AGENDA

Tuesday, April 4, 2023 **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

THIS MEETING WILL BE HELD IN PERSON AND VIRTUALLY (HYBRID).

Council Chambers
211 Hillcrest Avenue
Marina, California

AND

Zoom Meeting URL: https://zoom.us/j/730251556
Zoom Meeting Telephone Only Participation: 1-669-900-9128 - Webinar ID: 730 251 556

PARTICIPATION

You may participate in the City Council meeting in person or 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.

The most effective method of communication with the City Council is by sending an email to marina@cityofmarina.org 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)**

LAND ACKNOWLEDGEMENT

The City recognizes that it was founded and is built upon the traditional homelands and villages first inhabited by the Indigenous Peoples of this region - the Esselen and their ancestors and allies - and honors these members of the community, both past and present.

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)

   Liesbeth Visscher, Brian McCarthy, Kathy Biala, Mayor Pro-Tem/Vice Chair Cristina Medina Dirksen, Mayor/Chair Bruce C. Delgado

3. PUBLIC COMMENT ON CLOSED SESSION:

4. CLOSED SESSION:

   a. Conference with Legal Counsel, potential litigation, exposure to litigation per: "Conference with Legal Counsel – anticipated litigation, significant exposure to litigation pursuant to paragraph (d)(2) of CA Govt. Code sec. 54956.9 – One potential case

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

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

6. SPECIAL PRESENTATIONS:

   a. Ryan Parra, 2022 Officer of the Year
   b. Bambi Phillips, 2022 Professional Staff Employee of the Year
   c. Month of the Military Child Proclamation
   d. Central Coast Community Energy Presentation

7. COUNCIL AND STAFF ANNOUNCEMENTS:

8. PUBLIC COMMENT**:** *Any member of the public may comment on any matter within the City Council's jurisdiction that is not on the agenda. This is the appropriate place to comment on items on the Consent Agenda. Action will not be taken on items not on the agenda. Comments are limited to a maximum of three (3) minutes. General public comment may be limited to thirty (30) minutes and/or continued to the end of the agenda. 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. Whenever possible, written correspondence should be submitted to the Council in advance of the meeting, to provide adequate time for its consideration.*

9. 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 and non-controversial. 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 City Council may ask a question or make a comment about an agenda item and staff may provide a response. If discussion or a lengthy explanation is required, the Council may remove an item from the Consent Agenda for individual consideration. If an item is pulled for discussion, it will be placed at the end of Other Action Items Successor Agency to the former Marina Redevelopment Agency.*

10. CONSENT AGENDA: *These items are considered to be routine and non-controversial. All items under the Consent Agenda may be approved by one motion. Prior to such a motion being made, any member of City Council may ask a question or make a comment about an agenda item and staff may provide a response. If discussion or a lengthy explanation is required, Council may remove the item from the Consent Agenda and it will be placed at the end of Other Action Items.*

    a. ACCOUNTS PAYABLE: *(Not a Project under CEQA per Article 20, Section 15378)*

        (1) Accounts Payable Check Numbers 101977-102066, totaling $1,021,584.21. Successor Agency Accounts Payable Check Numbers: 108, totaling $4,500.00.

    b. MINUTES: *(Not a Project under CEQA per Article 20, Section 15378)*

        (1) March 21, 2023, Regular City Council Meeting

    c. CLAIMS AGAINST THE CITY: None

    d. AWARD OF BID: None

    e. CALL FOR BIDS: None

    f. ADOPTION OF RESOLUTIONS: *(Not a Project under CEQA per Article 20, Section 15378)*

        (1) Adopting Resolution No. 2023-, approving participation in the Nationwide Opioid Settlement Litigation with Teva, Allergan, CVS, Walgreens, and Walmart; and appointing the City Manager as the City's Authorized Representative and Authorizing the City Manager to take all reasonable and necessary actions.

    g. APPROVAL OF AGREEMENTS:

        (1) Adopting Resolution No. 2023-, approving a Public Improvement Agreement for the Veteran's Transition Center (VTC) "Lightfighter Village" Permanent Supportive Housing Project between the City of Marina and Lightfighter Village GP, LLC.

        (2) Adopting Resolution No. 2023-, approving an affordable housing agreement for Veterans Transition Center at 229-239 Hayes Circle (APN 031-021-040).

        (3) Adopting Resolution No. 2023-. approving Amendment No.1 to the agreement between the City of Marina and Harris and Associates, Inc. of Salinas, California, to provide construction management services for the Imjin Parkway Improvement Project.

    h. ACCEPTANCE OF PUBLIC IMPROVEMENTS: None

i. MAPS: None

j. REPORTS: (RECEIVE AND FILE):

(1) Receiving an informational update about the Bird Scooter Project.

k. FUNDING & BUDGET MATTERS: None

l. APPROVE ORDINANCES (WAIVE SECOND READING):

(1) Read by Title Only and adopting Ordinance No. 2023-05, approving Ordinance No. 2023-05, amending Section 17.46 (Signs) of the Marina Municipal Code. *The proposed amendments are exempt from CEQA per section 15061(b)(3).*

(2) Read by Title Only and adopting Ordinance No. 2023-06, amending the Accessory Dwelling Unit (ADU) Ordinance, Marina Municipal Code (MMC), Chapter 17.42.040, bringing these sections into compliance with recent changes in state law. *The proposed amendments are exempt from the California Environmental Quality Act (CEQA) per Sec. 15303(a).*

m. APPROVE APPOINTMENTS: None

11. PUBLIC HEARINGS: *In the Council's discretion, the applicant/proponent of an item may be given up to ten (10) minutes to speak. All other persons may be given up to three (3) minutes to speak on the matter.*

12. 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. Members of the public may be given up to three (3) minutes to speak.*

13. 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. Members of the public may be given up to three (3) minutes to speak.*

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. Adopting Resolution No. 2023-, receive a presentation of the General Plan 2045 (GP2045) Community Engagement Workplan (Plan) by the City's consultant, Raimi+Associates (R+A) and accept the plan as presented.

b. Adopting Resolution No. 2023-, awarding the Imjin Parkway Widening Project to Monterey Peninsula Engineering of Marina, California for the amount of $27,782,058.47.

14. COUNCIL & STAFF INFORMATIONAL REPORTS:

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

b. Council reports on meetings and conferences attended (Gov't Code Section 53232).

15. 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 31, 2023.

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ANITA SHARP, DEPUTY CITY CLERK

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

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

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

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

*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 2023 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 18, 2023	***Wednesday, September 6, 2023**
	Tuesday, September 19, 2023
Tuesday, May 2, 2023	Tuesday, October 3, 2023
Tuesday, May 16, 2023	Tuesday, October 17, 2023
Tuesday, June 6, 2023	Tuesday, November 7, 2023
Tuesday, June 20, 2023	Tuesday, November 21, 2023
***Wednesday, July 5, 2023**	Tuesday, December 5, 2023
Tuesday, July 18, 2023	Tuesday, December 19, 2023

****Wednesday, August 2, 2023**
Tuesday, August 15, 2023

*** Regular Meeting rescheduled due to Monday Holiday**

**** Regular Meeting rescheduled due to National Night Out**

C I T Y H A L L 2 0 2 3 H O L I D A Y S
(City Hall Closed)

Memorial Day ---------- Monday, May 27, 2023
Independence Day (City Offices Closed) ---------- Tuesday, July 4, 2023
Labor Day ---------- Monday, September 4, 2023
Veterans Day (City Offices Closed)---------- Friday, November 10, 2023
Thanksgiving Day----------Thursday, November 23, 2023
Thanksgiving Break---------- Friday, November 24, 2023
Winter Break---------- Monday, December 25, 2023-Friday, December 29, 2023

2023 COMMISSION DATES

U p c o m i n g 2 0 2 3 M e e t i n g s o f D e s i g n R e v i e w B o a r d
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

April 20, 2023	June 15, 2023	September 21, 2023
May 18, 2023	July 20, 2023	October 19, 2023
	August 17, 2023	November 16, 2023
		December 21, 2023

U p c o m i n g 2 0 2 3 M e e t i n g s o f E c o n o m i c D e v e l o p m e n t C o m m i s s i o n
3rd Thursday of every month. Meetings are held at the Council Chambers at 4:00 P.M.

~~April 21, 2023~~	~~June 16, 2023~~	~~September 15, 2023~~
~~May 19, 2023~~	~~July 21, 2023~~	~~October 20, 2023~~
	~~August 18, 2023~~	~~November 17, 2023~~
		~~December 15, 2023 (Cancelled)~~

U p c o m i n g 2 0 2 3 M e e t i n g s o f P l a n n i n g C o m m i s s i o n
2nd and 4th Thursday of every month. Meetings are held at the Council Chambers at 6:30 P.M.

April 13, 2023	July13, 2023	October 12, 2023
April 27, 2023	July 27, 2023	October 26, 2023
May 11, 2023	August 10, 2023	November 9, 2023
May 25, 2023	August 24, 2023	November 23, 2023(Canceled)
June 8, 2023	September 14, 2023	December 14, 2023
June 22, 2023	September 28, 2023	

Upcoming 2023 Meetings of Public Works Commission
3rd Thursday of every month. Meetings are held at the Council Chambers at 6:30 P.M.

April 20, 2023	July 20, 2023	October 19, 2023
May 18, 2023	August 17, 2023	November 16, 2023
June 15, 2023	September 21, 2023	December 21, 2023

Upcoming 2023 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, 2023 September 1, 2023 December 1, 2023

Upcoming 2023 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, 2023 July 13, 2023 October 12, 2023

Proclamation

Recognizing Police Officer Ryan Parra
Marina Police Department
2022 Officer of the Year

WHEREAS, Police Officer Ryan Parra demonstrated outstanding leadership, a superior work ethic and commitment and dedication to the Marina Police Department and the City of Marina; and,

WHEREAS, Officer Parra showed his willingness to further his knowledge and experience by volunteering to attend a POST certified school to quality as a motorcycle officer, acts as an advisor for the Department's Explorer Program and has invested his time interacting with the youth of the City of Marina; and,

WHEREAS, Officer Parra is noted to be a mentor for new officers; and

WHEREAS, Officer Parra is exceptionally proactive and made twenty-two DUI arrests, leads the Department in overall numbers of arrests and issued two-hundred-thirty-three traffic citations in 2022; and,

WHEREAS, Officer Parra has shown himself to be a consummate professional and eagerly seeks ways to improve his performance; and,

WHEREAS, Officer Parra's actions have brought credit not only upon himself and the Police Department, but to the City and the law enforcement profession as a whole.

NOW THEREFORE, this Council does hereby confer its highest commendation for the manner in which Officer Parra has performed his duties as a member of the Marina Police Department, with special thanks for his professionalism, dedication to duty and the members of the public.

IT IS HEREBY ORDERED that the City Clerk cause this Resolution to be engrossed so that it can be presented to Officer Ryan Parra as an expression of the Council's appreciation for his dedicated service to the City of Marina.

Adopted this 4th day of May 2023

CITY OF MARINA INCORPORATED NOVEMBER 13, 1975 CALIFORNIA

Bruce C. Delgado, Mayor

Proclamation

Recognizing Records Technician Bambi Phillips
Marina Police Department
2022 Professional Staff Person of the Year

WHEREAS, Records Technician Bambi Phillips distinguished herself through her dedication to duty and superior work ethic; and,

WHEREAS, Records Technician Phillips' attention to detail, job knowledge and self-motivation has made her an integral member of the Records Bureau and the Police Department; and,

WHEREAS, Records Technician Phillips' possesses strong public relations skills that makes her very effective when dealing with the public, especially when interacting with difficult persons; and,

WHEREAS, Records Technician Phillips initiative, enthusiasm, self-motivation, willingness to "go the extra mile", and sense of humor has created a positive work environment; and,

WHEREAS, Records Technician Phillips has brought credit not only upon herself and the Police Department, but to the City and the law enforcement profession as a whole.

NOW THEREFORE, this Council does hereby confer its highest commendation for the manner in which Records Technician Bambi Phillips has performed her duties as a member of the Marina Police Department, with special thanks for her professionalism, dedication to duty and the members of the public.

IT IS HEREBY ORDERED that the City Clerk cause this Resolution to be engrossed so that it can be presented to Records Technician Bambi Phillips as an expression of the Council's appreciation for her dedicated service to the City of Marina.

Adopted this 4th day of April 2023

CITY OF MARINA INCORPORATED NOVEMBER 13, 1975 CALIFORNIA

Bruce C. Delgado, Mayor

Proclamation

Month of the Military Child

-o0o-

WHEREAS, Marina is proudly home to the Former Ft. Ord Military base and continues to be home to Active, Reserve, and Guard forces of the United States Military; and

WHEREAS, Marina is still home to hundreds of military children who each day experience unique challenges, which they face with resilience and dignity beyond their years; and

WHEREAS, since 1986, the Department of Defense has recognized military children during the month of April because of their service, commitment, and sacrifice to supporting the Military's mission, it is important to honor and celebrate our military's youngest heroes; and

WHEREAS, it is essential to recognize that military children do make a significant contribution to our Nation through understanding and supporting their military parents who often work long hours and make numerous deployments when called upon. The month of the Military Child is an opportunity to remember children's roles in strengthening the military family; and

WHEREAS, our men and women in uniform can focus on the missions and challenges ahead when they know that their children are safe and secure; and

WHEREAS, the Month of the Military Child reinforces this concept and allows us to take stock in and recognize that our soldiers' children also play an important role in support of their parents, and thus, the Nation.

NOW THEREFORE BE IT PROCLAIMED, that I Bruce C. Delgado declare April 2023, Month of the Military Child and hereby urge all citizens, businesses and government leaders to observe the month with appropriate ceremonies, and activities that honor, support and thank military children and youth.

Dated this 4th day of April 2022

CITY OF MARINA INCORPORATED NOVEMBER 18, 1975 CALIFORNIA

Bruce C. Delgado, Mayor

Agenda Item: 6d



Central Coast Community Energy

Presentation to City of Marina
04.04.2023

Lena Wallace
Communications Specialist

Community Choice Aggregation

CCA



Purchases electricity on behalf of local communities; develops programs, rebates, and incentives

Investor-Owned Utility



Delivers electricity, maintains infrastructure, and handles billing

Customers



Benefits from local control, competitive rates, and clean energy as well as CCA programs, rebates, and incentives

Our Formation

2017

MBCP founded by Counties of Monterey, San Benito, Santa Cruz

2020

Service expands to Cities in San Luis Obispo County

2021

CCCE service expands to County of Santa Barbara

34

Member Agencies in **five** counties

400,000+

Customers

$1 billion

Investment in renewable energy
$26 million in customer programs

94%

Enrollment in communities

5000 GWh

Electricity delivered in 2022

45,049

Customers in unicorporated Santa Barbara County and Buellton enrolled in 2021/2022

Our Commitment

01 Local Control

02 Competitive Rates

03 Clean and Renewable Power

04 Community Reinvestiment



01 Local Control



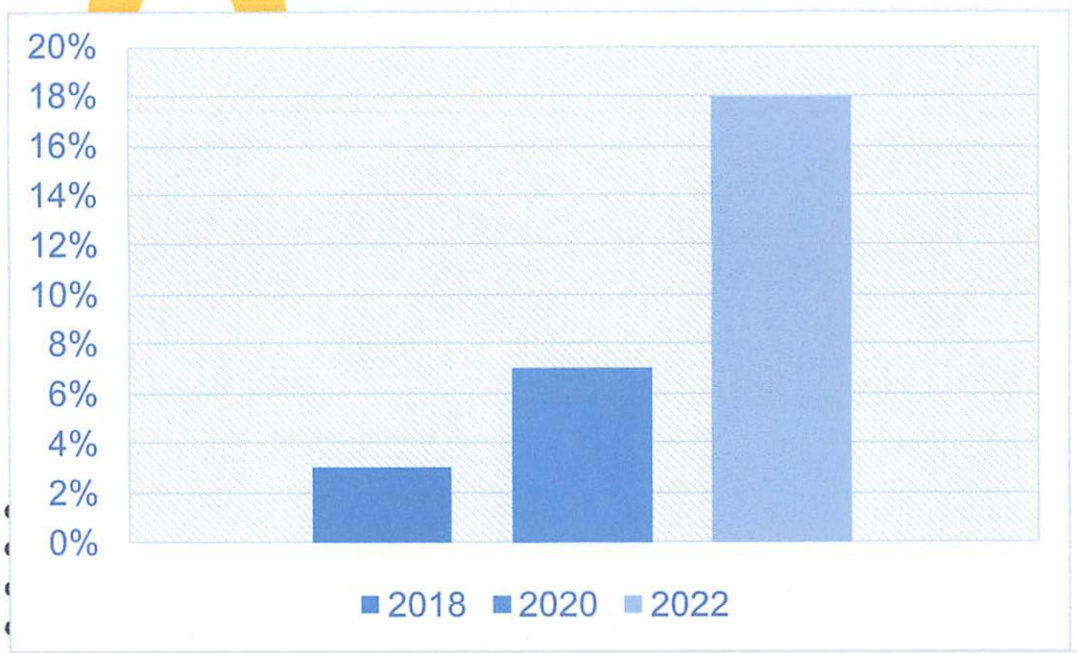
Our Governance

County of Monterey	City of Watsonville	City of Salinas	County of San Benito	County of Santa Cruz	City of Santa Cruz	County of Santa Barbara	City of Santa Maria
COASTAL CITIES		PENINSULA CITIES		SALINAS CITIES	SAN BENITO CITIES		SANTA CRUZ CITIES
Marina Sand City, Seaside **Del Rey Oaks***		**Carmel*** Monterey **Pacific Grove***		Greenfield **Gonzales*** Soledad	**Hollister*** San Juan Bautista		**Capitola*** Scotts Valley
SLO CITIES		SLO NORTH CITIES		SLO SOUTH CITIES	SB COUNTY CITIES		SB COUNTY CITIES
San Luis Obispo* Morro Bay		**Paso Robles*** Atascadero		Arroyo Grande Grover Beach **Pismo Beach***	Guadalupe **Solvang*** Buellton		Goleta **Carpinteria***



02 Competitive Rates

Average Residential Savings



18%

Average approximate difference between PG&E and CCCE residential generation rates in 2022

2% to 19%

Small to medium commercial* customers savings after March 2022

**Because our IOU imposes an additional demand charge that we do not, we cannot provide a percent savings for large commercial and agriculture accounts.*



03 Clean & Renewable Power

Procurement Targets

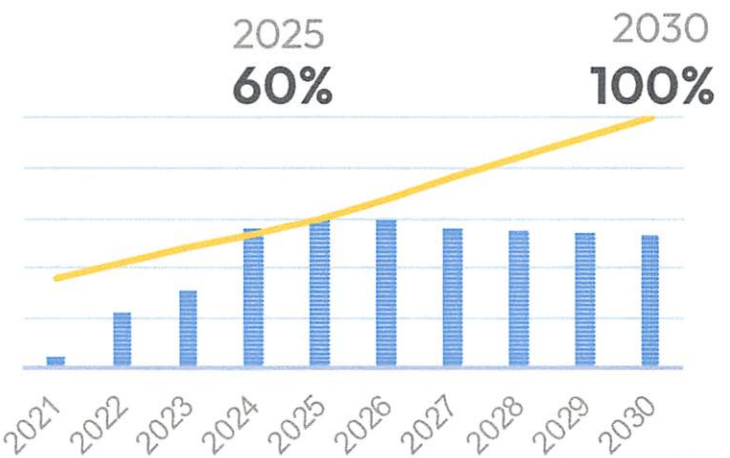
2030 Planned Resource Mix



47% Solar

43% Wind

10% Geothermal



Procurement Mix

Solar + Storage

575 MW generation
183 MW storage
150 MW solar only

Standalone Storage

102 MW

Geothermal

98 MW

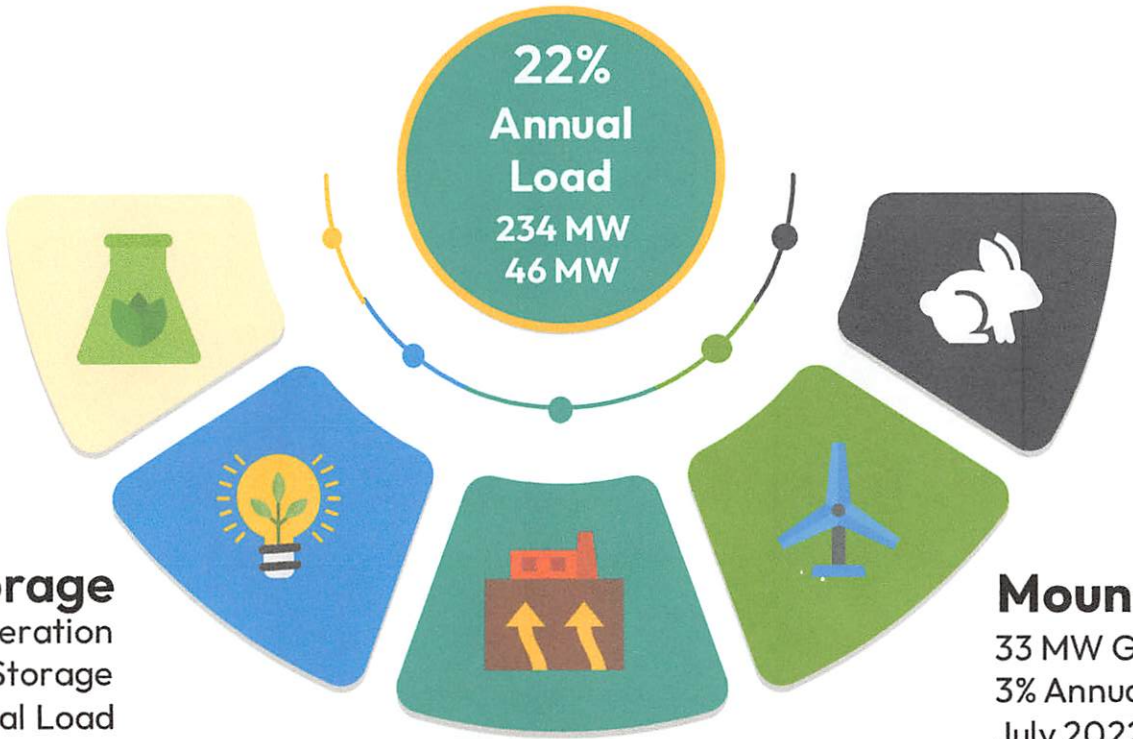
Wind

33 MW

Executed contracts for 19 renewable energy projects

9	5	4	1

Projects Online in 2022



Coso Geothermal
66 MW Generation
11% Annual Load
January 2022

Rabbitbrush Solar + Storage
60 MW Generation
12 MW Storage
3% Annual Load
October 2022

Slate Solar + Storage
68 MW Generation
34 MW Battery Storage
4% Annual Load
March 2022

Mountain View Wind
33 MW Generation
3% Annual Load
July 2022

Mammoth Casa Diablo IV
7 MW Generation
1% Annual Load
July 2022

Why electrify?

Reduce GHG Emissions

Transportation accounts for 41% of CA emissions. Gas appliances account for 12%.

Better Health Outcomes

Gas appliances impact indoor air quality and public health. Diesel exhaust is linked to multiple serious conditions.

Make an Impact

Every CCCE customer is on a pathway to carbon-free energy by 2030. Switching from gas to electric vehicles and appliances helps our region finish the job.





04 Community Reinvestment

FY 21/22: Community Reinvestment

Electric School Bus

$1.4M awarded to schools

Est. **148 mT CO2 emissions** avoided each year

Electrify Your Ride

$2.4M awarded to customers

Est. **2,500 mT CO2 emissions** avoided each year

New Construction Electrification

$600K+ awarded to affordable housing

Est. **170 mT CO2 emissions** avoided each year

Residential Programs

Service	Description	Price
Electrify Your Ride	Plug-In, Battery, Motorcycles, Leased, Used, Chargers and Readiness	$1,000-$4,000
Electrify Your Home	HVAC, Heat Pump Water Heater, Panel Replacement	$450-$4,000
New Construction Electrification	Fully electric Accessory Dwelling Units	$5,000

Member Agencies

Electrify Your Fleet

$5,000 - $100,000 per unit

Charge Your Fleet

Up to $100,000; additional funds to Plan Your Fleet

Reach Code Program

$100,000 budgeted for third-party implementation



Businesses

Ag Equipment

$15,000 - $100,000, designed to cover between 70% - 100% of project

New Construction Electrification

$2,500 per affordable or farm worker housing unit

Electrify Your Ride

Up to $150,000 for DCFC Level 3 Chargers



Underserved Communities

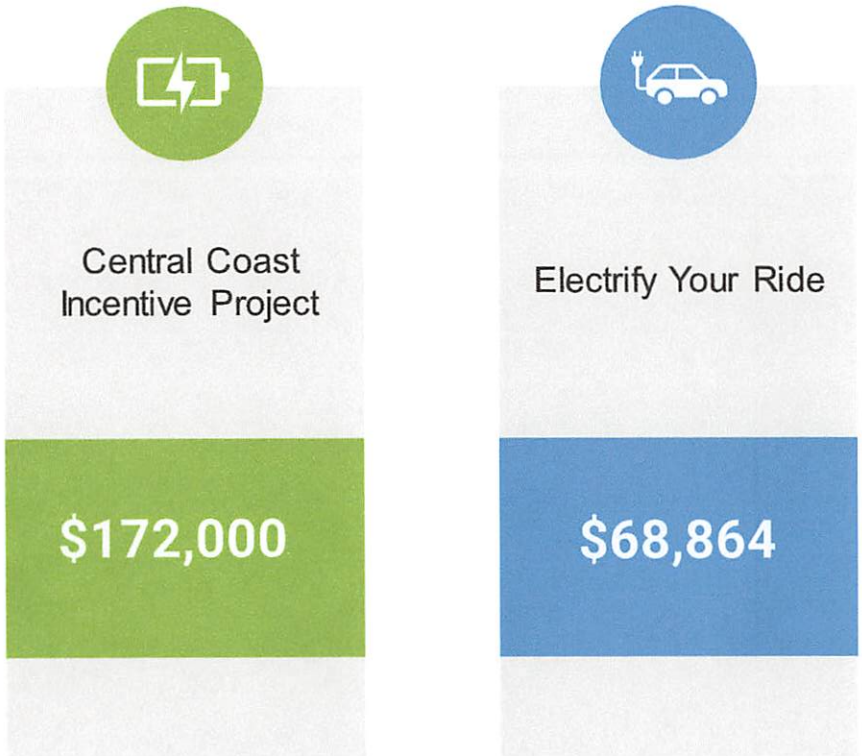
Workforce Development
Broadband initiative, support for contractors

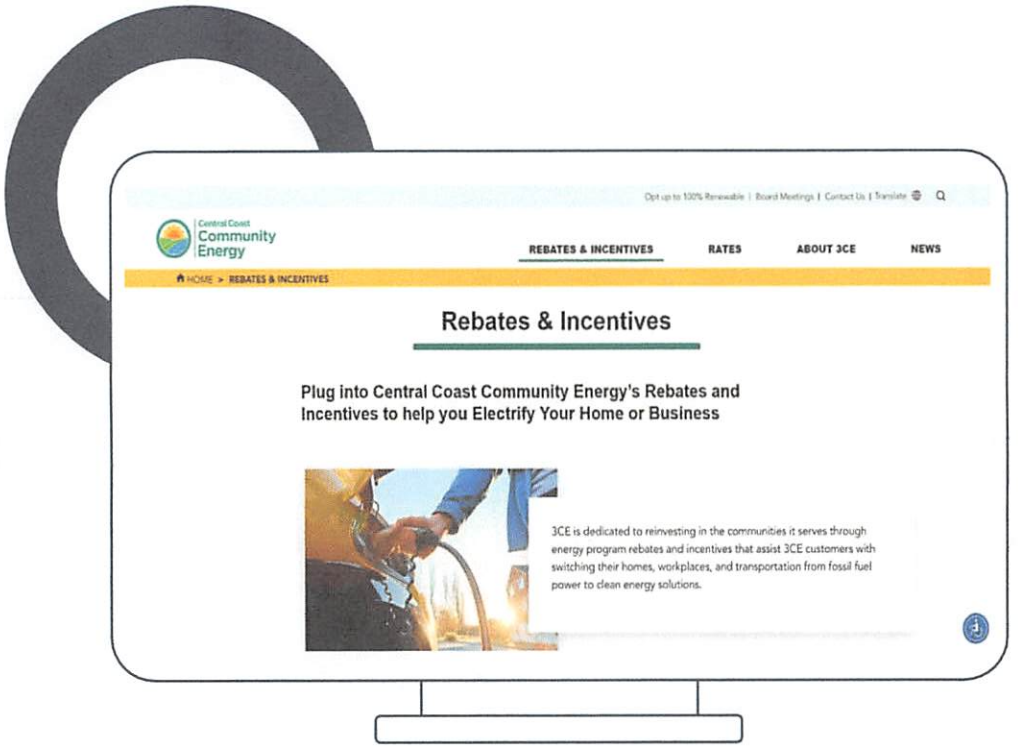
Farmworker Housing+Transportation

Additional Incentives
Income-qualified customers eligible for extra $1,000 EYR + EYH rebates



3CE Energy Programs in City of Marina
Total Investment: $240,864





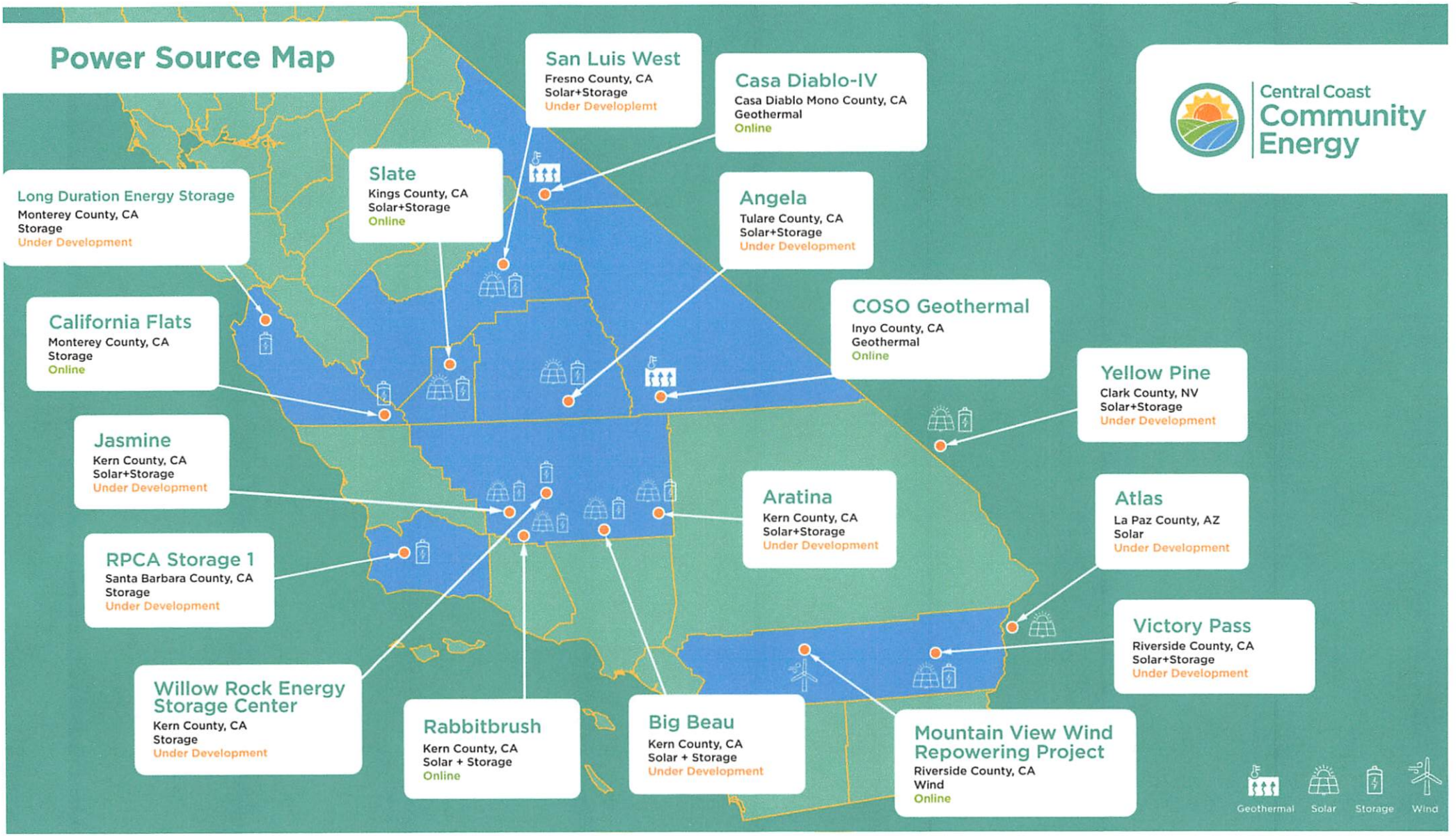
3cenergy.org

Thanks

Do you have any questions?

3CE.org
info@3CE.org




Power Source Map
Central Coast Community Energy
San Luis West
Fresno County, CA
Solar+Storage
Under Developlemt
Casa Diablo-IV
Casa Diablo Mono County, CA
Geothermal
Online
Slate
Kings County, CA
Solar+Storage
Online
Angela
Tulare County, CA
Solar+Storage
Under Development
Long Duration Energy Storage
Monterey County, CA
Storage
Under Development
COSO Geothermal
Inyo County, CA
Geothermal
Online
California Flats
Monterey County, CA
Storage
Online
Yellow Pine
Clark County, NV
Solar+Storage
Under Development
Jasmine
Kern County, CA
Solar+Storage
Under Development
Aratina
Kern County, CA
Solar+Storage
Under Development
Atlas
La Paz County, AZ
Solar
Under Development
RPCA Storage 1
Santa Barbara County, CA
Storage
Under Development
Victory Pass
Riverside County, CA
Solar+Storage
Under Development
Willow Rock Energy Storage Center
Kern County, CA
Storage
Under Development
Rabbitbrush
Kern County, CA
Solar + Storage
Online
Big Beau
Kern County, CA
Solar + Storage
Under Development
Mountain View Wind Repowering Project
Riverside County, CA
Wind
Online
Geothermal
Solar
Storage
Wind

DRAFT

Agenda Item: **10b(1)**
City Council Meeting of
April 4, 2023

MINUTES

Tuesday, March 21, 2023

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

THIS MEETING WILL BE HELD IN PERSON AND VIRTUALLY (HYBRID).

Council Chambers
211 Hillcrest Avenue
Marina, California

AND

Zoom Meeting URL: https://zoom.us/j/730251556
Zoom Meeting Telephone Only Participation: 1-669-900-9128 - Webinar ID: 730 251 556

PARTICIPATION

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The most effective method of communication with the City Council is by sending an email to marina@cityofmarina.org 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.

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: Liesbeth Visscher, Brian McCarthy, Kathy Biala (Remotely), Mayor Pro-Tem/Vice Chair Cristina Medina Dirksen, Mayor/Chair Bruce C. Delgado

3. PUBLIC COMMENT ON CLOSED SESSION: None

4. CLOSED SESSION:

   b. Real Property Negotiation (Govt. Code Section 54956.8)

      i. Property: Desert Star Systems, 3261 Imjin Road, Marina, CA
      Negotiating Party: Marco Flagg
      Negotiator(s): City Manager
      Terms: Price and Terms

      ii. Property: Commercial property at southeast corner of Del Monte Blvd. and Palm Avenue (APN 032-303-038)
      Negotiating Party: George Powell
      Negotiator(s): City Manager
      Terms: Price and Terms

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

Heidi Quinn, Interim City Attorney reported out Closed Session: Council met in Closed Session with regard to the two items listed. On both matters, Council received information, gave direction and no reportable action was taken.

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

6. SPECIAL PRESENTATIONS: None

7. COUNCIL AND STAFF ANNOUNCEMENTS:

- Mayor Pro Tem Medina Dirksen – Monterey Bay Moves Teen Yoga on March 26th at Vince DiMaggio Park, if interested go to www.montereybaymoves.com . Noted passing of a longtime Marina resident and volunteer, Kris Effland and her services were held this past weekend. Congratulated our Firefighter of the Year, Jason McCoy
- City Manager Long – Announced the city will hold its annual strategic planning and budget retreat on Thursday, March 30th from 6:00-9:00pm and on Friday, March 31st from 9:00am-Noon at the Marina Library Community Room.
- Mayor Delgado – Thanked all the volunteers that continue to help with the Lapis Road-Del Monte Blvd cleanup. Thanked the Irish Festival volunteers who put on the event at our Community Center over the weekend. Last native planting event will be on April 1st at Hilltop Park at the corner of 9th Street and 4th Avenue from 10:00am-1:00pm. On April 15, 2023 if the 17th Annual Earth Day event at Locke Paddon Park from 9:00am-1:00pm. Also commented on the Fire Department badge pinning ceremony.

Mayor Delgado announced that agenda item 10f(1) was pulled from the agenda and will not be discussed.

8. PUBLIC COMMENT**:** *Any member of the public may comment on any matter within the City Council's jurisdiction that is not on the agenda. This is the appropriate place to comment on items on the Consent Agenda. Action will not be taken on items not on the agenda. Comments are limited to a maximum of three (3) minutes. General public comment may be limited to thirty (30) minutes and/or continued to the end of the agenda. 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. Whenever possible, written correspondence should be submitted to the Council in advance of the meeting, to provide adequate time for its consideration.*

- Vely Matthews – Thanked the volunteers who came out on March 4th to help with the park cleanup at Los Arboles.
- Melissa Mejia – Commented on agenda item 10f(1) noting that many of the people residing in their vehicles have been struggling to find to find shelter. Stated the library keeps its Wi-Fi accessible 24-hours a day to help provide service to those who need it. Spoke about the City of Seaside's ordinance referred to as "7 to 7".
- Tommy Bolea – Spoke about Lodi, Ca versus Marina, Ca. Noted that residents of Lodi paid all the utility bills (Water & Electric) directly to the City of Lodi, not to an outside company.
- Grace Silva-Santella – Asked if the zoom clock could be displayed on screen during public comment periods. Spoke about attending the Irish Heritage event on Saturday at the Marina Civic Center and then a movie at the Library. Noted Marina struggles with getting the word out on all the events that take place and suggested the city partner with The Marina Foundation to hold a Non-profit Summit to talk about how we can get the word out on Marina based nonprofit organizations and how we can be better at promoting what we have going on here in the city.
- Rashlan Boshadev – Spoke about marketing Maina to show its points of interest. Spoke about Carmel's Heart of their city and a sculpture. Asked where the Heart of Marina is? Spoke about the older businesses needing to switch old signs to LED signs.

Heidi Quinn, Interim City Attorney stated for the record that agenda there were some minor non substantive corrections to item number 10f(2) they were just minor typographical errors and a revised version was circulated to the Council for consideration tonight.

9. 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 and non-controversial. 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 City Council may ask a question or make a comment about an agenda item and staff may provide a response. If discussion or a lengthy explanation is required, the Council may remove an item from the Consent Agenda for individual consideration. If an item is pulled for discussion, it will be placed at the end of Other Action Items Successor Agency to the former Marina Redevelopment Agency.*

10. CONSENT AGENDA: *These items are considered to be routine and non-controversial. All items under the Consent Agenda may be approved by one motion. Prior to such a motion being made, any member of City Council may ask a question or make a comment about an agenda item and staff may provide a response. If discussion or a lengthy explanation is required, Council may remove the item from the Consent Agenda and it will be placed at the end of Other Action Items.*

    a. ACCOUNTS PAYABLE: *(Not a Project under CEQA per Article 20, Section 15378)*

        (1) Accounts Payable Check Numbers 101891- 101976, totaling $440,270.89. Successor Agency Accounts Payables Check Number 105-107, totaling $5,919.98.

    b. MINUTES: *(Not a Project under CEQA per Article 20, Section 15378)*

        (1) March 7, 2023, Regular City Council Meeting

        (2) March 14, 2023, Special City Council Meeting

    c. CLAIMS AGAINST THE CITY: *(Not a Project under CEQA per Article 20, Section 15378)*

(1) Staff recommends that the City Council reject the following claim and direct sending appropriate notice of rejection to claimant: William James Lunsford (Minor) C/o KJ Injury & Accident Lawyer PC for a claim received on February 27, 2023.

d. AWARD OF BID: None

e. CALL FOR BIDS: None

f. ADOPTION OF RESOLUTIONS:

(1) ~~Adopting Resolution No. 2023-, approving designating parking lot and street at the Marina Library as areas where overnight parking or camping shall be prohibited pursuant to Municipal Code Section 10.40.150~~. ***Pulled from the agenda by staff.***

(2) Adopting **Resolution No. 2023-24**, ratifying Exhibit A, as corrected, to Ordinance 2022-06, and direct its codification; direct the City Clerk to file a copy of this corrected Exhibit A to Ordinance 2022-06 with the California Building Standards Commission of the State of California.

(3) Adopt **Resolution No. 2023-25**, accepting the Housing Element Annual Progress Report (APR) for calendar year 2022 and authorizing staff to submit the report to the Governor's Office of Planning and Research and the California Department of Housing and Community Development. This item is exempt from environmental review per Section 15306 (Information Collection) of the California Environmental Quality Act (CEQA) Guidelines.

g. APPROVAL OF AGREEMENTS: None

h. ACCEPTANCE OF PUBLIC IMPROVEMENTS: None

i. MAPS: None

j. REPORTS: (RECEIVE AND FILE): None

k. FUNDING & BUDGET MATTERS: None

(1) Adopting **Resolution No. 2023-26**, approving the allocation of $165,000 for emergency fire sprinkler system repairs at 721 Neeson Road.

l. APPROVE ORDINANCES (WAIVE SECOND READING):

(1) Read by Title Only and adopting **Ordinance No. 2023-03**, approving amending Sections 17.38.070 and 17.38.090 of the Marina Municipal Code to modify the parking standards in the MH-R District for the Townhomes in Sea Haven; and

(2) Read by title only and adopting **Ordinance 2023-04**, approving the Second Amendment to the Development Agreement for Sea Haven pursuant to Chapter 4.04 of the Marina Municipal Code.

m. APPROVE APPOINTMENTS:

(1) Appointing to Recreation & Cultural Services Commission: Shawn Adams and Sheila Baker. 2-seats expiring February 2025

Council Member McCarthy commented on agenda items 10f(3) and 10m(1). 10f(3), great work, reflects the hard work the planning department has done to be in compliant with the housing element. 10m(1), congratulated the appointed Recreation Commission members.

Council Member Biala commended on agenda item 10m(1). Notice that one of the applicants did not complete sections 3 and 4 of the application and stated that in the future she would like to see the application completed fully before being appointed to a commission.

DELGADO/MEDINA DIRKSEN: TO APPROVE THE CONSENT AGENDA MINUS 10f(1) AND REVISED EXHIBIT A TO AGENDA ITEM 10f(2). 5-0-0-0 Motion Passed by Roll Call Vote

11. PUBLIC HEARINGS: *In the Council's discretion, the applicant/proponent of an item may be given up to ten (10) minutes to speak. All other persons may be given up to three (3) minutes to speak on the matter.*

    a. Open a public hearing, take public testimony, and consider introducing Ordinance No. 2023-05, amending Section 17.46 (Signs) of the Marina Municipal Code. *The proposed amendments are exempt from CEQA per section 15061(b)(3).* ***Continued from March 7, 2023***

Mayor opened up the public hearing for comments:

- Grace Silva-Santella – Commented on the Code Enforcement Officer position and the difficulty of keeping up with the complaints. Asked if there will be code enforcement of signs or the sign ordinance. How does this sign ordinance revisions apply to tall, narrow, vertical banners? Spoke about past talks of possibly allowing professionally designed and built A-frame signs for central Marina to draw people off the street to businesses located at the back end of our older shopping centers.
- Rashlund – Clarified what a "sign cabinet" was. Spoke about the idea of a temporary sign and its purpose. Believes "feather flags" should be special events only. Noted there was nothing mentioned about dynamic LED signs. Commented on Marina Village Shopping Center signage and the difference going from cabinet signs to the channel letter signs. City should move to channel letter signage to make the city attractive.

Mayor Delgado closed the public hearing.

DELGADO/BIALA: THAT WE OPENED THE PUBLIC HEARING AND INTRODUCED ORDINANCE NO. 2023-05, AMENDING SECTION 17.46 (SIGNS) OF THE MARINA MUNICIPAL CODE. 4-0-0-1(McCarthy). Motion Passes by Roll Call Vote with McCarthy abstaining.

    b. Introduction of Ordinance No. 2023-06, amending the Accessory Dwelling Unit (ADU) Ordinance, Marina Municipal Code (MMC), Chapter 17.42.040, bringing these sections into compliance with recent changes in state law. *The proposed amendments are exempt from the California Environmental Quality Act (CEQA) per Sec. 15303(a).* ***Continued from March 7, 2023***

Mayor opened up the public hearing for comments:

- Jeff Markham – Noted Marina already has a parking problem with adding ADU's but can't deny the use. Asked City Council to consider residential parking permits that are allocated per household to get control of the situation.

Mayor Delgado closed the public hearing.

MCCARTHY/VISSCHER: THAT WE OPENED THE PUBLIC HEARING AND INTRODUCED ORDINANCE NO. 2023-06, AMENDING THE ACCESSORY DWELLING UNIT (ADU) ORDINANCE, MARINA MUNICIPAL CODE (MMC), CHAPTER 17.42.040, BRINGING THESE SECTIONS INTO COMPLIANCE WITH RECENT CHANGES IN STATE LAW. 5-0-0-0 Motion Passes by Roll Call Vote

12. 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. Members of the public may be given up to three (3) minutes to speak.*

13. 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. Members of the public may be given up to three (3) minutes to speak.*

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. Adopting **Resolution No. 2023-27**, authorizing the City Manager, or his designee, to negotiate a Memorandum of Understanding (MOU) with the Marina Equestrian Association (MEA) for the provision of equestrian boarding and related uses, and directing the City Manager to return to Council with a resolution to consider adoption of a mutually agreeable MOU between the City and MEA. ***Continued from March 7, 2023***

Public Comments:

- Jeff Markham – Stated that most of the horsed boarded by the MEA were not owned by residents of Marina. Asked what provisions would be made to make sure that city owned property, that's given out to the Marina Equestrian Association would actually be usable primarily by Marina residents?

MEDINA DIRKSEN/BIALA: THAT WE ADOPT RESOLUTION NO. 2023-27, AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO NEGOTIATE A MEMORANDUM OF UNDERSTANDING (MOU) WITH THE MARINA EQUESTRIAN ASSOCIATION (MEA) FOR THE PROVISION OF EQUESTRIAN BOARDING AND RELATED USES, AND DIRECTING THE CITY MANAGER TO RETURN TO COUNCIL WITH A RESOLUTION TO CONSIDER ADOPTION OF A MUTUALLY AGREEABLE MOU BETWEEN THE CITY AND MEA. 5-0-0-0 Motion Passes by Roll Call Vote

b. Adopting **Resolution No. 2023-28**, approving the Phase 1B-Promenade Public Improvement Agreement between City of Marina and Shea Homes, LP.

Public Comments: None received.

MCCARTHY/VISSCHER: THAT WE APPROVE RESOLUTION NO. 2023-28, APPROVING THE PHASE 1B-PROMENADE PUBLIC IMPROVEMENT AGREEMENT BETWEEN CITY OF MARINA AND SHEA HOMES, LP. AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE PUBLIC

IMPROVEMENT AGREEMENT ON BEHALF OF CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY. 5-0-0-0 Motion Passes by Roll Call Vote

c. Adopting **Resolution No. 2023-29**, approving the Phase 1B-Promenade Final Map for The Dunes on Monterey Bay Development Project Subdivision.

Public Comments: None received.

BIALA/VISSCHER: THAT WE APPROVE RESOLUTION NO. 2023-29, APPROVING THE PHASE 1B-PROMENADE FINAL MAP FOR THE DUNES ON MONTEREY BAY DEVELOPMENT PROJECT SUBDIVISION; ANS AUTHORIZING THE CITY CLERK TO EXECUTE THE FINAL MAP ON BEHALF OF CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY. 5-0-0-0 Motion Passes by Roll Call Vote

9:45 PM
Medina Dirksen/McCarthy: to extend the meeting time until the completion of agenda item 13d. 5-0-0-0 Motion Passes by Roll Call Vote

d. Adopting **Resolution No. 2023-30**, receiving a presentation for the four options for the proposed Dunes City Park Project; and providing input on the design for the proposed Dunes City Park Project.

Public Comments:

- Mike – Concerned about spending money on the unknown users. Likes Option #2. Asked if Council was deciding tonight on what to pick. Believes putting 2 fields into that area and putting 8 foot retaining walls here and there, and reducing the amphitheater is not a good idea especially with options at Preston Park. Concerned about the potential shrinking of children population.
- Leslie – Asked to retain a couple of the tennis courts in plan and segregate the pickleball courts to avoid balls from on sport crossing into the other courts and due to the growth of both sports.
- Jeff Markham – Spoke about the legacy trees where the barracks had been removed and the possible loss of them in Options #3 and #4 to accommodate a large sports field. Forwarded to Council on a Poll that was done on Nextdoor and hope you will look at them and listen to another source of information.
- Tommy Bolea – Likes Option #1 as it preserves lots of existing trees. Commented on the what sports could be brought indoors when it's cold. Compared natural grass versus Astroturf and the maintenance and upkeep of the fields.
- Grace Silva-Santella – expressed appreciation that you discuss the population numbers in the presentation and asked questions about them. Commented on the landmark trees and the health of them, they will need some work and a proper budget to maintain the care. The Recreation Commission sent you a recommendation to remove the Sports Pavilion to address the parking needs that can't be met by any of the options and maintenance costs. Commented on the growing desire for pickleball.

- Karen Andersen – Excited about the park and the possibilities of the swim center and prefers Option #2 as it maintains the amphitheater and provides the ball parks. Believes the church could be used for a museum.
- Vely Matthews – Likes Option #3. Commented on all the youth sports in Marina and noted there were more youth sports than pickleball or tennis. Marina serves about 300 children for baseball and about 500 for soccer. Hopes Marina leaders will learn to take and incorporate this into our new and fix our new existing fields that we've been trying so hard to maintain and keep up with. We need more for our youths.
- Nancy Amadeo – Prefers Option #1, it only has one park and it leave more room for quiet recreation and it also maintains the three historic building. Spoke about previous council approving the naming of the FORTAG in Marina would be called the Veterans Memorial Trail so people walking the rail could reflect on the military history. Commented on the amphitheater.
- Don Hofer – MCP will continue to work with Staff on more of the details on how we interface from the development to the park. Concerned about the parking along the west side and noted parking should be along Second Avenue. The concern has to do with the fact that the streets in that area are essentially neighborhood streets. Asked if there could be some analysis as to whether or not the major park fields could be accessed off Second Avenue as opposed to the streets within the neighborhood. Expressed concerns about the amphitheater facing the neighborhood with the noise.
- Carrie Burley – Commented on the population concerns within the youths and spoke about all the children signed up with the your sports programs and not having enough sports fields to accommodate them. Noted there was nothing mentioned about supporting girls' softball. Commented on the current condition of trying to play on the Preston Park ball field.
- Mike Kennedy – Likes Option #2, best compromise between Option #3 and Option #4. Option. #2 will also keep most of, not all of the legacy trees and other substantial trees that provide tremendously beneficial optics.
- Jason Companion – Spoke about working in both adult sports and youth sports. Suggested more beach volleyball areas. Likes Option 3.

Medina Dirksen/Delgado: That we have received a presentation about the Dunes City Park, and that we adopt Option #3, with the provision that we work with the MIRA and other observatory folks, and that the plan includes two tennis courts; and that we concurrently work to see the viability of improving Preston Park. Motion Withdrawn by motion maker.

Substitute Motion
McCarthy/Biala: That we adopt Park plan number 2, with the provisions that:

1. It's Dark-sky certified.
2. That we work with the observatory (MIRA) to develop a usage policy. (if MIRA is not happy with that policy they have a right to appeal to the city council).

Friendly Amendments
Council Member Biala

3. Look into realistic timelines and assessment of the Gillia at Preston Park
4. that we get information on the impact of the way that the pavilion is situated in option. 2.
5. Suggestions of alternate sites for the 3 barracks/Museum.

6. we look at the noise factor of the amphitheater and parking (best location)

Mayor Pro Tem Medina Dirksen

7. staff explore adding one more sand volleyball and move basketball somewhere else.
8. adding an additional tennis court, so the design would have two tennis courts and remove the Pickleball.

Mayor Delgado

9. ask Staff to look at the possibility of widened the entrance at Second Avenue, Eighth Street
10. Staff to compare, to investigate by National standards how many ball fields we need and do some comparison to some comparative analysis, to what's going on in Seaside (that we do a needs assessment for our ball fields with some understanding of what seaside is doing, and their numbers compared to ours and what State standards might)

Final Substitute Motion

MCCARTHY/BIALA: THAT WE ADOPT OPTION #2 AND DIRECT STAFF TO:

1. **DARK-SKY CERTIFIED.**
2. **THAT WE WORK WITH THE OBSERVATORY (MIRA) TO DEVELOP A USAGE POLICY.**
3. **LOOK INTO REALISTIC TIMELINES AND ASSESSMENT OF THE GILIA AT PRESTON PARK**
4. **THAT WE GET INFORMATION ON THE IMPACT OF THE WAY THAT THE PAVILION IS SITUATED IN OPTION # 2.**
5. **SUGGESTIONS OF ALTERNATE SITES FOR THE 3 BARRACKS/MUSEUM.**
6. **WE LOOK AT THE NOISE FACTOR OF THE AMPHITHEATER AND PARKING.**
7. **STAFF EXPLORE ADDING ONE MORE SAND VOLLEYBALL AND MOVE BASKETBALL SOMEWHERE ELSE.**
8. **ADDING AN ADDITIONAL TENNIS COURT, SO THE DESIGN WOULD HAVE TWO TENNIS COURTS AND REMOVE THE PICKLEBALL.**
9. **ASK STAFF TO LOOK AT THE POSSIBILITY OF WIDENED THE ENTRANCE AT SECOND AVENUE, EIGHTH STREET**
10. **STAFF TO COMPARE, TO INVESTIGATE BY NATIONAL STANDARDS HOW MANY BALL FIELDS WE NEED AND DO SOME COMPARISON TO SOME COMPARATIVE ANALYSIS, TO WHAT'S GOING ON IN SEASIDE.**

Substitute Motion #2

Visscher/ : motion to choose Option #1; and consider (1) widening the entrance at 8 Street and Second Avenue; (2) postponed the pavilion but keep space for it; (3) postpone the historic Buildings Museums; (4) eliminate or postpone one-bathroom building; (5) consider adding a beach volleyball courts; (6) have 2 tennis courts; (7) consider adding 2 pickable courts; (8) worked with Mira, and (9) immediately start working on plans to improve and expand Preston Park and Budget proper maintenance for both parks or old parks**. Motion dies for a lack of a Second.**

e. City Council receive the consultant's Objective Design Standards (ODS) presentation, receive any input from the public, and provide its own feedback on the key takeaways and community feedback presented. ***Continued to April 4, 2023***

14. COUNCIL & STAFF INFORMATIONAL REPORTS:

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

b. Council reports on meetings and conferences attended (Gov't Code Section 53232).

15. ADJOURNMENT: The meeting adjourned at 1:05 A.M.

_____

Anita Sharp, Deputy City Clerk

ATTEST:

_____

Bruce C. Delgado, Mayor

March 31, 2023 Item No. **10f(1)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of April 4, 2023

CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2023-, APPROVING PARTICIPATION IN NATIONWIDE OPIOID SETTLEMENT LITIGATION WITH TEVA, ALLERGAN, CVS, WALGREENS AND WALMART; AND APPOINTING THE CITY MANAGER AS THE CITY'S AUTHORIZED REPRESENTATIVE TO TAKE ALL REASONABLE AND NECESSARY ACTIONS.

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2023-, approving participation in the Nationwide Opioid Settlement Litigation with Teva, Allergan, CVS, Walgreens and Walmart; and appointing the City Manager as the City's Authorized Representative to Take All Reasonable and Necessary Actions.

INTRODUCTION

In late 2022, proposed nationwide settlement agreements were reached that would resolve the opioid litigation brought by states and local political subdivisions against three pharmacy chains—CVS, Walgreens, and Walmart—and two additional manufacturers—Allergan and Teva (collectively, "Defendants"). The settlement agreements will require these Defendants to pay more than $18 billion over 15 years to participating states and subdivisions to remediate and abate the impacts of the opioid crisis. The City of Marina ("City") will receive an allocation of the settlement funds only if it "opts-in" to participate in the litigation settlement no later than April 18, 2023.

BACKGROUND:

Previously, in 2021, nationwide settlements were reached to resolve all opioids litigation brought by states and local political subdivisions against the three largest pharmaceutical distributors—McKesson, Cardinal Health, and AmerisourceBergen ("Distributors")—and against manufacturer Janssen Pharmaceuticals, Inc. and its parent company Johnson & Johnson (collectively, "J&J"). These "2021 National Settlements" have been finalized, and payments have already begun. In all, the Distributors will pay up to $21 billion over 18 years, and J&J will pay up to an additional $5 billion over no more than nine years. The City Council previously adopted Resolution 2021-124 to participate in these settlements. To date, the City has received approximately $31,000 in settlement payments. It's anticipated that the City will receive fewer dollars in subsequent settlement years.

The 2022 National Settlements were the culmination of many years of intense negotiations among representatives of the State Attorneys General, the court-appointed Plaintiffs' Executive Committee and Negotiation Committee. Assuming maximum participation, the 2022 National Settlements require:

- Teva to pay up to $3.34 billion over 13 years and to provide either $1.2 billion of its generic version of the drug Narcan over 10 years or $240 million of cash in lieu of product, as each state may elect;
- Allergan to pay up to $2.02 billion over 7 years;
- CVS to pay up to $4.90 billion over 10 years;
- Walgreens to pay up to $5.52 billion over 15 years; and
- Walmart to pay up to $2.74 billion in 2023, and all payments to be made within 6 years.

In January 2023, each of the Defendants confirmed that a sufficient number of states had agreed to the settlements to move forward. The greater the level of subdivision participation, the more funds will ultimately be paid out for abatement. (These figures include amounts attributable to prior settlements between the Defendants and certain states/subdivisions and amounts for attorneys' fees and costs.)

Under the 2022 National Settlements, at least 85% of the funds going directly to participating states and subdivisions must be used for abatement of the opioid epidemic, with the overwhelming bulk of the proceeds restricted to funding future abatement efforts by state and local governments.

In addition to providing billions of dollars for abatement, the settlements also impose changes in the way the settling Defendants conduct their business. For example:

- Teva and Allergan have agreed to strict limitations on their marketing, promotion, sale, and distribution of opioids, including a ban on: (1) promotion and lobbying; (2) rewarding or disciplining employees based on volume of opioid sales; and (3) funding or grants to third parties; and
- Walmart, CVS, and Walgreens are required to implement changes in how they handle opioids, including requirements addressing their compliance structures, pharmacist judgment, diversion prevention, suspicious order monitoring, and reporting on red-flag processes, as well as blocked and potentially problematic prescribers.

