLE NO.	TYPE OF MATERIAL	ESTIMATED QUANTITY	FLOOR/ LEVEL	SAMPLE LOCATION	POS./ NEG.	ASBESTOS TYPE	%	FRIABILITY	DAMAGE
P00510	1	Pipe Run Insulation (4" O.D.)	860 LF	1	Service Area	P	Chrysotile	30	Friable	Minor
P00510	2	Pipe Fitting Insulation (4" O.D.)	38 E	1	Service Area	N		N/D		
P00510	3	Pipe Run Insulation (4" O.D.)	(R1)	1	Service Area	N		N/D		
P00510	4	Pipe Fitting Insulation (4" O.D.)	(R2)	1	Service Area	P	Chrysotile	30	Friable	Minor
P00510	5	Acoustic Panel (2' x 4') White	5,000 SF	1	Restroom	N		N/D		
P00510	6	Acoustic Panel (2' x 4') White	(R5)	1	Restroom	N		N/D		
P00510	7	Acoustic Panel (2' x 4') White	(R5)	1	Office	N		N/D		
P00510	8	Resilient Floor Tile (9" x 9") Brown	360 SF	1	Office	P	Chrysotile	5	Nonfriable	None
P00510	9	Floor Tile Mastic Black	1,085 SF	1	Office	P	Chrysotile	3	Nonfriable	None
P00510	10	Resilient Floor Tile (9" x 9") Brown	(R8)	1	Office	P	Chrysotile	5	Nonfriable	None
P00510	11	Resilient Floor Tile (9" x 9") Beige	725 SF	1	Office	P	Chrysotile	3	Nonfriable	None
P00510	12	Resilient Floor Tile (9" x 9") Beige	(R11)	1	Office	P	Chrysotile	3	Nonfriable	None
P00510	13	Floor Tile Mastic Black	(R9)	1	Office	P	Chrysotile	3	Nonfriable	None

(R#) denotes that the estimated material quantity for the area has been included in referenced sample number.

DIAGNOSTIC ENGINEERING INC.

PROJECT NO. 1A2141AB001

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00510**

BULK SAMPLE LOG

BUILDING NO.	SAMPLE NO.	TYPE OF MATERIAL	ESTIMATED QUANTITY	FLOOR/ LEVEL	SAMPLE LOCATION	POS./ NEG.	ASBESTOS TYPE	%	FRIABILITY	DAMAGE
P00510	14	Window Putty White	4,260 LF	1	Exterior Wall	N		N/D		
P00510	15	Resilient Floor Tile (9" x 9") Green	320 SF	1	Workshop Area	P	Chrysotile	3	Nonfriable	None
P00510	16	Floor Tile Mastic Gray	320 SF	1	Workshop Area	N		N/D		
P00510	17	Resilient Floor Tile (9" x 9") Green	(R15)	1	Workshop Area	P	Chrysotile	5	Nonfriable	None
P00510	18	Floor Tile Mastic Gray	(R16)	1	Workshop Area	P	Chrysotile	3	Nonfriable	None
P00510	19	Window Putty White	(R14)	1	Exterior Wall	P	Chrysotile	5	Nonfriable	None
P00510	20	Resilient Floor Tile (9" x 9") Brown	200 SF	Mezz Office		P	Chrysotile	5	Nonfriable	None
P00510	21	Floor Tile Mastic Black	400 SF	Mezz Office		N		N/D		
P00510	22	Resilient Floor Tile (9" x 9") Brown	(R20)	Mezz Office		P	Chrysotile	5	Nonfriable	None
P00510	23	Resilient Floor Tile (9" x 9") Black	200 SF	Mezz Office		P	Chrysotile	5	Nonfriable	None
P00510	24	Resilient Floor Tile (9" x 9") Black	(R23)	Mezz Office		P	Chrysotile	5	Nonfriable	None
P00510	25	Floor Tile Mastic Black	(R21)	Mezz Office		P	Chrysotile	2	Nonfriable	None
P00510	26	Pipe Fitting Insulation (3" O.D.)	10 E	1	Generator Room	N		N/D		

(R#) denotes that the estimated material quantity for the area has been included in referenced sample number.

DIAGNOSTIC ENGINEERING INC.

PROJECT NO. 1A2141AB001

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00510**

BUILDING SAMPLE NO.	TYPE OF MATERIAL	ESTIMATED QUANTITY	FLOOR/LEVEL	SAMPLE LOCATION	POS./NEG.	% ASBESTOS	FIABILITY	DAMAGE
P00510	27 Pipe Fitting Insulation (3" O.D.)	(R26)	1	Generator Room	N	N/D		
P00510	28 Pipe Fitting Insulation (3" O.D.)	(R26)	1	Generator Room	N	N/D		
P00510	29 Pipe Fitting Insulation Lagging (3" O.D.)	10 E	1	Generator Room	N	N/D		
P00510	30 Pipe Fitting Insulation Lagging (3" O.D.)	(R29)	1	Generator Room	N	N/D		
P00510	31 Pipe Run Insulation (5" O.D.)	15 LF	1	Boiler Room	P	Chrysotile	30 Friable	Minor
P00510	32 Pipe Fitting Insulation (5" O.D.)	5 E	1	Boiler Room	N	N/D		
P00510	33 Pipe Run Insulation Lagging (5" O.D.)	15 LF	1	Boiler Room	P	Chrysotile	5 Nonfriable	Minor
P00510	34 Pipe Run Insulation (5" O.D.)	(R31)	1	Boiler Room	P	Chrysotile	30 Friable	Minor
P00510	35 Pipe Fitting Insulation (5" O.D.)	(R32)	1	Boiler Room	N	N/D		
P00510	36 Pipe Fitting Insulation Lagging (5" O.D.)	5 E	1	Boiler Room	N	N/D		
P00510	37 Pipe Run Insulation (5" O.D.)	(R31)	1	Boiler Room	P	Chrysotile	40 Friable	Minor
P00510	38 Pipe Fitting Insulation (4" O.D.)	(R2)	1	Boiler Room	P	Chrysotile	5 Friable	Minor
P00510	39 Pipe Fitting Insulation Lagging (4" O.D.)	38 E	1	Boiler Room	P	Chrysotile	40 Nonfriable	Minor

(R#) denotes that the estimated quantity for the area has been included in referenced sample number.

PROJECT NO. 1A2141AB001

1285

DIAGNOSTIC ENGINEERING INC.

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00510**

BULK SAMPLE LOG

BUILDING NO.	SAMPLE NO.	TYPE OF MATERIAL	ESTIMATED QUANTITY	FLOOR/ LEVEL	SAMPLE LOCATION	POS./ NEG.	ASBESTOS TYPE	%	FRIABILITY	DAMAGE
P00510	40	Pipe Fitting Insulation (4" O.D.)	(R2)	1	Boiler Room	N		N/D		
P00510	41	Pipe Run Insulation Lagging (4" O.D.)	860 LF	1	Boiler Room	N		N/D		
P00510	42	Pipe Fitting Insulation (5" O.D.)	(R32)	1	Boiler Room	N		N/D		
P00510	43	Roofing Composite	16,900 SF	Roof	Lower Roof	N		N/D		
P00510	44	Roofing Mastic Black	700 LF	Roof	Lower Roof	P	Chrysotile	10	Nonfriable	None
P00510	45	Roof Penetration Mastic Black	40 E	Roof	Lower Roof	P	Chrysotile	10	Nonfriable	None
P00510	46	Roof Penetration Mastic Black	(R45)	Roof	Upper Roof	P	Chrysotile	10	Nonfriable	None
P00510	47	Roofing Mastic Black	(R44)	Roof	Upper Roof	P	Chrysotile	10	Nonfriable	None
P00510	48	Roofing Composite	(R43)	Roof	Upper Roof	N		N/D		

(R#) denotes that the estimated material quantity for the area has been included in referenced sample number.

DIAGNOSTIC ENGINEERING INC.

PROJECT NO. 1A2141AB001

ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00510

CURRENT WORKING ESTIMATE (CWE)**UNIT COST ESTIMATE SUMMARY**

DATE PREPARED: 5/27/82

SHEET 1 OF 2

PROJECT: FORT ORD INSTALLATION BUILDING - P 00510
 ASBESTOS MATERIAL ABATEMENT/REPLACEMENT

LOCATION: FORT ORD, CALIFORNIA

ARCHITECT/ENGINEER: DIAGNOSTIC ENGINEERING INC.

BASIS FOR ESTIMATE

☒ CODE A (NO DESIGN)
☐ CODE B (PRELIMINARY DESIGN)
☐ CODE C (FINAL DESIGN)
☐ OTHER (SPECIFY):

REPORT NO. 1A2141AB001

ESTIMATOR: M. EISSINGER

CHECKED BY: L. WERNER

ITEM NO.	DESCRIPTION	RECOMMENDED ACTION	ESTIMATED QUANTITY	UNIT	COST BREAKDOWN	UNIT COST (\$)	DIRECT COST (\$)
W.I. 1	Pipe Run and Fitting Insulation and Lagging	Repair	913	LF	ABATEMENT	6.13	5,600
					REPLACEMENT	0.00	0
					ADDITIVE REMOVAL	0.00	0
					ADDITIVE REPLACEMENT	0.00	0
W.I. 2	Pipe Run and Fitting Ins and Lagging	O&M	913	LF	ABATEMENT	0.00	0
					REPLACEMENT	0.00	0
					ADDITIVE REMOVAL	16.00	14,608
					ADDITIVE REPLACEMENT	15.00	13,694
W.I. 3	Resilient Floor Tile and Mastic	O&M	1,805	SF	ABATEMENT	0.00	0
					REPLACEMENT	0.00	0
					ADDITIVE REMOVAL	5.80	10,469
					ADDITIVE REPLACEMENT	3.50	6,318
W.I. 4	Window Putty	O&M	4,260	LF	ABATEMENT	0.00	0
					REPLACEMENT	0.00	0
					ADDITIVE REMOVAL	3.30	14,058
					ADDITIVE REPLACEMENT	3.00	12,780
W.I. 5	Roofing Mastic	O&M	700	LF	ABATEMENT	0.00	0
					REPLACEMENT	0.00	0
					ADDITIVE REMOVAL	3.50	2,450
					ADDITIVE REPLACEMENT	6.00	4,200
W.I. 6	Roof Penetration Mastic	O&M	40	E	ABATEMENT	0.00	0
					REPLACEMENT	0.00	0
					ADDITIVE REMOVAL	6.25	250
					ADDITIVE REPLACEMENT	7.50	300

DIAGNOSTIC ENGINEERING INC.

1287

PROJECT NO. 1A2141AB001

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00510**

CURRENT WORKING ESTIMATE (CWE)**UNIT COST ESTIMATE SUMMARY**

DATE PREPARED: 5/27/82

SHEET 2 OF 2

PROJECT: FORT ORD INSTALLATION BUILDING - P 00510
ASBESTOS MATERIAL ABATEMENT/REPLACEMENT
LOCATION: FORT ORD, CALIFORNIA
ARCHITECT/ENGINEER: DIAGNOSTIC ENGINEERING INC.

BASIS FOR ESTIMATE

☒ CODE A (NO DESIGN)
☐ CODE B (PRELIMINARY DESIGN)
☐ CODE C (FINAL DESIGN)
☐ OTHER (SPECIFY):

REPORT NO. 1A2141AB001

ESTIMATOR: M. EISSINGER

CHECKED BY: L. WERNER

COSTS FOR BUILDING P00510 : DIRECT COST		CONTRACTORS' 50% MARKUP (OVERHEAD, PROFIT, BONDS)	CONTRACTOR COST	
ABATEMENT	\$5,600	\$2,800	\$8,400	
REPLACEMENT	\$0	\$0	\$0	\$8,400
ADDITIVE REMOVAL	\$41,835	\$20,918	\$62,753	
ADDITIVE REPLACEMENT	\$37,292	\$18,646	\$55,938	\$118,691

RECOMMENDED ITEMS:

Building P00510 Contractor Cost		\$8,400
INDEPENDENT MONITORING (CONTRACT)	10%	\$840
SITE & UTILITIES		\$0
Total Contract Cost		\$9,240
Contingencies During Construction	10%	\$924
Subtotal		\$10,164
Supervision & Administration	8%	\$813
Total Construction		\$10,977
SUB-ALLOTMENT		\$0
Total CWE Without Additives		\$10,977

ADDITIVE ITEMS:

Building P00510 Additive Contractor Cost		\$118,691
INDEPENDENT MONITORING (CONTRACT)	10%	\$11,869
Total Additive Contract Cost		\$130,560
Contingencies During Construction	10%	\$13,056
Subtotal		\$143,616
Supervision & Administration	8%	\$11,489
Total Additives CWE		\$155,105
Total CWE Including All Additives		\$166,082

DIAGNOSTIC ENGINEERING INC.

1288

PROJECT NO. 1A2141AB001

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00510**

UNIT COST ESTIMATE

DATE PREPARED: 5/27/82

SHEET 1 OF 1

PROJECT: FORT ORD INSTALLATION BUILDING - P 00510
ASBESTOS MATERIAL ABATEMENT
LOCATION: FORT ORD, CALIFORNIA
**ARCHITECT/
ENGINEER:** DIAGNOSTIC ENGINEERING INC.

BASIS FOR ESTIMATE

☒ **CODE A (NO DESIGN)**
☐ **CODE B (PRELIMINARY DESIGN)**
☐ **CODE C (FINAL DESIGN)**
☐ **OTHER (SPECIFY):**

REPORT NO. 1A2141AB001

ESTIMATOR: M. EISSINGER

CHECKED BY: L. WERNER

ITEM NO.	DESCRIPTION	ACTION	ESTIMATED QUANTITY	UNIT	UNIT COST (\$)	DIRECT COST (\$)
W.L. 1	Pipe Run and Fitting Insulation and Lagging	Repair	913	LF	6.13	5,600
W.L. 2	Pipe Run and Fitting Ins and Lagging	O&M	913	LF	0.00	0
W.L. 3	Resilient Floor Tile and Mastic	O&M	1,805	SF	0.00	0
W.L. 4	Window Putty	O&M	4,260	LF	0.00	0
W.L. 5	Roofing Mastic	O&M	700	LF	0.00	0
W.L. 6	Roof Penetration Mastic	O&M	40	E	0.00	0

DIRECT COST

\$5,600

CONTRACTORS' 50% MARKUP (OVERHEAD, PROFIT, BONDS)

\$2,800

CONTRACTOR COST - ABATEMENT

\$8,400

DIAGNOSTIC ENGINEERING INC.

1289

PROJECT NO. 1A2141AB001

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00510**

UNIT COST ESTIMATE

DATE PREPARED: 5/27/92

SHEET 1 OF 1

PROJECT: FORT ORD INSTALLATION BUILDING - P 00510
ABATED MATERIAL REPLACEMENT

LOCATION: FORT ORD, CALIFORNIA

ARCHITECT/

ENGINEER: DIAGNOSTIC ENGINEERING INC.

BASIS FOR ESTIMATE

☒ CODE A (NO DESIGN)
☐ CODE B (PRELIMINARY DESIGN)
☐ CODE C (FINAL DESIGN)
☐ OTHER (SPECIFY):

REPORT NO. 1A2141AB001

ESTIMATOR: M. EISSINGER

CHECKED BY: L. WERNER

ITEM NO.	DESCRIPTION	ACTION	ESTIMATED QUANTITY	UNIT	UNIT COST (\$)	DIRECT COST (\$)
W.I. 1	Pipe Run and Fitting Insulation and Lagging	Replacement	913	LF	0.00	0
W.I. 2	Pipe Run and Fitting Ins and Lagging	Replacement	913	LF	0.00	0
I. 3	Resilient Floor Tile and Mastic	Replacement	1,805	SF	0.00	0
W.I. 4	Window Putty	Replacement	4,260	LF	0.00	0
W.I. 5	Roofing Mastic	Replacement	700	LF	0.00	0
W.I. 6	Roof Penetration Mastic	Replacement	40	E	0.00	0

DIRECT COST	\$0
CONTRACTORS' 50% MARKUP (OVERHEAD, PROFIT, BONDS)	\$0
CONTRACTOR COST - REPLACEMENT	\$0

DIAGNOSTIC ENGINEERING INC.

1290

PROJECT NO. 1A2141AB001

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00510**

UNIT COST ESTIMATE

DATE PREPARED: 5/27/82

SHEET 1 OF 1

PROJECT: FORT ORD INSTALLATION BUILDING - P 00510
ADDITIVE ASBESTOS MATERIAL REMOVAL
LOCATION: FORT ORD, CALIFORNIA
ARCHITECT/
ENGINEER: DIAGNOSTIC ENGINEERING INC.

BASIS FOR ESTIMATE	
☒	CODE A (NO DESIGN)
☐	CODE B (PRELIMINARY DESIGN)
☐	CODE C (FINAL DESIGN)
☐	OTHER (SPECIFY):

REPORT NO. 1A2141AB001

ESTIMATOR: M. EISSINGER

CHECKED BY: L. WERNER

ITEM NO.	DESCRIPTION	ACTION	ESTIMATED QUANTITY	UNIT	UNIT COST (\$)	DIRECT COST (\$)
W.I. 1	Pipe Run and Fitting Insulation and Lagging	Additive Removal	913	LF	0.00	0
W.I. 2	Pipe Run and Fitting Ins and Lagging	Additive Removal	913	LF	16.00	14,608
W.I. 3	Resilient Floor Tile and Mastic	Additive Removal	1,805	SF	5.80	10,469
W.I. 4	Window Putty	Additive Removal	4,260	LF	3.30	14,058
W.I. 5	Roofing Mastic	Additive Removal	700	LF	3.50	2,450
W.I. 6	Roof Penetration Mastic	Additive Removal	40	E	6.25	250

DIRECT COST	\$41,835
CONTRACTORS' 50% MARKUP (OVERHEAD, PROFIT, BONDS)	\$20,918
CONTRACTOR COST - ADDITIVE REMOVAL	\$62,753

DIAGNOSTIC ENGINEERING INC.

1291

PROJECT NO. 1A2141AB001

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00510**

UNIT COST ESTIMATE

DATE PREPARED: 5/27/92

SHEET 1 OF 1

PROJECT: FORT ORD INSTALLATION BUILDING - P 00510
ADDITIVE ABATED MATERIAL REPLACEMENT

LOCATION: FORT ORD, CALIFORNIA

ARCHITECT/
ENGINEER: DIAGNOSTIC ENGINEERING INC.

BASIS FOR ESTIMATE

☒ CODE A (NO DESIGN)
☐ CODE B (PRELIMINARY DESIGN)
☐ CODE C (FINAL DESIGN)
☐ OTHER (SPECIFY):

REPORT NO. 1A2141AB001

ESTIMATOR: M. EISSINGER

CHECKED BY: L. WERNER

ITEM NO.	DESCRIPTION	ACTION	ESTIMATED QUANTITY	UNIT	UNIT COST (\$)	DIRECT COST (\$)
W.I. 1	Pipe Run and Fitting Insulation and Lagging	Additive Replacement	913	LF	0.00	0
W.I. 2	Pipe Run and Fitting Ins and Lagging	Additive Replacement	913	LF	15.00	13,694
1. 3	Resilient Floor Tile and Mastic	Additive Replacement	1,805	SF	3.50	6,318
W.I. 4	Window Putty	Additive Replacement	4,260	LF	3.00	12,780
W.I. 5	Roofing Mastic	Additive Replacement	700	LF	6.00	4,200
W.I. 6	Roof Penetration Mastic	Additive Replacement	40	E	7.50	300

DIRECT COST	\$37,292
CONTRACTORS' 50% MARKUP (OVERHEAD, PROFIT, BONDS)	\$18,646
CONTRACTOR COST - ADDITIVE REPLACEMENT	\$55,938

FORT ORD WORKS

High Performance Structures

Jan 31, 2022

Mr. Matt Mogensen
City of Marina
Marina, Ca.

Matt,

This letter is to inform you that it is the intention of Fort Ord Works to transfer the remainder of the leases it holds at properties 3240 Imjin Road and 791 Neeson Road owned by the City of Marina over to Joby Aviation as an integral part of an overall sale of all assets of Fort Ord Works to Joby.

It is our understanding that Joby will be utilizing these facilities within the scope of the current City approved uses by Fort Ord Works (design and fabrication of composite aircraft components and tooling). We also understand that there are some open issues between FOW and the City that should be resolved in conjunction with the lease transfers such as -

- 1) An open building permit issued for 3240 Imjin Road
- 2) Business license fees owed the City by FOW
- 3) Monies owed FOW by City for work done by contractor on fire suppression system

We are hoping to close the transaction with Joby on or before March 1, 2022 so any actions by the city to help us achieve that goal will be greatly appreciated.

With best regards,
Joe Johnson
CEO, Fort Ord Works Inc.
Marina (Monterey area) California

i

Recording Requested by:)
City of Marina)
When Recorded Return to)
City of Marina)
Attn: Deputy City Clerk)
211 Hillcrest Avenue)
Marina, California 93933.)
_____)

A.P.N. 031-112-037 (a portion)

Exempt from Recording Fees: Govt. Code 27383
Documentary Transfer Tax: -0-
Assignment of a Lease of Real Property with a
Term less than 35 Years

[Space Above this Line for Recorder's Use)

**ASSIGNMENT OF LEASE, ASSUMPTION OF ASSIGNMENT OF LEASE
AND CONSENT TO ASSIGNMENT OF LEASE**

This Assignment of Lease, Assumption of Assignment of Lease and Consent to Assignment of Lease is entered into for reference purposes as of _____, 2022, by and between the City of Marina, a California charter city ("City"), Driven Performance, LLC (the "Assignor"), a California limited liability company, and Joby Aero, Inc. (the "Assignee"), a Delaware corporation, as follows.

Recitals

1. On March 28, 2017, the City and Assignor entered into that certain Lease (the "Lease"), a copy of which is attached hereto as **Exhibit A** and by this reference made a part hereof, for real property consisting of a portion of Assessor's Parcel Numbers ("APN") 031-112-0379 located in Monterey County consisting of being a portion of the Marina Municipal Airport, located within and around Building Number 510 (the "Building" or "Building 510") located at 3240 Imjin Road, City of Marina, County of Monterey, California, as shown on Exhibit A, attached to the Lease. The uses permitted by the Lease include tenant's commercial, non-aeronautical use of the leased premises for aviation-related manufacturing, assemblage or research and aviation-based services, supplies or retail including developing, designing, engineering, tooling, testing, manufacturing and the sale of composite aircraft components. Subject to obtaining a conditional use permit from the City, tenant may use the premises for

such other non-aviation-related uses as may be permitted by the conditional use permit. The tenant shall not use the leased premises, or any part thereof, or permit them to be used for any purpose other than the purpose specified herein without the consent of the City, such consent not to be unreasonably withheld.

2. The Lease provides the Assignor may assign the premises with the City's consent.. Any such assignment shall not, in any way, affect or limit the liability of Assignor 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 Assignor, the consent of whom shall not be necessary.

3. On January 31, 2022, the City was notified of Assignor's intention to assign its interest in the Lease to Assignee.

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

Article 1

Assignment of Lease.

For value received the undersigned Driven Performance, LLC, a California limited liability company, as lessee under the Lease and Assignor does hereby sell, transfer and assign to Assignee all right, title and interest in and to the Lease. In accepting assignment Assignee agrees, from the date the assignment becomes effective, to assume and perform all duties and obligations under the Lease as a direct obligation to the City.

Assignor shall remain liable for the performance of the provisions of the Lease. City shall send to Assignor any notice of default that City sends to Assignee. Assignor agrees to execute any and all documents necessary to effect the intent and purpose of this Assignment of Lease on demand.

The assignment of the Lease shall take effect on the date this document is fully executed by each party, or upon the date the Assignee provides insurance in accordance with the requirements of Article 11 of the Lease, whichever date is later, and Assignor shall give possession of the Premises to Assignee on that date.

Article 2**Assumption of Assignment of Lease**

For value received, the Assignee hereby assumes and accepts the foregoing Assignment of Lease by Assignor and assumes the obligations under the Lease. Such assumption and acceptance irrevocably bind Assignee and Assignee's successors in interest, heirs and personal representatives to the faithful performance of all terms and conditions of the Lease as direct obligations to the City to the same extent as if Assignee had been an original party thereto.

Assignee and Assignor agree to execute any and all documents necessary to effect the intent and purpose of this Assumption of Assignment of Lease on demand.

Article 3**Consent to Assignment of Lease**

The City hereby consents to the assignment of the Lease from Assignor to, and the assumption of the Lease by, the Assignee. The City's consent to the assignment is made without waiver of the restrictions concerning further assignment.

The City agrees to execute any and all documents necessary to effect the intent and purpose of this Consent to Assignment of Lease on demand.

Article 4**General Provisions**

All provisions hereof shall be binding on and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

In the event any portion of a promise or covenant contained in this Assignment of Lease, Assumption of Assignment of Lease and Consent to Assignment of Lease is held unreasonable or unenforceable in an unappealed final decision to which the City, Assignee and/or Assignor are bound by a court or agency having valid jurisdiction, the applicable party expressly agrees to be bound by each lesser covenant imposing the maximum duty permitted by law that is subsumed within the terms of such promise or covenant, as if it were separately stated and made part of this Assignment of Lease,

Assumption of Assignment of Lease and Consent to Assignment of Lease.

Assignor, Assignee, and City represent and acknowledge that they have each been provided with the opportunity to discuss and review the terms of this document with their respective attorneys before signing it and that they are freely and voluntarily signing this document in exchange for the benefits provided herein. Each further represents and acknowledges that a reasonable period of time within which to review the terms of this Assignment of Lease, Assumption of Assignment of Lease and Consent to Assignment of Lease.

Time is of the essence in the performance of each provision of this Assignment of Lease, Assumption of Assignment of Lease and Consent to Assignment of Lease.

Should any litigation be initiated between the parties hereto concerning this Assignment of Lease, Assumption of Assignment of Lease and Consent to Assignment of Lease or the rights or duties of either the City, Assignee or Assignor, the party prevailing in such action shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for attorney's fees in such action, which shall be determined by the court, or in a separate action brought for that purpose.

The individuals executing this Assignment of Lease, Assumption of Assignment of Lease and Consent to Assignment of Lease on behalf of the Assignor, the Assignee and the City represent and warrants that are duly authorized to execute and deliver this Assignment of Lease, Assumption of Lease and Consent to Assignment of Lease on behalf of said entity and that this document is binding upon said limited liability company, corporation and the City in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment, Assumption of Assignment and Consent to Assignment of Lease on the dates set forth below.

Attest: (Reso. No. 2022-____

Deputy City Clerk

City of Marina ("City")
A California Charter City

By: _____
Its: _____
Date: _____, 2022

Approved as to Form:

Robert Rathie
Counsel for the City

Driven Performance, LLC (“Assignor”)
A California Limited Liability Company

By: _____
Joe Johnson, Its Managing Member

Date: _____, 2022

Joby Aero, Inc. (“Assignee”)
A California Corporation

By: _____
Its: _____

Date: _____, 2022

By: _____
Its: _____

Date: _____, 2022

[All four above signatures to be notarized.]

EXHIBITS

EXHIBIT A

LEASE

DRAFT

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____)SS
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared

_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ Affix appropriate seal above

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____)SS
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared

_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ Affix appropriate seal above

DRY

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____)SS
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ Affix appropriate seal above

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____)SS
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ Affix appropriate seal above

March 3, 2022

Item No: **8g(2)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of March 15, 2022

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-,
APPROVING ASSIGNMENT OF A LEASE, ASSUMPTION OF
ASSIGNMENT OF LEASE AND CONSENT TO ASSIGNMENT OF
LEASE FOR 791 NEESON ROAD (BUILDING 521) BETWEEN THE
CITY OF MARINA, FORT ORD WORKS, INC AND JOBY AERO, INC.,
AND AUTHORIZING CITY MANAGER TO EXECUTE THE
ASSIGNMENT OF THE LEASE 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 assignment of a lease, assumption of assignment of lease and consent to assignment of lease for 791 Neeson Road (Building 521) between the City of Marina, Fort Ord Works, Inc and Joby Aero, Inc.; and
2. Authorizing City Manager to execute the Assignment of the Lease Agreement, on behalf of the City, subject to final review and approval by City Attorney.

BACKGROUND:

On November 7, 2018, the City and Fort Ord Works, Inc. entered into a certain Lease Agreement (**EXHIBIT “A”**) for a City owned building on the Marina Municipal Airport, located at 791 Neeson Road (Building 521). The term of the Lease is 5 years with a City option to extend another 5 years. The space consists of 7,220 square feet of warehouse, office and miscellaneous space. The initial Lease rate was \$.33 per square foot with an annual escalator of 5% throughout the term. The uses permitted by the Lease include tenant’s commercial, non-aeronautical use of the leased premises for aviation-related manufacturing, assemblage or research and aviation-based services, supplies or retail including developing, designing, engineering, tooling, testing, manufacturing and the sale of composite aircraft components.

ANALYSIS:

On January 31, 2022, the City received a letter from Joe Johnson, CEO of Fort Ord Works, Inc. (**EXHIBIT “B”**) requesting that the Lease for Building 521 be transferred to Joby Aero, Inc. for the remainder of the initial term and option period.

The initial 5 years of the Lease will conclude on November 7, 2023, after which the City will need to consent to an addition 5-year term to continue the lease. The current monthly rent for year 3 of the term is \$2,627 per month (\$.36 per s.f.). The Lease rate will continue to increase by 5% annually for the remainder of the term and will include the following monthly rents:

Rent for Year Four – \$2,758

Rent for Year Five – \$2,896

Rent for Year One of Optional Term – \$3,041
Rent for Year Two of Optional Term – \$3,193
Rent for Year Three of Optional Term – \$3,353
Rent for Year Four of Optional Term – \$3,521
Rent for Year Five of Optional Term – \$3,697

Tenant also pays 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 are paid by the Tenant as well.

The Assignment of the Lease to Joby Aero, Inc. requires the consent of the City. Approval of the attached resolution will allow the City Manager to sign the Assignment of a Lease, Assumption of Assignment of Lease and Consent to Assignment of Lease (**EXHIBIT "C"**) as the representative of the City.

FISCAL IMPACT:

There are no new fiscal impacts to the City as a result of this action.

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 ASSIGNMENT OF A LEASE, ASSUMPTION OF ASSIGNMENT OF LEASE AND CONSENT TO ASSIGNMENT OF LEASE FOR 791 NEESON ROAD (BUILDING 521) BETWEEN THE CITY OF MARINA, FORT ORD WORKS, INC AND JOBY AERO, INC., AND AUTHORIZING CITY MANAGER TO EXECUTE THE ASSIGNMENT OF THE LEASE ON BEHALF OF THE CITY, SUBJECT TO FINAL REVIEW AND APPROVAL BY CITY ATTORNEY

WHEREAS, Building 521 located at 791 Neeson Road consists of 7,220 square feet of warehouse, office and miscellaneous space; and,

WHEREAS, on November 7, 2018, the City and Fort Ord Works, Inc. entered into a Lease Agreement for the City owned Building 521 on the Marina Municipal Airport; and,

WHEREAS, the uses permitted by the Lease include the non-aeronautical use of the premises for aviation-related manufacturing, assemblage or research and aviation-based services, supplies or retail including developing, designing, engineering, tooling, testing, manufacturing and the sale of composite aircraft components; and,

WHEREAS, the current monthly rent for year 3 of the term is \$2,627 per month (\$.36 per s.f.). The Lease rate will continue to increase by 5% annually for the remainder of the term; and,

WHEREAS, on January 31, 2022, the City received a letter from Joe Johnson, CEO of Fort Ord Works, Inc. requesting that the Lease for Building 521 be transferred to Joby Aero, Inc. for the remainder of the initial term and option period; and,

WHEREAS, Article 15 of the Lease provides for the assignment of the Lease to another party with the written consent of the City; and,

WHEREAS, the Assignment of a Lease, Assumption of Assignment of Lease and Consent to Assignment of Lease between the City of Marina, Fort Ord Works, Inc and Joby Aero, Inc. attached herein provides the City's written consent to assignment of the Lease to Joby Aero, Inc. under the same terms as provided in said Lease; and,

WHEREAS, under the terms of the Lease the initial 5-year term will conclude on November 7, 2023, after which the City will need to consent to an addition 5-year term to continue the lease.

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

1. Adopting Resolution No. 2022-, approving assignment of a lease, assumption of assignment of lease and consent to assignment of lease for 791 Neeson Road (Building 521) between the City of Marina, Fort Ord Works, Inc and Joby Aero, Inc.; and
2. Authorizing City Manager to execute the Assignment of 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 15th 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

MARINA MUNICIPAL AIRPORT

LEASE BETWEEN

THE CITY OF MARINA

AND

FORT ORD WORKS, INC.

for

BUILDING 521

Recording Requested by and)
 When recorded mail to:)
 City Clerk)
 City of Marina)
 857 Cass Street, Suite D.)
 Monterey, California 93940)
)
 APN 031-112-015)
 _____)

LEASE

THIS LEASE (the "Lease"), made and entered into this 7th day of November 2018, by and between the **CITY OF MARINA**, a California municipal corporation ("City"), and FORT ORD WORKS, INC. a S corporation of the State of California ("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 structure formerly utilized by the U.S. Army as a flight simulator and office facility, for use in the Tenant's non aviation-related business of developing, designing, engineering, tooling, testing, manufacturing and the sale of composite aircraft components.
- C. As the lease of an existing public structure this Lease is categorically exempt from the California Environmental Quality Act (CEQA) in accordance with CEQA Categorical Exemption 15301.
- D. 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.

Terms and Conditions

Conditions Precedent

1. Approval 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 of the City of Marina.
3. Tenant's receipt of a conditional use permit issued by the City for the non aviation-related use of the premises, if any.
4. Approval by the City Manager/Airport Manager and the Airport Commission and by the City's Community Development and Public Works Departments of Tenant's plans and specifications for construction of the improvements to be made to the leased premises and its improvements.

**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 and premises (the "Premises"), being a portion of the Marina Municipal Airport, located within and around Building Number 521 (the "Building" or "Building 521") located at 791 Neeson Rd., Marina, County of Monterey, California, as shown on **Exhibit A**, attached hereto and made a part hereof. The interior space leased consists of approximately 7,222 square feet of warehouse, office and miscellaneous use space located on a single floor of Building 521 as outlined and designated on the floor plan attached hereto as **Exhibit B** and made a part hereof. The Building does not accommodate aircraft storage nor does the lease provide access to the Airport Operations area. The Premises includes two restroom facilities, located on the ground floor, not currently accessible to persons with disabilities ("ADA noncompliant restrooms") and the Building is otherwise noncompliant with the Americans with Disabilities Act ("ADA"). The exterior area includes the area shown on **Exhibit A**. 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 certain portions of the surrounding paved areas and parking lots as shown on **Exhibit A**. City reserves the right to designate alternate parking areas for Tenant's use. Tenant may, in a manner approved in advance and in writing by the City, mark or designate parking spaces for its use.

b) The furniture, furnishings, fixtures, and equipment, if any, to be set forth in the Schedule of Property attached hereto as **Exhibit C** 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 of 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 or taking off from the Airport, all at Tenant's sole cost and expense.

b) **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.

c) **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 upon November 1, 2018 (the "Effective Date"). City shall confirm the Effective Date of this Lease in writing to the Tenant. The

Term shall continue for five years following the Effective Date, to the "Expiration Date" five years hence unless terminated earlier as provided herein.

1.05 **Conditional Option to Extend**. City shall have the conditional right and option to renew and extend the term of this Lease 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. This option is conditional upon FAA approval and Tenant's acceptance of the terms of the lease amendment. This option may be exercised by the City by its giving written notice of its intent to extend this option to the Tenant not sooner than 210 nor less than 180 days before the expiration of the Term.

1.06 **Option to Extend – Rent Payable**. The monthly rent to be paid by the Tenant for the conditional five-year option will be increased by five percent (5.0%) above the monthly rent payable in the final year of the Term as follows:

Rent for Year One of first option to extend =	\$3,041.00 per month.
Rent for Year Two of first option to extend =	\$3,193.00 per month.
Rent for Year Three of first option to extend =	\$3,353.00 per month.
Rent for Year Four of first option to extend =	\$3,521.00 per month.
Rent for Year Five of first option to extend =	\$3,697.00 per month.

1.07 **Holding Over**. Any holding over after the expiration of the initial or extended 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.

ARTICLE 2. USE OF LEASED PREMISES

2.01 **Use**. This Lease is made for the purpose of allowing Tenant's commercial, non aeronautical, use of the leased Premises and for granting Tenant certain rights and privileges to occupy Building 521 and to use the adjacent areas designated for parking for Tenant's use. Tenant may use the Premises in its business of aviation-related manufacturing, assemblage or research and aviation-based services, supplies or retail including developing, designing, engineering, tooling, testing, manufacturing and the sale of composite aircraft components. Subject to obtaining a conditional use permit from the City, Tenant may use the Premises for such other non aviation-related uses as may be permitted by the conditional use permit. 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 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 or anticipated profits of Tenant or others.

c) Tenant shall have the right, at its expense, to place in 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 or signs to be affixed to the leased Premises, to be readily visible from Imjin Road. 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 rules and regulations promulgated by the City, 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 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) 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 at no additional cost to tenant.

2.03 Special Events. Tenant understands and acknowledges that the City will, from time to time, conduct special events at the Airport. Tenant agrees to cooperate with the City concerning these events (e.g. allowing the City to use the Premises Parking Area 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 covered in 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 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.

3.05 **Non Interference with Landing and Taking off of Aircraft.** 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 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.

