



NOTICE OF MEETING

CITY OF PACIFIC GROVE

CITY COUNCIL

AMENDED ERRATA SHEET



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

ERRATA SHEET

TO: HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL
FROM: Sandra Kandell, City Clerk/DEI Coordinator
MEETING DATE: 08/07/2024
SUBJECT: City Council Meeting Agenda- Errata Sheet

Attached is additional information for your consideration at the August 7, 2024 City Council Meeting:

Agenda Item	Information Provided/Corrected
12B	Resolution Correcting Clerical Error in Resolution No. 24-028 Submitting Ballot Measure to Voters to Amend City Charter to Change the Number of Elected City Council Members from Six to Four Correction to the last page of Resolution to read: Each Charter Article amendment, provided herein, shall become effective and implemented in conjunction with the following election dates: 1. Amendment of Charter Article 6 - November 7, 2028. 2. Amendment of Charter Article 11 - <u>November 7, 2028</u>. ~~November 3, 2028~~ 3. Amendment of Charter Article 12 - <u>November 3, 2026</u>. ~~November 7, 2026~~ 4. Amendment of Charter Article 13 - November 7, 2028. 5. Amendment of Charter Article 15 - November 7, 2028. 6. Amendment of Charter Article 19 - November 7, 2028. 7. Amendment of Charter Article 24 - November 7, 2028. 8. Amendment of Charter Article 26 - November 7, 2028. 9. Amendment of Charter Article 40 - November 7, 2028. (See Revised Agenda Report and Revised Resolution attached.)
5A	Corrected minutes of July 17, 2024. (See corrected page, attached hereto.)
7A	Revised paragraph 9 of Agenda Report should read as follows: <i>The Lease will be approved by Ordinance (Attachment 2). The proposed timeline for the Ordinance is a first reading of the Ordinance on July 3, 2024 and a second reading on August 7, 2024 and 30 days thereafter will be September 6, 2024 which, if the Ordinance is adopted, would be the Rent Commence Date.</i> (See all attachment referenced throughout 8/7 agenda report.)
9A	Further information provided as requested by Council. (See attached original agreement and Amendment 1 with attachments.)

9D	Agenda Item 9.D for the August 7, 2024, City Council Meeting concerns Tree Maintenance Services. Additional information has been requested regarding proposals received for the services and the proposed scope of work. Below is additional narrative information provided by Public Works staff that is supplemented by the attached matrix of proposals and the scope of work that will be attached to the standard contract if approved. Attached is a summary sheet of the proposals. The summary sheet provides a comprehensive list of the certifications held by each firm. Topes not only excels in emergency response but also possesses the right qualifications to effectively maintain the health of our trees. They actively perform this same service for the City of Carmel, the City of Monterey, and the County of Monterey, all of which have high standards of care. Their commitment to high-quality tree care is further demonstrated by their strict adherence to American National Standards Institute (ANSI) standards, the City's Urban Forestry Standards, and municipal code. Topes' expertise is showcased by their numerous certifications, including ISA Certified Arborist, ISA Certified Master Arborist, ISA Qualified Tree Risk Assessor, and Certified Tree Care Safety Professional. Additionally, two of their employees are actively working towards becoming municipal arborists. Importantly, the site supervisor for our contract is an ISA Certified Arborist who will provide oversight to their crews regarding tree care. Furthermore, I want to emphasize that the actions carried out by the on-call tree service contractor are assigned, monitored, and reviewed by the City's Arborist. (See attachments.)
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Attachments

12A ATTACHMENTS
5A ATTACHMENTS
7A ATTACHMENTS
9A ATTACHMENTS
9D ATTACHMENTS



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Mayor and City Councilmembers

FROM: Brian Pierik, City Attorney

MEETING DATE: August 7, 2024

SUBJECT: Resolution Correcting Clerical Error in Resolution No. 24-028 Submitting Ballot Measure to Voters to Amend City Charter to Change the Number of Elected City Council Members from Six to Four

CEQA: Does not constitute a “Project” under California Environmental Quality Act (CEQA) Guidelines

RECOMMENDATION

Motion to adopt Resolution Correcting Clerical Error in Resolution No. 24-028 Submitting Ballot Measure to Voters to Amend City Charter to Change the Number of Elected City Council Members from Six to Four

DISCUSSION

On July 3, 2024, the City Council of the City of Pacific Grove adopted Resolution No. 2024-028 Submitting Ballot Measure to Voters to Amend City Charter to Change the Number of Elected City Council Members from Six to Four to be voted upon at the election to be held on November 5, 2024. Resolution No. 2024-028 in the title of the Resolution states that in 2026 that two Councilmember shall be elected to a four year term and one Councilmember shall be elected to a two year term. Further, Section 3 of Resolution 2024-028 provides that the ballot question to be submitted to the electorate will be as follows:

Shall the Pacific Grove City Charter be amended to reduce the size of the City Council from six Councilmembers and a Mayor to four Councilmembers and a Mayor such that: in 2026 two Councilmembers shall be elected to four-year terms, and one to a single two-year term, and every two years thereafter two Councilmembers shall be elected to four-year terms; with associated amendments for votes needed for a quorum, majority vote and other select actions?	YES	
	NO	

Resolution No. 2024-028 in Exhibit A listed the Effective Dates for the amendments to the City Charter being proposed. However, in reviewing Resolution No. 2024-028, there is noted to be a clerical error which needs to be corrected on the Effective Dates for the changes proposed by the ballot measure for Article 11 (The Mayor) and Article 12 (Council) and those changes are shown here in redline to reflect the correct Effective Dates for the amendments to Article 11 and Article 12:

Each Charter Article amendment, provided herein, shall become effective and implemented in conjunction with the following election dates:

1. Amendment of Charter Article 6 - November 7, 2028.
2. Amendment of Charter Article 11 - November 7, 2028. ~~November 3, 2026.~~
3. Amendment of Charter Article 12 - November 3, 2026. ~~November 7, 2028.~~
4. Amendment of Charter Article 13 - November 7, 2028.
5. Amendment of Charter Article 15 - November 7, 2028.
6. Amendment of Charter Article 19 - November 7, 2028.
7. Amendment of Charter Article 24 - November 7, 2028.
8. Amendment of Charter Article 26 - November 7, 2028.
9. Amendment of Charter Article 40 - November 7, 2028.

The recommended action is for the City Council to adopt a Resolution Correcting Clerical Error in Resolution No. 24-028 Submitting Ballot Measure to Voters to Amend City Charter to Change the Number of Elected City Council Members from Six to Four as contained in the Attachment to this Agenda Report.

FISCAL IMPACT: None

ATTACHMENTS

Resolution Correcting Clerical Error in Resolution No. 24-028 Submitting Ballot Measure to Voters to Amend City Charter to Change the Number of Elected City Council Members from Six to Four

RESOLUTION NO. 24- _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE CORRECTING CLERICAL ERROR IN RESOLUTION NO. 2024-028 AND SUBMITTING A BALLOT MEASURE TO VOTERS TO AMEND THE PACIFIC GROVE CITY CHARTER TO CHANGE THE NUMBER OF ELECTED CITY COUNCIL MEMBERS FROM SIX TO FOUR COUNCILMEMBERS BY DIRECTING (1) IN 2026 TWO COUNCIL MEMBERS SHALL BE ELECTED TO FOUR-YEAR TERMS, AND ONE COUNCIL MEMBER SHALL BE ELECTED TO A SINGLE TWO-YEAR TERM, AND (2) EVERY TWO YEARS THEREAFTER BEGINNING IN 2028 TWO COUNCIL MEMBERS SHALL BE ELECTED TO FOUR-YEAR TERMS; CONSISTENT CHARTER CHANGES SHALL CLARIFY A QUORUM, MAJORITY VOTE AND OTHER SELECT ACTIONS AND REQUESTING THE MONTEREY COUNTY ELECTIONS DEPARTMENT TO CONDUCT THE ELECTION AND CONSOLIDATE IT WITH THE STATEWIDE ELECTION TO BE HELD ON NOVEMBER 5, 2024

WHEREAS, on July 3, 2024, the City Council of the City of Pacific Grove adopted Resolution No. 2024-028 entitled:

RESOLUTION NO. 24-028

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE SUBMITTING A BALLOT MEASURE TO VOTERS TO AMEND THE PACIFIC GROVE CITY CHARTER TO CHANGE THE NUMBER OF ELECTED CITY COUNCIL MEMBERS FROM SIX TO FOUR COUNCILMEMBERS BY DIRECTING (1) IN 2026 TWO COUNCIL MEMBERS SHALL BE ELECTED TO FOUR-YEAR TERMS, AND ONE COUNCIL MEMBER SHALL BE ELECTED TO A SINGLE TWO-YEAR TERM, AND (2) EVERY TWO YEARS THEREAFTER BEGINNING IN 2028 TWO COUNCIL MEMBERS SHALL BE ELECTED TO FOUR-YEAR TERMS; CONSISTENT CHARTER CHANGES SHALL CLARIFY A QUORUM, MAJORITY VOTE AND OTHER SELECT ACTIONS AND REQUESTING THE MONTEREY COUNTY ELECTIONS DEPARTMENT TO CONDUCT THE ELECTION AND CONSOLIDATE IT WITH THE STATEWIDE ELECTION TO BE HELD ON NOVEMBER 5, 2024

WHEREAS, Resolution No. 24-028 includes in Exhibit A as Part 4 EFFECTIVE DATES:

Each Charter Article amendment, provided herein, shall become effective and implemented in conjunction with the following election dates:

1. Amendment of Charter Article 6 - November 7, 2028.
2. Amendment of Charter Article 11 - November 3, 2026.
3. Amendment of Charter Article 12 - November 7, 2028.
4. Amendment of Charter Article 13 - November 7, 2028.

5. Amendment of Charter Article 15 - November 7, 2028.
6. Amendment of Charter Article 19 - November 7, 2028.
7. Amendment of Charter Article 24 - November 7, 2028.
8. Amendment of Charter Article 26 - November 7, 2028.
9. Amendment of Charter Article 40 - November 7, 2028.

WHEREAS, there is clerical error in the listing of the Effective Dates in Part 4 of Exhibit A in that Article 11 should be effective on November 7, 2028 and Article 12 should be effective November 3, 2026 as shown here in track changes and, as corrected, in Part 4 of Exhibit A attached to this Resolution:

Each Charter Article amendment, provided herein, shall become effective and implemented in conjunction with the following election dates:

1. Amendment of Charter Article 6 - November 7, 2028.
2. Amendment of Charter Article 11 - ~~November 7, 2028.~~ November 3, 2026.
3. Amendment of Charter Article 12 - ~~November 3, 2026.~~ November 7, 2028.
4. Amendment of Charter Article 13 - November 7, 2028.
5. Amendment of Charter Article 15 - November 7, 2028.
6. Amendment of Charter Article 19 - November 7, 2028.
7. Amendment of Charter Article 24 - November 7, 2028.
8. Amendment of Charter Article 26 - November 7, 2028.
9. Amendment of Charter Article 40 - November 7, 2028.

WHEREAS, except for the correction of the clerical error on the Effective Dates as identified hereinabove, the balance of this Resolution is identical to Resolution No. 2024-028.

WHEREAS, the Pacific Grove City Charter, since 1927, has required the staggered election of six Council members, in addition to the Mayor, whereby each Council Member is elected to serve a four-year term. This election system was largely based on the "Model City Charter" published in 1926 by the League of California Municipalities, with one notable exception being the "Model City Charter" recommended a five-member council.

WHEREAS, California city councils vary greatly in size from four to fifteen members. A clear majority of cities (almost 90%) throughout California call for election of a five-member council. This is the council membership for all cities in Monterey County, excepting Pacific Grove and Salinas. Less than 7% of California cities rely on a seven-member council.

WHEREAS, the proposed Charter Amendment would reduce the size of the City Council from seven to five members, that is, four Council members and a Mayor.

WHEREAS, reducing the number of elected council members from six to four will reduce redundancy, conserve City resources and facilitate decision-making. Some commentators have stated council larger than five increases the opportunity for members to divide into factions.

WHEREAS, any City Charter amendment must be approved by the voters of that City.

WHEREAS, a change to the City election system requires a vote of the electorate and may only be effected prospectively insofar as elected officials, by law, hold office for the entire term of their elected service.

WHEREAS, the change to the City election system proposes to stage this election sequence whereby one council member shall serve a single two-year term to provide a bridge between the six-member group of elected councilmembers to the four-member group of elected councilmembers.

WHEREAS, pursuant to Elections Code Section 10002, the City Council of the City of Pacific Grove may request the Board of Supervisors of the county to permit the county elections official to render specified services to the city or district relating to the conduct of an election. The city or district shall reimburse the county in full for the services performed upon presentation of a bill to the city or district.

WHEREAS, pursuant to Elections Code Section 10002, Monterey County Elections shall supply the elections official with a list of its precincts, or consolidated precincts, as applicable.

WHEREAS, the City Clerk and County Registrar of Voters are authorized to print forms, publish notices, and provide information as may be necessary or convenient to assure the orderly conduct of the election, and they shall do all other things necessary to facilitate the holding of the election in a manner consistent with law.

WHEREAS, pursuant to Elections Code Sections 10400, whenever two or more elections, including bond elections, of any legislative or congressional district, public district, city, county, or other political subdivision are called to be held on the same day, in the same territory, or in territory that is in part the same, they may be consolidated upon the order of the governing body or bodies or officer or officers calling the elections.

WHEREAS, pursuant to Elections Code Section 10403, whenever an election called by a district, city or other political subdivision for the submission of any question, proposition, or office to be filled is to be consolidated with a statewide election, and the question, proposition, or office to be filled is to appear upon the same ballot as that provided for that statewide election, the district, city or other political subdivision shall, at least 88 days prior to the date of the election, file with the board of supervisors, and a copy with the elections official, a resolution of its governing board requesting the consolidation, and setting forth the exact form of any question, proposition, or office to be voted upon at the election, as it is to appear on the ballot. Upon such request, the Board of Supervisors may order the consolidation. The resolution requesting the consolidation shall be adopted and filed at the same time as the adoption of the ordinance, resolution, or order calling the election.

WHEREAS, the City Council finds and determines this resolution is exempt from the California Environmental Quality Act, Public Resources Code Sections 21000 et seq. ("CEQA") and 14 Cal. Code of Regulations, Sections 15000, et seq. ("CEQA Guidelines"). The calling and noticing of an election for the submission of a ballot measure to voters is not a project within the meaning of CEQA Guidelines 15378.

WHEREAS, the City Council desires to submit the proposed Charter Amendment to the voters of the City at a General Municipal Election to be held on Tuesday, November 5, 2024, , and to be consolidated with the general municipal election and the statewide election to be held on that date.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE:

Section 1. Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Resolution 24-022. On June 5, 2024, the City Council adopted Resolution 24-022 Calling An Election, Requesting The County Elections Department Conduct The Election, Requesting Consolidation Of The Election With The November 5, 2024, General Municipal Election, And Authorizing The City Manager To Sign The Service Agreement For Provision Of Election Services.

Section 3. Election. Pursuant to Section 3 of Article XI of the California Constitution, Article 8 of the City Charter, and Elections Code Sections 9255(b)(l), the City Council of the City of Pacific Grove hereby orders the following proposed Charter Amendment be submitted to the voters at the November 5, 2024, General Municipal Election and requests the Monterey County Elections Department to conduct the election and consolidate it with the statewide election to be held on November 5, 2024 and submit to the electorate the following question:

Measure " _ " Charter Amendment - Reducing Number of Councilmembers.

Shall the Pacific Grove City Charter be amended to reduce the size of the City Council from six Councilmembers and a Mayor to four Councilmembers and a Mayor such that: in 2026 two Councilmembers shall be elected to four-year terms, and one to a single two-year term, and every two years thereafter two Councilmembers shall be elected to four-year terms; with associated amendments for votes needed for a quorum, majority vote and other select actions?	YES	
	NO	

Section 4. Proposed Charter Amendment. The text of the proposed Charter Amendment to be submitted to the voters is attached to this Resolution as Exhibit A and incorporated by reference. The full text of the proposed Charter Amendment shall be printed in the Sample Ballot and Voters Pamphlet and shall be made available to the public and to any voter at the County Elections Department and the Pacific Grove City Clerk.

Section 5. Publication of Measure. The City Clerk is directed to publish a synopsis of the measure at least one time not later than one week before the election.

Section 6. Approval. The vote requirement for this measure to pass shall be a majority of those casting ballots on the measure (50% plus 1).

Section 7. Filing with County. The City Clerk shall file a certified copy of this Resolution with the County Elections Department.

Section 8. Analysis and Argument. Pursuant to Elections Code Section 9280, the City Attorney shall prepare an impartial analysis of the measure that shall not exceed 500 words no later than 12:00 p.m. on August 15, 2024. Pursuant to Elections Code Section 9282, the City Council authorizes the Mayor to author and submit the primary argument and pursuant to Elections Code Section 9285(a), authorizes the Mayor to submit a rebuttal argument in favor of the ballot measure. Pursuant to Elections Code Section 9287, if more than one argument is submitted against the measure, the City Clerk shall select the argument to be included with the ballot materials. An argument for or against the measure shall not exceed 300 words in length. The last day to submit arguments for or against the proposed measure shall be August 15, 2024. Submittals are to be delivered to the City Clerk no later than 12:00 p.m. Rebuttal arguments (250 words) shall be permitted pursuant to applicable law. The last day to submit rebuttal arguments to the City Clerk shall be August 22, 2024. Submittals are to be delivered to the City Clerk no later than 12:00 p.m.

Section 9. Implementation. The City Clerk and City Manager are authorized to take all actions as necessary to effectuate the purposes of this resolution and the election. The City Manager is authorized to execute all documents and to perform all other necessary City acts to enter into a service agreement for the provision of election services with Monterey County Registrar of Voters. The City Clerk and City Attorney are authorized to make any typographical, clerical, and non-substantive corrections to this resolution as may be deemed necessary by the Monterey Elections Department.

Section 10. Declaration. The City Council shall meet to declare the results of the election called for by this Resolution at their regular meeting following certification of election results.

Section 11. Effective Date. This Resolution shall take immediate effect upon its adoption by the City Council and the City Clerk shall certify the vote adopting the resolution.

Section 12. Environmental Compliance. The City Council finds the adoption of this resolution is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly, or indirectly.

Section 13. Election Called and Consolidated. The City Council of the City of Pacific Grove hereby orders an election be called and consolidated with any and all elections also called to be held on November 5, 2024 within the same territory.

Section 14. All Necessary Services. The City Council of the City of Pacific Grove hereby orders that pursuant to Elections Code Section 10002 said governing body hereby requests the Board of Supervisors of the County of Monterey to permit the Monterey County Elections Department to provide any and all services necessary for conducting an election and agrees to pay for said services in full.

Section 15. Printing of Measure. The City Council of the City of Pacific Grove hereby requests that the Monterey County Elections Department print the attached full measure text Exhibit A exactly as filed or indicated on the filed document in the voter information guide for the November 5, 2024 election.

PASSED AND ADOPTED by the City Council of the City of Pacific Grove on this 7th day of August, 2024, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL PEAKE, Mayor

ATTEST:

DATED: _____

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

BRIAN A. PIERIK, City Attorney

RESOLUTION NO. _____

EXHIBIT A

Text of Proposed Charter Amendment to Be Submitted to the Voters: Proposal to Amend the Pacific Grove City Charter to Reduce the Size of the City Council from Six (6) Councilmembers and a Mayor to Four (4) Councilmembers and a Mayor and Redefine the Votes Needed for a Quorum, A Majority Vote and Other Select Actions.

TEXT OF AMENDMENT TO PACIFIC GROVE CITY CHARTER

Amended text shown in ***underscored bold italics*** text, and deleted text shown in strikeout text. **Highlighted** text shown solely for ease of reference.

PART 1: PROPOSED CHARTER AMENDMENT

Section 1. That Article 6 of the City Charter be amended to read as follows:

Article 6 Officers and Employees

The officers of the City of Pacific Grove shall consist of ~~six~~ **four** Councilmembers and a Mayor, a City Manager, a City Clerk, a City Treasurer, a City Attorney, other officers as provided by ordinance, and members of Commissions, Boards and Committees as provided by Charter and by ordinance; provided, the Council may by ordinance provide for such subordinate officers, assistants, deputies, clerks and employees as it deems necessary, and that the Council may at any time, when in its judgment the interest of the City so demands, consolidate by ordinance the powers and duties of two or more City officers, and place the same in charge of one such officer. The Mayor and the members of the Council shall be elected from the City at large. All other officers, assistants, deputies, clerks, and employees shall be appointed as provided in this Charter, or as the Council may provide by ordinance in case no provision for their appointment is herein made, and they shall hold their respective offices or positions at the pleasure of the appointing power, except as otherwise herein provided.

Section 2. That Article 11 of the City Charter be amended to read as follows:

Article 11 The Mayor

A Mayor shall be elected at each general municipal election and shall hold office for the term of two years from and after the Tuesday next succeeding the day of such election and until a successor is elected and qualified. The Mayor may receive compensation as provided by ordinance, but in no case shall the compensation exceed that amount which is permitted by State Law for General Law cities of comparable size to Pacific Grove. The Mayor shall be ineligible to hold any office or employment with the City except as a member of any board, commission or committee thereof of which the Mayor is constituted such member by General Law. In the name and on behalf of the City the Mayor shall sign all contracts, deeds, bonds and other legal instruments in which the city is a party. The Mayor or the Mayor's designate shall represent the City at all ceremonial functions of a social or patriotic character when it is desirable or

appropriate to have the City represented officially thereat. The Council shall choose one of its members to serve as Mayor pro tempore during the absence of the Mayor. The Mayor shall preside over all Council meetings and shall be entitled to one vote.

In the event a vacancy occurs in the office of the Mayor, the remaining Council Members shall appoint, by ~~four~~ **three** affirmative votes, one of their number to serve as Mayor for the remaining term of the vacated office of Mayor. If the Council does not fill the Mayoral vacancy within thirty (30) days its appointment power shall lapse and the Mayor Pro Tempore shall assume the office of Mayor. In either event, a vacancy shall then exist as to that Council seat, which shall be filled in accord with the provisions of Article 12 of this Charter.

Section 3. That Article 12 of the City Charter be amended to read as follows:

Article 12 Council

~~Three~~ **Two** Councilmembers shall be elected at each general municipal election and shall hold office for the term of four years each from and after the Tuesday next succeeding the day of such election, and until their successors are elected and qualified.

A vacancy in an elective office shall be filled by appointment by the Council, such appointee to hold office until the next general municipal election and until a successor is elected and qualified. Such successor shall be elected for the unexpired term of his or her predecessor at the general municipal election and until a successor is elected and qualified. Such successor shall be elected for the unexpired term of his or her predecessor at the general municipal election next succeeding such appointment. Should the Council fail to fill any such vacancy within thirty days after the same occurs, then it shall be filled by appointment by the Mayor; provided, however, that if the offices of a majority, or more, of the Council shall become vacant, then the City Clerk shall call a special election at once to fill the vacancies for the unexpired terms, and the same shall be conducted substantially in the manner provided for general municipal elections.

If any Councilmember of the City shall be absent for more than two consecutive regular meetings without good cause as determined by the Council, or shall cease to be a resident or elector of the City, or shall fail to qualify, or shall resign or be convicted of a felony, or be adjudged mentally incompetent, the Councilmember's office shall thereupon become vacant.

The Councilmembers may receive compensation as provided by ordinance, but in no case shall the compensation exceed that amount which is permitted by the State Law for General Law cities of comparable size to Pacific Grove.

No Councilmember shall be eligible to hold any other office or employment with the City except as a member of any board, commission, or committee thereof, of which the Councilmember is constituted such member by the General Law of the State.

The term of office for a Councilmember who files as a candidate for the Office of Mayor shall automatically expire on the Tuesday next succeeding the general municipal election held following that filing. The filing period for candidates to fill such Councilmember's term shall be extended an additional five days.

Section 4. That Article 13 of the City Charter be amended to read as follows:

Article 13 Meetings of the Council

All meetings of the Council shall be duly noticed and shall be open to the public and shall otherwise comply with applicable state law. All meetings of the Council shall be held in the Council Chambers, except that the Council may hold meetings at another location either to (1) accommodate those who wish to attend, or to (2) accommodate an emergency situation, or to (3) accommodate the needs of a particular meeting as determined in the sole discretion of the Council. There shall be two regular meetings of the Council in each month at a day and hour by ordinance determined, and any regular meeting may be adjourned to a date and hour certain and such adjourned meeting shall be a regular meeting for all purposes; provided however, the Council may cancel one of those meetings, as circumstances may require, by ~~five (5)~~ **four (4)** affirmative votes. The Council shall adopt rules for the conduct of its proceeding and shall provide by ordinance the manner in which its special meetings may be called.

Section 5. That Article 15 of the City Charter be amended to read as follows:

Article 15 Ordinances

- (a) The enacting clause of all ordinances passed by the Council shall read as follows: "The Council of the City of Pacific Grove does ordain as follows:" The enacting clause of all ordinances passed by the vote of the electors of the City through the exercise of the initiative or referendum shall be: "The people of the City of Pacific Grove do ordain as follows:"
- (b) The affirmative vote of ~~four~~ **three** members of the Council shall be necessary to adopt any ordinances, resolutions or claims against the City, which vote shall be taken by ayes and noes and entered upon the record, and upon the request of any member of the Council the ayes and noes shall be taken and recorded upon any vote.
- (c) No ordinance shall be passed by the Council on the day of its introduction nor within five days thereafter, nor at any time other than at a regular meeting, nor until its publication at least once in the official newspaper at least three days before its adoption. Provided, that the publication of ordinances as required herein may be satisfied by publication of a summary of a proposed ordinance, if at the time the ordinance is introduced the Council directs a summary to be published. Any summary so published shall be approved by the City Attorney. A copy of the full text of proposed ordinances for which summaries are published shall be on file in the office of the City Clerk and available to the public on and after the first business day following introduction.
- (d) Notwithstanding the five day waiting period required in (c), immediately hereinabove, any ordinance declared by the Council to be necessary as an emergency measure for preserving the public peace, health, safety or public welfare, and containing the reasons for its urgency, may be introduced and if passed by a vote of no fewer than ~~five~~ **four** members of the Council shall become effective immediately.

- (e) A proposed ordinance may be amended or modified between the time of its introduction and the time of its final passage, provided its general scope and original purpose are retained.
- (f) No ordinance or portion thereof shall be repealed, revised or amended except by ordinance, and all ordinances shall be signed by the Mayor and attested by the City Clerk.
- (g) Except as provided by General Law, or by this Charter, no action providing for the approval or amendment of the annual fiscal year budget, or for the acquisition, sale, lease, encumbrancing or disposition of real property of the City, or any interest therein, or for the levying of any tax or assessment, or for the granting of any franchise, or for the establishment or changing of zoning regulations, or for the imposing of any penalty, shall be taken except by ordinance.
- (h) All ordinances subject to the right of referendum shall become effective 30 days following final passage. All other ordinances shall be effective immediately upon final passage. The provisions of this subarticle shall not affect the ability of the Council to adopt emergency measures pursuant to subarticle (d) of this Article.

Section 6. That Article 19 of the City Charter be amended to read as follows:

Article 19 City Manager

There shall be a City Manager appointed by the affirmative vote of ~~five-sevenths~~ **four fifths** of the Council who shall be the administrative head of the City government. The City Manager shall be chosen by the Council without regard to political consideration and with reference solely to qualifications for such office. The procedure for removal of the City Manager shall be prescribed by ordinance.

It shall not be necessary that the City Manager reside in the City at the time of appointment, but the City Manager shall become a resident thereof within sixty days thereafter and thereafter during incumbency shall actually reside in the City.

The powers and duties of the City Manager shall be:

- a. To see that all ordinances are enforced.
- b. To appoint all heads of departments, subordinate officials and employees, and remove the same, and have general supervision and control over the same.
- c. To exercise general supervision over all privately owned public utilities operating within the City so far as the same are subject to municipal control.
- d. To see that the provisions of all franchises, leases, contracts, permits and privileges granted by the City are fully observed and to report to the Council any violations thereof.
- e. To act as purchasing agent for the City. The City Manager shall know the exact condition of the treasury at all times, and shall approve all demands before the same have been allowed by the Council if the City Manager is satisfied that the money is lawfully due.

- f. To attend all meetings of the Council unless excused therefrom by ~~three~~ **two** members thereof or by the Mayor.
- g. To examine, or cause to be examined, without notice, the conduct, or the official account and records, of any officer or employee of the City.
- h. To keep the Council advised as to the needs of the City.
- i. To have supervision over all City property, including public buildings, parks and playgrounds.
- j. To appoint such advisory boards as the City Manager may deem desirable to advise and assist the City Manager provided the members of such boards shall receive no compensation.
- k. To cause a quarterly statement of all funds in the treasury to be submitted to the Council. Such statements shall be submitted not later than the first meeting in November, February, May and August.
- l. To assume general control of the City government and all of its branches in case of riot, insurrection or extraordinary emergency, and to be responsible for the suppression of disorders and the restoration of normal conditions.