As with the 2021 National Settlements, states and local governments that want to participate in the 2022 National Settlements now have the opportunity to "opt in." This is not an ordinary "class action" in which a party is subject to settlement unless it affirmatively opts out. Instead a local government entity must opt in and affirmatively approve the settlement, which requires the local government to release any claim against the settling opioid distributors and manufacturers.

ANALYSIS:

The funds will be available for a broad range of approved abatement uses designed to (1) address the misuse and abuse of opioid products, (2) treat or mitigate opioid use or related disorders, or (3) mitigate other alleged effects of, including on those injured as a result of, the opioid epidemic. The list of pre-approved uses includes a wide range of intervention, treatment, education, and recovery services. A complete list of eligible uses is included as Attachment A. If the City opts in to the settlement it can elect to: (1) receive settlement funds through direct payment and use the funds for approved abatement or remediation uses; (2) authorize transfer of the funds, and the burden to spend them appropriately and account for them, to Monterey County ("County"); or (3) contract with the County for use of the funds. If the City elects to receive the funds directly, the City will have annual reporting obligations on the use of these funds. The City opted to receive direct payments for the 2021 National Settlements and will do the same for the 2022 Settlements. This Resolution approves participation in the settlement and appoints the City Manager as the City's authorized representative to execute all necessary documents, following review and approval by the City Attorney, to receive or make other allocation of the funds as allowed in accordance with the settlement agreement and allowed uses.

FISCAL IMPACT:

Preliminary estimates indicate that the City could receive more than $150,000 over a 15-year period, with a large portion of the funds payable during the initial seven years. The disbursement schedule is not yet available. If the City elects to receive funds directly, the City will incur staff time to fulfill its annual reporting obligations to demonstrate the proper use of the funds for approved opioid abatement activities. The extent of these reporting obligations is unknown but is not expected to be unduly burdensome.

Public safety staff are working with finance staff to utilize these funds in conformance with the list of uses as shown in **ATTACHMENT A**.

CONCLUSION:

This request is submitted for City Council consideration and adoption of a resolution approving participation in the 2022 Nationwide Opioid Settlement Litigation with Teva, Allergan, CVS, Walgreens and Walmart; and appointing the City Manager as the City's authorized representative to take all reasonable and necessary actions to implement the agreements.

Respectfully submitted,

_____

Juan Lopez
Finance Director
City of Marina

REVIEWED/CONCUR:

_____

Layne Long
City Manager
City of Marina

RESOLUTION NO. 2023-xx

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING PARTICIPATION IN NATIONWIDE OPIOID SETTLEMENT LITIGATION WITH TEVA, ALLERGAN, CVS, WALGREENS, AND WALMART; AND APPOINTING THE CITY MANAGER AS THE CITY'S AUTHORIZED REPRESENTATIVE TO TAKE ALL REASONABLE AND NECESSARY ACTIONS.

WHEREAS, local jurisdictions throughout the County, including the City of Marina, have and continue to experience an opioid epidemic as a result of opioid misuse, abuse, dependency, overdoses, and opioid related deaths; and

WHEREAS, according to the Centers for Disease Control, one in four people who are prescribed opioids for chronic pain develop issues with addiction; and

WHEREAS, the opioid epidemic affects our communities, devastates families, and overwhelms our health care, social services, law enforcement, and judicial systems; and

WHEREAS, the effects of the opioid epidemic have disproportionately affected Monterey County, although the number of opioids prescribed in Monterey County is decreasing, due in part to new regulations and the efforts of the Monterey County Prescribe Safe Initiative, a collaborative effort between doctors, hospitals, and law enforcement to address the problem of misuse of prescription medications and to reduce the overall harm from the use of potentially addictive opioid pain medications; and

WHEREAS, state and local subdivisions filed suit against opioid manufacturers and distributors, seeking damages and injunctive relief arising from opioid use and misinformation; and

WHEREAS, representatives of litigating state and local subdivisions reached settlement agreements with pharmacy chains CVS, Walgreens, Walmart and with manufacturers Allergan and Teva; and

WHEREAS, pursuant to the terms of settlement agreements, state and eligible local subdivisions must "opt in" to the settlement on or before April 18, 2023, by, among other possible actions, executing a Participation Agreement; and

WHEREAS, if the City of Marina elects to participate in the settlements, the City is expected to receive monetary payments over a 15-year period to fund opioid abatement costs, as defined; and

WHEREAS, the City Council finds that receiving the settlement funds is critical to the City's ongoing efforts to provide and maintain intervention, treatment, education, and recovery services necessary to effectively combat the epidemic.

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

Section 1. Participation in the Settlement. The City Council hereby approves and elects to "opt in" to the settlement agreements reached with distributors CVS, Walgreens, and Walmart and with manufacturers Allergan and Teva, relating to the National Multi-District Opioid Litigation, as a full participant.

Section 2. City Manager Appointment. The City Council hereby appoints the City Manager as the City's Authorized Representative and authorizes the City Manager to take all necessary and reasonable actions to effectuate the City's participation in the settlement and sign all necessary agreements, each following review and approval of the City Attorney.

Section 3. Effective Date. This Resolution shall be effective upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on this 4th day of April 2023, by the following vote:

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

_____
Bruce C. Delgado, Mayor

ATTEST:

_____
Anita Sharp, Deputy City Clerk

Exhibit E
List of Opioid Remediation Uses

Schedule A
Core Strategies

Settling States and Exhibit G Participants may choose from among the abatement strategies listed in Schedule B. However, priority may be given to the following core abatement strategies ("*Core Strategies*").[1]

A. NALOXONE OR OTHER FDA-APPROVED DRUG TO REVERSE OPIOID OVERDOSES

1. Expand training for first responders, schools, community support groups and families; and

2. Increase distribution to individuals who are uninsured or whose insurance does not cover the needed service.

B. MEDICATION-ASSISTED TREATMENT ("*MAT*") DISTRIBUTION AND OTHER OPIOID-RELATED TREATMENT

1. Increase distribution of MAT to individuals who are uninsured or whose insurance does not cover the needed service;

2. Provide education to school-based and youth-focused programs that discourage or prevent misuse;

3. Provide MAT education and awareness training to healthcare providers, EMTs, law enforcement, and other first responders; and

4. Provide treatment and recovery support services such as residential and inpatient treatment, intensive outpatient treatment, outpatient therapy or counseling, and recovery housing that allow or integrate medication and with other support services.

[1] As used in this Schedule A, words like "expand," "fund," "provide" or the like shall not indicate a preference for new or existing programs.

C. PREGNANT & POSTPARTUM WOMEN

1. Expand Screening, Brief Intervention, and Referral to Treatment ("*SBIRT*") services to non-Medicaid eligible or uninsured pregnant women;

2. Expand comprehensive evidence-based treatment and recovery services, including MAT, for women with co-occurring Opioid Use Disorder ("*OUD*") and other Substance Use Disorder ("*SUD*")/Mental Health disorders for uninsured individuals for up to 12 months postpartum; and

3. Provide comprehensive wrap-around services to individuals with OUD, including housing, transportation, job placement/training, and childcare.

D. EXPANDING TREATMENT FOR NEONATAL ABSTINENCE SYNDROME ("*NAS*")

1. Expand comprehensive evidence-based and recovery support for NAS babies;

2. Expand services for better continuum of care with infant-need dyad; and

3. Expand long-term treatment and services for medical monitoring of NAS babies and their families.

E. EXPANSION OF WARM HAND-OFF PROGRAMS AND RECOVERY SERVICES

1. Expand services such as navigators and on-call teams to begin MAT in hospital emergency departments;

2. Expand warm hand-off services to transition to recovery services;

3. Broaden scope of recovery services to include co-occurring SUD or mental health conditions;

4. Provide comprehensive wrap-around services to individuals in recovery, including housing, transportation, job placement/training, and childcare; and

5. Hire additional social workers or other behavioral health workers to facilitate expansions above.

F. TREATMENT FOR INCARCERATED POPULATION

1. Provide evidence-based treatment and recovery support, including MAT for persons with OUD and co-occurring SUD/MH disorders within and transitioning out of the criminal justice system; and

2. Increase funding for jails to provide treatment to inmates with OUD.

G. PREVENTION PROGRAMS

1. Funding for media campaigns to prevent opioid use (similar to the FDA's "Real Cost" campaign to prevent youth from misusing tobacco);

2. Funding for evidence-based prevention programs in schools;

3. Funding for medical provider education and outreach regarding best prescribing practices for opioids consistent with CDC guidelines, including providers at hospitals (academic detailing);

4. Funding for community drug disposal programs; and

5. Funding and training for first responders to participate in pre-arrest diversion programs, post-overdose response teams, or similar strategies that connect at-risk individuals to behavioral health services and supports.

H. EXPANDING SYRINGE SERVICE PROGRAMS

1. Provide comprehensive syringe services programs with more wrap-around services, including linkage to OUD treatment, access to sterile syringes and linkage to care and treatment of infectious diseases.

I. EVIDENCE-BASED DATA COLLECTION AND RESEARCH ANALYZING THE EFFECTIVENESS OF THE ABATEMENT STRATEGIES WITHIN THE STATE

Schedule B
Approved Uses

Support treatment of Opioid Use Disorder (OUD) and any co-occurring Substance Use Disorder or Mental Health (SUD/MH) conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

PART ONE: TREATMENT

A. TREAT OPIOID USE DISORDER (OUD)

Support treatment of Opioid Use Disorder ("*OUD*") and any co-occurring Substance Use Disorder or Mental Health ("*SUD/MH*") conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:[2]

1. Expand availability of treatment for OUD and any co-occurring SUD/MH conditions, including all forms of Medication-Assisted Treatment ("*MAT*") approved by the U.S. Food and Drug Administration.

2. Support and reimburse evidence-based services that adhere to the American Society of Addiction Medicine ("*ASAM*") continuum of care for OUD and any co-occurring SUD/MH conditions.

3. Expand telehealth to increase access to treatment for OUD and any co-occurring SUD/MH conditions, including MAT, as well as counseling, psychiatric support, and other treatment and recovery support services.

4. Improve oversight of Opioid Treatment Programs ("*OTPs*") to assure evidence-based or evidence-informed practices such as adequate methadone dosing and low threshold approaches to treatment.

5. Support mobile intervention, treatment, and recovery services, offered by qualified professionals and service providers, such as peer recovery coaches, for persons with OUD and any co-occurring SUD/MH conditions and for persons who have experienced an opioid overdose.

6. Provide treatment of trauma for individuals with OUD (*e.g.*, violence, sexual assault, human trafficking, or adverse childhood experiences) and family members (*e.g.*, surviving family members after an overdose or overdose fatality), and training of health care personnel to identify and address such trauma.

[2] As used in this Schedule B, words like "expand," "fund," "provide" or the like shall not indicate a preference for new or existing programs.

7. Support evidence-based withdrawal management services for people with OUD and any co-occurring mental health conditions.

8. Provide training on MAT for health care providers, first responders, students, or other supporting professionals, such as peer recovery coaches or recovery outreach specialists, including telementoring to assist community-based providers in rural or underserved areas.

9. Support workforce development for addiction professionals who work with persons with OUD and any co-occurring SUD/MH conditions.

10. Offer fellowships for addiction medicine specialists for direct patient care, instructors, and clinical research for treatments.

11. Offer scholarships and supports for behavioral health practitioners or workers involved in addressing OUD and any co-occurring SUD/MH or mental health conditions, including, but not limited to, training, scholarships, fellowships, loan repayment programs, or other incentives for providers to work in rural or underserved areas.

12. Provide funding and training for clinicians to obtain a waiver under the federal Drug Addiction Treatment Act of 2000 ("*DATA 2000*") to prescribe MAT for OUD, and provide technical assistance and professional support to clinicians who have obtained a DATA 2000 waiver.

13. Disseminate web-based training curricula, such as the American Academy of Addiction Psychiatry's Provider Clinical Support Service–Opioids web-based training curriculum and motivational interviewing.

14. Develop and disseminate new curricula, such as the American Academy of Addiction Psychiatry's Provider Clinical Support Service for Medication–Assisted Treatment.

B. SUPPORT PEOPLE IN TREATMENT AND RECOVERY

Support people in recovery from OUD and any co-occurring SUD/MH conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the programs or strategies that:

1. Provide comprehensive wrap-around services to individuals with OUD and any co-occurring SUD/MH conditions, including housing, transportation, education, job placement, job training, or childcare.

2. Provide the full continuum of care of treatment and recovery services for OUD and any co-occurring SUD/MH conditions, including supportive housing, peer support services and counseling, community navigators, case management, and connections to community-based services.

3. Provide counseling, peer-support, recovery case management and residential treatment with access to medications for those who need it to persons with OUD and any co-occurring SUD/MH conditions.

4. Provide access to housing for people with OUD and any co-occurring SUD/MH conditions, including supportive housing, recovery housing, housing assistance programs, training for housing providers, or recovery housing programs that allow or integrate FDA-approved mediation with other support services.

5. Provide community support services, including social and legal services, to assist in deinstitutionalizing persons with OUD and any co-occurring SUD/MH conditions.

6. Support or expand peer-recovery centers, which may include support groups, social events, computer access, or other services for persons with OUD and any co-occurring SUD/MH conditions.

7. Provide or support transportation to treatment or recovery programs or services for persons with OUD and any co-occurring SUD/MH conditions.

8. Provide employment training or educational services for persons in treatment for or recovery from OUD and any co-occurring SUD/MH conditions.

9. Identify successful recovery programs such as physician, pilot, and college recovery programs, and provide support and technical assistance to increase the number and capacity of high-quality programs to help those in recovery.

10. Engage non-profits, faith-based communities, and community coalitions to support people in treatment and recovery and to support family members in their efforts to support the person with OUD in the family.

11. Provide training and development of procedures for government staff to appropriately interact and provide social and other services to individuals with or in recovery from OUD, including reducing stigma.

12. Support stigma reduction efforts regarding treatment and support for persons with OUD, including reducing the stigma on effective treatment.

13. Create or support culturally appropriate services and programs for persons with OUD and any co-occurring SUD/MH conditions, including new Americans.

14. Create and/or support recovery high schools.

15. Hire or train behavioral health workers to provide or expand any of the services or supports listed above.

C. CONNECT PEOPLE WHO NEED HELP TO THE HELP THEY NEED (CONNECTIONS TO CARE)

Provide connections to care for people who have—or are at risk of developing—OUD and any co-occurring SUD/MH conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:

1. Ensure that health care providers are screening for OUD and other risk factors and know how to appropriately counsel and treat (or refer if necessary) a patient for OUD treatment.

2. Fund SBIRT programs to reduce the transition from use to disorders, including SBIRT services to pregnant women who are uninsured or not eligible for Medicaid.

3. Provide training and long-term implementation of SBIRT in key systems (health, schools, colleges, criminal justice, and probation), with a focus on youth and young adults when transition from misuse to opioid disorder is common.

4. Purchase automated versions of SBIRT and support ongoing costs of the technology.

5. Expand services such as navigators and on-call teams to begin MAT in hospital emergency departments.

6. Provide training for emergency room personnel treating opioid overdose patients on post-discharge planning, including community referrals for MAT, recovery case management or support services.

7. Support hospital programs that transition persons with OUD and any co-occurring SUD/MH conditions, or persons who have experienced an opioid overdose, into clinically appropriate follow-up care through a bridge clinic or similar approach.

8. Support crisis stabilization centers that serve as an alternative to hospital emergency departments for persons with OUD and any co-occurring SUD/MH conditions or persons that have experienced an opioid overdose.

9. Support the work of Emergency Medical Systems, including peer support specialists, to connect individuals to treatment or other appropriate services following an opioid overdose or other opioid-related adverse event.

10. Provide funding for peer support specialists or recovery coaches in emergency departments, detox facilities, recovery centers, recovery housing, or similar settings; offer services, supports, or connections to care to persons with OUD and any co-occurring SUD/MH conditions or to persons who have experienced an opioid overdose.

11. Expand warm hand-off services to transition to recovery services.

12. Create or support school-based contacts that parents can engage with to seek immediate treatment services for their child; and support prevention, intervention, treatment, and recovery programs focused on young people.

13. Develop and support best practices on addressing OUD in the workplace.

14. Support assistance programs for health care providers with OUD.

15. Engage non-profits and the faith community as a system to support outreach for treatment.

16. Support centralized call centers that provide information and connections to appropriate services and supports for persons with OUD and any co-occurring SUD/MH conditions.

D. ADDRESS THE NEEDS OF CRIMINAL JUSTICE-INVOLVED PERSONS

Address the needs of persons with OUD and any co-occurring SUD/MH conditions who are involved in, are at risk of becoming involved in, or are transitioning out of the criminal justice system through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:

1. Support pre-arrest or pre-arraignment diversion and deflection strategies for persons with OUD and any co-occurring SUD/MH conditions, including established strategies such as:

    1. Self-referral strategies such as the Angel Programs or the Police Assisted Addiction Recovery Initiative ("*PAARI*");

    2. Active outreach strategies such as the Drug Abuse Response Team ("*DART*") model;

    3. "Naloxone Plus" strategies, which work to ensure that individuals who have received naloxone to reverse the effects of an overdose are then linked to treatment programs or other appropriate services;

    4. Officer prevention strategies, such as the Law Enforcement Assisted Diversion ("*LEAD*") model;

    5. Officer intervention strategies such as the Leon County, Florida Adult Civil Citation Network or the Chicago Westside Narcotics Diversion to Treatment Initiative; or

    6. Co-responder and/or alternative responder models to address OUD-related 911 calls with greater SUD expertise.

2. Support pre-trial services that connect individuals with OUD and any co-occurring SUD/MH conditions to evidence-informed treatment, including MAT, and related services.

3. Support treatment and recovery courts that provide evidence-based options for persons with OUD and any co-occurring SUD/MH conditions.

4. Provide evidence-informed treatment, including MAT, recovery support, harm reduction, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions who are incarcerated in jail or prison.

5. Provide evidence-informed treatment, including MAT, recovery support, harm reduction, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions who are leaving jail or prison or have recently left jail or prison, are on probation or parole, are under community corrections supervision, or are in re-entry programs or facilities.

6. Support critical time interventions ("*CTI*"), particularly for individuals living with dual-diagnosis OUD/serious mental illness, and services for individuals who face immediate risks and service needs and risks upon release from correctional settings.

7. Provide training on best practices for addressing the needs of criminal justice-involved persons with OUD and any co-occurring SUD/MH conditions to law enforcement, correctional, or judicial personnel or to providers of treatment, recovery, harm reduction, case management, or other services offered in connection with any of the strategies described in this section.

E. ADDRESS THE NEEDS OF PREGNANT OR PARENTING WOMEN AND THEIR FAMILIES, INCLUDING BABIES WITH NEONATAL ABSTINENCE SYNDROME

Address the needs of pregnant or parenting women with OUD and any co-occurring SUD/MH conditions, and the needs of their families, including babies with neonatal abstinence syndrome ("*NAS*"), through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:

1. Support evidence-based or evidence-informed treatment, including MAT, recovery services and supports, and prevention services for pregnant women—or women who could become pregnant—who have OUD and any co-occurring SUD/MH conditions, and other measures to educate and provide support to families affected by Neonatal Abstinence Syndrome.

2. Expand comprehensive evidence-based treatment and recovery services, including MAT, for uninsured women with OUD and any co-occurring SUD/MH conditions for up to 12 months postpartum.

3. Provide training for obstetricians or other healthcare personnel who work with pregnant women and their families regarding treatment of OUD and any co-occurring SUD/MH conditions.

4. Expand comprehensive evidence-based treatment and recovery support for NAS babies; expand services for better continuum of care with infant-need dyad; and expand long-term treatment and services for medical monitoring of NAS babies and their families.

5. Provide training to health care providers who work with pregnant or parenting women on best practices for compliance with federal requirements that children born with NAS get referred to appropriate services and receive a plan of safe care.

6. Provide child and family supports for parenting women with OUD and any co-occurring SUD/MH conditions.

7. Provide enhanced family support and child care services for parents with OUD and any co-occurring SUD/MH conditions.

8. Provide enhanced support for children and family members suffering trauma as a result of addiction in the family; and offer trauma-informed behavioral health treatment for adverse childhood events.

9. Offer home-based wrap-around services to persons with OUD and any co-occurring SUD/MH conditions, including, but not limited to, parent skills training.

10. Provide support for Children's Services—Fund additional positions and services, including supportive housing and other residential services, relating to children being removed from the home and/or placed in foster care due to custodial opioid use.

PART TWO: PREVENTION

F. PREVENT OVER-PRESCRIBING AND ENSURE APPROPRIATE PRESCRIBING AND DISPENSING OF OPIOIDS

Support efforts to prevent over-prescribing and ensure appropriate prescribing and dispensing of opioids through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Funding medical provider education and outreach regarding best prescribing practices for opioids consistent with the Guidelines for Prescribing Opioids for Chronic Pain from the U.S. Centers for Disease Control and Prevention, including providers at hospitals (academic detailing).

2. Training for health care providers regarding safe and responsible opioid prescribing, dosing, and tapering patients off opioids.

3. Continuing Medical Education (CME) on appropriate prescribing of opioids.

4. Providing Support for non-opioid pain treatment alternatives, including training providers to offer or refer to multi-modal, evidence-informed treatment of pain.

5. Supporting enhancements or improvements to Prescription Drug Monitoring Programs ("*PDMPs*"), including, but not limited to, improvements that:

    1. Increase the number of prescribers using PDMPs;

    2. Improve point-of-care decision-making by increasing the quantity, quality, or format of data available to prescribers using PDMPs, by improving the interface that prescribers use to access PDMP data, or both; or

    3. Enable states to use PDMP data in support of surveillance or intervention strategies, including MAT referrals and follow-up for individuals identified within PDMP data as likely to experience OUD in a manner that complies with all relevant privacy and security laws and rules.

6. Ensuring PDMPs incorporate available overdose/naloxone deployment data, including the United States Department of Transportation's Emergency Medical Technician overdose database in a manner that complies with all relevant privacy and security laws and rules.

7. Increasing electronic prescribing to prevent diversion or forgery.

8. Educating dispensers on appropriate opioid dispensing.

G. PREVENT MISUSE OF OPIOIDS

Support efforts to discourage or prevent misuse of opioids through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Funding media campaigns to prevent opioid misuse.

2. Corrective advertising or affirmative public education campaigns based on evidence.

3. Public education relating to drug disposal.

4. Drug take-back disposal or destruction programs.

5. Funding community anti-drug coalitions that engage in drug prevention efforts.

6. Supporting community coalitions in implementing evidence-informed prevention, such as reduced social access and physical access, stigma reduction—including staffing, educational campaigns, support for people in treatment or recovery, or training of coalitions in evidence-informed implementation, including the Strategic Prevention Framework developed by the U.S. Substance Abuse and Mental Health Services Administration ("*SAMHSA*").

7. Engaging non-profits and faith-based communities as systems to support prevention.

8. Funding evidence-based prevention programs in schools or evidence-informed school and community education programs and campaigns for students, families, school employees, school athletic programs, parent-teacher and student associations, and others.

9. School-based or youth-focused programs or strategies that have demonstrated effectiveness in preventing drug misuse and seem likely to be effective in preventing the uptake and use of opioids.

10. Create or support community-based education or intervention services for families, youth, and adolescents at risk for OUD and any co-occurring SUD/MH conditions.

11. Support evidence-informed programs or curricula to address mental health needs of young people who may be at risk of misusing opioids or other drugs, including emotional modulation and resilience skills.

12. Support greater access to mental health services and supports for young people, including services and supports provided by school nurses, behavioral health workers or other school staff, to address mental health needs in young people that (when not properly addressed) increase the risk of opioid or another drug misuse.

H. PREVENT OVERDOSE DEATHS AND OTHER HARMS (HARM REDUCTION)

Support efforts to prevent or reduce overdose deaths or other opioid-related harms through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Increased availability and distribution of naloxone and other drugs that treat overdoses for first responders, overdose patients, individuals with OUD and their friends and family members, schools, community navigators and outreach workers, persons being released from jail or prison, or other members of the general public.

2. Public health entities providing free naloxone to anyone in the community.

3. Training and education regarding naloxone and other drugs that treat overdoses for first responders, overdose patients, patients taking opioids, families, schools, community support groups, and other members of the general public.

4. Enabling school nurses and other school staff to respond to opioid overdoses, and provide them with naloxone, training, and support.

5. Expanding, improving, or developing data tracking software and applications for overdoses/naloxone revivals.

6. Public education relating to emergency responses to overdoses.

7. Public education relating to immunity and Good Samaritan laws.

8. Educating first responders regarding the existence and operation of immunity and Good Samaritan laws.

9. Syringe service programs and other evidence-informed programs to reduce harms associated with intravenous drug use, including supplies, staffing, space, peer support services, referrals to treatment, fentanyl checking, connections to care, and the full range of harm reduction and treatment services provided by these programs.

10. Expanding access to testing and treatment for infectious diseases such as HIV and Hepatitis C resulting from intravenous opioid use.

11. Supporting mobile units that offer or provide referrals to harm reduction services, treatment, recovery supports, health care, or other appropriate services to persons that use opioids or persons with OUD and any co-occurring SUD/MH conditions.

12. Providing training in harm reduction strategies to health care providers, students, peer recovery coaches, recovery outreach specialists, or other professionals that provide care to persons who use opioids or persons with OUD and any co-occurring SUD/MH conditions.

13. Supporting screening for fentanyl in routine clinical toxicology testing.

PART THREE: OTHER STRATEGIES

I. FIRST RESPONDERS

In addition to items in section C, D and H relating to first responders, support the following:

1. Education of law enforcement or other first responders regarding appropriate practices and precautions when dealing with fentanyl or other drugs.

2. Provision of wellness and support services for first responders and others who experience secondary trauma associated with opioid-related emergency events.

J. LEADERSHIP, PLANNING AND COORDINATION

Support efforts to provide leadership, planning, coordination, facilitations, training and technical assistance to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, the following:

1. Statewide, regional, local or community regional planning to identify root causes of addiction and overdose, goals for reducing harms related to the opioid epidemic, and areas and populations with the greatest needs for treatment intervention services, and

to support training and technical assistance and other strategies to abate the opioid epidemic described in this opioid abatement strategy list.

2. A dashboard to (a) share reports, recommendations, or plans to spend opioid settlement funds; (b) to show how opioid settlement funds have been spent; (c) to report program or strategy outcomes; or (d) to track, share or visualize key opioid- or health-related indicators and supports as identified through collaborative statewide, regional, local or community processes.

3. Invest in infrastructure or staffing at government or not-for-profit agencies to support collaborative, cross-system coordination with the purpose of preventing overprescribing, opioid misuse, or opioid overdoses, treating those with OUD and any co-occurring SUD/MH conditions, supporting them in treatment or recovery, connecting them to care, or implementing other strategies to abate the opioid epidemic described in this opioid abatement strategy list.

4. Provide resources to staff government oversight and management of opioid abatement programs.

K. TRAINING

In addition to the training referred to throughout this document, support training to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, those that:

1. Provide funding for staff training or networking programs and services to improve the capability of government, community, and not-for-profit entities to abate the opioid crisis.

2. Support infrastructure and staffing for collaborative cross-system coordination to prevent opioid misuse, prevent overdoses, and treat those with OUD and any co-occurring SUD/MH conditions, or implement other strategies to abate the opioid epidemic described in this opioid abatement strategy list (*e.g.*, health care, primary care, pharmacies, PDMPs, etc.).

L. RESEARCH

Support opioid abatement research that may include, but is not limited to, the following:

1. Monitoring, surveillance, data collection and evaluation of programs and strategies described in this opioid abatement strategy list.

2. Research non-opioid treatment of chronic pain.

3. Research on improved service delivery for modalities such as SBIRT that demonstrate promising but mixed results in populations vulnerable to opioid use disorders.

4. Research on novel harm reduction and prevention efforts such as the provision of fentanyl test strips.

5. Research on innovative supply-side enforcement efforts such as improved detection of mail-based delivery of synthetic opioids.

6. Expanded research on swift/certain/fair models to reduce and deter opioid misuse within criminal justice populations that build upon promising approaches used to address other substances (*e.g.*, Hawaii HOPE and Dakota 24/7).

7. Epidemiological surveillance of OUD-related behaviors in critical populations, including individuals entering the criminal justice system, including, but not limited to approaches modeled on the Arrestee Drug Abuse Monitoring ("ADAM") system.

8. Qualitative and quantitative research regarding public health risks and harm reduction opportunities within illicit drug markets, including surveys of market participants who sell or distribute illicit opioids.

9. Geospatial analysis of access barriers to MAT and their association with treatment engagement and treatment outcomes.

March 28, 2023 Item No. **10g(1)**

Honorable Mayor and Members of the Marina City Council

City Council Meeting of April 4, 2023

RECOMMENDATION TO CONSIDER ADOPTING RESOLUTION NO. 2023-, APPROVING A PUBLIC IMPROVEMENT AGREEMENT FOR THE VETERAN'S TRANSITION CENTER (VTC) "LIGHTFIGHTER VILLAGE" PERMANENT SUPPORTIVE HOUSING PROJECT BETWEEN THE CITY OF MARINA AND USA PROPERTIES FUND, INC., AND; AUTHORIZING CITY MANAGER TO EXECUTE THE PUBLIC IMPROVEMENT AGREEMENT ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

RECOMMENDATION:

It is recommended that the City Council:

1. Consider adopting Resolution No. 2023-, approving a Public Improvement Agreement for the Veteran's Transition Center (VTC) "Lightfighter Village" Permanent Supportive Housing Project between the City of Marina and Lightfighter Village GP, LLC, and;

2. Authorizing the City Manager to execute the Public Improvement Agreement on behalf of the City subject to final review and approval by the City Attorney.

BACKGROUND:

At the regular meeting of November 20, 2018, the City Council adopted Resolution No. 2012-76, approving the Specific Plan (SP 2012-01) for a ±2.4 acre project site located at 229-239 Hayes Circle (APN 031-021-040). The proposed project consists of a new three-story, seventy-one (71) unit apartment complex.

ANALYSIS:

Lightfighter Village GP ("Developer") has submitted the on-site and off-site Improvement Plans for approval. Marina Municipal Code (MMC) section 16.06.090 sets the requirements for the off-site improvements for the right-of-way. MMC section 16.06.170 and 16.16.100 require an improvement security, such as a bonds, for all proposed improvements within the City right of way to ensure the timely construction of such improvements.

The Public Improvement Agreement has been reviewed by the Developer and the City Attorney. The Developer will provide labor and materials and faithful performance bonds as required by the Agreement.

FISCAL IMPACT:

Should the City Council approve this request, the City requires the Developer to provide satisfactory evidence of their ability to complete the public improvements by the posting of labor and material and faithful performance subdivision improvement bonds in an amount of 100% of the cost to perform the work. In the event of default on the part of the Developer, the City would utilize the bond funding to complete the improvements.

For the construction of off-site improvements, the Developer will post a bond in the amount of Six Hundred and Fifty-Six Thousand Dollars ($656,000.00) for completion of the public improvements and a bond in the amount of Six Hundred and Fifty-Six Thousand Dollars ($656,000.00) to secure payment for labor and materials. The Developer will also be required to apply for an encroachment permit for the construction inspection of the right-of-way improvements.

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

Respectfully submitted,

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

REVIEWED/CONCUR:

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

_____
Layne P. Long
City Manager
City of Marina

RESOLUTION NO. 2023-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA APPROVING A PUBLIC IMPROVEMENT AGREEMENT FOR THE VETERAN'S TRANSITION CENTER (VTC) "LIGHTFIGHTER VILLAGE" PERMANENT SUPPORTIVE HOUSING PROJECT BETWEEN THE CITY OF MARINA AND USA PROPERTIES FUND, INC., AND; AUTHORIZING CITY MANAGER TO EXECUTE THE PUBLIC IMPROVEMENT AGREEMENT ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

WHEREAS, at the regular meeting of November 20, 2018, the City Council adopted Resolution No. 2012-76, approving the Specific Plan (SP 2012-01) for a ±2.4 acre project site located at 229-239 Hayes Circle (APN 031-021-040). The proposed project consists of a new three-story, seventy-one (71) unit apartment complex.

WHEREAS, Lightfighter Village GP ("Developer") has submitted the on-site and off-site Improvement Plans for approval. Marina Municipal Code (MMC) section 16.06.090 sets the requirements for the off-site improvements for the right-of-way. MMC section 16.06.170 and 16.16.100 require an improvement security, such as a bonds, for all proposed improvements within the City right of way to ensure the timely construction of such improvements.

WHEREAS, the Public Improvement Agreement has been reviewed by the Developer and the City Attorney. The Developer will provide labor and materials and faithful performance bonds as required by the Agreement.

WHEREAS, should the City Council approve this request, the City requires the Developer to provide satisfactory evidence of their ability to complete the public improvements by the posting of labor and material and faithful performance subdivision improvement bonds in an amount of 100% of the cost to perform the work. In the event of default on the part of the Developer, the City would utilize the bond funding to complete the improvements.

WHEREAS, for the construction of off-site improvements, the Developer will post a bond in the amount of Six Hundred and Fifty-Six Thousand Dollars ($656,000.00) for completion of the public improvements and a bond in the amount of Six Hundred and Fifty-Six Thousand Dollars ($656,000.00) to secure payment for labor and materials. The Developer will also be required to apply for an encroachment permit for the construction inspection of the right-of-way improvements.

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

1. Approve a Public Improvement Agreement for the Veteran's Transition Center (VTC) "Lightfighter Village" Permanent Supportive Housing Project between the City of Marina and Lightfighter Village GP, LLC, and;

2. Authorize the City Manager to execute the Public Improvement Agreement 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 4th day of April 2023, by the following vote:

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

_____
Bruce Delgado, Mayor

ATTEST:

_____
Anita Sharp, Deputy City Clerk

Recording requested by and when
when recorded, return to:

City of Marina
211 Hillcrest Avenue
Marina, CA 93933
Attn: Public Works Director

Exempt from recording fee, per
Government Code Section 6103

APN: 031-021-040

PUBLIC IMPROVEMENT AGREEMENT FOR IMPROVEMENT OF STREETS, INSTALLATION OF SIDEWALKS, LANDSCAPING, STREET LIGHTS AND OTHER PUBLIC WORKS FACILITIES

– 239-243 Hayes Circle, Marina CA –

This Public Improvement Agreement for Streets, Installation of Sidewalks, Landscaping, Street Lights and Other Public Works Facilities (the "Agreement") is made and entered into this _____day of _____, 2023, by and between the City of Marina, herein called the "City," a municipal corporation, and Lightfighter Village GP, LLC, a real property owner and developer, herein called the "Developer." City and Developer are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

Recitals

A. Developer has presented to City for approval a plan of development (the "Development") located at 239-243 Hayes Circle, Marina CA, Marina, California (the "Property") within the City, pursuant to provisions of the City's ordinances and regulations relating to development approval.

B. Marina Municipal Code Section 16.06.090 provides that improvements may include paving; gutter; curb; sidewalks; raised medians; street lights; street trees; landscaping; street signs; street barricades, walls and fences (the "Improvements") necessary along the frontage of the Property as described and shown on Off-Improvement Plan Sheet(s) (the "Improvement Plans"). Completion of all Improvements in accordance with the Improvement Plans shall be completed prior to final inspection.

C. The Development has been approved, subject to the requirements and conditions on file in the Office of the Director of Public Works and incorporated into this Agreement by reference.

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D. The City has certain responsibilities for maintenance and operation of certain Improvements, utilities and public service facilities after acceptance by City, and the City agrees to discharge those responsibilities following its acceptance of the Improvements.

E. In consideration of the approval of the Development, Developer desires to enter into this Agreement, whereby Developer promises to install and complete, at Developer's own expense, the Improvements. Developer has secured its performance pursuant this Agreement by improvement security required by the City and approved by the City Attorney.

NOW THEREFORE, in consideration of the foregoing and in order to carry on the intent and purpose of said Codes, Ordinances, Resolutions, Rules and Regulations, it is agreed by and between the parties as follows:

SECTION 1

The recitals to this Agreement are hereby incorporated into the terms of this Agreement. All applicable Codes, Ordinances, Resolutions, Rules and Regulations and established policies of the City and the laws of the State of California and the United States of America concerning the subject matter of this Agreement are hereby referred to and incorporated herein to the same effect as if they were set out a length herein. Said Codes, Ordinances, Resolutions, Rules and Regulations include, but are not limited to, the following: The Municipal Code of the City of Marina, including the current Zoning Ordinance, and the currently adopted California Building Code. Performance by Developer of this Agreement shall not be construed to vest Developer's rights with respect to any change in any zoning or building law or ordinance.

Developer has been alerted to the requirements of California Labor Code section 1770 et seq. which require the payment of prevailing wage rates and the performance of other requirements if it is determined that this Agreement constitutes a public works contract. It shall be the sole responsibility of Developer to determine whether to pay prevailing wages for any or all work required by this Agreement. As a material part of this Agreement, Developer agrees to assume all risk of liability arising form any decision not to pay prevailing wages for the work required by this Agreement.

SECTION 2

The Developer agrees:

a. To undertake its obligations pursuant to this Agreement in accordance with each and every one of the applicable Codes, Ordinances, Resolutions, Rules and other Regulations and to comply with the foregoing and all applicable laws.

b. Prior to acceptance of the Improvements by the City, to indemnify, defend with counsel of City's choice and hold the City and any of its officials, boards and commissions and members thereof, agents and employees, free and harmless from all suits, fees, claims, demands, causes of action, costs, losses, damages, liabilities and expenses (including without limitation reasonable attorney's fees) because of or arising or resulting directly or indirectly from (i) any damage done

to any utility, public facility or other material or installation of the City on said real estate as a result of the Developer or any contractor or subcontractor of the Developer, or any employee of the foregoing, grading or working upon said real estate conducted by Developer or any contractor or subcontractor of the Developer; or (ii) any act or omission of Developer or Developer's contractors, or subcontractors, or any employee of the foregoing in connection with the design, construction or other work performed by them in connection with this Agreement, including without limitation all claims relating to injury or death of any person or damage to any property, except for such claims, demands, causes of action, liability or loss arising out of the sole negligence or intentional acts of the City or any of its officials, boards or commissions or members thereof, agents or employees. City shall not be responsible for the design or construction of the Property or the Improvements pursuant to the Improvement Plans, regardless of any negligent action or inaction taken by City in approving the Improvement Plans unless the particular improvement design was specifically required by City over written objection by Developer submitted to the City Engineer before construction and acceptance of the Improvements, which objection indicated that the particular improvement design was dangerous or defective and suggested an alternate safe and feasible design. Prior to acceptance, Developer shall remain obligated for routine maintenance of the Improvements. After acceptance, City shall be obligated for the routine maintenance of all Improvements but Developer shall remain obligated to eliminate any defect in design or dangerous condition caused by any design or construction defect. Provisions of this Section shall remain in full force and effect for ten years following acceptance by City of the Improvements. The Improvement security shall not be required to cover the provisions of this Section. Developer shall reimburse City for all reasonable costs and expenses (including but not limited to fees and charges of architects, engineers, attorneys, and other professionals, and court costs) incurred by City in enforcing the provisions of this Section.

d. To construct and improve, or have constructed and improved at its own cost, expense and liability, all public works facilities and other Improvements described in the Improvement Plans submitted to the City in furtherance of this Agreement on file with the City. To obtain, prior to commencing work all necessary permits and licenses and to give all incidental notices required for the lawful construction of the Improvements. If during the course of construction and installation of the Improvements, it is determined that the public interest requires alterations to the Improvements, Developer shall undertake such design and construction changes as may be reasonably required by the City. All Improvements shall be completed in accordance with all standards established in the applicable Codes, Ordinances, Resolutions, Rules and Regulations, all applicable laws and this Agreement, and in accordance with the grades, plans, and specifications approved by the City Engineer or his or her designee. Developer shall furnish two good and sufficient bonds, in an amount of 100% of the City Engineer's, or his or her designee's, estimated cost of the Improvements, guaranteeing Developer's performance of this Agreement: (1) a Payment Bond on a form provided by the City; and (2) a Faithful Performance Bond, both of which must be secured from a surety company admitted to do business in California. Each bond shall set forth a time period for performance by the Developer of its obligations and the terms and conditions on which the City may obtain the proceeds of the bond. Alternatively, the Developer may provide a cash deposit in an amount of 100% of the City Engineer's, or his or her designee's, estimated cost of the Improvements to guarantee Developer's performance of this Agreement.

The Faithful Performance Bond shall be in an amount not less than one hundred percent (100%) of the total estimated amount payable for the Improvements described in this Agreement, and shall secure payment to City of any loss due to the default of the Developer or its contractors or subcontractors their inability or refusal to perform this Agreement, and to guarantee or warranty the work done pursuant to this Agreement for a period of one year following acceptance thereof by City against any defective work or labor done or defective materials furnished. The Performance Bond shall by its terms remain in full force and effect for a period of not less than one year after completion of the Improvements by Developer and acceptance of the Improvements by the City, provided that after completion of the Improvements by the Developer and acceptance of the Improvements by the City, Developer may substitute for the Performance Bond securing the warranty described above with a separate warranty bond issued by an admitted surety in the amount of ten percent (10%) of the total contract price of the Improvements (provided that amount of said bond shall not be less than One Thousand Dollars ($1,000) to cover the one-year warranty period).

The Payment Bond shall be in an amount not less than one hundred percent (100%) of the total estimated amount payable for the Improvements described in this Agreement. The Payment Bond shall secure the payment of those persons or entities to whom the Developer may become legally indebted for labor, materials, tools, equipment or services of any kind used or employed by the contractor or subcontractor in performing the work, or taxes or amounts to be withheld thereon. The Payment Bond shall provide that the surety will pay the following amounts should the Developer, or its contractor or subcontractors fail to pay the same, plus reasonable attorneys' fees to be fixed by the court if suit is brought upon the bond: (1) amounts due to any person that has a lien right pursuant to California Civil Code Sections 8520, 8530 and 9100; (2) amounts due under the Unemployment Insurance Code with respect to work or labor performed for the Improvements described in this Agreement; and (3) any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Developer, its contractors and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to the work and labor. The Payment Bond shall, by its terms, inure to the benefit of any person that has a lien right pursuant to Civil Code Sections 8520, 8530 and 9100 so as to give a right of action to those persons or their assigns in any suit brought upon the bond.

Developer shall file with the Recorder's Office of the County of Monterey a notice of completion of the Improvements in accordance with California Civil Code section 3093.

The Developer shall submit the following for both the surety that furnishes the Payment Bond and the surety that furnishes the Faithful Performance Bond: (1) a current printout from California Department of Insurances website (www.insurance.ca.gov) showing that the surety is admitted to do business in the State; or (2) a certificate from the Clerk of the County of Monterey that the surety's certificate of authority has not been surrendered, revoked, canceled, annulled, or suspended or in the event that it has, than renewed authority has been granted.

e. Any use by any person of the Improvements or any portion thereof, shall be at the sole and exclusive risk of Developer prior to City's acceptance of the Improvements. At all times during the term of this Agreement and until the Improvements constructed by Developer are accepted by City, Developer shall, at no cost to City obtain and maintain (1) a policy of general liability and

property damage insurance in the minimum amount of Two Million Dollars ($2,000,000), combined single limit for both bodily injury and property damage; (2) workers' compensation insurance as required by law; and (3) broad form "Builder's Risk" property damage insurance limits of not less than 100% of the estimated value of the Improvements to be constructed by Developer pursuant to this Agreement (Builders Risk Insurance is not required when only mass grading and roadway- related improvements consisting of no structures are to be constructed).

Developer shall provide thirty (30) days written notice to City prior to termination, cancellation or modification of insurance. The insurance specified in (e) above shall (i) name City as additional insured, (ii) name City as a loss payee, and (iii) provide that City, although an additional insured or loss payee, may recover for any loss suffered by reason of the acts or omissions of Developer or Developer's contractors or subcontractors and shall be endorsed to waive all rights to recover against City for any loss or damage arising from a cause covered by the insurance required to be carried pursuant to this Agreement, and will cause each insurer to waive all rights of subrogation against City in connection therewith. All policies shall be written on an occurrence basis and not on a claims made basis and shall be issued by insurance companies acceptable to City. Prior to commencing any work pursuant this Agreement, Developer shall deliver to City the insurance company's certificate evidencing the required coverage, or if required by City a copy of the policies obtained. Not later than 30 days prior to policy expiration date on the current certificate of insurance, the Developer shall deliver to the City a new and updated certificate of insurance evidencing all required coverage remains in place.

Developer or its contractor(s) shall procure and maintain workers' compensation insurance with limits required by the California Labor Code and employer's liability insurance with limits of not less than $1,000,000 per occurrence at all times during which the insured retains employees.

f. Developer shall pay to the City all fees, taxes and assessment imposed in connection with the Development and inspection of the Improvements including, but not limited to, plan check, design review, engineering, inspection, and other service fees and any impact of connection fees. These fees must be pad in full prior to the City's acceptance of the Improvements. The fees referred to above are not necessarily the only City fees, charges or other costs that have been, or will be, imposed on the Development and Improvements, and this Agreement shall in no way exonerate or relive the Developer from paying such other applicable fees, charges and/or cots.

SECTION 3

An estimate of the cost for construction of the Improvements and performing land development work in connection with the Improvements according to the Improvement Plans has been made and has been approved by the City Engineer or his or her designee. That estimated amount is Six Hundred Fifty Six Thousand Dollars ($656,000). The basis for the estimate is on file in the Office of the City Engineer and is incorporated into this Agreement by reference.

SECTION 4

Developer will commence construction of the Improvements required by this Agreement within the time period set forth in the Schedule of Performance attached hereto as **Schedule 1** and incorporated herein by this reference (the "Schedule of Performance") between City and

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Developer, as the Schedule of Performance may be subsequently amended in writing. All the provisions of this Agreement and all work to be done pursuant to the terms of this Agreement are to be completed within the time periods set forth in such Schedule of Performance. Developer shall maintain such public works facilities and other Improvements described in this Agreement at Developer's sole cost and expense at all times prior to acceptance by City in a manner which will preclude any hazard to life or health or damage to property. City agrees if it becomes necessary to allow Developer, by a prior writing signed by the Public Works Director, to keep streets closed to public traffic until the Improvements are accepted by the City and the bonds are released.

Improvement security may be released or reduced in the following manner:

a. Improvement security given for faithful performance of the agreement may be released upon final completion and acceptance of the Improvements by the City; partial release of cash deposit Improvement security as the work progresses shall be as established hereinabove.

b. Improvement security securing the payment to the Developer, his contractors and subcontractors, and to persons renting equipment or furnishing labor or materials may, six months after the completion and acceptance of the work, be reduced to an amount not less than the total of all claims on which an action has been filed and notice thereof given in writing to the City Council, and if there are no actions filed, the Improvement security may be released in full. City expressly may require the surety not to release the amount of security deemed necessary by the City to assure payment of reasonable expenses and fees, including reasonable attorney's fees.

SECTION 5

City shall not be responsible or liable for the maintenance or care of the Improvements until City approves and accepts them. City shall exercise no control over the Improvements until accepted by City. Any use by any person of the Improvements, or any portion thereof, shall be at the sole and exclusive risk of the Developer at all times prior to City's acceptance of the Improvements. Developer shall maintain all the Improvements in a state of good repair until they are completed by Developer and approved and accepted by the City, and until the security for the performance of this Agreement is released. Maintenance shall include, but shall not be limited to, repair of pavement, curbs, gutters, sidewalks, signals, parkways, water mains, and sewers; maintaining all landscaping in a vigorous and thriving condition reasonably acceptable to City; removal of debris from sewers and storm drains; and sweeping, repairing and maintaining in a good and safe condition all streets and street Improvements. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by City. If Developer fails to properly prosecute its maintenance obligation under this Section, City may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. City shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the Improvements or their condition prior to acceptance.

SECTION 6

a) Default of Developer shall include, but not be limited to: (1) failure to timely commence construction of the Improvements; (2) failure to complete construction of the Improvements

within the time limitations set forth in the Schedule of Performance; (3) failure to timely cure any defect of the Improvements; (4) failure to perform substantial construction work on the Improvements for a period of sixty calendar days after commencement of the work; (5) Developer's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which Developer fails to discharge within thirty days; (6) commencement of a foreclosure action against the Development project or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; or (7) failure to perform any other obligation under this Agreement. Notwithstanding the foregoing, Developer shall not be in default under this Agreement if it cures any default within thirty days' of City's written notice of such default, or if the default may not reasonably be cured within such time period, if it commences to cure within thirty days and thereafter diligently proceeds to complete the cure.

b) City reserves to itself all remedies available to it at law or in equity for breach of Developer's obligations under this Agreement. City shall have the right, subject to this Section, to draw upon or utilize the appropriate security to mitigate City's damages in the event of default by the Developer. The right of City to draw upon or utilize the security is additional to, and not in lieu of, any other remedy available to City. It is specifically recognized that the estimated costs and security amounts may not reflect the actual cost of construction or installation of the Improvements and, therefore, City's damages for Developer's default shall not exceed the cost of completing the Improvements. The sums provided by the security for the Improvements may be used by City for the completion of the Improvements in accordance with the Improvement Plans referenced herein.

c) In the event of Developer's default under this Agreement, Developer authorizes City to perform such obligation sixty days after mailing written notice of default to Developer and to Developer's surety, and agrees to pay the entire cost of such performance by City. City may take over the work and prosecute the same to completion by contract or by any other method City may deem advisable, for the account and at the expense of Developer, and Developer's surety shall be liable to the City for any excess cost or damages occasioned City thereby, including but not limited to fees and charges of architects, engineers, attorneys, other professionals and court costs. In such event, City, without liability for doing so, may take possession of, and utilize in completing the work, such materials, appliances, plants and other property belonging to Developer as may be on the site of the work and necessary for performance of the work.

d) Failure of City to take an enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach of Developer.

SECTION 7

That the following General Stipulations and any attached stipulations shall be completed, subject to the approval of the Public Works Director.

1. Locate and properly dispose of any wells, septic tanks and underground fuel storage facilities.

2. Schedule the construction of Improvements along existing public roads so that the work

affecting vehicular traffic is complete with a minimum interruption of traffic.

3. All work within the public right-of-way shall be subject to the approval of the Public Works Director or his or her designee.

4. All construction work shall be coordinated so that the existing residents and/or businesses have access to their properties.

5. All Improvements shall be installed per the approved Improvement Plans.

6. The Developer shall provide to the City electronic copy of the "as built" and Improvement Plans as an AutoCAD drawing file (DWG format, latest AutoCAD edition).

7. Any reimbursements due the Developer, unless specified otherwise in writing in this Agreement, will expire ten (10) years after the date of execution of this Agreement.

8. Until the roads on the Property are open to the public, Developer shall give good and adequate warning to the public of each and every dangerous condition on the existing public roads, and will take all reasonable actions to protect the public from such dangerous condition.

9. Prior to the acceptance of any dedications or Improvements by City, Developer shall certify and warrant that neither the Improvements nor Developer is in violation of any environmental law and neither the Improvementsnor the Developer is subject to any existing, pending or threatened investigation by any federal, state or local governmental authority under or in connection with environmental law. Neither Developer nor any third party will use, generate, manufacture, produce, or release, on, under, or about the Improvements, any hazardous substance except in compliance with all applicable environmental laws. Developer has not caused or permitted the release of, and has no knowledge of the release or presence of, any hazardous substance on the Improvements or the migration of any hazardous substance from or to any other property adjacent to, or in the vicinity of, the Improvements. Developer's prior and present use of the Improvements has not resulted in the release of any hazardous substance on the Improvements. Developer shall give prompt written notice to City at the address set forth herein of: (i) Any proceeding or investigation by any federal, state or local governmental authority with respect to the presence of any hazardous substance on the Improvements or the migration thereof from or to any other property adjacent to, or in the vicinity of, Improvements; (ii) Any claims made or threatened by any third party against City or the Improvements relating to any loss or injury resulting from any hazardous substance; and, (iii) Developer's discovery of any occurrence or condition on any property adjoining in the vicinity of the Improvements that could cause the Improvements or any part thereof to be subject to any restrictions on its ownership, occupancy, use for the purpose for which is it is intended, transferability or suit under any environmental law.

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SECTION 8

Developer shall, at Developer's expense, obtain all necessary permits and licenses for the construction and installation of the Improvements, give all necessary notices and pay all fees and taxes required by law.

SECTION 9

Neither Developer nor any of Developer's agents, contractors or subcontractors are or shall be considered to be agents of City in connection with the performance of Developer's obligations under this Agreement.

SECTION 10

Nothing contained in this Agreement shall preclude City from expending monies pursuant to agreements concurrently or previously executed between the parties, or from entering into agreements with other developers for the apportionment of costs of water and sewer mains, or other improvements, pursuant to the provisions of the City ordinance providing therefor, nor shall anything in this Agreement commit the City to any such apportionment.

SECTION 11

Developer shall not be entitled to assign its obligations under this Agreement to any transferee of all or any part of the property within the Improvements or to any other third party without the express written consent of City.

SECTION 12

Acceptance of the work, or any portion of the work on behalf of the City shall be made by the City Council upon recommendation of the City Engineer after final completion and inspection of all Improvements and payment to the City by the Developer for the cost of all inspections. Such acceptance shall not constitute a waiver of defects by City. The City shall recover all inspection costs.

SECTION 13

The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.

SECTION 14

In the event that suit or arbitration is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to litigation costs and reasonable attorney's fees.

SECTION 15

This Agreement shall be interpreted in accordance with the laws of the State of California. Jurisdiction of all disputes of this Agreement shall be in the County of Monterey, State of California.

SECTION 16

Time is of the essence of this Agreement.

SECTION 17

This Agreement constitutes the entire agreement of the parties with respect to the subject matter. All modifications, amendments or waivers of the terms of this Agreement must be in writing and signed by an authorized representative of the parties.

SECTION 18

In the event the Schedule of Performance (including any Conforming Clarifications thereto) is tolled, the time for commencement of construction or completion of the Improvements hereunder shall be extended for the same duration as applies to the Schedule of Performance. Any such extension may be granted without notice to Developer's surety and shall not affect the validity of this Agreement or release the surety on any security given for this Agreement.

SECTION 19

The Parties hereby mutually agree that neither this Agreement, nor any other related entitlement, permit or approval issued by the City for the Development or Improvements shall operate to create the relationship of partnership, joint venture, or agency between City and Developer. Developer's contractors and subcontractors are exclusively and solely under the control and dominion of Developer, Nothing herein shall be deemed to make Developer or its contractors or subcontractors an agent or contractor of the City.

SECTION 20

All notices, demands, invoices and written determinations shall be in writing and delivered to the following addresses, or such other addresses as the Parties may designate by written notice:

City of Marina
Attn: Public Works Director
211 Hillcrest Avenue
Marina, CA 93901

Lightfighter Village GP, LLC
Attn: David Egan
22 Pelican Way
San Rafael, CA 94901

SECTION 21

This Agreement shall be construed with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate State court in the County of Monterey, California.

SECTION 22

This Agreement may be executed in counterpart originals, which taken together shall constitute one and the same instrument.

(Signatures contained on following page)

IN WITNESS WHEREOF, City and Developer have executed this Public Improvement Agreement as of the date first written above.

ATTEST:

_____
Anita Shepherd-Sharp
Deputy City Clerk

CITY OF MARINA

_____
Layne Long
City Manager
Date:_____

APPROVED AS TO FORM:

_____
City Attorney

By: Lightfighter Village GP, LLC
a California Limited Liability Company
Its: Managing General Partner

By: EAH Inc.
a California nonprofit public benefit corporation
Its: Manager/Member

By: _____
Name: David Egan
Title: Assistant Secretary

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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 CALIFORNIA

COUNTY OF _____

On _____, 20___, 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 _____

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 CALIFORNIA

COUNTY OF _____

On _____, 20___9, 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 _____

SCHEDULE 1

SCHEDULE OF PERFORMANCE

(See attached Schedule)

February 15, 2023 Item No. **10g(2)**

Honorable Mayor and Members of the Marina City Council

City Council Meeting of April 4, 2023

THE CITY COUNCIL SHALL CONSIDER ADOPTING RESOLUTION NO. 2023-, APPROVING AN AFFORDABLE HOUSING AGREEMENT FOR THE VETERANS TRANSISTION CENTER AT 229-239 HAYES CIRCLE (APN 031-021-040)

RECOMMENDATION: City Council shall consider

1. Adopting a resolution approving the affordable housing agreement for the Veteran's Transition Center.
2. Find that the action is exempt from CEQA pursuant to CEQA Guidelines Sections 15061(b)(3) and 15378(b).

BACKGROUND:

In November of 2018 the City Council approved the Veteran's Transition Center at 229-239 Hayes Circle. The proposed project is a three story, seventy-one (71) unit apartment structure intended to provide supportive housing for veterans, with priority on homeless veterans. The facility will allow veterans to reside at the service-based property in perpetuity, as opposed to transition housing which limits the tenure of tenants. The project involves the demolition of the existing house on site, a vacant duplex structure and construction of a 54,480 square foot three story 71-unit apartment complex organized into a main building and family wing connected via a covered walkway. Seventy (70) units will be rented, and one (1) unit is reserved for the onsite manager. When the City Council approved the project in 2018, condition of approval #8 was placed on the permit requiring approval of an affordable housing agreement prior to the issuance of a building permit.

COA #8. Affordable Housing Agreement/Program – Prior to issuance of the first construction permit, the Owner/Applicant shall development, sign, notarize and record an Affordable Housing Agreement with the City of Marina. Such agreement shall clearly identify the number of affordable units, the income level of affordability, the estimated rent to be collected for each unit, and the term (length) of all affordability restrictions.

To meet the applicant's construction schedule and to complete financing of the project by April 15, 2023, approval of the agreement by the Council in a timely manner is necessary.

DISCUSSION:

City staff have reviewed the document along with legal counsel and recommend of approval by the Council at this time.

FISCAL IMPACT:

None.

ENVIRONMENTAL REVIEW:

This action is exempt from environmental review pursuant to CEQA Guidelines Section 15061(b)(3) because there is no possibility that receiving an update on the Housing Element's Programs status will have a significant effect on the environment. As a separate and independent basis, this report is also exempt under CEQA Guidelines Section 15378(b).

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

REVIEWED/CONCUR:

_____
Guido F. Persicone, AICP
Community Development Director
City of Marina

_____
Layne Long
City Manager
City of Marina

Exhibit A – Draft Affordable Housing Agreement.

