



A G E N D A
CITY OF SEASIDE
CITY COUNCIL

REGULAR MEETING
VIRTUAL ONLY
Thursday, September 17, 2020
7:00 PM

This meeting is compliant with Governor Newsom's Executive Order N-29-20 which allows local legislative bodies to hold public meetings electronically only, without a physical location for public participation, accessible only telephonically or otherwise electronically (video conferencing) to all members of the public seeking to observe and address the local legislative body, in order to avoid public gatherings, and until further notice.

REMOTE PUBLIC COMMENTS To make a public comment, the following options are available:

- Before the Meeting via Email: Written comments can be emailed to CityClerk@ci.seaside.ca.us Include the following subject line: "Public Comment Item # (insert the agenda item number relevant to your comment). Written comments must be received by 5:00 p.m. on the day of the meeting. All submitted comments will be provided to the City Council or the Board for consideration, compiled as part of the record, and may be read into the record.
- During the Meeting via Oral Comments: When the Chair calls for public comment, attendees can queue to speak with the "Raise Hand" feature. On the Zoom application, click the "Raise Hand" button. On the phone, press *9. The Secretary to the Board will call speaker names and unmute speaker microphones. You will have up to 2 minutes to provide your comments, with time set by the discretion of the Mayor. Please note, if you chose to make comments orally, your written comments will not be read but will be included in the final record.

In an effort to ensure the virtual process closely follows our normal process, public comment will be accepted in writing during the meeting, but may not be read into the record during the meeting, but will be included as part of the final administrative record. Please do not plan to use the chat or Q&A features to put a comment on record. These resources are for tech support only

1. CALL TO ORDER

This meeting can be watched via the City of Seaside You Tube channel
https://www.youtube.com/channel/UC1Cu7854Ohtjpr_XV1tDvRg

Or by joining the Zoom webinar link
<https://us02web.zoom.us/j/81936832059>

Call in phone number: 669-900-9128
Zoom Meeting Id 819 3683 2059

2. ROLL CALL – ESTABLISHMENT OF QUORUM

Ian N. Oglesby	Mayor
David R. Pacheco	Mayor Pro Tem
Jason Campbell	Council Member
Jon Wizard	Council Member
Alissa Kispersky	Council Member

3. INVOCATION AND PLEDGE OF ALLEGIANCE

4. REVIEW OF AGENDA

If there are any items that arose after the 72-hour posting deadline, this is the point in the meeting where a vote may be taken to add the item to the agenda. (A 2/3-majority vote is required).

5. PUBLIC COMMENT

Members of the public wishing to address the City Council on matters within the jurisdiction of the City of Seaside, but not on this agenda, may do so during the Public Comment period for up to two minutes. Public Comments on specific agenda items are heard under that item. For the public record, please state your name.

6. PUBLIC AGENCY COMMUNICATIONS

This is a time specifically set aside for representatives of public agencies to make brief comments of general interest to the City Council and the community.

7. PRESENTATIONS

8. CONSENT AGENDA

A. APPROVE MINUTES FROM SEPTEMBER 3, 2020 REGULAR MEETING AND SEPTEMBER 9, 2020 SPECIAL MEETING

RECOMMENDATION: Approve the minutes as presented.

B. APPROVE AND FILE CITY CHECKS

RECOMMENDATION: Approve and file the accounts payable and wired payments made during the period of August 22, 2020 through September 4, 2020 including the payroll and benefits checks, direct deposits and wired payments related to the pay period ending August 27, 2020. Total Accounts Payable and Payroll for the above referenced period is \$1,303,788.74.

C. ADOPT A RESOLUTION AWARDING A PURCHASE AGREEMENT TO CONTE'S GENERATOR SERVICE AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE PURCHASE AGREEMENT IN THE AMOUNT OF \$122,591 FOR THE PURCHASE OF A PORTABLE EMERGENCY GENERATOR FOR SEASIDE MUNICIPAL WATER SYSTEM

RECOMMENDATION: Adopt a Resolution (Attachment 1) awarding a purchase agreement to Conte's Generator Service in the amount of \$122,591 to purchase a portable emergency generator for Seaside Municipal Water System and authorizing the City Manager to execute the purchase agreement.

D. ADOPT A RESOLUTION APPROPRIATING AND ENCUMBERING \$19,975 FROM THE POMA FUND BALANCE FOR THE PURCHASE OF A SCISSOR LIFT FROM HERC RENTALS FOR USE ON THE INTERGOVERNMENTAL SERVICES AGREEMENT CONTRACT

RECOMMENDATION: Adopt a Resolution (Attachment 1) appropriating and encumbering \$19,975 from the POMA Fund Balance for the purchase of a scissor lift, authorizing the City Manager to execute a purchase agreement with Herc Rentals for an amount not to exceed \$19,975 for the scissor lift, and directing the Finance Department to incorporate these changes in the Fiscal Year 2020/21 Budget.

E. ADOPT A RESOLUTION RATIFYING THE SEVENTH AMENDMENT TO THE PROCLAMATION OF LOCAL EMERGENCY

RECOMMENDATION: Adopt Resolution as presented ratifying the addition of complementary fire safety inspections for outdoor business operations and for the suspension of market rate water cost for ADUs.

9. PUBLIC HEARING

A. INTRODUCTION OF A PERMANENT SMALL CELL WIRELESS FACILITIES ORDINANCE (SEASIDE MUNICIPAL CODE - CHAPTER 17.55) AND ASSOCIATED RESOLUTION UPDATING TO THE CITY'S PLANNING FEE SCHEDULE

RECOMMENDATION: The proposed ordinance would amend Chapter 17.55 to establish reasonable, uniform, and comprehensive standards and procedures for small cell wireless facilities deployment, construction, installation, collocation, modification, operation, relocation, and removal within the city's jurisdictional boundaries consistent with and to the extent permitted under federal and California State law. This ordinance will also address costs recovery associated with small cell wireless facility permit applications, including recouping fees for City-hired independent experts and outside consulting fees. Also included are updates to the Planning Fee Schedule, establishing fees for Small Cell Permits and associated independent experts and consultants. The text amendment and resolution are exempt from the California Environmental Quality Act (CEQA) guidelines per section 15061(3).

10. BUSINESS ITEMS

A. APPROVE A MAYOR'S YOUTH FUND CONTRIBUTION REQUEST FROM CITIZENS FOR ACTION NOW

RECOMMENDATION: Approve a request from Citizens For Action Now for a donation of Three Thousand Dollars (\$3,000.00) from the Mayor's Youth Fund to help cover the costs for computers, calculators and notebooks.

B. APPROVE RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE AND SALE AND ESCROW INSTRUCTION AGREEMENT FOR THE MEDICAL OFFICERS BARRACKS LOCATED AT 4386-4387 PARKER FLATS CUTOFF ROAD, SEASIDE, CA 9395

RECOMMENDATION: Approve the Purchase and Sale Agreement for 4.98 acres of property containing two existing structures.

C. APPROVE RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE AND SALE AND ESCROW INSTRUCTION AGREEMENT FOR THE MAIN GATE PARCEL, SEASIDE, CA 93955

RECOMMENDATION: Approve the Purchase and Sale Agreement (PSA) with Petrovich Development Company LLC for approximately 56 acres of property.

D. CITY BLUE ZONE PARTICIPATION REQUEST

RECOMMENDATION: Authorize City participation in regional Blue Zone effort.

11. COUNCIL MEMBER REQUESTS

A. COUNCIL MEMBER CAMPBELL REQUEST COLONEL DURHAM RV PARKING SITE REPORT & DISCUSSION

RECOMMENDATION: Receive report and discuss.

B. COUNCIL MEMBER CAMPBELL REQUESTED A PLAN TO PROVIDE AN EDUCATION OUTREACH PROGRAM REGARDING ILLEGAL FIREWORKS IN THE CITY

RECOMMENDATION: To discuss Council Member request and provide direction to staff.

12. MAYOR, CITY COUNCIL, CITY MANAGER AND CITY ATTORNEY COMMENTS AND REPORTS ON COMMITTEE ASSIGNMENTS

This is a time specifically set aside for members of the City Council, the City Manager and City Attorney to make brief comments of general interest to the community, make requests that items be added to future City Council meeting agendas as necessary and report on committee assignments.

13. ADJOURNMENT

Next Regularly Scheduled Meeting:
October 1, 2020
7:00 PM

The City of Seaside is committed to providing accessible facilities and accommodating people with disabilities in all of its services programs and activities. If special considerations are needed by any person to fully participate in this meeting, contact the City Clerk at 899-6707 no fewer than two business days prior to the meeting to allow reasonable arrangements. Agendas are posted at:
<http://www.ci.seaside.ca.us/129/City-Council-Committee-Agendas>

Agenda-related writings or documents provided during public meetings are available for public inspection during the meeting or from the office of the City Clerk. This agenda is posted in compliance with California Governor Newsom's Executive Orders N-29-20 and N-33-20.



DRAFT MINUTES
CITY OF SEASIDE
CITY COUNCIL

SPECIAL MEETING
VIRTUAL ONLY
Wednesday, September 9, 2020
5:00 PM

1. CALL TO ORDER

Mayor Oglesby called the meeting to order at 5:00 PM.

2. ROLL CALL – ESTABLISHMENT OF QUORUM

PRESENT: Campbell, Kispersky, Oglesby, Pacheco, Wizard
ABSENT: None

3. PLEDGE OF ALLEGIANCE

4. PUBLIC COMMENT

None.

5. CLOSED SESSION

The City Council adjourned to closed session at 5:03. There were no comments from the public.

A. CONFERENCE WITH REAL PROPERTY NEGOTIATORS PURSUANT TO GOVERNMENT CODE SECTION 54956.8:

1. Parker Flats Medical Barracks known as the Nurses Barracks buildings located on the Former Fort Ord near the Department of Defense Building Located at Gigling Road and Parker Flats Cutoff Road. Negotiator for Developer: Al Glover.
2. The Property Commonly Referred to As Main Gate (Property bounded by Lightfighter, Divarty, Second Street and Highway Negotiator for Developer: Paul Petrovitch
3. Laguna Grande Shopping Center Parking Lot on Canyon Del Rey Blvd Owned By The Parking Authority Negotiator for the Developer: Bryan Chandler

Negotiator For The City: Craig Malin. Under Discussion: Price,
Terms Of Payment Or Both.

6. ADJOURNMENT

The Council reconvened to open session and there were no announcements for the public. Having no further business, the meeting was adjourned at 7:23 pm.

Respectfully submitted,

Lesley Milton, City Clerk

Ian N. Oglesby, Mayor



DRAFT MINUTES
CITY OF SEASIDE
CITY COUNCIL

REGULAR MEETING
VIRTUAL ONLY
Thursday, September 3, 2020
7:00 PM

1. CALL TO ORDER

Mayor Oglesby called the meeting to order at 7:00 pm.

2. ROLL CALL – ESTABLISHMENT OF QUORUM

PRESENT: Campbell, Kispersky, Oglesby, Pacheco, Wizard
ABSENT: None

3. INVOCATION AND PLEDGE OF ALLEGIANCE

4. REVIEW OF AGENDA

No changes.

5. PUBLIC COMMENT

PUBLIC COMMENT: Marisol, Stacie Andrews

6. PUBLIC AGENCY COMMUNICATIONS

Assistant City Manager Milton reported on the launch of the Small Business Microloan program as well as announcing the date of the next free food distribution on September 19, 2020.

7. PRESENTATIONS

A. REQUEST FOR PROPOSALS FOR ENHANCED COMMUNITY / SOCIAL SERVICES

City Manager Malin presented the details of the request for proposals for enhanced community and social services with a deadline is September 8, 2020 and he spoke to the committee openings to review the applications.

PUBLIC COMMENT: AnnaLisa Mitchell, Ronald Britt

8. CONSENT AGENDA

On motion by Council Member Jason Campbell and seconded by Council Member Jon Wizard and passed by the following vote the City Council approved the consent calendar minus items D, E, F, H and K.

RESULT:

Approved

AYES:

Ian Oglesby, Dave Pacheco, Jason Campbell, Jon Wizard, Alissa Kispersky

NOES:

None

A. PROCLAMATION DESIGNATING SEPTEMBER 2020 AS NATIONAL RECOVERY MONTH

Action: Approved

B. APPROVE MINUTES FROM AUGUST 20, 2020

Action: Approved

C. APPROVE AND FILE CITY CHECKS

Action: Approved

D. AUTHORIZE LETTER OF SUPPORT FOR AB1436 (CHIU) RELATED TO TENANCIES, RENTAL PAYMENT DEFAULT AND MORTGAGE FORBEARANCE

Action: Withdrawn as the Assembly has adjourned

E. AUTHORIZE LETTER OF SUPPORT OF SB 1231 FOR FISH AND WILDLIFE TO ISSUE A TAKE PERMIT TO COMPLETE THE PLAN ON 156 TO WIDEN THE HIGHWAY

Action: Withdrawn as the Assembly has adjourned

F. ADOPT A RESOLUTION APPROVING APPLICATION(S) FOR \$177,952 PER CAPITA GRANT FUNDS FOR FROM THE STATE FOR PARK REHABILITATION AND IMPROVEMENTS

Action: Approved Resolution 20-74

On motion by Council Member Alissa Kispersky and seconded by Mayor Pro Tem Dave Pacheco and passed by the following vote the City Council approved the item as presented.

RESULT:

Approved

AYES:

Ian Oglesby, Dave Pacheco, Jason Campbell, Jon Wizard, Alissa Kispersky

NOES:

None

G. ADOPT A RESOLUTION AUTHORIZING THE PURCHASE OF A TURF MOWER AND TRAILER IN THE AMOUNT OF \$30,139.63.

Action: Approved Resolution 20-75

H. RESOLUTION TO ADOPT THE 2019 MONTEREY PENINSULA, CARMEL BAY, AND SOUTH MONTEREY BAY INTEGRATED REGIONAL WATER MANAGEMENT PLAN UPDATE AND AUTHORIZE CITY MANAGER TO ENTER INTO SUB-REIMBURSEMENT AGREEMENT WITH THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

Action: Approved Resolution 20-76

- I. ADOPT A RESOLUTION AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH GAYA COATING CONSULTING FOR THE PROTECTIVE COATING QUALITY ASSURANCE INSPECTION SERVICES FOR THE MUNICIPAL WATER TANK REHABILITATION PROJECT FOR AN AMOUNT NOT TO EXCEED \$32,280.**

Action: Adopted Resolution 20-77

- J. ADOPT A RESOLUTION APPROVING THE PLANS AND SPECIFICATIONS FOR THE MUNICIPAL WATER TANKS REHABILITATION PROJECT, AND AWARDDING A CONSTRUCTION CONTRACT TO OLYMPUS AND ASSOCIATES, INC. FOR AN AMOUNT NOT TO EXCEED \$407,488.00 AND TOTAL PROJECT CONSTRUCTION COST INCLUDING 10% CONTINGENCY OF \$448,236.80.**

Action: Adopted Resolution 20-78

- K. ADOPT A RESOLUTION TO APPROPRIATE \$135,000 FROM CAPITAL RESERVE FUND TO THE CITY HALL SOLAR PROJECT, APPROVE A CONTRACT CHANGE ORDER IN THE AMOUNT OF \$126,647 WITH SANTA CRUZ WESTSIDE ELECTRIC INC. DBA SANDBAR TO MITIGATE SOIL CONTAMINATION, AND APPROVE ADDITIONAL CONTINGENCY IN THE AMOUNT OF \$11,000 FOR SAGE RENEWABLES FOR DESIGN SUPPORT DURING CONSTRUCTION**

Action: Adopted Resolution 20-79

Council Member Wizard expressed concern that there was not enough contingency budgeted to complete the project.

On motion by Council Member Jon Wizard and seconded by Council Member Alissa Kispersky and passed by the following vote the City Council approved the item as presented.

RESULT:	Approved
AYES:	<i>Ian Oglesby, Dave Pacheco, Jason Campbell, Jon Wizard, Alissa Kispersky</i>
NOES:	<i>None</i>

- L. ADOPT A RESOLUTION TO AMEND FISCAL YEAR 2020-2021 BUDGET TO INCORPORATE REVENUE AND EXPENDITURE APPROPRIATIONS TO FULFILL RESPONSIBILITIES ASSIGNED TO THE CITY OF SEASIDE FROM THE FORT ORD REUSE AUTHORITY DISSOLUTION**

Action: Adopted Resolution 20-80

9. BUSINESS ITEMS

- A. APPROVE A LETTER OF SUPPORT FOR AN ACTIVE TRANSPORTATION PROGRAM (ATP) GRANT APPLICATION FOR ROADWAY IMPROVEMENTS ALONG BROADWAY AVENUE**

City Engineer Nisha Patel presented the details of the infrastructure improvements along Fremont Avenue Corridor. The proposal includes a continuation of improvements from Del Monte to Broadway, will add additional public safety for buildouts, class 2 bike

lanes, roundabouts and safe routes to school improvements. The Active Transportation Program funding request is for \$12 million requested the Council approve the draft letter of support that will demonstrate the City wants to move forward with the project.
PUBLIC COMMENTS: Peter Keiser

On motion by Council Member Jason Campbell and seconded by Council Member Alissa Kispersky and passed by the following vote the City Council approved the draft letter and authorized submission of the grant application.

RESULT: **Approved**

AYES: Ian Oglesby, Dave Pacheco, Jason Campbell, Jon Wizard, Alissa Kispersky

NOES: None

B. DISCUSSION OF FUNDING NON PROFIT ORGANIZATIONS IMPACTED BY NEW FIREWORKS REGULATIONS AND PUBLIC EDUCATION PROGRAM

The City Council discussed the item which was a Council requested discussion. Mayor Oglesby and Mayor Pro Tem Pacheco submitted proposals taking into account sales figures over the past 5 years with varying levels of financial distribution from the City to the impacted non profits. The Council discussed legal and financial ability and responsibility to facilitate the proposals and the ability of the nonprofits to apply for the \$320 social services RFP.

PUBLIC COMMENT: AnnaLisa Mitchell, Pastor Britt, Peter Keiser, Eloise Shim, Regina Mason, Tommy Barker

On motion by Council Member Kispersky, seconded by Council Member Wizard and passed by the following vote the City Council agreed that instead of providing groups with previously budgeted money, that the City provide the impacted nonprofit organizations with volunteer opportunities that they can be compensated for and staff will bring back a detailed plan at a later date.

RESULT: **Approved**

AYES: Dave Pacheco, Jason Campbell, Jon Wizard, Alissa Kispersky

NOES: Ian Oglesby,

10. COUNCIL MEMBER REQUESTS

Council Member Wizard spoke to the previous direction to close Broadway Avenue for business operations and requested staff consider closing one lane on Broadway, to facilitate more outdoor dining opportunities. Council Member Campbell requested to agendize an education outreach program regarding illegal fireworks in the city, as quickly as possible.

A. MAYOR'S REQUEST TO RECONSIDER COMMISSIONER APPOINTMENT TO THE NEIGHBORHOOD IMPROVEMENT COMMISSION

On motion by Council Member Jason Campbell and seconded by Council Member Dave Pacheco and passed by the following vote the City Council approved the appointment of Ray Riordan to the NIC and Ben Strickland to the Homeless Committee.

*RESULT: **Approved***

AYES: Ian Oglesby, Dave Pacheco, Jason Campbell, Alissa Kispersky

NOES: Jon Wizard

11. MAYOR, CITY COUNCIL, CITY MANAGER AND CITY ATTORNEY COMMENTS AND REPORTS ON COMMITTEE ASSIGNMENTS

On motion the meeting was adjourned at 9:51 PM

12. ADJOURNMENT

Respectfully submitted,

Lesley Milton, City Clerk

Ian N. Oglesby, Mayor



**CITY OF SEASIDE
STAFF REPORT**

Item No.: 8.B.

TO: City Council

FROM: Craig Malin, City Manager

BY: Victor Damiani, Finance Director
Jessica Riley, Accounting Assistant

DATE: September 17, 2020

SUBJECT: APPROVE AND FILE CITY CHECKS

PURPOSE & RECOMMENDATION

Approve and file the accounts payable and wired payments made during the period of August 22, 2020 through September 4, 2020 including the payroll and benefits checks, direct deposits and wired payments related to the pay period ending August 27, 2020. Total Accounts Payable and Payroll for the above referenced period is \$1,303,788.74.

BACKGROUND

In accordance with Government Code Section 37208, at each City Council meeting the Council is provided a listing of the payroll and general checks issued since the last report so that it can inspect and confirm these checks. Each purchase has been reviewed and approved by the department making the purchase at the time of procurement. The invoice has been reviewed by the Finance Department prior to payment to ensure that it conforms to the approved budget.

Therefore, in accordance with Government Code Section 37208, the above referenced, and linked list of checks conforms to the approved budget and has been paid. These checks are submitted to the City Council for inspection and confirmation.

A description of the checks and wires exceeding \$10,000 are as follows:

- \$693,833.14 for Payroll and benefits

- \$70,033.35 to Harris & Associates for SCSD - Professional svcs. from 5/24/2020-6/27/2020 for Lift Station Upgrades and CIP management services. Professional svcs. From 3/29/2020 -5/23/2020 for Pavement Rehabilitation Project.
- \$12,838.29 to Marina Coast Water District for Multiple City of Seaside service addresses' water consumption. Billing period: 7/1/2020 - 7/31/2020.
- \$21,816.51 to PNC Equipment Finance for Lease expense for vactor/patch truck for 8/7/20-11/7/20.
- \$24,166.25 to Bear Electrical Solutions, Inc. for Traffic signal maintenance for July 2020 (Response and Routine) and General Jim Moore / Giggling Rd Lighting Project.
- \$26,674.00 to Googie Grill for Preparing and delivering meals, 3x/day, 4x/week for the Great Plates Initiative for the weeks of 8/10/20-8/16/20 & 8/17/20-8/23/20.
- \$11,327.17 to Golden State Truck and Trailer Repair for repair work for 2007/08 Pierce fire truck. Work included: check suspension, replacement for worn ball joint, replaced right side ball joints and tie rod assemblies, installed wheel end and reassembled ABS connections, & removed steering link and installed a new one.
- \$66,000.00 to Precision Emprise, LLC for Professional svcs. From 3/17/20-5/30/20 for sidewalk offset repair (shaving) on multiple City of Seaside streets.

The remaining checks, totaling \$447,121.58 include payments to vendors for operating expenditures.

The Checks report is available on the City's website here:

<https://www.ci.seaside.ca.us/194/Check-Draft-Register>

FISCAL IMPACT

There are no additional fiscal impacts.

ATTACHMENTS

None



**CITY OF SEASIDE
STAFF REPORT**

Item No.: 8.C.

TO: City Council

FROM: Craig Malin, City Manager

BY: Dave Fortune, Maintenance and Utilities Superintendent
Nisha Patel, Public Works Director/City Engineer

DATE: September 17, 2020

SUBJECT: ADOPT A RESOLUTION AWARDING A PURCHASE AGREEMENT TO CONTE'S GENERATOR SERVICE AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE PURCHASE AGREEMENT IN THE AMOUNT OF \$122,591 FOR THE PURCHASE OF A PORTABLE EMERGENCY GENERATOR FOR SEASIDE MUNICIPAL WATER SYSTEM

PURPOSE & RECOMMENDATION

Adopt a Resolution (Attachment 1) awarding a purchase agreement to Conte's Generator Service in the amount of \$122,591 to purchase a portable emergency generator for Seaside Municipal Water System and authorizing the City Manager to execute the purchase agreement.

BACKGROUND

Seaside Municipal Water System (SMWS) Well #4, located on the 1700 block of Juarez Street, is the City's only operating water well. This facility is an essential component for the City's ability to provide potable water to the customers within SMWS, especially during an emergency or crisis. It is critical for the water system to have a reliable and uninterrupted source of electricity.

The SMWS's current portable emergency generator has been utilized as an emergency electrical back-up source for Seaside City Hall over the past 15 years when not in use at the water well. In January of this year, the Monterey Bay Air Resources District

(MBARD) performed their yearly inspection of the generator. Because of the extended period that the generator has been at City Hall and the modification done to ensure the health and safety of staff, MBARD deemed the generator to be "Designated as a Stationary Engine at Seaside City Hall". This requires the purchase of a new portable emergency generator for SMWS at Well #4 in order to have a reliable uninterrupted source of electricity.

In August 2020, the City solicited a proposal to purchase the portable emergency generator system from Conte's Generator Service, a registered firm with the Systems for Award Management (SAM), a federal procurement system of which the City of Seaside is also a registered party. The proposal (Attachment 2) is for a portable emergency generator, capable of powering the well pump and equipped with a diesel storage tank to provide adequate running time during power outages.

Staff recommends purchase of a portable emergency generator in the amount of \$122,591 from Conte's Generator Service for the SMWS.

FISCAL IMPACT

Funds in the amount of \$115,000 for the portable emergency generator were included in the Fiscal Year 2020/21 Budget (Account No. 100-8310-8187 Department Equipment). Funds from Account No. 100-8310-9137 Facilities Repair/Maintenance were transferred to the Department Equipment Account to cover the additional \$7,591.00 needed.

Chapter 3.04.110 of the Seaside Municipal Code permits use of cooperative procurement agreements such as SAM.

ATTACHMENTS

1. Resolution
 2. Proposal
-

RESOLUTION NO. 20-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEASIDE

AWARDING A PURCHASE AGREEMENT TO CONTE'S GENERATOR SERVICE AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE PURCHASE AGREEMENT IN THE AMOUNT OF \$122,591 FOR PURCHASE OF A PORTABLE EMERGENCY GENERATOR FOR SEASIDE MUNICIPAL WATER SYSTEM

WHEREAS, the Seaside Municipal Water System Well is a critical facility that requires a reliable supply of uninterrupted electricity to properly function; and

WHEREAS, the existing portable emergency generator has been deemed as a Stationary Engine for the Seaside City Hall by the Monterey Bay Air Resource District; and

WHEREAS, the city is a registered party to the Systems for Award Management (SAM), a program of the federal procurement system; and

WHEREAS, Chapter 3.04.110 of the Seaside Municipal Code permits the use of cooperative procurement agreements; and

WHEREAS, the City received a proposal from Conte's Generator Service, a registered contractor with SAM, to purchase an portable emergency generator; and

WHEREAS, Conte's Generator Service proposal is in the amount of \$122,591, within the current approved Fiscal Year 2020/21 budget; and

NOW THEREFORE, BE IT RESOLVED, that the City of Seaside City Council award a purchase agreement to Conte's Generator Service in the amount of \$122,591 for the purchase of a Portable Emergency Generator, and authorize the City Manager to execute the purchase agreement; and

PASSED AND ADOPTED at a regular meeting of the City of Seaside City Council duly held on the 17th day of September, 2020 by the following vote:

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

Ian Oglesby, Mayor

ATTEST:

Lesley Milton, City Clerk

Conte's Generator Service
P.O. box 1469
Monterey, CA 93942
License #743207
831-375-1463/Fax: 831-392-0890

PROPOSAL

August 26, 2020

City of Seaside
440 Harcourt Ave.
Seaside CA 93955
Dave Fortune 760-2318
davefortune@ci.seaside.ca.us

We propose a Multiquip 180kva Trailer mounted generator with standard features and the following equipment.

1 X DCA180SSJU4F3 Generator \$92,512.00
1 X TRLR180EVE Trailer \$9,680.72
1 X EE36264 Coupler \$66.08
1 X MQPPB180J4F Power Balance \$5,375.63 (recommended option)

Total \$122,590.48

(TAXES, FUEL AND FACTORY FRIGHT INCLUDED IN THIS QUOTE)
Lead time Mid November as of today

Terms and conditions: A Purchase Order (Or verbal) is required upon acceptance of this quote. Remainder to be paid net 30. Generator Parts are special ordered to customer specifications and are non-returnable. Quote valid for thirty days from above date.

Signature: _____ Date: _____



**CITY OF SEASIDE
STAFF REPORT**

Item No.: 8.D.

TO: City Council

FROM: Craig Malin, City Manager

BY: Dave Fortune, Maintenance and Utilities Superintendent
Nisha Patel, Public Works Director/City Engineer

DATE: September 17, 2020

**SUBJECT: ADOPT A RESOLUTION APPROPRIATING AND ENCUMBERING
\$19,975 FROM THE POMA FUND BALANCE FOR THE PURCHASE
OF A SCISSOR LIFT FROM HERC RENTALS FOR USE ON THE
INTERGOVERNMENTAL SERVICES AGREEMENT CONTRACT**

PURPOSE & RECOMMENDATION

Adopt a Resolution (Attachment 1) appropriating and encumbering \$19,975 from the POMA Fund Balance for the purchase of a scissor lift, authorizing the City Manager to execute a purchase agreement with Herc Rentals for an amount not to exceed \$19,975 for the scissor lift, and directing the Finance Department to incorporate these changes in the Fiscal Year 2020/21 Budget.

BACKGROUND

The Maintenance and Utilities Division of the Public Works Department is requesting to purchase a scissor lift from Herc Rentals for use by the maintenance staff in support of the Intergovernmental Service Agreement (IGSA) Contract, more commonly referred to as the Presidio of Monterey Annex (POMA) Contract, with the federal government. Under this contract, the City performs maintenance on specific Army buildings and is reimbursed for staff time and materials.

A scissor lift uses a cross balance system to move up and down. It is generally used for a variety of tasks from performing building repairs or reaching materials stored high in warehouses. Staff is proposing to purchase an electric mobile scissor lift. It can be

driven to its location of use and will electrically move up and down.

Currently, City staff is renting a scissor lift or setting up scaffolding to use when making high repairs or installations in taller height Army buildings such as the gym and ballroom, both of which have 30 feet high ceilings. The use of scaffolding or an extension ladder is not as safe as using a scissor lift.

In August 2020, City staff solicited a proposal (Attachment 2) to purchase the scissor lift from Herc Rentals, a registered firm with Sourcewell. Sourcewell is a public agency serving as a municipal contracting agency, operating under legislative authority of Minnesota Statute 123A.21 with the authority to develop and offer, among other services, cooperative procurement services to its members. The purchase price provided includes delivery to the City, and all applicable fees and taxes.

Staff recommends purchase of a scissor lift in the amount of \$19,975 from Herc Rentals.

FISCAL IMPACT

Funds in the amount of \$19,975 are required from the POMA Fund Balance to purchase the scissor lift. City staff recommends that 19,975 be appropriated from Account No. 113-3604 to allocate the same amount to Account No. 113-8730-8187 Department Equipment.

When work is performed within the IGSA contract using the scissor lift, revenue will be generated through equipment rental rates billed through the IGSA contract, and it will replenish the POMA Fund Balance.

Chapter 3.04.110 of the Seaside Municipal Code permits the use of a cooperative procurement agreement.

ATTACHMENTS

1. Resolution
 2. Proposal
-

RESOLUTION NO. 20-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEASIDE

APPROPRIATING AND ENCUMBERING \$19,975 FROM THE POMA FUND BALANCE FOR THE PURCHASE OF A SCISSOR LIFT FROM HERC RENTALS FOR USE ON THE PRESIDIO OF MONTEREY ANNEX

WHEREAS, the City is in need of a scissor lift to support the Intergovernmental Service Agreement with the Federal Government more commonly referred to as the POMA contract; and

WHEREAS, the City is a registered party to Sourcewell, a program of the federal procurement system; and

WHEREAS, Chapter 3.04.110 of the Seaside Municipal Code permits the use of cooperative procurement agreements; and

WHEREAS, the City received a proposal from Herc Rentals, a registered contractor with Sourcewell, to purchase a new scissor lift; and

NOW, THEREFORE BE IT RESOLVED, the City Council of the City of Seaside hereby appropriates and encumbers \$19,975 from the POMA Fund Balance, authorizes the City Manager to execute an agreement with Herc Rentals for the purchase of the scissor lift for an amount not to exceed \$19,975, and directs the Finance Department to appropriate \$19,975 from Account No. 113-3604 and allocate the same amount to Account No. 113-8730-8187, and incorporate these changes into the Fiscal Year 2020/21 budget.

PASSED AND ADOPTED at a regular meeting of the City of Seaside City Council duly held on the 17th day of September, 2020 by the following vote:

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

Ian Oglesby, Mayor

ATTEST:

Lesley Milton, City Clerk

SALES QUOTE

Herc Rentals Inc.