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 shall be \$2,383.00 (at the rate of \$0.33 per square foot). Thereafter for the initial term the rent shall increase annually by five percent (5.0%) above the monthly rent payable in the prior year as follows:

Rent for Year Two =	\$2,502.00 per month.
Rent for Year Three =	\$2,627.00 per month.
Rent for Year Four =	\$2,758.00 per month.
Rent for Year Five =	\$2,896.00 per month.

Tenant shall also pay as additional rent, every month as provided above, the amounts set forth in Article 12 herein for utilities (water, sewer, and gas), trash collection and assessments. The rent payable under this Lease shall be triple net (*i.e.*, Tenant shall pay all of its operating expenses, insurance premiums and taxes including possessory interest tax). Rent and all net charges shall commence upon the Effective Date.

4.03 **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 may, but is not required to, provide written notice to Tenant of Tenant's failure to pay rent when 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.

4.04 **Performance Deposit.** Upon execution of this Lease, Tenant will pay to the City the sum of \$2,500.00, 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, 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.

4.07 **Accord and Satisfaction.** No payment by Tenant or receipt by the City or 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 require to be given pursuant to California Code of Civil Procedure section 1161 *et seq.*, or any successor statute thereto.

4.08 **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.

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. The City's reasonable determination thereof, in good faith, shall be conclusive.

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. The City's reasonable determination thereof, in good faith, shall be conclusive provided, however, Tenant may appeal the City's determination of the proration of any MCWRA assessments to the City Council, whose decision shall be final. In the event Tenant fails to pay any assessment when due, the City may, at its option, pay the same and collect from Tenant's performance deposit (see Section 4.06) the amounts so disbursed, plus interest at the rate of 10% per annum or fraction thereof.

ARTICLE 6. SUBORDINATE TO FEDERATION AGREEMENT 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 D") attached hereto and incorporated herein by this reference and as they 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 7.02 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

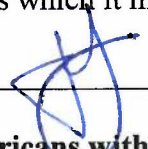
8.01 **Acceptance of Leased Premises.** Tenant understands that the leased Premises were formerly used by the federal government as part of an Army air base, that surrounding lands which were also part of such Army air base have, in the past been found to contain concentrations of volatile organic chemicals 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. The City has provided to the Tenant an asbestos survey report prepared by the U.S. Army Corps of Engineers for Building 521, which is attached hereto as **Exhibit D**. 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. As of the Effective Date, Tenant waives, releases and discharges the City, its Council, Commissions, Boards and Departments, their respective elected and appointed officials, officers, employees, agents, representatives and attorneys from any and all present and future claims, demands suits, legal and administrative proceedings, and from all liability, damages, losses, costs, liabilities, fees and expenses (including without limitation attorney's fees) arising out of or in any way connected with the Tenant's use, maintenance, leasehold or operation of the leased Premises, any Hazardous Materials, contamination in any state on the leased Premises, however the Hazardous Materials came to be placed there. Tenant acknowledges that it is aware of and familiar with the provisions of Section 1542 of the California Civil Code of Civil which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

To the extent of the release set forth in this Section 8.02, Tenant hereby waives and relinquishes all rights and benefits which it may have under Section 1542 of the California Civil Code.

Tenant's Initials:  _____

8.03 **Americans with Disabilities Act (ADA)**. The Building 521 described in this Lease and the real property of which it is a part has not undergone inspection by a certified access specialist (CASP) and has not been determined to meet all applicable construction-related accessibility standards pursuant to California Civil Code Section 55.53. In accordance with a written agreement between the City and the Tenant per California Civil Code section 1938(b). Tenant understands and acknowledges that, with the exception of: (1) an ADA compliant path of travel from the public way to inside the building, including common area, the City makes no representation concerning the premises compliance with the ADA. 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 the 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 521 will be or is in compliance with the ADA. The City and Tenant acknowledges that certain portions of Building 521 remain inaccessible for some disabled individuals. Tenant shall hold the City harmless for any liability, loss, damages or claim arising out of or related to compliance with ADA. Upon the Effective Date of this Lease, Tenant shall be responsible for the leased premises compliance with the ADA and Tenant shall hold the City harmless for any liability, loss, damages or claim arising out of or related to compliance with the ADA.

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.** During the initial or any extended term of this Lease Tenant or its contractors or subcontractors shall not make any additions or alterations to the improvements on the leased Premises which attach to, alter, or in any way affect the structural integrity of the Premises, without the prior written consent of the City, such consent not to be unreasonably delayed or withheld. Moreover, upon receiving consent to make an addition or alteration to the improvements on the leased Premises which attach to, alter or in any way affect any structural element of Building 521, Tenant or its contractors or subcontractors shall not commence work on the construction or installation of such added or altered improvement until plans and specifications for same have been submitted to and approved by the City's review processes and a building permit issued. During the initial or any extended term of this Lease, Tenant may make or cause to be made improvements which do not attach to, alter or in any way affect the structural integrity of the Premises and are required for Tenant's use. In making any such improvement Tenant shall obtain all required permits and be solely responsible for any damage to the Premises. Prior to making any improvements that do not attach to, alter or in any way affect the structural integrity of the Premises Tenant shall notify the Airport Manager in writing concerning the improvement and the Airport Manager shall have ten calendar days to object. If the Airport Manager lodges an objection to the improvement the Airport Manager and Tenant shall work in good faith to achieve the Tenant's goal.

9.02 **Performance Bond.** Tenant shall cause to be made, executed and delivered to City, prior to the date of commencement of any work in or on the leased area which attach to, alter or in any way affect any structural element of Building 521, performance bonds approved as to form and as to surety

by the City, with Tenant or Tenant's contractor as principal, and the City specifically named as an additional insured, each in the sum of one hundred percent (100%) of the amount of the contract for all work costing in excess of \$5,000.00 for a) the said required work in accordance with the approved plans and specifications and b) to provide that if Tenant or its contractor or contractors fail to pay for any materials, provisions or other supplies, used in or upon, for or about the performance of the work to be done, or for any work or labor thereon of any kind, that the surety will pay the same, in an amount not exceeding the sum specified in the bond, and also, in case suit is brought upon the bond, a reasonable attorney's fee as set by the court.

9.03 **Insurance.** Before commencing any work which attaches to, alters, or in any way affects any structural element of Building 521 which work will be performed by Tenant or its contractors and/or subcontractors engaged by the Tenant, Tenant agrees to obtain, or cause to be obtained, 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.

9.04 **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 which are not subject to amortization as Tenant Allowance-Eligible Improvements 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.

9.05 **Prevailing Wages.** Tenant shall abide by the regulations promulgated by the Fort Ord Reuse Authority in the FORA Master Resolution regarding the payment of prevailing wages for construction and/or improvement projects on former Fort Ord properties including the requirement that Tenant, any contractor, and any subcontractor performing work for which prevailing wages are required on the Premises be registered with the California Department of Industrial Relations ("DIR") in accordance with California Labor Code 1725.5. For any work paid for in whole or in part by public funds, Tenant shall comply with the requirements and implementing regulations of California Labor Code §1720 et seq. for payment of prevailing wages on "public works projects."

9.06 **Improvements by the City.** Except as otherwise expressly set forth in this Lease, 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 such construction or installation.

9.07 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 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 shall provide reasonable advanced 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.

9.08 Prevailing Wage Required.

(a) Prevailing Wage Standards.

(1) Basic Requirements. Tenant agrees that, with respect to any construction at or on the Premises for which prevailing wage is required by California Labor Code §1720 et seq. for work paid for in whole or in part from public funds or for "First Generation Construction Work" pursuant to the FORA Master Resolution Section 3.03.090. For the purposes of determining whether prevailing wage applies, Tenant and its contractors and subcontractors shall be considered as transferees of a FORA member agency, 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").

(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 9.10.

(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 9.10, 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 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 9.10 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 monthly in accordance with the procedures specified in subsections (b)-(e) inclusive of Section 1776 and Section 1771.4 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 and in

accordance with restrictions on disclosure of personal identification information set forth in the California Labor Code.

(j) In the event of repetitive breach of the requirements of this Section by Tenant, the City shall be entitled, in addition to all other remedies hereunder for breach of this Lease, to appoint at Tenant's expense a special monitor to oversee Tenant's compliance. Fees for said special monitor shall be billed to Tenant, which fees Tenant agrees to pay as Additional Rent within ten days after Tenant's receipt of such bill.

(k) 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.

(l) Contractors or subcontractors shall not be qualified to perform work on Tenant allowance-eligible improvements eligible for a Tenant allowance, 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.

9.09 Performance and Labor and Material Bonds. Before the commencement of any construction work hereunder for Tenant allowance-eligible improvements, the City will 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 Tenant allowance-eligible improvements) for the proposed Tenant allowance-eligible improvements, payable to the City and conditioned upon full, faithful and satisfactory performance by Tenant its contractor(s) of the such Tenant allowance-eligible 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 the such Tenant allowance-eligible 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 Tenant allowance-eligible 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's 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 Tenant Allowance-Eligible Improvements) for the proposed Tenant allowance-eligible improvements as such costs are set forth in the estimated Tenant allowance-eligible 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.

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

9.11 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 Buildings 521 prior to completion of the improvements in the amount of Five Hundred Fifty-Four Thousand Four Hundred Eight Dollars and no cents (\$554,408) 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 shall be responsible for the following maintenance and repair of Building 521 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 521 for the initial and any extended term of this Lease.

- a) Maintenance, repair or replacement of interior systems and components for the electrical, plumbing, ventilation, and mechanical systems including the overhead crane and the air compressor.
- b) Maintenance, repair, replacement or modification of the large rollup doors on the western and southern facing sides of Building 521.

- c) Interior and exterior glass, glazing, if any, and doors damaged by Tenant or its invitees.
- d) All interior walls, ceiling, floors, bathrooms, drains and other structures or components, if any.
- e) All air conditioning systems and components, if any.
- f) All communication systems and components.
- g) The “wet pipe” fire suppression system, if any.
- h) All security alarm systems and components, if any.
- i) Maintenance, sweeping and keeping clear of refuse, regular trash and waste removal, repair or replacement of sidewalks, driveways and asphalt parking areas as well as any damage to the building structure or components or paved surfaces caused by Tenant or its invitees.
- j) General maintenance and upkeep of the trash enclosure, if any.

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 to the City's satisfaction.

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) including 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 Tenant 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 untenable 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 **Monterey County Water Resources Agency (MCWRA) Assessment.** Tenant agrees to pay its pro rata share of assessments levied by the MCWRA. Tenant's liability shall be an equitable portion of the MCWRA assessment for all of the land and improvements included within the parcel 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. The City's reasonable determination thereof, in good faith, shall be conclusive. Charges will be due and payable within fifteen (15) days of the date of the invoice. Provided, however, Tenant may appeal the City's determination of the proration of MCWRA assessments to the City's Airport Commission, whose decision shall be final. In the event Tenant fails to pay any assessment 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.

12.06 **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, the Fort Ord Reuse Authority, Monterey Regional Water Pollution Control Agency, Marina Coast Water District, Pacific Gas & Electric Company and the Monterey Bay Unified Air Pollution Control District and the Monterey County Water Resources Agency.

ARTICLE 13. INSURANCE & INDEMNIFICATION

13.01 **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's Risk Manager including contractual liability, independent contractors, board 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 equal, from time to time, to the full replacement cost of Building 521 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's Risk 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 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 or potentially may include the City as a defendant. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.

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 personally 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 or partially at fault, or in instances where City's fault account for only a percentage of the liability involved. In those instances, the obligation of 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**. "Hazardous Materials" shall include substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq., the Resources Conservation and Recovery Act; all environmental laws of the State of California, and any other environmental law, regulation or ordinance now existing or hereinafter enacted.

16.02 **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 Tenants occupancy of the leased Premises.

16.03 **Hazardous Materials**. 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 Materials and of any hazardous substances that have come to be located beneath the Marina Municipal Airport. Tenant will comply with all applicable Hazardous Materials laws and such other reasonable rules, regulations and safeguards as may be required by the City (or any insurance carrier of the City) in connection with using, generating, manufacturing, refining, producing, processing, storing or disposing of Hazardous Materials on, under of about the leased Premises. Tenant shall, at its expense, procure, maintain in effect and comply with all conditions of any and all permits, license and other governmental and regulatory approvals required for the storage and use by Tenant of Hazardous Materials on the Premises including, without limitation, discharge of (appropriately treated) materials or wastes into or through any sanitary sewer serving Building 521.

16.04 **Removal**. Prior to the expiration or other termination 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.

16.05 **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 Materials on the Premises.

16.06 **Notice**. Upon execution of this Lease, Tenant shall provide the City's Fire Department with a complete list of all Hazardous Materials used or to be used or stored on the Premises with total quantities of all Hazardous Materials. 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 and 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. This Lease creates no rights under the California Government Code Sections 7260 to 7277 or the Federal Uniform Relocation Assistance Act for Tenant to receive relocation assistance upon termination of this Lease.

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. City may, but is not required to, provide written notice to Tenant of Tenant's failure to pay rent when 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 thirty 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 thirty 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 Manager
 211 Hillcrest Avenue
 Marina, California 93933
 Fax Number: (831) 384-0425

Copy to: City Attorney
 City of Marina
 Law Offices of Robert R. Wellington
 857 Cass Street, Suite D.
 Monterey, California 93940
 Fax Number: (831) 373-7106

To Tenant: Fort Ord Works, Inc
 791 Neeson Road
 Marina, CA 93933
 Fax Number () _____

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 as 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.

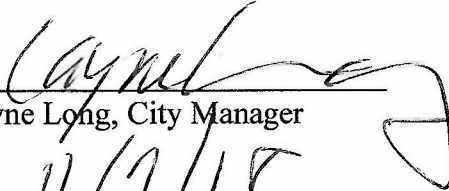
17.31 **Exhibits Incorporated.** All exhibits reference in this Lease and attached to it are hereby incorporated in it by this reference. In the event there is a conflict between any of the terms of this Lease and any of the terms of any exhibit to the lease, the terms of the Lease shall control the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

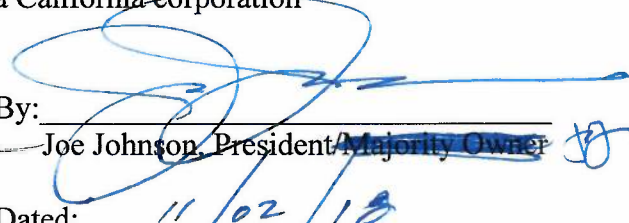
17.32 **Entire Agreement.** This Lease constitutes the entire and complete agreement between the parties regarding the subject matter hereof, and supersedes all prior or contemporaneous negotiations, understandings or agreements of the parties, whether written or oral, with respect to the subject matter.

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

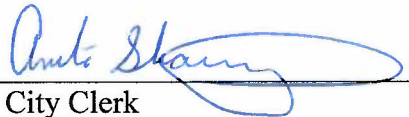
FORT ORD WORKS, INC.
a California corporation

By: 
Layne Long, City Manager
Dated: 11/7/18

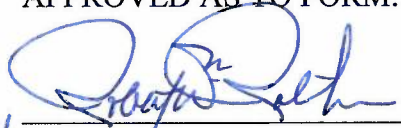
By: 
Joe Johnson, President/ Majority Owner
Dated: 11/02/18

(Pursuant to Reso. 2018-103)

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____
COUNTY OF _____

On _____, before me _____,

Notary Public, personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____
COUNTY OF _____

On _____, before me _____,

Notary Public, personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public (Seal)

EXHIBITS

EXHIBIT A

**A PLAT OF THE AIRPORT REAL PROPERTY
INCLUDING AREAS FOR PARKING**

EXHIBIT B

A FLOOR PLAN OF THE LEASED PREMISES

EXHIBIT C

SCHEDULE OF CITY-OWNED PROPERTY

EXHIBIT D

FEDERAL AVIATION ADMINISTRATION ASSURANCES

EXHIBIT E

ASBESTOS SURVEY FOR BUILDING 521

EXHIBIT A

PLAT OF THE AIRPORT REAL PROPOERTY INCLUDING AREAS FOR PARKING

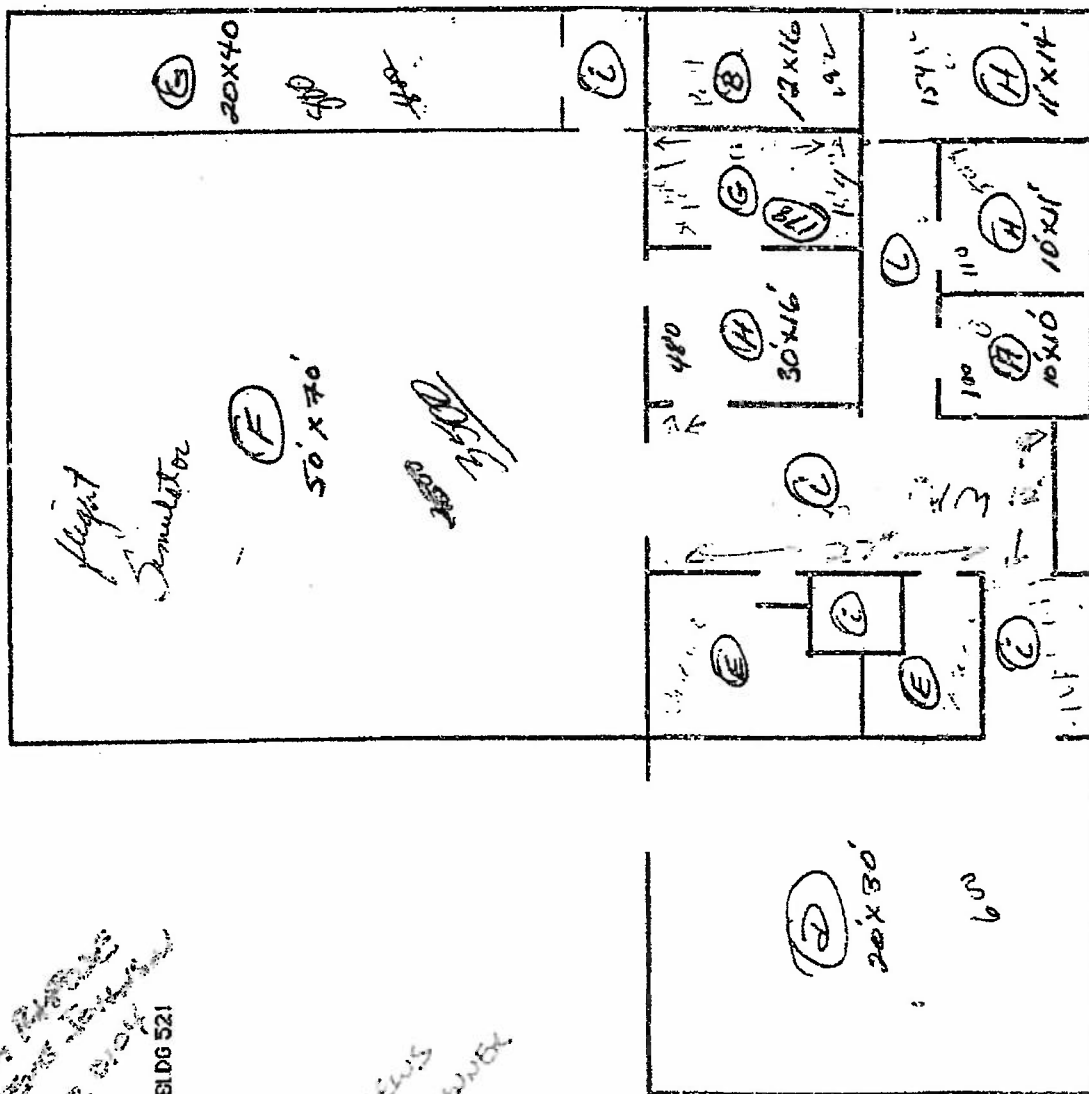


EXHIBIT A
PLAT OF THE AIRPORT REAL
PROPERTY INCLUDING
AREAS DESIGNATED FOR
PARKING

RED LINE IS BOUNDARY
OF THE LEASEHOLD

EXHIBIT B

FLOOR PLAN OF THE LEASED PREMISES



11/15/2011
 JIM MATHEWS
 CITY PLANNER

BLDG 521

EXHIBIT C

SCHEDULE OF CITY-OWNED PROPERTY

1. There is no City-owned property left in the building.

EXHIBIT D

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 Part 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 or 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.

EXHIBIT E

ASBESTOS SURVEY FOR BUILDING 521

Provided as separate .pdf file.

ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00521

BUILDING SUMMARY

BUILDING P00521

Date(s) of Survey 7/29/92
Estimated Date of Construction 1978
Building Usage Flight Simulation Building
Total Gross Square Footage 7,222 Sq. Ft.
Building Type Metal
Number of Levels 1
Estimated Cost of Recommended Work Items for Asbestos-Containing Materials (CWE) \$0
Total Estimated Cost Including Additive Items (CWE) \$42,536
• Cost per Square Foot Including Additive Items (CWE) \$5.89
Friable Asbestos-Containing Materials None
Nonfriable Asbestos-Containing Materials Floor Tile Mastic, Baseboard Mastic, Roof Penetration Mastic

WORK ITEM INVENTORY

BLDG/ WORK ITEM	DEI RATING	CONSTR. YEAR	TYPE OF MATERIAL	ESTIMATED QUANTITY	DESCRIPTION LOCATION	FRIABILITY	ACTION	CONT COST
P00521 1	13	N/A	Floor Tile Mastic	1,500 SF	1st Flr Various Locations	Nonfriable	O&M	\$0
FINDINGS: Nonfriable asbestos-containing floor tile mastic associated with 12" x 12" white resilient floor tile in the corridors, classroom, offices and west closet was in good condition. No asbestos was detected in the resilient floor tile. This material is protected by the floor tile and does not pose a risk of contamination as long as it does not become damaged or deteriorated in such a way that it could release asbestos fibers into the air. [Bulk Sample(s) 2, 4] RECOMMENDATIONS: Inspect biannually as part of O&M. Prohibit any disturbance including sanding, chipping or the use of corrosive cleaning chemicals on this material which may cause generation of airborne asbestos fibers. For all O&M, repair or removal activities, materials inseparable from the mastic must be considered asbestos-contaminated. Should this material be removed, delete this work item from the O&M. Use asbestos-free materials for any replacement. Additive cost for optional removal and replacement of this material is \$20,925.								

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00521**

WORK ITEM INVENTORY

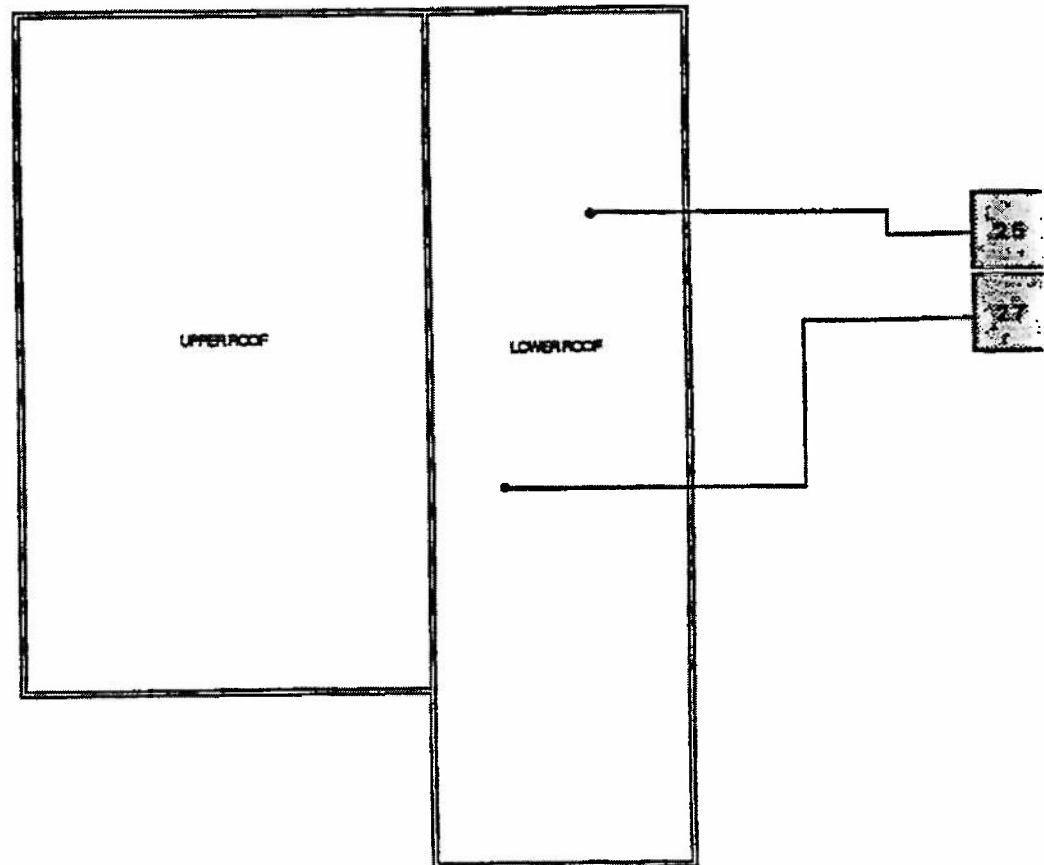
BLDG/ WORK ITEM	DEI RATING	CONSTR. YEAR	TYPE OF MATERIAL	ESTIMATED QUANTITY	DESCRIPTION LOCATION	FEASIBILITY	ACTION	CONTRACTOR COST
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**WORK ITEM SUMMARY
BUILDING P00521**

The work items are listed below in numerical (and DEI Rating) order, and their estimated costs have been totaled.

P00521 1	13	N/A	Floor Tile Mastic	1,500 SF	1st Flr Various Locations	Nonfriable	O&M	\$0
P00521 2	13	N/A	Baseboard Mastic	1,200 LF	1st Flr Throughout Building	Nonfriable	O&M	\$0
P00521 3	13	N/A	Roof Penetration Mastic	11 E	Upper and Lower Roofs	Nonfriable	O&M	\$0
								\$0

ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION



BUILDING P00521
ROOF PLAN
NOT TO SCALE



BULK SAMPLE ASBESTOS CONTENT ☒ = >0.1% ☐ = NONE DETECTED

AGNOSTIC ENGINEERING INC.

PROJECT NO. 1A2141AB00

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00521**

BULK SAMPLE LOG

BUILDING NO.	SAMPLE NO.	TYPE OF MATERIAL	ESTIMATED QUANTITY	FLOOR/ LEVEL	SAMPLE LOCATION	POS./ NEG.	ASBESTOS TYPE	%	FRIABILITY	DAMAGE
P00521	14	Wallboard	15,000 SF	1	Storeroom	N		N/D		
P00521	15	Textured Paint	(R13)	1	Closet	N		N/D		
P00521	16	Wallboard	(R14)	1	Closet	N		N/D		
P00521	17	Textured Paint	(R13)	1	Flight Simulation Bay	N		N/D		
P00521	18	Wallboard	(R14)	1	Flight Simulation Bay	N		N/D		
P00521	19	Joint Compound	15,000 SF	1	Corridor	N		N/D		
P00521	20	Joint Compound	(R19)	1	Corridor	N		N/D		
P00521	21	Joint Compound	(R19)	1	Corridor	N		N/D		
P00521	22	Duct Insulation Lagging	500 SF	1	Mechanical Room	N		N/D		
P00521	23	Duct Insulation Lagging	(R22)	1	Mechanical Room	N		N/D		
P00521	24	Joint Tape	1,500 SF	1	Mechanical Room	N		N/D		
P00521	25	Joint Tape	(R24)	1	Mechanical Room	N		N/D		
P00521	26	Roof Penetration Mastic	11 E	Roof	Lower Roof	P	Chrysotile	3	Nonfriable	None

(R#) denotes that the estimated material quantity for the area has been included in referenced sample number.

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00521**

CURRENT WORKING ESTIMATE (CWE)**UNIT COST ESTIMATE SUMMARY**

DATE PREPARED: 10/20/92

SHEET 1 OF 2

PROJECT: FORT ORD INSTALLATION BUILDING - P 00521
ASBESTOS MATERIAL ABATEMENT/REPLACEMENT

LOCATION: FORT ORD, CALIFORNIA

ARCHITECT/
ENGINEER: DIAGNOSTIC ENGINEERING INC.

BASIS FOR ESTIMATE

☒ CODE A (NO DESIGN)
☐ CODE B (PRELIMINARY DESIGN)
☐ CODE C (FINAL DESIGN)
☐ OTHER (SPECIFY):

REPORT NO. 1A2141AB001

ESTIMATOR: M. EISSINGER

CHECKED BY: L WERNER

ITEM NO.	DESCRIPTION	RECOMMENDED ACTION	ESTIMATED QUANTITY	UNIT	COST BREAKDOWN	UNIT COST (\$)	DIRECT COST (\$)
W.I. 1	Floor Tile Mastic	O&M	1,500	SF	ABATEMENT	0.00	0
					REPLACEMENT	0.00	0
					ADDITIVE REMOVAL	5.80	8,700
					ADDITIVE REPLACEMENT	3.50	5,250
W.I. 2	Baseboard Mastic	O&M	1,200	LF	ABATEMENT	0.00	0
					REPLACEMENT	0.00	0
					ADDITIVE REMOVAL	3.50	4,200
					ADDITIVE REPLACEMENT	2.50	3,000
W.I. 3	Roof Penetration Mastic	O&M	11	E	ABATEMENT	0.00	0
					REPLACEMENT	0.00	0
					ADDITIVE REMOVAL	22.73	250
					ADDITIVE REPLACEMENT	27.27	300

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00521**

UNIT COST ESTIMATE

DATE PREPARED: 10/20/92

SHEET 1 OF 1

PROJECT: FORT ORD INSTALLATION BUILDING - P00521
ASBESTOS MATERIAL ABATEMENT

LOCATION: FORT ORD, CALIFORNIA

ARCHITECT/

ENGINEER: DIAGNOSTIC ENGINEERING INC.

BASIS FOR ESTIMATE

☒ CODE A (NO DESIGN)
☐ CODE B (PRELIMINARY DESIGN)
☐ CODE C (FINAL DESIGN)
☐ OTHER (SPECIFY: _____)

REPORT NO. 1A2141AB001

ESTIMATOR: M. EISSINGER

CHECKED BY: L. WERNER

ITEM NO.	DESCRIPTION	ACTION	ESTIMATED QUANTITY	UNIT	UNIT COST (\$)	DIRECT COST (\$)
W.L 1	Floor Tile Mastic	O&M	1,500	SF	0.00	0
W.L 2	Baseboard Mastic	O&M	1,200	LF	0.00	0
W.L 3	Roof Penetration Mastic	O&M	11	E	0.00	0

DIRECT COST

\$0

CONTRACTORS' 50% MARKUP (OVERHEAD, PROFIT, BONDS)

\$0

CONTRACTOR COST - ABATEMENT

\$0

**ASBESTOS SURVEY REPORT
CORPS OF ENGINEERS - FORT ORD INSTALLATION
BUILDING P00521**

UNIT COST ESTIMATE

DATE PREPARED: 10/20/92

SHEET 1 OF 1

PROJECT: FORT ORD INSTALLATION BUILDING - P 00521
ADDITIVE ASBESTOS MATERIAL REMOVAL
LOCATION: FORT ORD, CALIFORNIA
ARCHITECT/
ENGINEER: DIAGNOSTIC ENGINEERING INC.

BASIS FOR ESTIMATE

☒ CODE A (NO DESIGN)
☐ CODE B (PRELIMINARY DESIGN)
☐ CODE C (FINAL DESIGN)
☐ OTHER (SPECIFY):

REPORT NO. 1A2141AB001

ESTIMATOR: M. EISSINGER

CHECKED BY: L. WERNER

ITEM NO.	DESCRIPTION	ACTION	ESTIMATED QUANTITY	UNIT	UNIT COST (\$)	DIRECT COST (\$)
W.I. 1	Floor Tile Mastic	Additive Removal	1,500	SF	5.80	8,700
W.I. 2	Baseboard Mastic	Additive Removal	1,200	LF	3.50	4,200
W.I. 3	Roof Penetration Mastic	Additive Removal	11	E	22.73	250

DIRECT COST	\$13,150
CONTRACTORS' 50% MARKUP (OVERHEAD, PROFIT, BONDS)	\$6,575
CONTRACTOR COST - ADDITIVE REMOVAL	\$19,725

FORT ORD WORKS

High Performance Structures

Jan 31, 2022

Mr. Matt Mogensen
City of Marina
Marina, Ca.

Matt,

This letter is to inform you that it is the intention of Fort Ord Works to transfer the remainder of the leases it holds at properties 3240 Imjin Road and 791 Neeson Road owned by the City of Marina over to Joby Aviation as an integral part of an overall sale of all assets of Fort Ord Works to Joby.

It is our understanding that Joby will be utilizing these facilities within the scope of the current City approved uses by Fort Ord Works (design and fabrication of composite aircraft components and tooling). We also understand that there are some open issues between FOW and the City that should be resolved in conjunction with the lease transfers such as -

- 1) An open building permit issued for 3240 Imjin Road
- 2) Business license fees owed the City by FOW
- 3) Monies owed FOW by City for work done by contractor on fire suppression system

We are hoping to close the transaction with Joby on or before March 1, 2022 so any actions by the city to help us achieve that goal will be greatly appreciated.

With best regards,
Joe Johnson
CEO, Fort Ord Works Inc.
Marina (Monterey area) California

i

Recording Requested by:)
 City of Marina)
 When Recorded Return to)
 City of Marina)
 Attn: Deputy City Clerk)
 211 Hillcrest Avenue)
 Marina, California 93933)
 _____)

A.P.N. 031-112-015

Exempt from Recording Fees: Govt. Code 27383
 Documentary Transfer Tax: -0-
 Assignment of a Lease of Real Property with a
 Term less than 35 Years

[Space Above this Line for Recorder's Use]

**ASSIGNMENT OF LEASE, ASSUMPTION OF ASSIGNMENT OF LEASE
 AND CONSENT TO ASSIGNMENT OF LEASE**

This Assignment of Lease, Assumption of Assignment of Lease and Consent to Assignment of Lease is entered into for reference purposes as of _____, 2022, by and between the City of Marina, a California charter city ("City"), Fort Ord Works, Inc. (the "Assignor"), a California corporation, and Joby Aero, Inc. (the "Assignee"), a Delaware corporation, as follows.

Recitals

1. On November 7, 2018, the City and Assignor entered into that certain Lease (the "Lease"), a copy of which is attached hereto as **Exhibit A** and by this reference made a part hereof, for real property consisting of a portion of Assessor's Parcel Numbers ("APN") 031-112-015 located in Monterey County consisting of being a portion of the Marina Municipal Airport, located within and around Building Number 521 (the "Building" or "Building 521") located at 791 Neeson Road, City of Marina, County of Monterey, California, as shown on Exhibit A, attached to the Lease. The uses permitted by the Lease include tenant's commercial, non-aeronautical use of the leased premises for aviation-related manufacturing, assemblage or research and aviation-based services, supplies or retail including developing, designing, engineering, tooling, testing, manufacturing and the sale of composite aircraft components. Subject to obtaining a conditional use permit from the City, tenant may use the premises for

such other non-aviation-related uses as may be permitted by the conditional use permit. The tenant shall not use the leased premises, or any part thereof, or permit them to be used for any purpose other than the purpose specified herein without the consent of the City, such consent not to be unreasonably withheld.

2. The Lease provides the Assignor may assign the premises with the City's consent. Any such assignment shall not, in any way, affect or limit the liability of Assignor 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 Assignor, the consent of whom shall not be necessary.

3. On January 31, 2022, the City was notified of Assignor's intention to assign its interest in the Lease to Assignee.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged the parties agree as follows:

Article 1

Assignment of Lease.

For value received the undersigned Fort Ord Works, Inc., a California corporation, as lessee under the Lease and Assignor does hereby sell, transfer and assign to Assignee all right, title and interest in and to the Lease. In accepting assignment Assignee agrees, from the date the assignment becomes effective, to assume and perform all duties and obligations under the Lease as a direct obligation to the City.

Assignor shall remain liable for the performance of the provisions of the Lease. City shall send to Assignor any notice of default that City sends to Assignee. Assignor agrees to execute any and all documents necessary to effect the intent and purpose of this Assignment of Lease on demand.

The assignment of the Lease shall take effect on the date this document is fully executed by each party, or upon the date the Assignee provides insurance in accordance with the requirements of Article 11 of the Lease, whichever date is later, and Assignor shall give possession of the Premises to Assignee on that date.

Article 2**Assumption of Assignment of Lease**

For value received, the Assignee hereby assumes and accepts the foregoing Assignment of Lease by Assignor and assumes the obligations under the Lease. Such assumption and acceptance irrevocably bind Assignee and Assignee's successors in interest, heirs and personal representatives to the faithful performance of all terms and conditions of the Lease as direct obligations to the City to the same extent as if Assignee had been an original party thereto.

Assignee and Assignor agree to execute any and all documents necessary to effect the intent and purpose of this Assumption of Assignment of Lease on demand.

Article 3**Consent to Assignment of Lease**

The City hereby consents to the assignment of the Lease from Assignor to, and the assumption of the Lease by, the Assignee. The City's consent to the assignment is made without waiver of the restrictions concerning further assignment.

The City agrees to execute any and all documents necessary to effect the intent and purpose of this Consent to Assignment of Lease on demand.

Article 4**General Provisions**

All provisions hereof shall be binding on and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

In the event any portion of a promise or covenant contained in this Assignment of Lease, Assumption of Assignment of Lease and Consent to Assignment of Lease is held unreasonable or unenforceable in an unappealed final decision to which the City, Assignee and/or Assignor are bound by a court or agency having valid jurisdiction, the applicable party expressly agrees to be bound by each lesser covenant imposing the maximum duty permitted by law that is subsumed within the terms of such promise or covenant, as if it were separately stated and made part of this Assignment of Lease,

Assumption of Assignment of Lease and Consent to Assignment of Lease.

