A G E N D A
CITY OF SEASIDE
CITY COUNCIL

REGULAR MEETING
VIRTUAL ONLY
Thursday, October 15, 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 channelhttps://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. CONSENT AGENDA

A. APPROVE MINUTES FROM OCTOBER 1, 2020 REGULAR MEETING

RECOMMENDATION: That the minutes be approved as presented.

B. APPROVE AND FILE CITY CHECKS

RECOMMENDATION: Approve and file the accounts payable and wired payments made during the period of September 19, 2020 through October 3, 2020 including the payroll and benefits checks, direct deposits and wired payments related to the pay period ending September 24, 2020. Total Accounts Payable and Payroll for the above referenced period is $2,255,652.35.

C. ENVIRONMENTAL SERVICES COOPERATIVE AGREEMENT (ESCA) OCTOBER QUARTERLY REPORT

RECOMMENDATION: Receive the Environmental Services Cooperative Agreement (ESCA) quarterly update.

D. APPROVE A RESOLUTION EXECUTING A MAINTENANCE AND RIGHT OF ENTRY AGREEMENT WITH THE MCDONALD'S IN SEASIDE

RECOMMENDATION: Approve a Resolution (Attachment 1) authorizing the City Manager to execute a Maintenance and Right of Entry Agreement (Attachment 2) with the property owner of McDonald's in Seaside.

E. ADOPT RESOLUTION ACCEPTING THE CERTIFICATE OF SIGNATURE VERIFICATION FOR THE REFERENDUM AGAINST ORDNANCE No. 1095 AND DECLARING THE SUFFICIENCY OF THE PETITION

RECOMMENDATION: Adopt the resolution declaring the sufficiency of the petition.

F. AUTHORIZE RESPONSE TO 2019-2020 MONTEREY COUNTY CIVIL GRAND JURY FINAL REPORT - "SEXUAL HARASSMENT PREVENTION #TRAININGCOMPLIANCE"

RECOMMENDATION: Accept and authorize the response to the Monterey Civil Grand Jury Final Report - Sexual Harassment Prevention #TrainingCompliance.

G. APPROVE RESOLUTION RATIFYING THE 8TH SUPPLEMENT TO THE PROCLAMATION OF LOCAL EMERGENCY

RECOMMENDATION: Adopt the resolution ratifying the allowance of food trucks on local streets when associated with brick and mortar businesses.

H. APPROVE RESOLUTION AUTHORIZING APPLICATION FOR AND ENTERING INTO AGREEMENTS FOR THE REGIONAL EARLY ACTION PLANNING (REAP) GRANT AND AUTHORIZE THE CITY FINANCE DIRECTOR TO MAKE ASSOCIATED FINANCIAL TRANSACTIONS.

RECOMMENDATION: Authorize resolution authorizing application for and entering into agreements for the REAP grant application for $165,000 and authorize the City Finance Director to make associated financial transactions.

8. BUSINESS ITEMS

A. COMMUNITY SOCIAL SERVICES GRANT FUNDING AWARDS

RECOMMENDATION: Review committee recommendations and provide directions.

B. CONSIDER DEVELOPER'S SEPTEMBER 30 PURCHASE AND SALE AND ESCROW INSTRUCTION AGREEMENT FOR THE MAIN GATE PARCEL, SEASIDE, CA 93955

RECOMMENDATION: Deny the Developer's September 30 Purchase and Sale Agreement (PSA).

9. COUNCIL MEMBER REQUESTS

A. MAYOR OGLESBY'S RESQUEST FOR RENTER ASSISTANCE PROGRAM (NOVEMBER 5, 2020)

10. 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.

11. ADJOURNMENT

Next Regularly Scheduled Meeting:
November 5, 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

REGULAR MEETING
Council Chamber
Thursday, October 1, 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, Pecheco, Wizard
ABSENT: None

3. INVOCATION AND PLEDGE OF ALLEGIANCE

Conducted.

4. REVIEW OF AGENDA

No additions to the agenda, Item 8E and 9A continued to first meeting in November 2020.

5. PUBLIC COMMENT

Public Comments: Harold Lusk, B. Langdon, Dennis Volk, Bettye Saxon, Peter Keiser, Erika Matadamas, Gail Tier, Ronald Britt, Marie Guth

6. PUBLIC AGENCY COMMUNICATIONS

Fireworks Referendum, City Birthday

7. PRESENTATIONS

A. STREET REPAIR UPDATE

City Engineer Patel provided a presentation on the status of the bond-funded street improvements.

8. CONSENT AGENDA

On motion by Council Member Jason Campbell and seconded by Council Member Alissa Kispersky and passed by the following vote the approved the Consent Agenda with the exception of item F.

RESULT:	***Approved***
AYES:	*Ian Oglesby, Dave Pacheco, Jason Campbell, Jon Wizard, Alissa Kispersky*
NOES:	*None*

A. APPROVAL OF MINUTES JUNE 4, 2020, JULY 2, 2020 SEPTEMBER 10, 2020, AND SEPTEMBER 17, 2020 CITY COUNCIL MEETINGS

Action: Approved

B. APPROVE AND FILE CITY CHECKS

Action: Approved and Filed

C. ISSUE A PROCLAMATION RECOGNIZING OCTOBER 4-10, 2020 AS FIRE PREVENTION WEEK IN THE CITY OF SEASIDE

Action: Issued

D. ADOPT A RESOLUTION AMENDING THE PROFESSIONAL SERVICES AGREEMENT WITH HARRIS & ASSOCIATES FOR PAVEMENT DESIGN SERVICES TO INCLUDE ADDITIONAL INSPECTION SUPPORT FOR AN AMOUNT NOT TO EXCEED $42,048.00.

Action: Adopted Resolution 20-86

E. APPROVE RESOLUTION AUTHORIZING A CONTRACT FOR SERVICES WITH EMC PLANNING GROUP FOR PROCESSING THE MAIN GATE PROJECT PLAN AND ENTITLEMENTS TO BE PAID FOR BY THE DEVELOPER

Action: Continued to November 2020

F. APPROVE RESOLUTION AUTHORIZING THE CITY ATTORNEY TO EXECUTE CONTRACTS RETAINING SPECIALIZED LEGAL SERVICES AND CONSULTANTS

Action: Approved Resolution 20-87

Council Member Kispersky questioned how this has been different in the past operations. Ms. Damon explained it was because the previous City Attorney was a contract attorney with a different scope and contract.

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*

9. PUBLIC HEARING

A. ADOPTION OF A PERMANENT SMALL CELL WIRELESS FACILITIES

ORDINANCE (SEASIDE MUNICIPAL CODE - CHAPTER 17.55) (SECOND READING, ROLL CALL VOTE)

Action: Continued to November 1, 2020

10. BUSINESS ITEMS

A. ADOPT RESOLUTION APPROVE PURCHASE AND SALE AGREEMENT FOR THE HOME DEPOT PARKING LOT AND AUTHORIZING THE EXECUTIVE DIRECTOR , IN CONSULTATION WITH THE CITY ATTORNEY, TO EXECUTE IT

Action:

City Manager Malin explained the Parking Authority ownership of the lot as well as the expenditure and maintenance obligations. The staff recommendation is to break free of the lease and sell the property. The fair market appraisal spoke to the property being highly restricted or burdened. The property owner of the land to which the Home Depot sits has requested to purchase this land. Accepting the request and selling the land would reduce the City's liability and expenses and the proposed owner would be improving the landscaping for the property. Mr. Malin answered questions from the Council.

Public Comment: Diane Nielsen

On the second, Council Member Campbell said he would not support the item.

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

RESULT:	***Approved***
AYES:	*Ian Oglesby, Dave Pacheco, Jon Wizard, Alissa Kispersky*
NOES:	*Jason Campbell*

11. COUNCIL MEMBER REQUESTS

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

City Manager Malin spoke to the previous Council discussion and the ultimate Council decision in July to relocate individuals for 120 days to the Col Durham road location, which is currently vacant city owned land. Mr. Malin detailed the number of vehicles, the amenities available and the city services that they have been provided. He spoke to the project Home Key application for which the City qualified and may be granted funding to provide a more permanent solution for up to 60 homeless individuals in Seaside. The cost has been $68,000, over four months, paid by Cares Act funding.

Council Member Campbell requested to pay someone to manage the site, to add legitimacy and requested it come back to the Council for an extension of time.

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

Assistant City Manager Milton presented an outline of the past three years of firework outreach strategies. The Council requested to consider additional communication strategies, and distribute them quarterly.

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

Mayor Oglesby requested to agendize a discussion and adoption of a renters assistance program.

13. ADJOURNMENT

On motion, the meeting was adjourned at 9:19 PM.

Respectfully submitted,

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Lesley Milton, City Clerk	**Ian N. Oglesby, Mayor**

CITY OF SEASIDE
STAFF REPORT

Item No.: 7.B.

TO: City Council

FROM: Craig Malin, City Manager

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

DATE: October 15, 2020

SUBJECT: **APPROVE AND FILE CITY CHECKS**

PURPOSE & RECOMMENDATION

Approve and file the accounts payable and wired payments made during the period of September 19, 2020 through October 3, 2020 including the payroll and benefits checks, direct deposits and wired payments related to the pay period ending September 24, 2020. Total Accounts Payable and Payroll for the above referenced period is $2,255,652.35.

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:

- $646,475.19 for Payroll and benefits
- $10,607.01 to Access Monterey Peninsula, Inc. (AMP) for April-June 2020 PEG fees (Public, Educational and Government access programming) for AT&T and Comcast.
- $352,377.42 to County of Monterey - Dept of Emergency Communications for Payment for FY2020/21 Quarter 1 & 2 - Next Generation (radio project) operations and maintenance fee and 911 dispatch services.
- $14,804.46 to Monterey County Convention & Visitor's Bureau for TID (Tourism Improvement District) remittance for the reporting period of July 2020 from the 13 City of Seaside Motels/Hotels.
- $70,697.30 to Wallace Group for SCSD - Professional svcs. Work related to Del Monte Sewer main upgrade rendered during June & July 2020 and for professional services for Fremont Blvd Sewer upgrade rendered through July 2020.
- $10,008.75 to Harris & Associates for SCSD prof. svcs. Project management for the period 7/26/2020 - 8/22/2020.
- $35,018.76 to Harris & Associates for Professional svcs. for the period 5/24/2020-7/25/2020 related to the Pavement Rehabilitation Project.
- $13,178.06 to TSI Incorporated for (1) Respirator fit tester that includes a carry case, AC adapter with universal plug set, and 8026 particle generator (115 VAC).
- $159,837.50 to Monterey Peninsula Engineering for SCSD - Professional svcs. Related to the Canyon Del Rey Sewer Main Replacement rendered through June 30, 2020.
- $111,717.00 to Food Bank for Monterey County for Food for COVID-19 City of Seaside distribution on 7/18/2020, 822/2020, & 9/22/2020.
- $40,387.55 to The Sohagi Law Group for Prof. svsc rendered through 6/30/2020 for Committee for Sound Water and Land Development of Fort Ord v. City of Seaside/ KB Bakewell Seaside Venture.
- $16,530.00 to Workbench for architectural services for the ADU project rendered from 4/16/2020 - 7/31/2020.
- $410,349.80 to K.J. Woods Construction Inc. for Draw request for SCSD professional svcs. for the Del Monte Sewer Main Upgrade. Work through 7/31/2020.
- $26,516.00 to Googie Grill for Preparing and delivering meals, 3x/day, 4x/week for the Great Plates Initiative for the periods 9/7/2020-9/13/2020 and 9/14/2020-9/20/20.

The remaining checks, totaling $381,101.50 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.: 7.C.

TO: City Council

FROM: Craig Malin, City Manager

BY: Stan Cook, ESCA Program Manager
Laura Vidaurri, ESCA Program Coordinator

DATE: October 15, 2020

SUBJECT: **ENVIRONMENTAL SERVICES COOPERATIVE AGREEMENT (ESCA) OCTOBER QUARTERLY REPORT**

PURPOSE & RECOMMENDATION

Receive the Environmental Services Cooperative Agreement (ESCA) quarterly update.

BACKGROUND

The Fort Ord Reuse Authority (FORA) officially closed all operations on June 30, 2020. Prior to the sunset, the City of Seaside and FORA entered into a Memorandum of Agreement (MOA) nominating Seaside as FORA's Environmental Services Cooperative Agreement (ESCA) Successor-In-Interest (Successor). Seaside is now responsible to perform the remaining Long-Term Obligations (LTO) management responsibilities related to U.S. Army (Army) Munitions and Explosives of Concern (MEC) on ESCA property until June 30, 2028. For continuity of programming, Seaside hired FORA's ESCA Remediation Program (RP) Senior Program Manager and the ESCA RP Coordinator (using Army ESCA funds) to facilitate the ESCA LTO Management Program. A summary of the ESCA remediation program to date is provided below. This report is required to be prepared and submitted quarterly to the Army after review and acceptance by the City Council.

FORA ESCA Remediation Program Background:
In 2007, the Army and FORA entered into an agreement for Army-funded ESCA for the removal of remnant MEC on 3,340 acres of the former Fort Ord. Under the ESCA terms, the Army

awarded FORA approximately $98 million to perform Comprehensive Environmental Response Compensation and Liability Act (CERCLA) MEC cleanup on those parcels. FORA, purchased an ESCA cost-cap insurance policy that increased the total value of funds. FORA also entered into the Administrative Order on Consent (AOC) with United States Environmental Protection Agency (EPA) and California Department of Toxic Substance Control (DTSC) (collectively referred to as Regulators) defining FORA's contractual conditions to complete the Army remediation obligations for the "ESCA parcels." FORA received ESCA property ownership after EPA approval and gubernatorial concurrence under a Finding of Suitability for Early Transfer in 2009.

The ESCA required FORA, acting as the Army's contractor, to address safety issues resulting from historic Fort Ord munitions training operations. Through the ESCA, FORA and the ESCA RP team have successfully addressed three (3) historic concerns: 1) yearly federal appropriation funding fluctuations that delayed Army cleanup and necessitated costly mobilization and demobilization expenses; 2) Regulator questions about protectiveness of previous actions for sensitive uses; and, 3) the local jurisdictions, community and FORA's desire to reduce MEC property access risks.

To complete the ESCA and AOC obligations, FORA entered into a Remediation Services Agreement (RSA) in 2007 by competitively selecting LFR Inc. (now Arcadis, Inc.) to provide MEC remediation services. Arcadis, Inc. ESCA contracting team includes Weston Solutions, Inc. and Westcliffe Engineers, Inc. to provide engineering, MEC remediation and public/regulatory outreach services. Arcadis, Inc. has completed, to regulators satisfaction, the environmental cleanup work funded by the Army (see table below).

Post-ESCA Amendment ESCA Fund Status as of June 30, 2020:

Item	**2017 & 2019 Amendment Allocations (to 9/1/19)**	**Accrued through June 2020**	**ESCA Remainder**
Line Item 0001 Environmental Services	**$94,172,954**	**$94,172,954**	**$0**
Line Item 0001A: Environmental Services: Post-Cost-Cap Insurance	332,086	332,086	0
Line Item 0001B: Environmental Services: Post-Cost-Cap Insurance	134,899	134,899	0
Line Item 0002: thru 31 Dec 2019 DTSC and EPA Technical Oversight Services	4,301,568	4,301,568	0
Line Item 0003: thru 30 June 2020 FORA ESCA Adm. Funds	1,865,848	1,865,848	0
Line Item 0003A: FORA ESCA Admin. Oversight: Post-Cost-Cap Insurance	36,314	36,314	0
Line Item 0004: thru 30 June 2028			

Post-Closure MEC Find Assessments			
Line Item 0005: thru 30 June 2028 Long Term/LUC Management	3,705,792	108,280	3,597,512
Total	**$105,078,112**	**$100,982,441**	**$4,095,671**

ESCA Program Update
The ESCA properties received Records of Decision (ROD) documenting controls required to protect public health and safety and Land Use Control Implementation Plan/Operation and Maintenance Plan (LUCIP/OMP) implementation, operation and maintenance ROD controls tailored to individual site conditions and historic MEC use. The final ESCA LUCIP/OMP documents were accepted by the Army and Regulators in February 2019. The future property owner (California State University Monterey Bay , Cities of Monterey and Del Rey Oaks, Monterey County and Monterey Peninsula College) received LUCIP/OMP site-specific training workshops. The ESCA properties received the last EPA Remedial Action Completion letter February 2019. The EPA issued a site-wide ESCA remedial completion certificate in April 2020.

ESCA property could not be transferred to the jurisdictions until Army deed modifications and issuance of the Army CERCLA Warranties/Deed Amendments were completed. In 2019, FORA requested the Army CERCLA Warranties/Deed Amendments for the ESCA properties. The ESCA property Army CERCLA Warranty and Deed modification documents were signed by FORA at Army Headquarters in Washington, D.C. and Recorded in Monterey County on June 26, 2020. FORA prepared ESCA property deeds transferring the ESCA properties to the Jurisdictions, including MPC and CSUMB. The Jurisdictions signed and recorded these deeds and now own their ESCA properties.

Remedial Action Completion initiated the Army's long-term obligations on ESCA properties. In May 2019, the FORA Board adopted Resolution 19-05 authorizing retention of Arcadis, Inc., Weston Solutions, Inc. and Westcliffe Engineers, Inc. to continue providing LTO support services at a cost not to exceed $1,328,741. These support service contracts were assigned to Seaside in June 2020. There have been three additional funding modifications approved by the Grants administrator in 2019 adding $40,362, $107,700 and $11,782 for contingent services.

The FORA Board nominated the City of Seaside as its ESCA Successor. The nomination was memorialized by the FORA Board on February 21, 2020 in the FORA and City of Seaside ESCA and Local Redevelopment Authority/Economic Development Conveyance Agreement Successor Implementing Agreement. EPA, DTSC and the Army were notified on February 24, 2020 of FORA’s sunset date and the nomination of Seaside as the ESCA Successor.

In June of 2020, Seaside executed a new ESCA with the US Army. The new agreement acknowledges that the ESCA properties have all received EPA Certificates of Remedial Completion (with DTSC concurrence), removes the MEC Remediation tasks, adds the completion date of June 30, 2028 and elaborates on the Long-Term Management Program support that Seaside will provide to the Regulators, Army and ESCA property owners.

ESCA staff conduct quarterly teleconferences with EPA, DTSC, Army, jurisdiction management, Permit, Planning, Police and Property Management personnel. Currently, the ESCA LTO Management staff are assisting to adopt changes to their existing Digging and Excavation Ordinances prohibiting private metal detection activities on the former Fort Ord and develop/install Jurisdiction-specific ESCA property signage with safety information and protect multiple endangered species.

FISCAL IMPACT

The actual cost to Seaside of these Army obligations will be fully reimbursed.

ATTACHMENTS

None

Reviewed for Submission to the
City Council by:

Craig Malin, City Manager

CITY OF SEASIDE
STAFF REPORT

Item No.: 7.D.

TO: City Council

FROM: Craig Malin, City Manager

BY: Nisha Patel, Public Works Director/City Engineer
Scott Ottmar, Senior Engineer

DATE: October 15, 2020

SUBJECT: **APPROVE A RESOLUTION EXECUTING A MAINTENANCE AND RIGHT OF ENTRY AGREEMENT WITH THE MCDONALD'S IN SEASIDE**

PURPOSE & RECOMMENDATION

Approve a Resolution (Attachment 1) authorizing the City Manager to execute a Maintenance and Right of Entry Agreement (Attachment 2) with the property owner of McDonald's in Seaside.

BACKGROUND

The McDonald's in Seaside (Project) has recently completed a renovation to their business. To satisfy the requirements of the City's storm water permit, the Project was required to develop and implement a Storm Water Control Plan (SWCP) and enter into Maintenance and Right of Entry Agreement (MROE) with the City.

A Storm Water Control Plan was reviewed and approved January 24, 2020 for the Project. As certified by the Project's engineer and verified by City's engineering staff, the Project has constructed structural storm water control measures (SCMs) consistent with the associated SWCP.

To insure ongoing maintenance of SCMs, the restaurant is required to enter into a Maintenance and Right of Entry Agreement (MROE) to be recorded at the Monterey County Recorder's Office. The MROE includes a site specific operation and maintenance plans and requires that an inspection by a qualified professional be conducted by September 30th of each year and an associated certificate be submitted to the City.

FISCAL IMPACT

There is no fiscal impact associated with entering into the Maintenance and Right of Entry Agreement.

ATTACHMENTS

1. Draft Resolution
2. Draft Maintenance Agreement

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

AUTHORIZING THE CITY MANAGER TO EXECUTE A MAINTENANCE AND RIGHT OF ENTRY AGREEMENT WITH E&E CAPLOW LIVING TRUST FOR REDEVELOPMENT OF A MCDONALD'S SEASIDE

WHEREAS, The E&E Caplow Living Trust, herein referred to as Applicant, owns parcel with APN 011-561-025, more commonly known as 1516 Canyon Del Rey Boulevard; and

WHEREAS, On July 18, 2019 the City Council adopted Resolution 19-57 approving Use Permit Application UP 19-07 and Coastal Development Permit 19-02 for the redevelopment of a McDonald's restaurant and associated site improvements located at 1516 Canyon Del Rey Boulevard; and

WHEREAS, UP 19-07 required Applicant to develop a Storm Water Control Plan (SWCP) to construct storm water control measures and enter into a Maintenance and Right of Entry Agreement with the City; and

WHEREAS, Applicant has developed a SWCP dated January 8, 2020 that was reviewed and approved January 24, 2020; and

WHEREAS, Applicant has constructed the storm water control measures, and executed a Maintenance and Right of Entry Agreement committing to maintain the improvements.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Seaside does hereby authorize the City Manager to execute the Maintenance and Right of Entry Agreement with E&E Caplow Living Trust attached hereto.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Seaside, State of California, on the 15th day of October 2020, by the following vote:

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

APPROVED:

ATTEST:

____
Ian Oglesby, Mayor
City of Seaside

____
Lesley Milton, City Clerk

WHEN RECORDED MAIL TO:
City Clerk,
City of Seaside
440 Harcourt Avenue
Seaside, CA. 93955

THIS SPACE FOR RECORDERS USE ONLY

MAINTENANCE AND RIGHT OF ENTRY AGREEMENT FOR STORMWATER CONTROL MCDONALD'S-SEASIDE, APN 011-561-025

MAINTENANCE AND RIGHT OF ENTRY AGREEMENT FOR STORMWATER CONTROL FOR MCDONALD'S-Seaside, APN 011-561-025

THIS MAINTENANCE AND RIGHT OF ENTRY AGREEMENT FOR STORMWATER CONTROL ("Agreement") is made and entered into in the City of Seaside, California, this ___day of___________, 2020 by and between E&E Caplow Living Trust, dated April 22, 1991 hereinafter referred to as "Owner" and the City of Seaside ("City"), a municipal corporation. This Agreement applies to properties in the County of Monterey, State of California, referred to as APNs 011-561-025. The Agreement is subject to the following recitals:

RECITALS

WHEREAS, the Owner owns real property ("Property") in the City of Seaside, County of Monterey, State of California, more specifically described in Exhibit "A" attached hereto and incorporated herein by this reference;

WHEREAS, the Planning Commission of the City of Seaside approved Use Permit No. UP 19-07 hereinafter referred to as "Permit", for the subject property attached hereto as Exhibit B;

WHEREAS, at the time of initial approval of said Permit, the City required the project to employ post-construction Stormwater Control Measures, hereinafter referred to as "SCMs," in accordance with Resolution R3-2013-0032 of the Central Coast Regional Water Quality Control Board (CCRWQCB) and Seaside Municipal Code Chapter 8.46, "Urban Storm Water Quality Management and Discharge Control" to minimize the adverse effects of urbanization and development on watershed processes and beneficial uses, and to protect and enhance the water quality of watercourses and water bodies in a manner pursuant to and consistent with the Federal Clean Water Act (33 U.S.C. § 1251 et seq.);

WHEREAS, the City of Seaside Municipal Code Chapter 8.46, "Urban Stormwater Quality Management and Discharge Control," regulates urban stormwater quality and provides requirements, known as Best Management Practices (BMPs) for managing and controlling stormwater quality and non-stormwater discharges to the storm drain system;

WHEREAS, the Permit requires the Owner to record a deed restriction requiring the approved SCMs not to be removed, relocated, covered, or hampered with in any way which may prevent them from performing their intended function, and to provide for ongoing maintenance and verification of ongoing maintenance of the SCMs by Owner and the Owner's successors in interest.

WHEREAS, the Owner has chosen to install and/or implement SCMs as shown on Exhibit C attached hereto and incorporated herein by this reference;

WHEREAS, the SCMs shown on Exhibit C are further described within the Stormwater Control Plan, dated January 8, 2020 hereinafter referred to as "SWCP", to comply with CCRWQCB Resolution R3-2013-0032 and Seaside Municipal Code Chapter 8.46;

WHEREAS, the SWCP has been certified by a licensed professional and reviewed and approved by the City;

WHEREAS, the SCMs, with installation and implementation on private property and draining only private property, are part of a private facility with all maintenance or replacement, therefore, the sole responsibility of the Owner in accordance with the terms of this Agreement;

WHEREAS, the Owner is aware that periodic maintenance is required to assure peak performance of all SCMs, furthermore, such maintenance activity will require compliance with all

Local, State, or Federal laws and regulations, including those pertaining to confined space and waste disposal methods, in effect at the time such maintenance occurs;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual stipulations and agreements contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. **Responsibility for Operation and Maintenance of SCMs:** Owner shall diligently maintain all SCMs in a manner that maintains the original flow and treatment requirements at all times. An Operation and Maintenance Plan is included as Exhibit "D". All reasonable precautions shall be exercised by Owner and Owner's representative or contractor in the removal and extraction of any material(s) from the SCMs and the ultimate disposal of the material(s) in a manner consistent with all relevant laws and regulations in effect at the time. As may be requested from time to time by the City, the Owner shall provide the City with documentation identifying the material(s) removed, the quantity, and disposal destination.

2. **Owner consents and agrees** to inspect and maintain the SCMs based on the schedule and procedures identified in the Operation and Maintenance Plan (Exhibit "D"). Each year during a period beginning on September 1 and ending no later than September 30, and at the time of any sale or other transfer of title to the Property, Owner shall provide the City with a Maintenance Certificate in the form attached hereto marked Exhibit "E" and by this reference incorporated herein certifying that the SCMs have been recently inspected and are functioning in compliance with the Operation and Maintenance Plan or, if such SCMs were not in compliance with the Operation and Maintenance Plan, what measures have been taken to bring the SCMs and the maintenance thereof into compliance with the Operation and Maintenance Plan. Proof of maintenance, such as copies of maintenance records and/or receipts shall be included with the Maintenance Certificate. Certificate shall be completed and stamped by a licensed engineer or other qualified professional approved by the City prior to inspection.

3. **Right of Access:** Owner hereby provides the City or City's agent complete access, of any duration, to the SCMs and their immediate vicinity, excluding any buildings, at any time, upon reasonable notice, or in the event of emergency, as determined by the City Engineer, with no advance notice, for the purpose of inspection, sampling, testing of the SCMs, and in case of emergency, to undertake, in the City's sole discretion, necessary repairs or other preventative measures at Owner's expense as provided in paragraph 4 below. City shall make every effort at all times to minimize or avoid interference with Owner's use of the Property.

4. **Penalty:** In the event Owner, or its successors or assigns, fails to accomplish the necessary maintenance contemplated by this Agreement or if the BMP's and/or SCM's do not perform in a manner that maintains the original treatment requirements at all times, then the Owner shall be subject to monetary fines per day or per occurrence in accordance with Chapter 8.46, "Urban Storm Water Quality Management and Discharge Control" of the Seaside Municipal Code.

5. **Recording:** This Agreement shall be recorded in the Office of the Recorder of Monterey County, California, at the expense of the Owner and shall constitute notice to all successors and assigns of the title to said Property of the obligation herein set forth, and also a lien in such amount as will fully reimburse the City, including interest as herein above set forth, subject to foreclosure in event of default in payment.

6. **Attorney's Fees:** In event of legal action occasioned by any default or fault of the Owner, or its successors or assigns, the Owner and its successors or assigns agree(s) to pay all costs incurred by the City in enforcing the terms of this Agreement, including attorney's fees and costs. In the event of legal action occasioned by any default of the City, the City agrees to pay all costs incurred by the Owner and its successors or assigns in enforcing the terms of this Agreement, including attorneys' fees and costs.

7. **Covenant:** It is the intent of the parties hereto that burdens and benefits herein undertaken shall constitute covenants that run with said Property and constitute a lien there against.

8. **Binding on Successors:** The obligations herein undertaken shall be binding upon the heirs, successors, executors, administrators and assigns of the parties hereto. The term "Owner" shall include not only the present Owner, but also its heirs, successors, executors, administrators, and assigns. Owner shall notify any successor to title of all or part of the Property about the existence of this Agreement. Owner shall provide such notice prior to such successor obtaining an interest in all or part of the Property. Such notice shall include the Stormwater Control Plan and the Operations and Maintenance Plan. The transfer of this information shall also be required with any subsequent sale of the property. Owner shall provide a copy of such notice to the City at the time of property transfer.

9. **Indemnity and Insurance:** The Owner, its heirs, successors, executors, administrators and assigns agree to defend, indemnify and hold harmless the City, its officials, employees and its authorized agents from any and all damages, accidents, casualties, occurrences or claims (collectively, "Claims") which might arise or be asserted against the City and which are connected with the construction, operation, presence, existence or maintenance of the BMP and/or SCM by the Owner, or from any personal injury or property damage that may result from the City or other public entities entering the Property under Section 3 of this Agreement; provided, however, that notwithstanding the foregoing, the Owner, its heirs, successors, executors, administrators and assigns shall have no obligation to defend, indemnify or hold harmless pursuant to this Section 9 for any Claims arising from the willful acts or omissions, or negligence, of the City or any other public entities, their officials, employees, or agents. The Owner shall maintain liability insurance with amounts not less than Two Million Dollars ($2,000,000.00) per occurrence and Four Million Dollars ($4,000,000.00) in the annual aggregate covering occurrences at the Property, and shall name City, its officers and employees as an additional insured on such liability policy. The Owner shall provide the City with proof of insurance as required by the City.

10. **Notice:** Any notice to a party required or called for in this Agreement shall be served in person, or by deposit in the U.S. Mail, first class postage prepaid, to the address set forth below. Notice(s) shall be deemed effective upon receipt, or seventy-two (72) hours after deposit in the U.S. Mail, whichever is earlier. A party may change a notice address only by providing written notice thereof to the other party.

MAINTENANCE AND RIGHT OF ENTRY AGREEMENT
FOR STORMWATER CONTROL
FOR MCDONALD'S-Seaside, APN 011-561-025

IN WITNESS THEREOF, the parties hereto have affixed their signatures as of the date first written above.

	Landlord: E&E Caplow Living Trust
By: ______________________ Signature	By: ______________________ Signature
Name: Craig Malin	Name: Mark A. Caplow Print Name
Title: City Manager	Title: Authorized Agent Print Title

List of Exhibits

A. Plat and Legal Description
B. Planning or BAR Conditions of Approval
C. Exhibit of Stormwater Control Measures
D. Operations and Maintenance Plan
E. Maintenance Certificate

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **CIVIL CODE § 1189**

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 Los Angeles)

On Sep. 21, 2020 before me, Lorenzo Jolon, Notary Public,
Date — Here Insert Name and Title of the Officer

personally appeared Mark A. Caplow
Name(s) of Signer(s)

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.~~

LORENZO D. JOLON
Notary Public - California
Los Angeles County
Commission # 2225938
My Comm. Expires Jan 16, 2022

Signature ____________
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Maintenance and right of Entry Agreement for Storm Control
Document Date: ____________ ~~Number of Pages~~: MCDONALD'S-SEASIDE APN 011-561-025
Signer(s) Other Than Named Above: ____________

Capacity(ies) Claimed by Signer(s)

Signer's Name: Mark A. Caplow	Signer's Name: ____________
☐ Corporate Officer — Title(s): ____________	☐ Corporate Officer — Title(s): ____________
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact	☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator	☐ Trustee ☐ Guardian or Conservator
☒ Other: Authorized Agent	☐ Other: ____________
Signer Is Representing: ____________	Signer Is Representing: ____________

WHEN RECORDED MAIL TO:

Elaine Caplow, Trustee
E&E Caplow Living Trust
9533 W. Pico Blvd., Suite A
Los Angeles, CA 90035

2020042384

Stephen L. Vagnini
Monterey County Clerk-Recorder
08/20/2020 08:50 AM
Recorded at the request of:
CITY OF SEASIDE
Titles: 1 Pages: 3
Fees: $0.00
Taxes: $0.00
AMT PAID: $0.00

SPACE ABOVE THIS LINE FOR REC

NOTICE OF MERGER

NOTICE IS HEREBY GIVEN THAT: On August 18 ,2020, the City of Seaside determined that under the provisions of Government Code Article 1.5, Section 66451.10 to Section 66451.21 inclusive, the real property in the City of Seaside, County of Monterey, State of California described below is, under the provisions of the Subdivision Map Act and Ordinances of the City of Seaside, merged for the purposes of the Subdivision Map Act into a single parcel.

Property owners: E & E Caplow Living Trust

Current Assessor's Parcel Numbers: 011-561-024 and 011-561-025

The legal description and graphic exhibit of said property is contained in Exhibits "A" and "B" attached hereto and incorporated herein by reference

Nisha Patel
City Engineer, City of Seaside

Dated: 8-18-20

Acknowledgment.

> 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 August 18 ,2020 before me, Dominique Latrice Jones, Notary Public personally appeared Nisha Patel, City Engineer , 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)

DOMINIQUE LATRICE JONES
Notary Public - California
Monterey County
Commission # 2237184
My Comm. Expires Apr 7, 2022

EXHIBIT A

LOT MERGER

LEGAL DESCRIPTION

PARCEL 1:

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF SEASIDE, COUNTY OF MONTEREY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING ALL OF PARCELS "E-1" AND "E-2", AS SAID PARCELS ARE SHOWN ON THAT CERTAIN MAP ENTITLED, "TRACT NO. 739, OFFICIAL MAP OF LAGUNA GRANDE REDEVELOPMENT PROJECT", FILED AUGUST 1, 1974 IN VOLUME 12 OF CITIES AND TOWNS, AT PAGE 60, RECORDS OF MONTEREY COUNTY, CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID PARCEL "E-1", SAID POINT BEING IN THE NORTHEASTERLY LINE OF CANYON DEL REY BOULEVARD (ALSO KNOWN AS STATE ROUTE 218), AS SHOWN ON SAID MAP (12 C&T 60), SAID NORTHEASTERLY LINE BEING A 7,450-FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY AND TO WHICH POINT A RADIAL BEARS SOUTH 51°50'49" WEST; THENCE 118.21 FEET NORTHWESTERLY ALONG AN ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 00°54'33" TO THE NORTHWESTERLY COMMON LINE FOR SAID PARCELS "E-1" AND "E-2"; THENCE ALONG LAST MENTIONED LINE NORTH 53°34'18" EAST, 174.25 FEET TO THE NORTHERLY CORNER OF SAID PARCEL "E-2"; THENCE ALONG THE NORTHEASTERLY LINE OF SAID PARCEL "E-2" SOUTH 36°25'42" EAST, 118.13 FEET TO THE SOUTHEASTERLY COMMON LINE FOR SAID PARCELS; THENCE ALONG LAST MENTIONED LINE SOUTH 53°33'20" WEST, 171.63 FEET TO THE POINT OF BEGINNING, AS SHOWN ON THE PLAT ATTACHED HERETO AND MADE A PART HEREOF.