RESOLUTION NO. 2023-

THE CITY COUNCIL OF THE CITY OF MARINA SHALL ADOPT RESOLUTION NO. 2023-, APPROVING AN AFFORDABLE HOUSING AGREEMENT FOR THE VETERANS TRANSISTION CENTER AT 229-239 HAYES CIRCLE (APN 031-021-040**)**

WHEREAS, on November 18, 2018, at a regular meeting, the Marina City Council conducted a duly noticed public hearing, considered all public testimony, written and oral, and adopted Resolutions No. 2018-139, 140, and 141 to grant project entitlements for a seventy-one (71) unit veteran's transition center at 229-239 Hayes Circle; and

WHEREAS, pursuant to project condition of approval #8 (COA #8) prior to the issuance of a building permit an affordable housing agreement must be approved by the City; and

WHEREAS, timely approval of this agreement is necessary in order for the applicant to complete the project in an expeditious manner and to complete the financing for the project;

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

1. Approve the Affordable Housing Agreement (Exhibit A) to this resolution.
2. Find that the action is exempt from CEQA pursuant to Sections 15061(b)(3) and 15378(b) of the CEQA Guidelines.

PASSED AND ADOPTED by the City Council of the City of Marina at a duly noticed regular meeting duly held on the 4th day of April 2023, 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

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Marina
211 Hillcrest Avenue
Marina, California
Attention: City Manager 93933

No fee for recording pursuant to
Government Code Section 27383

REGULATORY AGREEMENTAND DECLARATION OF RESTRICTIVE COVENANTS
LIGHTFIGHTER VILLAGE

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made and entered into as of this ____ day of April, 2023 by and between the City of Marina, a municipal corporation (the "City"), and Lightfighter Village, L.P., a California Limited Partnership (the "Owner").

RECITALS

A. Owner owns a leasehold interest in that certain property located in the City of Marina on the former Fort Ord Base more particularly described in Exhibit A attached hereto.

B. The City has issued a Combined Development Permit including a General Plan Land Use Map Amendment, a Conditional Use Permit and Site and Architectural Design Review for the development of seventy-one (71) permanently supportive housing units ("Development").

C. As a condition of approval of the Combined Development Permit and the Development, the Owner is required to comply with the City's Inclusionary Housing Ordinance, Chapter 17.48 ,which requires that for properties located at the former Fort Ord, at least 40% of the residential units must be affordable to very low, low and moderate income housing, with at least 15% of the residential units affordable to very low income households.

D. Pursuant to Chapter 17.48.080, the Affordable Units must be restricted pursuant to recorded covenants or restrictions which ensure that the Affordable Units remain available for occupancy by very low, low and moderate income households at affordable housing cost for fifty-five (55) years.

E. The following covenants and restrictions are recorded against the Property to ensure compliance with Chapter 17.48.080.

THEREFORE, the City and the Owner hereby agree as follows.

ARTICLE 1
DEFINITIONS

Section 1.1 Definitions. When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

(a) "30% AMI Household" means a household with a 30% Income Level as published by TCAC, or if TCAC does not publish such level, a household with an Adjusted Income that does not exceed thirty percent (30%) of Median Income.

(b) "30% Units" means the Units which, pursuant to Section 2.1 below are required to be occupied by 30% AMI Households.

(c) "50% AMI Household" means a household with a 50% Income Level as published by TCAC, or if TCAC does not publish such level, a household with an Adjusted Income that does not exceed fifty percent (50%) of Median Income.

(d) "50% Units" means the Units which, pursuant to Section 2.1 below are required to be occupied by 50% AMI Households.

(e) "Actual Household Size" shall mean the actual number of persons in the applicable household.

(f) "Adjusted Income" shall mean with respect to the Tenant of each Affordable Unit, the income from all persons in the households, including nonrelated individuals, calculated using the methods to calculate income adopted by TCAC.

(g) "Affordable Units" shall mean the 30% Units and the 50% Units collectively.

(h) "Agreement" shall mean this Regulatory Agreement.

(i) "City" shall mean the City of Marina, a municipal corporation.

(j) "Development" shall mean the Property and the seventy-one (71) residential units to be developed on the Property, as well as all landscaping, roads and parking spaces existing thereon, as the same may from time to time exist.

(k) "Development Loan" any loan received by Owner for the construction and operation of the Development.

(l) "Development Lender" means any lender of a Development Loan.

(m) "Ground Lease" means the ground lease between Veterans Transition Center of Monterey County, as lessor and the Owner as lessee.

(n) "HUD" means the United States Department of Housing and Urban Development.

(o) "Median Income" shall mean the median gross yearly income, adjusted for Actual Household Size, in the County of Monterey, California, as published from time to time by HUD. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the City shall provide the Owner with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HUD.

(p) "Owner" shall mean Lightfighter Village, L.P., a California Limited Partnership, and its successors and assigns to the Development.

(q) "Property" shall mean the parcel of real property located in Marina, California, as more particularly described in Exhibit A.

(r) "Rent" shall mean the total of monthly payments by the Tenant of an Affordable Unit for the following: (1) use and occupancy of the Affordable Unit and land and associated facilities, including parking; (2) any separately charged fees or service charges assessed by the Owner which are required of all Tenants, other than security deposits; (3) the cost of an adequate level of service for utilities paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not internet, telephone service, cable television service or any other utility or service permitted to be excluded from the calculation of Rent pursuant to the terms of 25 California Code of Regulations Section 6918; and (4) any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than the Owner, and paid by the Tenant.

(s) "TCAC" means the California Tax Credit Allocation Committee.

(t) "TCAC 30% Rent" means the maximum rent published by TCAC for a "30% AMI Household" in Monterey County for the applicable bedroom size.

(u) "TCAC 50% Rent" means the maximum rent published by TCAC for a "50% AMI Household" in Monterey County for the applicable bedroom size.

(v) "Tenant" shall mean a household occupying an Affordable Unit.

(w) "Term" shall mean the term of this Agreement, which shall commence on the date of this Agreement and shall continue until the fifty fifth (55) anniversary of the date a Certificate of Occupancy is issued for the Development.

(x) "Unit" shall mean one of the seventy-one (71) units to be constructed on the Property.

ARTICLE 2
AFFORDABILITY AND OCCUPANCY COVENANTS

Section 2.1 Occupancy Requirement.

(a) 30% Units. During the Term, the Owner shall cause eleven (11) of the Units to be rented to and occupied by, or if vacant, available for occupancy by 30% AMI Households.

(b) 50% Units. During the Term, the Owner shall cause eighteen (18) of the Units to be rented to and occupied by, or if vacant, available for occupancy by 50% AMI Households.

Section 2.2 Allowable Rent.

(a) 30% Units. Subject to the provisions of Section 2.3 below, the Rent paid by Tenants of the 30% Units may not exceed the TCAC 30% Rent for the applicable bedroom size.

(b) 50% Units. Subject to the provisions of Section 2.3 below, the Rent paid by Tenants of the 50% Units may not exceed the TCAC 50% Rent for the applicable bedroom size.

(c) Initial Rents and Rent Increases. Initial rents for all Affordable Units shall be approved by the City prior to occupancy to confirm compliance with this Agreement, which approval shall be deemed given if not denied within thirty (30) days after the City has received written request for approval. All rent increases shall also be subject to City approval to confirm compliance with this Agreement, which approval shall be deemed given if not denied within thirty (30) days after the City has received written request for approval. The City shall provide the Owner with a schedule of maximum permissible rents for the Affordable Units annually. Rents may not be increased more often than once every twelve (12) months and by no more than five percent (5%) per year without the prior written approval of the City. Owner shall provide

each Tenant with at least sixty (60) days written notice of any increase in Rent applicable to such Tenant.

Section 2.3 Increased Income of Tenants.

(a) Increase of Household Income Below Limit for 50% AMI Household. If, upon recertification of the income of a Tenant of an Affordable Unit, the Owner determines that the income of the Tenant has increased to above the qualifying limit for such household's unit (i.e. a 30% AMI Household's income increases but is below a 50% AMI Household income) but below the qualifying limit of a 50% AMI Household, the Tenant may continue to occupy the Affordable Unit and the Tenant's Rent will remain at the applicable rent level set for Tenant's Affordable Unit and the Owner shall rent the next available Unit to a household that is either a 30% AMI Household or 50% AMI Household as necessary to maintain the appropriate number of units in each income category as required pursuant to Section 2.1 above.

(b) Non-Qualifying Household. If, upon recertification of the income of a Tenant of an Affordable Unit, the Owner determines that the Tenant has an Adjusted Income exceeding the maximum qualifying income for a 50% AMI Household but the Tenant's income does not exceed 140% of the maximum qualifying income for a 50% AMI Household, such Tenant shall be permitted to continue occupying the Unit, the Tenant's Rent shall not be increased and the Owner shall rent the next available Unit to a 30% AMI Household or a 50% AMI Household as applicable, at a Rent not exceeding the maximum Rent specified in Section 2.2 or if the Owner has other Units occupied by 30% AMI Households or 50% AMI Households with rents at the allowable Rents in accordance with Section 2.2, the Owner may designate one of those Units as a 30% AMI Unit or 50% AMI Unit pursuant to this Agreement to ensure that the appropriate number of units in each income category as required pursuant to Section 2.1 above is maintained.

(c) Termination of Occupancy. Upon termination of occupancy of an Affordable Unit by a Tenant, such Affordable Unit shall be deemed to be continuously occupied by a household of the same income level as the income level of the vacating Tenant, until such Affordable Unit is reoccupied, at which time the income character of the Affordable Unit shall be redetermined. In any event, Owner shall maintain the occupancy requirements set forth in section 2.1 above.

Section 2.4 Income and Rent Calculations. In the event that TCAC no longer publishes the income and rent information that this Agreement contemplates that TCAC will publish, the City will provide the Owner with other income and rent determinations which are reasonably similar with respect to methods of calculations to those previously published by TCAC.

Section 2.5 Tenant Selection. Owner shall comply with the City's BMR Program Administrative Policies and Procedures as they currently exist or as they may be updated from time to time in the selection of Tenants, including complying with any preferences in such Guidelines, to the fullest extent allowed by applicable TCAC rules and regulations.

Section 2.6 Nondiscrimination. Owner shall not discriminate or segregate in the development, construction, use, enjoyment, occupancy, conveyance, lease, sublease, or rental of

any part of the Property on the basis of race, color, ancestry, national origin, religion, sex, sexual preference or orientation, age, marital status, family status, source of income, physical or mental disability, veteran status, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC) acquired or perceived, or any other arbitrary basis. Owner shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing.

ARTICLE 3
INCOME CERTIFICATION AND REPORTING

Section 3.1 Income Certification. The Owner will obtain, complete and maintain on file, immediately prior to initial occupancy and annually thereafter, income certifications from each Tenant renting any of the Affordable Units, provided, however, to the extent allowed by TCAC, subsequent income certifications may be tenant certified. The Owner shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking two or more of the following steps as a part of the verification process: (a) obtain a pay stub for the most recent pay period; (b) obtain an income tax return for the most recent tax year; (c) conduct a credit agency or similar search; (d) obtain an income verification form from the applicant's current employer; (e) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (f) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. Copies of Tenant income certifications shall be available to the City upon request.

Section 3.2 Annual Report to City. The Owner shall submit to the City (a) not later than the sixtieth (60^{th}) day after the close of each calendar year, or such other date as may be requested by the City, a statistical report, including income and rent data for all Affordable Units, setting forth the information called for therein, and (b) within fifteen (15) days after receipt of a written request, any other information or completed forms requested by the City in order to comply with reporting requirements of Health and Safety Code Section 33418.

Section 3.3 Additional Information. The Owner shall provide any additional information reasonably requested by the City. The City shall have the right to examine and make copies of all books, records or other documents of the Owner which pertain to the Development.

Section 3.4 Records. The Owner shall maintain complete, accurate and current records pertaining to the Development, and shall permit any duly authorized representative of the City to inspect records, including records pertaining to income and household size of Tenants upon reasonable prior notice during normal business hours. All Tenant lists, applications and waiting lists relating to the Development shall at all times be kept separate and identifiable from any other business of the Owner and shall be maintained as required by the City, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the City. The Owner shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least five (5) years.

Section 3.5 Expenses. Owner shall annually pay to City City's monitoring and enforcement fees for the Affordable Units in accordance with City's Master Fee Schedule. The

monitoring or enforcement fee shall be either City's actual expenses incurred for monitoring or enforcing the terms of this Agreement, including staff time and third party costs or the amount set forth in the Master Fee Schedule, as determined by City.

Section 3.6 On-site Inspection. The City shall have the right to perform an on-site inspection of the Development at least one (1) time per year. The Owner agrees to cooperate in such inspection. If City desires to inspect the interior of the residential units, City shall give Owner sufficient written notice to allow Owner to give seventy-two (72) hours notice to residents.

ARTICLE 4
OPERATION OF THE DEVELOPMENT

Section 4.1 Residential Use. The Development shall be operated only for residential use. No part of the Development shall be operated as transient housing.

Section 4.2 Taxes and Assessments. Owner shall pay all real and personal property taxes, assessments and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Owner shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Owner exercises its right to contest any tax, assessment, or charge against it, Owner, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

ARTICLE 5
PROPERTY MANAGEMENT AND MAINTENANCE

Section 5.1 Management Responsibilities. The Owner is responsible for all management functions with respect to the Development, including without limitation the selection of tenants, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no responsibility over management of the Development. The Owner shall ensure that the Development complies with the City of Marina's BMR Housing Program Administrative Policies and Procedures as it currently exists and as it may be amended from time to time. The Owner shall retain a professional property management company approved by the City in its reasonable discretion to perform its management duties hereunder. A resident manager shall also be required at all times. The City hereby approves _____ as the Management Agent (as defined in Section 5.2).

Section 5.2 Management Agent; Periodic Reports. The Development shall at all times be managed by an experienced management agent reasonably acceptable to the City, with demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing (as approved, the "Management Agent"). The Owner

shall submit for the City's approval the identity of any proposed Management Agent. The Owner shall also submit such additional information about the background, experience and financial condition of any proposed Management Agent as is reasonably necessary for the City to determine whether the proposed Management Agent meets the standard for a qualified Management Agent set forth above. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, the City shall approve the proposed Management Agent by notifying the Owner in writing. Unless the proposed Management Agent is disapproved by the City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved.

Section 5.3 Performance Review. The City reserves the right to conduct an annual (or more frequently, if deemed reasonably necessary by the City) review of the management practices and financial status of the Development. The purpose of each periodic review will be to enable the City to determine if the Development is being operated and managed in accordance with the requirements and standards of this Agreement. The Owner shall cooperate with the City in such reviews.

Section 5.4 Replacement of Management Agent. If, as a result of a periodic review, the City determines in its reasonable judgment that the Development is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, the City shall deliver notice to Owner of its intention to cause replacement of the Management Agent, including the detailed reasons therefor (a "Management Default Notice"). If the issues set forth in the Management Default Notice are not cured within sixty (60) days of delivery of the Management Default Notice, or if such default cannot be cured within sixty (60) days, if the cure is not commenced within sixty (60) days and diligently prosecuted thereafter, City staff and the Owner shall meet in good faith to consider methods for improving the financial and operating status of the Development, including, without limitation, replacement of the Management Agent.

If, after such meeting, City staff recommends in writing the replacement of the Management Agent, Owner shall, subject to the rights of any Development Lender, promptly dismiss the then Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a Management Agent set forth in Section 5.2 above and approved by the City pursuant to Section 5.2 above.

Any contract for the operation or management of the Development entered into by Owner shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute default under this Agreement, and the City may enforce this provision through legal proceedings as specified in Section 6.6.

Section 5.5 Approval of Management Policies. The Owner shall submit its written management policies with respect to the Development to the City for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement.

Section 5.6 Property Maintenance. The Owner agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) and in

accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials, and in accordance with the following maintenance conditions:

The City places prime importance on quality maintenance to ensure that all affordable housing projects within the City are not allowed to deteriorate due to below-average maintenance. Normal wear and tear of the Development will be acceptable to the City assuming the Owner agrees to provide all necessary improvements to assure the Development is maintained in good condition. The Owner shall make all repairs and replacements necessary to keep the improvements in good condition and repair.

In the event that the Owner breaches any of the covenants contained in this section and such default continues for a period of fifteen (15) days after written notice from the City with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from the City with respect to landscaping and building improvements, then the City, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter upon the Property and perform or cause to be performed all such acts and work necessary to cure the default. Pursuant to such right of entry, the City shall be permitted (but is not required) to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property. Owner shall promptly pay to the City, upon demand, any costs incurred by the City in connection with work of protection, maintenance, and preservation undertaken by the City pursuant to this section, and the City may attach a lien on the Property, or to assess the Property, in the amount of such expenditures if Owner does not promptly reimburse the City upon demand.

ARTICLE 6
MISCELLANEOUS

Section 6.1 Lease Provisions. The Owner shall use a form of Tenant lease approved by the City. The form of Tenant lease shall also comply with all requirements of this Agreement, and shall, among other matters, to the extent permitted by the Ground Lease, Development Lenders and applicable laws:

(a) provide for termination of the lease and consent by the Tenant to immediate eviction for failure: (1) to provide any information required under this Agreement or reasonably requested by the Owner to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy in the Development in accordance with the standards set forth in this Agreement, or (2) to qualify as a 30% AMI Household or 50% AMI Household, as the case may be, as a result of any material misrepresentation made by such Tenant with respect to the income computation or certification; and

(b) be for an initial term of not less than one (1) year. After the initial year of tenancy, the lease may be month to month by mutual agreement of the Owner and the Tenant; however the Rent may not be raised more often than once every twelve (12) months after such initial year. The Owner shall provide each Tenant with at least sixty (60) days' written notice of

any increase in Rent applicable to such Tenant, and with such further notice as may be required by Section 2.3 above.

Section 6.2 Nondiscrimination. All of the Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible. The Owner shall not give preference to any particular class or group of persons in renting or selling the Units, that the Affordable Units are required to be leased to income qualified households and in accordance with the City's BMR Housing Program Administrative Policies and Procedures unless required by the Ground Lease or the terms of any Development Loan. The Owner shall obtain the City's approval prior to implementing any preference for any particular class or group of person, There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, source of income (e.g. SSI, Housing Vouchers), age, ancestry, veteran status, or disability, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit nor shall the Owner or any person claiming under or through the Owner, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the construction, operation and management of any Unit.

Section 6.3 Section 8 Certificate Holders. The Owner will accept as Tenants, on the same basis as all other prospective Tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Owner shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective Tenants, nor shall the Owner apply or permit the application of management policies or lease provisions with respect to the Development which have the effect of precluding occupancy of units by such prospective Tenants.

Section 6.4 Term. The provisions of this Agreement shall apply to the Property for the entire Term. This Agreement shall bind any successor, heir or assign of the Owner, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the City.

Section 6.5 Notice of Expiration of Term.

(a) At least six (6) months prior to the expiration of the Term, Owner shall provide by first-class mail, postage prepaid, a notice to all Tenants containing (i) the anticipated date of the expiration of the Term, (ii) any anticipated increase in Rent upon the expiration of the Term, (iii) a statement that a copy of such notice will be sent to the City, and (iv) a statement that a public hearing may be held by the City on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing.

(b) In addition to the notice required above, Owner shall comply with the requirements set forth in California Government Code Sections 65863.10 and 65863.11 as such statutes may be amended from time to time. Such notice requirements include: (i) a three year notice to existing tenants, prospective tenants and Affected Public Agencies (as defined in California Government Code Section 65863.10(a)) prior to expiration of the Term; (ii) a twelve

(12) month notice to existing tenants, prospective tenants and Affected Public Agencies (as defined in California Government Code Section 65863.10(a)) prior to the expiration of the Term, (ii) a six (6) month notice requirement to existing tenants, prospective tenants and Affected Public Agencies prior to the expiration of the Term; (iii) a notice of an offer to purchase the Development to "qualified entities" (as defined in California Government Code Section 65863.11(d)).

Section 6.6 Covenants to Run With the Land. The City and the Owner hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land and shall bind all successors in title to the Property, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Development or the Property or any portion thereof, is to be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases such conveyed portion of the Development or the Property from the requirements of this Agreement.

Section 6.7 Enforcement by the City. If the Owner fails to perform any obligation under this Agreement, and fails to cure the default within thirty (30) days after the City has notified the Owner in writing of the default or, if the default cannot be cured within thirty (30) days, fails to commence to cure within thirty (30) days and thereafter diligently pursue such cure and complete such cure within ninety (90) days, or such longer period as reasonably approved by the City, in writing the City shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law:

(a) Action to Compel Performance or for Damages. The City may bring an action at law or in equity to compel the Owner's performance of its obligations under this Agreement, and/or for damages.

(b) Other Remedies. The City may exercise any other remedy provided under this Agreement or by law.

Owner's limited partners shall have the right to cure on behalf of Owner and City shall accept a cure therefrom as if such cure was made or tendered by Owner.

Section 6.8 Attorneys Fees and Costs. In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including attorneys' fees. This section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

Section 6.9 Recording and Filing. The City and the Owner shall cause this Agreement, and all amendments and supplements to it, to be recorded in the Official Records of the County of Monterey.

Section 6.10 Governing Law. This Agreement shall be governed by the laws of the State of California.

Section 6.11 Waiver of Requirements. Any of the requirements of this Agreement may be expressly waived by the City in writing, but no waiver by the City of any requirement of this Agreement shall, or shall be deemed to, extend to or affect any other provision of this Agreement.

Section 6.12 Amendments. This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the County of Monterey.

Section 6.13 Notices. Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, addressed to the appropriate party as follows:

Owner: Lightfighter Village, L.P.
c/o EAH Inc.
22 Pelican Way
San Rafael, CA 94901
Attn: Welton Jordan

With a Copy to: Bocarsly Emden Cowan Esmail & Arndt LLP
633 West 5th Street
Los Angeles, CA 90071
Attn: Nicole Deddens

City: City of Marina
211 Hillcrest Avenue
Marina, California 93933
Attention: City Manager

Such addresses may be changed by notice to the other party given in the same manner as provided above.

Section 6.14 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

Section 6.15 Rights of Mortgagee. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Development or the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Development or the Property that such violation has occurred, provided that Owner has provided City with notice of such mortgage or deed of trust including addresses for the holders of such mortgages or deed of

trust and provided further, the City's failure to give such notice shall not defeat or render invalid any notice of default given by the City to the Owner or prohibit the City from exercising any of its remedies.

Section 6.16 IN WITNESS WHEREOF, the City and the Owner have executed this Agreement by duly authorized representatives, all on the date first written above.

OWNER:

LIGHTFIGHTER VILLAGE, L.P.,
a California limited partnership

By: Lightfighter Village GP, LLC,
a California Limited Liability Company
its managing general partner

By: EAH Inc.,
a California nonprofit public benefit corporation,
its managing member

By: _____
Name: Welton Jordan
Title: Assistant Secretary

ATTEST:

By: _____

CITY:

City of Marina, a municipal corporation

By: _____

Its: _____

APPROVED AS TO FORM:

By: _____

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 CALIFORNIA)
)
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.

_____
Name: _____
Notary Public

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 CALIFORNIA)
)
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.

_____
Name: _____
Notary Public

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

The land is situated in the City of Marina, County of Monterey, State of California, and is described as follows:

WHEN RECORDED MAIL TO:

Veterans Transition Center
220 12th St.
Marina, CA 93933

Stephen L. Vagnini
Monterey County Recorder
Recorded at the request of
Filer

CRSUSY
11/07/2007
10:20:46

DOCUMENT: **2007084567**

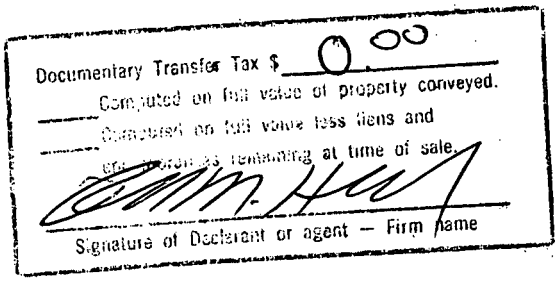
Titles: 1/ Pages: 23

Fees....
Taxes...
Other...
AMT PAID

THIS SPACE FOR RECORDER'S USE ONLY

TITLE OF DOCUMENT

Quick Claim Deed



Contract No. 09-CA-2297

QUITCLAIM DEED

THIS INDENTURE, made this 23rd day of October, 2007, between the United States of America, acting through the Secretary of Health and Human Services, by the Chief, Space Management Branch, Division of Property Management, Program Support Center, U.S. Department of Health and Human Services (hereinafter referred to as "Grantor"), under and pursuant to the power and authority delegated by the Federal Property and Administrative Services Act of 1949 (40 U.S.C. § 550), (hereinafter referred to as "the Act"), and regulations promulgated pursuant thereto at 45 C.F.R. Part 12, and the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11411), as amended, and regulations promulgated pursuant thereto at 45 C.F.R. Part 12a, and the Veterans Transition Center of Monterey County, (hereinafter referred to as "Grantee").

WITNESSETH

WHEREAS, by letter dated September 5, 2007, from the U.S. Department of the Army, certain surplus property consisting of 4.62 acres, improved with 10 buildings/facilities, hereinafter described (hereinafter referred to as "the Property"), was assigned to the Grantor for disposal upon the recommendation of the Grantor that the Property is needed for homeless assistance purposes in accordance with the provisions of the Act; and

WHEREAS, said Grantee has made a firm offer to purchase the Property under the provisions of the Act, has made application for a public benefit allowance, and proposes to use the Property in accordance with the approved program of utilization; and

WHEREAS, Grantor has accepted the offer of the Grantee,

NOW, THEREFORE, Grantor, for and in consideration of the foregoing and of the observance and performance by Grantee of the covenants, considerations and restrictions hereinafter contained and other good and valuable consideration, the receipt of which is hereby acknowledged, has remised, released and quitclaimed and by these presents does remise, release and quitclaim to Grantee, its successors and assigns, all right, title, interest, claim and demand, excepting and reserving such rights as may arise from the operation of the conditions subsequent hereinafter expressed, which the United States of America has in and to the Property, situate, lying, and being in Monterey City Lands, Tract No. 1, in the City of Marina, Monterey County, California, and more particularly described as follows:

Parcel A-1 (L9.1.1.2)

Being a portion of that certain Parcel A as shown on map filed in Vol. 20 of Surveys at page 74, records of said county, being particularly described as follows:

Beginning at a ¾" diameter iron pipe in the northeasterly boundary of said Parcel A, from which the southeasterly corner thereof bears, along said northeasterly boundary, S 52° 26' 36" E, 546.30 feet distant , and running thence

1) S 39° 30' 51" W, 173.56 feet to a 5/8"diameter rebar in the southwesterly boundary of Parcel A and the northeasterly line of Hayes Circle (a 60 feet wide street); thence along said boundary and street line

2) N 50° 29' 09" W, 445.11 feet to a 5/8" diameter rebar; thence tangentially

3) curving to the right on a circular arc of 630 feet radius, through an angle of 21° 08' 28", for a distance of 232.46 feet to a 5/8" diameter rebar at a point of compound curvature; thence tangentially

4) curving to the right on a circular are of 270 feet radius, through an angle of 8° 40' 30", for a distance of 40.88 feet to a 5/8" diameter rebar at the most northerly corner of said Parcel A; thence leave said street line and continuing along said parcel boundary

5) S 86° 57' 25" E, 88.08 feet to a 5/8" diameter rebar; thence

6) S 40° 48' 37" E, 141.20 feet to a 5/8" diameter; thence

7) N 39° 03' 52" E, 67.89 feet to a 5/8" diameter rebar; thence

8) S 52° 26' 36" E, 500.00 feet to the point of beginning.

Containing and area of 2.237 acres of land, more or less.

Parcel B-1 (L9.1.2.2)

Being a portion of that certain Parcel B as shown on map filed in Vol. 20 of Surveys at page 74, records of said county, being particularly described as follows:

Beginning at a 5/8" diameter rebar at the most northerly corner of said Parcel B, and running thence along the boundary thereof

1) S 84° 27' 31" E, 91.16 feet to a 5/8" diameter rebar in the northeasterly boundary of said Parcel B and the southwesterly line of Hayes Circle (60 feet wide street); thence along said boundary and street line

2) curving to the left on a circular arc of 330 feet radius, (the center of the circle of which said arc is a part bears N 83° 00' 39" E), through an angle of 22° 21' 30", for a distance of 128.77 feet to a 5/8" diameter rebar at a point of compound curvature; thence tangentially

3) curving to the left on a circular arc of 690 feet radius, through an angle of 21° 08' 28", for a distance of 254.60 feet to a 5/8" diameter rebar; thence tangentially

4) S 50° 29' 09" E, 238.50 feet to a 5/8" diameter rebar; thence leave said boundary and street line

5) S 78° 52' 40" W, 254.32 feet to a 5/8" diameter rebar at an angle point in the southwesterly boundary of said Parcel B; thence along said boundary

6) N 40° 01' 44" W, 451.02 feet to a 5/8" diameter rebar; thence

7) N 49° 58' 16" E, 30.93 feet to a 5/8" diameter rebar; thence

8) N 13° 39' 09" E, 164.77 feet to the point of beginning.

Containing an area of 2.384 acres of land, more or less.

SUBJECT to any and all other existing easements, encumbrances, covenants, restrictions, reservations or conditions affecting the above described property whether or not the same appear on record.

Grantee shall comply with all applicable Federal, State, municipal, and local laws, rules, orders, ordinances, and regulations in the occupation, use, and operation of the Property.

TO HAVE AND TO HOLD the Property subject, however, to each of the following conditions subsequent, which shall be binding upon and enforceable against Grantee, its successors and assigns, as follows:

1. That for a period of thirty (30) years from the date hereof the Property herein conveyed will be used continuously for health purposes in accordance with Grantee's approved program of utilization as set forth in its application dated October 28, 1992 and amended on November 10, 1992, December 11, 1992, January 28, 1998, February 19, 1998, June 27, 2006, and for no other purpose;

2. That during the aforesaid period of thirty (30) years Grantee will not resell, lease, mortgage, or encumber or otherwise dispose of any part of the Property or interest therein except as Grantor or its successor in function may authorize in writing;

3. Where construction or major renovation is not required or proposed, the Property must be placed into use within twelve (12) months from the date of this Deed. Where construction or major renovation is contemplated at the time of transfer, the Property must be placed into use within thirty-six (36) months from the date of this Deed;

4. That one year from the date hereof and annually thereafter for the aforesaid period of thirty (30) years, unless Grantor or its successor in function directs otherwise, Grantee will file with Grantor or its successor in function reports on the operation and maintenance of the Property and will furnish, as requested, such other pertinent data evidencing continuous use of the Property for the purposes specified in the above-identified application;

5. That during the aforesaid period of thirty (30) years Grantee will at all times be and remain a tax-supported organization or a nonprofit institution, organization, or association exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and

6. That, for the period during which the Property is used for the purpose for which the Federal assistance is hereby extended by Grantor or for another purpose involving the provision of similar services or benefits, Grantee hereby agrees that it will comply with the requirements of section 606 of the Act (40 U.S.C. § 476); the Fair Housing Act (42 U.S.C. § 3601-19) and implementing regulations; and, as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations; Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d to d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations; Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) and implementing regulations; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. § 6101-07) and implementing regulations; the prohibitions against otherwise qualified individuals with handicaps under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and implementing regulations, and all requirements imposed by or pursuant to the regulations of Grantor (45 CFR Parts 12, 12a, 80, 84, 86 and 91) issued pursuant to said Acts and now in effect, to the end that, in accordance with said Acts and regulations, no person in the United States shall, on the ground of race, color, national origin, sex, age, or handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under the program and plan referred to in condition numbered 1 above or under any other program or activity of Grantee, its successors or assigns, to which said Acts and regulations apply by reason of this conveyance.

In the event of a breach of any of the conditions subsequent set forth above, whether caused by the legal or other inability of Grantee, its successors and assigns, to perform any of the obligations herein set forth, Grantor or its successor in function will, at its option, have an immediate right of reentry thereon, and to cause all right, title, and interest in and to the Property

to revert to the United States of America, and Grantee, its successors and assigns, shall forfeit all right, title, and interest in and to the Property and to any and all of the tenements, hereditaments, and appurtenances thereunto belonging;

PROVIDED, HOWEVER, that the failure of Grantor or its successor in function to insist in any one or more instance upon complete performance of any of the said conditions subsequent shall not be construed as a waiver of or a relinquishment of the future performance of any of said conditions subsequent, but the obligations of Grantee with respect to such future performance shall continue in full force and effect;

PROVIDED FURTHER, that, in the event Grantor or its successor in function fails to exercise its option to reenter the premises and to revert title thereto for any such breach of conditions numbered 1, 2, 3, 4, or 5 herein within thirty-one (31) years from the date of this conveyance, conditions numbered 1, 2, 3, 4, and 5 herein, together with all rights to reenter and revert title for breach of condition, will, as of that date, terminate and be extinguished; and

PROVIDED FURTHER, that the expiration of conditions numbered 1, 2, 3, 4, and 5 and the right to reenter and revert title for breach thereof, will not affect the obligation of Grantee, its successors and assigns, with respect to condition numbered 6 herein or the right reserved to Grantor, or its successor in function, to reenter and revert title for breach of condition numbered 6.

Grantee may secure abrogation of the conditions subsequent numbered 1, 2, 3, 4, and 5 herein by:

a. Obtaining the consent of Grantor, or its successor in function, therefor; and

b. Payment to the United States of America of 1/360th of the percentage public benefit allowance granted of the fair market value as of the date of such requested abrogation, exclusive of the value of improvements made by Grantee to the extent that they add to the value of that portion of the Property to be released, for each month of the period to be abrogated.

Grantee, by acceptance of this Deed, covenants and agrees for itself, its successors and assigns, with respect to the Property or any part thereof--which covenant shall attach to and run with the land for so long as the Property is used for a purpose for which Federal assistance is hereby extended by Grantor or for another purpose involving the provision of similar services or benefits, and which covenant shall in any event, and without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity, for the benefit of and in favor of and enforceable by Grantor or its successor in function against Grantee, its successors and assigns for the Property, or any part thereof--that it will comply with the requirements of section 606 of the Act (40 U.S.C. § 476); the Fair Housing Act (42 U.S.C. § 3601-19) and implementing regulations; Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations; Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d to d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975

(42 U.S.C. § 6101-07) and implementing regulations; and the prohibitions against otherwise qualified individuals with handicaps under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and implementing regulations; and all requirements imposed by or pursuant to the regulations of Grantor (45 C.F.R. Parts 12, 12a, 80, 84 and 91) issued pursuant to said acts and now in effect, to the end that, in accordance with said acts and regulations, no person in the United States shall, on the ground of race, color, national origin, sex, age, or handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under the program and plan referred to in condition numbered 1 above or under any other program or activity of Grantee, its successors or assigns, to which such Acts and regulations apply by reason of this conveyance.

Grantee covenants and agrees that the Property will be used for secular purposes, with no more than a de minimis level of other activity.

Grantee, by acceptance of this Deed, covenants and agrees for itself, its successors and assigns, that in the event Grantor exercises its option to revert all right, title, and interest in and to the Property to Grantor, or Grantee voluntarily returns title to the Property in lieu of a reverter, then Grantee shall provide protection to and maintenance of the Property at all times until such time as the title is actually reverted or returned to and accepted by Grantor. Such protection and maintenance shall, at a minimum, conform to the standards prescribed by the General Services Administration and codified in the Federal Property Management Regulations at 41 C.F.R. Subpart 101-47.4913 now in effect, a copy of which is attached to Grantee's aforementioned application.

In the event title to the Property or any part thereof is reverted to the United States of America for noncompliance or is voluntarily reconveyed in lieu of reverter, Grantee, its successors or assigns, at the option of Grantor, or its successor in function, shall be responsible for and shall be required to reimburse the United States of America for the decreased value thereof that is not the result of reasonable wear and tear, an act of God, or alterations and conversions made by Grantee, its successors or assigns, to adapt the property to the health use for which the property was transferred. The United States of America shall, in addition thereto, be reimbursed for such damage, including such costs as may be incurred in recovering title to or possession of the above-described property, as it may sustain as a result of such noncompliance.

Grantee, by acceptance of this deed, further covenants and agrees for itself, its successors and assigns, that in the event the Property or any part thereof is, at any time within the period of thirty (30) years from the date of this conveyance, sold, leased, disposed of, or used for purposes other than those designated in condition numbered 1 above without the consent of Grantor, or its successor in function, all revenues therefrom or the reasonable value, as determined by Grantor, or its successor in function, of benefits to Grantee, deriving directly or indirectly from such sale, lease, disposal, or use, shall be considered to have been received and held in trust by Grantee for the United States of America and shall be subject to the direction and control of Grantor, or its successor in function; but the provisions of this paragraph shall not impair or affect the rights reserved to Grantor under any other provision of this deed.

Grantee, by acceptance of this Deed, covenants and agrees for itself, its successors and assigns, that the Property is transferred on an "as is, where is," basis, without warranty of any kind, either expressed or implied, including as to the condition of the Property. Grantee also covenants and agrees for itself, its successors and assigns, that Grantor has no obligation to provide any additions, improvements, or alterations to the Property.

Grantor, in its capacity as a public benefit conveyance authority for the United States of America, does not assume liability, custody, or accountability for the property in the event title to the Property reverts to the United States of America for noncompliance with this Deed, or in connection with any hazardous substance activity or condition on the Property.

The following covenants and restrictions are provided pursuant to the aforementioned letter of assignment from the U.S. Department of the Army.

1. CERCLA NOTICE

A. Pursuant to section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §9620(h)(3)(A)(i)(I) and (II)), available information regarding the type, quantity, and location of hazardous substances and the time at which such substances were stored, released, or disposed of, as defined in section 120(h), is provided in the Finding of Suitability to Transfer (FOST). Additional information regarding the storage, release, and disposal of hazardous substances on the Property has been provided to the Grantee, receipt of which the Grantee hereby acknowledges. Such additional information includes, but is not limited to, the Finding of Suitability to Transfer (FOST), Former Fort Ord, California, Track O Plug-in C, Track 1, and Track 1 Plug-In Parcels (August 2005) and documents referenced therein.

B. Pursuant to section 120(h)(3)(A)(i)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(III)), a description of the remedial action taken, if any, on the property is provided in FOST, Table 5 – Environmental Condition of Property. Additional information regarding the remedial action taken, if any, has been provided to the Grantee, receipt of which the Grantee hereby acknowledges. Such additional information includes, but is not limited to, the Finding of Suitability to Transfer (FOST), Former Fort Ord, California, Track O Plug-in C, Track 1, and Track 1 Plug-In Parcels (August 2005) and documents referenced therein.

2. CERCLA COVENANT

A Pursuant to section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(ii) and (B)), the United States warrants that –

(1) All remedial action necessary to protect human health and the

environment with respect to any hazardous substance identified pursuant to section 120(h)(3)(A)(i)(I) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 remaining on the property has been taken before the date of this deed, and

(2) Any additional remedial action found to be necessary after the date of this deed shall be conducted by the United States.

B. This warranty shall not apply in any case in which the person or entity to whom the property is transferred is a potentially responsible party with respect to such property. For purposes of this warranty, Grantee shall not be considered a potentially responsible partly solely due to the presence of hazardous substance remaining on the property on the date of this instrument, provided Grantee has not caused or contributed to a release of such hazardous substance.

3. COVENANT ACCESS CLAUSE

A. Pursuant to sections 120(h)(3)(A)(iii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(iii)), the United States retains and reserves a perpetual and assignable easement and right of access on, over, and through the Property, to enter upon the Property after the date of transfer of the Property in any case in which an environmental response action or corrective action is found to be necessary on the part of the United States, without regard to whether such environmental response action or corrective action is on the Property or on adjoining or nearby lands. Such easement and right of access includes, without limitation, the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring, coring, test-pitting, installing monitoring or pumping wells or other treatment facilities, response action, corrective action, or any other action necessary for the United States to meet its responsibilities under applicable laws and as provided for in this instrument. Such easement and right of access shall be binding on the Grantee, its successors and assigns, and shall run with the land.

B. In exercising such easement and right of access, the United States shall provide the Grantee or its successors or assigns, as the case may be, with reasonable notice of its intent to enter upon the Property and exercise its rights under this covenant, which notice may be severely curtailed or even eliminated in emergency situations. The United States shall use reasonable means, but without significant additional costs to the United States, to avoid and to minimize interference with the Grantee's and the Grantee's successors' and assigns' quiet enjoyment of the property. Such easement and right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the Property at a reasonable charge to the United States. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the Grantee nor its successors and assigns, for the exercise of the easement and right of access hereby retained and reserved by the United States.

C. Neither the Grantee nor its successors and assigns, as the case may be, shall have any claim at law or equity against the United States or any officer, employee, agent, contractor of any tier, or servant of the United States because of actions taken by the United States or its officers, employees, agents, contractors of any tier, or servants in exercising such easement and right of access pursuant to and in accordance with this covenant. In addition, the Grantee, its successors and assigns, shall not interfere with any response action or corrective action conducted by the United States on the Property.

D. The U.S. Environmental Protection Agency (US EPA) and the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC), and their officers, agents, employees, contractors, and subcontractors will have the right, upon reasonable notice to the Grantee, to enter upon the transferred premises in any case in which a response or corrective action is found to be necessary, after the date of transfer of the Property, or such access is necessary to carry out a response action or corrective action on adjoining property, including, without limitation, the following purposes:

(1) To inspect field activities of the United States and its contractors and subcontractors.

(2) To conduct any test or survey related to environmental conditions at the former Ford Ord or to verify and data submitted to the US EPA or the DTSC by the United States relating to such conditions.

4. "AS IS"

A. The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property and accepts the condition and state or repair of the Property. The Grantee understands and agrees that the Property and any part thereof is offered "AS IS" without any representation, warranty, or guaranty by the United States as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose(s) intended by the Grantee, and no claim for allowance or deduction upon such grounds will be considered.

B. No warranties, either expressed or implied, are given with regard to the condition of the Property, including, without limitation, whether the Property does or does not contain asbestos or lead-based paint, The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any asbestos, lead-based paint, or other conditions on the Property. The failure of the Grantee to inspect or to exercise due diligence to be fully informed as to the condition of all or any portion of the Property offered, will not constitute grounds for any claim or demand against the United States.

C. Nothing in this "AS IS" provision will be construed to modify or negate the United States' obligation under the CERCLA covenant or any other statutory obligation.

5. HOLD HARMLESS

A. To the extent authorized by law, the Grantee, its successors and assigns, covenant and agree to indemnify and hold harmless the United States, its officers, agents, and employees from (1) any and all claims, damages, judgments, losses, and costs, including fines and penalties, arising out of the violation of the notices, use restrictions, and restrictive covenants in this Deed by the Grantee, its successors and assigns, and (2) any and all claims, damages, and judgments arising out of, or in any manner predicated upon, exposure to asbestos, lead-based paint, or other condition on any portion of the Property after the date of conveyance.

B. The Grantee, its successors and assigns, covenant and agree that the Grantor shall not be responsible for any costs associated with modification or termination of the notices, use restrictions, and restrictive covenants in this Deed, including without limitation, any costs associated with additional investigation or remediation of asbestos, lead-based paint, or other condition on any portion of the Property.

C. Northing in this HOLD HARMLESS provision will be construed to modify or negate the United State's obligation under the CERCLA Covenant or any other statutory obligation.

6. POST-TRANSFER DISCOVERY OF CONTAMINATION

A. If an actual or threatened release of a hazardous substance or petroleum product is discovered on the Property after the date of conveyance, Grantee, its successors or assigns, shall be responsible for such release or newly discovered substance unless Grantee is able to demonstrate that such release or such newly discovered substance was due to the United State's activities, use, or ownership of the Property. If the Grantee, it successors or assigns believe the discovered hazardous substance is due to United States' activities, use or ownership of the Property, Grantee will immediately secure the site and notify the United States of the existence of the hazardous substances, and Grantee will not further disturb such hazardous substances without the written permission of the United States.

B. Grantee, its successors and assigns, as consideration for the conveyance of the Property, agree to release the United States from any liability or responsibility for any claims arising solely out of the release of any hazardous substance or petroleum product on the Property occurring after the date of the delivery and acceptance of this Deed, where such substance or product was placed on the Property by the Grantee, or its successors, assigns, employees, invitees, agents or contractors, after the conveyance. This paragraph shall not affect the United States' responsibilities to conduct response actions or corrective actions that are required by applicable laws, rules and regulations, or the United States' indemnification obligations under applicable laws.

ENVIRONMENTAL PROTECTION PROVISIONS

1. FEDERAL FACILITIES AGREEMENT

The United States Department of the Army (Army), acknowledges that Fort Ord has been identified as a National Priority List (NPL) Site under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) of 1980, as amended. The Grantee acknowledges that the Grantor has provided it with a copy of the Fort Ord Federal Facility Agreement (FFA) entered into by the United States Environmental Protection Agency (US EPA) Region IX, the State of California, and the Department of the Army, effective on November 19, 1990, and will provide the Grantee with a copy of any amendments thereto. The Grantee agrees that should any conflict arise between the terms of the FFA as they presently exist or may be amended, and the provisions of this Deed transfer, the terms of the FFA will take precedence. The Grantee further agrees that notwithstanding any other provisions of this property transfer, the United States assumes no liability to the Grantee should implementation of the FFA interfere with their use of the Property. The Grantee, or any subsequent transferee, shall have no claim on account of any such interference against the United States or any officer, agent, employee or contractor thereof.

2. LAND USE RESTRICTIONS

a. The United States Department of the Army (Army) has undertaken careful environmental study of the Property and concluded that the land use restrictions set forth below are required to ensure protection of human health and the environment. The Grantee, its successors or assigns, shall not undertake nor allow any activity on or use of the property that would violate the land use restrictions contained herein.

(1) **Residential Use Restriction.** In accordance with the provisions of Section 5 of the Environmental Protection Provisions, the Grantee, its successors and assigns, shall use the Property solely for commercial or industrial activities and not for residential purposes unless the Grantee performs abatement as required under Title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992. For purposes of this provision, residential use includes, but is not limited to, single family or multi-family residences; childcare facilities; and nursing home or assisted living facilities; and any type of educational purpose for children/young adults in grades kindergarten through 12.

(2) **Groundwater Restriction:** As described in the NOTICE OF THE PRESENCE OF CONTAMINATED GROUNDWATER, the Grantee is hereby informed and acknowledges that the groundwater under portions of the Property and associated with the Sites 2 and 12 (Sites 2/12) groundwater plume and the Operable Unit 2 (OUZ) groundwater plume is contaminated with volatile organic compounds (VOCs), primarily trichloroethylene (TCE). In accordance with the provisions of Section 6 of the Environmental Protection Provisions, the Grantee, its successors and assigns shall not access or use groundwater underlying the Property for any purpose. For the purpose of this restriction, "groundwater" shall have the same meaning

as in section 101(12) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

b. **Modifying Restrictions:** Nothing contained herein shall preclude the Grantee, its successors or assigns, from undertaking, in accordance with applicable laws and regulations and without any cost to the United States, such additional action necessary to allow for other less restrictive use of the Property. Prior to such use of the Property, Grantee shall consult with and obtain the approval of the Army, and, as appropriate, the State or federal regulators, or the local authorities in accordance with these Environmental Protection Provisions and the provisions of the CRUP(s). Upon the Grantee's obtaining the approval of the Army and, as appropriate, state or federal regulators, or local authorities, the Army agrees to record an amendment hereto. This recordation shall be the responsibility of the Grantee and at no additional cost to the United States.

c. **Submissions:** The Grantee, its successors and assigns, shall submit any requests to modifications to the above restrictions to Grantor, the Army, the US EPA, the DTSC and the RWQCB, in accordance with the provisions of the CRUP(s), by first class mail, postage prepaid, addressed as follows:

(1) Army: Director, Fort Ord Office
Army Base Realignment and Closure
P.O. Box 5008
Presidio of Monterey, CA 93944-5008

(2) US EPA: Chief, Federal Facility and Site Cleanup Branch
Superfund Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street, Mail Code: SFD-8-3
San Francisco, CA 94105-3901

(3) DTSC: Chief of Northern California Operations
Office of Military Facilities
Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826-3200

(4) RWQCB: Executive Officer
California Regional Water Quality Control Board
Central Coast Region
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401-7906

3. NOTICE OF THE PRESENCE OF CONTAMINATED GROUNDWATER (Parcels L9.1.1.2 and L9.1.2.2)

a. The groundwater beneath portions of the Property is contaminated with volatile organic compounds (VOCs), primarily trichloroethylene (TCE). The most recent data available (Annual Report of Quarterly Monitoring, October 2003 through September 2004) indicates that:

(1) Parcel S4.1.1 overlies the Sites 2/12 groundwater plume where the concentration of TCE in groundwater equals or exceeds 5.0 micrograms per liter (µg/L). For the Sites 2/12 groundwater plume area the maximum TCE concentration in the groundwater beneath the Property (Parcel S4.1.1) is between 5.0 µg/L and 10 µg/L and depth to groundwater is 68 to 75 feet below ground surface.

(2) Parcels E4.3.1.2, E4.3.2.1, E4.6.1, E4.6.2, E8a.1.1.2, L5.6.1 and L5.6.2 overlie the OU2 groundwater plume where the concentration of TCE in groundwater exceeds 5.0 µg/L. For the OU2 groundwater plume area the maximum TCE concentration in the groundwater beneath the Property (Parcel E4.3.1.2) is 26 µg/L as measured in groundwater extraction well EW-OU2-12A and depth to groundwater is 125 to 175 feet below ground surface.

b. The maximum concentrations of the chemicals of concern (associated with the OU2 and Sites 2/12 groundwater plumes) detected in the groundwater monitoring or extraction wells on the Property (September 2004) are listed below. The quantity released of these compounds is unknown. The OU2 and Sites 2/12 groundwater aquifer cleanup levels (ACLs), presented in the OU2 Fort Ord Landfills Record of Decision (ROD) (July 1994) and Basewide Remedial Investigation Sites ROD (January 1997), are provided for comparison.

Chemicals of Concern in Groundwater and Aquifer Cleanup Levels
(OU2 and Sites 2/12 Plumes)

Chemical Name	Regulatory Synonym	CASRN*	RCRA Waste Number	Parcel	Well (EW-OU2)	Maximum Concentrations (µg/L)	ACL (µg/L)
Benzene	Benzol	71432	U019	E4.3.1.2	-10-A	0.3	1.0
Carbon Tetrachloride	Methane, tetrachloro-	56235	U211			ND	0.5
Chloroform	Methane, trichloro-	67663	U044	E4.3.1.2	-12-A	2.3	2.0
1,1-Dichloroethane	Ethane, 1,1-dichloro-	75343	U076	E4.3.1.2	-10-A	6.9	5.0
1,2-Dichloroethane	Ethane, 1,2-dichloro-	107062	U077	E4.3.1.2	-10-A	1.5	0.5
1,1-Dichloroethene	Ethene, 1,1-dicholoro-	75354	U078			ND	6.0
Cis-1,2-Dichloroethene	Ethene, 1,2-dichloro(E)	156605	U079	E4.3.1.2	-10-A	8.9	6.0
1,2-Dichloropropane	Propane, 1,2-dichloro-	78875	U083	E4.3.1.2	-12-A	1.3	1.0
Total 1,3-Dichloropropene	Propene, 1,3-dichloro-	542756	--			ND	0.5
Methylene Chloride	Methane, dichloro-	75092	U080			ND	5.0
Tetrachloroethene	Ethene, tetrachloro-	127184	U210	E4.3.1.2	-10-A	5.4	3.0
Trichloroethylene	Ethene, trichloro-	79016	U228	E4.3.1.2	-12-A	26	5.0
Vinyl chloride	Ethene, chloro-	75014	U043	E4.3.1.2	-10-A	0.7	0.1

*Chemical Abstract Services Registry Number

c. Restrictions and Conditions

(1) The property is within the "Prohibition Zone" of the "Special Groundwater Protection Zone." A Covenant to Restrict the Use of Property (CRUP) for the Property will be established between the United States Army and the State of California (DTSC and the California Regional Water Quality Control Board, Central Coast Region). The Prohibition Zone encompasses the area overlying or adjacent to the four identified groundwater contamination

plumes at the former Fort Ord. The Prohibition Zone is identified on the "Former Fort Ord Special Groundwater Protection Zone Map" (the Map), which is on file with the County of Monterey (the County). County Ordinance No. 04011 prohibits the construction of water wells within the Prohibition Zone.

(2) The Grantee covenants for itself, its successors, and assigns not to access or use groundwater underlying the Property for any purpose. For the purpose of this restriction, "groundwater" shall have the same meaning as in section 101(12) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

(3) The Grantee covenants for itself, its successors, and assigns that neither the Grantee, its successors or assigns, nor any other person or entity acting for or on behalf of the Grantee, its successors or assigns, shall interfere with any response action being taken on the Property by or on behalf of the Army, or interrupt, relocate, or otherwise interfere or tamper with any remediation system or monitoring wells now or in the future located on, over, through, or across any portion of the Property without the expressed written consent of the Army in each case first obtained.

(4) The Grantee covenants for itself, its successors, or assigns, that it will not undertake nor allow any activity on or use of the Property that would violate the restrictions contained herein. These restrictions and covenants are binding on the Grantee, its successors and assigns; shall run with the land; and are forever enforceable.

4. NOTICE OF THE POTENTIAL FOR THE PRESENCE OF MUNITIONS AND EXPLOSIVES OF CONCERN (MEC)

a. The Grantee is hereby notified that due to the former use of the Property as a military installation, the Property may contain munitions and explosives of concern (MEC). The term MEC means specific categories of military munitions that may pose unique explosives safety risks and includes: (1) Unexploded Ordnance (UXO), as defined in 10 U.S.C. §101(e)(5); (2) Discarded military munitions (DMM), as defined in 10 U.S.C. §2710(e)(2); or (3) Munitions constituents (e.g., TNT, RDX), as defined in 10 U.S.C. §2710(e)(3), present in high enough concentrations to pose an explosive hazard. For the purposes of the basewide Military Munitions Response Program (MMRP) being conducted for the former Fort Ord and these Environmental Protection Provisions, MEC does not include small arms ammunition .50 caliber and below.

b. Portions of the Property were previously used for military training involving military munitions, or for disposal of munitions items. A review of existing records and available information indicates there are ten munitions response sites (MRSs) associated with the Property. Military training on the Property involved only the use of practice and pyrotechnic items that are not designed to cause injury, or military munitions items that do not pose an explosive hazard. Military munitions items were found within materials excavated from a landfill disposal area formerly on the Property; however, this is attributed to disposal activities at the landfill and not training. All landfill disposal areas within the Property have been fully excavated, the landfilled material removed, and the excavated areas backfilled or regraded. The ten MRSs were evaluated

and documented in the *Final Track 1 Ordnance and Explosives Remedial Investigation/Feasibility Study, former Fort Ord, California* (Track 1 OE RI/FS) (June 2004) the *Track 1 Plug-In Approval Memorandum, MRS-6 Expansion Area* (May 6, 2005) and, in accordance with the *Record of Decision, No Further Action Related to Munitions and Explosives of Concern – Track 1 Sites; No Further Remedial Action with Monitoring for Ecological Risks from Chemical Contamination at Site 3 (MRS-22)* (Track 1 ROD) (March 2005), no further action related to MEC is required at these ten MRSs.

c. The Army represents that, to the best of its knowledge, no MEC is currently present on the Property. Notwithstanding the Army's determination, the parties acknowledge that there is a possibility that MEC may exist on the Property. If the Grantee, any subsequent owner, or any other person should find any MEC on the Property, they shall immediately stop any intrusive or ground-disturbing work in the area or in any adjacent areas and shall not attempt to disturb, remove or destroy it, but shall immediately notify the local law enforcement agency having jurisdiction on the Property so that appropriate U.S. Military explosive ordnance disposal personnel can be dispatched to address such MEC as required under applicable law and regulations and at no expense to the Grantee. The Grantee hereby acknowledges receipt of the "Ordnance and Explosives Safety Alert" pamphlet.

d. Because the Army cannot guarantee that all MEC has been removed, the Army recommends reasonable and prudent precautions be taken when conducting intrusive operations on the Property and will, at its expense, provide construction worker ordnance recognition and safety training. For specific Track 1 sites that overlap the Property (MRS-1, MRS-6, (and MRS-6 Expansion Area), MRS-13A, MRS-22, MRS-27Y, MRS-49, MRS-59A, MRS-62, and MRS-66), the Army recommends construction personnel involved in intrusive operations at these sites attend the Army's ordnance recognition and safety training. To accomplish that objective, the Army requests notice from the Grantee of planned intrusive activities, and in turn will provide ordnance recognition and safety training to construction personnel prior to the start of intrusive work. The Army will provide ordnance recognition and safety refresher training as appropriate. For the Track 1 sites where ordnance recognition and safety training is recommended (MRS-1, MRS-6 (and MRS-6 Expansion Area), MRS-13A, MRS-22, MRS-27Y, MRS-49, MRS- 59A, MRS-62, and MRS-66), at the time of the next five-year review (2007), the Army will assess whether the education program should continue. If information indicates that no MEC items have been found in the course of development or redevelopment of the site, it is expected that the education program may, with the concurrence of the regulatory agencies, be discontinued, subject to reinstatement if a MEC item is encountered in the future.

f. Easement and Access Rights.

(1) The Army reserves a perpetual and assignable right of access on, over, and through the Property, to access and enter upon the Property in any case in which a munitions response action is found to be necessary, or such access and entrance is necessary to carry out a munitions response action on adjoining property as a result of the ongoing Munitions Response Remedial Investigation/Feasibility Study. Such easement and right of access includes, without limitation, the right to perform any additional investigation, sampling, testing, test-pitting, surface and

subsurface clearance operations, or any other munitions response action necessary for the United States to meet its responsibilities under applicable laws and as provided for in this Deed. This right of access shall be binding on the Grantee, its successors and assigns, and shall run with the land.

1) In exercising this easement and right of access, the Army shall give the Grantee or the then record owner, reasonable notice of the intent to enter on the Property, except in emergency situations. Army shall use reasonable means, without significant additional cost to the Army, to avoid and/or minimize interference with the Grantee's and the Grantee's successors' and assigns' quiet enjoyment of the Property; however, the use and/or occupancy of the Property may be limited or restricted, as necessary, under the following scenarios: (a) to provide the required minimum separation distance employed during intrusive munitions response actions that may occur on or adjacent to the Property; and (b) if Army implemented prescribed burns are necessary for the purpose of a munitions response action (removal) in adjacent areas. Such easement and right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the property at a reasonable charge to the United States. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the Grantee nor its successors and assigns, for the exercise of the easement and right of access hereby retained and reserved by the United States.

2) Neither the Grantee nor its successors and assigns, as the case maybe, shall have any claim at law or equity against the United States or any officer, employee, agent, contractor of any tier, or servant of the United States because of actions taken by the United States or its officers, employees, agents, contractors of any tier, or servants in exercising this easement and right of access pursuant to and in accordance with this Paragraph. In addition, the Grantee, its successors and assigns, shall not interfere with any munitions response action conducted by the Army on the Property.

g. The Grantee acknowledges receipt of the *Final Track 1 Ordnance and Explosives Remedial Investigation/Feasibility Study (Track 1 OE RI/FS) (June 2004) and the Record of Decision, No Further Action Related to Munitions and Explosives of Concern – Track 1 Sites; No Further Remedial Action with Monitoring for Ecological Risks from Chemical Contamination at Site 3 (MRS-22)* (Track 1 ROD) (March 2005).

5. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT

a. The Grantee is hereby informed and does acknowledge that friable and non-friable asbestos or asbestos-containing material (ACM) has been found on the Property, as described in the Asbestos Survey Report (April 26, 1993) and summarized in the CERFA Report (April 8, 1994). The Property may also contain improvements, such as buildings, facilities, equipment, and pipelines, above and below the ground, that contain friable and non-friable asbestos or ACM. The Occupational Safety and Health Administration (OSHA) and the U.S. Environmental Protection Agency (US EPA) have determined that unprotected or unregulated exposure to

airborne asbestos fibers increases the risk of asbestos-related diseases, including certain cancers that can result in disability or death.

b. Several buildings on the Property have been determined to contain friable asbestos. Detailed information is contained in the referenced survey report. The remaining buildings contain non-friable ACM rated in good condition. The Grantee agrees to undertake any and all asbestos abatement or remediation in the aforementioned buildings that may be required under applicable law or regulation at no expense to the United States. The Army has agreed to transfer said buildings to the Grantee, prior to remediation or abatement of asbestos hazards, in reliance upon the Grantee's express representation and covenant to perform the required asbestos abatement or remediation of these buildings.

c. The Grantee covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to asbestos. The Grantee agrees to be responsible for any future remediation or abatement of asbestos found to be necessary on the Property to include ACM in or on buried pipelines that may be required under applicable law or regulation.

d. The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property as to its asbestos and ACM content and condition and any hazardous or environmental conditions relating thereto. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any asbestos or ACM hazards or concerns.

6. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT (LBP) AND COVENANT AGAINST THE USE OF THE PROPERTY FOR RESIDENTIAL PURPOSE

a. The Grantee is hereby informed and does acknowledge that all buildings on Parcels L9.1.1.2 and L9.1.2.2, which were constructed or rehabilitated prior to 1978, is presumed to contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Every purchaser of any interest in Residential Real Property on which a residential dwelling built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning.

b. The Grantee covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on Parcels L9.1.1.2 and L9.1.2.2 as Residential Property, as defined under 24 Code of Federal Regulations Part 35, without complying with this section and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards. Prior to permitting the occupancy of Parcels L9.1.1.2 and L9.1.2.2 where their use subsequent to this conveyance is intended for residential habitation, the Grantee specifically agrees to perform, at its sole expense, the Army's abatement requirements under Title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992).

c. The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property as to its lead-based paint content and condition and any hazardous or environmental conditions relating thereto. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any lead-based paint hazards or concerns.

7. AIR NAVIGATION RESERVATION AND RESTRICTIONS

Monterey Airport and the former Fritzsche Airfield, now known as the Marina Municipal Airport, are in close proximity to the Property. Accordingly, in coordination with the Federal Aviation Administrative, the Grantee covenants and agrees, on behalf of it, its successors and assigns and every successor in interest to the Property herein described, or any part thereof, that, when applicable, there will be no construction or alteration unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration in accordance with Title 14, Code of Federal Regulations, Part 77, entitled Objects Affecting Navigable Airspace, or under the authority of the Federal Aviation Act of 1958, as amended.

8. NO LIABILITY FOR NON-ARMY CONTAMINATION

The Army shall not incur liability for additional response action or corrective action found to be necessary after the date of transfer in any case in which the person or entity to whom the Property is transferred, or other non-Army entity, is identified as the party responsible for contamination of the property.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed as of the day and year first above written.

UNITED STATES OF AMERICA
Acting through the Secretary of Health and Human Services

By: _____
John G. Hicks, Chief, Space Management Branch
Division of Property Management
Program Support Center

ACKNOWLEDGMENT

STATE OF MARYLAND)
COUNTY OF MONTGOMERY) SS

On this 23rd day of October, 2007, before me the undersigned officer, personally appeared John G. Hicks, known to me to be the Chief, Space Management Branch, Division of Property Management, Department of Health and Human Services, and known to me to be the person who executed the foregoing instrument on behalf of the Secretary of Health and Human Services, for the United States of America, and acknowledged to me that he subscribed to the said instrument in the name of the Secretary of Health and Human Services and on behalf of the United States of America.

Witness my hand and official seal.

(SEAL)

Jerry Ann Gaynes
Notary Public

My commission expires 3/1/2011

JerryAnn Gaynes
NOTARY PUBLIC
Montgomery County, MD
My Commission Expires
March 1, 2011

ACCEPTANCE

The Veterans Transition Center of Monterey County hereby accepts this deed and thereby agrees to all the terms, covenants, conditions and restrictions contained therein.

By _____
Thomas H. Griffin
Veterans Transition Center of Monterey County

ACKNOWLEDGMENT

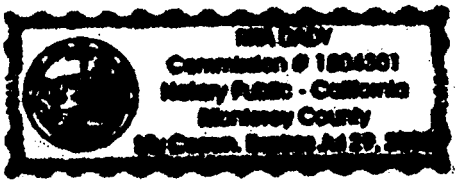
STATE OF CALIFORNIA)
COUNTY OF) SS

On this 1 day of November, 2007, before me, a Notary Public in and for the City of Monterey County of Monterey State of California, personally appeared Thomas H. Griffin, known to me to be the Chairperson, Board of Directors, the Veterans Transition Center of Monterey County (VTC), and known to me to be the person who executed the foregoing instrument on behalf of the VTC, and acknowledged to me that he executed the same as the free act and deed of the VTC.

Witness my hand and official seal.

(SEAL) _____
Notary Public

My commission expires 7/29/2008



END OF DOCUMENT

NOTARY SEAL
GOVERNMENT CODE SECTION 27361.7

I certify under penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary Rita Dady

Commission Number 1804301

Date of Commission Expires July 29, 2008

Place of Execution Monterey County Date 7/29/08

Signed

March 28, 2023 Item No. **10g(3)**

Honorable Mayor and Members of the Marina City Council

City Council Meeting of April 4, 2023

RECOMMENDATION TO CONSIDER ADOPTING RESOLUTION NO. 2023-, APPROVING AMENDMENT NO.1 TO THE AGREEMENT BETWEEN THE CITY OF MARINA AND HARRIS AND ASSOCIATES, INC. OF SALINAS, CALIFORNIA, TO PROVIDE CONSTRUCTION MANAGEMENT SERVICES FOR THE IMJIN PARKWAY IMPROVEMENT PROJECT, AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AMENDMENT ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

RECOMMENDATION:

It is recommended that the City Council:

1. Consider adopting Resolution No. 2023-, approving Amendment No.1 to the agreement between the City of Marina and Harris and Associates, Inc. of Salinas, California, to provide construction management services for the Imjin Parkway Improvement Project;

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

BACKGROUND:

At the regular meeting of September 18, 2018, the City Council adopted Resolution No. 2018-111, approving a Senate Bill 1 Local Partnership Program Baseline Agreement to receive grant funding amounting to $19 million for the Marina-Salinas Multimodal Corridor – Imjin Parkway Widening Project.

At the regular meeting of the California Transportation Commission of October 13-14, 2021, the Commission approved the allocation for locally administered Senate Bill 1 Local Partnership Program funds for the construction of the project.

At the regular meeting of November 2, 2021, the City Council adopted Resolution No. 2021-116, approving advertising and call for bids for Imjin Pkwy Widening Project.

At the regular meeting of December 14, 2021, the City Council adopted Resolution No. 2021-137 approving an agreement between City of Marina and Harris and Associates, Inc. of Salinas, California, to provide construction management services for the Imjin Parkway Improvement Project.

ANALYSIS:

Since contract execution, Harris and Associates have been supporting the City's preconstruction coordination with various project elements not included in their original scope of work including coordination with the California Department of Fish and Wildlife (CDFW) regarding the project's Incidental Take Permit (ITP) and subsequent submittal packages. Along with this additional scope of work, the consultant has provided additional support through their subconsultant teams with regards to Biological, Geological and Paleontological monitoring per the projects Mitigation Monitoring & Reporting Plan (MMRP).

Full execution of all requirements per the MMRP, the ITP mitigation requirements and additional support required by staff from the consultant team is included in the proposed contract amendment scope **("Exhibit A")**.

FISCAL IMPACT:
Should the City Council approve this request, adequate funding is available for the additional construction management and inspections services amendment of $85,314 for a total contract total of $3,593,355.42 in the Capital Improvement Program project account EDR1808-R46B (#401) Imjin Widening Project.

CONCLUSION:
This request is submitted for City Council consideration 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. 2023-

A RESOLUTION OF CITY COUNCIL OF THE CITY OF MARINA APPROVING AMENDMENT NO.1 TO THE AGREEMENT BETWEEN THE CITY OF MARINA AND HARRIS AND ASSOCIATES, INC. OF SALINAS, CALIFORNIA, TO PROVIDE CONSTRUCTION MANAGEMENT SERVICES FOR THE IMJIN PARKWAY IMPROVEMENT PROJECT, AND AUTHORIZE THE CITY MANAGER TO EXECUTE THE AMENDMENT ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY

WHEREAS, at the regular meeting of September 18, 2018, the City Council adopted Resolution No. 2018-111, approving a Senate Bill 1 Local Partnership Program Baseline Agreement to receive grant funding amounting to $19 million for the Marina-Salinas Multimodal Corridor – Imjin Parkway Widening Project, and;

WHEREAS, at the regular meeting of the California Transportation Commission of October 13-14, 2021, the Commission approved the allocation for locally administered Senate Bill 1 Local Partnership Program funds for the construction of the project, and;

WHEREAS, at the regular meeting of November 2, 2021, the City Council adopted Resolution No. 2021-116, approving advertising and call for bids for Imjin Pkwy Widening Project, and;

WHEREAS, at the regular meeting of December 14, 2021, the City Council adopted Resolution No. 2021-137 approving an agreement between City of Marina and Harris and Associates, Inc. of Salinas, California, to provide construction management services for the Imjin Parkway Improvement Project, and;

WHEREAS, since contract execution, Harris and Associates have been supporting the City's preconstruction coordination with various project elements not included in their original scope of work including coordination with the California Department of Fish and Wildlife (CDFW) regarding the project's Incidental Take Permit (ITP) and subsequent submittal packages. Along with this additional scope of work, the consultant has provided additional support through their subconsultant teams with regards to Biological, Geological and Paleontological monitoring per the projects Mitigation Monitoring & Reporting Plan (MMRP) , and;

WHEREAS, full execution of all requirements per the MMRP, the ITP mitigation requirements and additional support required by Staff from the consultant team is included in the proposed contract amendment scope **("Exhibit A")** , and;

WHEREAS, should the City Council approve this request, adequate funding is available for the additional construction management and inspections services amendment of $85,314 for a total contract total of $3,593,355.42 in the Capital Improvement Program project account EDR1808-R46B (#401) Imjin Widening Project.

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

1. Approve Amendment No.1 to the agreement between the City of Marina and Harris and Associates, Inc. of Salinas, California, to provide construction management services for the Imjin Parkway Improvement Project;

2. Authorize 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 4th day of April 2023, 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

FIRST AMENDMENT TO THE AGREEMENT FOR CONSTRUCTION MANAGEMENT AND CONSTRUCTION SUPPORT SERVICES FOR THE IMJIN PARKWAY WIDENING PROJECT

THIS FIRSTAMENDMENT ("First Amendment") to the Agreement for Construction Management and Construction Support Services for the Imjin Parkway Widening Project is made this _____ day of _____, by and between the CITY OF MARINA, a municipal corporation ("CITY") and HARRIS AND ASSOCIATES, INC., a California corporation ("CONSULTANT"). CITY and CONSULTANT are sometimes referred to herein collectively as the "Parties."

Recitals

A. On January 26, 2022, CITY and CONSULTANT entered into the Agreement for Construction Management and Construction Support Services for the Imjin Parkway Widening Project (the "Agreement") for CONSULTANT to perform preconstruction activities such as a constructability review of the project bid documents, providing community outreach, and to perform professional and environmental services necessary to during construction to fulfill all permitting and contract requirements in the amount of $3,508,042.00.

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 include additional services to be performed by CONSULTANT and additional compensation in the amount of $85,314.00 to be furnished by the CITY.

C. The CONSULTANT has prepared a document entitled "Imjin Parkway Widening Project: Additional Construction Management Scope" with terms for the proposed First Amendment of the Agreement (attached as "Exhibit 1" to this First Amendment incorporated herein by reference).

D. 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:

1. Exhibit "A1" and "B1" to the First Amendment is incorporated into the Agreement.

2. Section 1 "Scope of Work" sub-section (a) is amended 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" and Exhibit "A1" attached hereto ("Scope of Work") and by this reference made a part hereof. With prior written notice to Contractor, City may elect to delete certain tasks of the Scope of Work at its sole discretion."

3. Section 1 “Scope of Work” sub-section (e) is amended to read in its entirety:

“(e) City shall cooperate with Contractor and will furnish all information data, records and reports existing and available to City to enable Contractor to carry out work outlined in Exhibit “A" and Exhibit “A1”. Contractor shall be entitled to reasonably rely on information, data, records and reports furnished by the City, however, the City makes no warranty as to the accuracy or completeness of any such information, data, records or reports available to it and provided to Contractor which were furnished to the City by a third party. Contractor shall have a duty to bring to the City's attention any deficiency or error it may discover in any information provided to the Contractor by the City or a third party.”

4. Section 2 “Term of Agreement & Commencement of Work” is amended to read in its entirety:

“(a) Unless otherwise provided, the term of this Agreement shall begin on the date of its full execution and shall expire on December 31, 2025, unless extended by amendment or terminated earlier as provided herein. The date of full execution is defined as the date when all of the following events have occurred:

(i) This Agreement has been approved by the City's Council or by the board, officer or employee authorized to give such approval, and;

(ii) The office of the City Attorney has indicated in writing its approval of this Agreement as to form, and;

(iii) This Agreement has been signed on behalf of Contractor by the person or persons authorized to bind the Contractor hereto, and;

(iv) This Agreement has been signed on behalf of the City by the person designated to so sign by the City's Council or by the officer or employee authorized to enter into this Contract and is attested to by the Marina City Clerk.

(b) Contractor shall commence work on the Project upon full execution of this agreement. This Agreement may be extended upon written agreement of both parties. Contractor may be required to prepare a written schedule for the work to be performed, which schedule shall be approved by the City and made a part of Exhibit A and Exhibit A1, and to perform the work in accordance with the approved schedule.

5. Section 3 “Compensation” sub-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 in an amount not to exceed Three Million Five Hundred Ninety-Three Thousand Three Hundred Fifty-Six Dollars ($3,593,356.00) in accordance with the provisions of this Section and the Cost Estimate attached hereto as Exhibit B & Exhibit B1 and incorporated herein by this reference.”

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

This First Amendment is executed in two (2) duplicate originals, each of which is deemed to be an original. This First Amendment consists of pages (4) pages.

(Attestation & Approval follow)

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment to Agreement for Agreement for Construction Management and Construction Support Services for the Imjin Parkway Widening Project on the date and year first written above.

CITY OF MARINA	CONSULTANT
By: _____	By: _____
Layne Long	Name:
City Manager	Its:
Date: _____ 2023	Date: _____ 2023

ATTEST: Per Resolution 2023-

By: _____
Deputy City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

EXHIBIT A1

ADDITIONAL SCOPE OF SERVICES

Project Coordination and Management

Task 170: Pre-construction Coordination (primarily ITP and "Lands Package")

- Harris has provided [and will continue to provide] resources for review/evaluation of environmental documents as they relate to construction, attended inter-agency meetings as requested, and provide coordination between various entities involved in obtaining the ITP permit and completion of the "Lands Package" required by the ITP.

Deliverables: Meeting agendas, meeting minutes, and comments for document reviews.

Task 180 – Pre-Construction Biological Efforts

- The project Mitigation Monitoring & Reporting Plan (MMRP) contains several measures that require action prior to the Notice to Proceed. Denise Duffy & Associates will be performing this work; more detailed scope and estimated costs are attached.
    - Task 181 – Pre-Construction Biological Surveys
    - Task 182 – Monterey Spineflower Survey & Reporting
    - Task 183 – Tree & Vegetation Replacement Plan

Deliverables: Draft and final reports detailing findings and compliance with applicable permit requirements

Task 190: Paleontological Efforts

- The project Mitigation Monitoring & Reporting Plan (MMRP) contains several measures that require a report & plan be developed prior to the Notice to Proceed. Pacific Paleontology will be performing this work; detailed scope and estimated costs are attached.
    - Task 191 – Paleontological Evaluation Report, Monitoring Plan, and Employee Training
    - Task 200 – Paleontological Monitoring during mass grading

Pre-Construction Deliverables: Final Paleontological Evaluation Report, Monitoring Plan and Employee Training Materials.

Construction Deliverables: Field monitoring reports

EXHIBIT B1

CITY OF MARINA
IMJIN PARKWAY WIDENING PROJECT
PRE-CONSTRUCTION ADDITIONAL CM SCOPE
FEE ESTIMATE

TASK	TASK	DESCRIPTION	ESTIMATED COST
170		Pre-construction coordination	$ 25,000.00
180		Pre-Construction Biological Efforts (per MMRP)	
	181	Pre-construction Biological Surveys	$ 17,852.00
	182	Monterey Spineflower - survey and required reporting	$ 9,128.00
	183	Tree & Vegetation Replacement Plan	$ 18,934.00
190	190	Paleontological Efforts (per MMRP)	
	191	Paleontological Evaluation Report, Monitoring Plan, & Employee Training	$ 6,400.00
	192	Paleontological Monitoring*	$ 8,000.00
		Total	**$ 85,314.00**

* Estimated based on monitoring 100 days of mass grading - excludes treatment of major fossil finds, fees associated with curation, etc.

City of Marina Imjin Parkway Improvement Project (PLN 160374) – Pre-Construction Compliance Scope of Work

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To: Dana Van Horn, Harris and Associates, Inc.
Date: July 19, 2022
Client: City of Marina (City)
From: Matt Johnson, Denise Duffy & Associates (DD&A)
Ref: 2022-07
Subject: Scope of Work and Cost Estimate for Pre- and Post-Construction Compliance Imjin Parkway Improvements Project

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Denise Duffy & Associates (DD&A) is currently under contract with Harris and Associates, Inc. (Harris) to provide environmental compliance services support for the construction phase of the City of Marina's Imjin Parkway Improvement Project (project). Harris and DD&A conducted a review of the Mitigation Monitoring and Reporting Program (MMRP)for the project to determine the responsible party for each of the Mitigation Measures. As a result of this analysis, it was determined that DD&A would prepare a Scope of Work (SOW) and Cost Estimate for all Mitigation Measures associated with the pre-construction phases of the project that were outside of DD&A's existing Scope of Work. This Scope of Work would be the responsibility of a contracted biologist and/or restoration contractor. This document provides the SOW and Cost Estimate for environmental compliance and mitigation monitoring services for the project. Where appropriate, this SOW identifies the various project deliverables that will be completed for clarification purposes. This SOW includes compliance with the Final Initial Study Mitigated Negative Declaration (MND) and the MMRP for the project approved by the City of Marina (City).

Task 1 Pre-Construction

Task 1.1 Pre-Construction Biological Surveys

Pre-construction clearance surveys shall be conducted by a qualified biologist for component-specific species and habitats as directed by the MMRP. Survey methodology will be consistent with the requirements of the environmental documentation. Pre-construction survey reports describing the results of the surveys will be provided to the project proponents prior to any ground disturbing activities. The report will include but will not be limited to:

1) a description of the species observed, if any;
2) map of the location, if observed; and
3) recommended avoidance and minimization measures, if applicable.

This task will involve periodic coordination and strategy calls with City and project partners to coordinate information exchange, discuss/refine project submittal information, and work with the internal team to address project needs.

- *1.1.1 Pre-Construction Surveys for Smith's Blue Butterfly (Mitigation Measure BIO-6).*
- *1.1.2 Pre-Construction Surveys for Nesting Birds (Mitigation Measure BIO-6).*

- *1.3.3 Pre-Construction Surveys for Roosting Bats (Mitigation Measure BIO-6).*

Deliverables: Pre-construction survey reports (one draft and one final).

Task 1.2 Pre-Construction Monterey Spineflower Seed/Seedbank Collection, Preservation and Restoration

Prior to disturbance, Monterey spineflower seed/seedbank (through soil salvage) will be collected from plants in temporary impact areas. After construction is complete and no further impacts are anticipated, the contracted biologist will direct the broadcast and raking into the topsoil in the areas from which seed/seedbank was collected. The contracted biologist will direct this process, including identifying areas for seed/seedbank collection, identifying areas for seed/seedbank storage, and documentation of restoration of seed/seedbank. The contracted biologist will prepare a report documenting the entire process of seed/seedbank collection, preservation, and restoration.

Deliverables: Monterey Spineflower Temporary Impact Seed Collection and Restoration Report (one draft and one final).

Task 1.3 Tree and Vegetation Replacement Plan (TVRP)

Prior to the issuance of Notice to Proceed a contractor-supplied biologist/arborist/botanist will develop the Tree and Vegetation Replacement Plan (TVRP). The TVRP will include a locally native plant palette selected to blend with the existing native habitat types extant within the project corridor, to retain a visually unified corridor appearance, consistent with the Imjin Parkway Improvement Project Habitat Mitigation and Monitoring Plan (HMMP). The TVRP will implement required minimization planting per Chapter 29 (Highway Planting) of the Caltrans Project Development Procedures Manual and Chapter 900 (Landscape Architecture) of the Caltrans Highway Design Manual. The TVRP will be consistent with Mitigation Measure AES-4, AES-5, AES-8, AES-9, and EAS-11

Deliverables: TVRP (one draft and one final).

Cost Estimate

Attachment A provides the cost estimate to provide environmental services for the pre-construction phase of the project.

Attachment A

Cost Estimate

Cost Estimate for Imjin Parkway Improvements Project - Pre-Construction Complaince

		Labor Costs	Principal	Project Manager	Senior Environmental Planner/Scientist	Associate Planner/Scientist	Assistant Scientist	GIS Specialist	Graphics	Admin		Expenses		Task Total
			$ 242	$ 153	$142	$116	$104	$111	$85	$70			*Subtask*	
1.0	**Pre-Construction Phase**													**$ 45,914**
1.1	**Pre-Construction Biological Surveys**	--	--	--	--	--	--	--	--	--		$ -	**$ 17,852**	
1.1.1	*Pre-Construction Surveys for Smith's Blue Butterfly (Mitigation Measure BIO-6)*	$ 8,426	2	4	6	24	24	8	2	2		$ 500		
1.1.2	*Pre-Construction Surveys for Nesting Birds (Mitigation Measure BIO-6)*	$ 8,426	2	4	6	24	24	8	2	2		$ 500		
1.1.3	*Pre-Construction Surveys for Roosting Bats (Mitigation Measure BIO-6)*	$ 8,426	2	4	6	24	24	8	2	2		$ 500		
1.2	**Pre-Construction Monterey Spineflower Seed/Seedbank Collection, Preservation and Restoration**	$ 8,878	2	8	8	24	24	4	2	2		$ 250	**$ 9,128**	
1.3	**Tree and Vegetation Replacement Plan (TVRP)**	$ 18,684	8	24	16	32	32	24	8	6		$ 250	**$ 18,934**	
	TOTAL		**16**	**44**	**42**	**128**	**128**	**52**	**16**	**14**		**$ 2,000**		**$ 47,914**



Contract Proposal
Paleontological Monitoring of the Imjin Parkway Project

Pacific Paleontology, PaPa, *A. Wayne Thompson*

Principal Paleontologist, City of Marina **Lic**. #041066653, **DIR:** PW-LR-100100699, **SBE** CA Certified #2030692

Prepared at the request of
Dana Van Horn, PE, SQD
Harris & Associates
Salinas, CA, c: 831-419-7234

28 March, 2023

Good morning Dana,

Please find below our Paleontological Monitoring Proposal to satisfy the City of Marina's MM CUL-1c MMRP requirements for the Imjin Parkway Project. We feel fortunate and grateful that we have been asked to provide this proposal and will adhere to our firm's highest Environmental Mission Statement standards in our growing relationship with you and Harris & Associates.

Should you have any questions, please do not hesitate to contact me.

With kind regards,

Wayne Thompson

Wayne Thompson

Contract Proposal
Paleontological Monitoring of the Imjin Parkway Project

Pacific Paleontology, PaPa, *A. Wayne Thompson*

Principal Paleontologist, City of Marina Lic. #041066653, **DIR:** PW-LR-100100699, CA Certified SBE #2030692

Project:
Imjin Parkway Widening Project
City of Marina
Monterey County, CA

28 March, 2023

This proposal has been prepared at the request of Ms. Dana Van Horn, PE, SQD, Senior Construction Manager for Harris & Associates. The Project Site Monitoring will be planned, performed, and directed by Pacific Paleontology staff. We have reviewed the MMRP, Bid Plans, Initial Study, Geotech Report, Bid Schedule, and the PIR (Paleontological Identification Report) by WRECO for this project. The Paleontological Evaluation Report (PER) and the Paleontological Mitigation Plan (PMP), including the Employee Paleontological Awareness Program (EPAP), for the Imjin Project have been completed by our staff in anticipation of upcoming earth moving activities and Site Monitoring going out to bid to seek the lowest bidding successful firm. Paleontological training pamphlets have been completed and sent % Dana VanHorn to your Salinas office.

Component; MM CUL-1c "The plan shall include…paleontological monitoring during ground-disturbing activities by a qualified paleontologist."	Cost, up to…
MM CUL-1c; Paleontological Monitoring	$1,000.00/ 15-day billing cycle.

MM CUL-1c Paleontological Monitoring Task Breakdown; (Task Area 1a, b, c): Site Monitoring, (Task Area 2): Deployment of the Employee Paleontological Awareness Program, (Task Area 3): Lab work. For details of these three Task Areas, see below. All site monitoring is performed or supervised by Professional Paleontologist Mr. Thompson.

Kind regards,

Wayne Thompson

Wayne Thompson

***This cost proposal will not expire for the Imjin Parkway Expansion Project.**

PALEONTOLOGICAL MONITORING TASK BREAKDOWN:

City of Marina Imjin Parkway MMRP MM CUL-1c

Task Area 1a: Site Monitoring

Our proposal estimate here is based on 2X mobilizations per week and 6 small fossils found, extracted, prepared, identified, accessioned and cataloged for donation to an appropriate museum, university, or k-12 school for each 30-days of work, mobilizations being dependent upon where digging starts, the pace of excavation progress, the number of active excavation sites, and grading schedule components relative to critical deep digging points. For example, monitoring may be more concentrated than 2-3 days per week at the three large retaining wall footings (specifically footing numbers 1, 3, & 5) or if there are multiple active grading and trenching sites planned synchronously. It may also be less concentrated, dependant upon what stratigraphy is found sub-grade.

Due to the high paleontological significance of a nearby mammalian megafauna fossil site in Castroville, and because there is a high probability that the same group of strata as that discovery may occur at the Imjin Project Site, the paleontological sensitivity ranking for this project is high, as noted in the prior Windshield Survey of Allen, 2017, and in the Paleontological Monitoring Plan of Thompson, 2023. That site includes mammoths, mastodons, camels, and giant ground sloths in addition to fish, snakes, turtles, lizards, mollusks, microvertebrates, and other preserved creatures.

The paleontological sensitivity of the project area increases with depth below the surface as well, and borehole data down to 40.5-feet confirms this. Superficial sensitivity down to 5' is low in some areas, while in others the potential is higher. While revealing potential fossil-bearing silt layers of high paleontological significance in the boreholes, the original geotech study did not conclusively identify the known specific dark brown silty-clay strata that the mammalian megafauna fossils were discovered to be preserved in. Our expectation for the Imjin Project, then, is that there is a small chance for these older fossil-bearing layers to be uncovered, and because of this there is the potential for a significant discovery and thus paleontological sensitivity is high.

Our proposal here is thus initially in a "no-discovery condition", lacking the needed additional stratigraphic information that is required to make a more precise assessment. This assessment will only be revealed through monitoring during grading and trenching. This Monitoring Proposal, nonetheless, includes the embedded cost for potentially recovering up to 6 small (6" X 6" X 6") fossils discovered per 30-day cycle.

On larger projects like this, with a probability of limited fossils found, yet high paleontological sensitivity, we prefer to spread our monitoring out over longer periods of time, with more frequent, but shorter, daily spot checks initially until cessation of monitoring or discovery, limiting monitoring to less than half days; a few hours at a time. We do not at this time, with all the evidence and our background experience in the region, recommend full-day repeated monitoring without data-driven evidence to prove otherwise (found fossils/revealed dark clay-silt strata). If fossils/strata are found, monitoring will increase beyond 2X/week, and a cost adjustment proposal will be submitted. The likelihood of this is low, and as work progresses, we may enter upon cessation of monitoring through lack of evidence. Cessation of monitoring will also enter once all deeper grading is completed.

During these shorter visits to spot-check progress, we are maximizing our environmental monitoring efficiency by searching for excavated exposures of the potential fossil-bearing darker silt-clay strata, monitoring current deeper grading work, checking spoil piles, etc. These best management practices on the project site ensure that we can balance project needs with our high environmental protection standards. Additionally, with the deployment of our Employee Paleontological Awareness Program (EPAP), we can monitor much more effectively at these higher levels of efficiency knowing that protected resources can be conserved through recognition training for the on-site team at-large. If some of these exceptionally large fossilized creatures are discovered on site our strategy changes to build in more on-site time, related paleontological excavation equipment, and staff that go along with large fossil extractions and regular price point revision through addenda.

After completion of all the deeper excavation components of the project, such as retaining wall footings, deeper swales (2' and below) or other planned structures, the paleontological monitoring will enter cessation. The monitoring time may occasionally go up or down from projected in a 30-day cycle, for instance if the fossil-bearing strata is discovered but lacks fossils or if no fossil-bearing strata are exposed, respectively. A scenario in which the cost base would change up is if a single large or multiple small preserved fossils (over 6) were uncovered. In the event that there is no deep (2' or below) digging planned for a 30-day cycle, but will start again later, and thus no monitoring required, then there will be no charge for that cycle.

Task Area 1b: Site Monitoring, Supplies and Incidentals

Includes 6 small (6" X 6" X 6") fossils found, excavated, prepared, identified, accessioned and cataloged per 30-day cycle, and includes necessary supplies required by Professional Paleontologist in the performance of their duties; small hand tools (shovels, trowels, picks, hammers, chisels, dental picks, etc.), hand lenses, preservatives of various types, glues, whisk brooms, buckets, plaster-of-Paris, burlap, 2 X 4's, collecting bags, storage boxes, microfossil sampling equipment, preparation consolidants and adhesives, curation tools, field notebooks, data logs, and etc. If 6 small fossils are discovered, the proposal covers costs associated with all later lab fossil preparation and storage costs, space for the specimens, and supplies to prepare the fossils at Pacific Paleontology Labs in Monterey and/or Santa Cruz. A well-defined Cooperation and Assistance Contract, CAC, is recommended for this particular project and has previously been provided.

Task Area 1c: Site Monitoring, Management

Monitoring Management includes time for preparation of invoices, cost tracking, on-site record keeping, pre-construction meetings with contract engineers and other principals, billing and invoicing, preparation of written progress reports, stratigraphic mapping records, and other administrative responsibilities as required.

Task Area 2: Implementing the Employee Paleontological Awareness Program, EPAP

In-person on-site pre-construction training time with actual fossil mammoth/mastodon specimens is included and provided within this cost proposal. This is an important component. Personnel who have been visually entrained for specimen recognition are known to be far more effective at recognition of CEQA-protected local fossil color, texture, and shape properties, thus maximizing the chance of spotting critical resources. Proposal cost also assumes that the EPAP will also occur pre-grading using our remote access closed captioned environmental awareness video produced as a component of the Paleontological Mitigation Plan (PMP) that we are working on now. The environmental awareness training program is mandatory and attendance monitored. This cost line has been built in previously to the PMP and so is not part of this proposal. This proposal also does not include the Principal Paleontologist Scoping site visit component, which will occur over several days pre-grading, to surface search for fossils and identify any "hot spot" areas that may require greater attention during monitoring, and identifying any potential unrecognized surficial discoveries; this was already built into and included in our prior PMP contract proposal under which we are working now.

Task Area 3: Lab Work

Our on-site monitoring proposal also includes all fossil specimen preparation and lab analysis of up to 6 small (6" X 6" X 6") fossils collected during each 30-day cycle, including any potential consolidation for long-term museum storage, accessioning and cataloging, photography, professional identification to the lowest taxonomic level, storage, transport, and donation. This may include performing microvertebrate and other alluvial faunal and floral analyses from ancient lacustrine, fluvial, and potentially marine environments preserved in the area. Standard microscopy techniques will be employed using a #100 (149μm) and a #230 (63μm) and other regulated brass sieves as well as larger wood-framed sifting screens for larger microfossil material. Any microvertebrate fossil analysis that is needed will be carried out using a trinocular Motic SMZ-168 dissecting microscope equipped with a light ring and digital camera for specimen photography. A standard metal picking

tray with a 000 brush will be employed for any smaller material, however there is a low probability for this, and so cm-grid rubber picking mats will also be employed for any potential larger microvertebrates. Museum donation of discovered fossils is standard practice in most excavations + (See Pg. 5 below).

Should you have any questions please do not hesitate to contact me so that we can accommodate.

With kind regards, Wayne Thompson



*Allen, James. 2017 (December). Imjin Parkway Improvement Project Paleontological Identification Report. Walnut Creek, CA: WRECO.

+***Important notice***:
In the event that the museum accepting any found fossils has charges on their end for accepting and curating donations (they typically do) those charges are not included here in this proposal. Be aware, if those fossils are of large mammals, such as Mammoths, Mastodons, and Giant Ground Sloths that have been found nearby, or a large number of smaller fossils, these charges may be quite significant. If fossils are discovered in the Project Area, we can provide a cost estimate from the museum at that time. We have close professional working relationships with all the major California paleontological museums developed over many decades of paleontological work in field, lab, and research and will choose the appropriate repository for any potential fossils recovered on a case-by-case basis:

1. *The University of California Berkeley Museum of Paleontology, current Research Associate position.*
2. *The California Academy of Sciences, Department of Geology, current Research Associate position.*
3. *The Santa Cruz Museum of Natural History, current Paleontological Collections Advisor Position.*
4. *The Pacific Grove Museum of Natural History.*
5. *The L.A. County Museum of Natural History, Divisions of Vertebrate and Invertebrate Paleontology.*

At the same time, however, fossil donation depends on the paleontological significance of the discovery, and since Pacific Paleontology works closely with the Monterey/Santa Cruz k-16 educational community through its non-profit arm, these fees can potentially be mitigated for non-significant fossils through our educational outreach program with fossils for local school and student projects whenever possible.

March 27, 2023 Agenda Item: **10j(1)**

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of April 4, 2023

CITY COUNCIL RECEIVE AN INFORMATIONAL UPDATE ABOUT THE BIRD SCOOTER PROJECT.

BACKGROUND

On November 15, 2022, the City Council of the City of Marina approved Resolution No. 2022-133 authorizing a Shared Mobility Device Services Agreement. During the meeting, staff presented that the agreement included a 90-day check-in provision for staff to meet with Bird to review complaints and see if any changes were needed. The City Council requested that an informational update be brought back to the City Council after the meeting.

On December 1, 2022, Public Works entered into a fee agreement with Bird Scooters for and issued an encroachment permit to Bird Scooters.

On March 21, 2023, City of Marina Planning and Public Works staff met with Bird Scooters staff for a 90-day check-in and went over the program as detailed below.

Overview and Program

Bird staff provided the following table summarizing ridership through March 21, 2023

Month	Total Rides	Avg Rides Per Day	Total Distance Traveled (mi)	Avg Distance Traveled (mi)	Rides Per Scooter	Avg Ride Duration (min)	Avg Available Scooters	Unique Riders	Avg Rides per User
December	700	22	914.78	1.31	33.3	12.3	21	293	2.4
January	1034	33	1441.65	1.39	36.9	12.7	28	307	3.4
February	1537	54	1546.99	1.01	37.5	8.2	41	329	4.7
21-Mar	1013	48	919.52	0.91	-	7.5	-	251	4

Ridership has grown each month for total rides and total distance travelled. The average number of rides per day has been steadily increasing. Bird staff informed the city that the most success has been the routes between the California State University Monterey Bay (CSUMB) campus and the Dunes shopping area. Many riders now rely on electric scooters as a mode of transportation. Further, Bird scooters has reduced the Vehicle Miles Travelled (VMT) in the city by 4,822 over the course of three-plus months. For the new General Plan reducing VMT will help with the air quality and land use elements

Calls for Service.

Bird received twenty (20) calls for service from riders:

Date	Who reported (City 311/rider directly to company/etc.)	Complaint topic (device blocking sidewalk, device not parked at a bike rack or designated parking area, device needs maintenance, on private property, etc).	Source (mobile app, call, email, etc.)	Time of complaint/request	Time of resolution	Response time (duration in minutes)
12/2/2022	rider	damaged	community mode	12/2/2022 3:46	12/2/2022 3:47	1
12/6/2022	rider	damaged	community mode	12/6/2022 5:01	12/6/2022 5:08	6
2/1/2023	rider	damaged	community mode	2/1/2023 22:02	2/1/2023 22:11	8
2/9/2023	rider	damaged	community mode	2/9/2023 17:54	2/9/2023 17:55	1
2/13/2023	rider	damaged	community mode	2/13/2023 5:31	2/13/2023 5:33	1
2/14/2023	rider	damaged	community mode	2/14/2023 19:20	2/14/2023 19:22	2
2/16/2023	rider	damaged	community mode	2/16/2023 17:32	2/16/2023 17:33	0
2/20/2023	rider	damaged	community mode	2/20/2023 21:45	2/20/2023 21:47	1
2/28/2023	rider	damaged	community mode	2/28/2023 7:22	2/28/2023 7:29	7
2/28/2023	rider	damaged	community mode	2/28/2023 7:49	2/28/2023 7:50	0
3/1/2023	rider	damaged	community mode	3/1/2023 2:08	3/1/2023 2:15	7
3/3/2023	rider	damaged	community mode	3/3/2023 19:38	3/3/2023 19:41	2
3/8/2023	rider	damaged	community mode	3/8/2023 17:25	3/8/2023 17:25	0
3/8/2023	rider	damaged	community mode	3/8/2023 23:45	3/8/2023 23:46	1
3/13/2023	rider	damaged	community mode	3/13/2023 1:12	3/13/2023 1:13	0
3/16/2023	rider	damaged	community mode	3/16/2023 2:42	3/16/2023 2:51	8
3/17/2023	rider	damaged	community mode	3/17/2023 4:44	3/17/2023 4:49	4

City of Marina's Public Works and Planning Staff received two (2) complaints.

Date	Location	Complaint	Contact	Resolved
12/9/2022	Reservation Rd	2 scooters on sidewalk by Jack in the box, 2 by doctors on duty, 1 by Round Table knocked over	Planning contacted Bird and Fleet Manager relocated scooters	Issue resolved in less than an hour
12/16/2022	Redondo Court	Parked on sidewalk	Public Works contacted Bird	Scooters relocated in less than an hour

IMPACTS:

The impacts on the city staff have been minimal. The police department reports that as of March 27, 2023 there have been no reportable issues of traffic collisions with scooters in Marina. Public Works crew has not spent any work hours on scooters. The Fleet Manager has responded to all call for service in under four hour.

Staff will continue to monitor and track Bird scooters in Marina. All calls for service should be directed to Bird Scooters by phone: (866) 205-2442, email: hello@bird.co, or through the Bird app (link: https://www.bird.co/#take-a-ride). If issues are not resolved within four hours during business hours (8:00 am to 6:00 pm) then please contact Public Works at (831) 884-1212. For program feedback, please contact Interim Senior Planner Nicholas McIlroy by email: nmcilroy@cityofmarina.org or by phone: (831) 884-1217.

Respectfully submitted,

_____

Nick McIlroy,
Interim Senior Planner
City of Marina

REVIEWED/CONCUR:

_____

Guido Persicone, AICP
Community Development Director
City of Marina

_____

Layne Long
City Manager
City of Marina

ORDINANCE NO. 2023-05

AN ORDINANCE AMENDING TITLE 17, ARTICLE 4, SECTION 17.46 OF THE MARINA MUNICIPAL CODE PERTAINING TO SIGNS.

-oOo-

1. The Community Development Department (CDD) for the City of Marina (City), through its regular use and implementation of the Marina Municipal Code (MMC), has discovered several sections that are unclear and may be in violation of federal law.

2. Through this amendment, staff seeks to streamline sections to add clarity to both the public and staff in the implementation of this section, change the review authority for complying signs from a public hearing to an administrative review process, and to comply with the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. §§ 2000cc, et seq., which protects individuals, houses of worship, and other religious institutions from discrimination in zoning and landmarking laws.

3. Furthermore, the City seeks to allow an administrative process for Signs that comply with the code reserving the Planning Commission for the review of Signs that request exceptions or alternative designs that do not comply with the standards. This will benefit the business community and allow the Planning Commission to focus on larger projects and important policy questions.

4. The City's adopted fee schedule already includes fees for the administrative review of signs with and without an approved Sign Program as well as for the Signs that require a public hearing. No change to the adopted fee schedule is required at this time.

5. An amendment to the City's Municipal Code is needed to provide clarity and transparency in this Section. The proposed ordinance amendment is referenced herein as **Exhibit A** and is provided in a ~~strike-though~~ and <u>underline</u> format. Findings for the proposed amendments are included herein as **Exhibit B**

6. The City Council of the City of Marina reviewed the proposed amendments and considered the recommendations of the Planning Commission and held a duly noticed public hearing on February 7, 2023.

7. The City of Marina Planning Commission, at a duly noticed public hearing on January 12, 2023, adopted Resolution 2023-01 recommending that the City Council adopt the proposed amendment.

8. Environmental. In accordance with the California Environmental Quality Act (CEQA), this ordinance is not subject to CEQA pursuant to the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, Section 15061(b)(3), because the proposed ordinance is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Therefore, the adoption of this ordinance is exempt from CEQA and no further environmental review is necessary.

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

SECTION 1. The foregoing recitals and associated findings are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. The City Council of the City of Marina determines the proposed ordinance amendment is not a project pursuant to CEQA Guideline Section 15061(b)(3).

SECTION 3. The City Council hereby adopts the ordinance amendment attached hereinto as **Exhibit A** and incorporated by reference, based upon the express findings set forth in **Exhibit B** attached hereto and incorporated by reference.

SECTION 4. Severability. If any portion of this Ordinance is found to be unconstitutional or invalid the City Council hereby declares that it would have enacted the remainder of this Ordinance regardless of the absence of any such invalid part.

SECTION 5. The City Manager is directed to execute all documents and to perform all other necessary acts to implement this Ordinance.

SECTION 6. Effective Date. This Ordinance shall be in full force and effect on thirty (30) days after its final passage and adoption.

The foregoing Ordinance was introduced on March 21, 2023, and passed and adopted by the City Council of the City of Marina at a regular meeting duly held on April 4, 2023, 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

17.46.010 Purpose and intent.

A. It is the purpose and intent of this chapter to provide the city with a viable and practical set of sign regulations that will promote the orderly growth of the community; facilitate the continual upgrading of the community; and preserve the natural beauty of Marina while simultaneously protecting the rights of property and business owners to display signs and the right of individuals to live in, work in, and visit a city that is free from the visual blight that would result from under- or non-regulation of signs.

B. These sign regulations, pursuant to the provisions of the general plan, set forth the minimum acceptable standards necessary to protect and safeguard the life, peace, health, safety, property and general welfare of the public by regulating among other things the location, placement, size, number, area, type, illumination and maintenance of signs and sign structures.

C. In addition to the standards specified above, it is hereby set forth that a primary goal of these regulations shall be to ensure that signs and sign structures are considered in light of the architectural and landscape design of the buildings and properties along with individual setting or location of the buildings and properties.

17.46.020 Application.

No sign shall be placed, displayed, painted, posted, printed, tacked, fastened, erected, relocated, constructed or otherwise except as provided in this chapter.

17.46.030 Responsibility.

It shall be the sole responsibility of the person making application to place, construct, erect, alter, relocate, tack, fasten, paint, post or display any sign in the city to obtain the necessary authorization from the owner or lessee of the property.

17.46.040 Definitions.

As used in this chapter:

“Appeal authority” means the body tasked with hearing appeals to decisions of the review authority or community development director or designee. The site and architectural design review board hears appeals for decisions of the community development director or designee, the planning commission hears appeals for decisions of the site and architectural design review board, and the city council hears appeals for decisions of the planning commission.

“Awning” means a roof-like cover, usually of canvas, extending over or before a place.

“Compliant sign” means a sign that complies with the provisions of this chapter and requires an administrative sign permit issued by the community development director or designee.

“Exempt sign” means a sign that does not require a sign permit.

“Height”, when used in reference to a monument sign, means the vertical distance from the average of the lowest and highest points at the finished grade at the base of sign to the topmost point of the sign.

“Noncompliant sign” means a sign that does not comply with the provisions of this chapter and requires a sign permit issued by the review authority.

“Official signs and notices” means signs and notices placed by public officers or public agencies within their territorial or zoning jurisdiction and pursuant to and in accordance with direction or authorization contained in federal, state or local law for the purposes of carrying out an official duty or responsibility. Historical markers authorized by state law and placed by state or local government agencies or nonprofit historical societies shall be considered as official signs.

“Primary business frontage” or “PBF” means that frontage of a building containing the primary or most important entrance to the occupancy thereon. In such cases where there are multiple entrances, the community development director or designee shall determine which frontage is the primary frontage. In no case shall more than one primary business frontage be permitted.

“Public directional signs” means signs containing directional information about public places owned or operated by federal, state or local governments or their agencies; publicly owned natural phenomena, historic, cultural, scientific and educational sites; and publicly owned or operated areas of natural scenic beauty or naturally suited for outdoor recreation, deemed to be in the interest of the traveling public.

“Public utility signs” means warning signs, informational signs, notices or markers which are customarily placed by public or private utilities, as essential to their operations.

“Real estate signs” means signs used to advertise the sale, rental, lease, subdivision, or construction of property.

“Review authority” means the body tasked with reviewing and approving noncompliant sign permit applications and may include the site and architectural design review board or planning commission.

“Secondary business frontage” or “SBF” means that frontage of a building containing any entrance other than a primary business frontage. In no case shall more than two secondary business frontages be permitted.

“Service station” means a business which is primarily in the business of providing service to vehicles such as gasoline, oil, tire, mechanical assistance, parts, etc.

“Shopping center” means commercial and retail buildings and associated facilities which have been designed and developed as an integrated unit containing more than four separately owned and operated businesses which function as an integral unit and which utilize common off-street parking.

“Sign” means any letters, figures, design, symbol, trademark or illuminating device intended to attract attention to any person, partnership, corporation or unincorporated association, or any place, subject, public performance, article, machine or merchandise, whatsoever, and painted, printed, constructed, erected or displayed in any manner whatsoever.

“Sign area” means that area enclosed by a square, rectangle, triangle or other shape which connects the extreme points or edges of the sign, excluding the supporting structure which does

not form part of the sign proper. The area of a sign composed of characters, words or individual letters attached directly to a surface shall be the smallest shape that encloses the whole group. Sign area shall include only one face of any double-faced sign and shall include all faces of any multi-faced sign containing more than two faces. For the purpose of this definition, the faces of a double-faced sign shall be parallel.

“Sign area allotment” means the maximum area of signs that may be displayed on any site, premises, business, building, parcel, lot or otherwise not including signs specifically exempted in this chapter.

“Temporary sign” means a sign posted not more than sixty days prior to an event to which it pertains.

“Uniform Building Code” or “UBC”, “Uniform Electrical Code” or “UEC”, “Uniform Mechanical Code” or “UMC” means those codes which are currently in full force and effect as adopted by the city council, including any amendments or additions thereto adopted from time to time by the city council.

17.46.050 Sign permit required.

A. A sign permit is required unless the sign is exempt as provided in section 17.46.080.

1. A hearing shall be required for all noncompliant signs.~~t~~ A fee shall be collected by the community development director or designee prior to consideration of any sign by the review authority. The fee shall be established from time to time by resolution of the city council.

2. All signs compliant with the provisions of this chapter shall be subject to review and approval by the community development director or designee.

B. In order to facilitate the review and approval process, any person seeking to obtain a sign permit shall submit accurate plans, drawings, color boards, examples of materials, or any such other information specified by the community development director or designee. Written appeals shall be filed with the community development director or designee no later than ten days after the decision of the review authority or community development director or designee.

C. During the course of review and approval, the review authority or appeal authority may approve, disapprove, conditionally approve or modify the plans as submitted in order to ensure compliance with the spirit and intent of this chapter.

17.46.060 Building permit required.

A. In order to ensure that the building department is provided with an opportunity to review the placement, construction, erection, relocation or alteration of any and all signs in the city, it is required, unless otherwise specified herein, that a building permit shall be obtained from the building department prior to the placement, construction, erection, relocation, alteration or otherwise of the sign.

B. Any person seeking to obtain a building permit shall provide the building department with any and all necessary plans, drawings or other materials or information required by the building department along with written evidence that a sign permit has been obtained. Following a review

of the materials submitted, the building department may issue the building permit pursuant to the provisions of the UBC. A fee shall be collected by the building department prior to the issuance of any building permit. The fee for a building permit shall be as specified by department procedure.

17.46.070 Prohibited signs.

The following signs shall be prohibited in the city. Definitions and descriptions of these signs are included in this section. Additional definitions pertaining to this chapter are contained in Section 17.46.040.

A. *Portable signs.* Signs such as A-board or other such signs capable of standing without support or attachment to a structure or the ground.

B. *Animated signs.* Signs that involve animation, rotation, flashing, projections, scintillation, or any type of movement, not including barber pole signs or time, date and temperature signs.

C. *Billboard signs.* Off-site advertising signs that are designed to direct attention to a business, commodity, service or entertainment, sold or offered elsewhere than on the premises or property on which the sign is located.

D. *Roof signs.* Signs that are attached to, supported by, mounted on or project above a roof or other architectural feature including, but not limited to, mansards, parapets and the like.

E. *Projecting signs.* Signs that are suspended from or that are supported by a wall, building or structure and project more than three feet outward therefrom or signs that project into the public right-of-way. No provision contained herein shall be construed to prohibit the display or construction of freestanding signs.

17.46.080 Exempt signs.

The following signs are exempt from a sign permit:

A. Official signs and notices, public utility signs, and public directional signs, including time and temperature devices and signs indicating the location or direction of a place or area on the premises upon which the sign is located;

B. Professional nameplates not exceeding three square feet in area;

C. Temporary yard signs, subject to the provisions of Section 17.46.200;

D. Emergency, public service or other temporary non-advertising signs;

E. Memorial signs on tablets, names and dates of buildings when cut into any masonry surface or when flush mounted and constructed of bronze or other noncombustible materials;

F. Accessory signs of a secondary nature, e.g., savings stamp signs or credit card signs not exceeding one square foot;

G. Banners not exceeding 30 square feet when used for advertising the opening of a new business and/or the hiring of employees. Such signs shall be removed after 30 days;

H. Temporary window signs that are painted, placed, taped, displayed, or otherwise suspended within three feet of any window that are visible from outside the place of business and that are designed to be displayed for more than thirty days. Such signs are permitted to cover no more than ten percent of the area of the window; and

J. Real estate signs:

1. *Sale, rental, or lease signs*. Any property being advertised for sale, rent, or lease may have one such sign on the property not exceeding twelve square feet in area.

2. *Subdivision signs*. The land being subdivided may have no more than two signs posted upon it advertising the subdivision. Each sign shall not exceed thirty-two square feet in area.

3. *Under construction signs*. These signs shall not exceed twenty square feet in area. No more than one such sign shall be permitted and shall be removed prior to the issuance of the final occupancy permit.

4. *Portable, temporary signs displayed on private property*. In advertising a property for sale, rental, or lease, a portable sign, not exceeding six square feet in area, may be placed off the site on private property for the purpose of advertising that the subject property is open for inspection. One additional such sign may be displayed on the premises that is open for inspection. Such signs shall only be displayed when the premises are open for inspection.

5. *Model home signs*. Signs identifying model homes may be displayed on the property upon which the model homes are located. Such signs shall be located adjacent to the entrance of the model home. Such signs shall not exceed eight square feet in area nor three feet in height.

17.46.090 Nonconforming signs.

A. Any permanent sign lawfully existing prior to the adoption of this chapter and not conforming to the provisions contained in this chapter is declared to be a lawfully nonconforming sign and may remain as such.

B. No such nonconforming sign shall in any way be altered, relocated, replaced or reworded unless the sign can be made to conform to all provisions of this chapter. Nothing in this section shall be construed to prohibit the normal maintenance and repair of lawfully nonconforming signs.

17.46.100 Allowed sign types.

A. *Signs requiring a sign permit and review*. The following signs require a sign permit. Definitions of allowed signs are included in this section. Additional definitions pertaining to this chapter are contained in Section 17.46.040.

1. *Monument signs.* Freestanding signs of a permanent nature not attached to any portion of a building and not projecting over or through a roof, eaves of a building or any public right-of-way. Such signs may be placed within required yard or setback areas.

2. *Awning signs.* A sign attached to the face of or supported by an awning. Such signs must be parallel to the face to which attached and must not hang lower or project above the face to which attached.

3. *Marquee or canopy signs.* A sign attached to or supported by a marquee or canopy. Such signs must be parallel to the face to which they are attached and may not be made of cloth, canvas or other material of a similar nature nor shall such signs hang lower or project above the face to which attached.

4. *Nameplates.* Professional nameplates and occupation signs exceeding three square feet in area.

5. *Neighborhood signs*. Signs identifying a neighborhood or development, not exceeding fifty square feet in area.

6. *Readerboard signs.* A sign with detachable or interchangeable letters.

7. *Under canopy signs.* A sign attached to the underside of a canopy. The canopy must be of a permanent nature attached to and supported by a building. Such signs that do not exceed four square feet will not be included in the maximum sign area allotment. Any such sign exceeding four square feet shall be included in the maximum sign area allotment. Such signs shall have a minimum clearance of seven feet six inches above the sidewalk.

8. *Wall signs.* A sign of either solid face construction or individual letters placed against the exterior wall of any building or structure. Such signs shall not extend more than one foot beyond the wall.

17.46.110 Enforcement.

The regulations contained in this chapter shall be enforced as are other zoning, building and safety regulations as set forth in this code.

17.46.120 Remedies.

Notwithstanding the procedures for enforcement set forth in this code, the city is authorized to proceed in any other fashion, way or procedure permitted by law.

17.46.130 Abandoned signs and abatement thereof.

A. No person shall maintain or permit to be maintained on any premises owned or controlled by said person any sign which has been abandoned. Any such sign shall be promptly abated. Any sign which is located on property which becomes vacant for a period of six months or more and any sign which was erected for an occupant or business unrelated to the present occupant or their business and any sign which pertains to a time, event or purpose which no longer obtains shall be presumed to have been abandoned.

B. Unless some other form of abatement is approved by the community development director or designee in writing, abatement of abandoned signs shall be accomplished in the following manner:

1. Signs painted on buildings, walls, fences or structures shall be abated by removal of the paint constituting the sign or by painting over the sign in such a way that the sign shall not thereafter become visible.

2. Other types of signs may be abated by removal of the sign including its dependent structures and supports, unless the sign conforms to the provisions contained in this chapter, in which case all faces of the sign shall be screened from view in a manner satisfactory to the community development director or designee.

17.46.140 Abatement of signs presenting health or safety hazards.

A. *Signs on private property presenting health or safety hazards.* No sign may be placed upon any privately owned property in a manner that creates a public health or safety hazard. Any sign placed on, above or adjacent to any street, sidewalk or right-of-way that creates a health or safety hazard through obstructing vision or use of such street, sidewalk or right-of-way may be summarily removed by the public safety, public works or community development directors or their respective designees. Any sign so removed shall be returned to the owner upon payment of the costs of removal and storage. Any sign placed on or about private property that creates a health or safety hazard, including obstructing vision in the public right-of-way, may be removed by the public safety, public works or community development directors or their respective designees to a position on the private property where it does not create a health or safety hazard.

B. *Signs on public property.* No sign may be placed in or upon any public right-of-way, the exterior of any public building, any public grounds or property thereon, any public utility pole or appurtenance thereof, wherever located, or any tree on public property. Any such sign may be summarily removed and impounded by the public safety, public works or community development directors or their respective designees.

C. *Impounded signs.* Any sign impounded under the provisions of subsection A or B of this section shall be stored for a period of not less than thirty days at which time the signs may be salvaged, sold or destroyed in order to defray the costs of removal and storage. The person responsible for the placement of such sign shall be liable for the cost incurred in the removal and storage of the sign and the departments of public safety and public works are authorized to effect the collection of said cost.

D. *Noticing sign owners.* If the person who owns a sign that has been removed pursuant to this section can be identified, the city official who has removed said sign shall notify that person of the reasons the sign has been removed, the location of the sign and the procedures for the return of the sign.

17.46.150 General provisions.

A. *Maintenance and construction*. The appropriate sections of UBC, UEC, or any amendment thereto adopted by the city shall apply to the construction, placement or display of signs in the city. All signs having internal or built-in illumination shall be constructed wholly of noncombustible materials or other such fire resistive materials as approved by the building department. Guy wires or exposed strut-like sign structures shall not be utilized. Signs and sign structures shall at all times be maintained in a state of good repair including all braces, bolts, structural parts, supporting frames and fastenings.

B. *Safety*. In addition to all other maintenance and construction provisions contained in this chapter, all signs within the city shall comply with the following provisions:

1. *Obstructions to doors, windows or fire escapes.* No sign shall be erected, relocated, altered, maintained or otherwise so as to prevent ingress to or egress from any door, window or fire escape. No sign shall be attached to a standpipe, gutter, drain or fire escape, except signs referring specifically to the standpipe, gutter, drain or fire escape to which it is attached.

2. *Signs not to obstruct traffic signals.* No sign regulated by this chapter shall be erected at any location where, by reason of its position, it will obstruct or confuse the view of any authorized traffic sign, signal or device.

3. *Exterior of signs.* On all signs which are erected within five feet of a public street or sidewalk, no nails, tacks or wires shall be permitted to protrude therefrom. All structural trim maintained in conjunction with, attached to, or superimposed upon any sign shall be safely and securely built or attached to the sign structure.

C. *Signs in the coastal zone*. Notwithstanding any provision contained herein, all signs to be erected, constructed, placed, tacked, fastened, displayed, painted, posted, printed or otherwise in the Coastal Zone shall comply first and foremost with the provisions of the local coastal program (LCP) along with the spirit and intent of this chapter. In the case of any conflicts between the documents, the provisions of the LCP shall prevail. It is anticipated that signs and signing programs will be considered as a part of the coastal permit process.

17.46.160 Illumination of signs.

All illuminated signs in the city shall comply with the following standards:

A. The use of high intensity, unshielded or undiffused lights shall not be permitted.

B. Lights or illumination shall be shielded, oriented or diffused so as to eliminate undue glare onto adjacent properties and not conflict with safe traffic movement.

