



**CITY OF PACIFICA  
CITY COUNCIL AGENDA**

**Zoom Meeting:** <https://zoom.us/j/92690013329>

Dial-in: 1-669-900-6833 | WebinarID: 926 9001 3329

Alt 1: <https://www.cityofpacifica.org/LiveStream>

Alt 2: Cable Channel 26

Mayor Mary Bier  
Mayor Pro Tem Tygarjas Bigstyk  
Councilmember Mike O'Neill  
Councilmember Sue Vaterlaus  
Councilmember Sue Beckmeyer

**January 24, 2022 (MONDAY)**

[www.cityofpacifica.org](http://www.cityofpacifica.org)

***CORONAVIRUS DISEASE (COVID-19) NOTICE***

THIS MEETING WILL BE CONDUCTED PURSUANT TO THE PROVISIONS OF GOVERNMENT CODE SECTION 54953 (AS AMENDED BY AB 361) WHICH AUTHORIZES TELECONFERENCED MEETINGS UNDER THE BROWN ACT DURING CERTAIN PROCLAIMED STATES OF EMERGENCY. THE GOVERNOR OF CALIFORNIA PROCLAIMED A STATE OF EMERGENCY RELATED TO COVID-19 ON MARCH 4, 2020. THIS TELECONFERENCED MEETING IS NECESSARY SO THAT THE CITY CAN CONDUCT ESSENTIAL BUSINESS AND IS PERMITTED UNDER GOVERNMENT CODE SECTION 54953 IN ORDER TO PROTECT PUBLIC HEALTH AND SAFETY OF ATTENDEES.

Consistent with Government Code Section 54953, this City Council Meeting will be held via teleconference only and will not be physically open to the public. City Councilmembers and staff will teleconference into the meeting by audio and/or video. The meeting will be conducted via Zoom.

Below is information on how the public may observe and participate in the meeting.

**To Observe the Meeting:**

- To access the meeting by computer / smartphone, go to:  
<https://zoom.us/j/92690013329>
- To dial-in via phone:  
Dial: 1-669-900-6833      And enter Webinar ID: 926 9001 3329

**To Participate in the Meeting by Providing Public Comment:**

- **During the Meeting:** Live verbal public comments may be made by members of the public joining the meeting via Zoom. Zoom access information is provided above. Use the "raise hand" feature (for those joining by phone, press \*9 to "raise hand") during the public comment period for the agenda item you wish to address. The City Clerk will call on people to speak by name provided or last 4 digits of phone number for dial-in attendees. Please clearly state your full name for the record at the start of your public comment.
- **Before the Meeting:** Written public comments for the record may be submitted in advance by 12:00 p.m. on the meeting date by email to: [publiccomment@pacificagov](mailto:publiccomment@pacificagov) and will be made part of the written record but will not be read verbally at the meeting. Written public comments submitted by email should adhere to the following:
  - Clearly indicate the **Agenda Item No.** or specify **"Oral Communications"** in the

**Subject Line** for items not on the agenda

- Include the submitter's **full name**

Written public comments received by 12:00 p.m. on the meeting date will be provided in their entirety to the City Council prior to the meeting and will be made part of the written record but will not be read verbally at the meeting. Written public comments will be posted to the City's website for review prior to the meeting.

**Alternative Ways to Watch the Meeting:**

The primary method for observing and participating in the meeting is via the zoom link or phone number listed above, however, there are alternative ways to watch the meeting:

- Watch on TV on local cable channel 26
- Watch a Live Stream of the meeting by following <https://www.cityofpacificca.org/LiveStream> or [www.pacificcoast.tv](http://www.pacificcoast.tv)

Note: The methods of observing the meeting or providing public comments may be altered or the meeting may be cancelled, if needed. You may check on the status of the meeting by visiting the City's website at [www.cityofpacificca.org](http://www.cityofpacificca.org) for any updates or changes, should they occur.

**7:00 PM OPEN SESSION**

Call to Order

Roll Call

**Reading of Land Acknowledgment**

The City of Pacifica acknowledges that we occupy the unceded ancestral homeland of the Ramaytush Ohlone peoples, who are the original inhabitants of the San Francisco Peninsula. We honor the Ramaytush Ohlone peoples for their enduring commitment to Mother Earth. As the Indigenous protectors of this land and in accordance with their traditions, the Ramaytush Ohlone have never ceded, lost, nor forgotten their responsibilities as the caretakers of this place, as well as for all peoples who reside in their traditional territory. We affirm their sovereign rights as First Peoples and wish to pay our respects to the ancestors, elders, and relatives of the Ramaytush Ohlone peoples.

**Salute to the Flag led by Mayor pro Tem Bigstyk**

**SPECIAL PRESENTATIONS**

- A. Proclamation - Human Trafficking Prevention Month
- B. San Mateo County Libraries Annual Report

**CONSENT CALENDAR**

**Persons wishing to address the Council on any Consent Calendar item may do so at this time. Each speaker will be allotted three minutes.**

**Items on the consent calendar will be adopted by one motion unless a Councilmember requests, before the vote on the motion, to have an item discussed. Time limit on comments is three minutes or less.**

1. Approval of Disbursements for 12/01/21 through 12/15/21.  
**PROPOSED ACTION:** Move to approve attached lists of disbursements for 12/01/21 through 12/15/21.
2. Approval of Minutes  
**PROPOSED ACTION:** Move to approve the minutes of the special and regular City Council Meeting held on January 10, 2022.
3. Vegetation Management and Wildfire Preparedness Grant Funding Opportunities Through CalFire  
**PROPOSED ACTION:** Approve the resolution to submit for state sponsored grant funding for community vegetation fuel reduction and community education within the City of Pacifica.
4. Adoption of a Resolution of the City Council of Pacifica Approving the Lease Agreement Between the City of Pacifica and Paul and Amy Kukielka, dba Chit Chat Café for the Premises Located at 2100 Beach Boulevard (Located at the Pacifica Pier); authorizing the City Manager to execute the lease agreement and finding the lease categorically exempt from the California Environmental Quality Act ("CEQA").  
**PROPOSED ACTION:** Move to adopt the Resolution of the City Council of the City of Pacifica approving the Lease Agreement between the City of Pacifica and Amy Kukielka, dba Chit Chat Café for the Premises Located at 2100 Beach Boulevard (Located at the Pacifica Pier); authorizing the City Manager to execute the Lease Agreement and finding the lease categorically exempt from the California Environmental Quality Act ("CEQA").
5. Peninsula Clean Energy Solar Photovoltaic System with optional Battery Storage Municipal Facilities Procurement  
**PROPOSED ACTION:** Adopt a Resolution authorizing the City Manager to deploy a Solar Photovoltaic System (Solar PV System) with optional battery storage at the Pacifica Community Center in partnership with Peninsula Clean Energy should the City Manager determine there are cost effectiveness or other community benefits as determined by the City following participation in a collaborative procurement(s) led by Peninsula Clean Energy.
6. FY 2021-22 Street Asphalt Base Repair Project  
**PROPOSED ACTION:** Approve the following actions for FY 2021-22 Street Asphalt Base Repair Project:
  - A. Authorize the City Manager to Award and Execute a Construction Services Agreement with G. Bortolotto & Co., Inc., in an Amount Not to Exceed \$ \$151,208.90, including Contingencies and Change Orders; and
  - B. Authorize Staff to Execute Future Change Orders in an Amount Not to Exceed Twenty-Five Percent (25%) of the Contract Award Amount.

7. Playground Equipment Improvement Project (aka FY21-22 Priority Parks Project)  
**PROPOSED ACTION:** Move to approve a Master Agreement for Consultant Services and Task Order No. 1 with NCE (Attachment "A") in an Amount Not to Exceed \$274,540.00 for the Playground Equipment Improvement Project (aka FY21-22 Priority Parks Project), authorize budget authority in the amount of \$301,994, which includes a 10% contingency amount of \$27,454, and authorize the City Manager to execute all documents associated with this Agreement.

### **ORAL COMMUNICATIONS**

This portion of the Agenda is available for the public to address the City Council on any issue that is not on the Agenda. Any person wishing to address the Council shall be recognized by the Mayor during Oral Communications, provided, however, that during the Oral Communications portion of the agenda, only items not on the agenda for that meeting may be addressed. All remarks shall be addressed to the Council as a body and not to any member thereof. Councilmembers shall not enter into debate with speakers under Oral Communications. A maximum time of three minutes will be allowed for any speaker. Pursuant to Pacifica Municipal Code Title 2, Chapter 1, Section 2-1.118 any person making impertinent, slanderous, or profane remarks or who becomes boisterous while addressing the Council shall be called to order by the presiding officer and, if such conduct continues, may, at the direction of the presiding officer, be ordered barred from further audience before the Council during the meeting.

### **COUNCIL COMMUNICATIONS**

The purpose of Council Communications is for Councilmembers to inform each other of items of potential interest to other Councilmembers, such as interagency meetings.

### **STAFF COMMUNICATIONS**

The purpose of Staff Communications is for the City Manager to offer announcements as appropriate.

### **PUBLIC HEARINGS - NONE.**

### **CONSIDERATION**

8. Consultant Services for Preliminary Feasibility Assessment of Public Private Partnership with Pacifica School District  
**PROPOSED ACTION:** Provide direction to the City Manager about soliciting consultant services for a preliminary feasibility assessment of a public-private partnership with Pacifica School District.
9. Introduction of an Ordinance of the City Council of the City of Pacifica adding Chapter 32, "Sale or Distribution of Electronic Cigarettes" and Chapter 33, "Sales of Flavored Tobacco Products and Pharmacy Sales of Tobacco Products Prohibited" and amending Section 5-31.03, "Limits on Tobacco Retailer Licenses" within Chapter 31 of Title 5, "Public Welfare, Morals, and Conduct" of the Pacifica Municipal Code to Ban the Sale and Distribution of Flavored Tobacco Products, the Sale and Distribution of Electronic

Cigarettes and to Prohibit the Sale of Tobacco Products at Pharmacies in the City of Pacifica

**PROPOSED ACTION:** Move to waive the first reading of and introduce by title an ordinance of the City Council of the City of Pacifica adding Chapter 32, "Sale or Distribution of Electronic Cigarettes" and Chapter 33, "Sales of Flavored Tobacco Products and Pharmacy Sales of Tobacco Products Prohibited" and amending Section 5-31.03, "Limits on Tobacco Retailer Licenses" within Chapter 31 of Title 5, "Public Welfare, Morals, and Conduct" of the Pacifica Municipal Code to Ban the Sale and Distribution of Flavored Tobacco Products, the Sale and Distribution of Electronic Cigarettes and to Prohibit the Sale of Tobacco Products at Pharmacies in the City of Pacifica

10. Vision 2025 & Beyond – Fiscal Sustainability Analysis, Potential Revenue Options, and Ballot Measure Analysis & Communications Services

**PROPOSED ACTION:** Receive, discuss, and provide direction to the City Manager on the updated 10 Year Financial Forecast and options to maintain the current level of City services.

## **ADJOURN**

**NOTICE:** If you challenge a city's zoning, planning or other decision in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to, the public hearing. Judicial review of any city administrative decision may be had only if a petition is filed with the court not later than the 90th day following the date upon which the decision becomes final. Judicial review of environmental determinations may be subject to a shorter time period for litigation, in certain cases 30 days following the date of the final decision

The City of Pacifica will provide assistance for disabled citizens upon at least 24 hours advance notice to the City Manager's Office (650) 738-7301, or send request via email to: [scoffey@pacificagov](mailto:scoffey@pacificagov) if you need sign language assistance or written material printed in a larger font or taped, advance notice is necessary. All meeting rooms are accessible to the disabled.

The Pacifica Municipal Code is available on line at the City's website ([www.cityofpacificagov/municode](http://www.cityofpacificagov/municode));

## **HOW TO OBTAIN CITY COUNCIL AGENDAS**

### **Posted agendas:**

Agendas are posted no later than Friday prior to the City Council meeting date, at the entrance to the City Hall location at the Pacifica Community Center, 540 Crespi Drive.

### **View on the Internet:**

Follow the link to Council agenda, at [www.cityofpacificagov](http://www.cityofpacificagov)

### **E-mail subscription:**

Send a request to Sarah Coffey, at [scoffey@pacificagov](mailto:scoffey@pacificagov)

### **City Clerk's Office/City Manager's Office**

City Hall, 540 Crespi Drive

### **Council meetings:**

Agendas are available at the City Council meeting

## **HOW TO REACH YOUR GOVERNMENT OFFICIALS**

- Governor Gavin Newsom, State Capitol Building, Sacramento CA 95814 (916) 445-2841

- State Senator Josh Becker, 1528 So. El Camino Real, Suite 303, San Mateo CA 94402 (650) 212-3313
- Assembly Member Kevin Mullin, 1528 South El Camino Real, Suite 302 San Mateo, CA 94402 (650) 349-2200
- Congresswoman Jackie Speier, 155 Bovet Road, Suite 780, San Mateo CA 94402 (650) 342-0300
- Senator Alex Padilla, B03 Russell Senate Office Building, Washington DC 20510 (202) 224-3553
- Senator Dianne Feinstein, #1 Post Street, Suite 2450, San Francisco CA 94104 (415) 393-0707
- President Joseph R. Biden, 1600 Pennsylvania Ave. NW, Washington DC 20500

#### **CITY COUNCIL**

- Mayor Mary Bier, mbier@pacifica.gov
- Mayor pro Tem Tygarjas Bigstych, tbigstych@ pacifica.gov
- Councilmember Mike O'Neill, mo'neill@pacifica.gov
- Councilmember Sue Vaterlaus, svaterlaus@pacifica.gov
- Councilmember Sue Beckmeyer, sbeckmeyer@pacifica.gov



**CITY OF PACIFICA  
COUNCIL AGENDA SUMMARY REPORT**

**1/24/2022**

**SUBJECT:**

Approval of Disbursements for 12/01/21 through 12/15/21.

**RECOMMENDED ACTION:**

Move to approve attached lists of disbursements for 12/01/21 through 12/15/21.

**STAFF CONTACT:**

Yulia Carter, Chief Financial Sustainability Officer  
(650) 738-7402  
ycarter@pacifica.gov

**BACKGROUND/DISCUSSION:**

Staff has submitted the following disbursements for Council approval:

- Disbursements dated 12/01/21 through 12/15/21 in the amount of \$1,422,329.31 as written on regular checks numbered 58359-58573 (Attachment 1). These disbursements are for Fiscal Year 2021-2022.

**FISCAL IMPACT:**

These disbursements are within budgeted appropriations.

**ORIGINATED BY:**

Finance Department

**ATTACHMENT LIST:**

FY 2021-2022 Disbursements 58359-58573 - 12-1 to 12-15 (PDF)

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## REPORT PARAMETERS

ORGANIZATION : 001  
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 SORT OPTION : CHECK #  
 PRINT DETAILS : N  
 ORG NAME FOR EXTRACT FILE : PACIFICA

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CITY OF PACIFICA  
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BANK	CHECK #	CHECK AMT	CHECK DATE	VENDOR #	ADDRS #	VENDOR NAME	TYPE	CHECK STATUS
1	58359	\$143.47	12/01/21	00092	0	AD BRAKES	S	OUTSTANDING
1	58360	\$118.00	12/01/21	04066	0	ALERT PEST CONTROL COMPANY INC	S	OUTSTANDING
1	58361	\$172.52	12/01/21	05407	0	ALLEN ELECTRIC	S	OUTSTANDING
1	58362	\$1995.99	12/01/21	04980	1	AMAZON.COM SALES, INC.	S	OUTSTANDING
1	58363	\$271.62	12/01/21	00225	0	ATCO INTERNATIONAL	S	OUTSTANDING
1	58364	\$1813.53	12/01/21	00293	0	BEARING AGENCIES INC	S	OUTSTANDING
1	58365	\$405.22	12/01/21	00452	0	CALPICO INC.	S	OUTSTANDING
1	58366	\$25.00	12/01/21	00001	328	CAMPANA, NICHOLAS	S	OUTSTANDING
1	58367	\$1222.67	12/01/21	00510	0	CINTAS CORPORATION #464	S	OUTSTANDING
1	58368	\$732.11	12/01/21	02168	1	COMCAST	S	OUTSTANDING
1	58369	\$14342.35	12/01/21	00611	1	CSG CONSULTANTS, INC.	S	OUTSTANDING
1	58370	\$194.50	12/01/21	00025	0	DALY CITY/CITY OF	S	OUTSTANDING
1	58371	\$21.05	12/01/21	03047	0	FASTRAK VIOLATION PROCESSING DEPARTMENT	S	OUTSTANDING
1	58372	\$5777.64	12/01/21	02767	0	FLYERS ENERGY, LLC	S	OUTSTANDING
1	58373	\$7150.00	12/01/21	03947	1	GRANICUS, INC.	S	OUTSTANDING
1	58374	\$1773.23	12/01/21	00892	0	HACH COMPANY	S	OUTSTANDING
1	58375	\$49.59	12/01/21	00919	1	HERC RENTALS INC.	S	OUTSTANDING
1	58376	\$70.00	12/01/21	00925	0	HF&H CONSULTANTS LLC	S	OUTSTANDING
1	58377	\$2295.75	12/01/21	04085	0	JAMES FORD, INC.	S	OUTSTANDING
1	58378	\$50.00	12/01/21	00001	88	LUJAN, MATTHEW	S	OUTSTANDING
1	58379	\$4300.00	12/01/21	03111	0	MANAGEMENT PARTNERS	S	OUTSTANDING
1	58380	\$4850.00	12/01/21	05412	0	MONSIDO, INC.	S	OUTSTANDING
1	58381	\$14370.63	12/01/21	05374	0	MORENO & ASSOCIATES, INC.	S	OUTSTANDING
1	58382	\$178.20	12/01/21	01194	0	NATIONAL CONSTRUCTION RENTALS, INC	S	OUTSTANDING
1	58383	\$136.15	12/01/21	01217	0	OFFICE DEPOT	S	OUTSTANDING
1	58384	\$2503.21	12/01/21	01244	0	PACIFIC NURSERIES	S	OUTSTANDING
1	58385	\$2571.00	12/01/21	01249	0	PACIFICA CHAMBER OF COMMERCE	S	OUTSTANDING
1	58386	\$28800.00	12/01/21	02981	0	PRECISION TREE CARE	S	OUTSTANDING
1	58387	\$351.41	12/01/21	01336	0	QUILL CORPORATION	S	OUTSTANDING
1	58388	\$1760.00	12/01/21	00042	1	R & S ERECTION NORTH PENINSULA INC.	S	OUTSTANDING
1	58389	\$19947.87	12/01/21	04801	0	RK ENGINEERING, INC.	S	OUTSTANDING
1	58390	\$11118.47	12/01/21	03306	1	ROBERT HALF MANAGEMENT RESOURCES	S	OUTSTANDING
1	58391	\$275.00	12/01/21	00022	31	SAN MATEO COUNTY SHERIFF	S	OUTSTANDING
1	58392	\$900.00	12/01/21	00022	31	SAN MATEO COUNTY SHERIFF	S	OUTSTANDING
1	58393	\$1469.14	12/01/21	01450	0	SEAVIEW TIRE & BRAKE CENTER	S	OUTSTANDING
1	58394	\$199.81	12/01/21	01461	0	SERRAMONTE FORD INC.	S	OUTSTANDING
1	58395	\$52.88	12/01/21	02017	0	STATE LANDS COMMISSION	S	OUTSTANDING
1	58396	\$876.00	12/01/21	01029	2	THE PERMANENTE MEDICAL GROUP INC.	S	OUTSTANDING
1	58397	\$25.00	12/01/21	00001	312	TONDELLI-WALSH, NATALIE	S	OUTSTANDING
1	58398	\$750.59	12/01/21	04576	1	UNIVAR SOLUTIONS USA INC	S	OUTSTANDING
1	58399	\$1670.33	12/01/21	01663	0	URBAN FARMER STORE, THE	S	OUTSTANDING
1	58400	\$3255.42	12/01/21	03835	0	US FOODS, INC	S	OUTSTANDING
1	58401	\$991.09	12/01/21	01722	0	WILSEY & HAM	S	OUTSTANDING
1	58402	\$26965.13	12/01/21	04608	0	TRI COUNTIES BANK	S	OUTSTANDING
1	58403	\$123.68	12/08/21	00136	0	ALHAMBRA	S	OUTSTANDING
1	58404	\$1856.27	12/08/21	04980	1	AMAZON.COM SALES, INC.	S	OUTSTANDING
1	58405	\$4299.28	12/08/21	00217	3	ASSOCIATION OF BAY AREA GOVERNMENTS	S	OUTSTANDING
1	58406	\$200.00	12/08/21	04561	0	AVINA, ANGEL	S	OUTSTANDING
1	58407	\$368.00	12/08/21	02508	1	BMI	S	OUTSTANDING
1	58408	\$89562.55	12/08/21	02502	0	BURKE WILLIAMS AND SORENSON LLP	S	OUTSTANDING
1	58409	\$416.00	12/08/21	00011	0	C.W.E.A.	S	OUTSTANDING

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1	58410	\$239.66	12/08/21	00454	1	CAL-STEAM INC.#2504	S	OUTSTANDING
1	58411	\$125.00	12/08/21	00434	2	CALIFORNIA PEACE OFFICERS' ASSOCIATION	S	OUTSTANDING
1	58412	\$2441.00	12/08/21	03814	1	CAPPSTONE, INC.	S	OUTSTANDING
1	58413	\$4772.00	12/08/21	02655	0	CAROLLO	S	OUTSTANDING
1	58414	\$1465.28	12/08/21	00483	0	CDW GOVERNMENT, INC.	S	OUTSTANDING



1	58415	\$1950.51	12/08/21	00510	0 CINTAS CORPORATION #464	S OUTSTANDING
1	58416	\$218.14	12/08/21	03246	0 COAST COUNTIES PETERBILT & COAST COUNTIES PAC	S OUTSTANDING
1	58417	\$111.07	12/08/21	02168	1 COMCAST	S OUTSTANDING
1	58418	\$2094.58	12/08/21	04531	0 COOK, MICHAEL G.	S OUTSTANDING
1	58419	\$2695.75	12/08/21	00025	0 DALY CITY/CITY OF	S OUTSTANDING
1	58420	\$1000.00	12/08/21	05413	0 DIANE POSTON	S OUTSTANDING
1	58421	\$918.25	12/08/21	02793	0 EAST PENN MANUFACTURING CO., INC	S OUTSTANDING
1	58422	\$3735.76	12/08/21	03458	0 EOA INC	S OUTSTANDING
1	58423	\$500.00	12/08/21	00001	198 ESRICK, CLINT	S OUTSTANDING
1	58424	\$1648.26	12/08/21	03469	0 EVANTEC CORPORATION	S OUTSTANDING
1	58425	\$4499.14	12/08/21	02767	0 FLYERS ENERGY, LLC	S OUTSTANDING
1	58426	\$2945.00	12/08/21	03930	0 FREYER & LAURETA, INC.	S OUTSTANDING
1	58427	\$468.60	12/08/21	00870	0 GOVCONNECTION, INC.	S OUTSTANDING
1	58428	\$742.27	12/08/21	00872	0 GRAINGER	S OUTSTANDING
1	58429	\$2047.81	12/08/21	00892	0 HACH COMPANY	S OUTSTANDING
1	58430	\$8335.14	12/08/21	00919	1 HERC RENTALS INC.	S OUTSTANDING
1	58431	\$1149.89	12/08/21	00927	0 HINDERLITER, DE LLAMAS & ASSOC	S OUTSTANDING
1	58432	\$4137.88	12/08/21	04859	1 HOME DEPOT CREDIT SERVICES	S OUTSTANDING
1	58433	\$301.30	12/08/21	04850	1 HOME DEPOT USA, INC.	S OUTSTANDING
1	58434	\$1298.32	12/08/21	02511	0 IDEXX LABORATORIES	S OUTSTANDING
1	58435	\$600.00	12/08/21	05154	0 INTERWEST CONSULTING GROUP, INC.	S OUTSTANDING
1	58436	\$86.36	12/08/21	01812	4 KBA DOCUSYS	S OUTSTANDING
1	58437	\$687.44	12/08/21	03929	0 KENT CLEANERS	S OUTSTANDING
1	58438	\$177.63	12/08/21	03700	0 KIMBALL MIDWEST	S OUTSTANDING
1	58439	\$545.58	12/08/21	01055	2 KONE INC	S OUTSTANDING
1	58440	\$1908.60	12/08/21	01070	0 LAURETTA PRINTING COMPANY	S OUTSTANDING
1	58441	\$78.49	12/08/21	01090	0 LIFELOC TECHNOLOGIES	S OUTSTANDING
1	58442	\$3500.00	12/08/21	03111	0 MANAGEMENT PARTNERS	S OUTSTANDING
1	58443	\$3616.00	12/08/21	03790	0 MAZE & ASSOCIATES	S OUTSTANDING
1	58444	\$725.80	12/08/21	01142	0 MC MASTER-CARR SUPPLY COMPANY	S OUTSTANDING
1	58445	\$67.03	12/08/21	00001	215 MILLS, VICKY	S OUTSTANDING
1	58446	\$118.19	12/08/21	00001	355 MOLINA, JESSICA	S OUTSTANDING
1	58447	\$390.00	12/08/21	01378	0 MUSCIO SECURITY	S OUTSTANDING
1	58448	\$19687.50	12/08/21	05098	0 NEXTREQUEST CO.	S OUTSTANDING
1	58449	\$2776.23	12/08/21	01206	0 NORTH COAST COUNTY WATER DIST.	S OUTSTANDING
1	58450	\$1232.54	12/08/21	02486	0 O'REILLY AUTO PARTS	S OUTSTANDING
1	58451	\$192.25	12/08/21	01217	0 OFFICE DEPOT	S OUTSTANDING
1	58452	\$1987.73	12/08/21	02027	0 OLIVER PACKAGING AND EQUIPMENT COMPANY	S OUTSTANDING
1	58453	\$284.80	12/08/21	01758	3 PACIFICA FIREFIGHTERS ASSOCIATION	S OUTSTANDING
1	58454	\$12480.00	12/08/21	01261	0 PACIFICA SCHOOL DISTRICT	S OUTSTANDING
1	58455	\$700.00	12/08/21	03160	0 PUBLIC PARKING ASSOCIATES, INC.	S OUTSTANDING
1	58456	\$601.32	12/08/21	01336	0 QUILL CORPORATION	S OUTSTANDING
1	58457	\$1282.82	12/08/21	01374	0 R & B COMPANY	S OUTSTANDING
1	58458	\$321.56	12/08/21	01367	0 RICE TRUCKING SOIL FARM	S OUTSTANDING
1	58459	\$3065.52	12/08/21	03306	1 ROBERT HALF MANAGEMENT RESOURCES	S OUTSTANDING
1	58460	\$2274.25	12/08/21	00022	47 SAN MATEO COUNTY PUBLIC SAFETY COMMUNICATIONS	S OUTSTANDING

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1	58462	\$165.04	12/08/21	01498	0	SMART & FINAL	S	OUTSTANDING
1	58463	\$171132.50	12/08/21	00049	5	SOUTH SAN FRANCISCO, CITY OF	S	OUTSTANDING
1	58464	\$610.54	12/08/21	02642	2	T-MOBILE CORPORATION	S	OUTSTANDING
1	58465	\$436.66	12/08/21	01637	0	TURF & INDUSTRIAL EQUIPMENT CO	S	OUTSTANDING
1	58466	\$770.17	12/08/21	04418	1	U.S. BANK EQUIPMENT FINANCING, INC.	S	OUTSTANDING
1	58467	\$71.28	12/08/21	01647	0	ULINE SHIPPING SUPPLY SPECIALISTS	S	OUTSTANDING
1	58468	\$25.76	12/08/21	02663	0	UNDERWOOD, EILEEN	S	OUTSTANDING
1	58469	\$12.46	12/08/21	01652	0	UNITED PARCEL SERVICE	S	OUTSTANDING
1	58470	\$4179.64	12/08/21	03835	0	US FOODS, INC	S	OUTSTANDING
1	58471	\$2675.77	12/08/21	01684	0	VERIZON WIRELESS	S	OUTSTANDING
1	58472	\$1100.00	12/08/21	01729	0	WITMER-TYSON IMPORTS, INC.	S	OUTSTANDING
1	58473	\$4653.50	12/08/21	04832	1	WOODARD & CURRAN, INC.	S	OUTSTANDING
1	58474	\$3543.91	12/08/21	02495	0	YSI INCORPORATED	S	OUTSTANDING
1	58475	\$4845.69	12/15/21	00009	8	AT&T	S	OUTSTANDING
1	58476	\$45317.40	12/15/21	03874	0	4LEAF INC	S	OUTSTANDING
1	58477	\$463.63	12/15/21	00094	0	ADAM-HILL COMPANY, THE	S	OUTSTANDING
1	58478	\$605.47	12/15/21	00118	1	AIR EXCHANGE INC	S	OUTSTANDING
1	58479	\$134.70	12/15/21	00122	0	AIRGAS USA, LLC	S	OUTSTANDING
1	58480	\$69.49	12/15/21	00136	0	ALHAMBRA	S	OUTSTANDING
1	58481	\$1700.00	12/15/21	05420	0	ALL POLY CONCRETE	S	OUTSTANDING
1	58482	\$1338.85	12/15/21	04980	1	AMAZON.COM SALES, INC.	S	OUTSTANDING
1	58483	\$492.00	12/15/21	05352	0	ANKAR CYCLES, INC.	S	OUTSTANDING
1	58484	\$43.23	12/15/21	00009	2	AT&T MOBILITY	S	OUTSTANDING
1	58485	\$600.00	12/15/21	03188	0	ATLAS PLUMBING & ROOTER INC	S	OUTSTANDING
1	58486	\$2071.78	12/15/21	00293	0	BEARING AGENCIES INC	S	OUTSTANDING
1	58487	\$1280.73	12/15/21	00335	0	BLUE RIBBON SUPPLY COMPANY	S	OUTSTANDING
1	58488	\$207629.93	12/15/21	02502	0	BURKE WILLIAMS AND SORENSSEN LLP	S	OUTSTANDING
1	58489		12/15/21	02502	0	BURKE WILLIAMS AND SORENSSEN LLP	S	UNISSUED
1	58490	\$641.55	12/15/21	05405	0	CAL PACIFIC CONTRACTORS	S	OUTSTANDING
1	58491	\$3463.20	12/15/21	00507	0	CHILDCARE CAREERS	S	OUTSTANDING
1	58492	\$1005.20	12/15/21	00510	0	CINTAS CORPORATION #464	S	OUTSTANDING
1	58493	\$200.00	12/15/21	00019	1	COLMA FIREMAN'S SOCIAL CLUB	S	OUTSTANDING
1	58494	\$295.08	12/15/21	02168	1	COMCAST	S	OUTSTANDING
1	58495	\$169.02	12/15/21	02168	2	COMCAST	S	OUTSTANDING
1	58496	\$45.00	12/15/21	04677	0	CORODATA RECORDS MANAGEMENT INC	S	OUTSTANDING
1	58497	\$315.36	12/15/21	00632	0	DALTON TRACIE	S	OUTSTANDING
1	58498	\$1000.00	12/15/21	04848	0	DENNIS GUIDO	S	OUTSTANDING
1	58499	\$2500.00	12/15/21	00672	0	DIAL GLASS AND WINDOW CO	S	OUTSTANDING

1	58500	\$10800.00	12/15/21	02201	0 DISCOUNT PLUMBING, INC.	S OUTSTANDING
1	58501	\$28162.75	12/15/21	02130	1 DRYCO CONSTRUCTION, INC.	S OUTSTANDING
1	58502	\$1200.00	12/15/21	04321	0 DUBOCE JANITORIAL SERVICES	S OUTSTANDING
1	58503	\$12989.25	12/15/21	04386	1 EDGEWORTH INTEGRATION LLC	S OUTSTANDING
1	58504	\$ .45	12/15/21	00489	0 ENTERSECT	S OUTSTANDING
1	58505	\$77.24	12/15/21	00758	0 EXPERIAN	S OUTSTANDING
1	58506	\$8811.43	12/15/21	02767	0 FLYERS ENERGY, LLC	S OUTSTANDING
1	58507	\$4535.36	12/15/21	00856	0 GLOBALSTAR USA	S OUTSTANDING
1	58508	\$175.00	12/15/21	04684	0 GOLDSTREET DESIGN AGENCY, INC.	S OUTSTANDING
1	58509	\$1920.00	12/15/21	00001	220 GOMEZ, JOE	S OUTSTANDING
1	58510	\$176.12	12/15/21	05406	0 GRANITE ELECTRIC	S OUTSTANDING
1	58511	\$1000.00	12/15/21	05418	0 GREGORY ATKINSON	S OUTSTANDING

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CITY OF PACIFICA  
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BANK	CHECK #	CHECK AMT	CHECK DATE	VENDOR #	ADDRS #	VENDOR NAME	TYPE	CHECK STATUS
1	58512	\$167555.54	12/15/21	03616	0	GROUP 4 ARCHITECTURE RESEARCH PLANNING INC	S	OUTSTANDING
1	58513	\$43.41	12/15/21	00913	0	HAYWARD RUBBER STAMP	S	OUTSTANDING
1	58514	\$868.50	12/15/21	00919	1	HERC RENTALS INC.	S	OUTSTANDING
1	58515	\$930.20	12/15/21	00929	0	HI-TECH EMERGENCY VEHICLE INC.	S	OUTSTANDING
1	58516	\$1000.00	12/15/21	02306	0	HOFFMAN AMY	S	OUTSTANDING
1	58517	\$837.80	12/15/21	04999	2	IMAGE SOURCE	S	OUTSTANDING
1	58518	\$715.31	12/15/21	00990	0	INTERSTATE TRAFFIC CONTROL PRODUCTS	S	OUTSTANDING
1	58519	\$33750.00	12/15/21	04325	1	INTRENSIC	S	OUTSTANDING
1	58520	\$526.60	12/15/21	04085	0	JAMES FORD, INC.	S	OUTSTANDING
1	58521	\$721.88	12/15/21	01070	0	LAURETTA PRINTING COMPANY	S	OUTSTANDING
1	58522	\$475.44	12/15/21	01124	0	MARATHON DISTRIBUTORS, INC.	S	OUTSTANDING
1	58523	\$253.76	12/15/21	01142	0	MC MASTER-CARR SUPPLY COMPANY	S	OUTSTANDING
1	58524	\$23888.00	12/15/21	04077	0	METROPOLITAN PLANNING GROUP	S	OUTSTANDING
1	58525	\$1000.00	12/15/21	05417	0	MICHAEL EPLING	S	OUTSTANDING
1	58526	\$3459.46	12/15/21	01183	0	MUNICIPAL MAINTENANCE EQUIPMENT, INC.	S	OUTSTANDING
1	58527	\$1935.00	12/15/21	05416	0	MUNICIPAL RESOURCE GROUP, LLC	S	OUTSTANDING
1	58528	\$210.00	12/15/21	01378	0	MUSCIO SECURITY	S	OUTSTANDING
1	58529	\$1969.10	12/15/21	04549	0	NAF SERVICES, INC.	S	OUTSTANDING
1	58530	\$34950.00	12/15/21	04632	0	NICHOLS CONSULTING ENGINEERS, CHTD	S	OUTSTANDING
1	58531	\$20582.19	12/15/21	01206	0	NORTH COAST COUNTY WATER DIST.	S	OUTSTANDING
1	58532	\$516.23	12/15/21	01217	0	OFFICE DEPOT	S	OUTSTANDING
1	58533	\$627.62	12/15/21	01243	0	PACIFIC MANOR HARDWARE, INC.	S	OUTSTANDING
1	58534	\$4114.06	12/15/21	03242	0	PANKEY'S RADIATOR SHOP, INC.	S	OUTSTANDING
1	58535	\$893.14	12/15/21	00054	2	PAPE MACHINERY	S	OUTSTANDING
1	58536	\$6061.56	12/15/21	01329	0	PUMP REPAIR SERVICE CO., INC.	S	OUTSTANDING
1	58537	\$5353.47	12/15/21	04802	0	RECORDS CONTROL SERVICES	S	OUTSTANDING
1	58538	\$11605.25	12/15/21	03306	1	ROBERT HALF MANAGEMENT RESOURCES	S	OUTSTANDING
1	58539	\$39.76	12/15/21	01795	0	ROSS, LAURIE	S	OUTSTANDING
1	58540	\$3049.10	12/15/21	00022	8	SAN MATEO COUNTY CONTROLLER	S	OUTSTANDING
1	58541	\$8862.20	12/15/21	00055	0	SAN MATEO COUNTY FORENSIC LAB	S	OUTSTANDING
1	58542	\$2250.00	12/15/21	05421	0	SHEERAN PIPELINE INC.	S	OUTSTANDING
1	58543	\$61394.00	12/15/21	05096	0	SIERRA TRAFFIC MARKINGS, INC.	S	OUTSTANDING
1	58544	\$1200.00	12/15/21	01501	1	SMELLY MEL'S PLUMBING	S	OUTSTANDING
1	58545	\$9860.69	12/15/21	01570	0	SYNAGRO WEST, LLC	S	OUTSTANDING
1	58546	\$58.24	12/15/21	04874	0	THE DIRECTV GROUP, INC.	S	OUTSTANDING
1	58547	\$787.35	12/15/21	05419	0	THE GARLAND COMPANY, INC.	S	OUTSTANDING
1	58548	\$581.30	12/15/21	01636	0	TURBO DATA SYSTEMS, INC.	S	OUTSTANDING
1	58549	\$3850.00	12/15/21	03457	0	U.S. BANK	S	OUTSTANDING
1	58550	\$2616.00	12/15/21	02527	0	UNIVERSAL BUILDING SERVICES	S	OUTSTANDING
1	58551	\$3254.47	12/15/21	03835	0	US FOODS, INC	S	OUTSTANDING
1	58552	\$628.24	12/15/21	00001	249	WEHRMEISTER, CHRISTINE	S	OUTSTANDING
1	58553	\$85.50	12/15/21	05163	1	WEX HEALTH, INC.	S	OUTSTANDING
1	58554	\$200.00	12/15/21	04121	0	WHENTOWORK, INC.	S	OUTSTANDING
1	58555	\$8842.77	12/10/21	03741	0	BENEFIT COORDINATORS CORPORATION	S	OUTSTANDING
1	58556	\$29.50	12/10/21	01757	1	CALIFORNIA ASSN OF PROFESSIONAL FIREFIGHTERS	S	OUTSTANDING
1	58557	\$242.76	12/10/21	00814	1	CALIFORNIA STATE DISBURSEMENT UNIT	S	OUTSTANDING
1	58558	\$7.82	12/10/21	00814	1	CALIFORNIA STATE DISBURSEMENT UNIT	S	OUTSTANDING
1	58559	\$240.00	12/10/21	00814	1	CALIFORNIA STATE DISBURSEMENT UNIT	S	OUTSTANDING
1	58560	\$686.00	12/10/21	01757	0	CLEA	S	OUTSTANDING
1	58561	\$50.00	12/10/21	00814	0	FRANCHISE TAX BOARD	S	OUTSTANDING
1	58562	\$350.00	12/10/21	00814	0	FRANCHISE TAX BOARD	S	OUTSTANDING

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CITY OF PACIFICA  
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BANK	CHECK #	CHECK AMT	CHECK DATE	VENDOR #	ADDRS #	VENDOR NAME	TYPE	CHECK STATUS
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1	58564	\$2325.08	12/10/21	01758	1	PACIFICA FIREFIGHTERS UNION	S	OUTSTANDING
1	58565	\$840.00	12/10/21	01759	0	PACIFICA POLICE OFFICERS ASSOCIATION	S	OUTSTANDING
1	58566	\$210.00	12/10/21	01760	0	PACIFICA POLICE OFFICERS SAVINGS	S	OUTSTANDING
1	58567	\$420.00	12/10/21	01769	0	PACIFICA POLICE SUPERVISORS ASSOCIATION	S	OUTSTANDING
1	58568	\$7313.64	12/10/21	03349	0	PREFERRED BENEFIT INSURANCE ADMINISTRATORS	S	OUTSTANDING
1	58569	\$992.00	12/10/21	01768	0	TEAMSTERS LOCAL #350	S	OUTSTANDING
1	58570	\$2715.00	12/10/21	01764	0	TEAMSTERS LOCAL #856	S	OUTSTANDING
1	58571	\$61828.00	12/10/21	01771	0	TEAMSTERS LOCAL 856	S	OUTSTANDING
1	58572	\$34.64	12/10/21	01766	0	VISION SERVICE PLAN-CA	S	OUTSTANDING
1	58573	\$3084.99	12/10/21	01766	0	VISION SERVICE PLAN-CA	S	OUTSTANDING

TOTAL # OF ISSUED CHECKS:	215	TOTAL AMOUNT:	1,422,329.31
TOTAL # OF WIRES:	0	TOTAL AMOUNT:	0.00
TOTAL # OF VOIDED/REISSUED/UNCLAIMED CHECKS:	0	TOTAL AMOUNT:	0.00
TOTAL # OF ACH CHECKS:	0	TOTAL AMOUNT:	0.00
TOTAL # OF UNISSUED CHECKS:	1		

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## FUND TOTALS

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FUND	FUND NAME	ISSUED TOTAL	VOIDED/REISSUED TOTAL
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001	GENERAL FUND	833,409.43	0.00
007	S.L.E.S. FUND	33,750.00	0.00
009	STREET CONSTRUCTION FUND	120,931.87	0.00
010	GAS TAX MAINTENANCE FUND	2,569.77	0.00
012	HIGHWAY 1 IMPROVEMENT FUND	991.09	0.00
016	NPDES STORMWATER FUND	9,103.56	0.00
018	SEWER CHARGE FUND	87,103.15	0.00
019	PLANNED LOCAL DRAINAGE FUND	50,089.40	0.00
022	GENERAL CAPITAL IMPROVEMENT	208,280.97	0.00
034	SEWER FACILITY CONSTRUCT. FUND	24,393.10	0.00
035	BEACH PARKING FUND	1,684.47	0.00
038	DISASTER ACCOUNTING FUND	178.20	0.00
065	SELF-FUNDED DENTAL PLAN FUND	11,877.64	0.00
071	MOTOR POOL OPERATIONS FUND	37,966.66	0.00
		=====	=====
	TOTAL -	1,422,329.31	0.00

Attachment: FY 2021-2022 Disbursements 58359-58573 - 12-1 to 12-15 (4830 : Disbursements - Dated 12/01/21 through 12/15/21)



**CITY OF PACIFICA  
COUNCIL AGENDA SUMMARY REPORT**

**1/24/2022**

**SUBJECT:**

Approval of Minutes

**RECOMMENDED ACTION:**

Move to approve the minutes of the special and regular City Council Meeting held on January 10, 2022.