Assignor, Assignee, and City represent and acknowledge that they have each been provided with the opportunity to discuss and review the terms of this document with their respective attorneys before signing it and that they are freely and voluntarily signing this document in exchange for the benefits provided herein. Each further represents and acknowledges that a reasonable period of time within which to review the terms of this Assignment of Lease, Assumption of Assignment of Lease and Consent to Assignment of Lease.

Time is of the essence in the performance of each provision of this Assignment of Lease, Assumption of Assignment of Lease and Consent to Assignment of Lease.

Should any litigation be initiated between the parties hereto concerning this Assignment of Lease, Assumption of Assignment of Lease and Consent to Assignment of Lease or the rights or duties of either the City, Assignee or Assignor, the party prevailing in such action shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for attorney's fees in such action, which shall be determined by the court, or in a separate action brought for that purpose.

The individuals executing this Assignment of Lease, Assumption of Assignment of Lease and Consent to Assignment of Lease on behalf of the Assignor, the Assignee and the City represent and warrants that are duly authorized to execute and deliver this Assignment of Lease, Assumption of Lease and Consent to Assignment of Lease on behalf of said entity and that this document is binding upon said corporations and the City in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment, Assumption of Assignment and Consent to Assignment of Lease on the dates set forth below.

Attest: (Reso. No. 2022-____)

City of Marina ("City")
A California Charter City

Deputy City Clerk

By: _____
Its: _____

Date: _____, 2022

Approved as to Form:

Robert Rathie
Counsel for the City

Fort ORD Works, Inc. (“Assignor”)
A California Corporation

By: _____

Its: _____

Date: _____, 2022

By: _____

Its: _____

Date: _____, 2022

Joby Aero, Inc. (“Assignee”)
A Delaware Corporation

By: _____

Its: _____

Date: _____, 2022

By: _____

Its: _____

Date: _____, 2022

[All five above signatures to be notarized.]

EXHIBITS

EXHIBIT A

LEASE

DRAFT

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____)SS
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared

_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ Affix appropriate seal above

DRY

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____)SS
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared

_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ Affix appropriate seal above

DRY

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

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STATE OF _____)SS
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared

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WITNESS my hand and official seal.

Signature _____ Affix appropriate seal above

DRY

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

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STATE OF _____)SS
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared

_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ Affix appropriate seal above

DRY

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____)SS
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared

_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ Affix appropriate seal above

DRY

March 10, 2022

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

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of March 15, 2022

**CITY COUNCIL TO CONSIDER ADOPTING RESOLUTION NO. 2022-,
APPROVING AMENDMENT NO. 2 TO THE PROGRAM MANAGEMENT
SERVICES AGREEMENT BETWEEN THE CITY OF MARINA AND
WALLACE GROUP, AND AUTHORIZING THE CITY MANAGER TO
EXECUTE THE AMENDMENT ON BEHALF OF THE CITY SUBJECT TO
FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY.**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2022-, approving Amendment No. 2 to the Program Management Services between the City of Marina and Wallace Group (WG), to add to the scope of work for the program management services for multiple projects defined under the Capital Improvement Program (CIP) and Airport Capital Improvement Program (ACIP). **“Exhibit A-2”**
2. Increase the contract limit amount by \$1,288,548.04 for a total contract limit of \$2,601,794.04.
3. Authorizing the City Manager to execute the amendment on behalf of the City subject to final review and approval by the City Attorney.

BACKGROUND:

The City Council approved a two-year CIP and ACIP on June 18th, 2019. Program appropriations in the FY 19-20 and FY 20-21 budgets brings the CIP to \$58,923,848 in 35 projects and the ACIP to \$5,007,993 in 16 projects.

On April 7, 2020, the City Council passed Resolution No. 2020-30, approving a professional services agreement between the City of Marina and Wallace Group for Program Management Services for projects in the CIP.

On May 18, 2020, the City and Wallace Group entered into the Agreement for Program Management Services (the “Agreement”) to provide program management services pertaining to various City projects including, but not necessarily limited to, the Capital Improvement Program and the Airport Capital Improvement Program, for the City. The term of the Agreement ends on June 30, 2023, and compensation to the contractor under the Agreement was provided on a time and materials basis not to exceed \$703,696.

On June 15, 2021, the First Amendment was issued to provide further Program Management Services related to hazardous material abatement and removal of blighted buildings. In the First Amendment, the Section (A) of the Article 1 “Scope of Work” and the Section (a) of the Article 3 “Compensation” from the Agreement were deleted and replaced to increase the compensation cap into \$1,313,246.00.

According to the increase/changes in the scope of work related to the CIP and ACIP projects, City has received a cost proposal from Wallace Group attached hereto as “Exhibit A-2”, for the issuance of the Second Amendment to the Agreement for Program Management Services to increase the total compensation cap into \$2,601,794.04. “Exhibit A-2”

ANALYSIS:

On November 16, 2021, the City Council approved allocating \$51,930,00 and \$9,549,000 in the FY 22 and FY 23 budgets for the CIP projects, respectively. Also, the approved budgets for ACIP projects for the FY 22 and FY 23 are \$1,511,635 and \$1,997,600, respectively. Based on this approval, the scope of work for CIP and ACIP projects is expanded for FY 22-23.

The City regularly enters into various professional services contracts during the course of business to support delivery of capital improvements. A program management services contract with a consulting firm is one method to increase the capacity for managing and delivering capital improvements.

Wallace Group has the experience to provide program management services including bid document preparation, permitting, project bidding and engineering services during construction. Approval of the additional scope of work and associated increase in fee limit of \$1,288,548.04 to the Program Management Services contract is an expeditious and cost-effective way for the City to manage and complete the CIP and ACIP projects.

FISCAL IMPACT:

Authorization of the work scope change to the Program Management Services contract between the City of Marina and Wallace Group is estimated to cost the City \$1,288,548.04. These costs are anticipated in the multiple projects defined under CIP and ACIP. Sufficient funding is available in CIP and ACIP funding.

CONCLUSION:

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

Respectfully submitted,

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

REVIEWED/CONCUR:

Layne P. Long
City Manager
City of Marina

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING AMENDMENT NO. 2 TO THE ON-CALL CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES AGREEMENT BETWEEN THE CITY OF MARINA AND WALLACE GROUP AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY.

WHEREAS, on April 7, 2020 the City Council passed Resolution No. 2020-30, approving a professional services agreement between the City of Marina and Wallace Group for Program Management Services for projects in the Capital Improvement Program (CIP); and

WHEREAS, on May 18, 2020, the Program Management Services agreement between the City of Marina and Wallace Group was executed with a time and material compensation basis in an amount not to exceed of \$703,696.0; and

WHEREAS, on June 15, 2021, the First Amendment was issued to provide further Program Management Services related to hazardous material abatement and removal of blighted buildings and to increase the compensation cap to \$1,313,246.00.

WHEREAS, on November 16, 2021, the City Council approved allocating \$51,930,00 and \$9,549,000 budget for the FY 22 and FY 23 for the CIP projects, respectively. Also, the approved budgets for ACIP projects for the FY 22 and FY 23 are \$1,511,635 and \$1,997,600, respectively.

WHEREAS, the budget approval expands the scope of work for CIP and ACIP projects for FY 22-23.

WHEREAS, approval of the additional scope of work and associated increase in fee limit of \$1,288,548.04 to the Program Management Services contract is an expeditious and cost-effective way for the City to manage and complete the CIP and ACIP projects.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Marina does hereby adopt Resolution No. 2021- for the following actions:

1. Approving Amendment No. 1 to the Program Management Services between the City of Marina and Wallace Group (WG), to add to the scope of work for the program management services for the CIP and ACIP projects described in “**Exhibit A-2**”; and
2. Increase the contract amount limit by \$1,288,548.04 for a total contract amount of \$2,601,794.04; and
3. Authorizing the City Manager to execute the amendment on behalf of the City subject to final review and approval by the City Attorney.

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

ATTEST:

Anita Sharp, Deputy City Clerk

**SECOND AMENDMENT TO AGREEMENT
WITH CITY OF MARINA
AND WALLACE GROUP FOR
PROGRAM MANAGEMENT SERVICES**

THIS SECOND AMENDMENT (“Second Amendment”) to the Agreement for Program Management Services pertaining to City projects and to provide on-call services for the City on an as-needed basis as determined by the City Engineer is made this _____ 2022, by and between the City of Marina, a California charter city (“CITY”) and Wallace Group, a California Corporation (“CONTRACTOR”). CITY and CONTRACTOR are sometimes referred to herein collectively as the “Parties.”

Recitals

- A. On May 18, 2020, CITY and CONTRACTOR entered into the Agreement for Program Management Services (the “Agreement”) to provide program management services pertaining to various City projects including, but not necessarily limited to, the Capital Improvement Program and the Airport Capital Improvement Program, for the City. The term of the Agreement ends on June 30, 2023, and compensation to the CONTRACTOR under the Agreement was provided on a time and materials basis not to exceed \$703,696.
- B. On June 15, 2021 the First Amendment was issued to provide further Program Management Services related to hazardous material abatement and removal of blighted buildings. In the First Amendment, the Section (A) of the Article 1 “Scope of Work” and the Section (a) of the Article 3 “Compensation” from the Agreement were deleted and replaced to increase the compensation cap into \$1,313,246.00.
- B. The Agreement provides it may only be amended or modified by written agreement of the Parties. Both Parties now desire to amend the Agreement to increase the total annual compensation cap to provide additional compensation for program management and inspection services related to multiple projects under Capital Improvement Program (CIP) and Airport Capital Improvement Program (ACIP), described in “Exhibit A.”
- C. Only the numbered Articles of the Agreement which are being amended are set forth in this Second Amendment.

Terms & Conditions Amended

Now, therefore, the Parties agree to amend the Agreement as follows:

- 1. Article 1 “Scope of Work” Section (a) is deleted and replaced to read in its entirety:
 - (a) Contractor is hereby hired and retained by the City to work in a cooperative manner with the City to fully and adequately perform those services set forth in “Exhibit A”, “Exhibit A-1”, and “Exhibit A-2” attached hereto (“Scope of

Work”) and by this reference made a part hereof. The Contractor shall be available to perform services under this Agreement as needed during the term of the Agreement. With prior written notice to Contractor, City may elect to delete certain tasks of the Scope of Works at its sole direction.

2. Article 3 “Compensation” Section (a) is amended to read in its entirety:

(a) “City liability for compensation to Contractor under this Agreement shall only be to the extent of the present appropriation to fund this Agreement. For services to be provided under this Agreement, City shall compensate Contractor on a time and materials basis in an amount not to exceed **Two Million Six Hundred And One Thousand Seven Hundred And Ninety-Four Dollars And Four Cents (\$2,601,794.04)** in accordance with the provisions of this Section and the attached hereto as “Exhibit B” and incorporated herein by this reference.”

All other terms and conditions of the Agreement shall remain in full force and effect.

This Second Amendment may be executed in two (2) counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument. Counterpart may be delivered by facsimile, electronic mail (including pdf. or any electronic signature complying with the U.S.ESIGN Act of 2000, California’s Uniform Electronic Transactions Act (Cal. Civil Code 1633.1 et seq.) or other applicable law) or other transmission method and any counterpart so delivered shall be deemed to have been validly delivered and be valid and effective for all purposes. This Second Amendment consists of three (3) pages.

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment to the Agreement for CONTRACTOT to provide engineering and building permit services pertaining to City projects and development and to provide support services for the CITY on an as-needed basis as determined by the City Engineer on the date(s) and year written below.

CITY OF MARINA

Wallace Group, a California Corporation

By: _____
Layne Long
City Manager

By: _____
Name:
Its:

Date: _____ 2022

Date: _____ 2022

(Attestation & Approval follow)

ATTEST:

By: _____
Deputy City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

Exhibit A
CIP and ACIP projects to be Consultant Managed

Project Name		Proj Code (Finance)	Program Amount (1)
CIP			
1	Annual Street Resurfacing	APR1801	\$6,320,000
2	Community Center Playground Seating and Amenities	HSP1803	\$15,000
3	Vince DiMaggio Building Rain Gutter Replacement	APF 2003	\$25,000
4	California Avenue Pedestrian Crossing Installation	HSR 2005	\$75,000
5	Glorya Jean Tate Park Pump Track and Restroom Improvements	QLP 2006	\$350,000
6	Dunes Barracks Stabilization	QLP 2007	\$330,000
7	Arts Village Building Stabilization	EDF 2008	\$1,500,000
8	Duplex Housing Renovation	EDF 2010	\$450,000
9	Streetlight Replacement	HSR 2011	\$125,000
10	Equestrian Center Development	QLP 2018	\$850,000
11	Fire Station 3 Reroof and Cleanup	APF 2021	\$350,000
12	Salinas Avenue Widening	EDR 1904	\$490,000
13	Traffic Signal Maintenance	HSR 2012	\$200,000
14	Sea Haven Communit Park	QLP 2016	\$50,000
15	Preston Park Planning	QLP 2020	\$50,000
16	Stockade Demolition	TBD	\$2,050,000
CIP Totals			\$13,230,000

Wallace Group, Inc. Program Management Total \$592,853

ACIP			
1	Airport Building 504 Improvements	461	\$345,000
2	Airport Fuel Farm - Fuel Tank Replacement	480 / HSA18D4	\$300,000
3	Airport Pavement Maintenance	2003	\$274,000
4	Airport Building 533 Improvements	2004	\$175,000
5	Airport Building 524 Improvements	2006	\$140,000
6	Backup Power to Airport Fuel Farm	2008	\$36,000
7	Airport Building 510 New Roof	2102	\$105,000
8	Airport Gateway Sign	2103	\$35,000
9	Airport Storm Drain Mitigation	403	\$74,701
ACIP Totals			\$1,484,701

Wallace Group, Inc. Program Management Total \$110,843

Exhibit B - Rate Schedule

Exhibit A Standard Billing Rates



Engineering, Design & Support Services:

Prevailing Wage*

Assistant Designer/Technician	\$ 90
Designer/Technician I - IV	\$ 95 - \$125
Senior Designer I - III	\$138 - \$148
GIS Technical Specialist	\$135
Senior GIS Technical Specialist	\$145
Associate Engineer I - III	\$ 115 - \$135
Engineer I - IV	\$145 - \$160
Senior Engineer I - III	\$170 - \$180
Director	\$185
Principal Engineer/Consulting Engineer	\$215
Principal	\$230

Surveying Services:

Associate Survey Technician	\$ 95	
One-Person Survey Crew	\$160	\$195
Two-Person Survey Crew	\$215	\$290
Three-Person Survey Crew	\$275	\$370
Survey Technician I - IV	\$115 - \$139	
Land Surveyor I - III	\$145 - \$155	
Senior Land Surveyor I - III	\$160 - \$170	
Director	\$185	

Planning Services:

Associate Planner I - II	\$ 95 - \$105
Planner I - IV	\$128 - \$152
Senior Planner I - III	\$155 - \$165
Director	\$175

Landscape Architecture Services:

Associate Landscape Designer I - II	\$ 90 - \$100
Designer I - IV	\$110 - \$128
Landscape Architect I - IV	\$130 - \$145
Senior Landscape Architect I - III	\$147 - \$161
Director	\$165

Construction Management / Field Inspection Services:

Construction Office Tech I-III	\$ 95 - \$115	
Construction Inspector I - II	\$120 - \$135	\$155 - 160
Senior Construction Inspector	\$145	\$165
Assistant Resident Engineer I - II	\$140 - \$145	
Resident Engineer I - III	\$150 - \$160	
Senior Resident Engineer	\$170	
Director	\$180	

Public Works Administration Services:

Project Analyst I - IV	\$110 - \$140
Senior Project Analyst I - III	\$145 - \$155
Senior Environmental Compliance Specialist I - III	\$160 - \$170

Support Services:

Office Assistant	\$ 85
Project Assistant I - III	\$ 90 - \$100

Additional Professional Services:

Fees for expert witness preparation, testimony, court appearances, or depositions will be billed at the rate of \$300 an hour. As authorized in advance by the Client, overtime on a project will be billed at 1.5 times the employee's typical hourly rate.

Direct Expenses:

Direct expenses will be invoiced to the client and a handling charge of 15% may be added. Sample direct expenses include, but are not limited to the following:

- travel expenses
- sub-consultant services
- agency fees
- delivery/copy services
- mileage (per IRS rates)
- other direct expenses

Invoicing and Interest Charges:

Invoices are submitted monthly on an accrued cost basis in accordance with this Fee Schedule. A finance charge of 1.5% per month may be assessed on all balances that are thirty days past due.

Right to Revisions:

Wallace Group reserves the right to revise this Schedule of Fees on an annual basis, personnel classifications may be added as necessary.

***Prevailing Wage:**

State established prevailing wage rates may apply to some services and those rates are subject to change.

CONTRACT AMENDMENT

Project Name: Program Management Services	CA No. 1
Client Name: City of Marina	Project/Phase No. 1585-0001
Attention: Brian McMinn	Date: March 26, 2021
Address: 211 Hillcrest Avenue, Marina, California, 93933	

Wallace Group requests the Client's authorization to proceed with revisions to the contract agreement for the above referenced project as herein described. Approval below incorporates this document as a part of the original contract signed May 18, 2020. If approved, please return one signed original Contract Amendment to Wallace Group.

Description and Purpose of the Revision(s)

This amendment to the City of Marina Program Management Services is for managing the project delivery for the abatement and demolition of Phase 1: 47 wood barracks buildings and 31 duplex buildings, Phase 2: Six (6) wood barracks buildings and Phase 3: 13 barracks buildings. These buildings are at four areas in the City located at the former Fort Ord.

Also included is the preparation of plans, specifications and estimates, project bidding, engineering services during construction and closeout.

Below is the cost breakdown for this amendment:

PHASE 1:

1. Area 1 (City Park) ,47 buildings: \$292,350.00
2. Area 4 (Cypress Knoll), 31 duplex buildings: \$148,050.00
Total Phase 1: \$440,400.00

PHASE 2:

3. Area 2 (So of PBC Parcel) ,6 buildings: \$ 62,300.00

PHASE 3:

4. Area 3 (Eleventh Street), 13 buildings: \$106,850.00
Grand Total \$609,550.00

Proposal is based on the four areas to be delivered separately. If areas are bundled together cost will reduced. Cost breakdown is as shown Attachment A.

Revision(s) Represent:

- ☐ a change in previous instructions
☐ a change in Scope of Services
☒ other: Additional Work and Additional Funding

Revision(s) Fee:

- ☒ hourly (time & materials) \$609,550.00
☐ progress billing: \$
☐ not-to-exceed w/o authorization: \$

Revision(s) will be invoiced as:

- ☐ increase to an item within the existing contract
☒ a new item added to existing contract

Issued by,

WALLACE GROUP, a California Corporation

APPROVED BY CLIENT:

Kari E. Wagner, PE C66026
Principal

612 Clarion Court

San Luis Obispo

California 93401

T 805 544-4011

F 805 544-4294

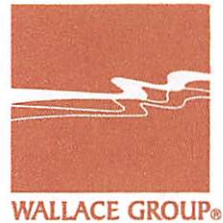
www.wallacegroup.us

Signature

Printed Name

Title

Date



CIVIL AND
TRANSPORTATION
ENGINEERING

CONSTRUCTION
MANAGEMENT

LANDSCAPE
ARCHITECTURE

MECHANICAL
ENGINEERING

PLANNING

PUBLIC WORKS
ADMINISTRATION

SURVEYING /
GIS SOLUTIONS

WATER RESOURCES

WALLACE GROUP
A California Corporation

612 CLARION CT
SAN LUIS OBISPO
CALIFORNIA 93401

T 805 544-4011

F 805 544-4294

10
www.wallacegroup.us

"Exhibit A-2"

No.	Project Name	Proj Code (Finance)	Program Amount FY2019-2021	Program Amount FY2021-2023	Approved WG PMS Amount	PROPOSED PMS AMENDMENT CIP FY 2021-2023
1	Annual Street Resurfacing	APR1801	\$6,320,000.00	\$6,980,000.00	\$100,067.00	\$25,000.00
2	California Avenue Pedestrian Crossing Installation	HSR 2005	\$75,000	\$370,000	\$7,125.00	\$25,900.00
3	Glorya Jean Tate Park Pump Track and Restroom Improvements	QLP 2006	\$477,952	\$1,100,000	\$25,861.00	\$44,000.00
4	Salinas Avenue Widening(*)	EDR 1904	\$50,000	\$3,250,000	\$36,206.00	\$227,500.00
5	Sea Haven Community Park (*)	QLP 2016	\$750,000	\$400,000	\$1,056.00	\$40,000.00
6	Preston Park Upgrade	QLP 2113		\$1,500,000		\$90,000.00
7	Sports Center Rehabilitation	QLF2004	\$185,000	\$3,500,000		\$221,100.00
8	City of Marina Entry sign and Landscaping	EDP1809		\$250,000		\$25,000.00
9	Pool Rehabilitation	QLF 1902		\$7,045,000		\$40,000.00
10	City Council Chambers ADA and Media Broadcast Improvements	QLF 2002	\$425,000	\$60,000		\$48,500.00
11	Dunes Park Development	QLP 2017	\$500,000	\$9,400,000		\$200,000.00
12	Traffic signal ADA Upgrade	HSR2106		\$100,000		\$10,000.00
13	Glorya Jean Tate Park Improvements	QLP2119		\$660,000		\$66,000.00
14	Locke Paddon Park Maintenance & Pond Management	EDP1809		\$350,000		\$35,000.00
CIP Program Amount Total			\$21,177,952	\$35,430,000	\$1,202,409	\$1,098,000

"Exhibit A-2"

CITY OF MARINA AIRPORT CAPITAL IMPROVEMENT PROGRAM							
No.	Project Name	Proj Code (Finance)	Program Amount FY2019-2021	Program Amount FY 2021-2023	WG PMS Approved Amount	TOTAL PMS AMENDMENT CIP FY 2019-2021	TOTAL PMS AMENDMENT CIP FY 2021-2023
1	Airport Pavement Maintenance	2003	\$275,334	\$179,000	\$20,246		\$14,320
2	Airport Building 533 Improvements	2004	\$175,925	\$475,000	\$12,931		\$46,358
5	Airport Building 510 New Roof	2102	\$220,243		\$7,758	\$23,958.68	
6	Airport Storm Drain Mitigation	403		\$74,701	\$5,520	\$2,231.29	
7	Airport Bldg 507 Improvement	2201		\$115,000			\$23,000
8	Aiport Bldg 510 Improvements	2202		\$75,000			\$15,000
9	Airport Bldg 520 Improvement	2203		\$65,000			\$13,000
10	Airport Airfield Safety Improvements	2205		\$100,000			\$20,000
11	Airport Bldg 514 Improvement	2301		\$25,000			\$5,000
12	Airport Bldg 518 Improvement	2302		\$30,000			\$15,000
13	Airport Bldg 526 Improvement	2303		\$30,000			\$15,000
14	Airport Landscape Improvement	2304		\$80,000			\$12,000
Airport CIP Program Amount Total				\$1,283,701.00		\$26,189.97	\$164,358.07

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of March 15, 2022

**CITY COUNCIL TO CONSIDER ADOPTING RESOLUTION NO. 2022-,
APPROVING AMENDMENT NO. 1 TO THE ON-CALL
ARCHITECTURAL SERVICES AGREEMENT BETWEEN THE CITY OF
MARINA AND JEFF KATZ ARCHITECTURE INCREASING THE ANNUAL
CONTRACT LIMIT TO \$900,000 FOR FISCAL YEAR 2022-2023, AND
AUTHORIZING THE CITY MANAGER TO EXECUTE THE
AMENDMENT ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW
AND APPROVAL BY THE CITY ATTORNEY.**

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2022-, approving Amendment No. 1 to the On-Call Architectural Services agreement between the City of Marina and Jeff Katz Architecture (JKA) increasing the annual contract limit to \$900,000 for fiscal year 2022-2023 (“**EXHIBIT A**”).
2. Authorizing the City Manager to execute the amendment on behalf of the City subject to final review and approval by the City Attorney.

BACKGROUND:

On November 16, 2021, the City Council adopted Resolution No. 2021-119, approving the final 2021-22 & 2022-23 Budget. Included in the Capital Improvement Program (CIP) portion of the budget was an allocation of \$3,500,000 in blight escrow bond funding to redevelop the sports center building on the former Fort Ord.

On July 7, 2021, the City Council passed Resolution No. 2020-79, approving a professional services agreement between the City of Marina and Jeff Katz Architecture for Architectural Services for projects in the CIP.

On December 2, 2021, the City entered into an agreement with the Jeff Katz Architecture to provide on-call architecture services associated with various City projects.

On December 14, 2021, the City Council received a presentation on the Sports Center including options to include roller sports in the programmed facilities. City Council directed staff to begin design of the Sports Center, Aquatic Center, and an outdoor Sports Pavilion.

The City received a cost proposal for the architectural design, bidding document preparation, and architectural support during construction for the Sports Center Building Rehabilitation Project in the amount of \$913,500 (“**EXHIBIT B**”). The JKA proposal also schematic design and design development to a 30% level for the Aquatic Center and outdoor Sports Pavilion.

ANALYSIS:

The annual contract limit for the On-Call Architectural Services between the City of Marina and JKA is \$300,000 and is not sufficient to issue Service Orders for full scope of the proposed architectural services for the Sports Center Building Rehabilitation Project.

The majority of the JKA work will occur during Fiscal Year 2022-2023. Increasing the annual compensation limit for the on-call architectural services agreement with JKA to \$900,000 for the next fiscal year will allow for completion of construction documents and bidding of the Sports Center Building Rehabilitation Project.

JKA has the experience to provide architectural services including bid document preparation and architectural services during construction. They are familiar with the project and have provided design concepts and financial feasibility studies for the Sports Center as well as the Aquatic Center. Approval of the increase in the contract limit to \$900,000 for the next fiscal year is an expeditious and cost-effective way for the City to manage the design of the Sports Center Building Rehabilitation Project.

Approval of this request allows issuance of service orders to JKA for the full scope of architectural design, bidding document preparation, and architectural support during construction for the Sports Center Building Rehabilitation Project as well as schematic design and design development to a 30% level for the Aquatic Center and outdoor Sports Pavilion.

Staff and JKA will return to the City Council with presentation of the schematic design and design development of the Sports Center, Aquatic Center, and Sports Pavilion for input during the overall construction document preparation.

FISCAL IMPACT:

Sufficient funding is allocated within the approved CIP budget to cover the full scope of the proposed architectural services for Sports Center Building Rehabilitation Project.

CONCLUSION:

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

Respectfully submitted,

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

REVIEWED/CONCUR:

Layne P. Long
City Manager
City of Marina

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING AMENDMENT NO. 1 TO THE ON-CALL ARCHITECTURAL SERVICES AGREEMENT BETWEEN THE CITY OF MARINA AND JEFF KATZ ARCHITECTURE INCREASING THE ANNUAL CONTRACT LIMIT TO \$900,000 FOR FISCAL YEAR 2022-2023; AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY.

WHEREAS, on November 16, 2021, the City Council adopted Resolution No. 2021-119, approving the final 2021-22 & 2022-23 Budget. Included in the Capital Improvement Program (CIP) portion of the budget was an allocation of \$3,500,000 in blight escrow bond funding to redevelop the sports center building on the former Fort Ord; and

WHEREAS, on July 7, 2021, the City Council passed Resolution No. 2020-79, approving a professional services agreement between the City of Marina and Jeff Katz Architecture for Architectural Services for projects in the CIP; and

WHEREAS, on December 14, 2021, the City Council received a presentation on the Sports Center including options to include roller sports in the programmed facilities. City Council directed staff to begin design of the Sports Center, Aquatic Center, and an outdoor Sports Pavilion; and

WHEREAS, on December 2, 2021, the City entered into an agreement with the Jeff Katz Architecture to provide on-call architecture services associated with various City projects.

WHEREAS, the City received a cost proposal for the architectural design, bidding document preparation, and architectural support during construction for the Sports Center Building Rehabilitation Project in the amount of \$913,500 (“Exhibit B”). The JKA proposal also schematic design and design development to a 30% level for the Aquatic Center and outdoor Sports Pavilion; and

WHEREAS, the annual contract limit for the On-Call Architectural Services between the City of Marina and JKA is \$300,000 and is not sufficient to issue Service Orders for full scope of the proposed architectural services for the Sports Center Building Rehabilitation Project; and

WHEREAS, increasing the annual compensation limit for the on-call architectural services agreement with JKA to \$900,000 for the next fiscal year will allow for completion of construction documents and bidding of the Sports Center Building Rehabilitation Project; and

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Marina does hereby adopt Resolution No. 2022- for the following actions:

1. Approving Amendment No. 1 to the On-Call Architectural Services agreement between the City of Marina and Jeff Katz Architecture (JKA) increasing the annual contract limit to \$900,000 for fiscal year 2022-2023 (“**Exhibit A**”); and
2. Authorizing the City Manager to execute the amendment on behalf of the City subject to final review and approval by the City Attorney.

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

ATTEST:

Anita Sharp, Deputy City Clerk

**AMENDMENT No. 1 TO AGREEMENT
BETWEEN CITY OF MARINA
AND JEFF KATZ ARCHITECTURE FOR
ON-CALL ARCHITECTURE SERVICES**

THIS AMENDMENT No. 1 (“Amendment No. 1”) to the Agreement for On-Call Architecture Services pertaining to various City projects and to provide on-call support services for the City on an as-needed basis as determined by the City Engineer is made this _____ 2022, by and between the City of Marina, a California charter city (“CITY”) and Jeff Katz Architecture, a California Corporation (“CONTRACTOR”). CITY and CONTRACTOR are sometimes referred to herein collectively as the “Parties.”

Recitals

- A. On December 2, 2021, CITY and CONTRACTOR entered into the Agreement for On-Call Architecture Services (the “Agreement”) for services to provide architectural services pertaining to various City projects and to provide on-call support services for the City on an as-needed basis as determined by the City Engineer. The term of the Agreement ends on June 30, 2024 and compensation to the Contractor under the Agreement was limited to \$300,000 per fiscal year.
- B. The Agreement provides it may only be amended or modified by written agreement of the Parties. Both Parties now desire to amend the Agreement to increase the total annual compensation limit under the Agreement to \$900,000 for fiscal year 2022/2023.
- C. Only the numbered Articles of the Agreement which are being amended are set forth in this First Amendment.

Terms & Conditions Amended

Now, therefore, the Parties agree to amend the Agreement as follows:

Article 3 “Compensation” Section (a) is deleted and replaced to read in its entirety:

“City liability for compensation to Contractor under this Agreement, as amended, shall only be to the extent of the present appropriation to fund this Agreement. For services to be provided under this Agreement City shall compensate Contractor in accordance with the provisions of this Section and the hourly rate(s) and reimbursable schedule(s) attached hereto as Exhibit B and incorporated herein by this reference. The total annual compensation under this Agreement as amended shall be limited to: (1) Three Hundred Thousand (\$300,000) for the period December 2, 2021 to June 30, 2022; (2) Nine Hundred Thousand Dollars (\$900,000) for the period July 1, 2022 to June 30, 2023; (3) On July 1, 2023 and continuing for the remaining term of this Agreement the total amount of compensation under this Agreement as amended shall be limited to Three Hundred Thousand Dollars (\$300,000) per fiscal year. All fiscal years commence on July 1 and end on June 30 and compensation during any portion of a fiscal year shall be pro-rated. For purposes of calculating and pro-rating compensation due each fiscal year shall be considered to have 365 days.”

All other terms and conditions of the Agreement as amended shall remain in full force and effect.

This Amendment No. 1 may be executed in two (2) counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument. Counterpart may be delivered by facsimile, electronic mail (including pdf. or any electronic signature complying with the U.S.ESIGN Act of 2000, California's Uniform Electronic Transactions Act (Cal. Civil Code 1633.1 et seq.) or other applicable law) or other transmission method and any counterpart so delivered shall be deemed to have been validly delivered and be valid and effective for all purposes. This Amendment No. 1 consists of two (2) pages.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 1 to the Agreement for CONTRACTOR to provide on-call architecture services pertaining to various City projects and development and to provide support services for the CITY on an as-needed basis as determined by the City Engineer on the date(s) and year written below.

CITY OF MARINA

Jeff Katz Architecture, a California Corporation

By: _____
Layne Long
City Manager

By: _____
Name:
Its:

Date: _____ 2022

Date: _____ 2022

(Attestation & Approval follow)

ATTEST: (Reso. 2022-____)

By: _____
Deputy City Clerk

APPROVED AS TO FORM:

By: _____
For the City Attorney



March 08, 2022

Layne Long
City Manager
City of Marina
211 Hillcrest Avenue
Marina, CA 93933

RE: Architectural Services – Marina Aquatic and Sports Center Design Phase – REVISED

Dear Layne,

Thank you for the opportunity to provide this proposal for Design and Engineering Consulting services to further develop the previous conceptual designs for the existing Aquatic and Sports Center facilities as well as the addition of a Sports Pavilion. This proposal is based on the following services: Architectural, Landscape Architecture, Structural, Civil, Aquatic, Mechanical and Electrical Engineering services as well as updated financial analysis and programming input from ISG.

We are excited to continue working with the City of Marina on this project utilizing the previous programming, feasibility and master planning for the rehabilitation of the existing Aquatic and Sports Center buildings, as well as an ancillary sports pavilion, on the site of the former Fort Ord. We estimate the overall construction cost for all project phases to be about \$19 million. However, per our discussions we will design the overall project (including all three facilities) to a 30% level to establish phasing and budgeting for the project to be completed in three separate phases, if desired.

Based on our discussions we have proposed the following scope of work. However, if there are scope items that are not included, or that are not necessary, we would be happy to re-assess the scope and fee as needed.

- Schematic Design for the Sports Center, Sports Pavilion and Aquatic Center – this includes site verification, review of record drawings, review of proposed program/design, and basis of design for each discipline for each facility. Civil will take a broader look at the overall site and assist in site design options and site utility planning. Coordination with the City will be required to define limits of public way improvements and any traffic impacts. JKA and ISG will work with the City to facilitate community engagement and verification of the program during this phase and a schematic level estimate will be completed reflecting three separate project phases for the project. This effort is done concurrently for all three facilities and is intended as one deliverable/set of documents.
- Design Development for the Sports Center, Sports Pavilion and Aquatic Center – based on the approved program this phase will provide further design development for each facility and the immediate site area including required parking, path of travel, and site circulation. This phase will take the design and coordination for both the building(s) and the site to about a 30% level. This will allow us to propose informed phasing options for the 3 main building components and establish limits of work for each based on phasing, site utilities and site

improvements. This effort is done concurrently for all three facilities and is intended as one deliverable/set of documents.

- Construction Documents for the Sports Center – For this proposal we have included Construction Documents for the Sports Center only as a part of the proposed fixed fee services. We have provided estimated fees for Construction Documents for both the Aquatic Center and Sports Pavilion for budgeting purposes. However, it is anticipated that these estimated fees will need to be adjusted based on the final phasing and limits of work established as a part of the Design Development phase.
- Construction Administration follows the same approach as the Construction Documents phase above.

We anticipate working with you to develop a detailed project schedule and a list of milestones and client meetings, as well as community meetings, that facilitate consensus while keeping the project on the intended schedule. Throughout the project we will update the operations and financial analysis for all facilities. We will also provide coordination with the surrounding park master plan and assessment of impacts to our project including site circulation, parking, signage, storm water and utilities.

The following sections further outline our intended scope of services for each phase of the project:

SCHEMATIC DESIGN PHASE (Sports Center, Aquatic Center, Sports Pavilion)

1. Meet with Project Team to discuss any adjustments to the established budget and program as well as potential phasing, schedule and design issues.
2. Develop Community Engagement approach and schedule.
3. Develop existing site and building plans based on field investigation and review of any as-builts.
4. Confirm Aquatic Program, Capacities, and Mechanical Program for the Aquatic Center.
5. Determine overall utility load requirements for the project to ensure adequate capacity for the facilities at the existing point of connection.
6. Determine impacts to Site Utilities including lighting, audio, electrical, gas, sewer and water.
7. Prepare updated program for each facility based on initial project finding, base plans and modified per discussions with the project team and community engagement.
8. Develop aquatic and building design alternatives as necessary and review with the City
9. Create updated base drawings and reconcile with current design (Sports Center, Aquatic Center, Sports Pavilion)
10. Prepare initial Site Planning including preliminary storm water hydrology, fire access, grading, utilities and phasing analysis.

