A G E N D A

CITY OF SEASIDE	JOINT SPECIAL MEETING
CITY COUNCIL/SUCCESSOR	Council Chamber
AGENCY TO REDEVELOPMENT	440 Harcourt Avenue
AGENCY OF THE CITY OF SEASIDE	Thursday, February 16, 2017
	5:00 PM

PLEASE TURN OFF YOUR CELL PHONES UPON ENTERING THE MEETING

1. CALL TO ORDER

Ralph Rubio	Mayor/Chair
Dennis Alexander	Mayor Pro Tem/Vice Chair
Jason Campbell	Council/Agency Member
David R. Pacheco	Council/Agency Member
Kayla Jones	Council/Agency Member

2. PLEDGE OF ALLEGIANCE

3. 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 three minutes. Public Comments on specific agenda items are heard under that item. For the public record, please state your name.

4. CLOSED SESSION

A. CLOSED SESSION PURSUANT TO GOVERNMENT CODE 54957.6 - CONFERENCE WITH LABOR NEGOTIATORS

Agency Negotiators: Craig Malin, City Manager; Roberta Greathouse, Human Resources Director; Donna Williamson, Labor Negotiator

Employee Organizations:

1. Seaside Police Officers' Association
2. Seaside City Employees' Association
3. Seaside Managers and Supervisory Employees' Association
4. Confidential Employees
5. Executive Managers

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

The Property Referred to As Main Gate (Maingate Property bounded by Lightfighter, Divarty, Second Street and Highway 1) Negotiator for the City: Craig Malin, City Manager. Under Negotiation: Price, Terms of payment, or both.

C. CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9

1. Keep Fort Ord Wild VS. City of Seaside Case Number 16Cv003795
2. LandWatch Monterey County VS. City of Seaside (Real Party: Monterey Downs, LLC) Case Number 16CV003793

D. CLOSED SESSION PURSUANT TO GOVERNMENT CODE SECTION 54956.9 (c) - POTENTIAL LITIGATION

Conference with legal counsel regarding the potential initiation of litigation (one potential case).

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

Seaside Resort Development 1 McClure Way Negotiator for the City: Craig Malin, City Manager, Under Negotiation: Disposition and Development Agreement Terms

5. CONSENT AGENDA

A. APPROVE THE MINUTES FROM THE FEBRUARY 2, 2017 MEETING

PURPOSE: To review and approve the minutes.

RECOMMENDATION: Approval.

B. APPROVE AND FILE SUCCESSOR AGENCY CHECKS - CONTINUED FROM THE FEBRUARY 2, 2017 MEETING

PURPOSE: This item has been continued from the February 2, 2017 Successor Agency Meeting. It is requested that the Successor Agency Board approve and file the accounts payable and wired payments made during the period of December 24, 2016 through January 24, 2017. In addition, approval of the payroll and benefits checks, direct deposits and wired payments related to the periods of January 5 and 19, 2017 is requested. Total Accounts Payable and Payroll for the above referenced period is $6,645.38.

RECOMMENDATION: It is recommended that the Successor Agency Board approve and file the attached checks.

C. APPROVE AND FILE SUCCESSOR AGENCY CHECKS

PURPOSE: It is requested that the Successor Agency Board approve and file the accounts payable and wired payments made during the period of January 25, 2017 through February 3, 2017. In addition, approval of the payroll and benefits checks, direct deposits and wired payments related to the period of February 2, 2017 is requested. Total Accounts Payable and Payroll for the above referenced period is $2,059.12.

RECOMMENDATION: It is recommended that the Successor Agency Board approve and file the attached checks.

6. BUSINESS ITEMS

A. CONSIDER EXCLUSIVE NEGOTIATING AGREEMENT WITH SEASIDE DEVELOPMENT COMPANY, LLC TO DEVELOP THE PROPERTY COMMONLY KNOWN AS MAINGATE

PURPOSE: Consider entering into an exclusive negotiating agreement (ENA) with Seaside Development Company, LLC. In September, Staff circulated a Request for Proposals for the development of the Maingate Property bounded by Lightfighter, Divarty, Second Street and Highway 1. Staff received four proposals of which two were chosen by the review committee to move forward to interviews. The interviews were conducted and Seaside Development Company, LLC., a subsidiary of Petrovich Development Company in Sacramento was chosen to move forward. During the ENA period, a Purchase and Sale Agreement will be negotiated and required pre-entitlement work will be completed.

RECOMMENDATION: Staff recommends entering into an Exclusive Negotiating Agreement with Seaside Development Company, LLC. to commence the development of the Maingate property.

7. ADJOURNMENT

Next Regularly Scheduled Meeting:
March 2, 2017
Seaside City Hall
5:30 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, they are asked to contact the City Clerk at 899-6707 no fewer than two business days prior to the meeting to allow reasonable arrangements. The City Council chamber is equipped with a portable microphone and assisted listening devices are available at all meetings.

City Council Meetings that are held in the City Council Chambers are broadcast live to all Seaside residents on Comcast Channel 25 and U-verse Channel 99. Meetings are also available through live streaming at: http://cvp.telvue.com/player?id=T01629&video=52314&noplaylistskin=1&width=400&height=300
Videos of past meetings are available on demand through the City's website: http://www.ci.seaside.ca.us

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 Government Code Section 54954.2(a) or Section 54956.

DRAFT MINUTES

CITY OF SEASIDE	JOINT SPECIAL MEETING
CITY COUNCIL/ SUCCESSOR	COUNCIL CHAMBER
AGENCY TO THE	Thursday, February 2, 2017
REDEVELOPMENT AGENCY	5:30 PM

1. **CALL TO ORDER**

Mayor Rubio called the meeting to order at 5:30 PM.