CONTAINING 20,452 SQUARE FEET, MORE OR LESS.

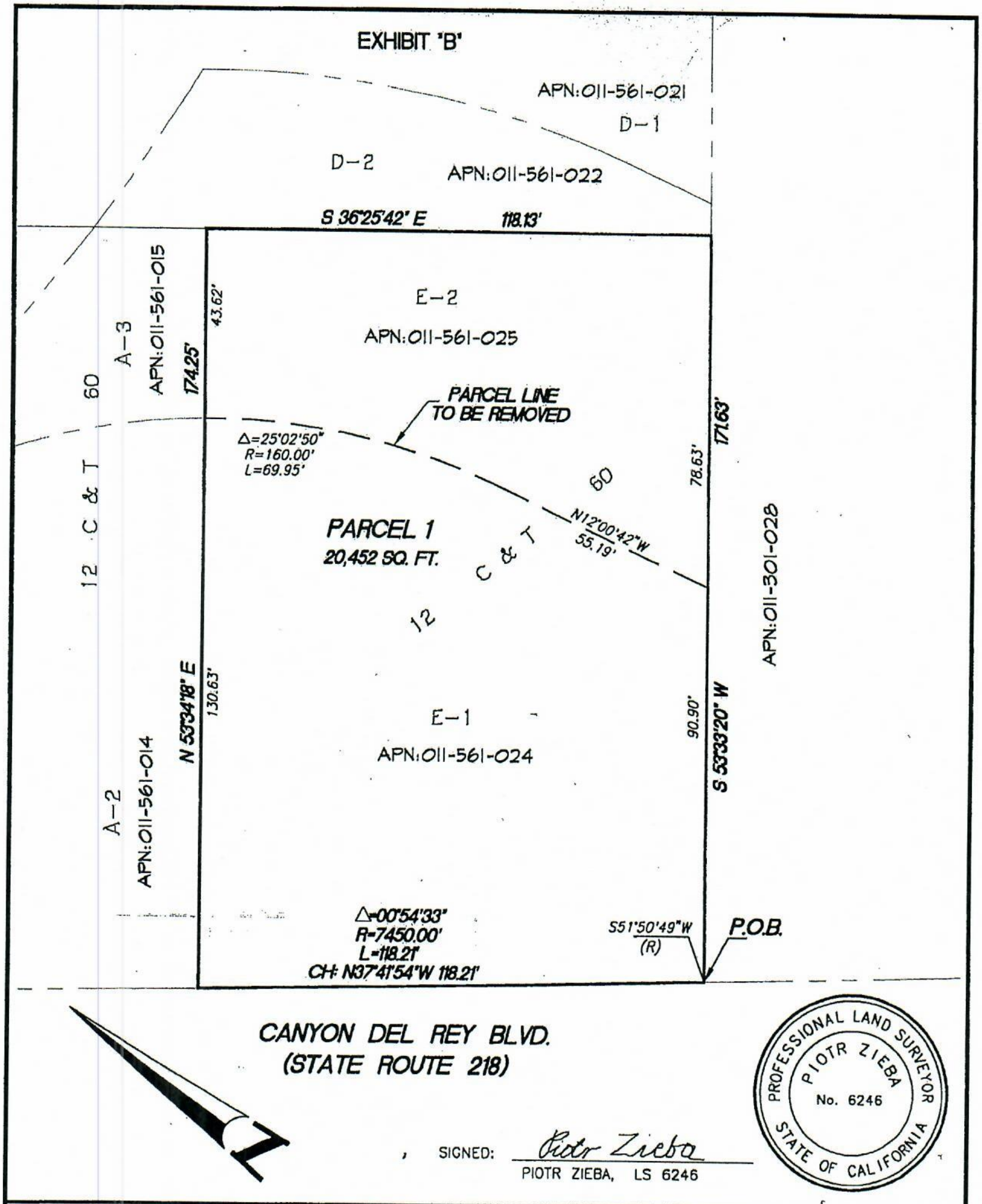
Piotr Zieba

PIOTR ZIEBA, P.L.S. 6246

08-06-20

DATE

PROFESSIONAL LAND SURVEYOR
PIOTR ZIEBA
No. 6246
STATE OF CALIFORNIA



ZIEBATECH LAND SURVEYING 9925 WINDSOR WAY, SAN RAMON, CA PHONE: 925-551-0108 E-MAIL: EZIEBA @ AOL.COM PIOTR ZIEBA ***** L.S. 6246	**PLAT TO ACCOMPANY LEGAL DESCRIPTION** **PARCEL MERGER** SEASIDE MONTEREY COUNTY CALIFORNIA	DATE: 10/10/19 SCALE: 1"=30' SHEET: 1 OF 1

COMMENT SHEET
PUBLIC WORKS-ENGINEERING DIVISION

Project Address: 1516 Canyon Del Rey
Project Number: UP-19-07
Applicant: PM Design
Description: The rebuild of a new 5,218 sq.ft. McDonalds, double drive thru, accessible path of travel to sidewalk, and landscaping.

Date Applied: March 28, 2019
APN: 011-561-024, 025

CONDITIONS

Post Construction Requirement Initial Review (LID)	Single Family Dwelling ☐ or Commercial ☒
Impervious Area: (≥2,500sf-new/replaced) ☒ (≥5,000sf-net) ☐ (≥15,000sf-net) ☐(≥22,000sf-net)	
Performance Requirement:	Exempt ☐ #1☐ #2☒ #3☒ #4☒ (#2-#4 require stormwater plan)
Erosion Sediment Control Plan	☒ (addition?)

The Public Works Department, Engineering Division, has completed a review of plans of the above project. The following Required Action shall be submitted and/or delineated within your building plans.

DEVELOPMENT CONDITIONS

1. Site plan shall clearly show and denote the following:
   a. Property lines
   b. All easements
   c. Adjacent improvements.
2. Proposed project must implement storm water best management practices (BMPs) during construction.(SMC 8.46)
   a. Complete and submit the Storm water Compliance Tracking Form, with signature with building permit application.
   b. A project specific Erosion and Sediment Control Plan (ESCP) is required of the applicant as part of building permit application.
   c. If the disturbed area is greater than one (1) acre, a Storm water Pollution Prevention Plan (SWPPP) shall be prepared and a WDID obtained by the applicant from the State Water Quality Control Board. Submit the SWPPP for City of Seaside review.
3. Post-development peak storm water runoff rates shall not exceed predevelopment rate. A pro rata share of the cost of offsite erosion sediment, and flood control improvements and/or for maintenance to the principal drainage way may be required by the city engineer to handle the increase peak runoff and/or sediment generated by the project.(SMC 15.32.170)
   a. Provide hydrology and hydraulic calculations to substantiate retention of storm water runoff for the entire redevelopment for the 24 hour-95% storm event.
   b. As part of building permit application, develop civil grading and drainage plans to clearly show direction of storm water drainage from new or redeveloped impervious surfaces.

Prepared by: Billy D. Thomas, Junior Engineer
Project Address:1516 Canyon Del Rey Blvd
■ Original Signed:
Staff Time (hrs): 2

If you have any questions, please contact Billy D. Thomas, Junior Engineer, at the Public Works Department, Engineering Division, at (831) 899-6745 or fax at (831) 899-6311, or email bthomas@ci.seaside.ca.us.

c. Drainage shall not be directed to adjacent properties.

4. As required by Attachment 1 to Resolution No. R3-2013-0032 of the Central Coast Regional Water Quality Control Board, the applicant shall develop a Storm water Control Plan demonstrating compliance with performance requirements #1, #2, #3, and #4 as applicable.(SMC 8.46.130)
   a. Applicant shall submit a Storm Water Control Plan prior to finalizing site plan or civil grading and drainage plans. Storm Water Control Plan shall be approved by the City prior to finalizing project civil grading and drainage plans and shall include hydrology and hydraulic calculations validating the design of conveyance, treatment and/or infiltration features.
      i. Provide a soils engineering report describing the soil type and soil hydrologic soil group substantiating design of structural storm water control measures described within the Storm Water Control Plan.
      ii. Infiltration testing shall be per the Riverside County-Low Impact Development BMP Design Handbook.
   b. Applicant shall submit architectural and civil grading and drainage plans with building permit application in substantial conformance to the approved Storm Water Control Plan.
      i. Plans shall clearly denote, in table format, the pre-project impervious surface area, new impervious surface area created, replaced impervious surface area, and post-project impervious surface area.
   c. Prior to issuance of occupancy, applicant shall execute and record as a deed restriction a Right of Entry and Maintenance Agreement. The Right of Entry and Maintenance Agreement shall:
      i. Include indemnity, insurance and security requirements in conformance with the template provided by the City, and
      ii. include an operation and maintenance (O&M) plan approved by the City stating that the property owner will conduct, and accepts responsibility for, maintenance of all storm water control measures (SCMs), and
      iii. include a legal description of the property, and
      iv. describe the methods and procedures for conducting periodic inspections and maintenances of all SCMs, and
      v. require applicant to provide to the City each year during a period beginning on September 1 and ending no later than September 30 a statement certified by a licensed Civil Engineer or Qualified Storm water Developer (QSD) registered in the State of California stating that the SCM maintenance is in accordance with the O&M plan, and
      vi. include a statement that transfers responsibility for maintenance of SCMs to future owners of the property.
5. The driveway shall be exit only and wide enough to accommodate one vehicle. Vehicles shall enter from the signalized intersection into the shopping center.

Prepared by: Billy D. Thomas, Junior Engineer ■ Original Signed:
Project Address:1516 Canyon Del Rey Blvd Staff Time (hrs): 2
If you have any questions, please contact Billy D. Thomas, Junior Engineer, at the Public Works Department, Engineering Division, at (831) 899-6745 or fax at (831) 899-6311, or email bthomas@ci.seaside.ca.us.

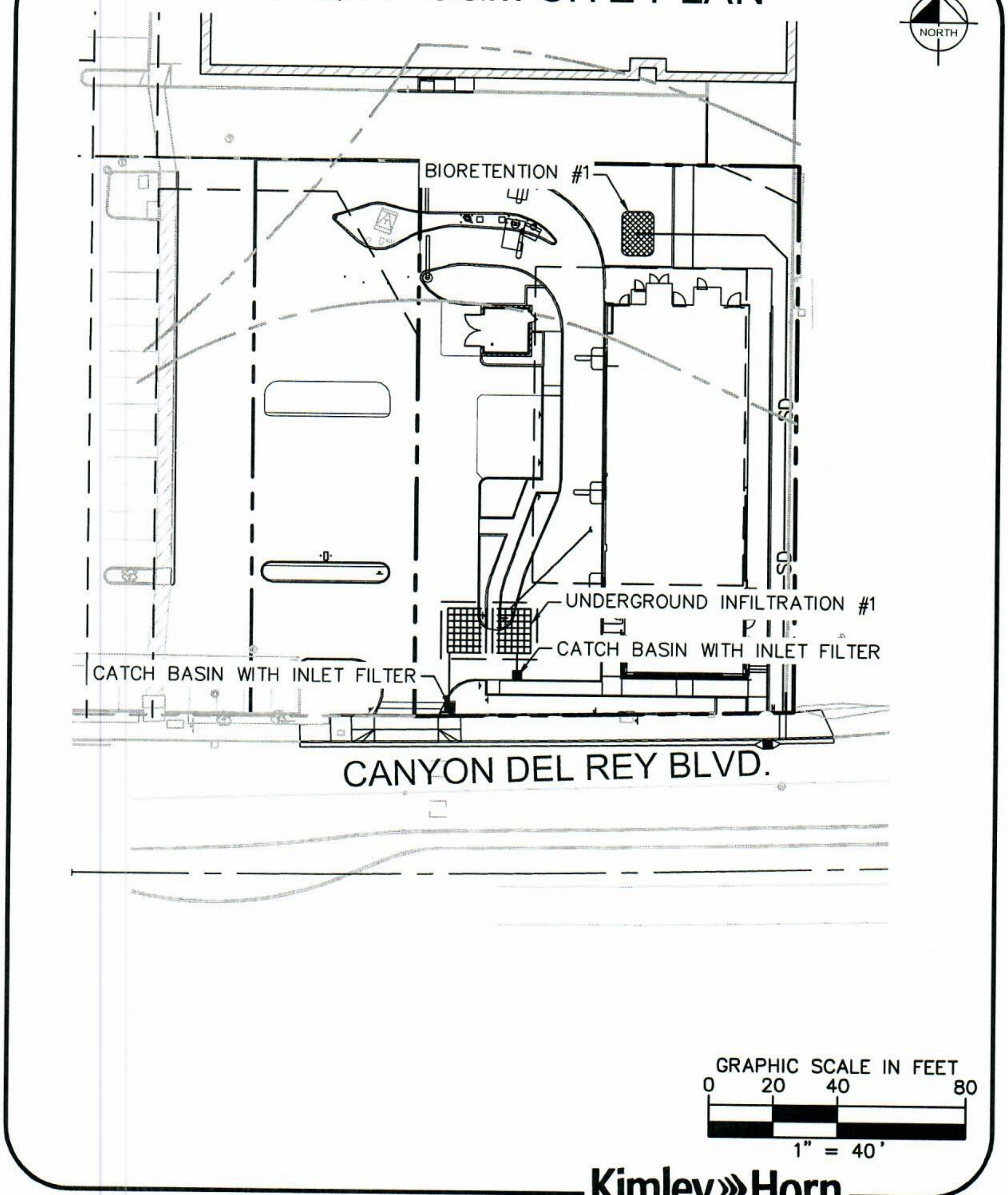
a. As part of building permit application, plans shall incorporate angled exit on to Canyon Del Rey Boulevard.
b. Project shall provide ADA compliant path of travel across driveway approach fronting Canyon Del Rey Boulevard (SR 218).
c. Applicant must coordinate with California Department of Transportation (Caltrans) and complete a Caltrans Standard Encroachment Permit Application for proposed construction of a new exit only driveway onto Canyon Del Rey Blvd.

6. Project shall provide a properly sized fats oils and grease interceptor sized in accordance with the Uniform Plumbing Code. Provide documentation to substantiate grease interceptor size with building permit application.
7. Prior to final inspection, any curb, gutter and sidewalk damaged during construction shall be replaced by a licensed concrete contractor in conformance with the most current applicable engineering standards, and upon the prior issuance of an Encroachment Permit from the Public Work Department.

Prepared by: Billy D. Thomas, Junior Engineer ■ Original Signed:
Project Address: 1516 Canyon Del Rey Blvd Staff Time (hrs): 2

If you have any questions, please contact Billy D. Thomas, Junior Engineer, at the Public Works Department, Engineering Division, at (831) 899-6745 or fax at (831) 899-6311, or email bthomas@ci.seaside.ca.us.

WQMP O&M SITE PLAN



Kimley»Horn

765 THE CITY DRIVE, SUITE 200, ORANGE, CA 92868
PHONE: 714-939-1030 FAX: 714-938-9488

Operation and Maintenance Plan for Stormwater Control Measures

McDonald's - Seaside

1516 Canyon Del Rey Boulevard
Seaside, CA 93955

Insert APN's 011-561-025

Date: 09/16/2020

Prepared By:

Kimley-Horn and Associates
Lucas Teani, P.E.
765 The City Drive, Suite 200
Orange, CA 92868

Operation and Maintenance Plan (OPM) for Stormwater Control Measures (SCMs) at McDonald's - Seaside

General

This Operation and Maintenance Plan (**OMP**) outlines the minimum operation and maintenance activities required for the stormwater control measures (**SCMs**) constructed as part of McDonald's - Seaside, located at 1516 Canyon Del Rey Boulevard, Seaside, CA 93955, Assessor's Parcel Number 011-561-025.

In addition to being kept by the Owner as part of the Project Manual, this OMP is an attachment to a Maintenance Agreement which will be recorded at the County Recorder's office.

This OMP was prepared pursuant to the "Post Construction Stormwater Management Requirements for Development Projects in the Central Coast Region", Central Coast Regional Water Quality Control Board Resolution No. R3-2013-0032 and the "Technical Guide for Low Impact Development" by Monterey Regional Stormwater Management Program dated March 2015.

Responsibilities

The property owner, E&E Caplow Living Trust c/o Mark Caplow (**Owner**), is responsible for facility operation, inspection, and maintenance. SCMs installed as part of the Project must be operated, inspected, and maintained for the life of the Project. Any change or alteration, or the failure to properly operate and maintain any feature described herein, could result in fines or other actions by the City of Seaside (**Municipality**), or by a state or federal authority. Furthermore, if SCM maintenance is not adequate, the Municipality may conduct inspections and repairs, at the Owner's expense. For more information please refer to the Maintenance Agreement.

Owner agrees to inspect and maintain the SCMs based on the schedule and procedures identified within this Operation and Maintenance Plan. Each year during a period beginning on September 1 and ending no later than September 30, and at the time of any sale or other transfer of title to the Property, Owner shall provide the City with a Maintenance Certificate (Appendix A) certifying that the SCMs have been recently inspected and are functioning in compliance with the Operation and Maintenance Plan or, if such SCMs were not in compliance with the Operation and Maintenance Plan, what measures have been taken to bring the SCMs and the maintenance thereof into compliance with the Operation and Maintenance Plan. Proof of maintenance, such as copies of maintenance records and/or receipts shall be included with the Maintenance Certificate. The certificate must be completed and stamped by a licensed civil engineer; or by another qualified person approved in advance by the City.

Updated information, including contact information (**Appendix B**), must be provided to the Municipality if and when the property is sold, or whenever there is a change to one of the listed responsible parties.

Facilities to be Maintained

The facilities which are constructed as part of the Project, and which must be operated, inspected, and maintained, are listed in **Table 1**, below. SCM locations and their tributary areas are shown graphically in **Attachment 1**. For more detailed construction information see the plans and specifications entitled "On-Site Improvement Plans for McDonald's". For facility sizing information see the Storm Water Control Plan (**Appendix C**).

Operation and Maintenance Plan (OPM) for Stormwater Control Measures (SCMs) at McDonald's - Seaside

Table 1. Facilities to be Maintained

1. General Site Features, including asphalt and concrete pavements, landscaped areas, soil slopes, gutters and swales, drain inlets, and storm drain pipes
2. Two (4) Bioretention Planters
3. 364 s.f. of underground infiltration system

These facilities must be operated, inspected and maintained in accordance with the Fact Sheets provided in **Attachment 2**.

Prepared by:

Lucas Teani, P.E.
765 The City Drive, Suite 200
Orange, CA 92868

Engineers Stamp

REGISTERED PROFESSIONAL ENGINEER
LUCAS M. TEANI
No. 89564
CIVIL
STATE OF CALIFORNIA

Lucas Teani, P.E.

09/16/2020
Date

Attachments:

1. Map of SCMs to be Maintained
2. O&M Fact Sheets

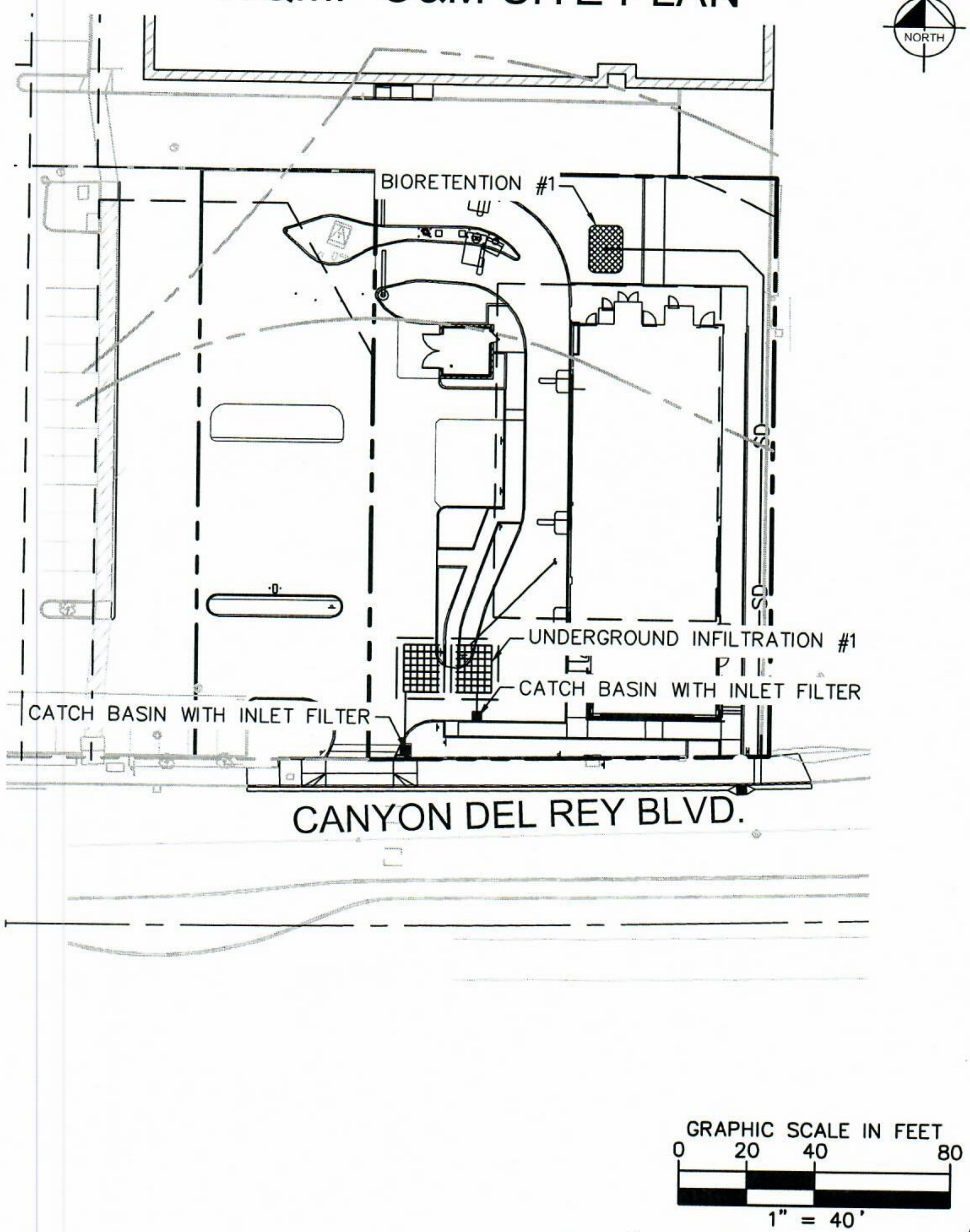
Appendices:

(Note: due to the limitations associated with title records, the Appendicies are not included in the recorded Maintenance Agreement. Appendices are include in the OMP submitted to the Owner and to the City, and must be made available by the Owner to the Municipality upon request, for the life of the Project.)

A. Sample Annual Certification
B. Manufacturer Maintenance Checklists
C. Responsible Parties
D. Storm Water Control Plan (Sheet C6.2 – Drainage Area Map & Sheet C6.3 – Drainage Area Details)

Attachment 1

WQMP O&M SITE PLAN



Kimley»Horn

765 THE CITY DRIVE, SUITE 200, ORANGE, CA 92868
PHONE: 714-939-1030 FAX: 714-938-9488

Attachment 2

Stormwater Facility Operation and Maintenance Fact Sheet

▸ GENERAL SITE AND STORM DRAINAGE FACILITY MAINTENANCE

Pavements:

1. Collect trash and sweep pavements regularly to prevent accumulation of soil, debris, and trash.

Landscaping:

1. Remove debris and trash regularly.
2. Prune or cut back plants for health and to ensure stormwater is able to flow into inlets and through curb cuts.
3. Control weeds by manual methods. If problem areas occur, corn gluten, white vinegar, vinegar-based products such as Burnout, or non-selective natural herbicides such as Safer's Sharpshooter may be used.
4. Fertilizer and pesticide use should be limited and conducted by appropriate professionals.
5. Examine the vegetation to ensure that it is healthy and dense enough to protect soils from erosion. Remove and replace all dead and diseased vegetation.
6. Replenish mulch as necessary. Mulch may be added from time to time to maintain a mulch layer thickness of 3".
7. Confirm that irrigation system is operating properly. Inspect all valves for proper on/off function and adjust as required. Inspect filters at valves and remove debris. For point source drip irrigation, inspect emitters and drip line for proper water flow and check that emitters are not clogged.

Storm Drain Inlets and Pipes

1. Maintain and periodically repaint or replace "No Dumping – Flows to Bay" drain inlet markings.
2. Clean storm drain inlets and other conveyance structures before the wet season to remove sediments, trash and debris accumulated during the summer.
3. Conduct inspections and clean and maintain storm drain inlets and storm drain pipes during the rainy season on a frequency necessary to maintain the system in proper working order.
4. Look for evidence of illegal discharges or illicit connections during routine maintenance of drainage structures:
    a. Is there evidence of spills such as paints, discoloring, etc?

b. Are there any odors associated with the drainage system?

c. Record locations of apparent illegal discharges/illicit connections.

d. Track flows back to potential dischargers and conduct aboveground inspections. This can be done through visual inspection of upgradient manholes or alternate techniques including zinc chloride smoke testing, fluorometric dye testing, physical inspection, or television camera inspection.

e. Eliminate the discharge once the origin of flow is established.

Annually, prior to the beginning of the rainy season:

1. Remove trash, debris, dead vegetation, and accumulated sediment.
2. Visually inspect all facilities to determine if any maintenance activities are required in order to be prepared for the upcoming season.
3. If necessary, replenish rock splash pads, gravel linings, mulch, or other material used to control drainage.
4. Inspect drainage outlets for signs of erosion or plugging.
5. Inspect soil slopes for evidence of instability or erosion.

Annually, at the end of the rainy season:

1. Remove trash, debris, vegetation, and accumulated sediment.
2. Determine if any maintenance, repair, or rehabilitation activities should be scheduled, since many of these activities need to be performed during the dry season.
3. Manually flush all valves serving subsurface drip zones.

▸ BIORETENTION

Bioretention areas are intended to:

1. Reduce pollutant loads by filtering stormwater runoff though a layer of specially formulated soil and then infiltrating stormwater into the ground.
2. Pond water up to a depth of 6 inches before overflowing to a drain inlet.
3. Infiltrate completely following each rain event.

Bioretention are not intended to:

1. Have standing water for periods longer than 48 hours after a storm
2. Serve as wetland or riparian habitat
3. Be accessed by anyone other than authorized personnel

The recommended routine maintenance activities for biofiltration planters are:

On an as-needed basis:

1. Remove any soil build-up, fallen leaves, debris, and trash.
2. Irrigate plants as needed during prolonged dry periods. In general, plants should be selected to be drought-tolerant and not require irrigation after establishment (two to three years).
3. Prune or cut back plants for health and to ensure stormwater is able to flow into inlets and across the surface of the facility. Remove and replant as necessary. When replanting, maintain the design surface elevation and minimize the introduction of soil
4. Control weeds by manual methods. If problem areas occur, corn gluten, white vinegar, vinegar-based products such as Burnout, or non-selective natural herbicides such as Safer's Sharpshooter may be used.
5. Examine the vegetation to ensure that it is healthy and dense enough to provide filtering and to protect soils from erosion. Remove and replace all dead and diseased vegetation.
6. Fertilizers and pesticide use should be limited and conducted by appropriate professionals. Synthetic pesticides shall not be used.

7. Replenish mulch as necessary. Do not mulch areas below the ponding elevation; mulch only in bare areas above the ponding elevation and until vegetation has established.
8. Confirm that irrigation is operational. Inspect all valves for proper on/off function and adjust as required. Inspect filters at valves and remove debris. For point source drip irrigation, inspect emitters and drip line for proper water flow and check that emitters are not clogged.

Annually, prior to October 15:

1. Remove trash, debris, weeds, dead vegetation, and accumulated sediment.
2. Replenish mulch as needed. Mulch may be added from time to time to maintain a mulch layer thickness of 3".
3. Visually inspect the facility to determine if any maintenance activities are required in order to be prepared for the upcoming season.
4. If necessary, replenish rock or other material used as a splash pad.
5. Inspect drainage outlets for signs of erosion or plugging.
6. Inspect soil slopes for evidence of instability or erosion.

During the rainy season:

1. Abate potential vectors (mosquito larvae) by filling holes in the ground in and around the facility so that there are no areas where water stands longer than 96 hours following a storm. If mosquito larvae are present and persistent, contact Monterey County Mosquito Abatement District. Mosquito larvicides should be applied only when absolutely necessary and then only by a licensed individual or contractor.

Annually, at the end of the rainy season:

1. Remove trash, debris, vegetation, and accumulated sediment.
2. Determine if any maintenance activities should be scheduled, since many maintenance activities need to be performed during the dry season.
3. Manually flush all valves serving subsurface drip zones.

The design long-term infiltration rate of the system is:

5 in/hr minimum (7 in/hr minimum immediately after maintenance)

At least once every 5 years:

1. After performing the standard annual maintenance, perform an infiltration test to demonstrate that the system is functioning as designed. The proposed method should be discussed with the municipality prior to performing the test.
   a. One test is the Single Ring Infiltrometer, as described in ASTM D 5126, "Standard Guide for Comparison of Field Methods for Determining Hydraulic Conductivity in Vadose Zone".
   b. Another test is the Double Ring Infiltrometer, as described in ASTM D3385, "Standard Test Method for Infiltration Rate of Soils in Field Using Double-Ring Infiltrometer". (The Double Ring Infiltrometer test is relatively expensive and requires specialized equipment.)
   c. The test should be performed as either a falling head test beginning at the design pond depth; or a constant head of approximately 1/2 of the design pond depth. A lateral flow correction factor should be applied.

   Infiltration testing typically demonstrates a surface infiltration rate significantly higher than the minimum required infiltration rate. If a surface infiltration rate near or lower than the design rate is calculated, further testing or system rehabilitation is needed.

Do Not:

1. Do not add fertilizer to bioretention facilities. Compost tea, available from various nurseries and garden supply retailers, may be applied at a maximum recommended rate of 5 gallons, mixed with 15 gallons of water, per acre, up to two weeks prior to planting and once per year between March and June. Do not apply when temperatures are below 50°F or above 90°F or when rain is forecast in the next 48 hours.
2. Do not use synthetic pesticides or herbicides on bioretention facilities. Beneficial nematodes and non-toxic controls may be used. Acceptable natural pesticides include Safer® products and Neem oil.
3. Do not add "normal" soil into the bioretention facility. Bioretention soil is specially formulated to provide a high infiltration rate; adding other "normal" soils can significantly reduce the ability of the facility to function as designed.
4. Do not re-grade or re-contour the bioretention facility. It is important that the ground surface be maintained in the design configuration.
5. Do not make additional openings in the side of the drain inlet in order to address surface water ponding issues. Water should pond to a depth of 6 inches before overflowing into the drain inlet.

Major Facility Changes or Renovation:

Contact the project civil engineer (**Kimley-Horn and Associates**), or other qualified engineer or landscape architect, in the event that major work is contemplated in or adjacent to the facility. Major work includes:

- Significant changes to the facility's planting palette or irrigation system.

- Re-grading the facility.
- Any activity which involves adding or removing soil from the facility.
- Modifying the "engineered" elements of the facility, including drain inlets, pipes, subsurface drains, check dams, water barriers, and structural elements.
- Improvements in areas which drain to the facility; especially improvements which would increase the area of impervious surface which drains to the facility.

UNDERGROUND INFILTRATION SYSTEM

Underground Infiltration System is intended to:

1. Capture stormwater runoff, store the runoff, and then allow it to percolate into the ground via the open space area of the cubes and perforations in the site wall.
2. Infiltrate completely following each rain event.

Underground Infiltration System <u>is not</u> intended to:

1. Have standing water for periods longer than 48 hours after a storm
2. Serve as an underground wetland or riparian habitat
3. Be accessed by anyone other than authorized personnel

The recommended routine inspection and maintenance activities for the Underground Infiltration System are:

Annually, prior to October 15 and at the end of the rainy season:

<u>Inspection</u>

1. Locate the inspection, cleanout and access ports. Inspection and cleanout ports are typically 18-inch diameter. Access ports are typically 24-inch or 30-inch diameter. Pictures should be taken to document the location or a site map should be generated to detail the as-built locations of the ports.
2. Unbolt and remove the access port lids.
3. Insert a measuring device into the opening making note of a point of reference to determine the quantity of sediment and other accumulated material. If access is required to measure, ensure only certified confined space entry personnel having appropriate equipment are allowed to enter the system.
4. In addition, for accessible concrete CUDO systems personnel should utilize appropriate confined space entry procedures to enter the system and photograph its condition.
5. Inspect inlet and outlet locations for obstructions. Obstructions should be removed at this time.
6. Inspect the structural components of the system.
7. Fill in the CUDO Inspection/Maintenance Data Sheet and send a copy to the regulatory agency if necessary.

Maintenance

1. Locate the inspection, cleanout and access ports. Inspection and cleanout ports are typically 18-inch diameter. Access ports are typically 24-inch or 30-inch diameter. Pictures should be taken to document the location or a site map should be generated to detail the as-built locations of the ports.

2. Unbolt and remove the access port lids.

3. Measure the sediment buildup at each port. If access is required to measure ensure only certified confined space entry personnel having appropriate equipment are allowed to enter the system.

4. A thorough cleaning of the system (inlets, outlets, ports, and inlet bays) shall be performed by either a vacuum truck or by manual methods.

5. Inspect inlet and outlet locations for obstructions. Obstructions should be removed at this time.

6. Inspect the structural components of the system.

7. Fill in the CUDO Inspection/Maintenance Data Sheet and send a copy to the regulatory agency if necessary.

The design long-term infiltration rate of the system is:

5 in/hr minimum (7 in/hr minimum immediately after maintenance)

Major Facility Changes or Renovation:

Contact the project civil engineer (**Kimley-Horn and Associates**), or other qualified engineer or landscape architect, in the event that major work is contemplated in or adjacent to the facility. Major work includes:

- Re-grading the facility.
- Any activity which involves altering the facility.
- Modifying the "engineered" elements of the facility, including drain inlets, pipes, water barriers, and structural elements.
- Improvements in areas which drain to the facility; especially improvements which would increase the area of impervious surface which drains to the facility.

Refer to Manufacturers Operation and Maintenance Requirements provided to owner and on file with the City of Seaside.

CITY OF SEASIDE
STAFF REPORT

Item No.: 7.E.

TO: City Council

FROM: Craig Malin, City Manager

BY: Lesley Milton, Assistant City Manager

DATE: October 15, 2020

SUBJECT: **ADOPT RESOLUTION ACCEPTING THE CERTIFICATE OF SIGNATURE VERIFICATION FOR THE REFERENDUM AGAINST ORDNANCE No. 1095 AND DECLARING THE SUFFICIENCY OF THE PETITION**

PURPOSE & RECOMMENDATION

Adopt the resolution declaring the sufficiency of the petition.