**STAFF CONTACT:**

Sarah Coffey, City Clerk  
650-738-7307  
scoffey@pacificafica.gov

**BACKGROUND/DISCUSSION:**

Move to approve the minutes of the special and regular City Council Meeting held on January 10, 2022 (Attachment A).

**FISCAL IMPACT:**

None.

**ORIGINATED BY:**

City Clerk

**ATTACHMENT LIST:**

Attachment A: Minutes of January 10, 2022 Meeting (PDF)



**CITY OF PACIFICA  
CITY COUNCIL MINUTES**

**Zoom Meeting:** <https://zoom.us/j/99091160676>  
Dial-in: 1-669-900-6833 | WebinarID: 990 9116 0676  
Alt 1: <https://www.cityofpacifica.org/LiveStream>  
Alt 2: Cable Channel 26

Mayor Mary Bier  
Mayor Pro Tem Tygarjas Bigstyk  
Councilmember Mike O'Neill  
Councilmember Sue Vaterlaus  
Councilmember Sue Beckmeyer

**SPECIAL and REGULAR MEETING**

**January 10, 2022 (MONDAY)**  
[www.cityofpacifica.org](http://www.cityofpacifica.org)

Mayor Mary Bier called the meeting to order on January 10, 2022 at 6:02 PM

**6:00 PM - OPEN STUDY SESSION**

Mayor Bier called the meeting to order at 6:02 p.m., stating that the Council would meet in Open Study Session. City Clerk Coffey announced the business to be discussed would be conducted by teleconference only pursuant to Government Code Section 54953 (as amended by AB 361).

Mayor Bier asked if she wanted to mention the conditions for public participation.

City Clerk Coffey explained the conditions for having Planning Commission meetings pursuant to Government Code Section 54953 (as amended by AB 361), to conduct necessary business as an essential governmental function as a teleconference meeting with no meeting location open to the public. She also gave information on how to present public comments participating by Zoom or phone.

**A. Solar Photovoltaic System with optional battery storage at Pacifica Community Center**

**PROPOSED ACTION:** Receive a presentation regarding the deployment of a Solar Photovoltaic System (Solar PV System) with optional battery storage at Pacifica Community Center and provide direction to the City Manager on pursuing a Power Purchase Agreement with Peninsula Clean Energy for participation in Peninsula Clean Energy's public facility solar and storage procurement process.

PW Dep. Director Bautista introduce the subject of the staff report, then introduced Dave Fribush from Peninsula Clean Energy who would give the presentation.

**Dave Fribush** stated that Rafael Reyes of Peninsula Clean Energy would begin the presentation.

**Rafael Reyes** began the presentation.

Mr. Fribush continued the presentation.

Mr. Reyes completed the presentation.

Attachment: Attachment A: Minutes of January 10, 2022 Meeting (4869 : Approval of Minutes)

City Manager Woodhouse clarified that this is a study session, and they intended to get a go ahead from Council for the next agenda for PCE to bring the resolution referenced for Council approval, or whatever documents are ready to meet PCE's commitment needs. He stated that they don't have the resolution for approval on this agenda and it will be a follow up item.

Councilmember Beckmeyer thought the presentation was very informative and she concluded that it was a 20-year project. She asked for some clarifications on battery life, etc..

Mr. Fribush responded that the panel life is 25-30 years but will probably last longer with parts warranted to 25 years and PPA agreement would be 20 years.

Mr. Reyes added that, regarding the additional 5-10 years, Pacifica would derive 100% of utility savings and savings are going to be more than presented in the 20-year time frame. He stated most ownership cases transfer to the city but can be part of the discussion.

Mr. Fribush stated that the battery lives are shorter, generally warranted for 10 years, and battery life depends on how much the battery is used.

Councilmember Vaterlaus acknowledged it was under warranty until they own the system, and she concluded that, if a better system comes along, they are stuck with the same system, and referred to the photovoltaic system which is less expensive. She asked what money this will come from and also asked if, after the 20 years, we are responsible for repairs.

Mr. Fribush responded that this was standard rooftop solar system and technology hasn't changed much in 30 years and he didn't expect radical changes but thought the battery technology would change. He stated that, for the solar, there is no upfront cost but there would need a pot of money for the battery. Regarding repairs, one option would be a maintenance agreement for after 20 years. He didn't think there was much solar maintenance, but at that point they are capturing the full savings of the systems, so as the savings are going up, you are still coming out ahead.

Mayor Bier opened public comments.

City Clerk Coffey Introduced the speakers.

**Bob Boles, Pacifica**, urged Council to not only put batteries in but to the maximum extent feasible to deal with various possible issues and get the best pricing.

**Ned Bitar, Pacifica**, stated he had concerns about the process of paying off costs and thought they should go with a firm that they have confidence in regarding their products and skills.

Mayor Bier closed public comments.

Councilmember O'Neill asked if there was an estimate of the annual maintenance cost for the panels due to exposure from the ocean.

Mr. Fribush stated that the maintenance would be covered by PCE and incorporated in the project and if it went to not saving money, they wouldn't move forward.

Mr. Reyes added that PCE wasn't doing the installation and maintenance, but additional maintenance costs would be borne by PCE through their contract with a well-established known

installer and maintenance company who specializes in solar installations. He stated that performance expectations would be put in and if the solar panel performance declines, they would ask their vendor to address any performance issues, i.e., repairs, etc., during the 20-year period.

Councilmember O'Neill concluded they were only indicating that they want to explore this option but the final contract would be considered at a later Council meeting.

City Manager Woodhouse agreed, including a decision of battery issues would also come at a future decision.

Councilmember O'Neill asked how old the existing roof is on the Community Center.

Mr. Fribush stated they this was the only building where they did a structural assessment of the roof to be sure it could support the panels but they would want to revisit that to make sure any planned maintenance is pulled forward prior to the installation.

Councilmember O'Neill stated that he has walked around the building and has seen some rebar on the side walls from the concrete, which was a concern with additional weight on the building. He was for solar energy and mentioned dealing with solar energy when remodeling the schools and acknowledged that the technology has changed since then. He questioned who would be responsible if something happens and they need to put a new roof on in five years.

Mr. Fribush stated that they will be bringing in experts and, when they look at the project, if they see issues that were missed, they might acknowledge it. He referred to who would bear the cost if the roof must be repaired in a few years, stating that it would depend on what caused the roof issue. If it was unexpected, it would be an insurance claim, but he would be wary of offering too much conjecture at this time as it would depend on the circumstances. They would want to plan for planned maintenance, but something else was unsure.

Councilmember O'Neill asked if PW Dep. Director Bautista wanted to respond to how old the roof is.

PW Dep. Director Bautista doesn't know how old it is, but thought it was done about five years ago when former Field Services Manager Biagini was here, before he got to the city which was almost eight years ago.

Councilmember O'Neill asked if, when they come back with this item, possibly in January, he could find out how old the roof is. When they come back with a proposal, they would have access to the analysis of general upkeep.

City Manager Woodhouse suggested that, when they come back with the resolution, they could include information about when the roof was last upgraded. He thought the concrete falling was probably more cosmetic than structural, but they will see what information they have.

Mayor pro Tem Bigstyk was in favor of bringing the resolution back. He thought they were a Council that tends to favor having more information than less, such as about the roof, batteries, etc. He referred to Councilmember O'Neill's comment and stated that, as he works in the Linda Mar Center near the ocean, and on a daily basis, he has to use his windshield wiper fluid and he thought it was salt from the sea breeze which could be something that also impacts the photovoltaics. He didn't know if that has been included in the calculations, but it could be advantageous to their final decision.



Councilmember Beckmeyer was also thinking about the maintenance and one area that might have some enlightenment is that they have panels at the wastewater treatment facility in the quarry and they have asked that question around those panels. She stated that things happen, but if it entails a staff cost for cleaning them to perform optimally, that would be important for them to know.

Councilmember O'Neill thought they have solar panels on Council Chambers and he never heard of any issues from that. He didn't want to be negative, but the Community Center has more people and more usage, and for that to be an issue is more critical. He thought they were going to upgrade with new solar panels at the wastewater treatment plant as he thought those were 15-20% of the power and today's technology can bring it to 50%.

PW Dep. Director Bautista stated he wasn't the project manager on the solar panels but he agreed technology is better now and the output of the solar panels are much greater and the original system was probably about 20% and at least double now, and cheaper as well.

Mayor Bier agreed with what Mr. Boles said as she was concerned about the battery, and thought getting the maximum of the battery and hoped they could get as much information as possible on batteries and choices available. She thought they should move forward.

Councilmember Beckmeyer agrees, adding that because they designated the Community Center as a cooling center on the rare days when they need it, she stated that the swamp cooler takes a lot of power so the maximum battery to extend that 4-hour backup to 16 or more would be great.

Mr. Fribush wanted to be clear about the 4-hour battery which is if the battery is being used at full power. The existing battery would be expected to be effectively a 16-hour battery based on the historical usage of the building.

Councilmember Vaterlaus agreed, stating that with the extended power outages, people used the community center to do things they couldn't do at home that were urgent such as charging their phones. She agreed that, if doing this project, they will need the batteries.

Mayor Bier asked if the City Manager had enough direction.

City Manager Woodhouse was hearing consensus from Council to move forward and work with PCE to bring a commitment resolution back.

Mayor Bier thanked Mr. Fribush and Mr. Reyes for their presentation, adding that the PCE is very important.

<b>RESULT:</b>	<b>NO VOTE REQUIRED</b>
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Mayor Bier called for a short break.

### **7:00 PM OPEN SESSION**

Call to Order

Mayor Bier reconvened for the regular meeting at 7:00 p.m.



Attendee Name	Title	Status	Arrived
Mary Bier	Mayor	Present	
Tygarjas Bigstych	Mayor Pro Tem	Present	
Mike O'Neill	Councilmember	Present	
Sue Vaterlaus	Councilmember	Present	
Sue Beckmeyer	Councilmember	Present	

City Clerk Coffey took a verbal roll call.

Staff Present: Kevin Woodhouse, City Manager; Michelle Kenyon, City Attorney; Tina Wehrmeister, Asst. City Manager/Planning Director; Lisa Petersen, PW Director; Dan Steidle, Police Chief; Sam Bautista, PW Dep. Director; Michael Perez, PB&R Director; Yulia Carter, Chief Financial Sustainability Officer; Tommy Yu, IT Manager; Josh Montemayor, Management Analyst; Sarah Coffey, City Clerk.

City Clerk Coffey explained the conditions for having Council meetings pursuant to the provisions of Government Code Section 54953 (as amended by AB 361) which authorizes teleconferenced meetings under the Brown Act during certain proclaimed states of emergency. She also explained that the public can observe and participate in the meeting via the Zoom link provided in the Agenda or by phone to the dial-in number and Webinar ID provided in the Agenda. This meeting can also be viewed live via local TV Channel 26 or online at [www.cityofpacific.org/LiveStream](http://www.cityofpacific.org/LiveStream). City Clerk Coffey also gave information on how to present public comments via email or live if participating by Zoom or phone.

### **Reading of Land Acknowledgment**

Mayor Bier read the Land Acknowledgement.

Mayor Bier then asked the City Clerk if she should explain the change in order of agenda at this time.

City Clerk Coffey stated that she should explain the agenda for the public hearing.

Mayor Bier then explained that Agenda Item #9 for redistricting must be held at 7:30 PM or soon thereafter following completion of the pending business items, i.e., consent calendar, and all other items will be after the public hearing and consideration items will be after communications. Items pulled from consent would be heard during the consideration portion of the meeting.

Salute to the Flag led by Mayor Bier

### **CONSENT CALENDAR**

Mayor Bier asked if there were any Councilmembers wanting to pull any items and, seeing no one, opened public comments.

Mgmt. Analyst Montemayor introduced the speakers.

**Dan Stegink, Pacifica**, stated he was speaking on Item #4. He referred to emails between Wastewater Dept., Public Works and Linda Mar residents and a question between City Council and Public Works regarding Linda Mar flooding. He mentioned all the serious problems with the flooding and possible repercussions if not addressed, and asked Council to take care of the problem.

**Mark Hubbell, Pacifica**, stated he wanted to speak on the process not the content of recent documents, i.e., General Plan and EIR.

Mayor Bier stated that it would have to be under Oral Communications later in the agenda and she will let him know.

Councilmember Beckmeyer referred to the minutes of December 13, 2021, stating on packet page 22, she wanted to check on the second to last paragraph, stating that it references “public engagement fees”, and she thought Mayor Bier said “public engagement piece”, and she wanted to verify if that was correct, she would like to request that it be a slight amendment to the minutes.

Mayor Bier agreed with the amendment.

Councilmember Beckmeyer moved approval of the consent calendar as amended; seconded by Mayor pro Tem Bigstych.

City Clerk Coffey took a vote by verbal roll call.

**CONSENT CALENDAR (incl. Item #2 as AMENDED)**

**RESULT:** **ADOPTED AS AMENDED [UNANIMOUS]**

**MOVER:** Sue Beckmeyer, Councilmember

**SECONDER:** Tygarjas Bigstych, Mayor Pro Tem

**AYES:** Bier, Bigstych, O'Neill, Vaterlaus, Beckmeyer

1. Approval of Disbursements for 11/01/21 through 11/30/21.  
**PROPOSED ACTION:** Move to approve attached lists of disbursements for 11/01/21 through 11/30/21.
2. Approval of Minutes  
**PROPOSED ACTION:** Move to approve the minutes of the special and regular Joint City Council and Economic Development Committee Meeting held on December 13, 2021.
3. Continuation of Proclamation of Local Emergency of the Pacifica Coastline from Westline Drive to the End of Beach Boulevard.  
**PROPOSED ACTION:** Accept report and make a determination that conditions of local emergency continue to exist within the Pacifica Coastline from Westline Drive to the end of Beach Boulevard.
4. Continuation of Proclamation of Local Emergency at the Anza Pump Station.  
**PROPOSED ACTION:** Accept Report and Make a Determination that Conditions of Local Emergency Continue to Exist at the Anza Pump Station at the Pacifica State Beach.

5. Continuation of Proclamation of the Existence of a Local Emergency Regarding Novel (new) Coronavirus ("COVID-19").  
**PROPOSED ACTION:** Accept report and make a determination that conditions of local emergency continue to exist regarding Novel (new) Coronavirus ("COVID-19").
6. Consideration of a Resolution Making Findings as Required by AB 361 to Continue to Permit the City Council and the City's Committees and Commissions to Conduct Teleconferenced Meetings Due to Health and Safety Concerns Relating to COVID-19  
**PROPOSED ACTION:** Move to adopt a Resolution making findings pursuant to AB 361 to authorize the City Council and the City's Committees and Commissions to continue to conduct teleconferenced meetings due to health and safety concerns relating to COVID-19.
7. Adoption of a Resolution of the City Council of the City of Pacifica approving the First Amendment to the Lease Agreement between the City of Pacifica and Stephen Johnson Photography for the premises located at 1220-C Linda Mar Boulevard (located in the Pacifica Center for the Arts).  
**PROPOSED ACTION:** Move to adopt the Resolution of the City Council of the City of Pacifica approving the First Amendment to the Lease Agreement between the City of Pacifica and Stephen Johnson Photography for the premises located at 1220-C Linda Mar Boulevard (located in the Pacifica Center for the Arts); authorizing the City Manager to execute the First Amendment to the Lease Agreement; and finding the approval of the First Amendment to the Lease Agreement exempt from the California Environmental Quality Act ("CEQA").
8. Notice of Completion for the Serra Drive Outfall Repair Project and approval of Amendment No. 1 for Inspection Services and approval of Amendment No. 2 for Design & Environmental Services  
**PROPOSED ACTION:** Adopt the resolution next in order a Resolution of the City Council of the City of Pacifica accepting completion and directing the City Manager to file Notice of Completion for the Serra Drive Outfall Repair Project; and Authorize the City Manager to release the retention funds to the contractor; and approve Amendment No. 1 for Construction Inspection Services; and approve Amendment No. 2 for Design and Environmental Services.

## **PUBLIC HEARINGS**

Mayor Bier stated that they would now move to Agenda Item #9.

City Attorney Kenyon stated that they were too fast and they need to wait until 7:30 PM, so they will need to go to Oral Communications first, Council Communications and Staff Communications if necessary, and to Consideration items as well if necessary until 7:30 PM.

Mayor Bier asked if they are in the middle of oral communications at 7:30, do they stop and come back to Oral Communications.

City Attorney Kenyon stated that they can finish the item. She stated that, when seeing the number of hands raised, they will anticipate how many speakers they will and if they will go to

9:00 that would be a problem, but she thought they can answer that question better when they find out how many people want to speak during Oral Communications.

Mayor Bier opened Oral Communications prior to moving on to Agenda Item #9 for the Public Hearing.

### **ORAL COMMUNICATIONS**

Mayor Bier asked if they wanted to go to two minutes with six hands raised.

Mayor pro Tem Bigstyk stated that they can give each a chance.

Mayor Bier set it at two minutes.

Mgmt. Analyst Montemayor introduced the speakers.

**Dan Stegink, Pacifica**, stated that he had never heard limiting the time to two minutes for only six speakers. He referred to the Ortega School's greenhouse being burned down by safe and sane fireworks at \$250,000, mentioned his concerns and requested that fireworks sales be stopped.

**Suzanne Moore, Pacifica**, thanked staff for the Pacifica General Plan draft, mentioned her thoughts on the process and asked questions regarding some of her concerns on RHNA goals, low income housing and asked about the status of the Local Coastal Plan. She is concerned about outreach to the community across the digital divide.

**Summer Lee, Pacifica**, referred to release of the draft General Plan and voiced her concerns about the process and some inconsistencies, providing some examples. She asked that they work with the public to do this better.

**Sue Digre, Pacifica**, referring to the release of the General Plan, encouraged Council and staff to do outreach to the community so everyone can respond to documents as the community are the stakeholders and there is a time limit to respond to very long and very important documents.

**Anita Rees, Pacifica Resource Center**, informed the community of the Pacifica Resource Center's modified hours and the process to make appointments for various reasons, including tax preparation, and mentioned schedules of other services provided by the PRC. She stated that the One Day Homeless Count has been rescheduled due to COVID, with the new date expected be February 24; for more information or to sign up to volunteer, go to [hsa.smcgov.org](https://hsa.smcgov.org).

**Peter Loeb, Pacifica**, stated that he participated in developing the 1980 General Plan and he remembered a series of public workshops going over each area's plan and he now was asking for help as they have no workshops or study sessions for the public to be informed and voice their concerns.

**Christine Boles, Pacifica**, referred to the Vista Mar project and voiced her concern about the city protecting public safety and dealing with the General Plan process. She encouraged them to work with the community.

**Mark Hubbell, Pacifica**, thanked staff for producing the planning documents, and voiced his concerns about providing the community opportunities to assist in the General Plan process with insight and experience to ensure an enduring plan and why they are not responding to requests for workshops and study sessions.

**Matthew D, Pacifica**, asked if Oral Communications later will give him three minutes to discuss his issue.

Mayor Bier stated that this is Oral Communications and it is two minutes. She stated that, if he wants to reach out to her or other members after the meeting, she will meet with him and talk with him. They can schedule a time. She asked him to give his public comment.

Matthew D. stated that he can't give it in two minutes and he suggested he present another time instead.

Mayor Bier stated that it was up to him to share a little now as he has the time.

Matthew D. gave an introduction about hillsides which is what he would talk about but does not have time now and he will try to do it at another time.

Mayor Bier asked him to send her an email so they can schedule a meeting.

Mayor Bier closed Oral Communications.

**9. Public Hearing to Receive Input from the Community Regarding the Redrawing of Election District Boundaries**

**PROPOSED ACTION:** Receive a report from Staff and City demographer, National Demographics Corporation (NDC), on the redistricting process and permissible criteria to be considered to redraw district boundaries; review existing boundary map 505b with 2020 census data and discuss the ability of re-adopting map 505b; and conduct a public hearing to receive public input on the composition of the districts.

City Clerk Coffey presented the staff report and introduced Robert McEntire to make the presentation.

**Robert McEntire, National Demographics Corporation**, made the presentation.

Mayor Bier wondered what date the next public hearing was.

Mr. McEntire stated that the next meeting was February 14 and they would need map information submitted by community members by February 4, which is ten days before the public hearing date. He then completed the presentation.

Councilmember Vaterlaus understood that districts were drawn using census tracts, but she thought it was sometimes difficult because one side of the street is in one district and the other side of the street is in another. She didn't see any way around that as they would have to move full census tracts and it would cause the numbers to be off.

Mr. McEntire thought it would be more convenient if the census tracts went along the back of property lines rather than the front of them.

Mayor Bier stated that they could take public comments.

City Attorney Kenyon asked the mayor to officially open the public hearing.

Mayor Bier opened the public hearing.

Mgmt. Analyst Montemayor introduced the speakers.

**Dan Stegink, Pacifica**, stated that he wanted to draw attention to the map and the pink district, District 1, there is a little tail there by a red key symbol that's unmarked, assuming that's a school, and also there's an upside down boot sticking out of the back of District five and Linda Mar. He stated he has sat through about 14 of these different electoral maps in different cities and states and has never seen a puzzle piece surrounded on three sides survive any kind of scrutiny or challenge. He states that essentially in District 5, Linda Mar, you've got one area that's that upside down boot, you've got four areas of that street that is technically surrounded on all four sides by a different district - the toe of that boot, which he believes is illegal in every state except Texas.

**Dinah Verby, Pacifica**, stated that she lives in the Vallemar neighborhood and she was very involved in the redistricting process in 2018, did a lot of work with the interactive maps, etc. She pointed out that there was an earlier version where Vallemar would have been split with some of the property that is now in District 4. From her perspective, she thinks it is very important to keep Vallemar all in one district. She added that she doesn't know if there is a compelling reason to re-do these maps, but if there is some legal concerns such as Mr. Stegink mentioned in his comments, then perhaps that will be necessary. She stated that from a Vallemartian's point of view, let's keep Vallemar all together. She added that she was not acknowledged during Oral Communications, so she then voiced her thoughts on the General Plan rollout process.

**Christine Boles, Pacifica**, stated that in terms of the redistricting she was not here when these maps were created a few years ago, but she thinks they were created with a lot of good public input. She stated that our geography is very challenged in being able to create proper boundaries, giving an example of Milagra Drive with one side in District 2 and one in District 3, but that seems okay to her. She stated she does not know Mr. Stegink's comments, so legal issues aside, if there are some then they will need to fix the maps, but from what she read in the report the cost to the City to keep the maps the same is about \$4,000 versus about \$44,000 for really re-looking at redistricting. She stated that since the numbers are okay and she hasn't heard a lot of complaints, realizing they have to have other public hearings to allow for more public comment, but her vote would be to not spend that money if we have other pressing needs for our limited resources and limited staff time. She concluded that barring any legal nonconformity, she recommends keeping the map as it is.

Mayor Bier closed the public hearing.

Councilmember Beckmeyer asked what the cost difference was to opening the mapping tool to the public versus not.

Mr. McEntire stated that the additional tools were in the original contract, and the simple drawing kit is about \$4,000 and the on line GIS system is closer to \$20,000. He stated that, as a Council they want input, but sometimes they spend money on all the tools and they have one submitted



map or such as Oxnard where they had 72 submitted maps and they spent a lot of money. He stated that they look for Council's direction for whatever is their approach.

Councilmember Beckmeyer asked if the GIS tool was a lease for a period of time for this project or access to a GIS mapping tool that could benefit in other areas of city management.

Mr. McEntire stated that it would be specifically for redrawing Council districts, and NDC would load up all the information necessary so community members could do that.

Mayor pro Tem Bigstyk stated that, if he heard 20 people giving their opinion on redistricting, it would give him consideration to work with. He did sit through a lot of the meetings on redistricting and he got a lot of information. He stated that, while they are getting confirmation on the process, at the next meeting when 40 people show up to state why it is important to do a "deep dig" and he asked if they could decide at that meeting whether to invest in the tools.

Mr. McEntire stated that they could, but he explained where they were in the process with a tight timeline, i.e., the next meeting is on February 14 when they have a conversation when everyone comes to talk.

Councilmember O'Neill thought they have another meeting in January.

City Clerk Coffey stated that there is, but the next public hearing for the redistricting is not scheduled until February 14.

Councilmember O'Neill understood that he was referring to a public hearing, not Council meeting.

City Clerk Coffey stated that provides time for consideration of any publicly submitted maps that can be processed and posted in the regulated time prior to the next public hearing.

Mr. McEntire stated that what makes a switch at the next meeting so difficult is the fact that there is 14 days between public hearings #2 and #3, and it will take several days to set up whatever tool Council decides they want to release and he would need at least a week to process whatever maps were turned in and they would be giving the community a window of 3-5 days to use the tools and submit what they want. He didn't think it was ideal since they were spending money to engage, but there are small flexibilities within the process and meetings could be added at the will of Council. He stated that they want to be flexible and follow Council's path.

City Attorney Kenyon added that, having been through a lot of these hearings in a lot of cities, most cities take the first meeting to decide if they want additional material provided to the public for drawing because of the time constraints that Mr. McEntire has raised. She stated that they were expecting Council to decide at this meeting if they want additional tools for mapping.

Councilmember O'Neill thought he would opt for the Excel tools. He thought Mr. McEntire said it was about \$4,000 and they would get some public input but spending \$40,000 for maps that are probably going to be substantially the same.

Mayor Bier stated that they asked the community questions but didn't get many answers. She asked if the community will be able to answer them moving forward or is this it.

Mr. McEntire stated that each meeting is a public hearing and at every iteration, the public has the ability to give input. He stated that the goal of three sessions was to narrow down to one or two maps at most and sequencing for each choice so they can pick and move to the ordinance.

Mayor Bier was speaking directly on the specific questions that he asked. She agreed with Councilmember O'Neill.

Mr. McEntire clarified that it was a consensus for the Excel paper tool.

City Attorney Kenyon asked the mayor to get a straw poll from the Councilmembers.

Mayor Bier asked for a head nod if they agree with the consensus, acknowledging that they did.

<b>RESULT:</b>	<b>NO VOTE REQUIRED</b>
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### **COUNCIL COMMUNICATIONS**

Councilmember Vaterlaus went to three events. She went to the Fairmont Homeowners Association meeting and Council of Cities in Colma where they elected another chair for Council of Cities and City Selection Committee. She also attended an informative legal update on SB9 and 10 which detailed everything, i.e., the possible subdivision of single family lots and adding on of one unit and have two single families and two ADUs, not a total of 10 units as she read in the Tribune.

Councilmember O'Neill mentioned that most of the county was shut down for the holidays, but the person in charge of the Airport Roundtable resigned, and if anyone wants to go to the meetings, there is a job opening; however, he does not know what the qualifications are. He stated that the executive director of LAFCO retired, and they had a meeting about the recruitment process for that position and will be coming up in the agenda. He stated that they had a meeting for Commute.org earlier. He reiterated that there were some inaccuracies mentioned in Oral Communications, stating that Pacifica has never had a fire from the safe and sane fireworks. It was alleged that those fireworks started Ortega School's fire at the greenhouse which was not true. He stated that the only fire that happened was some discarded fireworks that were put in a pile and reignited. He stated that safe and sane do not go in the air and do not start fires as illegal ones do, and even if they ban safe and sane, it would still be illegal. He stated that the reason that the greenhouse is so expensive to rebuild at Ortega because it is a structure that was considered a classroom and will have students attending and has to go through the Dept. of State Architects as every building in a school does and must be ADA compatible. He concluded that is what brings the cost to \$250,000. He met with Mayor Bier on a possible item coming to Council later this month.

Councilmember Beckmeyer attended a meeting with CCAG executive director and project manager to learn more about the resource management and climate protection committee. She stated that there was an opportunity for elected officials in San Mateo County to apply and be appointed by CCAG board to that committee. She thought she knew what it entailed but wanted more information so attended the meeting, and then decided to apply so she will keep Council posted. She had enjoyed the holidays and was pleased that as many as possible city staff were able as well. She stated that PW staff and public safety staff worked diligently through the entire holiday period and rainy time and she commended them. She stated that, at the Beautification Advisory Committee meeting where PW Director Petersen and Field Services Manager Lavorini were present, she told them how much she appreciated the non-stop effort and energy staff put



into every aspect of their work to keep our community safe, adding that many of them have been members of the community for a long time. She then mentioned that the Beautification Advisory Committee's adopt a spot, such as the bulb out on Palmetto, has been revamping the paperwork and process for adopting those spots which is now three years due to re-adopting. She stated that it is undergoing an update, mentioning appreciating Michelle Trayer's help around paperwork updates, such as keeping track of donations. She also commended committee member Julie Gossage for her work in designing the planting plan for the Crespi Avenue bioswale near Cabrillo School which are now planted, adding that the bioswale performed exactly as expected. She thought there needs a little bit of monitoring but it was basically really positive. She acknowledged that they have a new Park Superintendent on staff who lives in our community and formerly worked outside the community. She thought there was one more mural to be completed, i.e., the Four Directions Mural at the beach, and they are working with that artist who had a baby and has personal timing challenges. They have to coordinate closely because of repairs to the Anza Pump Station. She understands that the muralist from the "Protect What You Love" mural by Eureka Square has been put in touch with North Coast County Water District with a conversation on a possible additional mural, adding that it was not in their jurisdiction but she wanted to give them a heads up.

Councilmember O'Neill encouraged everyone to take precautions for the Omicron Covid-19 variant. He stated that he knows two families in town and one has two kids under five that have had Covid and he knows two people who have died of Covid, one in Tahoe and one in Pacifica. He stated that it can happen, mentioning a party where some Terra Nova kids attended, and there were five cases from that party and some siblings brought it to another school in Pacifica. He stated that it is a highly contagious strain and he encouraged everyone to take the proper precautions. He stated that they are looking at being fully vaccinated includes three shots. He encouraged everyone to take it seriously. He thought it was milder than the Delta variant but you never know so he asks why you would put yourself at risk. He stated the Economic Development Committee is having their meeting with a guest speaker, John Hutar, CEO of San Mateo County Convention and Visitors Bureau. He stated that they put out articles, such as a recent one on restaurants with views of the ocean. He contacted him because Pacifica was not there and we have three or four restaurants, three literally on the ocean. He corrected that. He also did an article on six things to do in Pacifica. He stated that the Zoom meeting would be the next day and they can get the link from Pacifica's website. He stated that Pacifica is a member of that organization and they take reservations for Pacifica's hotels. He stated that, if they go to the Economic Development Committee website, they can look at the local gift card program to help support our local businesses. He stated that, if you own a business, you should consider being one of the merchants for that program.

Mayor pro Tem Bigstych stated that his comment was a perfect segue for him to make a recommendation for the Moonraker Restaurant which has an extraordinarily beautiful view of the ocean. He enjoyed that with the mayor to celebrate his role in supporting her mayorship. He attended a few meetings. At Emergency Preparedness, OSPAC gave a presentation about Mori Point in alignment with the presentation we received the previous year. Peninsula Clean Energy talked about power storage procurement rates. They also talked about the process of refreshing Reach codes in the various municipalities and they are getting close for Pacifica to look at whether we want to refresh some of our Reach codes. He stated that the next PCE meeting will be on January 27. He enjoyed Council of Cities with councilmembers, and he congratulated Councilmember Vaterlaus for passing on the baton. He stated that there were a number of big topic issues that came up in his email box over the winter break. The first one was the General Plan which they heard about during oral communications. He stated that someone who has been sitting in those chairs for years before he joined Council and he felt it was difficult as he has been

sitting through years of General Plan meetings and not everyone in Pacifica has, so he took the feedback and plans on talking to the City Manager about that to see what the process looks like as he wants to be sure he has a good understanding. He thought he can't take another year of hearing that they don't have a General Plan, and finding that balance is important to him. He referred to emails on Linda Mar flooding, and he didn't want to get into what is or isn't, but he thought it was clear that the neighborhood has issues with storm drainage and they are working on the storm drainage master plan. He admits, as a new Councilmember, he didn't know there was a difference between the storm drain system and the sewer system and he is learning and has requested a meeting with PW Director Petersen to be sure he has a robust understanding that it is a problem in other places besides Linda Mar. He understands the Anza Pump Station has been in need of repair for quite awhile, and has been out of their hands on why it has not gotten repaired. He thought they will take the next step to get emergency permitting in place sooner than later. He is looking forward to learning a lot more about storm drainage to see what can be done and how quickly and answer some of the questions without having to go back to staff. He then referred to Councilmember O'Neill's mention of Covid, and mentioned his previous comments on his niece who contracted Covid and the strong impression it made on him. Her mother gave him permission to post her picture on Facebook to make a strong impression on others. He expressed his thoughts on the variants and threat to others which was what prompted him to encourage masking. He thought it was not as dangerous now to others, but he knows hospitals are overwhelmed so he encourages everyone to get vaccinated or, if not medically possible, they can at least wear a mask to not expose those with compromised medical condition. He thanked them for allowing him to speak.

Mayor Bier stated that they put out a letter earlier in the day to the community about Covid and the letter mentioned a lot of resources for staying informed, testing resources, with a testing site in Pacifica at the parking lot at Francisco Blvd. and Salada Avenue with appointments available for ages 1 and older. She stated that those without appointments after 5:00 pm, Sundays 10:00 am to 6:00 pm. She stated she will be sharing resources and links through her email, social media. She stated that she works for the high school district in Daly City's Youth Health Center and it was very overwhelming to see the surge and the effects on students and families. She mentioned the mental health aspect as people are afraid again and she was seeing that in coworkers and students. She is participating in the Mayors' mental health initiative and talking about things going on because of Covid. She stated that she is working on mental health first aid with the Office of Diversity and Equity and are getting money from county to train trainers and she will update the community as it comes forward. She referred to Daly City Councilmember Pamela DiGiovanni inviting her to attend the 66<sup>th</sup> installation of officers of the Coastside Masonic Lodge 762. She stated that a Pacifican, Leowell Pailano, was installed as a Master. She had no idea about it and went and thought there were so many people from Pacifica and were happy that someone from Pacifica was there to support them. They wanted her to let Pacificans know that they do clean ups on the highway once a month. She thanked Pacifica Hot Rodz for organizing the holiday car parade and toy drive. They assembled at Park Mall and had hot chocolate and people brought toys and put them into the back of Jeff Shive's truck, with almost 80 cars involved in the parade. She stated it was fun and they are always giving back to our community. She went to the quarterly Joint Articulation meeting with the water department and Jefferson Union High School District, Pacifica School District and the city to discuss all the things going on and support each other. She stated that she needed a break and it was nice to have some time off. She mention Mayor pro Tem Bigstyk's comment on a lot of emails that came through to them, and she will address them but she was still going through all of them.

## **STAFF COMMUNICATIONS**

City Manager Woodhouse stated that he would continue with the Omicron Covid-19 conversation. He stated that, as they anticipated before the holidays, it has come true post-holiday. He stated that the single day case count after the holidays were double what was reported last January. He stated that, fortunately, Omicron is not as severe, especially for those vaccinated but it is very contagious and spreads dramatically. He stated that today's single day case count was double over what it was on last Monday. He stated that everyone knows someone who has been infected by Omicron and, as Mayor Bier mentioned, a communication from the mayor came out today in social media and city's website with numerous resources listed in there. He stated that rapid testing and the PCR testing is a big issue now in its availability, making appointments, etc. He also referred to the mention of Sunday testing site at the parking lot at Francisco and Salada as well as other resources listed in the letter. He stated that the schools are affected and the city organization is also affected and they are doing their best to keep the doors open as well as keep employees and first responders healthy so they can have appropriate coverage. He stated that the mask recommendations are KN95 and N95 surgical masks which are the most protective. He stated that it is very important that those are being worn to protect yourself and others. He stated that this is a day by day, week by week and they will continue monitor and hopefully this surge will subside in a few weeks, but they will wait and see. He then referred to the December 23 rainstorm, stating that there is a "for the record" post available on the city's website that provides detailed facts about that rainstorm and how the Linda Mar and Anza Pump Stations were staffed the entire time and the pumps were working to minimize any water accumulation in the flood prone neighborhoods in Linda Mar. He referred to mention of the case closed gas station and it is now the Panda Express. He stated that was an old gas station that is closed and has no contamination at this point. He reiterated that, when there are storms, staff are working around the clock and the city takes seriously and proactively reports to all the regulatory agencies all the necessary reporting required. They will continue to work hard on storm water challenges. He then referred to the planned release for the General Plan update, Sharp Park Specific Plan and Environmental Impact Report, clarifying that staff took time to put together some details of frequently asked questions and it was important for community members to read those FAQs which are on the PlanPacifica webpage and they address a lot of questions being raised about the process and timeline. He wanted to clarify that the documents posted on Friday night were downloaded by at least one member of the public who provided comments that night. He was able to download them on Saturday but he didn't know if anyone had problems. He stated that the 45-day review period began starting Saturday, not Friday. He stated that is a 45-day review period for the draft Environmental Impact Report comment. He stated that the community are able to provide comments on the General Plan update and the Sharp Park Specific Plan until noon on the day of the first public hearing by Planning and that will be a month. He stated that he encouraged the receipt of comments altogether during the 45-day period because that enables a more robust review of all the comments but there is technically not a 45-day comment deadline for comments on the actual General Plan update document and the Specific Plan, only a technical 45-day deadline on the draft Environmental Impact Report.

Mayor Bier called a short break then resumed the meeting.

## **CONSIDERATION**

### **10. Surf Camp/School Permitting Policy Recommendations**

**PROPOSED ACTION:** Adopt the Surf Camp/School Permitting Policy

## Recommendations

PB&R Director Perez began the staff report then introduced Parks, Beaches & Recreation Commission Chair Cindy Abbott to join him in presenting the presentation.

Mayor pro Tem Bigstyk referred to a load of 98, asking if that means 98 people on the beach at any given time or 98 participants in all programs involved at any given time.

Chair Abbott stated that it is 98 people participating in a surf camp or school at one time.

Mayor pro Tem Bigstyk stated that helps. He mentioned a recommendation on the matrix in packet page 153, No. 8, which is to change the non-profit small camp size from 12 to 15, which would mean that the load would get raised from 98 to 104. He asked if the recommendation was for 104 rather than 98.