CITY COUNCIL/SUCCESSOR AGENCY TO REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE

PRESENT: Alexander, Campbell, Jones, Pacheco, Rubio
ABSENT: None

2. **PLEDGE OF ALLEGIANCE**

3. **PUBLIC COMMENT**

Mayor Rubio invited comments from the public and had no requests to speak.

4. **CONSENT AGENDA**

On motion by Council Member Campbell and seconded by Mayor Pro Tem Alexander and passed by the following vote the City Council/Agency Board approved the Consent Calendar as presented.

RESULT:	**Approved**
MOVER:	Council Member Jason Campbell
SECONDER:	Mayor Pro Tem Dennis Alexander
AYES:	Alexander, Campbell, Jones, Pacheco, Rubio
NOES:	None
ABSENT:	None

A. **APPROVE THE MINUTES FROM THE JANUARY 19, 2017 MEETING**

Action: Approved

B. **APPROVE AND FILE SUCCESSOR AGENCY CHECKS**

Action: Accepted & Filed

C. **ACCEPT AND FILE THE CASH AND INVESTMENT REPORT FOR SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY OF THE CITY OF SEASIDE QUARTER ENDING DECEMBER 31, 2016**

Action: Accepted

5. **CLOSED SESSION**

The City Council adjourned to Closed Session at 5:33 PM and City Attorney Freeman indicated that Item A was continued to a future meeting.

A. **CLOSED SESSION PURSUANT TO GOVERNMENT CODE 54957.6 - CONFERENCE WITH LABOR NEGOTIATORS**

B. CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9

C. CLOSED SESSION PURSUANT TO GOVERNMENT CODE SECTION 54956.9 (c) - POTENTIAL LITIGATION

6. STUDY SESSION

The City Council reconvened to open session at 5:45 PM.

A. CONDUCT A DISCUSSION AND STUDY SESSION ON POLICY OPTIONS REGARDING MEDICAL AND ADULT MARIJUANA

City Manager Malin presented the report speaking to the City of Seaside election results indicating 68% support of Proposition 64 regarding the adult use of Marijuana. He reported statistics of the State of Colorado since the passage of recreational marijuana. Revenues are up; arrests are down for public safety, as reported by the Department of Public Health. He then presented statistics that high school attendance which is trending down. He explained that Prop. 64 added adult recreational to the law of medical marijuana legalization, so adults 21 or older can obtain no more than 28.5 grams and can cultivate no more than six plants. He outlined the restrictions that remain for the usage of marijuana in public spaces. He also spoke to the leeway that cities now have to regulate, prohibit, license or tax the growth, distribution and sales of recreational marijuana. Mr. Malin outlined the different policy options and recommended that the City Council direct staff to draft regulations for future Council review to A) Permit medical marijuana dispensaries B) Allow more than one, and not more than three businesses within city limits. He noted that Seaside citizens are leaving Seaside to purchase medical marijuana in other cities which is something that should be addressed. It is a new and emerging industry with yet to be developed standards and metrics therefore we need to look at it and address it from a land use perspective. Given our proximity, it would make sense to try to capture the economies that are near us, campus, highway, downtown areas as examples. City Manager Malin answered questions from the Council.

Council Member Pacheco questioned if there was a metric established for the appropriate number of licenses for the population to which Mr. Malin indicated given the new newness of the industry, it's not yet determined. Staff has not done that level of analysis yet either. He further indicated that having just one is not advantageous for competition and looking at Seaside, we are large and diverse enough with land uses, we were looking to place the dispensaries where there is the greatest need and opportunity. Council Member Campbell questioned getting comparative information about youth impacts and also expressed concern regarding the number of dispensaries that could be supported per capita. Council Member Alexander clarified the market is clearly targeting those 21 years of age and older and confirmed that the rules will follow the lines of alcohol. CSUMB will be severely restricted, be careful putting it in the media that our city being a campus town, that will be our target market. Mr. Alexander spoke to concerns of having a dispensary, and statistics stated that around dispensaries there were increased sales to minors and wanted to be sure that is addressed. Mayor Rubio confirmed that there are no schools in our commercial district and yes, we would have to address security and ensure that we have full bought in from the Police Department. He also indicated that if there is a need to intensify patrols for one business, we need to be sure that business will be a plus to our revenues and not a drain. He encouraged understanding and consideration all the other permitting agencies locally and the number of dispensaries per capita to determine what would be sustainable.

Mayor Rubio invited public comment on this item.

- Darryl Choate reported that Oakland is talking about the "Home rule" which provides preference for "locals" to be an owner. He encouraged consideration for ownership by locals. He agreed with the max limit of three, which allows a market.
- Citizen requested that the delivery of medical marijuana be addressed, and spoke in support of the vetting process and questioned how the applications would be processed, speaking in support of local preference.

The City Council agreed with the staff recommendation.

City Manager Malin then spoke to the regulation of cultivation approved with the passage of Prop. 64. He indicated that citizens can grow marijuana plants residential, that the city can regulate it, but not prohibit it. Cities can prohibit outdoor cultivation. He presented the recommendation as 1) Require a permit for indoor cultivation and allow not more than four outdoor plants by permit. He believes that it could become a public health and safety matter given the proximity of houses in Seaside and the history of fire hazards with hydroponics equipment, it's important to regulate.

Council Member Pacheco agreed that regulation is necessary due to the tight distribution of houses. Council Member Campbell spoke in support of modest regulation, and then questioned the potential that the CA Attorney general could reverse the note that it can be banned. Council Member Alexander agreed regulation is necessary and expressed concern to know how many plants will generate 28.5 g. Mayor Rubio spoke to the height of the plants when mature, and expressed concern that harvest of four mature plants may generate a large enough supply to encourage sales of excess. He requested staff look into how Colorado how addressed that. He also expressed concern with theft when outside which needs to be factored into the types of security regulations to mitigate.