Section 7. That Article 24 of the City Charter be amended to read as follows:

Article 24 City Attorney

There shall be a City Attorney appointed by the City Council. The City Attorney shall be an attorney-at-law, admitted to the bar of the Supreme Court of this State, and one who has been in actual practice in the State, for at least three years next preceding appointment. All other things being equal, an attorney who has had special training for this office or experience in municipal corporation law shall be appointed to this office, if practicable. The City Attorney shall be legal advisor of the Council and shall be available to all other City officials on City business.

The City Attorney shall prosecute all violations of City ordinances, and shall draft all ordinances, resolutions, contracts, or other legal documents or proceedings required by the Council or other officials, except as may be otherwise provided, and shall perform such legal services from time to time as the Council may require, and shall attend all meetings of the Council unless excused therefrom by ~~three~~ **two** members thereof or by the Mayor. When from any cause therefrom the City Attorney is unable to perform the duties of office, the City Attorney shall with the consent of the Council appoint some other qualified attorney to act temporarily as City Attorney. Whenever, in the judgment of the Council, the interests of the City require it, assistant counsel may be employed. The City Attorney shall deliver all books, records, papers, documents, and property of every description, under his or her control, owned by the City, to his or her successor in office, and shall possess such other powers, and perform such additional duties, not in conflict with this Charter, as may be prescribed by ordinance.

Section 8. That Article 26 of the City Charter be amended to read as follows:

Article 26 Appointive Commissions and Boards

There shall be the Commission and Boards enumerated in this Article which shall have the powers and duties as provided herein. The appointment of persons to serve on these Commissions and Boards shall be made by the Mayor subject to the confirmation by affirmative vote of ~~four~~ **three** members of the Council.

Before making such appointments the Mayor shall consult with the Council and shall consider fully any and all nominations suggested by other members of the Council.

Members of Commissions and Boards shall serve at the pleasure of the Council. The Council, by an affirmative vote of ~~four~~ **three** of its members, may remove any member of any Commission or Board at any time during the Commission or Board member's term of office.

The term of office for members of Commissions and Boards shall be four years, but in no event shall any person serve more than three successive full terms on a single Commission or Board. For the purposes of this Article, service upon appointment to a vacated mid-term seat shall be deemed service for a full term. A person who has served for such three term period on a Commission or Board shall be eligible for reappointment to that Commission or Board after the expiration of two years.

Any person appointed to serve on such Commissions or Boards shall be a registered elector of the City and shall not hold any paid office or employment in the City government or be a member of any other Board as herein enumerated, or be a member of the City Council, except as an ex officio member without vote.

a. CITY PLANNING COMMISSION. There shall be a Planning Commission consisting of seven members, and shall have the following powers and duties:

- (1) Recommend to the Council the adoption, amendment, or repeal of a General Master Plan, or any part thereof, for the physical development of the City.
- (2) Exercise such functions with respect to land subdivisions, planning and zoning as may be prescribed by ordinance or resolution.
- (3) Perform such other duties relating to planning and zoning as the Council may require by ordinance or resolution, or as may be prescribed by the General Laws of the State.

b. LIBRARY BOARD. There shall be a Library Board consisting of five members and shall have the following powers and duties:

- (1) Act in an advisory capacity to the Council and City Manager in all matters pertaining to the operation of a public library.
- (2) Recommend to the City Council the adoption of such laws, rules, and regulations as it may deem necessary for the administration and protection of the City Library.

(3) Perform such other duties relating to the library services as the Council may require by ordinance or resolution.

c. MUSEUM BOARD. There shall be a Museum Board consisting of five members and shall have the following powers and duties:

(1) Act in an advisory capacity to the Council and City Manager in all matters pertaining to the operation of a public museum.

(2) Recommend to the City Council the adoption of such laws, rules, and regulations as it may deem necessary for the administration and protection of the City Museum.

(3) Perform such other duties relating to the museum service as the Council may require by ordinance or resolution.

d. RECREATION BOARD. There shall be a Recreation Board consisting of five members and shall have the following powers and duties:

(1) Act in an advisory capacity to the Council and City Manager in all matters pertaining to the operation of a City recreation program.

(2) Recommend to the City Council the adoption of such laws, rules and regulations as it may deem necessary for the administration and operation of a City recreation program.

(3) Promote and stimulate public interest in a recreation program and solicit to the fullest extent possible the cooperation of school authorities and other public and private agencies interested therein.

(4) Perform such other duties relating to the recreation program as the Council may require by ordinance or resolution.

Section 9. That Article 40 of the City Charter be amended to read as follows:

Article 40 Contracts on Public Works; Materials and Supplies

(a) In the erection, improvement and repair of all public buildings and works, in all street and sewer work, and in furnishing supplies or materials for same when the expenditure required for the same shall exceed the sum of Fifteen Thousand Dollars (\$15,000.00), the same shall be done by contract and shall be let to the lowest responsible bidder, after notice by publication in the official newspaper, and security for the due execution and performance of any such contract may be required of the successful bidder. The Council may provide by ordinance for the detailed procedure for carrying out this Article.

Provided, that the Council may reject any and all bids presented and may re-advertise in their discretion, and provided further, that after rejecting bids the Council may declare and determine by an affirmative vote of ~~five~~ **four** of its members that in its opinion the work in question may be more economically or satisfactorily performed by day labor, by either city employees or others,

and after adoption of a resolution to this effect, it may proceed to have the same done in the manner stated without further observance of the foregoing provisions of this Article.

Provided, further, that such contracts likewise may be let without advertising for bids if such work shall be deemed by the Council to be of urgent necessity for the preservation of life, health or property, and shall be authorized by resolution passed by an affirmative vote of ~~five~~ **four** Council members and containing a declaration of facts constituting such urgency.

(b) The Council by ordinance shall adopt policies and procedures, including appropriate bidding regulations, governing purchases of or contracts for supplies, materials and equipment. Purchases of supplies, materials and equipment shall be made only in accordance with the adopted policies and procedures.

PART 2: BALLOT DESCRIPTION

As provided in Government Code section 34458.5, the following ballot description is in this proposed Charter Amendment measure:

CHARTER AMENDMENT

The proposed Charter Amendment measure would amend Pacific Grove City Charter Articles 6, 11, 12, 13, 15, 19, 24, 26, and 40. The amendment would change the number of elected City Council members from six to four by directing (1) in 2026 two Council members shall be elected to four-year terms, and one Council member shall be elected to a single two-year term, and (2) every two years thereafter beginning in 2028 two Council members shall be elected to four- year terms; Consistent Charter changes shall clarify a quorum, majority vote and other select actions, which shall become effective when the number of Councilmembers is reduced to four (4) after the November 2028 election is certified.

Charter Article 6 would be revised to provide the reduction of the number of Councilmembers from six (6) to four (4).

Charter Article 11 would be revised to provide that in the event a vacancy occurs in the office of the Mayor, the remaining Council Members shall appoint, by three (3) affirmative votes, one of their number to serve as Mayor for the remaining term of the vacated office of Mayor, instead of four (4) votes.

Charter Article 12 would be revised to provide that two (2) Councilmembers shall be elected at each general municipal election rather than three (3).

Charter Article 13 would be revised to provide that the City Council may cancel one of its monthly meetings, by four (4) affirmative votes instead of five (5).

Charter Article 15 would be revised to provide that the affirmative vote of three (3) members of the Council shall be necessary to adopt any ordinances, resolutions or claims against the City instead of four (4).

Charter Article 19 would be revised to provide that the appointment of the City Manager shall require the affirmative vote of four fifths of the Council instead of five sevenths and to require the City Manager to attend all meetings of the Council unless excused by two (2) members instead of three (3), or by the Mayor.

Charter Article 24 would be revised to provide that the City Attorney must attend all meetings of the Council unless excused by two (2) members instead of three (3), or by the Mayor.

Charter Article 26 would be revised to provide that the appointment of persons serving on City Commissions and Boards shall be made by the Mayor subject to the confirmation by affirmative vote of three (3) members of the Council instead of four (4). Also the Council, by an affirmative vote of three (3) of its members, may remove any member of any commission, instead of four (4).

Charter Article 40 would be revised to provide that the Council after rejecting all bids may declare and determine by an affirmative vote of four (4) of its members instead of five (5) that in its opinion the work in question may be more economically or satisfactorily performed by day labor, by either city employees or others, and after adoption of a resolution, it may proceed to have the proposed work done without further observance of the foregoing provisions of Article 40.

Article 40 would also be revised to allow the Council to approve a contract without advertising for bids with a finding of urgent necessity for the preservation of life, health or property, with an affirmative vote of four (4) Council members instead of five (5).

PART 3: IMPLEMENTATION

In the event this Charter Amendment measure is approved:

- A. Exclusively for the election to be held in November 2026, two councilmembers shall be elected and hold office for a term of four years and one additional councilmember shall be elected and hold office for a term of two years, resulting in a four (4) member City Council and Mayor (5 member) local legislative body after the November 2028 election is certified
- B. To further effectuate the purposes of this Charter Amendment measure and the direction of the voters, the City Council shall amend the following sections of the Pacific Grove Municipal Code - Sections 2.04.070 (c)(5), 3.02.030 and 3.04.030, and such other sections as needed, to modify the number of required council votes for actions referenced in those provisions as may be consistent with this measure.
- C. This Charter Amendment measure shall be submitted to the Secretary of State pursuant to Government Code sections 34459 through 34461, inclusive.

PART 4: EFFECTIVE DATES

Section 3(a) of Article XI of the California Constitution provides:

For its own government, a county or city may adopt a charter by majority vote of its electors voting on the question. The charter is effective when filed with the Secretary of State. A charter may be amended, revised, or repealed in the same manner. A charter, amendment, revision, or repeal thereof shall be published in the official state statutes. County charters adopted pursuant to this section shall supersede any existing charter and all laws inconsistent therewith. The provisions of a charter are the law of the State and have the force and effect of legislative enactments.

This Charter Amendment measure shall become effective in the manner allowed by law.

Each Charter Article amendment, provided herein, shall become effective and implemented in conjunction with the following election dates:

1. Amendment of Charter Article 6 - November 7, 2028.
2. Amendment of Charter Article 11 - November 7, 2028.
3. Amendment of Charter Article 12 - November 3, 2026.
4. Amendment of Charter Article 13 - November 7, 2028.
5. Amendment of Charter Article 15 - November 7, 2028.
6. Amendment of Charter Article 19 - November 7, 2028.
7. Amendment of Charter Article 24 - November 7, 2028.
8. Amendment of Charter Article 26 - November 7, 2028.
9. Amendment of Charter Article 40 - November 7, 2028.

PART 5: SEVERABILITY

It is the intent of the people that the provisions of the Charter Amendment measure are severable and that if any section, subsection, sentence, clause, or phrase of this charter amendment is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Charter Amendment measure. The people of the City of Pacific Grove hereby declare that they would have passed this Charter Amendment measure and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

9. **REPORTS – REQUIRING ACTION**

- A. FY24/25 CIP Engineering Services *This item was pulled and considered immediately following the Consent Agenda.*

Reference: Joyce Halabi, Deputy Public Works Director

Recommended Action:

1. Authorize an agreement with Neill Engineers Corp for FY23/24 Capital Improvement Plan engineering services in an amount not to exceed \$~~573,079,545,871~~ plus a 15% contingency.
2. Alternatively, discuss and take other action on this item.
CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

- B. Contract Amendment for Professional Services

Action: Approved Amendment #1 to the Professional Services Agreement with Catacutan Consulting, LLC., increasing the previously approved contract by \$60,000 for a total not to exceed amount of \$100,000.

CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

10. **MEETING MINUTES OF COMMISSIONS, BOARDS, AND COMMITTEES**

- A. Beautification and Natural Resources Commission Minutes: May 21, 2024

Action: Received minutes.

CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

- B. Library Board Minutes: May 7, 2024

Action: Received minutes.

CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

- 8.A. Core Revenue Report for June 2024 *This item was pulled from the Consent Agenda.*
Public comment received from Mike Gibbs.

Action: Received the report.

CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

- 8.D. City of Pacific Grove Informational Report on Demographics *This item was pulled from the Consent Agenda.*

Public comment received from Andrew Kubica and Carmelita Garcia.

Action: Received and filed the City of Pacific Grove informational report on demographics prepared by National Demographic Corporation.

CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

- 9.A. FY24/25 CIP Engineering Services *This item was pulled from the Consent Agenda.*

Lover's Point

Snack Bar

BETWEEN THE BUN

BURGER **\$10**

single patty w/ lettuce, tomato, pickles, grilled onions, brioche bun.

CHEESEBURGER **\$12**

single patty w/ melted American cheese, lettuce, tomato, pickles, grilled onions, brioche bun.

MUSHROOM BURGER **\$14**

single patty w/ melted American cheese, grilled mushrooms, lettuce, tomato, pickles, grilled onions, brioche bun.

DOUBLE DOUBLE **\$14**

double patty w/ lettuce, tomato, pickles, grilled onions, brioche bun

FRIED CHICKEN SANDWICH **\$14**

buttermilk fried chicken, Gilroy garlic aioli, pickles, brioche bun

FLAT TOP HOT DOG **\$10**

Midwestern style hot dog w/ relish, grilled onions, pickles, tomato, split top bun

SNACKS

HANDCUT FRENCH FRIES **\$8**

double fried Kennebec potatoes, Big Sur sea salt

SOFT PRETZEL **\$12**

Nisi's pretzel served w/ sweet & tangy mustard sauce

GRILLED ARTICHOKE **\$12**

grilled Castroville artichoke w/ Big Sur sea salt, fresh herb, Gilroy garlic aioli

HAND CUT GARLIC FRIES **\$10**

double fried Kennebec potatoes, Gilroy garlic, fresh herbs, Big Sur sea salt

CLAM CHOWDER **\$8**

creamy New England chowder w/ clams and potatoes

SEASONAL SALAD **\$12**

SWEET TREATS

HAND SPUN MILK SHAKE **\$8**

Choice of:

- Vanilla
- Chocolate
- Strawberry

ICE CREAM BY THE SCOOP **\$4**

Choice of:

- Vanilla
- Chocolate
- Strawberry

CHURROS **\$8**

sprinkled w/ cinnamon sugar and served w/ Ghirardelli chocolate sauce

CHOCOLATE CHIP COOKIE **\$4**

ICE CREAM SANDWICH **\$10**

choice of icecream sandwiched between two homemade chocolate chip cookies

BEVERAGES

SODA BY THE CAN **\$3**

coke | diet | 7-Up | rootbeer

HOMEMADE LEMONADE **\$3**

ICED TEA **\$3**

WATER BY THE BOTTLE **\$3**

Acqua Panna still | San Pellegrino sparkling

ORDINANCE NO. 24-XXX

ORDINANCE OF THE CITY COUNCIL OF THE PACIFIC GROVE APPROVING A FIVE-YEAR LEASE BETWEEN SUNSET HOSPITALITY GROUP, INC., A CALIFORNIA CORPORATION, AND THE CITY OF PACIFIC GROVE FOR THE USE OF CITY OWNED PROPERTY INCLUDING APPROXIMATELY 270 SQUARE FEET OF BUILDING SPACE LOCATED AT LOVER’S POINT PARK AND BEACH IN THE CITY OF PACIFIC GROVE, AND AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE THE SAME

FACTS

1. The City of Pacific Grove (“City”) owns that certain portion of real property situated at the northeast corner of the intersection of Ocean View Boulevard and 17th Street, at the southerly end of Lover’s Point Park and Beach, improved with an approximately 270 square foot building (the “Premises”), located in the City of Pacific Grove, County of Monterey, State of California, as described with particularity in Exhibit A, attached hereto and incorporated herein by this reference.
2. The Premises is improved with a restaurant, including a kitchen, configured for walk-up ordering and take-out service only.
3. The City operates the Premises through a lease agreement for operation of restaurant food and beverage services.
4. The City issued a Request for Proposal (RFP) on March 19, 2024, and the City received proposals from three entities. A panel of staff reviewed the proposals and interviewed each proposer. As a result of the selection process, the proposal submitted by Sunset Hospitality, Inc. was selected as the highest rated proposal for their unique qualifications and vision for the Premises.
5. The lease allows Sunset Hospitality, Inc. the exclusive use of Premises for the sale of food, beverages, and related services.
6. Leasing of the Premises will not have a significant effect on the environment and is found to be exempt from the California Environmental Quality Act (CEQA) per Section 15301 of the CEQA Guidelines which allows for the leasing, licensing, repair, and maintenance of public or private structures.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE DOES ORDAIN AS FOLLOWS:

SECTION 1. The foregoing Facts are adopted as findings of the City Council as though set forth in full within the body of this ordinance.

SECTION 2. The proposed lease agreement between the City and Sunset Hospitality, Inc., is hereby approved, in the form attached hereto as Exhibit B, titled Tenant Lease by and between the City of Pacific Grove and Sunset Hospitality, Inc., incorporated herein by this reference.

SECTION 3. In the event of legal challenge to any aspect of this approval, Sunset Hospitality, Inc. shall defend and save harmless city against any claim, judgment or liability arising out of such challenge. Sunset Hospitality, Inc. may, in the event of such challenge and as an alternative to its obligation to defend and save harmless, terminate the lease agreement.

SECTION 4. As a condition of the approval hereby made, Sunset Hospitality, Inc. shall not only execute the lease agreement, but shall also sign and acknowledge the findings, terms and conditions set forth in this ordinance on a line to be provided below by the city clerk.

SECTION 5. The City Manager is directed to execute all documents and to perform all other necessary City acts to implement the intent of this Ordinance.

SECTION 6. Severability. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 7. In accord with Article 15 of the Pacific Grove City Charter, this ordinance shall become effective on the thirtieth (30th) day following its passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE
THIS 7th day of August, 2024, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL PEAKE, Mayor

ATTEST:
DATED: _____

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

BRIAN PIERIK, City Attorney

EXHIBIT A

Premises



Approximate 270 square foot building located at the northeast corner of the intersection of Ocean View Boulevard and 17th Street, at the southerly end of Lover's Point Park and Beach, located in the City of Pacific Grove.

EXHIBIT B

Form of Tenant Lease

TENANT LEASE

By and Between

CITY OF PACIFIC GROVE
a California charter city
("Landlord")

and
SUNSET HOSPITALITY GROUP, INC.
a California corporation
("Tenant")

Dated: August __, 2024

TENANT LEASE

BASIC LEASE PROVISIONS

1. Tenant: Sunset Hospitality Group, Inc.
 500 Hartnell Street
 Monterey, California 93933
 Phone: (310) 403-0210
2. Landlord: City of Pacific Grove
 300 Forest Avenue
 Pacific Grove, California 93950
 Phone: (831) 648-3174
 Attention: City Manager
3. Premises: That certain building of approximately 270 square feet in
 interior floor space located generally on the southwest portion
 of the City's Lover's Point Park and Beach, as depicted in
 Exhibit A attached hereto
4. Use: Snack bar (e.g., beverages, sandwiches, and light fare)
5. Term: Five (5) years, with one optional extension for an additional
 five-year term, if both parties agree to such extensions
6. Lease Commencement August __, 2024 ("**Commencement Date**").
Date:
7. Rent Commencement August __, 2024 ("**Rent Commencement Date**").
Date:
8. Base Rent: The initial monthly base rent shall be \$1,500 plus an annual
 payment equal to a proportion of annual gross sales in the
 following amounts:

 0% for annual gross sales under \$300,000
 2% for annual gross sales \$300,000 - \$399,999
 3% for annual gross sales \$400,000 - \$499,999
 4% for annual gross sales \$500,000 - \$599,999
 5% for annual gross sales \$600,000 - \$699,999
 6% for annual gross sales \$800,000 and above.

Tenant is separately responsible for paying for utilities and services (including electric, water and sewer).

The Basic Lease Information set forth above and the Exhibits listed below and attached hereto are incorporated into and made a part of the following Lease. Each reference in this Lease to any of the Basic Lease Information shall mean the respective information above and shall be construed to incorporate all of the terms provided under the particular Lease section pertaining to such information. In the event of any conflict between the Basic Lease Information and the provisions of the Lease, the latter shall control.

The following Exhibits are attached to this Lease and incorporated herein by this reference:

- Exhibit A** – Premises Description
- Exhibit B** – Rules and Regulations
- Exhibit C** – Ongoing Maintenance Schedule
- Exhibit D** – List of Lessor-owned Furnishings
- Exhibit E** – Initial Improvement Schedule
- Exhibit F** – Insurance Certificate

This Lease Agreement (this “**Lease**”) is made and entered into effective as of August __, 2024 (“**Effective Date**”) by and between the City of Pacific Grove, a California charter city (“**Landlord**”) and Sunset Hospitality Group, Inc., a California corporation (“**Tenant**”).

1. PREMISES.

1.1 Premises. Landlord is the owner of certain real property developed into a municipal park and beach commonly known as Lover’s Point Park and Beach, located generally at the northeast intersection of Ocean View Boulevard and 17th Street, situated in the City of Pacific Grove, Monterey County, State of California (“**Property**”). The Property is also improved with an approximately 270 square foot building (“**Premises**”) owned by Landlord and located in the southwest portion of the Property, and described and depicted in **Exhibit A**, attached hereto and incorporated herein by this reference. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, on the terms and subject to the covenants, conditions and uses stated herein, the Premises. The Premises are leased to Tenant in their “as is” condition. The Premises are leased on an “AS-IS” basis, “WITH ALL FAULTS,” with all furniture, fixtures and equipment located within the Premises as of the Commencement Date (except such as are already owned by Tenant), also being subject to this Lease. Tenant shall also be permitted to use the locked storage area located at the beach level of the Property to store items associated with the operation of the Premises.

1.2 Public Area. Tenant may, subject to rules made by Landlord, and on a non-exclusive basis, use those areas on the Property exterior to the Building designated by Landlord from time to time for the common use of Landlord and members of the public, such as patio and other public areas adjacent to the Building (the “**Public Area**”). Landlord has sole discretion to determine the design and location of the Public Area and to determine the manner in which the Public Area is maintained and operated. The Public Area does not include space within Tenant’s Premises.

1.3 Parking. During the Term, Tenant shall be entitled to utilize the number of parking spaces within the parking area for the Property as designated by Landlord from time to time. Landlord shall at all times have the right to establish and modify the nature and extent of the parking areas for Premises. Tenant shall not use more parking spaces than its allotment and shall not use any parking spaces specifically assigned by Landlord to other tenants, if any, or for such other uses such as visitor, handicapped or other special purpose parking.

1.4 Reserved Rights.

1.4.1 Landlord’s Right of Entry. Landlord reserves the right to enter the Premises upon reasonable notice to Tenant (except that advance notice shall not be required in case of an emergency) for the following purposes: (i) to inspect the condition of the Premises; (ii) to ascertain the performance by Tenant of the terms and conditions hereof; (iii) to respond to an emergency at the Premises; (iv) to maintain, inspect and repair the Premises to the extent required or permitted under this Lease; (v) to post notices of non-responsibility for alterations, additions or repairs undertaken by Tenant; and (vi) to show the Premises to prospective tenants or purchasers or persons acting on their behalf; (vii) to post a leasing sign in or about the Premises; and (viii) to perform any other right or duty of Landlord under this Lease. Landlord

may exercise this right of entry without any rent credit to Tenant for any loss of occupancy or quiet enjoyment of the Premises.

1.4.2 Additional Reserved Rights. In addition, Landlord reserve(s) the right upon reasonable notice to Tenant (except that advance notice shall not be required in case of an emergency) to undertake the following: (i) install, use, maintain, repair, alter, relocate or replace any improvements in the Public Area; (ii) grant easements encumbering the Property which do not unreasonably interfere with Tenant's use of the Premises and dedicate for public use portions thereof; and (iii) affix reasonable signs and displays.

1.5 Compliance with ADA. Notwithstanding anything to the contrary contained in this Lease, Landlord and Tenant agree that responsibility for compliance with the Americans With Disabilities Act of 1990, as amended (the "ADA") shall be allocated as follows: (i) Landlord shall be responsible for compliance with the provisions of Title III of the ADA for all Public Areas not included within the Premises; (ii) Landlord shall be responsible for compliance with the provisions of Title III of the ADA for any construction, renovations, alterations and repairs made within the Premises if such construction, renovations, alterations or repairs are made by Landlord, its employees, agents or contractors, at the direction of Landlord or done pursuant to plans and specifications prepared or provided by Landlord or Landlord's architect or space planner; (iii) Tenant shall be responsible for compliance with the provisions of Title III of the ADA for any construction, renovations, alterations and repairs made within the Premises if such construction, renovations, alterations and repairs are made by Tenant, its employees, agents or contractors, at the direction of Tenant or done pursuant to plans and specifications prepared or provided by Tenant or Tenant's architect or space planner.

1.5.1 Accessibility Disclosure. Landlord hereby advises Tenant that the Premises has not undergone an inspection by a certified access specialist, and except to the extent expressly set forth in this Lease, Landlord shall have no liability or responsibility to make any repairs or modifications to the Premises in order to comply with accessibility standards. The following disclosure is hereby made pursuant to applicable California law:

A Certified Access Specialist (CAsp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CAsp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CAsp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CAsp inspection, the payment of the fee for the CAsp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." [Cal. Civ. Code Section 1938(e)]. Any CAsp inspection shall be conducted in compliance with reasonable rules in effect at the Building with

regard to such inspections and shall be subject to Landlord's prior written consent.

2. TERM.

2.1 Lease Commencement Date. The initial term of this Lease shall be for a period of five (5) years commencing on the Effective Date ("**Initial Term**"). Any reference to "**Term**" in this Lease shall include the Initial Term and the Extension Term where Tenant and Landlord have extended the Lease pursuant to Section 2.2.

2.2 Optional Extension.

2.2.1 Provided that (i) Tenant is not in default under the terms of this Lease at the time the optional extension is exercised or at the commencement of the Extension Term (defined below), and (ii) Tenant has not been in default more than twice in any 12-month period, Landlord and Tenant may mutually agree to renew this Lease for an additional five-year period ("**Extension Term**"). The Extension Term shall commence, if at all, upon the expiration of the Initial Term and end sixty months later. There shall be no additional extension term beyond the Extension Term set forth herein.

2.2.2 The Extension Term shall be on all the terms and conditions of this Lease.

2.2.3 Base Rent for the Extension Term shall be determined as set forth in section 3.5 below.

2.2.4 Tenant must exercise its option to extend this Lease by giving Landlord a minimum of six (6) months written notice prior to the end of the Initial Term. If Tenant fails to give notice in a timely manner, Tenant shall lose the ability to exercise its extension option. Landlord may in its discretion waive such failure.

2.2.5 The extension option set forth herein is personal to Tenant and shall not be included in any assignment of this Lease without prior written approval from Landlord.

3. RENT.

3.1 Rent Commencement Date. Tenant's obligation to pay Rent under this Lease shall commence as of the Effective Date. Rent shall be paid as set forth in this Section 3.

3.2 Base Rent; Rent Adjustment. The monthly Base Rent for the Initial Term shall be \$1,500, for a total of \$18,000 per year. Base Rent shall be adjusted as set forth in this Section 3.2 and may be adjusted as set forth in Section 3.5, below. Tenant shall pay to Landlord, at Landlord's Address designated in Item 2 of the Basic Lease Information, or at such other address as Landlord may from time to time designate in writing to Tenant for the payment of Rent, the Base Rent herein defined, without notice, demand, offset or deduction, in advance, on the first day of each calendar month. Upon the execution of this Lease, Tenant shall pay to Landlord the first month's Base Rent due as of the Rent Commencement Date. All sums other than Base Rent which Tenant is obligated to pay under this Lease shall be deemed to be additional rent

("Additional Rent") due on the same date as Base Rent unless otherwise specified hereunder or otherwise requested by Landlord. Notwithstanding the foregoing, late charges under Section 3.3.4 shall be due and payable immediately as incurred. The term "Rent" means the Base Rent and all Additional Rent payable hereunder. If Rent is due for a period of less than a full month, it shall be prorated for such partial month on the basis of a thirty (30) day month. On the first anniversary of the commencement date of this Lease, and annually thereafter, the rent payable by Tenant shall be increased to an amount determined by multiplying the basic monthly rental by a fraction, the denominator of which shall be the most recent Consumer Price Index figure, as hereinafter defined, published prior to the date of this Lease, and the numerator of which shall be the most recent Consumer Price Index figure published prior to the particular anniversary date; provided, however, that in no event shall the rent for any month after such anniversary be less than the rent for the month immediately preceding such anniversary. As used herein, the term "Consumer Price Index" shall mean Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco- Oakland-San Jose Average for All Items, 1982-84=100, or the successor of that Index, as published by the Bureau of Labor Statistics, U.S. Department of Labor. Tenant shall make the rent payment on or before the 10th day of each month. Application of Payments. All payments received by Landlord from Tenant shall be applied to the oldest obligation owed by Tenant to Landlord. No designation by Tenant, either in a separate writing, on a check or money order, or otherwise shall modify this clause or have any force or effect.

