

CITY COUNCIL REGULAR MEETING

JOINT SAND CITY COUNCIL AND SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY

TUESDAY, NOVEMBER 5, 2024

5:30 PM

AGENDA
JOINT SAND CITY COUNCIL AND SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY

City Council Regular Meeting - Tuesday, November 5, 2024
5:30 PM

THIS MEETING WILL BE HELD VIRTUALLY AND IN PERSON, IS COMPLIANT WITH ASSEMBLY BILL ("AB") 2449, SIGNED INTO LAW ON SEPTEMBER 13, 2022, WHICH AMENDS GOVERNMENT CODE SECTION 54953 TO PROVIDE AUTHORITY FOR PUBLIC AGENCIES TO CONTINUE TO HOLD VIRTUAL MEETINGS AND REMAIN IN COMPLIANCE WITH THE BROWN ACT (GOV. CODE §§ 54950 ET SEQ.).
TO PARTICIPATE IN THE ZOOM COUNCIL WEBINAR LIVE:

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Webinar ID: 883 4910 0938

To participate telephonically by calling the number below:
(669) 900-6833

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If prompted to enter a participant ID, press #

TO PARTICIPATE IN PERSON:
City Hall Council Chamber
1 Pendergrass Way
Sand City, CA

How to submit written Public Comments:
If any member of the public would like to provide written comments at the meeting, please do as set forth below.

Written: All comments received before 8:00 am the day of the meeting will be posted on the City's website as "Correspondence" under the relevant agenda item and provided to the City Council members at the meeting. Please email your comments to: cityclerk@sandcityca.org.

Read Aloud During the Meeting: Email your comments to cityclerk@sandcityca.org. When the Mayor opens the public comment period for the relevant agenda item; please indicate the agenda item and title in your email subject line. If you want your comment read aloud, prominently write "Read Aloud at Meeting" at the top of the email and your comments will be read into the record (not to exceed three minutes at staff's cadence).

DURING EACH MEETING, members of the public may participate by calling and speaking live during the designated time(s), subject to time limits that may be imposed pursuant to the Brown Act at the number provided above. Please use the "raise your hand" option on Zoom, and the City Clerk will call on your name.

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1. ROLL CALL

2. PLEDGE OF ALLEGIANCE

3. ANNOUNCEMENT BY MAYOR, CITY ATTORNEY, AND CITY MANAGER

4. COMMUNICATIONS

Members of the public may address the City Council/Successor Agency on matters not appearing on the City Council/Successor Agency Agenda at this time for up to three minutes. In order that the City Clerk may later identify the speaker in the minutes of the meeting, it is helpful if speakers state their names. Public comments regarding items on the scheduled agenda will be heard at the time the item is being considered by the City Council/Successor Agency. The City Council Chambers podium is equipped with a portable microphone for anyone unable to come to the podium. If you need assistance, please advise the City Clerk as to which item you would like to comment on and the microphone will be brought to you.

5. CONSENT CALENDAR

The Consent Agenda consists of routine items for which City Council approval can be taken with a single motion and vote. A Council member may request that any item be placed on the Regular Agenda for separate consideration.

5A. Approve the City Council Regular Meeting Minutes for April 4, 2023, April 18, 2023, October 1, 2024, and the Special Meeting Minutes for October 22, 2024
Draft Minutes

5B. Hold Second Reading and Adopt an Ordinance Adding Chapter 18.102, “Commercial Cannabis Uses”, Adding Section 18.19.030.B. to Chapter 18.19 “Conditional Uses”, and Deleting Section 18.69.010, “Medical Marijuana Dispensaries, Delivery, Cultivation, and Sales” in its Entirety, and Amending Section 18.82.030 “Penalties”, of Title 18, “Zoning”, of the Sand City Municipal Code
Staff Report
Ordinance

5C. Annual Military Equipment and Use Update Report
Staff Report
Ordinance SC 23-03
Policy, SCPD Policy 706
Policy, SCPD Policy 706, SCPD Equip Owned Oper

5D. Approve a Resolution Approving the Carry Forward Professional Service Agreement with EMC Planning Group, Inc for Fiscal Year 2024-2025 for Website Design at a Cost not to Exceed $85,000 Through June 30, 2025

Staff Report
Professional Services Agreement
Exhibit A Additional Scope of Services
Exhbit B - Fee Schedule

5E. Acceptance of City/Successor Agency Financial Reports from August 2024
Staff Report
Month End Cash Register Activity Report
Month End Cash Disbursement Report
Successor Agency Trial Balance Report

5F. Acceptance of City/Successor Agency Financial Reports from September 2024
Staff Report
Month End Cash Register Activity Report
Month End Cash Disbursement Report
Successor Agency Trial Balance Report

6. CONSIDERATION OF ITEMS PULLED FROM CONSENT CALENDAR

7. PRESENTATION

7A. South of Tioga Hotel Project Update: Tom Jacobson, EKN Development

8. PUBLIC HEARING

9. NEW BUSINESS

9A. Approve a Resolution Approving a Professional Service Agreement with TL Engineering in the Amount of $18,347 to Perform an Engineering and Traffic Survey (E&TS) Analysis Related Services for the City of Sand City
Staff Report
Resolution
Professional Services Agreement

9B. Approve a Resolution Approving a Lease Agreement with Moore Twining Associates, Inc. for the Lease of Property Located at 501 Ortiz Avenue and Authorizing the City Manager to Execute the Agreement
Staff Report
Resolution
Draft Lease Agreement

9C. Approve a Resolution Establishing General Procedures and Criteria for the Issuance of Permits for Storefront Retail Commercial Cannabis Business Uses and Authorizing the City Manager to Prepare and Implement Administrative Procedures and Criteria for Review and Issuance of Related Operator Permits
Staff Report
Resolution

9D. Sand City Coastal Trail Draft Conceptual Plans
Staff Report
Exhibits A, B, C, & D

9E. Sand City Multiuse Trail Conceptual Plans
Staff Report
Exhibit A
Exhibit B
Exhibit C

9F. Approve a Resolution to Amend the Professional Service Agreement with EMC Planning Group, Inc for Fiscal Year 2024-2027 (Resolution SC 24-50) to Include the Addition of $180,000 for Each Year of the Agreement to Cover Costs Related to Long-Range Planning and Special Projects Through June 30, 2027
Staff Report
Resolution
Contract Amendment
Exhibit A

9G. Consideration and Approval for the Cancellation of the January 7, 2025 Regular City Council Meeting

10. COMMENTS BY COUNCILMEMBERS ON ITEMS OF INTEREST TO SAND CITY

11. CLOSED SESSION
City Council/Successor Agency Board to adjourn to Closed Session regarding:

11A.
Conference with real property negotiators pursuant to Government Code Section 54956.8 Property: 1715 & 1717 Contra Costa Street, APN's 011-231-020 & 021; City Negotiators: City Manager Vibeke Norgaard, City Attorney Adam Lindgren, Negotiating Parties: Kelly Morgan Trust Negotiation: Price and terms of payment

11B.
Re-adjourn to Open Session to report any action taken at the conclusion of Closed Session in accordance with California Government Code section 54957.1

12. ADJOURNMENT

The current agenda is available in PDF format on our website at:
www.sandcity.org

If you have a request for a disability-related modification or accommodation, including auxiliary aids or services, which will allow you to participate in a Sand City public meeting, please call the City Clerk at (831) 394-3054 extension 220, or give your written request to the City Clerk at 1 Pendergrass Way, Sand City, CA 93955 at least 48 hours prior to the scheduled meeting to allow the City Clerk time to arrange for the requested modification or accommodation.

AGENDA ITEM
5A.

Approve the City Council Regular Meeting Minutes for April 4, 2023, April 18, 2023, October 1, 2024, and the Special Meeting Minutes for October 22, 2024

MINUTES
JOINT SAND CITY COUNCIL AND SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY

Regular Meeting - Tuesday, April 4, 2023 5:30 PM

As allowed by Assembly Bill AB 2449, this meeting was conducted in person and by teleconference.

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

1. ROLL CALL

Present: Mayor Carbone
Vice Mayor Blackwelder
Councilmember Hawthorne
Councilmember Sofer

Staff: City Manager Vibeke Norgaard
Police Chief Brian Ferrante
Interim City Attorney Adam Lindgren
City Clerk Kerry Lindstrom

2. PLEDGE OF ALLEGIANCE

Police Chief Brian Ferrante led the Pledge of Allegiance.

3. INVOCATION

Reverend Hellam made the invocation.

4. ANNOUNCEMENT BY MAYOR, CITY ATTORNEY, AND CITY MANAGER

City Manager Norgaard announced:

- California Avenue will close for 2 weeks due to road work.
- Escrow closed on The Independent and is now owned by DiversyFund real estate investment.
- POA negotiations have concluded and a contract will be brought to Council for approval in early May.
- The City is pursuing many grants. Police Chief Ferrante is working with grant writers for grants to go towards the Police Department to offset costs.
- Advertising for the finance position will go out by the end of next week.
- The we.Mural Festival RFP has been issued with a closing date of May 1, 2023.
- After attending MBASIA meetings have learned the City's insurance premiums will go down.
- The housing element has had a lot of movement forward.
- Sand Dunes Drive is closed again due to the wind carrying sand and covering the road.
- Thank you to Mayor Carbone for all her planning and preparation for the City BBQ.
- MST had a stakeholder meeting regarding the MST SURF! line. Staff attended the meeting and raised concerns from Council regarding parking.
- Regarding Calabrese Park, the playground equipment has been ordered and is on its way. The City will initiate a notice to proceed once received.
- Police Chief Ferrante has announced that he will retire in June 2023.

5. COMMUNICATIONS
No public comment received.

6. CONSENT CALENDAR
Public comment received from Luke Kilpatrick

Upon motion by Councilmember Hawthorne and seconded by Vice Mayor Blackwelder, Council voted to approve the Consent Calendar.

Motion carried 4-0 by the following vote:

AYES: Mayor Carbone, Vice Mayor Blackwelder, Councilmembers Hawthrone and Sofer.
NOES: None.
ABSENT: None.
ABSTAIN: None.

6A. Approved SB511 Support Letter regarding Greenhouse Gas Inventories.

6B. Approved Resolution SC 23-16 authorizing the application for the SB379 California Automated Permit Processing Program (CALAPP).

6C. Approved National Public Works Week Proclamation.

7. CONSIDERATION OF ITEMS PULLED FROM CONSENT CALENDAR
No items were pulled.

8. PUBLIC HEARING

8A. New Councilmember Interviews

City Manager Norgaard informed the Council the candidates will draw straws to determine the order in which they will present to the Council. Any interested candidate will have the option to give a brief 5-10 minute presentation about themselves and answer any questions the Council may have. The Council may discuss each candidate and announce their top two choices. The City Clerk will tabulate the top two preferred candidates.

The candidates drew straws and determined the order in which the candidates would present themselves. The order was as follows: Don Difede, Tom McCullough, Luke Kilpatrick, Marilee Diaz, and Michelle Adams.

Tom Mc Cullough, Luke Kilpatrick, Marilee Diaz, and Michelle Adams presented themselves to the Council and answered various questions from the Council.

Don Difede was not in attendance and did not present to the Council.

Public comment received from Public Speaker and Michelle Djokic.

The Council wrote their vote on sheets of paper for their top two candidates. The

City Attorney announced the ballots are public record.

The City Clerk announced the Council's votes:
Vice Mayor Blackwelder – Luke Kilpatrick and Michelle Adams
Councilmember Hawthorne – Luke Kilpatrick and Tom McCullough
Mayor Carbone – Marilee Diaz and Michelle Adams
Councilmember Sofer – Marilee Diaz and Michelle Adams

The Council came to a consensus to advance the top three candidates, Michelle Adams, Marilee Diaz, and Luke Kilpatrick, to the next City Council meeting on April 18, 2023.

9. NEW BUSINESS

9A. Comments by Councilmembers on Items of Interest to Sand City

Vice Mayor Blackwelder expressed concerns about the dunes disappearing.

9B. Upcoming Meetings/Events

Councilmember Sofer noted recent meetings have been cancelled due to weather.

10. CLOSED SESSION

10A. City Council/Successor Agency Board to Adjourn to Closed Session Regarding Public Employee Performance Evaluation (Government Code §54957) Title: City Manager Performance Evaluation.

10B. Re-adjourn to Open Session to report any action taken at the conclusion of Closed Session in accordance with California Government Code §54957.1

Interim City Attorney Lindgren reported took no reportable action.

11. PRESENTATION

Public comment received from Luke Kilpatrick.

11A. Received the ReState Coastal Conservancy Grant Presentation from Michael Groves and Elizabeth King of EMC Planning Group, Inc.

12. ADJOURNMENT

Council adjourned the meeting at approximately 8:45 PM.

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Kerry Lindstrom, City Clerk

MINUTES
JOINT SAND CITY COUNCIL AND SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY

Regular Meeting - Tuesday, April 18, 2023 5:30 PM
As allowed per Assembly Bill AB2449, this meeting was conducted in person and by teleconference

Mayor Carbone opened the meeting at 5:30PM.

1. ROLL CALL

Present: Mayor Mary Ann Carbone
Councilmember Blackwelder
Councilmember Hawthorne
Councilmember Sofer

Staff: City Manager Vibeke Norgaard
Interim City Attorney Adam Lindgren
City Clerk Kerry Lindstrom
City Planner Zane Mortensen

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Police Chief Brian Ferrante.

3. INVOCATION

The invocation was led by Reverend Robert Hellam.

4. ANNOUNCEMENT BY MAYOR, CITY ATTORNEY, AND CITY MANAGER

Mayor Carbone announced:

- Copies of the Mayor's Report were placed on the table in the Council Chamber for the public.
- There will be a weed pulling party this weekend, April 22-23, 2024
- The MMIW event will take place on May 6, 2023 at the Oldemeyer Center, the topic of discussion will be on AB1314.
- A flyer was made available from the Department of Social Services regarding help for families affected by recent storms.

City Manager Norgaard reported:

- Both the Finance and Police Chief positions were posted.
- Jayson Fann moved into the lot next to the Independent and has a temporary lease with the owners and a CUP from the City and has approached the City for a temporary arrangement to provide music education in the Art Park.
- The RFP for mural curator services has gone out and may extend the deadline by two weeks to give plenty of time for a response.
- South of Tioga - This is the second week of road closures due to new streets being built. EKN will request a building permit after arranging financing.
- Matt Papurello from EMC has been working with Mark Parker to find areas in the City for urban greening development.
- EMC has provided a draft of the Housing Element. Will bring to Council at a future meeting.
- Continuing to work with Finance on the budget for 2023-24.

Interim City Attorney announced:

- Reminded the Council that he will be attending the League of California Cities city attorney conference starting on May 17, 2024.

5. COMMUNICATIONS

Public comment received from Brian Clark.

6. CONSENT CALENDAR

No public comment received.

Upon motion by Vice Mayor Blackwelder and seconded by Councilmember Hawthorne, the Council voted to add an emergency item as Item 6B, to the Consent Calendar.

Motion carried 4-0 by the following vote:

AYES: Mayor Carbone, Vice Mayor Blackwelder, Councilmembers Hawthorne and Sofer.
NOES: None.
ABSENT: None.
ABSTAIN: None.

Upon motion by Vice Mayor Blackwelder and seconded by Councilmember Sofer, the Council approved the Consent Calendar.

Motion carried 4-0 by the following vote:

AYES: Mayor Carbone, Vice Mayor Blackwelder, Councilmembers Hawthorne and Sofer.
NOES: None.
ABSENT: None.
ABSTAIN: None.

6A. Approved Resolution SC 23-17 recognizing National Crime Victims' Rights Week.

6B. Approved Letter of Support to Monterey Peninsula Airport District Regarding Fire Emergency Services.

7. CONSIDERATION OF ITEMS PULLED FROM CONSENT CALENDAR

No items were pulled.

8. PRESENTATION

8A. The City Council received a presentation on the SURF! Busway & Bus Rapid Transit Project presented by Lisa Rheinheimer, Assistant General Manager, Monterey-Salinas Transit.

Public comment received from Brian Clark and Luke Kilpatrick.

9. PUBLIC HEARING

9A. Consideration of Candidates to Fill the Vacant Seat on City Council and Appointment of a City Councilmember to Serve the Remaining Term of Former Councilmember Cruz

Public comment was received from Roy Meadows, Jessica Adam, Brian Clark, and Tom McCullough.

City Manager Norgaard instructed the Council to take turns at the dais announcing their top two choices from the candidates, Michelle Adams, Marilee Diaz, and Luke Kilpatrick.

After the Council each announced their votes, the votes were tabulated by the City Clerk with four votes for Marilee Diaz, three votes for Michelle Adams, and one vote for Luke Kilpatrick.

Mayor Carbone announced Michelle Adams and Marilee Diaz as the top two candidates.

The Council took turns at the dais announcing their top candidate. The votes were tabulated by the City Clerk with three votes for Marilee Diaz and one vote for Michelle Adams.

Marilee Diaz was voted to fill the vacant seat on the City Council and appointed as City Councilmember to serve the remaining term of former Councilmember Cruz.

10. NEW BUSINESS
None.

11. CLOSED SESSION
None.

12. ADJOURNMENT
Council adjourned the meeting at approximately 6:56PM.

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Kerry Lindstrom, City Clerk

MINUTES
JOINT SAND CITY COUNCIL AND SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY

City Council Regular Meeting - Tuesday, October 1, 2024, 5:30 PM
As allowed by Assembly Bill AB 2449, this meeting was conducted in person and by teleconference.

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

1. ROLL CALL

Present: Vice Mayor Blackwelder
Councilmember Diaz
Councilmember Hawthorne
Councilmember Sofer

Absent: Mayor Carbone

Staff: City Manager Vibeke Norgaard
City Attorney Adam Lindgren
City Clerk Kerry Lindstrom

2. PLEDGE OF ALLEGIANCE

Councilmember Diaz led the Pledge of Allegiance.

3. ANNOUNCEMENT BY MAYOR, CITY ATTORNEY, AND CITY MANAGER

City Manager Vibeke Norgaard announced:

- In connection with the 2024 we.Mural Festival, the Art Battle will take place on Friday, October 4, 2024, at 3:00 PM in the courtyard at The Independent.
- The Fire Department responded to a fire at the Lift Station. The fire was in the sewage tank and had filled with gas; local response teams responded quickly.
- The Candidates' Forum will be held at 6:00 PM on Wednesday, October 2, 2024 in the courtyard at The Independent.
- Light bulbs are now in the street lights on Park Avenue.
- The windows are now being installed at the South of Tioga project.

City Attorney Adam Lindgren announced:

- AB98 is being signed by the Governor and the City Attorney's Office will work with the Sand City Planning Department on more significant land use laws that might affect the City or the need to update codes in the near future.
- Looking forward to attending the League of California Cities 2024 Annual Conference along with the City Council and the City Manager.

4. COMMUNICATIONS

Public comment received from Steve Wilson, Luke Kilpatrick, and Taylor Hubler.

5. CONSENT CALENDAR

No public comment received.

Upon motion by Councilmember Hawthorne and seconded by Councilmember Diaz, Council voted 4-0-1, Mayor Carbone absent, to approve the Consent Calendar.

5A. Approved the City Council Regular Meeting Minutes for May 2, 2023, May 16, 2023, and the Special Meeting Minutes and Regular Meeting Minutes for September 17, 2024.

6. CONSIDERATION OF ITEMS PULLED FROM CONSENT CALENDAR

No items were pulled.

7. PUBLIC HEARING

7A. First Reading of an Ordinance Adding Chapter 18.102, "Commercial Cannabis Uses", Adding Section 18.19.030.B. to Chapter 18.19 "Conditional Uses", and Deleting Section 18.69.010, "Medical Marijuana Dispensaries, Delivery, Cultivation, and Sales" in its Entirety, and Amending Section 18.82.020 "Violations Unlawful", of Title 18, "Zoning", of the Sand City Municipal Code

Public comment received from Michelle Adams and Luke Kilpatrick.
Upon motion by Councilmember Hawthorne and seconded by Councilmember Diaz, Council voted 3-1-1, Mayor Carbone absent, Vice Mayor Blackwelder dissenting, waived reading of the ordinance in full and read by title only and held first reading of an ordinance adding Chapter 18.102, “Commercial Cannabis Uses”, adding Section 18.19.030.B. to Chapter 18.19 “Conditional Uses”, and deleting Section 18.69.010, “Medical Marijuana Dispensaries, Delivery, Cultivation, and Sales” in its entirety, and amending Section 18.82.020 “Violations Unlawful”, of Title 18, “Zoning”, of the Sand City Municipal Code.

8. NEW BUSINESS

8A. Approve a Resolution Accepting Public Art and Approving Site Selection for the Craig Hubler Memorial

Public comment received from Taylor Hubler and Steve Vagnini.

Upon motion by Councilmember Sofer and seconded by Councilmember Hawthorne, Council voted 4-0-1, Mayor Carbone absent, to approve Resolution SC 24-63 accepting public art and approving site selection for the Craig Hubler Memorial.

8B. Discussion and Consideration of RFP for Planning and Execution of the Sand City West End Celebration

Public comment received from Steve Vagnini, Luke Kilpatrick, and Steve Wilson.

Upon motion by Councilmember Hawthorne and seconded by Councilmember Diaz, Council voted 4-0-1, Mayor Carbone absent, directing Staff to prepare and issue a Request for Proposal for services for the 2025 West End Celebration.

9. COMMENTS BY COUNCILMEMBERS ON ITEMS OF INTEREST TO SAND CITY

Councilmember Hawthorne announced:

- The 2024 we.Mural Festival is taking place and he had dinner with the artists and stated they are a great group. The murals add positivity to the City and Sand City will be known as the Art City. The Art Battle will take place on Friday, October 4, 2024, at 3:00 PM in the courtyard at The Independent.

Vice Mayor Blackwelder announced:

- Another board he sits on issued a white paper and it would be good to have in the event of turnover and when new people come aboard.

Councilmember Hawthorne announced:

- Councilmembers make decisions for the City and not for personal interest, to help the whole City. That is something to keep in mind when running for City Council.

10. ADJOURNMENT

Council adjourned the meeting at 6:54 PM.

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Kerry Lindstrom, City Clerk

AGENDA
JOINT SAND CITY COUNCIL AND SUCCESSOR AGENCY OF THE REDEVELOPMENT AGENCY

City Council Special Meeting - Tuesday, October 22, 2024 4:30 PM

As allowed by Assembly Bill AB 2449, this meeting was conducted in person and by teleconference.

Mayor Carbone called the meeting to order at 4:34 PM.

1. ROLL CALL

Present: Mayor Carbone
Vice Mayor Blackwelder
Councilmember Diaz
Councilmember Hawthorne
Councilmember Sofer

Staff: City Manager Vibeke Norgaard
City Clerk Kerry Lindstrom

2. COMMUNICATIONS

Public Comment received from Brian Clark

3. REGULAR AGENDA

3A. Review and Approval of Request for Proposals for Event Production and Management of the Sand City West End Celebration

Public comment received from Brian Clark.

Upon motion by Councilmember Hawthorne and Councilmember Diaz, the Council voted 5-0, approving the Request for Proposals for event production and management of the Sand City West End Celebration.

4. ADJOURNMENT

Council adjourned the meeting at 5:11 PM.

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Kerry Lindstrom, City Clerk

AGENDA ITEM
5B.

Hold Second Reading and Adopt an Ordinance Adding Chapter 18.102, "Commercial Cannabis Uses", Adding Section 18.19.030.B. to Chapter 18.19 "Conditional Uses", and Deleting Section 18.69.010, "Medical Marijuana Dispensaries, Delivery, Cultivation, and Sales" in its Entirety, and Amending Section 18.82.030 "Penalties", of Title 18, "Zoning", of the Sand City Municipal Code

City of Sand City

STAFF REPORT

TO: Honorable Mayor and City Council
FROM: Vibeke Norgaard, City Manager
Anthony Amara, City Attorney
Brian Foucht, Contract Planner – EMC Planning Group
SUBJECT: Commercial Cannabis Business Ordinance- Second Reading, Adoption
DATE: November 5, 2024

BACKGROUND:
Commercial and medicinal cannabis businesses are currently prohibited within the City (Municipal Code Section 18.69.010).

In 2021 the City Council directed staff to prepare a draft Commercial Cannabis Ordinance. An initial draft was provided to the City Council in April, 2022. Subsequently, in October 2023, the City was awarded a Cannabis Retail Access Grant of $115,000 from the State of California Department of Cannabis Control (DCC).

Discussion:
1. Ordinance Adoption

The City Council conducted a public hearing, and introduced the ordinance on October 1, 2024. There are no significant modifications to the ordinance resulting from public testimony. City Council members inquired whether retail deliveries, allowed as part of a retail-only license, could be facilitated via telephone or via a retailer's website. Dept of Cannabis Control regulations 4 CCR section 15415.1 will allow remotely requested deliveries, provided that the telephone or internet service provider used to facilitate orders is wholly separate from the licensed retail business marketing and operations.

The proposed ordinance includes City standards for permitting and operation of licensed Commercial Cannabis Business uses and seeks to ensure the public health and safety and, at the same time, streamline the City's process, as follows:

- Defines a Commercial Cannabis Business only as a storefront retail commercial use enabled via a Type 10 License from the State of California Department of Cannabis Control (DCC); i.e. the ordinance does not allow cultivation, processing,

manufacture, wholesale, or warehousing or distribution unrelated to a storefront retail business;

- Includes definitions and requirements that are specific to storefront retail commercial uses;
- Limits retail commercial cannabis businesses to the Regional Commercial (C-4) Zoning District;
- Requires a Conditional Use Permit and Operator Permit issued by the City;
- Requires applicants for Conditional Use Permit and Operator Permit to submit applications to the City that document full compliance with all applicable DCC regulations;
- Requires Retail commercial cannabis uses only within an enclosed building;
- Enables delivery as part of Retail commercial business. Deliveries may be facilitated by a technology platform, the provider of which is wholly independent of the retailer; i.e. not involved with the retailer in any way except to provide the service.
- Enables Local Law Enforcement oversight and inspections of storefronts and vehicles, including implementation of DCC License security requirements;
- Enables denial and revocation by the City Council of Operator Permit and CUP for violation of licensure requirements;
- Enables the City Manager to develop a Commercial Cannabis Retail permit process; and
- References an equity application consultant will provide assistance as needed.

2. The City Manager will use grant funds, following adoption of the ordinance, to:

   a) Establish and administer a local cannabis retailer licensing program as described in its application for grant funds; and
   b) Enter into a contract with a qualified Equity Applicant Consultant for a not-to-exceed amount of $15,000.00.

CEQA:
The proposed amendments are Exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Guideline Section 15061 (b) (3) due to a) operation of the ordinance, as required therein, in compliance with City of Sand City State of California Laws, Regulations and Guidelines; b) regulation of specific uses allowed by this ordinance; and c) the required operation of this ordinance to render potential environmental as de-minimis, with certainty that no environmental effects will result from operation of the ordinance.

RECOMMENDATION:
Staff recommends that the City Council:

1. Motion for adoption of the ordinance

ATTACHMENTS:

1. Commercial Cannabis Business Ordinance

CITY OF SAND CITY
ORDINANCE NO SC 24-___, 2024

ORDINANCE OF THE CITY COUNCIL OF SAND CITY, STATE OF CALIFORNIA, ADDING CHAPTER 18.102, "COMMERCIAL CANNABIS USES", ADDING SECTION 18.19.030.B. TO CHAPTER 18.19 "CONDITIONAL USES", AND DELETING SECTION 18.69.010, "MEDICAL MARIJUANA DISPENSARIES, DELIVERY, CULTIVATION, AND SALES" IN ITS ENTIRETY, AND AMENDING SECTION 18.82.030 "PENALTIES", OF TITLE 18, "ZONING", OF THE SAND CITY MUNICIPAL CODE

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5 et seq., and entitled the Compassionate Use Act of 1996 ("CUA"), which intended to enable seriously ill Californians to legally possess, use, and cultivate cannabis for medical use under limited, specified circumstances; and

WHEREAS, in 2004, the California legislature enacted Senate Bill 420, the Medicinal Marijuana Program (the "MMP"), which, as codified in California Health and Safety Code Section 11362.7 et seq., was intended to clarify the CUA's scope and immunize from criminal prosecution, under specified state laws, certain activities and conduct related to the provision of medicinal cannabis to qualified patients; and

WHEREAS, on November 8, 2016, the voters of the State of California approved Proposition 64, entitled the "Control, Regulate and Tax Adult Use of Marijuana Act," which legalizes and regulates adult-use cannabis in California; and

WHEREAS, the State has established an integrated licensing and regulatory system for both medicinal and adult use cannabis businesses consistent with Propositions 215 and 64 entitled the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), codified in Business and Professions Code section 26000 et seq.; and

WHEREAS, Business and Professions Code section 26200 expressly recognizes the ability of cities to completely prohibit all medicinal and adult-use cannabis businesses or to allow and regulate such businesses; and

WHEREAS, the City has an existing citywide prohibition against all types of medicinal and commercial cannabis facilities and activity, codified in Section 18.69.010 of the Sand City Municipal Code, which the City now wishes to repeal; and

WHEREAS, the City applied for a Retail Access Grant (the "Grant") from the State of California Department of Cannabis Control which was awarded to the City in the amount of $115,000.00, to be expended prior to June 30, 2026; and to which this Ordinance is subject to the terms and conditions of; and

WHEREAS, a key requirement of the Grant will mandate the City provide opportunities and assistance to "Equity Applicants", which are generally described as those who were disadvantaged by the prior criminalization of cannabis; and

WHEREAS, upon information and belief, the City Council finds that allowing a limited number of commercial cannabis businesses in the City, subject to regulation, will benefit the local economy by providing jobs and opportunities to residents and Equity Applicants alike, while also providing other tangible community benefits, to be memorialized in a Community Benefit Agreement with approved commercial cannabis operators; and

WHEREAS, in order to protect the public health, safety, and welfare, the City desires to permit, commercial cannabis activity in the City subject to regulation as set forth in this ordinance; and

THE CITY COUNCIL OF THE CITY OF SAND CITY HEREBY ORDAINS AS FOLLOWS:

SECTION 1: Chapter 18.102 is hereby added to Title 18 of the Sand City Municipal Code to read in its entirety as follows:

18.102.010 - Purpose.

18.102.020 - Definitions.

18.102.030 – Permitted Cannabis Businesses.

18.102.040 – Requirements to Operate a Cannabis Business in the City.

18.102.050 - Location and Minimum Proximity Requirements.

18.102.060 - Application Procedures.

18.102.070 - Taxes.

18.102.080 – Appeals, Costs Of Enforcement, Liability and Indemnification.

18.102.010 - Purpose.

(a) The purpose of this section is to identify and establish standards for commercial cannabis uses that are conditionally permitted in certain Zoning Districts, but which have the potential to create significant effects on the community and surrounding properties. Furthermore, it is the purpose and intent of this section to:

(1) Incorporate by reference applicable Medicinal and Adult Use Commercial Cannabis Regulations for “M” and “A”, Type 10 licenses, respectively, in effect on the date that this section becomes effective, and as may be amended from time to time;

(2) Limit Commercial Cannabis Uses within the City of Sand City solely to storefront commercial retail uses for both “M” and “A” licenses, as defined in Business and Professions Code 26001(a), (ai);

(3) Establish standards for the issuance of permits for retail commercial storefront cannabis uses by specifying the Zoning Districts wherein such uses may be located and the location of such uses in relation to other uses within the City of Sand City;

(4) Assist law enforcement agencies in performing their duties effectively and in accordance with California law.

(5) Acknowledge that, notwithstanding the enactment in California of the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), the authority under which the provisions of this Chapter are incorporated within the Municipal Code, all forms of cannabis cultivation, processing, manufacture, distribution, sale and use of cannabis is illegal under federal law, and the provisions of this Chapter grant limited immunity from local prosecution to those medical and nonmedical cannabis activities that do not violate the restrictions and limitations set forth in this Chapter and relevant California law.

(6) Ensure that cannabis sold for medical and nonmedical purposes remains secure and does not find its way to minors or illicit markets.

(7) This Section shall not apply to legal medical cannabis or recreational cannabis activities carried out exclusively for one's personal use that does not involve or commercial activity otherwise regulated by this section.

18.102.020 - Definitions.

(a) "Cannabis" means that plant and all derivatives as defined in Business and Professions Code section 26001(f) and California Health and Safety Code section 11018 as both may be amended from time to time. Any reference to cannabis or cannabis products shall include medicinal and nonmedicinal cannabis and medical and nonmedical cannabis products unless otherwise specified. .

(b) "Cannabis Delivery" means the commercial transfer of cannabis or cannabis products to a customer pursuant to MAUCRSA or to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, as may be amended.

(c) "Cannabis Commercial Retail Business" or "Retailer" means a use requiring solely a Type 10 License wherein cannabis is offered for retail sale solely within a fully enclosed building. Such uses may include delivery, defined in Business and Professions Code 26001(r), and in accordance with applicable provisions of Department of Cannabis Control Regulations Section 15311, as may be amended, and in accordance with state and local laws and regulations.

(d) "Cannabis license" means a "A" or "M" license issued by the State of California Department of Cannabis Control issued pursuant to MAUCRSA and in accordance with Department of Cannabis Control Regulations Section Chapter 3, Section 15400 et seq.

(e) "Cannabis licensee" means a person issued a state license under MAUCRSA to engage in retail commercial cannabis sales and related activities.

(f) "Cannabis products" means cannabis offered for retail sale by a Type 10 licensee in accordance with provisions of this Chapter.

(g) “Child care center” shall have the same meaning as “day care center” in Health and Safety Code section 1596.76, as may be amended from time to time: means any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school age child care centers.

(h) “Commercial cannabis uses” means only storefront retail commercial cannabis activities pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”), Business and Professions Code 26000 et seq, including retail, sale of cannabis or cannabis products.

(i) “City Manager” means the City Manager or her/his designee.

(j) “Medical cannabis” or “medicinal cannabis” means cannabis that is used for medicinal cannabis purposes in accordance with the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”).

(k) “Person” means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, tribe, or any other group or combination acting as a unit and includes the plural as well as the singular number.

(l) “Premise(s)” means a leased or owned space within a fully enclosed building where the commercial retail cannabis use or activity is or will be conducted.

(m) “Primary caregiver” shall have the same meaning as set forth in Health and Safety Code section 11362.7, as the same may be amended from time to time.

(n) “Public place” means any publicly owned property or property on which a public entity has a right of way or easement.

(o) “Operator” means the natural person or designated officer responsible for the operation of a retail commercial cannabis use.

(p) “Retailer” means any premises that is a physical location within an enclosed building from which retail commercial cannabis activities are conducted facility, under a state cannabis license Type 10, or a state cannabis license type subsequently established equivalent to a Type 10.

(q) “Final Authority” means the individual or official City body (the City Manager, Director, Council, Commission, or Board) and others as identified in the Sand City Municipal Code as having the responsibility and authority to approve or deny land use permit applications.

(r) “Sale,” “sell,” and “to sell” shall have the same meaning as set forth in Business and Professions Code section 26001(ay) as the same may be amended from time to time: include any transaction whereby, for any consideration, title to cannabis or cannabis products is transferred from one person to another, and includes the delivery of cannabis or cannabis products pursuant to an order placed for the purchase of the same and soliciting or receiving an order for the same, but does not include the return of cannabis or cannabis products by a licensee to the licensee from whom the cannabis or cannabis product was purchased. .

(s) “School” means any public or private school providing instruction to students in kindergarten or any grades 1 through 12.

(t) “Youth center” shall have the same meaning as in Section 11353.1 of the Health and Safety Code, as may be amended from time to time: any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.

18.102.030 – Permitted Cannabis Businesses.

(a) Cannabis Retail Commercial Businesses Permitted Within the City. A maximum of two, (2) Type 10 Cannabis storefront retail businesses may operate within the City subject to the restrictions of this Chapter.

(b) Cannabis Delivery Operations Based Outside the City Permitted. Licensed cannabis delivery operations based outside of the City may deliver cannabis and cannabis products to customers and qualified patients and their caregivers within the City.

18.102.040 – Requirements to Operate a Cannabis Business in the City.

(a) Any cannabis business allowed in the City shall obtain all of the following:

(1) A City business license.

(2) A Cannabis Storefront Commercial Retail Operating Permit on a form specified by the City Manager.

(3) A Conditional Use Permit pursuant to the procedure in Chapter 18.74 of this Code. Any Conditional Use Permit relating to the location of a retail storefront commercial cannabis business may be approved based on all of the following findings:

a. The proposed use is consistent with the General Plan and any applicable specific plan.

b. The design, location, size, and operating characteristics of the proposed activity would be compatible with the existing and future land uses in the vicinity.

c. The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints.

d. The proposed project has been reviewed in compliance with the California Environmental Quality Act.

e. Conditions of approval require that the continuation of the retail storefront commercial cannabis use requires verification of annual license renewal by the Department of Cannabis Control within 30 days following approval of the renewal.

f. Conditions of Approval require the execution of a Community Benefit Agreement prior to issuance of a Business License for operation of a Retail Commercial cannabis business.

18.102.050 - Location and Minimum Proximity Requirements.

(a) All storefront retail commercial cannabis uses operating within the City shall be located in the Regional Commercial (C-4) Zoning District.

(b) Additionally, the following location and proximity requirements shall apply:

(1) No commercial cannabis use shall be located within six hundred feet (600') of a school, child care center, or youth center, as measured from the nearest property lines.

(2) No commercial cannabis use shall be located within two hundred feet (200') of a park or library, as measured from the nearest property lines.

(c) The proximity requirements above may be waived by the City Council when the applicant can show that an actual impassible physical separation exists between land uses or parcels, such as a building, sound wall, major street or highway, such that no negative off-site impacts could occur that would result in harm or likely harm to the public health, safety, or welfare or the health, safety, or welfare of nearby resident or tenant, unless otherwise prohibited under state law.

18.102.060 - Application Procedures.

(a) Application Submittal, Review and Approval Procedures.

(1) Solicitation of Applications. The City Manager will issue a notice soliciting applications to operate a storefront retail commercial cannabis business pursuant to this Chapter. Such notice will specify when the City will begin accepting applications and the deadline for receipt of applications.

(2) Applications shall include a detailed description of proposed "A" and "M" Type 10 License operations sufficient to demonstrate compliance with and corresponding to relevant MAUCRSA provisions and Department of Cannabis Control Medicinal Adult Use Commercial Cannabis Regulations generally and, in particular, Chapters 1 "All Licenses" and Chapter 3 "Retailers" (Sections 15000 and 15400 et seq., respectively), as they may be amended. Descriptions shall reference and address each of the applicable sections contained within these Chapters.

(3) Selection Process. The method for selecting the applicants that will be eligible to receive operator permits shall be set by resolution of the City Council. The City Manager shall be authorized to prepare any other necessary forms and adopt any necessary rules to implement the procedure guidelines and review criteria.

(4) Six (6) Month Time Period to Seek Conditional Use Permit. An applicant has six (6) months from the selection of an application by the City Council to obtain a Conditional Use Permit pursuant to Section 18.102.040(a)(3). If an applicant fails to obtain a Conditional Use Permit during that time period, another qualified applicant may be selected and such applicant may be permitted six (6) months from the date of selection by the City Council as an operator to seek a Conditional Use Permit from the City Council.

(5) State Licensing. Applicants who are granted an Operator Permit and Conditional Use Permit must obtain a state cannabis license prior to commencing operations. If an applicant fails to obtain a state cannabis license within six (6) months of being granted an Operator Permit, said operator permit shall expire and the City may select another qualified applicant in accordance with the method outlined per the City Council resolution and such applicant will be permitted to seek a Conditional Use Permit from the City Council.

(6) Licensed owners and operators shall, within the required Operator Agreement, acknowledge and agree to enable and facilitate the Chief of Police and other federal, state or local law enforcement entity or regulatory agency entity to inspect any premises and delivery vehicles to ensure compliance with these regulations and to fully cooperate with any official criminal investigation including access to camera footage, documents, premise areas of any building within which commercial retail cannabis is conducted.

(b) Grounds for Rejection of Applications/Revocation, Modification, or Suspension of Conditional Use Permits and Operator Permits.

(1) The City Manager, or designee, has the authority and discretion to reject any application pursuant to this Chapter for reasons of inconsistency with the requirements of this Chapter.

(2) The City Council may suspend, modify, or revoke a Conditional Use Permit or Operator Permit based on, but not limited to the following findings:

a. Entitlements for establishment of a Commercial Retail Cannabis Business are based on false or misleading statements to the City made by an applicant, partner, or investor.

b. Any owner, operator, investor, partner, or agent has been convicted of a felony, crime of moral turpitude, has been found by any State or local jurisdiction to have violated the provisions of MAUCRSA, or once formally notified by the City Manager or designee of such convictions or violations by an employee, an owner or operator maintains the ongoing permanent or temporary employment by such persons.

c. Any owner, operator, investor, partner, or agent has had a cannabis-related license or approval revoked from another jurisdiction within the previous year.

d. Failure to comply with any provisions of this article, the Zoning Code, state law, or any other applicable laws or regulations.

e. Unpaid fees, fines, taxes, or administrative penalties.

f. Facts or circumstances exist which indicate that the operation does or would very likely constitute a threat to public health, safety and/or welfare.

g. The cannabis business permittee has not been in regular and continuous operation in six (6) months since the date the City Council approved the application or the approved extension of the deadline from the City Manager or his or her designee.

h. The operation as proposed would violate any provision of state or local laws or regulations.

i. The operator fails to implement and maintain a safety and security plan in conformance with applicable Department of Cannabis Control Regulations contained in Chapter 1, Article 5 as they may be amended.

j. The operator willfully fails to comply with Laws and Regulations of the California Department of Justice Office of the Attorney General, Bureau of Firearms, as determined by the Chief of Police.

k. The operator has engaged in unlawful, fraudulent, unfair or deceptive business acts or practices.

l. The applicant's state license for the commercial cannabis operations is suspended or revoked. The City Council may reinstate the operator permit when documentation is received showing that the state license has been reinstated or reissued. It shall be within the City Council's sole discretion whether the City reinstates any permit after suspension or revocation of a state license.

m. State law permitting the use for which the permit was issued is amended or repealed resulting in the prohibition of such use, or the City receives credible information that the Federal government will commence enforcement measures against such businesses and/or local governments that permit such uses.

n. The applicant, owner, operator, partner or investor violates any agreement with the City, including City Business License, Conditional Use Permit, or Community Benefit Agreement.

(c) Any cannabis business that does not have the applicable State license is prohibited within the City.

(d) The City shall not issue any discretionary or ministerial permit, license, or other entitlement, which is sought pursuant to this article, including zoning clearance for a building permit, where the property upon which the use or structure is proposed is in violation of the Sand City Municipal Code, or any other local, state or federal law.

(e) **Operator Qualifications.** All commercial cannabis operators must meet the following minimum qualifications. The City reserves the right to require additional qualifications through the application procedure.

(1) Commercial cannabis business operators must be twenty-one (21) years of age or older.

(2) Commercial cannabis business operators shall be subject to background search by the California Department of Justice and local law enforcement.

(3) No commercial cannabis business owner or operator may have a felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code, and subdivision (c) of Section 1192.7 of the Penal Code. Operators may not have criminal convictions that substantially relate to the qualifications, functions, or duties of the business or profession, including a felony conviction involving fraud, deceit, or embezzlement or a criminal conviction for the sale or provision of illegal controlled substances to a minor.

(4) Commercial cannabis operators must meet the minimum qualifications established by the State for the storefront retail commercial license type.

(f) **Cannabis Operator Application Procedure.**

(1) A person may apply to operate a cannabis business by filing an application with the City Manager on a form provided by the City, and in accordance with Section 18.102.060(a), Resolution of the City Council and this section (f).

(2) The City Manager, or his or her designee, may design application forms and procedures specific to storefront retail license, type M, including online permitting, and require inspections of proposed facilities before approving a commercial cannabis use under this Article.

(3) Operator applications shall be reviewed by City staff or qualified consultants, as designated by the City Manager. Such review may include a scoring or ranking system.

(4) Applications shall include a component on community benefits, the terms of which shall be set out and memorialized in a Community Benefit Agreement. Community benefits may include, but will not be limited to: in-kind donations; sponsorship of select community events; financial support for special community events such as fairs, afterschool programs, youth centers, local schools (whether public or private); school athletic programs; school clubs; community centers, homeless shelters, senior centers and/or senior living facilities, and/or parks and recreation programs or facility improvements.

18.102.070 - Taxes.

(a) Commercial cannabis uses shall comply with any taxes that may be enacted by the City Council or voters and any additional regulations that may be promulgated in addition to all other current applicable state and local taxes.

18.102.080 – Appeals, Costs Of Enforcement, Liability and Indemnification.

a) Any applicant aggrieved by any formal action taken by the City Manager regarding actions or determinations referenced in Section 18.102.060(b) may appeal to the City Council in writing within ten (10) days after the date of such actions. City Council actions on such appeals shall be final.

(1) Appellants who file a timely written Notice of Appeal, on an appeal form created by the City Manager, will be entitled to an administrative hearing before the City Council.

(2) Upon receipt by the City Clerk of a timely-filed Notice of Appeal pertaining to suspensions, revocations, or non-renewals the City Clerk shall forward such appeal to the City Council, who shall schedule a hearing within thirty days (30) days. In the event such hearing cannot be heard within that time period or a mutually agreed upon time with the appellant, then the City Clerk shall schedule the appeal to be heard within forty-five (45) days.

(3) The appellant(s) listed on the written Notice of Appeal shall be notified in writing of the date, time, and location of the hearing at least ten (10) days before the date of the hearing ("notice of appeal hearing").

(4) At the date, time and location set forth in the Notice of Appeal hearing, the City Council shall hear and consider the testimony of the appellant(s), City staff, and/or their witnesses, as well as any documentary evidence properly submitted for consideration. The following rules shall apply at the appeal hearing:

a. Appeal hearings are informal, and formal rules of evidence and discovery do not apply. However, rules of privilege shall be applicable to the extent they are permitted by law, and irrelevant, collateral, undue, and repetitious testimony may be excluded.

b. The City bears the burden of proof to establish the grounds for nonrenewal, suspension, or revocation by a preponderance of evidence. Appellant(s) or Permittee(s) bear the burden of proof regarding denial of an Applicant's/Permittee's application.

c. The issuance of the City Manager's notice constitutes prima facie evidence of grounds for the denial, nonrenewal, suspension or revocation.

d. The City Council may accept and consider late evidence not submitted initially with the Notice of Appeal upon a showing by the appellant of good cause, provided, however, all evidence must be submitted at a minimum twenty-four (24) hours prior to the set hearing start time. The City Council shall determine whether a particular fact or set of facts amount to good cause on a case-by- case basis.

e. The appellant may bring a language interpreter to the hearing at their sole expense.

f. The City may, at its discretion, record the hearing by stenographer or court reporter, audio recording, or video recording. If the appellant requests from the City that a court reporter, stenographer, or videographer be used, appellant shall bear the costs of same and shall deposit such fees prior to commencement of the administrative hearing.

(5) If the appellant, or their legal representative, fails to appear at the appeal hearing, the City Council may cancel the appeal hearing and send a notice thereof to the appellant by certified, first class mail to the address(es) stated on the Notice of Appeal. A cancellation of a hearing due to non-appearance of the appellant shall constitute the appellant's waiver of the right to appeal and a failure to exhaust all administrative remedies. In such instances, the notice of decision is final and binding.

(6) Final Decision. Following the conclusion of the administrative hearing, the City Council shall issue a written decision within twenty (20) days which (i) determines if the action appealed from is affirmed or overturned and (ii) specifies the reasons for the decision.

(7) The written decision of the City Council shall provide that it is final and conclusive and is subject to the time limits and procedures set forth in California Code of Civil Procedure Sections 1094.5 and 1094.6 for judicial review.

(8) A copy of the written decision shall be served by certified, first class mail on the appellant. If the appellant is not the owner of the real property in which the cannabis business is located, or proposed to be located, a copy of the final decision may also be served on the property owner by first class mail to the address shown on the last equalized assessment roll. Failure of a person to receive a properly addressed final decision shall not invalidate any action or proceeding by the City pursuant to this Chapter.

b) In any enforcement action brought pursuant to this Chapter, whether by administrative or judicial proceedings, each person who causes, permits, suffers, or maintains the unlawful cannabis use shall be liable for all costs incurred by the City, including, but not limited to, administrative costs, and any and all costs incurred to undertake, or to cause or compel any responsible person to undertake, any abatement action in compliance with the requirements of this Section. In any action by the agency having jurisdiction to abate unlawful cannabis uses under this Section, whether by administrative or judicial proceedings, the prevailing party shall be entitled to a recovery of the reasonable attorney's fees incurred. Recovery of attorneys' fees under this subdivision shall be limited to those actions or proceedings in which the City elects, at the initiation of that action or proceeding, to seek recovery of its own attorney's fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorney's fees incurred by the City in the action or proceeding.

c) Liability and Indemnification. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this article shall not become a personal liability of any public officer or employee of the City. To the maximum extent permitted by law, the permittees under this article shall defend (with counsel acceptable to the City), indemnify and hold harmless the City of Sand City, the Sand City Council, and its respective officials, officers, employees, representatives, agents and volunteers (hereafter collectively called "City") from any liability, damages, actions, claims, demands, litigation, loss (direct or indirect), causes of action, proceedings, or judgment (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "action") against the City to attack, set aside, void or annul, any cannabis-related approvals and actions and strictly comply with the conditions under which such permit is granted, if any. The City may elect, in its sole discretion, to participate in the defense of said action and the permittee shall reimburse the City for its reasonable legal costs and attorneys' fees. Permittees shall be required to agree to the above obligations in writing.

SECTION 2: Title 18, Chapter 18.82, Section 18.82.030 Penalties, is hereby amended to add the following sections:

(a) Violations.

(1) Any violation of a term, condition, or the approved plans and specifications of any permit issued pursuant to this Title shall constitute a violation.

(2) Each and every day during any portion of which any violation is committed, continued, or allowed to continue shall be a separate offense.

(b) Remedies. In addition to the revocation and suspension provisions in this Article and any available remedies under the law, the following remedies shall be available to the City or other enforcement agency regarding violations of this Article.

(1) Administrative enforcement pursuant to this Municipal Code.

(2) Civil enforcement pursuant to this Municipal Code.

(3) Criminal enforcement as a misdemeanor, if allowed under State law.

(c) City Council may, by Resolution, adopt specific fines, fees, costs, and penalty amounts for violations and enforcement costs related to this article.

SECTION 3: Section 18.69.010 Medical Marijuana Dispensaries, Delivery, Cultivation, and Sales. is deleted in its entirety.

SECTION 4: "Commercial Retail Cannabis Business" is hereby added as item 27. to Division I Zoning Section 18.19.030.B.

SECTION 5: California Environmental Quality Act.

The proposed amendments are Exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Guideline Section 15061 (b) (3) due to a) operation of the ordinance, as required therein, in compliance with City of Sand City State of California Laws, Regulations and Guidelines; b) regulation of specific uses allowed by this ordinance; and c) the required operation of this ordinance to render potential environmental as de-minimis, with certainty that no environmental effects will result from operation of the ordinance.

SECTION 6: Severance.

If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The City Council hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clause, or phrase be declared unconstitutional or invalid.

SECTION 7: Effective Date

This Ordinance shall become effective thirty (30) days following its adoption.

PASSED AND ADOPTED, by the City Council of Sand City, this ____ day of_____, 2024 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

APPROVED:

_____
Mary Ann Carbone, Mayor

ATTEST:
DATED: _____

_____
Kerry Lindstrom, City Clerk

AGENDA ITEM
5C.

Annual Military Equipment and Use Update Report

City of Sand City

STAFF REPORT

TO: Honorable Mayor and City Council
FROM: David Honda, Chief of Police
SUBJECT: Annual Military Equipment and Use Update Report
DATE: November 5, 2024

BACKGROUND/DISCUSSION:
On September 30, 2021, California Assembly Bill 481 (AB 481) known as the *Law Enforcement and state agencies: military equipment, funding, acquisition, and use Act* was signed into law. Subsequently, the California Government Code (GC) §§ 7070, 7071, and 7072 were adopted to codify the requirements set forth in AB 481.

The law required each police agency to draft a policy, obtain approval from the Council by ordinance, and once approved have the policy accessible to the public through the Department website. The policy (SCPD 706) and ordinance (SC 23-03) were adopted by the Council on December 2, 2023. The policy and equipment list are posted on our department website as required by law. (Transparency | Sand City, CA)

The law also requires each law enforcement agency to submit an annual "Equipment and Use Report" within one year of the ordinance adoption, and annually thereafter. The report should include a summary of how the equipment was used and purpose; a summary of complaints or concerns received; any information about violations of equipment uses and actions taken in response; annual ongoing costs; changes in quantity of equipment; if the agency intends to purchase or acquire additional equipment in the upcoming year.

Monterey Peninsula Regional Special Response Unit (MPR SRU or SRU for short)

The Sand City Police Department (SCPD) participates in the Monterey Peninsula Regional Special Response Unit (SRU). The SRU is a specialized team that operates under an MOU between the eight Monterey Peninsula agencies. Each agency provides officers, command staff, and resources to provide a tactical team to address the ongoing needs of the Peninsula as well as assisting other jurisdictions in the region. The

The SRU provides a resource to respond to critical incidents, planned and unplanned high-risk events, and other specialized incidents as needed. The SRU utilizes various pieces of equipment that qualifies as Military Equipment as defined in AB 481. As part of

its responsibility to the SRU, each participating city has acquired or maintains equipment for use by members of the SRU. The listed equipment requires a government agency to purchase and since the SRU is a team of officers from each participating agency, not a government agency, each participating agency shares in purchasing the various equipment the SRU utilizes.

This report only includes items the SCPD ordered on behalf of the SRU and items purchased specific to SCPD patrol duties. Equipment ordered for the SRU by other participating agencies can be found in their individual agency reports. All SRU equipment is paid for by the SRU and not by the purchasing agency.

Summary of usage and purpose

The SCPD did not deploy any military equipment this year during daily patrol duties.