Chair Abbott stated that it will stay at 98 because with load, not all of those permits are used at one time and a non-profit camp can up to 15 at one time. She stated that they may not all be used in all of the seats simultaneously at the same day, same time.

Mayor pro Tem Bigstyk stated that was why he was confused, as a moment ago he thought she said all participants involved would be capped at 98.

Chair Abbott agreed, but she stated that was one time at the beach and not every camp, commercial or non-profit, uses the beach at the same time.

Mayor pro Tem Bigstyk concluded that, at any given time, there would be an assurance that there are not more than 98 people on the beach, although conceptually there is 104 people allowed to be part of the programs in total.

Chair Abbott responded affirmatively, clarifying that after a lot of conversation about when is the beach used by the two different types of programs, it is rare that they are all there at the same time.

Mayor pro Tem Bigstyk stated that his next question was, if it is a matter of how many people are allowed on the beach, i.e., 98, what would stop them from having another camp involved, a third camp utilizing the beach at a completely different time and is not over-saturating over the 98.

Chair Abbott stated that is where the new concept of load comes in, as it provides more opportunity for the CAPP permittee to potentially have more students and more programs available to offer. She stated that is the beauty of this whole load process, instead of their historical way of saying a permit holder has 24 seats and they may only use 10 or use all 24, but they were able to hold all that space at one time and wasn't available for anyone else. She stated that they did some preliminary reviews that the PB&R Dept. staff put together to find out some historical scheduling and that was where they saw that in the afternoon on a non-summer day, there is space available. They tried to not get too much into that number and the whole scheduling. She stated that part of what the program is going to do is that a lot of non-profit programs partner together, know each other and work together and they are going to be making sure that they are not over utilizing their places.

Mayor pro Tem Bigstyk asked, if another non-profit were to come and weren't familiar with this and they said they would like to apply for a permit at a time when otherwise the beach is not being utilized, whether they would have that opportunity.

Chair Abbott responded affirmatively, stating that as part of the program, they will be asking how many participants are in their program, what time of day do they want to use it and together the non-profits, along with the PB&R staff, will organize those time slots using a scheduling tool. She stated that they are all familiar with each other and have partnered throughout this process. They think this concept of load came to them from City Surf Project and Brown Girl Surf and is going to help them utilize the beach more and provide more opportunities.

Mayor pro Tem Bigstyk stated that there is the concept of the CARB. He stated that they have the CAPP which is the Community access Partner Program and the CARB which is the CAPP Application Review Body so, in total, the Community Access Partner Program application is review body. He understood a little bit while she was explaining it, but he asked her to take another step or two, as his initial question was why not just have these permits go through PB&R and why the separate CARB process. He thought he understood that she was saying essentially there will be specialized knowledge going into the participatory board of CARB that would not necessarily be present on PB&R. He asked for a sense of what that specialized knowledge looks like.

Chair Abbott stated that they want to be sure the board is very inclusive and has a broad range of people who are sitting on it, as it is a part of the overall goal of equity and inclusion. She stated that it will be very interesting because they know that, for programs applying for this permit, they are probably not going to be members of that but they will look to them and, for example, maybe the San Mateo County Office of Equity and Inclusion will help them find members. They talked about, while being a resident may be helpful, they don't necessarily need to be a Pacifican as they hope it is a process where they are all going to learn something about how they develop diverse and equitable bodies. They thought it was important for those programs as it takes a lot of training and some of the members of the public might talk about this, as the longstanding commercial operators have always done a great job on water safety and who their instructors are, but there has not been the understanding of being a person who maybe has been placed in a position where they felt uncomfortable going to the beach. She stated that, when she was growing up on the coastside in Southern California, she always thought of the beach and the water as a friend and a great place to go, adding that that is not where people from inland areas have necessarily felt comfortable for their own safety, fear of the water and feeling like an outsider. They thought a program of someone deciding on who those permit holders should be belongs in a different group.

Mayor pro Tem Bigstyk asked if they have decided what the proximate make up of CARB will be, as she mentioned that it might include people who are not necessarily Pacificans.

Chair Abbott stated that is the next step of putting it all together over the next few months of work in the PB&R Dept. They want to make sure that they have agreement at this time before moving into that next level.

Mayor pro Tem Bigstyk referred to the pilot program that was established, and asked if there was a pilot program for these organizations to have camps last summer.

Chair Abbott agreed, stating that the pilot began in the fall of 2020, but things have continued to be rather difficult even if people are outdoors. One of the permit holders of City Surf project did



hold a number of camps and Brown Girl Surf was being a lot more mindful and bringing them over in buses and shared transportation. City Surf does that as well, but it has been a very difficult and challenging time to even run an outdoor program. She stated that camps were held with the organizations since the fall of 2021 with these pilot permits.

Mayor pro Tem Bigstych asked whether she would say that, despite the constraints of Covid, it was a rather successful pilot.

Chair Abbott stated that City Surf was there an awful lot and had great access with everyone having a fabulous time. They partnered very well as they have always done with the commercial schools, so she thought it was a successful pilot.

Councilmember Vaterlaus wondered why they didn't actually require a lifeguard as she thought, in all of that safety, someone from each organization who is present should be a lifeguard.

Chair Abbott stated that they do require water safety certification and Director Perez can go into the details, but a lot of water safety of lifeguarding does not really apply to the type of work being done in the surf line and teaching how to surf. They talked about it quite a bit and no one wanted to go to that extra level.

PB&R Director Perez stated that they used to have a water safety instructor requirement and that was something that happens at a swimming pool, but not at the beach. He stated that, regarding the lifeguard issue, during the whole process, the task force was made up of people from existing camps, non-profits, surfers, and they heard from a lot of people. Lifeguarding wasn't a requirement before but they added in that it was recommended, but not required, so some may have it but some may not. The task force ultimately decided on putting in the recommendation after a good discussion.

Councilmember Vaterlaus asked if they can explain to her the water safety if something happens.

PB&R Director Perez stated that water safety instructor is a certificate you get when you teach swim lessons in a swimming pool, and it does not relate to open water, surfing, etc. He stated that everyone who works for the various camps or volunteer, they have to be proficient in surfing which would mean they are very good when it comes to pulling someone out of the water if they need to do that. He stated that a lot of their surf camps would probably tell them that they have pulled someone out, not from their camp, but somebody at the beach. They are doing those types of things and there is not a problem in the actual school itself. He stated that they used to require the water safety instructor, but it has no bearing on someone who would be working in open water. They consulted with the schools as well as their own water coordinator who has experience when it goes to open water lifeguarding as well. They thought it was an unnecessary requirement.

Chair Abbott stated that they do need to have the CPR certification on file for each employee and they also have to have a safety plan that they talk about and is documented and provided to PB&R Dept.

Councilmember O'Neill thought about the number of permits, and he appreciated the clarity of load as he thought it was a good way to deal with the issue, in some ways better than a permit. He stated that the permits will be issued to individual entities, and he asked if those will be transferable so, if one of the commercial wants to sell or retire, do they have to turn the permit in or part of his business that he sells or vice versa for the non-profits, i.e., are they transferable to another non-profit.

PB&R Director Perez stated that they had a commercial school that did change hands several years ago and they are still operating with them. They don't have that specifically addressed, and he didn't know that a non-profit would be sold in that time, but the length of the RFP kind of lays out how long they will have the permit lease. They did not address whether the business changes hands or not.

Councilmember O'Neill stated that one concern he has is an RFP process. He understands the concept but RFPs seem very onerous and he didn't think it was fair for non-profits who are minimally staffed with volunteers and even the commercials all going through the entire process. He asked if this is an abbreviated form of RFP so it is not quite as onerous.

PB&R Director Perez would love for it to not be onerous as they have to put it together and they are not going to put something to it. He thought the concept of the RFP is to make it fair and put that announcement out so other people or organizations have the ability to apply, as he thought that was the main point. He stated that the non-profits could tell him better than he does, but they are used to applying for these things and sometimes they are used to getting not a lot of turnaround to apply for it. He stated that, typically, a well-run non-profit should have the tax information they would need for that and probably almost boilerplate information that would go into that. He thought the specific program or specific RFP would be something else, not unlike applying for grants, etc. He stated that it would be new for their commercial camps. He stated that there will be plenty of time for them to know what is coming.

Councilmember O'Neill wanted to encourage them to simplify it and not make it difficult for a surf camp.

Chair Abbott stated that they did look at other jurisdictions along the coast in California and, with those they were able to survey, six out of 9 of them did do RFPs. She stated that they aren't breaking new ground on that.

Councilmember O'Neill was thinking that, with the RFP, they usually will talk about Beach Blvd., and he just wants something simple. He asked if the non-profits will be held to the same financial standards in terms of liability insurance, bonding, etc., that they require of the commercial.

PB&R Director Perez stated that, in the packet under guidelines / rules, he will see that laid out. He stated that it lists the same thing, and there is also some things that are specific to non-profits because a commercial camp doesn't have to have a 501c(3) and demonstrating their worth, with diverse populations and under-served communities, etc.

Councilmember O'Neill assumed the city is the named insured.

PB&R Director Perez stated that they are required to have insurance, a business license and all the expected boilerplate stuff. He then pointed out that the guidelines, rules and applicant qualifications are on packet pages 156 and 157. He stated that there are some minor tweaks to most of them that were already in existence.

Councilmember O'Neill stated that he was concerned about having another review board, as he understood they want expertise for non-profits but he asked if he sees this happening where they issue the RFP, get the responses and, similar to what they get for construction projects, staff would recommend who they would issue permits to.

PB&R Director Perez thought it could happen that way, but also thought the review board for the non-profits would be set up and have a meeting where they go over it and discuss the entrance. He stated that it is quite possible they don't get more than a handful applying and, in that case, it might not be that hard if they all meet the qualifications in order to issue the permit for them. He sees it similar to Commission type board meeting or a committee where staff would make sure they had all the information. He stated that Chair Abbott could speak to this as she has been on grant review boards, etc., and there are a lot of newer processes for these things, but in terms of selecting the individuals they are definitely going to be consulting those that Chair Abbott mentioned as well as non-profits that they are currently working with as they have a lot to do with us getting where we are now and came up with the idea of that review board. In general, he understands what he is saying about trying to simplify things and he would love to do that, but he knows there are some things that are going to take a little extra work. He stated that they need to do those things to make it happen.

Chair Abbott was glad he understood load and she thought Mira Manickam-Shirley, who may make a comment, introduced them to that idea.

Mayor Bier asked who is appointing the people on the CARB.

PB&R Director Perez thought with consultation, they will be recruiting them at a staff level but they will be getting input on this as this is not their area of expertise. Two non-profits they have been working with know a lot about this and they will be talking to the organization that Chair Abbott mentioned. He stated that this is all new and they are leading the way and this is something on which they will be seeking lots of input.

Mayor Bier opened public comments.

Mgmt. Analyst Montemayor introduced the speakers.

**Adriana Guerrero, Pacifica**, stated that she is the current Executive Director of Brown Girl Surf and appreciated all the work and commitment by everyone over the past 20 months, and expressed her thoughts on support for this process.

**Eddie Donnellan, MeWater Foundation founder**, stated that they are a San Francisco non-profit and he shared a story on his and children's feelings about not being allowed on the beach, and expressed his support on going forward with this equity process.

**Mira Manickam-Shirley, Brown Girl Surf co-founder**, expressed her appreciation of everyone involved in this process and gave her thoughts to ensure equitable access for surfing and approved of the proposed process.

**City Surf Project**, The representative of City Surf Project (name not provided) expressed his appreciation of everyone involved in this process and gave his thoughts on this process to provide a more equitable policy and allowing more groups, as well as on comments brought up during consideration. He emphasized that both City Surf Project and Brown Girl Surf rely heavily on safety, coaches are lifeguard and CPR certified and do trainings with Ocean Beach lifeguards every year. He stated that this should be a CARB consideration in making those recommendations. He supports adopting the proposed recommendations that will make this process a model across the state.

**Chloe Erskin, Oakland**, is a volunteer with Brown Girl Surf and expressed her thoughts on



participating in a program that brings women together in an equitable process and appreciation for those working on this process. She stated her support of the creation of the CAPP system to serve non-profits providing equitable access to underrepresented groups until the entire permitting system can reach a more equal place further down the road and applauded the Councilmembers and Task Force Members for working on this.

**Kimberly Williams, SMC Chapter of Surfrider Foundation**, thanked everyone in Pacifica who worked at facilitating the task force process and bringing this proposal to Council, as well as everyone else who helped to create a more equitable permit system and this is supported by the SMC Surfrider Foundation. She gave her thoughts and asked Council to approve this policy.

**Lynn Adams, Pacifica**, stated that she was proud of the PB&R Commission and everyone to make this proposal possible. She gave her thoughts on this proposal and recommended that the Council pass this proposal.

**Linda Locklin, California Coastal Commission**, stated that she has been following the work being done over the last 20 months, and she was present to concur with the previous speakers on how important this program is and recommended that Council adopt the recommendation provided by staff.

Mayor Bier closed public comments.

Councilmember O'Neill moved to approve the CAPP program as stated; seconded by Councilmember Vaterlaus.

Mayor pro Tem Bigstyk stated that he had a few comments before they vote on the motion on the floor. His heart felt so good to have a representative of the Coastal Commission to give the city support for this program. He thought this was his first experience to have that positive reinforcement on a city policy and he looked forward to more of that going forward. He stated that, for anyone listening who is driving through Pacifica in a bus and wish to stop at our beach, there are complications on how they orchestrate our businesses, but if their kids want to check out our beach, he encouraged them to let them. He pointed out that they were all white and were supporting this proposal. His heart also felt good regarding a line in the staff report about many municipalities in California having surf camper schools permitting program and none address the need to ensure a diverse mix of inclusive programs that will expand equity in surf camper schools. He stated that, with the implementation of the task force recommendations, Pacifica will be at the forefront of providing these opportunities. He was proud to be in support of what they have been discussing. He looks at this as a first step in working with partners who will teach us how to model making this a safe place for anyone who would wish access to the ocean. He stated that Pacifica is a gateway to this lifegiving entity and within that context he was very excited that they are taking steps to make sure that it is not just the residents but anyone who needs the healing qualities of this gift of from where we all come. He was looking forward to casting a yes vote.

Councilmember Beckmeyer didn't speak earlier because everyone brought up her questions. She stated that, since this was brought forward 20 months ago and the deluge of emails they received on this topic, it was clear around the issue of equity. She stated that, when they first made the recommendation and request for PB&R Commission to take this up and in her personal stance as well as all councilmembers, it was a no-brainer that it was everyone's right to participate and visit our beach. She thought it was difficult to have the question raised in a way that implied they didn't think that was true. She stated that it took some recognition that it was not personal and just business and it was the function of the way in which our policy was working or not working

regarding camps. She believed it wasn't an intentional act on the part of this or previous Councils or anyone in Pacifica, and she was proud to hear the community and fix it. She realized that it is more work, with an RFP and an investment of time and will continue to be but worth it. She stated that, in light of the Coastal Act, they acknowledge that it is everyone's right not to visit "our" beach but everyone's beach. She stated that she works in an elementary school and it is sometimes challenging to explain to the kids why certain things can't happen. She hoped that they can acknowledge that, even if procedures don't allow certain things like a group visiting or having a class, individuals always have the opportunity and she was grateful to Lynn Adams and the Pacific Beach Coalition for their leadership in helping anybody who wants to participate in cleaning the beach, visiting the beach, etc., and this is just another step in that direction. She is looking forward to the upcoming Coastal Commission meeting when this Coastal Development permit will be heard.

Councilmember Vaterlaus agreed with what everyone said and having no knowledge of what was happening with these issues, they had no idea and was never meant to exclude anyone but just the process and how it was taking place in the past. She is glad that they can be inclusive now so that everyone can do this and everyone who has this opportunity can enjoy being in Pacifica and get the feelings all of us get when we go to the beach. She stated that someday she will take a surf lesson.

Mayor Bier stated that systems of oppression and that locals only mindset really needs to be changed. She stated that this work is so important. As people were sharing their public comments, she was moved to tears as it was amazing and the work that PB&R Commission put in was appreciated. She thanked former Mayor Martin for pushing this along. She was humbled and moved and can't wait to vote.

City Clerk Coffey took a vote by verbal roll call.

Councilmembers thanked PB&R Director Perez for the presentation.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Mike O'Neill, Councilmember
<b>SECONDER:</b>	Sue Vaterlaus, Councilmember
<b>AYES:</b>	Bier, Bigstyk, O'Neill, Vaterlaus, Beckmeyer

11. Appointment of Councilmember Ad Hoc Subcommittee to Develop and Recommend Updates to the City Council Rules and Code of Ethics  
**PROPOSED ACTION:** Appoint a two Councilmember Ad Hoc Subcommittee to work with the City Manager and City Attorney to recommend updates to the City Council Rules and Code of Ethics for future consideration by the full City Council.

City Manager Woodhouse presented the staff report.

There were no public comments.

Councilmember Beckmeyer was pleased that this was coming forward as she believes policies like this need a refresh. She stated that, with the school board, she observed a deliberate process when taking a section of administrative and board policies at each meeting and was sure that, as

a seated school board member, is a little arduous. She thinks staff and Council operate at the highest level of ethics and she stated that this is not because they think they are not ethical but to create a continuous process improvement. She acknowledged that the City Manager has written on the topic of ethics in government elected leadership and staff level. She stated that it is a value they operate with every day and having an ad hoc subcommittee to look at the policy and codify what she believes is their constant and daily practice is a great way to go. She was ready to make a motion but would defer to the mayor and councilmembers for comment.

Councilmember Beckmeyer moved to appoint Councilmember O'Neill and Mayor pro Tem Bigstyk to Ad Hoc Subcommittee; seconded by Mayor Bier.

City Clerk Coffey took a vote by verbal roll call.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Sue Beckmeyer, Councilmember
<b>SECONDER:</b>	Mary Bier, Mayor
<b>AYES:</b>	Bier, Bigstyk, O'Neill, Vaterlaus, Beckmeyer

## 12. 2022 City Council Liaison and Committee Assignments

**PROPOSED ACTION:** Review the list of City Council Liaison and Committee Assignments, make any modifications for the calendar year 2022, and approve the final list.

City Clerk Coffey presented the staff report.

Councilmember Beckmeyer thought there was a conflict for Councilmember O'Neill with the Economic Development Committee.

Councilmember O'Neill stated that he was going to withdraw from the Economic Development Committee as he agreed to do another commitment. He stated that he would attend this month's meeting but there are two liaisons to that committee, and he stated that, if Councilmember Beckmeyer wishes to remain the sole liaison, he could act as the backup.

Councilmember Beckmeyer was okay with that.

Councilmember O'Neill stated that he was okay with that unless someone else wanted to be the backup.

Mayor pro Tem Bigstyk stated that he was already the backup of the two of them, so he was happy to remain as back up, with them switching from 2 to 1 and from 1 to 2. He thought this conversation is deliberation which is why he wanted to point that out.

Mayor Bier thought they could go to public comment first, and seeing no one, closed public comments.

Mayor Bier asked if that meant they needed another person for Economic Development.

Councilmember Beckmeyer stated that she could be the primary and either Councilmember O'Neill or Mayor pro Tem Bigstyk can be the alternate.

Councilmember O'Neill stated that it is now structured with two liaisons, but if they are willing to have one liaison and then the back up, it would be like the normal structure of all the other committees.

Councilmember Vaterlaus asked if there was a reason why they had two liaisons to that committee.

Councilmember O'Neill recalled that they wanted to show the importance of economic development to Council and why they had two liaisons.

Mayor Bier stated that it is important.

Mayor pro Tem Bigstyk asked Councilmember Vaterlaus if she was interested in being a co-liaison.

Councilmember Vaterlaus stated that she has another meeting on that night that she attends and that is difficult. She did suggest that she could be a backup every once in a while.

Councilmember O'Neill stated that, since it is an important committee and they do a lot of work with a lot of active individuals, he asked the City Attorney if it was legal for them to have a rotating and work out a schedule among the five Councilmembers as to who serves as the second council liaison.

City Clerk Coffey stated a concern that it may bring Brown Act challenges if there is a rotation of councilmembers on a standing committee.

City Attorney Kenyon agreed with the City Clerk that there would be Brown Act concerns with a rotating liaison member.

Mayor Bier stated that she can offer herself to be the second councilmember, which she thought was on Tuesdays.

Councilmember Beckmeyer stated that it was always the Tuesday after the Council meeting.

Councilmember O'Neill stated that he would be going the following night as he arranged for the guest speaker.

Councilmember Beckmeyer stated that she can only be there for the very beginning for tomorrow's meeting, which is not normally an issue. She had asked Mayor pro Tem Bigstyk if he would be able to attend. She stated that they can figure that all out after they make a motion and adopt this item.

Councilmember O'Neill stated that he offered Airport Roundtable as they have the opportunity to work with a brand new person as the head of the Roundtable and establish a relationship with a new person.

Councilmember Beckmeyer stated that, while it was tempting, she would like to remain on the Beautification Advisory Committee if possible as that is an important committee to her. She stated that, if it was important to him and he wanted to switch, she would be willing to do that.

Councilmember O'Neill stated that he will do the Airport Roundtable liaison. He stated that he did

make progress, getting a monitoring station and the city manager is working on getting a speaker to talk about the right and left turn they are going to make over the ocean. He was familiar with some of the issues, but he wanted to give all Councilmembers the opportunity to “grab the gold ring”.

Mayor pro Tem Bigstych stated that he wouldn't want to rob him of the opportunity, as he thought he has made inroads. He wanted to move to PCE, and thought it would be advantageous at this time if he takes over as the primary rather than the alternate.

Mayor Bier agreed, adding that he is doing a great job there.

Councilmember O'Neill stated that he will stay where he is except for Economic Development.

Councilmember Vaterlaus stated that she is on a Colma Creek Committee which is pretty much disbanded as the topic moved into the flood sea level rise.

Mayor Bier referred to the HEART and asked Councilmember Vaterlaus if she would mind switching out of that and letting her take that position.

Councilmember Vaterlaus stated that she likes HEART.

Councilmember O'Neill didn't think she can as it is a City Selection Committee.

Councilmember Vaterlaus stated that it was not a full HEART position, just one or two times a year, and both of them attended it last time. She stated that the mayor could be the lead and she can be the backup.

Mayor Bier thanked her.

Councilmember Vaterlaus stated that she would eventually like to go on to the HEART board itself.

Councilmember O'Neill stated that he would like to make a proposal, and doesn't know what the reaction will be. He stated that they all know they have had redistricting and they are going to have a new congress person, new assembly person, new supervisor, and relatively new state senators. He didn't know if they wanted to discuss doing some sort of legislative outreach among the five councilmembers, whether a standing committee or they each pick a representative to get to know the staff of the individuals.

Councilmember Vaterlaus asked if it was like a legislative liaison.

Councilmember O'Neill stated that he didn't know what they want to call it, but he was proposing that. He thought, if they have to agendize that for another meeting, that might be a good thing.

City Attorney Kenyon stated that it would need to be agendized for another meeting.

Councilmember Beckmeyer would definitely like to ask that they agendize that for discussion because she needs clarification about committees, etc.

Mayor Bier agreed. She asked if they are set with their list. She asked the City Clerk if she saw anything else they need to change.

City Clerk Coffey stated that she will share her screen with the updates that she thought were stated for 2022. She didn't catch the selected second liaison to the Economic Development Committee. She stated that, going down the list, they discussed Airport Committee Roundtable with Councilmember O'Neill retaining his position as the liaison with Councilmember Vaterlaus as the alternate. She heard discussion on the Economic Development Committee where Councilmember O'Neill is giving up that position and she needs to confirm who the second councilmember was selected, as she heard interest from several councilmembers.

Mayor Bier stated that it was her as the second liaison to Economic Development Committee.

Councilmember Beckmeyer agreed and Mayor pro Tem Bigstyk as the alternate. She asked him if that was his understanding.

Mayor pro Tem Bigstyk stated that was his understanding, and he asked if that will be too much for Mayor Bier or is she okay with that.

Mayor Bier stated that she was okay with that.

City Clerk Coffey stated that they have the Economic Development Committee and Library Advisory Committee with two councilmember liaisons and she understood that, in those cases, there does not need to be assigned an alternate.

City Attorney Kenyon thought there should not be an alternate because of the Brown Act, but they can deal with that. She stated that it was more complicated to have an alternate, as it does create some Brown Act issues.

City Clerk Coffey asked, based on that information, if Council wishes to have an alternate assigned for Economic Development Committee or just stick with two Council liaisons to that committee without an alternate.

Councilmember Beckmeyer asked the current alternate how he feels about that.

Mayor pro Tem Bigstyk stated that he was alright being taken off as an alternate if that makes life easier for them. He stated that it sounds like Mayor Bier will be there the following night, and asked if she needed him to be there.

Councilmember O'Neill stated that he will be there tomorrow because he arranged for the speaker.

Councilmember Beckmeyer asked if he will be there for the whole meeting.

Councilmember O'Neill stated that he was planning on being there for the whole meeting.

City Attorney Kenyon stated that they cannot have three Councilmembers at that meeting.

Mayor Bier stated that she won't start until Councilmember O'Neill is not there.

Mayor pro Tem Bigstyk stated that he won't be there either.

City Clerk Coffey asked about the question of the alternate for that committee.



Mayor pro Tem Bigstyk stated that she can take him off.

City Clerk Coffey then referred to discussion on the HEART agency committee, where Mayor Bier would be the primary representative and Councilmember Vaterlaus would be the alternate.

Councilmember Vaterlaus agreed.

City Clerk Coffey stated that it mirrors causing people effectively interagency council assignments as well.

Mayor Bier agreed.

City Clerk Coffey stated that she also heard discussion of Peninsula Clean Energy (PCE) wishing to swap the primary and alternate so that Mayor pro Tem Bigstyk will become the primary representative on PCE and Mayor Bier would act as the alternate.

Mayor Bier agreed.

City Clerk Coffey stated that she will update the list to reflect that Councilmember Vaterlaus is no longer the chair for Council of Cities and City Selection Committee that has changed for 2022.

Councilmember O'Neill asked who was elected.

Councilmember Vaterlaus stated it was Rico Medina and Eddie Flores.

Councilmember Beckmeyer stated that, if anyone is interested in ABAG or if Mayor pro Tem Bigstyk wants to switch with her, she was fine with that, but if not, she was fine with that as well.

Mayor pro Tem Bigstyk stated that over the course of the year, he never attended one of the meetings and he was fine taking over if she would like, but he was not sure what he was getting himself into.

Councilmember Beckmeyer stated that it is just one meeting a year and it is a long one, all morning and into the early afternoon. She also wasn't aware of what she was getting herself into but you get a packet in advance and she can talk to him about what ABAG entails.

Councilmember O'Neill stated that it was very similar to what the Cal. League has the last day before everybody leaves where you pass resolutions and vote.

Councilmember Beckmeyer stated that you also get a lot of presentations and understanding and they talk a lot about RHNA and how it came to be, etc.

Mayor pro Tem Bigstyk thought it sounds like he would enjoy it, and he was fine to swap with her on that one.

Councilmember Beckmeyer stated that they will reverse their positions on that. She then stated that she got word on the SMC JPA Advanced Life Support. She stated that they don't have an alternate on that and they only meet 2 or 3 times a year, and the January meeting has been canceled and the next meeting will be March 18. She stated that, at this moment, she is scheduled to be out of town that day and it would probably be very difficult to attend that meeting.

She asked that someone else take it or someone else become the alternate and plan to attend March 18.

Councilmember Vaterlaus asked if they are meeting on Friday.

Councilmember Beckmeyer stated that it was May, not March. She stated that the JPA in which they participate, AMR, is representing them in that.

Mayor pro Tem Bigstych stated that on May 18 they actually have an Emergency Preparedness meeting it looks like.

Councilmember O'Neill stated that it says they meet on Wednesday, 5/19, and he asked if it is 5/18 or 5/19.

Councilmember Beckmeyer stated that was last year's date.

Councilmember Vaterlaus agreed that it is May 18.

Councilmember O'Neill stated that he can make it if no one else can.

Councilmember Beckmeyer asked if they can put him down as an alternate.

Councilmember O'Neill agreed.

Councilmember Beckmeyer stated that was a 700 committee and they will have to get that information to him for doing the Form 700.

Mayor pro Tem Bigstych stated that, on going through the list again, he looked at Emergency Services Council of SMC and he asked Mayor Bier how committed she was to being the alternate on that one.

Mayor Bier stated not at all.

Mayor pro Tem Bigstych stated that he could swap in on the alternate slot.

Councilmember Vaterlaus stated that she never missed it, but you never know.

Mayor Bier stated that she never misses any meeting.

Mayor pro Tem Bigstych stated that he didn't want to muscle in on her turf but, as alternate, maybe he will have more of an opportunity to check it out.

Councilmember Vaterlaus stated that it is an interesting meeting.

Mayor Bier asked if anyone wanted to rotate into Open Space, as she was looking at all the times her name was on the list.

Mayor pro Tem Bigstych stated he would love to do that, but it is Emergency Preparedness night.

Mayor Bier stated that she will stay on it. She asked if they were done and do they have a motion.



Councilmember Beckmeyer asked City Clerk Coffey if she has everything she needs.

City Clerk Coffey stated that they need to have a motion to adopt the revised list.

Councilmember Vaterlaus asked Mayor Bier if she was still on Bike and Ped.

Mayor Bier stated that she was.

Councilmember Vaterlaus stated that she saw a lot of openings on Bike and Ped.

Mayor Bier stated that they have a lot.

Councilmember Beckmeyer asked if two people from the same jurisdiction be on it.

Mayor Bier responded that they can.

Councilmember Beckmeyer concluded that any of the other four councilmembers who have time in their schedule could apply.

Mayor Bier stated that the next meeting is January 27. She asked if they have a motion.

Councilmember Vaterlaus moved to accept the list of City Council Liaison and Committee Assignments; seconded by Mayor pro Tem Bigstyck.

City Clerk Coffey took a vote by verbal roll call.

Councilmember O'Neill congratulated Mayor Bier on her first meeting.

<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Sue Vaterlaus, Councilmember
<b>SECONDER:</b>	Tygarjas Bigstyck, Mayor Pro Tem
<b>AYES:</b>	Bier, Bigstyck, O'Neill, Vaterlaus, Beckmeyer

### **ADJOURN**

Councilmember Vaterlaus stated that she read in Council's rules and regulations that they were supposed to have a vote to adjourn the meeting.

Mayor Bier stated that she read that as well.

Councilmember Beckmeyer read that as well.

Councilmember O'Neill moved to adjourn; seconded by Councilmember Vaterlaus.

Councilmember Vaterlaus asked if they have to do a roll call vote.

City Attorney Kenyon stated that she is not aware of that, and she didn't think it was a legal obligation.

Councilmember Vaterlaus stated that it was in the rules and she was surprised as they don't do it.

Mayor pro Tem Bigstyk thought they could have that discussion when they update.

Councilmember O'Neill stated it will be the first deletion of the rules.

Mayor Bier adjourned the meeting at 10:38 p.m.

Transcribed by Barbara Medina, Public Meeting Stenographer.

Respectfully Submitted,

Sarah Coffey, City Clerk

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Mary Bier, Mayor



**CITY OF PACIFICA  
COUNCIL AGENDA SUMMARY REPORT**

**1/24/2022**

**SUBJECT:**

Vegetation Management and Wildfire Preparedness Grant Funding Opportunities Through CalFire

**RECOMMENDED ACTION:**

Approve the resolution to submit for state sponsored grant funding for community vegetation fuel reduction and community education within the City of Pacifica.

**STAFF CONTACT:**

Sean Kavanaugh, Deputy Fire Chief  
650-991-8138  
skavanaugh@northcountyfire.org

**BACKGROUND/DISCUSSION:**

The Governor and Legislature approved \$120 million to be awarded through the California Climate Investments (CCI) Fire Prevention Grant Program and others. CAL FIRE provides funding for local projects and activities that address the risk of wildfire and reduce wildfire potential to forested and forest adjacent communities.

Grant funded activities include hazardous fuel reduction, fire prevention planning, and fire prevention education with an emphasis on improving public health and safety while reducing greenhouse gas emissions. North County Fire Authority (NCFA) intends to apply for two separate grants. One is for modifying roadway vegetation. One is for public education and community outreach.

For the first grant, NCFA is requesting the amount of \$200, 000. If awarded, it will be used to modify vegetation adjacent to roadways to provide for safer ingress and egress of evacuating residents and responding emergency personnel.

For the second grant, NCFA is requesting \$100,000. If awarded, it will fund community outreach and education, which is an important part of being ready for wildfires.

It is anticipated that the state will make its decision on which grants will be funded in June 2022.

**RELATION TO CITY COUNCIL GOALS AND WORK PLAN:**

Working to maintain the health and safety of our residents and visitors along with our first responders.

**FISCAL IMPACT:**

If grants are awarded at the requested amounts, the City would receive \$300,000 toward

vegetation management and wildfire preparedness efforts.

**ORIGINATED BY:**

North County Fire Authority

**ATTACHMENT LIST:**

**RESOLUTION NO. \_\_\_\_\_****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA  
APPLICATION FOR FUNDING FROM THE FOREST HEALTH GRANT PROGRAM AS  
PROVIDED THROUGH CALIFORNIA CLIMATE INVESTMENTS**

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**WHEREAS**, the Governor of the State of California in cooperation with the California State Legislature has enacted State of California Greenhouse Gas Reduction Funding, which provides funds to the State of California and its political subdivisions for California Climate Investments, including forest health programs; and

**WHEREAS**, the State Department of Forestry and Fire Protection has been delegated the responsibility for the administration of the program within the State, setting up necessary procedures governing application by local agencies, non-profit organizations, and others under the program, and

**WHEREAS**, said procedures established by the State Department of Forestry and Fire Protection require the applicant to certify by resolution the approval of application before submission of said application to the State; and

**WHEREAS**, the applicant will enter into an agreement with the State of California to carry out a forest health project;

**NOW, THEREFORE, BE IT RESOLVED** that the City of Pacifica:

1. Approved the filing of an application for “California Climate Investments” Forest Health grant program funds; and
2. Certifies that said applicant has or will have sufficient funds to operate and maintain the project; and
3. Certifies that funds under the jurisdiction of The City of Pacifica are available to begin the project.
4. Certifies that said applicant will expend grant funds prior to March 15, 2026.
5. Appoints the Fire Chief, or a designee, as agent of the North County Fire Authority to conduct all negotiations, execute and submit all documents including, but not limited to applications, agreements, amendments, payment requests and so on, which may be necessary for the completion of the aforementioned project.

**Approved and adopted** the 24th day of January 2022. I, the undersigned, hereby certify that the foregoing Resolution, number XXXX was duly adopted by the following roll call vote:

**AYES**, Councilmembers:

**NOES**, Councilmembers:

**ABSENT**, Councilmembers:

**ABSTAIN**, Councilmembers:

\_\_\_\_\_  
Mary Bier, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Sarah Coffey, City Clerk

\_\_\_\_\_  
Michelle Kenyon, City Attorney



**CITY OF PACIFICA  
COUNCIL AGENDA SUMMARY REPORT**

**1/24/2022**

**SUBJECT:**

Adoption of a Resolution of the City Council of Pacifica Approving the Lease Agreement Between the City of Pacifica and Paul and Amy Kukielka, dba Chit Chat Café for the Premises Located at 2100 Beach Boulevard (Located at the Pacifica Pier); authorizing the City Manager to execute the lease agreement and finding the lease categorically exempt from the California Environmental Quality Act ("CEQA").

**RECOMMENDED ACTION:**

Move to adopt the Resolution of the City Council of the City of Pacifica approving the Lease Agreement between the City of Pacifica and Amy Kukielka, dba Chit Chat Café for the Premises Located at 2100 Beach Boulevard (Located at the Pacifica Pier); authorizing the City Manager to execute the Lease Agreement and finding the lease categorically exempt from the California Environmental Quality Act ("CEQA").

**STAFF CONTACT:**

Michael Perez, Director of Parks, Beaches and Recreation  
(650) 738-7381  
[mperez@pacificagov](mailto:mperez@pacificagov)

**BACKGROUND/DISCUSSION:**

The Chit Chat Café has been leasing the premises at 2100 Beach Boulevard since 2005, operating as a retail café. The current Lease Agreement expired on October 31, 2021, and has been extended on a month to month basis during good faith negotiations. The City desires to enter into a new Lease Agreement with the Chit Chat Café owners, Paul and Amy Kukielka.

The new lease will be for an initial term of three years with two optional extensions each for an additional one-year term (for a total of five years) if both parties agree to such extensions.

The initial monthly rent shall be \$1,402.67, for a total of \$16,832.04 per year. Rent will increase three percent (3%) annually on the anniversary of the Lease Commencement Date.

Tenant is separately responsible for paying for utilities and services (including electric, water and sewer). The lease will commence on January 24, 2022, with the rent commencement on February 1, 2022, if approved by Council, and if both options are exercised, it would expire January 31, 2027.

The proposed Lease contains various standard provisions which would require the Chit Chat Café owners to pay rent, maintain the Premises in a good condition, indemnify the City and maintain insurance, among other things.

Like many small businesses, during COVID-19, Chit Chat Café' owners have had challenges, impacting their ability to pay full rent. A repayment plan is included in the lease, where tenants will pay the amount of back-rent owed over the first three years of the Lease Agreement. In



addition, there is a provision for rent reduction based on pier or promenade closures. The Lease also contains provisions to make it clear that the Lease Agreement is subordinate and subject to any leasehold, license, or other property right or permission the City has with the State of California State Lands Commission authorizing the possession, occupancy and use of the tidal and submerged lands upon which the Pacifica Pier is built.

**CEQA:**

The Lease is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to the statute (Public Resources Code Section 21000, et seq.) and the CEQA Guidelines (14 Cal. Code Regs. 15000 et. seq.), under Section 15301 as a Class 2 Categorical Exemption as there will be no expansion of previous use beyond that existing at the time of the City's determination.

**ALTERNATIVE ACTION:**

The City Council may choose not to approve the Lease, in which case, City staff will continue to work with the owners of Chit Chat Café to enter into a new lease or locate a new tenant.

**RELATION TO CITY COUNCIL GOALS AND WORK PLAN:**

This action helps to support **Fiscal Sustainability** and **Stewardship of City Infrastructure**.

"Fiscal Sustainability" includes investing in economic development to increase revenues, funding a reserve/emergency fund, and being well prepared for grant opportunities.

"Stewardship of City Infrastructure" includes repairing/replacing outdated city facilities such as city hall, the libraries, fire stations, etc., improving streets, and responding to impacts of sea level rise.

Approving the proposed Lease would allow the City to receive income to offset the cost of maintenance of the premises.

**FISCAL IMPACT:**

Annual revenue in the amount of:

Year 1 - 16,832.04, Year 2 - \$17,337.00, Year 3 - \$17,857.11, Year 4 - \$18,392.82, Year 5 - \$18,944.61.

**ORIGINATED BY:**

Parks, Beaches & Recreation Department

**ATTACHMENT LIST:**

Agreement\_Lease\_Kukielka\_ChitChatCafe\_Pier\_Final\_2022 (PDF)



**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA  
APPROVING THE LEASE AGREEMENT BETWEEN THE CITY OF PACIFICA AND AMY  
AND PAUL KUKIELKA FOR THE PREMISES LOCATED AT 2100 BEACH BOULEVARD  
(LOCATED AT THE PACIFICA PIER).**

**WHEREAS**, City is the owner of the property located at 2100 Beach Boulevard, Pacifica, California, depicted on Exhibit A attached hereto; and

**WHEREAS**, Paul and Amy Kukielka have leased the premises located on this property for 16 years, functioning as a retail cafe; and

**WHEREAS**, Paul and Amy Kukielka wish to lease the premises from the City for three years with two options to extend the lease, each for an additional one year term, if both parties agree to such extensions; and

**WHEREAS**, The City desires to implement a Lease Agreement with the Paul and Amy Kukielka for use of the premises;

**NOW, THEREFORE, THE PACIFICA CITY COUNCIL HEREBY RESOLVES AS  
FOLLOWS:**

1. The City Council hereby finds that the Lease is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to the statute (Public Resources Code Section 21000, et seq.) and the CEQA Guidelines (14 Cal. Code Regs. 15000 et. seq.), under Section 15301 as a Class 2 Categorical Exemption as there will be no expansion of previous use beyond that existing at the time of the City's determination.
2. The City Council hereby approves the Tenant Lease with Paul and Amy Kukielka in substantially in the form attached hereto as Exhibit B.
3. The City Manager is hereby authorized to execute the Tenant Lease Agreement in the form attached hereto as Exhibit B, with minor revisions that may be approved by the City Manager and City Attorney, and to execute any other necessary documents to effectuate the terms of the Tenant Lease Agreement and take all steps necessary to carry it into effect.

**PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Pacifica, California, held on January 24, 2022 by the following vote of the members thereof:

**AYES**, Councilmembers:

**NOES**, Councilmembers:

**ABSENT**, Councilmembers:

**ABSTAIN**, Councilmembers:

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Mary Bier, Mayor

ATTEST:

APPROVED AS TO FORM:

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Sarah Coffey, City Clerk

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Michelle Kenyon, City Attorney

**TENANT LEASE****By and Between**

**CITY OF PACIFICA**  
a municipal corporation of the State of California  
("Landlord")

**and**

**Paul Kukielka and Amy Kukielka, dba Chit Chat Café**  
(collectively, "Tenant")

**Dated: January 24, 2022**

Attachment: Agreement\_Lease\_Kukielka\_ChitChatCafe\_Pier\_Final\_2022 (4864 : Chit Chat Lease)

## TENANT LEASE

### BASIC LEASE INFORMATION

1. Tenant: **Paul Kukielka and Amy Kukielka, dba Chit Chat Café,**  
2100 Beach Boulevard  
Pacifica, California 94044  
Phone: (510) 610-4609
  
2. Landlord: City of Pacifica, a California municipal corporation  
170 Santa Maria Avenue  
Pacifica, CA 94044  
Phone: (650) 738-7301  
Facsimile: (650) 359-6038  
Attention: City Manager
  
3. Premises: Approximately 623 Square feet of the southerly half of that certain building located on the inland portion of the Rev. Herschell Harkins Memorial Pacifica Pier (commonly known as the Pacifica Pier), 2100 Beach Boulevard, Pacifica, California, as depicted in Exhibit A attached hereto
  
4. Use: Café (e.g., beverages and light fare), ancillary sale of gift and souvenir items consistent with a retail café operation (e.g., postcards, mugs, tee shirts), and sale of frozen bait
  
5. Term: Three years, with two optional extensions, each for an additional one-year term, if both parties agree to such extensions
  
6. Lease Commencement Date: January 24, 2022 ("**Commencement Date**").
  
7. Rent Commencement Date: February 1, 2022 ("**Rent Commencement Date**").
  
8. Base Rent: The initial monthly rent shall be \$1,402.67, for an annualized total rent of \$16,832.04 in the first year of the initial term. Rent will increase three percent (3%) annually on the anniversary of the Lease Commencement Date for the duration of the Lease. 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 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.

This Lease Agreement (this “**Lease**”) is made and entered into effective as of January 24, 2022 (“**Effective Date**”) by and between the City of Pacifica, a California municipal corporation (“**Landlord**”) and Paul Kukielka and Amy Kukielka, sole proprietors, dba Chit Chat Cafe (collectively, “**Tenant**”).

## 1. **PREMISES.**

1.1 **Premises.** Landlord is the lessor of the real property named the Rev. Herschell Harkins Memorial Pacifica Pier, with a street address of 2100 Beach Boulevard, Pacifica, California 94044, commonly known as the Pacific Pier, a portion of which is depicted on **Exhibit A** attached hereto and incorporated herein by this reference (the “**Property**”). The Property includes a building adjacent to Beach Boulevard (the “**Building**”). Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, on the terms and subject to the covenants, conditions and uses stated herein, approximately 623 square feet of gross floor space located within the northerly portion of the Building, as depicted on Exhibit A (the “**Premises**”). The Premises shall not include the public restroom facilities located on the south facing side of the building. 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. Landlord reserves the use of the roof and exterior walls, together with the right from time to time to install, maintain, use and replace utility lines, pipes, conduits, ducts, wires and the like under, over or through the Premises in locations which will not materially interfere with Tenant’s use thereof.

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 **Reserved Rights.**

1.3.1 **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.

1.3.2 Building Alteration. Landlord reserves the right to redesign, reconstruct, expand, enlarge, reconfigure, or otherwise alter the Building during Tenant's occupancy ("**Building Alteration**"). Landlord shall provide Tenant with no less than thirty (30) days' prior written notice of the expected start date for the Building Alteration, together with a copy of the general contractor's construction schedule. Landlord will also provide Tenant with updated construction schedule(s) as received from the general contractor. Landlord and Tenant acknowledge that the Building Alteration and related work will result in such noise, dust, debris, and other inconveniences normally associated with construction projects of that type. In order to diminish such inconveniences, Landlord will add language to the Building Alteration construction contract requiring the general contractor to use its good faith best efforts to minimize disruptions to Tenant, and to require its subcontractor(s) to do the same. Building Alteration or related work shall not constitute a default of Landlord under this Lease, nor be considered or construed as an unreasonable interference with Tenant's use, enjoyment or occupancy of the Premises. This section does not create any obligation on Landlord's part to make any efforts to undertake, construct, substantially complete, market or lease the Building Alteration premises, or any portion thereof.

1.3.3 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.

1.4 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 Common Areas, including exterior and interior areas of the Building not included within the Premises or the premises of other tenants; (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.



1.4.1 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.

1.5 Lease Subordination. Notwithstanding anything to the contrary set forth herein, this Lease is subordinate and subject to any leasehold, license, or other property right or permission the Landlord has with the State of California State Lands Commission (“**Commission**”) authorizing the possession, occupancy and use of the tidal and submerged lands 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.

## 2. TERM.

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

### 2.2 Optional Extensions.

2.2.1 Provided that (i) Tenant is not in default under the terms of this Lease at the time each optional extension is exercised or at the commencement of the applicable 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 one-year period (each, an “**Extension Term**”), for a total of two Extension Terms. The first Extension Term shall commence, if at all, upon the expiration of the Initial Term and end twelve

months later (“**First Extended Term**”). The second Extension Term shall commence, if at all, upon the expiration of the First Extended Term and end twelve months later (“**Second Extended Term**”). There shall be no additional extension terms beyond the two Extension Terms set forth herein.

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

2.2.3 Base Rent for each 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 and, if applicable, First Extended Term to exercise its extension option. 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. If any Extension Term does not commence, then all further options to extend shall automatically terminate.

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.

2.2.6 Landlord’s City Manager, or his or her designee, may exercise the City’s rights relating to whether to agree to any Extension Term.

### 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.** The monthly Base Rent for the Initial Term shall be \$1,402.67, for a total of \$16,832.04 per year. Base Rent shall 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 3.2.2 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.

3.2.1 **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.

3.2.2 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 Bank of America, N.A. (or if Bank of America, N.A. ceases to exist, the largest bank then headquartered in the State of California) (“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.

3.3 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 the amounts defined and described in Section 3.4, and 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.

3.4 Repayment Plan. At the time of this Lease, the Tenant owes Landlord the amount of TWENTY THREE THOUSAND FOUR HUNDRED SEVENTY-TWO DOLLARS AND NINETY-FIVE CENTS (\$23,472.95) (“**Amount Owed**”) for back-rent for the time-period from October 1, 2020 through December 31, 2021, under that certain Tenant Lease, dated November 1, 2016 (the “**Prior Lease**”), by and Between City of Pacifica and Paul Kukielka and Amy Kukielka, dba Chit Chat Café. Tenant’s agreement to repay the Amount Owed under the Prior Lease pursuant to the terms and conditions set forth herein is a material consideration for Landlord agreeing to enter into this Lease.

To satisfy the Amount Owed, Tenant agrees to repay Landlord the amount of \$652.02 monthly as Additional Rent until the Amount Owed from February 1, 2022 to January 1, 2025 (three years).

3.5 Base Rent Adjustments. Base Rent will increase three percent (3%) annually on the anniversary of the Lease Commencement Date for the duration of the Lease, including during any extended term.

#### 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).

4.2 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.

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

4.4 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.

## 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 Building 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.

## 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 Building, 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 Building, 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 Building, 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 Building, 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 Building, 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 Building, 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, the Building, 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.

## **9. ALTERATIONS.**

9.1 Condition of Premises. Tenant acknowledges that Landlord has made no representation or warranty regarding the condition of the Building, Premises, Public Area, or Building 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, Building, Premises and/or Public Area or interfere with the operations of the Building Alteration activities, or related work.

9.5 Damage; Removal. Tenant shall repair all damage to the Property, the Building, 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 Building, 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, the Building, 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, Building, 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 as a café serving specialty coffees and teas, sandwiches and other light menu items (but excluding alcoholic beverages) and for the ancillary sale of gift and souvenir items that are consistent with a retail café operation (including postcards, mugs and tee shirts), sale of frozen bait, of the type used for fishing, to the extent such practice is consistent with any applicable federal, state or local regulations, and for no other uses without the prior written consent of Landlord, which may be granted or withheld in Landlord's sole discretion. Tenant acknowledges that neither Landlord nor any of Landlord's agents has made any representation or warranty with regard to the Premises, the Building, 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 C 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 or affecting all or any portion of the Building or any of the areas used in connection with the operation of the Building. Tenant acknowledges that the Premises are adjacent to a City-leased pier. 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. During Building Alteration activities, Landlord shall require its contractor to use good faith efforts to minimize any interference with Tenant's right of access.

## **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 or the Building. 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, or the Building 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 or Building, 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 Building or 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 Building or 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 Building or 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 19.1.

### 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 and/or Additional 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 and/or Additional 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/Additional 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 and/or Additional 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 and/or Additional 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 and/or Additional 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 [Intentionally omitted.]

15.5 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.

15.6 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.”

15.7 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, ATTORNMENT 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 ground 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.

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 ground 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. MISCELLANEOUS.

### 18.1 General.

18.1.1 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.

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

18.1.3 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.

18.1.4 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.

18.1.5 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 San Mateo County or the federal district court for the Northern District of California.

18.1.6 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.

18.1.7 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.

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

18.1.9 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.

18.1.10 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.

18.1.11 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.

18.1.12 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.

18.2 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 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.

18.4 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.

18.5 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.

18.6 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.

18.7 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.

18.8 Holding Over; Surrender.

18.8.1 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 two hundred percent (200%) 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.

18.8.2 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."

18.9 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.

18.11 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.

18.12 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.

18.13 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. In the event that the Lease obligations become a demonstrable financial burden on Tenant, Tenant and Landlord agree to negotiate an alternative rent structure or lease termination. Landlord may terminate this Lease upon sixty (60) days' prior written notice in the event of an irreconcilable conflict between this Lease and any lease, license, or other documented property right or permission to possess and occupy between the Landlord and the Commission, or in the event of the termination of Landlord's right or permission to possess and occupy the tidal and submerged lands.

[Signatures on Following Page]

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

City of Pacifica

Paul Kukielka and Amy Kukielka,  
sole proprietors, dba Chit Chat Cafe

By: \_\_\_\_\_

City Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

City Clerk

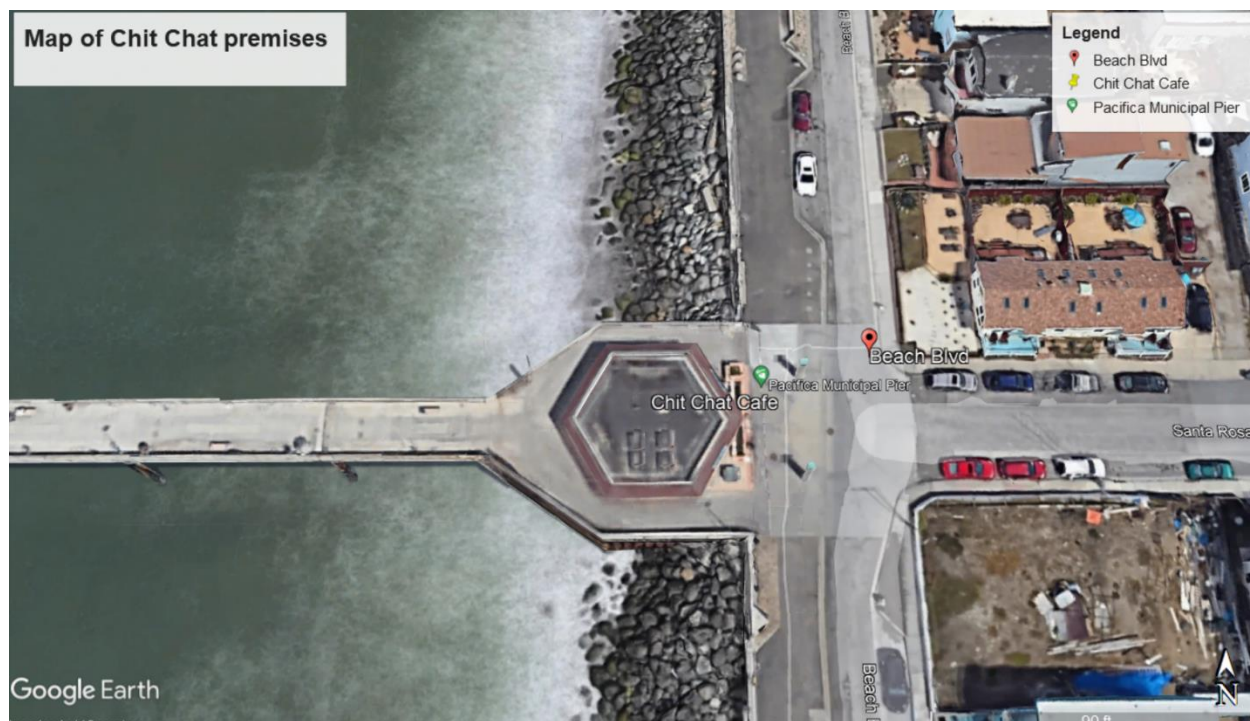
Approved as to form:

By: \_\_\_\_\_

City Attorney

Attachment: Agreement\_Lease\_Kukielka\_ChitChatCafe\_Pier\_Final\_2022 (4864 : Chit Chat Lease)

## EXHIBIT A



Attachment: Agreement\_Lease\_Kukielka\_ChitChatCafe\_Pier\_Final\_2022 (4864 : Chit Chat Lease)

Exhibit A-1

## 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. Locks; Keys. Tenant shall not alter any lock or install any new or additional locks or bolts on any doors or windows of the Premises without obtaining Landlord's prior written consent. Tenant shall bear the cost of any lock changes or repairs required by Tenant. Two keys shall be furnished by Landlord for the Premises, and any additional keys required by Tenant must be obtained from Landlord at a reasonable cost to be established by Landlord.
  
2. Admission to Building. Landlord and its agents shall not be liable for damages for any error concerning the admission to, or exclusion from, the Building of any person. Landlord reserves the right, in the event of invasion, mob, terrorist event, riot, public excitement, or other commotion, to prevent access to the Building or Property during the continuance of that event by any means it considers appropriate for the safety and protection of life and property.
  
3. Requirements of Tenant. Any special requirements of Tenant not set forth as an obligation of Landlord under the Lease will be considered only upon written application to Landlord at Landlord's address set forth in the Lease. Landlord's employees shall not perform any work or do anything outside their regular duties unless under special instructions from Landlord.
  
4. Use of Plumbing Facilities: Responsibility for Damage. The plumbing facilities (including but not limited to any and all restrooms, toilets, urinals, wash bowls, drains, and other apparatus) shall be used for no purpose other than that for which they were constructed, and no foreign substance of any kind shall be thrown into them. The expense of any breakage, stoppage, or damage resulting from violation of this rule shall be borne by the tenant who caused, or whose employees or agents caused, the breakage, stoppage, or damage.
  
5. Inflammable or Combustible Fluids or Materials: Foul or Noxious Gases or Substances: Nontoxic Materials. Tenant shall not use, or keep, or allow to be used or kept, in or on the Property or any portion thereof, any foul or noxious gas or substance, kerosene, gasoline, or other inflammable or combustible fluid or material, except those used in the normal course of a café use, stored and disposed of in compliance with all applicable Hazardous Materials Laws. All materials, fabrics, and products used in Tenant's furnishings, wall and floor coverings, and ceiling installations shall be nontoxic and subject to the prior approval of Landlord's architect or engineer. Nothing contained here is intended or shall be construed to alter or diminish any obligations of Tenant under any portion(s) of its Lease addressing environmental matters and compliance, indemnities, Hazardous Materials Laws, Hazardous Materials, or similar matters, or compliance with laws, ordinances, regulations, codes and other governmental requirements.



6. Exclusion or Expulsion. Landlord reserves the right to exclude or expel from the Property or any portion thereof any person who, in Landlord's judgment, is under the influence of alcohol or drugs or commits any act in violation of any of these Rules and Regulations.

7. Smoking; Illegal Substances. Smoking of tobacco products and use of illegal substances is strictly prohibited in or within 20 feet of the doors of the Premises or any portion thereof as per state law.

8. Operation of Electricity, Water and Air-Conditioning. Tenant shall not waste electricity, water, or air-conditioning and shall cooperate fully with Landlord to ensure the most effective operation of the Building's heating and air-conditioning system, if any.

9. Compliance With Safety Regulations. Tenant shall comply with all safety, fire protection, and evacuation procedures and regulations established by Landlord or by any government agency. Nothing contained here is intended or shall be construed to alter or diminish any obligations of Tenant under any portion(s) of its Lease addressing compliance with laws, ordinances, regulations, codes and other governmental requirements.

10. Extermination. Tenant agrees not to permit the extermination of vermin to be performed in, on or about the Property or any portion thereof except by a person or company reasonably designated by Landlord and at times reasonably designated by Landlord.

11. Obstructions. Tenant and Tenant's employees shall not in any way unreasonably obstruct any sidewalks, entry passages, pedestrian passageways, driveways, entrances and exits to the Building or Property, and they shall use the same only as passageways to and from the Premises. At no time shall Tenant, its employees or agents be permitted to conduct work activity (except for normal loading and unloading of vehicles) nor store wooden pallets, boxes, goods or other materials outside the confines of Tenant's Premises.

12. Compliance With Insurance Requirements, Warranties. Tenant shall not do anything in the Premises, or bring or keep anything therein, which will in any way increase or tend to increase the risk of fire or the rate of fire insurance or similar coverage carried or available to Landlord as set forth in Section 6.1 of the Lease, or which shall conflict with the regulations of the fire department or the law or with any insurance policy on the Premises or any part thereof, or with any rules or regulation established by any administrative body or official having jurisdiction. 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 take any action which would abrogate any warranties.

13. Title Encumbrances. 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.

14. Disposal of Trash and Garbage. Tenant shall store all trash and garbage within the interior of the Premises, except with Landlord's consent. Tenant shall not place or have placed in the trash boxes or receptacles any material that may not or cannot be disposed of in the ordinary and customary manner of removing and disposing of trash in the vicinity of the Building. In disposing of trash and garbage, Tenant shall comply fully with any law or



ordinance governing that disposal. All trash, garbage, and refuse disposal shall be made only through routes and at times designated by Landlord.

15. Provision of Information to Tenant's Employees. Tenant shall comply with requests by Landlord that Tenant inform Tenant's employees and agents of items of importance to Landlord.

16. Prohibited Uses and Activities.

16.1 Any use, operation or activity which causes or produces any discharges of noxious, toxic, hazardous or corrosive fumes or gases into the air;

16.2 Any use, operation or activity which causes or produces any noise or sound that, because of excessive or unusual volume, duration, intermittence, beats, frequency, or pitch is objectionable to Occupants, customers or visitors to the Property or any portion thereof;

16.3 Any use, operation or activity which causes or produces any excessive smoke emission;

16.4 Any use, operation or activity which causes or produces the attraction of flies, insects, rodents or other animals, or the creation or emission of dust or dirt, except for normal and reasonable café use;

16.5 Any use, operation or activity which causes or produces any emission of any air pollutants in violation of any state or federal standards, or the discharge of toxic substances or hazardous waste material into any sewer system or storm drain serving the Property in a manner that will result in any leaching into the soil, or release into the atmosphere or water table;

16.6 Hazardous or unsafe uses by reasons of danger of fire or explosion, or uses that will increase the fire hazard rating on the Property or other properties, or uses objectionable or offensive to the Property or adjoining properties;

16.7 Uses in violation of any applicable laws, orders, rules or regulations of any governmental authority, including applicable zoning and land-use laws and ordinances of the City;

16.8 Any construction, erection, or placement of ornamentation or other objects or equipment, permanently or temporarily, on the outside portions of the Property, whether such portion is improved or unimproved, except as specifically permitted by Landlord; and

16.9 Additional prohibited uses as determined by Landlord from time to time.

17. Conflict. In the event of any conflict between these Rules and Regulations or any further or modified Rules and Regulations from time to time issued by Landlord and the Lease provisions, the Lease shall govern and control.



**CITY OF PACIFICA  
COUNCIL AGENDA SUMMARY REPORT**

**1/24/2022**

**SUBJECT:**

Peninsula Clean Energy Solar Photovoltaic System with optional Battery Storage Municipal Facilities Procurement

**RECOMMENDED ACTION:**

Adopt a Resolution authorizing the City Manager to deploy a Solar Photovoltaic System (Solar PV System) with optional battery storage at the Pacifica Community Center in partnership with Peninsula Clean Energy should the City Manager determine there are cost effectiveness or other community benefits as determined by the City following participation in a collaborative procurement(s) led by Peninsula Clean Energy.

**STAFF CONTACT:**

Sam Bautista, DPW Deputy Director  
(650) 738-3771  
[sbautista@pacifica.gov](mailto:sbautista@pacifica.gov)

Lisa Petersen, DPW Director  
(650) 738-3770  
[lpetersen@pacifica.gov](mailto:lpetersen@pacifica.gov)

**BACKGROUND/DISCUSSION:**

At the January 10, 2022 City Council Study Session, the City Council provided the City Manager with direction regarding the City's participation in Peninsula Clean Energy's public facility solar and battery storage procurement process. Peninsula Clean Energy (PCE) has collaborated with its Joint Power Authority (JPA) members, including the City of Pacifica, to identify candidate critical facilities and develop Solar PV System designs for these sites. At its expense, PCE engaged an established independent engineering firm via competitive solicitation and, working with City staff, determined the feasibility of a Solar PV System for the Pacifica Community Center. In addition, PCE's structural engineering consultant has analyzed the existing roof and has determined it would be able to carry the additional load of the PV system.

PCE is piloting a new aggregate procurement model for public facilities to help reduce the costs and complexities for its public partners. PCE will manage the procurement process, financing, installation, operations, and maintenance with no upfront cost to the City. The process is intended to repeat with subsequent procurement rounds, and the City may add additional facilities in subsequent rounds.

A Battery Energy Storage System (Battery) will be included as an option in the procurement to provide added resilience benefits such as the ability to maintain an operational facility during a power outage or emergency event. If a Battery is included, it may require City funding or result in a monthly cost above the current energy bills. PCE, via a competitive solicitation, will be seeking best pricing for applicable Battery systems and explore financial options with the City.

There is no requirement to include the Battery, but if no Battery is installed, the Solar PV Systems will be designed as “battery ready” to allow for a streamlined future addition of a Battery.

PCE will offer a long-term Power Purchase Agreement (PPA) to the City for a specified price per kilowatt- hour (kWh) that is lower than the current and future price per kWh the City would pay for that same energy from the utility. The PPA will be provided “at cost” by PCE to cover equipment and installation. In addition, PCE will retain a small fee per kWh to cover its expenses, while maintaining full transparency with the City about all salient aspects of the project’s financials. If PCE is unable to offer a PPA rate for the Solar PV System that provides the City with net savings or other community benefits as determined by the City, the City would be under no obligation to move forward with the project.

PCE cannot provide a specific PPA price until it knows equipment costs, which will be determined via competitive solicitation. However, to make the RFP as competitive as possible, Bidders need to know that there is a firm commitment from participating facility owners to move forward if they can provide pricing that results in net savings.

## **ANALYSIS**

Solar PV Systems provide carbon-free renewable electricity to buildings and can meaningfully reduce electric bills. If included, the optional Battery can provide resilience benefits allowing the Pacifica Community Center to continue to operate on a limited basis during a power outage using electricity stored and generated onsite. Attachment “A” shows the proposed Solar PV System with Battery option.

The benefits of this project include:

- Peninsula Clean Energy has evaluated facilities with its engineering services partner and determined a feasible design for a Solar PV System;
- Peninsula Clean Energy performed an independent engineering assessment of the Community Center’s roof to confirm structural ability to support Solar PV equipment;
- The City will obtain financial and environmental benefits of a Solar PV System with no upfront costs and without incurring the staff time, cost, and complexity of conducting its own solicitation for design and structural assessment, hiring, and managing consultants, and overseeing construction and maintenance;
- Peninsula Clean Energy will execute all aspects of the procurement process;
- Peninsula Clean Energy will administer the construction and maintenance of the Solar PV System;
- The City will create local, renewable energy to advance its sustainability goals;
- The City will receive enhanced energy resiliency if a Battery is deployed; and
- The City will hedge against rising utility rates, which over the course of a 20+ year system life is expected to be significant.

The California Public Utilities Commission (CPUC) is currently engaged in rulemaking for changes to the Net Energy Metering (NEM) tariffs governing solar PV resources. It is expected that the next iteration of NEM (NEM 3) will be less advantageous for solar and may negatively affect project economics. In the past, projects that had reached a defined stage were grandfathered in under the existing tariff at the time. It is expected this might apply to the latest NEM revision as well. As such, it is important to deploy projects as soon as possible. IF NEM 3 is enacted prior to the deployment of Solar PV Systems from this procurement and would prevent PCE from offering a PPA at net benefits to the City, PCE would have the right to terminate this pilot program at no cost or obligation to the City.

This project is consistent with the City's Climate Action Plan, advancing the City's goals to:

- Promote energy efficiency and renewable energy in government operations; and
- Encourage solar energy installation; and
- Demonstrate environmental leadership, save money, and promote green jobs, comply with state environmental initiatives, and promote sustainable development.

At the January 10, 2022 Study Session, several Councilmembers asked questions regarding the Solar PV System. The first question was regarding the age of the Community Center roof. The Community Center roof was installed in 2008 and the life expectancy is 20-25 years. There are 6-11 years left on the roof. Therefore, it is recommended that the Community Center roof be replaced prior to installation of a Solar PV System, depending on funding availability. It is estimated roof replacement would cost \$215,000. Roof replacement in a future year after Solar PV System installation would cost approximately \$45,000 more (est. \$250,000), due to having to remove and reinstall the panels. If funding was not available for roof replacement before system installation, it is still feasible to replace the roof at a later date.

Another question asked was if the Solar PV System's performance would degrade over time due to being close to the ocean. Solar PV Systems are maintenance free for the first 20-25 years. The inverters of the system last as long as the panels. The Pacifica Wastewater Treatment plant, which is in close proximity to the Pacific Ocean, has an array of PV panels which offsets the electrical usage by up to 18%. Staff found that there was no appreciable degradation of the panel equipment or electrical output due to ocean proximity based on visual assessment and review of performance following panel cleaning.

As the City Council is supportive of moving forward with the Solar PV System and Battery, the City Manager recommends adopting the attached resolution to pursue a PPA with PCE to participate in PCE's public facility solar and storage procurement process.

#### **RELATION TO CITY COUNCIL GOALS AND WORK PLAN:**

The installation of a Solar PV System is consistent with the following Council adopted Goals:

- **Stewardship of City Infrastructure:** includes repairing/replacing outdated city facilities such as city hall, the libraries, fire stations, etc., improving streets, and responding to impacts of sea level rise. Installation of a Solar PV System would promote energy efficiency and environmental sustainability.
- **Environmental Sustainability:** includes mapping out parks and open space, preserving hillsides and beaches, paying attention to flora and fauna needs, environmental health, and climate adaptation. This project is consistent with the City's Climate Action Plan.

#### **FISCAL IMPACT:**

There is no expected upfront cost to the City for the project. For a project with solar power but no battery, the Solar PV System is expected to provide cost savings. The savings are expected to grow over time due to avoided increases in utility costs which are expected to rise as much as 5% or more per year according to proposals by Pacific Gas & Electric at the California Public Utilities Commission.

A Battery Energy Storage Systems (Battery) may be included as an option in the procurement to provide added resilience benefits such as the ability to maintain an operational facility during an outage or emergency event. If a Battery is included, it may require city funding or result in a monthly cost above current energy bills. Peninsula Clean Energy, via a competitive solicitation,

will be seeking best pricing for applicable Battery systems and explore financial options with the City Manager. There is no requirement to include the Battery but if no Battery is installed, the Solar PV Systems will be designed as “battery ready” to allow for a streamlined future addition of a Battery.

The Solar PV Systems would be financed through a Power Purchase Agreement (PPA) with Peninsula Clean Energy. With a PPA model, Peninsula Clean Energy will arrange for the installation, operations and maintenance of the Solar PV System, and the City would pay an agreed upon price per kilowatt-hour (kWh) for power generated throughout the system’s life. The PPA will be provided “at cost” by Peninsula Clean Energy to cover equipment and installation. In addition, Peninsula Clean Energy will also retain a small \$/kWh fee to cover its expenses and will be fully transparent with the City about all salient aspects of the project’s financials.

If Peninsula Clean Energy is unable to offer a PPA rate for the Solar PV System that will provide the City with net savings or other community benefits as determined by the City, then there would be no obligation to move forward.

Should the City Council go forward with the resolution, staff recommends that a budget request to replace the Community Center roof prior to the installation of a Solar PV System be included as part of the Capital Improvement Program for Fiscal Year 2022-23.

**ORIGINATED BY:**

Engineering

**ATTACHMENT LIST:**

Attachment "A" - Solar PV System and Battery Storage Option (DOCX)

**RESOLUTION NO. \_\_\_\_\_****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA AUTHORIZING  
MUNICIPAL FACILITIES PROCUREMENT FOR SOLAR AND BATTERY STORAGE  
SYSTEMS WITH PENINSULA CLEAN ENERGY**

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**WHEREAS**, the City Council of the City of Pacifica has demonstrated its commitment to a sustainable and resilient future through its policy goals and actions, including energy reduction, clean energy programs, and the expansion of local renewable power supply, and

**WHEREAS**, on July 4, 2021 the City Council adopted the Climate Action Plan to take a leadership role and commit to reducing total community-wide emissions by 35 percent below 2005 levels by 2020, and 80 percent below 1990 levels by 2050; and

**WHEREAS**, this procurement is consistent with the City's Climate Action Plan, advancing the City's goals to promote energy efficiency and renewable energy in government operations; encourage solar energy installation; and demonstrate environmental leadership, save money, and promote green jobs, comply with state environmental initiatives, and promote sustainable development; and

**WHEREAS**, a Community Choice Aggregation program is a mechanism by which local governments assume responsibility for providing electrical power for residential and commercial customers in their jurisdiction in partnership with local commercial energy purveyors and owners of transmission and distribution facilities, which in the case of San Mateo County is Pacific Gas & Electric Co.; and

**NOW THEREFORE, BE IT RESOLVED** by the City Council of the City of Pacifica that the City Manager is authorized to deploy Solar Photovoltaic Systems at municipal facilities, such as the Pacifica Community Center, in partnership with the City's public power provider, Peninsula Clean Energy through a standard Power Purchase Agreement with Peninsula Clean Energy, should the project result in financial and/or community benefits. The Council further authorizes the City Manager to explore an optional Battery Storage for the Pacifica Community Center and any other City facility in the future.

• • • • •

**PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Pacifica, California, held on the 24<sup>th</sup> day of January 2022, by the following vote:

**AYES**, Councilmembers:

**NOES**, Councilmembers:

**ABSENT**, Councilmembers:

**ABSTAIN**, Councilmembers:

Mary Bier, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Sarah Coffey, City Clerk

\_\_\_\_\_  
Michelle Kenyon, City Attorney



## PROPOSED SOLAR PV SYSTEM with BATTERY STORAGE OPTION

## Pacifica Community Center – Base Case



Peninsula Clean Energy

- Solar + Storage
- 76.7 kW rooftop solar
  - Structural engineering analysis completed
- 60 kW / 240 kWh battery
  - Critical load backup using existing transfer switch
  - Would provide 16 hours of backup at peak demand with no solar production
  - Longer if actual demand less than peak
- 120 MWh/yr generation
  - 80% of total usage



**CITY OF PACIFICA  
COUNCIL AGENDA SUMMARY REPORT**

**1/24/2022**

**SUBJECT:**

FY 2021-22 Street Asphalt Base Repair Project

**RECOMMENDED ACTION:**

Approve the following actions for FY 2021-22 Street Asphalt Base Repair Project:

- A. Authorize the City Manager to Award and Execute a Construction Services Agreement with G. Bortolotto & Co., Inc., in an Amount Not to Exceed \$ \$151,208.90, including Contingencies and Change Orders; and
- B. Authorize Staff to Execute Future Change Orders in an Amount Not to Exceed Twenty-Five Percent (25%) of the Contract Award Amount.

**STAFF CONTACT:**

Raymund Donguines, P.E., Senior Civil Engineer  
(650) 738-3768  
[donguinesr@ci.pacifica.ca.us](mailto:donguinesr@ci.pacifica.ca.us)

Sam Bautista, P.E., DPW Deputy Director  
(650) 738-3771  
[bautistas@ci.pacifica.ca.us](mailto:bautistas@ci.pacifica.ca.us)

Lisa Petersen, P.E., DPW Director  
(650) 738-3770  
[petersenl@ci.pacifica.ca.us](mailto:petersenl@ci.pacifica.ca.us)

**BACKGROUND/DISCUSSION:**

On December 13, 2021, the City Council approved the addition of the Arterial/Collector Street Asphalt Base Repair Project to the 5-year Capital Improvement Program. This is a yearly project that will focus on repairing asphalt failures on arterial and collector streets.

Arterial and collector streets are high traffic roadways that require continuous monitoring to address failed pavement areas that can impact traffic flow and safety on these important connector roads. The Arterial/Collector Street Asphalt Base Repair Projects will repair areas of failed asphalt on selected arterial and collector streets throughout the City as needed to both prevent streets identified in the City's 5-Year Street Maintenance Program from falling into more expensive repair categories and to address arterial and collector streets currently not included in the City's 5-year street maintenance program. The project will utilize unused balance from recently completed resurfacing/concrete projects associated with the City's 5-Year Street Maintenance Program for funding. This year's FY 2021-22 Base Repair Project (Project) will target failed pavement areas on Oceana Boulevard and Sharp Park Road to address safety issues and prevent these streets from falling into more expensive repair categories prior to the preventative slurry seal scheduled in the City's 5-year plan.

The Project was advertised on December 29, 2021 and January 5, 2022, in accordance with the

formal bid process. Nineteen (19) companies requested plans and specifications and seven (7) submitted bids. On January 13, 2022, the bid opening was held via Zoom by the City Clerk and the result is as follows:

Company	Base Bid	Add Alternate
G. Bortolotto & Co., Inc.	\$107,234.60	\$43,974.30
DRYCO	\$126,504.00	\$46,532.00
O'Grady Paving Inc.	\$129,615.40	\$53,608.00
Always Paving, Inc.	\$129,961.00	\$54,858.00
Interstate Grading and Paving, Inc.	\$147,284.20	\$60,532.30
Ronan Construction, Inc.	\$155,162.00	\$56,305.00
QA Constructors	\$187,253.88	\$56,716.78

The apparent low bidder is G. Bortolotto & Co., Inc. with a base bid amount of \$107,234.60 and add alternate bid amount of \$43,974.00. All required documentation was submitted with their bid. G. Bortolotto & Co., Inc., has performed on several other City paving projects in the past and their work has been satisfactory. As there are enough funds from the unused balance of the FY 2020-21 & FY 2021-22 Concrete and Curb Ramps Improvement Project and FY 2020-21 & FY 2021-22 Pavement Resurfacing Project, the City Manager recommends the award of contract for both the base bid and add alternate bid to the apparent low bidder, G. Bortolotto & Co., Inc. In addition, a 25% contingency is recommended as it is typical for failed asphalt areas to grow in size, especially following rain events, from design to construction of the work. This will allow enough funding to repair any increases in pavement failure areas that are identified during construction.

#### **ALTERNATIVE ACTION:**

Council may choose not to approve the construction agreement. However, this will result in project delays and increased deterioration of the existing pavement. Staff does not recommend this alternative action.

#### **RELATION TO CITY COUNCIL GOALS AND WORK PLAN:**

Approval of the construction contract is consistent with the following Council adopted Goals:

- **Stewardship of City Infrastructure:** includes repairing/replacing outdated city facilities such as city hall, the libraries, fire stations, etc., improving streets, and responding to impacts of sea level rise. This construction project will improve existing City streets and roads.

#### **FISCAL IMPACT:**

Funds for this project are from the unused fund balance related to the City's recently completed resurfacing/concrete projects associated with the 5-Year Street Maintenance Program. The following is the source and use of funds for the project:

<b>Total Project Source and Use of Funds</b>	
FY 2020-21 & FY 2021-22 Concrete and Curb Ramps Improvement Project unused balance	\$ 166,357.87
FY 2020-21 & FY 2021-22 Pavement Resurfacing Project unused balance	\$ 192,609.63

<b>Total Source of Funds</b>	<b>\$ 358,967.50</b>
Construction Cost	\$ 151,208.90
Contingency, 25%	\$ 37,800.00
<b>Total Use of Funds</b>	<b>\$ 189,008.90</b>
<b>Project End Balance</b>	<b>\$ 169,958.60</b>

Any remaining funds will go back to Street Construction Fund 9.

**ORIGINATED BY:**

Public Works

**ATTACHMENT LIST:**

FY 2021-22 Base Repair Construction Agreement with G. Bortolotto & Co Inc (PDF)

**CITY OF PACIFICA**  
**540 Crespi Drive, Pacifica, CA 94044**  
**CONSTRUCTION SERVICES AGREEMENT**  
**FY 2021-22 BASE REPAIR PROJECT**

**DATE: January 24, 2022**

**1. IDENTIFICATION OF CONTRACTOR:**

CONTRACTOR: G. Bortolotto & Co., Inc.

CALIFORNIA LICENSE NO: 397341 CLASS: A - General Engineering Contractor

**2. SCOPE OF THE WORK**

See Scope of Work attached as Appendix A.

**COMPENSATION FOR WORK.** Contractor's total compensation for the Work performed under this Agreement (**Contract Sum**) is \$151,208.90, to be paid as (**check one**): (1) ☐ lump sum; (2) ☒ lump sum with progress payments; (3) ☐ per attached schedule of rates and charges, up to a guaranteed not-to-exceed amount of \$\_\_\_\_\_. All payments (**check one**): ☒ shall ☐ shall not be subject to a five percent (5%) retention.

**3. SCHEDULE OF PERFORMANCE FOR THE WORK.** Contractor shall commence and complete the Work by the following dates:

Commencement Date shall be on the date established in the Notice to Proceed. Owner reserves the right to modify or alter the Commencement Date of the Work.

Substantial Completion Date: Within fourteen working days of Commencement Date.

Final Completion Date: Within fourteen calendar days of Substantial Completion.

**3.01 Liquidated Damage Amounts.**

- A. As liquidated damages for delay Contractor shall pay Owner Two Thousand Nine Hundred dollars (\$2,900.00) for each Day that expires after the time specified herein for Contractor to achieve Substantial Completion of the entire Work, until achieved.
- B. As liquidated damages for delay Contractor shall pay Owner Two Thousand Nine Hundred dollars (\$2,900.00) for each Day that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work, until achieved.

**3.02 Scope of Liquidated Damages**

- A. Contractor and Owner agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of such actual damages incurred by Owner because of a delay in completion of all or any part of the Work. Contractor and Owner agree that specified measures of liquidated damages shall be presumed to be the amount of such damages actually

sustained by Owner, and that because of the nature of the Project, it would be impracticable or extremely difficult to fix the actual damages.

- B. Liquidated damages for delay shall cover administrative, overhead, interest on bonds, and general loss of public use damages suffered by Owner as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from Defective Work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from Owner (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof. Owner may deduct from any money due or to become due to Contractor subsequent to time for completion of entire Work and extensions of time allowed pursuant to provisions hereof, a sum representing then-accrued liquidated damages.