BACKGROUND

The City Council adopted Ordinance 1095 on August 20th, 2020 titled "Amending Seaside Municipal Code Chapter 8.32 Fireworks".

On September 15th, 2020 the City received a referendum petition with 2,446 signatures in an attempt to prevent adopted Ordinance 1095 from taking effect. According to Elections Code (B)(vi), proponents have 30 days to circulate a petition from the date the summary was approved to stop the ordinance from taking effect.

A prima facie review (a raw count of signatures and format validity) was done and the petition was accepted with 2,431 signatures and staff requested Monterey County Elections to commence verification of signatures to match with voter registration files. In order for a referendum to be valid, the petition must include not less than 10% of the voters of the city according to the County Elections Official's last official report of registration to the Secretary of State (EC 9237). The last official report for the City of Seaside indicated that there were 14,124 registered voters, which requires no less than

1,412 valid signatures.

On October 5th, the City received notification from Monterey County Elections that the petition appears to have the necessary amount of valid signatures. The next step would be to transmit a "Certificate of Sufficiency" to the City Council at the next regular Council meeting. (Elections Code § 9237; Elections Code § 9240; Elections Code § 9114.) With that action, the ordinance would be officially suspended.

Going forward, the Council must do one of the following:

A) Repeal the ordinance in its entirety, or
B) Place the ordinance on the next regular municipal election, or
C) Call a special election to consider the ordinance.
(Elections Code § 9241; Elections Code § 1410)

Failure to take action (or reach consensus of action), the measure will automatically appear on the ballot at the next regular municipal election. The next General Municipal Election will be March 9, 2021. (Elections Code § 1000).

Staff recommends City Council adopt the attached resolution to declaring the sufficiency of the petition, which would stop Ordinance 1095 from taking effect.

The item will be brought back before the City Council at the November 5, 2020 meeting for direction. Should the Council place the Ordinance on the March 9, 2021 election ballot, the City Council would need to call for an election no later than December 9, 2020 (EC § 12109 between E-120-90).

FISCAL IMPACT

There is no cost associated with adopting the Resolution and declaring the petition sufficient. However should the Council direct staff to add to a general or special election, there will be costs associated with holding an election.

ATTACHMENTS

1. Draft Resolution
2. Certificate of Signature Verification for City of Seaside
3. Fireworks Petition (example)

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

ACCEPTING THE CERTIFICATE OF SIGNATURE VERIFICATION FOR THE REFERENDUM AGAINST ORDNANCE No. 1095 AND DECLARING THE SUFFICIENCY OF THE PETITION

WHEREAS, The City Council adopted Ordinance 1095 on August 20th, 2020 titled "Amending Seaside Municipal Code Chapter 8.32 Fireworks"; and

WHEREAS, On September 15th, 2020 the City received a referendum petition with 2,446 signatures in an attempt to prevent adopted Ordinance 1095 from taking effect; and

WHEREAS, According to Elections Code (B)(vi), proponents have 30 days to circulate a petition from the date the summary was approved to nullify an ordinance from taking effect; and

WHEREAS, Monterey County Elections was requested and completed a verification of signatures to match with voter registration files; and .

WHEREAS, Monterey County Elections Official's last official report of registration to the Secretary of State (EC 9237) for the City of Seaside was 14,124 registered voters and

WHEREAS, For the petition to valid, it requires 10% of total registered voters, which is no less than 1,412 valid signatures in the City of Seaside; and

WHEREAS, on October 5th, 2020 the City received notification from Monterey County Elections that the petition appears to have the necessary amount of valid signatures, by verifying a random sample of 500, allowed by Election Code § 9240.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Seaside hereby accepts the report from Monterey County Elections and adopts the City Clerk's Certificate of Sufficiency for the referendum petition submitted to nullify Ordinance 1095 Amending Seaside Municipal Code Chapter 8.32 Fireworks.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Seaside duly held on the 15th day of October 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

MONTEREY COUNTY ELECTIONS

1441 Schilling Place-North Building
Salinas, CA 93901

PO Box 4400
Salinas, CA 93912

831-796-1499 Phone
831-755-5485 Fax

www.MontereyCountyElections.us

elections@co.monterey.ca.us

Claudio Valenzuela
Registrar of Voters

Gina Martinez
Assistant Registrar of Voters

Certificate of Signature Verification

WHEREAS, Referendum Against Ordinance No. 1095 - Amending Seaside Municipal Code Chapter 8.32 Fireworks, was filed in the office of the Seaside City Clerk on September 15, 2020 and transferred to Elections for signature verification on September 22, 2020.

WHEREAS, the petition consists of 179 sections and 2,446 signatures;

WHEREAS, each section contains signatures purporting to be the signatures of qualified Electors of this county; that attached to each petition at the time it was filed was an affidavit purporting to be the affidavit of the persons who solicited the signatures, and containing the dates between which the purported qualified electors signed the petition; that the affiant stated his or her own qualifications, that he or she had solicited the signatures upon that section, that all of the signatures were made in his or her presence, and that to the best of his or her knowledge and belief each signature to that section was the genuine signature of the person whose name it purports to be;

WHEREAS, pursuant to Elections Code § 9115, of the 2,446 signatures submitted, Elections verified a random sampling of 500 signatures by examining the records of registration of this County, current and in effect at the respected purported dates of such signing, to determine what number of qualified electors signed the petition;

WHEREAS, Elections Code § 9215 provides that the minimum number of signatures required for an initiative petition submitted to the City is not less than 10% of the voters in the City, according to the last report of registration by the County Elections Official to the Secretary of State pursuant to Section 2187, and there are 14,124 voters in the City of Seaside as of the report of registration at the time of filing.

WHEREAS, of the 500 signatures verified in the random sampling, 388 were deemed valid, 112 signatures were found not sufficient, 1 of which was not sufficient because of duplicate signature records wherein a voter signed the petition more than once.

WHEREAS, the projected number of valid signatures on said petition is 1,879 signatures or 13.3% of the registered voters in the City of Seaside.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 2nd Day of October, 2020.

Claudio Valenzuela, Registrar of Voters
County of Monterey

MONTEREY COUNTY OFFICIAL SEAL REGISTRAR OF VOTERS

Referendum Against an Ordinance Passed by the City Council

We, the undersigned, are duly registered and qualified voters of the City of Seaside, California. We hereby protest the adoption of Ordinance Number 1095, adopted by the City Council on August 20, 2020 and request that Ordinance Number 1095 be reconsidered and repealed by the City Council or that it be submitted to a vote of the People of the City of Seaside at the next regular election or at a special election called for that purpose pursuant to Cal. Elec. Code section 9241.

ORDINANCE NO. 1095. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SEASIDE AMENDING SEASIDE MUNICIPAL CODE CHAPTER 8.32 FIREWORKS

>>The text of the ordinance that is the subject of the referendum begins following this page.<<

OFFICIAL TOP FUNDERS. Valid only for August 2020
Petition circulation paid for by Citizens for a Safe Fourth of July – a coalition of Seaside residents, nonprofits, and American Promotional Events, Inc. – West
Latest info: https://ci.seaside.ca.us/333/City-Clerk

NOTICE TO THE PUBLIC: THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK.

All signers of this petition must be registered to vote in the City of Seaside.				This column for official use only
1. 6	[redacted]	Residence Address ONLY: Seaside CA 93955 [redacted]	Seaside CA 93955	
2.	Pri[redacted]	Residence Address ONLY:		
	Signature as Registered to Vote:	City	Zip	
3.	Print Your Name:	Residence Address ONLY:		
	Signature as Registered to Vote:	City	Zip	
4.	Print Your Name:	Residence Address ONLY:		
	Signature as Registered to Vote:	City	Zip	
5.	Print Your Name:	Residence Address ONLY:		
	Signature as Registered to Vote:	City	Zip	
6.	Print Your Name:	Residence Address ONLY:		
	Signature as Registered to Vote:	City	Zip	

Referendum Against an Ordinance Passed by the City Council

ORDINANCE NO. 1095

AN ORDINANCE OF THHE CITY COUNCIL OF THE CITY OF SEASIDE

AMENDING SEASIDE MUNICIPAL CODE CHAPTER 8.32 FIREWORKS

THE CITY COUNCIL OF THE CITY OF SEASIDE DOES ORDAIN AS FOLLOWS:

SECTION 1. GENERAL PURPOSE AND FINDINGS.

The purpose of this Ordinance is to consider text amendments to the Seaside Municipal Code chapter 8.32 regarding fireworks for the following reasons:

Whereas, the City of Seaside has regulated fireworks since 1970.

Whereas, in 2014, Chapter 8.32 of the Seaside Municipal Code was amended to prohibit fireworks, but provided some narrow exceptions to allow the sale, use and possession of safe and sane fireworks during the period June 28 through noon on July 5.

Whereas, in the intervening years, there have been multiple complaints of noise and abuses related to the use of fireworks

Whereas, inspite of enforcement and deterrent efforts, the use of illegal firewoks and the complaints of nioise and abuses has not improved

Whereas, July 19, 2020, the City Council voted to amend the Seaside Municipal Code to exclude all private sale, use, or possession of all fireworks, including safe and sane, within the City at any time.

Whereas, the Council desired to have only one exception, Section 8.32.040 Public Displays and special events which require a permit to be issued and provides that the general public must be admitted to allow for a City sponsored fireworks display.

SECTION 2. ENVIRONMENTAL COMPLIANCE

The proposed changes to the Ordinance will not result in direct or indirect changes to the environment and do not meet the definition of project under CEQA. (14 CCR 15378(b)) Additionally, any cross-connection activities are categorically exempt from CEQA. (14 CCR 15301(b))

15378(b)) Additionally, any cross-connection activities are categorically exempt from CEQA. (14 CCR 15301(b))

SECTION 3. PROPOSED TEXT AMENDMENTS

This ordinance repeals and restates the following amendments into the Seaside Municipal Code:

Chapter 8.32

FIREWORKS

Sections:

* Prior legislation: Ords. 368, 369, 589, 760 and 884, and prior code §§ 8-100 – 8-109.

Referendum Against an Ordinance Passed by the City Council

8.32.010Purpose.

The purpose of this chapter is to regulate the possession, use, storage, sale and display or fireworks within the city of Seaside. (Ord. 1014 § 2, 2014)

8.32.020Definitions.

When used in this chapter, the following words shall have the meanings ascribed to them in this section:

"Affiliated organizations," for purposes of this chapter, shall be presumed to be the following:

1. Organizations incorporated under the same charter or organization and their auxiliaries if the auxiliary is incorporated under the same charter;

2. Organizations sharing the same officers and/or place of meetings and/or national parent organization;

3. Subdivisions and/or fractional divisions however named or delineated of organizations.

"Citation" means an administrative citation issued pursuant to this section to remedy a violation.

"Citee" means any person served with an administrative citation charging him or her as a responsible person for violation.

"City" means the city of Seaside.

"Code" means the city of Seaside Municipal Code.

"Code enforcement officer" or "CEO" means any employee or agent of the city of Seaside designated by the city council to enforce any provision of this code.

"Dangerous fireworks" means fireworks as listed and defined in California Health and Safety Code Sections 12505 and 12561 and the relevant sections of Title 19 of the California Code of Regulations, as the same may be amended from time to time.

"Eligible nonprofit organization" means a duly organized nonprofit, tax exempt charitable, religious, civic, patriotic, or community service association, organization, or corporation (collectively "the organization") which has met all the following criteria continuously for a minimum period of one year immediately preceding the filing of an application for a permit to display for sale or to sell safe and sane fireworks.

1. The organization must be a duly organized nonprofit entity which has tax exempt status from the Internal Revenue Service or the Franchise Tax Board, or which is an organization affiliated with and operating solely in support of an elementary school, junior high school, high school, university or community college that is located

within the city of Seaside and that serves, in whole or in part, residents of the city of Seaside.

2. The organization must have its principal place of business and principal meeting place within the city of Seaside and must hold its regularly scheduled meetings within the city of Seaside.

3. The organization must be one which provides direct and regular community services and benefits to the residents of the city of Seaside.

4. The organization must not have had a permit to sell revoked within twenty-four months prior to the organization's submittal of an application for a permit to sell.

"Exempt fireworks" means any special item containing pyrotechnic compositions which the state Fire Marshal, with the advice of the state fire advisory board, has investigated and determined to be limited to industrial, commercial, and agricultural use, or religious ceremonies when authorized by a permit granted by the authority having jurisdiction.

"Fireworks" means any device containing chemical elements and chemical compounds capable of burning independently of the oxygen of the atmosphere and producing audible, visual, mechanical, or thermal effects which are useful as pyrotechnic devices or for entertainment. These items include, but are not limited to, devices designated by the manufacturer as fireworks, torpedoes, skyrockets, roman candles, rockets, Daygo bombs, sparklers, party poppers, paper caps, chasers, fountains, smoke sparks, aerial bombs, and fireworks kits. These terms include both "dangerous fireworks" and "safe and sane fireworks."

"Fireworks sales permit" or "permit" means a permit issued pursuant to this chapter authorizing the display for sale and the sale of state-approved fireworks.

"Fireworks stand" means any building, counter, or other structure of a temporary nature used in the sale, the offering for sale, or display for sale of "safe and sane fireworks."

"Fireworks wholesaler" and "fireworks distributor" means a person, other than an importer, exporter, or manufacturer selling only to wholesalers, who sells fireworks to a retailer or any other person for resale. It also includes any person who sells dangerous fireworks to public display permittees.

"Hearing officer" means the person appointed by the city manager to serve as the hearing officer for administrative hearings hereunder.

"Issuance" or "issued" means:

1. The preparation and service of an administrative fine citation to a citee in the same manner as a summons in a civil action in accordance with Article III (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedures; or

Referendum Against an Ordinance Passed by the City Council

2. Mailing of administrative fine citation to the citee by certified mail with return receipt, to the address shown on the official records of the county assessor; or

3. By personally serving the responsible party by personal delivery of the administrative fine citation or by substituted service. Substituted service may be accomplished as follows:

a. By leaving a copy at the recipient's dwelling or usual place of abode, in the presence of a competent member of the household, and thereafter mailing by first class mail, postage prepaid, a copy to the recipient at the address where the copy was left; or

b. In the event the responsible party cannot be served by first class mail, postage prepaid, or cannot be personally served and has a property manager or rental agency overseeing the premises, substituted service may be made upon the property manager or rental agency or may be effected by posting the property with the administrative fine citation and mailing a copy by first class mail, postage prepaid, to the responsible party in violation at the address of the property where the violation exists.

"Permittee" means an eligible nonprofit organization to which a permit has been issued pursuant to this chapter.

"Person" means any person, partnership, organization, firm, corporation, association or any combination thereof, or any city, county, city and county, and state, and shall include any of their employees and authorized representatives.

"Principal place of business" and "principal meeting place" includes, but is not limited to, a permanent structure, playing field, geographic area, or service population which resides in or is located within the city of Seaside.

"Public display of fireworks" means an entertainment feature where the public is admitted or permitted to view the display or discharge of fireworks, including but not limited to those defined in this chapter.

"Responsible person" means a person who causes a violation of this chapter to occur or allows a violation to exist or continue, by his or her action or failure to act, or whose agent, employee or independent contractor causes a violation to occur, or allows a violation to exist or continue. There is a rebuttable presumption that the record owner of a residential parcel, as shown on the county's latest equalized property taxes assessment rolls, and a lessee of a residential parcel has a notice of any violation existing on said property. For purposes of this chapter, there may be more than one responsible person for a violation. Any person, irrespective of age, found in violation of any provision of this chapter may be issued a citation in accordance with the provisions of this chapter. Every parent, guardian or other person, having the legal care, custody or control of any person under the age of eighteen years, who knows or responsibly should know that a minor is in violation of this chapter, may be issued a citation in

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accordance with the provisions of this chapter, in addition to any citation that may be issued to the offending minor.

"Violation" or "violates" means any violation of any provision of this chapter. (Ord. 1014 § 2, 2014)

8.32.030General prohibition against possession, use, or sale of fireworks.
Except as otherwise provided in this chapter, no person shall possess, sell, use, display, explode, or discharge any fireworks within the city of Seaside. (Ord. 1014 § 2, 2014)

8.32.040Exception – Public displays and special events – Agricultural and wildlife fireworks – Model rockets.
A. The display of fireworks shall be permitted as a part of an entertainment feature for which is either City sponsored or co-sponsored event or for which a special event permit has been issued pursuant to SMC 17.52.040(E)(2) and to which the general public ~~or a private group~~ is admitted ~~or invited to attend and is admitted or permitted to enter.~~

B. It shall be unlawful for any person to possess, sell, furnish, or give away, or offer or expose for sale, or fire, discharge, or explode, any agricultural and wildlife fireworks within the city of Seaside without first obtaining a permit to do so from the fire chief. The permit shall not be transferable and shall particularly describe the place where agricultural and wildlife fireworks are to be stored, sold, or discharged. Such permit shall be for such length of time as the fire chief shall determine, but in any event, not to exceed twelve months.

C. The sale, purchase, storage, firing or discharge of model rockets may be allowed by written permit from the fire chief or his/her designee which shall include, but not be limited to, the conditions contained in Title 19 of the California State Administrative Code and any other conditions the fire chief may deem reasonably necessary for the safety and welfare of the public and the community. (Ord. 1014 § 2, 2014)

~~**8.32.050Exception – Safe and sane fireworks.**~~
~~The sale, display for sale, and use of safe and sane fireworks shall be permitted only during that period beginning at twelve noon on June 28th and ending at ten p.m. July 5th of that same year. It shall be unlawful for any person to sell safe and sane fireworks within the city of Seaside without having first applied for and received a permit from the city as required under this chapter. (Ord. 1014 § 2, 2014)~~

~~**8.32.060Permit to sell safe and sane fireworks – Application – Qualified applicants.**~~
~~A. All eligible nonprofit organizations interested in displaying for sale and in selling safe and sane fireworks must meet all requirements of this chapter and must submit an application to the city in a manner determined by the city manager or his/her designee. All applications for permits to display for sale and to sell safe and sane fireworks shall be in writing and shall be submitted to the city's fire chief or his/her designee on forms~~

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~~supplied by the city. Any eligible nonprofit organization which demonstrates compliance with all applicable requirements and conditions of this chapter shall be deemed a qualified applicant.~~

~~B. An interested eligible nonprofit organization may submit to the city an application for a permit to sell beginning March 1st of each year, or the first business day thereafter, and ending the last business day in April of that same year.~~

~~C. No organization shall submit more than one application. Submittal of more than one application by any organization or an affiliated organization thereof shall be grounds for denial of all applications. The city manager shall have final authority to determine the affiliation of organizations.~~

~~D. Any attempt to transfer an application shall void any and all applications filed by or on behalf of both the transferor and the transferee.~~

~~E. Each application shall be accompanied by a nonrefundable application fee at an amount established by resolution of the city council. The application fee shall be in addition to any fee or tax imposed by any other chapter of the Seaside Municipal Code. (Ord. 1014 § 2, 2014)~~

~~8.32.070 Limitation on permits to sell safe and sane fireworks – Selection of eligible nonprofit organizations.~~

~~A. Each calendar year, the city shall issue, at the sole discretion of the city council, up to a maximum number of permits not to exceed thirteen. One permit shall be issued to each eligible nonprofit organization selected pursuant to this section.~~

~~B. Of the maximum number of stands/permits allowable in any given year, there shall be two classes of stands/permits: grandfathered and lottery.~~

~~1. Grandfathered stands/permits are provided in recognition of the fact that some local service organizations have relied upon safe and sane fireworks sales as a primary source of income for many years.~~

~~2. Lottery stands/permits are provided in recognition of the fact that there are other local service organizations that could benefit from the sale of safe and sane fireworks, but are not as dependent upon this source of income.~~

~~Grandfathered permits may be established by city council resolution. Grandfathered organizations must reapply each year for a permit to sell safe and sane fireworks to retain their grandfathered status. Failure by a grandfathered organization to file complete permit application packets with the city by the required deadlines shall result in loss of their grandfathered status. Failure to abide by city policies and/or fireworks sales requirements, or by any other valid order or requirement issued by the fire department, may result in the disqualification for grandfathered status and will be grounds for the organization that previously held grandfathered status subject to the loss of such status.~~

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~~The number of lottery stands/permits consists of the difference between the maximum number of stands/permits allowed under this ordinance and the number of valid grandfathered stand/permits issued in that year. The number of lottery stand/permits may increase if one or more grandfathered stand/permits are not applied for in accordance with the city requirements. Lottery stand/permits shall be granted by lottery drawing held by the city clerk no later than May 15th of each year. Organizations selected by a lottery shall be notified by the city clerk following the results of the drawing. Notice of lottery drawing date and location shall be provided by the city clerk by notice posted on the city's website or placed in a daily newspaper having widespread circulation of the city of Seaside and by mail to those nonprofit organizations who have applied for a lottery stand/permit that year. Lottery stand/permits do not become grandfathered stand/permits that year. Lottery stand/permits do not become grandfathered stand/permits the following year. A holder of a lottery stand/permit in a particular year is not guaranteed the lottery stand/permit the following year.~~

~~C. Two or more eligible nonprofit organizations from the same priority category may jointly submit an application to the city pursuant to SMC 8.32.060 and may jointly receive a permit to sell fireworks pursuant to this chapter.~~

~~D. The city's fire marshal or his/her designee shall issue permits to those eligible nonprofit organizations that have submitted a conforming and timely application. Selection shall be made at random from among all those eligible nonprofit organizations which have submitted conforming and timely applications. The fire chief or his/her designee shall notify selected organizations in writing no later than May 15th of each year.~~

~~E. Permits issued pursuant to this section are valid only during the calendar year issued.~~

~~F. Permits are not transferable to any other person or organization.~~

~~G. Prior to the issuance of a permit pursuant to this chapter, and in addition to those other requirements set forth in this chapter or on the permit application; in order for a permit to be issued, a qualified nonprofit organization shall demonstrate compliance with all of the following:~~

~~1. On a form provided by the city, set forth the proposed location of the fireworks stand; the name, address and telephone number of one or more responsible adults who will be in charge of and responsible for the fireworks stand during the period fireworks are sold, displayed or stored at such location; and written permission from the owner of record and/or lessor and/or management company of the property upon which said fireworks stand is proposed to be located;~~

~~2. A copy of the requisite retail sales permit issued by the office of the California State Fire Marshal;~~

~~3. Evidence of a temporary sales tax permit from the California State Board of Equalization;~~

Referendum Against an Ordinance Passed by the City Council

~~4. Payment of the permit/license fee at the amount established by resolution of the city council;~~

~~5. Throughout the term of a permit issued pursuant to this chapter, each permittee shall pay for and maintain in full force and effect policies of insurance in a form and amount and with coverage types required by the city. The policies of insurance shall name the city, its officers, officials, agents, and employees as additional insureds. (Ord. 1014 § 2, 2014)~~

~~8.32.080Operator safety seminar.~~

~~Each year, one or more representatives from each organization that is issued a permit to display for sale or to sell safe and sane fireworks shall attend a stand operator safety seminar conducted by the city of Seaside fire department and each of the fireworks wholesalers operating in Seaside that year. The failure of an organization to have a representative of the organization attend the seminar shall result in the revocation of the permit and the disallowance to display for sale or to sell safe and sane fireworks. (Ord. 1014 § 2, 2014)~~

~~8.32.090Operation of fireworks stand.~~

~~A. No person shall sell any fireworks to any person under the age of eighteen years.~~

~~B. The sale of safe and sane fireworks pursuant to a permit issued under this chapter shall begin no earlier than twelve noon on June 28th and shall not continue after ten p.m. on July 5th of the same year. The sale of safe and sane fireworks shall be permitted only from nine a.m. to ten p.m. daily, except June 28th when the hours shall be from twelve noon to ten p.m.~~

~~C. No person other than the permittee organization or corporation shall operate the stand for which the permit is issued or share or otherwise participate in the profits of the operation of such stand.~~

~~D. No person other than the individuals who are members or volunteers of the permittee organization or the spouses, significant others, parents or adult children of such members shall sell or otherwise participate in the sale or display of safe and sane fireworks at such fireworks stand.~~

~~E. No person under the age of eighteen shall sell or participate in the sale of safe and sane fireworks or be in the fireworks stand and there shall be at least one supervisor, twenty-one years of age or older on duty at all times.~~

~~F. No person shall be paid any consideration by the permittee organization or any wholesale distributor of safe and sane fireworks for selling or otherwise participating in the sale of fireworks at such stand; provided, however, that compensation may be paid for security personnel during non-sale hours and to the party authorizing location of the stand on its property. The fire marshal or fire chief may revoke the fireworks storage permit of any wholesale distributor violating the terms of this section. (Ord. 1014 § 2, 2014)~~

Referendum Against an **Ordinance Passed by the City Council**

~~8.32.100Fireworks stands.~~

~~All retail sales of safe and sane fireworks shall be permitted only from within a fireworks stand. The sale from any other building, structure or location is prohibited. Fireworks stands shall be subject to the following provisions:~~

~~A. No fireworks stand shall be located within thirty feet of any adjacent building or within one hundred feet of any gasoline pump or distribution point.~~

~~B. Fireworks stands may be located on paved or unpaved surfaces, subject to the approval of the Seaside fire department and the community planning and development department.~~

~~C. Fireworks stands need not comply with the provisions of the building code of the city; provided, however, that all stands shall be erected under the supervision of the city's inspectors, who shall require that stands be constructed in a manner which will reasonably insure the safety of attendants and patrons; and provided further, that any electrical installations shall comply with all applicable codes. The permittee shall be responsible for the full costs associated with any inspections conducted by the city's inspectors and the permittee shall fully reimburse the city for all of its costs incurred in association with such inspections. The permittee shall make payment in full to the city within ten days of receipt of the invoice. Nonpayment shall prohibit the permittee from obtaining permits for subsequent years until the invoice is paid in full.~~

~~D. A twenty-five foot area surrounding the fireworks stand must be cleared of dried vegetation and must be maintained.~~

~~E. No fireworks stand shall be located closer than ten feet from any public roadway unless the rear of the fireworks stand is positioned against a curb that faces the primary use on that parcel and the fireworks stand is positioned to allow for the safe use of the parking lot and to allow for the free flow of vehicular and pedestrian traffic throughout the parcel. Fireworks stands may only be placed on a commercial, mixed-use, or industrial zoned parcel and in a location which otherwise meets the approval of the Seaside fire department and community planning and development department.~~

~~F. If a fireworks stand is going to use electric lights the wiring must be properly installed and will be subject to inspection by the city of Seaside fire department and/or building department. Open splices are prohibited and all wiring must be protected from physical damage and weather. Exposed light bulbs shall be protected with covers, cages or screens. Nothing in this chapter shall preclude or prohibit the use of battery-operated lights in and around a fireworks stand.~~

~~G. No fireworks stand shall have a floor area in excess of seven hundred fifty square feet.~~

~~H. Each fireworks stand shall have a least two exits. Each stand in excess of forty feet in length shall have at least three exits spaced approximately equidistant apart; provided, however, that in no case shall the distance between exits exceed twenty-four~~

Referendum Against an Ordinance Passed by the City Council

~~feet apart. Exit doors shall not be less than twenty-four inches wide and six feet in height and shall swing in the direction of exit travel.~~

~~I. Each fireworks stand shall be provided with at least one approved pressurized "water type" (minimum rating 2A) fire extinguisher with an up-to-date inspection tag that shows the fire extinguisher has been serviced within the past year.~~

~~J. All fireworks stands shall be disassembled and removed no later than July 8th at five p.m.~~

~~K. All fireworks stands are subject to daily inspection by the fire chief or his/her designee and the permittee shall be responsible for the costs incurred by the city in such inspections at the rates and amounts established by resolution of the city council. Other than the initial inspections, the permittee shall not be responsible for the cost of additional inspections unless probable cause existed necessitating the inspection(s) in the first place. The city will invoice the permittee for the full costs of inspection incurred by the city during the term the fireworks stand is in operation. The permittee shall make payment in full to the city within ten days of receipt of the invoice. Nonpayment shall prohibit the permittee from obtaining permits for subsequent years until the invoice is paid in full. (Ord. 1014 § 2, 2014)~~

~~8.32.110General requirements for permittees.~~

~~A. Fireworks stands shall not be located closer than six hundred feet apart, unless separated by a street, roadway or building.~~

~~B. All weeds and combustible material shall be cleared from the location of the fireworks stand to a distance of at least twenty-five feet surrounding the fireworks stand.~~

~~C. All trash and debris resulting from the operation of the fireworks stand must be removed on a daily basis.~~

~~D. "NO SMOKING" signs shall be prominently displayed on all sides of the fireworks stand, in both English and Spanish. Each sign shall have the words "NO SMOKING" in red letters not less than two inches in height with a minimum one-half inch stroke.~~

~~E. No fuel-powered generator or similar equipment shall be allowed within fifty feet of a fireworks stand.~~

~~F. When the stand is not being used for sale and/or display of fireworks, a reinforced, heavy metal, fully enclosed container, similar to a SAWDOC, walk-in type drop box or its equivalent, as approved by the fire chief or his/her designee, may be used to store fireworks.~~

~~G. Each fireworks stand must post its city of Seaside permit, its temporary sales tax permit, and its state fire marshal retail sales permit and proof of their required insurance in a prominent place inside the fireworks stand.~~

~~H. All unsold stock of fireworks held by the permittee after ten p.m. on July 5th shall be immediately stored in the container referenced in subsection F of this section and picked up by the fireworks wholesaler within seventy-two hours thereafter. (Ord. 1014 § 2, 2014)~~

8.32.120Revocation of permit.

A. The city fire chief or his/her designee or the city fire marshal or his/her designee may revoke, immediately and without notice or hearing, the permit of any permittee who violates any provision of this chapter. In the event of any such revocation the permittee must immediately cease operations and shall no longer display for sale or sell any fireworks. Any permittee whose permit has been revoked shall be prohibited from applying for or from receiving a permit under this chapter for a period of two years from the date of revocation.

B. Any revocation made pursuant to this section may be appealed by the permittee to the city manager on the next business day following such revocation. The city's fire chief and/or fire marshal or his/her designee shall provide the city manager with written notice of the revocation, including the name of the permittee and a brief statement on the grounds for revocation. The city manager shall consider the appeal at his/her earliest convenience and may, in his/her sole discretion, meet with the permittee to review the revocation and may, in his/her discretion, support or overturn the revocation. The city manager's decision shall be final and dispositive of the matter. In the event the city manager overturns the revocation the permittee may immediately resume operations pursuant to the originally issued permit and shall remain eligible for participation in the next year's application selection process. (Ord. 1014 § 2, 2014)

8.32.130Seizure of fireworks.

The fire chief or the fire marshal may seize, take, remove, or cause to be removed, at the expense of the permittee or owner thereof, all stocks of fireworks displayed or available for sale, stored, or held in violation of this chapter. (Ord. 1014 § 2, 2014)

8.32.140Police and fire department illegal fireworks operation plan and after action report.

A. On or before the first regular city council meeting in May of every year, both the city's police and fire departments must present to the city council an operation plan for the thirty-day period surrounding the 4th of July (June 17th through July 16th) for that year. Said operation plan should include, but not be limited to, the following information:

1. Identification of areas within the city where illegal fireworks were a problem in the previous year;

2. A general explanation of the supplemental fire and law enforcement personnel deployed within the city;

Referendum Against an Ordinance Passed by the City Council

3. A report on the additional apparatus and personnel who'll be on duty for the period of June 17th through July 16th of that year;

4. Recommendations on and discussion of what, if any, dedicated illegal fireworks enforcement patrols there should be for that year and all other relevant information and statistics deemed necessary by the city council;

5. A detailed discussion of the costs that will be incurred by the city that year to be delivered in the operation plan; what, if any, of these costs will be covered by existing fees levied on the permittees, and unexpended surcharge revenue from prior years;

6. A proposed recommendation for a surcharge resolution establishing the surcharge amount to be levied that year on each retail sale of safe and sane fireworks in an amount not to exceed seven percent.

B. On or about September 1st of that same year, both police and fire departments must report back to the city council with an after action report. That report should include, but is not limited to:

1. An evaluation of the effectiveness of that department's operation plan for that year including a listing of any significant fireworks-related incidents, both "dangerous fireworks" and "safe and sane fireworks";

2. Relevant incident statistics for the period of June 17th through July 16th, and identification of fireworks related incidents;

3. A report on how many calls there were regarding suspected "dangerous fireworks," how many of those calls either of the departments responded to, how many of those calls resulted in seizures and/or administrative fine citations. (Ord. 1014 § 2, 2014)

~~**8.32.150Fireworks surcharge.**~~

~~A. All nonprofit retail booth locations shall assess a surcharge, on all retail sales of safe and sane fireworks that occur in the city. The assessment shall be paid by the permittee upon presentment of an invoice by the city. The surcharge will be assessed to the public for each retail sale and is up and above the retail price of the fireworks and will not be deducted from the permittee's net profit.~~

~~B. The assessment is intended to raise sufficient funds for the city to help pay for the cost of enforcement; inspection of stands; public education and awareness campaigns; enforcing the provisions of this chapter, including extra personnel time, and cleanup of the fireworks trash and debris left behind each year. "Extra personnel time" shall be defined as employee or contracted employee time that the city would not otherwise incur but for the sale and use of safe and sane fireworks. By the first regular city council meeting in May of each year, the city manager must submit to the city council for its approval, a proposed budget for police, fire, administrative services and public~~

~~works departments. The exact amount of the assessment shall be determined each year by no later than the second regular city council meeting in May of that year and notice sent to each of the permittees. In no event shall the assessment be more than seven percent of the gross sales of the fireworks sold in the city that year. The fireworks wholesaler with whom each permittee has contracted shall be responsible for collecting the estimated assessment from their nonprofit organizations, advising the city of the amount of each estimated assessment collected, and holding the funds in trust pending notification by the city of the exact amount owed. After the city determines each permittee's share of the total annual sales volume, each permittee shall be billed for its share of the total assessment. A duplicate copy of each permittee's invoice will be sent to its fireworks wholesaler. Payment of the assessment by each permittee shall be due to the city thirty days after the issuance of the invoice. The expenses submitted are subject to review, audit and dispute by any permittee who has to pay the assessment that year. Any dispute of the assessment must be filed within fifteen days of its receipt or any right to contest it will be deemed waived. The city council is the final arbiter of any disputed assessment. Any excess (i.e., difference between amount of surcharge collected by each group and the amount of their individual assessment) shall remain the property of that permittee.~~

~~C. Failure by any permittee to pay the amount assessed to it by the city shall be cause to bar the permitee from selling safe and sane fireworks in the future, until the assessment is paid in full. Furthermore, if the assessment is not paid by the due date, it shall be subject to a ten percent penalty for each month or portion of a month that it is late. (Ord. 1014 § 2, 2014)~~

~~8.32.160Wholesale storage of safe and sane fireworks.~~

~~A. Wholesale storage of California State Fire Marshal listed safe and sane fireworks may be allowed under the provisions of this section and chapter. All wholesale storage facilities or buildings shall conform to the applicable building and fire codes of the city of Seaside.~~

~~B. An annual storage permit shall be required from the Seaside fire department for the wholesale storage of fireworks. The annual storage permit shall be annually renewable, subject to inspection clearance by the Seaside fire department. The fee for such permit shall be established by resolution of the city council.~~

~~C. All wholesale storage facilities or buildings are subject to daily inspection by the Seaside fire department. The city will invoice the wholesale storage permittee for the full costs of inspection incurred by the city during the term the location is in use. The permittee shall make payment in full to the city within ten days of receipt of the invoice. Nonpayment shall prohibit the permittee from obtaining permits for subsequent years until the invoice is paid in full. (Ord. 1014 § 2, 2014)~~

~~8.32.170Fireworks wholesaler public education plan.~~

~~Each fireworks distributor and fireworks wholesaler which is supplying one or more of the permittees under this chapter shall annually submit a public education plan to the~~

~~city of Seaside by no later than five p.m. on June 1st. Each public education plan shall outline the public safety and education efforts that the fireworks distributor or fireworks wholesaler has or intends to initiate, support, and/or deliver within the city of Seaside prior to and during the dates during which fireworks may be sold, displayed for sale, and used within the city of Seaside. At a minimum each public education plan shall consist of the distribution with each sale of safe and sane fireworks of two fireworks educational brochures prepared by the state fire marshal's office, and not less than one thousand dollars worth of public service announcements broadcast on local television, and bearing the fireworks wholesaler's name, on the safe and responsible use of safe and sane fireworks. Each public education plan should at least include samples of all the materials and the extent of distribution of all of the safety and education materials identified in that fireworks distributor or fireworks wholesaler's public education plan. (Ord. 1014 § 2, 2014)~~

8.32.180 Manufacture of fireworks prohibited.

No person, firm, or corporation shall manufacture fireworks of any type within the city of Seaside. (Ord. 1014 § 2, 2014)

8.32.190 Administrative fines and penalties.

~~A. Any violation of this chapter shall be a misdemeanor.~~

B. Any person or entity who possesses, uses, stores, sells, and/or displays safe and sane fireworks on or at dates, times, and/or locations other than those permitted under this chapter are subject to an administrative fine, together with all costs of enforcement, of an amount not to exceed ~~not less than~~ one thousand dollars for each such offense. Administrative fines shall be subject to the procedures established in Chapter 2.56 SMC.