3.3 Percentage Rent.

3.3.1 *Payment.* In addition to the Base Rent, Tenant agrees to pay to Landlord, as Rent for each Lease Year or partial Lease Year, the amount by which the percentage of Tenant's Gross Sales from the Premises set forth in Paragraph 8 of the Basic Lease Provisions for such Lease Year or partial Lease Year (the "Percentage Rent"). Percentage Rent will be determined and paid, without any prior demand within forty-five days (45-days) after the end of such Lease Year, including the last Lease Year of the term of the Lease, and Tenant's obligation will survive the expiration of the Lease Term. Each Lease Year will be considered as an independent accounting period for the purpose of computing the amount of Percentage Rent due. The amount of Gross Sales of any Lease Year will not be carried over into any other Lease Year.

3.3.2 *Gross Sales Reports.* Tenant agrees to submit to Landlord on or before the forty-fifth day (45th) day following the end of each Lease Year or partial Lease Year (including the last Lease Year hereof, as to which Tenant's obligation will survive the expiration of the Lease Term) a written statement signed and verified by an authorized representative of Tenant as true and correct, showing the amount of such Gross Sales during the preceding Lease Year or partial Lease Year and an itemization of all permissible deductions from Gross Sales. The annual statement will also be duly certified by Tenant or an officer of Tenant to be true and correct in compliance with the definition of Gross Sales in this Lease in accordance with sound and accepted accounting practice consistently applied. The statements referred to in this Section 3.3.2 of this Lease must be in such form and style and contain such details and information as Landlord may reasonably designate and will be delivered to the address set forth in Paragraph 2 of the Basic Lease Provisions or such other address as Landlord may from time to time designate. The acceptance by Landlord of payments of Percentage Rent or Gross Sales reports is without prejudice and does not constitute a waiver of Landlord's right to claim a deficiency in the payment of Percentage Rent or to audit Tenant's books and records. The Gross Sales for any

portion of a calendar month prior to the commencement of the first full calendar month, will be included in the report due for the next succeeding month.

3.3.3 *Records and Audit Reports.* Tenant agrees to prepare and keep for a period of at least thirty-six (36) months following the end of each Lease Year, true and accurate books of account and records, conforming to generally sound and accepted accounting principles consistently applied, including, but not limited to, sales tax and other reports filed with governmental agencies, all purchases and receipts of merchandise, inventories and all sales and other transactions by Tenant from which Gross Sales at, upon or from the Premises can be determined. Tenant agrees to record all sales, at the time each sale is made, and to retain cumulative cash register tapes or such other cumulative records concerning such Gross Sales as are approved by Landlord. Notwithstanding the foregoing, Landlord agrees that it will not unreasonably refuse to allow Tenant to maintain its books and records in computerized form, provided: (i) that Tenant's computerized books and records provide the same level of information as the print books and records described in this Section 3.3.3 of the Lease; (ii) such computerized books and records are retained for the full thirty-six (36) month retention period, and are made accessible for Landlord's inspection on request; (iii) print copies are made available to Landlord's representatives engaged in inspecting Tenant's books and records upon request. Landlord's consent to computerized record keeping, once given, may be revoked by Landlord on not less than sixty (60) days' prior written notice to Tenant, if Tenant fails to comply with the foregoing requirements.

If Tenant's Gross Sales are required to be reported on any federal, state or local sales tax return, and Gross Sales so reported on any of the sales tax returns exceed the Gross Sales as reported by Tenant under this Lease, then the Gross Sales will be taken at the highest figure so reported. If any governmental authority increases the Gross Sales reported by Tenant on any such tax return for any Lease Year for which such Gross Sales have been reported, then Tenant will notify Landlord promptly of such increase, supply to Landlord a true copy of such governmental action and pay any additional Percentage Rent due under this Lease together with interest at the late rent Interest Rate set forth in Section 3.3.4 of the Lease from the date such Percentage Rent was due.

Landlord has the right, upon thirty (30) days' notice to Tenant to cause a complete audit of all statements of Gross Sales and in connection with such audit, to examine Tenant's books of account and records (including all supporting data and any other records from which Gross Sales may be tested or determined) of Gross Sales disclosed in any statement provided or required to be provided to Landlord by Tenant. Tenant will make all such records available for such examination at the location set forth in Paragraph 1 of the Basic Lease Provisions. Landlord will have the right to copy and duplicate such information as Landlord may require. If any such audit discloses that the actual Gross Sales transacted by Tenant exceed those reported, then Tenant will pay Landlord such additional Percentage Rent as may be payable together with interest at the late rent Interest Rate pursuant to Section 3.3.4 of the Lease from the date such additional Percentage Rent was due. If the excess so disclosed is ten percent (10%) or more, Tenant will also pay the reasonable costs of Landlord's audit and examination. If the excess is less than ten percent (10%), then Landlord will pay for the services of its auditors. The furnishing by Tenant of any fraudulent statement will constitute a non-curable Event of Default. If an audit is commenced by Landlord, all supporting data and any other records from which Gross Sales may

be tested or determined will be preserved and retained by Tenant until a final resolution of such audit, dispute or difference. Any information obtained by Landlord as a result of such audit will be treated as confidential, except in any litigation or proceeding between the parties.

For purposes of this lease, the term “gross sales” means sum of the full sale price at which all beverages, food stuffs, catering services and other such goods, room rental fees charged by Tenant, specialty contracted services, wares and merchandise are sold at any time during the term of the Agreement by Tenant, its employees or agents in. Gross sales shall exclude credit card service charges that are not included in the sale price to customers.

3.3.4 Late Charge and Interest. The late payment of any Rent will cause Landlord to incur additional costs, including administration and collection costs and processing and accounting expenses and increased debt service (“Delinquency Costs”). If Landlord has not received any installment of Rent within five (5) calendar days after such amount is due, Tenant shall pay a late charge in the amount of One Hundred Twenty Five Dollars (\$125.00) immediately. This late charge represents a reasonable estimate of the Delinquency Costs incurred by Landlord. In addition, all delinquent amounts shall bear interest from the date such amount was due until paid in full at a rate per annum (“Applicable Interest Rate”) equal to the lesser of (a) the maximum interest rate permitted by law, or (b) five percent (5%) above the rate publicly announced by JPMorgan Chase Bank, N.A. (or if JPMorgan Chase Bank, N.A. ceases to exist, the largest bank then headquartered in the United States of America) (“Bank”) at its “Reference Rate.” If the use of the announced Reference Rate is discontinued by the Bank, then the term Reference Rate shall mean the announced rate charged by the Bank which is, from time to time, substituted for the Reference Rate. Landlord and Tenant recognize that the damage which Landlord shall suffer as a result of Tenant’s failure to pay such amounts is difficult to ascertain and said late charge and interest are the best estimate of the damage which Landlord shall suffer in the event of late payment. Landlord’s acceptance of late Rent, partial Rent and late charges does not equate with a waiver of Tenant’s default with respect to the overdue amount, or prevent Landlord from exercising any rights and remedies available under this Lease and/or by operation of law.

3.4 Additional Rent. In addition to paying the Base Rent specified in Item 8 of the Basic Lease Information and in Section 3.2, and pursuant to any Addendum or Amendment to this Lease that Landlord and Tenant may execute, Tenant shall pay as Additional Rent all Utilities and Services, defined and described in Section 4, not directly paid by Tenant to the utility company, and any other amounts of any kind that become due or payable by Tenant to Landlord under the terms of this Lease. Unless Landlord elects otherwise pursuant to this Lease, all amounts due under this section as Additional Rent are payable for the same periods and in the same manner, time and place, as the Base Rent. Tenant’s obligation to pay Rent under this Lease survives the Term to the extent such obligation has not been fulfilled during that Term.

3.5 Renegotiation of Base Rent Amount Upon Leasehold Improvements. If Tenant anticipates undertaking significant and costly renovations to the Property during the Term, upon the issuance of a building permit by City to commence such renovations, City and Tenant may meet to discuss a renegotiation of the rent amount to account for the improvements.

3.6 Security Deposit. Tenant shall not be required to deposit any sums with Landlord as security for Tenant's performance of its obligations under this Lease. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code and agrees that the provisions of this Section 3.5 shall govern the treatment of Tenant's Security Deposit in all respects for this Lease.

4. UTILITIES AND SERVICES.

4.1 Utilities and Services. Tenant shall be solely responsible for contracting for, and shall promptly pay any and all shall pay when due any and all water, heat, gas, electricity, telephone and other utilities and services ("collectively, "**Services**") provided to or for the Premises, including taxes thereon. Tenant shall establish its own accounts for all utility Services, including garbage collection services, to the extent such Services can be separately metered and billed. In the case of any Services that are not separately metered and billed directly to Tenant, but are metered jointly with other premises, Tenant shall pay Landlord upon demand a pro rata share, as determined by Landlord, of all charges. Landlord shall bill Tenant its pro rate share of any Services that are not separately metered within one hundred twenty (120) days of the date that Landlord receives such bills from the Service provider (e.g., utility company). Tenant will also procure, or cause to be procured without cost to Landlord, any and all necessary permits, licenses, or other authorization s required for the lawful and proper installation and maintenance upon the Premises of wires, pipes, conduits, tubes, and other equipment and appliances for use in supplying any such service to and upon the Premises. Landlord, upon request of Tenant, and at the sole expense and liability of Tenant, will join with Tenant in any application required for obtaining or continuing any such services.

4.2 Pest Control. Tenant, at Tenant's cost, shall at all times keep the Premises free of pests, including the obligation to maintain a pest control service contract with a licensed pest control operator. If Tenant fails to promptly and fully comply with this Section, Landlord shall have the right, but not the obligation, to enter the Premises to perform such spraying or inspections at Tenant's expense. Performance of such work by Landlord shall not constitute a waiver of Tenant's default in failing to do the same nor shall it entitle Tenant to any damage for any injury or inconvenience occasioned thereby nor to any abatement of Rent. Tenant shall reimburse Landlord for any cost incurred by Landlord pursuant to this Section upon demand therefor.

4.3 Exculpation of Liability. Landlord shall not be liable for any loss or damage suffered by Tenant or others, by reason of Landlord's failure to furnish any of the Services, or furnishing reduced Service; no such failure or reduction shall constitute or be construed as a constructive or other eviction of Tenant, nor shall Landlord be liable for loss of business or injury to property however occurring, through or in connection with or incidental to such failure to furnish or reduction of any of the Services. Should Landlord elect to provide a security patrol or system, Landlord shall not be responsible for any damage or injury to Tenant, Tenant's officers, agents, employees, independent contractors, invitees, customers, visitors, licensees, assignees or subtenants (individually and collectively, "Tenant's Parties"), or the Premises or property due to failure, action or inaction of such patrol or system. Landlord reserves the right to stop Services when necessary, by reason of accident or emergency or for inspection, repairs, alterations, decorations, additions or improvements which, in the judgment of Landlord, are

desirable or necessary to be made, until same shall have been completed, and shall further have no responsibility or liability for failure to supply any Services in such instance. Landlord shall use reasonable efforts to minimize the inconvenience to Tenant from any such disruptions or interruptions of Services and shall provide Tenant with reasonable notice of such disruptions or interruptions to the extent that Landlord is aware of or has been provided with advance notice of the disruptions or interruptions. The exculpation of liability under this Section shall not apply to the extent claims are caused by Landlord's sole or active negligence.

4.4 No Representation. Landlord makes no representation with respect to the adequacy or fitness of any heating, air conditioning or ventilation equipment in the Premises to maintain temperatures which may be required for, or because of, any equipment of Tenant, and Landlord shall have no liability for loss or damage suffered by Tenant or others in connection therewith.

4.5 Conservation and Use Policies. In the event of imposition of federal, state, or local governmental controls, rules, regulations, or restrictions on the use or consumption of energy or other utilities during the Term, both Landlord and Tenant shall be bound thereby. In the event of a difference in interpretation by Landlord and Tenant of any such controls, the interpretation of Landlord shall prevail, and Landlord shall have the right to enforce compliance therewith, including the right of entry into the Premises to effect compliance.

5. TAXES.

5.1 Taxes. As used in this Lease "Taxes" means Possessory Interest Taxes and Personal Taxes. Tenant's obligations for Taxes for the last full or partial year of the Term and for any prior unpaid Taxes shall survive the expiration or earlier termination of this Lease.

5.2 Statement Regarding Possessory Interest Tax. This Lease creates a possessory property interest in Tenant. Tenant's property interest may be subject to property taxation, and Tenant or the party in whom the possessory interest is vested may be subject to the payment of property taxes levied on the interest. Such taxes are referred to herein as "Possessory Interest Taxes".

5.3 Personal Taxes. Tenant shall pay directly to the taxing authority all taxes and assessments levied upon trade fixtures, alterations, additions, improvements, inventories and other personal property located and/or installed on the Premises by Tenant. Such taxes are referred to herein as "Personal Taxes".

5.4 Payment of Taxes. Tenant shall pay all Taxes prior to delinquency. To the extent any such taxes are not separately assessed or billed to Tenant by the taxing authority, Landlord shall deliver to Tenant copies of the assessment and tax bill together with Landlord's proposed allocation between Landlord and Tenant. Tenant shall pay the amount reasonably allocated to Tenant no later than ten (10) business days prior to the date on which such Taxes are due. Taxes attributable to any of Tenant's personal property situated within the Public Area shall be charged to Tenant. Should Tenant fail to pay its Taxes, Landlord may elect to do so on Tenant's behalf. Tenant will thereafter be required to reimburse Landlord for such Taxes together with interest at

the Applicable Interest Rate, from the date Landlord tendered payment, until the date Tenant fully reimburses Landlord.

5.5 Records and Accounting.

5.5.1 Tenant shall keep proper records and accounts of the gross sales. Such records and accounts, including any sales tax reports that Tenant is required to furnish to any governmental authority, shall be open at all reasonable times to the inspection of Landlord or Landlord's auditor or authorized representative, with prior notice and during business hours.

5.5.2 Monthly accounting of gross sales shall be compiled and furnished to Landlord and attached to the payment of Monthly Gross Sales Rent as described in Section 3.2.

5.5.3 Tenant shall provide to Landlord annual compiled financial statements of Tenant's business at the premises. The annual financial statements shall be due to Landlord within three (3) months after the end of each twelve (12) month operating period

6. INSURANCE.

6.1 Landlord. Landlord may elect to maintain insurance or an insurance equivalent (including but not limited to, e.g., that offered to a municipality through and by a joint powers authority, a self-insurance pool of liability coverage authorized pursuant to California Government Code Section 6500, or similar collective) insuring the Premises on an occurrence basis against fire and extended coverage (including, if Landlord elects, "all risk" coverage, earthquake/volcanic action, flood and/or surface water insurance) similar in type and coverage limits to that carried by Landlord on its other properties. Landlord may also carry such other insurance as Landlord may deem prudent or advisable, in such amounts and on such terms as Landlord shall determine.

6.2 Tenant. Tenant shall, at Tenant's expense, obtain and keep in force at all times the following insurance, and shall be liable for all premiums, deductibles, and self-insured amounts, if any, in connection therewith:

6.2.1 Commercial General Liability Insurance (Occurrence Form). A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate, providing coverage for, among other things, blanket contractual liability, premises, products/completed operations and personal injury, death and advertising injury coverage, with deletion of (a) the exclusion for operations within fifty (50) feet of a railroad property (railroad protective liability), if applicable, and (b) the exclusion for explosion, collapse or underground hazard, if applicable, and, if necessary, Tenant shall provide for restoration of the aggregate limit.

6.2.2 Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance that complies with all applicable state statutes and regulatory requirements, and, if Tenant hires any employees, employer's liability insurance coverage in the amount of at least One Million Dollars (\$1,000,000).

6.2.3 Property Insurance. “All risk” property insurance including boiler and machinery comprehensive form, if applicable, covering damage to or loss of any improvements, personal property, fixtures and equipment of Tenant (collectively “Tenant’s Property”) (and coverage for the full replacement cost thereof including business interruption of Tenant), together with, if the property of Tenant’s invitees is to be kept in the Premises, warehouse’s legal liability or bailee customers insurance for the full replacement cost of the property belonging to invitees and located in the Premises.

6.3 General.

6.3.1 Insurance Companies. Insurance required to be maintained by Tenant shall be written by companies licensed to do business in California and having a “General Policyholders Rating” of at least A:VIII (or such higher rating as may be required by a lender having a lien on the Premises) as set forth in the most current issue of “Best’s Insurance Guide.”

6.3.2 Certificates of Insurance. Tenant shall deliver to Landlord certificates of insurance for all insurance required to be maintained by Tenant pursuant to this Lease, in the form of the ACORN standard certificate of insurance, prior to the Commencement Date. Tenant shall, at least ten (10) days prior to expiration of the policy, furnish Landlord with certificates of renewal or “binders” thereof. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to modification except after sixty (60) days’ prior written notice to the parties named as additional insureds as required in this Lease (except in the case of cancellation for nonpayment of premium in which case cancellation shall not take effect until at least ten (10) days’ notice has been given to the parties named as additional insureds). If Tenant fails to maintain any insurance required in this Lease, Tenant shall be liable for all losses and cost resulting from said failure.

6.3.3 Additional Insureds. Landlord shall be named as an additional insured on the policy as required by Section 6.2.1. An additional insured endorsement naming such parties as additional insured(s) shall be attached to the certificate of insurance.

6.3.4 Primary Coverage. All insurance to be maintained by Tenant shall be primary without right of contribution from insurance of Landlord.

6.3.5 Umbrella/Excess Insurance. Any umbrella liability policy or excess liability policy (which shall be in “following form”) shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. The limits of insurance maintained by Tenant shall not limit Tenant’s liability under this Lease,

6.3.6 Waiver of Subrogation. Tenant waives any right to recover against Landlord for claims for damages to Tenant’s Property to the extent covered (or required by this Lease to be covered) by Tenant’s insurance. The coverage obtained by Tenant pursuant to this Lease shall include a waiver of subrogation endorsement attached to the certificate of insurance.

6.3.7 Notification of Incidents. Tenant shall notify Landlord within twenty four (24) hours after the occurrence of any accident or incident in/at Property or any portion thereof which could give rise to a claim against Landlord, its coverage, Tenant or Tenant’s

insurance. Tenant's notice shall be accompanied by a copy of any accident/incident form prepared by Tenant, reporting and/or relating to the accident/incident.

6.3.8 Adjustment of Insurance Levels. Landlord reserves the right at any time during the term of this Lease to change the amounts and types of insurance required hereunder upon giving Tenant three (3) months prior written notice.

7. INDEMNITY; LIABILITY EXEMPTION.

7.1 Indemnity. Except with respect to claims solely caused by Landlord's active negligence or willful misconduct, Tenant shall indemnify, protect, defend, and hold harmless Landlord and its elected and appointed officers, officials, employees, volunteers, lenders, agents, and contractors and each of their successors and assigns from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, arising at any time during or after the Term directly or indirectly as a result of or in connection with (i) any default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease; (ii) Tenant's use of the Premises or the Property, including the conduct of Tenant's business or any activity, work or things done, permitted or suffered by Tenant in or about the Premises, the Public Area, or other portions of the Property; (iii) any act, error or omission of Tenant or of any invitee, licensee or guest of Tenant, in or about the Premises, the Public Area, or other portions of the Property; (iv) loss of, injury, or damage to or destruction of property (including loss of use resulting from that loss, injury, damage or destruction); (v) all resulting economic losses, consequential and/or exemplary damages; and (vi) any subleases, assignments and related activities, (all of the foregoing, collectively, the "Indemnification"). Tenant shall provide such Indemnification by and through counsel reasonably acceptable to Landlord. The obligations of Tenant under this Section shall survive the expiration or sooner termination of this Lease.

7.2 Exemption of Landlord from Liability. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property including, but not limited to, Tenant's fixtures, equipment, furniture and alterations or injury to persons in, upon or about the Premises, the Public Area, or other portions of the Property arising from any cause, and Tenant hereby waives all claims in respect thereof against Landlord, except to the extent such claims are caused by Landlord's sole or active negligence or willful misconduct, Tenant hereby agrees that Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the property of Tenant, or injury to or death of Tenant, Tenant's Parties or any other person in or about the Premises, the Public Area, or the Property, whether such damage or injury is caused by fire, steam, electricity, gas, water or rain, or from the breakage, leakage or other defects of sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising upon the Premises, the Public Area, or other portions of the Property or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant, except damage or injury caused solely by Landlord's sole or active negligence or willful misconduct. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant, if any, of the Premises, the Public

Area or other portions of the Property or Landlord's failure to enforce the terms of any agreements with parties other than Tenant.

8. REPAIRS AND MAINTENANCE.

8.1 Landlord's Obligations.

8.1.1 At Landlord's Election on Tenant's Behalf, Landlord shall not be required to make or bear the costs of any repair resulting from (i) any alteration or modification to the Premises or to mechanical equipment within the Premises performed by, for or because of Tenant or to special equipment or systems installed by, for or because of Tenant, (ii) the installation, use or operation of Tenant's property, fixtures and equipment, (iii) the moving of Tenant's property in or out of the Premises, or the Property, or in and about the Premises, (iv) Tenant's use or occupancy of the Premises in violation of Section 10 of this Lease or in the manner not contemplated by the parties at the time of the execution of this Lease, (v) the acts or omissions of Tenant or Tenant's Parties, (vi) fire and other casualty, except as provided by Section 12 of this Lease, (vii) condemnation, except as provided in Section 13 of this Lease, or (viii) or any condition which might require repair. If Landlord elects to undertake repairs and maintenance necessitated by causes set forth in the preceding sentence, then Tenant shall pay as Additional Rent, Landlord's actual costs paid or incurred in connection therewith.

8.1.2 Tenant's Waiver. Notwithstanding anything to the contrary, whether stated or implied in this Lease, Tenant waives and releases its rights to make repairs at Landlord's expense or deduct such expenses from Rent, except as expressly stated in this Lease.

8.2 Tenant's Obligations. Tenant, at Tenant's expense, shall maintain the Premises in good order, condition and repair, including, without limitation, interior floor surfaces and floor coverings, interior walls and wall coverings, Signs and Graphics, and any items required for compliance with applicable laws, rules and regulations. In the event Tenant fails, in the reasonable judgment of Landlord, to maintain the Premises in good order, condition and repair, Landlord shall, upon five (5) days' written notice to Tenant, have the right to perform such maintenance, repairs or refurbishing at Tenant's expense, provided Tenant fails to do so within that five-day period.

8.3 Beginning Condition. On the Commencement Date, Tenant shall accept the Premises in its "AS IS" condition. Tenant acknowledges that it has inspected the Premises and agrees that the Premises are suitable for Tenant's intended use and Tenant agrees that it is not relying on any warranty or representation made by Landlord or its officers concerning the use of the Premises or the Property. Landlord does not represent or warrant that the Premises or the Property conform to applicable restrictions, zoning ordinances, setback lines, parking requirements, impervious ground cover ratio requirements, or other matters that may relate to Tenant's intended use.

8.4 Condition Upon Surrender. Upon the expiration of termination of this Lease, Tenant shall surrender the Premises to Landlord broom clean, and, subject to reasonable wear and tear, in the condition which Tenant shall have been required to maintain the Premises under this Lease with the heating, ventilation, plumbing, electrical, lighting, man doors, dock doors,

levelers, shelters, seals and bumpers (if any), windows and floors serving the Premises in good operating condition. Tenant shall repair all damage to the Premises caused by the installation or removal of its trade fixtures and other property of Tenant. Tenant shall restore the Premises to the same condition or better as existed immediately prior to the installation of any item removed.

9. ALTERATIONS.

9.1 Condition of Premises. Tenant acknowledges that Landlord has made no representation or warranty regarding the condition of the Premises, Public Area, or Property except as specifically stated in this Lease.

9.1.1 Landlord Improvements to Premises. The Premises are leased in an as-is condition.

9.2 Tenant Improvements to Premises. Tenant, at Tenant's sole cost and expense, may install interior improvements, subject to Landlord's prior written approval ("Work"). Plans, specifications, and drawings for the Work shall be subject to prior written approval by Landlord's Public Works Director, and Tenant shall be responsible for obtaining any and all required permits. Tenant may perform those components of the Work which constitute minor cosmetic alterations (i.e., painting), are non-structural, do not require a permit, and are not typically performed by a licensed contractor or tradesperson. Any other Work shall be performed by licensed contractors and in accordance with all applicable laws, including without limitation, any applicable State laws regarding prevailing wage requirements. In no event shall Tenant undertake any structural, electrical or plumbing work in connection with, or work on the exterior of, the Building, the Property or the Premises without Landlord's advance written consent.

9.3 Trade Fixtures: Alterations. Subject to Section 9.6, Tenant may install necessary trade fixtures, equipment and furniture in the Premises, provided that such items are installed and are removable without structural or material damage to the Premises. For purposes of this Lease, the term "trade fixture" shall mean specialty fixtures or equipment used in Tenant's trade or business as identified by Tenant and agreed to by Landlord in writing. Tenant shall not construct, or allow to be constructed, any alterations or physical additions in, about or to the Premises without the prior written consent of Landlord.

9.4 Standard of Work. All work to be performed by or for Landlord or Tenant pursuant hereto shall be performed diligently and in a first-class, workmanlike manner, and in compliance with all Laws applicable to the Premises and insurance carrier requirements. Landlord shall have the right, but not the obligation, to inspect periodically the Work, and Landlord may require changes in the method or quality of the Work. In no event shall the Work obstruct access to the Property and/or Public Area.

9.5 Damage; Removal. Tenant shall repair all damage to the Property and the Premises caused by the installation or removal of Tenant's fixtures, equipment, furniture and alterations. Upon the termination of this Lease, Tenant shall remove any or all alterations, additions, improvements and partitions made or installed by Tenant and restore the Premises to their condition existing prior to the construction of any such items and perform any closure work, investigation and environmental remedial work required by any Hazardous Materials Laws (as

hereinafter defined) or by any other applicable laws, ordinances, regulations or permits by any governmental authority having jurisdiction; provided, however, Landlord may require, upon written notice to Tenant no less than fifteen (15) days before the expiration of the Term, any such items (except trade fixtures) designated by Landlord to remain on the Premises, in which event they shall be and become the property of Landlord upon the termination of this Lease. All such removals and restoration shall be accomplished in a good and workmanlike manner so as not to cause any damage to the Premises, the Public Area, or the Property whatsoever and in strict accordance with all applicable laws, regulations and governmental orders.

9.6 Liens. Tenant shall promptly pay and discharge all claims for labor performed, supplies furnished, and services rendered at the request of Tenant and shall keep the Property and the Premises free of all mechanics' and materialmen's liens in connection therewith. Tenant shall provide at least ten (10) days' prior written notice to Landlord before any labor is performed, supplies furnished or services rendered on or at the Premises and Landlord shall have the right to post on the Premises notices of non-responsibility. If any lien is filed, Tenant shall cause such lien to be released and removed within ten (10) days after the date of filing, and if Tenant fails to do so, Landlord may take such action as may be necessary to remove such lien, without the duty to investigate the validity of it (unless Tenant has commenced an action to contest, dispute or defend the claims of lienholders and has provided Landlord with written notice of the pendency of the action), and Tenant shall pay Landlord such amounts expended by Landlord together with interest thereon, at the Applicable Interest Rate, from the date of expenditure.

9.7 Satellites and Antennae. Notwithstanding anything in this Lease to the contrary, Landlord and Tenant agree that it shall be reasonable for Landlord to withhold its consent to (i) installation in or about the Premises or Property of equipment comprising or relating to relays, monopoles, satellite dishes, antennae, wireless telecommunications devices, transmitters, roof mounts, two-way radios, or similar apparatus (collectively, "Transmission Devices") or (ii) any assignment or subletting which permits or contemplates installation of such Transmission Devices.