Mayor Rubio invited comments from the public.

- Darryl Choate said that two plants outside should not be regulated, but if indoor, you will benefit the City as utility taxes will increase. Agreed that indoor needs to be regulated, it's the most dangerous. He spoke to Oakland passing stringent indoor regulations.
- Citizen spoke to the League of CA Cities PowerPoint included in the packet and believed there was a type-o. As far as personal cultivators selling the product, the commercial will drive the price down so that personal cultivators will not be able to reap the prices that you get now. He is against the personal cultivation permit, does not think it is realistic or enforceable, and should allow 6 plants outdoor. How big they get is dependent on the growing technique. Speaking to the number of dispensaries, Santa Cruz had a study done which found it was best to have one dispensary for a 30k population. Does agree two permits are important for competitive options. He agreed with the competitive process, and encouraged the system to offer a point based system for those that are locals. Delivery that will be dependent on the state for regulation.

The City Council agreed with the staff recommendation.

Finally Mr. Malin spoke to the Non-dispensary marijuana businesses noting that the dispensary licenses are forthcoming at the state level. Staff recommends initiating a review of regulations for future Council review that would A) permit non-dispensary businesses/permitting retail co-location with dispensaries and B) permitting indoor commercial cultivation, laboratories and manufacturing. The cities that are best positioned to add value to a business are the cities that are the most successful. We need to be focused on economies of the future, and not of those of the past.

Council member Pacheco questioned what types of commercial businesses could sell adult marijuana and spoke to liking the concept to co-locate the retail with the dispensary. He then questioned why reports indicate that sales for medical marijuana will be higher than recreational. Mr. Malin indicated that is not uncommon, as part of the taxing that is applied to recreational marijuana. Council Member Campbell indicated he was not interested in the co-location and does not want to make it too accessible. It will already be accessible.
He then spoke to the cultivation revenue taxes citing revenue benefits and that we should be encouraging laboratory cultivation. Council Member Alexander also expressed the same concerns as Council Member Campbell and also requested to find out if allowing or permitting these types of businesses may impact federal funds for public safety training. Mayor Rubio believes it should be allowed but not required for co-locating citing the different types of product distribution methods. As new products are generated there will be a need to address and adapt.

Mayor Rubio again invited comments from the public.

- Citizen stated to the Council that if cities or counties do not regulate the taxes will not come back locally and also stated that convenience stores will likely not be allowed to sell as the state does not want to mix alcohol licenses with marijuana permits. State law prohibits marketing to children.
- Resident questioned if a baker wanted to make a marijuana chocolate items questioning if they would they be required as part of the two allowable permits.
- Darryl Choate thought the co-location meant having retail sales, and retail sales delivery business. He spoke in support of the City drafting their own regulations.
- Citizen indicated you would need to differentiate between those that are volatile and those that are not.

City Manager Malin reassured the Council that this is emerging, and staff will take a significant amount of time and do due-diligence research which should be completed by the end of the year so that all the nuances will be flushed out. The City Council agreed with the staff recommendation.

Mr. Malin spoke to the final aspect which is taxation indicating that to be ready, and best positioned staff recommend the Council place a ballot measure on the June ballot for a general tax, calibrating the taxation to the market to ensure that we do not incur any costs with the allowance of this industry. If directed, staff can poll the city citizens to see what their appetite is for taxation. If the Council wants to move forward in June, then on March 2nd the City Council would need to approve the ballot initiative. He believes that there will be added costs to the City for proposition 64 permits/licenses.

Mayor Rubio spoke in support of conducting the polling. Council Member Pacheco questioned the general tax initiative regulations to which Mr. Malin indicated that the general tax could be used for anything the Council directs it for on an annual basis. But the more specific you get into "areas" then it would be required to be added as a special tax regulation which requires a higher threshold for voter approval, and can forever be spent exclusively for those special areas. The Council discussed the outstanding needs in the community and the benefits and challenges with a general versus a special tax. Council Member Pacheco questioned if a community survey was going to look at the priorities for the residents about how to spend the money to with City Manager Malin affirmed.

Council agreed to the staff recommendations and that staff bring something before the Council on or before the March 2, 2017 City Council meeting.

7. <u>ADJOURNMENT</u>

On motion, the meeting was adjourned at 7:15 PM.

Respectfully submitted,

Lesley Milton-Rerig, City Clerk	**Ralph Rubio, Mayor/Chair**

CITY OF SEASIDE
STAFF REPORT

Item No.: 5.B.

TO: Successor Agency to the Redevelopment Agency of the City of Seaside

FROM: Craig Malin, City Manager

BY: Daphne Hodgson, Deputy City Manager Administrative Services

DATE: February 16, 2017

SUBJECT: **APPROVE AND FILE SUCCESSOR AGENCY CHECKS - CONTINUED FROM THE FEBRUARY 2, 2017 MEETING**

PURPOSE

This item has been continued from the February 2, 2017 Successor Agency Meeting. It is requested that the Successor Agency Board approve and file the accounts payable and wired payments made during the period of December 24, 2016 through January 24, 2017. In addition, approval of the payroll and benefits checks, direct deposits and wired payments related to the periods of January 5 and 19, 2017 is requested. Total Accounts Payable and Payroll for the above referenced period is $6,645.38.

RECOMMENDATION

It is recommended that the Successor Agency Board approve and file the attached checks.

BACKGROUND

In accordance with Government Code Section 37208, at each Agency meeting the Board is provided a listing of the payroll and general checks issued since the last report so that is can inspect and confirm these checks. Each purchase had 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 Agency Board for inspection and confirmation.

There were no checks that exceeded $10,000 between December 24, 2016 and January 24, 2017 for Successor Agency related expenses.

The Checks report is available on the City's website here:
http://www.ci.seaside.ca.us/194/Check-Draft-Register

FISCAL IMPACT

No fiscal impact.