C. The community development director or designee shall retain the right to require reduction in the intensity of illumination after the installation of any illuminated sign if said illumination creates any undue glare or hazard.

D. To help eliminate the potential for glare associated with internally illuminated or back-lit signs, the background of such signs shall be opaque.

17.46.170 Sign regulations for commercial and industrial districts.

C-1, C-2, P-C, and M Districts.

Sign Table A: Allowed Signs in Commercial and Industrial Districts

Sign Regulations in Commercial and Industrial Districts (C-1, C-2, P-C, M)	
Sign area	1 ½ sq ft for every foot of PBF* (max. 200 sq ft) ½ sq ft for every foot of each SBF** (max. 25 sq ft per SBF)
Number of signs	4 per business (max.)

Monument sign height (in feet; max.)	7			
	Shopping Center/Industrial Park Monument Identification Signs			
Site	Commercial: Less than 5 acres	Commercial: 5 to 25 acres	Commercial: More than 25 acres	Industrial: More than 4 buildings
Height (in feet; max.)	10	15	50	10
Sign area (sq ft; max.)	100	100	250	200
Number of signs (max.)	1 per principal street frontage (max. 2)	1 per principal street frontage (max. 2)	2	1 per principal entrance
*Primary business frontage **Secondary business frontage				

A. *Sign area.* One and one-half square feet are permitted for every foot of primary business frontage to a maximum of two hundred square feet per business. One-half square foot is permitted for every foot of secondary business frontage to a maximum of twenty-five square feet for each secondary business frontage.

B. *Number of signs.* No more than four signs may be permitted per business. Under canopy signs are not counted for the purposes of this section.

C. *Type of sign.* Any sign specified under Section 17.46.100 may be displayed in accordance with the provisions of this chapter. Monument signs not associated with a shopping center or industrial park shall be limited to a maximum height of seven feet.

D. *Service stations*. In addition to the signing permitted under Section 17.46.100, service stations may be permitted to display two additional signs each of which shall not exceed sixteen square feet. Such signs shall be permanently affixed to the ground or a structure.

E. *Master signing program approval required.*

1. Any and all commercial, office or industrial developments designed to contain more than four occupancies, businesses or buildings are required to obtain approval of a master signing program from the review authority. Said master signing program plans must be prepared, reviewed and approved by the review authority prior to the issuance of any occupancy permit in the development. Plans for the master signing program shall include specifications, descriptions and locations of all signs to be displayed on the site including but not limited to advertising, identification, directional and public service signs. Any decision of the review authority on a master signing program may be appealed to the appeal authority. Appeals shall be in writing and shall be filed with the community development director or designee within ten days of the decision.

2. Approved master signing programs may be modified from time to time by the review authority.

3. Individual tenant sign changes that comply with an approved master signing program shall be subject to review of the community development director or designee.

4. The following provisions apply to monument identification signs in shopping centers and industrial parks:

a. Shopping centers may be permitted to erect a monument identification sign which may also indicate the principal tenant and other services available on the site. Said sign shall be located adjacent to the principal street frontage and shall not exceed one hundred square feet in area. If the shopping center has more than one principal street frontage, two such signs may be permitted. Freestanding signs allowed for the identification of shopping centers or industrial or business parks of less than five acres shall not exceed a height of ten feet and for sites of less than twenty-five acres shall not exceed a height of fifteen feet.

b. Shopping centers containing more than twenty-five acres approved under a single development permit shall be permitted to erect two monument identification signs which may also indicate the principal tenants. Such signs shall not exceed two hundred fifty square feet in area nor fifty feet in height.

c. Industrial parks containing more than four buildings designed to be architecturally compatible, whether or not on the same parcel of land, shall be permitted to place monument signs along, at, or adjacent to principal entrances to the park. Such signs shall not exceed two hundred square feet or ten feet in height.

F. *Highway signs*. Commercially zoned properties having frontage on Highway 1 are declared to be sites of special significance and all signs and signing programs shall be approved by the planning commission. In considering a sign or signing program for a site of special significance, the following items shall be considered: the signing needs of the proposed use; the location of the site in relation to the freeway access; and the responsibility of the city to protect and preserve the natural beauty of Highway 1 while balancing the city's need for a healthy highway-oriented visitor-serving industry. Any decision of the planning commission concerning a site of special significance may be appealed to the city council, in writing, within ten days of the decision of the planning commission.

17.46.180 Sign regulations for residential districts.

R-1, R-2, R-3, R-4 and ST Districts.

Sign Table B: Allowed Signs in Residential Districts

Sign Regulations in Residential Districts (R-1, R-2, R-3, R-4, S-T) for sites with more than 4 dwelling units	
Sign area (max.)	30 sq ft
Number of signs (max.)	2
For sites with 4 or fewer dwelling units, only one nameplate not exceeding 3 sq ft is permitted. Home occupations are prohibited to identify or advertise businesses within residential zones per Section 17.42.110.	

A. *Single-family dwellings, duplexes, triplexes, and fourplexes.* One nameplate not exceeding three square feet per dwelling.

B. *Multiple-family dwellings containing more than four dwelling units, public, quasi-public, halls, organizations, churches, clubs, lodges, and all similar uses.* Maximum of two signs, each containing a maximum of thirty square feet.

C. All signs not permitted by subsections A and B of this section are prohibited in residential districts.

17.46.190 Sign regulations for the O District.

All signs, other than exempt signs which are regulated in Section 17.46.080, shall require approval by the review authority. Any decision of the review authority may be appealed to the appeal authority. Appeals shall be in writing and shall be filed with the community development director or designee within ten days of the decision. No sign shall be approved unless and until a finding is made that the proposed sign is consistent with the purpose, spirit and intent of this chapter.

17.46.200 Regulations for temporary signs.

A. *General provisions.* The following provisions apply to all temporary signs. Temporary signs do not require a sign permit:

1. No such sign shall be located upon any public street, alley, sidewalk, right-of-way, easement, or other governmental property.

2. All such signs shall be erected, altered and maintained in accordance with the UBC and the safety provisions set forth in Section 17.46.150.

3. All such signs must be stationary and unlighted.

4. Any freestanding sign shall be located at least five feet from any right-of-way line and may not encroach upon required parking or driveways.

5. The posting of any sign regulated by this section shall not in any way affect a property owner's right to erect signs permitted by other provisions of this chapter.

6. *Time limitations.* Signs regulated by this section may be posted not more than sixty days prior to an event to which they pertain. All such signs must be removed within five days after the event to which they pertain or within sixty-five days of their initial posting, whichever occurs first.

7. *Consent of owner or occupant.* No sign regulated by this section may be posted without the consent of the owner or legal occupant of the premises on which the sign is posted.

8. *Area of signs.* No sign regulated by this section shall exceed thirty-two square feet of sign area, except that in the R-1 district the total sign area shall not exceed eight square feet.

9. *Signs in the R-1 District.* The total area of all signs regulated by this section on any one property in the R-1, single-family residential district shall not exceed eight square feet. However, in this district, the number of such signs on any one property is not limited, provided the total area of all signs does not exceed eight square feet. All signs shall be freestanding, or attached to buildings, fences or windows of buildings.

10. *Signs in all districts other than the R-1 District.* In all zoning districts except the R-1 district, signs regulated by this section shall be freestanding or attached to buildings, fences or windows

of buildings. Any freestanding sign shall be placed only upon those vacant portions of a property which are not covered by structures, landscaping, parking areas or driveways. The total area of all signs on any one property which includes at least four thousand square feet of such vacant area shall be limited to not more than one square foot of sign area for each one hundred twenty-five square feet of such vacant area. For properties which include less than four thousand square feet of vacant area, each such property shall still be allowed up to thirty-two square feet of total sign area with no limitation upon the number of signs composing the thirty-two square feet.

11. *Responsibility for removal.* It shall be the property owner's responsibility to remove all signs regulated by this section within the time limitations specified above, whether or not the owner has consented to the posting or construction of such signs.

B. *Greater sign area and time limitations allowable pursuant to use permit and design review board approval.*

1. A sign area greater than otherwise allowed by this section may be allowed subject to sign permit approval by the review authority. Sign permits for temporary signs regulated by this section shall be granted for a period of not more than six months.

17.46.210 Severability.

If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion is a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion hereof.

FINDINGS
Staff finds that this project:

General Plan Compliance

1) General Plan Policy 4.8.5
"No commercial signs shall be permitted on buildings or properties which are visible to people using the beach, while signage which is oriented and sized to be easily visible to travelers on Highway One shall be permitted only for those properties contiguous to the Highway One right-of-way."

   Evidence: The proposed changes apply only to properties outside the Coastal zone and not subject to the City's Local Coastal Program.

Zoning Compliance

2) Lateral consistency with Title 17, Section 17.46

   Evidence: The amended ordinance is consistent with the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) and with the City's adopted General Plan and Local Coastal Program (LCP)

3) Compliance with Section 17.46.270
"Notwithstanding any provision contained herein, all signs to be erected, constructed, placed, tacked, fastened, displayed, painted, posted, printed or otherwise in the Coastal Zone shall comply first and foremost with the provisions of the Marina local coastal program (LCP) along with the spirit and intent of this chapter. In the case of any conflicts between the documents, the provisions of the LCP shall prevail. It is anticipated that signs and signing programs will be considered as a part of the coastal permit process."

   Evidence: No change is proposed to Section 17.46.270.

ORDINANCE NO. 2023-__

AN ORDINANCE AMENDING TITLE 17, ARTICLE 4, SECTION 17.46.040 OF THE MARINA MUNICIPAL CODE PERTAINING TO ACCESSORY DWELLING UNITS.

-oOo-

1. The Community Development Department (CDD) for the City of Marina (City), in response to Senate Bill (SB) 897, has recommended changes to several sections to bring the Marina Municipal Code (MMC) into compliance with state law.

2. Through this amendment, staff seeks to amend standards pertaining to building height for attached and detached accessory dwelling units (ADUs), parking standards, fire sprinklers, and junior accessory dwelling units (JADUs).

3. The City's adopted fee schedule allows the Building Department to collect permitting fees for ADUs and JADUs based on the construction valuation of the project. The City's adopted fee schedule does not currently allow CDD to collect impact fees or ADUs larger than 750 square feet. No additional fees may be assessed under state law. No change to the adopted fee schedule is proposed or required at this time.

4. An amendment to the City's Municipal Code is needed to provide clarity and transparency in this Section, and to bring this Section into compliance with state law. The proposed ordinance amendment is referenced herein as **Exhibit 1** and is provided in a ~~strike-though~~ and underline format.

5. The City Council of the City of Marina reviewed the proposed amendments and considered the recommendations of the Planning Commission and held a duly noticed public hearing on March 7, 2023.

6. The City of Marina Planning Commission, at a duly noticed public hearing on January 26, 2023, adopted Resolution 2023-06 recommending that the City Council adopt the proposed amendment.

7. Environmental. In accordance with the California Environmental Quality Act (CEQA), this ordinance is not subject to CEQA pursuant to the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, Section 15303(a), pertaining to new construction or conversion of small structures. Therefore, the adoption of this ordinance is exempt from CEQA and no further environmental review is necessary.

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

SECTION 1. The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. The City Council of the City of Marina determines the proposed ordinance amendment is not a project pursuant to CEQA Guidelines Section 15303(a).

SECTION 3. The City Council hereby adopts the ordinance amendment attached hereinto as **Exhibit 1** and incorporated by reference.

SECTION 4. Severability. If any portion of this Ordinance is found to be unconstitutional or invalid the City Council hereby declares that it would have enacted the remainder of this Ordinance regardless of the absence of any such invalid part.

SECTION 5. The City Manager is directed to execute all documents and to perform all other necessary acts to implement this Ordinance.

SECTION 6. Effective Date. This Ordinance shall be in full force and effect on thirty (30) days after its final passage and adoption.

The foregoing Ordinance was introduced on March 21, 2023, and passed and adopted by the City Council of the City of Marina at a regular meeting duly held on April 4, 2023 by the following vote:

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

_____

Bruce C. Delgado, Mayor

ATTEST:

_____

Anita Sharp, Deputy City Clerk

Exhibit 1

17.42.040 Accessory Dwelling Units

This section establishes standards for the location and construction of accessory dwelling units and junior accessory dwelling units (jointly referred to as "accessory units" in this section) in conformance with California Government Code Sections 65852.2 and 65852.22. These standards are intended to allow for accessory units as an important form of affordable housing and to comply with state law.

A. *Permits Required.*

1. Accessory units consistent with the requirements of this section are allowed by right with the issuance of a building permit.

2. *Time Limit to Act.* The city shall complete its review of an accessory unit application and approve or deny the application within sixty days of receipt of the application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory unit is submitted with a permit application to create a new single-family dwelling on the lot, the city shall delay acting on the permit application for the accessory unit until the city acts on the permit application to create the new single-family dwelling. If the applicant requests a delay, the sixty-day time limit shall be extended for the period of the requested delay. In either case the application to create the accessory unit shall be considered without discretionary review or hearing.

B. *Permitted Zoning Districts.*

1. Accessory dwelling units are permitted in any zoning district where single-family or multifamily dwellings are a permitted or conditionally permitted land use as identified in this title. Junior accessory dwelling units are permitted in any zoning district where single-family dwellings are a permitted or conditionally permitted land use as identified in this title.

C. *Site and Design Standards.*

1. *General.* Accessory units are subject to the same requirements that apply to primary dwellings on the same lot in the applicable zoning district except as specified in this section.

2. *Number of Accessory Units.* No more than one junior accessory dwelling unit and one accessory dwelling unit is permitted on a single lot with a single-family dwelling. Lots with existing multifamily dwellings shall have a number of internal or attached accessory dwelling units equal to twenty-five percent of the existing multifamily dwelling units. Fractions of units of one-half and above shall be rounded up. Accessory dwelling units may include portions of dwelling structures that are not used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, or garages; provided, that each unit complies with state building standards for dwellings. At least one accessory dwelling unit shall be permitted per lot within existing multifamily dwellings. Not more than two detached accessory dwelling units shall be permitted on lots with existing multifamily dwellings.

3. *Relationship to Primary Dwelling.*

a. An accessory dwelling unit may be within, attached to, or detached from the primary dwelling. Attachment to the primary dwelling shall be by sharing a common interior wall or

common roof. No passageway (as defined in California Government Code Section 65852.2) is required in conjunction with the construction of an accessory dwelling unit.

b. An accessory dwelling unit shall have its own kitchen, bathroom facilities, and entrance separate from the primary dwelling.

c. The city shall allow junior accessory dwelling units as defined in California Government Code Section 65852.22 to be constructed within the walls of the proposed or existing single-family residence with a separate entrance from the main entrance to the primary dwelling, an efficiency kitchen as defined herein, and shared or independent bathroom facilities.

4. *Height.*

a. A detached accessory dwelling unit is limited to sixteen feet in height. A detached accessory dwelling unit may be up to eighteen feet in height if it is (a) within one-half mile walking distance of a major transit stop or high quality transit corridor, or (b) on a lot that has an existing multifamily, multistory dwelling.

b. An attached accessory dwelling unit is limited to twenty-five feet in height or the height limitation that applies to the primary dwelling, whichever is lower.

~~An accessory unit is limited to sixteen feet in height; however, an accessory dwelling unit may be up to a maximum height limitation of twenty-four feet; provided, that it is constructed on a vacant lot in conjunction with a newly constructed primary single-family dwelling located on the same lot, and that the first story of the accessory dwelling unit structure includes parking for the unit and access to that parking is provided from the street with an unobstructed driveway or alleyway access of at least twelve feet in width.~~

5. *Maximum Unit Size.*

a. The maximum floor area for a studio or one-bedroom accessory dwelling unit shall be eight hundred fifty square feet, except accessory dwelling units which do not conform to subsections (A)(3)(d)(i) and (A)(3)(f)(iii) of this section which shall be limited to eight hundred square feet. The maximum floor area for an accessory dwelling unit of two bedrooms or more shall be one thousand square feet. In situations where an existing accessory structure is being converted to an accessory dwelling unit, an additional one hundred fifty square feet are allowed for expansion beyond the physical dimensions of the accessory dwelling unit, limited to providing ingress and egress only.

b. The maximum floor area of a junior accessory dwelling unit shall be five hundred square feet.

6. *Property Line Setbacks.*

a. No setback is required for an existing accessory structure or living area as defined herein that is converted to an accessory dwelling unit.

b. No setback is required for an accessory dwelling unit constructed in the same location and the same footprint as an existing accessory structure.

c. A minimum setback of four feet from the side and rear property lines is required for an accessory dwelling unit ~~twenty-four~~ twenty-five feet in height or less. If there is a recorded constraint, such as a no-build easement (e.g., public utility easement), then the recorded constraint prevails in determining the setback. Front ~~and street side~~ yard setbacks shall be the

same as the underlying zoning district. An accessory dwelling unit in excess of ~~twenty-four~~ twenty-five feet in height shall comply with setback requirements of the main structure of the applicable zoning district.

7. *Parking.*

a. Except as specified in this subsection, on-site parking for accessory dwelling units shall comply with all parking requirements in Chapter 17.44.

b. On-site parking is not required for junior accessory dwelling units.

c. In addition to on-site parking spaces required for the primary dwelling, one on-site parking space shall be provided for each accessory dwelling unit per unit or bedroom, whichever is less.

d. On-site parking spaces for accessory dwelling units may be covered or uncovered, may be tandem, and may be located within the front, side, or rear setback areas unless there is a specific site or regional condition related to fire or life safety that would make parking in setback areas unsafe.

e. No on-site parking is required for an accessory dwelling unit in the following cases:

i. The accessory dwelling unit is located within one-half mile walking distance of public transit.

ii. The accessory dwelling unit is located within a National Register Historic District or other historic district officially designated by the city council.

iii. The accessory dwelling unit is constructed within the primary residence or within an accessory structure.

iv. On-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

v. A car-share vehicle pick-up/drop-off location is located within one block of the accessory dwelling unit.

vi. The accessory dwelling unit is part of an application to create a new single-family or multifamily dwelling on the same lot.

8. *Utility Connections.*

a. *General.* An accessory unit shall not be considered a new residential use for the purposes of calculating local agency connection fees or capacity charges for utilities, including water and sewer service, unless constructed in conjunction with a new single-family residence.

b. *Accessory Units in Existing Space.* For accessory units within an existing primary dwelling, garage, or other accessory structure, the city shall not require an applicant to install a new or separate utility connection directly between the accessory unit and utility or impose a related connection fee or capacity charge.

c. *Attached and Detached Accessory Dwelling Units.* Consistent with California Government Code Section 66013, a utility connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or

charge shall not exceed the reasonable cost of providing this service.

d. *Fire Sprinklers.* ~~The installation of fire sprinklers shall not be required in an accessory unit if sprinklers are not required for the primary residence~~ Accessory units shall not be required to provide fire sprinklers if they are not required for the primary residence. The construction of a dwelling unit shall not trigger a requirement for fire sprinklers to be installed in the existing primary dwelling.

9. *Septic Tank Disposal System.*

a. In areas where septic tank disposal systems are allowed due to lack of sanitary sewer lines, detached accessory dwelling units shall be served by separate and independent septic tank sewage disposal systems. All leach lines shall be designed and installed in accordance with current septic system requirements of the county of Monterey health department.

b. In other areas of the city, accessory dwelling units shall be connected to the sanitary sewer system through the existing lateral line serving the primary dwelling.

10. *Deed Restrictions.*

a. *Deed Restriction Required.* Before obtaining a building permit for an accessory unit, the property owner shall file with the county recorder a declaration of restrictions containing a reference to the deed under which the property was acquired by the current owner. The deed restriction shall state that:

i. The accessory unit may not be sold separately from the primary dwelling.

ii The accessory unit is restricted to the approved size as set forth in subsection (A)(3)(e) of this section.

iii. The accessory unit shall not be rented for a period of less than thirty-one days.

iv. *Binding on Future Owners.* The above declarations shall be binding upon any successor in ownership of the property. Lack of compliance shall be cause for code enforcement and/or revoking the city's approval of the accessory unit.

11. *Fees.*

a. Impact fees shall not be imposed on an accessory dwelling unit less than seven hundred fifty square feet in size.

b. Impact fees charged for an accessory dwelling unit of seven hundred fifty square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling.

FINDINGS

Staff finds that this project:

General Plan Compliance

1) General Plan Policy 2.31
"It is the City of Marina's intent to promote construction of new housing that is environmentally and socially responsible."

   a. General Plan Policy 2.31.1
   "In order to promote the social and fiscal well-being of the community, new housing shall be phased and shall provide for the needs of all economic groups."

   b. General Plan Policy 2.31.4
   "New housing shall accommodate a broad range of lifestyles."

   c. General Plan Policy 2.31.6
   "New housing shall be constructed at densities and in patterns which conserve land, reduce reliance on the private automobile, and result in walkable, attractive neighborhoods."

   Evidence: The development of ADUs and JADUs is consistent with General Plan Policy 2.31 in that accessory units are more environmentally sustainable and more accessible to a broad range of income groups than a traditional single-family house.

Zoning Compliance

2) Lateral consistency with Title 17, Section 17.42.040

   Evidence: The amended ordinance is consistent with the state law and the City's adopted standards for accessory units.

California Environmental Quality Act (CEQA) Compliance

The proposed project is exempt from the California Environmental Quality Act (CEQA) under Section 15303(a) of the State CEQA Guidelines. Staff has determined that the exemption applies in this case because this Section exempts up to three single-family residences in urbanized areas.

March 21, 2023 Item No: **13a**

Honorable Mayor and Members of the Marina City Council

City Council Meeting of April 4, 2023

CITY COUNCIL RECEIVE A PRESENTATION ON THE GENERAL PLAN 2045 COMMUNITY ENGAGEMENT WORKPLAN AND ACCEPT THE PLAN AS PRESENTED. THIS PRESENTATION IS EXEMPT FROM ENVIRONMENTAL REVIEW PER SEC. 15378 OF THE CEQA GUIDELINES.

REQUEST: It is requested that City Council:

1. Receive a presentation of the General Plan 2045 (GP2045) Community Engagement Workplan (Plan) by the City's consultant, Raimi+Associates (R+A) and accept the plan as presented. The Plan is included **EXHIBIT A**.

BACKGROUND:

At its meeting on October 20, 2022, the City Council approved an Agreement for Professional Services Agreement with Raimi+Associates (R+A) to prepare a comprehensive General Plan Update (GP2045), associated Environmental Impact Report (EIR), and the necessary amendments to Title 17 of the Marina Municipal Code (MMC), as needed. As a component of the engagement and outreach activities identified in the approved Scope of Work (SOW), the GP2045 team (R+A and Planning staff) will conduct a wide variety of outreach and engagement activities as described in the Plan.

ANALYSIS:

As noted in the Plan, the range of activities to be undertaken throughout the General Plan Update (GPU) process includes:

- Stakeholder interviews with individuals representing agency, cultural, and business partners in the community;
- Educational Forums teamed with educational videos;
- Up to six (6) themed community workshops;
- Pop-up workshops;
- Online surveys and feedback forms;
- Specific youth engagement;
- Two (2) focus groups on Environmental Justice (EJ) policies; and
- General Plan Advisory Committee (GPAC) feedback. Note that those members of the community who either applied for or were recommended to the GPAC, but not appointed, will be included in the Stakeholder interviews.

These activities will be advertised through a new GP2045 website created and administered by R+A and the City's Facebook and Nextdoor accounts. Staff is considering adding an Instagram site as well in an effort to reach a younger audience. There will also be one (1) citywide postcard mailing letting people know about the GPU and how to obtain additional information through the website(s) and social media platforms.

Spanish language translation for certain materials and tasks is included in the Engagement budget and we would like to utilize community volunteers and GPAC members to assist with Korean, Hindi, Punjabi, Chinese (Mandarin) translation and others if possible.

FISCAL IMPACT:

There may be minor incidental costs to the City outside the GPU Engagement budget for supplies for pop-up meetings, copies, etc.

CONCLUSION:

This request is submitted for City Council discussion.

Respectfully submitted,

_____

Alyson Hunter, AICP
Interim Planning Manager,
Community Development Dept.
City of Marina

REVIEWED/CONCUR:

_____

Guido Persicone, AICP
Director, CDD
City of Marina

_____

Layne P. Long
City Manager
City of Marina

2045 MARINA General Plan
-Advancing Our Future-

Community Engagement Workplan

Final - 3/21/2023

Introduction

This engagement plan is an internal document that tracks all outreach activities in accordance with all phases laid out in the scope of work of the Marina General Plan Update. The purpose of this engagement plan is to identify opportunities for conducting outreach to Marina's diverse communities and key stakeholders, analyze existing demographics, and describe the tools for how the project team will interact and communicate with Marina residents about the General Plan Update. The engagement plan will be updated by the Engagement Specialist with new actions and details identified over the course of the project.

This document begins by outlining the project team's collective goals for community engagement. It then analyzes the demographic landscape of the city, documents the tools available to the team to execute communication with residents, and then lists ideas for engagement activities (in-person and virtual). Based on research and guidance from the Marina city staff, stakeholder groups are listed for partnerships.

Engagement Goals + Objectives

The following section identifies the goals and objectives of engagement for the City of Marina General Plan Update process:

1. Create an open and transparent engagement process that builds trust between the city, residents, businesses owners, and other stakeholders. This will occur by regularly updating the community about the project's direction, creating opportunities for substantive input into the process, developing culturally appropriate engagement materials, and "meeting residents where they are at" by engaging them directly in their neighborhoods.
2. Engage a wide diversity of residents, with a focus on those who typically do not participate in civic projects and government meetings. Focused engagement will occur with key groups including Hispanic, Asian (Korean, Filipino, Japanese, Chinese, and Vietnamese), veterans, seniors, and youth populations in Marina.
3. Create accessible informational materials (postcards, flyers, presentations, etc.), that are language and culturally appropriate and disseminate these materials at City Council meetings, public events, workshops, and places in the community with high foot traffic throughout the two years of the project.
4. Develop the next generation of community leaders bringing new residents into the process and allowing all residents to help set the overall direction of the General Plan.

5. Conduct engagement focused on residents living identified Disadvantaged Communities, as defined by Senate Bill 1000. These are communities that are low income and have disproportionate environmental health and pollution impacts.
6. Allow the community to provide substantive input on key components of the General Plan including the vision and guiding principles, the pattern and intensity of allowed land uses, and issues relevant to the City such as transportation, economic development, open space, arts and culture, health, and other policy issues.

Sampling Plan

This sampling plan identifies diverse populations that live in the city of Marina. Essentially, it is a demographic profile that informs our engagement strategy, which aims to be sensitive to the socio-cultural needs of residents through the engagement process.

TARGET GROUP	*MARINA STATISTICS*	*CHALLENGES*	*ACTIVITIES*	*POTENTIAL PARTNERS / EVENTS*
Monolingual Spanish Speakers	• *28% of Marina's population is Hispanic*	• *Language barriers* • *Lack of trust in process* • *Limited involvement in civic activities*	• *Interpretation services at workshops* • *In-language materials* • *1-1 meetings with community leaders* • *Pop-ups at Latin American grocery stores.*	• *Center for Community Advocacy* • *Conduct outreach at planned cultural events* • *Pop ups at Latino grocery stores*
Renters	• *59% of households are renter-occupied*	• *Limited involvement in civic activities*	• *Targeted outreach at tracts with majority rental units* • *Coordinating with multifamily building owners to distribute materials*	• *Tenant's right and renter's advocacy groups*
College Students	• *1,328 students*	• *Limited time* • *Lack of interest in civic engagement.* • *Temporary residence status in Marina (if at CSUMB)*	• *Partner with on-campus departments of Public Policy + Environmental Science for pop ups and flyers*	• *CSUMB Geography + Environmental Studies* • *CSUMB Office of Planning*

Households with Children	• *26% of households have children under the age of 18*	• *Hard for parents to get involved* • *Youth not normally included in process*	• *Hold focus groups with youth* • *Targeted outreach in partnership with the Youth Center and Marina Library*	• *Marina Youth Center* • *Pop ups at Marina Branch Library* • *Monterrey Peninsula Unified School District*
Asian Americans (largest groups are Korean + Vietnamese)	• *14% of Marina's population identifies as Asian; (approx. 7% Korean & 7% Vietnamese)*	• *Language barriers* • *Lack of trust in process* • *Limited involvement in civic activities*	• *Interpretation services at workshops* • *In-language materials* • *Targeted media outreach* • *Pop-ups at Asian American grocery stores + businesses*	• *Korean American Assoc. of Monterey, San Benito, & SC* • *Filipino-American Community Club of Monterey Pen.* • *Pop-ups at markets serving Asian community* • *Conduct outreach at cultural events*
Seniors	• *14% of Marina's population is composed of seniors*	• *Access to meetings, both virtual and in-person*	• *Pop-ups at spaces serving seniors* • *Stakeholder meetings* • *Postcards in food distribution bags*	• *Marina Senior Center* • *Marina Senior Association*
Veterans	*[unknown]*	• *Finding groups of veterans to engage*	• *Meetings with Veteran groups*	• *To be added following stakeholder interviews*

Data Source: American Community Survey, 2020

ENVIRONMENTAL JUSTICE-RELATED DATA

Senate Bill 1000 requires that local governments to identify environmental justice communities (called "disadvantaged communities" or DACs) in their jurisdictions, address environmental justice in their general plans, and conduct focused engagement efforts on topics related to environmental justice. As part of the SB 1000 process, R+A will work with the City to identify DACs and then develop targeted outreach activities to reach residents in these communities to discuss environmental justice issues. A preliminary assessment of DAC found that the following census tracts are likely DACs:

Census tract	*Intersections*	*Population*	*Ces4.0 percentile*	*High pollution area?*	*Low-income with pollution?*	*Federal DAC?*
014201	*Carmel Ave- Patton Pkwy- Del Monte Blvd- Salinas Ave*	*5414*	*49*	*Yes*	*No*	*No*

014202	*Reservation Rd- Carmel Ave- Monte Blvd - Salinas Ave*	*4411*	*51*	*Yes*	*Yes*	*Yes*

Outreach + Communication Tools

The following tools will be used to communicate with the public at key intervals during the project. The type of communication is generally divided into two categories: 1) updates on the project; and 2) invitations to specific events or activities.

- **Stakeholder Introduction Calls.** R+A staff will call all the stakeholders identified in the stakeholder list to provide an introduction to the project and discuss how to reach out to the stakeholder's constituents through their networks.
- **Email database.** R+A will create a "Mail Chimp" database for the project. This will be populated from existing city email databases and updated through the project. The email database will be the primary communication tool and will be used to inform the community about events and project initiatives. The following steps will be followed to develop and implement this communication tool.
    - Collect email databases from the City. The city will provide these to R+A in an excel format.
    - Prepare MailChimp Database and populate with City email lists.
    - Send introductory email to database asking residents to "opt out" if they don't want to receive General Plan-related emails.
    - Create a "sign up" widget for the project website that links to the MailChimp database. This will allow individuals to sign up for updates.
    - Send regular updates to the database throughout the project, including before every event.
- **Email List for Local Groups and Organizations.** Through the stakeholder identification and interview process, R+A will identify local groups and organizations with ties to the community. We will identify key contacts and ask these individuals to forward project-related announcements to their constituents. This will occur before each major community event.
- **Social media.** R+A will work with City staff to develop and manage social media accounts for Facebook, Instagram and NextDoor. R+A will be responsible for developing the content and city staff will post to social media. Postings will generally occur 2 weeks and a few days before each event. As needed, R+A can create Facebook and Instagram ads to announce public meetings. This cost will be from the project contingency budget.

- **Project website.** R+A will create a basic project website that contains project information, including background information, meeting notices and meeting summaries. R+A recommends that the web address for the website be either www.marina2045.com or www.marinagp2045.com R+A staff will develop the website and provide the city with access so that but R+A and city staff every can provide regular updates.
- **General Plan Initiation Postcard.** To announce the initiation of the Marina GPU process, the project team will develop a project postcard with information about the General Plan and announcing the preliminary engagement activities. R+A will use a mailing service to send the flyer to all addresses within the City of Marina. This will be billed to the on-call engagement task as it is not part of the core engagement activities. (Note that our current proposal is to send a postcard out at the beginning of the project only - as the on-call engagement or contingency task allows, R+A can create and send additional citywide mailers.) The engagement activities that will be announced in this postcard will be:
    - Project website
    - "General Plan 101" Kick-Off Educational Forum
    - Issues/Opportunities workshop
    - Issues/Opportunities survey
- **Project Information Factsheet.** At the beginning of the project, R+A will develop a brief factsheet with information about what a General Plan is, who is impacted, why it matters and how to get involved. R+A will rely on the City and community groups to distributed this to the public at pop-up workshops and other locations. City staff will be responsible for identifying and distributing the Factsheet. R+A can be responsible for printing the factsheet within the core budget or the on-call task.
- **Flyers.** R+A will develop a flyer for each round of engagement activities (ie, visioning, alternatives, etc.) and can print copies of flyers within the core budget or the on-call task. Paper flyers and posters will be distributed and posted prior to major engagement activities. Possible locations are identified in Section 7.
- **Press releases.** Media releases will be used to inform the media about key General Plan activities such as workshops or the release of major documents. This task can either be handed by city staff or R+A using the on-call budget.
- **Ads in newspapers.** The primary activity for advertising in local newspapers will be the free announcement section in the Monterey County Weekly and any other papers that include announcements about local meetings. At minimum, we recommend including ads before each workshop. This task will be completed by City staff.
- **Announcements at City Council and Planning Commission meetings.** City staff should provide monthly updates and announcements will be provided to elected and appointed officials and broadcast to the community at large. The purpose will be to keep these bodies

updated and engaged in the process and to reach residents and other stakeholder in attendance.

- **Translation and interpretation.** The project team acknowledges that the City of Marina is a diverse and multi-cultural city. In accordance with the goal of conducting an inclusive engagement process, the project team will translate engagement materials and surveys to Spanish.
- **Branded materials (bags, pens, coasters, etc.).** OPTIONAL: These can be produced by the team during the initial outreach phase.

Engagement Activities

The section below outlines the engagement activities agreed upon within the Project Scope of Work.

- **General Plan Advisory Committee.** City staff and R+A will form and convene an approximately 11-member GPAC to serve as a sounding board for engagement and content. Half of the meetings will be in person and half will be virtual (for the consultants). R+A will be responsible for developing the content for each meeting, including presentations and materials. City staff will be responsible for all logistics and communication with the GPAC. The following is the general flow of the meetings. Additional meetings can be added as part of the on-call engagement task or the contingency budget.
    - Introduction, engagement plan, startup tasks (1 meeting)
    - Issues and opportunities (1 meeting)
    - Existing conditions (1 meeting) covering subjects such as land use/Specific Plans/zoning; climate/sustainability/SLR; health and Environmental Justice
    - Vision and guiding principles (2 meetings)
    - Alternatives development and selection (2 meetings)
    - Policy development on key topics (1 meeting)
    - GP and EIR review (1 meeting)
- **Stakeholder interviews.** The R+A Team (including KHA, Rincon and EPS) will conduct 10+ stakeholder interviews at the beginning of the project. The list of stakeholders is in a separate document and will be decided with city staff. R+A will also meet with 2 Environmental Justice Organizations to better understand the EJ issues in the community. *(Note: The Stakeholder Interviews have been initiated by the General Plan Team as of March 21, 2023.)*
- **Educational Forums.** If needed the team can organize one or a series of workshops that inspire the City to this about its future and/or provide background information on the project. Preliminary, one educational forum is planned to provide background on General Plans.

- **Educational videos.** The R+A Team will produce a series of educational videos that can be posted online. These will be a combination of recordings from educational forums and workshops and videos specifically created to provide more content on the General Plan. The topic-specific videos will be accompanied by a brief survey to obtain community ideas about the topic.
    - General Plan Overview (presentation from the Jan 25 CC/PC joint study session).
    - Land use and urban design
    - Transportation and mobility
    - Environmental justice
    - Economic development
    - Parks, open space, and conservation/habitat
    - Infrastructure, with a focus on water (potential). Note that we will need assistance from the water providers and city staff on this presentation.
- **Community workshops.** R+A will organize 6 interactive workshops at key points in the process as listed below. R+A will be responsible for the following: workshop approach and content, developing materials, printing materials, preparing outreach materials to announce the workshops, providing up to 3 staff members to facilitate and run the meeting, and preparing summary notes. City staff will be responsible for meeting logistics, providing staff support and small group facilitators, and timely review of materials. (Note that Workshop 5 will be billed to On-Call Engagement)
    - Workshop 1: Educational Workshop on "What is a General Plan?"
    - Workshop 2: Issues and Opportunities and Vision/Guiding Principles
    - Workshop 3: Environmental Justice Workshop
    - Workshop 4: Develop Land Use and Mobility Alternatives
    - Workshop 5: Select Preferred Direction
    - Workshop 6: Policy Direction on Key Topics
    - Workshop 7: Draft General Plan Open House
- **Pop-Up Workshops.** R+A and city staff will jointly prepare and implement four rounds of pop-up workshops. The phases are below. This engagement activity is not part of the core scope of work so will be billed to the on-call engagement task. In each phase, R+A and city staff will decide upon a division of labor.
    - **Inform/educate.** Preliminary pop-ups to inform the community about the General Plan. Materials distributed will include fact sheet, sign up for email database, and a brief survey (continuation of existing city activities).
    - **Visioning.** Collection of information on issues/opportunities, community perspectives, vision for the future.
    - **Land use alternatives.** This series of pop-up will be to review the alternatives for the city and/or specific areas of the city.

    - **Policy development.** These pop-ups will be for a series of topic-specific pop-ups and/or for input on questions related to specific GP topics.
- **Surveys/Feedback Forms.** R+A will prepare and summarize surveys using SurveyMonkey or other tools. The following are the topics and timing of the surveys.
    - **Existing Conditions Mini Surveys.** Series of brief (3-4 question) surveys to accompany the topic-specific educational videos.
    - **Issues/Opportunities/Vision.** Questions about community preferences.
    - **Alternatives Development (if needed)** Interactive survey to identify potential land uses and development intensities.
    - **Land use alternatives.** Feedback on land use alternatives, including uses and specific concepts for growth areas.
    - **Policy Framework (if needed).** Review of topic-specific policy framework surveys. This could be to review specific content or a prioritization exercise.
    - **Draft General Plan.** Feedback form on the Draft General Plan.
- **Environmental Justice Policy Focus Group (2).** As part of the EJ Element development, R+A will conduct 2 focus groups with individuals and organizations identified during the engagement process to obtain feedback on policy direction.
- **Youth Engagement.** To be determined following meetings with school district representatives, likely to include listening sessions and coordination with civics-oriented classes and clubs.

The following table describes the outreach activities that will be associated with each of the engagement activities listed above.

Engagement Activity	Outreach Activity and Timing
GPAC	○ Email (Friday before each GPAC meeting)
Stakeholder Interviews	○ None (initial introductory email from the City)
Educational Forums	○ Email 2 weeks and 2 days before each ○ Social media (2 weeks and 2 days before each) ○ Emails to local groups (1 week before) ○ Press release (2 weeks before)
Educational Videos	○ Email blast when each is published on the website ○ Social media when each is published on the website
Community Workshops	○ Email 2 weeks and 2 days before each ○ Social media (2 weeks and 2 days before each) ○ Emails to local groups (1 week before) ○ Press release (2 weeks before) ○ Ads in newspapers (2 weeks before)

	○ Flyers (distributed starting 3 weeks before each workshop or group of workshops)
Pop-Up Workshops	○ None (intended for people who are not part of the process)
Surveys	○ Email 2 weeks and 2 days before each one begins ○ Social media (2 weeks and 2 days before each) ○ Email reminder 1 week before close

Note: The project website will be updated regularly with all of the above activities except for the stakeholder interviews and pop-up workshops.

Tracking

The Team will track participation throughout the update process based on the metrics identified below. The metrics are divided into 2 categories: demographics and number of participants.

- **Number of participants.**
  - Number of respondents to surveys
  - Number of people participating in each event (workshops, meetings, pop-ups, webinars), utilizing sign in sheets
  - Number of people listed in the General Plan database
  - Website activity
  - Social media touches
  - "Reach" of various outreach activities (i.e., readership of newspapers when ads are run; number of people receiving email communications from community groups, etc.)

- **Demographics.** Where possible, demographic data will be collected via questions provided in online surveys, live polling, website views, and sign-in sheets. The following information will be tracked:
  - Resident/business owner/other
  - Age (youth, seniors, families)
  - Ethnicity (especially Hispanic and Asian participation)
  - Language spoken at home
  - Renters/owners
  - Length of tenure in the City
  - Location of home or businesses (by Council District)

Potential Locations for Outreach

Identifying spaces within the City of Marina where residents of all ages visit is key to conducting inclusive outreach. Places with high foot traffic and high numbers of visitors with established programming are strategic in promoting the Marina GPU process. Based on preliminary research and input with City of Marina staff, the Project team has identified the following spaces in the community to conduct pop-ups, co-host events, or sharing flyers.

TYPE	PLACE	POTENTIAL ACTIVITY
Shopping Centers	• *Marina Shopping Center* • *Lucky's* • *Walmart Super Center* • *Asian Market of Marina* • *El Rancho Market*	*Post flyers and make an ask to hand out Marina GPU information outside of the supermarket*
Restaurants, Bars, and Cafes	• *Coffee Mia Brew Bar + Café* • *The Otter's Den* • *English Ales Brewery* • *LOCAL. Eats. Merch. Vibes*	*Post flyers about upcoming GPU events. Partner to co-host workshops at businesses with larger capacity.*
Community Spaces	• *Marina Library* • *Veterans Transition Center* • *CSUMB Student Union* • *Marina Senior Center* • *Marina Teen Center* • *Marina Farmer's Market*	*Conduct pop-ups, and interactive + informational activities.*
Events and Activities	• *Marina Farmers Market* • *Blue Zones community meetings and events* • *Sustainable Marina events* • *Other events that occur throughout the City during the year*	*Attend events for pop-ups and to hand out information on how to get involved in the General Plan update process.*

Key Stakeholders

This section identifies key stakeholders who will serve as experts on the community to partner with regarding the Marina GPU process, with activities ranging from direct interviews and conversations, information sharing, and direction. Based on preliminary research and input with City of Marina staff, the Project team has identified the following stakeholders to reach out to.

CATEGORY	STAKEHOLDERS
Environment, Sustainability, and Open Space	• *Land Watch Monterey County* • *Monterey Parks and Rec* • *Fort Ord Recreation Trails (FORT) Friends* • *Fort Ord Environmental Justice Network* • *Citizens for Sustainable Marina* • *Keep Fort Ord in the Wild* • *Monterey Peninsula Regional Park District*
Education	• *CSU Monterey Bay* • *Monterey Bay Peninsula School District* • *Marina High School* • *UC Santa Cruz Monterey Bay Education Science and Tech Center*
Business and Tourism	• *Monterey County Chamber of Commerce* • *Monterey County Hospitality Association* • *City of Marina Chamber of Commerce* • *Monterey Farm Bureau* • *Marina Municipal Airport*
Ethnic	• *Asian Communities of Marina* • *Korean American Assoc. of Monterey, San Benito, & SC* • *Filipino-American Community Club of Monterey Pen.*
Housing	• *Monterey Bay Economic Partnership* • *Center for Community Advocacy* • *Monterey County Association of Realtors* • *Housing Resource Center (HRC) of Monterey County* • *United Way of Monterey County*
Transportation	• *Monterey-Salinas Transit* • *Transportation Agency for Monterey County* • *Caltrans District 5*
Public Agencies	• *Marina Coast Water District* • *Monterey One Water* • *Local Agency Formation Commission of Monterey County (LAFCO)*
Community Interests	• *Marina Senior Association* • *Marina Rotary Club* • *The Marina Foundation* • *Arts Council for Monterey County*

Initial Engagement Schedule

The following is the engagement schedule for the first few months of the project.

January 2023

- Final Logo and Branding
- Develop stakeholder lists
- Set up email database

February 2023

- *Continue city-led pop-ups*
- Initial email blast
- Develop project website wireframe & content
- Draft Project Fact Sheet
- GPAC Formation (finalize after Council on 2/22)

March 2023

- Final Engagement Plan
- Conduct stakeholder interviews
- Finalize Project Fact Sheet
- Develop postcard mailer
- Send postcard mailer
- Launch website
- Prepare summary of stakeholder interviews
- Meetings with EJ organizations
- Launch Issues and Opportunities Survey

April 2023

- "What is a GP" Educational Forum (virtual)
- GPAC Meeting #1: Initiation
- Develop and publish educational videos on key existing conditions topics

May 2023

- GPAC Meeting #2: Issues and Opportunities
- Major in-person engagement push
    - Pop-ups on Issues and Opportunities
    - Workshop #1: Issues and Opportunities in-person charrette
    - Continued stakeholder and EJ meetings

March 29, 2023 Item No. **13(b)**

Honorable Mayor and Members of the Marina City Council

City Council Meeting of April 4, 2023

CITY COUNCIL CONSIDER ADOPTING RESOLUTION NO. 2023-, AWARDING THE IMJIN PARKWAY WIDENING PROJECT TO MONTEREY PENINSULA ENGINEERING OF MARINA, CALIFORNIA FOR THE AMOUNT OF $27,782,058.47, AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT DOCUMENTS AND ALL CHANGE ORDERS ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY, AND AUTHORIZING THE FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES

REQUEST:

It is requested that the City Council consider:

1. Adopting Resolution No. 2023-, awarding the Imjin Parkway Widening Project to Monterey Peninsula Engineering of Marina, California for the amount of $27,782,058.47, and;
2. Authorizing the City Manager to execute contract documents and all change orders on behalf of the City subject to final review and approval by the City Attorney, and;
3. Authorizing the Finance Director to make necessary accounting and budgetary entries.

BACKGROUND:

At the regular meeting of October 4, 2016, the City Council adopted Resolution No. 2016-142, Approving agreement between City of Marina and Kimley-Horn and Associates, Inc. of Salinas, California, to provide engineering services for the widening of Imjin Parkway in the amount of $2,173,520. The contract agreement has received two amendment approvals through Council Resolution No. 2019-14 and No. 2019-115.

At the regular meeting of June 15, 2017, the Public Works Commission adopted Resolution No. 2017-05(PW), receiving information on the City's Imjin Parkway Widening Project 30% Design.

At the regular meeting of September 18, 2018, the City Council adopted Resolution No. 2018-111, approving a Senate Bill 1 Local Partnership Program Baseline Agreement (SB1 LPP) to receive grant funding amounting to $19 million for the Marina-Salinas Multimodal Corridor – Imjin Parkway Widening Project.

At the regular meeting of November 19, 2019, the City Council approved Resolution 2019-124, approving a Measure X Regional Funding Agreement with the Transportation Agency for Monterey County (TAMC) to receive funding for the Marina-Salinas Multimodal Corridor-Imjin Parkway Widening Project.

At the regular meeting of the California Transportation Commission of October 13-14, 2021, the Commission approved the allocation for locally administered Senate Bill 1 Local Partnership Program funds for the construction of the project.

At the regular meeting of November 2, 2021, the City Council approved Resolution No. 2021-116, approving advertising and call for bids for the Imjin Pkwy Widening Project.

At the regular meeting of November 15, 2022, the City Council approved Resolution 2022-136, approve Amendment No.1 to the Measure X Regional Funding Agreement with the Transportation Agency for Monterey County (TAMC) to receive funding for the Marina-Salinas Multimodal Corridor – Imjin Parkway Widening Project.

At the regular meeting of March 23-24, 2023, the California Transportation Commission approved the TAMC allocation of $1.25 million of Senate Bill 1 Local Partnership Program funding to the Imjin Parkway Widening Project.

ANALYSIS:

On December 15, 2022, City staff advertised the Project with an Engineer's construction contract estimate of $29-34 million. On January 31, 2023, sealed bids were received, opened and publicly read for the Imjin Parkway Widening Project.

Five (5) bids were received as follows:

Monterey Peninsula Engineering	$27,782,058.47 (Lowest Bid)
Graniterock Construction Company	$28,211,282.39
DeSilva Gates Construction	$29,564,926.68
Teichert Construction	$30,956,260.77
Granite Construction Company	$33,968,171.15

The lowest bid total is $27,782,058.47 from Monterey Peninsula Engineering (MPE) of Marina, California. The cost estimate for City staff construction management, inspection, material testing, biological surveying, construction design support, administration, contingency and project closeout is $11,960,000. Therefore, the total project cost amounts to $39,742,058.47.

On February 8, 2023, staff received a bid advisory notice via email from the Foundation for Fair Contracting organization (FFC) requesting that the City reject MPE's bid proposal **("EXHIBIT A")**. Per the City's Municipal code and project contract documents, FFC as a non-profit does not meet the requirements to submit an official bid protest. The allegations of non-responsiveness were reviewed by the City Attorney who found no validation to reject MPE's bid proposal. The contractor also provided the City with a response to the bid advisory notice **("EXHIBIT B")**. After consideration of the information provided, staff has found the bid to be responsive and find no issues concerning MPE's responsibility to perform the work of the contract **("EXHIBIT C")**. The construction contract for the project requires that state prevailing wages be paid for the work performed. City's Construction Management consultant, Harris and Associates, will monitor compliance with prevailing wage laws for the duration of the project as part of their scope of work.

Consistent with SB1 and Measure X grant procedures, these grants will be reimbursed for project expenditures to the City. The City previously allocated $2 million in Public Facility Impact Fees (PFIF, Roadway) as part of the Fiscal Year 21/22 budget. These PFIF funds will be utilized to advance the payment of project costs prior to reimbursement. This project timeline is approximately two and a half years, and PFIF will be restored by the grant funds. It is currently estimated that $500,000 in project costs will be expended in Fiscal Year 22/23, with the remainder to be expended in Fiscal Years 23/24 and 24/25. Administering reimbursement with the grantor will be done on a quarterly basis or more frequently as deemed cost effective.

FISCAL IMPACT:

The total construction budget for the project is $40.5 million, funded with $20.25 million from the Local Partnership Program competitive grant; $18.25 million from Measure X; and $2 million from Public Facility Impact Fees (PFIF, Roadway).

Should the City Council approve this request, the City Finance Director will make all necessary accounting and budgetary entries to facilitate a short-term intrafund loan to the Capital Improvement Program Project EDR1808 – Imjin Pkwy Widening.

ENVIRONMENTAL:

California Environmental Quality Act (CEQA)

At the regular meeting of February 5, 2019, the City Council adopted Resolution No. 2019-11, adopting a mitigated negative declaration and mitigation monitoring program for the Imjin Parkway Widening Project. The Notice of Determination was filed with the State Office of Planning and Research and recorded with the Monterey County Recorders Office.

National Environmental Protection Act (NEPA)

In reviewing and approving projects under NEPA, Caltrans is the lead Agency in complying with all applicable federal environmental laws and with Federal Highway Administration's (FHWA) NEPA regulations, policies, and guidance, and is legally responsible and liable for the environmental decisions made on projects under NEPA Assignment. Caltrans has determined that this project is a Categorical Exclusion under 23 USC 327.

Incidental Take Permit (ITP)

The California Endangered Species Act (CESA) incidental take permit (ITP) has been issued by the California Department of Fish and Wildlife (CDFW) on December 12, 2022. All requirements set by the Permit and its Mitigation Monitoring and Reporting Program (MMRP) are currently underway, and staff are working with CDFW to finalize all protection measures and conditions prior to start of construction. The anticipated construction start date is June 2023.

CONCLUSION:

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

Respectfully submitted,

_____

Edrie Delos Santos, P.E.
Senior Engineer, Engineering Division
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. 2023-

A RESOLUTION OF THE CITY OF MARINA AWARDING THE IMJIN PARKWAY WIDENING PROJECT TO MONTEREY PENINSULA ENGINEERING OF MARINA, CALIFORNIA FOR THE AMOUNT OF $27,782,058.47, AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT DOCUMENTS AND ALL CHANGE ORDERS ON BEHALF OF THE CITY SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY ATTORNEY, AND AUTHORIZING THE FINANCE DIRECTOR TO MAKE NECESSARY ACCOUNTING AND BUDGETARY ENTRIES

WHEREAS, at the regular meeting of October 4, 2016, the City Council adopted Resolution No. 2016-142, Approving agreement between City of Marina and Kimley-Horn and Associates, Inc. of Salinas, California, to provide engineering services for the widening of Imjin Parkway in the amount of $2,173,520. The contract agreement has received two amendment approvals through Council Resolution No. 2019-14 and No. 2019-115, and;

WHEREAS, at the regular meeting of June 15, 2017, the Public Works Commission adopted Resolution No. 2017-05(PW), receiving information on the City's Imjin Parkway Widening Project 30% Design, and;

WHEREAS, at the regular meeting of September 18, 2018, the City Council adopted Resolution No. 2018-111, approving a Senate Bill 1 Local Partnership Program Baseline Agreement (SB1 LPP) to receive grant funding amounting to $19 million for the Marina-Salinas Multimodal Corridor – Imjin Parkway Widening Project, and;

WHEREAS, at the regular meeting of November 19, 2019, the City Council approved Resolution 2019-124, approving a Measure X Regional Funding Agreement with the Transportation Agency for Monterey County (TAMC) to receive funding for the Marina-Salinas Multimodal Corridor-Imjin Parkway Widening Project, and;

WHEREAS, at the regular meeting of the California Transportation Commission of October 13-14, 2021, the Commission approved the allocation for locally administered Senate Bill 1 Local Partnership Program funds for the construction of the project, and;

WHEREAS, at the regular meeting of November 2, 2021, the City Council approved Resolution No. 2021-116, approving advertising and call for bids for the Imjin Pkwy Widening Project, and;

WHEREAS, at the regular meeting of November 15, 2022, the City Council approved Resolution 2022-136, approve Amendment No.1 to the Measure X Regional Funding Agreement with the Transportation Agency for Monterey County (TAMC) to receive funding for the Marina-Salinas Multimodal Corridor – Imjin Parkway Widening Project, and;

WHEREAS, at the regular meeting of March 23-24, 2023, the California Transportation Commission approved the TAMC allocation of $1.25 million of Senate Bill 1 Local Partnership Program funding to the Imjin Parkway Widening Project, and;

WHEREAS, on December 15, 2022, City staff advertised the Project with an Engineer's construction contract estimate of $29-34 million. On January 31, 2023, sealed bids were received, opened and publicly read for the Imjin Parkway Widening Project, and;

WHEREAS, five (5) bids were received, opened and publicly read for the Imjin Pkwy Widening Project, and;

WHEREAS, the lowest bid total is $27,782,058.47 from Monterey Peninsula Engineering (MPE) of Marina, California. The cost estimate for City staff construction management, inspection, material testing, biological surveying, construction design support, administration, contingency and project closeout is $11,960,000. Therefore, the total project cost amounts to $39,742,058.47, and;

WHEREAS, on February 8, 2023, staff received a bid advisory notice via email from the Foundation for Fair Contracting organization (FFC) requesting that the City reject MPE's bid proposal ("Exhibit A"). Per the City's Municipal code and project contract documents, FFC as a non-profit does not meet the requirements to submit an official bid protest. The allegations of non-responsiveness were reviewed by the City Attorney who found no validation to reject MPE's bid proposal. The contractor also provided the City with a response to the bid advisory notice ("Exhibit B"). After consideration of the information provided, staff has found the bid to be responsive and find no issues concerning MPE's responsibility to perform the work of the contract ("Exhibit C"). The construction contract for the project requires that state prevailing wages be paid for the work performed. City's Construction Management consultant, Harris and Associates, will monitor compliance with prevailing wage laws for the duration of the project as part of their scope of work, and;

WHEREAS, consistent with SB1 and Measure X grant procedures, these grants will be reimbursed for project expenditures to the City. The City previously allocated $2 million in Public Facility Impact Fees (PFIF, Roadway) as part of the Fiscal Year 21/22 budget. These PFIF funds will be utilized to advance the payment of project costs prior to reimbursement. This project timeline is approximately two and a half years, and PFIF will be restored by the grant funds. It is currently estimated that $500,000 in project costs will be expended in Fiscal Year 22/23, with the remainder to be expended in Fiscal Years 23/24 and 24/25. Administering reimbursement with the grantor will be done on a quarterly basis or more frequently as deemed cost effective, and;

WHEREAS, the total construction budget for the project is $40.5 million, funded with $20.25 million from the Local Partnership Program competitive grant; $18.25 million from Measure X; and $2 million from Public Facility Impact Fees (PFIF, Roadway), and;

WHEREAS, should the City Council approve this request, the City Finance Director will make all necessary accounting and budgetary entries to facilitate a short-term intrafund loan to the Capital Improvement Program Project EDR1808 – Imjin Pkwy Widening, and;

WHEREAS, at the regular meeting of February 5, 2019, the City Council adopted Resolution No. 2019-11, adopting a mitigated negative declaration and mitigation monitoring program for the Imjin Parkway Widening Project. The Notice of Determination was filed with the State Office of Planning and Research and recorded with the Monterey County Recorders Office, and;

WHEREAS, in reviewing and approving projects under NEPA, Caltrans is the lead Agency in complying with all applicable federal environmental laws and with Federal Highway Administration's (FHWA) NEPA regulations, policies, and guidance, and is legally responsible and liable for the environmental decisions made on projects under NEPA Assignment. Caltrans has determined that this project is a Categorical Exclusion under 23 USC 327, and;

WHEREAS, the California Endangered Species Act (CESA) incidental take permit (ITP) has been issued by the California Department of Fish and Wildlife (CDFW) on December 12, 2022. All requirements set by the Permit and its Mitigation Monitoring and Reporting Program (MMRP) are currently underway, and staff are working with CDFW to finalize all protection measures and conditions prior to start of construction. The anticipated construction start date is June 2023.

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

1. Award the Imjin Parkway Widening Project to Monterey Peninsula Engineering of Marina, California for the amount of $27,782,058.47, and;
2. Authorize the City Manager to execute contract documents and all change orders on behalf of the City subject to final review and approval by the City Attorney, and;
3. Authorize Finance Director to make necessary accounting and budgetary entries.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 4th day of April 2023, by the following vote:

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

_____
Bruce Delgado, Mayor

ATTEST:

_____
Anita Sharp, Deputy City Clerk

VIA EMAIL – bmcminn@cityofmarina.org

February 9, 2023

Brian McMinn
City of Marina
211 Hillcrest Avenue
Marina, CA 93933

RE: BID ADVISORY

Bidder:	**Monterey Peninsula Engineering**
Awarding Agency:	**City of Marina**
Project:	**Imjin Parkway Widening Project (RSTPL-5416(011))**
FFC Case No.:	**1089SJ**

Dear Mr. McMinn:

The Foundation for Fair Contracting (FFC) is a nonprofit organization which has been serving the public interest since 1985. The objective of the FFC is to monitor compliance with prevailing wage laws pertaining to the construction industry, including informing and educating industry stakeholders. Unbalanced bids raise questions in regard to performance and compliance with the rules and regulations for the payment of prevailing wages, and the safety and well-being of the workforce. It further opens the question of excessive future change orders, the fairness to and rights of other bidders in the bidding process, and the intent of the bidding process in general.