#### 4. TERMS AND CONDITIONS.

- 4.01 Contractor shall perform the Work in accordance with the terms and conditions of this Agreement and the following attachments (together, **Contract Documents**):

Appendix A – Scope of Work

Appendix B – General Conditions

Appendix C – Insurance

Appendix D – Construction Labor and Materials Payment Bond

Appendix E – Construction Performance Bond

Appendix F – Supplemental Conditions

- 4.02 The Contract Documents are the sole and exclusive provisions that govern the Work. Any provision contained in any Owner purchase order issued in connection with this Agreement or any Work shall be null and void and shall have no force or effect.

- 4.03 Agreement number must appear on all invoices and correspondence. Send invoices in duplicate immediately upon performance of Work ordered hereon or as otherwise provided in the Contract Documents to:

**City of Pacifica, Department of Public Works,  
540 Crespi Drive, Pacifica, CA 94044**

CONTRACTOR: **G. Bortolotto & Co., Inc.**

OWNER: **City of Pacifica**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name & Title

Kevin Woodhouse, City Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Michelle Marchetta Kenyon, City Attorney

\_\_\_\_\_  
Sarah Coffey, City Clerk

**Addresses for Notices:**

Robert Bortolotto  
580 Bragato Road  
San Carlos, CA 94070

**Addresses for Notices:**

City of Pacifica  
540 Crespi Drive  
Pacifica, CA 94044



**Appendix A to Construction Services Agreement****SCOPE OF WORK**

**The project includes base repair, minor pavement striping and markings and other miscellaneous related work along Oceana Boulevard and Sharp Park Road.**

## Appendix B to Construction Services Agreement

### GENERAL CONDITIONS

#### ARTICLE 1 TERMS OF PERFORMANCE

**Construction Services Agreement (Agreement) Force and Effect.** The provisions of the Agreement and other Contract Documents constitute the entire agreement between the Contractor and Owner regarding the Work described herein. No representation, term or covenant not expressly specified in the Contract Documents shall be a part of the parties' agreement. The Agreement and other Contract Documents shall govern the Work (whenever performed), and shall supersede all other purchase orders and agreements between Contractor and Owner, and any proposal, with respect to the Work.

**Construction Performance Bond; Construction Labor and Materials Payment Bond; Securities in Lieu of Retention Escrow Account.**

If Contract Sum under the Agreement exceeds (or is expected to exceed) \$25,000, Contractor shall provide (i) a construction labor and material payment bond, in accordance with Civil Code Section 9550 and in form attached hereto Appendix D – Construction Labor and Materials Payment Bond, and (ii) a construction performance bond in form attached hereto as Appendix E – Construction Performance Bond. Contractor may not substitute cash in lieu of the required bond(s).

If the Agreement specifies performance retention, Contractor may elect to substitute securities or direct payment to an escrow account, pursuant to Public Contract Code Section 22300 (incorporated herein by this reference).

**Records and Payment Requests.** Contractor shall submit all billings with all necessary invoices or other appropriate evidence of proper performance, after which Owner shall make payment within 30 days. Upon Owner's written request, Contractor shall make available to Owner, its authorized agents, officers, or employees, any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the Work or the expenditures and disbursement charged to Owner, and all correspondence, internal memoranda, calculations, books and accounts, records documenting its Work under the Contract Documents, and invoices, payrolls, timecards, records and all other data related to matters covered by the Contract Documents. Contractor shall furnish to Owner, its authorized agents, officers, or employees, such other evidence or information as Owner may require with regard to the Work or any such expenditure or disbursement charged by Contractor. Contractor shall maintain all such documents and records prepared by or furnished to Contractor during the course of performing the Work for at least five years following completion of the Work, except that all such items pertaining to hazardous materials shall be maintained for at least 30 years. Contractor shall permit Owner to audit, examine and make copies, excerpts and transcripts from such records. The State of California or any federal agency having an interest in the subject of the Contract Documents shall have the same rights conferred to Owner by this section. Such rights shall be specifically enforceable.

**Use of Contract Documents and Other Information.** Drawings, Specifications, and other Contract Documents are made available to Contractor solely for Contractor's use under the Contract Documents. Further, all tangible and intangible property developed, produced and/or provided by Contractor under the Contract Documents, and all such items (other than Contract Documents) provided by Owner to Contractor in connection with the Contract Documents including, without limitation, drawings, specifications, sketches, models, samples, tools, computer programs, technical information, confidential business information, scripts, customer or personnel information and data, whether written, oral or otherwise (all hereinafter referred to as **Information**) shall be Owner's sole property. Contractor may not use Contract Documents or Information for

any purpose unrelated to Contract Documents without Owner's prior written consent. All copies of Information in written, graphic or other tangible form shall be delivered to Owner upon completion of Work, or earlier if otherwise provided in Contract Documents.

**Performance of Work/No Assignment.** Time is of the essence in the performance of the Work. Contractor will perform the Work in a skillful and workmanlike manner; comply fully with criteria established by Owner, and with applicable laws, codes, and all applicable industry standards. Contractor shall maintain its work area in a clean and sanitary condition, clear debris and trash at the end of each work day, and shall not damage or disrupt any property unless specifically part of the scope of the Contract Documents. Contractor shall not contract any portion of the Work or otherwise assign the Contract Documents without prior written approval of Owner. (Contractor shall remain responsible for compliance with all terms of the Contract Documents, regardless of the terms of any such assignment.) Contractor shall permit Owner (or its designees) access to the work area, Contractor's shop, or any other facility, to permit inspection of the Work at all times during construction and/or manufacture and fabrication. The granting of any progress payment, and any inspections, reviews, approvals or oral statements by any Owner representative, or certification by any governmental entity, shall in no way limit or relieve Contractor from its obligations under the Contract Documents. Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require strict performance of any provision of the Contract Documents, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every provision hereof. Owner shall have, at all times, set-off rights with respect to any payment and Contractor's failure to perform the terms of the Contract Documents.

**Defective Work; Warranties.** Contractor warrants that all construction services shall be performed in accordance with generally accepted professional standards of good and sound construction practices, all Contract Documents requirements, and all laws, codes, standards, licenses, and permits. Contractor warrants that all materials and equipment shall be new, of suitable grade of their respective kinds for their intended uses, and free from defects. Contractor hereby grants to Owner for a period of one year following the date of completion its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all labor, materials and equipment provided by Contractor and its Subcontractors of all tiers. If either prior to completion of the Work, or within one year after completion, any Work (completed or incomplete) is found to violate any of the foregoing warranties (**Defective Work**), Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions, correct, remove and replace the Defective Work with conforming Work, and correct, remove and replace any damage to other Work or other property resulting therefrom. If Contractor fails to do so within five days of Owner's written notice (or other time period specified in the notice), Contractor shall pay all of the Owner's resulting claims, costs, losses and damages. Where Contractor fails to timely correct Defective Work, or defects are discovered outside the correction period, Owner shall have all rights and remedies granted by law.

**Earthwork and Underground Facilities.** If the Work involves digging trenches or other excavations that extend deeper than four feet below the surface, Contractor shall notify Owner in writing of any material that Contractor believes may be hazardous waste that is required to be removed in accordance law, subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids, or unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents, pursuant to Public Contract Code Section 7104. For any Work involving trench shoring that costs in excess of \$25,000, Contractor shall submit and Owner (or a

registered civil or structural engineer employed by Owner) must accept, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, pursuant to Labor Code Section 6705. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer. Consistent with Government Code Section 4215, as between Owner and Contractor, Owner will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Site only if such utilities are not identified in the Contract Documents or information made available for bidding.

## LEGAL

**Compliance with Laws; Conflict of Interests.** Contractor shall comply with all applicable federal and state laws, regulations and policies, as amended, including those regarding discrimination, unfair labor practices, anti-kick-back, collusion, prevailing wages, labor compliance, and the provisions of the Americans with Disability Act. Contractor, its officer, partners, associates, agents, and employees, shall not make, participate in making, or in any way attempt to use the position afforded them by the Contract Documents to influence any governmental decision in which he or she knows or has reason to know that he or she has a financial interest under applicable state, federal and local conflict of interest regulations. Contractor warrants that no person or agency has been employed or retained, or will be employed or retained, to solicit or obtain any contract with Owner, upon an agreement or understanding for a contingent fee, except a bona fide employee or agency.

**Licenses, Patents, Permits.** Before commencing Work, Contractor shall apply for, obtain and maintain in current status, at its own expense, any license, permit or approval required from any agency for the performance of Work. To the greatest extent permitted by law, Contractor shall not be entitled to any compensation for any Work performed while not properly licensed, etc.

**Employee Wages; Records; Apprentices.** This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall post job site notices as prescribed by regulation. Contractor shall pay prevailing wages to its employees on any Order in excess of \$1,000.00. Copies of the prevailing rate of per diem wages are on file at Owner's principal office. Contractor shall comply with the 8-hours per day/40 hours per week/overtime/working hours restrictions for all employees, pursuant to the California Labor Code. Contractor and all subcontractors shall keep and maintain accurate employee payroll records for Work performed. The payroll records shall be certified and submitted as required by law, including Labor Code Section 1771.4 and 1776, including (if the Agreement is awarded on or after April 1, 2015 or continues on or after January 1, 2016) to the Labor Commissioner no less frequently than monthly. Contractor shall comply fully with Labor Code Section 1777.5 in the hiring of apprentices for work relating to the Agreement. If Contract Sum exceeds \$2,000 and is funded with federal funds, then Contractor shall pay federal Davis Bacon wages and comply with applicable federal requirements.

**Mandatory Contractor and Subcontractor Registration.** Pursuant to Labor Code Section 1771(a), Contractor represents that it and all of its Subcontractors are currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. Contractor covenants that any additional or substitute Subcontractors will be similarly registered and qualified.

**Indemnity/Liability.** Contractor shall defend, indemnify, and save harmless, to the fullest extent permitted by law, the Owner and each of its officers, directors, representatives, agents and employees, against all claims, suits, actions, loss, cost, damage, expense, and liability arising from or related to bodily injury to or death of any person or damage to any property, or resulting from any breach and/or Contractor's negligence in performing the Work pursuant to the Contract Documents. Notwithstanding any provision of the Contract Documents, Owner shall not be liable to Contractor

or anyone claiming under it, in contract or tort, for any special, consequential, indirect or incidental damages arising out of or in connection with the Contract Documents or the Work. Owner's rights and remedies, whether under the Contract Documents or other applicable law, shall be cumulative and not subject to limitation.

**Worker's Compensation.** Pursuant to Labor Code Sections 1860 and 1861, in accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his employees. Contractor represents that it is aware of the provisions of Labor Code Section 3700 that require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work.

## MISCELLANEOUS

**No Modification or Waiver; Severability.** The Contract Documents may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by fully authorized representatives of Owner and Contractor. Contract Documents headings are for convenience only and do not affect the construction of the Contract Documents. Should any part of the Contract Documents be declared invalid, void or unenforceable, all remaining parts, terms and provisions of the Contract Documents shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

**Independent Contractor.** Contractor is an independent Contractor and does not act as Owner's agent in any capacity, whatsoever. Contractor is not entitled to any benefits that Owner provides to Owner employees including, without limitation, insurance, worker's compensation benefits or payments, pension benefits, health benefits or insurance benefits. Terms within the Contract Documents regarding directives apply to and concern the result of the Contractor's provision of Work not the means, methods, or scheduling of the Contractor's Work. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures with respect to its provision of Work under the Contract Documents. Contractor shall pay all payroll taxes imposed by any governmental entity and will pay all other taxes not specifically identified in the Contract Documents as Owner's responsibility.

**Termination; Suspension; Disputes.** Owner may direct Contractor to terminate, suspend, delay, interrupt or accelerate Work, in whole or in part, for such periods of time as Owner may determine in its sole discretion. Owner will issue such directives in writing, and may do so, in whole or in part, for its convenience or due to Contractor's fault. Owner will compensate Contractor for extra costs resulting from such directives only to the extent that Owner issues such directives for its convenience and not due to Contractor's fault (but Owner shall not compensate Contractor for costs, profit or overhead anticipated to be earned or incurred on Work terminated for Owner's convenience.) Contractor shall continue its Work throughout the course of any dispute, and Contractor's failure to continue Work during a dispute shall be a material breach of the Contract Documents. All claims by Contractor against Owner shall be submitted in writing to Owner, and shall be governed by Public Contract Code Sections 20104 – 20104.6, after which time the one year time period in Government Code Section 911.2 shall be, pursuant to Government Code Section 930.2, reduced to 90 days. Should Contractor be terminated for default, and such termination is subsequently determined to be wrongful, such termination will be converted to a termination for convenience as provided herein.

**Notices.** All notices between the parties hereto shall be in writing and may be served by commercial express/overnight courier service or by depositing the same in the United States mail, postage prepaid and certified receipt requested, and addressed as indicated beneath each party's signature in the Master Agreement, or as either party may otherwise provide to the other.

**Dispute Resolution.** All Contractor claims not otherwise subject to Public Contract Code Sections 20104 et seq shall, as a condition precedent to litigation thereon, first be mediated. Mediation shall be confidential, non-binding, pursuant to the construction mediation procedures of JAMS in San Francisco, California, and utilize the services of a mediator mutually acceptable to the parties. If the parties are unable to agree, the mediator will be selected by JAMS from its panel of approved construction industry mediators, having a minimum of 10 years' experience in the construction industry. The cost of mediation shall be equally shared by all parties to the mediation. The parties shall, prior to the commencement of a mediation pursuant to this Paragraph, upon notice of the other party, exchange relevant, non-privileged project documents in compliance with Code of Civil Procedure Sections 2031.010 et seq. Additionally, the parties may agree mutually to engage in additional discovery prior to mediation. Should the parties proceed with additional discovery, they shall, unless mutually agreed otherwise, comply with Code of Civil Procedure Sections 2019, et. seq. The Mediator will undertake to resolve any discovery disputes relating to the Mediation.

**Execution; Venue; Limitations.** The Agreement shall be deemed to have been executed in San Mateo County, California. Enforcement of the Contract Documents shall be governed by the laws of the State of California, excluding its conflict of laws rules. Except as expressly provided in the Contract Documents, nothing in the Contract Documents shall operate to confer rights or benefits on persons or entities other than Owner and Contractor. As between the parties to the Agreement, any applicable statute of limitations for any act or failure to act shall commence to run on the date of Owner's issuance of the final Certificate for Payment, or termination of the Contract Documents, whichever is earlier, except for latent defects, for which the statute of limitation shall begin running upon discovery of the defect and its cause.



## Appendix C to Construction Services Agreement

### INSURANCE

1. Commercial General Liability Insurance, written on an “occurrence” basis, which shall provide coverage for bodily injury, death and property damage resulting from operations, liability for slander, false arrest and invasion of privacy, blanket contractual liability, broad form endorsement, and completed operations, personal and advertising liability, with limits of not less than **[\$1,000,000]** general aggregate and **[\$1,000,000]** each occurrence, subject to a deductible of not more than **[\$1,000]** payable by Contractor.
2. Business Automobile Liability Insurance with limits not less than **[\$1,000,000]** each occurrence including coverage for owned, non-owned and hired vehicles, subject to a deductible of not more than **[\$1,000]** payable by Contractor.
3. Workers’ Compensation Employers’ Liability limits not less than **[\$1,000,000]** each accident, **[\$1,000,000]** per disease and **[\$1,000,000]** aggregate. Contractor’s Workers’ Compensation Insurance policy shall contain a Waiver of Subrogation against the City of Pacifica, its officers, directors, officials, agents, employees and volunteers. In the event Contractor is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California.
4. **[If applicable]** Builder’s Risk Insurance including, without limitation, coverage against loss or damage to the Work by fire, lightening, wind, hail, aircraft, riot, vehicle damage, explosion, smoke, falling objects, vandalism, malicious mischief, collapse, and other such hazards as are normally covered by such coverage. Such insurance shall be in amount equal to the replacement cost (without deduction for depreciation and subject to stipulated value in lieu of average clause) of all construction constituting any part of the Work, excluding the cost of excavations, of grading and filling of the land. **[Alternatively, if applicable]** An Installation Floater including, without limitation, coverage against loss or damage to the Work by fire, lightening, wind, hail, vandalism, malicious mischief, and other such hazards as are normally covered by such coverage. Such insurance shall be in amount equal to the replacement cost (without deduction for depreciation and subject to stipulated value in lieu of average clause) of the Work. **[If either Builder’s Risk or an Installation Floater is required, continue]** Such insurance may be subject to deductible clauses not to exceed **[\$10,000]** for any one loss. Such insurance will not cover loss or damage to Contractor’s equipment, scaffolding or other materials not to be consumed in the performance of the Work. The insurer shall waive all rights of subrogation against Owner.
5. Insurance policies in Appendix C shall contain an endorsement containing the following terms:
  - 5.01 City of Pacifica, its officers, directors, officials, agents, employees, and volunteers, shall be named as additional insureds, but only with respect to liability arising out of the activities of the named insured, and there shall be a waiver of subrogation as to each named and additional insured.
  - 5.02 The policies shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company’s liability.
  - 5.03 Written notice of cancellation, non-renewal or of any material change in the policies shall be mailed to Owner thirty (30) days in advance of the effective date thereof.
  - 5.04 Insurance shall be primary insurance and no other insurance or self-insured retention carried or held by any named or additional insureds other than Contractor shall be called upon to contribute to a loss covered by insurance for the named insured.



6. Certificates of Insurance and Endorsements shall have clearly typed thereon the Project Name, shall clearly describe the coverage and shall contain a provision requiring the mailing of written notices of cancellation described in clause 5.03 above.
7. All policies of insurance shall be placed with insurers acceptable to Owner. The insurance underwriter(s) must be duly licensed to do business in the State of California and (other than for workers' compensation) must have an A. M. Best Company rating of [A-,VII] or better. Required minimum amounts of insurance may be increased should conditions of Work, in the opinion of Owner, warrant such increase. Contractor shall increase required insurance amounts upon direction by Owner.

**Appendix D to Construction Services Agreement**

**CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

1. THAT WHEREAS, the **City of Pacifica**, a general law city and municipal corporation of the State of California (**Owner**) has awarded to **G. Bortolotto & Co. Inc.** as Principal a Construction Services Agreement, dated the **24<sup>th</sup> day of January, 2022** (**Agreement**), titled **FY 2021-22 BASE REPAIR PROJECT** located at the City of Pacifica in the amount of **\$151,208.90** (Contract Sum), which Agreement is by this reference made a part hereof, for the work described as follows:

**The project includes base repair, minor pavement striping and markings and other miscellaneous related work along Oceana Boulevard and Sharp Park Road.**

2. AND WHEREAS, Principal is required to furnish a bond in connection with the Agreement to secure the payment of claims of laborers, mechanics, material suppliers, and other persons as provided by law;
3. NOW, THEREFORE, we, the undersigned Principal and \_\_\_\_\_ as Surety, are held and firmly bound unto Owner in the sum of 100% OF THE CONTRACT SUM (\$\_\_\_\_\_), for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.
4. THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by Owner, or its subcontractors shall fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the State of California Unemployment Insurance Code with respect to work or labor performed under the Agreement, or for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to California Unemployment Insurance Code Section 13020 with respect to such work and labor, that Surety will pay for the same in an amount not exceeding the sum specified in this bond, plus reasonable attorneys' fees, otherwise the above obligation shall become and be null and void.
5. This bond shall inure to the benefit of any of the persons named in California Civil Code Section 9100, as to give a right of action to such persons or their assigns in any suit brought upon this bond. The intent of this bond is to comply with the California Mechanic's Lien Law.
6. Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Agreement, or to the work to be performed thereunder, shall in any way affect the obligation of this bond; and it does hereby waive notice of any such extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Agreement, or to the work to be performed thereunder.
7. Surety's obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection with Agreement; and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the other.

8. Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CONTRACTOR AS PRINCIPAL**

**SURETY**

Company: (Corp. Seal)

Company: (Corp. Seal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
City, State, Zip Code

**END OF DOCUMENT**

Attachment: FY 2021-22 Base Repair Construction Agreement with G. Bortolotto & Co Inc (4866 : FY 2021-22 Base Repair Project)

## Appendix E to Construction Services Agreement

### CONSTRUCTION PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

1. THAT WHEREAS, **City of Pacifica**, a general law city and municipal corporation of the State of California (**Owner**) has awarded to **G. Bortolotto & Co. Inc.** as Principal a Construction Services Agreement, dated the **24<sup>th</sup> day of January, 2022 (Agreement)**, titled **FY 2021-22 BASE REPAIR PROJECT** located at the City of Pacifica in the amount of **\$151,208.90** (Contract Sum), which Agreement is by this reference made a part hereof, for the work described as follows:

**The project includes base repair, minor pavement striping and markings and other miscellaneous related work along Oceana Boulevard and Sharp Park Road.**

2. AND WHEREAS, Principal is required to furnish a bond in connection with the Agreement, guaranteeing the faithful performance thereof;
3. NOW, THEREFORE, we, the undersigned Principal and \_\_\_\_\_ as Surety are held and firmly bound unto Owner in the sum of 100% OF THE CONTRACT SUM to be paid to Owner or its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.
4. THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by Owner, shall promptly and faithfully perform the covenants, conditions, and agreements of the Agreement during the original term and any extensions thereof as may be granted by Owner, with or without notice to Surety, and during the period of any guarantees or warranties required under the Agreement, and shall also promptly and faithfully perform all the covenants, conditions, and agreements of any alteration of the Agreement made as therein provided, notice of which alterations to Surety being hereby waived, on Principal's part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify, defend, protect, and hold harmless Owner as stipulated in the Agreement, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and effect.
5. No extension of time, change, alteration, modification, or addition to the Agreement, or of the work required thereunder, shall release or exonerate Surety on this bond or in any way affect the obligation of this bond; and Surety does hereby waive notice of any such extension of time, change, alteration, modification, or addition.
6. Whenever Principal shall be and declared by Owner in default under the Agreement, Surety shall promptly remedy the default, or shall promptly:
  - 6.01 Undertake through its agents or independent contractors, reasonably acceptable to Owner, to complete the Agreement in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Agreement including, without limitation, all obligations with respect to warranties, guarantees, indemnities, and the payment of liquidated damages; or
  - 6.02 Obtain a bid or bids for completing the Agreement in accordance with its terms and conditions, and, upon determination by Owner of the lowest responsible bidder, reasonably acceptable to Owner, arrange for a contract between such bidder and Owner and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Sum, and to pay and perform all obligations of

Principal under the Agreement including, without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages; but, in any event, Surety's total obligations hereunder shall not exceed the amount set forth in the third paragraph hereof. The term "balance of the Contract Sum," as used in this paragraph, shall mean the total amount payable by Owner to the Principal under the Agreement and any amendments thereto, less the amount Owner paid to Principal.

7. Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Agreement, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the others. Surety may not use Contractor to complete the Agreement absent Owner's written consent.
8. No right of action shall accrue on this bond to or for the use of any person or corporation other than Owner or its successors or assigns.
9. Surety may join in any proceedings brought under the Agreement and shall be bound by any judgment.
10. Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

#### CONTRACTOR AS PRINCIPAL

Company: (Corp. Seal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip Code

#### SURETY

Company: (Corp. Seal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip Code

**END OF DOCUMENT**

**Appendix F to Construction Services Agreement****SUPPLEMENTAL CONDITIONS****1. Plans**

See Plans, Specifications and Estimates.

**2. Shop Drawings**

Shop drawings will not be required on this project.

**3. Dust Control and Cleanup**

During the construction period, the dust level shall be kept at a minimum. The premises shall also be kept free from the accumulation of waste material or rubbish. Failure to meet this requirement may result in project shutdown.

The final cleaning shall leave the facilities ready for use with no additional cleanup. Use no cleaning materials which will contaminate the ocean. At the completion of the contract, the Contractor shall remove all remaining litter, debris, materials, temporary structures and equipment from the site. The premises shall be left in a clean and orderly condition acceptable to the City Engineer.

In the event Contractor leaves the job overnight in an unclean condition, City may take action to provide necessary requirements and will deduct the cost of doing so from subsequent Contractor payments.

**4. Public Safety**

Contractor shall be responsible during all phases of work to provide for public safety and convenience. It shall be the Contractor's responsibility to provide adequate provisions to assure the safety of the general public throughout the duration of the project, including periods when no work is being performed. The site shall be thoroughly fenced-off when work is not actively in progress, and lighted barricades shall be placed around any obstructions not encompassed by this fence.

In the event Contractor leaves the job overnight in an unsafe condition, or fails to provide for public safety and convenience, City may take action to provide necessary requirements and will deduct the cost of doing so from subsequent Contractor payments.

All applicable safety regulations shall be complied with to protect the public and the Contractor's employees. Strict compliance with Cal/OSHA safety requirements in doing the work is required.

**5. Prevailing Wage Rates**

The Contractor shall post, in a location on the job site, the prevailing wage rate Determination which is applicable to this project.

**6. Discrimination**

No discrimination shall be made in the employment of persons upon public works because of the race, sex, age, color, national origin, creed, sexual orientation or marital status of such persons and every contractor for public works violating this section is subject to all the penalties imposed for a violation of Section 1735 of the California Labor Code.

7. **Employment of Apprentices**

Attention is directed to the provisions in Sections 1777.5 (Chapter 1411, Statutes of 1967) and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under him.

The Contractor and any subcontractor shall comply with the requirements of Sections 1777.5 and 1777.6 in the employment of apprentices.

Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

8. **Materials and Supplies**

All materials and supplies called for by contractor's scope and proposal and shall be new unless otherwise specified.

9. **Protection**

The Contractor shall provide adequate protection for the site and surroundings throughout the work. All damage done to existing property shall be neatly repaired or replaced at the Contractor's expense. Work shall be executed in a careful and orderly manner with the least possible disturbance to public and occupants of the area.

The Contractor shall conduct his operations in such a manner as to avoid damage to existing improvements and adjacent property. The Contractor shall, at its sole cost and expense, repair or replace any damage occurring from his operations to pursue completion of the contract. The repairs and replacement shall be to the satisfaction of the Engineer and according to City standards and practices. The minimum repair or replacement shall be equal to surrounding existing conditions or better, and the Engineer's decision as to acceptable repair or replacement shall be final. The burden of proof as to whether there was existing damage by the Contractor shall rest with the Contractor.

The site shall be maintained in a neat and orderly manner at all times. All existing facilities shall be protected and, if they are damaged or destroyed by the Contractor, shall be restored or replaced in kind at his expense, to their original conditions, or better, as approved by the City or other owner thereof. The site shall be secured at the conclusion of each work day.

10. **Inspections**

Inspectors, employed by the City, shall be authorized to inspect all work done and all materials furnished. Such inspection may extend to all or any part of the work on the project and to the preparation, fabrication or manufacture of the materials to be used. An inspector is not authorized to revoke, alter or waive any requirements of the specifications. He is authorized to call the attention of the Contractor to any failure of the work or materials to conform to the specifications and



contract. He shall have the authority to reject materials or suspend the work until any question at issue can be referred to and decided by the Engineer.

An inspector will in no case act as foreman or perform other duties for the Contractor, nor interfere with the Contractor's management of the work.

In case the Contractor refuses to suspend operations on verbal order, the inspector giving such verbal order will then issue the order in writing. After placing the order in the hands of the person in charge of the work for the Contractor, the inspector will immediately leave the job. Work done during the absence of the inspector will not be accepted or compensated.

The Contractor shall prosecute work only in the presence of an authorized inspector or authorized representative of the Engineer, and any work done without such inspection shall be at the Contractor's risk and be subject to rejection.

The Contractor shall furnish the Engineer with every reasonable facility for ascertaining whether or not the work, as performed, is in accordance with the requirements and intent of the specifications and contract. The Contractor shall at all times and for any purpose permit the Engineer and any of his representatives and representatives of the City to have access to the work and the premises used by the Contractor.

#### 11. **Defective Materials**

Any materials condemned or rejected by the Engineer as not meeting the requirements of these specifications may be branded or otherwise marked by the Engineer and shall, on demand, be at once removed by the Contractor to a satisfactory distance from the work.

If the Contractor does not remove such material within a reasonable time, fixed by written notice, the City may remove and store the materials at the expense of the Contractor. If the Contractor does not pay the expense of such removal and storage within ten days thereafter, the City may, upon ten days' written notice, sell such materials at auction or at private sale. The City will account for the net proceeds thereof after deducting all the costs and expenses that should have been borne by the Contractor.

No partial payment, inspection, taking possession of, or other act made or done by the Engineer or the City with respect to the work prior to the final completion and acceptance thereof shall relieve Contractor from performing the Work in accordance with this contract, and shall not affect or prejudice the right of the Engineer or the City to reject any defective work or material or to require the Contractor complete fulfillment of all the provisions of the contract.

If the Engineer deems it expedient and not in the best interests of the City to correct work injured or done not in accordance with the contract, the defective work may be accepted subject to an equitable deduction from the contract price which may be made therefor by the City upon certificate from the Engineer.

#### 12. **Temporary Suspension of Work and Extension of Time for Performance**

When conditions at the site of the proposed work are unsatisfactory for the prosecution of a part or all of the work as adjudged by the Contractor and he is forced to suspend such work until reasonable conditions for its prosecution exist, he may request, in writing, that the Engineer authorize such suspension of work. Without the Engineer's approval, any suspensions violate this specification.

Unsatisfactory conditions may include, but not limited to: inclement weather, excessively high surf and/or tides, strikes, excessive high or low ambient temperature and inability of delivery of materials by suppliers for good reason.

When, in the opinion of the Engineer, suspensions of work are beyond the control of both the Contractor and the City (including, without limitation, adverse weather, conditions, earthquakes, force majeure events), the time of performance as set forth in the Agreement will be extended by the Engineer, in writing, by a period of time equal to that lost due to the delay occasioned by the allowed suspension, all at no additional cost to the City and without waiver of remedies for nonproliferation of the work. Such allowed suspension of work shall not relieve the Contractor of his contractual responsibilities.

13. **Laws and Regulations**

The Contractor shall comply with all local, regional, State and Federal laws and regulations at all times. In addition, the Contractor shall meet the standards set by the Air Quality Act for Noise and Pollution. If there is any conflict between these specifications and provisions and any laws or regulations, the matter shall be brought to the attention of the Engineer immediately.

14. **Sound Control Requirements**

The Contractor shall comply with all local sound control and noise level rules, regulations and ordinances which apply to any work performed pursuant to the contract.

Each internal combustion engine, used for any purposes on the job or related to the job, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler.

15. **Air Pollution Control**

The Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to any work performed pursuant to the contract, involving any air pollution control rules, regulations, ordinances and statutes specified in Section 11017 of the Government Code.

16. **Water Pollution**

**General:**

Contractor shall take all measures necessary to prevent debris or contamination from entering the ocean. Best Management Practice (BMP) shall be enforced at all times.

**Correction of Inadequate Pollution and Erosion Control Measures:**

If the measures being taken by the Contractor are inadequate to control water pollution effectively, the City Engineer may direct the Contractor to revise operations. The directions will be in writing and will specify the items of work for which the Contractor's water pollution control measures are inadequate. No further work shall be performed on those items until the water pollution control measures are made adequate.

**Abatement of Other Water Pollution:**

The cleanup of water pollution by chemicals, petroleum products, cement or by the escape of any other material that is harmful or potentially harmful, from the work site as a result of the Contractor's operations, into drainage systems or the ocean shall be the financial responsibility of the Contractor. The means of cleanup and the party or parties to be engaged to perform the cleanup work shall be determined by the Engineer in consultation with appropriate hazardous materials, pollution control, safety, health and wildlife authorities and officials. The Contractor shall immediately carry out cleanup orders issued to him through or by the Engineer and shall make the work site accessible to personnel and equipment from outside pollution control resources called in by the Engineer. The cost of cleanup action called for by the Engineer and performed by outside resources shall be deducted from any monies due or become due the Contractor.

#### Compensation:

Full compensation for conforming to the requirements of this section shall be considered as included in the Contract Sum paid for the various items of work and no additional compensation will be allowed therefor.

### 17. **Environmental Protection Requirements**

#### Source Reduction and Recycling

The California Integrated Waste Management Act of 1989 (AB 939) mandates that 25 percent of the waste stream in the City of Pacifica be diverted from landfill by 1995 and that this diversion increase to 50 percent by 2000. AB 939 also required the City of Pacifica to prepare and adopt a Source Reduction and Recycling Element (SRRE) outlining recommended programs to meet the above noted diversion goals. One of the approved SRRE programs is to require the utilization of recycled construction materials for City projects. All work performed under this contract and all contractors and their associates and/or employees shall utilize recycled materials and recycle construction materials where feasible. Construction/Demolition Recycling Resources Lists are available from the Pacifica Planning Department and the California Integrated Waste Management Board.

Contractor shall reuse or recycle any useful construction materials generated during the project.

#### Disposal

At the end of each working day, the Contractor shall collect all scrap, debris and waste material and dispose of such materials properly.

#### **Hazardous Material/Waste Management**

##### A. Storage

The Contractor shall label and store all hazardous materials, such as pesticides, paints, thinners, solvents, and fuels; and all hazardous wastes, such as waste oil and antifreeze; in accordance with the City of Pacifica Hazardous Materials Storage Ordinance and all applicable State and Federal regulations.

The Contractor shall store all hazardous materials and all hazardous wastes in accordance with secondary containment regulations, and it is recommended that these materials and

wastes be covered, as needed, to avoid potential management of collected rain water as a hazardous waste.

The Contractor shall keep an accurate, up-to-date inventory, including Material Safety Data Sheets (MSDSs), of hazardous materials and hazardous wastes stored on-site, to assist emergency response personnel in the event of a hazardous materials incident.

B. Disposal

The Contractor shall use secondary containment, such as a drip pan, to catch leaks or spills any time that vehicle or equipment fluids are dispensed, changed or poured.

The Contractor shall keep a stockpile of spill cleanup materials, such as rags or absorbents, readily accessible on site.

The Contractor shall clean up leaks and spills of vehicle or equipment fluids immediately and dispose of the waste and cleanup materials as hazardous waste, as described in the section above.

The Contractor shall not wash any spilled material into streets, gutters, storm drains or creeks and shall not bury spilled hazardous materials.

The Contractor shall report any hazardous materials spill to the City of Pacifica Building Division at (650) 738-7344.

The Contractor shall inspect vehicles and equipment arriving on site for leaking fluids and shall promptly repair leaking vehicles and equipment. Drip pans shall be used to catch leaks until repairs are made.

C. Activity-Specific Requirements

The following requirements shall be met on all projects within the City of Pacifica that include the listed activities.

Concrete, Grout and Mortar Waste Management

Material Management:

The Contractor shall store concrete, grout, and mortar away from drainage areas and ensure that these materials do not enter the storm drain system or the ocean waters.

Concrete Truck/Equipment Wash Out:

The Contractor shall not wash out concrete trucks or equipment into streets or gutters.

The Contractor shall perform washout of concrete trucks or equipment off-site or in a designated area on-site where the water will flow onto dirt or into a temporary pit in a dirt area. The Contractor shall let the water percolate into the soil and

dispose of the hardened concrete in a trash container. If a suitable dirt area is not available, then the Contractor shall collect the wash water and remove it off-site.

18. **Layout of Work**

Layout of work shall be done by the Contractor. Contractor shall mark the work area limits and facilities to be removed and replaced. All layout shall be approved by the City.

19. **Substitutions**

Substitutions in material or methods of construction, when necessary because of material shortages or in order to avoid serious delay may be made only after they are approved by the City Engineer in writing.

20. **Traffic Control and Public Access**

The Contractor shall be responsible for proper traffic control to assure public safety and convenience. Continuous safe public access shall be maintained to residential structures at all times.

21. **Material and Workmanship**

All materials and workmanship are to be the best of their respective kinds. The terms “or equal,” “approved,” “selected” and so forth shall mean as approved, etc. by the City Engineer. All materials and equipment used should be in accordance with the manufacturer’s printed directions.

Use adequate numbers of skilled workmen who are thoroughly trained and experienced in necessary crafts and who are completely familiar with the specified requirements and methods needed for proper performance of work specified. Use equipment adequate in terms of size, capacity and numbers to accomplish work in a timely manner.

22. **Drug-Free Workplace**

The Contractor is required to comply with the Drug-Free Workplace Act of 1988. The requirements of the Drug-Free Workplace Policy are described in City of Pacifica Administrative Policy Number 46.

23. **Harassment and Discrimination**

The Contractor is required to comply with City of Pacifica Administrative Policy Number 33, Harassment and Discrimination in the Workplace.

24. **Payroll Records**

Contractor and each Sub-Contractor shall keep an accurate payroll record, showing the name, address, social security number, work week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him in connection with the public work. All payroll records shall be certified and maintained by the Contractor and be made available to auditors and managers from the City upon request.



**CITY OF PACIFICA  
COUNCIL AGENDA SUMMARY REPORT**

**1/24/2022**

**SUBJECT:**

Playground Equipment Improvement Project (aka FY21-22 Priority Parks Project)

**RECOMMENDED ACTION:**

Move to approve a Master Agreement for Consultant Services and Task Order No. 1 with NCE (Attachment "A") in an Amount Not to Exceed \$274,540.00 for the Playground Equipment Improvement Project (aka FY21-22 Priority Parks Project), authorize budget authority in the amount of \$301,994, which includes a 10% contingency amount of \$27,454, and authorize the City Manager to execute all documents associated with this Agreement.

**STAFF CONTACT:**

Sam Bautista, P.E., DPW Deputy Director  
(650) 738-3771  
[sbautista@pacifica.gov](mailto:sbautista@pacifica.gov)

Michael Perez, PB&R Director  
(650) 738-7382  
[mperez@pacifica.gov](mailto:mperez@pacifica.gov)

Lisa Petersen, P.E., DPW Director  
(650) 738-3770  
[lpetersen@pacifica.gov](mailto:lpetersen@pacifica.gov)

**BACKGROUND/DISCUSSION:**

The City Council approved the FY 2021-2026 Capital Improvement Program (CIP) in June of 2021. The CIP included the Playground Equipment Improvement Project meant to improve outdated citywide parks playground equipment. The City manages and maintains nineteen (19) total parks throughout the City of Pacifica and over the last several years Public Works (PW) and Parks, Beaches and Recreation (PB&R) staff have been working on assessment of the City parks needs due to aging infrastructure. This included a consultant playground equipment assessment study that was presented and discussed at a Parks, Beaches and Recreation Commission study session in September of 2019. Although Public Works staff does address spot repairs and replacements in the City's parks, addressing these needs in City parks that require all equipment upgraded is beyond the capacity of PW staff. Based on the assessment study and discussions between PW and PB&R staff, a priority list was created. The Community Center and Fairmont West Child Care Center playgrounds were selected for replacement and both projects were completed in spring of 2020. Oddstad Park is scheduled for replacement this fiscal year. It was also determined that four additional parks required complete replacement of all park equipment. These parks include the following:

- Skyridge Park located on Skyridge Drive
- Imperial Park located on Imperial Drive
- Marvilla Park located at 201 Marvilla Place

- Brighton Mini Park located at 497 Brighton Road

The City requires the services of a qualified landscape architect to assist in the planning, design and construction of the equipment at these parks, consequently, a Request for Proposals was issued on November 1, 2021 for landscape architectural services for the Playground Equipment Improvement project that will be titled the FY21-22 Priority Parks Project. On December 3, 2021, five (5) qualified firms submitted proposals in response to the RFP. Staff from the Engineering Division reviewed the submitted proposals from the five (5) consultants:

1. Gates & Associates
2. NCE
3. SSA Landscape Architects, Inc.
4. SERA Design
5. Verde Design, Inc.

Consultant interviews, with a panel selected from Engineering and Parks, Beaches, and Recreation staff, were conducted on December 16, 2021. The interviews were scored based upon the consultants' understanding of the project, experience with similar projects, interview presentation, and staff availability/project delivery as criteria for selection. Based upon the criteria, NCE was selected by staff to proceed with the FY21-22 Priority Parks Project.

After a kickoff meeting, NCE will be conducting a detailed and thorough investigation of each park and gather relevant background information through topographical surveys and mapping of existing utilities. This base map will help the landscape architects design proper playground clearances and ADA access to and from the site.

As parks are a very important component in the neighborhoods, NCE will work closely with City staff to create a Community Engagement Plan that identifies goals of the engagement process, key stakeholders, and methods of engagement. The Community Engagement Plan may include pop-up events, stakeholder/park user interviews, an on-line survey, a Zoom community meeting and/or social media postings (i.e., Twitter, NextDoor). The exact methods, schedule, and goals will be developed in consultation with the City during the kickoff meeting.