10. USE.

10.1 Usage. The Premises will be used for the operation of a snack bar serving sandwiches, other light menu items, and beverages, and for no other uses without the prior written consent of Landlord, which may be granted or withheld in Landlord's sole and absolute discretion. Tenant acknowledges that neither Landlord nor any of Landlord's agents has made any representation or warranty with regard to the Premises, the Public Area, or the Property with respect to their suitability for the conduct of Tenant's business. Tenant's execution of this Lease and entry of the Premises hereunder shall conclusively establish that the foregoing were at such time in satisfactory condition. Tenant, at Tenant's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities now in force or which may hereafter be in force ("Laws"), which shall impose any duty upon Landlord or Tenant with respect to the use, occupancy, or alteration of the Premises. Tenant shall be responsible for obtaining any permit or business license required by any governmental agency permitting Tenant's use of the Premises. Tenant shall comply with the Rules and Regulations, including observance of prohibited uses, attached hereto as Exhibit B and incorporated by reference, together with such reasonable additional rules and regulations as

Landlord may from time to time prescribe. Tenant shall not commit waste, overload the floors or structure of the building, subject the Property or any portion thereof to any use which would damage the same or increase the risk of loss or violate any insurance coverage, permit any unreasonable odors, smoke, dust, gas, substances, noise or vibrations to emanate from the Premises, take any action which would constitute a nuisance or would disturb, obstruct or endanger any other tenants, take any action which would abrogate any warranties, or use or allow the Premises to be used for any unlawful purpose. Landlord shall not be responsible for non-compliance by any other tenant or occupant with, or Landlord's failure to enforce, any of the rules and regulations or any other terms or provisions of such tenant's or occupant's lease. Tenant shall promptly comply with the reasonable requirements of any board of fire insurance underwriters or other similar body now or hereafter constituted. Tenant shall not do any act which shall in any way encumber the title of Landlord in and to the Property or any portion thereof.

10.2 Quiet Enjoyment. Tenant, upon paying Rent and performing all of its obligations under this Lease, shall peaceably and quietly enjoy the Premises, subject to the terms of this Lease, and any mortgage, deed of trust, lease, or other agreement to which this Lease may be subordinate. Tenant acknowledges that the Premises are adjacent to a City-owned public park and beach. Tenant acknowledges that Tenant is leasing the Premises with full awareness of this adjacent use.

10.3 Access. Tenant shall be permitted 24-hour a day access to the Premises.

10.4 Operations.

10.4.1 Hours of Operation. Tenant agrees that the hours of operation shall be posted at the location and any Tenant website that is primarily used for the space. Hours of operation shall be in compliance with the Rules and Regulations attached hereto as Exhibit B.

10.4.2 General Method of Operation. Tenant shall operate the business on the Premises continuously during the entire term of this Lease with such due diligence and efficiency as will reasonably produce the maximum return to Tenant.

10.4.3 Management. A manager shall be present during all times the facility is open for business.

10.4.4 Licenses and Permits. Tenant shall obtain all permits and licenses required by the laws of any federal, state, or other governmental agency to allow Tenant to meet the obligations under this Lease. All permits and licenses shall be maintained in Tenant's name. Tenant shall pay, at Tenant's own expense, all charges and fees incidental to the lawful conduct of the services, and keep fully informed on all existing Federal, State and local laws, ordinances, and regulations which in any manner affect the fulfillment of this agreement. Tenant shall pay, when due, all taxes and assessments levied upon the Premises and personal property situated in the Premises. Tenant recognizes and understands that this Lease may create a real property possessory interest tax that may subject the Tenant to real property taxes. Nonpayment of taxes may result in Tenant being in default under Section 5.4.

10.4.5 Restaurant Name. The restaurant name shall be "Lover's Point Snack

Bar.” Any change to this name shall require the advance written approval of Landlord. This name shall attach to the Premises and be exclusively available to Landlord and any successor restaurant operator, upon termination of the Lease.

10.4.6 Health and Sanitation. Tenant shall insure that all its employees are neatly attired in clean and appropriate uniforms whenever on duty. The Landlord requires that all Tenant’s employees engaged in the preparation, handling, serving, and storage of food meet both State of California and Monterey County Health Department requirements and the Landlord’s health requirements for such activity.

10.4.7 Recycling Program. Tenant, at Tenant’s cost, shall participate in any and all recycling programs in which Landlord is obligated to participate by law or if Tenant is otherwise required to do so pursuant to any federal, state or local law, rule or regulation

10.5 Sewer Damage. Tenant agrees not to discharge any harmful or dangerous chemicals into the sewer system, whether it be inside the Premises area or inside the main system leading from the Premises to the main sewer line. Should Tenant discharge any harmful chemicals into the sewer system, Tenant shall be fully responsible for the cost and repair of such damage. Landlord reserves the right to select an expert of its choosing to inspect any damage at Tenant’s cost. Tenant shall not be responsible for cost of expert if it is determined such damage is not caused by Tenant. Tenant accepts responsibility for any damage if the following conditions exist: (i) the damage to the sewer system is determined to be due to the chemicals used in the operation of Tenant’s business; or (ii) the damage exists only in the designated portion of the sewer system connecting to the Premises.

11. ENVIRONMENTAL MATTERS

11.1 Environmental Compliance. Tenant shall, at its sole cost and expense, comply with all federal, state and local laws from time to time in effect (“Hazardous Materials Laws”) concerning the management, use, generation, storage, transportation, presence, discharge or disposal of hazardous, toxic, radioactive or carcinogenic materials, substances or wastes (“Hazardous Materials”). Neither Tenant nor its agents, employees, contractors, sublessees, assignees or invitees shall use, handle, store, transport, release or dispose of any Hazardous Materials anywhere in, on, under or about the Premises. Tenant shall cause any and all Hazardous Materials brought onto, used, generated, stored or discharged in the Premises to be removed from the Premises and transported for disposal in accordance with applicable Hazardous Materials Laws. Landlord shall have the right to enter the Premises from time to time to conduct tests, inspections and surveys concerning Hazardous Materials and to monitor Tenant’s compliance with its obligations concerning Hazardous Materials and Hazard Materials Laws. Tenant shall immediately notify Landlord in writing of any voluntary clean-up or removal action instituted or proposed by Tenant, any enforcement, clean-up, removal or other governmental or regulatory action instituted or threatened, or any claim made or threatened by any person against Tenant, the Premises relating to Hazardous Materials or Hazardous Materials Laws, Tenant shall also supply to Landlord as promptly as possible, and in any event within five (5) business days after Tenant receives or sends same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Tenant’s use thereof and concerning Hazardous Materials or Hazardous Materials Laws.

11.2 Tenant's Indemnification. Except to the extent caused by Landlord's sole or active negligence, Tenant shall indemnify, defend and hold Landlord harmless from any claims, causes of action, liabilities, losses, damages, injunctions, suits, fines, penalties, costs or expenses (including attorneys' fees and expenses) caused or alleged to have been caused by the presence, use or release of Hazardous Materials in or about the Premises, including, without limitation, any personal injury, death, property damage, decrease in value of the Premises, caused or alleged to have been caused by the use, storage, generation, presence or release of Hazardous Materials, whether such claims, causes of action or liabilities are first asserted during the Term or thereafter, and including without limitation, claims made against Landlord with respect to personal injury, death or property damage sustained by third parties caused or alleged to have been caused by the use, storage, generation, presence or release of Hazardous Materials in violation of Tenant's obligations under this Lease. Tenant's obligations under this Section shall survive the expiration or earlier termination of this Lease.

12. DAMAGE AND DESTRUCTION.

12.1 If, during the Term, the building and other improvements that are part of the Premises are totally or partially destroyed from any cause, rendering the Premises totally or partially inaccessible or unusable, and at least one (1) year of the Term remains, Landlord shall restore said building and improvements to substantially the same condition as they were in immediately before destruction, if the restoration can be made under then existing laws and can be completed within 180 working days after obtaining all necessary permits therefore, and if the cost of such repairs does not exceed the amount of insurance proceeds received by Landlord from Tenant's Insurance pursuant to Section 6 above, on account of such damages. Such destruction shall not terminate this Lease. In case of destruction, there shall be an abatement or reduction of Rent, between the date of destruction and the date of completion of restoration if restoration takes place, based on the extent to which the destruction actually interferes with Tenant's use of the Premises. Tenant hereby waives the provisions of Sections 1932, Subdivision 2, and 1933, Subdivision 4, of the Civil Code of California. If the restoration cannot be made in the time stated in this paragraph, then within 15 days after the parties determine that the restoration cannot be made in the time stated in this paragraph, Tenant can terminate this Lease immediately by giving written notice to Landlord. If Tenant fails to terminate this Lease and if restoration is permitted under the existing laws, Landlord, at its election, can either terminate this Lease or restore the building and other improvements that are part of the Premises within a reasonable time and this Lease shall continue in full force and effect. If the existing laws do not permit the restoration, either party can terminate this Lease immediately by giving notice to the other party. In the event of the giving of such notice of termination by Landlord or Tenant as provided herein, this Lease and all interest of Tenant in the Premises shall terminate 15 days after receipt of such notice by the other party.

12.2 Uninsured or Underinsured Casualty. In the event that the Premises are (i) damaged to the extent Tenant is unable to use the Premises and such damage is not covered by insurance proceeds received by Landlord, (ii) the Premises are damaged to the extent that the estimated repair cost exceeds the insurance proceeds, if any, available for such repair (not including the deductible(s), if any, on Landlord's property and other applicable insurance) plus any amount that Tenant is obligated or elects to pay for such repair, (iii) the estimated repair cost, even though covered by insurance, exceeds fifty percent (50%) of the full replacement cost

of the Premises, or (iv) in the event that the holder of any indebtedness secured by the Premises requires that the insurance proceeds be applied to such indebtedness, then Landlord shall have the right at Landlord's option either (a) to repair such damage as soon as reasonably possible at Landlord's expense, or (b) to give written notice to Tenant within thirty (30) days after the date of the occurrence of such damage of Landlord's intention to terminate this Lease as of the date of the occurrence of such damage.

12.3 **Tenant's Fault; Repair Limitation.** If the Premises are damaged resulting from the negligence or breach of this Lease by Tenant or any of Tenant's Parties, Rent shall not be reduced during the repair of such damage and Tenant shall be liable to Landlord for the cost of the repair caused thereby to the extent such cost is not covered by insurance proceeds. Notwithstanding anything in this Lease to the contrary, and except to the extent caused by Landlord's sole or active negligence, Landlord shall not be required to repair any injury or damage, by fire or other cause to the property of Tenant or to make repairs or replacements of any decorations, or any improvements installed on the Premises by or for Tenant, unless Landlord has received insurance proceeds from Tenant's property insurance as provided in Section 6.2.3 above, and neither Tenant nor Landlord have opted to terminate this Lease as provided in Section 19.13.

13. EMINENT DOMAIN.

13.1 **Effect on Rights and Obligations.** If any portion of the Premises is permanently taken by condemnation, this Lease shall remain in effect, except that Tenant can elect to terminate this Lease if 15% or more of the total number of square feet in the Premises is taken or if the remaining portion of the Premises is rendered unsuitable for Tenant's continued use. If Tenant elects to terminate this Lease, Tenant must exercise its right to terminate by giving written notice to Landlord within 30 days after the nature and the extent of the taking have been finally determined, as of the date of termination, which date shall not be earlier than 30 days nor later than 90 days after Tenant has notified Landlord of its election to terminate; except that this Lease shall terminate on the date of taking if the date of taking falls on a date before the date of termination as designated by Tenant. If Tenant does not terminate this Lease within the 30-day period, this Lease shall continue in full force and effect, except that the monthly Rent thereafter to be paid shall be reduced on a pro-rata basis. Tenant shall notify Landlord in writing of any condemnation or threatened condemnation within ten (10) days after Tenant receives notice of said action or threatened action.

14. DEFAULT.

14.1 **Events of Default.** When used in this Lease with reference to Tenant, the term "default" refers to any breach of Tenant's obligations under this Lease, however brief. When any such default continues for the applicable period specified below, such default shall constitute an Event of Default hereunder, entitling Landlord to exercise the remedies set forth in Sections 14.2 and 14.3 of this Lease. The occurrence of any of the following events shall constitute an "Event of Default":

14.1.1 Failure to comply with Assignment and Subletting provisions as set forth in Section 15.1;

14.1.2 Abandonment of or vacating the Premises for a period of thirty (30) consecutive days;

14.1.3 Failure to pay Rent on the date when due and the failure continuing for a period of ten (10) days after such payment is due;

14.1.4 Failure to perform Tenant's covenants and obligations hereunder (except default in the payment of Rent) where such failure continues for a period of thirty (30) days;

14.1.5 The making of a general assignment by Tenant for the benefit of creditors; the filing of a voluntary petition by Tenant or the filing of an involuntary petition by any of Tenant's creditors seeking the rehabilitation, liquidation or reorganization of Tenant under any law relating to bankruptcy, insolvency or other relief of debtors and, in the case of an involuntary action, the failure to remove or discharge the same within sixty (60) days of such filing; the appointment of a receiver or other custodian to take possession of substantially all of Tenant's assets or this leasehold; Tenant's insolvency or inability to pay Tenant's debts or failure generally to pay Tenant's debts when due; any court entering a decree or order directing the winding up or liquidation of Tenant or of substantially all of Tenant's assets; Tenant taking any action toward the dissolution or winding up of Tenant's affairs; the cessation or suspension of Tenant's use of the Premises; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets or this leasehold; or

14.1.6 The making of any material misrepresentation or omission by Tenant or any successor in interest of Tenant in any materials delivered by or on behalf of Tenant to Landlord or Landlord's lender pursuant to this Lease.

14.2 Remedies.

14.2.1 Termination. In the event of the occurrence of any Event of Default, Landlord shall have the right to give a written termination notice to Tenant and, on the date specified in such notice (which date is at least two (2) business days following the date of delivery of such notice), this Lease shall terminate unless on or before such date all arrears of Rent and all other sums payable by Tenant under this Lease and all costs and expenses incurred by or on behalf of Landlord hereunder shall have been paid by Tenant and all other Events of Default at the time existing shall have been fully remedied to the satisfaction of Landlord.

A. Repossession. Following termination, without prejudice to other remedies Landlord may have, Landlord may (i) peaceably re-enter the Premises upon voluntary surrender by Tenant or remove Tenant therefrom and any other persons occupying the Premises, using such legal proceedings as may be available; (ii) repossess the Premises or re-let the Premises or any part thereof for such term (which may be for a term extending beyond the Term), at such rental and upon such other terms and conditions as Landlord in Landlord's sole discretion shall determine, with the right to make reasonable alterations and repairs to the Premises; and (iii) remove all personal property therefrom.

B. Unpaid Rent. Landlord shall have all the rights and remedies of a landlord provided by applicable law, including the right to recover from Tenant: (a) the worth, at the time of award, of the unpaid Rent that had been earned at the time of termination, (b) the

worth, at the time of award, of the amount by which the unpaid Rent that would have been earned after the date of termination until the time of award exceeds the amount of loss of rent that Tenant proves could have been reasonably avoided, (c) the worth, at the time of award, of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided, and (d) any other amount, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default. The phrase "worth, at the time of award," as used in (a) and (b) above, shall be computed at the Applicable Interest Rate, and as used in (c) above, shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

14.2.2 Continuation. Landlord shall have the remedy described in California Civil Code section 1951.4 (as amended from time to time, and successor statutes thereto) and Landlord may continue the Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due. In the event and for so long as Landlord elects this remedy, Tenant shall have the right to sublet its Premises, assign its interest in the Lease, or both, subject to Landlord's prior written consent, which shall not be unreasonably withheld. In addition, even though an Event of Default may have occurred, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession, and Landlord may enforce all of Landlord's rights and remedies under this Lease, including the right to recover Rent as it becomes due. Landlord, without terminating this Lease, may, during the period Tenant is in default, enter the Premises and re-let the same, or any portion thereof, to third parties for Tenant's account and Tenant shall be liable to Landlord for all costs Landlord incurs in re-letting the Premises, including, without limitation, brokers' commissions, expenses of remodeling the Premises and like costs. Re-letting may be for a period shorter or longer than the remaining Term. Tenant shall continue to pay the Rent on the date the same is due. No act by Landlord hereunder, including acts of maintenance, preservation or efforts to lease the Premises or the appointment of a receiver upon application of Landlord to protect Landlord's interest under this Lease, shall terminate this Lease unless Landlord notifies Tenant that Landlord elects to terminate this Lease. In the event that Landlord elects to re-let the Premises, the rent that Landlord receives from re-letting shall be applied to the payment of, first, any indebtedness from Tenant to Landlord other than Base Rent and Additional Rent; second, all costs, including maintenance, incurred by Landlord in re-letting; and, third, Base Rent and Additional Rent. After deducting the payments referred to above, any sum remaining from the rental Landlord receives from re-letting shall be held by Landlord and applied in payment of future Rent as Rent becomes due under this Lease. In no event shall Tenant be entitled to any excess rent received by Landlord. If, on the date Rent is due under this Lease, the rent received from the re-letting is less than the Rent due on that date, Tenant shall pay to Landlord, in addition to the remaining Rent due, all costs, including maintenance, which Landlord incurred in re-letting the Premises that remain after applying the rent received from re-letting as provided hereinabove. So long as this Lease is not terminated, Landlord shall have the right to remedy any default of Tenant, to maintain or improve the Premises, to cause a receiver to be appointed to administer the Premises and new or existing subleases and to add to the Rent payable hereunder all of Landlord's reasonable costs in so doing, with interest at the Applicable Interest Rate from the date of such expenditure.

14.3 Remedies Cumulative. Each right and remedy of Landlord provided for herein or now or hereafter existing at law, in equity, by statute or otherwise shall be cumulative and shall not preclude Landlord from exercising any other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity, by statute or otherwise. No payment by Tenant of a lesser amount than the Rent nor any endorsement on any check or letter accompanying any check or payment as Rent shall be deemed an accord and satisfaction of full payment of Rent; and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue other remedies.

14.4 Default of Landlord. Except to the extent caused by reasons beyond Landlord's reasonable control, Landlord's failure to perform any obligation required of it pursuant to the terms of this Lease within thirty (30) days following written notice from Tenant or, in the case of any obligation which cannot reasonably be performed within thirty (30) days, Landlord's failure to commence such performance within said thirty (30) day period and thereafter diligently pursue such performance to completion, shall constitute a default by Landlord under the terms of this Lease. In the event of a default by Landlord, Tenant shall have the right to seek any and all remedies provided for in this Lease or otherwise existing at law.

15. ASSIGNMENT AND SUBLETTING.

15.1 Landlord's Consent. Tenant shall not assign, sublet or otherwise transfer, whether voluntarily or involuntarily or by operation of law, the Premises or any part thereof, without Landlord's prior written approval, which shall not be unreasonably withheld. Any sublease or assignment or other transfer agreements shall be subject to Landlord's prior written approval. Tenant's attempted assignment/subletting without first obtaining Landlord's written consent shall be void at Landlord's election. Landlord's consent to one assignment or subletting shall not be deemed a consent to subsequent assignments and/or sublettings. The parties agree that it shall be reasonable for Landlord to withhold its consent to a proposed assignment or subletting if the proposed assignee or sublessee or the nature of its business would require Landlord to incur additional expense in construction work or other work to the Premises that would not otherwise be required if Tenant remained, for example, if the proposed assignee or sublessee is subject to compliance with additional requirements of the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) (including related regulations) beyond those requirements which are applicable to the tenant desiring to assign or sublease, if the proposed assignee's or sublessee's activities in, on or about the Premises or the Property involve the use, analysis, handling, storage, transport, discharge, release, generation or disposal of any Hazardous Materials, or if the proposed assignment or subletting would violate any section of this Lease.

15.2 Notice. If Tenant desires to assign this Lease or sublet any or all of the Premises, Tenant shall give Landlord written notice thereof ("Tenant's Transfer Request") with copies of all related documents and agreements associated with the assignment or sublease, including without limitation, a description of the space Tenant proposes to assign or sublet, the anticipated effective date of the assignment or sublease, the financial statements of any proposed assignee or sublessee, at least forty-five (45) days prior to the anticipated effective date of the assignment or sublease. A condition to Landlord's consent to any Transfer of this Lease will be the delivery to Landlord of a true copy of the fully executed instrument of assignment, sublease, transfer or hypothecation, in form and substance reasonably satisfactory to Landlord. Landlord shall have a

period of thirty (30) days following receipt of Tenant's Transfer Request and all related documents and agreements to notify Tenant in writing of Landlord's election to disapprove the Sublease or Assignment. In any event, if Landlord fails to notify Tenant in writing of Landlord's election, Landlord shall be deemed to have disapproved such assignment or subletting, nor shall failure by Landlord to approve a proposed tenant shall cause a termination of this Lease. This Lease may not be assigned by operation of law. Any purported assignment or subletting contrary to the provisions hereof shall be void at Landlord's election and shall constitute an Event of Default hereunder.

15.3 Subject to Lease. Any assignments or sublets must be subject to and in accordance with the terms and conditions of this Lease, and must be consistent with the use requirements provided in Section 10 herein. In no event may any sublessee encumber this Lease. Tenant shall remain fully liable under this Lease and shall not be released from performing any of the terms, covenants and conditions of this Lease.

15.4 Indemnification. Tenant shall ensure that any sublessees or assigns through their subleases or assignment agreements shall indemnify, protect, defend, and hold harmless Landlord and its elected and appointed officers, officials, employees, volunteers, lenders, agents, contractors and each of their successors and assigns to the same extent that Tenant shall so indemnify Landlord as set forth in this Lease.

15.5 Relocation Waiver. Each sublease or rental agreement shall contain a relocation waiver in substantially the following form: "Relocation Waiver. Sublessee fully releases and discharges the City of Pacifica (in its capacity as Landlord and otherwise as a municipal corporation) from all and any manner of rights, demands, liabilities, obligations, claims, or cause of actions, in law or equity, of whatever kind or nature, whether known or unknown, whether now existing or hereinafter arising, which arise from or relate in any manner to the sale of the Property, Building, Premises, or the Subleased Premises, the full or partial termination of Sublessee's leasehold interest as permitted under this Sublease, or the relocation of Sublessee's business operations or the relocation of any person or persons, business or businesses, or other occupant or occupants located on the Subleased Premises, including, without limitation, the specific waiver and release of any right to any relocation benefits, assistance and/or payments under Government Code sections 7260 et seq. ("Relocation Assistance Law"), notwithstanding that such relocation assistance, benefits and/or payments may be otherwise required under the Relocation Assistance Law or other state or federal law. Sublessee acknowledges and agrees that the release and waiver set forth in this section is material consideration for Landlord's consent to the sublease by Sublandlord of the Subleased Premises to Sublessee on the terms set forth herein and that, but for this release and waiver, Landlord would not have consented to the sublease of the Subleased Premises by Sublandlord to Sublessee. It is hereby intended that the above release relates to both known and unknown claims that the Sublessee may have, or claim to have, against the Landlord or the City of Pacifica with respect to the subject matter contained herein or the events relating thereto. By releasing and forever discharging claims both known and unknown which are related to or which arise under or in connection with the items set out above, the Sublessee expressly waives any rights under California Civil Code section 1542, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT

TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

15.6 Liability. Landlord may, without waiving any rights or remedies, collect rent from the assignee, sublessee or occupant and apply the net amount collected to the Rent herein reserved and apportion any excess rent so collected in accordance with the terms of the preceding sentence. Tenant (and successor tenants) shall continue to be liable as a principal and not as a guarantor or surety to the same extent as though no assignment or subletting had been made. In addition, Tenant shall make all legally required disclosures to the proposed assignee or sublessee. Landlord may consent to subsequent assignments or subletting of this Lease or amendments or modifications to the Lease by assignees of Tenant without notifying Tenant or any successor of Tenant and without obtaining their consent; Landlord’s consent shall not be construed as relieving Tenant or any successor tenant of any liability or obligation under the Lease. No transfer shall be effective until there has been delivered to Landlord a counterpart of the transfer instrument in which the transferee agrees to be and remain jointly and severally liable with Tenant (and if applicable, successor tenants) for the payment of Rent pertaining to the Premises and for the performance of all the terms and provisions of this Lease relating thereto arising on or after the date of the transfer. No transfer will release Tenant of Tenant’s obligations under this Lease or alter the primary liability of Tenant to pay the rent and to perform all other obligations to be performed by Tenant hereunder. In the event of default by any transferee of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such transferee or successor. Notwithstanding any contrary provision of this Lease, if Tenant or any proposed transferee claims that Landlord has unreasonably withheld or delayed its consent to a proposed transfer or otherwise has breached its obligations under this Section, Tenant’s and such transferee’s only remedy shall be to seek a declaratory judgment and/or injunctive relief, and Tenant, on behalf of itself and, to the extent permitted by law, such proposed transferee waives all other remedies against Landlord, including without limitation, the right to seek monetary damages or to terminate this Lease.

16. ESTOPPEL, ATTORNMENMENT AND SUBORDINATION.

16.1 Estoppel. Within ten (10) days after request by Landlord, Tenant shall deliver an estoppel certificate duly executed (and acknowledged if required by any lender or purchaser) to any proposed mortgagee, purchaser or Landlord, in a form substantially similar to that requested by the proposed mortgagee, purchaser or Landlord. Tenant’s failure to deliver said estoppel certificate in such time period shall be an Event of Default hereunder and shall be conclusive upon Tenant that (a) this Lease is in full force and effect, without modification except as may be represented by Landlord; (b) there are no uncured defaults in Landlord’s performance and Tenant has no right of offset, counterclaim or deduction against Rent hereunder; and (c) no more than one month’s Base Rent has been paid in advance. In addition, except to the extent caused by Landlord’s sole or active negligence, Tenant shall indemnify and hold Landlord harmless from and against any and all damages, penalties, fines, taxes, costs, liabilities, losses and expenses (including, without limitation, reasonable attorneys’ fees and court costs) which Landlord may sustain or incur as a result of or in connection with Tenant’s failure or delay in delivering such

estoppel certificate. Landlord reserves the right to substitute a different form of estoppel certificate upon the request of any proposed mortgagee or purchaser. If any financier should require that this Lease be amended (other than in the description of the Premises, the Term, the Permitted Uses, the Rent or as will substantially, materially and adversely affect the rights of Tenant), Landlord shall give written notice thereof to Tenant, which notice shall be accompanied by a Lease supplement embodying such amendments. Tenant shall, within ten (10) days after the receipt of Landlord's notice, execute and deliver to Landlord the tendered Lease supplement,

16.2 Subordination. This Lease shall be subject and subordinate to all Leases, and the lien of all mortgages and deeds of trust which now or hereafter affect the Premises or the Property or Landlord's interest therein, and all amendments thereto, all without the necessity of Tenant's executing further instruments to effect such subordination; provided, however, that Tenant's rights hereunder shall not be disturbed, except in accordance with the terms and provisions of this Lease. If requested, Tenant shall execute and deliver to Landlord within ten (10) days after Landlord's request, whatever documentation that may reasonably be required to further effect the provisions of this section.

Notwithstanding anything to the contrary set forth herein, Tenant acknowledges and agrees that this Lease is subordinate and subject to any Lease, license, or other property right or permission the Landlord has obtained from the Commission authorizing the occupancy and use of the Property and the Premises by the Landlord. In the event of a conflict between this Lease and any lease, license, or other similar document between the Landlord and the Commission, the document between the Landlord and the Commission shall control.

16.3 Attornment. In the event of a foreclosure proceeding, the exercise of the power of sale under any mortgage or deed of trust or the termination of a Lease, Tenant shall, if requested, attorn to the purchaser thereupon and recognize such purchaser as Landlord under this Lease. The transferee shall not be liable for any acts, omissions or defaults of Landlord that occurred before the sale or conveyance, or the return of any security deposit except for deposits actually paid to transferee, and except as reduced as expressly provided for by operation of law.

17. RELOCATION.

17.1 Tenant fully releases and discharges Landlord (in its capacity as Landlord and otherwise as a municipal corporation) from all and any manner of rights, demands, liabilities, obligations, claims, or cause of actions, in law or equity, of whatever kind or nature, whether known or unknown, whether now existing or hereinafter arising, which arise from or relate in any manner to the sale of the Property, Building, or Premises, the full or partial termination of Tenant's leasehold interest as permitted under this Lease, or the relocation of Tenant's business operations or the relocation of any person or persons, business or businesses, or other occupant or occupants located on the Premises including, without limitation, the specific waiver and release of any right to any relocation benefits, assistance and/or payments under Government Code sections 7260 et seq. ("**Relocation Assistance Law**"), notwithstanding that such relocation assistance, benefits and/or payments may be otherwise required under the Relocation Assistance Law or other state or federal law. Tenant acknowledges and agrees that the release and waiver set forth in this section is material consideration for Landlord's lease of the Premises to Tenant on the terms set forth herein and that, but for this release and waiver, Landlord would not have

leased the premises to Tenant. It is hereby intended that the above release relates to both known and unknown claims that the Tenant may have, or claim to have, against the Landlord or the City of Pacifica with respect to the subject matter contained herein or the events relating thereto. By releasing and forever discharging claims both known and unknown which are related to or which arise under or in connection with the items set out above, the Tenant expressly waives any rights under California Civil Code section 1542, which provides:

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

18. NON-DISCRIMINATION COVENANT. Tenant herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this Lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, physical or mental disability or medical condition, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises herein leased nor shall the Tenant himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the Premises herein leased

19. MISCELLANEOUS.

19.1 General.

19.1.1 Entire Agreement. This Lease sets forth all the agreements between Landlord and Tenant concerning the Property, the Premises, the Building and the Public Area; and there are no agreements either oral or written other than as set forth herein.