In deference to all bidders and in order for the public interest to best be served, please enter this formal bid advisory against the above-noted contractor as a matter of public record. We respectfully request that Monterey Peninsula Engineering (MPE) bid be rejected for the following reasons:

- **ONGOING VIOLATIONS OF PREVAILING WAGE LAWS RESULTING IN WAGE THEFT**
  MPE has numerous infractions/violations which have resulted in willful circumvention of the Laws and Regulations Governing the Payment of Prevailing Wages, including, but not limited to, violations resulting in wage theft and non-compliance with apprenticeship laws. MPE has engaged in this pattern of unlawful activity on various public works prevailing wage projects. Civil Wage and Penalty Assessments have been issued to MPE by the State of California, Division of Labor Standards Enforcement (DLSE), Labor Commissioner's office. We have provided supporting documentation for your review.

  Furthermore, MPE is currently under investigation by our offices and the State of California, Division of Labor Standards Enforcement (DLSE), Labor Commissioner's office in connection with issues provided below. We have provided supporting documentation for your review.

  - Misclassifications resulting in underpayments.
  - Failure to comply with overtime requirements.

- Failure to comply with apprenticeship requirements.
- Failing to report all workers on certified payrolls.

- **FAILURE TO COMPLY WITH WORKFORCE DEVELOPMENT AND FORMAL APPRENTICESHIP PROGRAMS**
  MPE has not made a good faith effort to participate and invest in Local Workforce Development, nor have they participated in local hiring of workers in the community through formal and recognized pre-apprenticeship programs and formal apprenticeship programs for specific apprenticeable crafts. They have failed to request, employ, train, and pay the proper prevailing wages to apprentices.

- **LITIGATION AND PRIVATE ATTORNEY GENERAL ACT (PAGA) LAWSUITS**
  MPE has history of litigation and PAGA related lawsuits filed with the State of California, brought forth from workers who have been victims of wage theft. Private litigation and PAGA supporting documentation are attached for your review.

Please contact our office with questions, comments, or clarifications.

Sincerely,

Jesse Jimenez
Executive Director

Case: 1089SJ

cc: City of Marina – Mayor and Councilmembers
Bruce Carlos Delgado – Email: bdelgado62@gmail.com
Cristina Medina Dirksen – Email: cmedinadirksen@cityofmarina.org
Brian McCarthy – Email: bmccarthy@cityofmarina.org
Kathy Y. Biala – Email: kybiala@icoud.com
Liesbeth Visscher – Email: councilmember_visscher@cityofmarina.org

630SJ

Labor Commissioner, State of California Department of Industrial Relations Division of Labor Standards Enforcement Bureau of Field Enforcement- Public Works	Gavin Newsom, Governor
DATE: November 27, 2019	In Reply Refer to Case No: 40-56394/148

RECEIVED
DEC - 2 2019
Foundation for Fair Contracting

CIVIL WAGE AND PENALTY ASSESSMENT

Awarding Body City of Marina	Work Performed in County of Monterey
Project Name Del Monte Blvd & Beach Blvd Rd Improvement Project	Project No. T129
Prime Contractor Monterey Peninsula Engineering A Partnership, a general partnership; MONTEREY PENINSULA ENGINEERING and MPE MANAGEMENT GROUP, each individually and as general partners of Monterey Peninsula Engineering A Partnership, a general partnership	
Subcontractor	

After an investigation concerning either the payment of wages to workers employed in the execution of the contract for the above-named public works project or compliance with the apprenticeship standards found in Labor Code section 1777.5, or both, the Division of Labor Standards Enforcement (the "Division") has determined that violations of the California Labor Code have been committed by the contractor and/or subcontractor identified above. In accordance with Labor Code section 1741, the Division hereby issues this Civil Wage and Penalty Assessment.

The nature of the violations of the Labor Code and the basis for the assessment are as follows:

Wage Violations:

Violation of Labor Code §1771, 1774: Failure to report all hours worked on the certified payroll records; Failure to correctly classify and pay workers pursuant to the scope of work performed; Failure to pay Saturday worked at the required Saturday rate. Violation of Labor Code §1815: Failure to pay overtime worked at the required overtime rates. Violation of Labor Code §1777.5: Failure to make training fund contributions for the unreported/misclassified hours.

Apprenticeship Violations:

Violation of Labor Code §1777: Failure to provide contract award information in a timely manner.

The attached Audit Summary further details the basis for this Assessment and itemizes the calculation of wages and penalties due under Labor Code sections 1775 and 1813.

The Division has determined that the total amount of wages due is: $15,898.00

The Division has determined that the total amount of penalties assessed under Labor Code sections 1775 and 1813 is: $20,815.00

The Division has determined that the amount of penalties assessed under Labor Code section 1777.7 is: $160.00

The Division has determined that the amount of penalties assessed under Labor Code section 1776 against Monterey Peninsula Engineering A Partnership is: $0.00

Please refer to page 5 for specific withholding obligations pertaining to these amounts.

STATE LABOR COMMISSIONER

By _____
Dina Morsi
Deputy Labor Commissioner II

PW 33 (Revised - 7/2013)

Notice of Right to Obtain Review - Formal Hearing

In accordance with Labor Code Section 1742, an affected contractor or subcontractor may obtain review of this Civil Wage and Penalty Assessment by transmitting a written request to the office of the Labor Commissioner that appears below within 60 days after service of the assessment.

To obtain a hearing, a written Request for Review must be transmitted to the following address:

State of California - Labor Commissioner
Civil Wage and Penalty Assessment Review Office
PO Box 255809
2801 Arden Way
Sacramento, CA 95825

A Request for Review either shall clearly identify the Civil Wage and Penalty Assessment from which review is sought, including the date of the assessment, or it shall include a copy of the assessment as an attachment, and shall also set forth the basis upon which the assessment is being contested. In accordance with Labor Code section 1742, the contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Commissioner at the hearing within 20 days of the Labor Commissioner's receipt of the written Request for Review.

Failure by a contractor or subcontractor to submit a timely Request for Review will result in a final order which shall be binding on the contractor and subcontractor, and which shall also be binding, with respect to the amount due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. Labor Code section 1743.

In accordance with Labor Code section 1742(d), a certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the State against the person assessed in the amount shown on the certified order.

(continued on next page)

Opportunity for Settlement Meeting

In accordance with Labor Code section 1742.1(c), the Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of this Civil Wage and Penalty Assessment, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking a hearing as set forth above under the heading Notice of Right to Obtain Review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. This opportunity to timely request an informal settlement meeting is in addition to the right to obtain a formal hearing, and a settlement meeting may be requested even if a written Request for Review has already been made.

Requesting a settlement meeting, however, does not extend the 60-day period during which a formal hearing may be requested.

A written request to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding this assessment must be transmitted to Dina Morsi at the following address:

State of California - Department of Industrial Relations
Division of Labor Standards Enforcement - Public Works Unit
7718 Meany Avenue
Bakersfield, CA 93308

Payment of Civil Wage and Penalty Assessment

Payment of the assessed wages and/or penalties must be made by check or money order payable to the Division of Labor Standards Enforcement and mailed to the following address along with a copy of this Civil Wage and Penalty Assessment:

State of California - Department of Industrial Relations
Division of Labor Standards Enforcement - Cashiering Unit
2031 Howe Avenue, Suite #100
Sacramento, CA 95825

(continued on next page)

Liquidated Damages

In accordance with Labor Code section 1742.1(a), after 60 days following the service of this Civil Wage and Penalty Assessment, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages in an amount equal to the wages, or portion that still remain unpaid. If the assessment subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor or subcontractor demonstrates to the satisfaction of the Director of the Department of Industrial Relations that he or she had substantial grounds for believing the assessment or notice to be an error, the Director shall waive payment of the liquidated damages.

Notwithstanding the above, in accordance with Labor Code 1742.1(b), there shall be no liability for liquidated damages if the full amount of the assessment or notice, including penalties, has been deposited with the Department of Industrial Relations, within 60 days following service of the Assessment or Notice, for the Department to hold in escrow pending administrative and judicial review. The Department shall release such funds, plus any interest earned, at the conclusion of all administrative and judicial review to the persons and entities who are found to be entitled to such funds.

Deposits must be made by check or money order payable to the Department of Industrial Relations with a letter and a copy of the Civil Wage and Penalty Assessment and mailed to:

Department of Industrial Relations
Accounting - Cashiering Unit
P.O. Box 420603
San Francisco, CA 94142

The Amount of Liquidated Damages Available Under this Assessment is: **$15,898.00**

(continued on next page)

Statutory Withholding Obligations

1. Awarding Body Withholding Obligations

In accordance with Labor Code section 1727(a), before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom all amounts required to satisfy this Civil Wage and Penalty Assessment. The amount required to satisfy this Civil Wage and Penalty Assessment shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

The amount which must be withheld and retained by the awarding body pursuant to this Civil Wage and Penalty Assessment is:

Wages Due:	$15,898.00
Penalties Due Under Labor Code sections 1775 and 1813:	$20,815.00
Penalties Due Under Labor Code section 1777.7:	$160.00
Penalties Due Under Labor Code sections 1776:	$0.00
Total Withholding Amount:	**$36,873.00**

2. Prime Contractor Withholding Obligations:

In accordance with Labor Code section 1727(b), if the awarding body has not retained sufficient money under the contract to satisfy this Civil Wage and Penalty Assessment based on a subcontractor's violations, the contractor shall, upon the request of the Labor Commissioner, withhold sufficient money due the subcontractor under the contract to satisfy the assessment and transfer the money to the awarding body. This amount shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

☐ **If this box is checked,** the Labor Commissioner hereby requests that the prime contractor withhold the following amount from money due the subcontractor and transfer the money to the awarding body to satisfy this assessment:

Wages Due:	$15,898.00
Penalties Due Under Labor Code sections 1775 and 1813:	$20,815.00
Penalties Due Under Labor Code section 1777.7:	$160.00
Penalties Due Under Labor Code sections 1776:	$0.00
Total Withholding Amount:	**$36,873.00**

Distribution:

Awarding Body
Surety(s) on Bond
Prime Contractor
Subcontractor

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

CERTIFICATION OF SERVICE BY MAIL
(C.C.P. 1013a) OR CERTIFIED MAIL

I, Dina Morsi, do hereby certify that I am a resident of or employed in the County of Kern, over 18 years of age, and not a party to the within action, and that I am employed at and my business address is:

Division of Labor Standards Enforcement
Bureau of Field Enforcement- Public Works Unit
7718 Meany Avenue
Bakersfield, CA 93308

On November 27, 2019, I served the within: (1) Civil Wage and Penalty Assessment by placing a true copy thereof in an envelope addressed as follows:

City of Marina 211 Hillcrest Ave. Marina, CA 93933 Daniel Paolini	Monterey Peninsula Engineering A Partnership 192 Healy Ave. Marina, CA 93933 Bartolo James Bruno	The Continental Insurance Company Care of: C T Corporation System 818 West Seventh St. Ste. 930 Los Angeles, CA 90017
Foundation for Fair Contracting 3807 Pasadena Ave., Suite 150 Sacramento, CA 95821 Arturo Sainz		

and then sealing the envelope and with postage and certified mail fees (if applicable) thereon fully prepaid, and then depositing it in the United States mail in Bakersfield by:

- [X] Ordinary first class mail
- [X] Certified mail
- [ ] Registered mail

I certify under penalty of perjury that the foregoing is true and correct

Executed on November 27, 2019, at Bakersfield, County of Kern, California

SIGNATURE

STATE CASE NO.
40-56394/148

PW 34 (Revised - 4/2002)

From: Rivera, Lori@DIR <LRivera@dir.ca.gov>
To: 'eva4ffc@aol.com' <eva4ffc@aol.com>
Subject: 40-38903 CWPA
Date: Mon, Mar 9, 2015 9:09 am
Attachments: 40-38903 CWPA.pdf (4367K)

50855

RECEIVED
MAR 09 2015
Foundation for
Fair Contracting

Lori R Rivera
Deputy Labor Commissioner I
Public Works Compliance Monitoring & Enforcement Unit

STATE OF CALIFORNIA
Department of Industrial Relations
DIVISION OF LABOR STANDARDS ENFORCEMENT
7718 Meany Ave
Bakersfield, CA 93308
Phone 661-587-3071 Fax 661-587-3081
lrivera@dir.ca.gov

Labor Commissioner, State of California
Department of Industrial Relations
Division of Labor Standards Enforcement
Bureau of Field Enforcement- Public Works
7718 Meany Ave
Bakersfield, CA 93308
TEL: 661-587-3071 FAX: 661-587-5081, lrivera@dir.ca.gov

Edmund G. Brown Jr., Governor

DATE:	In Reply Refer to Case No:
March 9, 2015	40-38903-522

CIVIL WAGE AND PENALTY ASSESSMENT

Awarding Body	Work Performed in County of
City of Pacific Grove	Monterey
PROJECT NAME	Project No.
Reconst of Wastewater Pump Station II & Force Main Replacement Include. Ocean View Blvd St. Overlay &	
Prime Contractor	
Monterey Peninsula Engineering, a general partnership dba Monterey Peninsula Engineering; MPE Management Group a general Partner of Monterey Peninsula Engine	
Subcontractor	
Monterey Peninsula Engineering, a general partnership dba Monterey Peninsula Engineering; MPE Management Group a general Partner of Monterey Peninsula Engine	

After an investigation concerning either the payment of wages to workers employed in the execution of the contract for the above-named public works project or compliance with the apprenticeship standards found in Labor Code section 1777.5, or both, the Division of Labor Standards Enforcement (the "Division") has determined that violations of the California Labor Code have been committed by the contractor and/or subcontractor identified above. In accordance with Labor Code section 1741, the Division hereby issues this Civil Wage and Penalty Assessment.

The nature of the violations of the Labor Code and the basis for the assessment are as follows:

Wage Violations: The contractor violated LC §1771 and §1774 wherein they failed to pay the required prevailing wage rate to workers employed in the execution of this public works contract. The contractor also failed to pay the required amount into the appropriate training fund pursuant to LC §1777.5.

Apprenticeship Violations:

The attached Audit Summary further details the basis for this Assessment and itemizes the calculation of wages and penalties due under Labor Code sections 1775 and 1813.

The Division has determined that the total amount of wages due is: $68,156.31

The Division has determined that the total amount of penalties assessed under Labor Code sections 1775 and 1813 is: $16,015.00

The Division has determined that the amount of penalties assessed under Labor Code section 1777.7 is: $0.00

The Division has determined that the amount of penalties assessed under Labor Code section 1776 against Monterey Peninsula Engineering, a general partnership dba Monte is: $0.00

Please refer to page 5 for specific withholding obligations pertaining to these amounts.

STATE LABOR COMMISSIONER

By Lori Rivera
Lori Rivera
Deputy Labor Commissioner I

PW 33 (Revised - 7/2015)

Notice of Right to Obtain Review - Formal Hearing

In accordance with Labor Code Section 1742, an affected contractor or subcontractor may obtain review of this Civil Wage and Penalty Assessment by transmitting a written request to the office of the Labor Commissioner that appears below within 60 days after service of the assessment.
To obtain a hearing, a written Request for Review must be transmitted to the following address:

Labor Commissioner - State of California
Civil Wage and Penalty Assessment Review Office
PO Box 255809
2801 Arden Way
Sacramento, CA 95825

A Request for Review either shall clearly identify the Civil Wage and Penalty Assessment from which review is sought, including the date of the assessment, or it shall include a copy of the assessment as an attachment, and shall also set forth the basis upon which the assessment is being contested. In accordance with Labor Code section 1742, the contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Commissioner at the hearing within 20 days of the Labor Commissioner's receipt of the written Request for Review.

Failure by a contractor or subcontractor to submit a timely Request for Review will result in a final order which shall be binding on the contractor and subcontractor, and which shall also be binding, with respect to the amount due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. Labor Code section 1743.

In accordance with Labor Code section 1742(d), a certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the State against the person assessed in the amount shown on the certified order.

(continued on next page)

Opportunity for Settlement Meeting

In accordance with Labor Code section 1742.1(c), the Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of this Civil Wage and Penalty Assessment, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking a hearing as set forth above under the heading Notice of Right to Obtain Review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. This opportunity to timely request an informal settlement meeting is in addition to the right to obtain a formal hearing, and a settlement meeting may be requested even if a written Request for Review has already been made.

Requesting a settlement meeting, however, does not extend the 60-day period during which a formal hearing may be requested.

A written request to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding this assessment must be transmitted to Lori Rivera at the following address:

State of California - Department of Industrial Relations
Division of Labor Standards Enforcement - Public Works Unit
7718 Meany Ave
Bakersfield, CA 93308

Payment of Civil Wage and Penalty Assessment

Payment of the assessed wages and/or penalties must be made by check or money order payable to the Division of Labor Standards Enforcement and mailed to the following address along with a copy of this Civil Wage and Penalty Assessment:

State of California - Department of Industrial Relations
Division of Labor Standards Enforcement - Cashiering Unit
2031 Howe Avenue, Suite 100
Sacramento, CA 95825-0196

(continued on next page)

Liquidated Damages

In accordance with Labor Code section 1742.1(a), after 60 days following the service of this Civil Wage and Penalty Assessment, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages in an amount equal to the wages, or portion that still remain unpaid. If the assessment subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor or subcontractor demonstrates to the satisfaction of the Director of the Department of Industrial Relations that he or she had substantial grounds for believing the assessment or notice to be an error, the Director shall waive payment of the liquidated damages.

Notwithstanding the above, in accordance with Labor Code 1742.1(b), there shall be no liability for liquidated damages if the full amount of the assessment or notice, including penalties, has been deposited with the Department of Industrial Relations, within 60 days following service of the Assessment or Notice, for the Department to hold in escrow pending administrative and judicial review. The Department shall release such funds, plus any interest earned, at the conclusion of all administrative and judicial review to the persons and entities who are found to be entitled to such funds.

Deposits must be made by check or money order payable to the Department of Industrial Relations with a letter and a copy of the Civil Wage and Penalty Assessment and mailed to:

Department of Industrial Relations
Attention Cashiering Unit
P.O. Box 420603
San Francisco, CA 94142

The Amount of Liquidated Damages Available Under this Assessment is: **$68,156.31**

(continued on next page)

Statutory Withholding Obligations

1. Awarding Body Withholding Obligations

In accordance with Labor Code section 1727(a), before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom all amounts required to satisfy this Civil Wage and Penalty Assessment. The amount required to satisfy this Civil Wage and Penalty Assessment shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

The amount which must be withheld and retained by the awarding body pursuant to this Civil Wage and Penalty Assessment is:

Wages Due:	$68,156.31
Penalties Due Under Labor Code sections 1775 and 1813:	$16,015.00
Penalties Due Under Labor Code section 1777.7:	$0.00
Penalties Due Under Labor Code sections 1776:	$0.00
Total Withholding Amount:	**$84,171.31**

2. Prime Contractor Withholding Obligations:

In accordance with Labor Code section 1727(b), if the awarding body has not retained sufficient money under the contract to satisfy this Civil Wage and Penalty Assessment based on a subcontractor's violations, the contractor shall, upon the request of the Labor Commissioner, withhold sufficient money due the subcontractor under the contract to satisfy the assessment and transfer the money to the awarding body. This amount shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

☐ **If this box is checked,** the Labor Commissioner hereby requests that the prime contractor withhold the following amount from money due the subcontractor and transfer the money to the awarding body to satisfy this assessment:

Wages Due:	$68,156.31
Penalties Due Under Labor Code sections 1775 and 1813:	$16,015.00
Penalties Due Under Labor Code section 1777.7:	$0.00
Penalties Due Under Labor Code sections 1776:	$0.00
Total Withholding Amount:	**$84,171.31**

Distribution:

Awarding Body
Surety(s) on Bond
Prime Contractor
Subcontractor

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

CERTIFICATION OF SERVICE BY MAIL
(C.C.P. 1013a) OR CERTIFIED MAIL

I, Linda Rodriguez, do hereby certify that I am a resident of or employed in the County of Kern, over 18 years of age, and not a party to the within action, and that I am employed at and my business address is:

Division of Labor Standards Enforcement
Bureau of Field Enforcement
7718 Meany Avenue
Bakersfield, CA 93308

On March 9, 2015, I served the within: (1) Civil Wage and Penalty Assessment

by placing a true copy thereof in an envelope addressed as follows:

City of Pacific Grove
300 Forest Ave., 2nd Floor
Pacific Grove, CA 93950
Daniel Gho - PW Superintendent

Monterey Peninsula Engineering, a general p
192 Healy Ave
Marina, CA 93933
Bartolo James Bruno

and then sealing the envelope and with postage and certified mail fees (if applicable) thereon fully prepaid, and then depositing it in the United States mail in Bakersfield by:

- [X] Ordinary first class mail
- [X] Certified mail
- [ ] Registered mail

I certify under penalty of perjury that the foregoing is true and correct

Executed on March 9, 2015, at Bakersfield, County of Kern, California

SIGNATURE

STATE CASE NO.
40-38903-522

PW 34 (Revised 4/2002)

PUBLIC WORKS AUDIT WORKSHEET

																	$84,171.30
EMPLOYER / FIRM Monterey Peninsula Engineering A Partnership							DEPUTY Lori Rivera	OFFICE Bakersfield								WAGES DUE AND OWING $67,122.48	
ADDRESS 192 Healy Ave	CITY Marina, CA 93933						TRANSCRIBER									PENALTIES DUE AND OWING $16,015.00	
PROJECT Reconst of Wastewater F	AWARDING BODY City of Pacific Grove		PRIME Monterey Peninsula En				AUDIT NUMBER/CASE NUMBER 40-38903-522									TRAINING FUND DUE/OWING $1,033.83	
EMPLOYEE	CLASSIFICATION	PERIOD WORKED	HOURS WORKED ST.	OT.	D.T.		OTHER WAGES PAID	TOTAL WAGES PAID	PREVAILING WAGE REQUIREMENTS *OTHER	TOTAL WAGES	AMOUNT OWING AND UNPAID	PENALTIES NO.1	PENALTIES NO. 2	TRNG. FUND	TOTAL AMOUNT DUE		
ALVAREZ, JOSE A.	Laborer Grp 1	10/05/13 - 10/05/13	8	0	0		0.00	172.00	0.00	366.32	194.32	40.00	0.00	3.12	237.44		
AYALA, JOSE LUIS	Laborer Grp 1	01/18/14 - 04/12/14	48	0	0		0.00	1056.00	0.00	2197.92	1141.92	240.00	0.00	18.72	1400.64		
BALLAGH, MICHAEL T.	Laborer Grp 1	12/07/13 - 03/08/14	75.5	13.25	0		0.00	1812.14	0.00	4242.01	2429.87	560.00	75.00	34.61	3099.48		
BELTRAN, EDUARDO	Laborer Grp 1	09/28/13 - 04/12/14	102	13	0		0.00	2264.50	0.00	5655.68	3391.18	680.00	125.00	48.53	4244.71		
BRUNO, BART N.	Laborer Grp 1	08/17/13 - 08/24/13	12	0	0		0.00	144.00	0.00	549.48	405.48	120.00	0.00	4.68	530.16		
CHAVARIN, RAUL	Laborer Grp 1	08/17/13 - 04/12/14	631.5	27.25	0		0.00	11766.59	0.00	30584.30	18817.71	3960.00	325.00	257.83	23360.54		
CORONA, TOMAS	Laborer Grp 1	11/30/13 - 03/08/14	32	3	0		0.00	730.00	0.00	1642.99	912.99	200.00	25.00	13.65	1151.64		
DE LA TORRE, LUIS E.	Laborer Grp 1	12/07/13 - 04/05/14	12	4	0		0.00	306.00	0.00	786.42	480.42	80.00	25.00	6.24	591.66		
FERNANDEZ, ANTONIO	Laborer Grp 1	01/11/14 - 04/12/14	40	1	0		0.00	830.00	0.00	1890.84	1060.84	240.00	0.00	15.99	1316.83		
FLAGOR, NEIL G.	Laborer Grp1, Oper. Engr	10/12/13 - 10/26/13	16	0	0		0.00	320.00	0.00	840.16	520.16	80.00	0.00	8.08	608.24		
GARCIA, DAVID Z.	Laborer Grp 1	10/12/13 - 02/08/14	95.5	0.5	0		0.00	1814.50	0.00	4402.56	2588.06	520.00	25.00	37.44	3170.50		
GOMEZ, JOSE O.	Laborer Grp 1	09/28/13 - 01/25/14	213.5	15.25	0		0.00	4491.13	0.00	10679.50	6188.37	1400.00	100.00	89.21	7777.59		
GUIDOTTI, STEPHEN D.	Laborer Grp 1	01/11/14 - 01/18/14	36	2	0		0.00	663.00	0.00	1766.91	1103.91	200.00	25.00	14.82	1343.73		
JUAREZ, JOSE	Laborer Grp 1	08/17/13 - 02/15/14	185	17	1		0.00	4664.00	0.00	9527.93	4863.93	1080.00	175.00	78.98	6197.91		
KIM, SONIL	Laborer Grp 1	10/19/13 - 03/08/14	148	14	1		0.00	3460.75	0.00	7626.38	4165.63	960.00	100.00	63.18	5288.81		
LAUDERDALE, JR., FRED	Laborer Grp 1	11/30/13 - 04/12/14	41	6	0		0.00	1218.75	0.00	2395.33	1176.58	280.00	50.00	21.62	1528.20		
MARTINEZ, JOSE	Op. Engr. Grp 4	08/17/13 - 02/15/14	62	1	0		0.00	1254.50	0.00	3748.18	2493.68	320.00	0.00	39.06	2852.74		
OLMOS, BRYAN J.	Laborer Grp 1	11/30/13 - 04/05/14	16	1	0		0.00	243.75	0.00	739.36	495.61	120.00	0.00	6.24	621.85		
PULIDO, JUAN	Laborer Grp 1, Teamster	08/24/13 - 04/12/14	50	1	0		0.00	639.00	0.00	2409.22	1770.22	280.00	50.00	28.17	2128.39		
SANDOVAL, HERMENEGILDO	Laborer Grp 1	11/30/13 - 12/07/13	8	2	0		0.00	225.50	0.00	455.17	229.67	80.00	0.00	3.71	313.38		
SANDOVAL, JR., MANUEL	Laborer Grp 1	01/04/14 - 02/22/14	28	1	0		0.00	678.50	0.00	1341.36	662.86	160.00	0.00	11.31	834.17		
SANDOVAL, MANUEL J.	Laborer Grp 1	01/04/14 - 02/22/14	56	1	0		0.00	1276.88	0.00	2593.86	1316.98	280.00	25.00	22.04	1644.01		
SANDOVAL, PORFIRIO	Laborer Grp 1	08/24/13 - 08/24/13	8	0	0		0.00	144.00	0.00	366.32	222.32	40.00	0.00	3.12	265.44		
Balance Brought forward from audit3 Summary							0.00	11477.75	0.00	21967.54	10489.79	2720.00	250.00	203.49	13663.27		
							0.00	51653.23	0.00	118775.71	67122.48	14640.00	1375.00	1033.83	$84,171.30		

The following entries represent the amounts relied upon for calculating Labor Code 1775 and 1813 penalties.

1775	40.00	Per Day
1813	25.00	Per Day

PUBLIC WORKS AUDIT WORKSHEET

EMPLOYER / FIRM Monterey Peninsula Engineering A Partnership						DEPUTY Lori Rivera		OFFICE Bakersfield						TOTAL AMOUNT DUE OWING $13,663.27			
ADDRESS 192 Healy Ave	CITY Marina, CA 93933					TRANSCRIBER								WAGES DUE AND OWING $10,489.79			
PROJECT Reconst of Wastewater F	AWARDING BODY City of Pacific Grove		PRIME Monterey Peninsula En			AUDIT NUMBER/CASE NUMBER 40-38903-522								PENALTIES DUE AND OWING $2,970.00			
														TRAINING FUND DUE/OWING $203.49			
EMPLOYEE	CLASSIFICATION	PERIOD WORKED	HOURS WORKED ST.	OT.	D.T.	OTHER WAGES PAID	TOTAL WAGES PAID	PREVAILING WAGE REQUIREMENT *OTHER	TOTAL WAGES	AMOUNT OWING AND UNPAID	PENALTIES NO.1	PENALTIES NO. 2	TRNG. FUND	TOTAL AMOUNT DUE			
SILVA, ALEXANDER	Laborer Grp 1	01/04/14 - 03/08/14	24	0	0	0.00	756.00	0.00	1206.48	450.48	160.00	0.00	11.20	621.68			
SOLLID, SCOTT D.	Cp. Engr. Grp 4	11/16/13 - 02/22/14	128	8	0	0.00	4200.00	0.00	8188.80	3988.80	1080.00	25.00	84.32	5178.12			
TREANOR, MIKE O.	Laborer Grp 1	09/14/13 - 04/12/14	55	2	0	0.00	1566.00	0.00	2636.92	1070.92	360.00	25.00	22.23	1478.15			
VALENCIA, JUAN M.	Laborer Grp 1	01/04/14 - 02/22/14	20	0	0	0.00	450.00	0.00	915.80	465.80	160.00	0.00	7.80	633.60			
VASQUEZ, VINCENTE	Laborer Grp 1	01/25/14 - 04/12/14	47.5	4	0	0.00	1337.50	0.00	2411.97	1074.47	280.00	50.00	20.09	1424.55			
ALEXANDER, JESSE J.	Laborer Grp 1	02/15/14 - 04/05/14	22	1.5	0	0.00	412.25	0.00	1096.23	683.98	120.00	0.00	9.17	813.15			
LOPEZ, JOSE	Laborer Grp 1	03/08/14 - 03/08/14	8	0.5	0	0.00	166.25	0.00	395.94	229.69	40.00	25.00	3.32	298.00			
CORONA, FRANCISCO	Laborer Grp 1	01/02/99 - 03/08/14	8	0.5	0	0.00	148.75	0.00	395.94	247.19	40.00	25.00	3.32	315.50			
MORAN, LUIS	Laborer Grp 1	03/08/14 - 04/12/14	30.5	2	0	0.00	837.50	0.00	1515.07	677.57	160.00	25.00	12.68	875.24			
LOPEZ, SERGIO	Op. Engr. Grp 4	04/05/14 - 04/12/14	26	0	0	0.00	913.00	0.00	1539.98	626.98	160.00	0.00	16.12	803.10			
RE, NEMO E.	Laborer Grp 1	04/05/14 - 09/27/14	8	4	0	0.00	378.00	0.00	603.26	225.26	40.00	25.00	4.68	294.94			
BIANCHI, BOB	Laborer Grp 1	04/05/14 - 04/12/14	16	4	0	0.00	272.50	0.00	969.58	697.08	80.00	50.00	7.80	834.88			
LEYVA, ALEJANDRO	Laborer Grp 1	04/12/14 - 04/12/14	2	0	0	0.00	40.00	0.00	91.58	51.58	40.00	0.00	0.78	92.36			
						0.00	11477.75	0.00	21967.54	10489.79	2720.00	250.00	203.49	$13,663.27			

The following entries represent the amounts relied upon for calculating Labor Code 1775 and 1813 penalties.

1775	40.00	Per Day
1813	25.00	Per Day

24

Labor Commissioner, State of California
Department of Industrial Relations
Division of Labor Standards Enforcement

DIVISION USE ONLY:	
TAKEN BY:	CASE #:
DATE TAKEN:	ASSIGNED TO:
OFFICE:	DATE RECEIVED:
	DATE ASSIGNED:

PUBLIC WORKS – PUBLIC COMPLAINT

The following information is important and must be provided.

Complainant Information

1. FIRST NAME	2. LAST NAME	3. COMPANY NAME	4. WORK/CELLULAR NO
Arturo	Sainz	Foundation for Fair Contracting	(916) 487-7871/ (916) 549-6378

5. CONTACT ADDRESS	6. CITY	7. STATE / ZIP CODE	8. EMAIL ADDRESS
3807 Pasadena Avenue, Suite 150 - Fax: (916) 487-0306	Sacramento	CA 95821	sainz@ffccalifornia.com

Project Information

Note: A separate form must be completed for each project in which you are alleging a violation of prevailing wages.

9. PROJECT NAME (If known)
Downtown Complete Streets Project

10. LIST ADDRESS(ES) OF PROJECT WHERE WORK WAS PERFORMED:
West Alisal at Main Street and East Gabilan and Main Street - Salinas, California

Monterey County

Complaint Against

11. NAME OF BUSINESS/CONTRACTOR/EMPLOYER	12. CONTRACTOR'S STATE LIC. NO
Monterey Peninsula Engineering A Partnership	972425

13. ADDRESS OF BUSINESS/CONTRACTOR/EMPLOYER (Include Zip Code)	14. BUSINESS TEL. NO
192 Healy Avenue Marina, CA 93933	559-994-6025

15. EMAIL ADDRESS	16. NAME OF PERSON IN CHARGE	17. TITLE
paul@mpe2000.com	Bartolo James Bruno	RME

Awarding Body

18. NAME OF PUBLIC AGENCY/AWARDED CONTRACT ENTITY
City of Salinas

19. ADDRESS OF AWARDING BODY	20. BUSINESS TEL. NO/
200 Lincoln Avenue Salinas, CA 93901	(831) 758-7241

21. EMAIL ADDRESS	22. NAME OF PERSON IN CHARGE / TITLE	23. AMOUNT OF CONTRACT
eda@ci.salinas.ca.us	Eda Herrera	$8,552,484.00

24. FIRST BID AD DATE	25.DATE PROJECT BEGAN	26. PROPOSED FINISH DATE	27. DATE OF NOTICE OF COMPLETION
07/10/2019	04/06/2020	01/31/2021	TBD

General Contractor (Prime Contractor)

28. NAME OF GENERAL CONTRACTOR	29. CONTRACTOR'S STATE LIC.
Same as Above	

30. ADDRESS	31. BUSINESS TEL. NO

32. EMAIL ADDRESS	33. NAME OF PERSON IN CHARGE	34. TITLE

Prevailing Wage Issues (Attach statements substantiating the allegation)

35. BRIEF EXPLAINATION OF ISSUES: (Check all applicable boxes)

- [x] Non-payment /Underpayment of wages
- [ ] Not paid travel and subsistence
- [x] Under reporting of hours
- [x] Unpaid overtime/Sat/Sun/Holiday rate
- [x] Misclassification of worker
- [ ] Insufficient fund check
- [ ] Fringe benefits not paid
- [ ] Other

See attached sheet for additional details

FFC Case No.: 895SJ

Apprentice Violations 1777.5 proceed to the next page

DLSEPW 1A (Rev 8.2012)

Apprentice Occupation

36. Trades and Classifications: Laborer, Operating Engineer

Apprentice Violations 1777.5

37. If the contractor is approved to train- Name of the Apprenticeship Committee:

38. Was there a LABOR COMPLIANCE PROGRAM on this project? ☐ Yes ☑ No
If Yes, Name of the LCP: _____ LCP Telephone Number: _____

Apprentice Issues
(List any documentation attached substantiating the allegation)

39. BRIEF EXPLAINATION OF ISSUES: (Check all applicable boxes)

☐ Failed to provide Contract award information (DAS 140). California Code of Regulations 230

☐ Failed to request dispatch of apprentices (DAS 142). California Code of Regulations 230.1

☐ Failed to employ registered apprentices in the correct ratio or not at all. California Code of Regulations 230.1

☐ Failed to make apprenticeship training fund contributions. California Code of Regulations 230.2

☐ Other (give clear concise statement of the facts constituting the basis of your complaint)

Proof of Service

40. ☐ Check the box if Proof of Service upon affected contractor and the General Contractor is attached.

I hereby certify that this is a true statement to the best of my knowledge and belief.

MY NAME MAY BE USED IN THIS INVESTIGATION. ☑ **Yes** ☐ **No**

Arturo Sainz

Signature

April 20, 2021

Date

Labor Commissioner, State of California Department of Industrial Relations Division of Labor Standards Enforcement Bureau of Field Enforcement- Public Works 7718 Meany Avenue Bakersfield, CA 93308 TEL: (661) 587-3071 FAX: (661) 587-3081	Gavin Newsom, Governor
Foundation for Fair Contracting 3807 Pasadena Avenue, Suite 150 Sacramento, CA 95821 Arturo Sainz	895SJ RECEIVED
DATE: June 23, 2021	In Reply Refer to Case No: 40-72626-522 JUN 28 2021

CASE ASSIGNMENT LETTER

Foundation for Fair Contracting

Project Name Downtown Complete Street Project - DIR ID #311021		Project No. 0
Prime Contractor Monterey Peninsula Engineering		
Subcontractor Monterey Peninsula Engineering		

Please be advised that I have been assigned to investigate your complaint against the above named contractor.

Any additional information should be directed to my attention, in writing. Please reference the case number on all correspondence.

You will be kept advised of the progress of this investigation as needed and of the final disposition in this matter.

STATE LABOR COMMISSIONER

By Lori Rivera

Lori Rivera
Deputy Labor Commissioner I

ENTERED

PW 4 (Revised 1/2015)

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ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 5/3/2017 10:04:03 AM
By: Jessica Ray, Deputy

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Attorneys for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MONTEREY

DANIEL MUNOZ, as an individual and on behalf of all others similarly situated,

Plaintiffs,

v.

MONTEREY PENINSULA ENGINEERING, a California corporation; and DOES 1 through 50, inclusive,

Defendants.

CASE NO. 17CV001603

CLASS ACTION AND INDIVIDUAL COMPLAINT FOR DAMAGES FOR:

(1) VIOLATION OF CAL. LABOR CODE § 226(a);

(2) VIOLATION OF CAL. LABOR CODE §§ 510 AND 1194;

(3) VIOLATION OF CAL. BUS. & PROF. CODE § 17200;

(4) VIOLATION OF CAL. LABOR CODE § 2698, *ET SEQ.*

(5) VIOLATION OF CAL. LABOR CODE § 1102.5 [INDIVIDUAL CLAIM];

(6) VIOLATION OF CAL. LABOR CODE § 6310 [INDIVIDUAL CLAIM];

(7) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY [INDIVIDUAL CLAIM]; AND

(8) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS [INDIVIDUAL CLAIM]

DEMAND FOR JURY TRIAL

DEMAND EXCEEDS $25,000.00

Plaintiff Daniel Munoz ("Plaintiff") hereby submits this Class Action Complaint ("Complaint") against Defendant Monterey Peninsula Engineering (the "Company" or "Defendant"), a California corporation, and DOES 1-50 (hereinafter collectively referred to as "Defendants"), on behalf of himself and the Class of all other similarly situated current and former employees of Defendants for penalties and/or damages for violations of the California Labor Code, including without limitation, failure to provide employees with accurate itemized wage statements, failure to pay all overtime wages, waiting-time penalties, and individually for retaliation as follows:

INTRODUCTION

1. This action is within the Court's jurisdiction under California Labor Code §§ 201-203, 226, 510, 1102.5, 1194, 2698, *et seq.*, and 6310, the California Industrial Welfare Commission's ("IWC") Wage Orders and California Business & Professions Code § 17200 (the "Unfair Competition Law" or "UCL").

2. This Complaint challenges systemic illegal employment practices resulting in violations of the California Labor Code against employees of Defendants.

3. Plaintiff is informed and believes, and based thereon alleges, that Defendants jointly and severally have acted intentionally and with deliberate indifference and conscious disregard to the rights of all employees by failing to keep accurate records and failing to provide accurate itemized wage statements identifying all required information, and failing to pay all overtime due.

4. Plaintiff is informed and believes, and based thereon alleges, that Defendants have engaged in, among other things a system of willful violations of the California Labor Code and applicable IWC Wage Orders by creating and maintaining policies, practices and customs that knowingly deny employees the above stated rights and benefits.

JURISDICTION AND VENUE

5. The Court has jurisdiction over the violations of the California Labor Code §§ 201-203, 226, 510, 1102.5, 1194, 2698, *et seq.*, and 6310, the IWC's Wage Orders and the UCL. As alleged below, Plaintiff has met all of the jurisdictional requirements to proceed under the

Private Attorney General's Act (the "PAGA"), Labor Code § 2698, *et seq.*

6. Venue is proper in Monterey County because Defendants maintain business locations in this County and Plaintiff performed work for Defendants in this County.

PARTIES

7. Plaintiff began working for Defendant in or around October 2016, as a non-exempt employee. On or about January 31, 2017, Plaintiff was terminated by Defendant in retaliation for complaining about potentially unlawful and unsafe working conditions.

8. Defendant is a California corporation engaged in construction services. The Company is headquartered in Monterey, California.

9. Plaintiff was and is a victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived him of the rights guaranteed by California Labor Code §§ 201-203, 226, 510, 1102.5, 1194, 2698, 6310, the applicable IWC Wage Orders and the UCL.

10. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Defendants and DOES 1 through 50 are and were business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California.

11. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to California Labor Code §§ 201-203, 226, 510, 1102.5, 1194, 2698, 6310, the applicable IWC Wage Orders and the UCL.

12. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes, and based thereon alleges, that each of said fictitious Defendants was responsible in some way for the matters alleged herein and proximately caused Plaintiff and members of the general public and class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

13. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants and employees of each of the other

Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and employment.

14. Plaintiff is informed and believes, and based thereon alleges, that at all times material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or joint venturer of, or working in concert with each of the other co- Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

15. At all times herein mentioned, Defendants, and each of them, were members of, and engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

16. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

CLASS ACTION ALLEGATIONS

17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to California Code of Civil Procedure § 382, of the following classes and subclass:

a. All current and former non-exempt California employees who worked over 8 hours in a day and/or over 40 hours in a workweek at any time from May 3, 2013, through the present (the "Overtime Class");

b. All current and former non-exempt California employees who received a wage statement from Defendant at any time during the period of time from May 3, 2016, through the present (the "Wage Statement Class"); and

c. All current and former non-exempt California employees who received a

wage statement from Defendant which listed overtime pay at any time from May 3, 2016, through the present ("Overtime Wage Statement Sub-Class").

18. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identity of the members of the Class is readily ascertainable by review of the Company's records, including payroll records. Plaintiff is informed and believes, and based thereon alleges, that the Company failed to provide accurate itemized wage statements to employees in violation of Labor Code § 226 and failed to pay all overtime to its non-exempt employees in violation of Labor Code §§ 510 and 1194.

19. **Adequacy of Representation**: The named Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the class defined above. Plaintiff's attorneys are ready, willing and able to fully and adequately represent the class and the named Plaintiffs. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a number of wage-and-hour class actions pending in California courts.

20. The Company uniformly administered a corporate policy, practice of failing to provide accurate itemized wage statements to employees in violation of Labor Code § 226 and failing to pay all overtime to its non-exempt employees in violation of Labor Code §§ 510 and 1194.

21. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst Plaintiffs and the claims of the Class concerning the Company's failure to provide accurate itemized wage statements to employees in violation of Labor Code § 226 and failure to pay all overtime to its non-exempt employees in violation of Labor Code §§ 510 and 1194

22. **Typicality:** The claims of the named Plaintiff are typical of the claims of all members of the Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical manner as the Class members. Plaintiff was not provided proper and accurate payroll records identifying all information required by Labor Code § 226(a). Specifically, the Company violated Labor Code § 226(a) by, among other things, failing to identify the rate at which overtime was paid. This is a violation of Labor Code § 226(a)(9). Further, the pay statements

identified an inaccurate straight time rate. The regular rate was identified as $21.50 when the true rate was typically a different amount. For example, for the pay period ending November 26, 2016, Plaintiff's pay statements identified a regular rate of $21.50. However, the true regular pay rate was $31.040. This is a violation of Labor Code § 226(a)(9). Defendant also failed to pay all overtime owed. For example, for the pay period ending on November 26, 2016, Plaintiff's regular rate was $31.040. Plaintiff worked two hours of overtime, paid at $45.060 per hour. Defendant should have paid the overtime at $46.56 per hour (1.5 multiplied by $31.040). This is a violation of Labor Code §§ 201-204, 510 and 1194. Thus, Plaintiff is a member of the Class and has suffered the alleged violations of California Labor Code §§ 201-204, 226, 510, 1194 and 2698, *et seq.*, the applicable IWC Wage Orders and the UCL.

23. The California Labor Code and upon which Plaintiff bases these claims is broadly remedial in nature. These laws and labor standards serve an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment.

24. The nature of this action and the format of laws available to Plaintiff and members of the Class identified herein make the class action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate Defendant would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of the individual Plaintiff with Defendants' vastly superior financial and legal resources. Requiring each Class member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

25. The prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual Class members against the Company and which would establish potentially

incompatible standards of conduct for the Company, and/or (b) adjudications with respect to individual Class members which would, as a practical matter, be dispositive of the interest of the other Class members not parties to the adjudications or which would substantially impair or impede the ability of the Class members to protect their interests. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

26. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation described herein is unlawful and creates an entitlement to recovery by Plaintiffs and the Class identified herein, in a civil action any and all applicable penalties and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 201-204, 226, 510, 558, 1194, and 2698, *et seq.*, the applicable IWC Wage Orders, and Code of Civil Procedure § 1021.5.

27. Proof of a common business practice or factual pattern, which the named Plaintiffs experienced and are representative of, will establish the right of each of the members of the Class to recovery on the causes of action alleged herein.

28. The Class is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by the Company. The Class is commonly entitled to restitution of those funds being improperly withheld by the Company. This action is brought for the benefit of the entire class and will result in the creation of a common fund.

INDIVIDUAL ALLEGATIONS

29. On January 31, 2017, Plaintiff was directed to help his co-workers cut an asbestos pipe. Plaintiff was not provided any safety gear or any training. None of the employees were certified to work with asbestos. Plaintiff told the foreman who was in charge of the pipe, Rudy, that it was unsafe to cut the pipe. Plaintiff told Rudy the workers needed safety gear and training to work with asbestos. In retaliation for Plaintiff's complaints about unsafe and potentially illegal working conditions, Defendant terminated Plaintiff's employment by no longer providing him any work assignments. Thus, on or about January 31, 2017, Plaintiff was unlawfully terminated.

30. As an actual and proximate result of the illegal employment actions of Defendants, Plaintiff has suffered and continues to suffer pain, humiliation, severe emotional distress, trauma,

and sleeplessness. Also, as an actual and proximate result of Defendants' illegal employment actions, Plaintiff has suffered lost wages and benefits. Plaintiff also has suffered a loss in earning capacity. Thus, Plaintiff has suffered economic and non-economic losses in an amount greater than this Court's jurisdictional minimum of $25,000. Plaintiff seeks lost wages and loss in earning capacity, as well as compensatory damages for pain and suffering, inconvenience, and mental anguish. Plaintiff also seeks punitive damages, interest, attorneys' fees, and costs, as permitted by law.

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226(a)

(AGAINST THE COMPANY AND DOES 1-50 BY PLAINTIFF AND THE CLASS)

31. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 30 as though fully set for herein.

32. The Company failed in its affirmative obligation to provide accurate itemized wage statements in violation of Labor Code § 226(a). Specifically, the Company violated Labor Code § 226(a) by, among other things, failing to identify the rate at which overtime was paid. This is a violation of Labor Code § 226(a)(9). Further, the pay statements identified an inaccurate straight time rate. The regular rate was identified as $21.50 when the true rate was typically a different amount. For example, for the pay period ending November 26, 2016, Plaintiff's pay statements identified a regular rate of $21.50. However, the true regular pay rate was $31.040. This is a violation of Labor Code § 226(a)(9). Accordingly, the wage statements provided to Plaintiffs and the Class violated Labor Code § 226(a).

33. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by Plaintiffs and the Class identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code § 226.

SECOND CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 510 AND 1194

(AGAINST THE COMPANY AND DOES 1-50 BY PLAINTIFF AND THE CLASS]

34. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 33 as though fully set for herein.

35. This cause of action is brought pursuant to Labor Code §§ 510 and 1194, which require an employer to pay employees overtime at a rate of one and one-half the employee's regular rate of pay for any work in excess of eight hours in a workday or 40 hours in a workweek.

36. As a pattern and practice, Defendants suffered and permitted employees to work in excess of eight hours in a workday and/or over 40 hours in a workweek without overtime pay. For example, for the pay period ending on November 26, 2016, Plaintiff's regular rate was $31.040. Plaintiff worked two hours of overtime, paid at $45.060 per hour. Defendant should have paid the overtime at $46.56 per hour (1.5 multiplied by $31.040). Plaintiff is informed and believes and based thereon alleges that Defendants had a uniform corporate pattern and practice and procedure regarding the above practices in violation of Labor Code §§ 510 and 1194.

37. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 510, 558, and 1194.

38. Based on the foregoing, Plaintiff and Class Members whose employment ended are also entitled waiting-time penalties pursuant to Labor Code §§ 201-203. Labor Code § 201 provides that all wages earned and unpaid at the time of an employee's discharge are due and payable immediately. Labor Code § 202 provides that, in the case of an employee who resigns or quits, such wages must be paid not later than 72 hours thereafter, unless the employee has given 72 hours previous notice, in which case the employee must be paid all wages due and earned at the time of quitting. Labor Code § 203 provides that an employer who willfully fails to pay such wages due to an employee who is discharged or quits must pay that employee waiting-time penalties in the form of a day's wages up to 30 days until all of the wages owed are paid. As a pattern and practice, Defendants regularly and willfully failed and refused to pay all wages due and earned to discharged employees at the time of their termination, or within 72 hours of

employees who quit and/or have resigned, or at the time of termination for those employees who gave 72 hours' notice.

THIRD CAUSE OF ACTION

VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, *ET SEQ.*

(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)

39. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 38 as though fully set for herein.

40. Defendants, and each of them, have engaged and continue to engage in unfair and unlawful business practices in California by practicing, employing and utilizing the employment practices outlined above, include, to wit, by failing to pay employees overtime wages for all hours worked in excess of 8 hours in a workday and/or 40 hours in a workweek in violation of Labor Code §§ 510 and 1194.

41. Defendants' utilization of such unfair and unlawful business practices constitutes unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

42. Plaintiff seeks, on behalf of himself and other members of the Class similarly situated, full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the Defendants by means of the unfair practices complained of herein. Pursuant to Business & Professions Code § 17203, Plaintiff also seeks injunctive relief to enjoin Defendants from engaging in the violations of the UCL and the Labor Code.

43. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as proscribed by California Business and Professions Code § 17200, *et seq.*, including those set forth herein above thereby depriving Plaintiff and other members of the class the minimum working condition standards and conditions due to them under the California laws as specifically described therein.

FOURTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 2698, *ET SEQ.*

(AGAINST THE COMPANY AND DOES 1-50 BY PLAINTIFF)

44. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 43 as though fully set for herein.

45. Plaintiff seeks penalties on behalf of the State of California for violations of Labor Code §§ 201-204, 226(a) and 510 committed against the following employees:

a. All current and former non-exempt California employees who worked over 8 hours in a day and/or over 40 hours in a workweek at any time from February 23, 2016, through the present;

b. All current and former California employees who received a wage statement from Defendant at any time during the period of time from February 23, 2016, through the present; and

c. All current and former non-exempt California employees who received a wage statement from Defendant which listed overtime pay at any time from February 23, 2016, through the present.

46. Additionally, Plaintiff seeks penalties for Defendant's violation of Labor Code § 1102.5, as alleged above.

47. On or about February 23, 2017, Plaintiff sent notice to the Labor Workforce Development Agency (the "LWDA") of the violations of Labor Code § 201-204, 226(a), 510, and 1102.5. As of the date of the filing of this Complaint, the LWDA has not notified Plaintiffs whether it intends to investigate the claims. Therefore, Plaintiff may seek applicable penalties under the PAGA.

48. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by the Plaintiff on behalf of the State of California, in a civil action, for penalties pursuant to the PAGA, Labor Code § 2699(a), including interest thereon, attorneys' fees, and costs of suit according to the mandate of PAGA for Defendant's violations of the aforementioned Labor Code statutes, as well as attorneys' fees and costs.

FIFTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 1102.5

(BY PLAINTIFF INDIVIDUALLY AGAINST ALL DEFENDANTS)

49. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 48 as though fully set for herein.

50. California Labor Code § 1102.5(c) provides that "[a]n employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation."

51. As alleged above, the Company retaliated against Plaintiff for engaging in protected activities. On January 31, 2017, Plaintiff was directed to help his co-workers cut an asbestos pipe. Plaintiff was not provided any safety gear or any training. None of the employees were certified to work with asbestos. Plaintiff told the foreman who was in charge of the pipe, Rudy, that it was unsafe to cut the pipe. Plaintiff told Rudy the workers needed safety gear and training to work with asbestos. In retaliation for Plaintiff's complaints about unsafe and potentially illegal working conditions, Defendant terminated Plaintiff's employment by no longer providing him any work assignments. Thus, on or about January 31, 2017, Plaintiff was unlawfully terminated.

52. As a proximate result of the Company's retaliation against Plaintiff, he has suffered and continues to suffer compensatory damages, including without limitation, severe emotional distress, lost wages, benefits, and compensation, and loss of future earnings and earning capacity in the amount of at least $25,000.00, according to proof at the time of trial, which is in excess of the jurisdictional minimum for this lawsuit to qualify as an unlimited civil action. Plaintiff claims such amounts as damages, together with prejudgment interest accruing from the date of the filing of this action pursuant to California Civil Code Sections 3281 and/or 3288, and/or any other provision of law providing for prejudgment interest.

53. Further, because the wrongful acts against Plaintiff were carried out, authorized, or ratified by the Company's management, who acted with malice, oppression, or fraud, or were deliberate, willful, and in conscious disregard of the probability of causing injury to Plaintiff, he seeks punitive damages to deter Defendants from committing said illegal acts in the future.

Plaintiff also seeks all applicable remedies available under the Labor Code, including without limitation, the penalties provided for under Section 1102.5(f), back-pay, and lost benefits.

SIXTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 6310

(BY PLAINTIFF INDIVIDUALLY AGAINST ALL DEFENDANTS)

54. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 53 as though fully set for herein.

55. Labor Code § 6310(b) prohibits, among other unlawful acts, discharging and/or suspending an employee because that employee has made a bona fide oral or written complaint to his or her employer of unsafe working conditions or work practices. Here, Defendant violated Labor Code § 6310(b) by retaliating against Plaintiff and ultimately terminating his employment in direct response to his complaints of unsafe working conditions.

56. As alleged above, the Company retaliated against Plaintiff for engaging in protected activities. On January 31, 2017, Plaintiff was directed to help his co-workers cut an asbestos pipe. Plaintiff was not provided any safety gear or any training. None of the employees were certified to work with asbestos. Plaintiff told the foreman who was in charge of the pipe, Rudy, that it was unsafe to cut the pipe. Plaintiff told Rudy the workers needed safety gear and training to work with asbestos. In retaliation for Plaintiff's complaints about unsafe and potentially illegal working conditions, Defendant terminated Plaintiff's employment by no longer providing him any work assignments. Thus, on or about January 31, 2017, Plaintiff was unlawfully terminated.

57. Pursuant to Labor Code § 6310(b), Plaintiff seeks all applicable remedies, including without limitation, reinstatement and reimbursement for lost wages and work benefits.

SEVENTH CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(BY PLAINTIFF INDIVIDUALLY AGAINST ALL DEFENDANTS)

58. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 57 as though fully set for herein.

59. At all times mentioned herein, the public policy of the State of California, as

codified, expressed and mandated in Labor Code §§ 1102.5 and 6310, prohibit retaliation against an employee who has refused to engage in potentially unlawful behavior and/or made a bona fide complaint about health and/or safety issues at the workplace. Nevertheless, Defendant violated these public policies by terminating Plaintiff on or about January 31, 2017, because of his complaints regarding unsafe and potentially illegal working conditions.

60. As a proximate result of Defendant's wrongful termination of Plaintiff, he has suffered and continues to suffer compensatory damages, including without limitation, severe emotional distress, lost wages, benefits, and compensation, and loss of future earnings and earning capacity in the amount of at least $25,000.00, according to proof at the time of trial, which is in excess of the jurisdictional minimum for this lawsuit to qualify as an unlimited civil action. Plaintiff claims such amounts as damages, together with prejudgment interest accruing from the date of the filing of this action pursuant to California Civil Code Sections 3281 and/or 3288, and/or any other provision of law providing for prejudgment interest.

61. Further, because the wrongful acts against Plaintiff were carried out, authorized, or ratified by Defendant's managing agents, acting with malice, oppression, or fraud, or were deliberate, willful, and in conscious disregard of the probability of causing injury to Plaintiff, he seeks punitive damages to deter Defendant from committing said illegal acts in the future.

EIGHTH CAUSE OF ACTION

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(BY PLAINTIFF INDIVIDUALLY AGAINST ALL DEFENDANTS)

62. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 61 as though fully set for herein.

63. When Defendants, and the each of them, committed the acts described above, they did so deliberately and intentionally to cause Plaintiff to suffer humiliation, mental anguish, and emotional distress. The outrageousness of the above-described conduct is amplified due to upper management's abuse of their positions with actual and apparent authority over Plaintiff, such as is commonly found in employment relationships. The Defendants, and each of them, were aware of their unlawful acts would cause Plaintiff to suffer extreme emotional distress and other consequential damages.

64. The above-said acts of the Defendants, and each of them, constituted intentional infliction of emotional distress against Plaintiff and such conduct of the Defendants was a substantial or determining factor in causing damage and injury to Plaintiff.

65. As a result of Defendants' intentional infliction of emotional distress, Plaintiff has suffered and continues to suffer substantial loss and damages including, loss of salary, future advancement, bonuses, benefits, embarrassment, humiliation, and mental anguish in an amount to be determined at trial.

66. Defendants, and each of them, committed said intentional infliction of emotional distress alleged herein against Plaintiff, maliciously, fraudulently, and oppressively with the wrongful intent of injuring Plaintiff for an improper and evil motive which constitutes a malicious and conscious disregard of Plaintiff's rights. Plaintiff is thereby entitled to punitive damages from the Defendants in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment individually and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Class;

2. For an order appointing Plaintiff as the representative of the Class as described herein;

3. For an order appointing counsel for Plaintiff as Class counsel;

4. Upon the First Cause of Action, for damages and/or penalties pursuant to California Labor Code § 226, and for costs and attorneys' fees;

5. Upon the Second Cause of Action, for all damages and/or penalties pursuant to California Labor Code §§ 201-204, 510, and 1194, and for costs and attorneys' fees;

6. Upon the Third Cause of Action, for all restitutionary and injunctive relief pursuant to California Business & Professions Code §§ 17200 and 17203;

7. Upon the Fourth Cause of Action, for civil penalties according to proof pursuant to Labor Code § 2698, *et seq.*;

8. Upon the Fifth through Eighth Causes of Action, all general and special damages, and all statutory damages pursuant to Labor Code §§ 1102.5 and 6310;

9. On all causes of action, for attorneys' fees and costs as provided by California Labor Code §§ 201-204, 226, 510, 558, 1194, 2698, *et seq.*, and Code of Civil Procedure § 1021.5; and

10. For such other and further relief as the Court may deem just and proper.

DATED: May 2, 2017

POLARIS LAW GROUP, LLP

By: _____
William L. Marder
Attorneys for PLAINTIFF and the CLASS

DEMAND FOR JURY TRIAL

Plaintiff, as an individual and on behalf of the Class, hereby demands a jury trial as provided by California law.