The SRU was deployed for the listed events:

- December 2, 2023, SRU assisted the Pacific Grove Police Department with the execution of a high-risk search warrant at two residences in the City of Seaside related to an attempted murder investigation. Two suspects were taken into custody without incident.
- April 18, 2024, SRU assisted Monterey County Sheriff's Office execute a high-risk search warrant related to the two shootings that resulted in the murder of six victims in King City and surrounding areas. The warrant was executed without incident. Multiple firearms suspected to be utilized in the murders were recovered.
- May 2, 2024, SRU assisted the Salinas Police Department serving thirteen search warrants and eleven federal indictments related to a year-long investigation of criminal gangs. The warrants were executed without incident.
- July 3, 2024, SRU assisted the Monterey and Seaside PD execute a high-risk arrest warrant for an individual who had warrant for felony assault weapons charges. The subject was located hiding under the floor but was arrested without additional incident.
- August 10, 2024, SRU assisted the Monterey PD execute a search warrant for an attempted murder suspect related to a shooting on Wharf #1. The suspect had multiple firearms registered in his name. The subject did not respond to requests to surrender and family members refused to cooperate. A drone was deployed inside the residence but did not locate anyone; however, witnesses stated the suspect was still inside. To avoid a potential violent encounter, liquid CS cannisters (aka "tear gas") were introduced and a physical search of the home ensued. The suspect was eventually apprehended later without further incident.

Summary of complaints or concerns

The City did not receive any complaints or concerns from community members related to the use of military equipment.

Violations and actions taken

There were no violations of equipment use observed or reported.

Annual ongoing costs

Annual membership to participate in the SRU is $5,000.00. All training and equipment purchased by the SRU are approved by a Board of Directors and are funded by either by the membership fees or grants through the Federal Emergency Management Agency's (FEMA) Bay Area Urban Areas Security Initiative (UASI) or the State Homeland Security Grant Program (SHSGP) both managed through the Monterey County Department of Emergency Management (DEM).

Ammunition for training and qualifications for the less lethal patrol shotguns is approximately $650.00 per year for ten officers, there were no purchases made this calendar year; however, we do anticipate needing to purchase less lethal "bean bag" ammunition for training and annual qualifications during this fiscal year.

An order was placed in December 2023 to replace 140 Flash-Bang device inserts that were utilized during SRU training and to maintain the inventory for critical incidents such as a hostage situation. The cost was $2,700.00 paid for by the SRU not the City.

Equipment maintenance and replacement part purchases are not anticipated for this calendar year nor the remainder of the FY 24/25.

Changes in quantity of equipment

The SCPD has not acquired any new equipment for agency use or the SRU.

Anticipated acquisition of equipment for the upcoming calendar year

The SCPD does not anticipate purchasing or acquiring any new equipment in the next calendar year.

CEQA:
This action does not constitute a "project" as defined by the California Environmental Quality Act (CEQA) guidelines section 15378.

FISCAL IMPACT:
Other than the anticipated purchase of less lethal ammunition of approximately $650.00, there are no new financial considerations for the City for existing military equipment since the items were purchased prior to the enactment of AB 481 or already funded by the SRU. The fund expenditures are anticipated in each annual department budget and approved by the Council.

RECOMMENDATION:
1. For report only.

ATTACHMENTS:
1. Ordinance, SC 2303
2. Policy, SCPD Policy 706
3. Policy, SCPD Policy 706, SCPD Equip Owned Oper.pdf

CITY OF SAND CITY
ORDINANCE NO SC 23-03, 2023

ORDINANCE OF THE CITY OF SAND CITY ADDING CHAPTER 13.07 THE LAW ENFORCEMENT MILITARY EQUIPMENT FUNDING, ACQUISITION, AND USE ORDINANCE

WHEREAS, pursuant to the City of Sand City's (the "City") Charter the City is authorized to enact ordinances to protect the health, safety, and welfare of its citizens and to meet the City's obligations under applicable law; and

WHEREAS, Sand City Municipal Code ("SCMC") Chapter 13.07, Military Equipment is established; and

WHEREAS, Assembly Bill 481 (AB 481), Law enforcement and state agencies: military equipment: funding, acquisition, and use act of 2021, required law enforcement agencies to obtain approval of the applicable governing body, by adoption of a military equipment use policy; and

THE CITY COUNCIL OF THE CITY OF SAND CITY HEREBY ORDAINS AS FOLLOWS:

SECTION 1: Chapter 13.07 is hereby added to Title 13, Public Services, of the Sand City Municipal Code to read as follows:

Chapter 13.07 Law enforcement military equipment funding, acquisition, and use ordinance.

13.07.010 Policy. The Police Department shall establish a policy by ordinance that requires approval from the City Council prior to engaging in any of the following:

(A) Requesting military equipment made available pursuant to Section 2576a of Title 10 of the United States Code.

(B) Seeking funds for military equipment, including, but not limited to, applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.

(C) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.

(D) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the territorial jurisdiction of the governing body.

(E) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body pursuant to this chapter.

(F) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of, military equipment.

(G) Acquiring military equipment through any means not provided by this paragraph.

13.07.020. Military Equipment. For purposes of this Chapter 13.07 "military equipment" shall have the meaning provided in California Government code 7070(c)

The policy shall be established, maintained, and amended as needed in accordance with the California Government Code, Title 1, Division 7 - Miscellaneous, Chapter 12.8, §§7071(a)(1)

SECTION 2: Determinations.

Based on the findings above, in addition to information provided to the City Council at the public meeting, the City Council determines as follows:

1. The military equipment identified in the annual military equipment report has complied with the standards for approval as set forth in Government Code section 7071 subdivision (d).

2. The Sand City Police Department's Military Equipment Use Policy is necessary because there are no reasonable alternatives that can achieve the same objectives of officer and civilian safety.

3. The Sand City Police Department's Military Equipment Use Policy will safeguard the public's welfare, safety, civil rights, and civil liberties.

4. The military equipment identified in the Sand City Police Department's Military Equipment Use Policy is reasonably cost effective compared to available alternatives that can achieve the same objectives of officer and civilian safety.

5. Prior military equipment use by the Sand City Police Department complied with the Military Equipment Use Policy although it was not yet in effect at the time, or if prior uses did not comply with the accompanying military equipment use policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance.

6. The Sand City Police Department's Military Equipment Use Policy, Policy 706, setting forth the City's military equipment use policy is approved.

SECTION 3: Severability.
If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The City Council hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clause, or phrase be declared unconstitutional or invalid.

SECTION 4: Effective Date
This Ordinance shall become effective thirty (30) days following its adoption.

SECTION 5: Codification
The City Clerk is hereby authorized and directed to codify the provisions of Section 1 of this Ordinance into the SCMC.

PASSED AND ADOPTED, by the City Council of Sand City, this 5th day of December, 2023 by the following vote:

AYES: Mayor Carbone, Vice Mayor Blackwelder, Councilmembers Diaz, Hawthorne, and Sofer.
NOES: None.
ABSTAIN: None.
ABSENT: None.

APPROVED:

Mary Ann Cabone, Mayor

ATTEST:
DATED: December 7, 2023

Kerry Lindstrom, City Clerk

706 Military Equipment

706.1 PURPOSE AND SCOPE

This policy governs the use of military equipment, as defined in Government Code § 7070, as may be amended. The Sand City Police Department (SCPD) and its members will comply with provisions of Government Code §§ 7071, 7072, and with otherwise applicable department policies, with respect to military equipment.

706.1.1 DEFINITIONS

This policy adopts the following definitions set forth in Government Code § 7070 (c)(1) through § 7070 (e)(16) as may be amended or superseded:

Governing body – The elected or appointed body that oversees the Department.

Military equipment –

1. Unmanned, remotely piloted, powered aerial or ground vehicles.

2. Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers. However, police versions of standard consumer vehicles are specifically excluded from this subdivision.

3. High mobility multipurpose wheeled vehicles (HMMWV), commonly referred to as Humvees, two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.

4. Tracked armored vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion.

5. Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.

6. Weaponized aircraft, vessels, or vehicles of any kind.

7. Battering rams, slugs, and breaching apparatuses that are explosive in nature. However, items designed to remove a lock, such as bolt cutters, or a handheld ram designed to be operated by one person, are specifically excluded from this subdivision.
8. Firearms of.50 caliber or greater. However, standard issue shotguns are specifically excluded from this subdivision.

9. Ammunition of.50 caliber or greater. However, standard issue shotgun ammunition is specifically excluded from this subdivision.

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10. Specialized firearms and ammunition of less than_.50 caliber, including assault weapons as defined in sections § 30510 and § 30515 of the Penal Code, with the exception of standard issue service weapons and ammunition of less than.50 caliber that are issued to officers, agents, or employees of a law enforcement agency or a state agency.

11. Any firearm or firearm accessory that is designed to launch explosive projectiles.

12. "Flashbang" grenades and explosive breaching tools, "tear gas," and "pepper balls," excluding standard, service issued handheld pepper spray.

13. TASER® Shockwave, microwave weapons, water cannons, and the Long-Range Acoustic Device (LRAD).

14. The following projectile launch platforms and their associated munitions: 40mm projectile launchers, "bean bag", rubber bullet, and specialty impact munition (SIM) weapons.

15. Any other equipment as determined by a governing body or a state agency to require additional oversight.

16. Notwithstanding paragraphs (1) through (15), "Military Equipment" does not include general equipment not designated as prohibited or controlled by the Federal Defense Logistics Agency.

706.2 POLICY

It is the policy of the Sand City Police Department that members of this department comply with the provisions of Government Code § 7071 with respect to military equipment. Use of military equipment should safeguard public welfare, safety, civil rights, and civil liberties.

706.3 MILITARY EQUIPMENT COORDINATOR

The Chief of Police designates the Police Commander to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

(a) Acting as liaison to the governing body for matters related to the requirements of this policy.

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(b) Identifying department equipment that qualifies as military equipment in the current possession of the Department, or the equipment the Department intends to acquire that requires approval by the governing body.

(c) Conducting an inventory of all military equipment at least annually.

(d) Collaborating with any allied agency that may use military equipment within the jurisdiction of Sand City Police Department (Government Code § 7071).

(e) Preparing for, scheduling, and coordinating the annual community engagement meeting to include:

1. Publicizing the details of the meeting.
2. Preparing for public questions regarding the department's funding, acquisition, and use of equipment.

(f) Preparing the annual military equipment report for submission to the Chief of Police and ensuring that the report is made available on the department website (Government Code § 7072).

(g) Coordinating the process for a person to register a complaint, concern, or question about the use of a type of military equipment. The Department will respond in a timely manner.

A complaint, concern or question related to Military Equipment utilization by the Sand City Police Department can be made through any of the below listed methods:

Email:	sandcityrecords@sandcitypd.org
By phone:	(831) 394 -1451
By mail:	Sand City Police Department Attn: Military Equipment Use Coordinator 1 Pendergrass Way Sand City, CA 93955
In person:	At the address list above

706.4 APPROVAL

This policy, and any subsequent amendments, will be available on the department website at least 30 days prior to any public hearing concerning the military equipment at issue. This policy will be submitted to the City Council for approval and will remain in

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effect only if it is approved within 180 days of submission. Approval of this policy or any subsequent amendments requires adoption by ordinance at an open session of a regular meeting providing for public comment. The department will cease use of any military equipment if its use, or the policy for its use, is not approved. An approved military equipment use policy is required prior to engaging in any of the following (Government Code § 7071):

(a) Requesting military equipment made available pursuant to 10 USC § 2576a.

(b) Seeking funds for military equipment, including but not limited to applying for a grant, soliciting, or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.

(c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.

(d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this department.

(e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.

(f) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of military equipment.

(g) Acquiring military equipment through any means not provided above.

706.5 COORDINATION WITH OTHER JURISDICTIONS

Military equipment used by other jurisdictions providing aid to SCPD shall comply with their respective military equipment use policies. SCPD is a participating member of the Sand City Peninsula Regional Special Response Unit (MPRSRU) in collaboration with other law enforcement agencies on the Sand City Peninsula. MPRSRU provides capabilities to address specific law enforcement issues, such as active shooter incidents, hostage situations, barricaded subject incidents, etc. SCPD also collaborates and works with the Sand City County Sheriff's Department and other local, state and federal law enforcement agencies that may provide aid to SCPD. Military equipment owned by other jurisdictions that may be used by MPRSRU inside the City of Sand City's jurisdiction is listed in Section Two of the Military Equipment Inventory. SCPD is authorized to use that military equipment in connection with MPRSRU activities/responses.

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706.6 ANNUAL REPORT

Within one year of approval of the military equipment use policy, and annually thereafter, the Chief of Police or the authorized designee will submit a military equipment report for each type of approved military equipment for as long as the military equipment is available for use. The annual military equipment report will be publicly available on the department website for as long as the military equipment is available for use. The report shall include all information required by Government Code § 7072 for the preceding calendar year for each type of military equipment.

706.7 COMMUNITY ENGAGEMENT

Within 30 days of submitting and publicly releasing the annual report, the Department shall hold at least one well-publicized and conveniently located community engagement meeting, at which the public may discuss and ask questions regarding the funding, acquisition, or use of military equipment.

706.8 MILITARY EQUIPMENT INVENTORY

The following constitutes a list of qualifying equipment owned and/or utilized by the Sand City Police Department.

See attachment: SCPD 706, SCPD Equip Owned Oper.pdf

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Attachments

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SCPD 706

SCPD Equip Owned Oper.pdf

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Type	Section 14 - Less lethal shotguns and kinetic energy munitions
Description	Remington 870 patrol shotguns converted to less lethal The shotguns have orange colored stock and foregrip to signify a less-lethal device
Quantity	Three (3)
Capabilities	The less shotgun less lethal platform utilizes kinetic energy munitions (aka “bean bag” or *Super-Sock©)* which are shot filled ballistic fiber, weighing approximately 40 grams, and resembling a small bean bag or sock. The bag travels at a lower velocity than a regular shotgun projectile to reduce any potential penetration and an advertised maximum effective range of 75 feet.
Expected Lifespan	20 + years
Manufacturer’s Description	The Remington Shotgun is milled from a single block of steel. The stock and fore grip are comprised of fiberglass-reinforced polymer with a rubber over-molding. This shotgun is a U.S.-made pump- action shotgun. The magazine tube holds 6 less-lethal rounds.
Purpose and Authorized Use	This platform and munitions are utilized as a less-lethal force option by officers who have successfully completed the required training.
Fiscal Impact	Initial: Unknown, the shotguns have been in SCPD inventory for more than two decades; however, the cost of conversion was approximately $350.00 per shotgun. On-going: approximately $200.00 for ammunition per year for practice and qualification
Legal, Procedural, and Compliance	CA Commission on Peace Officer Standards and Training (POST) Reg: 1005 (Minimum training standards), Reg 1081 (Shotgun) SCPD Policies – 300 (Use of Force), 303 (Control Devices and Techniques), 306 (Firearms)
Training Requirements	The initial training for the shotgun platform: POST Reg 1005 (Minimum training standards),1081 (16 hours for shotgun), 1082 (Minimum Content – Less Lethal Instructors) Less lethal training: POST certified less lethal device course 2- or 4-hour course

Type	Section 10 - Patrol rifle/carbine, semi-automatic
Description	Colt M4/AR15 (11); Ruger SR556 (1); Patrol rifles are fitted with EOTECH holographic sights
Quantity	Twelve (12)
Capabilities	Both platforms fire a .223 cal./5.56 mm rifle ammunition which offer more power, range, and accuracy at longer distance than the issued service handgun.
Expected Lifespan	15+ years
Manufacturer's Description	"The combat proven M4 platform takes a tactical turn with the release of the Colt® Law Enforcement M4 Carbine Semi-Auto Rifle. The 6-position collapsible stock offers custom adjustment from 35.5" down to 32" for increased maneuverability in tight quarters. This fast-aiming, and reliable carbine comes equipped with muzzle compensator and Magpul MBUS folding backup sight ready when you need it. The 16.1" M4 chrome-lined barrel has 1:7 rate-of-twist rifling*." "The RUGER® SR-556® and SR-762™ are gas-operated, piston-driven, box magazine fed, autoloading rifles. It is simple, reliable, and consists of relatively few components. The mechanism employs the Ruger short stroke piston system in conjunction with a rotating bolt. These rifles can be field stripped for cleaning to its basic subassemblies in seconds without the use of tools."
Purpose and Authorized Use	The patrol rifle/carbine enables officers to address short to long distance threats, and/or those threats who are heavily armed, armored, or both. In both short and long-distance deployments, patrol rifles provide officers with a platform that can assist in a more precise shot placement reducing the risk to officers and innocent by-standers.
Fiscal Impact	Initial: Approximately $1,500/rifle at the time of purchase (between 2005 and 2019) Ongoing: approximately $2,000.00 in ammunition cost annually for training and qualification
Legal, Procedural, and Compliance	Penal Code 33220(b) - Authorization and requisite POST training requirements POST Reg: 1005 (Minimum training standards), 1070 (Certified instruction), 1081(Rifle) SCPD Policies: 300 (Use of Force), 306 (Firearms)
Training Requirements	16-hour POST certified patrol rifle course taught by POST certified instructors; annual training and qualification

** Description for specific models owned by SCPD are no longer available on the current Colt website. Description taken from Cabelas.com for Colt LE Carbine.*

Type	Section 1 - Unmanned, remotely piloted, powered aerial vehicle
Description	DJI Mavic Pro, commercially available flying camera
Quantity	One (1)
Capabilities	Max speed – 9 mph; 12-megapixel camera; 4K video, micro-SD card; flight time 27 minutes (no wind at a consistent 15.5 mph); Max hover time 24 minutes (no wind)
Expected Lifespan	10 years
Manufacturer's Description	"The DJI Mavic Pro is DJI's smallest flying camera, featuring a fully stabilized camera, intelligent flight modes and obstacle avoidance inside a revolutionary folding design. It captures 4K videos and 12-megapixel photos and is capable of both *ActiveTrak*^{tm} and *Tapfly*^{tm} making complex shots effortless."
Purpose and Authorized Use	To enhance the safety of potentially dangerous situations by providing first responders with the ability to monitor video feed from vehicle cameras of hazardous areas prior to, or in lieu of, sending in personnel. UAS platforms may be used for search and rescue; suspect apprehension crime scene documentation; tactical operations; scene security; hazard monitoring; identification and mitigation; response to emergency calls; crisis communications; legally authorized surveillance.
Fiscal Impact	Acquired approximately 5 years ago; approximate 2018 cost of $800.00 - $1,000.00 (specific model is no longer available from manufacturer)
Legal, Procedural, and Compliance	SCPD Policy 606 (Unmanned Aerial System [UAS] Operations) Federal Aviation Administration (FAA): 14 CFR part 107 (Small UAS rule) or 49 U.S.C. §40102(a) and § 40125
Training Requirements	Remote Pilot Certification per FAA regulations and related POST certified remote pilot course (32 hours)

Type	Section 14 - Less lethal 40 mm projectile launcher and kinetic energy munitions
Description	Penn Arms 40 mm less lethal multi-shot launcher and less lethal munitions; Combined Tactical Systems (CTS) 4557 40 mm Sponge Foam Baton; projectile is made of closed cell neoprene
Quantity	One (1) launcher. Thirty (30) Sponge Foam Baton munitions.
Capabilities	The 40mm Less Lethal Launcher is capable of firing 40mm Kinetic Energy Munitions (known as sponge projectiles), irritant munitions, and smoke munitions. The Sponge Foam Baton projectile is 60 grams, velocity is 240-260 fps, effective range approximately 50 yards
Expected Lifespan	15+ years; 5-year warranty on munition
Manufacturer's Description	"Penn Arms 40mm multi-shot launchers are manufactured using 4140 hardened steel, 6061-T6 mil-spec anodized aluminum, and DuPont super tough glass-filled nylon. These launchers are lightweight, versatile, and used worldwide by police and corrections officers." "The Model 4557 Sponge Baton is a spin-stabilized projectile delivering blunt trauma effect. Although it is extremely accurate and consistent, accuracy is dependent on the launcher, using open sights vs. an improved sight, environmental conditions, and the operator. Effectiveness depends on many variables, such as distance, clothing, stature, and the point where the projectile impacts."
Purpose and Authorized Use	The Monterey Peninsula Special Response Unit (SRU) members utilize the Pen Arms 6 round 40MM Less Lethal Multi-Launcher with 40MM less lethal projectiles. The Multi-Launcher is registered to the Sand City Police Department on behalf of the SRU. It is utilized and maintained by members of the SRU
Fiscal Impact	Initial: No direct cost by the City; approximate cost of $3,336.00 funded by the SRU (2018) Ongoing: Cost of munitions for qualifications and critical incident response born by SRU not SCPD; Each Sponge Baton round is approximately $23.00 ($690.00 for recent purchase of 30) but varies each year depending on usage.
Legal, Procedural, and Compliance	POST Reg: 1070 (Certified Instruction), 1082 (Less Lethal Instructor) SCPD Policies: 300 (Use of Force), 303 (Control Devices and Techniques), 306 (Firearms)
Training Requirements	Less lethal training: POST certified less lethal device course 4-hour course plus annual qualification. SRU training: 80-hour POST certified basic S.W.A.T. course, 120 hours of annual training, and 24 hours of SWAT update training bi-annually.

Sand City Police Department
Military Equipment List

Type	Section 12 - Noise-flash Diversion Device aka Flash-bang Diversionary Device
Description	Combined Systems Inc. (CSI), Combined Tactical Systems (CTS) Flash-bang model 7290 series
Quantity	Twenty-four (24) 7290M Mini-bang, single use, steel body Twelve (12) 7290-3 Bang, single use, aluminum body Twelve (12) 7290-CI Command initiated, steel body
Capabilities	165 - 180 dB, 2M candela minimum per each model's specification sheet
Expected Lifespan	5-year warranty
Manufacturer's Description	**"7290** -The CTS 7290 is the standard for diversionary flash-bang devices. The 7290 produces a 165-180db and 6-8 million candela of light output. The patented design of the 7290, incorporates a porting system that eliminates movement of the body at detonation even if the top or bottom of the device should be in contact with a hard surface. In addition, internal adjustments have greatly reduced smoke output. Flash Bangs are used by special tactical units during hostage rescue and high-risk warrants. It is an ATF-controlled Class-C explosive device that emits a bright light and thunderous noise to distract potentially dangerous individuals. Priced Individually, Must Order in Quantities of 12"
Purpose and Authorized Use	The Monterey Peninsula Special Response Unit (SRU) members utilize these devices to distract potentially dangerous individuals during critical incidents such as a violent barricaded subject, hostage situations, high-risk search warrant or arrest warrant situations.
Fiscal Impact	Initial: No direct cost to the City; $4,125.00 funded by the SRU Ongoing cost: replacement varies depending on utilization $ 48.00 – 125.00 per individual device
Legal, Procedural, and Compliance	Penal Code 13514.1 (POST required guidelines) POST Reg: 1070 (Certified Instruction), 1082 (Diversionary Device Instructor), 1084 (Standardized Curriculum) SCPD Policies: 404 (MPR SRU)
Training Requirements	SRU training: POST certified 80-hour basic SWAT course, 120 hours of annual training, and 24 hours of SWAT update training bi-annually. Annual 10-hour diversion device training.

Sand City Police Department
Military Equipment List

Type	Section 12 - Irritant munitions (aka “tear gas”)
Description	Combined Systems Inc. (CSI), Combined Tactical Systems (CTS) irritant munitions
Quantity	Fifteen (15) CTS 3330, 37mm CS Liquid Barricade Smokeless Twenty-five (25) CTS 3300, 37mm Inert Barricade Smokeless Nine (9) CTS 5230, CS Cannister Grenade
Capabilities	3330 – Liquid CS filled projectile penetrates intermediate barriers and delivers irritant agents into an adjacent room. Velocity 385-425 fps, effective range of 50 yards 3300 – Inert. Velocity 385-425 fps, effective range of 50 yards 5230 - Large diameter burning grenade that discharges a high volume of smoke and chemical agent through multiple emission ports. Specifically for outdoor use and should not be deployed on rooftops, in crawl spaces or indoors due to potential fire hazard.
Expected Lifespan	5-year warranty
Manufacturer’s Description	“CTS produces a full line of chemical irritant and smoke munitions. The comprehensive line includes grenades, 12gauge, 37mm and 40mm projectiles. These less-lethal options address a wide range of scenarios from assisting tactical teams in displacing or detecting barricaded subjects to aiding riot control units charged with maintaining order in public or correctional environments.” “CTS Manufactures a wide range of single and multiple projectile munitions with payload capabilities exceeding those of any other less-lethal manufacturer. Single projectile offerings are extremely accurate for selective engagement in a variety of situations.”
Purpose and Authorized Use	The Monterey Peninsula Regional Special Response Unit (SRU) members utilize these devices to distract and/or gain compliance of potentially dangerous individuals during critical incidents such as a violent barricaded subject, hostage situations, high-risk search warrant or arrest warrant situations.
Fiscal Impact	No direct cost to the City; Recent purchase was $2,645.10 funded by the SRU Replacement cost varies depending on utilization $ 23.00 – 36.00 per individual device, funded by SRU
Legal, Procedural, and Compliance	Penal Code 22820 (required POST training) POST Reg: 1070 (Certified Instruction), 1081 (Chemical Agents), 1082 (Chemical Agent Instructor) SCPD Policies: 300 (Use of Force), 404 (MPR SRU)
Training Requirements	POST chemical agents, three modules, 10-hour course. SRU training: 80-hour POST certified basic S.W.A.T. course, 120 hours of annual training, and 24 hours of SWAT update training bi-annually.

AGENDA ITEM
5D.

Approve a Resolution Approving the Carry Forward Professional Service Agreement with EMC Planning Group, Inc for Fiscal Year 2024-2025 for Website Design at a Cost not to Exceed $85,000 Through June 30, 2025

City of Sand City

STAFF REPORT

TO: Honorable Mayor and City Council
FROM: Audrey Cray, HR/Risk Manager
SUBJECT: Authorize City Manager to Enter into a Fiscal Year 2023-24 Contract Carry Forward Agreement with EMC Planning Group for Website Design for Fiscal Year 2024-2025
DATE: November 5, 2024

BACKGROUND/DISCUSSION:

On November 7th, 2023, City Council approved amending the Fiscal Year 2023-2024 general planning services contract with EMC Planning Group to include website redevelopment and an economic development page.

On behalf of the City, EMC Planning Group successfully applied for the Regional Early Action Planning 2021 (REAP 2.0) Local Suballocation Grant from AMBAG. Sand City was awarded the grant, which originally was $85,000 but was amended to $79,985, for the completion of the website redevelopment and the economic development page.

As a reminder of what the Website Design project encompassed, Staff had proposed to City Council a request to work with EMC Planning Group to redesign the City's website to produce a more user-friendly experience for City staff, residents, the public, and developers looking for opportunity sites. As set forth in the grant application, the website redesign will primarily focus on improving access to important resources, such as zoning maps, required permits, applicable fees, building restrictions, and available incentives aimed at supporting residential development. The redesign will also improve the aesthetic appearance of the site, making it more closely reflect the City's presence as an artist's hub on Monterey Peninsula. Furthermore, EMC Planning Group will train City staff in the upkeep and maintenance of the City's website. Once City staff have been trained on the upkeep and maintenance of the City website, EMC Planning Group will continue to support City staff on an as needed basis.

The REAP 2.0 will also fund the creation of a new economic development webpage, which will be led by Keyser Marston and Associates and ELS Architecture and Urban Design as subconsultants to EMC Planning Group on the project.

The original timeline of completion for this project was set to be June 30, 2024, but due to unforeseen circumstances that could not be avoided, this project had to be

placed on hold so therefore, the project is now a carry forward Fiscal Year 2023-2024 project into Fiscal Year 2024-2025. The new expected completion date will be June 30, 2025.

CEQA:

This action does not constitute a "project" as defined by the California Environmental Quality Act (CEQA) guidelines section 15378.

FISCAL IMPACT:

There is no Fiscal Impact as these expected costs have already been included in the budget for FY 2023-2024 and will be carried forward to FY 2024-2025 during the mid-year process less any expenditures already encumbered.

RECOMMENDATION:

Staff recommends approval of the carry forward contract with EMC Planning Group for Website Design.

ATTACHMENTS:

- Resolution
- Professional Services Agreement
- Exhibit A- Additional Scope of Work
- Exhibit B – Fee Schedule

RESOLUTION ATTACHMENT 1
Resolution SC 24- (2024)

CITY OF SAND CITY
PROFESSIONAL SERVICE AGREEMENT FOR NON-CONSTRUCTION PROJECT

This Agreement made the 1st day of July, 2024 (the "Effective Date"), by and between the CITY OF SAND CITY, a municipal corporation, hereinafter referred to as "CITY", and EMC Planning Group Inc., a California Corporation, hereinafter referred to as "CONSULTANT" (together referred to the "Parties").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

I. TERM

The term of the Agreement will begin on the Effective Date of this Agreement and shall end June 30, 2025 or upon completion of the Scope of Services described herein, unless sooner terminated pursuant to the provisions of this Agreement. The Agreement may be reviewed and modified upon concurrence of both parties. No modification to the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

II. SERVICES

Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to the CITY the services described in the Scope of Work in Exhibit A, attached hereto and incorporated herein as though set forth in full. To the extent that Exhibit A is a proposal from CONSULTANT, such proposal is incorporated only for the description of the scope of services and no other terms and conditions from any such proposal shall apply to this AGREEMENT unless specifically agreed to in writing. Unless otherwise explicitly stated in Exhibit A, CONSULTANT shall at it sole cost and expense furnish all facilities and equipment which may be required for completing the tasks set forth in Exhibit A. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

III. PERFORMANCE

CONSULTANT shall at all times faithfully, competently and to the best of his/her ability, experience, and talent, perform all tasks described herein. CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of CONSULTANT hereunder in meeting its obligations under this AGREEMENT.

IV. TIME

CONSULTANT shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of

performance provided in section III (Performance) and to satisfy CONSULTANT'S obligations hereunder.

V. ASSIGNMENT OF PERSONNEL

CONSULTANT shall assign only competent personnel to perform services pursuant to his Agreement. In the event that CITY, in its sole discretion, at any time during the term of the Agreement, desires the reassignment of any such persons, CONSULTANT shall, immediately upon receiving notice from CITY of such desire, reassign such person or persons.

VI. PAYMENT

A. The CITY agrees to pay CONSULTANT monthly for services performed and reimbursable costs, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed eighty-five thousand dollars ($85,000) for the total term of the Agreement unless additional payment is approved as provided in this Agreement. Except as specifically authorized by CITY in writing, CONSULTANT shall not bill CITY for duplicative services performed by more than one person. Fees for work performed by CONSULTANT on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit A. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

B. CONSULTANT shall not be compensated for any services rendered in connection with its performance of this AGREEMENT which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. CONSULTANT shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and CONSULTANT at the time CITY's written authorization is given to CONSULTANT for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the AGREEMENT, but in no event shall such sum exceed eight thousand and five hundred dollars ($8,500) unless otherwise specified in the AGREEMENT. Any additional work in excess of this amount shall be approved by the City Council of Sand City.

C. CONSULTANT will submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Invoices shall include a task summary containing the

original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement. For each work item and task, a copy of the applicable time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the CITY disputes any of CONSULTANT's fees it shall give written notice to CONSULTANT within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this AGREEMENT shall be made within forty-five (45) days of receipt of an invoice. In no event shall CONSULTANT submit an invoice for an amount in excess of the maximum amount of compensation provided above for either a task or the entire Agreement, unless the Agreement is properly modified in writing prior to the submission of such an invoice.

VII. SUSPENSION OR TERMINATION OF AGREEMENT

A. The CITY may at any time, for any reason, with or without cause, suspend or terminate this AGREEMENT, or any portion hereof, upon written notification to CONSULTANT. Upon receipt of said notice, the CONSULTANT shall immediately cease all work under this AGREEMENT, unless the notice provides otherwise. If the CITY suspends or terminates a portion of this AGREEMENT such suspension or termination shall not make void or invalidate the remainder of this AGREEMENT.

B. CONSULTANT may cancel this Agreement upon 30 days written notice to CITY and shall include in such notice the reasons for cancellation.

C. In the event this AGREEMENT is terminated pursuant to this Section, the CITY shall pay to CONSULTANT the actual value of the work performed up to the time of termination; CITY may however condition payment of such compensation upon CONSULTANT delivering to CITY any and all Documents prepared in connection with this Agreement. Upon termination of the AGREEMENT pursuant to this Section, the CONSULTANT will submit an invoice to the CITY pursuant to Section 6.

D. The parties may amend this Agreement only by a writing signed by all the parties.

E. All obligations arising prior to the termination of this Agreement and all provision of this agreement allocating liability between the CITY and CONSULTANT shall survive the termination of this Agreement.

F. If CONSULTANT materially breaches any of the terms of this Agreement, CITY’s remedies shall include, but not be limited to, the following:

   a. Immediately terminate the Agreement

b. Retain all Documents and other work product prepared by CONSULTANT pursuant to this Agreement

c. Retain a different consultant to complete the work described in a given task order not finished by Consultant; and/or

VIII. OWNERSHIP OF DOCUMENTS

A. CONSULTANT shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by CITY that relate to the performance of services under this AGREEMENT. CONSULTANT shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. CONSULTANT shall provide free access to the representatives of CITY or its designees at reasonable times to such books and records; shall give CITY the right to examine and audit said books and records; shall permit CITY to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this AGREEMENT. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment. CONSULTANT understands that all such records may be subject to the examination and audit of the State Auditor or as part of any audit of the CITY.

B. Upon completion of, or in the event of termination or suspension of this AGREEMENT, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents, in electronic or other form, prepared in the course of providing the services to be performed pursuant to this AGREEMENT ("Documents") shall become the sole property of the CITY and may be used, reused, or otherwise disposed of by the CITY in connection with the project for which CONSULTANT'S services are provided under this AGREEMENT and without the permission of the CONSULTANT. With respect to computer files, CONSULTANT shall make available to the CITY, at the CONSULTANT's office and upon reasonable written request by the CITY, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. CONSULTANT hereby grants to CITY all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by CONSULTANT in the course of providing the services under this AGREEMENT.

IX. INDEMNIFICATION AND DEFENSE

A. Indemnity

To the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless CITY and any and all of its officials, employees, contractors and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs, caused in whole or in part by the negligent, reckless or wrongful act, error or omission of CONSULTANT, its officers, agents, employees or subconsultants (or any agency or individual that CONSULTANT shall bear the legal liability thereof) in the performance of services under this AGREEMENT. CONSULTANT's duty to indemnify and hold harmless CITY shall not extend to the CITY's sole or active negligence. This indemnification obligation is not limited by any limitation on the amount or type of damages available under any applicable insurance coverage and shall survive the expiration or termination of this Agreement with respect to any liability arising during the term of the Agreement. With respect to third party claims against the CONSULTANT, CONSULTANT waives any and all rights of any type to express or implied indemnity against the Indemnified Parties.

B. Duty to defend

In the event the CITY, its officers, employees, agents and/or volunteers are made a party to any action, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this AGREEMENT, and upon demand by CITY, CONSULTANT shall defend the CITY at CONSULTANT's cost or at CITY's option, to reimburse CITY for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters to the extent the matters arise from, relate to or are caused by CONSULTANT's negligent acts, errors or omissions. Payment by CITY is not a condition precedent to enforcement of this indemnity.

C. California Civil Code Section 2782.8

Notwithstanding the foregoing, to the extent that the CONSULTANT's services are subject to California Civil Code Section 2782.8, the above indemnity, including the cost to defend, shall be limited to the extent required by California Civil Code Section 2782.8.

X. INSURANCE

CONSULTANT shall maintain prior to the beginning of and for the duration of this AGREEMENT insurance coverage as specified in Exhibit C attached to and part of this AGREEMENT.

XI. INDEPENDENT CONSULTANT

A. CONSULTANT is and shall at all times remain as to the CITY a wholly independent consultant and/or independent contractor and not an employee of CITY. The personnel performing the services under this AGREEMENT on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither CITY nor any of its officers, employees, or agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees, subcontractors or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that it or any of its officers, employees, subcontractors or agents are in any manner officers, employees, or agents of the CITY. CONSULTANT shall not incur or have the power to incur any debt, obligation, or liability whatever against CITY, or bind CITY in any manner.

B. No employee benefits shall be available to CONSULTANT in connection with the performance of this AGREEMENT. Except for the fees paid to CONSULTANT as provided in the AGREEMENT, CITY shall not pay salaries, wages, or other compensation to CONSULTANT for performing services hereunder for CITY. CITY shall not be liable for compensation or indemnification to CONSULTANT for injury or sickness arising out of performing services hereunder.

XII. LEGAL RESPONSIBILITIES

The CONSULTANT shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this AGREEMENT. The CONSULTANT shall at all times observe and comply with all such laws and regulations. The CITY, and its officers, consultants and employees, shall not be liable at law or in equity occasioned by failure of the CONSULTANT to comply with this Section.

XIII. UNDUE INFLUENCE/CONFLICT OF INTEREST

CONSULTANT declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the CITY in connection with the award, terms or implementation of this AGREEMENT, including any method of coercion, confidential financial arrangement, or financial inducement.

No officer or employee of the CITY has or will receive compensation, directly or indirectly, from CONSULTANT, or from any officer, employee or agent of CONSULTANT, in connection with the award of this AGREEMENT or any work to be conducted as a result of this AGREEMENT. Violation of this Section shall be a material breach of this AGREEMENT entitling the CITY to any and all remedies at law or in equity. CONSULTANT may not serve other clients whose activities within the corporate limits of CITY or whose business regardless of location would place CONSULTANT in a "conflict of interest" as that term is defined in the Political Reform Act, California Government Code section 81000 et seq.

XIV. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of CITY, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any Agreement or sub-Agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this AGREEMENT.

XV. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

A. All information gained by CONSULTANT in performance of this AGREEMENT shall be considered confidential and shall not be released by CONSULTANT without CITY's prior written authorization. CONSULTANT, its officers, employees, agents, or subconsultants, shall not without written authorization from the City Manager, or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this AGREEMENT or relating to any project or property located within the CITY. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives CITY notice of such court order or subpoena.

B. CONSULTANT shall promptly notify CITY should CONSULTANT, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this AGREEMENT and the work performed there under or with respect to any project or property located within the CITY, unless the CITY is a party to any lawsuit, arbitration, or administrative proceeding connected to such Discovery, or unless CONSULTANT is prohibited by law from informing the CITY of such Discovery. CITY retains the right, but has no obligation, to represent CONSULTANT and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless CITY is a party to the lawsuit, arbitration, or administrative proceeding and is

averse to CONSULTANT in such proceeding, CONSULTANT agrees to cooperate fully with CITY and to provide the opportunity to review any response to discovery requests provided by CONSULTANT. However, CITY's right to review any such response does not imply or mean the right by CITY to control, direct, or rewrite said response.

XVI. NOTICES

Any notices which either party may desire to give to the other party under this AGREEMENT must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To CITY:
City of Sand City
1 Pendergrass Way
Sand City, CA 93955
Attention: Vibeke Norgaard, City Manager

To CONSULTANT:
EMC Planning Group, Inc.
601 Abrego Street
Monterey, CA 93940
Attention: Michael Groves, Senior Principal

XVII. ASSIGNMENT

The CONSULTANT shall not assign the performance of this AGREEMENT, nor any part thereof, nor any monies due hereunder, without prior written consent of the CITY. Because of the personal nature of the services to be rendered pursuant to this AGREEMENT, only CONSULTANT shall perform the services described in this AGREEMENT. Upon termination of this Agreement, CONSULTANT's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between CITY and the CONSULTANT.

Before CONSULTANT retains or contracts with any subcontractor, CONSULTANT shall provide CITY with the identity of the proposed CONSULTANT, a copy of the proposed written contract between CONSULTANT and such subcontractor which shall include an indemnity provision similar to the one provided herein and identifying CITY as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed subcontractor carries insurance at least equal to that required by this AGREEMENT or obtain a written waiver from CITY for such insurance.

XVIII. LICENSES

At all times during the term of this AGREEMENT, CONSULTANT, its employees, agents, and any subcontractors shall have in full force and effect, all licenses, permits, qualifications and approvals required of it by law for the performance of the services described in this AGREEMENT. In addition, CONSULTANT and any subcontractors shall obtain and maintain during the term of this Agreement a valid Sand City business license.

XIX. GOVERNING LAW

The CITY and CONSULTANT understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this AGREEMENT and also govern the interpretation of this Agreement. Any litigation concerning this AGREEMENT shall be brought and maintained in the Superior Court of the State of California in and for the County of Monterey or in the United States District Court for the Central District of California.

XX. ENTIRE AGREEMENT

This AGREEMENT contains the entire understanding between the parties relating to the obligations of the parties described in this AGREEMENT. All prior or contemporaneous Agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this AGREEMENT or with respect to the terms and conditions of this AGREEMENT, are merged into this AGREEMENT and shall be of no further force or effect. Each party is entering into this AGREEMENT based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

XXI. SEVERABILITY/NO IMPLIED WAIVER OF BREACH

If a court of competent jurisdiction finds that any provision of this Agreement is invalid, void or unenforceable, the provisions not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement**.**

The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any breach of that term or any other term of this Agreement.

XXII. ATTORNEYS FEES

If a party to this Agreement brings any action to enforce or interpret this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled.

XXIII. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this AGREEMENT on behalf of CONSULTANT warrants and represents that he/she has the authority to execute this AGREEMENT on behalf of the CONSULTANT and has the authority to bind CONSULTANT to the performance of its obligations hereunder. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

CONSULTANT

By:_____
(Signature)

_____
(Typed Name)

_____
(Title)

CITY OF SAND CITY

_____
Vibeke Norgaard, City Manager

ATTEST:

_____
Kerry Lindstrom, City Clerk

_____
Audrey Cray, Risk Manager

APPROVED AS TO FORM:

By: _____
Adam Lindgren, City Attorney

Attachments:	Exhibit A	Additional Scope of Work
	Exhibit B	Fee Schedule
	Exhibit C	Insurance Requirements

EXHIBIT A

CONSULTANT'S PROPOSAL

EXHIBIT B

FEE SCHEDULE

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting CONSULTANT's indemnification of CITY, and prior to commencement of Work, CONSULTANT shall obtain, provide and maintain at its own expense during the term of this AGREEMENT, policies of insurance of the type and amounts described below and, in a form, satisfactory to CITY.

General liability insurance. CONSULTANT shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than $1,000,000 per occurrence, $2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. CONSULTANT shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this AGREEMENT, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than $1,000,000 combined single limit for each accident.

Professional liability (errors & omissions) insurance. CONSULTANT shall maintain professional liability insurance that covers the Services to be performed in connection with this AGREEMENT, in the minimum amount of $1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this AGREEMENT and CONSULTANT agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this AGREEMENT.

Workers' compensation insurance. CONSULTANT shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least $1,000,000).

CONSULTANT shall submit to CITY, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of CITY, its officers, agents, employees and volunteers.

Umbrella or excess liability insurance. [Optional depending on limits required]. CONSULTANT shall obtain and maintain an umbrella or excess liability insurance policy with limits that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason;
- Pay on behalf of wording as opposed to reimbursement;
- Concurrency of effective dates with primary policies;
- Policies shall "follow form" to the underlying primary policies; and
- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

Other provisions or requirements

Proof of insurance. CONSULTANT shall provide certificates of insurance to CITY as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with CITY at all times during the term of this contract. CITY reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by CONSULTANT, his agents, representatives, employees or subconsultants.

Primary/noncontributing. Coverage provided by CONSULTANT shall be primary and any insurance or self-insurance procured or maintained by CITY shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of CITY before the CITY's own insurance or self-insurance shall be called upon to protect it as a named insured.

City's rights of enforcement. In the event any policy of insurance required under this AGREEMENT does not comply with these specifications or is canceled and not replaced, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONSULTANT or CITY will withhold amounts sufficient to pay premium from CONSULTANT payments. In the alternative, CITY may cancel this AGREEMENT.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City Administrator.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against CITY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CONSULTANT or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONSULTANT hereby waives its own right of recovery against CITY, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). CONSULTANT acknowledges and agrees that any actual or alleged failure on the part of the CITY to inform CONSULTANT of non-compliance with any requirement imposes no additional obligations on the CITY nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to CITY with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional insured status. General liability policies shall provide or be endorsed to provide that CITY and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to CITY and approved of in writing.

Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer’s limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass through clause. CONSULTANT agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by CONSULTANT, provide the same minimum insurance coverage and endorsements required of CONSULTANT. CONSULTANT agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. CONSULTANT agrees that upon request, all Agreements with consultants, subcontractors, and others engaged in the project will be submitted to CITY for review.

City's right to revise specifications. The CITY reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the CONSULTANT ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the CONSULTANT, the CITY and CONSULTANT may renegotiate CONSULTANT's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by CITY. CITY reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by CITY.

Timely notice of claims. CONSULTANT shall give CITY prompt and timely notice of claims made or suits instituted that arise out of or result from CONSULTANT's performance under this AGREEMENT, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. CONSULTANT shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

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1.0
Proposal Introduction

1.1 Project Background

The City of Sand City (the "City") has approached EMC Planning Group regarding the redevelopment of the City's website to create an Economic Development and Opportunity Sites (focusing on residential development) and a more user-friendly platform. The City's current website contains a range of outdated information and inactive links, as well as a lack of easily accessible resources, such as zoning requirements, permitting documents, and development incentives, that could promote economic growth in the community. This is primarily the result of the website's antiquated design, which limits user access and functionality, making it difficult for City staff to perform routine operations and update the available information.

1.2 Proposal Summary

Working closely with City staff, EMC Planning Group will provide a complete redesign of the City's website to produce a more user-friendly experience for City staff, residents, the public, and developers looking for opportunity sites. The website redesign will primarily focus on improving access to important resources, such as zoning maps, required permits, applicable fees, building restrictions, and available incentives aimed at supporting residential development. The website improvements would also consist of the creation of a new economic development webpage. The webpage would highlight opportunities for infill development throughout the City that would facilitate housing supply, choice, and affordability, including conceptual designs of possible residential development on vacant and underutilized lots.

Additionally, the new website will showcase ongoing projects and programs aimed at providing the City's residents with alternative options for transportation. This includes bus/taxi vouchers, ride share programs, and multi-use trail improvements to enhance regional connectivity of the existing trail in an effort to minimize motor vehicle emissions through vehicle trip reduction.

2.0
Proposed Project Personnel

2.1 Proposed Key Project Personnel

The following EMC Planning Group staff members will be the key project personnel assigned to complete the tasks as outlined in Section 3.0, Scope of Work.

Kristina Arden, MA –Marketing Director

Ms. Arden joined EMC Planning Group in December 2021. Her demonstrated areas of expertise are corporate and product branding, public and media relations, sales administration, copywriting, business development, tradeshow coordination, digital and print marketing, website development, and collateral content creation.

Ms. Arden is responsible for production layouts for desktop and electronic publishing, planning and directing marketing efforts, building brand awareness and positioning for EMC Planning Group, managing social media and content marketing, training staff on various design software, and developing and managing marketing budgets. She led the team responsible for updating and launching EMC Planning Group's new website in 2022, and continues to be responsible for updating the company website's design and the content posted.

Matt Papurello – Assistant Planner/GIS Technician

Mr. Papurello joined the firm in 2021. His responsibilities include creating and editing shapefiles, as well as, maintaining an up-to-date database of these shapefiles to be used in ESRI ArcGIS for the spatial analysis of ongoing and future projects. He is also experienced in Adobe Suites for graphical illustration and preparation. Mr. Papurello is also responsible for assisting with project research and various other planning projects. He was a member of the team responsible for updating and launching EMC Planning Group's new website in 2022, and continues to assist the team with updating the current website.

Mr. Papurello is currently part of the team assisting the City of Sand City Planning Department.

Esme Wahl – Associate Planner – Grant Management and Oversight

Ms. Esme Wahl joined EMC Planning Group as an Associate Planner in April 2023. Her area of expertise is local coastal plan amendments, coastal resiliency and adaption planning, habitat management and restoration, and coastal development permits.

Ms. Wahl will oversee the grant application process and manage the grant once it is awarded to the City of Sand City.

2.2 Additional EMC Planning Group Personnel

Additional EMC Planning Group personnel who may be assigned to this project as advisors based on the Scope of Work are as follows:

Michael Groves, AICP – Senior Principal/Principal-in-Charge

Mr. Groves founded EMC Planning Group in 1978. Through his leadership and commitment to excellence in client service and the hiring of highly qualified team members, Mr. Groves has successfully established the firm as one of the leading land use and environmental planning firms in California. With his vast experience as a land use and policy planner, Mr. Groves has provided project management for over 750 planning projects, within more than 150 California cities, counties, and special districts.

Mr. Groves is involved in project management and coordination of a full range of planning projects completed by the firm. His focus within the firm is on client representation for urban and regional planning projects; coastal planning efforts; conceptual design; real estate due diligence and site evaluation studies; land use planning and permitting efforts; and city, county, school district and special district planning and permitting.

Zane Mortensen, MS – Associate Planner

Mr. Mortensen joined the firm in April 2022, as an Assistant Planner to provide support in the preparation of environmental planning and land use documents for a variety of development projects such as residential sites, schools, subdivisions, specific plans, hospitals, and recreational facilities. Primary responsibilities involve conducting air quality and greenhouse gas emissions modeling and analysis, as well as the preparation of environmental review documentation in compliance with CEQA/NEPA regulatory standards.

Mr. Mortensen is currently part of the team assisting the City of Sand City Planning Department.

2.3 Subconsultants

ELS Architecture and Urban Design

Founded in 1967, ELS has a 55-year tradition in design for the public realm for both public and private clients. Regardless of the type of project, ELS has a strong passion for creating spaces and places that become the heart of the communities they serve. ELS excels in the creation of designs that bridge public and private interests, making work attractive to both the community and private development. Their projects are augmented by extensive experience in retail, arts and entertainment,

residential living, dining, hospitality, commercial office, education and recreation, historic renovations and sustainable design. This infusion of practical knowledge allows them to craft visions for evocative public spaces that are supported by feasible land-use strategies. The ELS portfolio illustrates commitment to mixed-use planning that creates dense, active districts that become regional destinations and memorable centers for community activity. Many of their projects have spurred the revitalization of surrounding properties and districts.

EMC Planning Group will be working with ELS Architecture and Urban Design for architectural renderings of key sites named in the Sand City 6th Cycle Housing Element Update and other locations The City determines are key sites. These architectural renderings will be geared towards showing developers some ideas of what could be at a given location, and are not meant to showcase plans already in motion for each site.

Keyser Marsten Associates

Keyser Marston Associates, Inc. (KMA) is a boutique real estate advisory firm, with offices in Berkeley, Los Angeles and San Diego, that specializes in:

- Real estate deal structuring, developer selection and transaction negotiation, especially public/private.
- Structuring affordable housing financing and implementation transactions.
- Fiscal analysis and municipal services financing to ensure new development generates sufficient reserves to fund needed services.
- Nexus analysis that supports the link between new development and funding of affordable housing, childcare, parks/open space, and the arts.
- Traditional real estate market and financial feasibility pro forma analysis that supports asset management, Specific Plan feasibility, policy planning and deal structuring.

KMA's principals have 20 to 40 years of experience analyzing and structuring deals and financing of most land uses. KMA's experience is in affordable, student and market rate housing, transit-oriented development, sports facilities, military base reuse and in projects with office, industrial or retail/entertainment.

While KMA is best known for its role as advisors to public sector and institutional clients, KMA also has an extensive private sector practice primarily serving technology companies, developers, law firms, non-profits and private landowners.

KMA will provide financial feasibility of the locations deemed as being key sites by the Sand City 6th Cycle Housing Element Update. This information will be used on the new Economic Development Page to show affordability and to entice potential future developers to the opportunity to develop within the City of Sand City.

3.0
Scope of Work

The following tasks comprise the Scope of Work for this project. The deliverables and time frames for each task are also included. The Scope of Work may be revised as necessary based on decisions made during Task 1.

3.1 Task 1: Review of Current City Website with City Staff

EMC Planning Group's internal team will work closely with City staff to determine the overall preferences in terms of a full website redesign and to develop a system that provides the level of functionality necessary to meet the City's needs.

EMC Planning Group will review the current website with City staff to determine the necessary changes and/or updates. Topics of discussion include, but are not limited to: website hosting and design platform (current platform vs. new platform); website structure and design, page layout, website flow, user-interface/user-friendliness, content/information availability (including images and clickable links), and website maintenance.

EMC Planning Group knows that the City was under contract to Granicus for website creation, hosting, and maintenance. In order to facilitate the City's website redesign, the current website is still being managed by Granicus on a month-to-month basis. The contract with Granicus having run out in 2022 was originally a 3 (three) year contract beginning in 2019.

Deliverable and Time Frame

The deliverable consists of a preliminary discussion with City staff to determine current website deficiencies and preferred functionality. It is anticipated that initial coordination will take up to one to two weeks to obtain all of the necessary information to begin the website redesign.

3.2 Task 2: Web Host Transfer and First Draft of Website Re-design

Once the current domain and website host have been identified EMC Planning Group will facilitate web host transfer. EMC Planning Group recommends creating a website utilizing the Managed WordPress product offered through GoDaddy. The next step is to redesign the City website in accordance with the items discussed during Task 1. Once the first draft is complete, EMC Planning

Group's internal team will meet with City staff to review the initial version of the redesigned website. City staff will review the draft website and provide EMC Planning Group staff with any revisions/feedback the City feels are appropriate. During this time, the City may contact Matt Papurello or Kristina Arden as necessary with additional requests pertaining to website content and/or design.

Deliverable and Time Frame

The deliverable is the first draft of the redesigned website. It is estimated that this task will take 10 to 12 weeks to complete due to the nature of the work involved.

3.3 Task 3: Economic Development Webpage

The economic development webpage will consist of a range of available resources aimed at supporting economic growth, primarily residential development, within the community. The economic development page will include links to resources for City zoning, building requirements, and permits, as well as incentives such as available density bonus and parking concessions available to support affordable housing. This would include visual representations and flowcharts illustrating the administrative pathway and requirements for specific development on a parcel level GIS database and would highlight 6th Cycle Housing Element sites as well as sites with streamlined permitting potential.