11. Prepare Schematic Site Plan, Floor Plan(s), and initial design model for review.
12. Present to Project Team for schematic design review and approval to proceed with current program and scope extents. At this stage any adjustments to the scope/program should be identified.
13. Refine Schematic Plans to reflect overall scope requirements. These plans will be schematic in nature and are intended only to provide information with regard to overall extent of the project.
14. Prepare basis of design for additional design elements, aquatics, building systems, site lighting, site structures, planting and irrigation, hardscape, and miscellaneous items with imagery where necessary to communicate design approach.
15. Prepare interior and exterior renderings of proposed design and provide an initial walk-thru of the 3D model for design review.
16. Prepare Opinion of Probably Cost and meet with the Project Team to discuss budget, program and design issues.
17. During this phase ISG will build on, update, and enhance its prior work on both the Aquatic Center and the Sports Center. This analysis will consider the potential phasing of the Aquatic Center and Sports Center options, developing independent financial and operational analysis for each facility as well as an integrated analysis of the combined facility. This analysis will also include the analysis of the programming, operational, and financial impact of two new elements: the Sports Pavilion (multi-sport rink configuration) and a support service building connecting the Aquatic Center and the Sports Center.
18. JKA and ISG will also work with the city to facilitate public and community engagement with stakeholders, users, and community organizations as well as updated market research.
19. This phase is anticipated to be 6 weeks long and include two in-person and two digital meetings.
20. After obtaining approval of Schematic Design, we will proceed into Design Development.
- ~~21. This phase also includes Project Initiation services including Topographic Survey, Records Review & Base Map Prep. These fees have been identified separately.~~

DESIGN DEVELOPMENT PHASE (Sports Center, Aquatic Center, Sports Pavilion)

1. Refine design of each facility (Sports Center, Aquatic Center, Sports Pavilion) to approximately 30% design completion, including indication of the establish phasing approach including Site Plans, Architectural Plans, and Engineering Plans.
2. Meet with the Building Department and any applicable utility companies or other points of coordination as necessary to establish expectations for the project and understand timelines for incorporation into the project schedule(s).
3. Updated phasing analysis including delineation of the recommended scope and limits of work for each phase.
4. Prepare preliminary material and equipment selections for review.

5. Prepare updated design renderings and project walk thru.
6. Develop Landscape Planting and Irrigation design.
7. Develop low voltage basis of design with City input as required.
8. Develop and refine plans as needed for each discipline including site plan(s), grading plan(s), utility plan(s), electrical/lighting plan(s), landscape plan(s), mechanical plan(s), structural plan(s) and architectural plans to describe design intent for each of the project elements and systems.
9. Aquatics plans for pool and water features, slide, piping and equipment including Pool Wall Profile, Shapes/Depths, and develop updated Water Activities and Features including the refinement of Mechanical Equipment, Development of Mechanical Equipment Layout and Utility Requirements for new design
10. Prepare preliminary Interior Elevations, Building Sections, Reflected Ceiling Plan and Roof Plan.
11. Preliminary Water, Sewer and Drainage Study.
12. Preliminary Stormwater Control Plan in accordance with City requirements.
13. Prepare preliminary grading, structural, mechanical and electrical engineered plans for the new design
14. Develop project estimate including proposed phasing.
15. Provide submittal and presentation to Project Team for design review and approval to proceed with current design direction. At this stage any adjustments to the design and phasing should be identified.
16. This phase is anticipated to be 12 weeks long and include one in-person and two digital meetings.
17. After obtaining approval of Design Development, we will proceed into Construction Documents for the Sports Center.
18. During Design Development ISG will continue to work with the JKA Team to update the program, management, and financial models and analysis based on final design elements. The Services in the Design Development and Construction Phases will also include an analysis of any cost cutting or value engineering based on impact on program, participation, management, and financial operations.

CONSTRUCTION DOCUMENTS PHASE (Sports Center Only)

1. Prepare drawings and specifications suitable for permitting and bidding of the Sports Center improvements to clearly delineate the Contractor's scope of work, including required architectural, civil, structural, mechanical, landscape and electrical design (including low voltage).
2. Submittals will be made to the City at 60% CDs, 90% CDs, 100% CDs and will include plans and specifications. A final FOR CONSTRUCTION document set will be distributed for construction once permitting is complete. It is assumed that the City will provide all required General and Supplementary Conditions and Bidding Information.

3. Submit plans to City Building Department for Building permit plan check and perform all required revisions to construction documents based on Building Department's plan check comments (Note: plan check and permit fees are not included).
4. Prepare final Signage, Fixtures, Furnishings and Equipment plans for the Sports Center.
5. Prepare updated cost opinion at each milestone.
6. Provide drawings and specifications (in electronic format) for bid package. For this proposal it is assumed that the City will advertise, assemble and distribute bid packages to General Contractors.
7. Interpret and clarify contract documents for bidders and assist in issuing addenda as required.
8. Attend a Pre-Bid walkthrough at the site with all interested contractors.
9. Participate in bid review of contractor's detailed cost breakdown and assist the City in evaluation of the bids.
10. This phase is anticipated to be 12 weeks long and include one in-person and three digital meetings.

CONSTRUCTION ADMINISTRATION PHASE (Sports Center Only)

1. Develop RFI responses as required to support Owner requests and to coordinate Contractor questions in the field
2. Coordinate all RFI review by provided consultants
3. Set Up and Manage an RFI log to enable all stakeholders to verify status
4. Consultant shall provide ASI's as required to reflect changes in scope or modifications made necessary due to changed field conditions based on the direction of the Owner
5. Where required, the ASI's shall include all drawings and specifications required to obtain the construction permits and approvals of the governmental authorities having jurisdiction over the Project.
6. Review Submittals as required by Contract Documents and coordinate all submittal review by provided consultants
7. Set Up and Manage a submittal review document to enable all stakeholders to verify status of submittals
8. *Construction Phase Services to be provided by Architect only. JKA will coordinate with Owners Rep (Wallace Group) as required. If additional consultant support is needed during construction, it will be provided as an additional service on an hourly basis. ~~Coordinate Work of provided Consultants~~*
9. Provide bi-weekly on-site project support through the course of construction and as requested by the Owner
10. This phase is anticipated to be 32 weeks long and include sixteen on site meetings and sixteen digital meetings.

ASSUMPTIONS & ADDITIONAL SERVICES

The following items are not included in the Proposed Services but can be provided as additional services only after written authorization is received. Unless a subsequent fixed fee proposal is provided, the work will be done on an hourly basis according to the terms established under our as-needed contract with the City.

Additional Services not included in our proposed scope of work include:

1. Title search and easement identification.
2. Additional design or drawings for tree relocation, temporary irrigation, drainage or detention systems beyond the project boundary.
3. Additional design or drawings for offsite water, sewer or storm drain systems outside the project area.
4. Design of fire access, fire access design or agency processing beyond our immediate site area.
5. Site signage design including overall park signage/wayfinding.
6. Assessment of Management and/or Partnership Options, Funding and Sponsorship Opportunities, Economic Impact Analysis or any ISG services during construction or startup.
7. Boundary Survey/Mapping, *Topographic Survey*, Traffic Analysis, Signal Design and/or Median Improvements.
8. Off-site Improvements, Work/Design in Public-Right-of-Way
9. Recycled Water Design, Plans, and DEH permitting.
10. Fence, Gate, Perimeter, and/or Retaining Wall Design.
11. Fire Protection Design and Engineering, Flow Test, Fire Sprinkler Design, Sprinkler Demand Calculations (anticipated as a deferred submittal).
12. Environmental Studies and Reports.
13. Geotechnical Engineering and Reports, Infiltration Testing.
14. Evaluation report providing recommendations for pavements, structures, earthworks, utilities, storm water infiltration, etc.
15. Additional Park improvements including playgrounds, sports fields, or site lighting.
16. HVAC studies and Life Cycle Cost Analysis.
17. Noise Studies and/or Acoustical studies and analysis.
18. Revisions to Contract Documents resulting from Owner requested changes to documents previously approved by the Owner, or due to code or zoning changes made subsequent to Owner approval.
19. Preparing separate construction document packages for discretionary permits, alternate bid items or project phasing beyond that described in this proposal.

20. Attendance of any public hearings and/or additional meetings other than detailed in this proposal.
21. Services required because of significant changes in the project (not due to the design team's acts or omissions) including, but not limited to, size, quality, complexity, schedule, or the method for bidding and contracting for construction.
22. Processing change requests for Owner requested changes, and for unforeseen site conditions, after bid, including revisions to Contract Documents, processing approval of revisions through the Building Department, and Change Order negotiation.
23. Providing services in conjunction with implementing substitutions proposed by the Contractor and making subsequent revisions to Contract Documents resulting from such.
24. Providing services made necessary by the default of the Contractor, by major deficiencies in the work of the Contractor, or by failure of performance of either the Owner or the Contractor under the Contract for Construction.
25. Providing services in conjunction with arbitration proceedings or legal proceedings, except where the Architect is a party to such proceedings.
26. Providing "Special Inspection" services required by law or the Contract Documents.
27. Preparation of documentation to process the project through the US Green Building Council as a LEED project.
28. Design of photo-voltaic electrical generation systems.
29. Plan check and permit fees are not included and are to be paid by the City.
30. Anticipated Reimbursable Expenses for travel, delivery, printing and reproduction costs have been included in the proposed fixed fee. If additional expenses are accrued they will be billed at a rate of 1.15 times the expense.

We propose to provide the stated basic services on an hourly time and materials basis ~~for a fixed~~ not to exceed a fee of Nine Hundred Thirteen Thousand Five Hundred Dollars (\$913,500.00). Invoices will be submitted monthly for the hours of work accrued during the month on any particular phase.

The breakdown for the proposed services is as follows:

Schematic Design Phase	\$ 154,200.00
<i>Supplemental Survey if Deemed Necessary</i>	\$ 7,900.00
Design Development Phase	\$ 362,000.00
Construction Documents Phase	\$ 293,400.00
Construction Administration Phase	\$ 84,500.00
Included Reimbursables	\$ 11,500.00
Total	\$ 913,500.00

All travel and reimbursable costs have been anticipated/included in this proposal and any additional terms are consistent with our as-needed contract.

For reference and budgeting purposes we have estimated design & engineering fees for the following additional design phases. These services can be further assessed and refined into a fixed fee proposal if requested at any time throughout the project.

Construction Documents – Aquatic Center	\$ 365,000.00
Construction Documents – Sports Pavilion	\$ 225,000.00
Construction Administration – Aquatic Center	\$ 215,000.00
<u>Construction Administration – Sports Pavilion</u>	<u>\$ 96,000.00</u>
Total	\$ 901,000.00

We appreciate the opportunity to present this proposal and we are excited about the opportunity to continue to work with you on this project. If you have any questions regarding this proposal, please do not hesitate to contact me at (619) 698-9177.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Matt Kingdon', with a long horizontal flourish extending to the right.

Matt Kingdon
Principal

March 9, 2022

Item No. **11a**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
March 15, 2022

**CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-,
APPROVING ADVERTISING AND CALL FOR BIDS FOR THE CITY
PARK BARRACKS AND CYPRESS KNOLLS BUILDINGS BLIGHT
REMOVAL 2022 PROJECT.**

RECOMMENDATION:

It is requested that the City Council consider adopting Resolution 2022- approving advertising and call for bids for the execution of the City Park Barracks and Cypress Knolls Buildings Blight Removal 2022 Project.

BACKGROUND:

The closure of Fort Ord resulted in land being deeded to the City of Marina in an “as-is” condition. The land contains numerous buildings that served the former fort which have deteriorated since 1994 and need to be removed as part of the land redevelopment.

Some of the buildings are on property that the City will retain and must be removed or renovated for adaptive reuse. These include 62-65 barracks buildings and 260 duplex housing units on what was planned to be the Cypress Knolls development.

Although the Fort Ord Reuse Authority (FORA) sunsetted on June 30, 2020, FORA secured bond funding for blight removal prior to closure. Included in the bond funding are FORA bond trust funds allocated to the City amounting to \$8,561,968 and escrow bonds that are projected to generate \$6.5M in blight removal funding through 2025.

On November 16, 2021, the City Council adopted Resolution No. 2021-119, approving the final 2021-22 & 2022-23 Budget. Included in the Capital Improvement Program (CIP) portion of the budget was an allocation of \$4,100,000 in blight bond funding to remove the barracks buildings on the site of the future Dunes Park and \$1,600,000 in blight bond funding to remove 31 housing duplexes along 3rd Avenue and Rendova Avenue on the site of the future Cypress Knolls Development.

On September 15, 2020, October 27, 2020, and January 20, 2021, the Marina City Council adopted Resolution No. 2020-127, 2020-140 and 2021-11, respectively, receiving staff presentation on blight removal and blight removal projects and providing direction to staff on priorities for blight removal.

On April 7, 2020, the City Council passed Resolution No. 2020-30, approving a professional services agreement between the City of Marina and Wallace Group (WG) for Program Management, On-call Design and On-call Construction Management, and Construction Inspection services for projects in the Capital Improvement Program (CIP) and Airport Capital Improvement Programs (ACIP).

On May 4, 2021, the City Council passed Resolution No. 2021-42 approving amendment No. 1 to the Program Management Services between the City of Marina and Wallace Group, to add to the scope of work the program management services for the hazardous material abatement and blighted building removal of Phase 1: 47 barracks buildings located at the Dunes City Park and 31 duplex buildings located in Cypress Knoll , and future Phase 2: six barracks buildings on CDEC Hill at Eleventh Street and future Phase 3: 13 barracks located on Dunes Park South.

ANALYSIS:

Wallace Group was directed by staff to prepare bidding documents (plans, specifications, and estimates) for the phase 1 of the blight removal project. The goal for this project is for the abatement, proper removal, and disposal of 45 barracks and miscellaneous debris, including debris from two burnt buildings at the proposed City Park located along Second Avenue and 8th Street and 30 duplex buildings and miscellaneous debris including debris from one burnt building, at the Cypress Knoll area along Rendova Avenue and Third Avenue for future park and or residential development. Site plans are shown in **EXHIBITS A AND B**.

The work in general is not limited to; installation and maintenance of BMPs from Storm Water Pollution Prevention Plan, abatement and proper removal and disposal of all hazardous materials on the sites described in the Pre-demolition Hazardous Material Inspection Reports, tree removal and trimming as shown on the plans and further described on the Specifications and Arborist Report, protection of Monterey gilia, nesting birds and bats, demolition and proper disposal of buildings, roadways, walkways and retaining walls, rough grading and site restoration. Above mention reports are available for review at the office of the City Public Works.

On March 10, 2022 the City of Marina Planning Commission held an open public hearing and adopted the draft Resolution No. 2022-xx, **EXHIBIT C**, approving the removal of 32 trees at the proposed City Park at the Dunes location and five trees at the Cypress Knolls location in order to remove the blighted buildings and all healthy trees to be replaced at 2:1 ratio. The Planning Commission added the following conditions of approval which will be incorporated in the final resolution on record:

1. Pictures of all trees to be retained and removed will be kept by the project arborist and made available on the City website.
2. The project arborist shall monitor the landscaping plan based on the current drought conditions in California.
3. Site 1 (Dunes): Sixty-four (64) replacement trees of comparable size and species shall be incorporated into the City Park landscaping plan when it is prepared, based on the conceptual design plans approved by the City Council.
4. Site 2 (Cypress Knolls): Ten (10) replacement trees shall be required as part of the Development Agreement for Cypress Knolls of comparable size and species. Replacement of Cypress Knolls trees shall be delayed until the development of the project is given final direction by the City Council.

Bidding documents includes provisions for tree protections and tree trimming per the Planning Commission conditions of approval. Tree replacement will be deferred and incorporated in the development of the Dunes Park and Cypress Knolls. Protective fencing will be installed around the Monterey Gilia, fencing placement will be supervised by the biologist before start of work. A biological survey for nesting birds and bats will be conducted 30 days before start of work. Provisions to adjust work to mitigate nesting birds and bats are incorporated on the bidding documents. Denise Duffy & Associates is retained for arborist and biological survey and inspection during execution of the blight abatement and removal.

FISCAL IMPACT:

This action, approving advertising and call for bids does not have fiscal impact. Capital Improvement Project funding, HSF2101 for Barracks Blight Removal with a funding amount of \$4,100,000.00 and HSF2103 for the Cypress Knolls Building Removal (Partial) with a funding amount of \$1,600,000.00 for a total project funding of \$5,700,000.00.

The Engineer's Opinion of Probable Construction Cost for this project is \$4,750,000.00. If an award is made for this project funding will come from CIP HSF2101 and HSF2103.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City of Marina Planning Division determined that this action, approving advertising and call for bids for the City Park Barracks and Cypress Knolls Buildings Blight Removal 2022 Project is Categorically Exempt under CEQA Guidelines per Article 19, Section 15304, minor alteration to land.

CONCLUSION:

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

Respectfully submitted,

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

REVIEWED/CONCUR:

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

Layne P. Long
City Manager
City of Marina

RESOLUTION NO. 2022-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
APPROVING ADVERTISING AND CALL FOR BIDS FOR THE CITY PARK
BARRACKS AND CYPRESS KNOLLS BUILDINGS BLIGHT REMOVAL 2022
PROJECT.

WHEREAS, the closure of Fort Ord resulted in land being deeded to the City of Marina in an “as-is” condition. The land contains numerous buildings that served the former fort which have deteriorated since 1994 and need to be removed as part of the land redevelopment.

Some of the buildings are on property that the City will retain and must be removed or renovated for adaptive reuse. These include 62-65 barracks buildings and 260 duplex housing units on what was planned to be the Cypress Knolls development; and

WHEREAS, the Fort Ord Reuse Authority (FORA) sunsetted on June 30, 2020, FORA secured bond funding for blight removal prior to closure. Included in the bond funding are FORA bond trust funds allocated to the City amounting to \$8,561,968 and escrow bonds that are projected to generate \$6.5M in blight removal funding through 2025; and

WHEREAS, on September 15, 2020, October 27, 2020, and January 20, 2021, the City Council of the City of Marina adopted Resolution No. 2020-127, 2020-140 and 2021-11, respectively, receiving staff presentation on blight removal and blight removal projects and providing direction to staff on priorities for blight removal; and

WHEREAS, On May 4, 2021, the City Council passed Resolution No. 2021-42 approving amendment No. 1 to the Program Management Services between the City of Marina and Wallace Group, to add to the scope of work the program management services for the hazardous material abatement and blighted building removal of Phase 1: 47 barracks buildings located at the Dunes City Park and 31 duplex buildings located in Cypress Knoll, and future Phase 2: six barracks buildings on CDEC Hill at Eleventh Street and future Phase 3: 13 barracks located on Dunes Park South; and

WHEREAS, Wallace Group was directed by staff to prepare bidding documents (plans, specifications, and estimates) for phase 1 of the blight removal project. The goal for this project is for the abatement, proper removal, and disposal of 45 barracks and miscellaneous debris, including debris from two burnt buildings at the proposed City Park located along Second Avenue and 8th Street and 30 duplex buildings and miscellaneous debris including debris from one burnt building, at the Cypress Knoll area along Rendova Avenue and Third Avenue for future park and or residential development. Site plans are shown in Exhibits A and B; and

WHEREAS, the work in general is not limited to; installation and maintenance of BMPs from Storm Water Pollution Prevention Plan, abatement and proper removal and disposal of all hazardous materials on the sites described in the Pre-demolition Hazardous Material Inspection Reports, tree removal and trimming as shown on the plans and further described on the Specifications and Arborist Report, protection of Monterey gilia, nesting birds and bats, demolition and proper disposal of buildings, roadways, walkways and retaining walls, rough grading and site restoration. Above mentioned reports are available for review at the office of the City Public Works; and

WHEREAS, on March 10, 2022 the City of Marina Planning Commission had an open public hearing and adopted Resolution No. 2022-xx, Exhibit C, approving the removal of 32 trees at the proposed City Park at the Dunes location and five trees at the Cypress Knolls location in order to remove the blighted buildings and all healthy trees to be replaced at 2:1 ratio. The Planning Commission added the following conditions of approval which will be incorporated in the final resolution on record:

1. Pictures of all trees to be retained and removed will be kept by the project arborist and made available on the City website.
2. The project arborist shall monitor the landscaping plan based on the current drought conditions in California.
3. Site 1 (Dunes): Sixty-four (64) replacement trees of comparable size and species shall be incorporated into the City Park landscaping plan when it is prepared, based on the conceptual design plans approved by the City Council.
4. Site 2 (Cypress Knolls): Ten (10) replacement trees shall be required as part of the Development Agreement for Cypress Knolls of comparable size and species. Replacement of Cypress Knolls trees shall be delayed until the development of the project is given final direction by the City Council; and

WHEREAS, bidding documents includes provisions for tree protections and tree trimming per the Planning Commission conditions of approval. Tree replacement will be deferred and incorporated in the development of the Dunes Park and Cypress Knolls. Protective fencing will be installed around the Monterey Gilia, fencing placement will be supervised by the biologist before start of work. A biological survey for nesting birds and bats will be conducted 30 days before start of work. Provisions to adjust work to mitigate nesting birds and bats are incorporated on the bidding documents. Denise Duffy & Associates is retained for the arborist and biological survey and inspection during execution of the blight abatement and removal; and

WHEREAS, this action, approving advertising and call for bids does not have fiscal impact. Capital Improvement Project funding, HSF2101 for Barracks Blight Removal with a funding amount of \$4,100,000.00 and HSF2103 for the Cypress Knolls Building Removal (Partial) with a funding amount of \$1,600,000.00 for a total project funding of \$5,700,000.00. If an award is made for this project funding will come from CIP HSF2101 and HSF2103; and

WHEREAS, the City of Marina Planning Division determined that this action, approving advertising and call for bids for the City Park Barracks and Cypress Knolls Buildings Blight Removal 2022 Project is Categorically Exempt under CEQA Guidelines per Article 19, Section 15304, minor alteration to land; and

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

1. Approve the advertisement and call for bids for the execution of the City Park Barracks and Cypress Knolls Buildings Blight Removal 2022 Project.

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

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ATTEST:

Bruce C. Delgado, Mayor

Anita Sharp, Deputy City Clerk

TABLE 1 - CITY PARK (PROJECT SITE 1)

TEMPORARY ADDRESS	PREVIOUS USE	BUILDING TYPE	APPROXIMATE AREA (SF)	NOTES
T-2109	HQ	B1-SINGLE STORY	992	ABATE AND REMOVE BUILDING
T-2111	HQ	B1-SINGLE STORY		BURNED, ABATE AND REMOVED DEBRIS
T-2112	HQ	B1-SINGLE STORY	992	ABATE AND REMOVE BUILDING
T-2113	HQ	B1-SINGLE STORY	992	ABATE AND REMOVE BUILDING
T-2114	HQ	B1-SINGLE STORY	992	ABATE AND REMOVE BUILDING
T-2115	HQ	B1-SINGLE STORY	992	ABATE AND REMOVE BUILDING
T-2116	HQ	B1-SINGLE STORY	992	ABATE AND REMOVE BUILDING
T-2110	HQ	B1-SINGLE STORY	1000	ABATE AND REMOVE BUILDING, INCLUDING SHED
T-2189	ARM STORAGE	B1-SINGLE STORY	1144	ABATE AND REMOVE BUILDING
T-2190	HQ	B1-SINGLE STORY	1144	ABATE AND REMOVE BUILDING
T-2192	ARMS STORAGE	B1-SINGLE STORY		DEMOLISHED, REMOVE AND DISPOSE OF TEMPORARY STRUCTURES AND SITE DEBRIS
T-2191	ARMS STORAGE	B1-SINGLE STORY	1144	ABATE AND REMOVE BUILDING
T-2193	ARMS STORAGE	B1-SINGLE STORY	1144	ABATE AND REMOVE BUILDING
T-2194	ARMS STORAGE	B1-SINGLE STORY	1144	ABATE AND REMOVE BUILDING
T-2195	HQ	B1-SINGLE STORY	1144	ABATE AND REMOVE BUILDING
T-2196	HQ	B1-SINGLE STORY	1144	ABATE AND REMOVE BUILDING
T-2129	DAY ROOM	B2-SINGLE STORY	2206	ABATE AND REMOVE BUILDING
T-2130	DINING	B2-SINGLE STORY	2206	ABATE AND REMOVE BUILDING
T-2131	DINING	B2-SINGLE STORY	2206	ABATE AND REMOVE BUILDING
T-2132	DINING	B2-SINGLE STORY	2206	ABATE AND REMOVE BUILDING
T-2133	DINING	B2-SINGLE STORY	2206	ABATE AND REMOVE BUILDING
T-2134	DINING	B2-SINGLE STORY	2206	ABATE AND REMOVE BUILDING
T-2135	DINING	B2-SINGLE STORY	2206	ABATE AND REMOVE BUILDING
T-2136	DINING	B2-SINGLE STORY	2206	ABATE AND REMOVE BUILDING
T-2149	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING
T-2150	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING
T-2151	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING
T-2152	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING
T-2153	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING
T-2154	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING
T-2155	OPERATIONS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING
T-2156	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING
T-2169	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING
T-2170	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING
T-2171	BARACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING
T-2172	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING
T-2173	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING
T-2174	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING
T-2175	OPERATIONS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING
T-2176	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING
T-2209	BARRACKS	B3-TWO STORY		BURNED, NO WORK REQUIRED
T-2210	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING
T-2211	BARRAKCS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING
T-2212	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING
T-2213	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING
T-2214	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING
T-2215	BARRACKS	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING
T-2216	HQ	B3-TWO STORY	4720	ABATE AND REMOVE BUILDING

NOTES:

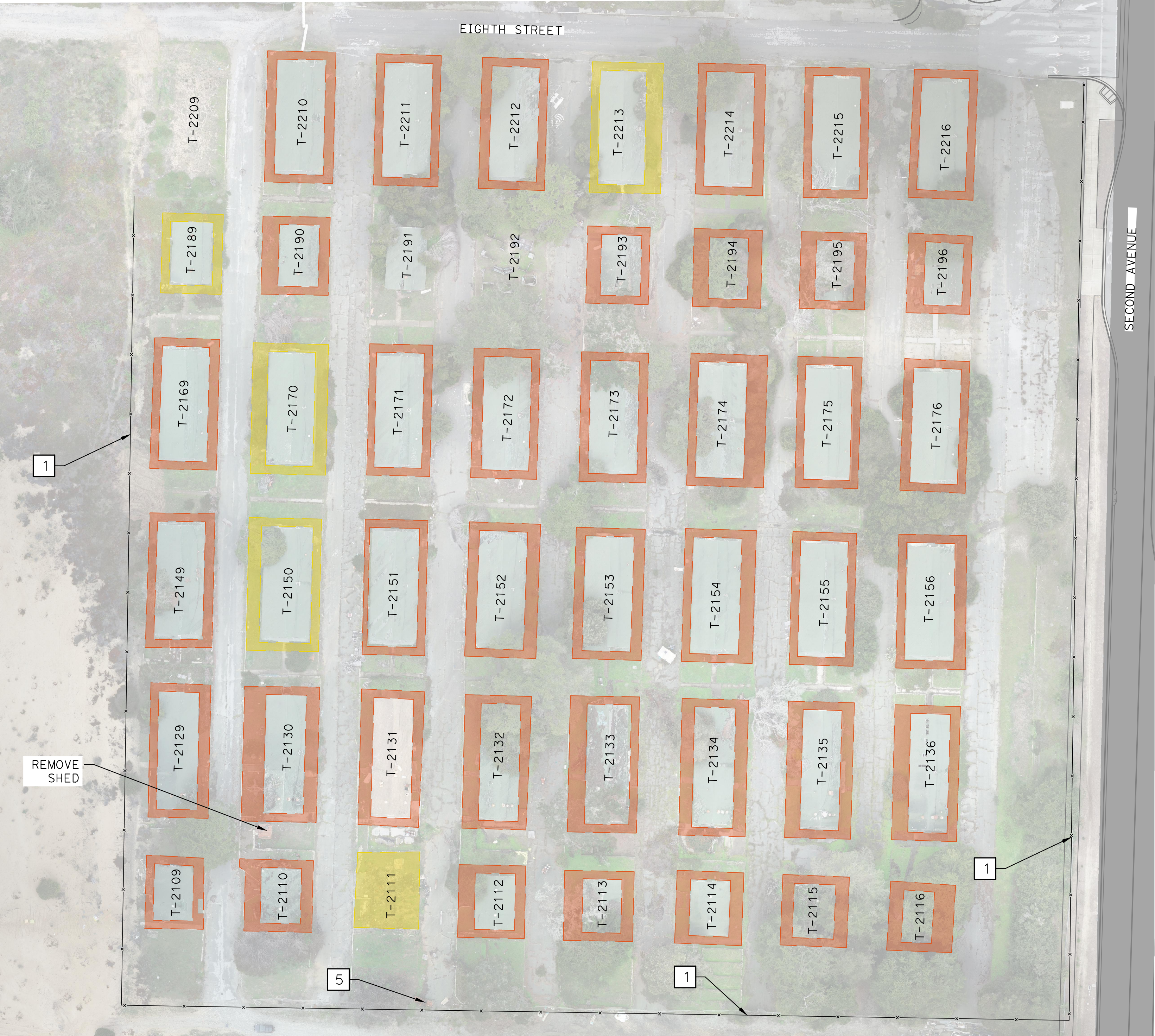
1. INSTALL TEMPORARY SECURITY CHAINLINK FENCE AROUND THE PERIMETER OF THE JOBSITE. CONTRACTOR MAY UTILIZE EXISTING CHAINLINK FENCE. EXISTING FENCE THAT IS USED SHALL BE PROTECTED DURING EXECUTION OF WORK AND SHALL BE RESTORED TO EQUAL OR BETTER CONDITION.

2. CONTRACTOR SHALL INSTALL ALL NECESSARY BMPS SHOWN ON THE SWPPP. SEE WPC SHEETS.

3. TREES TO BE REMOVED OR TRIMMED, SEE SHEET TR-1.

4. ALL BUILDINGS SHALL BE ABATED AS DESCRIBED IN TABLE 1 AND PER SPECIFICATIONS. ABATED BUILDINGS AND OTHER SITE DEBRIS SHALL BE REMOVED AND PROPERLY DISPOSED
5. BURNT CAR TO BE REMOVED AND DISPOSED PROPERLY.

6. ALL DRUMS TO BE DISPOSED AS HAZADOUS MATERIAL. CONTRACTOR HAS OPTIONS TO TEST CONTENTS AND DISPOSE ACCORDIANGLY.



CITY PARK PLAN
1"=50'

LEGEND:

- 6" SOIL REMEDIATION, SEE SHEET CD-3
- 3" SOIL REMEDIATION, SEE SHEET CD-3

FILE NAME: 1585-0001-00_DM-1.DWG
3/8/2022 10:38 AM
ZACH CAMPANG

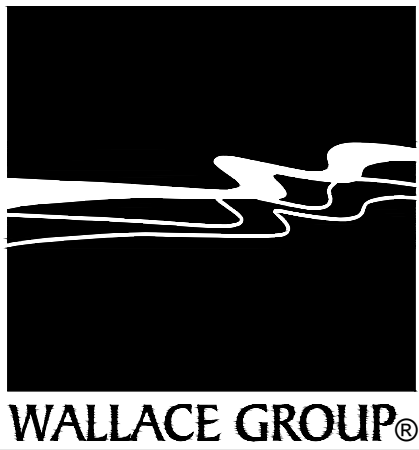


211 Hillcrest Avenue
Marina, CA 93933

CITY OF MARINA
DEPARTMENT OF PUBLIC WORKS

SCALE: HORIZ
VERT
ORIGINAL SCALE IN INCHES
FOR REDUCED PLANS
0 1 2

REVISIONS					
NO.	BY	DATE	DESCRIPTION	APPROVED BY	DATE
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CIVIL AND TRANSPORTATION ENGINEERING
CONSTRUCTION MANAGEMENT
LANDSCAPE ARCHITECTURE
MECHANICAL ENGINEERING
PLANNING
PUBLIC WORKS ADMINISTRATION
SURVEYING / GIS SOLUTIONS
WATER RESOURCES
612 CLARION COURT
SAN LUIS OBISPO, CA 93401
T 805 544-4011 F 805 544-4294
www.wallacegroup.us

PROJECT ENGINEER
PLANS APPROVAL DATE



CITY PARK BARRACKS AND CYPRESS KNOLL
BUILDINGS BLIGHT REMOVAL 2022 PROJECT

DEMOLITION PLAN

DM-1

DESIGNED BY EMC	DRAWN BY ZVC	CHECKED BY EMC	JOB NUMBER 1585-0001	SHEET 3	OF 14
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TABLE 2 - CYPRESS KNOLL (PROJECT SITE 2)

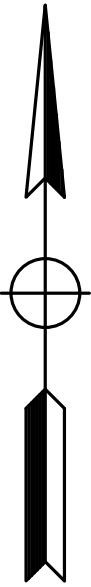
TEMPORARY ADDRESS	PREVIOUS USE	BUILDING TYPE	APPROXIMATE AREA (SF)	NOTES
224 & 226 HAYES CIRCLE	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
233 & 235 HAYES CIRCLE	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
300 & 302 HAYES CIRCLE	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
301 & 303 HAYES CIRLE	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
304 HAYES CIRCLE	BARRACKS	B1-SINGLE STORY		PARTIALLY BURNED, ABATE AND REMOVE REMAINING DEBRIS
305 & 307 HAYES CIRCLE	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
124 & 126 CARSWELL STREET	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
128 & 130 CARSWELL STREET	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
129 & 131 CARSWELL STREET	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
200 & 202 CARSWELL STREET	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
204 & 206 CARSWELL STREET	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
100 & 102 RENDOVA ROAD	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
101 & 103 RENDOVA ROAD	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
104 & 106 RENDOVA ROAD	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
105 & 107 RENDOVA ROAD	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
200 & 202 RENDOVA ROAD	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
201 & 203 RENDOVA ROAD	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
204 & 206 RENDOVA ROAD	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
205 & 207 RENDOVA ROAD	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
208 & 210 RENDOVA ROAD	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
200 & 202 3RD AVENUE	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
201 & 203 3RD AVENUE	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
204 & 206 3RD AVENUE	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
301 & 303 3RD AVENUE	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
100 & 102 BOOKER STREET	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
101 & 103 BOOKER STREET	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
104 & 106 BOOKER STREET	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
105 & 107 BOOKER STREET	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
117 & 119 YOUNG STREET	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
120 & 122 YOUNG STREET	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING
121 & 123 YOUNG STREET	BARRACKS	DUPLEX-SINGLE STORY	2874	ABATE AND REMOVE BUILDING

NOTES:

1. INSTALL TEMPORARY SECURITY CHAINLINK FENCE AROUND THE PERIMETER OF THE JOBSITE. CONTRACTOR MAY UTILIZE EXISTING CHAINLINK FENCE. EXISTING FENCE THAT IS USED SHALL BE PROTECTED DURING EXECUTION OF WORK AND SHALL BE RESTORED TO EQUAL OR BETTER CONDITION.
2. INSTALL TEMPORARY SECURITY CHAINLINK FENCE ROUND THE PERIMETER OF BUILDING WHERE WORK IS EXECUTED. CONTRACTOR MAY RELOCATE SECURITY FENCE TO THE NEXT BUILDING WHERE WORK IS EXECUTED.
3. CONTRACTOR SHALL INSTALL ALL NECESSARY BMPS SHOWN ON THE SWPPP. SEE WPC SHEETS.
4. TREES TO BE REMOVED OR TRIMMED, SEE SHEET TR-1.
5. ALL BUILDINGS SHALL BE ABATED AS DESCRIBED IN TABLE 2 AND PER SPECIFICATIONS. ABATED BUILDINGS AND OTHER SITE DEBRIS SHALL BE REMOVED AND PROPERLY DISPOSED

LEGEND:

- 6" SOIL REMEDIATION, SEE SHEET CD-3
- 3" SOIL REMEDIATION, SEE SHEET CD-3



CYPRESS KNOLL PLAN
1"=150'

FILE NAME: 1585-0001-00 DM-1.DWG
3/8/2022 10:39 AM
ZACH CAMPANG

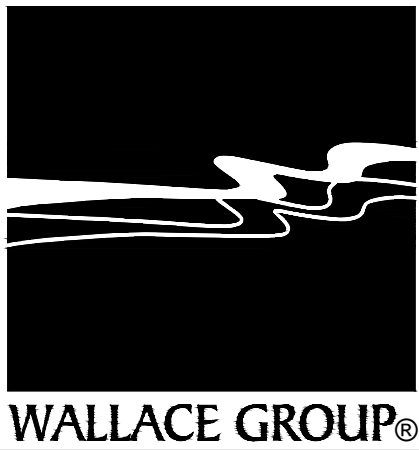


211 Hillcrest Avenue
Marina, CA 93933

CITY OF MARINA
DEPARTMENT OF PUBLIC WORKS

SCALE: HORIZ
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ORIGINAL SCALE IN INCHES
FOR REDUCED PLANS
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REVISIONS					
NO.	BY	DATE	DESCRIPTION	APPROVED BY	DATE
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SAN LUIS OBISPO, CA 93401
T 805 544-4011 F 805 544-4294
www.wallacegroup.us

PROJECT ENGINEER
PLANS APPROVAL DATE



CITY PARK BARRACKS AND CYPRESS KNOLL
BUILDINGS BLIGHT REMOVAL 2022 PROJECT

DEMOLITION PLAN

DM-2

DESIGNED BY	DRAWN BY	CHECKED BY	JOB NUMBER	SHEET	OF
EMC	ZVC	EMC	1585-0001	4	14

Item No. **7b**

Chair and Members
Of the Marina Planning Commission

Planning Commission Meeting
of March 10, 2022

RECOMMENDATION TO OPEN A PUBLIC HEARING, TAKE ANY TESTIMONY FROM THE PUBLIC, AND CONSIDER ADOPTING A RESOLUTION RECOMMENDING THAT THE COMMUNITY DEVELOPMENT DIRECTOR APPROVE THE REMOVAL OF 34 TREES AT THE PROPOSED CITY PARK AT THE DUNES LOCATION AND 5 TREES AT THE CYPRESS KNOLLS LOCATION IN ORDER TO REMOVE BLIGHTED BUILDINGS. ALL HEALTHY TREES TO BE REPLACED AT 2:1 RATIO. EXEMPT FROM CEQA PER ARTICLE 19, SECTION 15304 (MINOR ALTERATIONS TO LAND).

RECOMMENDATION:

1. Open a public hearing and take any testimony from the public, and;
2. Adopt a resolution of the Planning Commission of the City of Marina recommending that the Community Development Director approve the removal of thirty-two (32) trees to be removed at the City Park at the Dunes (APN: 031-221-008) and five (5) trees to be removed at the Cypress Knolls location (APN: 031-201-005).