19.1.2 Time of Essence. Time is of the essence of this Lease.

19.1.3 Attorneys' Fees. In any action or proceeding which either party brings against the other to enforce its rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party, including reasonable attorneys' fees, which amounts shall be a part of the judgment in said action or proceeding.

19.1.4 Severability. If any provision of this Lease or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this Lease and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.

19.1.5 Governing Law; Venue. This Lease shall be construed and enforced in accordance with the laws of the state of California without regard to principles of conflicts of

laws. Any action filed to enforce or interpret this Lease shall be filed and heard exclusively in the Superior Court of Monterey County or the federal district court for the Northern District of California.

19.1.6 No Option. Submission of this Lease to Tenant for examination or negotiation does not constitute an option to lease, offer to lease or a reservation of, or option for, the Premises; and this document shall become effective and binding only upon the execution and delivery hereof by Landlord and Tenant.

19.1.7 Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the successors and assigns of Landlord and, subject to compliance with the terms of Section 15, Tenant.

19.1.8 Third Party Beneficiaries. Nothing herein is intended to create any third-party benefit.

19.1.9 Memorandum of Lease. Landlord may elect to have either this either this Lease or a short form memorandum hereof recorded pursuant to the requirements of California Government Code section 37393. Tenant shall cooperate with Landlord in executing and acknowledging any such memorandum of lease. Upon the expiration or other termination of this Lease, Tenant shall immediately execute and deliver to Landlord a quitclaim deed to the Premises, Building, and/or Property, as required, in recordable form, designating Landlord as transferee or grantee.

19.1.10 No Agency, Partnership or Joint Venture. Nothing contained herein nor any acts of the parties hereto shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture by the parties hereto or any relationship other than the relationship of landlord and tenant.

19.1.11 Merger. The voluntary or other surrender of this Lease by Tenant or a mutual cancellation thereof or a termination by Landlord shall not work a merger and shall, at the option of Landlord, terminate all or any existing sub tenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such sub tenancies.

19.1.12 Headings. Section headings have been inserted solely as a matter of convenience and are not intended to define or limit the scope of any of the provisions contained herein.

19.2 Signs. All signs and graphics of every kind visible in or from public view or corridors, the exterior of the Premises, the exterior of the Building, or on monuments installed or caused to be installed by, for the benefit of, or at the request of Tenant ("Signs and Graphics") shall be subject to Landlord's prior written approval, shall be in keeping with the character of the Building and shall be subject to any applicable governmental laws, ordinances, and regulations and in compliance with Landlord's signage program, Tenant shall remove all such Signs and Graphics prior to the termination of this Lease. Such installations and removals shall be made in such manner as to avoid injury or defacement of the Premises; and Tenant shall repair any injury or defacement, including without limitation, discoloration caused by such installation or removal. Tenant shall be responsible for all fees, costs and expenses associated with installation and

removal of Signs and Graphics. In the event any such fees, costs or expenses are incurred by Landlord (whether directly or indirectly), Landlord shall deliver to Tenant an invoice, with reasonable supporting documentation, and Tenant shall reimburse Landlord for those amounts within fifteen (15) days after receipt of such invoice. Notwithstanding anything in this Lease to the contrary, Landlord is not required to provide Signs and Graphics beyond the standards set forth in the Rules and Regulations. Under no circumstances shall Tenant install or operate lighted signage.

18.3 Proprietary and Governmental Roles; Actions by City. Except where clearly and expressly provided otherwise in this Lease, the capacity of the City in this Lease shall be as owner and lessor of property only ("Proprietary Capacity"), and any obligations or restrictions imposed by this Lease on the City shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect its governmental capacities, including enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions pursuant to federal, state or local law ("Governmental Capacity"). When acting in its Proprietary Capacity, discretionary actions may be undertaken by the City Manager or other designees as designated by the City Manager to the extent otherwise provided for in this Lease. In addition, nothing in this Lease shall supersede or waive any discretionary or regulatory approvals required to be obtained from the City under applicable law, nor guarantee that the City, in its Governmental Capacity, will grant any particular request for a license, permit or other regulatory approval. Lessee understands that the City may grant or deny such request in its sole discretion and may impose such terms and conditions as it deems consistent with that discretion and applicable law.

19.4 Waiver. No waiver of any default or breach hereunder shall be implied from any omission to take action on account thereof, notwithstanding any custom and practice or course of dealing. No waiver by either party of any provision under this Lease shall be effective unless in writing and signed by such party. No waiver shall affect any default other than the default specified in the waiver and then such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant shall not be construed as a waiver of any subsequent breach of the same.

19.5 Limitation of Liability. The obligations of Landlord under this Lease are not personal obligations of the individual officials, officers, agents or employees of Landlord, and Tenant shall look solely to the Premises for satisfaction of any liability of Landlord and shall not look to other assets of Landlord nor seek recourse against the assets of the individual officials, officers, agents or employees of Landlord. Whenever Landlord transfers its interest, Landlord shall be automatically released from further performance under this Lease and from all further liabilities and expenses hereunder and the transferee of Landlord's interest shall assume all liabilities and obligations of Landlord hereunder from the date of such transfer.

19.6 Notices. All notices to be given hereunder shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or delivered by personal or courier delivery, or sent by facsimile (immediately followed by one of the preceding methods), to Landlord's Address and Tenant's Address, as applicable, as set forth in Item 1 and 2 of the Basic Lease Information, or to such other place as Landlord or Tenant may designate in a written

notice given to the other party. Notices shall be deemed served upon the earlier of receipt or three (3) days after the date of mailing.

19.7 Brokerage Commission. Landlord and Tenant each represents that neither has been represented by any broker in connection with this Lease, and that no real estate broker's commission, finder's fee or other compensation ("Commission") is due or payable. Tenant agrees to indemnify and hold harmless Landlord from any claims or liability, including reasonable attorneys' fees, in connection with a claim by any person for a Commission based upon any statement, representation or agreement of Tenant.

19.8 Authorization. Each individual or entity executing this Lease on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant and that such execution is binding upon Tenant.

19.9 Holding Over; Surrender.

19.9.1 Holding Over. If Tenant holds over the Premises or any part thereof after expiration or earlier termination of the Term, such holding over shall constitute a month-to-month tenancy, at a rent equal to one hundred thirty percent (130%) of the Base Rent in effect immediately prior to such holding over and shall otherwise be on all the other terms and conditions of this Lease. This section shall not be construed as Landlord's permission for Tenant to hold over. Acceptance of Rent by Landlord following expiration or termination shall not constitute a renewal of this Lease or extension of the Term except as specifically set forth above. If Tenant fails to surrender the Premises upon expiration or earlier termination of this Lease, Tenant shall indemnify and hold Landlord harmless from and against all loss or liability resulting from or arising out of Tenant's failure to surrender the Premises, including, but not limited to, any amounts required to be paid to any tenant or prospective tenant who was to have occupied the Premises after the expiration or earlier termination of this Lease and any related attorneys' fees and brokerage commissions.

19.9.2 Surrender. Upon the termination of this Lease or Tenant's right to possession of the Premises, Tenant will surrender the Premises, together with all keys, in good condition and repair, reasonable wear and tear excepted. Conditions existing because of Tenant's failure to perform maintenance, repairs or replacements shall not be deemed "reasonable wear and tear."

19.10 Joint and Several. If Tenant consists of more than one person, the obligation of all such persons shall be joint and several.

18.10 Compliance with Law. Tenant and its officers, employees, agents and assigns shall be bound by and comply with all applicable federal, state and local laws, statutes, ordinances, administrative orders, rules or regulations relating to its duties, obligations, rights and performance under the terms of this Lease.

19.11 Covenants and Conditions. Each provision to be performed by Tenant hereunder shall be deemed to be both a covenant and a condition. This Lease shall be construed as though the covenants between Landlord and Tenant are independent and not dependent. Tenant expressly waives the benefit of any statute to the contrary, and agrees that even if Landlord fails

to perform its obligations under this Lease, Tenant shall not be entitled to make repairs or perform any acts at Landlord's expense, or to any setoff against Rent or other amounts owing under this Lease against Landlord.

19.12 Force Majeure. A Party shall not be considered to be in default or breach of this Agreement, and shall be excused from performance or liability for damages to the other Party, if and to the extent it shall be delayed in or prevented from performing or carrying out any of the provisions of this Lease, arising out of or from any action, inaction, order, ruling, moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over any portion of the Property, over the construction anticipated to occur thereon or over any uses thereof, or by fire, flood, inclement weather, strikes, lockouts or other labor or industrial disturbance (whether or not on the part of agents or employees of either party hereto engaged in the construction of the Premises), civil disturbance, epidemic, pandemic, quarantine, order of any government, court or regulatory body claiming jurisdiction or otherwise, acts of terrorism, act of public enemy, war, riot, sabotage, blockade, embargo, failure or inability to secure materials, supplies or labor through ordinary sources by reason of shortages or priority, discovery of hazardous or toxic materials, earthquake, or other natural disaster, or any cause whatsoever beyond the reasonable control (*excluding financial inability*) of the party whose performance is required, or any of its contractors or other representatives, whether or not similar to any of the causes hereinabove stated.

Any Party claiming a Force Majeure event shall use reasonable diligence to remove the condition that prevents performance and shall not be entitled to suspend performance of its obligations in any greater scope or for any longer duration than is required by the Force Majeure event. Each Party shall use its best efforts to mitigate the effects of such Force Majeure event, remedy its inability to perform, and resume full performance of its obligations hereunder. A Party suffering a Force Majeure event ("Affected Party") shall notify the other Party ("Non-Affected Party") in writing ("Notice of Force Majeure Event") as soon as reasonably practicable specifying the cause of the event, the scope of commitments under the Agreement affected by the event, and a good faith estimate of the time required to restore full performance. Except for those commitments identified in the Notice of Force Majeure Event, the Affected Party shall not be relieved of its responsibility to fully perform as to all other commitments in the Agreement. If the Force Majeure event continues for a period of more than 90 days from the date of the Notice of Force Majeure Event, the Non-Affected Party shall be entitled, at its sole discretion, to terminate the Agreement.

For the avoidance of doubt, Force Majeure shall not include a party's financial inability to perform its obligations hereunder. Notwithstanding the preceding, upon the occurrence of a Force Majeure event, Landlord may, at Landlord's sole discretion, reduce the amount of rent due during the Force Majeure event, provided, however, that the amount of any such reduction shall be repaid in monthly installments during the remainder of the term of the Lease following the cessation of the Force Majeure event. Any unpaid balance at the end of the term of the Lease shall be due and payable in full. In the event of a Force Majeure event that limits or prevents Tenant's access to the Premises, Rent shall be abated for the duration of such Force Majeure event.

19.13 Rights to Terminate. Both Tenant and Landlord may terminate this Lease upon sixty (60) days' prior written notice, only on the grounds of a material default of the Lease. Notwithstanding the foregoing, Landlord may terminate this Lease absent a material default in the event that Landlord determines that the Premises require repair or restoration, Landlord may terminate this Lease upon sixty (60) days prior written notice to Tenant. Landlord shall also have the right to terminate this Lease upon thirty (30) days prior written notice to Tenant in the event that the California Coastal Commission (i) prohibits commercial activity on the Property or (ii) takes any other action that would materially conflict with Tenant's use of the Premises.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have executed this Lease as of the Effective Date,

City of Pacific Grove,
a California charter

Sunset Hospitality Group, Inc., a
California corporation

Name: _____
Bill Peake, Mayor

By: _____

Title: _____

By: _____

Title: _____

Attest:

By: _____
City Clerk

Approved as to form:

By: _____
City Attorney

EXHIBIT A
PREMISES DESCRIPTION AND DEPICTION



Approximate 270 square foot building located at the northeast corner of the intersection of Ocean View Boulevard and 17th Street, at the southerly end of Lover's Point Park and Beach, located in the City of Pacific Grove.

EXHIBIT B

RULES AND REGULATIONS

Tenant shall comply with the following Rules and Regulations. Landlord shall not be responsible to Tenant for the nonperformance of any of these Rules and Regulations.

1. Tenant shall not obstruct any sidewalks, halls, passages, exits, entrances, elevators, escalators or stairways of the Building. The halls, passages, exits, and entrances are not for the general public, and CITY shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of CITY would be prejudicial to the safety, character, reputation and interests of the Building and its tenants; provided, that nothing herein contained shall be construed to prevent such access to persons with whom any tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. Tenant and no employee, invitee, agent, licensee or contractor of Tenant shall go upon or be entitled to use any portion of the roof of the Building unless authorized by the City.
2. CITY will furnish Tenant, free of charge, two keys to each door lock in the Premises. CITY may impose a reasonable charge for any additional keys. Tenant may not make or have made additional keys, and Tenant shall not alter any lock or install a new additional lock or bolt on any door or window of its Premises. Tenant, upon termination of its tenancy, shall deliver to CITY the keys of all doors which have been furnished to, or otherwise procured by Tenant, and, in the event of loss of any keys, shall pay CITY the cost of replacing the same or of changing the lock or locks opened by such lost key if CITY shall deem it necessary to make such change.
3. IT cables and equipment, telephone lines and security systems shall not be installed in the Premises except with the approval and under the direction of CITY.
4. No furniture or equipment of any kind shall be brought into the Building without prior notice to CITY and all moving of the same into or out of the Building shall be done at such time and in such manner as CITY shall designate. Deliveries during normal office hours shall be limited to normal office supplies and other small items. No deliveries shall be made which impede or interfere with other tenants or the operation of the Building.
5. Tenant shall not use or keep in the Premises any hazardous materials, kerosene, gasoline or inflammable or combustible fluid or material other than those limited quantities necessary for the operation or maintenance of food service equipment. Tenant shall not use the Premises in a manner offensive or objectionable to CITY or other occupants of the Project by reason of noise, odors or vibrations, nor shall Tenant bring into or keep in or about the Premises any animals.
6. The normal hours of operation shall be 10:30 am until sunset, unless otherwise approved in writing by the CITY. CITY reserves the right to exclude from the Building between the hours of 7:00 p.m. and 6:00 a.m., or such other hours as may be established from time to time by CITY, and on legal holidays, any person unless that person is known to the person or employee in charge of the Building and has a pass or is properly identified. CITY shall not be liable for damages for any error with regard to the admission to or exclusion from the Building of any

person. Tenant shall be responsible for all persons for whom it requests passes and shall be liable to CITY for all acts of such persons.

7. Tenant shall close and lock all doors of its Premises and entirely shut off all water faucets or other water apparatus, and, except with regard to Tenant's computers and other equipment which reasonably require electricity on a 24-hour basis, all electricity, gas or air outlets before Tenant and its employees leave the Premises. Tenant shall be responsible for any damage or injuries sustained by other tenants or occupants of the Building or by CITY for noncompliance with this rule.

8. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed.

9. Tenant shall not sell, or permit the sale at retail, of newspapers, magazines, periodicals, theater tickets, or any other goods or merchandise to the general public in or on the Premises.

10. Tenant shall not install any radio or television antenna, loudspeaker or other device on the roof or exterior walls of the Building. Tenant shall not interfere with radio or television broadcasting or reception from or in the Building or elsewhere.

11. Except as expressly permitted in the Lease, Tenant shall not mark, drive nails, screw or drill into the partitions, window mullions, woodwork or plaster, or in any way deface the Premises or any part thereof, except to install normal wall hangings. Tenant shall repair any damage resulting from noncompliance under this rule.

12. Canvassing, soliciting and distribution of handbills or any other written material, and peddling in and around the Project or the Buildings are expressly prohibited, and each tenant shall cooperate to prevent same.

13. CITY reserves the right to exclude or expel from the Buildings any person who, in CITY's judgment, is intoxicated or under the influence of liquor or drugs or who is in violation of any of the Rules and Regulations of the Project.

14. All garbage and refuse disposal shall be made in accordance with directions reasonably issued from time to time by CITY.

15. The Premises shall not be used for (a) the storage, use, or sale of marijuana, (b) any repair, servicing, or storage of vehicles or (c) lodging or for manufacturing of any kind.

16. Tenant shall not use in any space any hand trucks except those equipped with rubber tires and side guards, or such other material-handling equipment as CITY may approve.

17. Tenant agrees that it shall comply with all fire and security regulations that may be issued from time to time by CITY, and Tenant also shall provide CITY with the name of a designated responsible employee to represent Tenant in all matters pertaining to such fire or security

regulations. Tenant shall cooperate fully with CITY in all matters concerning fire and other emergency procedures.

18. Tenant assumes any and all responsibility for protecting its Premises from theft, robbery and pilferage. Such responsibility shall include keeping doors locked and other means of entry to the Premises closed.

19. CITY may waive any one or more of these Rules and Regulations for the benefit of Tenant or any other tenant, but no such waiver by CITY shall be construed as a waiver of such Rules and Regulations in favor of Tenant or any other such tenant, nor prevent CITY from thereafter enforcing any such Rules and Regulations against any and all of the tenants in the Building.

20. These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements and conditions of any lease of premises in the Buildings.

21. CITY reserves the right to make such other and reasonable Rules and Regulations as, in its judgment, may from time to time be needed for safety, security, care and cleanliness of the Buildings and for the preservation of good order therein. Tenant agrees to abide by all such Rules and Regulations hereinabove stated and any additional rules and regulations which are adopted.

22. Tenant shall be responsible for the observance of all of the foregoing rules by Tenant's employees, agents, clients, customers, invitees or guests.

23. Tenant shall not without CITY's consent, which may be given or withheld in CITY's sole and absolute discretion, receive, store, discharge, or transport firearms, ammunition, or weapons or explosives of any kind or nature at, on or from the Premises.

24. EXCEPT WITH THE PRIOR WRITTEN PERMISSION OF CITY, NO OVERNIGHT PARKING IS PERMITTED AT THE PREMISES. A VIOLATION SHALL CONSTITUTE A DEFAULT HEREUNDER AND A DAILY FEE OF (\$100) SHALL BE CHARGED AS RENT FOR EACH VIOLATION.

25. SMOKING IS NOT PERMITTED ON THE PROPERTY EXCEPT IN SPECIFIC AREAS DESIGNATED BY CITY SHALL CONSTITUTE A DEFAULT HEREUNDER AS ALSO A FEE OF (\$50) SHALL BE CHARGED AS RENT FOR EACH VIOLATION.

EXHIBIT C
ONGOING MAINTENANCE SCHEDULE

EXHIBIT D
LIST OF LESSOR-OWNED FURNISHINGS

EXHIBIT E
INITIAL IMPROVEMENT SCHEDULE

EXHIBIT F
INSURANCE CERTIFICATE

LICENSE AGREEMENT

This License Agreement (“**Agreement**”) is made as of _____, 20__ (“**Effective Date**”) by and between the CITY OF PACIFIC GROVE, a California charter city (“**City**”), and the SUNSET HOSPITALITY GROUP, INC., a California corporation (“**Licensee**”). City and Licensee are at times referred to herein individually as “**Party**” and collectively as “**Parties**.”

RECITALS:

A. City owns that certain real property developed into a municipal park and beach commonly known as Lover’s Point Park and Beach, improved with a building consisting of approximately 270 square feet, located generally at the northeast intersection of Ocean View Boulevard and 17th Street, situated in the City of Pacific Grove, Monterey County, State of California (“**Property**”).

B. City and Licensee are in lease negotiations for a portion of the Property for the purpose of operating a restaurant/snack bar, which lease will be subject to approval by the City Council by ordinance.

C. Licensee has requested the right to use, during the negotiation and lease approval process, the 270 square foot building that is the subject of lease negotiations (“**Licensed Area**”), as described and depicted on Exhibit A, attached hereto and incorporated herein by this reference.

D. City and Licensee mutually acknowledge that a license is a form of limited, revocable permission to use property that does not constitute a sale, lease, encumbrance, or disposition of real property, and does not create or give rise to an interest in real property held by the licensee.

E. Licensee understands the limitations and risks inherent in a license and accepts such risks, including the risk of loss of any investment or expenditure.

F. For good and valuable consideration, receipt of which is acknowledged hereby, City is willing to permit Licensee to use the Licensed Area pursuant to the terms and conditions set forth in this Agreement.

AGREEMENT:

1. Recitals. The recitals set forth above are true and correct, and are incorporated by this reference herein as a substantive part of this Agreement.

2. Grant of License. City grants to Licensee a license (“**License**”) to use the Licensed Area for the permitted uses specified in Section 3 during the Term, together with the right of ingress and egress to and from the Licensed Area.

3. Uses. Licensee shall have the right to use the Licensed Area solely for the operation of a snack bar serving sandwiches, other light menu items, and beverages, and for no other uses without the prior written consent of City, which may be granted or withheld in City’s sole and absolute discretion. Licensee acknowledges that neither City nor any of City’s agents has made

any representation or warranty with regard to the Licensed Area with respect to its suitability for Licensee's purposes. Licensee, at Licensee's sole cost and expense, shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities now in force or which may hereafter be in force ("**Laws**"), which shall impose any duty upon Licensee with respect to the use, occupancy, or alteration of the Licensed Area. Licensee shall be responsible for obtaining any permit or business license required by any governmental agency permitting Licensee's use of the Licensed Area. Licensee shall comply with the Rules and Regulations, including observance of prohibited uses, attached hereto as Exhibit B and incorporated by reference, together with such reasonable additional rules and regulations as City may from time to time prescribe. Without limiting the foregoing, Licensee agrees not to use or permit use of the Licensed Area for any unlawful purpose, and not to commit or permit any waste or nuisance in or about the Licensed Area. Licensee will not use the Licensed Area in a manner that increases the risk of fire, cost of fire insurance or improvements thereon.

4. Term. The term of this Agreement ("**Term**") shall commence as of the Effective Date and shall continue until September 30, 2024, unless terminated earlier pursuant to Section 10.2 or Section 15.

5. License Fee. Licensee shall pay to City an monthly license fee of \$1,500 for the use of the Licensed Area.

6. Security. City shall have no obligation to provide security (including, but not limited to, lighting) for the Licensed Area. Any security for the Licensed Area shall be the sole responsibility of Licensee at Licensee's sole cost and expense.

7. Licensee Obligations.

7.1 Limit Use. Licensee shall ensure that the Licensed Area is used only for the purposes set forth in Section 3 hereof.

7.2 Damage. During the Term, Licensee shall be responsible to repair any damage to the Licensed Area arising from or connected to Licensee's use of the Licensed Area except only damages caused directly by City or its employees, invitees, agents, or contractors.

7.3 No Nuisance or Waste. Licensee shall not commit, suffer, or permit any nuisance or waste, environmental waste, damage, or destruction to occur in or about the Licensed Area and shall not permit the use of the Licensed Area for any illegal or immoral purpose. Licensee further agrees to comply with all State and federal laws and local ordinances concerning the Licensed Area and the use of the Licensed Area. During the Term Licensee shall comply with all federal, state, and local laws, regulations, and ordinances and the terms of this Agreement.

8. City's Right to Inspect. City, through its employees or agents, shall have the right to enter upon the Licensed Area at all reasonable times during the Term of this Agreement for the purpose of inspecting the same and making such repairs as City may deem desirable, upon providing Licensee with reasonable advance notice, whenever practicable.

9. No Transfer or Assignment. This License is personal to Licensee. Any attempt to transfer or assign this License shall be void and this License shall immediately terminate.

10. Hazardous Materials.

10.1 Compliance with Laws. Licensee shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept or used in or about the Licensed Area or Project by Licensee, its agents, employees, contractors or invitees.

10.2 Termination of License. City shall have the right to terminate the License in City's sole and absolute discretion in the event that (i) any anticipated use of the Licensed Area by Licensee involves the generation or storage, use, treatment, disposal or release of Hazardous Material in a manner or for a purpose prohibited or regulated by any governmental agency, authority or Hazardous Materials laws; (ii) Licensee has been required by any lender or governmental authority to take remedial action in connection with Hazardous Material contaminating the Licensed Area, if the contamination resulted from Licensee's action or use of the Licensed Area; or (iii) Licensee is subject to an enforcement order issued by any governmental authority in connection with the release, use, disposal or storage of a Hazardous Material on the Licensed Area.

10.3 Hazardous Materials Defined. The term "Hazardous Material(s)" shall mean any toxic or hazardous substance, material or waste or any pollutant or contaminant or infectious or radioactive material, including but not limited to, those substances, materials or wastes regulated now or in the future under any of the following statutes or regulations and any and all of those substances included within the definitions of "hazardous substances," "hazardous waste," "hazardous chemical substance or mixture," "imminently hazardous chemical substance or mixture," "toxic substances," "hazardous air pollutant," "toxic pollutant" or "solid waste" in the (a) "CERCLA" or "Superfund" as amended by SARA, 42 U.S.C. Sec. 9601 et seq., (b) RCRA, 42 U.S.C. Sec. 6901 et seq., (c) CWA, 33 U.S.C. Sec. 1251 et seq., (d) CAA, 42 U.S.C. 78401 et seq., (e) TSCA, 15 U.S.C. Sec. 2601 et seq., (f) The Refuse Act of 1899, 33 U.S.C. Sec. 407, (g) OSHA, 29 U.S.C. 651 et seq. (h) Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq., (i) USDOT Table (40 CFR Part 302 and amendments) or the EPA Table (40 CFR Part 302 and amendments), (j) California Superfund, Cal. Health & Safety Code Sec. 25300 et seq., (k) Cal. Hazardous Waste Control Act, Cal. Health & Safety Code Section 25100 et seq., (l) Porter-Cologne Act, Cal. Water Code Sec. 13000 et seq., (m) Hazardous Waste Disposal Land Use Law, Cal. Health & Safety Code Sec. 25220 et seq., (n) "Proposition 65," Cal. Health and Safety Code Sec. 25249.5 et seq., (o) Hazardous Substances Underground Storage Tank Law, Cal. Health & Safety Code Sec. 25280 et seq., (p) California Hazardous Substance Act, Cal. Health & Safety Code Sec. 28740 et seq., (q) Air Resources Law, Cal. Health & Safety Code Sec. 39000 et seq., (r) Hazardous Materials Release Response Plans and Inventory, Cal. Health & Safety Code Secs. 25500-25541, (s) TCPA, Cal. Health and Safety Code Secs. 25208 et seq., and (t) regulations promulgated pursuant to said laws or any replacement thereof, or as similar terms are defined in the federal, state and local laws, statutes, regulations, orders or rules. Hazardous Materials shall also mean any and all other substances, materials and wastes which are, or in the future become regulated under applicable local, state or federal law for the protection of health or the environment, or which are classified as hazardous or toxic substances, materials or wastes, pollutants or contaminants, as defined, listed or regulated by any federal, state or local law, regulation or order or by common law decision, including, without limitation, (i) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents, (ii) any petroleum products or fractions thereof,

(iii) asbestos, (iv) polychlorinated biphenyls, (v) flammable explosives, (vi) urea formaldehyde, and (vii) radioactive materials and waste.

10.4 City's Right to Perform Tests. At any time prior to the expiration of the License Term, City shall have the right to enter upon the Licensed Area in order to conduct tests of water and soil and to deliver to Licensee the results of such tests to demonstrate that levels of any Hazardous Materials in excess of permissible levels has occurred as a result of Licensee's use of the Licensed Area. Licensee shall be solely responsible for and shall indemnify, protect, defend and hold City harmless from and against all claims, costs and liabilities including actual attorneys' fees and costs arising out of or in connection with any removal, remediation, cleanup, restoration and materials required hereunder to return the Licensed Area and any other property of whatever nature to their condition existing prior to the appearance of the Hazardous Materials. The testing shall be at Licensee's expense if City has a reasonable basis for suspecting and confirms the presence of Hazardous Materials in the soil or surface or groundwater in on, under, or about the Licensed Area or the Project, which has been caused by or resulted from the activities of Licensee, its agents, employees, contractors or invitees.

10.5 Hazardous Materials Indemnity. Licensee shall indemnify, defend (by counsel reasonably acceptable to City), protect and hold the City harmless from and against any and all claims, liabilities, penalties, forfeitures, losses and/or expenses, including, without limitation, diminution in value of the Licensed Area or Project, damages for the loss or restriction on use of the rentable or usable space or of any amenity of the Licensed Area or Project, damages arising from any adverse impact or marketing of the Licensed Area or Project and sums paid in settlement of claims, response costs, cleanup costs, site assessment costs, attorneys' fees, consultant and expert fees, judgments, administrative rulings or orders, fines, costs of death or injury to any person or damage to any property whatsoever (including, without limitation, groundwater, sewer systems and atmosphere), arising from, or caused or resulting, either prior to or during the License Term, in whole or in part, directly or indirectly, by the presence or discharge in, on, under or about the Licensed Area or Project by Licensee, Licensee's agents, employees, licensees or invitees or at Licensee's direction, of Hazardous Material, or by Licensee's failure to comply with any Hazardous Materials Law, whether knowingly or by strict liability. Licensee's indemnification obligations shall include, without limitation, and whether foreseeable or unforeseeable, all costs of any required or necessary Hazardous Materials management plan, investigation, repairs, cleanup or detoxification or decontamination of the Licensed Area or Project, and the presence and implementation of any closure, remedial action or other required plans, and shall survive the expiration of or early termination of the License Term. For purposes of the indemnity provided herein, any acts or omissions of Licensee or its employees, agents, customers, subLicensees, assignees, contractors or subcontractors of Licensee (whether or not they are negligent, intentional, willful or unlawful) shall be strictly attributable to Licensee.