The economic development website would also highlight available rental units, commercial space, and vacant lots that could facilitate residential development. This includes working with partnering organizations to produce 2 (two) conceptual designs of potential affordable housing and mixed-use development sites on underutilized properties in the City, along with an economic proforma to assess economic feasibility of developing those sites.

Deliverable and Time Frame

The deliverable is the initial draft of the economic development webpage. With the inclusion of the conceptual designs and economic proforma for potential residential development, it is estimated that this task will take 8 to 10 weeks to complete due to the nature of the work involved.

3.4 Task 4: Final Draft of Website Redesign

Based on the feedback/comments received from the City, a final draft of the website will be produced for review by the City. A joint meeting with the City staff and EMC Planning Group will be set to review the Final Draft of the redesigned Sand City website. Any further revision of the Final Draft of the website will be discussed at this time.

Deliverables and Time Frame

The deliverables are the final draft of the redesigned website and a meeting to review the final design. Completion of the Final Draft of the City website will take up to three (3) weeks based on the amount of feedback received from the City's review of the First Draft.

3.5 Task 5: Training City Staff on Website Maintenance and Launch of Redesigned Sand City Website

After the final draft of the website is approved by the City, the EMC Planning Group will train members of City staff appointed to be responsible for the upkeep and maintenance of the website. This training will include, but not be limited to, training on how to update and create pages; uploading documents, and other general maintenance practices. After this training session the website will then be fully in control of the City of Sand City. EMC Planning Group's internal team will remain available for any questions that may arise after the website is launched.

After conducting the training for the City staff, the EMC Planning Group will arrange for the domain to be connected to the new Sand City website via the new webhosting platform/company (GoDaddy/WordPress).

Deliverables and Time Frame

The deliverables are the final draft of the redesigned Sand City website, a training meeting for the City staff appointed to update and maintain the website, and connection of the domain to the new webhosting platform (domain connection and website launch). Completion of the Final Draft of the Sand City website will take up to three (3) weeks based on the amount of feedback received from the City's review of the First Draft. A one-hour training meeting will be held to train City staff. Domain connection to the webhosting platform will take about one (1) hour to complete.

3.6 Task 6: Grant Administration

Throughout the course of the website redesign and economic development page addition, EMC Planning Group will provide updates and invoicing to the City and its staff and AMBAG as required. This task will take place during the preceding tasks as a means to keep City staff and AMBAG updated on the progress of the project. EMC Planning Group will also ensure that all grant requirements are met during each Task.

Deliverables

Final activity report and project invoices to AMBAG.

els+

architecture+
urban design

August 8, 2023

Matt Papurello
Assistant Planner
EMC Planning Group
601 Abrego Street
Monterey, CA 93940

Subject: Sand City Site Visualizations

Dear Matt,

We greatly appreciate the opportunity to assist EMC Planning Group with your work on The City of Sand City economic development webpage and Housing Element process. Since 2016 with the NewPark Specific Plan, ELS and EMC have partnered in a number of projects, focusing on each of our firms skills for maximum result. ELS is a broad-based architecture, urban design and master planning firm. Developers and cities alike appreciate our real-world approach to designing developable projects that stand the test of time. ELS is ideally suited to help you in Sand City where we can provide inspiring renderings that are grounded in real-world principles of development, giving the final views the most realistic, developable approach. We're excited to work with your team and the city to bring life to this exercise.

Joining us in this project is Keyser Marston Associates who will provide financial feasibility testing for the two selected sites. This is crucial to understanding the realistic outcomes as the City looks towards finalizing a Housing Element document that has the greatest potential for seeing an increase in housing stock over the next 8 years. ELS and Keyser Marston will complete this work based on the scope that follows.

Scope

Site Tests and Views

ELS and Keyser Marston will assist EMC Planning Group and the City of Sand City in selecting two of the current housing element sites to prepare development studies and vision renderings. ELS will look at each site as a singular development, taking into account existing zoning standards to establish if zoning allows adequate developable envelope to work financially. In tandem, ELS will work with Keyser Marston to determine the most likely development scenario based on the current land and construction values to identify what type of development is realistic and most likely to occur in the future.

To complete this task for the two sites, the ELS team will do the following:

- Identify two housing element sites in Sand City that represent significant potential for redevelopment.
- Develop a residential concept design based on existing zoning, maximizing unit count.
- Meet with Keyser Marston to review the density options and identify if either are realistic outcomes based on the economic situation of the sites.
- Prepare a summary document including the site testing scenarios and the resulting consensus regarding acceptable zoning controls for the production of housing. The base criteria will include:
    - Building Height
    - Building Setbacks
    - Onsite Parking requirements
    - Floor to Floor height requirements
    - Min. units per acre.

2040 Addison Street Berkeley, CA 94704 510.549.2929 elsarch.com

- Prepare two vision renderings for each site (4 total) to be used on the Sand City economic development website.
- Two rounds of comments are anticipated for each site.
- Meetings
    - In-person Meetings are not anticipated for this scope unless requested by the Client and compensated for as an additional service.
    - Zoom meetings as needed are included in the base fee.

We anticipate this process will take about 6-8 weeks. The fee includes zoom meetings as needed and two rounds of comments. If any in-person meetings in Sand City are needed, ELS can provide a proposal for additional services.

Fees
ELS and Keyser Marsten Associates will complete the two site studies and four vision renderings for a lump sum of **$47,000.**

We do not anticipate any reimbursables for the project. If reimbursables are incurred, they will be billed separately at cost times 1.1 and shall include actual expenditures made in the interest of the project, in the following categories:

1) Expense of transportation in connection with out-of-town travel.
2) Long-distance communications and facsimiles.
3) Reproduction and photography (excluding the photography included in the base scope).
4) Postage, shipping and delivery.
5) Fees paid for securing approval of authorities having jurisdiction over the project.

We appreciate working with EMC Planning once again on this important visioning exercise. Providing images of potential development of underutilized sites may help spur public and developer interest that could help move these sites forward in the future. Please do not hesitate to call us if you have any questions regarding our proposal.

Sincerely,
ELS Architecture and Urban Design

David Masenten, AIA, LEED BD+C

Principal

City of Sand City Website Redesign						
Task	**EMC Planning Group Inc.**					
Staff	Senior Principal	Associate Planner	Assistant Planner	Desktop Publisher	**Total Hours**	**Total Cost**
Billing Rate (Per Hour)	$275.00	$165.00	$140.00	$150.00		
Task 1	1.0	2.0	4.0	5.0	12.0	$1,915.00
Task 2	1.0	4.0	42.0	50.0	97.0	$14,315.00
Task 3	1.0	4.0	42.0	30.0	77.0	$11,315.00
Task 4	1.0	1.0	10.0	12.0	24.0	$3,640.00
Task 5	0.0	0.0	5.0	5.0	10.0	$1,450.00
Task 6	0.0	10.0	0.0	0.0	10.0	$1,650.00
Subtotal (Hours)	4.0	21.0	103.0	102.0	**Total Hours**	**Total Cost**
Subtotal (Cost)	$1,100.00	$3,465.00	$14,420.00	$15,300.00	**230.0**	**$34,285.00**

Additional Costs	
Travel Costs	$200.00
Administrative Overhead 8%	$16.00
Total	**$216.00**

Subconsultant Fees	
ELS Architecture and Urban Design	$47,000.00
Subconsultant Overhead 8%	$3,760.00
Total	**$50,760.00**

Total Costs	**$85,261.00**

NOTE: This proposal is valid for 90 days

EXHIBIT B

FEE SCHEDULE

EMC PLANNING GROUP INC.
A LAND USE PLANNING & DESIGN FIRM

FEE SCHEDULE

(Effective January 1, 2023)

Principals	Hourly Billing Rate
Senior Principal	$275.00
Principal	$250.00
Planners	
Principal Planner	$220.00
Senior Planner	$195.00
Associate Planner	$165.00
Assistant Planner	$140.00

Biologists	Hourly Billing Rate	Monitoring Rate
Principal Biologist	$210.00	($150.00)
Senior Biologist	$170.00	($130.00)
Associate Biologist	$145.00	($120.00)
Assistant Biologist	$125.00	($100.00)

Archaeologist	
Registered Professional Archaeologist	$145.00

Support Staff	
Desktop Publisher	$150.00
Executive Assistant/Production Manager	$125.00
Administrative Assistant	$115.00
GIS/Graphics Technician	$140.00

This fee schedule is exclusive of direct reimbursable expenses, such as word processing, editing, printing, copying, travel, lodging, dining, communications, supplies, equipment rental, etc. All expenses are billed at cost plus fifteen percent (15%) for administration. All outside services are billed at cost plus fifteen percent (15%) for administration. This fee schedule is subject to revision at any time.

A retainer of up to fifty percent (50%) of the approved contract amount may be required for new clients or projects. Invoices are due and payable within 30 days. Past due balances are subject to a service charge of one and one-half percent (1.5%) per month. Service charges are in addition to approved contract amount.

Expert witness services are provided at a fifty percent (50%) mark-up.

EMC PLANNING GROUP INC.
601 ABREGO STREET, MONTEREY, CA 93940
(831) 649-1799 / contactus@emcplanning.com
www.emcplanning.com

AGENDA ITEM
5E.

Acceptance of City/Successor Agency Financial Reports from August 2024

City of Sand City

STAFF REPORT

TO: Honorable Mayor and City Council/Successor Agency Board Members
FROM: Jennifer Pope, Finance Manager
SUBJECT: August 2024 Financial Report
DATE: November 5, 2024

BACKGROUND/DISCUSSION:
Attached are the financial reports for the City of Sand City and the Sand City Successor Agency of the former Redevelopment Agency.

A. City of Sand City Reports

a. Cash Register Activity Report, August 2024 (Attachment 1)
   Revenue total - **$751,685**
b. Cash Disbursement Report, August 2024 (Attachment 2)
   Expenditure total - **$558,628**

B. Sand City Successor Agency for the former Redevelopment Agency Reports

a. Trial Balance Report, August 2024 (Attachment 3)
   i. Revenue total - **$5,634**
   ii. Expenditures total - **$198,922**

Transfers
Transfers are shown in the Month End Cash Register Activity Report; they are transfers from one bank account to another and should not be considered as a revenue or expenditure.

Date	Source	Amount	Description

There were no transfers in August 2024.

CEQA:
This action does not constitute a "project" as defined by the California Environmental Quality Act (CEQA) guidelines section 15378.

FISCAL IMPACT:
There is no fiscal impact with receiving this report.

RECOMMENDATION:
Receive the report.

ATTACHMENTS:

1. Sand City Month End Cash Register Activity Report
2. Sand City Month End Cash Disbursement Report
3. Successor Agency Trial Balance Report

City of Sand City
Month End Cash Register Activity Report
Reporting Period: 8/24

Period	Post Date	Receipt	Receipt Date	Description	Debit Acct	Credit Acct	Amount paid
24-Aug	8/12/2024	29808	8/12/2024	SAND CITY PARKING	99 1001	10 4221 08	$ 40.00
24-Aug	8/12/2024	29809	8/12/2024	SAND CITY PARKING	99 1001	10 4221 08	$ 40.00
24-Aug	8/12/2024	29810	8/12/2024	SAND CITY PARKING	99 1001	10 4221 08	$ 40.00
24-Aug	8/12/2024	29811	8/12/2024	TOT TAX	99 1001	10 4034 00	$ 1,452.60
24-Aug	8/12/2024	29812	8/12/2024	TOT TAX	99 1001	10 4034 00	$ 1,203.00
24-Aug	8/12/2024	29813	8/12/2024	TOT TAX	99 1001	10 4034 00	$ 1,598.39
24-Aug	8/12/2024	29814	8/12/2024	TOT TAX	99 1001	10 4034 00	$ 561.68
24-Aug	8/12/2024	29815	8/12/2024	TOT TAX	99 1001	10 4034 00	$ 450.00
24-Aug	8/12/2024	29816	8/12/2024	TOT TAX	99 1001	10 4034 00	$ 870.48
24-Aug	8/12/2024	29817	8/12/2024	UTILITY USERS TAX	99 1001	10 4025 00	$ 0.71
24-Aug	8/12/2024	29818	8/12/2024	UTILITY USERS TAX	99 1001	10 4025 00	$ 628.04
24-Aug	8/12/2024	29819	8/12/2024	WEST END REVENUE	99 1001	10 4500 00	$ 150.00
24-Aug	8/12/2024	29820	8/12/2024	WEST END REVENUE	99 1001	10 4500 00	$ 500.00
24-Aug	8/12/2024	29820	8/12/2024	WEST END REVENUE	99 1001	10 4500 00	$ 100.00
24-Aug	8/12/2024	29821	8/12/2024	WEST END REVENUE	99 1001	10 4500 00	$ 150.00
24-Aug	8/12/2024	29822	8/12/2024	WEST END REVENUE	99 1001	10 4500 00	$ 500.00
24-Aug	8/12/2024	29822	8/12/2024	WEST END REVENUE	99 1001	10 4500 00	$ 100.00
24-Aug	8/12/2024	29823	8/12/2024	COUNTY/TRAFFIC	99 1001	35 4205 11	$ 52.82
24-Aug	8/12/2024	29823	8/12/2024	CRIMINAL PC1463/CITY FINES	99 1001	10 4210 08	$ 39.71
24-Aug	8/12/2024	29823	8/12/2024	COUNTY/PROOF OF CORR	99 1001	35 4205 11	$ 6.60
24-Aug	8/12/2024	29823	8/12/2024	COUNTY/PROPERTY TAX	99 1001	10 4020 00	$ 1,103.03
24-Aug	8/12/2024	29823	8/12/2024	1/2 TAX POLICE/PROP 172	99 1001	10 4330 08	$ 46.08
24-Aug	8/12/2024	29823	8/12/2024	COUNTY/REV & RECOVERY	99 1001	10 4210 08	$ 101.49
24-Aug	8/12/2024	29824	8/12/2024	BUSINESS LICENSE	99 1001	10 4055 00	$ 94,270.80
24-Aug	8/12/2024	29825	8/12/2024	GAS TAX 2103	99 1001	31 4305 11	$ 358.70
24-Aug	8/12/2024	29825	8/12/2024	GAS TAX - 2105 31	99 1001	31 4305 11	$ 198.62
24-Aug	8/12/2024	29825	8/12/2024	GAS TAX - 2106 32	99 1001	31 4305 11	$ 490.52
24-Aug	8/12/2024	29825	8/12/2024	GAS TAX - 2107 33	99 1001	31 4305 11	$ 267.75
24-Aug	8/12/2024	29825	8/12/2024	GAS TAX - 2107 33	99 1001	31 4305 11	$ 1,000.00
24-Aug	8/12/2024	29826	8/12/2024	MISC	99 1001	10 4730 00	$ 500.00
24-Aug	8/12/2024	29827	8/12/2024	SALES TAX RECEIVED	99 1001	10 4030 00	$ 271,206.76
24-Aug	8/12/2024	29828	8/12/2024	TRANSACTION/USE TAX	99 1001	10 4032 00	$ 362,239.50
24-Aug	8/12/2024	29829	8/12/2024	TRANSACTION/USE TAX	99 1001	10 4032 00	$ 4.91
24-Aug	8/12/2024	29830	8/12/2024	COPS GRANT	99 1001	10 4069 08	$ 8,333.33
24-Aug	8/12/2024	29831	8/12/2024	RENTAL INCOME	99 1001	10 4740 00	$ 1,699.59
24-Aug	8/12/2024	29832	8/12/2024	ART PARK REVENUE	99 1001	10 4504 00	$ 150.00
24-Aug	8/12/2024	29833	8/12/2024	MISC	99 1001	10 5085 00	$ 130.16
24-Aug	8/12/2024	29834	8/12/2024	ART PARK REVENUE	99 1001	10 4504 00	$ 150.00
24-Aug	8/12/2024	29835	8/12/2024	PLAN CHECK FEE 4165	99 1001	10 4165 06	$ 950.00
				Total Cash Register Activity			**$ 751,685.27**

City of Sand City
Month End Cash Disbursements Report
Period Report: 8/2024

Period	Check Number	Check Date	Vendor # (Name)	Gross Amount	Net Amount	Check Description
24-Aug	39636	8/21/2024	EMC02 (EMC PLANNING GROUP, INC.)	-7,771.26	-7,771.26	Ck# 039636 Reversed
	39648	8/13/2024	BRO07 (CHRISTOPHER BROWNING)	6,810.54	6,810.54	Automatic Generated Check
	39649	8/15/2024	4LE01 (4LEAF, INC.)	6,024.50	6,024.50	Automatic Generated Check
	39650	8/15/2024	CYP04 (CYPRESS COAST FORD)	557.57	557.57	Automatic Generated Check
	39651	8/15/2024	HAR06 (HARRIS & ASSOCIATES, INC.)	23,830.00	23,830.00	Automatic Generated Check
	39652	8/15/2024	LCW01 (LIEBERT CASSIDY WHITMORE)	2,107.50	2,107.50	Automatic Generated Check
	39653	8/15/2024	MCB01 (MONTEREY COUNTY BUSINESS)	5,000.00	5,000.00	Automatic Generated Check
	39654	8/15/2024	MEY01 (MEYERS NAVE, CORPORATION)	38,898.00	38,898.00	Automatic Generated Check
	39655	8/15/2024	MRW02 (MRWMD)	4,500.00	4,500.00	Automatic Generated Check
	39656	8/15/2024	RGS01 (REGIONAL GOVERNMENT SERVICES)	49.69	49.69	Automatic Generated Check
	39657	8/19/2024	A&R01 (A&R PLUMBING, INC)	748.05	748.05	Automatic Generated Check
	39658	8/19/2024	AFL01 (AFLAC)	527.94	527.94	Automatic Generated Check
	39659	8/19/2024	ALA04 (ALHAMBRA)	67.85	67.85	Automatic Generated Check
	39660	8/19/2024	AME10 (VESTIS)	565.8	565.8	Automatic Generated Check
	39661	8/19/2024	ASC01 (AMERICAN SUPPLY CO)	140.9	140.9	Automatic Generated Check
	39662	8/19/2024	ATT05 (AT&T MOBILITY)	989.4	989.4	Automatic Generated Check
	39663	8/19/2024	BCM01 (BCM ONE, INC.)	326.03	326.03	Automatic Generated Check
	39664	8/19/2024	CAJ01 (CAJPA)	750	750	Automatic Generated Check
	39665	8/19/2024	CAL01 (CAL-AM WATER)	820.87	820.87	Automatic Generated Check
	39666	8/19/2024	CAL15 (CALIFORNIA CONSULTING, INC.)	4,250.00	4,250.00	Automatic Generated Check
	39667	8/19/2024	CAM03 (TALKING WALLS)	20,000.00	20,000.00	Automatic Generated Check
	39668	8/19/2024	CHA04 (CALIFORNIA HIGHWAY)	350	350	Automatic Generated Check
	39669	8/19/2024	CHI07 (CHIDLAW MARKETING)	3,499.00	3,499.00	Automatic Generated Check
	39670	8/19/2024	COA07 (MONTEREY COUNTY WEEKLY)	1,858.25	1,858.25	Automatic Generated Check
	39671	8/19/2024	COM01 (COMMUNITY HUMAN SERVICES)	5,260.00	5,260.00	Automatic Generated Check
	39672	8/19/2024	COM11 (COMCAST)	406.2	406.2	Automatic Generated Check
	39673	8/19/2024	COR01 (CORBIN WILLITS SYSTEMS)	276.53	276.53	Automatic Generated Check
	39674	8/19/2024	COR04 (CORODATA SHREDDING, INC.)	61.75	61.75	Automatic Generated Check
	39675	8/19/2024	COR05 (CORODATA RECORDS MANAGEMENT)	87.85	87.85	Automatic Generated Check
	39676	8/19/2024	COU01 (COUNTY OF SANTA CLARA)	531.32	531.32	Automatic Generated Check
	39677	8/19/2024	DEP03 (DEPT. OF HOUSING & COMMUNITY DEVELOPMENT)	37	37	Automatic Generated Check
	39678	8/19/2024	DOC01 (DOCUSIGN INC LOCKBOX)	1,725.00	1,725.00	Automatic Generated Check
	39679	8/19/2024	EMC02 (EMC PLANNING GROUP, INC.)	46,168.51	46,168.51	Automatic Generated Check
	39680	8/19/2024	FIR03 (FIRST ALARM SECURITY)	35	35	Automatic Generated Check
	39681	8/19/2024	GAT02 (HOPE SERVICES)	6,792.50	6,792.50	Automatic Generated Check
	39682	8/19/2024	GLA06 (RORY GLASS)	1,000.00	1,000.00	Automatic Generated Check
	39683	8/19/2024	HDL01 (HDL COREN & CONE)	1,386.00	1,386.00	Automatic Generated Check
	39684	8/19/2024	HOM01 (HOME DEPOT CREDIT SERVICE)	5,280.96	5,280.96	Automatic Generated Check
	39685	8/19/2024	HUM02 (HUMANA INSURANCE COMPANY)	5,182.65	5,182.65	Automatic Generated Check
	39686	8/19/2024	LCW01 (LIEBERT CASSIDY WHITMORE)	3,586.00	3,586.00	Automatic Generated Check
	39687	8/19/2024	MBA01 (MONTEREY BAY AREA SELF INS.)	234,050.26	234,050.26	Automatic Generated Check
	39688	8/19/2024	MBP03 (MONTEREY BAY PEST CONTROL)	130	130	Automatic Generated Check
	39689	8/19/2024	MBT01 (MONTEREY BAY TECHNOLOGIES, INC.)	2,840.93	2,840.93	Automatic Generated Check
	39690	8/19/2024	MCV01 (SEE MONTEREY)	2,000.00	2,000.00	Automatic Generated Check
	39691	8/19/2024	MOB02 (MCGRATH RENTCORP)	574.99	574.99	Automatic Generated Check
	39692	8/19/2024	MON09 (MONTEREY BAY AIR RESOURCES DISTRICT)	208.45	208.45	Automatic Generated Check
	39693	8/19/2024	MRW01 (MONTEREY ONE WATER)	308.16	308.16	Automatic Generated Check
	39694	8/19/2024	NIN01 (NINYO & MOORE)	4,500.00	4,500.00	Automatic Generated Check
	39695	8/19/2024	OFF03 (ODP BUSINESS SOLUTIONS)	228.99	228.99	Automatic Generated Check
	39696	8/19/2024	PET01 (PETTY CASH-CASHED BY SHAN NORTON)	273.17	273.17	Automatic Generated Check
	39697	8/19/2024	PUB01 (PUBLIC STORAGE)	1,146.45	1,146.45	Automatic Generated Check
	39698	8/19/2024	SAF02 (SAFEGUARD BUSINESS SYSTEMS)	187.92	187.92	Automatic Generated Check
	39699	8/19/2024	SEA09 (SEASIDE GROUNDWATER BASIN WATERMASTER)	1,988.00	1,988.00	Automatic Generated Check
	39700	8/19/2024	SHA03 (SHAMROCK OFFICE SOLUTIONS)	330.73	330.73	Automatic Generated Check
	39701	8/19/2024	SLV01 (STEPHEN L. VAGNINI)	17,025.99	17,025.99	Automatic Generated Check
	39702	8/19/2024	STA03 (STAR SANITATION, LLC)	909.2	909.2	Automatic Generated Check
	39703	8/19/2024	STU02 (STURDY OIL COMPANY)	2,371.82	2,371.82	Automatic Generated Check
	39704	8/19/2024	SUN02 (SUN LIFE FINANCIAL)	1,867.84	1,867.84	Automatic Generated Check
	39705	8/19/2024	TYL02 (TYLER TECHNOLOGIES, INC)	1,261.50	1,261.50	Automatic Generated Check
	39706	8/19/2024	VER01 (VERIZON WIRELESS)	128.8	128.8	Automatic Generated Check
	39707	8/22/2024	4LE01 (4LEAF, INC.)	6,442.50	6,442.50	Automatic Generated Check
	39708	8/22/2024	EMC02 (EMC PLANNING GROUP, INC.)	42,466.23	42,466.23	Automatic Generated Check

Period	Check Number	Check Date	Vendor # (Name)	Gross Amount	Net Amount	Check Description
	39709	8/22/2024	STU02 (STURDY OIL COMPANY)	1,269.75	1,269.75	Automatic Generated Check
	39710	8/27/2024	4LE01 (4LEAF, INC.)	15,343.25	15,343.25	Automatic Generated Check
	39711	8/27/2024	AFL01 (AFLAC)	527.94	527.94	Automatic Generated Check
	39712	8/27/2024	ATT03 (A.T. & T.)	202.72	202.72	Automatic Generated Check
	39713	8/27/2024	BEN04 (JESUS BENITEZ)	2,520.00	2,520.00	Automatic Generated Check
	39714	8/27/2024	BUS05 (JEFF BUSHNELL)	209.06	209.06	Automatic Generated Check
	39715	8/27/2024	CHA04 (CALIFORNIA HIGHWAY)	350	350	Automatic Generated Check
	39716	8/27/2024	CLE01 (CALIFORNIA LAW)	288	288	Automatic Generated Check
	39717	8/27/2024	COA07 (MONTEREY COUNTY WEEKLY)	1,051.00	1,051.00	Automatic Generated Check
	39718	8/27/2024	COM11 (COMCAST)	306.91	306.91	Automatic Generated Check
	39719	8/27/2024	COR01 (CORBIN WILLITS SYSTEMS)	276.53	276.53	Automatic Generated Check
	39720	8/27/2024	CSD01 (CALIFORNIA STATE DISBURSE UNIT)	385	385	Automatic Generated Check
	39721	8/27/2024	CYP04 (CYPRESS COAST FORD)	926.34	926.34	Automatic Generated Check
	39722	8/27/2024	EMC02 (EMC PLANNING GROUP, INC.)	5,175.47	5,175.47	Automatic Generated Check
	39723	8/27/2024	FAN03 (JILL FANUCCHI)	298.81	298.81	Automatic Generated Check
	39724	8/27/2024	HUM02 (HUMANA INSURANCE COMPANY)	4,619.19	4,619.19	Automatic Generated Check
	39725	8/27/2024	KIO01 (KION)	500	500	Automatic Generated Check
	39726	8/27/2024	LIN01 (LINGO)	139.88	139.88	Automatic Generated Check
	39727	8/27/2024	MCC04 (MCCLEOA)	500	500	Automatic Generated Check
	39728	8/27/2024	MOB02 (MCGRATH RENTCORP)	574.99	574.99	Automatic Generated Check
	39729	8/27/2024	MRW02 (MRWMD)	496.65	496.65	Automatic Generated Check
	39730	8/27/2024	OFF03 (ODP BUSINESS SOLUTIONS)	141.41	141.41	Automatic Generated Check
	39731	8/27/2024	PET01 (PETTY CASH-CASHED BY SHAN NORTON)	80.27	80.27	Automatic Generated Check
	39732	8/27/2024	PGE01 (PACIFIC GAS & ELECTRIC)	3,575.42	3,575.42	Automatic Generated Check
	39733	8/27/2024	REN01 (RENTAL DEPOT - MONTEREY)	900	900	Automatic Generated Check
	39734	8/27/2024	RIG01 (JOHN BREARTON)	250	250	Automatic Generated Check
	39735	8/27/2024	SAN01 (SAND CITY POLICE OFFICERS)	1,420.00	1,420.00	Automatic Generated Check
	39736	8/27/2024	SLV01 (STEPHEN L. VAGNINI)	694.89	694.89	Automatic Generated Check
	39737	8/27/2024	SPC01 (SPCA)	245	245	Automatic Generated Check
	39738	8/27/2024	STU02 (STURDY OIL COMPANY)	1,107.58	1,107.58	Automatic Generated Check
	39739	8/27/2024	WEE02 (BOB WEEMS)	291.89	291.89	Automatic Generated Check
			Total Cash Disbursement	**558,627.78**	**558,627.78**	

Beginning of.: August 1, 2024 (02-25) Thru Ending of.: August 31, 2024 (02-25)

Ctr	G/L Account No Cal.	Fiscl	Date	Jrnl	Line	Description	Debit	Credit
40	1005					Fiduciary Fund Tax Increment Account		
						Balance August 1, 2024 (02-25)	1,476,814.99	
	Aug 2024	02-2025	09/11/24	03-00	0002	Hand Checks 09/11/24		182,329.75
	Aug 2024	02-2025	09/21/24	DL-00	0002	August Interest	5,634.34	
	Aug 2024	02-2025	09/23/24	DL-01	0002	Correcting Entry - AP		16,592.00
	** Budget not Applicable **					Activity ---->	5,634.34	198,921.75
						Balance August 31, 2024 (02-25)	1,283,527.58	
40	1025					Fiduciary Fund 2008 TAX EXEMPT CD#69981148831		
						Balance August 1, 2024 (02-25)	535,050.30	
	** Budget not Applicable **					Activity ---->	.00	.00
						Balance August 31, 2024 (02-25)	535,050.30	
40	1026					Fiduciary Fund 2008 TAX EXEMPT CD#53567157891		
						Balance August 1, 2024 (02-25)	540,471.43	
	** Budget not Applicable **					Activity ---->	.00	.00
						Balance August 31, 2024 (02-25)	540,471.43	
40	1070					Fiduciary Fund 2008B RESERVE ACCOUNT		
						Balance August 1, 2024 (02-25)	216,039.34	
	** Budget not Applicable **					Activity ---->	.00	.00
						Balance August 31, 2024 (02-25)	216,039.34	
40	1072					Fiduciary Fund 2008B Debt Service Fund		
						Balance August 1, 2024 (02-25)	1,511.78	
	** Budget not Applicable **					Activity ---->	.00	.00
						Balance August 31, 2024 (02-25)	1,511.78	

G/L Account No Ctr	Cal.	Fiscl	Date	Jrnl	Line	Description	Debit	Credit
40	1085					Fiduciary Fund 2017 Debt Service Fund		
						Balance August 1, 2024 (02-25)	3.99	
						** Budget not Applicable ** Activity ---->	.00	.00
						Balance August 31, 2024 (02-25)	3.99	
40	1291					Fiduciary Fund Land		
						Balance August 1, 2024 (02-25)	1,100,000.26	
						** Budget not Applicable ** Activity ---->	.00	.00
						Balance August 31, 2024 (02-25)	1,100,000.26	
40	1293					Fiduciary Fund FURNITURE AND FIXTURES		
						Balance August 1, 2024 (02-25)	40,218.25	
						** Budget not Applicable ** Activity ---->	.00	.00
						Balance August 31, 2024 (02-25)	40,218.25	
40	1297					Fiduciary Fund SIGNS AND LANDSCAPING		
						Balance August 1, 2024 (02-25)	182,630.99	
						** Budget not Applicable ** Activity ---->	.00	.00
						Balance August 31, 2024 (02-25)	182,630.99	
40	1300					Fiduciary Fund ACCUMULATED DEPRECIATION		
						Balance August 1, 2024 (02-25)		222,849.24
						** Budget not Applicable ** Activity ---->	.00	.00
						Balance August 31, 2024 (02-25)		222,849.24

G/L Account No Ctr	Cal.	Fiscl	Date	Jrnl	Line	Description	Debit	Credit
40	2001					Fiduciary Fund Accounts Payable		
						Balance August 1, 2024 (02-25)		16,592.00
	Aug 2024	02-2025	09/23/24	DL-01	0001	Correcting Entry - AP	16,592.00	
	** Budget not Applicable **					Activity ---->	16,592.00	.00
						Balance August 31, 2024 (02-25)	.00	
40	2045					Fiduciary Fund REFUNDABLE FEES		
						Balance August 1, 2024 (02-25)		1,455,000.00
	** Budget not Applicable **					Activity ---->	.00	.00
						Balance August 31, 2024 (02-25)		1,455,000.00
40	2050					Fiduciary Fund Deferred Revenue		
						Balance August 1, 2024 (02-25)		575,959.00
	** Budget not Applicable **					Activity ---->	.00	.00
						Balance August 31, 2024 (02-25)		575,959.00
40	2055					Fiduciary Fund Due to General Fund		
						Balance August 1, 2024 (02-25)		127,330.33
	** Budget not Applicable **					Activity ---->	.00	.00
						Balance August 31, 2024 (02-25)		127,330.33
40	2330					Fiduciary Fund GENERAL LT- ADVANCE COSTC0/SEA		
						Balance August 1, 2024 (02-25)		4,650,000.00
	** Budget not Applicable **					Activity ---->	.00	.00
						Balance August 31, 2024 (02-25)		4,650,000.00

G/L Account No Ctr	Cal.	Fiscl	Date	Jrnl	Line	Description	Debit	Credit
40	2455					Fiduciary Fund LT ADVANCES FOR OPERAT EXPENSE		
						Balance August 1, 2024 (02-25)		3,626,057.91
						** Budget not Applicable ** Activity ---->	.00	.00
						Balance August 31, 2024 (02-25)		3,626,057.91
40	2460					Fiduciary Fund ADVANCES COP REIMBURSEMENTS		
						Balance August 1, 2024 (02-25)		1,454,766.42
						** Budget not Applicable ** Activity ---->	.00	.00
						Balance August 31, 2024 (02-25)		1,454,766.42
40	2485					Fiduciary Fund SERIES B BONDS		
						Balance August 1, 2024 (02-25)		210,000.00
						** Budget not Applicable ** Activity ---->	.00	.00
						Balance August 31, 2024 (02-25)		210,000.00
40	2490					Fiduciary Fund Refunding Bonds, Series 2017		
						Balance August 1, 2024 (02-25)		2,210,000.00
						** Budget not Applicable ** Activity ---->	.00	.00
						Balance August 31, 2024 (02-25)		2,210,000.00
40	3400					Fiduciary Fund Unappropriated Fund Balance		
						Balance August 1, 2024 (02-25)	10,461,936.45	
						** Budget not Applicable ** Activity ---->	.00	.00
						Balance August 31, 2024 (02-25)	10,461,936.45	

G/L Account No Ctr	Cal.	Fiscl	Date	Jrnl	Line	Description	Debit	Credit
40	4450					Fiduciary Fund TAX INCR INTER		
						Balance August 1, 2024 (02-25)		6,122.88
	Aug 2024	02-2025	09/21/24	DL-00	0001	August Interest		5,634.34
	Annual Budget	.00				Remaining Balance 11,757.22 Activity ---->	.00	5,634.34
						Balance August 31, 2024 (02-25)		11,757.22
40	5415	03				Fiduciary Fund Finance Srvc Finance		
						Balance August 1, 2024 (02-25)	.00	
	Aug 2024	02-2025	09/11/24	03-00	0003	Vendor RSG01 Invoice 12172H Line 0001	68.75	
						JULY 2024- SUCCESSOR AGENCY SERVICES-ANNUAL REPORT		
						RSG, INC.		
						Hand Check # 002303		
	Annual Budget	-12,376.00				Remaining Balance -12,444.75 Activity ---->	68.75	.00
						Balance August 31, 2024 (02-25)	68.75	
40	5777	00				Fiduciary Fund Seaside Settle Non Department		
						Balance August 1, 2024 (02-25)	.00	
	Aug 2024	02-2025	09/11/24	03-00	0004	Vendor CIT02 Invoice C40820H Line 0001	182,261.00	
						JULY 2024- DEBT PAYMENT		
						CITY OF SEASIDE		
						Hand Check # 002305		
						JULY 2024 PAYMENT- DEBT PAYMENT		
	Annual Budget	.00				Remaining Balance -182,261.00 Activity ---->	182,261.00	.00
						Balance August 31, 2024 (02-25)	182,261.00	

AGENDA ITEM
5F.

Acceptance of City/Successor Agency Financial Reports from September 2024

City of Sand City

STAFF REPORT

TO: Honorable Mayor and City Council/Successor Agency Board Members
FROM: Jennifer Pope, Finance Manager
SUBJECT: September 2024 Financial Report
DATE: November 5, 2024

BACKGROUND/DISCUSSION:
Attached are the financial reports for the City of Sand City and the Sand City Successor Agency of the former Redevelopment Agency.

A. City of Sand City Reports

a. Cash Register Activity Report, September 2024 (Attachment 1)
   Revenue total - **$1,165,170**
b. Cash Disbursement Report, September 2024 (Attachment 2)
   Expenditure total - **$424,582**

B. Sand City Successor Agency for the former Redevelopment Agency Reports

a. Trial Balance Report, September 2024 (Attachment 3)
   i. Revenue total - **$4,546**
   ii. Expenditures total - **$751,457**

Transfers
Transfers are shown in the Month End Cash Register Activity Report; they are transfers from one bank account to another and should not be considered as a revenue or expenditure.

Date	Source	Amount	Description

There were no transfers in September 2024.

CEQA:
This action does not constitute a "project" as defined by the California Environmental Quality Act (CEQA) guidelines section 15378.

FISCAL IMPACT:
There is no fiscal impact with receiving this report.

RECOMMENDATION:
Receive the report.

ATTACHMENTS:

1. Sand City Month End Cash Register Activity Report
2. Sand City Month End Cash Disbursement Report
3. Successor Agency Trial Balance Report

City of Sand City
Month End Cash Register Activity Report
Reporting Period: 09/24

Period	Post Date	Receipt	Receipt Date	Description	Debit Acct	Credit Acct	Amount paid
24-Sep	9/4/2024	29836	9/3/2024	TOT TAX	99 1001	10 4034 00	2,114.81
24-Sep	9/4/2024	29836	9/3/2024	Transient Occupancy Tax Penalties	99 1001	10 4034 00	470.15
24-Sep	9/4/2024	29837	9/3/2024	TOT TAX	99 1001	10 4034 00	1,865.88
24-Sep	9/4/2024	29838	9/3/2024	TOT TAX	99 1001	10 4034 00	333.60
24-Sep	9/4/2024	29839	9/3/2024	TOT TAX	99 1001	10 4034 00	386.16
24-Sep	9/4/2024	29840	9/3/2024	TOT TAX	99 1001	10 4034 00	1,918.80
24-Sep	9/4/2024	29841	9/3/2024	TOT TAX	99 1001	10 4034 00	384.00
24-Sep	9/4/2024	29842	9/3/2024	UTILITY USERS TAX	99 1001	10 4025 00	786.48
24-Sep	9/4/2024	29843	9/3/2024	UTILITY USERS TAX	99 1001	10 4025 00	121.04
24-Sep	9/4/2024	29844	9/3/2024	UTILITY USERS TAX	99 1001	10 4025 00	7.70
24-Sep	9/4/2024	29845	9/3/2024	UTILITY USERS TAX	99 1001	10 4025 00	0.36
24-Sep	9/4/2024	29846	9/3/2024	UTILITY USERS TAX	99 1001	10 4025 00	41.26
24-Sep	9/4/2024	29847	9/3/2024	UTILITY USERS TAX	99 1001	10 4025 00	17,401.29
24-Sep	9/4/2024	29848	9/3/2024	UTILITY USERS TAX	99 1001	10 4025 00	3,304.62
24-Sep	9/4/2024	29849	9/3/2024	WEST END REVENUE	99 1001	10 4500 00	100.00
24-Sep	9/4/2024	29849	9/3/2024	WEST END REVENUE	99 1001	10 4500 00	510.00
24-Sep	9/4/2024	29850	9/3/2024	WEST END REVENUE	99 1001	10 4500 00	150.00
24-Sep	9/4/2024	29851	9/3/2024	WEST END REVENUE	99 1001	10 4500 00	150.00
24-Sep	9/4/2024	29852	9/3/2024	WEST END REVENUE	99 1001	10 4500 00	2,500.00
24-Sep	9/4/2024	29853	9/3/2024	WEST END REVENUE	99 1001	10 4500 00	150.00
24-Sep	9/4/2024	29854	9/3/2024	WEST END REVENUE	99 1001	10 4500 00	150.00
24-Sep	9/4/2024	29855	9/3/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/4/2024	29856	9/3/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/4/2024	29857	9/3/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/4/2024	29858	9/3/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/4/2024	29859	9/3/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/4/2024	29860	9/3/2024	SAND CITY PARKING	99 1001	10 4221 08	60.00
24-Sep	9/4/2024	29861	9/3/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/4/2024	29862	9/3/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/4/2024	29863	9/3/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/4/2024	29864	9/3/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/4/2024	29865	9/3/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/4/2024	29866	9/3/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/4/2024	29868	9/3/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/4/2024	29869	9/3/2024	POLICE REPORT 4560	99 1001	10 4560 08	10.00
24-Sep	9/4/2024	29870	9/3/2024	POLICE REPORT 4560	99 1001	10 4560 08	10.00
24-Sep	9/4/2024	29871	9/3/2024	BUSINESS LICENSE	99 1001	10 4055 00	112,912.65
24-Sep	9/4/2024	29872	9/3/2024	TRANSACTION/USE TAX	99 1001	10 4032 00	435,174.75
24-Sep	9/4/2024	29873	9/3/2024	SALES TAX RECEIVED	99 1001	10 4030 00	372,563.00
24-Sep	9/4/2024	29874	9/3/2024	TRANSACTION/USE TAX	99 1001	10 4032 00	65.16
24-Sep	9/4/2024	29875	9/3/2024	TRANSACTION/USE TAX	99 1001	10 4032 00	1,436.75
24-Sep	9/4/2024	29876	9/3/2024	CABLE FRANCHISE	99 1001	10 4035 00	1,285.90
24-Sep	9/4/2024	29877	9/3/2024	REAP PROJECT	99 1001	10 4608 19	10,838.29
24-Sep	9/4/2024	29878	9/3/2024	CABLE FRANCHISE	99 1001	10 4035 00	259.84
24-Sep	9/4/2024	29879	9/3/2024	RENTAL INCOME	99 1001	10 4740 00	1,699.59
24-Sep	9/4/2024	29880	9/3/2024	ROAD MAINTENANCE & REHAB	99 1001	37 4306 11	908.35
24-Sep	9/4/2024	29881	9/3/2024	POST REIMBURSEMENT	99 1001	10 4335 08	2,649.32
24-Sep	9/4/2024	29882	9/3/2024	POST REIMBURSEMENT	99 1001	10 4335 08	1,138.26
24-Sep	9/5/2024	29883	9/5/2024	ENGINEERING FEES	99 1001	10 4160 11	435.00
24-Sep	9/5/2024	29885	9/5/2024	ENGINEERING FEES	99 1001	10 4160 11	435.00

City of Sand City
Month End Cash Register Activity Report
Reporting Period: 09/24

Period	Post Date	Receipt	Receipt Date	Description	Debit Acct	Credit Acct	Amount paid
24-Sep	9/5/2024	29886	9/5/2024	ENGINEERING FEES	99 1001	10 4160 11	3,000.00
24-Sep	9/5/2024	29887	9/5/2024	SQUARE FEES	99 1001	10 2116	(4.73)
24-Sep	9/6/2024	29888	9/6/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/6/2024	29889	9/6/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/6/2024	29890	9/6/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/6/2024	29891	9/6/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/6/2024	29892	9/6/2024	SAND CITY PARKING	99 1001	10 4221 08	115.00
24-Sep	9/6/2024	29893	9/6/2024	BUSINESS LICENSE	99 1001	10 4055 00	125.00
24-Sep	9/6/2024	29894	9/6/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/6/2024	29895	9/6/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/6/2024	29896	9/6/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/6/2024	29897	9/6/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/6/2024	29898	9/6/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/6/2024	29899	9/6/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/6/2024	29900	9/6/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/6/2024	29901	9/6/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/6/2024	29902	9/6/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/6/2024	29903	9/6/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/6/2024	29904	9/6/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/6/2024	29905	9/6/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/6/2024	29906	9/6/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/6/2024	29907	9/6/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/6/2024	29909	9/6/2024	VEHICLE ABATEMENT/VLF	99 1001	10 4325 08	95.00
24-Sep	9/6/2024	29910	9/6/2024	SQUARE FEES	99 1001	10 2116	(5.51)
24-Sep	9/20/2024	29911	9/19/2024	TOT TAX	99 1001	10 4034 00	1,119.24
24-Sep	9/20/2024	29912	9/19/2024	TOT TAX	99 1001	10 4034 00	342.00
24-Sep	9/20/2024	29913	9/19/2024	TOT TAX	99 1001	10 4034 00	2,591.88
24-Sep	9/20/2024	29914	9/19/2024	TOT TAX	99 1001	10 4034 00	1,737.47
24-Sep	9/20/2024	29915	9/19/2024	TOT TAX	99 1001	10 4034 00	1,038.00
24-Sep	9/20/2024	29916	9/19/2024	TOT TAX	99 1001	10 4034 00	673.80
24-Sep	9/20/2024	29917	9/19/2024	TOT TAX	99 1001	10 4034 00	2,370.36
24-Sep	9/20/2024	29918	9/19/2024	TOT TAX	99 1001	10 4034 00	390.00
24-Sep	9/20/2024	29919	9/19/2024	TOT TAX	99 1001	10 4034 00	394.80
24-Sep	9/20/2024	29920	9/19/2024	TOT TAX	99 1001	10 4034 00	2,526.35
24-Sep	9/20/2024	29921	9/19/2024	UTILITY USERS TAX	99 1001	10 4025 00	0.69
24-Sep	9/20/2024	29922	9/19/2024	UTILITY USERS TAX	99 1001	10 4025 00	166.76
24-Sep	9/20/2024	29923	9/19/2024	UTILITY USERS TAX	99 1001	10 4025 00	104.99
24-Sep	9/20/2024	29924	9/19/2024	COPS GRANT	99 1001	10 4069 08	8,333.37
24-Sep	9/20/2024	29925	9/19/2024	SOUTH OF TIOGA REIMBURSEMENTS	99 1001	10 4530 00	2,863.75
24-Sep	9/20/2024	29926	9/19/2024	GAS TAX 2103	99 1001	31 4305 11	423.90
24-Sep	9/20/2024	29926	9/19/2024	GAS TAX - 2105 31	99 1001	31 4305 11	201.06
24-Sep	9/20/2024	29926	9/19/2024	GAS TAX - 2106 32	99 1001	31 4305 11	486.75
24-Sep	9/20/2024	29926	9/19/2024	GAS TAX - 2107 33	99 1001	31 4305 11	230.74
24-Sep	9/20/2024	29927	9/19/2024	US BANK CAL CARD REBATE	99 1001	10 4736 00	504.65
24-Sep	9/20/2024	29928	9/19/2024	CRIMINAL PC1463/CITY FINES	99 1001	10 4210 08	125.46
24-Sep	9/20/2024	29928	9/19/2024	COUNTY/PROOF OF CORR	99 1001	35 4205 11	0.54
24-Sep	9/20/2024	29928	9/19/2024	1/2 TAX POLICE/PROP 172	99 1001	10 4330 08	34.63
24-Sep	9/20/2024	29928	9/19/2024	COUNTY/REV & RECOVERY	99 1001	10 4210 08	172.23
24-Sep	9/20/2024	29929	9/19/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/20/2024	29930	9/19/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00

City of Sand City
Month End Cash Register Activity Report
Reporting Period: 09/24

Period	Post Date	Receipt	Receipt Date	Description	Debit Acct	Credit Acct	Amount paid
24-Sep	9/20/2024	29931	9/19/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/20/2024	29932	9/19/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/20/2024	29933	9/19/2024	SAND CITY PARKING	99 1001	10 4221 08	100.00
24-Sep	9/20/2024	29934	9/19/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/20/2024	29936	9/19/2024	SAND CITY PARKING	99 1001	10 4221 08	40.00
24-Sep	9/20/2024	29937	9/19/2024	MST SURF REIMBURSEMENT	99 1001	10 4529 00	22,948.75
24-Sep	9/20/2024	29938	9/19/2024	UTILITY USERS TAX	99 1001	10 4025 00	8.00
24-Sep	9/20/2024	29939	9/19/2024	TAMC MEASURE X FOR STREETS	99 1001	38 4302 11	135,786.78
				Total Cash Register Activity			**1,165,169.72**

City of Sand City
Month End Cash Disbursement Report
Period Report: 09/24

Period	Check Number	Check Date	Vendor # (Name)	Gross Amount	Net Amount	Check Description
24-Sep	39740	9/9/2024	COA07 (MONTEREY COUNTY WEEKLY)	$ 3,474.00	$ 3,474.00	Automatic Generated Check
	39741	9/9/2024	FAS01 (FASHION STREAKS)	$ 388.71	$ 388.71	Automatic Generated Check
	39742	9/9/2024	GOL01 (GOLDEN STATE PORTABLES)	$ 4,580.15	$ 4,580.15	Automatic Generated Check
	39743	9/9/2024	MIN01 (TONI MINERVA)	$ 419.12	$ 419.12	Automatic Generated Check
	39744	9/9/2024	RIG01 (JOHN BREARTON)	$ 2,628.75	$ 2,628.75	Automatic Generated Check
	39745	9/9/2024	SLV01 (STEPHEN L. VAGNINI)	$ 200.00	$ 200.00	Automatic Generated Check
	39746	9/9/2024	STA02 (KATY BAZURTO)	$ 2,600.00	$ 2,600.00	Automatic Generated Check
	39747	9/9/2024	USB01 (U.S. BANK CORP PAYMENT SYSTEMS)	$ 4,586.32	$ 4,586.32	Automatic Generated Check
	39748	9/11/2024	ELS01 (ELS ARCHITECTURE AND URBAN DESIGN)	$ 17,997.50	$ 17,997.50	Automatic Generated Check
	39749	9/11/2024	EMC02 (EMC PLANNING GROUP, INC.)	$ 69,259.97	$ 69,259.97	Automatic Generated Check
	39750	9/13/2024	ALA04 (ALHAMBRA)	$ 121.86	$ 121.86	Automatic Generated Check
	39751	9/13/2024	AME10 (VESTIS)	$ 705.91	$ 705.91	Automatic Generated Check
	39752	9/13/2024	ATT05 (AT&T MOBILITY)	$ 926.93	$ 926.93	Automatic Generated Check
	39753	9/13/2024	BAR01 (FOSTER & FOSTER, INC.)	$ 2,100.00	$ 2,100.00	Automatic Generated Check
	39754	9/13/2024	BUS05 (JEFF BUSHNELL)	$ 209.06	$ 209.06	Automatic Generated Check
	39755	9/13/2024	CAL01 (CAL-AM WATER)	$ 886.99	$ 886.99	Automatic Generated Check
	39756	9/13/2024	CAM03 (TALKING WALLS)	$ 20,000.00	$ 20,000.00	Automatic Generated Check
	39757	9/13/2024	COA07 (MONTEREY COUNTY WEEKLY)	$ 2,304.75	$ 2,304.75	Automatic Generated Check
	39758	9/13/2024	COM11 (COMCAST)	$ 361.80	$ 361.80	Automatic Generated Check
	39759	9/13/2024	COR04 (CORODATA SHREDDING, INC.)	$ 61.75	$ 61.75	Automatic Generated Check
	39760	9/13/2024	COR05 (CORODATA RECORDS MANAGEMENT)	$ 56.45	$ 56.45	Automatic Generated Check
	39761	9/13/2024	CYP04 (CYPRESS COAST FORD)	$ 179.29	$ 179.29	Automatic Generated Check
	39762	9/13/2024	DJO01 (SANDBOX)	$ 100.00	$ 100.00	Automatic Generated Check
	39763	9/13/2024	EMC02 (EMC PLANNING GROUP, INC.)	$ 175,893.69	$ 175,893.69	Automatic Generated Check
	39764	9/13/2024	FIR03 (FIRST ALARM SECURITY)	$ 1,246.20	$ 1,246.20	Automatic Generated Check
	39765	9/13/2024	GAT02 (HOPE SERVICES)	$ 6,483.75	$ 6,483.75	Automatic Generated Check
	39766	9/13/2024	HDL02 (HDL COMPANIES)	$ 684.00	$ 684.00	Automatic Generated Check
	39767	9/13/2024	HDL03 (HINDERLITER, DE LLAMAS & ASSOC)	$ 2,198.12	$ 2,198.12	Automatic Generated Check
	39768	9/13/2024	HOM01 (HOME DEPOT CREDIT SERVICE)	$ 3,249.16	$ 3,249.16	Automatic Generated Check
	39769	9/13/2024	LCW01 (LIEBERT CASSIDY WHITMORE)	$ 132.00	$ 132.00	Automatic Generated Check
	39770	9/13/2024	LIN01 (LINGO)	$ 139.88	$ 139.88	Automatic Generated Check
	39771	9/13/2024	MBP03 (MONTEREY BAY PEST CONTROL)	$ 130.00	$ 130.00	Automatic Generated Check
	39772	9/13/2024	MBT01 (MONTEREY BAY TECHNOLOGIES, INC.)	$ 2,907.56	$ 2,907.56	Automatic Generated Check
	39773	9/13/2024	MCH05 (MONTEREY COUNTY HEALTH)	$ 2,000.00	$ 2,000.00	Automatic Generated Check
	39774	9/13/2024	MEY01 (MEYERS NAVE, CORPORATION)	$ 25,285.52	$ 25,285.52	Automatic Generated Check
	39775	9/13/2024	MON10 (COUNTY OF MONTEREY)	$ 14,684.00	$ 14,684.00	Automatic Generated Check
	39776	9/13/2024	MOT03 (MOTOROLA SOLUTIONS, INC.)	$ 8,200.70	$ 8,200.70	Automatic Generated Check
	39777	9/13/2024	MRW02 (MRWMD)	$ 509.74	$ 509.74	Automatic Generated Check
	39778	9/13/2024	OFF03 (ODP BUSINESS SOLUTIONS)	$ 108.96	$ 108.96	Automatic Generated Check
	39779	9/13/2024	PBC01 (PITNEY BOWES)	$ 581.43	$ 581.43	Automatic Generated Check
	39780	9/13/2024	PET01 (PETTY CASH-CASHED BY SHAN NORTON)	$ 239.83	$ 239.83	Automatic Generated Check
	39781	9/13/2024	PGE01 (PACIFIC GAS & ELECTRIC)	$ 3,798.24	$ 3,798.24	Automatic Generated Check
	39782	9/13/2024	SAL06 (SALINAS AUTO CENTER)	$ 500.00	$ 500.00	Automatic Generated Check
	39783	9/13/2024	SHA03 (SHAMROCK OFFICE SOLUTIONS)	$ 181.95	$ 181.95	Automatic Generated Check
	39784	9/13/2024	SOF02 (ELIZABETH A. SOFER)	$ 23.18	$ 23.18	Automatic Generated Check
	39785	9/13/2024	STA03 (STAR SANITATION, LLC)	$ 813.00	$ 813.00	Automatic Generated Check
	39786	9/13/2024	STU02 (STURDY OIL COMPANY)	$ 1,326.30	$ 1,326.30	Automatic Generated Check
	39787	9/13/2024	VER02 (VERITONE, INC.)	$ 2,400.00	$ 2,400.00	Automatic Generated Check
	39788	9/13/2024	WEE02 (BOB WEEMS)	$ 291.89	$ 291.89	Automatic Generated Check
	39789	9/13/2024	WHI02 (WHITSON ENGINEERS)	$ 1,300.00	$ 1,300.00	Automatic Generated Check
	39791	9/26/2024	CYP04 (CYPRESS COAST FORD)	$ 213.84	$ 213.84	Automatic Generated Check
	39792	9/26/2024	GHD01 (GHD INC.)	$ 15,416.58	$ 15,416.58	Automatic Generated Check
	39793	9/26/2024	DEP01 (DEPT. OF CONSERVATION)	$ 241.50	$ 241.50	Automatic Generated Check
	39794	9/26/2024	EMC02 (EMC PLANNING GROUP, INC.)	$ 463.89	$ 463.89	Automatic Generated Check
	39795	9/26/2024	ESC01 (LAWRENCE ESCOBAR)	$ 5,813.00	$ 5,813.00	Automatic Generated Check
	39796	9/26/2024	GHD01 (GHD INC.)	$ 1,471.25	$ 1,471.25	Automatic Generated Check
	39797	9/26/2024	MBA01 (MONTEREY BAY AREA SELF INS.)	$ 10,906.61	$ 10,906.61	Automatic Generated Check
	39798	9/26/2024	PUB01 (PUBLIC STORAGE)	$ 597.00	$ 597.00	Automatic Generated Check
			Total Cash Disbursement	**$ 424,582.08**	**$ 424,582.08**	