Office: 831-751-2444

Branch #: 9735

Fax:

Cell: 831-324-3913

Email: JULIO.HERNANDEZ@HERCRENTALS.COM

Sales Rep: CESAR HERNANDEZ

Date: 8/17/2020

Customer Information

Name: **City of Seaside**

Contact: Dave Fortune

Address: 610 Olympia Ave

City, State: Seaside

Zip: 93955

Phone: (831) 899-6829

Fax:

Job Site Information

Name: **Same**

Contact:

Address:

City, State:

Zip:

Phone:

Fax:

Qty	Description	Part Number	Unit Price	Unit of Measure	Extended Price
1	GS-2646 Folding rails with full height swing gate				17,310.00
1	Automotive Style Horn				157.30
1	Folding rails with half high swing gate				384.80
Sub Total					17,852.10
Transportation Charges					431.60
Estimated Taxes 9.25%					1,691.24
Estimated Total					\$19,974.94

Sales Quote is valid through: 30 DAYS

Comments :

This price quote is for information purposes only and does not constitute an offer to rent or sell goods or equipment. All rentals or sales shall be subject to the terms and conditions of Herc Rentals Contract or Sales Invoice.



**CITY OF SEASIDE
STAFF REPORT**

Item No.: 8.E.

TO: City Council

FROM: Craig Malin, City Manager

BY: Lesley Milton, Assistant City Manager

DATE: September 17, 2020

**SUBJECT: ADOPT A RESOLUTION RATIFYING THE SEVENTH AMENDMENT
TO THE PROCLAMATION OF LOCAL EMERGENCY**

PURPOSE & RECOMMENDATION

Adopt Resolution as presented ratifying the addition of complementary fire safety inspections for outdoor business operations and for the suspension of market rate water cost for ADUs.

BACKGROUND

This is the seventh supplement to the emergency proclamation ratified initially on March 19, 2020 that is intended to alleviate challenges identified as a result of COVID-19.

This modification accomplishes the following two things, as outlined in the attached resolution and signed proclamation supplement:

1. Complementary Fire Inspection. The proclamation supplement authorizes the Fire Department to conduct complementary fire inspections to all businesses operating outdoors concerning having appropriate fire safety and/or traffic safety issues addressed.
2. Suspension of Market Rate Water Cost for ADUs. The proclamation supplement suspends the provisions of SMC section 13. 24. 025C. related to Residential Accessory Dwelling Units that require the payment of market

rate for an ADD during the length of the emergency and orders expeditious processing of the backlog of ADD applications.

It is recommended that the City Council adopt the draft resolution to ratify the seventh supplement as attached to this report.

FISCAL IMPACT

None.

ATTACHMENTS

1. Resolution 2020-Seventh Proclamation_dd
 2. 7th Supplement To Emergency Proclamation
-

Reviewed for Submission to the
City Council by:



Craig Malin, City Manager

RESOLUTION NO. 20-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEASIDE

RATIFYING THE SEVENTH SUPPLEMENT TO PROCLAMATION OF LOCAL EMERGENCY

WHEREAS, Government Code §8630 and Seaside Municipal Code Chapter 2.40 authorize the City Manager, acting as the Director of Emergency Services, to proclaim a local emergency as defined by Government Code §8558, subdivision (c) when the City of Seaside City Council is not in session; and

WHEREAS, on March 19, 2020, the City of Seaside ratified the Director of Emergency Services Proclamation of Local Emergency by adopting Resolution 20-13; and

WHEREAS, on the City Council ratified the Director of Emergency Services First and Revised Second Supplement, Third Supplement, Fourth, (Revised) Fifth Supplement and Sixth Supplement to the Proclamation of Local Emergency by adopting Resolutions 20-16, 20-21, 20-26, 20-63 and 20-73 respectively; and

WHEREAS, the City Council does hereby find that the circumstances of the pandemic spread of COVID-19 do constitute a risk of extreme peril and support and justify the additional regulations promulgated by the Sixth Supplement of the Proclamation of Local Emergency; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Seaside hereby adopts the declarations to the Director's Seventh Supplement and ratifies the Director's Seventh Supplement to his Declaration of Local Emergency, which provides for a complementary fire inspection of outdoor business areas, including restaurants. The Seventh Supplement is attached hereto and incorporated herein as Exhibit A, effective immediately upon the adoption of this resolution.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Seaside duly held on the 17th day of September, 2020 by the following vote:

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

Ian N. Oglesby, Mayor

ATTEST:

Lesley Milton, City Clerk

APPROVED AS TO FORM:

CITY ATTORNEY



SEVENTH SUPPLEMENT TO THE PROCLAMATION OF LOCAL
EMERGENCY THE CITY OF SEASIDE (GOV. CODE §8630)

WHEREAS, Government Code §8630 and Seaside Municipal Code Chapter 2.40 authorize the City Manager, acting as the Director of Emergency Services, to proclaim a local emergency as defined by Government Code §8558, subdivision (c) when the City of Seaside City Council is not in session; and

WHEREAS, the City Manager has issued prior Supplements to the Proclamation of Local Emergency; the factual recitals contained in the original Proclamation of Local Emergency and each subsequent to that proclamation are incorporated into this Supplement by reference; and

WHEREAS, on May 30, 2020, the State of California approved a Stage 2 variance application which outlined monitoring metrics the County of Monterey would follow in order to allow Monterey County to begin a staged re-opening process; and

WHEREAS, on June 11 and 12, 2020, the County of Monterey began the process of opening business sectors, which allowed restaurants, bars and breweries among other businesses to reopen pursuant to new reopening guidelines which provided for modified operations; and

WHEREAS, the State of California has established monitoring metrics for sustaining the re-opening process; and

WHEREAS, in the last week of June 2020, COVID 19 cases have surged in Monterey County and on July 2, 2020 Monterey County was placed upon the State of California "watch list" because it no longer met the metrics required to meet the Stage 2 variance process for re-opening; and

WHEREAS, on July 7, 2020, the number of confirmed cases in Monterey County 2,270 confirmed cases, 155 hospitalizations, and 17 death and on September 12, 2020, the number of confirmed cases in Monterey County is 8,904, 6021 recovered, 64 deaths and 527 hospitalizations; and

WHEREAS, in the 93955 zip code, the number of cases of COVID-19 has increased from 103 cases on July 7, 2020 to 442 on September 11, 2020; and

WHEREAS, on July 7, 2020, the County of Monterey was forced to prohibit indoor dining and operation at restaurants, bars and breweries and other businesses and businesses have begun operating in covered outdoor areas; and

WHEREAS, as the weather becomes cooler, the need for outdoor heating and other accommodations to keep guests comfortable may give rise to potential health and safety concerns; and

WHEREAS, the State of California has had an unprecedented wildfire season in Monterey County and neighboring Santa Cruz County, resulting in the damage of substantial housing resources and increasing the need for housing; and

WHEREAS, the Judicial Council has lifted the prohibition on foreclosures and evictions due to COVID-19 and it is anticipated that there will be a need for substantial additional housing resources due to impacts related to COVID-19; and

WHEREAS, accessory dwelling units, are a known source of housing units; and

WHEREAS, the provisions of SMC Section 13.24.025C. requiring payment of market value for water resources for ADUs unless they are deed restricted is presenting an impediment to the provision of additional ADUs due to both the costs and the reduction in City staffing due to COVID to compile the market information; and

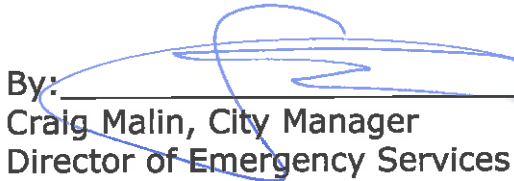
WHEREAS, pursuant to SMC Section 2.40.060 A.6.a, the Director of Emergency Services is empowered to issue rules and regulations to be confirmed by the City Council at the earliest practicable time; and

WHEREAS, in the interest of health and safety, as affected by the emergency caused by the COVID-19 pandemic, it is necessary to exercise my authority to issue these rules related to the protection of life and property.

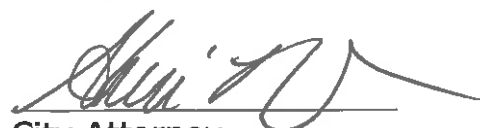
IT IS HEREBY ORDERED THAT:

- A. Complementary Fire Inspection. The City Manager hereby authorizes the Fire Department to conduct complementary fire inspections to all businesses operating outdoors concerning having appropriate fire safety and/or traffic safety issues addressed.
- B. Suspension of Market Rate Water Cost for ADUs. The City Manager hereby suspends the provisions of SMC section 13.24.025C. related to Residential Accessory Dwelling Units that require the payment of market rate for an ADU during the length of the emergency and orders expeditious processing of the backlog of ADU applications.

DATED: September 13, 2020

By: 
Craig Malin, City Manager
Director of Emergency Services

APPROVED AS TO FORM:


City Attorney



**CITY OF SEASIDE
STAFF REPORT**

Item No.: 9.A.

TO: City Council

FROM: Craig Malin, City Manager

BY: Dana Morrison
Gloria Stearns

DATE: September 17, 2020

**SUBJECT: INTRODUCTION OF A PERMANENT SMALL CELL WIRELESS
FACILITIES ORDINANCE (SEASIDE MUNICIPAL CODE -
CHAPTER 17.55) AND ASSOCIATED RESOLUTION UPDATING
TO THE CITY'S PLANNING FEE SCHEDULE**

PURPOSE & RECOMMENDATION

The proposed ordinance would amend Chapter 17.55 to establish reasonable, uniform, and comprehensive standards and procedures for small cell wireless facilities deployment, construction, installation, collocation, modification, operation, relocation, and removal within the city's jurisdictional boundaries consistent with and to the extent permitted under federal and California State law. This ordinance will also address costs recovery associated with small cell wireless facility permit applications, including recouping fees for City-hired independent experts and outside consulting fees. Also included are updates to the Planning Fee Schedule, establishing fees for Small Cell Permits and associated independent experts and consultants. The text amendment and resolution are exempt from the California Environmental Quality Act (CEQA) guidelines per section 15061(3).

BACKGROUND

EXECUTIVE SUMMARY:

In order to comply with changes in federal and state law that affect local authority over small wireless facilities, on October 17, 2019, the City Council reviewed and adopted

Urgency Ordinance 1066 adding a new chapter in the Municipal Code recognizing small wireless facilities and adopted a policy to regulate the permitting of said facilities. Unfortunately, the 45 day period of the Urgency Ordinance expired before it could be extended. As such, on December 5, 2019 the City Council adopted an amended version of said Urgency Ordinance (Urgency Ordinance 1072) and adopted a Small Cell Policy which established reasonable, uniform and comprehensive standards and procedures for small cell wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City's jurisdictional boundaries. Urgency Ordinance 1072 was extended for a term of 10 months and 15 days at the January 16, 2020 City Council meeting. The Urgency Ordinance is due to expire at the end of November 2020. The Ordinance proposed tonight is meant to serve as the permanent Small Cell Wireless ordinance and as such requires full analysis and public review.

PLANNING COMMISSION:

At the regular schedule public meeting of August 26, 2020 the Planning Commission reviewed and adopted a Resolution recommending approval of Small Cell Wireless Chapter 17.55 and associated fee schedule updates to the City Council.

FCC BACKGROUND:

The background on the Federal Communications Commission (FCC) order was outlined in the staff report of October 17, 2019 and continues to be the same and for brevity has not been duplicated in this staff report (said staff report has been included in this agenda packet as Attachment 6). As a reminder from the prior report, under the current FCC regulations and orders, local government permitting authority of small wireless facilities has been substantially affected.

Under the FCC rules, a presumptively reasonable time for review is 60 days for small cell attachments to existing structures and 90 days for attachments to new structures. Any appeal must also occur within the applicable shot clock. If the City fails to issue a timely final decision, the City's failure to act presumptively constitutes an effective prohibition of service and the applicant may file a claim in federal court for an injunction to issue "shovel-ready" permits.

In addition, the FCC provides that a local small cell regulation causes an effective prohibition in violation of federal law unless the regulation is (1) reasonable; (2) no more burdensome than regulations imposed on similar infrastructure deployments; and (3) objective and published in advance. Reasonable regulations are those that are technically feasible and reasonably directed to avoiding or remedying the "intangible public harm" (as it is described by the FCC) of unsightly or out-of-character deployments. Although the FCC declared that minimum spacing or under-grounding requirements would potentially violate the new test, the FCC provided little guidance as

to the scope of specific local regulations that would likely be considered to be preempted. The regulations mean that the City may not prohibit placement of small cells within the public right-of-way or on publicly-owned and operated utility poles but can prescribe reasonable standards for their placement and design.

Consistent with the City Council's prior direction, staff is bringing forward a permanent Ordinance for review and adoption.

SMALL CELL WIRELESS ORDINANCE (CHAPTER 17.55)

Upon the expiration of Urgency Ordinance 1072, the City's existing zoning code will not explicitly address small wireless facilities. Accordingly, staff seeks to permanently add Chapter 17.55 to the Seaside Municipal Code to recognize small wireless facilities. Chapter 17.55- Small Cell Wireless Facilities is substantially similar to the regulations and procedures set forth in the City Council Small Cell Policy (adopted December 5, 2019) changes which have been made are to address applicable application fees, costs and recouping of fees for the use of outside consultants and experts, as well as added language regarding backup-power related to California Public Utilities Commission Order which was issued in June of this year. The Chapter establishes that the required 'Small Cell Wireless Permit' shall be assessed at the same value as a Minor Use Permit (which is \$700 under the 2020-21 Fee Schedule). The Chapter is intended to promote the community interest of protecting the City's visual character from potential adverse impacts from facilities while providing access to high quality advanced wireless technology for the City's residents, businesses, and visitors.

Key provisions of the Ordinance (items in italics are new additions):

1. Application Requirements: Applicants are required to submit a variety of items, including but not limited to, a project narrative, construction drawings, a site survey, a radio frequency ("RF") report certifying compliance with federal standards, photo simulations, an executed Pole License Agreement, and review/permitting fees.
2. Fees and Deposits Submitted with Application(s): Application fee(s) shall be required to be submitted with any application. Notwithstanding the foregoing, no application fee shall be refundable, in whole or in part, to an applicant for a Small Cell Wireless Facility unless paid as a refundable deposit
3. Costs: Reasonable costs of city staff, consultant and attorney time (including that of the city attorney) pertaining to the review, processing, noticing and hearing procedures directly attributable to a Small Cell Wireless Facility shall be reimbursable to the City. To this end, the Community Development director, as applicable, may require applicants to enter a trust/deposit reimbursement agreement, in a form approved by the city attorney, or other established trust/deposit accounting mechanism for purposes of obtaining an applicant deposit from which the direct costs of City processing of an application may be drawn-down.

4. Independent Expert: Where the city determines that it requires expert assistance in evaluating an application, the city may procure technical and other specialized consulting services that may be necessary to promptly and thoroughly review the application. The Community Development Director, as applicable, is authorized to retain on behalf of the City one or more independent, qualified consultant(s) to review any Small Cell Wireless Facility application. The review is intended to be a review of technical aspects of the proposed wireless telecommunications facility and shall include, but not limited to, application completeness or accuracy, structural engineering analysis, or compliance with FCC radio frequency emissions standards.
5. Community Development Director shall review all applications: The Community Development Director, or his/her designee, shall be responsible for reviewing all applications.
6. Zoning Administrator: The Zoning Administrator shall hold a public hearing approving, conditionally approving or denying the application.
7. Noticing: The Community Development Director shall ensure that notice of the project application is mailed to all properties and record owners of properties within 300 feet of the project site. The notice shall also be posted at or near the physical location of any proposed small cell facility. The notice will contain a description of the project, the applicant's contact information, and a statement to send comments to the Director within a specified time frame.
8. Decisions and Appeals: Due to the extremely short shot clocks the Zoning Administrator will approve or deny the applications after a public hearing. Interested persons will have the opportunity to appeal the decision directly to the City Council. The entire process will be fast-tracked to ensure adequate time for public participation in the process.
9. Location Preferences and Design Standards: Residential areas and new freestanding poles or similar structures are the least preferred and require the applicant to demonstrate why a more preferred location within a reasonable distance from the site is technically feasible. The Ordinance includes design criteria and standards that preserve local authority and comply with the FCC's restrictions.
10. Automatic Conditions of Approval: The policy contains a substantial number of "standard conditions" applicable to all deployments. These ensure that the maintenance and operational requirements for all facilities are evenly applied, and also ensure that all facilities meet minimum standards in the event that an approval is mandated by law.
11. Back-up Power: On June 16, 2020 the California Public Utilities Commission (CPUC) issued an order (D.20-07-011) requiring wireless providers to adopt a 72-hour backup power requirement for wireless providers' facilities, to ensure minimum service coverage is maintained during disasters or commercial grid outages. The 72-hour backup power requirements are only required for facilities located in Tier 2 and Tier 3 High Fire Threat Districts. Portions of the City located east of General Jim Moore Boulevard and south of Eucalyptus Road are

designated as a Tier 2 High Fire Threat District.

ENVIRONMENTAL ASSESSMENT

The proposed code amendment is exempt from further environmental review in accordance with CEQA Guidelines section 15061(b)(3) because the it involves the adoption of regulations for small cell wireless facilities and does not directly or indirectly authorize or approve any actual physical changes in the environment.

SUMMARY/CONCLUSION

The City is seeking to complete full public review and analysis associated with the permanent Small Cell Wireless Ordinance in order to comply with the FCC regulations. Staff has worked with outside counsel to develop a flexible approach that preserves as much of the City's authority as possible while still achieving compliance. Staff recommends that the City Council Introduce and Waive the First Reading of the Small Cell Wireless Ordinance; the item will return to the City Council for a 2nd reading and adoption at a later date, along with the Resolution amending the Planning Department Fee Schedule.

FISCAL IMPACT

There is no fiscal impact for this item.

ATTACHMENTS

1. Attachment 1_ CC Ordinance_Small Cell
 2. Attachment 2 (Exhibit A)_Chapter 17.55
 3. Attachment 3_CC Resolution_Fee Schedule
 4. Attachment 4 (Exhibit B)_ changes to Planning Dept fee schedule
 5. Attachment 5_ PC Small Cell Wireless Resolution
 6. Attachment 6 - 10.17.2020 CC Small Cell Staff Report
-

ORDINANCE NO. XXXX**AN ORDINANCE OF THE CITY OF SEASIDE****ADDING CHAPTER 17.55 OF THE SEASIDE MUNICIPAL CODE ESTABLISHING REGULATIONS FOR SMALL WIRELESS FACILITIES PURSUANT TO APPLICABLE FEDERAL LAWS AND ASSOCIATED UPDATES TO THE CITY'S FEE SCHEDULE****THE CITY COUNCIL OF THE CITY OF SEASIDE HEREBY ORDAINS AS FOLLOWS:**

SECTION 1. Findings. On September 17, 2020, the City Council introduced an ordinance and waived its first reading of this Ordinance at a duly noticed public meeting. On October XX, 2020 the City Council returned for a second reading and considered the adoption of this Ordinance at a duly noticed public meeting and on the basis of the record thereof finds the following facts to be true.

a. Pursuant to Article XI, section 7 of the California Constitution and sections 36931 and following of the California Government Code, the City Council may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws; and

b. Significant changes in federal and State law that affect local authority over wireless communications facilities ("WCFs") have occurred, including but not limited to the following:

1. On August 2, 2018, the Federal Communications Commission ("FCC") adopted a declaratory ruling that prohibits state and local governments from adopting temporary moratoria on telecommunications infrastructure deployment; and
2. On September 26, 2018, the FCC adopted new rules that limit local authority to regulate "small wireless facilities" as that term is defined in 47 Code of Federal Regulations §1.6002(l); and
3. The FCC rules included a declaratory ruling and report and order, that, among other things, creates a new regulatory classification for small wireless facilities, requires State and local governments to process applications for small wireless facilities within 60 days or 90 days, establishes a national standard for an effective prohibition and provides that a failure to act within the applicable timeframe presumptively constitutes an effective prohibition; and
4. The FCC rules became partially effective on January 14, 2019, and fully effective on April 15, 2019, would require the City of Seaside ("City") to review small cell applications consistent with the FCC's national standard for permissible local regulations; and
5. The FCC rules provide that a local small cell regulation causes an effective prohibition in violation of federal law unless the regulation is 1) reasonable; 2) no more burdensome than regulations imposed on similar infrastructure deployments; and 3) objective and published in advance; and
6. The FCC regulations mean that the City may not prohibit placement of small cells within the public right-of-way or on publicly-owned and operated utility poles but can prescribe reasonable standards for their placement and design; and
7. On December 10, 2018, the FCC clarified the effective dates for the rule, stating that the shot clock and fee regulations would go into effect on January 14, 2019, and the aesthetic regulations go into effect on April 15, 2019.

- c. Given the rapid and significant changes in federal and State law, the actual and effective prohibition on moratoria to amend local policies in response to such changes and the significant adverse consequences for noncompliance with federal and state law, the City Council desires to add Seaside Municipal Code section 17.55, to allow greater flexibility and responsiveness to new federal and state laws in order to preserve the City's traditional authority to the maximum extent practicable (collectively, the "Amendments"); and
- d. The City is adopting a permanent Ordinance to establish reasonable, uniform and comprehensive standards and procedures for small cell wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City's jurisdictional boundaries consistent with and to the extent permitted under federal and California State law.
- e. The City of Seaside intends to establish reasonable, uniform and comprehensive standards and procedures for small cell wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City's jurisdictional boundaries, consistent with and to the extent permitted under federal and California state law. Such standards and procedures are intended to, and should be applied to, protect and promote public health, safety and welfare, and balance the benefits that flow from robust, advanced wireless services with the City's local values, which include without limitation the aesthetic character of the City, its neighborhoods and community. It is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interests is maintained; (2) protecting the City's visual character from potential adverse impacts and/or visual blight created or exacerbated by small wireless facilities and related communications infrastructure; (3) protecting and preserving the City's environmental resources; (4) protecting and preserving the City's public rights-of-way and municipal infrastructure located within the City's public rights-of-way; and (5) promoting access to high-quality, advanced wireless services for the County's residents, businesses and visitors.
- f. The Policies are not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent personal wireless services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or California state law; (6) impose any unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the County to preempt any applicable federal or California law.

SECTION 2. Adding Seaside Municipal Code Chapter 17.55 and Associated Fee Schedule Changes. A new section Chapter 17.55 is added to the Seaside Municipal Code as shown in Exhibit A. Small Cell Permit Fees are added to the Planning Department section of the Seaside 2020-21 Fee Schedule as shown in Exhibit B.

SECTION 3. Term. This Ordinance shall take effect and be in force immediately upon the passage and adoption hereof and implementation by the Agency shall take place no sooner than thirty (30) days following the date of the adoption of this ordinance

SECTION 4. CEQA Finding. The City Council finds there is no possibility the adoption of this Ordinance will have a significant effect on the environment. This Ordinance merely amends the Seaside Municipal Code to authorize the adoption of regulations related to WCFs. This Ordinance does not directly or indirectly authorize or approve any actual changes in the physical environment. Applications for any new WCF or change to an existing WCF would be subject to additional environmental review on a case-by-case basis. Accordingly, the City Council finds that this Ordinance would be exempt from CEQA Guidelines at Title 14, Section 15061(b)(3) of the California Code of Regulations.

SECTION 5. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid or unenforceable.

SECTION 6. Conflicts with Prior Ordinances. If the provisions in this Ordinance conflict in whole or in part with any other City regulation or ordinance adopted prior to the effective date of this section, the provisions in this Ordinance will control.

SECTION 7. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same or a summary thereof to be published and posted in the manner required by law.

INTRODUCED, PASSED AND ADOPTED at a regular City Council meeting duly held on the XXth day of October, 2020 by the following vote:

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

APPROVED:

Ian N. Oglesby, Mayor

ATTEST:

Lesley Milton, City Clerk

CHAPTER 17.55 SMALL CELL WIRELESS FACILITIES

SECTIONS:

17.55.010	PURPOSE AND INTENT
17.55.020	DEFINITIONS
17.55.030	APPLICABILITY; REQUIRED PERMITS AND APPROVALS
17.55.040	COSTS AND FEES
17.55.050	APPLICATION REQUIREMENTS
17.55.060	APPLICATION SUBMITTAL AND COMPLETENESS REVIEW
17.55.070	APPROVAL AND DENIALS; NOTICES
17.55.080	STANDARD CONDITIONS OF APPROVAL
17.55.090	LOCATION REQUIREMENTS
17.55.100	DESIGN STANDARDS

17.55.010. PURPOSE AND INTENT

- a) On September 27, 2018, the Federal Communications Commission ("FCC") adopted a *Declaratory Ruling and Third Report and Order*, FCC 18-133 (the "*Small Cell Order*"), in connection with two informal rulemaking proceedings entitled *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, and *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84. The regulations adopted in the *Small Cell Order* significantly curtail the local authority over wireless and wireline communication facilities reserved to State and local governments under sections 253 and 704 in the federal Telecommunications Act.
- b) The City of Seaside intends this Chapter to establish reasonable, uniform and comprehensive standards and procedures for small cell wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City's territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this Chapter are intended to and should be applied to, protect and promote public health, safety and welfare, and balance the benefits that flow from robust, advanced wireless services with the City's local values, which include without limitation the aesthetic character of the City, its neighborhoods and community. This Chapter is also intended to reflect and promote the community interest by the following:
- 1) ensuring that the balance between public and private interests is maintained;
 - 2) protecting the City's visual character from potential adverse impacts and/or visual blight created or exacerbated by small cell wireless facilities and related communications infrastructure;
 - 3) protecting and preserving the City's environmental resources;
 - 4) protecting and preserving the City's public rights-of-way and municipal infrastructure located within the City's public rights-of-way; and
 - 5) promoting access to high-quality, advanced wireless services for the City's

Residents and businesses and visitors.

c) This Chapter is not intended to, nor shall it be interpreted or applied to:

- 1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services;
- 2) prohibit or effectively prohibit any entity's ability to provide any telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management;
- 3) unreasonably discriminate among providers of functionally equivalent personal wireless services;
- 4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions;
- 5) prohibit any collocation or modification that the City may not deny under federal or California state law;
- 6) impose any unreasonable discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or
- 7) otherwise authorize the City to preempt any applicable federal or California law.

17.55.020. GENERAL DEFINITIONS

a) **Undefined Terms.** Undefined phrases, terms or words in this section will have the meanings assigned to them in 1 U.S.C. § 1, as may be amended or superseded, and, if not defined therein, will have their ordinary meanings. If any definition assigned to any phrase, term or word in this section conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.

b) **Defined Terms.**

1. "antenna" means the same as defined by the FCC in 47 C.F.R. § 1.6002(b), as may be amended or superseded.
2. "arterial street" means a street designed to feed through-traffic to freeways, provide access to adjacent land uses - mostly at intersections - and feature traffic control measures. The term "arterial street" as used in this Chapter is defined in the City of Seaside General Plan, Circulation Element.
3. "collector street" means a street designed to provide access to adjacent land uses and feed local traffic to arterials. The term "collector street" as used in this Chapter includes collectors and residential collectors as defined in the City of Seaside General Plan, Circulation Element.
4. "collocation" means the same as defined by the FCC in 47 C.F.R. § 1.6002(9), as may be amended or superseded.

5. "Community Development Director" means the Community Development Director or his/her designee and shall be the City official responsible for reviewing applications for small cell permits and after Zoning Administrator permit approval, vested with the authority to make modifications to permit conditions as provided in this Chapter.
6. "concealed" or "concealment" means concealing techniques that integrate the transmission equipment into the surrounding natural and/or built environment such that the average, untrained observer cannot directly view the equipment but would likely recognize the existence of the wireless facility or concealment technique. Camouflaging concealment techniques include but are not limited to:
 - i. antennas mounted within a radome above a streetlight;
 - ii. equipment cabinets in the public rights-of-way painted or wrapped to match the background; and
 - iii. cables and wiring concealed within a shroud and/or routed internally through the support structure.
7. "decorative pole" means any pole that includes decorative or ornamental features, design elements and/or materials intended to enhance the appearance of the pole or the public rights-of-way in which the pole is located.
8. "FCC" means the Federal Communications Commission or its duly appointed successor agency.
9. "FCC Shot Clock" means the presumptively reasonable time frame within which the City generally must act on a given wireless application, as defined by the FCC and as may be amended and superseded.
10. "ministerial permit" means any City-issued non-discretionary permit required to commence or complete any construction or other activity subject to the City's jurisdiction. Ministerial permits may include, without limitation, any building permit, construction permit, electrical permit, encroachment permit, excavation permit, traffic control permit and/or any similar over-the-counter approval issued by the City's departments.
11. "personal wireless services" means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.
12. "personal wireless services facilities" means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.
13. "RF" means radio frequency or electromagnetic waves
14. "Section 6409" means Section 6409(a) of the Middle Class Tax Relief and Job

Creation Act 012012, Pub.- L No. 112-96, 126 Stat 156, codified as 47 U.S.C. '§ 1.455(a), as may be amended or superseded.

15. "small cell wireless facility" or "small cell wireless facilities" means the same as defined by the FCC in 47 C.F.R. § 1.6002 as may be amended or superseded.

16. "tower" means the same as defined by the FCC in 47 C.F.R. § 1.6100(b)(9), as may be amended or superseded.

17. "Zoning Administrator" means the Community Development Director or his/her designee and shall be the City official responsible for conducting the public hearing and other duties as provided in this Chapter

17.55.030. APPLICABILITY; REQUIRED PERMITS AND APPROVALS

- a) **Applicable Facilities.** Except as expressly provided otherwise in this Chapter, the provisions in this Chapter shall be applicable to all existing small cell wireless facilities and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate, remove or otherwise deploy small cell wireless facilities within the public rights-of-way or on private property within the City's jurisdictional and territorial boundaries.
- b) **Small Cell Permit.** A "small cell permit," **(assessed as a Minor Use Permit under the Planning Department Fee Schedule)** subject to the Community Development Director's prior review and approval, is required for any small cell wireless facility proposed on an existing, new or replacement structure.
- c) **Request for Approval Pursuant to Section 6409.** Notwithstanding anything in the Chapter to the contrary, requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409 will be subject to the current FCC rules and regulations "eligible facilities requests" as defined by FCC and as may be amended or superseded.
- d) **Other Permits and Approvals.** In addition to a small cell permit, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial permits and/or other approvals issued by other City departments or divisions. All applications for ministerial permits submitted in connection with a proposed small wireless facility must contain a valid small cell permit issued by the City for the proposed facility. Any application for any ministerial permit(s) submitted without such small cell permit may be denied without prejudice. Furthermore, any small cell permit granted under this Chapter shall remain subject to all lawful conditions and/or legal requirements associated with such other permits or approvals.

17.55.040. FEES AND COSTS

- a) **Fees and Deposits Submitted with Application(s).** For all Small Cell Wireless Facility applications, application fee(s) shall be required to be submitted with any application, as established by City Council resolution and in accordance with California Government Code Section 50030. Notwithstanding the foregoing, no application fee shall be refundable, in whole or in part, to an applicant for a Small Cell Wireless Facility unless paid as a refundable deposit.
- b) **Costs.** Reasonable costs of city staff, consultant and attorney time (including that of the city attorney) pertaining to the review, processing, noticing and hearing procedures directly attributable to a Small Cell Wireless Facility shall be reimbursable to the City. To this end, the Community Development Director, as applicable, may require applicants to enter a trust/deposit reimbursement agreement, in a form approved by the city attorney, or other established trust/deposit accounting mechanism for purposes of obtaining an applicant deposit from which the direct costs of City processing of an application may be drawn-down.
- c) **Independent Expert.** The City Council authorizes the Community Development Director to, in the Director's discretion, select and retain an independent consultant with specialized training, experience and/or expertise in telecommunications issues satisfactory to the Community Development Director in connection with any permit application. The Community Development Director may request an independent consultant review on any issue that involves specialized or expert knowledge in connection with wireless facilities deployment or permit application for wireless facilities which include without limitation:
- **permit application completeness and/or accuracy , including performing a drive test or other form of reception testing to determine whether the proposed facility is necessary to achieve the applicant's objectives as may be required in order to determine the necessity of an exception;**
 - **pre-construction planned compliance with applicable regulation human exposure to RF emissions;**
 - **post-construction actual compliance with applicable regulations for human exposure to RF emissions;**
 - **whether and to what extent a proposed project will comply with applicable laws;**
 - **the applicability, reliability, and/or sufficiency of any information analyses or methodologies used by the applicant to reach any conclusion about any issue with the City's discretion to review; and**
 - **any other issue identified by the Directory that requires expert or specialized knowledge, including without limitation any issues related to an exception requested by the applicant**

Until such a time as the City hires staff possessing specialized expertise described in this paragraph, the City generally may be required to hire an independent consultant in connection with any application. The Community Development Director may request that the independent consultant prepare written report, testify at public meetings, hearings and/or appeals and attend meetings with City staff and/or the applicant.