C. The remedies set forth in this chapter are in addition to all other legal and equitable remedies, administrative, criminal or civil, that may be pursued by the city to address violations of this chapter ~~including, as an alternative to the issuance of an administrative fine pursuant to this section, and in his or her sole discretion, the city attorney may criminally prosecute a violation of this chapter~~.

D. The imposition of administrative fines under this section related to the use, possession, sale, or display for sale of dangerous fireworks shall be limited to persons who possess, sell, use, and/or display, or the seizure of, less than twenty-five pounds of dangerous fireworks measured by gross weight. Any person or entity who possesses, uses, stores, sells, and/or displays less than twenty-five pounds of dangerous fireworks are subject to an administrative fine, together with all costs of enforcement, of not less than one thousand dollars for each such offense.

E. Administrative fines collected pursuant to this section and related to dangerous fireworks shall not be subject to the restrictions of California Health and Safety Code Sections 12500 through 12759; however, the city shall provide cost reimbursement to the state fire marshal pursuant to regulations adopted by the state fire marshal addressing the state fire marshal's cost for the transportation and disposal of dangerous fireworks seized by the city, which costs will be part of any administrative fine imposed. Unless and until said regulations have been adopted, the city shall hold in trust two hundred fifty dollars, or twenty-five percent of administrative fines collected, to cover the cost reimbursement to the state fire marshal for the cost of transportation and disposal of the dangerous fireworks.

F. Because of the serious threat of fire or injury posed by the use of "dangerous fireworks" that can result from persistent or repeated failures to comply with the provisions of this code and the effect of such conditions or activities on the safety and the use and enjoyment of surrounding properties and to the public health, safety and welfare, this chapter imposes strict civil liability upon the owners of residential real property for all violations of this code existing on their residential real property. Each contiguous use, display and/or possession shall constitute a separate violation and shall be subject to a separate administrative fine. (Ord. 1014 § 2, 2014)

8.32.200Concurrent authority.
This chapter is not the exclusive regulation of fireworks within the city. It shall supplement and be in addition to other state, local, or federal laws, regulations, or ordinances and any other legal entity or agency having jurisdiction. (Ord. 1014 § 2, 2014)

8.32.210Fees deemed debt to the city.
The amount of any fine, fee, cost or charge imposed by this chapter shall be deemed a debt to the city that is recoverable in any court of competent jurisdiction. (Ord. 1014 § 2, 2014)

SECTION 4. EFFECTIVE DATE

This Ordinance shall become effective thirty (30) days after its final passage and adoption at a duly noticed public hearing for the second reading of the proposed text amendments.

INTRODUCED AND PASSED TO PRINT at a regular meeting of the City Council of the City of Seaside, State of California, on the 6th day of August 2020.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Seaside, State of California, on the 20th day of August, 2020, by the following vote:

AYES:	3	COUNCIL MEMBERS: Campbell, Oglesby, Pacheco
NOES:	1	COUNCIL MEMBERS: Wizard
ABSENT:	1	COUNCIL MEMBERS: Kispersky
ABSTAIN:	0	COUNCIL MEMBERS: None

Ian N. Oglesby, Mayor

ATTEST:

Lesley Milton, City Clerk

Referendum Against an Ordinance Passed by the City Council

ORDINANCE NO. 1095. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SEASIDE AMENDING SEASIDE MUNICIPAL CODE CHAPTER 8.32 FIREWORKS

OFFICIAL TOP FUNDERS. Valid only for August 2020
Petition circulation paid for by Citizens for a Safe Fourth of July – a coalition of Seaside residents, nonprofits, and American Promotional Events, Inc. – West
Latest info: https://ci.seaside.ca.us/333/City-Clerk

NOTICE TO THE PUBLIC: THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK.

All signers of this petition must be registered to vote in the City of Seaside.				This column for official use only
7.	Print Your Name:	Residence Address ONLY:		
	Signature as Registered to Vote:	City	Zip	
8.	Print Your Name:	Residence Address ONLY:		
	Signature as Registered to Vote:	City	Zip	
9.	Print Your Name:	Residence Address ONLY:		
	Signature as Registered to Vote:	City	Zip	
10.	Print Your Name:	Residence Address ONLY:		
	Signature as Registered to Vote:	City	Zip	
11.	Print Your Name:	Residence Address ONLY:		
	Signature as Registered to Vote:	City	Zip	
12.	Print Your Name:	Residence Address ONLY:		
	Signature as Registered to Vote:	City	Zip	
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	Signature as Registered to Vote:	City	Zip	
18.	Print Your Name:	Residence Address ONLY:		
	Signature as Registered to Vote:	City	Zip	
19.	Print Your Name:	Residence Address ONLY:		
	Signature as Registered to Vote:	City	Zip	
20.	Print Your Name:	Residence Address ONLY:		
	Signature as Registered to Vote:	City	Zip	

DECLARATION OF CIRCULATOR: (To be handwritten by the circulator after above signatures have been obtained)
I, Moriah Snyder (printed name), am 18 years of age or older. I reside at the following address:
14161 82nd Ave Seminole FL 33776 (residence address, including street and number, city, state and zip).
I circulated this section of the petition and witnessed each of the appended signatures being written. Each signature on this petition section is, to the best of my information and belief, the genuine signature of the person whose name it purports to be. All signatures on this document were obtained between the dates of 9/12/2020 (month, day, year) and 9/13/2020 (month, day, year).
I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Signed 9/13 (month, day) of 2020 (year), at Seaside (city), CA. SIGNATURE: Moriah Snyder

CITY OF SEASIDE
STAFF REPORT

Item No.: 7.F.

TO: City Council

FROM: Craig Malin, City Manager

BY: Roberta Greathouse, Human Resources Director/Risk Manager

DATE: October 15, 2020

SUBJECT: **AUTHORIZE RESPONSE TO 2019-2020 MONTEREY COUNTY CIVIL GRAND JURY FINAL REPORT - "SEXUAL HARASSMENT PREVENTION #TRAININGCOMPLIANCE"**

PURPOSE & RECOMMENDATION

Accept and authorize the response to the Monterey Civil Grand Jury Final Report - Sexual Harassment Prevention #TrainingCompliance.

BACKGROUND

The 2019/2020 Civil Grand Jury conducted a countywide investigation into local government's compliance with AB1825 which requires, among other things, employers to train supervisors in sexual harassment prevention.

The Grand Jury's final report recognized the wide range of training opportunities offered by the City throughout the year and noted that the training providers were well-qualified and materials were comprehensive and compliant. The City was commended for our fully compliant written Policy Against Harassment, Discrimination, and Retaliation.

The Grand Jury felt the City fell short in the area of efficient recordkeeping due to the various modalities of training offered. Although all supervisory training was completed by the date of the final report, there were supervisors that attended the mandated training late.

The Human Resources Department has implemented all of the Grand Jury's recommendations including improving the City's system for tracking training attendance and reminding supervisors to hold individual employees accountable for meeting training deadlines.

FISCAL IMPACT

There is no cost associated with this item.

ATTACHMENTS

1. Letter to Judge Hulsey
2. Grand Jury Final Report

Reviewed for Submission to the
City Council by:

Craig Malin, City Manager

OFFICE OF THE CITY MANAGER
440 Harcourt Avenue
Seaside, CA 93955
www.ci.seaside.ca.us
Telephone 831-899-6701
Fax 831-624-5839

October 15, 2020

The Honorable Stephanie E. Hulsey
Judge, Superior Court of California
County of Monterey
240 Church Street
Salinas, CA 93901

Dear Judge Hulsey,

This letter is written in response to the Monterey Civil Grand Jury Final Report – "Sexual Harassment Prevention #TrainingCompliance." As required by the report, this letter serves as the City's response pursuant to Penal Code section 933. The responses contained in this correspondence were approved by the City of Seaside's City Council at their regular meeting on October 15, 2020.

As the Civil Grand Jury's report acknowledges, the City maintains a fully compliant AB1825 policy and a comprehensive training program that allows employees the flexibility to select their preferred training method. Unfortunately, as the report identifies, that flexibility has resulted in some recordkeeping and tracking challenges.

Findings:

1. **Seaside is commended for its fully compliant AB 1825 written policy.**

   The City agrees with this finding.

2. **The city has a comprehensive AB 1825 training program that allows employees to select their preferred training method.**

   The City agrees with this finding.

3. **The city does not fully coordinate course completion between its three AB 1825 training modalities (classroom, online, and webinar) and does not limit employee training, which has resulted in some supervisory employees training more than required and other training late or not at all.**

   The City partially disagrees with this finding. Given the large quantity of mandated training courses staff are required to attend over the course of a year, and the City's commitment to on-going employee development, it is paramount that we offer a variety of means to attend training so employees and supervisors can attend training at their convenience. We also offer different modalities in order for staff to select the type of training that suits their learning style. Although we agree that offering training through different vendors that provide online, webinars, and in person training has created an administrative challenge to track, as of the date of the Grand Jury's report, all supervisory staff were up to date on the mandated harassment training. In some cases, employees will choose to take a course more frequently than required, which is acceptable.

4. **Seaside's onboarding procedures are ineffective at ensuring new and promoted supervisory employees complete AB 1825 training within six months.**

   The City partially agrees with this finding. Attending mandated training is the responsibility of the individual. The City's onboarding procedures enroll new supervisors in harassment training through TargetSolutions. Those new employees, and their supervisors, receive frequent reminders to attend the training and notice when the training is overdue. The breakdown occurs when individuals do not meet the required deadline and their supervisor fails to hold them accountable.

5. **The city lacks an efficient recordkeeping system for AB 1825 training compliance, and some training records for supervisory employees are archived off-site and are not readily accessible.**

   The City agrees with this finding. Offering training through several venues is necessary in order to provide staff the flexibility of attending training, not only at their convenience, but in the fashion that provides them with the best learning environment, but it does make the tracking more complex. Additionally, yes, we send non-active files to storage and recovery of those files does take some time.

Recommendations:

1. **By September 30, 2020, the city of Seaside's HR Director should assign one HR staff member to oversee AB 1825 training requirements and recordkeeping, so that all employees with training due in 2020 are trained by December 31, 2020.**

   This recommendation has been implemented.

2. **Seaside should implement an onboarding system that effectively captures new or promoted employees and requires them to complete AB 1825 training within six months of their hire or promotion. This recommendation should be completed within 90 days of the publication of this report.**

   This recommendation has been implemented.

3. **Seaside should adopt an effective training tracking system to assemble all AB 1825 recordkeeping in one location, preferably saved to electronic files with cloud access. This recommendation should be completed within 18 months of the publication of this report.**

   This recommendation has been implemented.

Respectfully,

Ian N. Oglesby
Mayor

C: Roberta Greathouse, Human Resources Director / Risk Manager

SEXUAL HARASSMENT PREVENTION
#TrainingCompliance

SUMMARY

It is an unfortunate reality of our times that sexual harassment remains a challenge in our workplaces. California has enacted many measures to prevent harassment, and to mandate that our communities combat this problem both in action and by education. The Civil Grand Jury has chosen to review one part of that education, the responsibility of local governments to train workplace supervisors in sexual harassment prevention in accordance with Assembly Bill 1825 (AB 1825).

Government enacts labor laws to protect workers and to create safe, productive workplace environments for all employees. Therefore, governmental entities should be held to the highest standards under the law and should serve as models of compliance.

This Civil Grand Jury investigation determined that compliance levels vary widely among the different jurisdictions in Monterey County. Three jurisdictions stood apart in their ability to achieve AB 1825 training compliance at 80% or above. These were: King City, Marina, and Soledad. This is more remarkable than it first appears. For example, two other cities had no AB 1825 training records prior to 2017 but are now getting on track. Several other cities had incomplete or inaccurate supervisory rosters, were missing training records to document timely training, had out-of-date policies, or had other substantial deficiencies. Four other local jurisdictions offer a choice of classroom or e-learning training, or even webinar training. This is a sound approach to ensuring wide access to AB 1825 training, but it also complicates their recordkeeping systems, and resulted in gaps in timely training for some supervisory employees. Finally, one city had 75% compliance based on their elected training tracking method but would have had a 100% compliance with the alternate tracking option.

Overall, the jurisdictions investigated by the Civil Grand Jury recognize the requirement and the practical value of doing AB 1825 supervisor training properly, but many did not devote the resources or the priorities to ensuring the training was done in accordance with state mandates.

GLOSSARY

2 CCR §11024 (Title 2, California Code of Regulations, Section 11024): the state administrative regulation, having the force of law, implementing the G.C. §12950.1 law mandating sexual harassment prevention training and education based on sex, gender identity, gender expression, and sexual orientation.

24-Month Tracking Method: requires that a supervisory employee be retrained within 24 months since his or her prior AB 1825 training.

AB 1825 (Assembly Bill 1825): legislation enacted in 2004 that imposed a supervisory employee sexual harassment training requirement on California employers effective January 2005.

AB 2053 (Assembly Bill 2053): a 2014 legislative amendment, effective January 1, 2015, which expanded the AB 1825 training requirement to include prevention of "abusive conduct."

Civil Grand Jury: Monterey County Civil Grand Jury.

CJPIA (California Joint Powers Insurance Authority): a joint powers authority focused on risk management and regulatory compliance.

Classroom Training: in-person, trainer-lead instruction, with instruction conducted in person by a qualified trainer in an organized manner, utilizing lesson plans in a setting removed from the supervisor's daily duties.

CY (Calendar Year) January 1 – December 31

DFEH (Department of Fair Employment and Housing): the state governmental agency responsible for enforcement of the Fair Employment and Housing Act (FEHA) and Title VII of the federal Civil Rights Act of 1964 statutory and case law principles concerning the prohibition against and the prevention of unlawful harassment, discrimination, and retaliation in employment.

EEOC: The federal Equal Employment Opportunity Commission

E-Learning Training: individualized, interactive, computer-based training created by a trainer and an instructional designer. Requires access to a live trainer who can answer questions.

Employer (as defined in AB 1825): private employers with 50 or more employees, the State of California, any political or civil subdivision of the state, and cities.

FEHC (Fair Employment and Housing Council): the implementing agency for California anti-discrimination laws and policies, also (DFEHC).

FY (Fiscal Year): July 1 – June 30: the one-year period used by the State of California for financial reporting and budgeting.

G.C. (California Government Code of Regulations) §12950.1: The AB 1825 law mandating California employers to train employees with the objective of changing workplace behaviors that create or contribute to harassment.

HR (Human Resources): a department of an organization that deals with the hiring, administration, and training of personnel.

JPA (Joint Powers Authority): Joint Powers Authorities are legally created entities that allow two or more public agencies (e.g. local governments, or utility or transport districts), to jointly exercise common powers for the purpose of providing public services more efficiently and in a cost-effective manner.

LEARN/LDS: Monterey County's Learning Development System

LMS (Learning Management Specialist): an employee who serves as a liaison and an AB 1825 training coordinator between the Monterey County Civil Rights office and various departments and divisions within the county.

Jurisdiction (local jurisdiction): a county, city, or incorporated town.

MBASIA (Monterey Bay Area Self Insurance Authority): a joint powers authority focused on risk management and regulatory compliance.

MCCRO (Monterey County Civil Rights Office): the responsible office for AB 1825 training for the county's government employees.

Municipality: a city or town that has corporate status and is a local government entity.

Regulation: a rule or requirement enacted by a governmental agency appointed by a governing federal or state body to implement and enforce compliance of a given law (a statute).

SB 396 (Senate Bill 396): California legislation signed into law in 2017 and effective January 1, 2018, that expanded AB 1825 training requirements to include harassment based on gender identity, gender expression, and sexual orientation.

SB 1343 (Senate Bill 1343): a further amendment to G.C. §12950.1 (effective January 1, 2019) expanding AB 1825 training requirements to private employers with five or more employees (rather than 50) and requiring harassment abusive conduct training for *all* employees (not just supervisors), as of January 1, 2020. This compliance date was extended one year to January 1, 2021 by SB 778, effective August 30, 2019).

Statute: written law passed by a legislative body (federal or state).

Supervisor and Supervisory Employees: supervisors located in California, as defined under CCR Section 12926. Attending a training does not create an inference that an employee is a supervisor or that a contractor is an employee or a supervisor.

Training Year Tracking Method: requires a supervisory employee be retrained sometime within the year in which 24 months has passed since his or her prior AB 1825 training.

Webinar Training: an internet-based seminar whose content is created and taught by a trainer and transmitted over the internet or an intranet in real time. Acceptable webinars must allow supervisors to ask the trainer questions.

BACKGROUND

Title VII of the Civil Rights Act of 1964 prohibits discrimination in the workplace, and subsequent federal regulations prohibit workplace harassment in more detail. Mandatory harassment prevention training, however, is currently required by only six states—California, Connecticut, Delaware, Illinois, Maine, and New York.[1] (It is important to note that 13+ other states require training of only a specific group.) It is not surprising that workplace sexual harassment remains a problem across the nation.

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[1] Johnson, Michael. "Sexual harassment training essential in all states, not just those with mandatory state training laws." Clear Law Institute. 6 January 2020. https://clearlawinstitute.com/blog/harassment-training-essential-employees-states-not-just-california-supervisors/

California's actions to address the issue of workplace harassment have been many and far reaching. California's statute governing mandatory sexual harassment prevention training originated in 2004 with the enactment of AB 1825. This law first launched a supervisory employee sexual harassment training requirement for California employers starting in 2005. "Employer" was specifically defined in the statute to include private employers with 50 or more employees, the state and all county governments in California, political or civil subdivisions, and all California cities. This law required employers to provide sexual harassment training to all supervisors within six months of assumption of their positions, and every two years thereafter.

The statute was amended in 2014 by AB 2053, that became effective January 1, 2015. This law extended the training requirement to include "abusive conduct." It was further amended in 2017 by Senate Bill 396 (SB 396), effective January 1, 2018, to include harassment based on gender identity, gender expression, and sexual orientation. Both laws were directed to be part of the training and education specified in G.C. §12950.1(a).

SB 1343, effective January 1, 2019, extended the law's reach to employers with as few as five employees (beyond the previously mandated employers with 50 or more employees), and it mandated harassment/abusive conduct training for *all* employees (not just supervisors), starting January 1, 2020. The California legislature extended the compliance date one year, to January 1, 2021, via Senate Bill 778 (SB 778).

The SB 396 amendment (gender identity, etc.) is self-explanatory. The AB 2053 amendment (abusive conduct) requires further explanation. "Abusive conduct," commonly referred to as "bullying," is defined in G.C. §12950.1(h)(2) to be: "verbal or physical workplace conduct by either employer or employee, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests," or the "gratuitous sabotage or undermining of a person's work performance." A single act will suffice if "especially severe and egregious."

California Government Code §12950.1 is the codified statute for the AB 1825 training requirement. A statute involving government enforcement typically delegates that responsibility to an appropriate government agency. For G.C.12950.1, that agency is the California Department of Fair Employment and Housing (DFEH). (See G.C. §12935(a)(1).

Acting on behalf of DFEH, the state Fair Employment and Housing Council (FEHC) has adopted a regulation titled, *Required Training and Education Regarding Harassment Based on Sex, Gender Identity, Gender Expression, and Sexual Orientation.* This regulation is found in Title 2, section 11024 of the California Code of Regulations (2 CCR §11024). The most recent amendments, effective April 1, 2016, do not reflect the 2017 gender/orientation additions.

The regulation explains the essential elements of an anti-harassment policy and how to utilize it if a harassment complaint is filed. It requires employers to provide supervisors with a copy of the employer's policy regardless of whether the policy is used as part of its AB 1825 training. Each supervisor is required to read the employer's policy and to acknowledge receipt of that policy.

This is the complicated framework under which AB 1825 supervisor training must be provided for all supervisory employees within six months of when they assume their duties, and every two years thereafter.

METHODOLOGY

Measuring compliance with the training requirements in G.C.§12950.1 can be as complicated as the code itself. Enforcement metrics are provided in the code, and practical standards for meeting the compliance guidelines for training content and even recordkeeping have evolved concurrent with changes to the code. The Civil Grand Jury used the 2 CCR §11024 regulation as its roadmap to measure compliance in the 13 jurisdictions investigated. As noted above, the regulation provides direction that the Civil

Grand Jury used to assess the essential areas of content subject matter and process (trainer qualifications, method of delivery, recordkeeping, etc.)

Investigatory Framework

The Civil Grand Jury adopted a straightforward investigative model. It chose DFEH regulation 2 CCR §11024 as the benchmark for measuring mandated training compliance, and subsequently collected documentary evidence and witness testimony. Thereafter, the Civil Grand Jury analyzed the material to assess the extent to which it matched the respondent jurisdiction's efforts to comply with the regulation. Next, the Civil Grand Jury conducted in-person interviews with personnel from each government entity investigated, in order to validate compliance, gather more detail, and develop an accurate picture of each jurisdiction's situation. Lastly, the Civil Grand Jury arranged exit interviews with appropriate representatives from the County of Monterey and the 12 cities investigated to confirm its findings.

The first step in the investigation focused on written materials–specifically, recordkeeping requirements mandated by the applicable state laws and imposed on the responsible parties. Subsection (b)(2) of 2 CCR §11024 details the training documentation that an employer must maintain. On October 15, 2019, the Civil Grand Jury issued letters to the above-referenced Monterey County government entities that were selected for this investigation. The Civil Grand Jury requested the following documentation which was quoted directly from 2 CCR §11024:

> Documentation of Training. To track compliance, an employer shall keep documentation of the training it has provided its employees under this section for a minimum of two years, including but not limited to the names of the supervisory employees trained, the date of training, the sign in sheet, a copy of all certificates of attendance or completion issued, the type of training, a copy of all written or recorded materials that comprise the training, and the name of the training provider.

The county and municipalities responded to the request and the Civil Grand Jury evaluated the materials provided.

Some jurisdictions also submitted additional training records through Year End 2019 (YE2019) to validate supervisor retraining within a two-year period. These jurisdictions used the Training Year Tracking method (see Glossary). Our training calculations excluded supervisory employees who separated employment, or who were on a leave of absence before the Training Year or before the 24-month training deadline ended.

DISCUSSION

It has been 29 years since Anita Hill shocked the nation with her testimony at Supreme Court Justice Clarence Thomas' confirmation hearing. Fifteen years later, in 2006, Tarana Burke coined the phrase “Me Too” to help women who had survived sexual violence, and to raise awareness of the pervasiveness of sexual abuse and assault in society. Today, our media still reports on far too many accounts of sexual abuse and assaults, with allegations and even convictions against famous celebrities and public figures alike.

High profile celebrity cases, however, are not the only setting where sexual harassment may occur. Those who work and live in all parts of our society, both in private enterprise and public government can encounter this crime. This is true even for our own local jurisdictions, where threats from sexual harassment and toxic work environments can exist as well. In 2018, for example, local media reported on the toll of sexual harassment within some Monterey Peninsula city governments. Sexual harassment not only harms our citizens, it has a significant monetary cost. Hundreds of thousands of dollars in fines and settlements divert funds from essential government-provided services. Sexual harassment harms victims and harms our communities' trust in society and each other, but it also harms us financially. This report cannot address those issues, but it can review the compliance with training that is essential to prevent those issues from occurring in our community governments.

Training

All employers know that *training* is a key preventive measure to safeguard the workplace, and the organization, against a hostile workplace environment and the liability, ligation, and damages that can result from such an environment.[2] California recently established the Government Operations Agency to oversee and ensure that all government agencies were "at or near full compliance" with supervisors' sexual harassment training. This is the California governor's personal response to multiple media reports that pointed out our state's inability to comply with requirements to *"provide sexual harassment training to all supervisors."* One of these reports[3] for example noted that in 2018, nearly 60% of state agencies surveyed did not provide sexual harassment training to their supervisors. California DFEH Director, Kevin Kish, admitted, "You have an enforcement model where basically people are not incentivized to comply up front."[4]

Based on this background, the Civil Grand Jury decided to investigate compliance with mandated sexual harassment prevention training for supervisors in Monterey County's 13 local jurisdictions. These jurisdictions included the County of Monterey and the 12 incorporated cities within the county's borders. The scope of the investigation focused on training materials and delivery, training management procedures, and administrative compliance.

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2 Feeney, E. "The importance of effective sexual harassment prevention training." ADP Spark blog. 2 April 2020. https://www.adp.com/spark/articles/2020/01/the-importance-of-effective-sexual-harassment-training.aspx#

3 Rodd, S. (2018, May 28)."It's Inexcusable': Dozens of California Government Agencies Failed to Provide Sexual Harassment Training to Nearly 1,800 Supervisors." *Capital Public Radio (KXJZ Sacramento)*. http://www.capradio.org/articles/2019/05/28/its-inexcusable-dozens-of-california-government-agencies-failed-to-ensure-sexual-harassment-training-to-nearly-1800-supervisors/

4 *Associated Press.* "California State Agencies Not Giving Required Harassment Training." *KPIX CBS SFBayArea*, 28 May 2019. https://sanfrancisco.cbslocal.com/2019/05/28/california-state-agencies-not-giving-required-harassment-training/

Although local media noted that Monterey Peninsula cities also had been reviewing and updating their AB 1825-related policies,[5] our investigation found that not all jurisdictions had completed this update, even two years later.

The objective of AB 1825 training requirements for supervisory employees is to eliminate, or at least reduce, incidents of harassment in the workplace. The goal is a safe and productive workspace for all employees. Despite long-standing training legislation, sexual harassment claims continue to be a source of liability. This has caused many cities and counties to band together in risk management consortiums to share resources for regulatory compliance, legal services, insurance, and training.

The risk management consortium with the largest local membership is the Monterey Bay Area Self Insurance Authority (MBASIA), whose members include the cities of Del Rey Oaks, Gonzales, Greenfield, King City, Marina, Sand City, and Soledad. MBASIA is a joint powers authority which is a division of the California Public Entity Agency Risk Management Association. It offers insurance coverage and risk management programs.

This was important for our investigation since many of the jurisdictions we reviewed rely on MBASIA's free online training modules that feature turn-key recordkeeping systems offered through TargetSolutions, and which meet AB 1825 training requirements.

In its examination of sexual harassment training policies, practices, and recordkeeping, the Civil Grand Jury found that the County of Monterey and its incorporated cities are conducting sexual harassment training, but not always in a consistent and timely fashion that complies with governing AB 1825 regulations. Systematic recordkeeping is a key factor in successful management of training compliance.

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5 Mayberry, C. "In wake of recent cases, Peninsula cities examine sexual harassment policies." Monterey Herald. 19 May 2018. https://www.montereyherald.com/2018/05/19/in-wake-of-recent-cases-peninsula-cities-examine-sexual-harassment-policies/

The small staffs of several local cities are challenged by handling multiple roles which include providing support to their city's officials, juggling daily priorities, and also scheduling, arranging, delivering, and tracking mandated trainings. This is in addition to reminding supervisory employees to attend that training. Staff of smaller cities who have adopted a simplified training management system appear to be more effective in this role. On another note, some city staff reported that they feel they are not supported by their superiors when they attempt to enforce training requirements. This is especially true in cities with veteran supervisory employees who do not find value in sexual harassment training.

A July 2019 article[6] noted that many HR professionals view harassment training as more of a protection for employers and find no evidence to confirm that delivering training and written policies alleviates workplace harassment. This research suggests that culture change, driven by the top organization leaders, is key. Mid-managers and HR workers simply do not have the authority to enforce training compliance without active support from upper management and without a credible zero tolerance policy.

Our investigation found that HR workers in some local jurisdictions did lack authorization from their superiors to enforce training requirements, and this created compliance roadblocks when that workforce did not think it needed sexual harassment training. This was illustrated by cases of lack of follow-up for missed training or even having no one person assigned to ensure AB 1825 training compliance. In some cases, just scheduling the training was perceived as compliance.

On the other hand, several cities provide supervisory training to non-supervisory employees as well. The Civil Grand Jury found that this was more common in instances where public safety personnel or part-time recreation staff have part-time supervisory duties outside of their normal classification.

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6 Flanagan, C. "The problem with HR." The Atlantic. July 2019.
https://www.theatlantic.com/magazine/archive/2019/07/hr-workplace-harrassment-metoo/590644/

Several cities with turnovers in their HR staff during the three fiscal years surveyed were missing training records. Therefore, their records were not easily accessible and were often incomplete. In most cases these cities have restarted their compliance efforts. The investigation also found some jurisdictions had tracking systems that are hard to maintain and that do not ensure retraining is completed within the mandated timeframes. Finally, some archive their records offsite or in employee files, which makes them difficult to access or use for planning and monitoring training.

Some cities could not provide copies of their training materials because they were no longer accessible from their online training provider. These on-line programs are non-compliant with 2 CCR §11024. One conclusion from this investigation is that, regardless of the training approach or modality, a jurisdiction must capture all its course materials for recordkeeping purposes and for future reference by employees if needed. This is a requirement of 2 CCR §11024.

Some of the Civil Grand Jury's generalized suggestions for achieving full AB 1825 training compliance are:

- Choose the Training Year Tracking Method for planning and tracking training. This gives all employees the same "time-block" deadline to complete training (for example, assigning a January 31 deadline, with a 30-day notice avoids the challenges of managing individual supervisory employee dues dates under the 24-month Training Method, dates that may come due throughout the year).
- Use just one authorized online vendor to ensure the most efficient method of tracking training. It provides the following: electronic recordkeeping for all required training in one place, automatic training reminders, copies of certificates of training completion, a live adviser for questions, access to training course materials required by 2 CCR §11024, and flexibility to train at the employee's convenience.
- Set and actively enforce serious and meaningful consequences for failing to train. This could include reprimands, or work performance penalties.

- Create a training tracking spreadsheet and assign it to one accountable staff person. The Civil Grand Jury found this to be the most effective means for smaller cities to manually track multiple training modes. A single worksheet can include a detailed employee roster with name, job title, date of hire, date of promotion, date of separation, and columns to track type and dates of everyone's training over three to four calendar years.
- Perform annual reviews and update, if required, harassment, discrimination, and retaliation policies. A comprehensive written AB 1825 harassment, discrimination, retaliation prevention policy should be consistent with 2 CCR §11023; the policy should contain a provision covering the employer's obligation under G.C. §12950.1 and 2 CCR §11024.

The following 13 sections are the Civil Grand Jury's summary reports for each local jurisdiction's AB 1825 supervisory employee training program.

City of Carmel-by-the-Sea

Carmel-by-the-Sea initially submitted the following records for review: a supervisory employee roster for FY 2016/17, 2017/18, and 2018/19, and written program materials for the 2018 federal Equal Employment Opportunity Commission (EEOC) classroom training (PowerPoint slide set captioned "Leading for a Respectful Environment"). Absent were a sign-in sheet for that live event, and completion certificates for any of the 2018 trainings (classroom or online). Certificates for three 2018 online trainings were later provided. The city does not use "training year" tracking to monitor training compliance. The other method allowed by DFEH regulation is to use the 24-month training Tracking Method for each employee's training attendance as the outer boundary to re-train ("individual" tracking).[7]

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7 The biannual "training year" method must be premeditated: "An employer may designate a 'training year' in which it trains some or all of its supervisory employees and thereafter must again retrain these supervisors by the end of the next 'training year,' two years later. . ." See: 2 CCR 11024(b)(1)(B).

The city offers both classroom and E-learning training, directing most employees to complete classroom training in even years. The city has expressed an affinity for the classroom modality, where personal interaction is a key element, due to what they see as a stronger likelihood of information retention.

According to the city, online training is made available for supervisory promotions and new hires in order to satisfy AB 1825's requirement that training of these employees take place within six months of promotion or hire. It is also available to supervisory employees whose work schedules extend beyond normal work hours.

Most of the city's training materials were reviewed and appear to adhere to the content areas mandated by 2 CCR §11024, and the qualifications of the trainer appear to be compliant (see 2 CCR §11024(a)(10)). The city provided records of a classroom training session conducted by the EEOC Training Institute on November 15, 2018. However, it was evident that the EEOC program was not developed with specific reference to the sexual harassment/abusive conduct requirements of AB 1825 and the implementing DFEH regulations. Of note, the focal point California Government Code section cited in the material is 12940 (unlawful employment practices, in general). Section 12950.1 (sexual harassment/abusive conduct) is nowhere mentioned. The EEOC training, although four hours in length, did comply with the required time elements for proper AB 1825 training.

The city's online E-learning provider is TargetSolutions. The city supplied no written materials relating to services supplied by this provider, other than a completion certificate for one October 29, 2019 training. However, materials obtained from other jurisdictions using this provider appear to be fully compliant with the applicable administrative regulation, 2 CCR §11024. Additional employee training occurred and was documented but without AB 1825 specified materials.

The 2016 classroom training by a local law firm was provided on January 16-17 of that year. The EEOC classroom training was done on November 15, 2018. There were no AB 1825 trainings offered in-between these two.

If the city were to apply the 24-month Training Tracking Method, its compliance rate for this period would be **0%** for timely training. However, using the Training Year Tracking Method that requires training to be completed within target calendar years, the city's retraining compliance rate would have been 90%. This fact indicates that the city should adopt a written policy to use the training year tracking, even if it continues the actual practice of individual training tracking.

