

City of Capitola

City Council Meeting Agenda

Thursday, February 09, 2023 – 6:00 PM



City Council Chambers
420 Capitola Avenue, Capitola, CA 95010

Mayor: Margaux Keiser

Vice Mayor: Kristen Brown

Council Members: Yvette Brooks, Joe Clarke, Alexander Pedersen

Regular Meeting of the Capitola City Council – 6 PM

All correspondences received prior to 5:00 p.m. on the Wednesday preceding a Council Meeting will be distributed to Councilmembers to review prior to the meeting. Information submitted after 5 p.m. on that Wednesday may not have time to reach Councilmembers, nor be read by them prior to consideration of an item.

1. Roll Call and Pledge of Allegiance

Council Members Yvette Brooks, Joe Clarke, Alexander Pedersen, Kristen Brown, and Mayor Margaux Keiser.

2. Additions and Deletions to the Agenda

3. Additional Materials

Additional information submitted to the City after distribution of the agenda packet.

4. Oral Communications by Members of the Public

*Please review the Notice of Remote Access for instructions. Oral Communications allows time for members of the Public to address the City Council on any "Consent Item" on tonight's agenda, or on any topic within the jurisdiction of the City that is not on the "General Government/Public Hearings" section of the Agenda. Members of the public may speak for up to three minutes, unless otherwise specified by the Mayor. Individuals may not speak more than once during Oral Communications. All speakers must address the entire legislative body and will not be permitted to engage in dialogue. A **maximum of 30 minutes** is set aside for Oral Communications.*

5. Staff / City Council Comments

Comments are limited to three minutes.

6. Consent Items

All items listed as "Consent Items" will be enacted by one motion in the form listed below. There will be no separate discussion on these items prior to the time the Council votes on the action unless members of the City Council request specific items to be discussed for separate review. Items pulled for separate discussion will be considered following General Government. Note that all Ordinances which appear on the public agenda shall be determined to have been read by title and further reading waived.

A. Consider and Approve 1/26/2023 City Council Meeting Minutes

B. Resolution Allowing for the Continuation of Teleconferencing

Recommended Action: 1) Make the determination that all hazards related to the worldwide spread of the coronavirus (COVID-19) as detailed in Resolution No. 4168 adopted by the City Council on March 12, 2020, still exist and there is a need to continue action; and 2) Adopt the proposed resolution authorizing the City Council (along with the Planning Commission and all advisory bodies) to continue to conduct teleconferencing meetings.

C. Revised 2023 City Council Meeting Schedule

Recommended Action: Approve the revised 2023 City Council Meeting Schedule to correct the second February meeting date.

D. Liability Claims

Recommended Action: Deny Matt Schaffer and Sonia Miller liability claims.

E. Design Contract for the Jade Street Park Universally Accessible Playground Project

Recommended Action: Authorize the City Manager to execute a Professional Services Agreement with Verde Design in an amount not to exceed \$87,053 for the design of a universally accessible playground at Jade Street Park in substantially similar form, as approved by the City Attorney, as the attached Agreement.

7. General Government / Public Hearings

All items listed in “General Government / Public Hearings” are intended to provide an opportunity for public discussion of each item listed. The following procedure pertains to each General Government item: 1) Staff explanation; 2) Council questions; 3) Public comment; 4) Council deliberation; 5) Decision.

A. Prospect Walking Path Repair and Continued Maintenance

Recommended Action: Provide direction to staff on the repair, continued maintenance and future use of the Prospect Walking Path.

B. Storm Update and General Special Event Permit for a Capitola Village Benefit Concert

Recommended Action: Receive update regarding the 2022-2023 Winter Storm Event and approve a General Special Event Permit for a Capitola Village Benefit Concert, including an Encroachment Permit and an Amplified Sound Permit.

C. Citywide Housing Element

Recommended Action: 1) Receive the presentation introducing the Housing Element Update and provide feedback regarding the planned update process.

8. Adjournment

Notice of In-Person & Remote Access

Meetings are open to the public for in-person attendance at the Capitola City Council Chambers located at 420 Capitola Avenue, Capitola, California, 95010

Other ways to Watch:

Spectrum Cable Television channel 8

City of Capitola, California YouTube Channel

To Join Zoom Application or Call in to Zoom:

Meeting

link: <https://us02web.zoom.us/j/83328173113?pwd=aVRwcWN3RU03Zzc2dkNpQzRWVXAydz09>

Or dial one of these phone numbers: **1 (669) 900 6833, 1 (408) 638 0968, 1 (346) 248 7799**

Meeting ID: **833 2817 3113**

Meeting Passcode: **678550**

To make a remote public comment:

Via Zoom Application: Use participant option to “raise hand”. The moderator will unmute you

Via Zoom phone call: Dial ***9** on your phone to “raise your hand”. The moderator will unmute you

Notice regarding City Council: The City Council meets on the 2nd and 4th Thursday of each month at 6:00 p.m. in the City Hall Council Chambers located at 420 Capitola Avenue, Capitola.

Agenda and Agenda Packet Materials: The City Council Agenda and the complete Agenda Packet are available for review on the City’s website: www.cityofcapitola.org and at Capitola City Hall prior to the meeting. Agendas are also available at the Capitola Post Office located at 826 Bay Avenue Capitola. Need more information? Contact the City Clerk’s office at 831-475-7300.

Agenda Materials Distributed after Distribution of the Agenda Packet: Pursuant to Government Code §54957.5, materials related to an agenda item submitted after distribution of the agenda packet are available for public inspection at the Reception Office at City Hall, 420 Capitola Avenue, Capitola, California, during normal business hours.

Americans with Disabilities Act: Disability-related aids or services are available to enable persons with a disability to participate in this meeting consistent with the Federal Americans with Disabilities Act of 1990. Assisted listening devices are available for individuals with hearing impairments at the meeting in the City Council Chambers. Should you require special accommodations to participate in the meeting due to a disability, please contact the City Clerk’s office at least 24 hours in advance of the meeting at 831-475-7300. In an effort to accommodate individuals with environmental sensitivities, attendees are requested to refrain from wearing perfumes and other scented products.

Televised Meetings: City Council meetings are cablecast “Live” on Charter Communications Cable TV Channel 8 and are recorded to be rebroadcasted at 8:00 a.m. on the Wednesday following the meetings and at 1:00 p.m. on Saturday following the first rebroadcast on Community Television of Santa Cruz County (Charter Channel 71 and Comcast Channel 25). Meetings are streamed “Live” on the City’s website at www.cityofcapitola.org by clicking on the Home Page link “**Meeting Agendas/Videos.**” Archived meetings can be viewed from the website at any time.

Capitola City Council

Agenda Report

Meeting: February 9, 2023

From: City Manager Department

Subject: Consider and Approve 1/26/2023 City Council Meeting Minutes



Recommended Action: Approve minutes from the regular meeting on January 26, 2023.

Background: Attached for Council review and approval are the draft minutes from the special City Council meeting on January 26, 2023, and the regular City Council meeting on January 26, 2023.

Attachments:

1. 1/26/2023 – Special
2. 1/26/2023 – Regular

Report Prepared By: Julia Moss, City Clerk

Approved By: Jamie Goldstein, City Manager

City of Capitola

Special City Council Meeting - Closed Session Minutes

Thursday, January 26, 2023 – 9:00 AM



City Council Chambers
420 Capitola Avenue, Capitola, CA 95010

Mayor: Margaux Keiser

Vice Mayor: Kristen Brown

Council Members: Yvette Brooks, Joe Clarke, Alexander Pedersen

Closed Session – 9 AM

1. Call to Order & Roll Call

The meeting was called to order at 9:05 AM. In attendance: Councilmember Brooks, Councilmember Clarke, Vice Mayor Brown, Mayor Keiser.
Councilmember Pedersen Absent.

2. Closed Session

- i. Liability Claims (Gov't Code § 54956.95)
Claimant: Matt Schaffer
Agency Claimed Against: City of Capitola
- ii. Liability Claims (Gov't Code § 54956.95)
Claimant: Sonia Miller
Agency Claimed Against: City of Capitola
- iii. Conference with Real Property Negotiators (Gov't Code § 54956.8)
Property: Capitola Wharf, 1400 Wharf Road, Capitola, CA, 95010
Negotiator: Jamie Goldstein, City Manager
Negotiating Parties: 1) Capitola Boat and Bait 2) Wharf House Restaurant
Under Negotiation: Lease Terms
- iv. Significant exposure to litigation pursuant to § 54956.9(d)(2): One case

3. Report on Closed Session

The City Council met and discussed four items on the Closed Session Agenda and took no reportable action.

4. Adjournment - Adjourned at 10:30 AM.

ATTEST:

Margaux Keiser, Mayor

Julia Moss, City Clerk

City of Capitola

City Council Meeting Minutes

Thursday, January 26, 2023 – 6:00 PM



City Council Chambers
420 Capitola Avenue, Capitola, CA 95010

Mayor: Margaux Keiser

Vice Mayor: Kristen Brown

Council Members: Yvette Brooks, Joe Clarke, Alexander Pedersen

Regular Meeting of the Capitola City Council – 6 PM

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1. Roll Call and Pledge of Allegiance

The meeting was called to order at 6:00 PM. In attendance: Council Members Brooks, Clarke, Pedersen, Mayor Keiser

Absent: Vice Mayor Brown

2. Additions and Deletions to the Agenda - *None*

3. Presentations

- A. Police Chief Dally presented the 2022 Capitola Sergeant Herb Ross Police Officer of the Year Award to Officer Daniel Vasquez

4. Report on Closed Session

The Council met and discussed four items on the Closed Session Agenda at 9 AM this morning. No reportable action.

5. Additional Materials - *None*

6. Oral Communications by Members of the Public

Bill Gray, resident, spoke about concerns regarding maintenance of the bluff trail and the degradation and erosion of the bluff.

Jason Shephardson, resident, spoke about beach cleanups for Capitola Beach.

7. Staff / City Council Comments

Councilmember Brooks thanked the community for stepping for the beach cleanup on January 22, 2023, and reminded the community of opportunities for support and fundraising.

Mayor Keiser thanked staff and the community for participating in the beach cleanup on January 22, 2023, and thanked the Public Works staff for their continued efforts to clean up from the storm damage.

8. Consent Items

- A. Consider and Approve 1/12/2023 City Council Meeting Minutes
- B. Approval of City Check Registers Dated November 28, 2022, December 9, 2022, and January 9, 2023.
Recommended Action: Approve check registers.
- C. Resolution Allowing for the Continuation of Teleconferencing
Recommended Action: 1) Make the determination that all hazards related to the worldwide spread of the coronavirus (COVID-19) as detailed in Resolution No. 4168 adopted by the City Council on March 12, 2020, still exist and there is a need to continue action; and 2) Adopt the proposed resolution authorizing the City Council (along with the Planning Commission and all advisory bodies) to continue to conduct teleconferencing meetings.
- D. Soquel Creek Water District Use Agreement for Capitola City Council Chambers
Recommended Action: Authorize the City Manager to enter into an agreement with the Soquel Creek Water District in the amount of \$5,000 for use of the City Council Chambers semi-monthly during 2023.
- E. Recreation Division Staffing Adjustments and Update to Hourly/Seasonal Pay
Recommended Action: 1) Approve adjustments to the Recreation Division staffing; and 2) Adopt the proposed resolution updating the Hourly/Seasonal pay rates.
- F. FY 2021-22 Audit Report
Recommended Action: Receive Report.
- G. Letter of Support for Zero Emission Rail Transit & Trail Project
Recommended Action: Authorize Mayor Keiser to sign a letter of support for the Zero Emission Rail Transit & Trail Project.

Motion to approve the Consent Calendar: Council Member Pedersen

Seconded: Council Member Clarke

Voting Yea: Mayor Keiser, Council Members Brooks, Clarke, Pedersen

9. General Government / Public Hearings

- A. Update on the 2022–2023 Winter Storm Event
Recommended Action: Receive update regarding the 2022-2023 Winter Storm Event.
City Manager Goldstein presented the staff report.
Council Member Pedersen inquired about a second beach cleanup event. Recreation Division Manager Bryant LeBlond advised that staff is working on another community event with a potential beach cleanup.
Council Member Clarke commended the Police Department for their coordination with the U.S. Secret Service.
Council Member Brooks inquired about emergency repairs and what the initial damage assessment covered.
- B. “Armed Forces Flag” Request in Accordance with Policy V-18: Outdoor Display of Governmental and Non-Governmental Flags on City Property
Recommended Action: Consider request to fly the “Armed Forces Flag” the week of May 13 through May 20, 2023, in accordance with Policy V-18: Outdoor Display of Governmental and Non-Governmental Flags on City Property and either 1) approve request or 2) deny request.

Chloe Woodmansee, Assistant to the City Manager, presented the staff report.

Motion to approve the flag request for 2023 made by Council Member Brooks.

Mayor Keiser requested that staff review the flag policy and bring the revised policy to the City Council to include Council Member support for requests and for a one-year denial period.

Motion to approve the flag request for 2023 made by Council Member Brooks

Seconded by Council Member Clarke

Voting Yea: Mayor Keiser, Council Members Brooks, Pedersen, Clarke

C. Lifeguard Program Update

Recommended Action: Receive report on plans to establish a Capitola Lifeguard Program beginning in summer 2023.

Recreation Division Manager Bryant LeBlond presented the staff report.

Council Member Brooks inquired about which staff members are being trained and the cost for training. Staff clarified that seasonal staff would make up the open water and tower lifeguards and year-round staff will make up the training cadre.

Mayor Keiser inquired about expiration of the USLA certification. Staff clarified that the certification is a three-year cycle.

Council Member Pedersen inquired about the open water lifeguard agency certification; staff clarified that is the certification that the City is pursuing.

10. Adjournment – *The meeting was adjourned at 6:51 PM to the next regularly scheduled meeting of the City Council on February 9, 2023 at 6:00 PM.*

ATTEST:

Margaux Keiser, Mayor

Julia Moss, City Clerk

Capitola City Council

Agenda Report



Meeting: February 9, 2023

From: City Manager Department

Subject: Resolution Allowing for the Continuation of Teleconferencing

Recommended Action: 1) Make the determination that all hazards related to the worldwide spread of the coronavirus (COVID-19) as detailed in Resolution No. 4168 adopted by the City Council on March 12, 2020, still exist and there is a need to continue action; and 2) Adopt the proposed resolution authorizing the City Council (along with the Planning Commission and all advisory bodies) to continue to conduct teleconferencing meetings.

Background: In December 2019, an outbreak of a respiratory illness linked to the novel coronavirus (COVID-19) was first identified. In March 2020, the State of California, the County of Santa Cruz, and the City of Capitola each declared a state of emergency due to the virus. Also in March 2020, the World Health Organization declared COVID-19 a pandemic. State and local health officers issued health orders to stop the spread of COVID-19; in Santa Cruz County this included March, April, and May 2020 Shelter-In-Place orders that were more restrictive than statewide guidance. Since then, the County Health Officer has incorporated all Orders of the State Public Health Officer, which set baseline statewide restrictions on travel and business activities. Currently (and since February 2022), there are no State required COVID-19 restrictions, other than minimal masking requirements in certain settings. COVID-19 public safety economic restrictions were mostly removed in June 2021 when the state met the criteria to fully reopen the economy and moved beyond the Blueprint for a Safer Economy.

The Governor signed Assembly Bill 361 on September 16, 2021. The Bill allows cities to continue virtual meetings (much as Capitola City Council Meetings function now) as long as the state is under a proclaimed state of emergency; through 2024 when the bill will sunset. The Bill requires legislative bodies to comply with the requirements set forth in Government Code section 54953(e)(2) to ensure the public can safely participate and observe local government meetings. One of the requirements is for Council to adopt findings every thirty days.

Attached is a resolution that makes the following findings:

- 1) Find that current conditions authorize teleconference public meetings, based on the Governor's state of emergency regarding the COVID-19 Pandemic
- 2) Authorize legislative bodies to conduct teleconference meetings, allowing Capitola City Council, Planning Commission, and other advisory bodies to continue to meet using Zoom.

Council will need to adopt resolutions making findings required by AB361 if Hybrid Meetings (with Council Members attending remotely) continue.

Discussion: On Monday, October 17, Governor Newsom announced that the COVID-19 State of Emergency will officially end on February 28, 2023. Operating under AB 361 requires that the state be under a proclaimed state of emergency, meaning that teleconferencing meetings permissible with AB 361 will no longer be so beginning February 2023.

Governor Newsom signed Assembly Bill 2449 (AB 2449) in September, and the Bill goes into effect on January 1, 2023. This Bill amends the Brown Act to provide additional teleconference procedures which would allow Council Members (members of a legislative body) to participate remotely in public meetings, however this Bill is much more restrictive than AB 361.