Beginning of.: September 1, 2024 (03-25) Thru Ending of.: September 30, 2024 (03-25)

G/L Account No Ctr	Cal.	Fiscl	Date	Jrnl	Line	Description	Debit	Credit
40	1005					Fiduciary Fund Tax Increment Account		
						Balance September 1, 2024 (03-25)	1,283,527.58	
	Sep 2024	03-2025	10/21/24	DL-00	0001	September AP Checks		711,327.13
	Sep 2024	03-2025	10/21/24	DL-00	0002	September AP Checks		40,129.50
	Sep 2024	03-2025	10/21/24	DL-02	0002	September 2024 Interest	4,546.19	
	** Budget not Applicable **					Activity ---->	4,546.19	751,456.63
						Balance September 30, 2024 (03-25)	536,617.14	
40	1025					Fiduciary Fund 2008 TAX EXEMPT CD#69981148831		
						Balance September 1, 2024 (03-25)	535,050.30	
	** Budget not Applicable **					Activity ---->	.00	.00
						Balance September 30, 2024 (03-25)	535,050.30	
40	1026					Fiduciary Fund 2008 TAX EXEMPT CD#53567157891		
						Balance September 1, 2024 (03-25)	540,471.43	
	** Budget not Applicable **					Activity ---->	.00	.00
						Balance September 30, 2024 (03-25)	540,471.43	
40	1070					Fiduciary Fund 2008B RESERVE ACCOUNT		
						Balance September 1, 2024 (03-25)	216,039.34	
	** Budget not Applicable **					Activity ---->	.00	.00
						Balance September 30, 2024 (03-25)	216,039.34	
40	1072					Fiduciary Fund 2008B Debt Service Fund		
						Balance September 1, 2024 (03-25)	1,511.78	
	** Budget not Applicable **					Activity ---->	.00	.00
						Balance September 30, 2024 (03-25)	1,511.78	

Beginning of.: September 1, 2024 (03-25) Thru Ending of.: September 30, 2024 (03-25)

G/L Account No Ctr	Cal.	Fiscl	Date	Jrnl	Line	Description	Debit	Credit
40	1085					Fiduciary Fund 2017 Debt Service Fund		
						Balance September 1, 2024 (03-25)	3.99	
	** Budget not Applicable **					Activity ---->	.00	.00
						Balance September 30, 2024 (03-25)	3.99	
40	1291					Fiduciary Fund Land		
						Balance September 1, 2024 (03-25)	1,100,000.26	
	** Budget not Applicable **					Activity ---->	.00	.00
						Balance September 30, 2024 (03-25)	1,100,000.26	
40	1293					Fiduciary Fund FURNITURE AND FIXTURES		
						Balance September 1, 2024 (03-25)	40,218.25	
	** Budget not Applicable **					Activity ---->	.00	.00
						Balance September 30, 2024 (03-25)	40,218.25	
40	1297					Fiduciary Fund SIGNS AND LANDSCAPING		
						Balance September 1, 2024 (03-25)	182,630.99	
	** Budget not Applicable **					Activity ---->	.00	.00
						Balance September 30, 2024 (03-25)	182,630.99	
40	1300					Fiduciary Fund ACCUMULATED DEPRECIATION		
						Balance September 1, 2024 (03-25)		222,849.24
	** Budget not Applicable **					Activity ---->	.00	.00
						Balance September 30, 2024 (03-25)		222,849.24

Beginning of.: September 1, 2024 (03-25) Thru Ending of.: September 30, 2024 (03-25)

G/L Account No Ctr	Cal.	Fiscl	Date	Jrnl	Line	Description		Debit	Credit
40	2001					Fiduciary Fund Accounts Payable			
						Balance September 1, 2024 (03-25)		.00	
						** Budget not Applicable **	Activity ---->	.00	.00
						Balance September 30, 2024 (03-25)		.00	
40	2045					Fiduciary Fund REFUNDABLE FEES			
						Balance September 1, 2024 (03-25)			1,455,000.00
						** Budget not Applicable **	Activity ---->	.00	.00
						Balance September 30, 2024 (03-25)			1,455,000.00
40	2050					Fiduciary Fund Deferred Revenue			
						Balance September 1, 2024 (03-25)			575,959.00
						** Budget not Applicable **	Activity ---->	.00	.00
						Balance September 30, 2024 (03-25)			575,959.00
40	2055					Fiduciary Fund Due to General Fund			
						Balance September 1, 2024 (03-25)			127,330.33
						** Budget not Applicable **	Activity ---->	.00	.00
						Balance September 30, 2024 (03-25)			127,330.33
40	2330					Fiduciary Fund GENERAL LT- ADVANCE COSTC0/SEA			
						Balance September 1, 2024 (03-25)			4,650,000.00
						** Budget not Applicable **	Activity ---->	.00	.00
						Balance September 30, 2024 (03-25)			4,650,000.00

G/L Account No Ctr	Cal.	Fiscl	Date	Jrnl	Line	Description	Debit	Credit
40	2455					Fiduciary Fund LT ADVANCES FOR OPERAT EXPENSE		
						Balance September 1, 2024 (03-25)		3,626,057.91
	** Budget not Applicable **					Activity ---->	.00	.00
						Balance September 30, 2024 (03-25)		3,626,057.91
40	2460					Fiduciary Fund ADVANCES COP REIMBURSEMENTS		
						Balance September 1, 2024 (03-25)		1,454,766.42
	** Budget not Applicable **					Activity ---->	.00	.00
						Balance September 30, 2024 (03-25)		1,454,766.42
40	2485					Fiduciary Fund SERIES B BONDS		
						Balance September 1, 2024 (03-25)		210,000.00
	** Budget not Applicable **					Activity ---->	.00	.00
						Balance September 30, 2024 (03-25)		210,000.00
40	2490					Fiduciary Fund Refunding Bonds, Series 2017		
						Balance September 1, 2024 (03-25)		2,210,000.00
	Sep 2024	03-2025	10/21/24	DL-00	0004	September AP Checks	680,000.00	
	** Budget not Applicable **					Activity ---->	680,000.00	.00
						Balance September 30, 2024 (03-25)		1,530,000.00
40	3400					Fiduciary Fund Unappropriated Fund Balance		
						Balance September 1, 2024 (03-25)	10,461,936.45	
	** Budget not Applicable **					Activity ---->	.00	.00
						Balance September 30, 2024 (03-25)	10,461,936.45	

Beginning of.: September 1, 2024 (03-25) Thru Ending of.: September 30, 2024 (03-25)

G/L Account No Ctr	Cal.	Fiscl	Date	Jrnl	Line	Description			Debit	Credit
40	4450					Fiduciary Fund TAX INCR INTER				
						Balance September 1, 2024 (03-25)				11,757.22
	Sep 2024	03-2025	10/21/24	DL-02	0001	September 2024 Interest				4,546.19
	Annual Budget	.00				Remaining Balance	16,303.41	Activity ---->	.00	4,546.19
						Balance September 30, 2024 (03-25)				16,303.41
40	5415	03				Fiduciary Fund Finance Srvc Finance				
						Balance September 1, 2024 (03-25)			68.75	
	Annual Budget	-12,376.00				Remaining Balance	-12,444.75	Activity ---->	.00	.00
						Balance September 30, 2024 (03-25)			68.75	
40	5545	04				Fiduciary Fund OUTSIDE COUNSEL Attorney				
						Balance September 1, 2024 (03-25)			.00	
	Sep 2024	03-2025	10/21/24	DL-00	0003	September AP Checks			40,129.50	
	Annual Budget	.00				Remaining Balance	-40,129.50	Activity ---->	40,129.50	.00
						Balance September 30, 2024 (03-25)			40,129.50	
40	5777	00				Fiduciary Fund Seaside Settle Non Department				
						Balance September 1, 2024 (03-25)			182,261.00	
	Annual Budget	.00				Remaining Balance	-182,261.00	Activity ---->	.00	.00
						Balance September 30, 2024 (03-25)			182,261.00	
40	6571					Fiduciary Fund 2017A Interest				
						Balance September 1, 2024 (03-25)			.00	

Beginning of.: September 1, 2024 (03-25) Thru Ending of.: September 30, 2024 (03-25)

G/L Account No Ctr	Cal.	Fiscl	Date	Jrnl	Line	Description	Debit	Credit
40	6571					Fiduciary Fund 2017A Interest (Continues..)		
	Sep 2024	03-2025	10/21/24	DL-00	0005	September AP Checks	31,492.50	
	Sep 2024	03-2025	10/21/24	DL-00	0006	September AP Checks		165.37
	Annual Budget		15,995.00			Remaining Balance -15,332.13 Activity ---->	31,492.50	165.37
						Balance September 30, 2024 (03-25)	31,327.13	

AGENDA ITEM
7A.

South of Tioga Hotel Project Update: Tom Jacobson, EKN Development

AGENDA ITEM
9A.

Approve a Resolution Approving a Professional Service Agreement with TL Engineering in the Amount of $18,347 to Perform an Engineering and Traffic Survey (E&TS) Analysis Related Services for the City of Sand City

City of Sand City

STAFF REPORT

TO: Honorable Mayor and City Council
FROM: Leon D. Gomez, P.E., City Engineer
SUBJECT: Adopt a resolution approving a Professional Services Agreement with TL Engineering in the amount of $18,347 to perform an updated Engineering and Traffic Survey (E&TS) for the City of Sand City
DATE: November 5, 2024

BACKGROUND/DISCUSSION:

Speed limits establish a reasonable and safe operating speed for a specific section of roadway. In California, speed limits are governed by the California Vehicle Code (CVC), Section 627, 22348 through 22413 and 40802. In compliance with State laws and the CVC, vehicle speed laws can only be enforced when speed limits of a roadway are determined by an Engineering and Traffic Survey (E&TS). An E&TS is an engineering study of the prevailing speeds and traffic conditions along a roadway, and it is completed every five years for streets greater than 40' in width, regardless of the street's classification. An E&TS can remain valid for a period of 10 years if a registered engineer determines no significant changes in roadway or traffic conditions have occurred. Local streets have a prima facie speed limit of 25 mph unless a different speed limit is determined by an engineering study. In Sand City, the city engineer did not make a determination to extend the survey in 2020 because he was unaware of the expiration date of the 2015 E&TS, which had been requested by the police department. As a result, the 2015 E&TS expired in 2020.

The most widely accepted method of determining the posted speed limit is to set the speed limit at the "85th percentile speed", which is the speed at or below which 85 percent of the traffic is moving. The 85th percentile speed is the single most influential indicator of what is safe and reasonable, and it is used to determine the speed limit by rounding to the nearest 5 mph increment and then posting the speed limit at that speed. If there are conditions not readily apparent to the driver, as determined by a registered engineer, the posted speed limit may be lowered by 5 mph, but this must be clearly documented in the E&TS.

In 2015, the City contracted with Hatch Mott MacDonald (HMM) to perform a speed survey at 11 roadway segments within the City. The survey was conducted in accordance with the CVC and California Manual on Uniform Traffic Control Devices (CA MUTCD) to allow radar enforcement by the City's Police Department. However, the 2015 speed survey has expired and speed limits are no longer enforceable within the City. A new E&TS is needed to establish new, updated speed limits within the City that are enforceable.

Review & Analysis

The City contacted TL Engineering (TLE) to provide a proposal and fee to perform an updated E&TS analysis. TLE is a professional traffic engineering consultant, and they have prepared a number of E&TS for other local agencies in the area. TLE has the engineering and technical expertise to provide this service. TLE's scope of work includes the following:

- The E&TS will be consistent with State requirements.
- TLE will hire National Data Services (NDS), a data collection company, to perform field data collection.
- TLE's scope of work includes survey and volume locations at eight (8) roadway segments throughout the City. Most of the segments will only require data collection at one location, while one segment will require three points of data collection. Below is a list of the locations and the number of data collection points:

    1. Contra Costa Street: 1 location (between Shasta St & Elder Ave)
    2. California Avene: 3 locations (west of Hickory Street, between Shake Ave & Tioga Ave, and between Playa Ave and Hwy 1)
    3. Sand Dunes Drive: 1 location (midway between Tioga Ave and the City Limits to the south)
    4. Tioga Avenue: 1 location (between Sand Dunes Dr & Metz Road)
    5. Metz Road: 1 location (between Tioga Ave & Playa Ave)
    6. Catalina Street: 1 location (between Orange Ave and Shasta St)
    7. Playa Avenue: 1 location (between Metz Road & California Ave)
    8. Redwood Avenue: 1 location (between Hickory Street & Holly Street)

    Note: the roadway segments and data collection locations were determined in consultation with the Chief of Police and City Engineer

- To assess safety, TLE will obtain collision data from the Statewide Integrated Traffic Records System (SWITRS) and the California Highway Patrol.
- To calculate average accident rates, average daily traffic volumes will be collected. 24-hour traffic counts will be collected on all road segments identified above.
- As an optional task, TLE has included the preparation of a sign plan. This optional task includes a site visit to evaluate existing signage to determine if the type, size, and locations meet current CA MUTCD requirements. Based on the site visit, TLE will provide recommendations for whether existing signs meet current requirements, need to be replaced, need to be relocated, and/or whether new signs are needed. Depending on the quantity, type and location of signs and poles that may be required, signs will be installed by the City's Public Works Department (or) a contract installer.

TLE's proposal is attached as **Exhibit A** to the Resolution. The cost for the E&TS is $14,387 (base scope of work). The cost for the optional sign plan is $3,960. The cost for both is $18,347.

CEQA:
This action does not constitute a "project" as defined by the California Environmental Quality Act (CEQA) guidelines section 15378.

FISCAL IMPACT:
The cost for the E&TS and optional sign plan is $18,347. Approval of this item would require an adjustment during the mid-year budget amendment.

RECOMMENDATION:
To establish enforceable speed limits within the City, it is recommended that the city council approve a Professional Services Agreement with TL Engineering in the amount of $18,347 to perform an updated Engineering and Traffic Survey (E&TS) and prepare a Sign Plan for the City of Sand City.

ATTACHMENTS:
1. Resolution

CITY OF SAND CITY
RESOLUTION SC ____, 2024

RESOLUTION OF THE CITY COUNCIL OF SAND CITY APPROVING A PROFESSIONAL SERVICE AGREEMENT WITH TL ENGINEERING IN THE AMOUNT OF $18,347 TO PERFORM AN ENGINEERING AND TRAFFIC SURVEY (E&TS) ANALYSIS AND RELATED SERVICES FOR THE CITY OF SAND CITY

WHEREAS, in September 2015, the City of Sand City (City) performed an Engineering and Traffic Survey (E&TS) analysis to establish speed limits for the street network for a period of five years to 2020; and

WHEREAS, speed limits establish a reasonable and safe operating speed for a specific section of roadway and are governed by the California Vehicle Code (CVC); and

WHEREAS, vehicle speed laws can only be enforced when the speed limits of a roadway are determined by an Engineering and Traffic Survey (E&TS); and

WHEREAS, the City contacted TL Engineering (TLE), a professional traffic engineering consultant, to provide a proposal and fee to perform an E&TS analysis and related services for the City; and

WHEREAS, TLE has prepared a number of E&TS for other local agencies in the area, and they have the engineering and technical expertise to provide this service; and

WHEREAS, TLE has submitted a proposal to perform an E&TS and to prepare a Sign Plan to ensure that speed limit signs meet current regulatory requirements in the amount of $18,347, attached as Exhibit A to this Resolution; and

WHEREAS, TLE's scope of work includes survey and volume locations at eight (8) roadway segments throughout the City, all of which were determined in consultation with the Chief of Police and City Engineer; and

WHEREAS, a new, updated E&TS is necessary in order to establish enforceable speed limits within the City.

NOW THEREFORE, BE IT HEREBY RESOLVED, that the City Council of Sand City does hereby authorize the following:

1. The City Manager is authorized to execute a Professional Service Agreement in substantially the same form as shown in Exhibit B, subject to review and approval of the City Attorney, with TL Engineering in the amount of $18,347, to perform an Engineering and Traffic Survey analysis and related services for the City of Sand City.

PASSED AND ADOPTED, at a regular meeting of the City Council of the City of Sand City, this 5th day of November 2024 by the following votes:

AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED:

_____
Mary Ann Carbone, Mayor

ATTEST:
DATED: _____

_____
Kerry Lindstrom, City Clerk

RESOLUTION ATTACHMENT 1
Resolution SC 24- (2024)

CITY OF SAND CITY

PROFESSIONAL SERVICE AGREEMENT FOR NON-CONSTRUCTION PROJECT

This Agreement made this _____ day of November, 2024 (the "Effective Date"), by and between the CITY OF SAND CITY, a municipal corporation, hereinafter referred to as "CITY", and TL Engineering, a California Corporation, hereinafter referred to as "CONSULTANT" (together referred to the "Parties").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

I. TERM

The term of the Agreement will begin on the Effective Date of this Agreement and shall end upon completion of the Scope of Services described herein, unless sooner terminated pursuant to the provisions of this Agreement. The Agreement may be reviewed and modified upon concurrence of both parties. No modification to the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

II. SERVICES

Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to the CITY the services described in the Scope of Work in Exhibit A, attached hereto and incorporated herein as though set forth in full. To the extent that Exhibit A is a proposal from CONSULTANT, such proposal is incorporated only for the description of the scope of services and no other terms and conditions from any such proposal shall apply to this AGREEMENT unless specifically agreed to in writing. Unless otherwise explicitly stated in Exhibit A, CONSULTANT shall at it sole cost and expense furnish all facilities and equipment which may be required for completing the tasks set forth in Exhibit A. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

III. PERFORMANCE

CONSULTANT shall at all times faithfully, competently and to the best of his/her ability, experience, and talent, perform all tasks described herein. CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of CONSULTANT hereunder in meeting its obligations under this AGREEMENT.

IV. TIME

CONSULTANT shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of

performance provided in section III (Performance) and to satisfy CONSULTANT'S obligations hereunder.

V. ASSIGNMENT OF PERSONNEL

CONSULTANT shall assign only competent personnel to perform services pursuant to his Agreement. In the event that CITY, in its sole discretion, at any time during the term of the Agreement, desires the reassignment of any such persons, CONSULTANT shall, immediately upon receiving notice from CITY of such desire, reassign such person or persons.

VI. PAYMENT

A. The CITY agrees to pay CONSULTANT monthly for services performed and reimbursable costs, in accordance with the proposal set forth in Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed eighteen thousand, three hundred and forty-seven dollars ($18,347.00) for the total term of the Agreement unless additional payment is approved as provided in this Agreement. Except as specifically authorized by CITY in writing, CONSULTANT shall not bill CITY for duplicative services performed by more than one person. Fees for work performed by CONSULTANT on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit A. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

B. CONSULTANT shall not be compensated for any services rendered in connection with its performance of this AGREEMENT which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. CONSULTANT shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and CONSULTANT at the time CITY's written authorization is given to CONSULTANT for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the AGREEMENT, or one thousand eight hundred and thirty-four dollars ($1,834.00) unless otherwise specified in the AGREEMENT. Any additional work in excess of this amount shall be approved by the City Council of Sand City.

C. CONSULTANT will submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Invoices shall include a task summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement. For each work item

and task, a copy of the applicable time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the CITY disputes any of CONSULTANT's fees it shall give written notice to CONSULTANT within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this AGREEMENT shall be made within forty-five (45) days of receipt of an invoice. In no event shall CONSULTANT submit an invoice for an amount in excess of the maximum amount of compensation provided above for either a task or the entire Agreement, unless the Agreement is properly modified in writing prior to the submission of such an invoice.

VII. SUSPENSION OR TERMINATION OF AGREEMENT

A. The CITY may at any time, for any reason, with or without cause, suspend or terminate this AGREEMENT, or any portion hereof, upon written notification to CONSULTANT. Upon receipt of said notice, the CONSULTANT shall immediately cease all work under this AGREEMENT, unless the notice provides otherwise. If the CITY suspends or terminates a portion of this AGREEMENT such suspension or termination shall not make void or invalidate the remainder of this AGREEMENT.

B. CONSULTANT may cancel this Agreement upon 30 days written notice to CITY and shall include in such notice the reasons for cancellation.

C. In the event this AGREEMENT is terminated pursuant to this Section, the CITY shall pay to CONSULTANT the actual value of the work performed up to the time of termination; CITY may however condition payment of such compensation upon CONSULTANT delivering to CITY any and all Documents prepared in connection with this Agreement. Upon termination of the AGREEMENT pursuant to this Section, the CONSULTANT will submit an invoice to the CITY pursuant to Section 6.

D. The parties may amend this Agreement only by a writing signed by all the parties.

E. All obligations arising prior to the termination of this Agreement and all provision of this agreement allocating liability between the CITY and CONSULTANT shall survive the termination of this Agreement.

F. If CONSULTANT materially breaches any of the terms of this Agreement, CITY’s remedies shall include, but not be limited to, the following:

   a. Immediately terminate the Agreement

b. Retain all Documents and other work product prepared by CONSULTANT pursuant to this Agreement

c. Retain a different consultant to complete the work described in a given task order not finished by Consultant; and/or

VIII. OWNERSHIP OF DOCUMENTS

A. CONSULTANT shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by CITY that relate to the performance of services under this AGREEMENT. CONSULTANT shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. CONSULTANT shall provide free access to the representatives of CITY or its designees at reasonable times to such books and records; shall give CITY the right to examine and audit said books and records; shall permit CITY to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this AGREEMENT. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment. CONSULTANT understands that all such records may be subject to the examination and audit of the State Auditor or as part of any audit of the CITY.

B. Upon completion of, or in the event of termination or suspension of this AGREEMENT, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents, in electronic or other form, prepared in the course of providing the services to be performed pursuant to this AGREEMENT ("Documents") shall become the sole property of the CITY and may be used, reused, or otherwise disposed of by the CITY in connection with the project for which CONSULTANT'S services are provided under this AGREEMENT and without the permission of the CONSULTANT. With respect to computer files, CONSULTANT shall make available to the CITY, at the CONSULTANT's office and upon reasonable written request by the CITY, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. CONSULTANT hereby grants to CITY all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by CONSULTANT in the course of providing the services under this AGREEMENT.

IX. INDEMNIFICATION AND DEFENSE

A. Indemnity

To the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless CITY and any and all of its officials, employees, contractors and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs, caused in whole or in part by the negligent, reckless or wrongful act, error or omission of CONSULTANT, its officers, agents, employees or subconsultants (or any agency or individual that CONSULTANT shall bear the legal liability thereof) in the performance of services under this AGREEMENT. CONSULTANT's duty to indemnify and hold harmless CITY shall not extend to the CITY's sole or active negligence. This indemnification obligation is not limited by any limitation on the amount or type of damages available under any applicable insurance coverage and shall survive the expiration or termination of this Agreement with respect to any liability arising during the term of the Agreement. With respect to third party claims against the CONSULTANT, CONSULTANT waives any and all rights of any type to express or implied indemnity against the Indemnified Parties.

B. Duty to defend

In the event the CITY, its officers, employees, agents and/or volunteers are made a party to any action, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this AGREEMENT, and upon demand by CITY, CONSULTANT shall defend the CITY at CONSULTANT's cost or at CITY's option, to reimburse CITY for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters to the extent the matters arise from, relate to or are caused by CONSULTANT's negligent acts, errors or omissions. Payment by CITY is not a condition precedent to enforcement of this indemnity.

C. California Civil Code Section 2782.8

Notwithstanding the foregoing, to the extent that the CONSULTANT's services are subject to California Civil Code Section 2782.8, the above indemnity, including the cost to defend, shall be limited to the extent required by California Civil Code Section 2782.8.

X. INSURANCE

CONSULTANT shall maintain prior to the beginning of and for the duration of this AGREEMENT insurance coverage as specified in Exhibit C attached to and part of this AGREEMENT.

XI. INDEPENDENT CONSULTANT

A. CONSULTANT is and shall at all times remain as to the CITY a wholly independent consultant and/or independent contractor and not an employee of CITY. The personnel performing the services under this AGREEMENT on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither CITY nor any of its officers, employees, or agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees, subcontractors or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that it or any of its officers, employees, subcontractors or agents are in any manner officers, employees, or agents of the CITY. CONSULTANT shall not incur or have the power to incur any debt, obligation, or liability whatever against CITY, or bind CITY in any manner.

B. No employee benefits shall be available to CONSULTANT in connection with the performance of this AGREEMENT. Except for the fees paid to CONSULTANT as provided in the AGREEMENT, CITY shall not pay salaries, wages, or other compensation to CONSULTANT for performing services hereunder for CITY. CITY shall not be liable for compensation or indemnification to CONSULTANT for injury or sickness arising out of performing services hereunder.

XII. LEGAL RESPONSIBILITIES

The CONSULTANT shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this AGREEMENT. The CONSULTANT shall at all times observe and comply with all such laws and regulations. The CITY, and its officers, consultants and employees, shall not be liable at law or in equity occasioned by failure of the CONSULTANT to comply with this Section.

XIII. UNDUE INFLUENCE/CONFLICT OF INTEREST

CONSULTANT declares and warrants that no undue influence or pressure was used against or in concert with any officer or employee of the CITY in connection with the award, terms or implementation of this AGREEMENT, including any method of coercion, confidential financial arrangement, or financial inducement.

No officer or employee of the CITY has or will receive compensation, directly or indirectly, from CONSULTANT, or from any officer, employee or agent of CONSULTANT, in connection with the award of this AGREEMENT or any work to be conducted as a result of this AGREEMENT. Violation of this Section shall be a material breach of this AGREEMENT entitling the CITY to any and all remedies at law or in equity. CONSULTANT may not serve other clients whose activities within the corporate limits of CITY or whose business regardless of location would place CONSULTANT in a "conflict of interest" as that term is defined in the Political Reform Act, California Government Code section 81000 et seq.

XIV. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of CITY, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any Agreement or sub-Agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this AGREEMENT.

XV. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

A. All information gained by CONSULTANT in performance of this AGREEMENT shall be considered confidential and shall not be released by CONSULTANT without CITY's prior written authorization. CONSULTANT, its officers, employees, agents, or subconsultants, shall not without written authorization from the City Manager, or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this AGREEMENT or relating to any project or property located within the CITY. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives CITY notice of such court order or subpoena.

B. CONSULTANT shall promptly notify CITY should CONSULTANT, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this AGREEMENT and the work performed there under or with respect to any project or property located within the CITY, unless the CITY is a party to any lawsuit, arbitration, or administrative proceeding connected to such Discovery, or unless CONSULTANT is prohibited by law from informing the CITY of such Discovery. CITY retains the right, but has no obligation, to represent CONSULTANT and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless CITY is a party to the lawsuit, arbitration, or administrative proceeding and is

averse to CONSULTANT in such proceeding, CONSULTANT agrees to cooperate fully with CITY and to provide the opportunity to review any response to discovery requests provided by CONSULTANT. However, CITY's right to review any such response does not imply or mean the right by CITY to control, direct, or rewrite said response.

XVI. NOTICES

Any notices which either party may desire to give to the other party under this AGREEMENT must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To CITY:
City of Sand City
1 Pendergrass Way
Sand City, CA 93955
Attention: Vibeke Norgaard, City Manager

To CONSULTANT:
TL Engineering
314 Colville Drive
San Jose, CA 95123
Attention: Leo Trujillo, PE, TE

XVII. ASSIGNMENT

The CONSULTANT shall not assign the performance of this AGREEMENT, nor any part thereof, nor any monies due hereunder, without prior written consent of the CITY. Because of the personal nature of the services to be rendered pursuant to this AGREEMENT, only CONSULTANT shall perform the services described in this AGREEMENT. Upon termination of this Agreement, CONSULTANT's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between CITY and the CONSULTANT.

Before CONSULTANT retains or contracts with any subcontractor, CONSULTANT shall provide CITY with the identity of the proposed CONSULTANT, a copy of the proposed written contract between CONSULTANT and such subcontractor which shall include an indemnity provision similar to the one provided herein and identifying CITY as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed subcontractor carries insurance at least equal to that required by this AGREEMENT or obtain a written waiver from CITY for such insurance.

XVIII. LICENSES

At all times during the term of this AGREEMENT, CONSULTANT, its employees, agents, and any subcontractors shall have in full force and effect, all licenses, permits, qualifications and approvals required of it by law for the performance of the services described in this AGREEMENT. In addition, CONSULTANT and any subcontractors shall obtain and maintain during the term of this Agreement a valid Sand City business license.

XIX. GOVERNING LAW

The CITY and CONSULTANT understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this AGREEMENT and also govern the interpretation of this Agreement. Any litigation concerning this AGREEMENT shall be brought and maintained in the Superior Court of the State of California in and for the County of Monterey or in the United States District Court for the Central District of California.

XX. ENTIRE AGREEMENT

This AGREEMENT contains the entire understanding between the parties relating to the obligations of the parties described in this AGREEMENT. All prior or contemporaneous Agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this AGREEMENT or with respect to the terms and conditions of this AGREEMENT, are merged into this AGREEMENT and shall be of no further force or effect. Each party is entering into this AGREEMENT based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

XXI. SEVERABILITY/NO IMPLIED WAIVER OF BREACH

If a court of competent jurisdiction finds that any provision of this Agreement is invalid, void or unenforceable, the provisions not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement**.**

The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any breach of that term or any other term of this Agreement.

XXII. ATTORNEYS FEES

If a party to this Agreement brings any action to enforce or interpret this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled.

XXIII. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this AGREEMENT on behalf of CONSULTANT warrants and represents that he/she has the authority to execute this AGREEMENT on behalf of the CONSULTANT and has the authority to bind CONSULTANT to the performance of its obligations hereunder. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

CONSULTANT

By:_____
(Signature)

_____
(Typed Name)

_____
(Title)

CITY OF SAND CITY

_____
Vibeke Norgaard, City Manager

ATTEST:

_____
Kerry Lindstrom, City Clerk

_____
Audrey Cray, HR/Risk Manager

APPROVED AS TO FORM:

By: _____
Adam Lindgren, City Attorney

Attachments:	Exhibit A	Consultant's Proposal
	Exhibit B	Insurance Requirements

EXHIBIT A

CONSULTANT'S PROPOSAL

TL ENGINEERING

Resolution Exhibit A

314 Colville Dr
San Jose, CA 95123
T 209-829-1553

September 10, 2024

Leon Gomez, City Engineer
City of Sand City
1 Pendergrass Way
Sand City, CA 93955

RE: Sand City Localized Speed Survey
Proposal to Conduct Engineering and Traffic Survey

Dear Mr. Gomez:

TL Engineering (TLE) is pleased to provide professional traffic engineering services to perform Engineering and Traffic Survey (E&TS) analysis for City of Sand City. The project understanding, assumptions, and specific services to be provided are described in Exhibit A of this proposal. The proposed fee estimate is included in Exhibit B.

TLE shall adhere to the City's standard contract terms & conditions for engineering projects.

We appreciate having the opportunity to assist you with this project, and we look forward to providing you with excellent service. If you have any questions or need additional information, please contact me at your convenience.

Respectfully Submitted,

TL Engineering

L. Trujillo

Leo Trujillo, PE, TE
Principal
T 209-829-1553
LTrujillo@tlengineering.net

Approved by Client

City of Sand City,

_____
Signature Date

_____
Name

_____
Title

EXHIBIT A
SCOPE OF SERVICES
LOCALIZED ENGINEERING & TRAFFIC SURVEY
SAND CITY, CALIFORNIA

ASSUMPTIONS & UNDERSTANDING:

This project consists of preparing an Engineering and Traffic Survey (E&TS) for Sand City (Client). Sand City (City) will be the lead agency in reviewing and approving the E&TS analysis and report. The following are our assumptions and understanding of the project:

- The scope of work for this E&TS is consistent with State requirements and past E&TS prepared for other local agencies.
- TLE will hire a data collection company (National Data Services, NDS) to perform all of the field data collection (i.e.: collect the speed survey data).
- TLE will hire a data collection company (National Data Services) to collect the daily traffic volumes at the project locations.
- Our Team will perform the necessary data reduction and provide recommendations in the summary report.
- This proposal includes survey and volume locations at eight (8) roadway segments throughout the City. Most of the segments will only require data collection at one location, while one segment will require three points of data collection. Additional locations can be added or removed per the direction of the City. Below is a list of the locations and the number of data collection points:
    1. Contra Costa St - 1 location (between Shasta St & Elder Ave)
    2. California Ave - 3 locations (just west of Hickory Street, between Shake Ave & Tioga Ave, and between Playa Ave and Hwy 1)
    3. Sand Dunes Dr - 1 location (midway between Tioga Ave and the City Limits to the south)
    4. Tioga Ave - 1 location (between Sand Dunes Dr & Metz Road)
    5. Metz Road - 1 location (between Tioga Ave & Playa Ave)
    6. Catalina Street - 1 location (between Orange Ave and Shasta St)
    7. Playa Ave - 1 location (between Metz Road & California Ave)
    8. Redwood Ave - 1 location (between Hickory Street & Holly Street)
- To assess safety, SWITRS collision data will be obtained from the California Highway Patrol.
- To calculate average accident rates, average daily traffic volumes will be necessary. Therefore, 24-hour traffic counts will need to be collected on all project road segments. These counts will be collected at each segment location identified above.
- No design work is included in our current scope of work
- The TLE Team will submit an encroachment permit application for the data collection. It is assumed that the permit will be provided by the City at no fee.

SCOPE OF SERVICES:

TASK 1: COORDINATION & PROJECT MANAGEMENT

TL Engineering will coordinate with City staff and the City Police Department as necessary throughout the analysis process. Time for this task covers phone calls, email correspondence, and brief meetings.

TASK 2: DATA COLLECTION

A. Radar Speed Data:

Radar speed data will be collected on 8 roadway segments in the City, as noted in the Assumptions & Understanding section of this proposal. The speed data collection shall be performed on weekdays during off-peak hours and no collection will be taken during peak hours of 7:00 am - 10:00 am and 4:00 pm - 7:00 pm. Speeds for a minimum of 100 vehicles per segment (50 in each direction) will be collected, consistent with state requirements.

All radar equipment used in this data collection effort will be certified. Any and all radar collection begins with the operator utilizing a tuning fork to confirm the device is accurately detecting speeds. Upon confirming the device accuracy, the operator will ensure they are located in an inconspicuous position with the goal of attracting little to no attention from oncoming traffic. Once a suitable location is determined, the operator will begin collection on lead vehicles only (minimum of 50 samples per direction) and will simply note all sample/collected speeds on a document.

B. Daily Traffic Volumes:

NDS will also collect 24-hour road segment volumes along all eight project roadway segments. The number of data collection points per segment are noted below:

1. Contra Costa St - 1 location (between Shasta St & Elder Ave)
2. California Ave - 3 locations (just west of Hickory Street, between Shake Ave & Tioga Ave, and between Playa Ave and Hwy 1)
3. Sand Dunes Dr - 1 location (midway between Tioga Ave and the City Limits to the south)
4. Tioga Ave - 1 location (between Sand Dunes Dr & Metz Road)
5. Metz Road - 1 location (between Tioga Ave & Playa Ave)
6. Catalina Street - 1 location (between Orange Ave and Shasta St)
7. Playa Ave - 1 location (between Metz Road & California Ave)
8. Redwood Ave - 1 location (between Hickory Street & Holly Street)

C. Collision Data:

Three years of SWITRS collision data (2021-2023) will be collected from the California Highway Patrol (CHP) for each of the surveyed segments.

Prior to the collection of any traffic volumes or radar speed data, the TLE Team will submit an encroachment permit application to the City. It is assumed that the permit will be issued by the City at no fee, since this is a city project.

TASK 3: DATA REDUCTION & ANALYSIS

The collected radar speed data for each location will be summarized in a table, including metrics such as 85th percentile (Critical speed), 50th percentile (Median Speed), and 10 MPH Pace speed (10 MPH increment range). Additionally, the raw data results (e.g., date and time of collection, raw results, speed metrics, etc.) will be summarized for each surveyed location, for inclusion in a report appendix.

The collected segment volumes for each location will be summarized in a table. The collision data for each surveyed location will be reviewed, processed and summarized in a table by location. Both mid-block and bicycle/pedestrian collisions per location will also be identified (if this information is available in the SWITRS collision data).

Note: The collision data summaries will include total collisions and collision rates. Quantification of collision rates and their comparison to statewide averages will be based on the 2018 Crash Data on California State Highways manual, which is the latest crash data document issued by California.

TASK 4: SPEED RECOMMENDATIONS

Using the data from the data reduction and analysis task, and requirements and guidelines in both the California Vehicle Code (CVC) and California Manual on Uniform Traffic Control Devices (2014 CA MUTCD, latest revision), recommended speed limits will be prepared for each surveyed location. These recommended speed limits will be added to the speed summary tables and justified in brief statements citing CVC/CA MUTCD requirements that apply to each surveyed location.

TASK 5: DOCUMENTATION REPORT

A comprehensive report will be prepared, including the data results, recommendations, tables, and raw collected data. This report will initially be prepared as an administrative draft report for City review. City comments will be incorporated into a final draft report

for and will be re-submitted to the City. Responses to City comments will be incorporated into a final report for adoption by Sand City, including the addition of the City Council adoption date to the front cover.

TASK 6: SIGN PLAN (OPTIONAL TASK)

Once the E&TS report is finalized and approved by the City, TLE will prepare a sign plan to be consistent with the recommendations in the report. From conversations with City staff, it is our understanding that the City will provide TLE with an electronic CAD file of basemap for the City, which will show ROW linework and street names for the entire city.

TLE will first conduct a site visit to review and record the presence and condition of any existing speed limit signs. TLE will then prepare the sign plan using the base map provided by the City. The sign plan will include speed limit signage information such as:

- Existing speed limit sign to remain
- Existing speed limit sign and post to be removed
- Existing speed limit sign panel to be removed and replaced with new speed limit sign panel (install on existing sign post)
- Existing speed limit sign and post to be removed and replaced with new speed limit sign and post
- Furnish and install new speed limit sign panel and post
- Furnish and install new speed limit sign panel mounted on street light/utility pole

The sign plan will also include general notes and details for the signing improvements, including references to the applicable City and Caltrans Standard Plans.

REIMBURSABLE/ADDITIONAL SERVICES/EXCLUSIONS

Any reproduction work, other than that required for the Consultant's in house use, and all mileage, Federal Express, UPS, California Overnight, and other deliveries will be billed per the attached Rate and Expense Schedule as included in the fees shown in Exhibit B.

The services to be provided are those detailed in this Scope of Services (Exhibit A). All items not expressly described in this Scope of Services shall be deemed "additional services"/"extra work" and compensation shall be on a time and expense basis per the attached Rate and Expense Schedule. The following items are specifically excluded from this Scope of Work:

A. Exclusions

1. Collection of any traffic data other than what is specifically described in this proposal
2. Preparation of any design plans (conceptual or final)
3. Analyses of any locations other than what are specifically described in this proposal
4. More than two revisions to the E&TS report
5. Any site visits

TL ENGINEERING

EXHIBIT B
COMPENSATION
LOCALIZED ENGINEERING & TRAFFIC SURVEY
SAND CITY, CALIFORNIA

Client shall compensate Consultant for the performance of the work previously described in Exhibit A, SCOPE OF SERVICES, and for such extras and additions as follows:

	Project Work Task	Principal Engineer $240	Senior Engineer $210	Associate Engineer $190	SUB-CONSULTANT NDS		Total Hour	Total Fee
1	COORDINATION & PROJECT MANAGEMENT	2					2	$480
2	DATA COLLECTION							
	A. Radar Speed Data	1			$1,737		1	$1,977
	B. Segment Volumes	1			$1,610		1	$1,850
	C. Collision Data	1					1	$240
3	DATA REDUCTION & ANALYSIS	10	12				22	$4,920
4	SPEED RECOMMENDATIONS	7	4				11	$2,520
5	DOCUMENTATION REPORT	10					10	$2,400
	Total Hours :	**32**	**16**	**0**			**48**	
	Staff Expenses :	**$7,680**	**$3,360**	**$0**	**$3,347**	**$0**	**48**	**$14,387**
	Travel Expenses :							$0
	Printing, Shipping, etc. :							$0
	Total Costs (without Optional Task 6):							**$14,387**

	OPTIONAL TASKS	Principal Engineer $240	Senior Engineer $210	Associate Engineer $190	SUB-CONSULTANT NDS		Total Hour	Total Fee
6	SIGN PLAN							
	A. City Base Map Manipulation	2					2	$480
	B. Site Visit	6					6	$1,440
	C. Prepare Sign Plan	8					8	$1,920
	Total Hours :	**16**	**0**	**0**			**16**	
	Staff Expenses :	**$3,840**	**$0**	**$0**	**$0**	**$0**	**16**	**$3,840**
	Travel Expenses :							$120
	Printing, Shipping, etc. :							$0
	Optional Task 6 Cost :							**$3,960**

Total Costs (with Optional Task 6):	**$18,347**

TL ENGINEERING

RATE AND EXPENSE SCHEDULES

(Effective through December 31, 2024)

HOURLY RATE SCHEDULE FOR PROFESSIONAL SERVICES

Classification	Rate
Principal Engineer	$240
Senior Engineer	$210
Associate Engineer	$190
Deposition/Court Appearance	rates are available upon request

EXPENSE SCHEDULE

Bond Copy (24"x36")	$1.50 each
Color/mylar plot (small, medium)	$10.00 each
Color/mylar plot (large)	$50.00 each
Xerox copy	$0.15 each
Color xerox copy (8½ x 11 or 11 x 17)	$0.50 each
Client-Requested Overtime	Hourly Rate plus 25%

All other expenses, including: ..... Actual Cost plus 15%

- Delivery Service
- Outside Reproduction
- Mileage - Auto
- Outside Consultants
- Travel & Expenses
- Filing or Permit Fees

EXHIBIT B

INSURANCE REQUIREMENTS

Without limiting CONSULTANT's indemnification of CITY, and prior to commencement of Work, CONSULTANT shall obtain, provide and maintain at its own expense during the term of this AGREEMENT, policies of insurance of the type and amounts described below and, in a form, satisfactory to CITY.

General liability insurance. CONSULTANT shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than $1,000,000 per occurrence, $2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. CONSULTANT shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this AGREEMENT, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than $1,000,000 combined single limit for each accident.

Professional liability (errors & omissions) insurance. CONSULTANT shall maintain professional liability insurance that covers the Services to be performed in connection with this AGREEMENT, in the minimum amount of $1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this AGREEMENT and CONSULTANT agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this AGREEMENT.

Workers' compensation insurance. CONSULTANT shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least $1,000,000).

CONSULTANT shall submit to CITY, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of CITY, its officers, agents, employees and volunteers.

Umbrella or excess liability insurance. [Optional depending on limits required]. CONSULTANT shall obtain and maintain an umbrella or excess liability insurance policy with limits that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason;
- Pay on behalf of wording as opposed to reimbursement;
- Concurrency of effective dates with primary policies;
- Policies shall "follow form" to the underlying primary policies; and
- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

Other provisions or requirements

Proof of insurance. CONSULTANT shall provide certificates of insurance to CITY as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with CITY at all times during the term of this contract. CITY reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by CONSULTANT, his agents, representatives, employees or subconsultants.

Primary/noncontributing. Coverage provided by CONSULTANT shall be primary and any insurance or self-insurance procured or maintained by CITY shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of CITY before the CITY's own insurance or self-insurance shall be called upon to protect it as a named insured.

City's rights of enforcement. In the event any policy of insurance required under this AGREEMENT does not comply with these specifications or is canceled and not replaced, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONSULTANT or CITY will withhold amounts sufficient to pay premium from CONSULTANT payments. In the alternative, CITY may cancel this AGREEMENT.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City Administrator.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against CITY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CONSULTANT or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONSULTANT hereby waives its own right of recovery against CITY, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). CONSULTANT acknowledges and agrees that any actual or alleged failure on the part of the CITY to inform CONSULTANT of non-compliance with any requirement imposes no additional obligations on the CITY nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the CITY requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the CITY.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to CITY with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional insured status. General liability policies shall provide or be endorsed to provide that CITY and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to CITY and approved of in writing.

Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer’s limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass through clause. CONSULTANT agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by CONSULTANT, provide the same minimum insurance coverage and endorsements required of CONSULTANT. CONSULTANT agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. CONSULTANT agrees that upon request, all Agreements with consultants, subcontractors, and others engaged in the project will be submitted to CITY for review.

City's right to revise specifications. The CITY reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the CONSULTANT ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the CONSULTANT, the CITY and CONSULTANT may renegotiate CONSULTANT's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by CITY. CITY reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by CITY.

Timely notice of claims. CONSULTANT shall give CITY prompt and timely notice of claims made or suits instituted that arise out of or result from CONSULTANT's performance under this AGREEMENT, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. CONSULTANT shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

AGENDA ITEM
9B.

Approve a Resolution Approving a Lease Agreement with Moore Twining Associates, Inc. for the Lease of Property Located at 501 Ortiz Avenue and Authorizing the City Manager to Execute the Agreement

City of Sand City

STAFF REPORT

TO: Honorable Mayor and City Council
FROM: Vibeke Norgaard, City Manager and Adam Lindgren, City Attorney
SUBJECT: Lease of City Property at 501 Ortiz Avenue.
DATE: November 5, 2024

RECOMMENDATION:
Approve Resolution No.____ approving a lease agreement with Moore Twining Associates, Inc. for the lease of City-owned property located at 501 Ortiz Avenue.

BACKGROUND:
The City is under escrow to own a building located at 501 Ortiz Avenue ("Property") which is currently leased by Moore Twining Associates, Inc. ("Tenant") since 2001. The Tenant informed the City that they wish to continue leasing the Property when the City takes ownership.

DISCUSSION:
Tenants currently operate "a multi-disciplined engineering and testing firm providing geotechnical engineering, environmental, construction inspection, materials testing, analytical chemistry and drilling services throughout California and the Western United States." The City and Tenant have been in contact throughout the City's negotiation and purchase of the Property, and wish to enter into a new lease agreement for the Property. The Tenant and City have agreed to the following lease terms:

- Lease term until December 31, 2025
- The lease will begin 30 days after the City takes ownership of the Property
- $3,000 monthly rent, plus utilities
- All maintenance will be at Tenant's expense
- Tenant may only change or alter the Property if approved by the City

Staff recommends approval of the lease agreement and note that Moore Twining comes highly recommended as a tenant from the previous Property owners.

FISCAL IMPACT:
The rent generated by this Lease will be $36,000 per year.

ATTACHMENTS:
1. Resolution No. 2024-
2. Draft Lease Agreement

CITY OF SAND CITY
RESOLUTION SC 24-___, 2024

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAND CITY APPROVING A LEASE AGREEMENT WITH MOORE TWINING ASSOCIATES, INC. FOR THE LEASE OF PROPERTY LOCATED AT 501 ORTIZ AVENUE AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, the Sand City (the "City") is under contract to purchase certain property located at 501 Ortiz Avenue, Sand City, California, 93955 consisting of approximately 2,500 square feet ("Property") which has been leased to Moore Twining Associates, Inc. ("Tenants") since 2001; and

WHEREAS, Tenants and the City wish to continue the lease when the City takes ownership of the Property; and

WHEREAS, the terms of the proposed lease agreement is for a term to begin thirty days after the City takes ownership until December 31, 2025, and will include monthly rent payments in the amount of Three Thousand Dollars ($3,000) and utilities; and

WHEREAS, the proposed lease will not allow Tenant to make changes to the Property without the City's consent, and will be responsible for maintenance of the Property; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Sand City does hereby approve a lease agreement with Moore Twining, Inc. to lease 501 Ortiz Avenue and authorizes the City Manager to execute the Agreement in a form approved by City Attorney.

PASSED AND ADOPTED by the City Council of the City of Sand City this ___ day of November, 2024 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED:

_____
Mary Ann Carbone, Mayor

ATTEST:
DATED: _____

_____
Kerry Lindstrom, City Clerk

LEASE AGREEMENT

by and between the

THE CITY OF SAND CITY

and

MOORE TWINING ASSOCIATES, INC.

(501 ORTIZ AVE.)

August [XX], 2024

This LEASE AGREEMENT (this "**Lease**" or this "**Agreement**"), dated as of August [XX], 2024 (the "**Effective Date**"), is entered into by and between the City of Sand City, a California municipal corporation (hereafter the "**City**" or the "**Landlord**") and Moore Twining Associates, Inc. (the "**Tenant**"). Landlord and Tenant are hereafter each referred to as a "**Party**" and collectively referred to as the "**Parties.**"

RECITALS

A. The City is the owner in fee title to real property located at 501 Ortiz Avenue, Sand City, California, 93955 (the "**Property**"), as more particularly described in Exhibit A attached hereto and incorporated herein by this reference. The Property is improved with an existing one-story structure which is currently used for commercial purposes.

B. The Tenant currently occupies the Property and operates thereon a commercial enterprise doing business as Moore Twining Associates, Inc. (the "**Business**").

C. The City acquired the Property for a public use. Tenant has an ongoing lease with the prior Property owner. Tenant has requested that the City enter into this Agreement to allow them to continue conducting business at the Property.

D. The City has agreed to lease the Property to the Tenant, and Tenant agrees to lease the Property from the City, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Tenant hereby agree as of the Effective Date as follows.

ARTICLE I
DEMISE OF PROPERTY

1.1 Incorporation of Recitals. The Parties acknowledge the truth of the Recitals set forth above, and all such Recitals are hereby incorporated into this Agreement.

1.2 Original Lease. The Parties' previous lease, attached hereto as Exhibit C (the "Original Lease"), shall control all matters not covered by this Agreement. In the event that the Original Lease and this Agreement conflict, this Agreement shall control.

1.3 Creation of Lease. City hereby leases to Tenant, and Tenant hereby leases from City, the Property for the Term subject to the terms and conditions and for the purposes set forth in this Agreement.

1.4 No Representations. Tenant acknowledges that neither Landlord nor any of Landlord's agents has made any representation or warranty as to the suitability or

fitness of the Premises for the conduct of the Business, and that neither Landlord nor any agent of Landlord has agreed to undertake any alterations or additions or to construct any tenant improvements to the Premises except as expressly provided in this Lease.

1.5 Relocation. Tenant acknowledges and agrees that Tenant is a "post-acquisition tenant" as provided in Government Code Section 7260, *et seq*., and the California Relocation Assistance and Real Property Acquisition Guidelines, 25 California Code of Regulations Section 6000, *et seq*., and Tenant is therefore not entitled to receive any relocation payments or other relocation assistance under applicable law as a result of Landlord's termination of this Lease or Tenant's vacation of the Premises.

ARTICLE II
TERM OF LEASE; RENT; SECURITY DEPOSIT

2.1 Term. The term of this Agreement (the "**Term**") shall commence on thirty (30) days after the date that the City unconditionally approves the Lease (such approval to be evidenced by the affirmative vote by the City Council), and City's delivery to Lessee of a written notice confirming the date of commencement of the Lease (the "**Commencement Date**"). The Term of this Lease shall commence on the Commencement Date, and shall be for a time period ending on [December 31, 2025. Landlord shall have the right to terminate this Lease, upon an Event of Default, during the Term by written notice to Tenant as specified in Article IX of this Agreement. Tenant shall have the right to terminate this Lease, without cause, during the Term by written notice to Landlord not less than thirty (30) days prior to the date of termination. The expiration of the Term or the sooner termination of this Agreement shall be referred to as "**Lease Termination**."

2.2 Rent. On the Commencement Date, and monthly on the first day of each month thereafter until Lease Termination, the Tenant shall pay to the Landlord, Three Thousand Dollars ($3,000) ("**Rent**"). Rent payments are due to the City at the address shown in Section 10.3.2 or such other place as the City may designate in writing. In the event the Tenant fails to pay Rent by the close of business by the 10th day of the month or the Tenant's check is returned by the financial institution on which it is drawn for insufficient funds, the Tenant shall pay the City (i) Twenty-Five Dollars ($25) as a late fee (the "**Late Payment Penalty**") and (ii) twelve percent (12%) interest accrued daily on such late Rent due to the City, which shall be included with the payment of Rent.

2.3 Payment of Property Expenses. Rent includes the payment of possessory interest taxes and water and sewer costs. The Tenant shall pay all other costs and expenses relating to the Property of any kind or nature whatsoever. Such costs and expenses shall include, without limitation, all amounts attributable to, or paid or incurred in connection with, the operation, repair, restoration, maintenance and management of the Premises; gross receipt taxes (whether assessed against the City or assessed against Tenant and collected by the City, or both); insurance premiums; utilities; refuse

disposal; lighting (including outside lighting); fire detection systems including monitoring, maintenance and repair; security; janitorial services; labor; air-conditioning and heating; maintenance and repair costs and service contracts; costs of licenses, permits and inspections; costs of landscaping; and all other costs and expenses paid or incurred with respect to the Property.