DATED: May 2, 2017

POLARIS LAW GROUP, LLP

By: _____
William L. Marder
Attorneys for PLAINTIFF and the CLASS

COPY

FILED

NOV 16 2011

CONNIE MAZZEI
CLERK OF THE SUPERIOR COURT
DEPUTY
CARMEN B. OROZCO

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Attorneys for Plaintiffs

CASE MANAGEMENT CONFERENCE
DATE: 3/23/2012
TIME: 9:00 AM
PLACE: Courtroom 15, 2nd Floor
1200 Aguajito Rd. Monterey CA 93940

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

JUAN A. BENITEZ and JOSE I. GARCIA, each as an individual, and on behalf of all those similarly situated and on behalf of the general public,

Plaintiffs,

v.

MONTEREY PENINSULA ENGINEERING, a California Corporation, SUNSET PACIFIC CONSTRUCTION COMPANY, a California Corporation, CONTINENTAL INSURANCE COMPANY, a Pennsylvania Corporation, CITY OF MONTEREY, a Political Sub-division of the State of California, CITY OF WATSONVILLE, a Political Sub-division of the State of California, MONTEREY PENNINSULA COMMUNITY COLLEGE DISTRICT, a Public Community College, COUNTY OF MONTEREY a Political Sub-division of the State of California, COUNTY OF SANTA CRUZ, a Political Sub-division of the State of California, and DOES 1 through 250,

Defendants.

Case No.: M114998

Judge:

Dept.:

COMPLAINT FOR DAMAGES AND PENALTIES FOR:

1. Failure to Pay Overtime Wages [Lab. Code §§ 510, 1194, 1811 and 1815];
2. Nonpayment Of Prevailing Wages [Cal. Lab. Code §§§ 1194, 1771 & 1774];
3. Failure to Pay Wages of Terminated Or Resigned Employees [Cal. Lab. Code §§201-203];
4. Failure To Provide Or Otherwise Compensate For Missed Breaks [Cal. Lab. Code §§ 226.7 and 512];
5. Recovery Under Public Works Payment Bonds [Cal. Civ. Code § 3250]
6. Enforcement of Stop Notices [Cal. Civ. Code §§ 3103, 3181-3214];
7. Recovery Under Stop Notice Release Bonds [Cal. Civ. Code § 3196]
8. Unfair Competition [Bus. & Prof. Code §§17200, et seq.]

JURY TRIAL DEMANDED

COME NOW JUAN A. BENITEZ and JOSE I. GARCIA ("Plaintiffs"), who demand trial by jury and complain and allege of Defendants MONTEREY PENINSULA ENGINEERING, a California Corporation ("MPE"), SUNSET PACIFIC CONSTRUCTION COMPANY, a California Corporation ("SUNSET"), CONTINENTAL INSURANCE COMPANY, a Pennsylvania Corporation, CITY OF MONTEREY, a Political Sub-division of the State of California, CITY OF WATSONVILLE, a Political Sub-division of the State of California, MONTEREY PENNINSULA COMMUNITY COLLEGE DISTRICT, COUNTY OF MONTEREY, a Political Sub-division of the State of California, COUNTY OF SANTA CRUZ, a Political Sub-division of the State of California and DOES 1 through 250 (hereinafter collectively referred to as the "Defendants") as follows:

I. INTRODUCTION

1. Plaintiffs bring this action against their former employers, MONTEREY PENINSULA ENGINEERING, SUNSET PACIFIC CONSTRUCTION COMPANY and Does 1 to 150, who failed to pay Plaintiffs the proper wages for each hour worked on public works projects in violation of the California Labor Code. Specifically, MPE and SUNSET failed to pay the proper minimum wages and overtime, including failure to pay prevailing wage for Plaintiffs work on public works projects in violation of the California Labor Code.

2. During his employment Plaintiff Juan Benitez performed the work of an Operating Engineer on public works projects, including, but not limited to the following public works projects: "Pacific Street Erosion Control", in Monterey California, "Green Valley Road Rehabilitation", in Watsonville California, "Parking Lot B Expansion" in Monterey California, "Storm Drain and Street Improvement" in the County of Monterey California, "Aptos Sewer Transmission Main Relocation" in Santa Cruz California, "County Service Area #5 Sand Dollar Force Main Replacement" in Santa Cruz California.

3. During his employment Plaintiff Jose I. Garcia worked as a Cement Mason, Laborer, Operator and Iron Worker on public works projects, including, but not limited to the following public works projects: "Parking Lot B Expansion" in Monterey California, "Hyland Drive – El Rancho Way Storm Drain & Street Improvement" in the County of Monterey

California, "Pacific Street Erosion Control", in Monterey California, "County Service Area #5 Sand Dollar Force Main Replacement" in Santa Cruz California, "Aptos Sewer Transmission Main Relocation" in Santa Cruz California, "Graham Hill Road Improvement Project" in the County of Santa Cruz , Morgan Hill Irrigation, and "Green Valley Road Rehabilitation", in Watsonville California.

4. Plaintiff Juan A. Benitez was employed from on or about August, 2010 through on or about July, 2011. In 2010 the rate for Operating Engineer Group 4 was $56.71. As an Operating Engineer, Plaintiff Benitez was paid a straight, non-prevailing wage rate of $18.75 per hour for work throughout the majority of his employment with MPE, despite requirements that he be paid the appropriate prevailing wage rate for the type of work performed.

5. Plaintiff Jose I. Garcia was employed from on or about November, 1998 through on or about August, 2011. During Plaintiff's employment, Plaintiff worked as a working foreman in different classifications including but not limited to Laborer, Operator, Cement Mason and Iron Worker. In 2010 the State of California rates of pay were as follows Laborer-$42.20, Operator-$56.71, Cement Mason-$45.41, Iron Worker-$57.31. Plaintiff Garcia was paid a straight, non-prevailing wage rate of $27.50 per hour for work throughout the majority of his employment despite requirements that he be paid the appropriate prevailing wage rate for the type of work performed.

6. During Plaintiffs' employment Plaintiffs were routinely required to skip rest breaks.

7. Plaintiffs seek back wages, penalties and interest for Defendants' willful failure to pay Plaintiffs their statutory wages (Labor Code §§1194, 1771, 1774).

8. Plaintiffs seek recovery of wages penalties and interest against Defendants CONTINENTAL INSURANCE COMPANY, a Pennsylvania Corporation and DOES 151 through 200 (hereinafter collectively referred to as the "Defendant Sureties") who issued statutory payment bonds on public projects where Plaintiff worked. The statutory bonds provided that if the contractor, or any of their subcontractors, failed to pay for any work or labor performed in connection with a public works project, that the surety on the bond would pay the

same. Plaintiff is entitled to recover under these payment bonds, as Defendants have failed to pay Plaintiff the earned wages on public works projects.

9. Plaintiffs seek enforcement of Stop Notices against the CITY OF MONTEREY, CITY OF WATSONVILLE, MONTEREY PENNINSULA COMMUNITY COLLEGE DISTRICT, COUNTY OF MONTEREY, COUNTY OF SANTA CRUZ, and Defendants DOES 201 through 225.

10. Plaintiffs seek recovery under the stop notice release bonds against Defendant MONTEREY PENINSULA ENGINEERING, SUNSET PACIFIC CONSTRUCTION COMPANY, Does 1 – 150, and Does 226-250.

11. Plaintiffs seek equitable relief for restitution and to enjoin Defendants MONTEREY PENINSULA ENGINEERING, SUNSET PACIFIC CONSTRUCTION COMPANYand DOES 1 through 150 from engaging in the practices alleged in this Complaint and to require Defendants all monies wrongfully withheld by Defendants' unfair business practices and unlawful competition.

12. Plaintiffs seek restitution of all unpaid wages. In addition to restitution and restoration of all wages owed to Plaintiffs, Plaintiffs seek to enforce any and all applicable equitable remedies.

13. Plaintiffs seek attorneys' fees and costs pursuant to various statutes under the Labor Code and Civil Code.

II. THE PARTIES

A. Plaintiffs

14. Plaintiff, JUAN A. BENITEZ is and at all relevant times herein was, an individual over the age of eighteen and a resident of California. Plaintiff was employed by Defendants SUNSET PACIFIC CONSTRUCTION COMPANY and MPE from on or about August, 2010 through on or about July, 2011. Plaintiff performed work within the State of California, including work on California "public works" projects as such term is defined by California Labor Code § 1720, et seq.

15. Plaintiff, JOSE I. GARCIA is and at all relevant times herein was, an individual over the age of eighteen and a resident of California. Plaintiff was employed by Defendant SUNSET PACIFIC CONSTRUCTION COMPANY and MPE from on or about November, 1998 through on or about August 12, 2011. Plaintiff performed work within the State of California, including work on California "public works" projects as such term is defined by California Labor Code § 1720, et seq.

B. Defendants

16. Plaintiffs are informed and believe Defendant MONTEREY PENINSULA ENGINEERING is and at all times mentioned herein is a California Corporation, duly organized in the State of California and authorized to do business in the State of California, and conducted business as a construction contractor in counties, including but not limited to Monterey County.

17. Plaintiffs are informed and believe that Defendant MONTEREY PENINSULA ENGINEERING is a licensed contractor in the State of California, license number 791700, including a A classification as a Genteral Engineering Contrator with a Hazardous Substances Removal certification. MPE's address is P.O. Box 2317, Monterey, CA 93942. MPE was engaged under and by virtue of the laws of the State of California in the business of engineering and contracting services, including underground utilities, grading, paving and general site work.

18. Plaintiffs are informed and believe that Defendant SUNSET PACIFIC CONSTRUCTION COMPANY is and at all times mentioned herein is a California Corporation, duly organized in the State of California and authorized to do business in the State of California, and conducted business as a construction contractor in counties, including but not limited to Monterey County.

19. Plaintiffs are informed and believe that Defendant SUNSET PACIFIC CONSTRUCTION COMPANY'S contractors license for the State of California, expired 12/31/1996, this was license number 466538, and included a type A classification as a Genteral Engineering Contrator. SUNSET PACIFIC CONSTRUCTION COMPANY'S address is P.O.

Box 2317, Monterey, CA 93942. SUNSET PACIFIC CONSTRUCTION COMPANY was engaged in the business of engineering and contracting services, including underground utilities, grading, paving and general site work.

20. **Joint Employer** Plaintiffs are informed and believe and based thereon allege that SUNSET and MPE jointly controlled the daily activities of the Plaintiffs; and both SUNSET and MPE suffered and permitted Plaintiffs to work, such that SUNSET and MPE should be considered a joint employer of the Plaintiffs.

21. **Alter Ego-** There exists such a unity of interest and ownership between Defendant SUNSET and Defendant MPE, that the individuality and separateness of Defendants has ceased to exist. Plaintiffs are informed and allege that the business affairs of SUNSET and MPE are so mixed and intermingled that the same cannot be reasonably segregated. SUNSET, and at all times relevant hereto, was and has been used by MPE as a shell and conduit for the conduct of MPE's affairs. The recognition of the separate existence of SUNSET would not promote justice in that it would permit Defendant MPE to insulate itself from the liability to Plaintiffs. MPE exerted, and continues to exert, control over SUNSET and undertook to commit systemic wage fraud and was aware of the practice of doing so. The wage fraud exposes SUNSET and MPE to liability. There is a unity of interest between MPE and SUNSET. Accordingly, SUNSET and MPE are the alter-ego of one another, and the fiction of their separate existence must be disregarded.

22. Plaintiffs are informed and believe and based thereon alleges that Defendant The CONTINENTAL INSURANCE COMPANY a Pennsylvania and DOES 151-200 acted as sureties for payment bonds on public works projects alleged herein and each was a corporation authorized to do business in the State of California, engaged under and by virtue of the laws of the State of California in making, guaranteeing, and becoming a surety on bonds and undertakings as required or authorized by law.

23. Plaintiffs are informed and believe and thereon allege that Defendant, CITY OF MONTEREY is at all times relevant to this action was, a political sub-division of the State of

California, and is withholding money pursuant to a Stop Notice for the "Pacific Street Erosion Control" project in Monterey, California.

24. Plaintiffs are informed and believe and thereon allege that Defendant, CITY OF WATSONVILLE is at all times relevant to this action was, a political sub-division of the State of California, and is withholding money pursuant to a Stop Notice for the "Green Valley Rehabilitation" project in Watsonville, California.

25. Plaintiffs are informed and believe and thereon allege that Defendant, MONTEREY PENNINSULA COMMUNITY COLLEGE DISTRICT, a public community college, is at all times relevant to this action was, and is withholding money pursuant to a Stop Notice for the "Parking Lot B Expansion" project in Monterey, California.

26. Plaintiffs are informed and believe and thereon allege that Defendant, COUNTY OF MONTEREY a political sub-division of the State of California, is at all times relevant to this action was, and is withholding money pursuant to a Stop Notice for the "Hyland Drive – El Rancho Way Storm Drain & Street Improvement" project in Salinas, California.

27. Plaintiffs are informed and believe and thereon allege that Defendant, COUNTY OF SANTA CRUZ a political sub-division of the State of California, is at all times relevant to this action was, and is withholding money pursuant to a Stop Notice for the "APTOS Sewer Transmission Main Relocation" project in Santa Cruz, California

28. Plaintiffs are informed and believes and based thereon allege that at all times mentioned herein Defendants and DOES 1 through 150 were authorized to conduct business in the State of California, doing business as contractors, subcontractors, or their agents, performing work on construction projects throughout the State of California, including public works projects.

29. Plaintiffs are further informed and believe and based thereon alleges that Defendant DOES 151-200 acted as sureties for payment bonds on public works projects alleged herein and each was a corporation authorized to do business in the State of California, engaged under and by virtue of the laws of the State of California in making, guaranteeing, and becoming a surety on bonds and undertakings as required or authorized by law.

30. Plaintiffs are further informed and believe and thereon allege that DOES 201 through 225 are cities, counties or other political subdivisions of the state of California and awarding bodies for public works projects (hereinafter collectively referred to as the "Awarding Body Defendants").

31. Plaintiffs are further informed and believe and thereon allege that Does 226 through 250 acted as a sureties for stop notice release bond(s) on one or more of the Projects where Plaintiffs were employed by Defendants and Does 1 through 150 and was a corporation authorized to do business in the State of California, engaged under and by virtue of the laws of the State of California in making, guaranteeing, and becoming a surety on bonds and undertakings as required or authorized by law. Plaintiffs do not know the identity and formal name of each surety which will be identified in discovery. Plaintiffs seek recovery against all applicable stop notice release bonds in existence and within the applicable statute of limitations.

32. Plaintiffs are further informed and believe and thereon allege that each of the Defendants named in this Complaint, including each of the Doe Defendants, are responsible in some manner for one or more of the events and happenings, and proximately caused the injuries and damages, hereinafter alleged.

33. Plaintiffs are further informed and believe and thereon alleges that each of the Defendants named in this Complaint, including each of the Doe Defendants, are responsible in some manner for one or more of the events and happenings, and proximately caused the injuries and damages, hereinafter alleged.

34. The true names and capacities, whether individual, corporate, partnership, associate, or otherwise, of Defendants, DOES 1 through 250 are unknown to Plaintiff who therefore sues these Doe Defendants by such fictitious names. Plaintiffs will seek leave to amend this Complaint to allege their true names and capacities when they are ascertained.

III. THE PROJECTS

35. Plaintiffs claim prevailing wages on all public works projects on which they performed work as employees of Defendants MPE, and Does 1-150. Such projects were

"public works" projects as defined by California Labor Code § 1720 et seq., for which MPE, and Does 1-150 were required to pay prevailing wages.

36. Plaintiffs are informed and believe that some of the formal names and/or identity of some of the public projects where Plaintiffs worked include but are not limited to: "*Pacific Street Erosion Control*", in Monterey California, *"Green Valley Road Rehabilitation"*, in Watsonville California, "*Parking Lot B Expansion"* in Monterey California, "*Storm Drain and Street Improvement"* in the County of Monterey California, "*Aptos Sewer Transmission Main Relocation"* in Santa Cruz California, "*County Service Area #5 Sand Dollar Force Main Replacement"* in Santa Cruz California.

37. Plaintiffs may have worked on other public works projects, the identity of which are yet unknown. The formal name and/or identity of the additional public works projects are unknown to Plaintiff upon the filing of the herein Complaint. Plaintiff seeks to recover for all work on all public works construction projects and reserve the right to amend this complaint when the names of these additional private and public work projects are ascertained.

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IV. GENERAL ALLEGATIONS

38. Plaintiffs are former employees of Defendant MPE and SUNSET and were employed on public works construction projects throughout the State of California.

39. Defendant MPE and SUNSET were engaged as contractors or subcontractors as defined under Labor Code § 1722.1.

40. The legal minimum wage rate for workers employed on California public works is the "general prevailing rate of per diem wages" (Labor Code §§ 1771, 1774) or more commonly referred to as the "prevailing wage" rate.

41. For their work on the Projects, Plaintiffs were required to be paid the minimum prevailing wage rate assigned per the labor classification set forth in semi-annual and annual bulletins published by the Director of Industrial Relations ("DIR"). The proper prevailing wage

rate for the work performed in the state of California is considered the minimum wage. It is the only legal wage that may be paid for work in execution of a public work contract. In addition to the required straight-time hourly rate of pay, the term "prevailing wage" includes a designated rate for overtime and holiday work, travel time and subsistence pay. (Cal. Code of Regulations § 16000). All such rates are published semi-annually by the California Department of Industrial Relations ("DIR") pursuant to pertinent California regulations.

42. Plaintiffs were not paid the required prevailing rate for their work performed on public works projects during their employment with MPE and SUNSET.

43. MPE and SUNSET were required to submit to the Awarding Bodies payroll records certified under penalty of perjury with the name and address of each worker, the classification of work performed, and the rate of pay for each hour worked. Plaintiffs are informed and believe that MPE and SUNSET did not submit accurate payroll records to all Awarding Bodies reflective the proper classification for Plaintiffs work.

44. Rather than being paid the required rate for their worker classifications, Plaintiffs were paid an hourly rate significantly less than the prevailing wage rate during their employment with MPE and SUNSET.

45. Plaintiffs are informed and believe that the required prevailing wage rates published by the State of California and applicable to Plaintiffs' work. The entire hourly prevailing wage rate for the each of the workers providing work on a public works project is determined by combining an hourly wage rate, plus a wage component entitled "employer payments" designed to benefit the employee, their families and dependants or retirees. The standard hourly wage must be paid directly to the employee. However, at the discretion of the employer, "employer payments" can either be paid directly to the employee or contributed by the employer into an approved employee benefit fund, plan or program on behalf of the employee.

46. In addition to the wage fraud and abuse, MPE and SUNSET engaged in other Labor Code violations, including but not limited to:

- failing to provide required rest breaks or compensate Plaintiffs for the missed breaks; and
- failing to provide itemized and accurate wage statements in violation of Labor Code § 226(a).

47. California law requires that on all public works projects, the contractor provide a payment bond from a qualified surety to guarantee the payment of all wages to all laborers of every class performing labor on, or bestowing skill or other necessary services, on the project. Plaintiffs are informed and believe that bonds were issued for the public work projects in compliance with Civil Code §§ 3247 and 3248.

V. FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

CALIFORNIA LABOR CODE §§ 510, 1194, ET SEQ., 1189, 1811 AND 1815

On Behalf of Plaintiffs

(Against MONTEREY PENINSULA ENGINEERING, SUNSET PACIFIC CONSTRUCTION COMPANY and Does 1 - 150)

48. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

49. California Labor Code § 510 provides in relevant part:

> Day's work; overtime; commuting time
> Eight hours of labor constitutes a day's work
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> Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on a seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee . . .

50. California Labor Code §1194 provides in relevant part that: "any employee receiving less than the minimum wage or the legal overtime compensation applicable to the

employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

51. Labor Code §1198 provides in relevant part, "the employment for longer hours that those fixed by the order or under conditions of labor prohibited by the order is unlawful."

IWC Order No. 16-2001(3)(A)(1) provides in relevant part:

> Employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:
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> (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to an including 12 hours in any workday, and for the first (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and
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> (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

52. Labor Code §1811 provides, "The time of service of any workman employed upon public work is limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week, except as hereinafter provided for under Section 1815." Section 1815 provides in relevant part that "work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 11/2 times the basic rate of pay."

53. As alleged herein, Defendants failed to properly compensate Plaintiffs for working off-the-clock, overtime and during meal and/or rest breaks. Plaintiffs and did not receive compensation for all hours worked over eight per day or forty per week.

54. In addition, California Labor Code § 226(a) provides in relevant part that: "Every employer shall . . . furnish each of his or her employees . . . an itemized statement in writing showing . . . total hours worked by the employee . . . and all applicable hourly rates in

effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."

55. California Labor Code §226(b) then provides in relevant part: "Any employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000) and shall be entitled to an award of costs and reasonable attorney's fees."

56. By their actions alleged above, Defendants violated the provisions of California Labor Code §§ 226, 510, 1194, et seq., 1198, and 1815 and are therefore liable to Plaintiffs for the damages caused.

57. As a result of the unlawful acts of Defendants, Plaintiffs have been deprived of overtime compensation in amounts to be determined at trial, and are entitled to injunctive relief and recovery of such amounts, including interest thereon, attorney's fees, costs, and penalties.

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VI. SECOND CAUSE OF ACTION
FOR NONPAYMENT OF PREVAILING WAGES
CALIFORNIA LABOR CODE §§ 1194, 1771 & 1774
On Behalf of Plaintiffs
(Against MONTEREY PENINSULA ENGINEERING, SUNSET PACIFIC CONSTRUCTION COMPANY and Does 1 - 150)

58. Plaintiff re-alleges and incorporate by reference as though fully set forth herein each of the allegations of the preceding paragraphs.

59. At all times mentioned herein, MPE, SUNSET and DOES 1 through 150 were subject to the minimum wage requirements of the State of California pursuant to Labor Code

§1194 and prevailing wage laws of the State of California pursuant to Labor Code §§ 1771, regarding work undertaken on public construction projects, including work undertaken on one or more of the Projects. Pursuant to Labor Code §1194, MPE, SUNSET and DOES 1 through 150 had a duty to pay Plaintiffs on the Projects not less than the minimum required hourly rate of pay and legal overtime wage. Pursuant to Labor Code §§ 1771 and 1774, MPE, SUNSET and DOES 1 through 150 had a duty to pay Plaintiffs on such Projects not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work.

60. The per diem wages and prevailing wages required to be paid pursuant to Labor Code §§ 1194, 1771 and 1774 are set forth in annual and semi-annual bulletins published by the California Department of Industrial Relations.

61. Plaintiffs were paid less than the minimum required general prevailing rate of per diem wages for work and less than the minimum required prevailing rate of per diem wages for holiday and overtime work for his work on one or more of the Projects as required by Labor Code §§ 1194, 1771 and 1774. Plaintiffs were paid a fraction of the required pay rates in a scheme to avoid paying the minimum required prevailing rate of per diem wages.

62. As a result of MPE, SUNSET and DOES 1 through 150 violation of statutory duties, as more fully set forth above, Plaintiffs were damaged in an amount above the jurisdictional limits of this court. Pursuant to Labor Code section 1194.2, Plaintiffs seek liquidated damages for failure to pay minimum wage.

63. Additionally, Plaintiffs seek as damages the difference between the amount actually paid and the prevailing wage rate. Plaintiff's audits and investigations are continuing, however, the amounts claimed are above the jurisdictional minimum requirements of this court. Plaintiffs will seek leave of court to amend this Complaint according to proof at the time of trial.

64. Plaintiffs are entitled to and therefore requests an award of pre-judgment interest on the unpaid wages set forth herein.

65. Plaintiffs have incurred, and will continue to incur attorneys' fees in the prosecution of this action and therefore demands such reasonable attorneys' fees as set by the court. WHEREFORE, Plaintiffs seek damages from Defendants, and each of them, as hereinafter set forth.

VII. THIRD CAUSE OF ACTION

Failure to Timely Pay Wages Due At Separation

California Labor Code §§ 201-203

On Behalf of Plaintiffs

(Against MONTEREY PENINSULA ENGINEERING, SUNSET PACIFIC CONSTRUCTION COMPANY and Does 1 - 150)

66. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

67. Section 201 and 202 of the California Labor Code require Defendants to pay their employees all wages due within 72 hours of termination of employment. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

68. Plaintiffs are entitled to compensation for all forms of wages earned, including, but not limited to, wages earned but not paid, compensation for unprovided meal periods, and/or compensation for unlawful deductions, but to date have not received such compensation, therefore entitled them Labor Code, Section 203 penalties.

69. More than 30 days have passed since Plaintiffs have left Defendants' employ, and on information and belief, they have not received payment for all wages due pursuant to Labor Code, Sections 201-203.

70. As a consequence of Defendant's willful conduct in not paying all earned wages when due, Plaintiffs are also entitled to an additional 30 days' wages as a penalty under Labor Code, Section 203, together with interest thereon and attorneys' fees and costs.

IIX. FOURTH CAUSE OF ACTION

FAILURE TO PAY FOR MISSED MEAL AND REST BREAKS

On Behalf of Plaintiffs

(Against MONTEREY PENINSULA ENGINEERING, SUNSET PACIFIC CONSTRUCTION COMPANY and Does 1 - 150)

71. Plaintiffs incorporate by reference each of the allegations of the preceding paragraphs as though fully set forth herein.

72. At all times during their employment, Plaintiffs were covered under the California Labor Code, the California Code of Regulations, and by the provisions of the Industrial Welfare Commission Wage Orders, including IWC orders 4-2000 and 4-2001.

73. California Labor Code §§ 512 and 11070 of Title 8 of the California Code of Regulations, Subdiv. 11(A)-(B) require that an employer provide its employees with a 30-minute meal break for every five-hour increment of time worked. California Labor Code § 512(a) states:

(a) An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and the employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

74. Subdivision 12(A) of 8 Cal. Code Regs. § 11070 and IWC Wage Orders require mandatory rest periods for non-exempt employees in the State of California. 8 Cal. Code Regs. § 11070, Subdiv. 12(A) states:

(b) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest

time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

75. California Labor Code § 226.7(b), 8 Cal. Code Regs. § 11070, Subdiv. 11(A)-(B) and 8 Cal. Code Regs. § 11070, Subdiv. 12(B) require that if an employer fails to provide an employee a meal or rest period, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

76. Defendants routinely failed to provide Plaintiffs with a 10 minute paid rest period every 4 hours of work in compliance with California Labor Code §§ 512(a) and 226.7, California Code Regs. § 11070 and IWC Wage Orders. As a result of Defendants' failure, Plaintiff is entitled to recover an amount to be proved at trial, of not less than one additional hour of pay at Plaintiffs regular rate of compensation for each workday that the rest periods were not provided.

77. Plaintiffs were not provided rest breaks during his shifts in accordance with California Law and IWC Wage Orders.

78. In doing the acts as alleged herein, in deliberately acting to take Plaintiffs labor without pay and in deliberately acting to take Plaintiffs wages, Defendants, and each of them, acted with malice, oppression, and with an intent to deny Plaintiff his wages, all in a willful and conscious disregard for the rights of the Plaintiff. Plaintiff is entitled to, and therefore seeks, punitive and exemplary damages in an amount to be proven at the time of trial.

79. Plaintiffs are entitled to and therefore requests an award of pre-judgment interest on the unpaid wages set forth herein. Plaintiff has incurred, and will continue to incur, attorneys' fees and costs in the prosecution of this action. Plaintiff seeks attorneys' fees under all applicable provisions of law including Labor Code § 1194. Wherefore, Plaintiff prays for judgment as set forth herein.

IX. FIFTH CAUSE OF ACTION

RECOVERY OF WAGES AND PENALTIES

UNDER PUBLIC WORKS PAYMENT BONDS

On Behalf of Plaintiffs

(As Against Defendant Sureties identified as CONTINENTAL INSURANCE COMPANY **and DOES 151 through 200)**

80. Plaintiffs incorporate by reference as though fully set forth herein each of the allegations of the preceding paragraphs.

81. Plaintiffs are informed and believe that contemporaneously with the execution of the contract for the Projects, the Defendant Sureties issued payment bond(s) for the purpose of complying with Civil Code Sections 3096 and 3247 through 3252, which were thereafter filed with and approved by the Awarding Body and/or its agents. The bonds provided that if the contractor, or any of their subcontractors, failed to pay for any work or labor performed on one or more of the respective public works projects, or for skill or services provided to one or more of the respective public works projects, that the surety on the bond would pay the same.

82. Plaintiffs are informed and believe that CONTINENTAL INSURANCE COMPANY issued payment bond #929510246 for the Pacific Street Erosion Control project in the amount of Two Hundred Four Thousand, Nine Hundred and Twelve Dollars.

83. Plaintiff is unaware of the surety and bond number for every payment bond for the public works projects at issue and will amend the complaint to ascertain the same. Plaintiffs seek recovery against any and all payment bonds as allowed by law, whether known or unknown, within the applicable statutes of limitations.

84. As a further condition of the payment bonds, the sureties and each of them, promised and agreed to pay for all unpaid labor, skill or services on the respective public works projects at issue, for all laborers of every class on the respective public works projects at issue, and for reasonable attorneys' fees to be fixed by the court in case suit was brought on the bond.

85. Plaintiffs are informed and believe and thereon allege that Defendant Sureties

have intentionally failed or refused to pay the verified claims for wages found to be due and payable to Plaintiffs. Defendant Sureties' failure or refusal to pay was "willful" under Labor Code § 203.5.

86. Pursuant to Labor Code §203.5 the claims for wages continues as a penalty against the bonding company or surety from the date on which demand for payment was made at the same rate until paid for up to 30 days.

87. There is now due, owing and unpaid wages for labor performed on one or more of the respective public works projects at issue by the Plaintiffs. Plaintiffs seek as damages the difference between the amount paid and the legal minimum wage, wages for missed meal and rest breaks, and wait time penalties for the Plaintiffs under Labor Codes §§203, and 203.5. Plaintiff's audit and investigation are continuing, however, the amounts claimed are above the jurisdictional minimum requirements of this court. Plaintiffs will seek leave of court to amend this Complaint according to proof at the time of trial. Plaintiffs claim said damages, together with interest thereon at the maximum legal rate, according to proof.

88. Plaintiffs have and will incur attorneys' fees and costs in the prosecution of this action and therefore demand such reasonable attorneys' fees and costs as set by the court.

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X. SIXTH CAUSE OF ACTION

ENFORCEMENT OF STOP NOTICES

California Civil Code §§ 3103, 3181-3214

(Brought by Plaintiffs Against Awarding Body Defendants CITY OF MONTEREY, CITY OF WATSONVILLE, MONTEREY PENNINSULA COMMUNITY COLLEGE DISTRICT, COUNTY OF MONTEREY, COUNTY OF SANTA CRUZ **and Does 201-225)**

89. Plaintiffs re-allege and incorporate by reference each of the allegations of the preceding paragraphs as though fully set forth herein.

90. Within applicable statutes of limitation Plaintiffs filed Stop Notices pursuant to

Civil Code §§ 3103, 3181-3214, seeking payment for work performed on the Project(s). The stop notice(s) were timely filed with the Awarding Body Defendants CITY OF MONTEREY, CITY OF WATSONVILLE, MONTEREY PENNINSULA COMMUNITY COLLEGE DISTRICT, COUNTY OF MONTEREY, COUNTY OF SANTA CRUZ and Does 201 through 225. At this time, Plaintiff is unaware of the status of the stop notices and will amend the complaint to ascertain the same. Plaintiff seeks recovery against any and all stop notices as allowed by law, whether known or unknown. A copy of Plaintiffs Stop Notices are attached to this complaint.

91. Under information and belief Plaintiffs alleges that as a consequence of the stop notices, the Awarding Body Defendants have withheld funds for payment to Plaintiffs for work performed.

92. There is now due, owing and unpaid wages for labor performed on one or more of the respective public works projects at issue by the Plaintiffs. Plaintiffs audit and investigation are continuing, however, the amounts claimed are above the jurisdictional minimum requirements of this court. Plaintiffs will seek leave of court to amend this Complaint according to proof at the time of trial. Plaintiffs claim said damages, together with interest thereon at the maximum legal rate, according to proof.

93. Plaintiffs have, and will continue to incur, attorneys' fees in the prosecution of this action and therefore demands such reasonable attorneys' fees as set by the court.

WHEREFORE, Plaintiff seeks damages from Defendants, and each of them, as herein set forth.

XI. SEVENTH CAUSE OF ACTION

RECOVERY UNDER STOP NOTICE RELEASE BONDS

California Civil Code § 3196

On Behalf of Plaintiffs

(Brought by Plaintiffs Against Defendants MONTEREY PENINSULA ENGINEERING, SUNSET PACIFIC CONSTRUCTION COMPANY and Does 1 – 150, and Does 226-250)

94. Plaintiffs re-allege and incorporate by reference each of the allegations of the preceding paragraphs as though fully set forth herein.

95. Within applicable statutes of limitation Plaintiffs filed Stop Notices pursuant to Civil Code §§ 3103, 3181-3214, seeking payment for work performed on the Project(s). The stop notice(s) were timely filed with the Awarding Bodies. At this time, Plaintiffs are unaware of the status of the stop notices and will amend the complaint to ascertain the same. Plaintiffs seek recovery against any and all stop notices as allowed by law, whether known or unknown.

96. Under information and belief Plaintiffs alleges that as a consequence of the stop notices, the Awarding Bodies have withheld funds for payment to Plaintiffs for work performed.

97. Plaintiffs allege that the Awarding Bodies accepted stop notice release bond(s) from an admitted surety to cover the obligations for payment to the Plaintiff on the Stop Notices.

98. Based on the stop notice release bonds, the Awarding Bodies have released the funds withheld pursuant to Plaintiff's stop notices. Plaintiff seeks recovery under the stop notice release bonds against Defendants **MONTEREY PENINSULA ENGINEERING** and **SUNSET PACIFIC CONSTRUCTION COMPANY**, Does 1 – 150, and Does 226-250.

99. There is now due, owing and unpaid wages for labor performed on one or more of the respective public works projects at issue by the Plaintiffs. Plaintiffs audit and investigation are continuing, however, the amounts claimed are above the jurisdictional minimum requirements of this court. Plaintiffs will seek leave of court to amend this Complaint according to proof at the time of trial. Plaintiffs claim said damages, together with interest thereon at the maximum.

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XII. EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

On Behalf of Plaintiffs, all Similarly Situated Workers and the General Public

(Against MONTEREY PENINSULA ENGINEERING, SUNSET PACIFIC CONSTRUCTION COMPANY and Does 1 – 150)

100. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

101. Plaintiffs seek equitable relief for restitution on behalf of themselves and all Similarly Situated Workers and the General Public and to enjoin Defendants from engaging in the practices alleged in this Complaint and to require Defendants all monies wrongfully withheld by Defendants' unfair business practices and unlawful competition.

102. At all times relevant hereto, California Business and Professions Code §17200 et seq. were in full force and effect. Section 17200 of the Business and Professions Code provides, in relevant part, that "unfair competition shall mean and include any unlawful, unfair, or fraudulent business act or practice. . . ."

103. Defendants, and each of them, are "persons" as defined under Business and Professions Code §17021. Each of the directors, officers, and/or agents of Defendants, and each of them, are equally responsible for the acts of the other directors, officers, employees and/or agents as set forth in the Business and Professions Code §17095.

104. Plaintiffs, and all similarly situated workers, have suffered injury in fact and has lost money as a result of the unfair competition of Defendants.

105. Plaintiffs bring this action within the four year statute of limitations under §17208 of the California Business and Professions Code.

106. Defendants, and each of them, engaged in unlawful and unfair business practices under California Business and Professions Code §17203. Defendants failed to pay required wages on public works projects which manifested as a pattern and practice whereby the Defendants engaged in unfair competition and unfair business practices Defendants gained a competitive advantage in the marketplace by failing to pay lawful wages that were required of

any other legitimate businesses as a requirement to engage in public works in the State of California.

107. At all times material to this action, Defendants' conduct described above is an unfair, unlawful and/or fraudulent business practice in violation of California Business & Professions Code §17200, et seq.

108. As set forth below, Plaintiffs allege, that by the wrongful conduct as alleged, Defendants have engaged in business within the State of California, as set forth and defined in Business and Professions Code §§§17026, 17029, and 17073, in a manner that injures workers on public works projects; leads to misrepresentations to the public about the manner in which Defendants engaged in business, and/or destroys competition in violation of Business and Professions Code §17043.

109. Upon information and belief, Plaintiffs allege that Defendants engaged in the acts and omissions heretofore alleged for the purpose of profiting from lower labor costs and obtaining an unlawful or unfair advantage in the California public works construction market, all in a scheme to engage in unfair competition, at the expense of the Plaintiffs and similarly situated workesr and to the detriment of public policy for the lawful employment of workers on construction projects, including public works projects.

110. As a direct and proximate result of these acts and omissions, the Defendants, and each of them, were able to unfairly compete in the State of California as contractor or subcontractor in violation of the Labor Code and the Business and Professions Code. Plaintiffs seek restitution of all unpaid wages. In addition to restitution and restoration of all wages owed to the Plaintiffs and to all affected workers, Plaintiffs seek to enforce any and all applicable equitable remedies.

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WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

A. FOR THE FIRST AND SECOND CAUSES OF ACTION:

1. For damages for unpaid wages, including overtime, measured as the difference between accrued wages at the proper prevailing wage and the actual wages paid to Plaintiff and for such damages as may be recoverable under law, according to proof at trial;

2. For liquidated damages per to Labor Code § 1194.2 for failure to pay minimum wage.

3. Damages per Labor Code § 226(a), up to $4,000, for false itemized wage statements pursuant to California law;

4. Pursuant to California law, an award of all accrued interest from the date that the wages were due and payable at the lawful rate specified in subdivision; and

5. An award to Plaintiff for all reasonable attorneys' fees and costs pursuant to California Labor Code § 1194 and/or other applicable state laws.

B. FOR THE THIRD CAUSE OF ACTION

1. Waiting time penalties of thirty days of pay at the Plaintiffs regular rate of pay, for interest thereon at the maximum legal rate, and for reasonable attorneys' fees and costs.

C. FOR THE FOURTH CAUSE OF ACTION:

1. For damages for unpaid wages for missed rest periods pursuant to Labor Code § 226.7(b) in the amount of one additional hour of pay at the worker's rate of compensation for each work day that a rest period was not provided, according to proof at trial;

2. For statutory penalties as may be recoverable under law;

3. For pre-judgment interest;

4. For attorneys fees and costs pursuant to Labor Code §§ 226.7(b), 1194 and/or other applicable state laws.

D. FOR THE FIFTH, SIXTH and SEVENTH CAUSES OF ACTION:

1. Damages for unpaid wages, including overtime and wages for unprovided meal and rest breaks, measured as the difference between accrued wages at the proper wage and the

actual wages paid to Plaintiff and for such damages as may be recoverable under law, according to proof at trial;;

2. For statutory penalties under Labor Code §§ 203 and 203.5 and others as may be recoverable under law;

3. For prejudgment interest; and

4. For attorneys fees and costs pursuant to *Labor Code* § 1194 and/or other applicable state laws.

E. FOR THE EIGHTH CAUSE OF ACTION:

1. An order certifying Plaintiffs as representatives of a class of similarly situated workers under Code of Civil Procedure §382 and Plaintiffs' counsel as class counsel.

2. An order imposing a constructive trust upon Defendants to compel them to transfer Plaintiff's wages that have been wrongfully obtained and withheld by Defendants to the detriment of Plaintiffs;

3. An award of restitution to Plaintiffs in the amount equal to all unpaid wages, including overtime wages owed, in a total amount to be proven at trial, plus interest as provided by statute;

4. A declaration that Defendants have engaged in unlawful and unfair business practices in violation of Cal. Bus. & Prof. Code § 17200 et seq. and notice to relevant governmental agencies and departments as determined by the Court;

5 A preliminary and/or permanent and mandatory injunction as provided under California Business and Professions Code §§ 17200 et seq. enjoining Defendants and their respective successors, agents, servants, officers, directors, employees and all persons acting in concert with them from pursuing the policies, acts and practices complained of herein and prohibiting Defendants from continuing such acts of unfair and illegal business acts and practices;

6. Equitable remedies, including but not limited to an equitable accounting, as the Court deems just and proper under the circumstances.

F. FOR ALL CAUSES OF ACTION:

1. For reasonable attorneys' fees and costs as permitted by California law;

2. For expenses and costs of suit;

3. For pre-judgment interest; and

4. Such other relief as the court deems just and proper under the circumstances.

Dated: November 11, 2011

DONAHOO & ASSOCIATES

By: _____

Richard E. Donahoo
Sarah L. Kokonas
Joseph K. Johnson
Attorneys for Plaintiffs

JURY TRIAL DEMAND

PLAINTIFFS hereby demand their constitutional right to trial by jury for all triable issues in the above–entitled action.

Dated: November 11, 2011

DONAHOO & ASSOCIATES

By: _____

Richard E. Donahoo
Sarah L. Kokonas
Joseph K. Johnson
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Attorney for Plaintiff ANTHONY IRIARTE

FILED
MAR 08 2007
LISA M. GALDOS
CLERK OF THE SUPERIOR COURT
C. WILLIAMS DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MONTEREY

UNLIMITED JURISDICTION

M83497

ANTHONY IRIARTE on his own behalf and in the interest of the general public,

Plaintiff,

v.

MONTEREY PENINSULA ENGINEERING, INC.; and DOES 1 through 50, Inclusive,

Defendants.

Case No.

COMPLAINT FOR STATUTORY VIOLATIONS, UNPAID WAGES, PENALTIES AND INJUNCTIVE RELIEF FOR:

1. VIOLATION OF STATUTORY DUTY FOR BREACH OF LABOR CODE §§ 1194, 1771 & 1774;
2. BREACH OF CONTRACT-THIRD PARTY BENEFICIARY;
3. LABOR CODE § 203 PENALTY;
4. LABOR CODE § 1194.2 PENALTY (failure to pay Prevailing Wage/Minimum Wage);
5. WAGE STUB VIOLATION PENALTIES AND ATTORNEYS' FEES LABOR CODE § 226;
6. LABOR CODE § 203.5 PENALTY;
7. RECOVERY UNDER PUBLIC WORKS PAYMENT BONDS, CIVIL CODE §§ 3096 and 3247 through 3252;
8. UNFAIR BUSINESS PRACTICES [Bus. & Prof. Code § 17200 et seq. on Behalf of the General Public]; and
9. UNJUST ENRICHMENT

BY FAX

I. NATURE OF THE CASE

1. Now come Plaintiff ANTHONY IRIARTE (hereinafter referred to as "Plaintiff"), individually, and in the interest of the General Public, and alleges against Defendants MONTEREY PENINSULA ENGINEERING, INC.; and DOES 1 through 50, inclusive, violations of the California Labor Code, Civil Code, breach of contract, unjust enrichment and Business and Professions Code.

2. This case involves a worker who performed labor on works of public improvement, or public works construction projects (hereinafter "PROJECTS"), who was not paid the correct prevailing rate of pay ("prevailing wage violation"), was not paid for all hours worked, and was not paid overtime wages. Moreover, he received wage stubs which were not compliant with state law to mask the rate of pay actually received and to mask the fact he was not paid as an Operating Engineer on Public Works Construction Projects.

3, This lawsuit has two distinct disputes. The first involves Plaintiff who was paid either $13.00 an hour or the rate of pay of a Laborer on PROJECTS subject to the payment of prevailing wages and actually discharged the work of an Operating Engineer and Laborer and earned and is owed the difference in wages which is a minimum wage violation. The second involves Plaintiff, and his co-workers who are members of the general public, and involves a construction project known as Urban Runoff Diversion Phase 2 for the City of Pacific Grove. This second dispute involves the fact that the Urban Runoff Diversion Phase 2 as described below was a Prevailing Wage Project and neither Plaintiff nor his co-workers, who are members of the general public, were paid prevailing wages.

4. Defendants MONTEREY PENINSULA ENGINEERING, INC., and DOES 1 through 25 are collectively identified and referred to as the MPE DEFENDANTS. As described below these individuals and entities hired, employed and benefited from the labor of PLAINTIFF such that they are responsible in whole or in part for the claims made.

5. Defendants Does 26 through 50, are collectively identified and referred to as SURETY BOND DEFENDANTS, are various entities that issued surety and/or construction bonds on jobs in which PLAINTIFF performed labor, was not paid correctly, and on which timely verified claims were made.

6. Plaintiff alleges that MPE DEFENDANTS failed to properly pay Plaintiff straight time, overtime and weekend and holiday pay on a work of public improvement subject to California's Prevailing Wage laws. This includes the show up pay; travel pay and the minimum shift pay which is part of MPE DEFENDANTS' prevailing wage obligations. Plaintiff seeks recovery of unpaid wages, accrued interest and penalties, attorneys' fees and costs.

7. Plaintiff seeks to enforce claims made against construction bonds issued by SURETY BOND DEFENDANTS and asserts claims for penalties based on the manner in which they processed his verified claims.

8. Finally, the employment practices plead as against MPE DEFENDANTS are unlawful, contrary to public policy of the State of California, and violate state statutes, including California's Unfair Competition Law (Cal. Business and Professions Code §§ 17200 et seq.), Civil Code §§ 3103 and 3181 through 3184, and California Labor Code §§ 201, 202, 203, 226, 226.7, 510, 1194, 1194.2, 1174, 1174.7 and 1198, and as such are predicate acts for the 8th cause of action.

II. JURISDICTION

9. Plaintiff brings this action against Defendants pursuant to Civil Code §§ 3103 and 3181 through 3184, California Labor Code §§ 200, 201, 202, 203, 203.1, 203.5, 218, 226, 1194, 1194.2, and 1174; Industrial Welfare Commission ("IWC") Wage Order 16-2001, and California Business and Professions Code §§ 17200 et seq.

16. Plaintiff is informed and believes and therefore alleges that certain MPE DEFENDANTS, and each of them, were at all relevant times herein acting as agents, and/or servants of MONTEREY PENINSULA ENGINEERING, INC., and in such a position influenced and governed MONTEREY PENINSULA ENGINEERING, INC. such that such a unity of interest between MONTEREY PENINSULA ENGINEERING, INC. and certain MPE DEFENDANTS that the MPE DEFENDANTS were alter egos of MONTEREY PENINSULA ENGINEERING, INC..

17. Plaintiff is informed and believes and therefore alleges that certain MPE DEFENDANTS, and each of them, were entitled to and did receive a beneficial interest in the proceeds of MONTEREY PENINSULA ENGINEERING, INC. by entering into the subcontracts and/or contracts for the awarding bodies on the Pubic Works Construction Projects at issue.

18. Plaintiff is informed and believes and therefore alleges that certain MPE DEFENDANTS, and each of them, operated a single construction company, wherein each was the alter-ego of the other, that a unity of interest exists between them such that in equity any separateness of form should be disregarded to prevent fraud and injustice.

19. Plaintiff is informed and believes and therefore alleges that adherence to the separate existence of MONTEREY PENINSULA ENGINEERING, INC. an entity distinct from certain MPE DEFENDANTS, and each of them, would permit an abuse of the corporate privilege and would sanction a fraud in that said defendants, and each of them, while acting as principle owners, shareholders, agents, and/or servants of MONTEREY PENINSULA ENGINEERING, INC. knowing performed the following: (1) engaged in wage and hour fraud against employees of MONTEREY PENINSULA ENGINEERING, INC., including Plaintiff; (2) acted to conceal the fact that Plaintiff was not paid prevailing wages by submitting falsified payroll records to the awarding agencies; (3) underbid the subcontracts and/or contracts for the PROJECTS with knowledge that the bid was insufficient to pay Plaintiff's prevailing wages; and (4) underbid the subcontracts and/or contracts for the PROJECTS in order to gain an unfair advantage over the competition in being awarded the subcontract and/or contract for the PROJECTS. Said

defendants' acts or omissions thereby subjected MPE DEFENDANTS to criminal and civil liability for their failure to pay minimum prevailing wages, tax fraud, insurance fraud, and numerous other wage and hour violations.

20. Plaintiff is informed and believes and therefore alleges that some MPE DEFENDANTS, and each of them, acted in concert to violate wage and hour laws of the State of California as delineated in the preceding paragraph, and as such operated a joint enterprise such that each was the alter-ego of one another. Failure to disregard any separateness between these defendants, and each of them, would promote fraud and injustice.

21. SURETY BOND DEFENDANTS are various entities that issued surety and/or construction bonds on jobs in which PLAINTFF performed labor, were not paid correctly, and on which timely verified claims were made.

22. Plaintiff is informed and believes and therefore alleges that at all times herein mentioned, defendants DOES 1 through 50, and each of them, were at all relevant times herein the agents, servants and/or employees of each and every group of defendants, and that all acts and omissions herein complained of were performed within the course and scope of said employment, service and/or agency and with the consent of each of the defendants. All actions of each defendant herein alleged were ratified and approved by the directors, officers or managing agents of defendants.

23. The true names and capacities, whether individual, corporate, associate or otherwise of defendant DOES 1 through 50, inclusive, are unknown to Plaintiff who therefore sues said defendants by such fictitious names. Plaintiff will seek leave of court to amend this Complaint to show their true names and capacities when the same have been ascertained pursuant to Code Civil Procedure section 474.

V. GENERAL ALLEGATIONS

24. MPE DEFENDANTS employed Plaintiff at various times within the statute of limitations in this action on Public Works Construction Projects, including but not limited to those identified above.

25. MPE DEFENDANTS compensated Plaintiff for his labor at a rate of pay below the prevailing wage rate of pay for the classification of labor he performed. Specifically, MPE DEFENDANTS paid Plaintiff either $13.00 an hour or a rate of pay for the "Laborer" Craft when Plaintiff either worked as a "Laborer" or "Operating Engineer.".

26. MPE DEFENDANTS did not compensate Plaintiff for his labor by making any fringe benefit contributions that could offset the prevailing wage rate of pay for the classification of his labor.

27. MPE DEFENDANTS did not compensate Plaintiff for his labor by paying overtime compensation when due and owing.

28. MPE DEFENDANTS did not compensate Plaintiff, and his co-workers who are members of the general public, the Prevailing Wage on the Urban Runoff Diversion Phase 2 for the City of Pacific Grove. Based on information and belief, this project is subject to the payment of prevailing wages because the City of Pacific Grove paid for the project in whole or in part from grant funds from the State of California Water Resources Control Board. Said funds subject the Urban Runoff Diversion Phase 2 for the City of Pacific Grove to the payment of prevailing wages to workers.

29. Based on the failure to pay all wages, Plaintiff will file verified claims against Surety or Bonding companies including SURETY BOND DEFENDANTS.

VI. FIRST CAUSE OF ACTION

VIOLATION OF STATUTORY DUTY FOR BREACH OF LABOR CODE §§ 218.5, 1194, 1194.2, 1771 & 1774
On Behalf of Plaintiff
(As Against MPE DEFENDANTS)

30. Plaintiff incorporates by reference as though fully set forth herein each of the allegations of Paragraphs 1 through 29.

31. At all times mentioned herein, MPE DEFENDANTS, and each of them, were subject to the minimum wage requirements of the State of California pursuant to Labor Code § 1194 and prevailing wage laws of the State of California. Pursuant to Labor Code §1194 defendants had a duty to pay their employees, including Plaintiff, not less that the minimum required hourly rate of pay and legal overtime wage.

32. The failure to pay the prevailing wage, which is a minimum wage, subjects, MPE DEFENDANTS, and each of them, to an assessment of the unpaid wage difference pursuant to Labor Code § 1194.2.

33. At all times mentioned herein, defendants were subject to the prevailing wage laws of the State of California pursuant to Labor Code §§ 1771, regarding work undertaken on public construction projects, including work undertaken on the projects listed above. Pursuant to Labor Code §§ 1771 MPE DEFENDANTS had a duty to pay their employees on such projects, including Plaintiff, not less that the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less that the general prevailing rate of per diem wages for holiday and overtime work.

34. At all times mentioned herein, MPE DEFENDANTS, and each of them, were subject to the prevailing wage laws of the State of California pursuant to Labor Code §§ 1774, regarding work undertaken on public construction projects. Pursuant to Labor Code §§ 1774, MPE DEFENDANTS, and each of them, had a duty to pay their employees on such projects, including Plaintiff, not less than the specific prevailing rates of wages to all workmen employed in the execution of the contract of the PROJECTS.

35. Plaintiff is informed and believes and based thereon contends that the per diem wages and prevailing wages required to be paid pursuant to Labor Code §§ 1194, 1771 and 1774 are set forth in annual and semi-annual bulletins published by the California Department of Industrial Relations.

36. Plaintiff's employment period, hours worked, and trade classification is based on his individual employment as described above and as will be proved at trial.

37. Plaintiff is informed and believes and based thereon alleges that Plaintiff was paid less than the minimum required general prevailing rate of per diem wages for work and less than the minimum required prevailing rate of per diem wages for holiday and overtime work for their work on the PROJECTS as required by Labor Code §§ 1194, 1771 and 1774.

38. Plaintiff is informed and believes and based thereon contends that said defendants, and each of them, violated Labor Code §§ 1194, 1194.2, 1771 and 1774, specifically by failing and refusing to comply with the statutory duty to pay Plaintiff's prevailing wages as required by the contracts and by statute, or ensure that Plaintiff was paid prevailing wages as required by the contracts and by statute.

39. As a result of MPE DEFENDANTS' violation of statutory duties, as more fully set forth above, Plaintiff earned but were not paid wages in an amount within the jurisdictional minimum of this court.

40. Plaintiff seeks as earned but were not paid wages the difference between the amount actually paid and the prevailing wage rate as determined by the Director of Industrial Relations. Plaintiff's audits and investigations are continuing, however, the amounts claimed are above the jurisdictional minimum requirements of this court. Plaintiff will seek leave of court to amend this Complaint according to proof at the time of trial.

41. Plaintiff is entitled to and therefore requests an award of pre-judgment interest on the unpaid wages set forth herein.

42. Plaintiff seeks and is entitled to an assessment of the unpaid minimum wage under Labor Code § 1194.2.

43. Plaintiff has incurred, and will continue to incur, attorneys' fees in the prosecution of this action and therefore demand such reasonable attorneys' fees and costs as set by the court.

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VII. SECOND CAUSE OF ACTION

BREACH OF CONTRACT -THIRD PARTY BENEFICIARY
On Behalf of Plaintiff
(As Against MPE DEFENDANTS)

44. Plaintiff incorporates by reference as though fully set forth herein each of the allegations of Paragraphs 1 through 43.

45. Plaintiff is informed and believes and based thereon alleges that during the relevant time periods mentioned herein, MPE DEFENDANTS and AWARDING BODY DEFENDANTS were parties to public works construction written contracts (hereinafter "the Contracts") for work undertaken on the PROJECTS listed above.

46. Plaintiff is informed and believes and based thereon alleges that the Contracts required MPE DEFENDANTS, and each of them, to comply with all applicable legal requirements for work undertaken on public works projects and ensure its subcontractors complied with all such laws, including payment of prevailing wages pursuant to Labor Code §§ 1194 and 1770 et seq.

47. Except as excused by the wrongful conduct of defendants, Plaintiff has performed all conditions required to be performed by Plaintiff under the Contracts and/or Subcontracts.

48. Plaintiff is informed and believes and based thereon alleges that MPE DEFENDANTS, and each of them, breached the Contracts and Subcontracts by failing to pay prevailing wages as required by the Contracts and Subcontracts, and as required by California law, and by failing to submit truthful and accurate Certified Payroll Records to the public bodies awarding the Contracts. Plaintiff was damaged by the failure of MPE DEFENDANTS, and each of them, to pay prevailing wages.

49. Plaintiff has standing as an intended third-party beneficiary of the Contracts and Subcontracts to assert said claims.

50. As a result of MPE DEFENDANTS', inclusive, breach of the Contracts and Subcontracts, as more fully set forth herein, Plaintiff was damaged in an amount within the jurisdictional minimum of this court.

51. Plaintiff seeks as contractual damages earned but unpaid wages being the difference between the amount paid and the prevailing wage rate as determined by the Director of Industrial Relations. Plaintiff's audits and investigations are continuing, however, the amounts claimed are above the jurisdictional minimum requirements of this court. Plaintiff will seek leave of court to amend this Complaint according to proof at the time of trial.

52. Plaintiff is entitled to and therefore requests an award of pre-judgment interest on the unpaid wages set forth herein.

53. Plaintiff has incurred, and will continue to incur attorney fees in the prosecution of this action and therefore demand such reasonable attorneys' fees as set by the court. Plaintiff is informed and believes and based thereon alleges that the contracts at issue provided that should a dispute arise in connection with the contract that attorneys fees would be awarded to the prevailing party.

54. Plaintiff has incurred, and will continue to incur, attorneys' fees in the prosecution of this action and therefore demand such reasonable attorneys' fees and costs as set by the court.

VIII. THIRD CAUSE OF ACTION

LABOR CODE § 203 PENALTIES
On Behalf of Plaintiff
(As Against MPE DEFENDANTS)

55. Plaintiff incorporates by reference as though fully set forth herein each of the allegations of Paragraphs 1 through 54.

56. Plaintiff is a former employee of MPE DEFENDANTS, who was discharged or quit. Plaintiff is informed and believes and based thereon alleges that defendants owed unpaid wages at the conclusion of his employment.

57. Plaintiff is informed and believes and based thereon alleges that he submitted at least two verified claims for wages now due on the PROJECTS.

58. Plaintiff is informed and believes and based thereon alleges that within the last four years MPE DEFENDANTS, inclusive, and each of them, willfully failed to pay Plaintiff's claims for compensation due to them as set forth above, and as required by Labor Code §201 and §202.

Under Labor Code § 203, MPE DEFENDANTS, and each of them, are liable to Plaintiff for a penalty of thirty-days wage at the legally required prevailing wage rate.

59. Plaintiff has incurred, and will continue to incur, attorneys' fees in the prosecution of this action and therefore demand such reasonable attorneys' fees and costs as set by the court.

IX. FOURTH CAUSE OF ACTION

LABOR CODE § 1194.2
On Behalf of Plaintiff

(As Against MPE DEFENDANTS)

60. Plaintiff incorporates by reference as though fully set forth herein each of the allegations of Paragraphs 1 through 59.

61. MPE DEFENDANTS failed to pay Plaintiff the prevailing wage which is a minimum wage under Labor Code § 1194.

62. Plaintiff is entitled to liquidated damages for the failure to pay the minimum wage under Labor Code § 1194.2 in the amount equal to the underpaid wage amount as MPE DEFENDANTS cannot demonstrate that the failure to pay minimum wage resulted from an omission made in good faith and that they had reasonable grounds for believing that the act or omission was not a violation of any provision of the Labor Code relating to minimum wage, or an order of the commission.

63. Plaintiff has incurred, and will continue to incur, attorneys' fees in the prosecution of this action and therefore demand such reasonable attorneys' fees and costs as set by the court.