For example, under AB 2449, Capitola Council Members could attend a Council meeting remotely if at least a quorum of Council Members are in-person at the Capitola City Council Chambers and Council also follows the following:

1. The Council must provide either a two-way audiovisual platform or two-way telephonic service and a live webcasting of the meeting to allow the public to remotely hear and visually observe the meeting, and remotely address the legislative body. (Zoom would likely fulfill this requirement.)
2. The agenda must identify and include an opportunity for all persons to attend via a call-in option, internet-based service option, and at the in-person location of the meeting. (Again, Zoom and the Council Chambers would likely fulfill this requirement.)
3. A member of the Council can only participate remotely if:
 1. the member notifies the Council at the earliest opportunity possible, including at the start of a regular meeting, of their need to participate remotely for “just cause”; or
 2. the member requests that the Council allow them to participate in the meeting remotely due to “emergency circumstances,” and the Council approves the request. The Council must request a general description (generally not exceeding 20 words) of the circumstances relating to the member’s need to appear remotely at the given meeting.
4. “Just cause” is defined as (i) a childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely; (ii) a contagious illness that prevents a member from attending in person; (iii) a need related to a physical or mental disability as defined by statute; or (iv) travel while on official business of the legislative body or another state or local agency.
5. Members of the Council are prohibited from using AB 2449 to participate in remote meetings for more than three consecutive months or for 20% of the regular meetings in a calendar year.
6. Members of the Council participating remotely must participate using both audio and visual technology (Zoom) and must publicly disclose whether any individual over the age of 18 is present at the remote location.
7. A meeting must be paused when there is any teleconference disruption for the public and no action can be taken if a disruption event prevents the Council from broadcasting the meeting. (This requirement is currently in place for remote or hybrid meetings.)
8. Real-time public comments must be allowed during the meeting.
9. The Council must implement procedures for resolving requests for reasonable accommodations for individuals with disabilities. (This requirement is currently in place for remote or hybrid meetings.)

Council may only conduct hybrid meetings under the current AB 361 rules until February 28, 2023. At that time, the new rules outlined above will take effect. Alternatively, after February 28, 2023, the Council could revert to the standard Brown Act procedures for teleconferencing, which require the City to post the address from which each teleconferencing member will be appearing on the agenda.

Staff is currently working to implement upgraded technology to allow for a smoother “hybrid” option so that members of the public may attend Council meetings either in-person or remotely. The rules outlined above pertain to members of the Council and their ability to participate remotely, and do not apply to the public.

Fiscal Impact: At Council direction, the City has maintained \$385,000 in a resiliency fund to help ensure the City has available resources should the pandemic result in further unforeseen impacts, which remains in the approved FY 2022-23 Budget.

Attachments:

1. Proposed Teleconferencing resolution

Report Prepared By: Julia Moss, City Clerk; Samantha Zutler, City Attorney

Approved By: Jamie Goldstein, City Manager

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA AND ON BEHALF
OF COMMISSIONS AND COMMITTEES CREATED BY THE CITY COUNCIL PURSUANT TO
CALIFORNIA GOVERNMENT CODE SECTION 54952(b) AUTHORIZING
TELECONFERENCE MEETINGS IN COMPLIANCE WITH AB 361 (GOVERNMENT CODE
SECTION 54953(e)) TO CONTINUE TO ALLOW MEMBERS OF THE PUBLIC TO SAFELY
PARTICIPATE IN LOCAL GOVERNMENT MEETINGS**

WHEREAS, the City Council is committed to ensuring public access to observe and participate in local government meetings; and

WHEREAS, all meetings of the City Council and other legislative bodies created pursuant to Government Code Section 54952(b) are open and public, as required by the Ralph M. Brown Act, so that any member of the public may participate in local government meetings; and

WHEREAS, the recently adopted AB 361, codified at Government Code section 54953(e), makes provisions for remote teleconferencing participation in local government meetings, without compliance with the requirements of 54953(b)(3), during a Governor-proclaimed state of emergency and if the local legislative body determines, by majority vote, that as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees, and

WHEREAS, on March 4, 2020, Governor Newsom proclaimed a State of Emergency due to the outbreak of respiratory illness due to a novel coronavirus (now known as COVID-19) and that State of Emergency is still in effect in the State of California; and

WHEREAS, on March 12, 2020, the Capitola City Council proclaimed the existence of a local emergency due to the worldwide spread of the coronavirus with Resolution No. 4168, pursuant to Section 8.08.020 of the Capitola Municipal Code and Section 8625 of the California Emergency Services Act in response to the COVID-19 pandemic; and

WHEREAS, COVID-19 continues to threaten the health and lives of City residents; and

WHEREAS, the SARS-CoV-2 Delta Variant (Delta Variant) is highly transmissible in indoor settings; and

WHEREAS, on July 28, 2021, the California Department of Public Health issued guidance calling for the use of face coverings and stating that the Delta Variant is two times as contagious as early COVID-19 variants, leading to increasing infections, the Delta Variant accounts for over 80% of cases sequenced, and cases and hospitalizations of COVID-19 are rising throughout the state; and

WHEREAS, the Delta Variant has caused, and will continue to cause, conditions of imminent peril to the health safety of persons within the City; and

WHEREAS, on October 14, November 23, and December 9, 2021, January 13, February 10, and February 27, March 10, March 24, April 14, April 28, May 12 and May 26, June 9, June 23, and July 28, 2022, August 25, and September 8, September 22, October 13, October 27, November 10, November 22, December 8, 2022, January 12, and January 26, 2023, the City Council adopted a resolution proclaiming the need to meet by teleconference pursuant to Government Code Section 54953; and

WHEREAS, the City Council, acting as a legislative body pursuant to Government Code section 54952(a) and for the benefit of the commissions, committees and other bodies that were created by the City Council pursuant to Government Code section 54952(b) (collectively referred

to as “Legislative Bodies”), finds that the current conditions meet the circumstances set forth in Government Code section 54953(e)(3) to allow Legislative Bodies to continue to use teleconferencing to hold open and public meetings if the Legislative Bodies comply with the requirements set forth in Government Code section 54953(e)(2) to ensure the public can safely participate in and observe local government meetings.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Capitola that the City Council does hereby:

1. Recitals. The Recitals set forth above are true and correct and are hereby incorporated by this reference.
2. Find that Current Conditions Authorize Teleconference Public Meetings of Legislative Bodies. The City Council has reconsidered the circumstances of the state of emergency and finds that based on the California Governor’s continued declaration of a State of Emergency and current conditions, meeting in person would present imminent risks to the health or safety of attendees, such that the conditions continue to exist pursuant to Government Code section 54953(e)(3) to allow Legislative Bodies to use teleconferencing to hold public meetings in accordance with Government Code section 54953(e)(2) to ensure members of the public have continued access to safely observe and participate in local government meetings.
3. Authorize Legislative Bodies to Conduct Teleconference Meetings. The Legislative Bodies are hereby authorized to take all actions necessary to carry out the intent and purpose of this Resolution, including conducting open and public meetings in accordance with Government Code section 54953(e)(2) and other applicable provisions of the Brown Act.

I HEREBY CERTIFY that the foregoing resolution was PASSED and ADOPTED by the City Council of the City of Capitola on the 9th day of February, 2023, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Margaux Keiser, Mayor

ATTEST: _____
Julia Moss, City Clerk

Capitola City Council

Agenda Report

Meeting: February 9, 2023
From: City Manager Department
Subject: Revised 2023 City Council Meeting Schedule



Recommended Action: Approve the revised 2023 City Council Meeting Schedule to correct the second February meeting date.

Background: The 2023 City Council Meeting Schedule was adopted by the City Council on December 8, 2022. An administrative correction is needed for the second meeting date in February. It was originally adopted with a February 16th meeting date, and staff recommends correcting this to February 23rd.

Fiscal Impact: There is no fiscal impact associated with this report.

Attachments:

1. Revised Meeting Schedule

Report Prepared By: Julia Moss, City Clerk

Reviewed By: Julia Moss, City Clerk

Approved By: Jamie Goldstein, City Manager

2023 CITY OF CAPITOLA City Council Regular Meeting Dates

Item 6 C.

Regular Meetings of the City Council are typically held on the second and fourth Thursdays of each month. The regular meetings begin at 6:00 PM in the Capitola City Hall Council Chambers, 420 Capitola Avenue, Capitola, CA.

MEETING DATE
JANUARY 12
JANUARY 19 – WORKSHOP
JANUARY 26
FEBRUARY 9
FEBRUARY 16 23
MARCH 9
MARCH 23
APRIL 13
APRIL 27
MAY 11
MAY 25
JUNE 8
JUNE 22
JULY 27
AUGUST 24
SEPTEMBER 14
SEPTEMBER 28
OCTOBER 12
OCTOBER 26
NOVEMBER 9
**TUESDAY, NOVEMBER 21
DECEMBER 14

Items received less than two weeks prior to the meeting date may be scheduled for the next available agenda.

** Due to Thanksgiving Holiday, the second November meeting will be held on Tuesday.

Capitola City Council

Agenda Report

Meeting: February 9, 2023

From: Public Works Department

Subject: Design Contract for the Jade Street Park Universally Accessible Playground Project



Recommended Action: Authorize the City Manager to execute a Professional Services Agreement with Verde Design in an amount not to exceed \$87,053 for the design of a universally accessible playground at Jade Street Park in substantially similar form, as approved by the City Attorney, as the attached Agreement.

Background: On November 22, 2022, the City Council authorized the Public Works Department to issue a Request for Proposals (RFP) for the design of a universally accessible (UA) playground at Jade Street Park. The proposed playground will replace an existing playground that was installed in 1999 and updated in 2007. The FY 2022-23 Capital Improvement Program Budget allocated \$275,000 to this project.

Based on preliminary research, staff has determined a comprehensive UA playground project at Jade Street Park could cost approximately \$1,500,000. To close the funding gap, the City intends on partnering with the Friends of County Parks (Friends) on a comprehensive fundraising campaign.

Discussion: Staff issued a request for proposals (RFP) on November 28, 2022. The RFP was advertised on the City's website, on industry sites, and through direct solicitation of experienced firms in order to solicit qualified consultants. Proposals were due on January 11, 2023, providing a five-week response period. Three proposals were submitted.

A selection panel consisting of Capitola Public Works staff, Recreation staff, and County of Santa Cruz Parks and Recreation staff evaluated all proposals. One proposal was found to be non-responsive to the requirements of the RFP. Two firms, O'Dell Engineering and Verde Design, were interviewed by the review panel on January 24, 2023. Based upon their rankings and interviews, the panel unanimously selected Verde Design. Verde Design is located in Santa Clara, has led multiple successful design projects for accessible parks, and has worked locally on projects for Watsonville, Campbell, Sunnyvale, and Morgan Hill.

Following the selection process, the City began negotiations with Verde Design, based on their proposed scope of work. The scope (Attachment 1) includes significant public outreach and input, site analysis, preparation of conceptual alternatives, presentations to City Council, and development of a final conceptual plan for fundraising purposes. The negotiated fee of \$87,053 is incorporated into the Professional Services Agreement (Attachment 2).

Upon the award of contract, meetings with the Verde Design team will begin immediately to complete a full conceptual plan and cost estimate by Summer 2023 to aid in fundraising efforts, scheduled to begin Fall 2023. Staff anticipates executing a Memorandum of Understanding (MOU) with the Friends to move forward with the advertising and fundraising for the project in Summer 2023.

The final design phase, preparation of project plans, specifications, and final cost estimate will require an amendment to the proposed design contract and will run concurrent with fundraising efforts. Dependent on fundraising efforts, construction may commence as early as Spring 2025.

Fiscal Impact: The FY 2022-23 Capital Improvement Program Budget has allocated \$275,000 to this project; therefore, sufficient funds are available for approval of this Professional Services Agreement.

The proposed agreement is for the conceptual design phase for the park design, which is inclusive of community outreach, alternative analysis and final conceptual design to develop a successful fundraising campaign. The final design phase will consist of completion of final preparation of plans, specifications, and estimates (PS&E) for construction. Additional design cost for the final design phase is estimated at \$90,000, dependent on final project construction scope.

Attachments:

1. Scope of Work
2. Professional Services Agreement

Report Prepared By: Jessica Kahn, Public Works Director

Reviewed By: Julia Moss, City Clerk; Tamar Burke, Assistant City Attorney

Approved By: Jamie Goldstein, City Manager



January 30, 2023

Subject: Jade Street Park Universally Accessible Playground Design

Dear Ms Kahn

Verde Design proposes the following preliminary fee based on the project scope understanding and approach we have proposed. Our sub-consultant fees for topographic survey only and included in this proposal.

We are pleased to learn that Verde is selected to perform the professional services for the City of Capitola, we have reviewed and updated the project tasks and overall process. The professional compensation is modified to address Community Outreach and Conceptual Design services as a first stage of the design process.

Our proposed services includes the original base scope of work with additional options that will enhance the community input process. The new base scope of services will provide a fulfilling community outreach process and conceptual design. Products from the community concept will be available for marketing and fundraising. Then with funding in hand, services for arborist and construction documents could be implemented to set the project plans up for bidding and construction.

Our first stage includes a community process and concept design. Arborist Report will be differed to the start of the 65% construction documents and will be authorized under a separate contract.

Please see the following fee worksheet that outlines scope of services tasks with hourly rates and time estimates for each of the following phases of work.

PROFESSIONAL COMPENSATION

For the scope of services and products identified in this proposal, Verde Design respectfully requests the following lump sum fee including all reasonable reimbursable expenses that are outlined to be included in each project.

Community Outreach & Conceptual Design	\$87,042.50
Reimbursables included	
Total	\$87,052.50

Services on Hold for Additional Authorization

Arborist Analysis & Report	\$5,510
Construction Documents 65% Submittal	\$35,780 estimated.
Construction Documents 95% Submittal	\$28,698 estimated.
Construction Documents 100% Submittal	\$15,978 estimated.
Drainage Calculations & Storm Water Management Plan	\$5,140
SWPPP Approval/NOI	\$4,150

We look forward to authorization and kick off meetings and how Verde Design can work with the City of Capitola Community on the development of the Jade Street Park Universally Accessible Playground project.

Yours truly,

Verde Design, Inc.

Derek C. McKee, RLA
Principal

CC: Nance Cronin, CFO, Verde Design

2) TECHNICAL PROPOSAL

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VERDE DESIGN

The following Approach and detailed Scope of Services is an approach to completing the community outreach, programming design, schematic plan design, construction documentation, and bidding and construction support outlined for the Universal Accessible Playground renovations at Jade Street Park for the City of Capitola (City) community.

Our approach and proposed services includes a base scope of work and additional options for tasks that can enhance the community input process. With the desired professional fee structure, we are providing these options. One of the options we thought would be a good approach is to focus on the community outreach process and conceptual design. These phases could be approved to attain community input and develop an accessible playground design and supporting graphics for fund raising. Then with funding in hand, services for construction documents could be implemented to set the project plans up for bidding and construction.

Our base approach includes a community process and construction documents. Services are a bit limited to limit our scope but even with this approach we are over the desired fee budget.

We have worked on several accessible playgrounds. Several have large budgets and we have quite a few with a construction budget closer to what is desired at Jade Street Park. We can share these relevant projects and construction values for comparison. It would be encouraged to attain more funding through the fund raising to create a more impressive universal accessible playground.

A) PROJECT APPROACH

Verde Design understands the general scope of services, including the complete development of the design and construction documents associated with the Jade Street Park playground project, outlined in the RFP.

Past experience has taught us that the key to envisioning and developing public parks begins with a simple, clear approach - **Investigate, Listen, Understand** and **Recommend**. Beginning with our initial kick-off meeting with City staff, we will establish project parameters, such as program, schedule, and budget.

Investigate - Establishing a solid foundation for success begins with project investigation. We will review existing utility documents, acquire the site topographic survey, perform a geotechnical investigation and conduct a site visit with City staff to confirm our understanding of the existing conditions and better

evaluate the opportunities and constraints for developing the specific amenities identified.

We will contact the appropriate utility companies to verify the location of all known existing utility lines, meters, and easements, as necessary, to fully understand the requirements for the project. Our team is fully capable of providing all engineering services, including water, sewer, as may be required by the appropriate utility companies and permitting agencies.

The existing parking lot will be analyzed for quantity of stalls comparison to needs of the park. More ADA spaces should be provided to the all-inclusive playground site. We will setup an estimated park program demand for parking and review parking use during this phase.

Existing trees will be reviewed with our teams Arborist for health, status and limitations on improvements for each. This service is provided as an optional service. The scope will include reviewing the proposed plans for maintaining the existing trees that provide shade and nice canopy on the play area edge.

A list of necessary permits for construction and implementation of the playground improvements will be developed. We will review any utility or agency easements and permitting needs. City of Capitola requirements will be reviewed with staff. A schedule and sequence for the identified permits will be setup.

Through this investigation, we will gain a thorough understanding of the existing site conditions, topography, soils, and infrastructure. This site analysis effort will be utilized throughout the duration of the project, enabling educated and effective decisions to be made.

Listen - We will listen to stakeholders' concerns and desires, acknowledge the guidance provided by City staff, and communicate what we are hearing back to these parties so we can collectively move forward together with a shared goal. We will meet with staff to attain input on the desired program, layout, materials, and design.

Preliminary program options will be generated and use-relationship diagrams created to help garner the input at the first community meeting. Our intent is to hear what the community would like to include for the all-inclusive playground. The preliminary program options / use-relationship diagrams are used to stimulate the input to attain priorities and comments. Equipment options may also be presented for input and priorities.