ATTACHMENTS

Reviewed for Submission to the
City Council by:

Craig Malin, City Manager

CITY OF SEASIDE
STAFF REPORT

Item No.: 5.C.

TO: Successor Agency to the Redevelopment Agency of the City of Seaside

FROM: Craig Malin, City Manager

BY: Daphne Hodgson, Deputy City Manager Administrative Services

DATE: February 16, 2017

SUBJECT: **APPROVE AND FILE SUCCESSOR AGENCY CHECKS**

PURPOSE

It is requested that the Successor Agency Board approve and file the accounts payable and wired payments made during the period of January 25, 2017 through February 3, 2017. In addition, approval of the payroll and benefits checks, direct deposits and wired payments related to the period of February 2, 2017 is requested. Total Accounts Payable and Payroll for the above referenced period is $2,059.12.

RECOMMENDATION

It is recommended that the Successor Agency Board approve and file the attached checks.

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

http://www.ci.seaside.ca.us/194/Check-Draft-Register

FISCAL IMPACT

No fiscal impact.

ATTACHMENTS

Reviewed for Submission to the
City Council by:

Craig Malin, City Manager

CITY OF SEASIDE
STAFF REPORT

Item No.: 6.A.

TO: Successor Agency to the Redevelopment Agency of the City of Seaside

FROM: Craig Malin, City Manager

BY:

DATE: February 16, 2017

SUBJECT: **CONSIDER EXCLUSIVE NEGOTIATING AGREEMENT WITH SEASIDE DEVELOPMENT COMPANY, LLC TO DEVELOP THE PROPERTY COMMONLY KNOWN AS MAINGATE**

PURPOSE

Consider entering into an exclusive negotiating agreement (ENA) with Seaside Development Company, LLC. In September, Staff circulated a Request for Proposals for the development of the Maingate Property bounded by Lightfighter, Divarty, Second Street and Highway 1. Staff received four proposals of which two were chosen by the review committee to move forward to interviews. The interviews were conducted and Seaside Development Company, LLC., a subsidiary of Petrovich Development Company in Sacramento was chosen to move forward. During the ENA period, a Purchase and Sale Agreement will be negotiated and required pre-entitlement work will be completed.

RECOMMENDATION

Staff recommends entering into an Exclusive Negotiating Agreement with Seaside Development Company, LLC. to commence the development of the Maingate property.

BACKGROUND

In September 2016, staff circulated a Request for Proposals (RFP) to developers nationwide in order to find a master developer for the Maingate Property. The property is North of Lightfighter between Highway 1 and 2nd Avenue. The 60 acre property is adjacent to California State University Monterey Bay (CSUMB) and due to its ocean views, freeway orientation and adjacency to the upcoming Dunes State Park entrance, the property is an attractive opportunity for developers.

Proposals were due on December 5th, 2016 and the City received four proposals. The proposals were reviewed by a committee that included FORA staff and CSUMB staff. The public was also asked to review the proposals and to provide comments via the same online mechanism that the committee members used. The initial review resulted in two proposals receiving most of the positive comments and votes, and these two development firms were invited to an interview with the committee on February 3, 2017. The committee discussed the interviews and determined that the project presented by Seaside Development Company, LLC., a subsidiary of Petrovich Development Company in Sacramento was the best fit for Seaside and the partner agencies. Staff then worked with the developer to create an Exclusive Negotiating Agreement (ENA).

The ENA provides sufficient time for the developer to design a project and to complete the required steps to develop the property, including modifying the existing entitlements as required. The key terms are:

- The developer will reimburse the City for all actual out-of-pocket expenses. This includes legal fees as well as all other expenses incurred in the process of updating the Specific Plan and any amendments to the existing environmental documents.
- The developer will devote up to $25,000 to the creation of a joint planning and public engagement office with the Developer and the City.
- The Developer will have 9 months to complete a development application.
- The City Manager can extend the agreement for up to 8 months if unexpected delays arise. The Developer must be in good standing and making adequate progress on their tasks in order to receive an extension.
- The Developer will make an initial deposit of $100,000 which will be used to pay direct expenses that the City will incur.