NCE will prepare two conceptual designs for each park that will present options based on varying levels of improvement and modification of the existing play areas, park uses, and amenities. The first option will include the replacement of play equipment, installation of ADA compliant play surfacing, and paths of travel from public right-of-way to play structures. The second option will propose new locations for activities such as moving play areas closer to entry points, providing space for new recreational opportunities such as informal play, walking paths, and a range of seating elements. The concepts will be presented in plans with imagery of proposed features/activities and hand drawn visualizations.

NCE will present the options for each park to City staff for their initial comments and suggestions. Based on the input received from City staff, NCE will prepare a preferred alternative plan for each park which may include elements from both the conceptual alternatives. The preferred alternatives will be presented to the PB&R Commission, and neighbors within 500-feet of the project site will be notified of the proposed park renovations. NCE assumes presenting all parks at one meeting. Based on the extent and types of comments received from the community and PB&R Commission, NCE will either incorporate the comments into the plans, or resubmit plans for a second review by the PB&R Commission.

Once a preferred plan is developed for each park, the landscape architect will produce 100% construction documents, which will include the construction plans, technical specification, and cost estimates in both hard copy and electronic formats. Originally stated in the RFP, Imperial



and Skyridge Parks were to be designed to 100% construction documents, while Brighton and Marvilla Parks were to be designed to a conceptual level due to budget; however, staff recommends designing all parks to 100% construction drawings. This would allow for at least 2 parks to be under construction in FY21-22, while the other two parks would be shovel-ready for construction FY22-23. Designing all park at this time would also be more cost effective and negate future escalation costs. In addition, NCE will be assisting the City during the bidding and construction phases of this project.

The design fee for FY21-22 Priority Parks Project is \$274,540. Staff recommends including a 10% contingency of \$27,454 for any additional or unforeseen work needed related to the design. Staff recommends approval of budget authority in the amount of \$301,994.

In addition, the City Manager recommends that City Council authorizes for the City Manager to award and execute a Master Agreement for Consultant Service and Task Order No. 1 and any future documents between the City of Pacifica and NCE for the FY21-22 Priority Parks Project, and approve budget authority in the amount of \$301,994 from the Roy Davies Fund 27.

#### **ALTERNATIVE ACTION:**

Council may choose not to award and execute the consultant services agreement; however, this will result in delays to the improvement of the parks. Therefore, the City Manager does not recommend this alternate action.

#### **RELATION TO CITY COUNCIL GOALS AND WORK PLAN:**

Approval of the consultant agreement is consistent with the following Council adopted Goals:

- **Stewardship of City Infrastructure:** includes repairing/replacing outdated city facilities such as city hall, the libraries, fire stations, etc., improving streets, and responding to impacts of sea level rise. The improvements to the parks will improve the lives of residents and visitors of the City.

#### **FISCAL IMPACT:**

The following is the source and use of funds for the project:

<b>Total Project Source and Use of Funds</b>	
Consultant Services Agreement	\$ 274,540
Contingency (10%)	\$ 27,454
Consultant Cost (with 10% Contingency)	\$ 301,994
<b>Total Use of Funds</b>	<b>\$(301,994)</b>
<b>Total Source of Funds (Roy Davies Fund 27)</b>	<b>\$ 600,000</b>
<b>Estimated Project End Balance</b>	<b>\$ 298,006</b>

#### **ORIGINATED BY:**

Engineering

#### **ATTACHMENT LIST:**

Attachment "A" - NCE - Master Agreement for Consultant Services and Task Order No. 1  
(PDF)

## ATTACHMENT "A"

### MASTER AGREEMENT FOR CONSULTANT SERVICES

This Master Agreement for Consultant Services (the "Agreement") is made and entered into this 24<sup>th</sup> of January 2022 by and between THE CITY OF PACIFICA, a municipal corporation (hereinafter referred to as "CITY") and NCE (hereinafter referred to as "CONSULTANT"). CITY and CONSULTANT may be referred to individually as "Party" and collectively as the "Parties."

### RECITALS

WHEREAS, CITY requires professional landscape architecture services for the City's Playground Equipment Improvement Project, aka FY21-22 Priority Parks Project,

WHEREAS, CONSULTANT is qualified to perform such services; and

WHEREAS, CONSULTANT has agreed to provide CITY with such services on the terms and conditions set forth herein.

NOW, THEREFORE, for the considerations hereinafter set forth, CONSULTANT and CITY agree as follows:

### ARTICLE 1 - SCOPE OF SERVICES

- 1.1. **Scope of Services.** CONSULTANT agrees to furnish services pursuant to a Task Order in the form set forth in Exhibit A, Task Order, which is attached hereto and incorporated herein (the "Services").
- 1.2. **Compliance with Law.** The Services shall be performed in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and orders.
- 1.3. **Time is of the Essence.** CONSULTANT agrees to diligently prosecute the Services. In the performance of this Agreement, time is of the essence.
- 1.4. **Professional Competence.** CONSULTANT represents that it has the professional skills necessary to perform the Services and that it will perform the Services in a skillful and professional manner. CONSULTANT represents that it has all the necessary licenses to perform the Services and shall maintain them throughout the term of this Agreement. CONSULTANT agrees that the Services shall be performed consistent with the professional skill and care ordinarily provided by engineers practicing in the same or similar locality under the same or similar circumstances. CITY and CONSULTANT agree that CONSULTANT is in responsible charge of the Services. Acceptance by CITY of the Services does not operate as a release of CONSULTANT from professional responsibility for the Services performed.
- 1.5. **Independent Contractor.** CONSULTANT is an independent contractor and not an employee of CITY. CONSULTANT expressly warrants that it will not represent that it is an employee of CITY.

- 1.6. **Confidentiality.** CONSULTANT agrees to maintain in confidence and not disclose to any person, firm, governmental entity, or corporation, without CITY's prior written consent, any trade secret or confidential information, knowledge or data relating to the products, process, or operation of CITY. CONSULTANT further agrees to maintain in confidence and not to disclose to any person, firm, governmental entity, or corporation any data, information, technology, or material developed or obtained by CONSULTANT during the performance of the Services. The covenants contained in this Section 1.6 shall survive the termination of this Agreement for whatever cause.
- 1.7. **Ownership of Material.** Any reports and other material prepared by or on behalf of CONSULTANT under this Agreement (collectively, the "Documents") shall be and remain the property of CITY. All Documents not already provided to CITY shall be delivered to CITY on the date of termination of this Agreement for any reason. The Documents may be used by CITY and its agents, employees, representatives, and assigns, in whole or in part, or in modified form, for all purposes CITY may deem appropriate without further employment of or payment of any compensation to CONSULTANT.
- 1.8. **Documentation.** CONSULTANT shall keep and maintain full and complete documentation and accounting records, employee time sheets, and correspondence pertaining to the performance of the Services, and CONSULTANT shall make such documents available for review and/or audit by CITY and CITY's representatives at all reasonable times for at least four years after the termination of this Agreement or completion of the Services.
- 1.9. **Testimony.** CONSULTANT agrees to testify at CITY's request if litigation is brought against CITY in connection with the Services. Unless the action is brought by CONSULTANT or is based upon CONSULTANT's negligence, CITY will compensate CONSULTANT for the preparation and the testimony at CONSULTANT's standard hourly rates.

## ARTICLE 2 - COMPENSATION

- 2.1. **Compensation.** Compensation for the Services shall be in accordance with the rate and schedules specified in a Task Order. However, in no event shall the amount the CITY pays to CONSULTANT for work done under a Task Order exceed the total compensation specified in the Task Order ("Cost Ceiling").
- 2.2. **Invoices.** CONSULTANT shall submit monthly invoices in a form satisfactory to CITY on or before the tenth day of each month for Services provided during the preceding month. CONSULTANT shall submit time and cost records as necessary to substantiate performance of the Services. Within 35 days after receipt of each such invoice, CITY shall verify the accuracy of the invoice, correct the charges where appropriate and as discussed and mutually agreed with CONSULTANT, and make payment to CONSULTANT in an amount equal to the amount of such invoice, as verified or corrected by CITY. No payment hereunder shall be construed as evidence of acceptance of any of CONSULTANT's work. CITY reserves the right to withhold payment from CONSULTANT on account of Services not performed satisfactorily, delays in CONSULTANT's performance of Services, or other defaults hereunder. CONSULTANT

shall not stop or delay performance of the Services under this Agreement on account of payment disputes with CITY.

- 2.3. **Status Reports.** Together with each monthly invoice, CONSULTANT shall submit a status report detailing the amount expended on the Services to that date and the remaining amount to be expended before the Cost Ceiling is reached. CONSULTANT shall notify CITY in writing when payments have reached 90 percent of the Cost Ceiling.
- 2.4. **Withholding.** In lieu of holding retention, CITY shall withhold CONSULTANT's final payment under a Task Order until the Services provided under that Task Order are complete and CITY has received all Documents. CONSULTANT shall diligently continue and complete performance of the Services if the Services are not complete at the time CONSULTANT has performed services up to the Cost Ceiling.

### ARTICLE 3 - TIME OF PERFORMANCE

- 3.1. **Effective Date.** This Agreement shall become effective upon execution of the second signature and shall remain in full force and effect until December 31, 2021 (the "Term"). Notwithstanding the foregoing, this Agreement may be extended for successive one-year term(s) upon mutual, written approval by the City Manager or his/her designee and CONSULTANT. Work authorized by a Task Order shall be performed in accordance with the schedule set forth in the Task Order.
- 3.2. **Termination.** This Agreement may be terminated at any time by CITY upon written notice to CONSULTANT.
- 3.3. **Final Payment.** CONSULTANT shall be entitled to compensation for Services performed up to the time of such termination, it being understood that any payments are full compensation for the Services rendered under this Agreement.
- 3.4. **Other Remedies.** Nothing in this Article 3 shall be deemed to limit the respective rights of the parties to terminate this Agreement for cause or otherwise to exercise any rights or pursue any remedies which may accrue to them.

#### ARTICLE 4 - DESIGNATED CONTACTS

- 4.1. **CITY Contact.** CITY designates Sam Bautista, P.E., its Deputy Director of Public Works, as its contact who shall be responsible for administering and interpreting the terms and conditions of this Agreement, for matters relating to CONSULTANT's performance under this Agreement, and for liaison and coordination between CITY and CONSULTANT. In the event CITY wishes to make a change in CITY's representative, CITY will notify CONSULTANT of the change in writing.
- 4.2. **CONSULTANT Contact.** CONSULTANT designates J. Ryan Shafer P.E., GE, its Principal, as its contact, who shall have immediate responsibility for the performance of the Services and for all matters relating to performance under this Agreement. Any change in CONSULTANT's designated contact shall be subject to written approval by CITY.

#### ARTICLE 5 - INDEMNIFICATION AND INSURANCE

- 5.1. **Indemnification.** CONSULTANT shall, to the fullest extent allowed by law, with respect to claims, liability, loss, damage, costs, or expenses, including reasonable attorney's and expert witness fees, awards, fines, penalties, or judgments, arising out of or relating to the Services (collectively "Claims") that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, defend, indemnify, and hold harmless CITY, its Officials, officers, employees and agents (the "CITY Parties"), except to the extent the Claims are attributable to CITY Parties' gross negligence or willful misconduct. CONSULTANT shall defend the CITY Parties as required by California Civil Code Section 2778, and with counsel reasonably acceptable to those parties. CONSULTANT shall have no right to seek reimbursement from the CITY Parties for the costs of defense except as allowed by law pursuant to Civil Code section 2782.8. The obligations contained in this Section 5.1 shall survive the termination of this Agreement for whatever cause for the full period of time allowed by law and shall not in any way be limited by the insurance requirements of this Agreement.

To the extent that CONSULTANT, is a design professional, as that term is defined in Civil Code section 2782.8(c)(3), the Consultant shall, to the fullest extent allowed by law, with respect to claims, liability, loss, damage, costs, or expenses, including reasonable attorney's and expert witness fees, awards, fines, penalties, or judgments (collectively "Claims"), defend, indemnify and hold harmless CITY, its officials, officers, employees and agents ("CITY Parties") from those Claims that are caused by the negligence, recklessness, or willful misconduct of the Consultant. In no event shall the cost to defend charged to the Consultant exceed the Consultant's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the Consultant shall meet and confer with other parties regarding unpaid defense costs. The obligations contained in this Section 5.1 shall survive the termination of this Agreement for whatever cause for the full period of time allowed by law and shall not in any way be limited by the insurance requirements of this Agreement.

- 5.2. **Health and Safety.** CONSULTANT may perform part of the Services at sites which contain unknown working conditions and contaminated materials. CONSULTANT shall be solely responsible for the health and safety of CONSULTANT's employees during the performance of the Services.
- 5.3. **Insurance.** CONSULTANT and all of CONSULTANTS employees, subcontractors, consultants and other agency shall procure, provide and maintain at all times during the performance of this Agreement, and for such additional periods as described herein, the insurance listed below with insurers licensed to do business in the State of California and with a Best's rating of no less than A:VII.
- A. Commercial Automobile Liability Insurance. Commercial Automobile Liability Insurance providing bodily injury liability and property damage, to protect against all liability arising out of the use of any owned, leased, passenger or commercial automobile at a minimum amount of \$1,000,000 combined single limit and \$2,000,000 aggregate. Coverage shall apply to hired and non-owned autos.
  - B. Commercial General Liability Insurance. Commercial General Liability Insurance, with limits providing a minimum amount of \$1,000,000 combined single limit coverage for each occurrence, \$2,000,000 general aggregate and \$2,000,000 products/completed operations aggregate. The insurance shall cover all operations including but not limited to the following: (1) premises, operations and mobile equipment liability; (2) completed operations and products liability; (3) contractual liability insuring the obligations assumed by CONSULTANT in this Agreement; (4) broad form property damage liability; (5) personal injury liability endorsement, including death; and (6) automobile bodily injury and property damage insurance, including all owned, hired and non-owned equipment.
  - C. Professional Liability Insurance. Professional Liability Insurance protecting against liabilities arising out of or in connection with negligent acts, errors, or omissions of CONSULTANT and all of CONSULTANTS employees, subcontractors, consultants and other agency in connection with this Agreement, at a minimum amount of \$1,000,000 combined single limit coverage and \$1,000,000 aggregate, on a "claims made basis" with a continuation of coverage extension for liabilities for two years from the date the Services are substantially complete. Such professional liability policies shall include coverage for liability assumed by the CONSULTANT under this Agreement.
  - D. Workers Compensation Insurance. Workers Compensation insurance, occupational disease insurance and employer's liability insurance shall be required with minimum limits as required by law, covering all workplaces involved in this Agreement.
  - E. Policy Terms. Concurrently with execution of this Agreement, CONSULTANT shall provide CITY with Certificates of Insurance evidencing that CONSULTANT has obtained or maintains the insurance required by this Section 5.3. The Certificates shall be on forms acceptable to CITY. CONSULTANT shall



also furnish CITY with original endorsements with the following documentation:

- Precluding cancellation or reduction in coverage before the expiration of thirty (30) days after CITY shall have received written notification thereof from CONSULTANT by United States mail;
- Providing that CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, and include a "separation of insureds" or "severability" clause which treats each insured separately, except with respect to the limits of the insurer's liability (cross-liability endorsement);
- Excepting CONSULTANT'S professional liability insurance, naming CITY, its City Council, boards, commissions, committees, officers, employees and agents as additional insureds ("Additional Insureds"); and
- Providing that for any claims relating to CONSULTANT's services hereunder, CONSULTANT's insurance coverage shall be primary insurance with respect to CITY, its City Council, boards, commissions, committees, officers, employees and agents, and that any insurance or self-insurance maintained by CITY for itself, its City Council, boards, commissions, committees, officers, employees and agents shall be in excess of CONSULTANT's insurance and shall not be contributory with it.
- It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverages requirements and/or limits shall be available to the Additional Insured, including but not limited to any umbrella or excess insurance. Furthermore, the requirements for coverage and limits shall be the greater of: (a) the minimum coverage and limits specified in this Agreement; or (b) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured.

F. Material Breach. If CONSULTANT fails to maintain insurance coverage or provided insurance documentation which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. CITY, at its sole option, may terminate this Agreement and obtain damages from CONSULTANT resulting from said breach. Alternatively, CITY may purchase the required insurance coverage, and without further notice to CONSULTANT, may deduct from sums due to CONSULTANT any premium costs advanced by CITY for such insurance. These remedies shall be in addition to any other remedies available to CITY.

## ARTICLE 6 - NOTICES

All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by facsimile or reputable overnight courier and shall be deemed received upon the earlier of: (1) if personally delivered, the date of delivery to the address of the person to receive such notice; (2) if delivered by Federal Express or other overnight courier for next business day delivery, the next business day; (3) if sent by facsimile, with the original sent on the same day by overnight courier, the date on which the facsimile is received, provided it is before 5:00 P.M. Pacific Time; or (4) if sent electronically, the date of delivery on the confirmed read receipt. Notice of change of address shall be given by written notice in the manner described in this Article 6. Rejection or other refusal to accept or the inability to deliver because of a change in address of which no notice was given shall be deemed to constitute receipt of the notice or communication sent. Unless changed in accordance herewith, the addresses for notices given pursuant to this Agreement shall be as follows:

If to CITY: Kevin Woodhouse, City Manager  
170 Santa Maria Avenue  
Pacifica, CA 94404  
Phone: (650) 738-7409  
Facsimile: (650) 359-6038  
Email: woodhousek@ci.pacifica.ca.us

If to CONSULTANT: J. Ryan Shafer, P.E., GE, Principal  
501 Canal Boulevard, Suite I  
Pt. Richmond, CA 94804  
Phone: (510) 215-3620  
Email: rshafer@ncenet.com

## ARTICLE 7 - MISCELLANEOUS

- 7.1. **Entire Agreement.** This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by an amendment in writing signed by each party.
- 7.2. **No Assignment.** The Services are deemed unique and neither party shall assign, transfer, subcontract or otherwise substitute its interest in this Agreement or any of its obligations hereunder without the prior written consent of the other party. As limited by this Section 7.2, this Agreement is to be binding on the successors and assigns of the parties hereto.

- 7.3. **Severability.** If any part of this Agreement is determined to be unconstitutional, invalid or beyond the authority of either party, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement can be interpreted to give effect to the intentions of the parties.
- 7.4. **Counterparts.** This Agreement may be signed in counterparts and, when fully signed, such counterparts shall have the same effect as if signed in one document.
- 7.5. **Choice of Law.** This Agreement and all matters relating to it shall be governed by the laws of the State of California without reference to its choice of laws principles and venue shall be in the appropriate court in San Mateo County, California.
- 7.6. **Waiver.** No failure on the part of either Party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder. A waiver by either CITY or CONSULTANT of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other further breach.
- 7.7. **Mediation.** In the event the parties are unable to resolve a dispute arising under this Agreement through good faith negotiations, the parties agree to submit the matter to mediation with a mutually agreeable mediator. Prior to the mediation, the parties shall exchange any documents reasonably necessary to resolve the matter to be mediated.
- 7.8. **Attorney's Fees.** If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.
- 7.9. **Interpretation.** In the event this Agreement is ever construed in any dispute between the parties, it and each of its provisions shall be construed without regard to the party or parties responsible for its preparation and shall be deemed to have been prepared jointly by the parties. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement.
- 7.10. **Authority.** Each individual executing this Agreement on behalf of one of the parties represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms.
- 7.11. **Third Parties.** Nothing contained in this Agreement shall create a contractual relationship with, or cause of action in favor of, a third party against either the CITY or CONSULTANT. CONSULTANT's Services hereunder are being performed solely for the benefit of CITY.

*[Signatures on Next Page]*

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

**CITY OF PACIFICA**

By: \_\_\_\_\_  
Kevin Woodhouse, City Manager

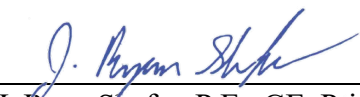
Date \_\_\_\_\_

Approved As To Form

By: \_\_\_\_\_  
Michelle Marchetta Kenyon, City Attorney

**CONSULTANT:**

**NCE**

By:  \_\_\_\_\_  
J. Ryan Shafer, P.E., GE, Principal

Date 1-11-2022

By: \_\_\_\_\_

Date \_\_\_\_\_

**EXHIBIT A**  
**TASK ORDER**

**EXAMPLE OF  
TASK ORDER NO. 1**

**CITY OF PACIFICA**

**AND**

**CONSULTANT**

**SECTION 1 – PURPOSE**

The purpose of this Task Order is to authorize and direct CONSULTANT to proceed with the work specified in SECTION 2 below, in accordance with the provisions of the Master Agreement for Consultant Services between the City of Pacifica (“CITY”) and CONSULTANT (“CONSULTANT”) hereto dated \_\_\_\_\_, 20\_\_ (“MASTER AGREEMENT”)

**SECTION 2 – SCOPE OF WORK**

The items authorized by this Task Order are presented in Attachment “A” – Scope of Services, which is attached hereto and incorporated by this reference.

**SECTION 3 – COMPENSATION AND PAYMENT**

Compensation shall be as provided in the MASTER AGREEMENT. Compensation for services as set forth in SECTION 2 shall be as set forth in Attachment “B” – Compensation, which is attached hereto and incorporated by this reference. Total compensation for all services provided under this Task Order shall not exceed AMOUNT (\$amount) (“Cost Ceiling”).

**SECTION 4 – TIME OF PERFORMANCE**

The services described in SECTION 2 of this Task Order shall be completed within 45 days or as extended in writing by the City Manager.

**SECTION 5 – ITEMS AND CONDITIONS**

All terms and conditions contained in the MASTER AGREEMENT are incorporated by reference and remain in full force and effect.

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_



**CITY OF PACIFICA**

By: \_\_\_\_\_  
 Kevin Woodhouse, City Manager

Date \_\_\_\_\_

Approved As To Form

By: \_\_\_\_\_  
 Michelle Marchetta Kenyon, City Attorney

**CONSULTANT****NCE**

By: \_\_\_\_\_  
 J. Ryan Shafer, P.E., GE, Principal

Date \_\_\_\_\_

By: \_\_\_\_\_

Date \_\_\_\_\_

**ATTACHMENT "A"**  
**SCOPE OF SERVICES**

**Attachment: Attachment "A" - NCE - Master Agreement for Consultant Services and Task Order No. 1 (4856 : Playground Equipment**

**ATTACHMENT "B"**  
**COMPENSATION**

**Attachment: Attachment "A" - NCE - Master Agreement for Consultant Services and Task Order No. 1 (4856 : Playground Equipment**

- 5 -

**TASK ORDER NO. 1****CITY OF PACIFICA****AND****CONSULTANT****SECTION 1 – PURPOSE**

The purpose of this Task Order is to authorize and direct CONSULTANT to proceed with the work specified in SECTION 2 below, in accordance with the provisions of the Master Agreement for Consultant Services between the City of Pacifica (“CITY”) and CONSULTANT (“CONSULTANT”) hereto dated January 24, 2022 (“MASTER AGREEMENT”)

**SECTION 2 – SCOPE OF WORK**

The items authorized by this Task Order are presented in Attachment “A” – Scope of Services, which is attached hereto and incorporated by this reference.

**SECTION 3 – COMPENSATION AND PAYMENT**

Compensation shall be as provided in the MASTER AGREEMENT. Compensation for services as set forth in SECTION 2 shall be as set forth in Attachment “B” – Compensation, which is attached hereto and incorporated by this reference. Total compensation for all services provided under this Task Order shall not exceed **\$274,540 (Two hundred seventy-four thousand five hundred forty dollars)** (“Cost Ceiling”).

**SECTION 4 – TIME OF PERFORMANCE**

The services described in SECTION 2 of this Task Order shall be completed by June 30, 2023 or as extended in writing by the City Manager.

**SECTION 5 – ITEMS AND CONDITIONS**

All terms and conditions contained in the MASTER AGREEMENT are incorporated by reference and remain in full force and effect.

Approved this 24<sup>th</sup> day of January, 2022.

**CITY OF PACIFICA**

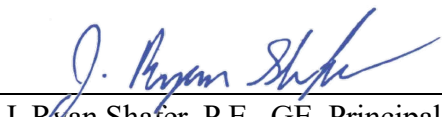
By: \_\_\_\_\_  
Kevin Woodhouse, City Manager

Date \_\_\_\_\_

Approved As To Form

By: \_\_\_\_\_  
Michelle Marchetta Kenyon, City Attorney

**CONSULTANT****NCE**

By: \_\_\_\_\_  
  
J. Ryan Shafer, P.E., GE, Principal

Date 1-11-2022

By: \_\_\_\_\_

Date \_\_\_\_\_

**ATTACHMENT "A"**  
**SCOPE OF SERVICES**

**Attachment: Attachment "A" - NCE - Master Agreement for Consultant Services and Task Order No. 1 (4856 : Playground Equipment**

## SCOPE OF WORK: CITY OF PACIFICA, FOUR PRIORITY PARKS

### PROJECT UNDERSTANDING

The City of Pacifica (City) intends to upgrade and renovate four parks-Marvilla, Brighton, Skyridge and Imperial. The renovations will include replacement of non-ADA compliant play equipment, safety surfacing, pathways and ramps, replacement/addition of new site furnishings and new curb, gutter, curb ramps, and storm water infrastructure if necessary. To assist with the implementation of these improvements, the City has requested NCE provide landscape architectural, community outreach/engagement and civil design services. Based on the City's comments on NCE's RFP dated December 3rd, 2021, NCE understands the extent, goals, and criteria for the Park Renovation Projects (project) to include the following:

- Park play structures and flatwork have deteriorated and are not code compliant. The City of Pacifica (City) plans to replace the existing play equipment and play surfacing with new play equipment, play surfacing, and flatwork that conforms to current ADA and play safety codes and responds to current park use patterns.
- The Parks will be renovated per the City's and State of California standards and regulations.
- The City would like NCE to create and lead a community outreach and engagement process that gathers community input, facilitates discussion, and incorporates the community's preferences into the design of each park.
- NCE shall prepare master plans for each Park and construction documents for Imperial and Skyridge Parks. The City has requested that NCE provided construction documents for Brighton and Marvilla Parks as optional tasks.

### KEY ASSUMPTIONS

In order to deliver the most successful design process, we have made the following key assumptions:

#### City's Responsibilities

NCE has assumed that the City will be able to provide the following to the extent available:

1. Provide information regarding utilities (i.e., water, sanitary sewer, electrical, and storm drain), boundary, right-of-way, and property limits, easements, tree locations, site furnishings, and existing construction as available.
2. Provide project requirements, including design objectives, budget, constraints, and criteria.
3. Provide existing technical specifications as the basis for developing new technical specifications including front end specifications.
4. Provide City Standard Provisions and Standard Design Criteria.
5. Provide electronic files of City's cover sheet template if preferred.
6. Provide City review at the various stages of project delivery and completion from both Public Works and Park and Recreation Commission.
7. City's arborist to provide recommendations for tree removals, pruning, construction protection or rooting pruning necessary to implement the Park renovations.
8. City to assist and participate in all public engagement meetings.
9. City to provide environmental clearance as needed, if required NCE can provide for additional scope and fee.



## Pavement Testing and Design

1. No pavement testing and/or design is anticipated as the Park is not anticipated to have traffic loading. However, two bulk samples of subgrade will be obtained from shovel test pits within landscape areas for laboratory testing including plasticity index (PI) and moisture content determinations to support subgrade preparation recommendations, particularly with respect to subgrade soils that may have a tendency to yield/pump and may require stabilization measures.

## Topographic Surveying, Base Map, and Right-of-Way

1. A topographic survey will be completed for each park site to establish a base map sufficient for developing contract documents. This will also include record data location of the existing right of way for the mapping corridor.
2. A critical assumption is that all proposed work will be within City right-of-way, as this has impacts to the level of effort required to completion of design.

## Utility Coordination and Location

1. Assumes no significant park renovations requiring lowering or relocation of utilities and therefore no utility coordination is included in this scope of work.

## Drainage

1. The park renovations will be designed to facilitate positive drainage away from the play areas, but it may be necessary to construct a catch basin/s within the parks with a lateral connection to the street stormwater main. For the purposes of this proposal it is assumed there will not be utility relocation or conflicts.

## Curb, Gutter, Curb Ramps and Sidewalks

1. New curb, gutter, curb ramp and sidewalk will be required for Skyridge Park. For the other park sites, the curb, gutter, curb ramp and sidewalk will only be replaced to the extent that they are damaged, do not conform to ADA or required to accommodate renovations.

## Irrigation Design

1. This scope of work includes irrigation design, and the system will be designed to conform to the State of California's water use regulations and building codes.

## PROJECT SCOPE

### Task 1: Kick-off Meeting

NCE will facilitate and lead a Kick-off Meeting with City staff, the meeting will be the initiation of the design process. The purpose of the meeting will be to:

- 1) confirm the scope and limit of work for each park
- 2) establish goals for the renovation of each park
- 3) develop a schedule and milestones
- 4) assign roles and responsibilities
- 5) identify key stakeholders
- 6) review maintenance, safety and use requirements for each park

## Task 2: Background Research

NCE will conduct a detailed and thorough process to review relevant background information and identify additional necessary information. The process will be as follows:

- 1) prepare topo, utility mapping, and boundary surveys
- 2) review existing background information (i.e., as-builts, aerial photography, existing survey info, GIS data) if available
- 3) coordinate with playground equipment manufacturer to review play equipment options

As part of the background research, NCE will conduct site visits to each park, key elements that will be inventoried include:

- existing play structures, surfacing, and ADA access
- location of existing underground and overhead utilities
- existing grading, drainage patterns, pedestrian circulation, site furnishings, pavements, and irrigation
- existing trees and vegetation for potential hazards, vitality, and maintenance needs
- boundaries of each park
- opportunities for amenities and activities
- viewsheds, privacy issues, access points, and potential personal safety concerns

**Deliverables:** topo, utility mapping, and boundary surveys

### Task 3.1: Community Engagement Plan

NCE will work closely with City staff to create a Community Engagement Plan that identifies goals of the engagement process, key stakeholders, and methods of engagement. The Community Engagement Plan may include pop-up events, stakeholder/park user interviews, an on-line survey, a Zoom community meeting and/or social media postings (Twitter, Next Door). Exact methods, schedule, and goals will be developed in consultation with the City during Task 1: Kick-off meeting.

**Deliverables:** community engagement plan

### Task 3.2: Community Engagement

Once the Community Engagement Plan is developed, NCE will collaborate with City staff on implementation. NCE will interview stakeholders (maximum of 4), lead pop-ups, create an on-line survey and provide content/digital media for social media postings. The City will advertise the projects, post project information on social media, participate in Community Zoom meetings and create press releases.

**Deliverables:** memorandum summarizing community engagement process and community preferences for each park

## Task 4: Conceptual Design

Based on background information gathered during Task 2 and community input during Task 3.2, NCE will prepare two conceptual designs for each park that will present options based on varying levels of improvement and modification of the existing play areas, park uses, and amenities. The first Option will include the replacement of play equipment, installation of ADA compliant play surfacing, and paths of travel from public right-of-way to play structures. The second Option will propose new locations for activities such as moving play areas closer to entry points, providing space for new recreational opportunities such as informal play, walking paths, and a range of seating elements. The concepts will be presented in plans with imagery of proposed features/activities and hand drawn visualizations.

**Deliverables:** conceptual designs with two options for each park

### Tasks 5: Review and Approvals

NCE will present the options for each park to City staff for their initial comments and suggestions. Based on the input received from City staff, NCE will prepare a preferred alternative plan for each park which may include elements from both the conceptual alternatives. The preferred alternatives will be presented to the PB&R commission, and neighbors within 500-feet of the project site will be notified of the proposed park renovations. NCE assumes presenting all parks at one meeting. Based the extent and types of comments received from the community and PB&R, NCE will either incorporate the comments into the plans, or resubmit plans for a second review by the PB&R.

**Deliverables:** preferred alternative plan for each park

### Task 6: 60% Construction Documents-Imperial and Skyridge Parks

The master plans for Imperial and Skyridge Parks will be revised per the comments of the PB&R Commission and City staff received during Task 4. NCE will meet with the City to review these comments, from which the 60% plans, specifications, and estimate (PS&E) will be prepared. NCE will provide a response to each comment in a table. The 60% PS&E will include additional design information and details typically expected at this stage of completion including layout, materials, grading and drainage plans, types, and extent of pedestrian pavements, play equipment, safety surfacing, site furnishings, railings, plantings, finishes, planting palette, irrigation equipment, and prototypical landscape details. Drawings will be drafted in digital format using AutoCAD and printed at 1/8" = 1'-0". NCE will prepare and continue to refine drawings:

The technical specifications will be prepared in MS Word format, follow the City's formatting conventions, reference the City's standard provisions, Caltrans 2018 Standards where applicable (including subsequent updates) and will be in in Construction Specification Institute format.

The Cost Estimate will be prepared in MS Excel format and will be based on the most recent construction cost data available to NCE from recent projects of this type. This initial estimate will then be updated and refined as the design effort progresses.

It is assumed that the City will require a 15-day review/comment period once the 60% PS&E package is submitted.

**Deliverables:** 60% PS&E with technical specifications, Cost Estimate, and a response to comment table

### Optional Task 6.1: 60% Construction Documents-Brighton and Marvilla Parks

The master plans for Brighton and Marvilla and Parks will be revised per the comments of the PB&R Commission and City staff received during Task 4 and NCE will provide construction documents as described in Task 6.

**Deliverables:** 60% PS&E with technical specifications, Cost Estimate, and a response to comment table

### Task 7: 90% Construction Documents-Imperial and Skyridge Parks

The 60% PS&E will be revised to incorporate comments by the City. NCE will again meet with the City to review these comments, from which the 90% PS&E will be prepared. NCE will provide a response to each comment in a table. The 90% PS&E will include notes and details necessary for construction. The Cost Estimate will be updated and refined as based on changes to the design concept.

It is assumed that the City will require a 10-day review/comment period once the 90% PS&E package is submitted.

**Deliverables:** 90% PS&E with technical specifications, Cost Estimate, and a revised response to comment table

### Optional Task 7.1: 90% Construction Documents-Brighton and Marvilla Parks

NCE will provide construction documents for Brighton and Marvilla Parks as described in Task 7

**Deliverables:** 90% PS&E with technical specifications, Cost Estimate, and a response to comment table

### **Task 8: 100% Construction Documents-Imperial and Skyridge Parks**

The 90% PS&E will be revised to incorporate final comments by the City. One reproducible copy of the 100%PS&E will then be packaged and submitted similar to the 90% PS&E unless directed otherwise. It is assumed that the City will require a 10-day review/comment period once the 100% PS&E package is submitted.

Upon receipt of the City's final review comments, the project documents will be finalized for bidding purposes.

A final quantity calculation will be tabulated and entered into the final Cost Estimate for each park. The final documents will be reviewed, stamped, and signed by NCE's registered landscape architect and the final PS&E will be delivered to the City in both hard copy and electronic formats.

**Deliverables:** One wet-signed and one electronic file of the final plans, technical specifications, and Cost Estimate. The electronic files for the final construction plans, specifications, and engineer's estimate will be in AutoCAD 2022, Microsoft Word, and Microsoft Excel, respectively.

### **Optional Task 8.1: 100% Construction Documents-Brighton and Marvilla Parks**

NCE will provide construction documents for Brighton and Marvilla Parks as described in Task 8.

**Deliverables:** One wet-signed and one electronic file of the final plans, technical specifications, and Cost Estimate. The electronic files for the final construction plans, specifications, and engineer's estimate will be in AutoCAD 2022, Microsoft Word, and Microsoft Excel, respectively.

### **Task 9: Bidding Support Services-Imperial and Skyridge Parks**

NCE will provide the City with assistance during the advertisement and bidding periods for each bid package. This will include attending the pre-bid conference, responding to questions, and preparation of up to one addendum and clarifications that are deemed necessary. NCE can assist the City in determining the responsiveness of bids received, checking and tabulating bid results.

### **Optional Task 9.1: Bidding Support Services-Brighton and Marvilla Parks**

NCE will provide bidding support services for Brighton and Marvilla Parks as described in Task 9

### **Task 10: Construction Observation Services**

NCE will provide services to the City during the construction of the projects. These services will include attendance at the pre-construction conference, reviewing submittals and responding to requests for information, field verification, recommendations for necessary construction changes due to unforeseen field conditions, assisting with the review of Contract Change Orders, and reviewing construction for acceptance. This task does not provide any field inspection services and we understand that the City will provide construction inspection.

### **Optional Task 10.1: Construction Observation Services-Brighton and Marvilla Parks**

NCE will provide bidding support services for Brighton and Marvilla Parks as described in Task 10

### **Fees**

NCE will provide the aforementioned services per the following summary-

- 1) Skyridge and Imperial Parks Tasks 1-10- \$137,740.00
- 2) Brighton and Marvilla Parks Tasks 1-5- \$75,000.00
- 3) Brighton and Marvilla Parks Optional Tasks 6.1, 7.1, 8.1, 9.1 and 10.1- \$61,800

**ATTACHMENT “B”****COMPENSATION**

# Pacifica Four Priority Park Fee Estimate 1.10.22 NCE

	Skyridge Park			Imperial Park			Marvilla Park			Brighton Park			Cost by Staff
	Hours	Rate	Cost	Hours	Rate	Cost	Hours	Rate	Cost	Hours	Rate	Cost	
Principal Landscape Architect	96	\$ 270	\$ 25,920	96	\$ 270	\$ 25,920	50	\$ 270	\$ 13,500	50	\$ 270	\$ 13,500	\$ 102,600
Associate Engineer	6	\$ 215	\$ 1,290	6	\$ 215	\$ 1,290	8	\$ 215	\$ 1,720	8	\$ 215	\$ 1,720	\$ 6,020
Senior Landscape Architect	88	\$ 185	\$ 16,280	88	\$ 185	\$ 16,280	58	\$ 185	\$ 10,730	58	\$ 185	\$ 10,730	\$ 62,900
CAD Technician	160	\$ 120	\$ 19,200	160	\$ 120	\$ 19,200	40	\$ 120	\$ 4,800	40	\$ 120	\$ 4,800	\$ 76,920
Subtotal	350		\$ 62,690	350		\$ 62,690	156		\$ 30,750	156		\$ 30,750	\$ 248,440
Reimbursables			\$ 6,000			\$ 6,000			\$ 4,000			\$ 4,000	\$ 26,100
Grand Total			\$ 68,690			\$ 68,690			\$ 34,750			\$ 34,750	\$ 274,540

Marvilla Park Optional			Brighton Park Optional		
Hours	Rate	Cost	Hours	Rate	Cost
44	\$ 270	\$ 11,880	44	\$ 270	\$ 11,880
	\$ 215	\$ -		\$ 215	\$ -
24	\$ 185	\$ 4,440	24	\$ 185	\$ 4,440
120	\$ 120	\$ 14,400	121	\$ 120	\$ 14,520
188		\$ 30,720	189		\$ 30,840
		\$ 2,050			\$ 4,050
		\$ 32,770			\$ 34,890

Attachment: Attachment "A" - NCE - Master Agreement for Consultant Services and Task Order No. 1



**CITY OF PACIFICA  
COUNCIL AGENDA SUMMARY REPORT**

**1/24/2022**

**SUBJECT:**

Consultant Services for Preliminary Feasibility Assessment of Public Private Partnership with Pacifica School District

**RECOMMENDED ACTION:**

Provide direction to the City Manager about soliciting consultant services for a preliminary feasibility assessment of a public-private partnership with Pacifica School District.

**STAFF CONTACT:**

Kevin Woodhouse, City Manager  
(650) 738-7409  
cmoffice@pacificagov

**BACKGROUND/DISCUSSION:**

On October 25, 2021, City staff, Pacifica School District (PSD) staff, Councilmember O'Neill, Mayor Pro Tem Bier, and PSD Board Trustees Bredall and Brocchini met via Zoom to discuss the concept of a potential public-private partnership project involving City and PSD property and affordable housing. The concept that was discussed, which was initially raised by Councilmember O'Neill during the Council's decision-making about the Civic Center project, was whether it would be feasible, and whether PSD had preliminary interest in exploring, a win-win-win arrangement to achieve new PSD Administrative Offices combined with affordable housing, and a shared corporation yard between the City's Public Works Department and PSD facility/maintenance staff. Preliminarily, the City's municipal corporation yard on Milagra Avenue and PSD's Administrative Offices on Vallemar were discussed; however, other appropriate locations/facilities may be studied if the Council directs the City Manager to begin the feasibility assessment.