2) TECHNICAL PROPOSAL

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We plan to meet with the City staff first to review the rough programs designs and then provide a community meeting in the early evening and a pop-up meeting at the park for a duration on a weekend. As an optional service, a community survey will be setup to provide input on the program, layout and priorities. With these meetings and the community survey, we will be able to receive input on the desired program and priorities from the community.

Pop-up meetings were also proposed as an optional service to present the programming graphics and attain community input at a community event or at the park. We also proposed another pop-up community meeting during the conceptual alternatives phase as an optional service.

To further support our clients' goals, the Verde team develops a detailed "Basis of Design" document as a means of tracking the programmatic input and infrastructural requirements for each project. We typically tally the input by element, category or program. This document is a summary of all the project information assembled to date, and represents the direction we, as a team, have agreed upon for the development of our conceptual designs. This document will be submitted as the conceptual design memorandum and updated as we proceed.

Understand - Using the tools mentioned above, we expect to have nearly all of the information needed to develop design solutions that respond to site constraints, stakeholder input, and budget. These initial concepts will reflect the input we received in a graphic form, which everyone can understand and respond to.

We provided an optional service to develop schematic alternatives to first review with staff and at a community meeting. This would provide another community engagement opportunity to review the design.

Our base services provide developing a minimum three conceptual alternative plans for the playground renovation we can obtain authentic, focused input and direction. The options will convey different layouts, materials and configurations to enable the staff and community to provide input. We generally create more options with the options that can be included based on our review with staff.

Demonstrating that we understand what is important, needed, required, and affordable is often the most challenging aspect of a project. We will prepare cost estimates for construction, as well as provide the City with identified issues relating to the options we



One way Verde Design is different from other firms I've worked with is they really listen to the client. Some design firms come into a project and they want to sell you on something they've already conceptualized or that fits their own artistic purpose, but Verde comes in with an open mind and listens first before drawing.



GREG BETTS, FORMER COMMUNITY SERVICES DIRECTOR
CITY OF PALO ALTO

MITCHELL PARK MAGICAL BRIDGE, PALO ALTO

have developed. We will meet with City staff first to review the conceptual alternatives.

The designs will be updated and presented at City Council. We proposed issuing another community survey on the updated designs to attain more focused input as an optional service

Based on the City Council's input, we will update the designs to a single preferred design labeled final concept. Updated estimate will be provided. A report will be setup to capture the input received during the community process and outcome of the design being proposed. We will review with staff, then update the presentation materials and assist staff with the council reports. We will prepare presentation material and present the draft concept to the City Council. If there are updates or comments required following this presentation, we will provide and coordinate with staff.

Recommend – With a clear concept developed, the community's vision will be developed into a biddable set of construction documents. Verde Design's expertise in taking projects from a conceptual design through construction will benefit you during the construction document phase, as we are experienced in creating plans that enable smooth bidding and construction.

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As we move forward with the design development plans, our first step is to prepare the systems design and engineering. This will include our 65% plan package, which will identify proposed materials and finishes, identify the size and location of elements, delineate the layout of the overall play area, and review the overall project costs for our recommendations as to how we believe the project should be built to meet the qualitative expectations, as well as the schedule constraints. We will meet with City staff to discuss the design documents and receive comments and requested modifications, which will be incorporated into the final project design.

Following the City staff review of the 65% plan set, specifications, and estimate, we will continue to revisit the Basis of Design document to track changes and confirm that all components of the program are being addressed.

The 95% construction documents will then be developed and submitted for City staff review and comment. We will meet with the staff to review the submittal and our response to the 65% comments, allowing us to move forward and complete the construction documents.

Once we have reviewed the 95% submittal documents with the City and received your comments, we will make the final revisions and updates to the construction documents that will bring them to the Final 100%/Bid level. At this stage, the bid package will be submitted to the City's Building Department or plan check process for review and approval, if necessary. We will provide SWPPP/QSP services and assist in attain the NOI permit as an optional service. Calculations for storm water management will be provided as an optional service if requested. Irrigation MWEL0 calculations will be provided on separate plans.

At each submittal, we will include an updated cost estimate and schedule so the City staff can review and track the construction budget and construction timing. We will present the submittal and provide a page turn review of the submittal package. Each submittal will include a progress report addressing updates, design modifications, costs, questions, and comment status.

As issues or items arise, we will investigate why. We will listen to potential solutions, asking questions along the way, to ensure that we understand the full breadth of the issue so that we may make recommendations, which will take into account your budget, schedule, and the overall impacts to the success of the project.

B) SCOPE OF WORK

PHASE 1: COMMUNITY OUTREACH AND CONCEPTUAL DESIGN

A. Project Start-Up.

- a. Establish files and in-house documentation.
- b. Receive all available data, maps, reports, etc.
- c. Obtain City documents relating to the site and other requirements, standards, and regulations for development of the facilities.
- d. Coordinate the topographic survey with the City.

B. Kick-Off Meeting.

- a. Meet with City staff to determine the project intent, scope, project budget and timetable.
- b. Identification of roles and responsibilities of consultant team, and City staff.
- c. Review the existing site plan, proposed park improvements and steps toward input, consensus and development of the design process.
- d. Review or develop the project's goals and objectives with staff.
- e. Review proposed new park amenities.
- f. Review the draft schedule submitted with the proposal and coordinate updates and adjustments for each phase of the design process and any other public hearings, or Council involvement with City calendar.

C. Site and Data Review.

- a. Review assembled project data, as-builts and historical information.
- b. Review City codes, ordinances, standards and policies pertaining to project design.
- c. Review and record utility information related to electrical, sewer, communications, irrigation and storm drainage.
- d. Provide a site topographic survey. No property lines or easements will be included.
- e. Review management and maintenance practices and concerns with City staff.
- f. Site visit to review prepared survey, perform visual analysis and become familiar with existing conditions and constraints. We recommend walking the

2) TECHNICAL PROPOSAL

Item 6 E.

VERDE DESIGN

site with City staff to review conditions and known issues or constraints.

- g. Review existing trees with our team's Arborist for health and development restrictions. This task is an optional service.

D. Design Objectives & Program Input.

- a. Develop and refine the project goals and objectives.
- b. Provide recommendations for code compliance, utility service, sustainability, safety and facility condition.
- c. Generate a park program and specific site uses list for the prioritized amenities.
- d. Develop a preliminary program list of potential park play area development elements.
- e. Develop preliminary use-relationship diagrams showing program areas, connections and layout.
- f. Setup a community survey and review with staff then publish. We will review outcome and results with staff and this process will occur simultaneous to the programming phase. This task is an optional service.
- g. Meet with City staff to review the preliminary program, use-relationship diagrams and existing conditions items.
- h. Revise the presentation graphics and information to reflect City comments and prepare for the first community meetings.
- i. Attend and present at the community meeting and pop-up meetings (optional service). Prepare a summary of input collected from each meeting.

E. Schematic Alternatives.

- a. Based on input at the community meetings and City staff, prepare a minimum of three (3) schematic alternative plans and other materials.
- b. Provide construction cost estimates based on the conceptual alternative designs.
- c. Meet with City staff to review the presentation materials.
- d. Setup an updated community survey with the schematic alternative designs for input. Publish and analyze survey input. This task is an optional service.
- e. Prepare and refine community meeting materials, presentation materials displaying the schematic alternative designs, and any other material needed to garner input from the public.



- f. Assist the City with presentation materials for the presentations.
- g. Materials may include providing the concept design electronically and on presentation boards, etc.
- h. Attend and assist City staff at the CC presentation.

F. Final Draft Preferred Alternative Plan.

- a. Prepare final draft preferred alternative plan, incorporating the input received at the community meetings and from City staff.
- b. Update the construction cost estimate.
- c. Develop a summary memorandum of the process and input attained.
- d. Meet with staff to review the final draft preferred alternative plan, updated estimate and prepare for the CC meeting.
- e. Assist the City with presentation materials for the presentations.
- f. Materials may include providing the concept design electronically and on presentation boards, etc.
- g. Attend and assist City staff at the CC presentation.

PHASE 2: CONSTRUCTION DOCUMENTS

Upon approval of the project requirements, and the agreement between City and Consultant on the design concept and scope, the Consultant shall develop design development and construction documents:

- A. Prepare and submit 65% design and construction documents, including drawings, technical specifications, calculations, and

Verde Design, Inc.
Project Schedule

Item 6 E.

Verde Design

Date: January 31, 2023

PROJECT: Jade Street Park Universally Accessible Playground Design

CLIENT: City of Capitola

PROJECT NUMBER: 23003002148M

2023

			Feb	Mar	Apr	May	Jun	Jul
A.	COMMUNITY OUTREACH & CONCEPTUAL DESIGN							
1	Establish Files & Admin. Procedures	2/10	◆					
2	KO meeting and Site Walk	2/10	◆					
3	Utility Company & Existing Utilities Review	2/16	◆					
4	Site Topographical Survey	2/13-3/1	◆					
5	Project Schedule	2/10	◆					
6	Review City, Utility and Consultant Data	2/16						
7	Preliminary Program & Use Relationship Graphics	3/15 to 3/20		◆				
8	Review Meeting with City Staff #2			◆				
9	Community Meeting #1	3/21		◆				
10	Community Pop-Up at Jade St Park	3/25		◆				
11	Online Survey #1	3/21 to 3/31		◆				
12	Develop Schematic Alternative Plans (2 total)	4/17			◆			
13	Prepare Preliminary Estimate of Const Cost one for each alternative	4/17			◆			
14	Staff Review Meeting #3	4/18			◆			
15	Revise Schematic Alternative Design	4/24			◆			
16	Community Meeting #2	4/25			◆			
17	Community Pop Up Mtg at Jade Street Park	4/29			◆			
18	Online Survey #2	4/25 to 5/5			◆			
19	Prepare Draft Alternative Conceptual Plans	5/22				◆		
20	Preliminary Construction Estimate	5/22				◆		
21	Review Meeting with City Staff #4	5/23				◆		
22	Presentation Materials for City Council Meeting	5/26					◆	
23	City Council Meeting #1	6/7					◆	
24	Prepare Final Preferred Alternative Plan	6/19					◆	
25	Update Preliminary Construction Estimate	6/19					◆	
26	Report - Program, Process & Final Preferred Plan	6/23					◆	
27	Presentation Materials for City Council Meeting	6/23					◆	
28	City Council Meeting #2	7/5						◆
29	Project Administration							
	Fund Raising Campaign (City & County Partners)							

**CITY OF CAPITOLA
PROFESSIONAL SERVICES AGREEMENT
Jade Street Park Universally Accessible Playground Project
Verde Design, Inc.**

THIS AGREEMENT is entered into on February 9, 2023, by and between the City of Capitola, a Municipal Corporation, hereinafter called "City" and Verde Design, Inc., hereinafter called "Consultant".

WHEREAS, City desires certain services described in Appendix One and Consultant is capable of providing and desires to provide these services;

NOW, THEREFORE, City and Consultant for the consideration and upon the terms and conditions hereinafter specified agree as follows:

**SECTION 1
Scope of Services**

The services to be performed under this Agreement are for Jade Street Park Universally Accessible Playground Project and further detailed in Appendix One.

**SECTION 2
Duties of Consultant**

All work performed by Consultant, or under its direction, shall be sufficient to satisfy the City's objectives for entering into this Agreement and shall be rendered in accordance with the generally accepted practices, and to the standards of, Consultant's profession.

Consultant shall not undertake any work beyond the scope of work set forth in Appendix One unless such additional work is approved in advance and in writing by City. The cost of such additional work shall be reimbursed to Consultant by City on the same basis as provided for in Section 4.

If, in the prosecution of the work, it is necessary to conduct field operations, security and safety of the job site will be the Consultant's responsibility excluding, nevertheless, the security and safety of any facility of City within the job site which is not under the Consultant's control.

Consultant shall meet with Public Works Director, called "Director," or other City personnel, or third parties as necessary, on all matters connected with carrying out of Consultant's services described in Appendix One. Such meetings shall be held at the request of either party hereto. Review and City approval of completed work shall be obtained monthly, or at such intervals as may be mutually agreed upon, during the course of this work.

**SECTION 3
Duties of the City**

City shall make available to Consultant all data and information in the City's possession which City deems necessary to the preparation and execution of the work, and City shall actively aid and assist Consultant in obtaining such information from other agencies and individuals as necessary.

The Director may authorize a staff person to serve as his or her representative for conferring with Consultant relative to Consultant's services. City shall not control or direct the manner in which the services are to be performed. However, the work in progress hereunder shall be reviewed from time to time by City at the discretion of City or upon the request of Consultant. If the work is satisfactory, it will be approved. If the work is not satisfactory, City will inform Consultant of the changes or revisions necessary to secure approval.

SECTION 4 Fees and Payment

Payment for the Consultant's services shall be made upon a schedule and within the limit, or limits shown, upon Appendix Two. Such payment shall be considered the full compensation for all personnel, materials, supplies, and equipment used by Consultant in carrying out the work. If Consultant is compensated on an hourly basis, Consultant shall track the number of hours Consultant, and each of Consultant's employees, has worked under this Agreement during each fiscal year (July 1 through June 30) and Consultant shall immediately notify City if the number of hours worked during any fiscal year by any of Consultant's employees reaches 900 hours. In addition, each invoice submitted by Consultant to City shall specify the number of hours to date Consultant, and each of Consultant's employees, has worked under this Agreement during the current fiscal year.

SECTION 5 Changes in Work

City may order major changes in scope or character of the work, either decreasing or increasing the scope of Consultant's services. No changes in the Scope of Work as described in Appendix One shall be made without the City's written approval. Any change requiring compensation in excess of the sum specified in Appendix Two shall be approved in advance in writing by the City.

SECTION 6 Time of Beginning and Schedule for Completion

This Agreement will become effective when signed by both parties and will terminate on the earlier of:

- The date Consultant completes the services required by this Agreement, as agreed by the City; or
- The date either party terminates the Agreement as provided below.

Work shall begin on or about February 10, 2023.

In the event that major changes are ordered or Consultant is delayed in performance of its services by circumstances beyond its control, the City will grant Consultant a reasonable adjustment in the schedule for completion provided that to do so would not frustrate the City's objective for entering into this Agreement. Consultant must submit all claims for adjustments to City within thirty calendar days of the time of occurrence of circumstances necessitating the adjustment.

SECTION 7 Termination

City shall have the right to terminate this Agreement at any time upon giving ten days written notice to Consultant. Consultant may terminate this Agreement upon written notice to City should the City fail to fulfill its duties as set forth in this Agreement. In the event of termination, City shall pay the Consultant for all services performed and accepted under this Agreement up to the date of termination.

SECTION 8 Insurance

Consultant shall procure and maintain for the duration of the contract and for ____ years thereafter, 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 the Consultant, his agents, representatives, or employees.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001).
2. Insurance Services office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California, and Employer's Liability Insurance.
4. Professional (Errors and Omissions) Liability insurance appropriate to the consultant's profession. Architects' and engineers' coverage shall include contractual liability.

Minimum Limits of Insurance

Consultant shall maintain limits no less than:

- | | |
|--|---|
| 1. General Liability:
(including operations,
products and completed
operations) | \$1,000,000 per occurrence and \$2,000,000 in
aggregate (including operations, for bodily injury,
personal and property damage. |
| 2. Automobile Liability: | \$1,000,000 per accident for bodily injury and
property damage. |
| 3. Employer's Liability Insurance | \$1,000,000 per accident for bodily injury and
property damage. |
| 4. Errors and Omissions
Liability:
Limits | \$1,000,000 per claim and \$2,000,000 in the
aggregate. |

Other Insurance Provisions

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Capitola, its officers, officials, employees and volunteers are to be covered as additional insured's as respects: liability arising out of work or operations performed by or on behalf of the Consultant or automobiles owned, leased, hired or borrowed by the Consultant.
2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled except after prior written notice has been given to the City.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Waiver of Subrogation

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Capitola** for all work performed by the Contractor, its employees, agents and subcontractors.

Verification of Coverage

Consultant shall furnish the City with original certificates and amendatory endorsements affecting coverage by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

SECTION 9 Indemnification

For General Services: To the fullest extent permitted by law, Consultant agrees to indemnify, defend, and hold harmless the City, its directors, officers, employees from and against any and all claims, demands, actions, liabilities, damages, judgments, or expenses (including attorneys' fees and costs) arising from the acts or omissions of Consultant's employees or agents in any way related to the obligations or in the performance of services under this Agreement, except for design professional services as defined in Civil Code § 2782.8, and except where caused by the sole or active negligence, or willful misconduct of the City.