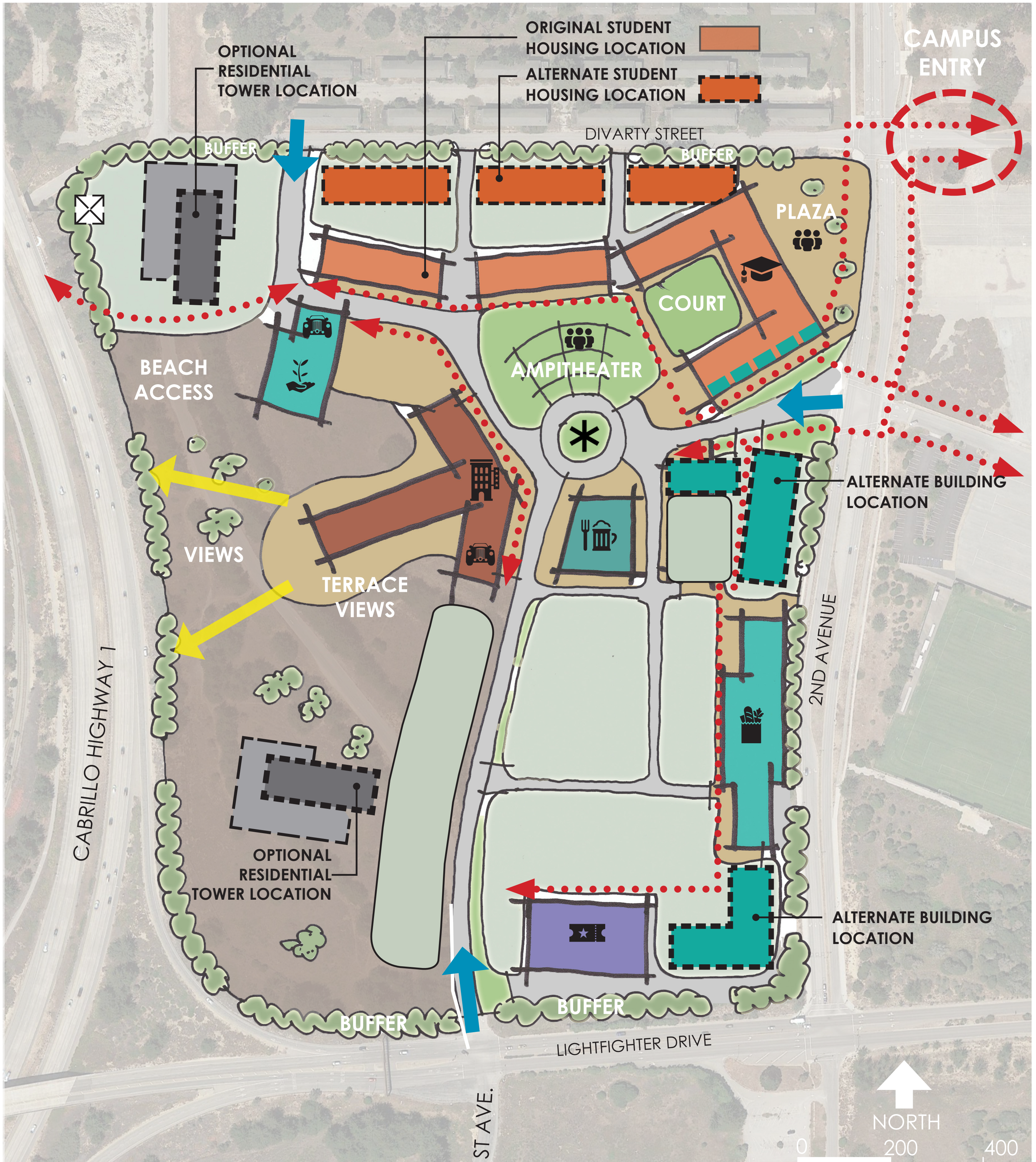
FISCAL IMPACT

ATTACHMENTS

1. Draft Site Plan
2. Exclusive Negotiating Agreement

Reviewed for Submission to the
City Council by:

Craig Malin, City Manager



ALTERNATE BUILDING LOCATION TO BE STUDIED

Site Plan-Alternate Building Locations

EXCLUSIVE NEGOTIATING AGREEMENT

This EXCLUSIVE NEGOTIATING AGREEMENT (this "ENA") is dated as of ______ ______, 2017 (the "Effective Date") 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 Seaside Development Company, LLC, a California Limited Liability Company (the "Developer"). The City and the Developer are sometimes individually referred to as a "Party" and are sometimes collectively referred to as the "Parties."

RECITALS

A. The City owns the land in the City of Seaside, California that is generally depicted on the "Site Map" attached hereto as Attachment No. 1 (the "Site").

B. The City has received a proposal from Developer for the purchase of the Site by the Developer and the development of The Maingate Property (the "Project") on the Site.

C. After considering the proposal of the Developer, the City has instructed the City's staff to proceed with this ENA between City and Developer to negotiate with each other on an exclusive basis to establish the terms and conditions of a Purchase and Sale Agreement (the "Agreement") that would result in the Developer's acquisition and development of the Site (the "Project").

D. The Developer and the City are willing to enter into this ENA setting forth, among other things, the terms pursuant to which the City will negotiate with the Developer on an exclusive basis for a specified period regarding the terms of the Agreement.

E. Through the ENA Period (as defined below), the staff, consultants and attorneys of the City will devote substantial time and effort in meeting with the Developer and its representatives, reviewing proposals, plans and reports, and negotiating and preparing the terms of this ENA and the Agreement.

NOW, THEREFORE, the Parties hereto agree as follows:

1. The term of this ENA shall commence on the date hereof and shall end on the earlier of: (i) the date that is one (1) calendar year after the date of this ENA subject to force majeure, as may be extended by the City Manager under this Section 1, or (ii) the date on which the City terminates this ENA as provided in Section 2 below (the "ENA Period"). Provided that the Developer is not in default, beyond any applicable notice and cure period, under this ENA and the City has not terminated this ENA pursuant to Section 2 below, the ENA period may be extended by the mutual written agreement of Developer and the City Manager of the City (acting for the City) for five (5) calendar months and then for three (3) calendar months; provided, however, that the City Manager may only grant an extension if: (i) the Developer is not then in default under this ENA (including, without limitation, Section 7 below); (ii) there are no material issues remaining to be resolved with respect to the Agreement; and (iii) the applicable extension is necessary only to complete the CEQA Documents or to obtain approvals from other governmental agencies with jurisdiction over this property (as defined in Section 8 below) and

then obtain City Council approval of the Agreement (which approval may be given or withheld in the City's sole and absolute discretion).

2. The City may not terminate this ENA if the Developer, subject to force majeure, has substantially complied with or has materially performed under the provisions of this ENA.

3. If the Developer and the City staff have not fully negotiated and agreed upon the terms of the Agreement prior to the end of the ENA Period, then this ENA shall automatically terminate and, except as expressly provided herein, neither party hereto shall have any further rights or obligations under this ENA. In no event shall any such negotiated Agreement become effective unless duly approved by the City board after compliance with the California Environmental Quality Act and all other applicable laws.

4. During the ENA Period (as extended under Section 1, if applicable), the City shall not negotiate with any person or entity other than the Developer for the sale, lease or development of the Site.