11. Improvements. Licensee may construct improvements upon the Licensed Area ("Improvements"), provided that said Improvements shall be approved in writing by City prior to the commencement of any work and provided further that all Improvements are completed in: (i) accordance with the plans and specifications approved by City, (ii) a good and workmanlike manner, (iii) conformity with all county, city, state and federal regulations, and any and all applicable permits. Licensee shall provide City with not less than ten (10) days' notice prior to the commencement of any work in, on or about the Licensed Area so that City, at City's option, may

post a Notice of Non Responsibility as provided by law. All work shall be completed by duly licensed and insured contractors, which contractors shall be acceptable to City. City makes no representation with respect to the applicability of public bidding procedures or requirements for the payment of prevailing wages hereunder.

11.1 Cost of Construction. All costs of construction shall be the sole responsibility of Licensee and shall be paid by Licensee when due. The Licensee shall conduct any construction program in such a manner so that no mechanic's liens or materialmen's liens shall be asserted, or purportedly asserted, against the Licensed Area or any improvements thereon. If any such lien shall be asserted, Licensee shall indemnify, defend and hold harmless City and the Licensed Area in accordance with Section 13, Indemnification, of this License. If requested by City, in City's sole discretion, Licensee shall post a surety bond to release the Licensed Area from any mechanic's liens recorded against the Licensed Area. Said bond shall be issued by a surety qualified to do business in California and shall be in an amount prescribed by law.

12. Insurance. Licensee shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Licensee's operation and use of the Licensed Area. The cost of such insurance shall be borne by the Licensee.

12.1 Minimum Scope And Limit Of Insurance. Coverage shall be at least as broad as:

12.1.1 Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

12.1.2 Workers' Compensation Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.

12.1.3 Property insurance against all risks of loss to any Licensee improvements or betterments, at full replacement cost with no coinsurance penalty provision.

If the Licensee maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Licensee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

11.2 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

11.2.1 Additional Insured Status: The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect

to liability arising out of work or operations performed by or on behalf of the Licensee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Licensee's insurance (at least as broad as ISO Form CG 20 10).

11.2.2 Primary Coverage: For any claims related to this contract, the Licensee's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Licensee's insurance and shall not contribute with it.

11.2.3 Legal Liability Coverage: The property insurance is to be endorsed to include Legal Liability Coverage (ISO Form CP 00 40 04 02 or equivalent) with a limit equal to the replacement cost of the Licensed Area.

11.2.4 Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, except with thirty (30) days' prior written notice to the City.

11.2.5 Waiver of Subrogation: Licensee hereby grants to City a waiver of any right to subrogation which any insurer of said Licensee may acquire against the City by virtue of the payment of any loss under such insurance. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

11.2.6 Acceptability of Insurers: Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.

11.2.7 Self-Insured Retentions: Self-insured retentions must be declared to and approved by the City. The City may require the Licensee to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

11.2.8 Verification of Coverage: Licensee shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before occupying the Licensed Area. However, failure to obtain the required documents prior to the work beginning shall not waive the Licensee's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time.

11.2.9 Special Risks or Circumstances: City reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

13. Indemnification. Licensee agrees to indemnify, defend (with counsel reasonably approved by City) and hold harmless the City and its authorized officers, employees, agents and volunteers, from any and all claims, actions, losses, damages, and/or liability arising out of this License from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the City on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Licensee's indemnification obligation applies to the City's "active" as well as "passive" negligence but does not apply to the City's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. The provisions of the Section shall survive the termination of this Agreement.

14. Covenants Against Discrimination. Licensee covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement.

15. Termination. This License may be terminated by either Party at any time, with or without cause, by providing written notice of termination to the other Party. Such termination will be effective thirty (30) days after such notice is received.

16. Duties upon Termination. Upon termination of this Agreement, Licensee, at its sole expense, shall be solely responsible to perform the following:

- a. Licensee shall clean and restore the Licensed Area to a condition similar to that existing prior to the Effective Date, subject to reasonable wear and tear.
- b. Remove all personal property on the Licensed Area.

Should Licensee fail to vacate the Licensed Area in a clean and undamaged condition and remove all personal property, City may arrange for the cleaning and/or repair of the Licensed Area and the removal of personal property, the cost of which will be immediately reimbursed by Licensee.

The Parties' obligations under Section 13 shall survive termination of this Agreement.

17. Proprietary and Governmental Roles; Actions by City. Except where clearly and expressly provided otherwise in this License, the capacity of the City in this License shall be as City and licensor of real property only ("Proprietary Capacity"), and any obligations or restrictions imposed by this License on the City, in its capacity as owner of the Licensed Area shall be limited to that capacity and shall not relate to, constitute a waiver of, supersede or otherwise limit or affect its governmental capacities, including enacting laws, inspecting structures, reviewing and issuing permits, and all of the other legislative and administrative or enforcement functions pursuant to federal, state or local law ("Governmental Capacity"). When acting in its

With a Copy to: Burke, Williams & Sorensen, LLP
2310 East Ponderosa Drive, Suite 25
Camarillo, CA 93010-4747
Phone: (805) 987-3468
Attn: Brian Pierik, City Attorney

20. GENERAL PROVISIONS.

20.1 Attorneys' Fees. In any action between the parties hereto, seeking enforcement of any of the terms and provisions of this Agreement, or in connection with the Licensed Area, the prevailing party in such action shall be entitled to have and to recover from the other party its reasonable attorneys' fees and other reasonable expenses in connection with such action or proceeding, in addition to its recoverable court costs.

20.2 Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California with regard to conflicts of laws principles or rules. Any legal action to interpret or enforce any term or conditions of this Agreement shall be brought in the Superior Court of California or the County of Ventura.

20.3 No Waiver. No delay or omission by either party in exercising any right or power accruing upon the compliance or failure of performance by the other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of a breach of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

20.4 Modifications and Amendment. In order to be effective, any modification or amendment of this Agreement shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of both parties.

20.5 Severability. If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provisions, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

20.6 Final Agreement. This Agreement contains the entire understanding and agreement of the parties with respect to the subject matter of this Agreement and all prior or contemporaneous agreements, understandings, representations and statements shall be of no force or effect.

20.7 Construction. This Agreement shall be construed according to its fair meaning as if prepared by all parties to this Agreement. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

20.8 Execution in Counterparts. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

20.9 Non-Liability of Officials or Employees. No officer, official or employee of City shall be personally liable for any obligations under the terms of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date set forth above.

Dated: _____, 2024

SUNSET HOSPITALITY GROUP, INC.
a California corporation

By: _____

Name:

Its:

By: _____

Name:

Its:

Dated: _____, 2024

CITY OF PACIFIC GROVE
a California charter city

By: _____

Name:

Its: City Manager

EXHIBIT A

LICENSED AREA



Approximate 270 square foot building located at the northeast corner of the intersection of Ocean View Boulevard and 17th Street, at the southerly end of Lover's Point Park and Beach, located in the City of Pacific Grove

EXHIBIT B

RULES AND REGULATIONS

Licensee shall comply with the following Rules and Regulations. Landlord shall not be responsible to Licensee for the nonperformance of any of these Rules and Regulations.

1. Licensee shall not obstruct any sidewalks, passages, exits, entrances, or stairways of the Property.
2. City will furnish Licensee, free of charge, two keys to each door lock in the Licensed Area. City may impose a reasonable charge for any additional keys. Licensee may not make or have made additional keys, and Licensee shall not alter any lock or install a new additional lock or bolt on any door or window of its Licensed Area. Licensee, upon termination of its tenancy, shall deliver to City the keys of all doors which have been furnished to, or otherwise procured by Licensee, and, in the event of loss of any keys, shall pay City the cost of replacing the same or of changing the lock or locks opened by such lost key if City shall deem it necessary to make such change.
3. IT cables and equipment, telephone lines and security systems shall not be installed in the Licensed Area except with the approval and under the direction of City.
4. No furniture or equipment of any kind shall be brought into the Licensed Area without prior notice to City and all moving of the same into or out of the Licensed Area shall be done at such time and in such manner as City shall designate. Deliveries during normal office hours shall be limited to normal office supplies and other small items.
5. Licensee shall not use or keep in the Licensed Area any hazardous materials, kerosene, gasoline or inflammable or combustible fluid or material other than those limited quantities necessary for the operation or maintenance of food service equipment. Licensee shall not use the Licensed Area in a manner offensive or objectionable to City or to members of the public and patrons of the Property by reason of noise, odors or vibrations, nor shall Licensee bring into or keep in or about the Licensed Area any animals.
6. City reserves the right to exclude from the Licensed Area between the hours of 7:00 p.m. and 6:00 a.m., or such other hours as may be established from time to time by City, and on legal holidays, any person unless that person is known to the person or employee in charge of the Licensed Area and has a pass or is properly identified. City shall not be liable for damages for any error with regard to the admission to or exclusion from the Licensed Area of any person. Licensee shall be responsible for all persons for whom it requests passes and shall be liable to City for all acts of such persons.
7. Licensee shall close and lock all doors of its Licensed Area and entirely shut off all water faucets or other water apparatus, and, except with regard to Licensee's computers and other equipment which reasonably require electricity on a 24-hour basis, all electricity, gas or air outlets

before Licensee and its employees leave the Licensed Area. Licensee shall be responsible for any damage or injuries sustained by others or by City for noncompliance with this rule.

8. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed.

9. Licensee shall not sell, or permit the sale at retail, of newspapers, magazines, periodicals, theater tickets, or any other goods or merchandise to the general public in or on the Licensed Area.

10. Licensee shall not install any radio or television antenna, loudspeaker or other device on the roof or exterior walls of the Licensed Area.

11. Except as expressly permitted in the License, Licensee shall not mark, drive nails, screw or drill into the partitions, window mullions, woodwork or plaster, or in any way deface the Licensed Area or any part thereof, except to install normal trade fixtures and wall hangings. Licensee shall repair any damage resulting from noncompliance under this rule.

12. Canvassing, soliciting and distribution of handbills or any other written material, and peddling in and around the Licensed Area are expressly prohibited, and each Licensee shall cooperate to prevent same.

13. City reserves the right to exclude or expel from the Licensed Area any person who, in City's judgment, is intoxicated or under the influence of liquor or drugs or who is in violation of any of the Rules and Regulations of the Project.

14. All garbage and refuse disposal shall be made in accordance with directions reasonably issued from time to time by City.

15. The Licensed Area shall not be used for (a) the storage, use, or sale of marijuana, (b) any repair, servicing, or storage of vehicles or (c) lodging or for manufacturing of any kind.

16. Licensee shall not use in any space any hand trucks except those equipped with rubber tires and side guards, or such other material-handling equipment as City may approve.

17. Licensee agrees that it shall comply with all fire and security regulations that may be issued from time to time by City, and Licensee also shall provide City with the name of a designated responsible employee to represent Licensee in all matters pertaining to such fire or security regulations. Licensee shall cooperate fully with City in all matters concerning fire and other emergency procedures.

18. Licensee assumes any and all responsibility for protecting its Licensed Area from theft, robbery and pilferage. Such responsibility shall include keeping doors locked and other means of entry to the Licensed Area closed.

19. City may waive any one or more of these Rules and Regulations for the benefit of Licensee, but no such waiver by City shall or prevent City from thereafter enforcing any such Rules and Regulations against Licensee.
20. City reserves the right to make such other and reasonable Rules and Regulations as, in its judgment, may from time to time be needed for safety, security, care and cleanliness of the Licensed Area and for the preservation of good order therein. Licensee agrees to abide by all such Rules and Regulations hereinabove stated and any additional rules and regulations which are adopted.
21. Licensee shall be responsible for the observance of all of the foregoing rules by Licensee's employees, agents, clients, customers, invitees or guests.
22. Licensee shall not without City's consent, which may be given or withheld in City's sole and absolute discretion, receive, store, discharge, or transport firearms, ammunition, or weapons or explosives of any kind or nature at, on or from the Licensed Area.
23. EXCEPT WITH THE PRIOR WRITTEN PERMISSION OF CITY, NO OVERNIGHT PARKING IS PERMITTED AT THE LICENSED AREA. A VIOLATION SHALL CONSTITUTE A DEFAULT HEREUNDER AND A DAILY FEE OF (\$100) SHALL BE CHARGED FOR EACH VIOLATION.
24. SMOKING IS NOT PERMITTED ON THE PROPERTY EXCEPT IN SPECIFIC AREAS DESIGNATED BY CITY SHALL CONSTITUTE A DEFAULT HEREUNDER AS ALSO A FEE OF (\$50) SHALL BE CHARGED AS RENT FOR EACH VIOLATION.

**AGREEMENT TO PROVIDE FIRE SERVICES
BETWEEN THE CITIES OF
MONTEREY AND PACIFIC GROVE**

THIS AGREEMENT is made and entered into this 26th day of June 2019, by and between the City of Monterey ("Monterey"), a municipal corporation, and the City of Pacific Grove ("Pacific Grove"), a municipal corporation (collectively referred to as "the Parties").

RECITALS

WHEREAS, since December 16, 2008, Pacific Grove has continuously contracted with Monterey for the provision of Fire Services within its jurisdiction; and

WHEREAS, the Parties desire to extend and continue such services on the terms and conditions stated herein; and

WHEREAS, it is the desire of the Parties to address, by this Agreement, all matters which are related to the services to be provided to Pacific Grove by Monterey; and

WHEREAS, this agreement is entered into pursuant to Government Code § 54981 and § 55632.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual advantages to be derived therefrom, and in consideration of the mutual covenants herein contained, it is agreed by and between the Parties hereto as follows:

**ARTICLE I
PROVISION OF SERVICES**

1.1 Scope of Services. Monterey shall provide Fire Services within the jurisdictional area of Pacific Grove. "Fire Services" shall mean those services identified in **Exhibit A**. In providing such services, Monterey shall administer the provisions of the Pacific Grove Fire Code and other Pacific Grove rules, regulations, policies and procedures as applicable to this Agreement.

1.2 Fire Chief. Monterey's Fire Chief shall serve as Fire Chief for Pacific Grove. The Fire Chief or his/her designee shall be immediately available for response and management of emergency incidents as necessary to provide incident command and coordination functions within the jurisdictional boundaries of Pacific Grove, including the authority to commit expenditure of Pacific Grove funds to mitigate an emergency incident consistent with the ordinances, policies and procedures of Pacific Grove.

1.3 Staffing. Monterey shall provide three (3) qualified Monterey fire personnel, meeting minimum federal and state-mandated training requirements for their respective classifications and responsibilities, assigned to the Pacific Grove fire station to provide Fire Services pursuant to this Agreement each and every day of the term of this Agreement. The three-person staff shall consist of a captain (or someone qualified to act in the capacity of a captain), an engineer (or someone qualified to



act in the capacity of an engineer), and a firefighter. At least one member of every shift shall be qualified as an Emergency Medical Technician.

(a) Additional qualified fire personnel may be assigned to the Pacific Grove station as determined by the Fire Chief or designee to provide supplemental Fire Services or staffing for special events, anticipated weather events, or other situations within the Pacific Grove Fire Services budget as that budget may be modified from year to year and operational capacity.

1.4 **Response Time.** Monterey acknowledges the existing Pacific Grove response performance standard for all emergency calls of five (5) minutes or less from receipt of an alarm at the responding station to the arrival of the first response team on scene ninety percent (90%) of the time. Monterey will strive to maintain that response standard with existing facilities and apparatus, and will provide a monthly response summary report to Pacific Grove by the 15th day of the following month delineating the response time for each incident within Pacific Grove.

ARTICLE II PAYMENT FOR SERVICES

2.1 **Direct Costs.** Pacific Grove shall compensate Monterey for all direct costs of providing the Fire Services, as set forth in **Exhibit B**. "Direct Costs" shall be the total actual personnel costs incurred by Monterey to perform the Fire Services, at the percentages stated in Exhibit B, and any and all other direct costs identified in Exhibit B. The Direct Costs are based on the staffing model agreed to in this Agreement and Pacific Grove shall not be invoiced for costs that exceed the costs of the staffing model, unless said staffing model is modified by the Parties in writing. Direct Costs shall not include Monterey's overhead costs, which shall be paid according to Section 2.3 of this Agreement.

2.2 **Overtime.** Pacific Grove shall compensate Monterey for all overtime costs reasonably and necessarily incurred. Monterey shall make its best efforts to limit the use of overtime and to avoid abuses of overtime. Monterey shall, at the written request of Pacific Grove's City Manager, investigate any overtime hours that appear excessive or unreasonable under the circumstances. Overtime shall only be invoiced as detailed in Exhibit B.

2.3 **Overhead Fee.** Pacific Grove shall pay a fee to Monterey as full compensation for all overhead and administrative costs (hereinafter the "Overhead Fee"). The Overhead Fee shall be a percentage of the Direct Costs as indicated in Exhibit B. Overhead shall include, but not be limited to, costs attributed to Command Staff, Inspection personnel and Administrative personnel.

2.4 **Reimbursable Costs.** Pacific Grove shall reimburse Monterey for actual costs incurred in providing the Fire Services, provided that Pacific Grove agrees to the costs in advance in writing or as provided herein. Pacific Grove shall not reimburse Monterey for any costs that are part of the Overhead Fee. Reimbursable Costs shall be divided into four categories:

(a) **Budgeted Costs.** The anticipated costs of providing Fire Services that Pacific Grove agrees to as part of the annual Fire Services budget. Monterey may incur Budgeted Costs



without a separate approval from Pacific Grove. The Budgeted Costs for the first year of the Initial Term shall be as set forth in Exhibit B.

(b) **Fire Prevention Plans Review Costs.** All Fire Prevention review of plans submitted for projects within Pacific Grove will be billed separately by Monterey to Pacific Grove in accordance with Monterey's published fee schedule in effect at the time. Services will be provided consistent with similar services provided in Monterey. Pacific Grove may bill the submitter of plans according to Pacific Grove's published fee schedule and will keep all fees collected.

(c) **Special Costs.** The costs that Monterey incurs at the special request of Pacific Grove, with Pacific Grove's advanced approval to incur the cost. Special Costs may include, but are not limited to, added costs for special event coverage, additional costs incurred due to anticipated weather events, or additional services that are beyond the scope of Fire Services.

(d) **Extraordinary Costs.** The costs that Monterey incurs unexpectedly as a result of an extraordinary event, such as disaster response or unforeseeable capital costs. Monterey shall only obtain Pacific Grove's advanced approval for extraordinary costs where such advanced approval is reasonably feasible under the circumstances. Monterey shall provide notice to Pacific Grove of all extraordinary costs as soon as reasonably feasible. Nothing in this Agreement shall prevent Monterey from fully and adequately responding to emergency events or mitigating potential costs to Pacific Grove.

2.5 Grant Funds/Insurance Proceeds/Other. Monterey shall not charge any costs to Pacific Grove where the costs may be offset by the use of grant funds, insurance proceeds, or any other third-party payments or reimbursements related to the Fire Services provided pursuant to this Agreement unless such payments or reimbursements are made directly to Pacific Grove, in which case Monterey shall be entitled to reimbursement and/or payment pursuant to the terms of this Agreement. Monterey shall not charge any costs to Pacific Grove that Monterey does not actually incur.

2.6 Annual Projections and Monthly Payments. Prior to March 15 of each year, Monterey shall provide Pacific Grove with a projected budget for Fire Services for the upcoming fiscal year. The budget shall identify all anticipated Direct Costs for the upcoming fiscal year, the Overhead Fee, all Budgeted Costs, and any Special Costs known at that time. Prior to April 15 of each year, Pacific Grove shall provide written acceptance to Monterey of the projected Fire Services budget or shall specify in writing the Budgeted Costs and/or Special Costs that Pacific Grove declines. Pacific Grove shall make a monthly payment to Monterey equal to one-twelfth (1/12) of the projected annual Direct Costs and the Overhead Fee, and one-twelfth (1/12) of agreed upon Budgeted Costs and/or Special Costs. The monthly payment shall be due on the 15th day of each month.

(a) Without limiting Monterey's duties under Article IV, Monterey shall promptly notify Pacific Grove in writing as soon as Monterey becomes aware of any changes in the anticipated direct costs (e.g., any increases in the labor rate). The notice shall indicate the changes to the monthly payment going forward.

(b) The annual budget projection shall include any anticipated major expenditures for the next three fiscal years, including but not limited to capital improvements needed for the Pacific Grove Fire Station, vehicle and apparatus replacement costs, and significant equipment replacement costs. A major expenditure shall be any expense that is expected to exceed \$5,000.

2.7 Review and Reconciliation of Costs. By November 1 each year, Monterey shall provide Pacific Grove with a full and detailed accounting of all costs duly incurred pursuant to this Agreement in the prior fiscal year. Monterey shall maintain books and records supporting all costs incurred and shall make any records related to the costs of providing the Fire Services available to Pacific Grove on request. Pacific Grove shall have the right to perform a full or partial audit of the costs at any time. Within 90 days of Monterey's delivery of the full and detailed accounting of all costs duly incurred in the prior fiscal year, Pacific Grove shall make full payment to Monterey of any outstanding deficiencies or Monterey shall return any outstanding overages.

2.8 Delinquency. In the event that Pacific Grove fails to pay the amount due to Monterey within thirty (30) days of the due date, or either party fails to make a timely payment for the annual reconciliation, then interest shall accrue to the unpaid balance at an annual equivalent rate equal to the Prior Year Penalty Factor, determined from the date the payment was originally due. The Prior Year Penalty Factor shall be the interest rate earned on Monterey's entire investment portfolio for the preceding Fiscal Year plus two percent (2%). For example, if the rate of return on Monterey's entire investment portfolio for the preceding Fiscal Year was four percent (4%) the Prior Year Penalty Factor will be six percent (6%).

2.9 Dispatch Services. Pacific Grove shall continue to contract directly with and pay Monterey County Emergency Communications Department for dispatch services, including but not limited to the following costs: (1) Dispatch services; (2) NGEN Infrastructure cost; (3) NGEN radio maintenance costs for all radios assigned to Pacific Grove; and (4) MDC charges for all mobile data computers assigned to Pacific Grove.

ARTICLE III PROPERTY USED FOR FIRE SERVICES

3.1 Fire Station. Monterey shall fully staff and use the Fire Station located at 600 Pine Avenue Pacific Grove, California, as its primary location for provision of Fire Services under this Agreement. Pacific Grove retains fee title to the Fire Station, but hereby grants Monterey a license for full use of the Fire Station during the term of this Agreement. Pacific Grove agrees to maintain the Fire Station in a safe, habitable, and serviceable condition at all times.

(a) Nothing herein shall in any way limit Pacific Grove's right to grant concurrent use of the Fire Station to the County, or any other party, for the provision of ambulance services. Monterey shall not interfere with the use of the Fire Station for ambulance services or hyperbaric chamber services.

(b) If Pacific Grove grants rights to a third party for concurrent use of the Fire Station for the provision of ambulance services, Pacific Grove shall take all reasonable steps to ensure

that the third party does not interfere with the use of the Fire Station for Fire Services.

3.2 Vehicles, Equipment and Apparatus. Pacific Grove grants a license to Monterey to use its command vehicles, equipment and apparatus to provide Fire Services to Pacific Grove, as well as to provide local mutual and automatic mutual aid, statewide master mutual aid and assistance by hire pursuant to the California Fire Assistance Agreement.

(a) For the duration of this Agreement, Monterey shall perform all necessary maintenance and repair of command vehicles as identified in Exhibit D. In the event that any command vehicle must be replaced, Monterey shall replace it and shall account for depreciation of said vehicle(s). In the event of termination of this Agreement, Pacific Grove shall purchase any vehicle replaced by Monterey for its depreciated value.

3.3 Inventory. Monterey shall inventory the vehicles, equipment and apparatus prior to the effective date of this Agreement. The initial inventory shall indicate any vehicles, equipment or apparatus previously identified as belonging to Pacific Grove that Monterey has removed or is no longer using for Pacific Grove. Monterey shall return the items to Pacific Grove, replace such items or credit Pacific Grove for their value. Monterey shall regularly review and update the inventory and submit the updated inventory list to Pacific Grove. If at any point during the term of this Agreement, Monterey has not performed a full and complete inventory review within the past year, Pacific Grove may demand that Monterey fully review and update the inventory list within a reasonable time, which shall either be 30 days or such other time agreed to by the parties. The inventory shall note the condition of the vehicle, equipment or apparatus and known damage beyond normal wear and tear. The inventory shall identify the anticipated replacement date for any vehicles, equipment or apparatus whose replacement cost is expected to exceed \$5,000.

(a) In addition to the inventory of vehicles, equipment and apparatus property, Monterey shall maintain an inventory of anticipated capital improvements for the Fire Station.

(b) Monterey will endeavor to use Pacific Grove vehicles, equipment and apparatus only in Pacific Grove as much as possible. Pacific Grove recognizes that it benefits from the larger fire services system that includes Monterey and all other contract agencies and that this benefit requires the movement of resources and equipment throughout the Monterey Fire service area. As such, Monterey is authorized to use Pacific Grove vehicles, equipment and apparatus in other jurisdictions it serves in the provision of fire services to the entire area served by Monterey as deemed operationally necessary by the Fire Chief or his/her designee.

3.4 Maintenance and Replacement. Pacific Grove shall bear all costs to maintain, repair and replace all facilities, vehicles (except with respect to command vehicles pursuant to Section 3.2(a)), equipment and apparatus owned by Pacific Grove and designated for use in the Fire Services. In the event that insurance covers any repair or replacement costs, Pacific Grove shall only bear the portion of the repair or replacement cost that exceeds the amount of payment received under the insurance coverage described in Section 7.4 of this Agreement. Pacific Grove shall not be required to maintain, repair or replace any item that is no longer needed for the Fire Services.

(a) Monterey shall notify Pacific Grove and request maintenance, repair or replacement of any facilities, vehicles, equipment or apparatus that have become damaged, obsolete, or inoperable. In the event that Pacific Grove fails to respond in a timely manner to notification pursuant to this section, Monterey may perform, or cause to be performed, the necessary maintenance, repair or replacement. Pacific Grove agrees to reimburse Monterey for any costs it so incurs. The cost shall be invoiced as a Reimbursable Cost.

(b) Monterey may, with Pacific Grove's prior approval, complete the purchase of any new or replacement equipment and invoice the costs as a Reimbursable Cost.

ARTICLE IV RELATIONS OF PARTIES

4.1 **Purpose.** The Parties recognize and acknowledge that Monterey's continued provision of Fire Services to Pacific Grove provides a mutual benefit to both parties. In an effort to continue to evolve the Fire Services in a manner that meets both parties' needs and expectations, the intent of this section is to develop mechanisms to ensure positive and thorough communications between the parties, while respecting the management autonomy of Monterey over the Fire Services.

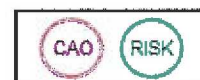
4.2 **Grant Management.** Monterey shall actively pursue grant opportunities that have the potential to decrease costs and/or increase service capabilities within Pacific Grove. Monterey shall notify Pacific Grove when potential opportunities arise, Monterey's plan for pursuing such opportunities, and how the opportunities will impact Pacific Grove. Monterey shall be responsible for applying for and managing grants. Pacific Grove will share in a proportionate cost of any third party or consultant grant management fees or a proportional share of costs associated with grants through which Pacific Grove receives a direct benefit. All grant application and administration costs performed by Monterey staff shall be considered as overhead and not subject to reimbursement by Pacific Grove.

4.3 Fire Service Updates.

(a) The Fire Chief shall provide a weekly update to the City Manager of Pacific Grove. The update shall contain information pertaining calls for service and incidents from the past week, use of duty hours in the past week, the training/readiness of personnel, regional activities and wildfire assistance efforts.

(b) Monterey shall host a quarterly meeting of all agencies that contract for fire services with Monterey to discuss issues affecting the services. The parties may mutually agree to suspend or skip a quarterly meeting, provided that the parties meet at least once annually. Pacific Grove acknowledges that attendance by agencies apart from Monterey shall be at the discretion of those agencies.

(c) The Fire Chief or designee shall provide notice, as soon as reasonably practicable under the circumstances, to the Pacific Grove City Manager or designee regarding any significant emergency or major storm events. As reasonably practicable, the Fire Chief or designee shall maintain regular communication with the Pacific Grove City Manager or relevant Pacific Grove Department Heads regarding emergency situations in Pacific Grove.