ARTICLE III
ALTERATIONS

3.1 Changes and Alterations. During the Term of this Agreement, the Tenant shall not make any change, alteration or addition to the Property that would materially alter the function or exterior appearance of the Property without the prior written consent of the City. All alterations and additions shall be made at the Tenant's sole cost and expense.

ARTICLE IV
USE, NONDISCRIMINATION AND OPERATION OF THE PROPERTY

4.1 Permitted Uses. The Tenant may use the Property for the Business as described herein and for no other purposes without the prior written consent of the City. The Tenant shall not use or permit the Property to be used in whole or in part during the Term for any purpose other than as permitted pursuant to this Agreement or by the City's written consent.

4.2 Nondiscrimination. The Tenant herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the Tenant himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

Notwithstanding the foregoing, with respect to familial status, nothing herein shall be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code nor shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to this Section 6.2.

4.3 Easements; Reservation of Rights. The City reserves the right to locate and construct its own utilities and to grant nonexclusive easements across the Property for utility and other purposes including the installation, maintenance, repair and replacement of utilities; provided that the exercise of such rights does not unreasonably interfere with the Tenant's use of the Property for the purposes set forth herein.

4.4 Maintenance and Inspection of the Property.

4.4.1 Maintenance. At the Tenant's sole cost and expense throughout the Term, the Tenant shall operate, maintain and manage the Property including all landscaping and improvements thereon in good order and repair and in neat, clean sanitary and safe condition in compliance with all local, state and federal laws, statutes and regulations relating to the use, occupancy or operation of the Property. The Tenant shall ensure that the Property is served by adequate lighting in accordance with applicable building codes. The Tenant shall promptly, at the Tenant's own cost and expense, make all necessary repairs, including replacements or renewals when necessary, and all such repairs shall be at least equal in quality to the original work, reasonable wear and tear accepted. The Tenant shall keep and maintain all portions of the Property in a clean and orderly condition, free of accumulation of dirt, rubbish, and graffiti. The Tenant's failure to maintain the Property in accordance with this Agreement shall be grounds for termination of this Agreement.

4.4.2 Inspection. At any time during the Term, upon reasonable advance notice and during normal business hours, the City may conduct interior and/or exterior inspections of the Property to confirm that it is being properly maintained as required herein. Following its inspection, the City may deliver to the Tenant written notification of any portions of the Property which the City has determined are not being properly maintained, and the Tenant shall promptly prepare and deliver to the City the Tenant's proposed plan for remedying the indicated deficiencies. The Tenant's failure to deliver a remedial plan and to complete remedial work within a reasonable time as determined by the City in its reasonable discretion shall be a default under this Agreement.

The failure of the City to inspect or to notify the Tenant of any deficiency shall not be a waiver of default or of the City's right to enforce the Tenant's maintenance and repair obligations. The Tenant shall defend (with counsel reasonably acceptable to the City), indemnify and hold the Indemnitees harmless from and against any and all Claims arising out of the Tenant's failure to fully and timely fulfill its obligations to maintain and repair the Property as required hereunder.

4.5 Compliance with Laws. The Tenant, at its sole cost and expense, shall comply with all applicable state and federal laws and regulations, including without limitation, all applicable state and federal labor laws and standards, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq*., California Government Code Section 4450, *et seq*., California Government Code Section 11135, *et seq*., and the Unruh Civil Rights Act, California Civil Code Section 51, *et seq*. pertaining to the use, operation,

and management of the Property and all City ordinances and regulations relating to the conduct of construction, including without limitation, all City ordinances and regulations relating to noise and maintenance of the Property.

The Tenant shall not itself use the Property for any unlawful purpose or perform, permit or suffer any act of omission or commission upon or about the Property or the Property which would result in a nuisance or a violation of law. The Tenant shall use its best efforts to not permit any permittees, licensees, guests or invitees to use the Property for any unlawful purpose or perform, permit or suffer any act of omission or commission upon or about the Property or the Property which would result in a nuisance or a violation of law.

ARTICLE V
CONDITION OF THE PREMISES;

5.1 Condition of the Property.

5.1.1 AS-IS Condition. The Tenant will lease the Property in its "AS IS" condition as such condition exists as of the Commencement Date.

5.1.2 No Representations. The Tenant acknowledges that except as expressly set forth herein, the City makes no representations or warranties expressed or implied regarding the condition of the Property or the fitness or suitability thereof for the Tenant's purposes, including but not limited to, the condition of the soil, its geology, topography, the presence or absence of fill, the presence or absence of Hazardous Materials, drainage, flood zone designation, or compliance with Hazardous Materials Laws, and no patent or latent defect or deficiency in the condition of the Property shall affect the rights of the Tenant or the City hereunder. The Tenant shall rely solely on its own independent investigation and judgment as to all matters relating to the Land. The Tenant acknowledges and agrees that prior to the Effective Date it has made such investigations of the Property, including without limitation such inquiries of governmental agencies, soils testing, tests and inspections as Tenant deemed necessary to determine the condition of the Property, and has approved all such characteristics and conditions and shall lease the Property in its condition as of the Effective Date "AS-IS" "WHERE-IS" AND WITH ALL FAULTS. The Tenant further acknowledges that the City has made available all data and information on the Property available to the City, but without warranty or representation by the City as to the completeness, correctness or validity of such data and information, except as otherwise set forth in this Agreement.

5.2 Tenant's Covenants. The Tenant hereby covenants and agrees that throughout the Term:

(a) The Property, and the use and operation thereof, shall be in compliance with all Hazardous Materials Laws, and the Tenant shall not cause or permit the Property or any portion thereof to be in violation of any Hazardous Materials Laws (as defined on Exhibit B, attached hereto).

(b) The Tenant shall not permit the Property or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials (as defined on Exhibit B, attached hereto) nor shall the Tenant permit the presence or release of Hazardous Materials in, on, under, about or from the Property with the exception of materials customarily used in construction, operation, use or maintenance of restaurant facilities, provided such materials are used, stored and disposed of in compliance with Hazardous Materials Laws.

ARTICLE VI
INDEMNITY AND INSURANCE

6.1 Indemnity. The Tenant shall indemnify, defend (with counsel reasonably acceptable to the City) and hold the Indemnitees harmless from and against any and all Claims arising during the Term and arising from or in connection with any of the following: (i) the operation or management of the Property, (ii) any work or thing done on or in the Property, (iii) any condition of any alteration or addition constructed by the Tenant on the Property, (iv) any breach or default by the Tenant in the performance of any covenant or agreement to be performed by the Tenant pursuant to the terms of this Agreement, (v) any negligence of the Tenant, or any of its agents, contractors, subcontractors, employees, or licensees, (vi) any accident, injury or damage caused to any person occurring during the Term in or on the Property, and (vii) the furnishing of labor or materials by the Tenant or its contractors, subcontractors, employees, or agents. In the event any such action or proceeding is brought against the City by reason of any such Claim, the Tenant, upon notice from the City, covenants to defend such action or proceeding by counsel reasonably satisfactory to the City. If an insurer under insurance required to be maintained by the Tenant hereunder shall undertake to defend the City under a reservation of rights with respect to ultimate coverage and the City shall reasonably deem it necessary to retain independent counsel with respect to such matter, the Tenant shall pay the reasonable fees of such counsel. The obligations of the Tenant under this Article VI shall not apply to any Claim or other matter to the extent such arises as a result of the gross negligence or willful misconduct of the Indemnitees. This Section shall survive the expiration or earlier termination of this Agreement.

6.2 Insurance Requirements. The Tenant shall procure, at its sole expense, and maintain in full force and effect during the Term, the following insurance naming the City as additional insured and/or loss payee:

a. Comprehensive General Liability insurance against claims for bodily and personal injury, death and property damage caused by or occurring in conjunction with the operation of the Property and the Business with a policy limit of at least Two Million Dollars ($2,000,000) per occurrence.

b. Workers' compensation insurance that complies with the statutory requirements of the state of California.

ARTICLE VII
ASSIGNMENT, TRANSFER, SUBLETTING; NONDISTURBANCE AND ATTORNMENT

7.1 Restrictions on Transfer, Assignment and Encumbrance. The Tenant shall have no right to sell, transfer, sublet, assign, encumber, hypothecate or otherwise convey ("**Transfer**") its leasehold interest hereunder or any portion of its interest in the Property, any Improvements or this Agreement voluntarily, involuntarily, by operation of law, or otherwise.

ARTICLE VIII
DEFAULT, REMEDIES AND TERMINATION

8.1 Event of Default. The Tenant shall be in default under this Agreement upon the occurrence of any of the following ("**Events of Default**"):

(a) Monetary and Non-Monetary Obligation. The Tenant at any time is in default hereunder as to any monetary obligation, including without limitation, the payment of Rent and payment of taxes and assessments due on the Property or part thereof, and such default continues for thirty (30) days or the Tenant defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 9.1, and unless a shorter cure period is specified for such default, the default continues for thirty (30) days after the date upon which the City shall have given written notice of the default to the Tenant (provided however, if the default is of a nature that it cannot be cured within thirty (30) days, an Event of Default shall not arise hereunder if the Tenant commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion and in no event later than one hundred and eighty (180) days after receipt of a Notice of Default);

(b) Insurance. The Tenant fails to obtain and maintain any insurance required pursuant to Section 6.2 of this Agreement, and the Tenant fails to cure such default within ten (10) days following receipt of Notice of Default;

(c) Abandonment. The Tenant abandons the Property and ceases to use it for the purposes authorized hereby for a period of ninety (90) days or more or as established pursuant to Section 1951.3 of the California Civil Code.

(d) Transfer. A voluntary or involuntary Transfer of all or any portion of the Tenant's interest in this Agreement occurs in violation of the provisions of Article VIII;

8.2 Notice and Opportunity to Cure.

8.2.1 Notice of Default. Upon the occurrence of a default hereunder, the non-defaulting party shall deliver a notice to the nonperforming party (the "**Notice of Default**"), stating the nature of the obligation which such nonperforming party has failed to perform, and stating the applicable period of time, if any, permitted to cure the default.

8.2.2 Failure to Give Notice; No Waiver. Failure to give, or delay in giving, the Notice of Default shall not constitute a waiver of any obligation, requirement or covenant required to be performed hereunder. No failure or delay by either party in asserting any rights and remedies as to any breach shall operate as a waiver of any breach or of any such rights or remedies. Delay by either party in asserting any of its rights and remedies shall not deprive such party of the right to institute and maintain any action or proceeding which it may deem appropriate to protect, assert or enforce any such rights or remedies.

8.3 Remedies Upon Default.

8.3.1 City's Remedies. Upon the occurrence of any Event of Default and in addition to any and all other rights or remedies of the City hereunder and/or provided by law, the City shall have the right to terminate this Agreement and/or the Tenant's possessory rights hereunder. The City's re-entry or taking of possession of the Property shall not be construed as an election on the City's part to terminate this Agreement unless the City shall have given written notice of such intention to the Tenant. In no event shall this Agreement be treated as an asset of the Tenant after any final adjudication in bankruptcy except at the City's option so to treat the same but no trustee, receiver, or liquidator of the Tenant shall have any right to disaffirm this Agreement.

8.4 Remedies Cumulative. No remedy specified in this Article IX shall be considered exclusive of any other remedy, but the same shall be cumulative and shall be in addition to every other remedy provided hereunder or now or hereafter existing at law or in equity or by statute, and every power and remedy provided by this Agreement may be exercised from time to time and as often as occasion may arise or as may be deemed expedient, subject to any limitations set forth herein.

ARTICLE IX
GENERAL PROVISIONS

9.1 Non-Subordination of Fee. Nothing in this Agreement shall be construed as an agreement by the City to subordinate its fee interest in the Property or its right to rent

payments hereunder or any other right of the City herein. The Tenant shall not mortgage its interest in the Property and the City not encumber or otherwise subordinate its fee interest in the Property or approve any mortgage of the Tenant's leasehold estate.

9.2 Representations of City and Tenant.

9.2.1 The Tenant hereby represents and warrants that as of the Effective Date the following are true and correct: (a) this Agreement constitutes the legally valid and binding obligation of the Tenant, enforceable against the Tenant in accordance with its terms, except as it may be affected by bankruptcy, insolvency or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally; and (b) the person executing this Agreement is authorized to do so; and (c) the execution of this Agreement and the acceptance of the obligations set forth herein do not violate any court order or ruling binding upon the Tenant or any agreement to which Tenant is a party or may be bound.

9.2.2 City hereby represents and warrants that as of the Effective Date the following are true and correct: (a) this Agreement constitutes the legally valid and binding obligation of the City, enforceable against the City in accordance with its terms, except as it may be affected by bankruptcy, insolvency or similar laws or by legal or equitable principles relating to or limiting the rights of contracting parties generally.

9.3 Miscellaneous.

9.3.1 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

9.3.2 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt; (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; or (iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any

notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

City: City of Sand City
1 Pendergrass Way
Sand City, CA 93955
Attention: City Manager

Tenant: **Moore Twining Associates, Inc.**
501 Ortiz Avenue,
Sand City, California, 93955
Attention: _____

9.3.3 Captions; Construction. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree that since both Parties have participated in the negotiation and drafting of this Agreement with the advice of counsel, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

9.3.4 Successors and Assigns. Subject to the restrictions on transfer set forth in Article VIII, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. Any reference in this Lease to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Agreement as if in every case so expressed.

9.3.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed in the Superior Court of Monterey County, California.

9.3.6 Attorney's Fees. If either Party commences an action against the other to enforce any obligation contained herein, or to interpret any provision hereof, each party shall be responsible for their respective counsel fees and costs.

9.3.7 Indemnity Includes Defense Costs. In any case where either Party is obligated under an express provision of this Lease, to indemnify and to save the other Party harmless from any damage or liability, the same shall be deemed to include defense of the indemnitee by the indemnitor, such defense to be through legal counsel reasonably acceptable to the indemnitee.

9.3.8 No Third-Party Beneficiaries; Disclaimer of Partnership, Lender/Borrower Relationship. Nothing contained in this Agreement is intended to or shall be deemed to

confer upon any person, other than the Parties any rights or remedies hereunder. The relationship of the parties under this Agreement is solely that of landlord and tenant, and it is expressly understood and agreed that the City does not as a result of this Agreement in any way nor for any purpose become a partner of the Tenant or a joint venturer with the Tenant in the conduct of the Tenant's business or otherwise. This Agreement is not intended to, and shall not be construed to, create the relationship of principal and agent, partnership, joint venture, or association as between the City and the Tenant. It is further expressly understood and agreed that this Agreement is not intended to, and shall not be construed to create the relationship of lender and borrower, and the City does not, solely as a result of this Agreement, become a lender to the Tenant.

9.3.9 Entire Agreement. This Agreement, together with all Exhibits, contains the entire agreement between the Parties relative to the transactions covered hereby. All previous correspondence, communications, discussions, agreements, understandings or proposals and acceptances thereof between the Parties or their representatives, whether oral or written, are deemed to have been integrated into and superseded by this Agreement and are of no further force and effect except as expressly provided in this Agreement.

9.3.10 Waiver; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any subsequent breach of the same or any other covenant or provision hereof. No waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party. This Agreement may be amended or modified only by a written instrument executed by the Parties.

9.3.11 Time is of the Essence. Time is of the essence of this Agreement and of each provision hereof.

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

9.3.13 Action by the Parties. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City in its capacity as landlord hereunder is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City's City Manager or by any person who shall have been designated by the City Manager, without further approval by the City Board of Directors unless the City Manager determines in his or her discretion that such matter requires consideration by the City Board.

9.3.14 Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of the City or the City shall be personally liable to Tenant or its successors in interest in the event of any default or breach by the City or for any amount which may become due to the Tenant or the Tenant's permitted successors in interest pursuant to this Agreement.

IN WITNESS WHEREOF, the Parties have entered into this Lease as of the Effective Date.

TENANT:
Moore Twining Associates, Inc.
,
a California Corporation

By: _____

LANDLORD:

CITY OF SAND CITY,
a California municipal corporation

By: _____
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM

_____
City Attorney

Exhibit A

PROPERTY
(Attach legal description.)

ORDER NO. : 0724023612

EXHIBIT A

The land referred to is situated in the County of Monterey, City of Sand City, State of California, and is described as follows:

Lot 8 in Block 30, as said Lot and Block are shown on that certain map entitled, "Map of East Monterey, Monterey County, Cal., Surveyed by W. C. Little", filed for record October 18, 1887 in the office of the County Recorder of the County of Monterey, State of California, in Volume 1 of Maps, "Cities and Towns", at Page 22.

APN: 011-196-014-000

ORDER NO. : 0724023613

EXHIBIT A

The land referred to is situated in the County of Monterey, City of Sand City, State of California, and is described as follows:

Lots 2, 4 and 6 in Block 30, in "Map of East Monterey, Monterey County, Calif., Surveyed by W. C. Little", filed for record October 18, 1887 in the Office of the County Recorder of the County of Monterey, State of California, in Volume 1 of Maps, "Cities and Towns", at Page 22.

APN: 011-196-015

Exhibit B

DEFINITIONS

Hazardous Materials. As used herein, "**Hazardous Materials**" means any substance, material, or waste which is or becomes regulated by any local, state or federal authority, City or governmental body, including any material or substance which is: (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) friable asbestos; (vii) polychlorinated biphenyls; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317); (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* (42 U.S.C. §6903); or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, *et seq.,* as the foregoing statutes and regulations now exist or may hereafter be amended.

Hazardous Materials Laws. As used herein "**Hazardous Materials Laws**" means all federal, state and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials, including without limitation, the laws, statutes and regulations cited in the definition of Hazardous Materials, as any of the foregoing may be amended from time to time

Exhibit C

DATE: 10 June 2023

TO: Vibeke Norgaard, City Manager, City of Sand City

FROM: Robin Aeschliman

SUBJECT: Seller documents

Attached please find:

1) Copy of lease agreement with A and R Plumbing for use of unimproved parcel at the NE corner of Otiz & Contra Costa

2) Copy of lease documents and addenda with Moore Twining for improved property at 501 Ortiz. NOTE: the agreement has not been updated since 2009. Moore Twining typically sends the rent check a week before due. In the beginning of the tenant-landlord relationship, the rent was collected in person. When I took on collection responsibility, I sent a monthly statement of rent due. That process ceased when the rent began arriving by overnight courier well in advance of the statement.

3) A brief history of the property and list of repairs and maintenance.

4) California -American Water Co. requires Backflow testing annually. Notice of requirement has been sent to Moore-Twining. Moore-Twining forwards the notice to Aeschliman Roper Rentals. We hire A and R Plumbing, Inc. to test and repair if needed.

ORTIZ HISTORY

1999 Executed contract to purchase, PP $245,000.
Received copy of 1997 appraisal by Craig Butorac; 501 Ortiz appraised at $220,000
Seller Curoc / John Lotz
Pete Ericksen represented the Seller
Disclosure Received: "Phase I" Preliminary Site Assessment
California Environmental Management Service Company, Inc.
Mountain View CA
(650) 966-1526
Couroc rented @ $1650 pm

2001 May 31; Couroc ended tenancy

September 5; Twining began tenancy; $1800 pm with a deposit of $1800 due on the 1st of each month. Twining took possession 5 September at the prorated amount of $1560.

2004 September 6, addendum 1, rent increased to $2000 pm

2006 September 6, addendum 2, rent increased to $2400 pm.

2007 September 6, addendum 3, rent increased to $2600 pm

2009 June 15; Twining merged and became known as Moore-Twining; addendum 4, converted to month-to-month tenancy with expiration date of October 31, 2009. Rent has continued month-to-month and remained at $2600 pm.

REPAIRS / MAINTENANCE

2023	13 January; Chris Dinner Heating, heater repair	$1821.36
	5 May; Chris Dinner Heating, heat/AC motor switch repair	1178.54
2021	14 February; Chris Dinner Heating; heater repair	603.71
2020	20 August; A and R Plumbing; backflow repair	220.00
	30 October; Augustin, painting	1195.36
2014	1 December; A and R Plumbing; backflow, move water heater toilet repair	1073.22

2013	1 May; door repair	1523.35
	21 May; replace fluorescent fixture, John Moore Electric	745.83
	12 September; electrical repair; John Moore Electric	135.60
2012	12 July; install new PRV; A and R Plumbing	353.08

NAI BT Commercial
Commercial Real Estate Services, Worldwide.

ADDENDUM No. 4

In reference to the (check box to the left):

X	LEASE

	PURCHASE AGREEMENT
	LISTING AGREEMENT

	EXCHANGE AGREEMENT
	SCHEDULE OF COMMISSIONS

	COUNTER OFFER
	OPTION AGREEMENT

Dated September 6, 2001 regarding the real property commonly know as 501 Ortiz Ave, Sand Ctiy CA 93955. A 2,500 sq ft free standing building, with the following revisions:

Lessor: M. Kelly & Katherine Roper; and Gregory and Robin Aeschliman (no change)

Lessee: Twining Laboratories Inc. (original), aka Moore-Twining Laboratories Inc. (recent merger)

Extended Term: Convert the current month to month tenancy to a six month term with expiration date of October 31, 2009.

Option to Renew: Lessee shall have three more options to extend the term for six months each. Beginning rent for each option shall be at market rates for similar space in Sand City, with third party arbitration if disputed between Lessor and Lessee.

Rent: Continued at $2,600/mo modified gross throughout the extended term. Lessor shall pay property tax and fire insurance, Lessee shall pay for trash removal and utilities as before.

ALL OTHER TERMS AND CONDITIONS OF THE ORIGINAL LEASE AS AMENDED BY THIS ADDENDUM ARE STILL IN AFFECT. All prior addendums are superceded by this fourth addendum. This addendum, upon its execution by both parties, is hereby fully incorporated in and made a part of the aforementioned Agreement.

ACKNOWLEDGED AND AGREED:

FOR LESSOR:

Kelly Roper
M. Kelly Roper

Katherine Roper
Katherine Roper

Gregory Aeschliman
Gregory Aeschliman

Robin Aeschliman
Robin Aeschliman

FOR LESSEE: Moore-Twining Laboratories Inc.

6/15/09
~~Harry Moore, President~~

KATE CLARK, CONTROLLER

ADD

LANDLORD COPY

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NAI BT Commercial
Commercial Real Estate Services, Worldwide.

ADDENDUM No._3__

In reference to the (check box to the left):

X	LEASE		PURCHASE AGREEMENT		EXCHANGE AGREEMENT		COUNTER OFFER
			LISTING AGREEMENT		SCHEDULE OF COMMISSIONS		_____

Dated September 6, 2001, regarding the Real Property commonly known as: 501 Ortiz Ave, Sand City (a 2,500.sq ft building) by and between M. Kelly & Katherine Roper; and Gregory & Robin Aeschliman as Lessor, and Twining Laboratories Inc. as Lessee, the undersigned parties hereby agree to amend said agreement as follows:

- Extend the term for a new 18 month period commencing September 5, 2007 and terminating March 4, 2009.
- The rent for this extended period shall be increased from $2,400 to $2,600/mo modified gross for the entire period. Lessor shall pay the property tax and fire insurance. Lessee shall pay for trash removal and utilities as before.

ALL OTHER TERMS AND CONDITIONS OF THE ORIGINAL LEASE, EXCEPT AS AMENDED BY ADDENDUM ONE, TWO AND THIS ADDENDUM THREE, ARE STILL IN AFFECT.

This Addendum, upon its execution by both parties, is hereby fully incorporated in and made a part of the aforementioned Agreement.

ACKNOWLEDGED AND AGREED

FOR LESSOR: Date 9-6-07

By: M Kelly Roper
M. Kelly Roper

By: Katherine Roper
Katherine Roper

By: Gregory Aeschliman
Gregory Aeschliman

By: Robin Aeschl
Robin Aeschliman

FOR LESSEE:

By: H. D. Moore date 9/5/07
Harry D. Moore, President

ADD

NAI BT Commercial
Commercial Real Estate Services, Worldwide.

1650 Technology Drive
Suite 600
San Jose, CA 95110-3812
Office 408/436-8000
Fax 408/441-0832
www.naibtcommercial.com

INVOICE

October 29, 2007

Invoice # 48089-1

Roper / Aeschliman Partnership
1720 Contra Costa
Sand City, CA 93955

Attention: Kelly Roper

Remit with copy of invoice to:
NAI BT Commercial
1650 Technology Drive, Suite 600
San Jose, CA 95110

Salesperson(s): Pete Ericksen

Leasing commission for negotiating and consummating that certain eighteen (18) month lease by and between Roper / Aeschliman Partnership as Lessor, and Twining Laboratories Inc. as Lessee, for office space located at 501 Ortiz Avenue, Sand City, California.

Commission Computation:

Rent		Term			Gross		Rate		Commission
$2,600.00	X	18	months	X	$46,800.00	X	2.00%	=	$936.00
Total Commission					$46,800.00				$936.00

Total Commission Now Due NAI BT Commercial **$936.00**

11/7/07
pd ck# 1042
936.00

Thank You!

ab

REMITTANCE INSTRUCTIONS:
1. Please enclose copy of invoice when remitting payment to the above address.
2. Payment due upon receipt.
3. Blickman Turkus, LP dba NAI BT Commercial (Federal I.D. #77-0187877).

Aeschliman/Roper Rental
1720 Contra Costa Street
Sand City, Ca 93955

October 17, 2007

Mr. Jack Darrah
Twining Laboratories
2527 Fresno Street
Fresno, CA 93721

Hi there,

Thank you for extending our lease for the Twining Office at 501 Ortiz Ave., Sand City. We appreciate having you as our tenant!

As per the updated lease agreement the new rent shall be $2600.00 per month. We received $2400.00 for September and $2400.00 for October.

Please remit the additional $400.00 rent.

Thank You,

Shannon Petty
For Aeschliman/Roper Rentals

Aeschliman/Roper Rental
1720 Contra Costa Street
Sand City, Ca 93955

October 17, 2007

Mr. Jack Darrah
Twining Laboratories
2527 Fresno Street
Fresno, CA 93721

Hi there,

Thank you for extending our lease for the Twining Office at 501 Ortiz Ave., Sand City. We appreciate having you as our tenant!

As per the updated lease agreement the new rent shall be $2600.00 per month. We received $2400.00 for September and $2400.00 for October.

Please remit the additional $400.00 rent.

Thank You,

Shannon Petty
For Aeschliman/Roper Rentals

3/25/08 LM
4/1/08 LM

Nov OK

Dec 200
Jan 200
Feb 200
March 200
April

NAI BT Commercial
Commercial Real Estate Services, Worldwide.

1 Lower Ragsdale Drive
Bldg 1 Suite 100
Monterey CA 93940
tel 831 375 8000
fax 831 647 2116
www.naibtcommercial.com

September 13,2007

Mr. Jack Darrah
Twining Laboratories
2527 Fresno St.
Fresno CA 93721

Dear Jack:

Enclosed please find the third addendum renewing your lease for another 18 months at 501 Ortiz Ave Sand City CA. Please have Harry Moore or another officer of the company sign and return the addendum to me. I will deliver the completed document to the Landlord. They asked me to convey to you that they are glad you are their Tenant, and look forward to their continued relationship with your company.

Call if you have questions or concerns. Thank you.

Sincerely,

Peter E. Ericksen, agent
NAI BT Commercial Real Estate

AESCHLIMAN ROPER RENTAL
1720 CONTRA COSTA ST

SAND CITY , CA 93955-3505

.

Dear AESCHLIMAN ROPER RENTAL
This incoming funds transfer was received on 2001-09-07, for $3360.00. The funds have been CREDITED to account # 44002319. If you have any questions, please contact your local branch.

~~~~~~~~ Incoming Wire Transfer Information ~~~~~~~~
Beneficiary: AESCHLIMAN ROPER RENTAL Account Number: 44002319
Address: 1720 CONTRA COSTA ST SAND CITY CA 93955
OMAD Reference # : 20010907L2LFST1C00011609071512FT01
Sender Bank Name: WELLS FARGO SF ABA Number: 121000248
Reference Number: 010907040731
Originator Bank: WELLS FARGO B
Account Number:
Address:
By Order Of: TWINING LABORATORY INC
Account Number: 4192136620
Address: 2527 FRESNO STREET FRESNO, CA 93721
Receiver Bank Name: FST NATL CENT SAL
ABA Number: 121140713
FRB Incoming Confirmation Number: 20010907L2LFST1C00011609071512FT01
Intermediary Bank:
Account Number:
Address:
Beneficiary Bank:
Account Number:
Address:
Reference for Beneficiary: FW00192250898441
Originator to Beneficiary: RE: RENT DEPOSIT
Bank to Bank Information: {6500}26380 CARMEL RANCHO LANE CARMEL CA*93923*
~~~~~~ END Incoming Wire Transfer Information ~~~~~~

NAI BT Commercial
Commercial Real Estate Services, Worldwide.

ADDENDUM NO. 2

In reference to the (check box to the left):

X	LEASE		PURCHASE AGREEMENT		EXCHANGE AGREEMENT		COUNTER OFFER
			LISTING AGREEMENT		SCHEDULE OF COMMISSIONS		_____

Dated September 6, 2001, regarding the Real Property commonly known as 501 Ortiz Ave, Sand City CA between Kelly & Katherine Roper; and Gregory & Robin Aeschliman as Lessor, and Tiniing Labs Inc. as Lessee, the undersigned parties hereby agree to amend said agreement as follows:

Lessee is herby exercising their second option to extend the term of the original lease. The extended term will be for eighteen months commencing March 5, 2006. The rent for this extension shall be $2,400/mo. Modified gross for the entire period. Lessor pays the property taxes and fire insurance. Lessee shall pay for trash removal and utilities as before.

ALL OTHER TERMS OF THE ORIGINAL LEASE REMAIN THE SAME.

This Addendum, upon its execution by both parties, is hereby fully incorporated in and made a part of the aforementioned Agreement.

Date: 1/17/06

By: Kelly Roper & Katherine Roper

Date:

By: Harry Moore, President

By: 01/24/06

GregoryAeschliman & Robin Aeschliman

ADD

LESSOR COPY

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BT COMMERCIAL REAL ESTATE
AN AFFILIATE OF THE WOODMONT COMPANIES

ADDENDUM NO. 1

In reference to the (check box to the left):

X	LEASE		PURCHASE AGREEMENT		EXCHANGE AGREEMENT		COUNTER OFFER
			LISTING AGREEMENT		SCHEDULE OF COMMISSIONS		_____

Dated September 6, 2001, regarding the Real Property commonly known as 501 Ortiz Ave, Sand City (a 2,500 sq ft building)between M. Kelly & Katherine Roper; and Gregory & Robin Aeschliman as Lessor, and Twining Labs, Inc. ,a Calif Corp as Lessee, the undersigned parties hereby agree to amend said agreement as follows:

Rental increases in the second and third year as provided for in the original 3 year lease are waived by Lessor upon full execution of this Addendum by the Parties.

Extend the term for a new 18 month period commencing September 5, 2004 and terminating March 4, 2006. Rent during the extended term will be $2,200/mo.

Lessee shall have an option to extend the term for another 18 months by giving Lessor written notice on or before December 4 2005 (90 days prior to expiration of the first extension). Rent during this extended period shall be $2,400/mo.

Rent will continue to be on a modified gross basis with the Lessor paying the property taxes (presently $1,707/yr), and property fire insurance (presently $840/yr). Lessee shall pay for and make their own arrangements for trash removal with a receptacle in the back right corner of the adjacent parking as required by the City Use Permit (see exhibit "A" attached).

ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME

This Addendum, upon its execution by both parties, is hereby fully incorporated in and made a part of the aforementioned Agreement.

Date: 8/30/04

FOR LESSOR:

M. Kelly Roper

Katherine Roper

Gregory Aeschliman

Robin Aeschliman

Date: 8/16/04

FOR LESSEE: Twining Labs Inc.

Harry Moore, President

BT COMMERCIAL REAL ESTATE
AN AFFILIATE OF THE WOODMONT COMPANIES

File

ADDENDUM NO. 1

In reference to the (check box to the left):

X	LEASE		PURCHASE AGREEMENT		EXCHANGE AGREEMENT		COUNTER OFFER
			LISTING AGREEMENT		SCHEDULE OF COMMISSIONS		_____

Dated September 6, 2001, regarding the Real Property commonly known as 501 Ortiz Ave, Sand City (a 2,500 sq ft building)between M. Kelly & Katherine Roper; and Gregory & Robin Aeschliman as Lessor, and Twining Labs, Inc. ,a Calif Corp as Lessee, the undersigned parties hereby agree to amend said agreement as follows:

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Extend the term for a new 18 month period commencing September 5, 2004 and terminating March 4, 2006. Rent during the extended term will be $2,200/mo.

X Lessee shall have an option to extend the term for another 18 months by giving Lessor written notice on or before December 4 2005 (90 days prior to expiration of the first extension). Rent during this extended period shall be $2,400/mo.

Rent will continue to be on a modified gross basis with the Lessor paying the property taxes (presently $1,707/yr), and property fire insurance (presently $840/yr). Lessee shall pay for and make their own arrangements for trash removal with a receptacle in the back right corner of the adjacent parking as required by the City Use Permit (see exhibit "A" attached).

ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME

This Addendum, upon its execution by both parties, is hereby fully incorporated in and made a part of the aforementioned Agreement.

Date: 8/30/04

FOR LESSOR:

Kelly Roper
M. Kelly Roper

Katherine Roper

Gregory Aeschliman

Robin Aeschliman

Date: 8/16/04

FOR LESSEE: Twining Labs Inc.

Harry Moore, President

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KELLY – CALL ME ON CELL # IF QUESTIONS 601-3379 THX Pete

BT COMMERCIAL REAL ESTATE

1 Lower Ragsdale Dr, Bldg. 1, Suite 100, Monterey CA 93940
Phone (831) 647-2110 • **Fax (831) 647-2116**

Fax Transmittal Sheet

TO: KELLY/CRAIG ET AL

FROM: Pete Ericksen

COMPANY: A&R PLUMBING

DATE: 8-2-04

FAX NUMBER: 394-0609

TOTAL NO. OF PAGES INCLUDING COVER: 7

PHONE NUMBER: 394-7221

EMAIL ADDRESS: pericksen@btcommercial.com

RE: TWINING LABS EXPANSION

☐ Urgent ☒ For Review ☐ Please Comment ☒ Please Reply ☐ Please Recycle

Comments: PARTNERS – I THINK THIS WILL BE YOUR BEST ALTERNATIVE TO KEEP TWINING IN YOUR BUILDING. I CALCULATED THE TAX FOR THE BUILDING AND 50'x75' LAND THAT GOES WITH IT AT $1707/YR AND MY LAST ESTIMATE FOR YOUR INSURANCE WAS $840/YR. TOGETHER ($2543/YR OR 212/MO) IS .085/SF/MO!

$2200/MO = .88/SF
– .085 TAX/INS
$.795/SF NNN

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CELL 601 3339

BT COMMERCIAL REAL ESTATE

1 Lower Ragsdale Dr, Bldg. 1, Suite 100, Monterey CA 93940
Phone (831) 647-2110 • Fax (831) 647-2116

SHANNON

Fax Transmittal Sheet

RE fax
1135 8/4/04

TO: KELLY RUSK

FROM: Pete Ericksen

COMPANY: A&R PLUMBING

DATE: 8-3-04

FAX NUMBER: 394-0609

TOTAL NO. OF PAGES INCLUDING COVER: 2

PHONE NUMBER: 394-7221

EMAIL ADDRESS: pericksen@btcommercial.com

RE: NEW ADDENDUM (2 X 18 MOS)

☐ Urgent ☒ For Review ☐ Please Comment ☒ Please Reply ☐ Please Recycle

Comments: KELLY –

IF OK, I WILL GO TO HARRY MOORE ON WEDNESDAY. THX

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ADD SHOWN TO TWINING FOR SIGNATURE

181

BT COMMERCIAL REAL ESTATE

1 Lower Ragsdale Dr, Bldg. 1, Suite 100, Monterey CA 93940
Phone (831) 647-2110 • **Fax (831) 647-2116**
OR Cell (831) 601-3379

Fax Transmittal Sheet

TO:	FROM:
Harry Moore	Pete Ericksen
COMPANY:	DATE:
Twining Labs Inc.	AUGUST 5, 2004 5, 2004
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
559-268-7126	3
PHONE NUMBER:	EMAIL ADDRESS:
559-268-7021 EXT 227	pericksen@btcommercial.com
RE:	CC:
Revised Addendum for an extension of your lease at 501 Ortiz, Sand City	

☐ Urgent **X For Review** ☐ Please Comment **X Please Reply** ☐ Please Recycle

Harry: The owners don't want to do a one-year lease with one-year options. They will do 18 months however with 18 month extension as written in the addendum. Please Call. THX

Pete

831-601-3379

CONTROLLER - LINDA DAVIDSON EXT

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Louisiana
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Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Virginia
Washington
Wisconsin

International

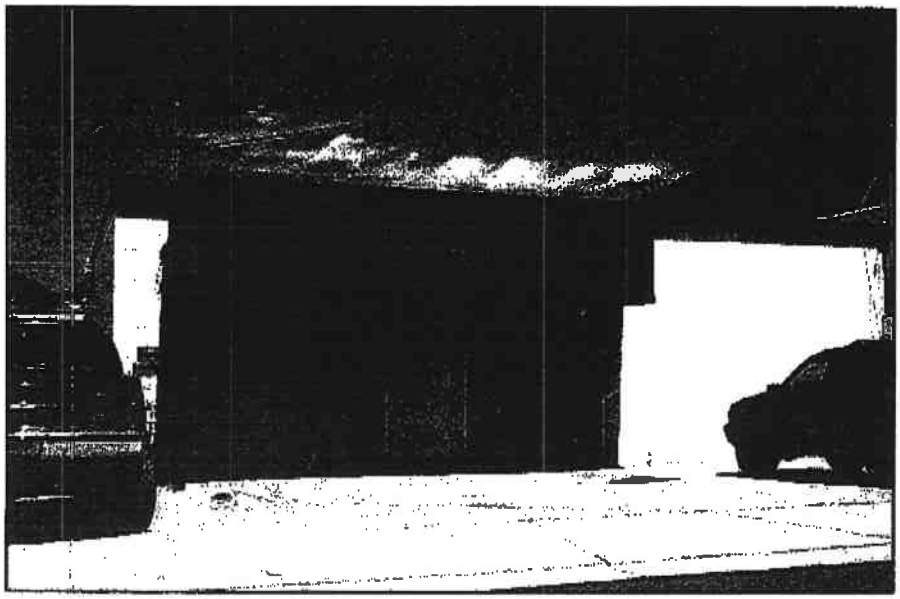
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182

OFFICE/R&D SPACE FOR LEASE

501 Ortiz Avenue
Sand City • California



Rent: $2,000/month ($0.80 p.s.f.)

Building Size: 2,500 s.f. (approx. 50' x 50')

WE CUT 1800/NO GROSS
(LANDLORD PAYS TAX/INS)

Parking: 6 parking spaces in front of building

Terms: NNN, 3-yr minimum lease term. Space offered "As-Is". Additional improvements negotiable.
↖ TENANT PAYS TAX/INS/CAM CHARGES

Configuration: Open administrative area in front. Two private executive offices, one with conferencing area. Equipment room/storage area. Work room with water and drains (Former dark room).

BT COMMERCIAL REAL ESTATE
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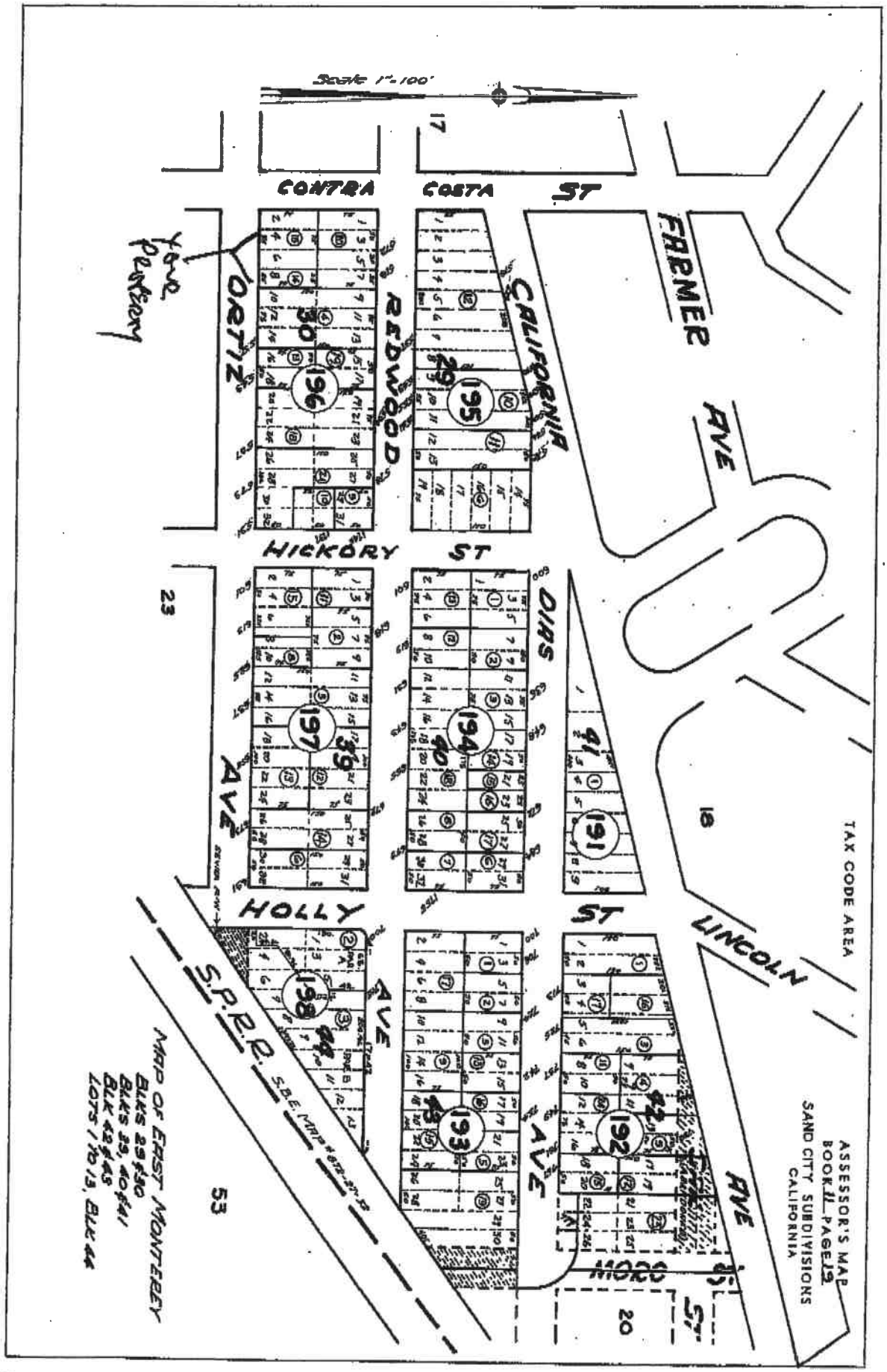
For more information, please contact Exclusive Agent:

PETE ERICKSEN
(831) 375-8000

1 Lower Ragsdale Drive, Building 1, Suite 100, Monterey, CA 93940

The above information has been secured from sources we believe reliable, but we make no representations or warranties, expressed or implied, as to the accuracy of the information. References to square footage or age are approximate. We make no representations or warranties that the premises are free of environmental hazards or that the premises are suitable in all respects to your contemplated use. You should conduct an independent investigation of all pertinent property information. We have no liability for any errors, inaccuracies or omissions.

Monterey, CA, 2004-2005 - 011-196-015-000, ,CA , Sheet: 183



Monterey, CA, 2004-2005 - 011-198-015-000, ,CA , Sheet: 1

185

Property Detail Report

For Property Located At
,CA

RealQuest.com

3 LOTS
2 VACANT
1 UNDER BLDG

Owner Information:

Owner Name:	ROPER MERRILL K		
Mailing Address:	1720 CONTRA COSTA ST, SAND CITY CA 93955-3505 C011	Vesting Codes:	/ A / TR
Phone Number:			

Location Information:

Legal Description:	MAP OF EAST MONTEREY LOT 2, 4 & 6 BLK 30		
County:	MONTEREY, CA	APN:	011-196-015-000
Census Tract/Block:	140.00 / 3	Alternate APN:	
Township-Range-Sect:		Subdivision:	EAST MONTEREY
Legal Book/Page:		Map Reference:	/ 1134-E1
Legal Lot:	2	Tract #:	
Legal Block:	30	School District:	MONTEREY PENINSULA M
Market Area:		Munic/Township:	

Owner Transfer Information:

Recording/Sale Date:	/	Document Number:	
Sale Price:		Deed Type:	

Last Market Sale Information:

Recording/Sale Date:	02/04/2000 / 01/25/2000	1st Mtg Amount/Type:	$165,000 / CONV
Sale Price:	$245,000	1st Mtg Int. Rate/Type:	/ ADJ
Sale Type:	FULL	2nd Mtg Amoun/Type:	/
Document Number:	7409	2nd Mtg Int. Rate/Type:	/
Deed Type:	CORPORATION GRANT DEED	Price Per SqFt:	
Transfer Doc Number:		Multi/Split Sale:	MULTI
New Construction:			
Title Company:	OLD REPUBLIC TITLE		
Lender:	FIRST NAT'L BK/CTRL CA		
Seller Name:	COUROC PROPERTIES LTD		

Prior Sale Information:

Prior Rec/Sale Date:	05/28/1997 /	Prior Lender:	PRIVATE INDIVIDUAL
Prior Sale Price:	$325,000	Prior 1st Mtg Amt/Type:	$365,000 / PRIVATE PARTY
Prior Doc Number:	3522-1484	Prior 1st Mtg Rate/Type:	/ FIX
Prior Deed Type:	CORPORATION GRANT DEED		

Property Characteristics:

Gross Area:		Parking Type:		Construct Type:	
Living Area:		Garage Area:		Heat Type:	
Tot Adj Area:		Garage Capacity:		Exterior wall:	
Above Grade:		Parking Spaces:		Porch Type:	
Total Rooms:		Basement Area:		Patio Type:	
Bedrooms		Finish Bsmnt Area:		Pool:	
Bath(F/H):	/	Basement Type:		Air Conditioning:	
Year Built / Eff:	/	Roof Type:		Style:	
Fireplace:		Foundation:		Quality:	
# of Stories:		Roof Material:		Condition:	
Other Improvements:					

Site Information:

Zoning:		Acres:		County Use:	LIGHT MFG
Flood Zone:		Lot Area:		State Use:	
Flood Panel:		Lot Width/Depth:	x	Res/Comm Units:	/
Flood Panel Date:		Site Influence:		Sewer Type:	
Land Use:	LIGHT INDUSTRIAL			Water Type:	

Tax Information:

Assessed Value:	$212,241	Assessed Year:	2003	Property Tax:	$2,221.62
Land Value:	$148,569	Improve %:	030%	Tax Area:	011000
Improvement Value:	$63,672	Tax Exemption:		Tax Year:	2003
Total Taxable Value:	$212,241				

186

Property Detail Report

For Property Located At
ORTIZ AVE, SAND CITY CA 93955

RealQuest.com

Owner Information:

Owner Name:	ROPER MERRILL K		
Mailing Address:	1720 CONTRA COSTA ST, SAND CITY CA 93955-3505 C011		
Phone Number:		Vesting Codes:	/ A / TR

SINGLE LOT UNDER THE BUILDING

Location Information:

Legal Description:	MAP OF EAST MONTEREY LOT 8 BLK 30		
County:	MONTEREY, CA	APN:	011-196-014-000
Census Tract/Block:	140.00 / 3	Alternate APN:	
Township-Range-Sect:		Subdivision:	~~EAST~~ MONTEREY
Legal Book/Page:		Map Reference:	/ 1134-E1
Legal Lot:	8	Tract #:	
Legal Block:	30	School District:	MONTEREY PENINSULA M
Market Area:		Munic/Township:	

Owner Transfer Information:

Recording/Sale Date:	/	Document Number:	
Sale Price:		Deed Type:	

Last Market Sale Information:

Recording/Sale Date:	02/04/2000 / 01/25/2000	1st Mtg Amount/Type:	$165,000 /
Sale Price:	$245,000	1st Mtg Int. Rate/Type:	/ ADJ
Sale Type:	FULL	2nd Mtg Amoun/Type:	/
Document Number:	7409	2nd Mtg Int. Rate/Type:	/
Deed Type:	CORPORATION GRANT DEED	Price Per SqFt:	
Transfer Doc Number:		Multi/Split Sale:	MULTIPLE
New Construction:			
Title Company:	OLD REPUBLIC TITLE		
Lender:	FIRST NAT'L BK/CTRL CA		
Seller Name:	COUROC PROPERTIES LTD		

Prior Sale Information:

Prior Rec/Sale Date:	05/28/1997 /	Prior Lender:	PRIVATE INDIVIDUAL
Prior Sale Price:	$325,000	Prior 1st Mtg Amt/Type:	$365,000 / PRIVATE PARTY
Prior Doc Number:	3522-1484	Prior 1st Mtg Rate/Type:	/ FIX
Prior Deed Type:	CORPORATION GRANT DEED		

Property Characteristics:

Gross Area:		Parking Type:		Construct Type:	
Living Area:		Garage Area:		Heat Type:	
Tot Adj Area:		Garage Capacity:		Exterior wall:	
Above Grade:		Parking Spaces:		Porch Type:	
Total Rooms:		Basement Area:		Patio Type:	
Bedrooms		Finish Bsmnt Area:		Pool:	
Bath(F/H):	/	Basement Type:		Air Conditioning:	
Year Built / Eff:	/	Roof Type:		Style:	
Fireplace:		Foundation:		Quality:	
# of Stories:		Roof Material:		Condition:	
Other Improvements:					

Site Information:

Zoning:		Acres:		County Use:	WHSE/LUMBER YARD
Flood Zone:	C	Lot Area:		State Use:	
Flood Panel:	0604350001A	Lot Width/Depth:	x	Res/Comm Units:	/
Flood Panel Date:		Site Influence:		Sewer Type:	
Land Use:	WAREHOUSE			Water Type:	

Tax Information:

Assessed Value:	$47,754	Assessed Year:	2003	Property Tax:	$514.62
Land Value:	$47,754	Improve %:		Tax Area:	011000
Improvement Value:		Tax Exemption:		Tax Year:	2003
Total Taxable Value:	$47,754				

LESSOR COPY (SIGNED)

AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION

STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE -- GROSS

(DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)

1. Basic Provisions ("Basic Provisions")

1.1 **Parties:** This Lease (**"Lease"**), dated for reference purposes only, September 6, 2001, is made by and between M. Kelly & Katherine Roper and Gregory & Robin Aeschliman (**"Lessor"**) and The Twining Labs, Inc., a California Corporation (**"Lessee"**), (collectively the **"Parties,"** or individually a **"Party"**).

1.2 **Premises:** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known as 501 Ortiz, Sand City; located in the County of Monterey, State of CA, and generally described as (describe briefly the nature of the property and, if applicable, the **"Project"**, if the property is located within a Project) a 2,500 s.f. concrete commercial building with 5 parking spaces in front (**"Premises"**). (See also Paragraph 2).

1.3 **Term:** 3 years and none months (**"Original Term"**) commencing September 5, 2001 (**"Commencement Date"**) and ending September 4, 2004 (**"Expiration Date"**). (See also Paragraph 3)

1.4 **Early Possession:** Made available for occupancy 9-5-01 (**"Early Possession Date"**). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** $1,800 per month (**"Base Rent"**), payable on the first day of each month commencing October 1, 2001. (See also Paragraph 4)

☑ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted and/or for common area maintenance charges.

1.6 **Base Rent Paid Upon Execution:** $1560.00 as Base Rent for the period September 5, 2001 to September 30, 2001.

1.7 **Security Deposit:** $1800.00 (**"Security Deposit"**). (See also Paragraph 5)

1.8 **Agreed Use:** soils engineering and testing branch office. (See also Paragraph 6)

1.9 **Insuring Party:** Lessor is the **"Insuring Party"**. The Annual "Base Premium" is $840 (estimated). (See also Paragraph 8)

1.10 **Real Estate Brokers:** (See also Paragraph 15)

(a) **Representation:** The following real estate brokers (collectively, the **"Brokers"**) and brokerage relationships exist in this transaction (check applicable boxes):

☐ n/a represents Lessor exclusively (**"Lessor's Broker"**);

☐ n/a represents Lessee exclusively (**"Lessee's Broker"**); or

☑ BT Commercial Real Estate represents both Lessor and Lessee (**"Dual Agency"**).

(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Broker the fee agreed to in their separate written agreement ~~(or if there is no such agreement, the sum of n/a % of the total Base Rent for the brokerage services rendered by said Broker).~~

1.11 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by n/a (**"Guarantor"**). (See also Paragraph 37)

1.12 **Addenda and Exhibits.** Attached hereto is an Addendum or Addenda consisting of Paragraphs 50 through 52 and Exhibits "A" Site plan/floor plan, all of which constitute a part of this Lease.

2. Premises.

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating rental, is an approximation which the Parties agree is reasonable and the rental based thereon is not subject to revision whether or not the actual size is more or less.

2.2 **Condition.** Lessor shall deliver the Premises broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs (**"Start Date"**), and warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems (**"HVAC"**), loading doors, if any, and all other such elements of the building, in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date and that the surface and structural elements of the roof, bearing walls and foundation of any buildings on the Premises (the **"Building"**) shall be free of material defects. If a non-compliance with said warranty exists as of the Start Date, Lessor shall, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify same at Lessor's expense. If, after the Start Date, Lessee does not give Lessor written notice of any non-compliance with this warranty within (i) six (6) months as to the HVAC systems or (ii) thirty (30) days as to the remaining systems and other elements of the Building, correction of such non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense, except for the roof, foundations, and bearing walls which are handled as provided in Paragraph 7.