5. The Developer shall deliver the materials and information identified on Attachment No. 2 attached hereto to the City within the times set forth on Attachment No. 2. At the beginning of each calendar month during the ENA Period (as extended under Section 1, if applicable), Developer shall provide a written report to the City describing in reasonable detail the Developer's activities with respect to the Project during the preceding calendar month. In the event that Developer has failed to provide City with any written report under this Section 5, City shall notify Developer in writing that such report is due and Developer shall have five (5) business days from receipt of such notice to deliver its written report to the City.

6. During the ENA Period (as extended under Section 1, if applicable), the City shall use good faith efforts to complete (or cause to be completed) the matters set forth in Attachment No. 4 attached hereto.

7. (a) Developer shall reimburse City for its actual out-of-pocket costs and expenses (including legal fees and costs excluding any legal fees related to defending the City in the event the City defaults under this or any other related obligation) incurred in preparing this ENA and fulfilling its obligations under this ENA from the date hereof, including, but not limited to: (i) the cost of developing, reviewing and processing any general plan amendments and/or specific plan amendments for the Site; (ii) the cost of preparing, reviewing and processing the CEQA Documents (as defined in Section 8 below); (iii) the costs of public engagement and staff review of Developer submittals and the costs of consultants retained by City in connection with the Agreement or Project (including, without limitation, commercially reasonable attorneys' fees and costs) at the rates set forth on Attachment No. 4; and (iv) the cost of negotiation and preparing the Agreement (collectively, the "Reimbursable Costs").

(b) Upon execution of this ENA, Developer shall have a period of not more than sixty (60) days to investigate all attributes of the Site, including without limitation all legal, physical, environmental and economic aspects of owning, developing the Site; provided, however, that Developer shall not undertake any invasive or Phase II testing at that Site without the City's prior written consent ("Due Diligence Period"). At the conclusion of Developer's Due Diligence Period, Developer shall have the right to terminate this ENA (with no further obligation of either party) or Developer shall deposit with the City the sum of One Hundred Thousand and No/100 Dollars ($100,000.00), up to Twenty-Five Thousand ($25,000.00) of which will be directed toward establishing a Seaside office the City and Developer may jointly utilize for planning and public engagement purposes. The Developer shall be obligated to maintain no less than Fifty Thousand and No/100 Dollars ($50,000) but not more than Sixty Thousand and No/100 Dollars ($60,000) on account with the City to pay for the direct costs associated with this project (the "Reimbursement Funds"). The Reimbursement Funds may be used and applied from time to time by the City to pay itself for Reimbursable Costs and not otherwise separately paid or reimbursed by the Developer. The Developer shall deposit with the City funds sufficient to replenish the Reimbursement Funds held by City within ten (10) days from receipt of written demand by the City together with any outstanding Developer's Accounting Statement (as defined in Section 7(d) below) not previously provided by City to Developer. At such time that City selects and contracts with the third party CEQA consultant (pursuant to Section 8 below), Developer will (within five (5) business days of City's written demand) deposit with the City additional funds in an amount sufficient to pay to all estimated costs expressly identified in the third-party consultant's contract in which the City is solely responsible for and obligated to pay directly to such third party CEQA consultant ("CEQA Deposit"). It is expressly understood and agreed that whether or not Developer is party to the third party CEQA consultant contract, the Developer shall not be required to deposit with the City (nor shall the CEQA Deposit include) any amounts that will be paid directly by Developer to such third party CEQA consultant. Any remaining amount of the Reimbursement Funds (including the CEQA Deposit) shall be delivered to the Developer (along with a final accounting of the City's application of the Reimbursement Funds) within thirty (30) days after the earlier of: (i) the execution of the Agreement by the Parties, or (ii) the termination of this ENA.

(c) The up to Twenty-Five Thousand ($25,000.00) sum referenced in 7(b) directed toward establishing a Seaside office the City and Developer may jointly utilize for planning and public engagement purposes is, explicitly, a one-time contribution toward the City leasing, furnishing and equipping a Seaside office open to the public, intended to be utilized for planning, economic development and public engagement. The Developer shall have no obligation to pay monthly rent, utility or related building expenses through the term of this ENA to utilize the office during reasonable hours, in coordination with any City use of the office.

(d) On a monthly basis, the City is to provide Developer a complete and itemized accounting of its use of monies designated Reimbursement Funds ("Developer's Accounting Statement"). The Developer's Accounting Statement shall include, but not be limited to, all third-party invoices charged to and paid by City for work required under this ENA, accounting of City Staff time (per hourly increments) that reasonable identifies specific task performed, staff person performing such work, and City department. Absent adequate accounting, the City shall not be authorized to draw down on Developer's Reimbursement Funds. The City agrees to use commercially reasonable efforts to use Developers funds as efficiently and judicially as possible. The provisions of this Section shall survive the expiration or earlier termination of this ENA.

(e) Notwithstanding anything to the contrary in this ENA, express or implied, City shall have the right in its reasonable discretion to cease evaluation of submittals relating to the Project, stop any other staff work and/or work of its consultants and stop negotiating or discussing the Project and/or Agreement, in whole or in part, in the event that City determines that the sums then on deposit with City are or may not be sufficient to pay for all of the projected/established Reimbursable Costs projected/estimated by City; provided, however, prior to the cessation or stoppage of work as described in this Section 7(e), the City shall first provide Developer written notice of the insufficiency of sums on deposit with City, and the amount of the deposit required by Developer to continue work. Developer shall have ten (10) business days from receipt of such written notice to make the necessary deposits before the City ceases or stops any work. While the City waits for any necessary deposit under this section, the City may, at its discretion, table any topic for discussion before any public body under its authority, or may request tabling of discussion of any related matter before any other public body; provided, however, the City shall not table (or make any request to table) any discussion before any public body if (i) the City has failed to provide the most current and up to date Developer's Accounting Statement or (ii) the discussion before any public body has been noticed to the public in accordance with all applicable laws (including, but not limited to, CEQA and the Brown Act).