GENERAL SITE INFORMATION:

	Project Site 1	Project Site 2
Location:	City Park at the Dunes APN 031-221-008	Cypress Knolls APN 031-201-005
General Plan:	Mixed Use	Multi-Family Residential
Zoning:	UV-SP (University Villages / Specific Plan)	R4 (Multi Family Residential District)
Site Area / Dimensions:	15.02 acres	154.56 acres
Owner / Applicant	City of Marina	City of Marina

BACKGROUND:

On February 17, 2021 the City Council adopted Resolution No. 2021-11 to authorize blight removal funding and blight removal projects.

February 1, 2022 Elvie Camacho of Wallace Group applied on behalf of the City of Marina's Public Works Department for two tree removal permits for properties owned by the City of Marina.

On February 2, 2022 Associate Planner Nicholas McIlroy walked both sites with Elvie Camacho and her team to understand the site and the arborist report.

On February 9, 2022 Associate Planner Nicholas McIlroy walked the City Park site with Arborist and Project Coordinator Patric Krabacher and noted that the trees scheduled for removal were mostly in a state of decline.

On February 17, 2022 Patric Krabacher, Project Manager for Denise Duffy and Associates Inc. provided a compliance memorandum for the blight removal project (EXHIBIT D). The memorandum includes mitigation measures for Monterey gilia, nesting birds and special-status bat species that will be included as conditions of approval in the attached resolution and as part of the blight removal that will be heard by the City Council.

The arborist reports submitted to the City on February 17, 2022 (EXHIBIT B and C) contains the following results, observations, and recommendations:

PROJECT DESCRIPTION:

Tree Removal

Site 1 (City Park):

The February 17, 2022 updated arborist survey flagged 32 trees to be removed at the future City Park within the Dunes site. The report notes that the trees are located next to blight buildings so that their roots grow under the foundation or are blocking access and will impact the required blight removal activities and therefore the following trees must be removed:

- Seventeen (17) *Acacia sp.* (Acacia) trees in fair health
- Ten (10) *Pinus radiata* (Monterey Pine) in poor health
- Four (4) *Hesperocyparis macrocarpa* (Monterey Cypress) in poor health
- One (1) *Eucalyptus sp.* (Eucalyptus) in poor health
- One (1) *Pinus muricata* (Bishop Pine) in fair health
- One (1) *Pittosporum undulatum* (Australian Cheesewood) in fair health

Site 2 (Cypress Knolls):

The January 27, 2022 survey flagged 5 trees to be removed at the Cypress Knolls site. The report notes that the trees are located next to blight buildings so that their roots grow under the foundation or are blocking access and will impact the required blight removal activities and therefore the following trees must be removed:

- Four (4) *Acacia sp.* (Acacia) trees in fair health
- One (1) *Leptospermum laevigatum* (Australia Tea Tree) in fair health

Tree Replacement

The removal of all healthy trees on City of Marina property including thirty-two (32) at the City Park and five (5) trees at Cypress Knolls are required to be replaced at a 2:1 ratio for a total of 78 replacement trees. The arborist recommends the following replacement plan:

- Site 1: Sixty-four (68) replacement trees will be incorporated into the City Park landscaping plan when it is prepared.
- Site 2: Ten (10) replacement trees will be required as part of the Development Agreement for Cypress Knolls.

PROJECT ANALYSIS

The trees proposed for removal are dead or are in poor condition and showing severe signs of decay, disease, and insect infestations as detailed in the arborist report. These trees must be removed due to their location on both project sites in order to remediate the soil and demolish the blighted buildings. Where possible native trees that are in fair and good condition will be limbed or trimmed prior to demolition so that they can be retained. Therefore, the tree removal will have as small of an impact on the future urban forest and allow flexibility with how the two sites will be developed with existing mature trees.

The locations of Monterey Gilia surveyed by Dennis Duffy and Associates between 2006 and 2021 show no Monterey Gilia (5 individuals or more) near where the trees will be removed in Cypress Knolls (EXHIBIT D). Mitigation measures 6 through 8 from the certified EIR have been added to the resolution to mitigate any disturbance of the areas that do have documented Monterey Gilia.

CORRESPONDENCE

Staff received an email from Mike Owen regarding this project (EXHIBIT E).

CONFLICT OF INTEREST

Commission members are subject to all aspects of the Political Reform Act. Commission members must not make, participate in making, or attempt to influence in any manner a governmental decision which he/she knows, or should know, may have a material effect on a financial interest. Staff is not aware that any Commissioner owns property within 500 feet of either project site.

ENVIRONMENTAL REVIEW:

The City of Marina Planning Division determined the project is exempt from the California Environmental Quality Act (CEQA) Guidelines (Article 19, Section 15304) because the project proposes minor alterations to land.

CONCLUSION:

This request is submitted for Planning Commission consideration and possible action.

Prepared by Associate Planner, Nicholas McIlroy

Exhibits

A- Resolution

B- City Park Arborist Report dated February 17, 2022

C- Cypress Knolls Arborist Report dated February 17, 2022

D- Compliance Memorandum for City of Marina Blight Removal Project 2022-
Cypress Knolls

E- Correspondence

EXHIBIT A

RESOLUTION NO. 2022-XX

MARINA RECOMMEND THE COMMUNITY DEVELOPMENT DIRECTOR APPROVE THE REMOVAL OF 34 TREES AT THE PROPOSED CITY PARK AT THE DUNES LOCATION AND 5 TREES AT THE CYPRESS KNOLL'S LOCATION FOR BLIGHTED REMOVAL. ALL HEALTHY TREES TO BE REPLACED AT 2:1 RATIO. EXEMPT FROM CEQA PER ARTICLE 19, SECTION 15304 (MINOR ALTERATIONS TO LAND).

WHEREAS, on February 17, 2021 the City Council adopted Resolution No. 2021-11 to authorize blight removal funding and blight removal projects; and

WHEREAS, two arborist reports were submitted to the City on February 17, 2022 (**EXHIBIT B and C**) that evaluated the health and number of trees to be removed and contains tree replacement recommendations; and

WHEREAS, on February 17, 2022 Patric Krabacher, Project Manager for Denise Duffy and Associates Inc. provided a compliance memorandum for the blight removal project (**EXHIBIT D**). The memorandum includes mitigation measures for Monterey gilia as incorporated below; and

WHEREAS, the removal of all healthy trees on City of Marina property including thirty-two (32) at the City Park (APN 031-221-008) and five (5) trees at Cypress Knolls (APN 031-201-005) are required to be replaced at a 2:1 ratio for a total of 78 replacement trees. The arborist recommends the following replacement plan:

- City Park: Sixty-four (68) replacement trees will be incorporated into the City Park landscaping plan when it is prepared in the future to be verified by Staff.
- Cypress Knolls: Ten (10) replacement trees will be required as part of the Development Agreement for Cypress Knolls to be verified by Staff.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Commission of the City of Marina that it hereby approves RESOLUTION 2022-XX subject to the following required findings and conditions of approval.

Findings

1. The trees proposed for removal are dead or are in poor condition and showing severe signs of decay, disease, and insect infestations as detailed in the arborist report. These trees must be removed due to their location on both sites in order to remediate the soil and demolish the buildings. Where possible native trees that are in fair and good condition will be limbed or trimmed prior to demolition so that they can be retained.
2. The locations of Monterey Gilia surveyed by Dennis Duffy and Associates between 2006 and 2021 (**EXHIBIT D**) show no Monterey Gilia (5 individuals or more) where the trees will be removed in Cypress Knolls (Project Site 2).

Conditions of Approval

1. That replacement trees shall be allowed to develop their natural form and shall not be trimmed as a topiary or other unnatural form. All tree trimming shall conform to trimming standards.
2. Tree Removal and Protection Plan. Tree removal information shall be provided on the demolition and grading permit prior to issuance. All tree protection shall be installed and approved by the grading inspector prior to removal or retention of any trees. The tree removal and protection plan shall include:
 - a. Trees approved for removal and trees to be preserved;
 - b. Tree protection guideline notes to include an objectively observable maintenance and care plan and program to be implemented to ensure the continued health and care of other trees on the property during construction in accordance with tree protection guidelines adopted;
 - c. All trees scheduled for preservation which may be at risk of injury or harm during the removal of trees approved for removal or during grading, trenching or other activities associated with the development or use of a property shall be temporarily fenced in a bright color (typically orange mesh fencing). Temporary fencing shall be installed prior to the beginning of tree removals, grading or demolition; and
 - d. Applicant to work with Staff to ensure that the arborist is on-site as needed during the fencing and tree removal for both sites.
3. Work should be timed to avoid the breeding and nesting season for raptors and other protected avian species. If work must occur during the avian breeding and nesting season (approximately February 1 through September 15), surveys for nesting birds shall be conducted no more than 15 days prior to project activities in all areas within 300 feet of the project footprint that may provide suitable nesting habitat. If nesting birds are identified during surveys, an appropriate buffer shall be imposed within which no work or disturbance will take place (generally 300 feet in all directions). A qualified biologist shall be on-site during work re-initiation in the vicinity of the nest offset to ensure that the buffer is adequate and that the nest is not stressed and/or abandoned. No work shall proceed in the vicinity of an active nest until such time as all young are fledged, or until after September 16, when young are assumed fledged.
4. Mitigation Measures: the following biological mitigation measures required by the certified EIR shall be implemented during the project:

Monterey gilia Mitigation A-4

- To avoid potential impacts to Monterey gilia until the City-wide Section 2081 ITP is issued, the following mitigation measures shall be implemented prior to the commencement of any ground- disturbing activities within the project site:
 - A qualified biologist shall direct the placement of protective fencing surrounding all documented Monterey gilia populations within the project, this may require a survey to be conducted prior to the onset of construction. No construction activities shall be allowed within the protective fencing.

- Grading, excavating, and other activities that involve substantial soil disturbance shall be planned and carried out in consultation with a qualified hydrologist, engineer, or erosion control specialist, and shall utilize standard erosion control techniques to minimize erosion and sedimentation in the areas containing all documented Monterey gilia populations within the project.
- No construction equipment shall be serviced or fueled within 50 feet of areas containing all documented Monterey gilia populations within the project.
- Irrigation systems shall be designed to minimize runoff or irrigation water into all documented Monterey gilia populations within the project.

Nesting Birds Mitigation A-6:

- To mitigate potentially significant impacts to nesting raptors resulting from removal of trees during nesting season (the nesting season is March 1 to September 15), pre-construction (i.e. no more than 30 days prior to construction) surveys for active nests shall be conducted by a qualified biologist within 250 feet of proposed construction activities; pre-construction surveys are not necessary outside the nesting season. If active nests are found, a suitable construction buffer shall be established by a qualified biologist until the young of the year have fledged. Alternatively, construction activities that may affect nesting raptors can be timed to avoid the nesting season.

Special-Status Bat Species Mitigation A-7:

- Prior to construction (e.g., building demolition and tree removal), a qualified biologist shall survey the Project site for the presence of special-status bat species. If special-status bat species are present, the following measures shall be implemented:
 - Removal of buildings that contain the bats shall not occur if maternity bat roosts are present (typically maternity roosts are present between April 15 and August 1; however, this timeframe does not apply to all species).
 - No building removal shall occur within 30 feet of the maternity roost until all young bats have fledged - as determined by a qualified biologist.
 - If special-status bats are present but there is not an active maternity roost, the building(s) containing the bats shall not be demolished or removed until the bats have been excluded using exclusionary devices under the supervision of a qualified bat specialist.

PASSED AND ADOPTED by the Planning Commission of the City of Marina at a regular meeting duly held on the 10th day of March 2022, by the following vote:

AYES, MEMBERS:

NOES, MEMBERS:
ABSENT, MEMBERS:
ABSTAIN, MEMBERS:

Chairperson

ATTEST:

Guido F. Persicone, AICP
Community Development Department
City of Marina



MEMORANDUM

Date: March 7, 2022

To: Brian McMinn, Public Works Director/City Engineer
City of Marina

From: Patric Krabacher, ISA Certified Arborist 11759
Denise Duffy & Associates, Inc.

RE: Arborist Report for the City of Marina Blight Removal Project 2022 – City Park

Denise Duffy & Associates, Inc. (DD&A) is contracted by the City of Marina (City) to provide on-call environmental consulting services for City projects. In support of the Blight Removal Phase of the City Park Project (project or proposed project), located within City limits and within the boundaries of the University Villages Specific Plan (UVSP), DD&A conducted an analysis of trees within the vicinity of 47 buildings which are proposed for demolition. The analysis is based on a tree inventory conducted by DD&A in October 2019 for the Dunes on Monterey Bay Project (Dunes Project) and on a site visit conducted by DD&A in December 2021 to update the results of the tree inventory. This Arborist Report documents the results of the tree analysis, recommends tree removal, or trimming where necessary to facilitate remediation and demolition, and recommends mitigation to avoid, minimize, or mitigate potential adverse impacts of tree removal, or trimming.

METHODS

Limitations

This report only identifies potential project impacts to trees and potential adverse impacts resulting from tree removal; no other protected or sensitive biological resources are addressed. To determine potential project impacts to other sensitive biological resources (i.e., sensitive habitats, special-status plants, and special-status wildlife), additional analysis (e.g., biological resources study, focused botanical surveys, and protocol wildlife surveys) may be required.

It is not the intent of this report to provide a monetary valuation of the trees or provide risk assessment for any tree on this parcel, as any tree can fail at any time. No clinical diagnosis was performed on any pest or pathogen that may or may not be present within the site. In addition to an inspection of the property, DD&A relied on information provided by the City and/or the City's consultants (e.g., survey boundaries, property boundaries, project description) to prepare this report, and must reasonably rely on the accuracy of the information provided. DD&A shall not be responsible for another's means, methods, techniques, schedules, or procedures, or for contractor safety or any other related programs, or for another's failure to complete work in accordance with approved plans and specifications.

Regulatory Setting

City of Marina Municipal Code

Marina Municipal Code (MMC or City Code) Section 17.62.030 requires a tree removal permit to remove, damage, or relocate, or cause to be removed, damaged, or relocated any tree on any property within City limits, unless exempted by MMC Sections 17.62.040 or 17.62.050. MMC Section 17.62.030 also prohibits construction activities within the dripline of any tree, unless these activities are conducted in compliance with tree protection guidelines adopted by resolution of the planning commission.

City Code defines “tree” as any living woody perennial plant having a single stem of six inches or more diameter at breast height (DBH) or a multi-stemmed plant having an aggregate diameter of ten inches or more measured at DBH, and any living woody perennial plant which was planted in accordance with requirements of an approved compensation plan or was planted as part of a landscaping plan approved by the City. MMC defines “dripline” as the greater of the outermost edge of the tree’s canopy, or fifteen times DBH measured from the center point of the tree.

UVSP Tree Standards

UVSP Tree Standards call for the preservation of as many healthy Monterey cypress trees and oak trees as practicable. In accordance with the UVSP Tree Standards, Monterey cypress trees and oak trees that are in good or fair condition must be protected during construction and preserved wherever practicable. If relocation is possible, Monterey cypress and oak trees shall be removed by machinery, be immediately replanted at a new site, and be watered and fertilized. Monterey cypress and oak trees in good or fair condition that are removed shall be replaced on-site at a ratio of two replacement trees for every one removed (2:1). UVSP classifies tree health based on the following definitions:

- *Good.* Tree is healthy and vigorous as indicated by color of foliage and density, has no apparent signs of insect, disease, structural defects or mechanical injury. Tree has good form and structure.
- *Fair.* Tree is in average condition and vigor for the area, but may show minor insect, disease, or physiological problems. Trees rated as Fair/Poor may be improved with correctional pruning.
- *Poor.* Tree that is in a general state of decline and may show severe structural or mechanical defects which may lead to failure, may have insect or disease damage, but is not dead.
- *Dead/Snags.* Dead standing trees.

California Fish and Game Code

Section 3503 of the California Fish and Game Code states that it is “unlawful to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto.” Section 3503.5 prohibits the killing, possession, or destruction of any birds in the orders Falconiformes or Strigiformes (birds-of-prey). Section 3511 prohibits take or possession of fully protected birds. Section 3513 prohibits the take or possession of any migratory nongame birds designated under the federal Migratory Bird Treaty Act. Section 3800 prohibits take of nongame birds.

Survey Methods

2019 Tree Inventory

In support of the Dunes Project, DD&A biologists (led by ISA Certified Arborist Patric Krabacher) conducted an inventory of trees within the boundaries of the Dunes Project (which encompassed the buildings which are proposed for demolition as part of the City Park Project) on October 4, 9, 10, 11, 14, 16, and 17, 2019. The tree inventory included the mapping and tagging of all trees, as defined by City Code, within the survey area. Trees were inventoried with City requirements and UVSP Tree Standards, as follows:

- All trees 6" diameter at breast height (DBH) or greater were tagged with a global positioning system (GPS) location and a numbered aluminum marker (on the most feasible/visible location possible).
- Diameter was recorded at breast height (4.5 feet above ground) or, for multi-stemmed trees, at the most representable location.
- Multi-stemmed trees were recorded as one tree if the root crown (the point where the trunk meets natural grade) was contiguous. Multi-stemmed tree DBH was calculated by taking the square root of the squared sum of all stems measured ($\sqrt{\text{Stem 1 DBH}^2 + \text{Stem 2 DBH}^2 + \text{Stem 3 DBH}^2 \dots}$). This equation returns the diameter at the base of the tree (Chojnacky, 1999).
- Species, size, and health class were recorded for each tree. Tree health was based on the UVSP classification system and was evaluated by visually inspecting each tree from its root crown to its foliar canopy for signs of decay, disease, or insect infestations.

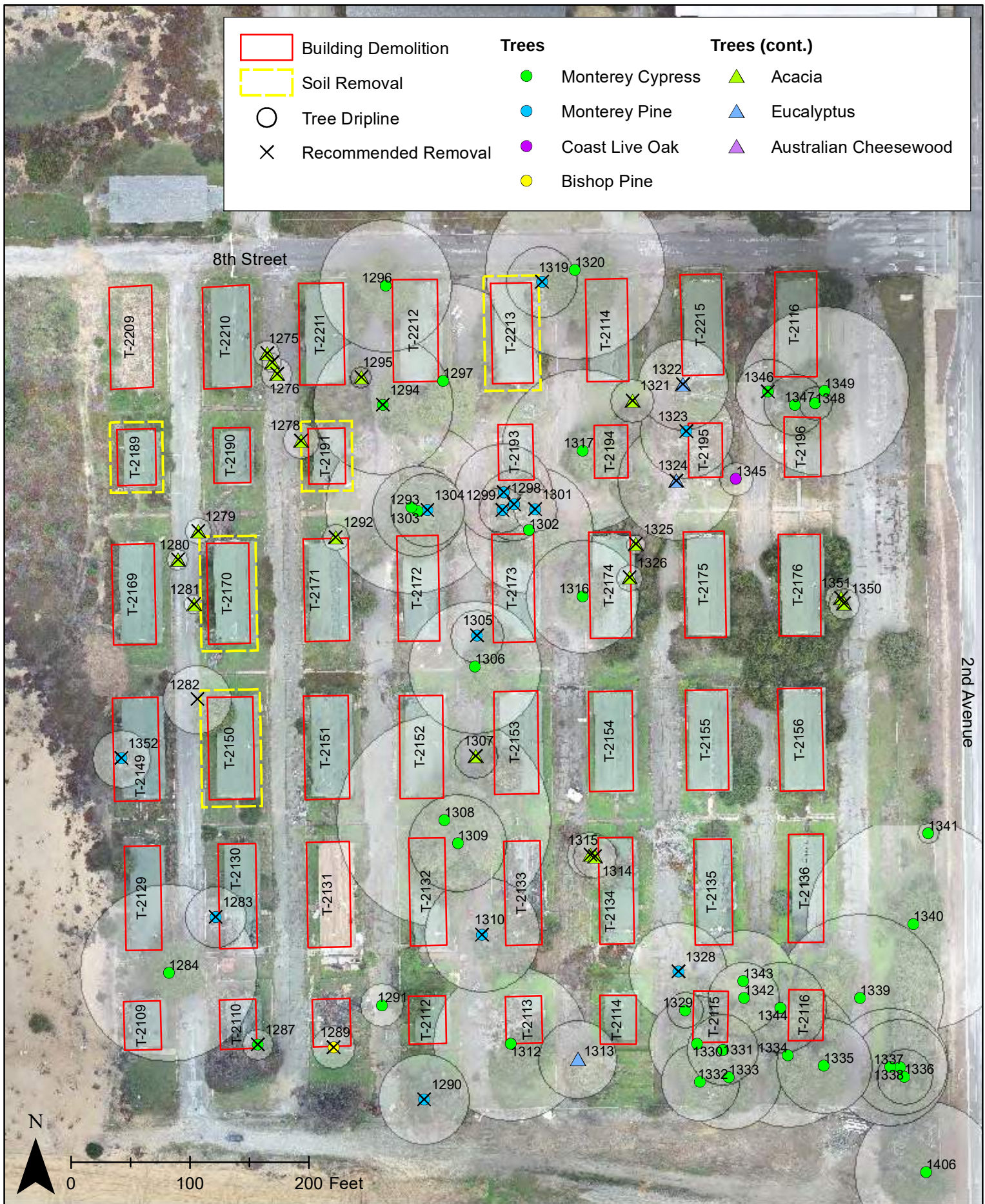
GPS data were collected using a Trimble® TDC600 GPS and were then digitized using Trimble® TerraFlex and ESRI® ArcGIS 10.4. GPS data were collected using geographic coordinate system Universal Transverse Mercator (UTM) Zone 10 North and the World Geodetic System 1984 (WGS84) datum.

2021 Tree Survey

On December 20, 2021, DD&A biologists (led by ISA Certified Arborist Patric Krabacher) conducted a survey of the project site to determine any changed circumstances since the 2019 tree inventory was prepared. The survey included updating the health class of trees and determining which trees may need to be removed to facilitate the remediation and demolition phase of the proposed project.

RESULTS

DD&A inventoried 72 trees in the vicinity of the buildings proposed for demolition, including 36 Monterey cypresses (*Hesperocyparis macrocarpa*), 17 acacias (*Acacia* sp.), 13 Monterey pines (*Pinus radiata*), three (3) Eucalyptus (*Eucalyptus* sp.), one (1) coast live oak (*Quercus agrifolia*), one (1) Bishop pine (*Pinus muricata*), and one (1) Australian cheesewood (*Pittosporum undulatum*) (**Figure 1, Appendix A, and Appendix B**). Most trees are in average vigor for the area; however, 18 trees are dead or are in poor condition and showing severe signs of decay, disease, and insect infestations, including pitch canker (*Fusarium circinatum*), oak branch canker, foamy bark canker, oak ambrosia beetles, and *Phytophthora* root and crown rot (**Appendix A and Appendix B**). No symptoms of sudden oak death were observed.



Tree Survey Results

Date

2/17/2022

Scale

1 in = 100 ft



Denise Duffy & Associates, Inc.
Planning and Environmental Consulting

Figure

1
20

DISCUSSION

Per conversations with Wallace Group, the City's engineering consultant for the project, excavation due to building demolition in the proposed City Park would be limited to three (3) inches deep within the footprints of all existing 47 buildings (to remove debris) and excavation due to soil remediation would extend to six (6) inches deep and six (6) feet out from five buildings (buildings T-2150, T-2170, T-2189, T-2191, and T-2213).

Due to the shallow depth of excavation required for demolition, demolition is not likely to significantly impact the dripline of any adjacent tree and tree removal would not be required to successfully implement this portion of project; however, it is recommended that trees whose canopies overlap or abut buildings are limbed or trimmed prior to demolition. In accordance with the City's Tree Protection Guidelines and with California Fish and Game Code, the following measures are recommended to avoid or minimize impacts potential adverse impacts resulting from tree trimming:

1. Trimming must conform to the guidelines and best management practices established in **Appendix C**, must be performed by a qualified tree removal contractor, and must not remove more than 30 percent of any one tree's canopy. Trees shall be allowed to develop their natural forms and shall not be trimmed as topiaries or other unnatural forms.
2. Work should be timed to avoid the breeding and nesting season for raptors and other protected avian species. If work must occur during the avian breeding and nesting season (approximately February 1 through September 15), surveys for nesting birds shall be conducted no more than 15 days prior to project activities in all areas within 300 feet of the project footprint that may provide suitable nesting habitat. If nesting birds are identified during surveys, an appropriate buffer shall be imposed within which no work or disturbance will take place (generally 300 feet in all directions). A qualified biologist shall be on-site during work re-initiation in the vicinity of the nest offset to ensure that the buffer is adequate and that the nest is not stressed and/or abandoned. No work shall proceed in the vicinity of an active nest until such time as all young are fledged, or until after September 16, when young are assumed fledged.

Due to the level of excavation required for soil remediation, tree removal would be required around buildings T-2150, T-2170, T-2189, T-2191, and T-2213 and would include the following trees:

- Tree 1278 (acacia in fair condition),
- Tree 1279 (acacia in fair condition),
- Tree 1281 (acacia in fair condition),
- Tree 1282 (Australian cheesewood in fair condition), and
- Tree 1319 (Monterey pine in poor condition).

Per UVSP Tree Standards, mitigation (i.e., replacement) would not be required for removal of these trees, which are non-native species or native trees in poor condition. However, in accordance with City Code, a tree removal permit from the City would be required to remove all living trees, including trees in poor condition. Therefore, a completed tree removal permit application for Trees 1278, 1279, 1281, 1282, and 1319 is included in this report as **Appendix D**. Tree removal must conform to any requirements established

by the City in the approved tree removal permit. In addition, it is recommended that Mitigation Measure 2, above, and the following mitigation be implemented as part of tree removal:

3. Pursuant to Section 17.62.030 of City Code, the project must comply with the City's Tree Protection Guidelines. To reduce impacts to trees not scheduled for removal, the tree removal contractor shall implement the best management practices for working near trees established in **Appendix C**. Trees which will be retained on site shall be allowed to develop their natural forms and shall not be trimmed as topiaries or other unnatural forms.

Although not required to implement the project, it is also recommended that the remaining 14 acacia trees be removed due to this non-native species being a locally problematic plant which spreads quickly and is known to outcompete native species¹. It is further recommended that the remaining 13 trees in poor condition (nine [9] Monterey pines, one [1] Monterey cypress, one [1] Bishop pine, and one [1] eucalyptus) and the remaining six (6) trees which are dead (three [3] Monterey pines, two [2] Monterey cypresses, and one [1] eucalyptus) be removed to maintain the health of the urban forest within City Park and to reduce tree-related hazards to persons or structures. See **Appendix A** for the complete list of trees which are recommended for removal.

Per UVSP Tree Standards, mitigation (i.e., replacement) would not be required for removal of these non-native or unhealthy trees. In addition, a tree removal permit would not be required to remove the seven (7) dead trees. However, in accordance with City Code, a tree removal permit from the City would be required to remove the 31 living trees. A completed tree removal permit application for these trees is included in this report as **Appendix D**. Tree removal must conform to any requirements established by the City in the tree removal permit. In addition, it is recommended that Mitigation Measures 2 and 3, above be implemented to avoid or minimize potential project impacts resulting from tree removal.

CONCLUSION

To facilitate demolition of 47 buildings and soil remediation around five [5] of these buildings within the proposed City Park, it is recommended that trees directly adjacent to these buildings or trees within the boundaries of soil remediation be limbed, trimmed, or removed prior to demolition. In addition, it is recommended that all non-native trees and/or trees in poor or dead be removed to prevent spread of non-native invasive species, maintain the health of the urban forest within City Park, and reduce tree-related hazards to persons or structures. A tree removal permit from the City is required to remove all living trees. A completed tree removal permit application for trees which are recommended for removal is included in this report as **Appendix D**. Implementation of the measures identified above and any additional measures established by the City in the tree removal permit would avoid or minimize potential impacts resulting from tree trimming, and removal.

If you have any comments or questions about this report, please contact Patric Krabacher at pkrabacher@ddaplaning.com or (831) 373-4341 ext. 29.

¹ Additional acacia and Australian cheesewood individuals occur within the project site; however, they are smaller than six (6) inches DBH and, as such, are not considered "trees" and were not inventoried as part of this report. It is recommended that all these plants be removed from the proposed City Park to reduce the spread of non-native species. A tree removal permit is not required for plants smaller than six (6) inches DBH.

REFERENCES

David C. Chojnacky. 1999. Converting Tree Diameter Measured at Root Collar to Diameter at Breast Height.

APPENDIX A

Tree Table

Tree ID	Scientific Name	Common Name	Individual Stem DBH (in)				Total DBH (in)	Dripline (ft)	Health	Recommendation
1275	<i>Acacia sp.</i>	Acacia	9				9	11	Fair	Remove
1276	<i>Acacia sp.</i>	Acacia	8	6			10	13	Fair	Remove
1277	<i>Acacia sp.</i>	Acacia	6				6	8	Fair	Remove
1278	<i>Acacia sp.</i>	Acacia	6	6	6	6	12	15	Fair	Remove
1279	<i>Acacia sp.</i>	Acacia	9				9	11	Fair	Remove
1280	<i>Acacia sp.</i>	Acacia	7				7	9	Fair	Remove
1281	<i>Acacia sp.</i>	Acacia	6				6	8	Fair	Remove
1282	<i>Pittosporum undulatum</i>	Australian Cheesewood	11	9	12	14	23	29	Fair	Remove
1283	<i>Pinus radiata</i>	Monterey Pine	21				21	26	Dead	Remove
1284	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	60				60	75	Fair	Retain
1287	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	6	6	6		10	13	Dead	Remove
1289	<i>Pinus muricata</i>	Bishop Pine	15				15	19	Poor	Remove
1290	<i>Pinus radiata</i>	Monterey Pine	30				30	38	Poor	Remove
1291	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	10	8	6		14	18	Fair	Retain
1292	<i>Acacia sp.</i>	Acacia	6	6			8	11	Fair	Remove
1293	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	58				58	73	Fair	Retain
1294	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	47				47	59	Poor	Remove
1295	<i>Acacia sp.</i>	Acacia	7				7	9	Fair	Remove
1296	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	45				45	56	Fair	Retain
1297	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	66				66	83	Fair	Retain
1298	<i>Pinus radiata</i>	Monterey Pine	33				33	41	Poor	Remove
1299	<i>Pinus radiata</i>	Monterey Pine	16				16	20	Poor	Remove
1300	<i>Pinus radiata</i>	Monterey Pine	24				24	30	Poor	Remove
1301	<i>Pinus radiata</i>	Monterey Pine	14				14	18	Dead	Remove
1302	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	43				43	54	Fair	Retain
1303	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	30				30	38	Fair	Retain
1304	<i>Pinus radiata</i>	Monterey Pine	25				25	31	Poor	Remove
1305	<i>Pinus radiata</i>	Monterey Pine	18				18	23	Poor	Remove
1306	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	45				45	56	Fair	Retain
1307	<i>Acacia sp.</i>	Acacia	15				15	19	Fair	Remove
1308	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	72				72	90	Fair	Retain
1309	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	33				33	41	Fair	Retain
1310	<i>Pinus radiata</i>	Monterey Pine	39				39	49	Poor	Remove
1312	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	52				52	65	Fair	Retain

Tree ID	Scientific Name	Common Name	Individual Stem DBH (in)			Total DBH (in)	Dripline (ft)	Health	Recommendation
1313	<i>Eucalyptus sp.</i>	Eucalyptus	17	20		26	33	Fair	Retain
1314	<i>Acacia sp.</i>	Acacia	15			15	19	Fair	Remove
1315	<i>Acacia sp.</i>	Acacia	16			16	20	Fair	Remove
1316	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	24	30		38	48	Fair	Retain
1317	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	54			54	68	Fair	Retain
1319	<i>Pinus radiata</i>	Monterey Pine	24			24	30	Poor	Remove
1320	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	61			61	76	Fair	Retain
1321	<i>Acacia sp.</i>	Acacia	6	11	9	15	19	Fair	Remove
1322	<i>Eucalyptus sp.</i>	Eucalyptus	30			30	38	Dead	Remove
1323	<i>Pinus radiata</i>	Monterey Pine	31			31	39	Poor	Remove
1324	<i>Eucalyptus sp.</i>	Eucalyptus	40			40	50	Poor	Remove
1325	<i>Acacia sp.</i>	Acacia	6			6	8	Fair	Remove
1326	<i>Acacia sp.</i>	Acacia	6	6		8	11	Fair	Remove
1328	<i>Pinus radiata</i>	Monterey Pine	33			33	41	Dead	Remove
1329	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	12			12	15	Fair	Retain
1330	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	32			32	40	Fair	Retain
1331	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	24			24	30	Fair	Retain
1332	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	26			26	33	Fair	Retain
1333	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	36			36	45	Fair	Retain
1334	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	48			48	60	Fair	Retain
1335	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	32			32	40	Fair	Retain
1336	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	19			19	24	Fair	Retain
1337	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	30	18	13	40	50	Fair	Retain
1338	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	32			32	40	Fair	Retain
1339	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	32	40	25	57	71	Fair	Retain
1340	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	72			72	90	Fair	Retain
1341	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	7			7	9	Good	Retain
1342	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	24			24	30	Fair	Retain
1343	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	35			35	44	Fair	Retain
1344	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	30			30	38	Fair	Retain
1345	<i>Quercus agrifolia</i>	Coast Live Oak	8	8		11	14	Fair	Retain
1346	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	22			22	28	Dead	Remove
1347	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	10	18		21	26	Fair	Retain
1348	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	11			11	14	Fair	Retain

<i>Tree ID</i>	<i>Scientific Name</i>	<i>Common Name</i>	<i>Individual Stem DBH (in)</i>				<i>Total DBH (in)</i>	<i>Dripline (ft)</i>	<i>Health</i>	<i>Recommendation</i>
1349	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	34	36	28	10	58	72	Fair	Retain
1350	<i>Acacia sp.</i>	Acacia	8	6			10	13	Fair	Remove
1351	<i>Acacia sp.</i>	Acacia	8	8			11	14	Fair	Remove
1352	<i>Pinus radiata</i>	Monterey Pine	20				20	25	Poor	Remove

APPENDIX B

Photo Log



Photo 1. Tree 1290



Photo 2. Tree 1300



Photo 3. Tree 1292



Photo 4. Tree 1294



Photo 5. Tree 1295



Photo 6. Tree 1299



Photo 7. Tree 1289



Photo 8. Tree 1304



Photo 9. Tree 1305



Photo 10. Tree 1307



Photo 11. Tree 1310



Photo 12. Tree 1314



Photo 13. Tree 1315



Photo 14. Tree 1282



Photo 15. Tree 1319



Photo 16. Tree 1321



Photo 17. Tree 1352



Photo 18. Tree 1323



Photo 19. Tree 1324

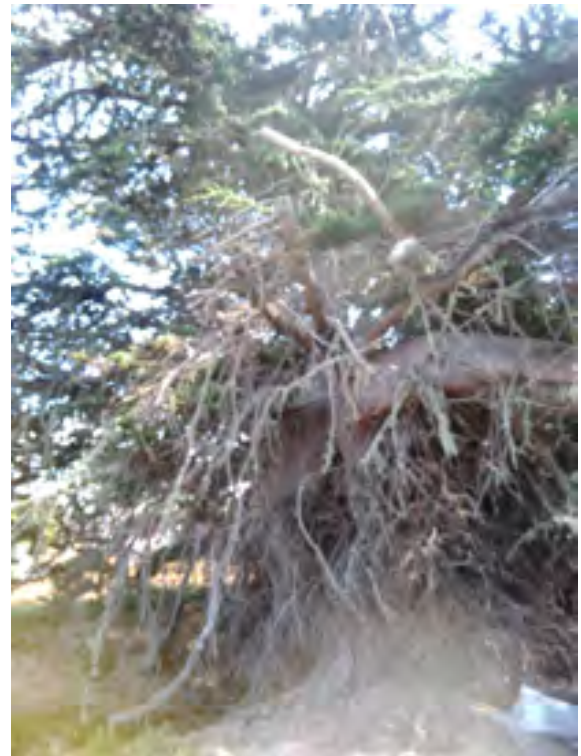


Photo 20. Tree 1325



Photo 21. Tree 1326



Photo 22. Tree 1350



Photo 23. Tree 1351



Photo 24. Tree 1278



Photo 25. Tree 1275



Photo 26. Tree 1276



Photo 27. Tree 1277



Photo 28. Tree 1281



Photo 29. Tree 1279



Photo 30. Tree 1280



Photo 31. Tree 1298

APPENDIX C

Best Management Practices

BEST MANAGEMENT PRACTICES WHEN WORKING NEAR TREES

Best Management Practices

The following BMPs are recommended to reduce impacts to trees:

- Do not deposit any fill around trees, which may compact soils and alter water and air relationships. Avoid depositing fill, parking equipment, or staging construction materials near existing trees. Covering and compacting soil around trees can alter water and air relationships with the roots. Fill placed within the critical rootzone or dripline may encourage the development of oak rot fungus (*Armillaria mellea*). As necessary, trees may be protected by boards, fencing or other materials to delineate protection zones.
- Pruning shall be conducted to avoid unnecessary injuries to the tree. General principals of pruning include placing cuts immediately beyond the branch collar, making clean cuts by scoring the underside of the branch first, and for live oak, avoiding the period from February through May.
- Native live oaks are not adapted to summer watering and may develop crown or root rot as a result. Do not regularly irrigate within the critical rootzone or dripline of oaks. Native, locally adapted, drought resistant species are the most compatible with this goal.
- Root cutting should occur outside of the springtime. Ideal time for root pruning will take place late June and July. Pruning of the live crown should not occur February through May.
- Oak material greater than 3 inches in diameter remaining on site more than one month that is not cut and split into firewood should be covered with thick clear plastic that is dug in securely around the pile. This will discourage infestation and dispersion of bark beetles.
- A mulch layer up to approximately 4 inches deep may be applied to the ground under selected oaks following construction. Only 1 to 2 inches of mulch should be applied within 1 to 2 feet of the trunk, and under no circumstances should any soil or mulch be placed against the root crown (base) of trees. The best source of mulch would be from chipped material generated on site.