2.3 **Compliance.** Lessor warrants that the improvements on the Premises comply with all applicable laws, covenants or restrictions of record, building codes, regulations and ordinances (**"Applicable Requirements"**) in effect on the Start Date. Said warranty does not apply to the use to which Lessee will put the Premises or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. NOTE: Lessee is responsible for determining whether or not the zoning is appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed. If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within six (6) months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed (as opposed to being in existence at the Start Date, which is addressed in Paragraph 6.2(e) below) so as to require during the term of this Lease the construction of an addition to or an alteration of the Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Building (**"Capital Expenditure"**), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES IS LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES IS LOCATED.

The Parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: _____
on: _____
by **LESSOR:**
M. Kelly & Katherine Roper and Gregory & Robin Aeschliman
By: Katherine Roper Kelly Roper
Name Printed: KATHERINE ROPER - KELLY ROPER
Title: OWNER

By: _____
Name Printed: KELLY ROPER
Title: OWNER
Address: 1720 CONTRA COSTA ST
SAND City, CA 93955
Telephone: (831) 394-7221
Facsimile: (831) 394-0609
Federal ID No. _____

Gregory J. Aeschliman Robin Aeschliman
GREGORY J. AESCHLIMAN ROBIN J. AESCHLIMAN

Executed at: _____
on: _____
by **LESSEE:**
The Twining Labs, Inc., a California Corporation
By: _____
Name Printed: Harry Moore
Title: President, CEO

By: _____
Name Printed: _____
Title: _____
Address: _____
_____
Telephone: (____) _____
Facsimile: (____) _____
Federal ID No. _____

NOTE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION, 700 So. Flower Street, Suite 600, Los Angeles, California 90017. (213) 687-8777. Fax No. (213) 687-8616

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50. **Rent. The rent schedule shall be:**

0-12 mos	$1,800/mo
13-24 mos	$1,900/mo
25-36 mos	Last rent adjusted by Oakland-San Francisco-San Jose Consumer Price Index

51. **Condition of Premises.** Landlord has completed the following:

a. Repaint the building exterior and interior
b. Replace broken vinyl floor tiles, clean and buff tile floors
c. Repair and repaint damages to wall & ceiling
d. Add a door to former darkroom space
e. Remove weeds and clean up exterior
f. Permit tenant to use landlords dumpster*
g. Replace defective florescent bulbs and ballast
h. Shampoo carpet

* NOTE: In the event it becomes impractical to share a dumpster or arrange for additional pickups, tenant shall provide it's own dumpster in the rear corner of the adjacent parking lot next to the building (see Exhibit "A")

52. **Operating Expenses.** Landlord pays property taxes and fire insurance and for trash removal. Tenant pays for all utilities and services used or consumed on the premises, including sewer fees.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ORIGINAL (UNSIGNED)

AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION

STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE -- GROSS

(DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)

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1.7 **Security Deposit:** $1800.00 **("Security Deposit").** (See also Paragraph 5)

1.8 **Agreed Use:** soils engineering and testing branch office. (See also Paragraph 6)

1.9 **Insuring Party:** Lessor is the **"Insuring Party".** The Annual "Base Premium" is $840 (estimated). (See also Paragraph 8)

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☐ n/a represents Lessee exclusively **("Lessee's Broker");** or

☑ BT Commercial Real Estate represents both Lessor and Lessee **("Dual Agency").**

(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Broker the fee agreed to in their separate written agreement ~~(or if there is no such agreement, the sum of n/a % of the total Base Rent for the brokerage services rendered by said Broker).~~

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2. Premises.

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating rental, is an approximation which the Parties agree is reasonable and the rental based thereon is not subject to revision whether or not the actual size is more or less.

2.2 **Condition.** Lessor shall deliver the Premises broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs (**"Start Date"**), and warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems (**"HVAC"**), loading doors, if any, and all other such elements of the building, in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date and that the surface and structural elements of the roof, bearing walls and foundation of any buildings on the Premises (the **"Building"**) shall be free of material defects. If a non-compliance with said warranty exists as of the Start Date, Lessor shall, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify same at Lessor's expense. If, after the Start Date, Lessee does not give Lessor written notice of any non-compliance with this warranty within (i) six (6) months as to the HVAC systems or (ii) thirty (30) days as to the remaining systems and other elements of the Building, correction of such non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense, except for the roof, foundations, and bearing walls which are handled as provided in Paragraph 7.

2.3 **Compliance.** Lessor warrants that the improvements on the Premises comply with all applicable laws, covenants or restrictions of record, building codes, regulations and ordinances (**"Applicable Requirements"**) in effect on the Start Date. Said warranty does not apply to the use to which Lessee will put the Premises or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. NOTE: Lessee is responsible for determining whether or not the zoning is appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed. If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within six (6) months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed (as opposed to being in existence at the Start Date, which is addressed in Paragraph 6.2(e) below) so as to require during the term of this Lease the construction of an addition to or an alteration of the Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Building (**"Capital Expenditure"**), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital

Expenditure is required during the last two (2) y of this Lease and the cost thereof exceeds six (6) ths' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within ten (10) days after receipt of Lessee's terminati.. notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to six (6) months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least ninety (90) days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor and Lessee shall allocate the obligation to pay for such costs pursuant to the provisions of Paragraph 7.1(c); provided, however, that if such Capital Expenditure is required during the last two years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon ninety (90) days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within ten (10) days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon thirty (30) days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall be fully responsible for the cost thereof, and Lessee shall not have any right to terminate this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements), and their suitability for Lessee's intended use, (b) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, and (c) neither Lessor, Lessor's agents, nor any Broker has made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (a) Broker has made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (b) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 **Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

3. Term.

3.1 **Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 **Early Possession.** If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such early possession. All other terms of this Lease shall, however, be in effect during such period. Any such early possession shall not affect the Expiration Date.

3.3 **Delay In Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession as agreed, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until it receives possession of the Premises. If possession is not delivered within sixty (60) days after the Commencement Date, Lessee may, at its option, by notice in writing within ten (10) days after the end of such sixty (60) day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said ten (10) day period, Lessee's right to cancel shall terminate. Except as otherwise provided, if possession is not tendered to Lessee by the Start Date and Lessee does not terminate this Lease, as aforesaid, any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession of the Premises is not delivered within four (4) months after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. Rent.

4.1. **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent (**"Rent"**).

4.2 **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. Rent for any period during the term hereof which is for less than one (1) full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating.

5. Security Deposit. Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due Lessor or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of said Security Deposit, Lessee shall within ten (10) days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on said change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within fourteen (14) days after the expiration or termination of this Lease, if Lessor elects to apply the Security Deposit only to unpaid Rent, and otherwise within thirty (30) days after the Premises have been vacated pursuant to Paragraph 7.4(c) below, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. Use.

6.1 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs owners and/or occupants of, or causes damage to neighboring properties. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements on the Premises or the mechanical or electrical systems therein, or is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor shall within five (5) business days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in use.

6.2 **Hazardous Substances.**

(a) **Reportable Uses Require Consent.** The term **"Hazardous Substance"** as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. **"Reportable Use"** shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. **No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.**

(e) **Lessor Indemnification.** Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which existed as a result of Hazardous Substances on the Premises prior to the Start Date or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to the Start Date, unless such remediation measure is required as a result of Lessee's use (including alterations) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds twelve (12) times the then monthly Base Rent or $100,000, whichever is greater, give written notice to Lessee, within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date sixty (60) days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within ten (10) days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to twelve (12) times the then monthly Base Rent or $100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within thirty (30) days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said requirements are now in effect or become effective after the Start Date. Lessee shall, within ten (10) days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements.

6.4 **Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30 below) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a contamination is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspections, so long as such inspection is reasonably related to the violation or contamination.

7. Maintenance; Repairs, Utility Installations; Trade Fixtures and Alterations.

7.1 **Lessee's Obligations.**

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance with Covenants, Restrictions and Building Code), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage and Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations, and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, heating, ventilating, air-conditioning, electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), ceilings, floors, windows, doors, skylights, landscaping, driveways, parking lots, fences, signs, sidewalks and parkways located in, on, or adjacent to the Premises. Lessee is also responsible for keeping the roof and roof drainage clean and free of debris. Lessor shall keep the surface and structural elements of the roof, foundations, and bearing walls in good repair (see Paragraph 7.2). Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a first-class condition (including, e.g., graffiti removal) consistent with the exterior appearance of other similar

facilities of comparable age and size in the vici ncluding, when necessary, the exterior repainting o' Building.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintai. ontracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements ("Basic Elements"), if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, (iii) fire extinguishing systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, (v) driveways and parking lots, (vi) clarifiers, (vii) basic utility feed to the perimeter of the Building, and (viii) any other equipment, if reasonably required by Lessor.

(c) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if the Basic Elements described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such Basic Elements, then such Basic Elements shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is the number of months of the useful life of such replacement as such useful life is specified pursuant to Federal income tax regulations or guidelines for depreciation thereof (including interest on the unamortized balance as is then commercially reasonable in the judgment of Lessor's accountants), with Lessee reserving the right to prepay its obligation at any time.

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance with Covenants, Restrictions and Building Code), 9 (Damage or Destruction) and 14 (Condemnation), it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of the Lessee, except for the surface and structural elements of the roof, foundations and bearing walls, the repair of which shall be the responsibility of Lessor upon receipt of written notice that such a repair is necessary. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 **Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions; Consent Required.** The term **"Utility Installations"** refers to all floor and window coverings, air lines, power panels, electrical distribution, security and fire protection systems and signs, communication systems, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term **"Trade Fixtures"** shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term **"Alterations"** shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. **"Lessee Owned Alterations and/or Utility Installations"** are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a). Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, and the cumulative cost thereof during this Lease as extended does not exceed $50,000 in the aggregate or $10,000 in any one year.

(b) **Consent.** Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount equal to the greater of one month's Base Rent, or $10,000, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to one and one-half times the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Indemnification.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than ten (10) days' notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to one and one-half times the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 **Ownership; Removal; Surrender; and Restoration.**

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per Paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than ninety (90) and not later than thirty (30) days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender/Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee Owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee, and the removal, replacement, or remediation of any soil, material or groundwater contaminated by Lessee. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity.

8.1 **Payment of Premium Increases**

(a) Lessee shall pay to Lessor any insurance cost increase (**"Insurance Cost Increase"**) occurring during the term of this Lease. "Insurance Cost Increase" is defined as any increase in the actual cost of the insurance required under Paragraphs 8.2(b), 8.3(a) and 8.3(b) (**"Required Insurance"**), over and above the Base Premium as hereinafter defined calculated on an annual basis. "Insurance Cost Increase" shall include but not be limited to increases resulting from the nature of Lessee's occupancy, any act or omission of Lessee, requirements of the holder of mortgage or deed of trust covering the Premises, increased valuation of the Premises and/or a premium rate increase. The Parties are encouraged to fill in the Base Premium in Paragraph 1.9 with a reasonable premium for the Required Insurance based on the Agreed Use of the Premises. If the Parties fail to insert a dollar amount in Paragraph 1.9, then the Base Premium shall be the lowest annual premium reasonably obtainable for the Required Insurance as of the commencement of the Original Term for the Agreed Use of the Premises. In no event, however, shall Lessee be responsible for any portion of the increase in the premium cost attributable to liability insurance carried by Lessor under Paragraph 8.1(b) in excess of $2,000,000 per occurrence.

(b) Lessee shall pay any such Insurance Cost Increase to Lessor within thirty (30) days after receipt by Lessee of a copy of the premium statement or other reasonable evidence of the amount due. If the insurance policies maintained hereunder cover other property besides the Premises, Lessor shall also deliver to Lessee a statement of the amount of such Insurance Cost Increase attributable only to the Premises showing in reasonable detail the manner in which such amount was computed. Premiums for policy periods commencing prior to, or extending beyond the term of this Lease, shall be prorated to correspond to the term of this Lease.

8.2 **Liability Insurance.**

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability Policy of Insurance protecting Lessee and Lessor against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than

$2,000,000 per occurrence with an **"Additional Insured-Managers or Lessors of Premises Endorsement"** and contain the **"Amendment of the Pollution Exclusion Endorsement"** for damage caused by heat, smoke or fumes from a hostile fire. The Policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. All insurance carried by Lessee shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 **Property Insurance - Building, Improvements and Rental Value.**

(a) **Building and Improvements.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor, with loss payable to Lessor, any groundlessor, and to any Lender(s) insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lenders, but in no event more than the commercially reasonable and available insurable value thereof. If Lessor is the Insuring Party, however, Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee under Paragraph 8.4 rather than by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender or included in the Base Premium), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located.

(b) **Rental Value.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor, with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one (1) year. Said insurance shall provide that in the event the Lease is terminated by reason of an insured loss, the period of indemnity for such coverage shall be extended beyond the date of the completion of repairs or replacement of the Premises, to provide for one full year's loss of Rent from the date of any such loss. Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next twelve (12) month period.

(c) **Adjacent Premises.** If the Premises are part of a larger building, or of a group of buildings owned by Lessor which are adjacent to the Premises, the Lessee shall pay for any increase in the premiums for the property insurance of such building or buildings if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

8.4 **Lessee's Property/Business Interruption Insurance.**

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed $1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations. Lessee shall provide Lessor with written evidence that such insurance is in force.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 **Insurance Policies.** Insurance required herein shall be by companies duly licensed or admitted to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least B+, V, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after thirty (30) days prior written notice to Lessor. Lessee shall, at least thirty (30) days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 **Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 **Indemnity.** Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 **Exemption of Lessor from Liability.** Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building of which the Premises are a part, or from other sources or places. Lessor shall not be liable for any damages arising from any act or neglect of any other tenant of Lessor. Notwithstanding Lessor's negligence or breach of this Lease, Lessor shall under no circumstances be liable for injury to Lessee's business or for any loss of income or profit therefrom.

9. Damage or Destruction.

9.1 **Definitions.**

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations, Utility Installations and Trade Fixtures, which can reasonably be repaired in six (6) months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within thirty (30) days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in six (6) months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within thirty (30) days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Paragraph 6.2(a), in, on, or under the Premises.

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease

shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is $10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within ten (10) days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said ten (10) day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within ten (10) days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect; or (ii) have this Lease terminate thirty (30) days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 **Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective sixty (60) days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within ten (10) days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within thirty (30) days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 **Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate sixty (60) days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 **Damage Near End of Term.** If at any time during the last six (6) months of this Lease there is damage for which the cost to repair exceeds one (1) month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective sixty (60) days following the date of occurrence of such damage by giving a written termination notice to Lessee within thirty (30) days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is ten days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 **Abatement of Rent; Lessee's Remedies.**

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor shall be obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within ninety (90) days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than sixty (60) days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within thirty (30) days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within said thirty (30) days, this Lease shall continue in full force and effect. **"Commence"** shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.7 **Termination - Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

9.8 **Waive Statutes.** Lessor and Lessee agree that the terms of this Lease shall govern the effect of any damage to or destruction of the Premises with respect to the termination of this Lease and hereby waive the provisions of any present or future statute to the extent inconsistent herewith.

10. Real Property Taxes.

10.1 **Definition of "Real Property Taxes."** As used herein, the term **"Real Property Taxes"** shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Premises are located. The term **"Real Property Taxes"** shall also include any tax, fee, levy, assessment or charge, or any increase therein, imposed by reason of events occurring during the term of this Lease, including, but not limited to, a change in the ownership of the Premises.

10.2 (a) **Payment of Taxes.** Lessor shall pay the Real Property Taxes applicable to the Premises provided, however, that Lessee shall pay to Lessor the amount, if any, by which Real Property Taxes applicable to the Premises increase over the fiscal tax year during which the Commencement Date occurs (**"Tax Increase"**). Subject to Paragraph 10.2(b), payment of any such Tax Increase shall be made by Lessee to Lessor within thirty (30) days after receipt of Lessor's written statement setting forth the amount due and the computation thereof. If any such taxes shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such taxes shall be prorated to cover only that portion of the tax bill applicable to the period that this Lease is in effect.

(b) **Advance Payment.** In the event Lessee incurs a late charge on any Rent payment, Lessor may, at Lessor's option, estimate the current Real Property Taxes, and require that the Tax Increase be paid in advance to Lessor by Lessee, either: (i) in a lump sum amount equal to the amount due, at least twenty (20) days prior to the applicable delinquency date; or (ii) monthly in advance with the payment of the Base Rent. If Lessor elects to require payment monthly in advance, the monthly payment shall be an amount equal to the amount of the estimated installment of the Tax Increase divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable Tax Increase is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable Tax Increase. If the amount collected by Lessor is insufficient to pay the Tax Increase when due, Lessee shall pay Lessor, upon demand, such additional sums as are necessary to pay such obligations. All monies paid to Lessor under this Paragraph may be intermingled with other monies of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any balance of funds paid to Lessor under the provisions of this Paragraph may, at the option of Lessor, be treated as an additional Security Deposit.

(c) **Additional Improvements.** Notwithstanding anything to the contrary in this Paragraph 10.2, Lessee shall pay to Lessor upon demand therefor the entirety of any increase in Real Property Taxes assessed by reason of Alterations or Utility Installations placed upon the Premises by Lessee or at Lessee's request.

10.3 **Joint Assessment.** If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the Tax Increase for all of the land and improvements included within the tax parcel assessed, such proportion to be conclusively determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

10.4 **Personal Property Taxes.** Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee. When possible, Lessee shall cause such property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said personal property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within ten (10) days after receipt of a written statement.

11. Utilities. Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered.

12. Assignment and Subletting.

12.1 **Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, **"assign or assignment"**) or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) A change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of twenty-five percent (25%) or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than twenty-five percent (25%) of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. **"Net Worth of Lessee"** shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon thirty (30) days written notice, increase the monthly Base Rent to one hundred ten percent (110%) of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to one hundred ten percent (110%) of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to one hundred ten percent (110%) of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

12.2 **Terms and Conditions Applicable to Assignment and Subletting.**

(a) Regardless of Lessor's consent, any assignment or subletting shall not: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease; (ii) release Lessee of any obligations hereunder; or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of $1,000 or ten percent (10%) of the current monthly Base Rent applicable to the portion of the Premises which is the subject of the proposed assignment or sublease, whichever is greater, as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested.

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

12.3 **Additional Terms and Conditions Applicable to Subletting.** The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. Default; Breach; Remedies.

13.1 **Default; Breach.** A **"Default"** is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or rules under this Lease. A **"Breach"** is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, and/or Security Deposit or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of three (3) business days following written notice to Lessee.

(c) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) a Tenancy Statement, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 42 (easements), or (viii) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of ten (10) days following written notice to Lessee.

(d) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40

hereof, other than those described in subparagraphs 13.1(a), (b) or (c), above, where such Default continues for a period of thirty (30) days after written notice; provided, however, that if the nature of Lessee's Default is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(e) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a **"debtor"** as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days; provided, however, in the event that any provision of this subparagraph 13.1 (e) is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(f) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(g) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor; (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty; (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing; (iv) a Guarantor's refusal to honor the guaranty; or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within sixty (60) days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 **Remedies.** If Lessee fails to perform any of its affirmative duties or obligations, within ten (10) days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including, but not limited to, the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by Lessor shall be due and payable by Lessee upon receipt of invoice therefor. If any check given to Lessor by Lessee shall not be honored by the bank upon which it is drawn, Lessor, at its option, may require all future payments to be made by Lessee to be by cashier's check. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent (1%). Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 12. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 **Inducement Recapture.** Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as **"Inducement Provisions,"** shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 **Late Charges.** Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within five (5) days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall pay to Lessor a one-time late charge equal to ten percent (10%) of each such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 **Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within thirty (30) days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the thirty-first (31st) day after it was due as to non-scheduled payments. The interest (**"Interest"**) charged shall be equal to the prime rate reported in the Wall Street Journal as published closest prior to the date when due plus four percent (4%), but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 **Breach by Lessor.**

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than thirty (30) days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such thirty (30) day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within thirty (30) days after receipt of said written notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent an amount equal to the greater of one month's Base Rent or the Security Deposit, and to pay an excess of such expense under protest, reserving Lessee's right to reimbursement from Lessor. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively **"Condemnation"**), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than ten percent (10%) of any building portion of the premises, or more than twenty-five percent (25%) of the land area portion

of the premises not occupied by any building, is [illegible]n by Condemnation, Lessee may, at Lessee's optio[illegible] be exercised in writing within ten (10) days after Lessor shall have given Lessee written notice of [illegible]on taking (or in the absence of such notice, within ten[illegible]0) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. Brokers' Fee.

15.1 **Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.10 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option; (b) if Lessee acquires any rights to the Premises or other premises owned by Lessor and located within the same Project, if any, within which the Premises is located; (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease; or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the schedule of said Brokers in effect at the time of the execution of this Lease.

15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Each Broker shall be a third party beneficiary of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to a Broker any amounts due as and for commissions pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within ten (10) days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker.

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, and/or attorneys' fees reasonably incurred with respect thereto.

16. Estoppel Certificates.

(a) Each Party (as **"Responding Party"**) shall within ten (10) days after written notice from the other Party (the **"Requesting Party"**) execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current **"Estoppel Certificate"** form published by the American Industrial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such ten day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party; (ii) there are no uncured defaults in the Requesting Party's performance; and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including, but not limited to, Lessee's financial statements for the past three (3) years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. Definition of Lessor. The term **"Lessor"** as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Except as provided in Paragraph 15, upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined. Notwithstanding the above, and subject to the provisions of Paragraph 20 below, the original Lessor under this Lease, and all subsequent holders of the Lessor's interest in this Lease shall remain liable and responsible with regard to the potential duties and liabilities of Lessor pertaining to Hazardous Substances as outlined in Paragraph 6 above.

18. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. Days. Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

20. Limitation on Liability. Subject to the provisions of Paragraph 17 above, the obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, the individual partners of Lessor or its or their individual partners, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against the individual partners of Lessor, or its or their individual partners, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. No Prior or Other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party. The liability (including court costs and Attorneys' fees), of any Broker with respect to negotiation, execution, delivery or performance by either Lessor or Lessee under this Lease or any amendment or modification hereto shall be limited to an amount up to the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

23. Notices.

23.1 **Notice Requirements.** All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given forty-eight (48) hours after

the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt, provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. Waivers. No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent. The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

25. Recording. Either Lessor or Lessee shall, upon request of the other, execute, acknowledge and deliver to the other a short form memorandum of this Lease for recording purposes. The Party requesting recordation shall be responsible for payment of any fees applicable thereto.

26. No Right To Holdover. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to one hundred fifty percent (150%) of the Base Rent applicable during the month immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. Covenants and Conditions; Construction of Agreement. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. Binding Effect; Choice of Law. This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. Subordination; Attornment; Non-Disturbance.

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, **"Security Device"**), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lessor's Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** Subject to the non-disturbance provisions of Paragraph 30.3, Lessee agrees to attorn to a Lender or any other party who acquires ownership of the Premises by reason of a foreclosure of a Security Device, and that in the event of such foreclosure, such new owner shall not: (i) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (ii) be subject to any offsets or defenses which Lessee might have against any prior lessor; or (iii) be bound by prepayment of more than one (1) month's rent.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a **"Non-Disturbance Agreement"**) from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within sixty (60) days after the execution of this Lease, Lessor shall use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said sixty (60) days, then Lessee may, at Lessee's option, directly contact Lessor's lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. Attorneys' Fees. If any Party or Broker brings an action or proceeding involving the Premises to enforce the terms hereof or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, **"Prevailing Party"** shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach.

32. Lessor's Access; Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times for the purpose of showing the same to prospective purchasers, lenders, or lessees, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary. All such activities shall be without abatement of rent or liability to Lessee. Lessor may at any time place on the Premises any ordinary **"For Sale"** signs and Lessor may during the last six (6) months of the term hereof place on the Premises any ordinary **"For Lease"** signs. Lessee may at any time place on or about the Premises any ordinary **"For Sublease"** sign.

33. Auctions. Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. Signs. Except for ordinary "For Sublease" signs, Lessee shall not place any sign upon the Premises without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. Termination; Merger. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within ten (10) days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. Consents. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited

to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within ten (10) business days following such request.

37. Guarantor.

37.1 **Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by the American Industrial Real Estate Association, and each such Guarantor shall have the same obligations as Lessee under this Lease.

37.2 **Default.** It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) a Tenancy Statement, or (d) written confirmation that the guaranty is still in effect.

38. Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. Options.

39.1 **Definition. "Option"** shall mean: (a) the right to extend the term of or renew this Lease or to extend or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 **Options Personal To Original Lessee.** Each Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 **Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured; (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee); (iii) during the time Lessee is in Breach of this Lease; or (iv) in the event that Lessee has been given three (3) or more notices of separate Default, whether or not the Defaults are cured, during the twelve (12) month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term, (i) Lessee fails to pay Rent for a period of thirty (30) days after such Rent becomes due (without any necessity of Lessor to give notice thereof), (ii) Lessor gives to Lessee three (3) or more notices of separate Default during any twelve (12) month period, whether or not the Defaults are cured, or (iii) if Lessee commits a Breach of this Lease.

40. Multiple Buildings. If the Premises are a part of a group of buildings controlled by Lessor, Lessee agrees that it will observe all reasonable rules and regulations which Lessor may make from time to time for the management, safety, and care of said properties, including the care and cleanliness of the grounds and including the parking, loading and unloading of vehicles, and that Lessee will pay its fair share of common expenses incurred in connection therewith.

41. Security Measures. Lessee hereby acknowledges that the rental payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

42. Reservations. Lessor reserves to itself the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

43. Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay.

44. Authority. If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within thirty (30) days after request, deliver to the other party satisfactory evidence of such authority.

45. Conflict. Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. Offer. Preparation of this Lease by either Party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

47. Amendments. This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

48. Multiple Parties. If more than one person or entity is named herein as either Lessor or Lessee, such multiple Parties shall have joint and several responsibility to comply with the terms of this Lease.

49. Mediation and Arbitration of Disputes. An Addendum requiring the Mediation and/or the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease ☐ **is** ☑ **is not** attached to this Lease.

- continued on next page -

50. **Rent. The rent schedule shall be:**

0-12 mos	$1,800/mo
13-24 mos	$1,900/mo
25-36 mos	Last rent adjusted by Oakland-San Francisco-San Jose Consumer Price Index

51. **Condition of Premises.** Landlord has completed the following:

a. Repaint the building exterior and interior
b. Replace broken vinyl floor tiles, clean and buff tile floors
c. Repair and repaint damages to wall & ceiling
d. Add a door to former darkroom space
e. Remove weeds and clean up exterior
f. Permit tenant to use landlords dumpster*
g. Replace defective florescent bulbs and ballast
h. Shampoo carpet

* NOTE: In the event it becomes impractical to share a dumpster or arrange for additional pickups, tenant shall provide it's own dumpster in the rear corner of the adjacent parking lot next to the building (see Exhibit "A")

52. **Operating Expenses.** Landlord pays property taxes and fire insurance and for trash removal. Tenant pays for all utilities and services used or consumed on the premises, including sewer fees.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES IS LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES IS LOCATED.

The Parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

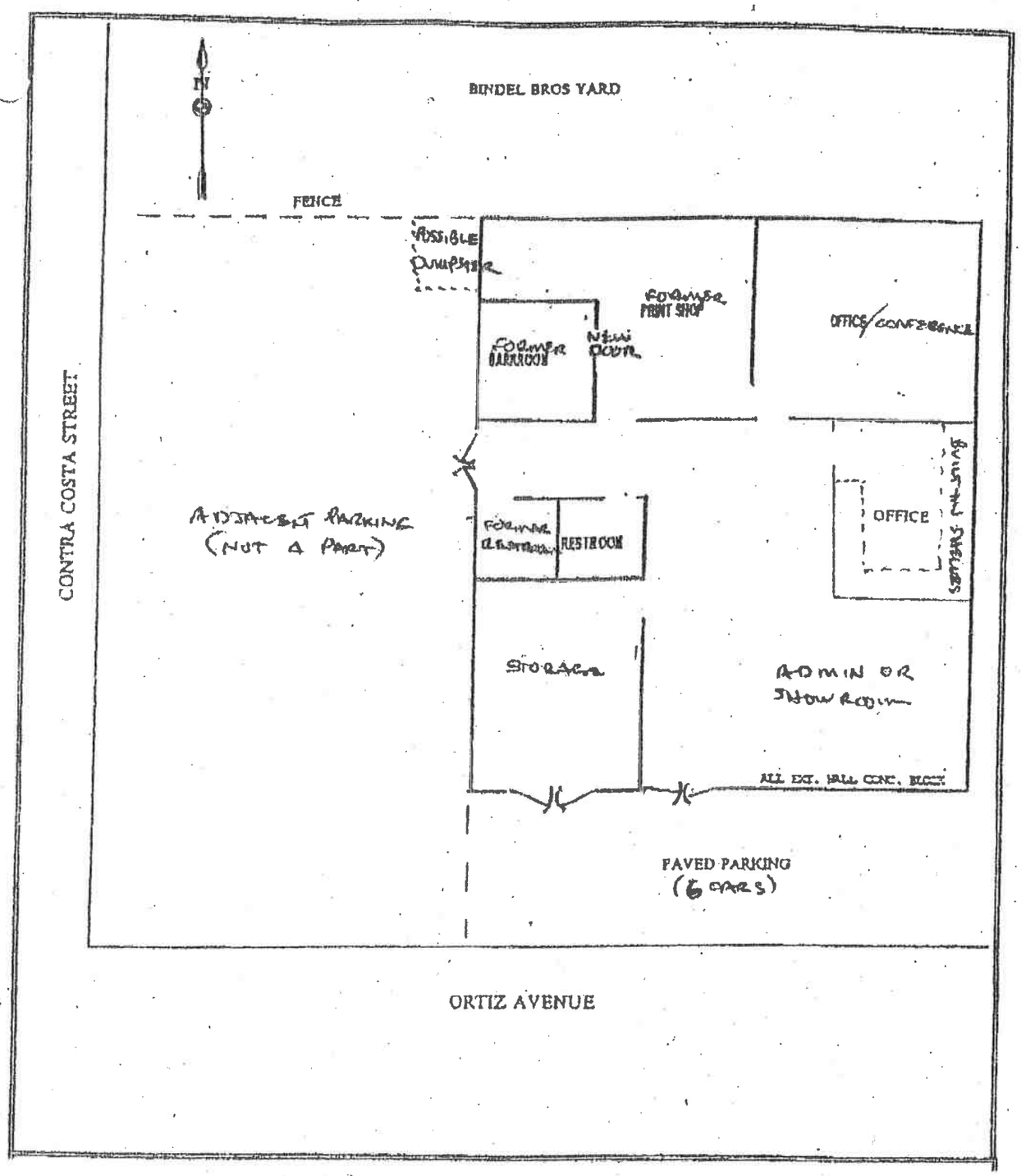
Executed at: _____	Executed at: _____
on: _____	on: _____
by **LESSOR:**	by **LESSEE:**
M. Kelly & Katherine Roper and Gregory & Robin Aeschliman	The Twining Labs, Inc., a California Corporation
By: _____	By: _____
Name Printed: _____	Name Printed: Harry Moore
Title: _____	Title: President, CEO
By: _____	By: _____
Name Printed: _____	Name Printed: _____
Title: _____	Title: _____
Address: _____	Address: _____
_____	_____
Telephone: (____) _____	Telephone: (____) _____
Facsimile: (____) _____	Facsimile: (____) _____
Federal ID No. _____	Federal ID No. _____

NOTE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION, 700 So. Flower Street, Suite 600, Los Angeles, California 90017. (213) 687-8777. Fax No. (213) 687-8616

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EXHIBIT "A"

SITE PLAN, 501 ORTIZ AVENUE



AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION

STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE – GROSS

(DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)

1. **Basic Provisions ("Basic Provisions")**

1.1 **Parties:** This Lease ("Lease"), dated for reference purpose only September 6, 2001, is made by and between M. Kelly & Katherine Roper and Gregory & Robin Aeschliman ("Lessor") and The Twining Labs, Inc., a California Corporation ("Lessee"), (collectively the "Parties," or individually a "Party").

1.2 **Premises:** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known as 501 Ortiz, Sand City, located in the County of Monterey, State of CA, and generally described as (describe only the nature of the property and, if applicable, the "Project", if the property is located within a Project) a 2,560 s.f. concrete commercial building w/5 parking spaces in front ("Premises"). (See also Paragraph 2).

1.3 **Term:** 3 years and none months ("Original Term") commencing September 5, 2001 ("Commencement Date") and ending September 4, 2004 ("Expiration Date"). (See also Paragraph 3)

1.4 **Early Possession:** Made available for occupancy 9-5-01 ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** $1,800 per month ("Base Rent"), payable on the first day of each month commencing October 1, 2001. (See also Paragraph 4)

☐ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted ~~and/or for common area maintenance charges~~.

1.6 **Base Rent Paid Upon Execution:** $1,560.00 as Base Rent for the period September 5, 2001 to September 30, 2001.

1.7 **Security Deposit:** $1800.00 ("Security Deposit"). (See also Paragraph 5)

1.8 **Agreed Use:** guild engineering and testing branch office. (See also Paragraph 6)

1.9 **Insuring Party:** Lessor is the "Insuring Party". The Annual "Base Premium" is $840 (estimated). (See also Paragraph 8)

1.10 **Real Estate Brokers:** (See also Paragraph 15)

(a) **Representation:** The following real estate brokers (collectively, the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):

☐ n/a represents Lessor exclusively ("Lessor's Broker");

☐ n/a represents Lessee exclusively ("Lessee's Broker"); or

☑ BT Commercial Real Estate represents both Lessor and Lessee ("Dual Agency").

(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Broker the fee agreed to in their separate written agreement (~~or if there is no such agreement, the sum of n/a or~~ ~~% of the total Base Rent for the brokerage services rendered by said Broker~~).

1.11 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by n/a ("Guarantor"). (See also Paragraph 37)

1.12 **Addenda and Exhibits.** Attached hereto is an Addendum or Addenda consisting of Paragraphs 50 through 52 and Exhibits "A" Site plan/floor plan all of which constitute a part of this Lease.

2. **Premises.**

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating rental, is an approximation which the Parties agree is reasonable and the rental based thereon is not subject to revision whether or not the actual size is more or less.

2.2 **Condition.** Lessor shall deliver the Premises broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, if any, and all other such elements of the building, in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date and that the surface and structural elements of the roof, bearing walls and foundation of any buildings on the Premises (the "Building") shall be free of material defects. If a non-compliance with said warranty exists as of the Start Date, Lessor shall, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify same at Lessor's expense. If, after the Start Date, Lessee does not give Lessor written notice of any non-compliance with this warranty within (i) six (6) months as to the HVAC systems or (ii) thirty (30) days as to the remaining systems and other elements of the Building, correction of such non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense, except for the roof, foundations, and bearing walls which are handled as provided in Paragraph 7.

2.3 **Compliance.** Lessor warrants that the improvements on the Premises comply with all applicable laws, covenants or restrictions of record, building codes, regulations and ordinances ("Applicable Requirements") in effect on the Start Date. Said warranty does not apply to the use to which Lessee will put the Premises or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. NOTE: Lessee is responsible for determining whether or not the zoning is appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed. If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within six (6) months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed (as opposed to being in existence at the Start Date, which is addressed in Paragraph 6.2(c) below) so as to require during the term of this Lease the construction of an addition to or an alteration of the Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Building ("Capital Expenditures"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital

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50. **Rent.** The rent schedule shall be:

0-12 mos $1,800/mo
13-24 mos $1,900/mo
25-36 mos Last rent adjusted by Oakland-San Francisco-San Jose Consumer Price Index

51. **Condition of Premises.** Landlord has completed the following:
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g. Replace defective florescent bulbs and ballast
h. Shampoo carpet

* NOTE: In the event it becomes impractical to share a dumpster or arrange for additional pickups, tenant shall provide it's own dumpster in the rear corner of the adjacent parking lot next to the building (see Exhibit "A")

52. **Operating Expenses.** Landlord pays property taxes and fire insurance and for trash removal. Tenant pays for all utilities and services used or consumed on the premises, including sewer fees.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

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The Parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at:	Executed at: Fresno, CA
on:	on: September 7, 2001
by LESSOR: M. Kelly & Katherine Soper And Gregory A Soper Associates	by LESSEE: The Twining Labs, Inc., a California Corporation
By:	By:
Name Printed:	Name Printed: Harry Moore
Title:	Title: President, CEO
By:	By:
Name Printed:	Name Printed: Brian Bandomir
Title:	Title: Controller
Address:	Address: 2527 Fresno Street Fresno, CA 93721
Telephone: (___)	Telephone: (559) 268 7021
Facsimile: (___)	Facsimile: (559) 268 0740
Federal ID No.	Federal ID No. 94-1480968

NOTE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AMERICAN INDUSTRIAL REAL ESTATE ASSOCIATION, 700 So. Flower Street, Suite 600, Los Angeles, California 90017. (213) 687-8777. Fax No. (213) 687-8616

COMMERCIAL REAL ESTATE
AN AFFILIATE OF THE WOODMONT COMPANIES

REAL PROPERTY DISCLOSURES AND ACKNOWLEDGEMENT
(LEASE OR SALE)

Date: 9-5-01

Broker: PETE ERICKSEN - MONTEREY

~~Seller~~/Lessor: M. KELLY & KATHIE RYDER / GREG & ROBIN AESCHLIMAN

~~Purchaser~~/Lessee: TWINING LABORATORIES INC

Property Address: 501 ORTIZ, SAND CITY

Also Known As: FORMER COMM. OFFICE BLDG

NOTIFICATION RE: NATIONAL FLOOD INSURANCE PROGRAM

This property ☒ is / ☐ is not located in a Special Flood Hazard Area on United States Department of Housing and Urban Development (HUD) "Special Flood Zone Area Maps." Federal law requires that as a condition of obtaining federally related financing on most properties located in "flood zones, banks, savings and loan associations, and some insurance lenders require flood insurance to be carried where the property, real or personal, is secured for a loan. This requirement is mandated by the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973. The purpose of the program is to provide flood insurance to property owners at a reasonable cost. Cities or counties participating in the National Flood Insurance Program may have adopted building or zoning restrictions, or other measures, as part of their participation in the program. You should contact the city or county in which the property is located to determine any such restrictions. The extent of coverage available in your area and the cost of this coverage may vary, and for further information, you should consult your lender or insurance carrier.

Flood Zone Designation: Zone: 3 Source: FEMA MAP

ALQUIST-PRIOLO NOTIFICATION: ALQUIST-PRIOLO SPECIAL EARTHQUAKE FAULT ZONING ACT

The Property described above ☒ is / ☐ is not / ☐ may not be situated in an Earthquake Fault Zone as designated under the Alquist-Priolo Earthquake Fault Zoning Act, Sections 2621-2630, inclusive, of the California Public Resources Code; and, as such, the construction or development of the Property of any structure for human occupancy may be subject to the findings of a geologic report prepared by a geologist registered in the State of California, unless such report is waived by the city or county under the terms of the Act. No representations on the subject are made by Seller/Lessor or by Broker or its agents or employees, and the Purchaser/Lessee should make his/her/its own inquiry or investigation.

HAZARDOUS WASTES OR SUBSTANCES AND UNDERGROUND STORAGE TANKS

Comprehensive federal and state laws and regulations have been enacted in the past several years in an effort to control the use, storage, handling, clean-up, removal and disposal of hazardous wastes or substances. Some of these laws and regulations (such as, for example, the Comprehensive Environmental Response Compensation and Liability Act [CERCLA]) provide for broad liability on the part of owners, tenants, or other users on property for clean-up costs and damages, regardless of fault. Another such statute is California Health and Safety Code Section 25359.7(a), which provides in part that a Seller/Lessor of nonresidential real property who knows, or has reasonable cause to believe, that any release of a hazardous substance that has come to be located on or beneath that real property shall, prior to the sale or lease, give written notice of that condition to the Purchaser/Lessee; and that failure of the Seller/Lessor to provide written notice as required shall subject the Seller/Lessor to liability for damages. Other laws and regulations set standards for the handling of asbestos, and establish requirements for the use, modification, abandonment, and closure of underground storage tanks.

It is not practical or possible to list all such laws and regulations in this Notice. Therefore, Broker recommends that Sellers/Lessors and Purchasers/Lessees consult legal counsel to determine their respective rights and liabilities with respect to the issues described in this Notice, as well as all other aspects of the proposed transaction. If hazardous wastes or substances have been, or are going to be used, stored, handled or disposed on the Property, or if the Property has had or may have underground storage tanks, it is essential that legal and technical advice be obtained to determine, among other things, the nature of permits and approvals which have been obtained or may be required; the estimated costs and expenses associated with the use, storage, handling, clean-up, disposal or removal of hazardous wastes or substances; and the nature and extent of contractual provisions necessary or desirable in this transaction. Broker recommends expert assistance and site investigation to determine past uses of the property, which may provide valuable information as to the likelihood of hazardous wastes or substances, or underground storage tanks, being on the Property.

Seller/Lessor agrees to disclose to Broker and to Purchaser/Lessee any and all information which he/she/it has regarding present and future zoning and environmental matters affecting the Property and regarding the condition of the Property, including, but not limited to structural, mechanical and soil conditions, the presence and location of asbestos, PCB transformers, other toxic, hazardous or contaminated substances, and underground storage tanks, in, on or about the Property. Broker hereby requests that such information be provided immediately so that it may be timely communicated to the Purchaser/Lessee.

Broker has conducted no investigation regarding the subject matter hereof, except as may be contained in a separate written document signed by Broker. Broker makes no representations concerning the existence or nonexistence of hazardous wastes or substances, or underground storage tanks in, on, or about the Property. Purchaser/Lessee should contact a professional, such as a civil engineer, industrial hygienist or other persons with experience in these matters, to advise on these matters.

The term "hazardous wastes or substances" is used herein in its very broadest sense and includes, but is not limited to, petroleum based products, paint and solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonium compounds, asbestos, PCBs and other chemical products. Hazardous wastes or substances and underground storage tanks may be present on all types of real property. This Notice is intended to apply to any transaction involving any type of real property, whether improved or unimproved.

BROKER DISCLOSURE

The parties hereby expressly acknowledge that Broker has made no independent determination or investigation regarding the following: present or future use or zoning of the property; environmental matters affecting the Property; the condition of the Property, including, but not limited to structural, mechanical and soils conditions, as well as issues surrounding hazardous wastes or substances as set out above; violations of the Occupational Safety and Health Act or any other federal, state, county or municipal laws, ordinances, or statutes; measurements of land and/or buildings. Purchaser/Lessee agrees to make its own investigation and determination regarding such items.

A real estate broker is qualified to advise on real estate. If you desire legal advice, please consult your attorney.

AMERICANS WITH DISABILITIES ACT (ADA)

Owners or tenants of real property may be subject to the Americans with Disabilities Act (ADA), a federal law codified at 42 USC Section 12101 et. seq. Among other requirements of the ADA that could apply to your property, Title III of the Act requires owners and tenants of "public accommodations" to remove barriers to access by disabled persons and provide auxiliary aids and services for hearing, vision or speech impaired persons. The regulations under Title III of the ADA are codified at 28 CFR Part 36.

Broker recommends that you and your attorney review the ADA and the regulations, and, if appropriate, your proposed lease or purchase and sale agreement, to determine if this law would apply to you and the nature of the requirements. These are legal issues. You are responsible for conducting your own independent investigation of these issues.

NOTICE TO PURCHASERS AND SELLERS REGARDING THE FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA)

Unless an exemption applies, FIRPTA requires that every Purchaser of real estate in the United States deduct and withhold from the Seller's proceeds an amount equal to ten percent (10%) of the gross sales price. The primary exemptions are:

1) The Seller furnishes to the Purchaser a certificate executed by the Seller stating under penalty of perjury the Seller's United States taxpayer identification number and that the Seller is not a foreign person. (A foreign person is any foreign citizen or entity other than a United States resident alien.)
2) The property is acquired by the Purchaser for use at his or her residence and the amount paid for the property is $300,000 or less.

If the Purchaser fails to deduct and withhold the correct amount of tax on a non-exempt sale, the Purchaser will be liable to the Internal Revenue Service (I.R.S.) for that tax. If the initial cash consideration paid by the Purchaser prior to the transfer of title is not enough to cover the withholding liability, the Purchaser will be liable for the higher amount unless the Purchaser and Seller obtain a qualifying statement from the I.R.S. before transfer of title.

Even though the Seller provides the Purchaser with a non-foreign person certificate, the Purchaser must still withhold the tax if the Purchaser has actual knowledge that the certificate is false or if the Purchaser receives notice from the Purchaser's agent or Seller's agent that the certificate is false.

A Seller who is a foreign person should consult with an attorney or accountant familiar with FIRPTA before entering into any negotiations or contracts for the sale of property. If the Seller acts promptly, depending on the particular circumstances, it may be possible to have the I.R.S.: (1) determine the Seller's maximum tax liability, (2) reduce the amount which the Purchaser must withhold, (3) issue a qualifying statement, or (4) make an early refund of excess withholding.

YEAR 2000 DISCLOSURES

Many buildings are dependent on computers, computer software applications or microchips (collectively, "Computers") that operate building systems like elevators, lighting, power, HVAC and security systems. Many of these Computers are date sensitive. Unless the Computers are Year 2000 Compliant (hereinafter defined), the Computers may experience operating problems or fail to operate when the date changes to a number the Computer does not properly recognize. In addition, many vendors providing services to or for the benefit of a building owner may rely on computers or software systems that are not Year 2000 Compliant. The failure of the vendor's systems may cause service interruptions when the date changes. Any Computer or vendor failures may have a significant impact upon the value of a building or any leasehold interest in a building. Year 2000 Compliant means, that a Computer will properly read and process information involving dates in both the twentieth and twenty-first century, and that date information will be read or sorted in accurate sequence, and that calculations involving dates will be performed properly, including leap year calculations.

The real estate brokers involved in this transaction are neither authorized nor qualified to advise you as to whether the Building, its systems or its vendors are Year 2000 Compliant. Nor are the brokers involved in this transaction qualified to advise you concerning whether the Seller or Owner has an adequate plan to bring it or the Property into Year 2000 Compliance, or to assure that the vendors providing goods or services to the property have adequately addressed the Year 2000 issue. It is the responsibility of the parties to a transaction to retain expert advisors to assist them in evaluating the potential Year 2000 Compliance issues relating to any particular transaction. The brokers involved in this transaction are not qualified to advise you concerning a potential expert's qualifications.

SELLER'S CERTIFICATE

(To be executed only if the Seller is not a foreign person or entity)

The undersigned hereby certifies:

1) The names, addresses and United States taxpayer identification numbers of all of the owners of the above property are as follows (attach addendum if more space is needed):

SELLER'S NAME	U.S. TAX NUMBER (Or, Social Security Number)	ADDRESS: (If the Seller is an individual, the individual's home address must be used)

There is no other person or entity who has an ownership interest in the property.

2) None of the owners of the Property are nonresident aliens for purposes of U.S. income taxation or, if Seller is an entity, it is not a foreign corporation, foreign partnership, foreign trust, or foreign estate, as such terms are defined in the Internal Revenue Code and regulations thereto.

3) I (we) understand that the Purchaser of the Property intends to rely on the foregoing representations in connection with the Foreign Investment in Real Property Tax Act and that this certification may be disclosed to the Internal Revenue Service.

The undersigned hereby declare under penalty of perjury that the foregoing is true and correct.

Date:_____ Date:_____

Seller:_____ Seller:_____

By:_____ By:_____

Title:_____ Title:_____

(The original of this certificate is to be delivered to the Purchaser, or the closing agent, if any, on or before the closing.)

NOTICE TO PURCHASERS AND SELLERS REGARDING CALIFORNIA TAX WITHHOLDING

California Revenue and Taxation Code Section 18662 requires that every Purchaser must, unless an exemption applies, deduct and withhold three-and-one-third percent (3-1/3%) of the gross sales price from Seller's proceeds and send it to the Franchise Tax Board, if the Seller has a last known address outside of the State of California, or if Seller's proceeds will be paid to a financial intermediary of Seller. Seller and Purchaser therefore agree to execute and deliver any instrument, affidavit, statement, or instruction reasonably to establish an exemption from these requirements, or agree to withholding of taxes under this statute if required.

EARTHQUAKE SAFETY

Owners of their agents who are involved in the transfer of a precast concrete or reinforced or unreinforced masonry building with wood frame floors or roof which was built before January 1, 1975 must deliver to the transferee a copy of "The Commercial Property Owner's Guide to Earthquake Safety" published by the California Seismic Safety Commissions. The undersigned Purchaser/Lessee of the real property herein described acknowledges that Broker has delivered to the undersigned a copy thereof in accordance with California Government Code Section 8875.6 and Sections 8893 et seq.

WATER HEATER BRACING DISCLOSURE AND CERTIFICATION

The Seller hereby certifies that all water heaters in or on the Property are braced, anchored or strapped to resist falling or horizontal displacement due to earthquake motions as required by state and applicable local codes.

STATE FIRE RESPONSIBILITY AREAS

Certain areas of the State have been designated as areas in which the financial responsibility of preventing and suppressing fires is primarily that of the State. Under Public Resources Code §4136, when the Seller of real property has actual knowledge that the property is located within such a state responsibility area, or

CITY OF SAND CITY

APPLICATION FOR ZONING PERMIT

Permit No. Z01-09

1. Name of applicant(s) Twining Laboratories
2. Mailing Address 4 Justin Court Phone 3331180
   Monterey, CA 93940 Zip Code
3. Property Address 501 Ortiz Avenue, Sand City, CA 93955
4. Name of Property Owner(s) Kelly & Kathy Roper/Greg & Robin Eischelman
5. Property Owner's Mailing Address 1720 Contra Costa St.
6. Assessor's Parcel Number 011-196-015 7. Zoning M
8. Building Area (sq.ft. & dimensions) 50' x 50' 2500 sq.ft.
9. Present or Last Use of Building Couroc Office/Limited Retail showroom
10. Briefly describe your intent of use of the subject property:
    Office space for geotechnical & soil testing service company. Some soil testing and storage.
11. Number of employees (including management/owner) 7 - 9
    Most not working in office.
12. Number of on-site parking spaces provided 4 - 5
13. Will there be any business related signs? Yes x No ___. If yes, complete separate application for Sign Permit review and approval.
14. Is the property, or any portion thereof, within a California Coastal Zone? Yes ___ No x.
15. Are adequate water and sewer utilities provided? Yes x No ___.
16. Will any hazardous materials be used or stored on-site (e.g. explosives, corrosives, gasoline, etc.) Yes x No ___. If yes, list materials and explain on separate sheet of paper.

    Yes (see attached)

17. Will the proposed project create any of the following environmental effects: fire or explosion hazard, noise or vibration; intense illumination; smoke, charred paper, dust soot, grime, carbon, noxious acids, fumes, gases, odors, particulate matter, or any other form of air contaminate; heat or cold; dampness; electrical or radioactive emission? Yes__No__. If yes, explain fully on separate sheet of paper.
18. As part of the application, please submit the following:
    A) Site Plan with the following information:
    - Dimensions of property lines, building exterior and interior
    - Label all work, storage, office areas and restrooms.

    B) Written Letter of Intent with the following information:
    - Hours and days of operation
    - List of equipment and materials used and stored.
    - Schedule of shipments and deliveries.
    - Description of the business and work performed on-site.

PLEASE READ:
This Zoning Permit was prepared by City staff based upon information submitted by the applicant and/or property owner, in accordance with the ordinances currently in effect as the date indicated below. City staff determination, as stated herein, may be appealed to the City Council within ten (10) working days of the effective date of this permit's authorization.

STAFF USE ONLY:
The proposed use is permitted x, or is a conditional use__, under section 18.20.020.C/G of the Sand City Zoning Ordinance.
Required permits or approvals prior to use of the site:
Permits:

___Building Permit	__xBusiness License
___Design Permit	___Encroachment Permit
___Sewer Permit	__xSign Permit
___Site Plan Permit	___Temporary Zoning Permit
___Variance	___Water Permit
___Other_____.	

Inspections:

___Building Dept.	_x_Fire Dept.	___Health Dept.
___City Engineer Review		

Zoning Permit No. Z01-09

Conditions, Requirements, and Staff Comments: No parking of vehicles on-site during non-business hours. The primary authorized use of this site is storage of equipment with limited testing and accessory office. Any trash dumpster shall be within a wood or masonry enclosure. The adjacent parcel under the same ownership shall absorb overflow parking. All Federal and State regulations regarding equipment with radioactive components shall be adheared to; otherwise, no such equipment shall be stored within Sand City. This equipment shall not pose a hazard to the surrounding properties.

APPLICANT'S ATTESTATION:

I/We declare that the information provided to City staff, as stated on this application is true and correct to the best of my knowledge; and that, I/We state that as the applicant(s) herein described that I/We have read and understand the information on this permit application.

X _____ _____

Applicant TWINING LABORATORIES Date

PROPERTY OWNER'S ATTESTATION:

I/We declare that I/We are the owner(s) of the property described herein on this application; and that, I/We have familiarized myself/ourselves with the contents of this permit application.

_____ _____

Property Owner M-KELLY RUPER G. ESCHEMANN Date

CITY STAFF'S ATTESTATION:

Based upon the information provided by the applicant on this permit application for a Zoning Permit, a City Business License may X, or may not__, be issued for the proposed use.

_____ _____

Planning Staff Date

Zoning Permit No. 201-09

Conditions, Requirements, and Staff Comments: The primary authorized use of this site is storage of equipment with limited testing and accessory office. Any trash dumpster shall be within a wood or masonry enclosure. The adjacent parcel under the same ownership shall absorb overflow parking. All Federal and State regulations regarding equipment with radioactive equipments shall be adheared to; otherwise, no such equipment shall be stored within Sand City. This equipment shall not pose a hazard to the surrounding properties.

APPLICANT'S ATTESTATION:
I/We declare that the information provided to City staff, as stated on this application is true and correct to the best of my knowledge; and that, I/We state that as the applicant(s) herein described that I/We have read and understand the information on this permit application.

X _____ 9-5-01

Applicant TWINING LABORATORIES Date

PROPERTY OWNER'S ATTESTATION:
I/We declare that I/We are the owner(s) of the property described herein on this application; and that, I/We have familiarized myself/ourselves with the contents of this permit application.