(f) It is expressly understood that any third (3rd) party invoices, including any and all development and/or environmental consultants, that are billed to the City and paid for from Reimbursement Funds shall be paid within ten (10) days from receipt of such invoice. Provided that sufficient funds are available (regardless of any minimum amount required under this ENA), the Developer shall not be responsible or liable for any additional amounts charged as late payment fees, interest, or any other charge for failure to make a timely payment. City shall diligently manage any accounts and deposits described in this ENA. In the event that any third-party ceases or stops work for failure of payment by City for which sufficient funds are available to make such payment, shall not constitute or be deemed as a Developer default under this ENA.

8. The City and Developer acknowledge that all applicable requirements of the California Environmental Quality Act ("CEQA") must be met in order to execute and deliver the Agreement and develop the Site and that this may require an environmental impact report, supplemental environmental impact report, negative declaration, and/or other reports or analyses for CEQA purposes (collectively, the "CEQA Documents"). The Developer will, at its cost, fully cooperate with the City in the City's preparation of the CEQA Documents as the lead agency for the CEQA Documents. At that time the City determines the applicable and requisite CEQA Document(s) necessary to develop the Site, City shall seek project proposals from no less than three (3) qualified and reputable environmental consulting firms to prepare and/or manage sub-consultants in the preparation of any and all applicable environmental studies, traffic studies, and other applicable CEQA study and to draft the requisite CEQA Document(s). In no event, shall the scope of any contract with a third-party consultant be substantially modified without prior notice the Developer.

9. Developer acknowledges that (a) if the Site or any portion thereof was part of the former Fort Ord, prevailing wages shall be paid in connection with the development of and construction on the Site by Developer (and any transferee of Developer) pursuant to Section 2(a) of the Implementation Agreement between City of Seaside and the Ford Ord Reuse Authority and Section 3.03.090 of the Fort Ord Reuse Authority Master Resolution described therein; and (b) prevailing wages may otherwise be required to be paid if the City provides any financial assistance to the Developer in connection with the Project.

10. Developer acknowledges that Developer shall be required to comply with (and to cause its contractors, subcontractors, tenants to comply with) the City's Local First

Source Recruitment Policy, a copy of which is available from City staff, and to give preference to contractors in the City and then to contractors in the County.

11. The Developer shall bear all costs and expenses of any and all title, environmental, physical, engineering, financial, and feasibility investigations, reports and analyses and other analyses or activities performed by or for the Developer.

12. The Developer and the City understand and agree that neither Party is under any obligation whatsoever to enter into an Agreement. In the event of the expiration or earlier termination of this ENA, the City shall be free at the City's option to negotiate with any persons or entities with respect to the sale, lease and development of the Site.

13. To the extent the City has not defaulted (beyond any applicable notice and cure period), the Developer shall indemnify, defend, and hold the City and City harmless from any and all costs, expenses, losses, claims, liabilities, damages and causes of action arising out of Developer's entering into or performing this ENA and/or Developer's failure to perform any obligation of Developer under this ENA. The Developer's obligations under the preceding sentence shall survive the expiration or earlier termination of this ENA.

14. The Developer represents and warrants that its undertakings pursuant to this ENA are for the purpose of development of the Site and not for speculation in land, and the Developer recognizes that, in view of the importance of the redevelopment of the Site to the general welfare of the community, the qualifications and identity of the Developer and its principals are of particular concern to the City; therefore, this ENA may not be assigned by the Developer without the prior express written consent of the City in its sole and absolute discretion. However, the City acknowledges that the Developer may intend to form a new entity controlled by the parties comprising the Developer that will be the Developer entity that will be a party to the Agreement. The City shall have the right to review and approve the organizational documents of such entity and the entities comprising such entity.

15. Any notice, request, approval or other communication to be provided by one Party to the other with regard to default or termination shall be in writing and provided by certified mail, return receipt requested, or a reputable overnight delivery service (such as Federal Express) and addressed as follows:

If to the Developer:

Seaside Development Company, LLC
825 K Street, 3rd Floor
Sacramento, CA 95814
Attn: Paul S. Petrovich and John M. Cox, Esq.

If to the City:

City of Seaside
440 Harcourt Avenue
Seaside, CA 93955
Attn: City Manager

Notices shall be deemed delivered: (i) if sent by certified mail, then upon the date of delivery or attempted delivery shown on the return receipt; or (ii) if delivered by overnight delivery service, then one (1) business day after delivery to the service as shown by records of the service.

Notices regarding routine procedural matters under this ENA, specifically including documentation of reimbursable costs may be transmitted via e-mail, as directed by the Developer and City representatives.

16. For purposes of the negotiations contemplated by this ENA, the Developer's representative shall be John M. Cox (Phone: 916) 442-4600 (x217); Email: jcox@petrovichdevelopment.com with all correspondence copied to paul@petrovichdevelopment.com and the City's representative shall be Kurt Overmeyer (Phone: (831) 899-6839; Email: kovermeyer@ci.seaside.ca.us.

17. This ENA constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof. There are no agreements or understandings between the Parties and no representations by either Party to the other as an inducement to enter into this ENA, except as expressly set forth herein. All prior negotiations between the Parties are superseded by this ENA. Neither the City nor its officers, members, staff or agents have made any representations, warranties or promises to the Developer other than as expressly set forth herein.

18. This ENA may not be altered, amended or modified except by a writing duly approved and executed by all Parties.

19. If any Party should bring any legal action or proceeding relating to this agreement or to enforce any provision hereof, or if the Parties agree to arbitration or mediation relating to this ENA, the Party in whose favor a judgment or decision is rendered shall be entitled to recover reasonable attorneys' fees and expenses from the other. The Parties agree that any legal action or proceeding or agreed-upon arbitration or mediation shall be filed in and shall occur in the County of Monterey.