For Design Professional Services under Civil Code §2782.8: To the fullest extent permitted by law, Consultant agrees to indemnify, defend, and hold harmless the City, its directors, officers, and employees

from and against any and all claims, demands, actions, liabilities, damages, or expenses (including attorneys' fees and costs) arising from the negligence, recklessness, or willful misconduct of the Consultant, Consultant's employees, or agents in any way related to the obligations or in the performance of design professional services under this Agreement as defined in Civil Code §2782.8, except where caused by the sole or active negligence, or willful misconduct of the City. The costs to defend charged to the Consultant relating to design professional services shall not exceed the Consultant's proportionate percentage of fault per Civil Code §2782.8 and against all claims, damages, losses, and expenses including attorney fees arising out of the performance of the work described herein, caused in whole or in part by any negligent act or omission of the Consultant, Consultant's employees, agents or subcontractors, except where caused by the active negligence, sole negligence, or willful misconduct of the City.

SECTION 10 **Civil Rights Compliance/Equal Opportunity Assurance**

Every supplier of materials and services and all consultants doing business with the City of Capitola shall be in compliance with the applicable provisions of the Americans with Disabilities Act of 1990, and shall be an equal opportunity employer as defined by Title VII of the Civil Rights Act of 1964 and including the California Fair Employment and Housing Act of 1980. As such, consultant shall not discriminate against any person on the basis of race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, age or sex with respect to hiring, application for employment, tenure or terms and conditions of employment. Consultant agrees to abide by all of the foregoing statutes and regulations.

SECTION 11 **Legal Action/Attorneys' Fees**

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which he or she may be entitled. The laws of the State of California shall govern all matters relating to the validity, interpretation, and effect of this Agreement and any authorized or alleged changes, the performance of any of its terms, as well as the rights and obligations of Consultant and the City.

SECTION 12 **Assignment**

This Agreement shall not be assigned without first obtaining the express written consent of the Director after approval of the City Council.

SECTION 13 **Amendments**

This Agreement may not be amended in any respect except by way of a written instrument which expressly references and identifies this particular Agreement, which expressly states that its purpose is to amend this particular Agreement, and which is duly executed by the City and Consultant. Consultant acknowledges that no such amendment shall be effective until approved and authorized by the City Council, or an officer of the City when the City Council may from time to time empower an officer of the City to approve and authorize such amendments. No representative of the City is authorized to obligate the City to pay the cost or value of services beyond the scope of services set forth in Appendix Two. Such authority is retained solely by the City Council. Unless expressly authorized by the City Council, Consultant's compensation shall be limited to that set forth in Appendix Two.

SECTION 14 Miscellaneous Provisions

1. *Project Manager.* Director reserves the right to approve the project manager assigned by Consultant to said work. No change in assignment may occur without prior written approval of the City.
2. *Consultant Service.* Consultant is employed to render professional services only and any payments made to Consultant are compensation solely for such professional services.
3. *Licensure.* Consultant warrants thereby represents that he or she has an established trade, occupation, or business in the same nature of services Consultant is performing under this Agreement. Consultant warrants that he or she has complied with any and all applicable governmental licensing requirements.
4. *Other Agreements.* This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter, and no other agreement, statement or promise related to the subject matter of this Agreement which is not contained in this Agreement shall be valid or binding.
5. *City Property.* Upon payment for the work performed, or portion thereof, all drawings, specifications, records, or other documents generated by Consultant pursuant to this Agreement are, and shall remain, the property of the City whether the project for which they are made is executed or not. The Consultant shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information and reference in connection with the City's use and/or occupancy of the project. The drawings, specifications, records, documents, and Consultant's other work product shall not be used by the Consultant on other projects, except by agreement in writing and with appropriate compensation to the City.
6. *Consultant's Records.* Consultant shall maintain accurate accounting records and other written documentation pertaining to the costs incurred for this project. Such records and documentation shall be kept available at Consultant's office during the period of this Agreement, and after the term of this Agreement for a period of three years from the date of the final City payment for Consultant's services.
7. *Independent Contractor.* In the performance of its work, it is expressly understood that Consultant, including Consultant's agents, servants, employees, and subcontractors, is an independent contractor solely responsible for its acts and omissions, and Consultant shall not be considered an employee of the City for any purpose. Consultant expressly warrants not to represent, at any time or in any manner, that Consultant is an employee of the City.
8. *Conflicts of Interest.* Consultant stipulates that corporately or individually, its firm, its employees and subcontractors have no financial interest in either the success or failure of any project which is, or may be, dependent on the results of the Consultant's work product prepared pursuant to this Agreement.
9. *Notices.* All notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given and fully received when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed to the respective parties as follows:

CITY
CITY OF CAPITOLA
420 Capitola Avenue
Capitola, CA 95010
831-475-7300

CONSULTANT
Verde Design, Inc.
2455 The Alameda
Santa Clara, CA 95050
408-985-7200

By: _____
Benjamin Goldstein, City Manager

By: _____

Dated: _____

Dated: _____

Approved as to Form:

Samantha W. Zutler, City Attorney

APPENDIX ONE

Scope of Services

**Verde Design, Inc.
Fee Schedule**

Item 6 E.

Verde Design

Date: January 31, 2023

PROJECT: Jade Street Park Universally Accessible Playground Design

CLIENT: City of Capitola

PROJECT NUMBER: 23003002148M

	TASKS	ANDRES PD	DAN PD	BILL DOD	TODD SPM	COURTNEY PE	DEREK PIC	Verde Total Fees	IFand Survey	TOTAL FEES
COMMUNITY OUTREACH & CONCEPTUAL DESIGN										
1	Establish Files & Admin. Procedures	1.0			1.0			\$415.00		\$415.00
2	KO meeting and Site Walk	5.0			4.0		2.0	\$2,355.00		\$2,355.00
3	Utility Company & Existing Utilities Review	2.0			2.0			\$830.00		\$830.00
4	Site Topographical Survey	2.0			0.5			\$455.00	\$8,300.00	\$8,755.00
5	Project Schedule				1.0			\$250.00		\$250.00
6	Review City, Utility and Consultant Data	2.0			2.0			\$830.00		\$830.00
7	Preliminary Program & Use Relationship Graphics	12.0	8.0	8.0	4.0		1.0	\$6,565.00		\$6,565.00
8	Review Meeting with City Staff #2	5.0			4.0		2.0	\$2,355.00		\$2,355.00
9	Community Meeting #1	6.0			6.0		4.0	\$3,550.00		\$3,550.00
10	Community Pop-Up at Jade St Park	6.0			5.0			\$2,240.00		\$2,240.00
11	Online Survey #1	8.0	4.0		4.0		1.0	\$3,245.00		\$3,245.00
12	Develop Schematic Alternative Plans (2 total)	14.0	12.0	10.0	4.0		1.0	\$8,055.00		\$8,055.00
13	Prepare Preliminary Estimate of Const Cost one for each	6.0			2.0		1.0	\$1,755.00		\$1,755.00
14	Staff Review Meeting #3	5.0			5.0		3.0	\$2,870.00		\$2,870.00
15	Revise Schematic Alternative Design	8.0	4.0	4.0	4.0		1.0	\$4,245.00		\$4,245.00
16	Community Meeting #2	6.0			6.0		4.0	\$3,550.00		\$3,550.00
17	Community Pop Up Mtg at Jade Street Park	6.0			5.0			\$2,240.00		\$2,240.00
18	Online Survey #2	8.0	4.0		4.0		1.0	\$3,245.00		\$3,245.00
19	Prepare Draft Alternative Conceptual Plans	14.0	12.0	8.0	4.0		1.0	\$7,555.00		\$7,555.00
20	Preliminary Construction Estimate	5.0			2.0		0.5	\$1,457.50		\$1,457.50
21	Review Meeting with City Staff #4	5.0			4.0		2.0	\$2,355.00		\$2,355.00
22	Presentation Materials for City Council Meeting	4.0			4.0		1.0	\$1,925.00		\$1,925.00
23	City Council Meeting #1				4.0			\$1,000.00		\$1,000.00
24	Prepare Final Preferred Alternative Plan	12.0	8.0	5.0	3.0		1.0	\$5,565.00		\$5,565.00
25	Update Preliminary Construction Estimate	3.0			2.0		1.0	\$1,260.00		\$1,260.00
26	Report - Program, Process & Final Preferred Plan	5.0			5.0		1.0	\$2,340.00		\$2,340.00
27	Presentation Materials for City Council Meeting	3.0			3.0			\$1,245.00		\$1,245.00
28	City Council Meeting #2				4.0			\$1,000.00		\$1,000.00
29	Project Administration	6.0			6.0			\$2,490.00		\$2,490.00
Reimbursables								\$1,500.00		\$1,500.00
SUBTOTAL:		159.0	52.0	35.0	104.5	0.0	28.5	\$78,742.50	\$8,300.00	\$87,042.50



VERDE DESIGN

Charge Rate Schedule

Effective until December 31, 2023

The following chart outlines the current charge rate for professional and office costs. Reimbursable rates and expenses are shown at the bottom.

Project Rates

Principal	\$265.00 per hour
Project Manager/Construction Manager	
Level Four	\$250.00 per hour
Level Three	\$230.00 per hour
Level Two	\$185.00 per hour
Level One	\$170.00 per hour
Project Engineer	
Level II	\$190.00 per hour
Level I	\$175.00 per hour
IT Manager	\$185.00 per hour
CAD Manager	\$180.00 per hour
Project Designer	\$165.00 per hour
Job Captain/Staff Engineer/Construction Administrator	\$155.00 per hour
Draftsperson Level II	\$150.00 per hour
Draftsperson Level I	\$145.00 per hour
Project Administrator	\$90.00 per hour
Intern	\$80.00 per hour

Reimbursable Rates

Blueprints, Printing and Reproductions	Cost plus 10%
Sub Consultant Services	Cost plus 10%

Reimbursable Expenses

Blueprints and Reproductions	Travel Expenses
Photography	Parking and Toll Expenses
Models and Renderings	Permit Fees
Postage/Overnight Mail Service	Courier Delivery Service

Charge Rate Schedule is subject to revisions.

APPENDIX TWO Fees and Payments

For the services performed, City will pay consultant on a not-to-exceed, lump sum basis upon satisfactory completion of the services and delivery of work products. Payments will be issued monthly as charges accrue.

Consultant hereby represents and warrants, based upon Consultant's independent determination of the time and labor, which will be required to perform said services, that Consultant will provide all said services at a cost which will not exceed the maximum price set forth in this agreement for Consultant's services. Consultant hereby assumes the risk that Consultant will perform said services within this maximum price constraint and Consultant acknowledges that its inability to do so shall not excuse completion of the services and shall not provide a basis for additional compensation.

Expenses may include travel, meals and lodging while traveling, materials other than normal office supplies, reproduction and printing costs, equipment rental, computer services, service of subconsultants or subcontractors, and other identifiable job expenses. The use of Consultant's vehicles for travel shall be paid at the current Internal Revenue Service published mileage rate.

In no event shall the total fee charged for the scope of work set forth in Appendix One exceed the total budget of \$87,053 (Eighty-Seven Thousand Fifty-Three Dollars and Zero Cents), without specific, written advance authorization from the City.

Payments shall be made monthly by the City, based on itemized invoices from the Consultant which list a brief description of the services performed, the date the services were performed, the hours spent and by whom, and a brief description of the actual costs and expenses incurred. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person. Such payments shall be for the invoice amount. The monthly statements shall contain the following affidavit signed by a principal of the Consultant's firm:

"I hereby certify as principal of the firm of Verde Design, Inc, that the charge of \$87,053 as summarized above and shown in detail on the attachments is fair and reasonable, is in accordance with the terms of the Agreement dated February 9, 2023 and has not been previously paid."

Capitola City Council

Agenda Report

Meeting: February 9, 2023

From: Public Works Department

Subject: Prospect Walking Path Repair and Continued Maintenance



Recommended Action: Provide direction to staff on the repair, continued maintenance and future use of the Prospect Walking Path.

Background: The City entered into an agreement with the Union Pacific Railroad Company (UPRR) in October of 2004 to “construct, maintain, use, repair, renew and reconstruct the three existing stairways and connecting walking path” located along the railway corridor between Prospect Avenue and Cliff Drive as shown in Figures 1 and 2 below in in Schedule 1 of the agreement (Attachment 1). All three stairways were existing structures non-City installed in 2004. The City reconstructed the most eastern stairway and railing immediately above, and connecting to, Wharf Road in 2006. Santa Cruz County Regional Transportation Commission (RTC) acquired the rail corridor from UPRR in 2012.

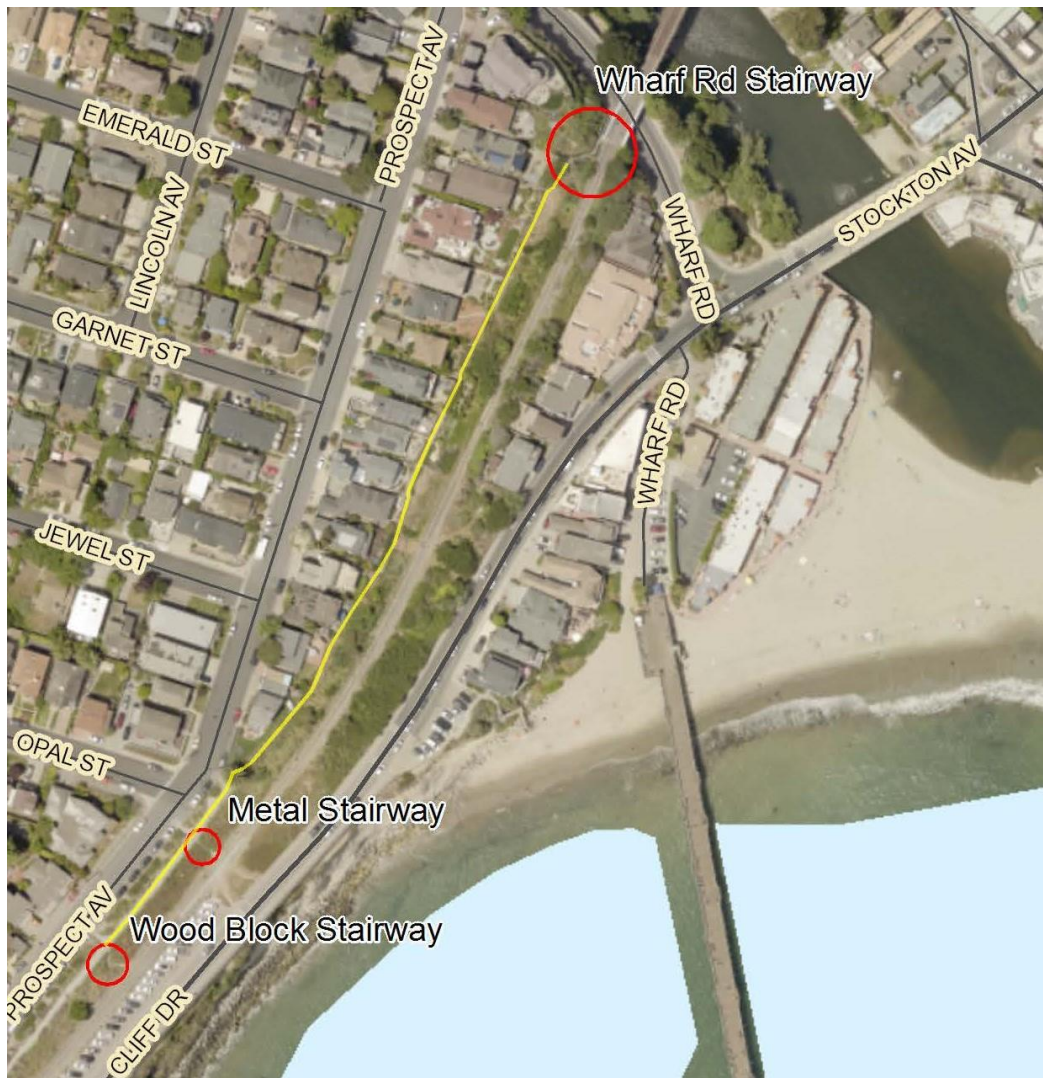


Figure 1. Walking Path and Stairways Maintained by the City - Overview



Figure 2. Stairways Maintained by the City

During the recent storms, several slope failures occurred in the area the City maintains under this agreement. Two smaller failures are on the western edge of the walking path, and a third, more significant, slope failure is adjacent to private property encroachments at 1400 and 1410 Prospect Avenue. These slope failures are creating an unstable and unsafe condition for the walking path above, see Figures 3 and 4.



Figure 3. Slope Failure Locations Overview



Figure 4. Slope Failures – West



Figure 5. Slope failure adjacent to 1400 and 1410 Prospect Avenue

City Staff has been in contact with the RTC regarding this slope failure. The RTC has informed the City that the RTC, as owner of the property, will stabilize the slope but will not restore the slope for a navigable trail.

Discussion: Staff has identified three potential options for the continued maintenance and use of the Prospect Walking Path.