Tree Protection Standards:

- All trees scheduled for preservation which may be at risk of injury or harm during the removal of trees approved for removal or during grading, trenching or other activities associated with the development or use of a property shall be temporarily fenced during such tree during such activities. Fencing shall be installed prior to the beginning of tree removals, grading or building. Fencing shall be installed at the edge of the root zone unless alternate location is determined essential to the construction of the project as approved. The root zone is determined to be the area located within a distance of 15 times the trunk diameter in all directions. Fencing shall consist of chain link or plastic link fence, rigidly supported and maintained during all construction at a minimum height of 4' 0" above grade. Removal of fencing shall only be at the direction of the City planning department. All trees to be fenced shall be clearly marked to notify all personnel and city inspectors that the subject tree(s) are to be fenced at all times during construction.
- Fenced areas shall not be used for material stockpile, storage or vehicle parking. Dumping of materials, chemicals or garbage shall be prohibited within the fenced area. Fenced areas shall be maintained in a natural condition and not compacted. Fenced areas shall be maintained at natural or existing grade.

- Utility and drain lines shall be located outside the root zone of all preserved trees unless essential to develop property as approved. Where alternative routes are not available, any digging or trenching necessary for utility conduit, pipe, wire and drain lines shall not cut any major root. Major roots are those with a diameter of 2 inches or more. Utility lines shall not be within 3 feet of the trunk of any tree.
- All approved construction within the root zone shall observe the following construction practices:
 1. Hand trenching at point or line of grade cuts closest to the trunk to expose major roots 2" or more in diameter.
 2. In cases where rock or unusually dense soil prevents hand trenching, mechanical trenching may be permitted provided that work inside the dripline is closely supervised to prevent tearing or other damage to major roots.
 3. Exposed major roots shall be cut with a saw to form a smooth surface and avoid tearing or jagged edges.
 4. Absorbent tarp or heavy cloth fabric shall be placed over grade cuts where roots are exposed and secured with stakes and 2" to 4" of compost or wood chips spread over the tarp to prevent moisture loss. Care shall be taken that moisture levels beneath tarped areas remain comparable to surrounding areas until backfilling occurs. Some watering of these areas may be necessary to maintain moisture levels, and such measures shall remain in effect through all phases of construction, including all delays and other periods of inactivity.

Tree Pruning

Pruning is to be minimal but performed only when necessary in accordance to American National Safety Institute ANSI A300 Pruning Standards. Pruning may include the larger canopied trees that have deadwood or are exhibiting some minor structural defect or minor disease that must be compensated. Should the health and vigor of any tree decline it will be treated as appropriately recommended by a certified arborist or qualified forester.

The following are offered as guidelines when pruning;

- In general trees will be assessed then pruned first for safety, next for health, and finally for aesthetics. No more than 25% of the tree overall crown will be pruned in one season.
- Type of pruning is determined by the size of branches to be removed. General guidelines for branch removal are:
 1. Fine Detail pruning-limbs under 2-inch diameter are removed
 2. Medium Detail Pruning-Limbs between 2- and 4-inch diameter
 3. Structural Enhancement-limbs greater than 4-inch diameter.
 4. Broken and cracked limbs-removed will be removed in high traffic areas of concern.

Crown thinning is the cleaning out of or removal of dead diseased, weakly attached, or low vigor branches from a tree crown and consist of the following steps:

- All trees will be pre-assessed on how the tree will be pruned from the top down.

- Tree trimmers will favor branches with strong, U-shaped angles of attachment and where possible remove branches with weak, V-shaped angles of attachment and/or included bark.
- Lateral branches will be evenly spaced on the main stem of young trees and areas of fine pruning.
- Branches that rub or cross another branch will be removed where possible.
- Lateral branches will be no more than one-half to three-quarters of the diameter of the stem to discourage the development of co-dominant stems where feasible.
- In most cases trimmers will not remove more than one-quarter of the living crown of a tree at one time. If it is necessary to remove more, it will be done over successive years.

Crown-raising removes the lower branches of a tree to provide clearance for buildings, vehicles, pedestrians and vistas and performed as follows:

- Live branches on at least two-thirds of a tree's total height will be maintained wherever possible. The removal of too many lower branches will hinder the development of a strong stem.
- All basal sprouts and vigorous epicormic sprouts will be removed where feasible.

Crown reduction is used to reduce the height and/or spread of trees and is used for maintaining the structural integrity and natural form of a tree and conducted as follows:

- Crown reduction pruning is used only when absolutely necessary. Pruning cuts will be at a lateral branch that is at least one-third the diameter of the stem to be removed wherever possible.
- When it is necessary to remove more than half of the foliage from a branch it may be necessary remove the entire branch.

Crown restoration is used to improve the structure and appearance of trees that have been topped or severely pruned using heading cuts. One of three sprouts on main branch stubs should be selected to reform a natural appearing crown. Selected vigorous sprouts may need to be thinned to ensure adequate attachment for the size of the sprout. Restoration may require several years of pruning.

APPENDIX D

Tree Removal Application



PLANNING APPLICATION

Project Address/Location: Remediation/Demo at City Park **APN:** _____

Applicant(s):

Name: City of Marina
Mailing Address: _____
Phone: _____ Email: _____

Property Owner:

Name: SAME AS ABOVE
Mailing Address: _____
Phone: _____ Email: _____

Project Description: What do you want to do?

Remove 37 trees to facilitate the project and maintain health and safety of the urban forest in City Park.

Property Owner Authorization:

By signing this application I certify that I have reviewed this completed application and the attached material and consent to its filing. I agree to allow the Community Development Department to duplicate and distribute plans to interested persons as it determines is necessary for the processing of the application.

Signed Date

Applicant/Representative Certification:

I understand the City might not approve what I am applying for or might set conditions of approval. I agree to allow the Community Development Department to duplicate and distribute plans to interested persons as it determines is necessary for processing of the application.

Signed Date

Permission to Access Property

This section is to be completed by the **property owner** and/or occupant who controls access to the property. To adequately evaluate many project proposals Community Development Department Staff, Commissioners and City Council Members will have to gain access to the exterior of the real property in order to adequately review and report on the proposed project. Your signature below certifies that you agree to give the City permission to access the project site from 8 a.m. to 5 p.m., Monday through Friday, as part of the normal review of this planning application.

Signed Date

Indemnification Agreement:

The Owner/Applicant shall defend, indemnify and hold harmless the City or its agents or officers and employees from any claim, action or proceeding against the City or its agents, officers or employees, to attack, set aside, void, or annul, in whole or in part, the City's approval of this project. In the event that the City fails to promptly notify the Owner / Applicant of any such claim, action or proceeding, or that the City fails to cooperate fully in the defense of said claim, this condition shall thereafter be of no further force or effect.

Signed Date

FOR OFFICE USE ONLY:

Date Application Submitted: _____ Fee Collected: \$ _____
Date Application Complete: _____ Receipt Number: _____
File Number(s): _____
Planner Initials: _____ Associated Permits: _____



MEMORANDUM

Date: February 15, 2022

To: Brian McMinn, Public Works Director/City Engineer
City of Marina

From: Patric Krabacher, ISA Certified Arborist 11759
Denise Duffy & Associates, Inc.

RE: Arborist Report for the City of Marina Blight Removal Project 2022 – Cypress Knolls

Denise Duffy & Associates, Inc. (DD&A) is contracted by the City of Marina (City) to provide on-call environmental consulting services for City projects. In support of the Blight Removal Phase of the Cypress Knolls Project (project or proposed project), located within City limits and the Former Fort Ord, DD&A conducted an inventory of trees within the vicinity of 31 buildings which are proposed for demolition. This Arborist Report documents the results of the tree inventory, recommends tree removal where necessary to facilitate remediation and demolition, and recommends mitigation to avoid, minimize, or mitigate potential adverse impacts of tree removal or trimming.

METHODS

Limitations

This report only identifies potential project impacts to trees and potential adverse impacts resulting from tree removal; no other protected or sensitive biological resources are addressed. To determine potential project impacts to other sensitive biological resources (i.e., sensitive habitats, special-status plants, and special-status wildlife), additional analysis (e.g., biological resources study, focused botanical surveys, and protocol wildlife surveys) may be required.

It is not the intent of this report to provide a monetary valuation of the trees or provide risk assessment for any tree on this parcel, as any tree can fail at any time. No clinical diagnosis was performed on any pest or pathogen that may or may not be present within the site. In addition to an inspection of the property, DD&A relied on information provided by the City and/or the City's consultants (e.g., survey boundaries, property boundaries, project description) to prepare this report, and must reasonably rely on the accuracy of the information provided. DD&A shall not be responsible for another's means, methods, techniques, schedules, or procedures, or for contractor safety or any other related programs, or for another's failure to complete work in accordance with approved plans and specifications.

Regulatory Setting

City of Marina Municipal Code

Marina Municipal Code (MMC or City Code) Section 17.62.030 requires a tree removal permit to remove, damage, or relocate, or cause to be removed, damaged, or relocated any tree on any property within City limits, unless exempted by MMC Sections 17.62.040 or 17.62.050. MMC Section 17.62.030 also prohibits construction activities within the dripline of any tree, unless these activities are conducted in compliance with tree protection guidelines adopted by resolution of the planning commission.

City Code defines “tree” as any living woody perennial plant having a single stem of six inches or more diameter at breast height (DBH) or a multi-stemmed plant having an aggregate diameter of ten inches or more measured at DBH, and any living woody perennial plant which was planted in accordance with requirements of an approved compensation plan or was planted as part of a landscaping plan approved by the City. MMC defines “dripline” as the greater of the outermost edge of the tree’s canopy, or fifteen times DBH measured from the center point of the tree.

California Fish and Game Code

Section 3503 of the California Fish and Game Code states that it is “unlawful to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto.” Section 3503.5 prohibits the killing, possession, or destruction of any birds in the orders Falconiformes or Strigiformes (birds-of-prey). Section 3511 prohibits take or possession of fully protected birds. Section 3513 prohibits the take or possession of any migratory nongame birds designated under the federal Migratory Bird Treaty Act. Section 3800 prohibits take of nongame birds.

Survey Methods

DD&A biologists, led by ISA Certified Arborist Patric Krabacher, conducted an inventory of trees within the vicinity of buildings which are proposed for demolition on December 20, 2021. The tree inventory included the mapping and tagging of all trees, as defined by MCC Chapter 17.62, within the survey area. Trees were inventoried in accordance with the with the following protocol:

- All trees 6” diameter at breast height (DBH) or greater were tagged with a global positioning system (GPS) location and a numbered aluminum marker (on the most feasible/visible location possible). If a tree was already tagged as part of a previous survey effort, the existing tag number was recorded.
- Diameter was recorded at breast height (4.5 feet above ground) or, for multi-stemmed trees, at the most representable location.
- Multi-stemmed trees were recorded as one tree if the root crown (the point where the trunk meets natural grade) was contiguous. Multi-stemmed tree DBH was calculated by taking the square root of the squared sum of all stems measured ($\sqrt{\text{Stem 1 DBH}^2 + \text{Stem 2 DBH}^2 + \text{Stem 3 DBH}^2 \dots}$). This equation returns the diameter at the base of the tree (Chojnacky, 1999).
- Species, size, health class, and photographs were recorded for each tree. Tree health was recorded based on the following definitions:

- *Good*. Tree is healthy and vigorous, as indicated by foliage color and density, and has no apparent signs of insect, disease, structural defects, or mechanical injury. Tree has good form and structure.
- *Fair*. Tree is in average condition and vigor for the area, but may show minor insect, disease, or physiological problems. Trees in fair condition may be improved with correctional pruning.
- *Poor*. Tree is in a general state of decline. Tree may show severe structural or mechanical defects which may lead to failure, and may have insect or disease damage, but is not dead.

Tree health was evaluated by visually inspecting each tree from its root crown to its foliar canopy for signs of decay, disease, or insect infestations. In accordance with MMC’s definition of a “tree,” dead trees were not inventoried.

GPS data were collected using a Trimble® Geo 7 Series GPS and were then digitized using Trimble® GPS Pathfinder and ESRI® ArcGIS 10.4. GPS data were collected using geographic coordinate system Universal Transverse Mercator (UTM) Zone 10 North and the World Geodetic System 1984 (WGS84) datum.

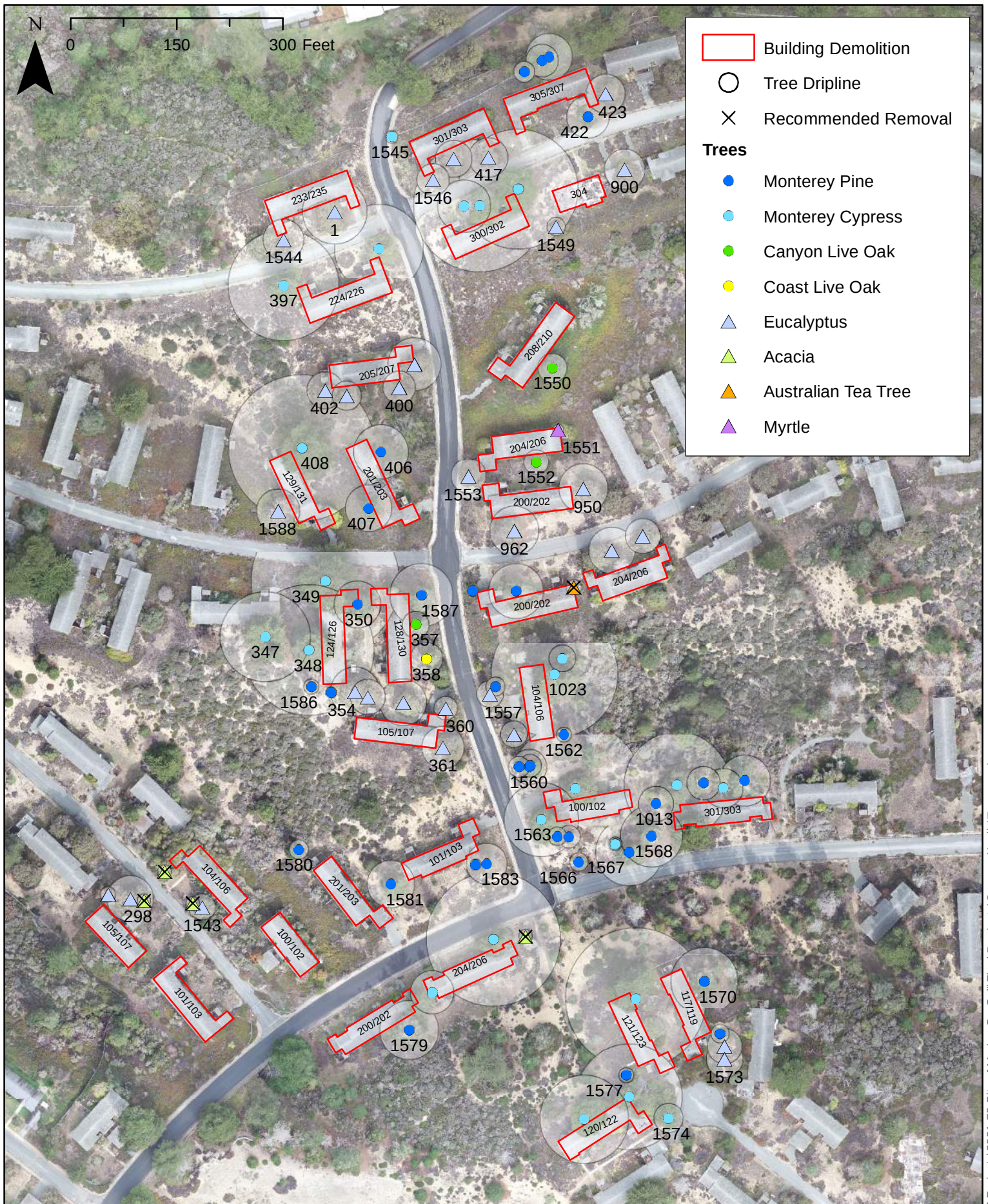
RESULTS

DD&A inventoried 96 trees in the vicinity of the buildings proposed for demolition, including 33 Monterey pines (*Pinus radiata*), 30 Eucalyptus (*Eucalyptus* sp.), 23 Monterey cypresses (*Hesperocyparis macrocarpa*), four (4) acacia (*Acacia* sp.), three (3) canyon live oaks (*Quercus chrysolepis*), one (1) coast live oak (*Quercus agrifolia*), one (1) Australian tea tree (*Leptospermum laevigatum*), and one (1) myrtle (*Myrtus* sp.) (**Figure 1, Appendix A, and Appendix B**). Most trees are in average vigor for the area but are showing signs of decay, disease, and insect infestations, including pitch canker (*Fusarium circinatum*), oak branch canker, foamy bark canker, oak ambrosia beetles, and *Phytophthora* root and crown rot. No symptoms of sudden oak death were observed.

DISCUSSION

Per conversations with Wallace Group, the City's engineering consultant for the project, demolition and excavation at Cypress Knolls would be limited to three (3) inches deep within the existing building footprints. Due to the shallow depth of excavation, demolition is not likely to significantly impact the dripline of any adjacent tree and tree removal is not required to successfully implement the project. However, it is recommended that trees whose canopies overlap or abut buildings are trimmed prior to demolition. In accordance with the City’s Tree Protection Guidelines and with California Fish and Game Code, the following measures are recommended to avoid or minimize potential adverse impacts resulting from tree trimming:

1. Trimming must conform to the guidelines and best management practices established in **Appendix C**, must be performed by a qualified tree removal contractor, and must not remove more than 30 percent of any one tree's canopy. Trees shall be allowed to develop their natural forms and shall not be trimmed as topiaries or other unnatural forms.



Tree Survey Results

Date

2/17/2022

Scale

1 in = 200 ft



Denise Duffy & Associates, Inc.
Planning and Environmental Consulting

Figure

1
46

2. Work should be timed to avoid the breeding and nesting season for raptors and other protected avian species. If work must occur during the avian breeding and nesting season (approximately February 1 through September 15), surveys for nesting birds shall be conducted no more than 15 days prior to project activities in all areas within 300 feet of the project footprint that may provide suitable nesting habitat. If nesting birds are identified during surveys, an appropriate buffer shall be imposed within which no work or disturbance will take place (generally 300 feet in all directions). A qualified biologist shall be on-site during work re-initiation in the vicinity of the nest offset to ensure that the buffer is adequate and that the nest is not stressed and/or abandoned. No work shall proceed in the vicinity of an active nest until such time as all young are fledged, or until after September 16, when young are assumed fledged.

Although not required to implement the project, it is recommended that the four (4) acacia trees and the one (1) Australian tea tree within the survey area be removed; these non-native species are locally problematic plants which spreads quickly and outcompetes native species. In addition, the Australian tea tree is exhibiting an extreme lean and may therefore pose a hazard to persons or structures. Per City Code, a tree removal permit from the City would be required to remove these trees. A completed tree removal permit application is included in this report as **Appendix D**. Tree removal must conform to any requirements established by the City in the tree removal permit. In addition, it is recommended that Mitigation Measure 2, above, and the following mitigation be implemented as part of tree removal:

3. Pursuant to Section 17.62.030 of City Code, the project must comply with the City's Tree Protection Guidelines. To reduce impacts to trees not scheduled for removal, the tree removal contractor shall implement the best managements practices for working near trees established in **Appendix C**. Trees which will be retained on site shall be allowed to develop their natural forms and shall not be trimmed as topiaries or other unnatural forms.

CONCLUSION

To facilitate demolition of 31 buildings within the Cypress Knolls development area, it is recommended that trees directly adjacent to these buildings be trimmed prior to demolition. In addition, it is recommended that four (4) acacia trees and one (1) Australian tea tree be removed to prevent the spread of invasive species and/or to remove a potential hazard. A tree removal permit from the City is required to remove these five (5) trees. Implementation of the measures identified above and any additional measures established by the City in the tree removal permit would mitigate, avoid, or minimize potential impacts resulting from tree trimming, and removal.

If you have any comments or questions about this report, please contact Patric Krabacher at pkrabacher@ddaplaning.com or (831) 373-4341 ext. 29.

REFERENCES

David C. Chojnacky. 1999. Converting Tree Diameter Measured at Root Collar to Diameter at Breast Height.

APPENDIX A

Tree Table

Tag	Scientific Name	Common Name	Individual Stem DBH (in)				Total DBH (in)	Dripline (ft)	Health	Recommendation
1	<i>Eucalyptus</i> sp.	Eucalyptus	37				37	46	Fair	Retain
298	<i>Eucalyptus</i> sp.	Eucalyptus	16	13	16		26	33	Fair	Retain
347	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	51				51	64	Fair	Retain
348	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	74				74	93	Fair	Retain
349	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	84				84	105	Fair	Retain
350	<i>Pinus radiata</i>	Monterey Pine	26				26	33	Fair	Retain
354	<i>Eucalyptus</i> sp.	Eucalyptus	24	14			28	35	Fair	Retain
357	<i>Quercus chrysolepis</i>	Canyon Live Oak	15				15	19	Fair	Retain
358	<i>Quercus agrifolia</i>	Coast Live Oak	18				18	23	Fair	Retain
359	<i>Eucalyptus</i> sp.	Eucalyptus	25	8			26	33	Fair	Retain
360	<i>Eucalyptus</i> sp.	Eucalyptus	6	6	7	8	14	17	Fair	Retain
361	<i>Eucalyptus</i> sp.	Eucalyptus	24				24	30	Fair	Retain
397	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	52	36			63	79	Fair	Retain
398	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	50				50	63	Fair	Retain
400	<i>Eucalyptus</i> sp.	Eucalyptus	18				18	23	Fair	Retain
402	<i>Eucalyptus</i> sp.	Eucalyptus	10	12	14		21	26	Fair	Retain
406	<i>Pinus radiata</i>	Monterey Pine	31				31	39	Poor	Retain
407	<i>Pinus radiata</i>	Monterey Pine	26				26	33	Fair	Retain
408	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	83				83	104	Fair	Retain
417	<i>Eucalyptus</i> sp.	Eucalyptus	22				22	28	Poor	Retain
419	<i>Pinus radiata</i>	Monterey Pine	18				18	23	Fair	Retain
420	<i>Pinus radiata</i>	Monterey Pine	26				26	33	Fair	Retain
422	<i>Pinus radiata</i>	Monterey Pine	24				24	30	Poor	Retain
423	<i>Eucalyptus</i> sp.	Eucalyptus	16	16			23	28	Fair	Retain
896	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	30				30	38	Fair	Retain
897	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	75				75	94	Fair	Retain
898	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	68				68	85	Fair	Retain
900	<i>Eucalyptus</i> sp.	Eucalyptus	23				23	29	Fair	Retain
950	<i>Eucalyptus</i> sp.	Eucalyptus	28				28	35	Fair	Retain
962	<i>Eucalyptus</i> sp.	Eucalyptus	28				28	35	Fair	Retain
964	<i>Pinus radiata</i>	Monterey Pine	31				31	39	Fair	Retain
965	<i>Leptospermum laevigatum</i>	Australian Tea Tree	9				9	11	Fair	Remove
967	<i>Eucalyptus</i> sp.	Eucalyptus	26				26	33	Fair	Retain
969	<i>Eucalyptus</i> sp.	Eucalyptus	16	12			20	25	Fair	Retain

Tag	Scientific Name	Common Name	Individual Stem DBH (in)				Total DBH (in)	Dripline (ft)	Health	Recommendation
1009	<i>Pinus radiata</i>	Monterey Pine	29				29	36	Fair	Retain
1010	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	22				22	28	Fair	Retain
1011	<i>Pinus radiata</i>	Monterey Pine	19				19	24	Poor	Retain
1013	<i>Pinus radiata</i>	Monterey Pine	20				20	25	Poor	Retain
1017	<i>Pinus radiata</i>	Monterey Pine	13				13	16	Poor	Retain
1019	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	76				76	95	Fair	Retain
1023	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	44	40	30	28	72	90	Fair	Retain
1543	<i>Eucalyptus</i> sp.	Eucalyptus	15				15	19	Fair	Retain
1544	<i>Eucalyptus</i> sp.	Eucalyptus	16	13	11		23	29	Fair	Retain
1545	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	7				7	9	Fair	Retain
1546	<i>Eucalyptus</i> sp.	Eucalyptus	12	14			18	23	Fair	Retain
1547	<i>Eucalyptus</i> sp.	Eucalyptus	21				21	26	Fair	Retain
1548	<i>Pinus radiata</i>	Monterey Pine	12				12	15	Good	Retain
1549	<i>Eucalyptus</i> sp.	Eucalyptus	6	6	6		10	13	Fair	Retain
1550	<i>Quercus chrysolepis</i>	Canyon Live Oak	17				17	21	Fair	Retain
1551	<i>Myrtus</i> sp.	Myrtle	6				6	8	Fair	Retain
1552	<i>Quercus chrysolepis</i>	Canyon Live Oak	13	7			15	18	Fair	Retain
1553	<i>Eucalyptus</i> sp.	Eucalyptus	14	14			20	25	Fair	Retain
1554	<i>Pinus radiata</i>	Monterey Pine	6				6	8	Good	Retain
1555	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	15				15	19	Good	Retain
1556	<i>Pinus radiata</i>	Monterey Pine	11				11	14	Fair	Retain
1557	<i>Eucalyptus</i> sp.	Eucalyptus	6	7	6	6 6 6	15	19	Poor	Retain
1558	<i>Eucalyptus</i> sp.	Eucalyptus	9	7	6	8	15	19	Poor	Retain
1559	<i>Pinus radiata</i>	Monterey Pine	12				12	15	Fair	Retain
1560	<i>Pinus radiata</i>	Monterey Pine	15	13			20	25	Fair	Retain
1561	<i>Pinus radiata</i>	Monterey Pine	13				13	16	Fair	Retain
1562	<i>Pinus radiata</i>	Monterey Pine	9				9	11	Fair	Retain
1563	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	28	26	18		42	53	Fair	Retain
1564	<i>Pinus radiata</i>	Monterey Pine	10				10	13	Poor	Retain
1565	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	8				8	10	Fair	Retain
1566	<i>Pinus radiata</i>	Monterey Pine	10				10	13	Fair	Retain
1567	<i>Pinus radiata</i>	Monterey Pine	38				38	48	Poor	Retain
1568	<i>Pinus radiata</i>	Monterey Pine	18	18	13	20	35	44	Poor	Retain
1569	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	60				60	75	Fair	Retain

Tag	Scientific Name	Common Name	Individual Stem DBH (in)				Total DBH (in)	Dripline (ft)	Health	Recommendation
1570	<i>Pinus radiata</i>	Monterey Pine	38				38	48	Poor	Retain
1571	<i>Pinus radiata</i>	Monterey Pine	10				10	13	Fair	Retain
1572	<i>Eucalyptus</i> sp.	Eucalyptus	20				20	25	Fair	Retain
1573	<i>Eucalyptus</i> sp.	Eucalyptus	21				21	26	Fair	Retain
1574	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	9	9	8	7	17	21	Fair	Retain
1575	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	50				50	63	Fair	Retain
1576	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	60				60	75	Poor	Retain
1577	<i>Pinus radiata</i>	Monterey Pine	9				9	11	Fair	Retain
1578	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	25				25	31	Fair	Retain
1579	<i>Pinus radiata</i>	Monterey Pine	30	15			34	42	Fair	Retain
1580	<i>Pinus radiata</i>	Monterey Pine	11				11	14	Fair	Retain
1581	<i>Pinus radiata</i>	Monterey Pine	24	12			27	34	Fair	Retain
1582	<i>Pinus radiata</i>	Monterey Pine	6				6	8	Fair	Retain
1583	<i>Pinus radiata</i>	Monterey Pine	7	9	20		23	29	Fair	Retain
1584	<i>Eucalyptus</i> sp.	Eucalyptus	19	6			20	25	Fair	Retain
1585	<i>Pinus radiata</i>	Monterey Pine	6				6	8	Fair	Retain
1586	<i>Pinus radiata</i>	Monterey Pine	9				9	11	Fair	Retain
1587	<i>Pinus radiata</i>	Monterey Pine	36				36	45	Fair	Retain
1588	<i>Eucalyptus</i> sp.	Eucalyptus	25				25	31	Fair	Retain
1589	<i>Eucalyptus</i> sp.	Eucalyptus	12	12			17	21	Fair	Retain
1590	<i>Eucalyptus</i> sp.	Eucalyptus	26	14	6		30	38	Fair	Retain
1614	<i>Eucalyptus</i> sp.	Eucalyptus	9				9	11	Fair	Retain
1731	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	76				76	95	Fair	Retain
N/A*	<i>Acacia</i> sp.	Acacia	8*				8	10	Fair	Remove
N/A*	<i>Acacia</i> sp.	Acacia	8*				8	10	Fair	Remove
N/A*	<i>Acacia</i> sp.	Acacia	8*				8	10	Fair	Remove
N/A*	<i>Acacia</i> sp.	Acacia	8*				8	10	Fair	Remove
N/A*	<i>Hesperocyparis macrocarpa</i>	Monterey Cypress	80*				80	100	Fair	Retain

* Due to homeless encampment, tree was not tagged and DBH was estimated.

APPENDIX B

Photo Log



Photo 1. Tree 965



Photo 2. Approximately four (4) *Acacia* sp .
proposed for removal. Due to homeless
encampment, trees were not tagged and DBH
was estimated.

APPENDIX C

Best Management Practices

BEST MANAGEMENT PRACTICES WHEN WORKING NEAR TREES

Best Management Practices

The following BMPs are recommended to reduce impacts to trees:

- Do not deposit any fill around trees, which may compact soils and alter water and air relationships. Avoid depositing fill, parking equipment, or staging construction materials near existing trees. Covering and compacting soil around trees can alter water and air relationships with the roots. Fill placed within the critical rootzone or dripline may encourage the development of oak rot fungus (*Armillaria mellea*). As necessary, trees may be protected by boards, fencing or other materials to delineate protection zones.
- Pruning shall be conducted to avoid unnecessary injuries to the tree. General principals of pruning include placing cuts immediately beyond the branch collar, making clean cuts by scoring the underside of the branch first, and for live oak, avoiding the period from February through May.
- Native live oaks are not adapted to summer watering and may develop crown or root rot as a result. Do not regularly irrigate within the critical rootzone or dripline of oaks. Native, locally adapted, drought resistant species are the most compatible with this goal.
- Root cutting should occur outside of the springtime. Ideal time for root pruning will take place late June and July. Pruning of the live crown should not occur February through May.
- Oak material greater than 3 inches in diameter remaining on site more than one month that is not cut and split into firewood should be covered with thick clear plastic that is dug in securely around the pile. This will discourage infestation and dispersion of bark beetles.
- A mulch layer up to approximately 4 inches deep may be applied to the ground under selected oaks following construction. Only 1 to 2 inches of mulch should be applied within 1 to 2 feet of the trunk, and under no circumstances should any soil or mulch be placed against the root crown (base) of trees. The best source of mulch would be from chipped material generated on site.

Tree Protection Standards:

- All trees scheduled for preservation which may be at risk of injury or harm during the removal of trees approved for removal or during grading, trenching or other activities associated with the development or use of a property shall be temporarily fenced during such tree during such activities. Fencing shall be installed prior to the beginning of tree removals, grading or building. Fencing shall be installed at the edge of the root zone unless alternate location is determined essential to the construction of the project as approved. The root zone is determined to be the area located within a distance of 15 times the trunk diameter in all directions. Fencing shall consist of chain link or plastic link fence, rigidly supported and maintained during all construction at a minimum height of 4' 0" above grade. Removal of fencing shall only be at the direction of the City planning department. All trees to be fenced shall be clearly marked to notify all personnel and city inspectors that the subject tree(s) are to be fenced at all times during construction.
- Fenced areas shall not be used for material stockpile, storage or vehicle parking. Dumping of materials, chemicals or garbage shall be prohibited within the fenced area. Fenced areas shall be maintained in a natural condition and not compacted. Fenced areas shall be maintained at natural or existing grade.

- Utility and drain lines shall be located outside the root zone of all preserved trees unless essential to develop property as approved. Where alternative routes are not available, any digging or trenching necessary for utility conduit, pipe, wire and drain lines shall not cut any major root. Major roots are those with a diameter of 2 inches or more. Utility lines shall not be within 3 feet of the trunk of any tree.
- All approved construction within the root zone shall observe the following construction practices:
 1. Hand trenching at point or line of grade cuts closest to the trunk to expose major roots 2" or more in diameter.
 2. In cases where rock or unusually dense soil prevents hand trenching, mechanical trenching may be permitted provided that work inside the dripline is closely supervised to prevent tearing or other damage to major roots.
 3. Exposed major roots shall be cut with a saw to form a smooth surface and avoid tearing or jagged edges.
 4. Absorbent tarp or heavy cloth fabric shall be placed over grade cuts where roots are exposed and secured with stakes and 2" to 4" of compost or wood chips spread over the tarp to prevent moisture loss. Care shall be taken that moisture levels beneath tarped areas remain comparable to surrounding areas until backfilling occurs. Some watering of these areas may be necessary to maintain moisture levels, and such measures shall remain in effect through all phases of construction, including all delays and other periods of inactivity.

Tree Pruning

Pruning is to be minimal but performed only when necessary in accordance to American National Safety Institute ANSI A300 Pruning Standards. Pruning may include the larger canopied trees that have deadwood or are exhibiting some minor structural defect or minor disease that must be compensated. Should the health and vigor of any tree decline it will be treated as appropriately recommended by a certified arborist or qualified forester.

The following are offered as guidelines when pruning;

- In general trees will be assessed then pruned first for safety, next for health, and finally for aesthetics. No more than 25% of the tree overall crown will be pruned in one season.
- Type of pruning is determined by the size of branches to be removed. General guidelines for branch removal are:
 1. Fine Detail pruning-limbs under 2-inch diameter are removed
 2. Medium Detail Pruning-Limbs between 2- and 4-inch diameter
 3. Structural Enhancement-limbs greater than 4-inch diameter.
 4. Broken and cracked limbs-removed will be removed in high traffic areas of concern.

Crown thinning is the cleaning out of or removal of dead diseased, weakly attached, or low vigor branches from a tree crown and consist of the following steps:

- All trees will be pre-assessed on how the tree will be pruned from the top down.

- Tree trimmers will favor branches with strong, U-shaped angles of attachment and where possible remove branches with weak, V-shaped angles of attachment and/or included bark.
- Lateral branches will be evenly spaced on the main stem of young trees and areas of fine pruning.
- Branches that rub or cross another branch will be removed where possible.
- Lateral branches will be no more than one-half to three-quarters of the diameter of the stem to discourage the development of co-dominant stems where feasible.
- In most cases trimmers will not remove more than one-quarter of the living crown of a tree at one time. If it is necessary to remove more, it will be done over successive years.

Crown-raising removes the lower branches of a tree to provide clearance for buildings, vehicles, pedestrians and vistas and performed as follows:

- Live branches on at least two-thirds of a tree's total height will be maintained wherever possible. The removal of too many lower branches will hinder the development of a strong stem.
- All basal sprouts and vigorous epicormic sprouts will be removed where feasible.

Crown reduction is used to reduce the height and/or spread of trees and is used for maintaining the structural integrity and natural form of a tree and conducted as follows:

- Crown reduction pruning is used only when absolutely necessary. Pruning cuts will be at a lateral branch that is at least one-third the diameter of the stem to be removed wherever possible.
- When it is necessary to remove more than half of the foliage from a branch it may be necessary remove the entire branch.

Crown restoration is used to improve the structure and appearance of trees that have been topped or severely pruned using heading cuts. One of three sprouts on main branch stubs should be selected to reform a natural appearing crown. Selected vigorous sprouts may need to be thinned to ensure adequate attachment for the size of the sprout. Restoration may require several years of pruning.

APPENDIX D

Tree Removal Application



PLANNING APPLICATION

Project Address/Location: City of Marina Blight Removal 2022 - Cypress Knolls **APN:** _____

Applicant(s):

Name: City of Marina
Mailing Address: _____
Phone: _____ Email: _____

Property Owner:

Name: SAME AS ABOVE
Mailing Address: _____
Phone: _____ Email: _____

Project Description: What do you want to do?

Remove four (4) acacia trees and one (1) Australian cheesewood tree.

Property Owner Authorization:

By signing this application I certify that I have reviewed this completed application and the attached material and consent to its filing. I agree to allow the Community Development Department to duplicate and distribute plans to interested persons as it determines is necessary for the processing of the application.

Signed Date

Applicant/Representative Certification:

I understand the City might not approve what I am applying for or might set conditions of approval. I agree to allow the Community Development Department to duplicate and distribute plans to interested persons as it determines is necessary for processing of the application.

Signed Date

Permission to Access Property

This section is to be completed by the **property owner** and/or occupant who controls access to the property. To adequately evaluate many project proposals Community Development Department Staff, Commissioners and City Council Members will have to gain access to the exterior of the real property in order to adequately review and report on the proposed project. Your signature below certifies that you agree to give the City permission to access the project site from 8 a.m. to 5 p.m., Monday through Friday, as part of the normal review of this planning application.