Although PSD representatives communicated that seeking new Administrative Offices is not the highest priority at this time for them compared to responding to COVID-19 variant challenges and focusing on their Oddstad Avenue workforce housing project, they generally expressed support for beginning to explore the concept, understanding that public-private partnerships are complex and take many years to assess and structure. An appropriate first step is to engage a financial services consulting firm familiar with public-private partnerships to conduct a preliminary feasibility assessment based on initial basic information about the City and PSD properties and operational needs. In order to maintain forward progress on this City/PSD partnership, Councilmember O'Neill requested an item be agendaized for Council consideration of funding such a preliminary feasibility assessment. Councilmember O'Neill's suggestion is that funding in the amount of approximately \$10,000 would allow a financial services firm to assess basic assumptions and financial feasibility of a potential project in order for the City Council and the PSD Board of Trustees to make a more informed decision about next steps.

The City's purchasing policy requires soliciting multiple proposals on studies/projects that



exceed \$5,000. To solicit proposals on this project from qualified firms, City staff and PSD staff would work together to develop a basic Request for Proposals summarizing the project concept. Prior to agendizing this item for Council consideration, City Manager Woodhouse met with PSD Superintendent Olsen to discuss PSD staff capacity and timing for getting this preliminary feasibility assessment underway. PSD is supportive of conducting this assessment, however due to COVID-19 variant response, other priority PSD projects, and upcoming annual budget development, their preference is to pursue this assessment during an August to December timeframe.

The City Manager is requesting City Council direction as follows:

1. Should the City solicit proposals for a preliminary feasibility assessment in collaboration with the Pacifica School District for a potential public-private partnership project?
2. If yes, then:
  - a. What should the not-to-exceed cost of this preliminary feasibility assessment be? \$10,000? \$15,000? \$20,000?
  - b. Should the City fund all of it, or should the cost be shared with PSD?
  - c. Should the timing of the assessment be according to PSD's preference to begin in August, or does the City Council prefer sooner with minimal PSD staff involvement?

#### **ALTERNATIVE ACTION:**

This study is not currently on the City Council Priorities list for Fiscal Year 2021-22, nor one of the many on-going priorities from previous years on which staff is focused. The City Council could choose to defer its decision on funding this study to Council's goal-setting for FY2022-23 priorities and FY2022-23 budget development.

#### **RELATION TO CITY COUNCIL GOALS AND WORK PLAN:**

A public-private partnership with Pacifica School District concerning City and PSD facilities and affordable housing relates primarily to the Council's goals of Fiscal Sustainability and Strong City Workforce Infrastructure.

#### **FISCAL IMPACT:**

It is anticipated the cost of this study would be whatever not-to-exceed threshold is set by Council.

#### **ORIGINATED BY:**

City Manager's Office  
City Council

#### **ATTACHMENT LIST:**



**CITY OF PACIFICA  
COUNCIL AGENDA SUMMARY REPORT**

**1/24/2022**

**SUBJECT:**

Introduction of an Ordinance of the City Council of the City of Pacifica adding Chapter 32, "Sale or Distribution of Electronic Cigarettes" and Chapter 33, "Sales of Flavored Tobacco Products and Pharmacy Sales of Tobacco Products Prohibited" and amending Section 5-31.03, "Limits on Tobacco Retailer Licenses" within Chapter 31 of Title 5, "Public Welfare, Morals, and Conduct" of the Pacifica Municipal Code to Ban the Sale and Distribution of Flavored Tobacco Products, the Sale and Distribution of Electronic Cigarettes and to Prohibit the Sale of Tobacco Products at Pharmacies in the City of Pacifica

**RECOMMENDED ACTION:**

Move to waive the first reading of and introduce by title an ordinance of the City Council of the City of Pacifica adding Chapter 32, "Sale or Distribution of Electronic Cigarettes" and Chapter 33, "Sales of Flavored Tobacco Products and Pharmacy Sales of Tobacco Products Prohibited" and amending Section 5-31.03, "Limits on Tobacco Retailer Licenses" within Chapter 31 of Title 5, "Public Welfare, Morals, and Conduct" of the Pacifica Municipal Code to Ban the Sale and Distribution of Flavored Tobacco Products, the Sale and Distribution of Electronic Cigarettes and to Prohibit the Sale of Tobacco Products at Pharmacies in the City of Pacifica

**STAFF CONTACT:**

Daniel Steidle, Chief of Police  
650-738-7314  
steidled@pacificapolice.org

**BACKGROUND/DISCUSSION:**

Concerns regarding health problems caused by smoking and second-hand smoke and the attractiveness of flavored tobacco products to minors has created public health policy discussions at the local, state and national level. In response, some local jurisdictions have adopted ordinances prohibiting the sale of flavored tobacco products.

At the request of Councilmembers Bier and O'Neill, staff presented this topic to City Council on January 13, 2020 seeking direction regarding whether to develop an ordinance prohibiting the sale of flavored tobacco products and electronic cigarettes (E-Cigarettes). At the time of the presentation, Senate Bill (SB) 793 was in the legislative process. SB793 provides that a tobacco retailer, or any of the tobacco retailer's agents or employees, shall not sell, offer for sale, or possess with the intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer. An exemption to this bill allows for the sale of hookah products, if the business is properly licensed and does not allow patrons under 21 years of age to enter the business. Direction from City Council was to wait for the outcome on SB793 before determining whether to adopt a local ordinance.

On August 28, 2020, SB793 was signed into law by Governor Newsom. However, on August 31, 2020, implementation of the new law was halted when a referendum was filed with the California Secretary of State to repeal the new law. As of December 2020, the referendum had received the required number of voter signatures to place the item on the November 2022 state

ballot. In the November 2022 state election, the voters of the State of California will decide whether to enact or repeal SB793.

With the delay and potential repeal of SB793, City Council listed as one of 17 priorities adopted on April 17, 2021 to “Present an ordinance to City Council for consideration regulating the sale of flavored tobacco in Pacifica.”

On September 27, 2021, staff presented to City Council a report on the consideration of development of an ordinance prohibiting the sale of flavored tobacco products and E-cigarettes. Staff requested direction regarding the City Council’s desire to proceed with an ordinance, and if so, what specific elements they wanted included in the ordinance. City Council directed staff to return with an ordinance containing the following:

- 1) Prohibition on the sale of flavored tobacco with an exemption for adult only business to sell hookah related tobacco products
- 2) Prohibition on the sale of E-cigarettes
- 3) Prohibition on the sale of all tobacco products at pharmacies

## **DISCUSSION**

Tobacco use remains the leading cause of preventable death in the United States, killing more than 480,000 people each year.<sup>1</sup> It causes or contributes to many forms of cancer, as well as heart and respiratory diseases, among other health disorders. Tobacco use remains a public health crisis of the first order, in terms of the human suffering and loss of life it causes, the financial costs it imposes on society and the burdens it places on our health care system.

### **Youth and Flavored Tobacco**

Flavored tobacco products have been the subject of negative publicity as they are known to be attractive to minors. According to Tobacco Free Kids, a non-profit organization that works to reduce youth access to tobacco and reduce tobacco related deaths:

- Tobacco industry documents show that the tobacco companies have a long history of developing and marketing flavored tobacco products as “starter” products that attract kids.
- Flavors improve the taste and reduce the harshness of tobacco products, making them more appealing and easier for beginners to try the product and ultimately become addicted.
- Menthol cools and numbs the throat, reducing the harshness of cigarette smoke, thereby making menthol cigarettes more appealing to youth who are initiating tobacco use.

<sup>1</sup>U.S. Department of Health and Human Services. The Health Consequences of Smoking-50 Years of Progress: A Report of the Surgeon General. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014.

- According to the Federal Food and Drug Administration's (FDA) Tobacco Product Scientific Advisory Committee (TPSAC), menthol cigarettes increase the number of children who experiment with cigarettes and the number of children who become regular smokers, increasing overall youth smoking.
- Flavors can create the false impression that a tobacco product is less harmful than it really is.

In the same publication, Tobacco-Free Kids provided the following statistics that were collected in a 2019 survey of middle and high school students:

- 81% of youth who have ever used tobacco products initiated with a flavored product.
- 72.3% of youth tobacco users have used a flavored tobacco product in the month preceding the survey.
- At least two-thirds of youth tobacco users report using tobacco products "because they come in flavors I like."

Flavored tobacco products promote youth initiation of tobacco use and help young occasional smokers to become daily smokers by reducing or masking the natural harshness and taste of tobacco smoke and thereby increasing the appeal of tobacco products. As tobacco companies well know, menthol, in particular, cools and numbs the throat to reduce throat irritation and make the smoke feel smoother, making menthol cigarettes an appealing option for youth who are initiating tobacco use. Tobacco companies have used flavorings such as mint and wintergreen in smokeless tobacco products as part of a "graduation strategy" to encourage new users to start with tobacco products with lower levels of nicotine and progress to products with higher levels of nicotine. It is therefore unsurprising that young people are much more likely to use menthol-, candy- and fruit-flavored tobacco products than adults, including not just cigarettes but also cigars and cigarillos.

Research also shows that use of menthol cigarettes has perpetuated disparities among different groups. According to the 2018 National Survey of Drug Use and Health (NSDUH): 85% of African American smokers, 50% of Hispanic smokers and 47% of Asian American smokers use menthol cigarettes, compared to 29% of White smokers; 51% of lesbian/gay and 46% of bisexual smokers use menthol cigarettes, compared to 39% of heterosexual smokers; 45% of smokers with severe psychological distress use menthol cigarettes compared to 39% of smokers with no past month serious psychological distress; 47% of smokers living in poverty use menthol cigarettes, compared to 36% of smokers with an income exceeding twice the Federal Poverty Threshold; and 60% of pregnant smokers use menthol cigarettes.<sup>2</sup>

### **Health Issues Relating to Use of E-Cigarettes**

Health issues have long been chronicled related to smoking of tobacco products and second-hand smoke, and more recently, smoking using e-cigarette devices ("vaping").

Health issues related to tobacco E-cigarettes and ingestion of THC by vaping have gained national attention after a string of deaths and hospitalizations involving the use of these products. The Center for Disease Control (CDC) is currently investigating the cause of these illnesses. Research into the causes of these illnesses has not concluded nor identified definitively a specific cause(s). However, the CDC reports illnesses at a much higher level occur as a result of consuming THC vaping products that are black market purchased than THC products purchased legally. While THC-only vaping products that contain cannabis oils tested at

State approved facilities are legal to sell in legal cannabis retail operations, the CDC and FDA recommend that people should not use THC-containing e-cigarette, or vaping products, particularly from informal sources like friends, family, or in-person or online sellers.

A February 2019 publication by the Harvard Medical School stated advocates of vaping have promoted it as a way to help cigarette smokers to quit. The article indicated that although giving up nicotine products altogether might be the ultimate goal, there may be health benefits to a smoker who becomes a long-term vaper instead, though this remains unproven.

While the FDA has stated E-cigarettes are unhealthy, they have recommended smokers who have chosen to vape not return to cigarette smoking, but rather should seek FDA approved smoking cessation medications.

### **Youth and E-Cigarettes**

Electronic smoking device (or “E-cigarette, vape, vape pen, e-hookah, etc.”) usage by youth, however, has been rising as these products become more and more prevalent. Usage by high school students increased 78% between 2017-2018 with 1 in 5 high school students currently using and 1 in 20 middle school students currently using the products.<sup>3</sup> The devices were available in the U.S. marketplace in the mid-2000s<sup>4</sup> and by 2014, the products were the most commonly used tobacco product among middle school and high school students.<sup>5</sup> The Centers for Disease Control and Prevention also has reported a more than 800% increase in E-cigarette use among middle school and high school students between 2011 and 2015.

According to a 2021 FDA survey, more than 2 million U.S. youth currently use E-cigarettes (11.3% of high school students and 2.8% of middle school students).<sup>6</sup> Among those youth, about 2 in 5 of them use E-cigarettes frequently while about 1 in 4 use E-cigarettes daily. These survey results show high rates of frequent and daily use which suggests many teens

have a strong dependence on nicotine. Of those youth that indicated E-cigarette use in the survey, nearly 85% of them used flavored E-cigarettes.

Almost 17.7 million (7 in 10) youths were exposed to advertisements for E-cigarettes in retail stores in 2016, while about 2 in 5 had exposure on the Internet or on television, and almost 1 in 4 had exposure through magazines and newspapers. E-cigarette advertising has an association with e-cigarette use among youths. The advertising themes and strategies used are similar to traditional cigarette advertising tactics that have been found to appeal to youths.<sup>7</sup>

A 2018 National Academy of Sciences, Engineering, and Medicine report found moderate evidence that E-cigarette use increases the frequency and intensity of smoking cigarettes in the future.<sup>8</sup> This is significant because any use of E-cigarettes by young people, according to the U.S. Surgeon General, is not safe even if the young people do not move on to future cigarette smoking.<sup>9</sup>

<sup>2</sup> Delnevo, CD, et al., “Banning Menthol Cigarettes: A Social Justice Issue Long Overdue,” *Nicotine & Tobacco Research*, 22(10): 1673-1675, 2020.

<sup>3</sup> Cullen KA, Ambrose BK, Gentzke AS, Apelberg BJ, Jamal A, King BA. Notes from the Field: Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students - United States, 2011-2018.

<sup>4</sup> US Department of Health and Human Services. E-cigarette use among youth and young adults: a report of the Surgeon General. Atlanta, GA: US Department of Health and Human Services, CDC, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2016.

<sup>5</sup> Arrazola RA, Singh T, Corey CG, et al. Tobacco use among middle and high school students-United States, 2011-2014. *MMWR Morb Mortal Wkly Rep* 2015.

<sup>6</sup> FDA and Centers for Disease Control and Prevention (CDC) released findings from the 2021 National Youth

Tobacco Survey (NYTS).

<sup>7</sup> Marynak K, Gentzke A, Wang TW, Neff L, King BA. Exposure to Electronic Cigarette Advertising Among Middle and High School Students - United States, 2014-2016. MMWR Morb Mortal Wkly Rep 2018.

<sup>8</sup> Moritz, T. (2019, March 18). Vaping: It's All Smoke and Mirrors.

<sup>9</sup> US Department of Health and Human Services. E-cigarette use among youth and young adults: a report of the Surgeon General. Atlanta, GA: US Department of Health and Human Services, CDC, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2016.

## **Proposed Ordinance**

In accordance with the Council's direction, staff has prepared an ordinance to add Chapter 32 (Sale or Distribution of Electronic Cigarettes) and Chapter 33 (Sales of Flavored Tobacco Products and Pharmacy Sales of Tobacco Products Prohibited) to Title 5 "Public Welfare, Morals, and Conduct" to the Pacifica Municipal Code.

The proposed ordinance would provide the following:

- 1) Prohibition on the sale and distribution of all flavored tobacco products within the City. There is an exemption for licensed tobacco retailers that are adult only (21 years and over) licensed retailers to sell flavored tobacco products for use with a hookah pipe or hookah Products.
- 2) Prohibition on the sale and distribution of E-cigarettes within the City.
- 3) Prohibition on the sale of all tobacco products at pharmacies within the City. This includes all businesses where pharmacies are located, regardless of whether the business sells other products in addition to prescription medication.

Per existing Pacifica Municipal Code section 5-31.02, tobacco retailers are required to possess a tobacco retail license from the City. Licenses are valid for a period of one year. In the proposed ordinance, prohibition on the sale of flavored tobacco products, E-cigarettes, and tobacco products at pharmacies would take effect upon next renewal of the permittee's tobacco retail license after the adoption of the ordinance.

The proposed ordinance would also make conforming changes to Section 5-31.03 of the Pacifica Municipal Code to indicate that no license may issue to authorize tobacco retailing at a pharmacy, as that term is defined.

Notices were sent to licensed tobacco retailers informing them of the elements of this proposed ordinance.

## **ALTERNATIVE ACTION:**

If not introduced as presented, Council may choose to introduce this ordinance with amendments or decline to introduce this ordinance and provide staff with further direction

## **RELATION TO CITY COUNCIL GOALS AND WORK PLAN:**

Consideration of a prohibition on the sale of flavored tobacco products and E-cigarettes in Pacifica resonates with the City Council Goal of "A Healthy and Compassionate Community."

## **FISCAL IMPACT:**

The City Attorney costs for bringing this ordinance to adoption is \$6,000 - \$10,000.

Personnel costs relating to enforcement of this ordinance are expected to be minimal.

**ORIGINATED BY:**

Police

**ATTACHMENT LIST:**

Attachment A- 09-27-21 Staff Report (PDF)



**ORDINANCE NO. (ID # 4855)**

**ORDINANCE NO. XXXX**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA ADDING CHAPTER 32, "SALE OR DISTRIBUTION OF ELECTRONIC CIGARETTES" AND CHAPTER 33, "SALES OF FLAVORED TOBACCO PRODUCTS AND PHARMACY SALES OF TOBACCO PRODUCTS PROHIBITED" AND AMENDING SECTION 5-31.03, "LIMITS ON TOBACCO RETAILER LICENSES" WITHIN CHAPTER 31 OF TITLE 5 "PUBLIC WELFARE, MORALS, AND CONDUCT" OF THE PACIFICA MUNICIPAL CODE TO BAN THE SALE AND DISTRIBUTION OF FLAVORED TOBACCO PRODUCTS, THE SALE AND DISTRIBUTION OF ELECTRONIC CIGARETTES AND TO PROHIBIT THE SALE OF TOBACCO PRODUCTS AT PHARMACIES IN THE CITY OF PACIFICA**

**WHEREAS**, tobacco use remains the leading cause of preventable death in the United States, killing more than 480,000 people each year.<sup>1</sup> It causes or contributes to many forms of cancer, as well as heart and respiratory diseases, among other health disorders. Tobacco use remains a public health crisis of the first order, in terms of the human suffering and loss of life it causes, the financial costs it imposes on society and the burdens it places on our health care system; and

**WHEREAS**, according to the Federal Food and Drug Administration ("FDA"), nearly 80% of youth ages 12-17 and nearly 75% of young adults ages 18-25 who were currently tobacco users in 2014 reported that the first tobacco product they ever used was flavored;<sup>2</sup> and

**WHEREAS**, each day, about 2,500 children in the United States try their first cigarette; and another 400 children under 18 years of age become new regular, daily smokers. 81% of youth who have ever used a tobacco product report that the first tobacco product they used was flavored.<sup>3</sup> Flavored tobacco products promote youth initiation of tobacco use and help young occasional smokers to become daily smokers by reducing or masking the natural harshness and taste of tobacco smoke and thereby increasing the appeal of tobacco products. As tobacco companies well know, menthol, in particular, cools and numbs the throat to reduce throat irritation and make the smoke feel smoother, making menthol cigarettes an appealing option for youth who are initiating tobacco use. Tobacco companies have used flavorings such as mint and wintergreen in smokeless tobacco products as part of a "graduation strategy" to encourage new users to start with tobacco products with lower levels of nicotine and progress to products with higher levels of nicotine. It is therefore unsurprising that young people are much more likely to use menthol-, candy- and fruit-flavored tobacco products than adults, including not just cigarettes but also cigars

<sup>1</sup> U.S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014.

<sup>2</sup> Villanti, A. C., Johnson, A. L., Ambrose, B. K., Cummings, K. M., Stanton, C. A., Rose, S. W., ... Hyland, A. (2017). Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study (2013-2014). American Journal of Preventive Medicine.

<sup>3</sup> Ibid.

and cigarillos. Data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle school and high school smokers report using flavored little cigars or flavored cigarettes. Further the Centers for Disease Control and Prevention has reported a more than 800% increase in electronic cigarette use among middle school and high school students between 2011 and 2015. Nicotine solutions, which are consumed via electronic smoking devices such as electronic cigarettes are sold in thousands of flavors that appeal to youth, such as cotton candy and bubble gum; and

**WHEREAS**, According to Tobacco Free Kids, a non-profit organization that works to reduce youth access to tobacco and reduce tobacco related deaths:

- Tobacco industry documents show that the tobacco companies have a long history of developing and marketing flavored tobacco products as “starter” products that attract kids.
- Flavors improve the taste and reduce the harshness of tobacco products, making them more appealing and easier for beginners to try the product and ultimately become addicted.
- Menthol cools and numbs the throat, reducing the harshness of cigarette smoke, thereby making menthol cigarettes more appealing to youth who are initiating tobacco use.
- According to the Federal Food and Drug Administration’s (FDA) Tobacco Product Scientific Advisory Committee (TPSAC), menthol cigarettes increase the number of children who experiment with cigarettes and the number of children who become regular smokers, increasing overall youth smoking.
- Flavors can create the false impression that a tobacco product is less harmful than it really is; and

**WHEREAS**, Tobacco-Free Kids conducted a 2019 survey of middle and high school students and determined the following based on those survey results:

- 81% of youth who have ever used tobacco products initiated with a flavored product.
- 72.3% of youth tobacco users have used a flavored tobacco product in the month preceding the survey.
- At least two-thirds of youth tobacco users report using tobacco products “because they come in flavors I like”; and

**WHEREAS**, research also shows that use of menthol cigarettes has perpetuated disparities among other groups. According to the 2018 National Survey of Drug Use and Health (NSDUH): 85% of African American smokers, 50% of Hispanic smokers and 47% of Asian American smokers use menthol cigarettes, compared to 29% of White smokers; 51% of lesbian/gay and 46% of bisexual smokers use menthol cigarettes, compared to 39% of heterosexual smokers; 45% of smokers with severe psychological distress use menthol cigarettes compared to 39% of smokers with no past month serious psychological distress; 47% of smokers living in poverty use menthol cigarettes, compared to 36% of smokers with an income exceeding twice the Federal Poverty Threshold; and 60% of pregnant smokers use menthol cigarettes<sup>4</sup>; and

<sup>4</sup> Delnevo, CD, et al., “Banning Menthol Cigarettes: A Social Justice Issue Long Overdue,” Nicotine & Tobacco Research, 22(10): 1673-1675, 2020.

**WHEREAS**, by selling tobacco products, pharmacies reinforce positive social perceptions of smoking, convey tacit approval of tobacco use, and send a message that it is not dangerous to smoke; and

**WHEREAS**, the Tobacco and Education Research Oversight Committee for California, as well as the American Pharmacists Association, the California Pharmacists Association, and the California Medical Association have called for the adoption of state and local prohibitions of tobacco sales in drug stores and pharmacies; and

**WHEREAS**, electronic smoking device (or electronic cigarette (E-cigarette), vape, vape pen, e-hookah, etc.) usage by youth has been rising. Usage by high school students increased 78% between 2017-2018 with 1 in 5 high school students currently using and 1 in 20 middle school students currently using the products.<sup>5</sup> The devices were available in the U.S. marketplace in the mid-2000s<sup>6</sup> and by 2014, the products were the most commonly used tobacco product among middle school and high school students;<sup>7</sup> and

**WHEREAS**, The Centers for Disease Control and Prevention also has reported a more than 800% increase in E-cigarette use among middle school and high school students between 2011 and 2015; and

**WHEREAS**, according to a 2021 FDA survey, more than 2 million U.S. youth currently use E-cigarettes (11.3% of high school students and 2.8% of middle school students).<sup>8</sup> Among those youth, about 2 in 5 of them use E-cigarettes frequently while about 1 in 4 use E-cigarettes daily. These survey results show high rates of frequent and daily use which suggests many teens have a strong dependence on nicotine. Of those youth that indicated E-cigarette use in survey, nearly 85% of them used flavored E-cigarettes; and

**WHEREAS**, in 2016, it was estimated that 20.5 million (4 in 5) middle and high school students in the U.S. were exposed to advertisements for E-cigarettes from at least one source. This was a significant increase compared to 2014 and 2015 data. Furthermore, almost 17.7 million (7 in 10) youths were exposed to advertisements for E-cigarettes in retail stores in 2016, while about 2 in 5 had exposure on the Internet or on television, and almost 1 in 4 had exposure through magazines and newspapers. E-cigarette advertising has an association with e-cigarette use among youths. The advertising themes and strategies used are similar to traditional cigarette advertising tactics that have been found to appeal to youths;<sup>9</sup> and

**WHEREAS**, a 2018 National Academy of Sciences, Engineering, and Medicine report found moderate evidence that e-cigarette use increases the frequency and intensity

<sup>5</sup> Cullen KA, Ambrose BK, Gentzke AS, Apelberg BJ, Jamal A, King BA. Notes from the Field: Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students – United States, 2011-2018.

<sup>6</sup> US Department of Health and Human Services. E-cigarette use among youth and young adults: a report of the Surgeon General. Atlanta, GA: US Department of Health and Human Services, CDC, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2016.

<sup>7</sup> Arrazola RA, Singh T, Corey CG, et al. Tobacco use among middle and high school students—United States, 2011–2014.

<sup>8</sup> FDA and Centers for Disease Control and Prevention (CDC) released findings from the 2021 National Youth Tobacco Survey (NYTS)

<sup>9</sup> Marynak K, Gentzke A, Wang TW, Neff L, King BA. Exposure to Electronic Cigarette Advertising Among Middle and High School Students – United States, 2014-2016. MMWR Morb Mortal Wkly Rep 2018.

of smoking cigarettes in the future.<sup>10</sup> According to a report by the Surgeon General, any use of E-cigarettes among young people is not safe even if the young people do not move on to future cigarette smoking;<sup>11</sup> and

**WHEREAS**, on January 13, 2020 and September 27, 2021 staff presented to City Council reports on the consideration of development of an ordinance prohibiting the sales of flavored tobacco products and E-cigarettes; and

**WHEREAS**, with the delay and potential repeal of SB793, City Council listed as one of 17 priorities adopted on April 17, 2021 to “Present an ordinance to City Council for consideration regulating the sale of flavored tobacco in Pacifica”; and

**WHEREAS**, a local prohibition against the sale and distribution of all electronic smoking devices and flavored tobacco is an effective means to reduce the availability of these products to youth, thereby protecting the public health and safety by discouraging tobacco initiation and continued use.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFICA DOES ORDAIN AS FOLLOWS:**

**Section 1. Recitals.** The City Council of the City of Pacifica does hereby find the above referenced recitals are true and correct and material to the adoption of this Ordinance.

**Section 2. Added.** Chapter 5.32, “Sale and Distribution of Electronic Cigarettes” is hereby added to Title 5, “Public Welfare, Morals, and Conduct” of the Pacifica Municipal Code as follows:

“Sec. 5-32.01 – Definitions

For the purposes of this chapter, the following definitions shall govern unless the context clearly requires otherwise:

- a) "Distribute" or "Distribution" means the transfer by any Person other than a common carrier, at any point from the place of manufacture or thereafter to a Person who sells or offers to sell the electronic cigarette or other electronic smoking device.
- b) "Electronic Cigarette" has the meaning set forth in Section 30121 of the California Revenue and Taxation Code, as may be amended from time to time.
- c) "Person" means any individual, partnership, cooperative association, private corporation, or any other legal entity.
- d) "Tobacco Retailer" is defined as set forth in subsection (i) of Section 5-31.01 of this Code.

<sup>10</sup> Moritz, T. (2019, March 18). Vaping: It’s All Smoke and Mirrors.

<sup>11</sup> US Department of Health and Human Services. E-cigarette use among youth and young adults: a report of the Surgeon General. Atlanta, GA: US Department of Health and Human Services, CDC, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2016.

- e) "Tobacco Retailer License" "shall mean a Tobacco Retailer that has been issued a License pursuant to Section 5-31.02 of this Code.
- f) "Sell", "Sale" or "to Sell" mean any transaction where, for any consideration, ownership is transferred from one (1) Person or entity to another including, but not limited to any transfer of title or possession for consideration, exchange or barter, in any manner or by any means

Sec. 5-32.02 – Sale or Distribution of Electronic Cigarettes Prohibited.

- a) No Person, Tobacco Retailer, or other legal entity shall Sell or offer for Sale nor Distribute any Electronic Cigarette to a Person within the geographic boundaries of the City.
- b) For Tobacco Retailers that have a valid Tobacco Retailer License, the provisions of Section 5-33.02(a) shall take effect upon expiration of the Tobacco Retailer License in effect as of the effective date of this Ordinance.

Sec. 5-32.03 – Enforcement.

- a) The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.
- b) Violations of this chapter are subject to a civil action brought by the City Attorney, punishable by a civil fine payable to the city not less than One Hundred (\$100) Dollars and not exceeding One Thousand and no/100ths (\$1,000.00) Dollars per violation.
- c) Violations of this chapter may, in the discretion of the City Attorney, be prosecuted as infractions or misdemeanors.
- d) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.
- e) In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the City Attorney, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

Sec. 5-32.04 – Public Nuisance.

Any violation of this chapter is hereby declared a public nuisance."

**Section 3. Added.** Chapter 5.33, "Sales of Flavored Tobacco Products and Pharmacy Sales of Tobacco Products Prohibited" is hereby added to Title 5, "Public Welfare, Morals, and Conduct" of the Pacifica Municipal Code as follows:

"Sec. 5-33.01 – Definitions

For the purposes of this chapter, the following definitions shall govern unless the context clearly requires otherwise:

- a) "Adult" shall mean any individual 21 years of age or older.
- b) "Adult-only retailer" shall mean any retailer or businesses that allows entry only by adults onto the entire premises of the business or retailer, or that require minors to be accompanied by a parent, guardian, or another adult in order to enter the entire premises of the business or the retailer. The definition of an "adult-only retailer" does not include any retailer or business that only prohibits minors from entering certain sections, divisions, or a part of the premises that are marked or otherwise restricted as adult only and allows minors to otherwise enter the remainder of its premises unaccompanied by a parent, guardian or another adult.
- c) "Characterizing flavor" shall mean a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include, but are not limited to, tastes or aroma relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma, or both, as described in the first sentence of this definition that constitutes a characterizing flavor.
- d) "Constituent" shall mean any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet that is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.
- e) "Distinguishable" shall mean perceivable by either the sense of smell or taste.
- f) "Distribute" or "Distribution" means the transfer by any Person other than a common carrier, at any point from the place of manufacture or thereafter to a Person who sells or offers to sell the electronic cigarette or other electronic smoking device.
- g) "Flavored tobacco product" shall mean any tobacco product that contains a constituent that imparts a characterizing flavor.
- h) "Hookah Pipe" shall mean a type of water pipe used to smoke flavored tobacco products, with a long flexible tube for drawing aerosol through water.
- i) "Hookah Products" shall mean any component of a hookah pipe including, but not limited to, heads, stems, bowls, vases and hoses.

- j) "Labeling" shall mean written, printed, pictorial, or graphic matter upon any tobacco product or any of its packaging.
- k) "Packaging" shall mean a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a tobacco product is sold, or offered for sale, to a consumer.
- l) "Person" means any individual, partnership, cooperative association, private corporation, or any other legal entity.
- m) "Pharmacy" shall mean any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.
- n) "Sell", "Sale" or "to Sell" shall mean any transaction where, for any consideration, ownership is transferred from one (1) Person or entity to another including, but not limited to any transfer of title or possession for consideration, exchange or barter, in any manner or by any means.
- o) "Tobacco Product" shall have the same definition as set forth in subsection (h) of Section 5-31.01 of this Code.
- p) "Tobacco Retailer" shall have the same definition as set forth in subsection (i) of Section 5-31.01 of this Code.
- q) "Tobacco Retailer License" shall mean a Tobacco Retailer that has been issued a License pursuant to Section 5-31.02 of this Code.

**Sec. 5-33.02 – Sale or Offer for Sale of Flavored Tobacco Products Prohibited.**

- a) No Person, Tobacco Retailer, or other legal entity shall Sell, or offer for Sale nor Distribute, any Flavored Tobacco Product, except as provided in Section 5-33.02(c).
- b) There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the Tobacco Product has or produces a Characterizing Flavor including, but not limited to, text, color, and/or images on the product's Labeling or Packaging that are used to explicitly or implicitly communicate that the Tobacco Product has a Characterizing Flavor.

- c) Tobacco Retailers that are Adult-Only Retailers that sell Flavored Tobacco Products for use with a Hookah Pipe or Hookah Products shall be exempt from the requirements of section 5-33.02(a).
- d) For Tobacco Retailers that have a valid Tobacco Retailer License, the provisions of Section 5-33.02(a) shall take effect upon expiration of the Tobacco Retailer License in effect as of the effective date of this Ordinance.

**Sec. 5-33.03 – Sale or Offer for Sale of Tobacco Products by a Pharmacy Prohibited.**

- a) No Pharmacy or Pharmacy employee or agent shall sell or offer for sale any Tobacco Product.
- b) No new Tobacco Retailer License may be issued to a Pharmacy after the effective date of this Ordinance.
- c) No Tobacco Retailer License may be renewed by a Pharmacy after the effective date of this Ordinance.
- d) The provisions of Section 5-33.03(a) shall take effect upon the expiration of the Pharmacy's Tobacco Retailer License in effect as of the effective date of this Ordinance.

**Sec. 5-33.04 – Enforcement.**

- a) The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.
- b) Violations of this chapter are subject to a civil action brought by the City Attorney, punishable by a civil fine payable to the City not less than One Hundred (\$100) Dollars and not exceeding One Thousand and no/100ths (\$1,000.00) Dollars per violation.
- c) Violations of this chapter may, in the discretion of the City Attorney, be prosecuted as infractions or misdemeanors.
- d) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.
- e) In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the City Attorney, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

**Sec. 5-33.05 – Public Nuisance.**

Any violation of this ordinance is hereby declared a public nuisance.



Sec. 5-33.06 – No Conflict with Federal or State Law.

Nothing in this chapter shall be interpreted or applied so as to create any requirement, power, or duty that is preempted by federal or state law.”

**Section 4. Amended.** Section 5-31.03, “Limits on tobacco retailer licenses” of Chapter 31 “Tobacco Retailing” within Title 5, “Public Welfare, Morals, and Conduct” of the Pacifica Municipal Code is hereby amended by repealing and replacing Section 5-31.03 in its entirety to read as follows:

“Sec. 5-31.03. - Limits on tobacco retailer licenses.

- a) No license may issue to authorize tobacco retailing at other than a fixed location. For example, tobacco retailing by persons on foot or from vehicles is prohibited.
- b) No license may issue to authorize tobacco retailing at any location that is licensed under State law to serve alcoholic beverages for consumption on the premises (e.g., an "on-sale" license issued by the California Department of Alcoholic Beverage Control) and no license may issue to authorize tobacco retailing at any location offering food or alcoholic beverages for sale for consumption by guests or patrons on the premises. For example, tobacco retailing in bars and restaurants is prohibited. Restaurants that allow on-site consumption of alcoholic beverages that were brought to the premises by patrons shall also not be entitled to a license to engage in tobacco retailing.
- c) No license may issue to authorize tobacco retailing at a Pharmacy, as that term is defined in Section 5-33.01 of this Code.”

**Section 5. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentence, clauses or phrases be declared unconstitutional.

**Section 6. Publication.** The City Clerk is hereby ordered and directed to certify to the passage of this Ordinance by the City Council of the City of Pacifica, California, and cause the same to be published in accordance with State Law.

**Section 7. Effective Date.** This Ordinance shall be in full force and effect thirty (30) days after its adoption and shall be published and posted as required by law.

**PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Pacifica, California, held on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by the following vote:

**AYES**, Councilmembers:

**NOES**, Councilmembers:

**ABSENT**, Councilmembers:

**ABSTAIN**, Councilmembers:

**CITY OF PACIFICA**

By: \_\_\_\_\_  
Mary Bier, Mayor

ATTEST:

\_\_\_\_\_  
Sarah Coffey, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michelle M. Kenyon, City Attorney

\* \* \* \* \*

(ID # 4855) at 1/24/2022 7:00 PM City Council Regular Meeting



**CITY OF PACIFICA  
COUNCIL AGENDA SUMMARY REPORT**

**9/27/2021**

**SUBJECT:**

Consideration of Development of an Ordinance Prohibiting the Sale of Flavored Tobacco Products and Electronic Cigarettes ("E-Cigarettes").

**RECOMMENDED ACTION:**

Accept the report and provide direction to the City Manager regarding developing an ordinance prohibiting the sale of flavored tobacco products.

**STAFF CONTACT:**

Daniel Steidle, Chief of Police  
650-738-7314  
steidled@pacificapolice.org

**BACKGROUND/DISCUSSION:**

Concerns regarding health problems caused by smoking and second-hand smoke and the attractiveness of flavored tobacco products to minors has created public health policy discussions at the local, state and national level. In response, some local jurisdictions have adopted ordinances prohibiting the sale of flavored tobacco products.

At the request of Councilmembers Bier and O'Neill, staff presented this topic to City Council on January 13, 2020 seeking direction regarding whether to develop an ordinance prohibiting the sale of flavored tobacco products and E-Cigarettes. At the time of the presentation, SB793 was in the process of legislation. SB793 provides that a tobacco retailer, or any of the tobacco retailer's agents or employees, shall not sell, offer for sale, or possess with the intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer. An exemption to this bill allows for the sale of hookah products, if the business is properly licensed and does not allow patrons under 21 years of age to enter the business. Direction from City Council was to wait for the outcome on SB793 before determining whether to adopt a local ordinance.

On August 28, 2020, SB793 was signed into law by Governor Newsom. However, on August 31, 2020, implementation of the new law was halted when a referendum was filed with the California Secretary of State to repeal the new law. As of December 2020, the referendum had received the required number of voter signatures to place the item on the November 2022 state ballot. In the November 2022 state election, the voters of the State of California will decide whether to enact or repeal SB793.

With the delay and potential repeal of SB793, City Council listed as one of 17 priorities adopted on April 17, 2021 to "Present an ordinance to City Council for consideration regulating the sale of flavored tobacco in Pacifica."

This report to Council provides information regarding this issue for City Council consideration. The City Manager is seeking direction from the Council whether the Council would like to consider at this time a draft ordinance prohibiting the sale of flavored tobacco products in

Pacifica. This report provides information about this health issue, what other jurisdictions have done, legal costs to develop a draft ordinance, and other information relevant to the Council's consideration of this topic.

### Definitions in City's Municipal Code

Discussion of a potential ordinance regarding flavored tobacco and E-Cigarette products requires definition of certain terms, including a definition of flavored tobacco products. As a baseline for a full discussion on the subject, below are some relevant definitions which currently exist in Chapter 15 of Title 4 (Smoking Prohibitions) and Chapter 31 of Title 5 (Tobacco Retailing) of the Pacifica Municipal Code relating to Tobacco:

#### Electronic Smoking Device

*"Electronic smoking device" means an electronic and/or battery operated device, which can provide an inhalable dose of nicotine, cannabis, whether recreational or medicinal, or other vaporized liquids to the person inhaling the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah. "Electronic smoking device" does not include any product specifically approved by the United States Food and Drug Administration for the use in the mitigation, treatment, or prevention of disease.*

#### Tobacco or nicotine product:

*"Tobacco or nicotine product" means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco; and any electronic cigarette or other electronic device used to generate smoke; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.*

#### Tobacco Retailer:

*"Tobacco Retailer" means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia, or who distributes free or low cost samples of tobacco products or tobacco paraphernalia. "Tobacco retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, tobacco products, or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.*

The following definitions are not in the City's Municipal Code but are codified in Chapter 4.99 of Title 4 of the San Mateo County Code of Ordinances relating to regulation of flavored tobacco and may be helpful in the discussion of the development of an ordinance:

Flavored tobacco product: *Any tobacco product that contains a constituent that imparts a characterizing flavor.*

Constituent: *Any ingredient, substance, chemical or compound, other than tobacco, water, or reconstituted tobacco sheet that is added by the manufacturer to a tobacco product during the processing, manufacture, or packaging of the tobacco product.*

Characterizing Flavor: *A distinguishable taste or aroma, or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the*

*tobacco product. Characterizing flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma, or both, as described in the first sentence of this definition that constitutes a characterizing flavor.*

While the foregoing definitions are not determinative of what definitions may be used in any possible ordinance, they provide a basic understanding of what the relevant terms may mean.

### **Youth and Flavored Tobacco**

Flavored tobacco products have been the subject of negative publicity as they are known to be attractive to minors. According to Tobacco Free Kids, a non-profit organization that works to reduce youth access to tobacco and reduce tobacco related deaths:

- Tobacco industry documents show that the tobacco companies have a long history of developing and marketing flavored tobacco products as “starter” products that attract kids.
- Flavors improve the taste and reduce the harshness of tobacco products, making them more appealing and easier for beginners to try the product and ultimately become addicted.
- Menthol cools and numbs the throat, reducing the harshness of cigarette smoke, thereby making menthol cigarettes more appealing to youth who are initiating tobacco use.
- According to FDA’s Tobacco Product Scientific Advisory Committee (TPSAC), menthol cigarettes increase the number of children who experiment with cigarettes and the number of children who become regular smokers, increasing overall youth smoking.
- Flavors can create the false impression that a tobacco product is less harmful than it really is.