_____ 9-5-01

Property Owner Date

CITY STAFF'S ATTESTATION:
Based upon the information provided by the applicant on this permit application for a Zoning Permit, a City Business License may__, or may not__, be issued for the proposed use.

_____ _____

Planning Staff Date

THE TWINING LABORATORIES, INC.
ESTABLISHED 1930
ANALYTICAL CHEMISTRY • ENVIRONMENTAL SERVICES
GEOTECHNICAL ENGINEERING • SAMPLING SERVICES
CONSTRUCTION INSPECTION & MATERIALS TESTING

August 30, 2001

City of Seaside

RE: Use and Storage of
Portable Density and Moisture Testing Gauge
1720 Contra Costa

To whom it may concern:

This letter is to describe the storage of portable density and moisture testing gauges at the above referenced property. We understand that there is a concern about the storage since these gauges do contain a small amount of radioactive material and are regulated by the State of California Department of Health Services. The gauges are used by engineering technicians to measure the density and moisture content of soils placed as fill for various construction projects throughout the Monterey Bay area.

The gauge contains a small quantity of radioactive material in a stainless steel capsule. Properly used and stored, the gauge presents no danger to the operator or the general public. The only danger is if the gauge is tampered with by an unauthorized person and the sealed, shielded sources are broken.

Nuclear density gauges have been used as an inspection tool on earthwork and paving construction projects since the late 1970's. In fact Twining has performed testing for may past projects in Sand City (such as the Edgewater Shopping Center and Fremont Street improvements) where these gauges have been used to verify compaction of soils as required by the Sand City Building Department.

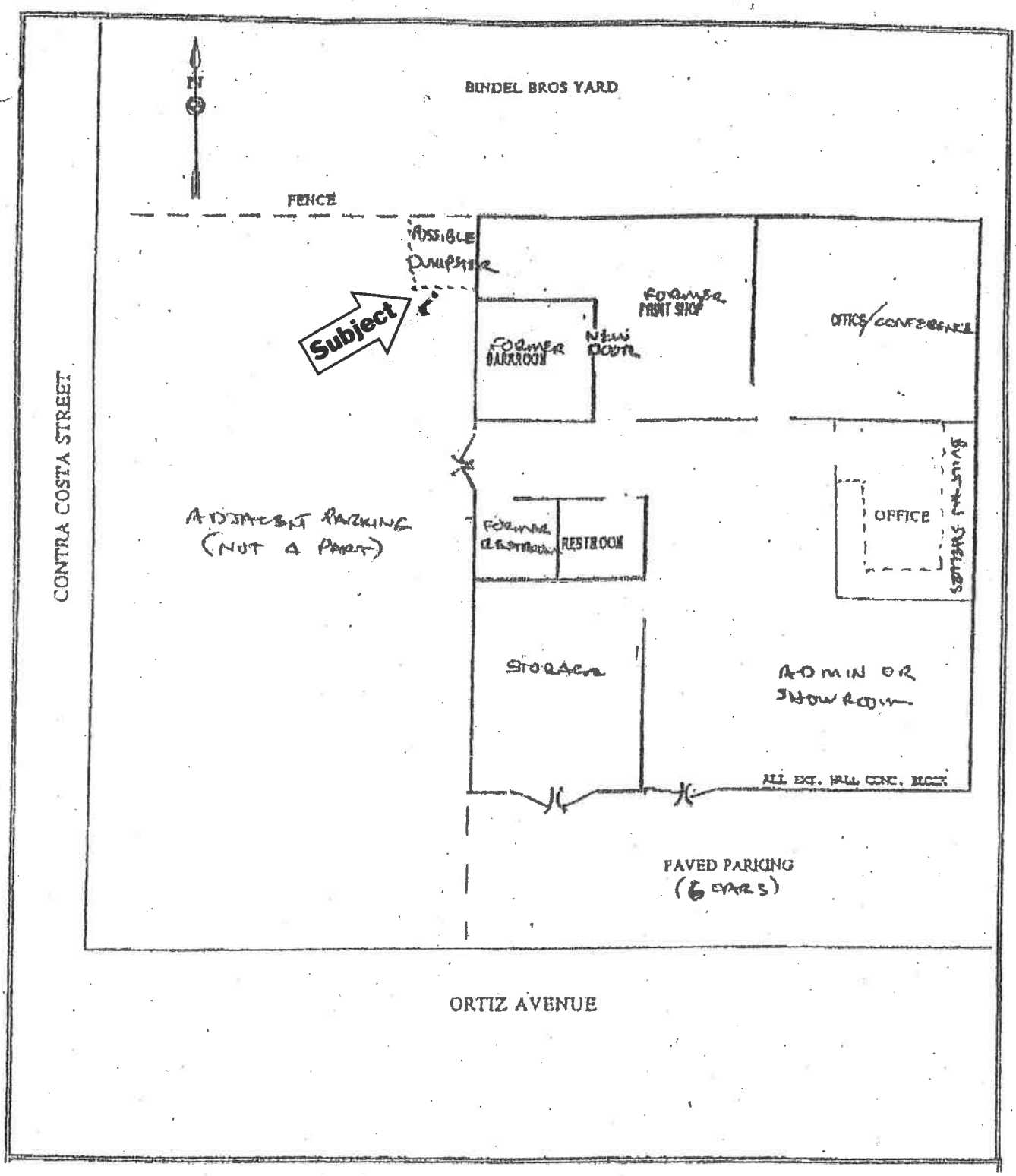
The use and storage facility is licenced and regulated by the State of California. All personnel who are authorized to operate a gauge are required to attend radiation safety courses. When in transport, the gauges are stored in 2 feet long 1½ feet tall and 1½ feet wide boxes which are locked in-place. When stored at an approved storage facility (such as our office) a triple lock system is required to provide a higher level of security.

We hope this short letter alleviates any concerns about public safety with respect to these gauges. If you have any further questions please contact Mr. Scott Krauter, Twining's designated corporate Radiation Safety Officer at (559) 268-7021, or by e-mail at scottk@twining.com.

Scott W. Krauter
Radiation Safety Officer

EXHIBIT "A"

SITE PLAN, 501 ORTIZ AVENUE



Attn: Pete E / Kelly R,

Wire Transfer Services
Outgoing Wire Transfer Request

WELLS FARGO

The monies from account will be charged a fee for processing this wire.

For Bank Use Only: Transfer fee amount, U.S. dollars $

Date Transaction Requested: Month 09 Day 07 Year 2001

Originating Bank Name: Fresno Main AU/CC 0192

Send date if different than date Requested: Month Day Year

Branch must hold until send date indicated if date other than today.

Transfer from account number: 4192136620

Must be a Wells Fargo Bank checking, savings, market rate or wholesale checking account

Transaction Number/ FAS Reference #: FW # 30192 - 250 - 8936411

For Bank Use Only when not debiting the customer account directly:
Wires in Process Account Funded by:
- ☒ Customer paid with cash
- ☐ Customer paid with check
- ☐ Customer paid through issuance of non-bank checking, savings, MRA, WDDA, RTS or Hogan
- ☐ Non-customers $3,000.00 and over

Account #:

US dollar amount: 3,360.00

Originator Information

Name: Twining Laboratories

Address: 2527 Fresno St. Fresno CA

City/State/Zip: 93716

Phone: (559) 268-7021 Tax ID number/Secondary ID: #94-1480962

If wiring foreign currency complete fields below

Foreign currency name:

Foreign currency amount:

U.S. dollar equivalent:

For Bank Use Only:

Rate: Contract number (Required if $15,000 and greater U.S. dollar equivalent): Trader contact:

Beneficiary Information

Beneficiary name: Aeschliman - Roger Rental Beneficiary account number: #44002319

Beneficiary address: 1720 Contra Costa St.

Special Information for Beneficiary: Sand City, CA 93955

Beneficiary Bank

Beneficiary Bank ASA or Bank Identifier Code (BIC): International Sort Code: ABA #121140713

Beneficiary Bank Name: First National Bank City: State: Country:

Special Information for Beneficiary Bank: 26350 Carmel Rancho Lane, Carmel, CA 93923

Intermediary Bank Information

Intermediary Bank ABA or Bank Identifier Code (BIC): RE: Rent Deposit International Sort Code:

Intermediary Bank Name: Intermediary Bank's Account at Intermediary Bank:

City: State: Country: Special Information for Beneficiary Bank:

My signature here indicates agreement to all of the information on this Outgoing Wire Transfer Request and to the terms and conditions on the second page of this Request. Wells Fargo Bank is authorized to rely on the information on this Request in making the requested funds transfer.

Customer Signature

X [signature] Date: 9/7/01

Bank approval/exception process

Verification of Originator (Telephone, Fax, Written Requests or Business account, validate the originator is an authorized signer and attach supporting Documentation)

Method of identification to verify caller's authority to charge account for wire:

Reason caller cannot come into bank:

Caller's immediate phone number: Caller's location: ☐ Company ☐ Home ☐ Other

Confirmation of Request (Banker Calls Customer for Confirmation)

Phone number to call to verify request: Source used (e.g.) ☐ Bank records ☐ Telephone directory ☐

Time of call to customer: Name of person placing call:

☐ Customer approved transfer ☐ Customer denied transfer Customer contact name:

Telephone, Fax or Written Request-Approvals

Account officer: Date: Next level of approval (if necessary): Date:

Bank

Initiated by: 1st Approval: 2nd Approval:

Name on ID: CDL # N4785984 Type of ID and number as per Wells Fargo check cashing standards: Expiration date:

X Brian Boudreau

FAX: 11-01

WIRE 74388 (7-96-30610)

Fax

THE TWINING LABORATORIES, INC.
FRESNO/MODESTO/VISALIA/BAKERSFIELD/SALINAS

[redacted]

Name:. Kellly Roper
Organization: A & R Plumbing
Fax: (831) 394-0609
Phone:
From: Brian Boudreau - Controller
Date: September 7, 2001
Subject: Lease for 501 Ortiz, Sand City, CA
Pages: 4

Comments:

Please call if you have any questions.

Brian

From The Twining Laboratories, Inc.
Phone: (559) 268-7021
Fax: (559) 268-0740

AGENDA ITEM
9C.

Approve a Resolution Establishing General Procedures and Criteria for the Issuance of Permits for Storefront Retail Commercial Cannabis Business Uses and Authorizing the City Manager to Prepare and Implement Administrative Procedures and Criteria for Review and Issuance of Related Operator Permits

City of Sand City

STAFF REPORT

TO: Honorable Mayor and City Council
FROM: Vibeke Norgaard, City Manager and Brian Foucht, Contract Planner – EMC Planning Group
SUBJECT: Resolution Approving Procedures
DATE: November 5, 2024

BACKGROUND:
Commercial and medicinal cannabis businesses are currently prohibited within the City (Municipal Code Section 18.69.010). In 2021 the City Council directed staff to prepare a draft Commercial Cannabis Ordinance. An initial draft was provided to the City Council in April, 2022. Subsequently, in October 2023, the City was awarded a Cannabis Retail Access Grant of $115,000 from the State of California Department of Cannabis Control (DCC).

On October 1, 2024 the City Council conducted a public hearing and approved the First Reading of an Ordinance adding Chapter 18.102, "Commercial Cannabis Uses"; adding Section 18.19.030.B. to Chapter 18.19 "Conditional Uses"; deleting Section 18.69.010, "Medical Marijuana Dispensaries, Delivery, Cultivation, and Sales" in its entirety; and amending Section 18.82.030 "Penalties", of Title 18, "Zoning", of the Sand City Municipal Code;

Discussion:
The ordinance limits, to two (2), the number of store front businesses. Ordinance section 18.102.060(a)(3) requires the City Council to set the method for selecting applicants who are eligible to receive Operator Permits and authorizes the City Manager to prepare forms and adopt any necessary rules to implement the procedure guidelines and review criteria. The attached resolution establishes an application process and directs the City Manager to implement that process.

Evaluation and selection of up to two (2) applicants from among multiple candidates will involve a transparent process. The recommended approach involves rank ordering of applicants against a set of varied priorities:

- Demonstrated consistency with all DCC regulations
- Safety and Security Plan acceptable to Police Chief
- Operator/Employee and Owner/Partner background clearance
- Record of continuous operation
- Premise Improvement Plan
- Proposed community benefit
- Labor and Employment Plan – emphasis on local employment

Applicants would be ranked according to how well each applicant meets each priority relative to other applicants.

Recommendation:
Staff recommends that the City Council approve the attached resolution setting guidelines for evaluation and selection of applicants to obtain an Operator Permit for Store Front Retail Cannabis Business.

Attachment:
1. Resolution

CITY OF SAND CITY
RESOLUTION SC ____2024

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAND CITY ESTABLISHING GENERAL PROCEDURES AND CRITERIA FOR THE ISSUANCE OF PERMITS FOR STOREFRONT RETAIL COMMERCIAL CANNABIS BUSINESS USES AND AUTHORIZING THE CITY MANAGER TO PREPARE AND IMPLEMENT ADMINISTRATIVE PROCEDURES AND CRITERIA FOR REVIEW AND ISSUANCE OF RELATED OPERATOR PERMITS

WHEREAS, on November 5, 2024 the City Council of the City of Sand City adopted an Ordinance adding Chapter 18.102, “Commercial Cannabis Uses”, adding Section 18.19.030.B. to Chapter 18.19 “Conditional Uses”, and deleting Section 18.69.010, “Medical Marijuana Dispensaries, Delivery, Cultivation, and Sales” in its entirety, and amending Section 18.82.030 “Penalties”, of Title 18, “Zoning”, of the Sand City Municipal Code; and

WHEREAS, the above referenced Ordinance section 18.102.060(a)(3) requires the City Council to set the method for selecting applicants who are eligible to receive Operator Permits and authorizes the City Manager to prepare forms and adopt any necessary rules to implement the procedure guidelines and review criteria.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Sand City as follows:

Section 1. Application Procedure Guidelines and Review Criteria for Storefront Commercial Cannabis Business Operator Permit, in substantially the same form and content as that attached as Exhibit "A", and incorporated herein by reference, is hereby approved by the City Council of Sand City.

Section 2. The City Manager, or their designee, is authorized to make interpretations, corrections, clarifications, and revisions to the Application Procedure Guidelines as they deem necessary to facilitate the orderly and efficient implementation of any commercial cannabis permit application and selection process initiated or conducted by the City.

PASSED AND ADOPTED by the City Council of the City of Sand City this ___ day of November 2024 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED:

_____
Mary Ann Carbone, Mayor

ATTEST:
DATED: _____

_____
Kerry Lindstrom, City Clerk

EXHIBIT "A"

General Application Procedure Guidelines and Review Criteria For Issuance Of An Operator Permit For Storefront Retail Cannabis Businesses

1. The City Manager or designee shall implement the City's Storefront Retail Cannabis Business ordinance as follows:

   a) Prepare forms for acceptance and processing applications;

   b) Solicit for professional services to assist equity applicants;

   c) Solicit for applicants for Conditional Use Permit;

   d) Prequalify CUP applicants based on the following criteria:

Eligibility Criteria	Priority
Store front retail program documentation demonstrates consistency with all DCC regulations and Sand City safety and security plan requirements	1
Safety and Security Plan acceptable to Police Chief	2
Operator/Employee and Owner/Partner background clearance	2
Record of continuous operation in another jurisdiction	2
Premise Improvement Plan describing new tenant improvements: attractive and professional business appearance, including, but not limited to, new flooring, display cases, interior and exterior paint or wall coverings, and signage.	3
Proposed community benefit includes financial, in kind, or other forms of support within the community acceptable to the City in the following areas: • Recreation • The Arts • Beautification • Community events	3
Labor and Employment Plan – emphasis on local employment	4

   a) A staff committee will evaluate applications according to the above criteria. Evaluation of multiple applicants shall be accomplished by a numerically based rank - order process. In cases

where more than two applications have equivalent ranking Operator Permits will be issued by lottery.

b) Not more than two (2) applicants will be selected as eligible to complete the CUP process and, within 6 months after expiration of the CUP appeal period, obtain a DCC Type 10 license.

c) A condition of CUP approval will specify the maximum number of days following issuance of the DCC license by which an Operator Permit must be obtained. This time period will be based on the circumstances of the individual case outlined in the CUP application.

d) A ministerial, Operator Permit will be issued administratively by the City Manager following completion of permitted and licensed improvements to the store front.

e) Successful applicants will be required to enter into a community benefit agreement with the City before their business can begin operation.

END

AGENDA ITEM
9D.

Sand City Coastal Trail Draft Conceptual Plans

City of Sand City

STAFF REPORT

TO: Mayor and City Council
FROM: Esme Wahl, Contract Associate City Planner, EMC Planning Group
SUBJECT: Sand City Coastal Trail – Draft Conceptual Plans
DATE: November 5, 2024

BACKGROUND:
In 2023, City staff and EMC applied for a grant from the State Coastal Conservancy which was approved on February 15th, 2024 in the amount of $473,500, to prepare trail alignment and restoration plans, designs, permit applications, and environmental documentation for a 0.7-mile segment of trail. This trail project is being referred to as the 'Sand City Coastal Trail'.

Project Goals:
This trail project will enhance access to and along the coast in Sand City and provide Americans with Disability Act (ADA) access to the Coast. The project will provide enhanced coastal access for residents, visitors, and employees in Sand City's West End District, improve day-use recreational opportunities, and provide ADA accessibility through features such as a boardwalk, viewing platform, and ADA parking. Additionally, the project will restore sensitive dune habitats.

Currently, there is no complete trail system connecting Sand City's city-center to the coast, nor is there any formal coastal access along Sand City's shoreline. As a result, existing residential neighborhood community-members and visitors to Sand City do not currently have dedicated and walkable access to the coast in Sand City. The proposed trail alignment will begin at City Hall (specifically at the newly renovated Calabrese Park above City Hall) in the West End District and pass by the South of Tioga development to Tioga Avenue and then out to and along Sand City's coast, providing visitors and residents with safe and dedicated access to the coast in Sand City.

On the west side of State Route 1, there is no formal trail system which connects Tioga Avenue to the Vista Point viewing platform and beach access point at West Bay Street. The current lack of a dedicated boardwalk/trail system in this area has resulted in many informal footpaths meandering through the sensitive dune habitat south of Tioga Avenue, resulting in impacts to a number of special status species in this area. The boardwalk will

keep people from damaging the sensitive habitat and will allow the dune restoration efforts that are part of the project to have a better chance of success.

DISCUSSION:

The City has been working with its consultant team, which includes BFS Landscape Architects, Whitson Engineers, EMC Planning Group, Polaris Land Surveying, and Integral Consulting to prepare technical studies and conceptual design plans for the project. The draft conceptual plans include the proposed trail alignment, trail types, locations of wayfinding signage, educational signs, and lighting, location of the viewing platform, location of a vault-style restroom, and parking improvements at Tioga Avenue.

The draft conceptual plans have been prepared after a number of site visits, preparation of technical studies, coordination with State Parks, and community outreach events. Various technical studies have been completed to help the consultant team understand the site constraints and to ultimately inform the trail alignment so that the trail will be sited and designed in a way which is sustainable over time. The constraints that the consultant team has considered include: coastal erosion, private land, special-status species, and viewshed. Based on the findings of these technical studies, the following trail alignment and project components were developed.

Project Description:

Trail Alignment

The Sand City Coastal Trail will begin at the upper end of Calabrese Park in Sand City's West End District and will ultimately terminate at the viewing platform at the end of West Bay Street. On the east side of State Route 1, the coastal trail is primarily located within the City right-of-way, with the exception of one private parcel (APN 011-125-052-000) crossing in the East Dunes. West of State Route 1, the current trail alignment is located partially within State Parks land and partially within the City right-of-way. Sand City staff and the consultant team has been working closely with State Parks staff on the portion of the trail alignment within State Parks jurisdiction.

The coastal trail will be comprised of various trail types, which include sections of sidewalk (which will be demarcated with plaques set into the sidewalk) and multiple boardwalk types (including at-grade wood boardwalks, raised wood boardwalks, and SuperDeck foam boardwalks). At this point, the entire trail has been designed to be ADA accessible. Exhibit A, Draft Conceptual Plans, shows the trail alignment.

There will be connection points between the Coastal Trail and the Multi-Use Trail at Tioga Avenue and Pendergrass Way. The connection points will include wayfinding signs and sidewalk plaques.

Trail Alignment East of Highway 1

The trail will begin at the upper end of Calabrese Park and will follow a proposed sidewalk down Pendergrass Way, where it will turn onto Ocean View Avenue. The trail will proceed down existing and proposed sidewalks along Ocean View Avenue, which will be marked with sidewalk plaques and ocean-themed crosswalk designs. From the end of Ocean View Avenue, the trail will traverse the east dunes and would transition to a wooden boardwalk. Through the east dunes, the boardwalk would pass by the new South of Tioga development. There would be a trail off-shoot to connect the boardwalk to the South of Tioga Development, so that residents and guests of the three South of Tioga land use types could easily access the trail. This stretch of boardwalk will likely contain some interpretive signage regarding species types and habitat preservation in the East Dunes area of the City. The boardwalk will ultimately terminate at Tioga Avenue, where the trail will once again become a sidewalk type trail demarcated with sidewalk plaques and wayfinding signage. At Tioga Avenue, the trail turns west, where it continues along the sidewalk and across the overpass.

Trail Alignment West of Highway 1

After crossing the overpass, the sidewalk on Tioga Avenue terminates where Tioga Avenue intersects with Sand Dunes Drive. There is no existing sidewalk along the portion of Tioga Avenue located seaward of Sand Dunes. The project would include sidewalk improvements along the south side of Tioga Avenue in this area. Interpretive fencing will be installed to guide users and protect the dunes along Tioga Avenue. The trailhead of the boardwalk would be located approximately three-quarters of the way down Tioga Avenue from Sand Dunes Drive.

The boardwalk would meander through the sand dunes between Tioga Avenue and West Bay Street. The alignment of the boardwalk in this area is depicted on Exhibit A, Draft Conceptual Plans. The boardwalk will include a mixture of at-grade and raised wooden boardwalk types in an effort to maintain the slope of the boardwalk within ADA standards. The boardwalk location is also designed to avoid the prime snowy plover breeding habitat and is planned to be raised in specific areas to allow the passage of Snowy Plovers beneath the boardwalk. There would also be an off-shoot from the boardwalk, which would allow users direct access to the beach. The off-shoot would be constructed using SuperDecks material, which is a lightweight, durable material (see Exhibit B, SuperDecks Boardwalk) that can easily be moved in the case of a large storm event. The boardwalk would also be constructed using SuperDecks along Ocean View Avenue, where the trail alignment is located close to the beach and is within the coastal hazard zone identified by Integral Consulting.

Viewing Platform

The project would include a viewing platform with a bench and an interpretive sign. The draft conceptual plans show the viewing platform sited near the end of Mar Vista Drive in a location that offers users ocean views. The goal is for the viewing platform to provide an ADA accessible area near the beach, at the edge of the coastal bluff, with interpretive signage for people to simply enjoy the coast.

In order to provide ocean views, the viewing platform has to be sited within the coastal hazard zone identified by Integral Consulting. The project team is researching lightweight products that can provide a durable viewing platform that can also be easily moved inland over time, if needed. The idea is a viewing platform built on skids, so that it can be moved with a tractor, as needed, when coastal wave run-up and erosion impact the Sand City coast.

Restrooms

In order to be sited outside of the hazard zones mapped by Integral Consulting, the restrooms would likely be located to the east of the Monterey One Water pump station. The consultant team is currently determining the best option for a double-vault restroom. One potential option is a permanent double vault restroom that would connect to sewer and water lines. If water supply and sewer connections are not feasible in this location, there are vault-style restroom designs available that do not require sewer and water connections.

Tioga Avenue Improvements

The project includes striping on Tioga Avenue to formalize the parallel parking spaces. The project team is currently looking into the feasibility of providing two ADA accessible parking spaces at the end of Tioga Avenue.

Habitat Restoration:

As a part of the Coastal Trail project, the City is proposing to restore, with native dune habitat, the area bounded by Tioga Avenue, Sand Dunes Drive, West Bay Street, and the Monterey Bay, with the exception of the area that has already been restored by State Parks (see Exhibit C, Proposed Restoration Area). Once the trail alignment is finalized, the consultant team will prepare a Habitat Restoration Plan for the area of the dunes identified in Exhibit C. The dunes would be restored around the boardwalk during the implementation of the project.

Technical Studies:

Coastal Erosion

Integral Consulting modeled dune erosion as a result of storm events and sea-level rise in the project area west of State Route 1 (see Exhibit D, Coastal Hazards Map). The results of their analysis provided the project team with a coastal hazards map which shows projected dune erosion with 0.5 feet, 1 foot, and 2 feet of sea level rise combined with storm surge. The consultant team used this information to site the permanent trail structures outside of the hazard zones. For the portions of the trail and viewing platform which must be located within the hazard areas, the project team has identified products that are lightweight, durable, and temporary in nature, so that they could be moved out of the way if a large storm surge is anticipated, or could be moved inland as the dune crest recedes over times.

Focused Plant Surveys

Focused plant surveys were conducted on May 7, and May 8, 2024. The results of these surveys have been taken into consideration in the trail alignment.

Community Outreach

On March 19, 2024, City staff presented the preliminary project concept at a City Council hearing, where the City Council accepted the Coastal Conservancy grant funds.

EMC Planning Group conducted community outreach at the West End Celebration on August 24 and 25, 2024 and at the 831 Night Market on October 4, 2024. Generally, the City has gained overwhelming support by community members for this project. The majority of survey respondents supported a trail connecting the city-center to the coast, expressed a need for ADA accessibility, and favored a viewing platform and restroom near the beach.

Conclusion

The draft conceptual plans represent a trail alignment and project features that consider and work around private parcels, coastal erosion, sensitive habitat, and ADA requirements. For the next steps, the City will finalize the conceptual design plans based on discussions with State Parks staff and feedback received from City Council and will then move to 30% design plans.

CEQA: Environmental documentation will be prepared as a part of the City Council agreement with the 30% design plans.

RECOMMENDATION: Receive input on draft conceptual plans and receive direction and authorization to move to 30% design plans and CEQA documentation.

FISCAL IMPACTS: The planning of this project is fully funded by a grant from the State Coastal Conservancy.

ATTACHMENTS:

1. Exhibit A, Draft Conceptual Plans
2. Exhibit B, Super Decks Boardwalk
3. Exhibit C, Proposed Restoration Area
4. Exhibit D, Coastal Hazards Map

Draft Conceptual Plans

A

EXHIBIT



KEY MAP

SCALE: 1"= 100'-0"

50 0 100 200

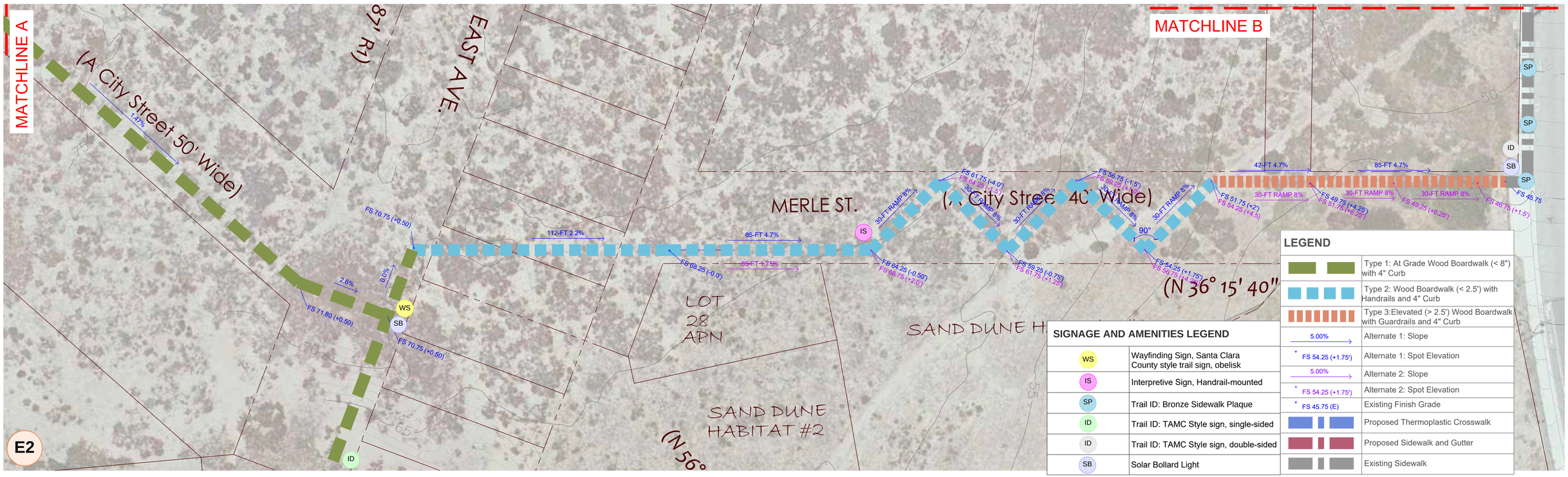
SAND CITY COASTAL TRAIL

LOCATION: SAND CITY, CA

DATE: 10/29/2024

PROJECT NUMBER: 24.021





LEGEND

	Type 1: At Grade Wood Boardwalk (< 8") with 4" Curb
	Type 2: Wood Boardwalk (< 2.5') with Handrails and 4" Curb
	Type 3:Elevated (> 2.5') Wood Boardwalk with Guardrails and 4" Curb
5.00% →	Alternate 1: Slope
FS 54.25 (+1.75')	Alternate 1: Spot Elevation
5.00% →	Alternate 2: Slope
FS 54.25 (+1.75')	Alternate 2: Spot Elevation
FS 45.75 (E)	Existing Finish Grade
	Proposed Thermoplastic Crosswalk
	Proposed Sidewalk and Gutter
	Existing Sidewalk

SIGNAGE AND AMENITIES LEGEND

WS	Wayfinding Sign, Santa Clara County style trail sign, obelisk
IS	Interpretive Sign, Handrail-mounted
SP	Trail ID: Bronze Sidewalk Plaque
ID	Trail ID: TAMC Style sign, single-sided
ID	Trail ID: TAMC Style sign, double-sided
SB	Solar Bollard Light

SCALE: 1"= 20'-0"

20 0 20 40

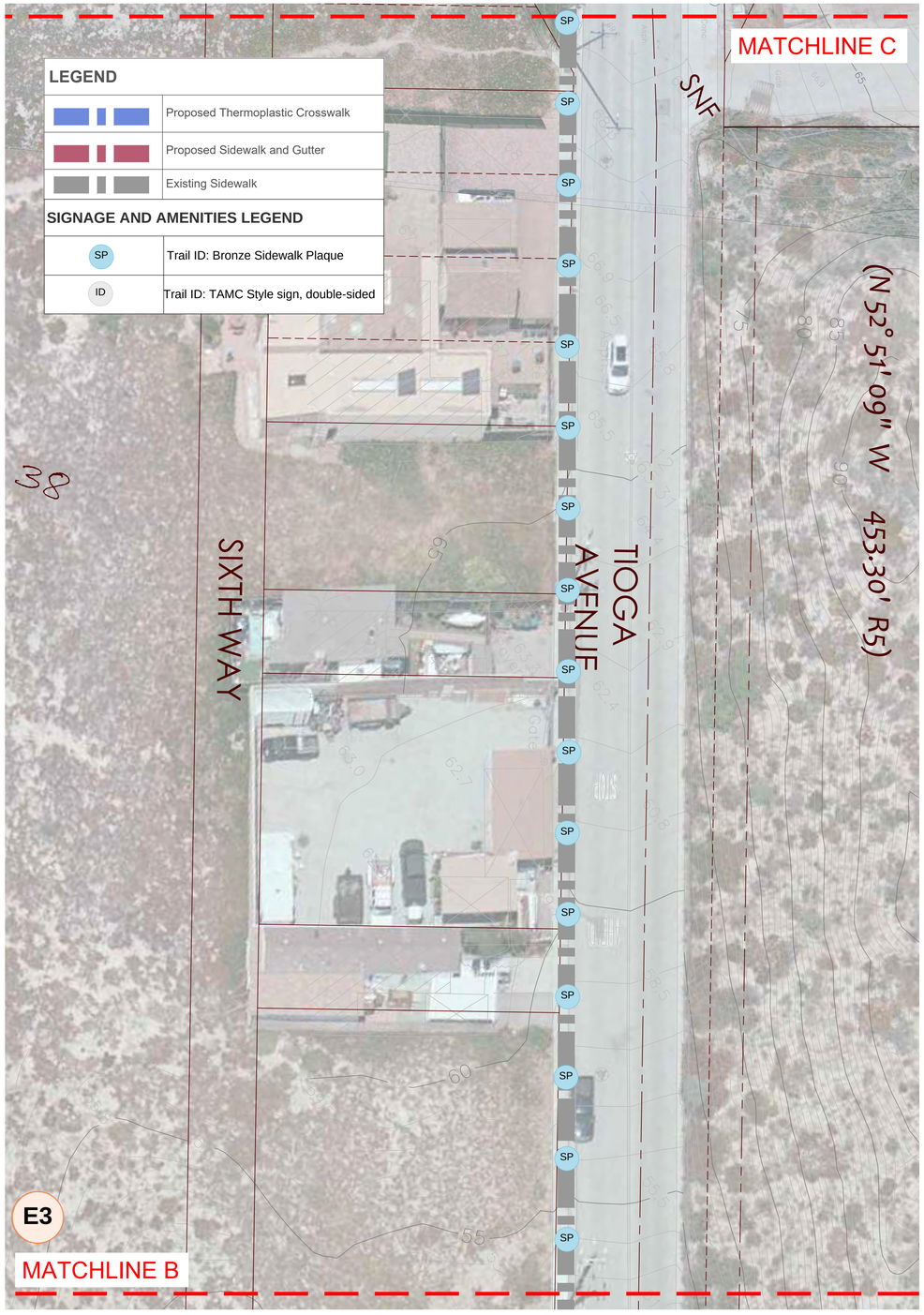
EAST DUNES TRAIL ALIGNMENT - 1

SAND CITY COASTAL TRAIL

LOCATION: SAND CITY, CA

DATE: 10/29/2024

PROJECT NUMBER: 24.021





EAST DUNES TRAIL ALIGNMENT - 2

SCALE: 1"= 20'-0"

20 0 20 40

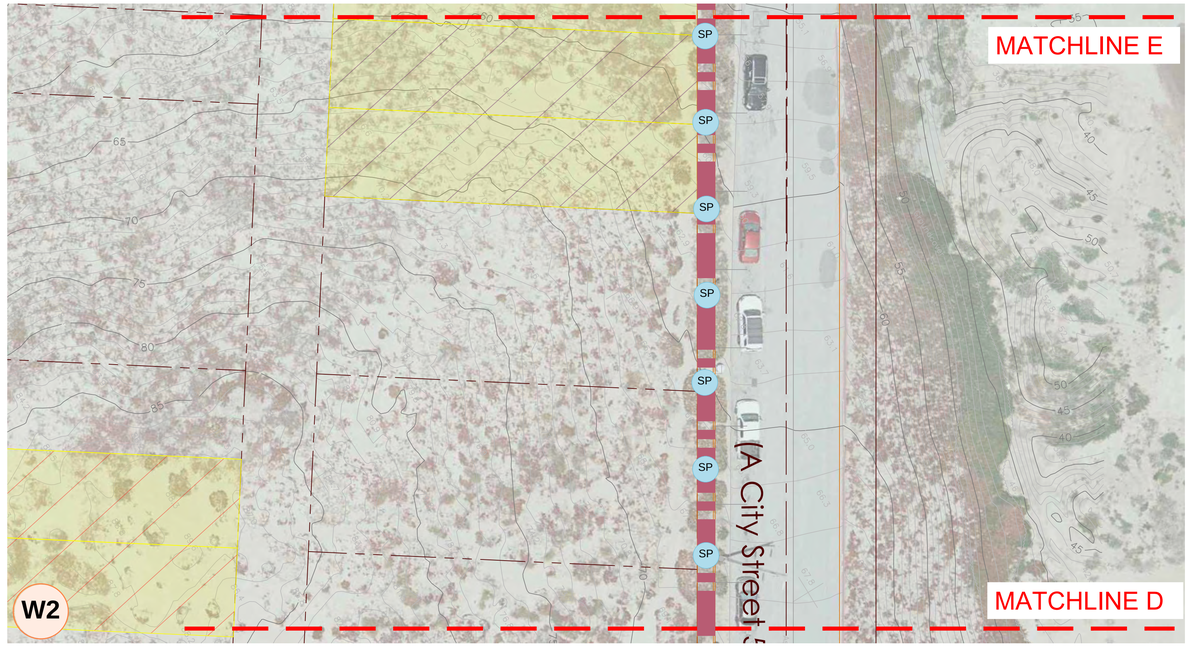
SAND CITY COASTAL TRAIL

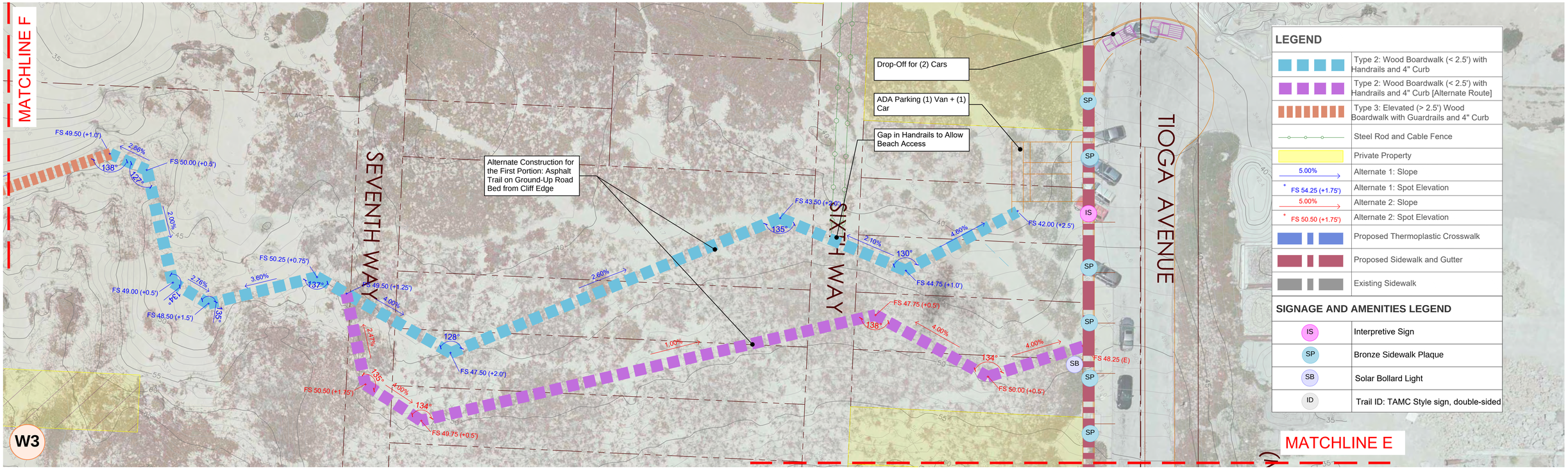
LOCATION: SAND CITY, CA

DATE: 10/29/2024

PROJECT NUMBER: 24.021







WEST DUNES TRAIL ALIGNMENT - 1

SCALE: 1"= 20'-0"

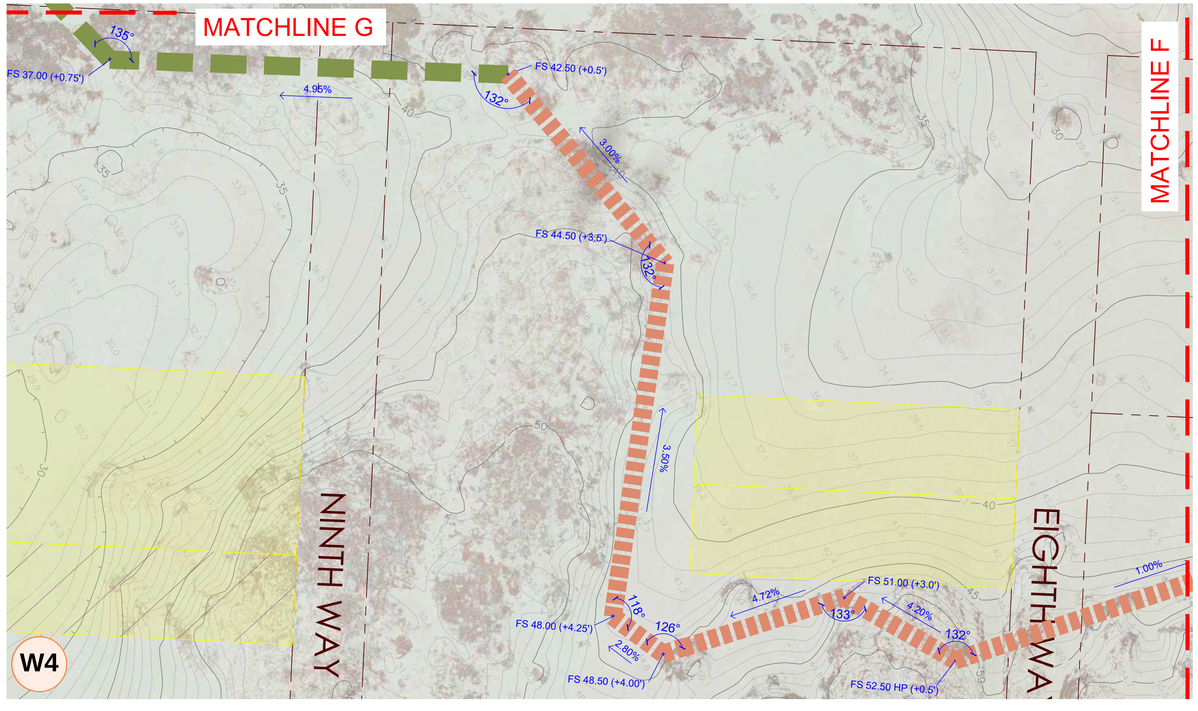
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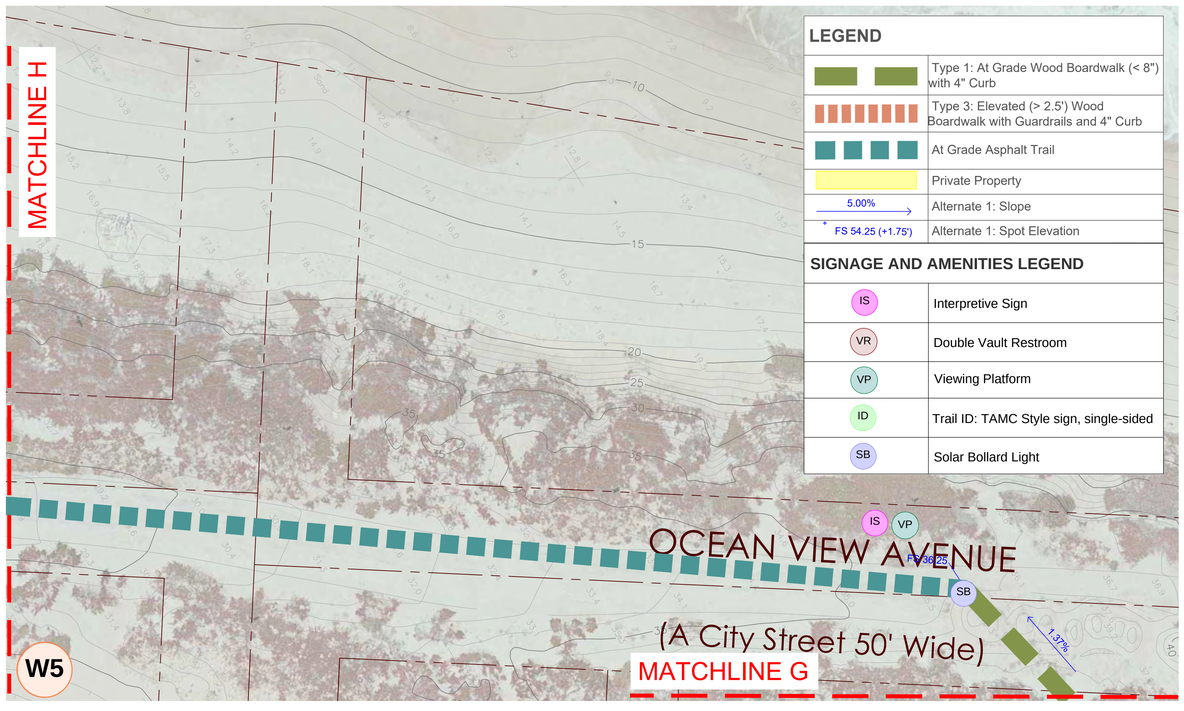
SAND CITY COASTAL TRAIL

LOCATION: SAND CITY, CA

DATE: 10/29/2024

PROJECT NUMBER: 24.021





LEGEND

	Type 1: At Grade Wood Boardwalk (< 8") with 4" Curb
	Type 3: Elevated (> 2.5') Wood Boardwalk with Guardrails and 4" Curb
	At Grade Asphalt Trail
	Private Property
5.00%	Alternate 1: Slope
FS 54.25 (+1.75')	Alternate 1: Spot Elevation

SIGNAGE AND AMENITIES LEGEND

IS	Interpretive Sign
VR	Double Vault Restroom
VP	Viewing Platform
ID	Trail ID: TAMC Style sign, single-sided
SB	Solar Bollard Light



WEST DUNES TRAIL ALIGNMENT - 2

SCALE: 1"= 20'-0"

20 0 20 40

SAND CITY COASTAL TRAIL

LOCATION: SAND CITY, CA

DATE: 10/29/2024

PROJECT NUMBER: 24.021

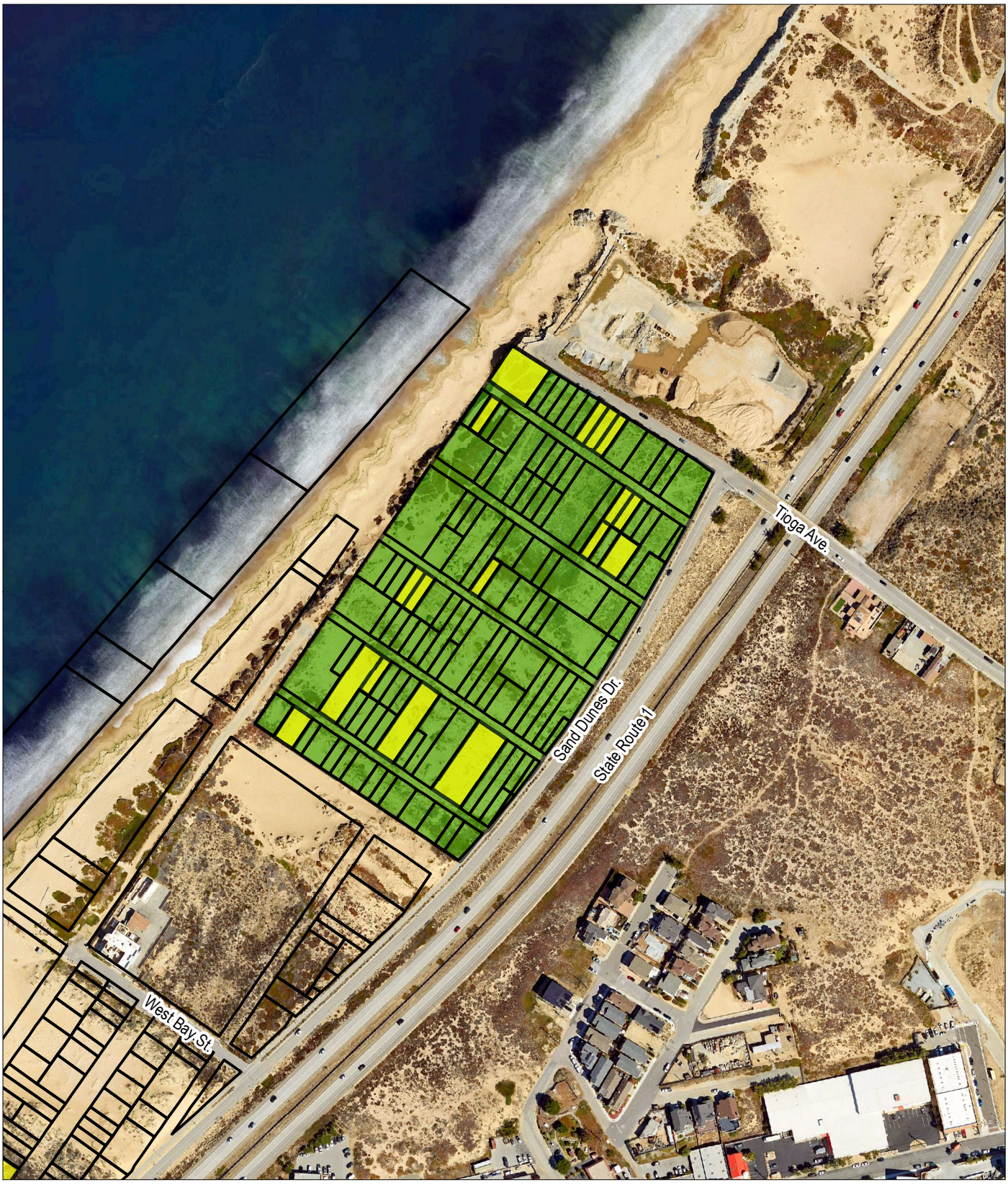
SuperDecks Boardwalk Example

EXHIBIT B



Proposed Restoration Area

EXHIBIT C



0 300 feet

Restoration Area

Privately Owned Parcels

Note: Privately owned parcels are not included in the restoration area

Source: Monterey County GIS 2024, Google Earth 2024

Exhibit C

West Dunes Restoration Area

Sand City Coastal Trail

EMC

Coastal Hazards Map

D

ATTACHMENT

Integral Erosion Setback Line

w/ Storm w/ SLR. 0.5 = 2044, 1 = 2057, 2 = 2071

0.5 — 2

- Parcels Of Private Ownership
- Bluff Top 2024
- Toe Location 2024
- Current Setback

100yr storm with angle of repose



AGENDA ITEM
9E.

Sand City Multiuse Trail Conceptual Plans

City of Sand City

STAFF REPORT

TO: Mayor and City Council
FROM: Zane Mortensen, Contract Associate City Planner/EMC Planning
SUBJECT: Sand City Multiuse Trail – Conceptual Plans
DATE: November 5, 2024

BACKGROUND:
In 2023, City Staff and EMC Planning Group applied for the Monterey Bay Air Resources District's (MBARD) Clean Air Management Program for grant funding to support planning efforts for the construction of a Multiuse Trail in the City of Sand City (the "City"). On March 19th, 2024, MBARD approved grant funding in the amount of $205,000 for the City to prepare preliminary plans and a conceptual design for an approximately 1-mile pedestrian and bicycle trail segment within the TAMC railway corridor extending through both Sand City and the City of Seaside. On May 8th, 2024 the Association of Monterey Bay Governments (AMBAG) approved grant funding in the amount of $1,960,000 for the partial cost of constructing the trail. EMC and City Staff have worked closely with the City's grant writer to seek additional funding to both complete the planning of the trail as well as the future construction. This trail project is being referred to as the 'Sand City Multiuse Trail'.

Project Goals:
The Monterey Bay Coastal Recreation Trail spans 18-miles from Pacific Grove to Castroville. However, there is a gap in the trail system within the City from the intersection of Canyon Del Rey Boulevard (State Route 218) and Del Monte Avenue to the State Route 1 onramp at the City's northern boundary. As a result, trail users are diverted approximately 2-miles onto City streets crossing under State Route 1 and behind the Sand Dollar shopping center before reconnecting with the regional trail system.

The Sand City Multiuse trail aims to close that gap in the regional trail system. The trail project will significantly improve trail connectivity for Sand City residents and visitors, enhancing access to parks, schools, workplaces, and other destinations. The project will be designed to meet ADA accessibility standards, ensuring that the trial provides access for people of all abilities. The trail also makes it easier for people to walk and bike to public transportation, reducing the need for car trips, and supporting a more sustainable transportation network. By promoting non-motorized travel, the project will help lower air pollution and greenhouse gas emissions.

The project also includes trailside parking facilities that offer convenient access to both existing and future transit hubs. This will enhance the overall convenience and safety for those using non-motorized travel options to connect with public transit.

The proposed trail alignment will run directly alongside the recently approved 214-room hotel and 356-unit multi-family residential project, known as the South of Tioga development, which includes 52 deed-restricted affordable units. The implementation of the Multiuse Trail will offer future residents and visitors a safe, dedicated access to the regional trail system.

DISCUSSION:

City Staff has been working with its consultant team, which includes EMC Planning Group, BFS Landscape Architects, Harris Engineers, Polaris Land Surveying, and TL Engineering, to prepare technical studies and conceptual design plans for the project. The draft conceptual plans include the proposed trail alignment, pedestrian crossings, vehicle intersection safety improvements, locations of wayfinding signage, lighting, and trailside parking facilities.

The draft conceptual plans have been prepared after a number of project site visits, technical studies, and stakeholder engagement. Various technical studies have been completed to help the consultant team understand the site constraints and to ultimately inform the trail alignment so that the trail will be sited and designed in a way which is sustainable over time. The constraints that the consultant team has considered include: site topography, special-status species, existing trees, property boundaries, existing use, trail lighting, regional connectivity, and safe pedestrian/cyclist access. The trail alignment and project components were developed based on the findings of these technical studies.

The MST SURF! project will integrate with the bike trail by creating a safe and accessible connection across Playa Avenue and California Avenue. As part of the City's requirements for the MST SURF! project design, intersection improvements will be made to enhance pedestrian and cyclist safety, including updated crosswalks, signals, and signage. These enhancements will ensure a continuous, secure route for users, linking the MST SURF! development to the bike trail, greatly improving overall regional connectivity.

Project Description:

Trail Alignment

An overview of the trail specifications and conceptual design has been prepared for a presentation at the November 5th City Council meeting. The presentation will provide a

walkthrough of the preliminary trail alignment and a detailed explanation of key project components.