The supervisory employee roster supplied by the city reflects that there were people either hired or promoted to supervisory positions at some point during the 2017/18 fiscal year. The DFEH regulation (and the authorizing statute itself) provide that such supervisory employees must be given AB 1825 training within six months of their hire or promotion date. Because the city could not provide compliance data for these supervisory hires' AB 1825 training the Civil Grand Jury could only conclude that it did not meet the required standard for this training.

This investigation noted that prior to the EEOC event, the last AB 1825 training of any kind had been nearly three years earlier, in early 2016. When interviewed about this issue, the respondents only stated that there had been nobody in charge of employee training.

Apart from the January 2016 training by an outside law firm, the November 2018 EEOC classroom event, and three subsequent individual online trainings, the history of the city's compliance with AB 1825 supervisory training is undocumented. In response to a Civil Grand Jury query about how long the city had provided sexual harassment training for its workforce, the city's response was that this was unknown.

Currently, the city has arranged to do individual tracking of employee training both manually and by electronic means. An HR employee maintains an online calendar that is annotated with supervisory employees who are periodically due for re-training.[8] In addition, for instances when new hires and promotions occur, the TargetSolutions online provider maintains training data for each participant that is accessible online to the city, and allows HR staff to check-in periodically to see who is due for re-training.

When questioned as to why there was no attendance or completion paperwork (rosters or completion certificates) for the November 2018 EEOC training event, the city responded that it was assumed the provider (EEOC) would take care of those details.

The city informed the Civil Grand Jury that a written policy that addresses, wholly, or in part, AB 1825 employee training is stored on the city's shared computer drive, and thereby available to employees. While the Policy reveals a detailed, thorough, and comprehensive treatment of the subject of workplace harassment, it contains nothing whatsoever about employee training.

City of Del Rey Oaks

The Civil Grand Jury determined that, based on interviews and material made available to its investigation, the City of Del Rey Oaks' AB 1825 training was not offered or required until sometime during fiscal year 2017/18. This was surprising since the law required such training take place as early as 2005. The first AB 1825 training date recorded on the personnel roster the city provided to the Civil Grand Jury was March 2, 2018. City records show the city trained 80% of its eligible supervisory employees in 2018 with 60% of the supervisors training in March 2018, 20% training in October 2018, and the remaining 20% not training at all.

Because Del Rey Oaks did not offer AB 1825 training for supervisors until 2018, the Civil Grand Jury is unable to determine two-year training timeliness. In addition,

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8 Ibid.

submitted records for newly hired and promoted supervisors showed no training for new supervisors within six months. One supervisor did receive the training, but it was three months prior to his promotion. The city's compliance with the AB 1825 standard for six-month training is **0%**.

Del Rey Oaks uses E-Learning through Apex Solutions exclusively. This is a certified AB 1825 training provider. The city uses E-learning as opposed to classroom-style training due to its small number of supervisory staff. This was particularly suitable to the city's situation where most supervisors are law enforcement employees who work irregular shifts. Del Rey Oaks will occasionally be offered space in classroom-style trainings provided by other local cities, and one supervisor did take advantage of that offer.

The city's Assistant City Clerk maintains records of training taken and training due by using a computer-based calendar system, and by accessing Apex Solutions online training records for the city's employees. The Civil Grand Jury concluded that this simple system could work well for Del Rey Oaks based on its small staff numbers. With only 15 employees, including six supervisors, AB 1825 training records are easily maintained.

A harassment policy is included as Section 3.05 in the city's out-of-date Personnel Manual, which was last revised over ten years ago. This manual does include a sexual harassment policy but lacks any of the more current forms of harassment stipulated in AB 1825 amendments. The policy also lacks AB 1825 mandates for sexual harassment prevention training of supervisory employees.

Del Rey Oaks went through a significant turn-over of management and elected officials in 2017 and 2018. Since then, the city has contracted with a consulting firm specializing in the administrative needs of local governments. This firm's scope of work focuses on Del Rey Oaks human resource systems. This is a welcome effort by the city to improve its HR system.

City of Gonzales

Gonzales has been providing AB 1825 training since 2005. All employees, not only supervisory employees, participate in this training. The city has expressed an affinity for the classroom training modality believing there is better information retention where personal interaction is a key element of the training. Online methods are employed in the event a supervisory position is filled by new hires or promotions. Gonzales uses the Training Year Tracking Method to schedule and monitor training compliance.

Gonzales is a member of the MBASIA and utilizes MBASIA's sexual harassment training resources. Therefore, cost is not an issue with respect to participation in AB 1825 training activities.

Based on the supervisory employee roster that the city initially provided, 14 listed supervisory employees were eligible for training in 2016. Eleven of those employees participated in the December 6, 2016 classroom training conducted by Concern-EAP, a provider of short-term counseling services for employees and their family members.

Submitted training materials included a PowerPoint presentation and a participant guide both captioned "Preventing Sexual Harassment." Both items make specific reference to both federal and California state law–in the case of the state, AB 1825, the original 2004 training mandate, and AB 2053, the 2015 amendment expanding coverage to include abusive conduct. Significantly, a promotional flyer prepared by Concern-EAP, and bearing its logo, states:

> This course meets the requirements of California AB 1825, Training for Supervisors, AB 2053 Abusive Conduct, SB 396 Gender Issues, & SB 1343 Training for Non-Supervisors.

Notwithstanding the foregoing, the Civil Grand Jury's review of these materials reveals significant deficiencies when matched up against the training content requirements set forth in the applicable DFEH implementing regulation, 2 CCR §11024. Specifically, neither the PowerPoint nor participant guide materials contain any mention of the following:

- Remedies for victims of harassment
- Strategies to prevent workplace harassment
- Supervisor reporting responsibility
- The limited confidentiality of the complaint process
- Necessary corrective steps (e.g. investigation of complaint)
- How to handle situation where a supervisor is accused
- Essential elements of an anti-harassment policy and how to use it

The Civil Grand Jury finds that although the 2016 Concern-EAP training materials were non-compliant with the relevant state administrative regulation, they were represented to the city as being fully-compliant with the requirements of California law, and the city had no reason to believe otherwise. Therefore, the Civil Grand Jury concludes that the city acted in accordance with the training mandate of G.C. §12950.1.

Three newly promoted supervisory employees completed online training in 2017. The provider was EVERFI, which is a provider of online training for businesses and higher education, including AB 1825. The city could not provide EVERFI training materials, because it did not have access to them. Because of this the Civil Grand Jury could not determine whether EVERFI's online supervisory employee training complied with 2 CCR §11024, and it could not validate that the city met the AB 1825 requirements for newly promoted supervisors for that year.

The City of Gonzales provided no AB 1825 training records for 2018 and provided none for the first half of 2019 (when the final fiscal year of this review ended). The Civil Grand Jury therefore concluded that the 14 supervisory employees who had been trained in 2016 were not retrained as required in 2018. This was affirmed by information later obtained by the Civil Grand Jury, which revealed that training was not done in a timely manner due to staff changes and workload issues. This was a surprising breakdown in managing mandated training. When coupled with the inability to confirm AB 1825 training for the three supervisory employees hired in 2017, the compliance picture for the city was problematic.

After this initial review, Gonzales subsequently provided AB 1825 records for classroom and online training completed during December 2019. The December 11 classroom event was conducted by Concern-EAP. This training was attended by 15 supervisors and 41 non-supervisors. It was structured as a 2-hour event, with the first hour for all employees, and the second hour reserved for managers and supervisors only. The training content for this session was examined. It was found to be meaningfully different from the substandard material by Concern-EAP used in 2016 and appeared to be compliant with 2 CCR §11024 content requirements. Additionally, the three supervisory employees first trained in 2017 were retrained in 2019. However, this training was outside the scope of this Civil Grand Jury's inquiry.

Finally, the Civil Grand Jury noted that Gonzales has no written policy for AB 1825 sexual harassment/abusive conduct training. However, the city attorney is currently updating city policies for consideration in June 2020.

City of Greenfield

Greenfield conducts AB 1825 supervisor training under the direct supervision of the City Manager's Office. The executive assistant to the City Manager tracks compliance and facilitates AB 1825 supervisor new or biannual training for the city's approximately 19 supervisors, and for all new supervisors required to complete the training within six months. The city's sexual harassment prevention policy is provided to all employees upon hire, and the city has posted its sexual harassment prevention policy on the city's public internet.

Greenfield's compliance in AB 1825 supervisor training recordkeeping is currently marginal. During this inspection, the Civil Grand Jury determined that the recent year's records of AB 1825 training were irregular or incomplete. Although many training sessions, both on-line and classroom, had been held in recent years, the historical records for these training events are incomplete. However, the manual entry process for tracking now has been augmented by the TargetSolutions training management system.

The Greenfield City Manager's Office facilitates AB 1825 supervisor training and tracks compliance. The executive assistant to the City Manager is the focal point for these actions. The number of supervisors who require AB 1825 training in Greenfield varies each year, both because AB 1825 supervisor training is biannual and because the number of city supervisory employees varies. Also, all new supervisors are required to complete AB 1825 training within six months of hire.

The increasingly detailed AB 1825 requirements suggest that even with the improved TargetSolutions records management system, compliant AB 1825 recordkeeping will remain problematic for the city if this task remains as an additional duty for the City Manager's Office.

The city's sexual harassment prevention policy is posted on the city's website. That policy, "Harassment Policy and Complaint Procedure," is incorporated by reference as Attachment B to Rule 17, of Section 7 to the city's Personnel Rules and Regulations (adopted December 1993). This policy is provided to all employees upon hire. The policy has no notations to indicate if, or when, this policy was ever updated. It does not specify or reference AB 1825 or any supervisor-specific training responsibilities.

The city training records provided to the Civil Grand Jury for this investigation did not identify which attendees were supervisors (for AB 1825 purposes). However, interviewees estimated that there was an average of 12 supervisors on the city payroll at any one time. Based on city rosters, position titles, and training records that could be cross referenced by the Civil Grand Jury, the number of supervisors appears to average about 19.

The Civil Grand Jury found that much of the city's sexual harassment prevention training is conducted with supervisors and employees attending together. This was documented for sexual harassment prevention (AB 1825) and anti-abusive conduct (AB 2053) training sessions in both 2017 and 2019.

As noted above, since at least July of 2019, the city has used TargetSolutions for online delivery of individual AB 1825 training, and to track the training status of supervisory and other employees. The city also conducts in-person classroom AB 1825 training and has used both the City Attorney and outside firms as providers. The training course materials reviewed by the Civil Grand Jury were current or compliant with state requirements at the time of presentation. In accordance with state requirements, the city also maintains some training rosters, and some training certificates. However, the city did not provide any requested training records or material for FY 2017/18, one of the three years (FY 2016/17, FY2017/18, FY2018/19) of AB 1825 sexual harassment prevention training that was investigated. Based on interviews conducted by the Civil Grand Jury, some sexual harassment prevention training was conducted in FY2017/18, but the Civil Grand Jury was not able to verify any training during that period.

Greenfield's compliance in tracking AB 1825 supervisor training is currently marginal. As noted above, since at least July 2019, the city was able to produce some required tracking data for several, but not all, requested fiscal years, and it could not present <u>complete</u> AB 1825 training records for any fiscal year. Based on records made available to the Civil Grand Jury, and even accepting the unverifiable assumption provided by the city that session rosters submitted to the Civil Grand Jury likely represented AB 1825 supervisor training, the city's recorded AB 1825 supervisor training rates appear low.

AB 1825 Training Fiscal Year *	Total Supervisors Trained (AB 1825) %	Total Supervisors for FY
FY 2016/17	10 (53%)	19
FY 2017/18	No records	20
FY 2018/19	7 (37%)	19
* based on materials provided by City of Greenfield		

At least one person interviewed by the Civil Grand Jury noted that many supervisory personnel had completed the FY 2018/19 AB 1825 training, but records had not been updated at the time of this investigation. One training-due roster was provided with four supervisors' names to show that they were in the process of completing AB 1825 training. The Civil Grand Jury could not verify completion of that training but noted that even with an additional four supervisors added to the "completed" numbers, the overall compliance rate for the City of Greenfield for FY 2018/19 would be **58%**. This percentage could be higher if AB 1825 supervisor training had been conducted in FY 2017/18. Those supervisors trained in the prior year would still be qualified for the next year's training period. However, the city had no records to document any training attesting to this situation.

The Civil Grand Jury also determined that, according to all records provided by the city, a total of nine current supervisory personnel had not taken, nor are there records of them taking, any AB 1825 training during the three fiscal years reviewed in this investigation. That represents 47% of the current supervisory staff.

On a positive note, the Civil Grand Jury recognized that the city is changing its recordkeeping and training tracking system. Since July 2019, the manual entry process of names, dates and periodic spreadsheet updates have been augmented by the TargetSolutions training management records system. This is a positive measure, and together with continued focus by the city's leadership, Greenfield's training compliance levels may reach closer to the state-required 100%.

Yet, due to the increasingly detailed AB 1825 training and recordkeeping requirements, and the high volume of administrative functions that is managed by the City Manager's Office, the Civil Grand Jury fears that even with the limited population of supervisors in the city and with improved TargetSolutions learning management system records processes, compliant AB 1825 recordkeeping will remain problematic if it remains an additional duty located in the City Manager's Office.

King City

King City's sexual harassment prevention training for supervisors and managers is provided exclusively through a *ThinkHR* online AB 1825 training course. This E-learning training—from method, trainer qualifications, training content, access to training records, certificates of completion, and access to live advisers—appears to be fully compliant with the applicable administrative regulation 2 CCR §11024.

During the three fiscal years from July 1, 2016 through June 30, 2019, all but two of King City's supervisory employees completed timely AB 1825 training. Both of those employees had taken a leave of absence. One did not return to work, and the other completed timely training upon return from the leave. After a follow-up records review, the Civil Grand Jury concluded that King City has maintained 100% compliance to AB 1825 for the past three fiscal years.

For the fiscal periods reviewed, King City hired or promoted two supervisory employees and one contract supervisor. All three received AB 1825 training within six months of their date of hire or promotion. These training records demonstrate a **100%** compliance level for training of new and promoted supervisory employees.

King City uses the Training Year Tracking Method to track when training is due. HR calendars individual training due dates and notifies those supervisors whose training is due prior to their two-year anniversary. By choosing to focus on AB 1825 training every other year (odd years), King City has been able to simplify recordkeeping and achieve 100% compliance with training. Supervisory employees who are hired or promoted and receive their initial six-month training in even years, train again the following calendar year (in odd years) to maintain a streamlined biannual tracking system.

Because King City tracks training for 18 supervisory employees and contractors, their training compliance system is handled with a simple Excel spreadsheet and Outlook calendar reminders. Using a single training mode, training records are easily tracked and are well-maintained. HR also implements a routine of personal follow-up to ensure untrained supervisors train before the year end. Training expectations are supported by the City Manager, who promotes timely training.

King City's Policy No. 10, titled, *Harassment, Discrimination, and Retaliation,* is posted on the city's public website. Subsection 7 of the policy, titled, *Training*, covers the necessary requirements of AB 1825. All employees receive a copy of this policy as a part of their initial orientation with the city and sign an acknowledgement of receipt. The policy is deemed fully compliant with current 2 CCR §11024 regulations.

All elements of King City's AB 1825 supervisory training program comply with the 2 CCR §11024 regulations. King City is to be commended for this excellent record.

City of Marina

Marina takes advantage of its MBASIA membership to access its AB 1825-compliant training programs. The membership provides free online training through TargetSolutions, and a fee-for-service classroom training option with a local law firm.

E-learning with TargetSolutions is the primary method for AB 1825 training in Marina. The city offered live classroom training twice: once in 2013 and again during 2019. HR staff reported employees prefer this training mode, because it is interactive, allowing employees to ask specific questions. However, classroom training is dependent on available budget allocations.

The Civil Grand Jury conducted a review of the PowerPoint presentation and handout for training titled "Preventing Harassment, Discriminations and Retaliation." The course appears to be fully compliant with applicable administrative regulation 2 CCR §11024. It includes qualified trainers, certificates of completion, training sign-in sheets, and training data report capability.

Thirty-five supervisory employees were eligible for supervisory training during FY 2016/17, FY 2017/18, and FY 2018/19. Thirty employees had timely training. One employee missed 2017 training. One employee, a senior city official, missed both 2017 and 2019 trainings. Two employees had late new hire/promoted training that coincided with training due in 2019. One employee completed non-supervisory training in 2019 but previously had supervisory training in 2017. Marina demonstrated **85.7%** timely supervisory training.

Seven new supervisors were hired or promoted between FY 2016/17, 2017/18, and 2018/19. Five out of seven received timely supervisory training within the prescribed six-month period. The city had a **71.4%** timely training compliance record for the period. One staff member has responsibility for the city's HR function, which includes AB 1825 compliance and program management. The HR staff uses the 24-MonthTracking Method in odd year cycles. Marina staff is effective at assigning training to employees and giving them deadlines of up to one month to encourage timely training. However, a break in online training occurred in 2018 when TargetSolutions went offline to update their materials to include new California regulations. This training inaccessibility may have impacted timely training for two employees who had training due in 2018.

The city's HR maintains AB 1825 training records for its management groups using the online TargetSolutions roster which can be manually updated for classroom training based on completed sign-in sheets. Public safety groups, such as police and fire, primarily use TargetSolutions online training and manage training of their own personnel in a timely fashion. Marina appears to have well-functioning recordkeeping systems on these two fronts.

For new hires, the city provides these employees with a written sexual harassment policy and a brochure from the Department of Fair Employment and Housing, and has the employees sign an acknowledgement of receipt for the policy. It is a stand-alone harassment policy document, titled *Policy Against Sexual Harassment*, which is missing a reference to certain protected classes of employees with respect to gender, gender identity, gender expression, marital status, genetic characteristics, and military/veteran status. It also lacks a section on training mandated by 2 CCR §11024 regulations. The policy is therefore marginally compliant with AB 1825 and AB 2053.

All employees are given a copy of this stand-alone policy, as part of their initial orientation, as well as a brochure from the California Department of Fair Employment and Housing concerning sexual harassment prevention training. The city is in the process of updating its *Personnel Policy Manual*, which was adopted in 1995 and last updated in 1999.

City of Monterey

Monterey prefers using classroom training to meet AB 1825 requirements. Classroom training in 2019 was provided by a Human Resources employee who was formerly an attorney and certified trainer with a large local law firm that specializes in AB 1825 training. Copies of the training materials, entitled “Workplace Harassment and Bullying Prevention Training,” were reviewed. The State Laws section is missing any specific reference to AB 1825 regulation governing 2-year and 6-month training requirements for supervisory employees.

For its 2018 classroom training, Monterey selected a two-hour course facilitated by the federal Equal Employment Opportunity Commission’s (EEOC) Training Instituted, entitled “Working in a Respectful Environment.” The Monterey workshop materials that were submitted for the EEOC course only covered the two-hour training attended by all employees. Those training materials did cover California Laws and Regulations, including §12950.1 California Training Requirements for AB 1825. However, the duties of a supervisor were not covered. The supervisory employees had extended training of one additional hour. No program materials were submitted for that portion of the training, so the Civil Grand Jury is unable to ascertain the compliance level of the supervisory portion of the EEOC training program.

Furthermore, the focus of the EEOC training workshop was creating and maintaining a “respectful workplace,” not sexual harassment and abusive conduct prevention. The

§12950.1 content is only dealt with in the second of six modules for the two-hour session. The Civil Grand Jury concluded a majority of the training concerned other topics, which did not satisfy the two-hour sexual harassment/abusive conduct training requirements for supervisors. Therefore, this training program was deemed deficient for AB 1825 compliance purposes.

E-Learning through TargetSolutions is used for employees unable to attend classroom training due to scheduling issues (usually public safety personnel), for newly promoted supervisors, and for supervisors who were found to need additional training based on decisions made by their departments. The TargetSolutions' AB 1825 E-Learning training program is fully compliant with AB 1825 mandates. It provides certificates of completion and training data for each employee that is accessible online by the employer.

In order to determine if the City's supervisory employees received AB 1825 training within six months of hire or promotion and every two years thereafter, the Civil Grand Jury requested Monterey provide a list of employees in supervisory positions during the period of fiscal years 2016/17, 2017/18, and 2018/19. A handwritten comment on the top of the list provided by the city stated, "List of supervisors 2018/2019." This list was inadequate for the Civil Grand Jury's purposes as it may not have included supervisors who had been hired, promoted, or separated during the two prior fiscal years.

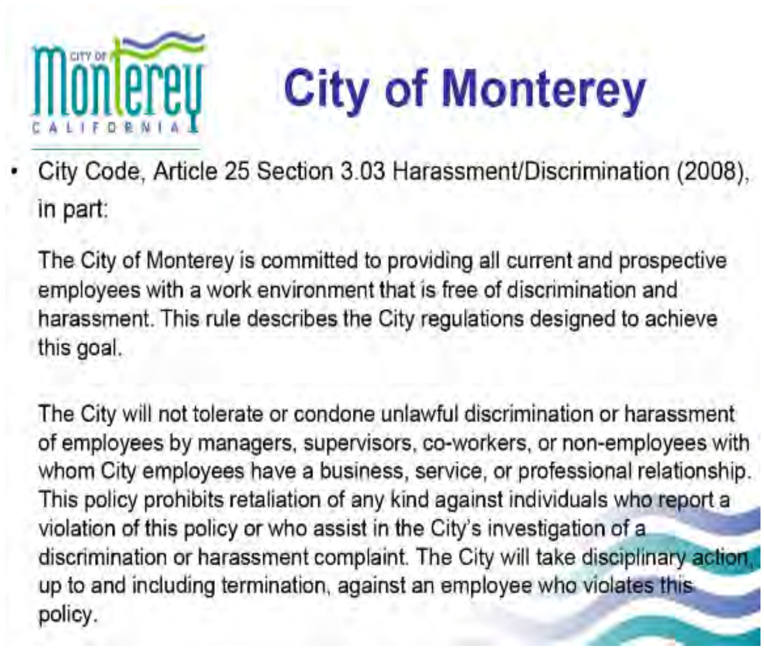
Monterey was subsequently asked to provide a list of supervisors employed during the three fiscal years of 2016 through 2019 that included their hire, promotion, and if applicable, separation dates. The city responded that their database could not provide the requested information because the database's reporting capabilities were limited to currently active supervisors. This led the Civil Grand Jury to conclude that the "Active Supervisors List" that was submitted and dated October 30, 2019 only included supervisory personnel on payroll at that time and not in prior years and it did not include former positions that the employee may have held with the city.

Therefore, the Civil Grand Jury concluded that if a supervisor was initially hired as a non-supervisory employee and later promoted to a supervisory position, Monterey's Human Resources Department could not track the employee's date of promotion or what former position classifications that employee may have held. In addition, Monterey was unable to provide names of employees who received AB 1825 training during FY 2016/17. The city reported to the Civil Grand Jury that they did not have a list of supervisors on payroll for that period.

This failing of Monterey's personnel tracking system results in an inability to determine if current supervisory employees had received their required AB 1825 training within six months of hire or promotion and then every two years thereafter. Because of these deficiencies in Monterey's tracking system, the Civil Grand Jury was unable to determine if the City of Monterey is compliant with AB 1825's training mandates. Because training timeliness cannot be verified, the Civil Grand Jury determined that Monterey's compliance with AB 1825 supervisory employee training requirements was **0%** for supervisory employee retraining and **0%** for new and promoted supervisor training.

Monterey reports it is creating a new system in 2020 that will capture all employee classifications (supervisory or non-supervisory) and whether each employee has completed mandated AB 1825 training.

Monterey's sexual harassment policy, titled *Harassment/Discrimination/ Retaliation/Abusive Conduct/Bullying Policy* is contained in city code 25-3.03. The ordinance was originally adopted in 2008 and amended on March 20, 2018. While the policy accurately reflects the conduct prohibitions in 2 CCR §11023, it does not include the mandated employee training requirements in 2 CCR §11024. Below is a PowerPoint slide illustrating the city's policy and used in Monterey's 2019 classroom trainings.



City of Pacific Grove

The city of Pacific Grove exclusively trained its supervisory employees with classroom sessions during FY 2016/17, FY 2017/18, and FY 2018/19. The city prefers classroom-style training as the best method for fulfilling the interactive requirement of 2 CCR §11024 regulations, and it is more focused to organizational culture rather than to the liability aspects of the regulation.

The city contracts for the training with DeLay & Laredo, Attorneys at Law, whose partner also serves under a separate contract as Pacific Grove's city attorney. The firm is located in Pacific Grove and is a qualified AB 1825 training provider.

The city’s AB 1825 classroom training course titled, *Sexual Harassment Prevention – A Guide for Elected Officials & Senior Staff – AB 1825*, is offered throughout each calendar year. AB 1825 supervisory training content appears to be fully compliant with the applicable administrative regulation 2 CCR §11024. It provides training sign-in sheets for each employee. Certificates of completion are not issued.

The classroom schedule included two training dates in 2017, six training dates in 2018, and two training dates in 2019 (one of which was held after FY ending June 30, 2019).

Staff in the city’s HR Department changed in 2016. The newer employees were unable to access AB 1825 training records for 2016 and prior years. Therefore, the city’s current training records start in 2017. Forty-five supervisory employees were eligible for training during the three fiscal years reviewed. Thirty-four trained timely which equated to **75.5%** timely training. Five employees who were trained in 2018 did not have training that was verifiable as timely because of missing 2016 training records. If 2016 training could be confirmed for these five employees, the timely training rate would increase to 80%.

Fifteen new or promoted supervisory employees, plus one other new hire who had training due by July 20, 2016, were subject to the mandated six-month training for new supervisors. Four had confirmed timely training, and two employees’ records confirmed late training. For the other ten employees, timely training could not be determined—because nine of those employees were missing a date of hire or promotion, and one was missing 2016 training records. So, out of 16 eligible new or promoted supervisory employees, timely training was confirmed for four based on the available training records, resulting in a **25%** training compliance level.

Pacific Grove’s two most significant training challenges deal with employees who work outside normal business hours, such as public safety officers, and new and promoted supervisory employees who are required to train within six months. HR occasionally offers online options as needed in special cases. No record of online training was received for the period of the Civil Grand Jury 's review.

Two supervisory employees were trained more often than the two-year statutory requirement. The city also trained 63 non-supervisory employees in the same sessions as supervisors and managers in order to include staff who may have lead duties.

Given its small HR staff, Pacific Grove should consider streamlining the AB 1825 training system to concentrate training in even or odd years to simplify recordkeeping and improve timely training for its supervisory employees. Training records were maintained on an Excel spreadsheet that has tabs for each training calendar year. It included the following: employee name, assignment title, training completion date, training provider, and comments such as new hire, promoted, separated.

The city did revise its training tracking system into a single spreadsheet for the Civil Grand Jury, which allows an easier means of viewing training compliance over several calendar years.

The city's harassment policy is posted on its public website within the *Administrative Policies and Procedures Manual*, which was last updated on February 7, 2017. Found in Sections 100.080–100.110, titled *Harassment, Discrimination, and Retaliation Prevention Policy and Complaint Procedure*, the policy discusses harassment and abusive conduct, protected classes, retaliation, reporting, and complaint procedure consistent with 2 CCR §11023; it does not contain a provision covering the employer's training obligation under G.C. §12950.1 and 2 CCR §11024.

Pacific Grove's *Employee Handbook*, which is also posted on the city's website, is dated August 1, 2016. Review of the handbook showed it is missing all reference to a policy pertaining to sexual harassment or abusive behavior required by 2 CCR §11023. Therefore, it is assumed employees sign a required acknowledgement of receipt of the handbook in their new-hire orientation, but it is deficient in the acknowledgement of a legally required receipt of the harassment, discrimination, and retaliation policy.

City of Salinas

The city of Salinas AB 1825 supervisor training is coordinated by the Human Resources (HR) Department. New employees are provided with the *Employee Guidelines on Preventing Sexual Harassment* including the (2017) Salinas Administrative Memorandum *Addressing Discrimination and Harassment Prevention*. These documents are also available on the city's intranet and can be accessed at the HR office.

Salinas' approach toward AB 1825 supervisor training compliance monitoring has been evolving in recent years. In 2017 the City's municipal financial and personnel functions support software package, New World ERP, was extended to HR training tracking to automate tracking of training deadlines and create an archive of historical training records.

Based on the materials provided to the Civil Grand Jury during this investigation, the city maintains complete AB 1825 course materials as well as some sign in rosters, some certificates of training, and additional AB 1825 reference materials used to organize or conduct the courses. While selected records of training data were missing, the overall organization of AB 1825 supervisor training program records were clear and well-managed.

Supervisors must take AB 1825 training biannually or within six months of assuming a supervisory position. Supervisor participation for the years reviewed by the Civil Grand Jury fell short of state requirements. In FY 2018/19 for example, only **45%** of the City's supervisory employees were trained or qualified by prior training in AB 1825 sexual harassment prevention. Also, an issue is the city's approach for tracking six-month new supervisor AB 1825 training. Currently, the city manually tracks this requirement. There is no automated method to link a new supervisor's hire or promotion to the AB 1825 supervisor training requirement. The use of the New World ERP system to track AB 1825 training occurrences and due dates is a good improvement to the city's process for that training. TargetSolutions online training, however, still must be manually cross loaded into the New World ERP system.

Overall, the Civil Grand Jury noted that the management and direct execution of the AB 1825 program was professionally managed and focused on delivering city-centric training that was relevant to its supervisors and employees. Our assessment was that improving supervisor compliance and continuing to develop more automated records keeping systems will make Salinas' current good system even better. The city's AB 1825 supervisor training is coordinated by the Human Resources (HR) Department. The HR Director has three employees that can assist with all AB 1825 training-related processes.

According to personnel interviewed by the Civil Grand Jury, prior to 2017 the city generally conducted a biannual sexual harassment prevention classroom training class for supervisors on pace with the AB 1825 (and prior) requirements. In 2017, the city started presenting the AB 1825 course annually and, starting in 2020, has begun presenting quarterly sessions for AB 1825.

Salinas has a strong preference for classroom/in-person AB 1825 supervisor training. The Civil Grand Jury was told that city leadership believes that the hands-on sessions provide more direct contact, greater interaction, and allow the course to be tailored to city-specific conditions and situations. The City Attorney and HR section AB 1825-instruction qualified personnel are the main trainers for this course. The city also has availed itself of law firms and even the National League of City's AB 1825 courses, on an opportunistic basis. Online training is made available by exception. TargetSolutions was mentioned as the current main provider of the city's online AB 1825 training. Online instruction is used primarily for catch-up or if a new supervisor cannot meet the six-month requirement for AB 1825 training after being hired or promoted into position.

The city provided complete course materials to the Civil Grand Jury and stated that these materials are available (per state requirement) if sought by employees. In addition to course materials, the city-maintained sign in rosters, some certificates of training, and additional AB 1825 reference materials that were used to organize or conduct the courses. While selected records of training or completion were missing, the overall organization of AB 1825 supervisor training records and materials was clear, logical, and well-documented.

The well-organized, comprehensive approach that the HR department applies to AB 1825 supervisor training is not reflected in supervisor participation rates. A summary of supervisor participation for the years reviewed by the Civil Grand Jury provided the following results:

AB 1825 Training Fiscal Year *	Nr. of Supervisors Trained or Qualified (%)	FY Supervisor Count
FY 2016/17	66 (47%)	139
FY 2017/18	91 (64%)	137
FY 2018/19	52 (45%)	116
* Data from City of Salinas		

Supervisors must take AB 1825 training every two years, based on the Training Year Tracking Method or within six months of assuming a supervisory position. For FY 2017/18 and FY 2018/19 the above numbers reflect the combined total of actual AB 1825 training, plus supervisors who already taken AB 1825 training within the past 24 months (or within two training years). For example, in FY 2018/19, the number of supervisors who took AB 1825 training, according to records provided to the Civil Grand Jury, was 21 personnel. In addition, 31 supervisors were still qualified by prior AB 1825 training (for two years). This meant that 52, or 44.8%, of the city's supervisors were compliant with the state requirements for timely training during the fiscal year period. It also meant that 64 supervisors were out of phase and not compliant. The Civil Grand Jury determined that of those non-compliant supervisors, 41 or 35% of *all* supervisors for FY2018/19 had not done any AB 1825 training for the past three years. Interviewees did caveat the data provided above by noting that in some cases, rosters of supervisors provided to the Civil Grand Jury reflected a managers group, or a supervisors group. This meant that in some cases, some individuals on the list may not be supervisors. However, the Civil Grand Jury was not able to parse all lists to exclude non-supervisory personnel included in the requested supervisors' rosters.

Investigation into the reasons for suboptimal compliance revealed several conditions. First, the new tracking system (New World ERP) has been implemented backward from the newest employees/supervisors. This meant that as a new hire is processed or "on-boarded," that employee (if a supervisor) is given a target date for AB 1825 training in the New World system. Other supervisors have been added into the system working back among all employees. Periodic checks of the New World ERP will allow HR personnel to know who is due for the next AB 1825 sessions–if they have been entered into the system. The second reason that the Civil Grand Jury determined that compliance was an issue is supervisor personal responsibility.

This investigation noted several examples of city HR notices for AB 1825 training that had been sent to all listed supervisors. The Civil Grand Jury was even told that "global" notices of upcoming training have been posted on occasion. This suggested that a certain percentage of supervisors simply don't attend.

When questioned on this point, city personnel provided a different perspective. In the past, shift work, special assignments, or duty away from the city's training classrooms were reasons for supervisors to miss the once-each-two years (pre-2017), or the once-a-year (2017-2020) AB 1825 training. Those supervisors who missed should have sought out the online programs that the city makes available. However, waiting for the next class appeared to be a default approach for many supervisors. Starting in 2020, the city started quarterly AB 1825 supervisor training. Interviewees stated that this approach is a method that the city will use to raise its compliance rates to better levels.

The use of the New World ERP system to track AB 1825 training occurrences and due dates is a good improvement to the city's program. However, this system still requires manual operation by HR staff to determine the population of supervisors due for training prior to any given class. This is a point of potential failure in working to achieve compliance. So, too, this investigation did not show how the TargetSolutions online training is integrated into the New World system. This appears be a manual action required between the two systems. That is another point where accountability and tracking can breakdown.

Finally, in spite of the challenges the city faces in raising supervisor compliance rates, the Civil Grand Jury noted that the management and direct execution of the AB 1825 program was professionally executed and tightly focused on delivering city-centric training that was relevant to its supervisors and employees. Continuing the current course, and taking a macro look at the overall status and results for the city's AB 1825 supervisor training, are the next steps. The Civil Grand Jury determined that this approach has not been routinely incorporated in the otherwise crisp and efficient AB 1825 supervisor training program.

Sand City

Sand City has been providing sexual harassment prevention training for its workforce at least as far back as the inception of the AB 1825 requirements (2005). The city has expressed an affinity for the online modality because it is thought more convenient for employees. The city has used the online provider AJ Novick Group, Inc. for many years. Cost is not an issue with respect to participation in AB 1825 training activities, because Sand City is an MBASIA member with access to a variety of educational functions, including sexual harassment prevention trainings.