Subject to applicable law, in the event that the Community Development Director elects to retain an independent consultant in connection with any permit application, the applicant shall be responsible for the reasonable costs in connection with the services provided, which may include without limitation any costs incurred by the independent consultant to attend and participate in any meetings or hearings. Before the independent consultant may provide any services, the applicant shall tender to the City a deposit in an amount equal to the estimated cost for the services to be provided.

The Community Development Director may request additional deposits as reasonably necessary to ensure sufficient funds are available to cover the reasonable costs in connection with the independent consultant's services. In the event that the deposit exceeds the total costs for consultant's services the Community Development Director shall promptly return any unused funds to the applicant after the wireless facility has been installed and passes a final inspection by the Community Development Director or his/her designee. In the event that the reasonable costs for the independent consultant's services exceed the deposit, the Community Development Director shall invoice the applicant for the balance. The City shall not issue any construction or encroachment permit to any applicant with any unpaid deposit requests or invoices.

17.55.050. APPLICATION REQUIREMENTS

- a) **Small Cell Permit Application Contents.** All applications for a small cell permit must include all the information and materials required in this **Section 17.55.050(a)**.
 - 1) **Application Form.** The applicant shall submit a complete, duly executed small cell permit application on the then-current form prepared by the Community Development Director.
 - 2) **Application Fee.** The applicant shall submit the applicable small cell permit application fee established **as equivalent to a Minor Use Permit**. Batched applications must include the applicable small cell permit application fee for each small cell wireless facility in the batch. If no small cell permit application fee has been established, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to reimburse the City for its reasonable costs incurred in connection with the application within 10 days after the City issues a written demand for reimbursement.

- 3) **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a California licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholds, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must:
- i. contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions;
 - ii. identify all structures within 500 feet from the proposed project site and call out such structures' overall height above ground level;
 - iii. the weight of all structures, antennae and other equipment placed upon the poles;
 - iv. depict the applicant's plan for electric and data backhaul utilities, which shall include the locations for all conduits, cables, wires, hand-holes, junctions, transformers, meters, disconnect switches, and points of connection; and
 - v. demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, and public utility regulations and orders.
- 4) **Site Survey.** For any small cell wireless facility; the applicant shall submit a survey prepared, signed and stamped by a California licensed or registered engineer. The survey must identify and depict all existing boundaries, encroachments and other structures within 50.0 feet from the proposed project site, which includes without limitation all:
- i. traffic lanes;
 - ii. all private properties and property lines;
 - iii. above and below-grade utilities and related structures and encroachments;
 - iv. fire hydrants, roadside call boxes and other public safety infrastructure;
 - v. streetlights, decorative poles, traffic signals and permanent signage;
 - vi. sidewalks, driveways, parkways, curbs, gutters and storm drains;
 - vii. benches, trash cans, mailboxes, kiosks and other street furniture; and
 - viii. existing trees, planters and other landscaping features.
- 5) **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed small cell wireless facility in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed

site location and the photo location for each vantage point. At least one simulation must depict the small cell wireless facility from a vantage point approximately 50 feet from the proposed support structure or location.

- 6) **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed wireless facility qualifies as a "small cell wireless facility" as defined by the FCC in 47 C.F.R. § 1.6002(/). A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met-bare conclusions not factually supported do not constitute complete written analysis. As part of the written statement the applicant must also include (i) whether and why the proposed support is a "structure" as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed wireless facility meets each required finding for a small cell permit as provided in **Section 17.55.070(c)**.
- 7) **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies that the proposed small cell wireless facility, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the City. The RF report must include the actual frequency and power levels (in watts effective radiated power) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
- 8) **Public Notices.** The applicant shall reimburse the City for the cost of preparing and mailing and posting public notices.
- 9) **Regulatory Authorization.** The applicant shall submit evidence of the applicant's regulatory status under federal and California law to provide the services and construct the small cell wireless facility proposed in the application.
- 10) **Pole License Agreement.** For any small cell wireless facility proposed to be installed on any structure owned or controlled by the City and located within the public rights-of-way, the applicant shall submit an executed Pole License Agreement on a form prepared by the City that states the terms and conditions for such non-exclusive use by the applicant. At a minimum, the Pole License Agreement shall address equipment loading maximums and other public and emergency safety requirements. No changes shall be permitted to the City's Pole License Agreement except as may be indicated on the form itself. Any unpermitted changes to the City's Agreement shall be deemed a basis to deem

the application incomplete. Refusal to accept the terms and conditions in the City's Agreement shall be an independently sufficient basis to deny the application.

11) **Title Report and Property Owner's Authorization.** For any small cell wireless facility proposed to be installed on any private property not owned or controlled by the City, the applicant must submit:

- i. a title report issued within 30 days from the date the applicant filed the application; and
- ii. if the applicant is not the property owner, a written authorization signed by the property owner identified in the title report that authorizes the applicant to submit and accept a small cell permit in connection with the subject property. For any small cell wireless facility proposed to be installed on a support structure in the public right-of-way, the applicant must submit a written authorization from the support structure owner(s).

12) **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by an engineer licensed by the State of California for the proposed small cell wireless facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the City's noise regulations. The acoustic analysis must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer(s) that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable noise limits.

b) **Additional Requirements.** The City Council authorizes the Community Development Director to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the Community Development Director finds necessary, appropriate or useful for processing any application governed under this Chapter. All such requirements and materials must be in written form and publicly available to all interested parties.

17.55.060. APPLICATION SUBMITTAL AND COMPLETENESS REVIEW

a) **Requirements for a Duly Filed Application.** Any application for a small cell permit will not be considered duly filed unless submitted in accordance with the requirements in **Section 17.55.060(a)**.

1) **Submittal Appointment.** All applications must be submitted to the City at a pre-scheduled appointment with the Community Development Director. Potential applicants may generally submit one application per appointment, or up to five individual applications per appointment for batched applications as provided in **Section 17.55.060(d)** Potential applicants may schedule successive appointments

for multiple applications whenever feasible and not prejudicial to other applicants for any other development project. The Community Development Director shall use reasonable efforts to offer an appointment within five working days after the Community Development Director receives a written request from a potential applicant. Any purported application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed, whether the City retains, returns or destroys the materials received.

- 2) **Pre-Submittal Conferences.** The City strongly encourages, but does not require, potential applicants to schedule and attend a pre-submittal conference with the Community Development Director for all proposed projects that involve small cell wireless facilities. A voluntary pre-submittal conference is intended to streamline the review process through informal discussion between the potential applicant and staff that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, potential applicants are encouraged (but not required) to bring any draft applications or other materials so that City staff may provide informal feedback and guidance about whether such draft applications or other materials may be incomplete or unacceptable. The Community Development Director shall use reasonable efforts to provide the potential applicant with an appointment within five working days after receiving a written request and any applicable fee or deposit to reimburse the City for its reasonable costs to provide the services rendered in the pre-submittal conference.
- b) **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, and to mitigate unreasonable delays or barriers to entry caused by chronically incomplete applications, any application governed under this Chapter will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the Community Development Director within 60 calendar days after the Community Development Director deems the application incomplete in a written notice to the applicant. As used in this **Section 17.55.060(c)** a "substantive response" must include the materials identified as incomplete in the Community Development Director's notice.
- c) **Batched Applications.** Applicants may submit up to five individual applications for a small cell permit in a "batch" to be reviewed together at the same time; provided, however, that:
 - 1) all small cell wireless facilities in a batch must be proposed with substantially the same equipment in the same configuration on the same support structure type;
 - 2) each application in a batch must meet all the requirements for a complete

application, which includes without limitation the application fee for each application in the batch;

- 3) if any individual application within a batch is deemed incomplete, the entire batch shall be automatically deemed incomplete;
- 4) if any application is withdrawn or deemed withdrawn from a batch, all other applications in the entire batch shall be automatically deemed withdrawn; and
- 5) if any application in a batch fails to meet the required findings for approval, the entire batch shall be denied in the manner described in **Section 17.55.070(e)**.

- d) **Additional Procedures.** The City Council authorizes the Community Development Director to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for appointments with applicants, as the Community Development Director deems necessary or appropriate to organize, document and manage the application intake process. All such rules and regulations must be in written form and publicly stated to provide all interested parties with prior notice.

17.55.070. APPROVALS AND DENIALS; NOTICES

- a) **Public Notice.** Within approximately 10 days after an application is received and prior to any approval, conditional approval or denial, the City shall mail public notice to all properties and record owners of properties within 300 feet from the project site. The notice shall also be posted in a publicly accessible area in or within close proximity to the proposed physical location of any facility. The notice must contain:

- 1) a general project description;
- 2) the applicant's identification and contact information as provided on the application submitted to the City;
- 3) contact information for the Community Development Director for interested parties to submit comments;
- 4) a statement that the Zoning Administrator will act on the application at a public hearing but that any interested person or entity may appeal the Zoning Administrator's decision directly to the City Council; and
- 5) a general statement that the FCC requires the City to take final action on small cell applications within 60 days or 90 days, depending on the nature of the proposed facility.

- b) **Administrative Review.** Not less than 10 calendar days after the public notice required in **Section 17.55.070(a)** sent, and not more than 29 calendar days after the application has been deemed complete, the Zoning Administrator shall approve, conditionally approve or deny a complete and duly filed small cell permit application at a public hearing.

- c) **Required Findings.** The Zoning Administrator may approve or conditionally approve a complete and duly filed application for a small cell permit when the Zoning Administrator finds:

- 1) the proposed project meets the definition for a "small cell wireless facility" as

defined by the FCC;

- 2) the proposed project would be in the most preferred location within 750 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location(s) within 750 feet would be technically infeasible;
- 3) the proposed project would not be located on a prohibited support structure identified in this Chapter;
- 4) the proposed project would be on the most preferred support structure within 750 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred support structure(s) within 750 feet would be technically infeasible;
- 5) the proposed project complies with all applicable design standards in this Chapter;
- 6) the applicant has demonstrated that the proposed project will be in planned compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions; and
- 7) all public notices required for the application have been given.

- d) **Conditional Approvals; Denials without Prejudice.** Subject to any applicable federal or California laws, nothing in this Chapter is intended to limit the Zoning Administrator's ability to conditionally approve or deny without prejudice any small cell permit application as may be necessary or appropriate to ensure compliance with this Chapter.
- e) **Decision Notices.** Within five calendar days after the Zoning Administrator acts on a small cell permit application, the Zoning Administrator shall notify the applicant and all parties entitled to receive notice of the application by written notice. If the Zoning Administrator denies the application (with or without prejudice), the written notice must contain the reasons for the decision.
- f) **Appeals.** Any interested person or entity may appeal the decision by the Zoning Administrator to the City Council. Appeals must be filed within seven days after the date of the Zoning Administrator's decision; provided, however, that appeals from an approval shall not be permitted when based solely on the environmental effects from radio frequency emissions that are compliant with applicable FCC regulations and guidelines. The notice of appeal must contain a short and plain statement of the basis for the appeal, which may be supplemented after the notice period has expired but before the hearing. The City Council shall hear appeals *de novo* and issue the applicant a written decision within five (5) calendar days after the date of the public hearing.

17.55.080. STANDARD CONDITIONS OF APPROVAL

- a) **General Conditions.** In addition to all other conditions adopted by the Zoning Administrator for a small cell permit, all small cell permits issued under this Chapter shall be automatically subject to the conditions in this **Section 17.55.080(a)**.

- 1) **Permit Term.** This permit will automatically expire 10 years and one day from its issuance unless California Government Code § 65964(b) authorizes the City to establish a shorter term for public safety reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this wireless facility, which includes without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.
- 2) **Permit Renewal.** Within one (1) year before the expiration date of this permit, the permittee may submit an application for permit renewal. To be eligible for administrative review and renewal, the permittee must demonstrate that (a) the subject wireless facility is in compliance; with all the conditions of approval associated with this permit and all applicable provisions in the Seaside Municipal Code and this Chapter that exist at the time the decision to renew the permit would be rendered. The Community Development Director shall have discretion to modify or amend the conditions of approval for permit renewal on a case-by-case basis as may be necessary or appropriate to protect and promote the public health, safety and welfare, allow for the proper operation of the approved wireless facility, maintain compliance with applicable laws and/or to advance the goals or policies in the General Plan and any specific plan, the Seaside Municipal Code and/or this Chapter. Upon renewal, this permit will automatically expire 10 years and one day from its issuance, except when California Government Code § 65964 and (b), as may be amended or superseded in the future, authorizes the City to establish shorter term for public safety reasons.
- 3) **Post Installation Certification.** Within 60 calendar days after the permittee commences full, unattended operations of a small cell wireless facility approved or deemed-approved, the permittee shall provide the Community Development Director with documentation reasonably acceptable to the Community Development Director that the small cell wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and Photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
- 4) **Build-Out Period.** This small cell permit will automatically expire six (6) months from the approval date (the "build-out period") unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved small cell wireless facility, which includes without limitation any permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, the small cell wireless facility or its use. If this build-out period expires, the City will not extend the build-out period but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.
- 5) **Site Maintenance.** The permittee shall keep the site, which includes

without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions in this small cell permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.

- 6) **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("laws") applicable to the permittee, the subject property, the small cell wireless facility or any use or activities in connection with the use authorized in this small cell permit, which includes without limitation any laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all laws. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in the Seaside Municipal Code, this Chapter any permit, any permit condition or any applicable law or regulation, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all aspects with all applicable provisions in the Seaside Municipal Code, this Chapter, any permit, any permit condition or any applicable law or regulation.
- 7) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not, perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Seaside Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare a state of emergency within the City. The Community Development Director and/or the Public Works Director may issue a stop work order for any activities that violates this condition in whole or in part.
- 8) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee. Notwithstanding the prior sentence,

the City's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee, if present, may observe the City's officers, officials, staff or other designees while any such inspection or emergency access occurs.

- 9) **Permittee's Contact Information.** Within 10 days from the final approval, the permittee shall furnish the City with accurate and up-to-date contact information for a person responsible for the small cell wireless facility, which includes without limitation such person's full name, title, direct telephone number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and promptly provide the City with updated contact information if either the responsible person or such person's contact information changes.
- 10) **Indemnification.** The permittee and, if applicable, the property owner upon which the small cell wireless facility is installed shall defend, indemnify and hold harmless the City, City Council and the City's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees") from any and all
 - i. damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("claims") brought against the indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of this small cell permit, and
 - ii. other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this small cell permit or the small cell wireless facility.

In the event the City becomes aware of any claims, the City will use best efforts to promptly notify the permittee and the private property owner (if applicable) and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the property owner and/or permittee (as applicable) shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the City to approve this small cell permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this small cell permit.

- 11) **Performance Bond.** Before the Building Division issues any permits required to commence construction in connection with this permit, the permittee shall post a

performance bond from a surety and in a form acceptable to the Community Development Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contract or with experience in wireless facilities removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws. In establishing or adjusting the bond amount required under this condition, and in accordance with California government Code §65964(a), the Community Development Director shall take into consideration any information provided by the permittee regarding the cost to remove the wireless facility to a standard compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility in accordance with this condition.

12)**Permit Revocation.** Any permit granted under this Chapter may be revoked in accordance with the provisions and procedures in this condition. The Community Development Director may initiate revocation proceedings when the Community Development Director has information that the facility may not be in compliance with all applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Before the Zoning Administrator may conduct a public hearing to revoke any permit granted under this Chapter, the Community Development Director must issue a written notice to the permittee that specifies the following:

- i. the facility;
- ii. the violation(s) to be corrected;
- iii. the timeframe in which the permittee must correct such violation(s); and
- iv. that, in addition to all other rights and remedies the City may pursue, the City may initiate revocation proceedings for failure to correct such violation(s).

The Zoning Administrator's decision may be appealed to the City Council after a duly noticed public hearing. The City Council may revoke a permit when it finds substantial evidence in the written record to show that the facility is not in compliance with any applicable laws, which includes without limitation, any permit in connection with the facility and any associated conditions with such permit(s). Any decision by the City Council to revoke or not revoke a permit shall be final and not subject to any further appeals. Within five business days after the City Council adopts a resolution to revoke a permit, the Community Development Director shall provide the permittee with a written notice that specifies the revocation and the reasons for such revocation.

13)**Record Retention.** Throughout the permit term, the permittee must maintain a

complete and accurate copy of the written administrative record, which includes without limitation the small cell permit application, small cell permit, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval, any ministerial permits or approvals issued in connection with this approval and any records, memoranda, documents, papers and other correspondence entered into the public record in connection with the small cell permit (collectively, "records"). If the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved by inspecting the missing records will be construed against the permittee. The permittee shall protect all records from damage from fires, floods and other hazards that may cause deterioration. The permittee may keep records in an electronic format; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicts between such City-controlled copies or records and the permittee's electronic copies, and complete originals will control over all other copies in any form. The requirements in this condition shall not be construed to create any obligation to create or prepare any records not otherwise required to be created or prepared by other applicable laws. Compliance with the requirements in this condition shall not excuse the permittee from any other similar record-retention obligations under applicable law.

14) Abandoned Wireless Facilities. The small cell wireless facility authorized under this small cell permit shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a small cell wireless facility is abandoned or deemed abandoned, the permittee and/or property owner shall completely remove the small cell wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Seaside Municipal Code. In the event that neither the permittee nor the property owner complies with the removal and restoration obligation under this condition within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with, or without notice, and the permittee and property owner (where private property) shall be jointly and severally liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.

15) Landscaping. At the discretion of the Community Development Director, the permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site, or pay a fee to the City's Urban Forestry Fund if replacement landscaping is not feasible or desired at the location. If any trees are damaged or displaced, the permittee shall replace landscaping as determined by the City's unless approved by the City's arborist. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree unless approved by the City's arborist. The permittee shall, at all times, be responsible to maintain any replacement landscape features.

16) **Cost Reimbursement.** The permittee acknowledges and agrees that:

- i. the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the City to incur costs and expenses;
- ii. the permittee shall be responsible to reimburse the City for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and any other costs reasonably related to or caused by the request for authorization to construct, install and/or operate the wireless facility;
- iii. any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse City for all such costs 10 days after a written demand for reimbursement and reasonable documentation to support such costs; and
- iv. the City shall have the right to withhold any permits or other approvals in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the City by the permittee.

b) **Conditions for Small Cell Wireless Facilities in the Public Rights-of-Way.** In addition to all conditions in subsection (a), all small cell permits for small cell wireless facilities in the public rights-of-way issued under this Chapter shall be automatically subject to the conditions in this **Section 17.55.080(b)**.

- 1) **Future Undergrounding Programs.** Notwithstanding any term remaining on any small cell permit, if other utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's small cell wireless facility is located, the permittee must also underground its equipment, except the antennas and any approved electric meter, at approximately the same time. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition. Small cell wireless facilities installed on utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the City's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the state public utilities commission for undergrounding costs.
- 2) **Electric Meter Upgrades.** If the commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.

3) **Rearrangement and Relocation.** The permittee acknowledges that the City, in its sole discretion and at any time, may:

- i. change any street grade, width or location;
- ii. add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and utility systems for gas, water, electric or telecommunications; and/or
- iii. perform any other work deemed necessary, useful or desirable by the City (collectively, "City work").

The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in this small cell permit. If the Public Works Director determines that any City work will require the permittee's small cell wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's small cell wireless facility within a reasonable time after the Public Works Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's small cell wireless facility without prior notice to permittee when the Public Works Director determines that the City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs.

17.55.090. LOCATION REQUIREMENTS

- a) **Preface to Location Requirements.** This subsection (a) provides guidance as to how to interpret and apply the location requirements in this **Section 17.55.090**. To better assist applicants and decision makers understand and respond to the community's aesthetic preferences and values, subsections (b) (c), (d) and (e) set out listed preferences for locations and support structures to be used in connection with small cell wireless facilities in ordered hierarchies. Applications that involve lesser- preferred locations or structures may be approved so long as the applicant demonstrates that either (1) no more preferred locations or structures exist within 750 feet from the proposed site; or (2) any more preferred locations or structures within 750 feet from the proposed site would be technically infeasible as supported by clear and convincing evidence in the written record. Subsection (f) identifies "prohibited" support structures on which the City shall not approve any small cell permit application for any competitor or potential competitor.

b) **Locations in the Public Rights-of-Way.** The City prefers small cell wireless facilities in the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows:

- 1) locations within areas designated as any of the land use categories listed in the General Plan under the "Commercial," "Mixed Use," categories, on or along arterial streets as defined and mapped in the General Plan;
- 2) locations within areas designated as any of the land use categories listed in the General Plan under the "Commercial," "Mixed Use," or "Open Space Recreation" categories (except where in or adjacent to public parks and Open Space Recreation areas), on or along collector streets as defined and mapped in the General Plan; locations within areas designated as any of the land use categories listed in the General Plan under the "Commercial," "Mixed Use," or "Open Space Recreation" categories (except where in or adjacent to public parks and Open Space Recreation areas), on or along local streets as defined and mapped in the General Plan;
- 3) locations within or adjacent to public parks and Open Space Recreation areas, or areas designated "Institutional" in the General Plan, on or along arterial, collector or local streets as defined and mapped in the General Plan;
- 4) locations within the West Broadway Urban Village Specific Plan Area;
- 5) any location within any non-residential or mixed-use Specific Plan land use designation
- 6) locations within areas the General Plan Under the "Residential" category, on or along arterial streets as defined and mapped in the General Plan;
- 7) locations within areas designated as any of the land use categories listed in the General Plan under the "Residential" category, on or along collector streets defined and mapped in the General Plan; and
- 8) locations within areas designated as any of the land use categories listed in the General Plan under the "Residential" category, on or along local streets as defined and mapped in the General Plan.

c) **Locations Outside the Public Rights-of-Way.** The City prefers small cell wireless facilities outside the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows:

- 1) locations within areas designated as any of the land use categories listed in the General Plan under the "Commercial," "Mixed Use," or "Open Space Recreation" categories (except within any public park or Open Space Recreation areas);
- 2) locations within areas designated "Institutional" in the General Plan; within the West Broadway Urban Village Specific Plan Area, any location within any non-residential or mixed-use Specific Plan land use designation;
- 3) locations within areas designated as any of the land use categories listed in the General Plan under the "Residential" category;
- 4) locations within any public park or Open Space Recreation area;

- 5) locations within the West Broadway Urban Village Specific Plan Area; and
 - 6) locations within residential Specific Plan land use designations.
- d) **Support Structures in the Public Rights-of-Way.** The City prefers small cell wireless facilities to be installed on support structures in the public rights-of-way, ordered from most preferred to least preferred, as follows:
- 1) existing or replacement metal or composite streetlight or utility poles;
 - 2) new, non-replacement metal or composite streetlight poles;
 - 3) new, non-replacement poles for small cell wireless facilities;
 - 4) existing or replacement wood utility or streetlight poles.
- e) **Support Structures Outside the Public Rights-of-Way.** The City prefers small cell wireless facilities to be installed on support structures outside of the public rights-of-way, ordered from most preferred to least preferred as follows:
- 1) existing, non-historic buildings, or other non-tower structures previously approved for use as a support structure for personal wireless service facilities;
 - 2) other existing, non-historic buildings, or other non-tower structures;
 - 3) existing or replacement utility poles or towers;
 - 4) new, non-replacement towers for small cell wireless facilities; and
 - 5) existing historic buildings.
- f) **Prohibited Support Structures.** The City prohibits small cell wireless facilities to be installed on the following support structures, whether located in the public rights-of-way or not: decorative poles and decorative streetlights; traffic signals, signs, poles, cabinets and related devices; new, non-replacement wood poles.

17.55.100. DESIGN STANDARDS

a) General Standards

- 1) **Noise.** Small cell wireless facilities and all accessory equipment and transmission equipment must comply with all applicable noise control standards and regulations in Seaside Municipal Code Chapter 17.30.060, as either may be amended or superseded, and shall not exceed, either on an individual or cumulative basis.
- 2) **Lights.** Small cell wireless facilities shall not include any lights that would be visible from publicly accessible areas, except as may be required under Federal Aviation Administration, FCC, other applicable regulations for health and safety. All equipment with lights (such as indicator or status lights) must be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas. The provisions in this subsection shall not be interpreted or applied to prohibit installations on streetlights or luminaires installed on new or replacement poles as may be required under this Chapter.
- 3) **Landscape Features.** At the discretion of the Community Development Director,

the permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site, or pay a fee to the City's Urban Forestry Fund if replacement landscaping is not feasible or desired at the location. If any trees are damaged or displaced, the permittee shall replace landscaping as determined by the City's arborist. Only International Society of Arboriculture certified workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size as the damaged tree unless approved by the City's arborist. The permittee shall, at all times, be responsible to maintain any replacement landscape features.

- 4) **Site Security Measures.** Small cell wireless facilities may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The Community Development Director shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on small cell wireless facilities shall be constructed from or coated with graffiti-resistant materials.
- 5) **Signage Advertisements.** All small cell wireless facilities must include signage that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll free number to the owner/operator's network operations center. Small cell wireless facilities may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC, Occupational Safety and Health Administration or other United States governmental agencies for compliance with RF emissions regulations.
- 6) **Compliance with Health and Safety Regulations.** All small cell wireless facilities shall be designed, constructed, operated and maintained with all generally applicable health and safety regulations which includes without limitation all applicable regulations for human exposure to RF emissions and compliance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*).

b) **Small Cell Wireless Facilities in the Public Right-of-Way.**

- 1) **Overall Height.** Small cell wireless facilities may not exceed either (A) the minimum separation from electrical lines required by applicable safety regulations, plus four feet or (B) four feet above the existing support structure.
- 2) **Antennas.**
 - i. **Concealment.** All antennas and associated mounting equipment, hardware, cables or other connectors must be completely concealed within an opaque antenna shroud or radome. The antenna shroud or radome must be painted a flat, non-reflective color to match the underlying support

structure.

- ii. **Antenna Volume.** Each individual antenna may not exceed three cubic feet in volume and all antennas may not exceed six cubic feet in volume.

3) **Accessory Equipment.**

- i. **Installation Preferences.** All non-antenna accessory equipment shall be installed in accordance with the following preferences, ordered from most preferred to least preferred:

1. underground in any area in which the existing utilities are primarily located underground;
2. on the pole or support structure; or
3. integrated into the base of the pole or support structure. Applications that involve lesser-preferred installation locations may be approved so long as the applicant demonstrates that no more preferred installation location would be technically feasible as supported by clear and convincing evidence in the written record.

- ii. **Undergrounded Accessory Equipment.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the City's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk. Applicants shall not be permitted to install an underground vault in a location that would cause any existing tree to be materially damaged or displaced, unless approved by the Community Development Director.

- iii. **Pole-Mounted Accessory Equipment.** All pole-mounted accessory equipment must be installed in a single equipment shroud unless the applicant demonstrates that a single shroud would be technically infeasible as supported by clear and convincing evidence in the written record. All pole-mounted accessory equipment must be installed flush to the pole to minimize the overall visual profile. If any applicable health and safety regulations prohibit flush-mounted equipment, the maximum separation permitted between the accessory equipment and the pole shall be the minimum separation required by such regulations. All pole-mounted equipment and required or permitted signage must be placed and oriented away from public view. Pole-mounted equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations. All cables, wires and other connectors must be routed

through conduits within the pole, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, applicants shall route them through a single external conduit or shroud that has been finished to match the underlying support structure.

- iv. **Base-Mounted Accessory Equipment.** All base-mounted accessory equipment must be installed within a shroud, enclosure or pedestal integrated into the base of the support structure. All cables, wires and other connectors routed between the antenna and base-mounted equipment must be concealed from public view.
- v. **Ground-Mounted Accessory Equipment.** The Community Development Director shall not approve any ground-mounted accessory equipment including, but not limited to, any utility or transmission equipment, pedestals, cabinets, panels or electric meters.
- vi. **Accessory Equipment Volume.** All accessory equipment associated with a small cell wireless facility installed above ground level shall not cumulatively exceed:
 - 1. nine (9) cubic feet in volume if installed in a residential district; or
 - 2. seventeen (17) cubic feet in volume if installed in a non-residential district.

The volume calculation shall include any shroud, cabinet or other concealment device used in connection with the non-antenna accessory equipment. The volume calculation shall not include any equipment or other improvements placed underground.

- 4) **Streetlights.** Applicants that propose to install small cell wireless facilities on an existing streetlight must remove and replace the existing streetlight with one substantially similar to and which meets the City's standards and specifications but designed to accommodate wireless antennas and accessory equipment. To mitigate any material changes in the streetlighting patterns, the replacement pole must:
 - i. be located as close to the removed pole's possible;
 - ii. be aligned with the other existing streetlights and
 - iii. include a luminaire at substantially the same height and distance from the pole as the luminaire on the removed pole. All antennas must be installed above the pole within a single, canister style shroud or radome that tapers for the pole.

- 5) **Wood Utility Poles.** Applicants that propose to install small cell wireless facilities on an existing wood utility pole must install all antennas above the pole unless the applicant demonstrates that mounting the antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record. Side-mounted antennas on a stand-off bracket or extension arm must be concealed within a shroud. All cables, wires and other connectors must be concealed within the side-arm mount or extension arm. The maximum horizontal separation between the antenna and the pole shall be the minimum separation required by applicable health and safety regulations. Applicants that propose to install small cell wireless facilities on a replacement wood utility pole must remove and replace the existing wood utility pole with one that is substantially similar in height and diameter unless the applicant demonstrates that a substantially familiar replacement pole would be technically infeasible as supported by clear and convincing evidence in the written record.
- 6) **New, Non-Replacement Poles.** Applicants that propose to install small cell wireless facilities on a new, non-replacement pole must install a new streetlight in accordance with the City's standards, specifications and spacing requirements but designed to accommodate wireless antennas and accessory equipment located immediately adjacent to the proposed location. If there are no existing streetlights in the immediate vicinity, the applicant may install a metal or composite pole capable of concealing all the accessory equipment either within the pole or within an integrated enclosure located at the base of the pole. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches. All antennas, whether on a new streetlight or other new pole, must be installed above the pole within a single, canister style shroud or radome.
- 7) **Strand-Mounted Wireless Facilities.** No more than one strand-mounted wireless facility may be installed on any single span between two poles. The Community Development Director shall not approve any ground-mounted equipment in connection with any strand-mounted wireless facility. All equipment and other improvements associated with a strand-mounted wireless facility must comply with all applicable health and safety regulations. Strand-mounted wireless facilities shall not exceed one cubic foot in total volume. All strand-mounted equipment shall be finished in a non-reflective grey color. Any accessory equipment mounted on the pole shall be painted and textured to match the underlying pole. "Snow shoes" and other spooled fiber or cables are prohibited.
- 8) **Encroachments over Private Property.** Small cell wireless facilities may not encroach onto or over any private or other property outside the public rights-of-way without the property owner's express written consent.
- 9) **Backup Power Sources.** Fossil-fuel based backup power sources shall not

be permitted within the public rights-of-way; provided, however, that connectors or receptacles may be installed for temporary backup power generators used in an emergency declared by federal, state or local officials.

10) **Obstructions; Public Safety.** Small cell wireless facilities and any associated equipment or improvements shall not physically interfere with or impede:

- i. worker access to any above ground or underground infrastructure for traffic control, streetlight or public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, or barricade reflectors;
- ii. access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop;
- iii. worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency;
- iv. access to any fire hydrant or water valve;
- v. access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way; or
- vi. access to any fire escape.

11) **Utility Connections.** All cables and connectors for telephone, data backhaul, primary electric and other similar utilities must be routed underground in conduits large enough to accommodate future collocated wireless facilities. Undergrounded cables and wires must transition directly into the pole base without any external doghouse. All cables, wires and connectors between the underground conduits and the antennas and other accessory equipment shall be routed through and concealed from view within:

- i. internal risers or conduits if on a concrete, composite or similar pole; or
- ii. a cable shroud or conduit mounted as flush to the pole as possible if on a wood pole or other pole without internal cable space. The Community Development Director shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.

12) **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.

13) **Electric Meters.** Small cell wireless facilities shall: set flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded smart meter. The Community Development Director shall not approve a separate ground-mounted electric meter pedestal.