(d) Monterey shall routinely review service calls to look for patterns of over-use or abuse of services. The Fire Chief shall meet with the City Manager on a quarterly basis to review findings, determine appropriate responses, and actively participate in developing and implementing remedies.

4.4 Meet and Discuss Obligations.

(a) **Hiring of Fire Chief.** Prior to the hiring of a new Fire Chief, Monterey shall contact the City Manager of Pacific Grove to discuss the nature of the recruitment effort. To the extent feasible, Monterey shall use a hiring panel to perform initial interviews of potential candidates and shall invite the City Manager of Pacific Grove or designee to serve on the hiring panel.

(b) **Assignment of Command Personnel.** Prior to assigning any command personnel to Pacific Grove, including any interim or temporary Fire Chief, Monterey shall first offer to meet and discuss with the City Manager of Pacific Grove regarding the proposed assignment.

(c) **Labor Negotiations.** To the extent allowed by law, Monterey shall meet and discuss with the City Manager of Pacific Grove regarding any matter that may impact the cost or nature of service, including Monterey's negotiations with relevant labor groups or other personnel.

(d) **Nature of Obligation.** For purposes of this section, "meet and discuss" means that Monterey shall provide the City Manager with sufficient information related to a decision and with sufficient lead time to enable Pacific Grove to provide meaningful feedback and input. Monterey shall, in good faith, consider Pacific Grove's input on the matter but shall not be obligated to include Pacific Grove in any final decisions or negotiations. Pacific Grove shall maintain the confidentiality of any non-public information provided in the course of any meet and discuss.

(e) **Limitation.** This subsection shall not limit or restrict Monterey from taking any action related to an emergency situation or otherwise necessary to prevent immediate risk to health, safety, or welfare of the community.

4.5 Personnel. Personnel assigned to provide services in Pacific Grove shall meet the standards of conduct, respect and decorum required of all City of Monterey employees. These standards are aligned with Pacific Grove's expectations of representatives of their City in all interactions with the public and Pacific Grove staff. The Fire Chief shall meet with the City Manager upon request to provide information and explanation regarding these standards, and shall provide appropriate information when relevant regarding the City of Monterey's action plan for dealing with any employees that fail to meet these requirements.

4.6 Use of Duty Hours. During standard business hours of 8:00 AM to 5:00 PM, firefighters assigned to the Pacific Grove Fire Station shall present themselves as firefighter personnel and perform duties that benefit Pacific Grove. Firefighters shall wear clothing that identifies them as firefighter for

the department. Monterey shall develop a list of standard tasks to be regularly performed as part of the duty assignments, including but not limited to upkeep of the Fire Station, routine maintenance of all apparatus and vehicles, and performance of fire inspections. (refer to Monterey Fire Policy #232.101 *Work Schedule* as may be amended from time to time)

4.7 City Council Meetings. The Fire Chief or his/her designated command staff shall attend all regularly scheduled Pacific Grove City Council meetings unless excused by the Pacific Grove City Manager, as well as those Special City Council meetings identified by the City Manager.

4.8 Community Participation. Monterey and Pacific Grove recognize and acknowledge that the Fire Department is an important component of the Pacific Grove community. In addition to community programs required in the scope of services, Monterey shall participate as reasonably practicable in community events and other outreach and educational opportunities occurring in Pacific Grove.

4.9 Annual Review. Pacific Grove shall perform an informal review of Monterey's services each year. The informal review shall address, generally, whether the services are meeting or failing to meet the expectations of Pacific Grove. If failing to meet expectations, the informal review shall address potential corrective measures.

4.10 Fair and Equitable Adjustment. The City of Monterey shall inform the City of Pacific Grove when contract changes in other jurisdictions appear to require a fair and equitable adjustment. The City of Monterey is obligated to present and discuss contract agreements with other jurisdictions.

4.11 Reservation of Rights. Monterey reserves the right as an independent contractor to control the management of the services. Nothing herein shall be construed as waiving any rights of an independent contractor or creating any relationship other than an independent contractor relationship.

ARTICLE V TERM OF AGREEMENT

5.1 Initial Term. The initial term of this Agreement shall be from July 1, 2019, at 7:45 a.m., through July 1, 2027, at 7:45 a.m.

5.2 Automatic Renewal of Agreement for Five Year Terms. Upon the conclusion of the initial Term and of each Term thereafter, this Agreement shall be automatically extended for additional five (5) year Terms unless either Party gives the other Party written notice of its intent to allow this Agreement to lapse. If either Party does not wish for this Agreement to be automatically extended for an additional Term pursuant to this section, that Party shall give the other Party written notice of its intent to allow the Agreement to lapse no later than the June 30 immediately preceding the end of that Term of the Agreement. Written notification of intent to allow the Agreement to lapse shall be in the form of a Resolution of the respective City Council, and shall be provided to the City Manager of the affected city with duplicate notification to the Fire Chief.

5.3 Termination. Notwithstanding Section 5.1 or Section 5.2 of this Agreement, either party may terminate this Agreement by providing twelve (12) months' written notification to the other party,

and the term of this Agreement or any extension thereof shall be shortened accordingly. Written notification of termination shall be in the form of a Resolution of the respective City Council, and shall be provided to the City Manager of the affected city with duplicate notification to the Fire Chief. Upon termination of this Agreement, Monterey will deliver to Pacific Grove the real property, buildings, vehicles, equipment and apparatus described in Article III herein, reasonable wear and tear excepted.

5.4 Termination Penalty. A penalty fee of One Hundred Thousand Dollars (\$100,000) shall be assessed if the City of Pacific Grove elects to terminate this Agreement prior to six (6) years without cause. Monterey's acceptance of the termination fee shall constitute a waiver of all claims against Pacific Grove for termination.

ARTICLE VI CARRY-OVER PROVISIONS

6.1 Intent to Continue Services. In 2008, Pacific Grove ceased operating its own fire department and began contracting with Monterey. The intent of this Agreement is to continue this relationship and to continue carrying out terms agreed to as part of the transition of services, as set forth in the section. This section should be construed to be consistent with the original agreement between the parties.

6.2 Adjusted Transferred Leave Balance. Effective the start of this Agreement, the adjusted transferred leave balance is \$293,000. The adjusted transferred leave balance reflects 13.64% of the unpaid vacation, sick leave, and compensation time balances on May 31, 2019. The balance of sick leave has been adjusted to reflect 40% of the stated value to reflect Monterey's policy to pay sick leave at 40%. The value of the Adjusted Transferred Leave Balance will be reduced by the amount Pacific Grove pays Monterey each year to compensate Monterey for direct expenses attributable to annual leave payoffs and termination leave payoffs until such time as the Adjusted Transferred Leave Balance shown on Exhibit C is paid in full. Payments made by Pacific Grove for leave balance cash-outs for Fiscal Year 18/19 will be applied as a reduction to the \$293,000 balance. The Parties stipulate that Exhibit C, attached hereto and incorporated herein, contains an accurate accounting of the current outstanding Adjusted Transferred Leave Balance. Although the Original Agreement was terminated by Pacific Grove, the Parties stipulate that Pacific Grove was relieved of its obligation under the Original Agreement to pay the outstanding value of the Transferred Leave Balance and the terms herein supersede all prior agreements. The outstanding value of the Adjusted Transferred Leave Balance, if any, will be forgiven, if Pacific Grove terminates this Agreement at the completion of year 6 or later.

6.3 PERS Credit. Pacific Grove and Monterey retained their respective unfunded CalPERS pension liabilities at the time of the initial agreement. To recognize that Pacific Grove should not be charged for Monterey's share of pension costs, as well as the unfunded pension liability retained by Pacific Grove, Pacific Grove shall receive an annual PERS credit of \$57,800. This credit shall expire in Fiscal Year 2028/29. This is a continuation of the provisions included in the previous contract.



ARTICLE VII INDEMNIFICATION AND INSURANCE

7.1 Mutual Indemnification.

(a) Each Party shall indemnify, defend and hold harmless the other party, to the extent allowed by law and in proportion to fault, against any and all third-party liability for claims, demands, costs or judgments (direct, indirect, incidental or consequential) involving bodily injury, personal injury, death, property damage or other costs and expenses (including reasonable attorneys' fees, costs and expenses) arising or resulting from the acts or omissions of its own officers, agents, employees or representatives carried out pursuant to the obligations of this Agreement.

(b) Each Party shall protect, defend, indemnify and hold harmless the other party (including their officials, employees and agents as the same may be constituted now and from time to time hereafter) from and against any and all liabilities, losses, damages, expenses or costs, whatsoever (including reasonable attorneys' fees, costs and expenses), which may arise against or be incurred by the other Party as a result of or in connection with any actual or alleged breach of this Agreement by either Party.

(c) Notwithstanding the foregoing Sections 7.1(a) and (b), Pacific Grove shall remain liable for its own real and personal property damage (including, without limitation, autos, equipment, and apparatus, since it is retaining ownership of, insurable interests therein, and insurance on its property).

(d) Monterey shall be responsible for all third-party liability, including third party property damage, caused by the negligence or wrongful acts of Monterey officers, officials, and employees resulting from Monterey's operation of Pacific Grove vehicles and equipment, or resulting from maintenance performed by Monterey.

(e) Except for any duties either Party owes to the other pursuant to the provisions of this Agreement, nothing in this Agreement shall be construed to waive any legal protections or immunities available to the Parties under state or federal law.

(f) Accordingly, the Parties hereby expressly agree to waive the pro rata risk allocation contained in California Government Code Section 895.6.

7.2 Mutual Indemnification Obligations Survive Termination. As to activities occurring or being carried out in performance of this Agreement and during the term of this Agreement, the obligations created by Section 7.1 shall survive termination of this Agreement.

7.3 Immunity Preservation. Nothing in this Agreement shall be read as waiving or limiting any defense to claims of liability otherwise available to fire personnel, and/or public employees, such as the defense of qualified immunity. Nothing in this Agreement shall be read as intending to create or creating a higher duty of care on the part of either Pacific Grove or Monterey, or their officers, than



would otherwise exist under existing law and the involved Party's own policies, practices, and procedures.

7.4 Public Liability and Property Insurance.

(a) Each Party shall maintain in effect, at its own cost and expense, the following insurance coverage provided either through a bona fide program of self-insurance, commercial insurance policies, or any combination thereof:

i. Commercial general liability or public liability with minimum limits of \$5,000,000 per occurrence and \$10,000,000 in the aggregate.

ii. Auto liability including owned, leased, non-owned, and hired automobiles, with a combined single limit of not less than \$5,000,000 per occurrence and \$10,000,000 in the aggregate.

iii. If a Party employs others in the performance of this Agreement, that Party shall maintain Workers' Compensation in accordance with California Labor Code section 3700 with a minimum of \$1,000,000 per occurrence for employer's liability, for the duration of time that such workers are employed.

iv. All risk property insurance, excluding earthquake and flood, on all permanent property of an insurable nature in an amount sufficient to cover at least 100% of the replacement costs of said property. In any event, Pacific Grove shall maintain property insurance coverage for all the real property, buildings, equipment and apparatus described in the inventory required pursuant to Section 3.3 of this Agreement.

(b) All insurance required by this Agreement shall:

i. Be placed (1) with companies admitted to transact insurance business in the State of California and with a current A.M. Best rating of no less than A:VI or with carriers with a current A.M. Best rating of no less than A:VII; or (2) disclosed self-insurance with limits acceptable to the other Party.

ii. Provide that each Party's insurance is primary and non-contributing insurance to any insurance or self-insurance maintained by the other Party and that the insurance of the other Party shall not be called upon to contribute to a loss covered by a Party's insurance.

(c) Prior to July 1, 2019, each Party shall file certificates of insurance with the other Party evidencing that the required insurance is in effect.

7.5 Workers' Compensation.

(a) Monterey shall provide Pacific Grove an endorsement that its Workers Compensation insurer waives the right of subrogation against Pacific Grove, its officers,



officials, employees and volunteers for all claims on or after the effective start date of this Agreement during the tenure of said Agreement.

ARTICLE VIII MISCELLANEOUS

8.1 Amendments to Agreement. No part of this Agreement shall be altered or amended except by resolution of both City Councils.

8.2 Assignment. The rights and obligations of the Parties under this Agreement are not assignable and shall not be delegated without the prior written approval of the other party's City Manager.

8.3 Dispute Resolution. The Parties recognize that this Agreement cannot represent a complete expression of all issues which may arise during the performance of the Agreement. Accordingly, Monterey and Pacific Grove agree to meet and confer in good faith over any issue not expressly described herein to the end that Pacific Grove will obtain the best Fire Services possible under the most favorable economic terms and that Monterey will be fairly and adequately compensated for the services it provides hereunder.

(a) It is the Parties' intention to avoid the cost of litigation and to resolve any issues that may arise amicably if possible. To that end, the Parties agree to meet within ten (10) business days of a request made by the other party in writing to discuss the issues and attempt to resolve the dispute. If the dispute is not resolved after that meeting, the Parties agree to mediate the dispute within 30 calendar days of the meeting or as soon thereafter as possible. The mediator will be chosen by mutual agreement of the Parties. The costs of mediation will be borne by the Parties equally. No party may initiate litigation prior to the conclusion of mediation. In any action brought under this Agreement, the prevailing Party shall be entitled to recover its actual costs and attorney fees pursuant to California Civil Code section 1717.

8.4 Exhibits. The following Exhibits are attached hereto and incorporated as if fully set forth herein:

Exhibit A: Scope of Fire Services

Exhibit B: Cost Detail

Exhibit C: Leave Balance Detail

Exhibit D: Command Vehicles

8.5 Notices. All notices required or permitted hereunder shall be deemed sufficiently given if delivered by hand, electronic mail, or by United States mail, postage prepaid, addressed to the Parties at the addresses set forth below or to such other address as may, from time to time, be designated in writing.



To Pacific Grove:

City Manager
Pacific Grove City Hall
300 Forest Avenue
Pacific Grove, CA 93950

To Monterey:

City Manager
Monterey City Hall
580 Pacific Street
Monterey, CA 93940

IN WITNESS WHEREOF, the Parties execute this agreement hereto on the day and the year first written above.

CITY OF PACIFIC GROVE, A Municipal Corporation

By:  Date: 7/2/19
City Manager

CITY OF MONTEREY, A Municipal Corporation

By:  Date: 7/3/2019
City Manager

APPROVED AS TO FORM AND CONTENT:

By: 
City Attorney, City of Pacific Grove

EXHIBIT A

SCOPE OF SERVICES

Scope of Services

Monterey shall provide the following services:

1. Administration. Provide administrative responsibility and support for all fire, emergency and non-emergency services in Pacific Grove. Administration of fire services shall include the following:
 - a. Adequate supervision and staffing.
 - b. Program planning.
 - c. Budget projection and detailed accounting of actual expenses.
 - d. Delivery and documentation of all federal and state-mandated firefighter training.
 - e. Coordination of procurement of all operational supplies, services, and equipment.
 - f. Maintenance of segregated records related to Pacific Grove services and costs.
 - g. Representation at all regular City Council meetings, as well as those City staff meetings and/or community meetings deemed required by the City Manager
 - h. Transparency with Pacific Grove in management decisions affecting fire service delivery.
2. Incident Response. Delivery of all fire protection and emergency services within the incorporated limits of Pacific Grove, including responding to calls for fire suppression, emergency medical response (including Basic Life Support services), rescue services, hazardous materials, and all other emergency and non-emergency calls for service as received and dispatched by the Monterey County Department of Emergency Communications. A Chief Officer, or acting Chief Fire Officer, shall respond to all major incidents as determined by the Fire Chief.
3. Ocean Rescue. Provide marine rescue services, including maintenance of specialized qualifications and equipment. This does not include operation of the hyperbaric chamber. Monterey shall evaluate the costs and benefits of expanding its current marine operations program to include rescue swimmer and/or personal watercraft operational capabilities for policy-level consideration.
4. Fire Safety Inspections/Enforcement. Perform fire safety inspections of all state-mandated occupancies within Pacific Grove and issue related operational permits. Enforce other Municipal



Code provisions related to fire services, including but not limited to weed abatement (Chapter 12.12) and fireworks (Chapter 11.84), and hazardous material releases. Review of all development and building plans to ensure compliance with applicable fire and life safety codes and regulations, as well as inspection of fire protection and fire alarm systems for compliance with applicable codes and standards. Pacific Grove shall collect and retain any fees collected for issuance of building permits. To the maximum extent feasible, inspection shall be performed during standard duty hours.

5. Investigations. Investigate all fires to establish origin and cause and coordinate with the Pacific Grove Police Department on criminal investigations and prosecutions resulting therefrom. Provide fire investigation reports.
6. Major Disaster Response. In the event of a major disaster, provide support to the Pacific Grove's Emergency Operations Center (EOC) and coordinate with other agencies in the region in the event of a multi-jurisdictional disaster.
7. Mutual Aid. Pursuant to existing agreements, coordinate with other agencies regarding mutual aid services to Pacific Grove. Respond to requests for mutual aid or assistance-by-hire by other agencies pursuant to the California Statewide Mutual Aid Agreement or the California Fire Assistance Agreement.
8. Training. Maintain a continuous training program that corresponds to federal, state and local mandates, as well as evolving industry best practices and developments in emerging fire suppression and fire prevention techniques.
9. False Fire Alarms. Monterey will enforce the provisions of Chapter 6.02.040 (Schedule of fees and service charges) of the Pacific Grove Municipal Code relating to recovery of costs associated with responses to false fire alarms.
10. Community Outreach and Education. Offer on-going fire prevention, CPR and safety education programs for residents, schools, businesses, community associations, childcare providers, City staff and other members of the community, and/or community stakeholders
11. C.E.R.T. Provide a Community Emergency Response Team (C.E.R.T.) program, offering on-going training, support and coordination with volunteers such that the Fire Department is the primary point of contact and lead agency for the C.E.R.T. team in the community.
12. Fire Explorer Program. Monterey shall evaluate the costs and benefits of implementing and maintaining an active high school student Fire Explorer program for policy-level consideration.
13. Emergency Management. Monterey, through its Fire Chief, or his/her designee, shall be responsible for overseeing the Emergency Operations Center (EOC). The Fire Chief will work with Pacific Grove Department Heads to provide training in the concepts and principles of the



Standardized Emergency Management System (SEMS), National Incident Management System (NIMS), and the Incident Command System (ICS) to ensure Pacific Grove staff is up-to-date on required training. The Fire Chief will conduct a minimum of two Pacific Grove EOC drills per year. The Fire Chief will update the Pacific Grove Emergency Operations Plan to include approval by the California Office of Emergency Services and subsequent adoption by Pacific Grove. The Emergency Operations Plan (EOP) shall provide a comprehensive plan for managing any emergency situations, including natural disasters, homeland security emergencies, and technical fault incidents, and it shall contain a hazard analysis and a description of preparedness measures intended to protect the health and lives of community members and minimize damage. The EOP shall contain procedures for responding to emergency situations, and conducting recovery operations to restore the community after a disaster.

EXHIBIT B

COST DETAIL

Exhibit B - Direct Costs and Overhead Fee

	Qty	Total Cost	% Applied	Subtotal	Admin. / Overhead	Station	Mgmt. Div. Chief	Fire Prevention
HQ								
Fire Chief	1	-	-	-	✓			
Assistant Fire Chief	1	-	-	-	✓			
Division Chiefs	3	259,200	13.64%	106,036			106,036	
Deputy Fire Marshal	1	-	-	-	✓			
Fire Inspector - Part Time	1	35,132	100.0%	35,132				35,132
Administrative Analyst	1	-	-	-	✓			
Fire Prevention Tech	1	-	-	-	✓			
Executive Assistant	1	-	-	-	✓			
Station Staffing						1,749,207		
Captains	3	223,336	100.0%	670,008				
Engineers	3	192,242	100.0%	576,726				
Firefighter	3	167,491	100.0%	502,473				
Overtime/Out of Class Pay								
Station Crew (.45 FTE)	1	261,880	100.0%	261,880		261,880		
Division Chiefs	3	22,418	13.64%	9,171			9,171	
Deputy Fire Marshal	1	-	-	-	✓			
Other Personnel								
Leave Payoffs ⁽¹⁾	1	366,664	13.64%	50,000			50,000	
Medical Exams - DC	3	309	13.64%	126			126	
Medical Exams - Station	9	309	100.00%	2,781		2,781		
Random Drug Testing HQ	0	-	-	-	✓			
Random Drug Testing - Station	0	-	-	-	✓			
Tuition Reimbursements - DC	3	1,000	13.64%	409			409	
Tuition Reimbursements - Station	6	1,000	100.00%	6,000		6,000		
WC & UI - DC	3	7,253	13.64%	2,967			2,967	
WC & UI - Fire Inspection	0.5	7,253	100.00%	3,627				3,627
WC & UI Station	9	7,253	100.00%	65,277		65,277		
OPEB - DC	3	2,509	13.64%	1,026			1,026	
OPEB - Fire Inspector	0.5	2,509	100.00%	1,255				1,255
OPEB - Station	9	2,509	100.00%	22,581		22,581		
Total Personnel Expenses						2,107,726	169,736	40,013
Operating Expenses								
Vehicle operations								
Command vehicles O & M	1	10,631	13.64%	1,450			1,450	
Command Vehicles Depreciation	1	5,875	13.64%	801			801	
Prevention SUV O & M	1	3,325	13.64%	453	✓			-
Prevention SUV Depreciation	1	905	13.64%	123	✓			-
Risk Management	1	-	-	-	✓			
Personal Protective Equip.	1	126,992	13.64%	17,317		17,017	300	-
Information Technology								
Headquarters	1	-	-	-	✓			
Station	1	-	-	-	✓			
Supplies & Services HQ	1	-	-	-	✓			
HQ Office Space	1	-	-	-	✓			
Total Operating Expenses						17,017	2,551	-
Subtotal						2,124,743	172,287	40,013
Administrative Charges				10%		212,474	17,229	4,001
Grand Total						\$ 2,337,217	\$ 189,516	\$ 44,014
Subtotal Prior to Adjustments								\$ 2,570,748
PERS Credit								(57,800)
Total amount invoiced								\$ 2,512,948

Notes

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(1) Estimated for illustrative purposes only. Cost based on 13.64% of the actual leave payoffs for operational staff, with amount paid

Adjusted Leave Balance



EXHIBIT C

LEAVE BALANCE DETAIL

**EXHIBIT C - ADJUSTED LEAVE BANK
MONTEREY FIRE DEPARTMENT - OPERATIONS, BASE SALARY LEAVE BALANCE VALUES - 6/31/2019**

RATE	COMP TIME HOURS	SICK HOURS	VACATION HOURS	TOTAL HOURS	COMP TIME VALUE	SICK VALUE	VACATION VALUE	TOTAL VALUE
\$37.54	222.76	396.70	527.30	1,146.76	\$ 8,362	\$ 14,892	\$ 19,795	\$ 43,049
\$30.88	177.52	341.00	270.36	788.88	\$ 5,491	\$ 10,530	\$ 8,394	\$ 24,386
\$28.01	0.00	36.00	28.02	64.02	\$ -	\$ 1,008	\$ 785	\$ 1,793
\$35.75	26.63	86.90	81.20	192.73	\$ 916	\$ 3,071	\$ 2,903	\$ 6,890
\$35.75	38.79	439.00	114.90	592.69	\$ 1,387	\$ 15,694	\$ 4,108	\$ 21,189
\$30.88	280.84	372.00	102.88	755.72	\$ 8,672	\$ 11,487	\$ 3,175	\$ 23,334
\$37.54	48.31	685.00	214.40	947.71	\$ 1,738	\$ 25,715	\$ 8,049	\$ 35,502
\$57.79	12.25	1,181.50	435.41	1,629.16	\$ 708	\$ 67,123	\$ 25,162	\$ 92,993
\$30.88	342.93	223.00	30.86	596.69	\$ 10,587	\$ 6,886	\$ 353	\$ 17,726
\$45.61	119.40	2,102.55	65.01	2,286.96	\$ 5,446	\$ 95,897	\$ 2,965	\$ 104,308
\$34.05	276.23	355.75	502.40	1,134.38	\$ 9,406	\$ 12,112	\$ 17,107	\$ 38,625
\$47.55	28.50	363.29	482.95	854.74	\$ 1,355	\$ 17,274	\$ 22,013	\$ 40,642
\$34.05	87.07	304.25	195.03	586.35	\$ 2,865	\$ 10,360	\$ 6,641	\$ 19,866
\$34.05	154.09	145.75	150.40	450.24	\$ 5,247	\$ 4,963	\$ 5,121	\$ 15,331
\$43.44	127.57	1,238.25	77.55	1,443.37	\$ 5,542	\$ 53,790	\$ 3,369	\$ 62,700
\$34.05	64.99	526.25	543.98	1,135.22	\$ 2,213	\$ 17,919	\$ 18,523	\$ 38,655
\$43.44	67.59	1,106.55	64.28	1,238.42	\$ 2,936	\$ 48,069	\$ 2,792	\$ 53,797
\$34.05	103.07	562.50	186.40	851.97	\$ 3,510	\$ 19,153	\$ 5,666	\$ 28,329
\$34.05	85.60	60.00	80.25	225.85	\$ 2,234	\$ 2,043	\$ 7,733	\$ 7,009
\$43.44	86.89	24.75	139.23	250.87	\$ 3,775	\$ 1,075	\$ 6,348	\$ 10,898
\$37.54	176.95	421.75	385.48	984.18	\$ 6,718	\$ 15,832	\$ 14,471	\$ 37,021
\$43.44	72.65	631.22	138.76	842.63	\$ 3,156	\$ 27,420	\$ 5,941	\$ 36,517
\$34.05	58.70	24.00	140.65	223.35	\$ 1,999	\$ 817	\$ 4,789	\$ 7,605
\$47.55	65.90	1,195.14	72.15	1,333.19	\$ 3,131	\$ 56,829	\$ 3,431	\$ 63,391
\$43.44	41.61	513.25	384.58	939.44	\$ 1,808	\$ 22,256	\$ 16,706	\$ 40,600
\$37.54	239.12	204.00	527.30	970.42	\$ 8,977	\$ 7,658	\$ 19,795	\$ 36,430
\$37.54	33.11	816.25	156.94	1,006.30	\$ 1,243	\$ 30,642	\$ 5,892	\$ 37,777
\$37.54	185.95	876.00	347.15	1,419.10	\$ 7,356	\$ 32,685	\$ 13,032	\$ 53,073
\$43.44	171.07	2,152.05	526.70	2,649.82	\$ 7,431	\$ 93,484	\$ 22,880	\$ 123,795
\$43.44	279.33	1,522.00	527.30	2,328.63	\$ 12,091	\$ 66,116	\$ 22,908	\$ 101,115
\$28.01	0.00	36.00	28.02	64.02	\$ -	\$ 1,008	\$ 785	\$ 1,793
\$43.44	288.83	350.00	407.33	1,046.16	\$ 12,981	\$ 15,204	\$ 17,694	\$ 45,880
\$37.54	0.00	207.50	216.68	424.18	\$ -	\$ 7,790	\$ 8,134	\$ 15,924
\$30.88	270.64	348.00	222.86	841.50	\$ 8,364	\$ 10,716	\$ 6,882	\$ 25,962
\$37.54	196.58	2,156.00	493.30	2,615.88	\$ 6,253	\$ 81,011	\$ 18,518	\$ 105,769
\$37.54	453.87	456.80	116.90	1,027.57	\$ 17,038	\$ 17,148	\$ 4,386	\$ 38,572
\$29.40	219.07	201.00	144.10	564.17	\$ 6,441	\$ 5,909	\$ 4,237	\$ 16,587
\$37.54	6.70	136.51	329.06	472.27	\$ 252	\$ 5,125	\$ 12,353	\$ 17,729
\$34.05	375.07	163.50	289.51	828.08	\$ 12,771	\$ 5,567	\$ 9,556	\$ 28,193
\$45.61	603.09	3,091.15	542.95	4,237.19	\$ 27,507	\$ 140,387	\$ 24,764	\$ 192,658
\$37.54	282.92	1,066.50	527.30	1,876.72	\$ 10,621	\$ 39,661	\$ 19,795	\$ 70,077
\$37.54	171.07	984.00	98.45	1,253.52	\$ 6,422	\$ 36,939	\$ 3,695	\$ 47,056
\$45.61	121.59	1,780.16	416.21	2,297.96	\$ 5,546	\$ 80,281	\$ 18,983	\$ 104,810
\$34.05	182.40	402.50	325.28	910.18	\$ 6,211	\$ 13,705	\$ 11,076	\$ 30,992
\$29.40	288.46	184.00	144.10	616.56	\$ 6,481	\$ 5,410	\$ 4,237	\$ 16,127
\$34.05	6.53	475.50	216.61	700.64	\$ 222	\$ 16,191	\$ 7,444	\$ 23,857
\$43.44	124.18	1,556.75	326.65	2,007.58	\$ 5,394	\$ 67,625	\$ 14,190	\$ 87,210
\$34.05	229.45	524.00	503.30	1,256.75	\$ 7,813	\$ 17,842	\$ 17,137	\$ 42,792
\$37.54	97.95	87.25	123.20	298.40	\$ 3,302	\$ 3,275	\$ 4,625	\$ 11,202
\$34.05	459.57	1,227.25	497.62	2,184.44	\$ 15,646	\$ 41,788	\$ 16,944	\$ 74,380
\$45.61	142.02	1,258.90	410.70	1,811.62	\$ 6,478	\$ 57,418	\$ 18,732	\$ 82,628
\$30.88	183.82	205.25	161.36	550.43	\$ 5,676	\$ 6,338	\$ 4,983	\$ 16,997
\$30.88	334.07	283.00	174.86	791.93	\$ 10,316	\$ 8,121	\$ 5,400	\$ 23,837
\$28.01	0.00	36.00	28.02	64.02	\$ -	\$ 1,008	\$ 785	\$ 1,793
\$37.54	56.21	134.25	246.40	436.86	\$ 2,110	\$ 5,040	\$ 9,250	\$ 16,400
\$45.61	126.02	2,566.05	393.03	3,085.10	\$ 5,748	\$ 117,036	\$ 17,926	\$ 140,711
\$30.88	282.45	348.00	54.86	685.31	\$ 9,031	\$ 10,746	\$ 1,694	\$ 21,471
\$34.05	21.62	1,287.00	527.30	1,835.92	\$ 736	\$ 43,822	\$ 17,955	\$ 62,513
\$37.54	136.95	1,204.73	477.62	1,819.30	\$ 5,141	\$ 45,226	\$ 17,630	\$ 67,997
\$37.54	206.07	48.80	127.73	382.60	\$ 7,736	\$ 1,832	\$ 4,796	\$ 14,369
\$43.44	33.56	258.55	175.00	467.11	\$ 1,468	\$ 11,231	\$ 7,602	\$ 20,281
\$34.05	115.20	229.11	319.36	663.67	\$ 3,923	\$ 7,801	\$ 10,875	\$ 22,599
\$37.54	34.00	910.50	184.82	1,129.32	\$ 1,276	\$ 34,180	\$ 6,942	\$ 42,398
\$37.54	33.31	888.80	266.87	1,229.98	\$ 1,250	\$ 33,366	\$ 11,220	\$ 45,836
\$37.54	74.26	1,137.21	246.20	1,459.67	\$ 2,788	\$ 42,691	\$ 9,317	\$ 54,796
\$41.37	158.04	858.25	376.65	1,392.94	\$ 6,538	\$ 35,506	\$ 15,582	\$ 57,626
\$37.54	123.07	762.00	183.54	1,068.61	\$ 4,620	\$ 28,605	\$ 6,890	\$ 40,116
\$43.44	162.86	2,035.50	399.30	2,617.66	\$ 7,944	\$ 88,422	\$ 17,346	\$ 113,712
\$34.05	58.70	431.75	144.03	634.48	\$ 1,989	\$ 14,701	\$ 4,904	\$ 21,694
\$43.44	35.97	2,674.05	115.07	2,825.09	\$ 1,563	\$ 116,161	\$ 4,999	\$ 122,722
\$37.54	357.86	1,115.45	455.30	1,928.61	\$ 13,434	\$ 41,874	\$ 17,082	\$ 72,400
\$28.01	0.00	36.00	28.02	64.02	\$ -	\$ 1,008	\$ 785	\$ 1,793
\$45.61	95.13	1,288.85	204.24	1,588.22	\$ 4,339	\$ 19,560	\$ 3,315	\$ 33,214
\$37.54	33.00	1,059.24	353.19	1,445.43	\$ 1,239	\$ 39,764	\$ 13,259	\$ 54,261
\$37.54	39.08	1,348.05	198.12	1,585.25	\$ 1,467	\$ 50,606	\$ 7,137	\$ 59,210
\$34.05	47.88	854.75	104.08	1,006.71	\$ 1,630	\$ 29,104	\$ 3,544	\$ 34,278
\$34.05	25.90	105.50	194.45	325.85	\$ 882	\$ 3,592	\$ 6,621	\$ 11,095
\$30.88	283.20	293.00	196.36	772.56	\$ 8,128	\$ 9,048	\$ 6,064	\$ 23,239
\$34.04	147.57	654.25	518.00	1,319.82	\$ 5,023	\$ 22,271	\$ 17,633	\$ 44,927
	11,369.63	57,724.79	20,728.32	99,822.74	\$ 420,138	\$ 2,332,337	\$ 798,728	\$ 3,551,203