1. **Negotiate Termination of the Agreement and abandon the walking path.** Under this scenario, the City would approach RTC to discuss terminating the Agreement. Following termination the City would likely be responsible for removing the staircases within 90 days and restoring the property to its original (2004) condition. RTC would nonetheless stabilize the existing slope failures. Most of the benches on the eastern park space portion of the walking path are located just outside the RTC property in the City's right of way. Thus, if the City and RTC terminate the Agreement, the City would not be responsible for removing the benches in this eastern park space portion of the walking path.
2. **Repair the walking path in place.** Under this scenario, the City would apply for FEMA Public Assistance Funding to repair the failed slope to pre-storm conditions. Federal design and bidding requirements would apply, and the City would need to execute a Right of Entry Agreement with the RTC. It is likely that similar failures will occur along the walking path with subsequent storm events.
3. **Relocate the walking path inland from the failed slope.** Under this scenario, the City would apply for FEMA Public Assistance Funding, and potentially be eligible for FEMA Hazard Mitigation Funding, to relocate the walking path further inland from the current top of slope in the areas where there are private encroachments into the railroad corridor right of way. The City would collaborate with the RTC to remove the encroachments and then reconstruct the trail in a more stable location. This scenario would reduce the likelihood of future slope failure affecting the usability of the walking path.

Applying for FEMA reimbursement and/or project funds significantly lengthens the timeline for resolution of the slope failures. The City must prioritize FEMA-funded projects, both by FEMA program guidelines and workload necessity. Considering the larger capital projects the City must address due to storm damage, such as the Municipal Wharf and Stockton Bridge, the repair of the walking path is likely to be deferred to later in the process.

Fiscal Impact: The fiscal impact varies depending on the direction given by Council.

Option 1 could be completed at a relatively low cost to the City, however, a permanent blockage of the stairs leading up from Wharf Road to the walkway would be required. There would also be marginal cost savings to the City by not having to maintain the stairways and walking path.

Option 2 construction cost is estimated at \$50,000. Option 3 would have a similar capital cost to the City but would require staff time to assist the RTC to remove private encroachments from the railroad corridor right of way. However in the long term, Option 3 would reduce City costs as the path would be less susceptible to future slope failures. Both options would require the design and construction of the repair to meet federal bidding guidelines to be eligible for FEMA funding and a Right of Entry Agreement with the RTC.

Attachments:

1. Maintenance Agreement for Stairways and Walking Path

Report Prepared By: Jessica Kahn, Public Works Director

Reviewed By: Julia Moss, City Clerk; Tamar Burke, Assistant City Attorney

Approved By: Jamie Goldstein, City Manager

**LICENSE FOR MAINTENANCE OF STAIRWAYS
ON RAILROAD PROPERTY**

**Duplicate Original
Railroad Copy**

THIS AGREEMENT is made this 5TH day of OCTOBER, 2004, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware Corporation ("UP" or Licensor) and the **CITY OF CAPITOLA**, whose address is 420 Capitola Avenue, Capitola, CA 95010 ("City" or "Licensee").

WHEREAS, certain stairways with a connecting walking path have previously been constructed on Licensor's property by parties unknown in order to facilitate recreational users accessing the adjacent ocean beach.

WHEREAS, City wishes to maintain and repair the stairways and walking path due to the frequent use of the same by pedestrians seeking such recreational access to ocean beach.

WHEREAS, City has also agreed to install and maintain additional fencing for access to that stairway closest to the southerly end of Licensor's bridge over Soquel Creek.

NOW THEREFORE, IT IS AGREED as follows:

Section 1. RIGHTS GRANTED.

A. Subject to the terms and conditions of this Agreement, UP hereby grants to Licensee, its successors and assigns, a license to construct, maintain, use, repair, renew and reconstruct the three (3) existing stairways and connecting walking path which are located at Licensor's right of way on UP's Santa Cruz Subdivision in the City of Capitola, County of Santa Cruz, State of California in the locations shown on the print dated June 11, 2004, marked **Schedule 1**, which is attached hereto and hereby made a part hereof (hereinafter the "Stairways", "Walking Path" or the "Licensed Area").

B. The rights granted herein are made subject to and subordinate to the prior and continuing right of UP, its successors and assigns, to use all of the tracks and property adjacent to and above the Stairways and Walking Path in the performance of its duty as a common carrier, and there is reserved unto UP, and its successors and assigns, the right to construct, reconstruct, maintain, repair, use and operate existing or future additional railroad tracks, track appurtenances, fiber optic or signal lines and facilities, pipe, and wire lines over, under and across the property, including without limitation, the Licensed Area.

C. The rights granted herein are given only insofar as UP may lawfully grant the same and UP makes no covenant or warranty of title, or for quiet possession or against encumbrances. No damages shall be recoverable from UP because of any dispossession of Licensee or because of failure of, or defect, in UP's title to the Property. The rights granted herein are also subject to any and all outstanding or existing licenses, leases, licenses, restrictions, conditions, covenants, claims of title and other rights (whether public or private and whether recorded or unrecorded) including, but not limited to, those for communication, pipeline and wire line facilities and also to any and all extensions and renewals thereof.

D. Licensee, by virtue of this license, shall not encroach upon, or occupy or use any other property of UP.

E. UP grants to Licensee only the right for the purposes aforesaid and Licensee shall not use or permit use of the Licensed Area for any other purpose.

F. If the right granted herein shall result in a substantial operational or safety problem for UP, then the parties shall negotiate in good faith to resolve such problem to the mutual satisfaction of the parties.

G. Fiber optic cable systems may be buried on UP's right-of-way. Protection of the fiber optic cable system is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Licensee, or its contractors, shall telephone UP during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through Friday, except for holidays) at 1-800-336-9193 (also a 24-hour seven day number for emergency calls) to determine if fiber optic cable is buried anywhere on the right-of-way to be used by Licensee. If it is, Licensee, or its contractors, will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the right-of-way.

H. Licensee acknowledges that UP would not have granted this License without Licensee's agreement to comply with the covenants in this Section 1, and that a breach of any covenant constitutes a material breach of this Agreement.

Section 2. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT; FLAGGING.

A. The Licensee confirms that all work described herein, will be performed by a contractor or contractors hired by the Licensee. The Licensee agrees to require each of its contractors, (and their respective subcontractors), to execute UP's form of Contractor's Right of Entry Agreement that is marked **Schedule 3**, attached hereto and hereby made a part hereof, and to provide UP the insurance binders or certificates set forth in Exhibit A-1 of the Contractor's Right of Entry Agreement before commencing any work on any UP property.

B. The Licensee shall also require its contractors/subcontractors to perform their construction work in such a manner so as not to endanger or delay the movement of trains, engines or cars of UP, and so as not to injure or endanger UP's officers, agents, employees or damage their property. The Licensee shall also require its contractors/subcontractors to give precedence to the movement of trains, engines and cars of UP, over the movement of vehicles or equipment or construction activities of the Licensee's contractors/subcontractors.

C. If at any time during the construction or reconstruction of the Stairways, UP deems that flagging protection is necessary, such flagging shall be provided by UP at no cost to UP as set forth in the Contractor's Right of Entry Agreement described in Section 2A above.

Section 3. LIABILITY.

A. To the extent permitted by law, Licensee shall save, protect, defend, indemnify and hold harmless UP, and its respective affiliates, and their respective officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses, fines and penalties of whatsoever nature, including court costs and attorney's fees, arising from and growing out of any injury or death of persons whomsoever (including officers, agents and employees of UP or the Licensee and of any contractor as well as other persons) or loss of or damage to property whatsoever (including property of or in the custody of UP, the

Licensee or any contractor as well as other property), when such injury, death, loss or damage occurs or arises from Licensee's presence upon, or use of, or actions in the Licensed Area.

Section 4. MAINTENANCE OF STAIRWAYS.

Licensee, at its sole cost and expense and without any contribution whatsoever from Licensor, shall at all times during the term of this Agreement repair and maintain the Stairways in good and clean condition and repair, including without limitation, control of pest and vegetation. Licensee further agrees to rebuild the existing wooden stairway and to construct a fence along the pathway directing pedestrians to the steel stairway that leads to Wharf Road.

Section 5. INSURANCE.

Licensee is self-insured. Licensee may self insure for the coverages provided in **Schedule 2**, as customary under its respective risk management programs; provided its self-insurance retention is in keeping with its net worth and cash flows and is consistent with that of other Licensees of its size and operation.

Section 6. TERMINATION; WAIVER OF BREACH; TERM.

A. UP may terminate this Agreement by giving Licensee notice of termination if Licensee defaults under any obligation of Licensee under this license and, if after written notice is given by UP to Licensee specifying the default, Licensee fails either to immediately begin to cure the default, or to complete the cure expeditiously but in any event within thirty (30) days after the default notice is given. A waiver by UP of a breach of Licensee of any covenant or condition of this Agreement shall not impair the right of UP to avail itself of any subsequent breach thereof.

B. UP may also terminate this Agreement by giving written notice to Licensee if safety and operational needs of UP are materially affected or impaired by Licensee's use of the Property, and UP and Licensee cannot come to any mutual agreement or understanding as to how Licensee, at Licensee's sole cost and expense, will eliminate such material effect or impairment.

C. This Agreement and the license and permission herein granted shall be effective as of the date first herein written, and shall remain in full force and effect until terminated as herein provided.

Section 7. REMOVAL OF STAIRCASES UPON TERMINATION

Within ninety (90) days after termination of this Agreement the Licensee, at its sole cost and expense, shall remove the Staircases from the Property and restore the Property to its original condition, failing in which UP may perform such activities at the expense of Licensee.

Section 8. NOTICES.

Any notices required or desired to be given under this Agreement shall be in writing and personally served, given by overnight express delivery, or given by mail. Telecopy notices shall be deemed valid only to the extent they are (a) actually received by the individual to whom addressed, and (b) followed by delivery of actual notice in the manner described above within three (3) business days thereafter. Any notice given by mail shall be sent, postage prepaid, by certified mail, return receipt requested, addressed to the party to receive at the following address or at such other address as the party may from time to time direct in writing:

UP: Union Pacific Railroad Company
ATTN: Gen. Mgr. Real Estate
Real Estate Department
1416 Dodge Street, WP001
Omaha, Nebraska 68102
Facsimile: (402) 997-3601/3602

Licensee: City of Capitola
ATTN: Public Works Director
420 Capitola Vaenue
Capitola, CA 95010
Facsimile: (831) 479-8879

Express delivery notices shall be deemed to be given upon receipt. Postal notices shall be deemed to be given three (3) days after deposit with the United States Postal Service.

Section 9. SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, but Licensee shall not assign this Agreement or any rights herein to any party without the prior written consent of UP.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the day and year first above written.

WITNESS:

LICENSOR

UNION PACIFIC RAILROAD COMPANY

By: 

Title: General Director-Real Estate


LICENSEE

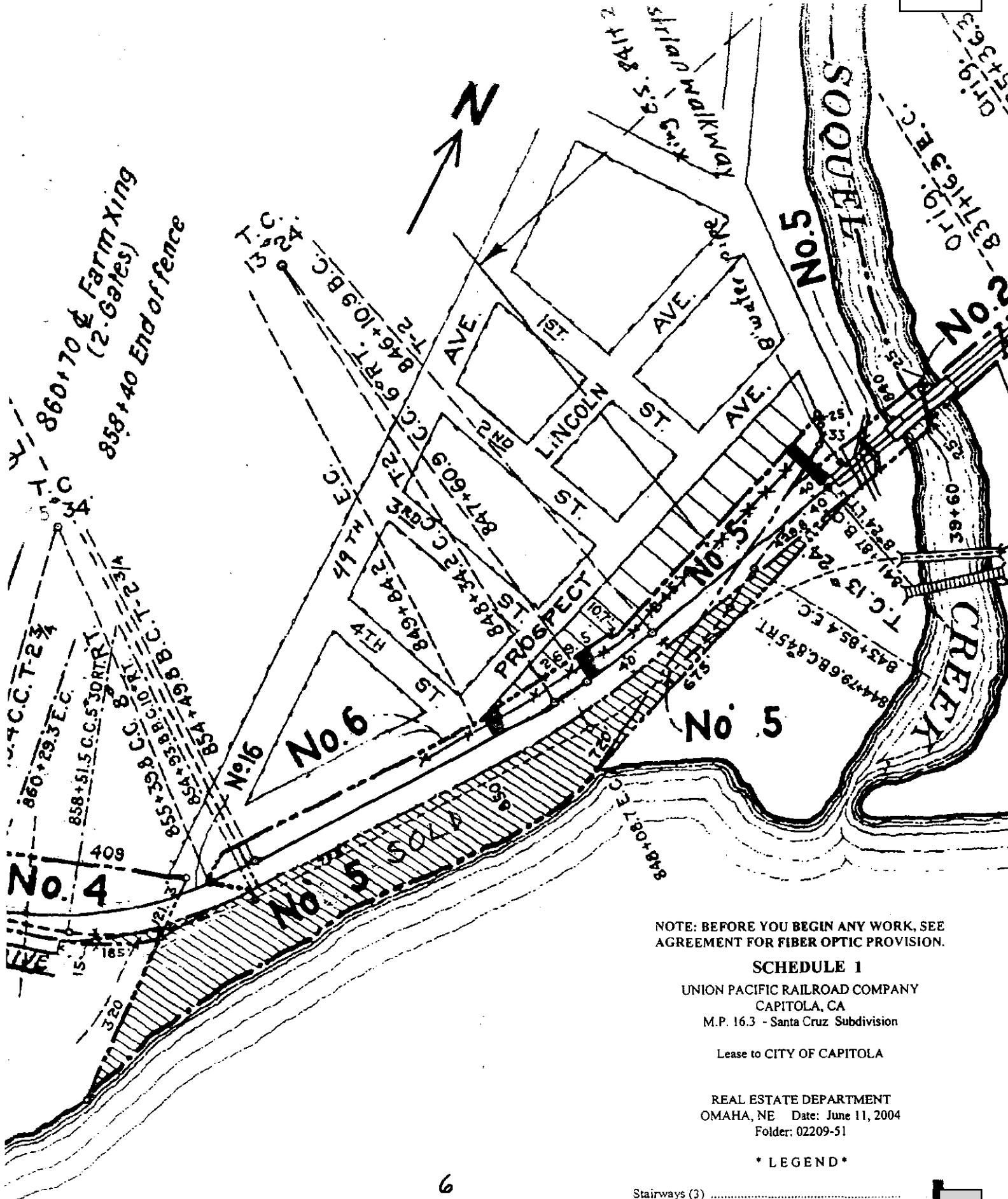
CITY OF CAPITOLA

By: 

Title: City manager

WITNESS:


Pamela Greeninger
CITY CLERK
9/27/04



NOTE: BEFORE YOU BEGIN ANY WORK, SEE
AGREEMENT FOR FIBER OPTIC PROVISION.

SCHEDULE 1

UNION PACIFIC RAILROAD COMPANY
CAPITOLA, CA
M.P. 16.3 - Santa Cruz Subdivision

Lease to CITY OF CAPITOLA

REAL ESTATE DEPARTMENT
OMAHA, NE Date: June 11, 2004
Folder: 02209-51

*** LEGEND ***

Stairways (3)
Walking Path
(RR)R/W Outlined

SCHEDULE 2**UNION PACIFIC RAILROAD
CONTRACT INSURANCE REQUIREMENTS**

Political Body and/or its Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a single limit of at least \$1,000,000 each occurrence or claim and an aggregate limit of at least 5,000,000. Coverage must be purchased on a post 1998 ISO or equivalent form, including but not limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability
- Products and completed operations

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- "For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law."
- The exclusions for railroads (except where the Job Site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.
- Separate general aggregate for the project
- Coverage for Railroad's employees shall not be excluded
- Waiver of subrogation

B. Business Automobile Coverage insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence or claim, including but not limited to coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- "For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law."
- Motor Carrier Act Endorsement- Hazardous materials clean up (MCS-90)

C. Workers Compensation and Employers Liability insurance including but not limited to:

- Political Body and/or its Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit, \$500,000 each employee

If Workers Compensation insurance will not cover the liability of Political Body and/or its Contractor in states that require participation in state workers' compensation fund, Political Body and/or its Contractor shall comply with the laws of such states. If Political Body and/or its Contractor is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation coverage. Coverage shall include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable. The policy shall also contain the following endorsement **which shall be indicated on the certificate of insurance:**

- Alternate Employer Endorsement

D. Umbrella or Excess Policies In the event Political Body and/or its Contractor utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

E. Railroad Protective Liability insurance naming only the Railroad as the insured with a combined single limit of \$1,000,000 per occurrence with a \$5,000,000 aggregate. The policy shall be broad form coverage for "Physical Damage to Property" (ISO Form CG 00 35 07 98 or equivalent). A binder stating the policy is in place must be submitted to the Railroad until the original policy is forwarded to the Railroad.

Other Requirements

F. Punitive damage exclusion must be deleted, **which deletion shall be indicated on the certificate of insurance.**

G. Political Body and/or its Contractor agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against Railroad. Political Body and/or its Contractor further waives its right of recovery, and its insurers also waive their right of

subrogation against Railroad for loss of its owned or leased property or property under its care, custody and control. Political Body and/or its Contractor's insurance shall be primary with respect to any insurance carried by Railroad. All waivers of subrogation **shall be indicated on the certificate of insurance.**

H. All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and shall name Railroad as an additional insured. **Severability of interest and naming Railroad as additional insured shall be indicated on the certificate of insurance.**

I. Prior to commencing the Work, Political Body and/or its Contractor shall furnish to Railroad original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments, and reference the contract audit/folder number if available. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing of any cancellation or material alteration. **Upon request from Railroad, a certified duplicate original of any required policy shall be furnished.**

J. Any insurance policy shall be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

K. Political Body and/or its Contractor **WARRANTS** that this Agreement has been thoroughly reviewed by Political Body and/or its Contractor's insurance agent(s)/broker(s), who have been instructed by Political Body and/or its Contractor to procure the insurance coverage required by this Agreement and acknowledges that Political Body and/or its Contractor insurance coverage will be primary.