- 14) **Street Trees.** To preserve existing landscaping in the public rights-of-way, all work performed in connection with small cell wireless facilities shall not cause any street trees to be trimmed, damaged or displaced. If any street trees are damaged or displaced, the applicant shall be responsible, at its sole cost and expense, to plant and maintain replacement trees at the site for the duration of the permit term.

c) **Small Cell Wireless Outside of the Public Right-of-Way**

- 1) **Overall Height.** Small cell wireless facilities on private property may not exceed the applicable height limit for primary structures in the applicable zoning district or overlay zone, except as follows:
 - i. Residential or Open Space Recreation land use districts as designated in the General Plan: 30 feet
 - ii. Non-Residential. General Plan land use designations (including designations listed under Commercial; Open Space Recreation; Mixed-Use and Institutional categories: 40 feet
 - iii. Where the facility would be mounted on an existing building or structure, the height of the wireless facility shall not exceed the maximum height of the building or structure, including any existing parapet or roof-mounted screen, by more than five feet.
 - iv. Exceptions to height limits that are otherwise allowed by SMC Section 17.54.060 (B) for antennas, transmission towers and similar appurtenances shall not apply to small cell wireless facilities in any zoning district or PUD.
- 2) **Setbacks.** Small cell wireless facilities on private property may not encroach into any applicable setback for Class I or Class II accessory structures in the subject zoning district.
- 3) **Backup Power Sources.**
 - i. The Community Development Director shall not approve any fossil fuel generators or other similarly noisy or fume-emitting generators in or within 250 feet from any residence; provided, however, the Community Development Director may approve sockets or other connections used for temporary backup generators used in an emergency declared by federal, state or local officials.
 - ii. **As required by California Public Utilities Commission (CPUC) Order (D.20-07-011), any new or existing wireless facilities located in Tier 2 and Tier 3 High Fire Threat Districts within the City's jurisdiction shall be required to implement a 72-hour backup power requirements in accordance with the aforementioned CPUC Order.**

- 4) **Parking; Access.** Any equipment or improvements constructed or installed in connection with any small cell wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, small cell wireless facilities must use existing parking and access rather than construct new parking or access improvements. Any new parking or access improvements must meet City standards.

- 5) **Towers, Poles and Other Freestanding Small Cell Wireless Facilities.** All new towers, poles or other freestanding structures that support small cell wireless facilities must be made from a metal or composite material capable of concealing all the accessory equipment, including cables, mounting brackets, radios, and utilities, either within the support structure or within an integrated enclosure located at the base of the support structure. All antennas must be installed above the pole in a single, canister-style shroud or radome. The support structure and all transmission equipment must be painted with flat/neutral colors that match the support structure. The pole height shall not exceed thirty-five (35) feet or the applicable height limit listed in Section (c)(i) whichever is less. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches.

- 6) **Building-Mounted Small Cell Wireless Facilities**
 - i. **Preferred Concealment Techniques.** All applicants must propose new non-tower small cell wireless facilities that are completely concealed and architecturally integrated into the existing facade or rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials). Alternatively, if the applicant demonstrates with clear and convincing evidence that integration with existing features is technically infeasible, the applicant may propose completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, steeples and chimneys).

 - ii. **Facade-Mounted Equipment.** When small cell wireless facilities cannot be placed behind existing parapet walls or other existing screening elements, the Community Development Director may approve facade-mounted antenna equipment in accordance with this **Section 17.55.100(c)(6)(ii)**. All facade mounted equipment must be concealed behind screen walls and mounted flush to the facade. The Community Development Director may not approve "pop-out" screen boxes. The Community Development Director may not approve any exposed facade-mounted antennas, including but not limited to exposed antennas painted to match the façade.

RESOLUTION NO. 20-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEASIDE

ADOPT A RESULTION UPDATING THE 2020-2021 PLANNING DEPARTMENT FEE SCHEDULE TO INCLUDE SMALL CELL PERMIT AND ASSOCIATED FEES.

WHEREAS, the Fiscal year 2020-2021 budget for the City of Seaside was adopted on June 18, 2020 and the annual fee schedule was adopted on July 2, 2020; and

WHEREAS, new fees are required to be added to the Planning Department fee schedule to address Small Cell Permits and associated consultant/independent expert review (see Exhibit B); and

WHEREAS, on August 26, 2020, the Planning Commission held a public hearing to review this Resolution and the associated permanent Small Cell Wireless Ordinance (Chapter 17.55) as well as the associated fee schedule amendments, at which the Commission received, reviewed, and considered the staff report, written and oral testimony from the public, and whereby the Commission recommended approval to the City Council; and

WHEREAS, on September 17, 2020, the City Council held a public hearing which Introduced and Waived the First Reading of the associate Ordinance: Small Cell (SMC Chapter 17.55).

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Seaside hereby approves the modification to the Planning Department Fee Schedule to include associate Small Cell Permit fees.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Seaside duly held on the Xth day of October 2020, by the following vote:

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

ATTEST:

Ian N. Oglesby, Mayor

Lesley Milton-Rerig, Assistant City Manager/City Clerk

Proposed Changes to Seaside Planning Department Fee Schedule

CITY OF SEASIDE
 MASTER FEE SCHEDULE
 SCHEDULE OF PLANNING DEPARTMENT FEES

		19/20 Adopted (3.7%)	20/21 Proposed (2.3%)
PLANNING DEPARTMENT FEES			
SMALL CELL PERMIT			
	Small Cell Permit (assessed as a Minor Use Permit)	\$ —	\$ see Minor Use Permit
	City Attorney's Review of Projects and Permits (if necessary, an additional deposit amount will be required for City Attorney review of Projects)	\$ —	\$ Deposit - estimated # of attorney hours
	Consultant Fee: Including, but not limited to, Radio Frequency Expert, Engineering, Arborist Services	\$ —	\$ Consultant Fee
OTHER FEES			
	Affordable Housing Agreement	\$ 1,730	\$ 1,770
	Mobilhome Park Conversions, Closures, and Cessation of Use Fee	\$ 1,730	\$ 1,770
	Deferred Completion Agreement	\$ 865	\$ 885
	Floodplain Development Permit	\$ 865	\$ 885
	Tentative Parcel Map Waiver	\$ 1,730	\$ 1,770
	gg	\$ 1,730	\$ 1,770
	Real Property Disclosure Report	\$ 150	\$ 153
LAND USE APPEALS			
	Non-Applicant	\$ 3,243	\$ 3,318
	Applicant	\$ 3,458	\$ 3,538
	Administrative Review for Radio, Satellite and Dish Antennas	\$ 865	\$ 885
	Grand Opening and Promotional Banner / Temporary Sign	\$ 108	\$ 110
	Sign Permit (Over-the-counter)	\$ 217	\$ 222
ZONING COMPLIANCE PLAN CHECK:			
	Over the Counter (Replacement in Kind)	\$ 108	\$ 110
	Over the Counter (Minor)	\$ 108	\$ 110
	Zoning Confirmation Letter	\$ 865	\$ 885
	Advanced Planning Surcharge:		
	(Charged on all new construction for building plans (e.g. additions, new buildings), pw/eng. fire permits, and development applications)	0.3% of building valuation	0.3% of building valuation
HOURLY RATES			
	Planning Services	\$ 217	\$ 222
	For services requested of City staff which have no fee listed in this fee schedule, the City Manager of the City Manager's designee shall determine the appropriate fee based on the established hourly rates for this department/division. Additionally, the City will pass-through to the applicant any discrete costs incurred from the use of external service providers (e.g. Consultants) if required to process the specific application.		

**PLANNING COMMISSION
RESOLUTION NO. 20-19**

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SEASIDE,
CALIFORNIA RECOMMENDING ADOPTION OF A PERMANENT SMALL CELL
WIRELESS ORDINANCE (CHAPTER 17.55) REGULATING SMALL CELL
WIRELESS FACILITIES AND OTHER INFRASTRUCTURE DEPLOYMENTS IN
THE PUBLIC RIGHT-OF-WAY AND ADOPTING AN AMENDMENT TO THE 2020-
2021 FEE SCHEDULE TO ADDRESS COST RECOVERY ASSOCIATED WITH
SMALL CELL WIRELESS FACILITY PERMIT APPLICATIONS**

WHEREAS, on December 5, 2019, the City Council adopted a Small Cell Policy, which established reasonable, uniform and comprehensive standards and procedures for small cell wireless facilities and other infrastructure deployment on the public right-of-way, for the construction, installation, collocation, modification, operation, relocation and removal of such facilities within the City of Seaside's jurisdictional boundaries, consistent with and to the extent permitted under federal and California state law;

WHEREAS, in response to staff's evaluation and consideration of the proposed provision, the City Council desires to adopt a permanent Small Cell Wireless Facility Ordinance (Chapter 17.55) described in Exhibit A with proposed text bolded and underlined; and

WHEREAS, on August 26, 2020, the Planning Commission held a public hearing to review this Resolution and the associated permanent Small Cell Wireless Ordinance (Chapter 17.55) as well as the associated fee schedule amendments, at which the Commission received, reviewed, and considered the staff report, written and oral testimony from the public, and whereby the Commission recommended approval to the City Council;

NOW, THEREFORE, BE IT RESOLVED, THE CITY OF SEASIDE PLANNING COMMISSION HEREBY FINDS, DETERMINES, AND RESOLVES AS FOLLOWS:

1. **Findings.** The Planning Commission finds that: a) the facts set forth in the recitals in this Resolution are true and correct and incorporated by reference; b) the recitals constitute findings in this matter and, together with the staff report, other written reports, public testimony and other information contained in the record, are an adequate and appropriate evidentiary basis for the action taken in this Resolution; c) the provisions in this Resolution and the proposed permanent Ordinance (Chapter 17.55) are consistent with the General Plan, Seaside Municipal Code and applicable federal and state law; and d) neither this Resolution nor the Ordinance and associated fee schedule amendments will be detrimental to the public interest, health, safety, convenience or welfare.

2. **Environmental Review.** The Planning Commission finds that, pursuant to CEQA Guidelines Section 15061(b)(3), there is no possibility that this project will have a significant impact on the physical environment. This Resolution recommend approval of a permanent Small Cell Wireless Facility Ordinance (Chapter 17.55) which regulates small cell wireless facilities and other infrastructure deployments. This Resolution does not directly or indirectly authorize any actual changes in the physical environment. If adopted by the City Council the Ordinance requires that applications for any new small wireless facility or other infrastructure deployment be subject to additional environmental review on a case-by-case basis. Accordingly, the Planning Commission finds that this Resolution is not subject to CEQA or, in the alternative, is exempt from CEQA under the general rule.

PASSED, APPROVED, AND ADOPTED on the 26th day of August, 2020, by the Planning Commission of the City of Seaside, State of California.

AYES:	7 COMMISSIONERS	Dodson, Huynh, Silva, Spalletta, Owens, Silva, Evans
NOES:	0 COMMISSIONERS	None
ABSENT:	0 COMMISSIONERS	None
ABSTAIN:	0 COMMISSIONERS	None

John Owens, Chairperson

ATTEST:

Lesley Milton, City Clerk



**CITY OF SEASIDE
STAFF REPORT**

Item No.: 9.B.

TO: City Council

FROM: Craig Malin, City Manager

BY: Sheri Damon, Assistant City Attorney

DATE: October 17, 2019

SUBJECT: CITY-INITIATED URGENCY ORDINANCE: ADDING CHAPTER 17.55 TO THE TO THE SEASIDE MUNICIPAL CODE (SMC) TO ADD A NEW CHAPTER SPECIAL PROVISIONS FOR SMALL WIRELESS FACILITIES, AND MAKING THEM SUBJECT TO A PERMIT AS SPECIFIED IN A NEW CITY COUNCIL POLICY

PURPOSE & RECOMMENDATION

Adopt an Urgency Ordinance amending City's municipal code to recognize small wireless facilities.

BACKGROUND

EXECUTIVE SUMMARY

In order to comply with recent changes in federal and state law that affect local authority over small wireless facilities, on October 17, 2019, the City Council will be asked to review and adopt a new chapter in the Municipal Code recognizing small wireless facilities and adopt a policy to regulate the permitting of said facilities.

BACKGROUND

On September 26, 2018, the Federal Communications Commission (FCC) adopted new rules that further limit local authority to regulate "small wireless facilities" as that term is

defined in 47 C.F.R. § 1.6002(l). The FCC rules, which became fully effective on April 15, 2019, require the City to review small cell applications faster and under more limited criteria consistent with the FCC's national standard for permissible local regulations. These rules are part of a larger rule-making that aims to reinterpret the federal Telecommunications Act of 1996.

Small wireless facilities generally include the smaller scale antennas and associated facilities (as compared to first generation macro facilities) that are part of the next generation of wireless technology, known as 5G. 5G operates at significantly faster speeds than the existing 4th Generation (4G) technology, using higher frequency, directional radio waves over shorter distances. 5G technology calls for smaller, more frequently-placed antennas than 4G, which lend themselves to placement on light-poles and similar existing infrastructure. Wireless carriers have begun 5G installation in a number of major cities areas across the country, including Sacramento and Los Angeles, and are working towards nationwide deployment by the end of 2020.

Under the new rules, the FCC defines the presumptively reasonable time for review as 60 days for small cell attachments to existing structures and 90 days for attachments to new structures. Any administrative appeal must also occur within the applicable shot clock. If the City fails to issue a timely final decision, the City's failure to act presumptively constitutes an effective prohibition of service and the applicant may file a claim in federal court for an injunction to issue "shovel-ready" permits.

In addition, the FCC provides that a local small cell regulation causes an effective prohibition in violation of federal law unless the regulation is (1) reasonable; (2) no more burdensome than regulations imposed on similar infrastructure deployments; and (3) objective and published in advance. Reasonable regulations are those that are technically feasible and reasonably directed to avoiding or remedying the "intangible public harm" (as it is described by the FCC) of unsightly or out-of-character deployments. Although the FCC declared that minimum spacing or under-grounding requirements would potentially violate the new test, the FCC provided little guidance as to the scope of specific local regulations that would likely be considered to be preempted. The regulations mean that the City may not prohibit placement of small cells within the public right-of-way or on publicly-owned and operated utility poles but can prescribe reasonable standards for their placement and design.

On December 10, 2018, the FCC clarified the effective dates for the rule, stating that the shot clock and fee regulations go into effect on January 14, 2019, with the aesthetic regulations going into effect on April 15, 2019. The City Council has directed that the staff bring forward policies regulating small cells.

AMENDMENT OF THE CITY'S WIRELESS ORDINANCE

Because small cell wireless technology is relatively new, the City's existing zoning code

does not explicitly address small wireless facilities. Accordingly, staff seeks to add a new chapter 17.55 to the Seaside Municipal Code to recognize small wireless facilities and regulate those policies by adopting a City Council Policy overseeing the permitting of these facilities.

ADOPTION OF COUNCIL POLICY REGULATING SMALL WIRELESS FACILITIES

The purpose of the Council's Small Wireless Facilities Policy (Policy) is to establish reasonable and comprehensive standards and procedures for the permitting of small wireless facilities within the City, including but not limited to the siting of facilities, aesthetics, construction, operation, modification, and removal. The Policy is intended to promote the community interest of protecting the City's visual character from potential adverse impacts from facilities while providing access to high quality advanced wireless technology for the City's residents, businesses, and visitors. The City Council should note that, as a policy rather than an Ordinance, the City may amend or revoke the provisions more quickly. This approach is recommended by the City's outside counsel due to the rapid and sometimes unpredictable changes in the federal law.

Key provisions of the Policy

1. Application Requirements

Applicants are required to submit a variety of items, including but not limited to, a project narrative, construction drawings, a site survey, a radio frequency ("RF") report certifying compliance with federal standards, photo simulations, an executed Pole License Agreement, and review/permitting fees.

2. Community Development Director shall review all applications

The Community Development Director, or his/her designee, shall be responsible for reviewing all applications and approving, conditionally approving or denying the application.

3. Noticing

The Community Development Director shall ensure that notice of the project application is mailed to all properties and record owners of properties within 300 feet of the project site. The notice will contain a description of the project, the applicant's contact information, and a statement to send comments to the Director within a specified time frame.

4. Decisions and Appeals

The findings for approval have been amended to reflect the new objectivity requirement in the FCC rules. Due to the extremely short shot clocks, the initial decision to approve or deny will be made by the Community Development Director. Interested persons will have the opportunity to appeal the decision directly to the City Council. The entire process will be fast-tracked to ensure adequate time for public participation in the

appeal process.

5. Location Preferences and Design Standards

The policy sets forth ranked preferences for locations and support structures within those locations. Residential areas and new freestanding poles or similar structures are the least preferred and require the applicant to demonstrate why no more preferred location within a reasonable distance from the site is technically feasible. Staff has also worked with outside counsel to develop detailed and objective design criteria and standards that preserve local authority and comply with the FCC's restrictions.

6. Automatic Conditions of Approval

The policy contains a substantial number of "standard conditions" applicable to all deployments. These ensure that the maintenance and operational requirements for all facilities are evenly applied, and also ensure that all facilities meet minimum standards in the event that an approval is mandated by law.

ENVIRONMENTAL ASSESSMENT

The proposed code amendment is exempt from further environmental review in accordance with CEQA Guidelines section 15061(b)(3) because the it involves the adoption of regulations for small cell wireless facilities and does not directly or indirectly authorize or approve any actual physical changes in the environment.

SUMMARY/CONCLUSION

The proposed ordinance and policy are necessary for compliance with new FCC regulations. Although these new regulations are intended to restrict local authority, staff has worked with outside counsel to develop a flexible approach that preserves as much of the City's authority as possible while still achieving compliance. Staff recommends that the City Council review and adopt the proposed ordinance.

FISCAL IMPACT

There is no fiscal impact for this item.

ATTACHMENTS

1. Urgency Ordinance Telecom
-

Reviewed for Submission to the
City Council by:



Craig Malin, City Manager



**CITY OF SEASIDE
STAFF REPORT**

Item No.: 10.A.

TO: City Council

FROM: Craig Malin, City Manager

BY: Dan Meewis, Recreation Director

DATE: September 17, 2020

**SUBJECT: APPROVE A MAYOR'S YOUTH FUND CONTRIBUTION REQUEST
FROM CITIZENS FOR ACTION NOW**

PURPOSE & RECOMMENDATION

Approve a request from Citizens For Action Now for a donation of Three Thousand Dollars (\$3,000.00) from the Mayor's Youth Fund to help cover the costs for computers, calculators and notebooks.

BACKGROUND

Citizens For Action Now is requesting a Three Thousand Dollars (\$3,000.00) from the Mayor's Youth Fund to help cover the costs for computers, calculators and notebooks.

Citizens For Action Now is offering a program called Computer Science Discoveries. It is an introductory computer science course for youth ages 6-12. Mapped to CTSA standards, the course takes a wide lens on computer science by covering topics such as problem solving, programming, physical computing, user centered design and data. It inspires students as they build their own websites, apps, animations, games and physical computing systems. Classes are a semester long and students have the opportunity to continue on to the next semester to further their education in computer science. The Computer Science Program will refurbish the donated computers. The students will learn the environmental benefits of refurbishing computers.

Based on the information provided in the application, the request meets the criteria for the Mayor's Youth Fund Policy. This is the first time that Citizens For Action Now is requesting a donation.

FISCAL IMPACT

This request would be funded by a donation from Green Waste Recovery Inc. donation to the Mayor's Youth Fund. The current balance in the Mayor's Youth Fund Account is \$38,067.07. If the City Council approves this request, the balance will drop down to \$35,067.07.

In the event that all of the funds in the Mayor's Youth Fund become exhausted, staff will keep a file of all applications. Once Green Waste issues the next round of funding all applications on file will be processed on the next available City Council Meeting.

ATTACHMENTS

1. MYF Request Citizens for Action Now 2020
 2. Citizens For Action Now W-9 2020
 3. Citizens For Action Now 501(c)(3)
-

Reviewed for Submission to the
City Council by:



Craig Malin, City Manager



**SEASIDE
CALIFORNIA**

Mayor's Youth Fund

986 Hilby Avenue, Seaside CA 93955
831-899-6800 | FAX: 831-718-8603

MAYOR'S YOUTH FUND POLICY

Purpose: The Mayor's Youth Fund was created to provide supplemental financial assistance to students and non-profit groups that provide services to improve the lives of young people living in the City of Seaside. A policy has been developed to standardize the evaluation of contribution requests and ensure that the funds are used appropriately to serve the City's youth.

Eligible Applicants: Contributions will only be made to, or on behalf of, students or organized groups, such as schools and non-profit organizations based in Seaside and/or serving a majority of Seaside residents (50%) that are 18 years old or younger or enrolled in high school. Faith based organizations may apply for contributions from the Mayor's Youth Fund if the funding is not used to support religious activities such as worship, Sunday School, or religious instruction. In addition, activities funded by the Mayor's Youth Fund must be open to all persons without regard to their religious affiliation.

Submittal of Contribution Requests: In order to request a contribution, the following information must be provided in writing:

- Name of the organization, person(s) benefiting, proposed use of the funds, total amount needed or fundraising goal.
- Description of other methods being used to raise funds and/or other contributors.
- An explanation of how the group, activity, or event will benefit Seaside youth.
- Written description of how the use of the funds will be specifically used for youth group activities/events and/or has a nexus to the goals related to recycle, cleanup, and "green" sustainability to ensure a healthy environment.
- How this request will provide a municipal benefit (ie., benefit the community).
- Proof of non-profit organizations status (not a taxpayer's I.D. number) and a current W-9 form.

Evaluation Process and Criteria: Contributions can only be made if approved by the City Council. Funding requests will be evaluated based on their consistency with this policy, including the following criteria.

- Scholastic, athletic, music, environmental and art activities will be considered for funding based on the quality of the proposed activity.
- Evidence of activities/events related to "reduce, reuse and recycle" to ensure a healthy environment.
- Contributions requests will be accepted from individuals and can be made to an organization on behalf of an individual member or student.
- Contributions are only paid to organizations, such as non-profit groups and schools.
- Contributions are intended to fund actual costs related to an event or activity. (Please see "Payment Process" information provided below.)
- Contributions from the Mayor's Youth Fund are not intended to be the sole source of funds for an organization or program and will only be made to supplement other fundraising activities.
- How this request will provide a municipal benefit (ie., benefit the community).



**SEASIDE
CALIFORNIA**

Mayor's Youth Fund

986 Hilby Avenue, Seaside CA 93955

831-899-6800 | FAX: 831-718-8603

Contribution Limits: In order to equitably distribute funds available in the Mayor's Youth Fund, the following contribution guidelines have been developed, although all contributions are subject to the discretion of the City Council.

Individuals	25% of total cost of activity (not to exceed \$1,000)
Groups up to 20 people	up to \$1,500
Groups of 21+ people	up to \$3,000

In addition, funding will be limited to one contribution per year (every 12 months).

Funding Requirements:

- Funding is limited to one contribution per year (every 12 months).
- The Mayor's Youth Fund Closing Report Form must be submitted to staff at least 60 days upon completion of the event, activity or program. Applicants that do not furnish the form may not apply for funds for the following year.
- A representative from the organization is required to be at the Council meeting for their application to be heard. If no representative is present then the agenda item will be postponed to another City Council meeting upon notification by the applicant.
- Incomplete applications will not be forwarded for Council consideration; applications not answering the question related to reduce, reuse or recycle are considered incomplete.

Individual Requests: Please attach an itemized list of all expenses. Amount of donation may not exceed 25% of the total cost of the activity and not exceed \$1,000. Applications that are incomplete will be returned.

Payment Process: If a contribution is approved by the City Council, payment will be made to the authorized organization or directly to the vendor selected by the authorized organization after submittal of a receipt or the presentation of actual invoices. No funding can go directly to an individual. This process is required in order to provide documentation required to meet municipal auditing standards.

All requests will be considered before the City Council and you will be notified of the specific date your item is placed on the agenda. Please return this completed form with necessary attachments to:

Dan Meewis
City of Seaside Recreation Services
440 Harcourt Avenue
Seaside, CA 93955

Mayor Youth's Contribution Request

08/23/2020 5:53 PM (EDT)

Prior to completing this request please, review the attached contribution policy. All requests will be considered before the City Council and you will be notified of the specific date your item is placed on the agenda.

Name of Organization Citizens for Action Now

Name of Applicant Monica Mapp

Address 2075 Highland Street

City Seaside

State CA

Zip Code 93955

Email Address ~~citizens@citizensforactionnow.org~~

citizen @ citizens for actionnow.org

Phone Number (Home) 8315216300

Phone Number (Cell) 831-521-6300

Percentage of Residents or Students of Seaside 85%

Number of Participants 25

Ages of Participants 6-12 years old

CRITERIA

Applicants must meet at least one of the following criteria to be eligible for funding. Please select one or more from the following list:

- Scholastic

Is funding a reward for one of these activities?

No

Description of event, activity or program funding pertains to:

Computer Science Discoveries:
Computer Science Discoveries is an introductory computer science course for youth age 6-12. Mapped to CTSA standards, the course takes a wide lens on computer science by covering topics such as problem solving, programming, physical computing, user centered design and data, while inspiring students as they build their own websites, apps, animations, games, and physical computing systems. Classes are a semester long and students have the opportunity to continue on to the next semester to further their education in computer science.

Attach Additional Information as Necessary

File(s) attached:



W-9.pdf



TAX I.D NUMBER.pdf

Description of how the funds will be specifically used for youth groups activities/events and/or has a nexus to the goals of recycling, cleanup and/or "green" sustainability to insure a healthy environment.

Funds will be used to purchase computers (for student who have no access to a computer) calculators and notebooks. Students will learn the importance of recycling. Citizens for Action Now will receive donated computers that are in need of being refurbished. The Computer Science Program will refurbish the donated computers. The students will learn the environmental benefits of refurbishing computers. For example: 1. Prevents toxins from seeping into the environment. 2. Lowers the amount of electronic wastes. 3. Help provide technology to people in your community, who are in need.

What other fundraising activities are you participating in to fund your event, program or activity and what other funding sources will supplement your request?

Mini Grant from Community Foundation, individual donations, online and local fundraisers. Will continue to apply for grants.

Total Amount Requested (please make sure to read the Contribution Limits and Funding Requirements of the attached info page).

3000

Applicant Signature

monica m. app

Signature Date

08/23/2020

Thank you, please submit your application and someone from the City will get back to you as soon as possible.

Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

► Go to www.irs.gov/FormW9 for instructions and the latest information.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

Citizens for Action Now

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC ☒ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____
Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Other (see instructions) ► _____

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

2075 Highland Street

6 City, state, and ZIP code

Seaside, CA 93955

7 List account number(s) here (optional)

Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

____ - ____ - ____

or

Employer identification number

8 4 - 1 8 4 4 6 0 0

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign
Here

Signature of
U.S. person ►

Monica Mapp

Date ►

8/23/20

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding*, later.

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date:

MAY 12 2020

CITIZENS FOR ACTION NOW
2075 HIGHLAND STREET
SEASIDE, CA 93955-0000

Employer Identification Number:
84-1844600
DLN:
26053525001900
Contact Person:
CUSTOMER SERVICE ID# 31954
Contact Telephone Number:
(877) 829-5500
Accounting Period Ending:
June 30
Public Charity Status:
509(a)(2)
Form 990/990-EZ/990-N Required:
Yes
Effective Date of Exemption:
August 17, 2018
Contribution Deductibility:
Yes
Addendum Applies:
No

Dear Applicant:

We're pleased to tell you we determined you're exempt from federal income tax under Internal Revenue Code (IRC) Section 501(c)(3). Donors can deduct contributions they make to you under IRC Section 170. You're also qualified to receive tax deductible bequests, devises, transfers or gifts under Section 2055, 2106, or 2522. This letter could help resolve questions on your exempt status. Please keep it for your records.

Organizations exempt under IRC Section 501(c)(3) are further classified as either public charities or private foundations. We determined you're a public charity under the IRC Section listed at the top of this letter.

If we indicated at the top of this letter that you're required to file Form 990/990-EZ/990-N, our records show you're required to file an annual information return (Form 990 or Form 990-EZ) or electronic notice (Form 990-N, the e-Postcard). If you don't file a required return or notice for three consecutive years, your exempt status will be automatically revoked.

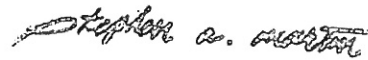
If we indicated at the top of this letter that an addendum applies, the enclosed addendum is an integral part of this letter.

For important information about your responsibilities as a tax-exempt organization, go to www.irs.gov/charities. Enter "4221-PC" in the search bar to view Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, which describes your recordkeeping, reporting, and disclosure requirements.

Letter 947

CITIZENS FOR ACTION NOW

Sincerely,

A handwritten signature in dark ink, appearing to read "Stephen A. Martin". The signature is written in a cursive, slightly slanted style.

Director, Exempt Organizations
Rulings and Agreements

Letter 947



**CITY OF SEASIDE
STAFF REPORT**

Item No.: 10.B.

TO: City Council

FROM: Craig Malin, City Manager

BY: Craig Malin, City Manager

DATE: September 17, 2020

**SUBJECT: APPROVE RESOLUTION AUTHORIZING THE CITY MANAGER TO
EXECUTE A PURCHASE AND SALE AND ESCROW INSTRUCTION
AGREEMENT FOR THE MEDICAL OFFICERS BARRACKS
LOCATED AT 4386-4387 PARKER FLATS CUTOFF ROAD,
SEASIDE, CA 9395**

PURPOSE & RECOMMENDATION

Approve the Purchase and Sale Agreement for 4.98 acres of property containing two existing structures.

BACKGROUND

This Purchase and Sale Agreement is for Parcel S of E18.1.3 - a parcel of land less than five acres in size - located on Parker Flats Cutoff Road near Gigling Road and adjacent to the Department of Defense Office Building. The property contains two existing three story structures which were used as forty (40) medical officer apartments along with an existing parking lot and attendant water connections and other infrastructure. A picture of the site, outlined in blue shows the buildings, the parking lot, the sparse vegetation of the site, and the existing access across the Army property.

The purchase price is based upon a reuse and rehabilitation of the existing buildings and results after an Exclusive Negotiating Agreement was entered into with AP Glover Enterprises in 2017. The property was a part of the Early Transfer Clean Up process that was handled by the Fort Ord Reuse Authority. In 2018, the purchaser expended substantial sums (approximately \$1.3 Million) in remediating the property, which had

fallen into substantial disrepair, due to vandalism, animal infestation and other activities with the understanding that the property would transfer to the City in 2018 or early 2019. The property was finally transferred to the City from FORA on June 29, 2020 as a 4.98 acre parcel.

Approval of the PSA does not approve any certain project or reuse on the property and is exempt from CEQA. The Developer will be required to receive review and approvals for reuse of the property which undergo environmental review in the future. Items to be addressed will include, but may not be limited to, water and waste water, either water service agreement or annexation to Marina Coast Water District, land use approvals, engineering review, storm drainage, an Affordable Housing Agreement and/or regulatory agreements for affordable housing (minimum of 20% restricted) and reviews of any landscaping plans. The City is required to obtain an access and utility easement to the site from the US Army/Department of Defense. Public hearings may include Planning Commission review of the architectural designs and formal water allocation. The City's General Plan land use designation for this property is High Density Residential and the zoning is HR.

The purchase price for the property is \$700,000 based upon a reuse of the existing structures on site. The costs of additional and updated infrastructure required for reuse was taken into consideration in the appraisal which resulted in an appraised amount of \$650,000. Upon approval of any project, the Purchaser will be required to pay FORA replacement fees to Marina Coast Water District, Transportation Agency of Monterey County and to the City replacement fee of 30% of what the FORA fee would have been on the property for the purposes of habitat management or any other item for which FORA used its community facility district fees, along with permit and other City fees. There is no public subsidy included in this transaction. The final purchase is projected prior to the end of 2020.

FISCAL IMPACT

\$700,000 to the City less standard and customary costs of escrow. Potential ongoing increases in the amounts of property tax revenues to the City.