The city did not submit requested training materials relevant to AJ Novick Group's training. The AJ Novick website advertises compliance with California anti-harassment law; in particular, AB 1825, AB 2053, SB 396, and SB 1343. The online course is timed at "at least two hours to complete."

As for content, the course curriculum includes information on relevant state and federal law, gender/sexual orientation harassment, remedies available to harassment victims, and practical examples. It is asserted that the training materials are “designed by experts in sexual harassment and corporate training.”

The website claims to have an interactive modality because of the presence of “periodic quizzes.” The provider states that it retains copies of written and recorded training materials. Thus, the material requested from Sand City likely could have been supplied to the Civil Grand Jury had the city sought it.

Therefore, it appears that the online supervisory employee training provided by Sand City likely substantially conformed to the requirements of 2 CCR §11024.

The city does not use the Training Year Tracking Method to monitor training compliance. The other method allowed by DFEH regulation is the 24-Month Tracking Method which tracks the dates of individual employees training, requiring them to be retrained within 24 months of their most recent training.[9]

The city-prepared compilations contain the names of nine supervisory employees. Two of them appeared as employees for only one of the subject years: One of the supervisors—whose date of hire was November 5, 2005—separated on March 31, 2017. It is unknown when he might have done any prior training, so he is dropped from the assessment because it is outside the scope of this review. The other supervisor—whose date of hire was November 21, 2018, separated on June 30, 2019. He did the training the day after he was hired, November 22, 2018.

Of the remaining seven under the 24-Month Tracking Method, one who trained on August 22, 2017 was due for retraining no later than August 22, 2019. This supervisor re-trained on August 27, 2019, and therefore was not in compliance. Another supervisor

9 Ibid.

who trained on October 3, 2017 was due for retraining no later than October 3, 2019, but re-trained on September 3, 2019, and therefore is compliant.

Two supervisors who trained on October 28, 2017, and were due for retraining no later than October 28, 2019, were re-trained on September 15, 2019 and November 2, 2019, respectively; therefore, there was one within compliance and one was not. Three other supervisors received timely re-training prior to the end of FY 2018/19.

Accordingly, six of the eight eligible supervisors retrained in a timely manner**.** The other two were less than a week past due when they retrained. The compliance rate under this method is **75%**. In contrast, the compliance rate under the Training Year Tracking Method would assume eight out of eight eligible employees took retraining in a timely manner, which would result in 100% compliance.

One new supervisor was hired during the three-year period of review and was required to train within six months. As indicated above, the employee's date of hire was November 21, 2018, and the training was completed on November 22, 2018, the day after he was put on the payroll. Therefore, Sand City's training compliance rate for new supervisors is **100%.**

A harassment policy is included in the city's *Personnel Manual* and Sand City noted that its written policy regarding AB 1825 training is in this document. A review of section 2.03 of the *Personnel Manual* reveals a standard workplace anti-harassment policy. The only part of section 2.03 that in any way touches on the topic of employee training is the last sentence of subsection A, *Statement of Intent*, which reads as follows:

> In keeping with our commitment to a harassment-free environment, The City will comply with all applicable rules and regulations regarding the training of employees in supervisory positions.

Sand City has assigned an administrative staff member to maintain training records, which are kept in a binder at City Hall. This staff member also coordinates training reminders. The city is effectively managing AB 1825 training for their supervisory employees.

City of Seaside

The city of Seaside has offered AB 1825 supervisory training to its employees for many years. The city recognizes employees have different learning styles, so their workforce is offered flexible training options from online, classroom, and webinar courses. Flexibility, however, has created a complex recordkeeping challenge for staff.

Seaside facilitates a wide range of training opportunities throughout the year. Their training providers are well-qualified, and materials are comprehensive and compliant. Written policies are fully compliant and distributed in person, on the city's website, at trainings, and available in the resource library. Classroom training with California Joint Powers Insurance Authority (CJPIA) is preferred by most employees, but online training is necessary for employees such as police and fire personnel who have unique schedules and cannot attend a daytime training session.

E-learning is handled with the TargetSolutions AB 1825 supervisory training program, *Smart Workplaces: Sexual Harassment Prevention for Office Managers & Supervisors, California, AB 1825* and appears to be fully compliant with the applicable administrative regulation 2 CCR §11024. TargetSolutions provides certificates of completion and reports of training data for each employee that is accessible online to the employer.

Seaside has access to classroom training through its membership in the CJPIA. The Civil Grand Jury conducted a review of training handouts prepared by CJPIA titled, *Workplace Harassment Training*, and dated April 10, 2018, January 23, 2019, and January 24, 2019. The courses appear to be fully compliant with applicable administrative regulation 2 CCR §11024.

Webinar training was provided by Burke, Williams & Sorenson LLP, a Los Angeles-based law firm serving public agencies and private business entities across California. Their webinar program was titled, *Not Your Average Harassment Training*. Training materials were not provided for review, so AB 1825 compliance cannot be confirmed. The website does establish the two trainers as qualified employment law attorneys. A submitted sign-in sheet and certificates indicate a single training date of October 25, 2017.

Employees are responsible for registering for their AB 1825 training, and they are not limited to how often they train. They can view their training records on the TargetSolutions dashboard. The Fire and Police Departments handle their own staff's training reminders apart from the HR Department. HR staff sets up credentialing reminders within the TargetSolutions system, which is not fail safe. Some employees train more than needed, while others ignore training reminders or delay training past the deadline. Credentialing reminders drop off after a certain time period, which leads to late and uncompleted training.

The submitted supervisory roster combined records for FY 2016/17, FY 2017/18, FY 2018/19 and was well-organized. Training records, such as sign-in sheets and certificates of completion, were a piecemeal submission of separate documents that were matched to the submitted employee roster. Several listed supervisors with gaps in training were short-term, interim supervisors who were excluded from the compliance analysis.

Gathering the training records for nearly 100 employees and alternately training between the three training methods presented a challenge because some training records are archived off-site. Although they are training their employees, Seaside does not have a systematic way to track AB 1825 training from year-to-year. Eighty-seven supervisory employees were eligible for supervisory training during FY 2016/17, FY 2017/18, and FY 2018/19. Fifty-five employees had timely training. Fourteen employees had late training, beyond two calendar years. Six employees completed non-supervisory training only. Twelve employees had no training records. Seaside demonstrated **63%** timely supervisory training.

Twenty-four new supervisors were hired or promoted between FY 2016/17, 2017/18, and 2018/19. One new supervisory employee who was hired in Quarter two of 2016 had new hire training due in FY 2016/17 and is included in the timely training calculation. Nine of 25 new supervisors received timely supervisory training within the prescribed six-month period. The city had a **36%** timely training compliance record for the period.

Twenty-one supervisory employees trained more often than required. The city does not monitor or limit the number of employee trainings.

Thirty-nine non-supervisory employees completed 48 supervisory training sessions. Seaside has firefighters and recreation employees who may work out of class and have lead employee duties, where they are called to supervise others in a flexible capacity. Erring on the side of caution, Seaside should continue to encourage or require all employees with occasional lead responsibilities to complete supervisory training for AB 1825 purposes as a risk prevention measure.

Seaside has three Human Resources staff who share HR duties. No one person is responsible for maintaining AB 1825 training records. AB 1825 records are not accessible in one place. Recordkeeping and timely training are the major problems Seaside contends with in an otherwise well-functioning AB 1825 training program.

A harassment policy document, entitled *Policy Against Harassment, Discrimination, and Retaliation*, is included on the city website under *Human Resources Policies and Procedures*, which was last updated in 2018. The policy is compliant with AB 1825, AB 2053, AB 1661 (pertaining to elected officials). It requires supervisory employees be trained on preventing sexual harassment and abusive conduct in the workplace every two years. In addition, it requires that all persons appointed or promoted to supervisory positions be trained within six months of appointment or promotion from a non-supervisory position.

All employees are given a copy of the policy as part of their initial orientation and are to receive a copy in conjunction with any training they attend. Supervisory employees are required to sign an acknowledgement of receipt of the *Policy Against Harassment, Discrimination, and Retaliation* at their time of hire.

City of Soledad

During the three fiscal years from July 1, 2016 through June 30, 2019, the city of Soledad had an average of 19 supervisory employees on payroll. Except for one supervisor who was on leave in 2019, every supervisor in the city received timely AB 1825 training. The Civil Grand Jury concluded that Soledad demonstrated **100%** compliance with AB 1825 training regulations.

The city hired four new or promoted supervisors during the period of review. All four supervisory employees received AB 1825 training within six months of hire, achieving a **100%** rate of compliance.

E-learning is the only method the city uses for AB 1825 training. It is provided online through TargetSolutions. TargetSolutions' supervisory training program appears to be fully compliant with 2 CCR §11024. It provides certificates of completion and training data for each employee that is accessible online to the employer.

The city uses the Training Year Tracking Method to track when training is due. In early January of each year, the city's Human Resources Department notifies those supervisors whose training is due in that year and informs them that they must complete the training by January 30. All newly hired or promoted supervisors receive AB 1825 training within 30 days of hire, a full five months earlier than the law requires.

Because Soledad averages just 19 supervisory employees on their payroll at any one time, their training compliance system is a simple Excel spreadsheet. By choosing only one month out of each year (January) to focus on AB 1825 training, Soledad has been able to achieve **100%** compliance with training new supervisors within the required six months and other supervisors every two calendar years.

A policy titled, *Policy Against Harassment, Discrimination, and Retaliation* is included as Section 4 in the city's *Personnel Rules and Regulations Manual* adopted in September 2016 and available on the city's public website. Subsection 4.04 of the policy, titled *Training and Policy Dissemination,* spells out all requirements of AB 1825.

Soledad is to be commended for this excellent compliance record.

County of Monterey

Monterey County conducts a high volume of AB 1825 supervisor training. This training is managed by the Monterey County Civil Rights Office (MCCRO). MCCRO has a robust AB 1825 training program that is centered on online training delivered by EVERFI corporation and augmented by classroom/in-person training led or monitored by qualified professionals from MCCRO.

An active but labor-intensive outreach program has been developed by MCCRO to support department managers and to coordinate with each department's learning management specialists (LMSs). This network is necessary for MCCRO to help ensure that Monterey County government delivers a model work environment and meets all AB 1825 and other Civil Rights training requirements. However, some AB 1825 training is not documented accurately in records, and the training tracking system, at least for AB 1825, is problematic in that it still reflects the transition among three different online learning systems used during the past four years. This is an area that requires more attention and improvement.

Because of MCCRO's limited access to certain HR data, it is not able to routinely audit compliance with all AB 1825 supervisor training rules. However, MCCRO works actively with department heads and department LMSs to promote compliance with AB 1825 regulations.

While MCCRO is responsible for AB 1825, this is just one portion of the large portfolio managed by this small office. MCCRO promotes a spirit for personnel to "respect civil rights, provide equal opportunity for all, and pursue equity in all operations by developing a culture of diversity and inclusion" in the Monterey County government and for the Monterey County community.

MCCRO prefers delivering AB 1825 training primarily via EVERFI's online training because County government is large and spread out among many facilities. Online training is augmented by MCCRO's classroom/in-person trainings. The Civil Grand Jury investigation determined that MCCRO leadership is well-informed of all changes and requirements for AB 1825 training, and they review and validate all training delivered by its online vendor and by MCCRO staff. MCCRO manages and audits all training requirements in their area of responsibility—including AB 1825, via close and ongoing contacts with the LMSs who are placed in each County department. LMSs are two-way conduits for information and situational awareness for MCCRO issues, including AB 1825.

Starting this year, MCCRO began publishing a monthly e-note or update that is tailored for each department. This periodical provides both relevant information and overviews of that department's compliance with requirements like AB 1825. Concurrent with the MCCRO e-note is a more detailed list for each LMS. The Civil Grand Jury was told that this is a two-way process where the LMSs work closely with MCCRO to ensure each department's compliance. Because of MCCRO's limited access to certain HR personnel data, MCCRO must coordinate with LMSs for data on supervisor training and changes in supervisor status—changes that would require additional AB 1825 training. While AB 1825 requires newly hired or promoted supervisors to receive AB 1825 training within six months, Monterey County requires new supervisors to complete AB 1825 training within 60 days of hire/promotion.

In recent years, MCCRO has migrated, in part or full, among three different online training networks. Currently, MCCRO uses the County's Learning Development System (LEARN/LDS) but retains EVERFI for its preferred quality of AB 1825 modules. MCCRO interviewees noted that EVERFI provides a bilingual capability for training that allows county supervisory employees to take their AB 1825 training in either English or Spanish. A drawback with the current state of training infrastructure for MCCRO is that all training records are dispersed among several legacy training systems. Although all county training data is still accessible, there is yet no unified application interface (API) to seamlessly retrieve all MCCRO training records. The Civil Grand Jury was told that this is an ongoing project that had not yet been completed at the time of this investigation.

As mentioned in other portions of this report, there are many different requirements for monitoring scheduled training, managing training records and even overseeing the storage of AB 1825 materials. The Civil Grand Jury reviewed how MCCRO completes these functions.

MCCRO provided real-course training materials, past rosters, and data to show how the office managed AB 1825 compliance. The training materials and rosters provided complied with state guidelines, however training certificates were not provided for supervisory employees.

Based on data provided to the Civil Grand Jury by MCCRO, the number of supervisors on payroll each year varied. For the years examined by the Civil Grand Jury, the rosters reflected the following supervisor counts: FY 2016/17 = 940 supervisors, FY 2017/18 = 1,108 supervisors, and FY 2018/19 = 1,018.

The Civil Grand Jury requested information on the *total number of supervisors trained* in AB 1825 during each fiscal year for the three years (FY 2016/17, FY 2017/18, FY 2018/19). The data that MCCRO provided are summarized below:

AB 1825	Total Trained	Main Roster of AB 1825 training	Other AB 1825 Rosters Provided
FY 2016/17	441	425	16
FY 2017/18	429	347	82
FY 2018/19	976	933	43

These records show that a significant amount of AB 1825 supervisor training was presented during this period. These numbers are compared with the corresponding years' supervisor rosters. The data for FY 2018/19 suggests a positive picture.

AB 1825	Total Trained	Roster of Supervisors (FY)	% Supervisors trained
FY 2016/17	441	940	46.9% (441 / 940)
FY 2017/18	429	1108	38.7% (419 / 1108)
FY 2018/19	976	1018	95.8% (976 / 1018)

However, this conclusion is not completely accurate, and it is not completely verifiable. Instead of having 95.8% of supervisory personnel trained in AB 1825 in FY 2018/19, the Civil Grand Jury uncovered an opposite picture: 38.6% (393) of all listed supervisors for FY 2018/19 had not only not received *any* AB 1825 training that year—they had not received any AB 1825 training for the entire three-year period.

The Civil Grand Jury sought to determine how this significant difference could occur. The primary reason suggested by this investigation is a deficiency in training tracking, in this case, supervisor AB 1825 training tracking.

The Civil Grand Jury noted that the names on all AB 1825 training rosters provided by the MCCRO were frequently different from the names on the rosters of supervisors as provided for the corresponding fiscal years. For example, one AB 1825 training roster for FY 2018/19 listed 933 supervisors trained. The Civil Grand Jury discovered that 41.4% of the names on that list (386 supervisors) were *not* listed on the official supervisor roster provided for that same year. This same gap, with varying proportions, existed for every year's training lists and every year's supervisor rosters.

So, instead of having 976 of 1,018 (95.8%) supervisors trained in AB 1825 in 2018/19, the actual number of supervisors (on the roster) either trained that year, or qualified that year under the AB 1825 biannual training requirement was only 593 or **58%**. This included 510 roster-supervisors who did attend AB 1825 training during that fiscal year, and also included another 83 (roster) supervisors who were qualified because they had already taken training within 24 months, or within the two years allowed (using the Training Year Tracking Method).

When asked during interviews why there were name and training discrepancies in the rosters provided, MCCRO personnel replied that there were several issues. First, MCCRO requests supervisor rosters from the departments. Sometimes rosters may include non-supervisors when departments provide "management group" rosters that include more than actual supervisors. Sometimes departments have personnel who are acting in supervisory positions, and even attend required AB 1825 training, but they are not reflected on actual supervisory rosters. Finally, they added that MCCRO does not have HR control over individual records—so data like "date hired," or "date promoted," which are important for ensuring AB 1825 compliance, require extra steps and additional coordination to obtain.

MCCRO personnel interviewed by the Civil Grand Jury also suggested that this problem is mitigated to an extent because department LMSs "self-track" training. MCCRO actively works with the LMSs, who are part of each department. These LMSs work to ensure that their departments comply with required training regardless of what rosters or lists are on file. This suggests that many, if not all the "non-roster" personnel who took AB 1825 training—the 446 personnel (976-510) difference in FY 2018/19 example above, may have been supervisors or acting supervisors.

The Civil Grand Jury could not confirm this at the department level, but it did note that the training rosters provided were also inaccurate. The computer-generated training rosters included more than a half-dozen names that were listed backward—an individual whose first name was listed as the last name and last name as a first name. This turns the tracking process for individuals into a manual stop-and-search action. While it is a repeated yet small lack of attention to detail on a training list, this same lack of attention to detail is mirrored at the macro level for AB 1825 training.

For all three years of requested data, there is an unacceptable lack of accuracy for the list of each FY's supervisors. This lack of precision undermines MCCRO's tracking of AB 1825 training compliance. The Civil Grand Jury determined that in part this is an issue of LMS training and supervision, and in part it this is an issue of MCCRO standards for data required for managing state AB 1825 supervisor training. The Civil Grand Jury recommends that MCCRO specialists who manage training compliance be provided more access to the HR Department. The Civil Grand Jury determined that the workload for compliance management is greater than the current staffing for that function can perform professionally.

FINDINGS

Findings – City of Carmel-by-the-Sea

F1. A November 2018 classroom training by the United States Equal Employment Opportunity Commission was not in compliance with AB 1825 and 2 CCR §11024: a) it was not undertaken within 24 months of the last training event for any of the attendees, b) insufficient time was allocated to the required subject matter, and c) written proof of attendance and/or course completion was not generated.

F2. A contributing factor to the city's failure to meet the two-year timeframe for sexual harassment/abusive conduct re-training was the absence of city staff with the responsibility to oversee employee training.

F3. The lack of attendance and completion of paperwork for the November 2018 EEOC classroom training was due in part to the city's assumption that the trainer would be responsible for all such documentation, and in part to the EEOC's practice of not generating certificates.

F4. There were six people who the city either hired or promoted to supervisory positions at some point during the 2017/18 fiscal year, and who should have received AB 1825 training within six months of hire/promotion. The November 15, 2018 EEOC training could have afforded a timely compliance scenario only for those FY 17/18 employees that were hired/promoted during the six-week period between May 16 and June 30, 2018. There were no other AB 1825 trainings of city employees during the period May 16, 2017 to November 15, 2018.

Findings – City of Del Rel Oaks

F5. The city of Del Rey Oaks has not ensured that every employee who is required to take AB 1825 training, completes that training in a manner and at a time as required by law.

F6. The city has not provided their employees with an updated and accurate Personnel Manual that includes all AB 1825 and related training requirements.

Findings – City of Gonzales

F7. Gonzales currently has a viable dual approach toward of AB 1825 training through use of group-oriented classroom presentations and e-learning (i.e. computer-based training). Classroom presentations are preferred but E-learning is used for supervisorial promotions/new hires (e.g. where a classroom training is unavailable).

F8. A December 6, 2016 classroom training by Concern-EAP, although deficient with reference to 2 CCR §11024, was sufficient to render the city of Gonzales compliant with the training mandate imposed by AB 1825.

F9. Online AB 1825 training by EVERFI that was done in 2017 was <u>not</u> in compliance with AB 1825 and 2 CCR §11024: the Civil Grand Jury was provided with insufficient information upon which to make a determination whether or not the online supervisory employee training complied with 2 CCR §11024.

F10. The city failed to meet the timeframe for sexual harassment/abusive conduct re-training of supervisory employees, as directed by California Government Code §12950.1 and more particularly specified in 2 CCR §11024.

F11. The city's failure to meet the timeframe for sexual harassment/abusive conduct re-training established by 2 CCR §11024 was due to staff changes and workload issues.

F12. The city has no written policy about AB 1825 sexual harassment/ abusive conduct training.

Findings – City of Greenfield

F13. Greenfield's Office of the City Manager should be recognized for its clear understanding of state requirements for AB 1825 supervisor training, and its dedicated approach to actively conducting both online and in-person classroom AB 1825 supervisor training in spite of lack of support from some city supervisory employees.

F14. The city's sexual harassment prevention policy (Attachment B to Rule 17, Section 7) is incomplete and out of date. It does not provide adequate information to assist employees or guide supervisors in dealing with sexual harassment situations.

F15. The city's Office of the City Manager's AB 1825 compliance records management is inadequate. The combination of a lack of a viable tracking system and a single staff point of contact has made effective tracking and compliance problematic.

F16. The city's Office of the City Manager's decision to use an automated learning management system, like TargetSolutions, was a positive measure that may facilitate more timely training delivery and better records keeping in the future.

F17. Even with an automated learning management system for AB 1825 training and records compliance, the city's Office of the City Manager will have continued difficulty meeting state standards for AB 1825 training compliance because of competing work requirements in the City Manager's office and the limited time and resources devoted to this training. The current approach does not recognize the expanded range of compliance measures required by AB 1825.

Findings – King City

F18. King City is to be commended for their excellent record in maintaining **100%** compliance with AB 1825 requirements for the fiscal years 2016/17, 2017/18 and 2018/19.

Findings – City of Marina

F19. Marina has implemented a streamlined, effective training year tracking system for AB 1825 training for supervisory employees in its general management group.

F20. The city did not address an alternate online training source for new and promoted supervisors during 2018, which may have resulted in two late trainings.

F21. A high-ranking official is the only supervisory employee with no record of training for 2017 or 2019 and is assumed to have failed to complete required AB 1825 training.

F22. The city's written, stand-alone harassment policy needs updating, because it is missing certain language governing protected classes required by the California Department of Fair Employment and Housing's 2 CCR §11023 regulations, and it does not contain a reference to AB 1825 supervisor training mandated under 2 CCR §11024 regulations.

F23. Revision of the city's Personnel Policy Manual is extremely overdue.

Findings – City of Monterey

F24. The city of Monterey's personnel tracking system does not include enough data to ascertain whether employees promoted to a supervisory position received AB 1825 training within six months of hire or promotion as a supervisory and then every two years thereafter.

F25. Monterey was unable to provide a complete and accurate roster of all of its supervisory employees along with their AB 1825 training dates resulting in the Civil Grand Jury having insufficient information to determine if the city was indeed training all of its supervisors timely and according to AB 1825 mandates.

F26. Monterey's sexual harassment policy titled, *Harassment/Discrimination/ Retaliation/Abusive Conduct/Bullying Policy,* in city code 25-3.03 accurately reflects the 2 CCR §11023 conduct prohibitions, but it does not include the mandated employee training requirements in 2 CCR §11024.

Findings – City of Pacific Grove

F27. Pacific Grove has a first-rate classroom training program. However, its structured in-person training dates sometimes make it hard to achieve timely training for all employees who have training due.

F28. The city's existing AB 1825 recordkeeping system does not facilitate tracking two-calendar year retraining and six-month supervisory employee training.

F29. The city's electronic onboarding or induction does not ensure timely six-month training for new and promoted supervisors, which has resulted in a low percentage of timely training.

F30. The city's policies no. 100.80 –100.110, *Harassment, Discrimination, and Retaliation Prevention Policy and Complaint Procedure*, found in the

Administrative Policies and Procedures Manual posted on the website, are missing a reference to mandated AB 1825 training requirements contained in 2 CCR §11024 regulations.

F31. The city's Employee Handbook, for which employees sign an acknowledgement of receipt, is missing references to AB 1825 policy and mandated training requirements.

Findings – City of Salinas

F32. The city of Salinas HR Department should be recognized for its clear understanding of state requirements for AB 1825 supervisor training and its active and professional approach to that training for the city.

F33. The city's AB 1825 compliance program is generally compliant with state requirements but is somewhat deficient in identifying and ensuring new supervisor six-month AB 1825 training compliance.

F34. The city currently manages AB 1825 using the New World ERP system and using online vendors like TargetSolutions. This dual systems approach is a point of potential failure in tracking.

F35. The city currently manages AB 1825 using the New World ERP system and HR records to generate notices for supervisors of required training. However, the Civil Grand Jury found there is insufficient senior management accountability or focus on the individual city supervisory employee to complete required training in a timely manner. Absent senior management emphasis, complete compliance or even high rates of compliance with AB 1825 training requirements may be difficult to achieve.

Findings – Sand City

F36. For two employees, Sand City failed to meet the two-year timeframe for sexual harassment/abusive conduct re-training of supervisory employees, as directed by California Government Code §12950.1 and more particularly specified in 2 CCR §11024.

F37. The city has no written policy regarding AB 1825 sexual harassment/abusive conduct training.

Findings – City of Seaside

F38. Seaside is commended for its fully compliant AB 1825 written policy.

F39. The city has a comprehensive AB 1825 training program that allows employees to select their preferred training method.

F40. The city does not fully coordinate course completion between its three AB 1825 training modalities (classroom, online, and webinar) and does not limit employee training, which has resulted in some supervisory employees training more than required and other training late or not at all.

F41. Seaside's onboarding procedures are ineffective at ensuring new and promoted supervisory employees complete AB 1825 training within six months.

F42. The city lacks an efficient recordkeeping system for AB 1825 training compliance, and some training records for supervisory employees are archived off-site and are not readily accessible.

Findings – City of Soledad

F43. Soledad is to be commended for their excellent record in maintaining **100%** compliance with AB 1825 requirements for the fiscal years 2016/17, 2017/18, and 2018/19.

Findings – County of Monterey

F44. Monterey County Civil Rights Office (MCCRO) has a strong, professional understanding of all requirements to comply with AB 1825 training in the Monterey County government, and delivers high quality, compliant AB 1825 training to County supervisory employees in both online and classroom/in-person settings.

F45. MCCRO's AB 1825 compliance records management is inadequate. The office (1) lacks a unified interface for accessing or directly managing all past training, and (2) lacks sufficient access to individual personnel records to actively track ongoing AB 1825 training deadlines for current or new supervisors.

F46. MCCRO's AB 1825 compliance records management process is a complex series of push-pull actions—requiring careful, ongoing interaction between the MCCRO and other County departments. Each department has Learning Management Specialists to help make this process work, but the MCCRO itself does not have sufficient staff to keep up with the coordination and planning work of ensuring AB 1825 training requirements are met for supervisors in all departments.

F47. Monterey County Civil Rights Office leadership and staff displayed a high degree of professionalism and personal commitment to the spirit as well as the letter of the AB 1825 law. All office personnel were forthcoming, honest, and helpful for this investigation.

RECOMMENDATIONS

When the 2019/20 Civil Grand Jury began our investigations, COVID-19 had not yet become a public health crisis. However, as we conclude our reports, we are tasked to specify a time frame within which to address our recommendations. We have done so, attempting to allow some extra time given the current situation. We ask the County Supervisors, Departments, Cities, and Special Districts responsible for enacting our recommendations to do their best to accomplish these goals as expeditiously as possible, given the effect of the current pandemic crisis on staffing availability.

Recommendations – City of Carmel-by-the-Sea

R1. By September 30, 2020, AB 1825 sexual harassment/abusive conduct training undertaken by and/or at the direction of the city of Carmel-by-the-Sea should follow the directives and protocols laid out in 2 CCR §11024, including but not limited to the following areas: frequency, duration, and documentation of training; content of training; method of delivery of training; qualification of the trainer.

R2. By September 30, 2020, Carmel-by-the-Sea should always have a staff member whose responsibility includes oversight of AB 1825 sexual harassment/abusive conduct workforce training.

Recommendations – City of Del Rey Oaks

R3. By December 31, 2020, those Del Rey Oaks supervisory employees who received AB 1825 training in 2018, should have completed the training again, as the law mandates the training must be completed every two calendar years or every 24 months, whichever method is chosen by the employer.

R4. By September 30, 2020, Del Rey Oaks should have published an updated Personnel Manual that references current law on harassment of all types and on mandated harassment training. Del Rey Oaks should make the revised manual available to all employees.

Recommendations – City of Gonzales

R5. By September 30, 2020, AB 1825 sexual harassment/abusive conduct training undertaken by and/or at the direction of the city of Gonzales should follow the directives and protocols laid out in 2 CCR §11024, including but not limited to the following areas: frequency, duration, and documentation of training; content of training; method of delivery of training; qualification of the trainer.

R6. By September 30, 2020, the city should retain a full and complete written record with respect to all AB 1825 trainings that it provides, sponsors, or otherwise uses, regardless of whether delivered via classroom, e-learning, or webinar format.

R7. By December 31, 2020, the city should prepare a written AB 1825 harassment, discrimination, retaliation prevention policy that is consistent with 2 CCR §11023; the policy should contain a provision covering the employer's training obligation under G.C. §12950.1 and 2 CCR §11024.

Recommendations – City of Greenfield

R8. Greenfield should revise its sexual harassment prevention policy to reflect current state law, city practices, and to make it a useful guide for employee and supervisors alike. This revision should be completed by December 20, 2020.

R9. The city's Office of the City Manager should review and revise current management practices for AB 1825 supervisory training and tracking. This revision should include: (1) development of a city supervisory responsibility system that will create a "demand pull" for AB 1825 supervisor training to complement the current "requirement push" approach that the city has used; (2) integration of all in-person classroom AB 1825 training rosters and training data with the TargetSolutions learning management system to ensure one unified management, tracking, and reporting system for all AB 1825 training; and (3) off-loading the AB 1825 training and tracking responsibilities from the Office of the City Manager to a new or existing HR section, or augmenting the Office of the City Manager's personnel with part-time or dedicated personnel responsible for tracking and coordinating AB 1825 training and compliance data. This revision should be completed by June 30, 2022.

Recommendations – City of Marina

R10. Marina should employ a back-up online training provider in the event of a future hiatus in the TargetSolutions training program. This recommendation should be implemented no later than 6 months after this report is published.

R11. Department heads should be models to other supervisory employees on the importance of respect in the workplace. Therefore, by September 30, 2020, the one city official who did not train in 2017 and 2019 should complete online AB 1825 training in 2020, 2021, and subsequent odd years.

R12. The city should update its written, stand-alone, "Policy Against Sexual Harassment," and its associated Acknowledgement of Receipt form, within 90 days of the publication of this report.

R13. The city should revise its *Personnel Policy Manual* so that it reflects the mandated training requirements outlined in 2 CCR §11024. This recommendation should be completed no later than 12 months after this report is published.

Recommendations – City of Monterey

R14. Monterey should revise their personnel tracking system to include all city employees regardless of department, each employee's date of hire as a supervisor or date of promotion to a supervisory position, and date of classification change to a non-supervisory position, in order to accurately determine if AB 1825 training mandates are being met. This recommendation should be completed no later than 12 months after this report is published.

R15. The city should review its *Harassment/Discrimination/Retaliation/Abusive Conduct/Bullying Policy* to include the employee training requirements mandated by 2 CCR §11024. This recommendation should be completed no later than 12 months after this report is published.

R16. The city should diligently assess whether the AB 1825 training programs it uses, such as those offered by the federal EEOC, meet the training curriculum mandates outlined in AB 1825 and its amendments. This recommendation should be completed no later than 12 months after this report is published.

Recommendations – City of Pacific Grove

R17. By September 30, 2020, Pacific Grove should continue to improve its recordkeeping efforts and fully update its supervisory employee roster worksheet to better track and address potentially late AB 1825 training before it becomes late.

R18. The city should develop a practice to individually counsel and refer new and promoted supervisors to online training when classroom training is not available within six months of their hire. Those employees also should be encouraged to take the next session of in-person classroom training to reinforce the city's culture of respect. This recommendation should be completed no later than six months after this report is published.

R19. By December 31, 2020, the city should amend their Administrative Policies and Procedures Manual, policies no. 100.80 –100.110, *Harassment, Discrimination, and Retaliation Prevention Policy and Complaint Procedure*, to reference AB 1825 training requirements per 2 CCR §11024 regulations.

R20. The city should publish an updated Employee Handbook that references current law on harassment of all types, on abusive conduct, and on mandated harassment training. Pacific Grove should distribute the revised handbook to all employees and require them to sign a new acknowledgement of receipt. This recommendation should be completed within 18 months of the publication of this report.

Recommendations – City of Salinas

R21. By June 30, 2021, the city of Salinas should automate the six-month new supervisor training signal for AB 1825 training. The city's HR Department should develop an automated HR noticing process that informs all newly hired or appointed supervisors of the six-month AB 1825 supervisor training requirement, and signals HR to (automated or manually) enter that training suspense in the New World ERP system.

R22. By June 30, 2022, the city should continue to advance HR integration and automation of training processes and functions. This should include (1) automated notices or "ticklers" to supervisors on AB 1825 training deadlines, (2) integrating online training records with the New World ERP system, and (3) routinely creating global city reports of compliance that can provide HR and senior city leadership with a comprehensive snapshot of AB 1825 training compliance by city supervisory personnel.

R23. By September 30, 2020 the city's senior management should adopt a stronger emphasis on promoting individual city supervisory employee responsibility to complete required training, including AB 1825 supervisor training, in a timely manner.

Recommendations – Sand City

R24. By December 31, 2020, Sand City should ensure that AB 1825 sexual harassment/abusive conduct prevention training undertaken by and/or at the direction of the city follows the directives and protocols laid out in 2 CCR §11024, including but not limited to the following areas: frequency, duration, and documentation of training; content of training; method of delivery of training; qualification of the trainer.

R25. Sand City should develop a system to ensure that a full and complete written record of all AB 1825 trainings that it sponsors, regardless of whether delivered via classroom, e-learning, or webinar format, is in place and includes the date of the trainings and the names of attendees. This recommendation should be completed within 18 months of the publication of this report.

R26. By December 31, 2020, Sand City should engage with the City Attorney, other staff, or an outside contractor to prepare a written policy regarding AB 1825 sexual harassment/abusive conduct prevention training for its workforce.

Recommendations – City of Seaside

R27. By September 30, 2020, the city of Seaside's HR Director should assign one HR staff member to oversee AB 1825 training requirements and recordkeeping, so that all employees with training due in 2020 are trained by December 31, 2020.

R28. Seaside should implement an onboarding system that effectively captures new or promoted employees and requires them to complete AB 1825 training within six months of their hire or promotion. This recommendation should be completed within 90 days of the publication of this report.

R29. Seaside should adopt an effective training tracking system to assemble all AB 1825 recordkeeping in one location, preferably saved to electronic files with cloud access. This recommendation should be completed within 18 months of the publication of this report.

Recommendations – County of Monterey

R30. The Monterey County Civil Rights Office should review and revise the processes used to manage AB 1825 supervisory employee records to include the following: (1) develop a unified interface for accessing and directly managing all past training; (2) develop a method either with Learning Management Specialists, or centralized with an automated and trackable notice or tickler for AB 1825 training due dates; and (3) increase staffing and authority for personnel responsible for tracking and coordinating AB 1825 training and compliance data. This recommendation should be completed within 18 months of the publication of this report.