L. If Political Body and/or its Contractor fails to procure and maintain insurance as required, Railroad may elect to do so at the cost of Political Body and/or its Contractor plus a 25% administration fee.

M. The fact that insurance is obtained by Political Body and/or its Contractor or Railroad on behalf of Political Body and/or its Contractor shall not be deemed to release or diminish the liability of Political Body and/or its Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.

SCHEDULE 3

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT is made and entered into as of the _____ day of _____, 20____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (the "Railroad"); and _____, a _____ corporation (the "Contractor").

RECITALS:

Contractor has been hired by _____ to perform work relating to _____

_____ (the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of _____ [, which work is the subject of a contract dated _____ between _____

Railroad and _____].

Contractor has requested Railroad to permit it to perform the work on the portion of Railroad's property shown on the print dated _____, marked **Exhibit A**, attached hereto and hereby made a part hereof, and Railroad is agreeable thereto, subject to the following terms and conditions.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this agreement, all references in this agreement to the Contractor shall include the Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

The Railroad hereby grants to the Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing any work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS A, B, C AND D.

The terms and conditions contained in **Exhibit A**, **Exhibit B**, **Exhibit C** and **Exhibit D**, attached hereto, are hereby made a part of this agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.

A. The Contractor shall bear any and all costs and expenses associated with any work performed by the Contractor, or any costs or expenses incurred by the Railroad relating to this agreement.

B. The Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

C. The Contractor, at its own expense, shall adequately police and supervise all work to be performed by the Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of the Contractor for safe conduct and adequate policing and supervision of the Contractor's work shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications involving the work, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad Representative, or by compliance by the Contractor with any requests or recommendations made by the Railroad Representative.

ARTICLE 5 - TERM; TERMINATION.

A. The grant of right herein made to Contractor shall commence on the date of this agreement, and continue until _____, unless sooner terminated as herein provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad property.

B. This agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 6 - CERTIFICATE OF INSURANCE.

A. Before commencing any work, Contractor will provide Railroad with the insurance binders, policies, certificates and/or endorsements set forth in **Exhibit C** of this agreement.

B. All insurance correspondence, binders, policies, certificates and/or endorsements shall be directed to:

Union Pacific Railroad Company

 [Insert mailing address]

Attn: _____

ARTICLE 7 - DISMISSAL OF CONTRACTOR/SUBCONTRACTOR EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad property any employee of Contractor or any subcontractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad property.

ARTICLE 8 - ADMINISTRATIVE FEE.

Contractor shall pay to Railroad _____ Dollars (\$_____) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this agreement.

ARTICLE 9 - CROSSINGS.

No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

ARTICLE 10.- EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored on Railroad property without the prior written approval of the Railroad.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: _____
Title: _____

(Name of Contractor)

By: _____
Title: _____

EXHIBIT B TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

A. The Contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by the Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Railroad Representative will determine and inform the Contractor whether a flagman need be present and whether the Contractor need implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by the Railroad, such services will be provided at Contractor's expense with the understanding that if the Railroad provides any flagging or other services, the Contractor shall not be relieved of any of its responsibilities or liabilities set forth herein. Contractor shall promptly pay to Railroad all charges connected with such services within thirty (30) days after presentation of a bill.

B. The rate of pay per hour for each man will be the prevailing hourly rate in effect for an eight hour day for the class of men used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect on the day of execution of this agreement. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays; two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between the Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized Governmental Agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, the Contractor shall pay on the basis of the new rates and charges.

C. Reimbursement to the Railroad will be required covering the full eight hour day during which any flagman is furnished, unless he can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by said flagman following his assignment to work on the project for which the Railroad is required to pay the flagman and which could not reasonably be avoided by the Railroad by assignment of such flagman to other work, even though the Contractor may not be working during such time. When it becomes necessary for the Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, the Contractor must provide the Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5)-days notice of cessation is not given, the Contractor will still be required to pay flagging charges for the five (5)-day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to the Railroad if flagging service are needed again after such five day cessation notice has been given Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of the Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Railroad without liability to the Contractor or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Railroad's property, and others) and the right of the Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.

A. The Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of the Railroad, including without limitation, the operations of the Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by the Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of the Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

B. Operations of the Railroad and work performed by the Railroad personnel and delays in the work to be performed by the Contractor caused by such railroad operations and work are expected by the Contractor, and Contractor agrees that the Railroad shall have no liability to Contractor, its subcontractors or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of the Railroad and third parties so as to avoid interference with railroad operations. The safe operation of the Railroad takes precedence over any work to be performed by the Contractor.

Section 4. LIENS.

The Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. The Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of the Railroad for any such work performed. The Contractor shall indemnify and hold harmless the Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If the Contractor fails to promptly cause any lien to be released of record, the Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. The Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.

B. In addition to other indemnity provisions in this Agreement, the Contractor shall indemnify, defend and hold the Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of the Contractor, its contractor, agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this agreement, the Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by the Contractor. The Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. The Contractor shall at a minimum comply with the Railroad's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by the Railroad's own forces. As a part of the Contractor's safety responsibilities, the Contractor shall notify the Railroad if the Contractor determines that any of the Railroad's safety standards are contrary to good safety practices. The Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter on the job site.

B. Without limitation of the provisions of paragraph A above, the Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C. The Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. The Contractor shall promptly notify the Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. The Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of the Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

D. If and when requested by the Railroad, the Contractor shall deliver to the Railroad a copy of the Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require the Contractor to correct any deficiencies in the Safety Plan. The terms of this agreement shall control if there are any inconsistencies between this agreement and the Safety Plan.

Section 8. INDEMNITY.

A. To the extent not prohibited by applicable statute, the Contractor shall indemnify, defend and hold harmless the Railroad, its affiliates, and its and their officers, agents and employees ("Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, the Contractor, or any employee of the Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by the Contractor, or (ii) any act or omission of the Contractor, its officers, agents or employees, or (iii) any breach of this agreement by the Contractor.

B. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.

C. The Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by the Contractor's own employees. The Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Railroad under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.

D. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this agreement may be relied upon or used by the Contractor in any attempt to assert liability against the Railroad.

E. The provisions of this Section 8 shall survive the completion of any work performed by the Contractor or the termination or expiration of this agreement. In no event shall this Section 8 or any other provision of this agreement be deemed to limit any liability the Contractor may have to any Indemnified Party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

In the event the Railroad authorizes the Contractor to take down any fence of the Railroad or in any manner move or disturb any of the other property of the Railroad in connection with the work to be performed by Contractor, then in that event the Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. The Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by the Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by the Contractor shall in no way impair the right of the Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this agreement shall be effective unless made in writing and signed by the Contractor and the Railroad. This agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between the Contractor and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by the Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

The Contractor shall not assign or subcontract this agreement, or any interest therein, without the written consent of the Railroad. The Contractor shall be responsible for the acts and omissions of all subcontractors, and shall require all subcontractors to maintain the insurance coverage required to be maintained by the Contractor as provided in this agreement, and to indemnify the Contractor and the Railroad to the same extent as the Railroad is indemnified by the Contractor under this agreement.

**EXHIBIT C
TO
CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT**

**Union Pacific Railroad Company
Insurance Provisions For
Contractor's Right of Entry Agreement**

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a single limit of at least \$5,000,000 each occurrence or claim and an aggregate limit of at least \$10,000,000. Coverage must be purchased on a post 1998 ISO or equivalent form, including but not limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability (Not less than the replacement value of the portion of the premises occupied)
- Products and completed operations

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- "For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law."
- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.
- Coverage for Contractor's (and Railroad's) employees shall not be excluded
- Waiver of subrogation

B. Business Automobile Coverage insurance. This insurance shall contain a combined single limit of at least \$5,000,000 per occurrence or claim, including but not limited to coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned

The policy shall also contain the following endorsements **which shall be indicated on the certificate of insurance:**

- "For purposes of this insurance, Union Pacific Railroad payments related to the Federal Employers Liability Act or a Union Pacific Wage Continuation Program or similar programs are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law."
- The exclusions for railroads (except where the Job site is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.
- Motor Carrier Act Endorsement- Hazardous materials clean up (MCS-90) if required by law.

C. Workers Compensation and Employers Liability insurance including but not limited to:

- Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement

- Employers' Liability (Part B) with limits of at least
\$500,000 each accident, \$500,000 disease policy limit
\$500,000 each employee

If Workers Compensation insurance will not cover the liability of Contractor in states that require participation in state workers' compensation fund, Contractor shall comply with the laws of such states. If Contractor is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation coverage. Coverage shall include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy shall also contain the following endorsement **which shall be indicated on the certificate of insurance:**

- Alternate Employer Endorsement

- D. **Umbrella or Excess Policies** In the event Contractor utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.
- E. **Railroad Protective Liability** insurance naming only the Railroad as the insured with a combined single limit of \$2,000,000 per occurrence with a \$6,000,000 aggregate. The policy shall be broad form coverage for "Physical Damage to Property" (ISO Form CG 00 35 07 98 or equivalent). A binder stating the policy is in place must be submitted to the Railroad until the original policy is forwarded to the Railroad.

Other Requirements

- F. Punitive damage exclusion must be deleted, **which deletion shall be indicated on the certificate of insurance.**
- G. Contractor agrees to waive its right of recovery, and its insurers, through policy endorsement, agree to waive their right of subrogation against Railroad. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under its care, custody and control. Contractor's insurance shall be primary with respect to any insurance carried by Railroad. All waivers of subrogation **shall be indicated on the certificate of insurance.**
- H. All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and shall name Railroad as an additional insured. **Severability of interest and naming Railroad as additional insured shall be indicated on the certificate of insurance.**
- I. Prior to commencing the Work, Contractor shall furnish to Railroad original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing of any cancellation or material alteration. **Upon request from Railroad, a certified duplicate original of any required policy shall be furnished.**
- J. Any insurance policy shall be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- K. Contractor **WARRANTS** that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement and acknowledges that Contractor's insurance coverage will be primary.
- L. The fact that insurance is obtained by Contractor or Railroad on behalf of Contractor shall not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of

this Agreement. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.

EXHIBIT D TO CONTRACTOR'S RIGHT OF ENTRY AGREEMENT**MINIMUM SAFETY REQUIREMENTS**

The term "employees" as used herein refer to all employees of the Contractor as well as all employees of any subcontractor or agent of the Contractor.

I. Clothing

- A. All employees of the Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, the Contractor's employees must wear:

- (i) Waist-length shirts with sleeves.
 - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
 - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

The Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with the contractor's or subcontractor's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers
 - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
 -
- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

The Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized workwear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractors must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. The Contractors will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of the Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of the Contractor's equipment is unsafe for use, the Contractor shall remove such equipment from the Railroad's property. In addition, the Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. The Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. The Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by the Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.
- D. All employees comply with the following safety procedures when working around any railroad track:

- (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
- (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
- (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
- (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
- (v) Before stepping over or crossing tracks, look in both directions first.
- (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.

E. All employees must comply with all federal and state regulations concerning workplace safety.

Capitola City Council

Agenda Report

Meeting: January 20, 2023

From: Police Department

Subject: Storm Update and General Special Event Permit for a Capitola Village Benefit Concert



Recommended Action: Receive update regarding the 2022-2023 Winter Storm Event and approve a General Special Event Permit for a Capitola Village Benefit Concert, including an Encroachment Permit and an Amplified Sound Permit.

Background: In February 2002, the City Council approved Resolution No. 3202, adopting a special event permit program and fee schedule. The purpose of the program was to provide regulations and guidelines for special events occurring within the City limits and to recover costs associated with those events. Special events are divided into two categories: general special events and minor special events. General special events are those with more than 200 attendees, or notable impacts on City services or a neighborhood. Minor special events are activities with fewer than 200 people and limited impacts. Minor special events can be approved by the City Manager, while all applications for new general special events must be presented to the Council for review and consideration.

Beginning in late December of 2022 and into January of 2023, the City of Capitola and the entire Santa Cruz County experienced a series of major winter storm events that resulted in flooding and significant damage to local Capitola businesses and residents. On January 4, 2023, in anticipation of an impending storm, the City Manager signed a Proclamation of Local Emergency and issued evacuation orders for the residents within Capitola Village, Riverview Drive, and Riverview Avenue (This order was later ratified by City Council during a Special Meeting on January 6, 2023). To date, the Finance Director has submitted initial damage estimates for approximately \$2,600,000 in lost City assets. The estimates for the local businesses and homes remain currently unknown.

In response to the winter storms, the community partnered with the Community Foundation Santa Cruz County (CFSSC) to coordinate fundraising efforts for Capitola Village and Soquel Village. According to the CFSSC website, they have already issued \$510,000 in disaster grants. With the outpouring of support and volunteer requests, the Capitola Recreation Division began compiling a list of volunteers to organize recovery efforts. On January 22, 2023, the City partnered with Save Our Shores and conducted a beach clean-up with the motto: *Capitola Strong*. The beach clean-up was a great success and opened further discussions about ways to generate support for the local community.

The idea of a benefit concert was developed by local bands, and many local volunteers began quickly formulating plans for a benefit concert for Capitola Village. To accomplish this benefit concert, the Business Improvement Agency (BIA) has submitted an application for a General Special Event Permit requesting to have a benefit concert series at Esplanade Park on Saturday, February 18, 2023, from noon until 6:00 PM. The concert will be open to the public with a beer garden to raise funds for donations.

Discussion: The applicant has applied for a one-day General Special Event Permit for Saturday, February 18, 2023, from 12:00 pm – 6:00 pm. The event encompasses a benefit concert at Esplanade Park to include four bands starting at noon and concluding by 6:00 pm. Sierra Nevada Brewery has generously donated a concession trailer and beer to be sold for proceeds. This event will be modeled after our Twilight Concert Series and City staff representatives Nikki Bryant LeBlond, Kelly Barreto, and Kaysie Anderson are assisting with the coordination.

The anticipated attendance is between 1,000 to 2,000 persons for this six-hour event. Due to the construction areas, the Village will be limited to vehicle traffic during the event. The Police Department will assist with the road closures and will be on foot patrol during the event. This event will be free and open to the public. Patrons are encouraged to find alternative modes of transportation and a bicycle parking lot will be set up. Attendees will be encouraged to visit all merchants and local restaurants in the Village. The applicant will supply the necessary restrooms and trash and recycling bins for this event.

A one-day ABC alcohol license has been approved and Mary Beth Cahalen from the BIA/Capitola Soquel Chamber of Commerce is the beverage coordinator for the age verification, drink ticket sales, and dispensing. 100% of the proceeds will be donated to CFSSC for future distribution. All the efforts for this event are donated.

Fiscal Impact: The event coordinator has requested that the City fees be waived for this event, including the bandstand and permit fees. Insurance and other incidentals will be purchased by the event coordinator.