ATTACHMENTS

1. Resolution selling property
 2. Purchase and Sale Agreement
 3. Picture of Building
-

Reviewed for Submission to the
City Council by:



Craig Malin, City Manager

RESOLUTION NO. 2020-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEASIDE AUTHORIZING THE CITY MANAGER ON BEHALF OF THE CITY TO EXECUTE A PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS ("PSA") FOR THE 4.98 PARCEL OF LAND CONTAINING BUILDINGS 4386-4387 ALSO KNOWN AS THE MEDICAL OFFICER BARRACKS LOCATED OFF PARKER FLATS CUTOFF ROAD

WHEREAS, on December 21, 2017 the City entered into an Exclusive Negotiating Agreement ("ENA") for the medical officer's barracks with Glover Enterprises ("Purchaser") as such ENA has been amended from time to time; and

WHEREAS, the Fort Ord Reuse Authority has been holding the Nurse's Barracks property located at 4386 Parker Flats Cutoff Road pursuant to a Finding of Suitability for Early Transfer and performing remediation as an Army response contractor pursuant to the terms of an Environmental Services Cooperative Agreement; and

WHEREAS, on June 29, 2020, the 4.98 parcel of land transferred to the City of Seaside from the Fort Ord Reuse Authority; and

WHEREAS, the City desires to sell the 4.98 parcel of land containing two metal frame apartment buildings previously used by the Army as medical officer's barracks to AP Glover Enterprises ("Purchaser"); and

WHEREAS, the Purchaser will be required to obtain all approvals from the City and other agencies to reuse the property as apartments, which permits and approvals will be subject to CEQA;

NOW, THEREFORE, THE CITY COUNCIL FINDS, DETERMINES AND RESOLVES AS FOLLOWS:

- 1.** The City Council of the City of Seaside approves the terms and conditions of the PSA and all other documents reasonably required to implement the PSA, as substantially set forth in the form of PSA attached to this resolution; and
- 2.** The City Council hereby authorizes the City Manager, in consultation with the City Attorney, to execute the PSA, including reasonable modifications thereto, and authorizes the City Manager to execute all documents reasonably required to effect the final sale of the property to the Purchaser.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Seaside duly held on the 17th day of September, 2020 by the following vote:

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

Ian N. Oglesby, Mayor

ATTEST:

Lesley Milton, City Clerk

APPROVED AS TO FORM:

CITY ATTORNEY

PURCHASE AND SALE AGREEMENT

AND

ESCROW INSTRUCTIONS

by and between the

City of Seaside
("Seller")

and

AP Glover Enterprises, LLC

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EXHIBIT A LEGAL DESCRIPTION OF THE LAND

EXHIBIT B FORM OF QUIT CLAIM DEED

EXHIBIT C CERTAIN DEFINITIONS

EXHIBIT D LIST OF DOCUMENTS DELIVERED TO BUYER

PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

This PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (this "Agreement") is dated as of August __, 2019 (the "Effective Date") and is entered into by and between Alfred P. Glover, DBA as AP Glover Enterprises LLC, a California limited liability company, or its assignee ("Buyer") and the City of Seaside ("Seller").

RECITALS

A. Seller is the owner of the land in the City of Seaside, County of Monterey, State of California, more particularly described on **Exhibit A** attached hereto and made a part hereof, commonly known as the Fort Ord Medical Officer's Barracks, together with all improvements thereon, with all easement rights and appurtenances thereto, including all easements and appurtenances and water allocation, (as defined in Section 5.5 (collectively, the "Property").

B. Buyer desires to purchase the Property from Seller and intends to rehabilitate and renovate the existing Medical Officer's Barracks, which was previously used for housing for the military's personnel, for use as affordable housing.

AGREEMENT

NOW, THEREFORE, in consideration of the terms and conditions of this Agreement and for other valuable consideration, the receipt of which is hereby acknowledged, Buyer and Seller agree as follows:

1. **Purchase and Sale.** Subject to and in accordance with the terms and conditions hereinafter set forth, Seller agrees to sell Property to Buyer, and Buyer agrees to purchase the Property from Seller.

2. **Opening and Closing of Escrow.** Within three (3) business days after the Effective Date, the parties shall open an escrow ("Escrow") with Chicago Title Company, Monterey ("Escrow Holder" and "Title Company"), at 250 Bonifacio Place, Monterey, CA 93940 Attn: Kimberly Verania, Escrow Officer; Phone: (831) 375-2262 Email: kim.verania@ctt.com; and shall deliver a copy of this fully executed Agreement to said Escrow Holder. "Close of Escrow" shall be the date that a QUIT CLAIM DEED conveying title to the Property to Buyer, is recorded in the Official Records of the Monterey County Recorder's Office. Subject to satisfaction of all conditions in Section 14, Close of Escrow shall occur on or before the date that is thirty (30) days after the expiration of the Due Diligence Period, as defined in Section 5.1 below.

3. **Purchase Price; Deposit; Liquidated Damages.**

3.1 **Purchase Price.**

(a) Subject to adjustment pursuant to Section 3.1(d), below, the purchase price for the Property to be paid by Buyer is the sum of Seven Hundred Thousand dollars (\$700,000.00) ("Purchase Price").

(b) Buyer shall deposit with Escrow Holder concurrent with opening Escrow, the sum of Twenty Five Thousand Dollars (\$25,000.00) (the "Initial Deposit"). On the Close of Escrow, the Initial Deposit shall be applied toward the Purchase Price. In the event this Agreement is terminated by Buyer under Section 14.1 below, as a result of the failure of a closing condition in favor of Buyer pursuant to Section 14, as a result of a default by Seller, then the Deposit shall be refunded to Buyer.

If Buyer does not otherwise terminate the Purchase Agreement prior to the expiration of the Due Diligence Period, then Buyer shall within three (3) business days following the expiration of the Due Diligence Period deposit into Escrow an amount equal to three (3%) percent of the Purchase Price less the Initial Deposit ("Additional Deposit") at which point, the Initial Deposit and Additional Deposit and all interest thereon will be credited at Closing against the Purchase Price, and shall be nonrefundable except in the event this Agreement is terminated by Buyer under Section 14.1 below, as a result of the failure of a closing condition in favor of Buyer pursuant to Section 14 or as a result of a default by Seller, then the Deposit shall be refunded to Buyer. The Initial Deposit and Additional Deposit shall collectively be referred to as the "Deposit".

Notwithstanding anything in this Agreement to the contrary, Buyer agrees and acknowledges that One Hundred Dollars (\$100) of the Initial Deposit (the "Independent Consideration") shall be paid to Seller and deemed nonrefundable as consideration for the rights and privileges granted to Buyer herein, including any and all rights granted to Buyer to terminate this Agreement during certain periods hereunder. The Independent Consideration shall be immediately released by Escrow Holder to Seller and shall not be considered part of the "Deposit" hereunder.

(c) Buyer acknowledges that Seller has ordered an Appraisal. The appraised value of the Property as set forth in the Property Appraisal, as adjusted by costs already expended by Buyer, must be equal to or less than the Purchase Price to be paid by Buyer for the Property. If Closing occurs more than six (6) months after the initial Property Appraisal, then Seller may request an updated Property Appraisal which shall be at the sole expense of the Buyer.

(d) Buyer acknowledges that in the event that the Fair Market Appraisal Value exceeds the agreed upon purchase price, the City will be required to renegotiate a revised purchase price or the City may elect to hold an Economic Development Subsidy Hearing pursuant to California Government Code Section 53083 in the City's sole discretion. The City acknowledges the Buyer's intent to provide affordable and workforce housing, as well as removing blight, re-using structures and developing the 4.9 acre site at a significantly reduced density than allowed under current zoning (25 units/acre) to preserve natural resources as being, cumulatively, in the public interest. Purchaser agrees to reserve eight units for affordable housing with two offered at a monthly rental for the Very Low Income (20% of 80% of Monterey County median income), three units offered at a monthly rental for Low Income and three units offered at a monthly rental for Moderate Income, based upon three person households and Monterey County income levels as set by the State of California Housing and Community Development Department. Said reservation of affordable units shall be

memorialized by a recorded Affordable Housing Agreement and required deed restrictions restricting the rents and/or sales for the eight units for a period of thirty (30) years.

(e) Buyer shall pay all required fees at the time of submission of plans for building permits. These fees include, and may not be limited to, the Transportation Agency of Monterey County (TAMC) regional traffic impact fee, the Marina Coast Water District capacity fees for sewer and water service.

(f) The Buyer shall pay an exaction equal to thirty percent (30%) of the replacement housing fee of the Fort Ord Reuse Authority (FORA) Community Facilities District fee at the time of dissolution of FORA for each unit which is not income restricted constructed (\$7,622 per unit *30%*32 or \$73,171.20 total) which may be used for any of the purposes outlined in the FORA CFD. The exaction shall be due upon final inspection prior to obtaining a certificate of occupancy.

3.2 Liquidated Damages.

IF BUYER FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY AS HEREIN PROVIDED BY REASON OF DEFAULT OF BUYER AFTER BUYER'S RELEASE OR SATISFACTION OF ALL OF BUYER'S CONDITIONS TO PURCHASE, IT IS AGREED THAT THE DEPOSIT THEN HELD BY ESCROW HOLDER SHALL BE NON-REFUNDABLE AND SELLER SHALL BE ENTITLED TO SUCH DEPOSIT PLUS ANY ACCUMULATED INTEREST, WHICH AMOUNT SHALL BE ACCEPTED BY SELLER AS LIQUIDATED DAMAGES AND NOT AS A PENALTY AND AS SELLER'S SOLE AND EXCLUSIVE REMEDY. IT IS AGREED THAT SAID AMOUNT CONSTITUTES A REASONABLE ESTIMATE OF THE DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1671 ET SEQ. BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL OR IMPOSSIBLE TO PRESENTLY PREDICT WHAT MONETARY DAMAGES SELLER WOULD SUFFER UPON BUYER'S FAILURE TO COMPLETE ITS PURCHASE OF THE PROPERTY. BUYER DESIRES TO LIMIT THE MONETARY DAMAGES FOR WHICH IT MIGHT BE LIABLE HEREUNDER AND BUYER AND SELLER DESIRE TO AVOID THE COSTS AND DELAYS THEY WOULD INCUR IF A LAWSUIT WERE COMMENCED TO RECOVER DAMAGES OR OTHERWISE ENFORCE SELLER'S RIGHTS. IF FURTHER INSTRUCTIONS ARE REQUIRED BY ESCROW HOLDER TO EFFECTUATE THE TERMS OF THIS SECTION, BUYER AND SELLER AGREE TO EXECUTE THE SAME. THE PARTIES ACKNOWLEDGE THIS PROVISION BY PLACING THEIR INITIALS BELOW:

SELLER'S INITIALS

BUYER'S INITIALS

4. Title Insurance.

4.1 Within five (5) business days after transfer of property to the Seller, Seller and Buyer shall cause Title Company to furnish Buyer with an updated title report for the

Property, together with copies of all documents referenced therein as exceptions to title (collectively, the Title Report”).

4.2 Buyer shall have until the expiration of the Due Diligence Period set forth in Section 5.1, or any extension thereof under Section 5.7 below, to deliver to Seller and Escrow Holder written notice (the “Preliminary Title Notice”) of Buyer’s approval, conditional approval or disapproval of the title exceptions disclosed in the Title Report (excluding the standard printed exceptions in the form of title policy and taxes and assessments which are liens not yet due and payable) and any matters shown by a survey conducted by Buyer at Buyer’s cost. All matters not timely disapproved by Buyer will be deemed approved (all such exceptions which are approved or deemed approved by Buyer being referred to herein as the “Permitted Title Exceptions”). All such exceptions disapproved by Buyer are referred to herein as “Disapproved Exceptions”. Notwithstanding anything to the contrary, in no event shall any exception related Monetary Liens be deemed Permitted Title Exceptions regardless of whether or not included Buyer’s Preliminary Title Notice. As used herein, “Monetary Liens” mean all monetary liens or encumbrances recorded against the Property regardless of whether the same arise before or after the Inspection Period; provided, however, Monetary Liens shall not include non-delinquent real estate taxes and assessments, or monetary liens, encumbrances, or obligations imposed in connection with any act or omission on the part of Buyer or any of Buyer’s agents, employees, contractors or subcontractors.

4.3 Seller shall have ten (10) days after receipt of Buyer’s Preliminary Title Notice to agree in writing to cause any such Disapproved Exceptions to be released of record, or commit to cause the Title Company to endorse over such Disapproved Exceptions pursuant to an endorsement or endorsements reasonably acceptable to Buyer, or elect not to remove or endorse over Disapproved Exceptions. If Seller fails to deliver its response notice within said ten (10) days, Seller shall be deemed to have elected not to eliminate or endorse over all matters disapproved or conditionally approved by Buyer.

4.4 If Seller elects not to agree in writing, to remove and elects not to cause the Title Company to endorse a Disapproved Exception (other than Monetary Liens as to which Seller’s obligation to remove is absolute), Buyer shall have the option to within five (5) business days after Seller’s notice to Buyer to elect to terminate this Agreement, in which case the Deposit shall be returned to Buyer. If within five (5) business days after the end of the 10-day period Buyer fails to timely deliver the termination notice, then Seller may elect to deliver a termination notice in writing to Buyer.

4.5 Buyer’s fee title to the Property shall be insured at the Close of Escrow by an CLTA Standard Coverage Owner’s Policy of Title Insurance in the amount of the Purchase Price, issued by Title Company unless, at the option of Buyer, if Buyer performs an ALTA survey at Buyer’s cost during the period described in Section 4.2 above and requires an ALTA Extended Coverage Owner’s Policy of Title Insurance. Any such policy of Title insurance shall contain only the Permitted Title Exceptions. Under no circumstances shall the Title Policy to be issued to Buyer at Closing contain an exception relating to any of the closing conditions in Section 14.. If Buyer elects to obtain ALTA Extended Coverage Owners Insurance, the Seller shall credit Buyer in escrow the cost of a CLTA Policy as set forth in Section 8 of this agreement.

4.6 Seller shall be responsible to pay any documentary transfer tax. Buyer and Seller agree that Escrow fees shall be split equally between Buyer and Seller. Other fees not specifically called out herein shall be paid as is the custom and practice in real estate practice in Monterey County.

5. Due Diligence; Right of Entry.

5.1 Within one (1) business day after the Effective Date, Seller shall deliver to Buyer the documents described on Exhibit "D". Seller hereby grants Buyer and its agents, employees, contractors and subcontractors designated in writing by Buyer to Seller (collectively "Representatives") the right to enter on the Property until the date that is one hundred eighty (180) days after the Effective Date (the "Due Diligence Period") for the purpose of inspecting the physical condition of the Property, including soils, title, survey, zoning, water availability, engineering and entitlement and permitting requirements, development potential, geological matters and the environmental condition of the Property, including toxic or hazardous substances and other contamination, subject to scheduling and coordination with the Seller. All such investigations shall be at Buyer's expense. All work performed by Buyer and its Representatives will be performed diligently and in a manner consistent with the standards of care, diligence and skill exercised by recognized consulting firms for similar services, and in accordance with professional standards and the requirements of any governmental agency or entity and all applicable laws. Seller shall use commercially reasonable efforts to cooperate with Buyer's investigations and to provide Buyer and its Representatives access to the Property upon forty-eight (48) hours' notice. Upon transfer of the subject property to City, a new Right-of-Entry Agreement similar to attached Exhibit "A" shall be executed by Seller and Buyer.

5.2 Buyer and its Representatives shall promptly notify the Seller of any discovery, spill, release, or discharge of any Hazardous Substances, as defined in Exhibit C, on, under or about the Property which is discovered, encountered, or results from or is related to the Buyer's or its Representatives' access to and/or use of the Property under this Agreement. Buyer shall provide Seller with any documents related to said adverse conditions except those confidential attorney/client communications.

5.3 In connection with the inspections of the Property by Buyer and its Representatives (including, without limitation, any survey), Buyer shall, at its own cost and expense, take any necessary action to keep the Property, and any improvements and personalty thereon, in good order and repair and safe condition to the extent that such Property, improvements or personalty were in such condition prior to its entry, and the whole of the Property, in a clean, sanitary and orderly condition, including, without limitation, ensuring that any holes, ditches or other indentations, as well as any mounds or other inclines created by any excavation by Buyer or its Representatives are regraded, resurfaced and compacted. If any portion of the Property or an adjacent property, including improvements and fixtures, suffers damage or alteration by reason of the access and activities of Buyer or its Representatives on the Property, Buyer shall, at its own cost and expense, promptly repair all such damage and restore the Property or adjacent property to as good a condition as before such damage or alteration

occurred, or if it cannot be repaired, Buyer shall replace such damaged or altered property to the extent possible.

5.4 “Sufficient Water allocation” means that amount of water allocated to the 4.98 acre site at the time of project entitlements. Buyer acknowledges that Seaside’s water allocation is managed and served by Marina Coast Water District. Buyer further acknowledges that he will be responsible to obtain any will serve commitments from MCWD and pay such connection and other charges as established by MCWD and paid by other customers. Buyer shall assure itself that the allocation of water is sufficient for his planned use(s) of the property.

5.5 Prior to entering the Property, Buyer shall provide Seller with reasonable evidence that Buyer has reasonable insurance covering Buyer’s activities on the Property. In any event, Buyer shall defend, protect, indemnify, and hold free and harmless Seller and its employees, agents, and representatives, and their successors, and assigns (individually as “Indemnatee” and collectively, “Indemnitees”), free and harmless from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever (collectively, the “Claims”), including fees of accountants, attorneys, expert witnesses, or other professionals, and all costs associated therewith, arising or claimed to arise, directly or indirectly, out of, in connection with, resulting from, or related to any act, failure to act, error, or omission of Buyer or any of its Representatives arising or claimed to arise, directly or indirectly, out of, in connection with, resulting from, or related to entry upon the Property pursuant to this Section (but in no event shall Buyer be responsible to defend, protect, indemnify or hold Seller harmless due to Buyer’s mere discovery of contamination or other conditions adversely affecting the value of the Property).

5.6 Buyer may, by written notice and at Buyer’s election prior to the expiration of the Due Diligence Period or any extension thereto, extend the Due Diligence Period by up to six (6) thirty (30) day periods (each a “Due Diligence Period Extension” and collectively the “Due Diligence Period Extensions”). Within three (3) business days following Buyer’s election to exercise each Due Diligence Period Extension, Buyer shall deposit with Escrow Holder the sum of Five Hundred Dollars (\$500.00) (the “Due Diligence Period Extension Fee”), which Due Diligence Period Extension Fee shall be non-refundable (except under the limited circumstances set forth in Section 3.1(b)), but shall be applied to the Purchase Price at Closing.

5.7 Given that no specific entitlements or development approvals are being conveyed with the sale of the Property, it is Buyer’s intention to use the Due Diligence Period to (among other things) obtain all possible entitlements required to develop the Property (with the possible exception of water connections), including any CEQA approvals. Buyer and Seller shall work in good faith to determine what developments are appropriate for and on the Property and to timely and diligently process approval of such developments to their mutual agreement and satisfaction during the Due Diligence Period. In the event that Buyer determines that any condition or matter affecting the Property is unacceptable to Buyer in Buyer’s sole and absolute discretion, or if Buyer and Seller cannot agree on the terms governing Buyer’s proposed development of the Property, Buyer may cancel Escrow by written notice to Seller and Escrow

Holder and receive a full refund of the Deposit prior to the expiration of the Due Diligence Period.

5.9 Buyer and all associated successors and assigns and their prime contractors or sub-contractors, shall comply with the FORA Master Resolution section 3.03.090, as that section may be amended from time to time, mandating the payment of prevailing wages on First Generation construction, including but not limited to the requirement that all contractors and subcontractors prior to performing work on the property shall be registered with the Department of Industrial Relations. To the extent prevailing wages are required to be paid pursuant to Labor Code sections 1720 and following, the Buyer, his successors and assigns shall comply with the State's labor code requirements in all respects. Buyer, specifically agrees and shall cause any successor or assign, and their respective contractors and subcontractors to comply with the provisions of this paragraph, keep certified payroll records and make un-redacted copies of such records available to City or its agents for purposes of monitoring and ensuring compliance with this section. Buyer shall make or cause such documents produced to City or its agent within 10 business days of a written request for said documents. Finally, Buyer for himself, his successors and assigns hereby agree that the Department of Industrial Relations may enforce the provisions of this Paragraph as though the Project was subject to the public works requirements of the Labor Code.

6. Deposit of Documents and Funds in Escrow.

6.1 Seller and Buyer, as applicable, hereby covenant and agree to deliver to Escrow Holder at least one (1) business day prior to Close of Escrow the following instruments, documents, and funds, the delivery of each of which shall be a condition of the Close of Escrow.

6.2 Seller shall deliver:

(a) A QUIT CLAIM DEED in the form attached hereto as Exhibit "B" duly executed and acknowledged by Seller;

(b) A Withholding Exemption Certificate Form 593-C as contemplated by California Revenue and Taxation Code §18662 (the "Withholding Affidavit") duly executed by Seller;

(c) A Certification of Non-Foreign Status in accordance with Internal Revenue Code Section 1445 duly executed by Seller;

(d) Such proof of Seller's authority and authorization to enter into this transaction as the Title Company may require in order to issue the Title Policy; and

(e) An owner's affidavit and such other customary documents which may be requested by Escrow Holder or Title Company.

(f) A Regulatory Agreement restricting rents on eight units, signed by Seller.

6.3 Buyer shall deliver:

- (a) The Purchase Price (less the Deposit) together with such funds as are required to pay for costs and expenses payable by Buyer hereunder; and
- (b) A Regulatory Agreement restricting rents on eight units signed by Buyer.
- (c) A preliminary change of ownership report ("PCOR") and such other customary documents which may be requested by Escrow Holder or Title Company.

7. Authorization to Record Documents and Disburse Funds. Escrow Holder is hereby authorized to record the documents and disburse the funds and distribute the documents called for hereunder upon the Close of Escrow, provided each of the following conditions has then been fulfilled:

7.1 The Title Company can issue the Title Policy, with a liability in the amount of the Purchase Price, showing fee title to the Property vested in Buyer, subject only to the Permitted Title Exceptions.

7.2 Seller and Buyer shall have deposited in Escrow the documents and funds required pursuant to Section 6.

7.3 Escrow Closing Instructions executed by Buyer and Seller and in a format customarily utilized by Title Company.

8. Prorations; Charges. The following items are to be prorated as of Close of Escrow: (i) taxes; (ii) assessments (on a per square foot basis); and (iii) any utilities charges. Buyer shall pay (i) fifty percent (50%) of the escrow fees and charges of Escrow Holder, (ii) the cost of all endorsements to the Title Policy and any extended coverage, and (iii) Buyer's share of the charges prorated under this Agreement. Seller shall pay: (i) fifty percent (50%) of the escrow fees and charges of Escrow Holder; (ii) the cost of the premium for CLTA coverage under the Title Policy; (iii) all recording charges, if any; and (iv) any documentary transfer taxes. If the Escrow shall fail to close for any reason other than Seller's default, Buyer shall pay any applicable Escrow cancellation charges.

9. Condemnation; Destruction. All risk of loss with respect to the Property shall remain with Seller until after the Close of Escrow and delivery of possession of the Property to Buyer. If at any time prior to the Close of Escrow, the Property, or any portion thereof, is damaged by fire or other casualty or taken or appropriated through eminent domain or similar proceedings, or is condemned for any public or quasi-public use, Buyer may terminate this Agreement. If Buyer terminates this Agreement, Seller shall be entitled to receive all insurance proceeds payable to Buyer or Seller or all condemnation proceeds actually paid for that portion of the property taken. If Buyer elects to maintain this Agreement in full force and effect, then upon Close of Escrow, Buyer shall be entitled to receive all insurance proceeds payable to Seller or all condemnation proceeds actually paid for that portion of the Property taken or, if such proceeds have been paid to Seller, Buyer shall receive a credit against the Purchase Price equal to the amount of proceeds actually paid to Seller. Buyer shall not be entitled to any reduction in the Purchase Price.

10. Default.

10.1 Notice of Default. With respect to a default by either party hereunder, neither party will be in default under this Agreement unless and until the other party gives the defaulting party written notice specifying the default or defaults and if such default or defaults have not been cured within five (5) business days from the delivery to defaulting party of such notice. In the event of a breach or default under this Agreement by either Seller or Buyer, if such default is not cured within the five (5) business day grace period, then the non-defaulting party shall have the right to terminate this Agreement and the Escrow for the purchase and sale of the Property by delivering written notice thereof to the defaulting party and to Escrow Holder.

10.2 Remedies. If Buyer is the non-defaulting party and elects to terminate this Agreement, then Buyer shall thereupon promptly receive a refund of the Deposit. Seller and Buyer mutually agree that the Property is of a special and unique character which gives it a peculiar value, and that Buyer cannot be reasonably or adequately compensated in damages in an action at law in the event Seller breaches its obligation to sell the Property to Buyer. Therefore, Seller expressly agrees that Buyer shall be entitled to injunctive and other equitable relief (including the right to specifically enforce Seller's obligation to sell the Property to Buyer) in the event of such breach, in addition to any other rights or remedies which Buyer may possess, including, without limitation, the right to record a notice of pendency of action against any of the Property and/or to terminate this Agreement, have the Deposit returned and pursue an action for damages. If Buyer is the defaulting party and Seller elects to terminate this Agreement, then Seller shall be entitled, as its sole and exclusive remedy, to retain the Deposit as liquidated damages pursuant to Section 3.2, above.

11. As Is; Release. Buyer is acquiring the Property "AS IS, WHERE IS" without any representation or warranty of Seller, implied or statutory, as to the nature or condition of or title to the Property or its fitness for Buyer's intended use of same (except as expressly set forth herein). Buyer is familiar with the Property. Buyer is relying solely upon its own, independent inspections, investigations and analysis of the Property as it deems necessary or appropriate in so acquiring the Property from Seller, including, without limitation, an analysis of any and all matters concerning the condition of the Property and its suitability for Buyer's intended purposes, and a review of all applicable laws, ordinances, rules and governmental regulations (including, but not limited to, those relative to building, zoning and land use) affecting the development, use, occupancy or enjoyment of the Property.

BUYER ACKNOWLEDGES AND AGREES THAT, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE PROPERTY OR ANY MATTER RELATED THERETO, INCLUDING, WITHOUT LIMITATION, THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, AND COMPLIANCE WITH ANY ENVIRONMENTAL LAWS OR THE PRESENCE, ABSENCE, CONDITION OR STATUS OF ANY HAZARDOUS MATERIALS. BUYER ACKNOWLEDGES AND AGREES THAT

TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS" CONDITION AND BASIS WITH ALL FAULTS, AND THAT SELLER HAS NO OBLIGATIONS TO MAKE REPAIRS, REPLACEMENTS OR IMPROVEMENTS OR REMEDIATE ANY HAZARDOUS MATERIALS.

BY INITIALING BELOW, THE BUYER ACKNOWLEDGES THAT (i) THIS SECTION 11 HAS BEEN READ AND FULLY UNDERSTOOD, (ii) THE BUYER HAS HAD THE CHANCE TO ASK QUESTIONS OF ITS COUNSEL ABOUT ITS MEANING AND SIGNIFICANCE, AND (iii) THE BUYER HAS ACCEPTED AND AGREED TO THE TERMS SET FORTH IN THIS SECTION 11.

BUYER'S INITIALS

Buyer waives and releases as of the Close of Escrow any and all claims it may have against Seller relating to the physical condition of the Property (including, without limitation, the presence or release hazardous materials or substances). To the extent of such waiver and release, Buyer expressly waives its rights, if any, under California Civil Code Section 1542 which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY. ."

Buyer's Initials

12. Notices. All notices, requests and demands to be made hereunder to the parties hereto shall be made in writing to the addresses set forth below and shall be given by any of the following means: (a) personal service; (b) certified or registered mail, postage prepaid, return receipt requested; or (c) nationally recognized courier or delivery service. Such addresses may be changed by notice to the other parties given in the same manner as provided herein. Any notice, demand or request sent pursuant to either clauses (a) or (c) hereof shall be deemed received upon the actual delivery thereof, and, if sent pursuant to clause (b) shall be deemed received five (5) days following deposit in the mail. Refusal to accept delivery of any notice, request or demand shall be deemed to be delivery thereof. If any party hereto is not an individual, notice may be given to any officer, general partner or principal thereof.

Buyer: AP Glover Enterprises LLC
1676 Fremont Blvd
Seaside, CA 93955

Seller: City of Seaside
440 Harcourt Avenue

Seaside, California 93955
Attn.: City Manager

With a E-Copy to Cityattorney@ci.seaside.ca.us

Escrow Holder: Chicago Title Company
250 Bontifacio Pl.
Monterey, CA 93940

Kimberly Verania
kim.verania@ctt.com

13. Broker's Commissions. No Broker's Commissions shall be paid.

14. Closing Conditions.

14.1 Conditions to Buyer's Obligations: Buyer will have no obligation to purchase the Property and close escrow unless each of the following conditions precedent have been satisfied or waived by Buyer:

(a) Seller shall have complied and at Closing will be in compliance with each its covenants and obligations in this Agreement;

(b) Each of the representations and warranties of Seller in this Agreement will be materially true and correct as of the Closing Date;

(c) Receipt of an ingress and egress easement from the Department of the Army;

(d) Receipt of project entitlements from the City of Seaside.

Subject to Section 10, if any of the conditions precedent in favor of Buyer set forth in Section 14.1 are neither satisfied nor waived by Buyer by the Closing Date, Buyer (at its option) may terminate this Agreement by giving a notice of termination to Seller on or before all of the applicable conditions have been satisfied. In such case, (i) the Escrow shall terminate (ii) Buyer will have no further obligation to purchase the Property from Seller, (iii) Seller will have no further obligation to sell the Property to Buyer, and (iv) the parties will have no further obligation to one another, except as otherwise expressly provided herein. In the event of such a termination, the Deposit shall be returned to Buyer (except for the Independent Consideration which was previously released to Seller).

14.2 Conditions to Seller's Obligations: Seller will have no obligation to sell the Property and close escrow unless each of the following conditions precedent have been satisfied or waived by Seller:

(a) Buyer shall have complied and at Closing will be in compliance with each of its covenants and obligations in this Agreement;

(b) Each of the representations and warranties of Buyer in this Agreement will be materially true and correct as of the Closing Date; and

(c) Receipt of ingress and egress easement from the Department of the Army.

Subject to Section 10, if any of the conditions precedent in favor of Seller set forth in Section 14.2 are neither satisfied nor waived by Seller by the Closing Date, Seller (at its option) may terminate this Agreement by giving a notice of termination to Buyer on or before all of the applicable conditions have been satisfied. In such case, the parties' rights and obligations shall be governed by Section 3.2.

15. Representations and Warranties.

15.1 Representations and Warranties of Seller. Seller makes the following representations and warranties to Buyer:

(a) Seller is a general law city, duly organized, validly existing and in good standing under the laws of the State of California and is duly qualified to do business in the State of California. Seller has the right, power and authority to enter into this Agreement and to perform its obligations hereunder, and the person(s) executing this Agreement on behalf of Seller have the right, power and authority to do so, provided Seller receives an ingress and egress easement from the Department of the Army and the Property from FOR A.

(b) The Property is, to the actual current knowledge of the City Manager of the Seller, not in violation, nor has been nor is currently under investigation for violation of any Environmental Laws, including, but not limited to, soil and groundwater conditions, the Property has not been subject to a deposit of any Hazardous Substances, neither Seller nor, to the best of Seller's knowledge, any third party has used, generated, manufactured, stored or disposed in, at, on, under or about the Property or transported to or from the Property any Hazardous Substance, and there has been no discharge, release or, to the best of Seller's knowledge, migration of any Hazardous Substance from, into, on, under or about the Property; and there is not now, nor, to the best of Seller's knowledge, has there ever been on or in the Property underground storage tanks or surface impoundments, any asbestos-containing materials or any polychlorinated biphenyls used in hydraulic oils, electrical transformers or other equipment.

(c) Within one (1) business day after the Effective Date, Seller will have disclosed or made available to Buyer all information in Seller's possession or known to Seller concerning the Property.

(d) To the best of Seller's knowledge, there are no liens (including without limitation, mechanics liens), claims, encumbrances, easements, covenants, conditions, restrictions or other matters of record affecting title to the Property which are not disclosed in the Preliminary Title Report, and except as disclosed in the Title Report, there are no special assessments (whether from an assessment district, facilities district, or otherwise) against the Property nor has Seller received any written notice of any

special assessments being contemplated. Seller is not aware of any other assessment districts or areas which are being formed or contemplated.

(e) The City does not consider renovations of already existing buildings on Fort Ord to be First Generation Construction projects for the purposes of requiring the payment of prevailing wages pursuant to the Master Resolution section 3.03.090.

All representations, warranties and covenants of Seller in this Agreement are made as of the date of this Agreement and as of the Closing and shall survive the Closing. It shall be a material default hereunder if Seller is unable to make such representations and warranties truthfully as of the Closing Date.