X. FIFTH CAUSE OF ACTION

LABOR CODE § 226
On Behalf of Plaintiff

(As Against MPE DEFENDANTS)

64. Plaintiff incorporates by reference as though fully set forth herein each of the allegations of Paragraphs 1 through 63.

65. At all times relevant hereto, Defendants were subject to the provisions of IWC Wage Order 16-2001, and Labor Code §§ 226 and 1174, which require Defendants to keep written

daily records of each of its employee's hours of work and meal breaks and to maintain such records for at least three years; and to provide each employee with each periodic wage payment a writing setting forth, among other things, the dates of labor for which payment of wages is made, the total hours of work for the pay period, the gross and net wages paid, all deductions from those wages, and the name and address of the employer.

66. Defendants knowingly and intentionally failed to provide Plaintiff with accurate, itemized wage statements in compliance with Labor Code §226. Such failures in Defendants' itemized wage statements included, among other things, not accurately showing the number of all hours worked, including overtime hours, in each pay period and/or incorrectly reporting gross wages earned.

67. As a direct result of each Defendants' failure, Plaintiff was injured and entitled to recover an amount to be proved at trial, of not less than $100.00 for each violation up to $4,000.00.

68. Plaintiff on behalf of himself and the general public is entitled to and seek an injunction ordering Defendants to comply now and in the future with the record keeping provisions of IWC Wage Orders 1-98, the March 1, 2000-September 30, 2000 Interim Wage Order, 1-2000, 1-2001, and Labor Code §§ 226 and 1174, and with the pay stub provisions of Labor Code §§ 226 and 226.6; and statutory penalties and attorney fees pursuant to Labor Code § 226 and Civil Code § 1021.5.

69. Defendants' practices as alleged as the failure to provide accurate wage statements is an ongoing unlawful business practice by which Defendants profited, and which are proscribed by Business and Professions Code § 17200. Plaintiff on behalf of himself and the general public are entitled to and seek an injunction ordering Defendants to comply now and in the future with the record keeping provisions of IWC Wage Order 1-98, the March 1, 2000-September 30, 2000 Interim Wage Order, 1-2000, 1-2001, and Labor Code §§ 226 and 1174, and with the pay stub provisions of Labor Code § 226; and statutory penalties and attorney fees pursuant to Labor Code §§ and 226, 1194 and Civil Code § 1021.5.

XI. SIXTH CAUSE OF ACTION

RECOVERY UNDER PUBLIC WORKS PAYMENT BOND
On Behalf of Plaintiff
(As Against MPE DEFENDANTS and SURETY DEFENDANTS)

70. Plaintiff incorporates by reference as though fully set forth herein each of the allegations of Paragraphs 1 through 69.

71. Plaintiff is informed and believes and based thereon alleges that contemporaneously with the execution of the Contracts for the PROJECTS that MPE DEFENDANTS as principal, and SURETY DEFENDANTS, as surety, executed a Payment Bond for Labor and Materials for the purpose of complying with Civil Code §§ 3096 and 3247 through 3252, which was thereafter filed with and approved by the respective awarding body. The bond was conditioned, and provided that if MPE DEFENDANTS or any of their subcontractors, such as MPE DEFENDANTS, and each of them, failed to pay for any work or labor performed on the aforementioned projects of any kind, that the surety on the bond would pay the same. Plaintiff alleges that the expiration of the stop notice period for each project or projects covered under the payment bond(s) occurred less than six months prior to the filing of the herein action.

72. Plaintiff is informed and believes and based thereon alleges that as a further condition of the payment bond on the PROJECTS, MPE DEFENDANTS and SURETY DEFENDANTS, and each of them, promised and agreed to pay reasonable attorneys' fees to be fixed by the court in case suit was brought on the bond and undertaking.

73. Under Civil Code § 3250, Plaintiff is entitled to an award of reasonable attorneys fees in the sum to be fixed by the Court, for costs of suit, and for prejudgment interest as set by law.

74. Plaintiff is informed and believes and based thereon alleges that there is now due, owing and unpaid from MPE DEFENDANTS, and each of them, wages for labor performed on the PROJECTS by Plaintiff. Plaintiff seeks as damages the difference between the amount paid and the prevailing wage rate as determined by the Director of Industrial Relations. Plaintiff's

audits and investigation are continuing, however, the amounts claimed are above the jurisdictional minimum requirements of this court. Plaintiff will seek leave of court to amend this Complaint according to proof at the time of trial. Plaintiff claims said damages, together with interest thereon at the maximum legal rate, according to proof.

75. Plaintiff has incurred, and will continue to incur, attorneys' fees in the prosecution of this action and therefore demand such reasonable attorneys' fees and costs as set by the court.

XII. EIGHTH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES
(On Behalf of Plaintiff Individually and in the Interest of the General Public)
(As against MPE DEFENDANTS)

76. Plaintiff incorporates by reference as though fully set forth herein each of the allegations of Paragraphs 1 through 75.

77. Plaintiff individually, and in the interest of the general public, is informed and believes and based thereon alleges that MPE DEFENDANTS, and each of them, engaged in the acts and omissions heretofore alleged for the purpose of depriving their employees of their weekly pay at the minimum wage rate as set by law. Plaintiff, on behalf of the general public, is further informed and believe and based thereon allege that defendants, and each of them have also engaged in the acts and omissions heretofore alleged for the purpose of profiting from lower labor costs, employer taxes, workers compensation insurance, employer related expenses, and obtaining a deceitful, unlawful or unfair advantage in the competitive biding for public works construction contracts, all in a scheme to engage in unfair competition, at the expense of the general public and to the detriment of public policy for the lawful construction of public works projects. Said conduct deceived the general public into believing MPE DEFENDANTS were legitimate public works contracts and constitutes an Unfair Trade Practice and violates the Unfair Practices Act of the California Business and Professions Code, Section 17200 et seq.

78. Plaintiff, on behalf of the general public, is prosecuting this action in the interest of the general public, to maintain the integrity of public works projects, compliance with pubic

works labor laws and to prevent and deter practices of MPE DEFENDANTS, and each of them, which constitute an Unfair Trade Practice as required by California Business & Professions Code, section 17200 et seq.

79. Plaintiff is an aggrieved worker and therefore has standing to maintain this action. Moreover, based on information and belief Plaintiff satisfies the requirements of California Business and Professions Code sections 17203 and 17204 and will be able to comply with California Code of Civil Procedure section 382.

80. As a proximate result of the above mentioned acts and omissions of MPE DEFENDANTS, and each of them, as previously alleged, the general public and employees of MPE DEFENDANTS, and each of them, have been damaged in an amount above the jurisdictional limits of this court.

81. Plaintiff us entitled to and therefore request an award of pre-judgment interest at the maximum legal rate.

82. Plaintiff has incurred, and will continue to incur attorney fees in the prosecution of this action.

XIII. NINTH CAUSE OF ACTION

UNJUST ENRICHMENT
On Behalf of Plaintiff
(As Against MPE DEFENDANTS)

83. Plaintiff incorporates by reference as though fully set forth herein each of the allegations of Paragraphs 1 through 82.

84. MPE DEFENDANTS received funds from various public entities, and general contractors and/or subcontractors to pay the prevailing rate of pay on public works construction.

85. Said funds were for the benefit of Plaintiff.

86. By failing to pay for all hours worked and overtime on public works construction MPE DEFENDANTS unjustly enriched themselves of funds earmarked to Plaintiff.

87. Under equitable principles, MPE DEFENDANTS were and are unjustly enriched and MPE DEFENDANTS should be required to pay said funds to Plaintiff.

88. Plaintiff has fulfilled all conditions precedent to receive said funds.

XV. ATTORNEY FEES AND COSTS

89. Enforcement of statutory provisions enacted to protect workers and to ensure proper and prompt payment of wages due to employees is a fundamental public interest in California. Consequently, Plaintiff's success in this action will result in the enforcement of important rights affecting the public interest and will confer a significant benefit upon the general public. Private enforcement of the rights enumerated herein is necessary as no public agency has pursued enforcement. Plaintiff is incurring a financial burden in pursuing this action and it would be against the interest of justice to require the payment of any attorney's fees and costs from any recovery that might be obtained herein. As prayed for below, Plaintiff and his counsel of The Law Office of Richard H. Wilson and The Law Offices of Tomas E. Margain are entitled to and seeks an award of attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5, Labor Code §§ 1194, 1194.2 and other applicable laws.

XVI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For damages for unpaid compensation according to proof at trial measured as the difference between the prevailing wage rate and the wages paid to Plaintiff;

2. For General Damages and Special Damages as allowed by law;

3. For pre-judgment and post-judgment interest at the maximum legal rate;

4. For penalties pursuant to Labor Code § 203 in an amount equal to thirty days wages to Plaintiff measured at the applicable prevailing wage rate;

5. For liquidated damages or an assessment pursuant to Labor Code § 1194.2 in an amount equal to the unpaid prevailing wage amount;

6. For penalties pursuant to Labor Code § 203.5 in an amount equal to thirty days wages to Plaintiff measured at the applicable prevailing wage rate;

7. For an award of earned but unpaid wages to Plaintiff under the Unfair Competition Act;

8. For equitable and injunctive relief under the Unfair Competition Act;

9. For an award of earned but unpaid wages to Plaintiff under theories of Unjust enrichment;

10. Wage Stub Violation Penalties and an injunction to Plaintiff and his co-workers who are members of the general public;

11. For a finding that various Doe Defendants are alter egos of the named Defendants;

12. For a finding that various Doe Defendants are statutory employers of Plaintiff;

13. For a finding that the corporate veil of certain named Defendants should be disregarded as according to proof;

14. For an award of reasonable attorney fees and costs of suit;

15. For any and all penalties allowable by law for the alleged conduct; and

16. For such other and further relief as the court may deem proper.

Dated: March 8, 2007

LAW OFFICE OF RICHARD H. WILSON

By: _____
RICHARD H. WILSON
Attorneys for Plaintiff

PAUL D. SUPTON, Bar No. 072866
ALAN G. CROWLEY, Bar No. 203438
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Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MONTEREY

FRED HIRSHBACH, on behalf of the general public; JIM HOMER, also on behalf of the general public; and JUAN GALLO, on behalf of themselves and on behalf of others similarly situated, Plaintiffs, vs. MONTEREY PENINSULA ENGINEERING, INC.; SUNSET PACIFIC; and DOES 1 THROUGH 50, inclusive, DEFENDANTS.	Case No. M63013 **AMENDED NOTICE OF DEPOSITION OF PAUL BRUNO** Deposition Date: March 11, 2004 Time: 10:00 a.m. Location: Pulone & Stromberg, Inc. Certified Shorthand Reporters 1550 The Alameda, Suite 150 San Jose, California, 95126 Telephone: (888) 280-6628 Facsimile: (408) 288-1261

TO: EACH PARTY AND THEIR ATTORNEY OF RECORD

NOTICE IS HEREBY GIVEN that Plaintiffs will take the deposition of PAUL BRUNO, on March 11, 2004 at 10:00 a.m., at Pulone & Stromberg, Inc., Certified Shorthand Reporters, 1550 The Alameda, Suite 150, San Jose, California, 95126, Telephone: (888) 280-6628. The deposition shall be taken upon oral examination before a certified shorthand reporter, authorized to

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administer oaths, and shall continue from day to day until completed or adjourned, Sundays and holidays excepted.

DATED: February 19, 2004

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: _____
ALAN G. CROWLEY
Attorneys for Plaintiffs

WEINBERG, ROGER & ROSENFELD
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180 Grand Ave. Ste. 1400
Oakland, CA 94612
(510) 839-6600

LABOR COMMISSIONER, STATE OF CALIFORNIA
Department of Industrial Relations
Division of Labor Standards Enforcement

Bureau of Field Enforcement
100 Paseo de San Antonio Rm 126
San Jose, CA 95113

AWARDING BODY:

City of Seaside
440 Harlowe Avenue
Seaside, CA 93455

DEPARTMENT OF INDUSTRIAL RELATIONS * STATE OF CALIFORNIA *

DATE: January 26, 1988

IN REPLY, REFER TO CASE NUMBER: 28-7955SNJ051

NOTICE OF WAGES OWED

CONTRACT NUMBER

SUB-CONTRACTOR: Monterey Peninsula Engineering

GENERAL CONTRACTOR: Olympic Builders

PROJECT NAME AND ADDRESS: Improvements on Kimball Avenue

Please Take Notice that the person(s) named on Exhibit "A", attached hereto and made a part hereof, have performed labor as stated on Exhibit "A" for the sub-contractor or general contractor, named above, or other person(s) acting by your authority on the work of improvement in progress or being completed at your property at the project shown above.

Total value of the labor so performed is the sum of $ 17,813.07, and no payments have been made for the foregoing labor except as indicated on Exhibit "A", and there now remains due, owing and unpaid $ 17,813.07 after deducting all just credits and offsets. The labor was performed for and furnished to the general contractor named above upon the project shown above.

This Notice is given pursuant to the provisions of Section 1727 of the Labor Code. You are hereby required, pursuant to said section to withhold any and all payments which are or hereafter may become due to the contractor hereinabove named to the extent of the total claim as hereinabove shown.

Executed on January 26, 1988, at San Jose, California.

RECEIVED
FEB 1 1988
F.E.C. SR

STATE LABOR COMMISSIONER

By Lucien Kubota
Lucien Kubota
Deputy Labor Commissioner

PW - 14 (5/87)

NOTICE OF WAGES OWED

Richard K. Grosboll, State Bar #99729
Carolyn A. Anderson, State Bar #145628
NEYHART, ANDERSON, REILLY & FREITAS
600 Harrison Street, Suite 535
San Francisco, CA 94107
(415) 495-4949

Attorneys for Plaintiffs

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JEANNE NUNEZ, RAYMOND PEREZ, ROBERT NUNEZ, RICHARD MORGAN, and JOHN MACHADO,

Plaintiffs,

vs.

MONTEREY PENINSULA ENGINEERING, INC., MONTEREY PENINSULA ENGINEERING PROFIT SHARING PLAN, and BART J. BRUNO,

Defendants.

No.

COMPLAINT FOR DAMAGES AND INJUNCTIVE AND DECLARATORY RELIEF

[Seeking Pension Benefits and Documents Under ERISA]

I. INTRODUCTION

1. Plaintiffs JEANNE NUNEZ, RAYMOND PEREZ, ROBERT NUNEZ, RICHARD MORGAN, and JOHN MACHADO bring this action to recover pension benefits due them under the MONTEREY PENINSULA ENGINEERING, INC. PROFIT SHARING PLAN ("PLAN") and to force defendants MONTEREY PENINSULA ENGINEERING, INC. ("MPE"), the PLAN, and BART J. BRUNO to furnish plaintiffs with documents previously

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requested pertaining to the plaintiffs' benefits under the PLAN. Defendants have violated the Employee Retirement Income Security Act, as amended, 29 U.S.C. 1001, et seq. ("ERISA") and infringed on plaintiffs' rights under ERISA in several ways:

a. Elimination of the immediate lump sum payment benefit option upon termination of employment and replacement of that benefit option with an eighteen month waiting period;

b. Reduction in benefits through 1) the loss of earnings during the 18 month waiting period, 2) loss of earnings for the period since the 18 month period has lapsed, and 3) low-yielding investments;

c. Establishment and implementation of a vesting and benefit program that results in very few employees becoming vested and resulting in certain employees, including defendant BART J. BRUNO, reaping the forfeited benefits;

d. Failure to properly credit plaintiffs with all the benefits to which they were due, including not contributing full amounts due the employees on public works projects as required by the Davis-Bacon Act;

e. Failure to furnish Plan documents.

Plaintiffs seek a Court order directing the defendants to furnish the plaintiffs with the requested documents necessary for the plaintiffs to determine the accuracy of their pensions and the prudence of certain aspects of the administration, management and funding of the PLAN.

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II. JURISDICTION AND VENUE

2. Plaintiffs bring this action for injunctive, declaratory and monetary relief pursuant to ERISA Sections 404 and 502, 29 U.S.C. §§ 1104 and 1132. Jurisdiction is conferred by ERISA Sections 502(a)(1)-(3) and (c), 29 U.S.C. § 1132(a)(1)-(3) and (c). Venue is proper in the Northern District of California given that Defendants' principal place of business is in Monterey, California. Plaintiffs also reside in Monterey County, California.

III. PARTIES

3. Plaintiff JEANNE NUNEZ is a former employee of the defendant MPE, which established and administers the Defendant PLAN. Plaintiff J. NUNEZ is a participant of the defendant PLAN within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7).

4. Plaintiff RAY PEREZ is a former employee of the defendant MPE. Plaintiff PEREZ is a participant of the defendant PLAN within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7).

5. Plaintiff ROBERT NUNEZ is a former employee of the defendant MPE. Plaintiff R. NUNEZ is a participant of the defendant MPE PLAN within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7).

6. Plaintiff RICHARD MORGAN is a former employee of the defendant MPE. Plaintiff MORGAN is a participant of the defendant MPE PLAN within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7).

7. Plaintiff JOHN MACHADO is a former employee of the defendant MPE. Plaintiff MACHADO is a participant of the

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defendant PLAN within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7).

8. Defendant MPE is a California corporation with its principal office and place of business in Monterey, California. Defendant MPE is an employer within the meaning of ERISA § 3(5), 29 U.S.C. § 1002(5), a party in interest within the meaning of ERISA § 3(14), 29 U.S.C. § 1002(14), a plan sponsor within the meaning of ERISA § 16(B), 29 U.S.C. § 1002(16)(B), and a fiduciary within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

9. Defendant PLAN is an employee pension benefit plan within the meaning of ERISA § (3)(2), 29 U.S.C. § 1002(2). Defendant Plan maintains its principal office in Monterey, California.

10. Defendant BART J. BRUNO is the President of Defendant MPE, and has primary responsibility for administering the defendant PLAN. Defendant BRUNO is the Plan Administrator for the PLAN. Defendant BRUNO is a fiduciary within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

IV. STATEMENT OF FACTS

11. Plaintiffs were employed by defendant MPE for the following periods (on or about these dates):

Jeanne Nunez	July, 1985	February, 1991
Ray Perez	August, 1986	November, 1991
Robert Nunez	April, 1989	August, 1990
Richard Morgan	February, 1984	November, 1991
John Machado	June, 1991	August, 1992

As employees of MPE, plaintiffs participated in and began earning

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benefits under the PLAN.

12. When the plaintiffs J. NUNEZ, PEREZ and MORGAN began participating in the PLAN, the PLAN provided that said plaintiffs had the option of selecting a lump sum distribution of their pension benefits upon termination of employment. At an unspecified time in the late 1980's, the defendants, and each of them, amended the PLAN by eliminating the lump sum option and replaced it with a requirement that the participants must wait five years from the date of termination of employment to be entitled to such benefits. Said plaintiffs learned later that that new rule may have been effective as of December 31, 1988.

Subsequently, effective of as of May 31, 1992, defendants, and each of them, amended the Plan again to provide that plaintiffs, and other similarly-situated plaintiffs, would have to wait eighteen (18) months after their termination of employment to be entitled to their benefits. Each of the plaintiffs terminated his or her employment more than 18 months ago and have yet to receive a distribution of his or her profit sharing benefits. Defendants unilateral imposition of a more restrictive benefit option without any formal notice of such change violates ERISA Section 204(g), 29 U.S.C. 1054(g).

13. During the time in which the plaintiffs have participated in the Plan, they have been concerned that their retirement benefits were not being invested in a safe and prudent manner and that defendants MPE, MPE PLAN, and BART J. BRUNO were not properly investing the Plan's assets. Plaintiffs are informed

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and believe that in at least one year, the Plan had a very low yield (under 3%) and that in other years, the returns were less than the investment yields for similar types of retirement plans. Prior to filing this lawsuit, plaintiffs requested specific information on the investments to verify their suspicions about the low-yielding investments, but defendants refused to furnish such information.

14. Plaintiffs are informed and believe and therefore allege that very few employees of MPE have become more than marginally vested, if at all, in their pension benefits under the PLAN, and as a result, defendant BART J. BRUNO and other family members of said defendant benefit unduly from the forfeitures in the Plan. Accordingly, plaintiffs believe the Plan is operated and administered in such a manner not in the best interests of the Plan participants and beneficiaries.

15. Because much of the work performed by MPE is on public works projects, MPE is required to comply with the federal Davis-Bacon Act [29 U.S.C. 726a, et seq.] and the Anti-Kickback Act [41 U.S.C. 51, et seq.]. On such projects the law requires that any pension or profit sharing contributions on behalf of the persons employed on such public projects must be irrevocably made to such pension or profit sharing fund on behalf of the employees. Plaintiffs are informed and believe and therefore allege that the retirement funds to which the plaintiffs are entitled on such projects have not always been contributed solely on behalf of the individual employees who labored on those projects, nor were such

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amounts irrevocably contributed on their behalf. Rather only small amounts far short of the prevailing rate for pension-type contributions have been distributed to profit-sharing accounts of the employees who were employed on these projects. Furthermore, much of the money set aside for such retirement contributions appears to have been distributed to the profit sharing accounts of other employees who did not work on such public works projects, including high-level management of MPE, including defendant BART J. BRUNO. In failing to properly administer these government-mandated benefits and not properly crediting the contributions for these individuals, defendants MPE and BART BRUNO breached their fiduciary duty under ERISA. To determine whether the appropriate contributions were made irrevocably to the employees' profit sharing accounts, plaintiffs requested of the defendants that they be able to review the certified payroll records. Defendants, and each of them, have refused to provide access to such records.

16. On or about October 26, 1992, plaintiffs JEANNE NUNEZ, RAYMOND PEREZ, and JOHN MACHADO (among other individuals) wrote to the defendants complaining about the elimination of the lump sum benefit option, the potential poor investments, the possibility of the Plan benefiting high level management, including certain key employees of the company, and the potential violation of the Davis-Bacon and Anti-Kickback Acts. Plaintiffs also requested numerous documents and information. (A copy of the letter is attached hereto as Exhibit A.)

17. Defendants did not respond specifically to the

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complaints about the elimination of the lump sum benefit option at termination, the poor investments and other issues raised in the letter of October 26, 1992. Although defendants furnished certain information, they failed to provide numerous documents requested by plaintiffs. On or about March 8, 1992, plaintiffs JEANNE NUNEZ and RAYMOND PEREZ, through their legal counsel, wrote to the defendants again requesting the documents and information that had not been previously furnished and reminded defendants that they had not responded to the plaintiffs' complaints. (A copy of the letter is attached hereto as Exhibit B.) Defendants failed to furnish any additional information or documentation in response to that letter.

18. Plaintiffs J. NUNEZ, RAYMOND PEREZ and JOHN MACHADO have complied with the Plan's claims and appeal procedure to no avail. Plaintiffs ROBERT NUNEZ and RICHARD MORGAN have claims very similar to that of plaintiffs JEANNE NUNEZ and RAYMOND PEREZ. Consequently, plaintiffs are informed and believe that the results of engaging in the claims and appeal procedure would be the same as that of plaintiffs JEANNE NUNEZ and RAYMOND PEREZ. Simply, it would be futile for them to raise the same claims as plaintiffs JEANNE NUNEZ and RAYMOND PEREZ.

V. FIRST CAUSE OF ACTION

(Immediate Payment of Benefits Pursuant to ERISA)

19. Plaintiffs reallege and incorporate Paragraphs 1 through 19 as though fully set forth herein.

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20. At an unspecified time in the late 1980's, defendants, without notice to the participants, amended the MPE Plan by eliminating the lump sum benefit option and replacing it with an 18 month waiting period (initially a 5 year wait period, which was subsequently changed to 18 months). Rather than receive their pension benefits immediately upon termination of employment from MPE, participants have been forced to wait 18 months to receive their distributions. Thus, their pension benefits were at the whim of the defendants during this 18 months period. In fact, plaintiffs have not received their pension benefits even though over 18 months has passed since their termination.

21. By eliminating the plaintiffs' entitlement to pension benefits immediately upon termination of employment or retirement, and by forcing them to wait 18 or more months for their benefits, Defendants have violated ERISA and the Department of Labor Regulations issued thereunder. The Plan's elimination of the lump sum option violates ERISA Section 204(g)(2), 29 U.S.C. 1054(g)(2), which prohibits the amendment of a pension plan to eliminate accrued benefits, including an optional form of benefit. The payment of benefits in a lump sum is one such optional form of benefit under Department of Labor Regulation 26 C.F.R. 1.411(d)-4, Q&A-1(b).

22. By eliminating the lump sum benefit option and by failing to timely pay said plaintiffs their pension benefits, the defendants MPE and BART J. BRUNO, fiduciaries of the Plan, have violated their duty to act solely in the interests of the Plan

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participants and beneficiaries and for the exclusive purpose of providing benefits for plan participants and beneficiaries pursuant to ERISA Section 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A).

23. ERISA Section 403(c)(1), 29 U.S.C. § 1103(c)(1), prohibits the defendants from using plan assets to inure to the benefit of MPE or BART J. BRUNO and requires that the defendants hold plan assets for the exclusive purpose of providing benefits to plaintiffs and the other plan participants and beneficiaries.

24. ERISA Section 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D), prohibits the defendant fiduciaries from engaging in a transfer of plan assets to MPE or BART J. BRUNO or any other party-in-interest.

25. ERISA Section 405, 29 U.S.C. 1105, provides that each defendant fiduciary is jointly and severally liable for the violations of law and other breaches of duty committed by any other fiduciary, and imposes an affirmative duty upon the defendants, and each of them, to correct and remedy breaches of duty committed by co-fiduciaries.

26. By taking, approving, and/or acquiescing in the actions and omissions set forth herein, including without limitation, the failure to timely pay the specified plaintiffs' benefits, the defendants, and each of them, violated each of the foregoing provisions of ERISA.

VI. SECOND CAUSE OF ACTION
(Loss of Benefits-Breach of Fiduciary Duty)

27. Plaintiffs reallege and incorporate paragraphs 1-26 as

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though fully set forth herein.

28. Section 502(a) of ERISA, 29 U.S.C. 1132(a) authorizes the bringing of a civil action by a participant to recover benefits due under the Plan or to enforce his rights under the Plan, which may include the granting of injunctive or other equitable relief. Defendants, and each of them, have wrongfully denied plaintiffs benefits due them under the Plan, have structured the PLAN in a manner that is not solely in the interests of plan participants and beneficiaries, and have damaged plaintiffs in the following ways, each of which constitutes a separate and distinct violation of ERISA:

a. Defendants, and each of them, have wrongfully, and in an arbitrary, capricious, fundamentally unfair, and in a bad faith way, failed to timely pay plaintiffs the benefits due them under the Plan. Even though from 20 to 25 months have passed since the plaintiffs have terminated their employment with defendant MPE, defendants have failed to distribute to plaintiffs their benefits or to give them the option to apply for their benefits.

b. Plaintiffs are informed and believe and therefore allege that once they are notified that they may file for their pension benefits, their benefits will be based on the pension statements as of November 30, 1992, and as a result, plaintiffs will have forfeited interest and other earnings since that date to the date of the distribution;

c. Defendants calculation of plaintiffs' benefits results in plaintiffs receiving benefits less than those to which they would

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be entitled if all contributions required by defendant MPE had been made as required by the Davis-Bacon Act, 40 U.S.C. § 726, et seq.;

d. Defendants administration and operation of the Plan, including the implementation of a restrictive vesting schedule, results in only a few participants being fully vested and results in the forfeiture of considerable benefits to the PLAN; and such forfeiture has both the direct and indirect result of benefiting defendant BART J. BRUNO. Plaintiffs are informed and believe and therefore allege that other family members of defendant Bart. J. Bruno also benefit from such high forfeiture rates;

e. Defendants have by other means not presently known wrongfully denied plaintiffs their full pension benefits;

f. The minimal investment data furnished to plaintiffs disclosed that the PLAN'S investments returns were lower than investment returns of similarly situated pension plans for the 1987-1991 period. Plaintiffs are informed and believe, based on the minimal information provided by defendants that the PLAN'S assets have not been invested in a prudent manner.

29. By making investments that did not provide a reasonable yield for the MPE PLAN, the defendants violated ERISA Section 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A).

30. In not properly investing the Plan's assets, defendants have violated their duty to act solely in the interests of the plaintiffs and other plan participants and for the exclusive purpose of providing benefits for such participants, as required

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600 HARRISON STREET, SAN FRANCISCO 94107
TELEPHONE (415) 495-4949

DRAFT

by ERISA Section 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A).

VII. THIRD CAUSE OF ACTION
(Failure to Properly Credit Pension Contributions)

31. Plaintiffs reallege and reincorporate paragraphs 1-30 as though fully set forth herein.

32. As fiduciaries of the MPE Plan, Defendants MPE and BART J. BRUNO had a fiduciary obligation to administer the Plan in the best interests of the Plan participants and beneficiaries.

33. Plaintiffs RAYMOND PEREZ, ROBERT NUNEZ, RICHARD MORGAN and JOHN MACHADO are informed and believe and therefore allege that the retirement funds to which they and other MPE employees were entitled to on public works projects were not contributed solely on behalf of the individual employees who labored on those projects nor were they irrevocably contributed on their behalf. Instead, small amounts far short of the prevailing rate for pension type contributions were distributed to profit-sharing accounts of the employees who were employed on these projects. Further, much of the funds set-side for such contributions appears to have been distributed to the profit sharing accounts of other employees, including MPE's high-level management.

34. Department of Labor ("DOL") Regulation 29 C.F.R. 5.26, which interprets and applies the Davis-Bacon Act, provides that under the fringe benefit provisions of the Act, the amount of contributions for fringe benefits must be made to a trustee or to a third person irrevocably. The third person must be one who is not affiliated with the contractor or subcontractor. The

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regulation provides in pertinent part:

> The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that in no event will the contractor or subcontractor be able to recapture any of the contributions paid or in any way divert the funds to his own use or benefit.

35. Plaintiffs are informed and believe that the United States Government has not, on behalf of the plaintiffs, withheld from the defendants any funds for any of the jobs performed under the Davis-Bacon Act.

36. By failing to enforce the prevailing wage laws requiring that any pension or profit sharing contributions on behalf of employees employed on such public projects must be irrevocably made to such pension or profit sharing fund on behalf of the employees, and by failing to enforce and implement the DOL regulations set forth in paragraph 31 above, the defendants MPE and BART J. BRUNO violated their fiduciary duty to said plaintiffs under ERISA § 404(a), 29 U.S.C. § 1104(a) and engaged in a prohibited transaction under ERISA § 406(a), 29 U.S.C. § 1106(a).

VII. FOURTH CAUSE OF ACTION
(Failure to Furnish Documents)

37. Plaintiffs reallege and incorporate by reference paragraphs 1-36 as though fully set forth herein.

38. Prior to filing this lawsuit, plaintiffs requested certain documents and information pertaining to their request for

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greater benefits and concerns about the administration of the PLAN. Defendants refused to provide many of the requested documents, including but not limited to, investment reports and information, payroll records relating to the violations of the Davis-Bacon and Anti-Kickback Acts, the elimination of the lump sum distribution benefit option at termination of employment and other information.

39. Without the requested documents, plaintiffs have been and are unable to definitely determine their rights under the Plan and to determine whether defendants have acted improperly.

40. Pursuant to ERISA Section 404(a)(1), 29 U.S.C. 1104(a)(1), defendants were and are under a duty with respect to the Plan and the Plan participants to act solely in the interest s of the participants and for the exclusive purpose of providing benefits; they were and are under a duty to act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

41. Department of Labor Regulation 2560.503-1(g)(1) promulgated pursuant to ERISA Section 503, 29 U.S.C. 1133, states:

> Every plan shall establish and maintain a procedure ... under which a full and fair review of the claim and its denial may be obtained. Every such procedure shall include...provisions that a claimant or his authorized representative may:
>
> (i) Request a review upon written application to the plan;

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(ii) Review pertinent documents; and

(iii) Submit issues and comments in writing.

[Emphasis added.]

42. ERISA § 502(c), 29 U.S.C. § 1132(c), provides that:

> Any administrator...who fails or refuses to comply with a request for information... required by the title to (be) furnish(ed) to a participant or beneficiary...by mailing the material requested...within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $100 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

43. ERISA § 405, 29 U.S.C. § 1105, provides that each defendant fiduciary is jointly and severally liable for the violations of law committed by any other fiduciary, and imposes an affirmative duty upon the defendant-fiduciaries, and each of them, to correct and remedy breaches of duty committed by co-fiduciaries.

44. Defendants, and each of them, have failed to timely comply with plaintiffs' request for the pertinent documents and information as set forth herein. In so doing, defendants, and each of them, have violated ERISA §§ 102(a), 104(b)(1)-(4), 105(a), 404(a)(1), 405, 502(c), and 503, 29 U.S.C. 1022(a), 1024(b)(1)-(4), 1045(a), 1104(a)(1), 1105, 1132(c), and 1133, and Department of Labor Regulation 29 C.F.R. § 2560.503-1(g)(1)(ii).

//

//

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VIII: FIFTH CAUSE OF ACTION

45. Plaintiffs realize and incorporate by reference paragraphs 1-44 as though fully set forth herein.

46. ERISA § 104(b)(1)(A), 29 U.S.C. § 1024(b)1)(A) requires each Plan Administrator to furnish Plan participants, including the plaintiffs, with a Summary Plan Description ("SPD") of the defendant Plan within 90 days after becoming a Plan participant.

47. Plaintiffs are informed and believe that defendants have had a practice, which still exists, of not routinely furnishing such SPD's to Plan participants in the manner and time period required by ERISA as set forth in paragraph 46 above.

48. Plaintiff JOHN MACHADO never received an SPD while employed by MPE.

49. Plaintiffs J. NUNEZ, PEREZ, R. NUNEZ and MORGAN did not receive SPD's within the 90 day period after becoming Plan participants.

50. By failing to furnish SPD's to the plaintiffs within 90 days after becoming Plan participants, defendants violated ERISA § 104(b)(1)(A), 29 U.S.C. § 1024 (b)(1)(A).

PRAYER FOR RELIEF

WHEREFORE, plaintiffs that the Court:

1. Declare that the amendment to the Plan eliminating the lump sum benefit option at termination of employment violates ERISA;

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2. Order defendants to pay to plaintiffs their profit sharing benefits immediately, including interest and earnings that would have been made, since the plaintiffs' termination of employment.

3. Order defendants to pay plaintiffs greater profit sharing benefits based on the investment returns that the MPE Plan would have made if the investments had been handled in a prudent manner;

4. Order defendants to pay plaintiffs greater benefits based on their legal requirement to irrevocably contribute specified profit sharing benefits to the MPE Plan on the plaintiffs' behalf;

5. Order defendants to furnish plaintiffs with the requested documents and information originally requested on October 26, 1992;

6. Order defendants to establish a practice of furnishing Summary Plan Descriptions to new Plan participants within 90 days of becoming participants.

7. Invoke the provisions of Section 502(c) of ERISA, and require that defendants pay to plaintiffs, and each of them, $100.00 per day for each day from the thirtieth day following receipt by defendant of the initial request for information;

8. Impose on defendants such other penalties as may be necessary to deter defendants from violating the rights of similarly situated participants and beneficiaries in the future;

9. Order defendants to reimburse plaintiffs for their

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attorneys fees and costs incurred pertaining to this dispute pursuant to ERISA Section 502(g), 29 U.S.C. §1132(g);

10. Order such other and further relief as the court may deem just and proper.

Dated: July 2, 1993

Respectfully submitted,

RICHARD K. GROSBOLL
CAROLYN A. ANDERSON
NEYHART, ANDERSON, REILLY & FREITAS

By: _____
Richard K. Grosboll

By: _____
Carolyn A. Anderson

NEYHART, ANDERSON, REILLY & FREITAS
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MONTEREY PENINSULA ENGINEERING

CONTRACTORS & ENGINEERS
P.O. BOX 2317
MONTEREY, CA 93942
(831) 384-4081

March 9, 2023

Brian McMinn
City of Marina
211 Hillcrest Avenue
Marina, CA 93933

Re: Imjin Parkway Widening Project

Mr. McMinn,

Thank you for bringing the February 9th Foundation for Fair Contracting (FFC) "Bid Advisory" letter to our attention. Suffice to say we take issue with it. Being maliciously attacked like this is beyond frustrating. To be maligned in your hometown makes it even more infuriating.

This is the fourth FFC letter like this that we know of that was sent over the past year. It is intentionally misleading, contains numerous falsehoods, and is defamatory. The FFC knows this. Only a bad actor knows the truth yet chooses to continue to repeat a lie. Enclosed is a letter we sent to the FFC after they issued the exact same "Bid Advisory" letter to the San Lorenzo Valley Water District (Attachment A). Like our other clients, the District saw through their charade and awarded MPE the project.

For background, while the FFC touts that it is a nonprofit serving the public interest, it is not an independent "agency" operating without an agenda. The fact is that the FFC is a union organization solely funded by the Operating Engineers and Laborers unions. It was created to target merit shop contractors. They have been monitoring MPE projects for nearly 40 years.

The FFC stepped up their attack on our company because we have been publicly providing opposing information about union sponsored Project Labor Agreements. They are trying to discourage us and others from publicly engaging with the city councils and other government entities on this subject.

The FFC knows their salacious storytelling causes reputational injury. They use exaggeration and innuendo as an effective ways to smear honest companies. It is shameful. The only bright spot is that no City, District, or agency has acted upon the FFC's lies to deny MPE an opportunity to provide its services.

The February 9th letter included approximately 100 pages of documents spanning across the last 35 years that supposedly support their allegations. The FFC added these pages hoping the City would be misled by volume over substance. The *Summary of the Attached Documents* that follows this letter shows how these pages are just fluff and do little to add credibility to the allegations made in the letter. We would be happy to further review any of these with the City.

In short, the 100 pages only include one MPE settlement with the DIR that resulted in a wage payment funded by MPE. That matter resulted in a wage assessment of $710. The two wage matters listed that are of any substance were both fully funded by the City of Pacific Grove. Both were the result of the City misapplying its Charter City exemption from the prevailing wage law. The FFC knows the truth about each of these but chooses to spread its lies instead. To refer to this as wage theft by MPE is despicable.

To put all this into perspective, MPE has successfully completed over 700 public works projects. It has employed well over 1,000 people and has paid over $100M in compensation to its employees. For 38 years we have operated under the close scrutiny of the FFC. They can try to disparage us but it is without foundation.

As you know, MPE is a family owned and managed company. We are very proud of the long record of success that it has developed over the past four decades. It is unfortunate that the FFC chose to spread lies about MPE to you and the Council. The truth is that MPE has successfully completed many projects for the City of Marina. That is what should be remembered, not this smear.

Thank you in advance for your assistance in setting the record straight.

Sincerely,

Monterey Peninsula Engineering

Paul B. Bruno
CFO / Principal

Attachments:

Summary of Attached Documents
Exhibits A thru D

CC: Peter J. Taormina
Bart J. Bruno

PBB:mm

Summary of the Attached Documents

Pages 1 > 2 are the FFC letter.

Pages 2 > 9.

The document is a 2019 DIR Assessment totaling $36,873. MPE was not found liable for this amount. That was an initial audit assessment that was subsequently amended twice. The actual final wage settlement was $710 on a $2M project. This settlement was without an admission of liability. We disagreed and truly believed that no wages were due. We chose to settle rather than incur additional time and expense pursuing absolute vindication. See Attachment B.

Pages 10 > 17.

The document is a 2015 DIR Assessment totaling $84,171.31. What the FFC knows but fails to mention is the amount was entirely paid by the City of Pacific Grove. MPE did nothing wrong. The City put the project out to bid without a prevailing wage requirement believing it was governed by their Charter City Exemption. After it was completed, the DIR determined that the City had erred. The City issued a change order to MPE paying for the resulting wage underpayment. See Attachment C.

Pages 18 > 21.

This document is a 2021 Complaint filed by the FFC and a DIR Notice that the complaint had been assigned to an investigator. MPE denied any wrongdoing and fully cooperated with the DIR. No findings of any violations were issued. The City of Salinas had also done its own review found no violations. The project has since been closed out.

Pages 22 > 37.

The document is a 2017 union-sponsored private lawsuit brought by a former employee. There was no DIR action. The suit was dismissed with no findings of any PAGA violations and no payments were made related to the PAGA allegations. The remaining wrongful termination claim was disputed by MPE. MPE's insurance carrier chose to settle the remaining issue based upon its nuisance value.

Pages 38 > 63.

The document is a 2011 union-sponsored private lawsuit brought by two former employees. There was no DIR action. It was dismissed with no findings of any PAGA violations and no payments were made related to the PAGA allegations. The disputed wage settlements were less than $1,500 for one employee and less than $400 for the other.

Pages 64 > 80.

The document is a 2007 union-sponsored private lawsuit brought by a former employee. There was not DIR action. MPE did nothing wrong. The $70,000 wage settlement was paid entirely by the City of Pacific Grove. The City had put the project out to bid without a prevailing wage requirement relying

upon their Charter City Exemption. Their position was challenged in this court case. The City chose to settle the matter and issue payment to MPE which was then remitted to the employees who worked on the project. See Attachment D.

Pages 81 & 82.

The document is a 2004 Notice of Deposition in connection with a union-sponsored suit. The lead plaintiffs, Mr. Hirshach and Mr. Homer, were both union business agents. There was no DIR action. This suit is best described as a fishing expedition that went nowhere. The attached document simply shows that I was deposed in connection with the matter.

Page 83.

The document is a 1988 DIR Notice. We were unable to locate any records related to this 35 year old notice. We inquired of the Company founder and he had no recollection of it. The fact that no specific file was retained by the Company would lead us to believe that, like the others, the matter was resolved with little or no actual liability

Pages 84 > 102.

The document is a Draft copy of 1993 union-sponsored Federal suit brought several former employees. It made a broad range of accusations against the Company's retirement plan that were found to be meritless. The fact that FFC has a "DRAFT" copy of the suit highlights their decade's long involvement with the harassment campaign being waged by various unions against MPE. MPE was awarded Summary Judgment dismissing all but one claim. This one remaining claim could not be addressed by Summary Judgment because there was a dispute about fact, not just law. The remaining issue was whether an employee who worked on the "last workday" of the plan year would be entitled to a profit sharing distribution when the actual last day of the plan year ended on a weekend. The Plan Administrator had followed the wording of the plan which specifically stated "last day" of the plan year. MPE settled this one remaining claim directly with the claimant without an admission of liability for less than $10,000. MPE chose to make this nuisance value payment rather than expend additional time and effort litigating the matter.

Attachment A

MONTEREY PENINSULA ENGINEERING

CONTRACTORS & ENGINEERS
P.O. BOX 2317
MONTEREY, CA 93942
(831) 384-4081

February 14, 2023

Foundation for Fair Contracting
3807 Pasadena Ave, Suite 150
Sacramento, CA 95821

Attn: Mr. Jesse Jimenez, Executive Director
Via Email

Re: FFC / San Lorenzo Valley Water District Allegations

Mr. Jimenez,

We are writing with regard to the Foundation for Fair Contracting's (FFC's) email containing a Bid Advisory letter dated 2/9/23. This correspondence was sent to the Mr. Josh Wolff of the San Lorenzo Valley Water District as well as the District's Board of Directors. The letter recommended the rejection of Monterey Peninsula Engineering's (MPE's) bid.

Your correspondence was sent to an awarding body with the express purpose of injuring MPE's reputation and interfering with a valuable business relationship. You sent the correspondence knowing that it was intentionally misleading, contained falsehoods, and was defamatory. It is obvious that the FFC is not concerned about the potential financial repercussions to MPE resulting from it making such statements. If it was, it wouldn't continue to make the false accusations. For example, the FFC knows that there has never been a single DAS complaint resulting in a final determination that there was a violation of DAS rules or an underpayment of wages to an apprentice by MPE. To continue to allege otherwise is incorrect and intentionally defamatory.

This "Bid Advisory" tactic is not an isolated occurrence. The current correspondence contains many of the same allegations that were included in your March 2022 correspondence to the City of Seaside and your May 2022 correspondence to the City of Soledad. We responded to you each time and incorporate our March 21, 2022, and our May 19, 2022, response letters by reference. Your continued spreading of this disinformation shows that the FCC does not care about being truthful, even when forewarned that its allegations are false and could cause harm to MPE.

Despite your repeated smears, both cities and the water district awarded their projects to MPE. Had they not, MPE would be seeking recovery of our damages from the FFC.

With regard to the documents attached to your recent letter, we offer the following examples of pertinent missing details and context, much of which is already known to you. These examples are not meant to be an all-inclusive chronicling of the falsehoods that the FCC knowingly spread in its Bid Advisory –

City of Marina / Del Monte & Beach Road Improvements – The document provided was a 2019 DIR Assessment totaling $36,873. The FFC knows that MPE was not found liable for this initial audit assessment amount. MPE successfully disputed the findings and the assessment was subsequently amended twice. The actual final wage settlement was $710. The settlement was without an admission of liability.

City of Pacific Grove / Waste Water Pump Station 11 Project – The document provided was a 2015 DIR Assessment totaling $84,171.31. The FFC knew but purposely failed to disclose that the amount was entirely paid by the City of Pacific Grove. This is because the City put the project out to bid without a prevailing wage requirement believing it was governed by their Charter City Exemption. After it was completed, the DIR determined that the City had erred. The City issued a change order to MPE paying for the resulting wage underpayment. The FFC has previously been provided a copy of the change order. Despite knowing that MPE did nothing wrong, the FFC still chose to use this as an example of wage theft by MPE.

Munoz v. Monterey Peninsula Engineering – The document provided was a 2017 lawsuit by a former employee. MPE successfully contested each and every PAGA allegation. There was no evidence of any PAGA violations nor were there any PAGA related payments. The court approved this stipulated dismissal.

Iriarte vs Monterey Peninsula Engineering – The document provided was a 2007 lawsuit by a former employee. The FFC knew, but failed to mention, that the $70,000 wage payment to the employees was entirely funded by the City of Pacific Grove. This is because the City put the project out to bid without a prevailing wage requirement based upon their Charter City Exemption.

Nunez, et al, vs Monterey Peninsula Engineering – The document provided was the entire DRAFT copy of a 1993 lawsuit. The broad range of accusations regarding the administration of MPE's retirement plan was found to be meritless and subsequently dismissed by Summary Judgement. This is public knowledge. The single remaining disputed claim was settled with the one affected employee for less than $10,000.

Both our reputation and ability to perform work for public clients have value. Your continued actions seek to intentionally diminish this value. We again insist that the FFC promptly and succinctly rescind its knowingly false and misleading statements and cease from making any further such statements. This letter, as well as the others we had sent to you, puts the FFC on notice. MPE will seek recovery from the FFC for any reputational or financial harm that may arise from its defamatory conduct and improper actions.

Sincerely,

Paul B. Bruno
CFO

Attachment B

AGREEMENT

4. Monterey will pay, and DLSE will accept, $1,497.52 in full and final satisfaction of case no. 40-56394-148, reflecting $709.78 in wages and $232.74 in interest, to be disbursed by DLSE as set forth in the chart below, $400.00 in penalties pursuant to Labor Code section 1775, $80.00 in penalties pursuant to Labor Code section 1777.7, and $75.00 in penalties pursuant to Labor Code section 1813.

[redacted]	$90.80	$31.30
[redacted]	$26.56	$10.04
[redacted]	$151.37	$48.69
[redacted]	$441.05	$142.71

5. DLSE will request that DIR release $1,497.52 from the deposit, and to immediately refund the balance with interest to Monterey. Upon receipt of funds, Monterey will withdraw its request for review.

6. Should either party to this agreement default, that party shall be liable for any such additional sums as may be incurred to enforce this settlement agreement, including attorney's fees and costs.

Attachment C

CITY OF PACIFIC GROVE
Monterey County, California

CONTRACT CHANGE ORDER NO. 7

Contract Reference: Combined Reconstruction of Wastewater Pump Station 11 and Forcemain Replacement including Ocean View Blvd. Street Overlay and Urban Runoff Diversion - Phase 3 Project

To: Monterey Peninsula Engineering
You are hereby requested to make changes described below from the plans and specifications or to do the following described work not included in the plans and specifications as part of the contract.

NOTE: This change order is not effective until approved by all parties.

DESCRIPTION OF WORK TO BE DONE:

Under Reconstruction of Pump Station 11 and Forcemain Replacement including Ocean View Blvd. Street Overlay portion of the project:

1. Reimbursement for costs related to the State of California Civil Wage and Penalty Assessment for Monterey Peninsula Engineering.

Total Cost for Change Order No. 7 = $84,171.31

By reason of this order, the contract amount of $1,975,257.34 will be increased by the sum of $84,171.31. The contract total including this and previous change orders will be $2,059,428.65.

The increased cost is covered by the project contingency and is under the approved budget.

Submitted By: _____ **Date:** 3/11/15
City Engineer

Recommended By: _____ **Date:** 3/16/15
Public Works Superintendent

Approved By: _____ **Date:** 3-16-15
City Manager

Accepted: _____ **Date:** 3/12/15
Contractor

By: _____ **Title:** _____

w/attachments

W.O. 8311

CITY OF PACIFIC GROVE
Pacific Grove Public Works
2100 Sunset Drive
Pacific Grove, Ca 93950
831-648-5722

April 23, 2014
Mr. Paul B. Bruno
Monterey Peninsula Engineering
P.O. Box 400
Marina CA 93933

Mr. Bruno,

This letter is concerning the formal Notice of Investigation from the Department of Industrial Relations regarding prevailing wage requirements for the Reconstruction of Wastewater PS 11 Force Main Replacement, including Ocean View Blvd street overlay project.

Attached is a PDF of Resolution 5874 which restates the policy of the Pacific Grove regarding the Charter City home rule exemption from prevailing wage requirements.

Sincerely,

Daniel Gho
City of Pacific Grove's Public Works Superintendent

Attachments:

1. Resolution 5874

RESOLUTION NO. 5874

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE RESTATING CURRENT CITY POLICY REGARDING PAYMENT OF STATE-ESTABLISHED GENERAL PREVAILING WAGE RATES

WHEREAS, pursuant to California Labor Code Section 1770, et seq., local political subdivisions are required to pay, on public works projects, prevailing wage rates as established by the Director of the California Department of Industrial Relations; and

WHEREAS, California courts have long held that because California chartered cities enjoy autonomy over "municipal affairs" (Article XI, Section 5, California Constitution), and because the prevailing wage law, a general law, purports to cover a local municipal affair, i.e., local public works projects, that said prevailing wage law does not apply to chartered cities; and

WHEREAS, the City of Pacific Grove is a chartered city, enjoying the protection of Article XI, Section 5, California Constitution; and

WHEREAS, this Council desires to restate the established policy of this City, consistent with the aforedescribed judicial precedent, that provisions of California Labor Code Section 1770, et seq., shall not be applicable to public works undertaken by the City of Pacific Grove;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF PACIFIC GROVE DOES RESOLVE AS FOLLOWS:

SECTION 1. Wage rates paid on public works projects undertaken by the City of Pacific Grove, by either its own forces or by contract, shall not be governed by the prevailing wage law found at California Labor Code Section 1770, et seq.

SECTION 2. This exemption from said Labor Code provisions is based on precedent of long standing established on constitutional principles by the appellate courts of the State of California.

SECTION 3. This exemption is a restatement of existing City policy.

SECTION 4. This exemption notwithstanding, prevailing wages shall be appropriate when required by Federal or State grants and on other projects considered to be of statewide concern.

Attachment D

WARNING: THIS DOCUMENT IS PRINTED ON CHECK PROTECT SAFETY PAPER AND HAS A WATERMARK ON BACK - HOLD AT AN ANGLE TO VIEW

CITY OF PACIFIC GROVE

300 Forest Avenue
Pacific Grove, CA 93950

BANK OF AMERICA
601 LIGHTHOUSE AVENUE
PACIFIC GROVE, CA 93950

11-35
1210

CHECK NUMBER 054738

CHECK DATE 01/26/09

CHECK NO. 54738

AMOUNT $****70,000.00*

PAY THE SUM OF SEVENTY THOUSAND DOLLARS & ZERO CENTS

Daniel E. Cort, Mayor

TO THE ORDER OF
MONTEREY PENINSULA ENGINEERING, INC
P.O. BOX 2317
MONTEREY CA 93942

VOID AFTER 6 MONTHS

Catherine E. Krysynu, Assistant Finance Officer

TWO SIGNATURES REQUIRED

NOTE: The MICR & Arabic Numbering Bleeds Thru To Pink On The Back.

⑈054738⑈ ⑆121000358⑆ 08559⑈80200⑈

VENDOR NO. 1786 CHECK NO. 54738

ACCOUNT	PURCH. ORDER	INVOICE NUMBER	AMOUNT	DESCRIPTION
702 5291	09001997	09001997	70,000.00	SETTLEMENT/STORM WATE

Rec'd 1/26/09 4:30pm

Deposit to Acct
7200513943
1/27/09

1786 MONTEREY PENINSULA ENGINEERING, INC

DEPOSITED WITH

Rabobank, N.A.

Rabobank

OP-340 (04/08) Sunset Printing

EQUAL HOUSING LENDER

TR:7 73-2 01/27/09 09:25 AM
XXXXXX3943 Ck Deposit $70,000.00

DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL

Thank you for banking with us.

All items are received subject to conditions and terms stated in the Understanding Your Deposit Account Agreement & Disclosures booklet.

MONTEREY PENINSULA ENGINEERING

CONTRACTORS & ENGINEERS
P.O. BOX 2317
MONTEREY, CA 93942
(831) 384-4081

January 2, 2009

Dear _____:

On June 16, 2006, Monterey Peninsula Engineering submitted a bid on the Pacific Grove Urban Runoff Diversion Phase 2 project. Per the published Notice Inviting Sealed Bids and the Project Specifications, Monterey Peninsula Engineering was told that the project was not governed by the State prevailing wage law. MPE submitted its bid based upon its normal, open shop rates and paid accordingly.

In March of 2007, a lawsuit was filed regarding the payment of prevailing wages on the project. Although the company and the City believe that all wage payments to employees working on the Project were in fact correct and proper, and while there has been no legal determination otherwise, the City of Pacific Grove and Monterey Peninsula Engineering have agreed with the plaintiff's attorneys to resolve the matter. As part of the settlement, the City of Pacific Grove has placed money into a settlement fund for disbursement to the hourly field employees who worked on the project, based upon a formula reached and agreed upon with the plaintiff's attorneys after they had carefully reviewed company records on the Project, and the hours worked by various employees.

You have been identified as one of the employees eligible for an additional payment. The amount of your payment is a pro rata share of the settlement fund based upon hours worked on the project. In order to apply for this payment, you must sign and date the attached Settlement Agreement and Release of Claim form and return it to Paul Bruno in the office as soon as possible. The form will indicate the amount of the payment you will receive if you sign, date and return it within 90 days.

If you do not contact us to make your claim by April 2, 2009, we may be unable to act upon your claim. In addition, payments can only be processed if a sufficient number of employees have returned the form, and a sufficient percentage of the Settlement Fund is claimed.

Please note that this payment will be subject to payroll taxes and withholding and will be reported on your W-2 form.

Sincerely,

Monterey Peninsula Engineering

Paul B. Bruno, CPA
Chief Financial Officer

FORM OF CONTRACT

FOR

Imjin Parkway Widening Project

THIS AGREEMENT, made and entered into this ... _____ 2023, by and between The City of Marina, a municipal corporation of the State of California, hereinafter called "City of Marina" or "City" and Monterey Peninsula Engineering or "Contractor,"

W I T N E S S E T H:

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

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

a. Accepted Proposal;
b. Proposal Guaranty Bond;
c. Contract Agreement;
d. Performance Bond;
e. Bond for Labor and Material;
f. Proposal Supplement Including an Experience Statement and List of Proposed Subcontractors;
g. These Plans and Specifications;
h. The California State Standard Specifications and Standard Details 2018; and
i. Insurance.

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

Twenty-Seven Million Seven Hundred Eighty-Two Thousand Fifty-Eight Dollars and Forty-Seven Cents

($ 27,782,058.47)

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

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

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

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

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

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

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

TENTH:

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

ELEVENTH:

COMPLIANCE WITH PROVISIONS OF LAW.

a) The City is subject to laws relating to public agencies which are part of this contract as though fully set forth herein.

b) Contractor shall comply with City of Marina Municipal Code Chapter 13.02 Local Hiring for Public Works.

c) Contractor shall comply with laws relating to the work.

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

CONTRACTOR	CITY OF MARINA
By: _____	By: Layne P. Long, City Manager
Print Name: _____	Date: _____
Address: _____	
_____	
Date: _____	
APPROVED AS TO FROM:	
By: _____ City Attorney	By: _____
Date: _____	Date: _____
ATTESTED:	
By: _____ Anita Shepherd-Sharp Deputy City Clerk	
Date: _____	Resolution No. 2023-_____

EXHIBIT D TO
STAFF REPORT



Imjin Parkway
Widening Project

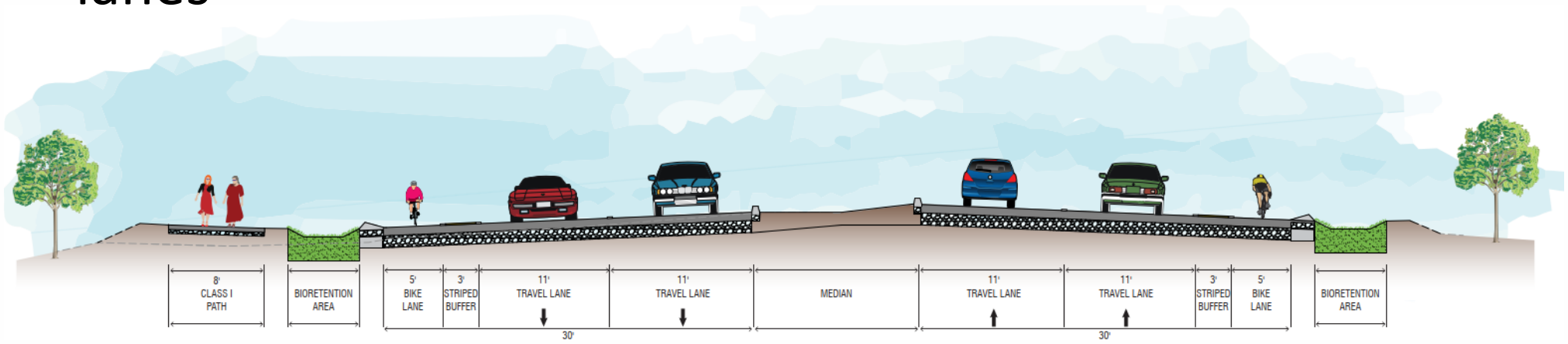
Kimley»Horn
Expect More. Experience Better.

Project Overview



Improvements

- Widen to four lanes
- Install four roundabouts
- Install mixed use path
- On-street buffered bike lanes
- Stormwater treatment areas
- Retaining and sound walls
- Landscaping and irrigation



Corridor Layout



Corridor Layout



Corridor Layout





Funding

Component	Funding Source	Amount	
Construction	Local Impact Fee	$2.00 million	
	Measure X	$18.25 million	
	Senate Bill 1 (SB1) Local Partnership Program (LPP)	$20.25 million	
	TOTAL	$40.5 million	