In the same publication, Tobacco-Free Kids provided the following statistics that were collected in a 2019 survey of middle and high school students:

- 81% of youth who have ever used tobacco products initiated with a flavored product.
- 72.3% of youth tobacco users have used a flavored tobacco product in the past month.
- At least two-thirds of youth tobacco users report using tobacco products “because they come in flavors I like.”

### **Health Issues Relating to Use of E-Cigarettes**

Health issues have long been chronicled related to smoking of tobacco products and second-hand smoke, and more recently, smoking using e-cigarette devices (“vaping”).

Health issues related to tobacco E-cigarettes and ingestion of THC by vaping have gained national attention after a string of deaths and hospitalizations involving the use of these

products. The Center for Disease Control (CDC) is currently investigating the cause of these illnesses. Research into the causes of these illnesses has not concluded nor identified definitively a specific cause(s). However, the CDC reports illnesses at a much higher level occur as a result of consuming THC vaping products that are black market purchased than THC products purchased legally. While THC-only vaping products that contain cannabis oils tested at State approved facilities are legal to sell in legal cannabis retail operations, the CDC and FDA recommend that people should not use THC-containing e-cigarette, or vaping products, particularly from informal sources like friends, family, or in-person or online sellers.

A February 2019 publication by the Harvard Medical School stated advocates of vaping have promoted it as a way to help cigarette smokers to quit. The article indicated that although giving up nicotine products altogether might be the ultimate goal, there may be health benefits to a smoker who becomes a long-term vaper instead, though this remains unproven.

While the FDA has stated E-cigarettes are unhealthy, they have recommended smokers who have chosen to vape not return to cigarette smoking, but rather should seek FDA approved smoking cessation medications.

### Legislation/Policy

On September 16, 2019, Governor Newsom instructed state regulators to “reduce youth vaping consumption” by finding ways to ban illegal and counterfeit vaping products. The Governor also set aside \$20 million for a vaping awareness campaign and instructed state health officials to develop signs warning against the hazards of vaping to be placed at retailers and on advertising for E-cigarettes and accessories. Governor Newsom has stated that he does not have the authority to ban flavored vaping products, but would work with legislators in 2020 to ban them. The effort to ban flavored vaping products emerged in 2020 and SB793 and was signed into law, but as stated above, is subject to a statewide vote in November 2022.

In November 2019, San Francisco voters defeated Measure C, which would have partially overturned San Francisco’s ordinance related to E-cigarettes and flavored tobacco. In San Francisco, certain e-cigarette sales are prohibited anywhere the sale of tobacco products are prohibited. In addition, flavored tobacco product sales are prohibited (including flavored E-cigarettes). Cannabis vaping products are legal to sell anywhere cannabis sales are permitted. Beginning in late January 2020, San Francisco suspended the sale of electronic cigarettes, except for those E-cigarettes that have gone through required premarket review by the FDA.

The Family Smoking Prevention and Tobacco Control Act (“Act”), passed by the United States Congress in October 2009, bans cigarettes with flavors other than menthol or tobacco. Flavored E-cigarettes, e-liquids, cigars, hookah, and chewing tobacco are unregulated. However, the Act also provides that every “new tobacco product” (defined to include any tobacco product not on the market in the United States as of February 15, 2007), must be authorized by the FDA in a premarket review before it may enter the marketplace in the United States. Where it can be shown that there is a lack of showing that permitting the sale of the product would be appropriate for the protection of the public health, the Act requires that the FDA deny the application for premarket review.

A result of a federal court ruling, E-cigarette manufacturers were required to submit applications to the FDA for product approval by September 9, 2020. The ruling allowed these products to remain on the market with a one-year grace period without being subject to FDA enforcement while applications were being reviewed.

On September, 9, 2021, the FDA announced it had processed 93% of the applications received, and had issued marketing denial orders for more than 946,000 flavored vaping products because their applications "lacked sufficient evidence that they have a benefit to adult smokers sufficient to overcome the public health threat posed by the well-documented, alarming levels of youth use of such products." A decision has not been made on the applications from Juul, the largest E-cigarette manufacturer. The FDA has advised they are processing the remaining applications, many of which are in the final stages of review.

### **San Mateo County Ordinances**

The following San Mateo County jurisdictions prohibit the sales of flavored tobacco products:

1. Burlingame
2. East Palo Alto (Prohibits sale of all E-cigarettes)
3. Half Moon Bay
4. Menlo Park (Prohibits sale of all E-cigarettes)
5. Portola Valley
6. San Carlos
7. San Mateo (Prohibits sale of all E-cigarettes)
8. South San Francisco (Only 21+ years stores are allowed to sell e-cigarettes and flavored tobacco products)
9. Unincorporated San Mateo County (Prohibits sale of all E-cigarettes)

### **Legal Considerations**

Under the California Constitution, a "county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal Const art XI, §7). Additionally, cities are authorized by State law to enact local tobacco retail licensing ordinances and allows for the suspension or revocation of a license for a violation of any state tobacco control law. (Cal. Bus. & Prof. Code § 22971.3). As a result of the foregoing authority, a number of cities and counties in California have exercised their local legislative power to regulate businesses that sell flavored tobacco and E-cigarette products to address the significant health and safety concerns which arise from use of flavored tobacco and E-cigarettes.

While many cities and counties have adopted ordinances regulating sales of flavored tobacco and/or E-cigarettes, there have been some legal challenges to certain ordinances. As discussed above, the City and County of San Francisco received a referendum challenge, Measure C, which would have partially overturned San Francisco's ordinance related to E-cigarettes and flavored tobacco. Measure C was primarily funded by JUUL but prior to the November, 2019 election, JUUL decided to pull funding for the Measure and it failed. Additionally, the City of Livermore received a similar referendum challenge. Although the referendum had qualified for the March 3, 2020 ballot, the referendum backed by JUUL was withdrawn in October, 2019. JUUL has indicated that these withdrawals are due to a change in



new leadership causing the company to review its policies. Additionally, various tobacco retailers have sued cities that have adopted ordinances regulating flavored tobacco, including the City of Palo Alto, based on various causes of action including alleged violations of the U.S. and California Constitutions. It does not appear that any litigation to date has been successful in overturning these ordinances. However, in order to further reduce the risk of potential litigation exposure, any such ordinance regulating flavored tobacco or E-cigarettes will need to be carefully crafted with findings supporting the health and safety risks of these products.

## **Conclusion**

Marketing flavored tobacco products towards minors and consumption of flavored tobacco products by minors has sparked many communities to adopt local ordinances prohibiting the sales of these products. The information provided in this staff report is intended to guide the Council's consideration of whether the City should develop an ordinance restricting the sales of certain flavored tobacco products. If the Council is interested in directing the City Manager to return with a draft ordinance prior to a state or federal action, then the following variables need to be clarified:

1. Should the ordinance be focused only on the prohibition of flavored tobacco sales (All flavored tobacco and flavored E-cigarette products)?
2. Should the ordinance prohibit all E-cigarette sales, both flavored and unflavored?  
Alternatively, should the ordinance prohibit E-cigarette sales except in only 21+ stores?
3. Should the ordinance prohibit cannabis "E-cigarette" products?
4. Other variables?

## **ALTERNATIVE ACTION:**

Request further research/information from staff prior to providing direction regarding a potential ordinance. Council may also desire to accept the report and request no further action from staff.

## **RELATION TO CITY COUNCIL GOALS AND WORK PLAN:**

Consideration of a prohibition on the sale of flavored tobacco products and E-cigarettes in Pacifica resonates with the City Council Goal of "A Healthy and Compassionate Community."

## **FISCAL IMPACT:**

The City Attorney's Office estimates that legal costs relating to preparation of an ordinance would vary depending on the variables identified by Council and range from \$6,000 (if Council directs staff to prepare an ordinance to only prohibit flavored tobacco) up to \$10,000 (if Council directs staff to also include in the ordinance a prohibition of cannabis e-cigarette products)

## **ORIGINATED BY:**

Police

## **ATTACHMENT LIST:**

None (TXT)



**CITY OF PACIFICA  
COUNCIL AGENDA SUMMARY REPORT**

**1/24/2022**

**SUBJECT:**

Vision 2025 & Beyond – Fiscal Sustainability Analysis, Potential Revenue Options, and Ballot Measure Analysis & Communications Services

**RECOMMENDED ACTION:**

Receive, discuss, and provide direction to the City Manager on the updated 10 Year Financial Forecast and options to maintain the current level of City services.

**STAFF CONTACT:**

Kevin Woodhouse, City Manager  
(650) 738-7409  
[kwoodhouse@pacifica.gov](mailto:kwoodhouse@pacifica.gov)

**INTRODUCTION:**

At the December 13, 2021, City Council meeting, staff presented an update to the City Council on the Vision 2025 & Beyond Strategic Financial Sustainability Study. This study, which was identified by the City Council as a priority beginning in Fiscal Year 2019-20, has the following Purpose Statement as refined by the City Council on October 12, 2020:

*The Purpose of the Pacifica Vision 2025 & Beyond project is to tell Pacifica's story of the many priority infrastructure projects, and enhanced programs and services envisioned for Pacifica's mid to long-term future that are equitable and inclusive and will help all Pacificans thrive, and to articulate the City's financial opportunities, challenges, and strategies to achieve this vision and resiliency.*

As presented in December 2021, the study includes these five components:

1. Financial Forecasting and Revenue Enhancement Strategies
2. Economic Opportunities Study
3. Pacifica Marketing Study & Marketing Plan
4. Public Engagement and Surveys
5. Public Information Final Report

At the December 2021 meeting, the Council received reports and focused on items II (Economic Opportunities Study) and III (Pacifica Marketing Study & Marketing Plan), provided input on the Statement of Work for the Economic Opportunities Study, and approved the City Manager's recommendation to release a Request for Proposals for this component in January, 2022. At the same meeting, the City Council, together with the Economic Development Committee in a joint study session, provided feedback on the Pacifica Marketing Study prepared by Creative Digital Agency (CDA) and approved the City Manager's recommendation to develop an agreement with CDA for a 2-year marketing plan and return to City Council in early 2022 for consideration of approval of that agreement.

Since that meeting, Staff has continued work on these two components of Vision 2025 & Beyond. The Request for Proposals (RFP) for the Economic Opportunities Study has been updated to include the suggestions and additions from the City Council. The RFP will be issued shortly. The Shop Pacifica program continues to move ahead in its “soft launch” phase, with almost \$1,000 being added to date to the Pacifica economy through Gift Card purchases that are starting to be redeemed by recipients at merchants in Pacifica (14 signed up to date).

Finally, at the December 2021 meeting, staff reported that the City’s Chief Fiscal Sustainability Officer had begun working with City Staff, HdL (the City’s Revenue Consultant), and Financial Consultants, to refine a preliminary 10-Year Financial Forecast to return to the City Council in early 2022 to present the forecast, alongside an initial assessment of Revenue Enhancement Strategies (including voter-approved revenue measures) that might be feasible to help maintain, or enhance, the current level of City services, as well as fund Capital Projects and infrastructure needs in Pacifica.

Therefore, the purpose of tonight’s Vision 2025 & Beyond discussion is to present the refinements of the preliminary 10-Year Financial Forecast to clearly communicate the City’s fiscal sustainability challenges and to discuss a variety of potential revenue measures that have been preliminarily evaluated for their revenue-generating capacity. ***The City Manager is seeking City Council direction about which potential revenue measures should advance to the next phase of feasibility assessment, including engagement of a consultant for ballot measure analysis and communications services.***

## **BACKGROUND:**

### **Updated 10 Year Financial Forecast**

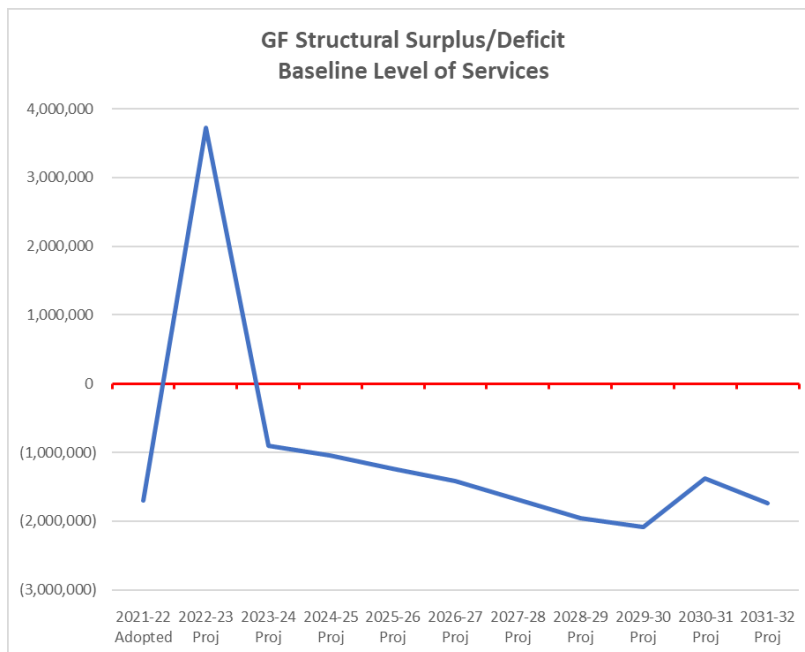
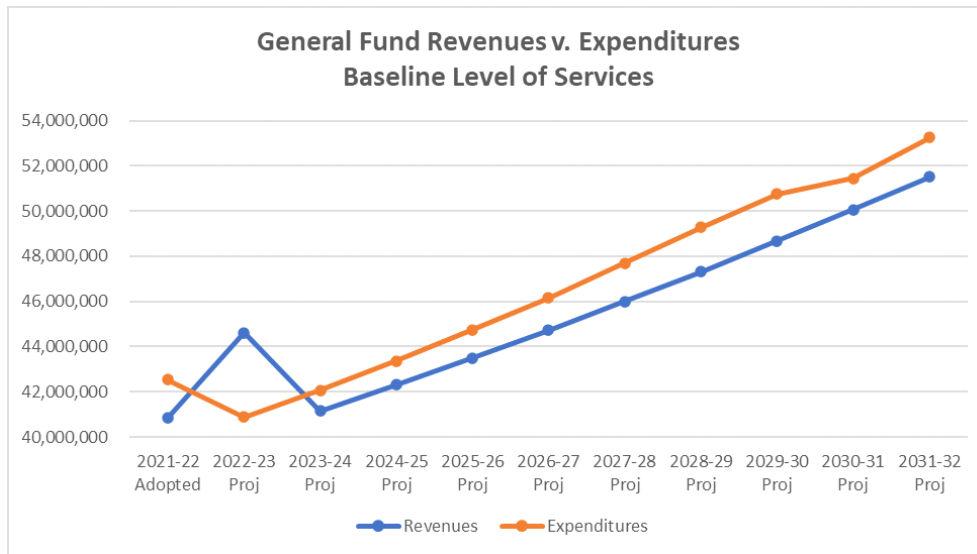
During the 2021-22 Budget process, the City Council was presented with a 10 Year Financial Plan. That plan has been updated by the Chief Fiscal Sustainability Officer for tonight's Vision 2025 & Beyond discussion and is attached to this report as **Attachment A**.

The updated plan considers current revenue and expenditure trends at the mid-year mark. It also adjusts for PERS Retirement and Year 2 labor union MOU expenses, removes limited-term positions in the budget, assumes annual debt service for the Civic Center Renovation project, does *not* assume any ongoing General Fund contribution towards the capital improvement program, and reflects a 14% increase in PERS unfunded liability from the prior year.

With these updates, the City’s Operating Budget that covers ongoing services to the community will remain in balance during the current 2021-22 fiscal year and the upcoming 2022-23 fiscal year. This is in part due to the availability of American Recovery Plan Act (ARPA) funds that offset losses of City revenues during the Covid pandemic plus the payment of In Lieu Vehicle License Fees from the State. However, these funds will be spent by the end of the 2022-23 fiscal year resulting in a financial deficit in future years.

### **Projected Financial Deficit Starting in 2023-24 Fiscal Year**

Starting in the third year of the financial forecast, the City will experience a shortfall in funds to maintain the current level of City Services. This shortfall is projected to be \$0.9 Million in 2023-24, growing to \$1.1 Million the following year (2024-25) and reaches \$2.1 Million in FY 2029-30, as summarized in the charts and table below.

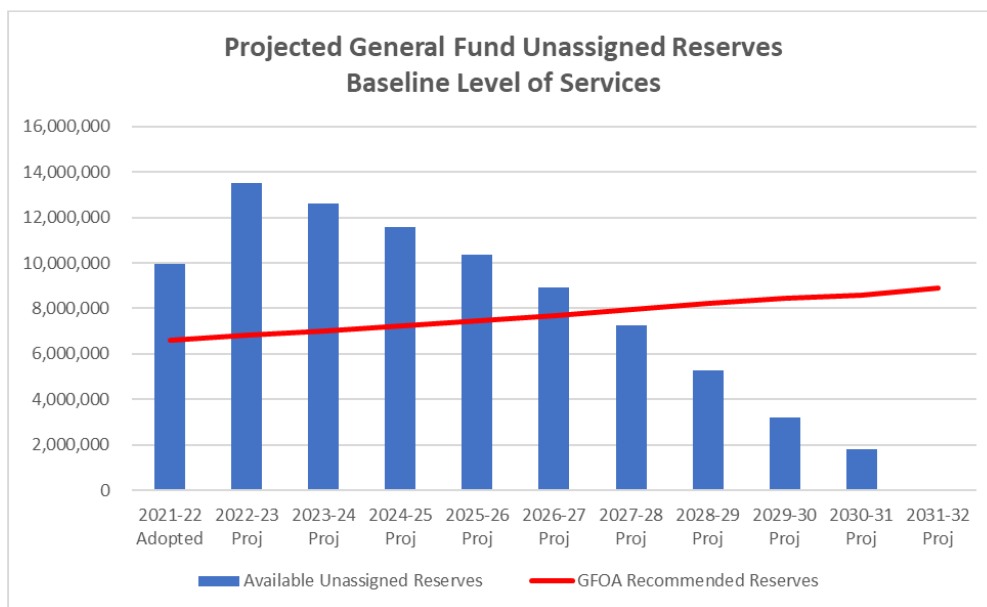


<u><b>Fiscal Year</b></u>	<u><b>Projected Deficit</b></u>
2023-24	905,502
2024-25	1,045,390
2025-26	1,238,878
2026-27	1,421,768
2027-28	1,688,929
2028-29	1,957,370
2029-30	2,082,106
2030-31	1,384,675
2031-32	1,742,239

### Budget Deficit Impact on General Fund Reserves in Future Years

If the structural budget deficit beginning in the 2023-24 fiscal year remains unaddressed, the City's unassigned General Fund Reserves will continue to shrink and eventually fall below the Government Finance Officers Association (GFOA) recommendation for government entities of no less than two months of regular general fund operating expenditures.

Maintaining sufficient reserves is necessary for fiscal and operational sustainability, which becomes especially critical in the current uncertain economic situation. Therefore, staff always strives to go above the minimum recommendation for General Fund undesignated fund balance. The prospect of it falling below the minimum threshold guidelines presents a significant challenge to maintaining the City's operations and is not sustainable.



### ADDRESSING BUDGET CHALLENGES & PROJECTED DEFICIT

#### Actions and Strategies to Address Budget Challenges

The City of Pacifica has historically worked to reduce expenditures in the Annual Budget to live within existing revenue means. This has meant cutting positions and managing salary growth to the point where the organization and capacity for service provision is inadequate to meet the needs and desires of the community.

There are components of the Vision 2025 & Beyond study that will focus on revenue enhancement strategies through non-tax methods, such as economic development and marketing, including efforts to develop additional hotel capacity and increase visitation to improve Transient Occupancy Tax and Sales Tax revenues. In addition, Staff will be working on updating User Fees and Development Impact Fees in the City. This work will help improve the City's financial sustainability in the years to come.

However, the reality is that, even with these non-tax revenue enhancement strategies, the City is facing a projected deficit in the near term. Continued revenue enhancements are needed to 1) maintain the current level of services, 2) tackle organizational capacity and retention challenges, and 3) address neglected infrastructure needs and any additional operational costs.

To keep Pacifica structurally sustainable at a level of expected service delivery and capital improvement project funding envisioned by the community, it is anticipated the Council and the community will need to consider voter-approved revenue measures in the future as a necessary strategy.

## **POTENTIAL REVENUE MEASURES**

### **Potential Revenue Measures**

The December 2021 presentation about Vision 2025 & Beyond mentioned this next step of analyzing some of the City's key revenues to determine what the financial impact would be of bringing certain revenues to be on par with other agencies in the region.

With the assistance of the City's tax consultant, HdL, staff has identified several potential revenue sources that could be considered by the Council to address the City's revenue shortfall in future years. They are summarized in the table below, followed by a more detailed description.

<b><u>Revenue Option</u></b>	<b><u>Annual Revenue (Net Increase)</u></b>
UUT - Broaden Base	3,100,000
UUT - Cut Rate to 5%, Broaden Base	2,000,000
Local Sales Tax @.50c	2,600,000
Local Sales Tax @.25c	1,300,000
Business License Update	500,000
TOT - 12% to 15%	350,000
TOT - 12% to 14%	280,000

### **Utility User Tax (\$2 Million to \$3.1 Million annually)**

Cities may impose a Utility User Tax (UUT) on utility services including electricity, gas, water, sewer, and telecommunications. Utility companies are responsible for collecting the taxes and remitting them to the City. Utility user tax rates throughout the State range from 1 % to 11%.

The City of Pacifica has a Utility User Tax (UUT) of 6.5% that is charged on electricity and gas. In the 2019-20 fiscal year, the UUT generated \$1.7 Million in revenues.

Currently, the UUT is not collected on telecommunications (phone and cable TV), prepaid wireless, or water. In other cities, these utilities are also subject to UUT. If these categories were added to the UUT in Pacifica at the current 6.5% UUT rate, an additional \$3.1 Million in revenue would be received.

Alternatively, the City could broaden the categories of the UUT but lower the tax rate from 6.5% to 5%. This combination of broader categories but a lower tax rate would increase revenue by \$2 Million per year.

### **Local Sales Tax (\$1.2 Million to \$2.4 Million annually)**

The City of Pacifica currently receives one percent of the sales and use taxes from the State. This generates \$2.6 Million per year in revenues.

Cities may impose sales tax rates to be added to the statewide "base". The add on rates are

"transactions and use taxes" and are allocated to the jurisdiction where the taxed product is received. Over 100 of the 482 cities in California have enacted local transactions and use taxes of up to one percent. Under state law, the maximum combination of transactions and use tax rates in any location may not exceed two percent.

According to estimates provided by HdL, if Pacifica were to adopt a Local Add-On Sales Tax (Transactions & Use Tax) of one-half cent it would generate approximately \$2.6 Million per year. A quarter cent Local Add On Sales Tax would generate approximately \$1.3 Million per year in Pacifica.

### **Business License Tax (\$500,000 annually)**

The Business License Tax (BLT) is charged to anyone doing business in a City. It is a common revenue used to fund City services throughout California with over 450 of the 482 cities in California levying a BLT. The BLT recognizes the link between City services and infrastructure and the use of these by local businesses.

Pacifica requires all businesses operating within the City to obtain a business license and pay business license tax per section 3-1.101 of the City's Municipal Code. This revenue is locally controlled and funds essential services. The City currently issues over 2,100 business licenses annually and, over the last five fiscal years, has generated an average of \$440,000 in business license tax revenues per fiscal year.

HdL has done some initial analysis of the City's Business License Tax Ordinance. This includes suggestions on updating the language of the ordinance, reducing the number of tax categories from 7 to 4, and updating the tax rates.

The current tax structure has been in place since 1984 and is complex. There are seven different classifications with different rates that are not structured along industry lines. As a result, some businesses pay a flat \$40, plus 30c per one thousand dollars of annual gross receipts over \$25,000, while other business license tax classifications have the business pay a minimum of \$100, plus 77c per one thousand dollars of annual gross receipts over \$25,000. The recommendation to charge different rates based on business activity would simplify the number of business classifications, improve equitability and increase business tax revenue. Also, less complexity in the tax structure may lead to increased business attraction and retention. By reforming the tax structure, the City will make it easier for businesses to correctly report their taxes. The simplified structure will also provide better fiscal stability to the City and make it more in-line with the neighboring communities that have recently revisited their business license tax structure. The proposed changes are estimated to generate up to an additional \$500,000 per year in business license tax revenue.

### **Transient Occupancy Tax (\$280,000 to \$350,000 annually)**

Transient Occupancy Tax (TOT) (also known as a Hotel Tax) is charged as a percentage of a room rate to people who occupy a hotel, motel, inn, or other forms of transient lodgings (short-term rentals) for thirty (30) days or less. The tax is collected by the lodging operator and is remitted to the City by the lodging operator. It is a revenue that has been used to fund City services throughout California and has been adopted in 430 of the 482 cities in the State. Pacifica's rate is currently 12%, totaling approximately \$1.7 Million per year in TOT revenue.

Many cities raised their TOT rates from 12% to 14% over the past 4 years. TOT rates have also gone beyond 14% in two local cities - Half Moon Bay (15% effective on July 1, 2022) and Palo Alto (15.5%). Staff is also aware that additional cities are considering TOT rate increases and other revenue measures to address their projected budget shortfalls at their next elections.

If Pacifica increased its TOT tax rate from 12% to 14%, that change would bring in an additional \$280,000 per year in revenue. Increasing the TOT tax rate from 12% to 15% would bring in an additional \$350,000 per year.

### **Other Revenue Measures**

In addition to the revenue options detailed above, the Council may also consider other revenue measures to address the City's projected budgetary deficit or other priority service level enhancements. These options could include a General Obligation Bond to fund one or multiple major infrastructure projects, such as for streets rehabilitation, new libraries, and the Beach Boulevard Infrastructure Resiliency Project. The City Council may identify other needs and measures to achieve those needs, such as an idea raised by Councilmember O'Neill about a special hotel tax to help fund playing field improvements in collaboration with the Pacifica School District. The City Manager is seeking input on any of these other types of ideas.

### **General Taxes and Special Taxes**

The provisions of the State Constitution adopted as part of Proposition 13 in 1978, and Proposition 218 in 1996 define local taxes as either "General Taxes" or "Special Taxes". This language requires that *"local governments may not impose, increase, or extend: (1) any general tax, unless approved by a majority vote at a general election; or (2) any special tax, unless approved by a two-thirds vote."*

Therefore, whether a measure is a General Tax or Special Tax is a critical point to analyze in preparing for the feasibility of a voter-approved ballot measure. The UUT, BLT, TOT, and Local Sales Tax measures described above can be structured as General Taxes requiring majority vote only. Such measures also have to occur in a General Election. The next General Election in Pacifica will be held in November 2022.

### **RESTORING CITY SERVICES, ENHANCING SERVICES & CAPITAL PROJECT NEEDS**

Given the size of the City's projected financial shortfall starting in 2023-24 to maintain the current level of City Services, staff has not yet analyzed the added cost of restoring City Services cut in prior years, enhancing the current level of City services, or funding major infrastructure and Capital Improvement Project needs. The Vision 2025 & Beyond study process will include public engagement about what types and levels of City services and capital projects the City Council and the community envision for Pacifica's future. This vision for Pacifica's future will inform what types of voter-approved revenue measures, combined with non-tax revenue enhancement strategies, will comprise the best financial sustainability strategy that is acceptable to the community.

### **ALTERNATIVES TO POTENTIAL REVENUE MEASURES**

Based on staff's projections, the ongoing need to continue the current level of City services for the Pacifica community and maintain the minimum level of reserves for the next ten years of the financial outlook is estimated at \$1.9 million to \$2.3 million per year.

This Financial Outlook projection was prepared to reflect the current level of services and operations. The projection does not take into account challenges that face Pacifica today. These challenges include the City's organizational capacity being severely hampered by limited staffing resources that are significantly leaner than other comparable agencies and compensation levels that are lower than other comparable agencies. Exceptionally lean staffing and compensation levels below median of comparable agencies do not make for a sustainable organizational model.



If voter-approved revenue measures are not approved, whether or not in combination with non-tax revenue enhancements, to close the upcoming gap in revenues compared to projected expenses, the City will be faced with repeating its history of service and personnel reductions. Since the City is already very lean, such reductions will likely require very noticeable structural service-level changes.

### **NEXT STEPS**

At tonight's meeting, the City Manager is seeking the Council's direction on which potential revenue measures should advance to the next phase of feasibility assessment. Once Staff has received that direction, work will continue advancing this matter for discussion with the Council and the community. That process will include the following steps:

1. Further work on assessing the feasibility of placing one or more revenue measures on the November 2022 ballot.
2. Retaining a firm to work with the City on educational outreach and public engagement on the potential revenue measure.
3. Returning to the City Council for a decision on moving ahead with a revenue measure - most likely in April.
4. If the Council moves ahead with a revenue measure, developing the proposed ordinance(s) and ballot measures on a timeline to meet County ballot requirements - likely in May or June.

### **ALTERNATIVE ACTION:**

The City Council may decide to direct Staff to take alternative actions to address the projected City budget deficit starting in the 2023-24 fiscal year. These may include:

1. One or more of the alternatives and options described earlier in the **Alternatives to Potential Revenue Measures** section of this report.
2. The City Council may want to pursue additional revenue options to address needs beyond the current level of services described in the **Restoring City Services, Enhancing City Services & Capital Project Needs** section of the report.

### **RELATION TO CITY COUNCIL GOALS AND WORK PLAN:**

This item advances the Vision 2025 & Beyond program and furthers the City Council's Strategic Goals and the City's efforts towards **Fiscal Sustainability**.

### **FISCAL IMPACT:**

Funding to continue work on the Vision 2025 & Beyond project is included in the 2021-22 budget. As Staff works to further develop the potential revenue measure for the November 2022 ballot, including retaining a firm to assist with education, outreach, and polling, we will assess whether there is a need for additional funding for this work at that time.

### **ORIGINATED BY:**

City Manager's Office

### **ATTACHMENT LIST:**

Attachment A - Long Term Fiscal Outlook (PDF)

City of Pacifica  
Long Term Financial Forecast Table and Assumptions  
General Fund

Attachment A

REVENUE	2021-2022 Adopted Budget	2022-2023 Projected	2023-2024 Projected	2024-2025 Projected	2025-2026 Projected	2026-2027 Projected	2027-2028 Projected	2028-2029 Projected	2029-2030 Projected	2030-2031 Projected	2031-2032 Projected
Property Tax	\$ 13,968,964	\$ 14,527,723	\$ 15,108,831	\$ 15,713,185	\$ 16,341,712	\$ 16,995,381	\$ 17,675,196	\$ 18,382,204	\$ 19,117,492	\$ 19,882,191	\$ 20,677,479
Sales Tax	2,559,413	2,610,601	2,688,919	2,769,587	2,852,674	2,938,255	3,026,402	3,117,194	3,210,710	3,307,032	3,406,243
Transient Occupancy Tax	1,750,423	1,767,927	1,812,125	1,857,429	1,903,864	1,951,461	2,000,247	2,050,254	2,101,510	2,154,048	2,207,899
Other Taxes	5,439,306	7,595,259	8,235,736	8,441,629	8,652,670	8,868,987	9,090,711	9,317,979	9,550,928	9,789,702	10,034,444
Department/Program Revenues	10,540,342	10,751,149	10,966,172	11,185,495	11,409,205	11,637,389	11,870,137	12,107,540	12,349,691	12,596,684	12,848,618
Transfer In-Other	2,150,898	2,151,000	2,151,000	2,151,000	2,151,000	2,151,000	2,151,000	2,151,000	2,151,000	2,151,000	2,151,000
Excess ERAF	88,000	88,000	88,000	88,000	88,000	88,000	88,000	88,000	88,000	88,000	88,000
Grants	133,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000
ARPA	4,205,718	5,015,305									
Total Annual Revenue	\$ 40,836,064	\$ 44,606,964	\$ 41,150,784	\$ 42,306,324	\$ 43,499,126	\$ 44,730,472	\$ 46,001,694	\$ 47,314,170	\$ 48,669,331	\$ 50,068,657	\$ 51,513,683
EXPENDITURES	2020-2021 Adopted Budget	2022-2023 Projected	2023-2024 Projected	2024-2025 Projected	2025-2026 Projected	2026-2027 Projected	2027-2028 Projected	2028-2029 Projected	2029-2030 Projected	2030-2031 Projected	2031-2032 Projected
Salaries And Benefits	\$ 27,055,654	\$ 28,163,609	\$ 29,097,230	\$ 30,166,374	\$ 31,292,731	\$ 32,480,239	\$ 33,733,140	\$ 35,055,999	\$ 36,453,732	\$ 37,931,631	\$ 39,495,399
Material/Supplies/Maintenance	4,388,613	4,445,165	4,499,230	4,555,470	4,612,414	4,670,069	4,728,445	4,787,550	4,847,395	4,907,987	4,969,337
Contract Services	5,992,909	6,147,052	6,289,228	6,446,459	6,607,620	6,772,811	6,942,131	7,115,684	7,293,576	7,475,916	7,662,814
Debt Service	1,959,943	1,986,495	2,030,598	2,043,411	2,085,239	2,089,121	2,146,907	2,172,307	2,016,734	997,798	988,373
Op. Transfers Out	139,727	140,000	140,000	140,000	140,000	140,000	140,000	140,000	140,000	140,000	140,000
Total Annual Operating Expenditures	\$ 39,536,846	\$ 40,882,321	\$ 42,056,286	\$ 43,351,714	\$ 44,738,003	\$ 46,152,240	\$ 47,690,623	\$ 49,271,541	\$ 50,751,437	\$ 51,453,332	\$ 53,255,922
Capital Transfers	\$ 3,000,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total General Fund Expenditures	\$ 42,536,846	\$ 40,882,321	\$ 42,056,286	\$ 43,351,714	\$ 44,738,003	\$ 46,152,240	\$ 47,690,623	\$ 49,271,541	\$ 50,751,437	\$ 51,453,332	\$ 53,255,922
GF Structural Surplus/Deficit	(1,700,782)	3,724,643	(905,502)	(1,045,390)	(1,238,878)	(1,421,768)	(1,688,929)	(1,957,370)	(2,082,106)	(1,384,675)	(1,742,239)
Projected Ending Fund Balance	\$ 14,800,591	\$ 18,525,234	\$ 17,619,731	\$ 16,574,342	\$ 15,335,464	\$ 13,913,696	\$ 12,224,767	\$ 10,267,397	\$ 8,185,291	\$ 6,800,616	\$ 5,058,377
Non-Spendable and Assigned	\$ 9,111,980	\$ 9,081,832	\$ 9,199,229	\$ 9,328,771	\$ 9,467,400	\$ 9,608,824	\$ 9,762,662	\$ 9,920,754	\$ 10,068,744	\$ 10,138,933	\$ 10,319,192
Unassigned Fund Balance	\$ 5,688,612	\$ 9,443,402	\$ 8,420,503	\$ 7,245,570	\$ 5,868,064	\$ 4,304,873	\$ 2,462,105	\$ 346,643	\$ (1,883,453)	\$ (3,338,317)	\$ (5,260,816)
Unassigned balance as % of Op. Exp.	14.4%	23.1%	20.0%	16.7%	13.1%	9.3%	5.2%	0.7%	-3.7%	-6.5%	-9.9%
Total Available Reserves (Unassigned + 10% Policy Designation)	9,942,296	13,531,634	12,626,131	11,580,742	10,341,864	8,920,096	7,231,167	5,273,797	3,191,691	1,807,016	64,777
Available balance as % of Op. Exp	25.1%	33.1%	30.0%	26.7%	23.1%	19.3%	15.2%	10.7%	6.3%	3.5%	0.1%

Attachment: Attachment A - Long Term Fiscal Outlook (4870 : Vision 2025 & Beyond - Fiscal

## LONG TERM FINANCIAL FORECAST ASSUMPTIONS

The long-term financial model features a set of assumptions for both revenues and expenditures based on conservative projections. The scenario presented represents conservative levels of revenue based on information available now. These projections are preliminary, and staff will further refine the figures presented in this report once new financial information becomes available and FY 2021-22 Mid-Year Budget Review work is done in the next couple of months.

### Revenue Assumptions

1. **Property Tax** assumes a 4% annual increase, which is in line with the past years' collections and consistent with the anticipated increases in the assessed market value of recently sold properties.
2. **Sales Tax** assumes a 2% increase for FY2022-23 based on recent projections by HdL projections (City's Sales Tax advisor) and a 3% in the following years considering local economic recovery from the pandemic and continuing growth in online sales.
3. **Transient Occupancy Tax** assumes a modest 1% increase for the next fiscal year and a 2% increase after that, assuming a gradual return to pre-pandemic travel.
4. **Other Taxes** include Business License and Utility Users Taxes (UUT), cannabis operations tax, and Vehicle License Fees (VLF). Cannabis Tax includes additional revenues of \$0.8M in the upcoming year, based on projected receipts from two additional marijuana businesses. Staff assumed a 2% increase in this category per year and also included the \$2.1M in VLF reimbursement from the State expected in FY 2022-23 and another \$2.6M in the following year.
5. **Departmental or Program revenues** include building, planning and other permits, recreation revenues, and rentals. This category is projected to increase by 2% based on the current service activity level that is anticipated to continue.
6. No changes were assumed for the General Fund portion of **Excess ERAF**, which will continue funding the Disaster Fund as per previously approved Council policy, leaving only \$88K in General Fund to provide local non-profit grants, nor any new ongoing **Grants** are anticipated. The **Operating Transfer In/Out** category also remains the same. However, this figure is likely to change once the new Cost Allocation Plan is complete.

### Expenditures Assumptions

1. **Salaries and Benefits (S&B)** projections include the same full-time equivalent count citywide and assume an ongoing 2% annual increase in the employee compensation in the future years, consistent with the current Memoranda Of Understanding (MOU) terms and provisions. Other S&B assumptions include the following:
  - a. FY 2022-23 includes an additional increase (\$185K above the Revised FY21-22 Budget level) due to implementing the new MOU agreements.
  - b. FY 2022-23 assumptions restores the amended FY 2021-22 Budget cuts (including \$279K cost-savings resulting from the budgeted delay in filling vacancies) to make the FY2021-22 impacts of new MOU provisions cost-neutral.

- c. The Projections also include an anticipated increase in the City's contribution towards the unfunded liabilities of \$0.6M for FY2022-23 and \$0.4M in FY2023-24 as per CALPERS Actuarial Reports.
  - d. The FY2023-24 projections remove all Limited-Term positions, including those funded by ARPA.
  - e. The FY2023-24 Projections eliminate the one-time 1% Bonus pay funded by ARPA that part of the new labor agreements that went into effect in FY2021-22.
- 2. **Materials, Supplies, and Maintenance Category** assumes a very modest 1.25% increase that partially accounts for inflation.
  - a. FY 2022-23 assumptions restore the amended FY 2021-22 Budget reductions, including \$136K operational cost-savings measures implemented by departments this year to make the FY2021-22 impacts of new MOU provisions cost-neutral.
  - b. FY 2022-23 Projections include reductions related to one-time COVID prevention and sanitation uses of \$120K funded by ARPA
- 3. **Contractual Services Category** assumes a 2.5% annual increase applied to most City contracts to account for regular CPI increases and inflation.
  - a. FY 2022-23 assumptions restore the amended FY 2021-22 Budget reductions, including \$173K in departments' operational cost-savings measures to make the FY2021-22 impacts of new MOU provisions cost-neutral.
  - b. FY 2022-23 Projections are reduced by \$460K related to Economic recovery, homelessness, and other one-time uses funded by ARPA
- 4. **Debt Service Expense Category** is projected in accordance with the City's updated debt service schedule.
- 7. **Operating Transfers Category** remains the same for the future years. However, this figure is likely to change once the new Cost Allocation Plan is complete. In addition, this category will be further refined during the budget development process when some changes to the FY 2022-23 internal service cost become available (e.g., insurance premiums, etc.)
- 5. **Capital Transfers Category.** The Financial Outlook does not assume any ongoing General Fund contribution towards the Capital Improvement Program (CIP). However, some General Fund contribution for CIP is likely to be required every year based on the Council's strategic priorities and discretion.