15.2 Representations and Warranties of Buyer. Buyer makes the following representations, warranties and covenants to Seller:

(a) Buyer is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of California and is duly qualified to do business in the State of California. Buyer has the right, power and authority to enter into this Agreement and to perform its obligations hereunder, and the person(s) executing this Agreement on behalf of Buyer have the right, power and authority to do so.

(b) All representations and warranties of Buyer in this Agreement are made as of the date of this Agreement and as of the Closing, and shall survive the Closing and the recordation of the QUIT CLAIM DEED. It shall be a material default if Buyer is unable to make such representations and warranties truthfully as of the Closing Date.

16. Standard Instructions. Each party agrees to execute Escrow Holder's supplemental reasonable standard instructions as may be necessary or proper in order to consummate the transactions contemplated by this Agreement; provided, however, in the event of a material conflict between the terms hereof and the terms of such standard instructions, the terms hereof shall control.

17. Time is of the Essence. Subject to Section 10, the parties hereto agree that time is of the essence with respect to each term, condition and covenant hereof.

18. Successors and Assigns. The provisions of this Agreement are expressly binding upon, and shall inure to the benefit of, the parties hereto and their successors in interest and assigns.

19. Entire Agreement. This Agreement, together with all exhibits hereto, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. .

20. Severability. Invalidation of any of the terms, conditions, covenants, or other provisions contained herein by judgment or court order shall in no way affect any of the other

terms, conditions, covenants, or provisions hereof, and the same shall remain in full force and effect.

21. Amendments. Any amendments to this Agreement shall be effective only when duly executed by Seller and Buyer and deposited with Escrow Holder.

22. Attorneys' Fees. In the event of a lawsuit or arbitration is brought to interpret or for the enforcement of this Agreement or as the result of any alleged breach thereof, the prevailing party or parties in such suit shall be entitled to recover their costs, expenses and reasonable attorneys' fees from the losing party or parties, and any judgment or decree rendered in such proceedings shall include an award thereof.

23. No Third Party Beneficiary Rights. This Agreement is entered into for the sole benefit of Seller and Buyer and no other parties are intended to be direct or incidental beneficiaries of this Agreement.

24. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

25. Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In order to expedite the transaction contemplated herein, facsimile and/or .pdf signatures may be used in place of original signatures on this Agreement. Seller and Buyer intend to be bound by the signatures on the electronically transmitted document, are aware that the other Party will rely on such signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

26. Assignment of Agreement. Buyer may not assign or transfer its rights and obligations under this Agreement without first obtaining the prior written consent of Seller which consent shall not be unreasonably withheld.

27. Tax Deferred Exchange. Each party reserves the right to structure this transaction as a tax deferred exchange for the benefit of that party, and the other party agrees to cooperate with the exchanging party to effect the completion of such exchange, at no cost or liability to the other party. Said exchange may be completed either as a concurrent exchange or a delayed exchange, in either case pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder. In the event of a delayed exchange, the Closing Date hereunder shall not be delayed. In no event shall either party be required to take title to any other property, other than Buyer taking title to the Property, and in no event shall any parties' rights or obligations hereunder be altered by the other party's exchange. Either party structuring this transaction as a tax-deferred exchange hereby agrees to indemnify, defend and hold the other harmless from and against any and all claims, causes of action, suits, damages, liabilities, costs or expenses (including, without limitation, reasonable attorneys' fees) arising out of their exchange.

[Signatures on the following page.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

BUYER:

AP GLOVER ENTERPRISES LLC
a California Limited Liability Company

By: _____
Alfred Pinkney Glover, Trustee
PAG Trust, Its Managing Member

By: _____

SELLER:

THE CITY OF SEASIDE
A General Law city

By: _____

Print Name: _____
City Manager

Attest:

Print Name: _____
City Clerk

Approved as to Form:

City Attorney

LIST OF EXHIBITS

Exhibit A	Legal Description of the Property
Exhibit B	Form of QUIT CLAIM DEED
Exhibit C	Certain Definitions
Exhibit D	List of Documents
Exhibit E	FORA Right-of-Entry Agreement

EXHIBIT A
LEGAL DESCRIPTION OF THE LAND

Will insert legal prior to execution

EXHIBIT B

FORM OF QUIT CLAIM DEED

RECORDING REQUESTED BY,
AND WHEN RECORDED RETURN TO
(AND SEND TAX STATEMENTS TO):

Attn: _____

[SPACE ABOVE FOR RECORDER'S USE ONLY]

This document is exempt from the
payment of a recording fee pursuant to
Government Code Section 27383

QUIT CLAIM DEED

THE UNDERSIGNED GRANTOR DECLARES AS FOLLOWS:

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the the City of Seaside (the "Grantor") hereby quitclaims to _____ ("Grantee") the land in the City of Seaside, County of Monterey, State of California, more particularly described on **Exhibit A** attached hereto and all improvements thereon and all rights and appurtenances relating thereto (the "Property").

That the documentary transfer tax is \$ _____ (\$1.10 per \$1000 of consideration/purchase price); property is in the City of Seaside, County of Monterey.

IN WITNESS WHEREOF, Grantor has executed this QUIT CLAIM DEED as of the date set forth below.

Dated: _____, 20__

THE CITY OF SEASIDE

By: _____
Print Name: _____
City Manager

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 Monterey)

On _____, before me, _____, a 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 _____

EXHIBIT C

CERTAIN DEFINITIONS

Environmental Condition means any condition of the Property that exists prior to or after the Closing Date, with respect to the air, land, soil, surface, subsurface strata, surface water, ground water, storm water or sediments.

Environmental Laws means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance (as later defined), or pertaining to occupational health or industrial hygiene (and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Property), occupational or environmental conditions on, under, or about the Property, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USCS §§ 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (RCRA) [42 USCS §§ 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) [33 USCS §§ 1251 et seq.]; the Toxic Substances Control Act (TSCA) [15 USCS §§ 2601 et seq.]; the Hazardous Materials Transportation Act (HMTA) [49 USCS §§ 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USCS §§ 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 USCS §§ 6901 et seq.]; the Clean Air Act [42 USCS §§ 7401 et seq.]; the Safe Drinking Water Act [42 USCS §§ 300f et seq.]; the Solid Waste Disposal Act [42 USCS §§ 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 USCS §§ 1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 USCS §§ 11001 et seq.]; the Occupational Safety and Health Act [29 USCS §§ 655 and 657]; the California Underground Storage of Hazardous Substances Act [H & S C §§ 25280 et seq.]; the California Hazardous Substances Account Act [H & S C §§ 25300 et seq.]; the California Hazardous Waste Control Act [H & S C §§ 25100 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [H & S C §§ 24249.5 et seq.]; the Porter-Cologne Water Quality Act [Wat C §§ 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to occupational health or industrial hygiene, and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Property, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

Hazardous Substances includes without limitation:

- (a) Those substances included within the definitions of hazardous substance, hazardous waste, hazardous material, toxic substance, solid waste, or pollutant or contaminant in CERCLA, RCRA, TSCA, HMTA, or under any other Environmental Law;
- (b) Those substances listed in the United States Department of Transportation (DOT) Table [49 CFR 172.101], or by the Environmental Protection Agency (EPA), or any successor agency, as hazardous substances [40 CFR Part 302];

(c) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and

(d) Any material, waste, or substance that is

(i) a petroleum or refined petroleum product,

(ii) asbestos,

(iii) polychlorinated biphenyl,

(iv) designated as a hazardous substance pursuant to 33 USCS § 1321 or listed pursuant to 33 USCS § 1317,

(v) a flammable explosive, or

(vi) a radioactive material.

EXHIBIT D

LIST OF DOCUMENTS DELIVERED TO BUYER

Property Information Sheet

Sellers Mandatory Disclosure Form

JCP-LGS Property Information Disclosure Report

Regulatory Agreement restricting Rents (Form)



Google Earth

© 2018 Google



200 ft
Packet Page 114



CITY OF SEASIDE STAFF REPORT

Item No.: 10.C.

TO: City Council

BY: Craig Malin, City Manager

DATE: September 17, 2020

SUBJECT: APPROVE RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE AND SALE AND ESCROW INSTRUCTION AGREEMENT FOR THE MAIN GATE PARCEL, SEASIDE, CA 93955

PURPOSE & RECOMMENDATION

Approve the Purchase and Sale Agreement (PSA) with Petrovich Development Company LLC for approximately 56 acres of property.

BACKGROUND

his Purchase and Sale Agreement is for the Main Gate parcel - a parcel of land approximately 56 acres in size – generally bounded by Hwy 1, Second Avenue, Lightfighter and Divarty. The parcel is generally unimproved land, with a street (First Street) running north/south from Divarty to Lightfighter. The California State University, Monterey Bay (CSUMB) owns approximately 2.6 of the 56 acres in a strip of land along Second Avenue.

After issuing a Request for Proposals (RFP), the City entered into an Exclusive Negotiating Agreement (ENA) with Seaside Development Company LLC, represented by Paul Petrovich in February of 2017. The City extended the due diligence period of the original ENA for the benefit of Seaside Development Company LLC and, in September 2019, extended the ENA with the renamed, Petrovich Development Company LLC. The City's position, which Mr. Petrovich disagrees with, is the term of the extended ENA expires on September 30, 2020.

The City has contracted with BBG Inc. for two appraisals of the property. The first appraisal was completed in December, 2018 and resulted in an appraised value for the totality of the acreage (including the CSUMB parcel) of \$8.3 million. A second appraisal was conducted by BBG Inc. in June of 2020 and - owing in part to COVID-19 conditions

- resulted in an appraised value for the totality of the acreage (including the CSUMB parcel) of \$4.27 million. The purchase price in the PSA reflects the original, non COVID-19 impaired appraised value of \$8.3 million.

The PSA includes an expected \$15 million investment by the City, paid for through new revenue generated on the parcel, for public infrastructure to support the development of the parcel. The investment is structured as reimbursement of new City revenue which the development generates in a tiered structure, to assure the City is always in a cash-positive position as the property is developed. The PSA includes a substantial deposit and other terms and conditions intended to protect the public interest. A provision, for the sole benefit of the City, is included to assure that no litigation is outstanding on other projects on the former Fort Ord, including the Campus Town project, prior to closing. The City views the well-planned and orderly development of the Campus Town and Main Gate parcels to be critical to the community's social, environmental and fiscal success, and has a public interest in advancing both projects.

Approval of the PSA does not approve any certain project or reuse on the property and is exempt from CEQA. A conceptual mixed-use plan consistent with the quality and scope of what was presented by Mr. Petrovich to secure the ENA in 2017 is attached as an exhibit to the PSA. The conceptual plan demonstrates high quality urban design, with mixed-uses, usable open space and building faces framing the public realm. The plan recognizes the site's prominence as a gateway to both the city and CSUMB, and illustrates a robust array of pedestrian and bicycle infrastructure with highly walkable connectivity and varied commercial and residential development, including 330 student and 67 affordable residences on-site.

Pursuant to the PSA, Petrovich Development Company LLC will be required to undertake and pay for all required CEQA review. The City has secured a proposal from the EMC Planning Group in the amount of \$404,560 to conduct and project manage necessary CEQA activities and is prepared to place the contract on the October 1 agenda for approval. The mixed-use conceptual design is intended to substantially improve the parcel's social and environmental performance, as compared to its present state or fully commercially developed state under the existing Specific Plan.

The Council should note Mr. Petrovich has expressed concerns with some of the provisions in the draft PSA and City staff is waiting for a written outline of requested revisions from Mr. Petrovich prior to releasing a final draft of the PSA. Should that outline be received prior to the Council meeting, staff may recommend revisions to the attached PSA.

FISCAL IMPACT

\$8.3 million in land sale revenue to the City at closing, less standard and customary

costs of escrow. Multiple millions in annual revenue to the City at buildout, with hundreds of jobs for the community.

ATTACHMENTS

1. Resolution Main Gate-Revised 9.16.20
 2. Purchase and Sale Agreement - Revised 9.16.20
 3. Main Gate PSA Concept Plan
-

Reviewed for Submission to the
City Council by:



Craig Malin, City Manager

RESOLUTION NO. 2020-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEASIDE AUTHORIZING THE CITY MANAGER ON BEHALF OF THE CITY TO EXECUTE A PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS ("PSA") FOR THE MAIN GATE PROPERTY GENERALLY LOCATED EAST OF HWY 1 AND BOUNDED BY LIGHFIGHTER, 2ND AVENUE AND DIVARTY STREET

WHEREAS, on February 17, 2017 the City entered into an Exclusive Negotiating Agreement ("ENA") for the Main Gate property with Petrovich Development Company ("Developer") and the agreement was extended through September 30, 2020; and

WHEREAS, the City and Developer have been working on a conceptual plans and negotiating terms relative to the disposition of the Property; and

WHEREAS, the City desires to sell the property owned by the City to Developer; and

WHEREAS, the Developer will be required to meet all the conditions for closing, including but not limited to obtaining all approvals from the City and other agencies to Develop the property, which permits and approvals will be subject to CEQA;

NOW, THEREFORE, THE CITY COUNCIL FINDS, DETERMINES AND RESOLVES AS FOLLOWS:

- 1.** The City Council of the City of Seaside approves the terms and conditions of the PSA and all other documents reasonably required to implement the PSA, as set forth in the form of PSA attached to this resolution; and
- 2.** The City Council hereby authorizes the City Manager, in consultation with the City Attorney, to execute the attached PSA, including preparation of the appropriate referenced attachments, up to September 30, 2020, provided however, that the Developer has executed the PSA document, and authorizes the City Manager to execute all documents reasonably required to effect the final sale of the property to the Developer.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Seaside duly held on the 17th day of September, 2020 by the following vote:

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

Ian N. Oglesby, Mayor

ATTEST:

Lesley Milton, City Clerk

APPROVED AS TO FORM:

CITY ATTORNEY

CITY DRAFT 9-15-2020

PURCHASE AND SALE AGREEMENT

by and between the

CITY OF SEASIDE

and

PETROVICH DEVELOPMENT COMPANY, LLC

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the “Agreement”) is dated (for reference purposes only) as of _____, 2020 and is entered into by and between the CITY OF SEASIDE, a municipal corporation, as successor agency to the Redevelopment Agency of the City of Seaside] (the “City”), and PETROVICH DEVELOPMENT COMPANY, LLC, a California limited liability company, (the “Developer”).

RECITALS

A. City owns the land described on Exhibit “A” [needed] and the improvements thereon, if any (the “Property”) and Developer will, by Close of Escrow (as defined below), subdivide such Property into parcels consistent with that Tentative Map attached hereto as Exhibit “B”. [needed]

B. Developer desires to acquire from City all the real property within Lots A-3 through A-6 and Lot C-6, comprising of approximately [needed] acres of unimproved real property as well as all property and land to be used for public/private and right of way infrastructure and all public improvements (the “Land”), as depicted on Exhibit “B-1”, [needed] attached hereto, for the purpose of developing such Land as general commercial, retail, hotel, residential, and open space uses (the “Project”), as more particularly shown on Exhibit “C” [needed] attached hereto.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants contained in this Agreement, the parties hereto agree as follows:

1. DEFINITIONS.

1.1 Definitions. The following capitalized terms used in this Agreement shall have the meanings set forth below:

1.1.1 “Agreement” means this Purchase and Sale Agreement.

1.1.2 “Approved Title Exceptions” is defined in Section 2.4.1.

1.1.3 Building Permit” means, collectively, any and all permits necessary to grade the Land and construct the Project that would be issued by the City.

1.1.4 “CEQA” means the California Environmental Quality Act as set forth under the California Public Resources Code, Sections 21000 – 21178, and Title 14 California Code of Regulations, Section 753, and Chapter 3, Sections 15000 – 15387.

1.1.5 “City” means the City of Seaside, a municipal corporation.

1.1.6 “City Manager” means the City Manager of the City (who is currently Craig Malin).

1.1.7 “Close of Escrow” is defined in Section 2.3.

1.1.8 “Default” is defined in Section 5.

1.1.9 “Deposit” is defined in Section 2.2.

1.1.10 “Disapproved Title Exceptions” is defined in Section 2.4.1.

1.1.11 “Effective Date” means the date on which both the City and the Developer have executed and delivered this Agreement to the other. That date shall be inserted in the introductory paragraph of this Agreement.

1.1.12 “Escrow” is defined in Section 2.3.

1.1.13 “Escrow Holder” means Chicago Title Company, Monterey Office.

1.1.14 “FORA” means the Fort Ord Reuse Authority established by California State Legislature pursuant to the Fort Ord Reuse Authority Act (pursuant to California Government Code Sections 67650, et seq.)

1.1.15 “FIRPTA Certification” is defined in Section 2.8.1.3.

1.1.16 “Force Majeure Delay” is defined in Section 8.16.

1.1.17 “Quitclaim Deed” is defined in Section 2.4.2.

1.1.18 “Hazardous Materials” means any chemical, material or substance now or hereafter defined as or included in the definition of hazardous substances, hazardous wastes, hazardous materials, extremely hazardous waste, restricted hazardous waste, toxic substances, pollutant or contaminant, imminently hazardous chemical substance or mixture, hazardous air pollutant, toxic pollutant, or words of similar import under any local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto applicable to the Land, including, without limitation: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq. (“CERCLA”); the Hazardous Materials Transportation Act, as amended, 49 U.S.C. 1801, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq.; and the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq. (“RCRA”) The term Hazardous Materials shall also include any of the following: any and all toxic or hazardous substances, materials or wastes listed in the United States Department of Transportation Table (49 CFR 172.101) or by the Environmental Protection City as hazardous substances (40 CFR. Part 302) and in any and all amendments thereto in effect as of the Close of Escrow Date; oil, petroleum, petroleum products (including, without limitation, crude oil or any fraction thereof), natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel, not otherwise designated as a hazardous substance under CERCLA; any substance which is toxic, explosive, corrosive, reactive, flammable, infectious or radioactive (including any source, special nuclear or by product material as defined at 42 U.S.C. 2011, et seq.), carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority; asbestos in any form; urea

formaldehyde foam insulation; transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls; radon gas; or any other chemical, material or substance (i) which poses a hazard to the Land, to adjacent properties, or to persons on or about the Land, (ii) which causes the Land to be in violation of any of the aforementioned laws or regulations, or (iii) the presence of which on or in the Land requires investigation, reporting or remediation under any such laws or regulations.

1.1.19 “Improvements” means all buildings, landscaping, infrastructure, utilities, and other improvements to be built on the Land.

1.1.20 “Lot” means a legal parcel of real property as designated on that Tentative- Map attached hereto as **Exhibit “B”**, when such map is recorded as a Final Map.

1.1.21 “Party” means any party to this Agreement, and “Parties” means all parties to this Agreement.

1.1.22 “Permitted Exceptions” is defined in Section 2.4.2.

1.1.23 “Plan” means the preliminary plan for the uses and development on the Land as shown on attached **Exhibit “C”**.

1.1.24 “Project” means the Land and Improvements.

1.1.25 “Purchase Price” is defined in Section 2.1.

1.1.26 “Released Parties” is defined in Section 2.7.4.

1.1.27 “Required Entitlements” means all permits and other entitlements for use subject to approval or issuance by the City in connection with development of the Property which may include, but are not limited to: (i) conditional use permits, public use permits, and plot plans (ii) design approval; (iii) grading and building permits; (iv) general plan and specific plans and any amendments thereto; (v) tentative and final subdivision and parcel maps; (vi) zoning; (vii) water allocations; (viii) a Development Agreement as defined in California law; and (ix) CEQA actions associated with any of the foregoing.

1.1.28 “Title Company” shall mean the Escrow Holder (i.e., the Title Company and the Escrow Holder are the same).

1.1.29 “Withholding Affidavit” is defined in Section 2.8.1.2.

2. PURCHASE AND SALE OF THE PROPERTY; PURCHASE PRICE; DEPOSIT.

2.1 Purchase and Sale; Purchase Price. In accordance with and subject to the terms and conditions hereinafter set forth, the City agrees to sell the Land to Developer, and Developer agrees to purchase the Land from the City. The purchase price for the Land to be paid by Developer (the “Purchase Price”) shall be EIGHT MILLION THREE HUNDRED THOUSAND AND 00/100THS DOLLARS (\$8,300,000.00). Notwithstanding anything to the

contrary contained herein, the Close of Escrow on any portion of the Project shall not occur until such time as the Closing Conditions, as defined in Section 2.5 hereof, for such portion of the Project have been satisfied.

2.2 Deposit. Within ten (10) business days after the Effective Date, the Developer shall deposit the sum of ~~ONE MILLION FIVE HUNDRED TWO MILLION SEVENTY-FIVE THOUSAND AND 00/100THS DOLLARS (\$2,075,0001,500,000.00)~~ with Escrow Holder (together with all interest thereon, the “Deposit”). The Deposit shall be held by Escrow Holder in an interest-bearing account. The Deposit may be released and used by the City at the City’s sole request, for the purpose of establishing or augmenting the Reimbursement Account set forth in Paragraph 3.3.3 to reimburse the City for any and all costs required pursuant to Paragraph 3.8, including without limitation that Third-Party Planner Costs and City costs (collectively “Processing Costs”). At no time shall the Deposit drop below Two Hundred Fifty Thousand (\$250,000), nor shall the use by the City of the Deposit for Processing Costs relieve the Developer from the provisions of Paragraph 3.8 hereinbelow. The Deposit remaining after payment of “Processing Costs” shall be credited to the Purchase Price at the Close of Escrow. In the event the Close of Escrow does not occur due to a default by Developer, the Deposit shall be delivered to and retained by the City as liquidated damages for such default according to the schedule set forth below. Such liquidated damages may include all costs incurred by the City in processing the Project that have not been paid or reimbursed by the Developer. DEVELOPER AND THE CITY AGREE THAT BASED UPON THE CIRCUMSTANCES NOW EXISTING, KNOWN AND UNKNOWN, IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO ESTABLISH THE CITY’S DAMAGES BY REASON OF A DEFAULT BY DEVELOPER PRIOR TO THE CLOSE OF ESCROW. ACCORDINGLY, DEVELOPER AND THE CITY AGREE THAT IN THE EVENT OF A DEFAULT BY DEVELOPER PRIOR TO THE CLOSE OF ESCROW, THE CITY SHALL BE ENTITLED TO RETAIN THE DEPOSIT, PLUS ANY ACCRUED INTEREST THEREON, AS LIQUIDATED DAMAGES.

In the event Developer defaults within—18 months of the Effective Date, Developer will not be assessed for any liquidated damages against the Deposit. In the event Developer defaults at any time between 18 months and 42 months of the Effective Date, a default shall cause a payment of \$350,000.00 in liquidated damages for each year, cumulatively, such default exists. In the event Developer defaults at any time after 42 months from the Effective Date, a default shall cause a \$1,000,000.00 payment in liquidated damages for each year, cumulatively, such default exists.

2.3 Opening and Closing of Escrow. Within five (5) business days after the Effective Date, the City and the Developer shall cause an escrow (the “Escrow”) to be opened with Escrow Holder for the sale of the Land by the City to Developer. The Parties shall deposit with Escrow Holder a fully executed duplicate original of this Agreement as the escrow instructions for the Escrow. The City and Developer shall provide such additional instructions as shall be necessary and consistent with this Agreement. It is expressly understood and agreed upon that Escrow shall close (the “Close of Escrow”) shall be the date that a quitclaim deed for the applicable portion of the Property in favor of Developer, is recorded in the Official Records of the Monterey County Recorder’s Office. In no event shall Close of Escrow occur after the date that is five (5) years after the expiration of the Due Diligence Period (as defined in Section 2.7.2 hereinbelow. —thirty (30) days from the later of (i) the date in which each Closing

~~Condition identified in Section 2.5 has been satisfied, (ii) the expiration of the Due Diligence Period (as defined in Section 2.7.2), (iii) the expiration of any and all appeal periods associated with the governmental approvals associated with the Required Entitlements or (iv) the date upon which any Third Party Lawsuit (as defined in Section 5.1) has been fully adjudicated or otherwise settled and is not subject to further judicial review. If the Close of Escrow does not occur by such date, any party not then in default may terminate this Agreement by written notice to the other and all the funds and documents deposited with Escrow Holder shall be promptly refunded or returned, as the case may be, by Escrow Holder to the depositing party, in the manner described in Section 2.7.3.3 below.~~

2.4 Condition of Title; Title Insurance.

2.4.1 Survey; Title Exceptions. Developer acknowledges receipt of preliminary report No. [need to order] _____ dated _____ (the “PTR”) prepared by Chicago Title Company (the “Title Company”) and Developer hereby approves the title exceptions in the PTR, except for _____ which Developer may have plotted on an ALTA survey to be obtained by Developer at Developer’s cost (the “Survey”) and except for any other title exceptions revealed by the Survey (“Disapproved Title Exceptions”). Upon the execution of this Agreement, Developer shall diligently cause the Survey to be performed as permitted by and subject to the terms of Section 2.7.2 below and shall promptly (but in no event later than five (5) business days from Developer’s receipt of the draft Survey) deliver a copy of the Survey to the City together with any reasonable written objections (if any) to items in the PTR or other title exceptions shown on the Survey with a written explanation thereof. City shall then have five (5) business days to notify Developer in writing that City will: (a) remove one or more of the applicable exception(s) or cause them to be removed by the end of the Due Diligence Period (as defined in Section 2.7.2, below, or insured over by the Title Company); (b) decline to remove exceptions (or to cause them to be removed). Failure by City to so notify Developer shall be deemed to be City’s election not to remove or otherwise address the applicable title exception(s). If City notifies Developer that City will remove (or cause to be removed) one or more of such title exceptions, then City shall do so on or before the expiration of the Due Diligence Period (unless this Agreement is terminated by Developer under this Section or Section 2.7.3 below). If City fails to so notify Developer as to any exception, or declines to remove title exceptions, then Developer may terminate this Agreement. If Developer fails to notify the City of its approval of the Approved Title Exceptions by way of its Approval Notice (as defined in Section 2.5.10, below), this Agreement will be deemed to be terminated. The term “Approved Title Exceptions” shall mean the title exceptions specifically listed above to which Developer has not objected and any title exceptions that City has agreed to remove, cause to be removed, or cause to be “insured over”.

2.4.2 At the Close of Escrow, the City shall convey title to the Land to Developer by quitclaim deed substantially in the form attached hereto as **Exhibit “D”** (the “Quitclaim Deed”). Title to the Land shall be conveyed subject to: (i) non delinquent current real property taxes and assessments not yet due for the tax year during which the conveyance occurs, (ii) all Approved Title Exceptions, (iii) the terms of this Purchase and Sale Agreement (as referenced in the Quitclaim Deed), and (iv) any matters which arise out of the actions of Developer, Developer’s Designee’s or Developer’s agents and representatives (collectively, the “Permitted Exceptions”).

2.5 Conditions to Close of Escrow. The obligation of the City and Developer under this Agreement to close Escrow shall be subject to the satisfaction (or express written waiver by the benefited party) of each of the following conditions (each a “Closing Condition,” collectively, the “Closing Conditions”). Each condition is for the benefit of both parties unless otherwise noted.

2.5.1 There shall have been no changes to the physical condition or environmental status of the Land and no new title exceptions from the expiration of the Due Diligence Period to Close of Escrow except as may have been caused by Developer.

2.5.2 City’s removal (or Title Company’s reasonably insuring over) the Disapproved Title Exceptions.

2.5.3 City shall cause the Property to be free of Hazardous Materials (defined below) or be remediated to residential standards at no cost to Developer, such that residential development may proceed without any further environmental restrictions, soil vapor mitigation measures, clean-up, remediation, testing or monitoring (in the case of such remediation, all governmental and/or regulatory agencies asserting jurisdiction over the development or remediation of the Property shall have issued final and unqualified “no further action” letters, site closure letters, and/or similar written determination (in a form and substance satisfactory to Developer in Developer’s sole and absolute discretion).

2.5.4 City shall provide a water allocation for the land uses contained in that portion of the Property for which a Close of Escrow is sought and/or a long term plan for water supply and allocation based upon land use priorities of the City that allocates water on an as permit-pulled basis.

2.5.5 The representations and warranties of the City and the Developer contained in this Agreement being true and correct.

2.5.6 There shall be no pending litigation, or possible challenges to any approvals for which the statute of limitations has not expired, on any project on the former Fort Ord, including but not limited to the Campus Town project. This condition is for the sole benefit of the City.

2.5.7 The delivery by City and Developer of all documents and funds required to be delivered pursuant to Section 2.8 hereof.

2.5.8 The Title Company shall have committed to issue at the Close of Escrow an ALTA extended coverage Owner’s title insurance policy, with any endorsements reasonably requested by Developer, showing fee simple title to the Land vested in Developer (or Developer’s assignee as permitted by this Agreement), subject only to the Permitted Exceptions. This condition is for the sole benefit of Developer.

2.5.9 The Developer shall have submitted to the City Manager a description of the legal and ownership structure of the Developer and any assignee (and its organizational documents) and the City Manager shall have approved such entity and documents. In the event of an assignee, Developer shall remain obligated to perform all of the covenants of

this Agreement in the event the assignee fails to perform. This condition is for the sole benefit of the City.

2.5.10 Developer and City shall have performed, observed and complied with all covenants, agreements and conditions required by this Agreement to be performed, observed and complied with on its part prior to or as of the Close of Escrow.

2.5.11 The City has issued final approval on all Required Entitlements for the portion of the Project for which the Close of Escrow is sought by Developer and all statutory periods for legal challenges and appeals (including any appeal to the City Council) to any or all of such Required Entitlements for such portion have~~-~~ expired without possibility of further judicial review.

2.5.12 Developer has delivered to City and Escrow Holder (prior to the expiration of the Due Diligence Period) Developers written approval ("Approval Notice") that Developer has approved (i) Condition of Title (per Section 2.4), (ii) Condition of the Property (per Section 2.7), and (iii) satisfaction of all the Closing Conditions (per this Section 2.5). This condition is for the sole benefit of the City.

2.5.13 Compliance with California Subdivision Map Act. This Agreement is expressly conditioned on the Developer having done the following ("Map Act Condition"):

2.5.13.1 From and after the Effective Date, Developer shall cause to be prepared a tentative Subdivision Map for the Land (the "Tentative Map"). Such Tentative Map shall be developed in a manner consistent the Plan approved for the Project.

2.5.13.2 Developer shall be responsible to comply with the Tentative Map conditions and for any and all taxes, fees, applications, costs, and any other costs required by the City or County to record a Final Map for the applicable portion of the Project for which recordation of the Final Map is sought.

2.5.13.3 Non-Waivable Obligation. THIS CONTRACT IS EXPRESSLY CONDITIONED UPON THE PROPERTY BEING SEPARATELY CONVEYABLE AS A SEPARATE LEGAL PARCEL(S) PRIOR TO THE CLOSING. THIS CONDITION IS NOT WAIVABLE BY EITHER PARTY. THE PARTIES AGREE THAT THIS IS IN COMPLIANCE WITH THE SUBDIVISION MAP ACT AS INTERPRETED BY *Black Hills Investments, Inc. v. Albertson's, Inc.* (2007) 146 Cal.App.4th 883 and related case law including, but not limited to, *American Nat'l Red Cross v. United Way Cal. Capital Region* (ED Cal., Dec. 19, 2007, No. Civ S007-1236) 2007 US Dist. Lexis 95296.

2.5.13.4 The expiration of all CEQA statutory appeal periods for challenging any of the Required Entitlements or other discretionary approvals, or the date upon which any CEQA appeal, challenge, or suit has been fully adjudicated or otherwise settled and is not subject to further judicial review.

2.6 Costs; Escrow Holder Settlement Statement

~~2.6.1 Developer's Costs. In addition to those other costs allocated to Developer under this Agreement, Developer shall be responsible for the following closing costs at Close of Escrow:~~

~~2.6.1 Prorations; Charges. Property taxes, assessments, and rents relating to each Phase shall be prorated as of the Close of Escrow for such Phase. Developer shall pay (i) fifty percent (50%) of the escrow fees and charges of Escrow Holder, (ii) the cost of all endorsements to the Title Policy and any extended coverage, and (iii) Developer's share of the charges prorated under this Agreement. City shall pay: (i) fifty percent (50%) of the escrow fees and charges of Escrow Holder; (ii) the cost of the premium for CLTA coverage under the Title Policy; (iii) all recording charges, if any; and (iv) any documentary transfer taxes. If the Escrow shall fail to close for any reason other than City's default, Developer shall pay any applicable Escrow cancellation charges.~~

~~The Escrow Holder's charges in connection with the Escrow and Closing hereunder; and,~~

~~The cost of the ALTA extended coverage owner's policy of title insurance ("ALTA Extended Coverage Policy"), including any survey costs in connection with the ALTA Extended Coverage Policy and the cost of title endorsements (if any) requested by Developer (the "Title Policy").~~

~~All recording costs; and,~~

~~City and County transfer taxes, as applicable.~~

2.6.2 Settlement Statement. Escrow Holder is authorized on the Close of Escrow to pay and charge the Parties for any fees, charges and costs payable under this Section 2.6~~7~~ as set forth on the settlement statements approved by the Parties. Before such payments are made, Escrow Holder shall notify the City and Developer of the fees, charges, and costs necessary to close under the Escrow, by delivering draft settlement statements to the Parties for their mutual approval.