Signed Date

Indemnification Agreement:

The Owner/Applicant shall defend, indemnify and hold harmless the City or its agents or officers and employees from any claim, action or proceeding against the City or its agents, officers or employees, to attack, set aside, void, or annul, in whole or in part, the City's approval of this project. In the event that the City fails to promptly notify the Owner / Applicant of any such claim, action or proceeding, or that the City fails to cooperate fully in the defense of said claim, this condition shall thereafter be of no further force or effect.

Signed Date

FOR OFFICE USE ONLY:

Date Application Submitted: _____ Fee Collected: \$ _____
Date Application Complete: _____ Receipt Number: _____
File Number(s): _____
Planner Initials: _____ Associated Permits: _____



MEMORANDUM

Date: February 16, 2022

To: Brian McMinn, Public Works Director/City Engineer
City of Marina

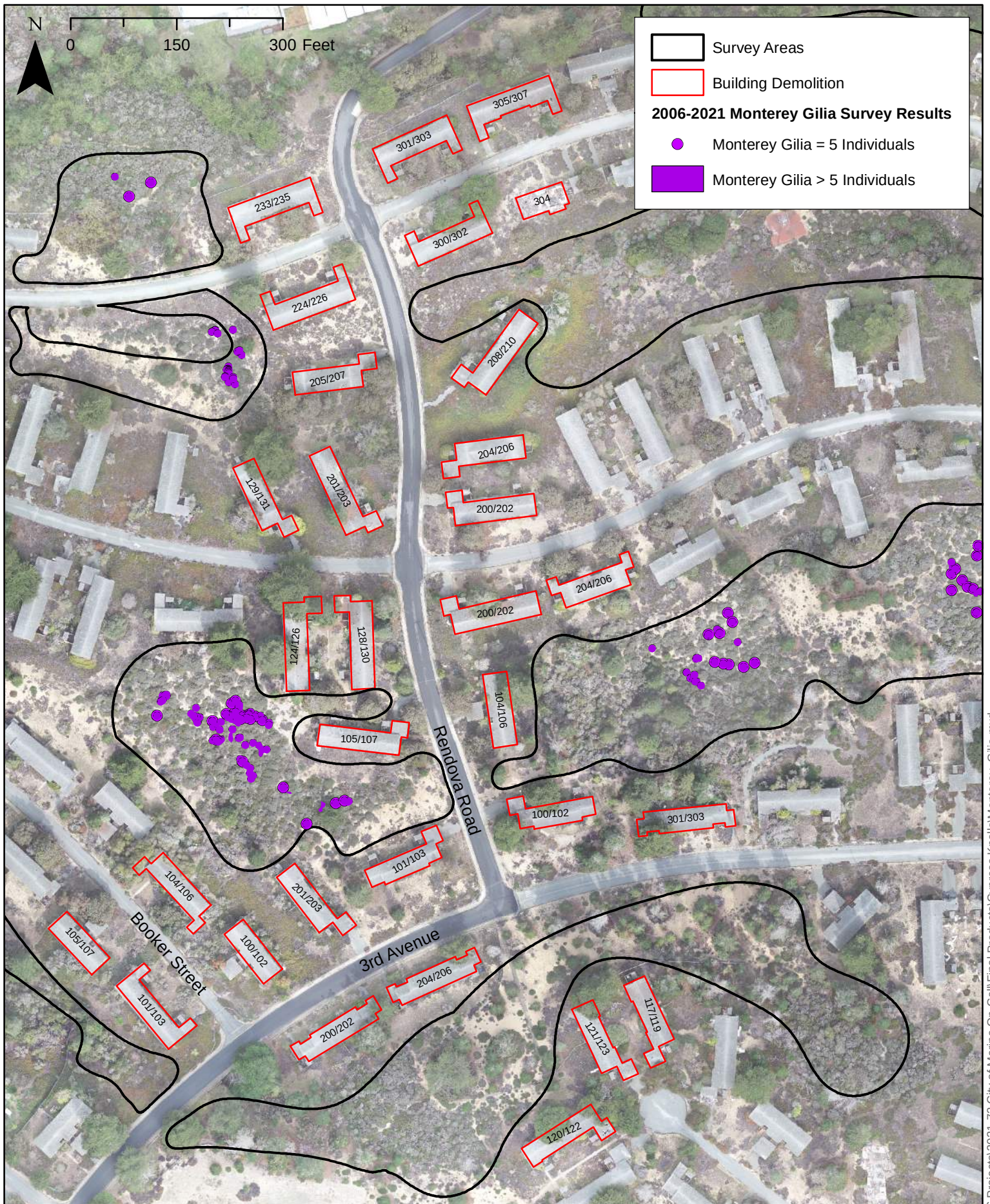
From: Patric Krabacher, Project Manager
Denise Duffy & Associates, Inc.

RE: Compliance Memorandum for the City of Marina Blight Removal Project 2022 – Cypress Knolls

Denise Duffy & Associates, Inc. (DD&A) is contracted by the City of Marina (City) to provide on-call environmental consulting services for City projects. The City is proposing to conduct demolition activities within the Cypress Knolls project site, as described in the *Cypress Knolls Tentative Tract Map and General Plan Amendment, Environmental Impact Report* (EIR) (Firma, 2006). The City requested that DD&A review the proposed demolition activities associated with the Blight Removal Phase of the Cypress Knolls Project (project) and identify the relevant biological mitigation measures required from the EIR that are applicable to the project. Based on our review, this Compliance Memorandum identifies the relevant biological mitigation measures that shall be implemented to reduce any potentially significant impacts to sensitive biological resources within the site in compliance with the EIR.

Methods

DD&A biologists conducted focused Monterey gilia (*Gilia tenuiflora* ssp. *arenaria*) surveys within Cypress Knolls between the months of April and June, between the years 2006 and 2021 following the applicable guidelines outlined in the U.S. Fish and Wildlife Service (Service) *Guidelines for Conducting and Reporting Botanical Inventories for Federally listed, Proposed and Candidate Plants* (Service, 2000), the California Department of Fish and Wildlife (CDFW) *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFW, 2018), and California Native Plant Society (CNPS) *Botanical Survey Guidelines* (CNPS, 2001). All special-status plant species identified were mapped using a Trimble Geo 7X GPS unit, which were later digitized using ArcGIS software. Populations of plants with more than five individuals were mapped as a polygon and the density of the population was documented. Densities were recorded as low (1-33% cover), medium (34-66% cover) and high (67-100% cover). Individual plants or populations of five or fewer individuals were mapped as a point and a count of the number of individual plants was documented. Populations included all individuals within approximately three feet of another individual; individual plants further away than three feet were mapped as a separate polygon or point. Data collected during the surveys was used to assess the environmental conditions of the project site and its surroundings, evaluate environmental constraints at the site and within the local vicinity, and provide a basis for recommendations to minimize and avoid impacts. Results from these survey efforts are presented in **Figure 1**.



Monterey Gilia Survey Results 2006-2021

Date
2/16/2022
Scale
1 in = 200 ft



Denise Duffy & Associates, Inc.
Planning and Environmental Consulting

Figure
1
61

Mitigation Measures

The following biological mitigation measures required by the certified EIR shall be implemented during the project:

Monterey gilia

- **Mitigation A-4:**

- To avoid potential impacts to Monterey gilia until the City-wide Section 2081 ITP is issued, the following mitigation measures shall be implemented prior to the commencement of any ground-disturbing activities within the project site:
 - A qualified biologist shall direct the placement of protective fencing surrounding all documented Monterey gilia populations within the project, this may require a survey to be conducted prior to the onset of construction. No construction activities shall be allowed within the protective fencing.
 - Grading, excavating, and other activities that involve substantial soil disturbance shall be planned and carried out in consultation with a qualified hydrologist, engineer, or erosion control specialist, and shall utilize standard erosion control techniques to minimize erosion and sedimentation in the areas containing all documented Monterey gilia populations within the project.
 - No construction equipment shall be serviced or fueled within 50 feet of areas containing all documented Monterey gilia populations within the project.
 - Irrigation systems shall be designed to minimize runoff or irrigation water into all documented Monterey gilia populations within the project.
- If construction activities must commence that will result in “take” of documented Monterey gilia populations within the project, prior to issuance of the City-wide Section 2081 ITP, one of the following measures (at the applicant's option) shall be implemented:
 - The project site plan shall be redesigned to eliminate the loss of any Monterey gilia individuals and provide protection for the individuals in perpetuity; or
 - The project applicant shall obtain a project-specific Section 2081 ITP to mitigate for the “take” of Monterey gilia. The project applicant would be required to comply with the Section 2081 ITP requirements, which may include conservation of existing populations and/or creation/enhancement of suitable Monterey gilia habitat.

Nesting Birds

- **Mitigation A-6:**

- To mitigate potentially significant impacts to nesting raptors resulting from removal of trees during nesting season (the nesting season is March 1 to September 15), pre-construction (i.e. no more than 30 days prior to construction) surveys for active nests shall be conducted by a qualified biologist within 250 feet of proposed construction activities; pre-construction surveys are not necessary outside the nesting season. If active nests are found, a suitable construction buffer shall be established by a qualified biologist until the young of the year have fledged. Alternatively, construction activities that may affect nesting raptors can be timed to avoid the nesting season.

Special-Status Bat Species

- **Mitigation A-7:**

- Prior to construction (e.g., building demolition and tree removal), a qualified biologist shall survey the Project site for the presence of special-status bat species. If special-status bat species are present, the following measures shall be implemented:

- Removal of buildings that contain the bats shall not occur if maternity bat roosts are present (typically maternity roosts are present between April 15 and August 1; however, this timeframe does not apply to all species).
- No building removal shall occur within 30 feet of the maternity roost until all young bats have fledged - as determined by a qualified biologist.
- If special-status bats are present but there is not an active maternity roost, the building(s) containing the bats shall not be demolished or removed until the bats have been excluded using exclusionary devices under the supervision of a qualified bat specialist.

If you have any comments or questions about this report, please contact me at pkrabacher@ddaplanning.com or at (831) 373-4341 ext. 29.

Sincerely,



Patric Krabacher, ISA Certified Arborist 11759
DENISE DUFFY & ASSOCIATES, INC.

References

California Department of Fish and Wildlife. 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities.

California Native Plant Society. 2001. Botanical Survey Guidelines. Available Online at: http://www.cnps.org/cnps/rareplants/pdf/cnps_survey_guidelines.pdf

Firma Consultants, Inc. 2006. Cypress Knolls Tentative Tract Map and General Plan Amendment, Environmental Impact Report.

U.S. Fish and Wildlife Service (Service). 2000. Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed, and Candidate Plants. Available online at: http://www.fws.gov/ventura/speciesinfo/protocols_guidelines/docs/botanicalinventories.pdf

U.S. Army Corps of Engineers, Sacramento District (ACOE). 1997. Installation-Wide Multispecies Habitat Management Plan for Former Fort Ord, California. April 1997. Sacramento, CA.

March 7, 2022

Item No. **11b**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of March 15, 2022

THE CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2022-, ADOPTING A VEHICLE MILES TRAVELED (VMT) AS A THRESHOLD OF SIGNIFICANCE FOR THE PURPOSES OF ANALYZING TRANSPORTATION IMPACTS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PURSUANT TO SB 743.

RECOMMENDATION: City Council consider

1. Adopting Resolution No. 2022-, adopting Vehicle Mile Traveled (VMT) as a threshold of significance for the purposes of assessing transportation impacts under the California Environmental Quality Act (CEQA); and
2. Find that the action is exempt from CEQA pursuant to Section 15308 of the CEQA Guidelines.

SUMMARY:

In 2013, SB 743 was signed into law by California Governor Jerry Brown with a goal of reducing Greenhouse Gas (GHG) emissions, promoting the development of infill land use projects and multimodal transportation networks, and to promote a diversity of land uses within developments. One significant outcome resulting from this statute is the removal of automobile delay and congestion, commonly known as level of service (LOS), as a basis for determining significant transportation impacts under the California Environmental Quality Act (CEQA).

The Governor's Office of Planning and Research (OPR) selected Vehicle Miles Traveled (VMT) as the principal measure to replace LOS for determining significant transportation impacts. VMT is a measure of total vehicular travel that accounts for the number of vehicle trips and the length of those trips

BACKGROUND:

CEQA is a state statute that requires public agencies to study and identify potentially significant environmental impacts of proposed projects and avoid or reduce those impacts to a level of insignificance, to the extent feasible.

One component of CEQA is to evaluate future transportation impacts of various projects. Senate Bill (SB) 743, codified in Public Resources Code section 21099, was signed into law in 2013. It required the Governor's Office of Planning and Research (OPR) to amend the CEQA Guidelines to revise the criteria for determining the significance of transportation impacts, and to provide that automobile delay shall not be considered a significant impact on the environment under CEQA, except in locations specifically identified in the guidelines, if any.

The Legislative intent of SB 743 is to ensure transportation impacts continue to be addressed under CEQA, and to promote statewide goals of public health, infill development, and greenhouse gas reduction. In December 2018, CEQA Guideline section 15064.3 was adopted, identifying the amount and distance of automobile travel attributable to a project, or VMT, as the most appropriate metric for transportation impact analysis. Statewide application of CEQA Guideline section 15064.3 was required beginning July 1, 2020. This is a shift away from the delay-based level of service (LOS) metric that historically has been used for evaluating traffic impacts. The updated state CEQA Guidelines require all California cities to use VMT-based thresholds for CEQA impact analyses. In 2021, the City of Marina hired Kimley-Horn and Associates (transportation consultants) to assist with the necessary work to implement the VMT metric, including updating and running the Association of Monterey Bay Area Governments' (AMBAG) Transportation Model, mapping, and generating thresholds of significance standards for Marina. That work developed the recommendations contained in this report.

The VMT metric considers the distance that new residents or employees of a proposed development project would travel on average as the result of the project. VMT is advantageous to developers proposing compact, mixed-use developments within an established urban limit because it “rewards” a project for being in close proximity to daily destinations such as schools, grocery stores, jobs, and services.

Likewise, projects that are on the far edges of town would more likely have high VMT because daily destinations are further away. If a project generates VMT above the stated thresholds of significance, common ways to reduce VMT on a project level are investments in Transportation Demand Management (TDM) such as transit passes, bike and pedestrian programs, car share, on-site childcare facilities, and other means. Other ways include the construction of or contribution to bike and pedestrian or high-occupancy vehicle projects.

OPR recommends a threshold of significance of 15% below the regional average VMT. SB 743 does not prevent a city or county from continuing to analyze delay or LOS as part of development standards, but it may no longer constitute the basis for CEQA impact and mitigation (Public Resources Code section 21099(e)(4)). For example, the City may adopt a fair share traffic impact fee, to ensure that new development bears a proportionate share of the cost of capital facilities and other costs necessary to accommodate such development.

PROPOSED VMT POLICY

In recognition of SB 743 and OPR’s VMT recommendations, the recommendations in this report include VMT thresholds, screening criteria, and mitigation to ensure consistency with CEQA Guidelines.

Additionally, the City partnered with Kimley-Horn to develop a VMT Tool that uses the AMBAG model to determine whether a proposed project would create a significant impact. The tool evaluates a project’s anticipated VMT based on its land use type. This was done in compliance with SB 743 and OPR’s “*Technical Advisory on Evaluating Transportation Impacts in CEQA*”

RECOMMENDED SCREENING CRITERIA

CEQA Guidelines section 15063 and OPR’s “Technical Advisory on Evaluating Transportation Impacts in CEQA” allow for development of screening criteria used to identify when a project should be expected to cause a less-than-significant impact on transportation without conducting a detailed CEQA VMT analysis. The following criteria are recommended by OPR and staff:

Small Projects: If a project generates or attracts less than 110 trips per day and is consistent with the General Plan and Sustainable Communities Strategy, that project may be assumed to cause a less-than-significant transportation impact.

Development in Low-VMT Areas/Map-Based Screening: Maps showing existing VMT values within a city are referred to as heat maps. These maps display colors representing the level of variation from a local or regional VMT reference average for a jurisdiction. The purpose of these heat maps is to determine if a project could be in an area with low existing VMT. OPR advises that residential and office projects in areas of low VMT that are compatible with surrounding development in terms of density, mix of uses, and transit accessibility will tend to exhibit similarly low VMT. These projects would, therefore, be presumed to have a less-than-significant VMT impact. OPR guidance suggests using regional as opposed to citywide geographies for reviewing office development, as employees often commute from outside the city boundary to their jobs. Under the recommended approach for map-based screening, projects located in low VMT areas (zones with VMT that is at least 15% below the regional average VMT) would be presumed to have a less-than-significant transportation impact under CEQA.

Proximity to Transit Stations: Lead agencies should presume that certain projects (including residential, retail, and office projects, as well as projects that are a mix of these uses) proposed within 1/2 mile of an existing major transit stop or an existing stop along a high-quality transit corridor will have a less-than-significant impact on VMT. This presumption would not apply, however, if project-specific or location-specific information indicates that the project will still generate significant levels of VMT, as might be the case if the

project has a Floor Area Ratio (FAR) of less than 0.75, includes parking in excess of requirements, is inconsistent with local and regional plans, or replaces affordable units with a smaller number of market rate units. “High quality transit corridor” and “major transit stops” are defined in the Public Resources Code. “Major transit stop” means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods. A “high quality transit corridor” means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours. Affordable Residential Development:

Affordable Housing Development: Adding affordable housing to infill locations improves jobs-housing match, in turn shortening commutes and reducing VMT. Projects that are 100% affordable residential development, or the residential component of a mixed-use development, in infill locations shall be assumed to have a less-than-significant impact on transportation under CEQA. Furthermore, a project which includes any affordable residential units may factor the effect of the affordability on VMT into the assessment of VMT generated by those units.

RECOMMENDED THRESHOLDS OF SIGNIFICANCE

If a project is not screened out with the criteria outlined above, then it shall be subject to a detailed CEQA VMT Analysis. Should a project exceed the threshold of significance, a menu of accepted transportation demand management (TDM) options is available to reduce the project VMT to an acceptable level. OPR recommends lead agencies use an efficiency metric (reduction per capita or employee) to define thresholds of significance for residential and employment land use projects. OPR suggests that a 15% VMT reduction relative to regional average VMT levels is achievable at the project level for a variety of land uses and is consistent with achieving the State’s climate goals. OPR and staff recommend the following thresholds of significance:

Residential: A proposed project exceeding a level of 15% above the existing countywide average VMT per capita may indicate a significant transportation impact.

Office: A proposed office project exceeding a level of 15% above the below existing countywide average VMT per employee may indicate a significant transportation impact.

Retail: A net increase in total VMT may indicate a significant transportation impact. Note: because new retail development can redistribute some trips rather than create all new trips, estimating the total change in VMT is the best way to analyze retail. Consider that there is currently a popular Store X four miles away. If Store X opens a new store two miles away, trips that would have normally gone further distances to access that store are now making shorter trips.

All other land uses: A net increase in total VMT may indicate a significant transportation impact. Mixed Use Projects: Each component of the mixed-use project shall be evaluated independently and the threshold of significance for each project type shall apply.

Redevelopment: If a redevelopment project results in a lower VMT than the VMT being generated by the existing land use, the project is assumed to have a less-than-significant impact. If the project increases the net overall VMT, the thresholds above should apply.

Finally, it should be noted that the City will update the City’s VMT thresholds and methodology on an as needed basis to reflect changes in CEQA requirements, new methodology development, or refinement of process moving forward. As such, the City shall regularly review these guidelines for applicability, and project sponsors and consultants should contact the City to ensure that they are applying the most recent guidelines for project impact assessment. In summary, the Planning Commission should receive a report and presentation, accept public comment, and provide a recommendation to the City Council.

SUMMARY OF VMT POLICY IMPLEMENTATION

In summary, below is a chart that will be helpful to the Planning Commission to understand how City will be implementing the draft VMT policy in the near term.

- Step 1 – Determine if project is ministerial or discretionary
- Step 2 – Determine ITE land use
- Step 3 – Screen for Non-Significance Transportation Impact
- Step 4 – Determine Significance Threshold and Methodology
- Step 5 – Develop Scope Agreement and Complete VMT Analysis
- Step 6 – Identify Mitigation Measures
- Step 7 – Monitor Mitigation

FISCAL IMPACT:

The original contract was entered into with Kimley Horn Consultant in an amount not to exceed \$25,090 to complete the VMT policy. A contract amendment for \$6,350 was processed to ensure the consultant was available at public hearings before the Planning Commission and City Council.

COMMUNITY INPUT

The week of February 24, 2022 City staff received comments from Land Watch. Their comments were incorporated into the VMT policy and are include as Exhibit E to this staff report.

ENVIRONMENTAL REVIEW:

The adoption of the new local CEQA threshold of significance for transportation impacts will not have a significant environmental impact and therefore is exempt from CEQA pursuant to Section 15308 of the California Code of Regulations because the action is undertaken by the City for the protection of the environment.

CONCLUSION:

This request is submitted for City Council consideration and comment.

Respectfully submitted,

Guido F. Persicone, AICP
Community Development Director
City of Marina

REVIEWED/CONCUR:

Layne Long
City Manager
City of Marina

Exhibit A-Draft VMT Policy
Exhibit B-Marina VMT Tool
Exhibit C1-VMT Employment Heat Maps
Exhibit C2-VMT VMT Per Capita Heat Maps
Exhibit D-Land Watch Project Comments

RESOLUTION NO. 2022-

THE CITY COUNCIL OF THE CITY OF MARINA SHALL ADOPT VEHICLE MILES TRAVELED (VMT) AS A THRESHOLD OF SIGNIFICANCE FOR THE PURPOSES OF ANALYZING TRANSPORTATION IMPACTS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PURSUANT TO SB 743.

WHEREAS, the State legislature of the State of California adopted the California Environmental Quality Act of 1970 (CEQA), as amended, and codified in Sections 21,000 et seq. of the Public Resources Code; and

WHEREAS, the Legislature directed the Secretary of the Natural Resources Agency to prepare State guidelines for the implementation of said act by public agencies; and

WHEREAS, Senate Bill 743, codified in Public Resources Code section 21099, required changes to the CEQA Guidelines requiring the criteria for determining the significance of transportation impacts of projects; and

WHEREAS, CEQA Guidelines section 15064.3 went into effect on July 1, 2020, and it identifies vehicle miles traveled (VMT) as the most appropriate metric to evaluate a project's transportation impacts; and

WHEREAS, automobile delay, as measured by level of service (LOS), no longer constitutes a significant environmental effect under CEQA. SB 743 does not prevent a city or county from continuing to analyze delay or LOS as part of development standards, but it may no longer constitute the basis for CEQA impact and mitigation. (Public Resources Code section 21099(e)(4)); and

WHEREAS, CEQA Guidelines section 15064.7(a) defines a threshold of significance as an identifiable quantitative, qualitative or performance level of a particular environmental effect, noncompliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant; and

WHEREAS, CEQA Guidelines section 15064.7(b) requires that threshold of significance be adopted by ordinance, resolution, rule or regulations, developed through a public review process and be supported by substantial evidence; and

WHEREAS, the City is adopting this VMT Policy to bring the City's transportation analysis methodology in line with state goals pursuant to SB 743; and

WHEREAS, the Planning Commission hosted a public meeting on February 24, 2022, to review the policy and adopted a resolution in support of this policy; and

WHEREAS, on February 23, 2022, the City of Marina received comments from Land Watch which have been incorporated herein and included as Exhibit E (Public Comments) to the staff report.

WHEREAS, the City Council reviewed the policy at a duly noticed public hearing dated March 15, 2022; and

WHEREAS, the City Council finds and determines, based upon staff and consultant reports and research as well as testimony in the record, that the revised CEQA thresholds of significance under consideration are consistent with State requirements as to how transportation impacts should be evaluated for purposes of CEQA review of projects. The revised thresholds are based upon the VMT metric that is specifically required in CEQA Guidelines section 15064.3. Additionally, the City's policy is consistent with and based upon review of the Governor's Office of Planning and Research (OPR) guidance.

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

1. Adopt Vehicle Mile Traveled (VMT) as a threshold of significance for the purposes of assessing transportation impacts under the California Environmental Quality Act (CEQA).
2. Find that the action is exempt from CEQA pursuant to Section 15308 of the CEQA Guidelines.

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

DRAFT SB 743 Implementation Guidelines

City of Marina

March 7, 2022

1.0 Background

In 2013, SB 743 was signed into law by California Governor Jerry Brown with a goal of reducing Greenhouse Gas (GHG) emissions, promoting the development of infill land use projects and multimodal transportation networks, and to promote a diversity of land uses within developments. One significant outcome resulting from this statute is the removal of automobile delay and congestion, commonly known as level of service (LOS), as a basis for determining significant transportation impacts under the California Environmental Quality Act (CEQA).

The Governor's Office of Planning and Research (OPR) selected Vehicle Miles Traveled (VMT) as the principal measure to replace LOS for determining significant transportation impacts. VMT is a measure of total vehicular travel that accounts for the number of vehicle trips and the length of those trips. OPR selected VMT, in part, because jurisdictions are already familiar with this metric. VMT is already used in CEQA to study other potential impacts such as GHG, air quality, and energy impacts and is used in planning for regional Sustainable Communities Strategies (SCS).

VMT also allows for an analysis of a project's impact throughout the jurisdiction rather than only in the vicinity of the proposed project allowing for a better understanding of the full extent of a project's transportation-related impact. It should be noted that SB 743 does not disallow the City of Marina to use LOS for other planning purposes outside the scope of CEQA.

2.0 Use of This Document

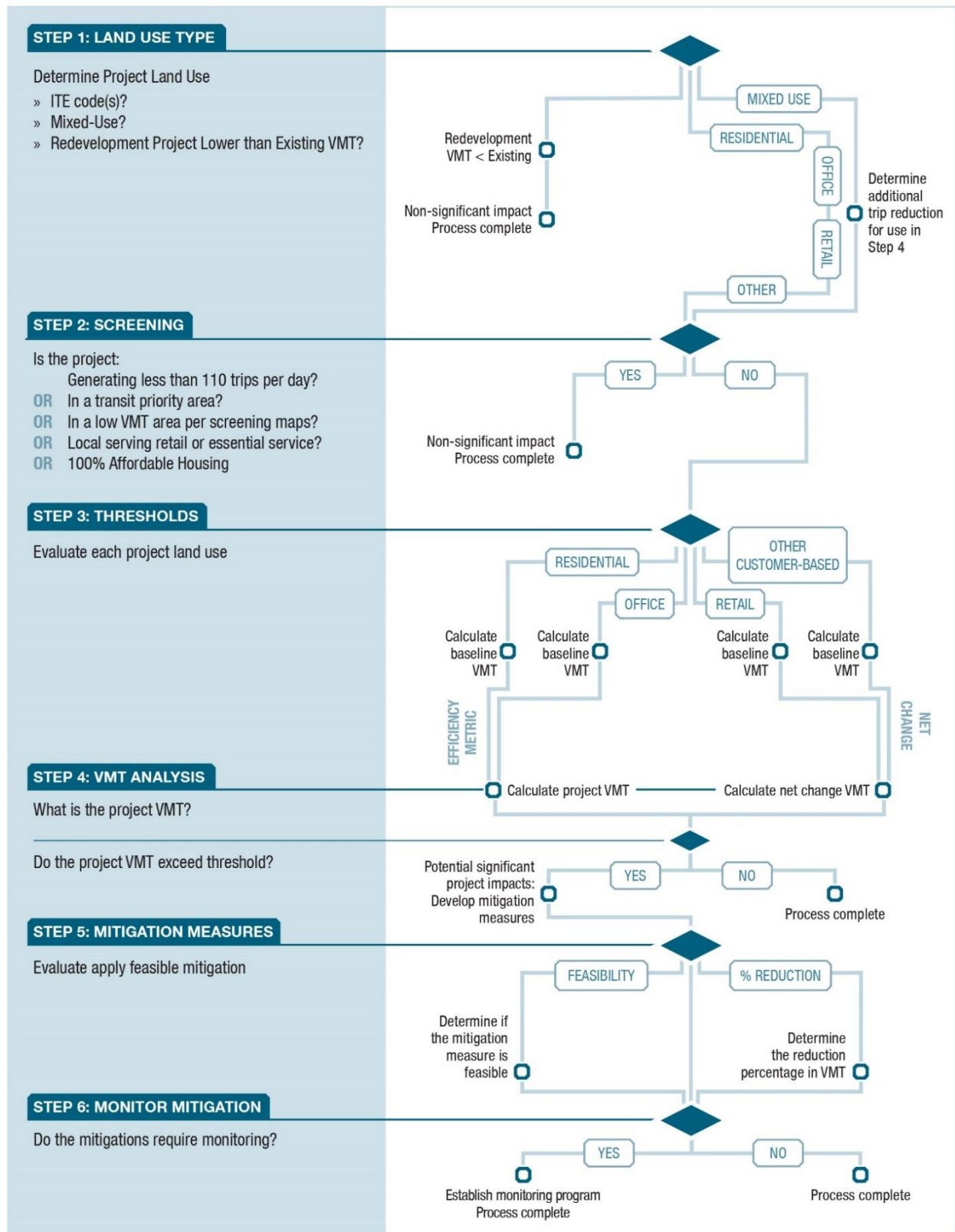
Note that although this document includes footnotes and references to other documents, this document has been developed to serve both as the basis of SB 743 implementation and VMT analysis within the City. Accordingly, the document does not require the reader to reference the footnotes unless they are interested in understanding the technical basis of elements of this document's preparation. Analysis guidelines are separated into two distinct approaches, those that relate to land use projects (Section 3.0) and those that relate to transportation improvement projects (Section 4.0). If a project includes both land use and transportation improvement elements, analysis would be required to be carried out for both.

3.0 Land Use Projects

An approach to identify transportation impacts under CEQA for land-use that closely align with guidance provided within the OPR *Technical Advisory on Evaluating Transportation Impacts in CEQA* (2018). While the OPR guidance related to SB 743 has been a helpful introduction to using VMT to evaluate projects, it does not provide a complete solution. There are a multitude of complex practical issues that are not addressed by the OPR guidance. OPR Guidance does not specifically address land uses beyond residential, office and retail, and it provides latitude on some elements of implementation. In response

to this, a specific series of analysis steps for SB 743 project evaluation have been developed to clarify requirements and reduce potential confusion. **Exhibit 1** provides a graphical representation of this analysis process.

Exhibit 1 – Process for CEQA VMT Analysis for Land Use Projects



Step 1: Determine Land Use Type

During the initial step, land use projects will need to be evaluated for the following considerations:

- **Land use type.** For the purposes of analysis, the Institute of Transportation Engineers (ITE) land use codes serve as the basis of land use definitions. Although it is recognized that VMT evaluation tools and methodologies are typically not fully sensitive to some of the distinctions between some ITE categories, the use of ITE land use codes is useful for maintaining consistency across analyses, determining trip generation for other planning level tools, and maintaining a common understanding of trip making characteristics amongst transportation professionals. The ITE land use code is also used as an input into the VMT Analysis Tool
- **Mixed Use.** If there are multiple distinct land uses within the project (residential, office, retail, etc.), they will be required to be analyzed separately unless they are determined to be insignificant to the total VMT. Mixed use projects are permitted to account for internal capture which depending on the methodology may require a distinct approach not covered in this documentation. This analysis would be the responsibility of the applicant and will need to be prepared by a qualified transportation professional and approved by the City of Marina.
- **Redevelopment projects.** As described under the Non-Significant Screening Criteria section, redevelopment projects which have lower VMT than the existing on-site use can be determined to have a non-significant impact.

Step 2: Screen for Non-Significant Transportation Impact

The purpose of this step is to determine if a presumption of a non-significant transportation impact can be made on the facts of the project. The guidance in this section is primarily intended to avoid unnecessary analysis and findings that would be inconsistent with the intent of SB 743. A detailed CEQA transportation analysis will not be required for land use elements of a project that meet the screening criteria shown in **Exhibit 2**. Note that as the lead agency, the City will make the ultimate determination as to the whether the presumption of a non-significant transportation impact is appropriate for a given project. If a project has multiple distinct uses (residential, office, retail, etc.), only those elements of the project that are not screened out would require further evaluation to determine transportation significance for CEQA purposes.

Exhibit 2 – Screening Criteria

Screening Criteria	OPR Guidance
Small Projects¹ This applies to projects with low trip generation per existing CEQA exemptions. Note that this includes any land use type (residential, office, etc.)	Presumed to cause a less-than-significant impact: - Project generation is less than 110 trips per day per the ITE Manual or other acceptable source determined by City of Marina Unless: - It is inconsistent with the Sustainable Communities Strategy as determined by the City of Marina
Projects Near High Quality Transit² High quality transit provides a viable option for many to replace automobile trips with transit trips resulting in an overall reduction in VMT.	Presumed to cause a less-than-significant impact: - Within a ½ mile of an existing major transit stop (maintains a service interval frequency of 15 minutes or less during the morning and afternoon peak commute periods). Unless: - Has a Floor Area Ratio (FAR) of less than 0.75; or - Includes more parking, excluding on-street parking, for use by residents, customers, or employees of the project than required by the City of Marina zoning code; or - It is inconsistent with the Sustainable Communities Strategy as determined by the City of Marina; or - Replaces affordable residential units with a smaller number of moderate- or high-income residential units
Local-Serving Retail³ The introduction of new Local-serving retail has been determined to reduce VMT by shortening trips that will occur out of necessity (groceries, other essentials, etc.).	Presumed to cause a less-than-significant impact: - No single store on-site exceeds 50,000 square feet; and - Project is local-serving as determined by the City of Marina Unless: - The nature of the service is regionally focused as determined by the City of Marina

¹ 2018 OPR Guidance, page 12² 2018 OPR Guidance, page 13³ 2018 OPR Guidance, page 16

Exhibit 2 – Screening Criteria

Screening Criteria	OPR Guidance
Affordable Housing⁴ Lower-income residents make fewer trips on average, resulting in lower VMT overall.	Presumed to cause a less-than-significant impact: - A high percentage of affordable housing is provided as determined by the City of Marina Unless: - The percentage of affordable housing is determined by the City of Marina to not be high in relation to the residential element of a project
Local Essential Service⁵ As with Local-Serving Retail, the introduction of new Local Essential Services shortens non-discretionary trips by putting those goods and services closer to residents, resulting in an overall reduction in VMT.	Presumed to cause a less-than-significant impact: Building is less than 50,000 square feet: and Land Use is : - Day care center; or - Public K-12 School; or - Police or Fire facility; or - Medical/Dental office building; or - Government offices (in-person services such as post office, library, and utilities) Unless: - The nature of the service is regionally focused as determined by the City of Marina
Map-Based Screening This method eliminates the need for complex analyses, by allowing existing VMT data to serve as a basis for the screening smaller developments.	Presumed to cause a less-than-significant impact: - Area of development is under threshold as shown on screening map as allowed by City of Marina Unless: - Represent significant growth as to substantially change regional travel patterns as determined by the City of Marina

⁴ 2018 OPR Guidance, page 14. As described, “Evidence supports a presumption of less than significant impact for a 100 percent affordable residential development (or the residential component of a mixed-use development) in infill locations. Lead agencies may develop their own presumption of less than significant impact for residential projects (or residential portions of mixed-use projects) containing a particular amount of affordable housing, based on local circumstances and evidence.”

⁵ Based on assumption that, like local-serving retail, the addition of necessary local in-person services will reduce VMT given that trips to these locations will be made irrespective of distance given their non-discretionary nature.

Exhibit 2 – Screening Criteria

Screening Criteria	OPR Guidance
Note that screening is limited to residential and office projects.	
Redevelopment Projects⁶ Projects with lower VMT than existing on-site uses, can under limited circumstances, be presumed to have a non-significant impact. In the event this screening does not apply, projects should be analyzed as though there is no existing uses on site (project analysis cannot take credit for existing VMT).	Presumed to cause a less-than-significant impact: - Project replaces an existing VMT-generating land use and does not result in a net overall increase in VMT Unless: - The project replaces an existing VMT-generating land use and results in a net overall increase in VMT

⁶ 2018 OPR Guidance, Page 18

Step 3: Determine Significance Threshold and Methodology

The purpose of this step is to determine the threshold of significance for application to a land use project. Significance thresholds are based on land use type, broadly categorized as efficiency and net change metrics. Efficiency metrics include VMT/Capita and Work VMT/employee⁷. As described in **Exhibit 3**, “Net Change” refers to the net change in regional VMT. “Net Change” is used for elements that include a significant customer base, such as commercial uses, although it can extend to a variety of uses that have similar characteristics.

Exhibit 3 - Significance Threshold and Methodology

Example Details	Efficiency	Net Change
Example Land Use	Residential, Professional Office, Industrial	Retail, Medical Office, Sports Venue
Example VMT Thresholds	Per capita, per employee	Region VMT change
Customer Component	No	Yes
Allowable Methods	Non-Significant Screening Criteria, The City of Marina VMT Analysis Tool, Travel Demand Model, Other methods as deemed appropriate by the City of Marina	Non-Significant Screening Criteria, Travel Demand Model, Other methods as deemed appropriate by the City of Marina

For projects with a significant customer base it is typically appropriate to separate employee trip characteristics from the customer base unless the customer base is minimal in nature. Under these circumstances, it is most appropriate to evaluate the total of the delta in regional VMT resultant from the customer base plus the delta of VMT resultant from employees based on the following formula:

(number of employees) x (estimated VMT/employee – threshold VMT/employee)

The threshold of significance will accordingly correspond to the “Net Change” threshold as described in **Exhibit 3**. Under these circumstances, it is most appropriate to evaluate this total Net Change as the basis for evaluating the outcome of mitigations in terms of determining transportation significance although each element of the project should be tallied separately for the purposes of clarity.

As provided for under Allowable Methods, note that some projects may require approaches and analysis methods not described within this document given their unique locations or that the proposed land use is not appropriately represented in the AMBAG Travel Demand Model. This can also be the case if there is unique data associated with a project such as a market study or other relevant data.