The proposed multiuse trail system will span approximately one mile within the TAMC railway corridor, connecting the existing recreational trail system at the Del Monte Boulevard and Canyon Del Rey Boulevard intersection in the City of Seaside to the future MST SURF! station located at the intersection of Playa Avenue and California Avenue. The trail will also offer direct access to the West End District at Holly Street and Ortiz Avenue, as well as connections to the Coastal Trail along Tioga Avenue.

For most of the alignment, the trail will consist of two distinct paths—one 8-foot-wide path designated for pedestrians and a 12-foot-wide path designated for cyclists—designed to provide a safer and more efficient experience for all users. A 12 mile per hour speed limit will be applied for all cyclist travel to ensure trail safety and maintain regulatory consistency with the existing regional trail network. The trail also features ample landscaping, creating a green belt along the City's and Seaside's border, enhancing both the aesthetics and environmental value of the area.

The project will improve pedestrian safety at key intersections, ensuring safer crossings. Parking facilities are strategically placed throughout the design to provide easy access to the trail and nearby transit hubs, ultimately reducing traffic congestion across the City by promoting non-motorized and public transportation options. Exhibit A, Draft Conceptual Plans, shows the trail alignment.

Trail Alignment within the City of Sand City

The majority of the proposed trail, approximately 0.8 miles, lies within the City's limits, extending from the future MST SURF! project site at the intersection of Playa and California Avenue to the city's southern boundary at Olympia Avenue.

Pedestrians and cyclists headed south will access the trail at the southeast corner of the Playa and California Avenue intersection, just south of the planned rapid bus transit station. Upon entering the railway corridor, the trail splits into two designated pathways, with cyclists directed to the east and pedestrians to the west. The paths merge again to guide users toward the established crossing at Tioga Avenue. Past Tioga Avenue, the trails separate once more after reentering the railway corridor, running parallel to one another for approximately 0.6 miles until reaching Contra Costa Street. The pathways then merge once again to guide users safely across Contra Costa Street, continuing to the City limits at Olympia Avenue.

Trail Alignment within the City of Seaside

The southern most end of the proposed trail -approximately 0.2 miles – will be located within the City of Seaside, running from the City limit at Olympia Avenue to the existing Monterey Bay Coastal Recreation Trail at the intersection of Del Monte Avenue and Canyon Del Rey Boulevard (State Route 218). Due to the topography of the railway corridor in Seaside, the pedestrian and cyclist trails merge for approximately 0.1-miles until reaching the northwest corner of what is currently the Starbucks property. At this point, the trails diverge, with pedestrians being directed toward Canyon Del Rey Boulevard (State Route 218) and cyclists toward Del Monte Avenue.

To ensure safe and clear guidance, trail signage and embedded sidewalk markers will be installed along Del Monte Avenue and Canyon Del Rey Boulevard, directing pedestrians and cyclists to the established crossing, ensuring safe access to the regional trail system. Several options are currently being investigated as a possible means to design a "Protected Intersection" at Canyon Del Rey (State Route 218) and Del Monte. These options include the construction of bulb outs and curb extensions, split crossings, expand or improve sidewalks, physical barriers separating traffic and cyclists, as well as directional signage, sidewalk markers, and painting for better navigation.

Trail Lighting

The proposed multiuse trail will feature strategically placed lighting along its entire length, enhancing safety and accessibility for all users during early morning and evening hours. Lighting will improve visibility, reducing the risk of accidents for pedestrians and cyclists and creating a safer environment for trail users after dark. Additionally, well-lit trails have been shown to deter unwanted activity, increasing the sense of security for the community. This lighting will also support extended usage of the trail, encouraging more people to choose walking or cycling as alternatives to car travel.

Trailside Parking Facilities

The preliminary project design includes a total of 228 new parking spaces incorporated at the following locations:

- Seventy (70) parking spaces between Playa Avenue and Tioga Avenue. Parking will facilitate one way vehicle traffic with motorist entering from Tioga Avenue and exiting onto Playa Avenue;
- Twenty-four (24) parking spaces adjacent to California Avenue directly east of the South of Tioga development area. Parking will facilitate one way vehicle traffic with motorist entering from and exiting on California Avenue; and

- One hundred and thirty-five (135) parking spaces from the southern boundary of the Granite Rock property to Contra Costa Street. Parking will facilitate one way vehicle traffic with motorist entering from Contra Costa Street and exiting onto either Holly Street/Ortiz Avenue or Redwood Avenue.

Intersection Improvements

When designing the trail, careful consideration was given to pedestrian crossings at intersections to ensure safety and accessibility, including the following factors:

- Visibility of pedestrians for drivers
- Adequate signage and signals
- Crosswalk markings and lighting
- Timing of traffic signals for pedestrian flow
- Accessibility for people with disabilities
- Potential for traffic calming measures
- Installation of rapid flashing beacons
- Implementation of raised crosswalks
- Proximity to public transit stops

Trailside Gathering Area

A gathering area is proposed as part of the trail design near the trail terminus at Canyon Del Rey. The gathering area will consist of a large pave area adjacent to the trail system but outside of the established path of travel. Gathering areas commonly contain lighting, informational signage, bicycle parking, and seating options, such as benches and/or picnic benches.

These areas within a trail system enhance traffic safety by providing a designated space for trail users to gather and organize before entering or crossing busy roads or intersections. This reduces congestion at key access points and minimizes the risk of accidents by allowing cyclists and pedestrians to pause, coordinate, and safely proceed together. It also helps prevent trail users from unexpectedly entering high-traffic areas, improving overall safety for both trail users and motorists.

Technical Studies:

Aerial Surveys

Aerial site surveys were conducted by the City's land surveyor (Lynn Kovach, Polaris Land Surveyors) as part of the trail project to capture detailed, high-resolution imagery and data from above the proposed trail alignment (see Exhibit B, Aerial Site Survey). These surveys provided a comprehensive view of the project boundaries, topography,

and existing land use, enabling the project team to identify potential site constraints such as elevation changes, vegetation, and nearby infrastructure. This data is essential in planning the trail's alignment, ensuring that both pedestrian and cyclist paths are designed safely and efficiently. The aerial surveys also helped inform decisions regarding landscaping, signage placement, and parking facilities.

Focused Plant Surveys

Focused plant surveys were conducted on May 7, and May 8, 2024. The results of these surveys have been taken into consideration in the trail alignment. The results of the focused plant surveys are included in Exhibit C, Focused Plant Surveys.

Stakeholder Engagement

The project was initial presented to City Council on December 16, 2023, for direction and authorization to proceed with the conceptual project design. Since receiving the City Councils' approval to advance the project, ongoing stakeholder engagement for the trail project has included meetings with the City of Seaside, preliminary meetings with TAMC staff, a presentation to the TAMC Rail Committee on January 8th, 2024, and at the TAMC Board of Directors meeting on February 28th, 2024, as well meetings with existing leaseholders within the railway corridor. Community outreach has also been conducted at the City's West End festival, 831 Night Market, and through the City's quarterly newsletter. These discussions have helped shape the project's design and alignment. In general, the project has received strong support and enthusiasm from the relevant stakeholders, including letters of support from MST; TAMC; the cities of Del Rey Oaks, Monterey; Pacific Grove; Seaside, Marina, CSUMB, the Monterey Unified School District, the Monterey County Board of Supervisors; and Supervisor Askew, reflecting a shared commitment to improving regional connectivity and enhancing the community.

Next steps

As the project progresses, the next steps will involve refining the 10% conceptual design drawings, detailing specifications for trail improvements, and preparing CEQA environmental review documentation. If Council approves moving ahead to 30% design based on the current concept, City staff will work with the City of Seaside, and TAMC staff before advancing the design to 30% completion. City staff will continue collaborating with EMC Planning Group to pursue additional grant funding to support the remaining costs for finalizing project plans and future construction.

CEQA: Environmental documentation will be prepared following the City Council agreement with the 10% design plans.

RECOMMENDATION: Receive a presentation of the draft conceptual plans, discuss the trail with staff and direct staff to advance the plans to 30% design including initiating CEQA

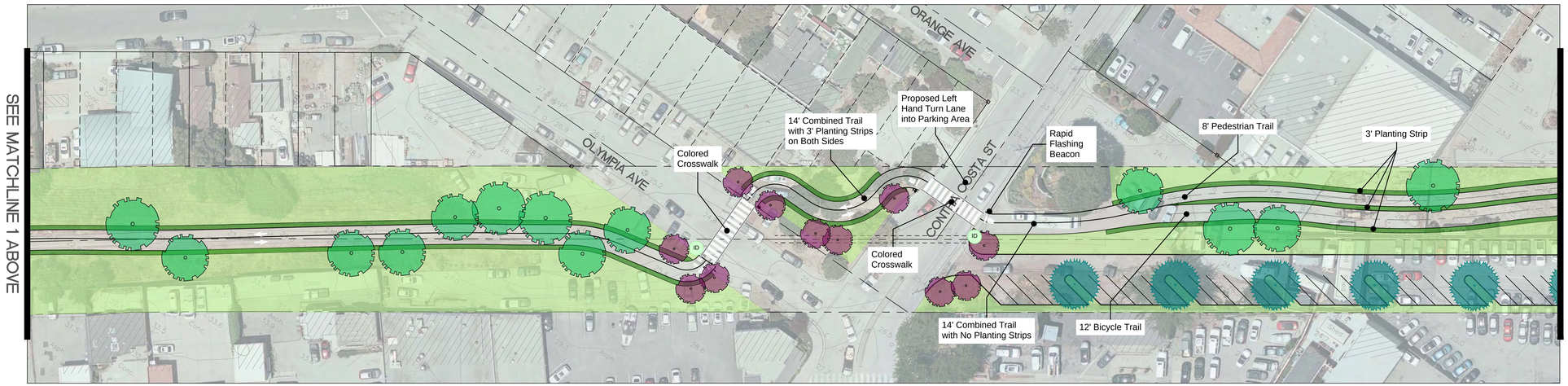
documentation. The plans will be refined based on input received from Council Members, TAMC, the City of Seaside, and members of the public.

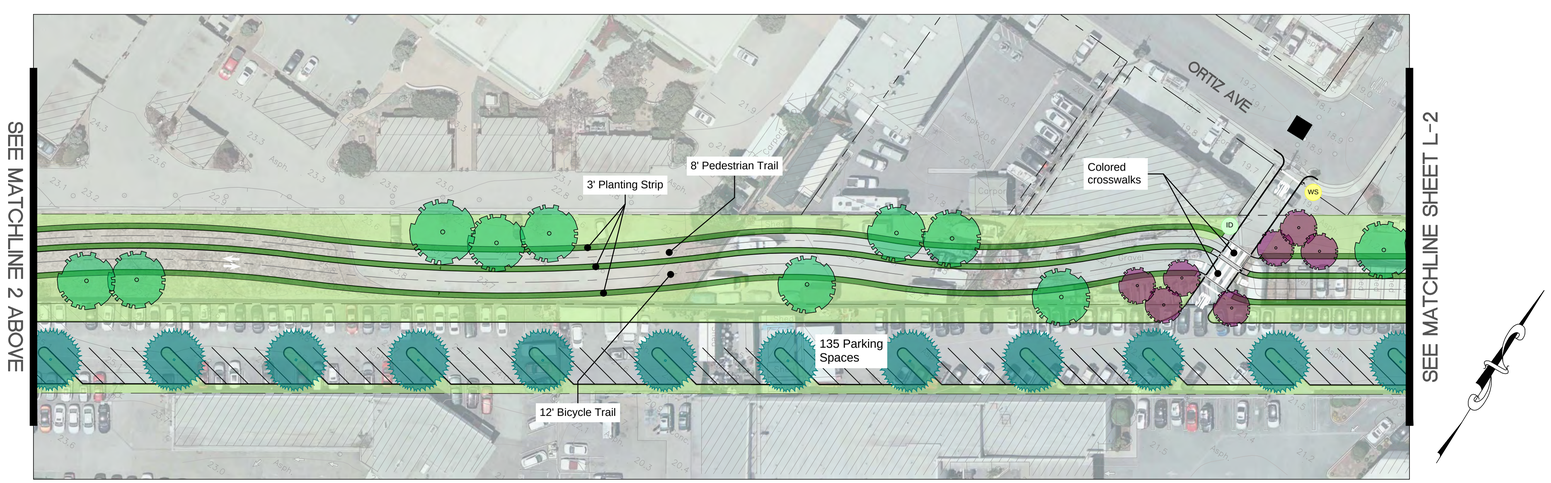
FISCAL IMPACTS: The cost of the preliminary project design is covered by grant funding obtained through MBARD. However, funding has not yet been secured to complete the final project plans, design, and construction. EMC and City Staff will continue to pursue funding opportunities to cover the cost of the remaining planning, design, and construction efforts.

ATTACHMENTS:

1. Exhibit A, Draft Conceptual Plans
2. Exhibit B, Aerial Site Survey
3. Exhibit C, Focused Plant Surveys







SIGNAGE LEGEND

- WS — Wayfinding Sign, Post-mounted
- IS — Interpretive Sign, Handrail-mounted
- SP — Trail ID: Bronze Sidewalk Plaque
- ID — Trail ID: Post-mounted Sign

LANDSCAPE LEGEND

- Landscape Type 1
- Landscape Type 2
- Shade Trees - Trail
- Shade Trees - Parking
- Ornamental Trees

GRAPHIC SCALE:
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1"=40'

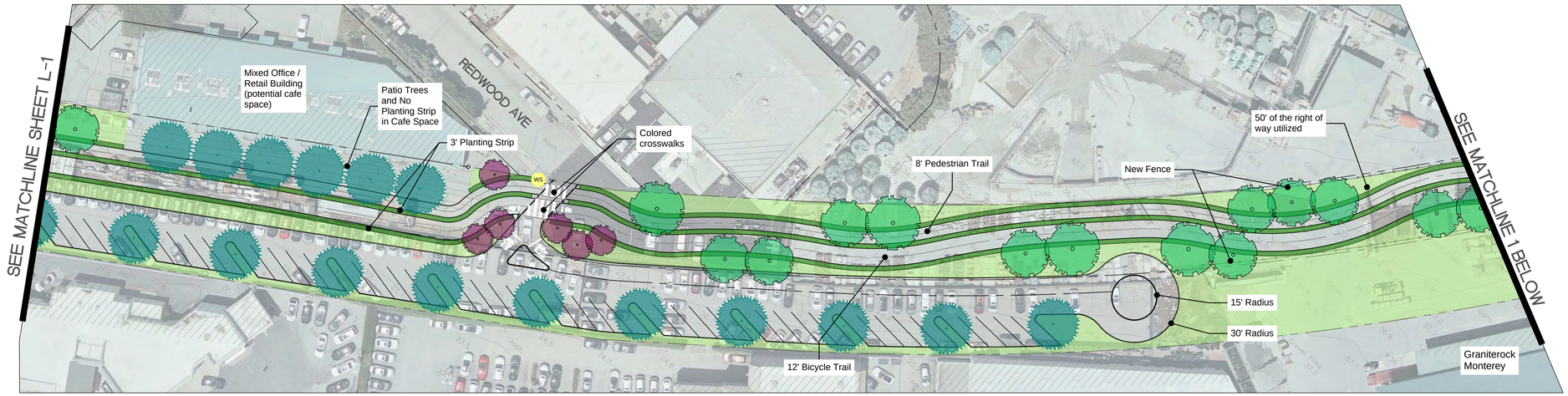
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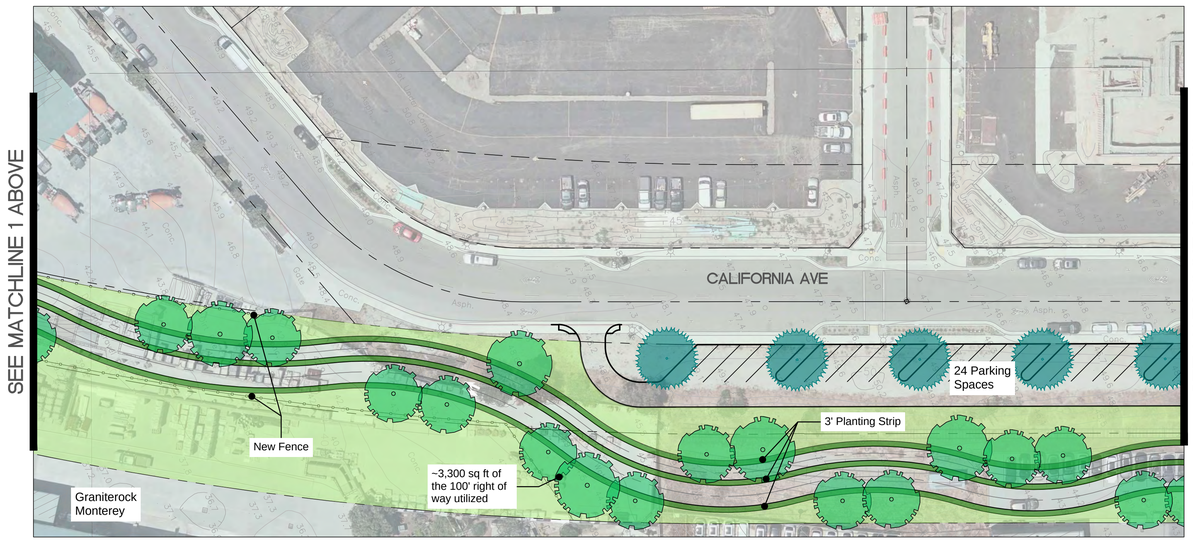
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3			
4			

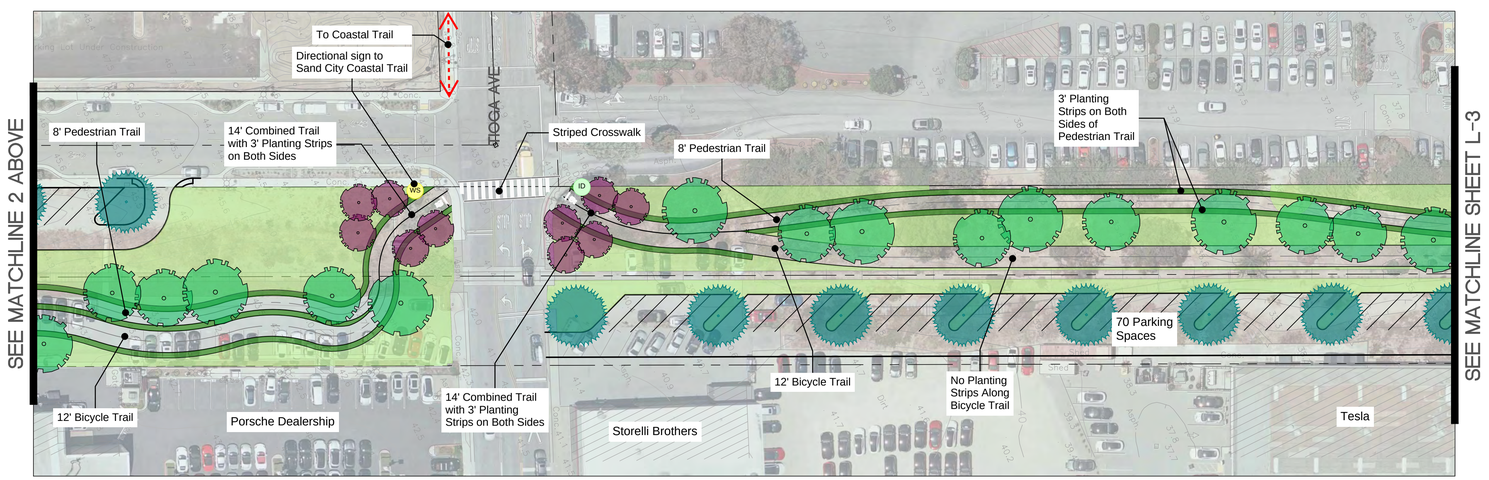
BFS LANDSCAPE ARCHITECTS
425 PACIFIC STREET #201
MONTEREY, CALIFORNIA 93940
831.646.1383 • BFSLA.COM

CITY OF SAND CITY
1 PENDERGRASS WAY, SAND CITY, CA 93955
PROJECT TITLE
MULTIUSE TRAIL IMPROVEMENTS PROJECT
SHEET DESCRIPTION
MULTIUSE TRAIL PLANTING

DESIGNED BY: CT/AP
DATE: 06/14/2024
SCALE: AS NOTED
PROJECT NO. 24.022
DRAWING NO. L-1.1
SHEET 1 OF 3







SIGNAGE LEGEND

- WS — Wayfinding Sign, Post-mounted
- IS — Interpretive Sign, Handrail-mounted
- SP — Trail ID: Bronze Sidewalk Plaque
- ID — Trail ID: Post-mounted Sign

LANDSCAPE LEGEND

- Landscape Type 1
- Landscape Type 2
- Shade Trees - Trail
- Shade Trees - Parking
- Ornamental Trees

GRAPHIC SCALE:
40 0 40 80 120
1"=40'

REVISIONS

NO.	DATE	INITIAL	DESCRIPTION
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2			DRAFT SUBMITTAL

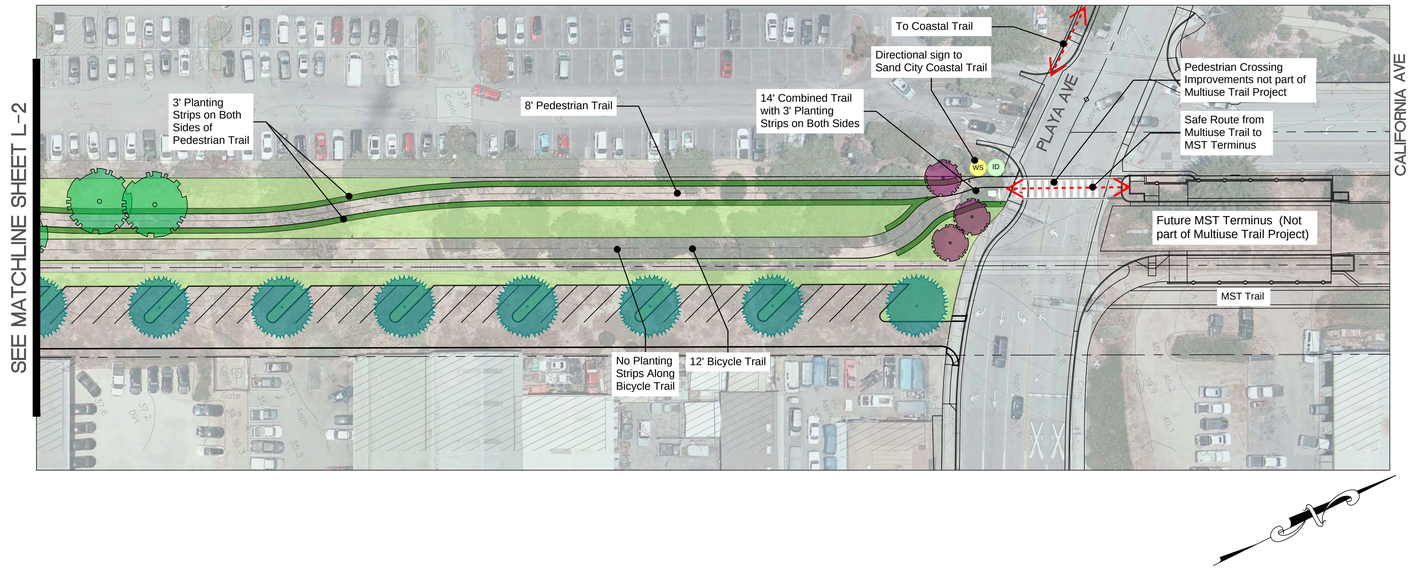
BFS LANDSCAPE ARCHITECTS
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CITY OF SAND CITY
1 PENDERGRASS WAY, SAND CITY, CA 93955

PROJECT TITLE
MULTIUSE TRAIL IMPROVEMENTS PROJECT

SHEET DESCRIPTION
MULTIUSE TRAIL PLANTING

DESIGNED BY: CT/AP
DATE: 06/14/2024
SCALE: AS NOTED
PROJECT NO. 24.022
DRAWING NO. L-1.2
SHEET 2 OF 3



LANDSCAPE LEGEND

- Landscape Type 1
- Landscape Type 2
- Shade Trees - Trail
- Shade Trees - Parking
- Ornamental Trees

SIGNAGE LEGEND

- WS — Wayfinding Sign, Post-mounted
- IS — Interpretive Sign, Handrail-mounted
- SP — Trail ID: Bronze Sidewalk Plaque
- ID — Trail ID: Post-mounted Sign

TREE LEGEND

Shade Trees - Trail



HESPEROCYPARIS MACROCARPA
MONTEREY CYPRESS



PINUS RADIATA
MONTEREY PINE

TREE LEGEND

Shade Trees - Parking



LAGUNARIA PATERSONIA
PRIMROSE TREE

TREE LEGEND

Ornamental Trees



ARBUTUS MARINA
STRAWBERRY TREE

LANDSCAPE LEGEND

Landscape Type 1: California native low shrubs, groundcovers and perennials





LANDSCAPE LEGEND

Landscape Type2: California native grasses with selected wildflowers, tall shrubs and trees





ARCTOSTAPHYLOS
MANZANITA



CEANOTHUS
CALIFORNIA LILACS

GRAPHIC SCALE:
40 0 40 80 120
1"=40'

SAND CITY

REVISIONS NO.	DATE	INITIAL	DESCRIPTION
1			NOT FOR CONSTRUCTION
2			DRAFT SUBMITTAL
3			
4			

BFS LANDSCAPE ARCHITECTS
425 PACIFIC STREET #201
MONTEREY, CALIFORNIA 93940
831.646.1383 • BFSLA.COM

CITY OF SAND CITY
1 PENDERGRASS WAY, SAND CITY, CA 93955

PROJECT TITLE
MULTIUSE TRAIL IMPROVEMENTS PROJECT

SHEET DESCRIPTION
MULTIUSE TRAIL PLANTING

DESIGNED BY: CT/AP
DATE: 06/14/2024
SCALE: AS NOTED
PROJECT NO. 24.022
DRAWING NO. L-1.3
SHEET 1 OF 3

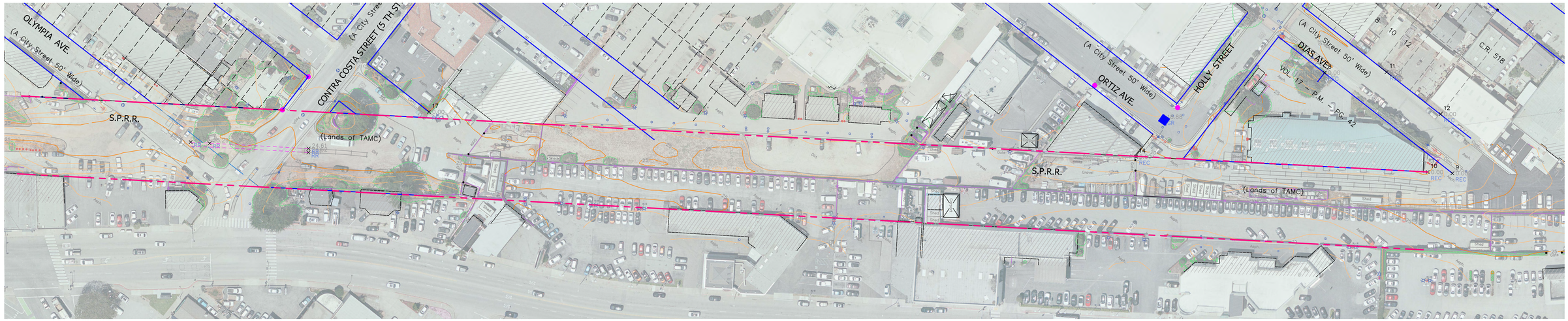
SURVEY
OF
PROPOSED ROUTE OF MULTI USE TRAIL
WITHIN SAND CITY,
MONTEREY COUNTY, CALIFORNIA

BASIS OF BEARINGS

THE BEARING OF N 00°00'00" E ALONG THE RANCHO BOUNDARY LINE AS SHOWN ON THE MAP RECORDED IN VOLUME xx OF SURVEYS AT PAGE xx AS FOUND MONUMENTED, WAS TAKEN AS BASIS OF BEARINGS SHOWN UPON THIS MAP.

NOTES

1. DISTANCES ARE EXPRESSED IN FEET AND DECIMALS THEREOF.





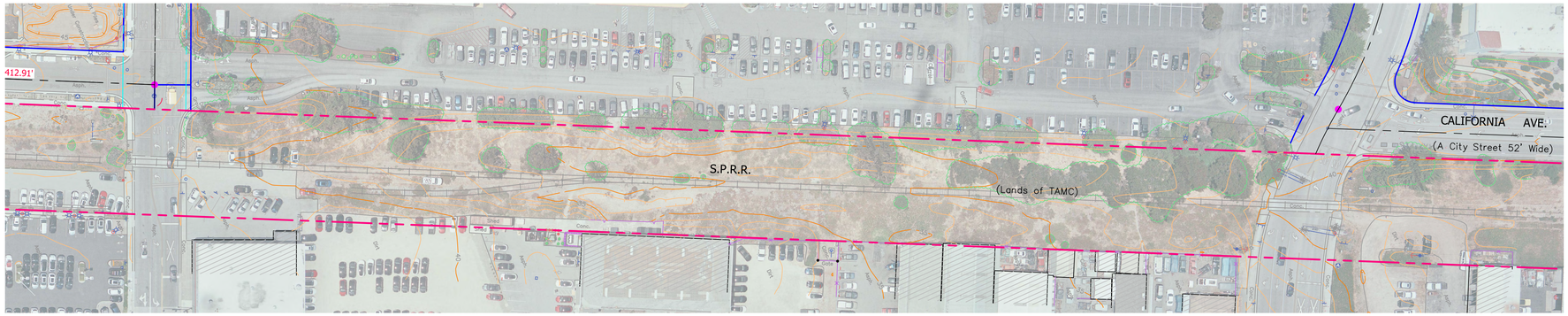
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SCALE IN FEET

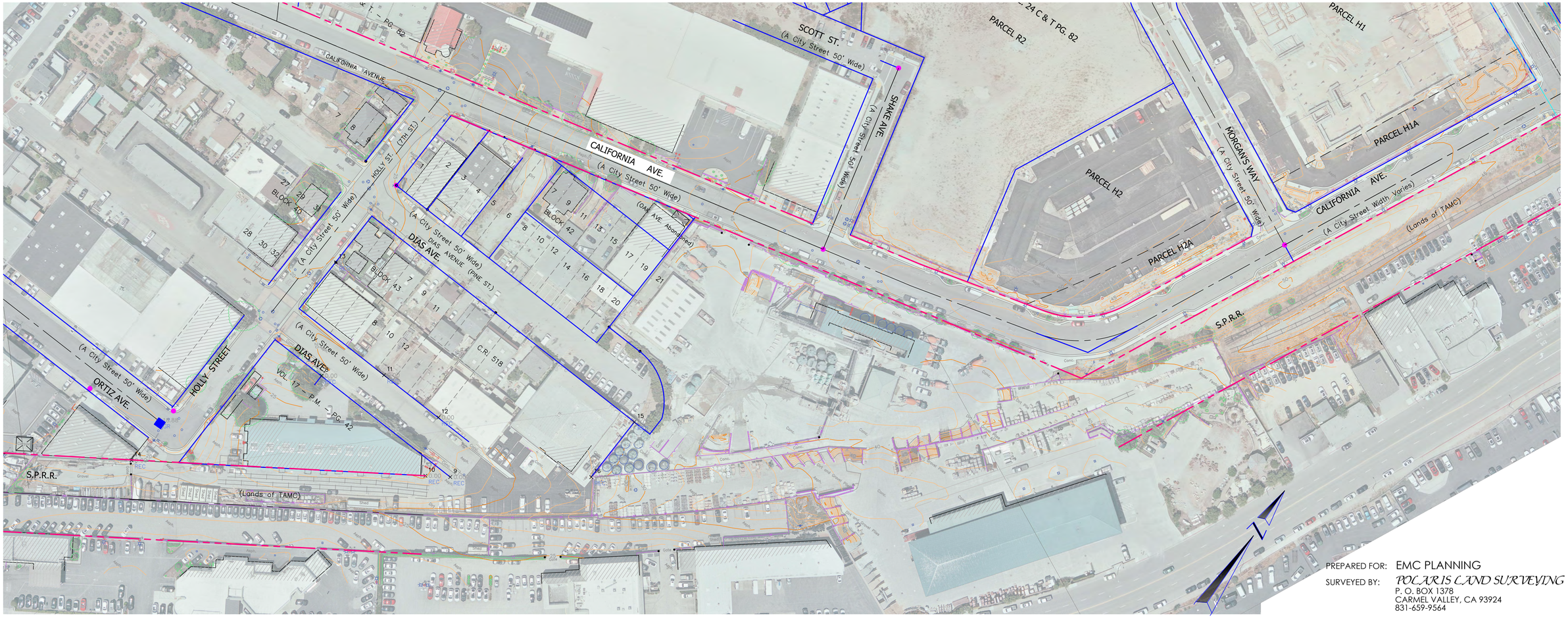
PREPARED FOR: EMC PLANNING
SURVEYED BY: *POLARIS LAND SURVEYING*
P. O. BOX 1378
CARMEL VALLEY, CA 93924
831-659-9564

SCALE: 1" = 50' VIEW: D2 DATE: July 16, 2024
FILE NAME: SAND CITY BASEMAP JOB #24-143 Sheet 2 of 2

SURVEY
OF
PROPOSED ROUTE OF MULTI USE TRAIL
WITHIN SAND CITY,
MONTEREY COUNTY, CALIFORNIA

0 60' 120' 180'
SCALE IN FEET



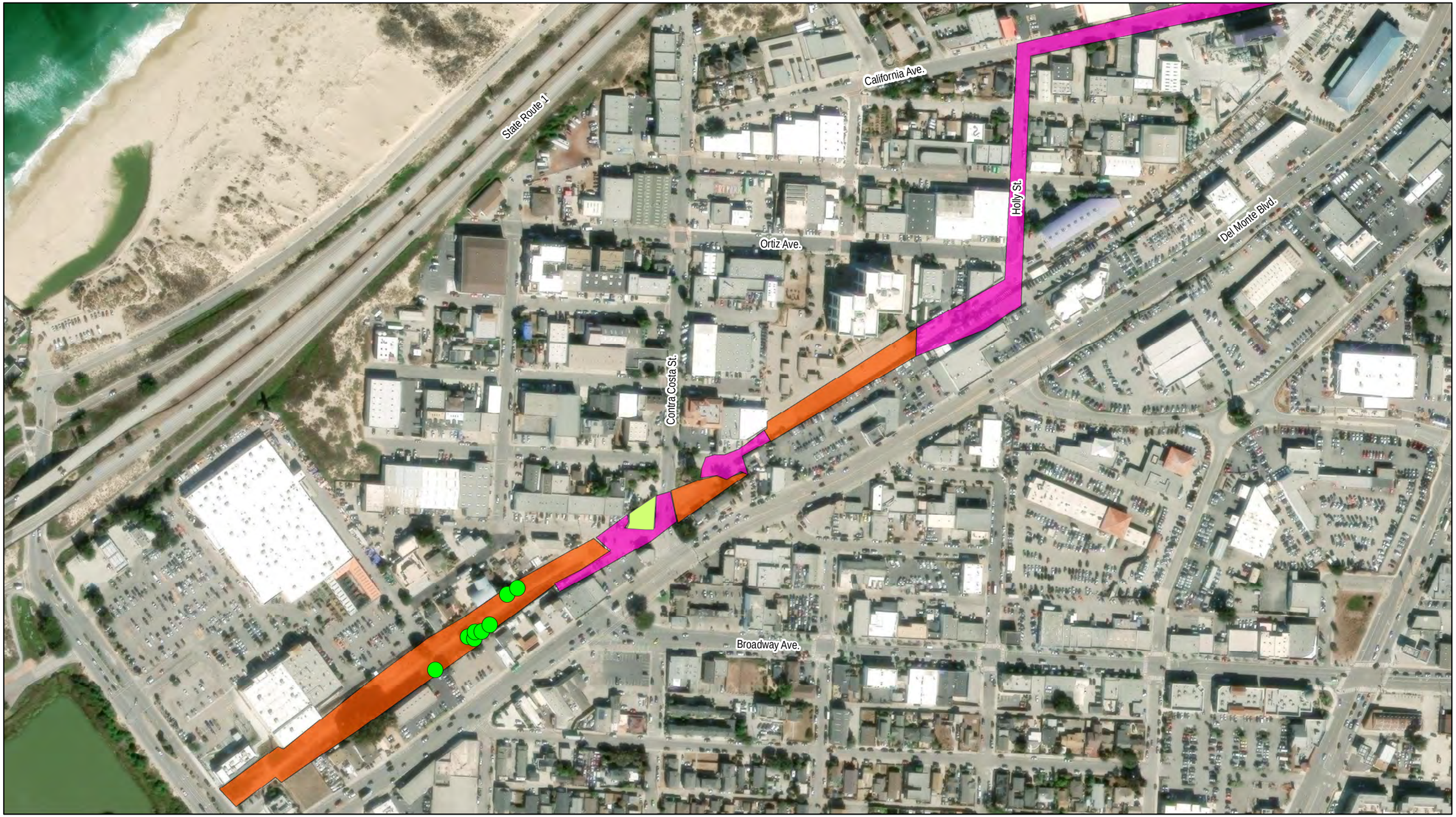


0 60' 120' 180'

PREPARED FOR: EMC PLANNING

SURVEYED BY: POLARIS LAND SURVEYING
P. O. BOX 1378
CARMEL VALLEY, CA 93924
831-659-9564

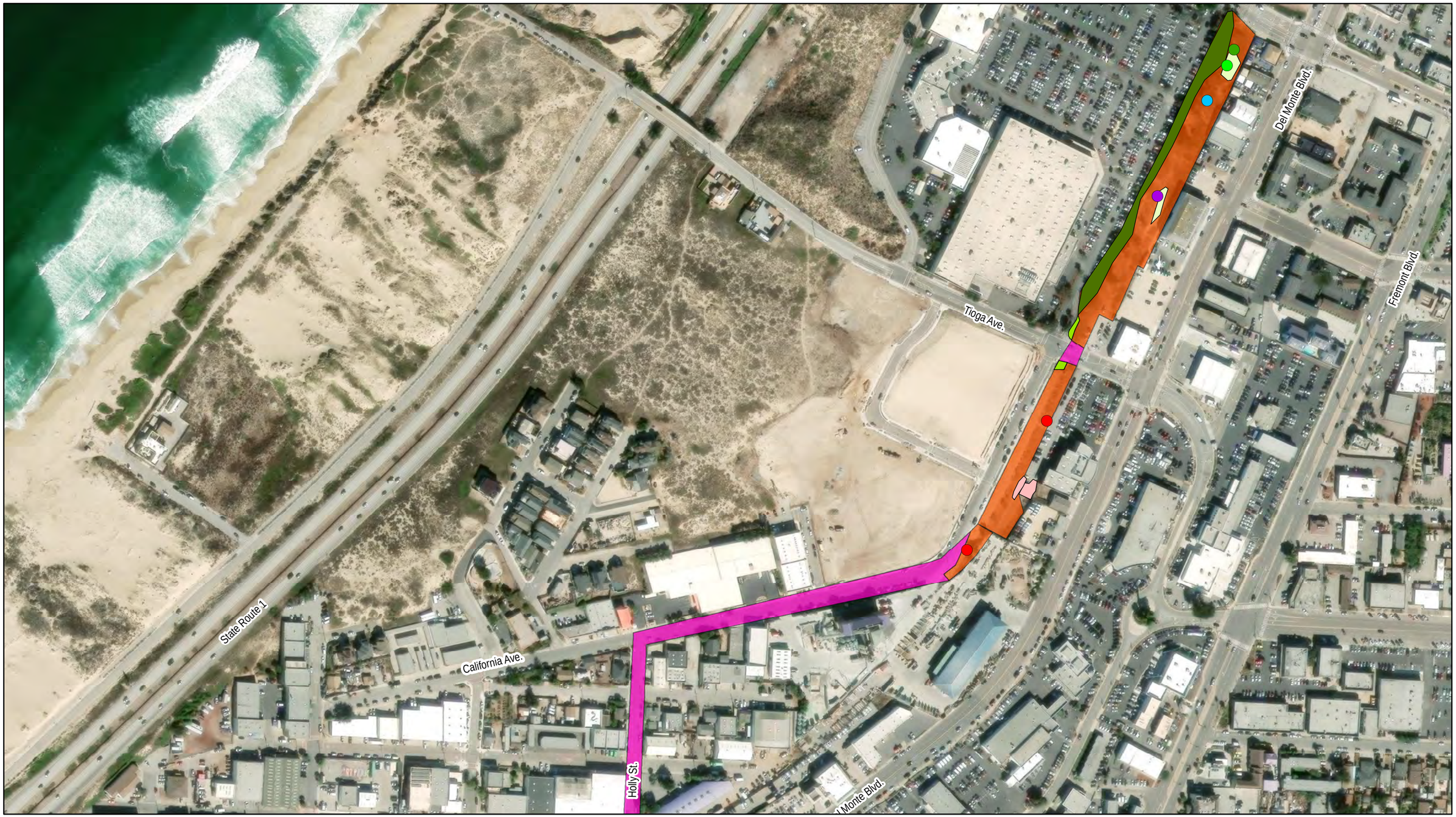
SCALE: 1" = 60' VIEW: D2 DATE: July 16, 2024
FILE NAME: SAND CITY BASEMAP JOB #24-143 Sheet 2 of 2



Source: ESRI 2024, City of Sand City 2024, EMC 2024

Figure 1
Habitat Map West

Cal Trans Sustainable Communities Grant



Source: ESRI 2024, City of Sand City 2024, EMC 2024

Figure 2
Habitat Map East

Cal Trans Sustainable Communities Grant

AGENDA ITEM
9F.

Approve a Resolution to Amend the Professional Service Agreement with EMC Planning Group, Inc for Fiscal Year 2024-2027 (Resolution SC 24-50) to Include the Addition of $180,000 for Each Year of the Agreement to Cover Costs Related to Long-Range Planning and Special Projects Through June 30, 2027

City of Sand City

STAFF REPORT

TO: Honorable Mayor and City Council
FROM: Audrey Cray, HR/Risk Manager
SUBJECT: Authorize an Amendment to the Professional Service Agreement (PSA) with EMC Planning Group, Inc for General Planning Services for Fiscal Year 2024-25 to Fiscal Year 2027-2028.
DATE: November 5, 2024

BACKGROUND/DISCUSSION:

On July 18, 2024, Council approved a three-year agreement with EMC Planning Group, Inc for General Planning Services in the amount of $455,000 for Year 1 and a 5% increase for the two subsequent years.

Staff has identified a need to increase the contract amount for all three years in the amount of $180,000 for each year of the three-year contract. The City, in partnership with EMC Planning Group, Inc, has aggressively sought and been successful in receiving multiple grants that will fund a large variety of long-range and special projects. The original General Planning Services Scope of Work did not encompass the depth and breadth of the additional work necessary to apply for these grants, nor the complexity of other special projects.

This budget amendment will allow EMC Planning Group Team to annually support the City Staff by performing Planning Services for both the day-to-day activities as well as the long-range projects that advance the City's vibrancy and vision for an artist community and sustainable City. Examples of long-range/special projects that would fall under this type of budget include:

- Affordable Housing associated work including the Art Park visioning and Phase 1 review (Pro-Housing and Permanent Local Housing allocation grant)
- California Emerging Technologies Fund and city broadband (grant funded)
- Cannabis Ordinance and Implementation (Grant funded and Underway)
- New grants coordination and preparation of grant application materials in collaboration with the City Manager and City Grants Consultant
- East Dunes Residential Project agreements, meetings with private property owners, assist with negotiation of agreements,

work towards a City-wide Incidental Take Permit (ITP)
- Parking Plan implementation
- Annual Progress Report submittal to HCD and OPR
- Sand City Developments (e.g., Eco Resort, King Project, etc,)
- West End Stormwater Project support to City Engineer
- Marketing Services – Sand City Newsletter and City Web Site Maintenance

The City Manager, EMC Planning Group and other City Staff and Departments have written and applied for grant funding to support the City's budget and begin implementation of a handful of visionary projects that have been advocated for by City Staff and the City Council.

CEQA:
This action does not constitute a "project" as defined by the California Environmental Quality Act (CEQA) guidelines section 15378.

FISCAL IMPACT:
An additional approximation of $180,000 will be included in the FY 2024-25 Requested Mid-Year budget to be brought forward to Council on a later date which will include the dollar amount not covered by reimbursement agreements and grants; future years will be included for approval during the budget process.

RECOMMENDATION:
Staff recommends **APPROVAL** of the attached resolution to direct the City Manager to amend the three-year agreement with EMC Planning Group to provide professional planning services to the City, as described herein, in an amount not to exceed $635,000 for fiscal year 2024-25, with a 5% increase per fiscal year through the term of the contract.

ATTACHMENTS:
- Resolution
- Amendment to the Agreement
- Staff Report
- Exhibit A

CITY OF SAND CITY
RESOLUTION SC___, 2024

RESOLUTION OF THE CITY COUNCIL OF SAND CITY TO AMEND THE PROFESSIONAL SERVICE AGREEMENT WITH EMC PLANNING GROUP, INC FOR FISCAL YEAR 2024-2027 (RESOLUTION SC 24-50) TO INCLUDE THE ADDITION OF $180,000 FOR EACH YEAR OF THE AGREEMENT TO COVER COSTS RELATED TO LONG-RANGE PLANNING AND SPECIAL PROJECTS THROUGH JUNE 30, 2027

WHEREAS, the City of Sand City (the "City") has no in-house staff resources within its Community Development and Planning Departments; and

WHEREAS, for over 40 years, EMC Planning Group, Inc. (EMC) has provided responsive and quality planning related services with locally accessible staff and office location for the City of Sand City; and

WHEREAS, EMC Planning Group is under contract to provide the City with on-call Planning Support Services for Fiscal Years 2023-24, 2024-25, & 2025-26; and

WHEREAS, the City of Sand City is currently working on a number of projects within the City which go beyond the scope of EMC Planning Group's original scope of work for on-call Planning Support Services; and

WHEREAS, the City finds it benefits the growth of the City to have EMC Planning Group, Inc continue to assist the on-call Planning Support services as well as long-range planning projects; and

WHEREAS, the scope of Planning Services outlined in Exhibit A of the Amendment to the Agreement, attached hereto and incorporated herein by this reference, for the fiscal year 2024-2025 providing long-range planning and special projects, including but not necessarily limited to:

- Cannabis Ordinance and program development
- Affordable Housing associated work including the Art Park visioning and Phase 1 review (Pro-Housing and Permanent Local Housing allocation grant)
- New grants coordination and preparation of grant application materials in collaboration with the City Manager and City Grants Consultant
- East Dunes Residential Project agreements, meetings with private property owners, assist with negotiation of agreements, work towards a City-wide Incidental Take Permit (ITP)
- Parking Plan implementation
- Annual Progress Report submittal to HCD and OPR
- Sand City Developments (e.g., Eco Resort, King Project, etc.)
- West End Stormwater Project support to City Engineer; and

- Marketing Services – Sand City Newsletter and City Website Maintenance

WHEREAS, EMC Planning Group, Inc. will maintain a current business license**.**

NOW, THEREFORE, BE IT RESOLVED that the City Council of Sand City does hereby authorize the City Manager to amend Sand City's existing agreement for Planning Related Services (Resolution SC 24-50) into an agreement for Planning Related Services with EMC Planning Group, Inc., to add $180,000 per year of the three year agreement, to EMC Planning Group's existing contract for at a cost not to exceed $635,000 for Fiscal Year 2024-2025.

PASSED AND ADOPTED by the City Council of the City of Sand City this 5th day of November 2024 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED:

_____
Mary Ann Carbone, Mayor

ATTEST:
DATED: _____

_____
Kerry Lindstrom, City Clerk

RESOLUTION EXHIBIT A
Resolution SC 24-__ 2024

FIRST AMENDMENT TO PROFESSIONAL SERVICE AGREEMENT WITH EMC PLANNING GROUP, INC FOR THE 24-27 GENERAL PLANNING SERVICES AGREEMENT

THIS FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (this "**Amendment**"), dated November 5th, 2024, amending that certain PROFESSIONAL SERVICES AGREEMENT ("**PSA**") entered into on July 1st, 2024 by and between the City of Sand City, a California municipal corporation (the "**City**") and EMC Planning Group, Inc. ("**Consultant**"). The City and the Consultant are each referred to herein as a "**Party**" and collectively referred to as the "**Parties**."

WHEREAS, the Parties desire to amend the payment term of the PSA.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Section "VI. Payment" is revised in its entirety as follows:

"A. The City agrees to pay CONSULTANT monthly for services performed and reimbursable costs, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not be in excess of Six Hundred and Thirty Five Thousand Dollars ($635,000) for the fiscal year 2024-25 plus a 5% increase with each fiscal year going forward (fiscal year 2025-26 and an additional 5% in fiscal year 2026-27); unless additional payment is approved as provided in this Agreement. Except as specifically authorized by City in writing, CONSULTANT shall not bill CITY for duplicative services performed by more than one person. Fees for work performed by CONSULTANT on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit A. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

B. CONSULTANT shall not be compensated for any services rendered in connection with its performance of this AGREEMENT which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. CONSULTANT shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and CONSULTANT at the time CITY's written authorization is given to CONSULTANT for the performance of said services. The City Manager may

approve additional work not to exceed ten percent (20%) of the amount of the AGREEMENT, but in no event shall such sum exceed one hundred and twenty-seven thousand dollars ($127,000). Any additional work in excess of this amount shall be approved by the City Council of Sand City.

C. CONSULTANT will submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Invoices shall include a task summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement. For each work item and task, a copy of the applicable time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the CITY disputes any of CONSULTANT's fees it shall give written notice to CONSULTANT within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this AGREEMENT shall be made within forty-five (45) days of receipt of an invoice. In no event shall CONSULTANT submit an invoice for an amount in excess of the maximum amount of compensation provided above for either a task or the entire Agreement, unless the Agreement is properly modified in writing prior to the submission of such an invoice."

Section 2. Effect

Except as otherwise expressly set forth in this Amendment, all other terms and conditions of the PSA remain unchanged and in full force and effect. In the event there is a conflict between the terms and provisions of this Amendment and the PSA as originally executed, the terms and provisions of this Amendment shall control.

Section 3. General Provisions.

This Amendment may be executed in separate counterparts, which together shall be fully effective as an original and together constitute one and the same instrument. Facsimile signatures appearing hereon shall be deemed originals. This Amendment shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the date first written above.

CITY
City of Sand City

By: _____
Vibeke Norgaard

CONSULTANT
EMC Planning Group, Inc

By:_____
Michael Groves

City Manager

Senior Principle

Planning for Success.

September 4, 2024

Audrey Cray
City of Sand City
1 Pendergrass Way
Sand City, CA 93955

Re: Fiscal Year 2024-2025 General City Planning Services Amendment #1 (24-075) to include budget for immediate need and/or on-going Long-Range Planning requests that are not budgeted for in the General Planning Services budget.

Dear Vibeke,

This is a request from EMC Planning Group to amend the existing General Services scope and budget for City Planning to add an annual budget to cover immediate need and/or on-going long-range planning projects that are not budgeted for in the General Planning Services budget. As an example, the City, in partnership with EMC Planning Group, has aggressively sought and been successful in receiving multiple grants that fund a wide variety of long-range and special planning projects. The original General Planning Services contract did not anticipate the depth and breadth of the additional work to apply for these grants, nor the complexity of other special projects like the Facade Improvement Program, Cannabis Ordinance, Art Park land purchase and visioning/renovation design work, the East Dunes Project, and other long-range efforts (e.g. MST Surf Bus Project).

This budget amendment will allow the EMC Planning Group Team to annually support the City Staff by providing and performing Planning Services on both General Planning Services (the day-to-day activities) and these long-range projects that advance the City's vibrancy and vision for an artist community and sustainable City. The following are examples of projects that would fall under this type of annual budget:

Grant Funded Programs

- Cannabis Ordinance and program development;

- Affordable Housing associated work including the Art Park visioning and Phase 1 review (Pro-Housing and Permanent Local Housing allocation grant);
- California Emerging Technologies Fund and city broadband;

Long-Range Planning / Special Projects

- New grants coordination and preparation of grant application materials in collaboration with the City Manager and City Grants Consultant;
- East Dunes Residential Project agreements, meetings with private property owners, assist with negotiation of agreements, work towards a City-wide Incidental Take Permit (ITP);
- Parking Plan implementation
- Annual Progress Report submittal to HCD and OPR;
- Sand City Developments (e.g., Eco Resort, King Project, etc.);
- West End Stormwater Project support to City Engineer; and
- Marketing Services – Sand City Newsletter and web-site maintenance

Budget

Amend the Fiscal Year 2024-2025 Scope and Budget for the General City Planning Services contract to include a "Long-Range" planning requests budget, allowing City Staff to call on EMC Planning Group to assist with these types of projects. Examples of Long-Range planning requests that have been on-going in the past fiscal year and in this new fiscal year (2024-2025) are described above. These types of Long-Range planning efforts do not fall under our General City Planning Services contract (e.g., over the counter assistance, standard permit processing, noticing, staff reports, resolutions, etc.). After reviewing the long-range efforts described above and the grant writing efforts on behalf of the City, we suggest an annual contract amendment of an additional $180,000 for each year of the 3-year contract.

Thank you for selecting EMC Planning Group to support Sand City's Planning efforts. We value our on-going relationship with Sand City and envision the City making great strides in implementing their vision and plans over the next several years.

Sincerely,



Michael J. Groves, AICP
President / Senior Principal

AGENDA ITEM
9G.

Consideration and Approval for the Cancellation of the January 7, 2025 Regular City Council Meeting

AGENDA ITEM
11A.

Conference with real property negotiators pursuant to Government Code Section 54956.8 Property: 1715 & 1717 Contra Costa Street, APN's 011-231-020 & 021; City Negotiators: City Manager Vibeke Norgaard, City Attorney Adam Lindgren, Negotiating Parties: Kelly Morgan Trust Negotiation: Price and terms of payment

AGENDA ITEM
11B.

Re-adjourn to Open Session to report any action taken at the conclusion of Closed Session in accordance with California Government Code section 54957.1