2.7 Condition of the Property.

2.7.1 "As-Is" Sale. Developer acknowledges and agrees that, except as expressly set forth herein, Developer is acquiring the Land and Improvements in their "AS IS" condition, WITH ALL FAULTS, IF ANY, AND, EXCEPT AS EXPRESSLY SET FORTH HEREIN, WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED and neither City nor any agents, representatives, officers, or employees of City have made any representations or warranties, direct or indirect, oral or written, express or implied, to Developer or any agents, representatives, or employees of Developer with respect to the condition of the Land or Improvements, their fitness for any particular purpose, or their compliance with any laws, and Developer is not aware of and does not rely upon any such representation by any other party. Except as expressly set forth herein, neither City nor any of its representatives is making or shall

be deemed to have made any express or implied representation or warranty, of any kind or nature, as to (a) the physical, legal or financial status of the Land or Improvements, (b) the Land's or Improvements' compliance with applicable laws, (c) the accuracy or completeness of any information or data provided or to be provided by City, or (d) any other matter relating to the Land or Improvements.

2.7.2 Due Diligence Period; Inspections by Developer. Upon the Effective Date of this Agreement until ninetythree (930) days after the Opening of Escrow from ~~later of (i) expiration of all statutes of limitation or appeal periods for any challenges to any Required Entitlements for the Project, (ii) expiration of all CEQA statutes of limitations periods for challenging any of the Required Entitlements, or (iii) the date upon which any CEQA appeal, challenge, or suit has been fully adjudicated or otherwise settled and not subject to further judicial review, such that the City is able to proceed with necessary approvals for the Project~~ (the "Due Diligence Period") Developer shall have the ability to review the suitability of the Property for Developer's Buyer's use and development, including, without limitation, any governmental land regulations, zoning ordinances, development costs, financial and market feasibility, all covenants, conditions, and restrictions and other contracts, agreements or documents affecting the Property, proposed or existing assessment districts affecting the Property, the status of the entitlement or development condition of the Property, the physical condition of the Property, including soil and geological assessments and Phase I environmental audit ("Due Diligence Matters") and to deliver to SellerCity and Escrow Holder, in buyerDeveloper's sole and absolute discretion, written notice (the "Due Diligence Approval Notice") of BuyerDeveloper's approval of the Due Diligence Matters. If BuyerDeveloper does not deliver the Due Diligence Approval Notice before the expiration of the Due Diligence Period, then (a) BuyerDeveloper shall have disapproved of the Due Diligence Matters, (b) the Deposit and all interest accrued thereon shall be returned to the BuyerDeveloper, as reduced by the actual costs for the Third Party Project Planner Costs and other Project Processing Costs as set forth in Paragraph 3.8,; (c) this Agreement and the Escrow shall terminate; (d) BuyerDeveloper shall pay any Escrow termination charges and (e) the parties shall have no further obligation to one another with respect to this Agreement, except as expressly provided herein.

2.7.2.1 Inspections by Developer. Developer and its contractors and consultants who are designated in writing to City ("Developer Designee's") shall have the right to enter onto the Property (without disturbing any occupants thereof) for the purpose of performing the Survey, hazardous materials inspections, soils inspections and other physical inspections and investigations; provided, however, that: (a) Developer shall deliver copies of all inspection reports to City; (b) no inspections or investigations shall damage the Property or any improvements thereon or shall be "invasive" unless the City has received a plan describing the scope of the inspection or investigation and has approved such plan in writing, which approval shall not be unreasonably withheld, conditioned, or delayed; (c) Developer shall immediately repair all damage caused by or related to its inspections; and (d) neither Developer nor any of Developer's Designees shall enter the Property unless Developer has provided City reasonable written evidence (such as insurance certificates and/or copies of policies) that the activities of Developer and the Developer Designees are covered by reasonable liability insurance naming City as an additional

insured. Developer shall defend, indemnify and hold City harmless from and against any and all claims, liabilities, losses, damages, costs and expenses (including, without limitation, attorneys' fees and cost) resulting from the entry onto the Property, inspections or tests by Developer or Developer's Designees. In the event there is any legal challenge or appeal of any matter contemplated in this Section, Developer may (in its sole and absolute discretion) waive the resolution of such legal challenge or appeal by issuing its Approval Notice, and provided that all other Closing Conditions have been satisfied, the Parties shall proceed to the Close of Escrow, provided and only if the City has no monetary or other liability for resolution of such legal challenge or appeal.

2.7.3 Developer Disapproval; Termination. This Agreement shall be terminated upon the following:

2.7.3.1 If, prior to the expiration of the Due Diligence Period, Developer disapproves (in its sole and absolute discretion) of any condition of the Land, Property, or Improvements, or the feasibility of Developer's intended use and development of the thereof for any reason or no reason whatsoever, Developer shall have the right at any time during the Due Diligence Period to terminate this Agreement by written notice to the City and Escrow Holder.

2.7.3.2 If the Developer fails to deliver an Approval Notice to the City and Escrow Holder on or prior to the last day of the Due Diligence Period, Developer shall be deemed to have disapproved feasibility and elected to terminate this Agreement.

2.7.3.3 If Developer is not in default and so terminates this Agreement, or is deemed to have so terminated this Agreement, under sections 2.7.3.1 or 2.7.3.2, then Escrow Holder shall promptly return the Deposit to the Developer and deliver all documents deposited with Escrow Holder to the party that deposited such documents, and neither party shall have any further rights or obligations hereunder; provided, however, that, any costs incurred by the City in processing the applications for the Project and the Required Entitlements that have not been paid or reimbursed by the Developer shall be deducted from the Deposit and paid to the City prior to the release of the Deposit to the Developer.

2.7.4 Releases and Waivers. Developer acknowledges and agrees that in the event Developer does not approve of the condition of the Land, Property, or Improvements under Section 2.7.2, Developer's sole right and remedy shall be to terminate this Agreement under and in accordance with Section 2.7.3, and Developer hereby waives any and all objections to or complaints regarding the Land and its condition, including, but not limited to, federal, state or common law based actions and any private right of action under state and federal law to which the Land is or may be subject, including, but not limited to, CERCLA (as defined in Section 1.1.19), RCRA (as defined in Section 1.1.19), physical characteristics and existing conditions, including, without limitation, structural and geologic conditions, subsurface soil and water conditions, solid and hazardous waste and Hazardous Materials on, under, adjacent to or otherwise affecting the Land, and endangered or threatened species under California or federal law. Developer further hereby assumes the risk of changes in applicable laws and regulations relating to past, present and future environmental conditions on the Land and the risk that

adverse physical characteristics and conditions, including, without limitation, the presence of Hazardous Materials or other contaminants, may not have been revealed by its investigations.

Developer and anyone claiming by, through or under Developer also hereby waives its right to recover from and fully and irrevocably releases City and its council members, board members, employees, officers, directors, representatives, agents, servants, attorneys, successors and assigns (“Released Parties”) from any and all claims, responsibility and/or liability that it may now have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to (i) the condition (including any defects, errors, omissions or other conditions, latent or otherwise, and the presence in the soil, air, structures and surface and subsurface waters of materials or substances that have been or may in the future be determined to be Hazardous Materials or otherwise toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Land under current or future federal, state and local laws regulations or guidelines), valuation, salability or utility of the Land, or its suitability for any purpose whatsoever, and (ii) any information furnished by the Released Parties under or in connection with this Agreement. This release includes claims of which Developer is presently unaware or which Developer does not presently suspect to exist which, if known by Developer, would materially affect Developer’s release to City. Developer specifically waives the provision of California Civil Code Section 1542, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

In this connection and to the extent permitted by law, Developer hereby agrees, represents and warrants that Developer realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Developer nevertheless hereby intends to release, discharge and acquit Released Parties from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which might in any way be included as a material portion of the consideration given to City by Developer in exchange for City’s performance hereunder.

The City has given the Developer material concessions regarding this transaction in exchange for Developer agreeing to the provisions of this Section 2.7.4. The City and Developer have each initialed this Section 2.7.4 to further indicate their awareness and acceptance of each and every provision hereof.

CITY'S INITIALS

DEVELOPER'S INITIALS

2.7.5 Environmental Indemnity. From or after the Close of Escrow on any portion of the Property, Developer shall indemnify, protect, defend and hold harmless the City, and the City's officials, officers, attorneys, employees, consultants, agents and representatives, from and against any and all claims, liabilities, suits, losses, costs, expenses and damages, including but not limited to attorneys' fees and costs, arising directly or indirectly out of any claim for loss or damage to any property, including the Land and Property, injuries to or death of persons, or for the cost of cleaning up the Land and Property and removing Hazardous Materials or toxic substances, materials and waste therefrom, by reason of contamination or adverse effects on the environment, or by reason of any statutes, ordinances, orders, rules or regulations of any governmental entity or agency requiring the clean up of any Hazardous Materials caused by or resulting from any Hazardous Material, or toxic substances or waste existing on or under, any portion of the Land acquired by Developer.

2.8 Deposits into Escrow.

2.8.1 The City hereby covenants and agrees to deliver to Escrow Holder prior to the Close of Escrow the following instruments and documents, the delivery of each of which shall be a condition of the Close of Escrow:

2.8.1.1 A Quitclaim Deed duly executed and acknowledged by the City, in the form attached hereto as **Exhibit "D"**.

2.8.1.2 The affidavit as contemplated by California Revenue and Taxation Code 590 (the "Withholding Affidavit");

2.8.1.3 A Certification of Non-Foreign Status in accordance with I.R.C. Section 1445 (the "FIRPTA Certificate");

2.8.1.4 Such proof of the City's authority and authorization to enter into this transaction as the Title Company may reasonably require in order to issue Developer's Title Policy and ALTA Extended Coverage Policy (if any); and

2.8.1.5 Such proof of the Developer's satisfaction of the Map Act Condition (as defined in Section 2.5.11) sufficient to transfer the applicable portion of the Property as a legal parcel under the California Subdivision Map Act.

2.8.2 The Developer hereby covenants and agrees to deliver to Escrow Holder prior to the Close of Escrow the following instruments and documents, the delivery of each of which shall be a condition of the Close of Escrow:

2.8.2.1 The Purchase Price (as defined in Section 2.1), less the Deposit (as defined in Section 2.2), in the form of a certified or cashier's check or wired funds, plus Developer's Costs;

2.8.2.2 A Preliminary Change of Ownership Report fully completed by the Developer;

2.8.2.3 Such proof of Developer's authority and authorization to enter into this Agreement, on the part of each individual or entity comprising Developer, and to consummate the transaction contemplated herein as may be reasonably request by City or Title Company; and,

2.8.2.4 Any other documents reasonably requested by the City or the Title Company to consummate the transaction contemplated by this Agreement.

2.9 Authorization to Record Documents and Disburse Funds. Escrow Holder is hereby authorized to record the documents and disburse the funds and documents called for hereunder upon the Close of Escrow, provided each of the following conditions has then been fulfilled:

(i) The Title Company can issue in favor of Developer an ALTA Extended Coverage Policy (as defined in Section 2.6.1.2), with liability equal to the Purchase Price (or such lesser amount as shall have been requested by Developer), showing the Land and Property vested in Developer subject only to the Permitted Title Exceptions.

(ii) The City shall have deposited in Escrow the documents required pursuant to Section 2.8.1, and Developer shall have deposited in Escrow the Purchase Price and all Escrow closing costs.

(iii) The City and Developer have confirmed to Escrow Holder that all of the other closing conditions set forth in Section 2.5 have been satisfied or expressly waived in writing by the Party(s) benefited thereby.

Unless otherwise instructed in writing, Escrow Holder is authorized to record at the Close of Escrow any instrument delivered through this Escrow if necessary or proper for issuance of Developer's Title Policy and ALTA Extended Coverage Policy (if any).

2.10 Escrow's Closing Actions. On the Close of Escrow, Escrow Holder shall:

2.10.1 Record the Quitclaim Deed in the Official Records of Monterey County (which shall be deemed delivery of said instruments to Developer);

2.10.2 Issue the Title Policy (or cause the Title Company to issue the Title Policy);

2.10.3 Prorate taxes, assessments, rents, and other charges as of the Close of Escrow in accordance with the settlement statements approved by the Parties.

2.10.4 From funds deposited by the City, pay prorated amounts and charges to be paid by or on behalf of Developer, and return any excess to Developer;

2.10.5 Prepare and deliver to both Developer and the City one signed copy of Escrow Holder's closing statement showing all receipts and disbursements of the Escrow; and

2.10.6 Deliver the FIRPTA Certificate and the Withholding Affidavit to Developer.

2.10.7 Record the Final Map (as further described in Section 2.5.11).

2.10.7.1 From funds deposited by the City (unless otherwise satisfied) pay the proceeds due to FORA or its successor as a result of the purchase of the Land.

2.10.7.2 From funds deposited, issue credit to Developer in the amount of the Deposit. The amount of costs incurred by the City in processing the Project that have not been paid or reimbursed by the Developer shall be separately deposited by Developer in the Escrow in addition to the Deposit and paid from the Escrow to the City.

2.11 Additional Instructions. If required by the Escrow Holder, the Parties shall execute appropriate escrow instructions, prepared by the Escrow Holder, which are not inconsistent herewith. If there is any inconsistency between the terms hereof and the terms of the escrow instructions, the terms hereof shall control unless an intent to amend the terms hereof expressly stated in such instructions.

3. DEVELOPMENT COVENANTS.

3.1 Development of the Project. As a material element of the consideration for this Agreement for the City, Developer shall develop the Land and the Improvements on the Land in accordance with the general standards set forth below; the Plan as generally set forth in **Exhibit "C"** attached hereto and incorporated by reference herein; all requirements of any and all applicable federal, state and local laws, rules and regulations (including any conditions of approval required by the City in its governmental capacity); and all other terms, conditions and requirements of this Agreement; provided that the obligations of Developer set forth therein which are to be performed after the Close of Escrow shall be delayed by Force Majeure Delays, if applicable, and provided, further, that the City Manager may extend any deadline therein in his sole and absolute discretion, not to exceed ninety (90) days per applicable deadline. Until a Certificate of Completion is issued, the Developer shall provide the City with periodic progress reports, as reasonably requested by the City, regarding the status of the construction of the Improvements.

Developer may be authorized to close Escrow on only a portion of the Project with the approval of the City, provided all of the circumstances and conditions specified in Section 2.3 necessary for Closing with respect to such portion of the Project shall have been satisfied, and the Purchase Price shall have been paid in full. The City will require that the first portions of the Project to proceed with Closing and construction shall be the commercial, business, and hotel portions of the Project.

3.2 General Standards.

3.2.1 [Craig to provide more specificity after receipt of the agreed upon Preliminary Plan.] A preliminary draft of the plan (the “Plan”) is attached as **Exhibit “C”**. Any final plan and corresponding entitlement approvals will be subject to compliance with the California Environmental Quality Act (“CEQA”).

3.2.2 The City will acquire the strip of land adjacent to the Land that is owned by California State University, Monterey Bay (“CSUMB”) and incorporate such land into the Project, as shown on the attached Plan. Upon acquisition the City shall quitclaim the parcel to Developer at nominal cost concurrent with the Close of Escrow. The Developer acknowledges that the plans approved by the City provide for recovery of the appraised value of the Property independent of reliance upon the City’s successful acquisition of the CSUMB parcel.

3.2.3 Developer acknowledges and agrees that the full water supply for the Project is not guaranteed, and that water for the full development is intended to be supplied to the Project in connection with the long-term water supply options of the City.

3.2.4 To assist Developer in covering the infrastructure costs of the Project, the City has agreed to reimburse Developer, or relieve Developer from paying, up to \$15,000,000 (Fifteen Million Dollars) in infrastructure costs. City’s obligation to begin paying the \$15,000,000 shall arise upon the City’s annual receipt of either transient occupancy tax and/or sales tax from the Main Gate Project in excess of \$1,000,000. The City shall pay to Developer 25% of the annual receipts until City is receiving \$3,000,000 in annual receipts, and after the City is receiving greater than \$3,000,000 in annual receipts, it will pay to developer 50% of such annual receipts, until Developer has cumulatively received his actual costs of installation of infrastructure as documented by receipts, and not to exceed \$15,000,000.

3.3 Schedule Of Performance

3.3.1 Developer will submit all applications and comply with all requests for information on a timely basis and in accordance with reasonable deadlines established by the City and/or City’s consultants, particularly in connections with the CEQA process.

~~3.3.2 Developer shall develop the General Commercial uses (including the Hotel(s)) and Retail uses as the first phase of the Project.~~

3.3.2 It is the intent of this Agreement that Developer shall bear all costs of the process of obtaining all Required Entitlements for the Project, which shall include but not be limited to the charges and costs of consultants hired by the City (including those of an EIR preparer), and the time of members of the City staff, the City Manager, and the City Attorney devoted to the process. Developer shall submit with the first application the sum of \$200,000.00 to be maintained by the City in a separate account (the “Reimbursement Account”) to cover the initial costs. The Reimbursement Account shall be supplemented by a deposit of \$300,000 at the time of commencement of work on a draft EIR for the Project. At all times the amount in the Reimbursement Account shall be supplemented by Developer based on costs expected to be incurred by the City that exceed the amounts of the foregoing deposits. City shall not be

required to proceed with any aspect or task in the approval process unless Developer has submitted sufficient funds for the Reimbursement Account to cover the estimated costs of such aspect or task. City may request a separate reimbursement agreement to address the details of handling the Reimbursement Account.

3.4 If Close of Escrow occurs and thereafter Developer fails to cause the Project to qualify for its first certificate of occupancy for the [*first element of the Project*] by the date which is twelve (12) calendar months following the date of Close of Escrow, subject to extensions due to delays in construction caused by reason of any Force Majeure Delay or approved by the City Manager, then Developer shall pay damages to the City for such failure to open by such date in the sum of Nine Hundred Fifty-Eight Dollars (\$958.00) per day thereafter (payable from time to time within ten (10) days after written demand from City), until the Project qualifies for the first certificate of occupancy, which amount shall constitute City's liquidated damages for such failure to qualify for a certificate of occupancy by such date; provided, however, that if Developer relinquishes its right to develop the Project pursuant to this Agreement and reconveys title to the Land to the City free of any liens or encumbrances created by the Developer, such penalty shall thereupon cease to apply from and after the date of such reconveyance. Such payments shall be due from time to time within ten (10) days after receipt of demand therefor from the City given from time to time. DEVELOPER AND CITY AGREE THAT BASED UPON THE CIRCUMSTANCES NOW EXISTING, KNOWN AND UNKNOWN, IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO ESTABLISH CITY'S DAMAGES BY REASON OF A DEFAULT BY DEVELOPER CONSISTING OF THE FAILURE TO CAUSE THE PROJECT TO QUALIFY FOR A CERTIFICATE OF OCCUPANCY ON OR BEFORE THE DEADLINE DESCRIBED ABOVE. ACCORDINGLY, DEVELOPER AND CITY AGREE THAT IN THE EVENT OF SUCH DEFAULT BY DEVELOPER, CITY SHALL BE ENTITLED TO THE SUM OF \$958.00 PER DAY AFTER SUCH DEADLINE UNTIL THE PROJECT QUALIFIES FOR A CERTIFICATE OF OCCUPANCY AS LIQUIDATED DAMAGES.

3.5 City's Right to Review Plans and Specifications. In connection with construction of the Project, Developer shall comply in all respects with plans and specifications approved by the City. The City shall have the right to review all plans and specifications for the Improvements prior to their commencement of construction to ensure that the Improvements are constructed in accordance with the City's rules and regulations and the other applicable provisions of this Agreement.

3.6 Construction Contracts. Developer shall retain one or more reputable and financially responsible general contractors (each, a "General Contractor") to undertake the construction of the Project or applicable portion thereof. Each General Contractor shall be acceptable to and approved in writing by the City Manager (in the exercise of his sole and absolute discretion), shall be licensed in California, shall have any other licenses required by the City, and shall be experienced in constructing the type of improvements constituting the Improvements. On or before the date set forth for commencement of construction, Developer shall enter into a written contract, in form and substance acceptable to the City Manager (the "Construction Contract"), with the General Contractor(s) for performing the work constituting the construction of the applicable portion of the Project. Each such Construction Contract shall obligate the General Contractor to commence and complete such construction in accordance with

this Agreement and all applicable federal, state and local laws, rules and regulations. Developer shall obtain all appropriate lien waivers from the General Contractor and its subcontractors, or bonds acceptable to Developer and the City in form and amount, insuring against loss arising from any mechanics', laborers', materialmens' or other like liens filed against the Land.

The Developer shall include provisions within all Construction Contracts which require the construction contractors and their subcontractors to adhere to: (i) the City's Local First Source Recruitment Policy attached hereto as Exhibit "E" [needed]; and (ii) the following local preferences in selecting its contractors and hiring construction workers: (a) first preference shall be for contractors and subcontractors located in the City of Seaside, and (b) second preference should be for contractors and subcontractors located in the County of Monterey. Nothing in this Section shall prevent the Developer from selecting contractors or subcontractors (or the construction contractors from selecting subcontractors) outside of Monterey County if the Developer is unable to obtain competitive bids from the aforementioned preference groups. Competitive bids for the purpose of this Agreement shall be determined based on experience and bid price.

3.7 Construction Loan. ~~Intentionally omitted. Developer shall submit to the City, for approval by the City Manager, evidence of an executed Construction Loan commitment (or non-binding letter of intent containing all material financing terms and conditions) for each portion of the Project prior to commencement of construction thereof. As used herein, the term "Construction Loan" shall mean a loan in an aggregate amount equal to (or greater than) all hard costs of designing and constructing the Improvements of such portion of the Project and all soft costs for owning and operating the such portion of the Project until maturity of the construction loan, as shown in the budget for such Construction Loan and the Project Budget, less equity funds for such purposes to be provided by Developer and shown in the Project Budget.~~

3.8 Costs of Entitlement, Development and Construction. The Developer agrees that all costs, expenses, and fees associated with the applications for and processing of all Required Entitlements for the Project, and the development and construction of the Project (including, but not limited to, governmental permits and approvals that may be required from agencies other than the City), shall be borne by Developer. It is the intent of the City in entering into this Agreement that the City shall have no responsibility for, and shall be held harmless by the Developer from, any and all costs associated in any way with the Project, including any cost of litigation. Developer shall submit to the City the estimated cost, as determined by the City, for all application, processing, EIR, and other costs of obtaining the Required Entitlements to complete the Project, including but not limited to outside consultant costs, as part of a Project Budget. The time of City staff devoted to the Project shall be reimbursed as costs according the schedule set forth in **Exhibit "F"**. [needed]

3.9 Rights of Access and Inspection. In addition to those rights of access to and across the Land to which the City may be entitled by law, members of the staffs of the City shall have a reasonable right of access to the Land, without charge or fee, at any reasonable time, upon reasonable notice to Developer (which may be telephonic notice to _____ or the construction foreman) to inspect the work being performed at the Land in connection with the initial development of the Project but shall not be obligated to do so and City shall not be liable

for any failure to disclose any information discovered by City (or that could or should have been discovered by any City inspection).

3.10 Local, State and Federal Laws. Developer shall carry out the construction of the Improvements on the Land in conformity with all applicable federal, state and local laws, including all applicable federal and state occupation, safety and health standards. Developer will pay, or cause to be paid, the prevailing rates of wages for all work as described in Sections 1720 et seq. of the California Labor Code and related regulations and obtain payment and performance bonds for such work.

3.11 City and Other Governmental City Permits and Approvals. Before commencement of construction or development of any work of improvement on the Land, Developer shall (at Developer's sole expense) secure, or cause to be secured, any and all permits and approvals which may be required by the City or any other governmental agency having jurisdiction over such construction or development, as more particularly set forth in this Agreement.

3.12 No Discrimination During Construction. Developer, for itself and its successors and assigns, agrees that it shall not discriminate against any employee or applicant for employment because of age, sex, marital status, race, handicap, color, religion, creed, ancestry, or national origin in the construction of the Improvements.

3.13 Taxes, Assessments, Encumbrances and Liens. Developer shall pay when due all real property taxes and assessments assessed or levied on portions of the Land from time to time, commencing immediately the Closing.

3.14 No Agency Created. In performing this Agreement, Developer is an independent contractor and not the agent of the City. The City is not an agent of Developer. The City shall not have any responsibility whatsoever (among other costs) for payment to any contractor or supplier of Developer or its contractors.

3.15 Certificate of Completion. Upon Developer's completion of the construction of each portion of the Project, Developer will apply to the City for a Certificate of Completion. The City's issuance of the Certificate of Completion shall constitute the acknowledgement of the City that Developer has complied in all respects with its development obligations (and only the development obligations for that portion of the Project) set forth in this Article 3. Promptly following the City's issuance of a certificate of occupancy for the entire project, and provided that Developer is then in full compliance with all of its obligations under Article 3 of this Agreement, the City Manager shall execute, acknowledge and deliver the Certificate of Completion, which shall be recorded in the Official Records of Monterey County. If the City Manager believes that the Developer is not in compliance with its obligations under this Article 3, the City Manager shall promptly specify the nature of such non-compliance by written notice to Developer.

3.16. Non-Opposition. Developer, for itself and its members, principals, affiliates, representatives, agents, employees, attorneys, officers, directors, heirs, successors and assigns ("Developer Parties"), agrees and covenants that it shall not itself, or counsel

others to, directly or indirectly, initiate, aid, request, encourage, file, fund or participate (collectively, “Participate”) in any activity jeopardizing or challenging the Campus Town project, including without limitation the Campus Town Project Approvals (as defined below), including without limitation: (i) any administrative or judicial hearing or appeal related in any way to any aspect of the approval, permitting, entitlement, development or operation of the Campus Town project, including without limitation the Campus Town Project Approvals, including, without limitation, or an appeal of any of the Campus Town Project Approvals; (ii) any litigation affecting, in any way, approval, permitting, entitlement, development or operation of the Campus Town Project, including without limitation the Campus Town Project Approvals; (iii) any legislation, initiative, referendum or moratorium which would in any way prevent or impede the approval, permitting, entitlement, development or operation of the Campus Town Project, including without limitation the Campus Town the Project Approvals; or (iv) any community meetings, proceedings or other events which have as a topic any form of opposition to the Campus Town project, including without limitation the Campus Town Project Approvals. For purposes of this Agreement, “Campus Town Project Approvals” shall mean the Campus Town Specific Plan Final Environmental Impact Report (State Clearinghouse Number 2018021079), certified by the City on March 5, 2020, the “Project Approvals” (including “Subsequent Project Approvals”) as defined in Section 1.dd of the Development Agreement for the Campus Town project, approved by the City on March 19, 2020, and recorded in Monterey County records (“Campus Town DA”), the consistency determination for Campus Town approved by the Fort Ord Reuse Authority Board on June 2, 2020 and any subsequent approvals, permits and entitlements for the Campus Town project, including without limitation Subsequent Project Approvals as defined in Section 1(ii) of the Campus Town DA, United States Army Corps of Engineers (“USACE”) nationwide permits, California Regional Water Quality Control Board (“RWQCB”) water quality certification, and amendments or modifications to any of the foregoing. Each challenge referenced within this Section, whether to the Campus Town project or to any of the Project Approvals, is referred to herein as a “Campus Town Challenge.”

(b) The City commits to including provision, for the benefit of Developer, similar to the Non-Opposition provisions in Paragraph 3.16 hereinabove in any the Campus Town document(s)s, at such time as those documents should be presented to the City for amendment.

4. LIMITATIONS ON TRANSFERS AND SECURITY INTERESTS.

4.1 Restriction on Transfer of Developer’s Rights and Obligations. Prior to issuance of a Certificate of Completion for the applicable portion of the Project and the opening of such portion of the Project for business, Developer shall not sell, assign, transfer, mortgage, lease (except for space leases conditioned upon Project completion), hypothecate, or convey (collectively, a “Transfer”) the Land or any part thereof or any of Developer’s rights or obligations hereunder, without the City’s prior written consent, which consent may be granted or withheld in the City’s sole and absolute discretion, except for the execution of one or more deeds of trust and related instruments securing Developer’s Construction Loan, a conveyance of the Land resulting from the foreclosure thereof (or a deed in lieu of such a foreclosure). Developer may assign, convey, or otherwise transfer its rights and obligations hereunder, without City’s

consent, but with notice to City, to (i) a partnership in which Developer is one of the general partners, (ii) a limited liability company in which Developer is a managing member or holds at least 50% of the voting or equity interests, (iii) a corporation in which Developer holds at least 50% of the voting or equity interests, (iv) a person or entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Developer. Developer acknowledges that the identity of Developer is of particular concern to the City, and it is because of Developer's identity that the City has entered into this Agreement with Developer. Except for any Transferee approved by the City pursuant to this Section 4.1, and except for any Holder (defined in Section 4.2) that has taken possession of the Land, no voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement. No transfer or assignment of Developer's interest hereunder either with or without the City's prior written approval shall be deemed to release Developer from the obligations of Developer hereunder.

4.1.1 Subject to Section 4.2 below, after the issuance of a Certificate of Completion for a distinct portion of the Project, and the opening of such portion of the Project for business, Developer shall have the right to Transfer such portion of the Land to any party (a "Transferee") provided that:

4.1.1.1 The Transferee (and/or its management company or affiliates, if any) has the experience, quality, character, trade record, financial ability and reputation, as determined by City in its sole and absolute discretion, to own such portion of the Project and to cause it to be managed and operated (whether directly or through an agreement approved by the City in accordance with this Agreement) in compliance with this Agreement; and

4.1.1.2 The Transferee assumes in writing all obligations of Developer set forth in this Agreement with respect to such portion of the Project (except those pursuant to Articles 2 and 3, which shall be deemed satisfied upon the Close of Escrow and the issuance of the Certificate of Completion, respectively).

In the event that Developer desires to Transfer a portion of the Land pursuant to this Section 4.1., Developer will so notify the City, and will provide the City with all pertinent information regarding the Transferee. The City will approve or disapprove the Transferee (in its sole and absolute discretion) within thirty (30) days after receipt of written notice of Developer's intention to make the Transfer. Upon the completion of any Transfer to a Transferee approved by the City as provided in this Section 4.1, the Transferee shall assume all of Developer's rights and obligations under this Agreement. Developer shall not, however, be released from the liabilities and obligations under this Agreement with respect to such portion of the Land.

4.2 Holders of Deeds of Trust. Notwithstanding any provisions of Section 4.2 to the contrary, Developer shall have the right to hypothecate its interest in the Land and the Project pursuant to one or more deeds of trust from an institutional lender approved by the City

(which approval shall not unreasonably be withheld or delayed), for the purpose of securing loans of funds to be used for financing the direct and indirect costs of the Project (including land development costs, reasonable and customary developer fees, loan fees and costs, and other normal and customary project costs), or for refinancing the construction financing with permanent financing. Any institutional lender of record holding any such deed of trust, whose name and address shall have been provided by Developer to City referred to herein as a "Holder."

4.3 Rights of Holders. The City shall deliver a copy of any notice or demand to Developer concerning any breach or default by Developer under this Agreement to each Holder who has previously made a written request to the City for special notice hereunder. Any notice of breach or default by Developer shall not be effective against any such Holder unless given to such Holder. Such Holder shall have the right at its option to cure or remedy any such default and to add the cost thereof to the secured debt and the lien of its security interest. If such breach or default can only be remedied or cured by such Holder upon obtaining possession, such Holder may remedy or cure such breach or default within a reasonable period of time after obtaining possession, provided such Holder seeks possession with diligence through a receiver or foreclosure. Such Holder shall not undertake or continue the construction or completion of the Improvements beyond the extent necessary to conserve or complete the Improvements. Any Holder completing the Improvements must assume all rights and obligations of Developer under this Agreement and shall then be entitled, upon written request made to the City, to a Certificate of Completion from the City.