Attachments:

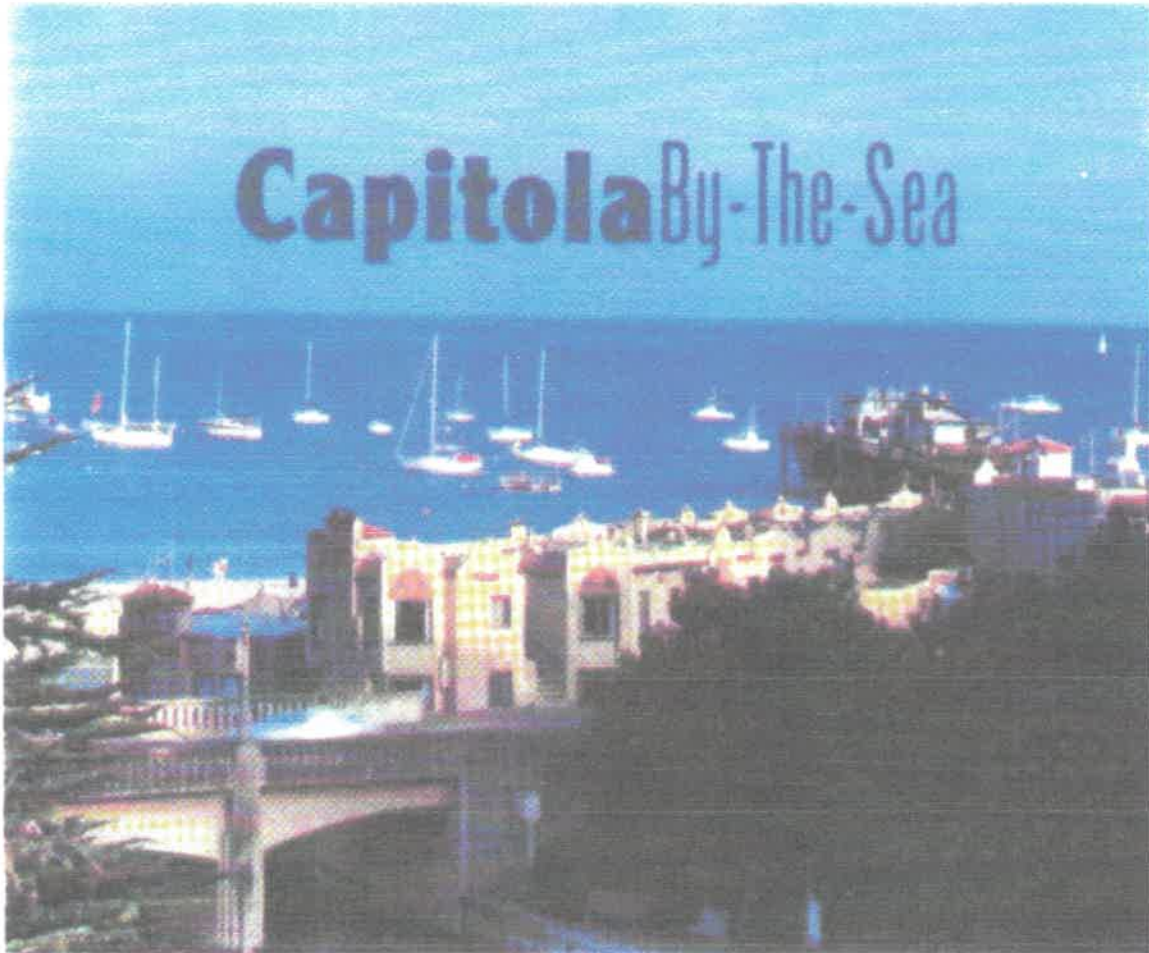
1. 2023 SE Permit Application – Benefit Concert on February 18, 2023

Report Prepared By: Andrew Dally, Chief of Police

Reviewed By: Julia Moss, City Clerk; Samantha Zutler, City Attorney

Approved By: Jamie Goldstein, City Manager

GENERAL SPECIAL EVENT PERMIT APPLICATION



CITY OF CAPITOLA

∞ Are admission, entry or vendor participant fees required? ☐ Yes ☒ No

∞ If yes, explain: Public admission fees: \$ N/A per person

Participant entry fees: \$ N/A per person

Vendor fees: \$ N/A per booth

Number of vendors: 1

How many vendors are for profit? N/A

How many vendors are nonprofit? N/A

∞ \$ 5,000-10,000 Total estimated gross receipts, including tickets, product and sponsorship sales from this event. Explain how this amount was computed. Indicate amount per item.

\$ 0 Admission fees

\$ 5.00 Product fees

\$ 0 Sponsorship

\$ 0 Participant entry fees

\$ 0 Other (Please specify): _____

∞ \$ _____ Total estimated expenses for this event.

\$ 0 Advertising

\$ 0 Wages, salaries

\$ 0 City services (police, fire, street closures)

\$ 0 Insurance

\$ 0 Business license fee

\$ 0 Other (Please specify): _____

∞ Is the organization a "tax exempt, nonprofit" organization? Yes ☒ No ☐

∞ \$ 5,000-10,000 Projected amount of revenue the Sponsoring Organization(s) will receive as a result of this event.

∞ Specify the organization(s) to receive funding: Community Foundation of Santa Cruz

∞ City sponsorship requested? ☒ Yes ☐ No If yes, please describe:

Waiving of the Event Permits Fees

OVERALL EVENT DESCRIPTION

∞ Will a staging/setup/assembly location be required? ☒ Yes ☐ No

∞ If yes, begin day/date: 2/18/2023 Start time: 8:00 ☒ AM/☐ PM

∞ Location: Esplanade Park

∞ Description of the scope of the setup/assembly work (Attach additional pages and drawings as needed): Band Set up, Beer Truck Set up and Check In Tables

∞ If yes, dismantle day date: 2/18/2023 Completion time: 8:00 ☐ AM / ☒ PM

∞ List the street(s) requiring closure as a result of this event. Include street names, day, date and time of closing and the time of reopening: Date: 2/18/2023

Time: 8:00 AM - 8:00 PM

Small portion of Esplanade Loop

City of Capitola to conduct street closures as needed (cost to be specified)

∞ List street(s) requiring the posting of "No Parking" signs. Indicate days, dates, and times needed and an explanation of necessity for "No Parking" zone: _____

Same as above

NOTE: "No Parking" signs will be posted twenty-four hours in advance of required days, dates and time. Cost for the posting of "No Parking" signs will be specified upon review of the application by City staff.

OVERALL EVENT DESCRIPTION (continued)

∞ Attach a diagram (please try to make diagram reasonably to scale), showing the overall layout and setup locations. Using the letters below, indicate the site for these on your diagram. See attached

- A Alcoholic and nonalcoholic concession
- B First-aid facilities
- C Tables and chairs
- D Fencing, barriers and/or barricades
- E Generator locations and/or sources of electricity
- F Canopies or tent locations
- G Booths, exhibits, displays or enclosures
- H Scaffolding, bleachers, platforms, stages, grandstands, related structures
- I Vehicles and/or trailers
- J Trash containers or dumpsters
- K Non-food vendor locations
- L Food concession and/or food preparation areas
- M Portable toilet locations

N Other related event components not covered above (describe separately)

∞ Please describe how food will be served at the event: Beer will be served out of a beer Truck

∞ Will food be cooked in the event area? ☐ Yes ☒ No

∞ If yes, specify method: ☐ Gas ☐ Electric ☐ Charcoal ☐ Other (specify):

∞ Does the event involve the sale or use of alcoholic beverages? ☒ Yes ☐ No

∞ If yes, please describe: Beer from Sierra Nevada

∞ If alcohol is to be sold, how will the alcohol sales be regulated? By Ticket Sales

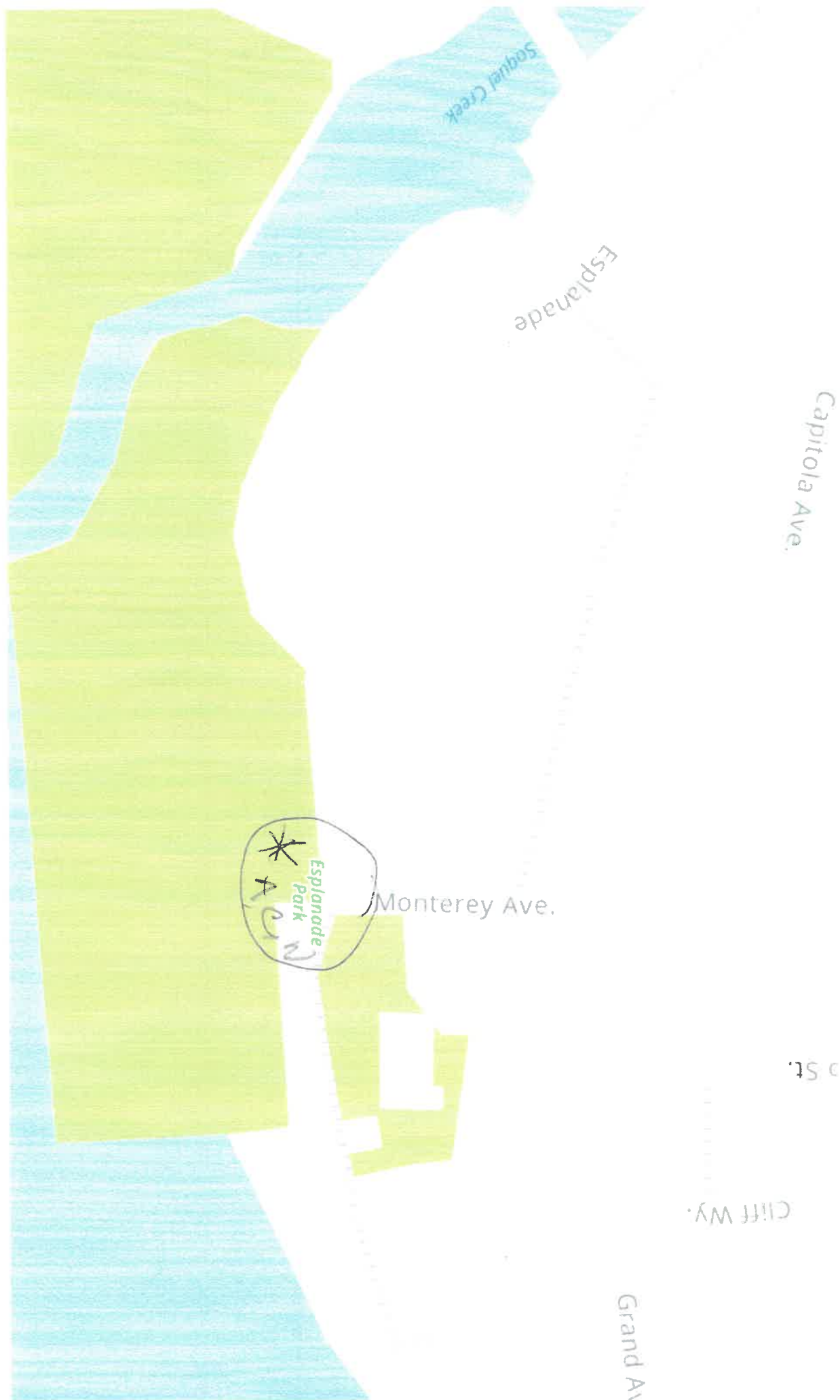
Please attach a copy of your ABC license.

∞ Will there be items or services sold at the event? ☒ Yes ☐ No

∞ If yes, please describe: Beer will be sold possibly T-shirts

∞ Do the vendors have City of Capitola business licenses? ☒ Yes ☐ No

Food Vendors



OVERALL EVENT DESCRIPTION (continued)

Portable and/or permanent toilet facilities:

- ∞ Number of portable toilets: 9 (Recommended: 1 for every 250 people)
- ∞ Number of ADA-accessible toilets: 1 (Recommended: 10% of total toilets)

(NOTE: Unless the Applicant can substantiate the availability of both accessible and non-accessible toilet facilities in the immediate area of the site, the above is required. Portable toilet facilities must be in place 24 hours in advance, cleaned and sanitized daily during the event, and must be removed by 8:00 a.m. the next business day following the event. Location sites for portable toilets must be pre-approved prior to installation.)

- ∞ Number of trash receptacles: 0
- ∞ Number of dumpsters with lids: 0 (Recommended 1 per 400 people)
- ∞ Number of recycling containers: 0 (Voluntary)
- ∞ Describe the plan for cleanup and removal of waste and garbage during and after the event:

Port a Potties will be located in
Theatre parking lot

(Note: It is the event organizer's responsibility to dispose of waste and garbage daily throughout the term of the event, unless otherwise contracted with City staff, which will require a fee. Immediately upon conclusion of the event, the venue must be returned to a clean condition. Street sweeping can be arranged with City crews for an additional fee.)

PARKING PLAN – SHUTTLE PLAN – MITIGATION OF IMPACT

- ∞ Please provide a detailed description or diagram that indicates the proposed parking plan and/or shuttle plan for the event. Include a description of the parking plan/shuttle plan for the disabled.

Parking for Bands

- ∞ Describe plan to notify those residents, businesses, churches, etc. that will be impacted by this event.

Social Media, Event Posters,
Radio

- ∞ Does this event involve a moving route of any kind along streets or sidewalks?

☐ Yes ☒ No

- ∞ If yes, highlight your proposed route on the enclosed map, indicating the directions of travel, and provide a written narrative to explain your route and its impact.

∞ N/A

- ∞ Does this event involve a fixed venue site? ☒ Yes ☐ No

- ∞ If yes, highlight the site on the enclosed map, showing all the streets impacted by the event.

Esplanade Park

ENTERTAINMENT – ATTRACTION – RELATED EVENT ACTIVITIES

∞ Is there any musical entertainment or amplified sound related to your event?

☒ Yes ☐ No

∞ If yes, what kind: Rock & Roll and Soft Rock

∞ Contact person's name: Kelly Barretto Phone number: (831) 475-7300

∞ Contact person's address: N/A
street

city state zip code

∞ Number of stages: 1 Number of bands: 3-4

∞ Type of music: Rock & Light Rock Sound amplification? ☒ Yes ☐ No

∞ If yes, start time: 12:00 ☐ AM ☒ PM Finish time: 6:00 ☐ AM ☒ PM

∞ Have you applied for a sound permit? ☒ Yes ☐ No (Refer to city ordinance 9.12.040)

∞ Will sound checks be conducted prior to the event? ☒ Yes ☐ No

∞ If yes, do you wish to have the city provide the checks? ☐ Yes ☒ No

∞ Describe sound equipment that will be used: Speakers, PR Equipment and Amplifiers

∞ Will fireworks, rockets or other pyrotechnics be used? ☐ Yes ☒ No

∞ If yes, name and phone number of pyrotechnic company: _____

(_____) _____

∞ Describe (indicate dates, times and locations for launching and fallout areas):

∞ Has a permit been issued? ☐ Yes ☒ No

∞ Will there be any type of open flames used? ☐ Yes ☒ No

∞ If yes, please describe: _____

∞ Will any signs, banners, decorations or special lighting be used? ☒ Yes ☐ No

∞ If yes, please describe: Street Banner over Monterey

(Refer to city ordinance chapter 17.57) (If they have time To get it made)

INSURANCE

Applicant must provide insurance at the following minimal limits: \$1,000,000 (one million) combined single limit. (Two million for the annual Art and Wine Festival). This Certificate of Insurance must name the City as an additional insured throughout the event duration, including setup and breakdown. The Certificate of Insurance, including limits of insurance, must be received by the Special Events Coordinator by _____ to finalize this permit.

HOLD HARMLESS

The Applicant will, at its sole expense, provide the City with evidence of insurance for general liability and Worker's Compensation benefits for accidents or injuries that occur or are sustained in connection with the special event which is the subject of this permit application and contract. The Applicant agrees on behalf of itself and on behalf of its agents and employees that the Applicant will not make a claim against, sue, attach the property of, or prosecute the City or any of the City's agencies, employees, contractors or agents for injury or damages resulting from negligence or other acts, however caused, which might be asserted against the City in connection with actions taken by the City or the City's employees or agents in connection with this Special Event Permit. In addition, Applicant, on behalf of itself and its agents and employees, as well as its successors and assigns, hereby releases, discharges and holds the City harmless from, and indemnifies the City against, all actions, claims or demands Applicant, or Applicant's employees, agents, successors or assigns, or any third person now has or may hereafter have for personal injury or property damage resulting from the actions of the Applicant, the Applicant's employees or agents, or any other person under the control of the Applicant, taken pursuant to this Special Event Permit whether said actions are characterized as negligent or intentional.

Applicant Signature: _____

ADVANCED CANCELLATION NOTICE REQUIRED

If this event is cancelled, notify the Special Events Coordinator at (831) 475-4242.

I certify that the information contained in the foregoing application is true and correct to the best of my knowledge and belief, that I have read, understand and agree to abide by the rules and regulations governing the special event under Capitola Municipal Code, and that I understand that this applications is made subject to the rules and regulations established by the City Council and/or the City Manager or the City Manager's designee. I agree to comply with all permit conditions and with all other requirements of the City, County, state and federal governments and any other applicable entity that may pertain to the use of the event premises and the conduct of the event. I agree to abide by these rules and further certify that I, on behalf of the organization, am also authorized to commit that organization and, therefore, agree to be financially responsible for any costs and fees that may be incurred by or on behalf of the event to the City of Capitola.

Name of Applicant (print): Mary Beth Cahalan

Title: Artist

Signature of Applicant: Mary Beth Cahalan Date: 2/1/2023

Permit No:



City of Capitola Public Works Department

420 Capitola Avenue • Capitola • 95010
831.475.7300 • capitoladpw@ci.capitola.ca.us

Encroachment Permit

Any person, firm or corporation encroaching into the public right-of-way, or water course to do work, store materials, erect or place any structure is required to obtain an Encroachment Permit per Capitola Municipal Code Section 12.56

Job Address Esplanade Park

Description of Work

Beyond the Flood Benefit Concert

Contractor

Mary Beth Cahalen

State License Number

Contact Name

Mary Beth Cahalen

Email

mbb4the sea@aol.com

Phone - Office

Phone - Cell

(831) 332-4528

Phone - 24-hour Emergency

Job Start Date

2/18/2023

Completion Date

2/18/2023

CERTIFICATE OF INSURANCE AND LICENSE COMPLIANCE

WORKER'S COMPENSATION (Labor Code Section 3800)

- ☐ 1.a. I have attached a certificate of insurance which shows that I carry Worker's Compensation Insurance for work to be done under this permit.
- ☐ b. I have on file with the Capitola Public Works Department a certificate of insurance as described in (a) above.
- ☐ 2. I have attached a certificate of consent to self-insure issued by the Director of Industrial Relations.
- ☐ 3. I certify that in the performance of the work for which this permit is issued I shall not employ any person in any manner so as to become subject to the worker's compensation laws of California.