⁷ Work VMT specifically applies to commute trips as represented by the attractions in the Travel Demand Model. Refer to Appendix A for additional information

VTM Thresholds of Significance

OPR suggests a 15 percent VMT reduction relative to existing local or regional average VMT levels. The thresholds of significance recommended by OPR, as they relate to the City of Marina, are summarized in **Exhibit 4**.

Exhibit 4 - OPR suggested VMT Thresholds of Significance

Land Use	OPR Guidance ⁸
Residential	15% below existing city-wide average VMT per capita
Office	15% below existing county-wide average VMT per employee
Retail	Net increase in regional VMT

Based on these criteria the VMT thresholds of significance shown in **Exhibit 5** have been established.

Exhibit 5 - VMT Thresholds of Significance

Land Use	VMT Threshold	Basis
Residential	10.9 VMT/capita ⁹	15% below existing city-wide average VMT per capita.
Office	6.6 Work VMT/Employee ¹⁰	15% below existing county-wide average Work VMT per employee
Retail	Net regional change	Using the county as the basis
Other Employment	Work VMT/Employee ¹¹	15% below existing county-wide average Work VMT per employee for similar land uses
Other Customer	Net regional change	Using the county as the basis

Note that the inclusion of “Other Employment” and “Other Customer” refers to all other service and goods providers that are not included in the office/retail categories. As shown they follow a similar approach to the office/retail categories with the principal difference being that the average/basis for of the threshold would be the aggregation of the specific “other” land use across the county (i.e. an industrial project would use industrial uses, etc.).

Based on improvements to methods and data as well as other modeling modifications there will be periodic updates to the numerical threshold values shown, however the relative approach for calculating them should remain the same. The values in the current VMT Analysis Tool, discussed in the

⁸ 2018 OPR Guidance, Pages 15-16

⁹ Residential VMT specifically applies to all Home-Based trips residential trips as represented in the Travel Demand Model. Refer to Appendix A for additional information.

¹⁰ Work VMT specifically applies to commute trips as represented in the Travel Demand Model. Refer to Appendix A for additional information

¹¹ Work VMT specifically applies to commute trips as represented in the Travel Demand Model. Refer to Appendix A for additional information

next section, will supersede the information provided in the table above. Additional thresholds for various employment types are also provide in the VMT Analysis Tool.

VTM Analysis Tool

The City of Marina has developed a VMT Analysis Tool for use in SB 743 land use project analysis. The purpose of the tool is to calculate VMT for a land use project. As with any VMT Analysis Tool, there are distinct limitations in terms of its application including limits on the type and size of development that can be applied to. Note that it is anticipated that the tool will continue to evolve in response to data or methodological changes and as such it is important that the most current version of the tool be utilized. Broadly, the VMT Analysis Tool provides the following information:

- Institute of Transportation Engineers (ITE) Trip Generation
- VMT Threshold Analysis
- Greenhouse Gas (GHG) Estimation
- Transportation Demand Management (TDM) Evaluation

The VMT Analysis methodology is summarized in **Appendix A**.

Step 4: Scope of Analysis Agreement

Prior to undertaking VMT analysis, a scope compliant with the City of Marina's requirements must be prepared by the project applicant and submitted to the City for approval. Given the potential complexities of some uses, particularly those not identified as residential, retail, or office, an agreement regarding the threshold and methodology is important to avoid analysis that is not compliant with the City of Marina's requirements.

Step 5: Analysis and Mitigation

During this step, the analysis agreed to under Step 4 should be completed. Relevant documentation providing enough detail that assumptions are clearly understandable, and methods that can be replicated should be provided along with the results of the VMT analysis for the proposed project.

If a significant transportation impact is identified, feasible mitigation measures to avoid or reduce the impact must be identified. CEQA requires that mitigation measures are included in the project's environmental assessment. OPR provides a list of potential measures to reduce VMT but gives the lead agency (the City of Marina in this case) full discretion in the selection of mitigation measures.

The type and size of the project will determine the most appropriate mitigation strategies for VMT impacts. For large projects such as general plans or specific plans, VMT mitigations should concentrate on the project's density and land use mix, site design, regional policies, and availability of transit, bicycle, and pedestrian facilities. For smaller projects such as an individual development project, VMT mitigations will typically require the preparation of a transportation demand management (TDM) program. A TDM program is a combination of strategies to reduce VMT. The program is created by an applicant for their land use project based on a list of strategies agreed to with the City of Marina.

The City of Marina has developed a list of potential TDM strategies appropriate for their jurisdiction and what magnitude of VMT reduction could be achieved. The selection process was guided by the California

Air Pollution Control Officers Association (CAPCOA) recommendations found in the 2010 publication *Quantifying Greenhouse Gas Mitigation Measures*. The area context of the City of Marina also influenced the type of TDM strategies that were selected. CAPCOA has found strategies with the largest VMT reduction in rural areas include vanpools, telecommute or alternative work schedules, and master planned communities with design and land-use diversity to encourage intra-community travel. Based on empirical evidence, CAPCOA found the cross-category maximum for all transportation-related mitigation measures is 15% for suburban settings.

Appendix B summarizes available TDM strategies along with the maximum VMT reduction, applicable land use application, and complementary strategies. The City of Marina's VMT Analysis Tool includes the TDMs summarized in **Appendix B**. Note that it should not be assumed that a project implementing these measures would in fact attain that maximum percentage reduction. The actual VMT reduction for a project should be based on project-specific analysis using the analytic tools and methods identified in the CAPCOA guidance. Note also, that the percentage VMT reductions from multiple mitigation measures may not be additive. The actual VMT reduction should be based on project-specific analysis using the analytic tools and methods identified in the CAPCOA guidance, including CAPCOA's caps on attainable maximum VMT reductions where multiple mitigation measures are adopted

Step 6: Mitigation Monitoring

As required by CEQA, the City of Marina will require ongoing mitigation monitoring and reporting. The specifics of this will be developed on a project basis.

4.0 Transportation Projects

Depending on the specific nature of a transportation project; it can alter trip patterns, trip lengths, and even trip generation. Research has determined that capacity-enhancing projects can and often do increase VMT. This phenomenon is commonly referred to as "induced demand". The result of these increases in VMT can often both be measured in congestion increases and negative impacts to air quality including GHG emissions. While methods are generally less developed for the analysis of induced demand compared to other areas of transportation analysis, there is still the need to quantify and understand its impact to the transportation system considering the requirements of SB 743.

Similarly, to land use projects, the approach to transportation project analysis closely align with the 2018 OPR Guidance. In terms of analysis, the analyst should first determine whether the transportation project has been prescreened and determined to have a non-significant impact as described in the following section.

Screen for Non-Significant Transportation Impact

At the discretion of the City of Marina, the following improvements maybe presumed to result in a non-significant impact¹²:

1. Rehabilitation, maintenance, replacement, safety, and repair projects designed to improve the condition of existing transportation assets (e.g., highways; roadways; bridges; culverts;

¹² 2018 OPR Guidance, Page 20

2. Transportation Management System field elements such as cameras, message signs, detection, or signals; tunnels; transit systems; and assets that serve bicycle and pedestrian facilities) and that do not add additional motor vehicle capacity
3. Roadside safety devices or hardware installation such as median barriers and guardrails
4. Roadway shoulder enhancements to provide “breakdown space,” dedicated space for use only by transit vehicles, to provide bicycle access, or to otherwise improve safety, but which will not be used as automobile vehicle travel lanes
5. Addition of an auxiliary lane of less than one mile in length designed to improve roadway safety
6. Installation, removal, or reconfiguration of traffic lanes that are not for through traffic, such as left, right, and U-turn pockets, two-way left turn lanes, or emergency breakdown lanes that are not utilized as through lanes
7. Addition of roadway capacity on local or collector streets, based on the City’s functional classification, provided the project also substantially improves conditions for pedestrians, cyclists, and, if applicable, transit
8. Conversion of existing general-purpose lanes (including ramps) to managed lanes or transit lanes, or changing lane management in a manner that would not substantially increase vehicle travel
9. Addition of a new lane that is permanently restricted to use only by transit vehicles
10. Reduction in number of through lanes
11. Grade separation to separate vehicles from rail, transit, pedestrians or bicycles, or to replace a lane in order to separate preferential vehicles (e.g., HOV, HOT, or trucks) from general vehicles
12. Installation, removal, or reconfiguration of traffic control devices, including Transit Signal Priority (TSP) features
13. Installation of traffic metering systems, detection systems, cameras, changeable message signs and other electronics designed to optimize vehicle, bicycle, or pedestrian flow
14. Timing of signals to optimize vehicle, bicycle, or pedestrian flow
15. Installation of roundabouts or traffic circles
16. Installation or reconfiguration of traffic calming devices
17. Adoption of or increase in tolls
18. Addition of tolled lanes, where tolls are sufficient to mitigate VMT increase
19. Initiation of new transit service
20. Conversion of streets from one-way to two-way operation with no net increase in number of traffic lanes

21. Removal or relocation of off-street or on-street parking spaces
22. Adoption or modification of on-street parking or loading restrictions (including meters, time limits, accessible spaces, and preferential/reserved parking permit programs)
23. Addition of traffic wayfinding signage
24. Rehabilitation and maintenance projects that do not add motor vehicle capacity
25. Addition of new or enhanced bike or pedestrian facilities on existing streets/highways or within existing public rights-of-way
26. Addition of Class I bike paths, trails, multi-use paths, or other off-road facilities that serve non-motorized travel
27. Installation of publicly available alternative fuel/charging infrastructure
28. Addition of passing lanes, truck climbing lanes, or truck brake-check lanes in rural areas that do not increase overall vehicle capacity along the corridor

Significance Threshold and Methodology

For projects that increase roadway capacity and are not identified under the Non-Significant Screening Criteria in the prior section, the significance criterion should be change in regional VMT. A finding of a significant impact would be determined if a transportation project results in a net increase in regional VMT. As a practical matter, any roadway with more than a quarter mile in new roadway travel lane (through lanes) should be evaluated for induced demand. A competent transportation professional will be required to provide a basis for this evaluation that considers available data, roadway context, and tools. Depending on the location and nature of the roadway this may be best accomplished using a the AMBAG Travel Demand Model.

Appendix A

VMT Analysis Methodology

Travel Demand Models (TDMs) are broadly considered to be amongst the most accurate of available tools to assess regional and sub-area VMT. The Association of Monterey Bay Area governments (AMBAG) maintains the regional travel demand model as a part of the Metropolitan Transportation Plan/Sustainable Communities Strategy program (MTP/SCS) that includes Monterey County and the City of Marina. The latest available version of the AMBAG TDM was developed in 2018.

The 2018 Base Year model scenario was used for the baseline conditions and 2040 Future Year model scenario was used for the cumulative conditions in the City. The incorporated cities included in the model are major contributors of the trips throughout Monterey County during a typical weekday.

As many of AMBAG Region's daily trips originate from or are destined for areas outside of the County such as the Bay area and Santa Clara County (external trips), their total length could not be computed solely using the AMBAG TDM, additional analysis was required. The length of these trips was determined using two main processes, using Big Data and AMBAG TDM output files. Data was obtained from Teralytics that summarized the number of trips to and from the AMBAG Region to the surrounding Counties at the Census Tract level for the entire month of October 2019. The distance between each Census Tract was determined by using the TransCAD software, the modeling platform the AMBAG TDM runs on. The multipath analysis function within the TransCAD software was used to determine the point to point distance between the centroid of each Census Tract using the internal pathing algorithm that determines the shortest path along the roadway network between the centroid of each Census Tract pair. The shortest path between each AMBAG Region Census Tract and each non-AMBAG Region Census Tract that contained at least one trip was multiplied by the share of the total trips to and from each Census Tract within the AMBAG Region to determine the average trip length to and from Census Tracts. The average trip length was applied to each TAZ based on the TAZ to Census Tract association and multiplied by the number of external trips to and from that TAZ to determine the total external VMT by TAZ.

Model Zone Structure

VMT was computed at Traffic Analysis Zone (TAZ) level to determine the thresholds as well as to allow for comparisons among different areas throughout the County.

Socio-Economic Data

Socioeconomic data (SED) and other model inputs are associated with each TAZ. Out of several different variables in the model SED, the VMT analysis mainly focused on population, the number of households, the number of students, and types of employment that are used in the trip generation component. VMT computation was focused on the number of households in each TAZ and employment variables by 6 industries to determine rest of the trips. Employment variables used in the model are listed below.

Employment by Industry type:

1. Agriculture
2. Construction

3. Industrial and Manufacturing
4. Retail and Food
5. Service (White Collar, non-government jobs)
6. Public Administration (Government jobs)

Trip Generation

The AMBAG TDM runs a series of complex steps to estimate daily trip productions and attractions by various trip purposes for each TAZ. The trip purposes are listed below.

Model Trip Purpose:

1. Home-Based Work (HBW)
2. Home-Based Shopping (HBShop)
3. Home-Based School, K-12 (HBSchool)
4. Home-Based University (HBUniv)
5. Home-Based Other (HBOther)
6. Non-Home-Based Work (NHBW)
7. Non-Home-Based Other (NHBO)
8. Visitor Shop
9. Visitor Tourist

The production model uses several variables such as number of workers, household income, age, household size and car availability depending on the trip purpose. Trip productions for every TAZ in the model were compiled separately by each trip purpose. The attraction model uses employment categories for the HW trip purpose, whereas it uses the employment categories and number of students (K-12 and University) for all non-HW trip purposes. The attraction model estimates trip attractions to each TAZ by regression coefficients that vary by employment type. Trip attractions for every TAZ were compiled by each purpose and by each employment type based on these regression coefficients.

Person Trips, Vehicle Occupancy, Trip Distance

Trip productions and attractions were compiled after the mode choice step, and only auto trips were used for the analysis. After the vehicle trip productions and attractions were computed for each trip purpose, trip lengths were applied for each zone pair from the skim matrices in the model to compute the production and attraction VMT by purpose.

VMT by Land Use Type

The residential VMT was computed by combining the production VMT for all the Home-Based trip purposes. VMT for non-residential land uses was computed from the attraction VMT by appropriate trip purposes and regression coefficients used in the attraction model.

Residential and non-residential VMT by each TAZ were computed and average VMT were determined by City, County and Region levels to determine the City's thresholds.

Appendix B

City of Marina					
TDM Measure #	Transportation Demand Management Measure	Description	TDM Type	Max VMT Reduction	VMT Reduction Type
Transit Strategies					
1	Transit Stops	Coordinate with local transit agency to provide bus stop near the site. Real time transportation information displays support on-the-go decision making to support sustainable trip making. Only get a reduction on a non-HQT line, cannot get both.	Infrastructure	3%	All
2	Safe and Well-Lit Access to Transit	Enhance the route for people walking or bicycling to nearby transit (typically off-site). Provide Emergency 911 phones along these routes to enhance safety.	Infrastructure	1%	All
3	MST Trolley	Implement project-operated or project-sponsored neighborhood shuttle serving residents, employees, and visitors of the project site.	Incentive	13.4%	All
4	Transit Subsidies	Involves the subsidization of transit fare for residents and employees of the project site. This strategy assumes transit service is already present in the project area. Pays for employees to use local transit. This could either be a discounted ticket or a full-reimbursed transit ticket. Include Trolley considerations.	Incentive	20%	All
Communication & Information Strategies					

City of Marina					
TDM Measure #	Transportation Demand Management Measure	Description	TDM Type	Max VMT Reduction	VMT Reduction Type
5	Mandatory Travel Behavior Change Program	Involves the development of a travel behavior change program that targets individuals' attitudes, goals, and travel behaviors, educating participants on the impacts of their travel choices and the opportunities to alter their habits. Provide a web site that allows employees to research other modes of transportation for commuting. Employee-focused travel behavior change program that targets individuals attitudes, goals, and travel behaviors, educating participants on the impacts of their travel choices and the opportunities to alter their habits.	Incentive	4%	All
6	Promotions & Marketing	Involves the use of marketing and promotional tools to educate and inform travelers about site-specific transportation options and the effects of their travel choices with passive educational and promotional materials. Marketing and public information campaign to promote awareness of TDM program with an on-site coordinator to monitor program.	Incentive	4%	All
Commuting Strategies					
7	Employer Sponsored Vanpool or Shuttle	Implementation of employer-sponsored employee vanpool or shuttle providing new opportunities for access to connect employees to the project site.	Incentive / Infrastructure	13.4%	All

City of Marina					
TDM Measure #	Transportation Demand Management Measure	Description	TDM Type	Max VMT Reduction	VMT Reduction Type
8	Emergency Ride Home (ERH) Program	Provides an occasional subsidized ride to commuters who use alternative modes. Guaranteed ride home for people if they need to go home in the middle of the day due to an emergency or stay late and need a ride at a time when transit service is not available. Ecology Action is preferred vendor. This supplemental to the other trip reduction strategies. ADD to 5 and 6	Incentive	9%	Commute
9	On-site Childcare	Provides on-site childcare to remove the need to drive a child to daycare at a separate location.	Infrastructure	2%	All
10	Telecommuting	Four-Ten work schedule results in 20% weekly VMT reduction, 10% trip reduction equals 15% VMT reduction	Incentive	20%	All
11	Alternative work schedule	Alternative Fridays off (Nine-Ten schedule)	Incentive	10%	All
Shared Mobility Strategies					
12	Mandatory Ride Amigos-Share Program	Increases vehicle occupancy by providing ride-share matching services, designating preferred parking for ride-share participants, designing adequate passenger loading/unloading and waiting areas for ride-share vehicles, and providing a website or message board to connect riders and coordinate rides. Need a point person from the business on-site	Incentive	15%	Commute

City of Marina					
TDM Measure #	Transportation Demand Management Measure	Description	TDM Type	Max VMT Reduction	VMT Reduction Type
13	Employee/Employer Car Share	Implement car sharing to allow people to have on-demand access to a vehicle, as-needed. This may include providing membership to an existing program located within 1/4 mile, contracting with a third-party vendor to extend membership-based service to an area, or implementing a project-specific fleet that supports the residents and employees on-site.	Incentive	0.7%	All
		Provide an on-site car vehicle for employees to use for short trips. This allows for employees to run errands or travel for lunch.	Incentive	2%	Commute
14	Designated Parking Spaces for Car Share Vehicles	Reserved car share spaces closer to the building entrance.	Infrastructure	1%	All
15	School Carpool Program	Implements a school carpool program to encourage ride-sharing for students.	Incentive	15.8%	School
Bicycle Infrastructure Strategies					
16	Bike Share	Developer on-site bike share facilities	Incentive / Infrastructure	7%	All
17	Implement/Improve On-street Bicycle Facility	Implements or provides funding for improvements to corridors and crossings for bike networks identified within a one-half mile buffer area of the project boundary, to support safe and comfortable bicycle travel.	Infrastructure	0.625%	All
18	Include Bike Parking in excess of City Code	Implements long-term bicycle parking to support safe and comfortable bicycle travel by providing parking facilities at destinations	Infrastructure	0.625%	All
19		Implements additional end-of-trip bicycle facilities to support	Infrastructure	0.625%	All

City of Marina					
TDM Measure #	Transportation Demand Management Measure	Description	TDM Type	Max VMT Reduction	VMT Reduction Type
	Include Secure Bike Parking and Showers	safe and comfortable bicycle travel.		4%	Commute
Neighborhood Enhancement Strategies					
20	Neighborhood Improvement Projects	Implements neighborhood improvement measures throughout and around the perimeter of the project site that encourage people to walk, bike, or take transit within the development and to the development from other	Infrastructure	1%	All
21	Pedestrian Network Improvements	Implements pedestrian network improvements throughout and around the project site that encourages people to walk.	Infrastructure	2%	All
Miscellaneous Strategies					
22	Virtual Care Strategies for Hospitals/Health care providers/MOB/C clinic	Resources to allow patients to access healthcare services or communicate with healthcare staff through online or off-site programs.	Infrastructure	15%	Hospital Visitors
23	On-site Affordable Housing	Provides on-site affordable housing in excess of inclusionary rates % of units is the % reduction developer can get.	Infrastructure	4%	All
Parking Strategies					
24	Reduce Parking Supply	Changes on-site parking supply to provide less than the amount required by municipal code. Permitted reductions could utilize mechanisms such as TOC, Density Bonus, Bike Parking ordinance, or locating in a Specific Plan Area.	Infrastructure	12.5%	All
25	Parking Cash-Out	Provide employees a choice of forgoing current parking for a cash payment to be determined by the employer. The higher the cash payment, the higher the reduction.	Incentive	7.7%	Commute

City of Marina					
TDM Measure #	Transportation Demand Management Measure	Description	TDM Type	Max VMT Reduction	VMT Reduction Type
26	Residential Area Parking Permits	Implementation of residential permit parking zones for long-term use of on-street parking in residential areas.	Incentive	0.25%	All

VMT CALCULATOR

Version 1.0 Build Date 1_12_21

PROJECT INFORMATION

Project Name	
Address	
TAZ	
Project Context/Setting	Low Density Suburb

ANALYSIS YEARS

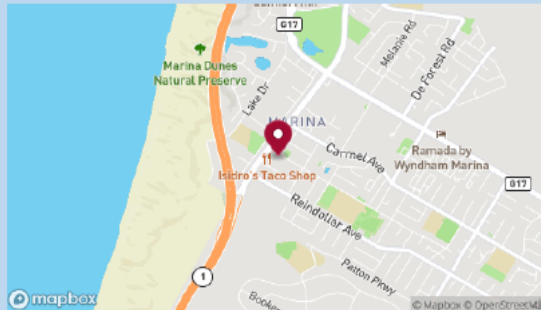
Analysis Year	2015
---------------	------

LAND USE INFORMATION

VMT Land Use Type	Residential
Trip Gen Land Use Type	210 Single-Family Detached Housing
	Accepted: Common Land Use
Dwelling Unit(s)	0
Mixed-Use Adjustment	0%

PRESUMPTIONS OF LESS THAN SIGNIFICANT IMPACT

☐	Affordable Housing
☐	Within a 1/2 mile of Major Transit Stop
☐	Local Retail (<50,000 Sq Ft)
☐	Less than 110 Trips per Day
Trip Gen less than 110, consider checking the above box	

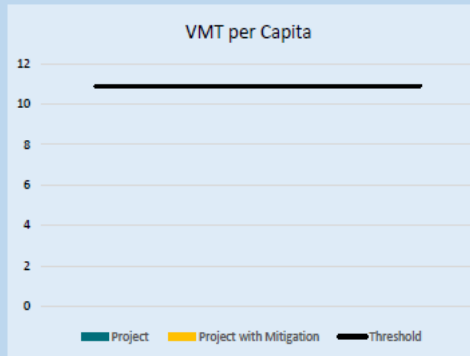


TRANSPORTATION SIGNIFICANCE

This tool is only intended for projects of 2,000 trips or less.

	PROJECT	REDUCTIONS	PROJ. WITH MITIGATION
VMT/Capita	0.0	0.0	0.0
Daily Trips	0	0	0
Enter valid address or TAZ#			

Average (VMT/Capita)	12.8
Threshold (15% below Average)	10.9
Significant Impact?	No



TRANSPORTATION DEMAND MANAGEMENT (TDM) STRATEGIES

PARKING STRATEGIES

TRANSIT STRATEGIES

COMMUNICATION & INFORMATION STRATEGIES

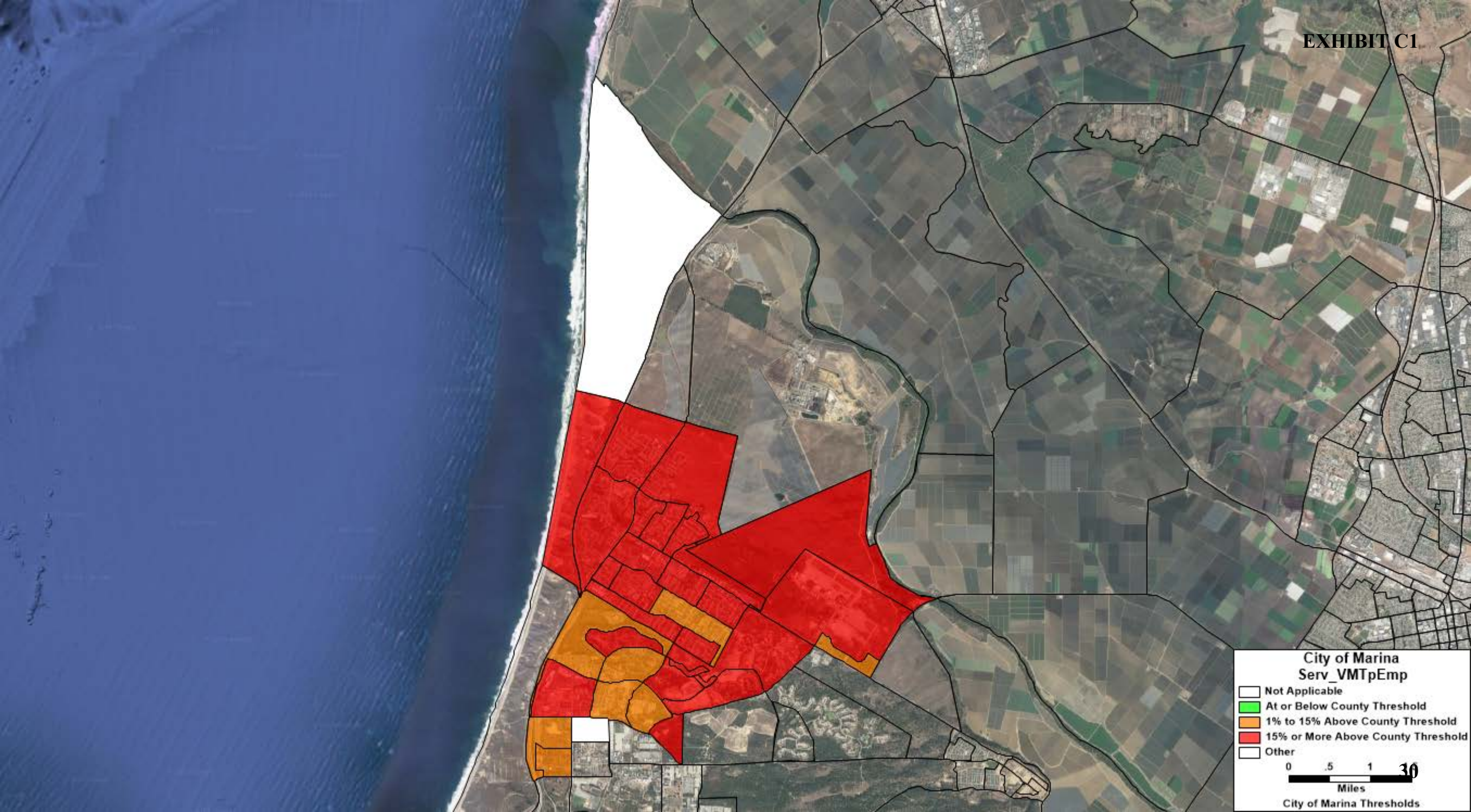
COMMUTING STRATEGIES

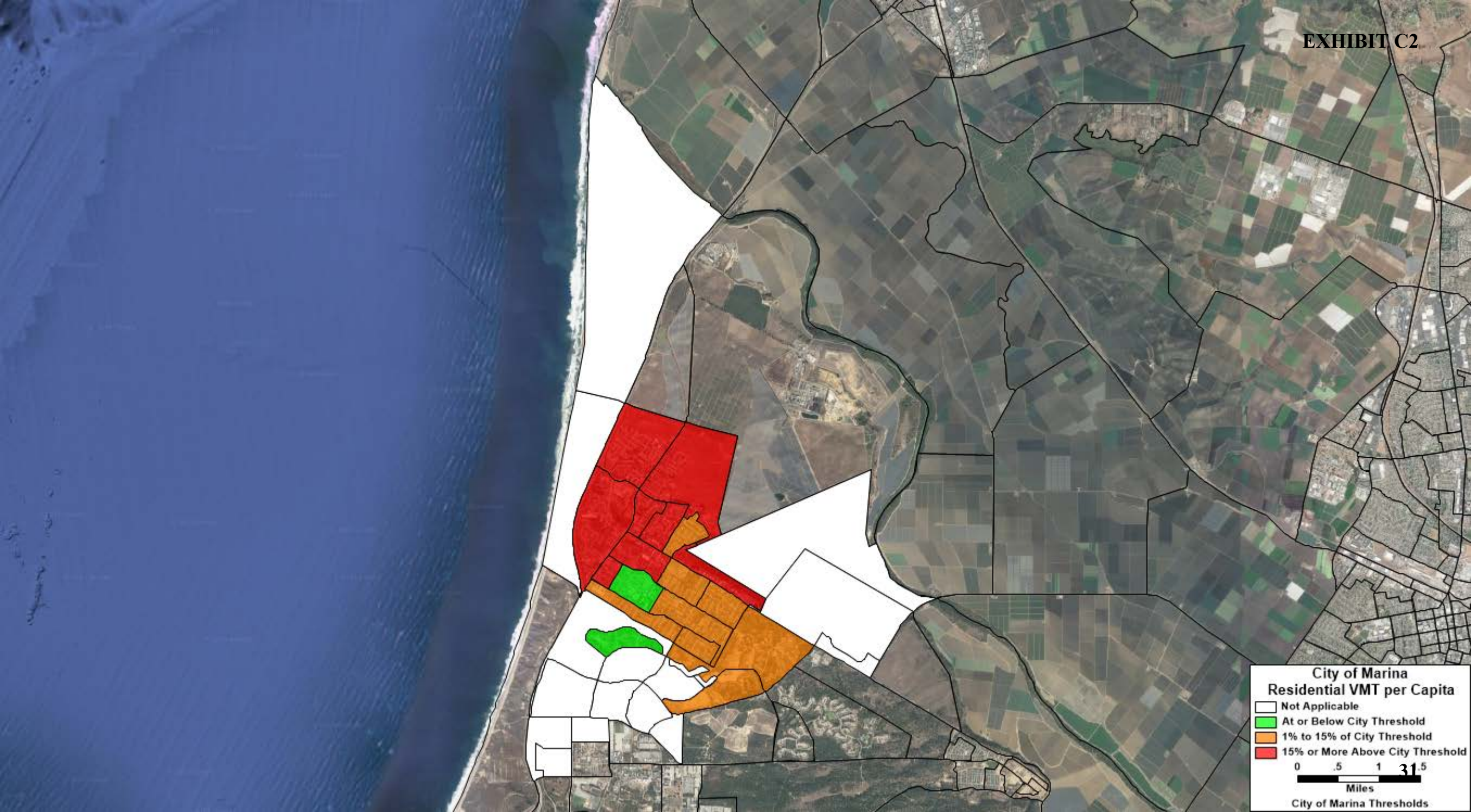
SHARED MOBILITY STRATEGIES

BICYCLE INFRASTRUCTURE STRATEGIES

NEIGHBORHOOD ENHANCEMENT STRATEGIES

MISCELLANEOUS STRATEGIES





Guido Persicone

From: Guido Persicone
Sent: Wednesday, February 23, 2022 5:07 PM
Subject: FW: Marina Planning Commission February 24, 2021, Agenda Item No. 6a draft VMT policy
Attachments: CORRECTION: Marina Planning Commission February 24, 2021, Agenda Item No. 6a draft VMT policy; FW: CORRECTION: Marina Planning Commission February 24, 2021, Agenda Item No. 6a draft VMT policy; CORRECTION (#2): Marina Planning Commission February 24, 2021, Agenda Item No. 6a draft VMT policy

FYI-I received some comments about the VMT project from LandWatch. We will address said comments tomorrow night.

Guido F. Persicone

From: Michael DeLapa <execdir@landwatch.org>
Sent: Tuesday, February 22, 2022 12:39 PM
To: Guido Persicone <gpersicone@cityofmarina.org>
Cc: Anita Shepherd-Sharp <AShepherd@cityofmarina.org>
Subject: Marina Planning Commission February 24, 2021, Agenda Item No. 6a draft VMT policy

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

RE: Marina Planning Commission February 24, 2021, Agenda Item No. 6a draft VMT policy

Dear Mr. Persicone,

Landwatch has preliminarily reviewed the proposed VMT-based thresholds of significance for transportation impacts. LandWatch generally supports using the 15% reduction threshold, consistent with the OPR guidance.

However, we recommend that the Planning Commission direct staff to address the following items before submitting the thresholds to the Council for approval. These clarifications will make the thresholds consistent with CEQA and easier to administer. They will also eliminate potential confusion.

- The thresholds of significance are consistently identified as presumptions. They should be clearly identified as rebuttable presumptions. The thresholds document should state with reference to any and all of its identified thresholds:
 - *A VMT analysis is required if a fair argument is made that the presumption should not apply to a particular project.*
- Each of the mitigation measures in Appendix B, which are based on the CAPCOA guidance, lists the "Max VMT reduction" for that measure in percentage terms. The thresholds document should state:
 - *There is no assumption that any project implementing these measures would in fact attain that maximum percentage reduction. The actual VMT reduction for a project should be based on project-specific analysis using the analytic tools and methods identified in the CAPCOA guidance.*
- Many of the mitigation measures in Appendix B are overlapping and not additive. The thresholds document should state:

- *There should be no assumption that the percentage VMT reductions from multiple mitigation measures are additive. The actual VMT reduction should be based on project-specific analysis using the analytic tools and methods identified in the CAPCOA guidance, including CAPCOA's caps on attainable maximum VMT reductions where multiple mitigation measures are adopted.*
- The screening criteria allows for exemptions for small projects that are inconsistent with the Sustainability Community Strategy and Development in Low-VMT Areas/Map-Based Screening. The Guidelines should specify what counts as a "small project" and what constitutes inconsistency with the SCS since that is a very vague plan.
- The legends on the VMT maps in Exhibits D1 and D2 are unclear.
 - In Exhibit D1 it is not clear if the term "County Threshold" is supposed to reference the County average or to reference some percentage reduction below that average that represents a threshold of significance, e.g., a 15% reduction from the County average. If the reference is to the County average, the legend should say so. If the reference is to a "threshold" that is less than the County average, the legend should identify the relation of that threshold to the County average, e.g., 15% below. Furthermore, it is unclear why the legends in D1 distinguish the orange areas that are "1% to 15% Above County Threshold" from the red areas that are "15% or More Above County Threshold." If an area is above the "County Threshold," whether "Threshold" means "average" or even "15% below average," it is treated the same regardless whether it is 1% above or 15% above. What matters here is whether an area is below the "Threshold," which should be identified as 15% below the County Average.
 - Exhibit D2 suffers from exactly the same lack of clarity, except that the references are to the "City Threshold." Does "City Threshold" mean City average or 15% below that average? In addition, it should not matter whether an area is 1% above the "City Threshold" or 15% above it since the relevant question is simply whether the area is 15% below the City average.

We look forward to seeing these clarifications in the thresholds document to be submitted to the Council for approval. Thank you for your consideration.

Best regards,

Michael

Please subscribe to the LandWatch newsletter, "like" us on Facebook and follow us on Twitter.

Michael D. DeLapa
 Executive Director
 LandWatch Monterey County
execdir@landwatch.org
 650.291.4991 m

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 Facebook facebook.com/LandWatchMontereyCounty/

Guido Persicone

From: Michael DeLapa <execdir@landwatch.org>
Sent: Tuesday, February 22, 2022 1:53 PM
To: Guido Persicone
Subject: CORRECTION: Marina Planning Commission February 24, 2021, Agenda Item No. 6a draft VMT policy

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Dear Mr. Persicone,

Please note this correction to my prior letter, i.e., our recommendation for defining "small project" should state "what constitutes consistency," not "what constitutes inconsistency."

- The screening criteria allows for exemptions for small projects that are inconsistent with the Sustainability Community Strategy and Development in Low-VMT Areas/Map-Based Screening. The Guidelines should specify what counts as a "small project" and what constitutes ~~in~~consistency with the SCS since that is a very vague plan.

Thank you.

Best regards,

Michael

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Michael D. DeLapa
 Executive Director
[LandWatch Monterey County](https://www.landwatch.org)
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 Facebook facebook.com/LandWatchMontereyCounty/

Guido Persicone

From: Guido Persicone
Sent: Tuesday, February 22, 2022 2:37 PM
To: Schmitt, Michael; Frederik Venter (frederik.venter@kimley-horn.com)
Subject: FW: CORRECTION: Marina Planning Commission February 24, 2021, Agenda Item No. 6a draft VMT policy

From: Michael DeLapa <execdir@landwatch.org>
Sent: Tuesday, February 22, 2022 1:53 PM
To: Guido Persicone <gpersicone@cityofmarina.org>
Subject: CORRECTION: Marina Planning Commission February 24, 2021, Agenda Item No. 6a draft VMT policy

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Thank you.

Best regards,

Michael

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Guido Persicone

From: Michael DeLapa <execdir@landwatch.org>
Sent: Tuesday, February 22, 2022 4:20 PM
To: Guido Persicone
Subject: CORRECTION (#2): Marina Planning Commission February 24, 2021, Agenda Item No. 6a draft VMT policy

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Dear Mr. Persicone,

To follow up my earlier email, the staff report incorrectly references the threshold that is actually set out in the proposed thresholds document as follows:

Residential: A proposed project exceeding a level of 15% above the existing countywide average VMT per capita may indicate a significant transportation impact.

Office: A proposed office project exceeding a level of 15% above the below existing countywide average VMT per employee may indicate a significant transportation impact.

We assume these references should be to levels 15% below, not above the average.

Thank you.

Best regards,

Michael

Please subscribe to the LandWatch newsletter, "like" us on Facebook and follow us on Twitter.

Michael D. DeLapa
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