4.4 Noninterference with Holders. The provisions of this Agreement do not limit the right of Holders (a) to foreclose or otherwise enforce any mortgage, deed of trust, or other security instrument encumbering all or any portion of the Land, and the Improvements thereon, (b) to pursue any remedies for the enforcement of any pledge or lien encumbering such portions of the Land, or (c) to accept, or cause its nominee to accept, a deed or other conveyance in lieu of foreclosure or other realization. In the event of (i) a foreclosure sale under any such mortgage, deed of trust or other lien or encumbrance, (ii) a sale pursuant to any power of sale contained in any such mortgage or deed of trust, or (iii) a deed or other conveyance in lieu of any such sale, the purchaser or purchasers and their successors and assigns, and such portions of the Land shall be, and shall continue to be, subject to all of the conditions, restrictions and covenants of all documents and instruments recorded pursuant to this Agreement, including, without limitation, the restrictions set forth in the Quitclaim Deed on such property from the City to Developer. The City agrees to execute such further documentation regarding the rights of any Holder as is customary with respect to construction or permanent financing, as the case may be, to the extent that such documentation is reasonably requested by any Holder and is reasonably approved by the City.

4.5 Right of City to Cure. In the event of a default or breach by the Developer of a loan by a Holder prior to the completion of the Improvements, the City may, upon prior written notice to the Developer, cure the default, prior to the completion of any foreclosure. In such event the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Land or any portion thereof to the extent of such costs and disbursements. The City agrees that such lien shall be subordinate to any lien in favor of a Holder, and the City shall execute

from time to time any and all documentation reasonably requested by the Developer to effect such subordination.

4.6 Right of City to Satisfy Other Liens. After the Close of Escrow and after the Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Land or any portion thereof, and has failed to do so, in whole or in part, the City shall, upon prior written notice to the Developer, have the right to satisfy any such lien or encumbrances and charge the Developer with the costs incurred by the City in doing so; however, nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount therein and so long as such delay in payment shall not subject the Land or any portion thereof to forfeiture or sale.

5. DEFAULT, REMEDIES AND TERMINATION.

5.1 If the sale of the Land is not consummated in accordance with the terms of this Agreement due to the default of either Party, the remedies available are as follows:

5.1.1 Remedies Upon the City's Default. If the City fails to allow for the Closing as contemplated in this Agreement in a timely manner because of a default by the City, then the Developer may (i) terminate this Agreement by delivery of written notice to the City and Escrow Holder, or (ii) purchase the Land (or if necessary, seek specific performance of this Agreement) provided that the City shall be provided at least ten (10) business days to cure such default.

5.1.2 Remedies Upon the Developer's Default. If the Developer fails to allow for the Closing as contemplated in this Agreement in a timely manner because of a default by the Developer, then the City may terminate this Agreement by delivery of written notice to the Developer and Escrow Holder, provided that the Developer shall be provided at least ten (10) business days to cure such default.

5.1.3 Deposit. If Developer is not in default and does not provide its Approval Notice, this Agreement shall terminate and Escrow Holder shall promptly return the Deposit (along with any accumulated interest) to the Developer, less any costs of the City associated with the Project that have not been paid or reimbursed to the City by Developer. .

5.1.4 Escrow Expenses. If the Developer fails to allow for the Closing as contemplated in this Agreement for any reason (other than a default by the City), including, without limitation, termination as permitted under the Closing Conditions as provided in Section 2.5, the Developer shall be liable for all of the Escrow Costs.

5.1.5 The Developer's Liability. Other than loss of the Deposit as liquidated damages, together with any amounts due the City as described in section 5.1.3 and payment of the Escrow Expenses, the Developer shall have no further liability to the City of any kind whatsoever by reason of the termination and/or non-performance of this Agreement by the Developer.

5.2 No Speculation. The rights established in this Article are to be interpreted in light of the fact that the City will convey the Land to Developer for development and operation of the Project thereon and not for speculation in undeveloped land or for construction of different improvements.

5.3 No Personal Liability. No representative, agent, attorney, consultant, or employee of the City shall personally be liable to the Developer or any successor in interest, in the event of any Default by the City, or for any amount which may become due to the Developer or any successor in interest, on any obligation under the terms of this Agreement. No representative, agent, attorney, consultant, or employee of the Developer shall personally be liable to the City or any successor in interest, in the event of any Default by the Developer, or for any amount which may become due to the City or any successor in interest, on any obligation under the terms of this Agreement.

5.4 Rights and Remedies are Cumulative. The rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the non-defaulting Party; provided, however, that liquidated damages specified herein shall constitute the sole damages recoverable for the default giving rise to such liquidated damages.

5.5 Inaction Not a Waiver of Default. Any failures or delays by either Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such Party of its rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. The acceptance by a Party of less than the full amount due from the other party shall not constitute a waiver of such Party's right to demand and receive the full amount due, unless such Party executes a specific accord and satisfaction.

6. LEGAL CHALLENGE/INDEMNITY.

6.1 (a) Indemnification for Challenges to Project Approvals. City and Developer shall cooperate in the defense of any court action or proceeding instituted by a third party challenging the validity any of the Project Approvals (including this Agreement), the Final EIR, or any CEQA determination related to any of the Project Approval(s), ("Litigation Challenge"), and the Parties shall keep each other informed of all developments relating to such defense, subject only to confidentiality requirements that may prevent the communication of such information. To the extent Developer desires to contest or defend such Litigation Challenge, (i) Developer shall take the lead role defending such Litigation Challenge and may, in its sole discretion, elect to be represented by the legal counsel of its choice; (ii) City may, in its sole discretion, elect to be separately represented by the legal counsel of its choice, selected after consultation with Developer, in any action or proceeding, with the reasonable costs of such representation to be paid by Developer in an amount not to exceed One Hundred Thousand Dollars (\$100,000.00) without Developer's written approval, not to be unreasonably withheld, conditioned, or delayed; (iii) within twenty (20) days after written notification by City of its retention of counsel in accordance with this Section, Developer shall establish a Fifty Thousand Dollar (\$50,000.00) reimbursement account for City's legal expenses and Developer shall

reimburse City, within forty-five (45) days following City's written demand therefor, which may be made from time to time during the course of such litigation, all reasonable costs incurred by City in connection with the Litigation Challenge, including City's reasonable administrative, legal, and court costs and City Attorney oversight expenses, subject to the cap set forth in the preceding clause (ii); and (iv) Developer shall indemnify, defend, and hold harmless the City and its elected and appointed officials, officers, agents, employees, contractors and representatives (the "City Parties") from and against any damages, attorneys' fees or cost awards, including attorneys' fees awarded under Code of Civil Procedure section 1021.5, assessed or awarded against City by way of judgment, settlement, or stipulation. Upon request by Developer, City shall enter into a joint defense agreement in a form reasonably acceptable to the City Attorney to facilitate the sharing of materials and strategies related to the defense of such Litigation Challenge without waiver of attorney client privilege. Any proposed settlement of a Litigation Challenge by a Party shall be subject to the approval of the other Party, such approval not to be unreasonably withheld, conditioned or delayed. If the terms of the proposed settlement would constitute an amendment or modification of any Project Approvals (including this Agreement), the settlement shall not become effective unless such amendment or modification is approved by City in accordance with the applicable rules, and City reserves its full legislative discretion, in accordance with applicable law, with respect thereto. If Developer opts not to contest or defend such Litigation Challenge, City shall have no obligation to do so, but shall have the right to do so at its own expense.

6.2 Notice of Action. City shall promptly notify Developer claim, action or proceeding within the scope of this Section.

6.3 If, in such Litigation Challenge, a final judgment or other final order is issued by the court which has the effect of invalidating or rendering ineffective, in whole or in part, any provision of this Agreement, the Agreement itself, Required Entitlements, any other Condition Precedent, the following shall apply:

(i) The City and the Developer shall meet and endeavor, in good faith, to attempt to reach agreement on any amendments needed to allow for the contemplated sale of the Land to proceed in a reasonable manner, taking into account the terms and conditions of the court's judgment or order and the effect of any such judgment, order, amendments, or any other terms and conditions has on the value Property (in whole or in part).

(ii) In the event that an amendment is not required, and the court's judgment or order requires the City to engage in hiring any type of consultant or amend any existing report or findings of the City, other or further proceedings, the City agrees to comply with the terms of the judgment or order expeditiously as long as the City is not required to incur additional costs.

(iii) The Litigation Challenge shall not be settled without the approval of the City. The Developer may not settle the Litigation Challenge even if the terms are acceptable to Developer.

6.4 Survival. The terms of this Article 6 and Developer's indemnity obligations herein shall survive the Close of Escrow and shall not merge into any quitclaim or other deed or other document transferring title, and shall survive the termination or expiration of this agreement

7. REPRESENTATIONS AND WARRANTIES.

7.1 Developer Representations. Developer represents and warrants to the City as of the date of this Agreement and as of the Close of Escrow that:

(i) Developer is a limited liability company validly existing and in good standing under the laws of the State of California.

(ii) Developer has duly authorized the execution and performance of this Agreement and the execution and performance of all of the closing documents set forth herein.

(iii) Developer's execution and performance of this Agreement and the closing documents will not result in a material breach of any provision of any agreement or any deed of trust, lease, contract, agreement, instrument, order, judgment or decree by to which Developer is a party.

(iv) The Developer has not engaged a broker with respect to the purchase of the Land contemplated herein.

(v) Developer, on behalf of itself and the Developer Parties, represents and warrants that the Developer Parties as of the Effective Date are not currently and will have not Participated in any Campus Town Challenge.

7.2 City Representations. The City hereby represents and warrants to the Developer as of the date of this Agreement and as of the Close of Escrow that:

7.2.1 The City has the legal power, right and authority to enter into this Agreement and the instruments referenced in this Agreement, and to consummate the transactions contemplated in this Agreement.

7.2.2 The individual(s) executing this Agreement and the instruments referenced in this Agreement on behalf of the City have the legal power, right and actual authority to bind the City to the terms and conditions of this Agreement and the instruments referenced in this Agreement.

8. GENERAL PROVISIONS.

8.1 Notices. All notices and demands shall be given in writing by certified mail, postage prepaid, and return receipt requested, or by reputable overnight messenger. Notices shall be considered given upon the earlier of (a) one business day following deposit or delivery with a nationally recognized overnight courier delivery charges prepaid, or (b) upon

delivery or attempted delivery as shown on the return receipt if sent by certified mail. Notices shall be addressed as provided below for the respective Party; provided that if any Party gives notice in writing of a change of name or address, notices to such Party shall thereafter be given as demanded in that notice:

If to the City: City of Seaside
 440 Harcourt Avenue
 Seaside, California 93955
 Attn: City Manager

With E-copy to cityattorney@ci.seaside.ca.us

If to the Developer: Petrovich Development Company
 825 K Street, 3rd Floor
 Sacramento, California 95814
 Attn: Paul Petrovich

8.2 Construction. The Parties agree that each Party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement or any amendments or exhibits thereto. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties.

8.3 Interpretation. In this Agreement the neuter gender includes the feminine and masculine, and singular number includes the plural, and the words “person” and “party” include corporation, partnership, firm, trust, or association wherever the context so requires. Unless otherwise required by a specific provision of this Agreement, time hereunder is to be computed by excluding the first day and including the last day. If the date for performance falls on a Saturday, Sunday, or legal holiday, the date for performance shall be extended to the next business day. All references in this Agreement to a number of days in which either party shall have to consent, approve or perform shall mean calendar days unless specifically stated to be business days.

8.4 Time of the Essence. Time is of the essence of this Agreement.

8.5 Warranty Against Payment of Consideration for Agreement. Developer warrants that it has not paid or given, and will not pay or give, to any third person, any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers and attorneys.

8.6 Attorneys’ Fees. If any Party brings an action to enforce the terms hereof or declare its rights hereunder, the prevailing Party in any such action shall be entitled to its reasonable attorneys’ fees to be paid by the losing Party as fixed by the court. If the City is made a Party to any litigation instituted by or against Developer or to any litigation attacking the validity of this Agreement, then Developer shall indemnify and defend the City against, and save it harmless from, all costs, expenses (including reasonable attorneys’ fees), claims, liabilities,

damages and losses incurred by the City in connection with such litigation provided, however, that in no event shall the Developer be obligated to pay any damages awarded to any person or entity that result from the gross negligence or willful misconduct of the City.

8.7 Entire Agreement Waivers and Amendments. Except for that certain Hold Harmless and Indemnification Agreement dated September ____, 2019, between Developer and the City, this Agreement, together with all attachments and exhibits hereto, and all agreements executed pursuant hereto, constitutes the entire understanding and agreement of the Parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and it supersedes all negotiations or previous agreements between the Parties with respect to the subject matter hereof. No subsequent agreement, representation or promise made by either Party hereto, or by or to any employee, officer, agent or representative of either Party, shall be of any effect unless it is in writing and executed by the Party to be bound thereby. No person is authorized to make, and by execution hereof Developer and the City acknowledge that no person has made, any representation, warranty, guaranty or promise except as expressly set forth herein; and no agreement, statement, representation or promise made by any such person which is not contained herein shall be valid or binding on Developer or the City.

8.8 Severability. Each and every provision of this Agreement is, and shall be construed to be, a separate and independent covenant and agreement. If any term or provision of this Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected hereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law. Notwithstanding the foregoing, the terms and provisions of Section 3.16 and 7.1(v) shall not be severable; if the terms and provisions of Section 3.16 or 7.1(v) are held to be invalid or unenforceable, this Agreement shall terminate and be no further force and effect except as otherwise provided herein.

8.9 Headings. All section headings and subheadings are inserted for convenience only and shall have no effect on the construction or interpretation of this Agreement.

8.10 No Third-Party Beneficiaries. This Agreement is made and entered into for the sole benefit of the Parties, and there are no third-party beneficiaries of this Agreement. No other person shall have any right of action based upon any provision of this Agreement.

8.11 Governing Law; Jurisdiction; Service of Process. This Agreement and the rights of the Parties shall be governed by California law. The Parties consent to the exclusive jurisdiction of the California Superior Court for the County of Monterey. If any legal action is commenced by Developer against the City, or by City against Developer, service of process on the City shall be made by personal service upon the City Manager, or in such other manner as may be provided by law. If any legal action is commenced by City against Developer, service of process on Developer shall be made by personal service on Developer's agent for service of process, or in such other manner as may be provided by law. Developer agrees, for the benefit of the City, that it shall designate an agent for service of process in the State of California in the manner prescribed by law.

8.12 Assignment. Except as otherwise expressly provided in Article 7 , the Developer may not assign, transfer or convey its rights or delegate its obligations under this Agreement without the prior written consent of the City, which City may withhold in its sole discretion.

8.13 Survival. The provisions hereof shall not merge into, but rather shall survive, any conveyance hereunder (including, without limitation, the delivery and recordation of the Quitclaim Deed) and the delivery of all consideration.

8.14 Estoppel Certificates. Upon written request of the Developer, the City shall within thirty (30) days of the date of such request, execute and deliver to Developer, a written statement: certifying, to the best of City's knowledge, that (a) this Agreement in full force and effect, if such is the case, and has not been modified or amended, except as shall be stated; and (b) that no default by the Developer exists under this Agreement.

8.15 City Actions. In addition to any provisions of this Agreement that gives the City Manager the authority to make decisions and grant approvals, the City hereby authorizes the City Manager after consultation with the City Attorney to deliver such approvals, consents as are contemplated by this Agreement, waive requirements under this Agreement, and modify this Agreement, on behalf of the City provided that the applicable approval, consent, waiver or modification is not substantial (i.e., does not change the fundamental business transaction between the Developer and the City, as determined by the City Manager in consultation with the City Attorney).

8.16 Force Majeure. Notwithstanding anything to the contrary in this Agreement, nonperformance shall be excused when performance is prevented or delayed by reason of any of the following forces reasonably beyond the control of such party (a "Force Majeure Delay"): (i) failure to perform attributable to any strike, lockout or other labor or industrial disturbance, civil disturbance, future order claiming jurisdiction, act of the public enemy, war, riot, sabotage, blockade, embargo, inability to secure customary materials, supplies or labor through ordinary sources by reason of regulation or order of any government or regulatory body; and, (ii) delay attributable to severe weather, lightning, earthquake, fire, storm, hurricane, tornado, flood, washout, explosion, or any other similar industry-wide cause beyond the reasonable control of the party from whom performance is required, or any of its contractors or other representatives. Any prevention, delay or stoppage due to any Force Majeure Delay shall excuse the performance of the party affected for a period of time equal to any such prevention, delay or stoppage (except the obligations that can be satisfied by the payment of money).

8.17 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed as original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the day and year first above written.

DEVELOPER:

PETROVICH DEVELOPMENT COMPANY,
LLC, a California limited liability company,

CITY:

CITY OF SEASIDE

By: _____
Paul Petrovich, Managing Member

By: _____
Ian Oglesby, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

By: _____

EXHIBIT “A”

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT “B”

PARCEL MAP & DEPICTION OF “LAND”

(Petrovich to Provide)

EXHIBIT “C”

PRELIMINARY PLAN

(Petrovich to Provide)

EXHIBIT "D"

FORM OF QUITCLAIM DEED

Recording Requested by and when recorded return to,
and mail tax statements to:

Exempt from Recording Fees Pursuant to
Government Code Section 27383

Documentary transfer tax is \$ _____ based on the full value of the property conveyed.

QUITCLAIM DEED

The undersigned grantor(s) declare(s):

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the CITY OF SEASIDE, as successor to the Redevelopment Agency of the City of Seaside ("Grantor") hereby QUITCLAIMS to PETROVICH DEVELOPMENT COMPANY, LLC, a California limited liability company ("Grantee") the land (the "Land") located in the City of Seaside, County of Monterey, State of California described on Exhibit "A".

SUBJECT TO, all matters of record.

This quitclaim of the Land is subject to the terms of a Purchase and Sale Agreement entered into by and between Grantor and Grantee dated as of September ___, 2020, (the "Agreement") the terms of which are incorporated herein by reference). A copy of the Agreement is available for public inspection at the offices of the Grantor at 440 Harcourt Avenue, Seaside, California 93955.

IN WITNESS WHEREOF, the undersigned has executed this Quitclaim Deed as of the date set forth below.

Dated: _____

CITY OF SEASIDE

By: _____

Print Name: _____
Mayor

ATTEST:

City Clerk

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 Monterey)
)

On _____ before me, _____ (insert name and title of the officer) 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 _____ (Seal)
Signature of Notary Public

EXHIBIT “E”
FIRST SOURCE RECRUITMENT POLICY

(City to Provide)

EXHIBIT 'F'
RATES OF CITY STAFF FOR WORK ON PROJCT
(CITY TO PROVIDE)

TABLE OF EXHIBITS

EXHIBIT “A”	LEGAL DESCRIPTION OF PROPERTY
EXHIBIT “B”	PARCEL MAP AND DEPICTION OF “LAND”
EXHIBIT “C”	PRELIMINARY PLAN
EXHIBIT “D”	FORM OF QUITCLAIM DEED
EXHIBIT “E”	FIRST SOURCE RECRUITMENT POLICY
EXHIBIT ‘F’	RATES OF CITY STAFF FOR WORK ON PROJECT



PROJECT SUMMARY

RESIDENTIAL	UNITS
MULTI FAMILY	150
BROWNSTONES	76
ALLEY 4 PACK	64
APARTMENTS/RETAIL "E"	42
STUDENT HOUSING	330

TOTAL	662
* AFFORDABLE HOUSING UNITS FROM ABOVE	67

SHOPS & RETAIL	SF
SHOPS "A"	8,000
SHOPS "B"	8,000
SHOPS "C"	8,000
SHOPS "D"	16,000
SHOPS UNDER "SH"	7,000
RETAIL "E"	34,000
BREWERY	18,000

TOTAL	98,000
-------	--------

HOTEL	KEYS
HOTEL "A"	225
HOTEL "B"	225

TOTAL	450
-------	-----

QUONSET HUTS	1.2 ACRES
FLEX ZONE	3.1 ACRES

MAIN GATE
SEASIDE | CALIFORNIA

CLIENT | 17-129
DATE 09 | 08 | 20





CITY OF SEASIDE STAFF REPORT

Item No.: 10.D.

TO: City Council

BY: Craig Malin, City Manager

DATE: September 17, 2020

SUBJECT: CITY BLUE ZONE PARTICIPATION REQUEST

PURPOSE & RECOMMENDATION

Authorize City participation in regional Blue Zone effort.

BACKGROUND

"Blue Zones" were first identified in the mid 2000's as places where people lead substantially more healthy and happy lives, with significantly longer lifespans. A mix of climate, air and water quality, built environment, exercise opportunity, healthy diet, social welfare and justice and accessible health care, a "Blue Zone" can exist either through happy circumstance (rare) or public policy effort (becoming less rare), guided by the Blue Zones Project.

In February, Mayor Oglesby and senior staff met with Blue Zone Project staff as they were surveying the region for potential participation in a Blue Zone effort. Regional sponsors including the Salinas Valley Memorial Healthcare System, Taylor Farms and Montage Health are funding the exploratory effort.

With Seaside's attributes and vision substantially in synch with Blue Zone ideals, the regional sponsors would like to include Seaside in the regional effort, at no cost to the City.

With rare opportunities to provide healthier, happier, longer-living lives for our citizens at no cost, participation in the regional project is recommended.

FISCAL IMPACT

No cost to be identified as a Blue Zones participating community. Staff work and meetings required.

ATTACHMENTS

1. Email requesting Blue Zone Project Expansion Consideration
-

Reviewed for Submission to the
City Council by:



Craig Malin, City Manager

Craig Malin - Blue Zones Project Expansion Consideration

From: Kendra Howell <khowell@svmh.com>
To: "Ian Oglesby - City of Seaside (ioglesby@ci.seaside.ca.us)" <ioglesby@ci...>
Date: 9/3/2020 12:40 PM
Subject: Blue Zones Project Expansion Consideration
CC: Tiffany DiTullio <TDITULLIO@svmh.com>

Hello Mayor Oglesby, City Manager Malin, and Ms. Stearns –

I do hope that this message finds you and your families well. To say that the past several months have been challenging times is an understatement. My best wishes go to you and your staff as you manage the city's business and the health and wellness of Seaside residents.

Thank you for making the time in February to learn more about Blue Zones Project and providing insightful information as our local sponsors explored the potential of expansion. The local sponsors, Salinas Valley Memorial Healthcare System, Taylor Farms and Montage Health have been working closely with the Blue Zones Project Central leadership to review the feedback from participants throughout the county. As a result of the site visit in late February, the assessment identifies Seaside as a potential location for project expansion. While Blue Zones Project is a publically endorsed, privately funded project, successful implementation truly does depend on engagement at the city level to support the efforts for sustainable change. I am reaching out to share the news of Seaside being identified as a city showing high readiness for implementation of Blue Zones Project and to assess your level of interest to support these efforts should the project be agreed upon for expansion.

As we discussed when we met, there is no cost to a city to be identified as a Blue Zones participating community – the project (staff, resources) are funded by the sponsoring organizations. However, the commitment of the city to support the project principles is key to success. For example, in Salinas, we work closely with city staff to first determine the areas of alignment and then work to support their efforts (Vision Zero Planning, Safe Routes to School, ADU advocacy, etc.). Several city staff participate on our committees. Restaurants, worksites, grocery, and schools are also engaged so it truly becomes a community effort to support health and wellness. I'd be happy to let Ray Corpuz know we are communicating should you wish to contact him for more details.

I've copied Tiffany DiTullio, the Executive Director of our local project. Please let us know your thoughts and any questions you may have. We'd be happy to schedule a time to talk also. We hope to know final expansion plans by October but rollout would not begin until early 2021.

Warm regards - Kendra

Kendra Howell, MPP | Senior Policy Lead, Blue Zones Project®
 Director, Government Affairs | Salinas Valley Memorial Healthcare System
 (831) 869-9195
khowell@svmh.com

Blue Zones Project®

We help people live longer, better lives by improving their surroundings.

[In the news](#) | [MailScanner has detected a possible fraud attempt from "community.bluezonesproject.com" claiming to be bluezonesprojectmontereycounty.com](#)

CONFIDENTIALITY NOTICE: This message and any included attachments are from Salinas Valley Memorial Healthcare System and are intended only for the addressee. The information contained in this message is confidential and may constitute inside or non-public information under international, federal, or state securities laws. Unauthorized forwarding, printing, copying, distribution, or use of such information is strictly prohibited and may be unlawful. If you are not the addressee, please promptly delete this message and notify the sender of the delivery error by e-mail or you may call Salinas Valley Memorial Healthcare System's Privacy Officer in Salinas, California, U.S.A. at (+1) (831) 755-0751.



CITY OF SEASIDE STAFF REPORT

Item No.: 11.A.

TO: City Council

BY: Craig Malin, City Manager

DATE: September 17, 2020

**SUBJECT: COUNCIL MEMBER CAMPBELL REQUEST COLONEL DURHAM RV
PARKING SITE REPORT & DISCUSSION**

PURPOSE & RECOMMENDATION

Receive report and discuss.

BACKGROUND

The Colonel Durham RV parking site was established in late July as an alternative site to the prior Roberts Lake location. It was directed by the City Council to be a temporary location, for 120 days (late November). The site had the advantages of being larger, quieter and considerably safer from a COVID-19 transmission perspective in that it reduced cross-usage with park users from Seaside or other communities. The site also had the advantage of being served with potable water, and a shower was constructed for residents.

The City's earliest efforts at the Colonel Durham site were to prepare the site for RV occupants. Presently, 32 vehicles and 33 residents are at the site. The early efforts, largely successful, have transitioned to providing written site rules and permits for occupants, focused on safety. The rules are attached. Under the rules, one person has left the site and is not allowed to return. City staff has also been focused on a HCD grant opportunity which may provide housing for homeless Seaside residents. The outcome of the grant application is as yet unknown.

Staff expects City expenses for the site to range up to \$60,000 (see attached summary), funded through CARES Act revenue. At present, no better or more cost-efficient site has been identified to replace the site at the conclusion of the Council-authorized 120 days.

FISCAL IMPACT

Per attached summary.

ATTACHMENTS

1. Col Durham Site Rules
 2. Col Durham Site Expenses
-

Reviewed for Submission to the
City Council by:

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Craig Malin, City Manager

Parking Site Rules

The Colonel Durham RV parking location is for the benefit of individuals who were previously parked at the Roberts Lake site. It is a temporary location, by authorization of the Seaside City Council, allowing people with permits to sleep in their vehicles. Rules for the site include:

1. Vehicles must be operational and not leak onto the ground.
2. Each participating vehicle must display a current permit. Permits will be provided to signatories of this document.
3. Open fires of any kind, including fireworks, are prohibited. Cooking outside or inside vehicles is permitted only consistent with Seaside Fire Department guidance. **Any open fire of any kind that is inconsistent with Seaside Fire Department cooking guidance will be cause for revocation of a permit to stay at the site.**
4. Quiet hours are to be observed from 11:00 PM to 7:00 AM.
5. Violence, intimidation or verbal abuse will not be tolerated. Degrading ethnic, racist, sexist, homophobic or other demeaning remarks are not acceptable. **Any violence of any kind will be cause for revocation of a permit to stay at the site.**
6. Belongings must be stored inside vehicles. New structures, including tents, are prohibited.
7. Trash and recyclables must be disposed of in the designated trash cans.
8. Pets must be under the owner's immediate control at all times: either inside the vehicle or on a leash not more than 8 feet in length.
9. Use of illegal drugs is prohibited on City property.
10. All propane tanks must be securely fastened to a recreational vehicle's propane tank mounting bracket.

11. A smoke/carbon monoxide detector is required for recreational vehicles. The City will provide free detectors, if needed.
12. Trespassing in City buildings is prohibited. **Trespassing in the City building will be cause for revocation of a permit to stay at the site.**
13. Recreational vehicles shall not be parked within ten feet of each other.
14. Electricity hookups to any source other than a generator are prohibited.
15. Parking lot users assume all risks associated with use of the lot. Individuals are responsible for ensuring all precautions are taken to prevent the spread of COVID19.

BY SIGNING BELOW I HEREBY ACKNOWLEDGE HAVING READ AND UNDERSTOOD THE ABOVE RULES AND REGULATIONS AND THAT A VIOLATION OF SUCH RULES AND REGULATIONS MAY RESULT IN BEING ASKED TO LEAVE THE PARKING AREA; I ALSO UNDERSTAND THAT THIS IS A TEMPORARY PARKING LOCATION ONLY BY PERMISSION OF THE CITY.

signature

date

print name

email or phone #

vehicle description / license plate #

Col. Durham RV Site Expenses
One-time Costs and Four Month Operating Projection

	One-time Cost	Projected Ongoing Costs - 4 months	Total Projected Costs
Portable toilets and sink stations (inc. every day service)	-	\$10,000	\$10,000
Dumpsters (inc. service)	-	4,800	4,800
Waterline (materials and labor)	\$3,600	-	3,600
Sewer line & Shower Construction (materials and labor)	7,500	-	7,500
Robert's Lake clean-up (labor and dump costs)	4,800	-	4,800
No entry signs	759	-	759
Clean-up of junk found at church site and 2 parking lots (labor and dump costs)	4,000	-	4,000
2 Hunting cameras (\$100/ ea.)	200	-	200
Parking By City Approval Only signs	1,115	-	1,115
Drive by and other misc. requests by PW Staff	-	12,800	12,800
3 Trash cans (\$40/ea.)	120	-	120
30 Solar heated shower water bags (\$20/ea.)	600	-	600
Police call out time	2,096	5,120	7,216
Vehicle Towing	2,280	-	2,280
Total	\$27,070	\$32,720	\$59,790

Notes:

Water usage costs are unknown at this time and will be based on actual usage
Sewer usage cost are unknown at this time and will be based on actual usage



CITY OF SEASIDE STAFF REPORT

Item No.: 11.B.

TO: City Council

FROM: Craig Malin, City Manager

BY: Lesley Milton, Assistant City Manager

DATE: September 17, 2020

**SUBJECT: COUNCIL MEMBER CAMPBELL REQUESTED A PLAN TO
PROVIDE AN EDUCATION OUTREACH PROGRAM REGARDING
ILLEGAL FIREWORKS IN THE CITY**

PURPOSE & RECOMMENDATION

To discuss Council Member request and provide direction to staff.

BACKGROUND

For the last three years the City has put forth a robust 4th of July Fireworks public education campaign which promoted both safe practices for using Safe and Sane Fireworks and the ban on illegal fireworks including the deterrent citation costs and non traditional enforcement strategies. Staff deployed methods including Public Service Announcements, flyers, direct mailers, door hangers, yard signs, and informational videos used to educate and warn Seaside property owners, Seaside residents, and Neighborhood and Business Block Watch groups, flyers were passed out at schools during the end of the school year rallies, posters were hung in window throughout the business districts and Police Department listening sessions were conducted, all concurrent with paid social media blast campaigns prior to July 4th promoting the anonymous tip line giving individuals the ability to anonymously report illegal firework possession and use. Additionally changeable messaging sign boards were displayed in the three most traveled corridors for the two weeks prior to the holiday warning of \$2,500 fines for illegal firework possession, the use of aerial photography and undercover officers to enforce fireworks ordinances.

Member of our community, businesses and community partners all seek and receive information from a variety of communication channels, and due to the current pandemic, it's not always traditional media. Some have costs associated, some without, but all that require staff time. The most effective communication strategies have individually crafted messages and audience target marketing. Should the Council direct staff to continue, expand or modify this outreach effort, direction should be given as to which strategies they deem most effective and how much money and staff time should be allocated for this effort.

FISCAL IMPACT

None with receiving the presentation. 2020 4th of July Fireworks media campaign expenditures totaled approximately \$8,000. Below are some communication strategies and associated hard costs, which do not include staff time, for discussion purposes.

No Cost/Staff Time Only Communication Strategies

Media releases
Email blasts
Social media
Website notices
Text message alerts (emergency system)
City Council Presentations
Town hall meetings

Costs associated Communication Strategies

*Estimated based on previous purchases

Postcards	\$5,000 per mailing
Newsletters	\$13,000 per mailing
Posters	\$1.25 per each
Flyers	\$.30 per each
Door hangers	\$250 per 2,000
Yard Signs in public spaces	\$10 per each
Contact Cards for social media contacts	\$15 per 1,000
Banners in public building	\$125 per each
Public notice boards at major parks	\$3,000-\$5,000 per each initial investment
Metal street signs	\$50 per each, plus pole
Light pole banners	\$50 per each

ATTACHMENTS

None

Reviewed for Submission to the
City Council by:



Craig Malin, City Manager