REQUIRED RESPONSES

Pursuant to Penal Code §933 and 933.05, the Civil Grand Jury requests responses as follows:

City of Carmel-by-the-Sea

- The City Council of City of Carmel-by-the-Sea
  - Respond to Findings: F1 – F4
  - Respond to Recommendations: R1 – R2

City of Del Rel Oaks

- The City Council of Del Rel Oaks
  - Respond to Findings: F5, F6
  - Respond to Recommendations: R3 – R4

City of Gonzales

- The City Council of Gonzales
  - Respond to Findings: F7 – F12
  - Respond to Recommendations: R5 – R7

City of Greenfield

- The City Council of City of Greenfield
  - Respond to Findings: F13 – F17
  - Respond to Recommendations: R8 – R9

City of Marina

- The City Council of City of Marina
  - Respond to Findings: F19 – F23
  - Respond to Recommendations: R10 – R13

City of Monterey

- The City Council of City of Monterey
  - Respond to Findings: F24 – F26
  - Respond to Recommendations: R14 – R16

City of Pacific Grove

- The City Council of City of Pacific Grove
  - Respond to Findings: F27 – F31
  - Respond to Recommendations: R17 – R20

City of Salinas

- The City Council of City of Salinas
  - Respond to Findings: F32 – F35
  - Respond to Recommendations: R21 – R23

City of Sand City

- The City Council of Sand City
  - Respond to Findings: F36 – F37
  - Respond to Recommendations: R24 – R26

City of Seaside

- The City Council of City of Seaside
  - Respond to Findings: F38 – F42
  - Respond to Recommendations: R27 – R29

County of Monterey

- The Monterey County Board of Supervisors
  - Respond to Findings: F44 – F47
  - Respond to Recommendations: R30

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code §929 requires that reports of the Civil Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.

WORKS CITED

2 CCR (California Code of Regulations) §11024. Required Training and Education Regarding Harassment Based on Sex, Gender Identity, Gender Expression, and Sexual Orientation. https://govt.westlaw.com/calregs/Document/I4597AA3786DE4A7B820F9D02C8795550?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)

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Flanagan, Caitlin. “The problem with HR.” *The Atlantic* (July 2019). https://www.theatlantic.com/magazine/archive/2019/07/hr-workplace-harrassment-metoo/590644/

Johnson, Michael. “Sexual harassment training essential in all states, not just those with mandatory state training laws.” Clear Law Institute (January 6, 2020). https://clearlawinstitute.com/blog/harassment-training-essential-employees-states-**not**-just-california-supervisors/

Mayberry, Carly. “In wake of recent cases, Peninsula cities examine sexual harassment policies.” *Monterey Herald* (May 19, 2018; updated September 11, 2018). https://www.montereyherald.com/2018/05/19/in-wake-of-recent-cases-peninsula-cities-examine-sexual-harassment-policies/

Rodd, S. "It’s Inexcusable’: Dozens of California Government Agencies Failed to Provide Sexual Harassment Training to Nearly 1,800 Supervisors." Capital Public Radio (KXJZ Sacramento). 28 May 2018. http://www.capradio.org/articles/2019/05/28/its-inexcusable-dozens-of-california-government-agencies-failed-to-ensure-sexual-harassment-training-to-nearly-1800-supervisors/

CITY OF SEASIDE
STAFF REPORT

Item No.: 7.G.

TO: City Council

FROM: Craig Malin, City Manager

BY: Gloria Stearns, Community Development Manager

DATE: October 15, 2020

SUBJECT: **APPROVE RESOLUTION RATIFYING THE 8TH SUPPLEMENT TO THE PROCLAMATION OF LOCAL EMERGENCY**

PURPOSE & RECOMMENDATION

Adopt the resolution ratifying the allowance of food trucks on local streets when associated with brick and mortar businesses.

BACKGROUND

The City Council ratified the Director of Emergency Services First and Revised Second Supplement, Third Supplement, Fourth, (Revised) Fifth, Sixth AND Seventh (Revised) Supplement to the Proclamation of Local Emergency by adopting Resolutions 20-16, 20-21, 20-26, 20-63, 20-73 and 20-83 respectively. This is the eighth supplement to the emergency proclamation intended to alleviate challenges identified as a result of COVID-19.

Seaside Municipal Code 10.32 regulates food trucks. This supplement would temporarily suspend the enforcement of the code and allows for limited food truck operation in private parking areas and streets that are not commercial corridors when partnering with a nearby restaurant(s) to provide a bonified meal that would be consumed in an outdoor dining setting. This action would allow more Seaside businesses to operate in compliance with the County of Monterey prohibition on indoor dining and the State of California Alcoholic Beverage Control regulations for the operation of restaurants, bars and breweries.

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

FISCAL IMPACT

Positive for local businesses. No fiscal impact to the City.

ATTACHMENTS

1. Draft Resolution
2. Eighth Proclamation

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 RATIFYING THE EIGHTH 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, Sixth AND Seventh (Revised) Supplement to the Proclamation of Local Emergency by adopting Resolutions 20-16, 20-21, 20-26, 20-63, 20-73 and 20-83 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 Eighth 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 Eighth Supplement and ratifies the Director's Eighth Supplement to his Declaration of Local Emergency, which allows for limited food truck operation in private parking areas and streets that are not commercial corridors. The Eighth Supplement is attached hereto and incorporated herein as Exhibit A, continued in effect and is ratified 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 15th day of October, 2020 by the following vote:

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

____
Ian N. Oglesby, Mayor

ATTEST:	APPROVED AS TO FORM:
__________________________ Lesley Milton, City Clerk	__________________________ CITY ATTORNEY

EIGHTH 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, 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 September 29, 2020, the number of confirmed cases in Monterey County 10,050 confirmed cases, 597 hospitalizations, and 73 deaths; and

WHEREAS, in the 93955 zip code, the number of cases of COVID-19 has increased to 499 cases on September 29, 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

WHEREAS, on June 20, 2020 the State of California Alcoholic Beverage Control revised the COVID-19 Temporary Catering Authorization, which allows certain licensed businesses to serve alcohol with a meal, outdoors while following social distancing guidelines and directives; and

WHEREAS, the Alcohol and Beverage Control has allowed that bars be allowed to serve food with their license so long as it is a bona fide meal; 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. Temporary Food Truck Partnerships. The City Manager hereby authorizes licensed businesses to partner with food truck vendor(s) and/or nearby restaurant(s) to provide a meal that may be considered a bona fide meal and part of a transaction, when consumed within an acceptable outdoor dining setting. Food truck regulations per SMC 10.32 are temporarily waived for food truck partnerships operating with a licensed business partner, provided the food truck partnerships remain in private parking areas, and/or a street that is not a major commercial corridor including Broadway, Fremont and Del Monte. Public rights of way (sidewalks, etc) are to maintain a clear path of travel for pedestrians. Outdoor cooking is not allowed on sidewalks. Food trucks that are not part of a partnership with licensed businesses still must comply with SMC 10.32.

DATED: October 5, 2020

By: ______________________________
Craig Malin, City Manager
Director of Emergency Services

APPROVED AS TO FORM:

____
City Attorney

CITY OF SEASIDE
STAFF REPORT

Item No.: 7.H.

TO: City Council

FROM: Craig Malin, City Manager

BY: Gloria Stearns, Community Development Manager

DATE: October 15, 2020

SUBJECT: **APPROVE RESOLUTION AUTHORIZING APPLICATION FOR AND ENTERING INTO AGREEMENTS FOR THE REGIONAL EARLY ACTION PLANNING (REAP) GRANT AND AUTHORIZE THE CITY FINANCE DIRECTOR TO MAKE ASSOCIATED FINANCIAL TRANSACTIONS.**

PURPOSE & RECOMMENDATION

Authorize resolution authorizing application for and entering into agreements for the REAP grant application for $165,000 and authorize the City Finance Director to make associated financial transactions.

BACKGROUND

The Regional Early Action Planning (REAP) Grant is intended to help regional entities facilitate local housing production that will assist local governments in meeting their Regional Housing Needs. The Association of Monterey Bay Area Governments (AMBAG) is facilitating the REAP grant applications for this area.

The REAP grant funds, $165,000, will allow the City of Seaside to complete the final updates needed for the General Plan Update, Environmental Impact Report (EIR), and Zoning Code.

A fully executed resolution is a requirement for the REAP grant application.

The grant application is attached to this staff report.

FISCAL IMPACT

The grant funds of $165,000 will be placed in 100-7310-1035 and positively affect the general fund. The fund balance that was in 100-7310-1035 may be used elsewhere in the general fund (approximately $118,284).

ATTACHMENTS

1. Draft Resolution

Reviewed for Submission to the
City Council by:

Craig Malin, City Manager

RESOLUTION NO. 20-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEASIDE,

TO APPROVE APPLYING FOR AND ENTERING INTO AGREEMENTS FOR THE REGIONAL EARLY ACTION PLANNING GRANT AND AUTHORIZING THE CITY FINANCE DIRECTOR TO MAKE ASSOCIATED TRANSACTIONS.

WHEREAS, Governor Gavin Newsom signed Assembly Bill 101 in September 2019, which established the Local Government Planning Support Grants Program which allocates $125 million in housing planning funds to regional entities throughout the state; and

WHEREAS, the California Department of Housing and Community Development (HCD) has been assigned as the state agency overseeing this program; and

WHEREAS, the provisions of AB 101 require the California Central Coast's Councils of Government form a multiagency group comprising three representatives from each of the region's five counties to administer approximately $8 million in housing planning funds dedicated to the Central Coast region through the Regional Early Action Planning (REAP) grant; and

WHEREAS, the Central Coast Housing Working Group has been established as the multiagency working group to administer these REAP funds pursuant to AB 101; and

WHEREAS, the Association of Monterey Bay Area Governments (AMBAG) will serve as the fiscal agent of the Central Coast Housing Working Group and will staff the group; and

WHEREAS, AMBAG will use three percent of the AB 101 Central Coast regional funding to administer the mega regional grant program, staff the Central Coast Housing Working Group, provide required reporting, and provide oversight of the grant program from 2020 to 2024; and

WHEREAS, AMBAG will allocate AB 101 housing planning funds to the four COGs in the Central Coast area: AMBAG, the San Luis Obispo Council of Governments, the Santa Barbara County Association of Governments, and the Council of San Benito County Governments; and

WHEREAS, the City of Seaside is eligible to submit a request for allocation for a portion of Central California AB 101 housing planning funds from AMBAG; and

WHEREAS, the amounts allocated to the Association of Monterey Bay Area Governments (AMBAG) are based on the allocation method approved by the Central Coast Housing Working Group; and

WHEREAS, the amounts allocated to the City of Seaside will be based on the allocation method approved by AMBAG; and

WHEREAS, AMBAG shall approve allocation requests subject to the terms and conditions of eligibility, guidelines, Notices of Funding Availability, and program requirements.

THEREFORE, BE IT RESOLVED:

1. The City of Seaside is hereby authorized to request an allocation not to exceed $160,000 from the Association of Monterey Bay Area Governments which acts on behalf of the Central Coast Housing Working Group, and

2. The City of Seaside is hereby authorized to enter into agreements, and take further actions as may be necessary to give effect to this resolution, such as executing amendments and approving funding applications with the Association of Monterey Bay Area Governments for REAP grant funding.

PASSED AND ADOPTED at the regular meeting of the City Council of the City of Seaside, State of California, on the 15th of October 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

CITY OF SEASIDE
STAFF REPORT

Item No.: 8.A.

TO: City Council

FROM: Craig Malin, City Manager

BY: Ashley Collick, Recreation Supervisor

DATE: October 15, 2020

SUBJECT: **COMMUNITY SOCIAL SERVICES GRANT FUNDING AWARDS**

PURPOSE & RECOMMENDATION

Review committee recommendations and provide directions.

BACKGROUND

The City of Seaside budgeted $320,000 in the FY20/21 fiscal year to enhance community and social services. Enhanced services in realms including, but not limited to, education, recreation, social work, public health, public safety, mental health, youth development, elder care, community building and restoration, and homeless and housing advocacy are eligible for funding.

Eligible applicants were public or private nonprofit organizations including community-based organizations (CBO) and faith-based organizations serving Seaside residents. Grass-roots organizations which are not officially recognized as a non-profit we asked to align with an established non-profit to apply. Applicants were urged to propose cost-effective projects that meet a significant and timely community need and/or impact a substantial number of individuals, and applicants must propose a cash and/or in-kind match of at least 10%.

Successful applicants will be required to submit quarterly reports to the City of Seaside. This includes descriptions of special events, significant activities, and major accomplishments, and quantitative information on the number of service hours, participants served, people completing or leaving the program, and other information as needed. Successful applicants will also be required to participate in a comprehensive evaluation of the program and present a status report to the City not later than April 9, 2021.

Twelve proposals were received on September 8, 2020. They are all available at the following link: https://ca-seaside.civicplus.com/CivicAlerts.aspx?AID=366 The following organizations submitted proposals, Community Human Services requested $50,000.00 "In support of our Seaside Family Service Center (FSC)"; Community Partnership for Youth requested $100,000.00 for their Mentor-Tutor Program; Community 831 Action Teams requested $193,000.00 for "Pause the Calls"; Dorea Church requested $50,000.00 for their health and fitness program; Meals on Wheels requested $20,000.00 for their food delivery service (costs of food only); Orchestra in the Schools requested $11,292.00 to support "Orchestra in the Schools Online Music Instruction"; Friends of Seaside Library requested $40,000.00 for a Garden at the entrance to the Seaside Library; Partners for Peace requested $15,045.00 for their "Preparing our kids for success" program; Road to Reality requested $130,141.00 for "Road 2 Reality, Inc is dedicated to all individuals who are willing to thrive and work together towards positive change in the community"; Seaside Aquatics Club (The Dolphins) requested $25,000.00 in Support of the Dolphin Swim Program; Sun Street Centers requested $30,760.00 "Prevention, education, treatment, and recovery" during the Pandemic; and The Village Project requested $116,820.00 for community mental health enhancement.

An ad-hoc committee of professionals, consisting city staff, community and social service professionals, and community residents, were responsible for reviewing proposals applications. The members of the committee are Dr. Reiko Sakai, Pastor Harold Lusk, Ashley Collick, Donnie Everett, Kenneth Fletcher, Jasmine Dolan, and Thomas Muir.

Each organization had an opportunity to score 100 points maximum on their proposal. The following criteria was used to score each proposal; demonstrated project need & target population (30 points), quality of and need for the practice or program proposed (20 points), evidence that the program or practices are effective (10 point), potential for maximum positive impact (20 points), organization and staff experience and capabilities (10 points), Cost-effectiveness and funding match (10 points).

The committee held it's introductory meeting on September 21st, 2020. On September 29, 2020 they heard presentations from community based organizations who made the case on why they should be awarded funding. The committee deliberated on September 30th, 2020 and scoring was announced on October 7th, 2020. Every meeting was streamed live on YouTube and the written public comment was received and reviewed by the committee members before and after each meeting.

The committee understood that they could have disregarded the standards set forth in the RFP, but recognized that by doing so they wouldn't be setting the right tone for fairness in the spirit of the grant. There was a healthy debate on whether the funds should be divided equally among the applicants. The committee chose not to go in that direction recognizing that each organization requested what they needed for reasons known to them not the committee. They spent a lot of time hearing from the community through written public comment, discussing the details of the RFP, and whether certain organizations should be "disqualified" based their lack of 501c3 status, missing documentation, or turning in their proposals after the 5pm deadline on September 8, 2020. Ultimately, the committee decided to score every proposal submitted on September 8th, 2020, and allowing organizations who listed their 501c3 number but didn't provide an IRS letter to be considered for funding. Organizations were recommended for funding based on their ranking, and the committee chose to fully fund those organizations and award the remaining balance to an additional organization.

Based on the scoring / ranking of the proposals the ad hoc committee makes the following funding recommendations:

Community Human Services with a total average score of 91 at $50,000.00. The Village Project Inc. with a total average score of 90 at $116,820.00. Community Partnership for Youth with a total average score of 89 at $100,000.00. Meals on wheels with a total average score of 87 at $20,000.00. Sun Street Centers with a total average score of 84 at $30,760.00. The remaining balance of $2,420 is recommended to be awarded to the Seaside Aquatics Club (The Dolphins) who had a total average score of 80.

The committee recognizes that this was a difficult decision as each proposal presented would greatly benefit the City of Seaside. They each expressed disappointment at not having more funding available to support the efforts of start up non profits, and newer innovative programs. They each expressed hope that any future funding be used to assist grass roots organizations to help get them a proper footing in the community.

FISCAL IMPACT

The recommended awarding is as follows:

Community Human Services $50,000.00

The Village Project, INC. $116,820.00

Community Partnership for Youth $100,000.00

Meals on Wheels $20,000.00

Sun Street Centers $30,760.00

Seaside Aquatics Club $2,420.00

Total award $320,000

ATTACHMENTS

1. Final CSS Grant Eval Scores for Staff Report

Reviewed for Submission to the
City Council by:

Craig Malin, City Manager

Proposal Application	Total Average Score	Demostrated project need, target population	Quality of need for the practice or program proposed	Evidence that the program or practices are effective	Potential for maximum positive impact	Organization and staff experience and capabilities	Cost effective and funding match
CHS	91	25	18	9	18	10	10
CPY	89	26	18	9	18	10	9
Community 831	37	15	7	2	8	3	3
Dorea Church	39	11	7	4	8	5	3
Meals on Wheels	87	23	18	9	17	10	10
Orchestra in Schools	60	16	12	7	9	8	8
Seaside Library	44	11	10	2	9	6	5
P4P	77	19	15	9	15	9	9
Road to Reality	42	13	7	4	10	5	4
Seaside Aquatics	80	23	17	8	15	8	9
Sun Street	84	25	17	7	16	9	10
Village Project	90	27	18	9	18	9	8

Proposal	Total Average Score	Requested amount	
CHS	91	$50,000.00	
Village Project	90	$116,820.00	
CPY	89	$100,000.00	
MOW	87	$20,000.00	
Sun Street	84	$30,760.00	
Seaside Aquatics	80	$25,000.00	To be awarded balance
P4P	77	$15,045.00	
Orchestra in Schools	60	$11,292.00	
Seaside Library	44	$40,000.00	
Road to Reality	42	$130,141.00	
Dorea Church	39	$50,000.00	
Community 831	37	$193,000.00	

Total Awarded	Balance	Unawarded
$317,580.00	$2,420.00	$464,478.00

CITY OF SEASIDE
STAFF REPORT

Item No.: 8.B.

TO: City Council

BY: Craig Malin, City Manager
Sheri Damon, City Attorney

DATE: October 15, 2020

SUBJECT: **CONSIDER DEVELOPER'S SEPTEMBER 30 PURCHASE AND SALE AND ESCROW INSTRUCTION AGREEMENT FOR THE MAIN GATE PARCEL, SEASIDE, CA 93955**

PURPOSE & RECOMMENDATION

Deny the Developer's September 30 Purchase and Sale Agreement (PSA).

BACKGROUND

At the September 17 City Council meeting, the City Council authorized the City Manager to sign a PSA for the Main Gate parcel, contingent upon Petrovich Development Company signing the PSA on or prior to September 30. Petrovich Development Company submitted to the City Attorney a list of changes to the City approved document, some of which were substantive and some non-substantive. To the extent that the changes requested clarified the essential terms of the transaction and did not materially change the agreement, the City Attorney made those changes and explained that neither the City Manager nor City Attorney could negotiate substantive changes to the PSA.

Mr. Petrovich, the principal of Petrovich Development Company, did not sign the PSA which was approved by the City Council as clarified by the City Attorney. Instead, he submitted a substantially revised PSA at 5:13 PM on September 30 to the City Manager under cover of the following email:

> Craig,
>
> Attached are the documents I am willing to execute today as soon as the City

approves them since. I suggest the City approves them so as not to continue to violate its requirements under the law to treat me equally to similarly situated properties as it did just months ago with Campus Town as well as The Nurses Barracks transaction and not continue to violate the ENA and other laws to the detriment of the community and CSUMB.

Thank you,

Paul

Consistent with the September 17 directive of the City Council, the City Manager did not sign the PSA. Mr. Petrovich emailed the City at 5:13 PM, September 30. The PSA Mr. Petrovich emailed the City Manager is attached, in redline form. Mr. Petrovich's PSA includes substantial revisions which are not in the best interests of the City and thus, staff recommends the City Council formally votes to deny Mr. Petrovich's PSA.

The Main Gate parcel is 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 Mr. Petrovich in February of 2017. The City extended the due diligence period of the original ENA for the benefit of Seaside Development Company LLC which terminated in June 2019. On June 8, 2019, Petrovich Development Company formally withdrew its application and stopped processing any plans.

Nonetheless, in September 2019, the City acknowledged there were significant amounts of time that had been spent in negotiating site acquisition and development of the Main Gate project. Accordingly, on September 19, 2019, the City approved the extension of the ENA for one year along with an Indemnification Agreement, with the renamed, Petrovich Development Company LLC. The effective date of the ENA Extension was September 30, 2019.

During the months of October and November 2019, the City and PDC met multiple times in an effort to address the terms and development requirements related to the project. In November 2019, the PDC instructed that all negotiation efforts cease until the appraisal was updated, among other things. PDC wanted the opportunity to submit a memo regarding all the items he believed were incorrectly appraised. He further instructed he did not want to have the appraisal started until January 2020. The appraisal was received by the City (after his extensive contacts with the parties, both

Developer and City) on June 8, 2020. It is noteworthy that the PDC did not submit or update any plans during the time period of June 8, 2019 through August 13, 2020, despite the Attachment 2 of the ENA calling for such submittal.

Despite the end date of September 30, 2020 for the extended ENA, for the first time on or about August 3, 2020, Petrovich Development Company contended the ENA was extended by many years due to "tolling". In making this argument, PDC relies upon language on Attachment 2 to the original ENA that provides for tolling upon the Developer's timely compliance with applicable delivery requirements. It is noteworthy that the Developer withdrew his applications in June 2019 which was a requirement of Attachment 2. On July 2, 2020, the City Council directed that PDC provide a plan which was consistent with the scope and quality of the concept plan Mr. Petrovich had provided the City to secure the original ENA in 2017.

In August 2020, PDC submitted its "Summary of Tolling Events". The City finds that all events listed in the Summary prior to September 30, 2019 have no merit in terms of tolling. Additionally, for any event claimed by PDC for which he called a stop to work, there can be no tolling. In that document, PDC contends that the length of time it took a third party appraiser to update the appraisal tolls the ENA by nine months. PDC further contends that the City requiring a new site plan and update (after a withdrawn application) is a "multi-year" tolling event. The Developer advised the City that he could "manufacture" an extension to the ENA by simply submitting an application, and on or about August 13, 2020, the Developer submitted documents he claimed was an application. The documents submitted were not a completed application and do not meet the Attachment 2 standard set forth, however, the Planning Department did not send this information to the Developer until September 17, 2020. Assuming the submitted documents met the standard and giving the Developer the benefit of the doubt, the maximum the ENA extension could have been tolled was four days or through October 4, 2020. In any case, as of today's date, the City's position is the **ENA has expired.**

Through the course of negotiating with Mr. Petrovich, the City 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 City Council-approved PSA reflected the original, non COVID-19 impaired appraised value of $8.3 million.

The City Council-approved PSA included 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 was structured as reimbursement of new City revenue which the development would generate in a tiered structure, to assure the City would always be a cash-positive position as the property was developed. The City Council-approved PSA included a substantial deposit and other terms and conditions intended to protect the public interest. A provision, for the sole benefit of the City, was 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.

While the Campus Town and Main Gate parcels and projects have some similarities, they are substantively different. The Main Gate parcel is half the size of the Campus Town parcels. It lacks the omnipresent blighted buildings on the Campus Town property and benefits from exceptional visibility and adjacency to both Highway 1 and a potential sports district of CSUMB. While CSUMB's ownership of property adjacent to Second Avenue is a complicating factor, the Main Gate parcel had entitlements under which Mr. Petrovich could have advanced development at any time since securing the ENA in early 2017. The Campus Town project had no such entitlements, and has well in excess of ten million dollars of blight removal necessary to complete construction. Despite the significant physical, financial and procedural advantages of the Main Gate parcel in comparison to the Campus Town parcel, the Campus Town project has proceeded through community engagement, CEQA review, and City Council approval of a Specific Plan and Development Agreement while the Main Gate ENA has been extended, and now lapsed, with little substantive progress.

Likewise, the Nurses' Barracks project, also on the former Fort Ord, is substantially different from the Main Gate parcel. The Nurses' Barracks parcel and subsequent project is the rehabilitation of two existing apartment buildings with a substantial amount of Developer investment remediating the buildings and no public subsidy. Both the ENA and a PSA, were negotiated in 2017 and 2018, respectively. However, the first PSA was sent aside in subsequent litigation.

While both the Campus Town and Nurses' Barracks developers have built community trust and support with active listening and diligent attention to community needs, never halting forward progress, demanding the City retain outside legal counsel or implicitly threatening litigation, the same cannot be said about Mr. Petrovich. Regardless, the City expended extraordinary time and energy trying to advance a mutually beneficial project on the Main Gate parcel with Mr. Petrovich, with staff working nights, weekends and holidays to assist, and the City Council committing to $15 million of public investment to a project on a parcel that has not a single barracks building on it, requiring demolition in advance of construction.

Mr. Petrovich's proposed PSA retains the $15 million of City Council-authorized public investment but contains substantial revisions embedded within the redlined language that would add millions to his side of the ledger. The proposed PSA also improperly tries to limit the amount of mitigation measures that would be applicable to the project before the environmental document or impacts can be determined. Staff recommends denial.

FISCAL IMPACT

Indeterminate and potentially negative, as the fiscal impact of the project is unknown and the Developer's 9.30.20 PSA includes a provision that specifies a Development Agreement which was not submitted with the PSA.

ATTACHMENTS

1. Developer Proposal September 30, 2020

Reviewed for Submission to the
City Council by:

Craig Malin, City Manager

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" (the "Property") and Developer will, by Close of Escrow (as defined below), subdivide such Property into parcels as required by Section 2.5.13, herein below.

B. Developer desires to acquire from City all the Property within the Concept Planning Area comprising of approximately fifty-four (54+/-) acres of unimproved real property as well as all that certain strip of property comprising of approximately 2.4 acres property and land bounded by Second Avenue and currently owned by CSUMB (the "CSUMB Strip", the Property and CSUMB Strip shall collectively be referred to as the "Land"), 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"** attached hereto and the CSUMB Strip is generally depicted on **Exhibit "C-1".**

C. As of the Effective Date of this Agreement, the City shall have committed to Developer (in writing) that it has dedicated (without offset, modification, or right to rescind) to the Project not less than the 149 acre feet of water per year consistent with the terms set forth in City Resolution No. 08-32 ("City Water Commitment").

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" as a breach of or failure to perform any of the representations, warranties, or covenants of this Agreement...

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~~ Grant 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 prepared pursuant to Section 2.5.13 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 Property to Developer, and

Developer agrees to purchase the Property 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). Developer shall also purchase the CSUMB Parcel, at a nominal cost (consistent with this Agreement) at Close of Escrow ~~such time the City is able to sell it to Developer as provided in Section 3.2.2~~. 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. Notwithstanding the foregoing, the acquisition of the Property may be subjection to the terms and conditions set forth in Article 4 (Acquisition Matters).

2.1.1 Phased Purchase Option.

~~2.1~~2.2 Deposit. In consideration of Developer having expended over Two Million Dollars ($2,000,000.00) for studies, appraisals, consultants, environmental analyses, CEQA attorneys, staff, office resources, and numerous others matters that cannot be listed but all inure to benefit of the City and is non-refundable and does not apply to the Purchase Price, the Developer ~~W~~within ten (10) business days after the Effective Date, the Developer shall deposit the sum of FORTY SIX ~~ONE MILLION FIVE HUNDRED~~ THOUSAND AND 00/100THS DOLLARS (~~$1,500,000.00~~$46,000.00) 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 Paragra ph 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 Processing Costs costs incurred by the City that have not been paid or reimbursed by the Developer but shall not relieve the Developer of paying any Processing Costs incurred in excess of the Deposit. 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.~~

~~2.2~~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 "Close of Escrow") shall be the date that a ~~quitclaim~~Grant ~~deed~~ 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.

~~2.3~~2.4 Condition of Title; Title Insurance.

~~2.3.1~~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".

~~2.3.2~~2.4.2 At the Close of Escrow, the City shall convey title to the Land to Developer by ~~quitclaim~~Grant deed substantially in the form attached hereto as **Exhibit "D"** (the "~~Quitclaim~~Grant 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~~Grant 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").

~~2.4~~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 if for the benefit of both parties unless otherwise noted.

~~2.4.1~~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.

~~2.4.2~~2.5.2 City's removal (or Title Company's reasonably insuring over) the Disapproved Title Exceptions.

~~2.4.3~~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).

~~2.4.4~~2.5.4 City shall have secured sewer and water allocations from all applicable entities sufficient for the completion of the Project; and to the extent required, the City shall take any necessary action to transfer any third party to Developer the rights to the 149 acre feet of water per year established by City Resolution No. 08-32~~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~~.

~~2.4.5~~2.5.5 The representations and warranties of the City and the Developer contained in this Agreement being true and correct.

~~2.4.6~~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.

~~2.4.7~~2.5.7 The delivery by City and Developer of all documents and funds required to be delivered pursuant to Section 2.8 hereof.

~~2.4.8~~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.

~~2.4.9~~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.

~~2.4.10~~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.

~~2.4.11~~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 Developer and City shall have entered into the Statutory Development Agreement for the Project pursuant Government Code Sections 65864 et seq. attached hereto as **Exhibit "G".** The parties acknowledge and agree that the Development Agreement is subject to compliance with the California Environmental Quality Act and is not effective until such compliance has been established in accordance with all applicable laws. The parties further acknowledge and agreement that the purpose of adopting the Development Agreement is to memorialize the terms mutually acceptable to City and Developer. The parties further acknowledge and agree to not modify, amend, or remove any material term under the Development Agreement unless such modification, amendment, or removal is required by a direct nexus between that term (or those terms) and compliance with CEQA.

2.5.14 There shall be no suit, action or arbitration, judgment or legal, administrative, or other proceeding or governmental investigation, formal or informal, including but not limited to eminent domain, condemnation, assessment district or zoning change proceeding, pending or threatened, that affects the Property or the Project

~~The City shall have obtained from 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 and Developer shall reimburse the City $1,000 as nominal consideration since the value of this strip of land was established as part of the Purchase Price~~

~~2.4.12~~2.5.15 Compliance with California Subdivision Map Act. This Agreement is expressly conditioned on the Developer having done the following ("Map Act Condition"):

~~2.4.12.1~~2.5.15.1 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.

~~2.4.12.2~~2.5.15.2 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.

~~2.4.12.3~~2.5.15.3 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.

2.5.15.4 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.

2.5.16 The City shall have obtained from the CSUMB Strip and incorporated into the Project, as shown on the attached Plan and Developer shall reimburse the City $1,000 as nominal consideration since the value of this strip of land was established as part of the Purchase Price

~~2.5~~2.6 Costs; Escrow Holder Settlement Statement

~~2.5.1~~ 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.

~~2.5.2~~2.6.1 ~~.~~

~~2.5.3~~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 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.

~~2.6~~2.7 Condition of the Property.

~~2.6.1~~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.

~~2.6.2~~2.7.2 Due Diligence Period; Inspections by Developer. Upon the Effective Date of this Agreement until ninety (90) days after the Opening of Escrow (the "Due Diligence Period") Developer shall have the ability to review the suitability of the Property for Developer'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") Developer shall also have the ability to review the Due Diligence Material for the CSUMB Parcel with consent of CSUMB or the City, if the CSUMB Parcel is owned by the City. Prior to the expiration of the Due Diligence Period, Developer may deliver to the City Escrow Holder, in Developer's sole and absolute discretion, written notice (the "Due Diligence Approval Notice") of Developer's approval of the Due Diligence Matters. If Developer does not deliver the Due Diligence Approval Notice before the expiration of the Due Diligence Period, then (a) Developer shall have disapproved of the Due Diligence Matters, (b) the Deposit and all interest accrued thereon shall be returned to the Developer, 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) Developer 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.

~~2.6.2.1~~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 (and the CSUMB Parcel, with the Consent of CSUMB or the City, if owned but the City) (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 Land 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 Land unless Developer has provided City and CSUMB, if applicable, 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 and CSUMB, if applicable, as an additional insured. For inspection purposes only, Developer shall defend, indemnify and hold City and CSUMB 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 Land, 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. The foregoing indemnity, defense and hold harmless obligations do not apply to (a) any loss, liability cost, claim, damage, injury or expense to the extent arising from or related to the acts or omissions of City, (b) any diminution in value in the Property arising from or relating to matters discovered by Developer during its investigation of the Property, (c) any latent defects in the Property discovered by Developer, and (d) the release or spread of any Hazardous Materials that are discovered (but not deposited) on or under the Property by Developer~~, provided and~~

~~only if the City has no monetary or other liability for resolution of such legal challenge or appeal~~.

~~2.6.3~~2.7.3 Developer Disapproval; Termination. This Agreement shall be terminated upon the following:

~~2.6.3.1~~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.

~~2.6.3.2~~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.

~~2.6.3.3~~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 Processing 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.

~~2.6.4~~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 1.1.18), RCRA (as defined in Section 1.1.18), 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.

For purposes of this Section 2.7 only, Developer and anyone claiming by, through or under Developer also hereby waives its right to recover from and fully and irrevocably releases CSUMB, the City ~~and CSUMB~~ 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 or CSUMB. 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 and this Section 2.7.4 is solely limited to terms set forth in Section 2.7.~~.~~

____________________	____________________
CITY'S INITIALS	DEVELOPER'S INITIALS

~~2.6.5~~2.7.5 INTENTIONALLY OMITTED~~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 CSUMB, if applicable, and the City's and~~

~~CSUMB'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 , injuries to or death of persons, or for the cost of cleaning up the Land 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 cleaning 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~~.

~~2.7~~2.8 Deposits into Escrow.

~~2.7.1~~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:

~~2.7.1.1~~2.8.1.1 A ~~Quitclaim~~Grant Deed duly executed and acknowledged by the City, in the form attached hereto as **Exhibit "D"**.

~~2.7.1.2~~2.8.1.2 The affidavit as contemplated by California Revenue and Taxation Code 590 (the "Withholding Affidavit");

~~2.7.1.3~~2.8.1.3 A Certification of Non-Foreign Status in accordance with I.R.C. Section 1445 (the "FIRPTA Certificate");

~~2.7.1.4~~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

~~2.7.1.5~~2.8.1.5 Such proof of the Developer's satisfaction of the Map Act Condition (as defined in Section 2.5.13) sufficient to transfer the applicable portion of the Land as a legal parcel under the California Subdivision Map Act.

~~2.7.2~~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:

~~2.7.2.1~~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;

~~2.7.2.2~~2.8.2.2 A Preliminary Change of Ownership Report fully completed by the Developer;

~~2.7.2.3~~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,

~~2.7.2.4~~2.8.2.4 Any other documents reasonably requested by the City or the Title Company to consummate the transaction contemplated by this Agreement.

~~2.8~~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).