20. The interpretation and enforcement of this ENA shall be governed by the laws of the State of California.

21. Time is of the essence of each and every provision hereof in which time is a factor.

22. This ENA may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same ENA.

IN WITNESS WHEREOF, the Parties hereto have executed this ENA as of the day and year first written above.

CITY:

CITY OF SEASIDE

By: ______________________________

______________________________,

Mayor

Attest:

____

City Clerk

Approved at to Form:

____

DEVELOPER:

Seaside Development Company, LLC,
a California Limited Liability Company

By: ______________________________

Print Name: Paul S. Petrovich

Title: CEO

ATTACHMENT NO. 1

SITE MAP

(Attached.)

ATTACHMENT NO. 2

SPECIFIC DEVELOPER TASKS

1. Within Four (4) calendar months after the date of execution of this ENA, Developer shall deliver the following items for City staff review and approval:

    i) Preliminary site plan and revised architectural concept drawings identifying the location, general configuration traffic circulation, and proposed design characteristics of the Project.

    ii) Conceptual development program ("Development Program") for the Project that include a breakdown of the proposed scope of development including a range of building square feet by land use and acreage by land use, improvements, approximate number and mix of any residential units, any affordable housing units by level of affordability proposed public parks/amenities, circulation acreage, and other general uses.

    iii) Detailed market analysis for the Project as a whole demonstrating the marketability of the proposed conceptual development program. If appropriate, the findings of the market study may be used to modify and refine the development concept.

2. Within Four (4) calendar months after the date of this ENA, Developer and City staff shall determine the likely type and schedule for obtaining entitlements necessary for construction of the Project including, but not limited to, discretionary permits.

3. Within Six (6) calendar months after the date of this ENA, Developer shall deliver to City for City staff review and approval, a preliminary financing plan for the proposed Project.

4. Within Six (6) calendar months after the date of this ENA, Developer shall submit to City a schedule of development setting forth the proposed timetable for the commencement, substantial completion and final completion of the Project (the "Development Schedule"). The parties agree and understand the actual implementation of the plan is subject to many factors outside the control of the Developer and City and that Developers obligation to fulfill the timetable shall be based on commercially reasonable efforts and force majeure.

5. Within Six (6) calendar months after the date of this ENA, Developer shall obtain and review a preliminary report for the Site from a title company selected by Developer and copies of the documents listed as title exceptions therein and shall deliver copies of the reports and documents to City together with a written description of any objections Developer may have to any of the title exceptions (and the rationale for the objections), it being understood that Developer shall have the right under the Agreement to perform/obtain an ALTA survey at Developer's cost and reasonably object to items (and locations of title exceptions) disclosed by such survey.

6. Within Nine (9) calendar months after the date of this ENA, Developer shall deliver to the City a fully completed and executed development application including all items

identified on the City of Seaside Development Application Submittal Checklist excluding completed third party reports or analysis that would only occur once the Application is accepted by the City.

7. Developer shall promptly provide comments to the City on the initial draft of the Agreement and subsequent drafts submitted by City.

Notwithstanding anything to the contrary in the timelines described in this Attachment No. 2, upon Developer's timely compliance with the applicable delivery requirements and/or requisite submission outlined above, the time period shall toll or otherwise cease to accrue while such delivered/submitted item is being reviewed, evaluated, or otherwise assessed by the City or independent third (3rd) party not otherwise controlled by Developer. In the event that such Developer delivered/submitted item is a material or substantial component of the above mentioned Developer Tasks, such tolling shall not begin until the thirtieth (30th) day from date of delivery. For non-material and less significant submitted items, there shall be a ten (10) day period before tolling occurs.

Prior to execution of the Agreement, the Developer shall submit to the City for its review and approval all organizational documents for the entities signing the documents (and, to the extent requested by City, information, certifications and/or documents relating to the ownership, control and signing authority of the direct and indirect owners, members or partners of each such entity).

ATTACHMENT NO. 3

SPECIFIC CITY TASKS

1. Within thirty (30) days after the Effective Date, City shall provide to Developer copies of all currently existing plans, studies and other written information regarding the Site in the possession of the City, to the extent not previously delivered to Developer and to the extent material to the Project. Thereafter, the City shall promptly provide to Developer within ten (10) days after receipt thereof copies of all plans, studies and other written information material to the Project which are received by the City.

2. As soon as they are available, the City shall provide the Developer with copies of contracts entered into between the City and its consultants for the Project. Developer shall have the right to review and provide input to any and all consultant contracts procured on its behalf prior to execution by the City.

3. On or before Three (3) months, City shall provide an initial draft of the Agreement to Developer and shall thereafter revise the draft Agreement to the extent reasonably permitted by the Agreement negotiations.

4. Within Four (4) months after the date of this ENA, Developer and City staff shall determine the likely type and schedule for obtaining entitlements necessary for construction of the Project including, but not limited to, the Discretionary Permits.

5. City shall use good faith efforts to diligently prepare and process the required CEQA Documents. City agrees to submit a CEQA status report to the Developer monthly during the term of this ENA or as mutually determined by the Parties.

6. City and City staff will review the Developer's development application and other submissions in a timely manner.

7. No consents, approvals or comments by City staff or City staff shall diminish, affect or waive either: (i) rights of the City to later impose conditions and requirements under CEQA; (ii) the rights of the City not to approve the Agreement; (iii) the City's governmental rights, powers and obligations.

8. City shall promptly provide comments to the Developer on the initial Developer redlines/edits of the Agreement and subsequent drafts submitted to the City.

ATTACHMENT NO. 4

STAFF HOURLY RATES

(Attached.)