Percentage of Total	13.64%	13.64%	13.64%	13.64%	13.64%	13.64%	13.64%
Percentage applicable to PG (Adjusted Leave Bank)	1,550	7,872	2,827	12,249	\$ 57,292	\$ 318,04	\$ 84,255
Reduction for sick leave cash out at 40%	(4,723)	(4,723)	(4,723)	(4,723)	(190.82)	(190.82)	(80,828)
Adjusted Leave Bank	1,550	3,149	2,827	7,526	\$ 57,292	\$ 127,217	\$ 3,470,375



EXHIBIT D
COMMAND VEHICLES

Exhibit D
Command Vehicles Leased to Monterey by Pacific Grove

Make	Model	Year	VIN
Ford	Expedition	2005	1FMPU16575LB02053
Chevrolet*	Tahoe	2017	1GNSKFKC6HR187112

*Vehicle is replacement for 2003 Ford Expedition that was leased by Monterey under the initial Fire Services Agreement dated 10/8/2008 that was replaced by the City of Monterey under the provisions of that agreement. Monterey holds title to the new vehicle but it is covered under the provisions of leased command vehicles in Section 3.2(a).

**Amendment #1 to the
Agreement to Provide Fire Services
between the Cities of Monterey and Pacific Grove**

The Agreement to Provide Fire Services between the Cities of Monterey and Pacific Grove, initially authorized by Monterey City Council Resolution #19-118 and executed on June 26, 2019, ("Agreement") by and between the CITY OF MONTEREY, a municipal corporation (hereinafter "Monterey") and the CITY OF PACIFIC GROVE, a municipal corporation (hereinafter "Pacific Grove"), is hereby amended as follows:

1. Exhibit A to the Agreement is amended to add Advanced Life Support (ALS) services to the Incident Response section. Exhibit A, as amended, is attached hereto and replaces all prior versions of Exhibit A.
2. Exhibit B to the Agreement is amended to adjust the budget projection model to add the costs to provide Advanced Life Support (ALS) services. Exhibit B, as amended, is attached hereto and replaces all prior versions of Exhibit B.

This amendment is made pursuant to Section 8.1 Amendments to Agreement. All other remaining terms and conditions of the Agreement not specifically amended herein shall remain unchanged.

IN WITNESS WHEREOF, this Amendment is made and entered into this date:

_____.

APPROVED AS TO FORM:

By: _____
City Attorney, City of Pacific Grove

CITY OF MONTEREY, A Municipal Corporation

CITY OF PACIFIC GROVE, A Municipal Corporation

By: _____
Hans Uslar, City Manager

By: _____
Matthew Mogensen, City Manager

Date: _____

Date: _____

EXHIBIT A

SCOPE OF SERVICES

Scope of Services

Monterey shall provide the following services:

1. Administration. Provide administrative responsibility and support for all fire, emergency and non-emergency services in Pacific Grove. Administration of fire services shall include the following:
 - a. Adequate supervision and staffing.
 - b. Program planning.
 - c. Budget projection and detailed accounting of actual expenses.
 - d. Delivery and documentation of all federal and state-mandated firefighter training.
 - e. Coordination of procurement of all operational supplies, services, and equipment.
 - f. Maintenance of segregated records related to Pacific Grove services and costs.
 - g. Representation at all regular City Council meetings, as well as those City staff meetings and/or community meetings deemed required by the City Manager
 - h. Transparency with Pacific Grove in management decisions affecting fire service delivery.
2. Incident Response. Delivery of all fire protection and emergency services within the incorporated limits of Pacific Grove, including responding to calls for fire suppression, emergency medical response (including **Advanced** Life Support services), rescue services, hazardous materials, and all other emergency and non-emergency calls for service as received and dispatched by the Monterey County Department of Emergency Communications. A Chief Officer, or acting Chief Fire Officer, shall respond to all major incidents as determined by the Fire Chief.
3. Ocean Rescue. Provide marine rescue services, including maintenance of specialized qualifications and equipment. This does not include operation of the hyperbaric chamber. Monterey shall evaluate the costs and benefits of expanding its current marine operations program to include rescue swimmer and/or personal watercraft operational capabilities for policy-level consideration.
4. Fire Safety Inspections/Enforcement. Perform fire safety inspections of all state-mandated occupancies within Pacific Grove and issue related operational permits. Enforce other Municipal

Code provisions related to fire services, including but not limited to weed abatement (Chapter 12.12) and fireworks (Chapter 11.84), and hazardous material releases. Review of all development and building plans to ensure compliance with applicable fire and life safety codes and regulations, as well as inspection of fire protection and fire alarm systems for compliance with applicable codes and standards. Pacific Grove shall collect and retain any fees collected for issuance of building permits. To the maximum extent feasible, inspection shall be performed during standard duty hours.

5. Investigations. Investigate all fires to establish origin and cause and coordinate with the Pacific Grove Police Department on criminal investigations and prosecutions resulting therefrom. Provide fire investigation reports.
6. Major Disaster Response. In the event of a major disaster, provide support to the Pacific Grove's Emergency Operations Center (EOC) and coordinate with other agencies in the region in the event of a multi-jurisdictional disaster.
7. Mutual Aid. Pursuant to existing agreements, coordinate with other agencies regarding mutual aid services to Pacific Grove. Respond to requests for mutual aid or assistance-by-hire by other agencies pursuant to the California Statewide Mutual Aid Agreement or the California Fire Assistance Agreement.
8. Training. Maintain a continuous training program that corresponds to federal, state and local mandates, as well as evolving industry best practices and developments in emerging fire suppression and fire prevention techniques.
9. False Fire Alarms. Monterey will enforce the provisions of Chapter 6.02.040 (Schedule of fees and service charges) of the Pacific Grove Municipal Code relating to recovery of costs associated with responses to false fire alarms.
10. Community Outreach and Education. Offer on-going fire prevention, CPR and safety education programs for residents, schools, businesses, community associations, childcare providers, City staff and other members of the community, and/or community stakeholders
11. C.E.R.T. Provide a Community Emergency Response Team (C.E.R.T.) program, offering on-going training, support and coordination with volunteers such that the Fire Department is the primary point of contact and lead agency for the C.E.R.T. team in the community.
12. Fire Explorer Program. Monterey shall evaluate the costs and benefits of implementing and maintaining an active high school student Fire Explorer program for policy-level consideration.
13. Emergency Management. Monterey, through its Fire Chief, or his/her designee, shall be responsible for overseeing the Emergency Operations Center (EOC). The Fire Chief will work with Pacific Grove Department Heads to provide training in the concepts and principles of the

Standardized Emergency Management System (SEMS), National Incident Management System (NIMS), and the Incident Command System (ICS) to ensure Pacific Grove staff is up-to-date on required training. The Fire Chief will conduct a minimum of two Pacific Grove EOC drills per year. The Fire Chief will update the Pacific Grove Emergency Operations Plan to include approval by the California Office of Emergency Services and subsequent adoption by Pacific Grove. The Emergency Operations Plan (EOP) shall provide a comprehensive plan for managing any emergency situations, including natural disasters, homeland security emergencies, and technical fault incidents, and it shall contain a hazard analysis and a description of preparedness measures intended to protect the health and lives of community members and minimize damage. The EOP shall contain procedures for responding to emergency situations, and conducting recovery operations to restore the community after a disaster.

Exhibit B - Direct Costs and Overhead Fee

	Qty	Total Cost	% Applied	Subtotal	Admin. / Overhead	Station	Mgmt. Div. Chief	Fire Prevention
HQ								
Fire Chief	1	-	-	-	✓		-	
Assistant Fire Chief	1	-	-	-	✓			
Division Chiefs	3	379,095	13.64%	155,126			155,126	
Deputy Fire Marshal	1	-	-	-	✓			
Fire Inspector - Part Time	1	49,551	100.0%	49,551				49,551
Administrative Analyst	1	-	-	-	✓			
Fire Prevention Tech	1	-	-	-	✓			
Executive Assistant	1	-	-	-	✓			
Analyst - Part Time	1	4,000	100.0%	4,000			4,000	
Station Staffing						2,154,746		
Captains	3	281,698	100.0%	845,093				
Engineers	3	232,113	100.0%	696,338				
Firefighter	3	204,438	100.0%	613,314				
Paramedic Premium Pay ⁽¹⁾	4	11,141	100.0%	44,563		44,563		
Overtime/Out of Class Pay								
Station Crew	1	359,124	100.0%	359,124		359,124		
Division Chiefs	3	28,295	13.64%	11,578			11,578	
Deputy Fire Marshal	1	-	-	-	✓			
Other Personnel								
Medical Exams - DC	3	881	13.64%	360			360	
Medical Exams - Station	9	881	100.00%	7,926		7,926		
Random Drug Testing HQ	0	-	-	-	✓			
Random Drug Testing - Station	0	-	-	-	✓			
Tuition Reimbursements - DC	3	2,000	13.64%	818			818	
Tuition Reimbursements - Station	6	1,000	100.00%	6,000		6,000		
WC & UI - DC	3	18,633	13.64%	7,625			7,625	
WC & UI - Fire Inspection	0.5	18,633	100.00%	9,317				9,317
WC & UI Station	9	18,633	100.00%	167,698		167,698		
OPEB - DC	3	3,467	13.64%	1,419			1,419	
OPEB - Fire Inspector	0.5	-	100.00%	-				-
OPEB - Station	9	3,467	100.00%	31,201		31,201		
Paramedic Certification/Training ⁽¹⁾	4	828	100.00%	3,310		3,310		
Total Personnel Expenses						2,774,568	180,926	58,868
Operating Expenses								
Vehicle operations								
Command vehicles O & M	1	16,863	13.64%	2,300			2,300	
Command Vehicles Depreciation	1	18,581	13.64%	2,534			2,534	
Prevention SUV O & M	1	-	13.64%	-	✓			-
Prevention SUV Depreciation	1	-	13.64%	-	✓			-
Risk Management	1	-	-	-	✓			
Personal Protective Equip.	1	200,500	13.64%	27,348		20,513	6,835	-
Information Technology								
Headquarters	1	-	-	-	✓			
Station	1	-	-	-	✓			
Supplies & Services HQ	1	-	-	-	✓			
HQ Office Space	1	-	-	-	✓			
Total Operating Expenses						20,513	11,670	-
Subtotal						2,795,081	192,596	58,868
Administrative Charges				10%		279,508	19,260	5,887
Grand Total						\$ 3,074,589	\$ 211,856	\$ 64,754
Subtotal Prior to Adjustments								\$ 3,351,199
PERS Credit								(57,800)
Leave Payoffs	1	269,579	13.64%	36,771				36,771
Total amount invoiced								\$ 3,330,170

Notes

(1) Provides for 1 relief personnel

Scope of Services

The Contractor shall perform the necessary work for trees in public right-of-way and on all city-owned properties and facilities. This includes medians, parks, public facilities, city-owned properties, open spaces, street trees, easements, and the City's municipal golf course.

The scope of work covers all trees within the City of Pacific Grove's public right-of-way and on City facilities that are scheduled for or in need of maintenance or removal as determined by the City of Pacific Grove's Director of Public Works, the City Arborist, or their representative. The tasks include standard, priority, and emergency pruning, street clearance pruning, tree removal, emergency tree response, tree planting, staking installation, maintenance or removal, pest control, and fertilization.

Description of Required Services

1. The CONTRACTOR shall furnish all labor, materials, tools and equipment necessary to safely perform the work assigned. This equipment may include, but is not limited to, dump trucks, woodchippers aerial lifts, traffic control devices, chainsaws, personal safety gear, etc. The CONTRACTOR will clearly post the business name on all company vehicles. Employees of the CONTRACTOR must also be clearly identifiable as employees of that CONTRACTOR and be courteous to all persons and animals.
2. All work performed, methods, and equipment used shall be in conformance with the Prevailing State and Federal Occupational Safety and Health Act (OSHA). Costs from delays and losses due to operations not in conformance with these acts, specifications, or stoppages by OSHA inspectors or the designated representative, as a result of non-conformance, shall be solely borne by the CONTRACTOR.
3. CONTRACTOR must have on site a Certified Arborist or equal. CONTRACTOR must be available for inspection tours or future project site tours as requested by the City. CONTRACTOR must maintain daily records, including various maintenance activities, hours during which activities are performed, location of work, employees present at job sites, activities employees performed, materials and equipment uses.
4. CONTRACTOR will receive direction from the Director of Public Works, the City Arborist, or his/ her designee. The CONTRACTOR shall be solely responsible for traffic control. At a minimum, placement of adequate pre-warning and detour signs to control vehicular and pedestrian traffic shall be required.
5. The CONTRACTOR shall be responsible for obtaining and providing the City with a City of Pacific Grove Business License prior to commencement of Contract for Services.

6. The CONTRACTOR shall perform work during regular business hours, which is between the hours of 8:00 am and 5:00 pm, unless the project manager has specified otherwise by the means of written approval. Emergency work shall occur as necessary.

7. The CONTRACTOR shall provide the project manager at least forty-eight (48) hours prior to the commencement of any work to be performed, excluding emergency work. Emergency work completion must be communicated to project manager within forty-eight (48) hours.

8. The City will provide a representative to meet with the CONTRACTOR regularly on site to inspect CONTRACTOR's performance and conformance of job requirements for the project. It is the understanding of the City that the CONTRACTOR will provide competent and trained professionals with extensive knowledge of their trade. It is solely the responsibility of the CONTRACTOR to provide training for their employees, and all personal protective equipment to safely perform the duties of the project.

9. CONTRACTOR shall be available twenty-four (24) hours a day, 7 day a week for emergency response. For emergency work CONTRACTOR shall provide a twenty-four (24) hour emergency contact phone number. All requests to this phone number must be replied to within one (1) hour of the initial phone call, and crews must be dispatched within two (2) hours of initial contact by the City.

10. CONTRACTOR shall be responsible for removal and disposal of all debris in a legal and appropriate manner daily. All job sites need to be cleaned of all hazards and equipment, unless approval has been given from the City to store equipment at the job site, by the end of each business day.

11. All planting performed by the CONTRACTOR shall be conducted in a professional manner consistent with the City of Pacific Grove's Urban Forestry Standards and the American National Standards Institute (ANSI A300) Tree planting standards. All backfill material shall be completed using existing or surrounding soils. If existing soils are inadequate, backfill shall consist of topsoil, free of debris and foreign substances. All newly planted trees shall be maintained by the CONTRACTOR for ninety (90) days or until final acceptance by the City of Pacific Grove.

PRUNING/ REMOVAL SPECIFICATIONS

1. All tree pruning shall conform to the guidelines in the most recent edition of the American National Standards Institute (ANSI) for Tree Care Operations Pruning Standards and Best Management Practices.
2. All tree work shall be conducted in a professional manner and consistent with the accepted standards of the arboriculture industry, the City's Urban Forestry Standards, and the City's municipal code.
3. Removal of stumps shall be performed at the time of removal or within forty-eight hours (48) of the tree removal. CONTRACTOR is responsible for all underground

service utilities prior to grinding. If stump removal cannot be removed within the forty-eight (48) hour period, it is the responsibility of the CONTRACTOR to inform the City and ensure that the stump is left in a manner that poses no danger to the public. The use of barricades, cones, signs, or other devices may be required.

4. Stumps shall be ground to a minimum of six (6) inches below the surrounding grade and six (6) inches from the outer circumference of the stump. Unless specified by the City's Director of Public Works, the City Arborist or his/her representative.
5. Holes created from stump removal or grinding shall be backfilled the same day. Backfill material can either be soil or the wood chips resulting from the grindings. Holes shall be compacted and present no danger to the public and must be flush with existing grade.

2024 Request for Proposals - Tree Maintenance Services Public Right-of-Way and on City Owned Properties/Facilities

Item	Unit	Mario's Tree Service	Community Tree Service LLC	West Coast Arborists	Topes Tree Service	T&S Tree Service LLC
STREET CLEARANCE ACTIVITIES						
Residential Grid and Park/Facility Pruning (small, medium and large trees)	Per Hour	\$202 2 person crew	\$450 2-3 person crew	\$115 1 person crew	\$240 3 person crew	\$105 1 person crew
Adjust for comparison to 1 person crew	Per Hour	\$101.00	\$150.00	\$115.00	\$80.00	\$105.00
TRIMMING SERVICES						
0"-6" dbh	Per Hour	\$202.00	\$450.00	\$115.00	\$160.00	\$105.00
7"-12" dbh	Per Hour	\$202.00	\$450.00	\$115.00	\$160.00	\$105.00
13"- 18" dbh	Per Hour	\$202.00	\$450.00	\$115.00	\$160.00	\$105.00
19"-24" dbh	Per Hour	\$202.00	\$450.00	\$115.00	\$240.00	\$105.00
25" and over dbh	Per Hour	\$202.00	\$450.00	\$115.00	\$240.00	\$105.00
TREE REMOVAL SERVICES						
Complete Tree Removal Under 28" (including stump/roots)	Per DBH	\$35.00	\$34.00	\$115.00	\$59.00	\$125.00
Complete Tree Removal Over 28" (including stump/roots)	Per DBH	\$50.00	\$48.00	\$115.00	\$99.00	\$137.00
STUMP REMOVAL						
Stump Removal (including roots)	Per diameter inch	\$20.00	\$12.00	\$30.00	\$9.00	\$25.00
TREE PLANTING						
Tree Planting 15-gallon tree w/linear root barrier	Per Tree	\$225.00	\$700.00	\$375.00	\$250.00	\$275.00
Tree Planting 15-gallon tree w/out linear root barrier	Per Tree	\$180.00	\$605.00	\$350.00	\$200.00	\$195.00
Tree Planting 24" box tree w/linear root barrier	Per Tree	\$425.00	\$1,050.00	\$625.00	\$500.00	\$475.00
Tree Planting 24" box tree w/out linear root barrier	Per Tree	\$375.00	\$945.00	\$575.00	\$400.00	\$395.00
WATERING SERVICES						
Tree watering	Per Half Day	\$500.00	\$675.00	\$460.00	\$425.00	\$475.00
CONSULTING ARBORIST SERVICES						
Evaluation by certified arborist w/verbal recommendation	Hourly	\$175.00	\$135.00	\$195.00	\$70.00	\$125.00
Evaluation by certified arborist w/arborist report	Hourly	\$175.00	\$155.00	\$195.00	\$90.00	\$125.00
ADDITIONAL LABOR						
Certified Utility Arborist	Hourly	\$135.00	\$125.00	\$115.00	\$80.00	\$125.00
Certified Utility Line Clearance Trimmer	Hourly	\$135.00	\$105.00	\$115.00	\$80.00	\$125.00
Certified Utility Line Clearance Trainee	Hourly	\$135.00	\$95.00	\$115.00	\$80.00	\$125.00
Certified Crane Operator	Hourly	\$142.50	\$125.00	\$115.00	\$120.00	\$125.00
Certified Arborist, Crew Supervisor or Lead worker	Hourly	\$115.04	\$115.00	\$115.00	\$80.00	\$125.00
Tree Trimmer	Hourly	\$98.64	\$100.00	\$115.00	\$80.00	\$105.00
Tree Maintenance Worker	Hourly	\$89.34	\$90.00	\$115.00	\$80.00	\$105.00
Laborer	Hourly	\$89.34	\$85.00	\$115.00	\$70.00	\$105.00
ADDITIONAL EQUIPMENT						
50 ft. aerial lift truck	Hourly	\$127.50	\$75.00	\$40.00	\$25.00	\$75.00
100 ft. aerial lift truck	Hourly	\$146.50	\$105.00	\$40.00	\$25.00	\$75.00
5 yd. brush truck/chip truck	Hourly	\$115.25	\$75.00	\$40.00	\$25.00	\$55.00
5-6 yd. dump truck	Hourly	\$152.96	\$75.00	\$40.00	\$25.00	\$55.00
Skip loader	Hourly	\$125.00	\$75.00	\$40.00	\$10.00	\$75.00
Roll off box	Hourly	\$100.00	\$20.00	\$40.00	\$50.00	\$75.00
Disc chipper equivalent to Vermeer 1250	Hourly	\$85.00	\$45.00	\$40.00	\$25.00	\$55.00
EMERGENCY CALLOUTS						
Tree Emergency call out – after hours and/or weekends (3 crew members, chipper, chipper truck)	Hourly	\$606.04	\$525.00	\$450.00	\$410.00	\$475.00
Tree Emergency call out – after hours and/or weekends (4 crew members, chipper, chipper truck and crane)	Hourly	\$875.00	\$890.00	\$600.00	\$600.00	\$975.00
ADDITIONAL PROPOSAL COTENT						
Years of Experience	N/A	15 Years	Unspecified number of years. LLC established 2 years ago	51 years	45 years	10+ years Business Established 2 years ago

2024 Request for Proposals - Tree Maintenance Services Public Right-of-Way and on City Owned Properties/Facilities

Item	Unit	Mario's Tree Service	Community Tree Service LLC	West Coast Arborists	Topes Tree Service	T&S Tree Service LLC
Certifications	N/A	*ISA Certified Arborist *ISA Certified Tree Worker Climber Specialist *Line Clearance Tree Trimmer *Journey worker *Pest Control License *Minority Business Enterprise *Certified Flagger *Certified Tree care Safety Professional (TCIA)	*ISA Tree Risk Assessment Qualification *Certified Arborist *ISNETWORLD Member Contractor	*ISA Tree Risk Assessment Qualified *ISA Certified Utility Arborist Specialist *WCA Certified Utility Line Clearance Workers *ISA Tree Worker Climber *ISA Certified Utility Specialist *TCIA Certified Tree care Safety Professional *ISA Municipal Specialists *NCCCO Certified Crane Operators *Wildlife Aware/Certified by WTI *Qualified Applicators *WCA Qualified Tree Worker *ISA Certified Tree Worker	*ISA Certified Arborist *ISA Certified Master Arborist *ISA Certified Tree Worker *ISA Qualified Tree Risk Assessor *Certified Tree care Safety Professional (Tree Care Industry Association) *Certified Tree Worker Climber Specialist *Ariel Lift Certified *Pest Control Applicator *NCCCO Certified Crane Operator *Two employees in the process of becoming Municipal Arborists *OSHA Trained in Safety *ISNETWORLD Member Contractor *Golden Shovel Standard	*ISA Certified Arborist *Certified Utility Arborist *Certified Line Clearance Tree Trimmers
Office Locations	N/A	*Main Office: Corona, CA *Yard: Stockton, CA	*Main Office: Royal Oaks, CA *Main Yard: Pajaro, CA *Satellite Yards: Watsonville, Felton and Orinda, CA	*Main Office: Anaheim, CA *Closest Regional Office: San Jose, CA	*Main Office: Carmel, CA *Yard: Monterey, CA Satellite Office: Salinas, CA	*Main Office: Bakersfield, CA *Yard: Bakersfield, CA
Emergency Response Plan	N/A	*No explicit mention of Emergency Response Plan *Proposal mentioned having employees stay in the City with support from other offices	*Project Manager will be available 7 days/week, 24hrs to schedule emergency response	*1-800 number provided. Appears to be the same number for all clients *Emergency Response Timeline: 1-3 hours to respond/24 hours for completion	*Contact Andy or Andrew (owners) for emergency dispatch *~20-30 minute response time	*Emergency protocol stipulated *Crews available 24/7 for dispatch. *Responding personnel includes certified arborists & tree care specialists *emergency response included feedback loop to the City
Number of Employees	N/A	200	160	1200	31	15
Additional Callouts	N/A	*Relevant Experience: Southern California Edison, LA Dept. of Water & Power, Caltrans, PG&E	*Relevant Experience: City of Santa Cruz, Santa Cruz Regional Transportation Commission, San Mateo County Resource Conservation District *Explicit mention that time is billed starting when employees leave the yard in Royal Oaks through when they return to the yard. *RFP states "to meet the on-site [arborist] requirement the lead worker is equivalent to the arborist."	*Tree Care Industry Association Company Wide accreditation *Experience: 350 California & Arizona Municipalities *Sales volume \$190M annually *Proposal recommends equal distribution of work throughout the year *Workflow timelines: Grid pruning within 30 days, removal within 15 days, planting within 15 days *large fleet of equipment	*ISA Certified Site Supervisor or Foreman *Extensive Local Experience - On-call Tree Service Contractor for City of Monterey, Monterey County, City of Carmel, and City of Pacific Grove *In house training to ISA standards - line clearance, knot tying, climbing etc. *Prompt emergency response times	*Relevant Experience: City of Chico *Indicated capability to establish satellite offices as required by project demands