~~2.9~~2.10 Escrow's Closing Actions. On the Close of Escrow, Escrow Holder shall:

~~2.9.1~~2.10.1 Record the ~~Quitclaim~~Grant Deed in the Official Records of Monterey County (which shall be deemed delivery of said instruments to Developer);

~~2.9.2~~2.10.2 Issue the Title Policy (or cause the Title Company to issue the Title Policy);

~~2.9.3~~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.

~~2.9.4~~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;

~~2.9.5~~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

~~2.9.6~~2.10.6 Deliver the FIRPTA Certificate and the Withholding Affidavit to Developer.

~~2.9.7~~2.10.7 Record the Final Map (as further described in Section 2.5.11).

~~2.9.7.1~~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.

~~2.9.7.2~~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.

~~2.10~~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 (each, a "Phase" 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 Phase of the Project shall have been satisfied, and the Purchase Price shall have been~~

~~paid in full. The City will require that the first Phases 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 The City expects development of the parcel to be consistent with ~~to represent contemporary planning and architectural standards, with sufficient density, mixed-uses, pedestrian orientation and building energy performance to optimize environmental, financial and social outcomes. Excellent urban design, with buildings defining streetscapes and supporting a convivial public realm is required. The site plan must relate strongly and supportively to CSUMB,~~

~~establishing both a distinctive entry sequence to the university from Highway 1, and a vibrant, highly permeable connection to the university itself. Residential uses should be varied and dense, including student housing, live/work/maker units, residences above retail and affordable units built on site. Final site plans must feature robust pedestrian and bicycle infrastructure, including a FORTAG corridor as a feature of the site. A~~ the preliminary draft of the plan (the "Plan") is attached as **Exhibit "C"**. This Plan is mutually agreed upon by the City and Developer and any modifications and amendments shall be required solely so that a~~A~~ny final plan and corresponding entitlement approvals will be subject to compliance with the California Environmental Quality Act ("CEQA").~~ A Development Agreement shall be developed upon completion of the Draft Environmental Document and contemporaneously with the preparation of the Final environmental document and shall address, but not be limited to, the terms listed in Exhibit G.~~ The Development Agreement shall include (but not be limited to) the following terms:

City Investment. The City Investment to the Project shall not exceed Fifteen Million and 00/100ths Dollars ($15,000,000.00). The City Investment shall reimburse Developer (as Developer) up to, but not more than, Eight Million Three Hundred Thousand and 00/100ths Dollars ($8,300,000.00) for Developer's out-of-pocket costs associated with development and construction of all public improvements and backbone infrastructure. If Developer acquires the Property at reduced Purchase Price based on City's inability to deliver at Closing the Project Water Requirements (as set forth in Section 3(b)), the City's note shall be reduced (dollar for dollar) upon completion of public improvements and backbone infrastructure in an amount in excess of what Developer paid the City until the Developer's out of pocket costs equal the Purchase Price. In the event, the Purchase Price and note are completely satisfied for Developer's work (as described in this Section 3.2.1, the City shall immediately reconvey (in full) the Deed of Trust and provide Developer written notice that the note has been paid in full and no further obligations are due thereunder. The remainder of the City Investment shall be paid via City transient occupancy tax ("**TOT**") and City sales tax in which the City pays the seventy percent (70%) of all TOT and sales tax revenues until the City Investment is full satisfied and complete.

3.2.2 Waiver and Reduction of Fees. Separate and independent from the City Investment, the Development Agreement shall provide that Developer (as Developer) (i) shall not be obligated to pay Developer Fees (which include, but are not limited to, those monetary impact fees, linkage fees, assessments, fair share charges, or other similar Developer impact fees commonly required in connection with a new development); (ii) shall not pay any new taxes or Assessments unless either is adopted by City-wide vote or City-wide landowner approval; (iii) shall not pay more than thirty percent (30%) of the FORA Replacement Fee (which is the fee should the FORA CFD be terminated and fully and finally removed as an encumbrance on the Property such that the Project and the Property no longer are subject to the FORA CFD and no further assessments or other payments are required to be paid thereunder, then at the time of issuance of each building permit for the Project subsequent to such final termination and removal the FORA Replace Fee is required); and (iv) any other waiver or reduction provided to Campus Town shall also be provided to Main Gate.

3.2.3 Recycled Water Line. Developer was assured that the recycled water line was to run down 1st Avenue, but due to unanswered requests from MCWD for the Easement, the recycled water line was constructed under General Jim Moore Blvd. Accordingly, the Development Agreement shall provide (as separate and independent from the City Investment) the Cost to deliver recycled water from General Jim Moore Blvd to Main Gate. If City requires a larger pipe than necessary to fulfill Main Gate's usage, the City will pay in cash to Developer, the percentage of volume increase on a pro-rata basis.

3.2.4 Traffic Circles. City (as the City) shall construct and install traffic circles at 1st Avenue and 2nd Avenue within twelve (12) months of Close of Escrow. Alternatively, the City will provide a full signalized access including left turn access for east bound Lightfighter traffic at 1st Avenue (provided that such alternative signal does not trigger any other condition on Main Gate).

3.2.5 Mitigation Due to Other Projects. Any condition or requirement for additional infrastructure applied to Main Gate that otherwise would not have been assessed had other projects not been approved prior to March 1, 2017, shall be paid for by the City and such payment shall be separate and independent from the City Investment.

3.2.6 Mitigation Measures Generally. Developer shall not be obligated to undertake any mitigation measure unless such mitigation is established via applicable reports and analyses to be directly related to the impact created by the Project. Even if a direct relationship is established, Developer shall only mitigated up to (and not more than) the proportionate share of impact caused by Developer. For example, if the Project only causes a ten percent (10%) impact on certain intersection and Developer shall only undertake its proportionate 10% obligation. It is expressly understood that this section is provided as a protection to Developer if the City had failed to secure or require mitigation from any other project or development.

3.2.7 Affordable Housing. The affordable housing requirement shall not more than twenty percent (20%) of the approved detached single-family homes and market rate multi-family housing only. Developer may qualify for a density bonus. Developer may satisfy its Affordable Housing requirement enough Student Housing Units up to 40% of its requirements affordable student housing units.

3.2.8 *~~Other Items~~Pardee Case*. Additional items commonly included within a development agreement, such as, but not limited to, a developer's right to the greatest amount of time and flexibility (in light of the *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465 and/or any other similar or distinguishing cases) as necessary or appropriate to permit Developer to complete the development of the Project irrespective of later adopted rules, regulations or initiatives which would otherwise restrict Developer's time to complete the Project.

3.2.9 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).

3.2.10 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.

3.2.11 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.

3.2.12 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.

~~3.3 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.~~

~~3.3.1 City intends to acquire the strip of land adjacent to the Property that is owned by California State University, Monterey Bay (i., e., the "CSUMB Parcel") 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. .~~

~~3.3.2 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.~~

~~3.3.3. 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.~~

~~3.4~~3.3 Schedule ~~Of~~ of Performance

~~3.4.1~~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.

~~3.4.2~~3.3.2 INTENTIONALLY OMITTED.

~~3.4.3~~ 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. The deposit and reimbursement terms under the ENA shall govern the manner in which Developer reimburses the City for all costs associated with the third-part planner. Accordingly, Developer shall submit ~~Developer shall submit with~~ the first application the sum necessary (if any) to bring Developer into compliance with Section 7 if the ENA. ~~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.~~

Consistent with the foregoing, 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".**

~~If Close of Escrow occurs and thereafter Developer fails to cause the Project to qualify for its first certificate of occupancy for the [*first* Phase *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~~3.4 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~~3.5 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. Developer shall notify City Manager that ~~E~~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~~ is 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 ~~Phase~~ 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"; 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~~3.6 Removal of First Avenue~~Construction Loan~~. In accordance with the foregoing, City shall be required to demolish and remove (in conformance with all applicable laws) 1st Avenue as may be required or as may be necessary to permit unrestricted development of the Property in accordance with the Entitlements and satisfy the requirements of this Section 3.5. The demolition and removal of 1st Avenue may be done in portions consistent with the development plan as on **Exhibit "C"** attached hereto. If City fails to perform its removal obligations under this Section, then Developer (upon delivery of written notice to City) shall have the right to elect to perform such demolition and removal obligations and in which City shall reimburse Developer in the form of a credit against all fees, taxes or incremental take downs of the subject property in the amount of One Hundred Percent (100%) of Developer's designated subcontractor(s)' and consultant(s)' written estimate of all costs, fees and expenses to be paid by Developer in connection with such demolition and removal of 1st Avenue plus an administrative fee of ten percent (10%) of all costs ("Developer's Self-Help Costs")~~Intentionally omitted~~.

~~3.8~~3.7 ~~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"**.~~INTENTIONALLY OMITTED (Moved to Section 3.3)

~~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).~~

~~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.~~

~~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.~~

~~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.~~

~~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 on the Close of Escrow~~

~~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.~~

~~Certificate of Completion. Upon Developer's completion of the construction of each Phase 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 Phase of the Project) set forth in this Article 3. Promptly following the City's issuance of a certificate of occupancy for the entireProject , 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, 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, 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 hereby acknowledges and agrees that it shall obtain from the developers, owners, applicants ~~commits to including~~ a reciprocal provision in identical form and substance but ~~,~~ for the benefit of Developer, ~~similar to~~to the Non-Opposition provisions in this Paragraph 3.16 ("Campus Town Non-Opposition Agreement") within ten (10) days of the Effective Date of this Agreement. Upon City obtaining such Campus Town Non-Opposition Agreement, the City shall provide a copy to Developer for its files. In the event that City has not obtained such Campus Town Non-Opposition Agreement and/or fails to provide Develop a copy of the signed Campus Town Non-Opposition Agreement within the time prescribed herein, the terms, provisions, rights, obligations of this Section 3.16 shall immediately (without further action of either party hereto) be deemed null and void and have no further impact or effect on Developer. For the avoidance of doubt, if the City fails to obtain the Campus Town Non-Opposition in identical form and substance (but for the benefit of the Developer) as required ~~(a)~~ hereinabove in any Campus Town document(s) within ten (10) days of the Effective Date, this Section 3.16 shall terminate and Developer shall no longer be bound any terms or obligations but the remaining terms of this Agreement shall survive~~, at such time as those documents should be presented to the City for amendment~~.

Except as provided above, ~~T~~the ~~above~~ provisions of this Section ~~Paragraph 3.16 hereinabove~~3.16 are non-severable.

~~4. LIMITATIONS ON TRANSFERS AND SECURITY INTERESTS.~~ACQUISITION MATTERS.

4.

4.1 Pre-Development Requirements & Entitlement Approval. Upon Developer's written request (in which such Developer's request shall identify the area and the purchase price, as defined below, of Property to be acquired) and subject to City's approval, Developer may elect to purchase a portion of the Property to develop in accordance with the existing Specific Plan entitlements and the Main Gate water allocation of 149 AFY (as set forth in City Resolution No. 08-32). In the event that Developer so elects (with City approval), the City represents and warrants that it will continue to procure all Development Requirements and processing of Entitlements not then obtained for the mixed-use site plan attached hereto as **Exhibit B**. Developer's written request shall identify the area and the purchase price, as defined in Section 4.3, below.

4.2 Post-Development Requirements & Entitlement Approval. Following City's full and complete satisfaction of Development Requirement and Developer's receipt of all Approvals for Entitlements, but prior to the Close of Escrow, Developer may request (in writing) to purchase the Property in one or more phases, which request shall be subject to City's approval (which shall not be unreasonably withheld, conditioned, or delayed). In the event that Developer so elects (with City approval), the City represents and warrants that it will continue to procure all Development Requirements and processing of Entitlements not then obtained for the mixed-use site plan per **Exhibit B**. Developer's written request shall identify the area and the purchase price, as defined in Section 4.3, below.

4.3 Phased Acquisition Purchase Price. Subject to the foregoing, if Developer and City agree that the Property may be purchased in phases, the Purchase Price for such acquisition shall be determined by the overall square footage agreed upon multiplied by $3.40, which is the per square foot purchase price ($8,300,000/2,439,360 square feet = $3.40). Consistent with the Development Agreement, upon Developer's acquisition of a portion of the Property, the overall or total Purchase Price set forth herein shall be immediately reduced by the amount paid to City.

For example, if Developer acquires 435,600 square feet of the Property to develop of the entire 56 acres known as Main Gate, Developer shall pay One Million Four Hundred Eighty-Two Thousand One Hundred Forty and 86/100ths Dollars ($1,482,142.86) for such portion of the Property less the estimated Investment per the Engineer's Estimate (as defined below) that qualifies as a credit to develop said amount of property only. Upon close of escrow for such portion of the Property, the Purchase Price owed by Developer shall be credited by the associated Investment on the closing statement for the acquisition of the 435,600 square feet of land. The cost for the remaining property hereunder shall be $6,817,857.14. For the avoidance of doubt, the total Purchase Price paid by Developer (whether the property is acquired in one or more phases) shall never exceed Eight Million Three Hundred Thousand and 00/100ths Dollars ($8,300,000.00). Further, the parties agree that should any transaction involving an initial take down may be separately documented but in no event shall such transaction deviate for the applicable terms hereunder. Notwithstanding the foregoing (which is merely provided as flexibility to the parties), nothing herein shall be deemed a waiver of City's obligation to deliver the Project Water Requirements and the reduction of the Purchase Price as expressly described in Section 3.1(a) above. Those terms shall remain a part of this Agreement even if the parties mutually agreed to a phased development as set forth herein.

4.4 Development Requirements. The parties hereby acknowledge and understand that the Project and Developer Proposal is based on the City RFP, which contemplates sufficient water, available housing units, agreements in place to develop and use for access and development the 2.4 acres along 2nd Avenue owned by CSUMB and all Entitlements in place, among others, necessary to successfully develop the Project. Additionally, the price Developer is willing to pay is value set for the in that certain Appraisal, dated December 14, 2018, prepared by BBG Appraisal Inc. for the City that included these development "hypothetical assumptions" as complete or part of the Project, and therefore the 2018 value is approximately $4,550,000.00 higher than the certain Appraisal, dated June 8, 2020. Accordingly, City covenants and agrees to use commercially reasonable efforts to (i) secure (via ownership at City's sole costs and expense) fee title to certain portion of the CSUMB parcel (along the eastern boundary of the Property) as depicted in Exhibit B (in which Developer will reimburse City not more than One Thousand Dollars ($1,000.00) for the unencumbered fee title and if allocations of City sales or TOT taxes are required to secure that property, those allocations will be subordinates to Developer's rights to such tax revenue per the City Investment as further defined in Section 5.10); (ii) provide a will serve letter from the designated water service provider for the Property that guarantees the full supply of water for the full Project as set forth in the Water Supply Assessment and Written Verification of Supply; (iii) provide rights to develop no less than 680 housing units as contemplated in the Conceptual Plan and to be further defined in that certain Development Agreement by and between the City (as City) and Developer (as Developer, dated concurrently herewith) ("Development Agreement"); and, (iv) all of the foregoing shall not be deemed complete until all appeal periods and statutes of limitations for any legal challenges have expired ("Development Requirements").

City acknowledges and understands that as a material inducement for Developer to agree to pay the Purchase Price ($8,300,000.00), City represented it would (i) procure, deliver and convey to Developer each and every one of the Development Requirements; and (ii) the failure to deliver any one of the Development Requirements would prohibit or materially impair Developer from developing the Property in accordance with the Conceptual Plan (Exhibit C). As such, if City has not obtained any or all of the Development Requirements by the Outside Closing Date, Developer in its sole discretion and upon written notice to City may (x) terminate this Agreement and the Deposit (including the Reimbursement Deposit) shall be immediately returned to Developer; or, (y) purchase the Property for a total purchase price in an amount not to exceed pay Three Million Seven Hundred Ten Thousand and 00/100ths Dollars ($3,710,000.00), which is the appraised value as set forth in that certain Appraisal, dated June 8, 2020, prepared by BBG.~~Restriction on Transfer of Developer's Rights and Obligations. Prior to issuance of a Certificate of Completion for the applicable Phase of the Project and the opening of such Phase 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 Phase of the Project, and the opening of such Phase 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 Phase 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~~Grant ~~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~~4.5 ~~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 Processing 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 Agreement 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~~Intentionally Omitted.

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~~INTENTIONALLY OMITTED.

~~(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.~~

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

~~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, or any other Condition Precedent, the following shall apply:~~

~~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 of the Land (in whole or in part).~~

~~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.~~

~~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.~~

~~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~~Grant ~~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 is not and will not participate in any Campus Town Challenge. This provision is non-severable from this Agreement.~~

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.

7.2.3 City is the sole owner in fee simple of the Property and has the full right, capacity, power, and authority to enter into and carry out the terms of this Agreement. This Agreement has been duly authorized and entered into by City and the parties signing on behalf of City, and upon delivery to and execution by Developer shall be a valid and binding agreement of City.

7.2.4 Except as identified in the Title Report, City has not alienated, encumbered, transferred, assigned or otherwise conveyed its interest in the Property or any portion thereof, nor entered into any agreement to do so, nor shall City do so. By entering into and performing the transactions contemplated by this Agreement, City will not violate or breach any agreement covenant or obligation binding on City, and City may convey the Property to Developer without the consent of any third party.

7.2.5 To City's actual knowledge there are no mechanic's or materialman's liens, or similar claims or liens now asserted against the Property for work performed or commenced prior to the date hereof other than as described in the Title Report.

7.2.6 To City's actual knowledge, as of Close of Escrow, the Property is not in violation or is not currently under investigation for violation of any Environmental Law.

7.2.7 There is no suit, action or arbitration, or legal, administrative, or other proceeding or governmental investigation, formal or informal, including but not limited to eminent domain, condemnation, assessment district or zoning change proceeding, pending or, to City's actual knowledge, threatened, or any judgment, moratorium or other government policy or practice that affects the Property or Developer's anticipated development of the Property, or that adversely affects City's ability to perform hereunder, nor does City know of any fact that might give rise to an action, investigation or proceeding.

7.2.8 City is not in default under any encumbrance, lien or restriction on the Property.

7.2.9 Except as disclosed in the Title Report, City has not made any commitment, agreement or representation to any government authority, or any adjoining or surrounding property owner or any other third party, that would in any way be binding on Developer or would interfere with Developer's ability to develop and improve the Property and will not make any commitment or representation that would affect the Property or any portion thereof prior to the Close of Escrow, without Developer's written consent. This includes providing any easement to any third party (government entity, private party, or otherwise) that is not disclosed on the Title Report.

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 or ~~CSUMB~~ 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 ~~and CSUMB, if applicable,~~ against, and save it harmless from, all costs, expenses (including reasonable attorneys' fees), claims, liabilities, damages and losses incurred by the City ~~or CSUMB, if applicable,~~ 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 ~~or CSUMB~~.

8.7 Entire Agreement Waivers and Amendments. ~~Except for that certain Hold Harmless and Indemnification Agreement dated September 19, 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. Neither Developer nor City may assign or transfer their respective rights or obligations under this Agreement without first obtaining the prior written consent of the other, which consent may be granted or withheld in its sole and absolute discretion. Notwithstanding the foregoing, Developer may assign, convey, or otherwise transfer its rights and obligations hereunder, without City's consent or prior notice, 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, (v) a successor by way of merger or consolidation or the acquisition of all or substantially all of Developer's assets, or (vi) a third party to effectuate a land banking arrangement pursuant to which Developer has the right to develop and reacquire the Property~~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~~Grant 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:	**CITY:**
PETROVICH DEVELOPMENT COMPANY, LLC, a California limited liability company,	CITY OF SEASIDE
By: ______________________________	By: ______________________________
Paul Petrovich, Managing Member	Craig Malin, City Manager
	ATTEST:
	______________________________
	City Clerk

APPROVED AS TO FORM:

By: ________________________________

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

The picture can't be displayed.

<u>EXHIBIT "B"</u>

<u>TENTATIVE MAP TO BE PREPARED BY DEVELOPER IN ACCORDANCE WITH AGREEMENT</u>

(Petrovich to Provide)

EXHIBIT "C"

PRELIMINARY PLAN

The picture can't be displayed.

EXHIBIT "D"

FORM OF ~~QUITCLAIM~~GRANT 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~~GRANT 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 ~~QUITCLAIM~~GRANTS 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~~Grant 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~~Grant 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 OF SEASIDE

LOCAL FIRST SOURCE RECRUITMENT POLICY

FINDINGS

Capitalized terms, which appear in this Policy, are as defined in Article I of this Policy (below).

A. The City hereby finds and determines that, based partially on the closure of the massive military reserve once known as Fort Ord, there is a high incidence of unemployment and underemployment among the Residents of the City and within the City.

B. The City further finds and determines that this high incidence of unemployment and underemployment is due also to artificial barriers in the employment market which serve to reduce the likelihood that Residents will find employment which is commensurate with their education, skills and experience and which do not affect nonresidents of the City in a similar manner.

C. The City further finds and determines that the existence of high unemployment within the City serves as a blighting influence on the City, and the resultant reduction or elimination of the incomes of Local Businesses and Residents may serve as a blighting influence, by decreasing the amount of available jobs, increasing the likelihood that Residents and Distressed Workers will engage in criminal activities, increase the incidence of undermaintenance of property within the jurisdiction leading to a decreased property tax base and other social ills within and the City.

D. The City further finds and determines that Residents and Local Businesses will bear a disproportionate burden of development, which may result in the displacement of Local Businesses and a reduction in the number of Residents who are employed within the City.

E. The City further finds and determines that the burdens of development will not be borne in a similar manner by those who reside or conduct business outside the City.

F. The City further finds and determines that Residents and Local Businesses should be given an opportunity to be employed in the development of areas within the City and the ongoing uses to be created in the City, so as to mitigate the disproportionate burden of development on Residents, Distressed Workers and Local Businesses.

POLICY

I. Definitions:

For the purposes of this Policy, the following terms shall have the meaning specified below:

A. "City" shall mean the City of Seaside.

B. "City Contract" shall mean any contract entered into by the City and a Developer or End User for labor or services related to development within the City, including but not limited to construction contracts, consultant contracts or the operation of industrial, commercial, retail or office-related businesses within the City.

C. "DDA" shall mean a disposition and development agreement entered into by the City and a Developer or End User for the redevelopment and/or use of property within the City.

D. "Developer" shall mean any individual, unincorporated association, partnership, joint venture group, corporation or subcontractor of same, which is engaged, inactivates related to development in the City. "Developer" shall not include those consultants or employees of the City who are retained to perform administrative, management, consulting or legal services for the City.

E. "Developer Contract" shall mean any contract entered into by a developer and any third party where the scope of the Developer Contract is to perform work related to a development in the City, and where the developer has entered into a City Contract or has received a Subsidy. Developer Contract shall include, but not be limited to, construction contracts, consultant contracts and any other contracts for the performance of services or labor related to development in the City.

F. “Distressed Workers” shall mean those Residents who are unemployed, no presently employable, or underemployed based on their skills, education and experience, displaced workers, workers who are eligible for participation in programs governed by the Job Training Partnership Act, or persons who have recently encountered labor market barriers or obstacles as determined by local employment referral and training organizations.

G. “End Users” shall mean those businesses, which commence operation in industrial manufacturing, commercial, retail or office space within the City after the completion of any initial construction or rehabilitation projects related to that space.

H. “Good Faith Effort” shall mean diligent efforts to locate and employ qualified Residents or Distressed Workers, or diligent efforts to provide funds or training opportunities to benefit Distressed Workers. Diligent efforts to located Qualified Residents shall include, at a minimum, notification by the Developer of End User to the City and all Service Organizations of the availability of employment opportunities prior to the time that those opportunities are advertised to the general public and other outreach efforts as are deemed necessary by the City.

Diligent efforts to employ Qualified Residents or Distressed Workers shall include at a minimum hiring of Qualified Residents and/or Distressed Workers who are recommended to the Developer or End User by the City or Service Organizations after such notification, to the extent that the Developer or End User has existing employment opportunities available.

“Good Faith Effort” shall further mean diligent efforts to contract or subcontract a portion of contracts to Local Business Diligent efforts to contract or subcontract to Local Businesses shall include, at a minimum, advertisement of available subcontracting opportunities by Developers and End Users to the City’s Chamber of Commerce and other businesses and professional organizations serving the City, solicitation of Local Businesses who are known by the Developer or End User to provide services which are required by the Developer or End

User, and solicitation of referrals to Local Businesses from the City and Service Organizations.

I. “Local Businesses” shall mean those industrial, manufacturing, commercial, retail or office related businesses licensed by the City of Seaside whose principal place of business or headquarters is located within the City limits.

J. “Resident” shall mean any person whose primary residence is in the City of Seaside.

K. “Service Organization” shall mean a nonprofit community group, employment service, or job training organization, which has Seaside as part of its service area or otherwise provides job placement or training, or other assistance to Residents, or business support services to Local Businesses.

L. “Subcontractor” shall mean any and all parties with whom the Developer and Contractor intends to enter into a contract to perform a portion of any said work regardless of tier.

M. “Subsidy” shall include, but are not limited to, any direct or indirect cash or other financial assistance to a Developer or End User through any of the following programs: federal or state grants or other government grant or loan programs; revolving loan funds; redevelopment agency assistance such as write-downs of the cost of land by the City, property tax abatement or sales tax rebate sharing agreements, tax increment financing, revenue or development bonds; and any other loans, grants bonds, or capital improvements financed in whole or in part, whether through the investment of cash or in-kind resources or the issuance of bonds, notes or indentures by the City, or any entity whose borrowing powers is underwritten in whole or in part by the City. “Subsidy” shall also include the creation of assessment districts for the benefit of a Developer or End User by the City and/or the City for the purpose of improving property for the Developer’s or End User’s use, and any other financial or nonfinancial assistance provided by the City which materially benefits a Developer or End User.

II. First Source Recruitment Policy:

A. Hiring. It shall be the policy of the City that the City, Developers and End Users shall recruit for the purpose of hiring, to the greatest extent feasible, qualified Residents and Local Businesses in the performance of work related to development within the City, including construction, operation and management of manufacturing, commercial, industrial, retail or office-related businesses within the City.

B. Training. It shall be the policy of the City that the City, Developers and End Users shall provide to the greatest extent feasible, training programs or funding to support such programs, for Distressed Workers, so that those workers may qualify for employment opportunities created by this policy. The City shall work with Developers, End Users and Service Organizations to develop effective training programs as necessary to effectuate this policy.

1. First Source. To the extent that the training programs are implemented by the City as a part of this Policy and Distressed Workers are trained for and become qualified to perform jobs for Developers and End Users, it shall be the Policy of the City that the City, Developers and End Users shall make a Good Faith Effort to hire Distressed Workers in the construction, operation and management of manufacturing, commercial, industrial, retail or office-related businesses within the City.

C. Scope of Policy. The Policy shall be implemented by the City to the greatest extent feasible by the City in its negotiation of DDAs, City Contracts, and other agreements with Developers and End Users pertaining to the development in the City. The Policy shall be implemented by Developers in negotiation of Developer Contracts, including the subcontracts and contracts with End Users of property.

D. Term. The Policy shall be in effect from the date of its adoption by the City until such time that it is amended or terminated by the City. The City shall annually evaluate the Policy and determine its effectiveness and may at that time make any necessary adjustments to the Policy as the City deems appropriate.

III. City Contracts:

A. Contracts Under $5,000 for Grading, Clearing, Demolition and Construction:

In all City Contracts for grading, clearing, demolition and construction within the City for which the value of the City Contract is less than $5,000, the City shall, prior to advertising the availability of the contract to the general public, first advertise the availability of these City Contracts to Residents and Local Businesses who are qualified to perform the work which is the subject of the City Contract. To the greatest extent feasible, the City shall give preference in awarding these City Contracts to Residents and Local Businesses who are qualified to perform the grading clearing, demolition or construction work, which is the subject of the City Contract.

B. City Construction Contracts

For all City Contracts for the construction of public improvements, including but not limited to contracts valued at over $5,000 for grading, clearing, demolition and construction, the City may grant a preference to those construction contractors who have made a Good Faith Effort to hire, or who agree to hire, on a craft-by-craft basis, qualified Residents to perform the City Contract. The City may further grant preference to construction contractors who have subcontracted, or made a Good Faith Effort to subcontract, a portion of the City Contract to Local Businesses.

C. Contracts Valued at Over $100,000

For all other City Contracts whose dollar value is estimated to exceed $100,000 at the time the scope of work for the City Contract is prepared, the City may specify in its bid package that preference for the City Contract shall be given to the lowest responsible bidder who, as part of the bid, demonstrates that it has made a Good Faith Effort to hire, or has hired, qualified Residents to perform a portion of the work which is the subject of the City Contract, or demonstrates that it has subcontracted or has made a Good Faith Effort to subcontract to Local Businesses a portion of the work which is the subject of the City Contract.

D. Operation of Facilities

For all City Contracts for the operation and management of public improvements or public facilities, the City shall, to the greatest extent feasible, grant a preference to those construction contractors who have made a Good Faith Effort to hire, or who have hired qualified Residents to perform some or all of labor necessary to perform the City Contract. The City may further grant preference to construction contractors who have made a Good Faith Effort to subcontract, or have subcontracted a portion of the City Contract to Local Businesses.

E. Disposition and Development Agreements (DDAs)

For all DDAs or similar agreements entered into by the City, the City shall negotiate, to the extent feasible, provisions in the DDA or agreement which require the Developer, End User or other part to make a Good Faith Effort to hire qualified Residents in employment within the City and to utilize, or make a Good Faith Effort to utilize, Local Businesses, to implement the DDA or any subcontract arising from the DDA.

F. Training Fund

For all City Contracts with Developers and End Users, including but not limited to construction contracts, DDAs and leases, the City shall negotiate, to the extent feasible, provisions in the DDA or City Contract which require the Developer, End User to contribute to a training fund to be administered by the City for the purposes of providing education and/or training to Distressed Workers.

IV. Developers

A. Scope of Section. The provisions of this Article 4 shall apply only to those Developers who receive a Subsidy or Subsidies, as defined in this Policy, from or through the efforts of the City.

B. Construction Contracts

For all construction contracts which arise as a result of a DDA entered into by the

City and a Developer, the Developer shall negotiate, to the extent feasible, provisions in its construction contract which require the prime contractor to hire, or make a Good Faith Effort to hire, on a craft-by-craft basis, qualified Residents to perform some or all of the labor necessary to perform the Developer Contract. The Developer shall also negotiate, to the extent feasible, provisions in its construction contract with the prime contractor to subcontract, or make a Good Faith Effort to subcontract, a portion of the Developer Contract to Local Businesses.

C. Other Contracts

For all Developer Contracts other than construction contracts, the Developer shall negotiate, to the extent feasible, provisions in the Developer Contract, which require the other contracting party to make a Good Faith Effort to hire qualified Residents to implement the Developer Contract.

V. End Users

A. Scope of Section. The Provisions of this Article 5 shall apply only to those End Users who have entered into an City Contract or who have, directly or indirectly, received a Subsidy or Subsidies, as defined in this policy, from or through City efforts.

B. Operation of Facilities. In hiring its work force to operate or manage a commercial, retail or office-related business which is located within the City, an end User shall, to the greatest extent feasible, make a Good Faith Effort to employ qualified Residents or to provide ongoing training opportunities (such as part-time work, internships or classes) to Distressed Workers, within the skill areas which are utilized by the End User in the operation and management of the End User's business.

VI. Exceptions

A. Compliance with State and Federal Law. This Policy shall only be enforced to the extent that it is consistent with the laws of the City, the State of California and the United States. If any provision of this Policy is deemed to be unconstitutional or otherwise in conflict with the state or federal law, the applicable state or federal law shall prevail over the terms of this Policy, and the inconsistent provisions of this Policy shall not be enforced by the City or any other body.

B. Court Order. Notwithstanding the provisions of this Policy, a Developer shall be deemed to be in compliance with this Policy if it is bound by court or administrative order or decree, or a settlement agreement arising from a labor relations dispute, which governs the hiring of workers by the Developer and the provisions of which make it impossible for the Developer to hire Residents or Distressed Workers in accordance with the terms and conditions of this Policy.

C. Exception for Good Faith Effort. Notwithstanding the provisions of this Policy, there shall be no penalty or sanction arising as a result of the failure of the City, Developers or End Users to achieve the goals of this Policy, so long as the City, Developer or End User has made a Good Faith Effort to comply with the goals of this Policy.

VII. Administration

A. City Manager. The City Manager of the City, or his designee, shall be responsible for the implementation of this Policy and shall develop any administrative policies or procedures, which are necessary to effectuate this Policy.

B. Service Organization. The City and Developers shall work with Service Organizations as necessary to implement the Policy. The City may work with the Service Organizations to provide a mechanism by which the Service Organization may provide recruitment, screening, referral, placement and training services in furtherance of this Program. Such a mechanism may also include, at the discretion of the City and the Service Organization, a means by which one or more Service Organizations shall provide any necessary monitoring services for the implementation of this policy.

C. Binding Upon Successors. It is intended that the provisions of this policy shall be applicable to all development activities to the fullest extent permitted by law for the benefit and in favor of the City; and the provisions of this policy shall be enforceable by the City, Developers, End Users and any of their successors in Interest to property in the City.

DRAFT

EXHIBIT 'F'

City of Seaside		
Cost Reimbursement Billing Rates - July 1, 2020 thru June 30, 2021		
Name	**Fully Burdened Hourly Billing Rate (FY 2020-2021)**	**Indirect Cost Allocation Rate (FY2020-2021)**
Building		
David Little	$ 111.74	11.2%
Planning		
Gloria Stearns	$ 85.92	10.6%
Betha Rocha	$ 79.79	10.6%
Dana Morrison	$ 61.89	10.6%
Engineering		
Scott Ottmar	$ 113.24	15.9%
Nisha Patel	$ 130.47	15.9%
City Attorney		
Sheri Damon	$ 149.33	11.6%
Dominique Davis	$ 42.25	11.6%
City Manager		
Craig Malin	$ 199.33	18.9%
*As adjusted on an annual Basis		
* * The indirect cost allocation amount is billed as a separate line item. It is an allowable reimbursement cost per the City of Seaside Full Cost Allocation Plan, which was prepared by Mahoney & Associates Consulting, LLC.		

<u>**EXHIBIT "G"**</u>

<u>FORM DEVELOPMENT AGREEMENT</u>

<u>RATES OF CITY STAFF FOR WORK ON PROJET</u>

TABLE OF EXHIBITS

CITY OF SEASIDE
STAFF REPORT

Item No.: 9.A.

TO: City Council

FROM: Craig Malin, City Manager

BY: Lesley Milton, Assistant City Manager

DATE: October 15, 2020

SUBJECT: **MAYOR OGLESBY'S RESQUEST FOR RENTER ASSISTANCE PROGRAM (NOVEMBER 5, 2020)**

PURPOSE & RECOMMENDATION

To bring the item back for Council discussion and action.

BACKGROUND

At the October 1, 2020 City Council meeting Mayor Oglesby requested to agendize a discussion and adoption of a renter's assistance program.

At the Mayor's request, the item will be placed on the November 5, 2020 meeting.

FISCAL IMPACT

None.

ATTACHMENTS

None

Reviewed for Submission to the
City Council by:

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Craig Malin, City Manager