COMPREHENSIVE GENERAL AND AUTO LIABILITY

- ☐ 1.a. I have attached a certificate of insurance which shows that I carry General and Auto Liability, (\$1,000,000 minimum each for Personal injury and Property Damage), for work to be done under this permit. The above-named certificate of insurance shall name the City of Capitola as an additional insured.
- ☐ b. I have on file with the Capitola Public Works Department a Certificate of Insurance as described in (a) above.
- ☐ 2. As a public utility agency we are exempt.

CONTRACTOR'S LICENSING (Business and Professions Code Section 7031.5)

- ☐ 1. As the applicant, I am licensed under the provisions of the Contractor's License Law. My license number _____ in classification _____ is in full force and effect.
- ☐ 2. I am exempt from the "License Required" provisions of the Contractor's License Law, State basis of exemption: _____

I understand that this permit is automatically revoked at any time should the required Worker's Compensation Insurance become expired or terminated. I agree to indemnify, defend, and hold harmless the City of Capitola, its officers, agents and employees, from and against all claims, demands, actions, damages, or judgments, including associated costs of investigation and defense to the extent caused by contractor's negligence, recklessness, or willful misconduct in the performance of the work.

Signature of Contractor

Mary Beth Cahalen

Date

2/1/2023

Worker's Compensation Certificate Verified by

Date



ANDREW J. DALLY
CHIEF OF POLICE

422 CAPITOLA AVENUE
CAPITOLA, CALIFORNIA 95010
TELEPHONE (831) 475-4242
FAX (831) 479-8881

APPLICATION FOR AMPLIFIED SOUND PERMIT

Application fee of \$30 must be submitted with this completed application.

APPLICANT INFORMATION:

Applicant/Name of Organization: Capitola Wharf and Business Improvement
(CBIA)
Address: 204 Capitola Ave. Capitola CA 95010
Phone #: (831) 332-4528 Email: mbb@the sea @ caol.com

EVENT INFORMATION:

Event Name: Beyond the Flood Benefits Concert
Type of Event: Bands and Beer Garden
Location of Event: Esplanade Park
Date(s) of Event: 2/18/2023 Hours of Event: 12:00 - 6:00 pm
Estimated Attendance: 5,000-10,000 ☒ Public Property ☐ Private Property

Beth Cahalan
Applicant's Signature

2/1/2023
Date

Mary Beth Cahalan
Print Name

Approved By: _____, Chief of Police
Andrew Dally

Date: _____

Approved By: _____, CDD Director

Date: _____

*Signature required for publicly attended events



Street Banner Application
Over-the-Street Banner
This is NOT a Permit

Submit a completed application form, including a color graphic of the banner design with dimensions at least **60 days** prior to the proposed installation date.

Email to: CapitolaDPW@ci.capitola.ca.us
 Mail to: City of Capitola Public Works Department
 420 Capitola Avenue, Capitola, CA 95010

Applicant Information

Name	Phone No.
Business Improvement Assoc.	831-332-4528
Organization/Event	
Beyond the Flood Benefits Concert	
Mailing Address	
204 Capitola Ave. Capitola, CA 95010	
Email Address	
mbythetsea@aol.com	

Event Information

Location (City of Capitola reserves the right to place your banner in the location available)	
<input type="checkbox"/> Capitola Avenue	<input checked="" type="checkbox"/> Monterey Avenue
Event Date	
2/18/2023	
Requested Banner Installation Date	Requested Banner Removal Date
2/13/2023	2/20/2023
Banner Text (Event Name, Date, Time)	
Beyond the Flood Benefits Concert	

By signing this application, I certify I have read and understand the Capitola Village Over the Street Banner Program Policy and I agree to be bound by them. I understand my banner may be recycled or discarded if not picked up within 10 days of take-down date. I understand that street banner service is subject to scheduling maintained by the City.

Beth Calm
 Applicant Signature

2/1/2023
 Date

Staff Approval: _____	Date: _____
Permit Conditions: _____	

DAILY LICENSE APPLICATION

Complete all applicable items. Submit this application to your local ABC District Office with the required fee (Cashier's Check or Money Order) payable to ABC. Once the daily license is issued, fees cannot be refunded. Listing of ABC District Office is available at <https://www.abc.ca.gov/contact/district-offices/>. Please visit <https://www.abc.ca.gov/abc-221-instructions/> for further instructions.

ABC USE ONLY		Item 7 B.
License #	Receipt #	\$
Conditions Requested <input type="checkbox"/> Yes <input type="checkbox"/> No		Diagram Requested <input type="checkbox"/> Yes <input type="checkbox"/> No
License Type <input type="checkbox"/> B & W <input type="checkbox"/> General <input type="checkbox"/> Special		

SECTION 1. ORGANIZATION AND LICENSE TYPE INFORMATION

Organization Name Capitola Village Wharf Business Improvement Area	Tax ID 83-0653603
Organization Mailing Address 209 Capitola Ave., Capitola CA 95010	

LICENSE TYPE

<input type="checkbox"/> Special Daily Beer and Wine (\$50.00) <input type="checkbox"/> Amateur Sports Organization <input checked="" type="checkbox"/> Charitable <input type="checkbox"/> Civic <input type="checkbox"/> Cultural <input type="checkbox"/> Fraternal <input type="checkbox"/> Political <input type="checkbox"/> Religious <input type="checkbox"/> Social <input type="checkbox"/> Other:	<input type="checkbox"/> Daily General (\$75.00) <input type="checkbox"/> Political Party/Affiliate Supporting Candidate for Public Office or Ballot Measure <input type="checkbox"/> Organization Formed for Specific Charitable or Civic Purpose <input type="checkbox"/> Fraternal Organization in Existence over Five Years with Regular Membership <input type="checkbox"/> Religious Organization <input type="checkbox"/> Vessel per Section 24045.10 B&P (\$50.00)	<input type="checkbox"/> Special Temporary License (\$100.00) <input type="checkbox"/> Television Station per Section 24045.2 or 24045.9 B&P <input type="checkbox"/> Non-profit Corporation per Section 24045.4 and 24045.6 B&P <input type="checkbox"/> Person conducting Estate Wine Sale per Section 24045.8 B&P <input type="checkbox"/> Women's Educational and Charitable Organization per Section 24045.3 B&P <input type="checkbox"/> Other Special Temporary License Per Section: License #: Amount:
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SECTION 2. EVENT DETAILS

Event Dates 2/18/2023	Total # of Days 1	Hours of Alcoholic Beverage Sales, Service and/or consumption 12pm To 6pm	Virtual Event <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>Mark Yes, if the event is 100% virtual</i>
Event Address (Street #, name, and city)		Event Location Description (Jones Park, Pavilion A, etc.) ESPLANADE PARK, CAPITOLA VILLAGE	Location Within the City Limit <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Event Type <input type="checkbox"/> Barbeque <input type="checkbox"/> Dinner <input type="checkbox"/> Sporting Event <input type="checkbox"/> Birthday <input type="checkbox"/> Festival <input type="checkbox"/> Social Gathering <input checked="" type="checkbox"/> Concert <input type="checkbox"/> Lunch <input type="checkbox"/> Wedding <input type="checkbox"/> Carnival <input type="checkbox"/> Mixer <input checked="" type="checkbox"/> Other: <input type="checkbox"/> Dance <input type="checkbox"/> Picnic		Type of Entertainment Concert/Fund Raiser	Event Open to Public <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Estimated Attendance 10,000		Security Guard If Yes, how many <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No 6	Outdoor Event <input checked="" type="checkbox"/> Yes* <i>*If Yes, a diagram of the event area is required</i> <input type="checkbox"/> No

REQUIRED




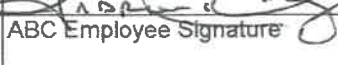
☐ By checking this box, you are certifying that you understand the requirements detailed in Business and Professions (B&P) Code Section 25682(c) which state that a nonprofit organization that has obtained a temporary daily license from the department must designate a person(s) to receive RBS training certification prior to the event, and that designated person(s) shall remain onsite for the duration of the event.

SECTION 3. CONTACT INFORMATION

Contact Person Mary Beth Cahalen	Phone Number 831-332-4528	Email Address mbbythesea@aol.com
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SECTION 4. SIGNATURES AND APPROVALS

I attest that I am authorized by the organization named above to make this application on its behalf.

Organization's Authorized Representative Name Mary Beth Cahalen	Phone Number 831-332-4528	Signature 	Date Signed 1/25/2023
Property Owner Approval By (Name) Required Samie Goldstein	Phone Number	Signature 	Date Signed
Law Enforcement Approval By (Name), If applicable Andrew Dwyer	Phone Number 831-475-4242	Signature 	Date Signed 1/24/2023
District Office Approval By (Name)	Phone Number	ABC Employee Signature 	Issuance Date

The above named organization is hereby licensed, pursuant to the California B&P Code Division 9 and California Code of Regulations, to engage in the temporary sale of alcoholic beverages for consumption at the abovenamed location for the period authorized above. B&P Code Section 25682(c) requires that a designated RBS-trained person(s) shall remain on site for the duration of the event. Failure to comply with this requirement will result in immediate cancellation of the permit. **This license may be revoked summarily by the Department if, in the opinion of the Department and/or the local law enforcement agency, it is necessary to protect the safety, welfare, health, peace and morals of the people of the State.**

Capitola City Council

Agenda Report

Meeting: February 9, 2023

From: Community Development Department

Subject: Citywide Housing Element



Recommended Action: 1) Receive the presentation introducing the Housing Element Update;

Background: In accordance with applicable State housing law, local government agencies are legally required to adopt plans and programs for housing that provide opportunities for and do not unduly constrain housing development. The Housing Element, which is one of seven State-mandated components of the City's General Plan, is therefore a mechanism by which the State requires local jurisdictions to provide a variety of housing options and strive toward reaching regional housing needs while maintaining civic and local responsibility toward economic, environmental, and fiscal factors and community goals stated within adopted General Plan documents.

Housing Elements are required to be updated every eight years and are required to be certified by the State of California Department of Housing and Community Development (HCD) prior to finalization, in order for HCD to ensure that cities are taking necessary steps to promote the creation of housing for all income categories and of all housing types.

The City's current Housing Element was adopted by the Capitola City Council in 2015 and certified by the State of California in 2016, and will be in effect through December 2023. The City is required by law to update the Housing Element for the 2023-2031 planning period (also known as the sixth cycle) and have the updated Housing Element adopted and certified by HCD by December 31, 2023.

On May 12, 2022, the City Council authorized an agreement with RRM Design Group (RRM) for the preparation of the 2023-2031 Housing Element. Staff has worked with RRM to assess existing and projected housing needs, review the existing Housing Element, and commence work on the updated Housing Element. In addition, pursuant to applicable State housing law, the City has started soliciting public participation from all segments of the community in the preparation of the Housing Element.

Discussion: Unlike State housing law, the composition and condition of Capitola's housing stock has remained relatively stable during the past housing cycle. Between 2015-2021, one very-low-income, two moderate-income units, and 39 above-moderate-income units were developed in Capitola. Moderate-income units include secondary dwelling units and above-moderate-income units include new and replacement home construction. In addition, Capitola has accomplished the following during the 2015-2023 5th cycle:

- Updated the entire zoning code; commercial corridors updated to include mixed-use
- Adopted Objective Design Standards for all multi-family and mixed-use
- Adopted a prototype accessory dwelling unit (ADU) design (building plan-ready)
- Created an ADU Guidance Document for the public
- Updated Inclusionary Housing Ordinance and housing impact fees
- Funded emergency housing program and rental assistance for low-income
- CDBG mobile home rehabilitation programs (8) and down payment assistance program (1)

Housing Element Compliance

Failure to comply with applicable Housing Element law, or to incorporate the abovementioned statutory requirements in a Housing Element, may result in HCD issuing findings of non-compliance and withholding certification of a Housing Element. In such cases, the City may be subject to significant consequences, including disqualification from obtaining certain funding grants or bonds from the State of California, suspension or termination of various State-issued proposition funds, potential litigation, the imposition of a moratorium on land use approvals and building permit issuance, the potential loss of post-redevelopment dissolution funds (Housing Asset Funds), and the requirement to update the associated Housing Element on a four year planning cycle, rather than an eight year cycle. In addition to facing significant fines, a court may limit local land use decision-making authority until the jurisdiction brings its Housing Element into compliance. Additionally, the City may lose eligibility for housing-related grant funding, such as SB 2 Planning Grants and CalHome funds, among others.

Housing Element Key Components

State law (California Government Code Sec. 65583 et seq) sets forth requirements for Housing Elements and related land use regulations related to housing. The Draft 2023-2031 Housing Element will include the following components:

- **Background Information:** A housing needs assessment which identifies and analyzes the existing and projected housing needs within the City by examining demographic, employment, and housing trends and conditions, with attention paid to special housing needs (e.g., seniors, large families, persons with disabilities).
- **Constraints on Housing Analysis:** An analysis of existing and potential governmental and nongovernmental barriers to housing development.
- **Housing Resources:** An inventory of resources relevant to meeting the City's housing needs.
- **Housing Plan:** A statement of goals, policies, quantifiable objectives, and financial resources available for the preservation, improvement, and development of housing.
- **Evaluation of Past Performance:** Review of the 2015-2023 5th cycle Housing Element to measure progress and effectiveness of housing and outreach policies and programs.
- **Public Participation:** Implement a robust community engagement program, reaching out to all economic segments of the community plus traditionally underrepresented groups.
- **Sites Inventory:** Identify locations of available sites for housing development or redevelopment to ensure there is enough land zoned for housing to meet the future need at all income levels.

Regional Housing Needs Allocation (RHNA)

The Regional Housing Needs Allocation (RHNA) is mandated by State law to quantify the need for housing throughout the State. This informs the local planning process to address existing and future housing needs resulting from projected state-wide growth in population, employment, and households. Every City and County in California must plan for its fair share of the region's housing need, as determined through the RHNA process. HCD identifies the total housing need for each region of the state. In the Monterey Bay region, the Association of Monterey Bay Area Governments (AMBAG) distributes this regional need to local governments. Once a local government has received its RHNA, it must revise its Housing Element to demonstrate how it plans to accommodate its portion of the region's housing need.

Capitola's 5th cycle RHNA requirement was 143 units, which was the same requirement as the previous 4th cycle. AMBAG has allocated Capitola 1,336 housing units for the current 2023-2031 6th cycle.

It is important to note that the Housing Element is a policy document, and no actual development is proposed as part of the adoption of the housing element. Further implementation actions will need to be undertaken in accordance with state law (Assembly Bill 1398). In general, housing units are not built by the City but instead developed primarily by private and nonprofit developers on private property.

Housing Programs

During the 2015-2023 5th cycle Housing Element update, the City adopted 32 programs that strive to accommodate housing through preservation, improvement, and the development of new housing units. Moreover, opportunity sites identified in the 2015-2023 5th cycle Housing Element could provide a total of 75 units for very low- and low-income households which exceeded the 57 unit RHNA requirement by 18 units.

Strategies and programs identified within the Housing Plan focus on the following list. Specific goals, policies, and programs to accomplish each of these will be identified within the Housing Plan section of the draft housing element.

- Conserve and improve existing housing stock;
- Assist in the development of affordable housing;
- Improve the safety, quality, and existing housing condition;
- Facilitate housing development for all income levels and household types, including special needs populations and new affordable housing;
- Remove governmental constraints to housing development; and
- Promote fair housing opportunities for all.

New Housing Element Requirements

Recent changes to state law have imposed new requirements for the Housing Elements which introduces substantial challenges to the City's ability to identify sites to accommodate our required RHNA allocation. New Housing Element requirements include:

- **Higher RHNA Allocations:** The City's 2015-2023 Housing Element RHNA allocation was 143 units, including 57 lower-income units. Comparatively, the 2023-2031 Housing Element RHNA allocation of 1,336 units, including 712 lower-income units, is approximately 9.3 times higher than the previous element's allocation.
- **Affirmative Further Fair Housing (AFFH):** Assembly Bill 686 was passed in 2018 as the statewide framework to affirmatively further fair housing (AFFH) to promote inclusive communities, further housing choice, and address racial and economic disparities through government programs, policies, and operations. AB 686 defines "affirmatively furthering fair housing" to mean "taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity" for persons of color, persons with disabilities, and other protected classes. The bill added an assessment of fair housing to the housing element which includes the following components: a summary of fair housing issues and assessment of the City's fair housing enforcement and outreach capacity; an analysis of segregation patterns and disparities in access to opportunities, an assessment of contributing factors, and an identification of fair housing goals and actions.
- **Eligible Lower-Income Sites:** There are new regulations on the extent to which the City can reuse sites included in previous Housing Elements and increased scrutiny of small, and non-vacant sites when these sites are proposed to accommodate units for very low- and low-income households.
- **No Net Loss:** A 2017 amendment to Government Code Section 65863 (No Net Loss) requires that jurisdictions preserve sufficient and available sites for lower-income housing throughout the RHNA planning period at all times. The City cannot permit the reduction of residential density for any site unless the reduction is consistent with the adopted General Plan, including the Housing Element. Additionally, if the City allows development of any site with less units by income level than identified in the Housing Element for that site, it must determine if the remaining sites identified in the Housing Element are adequate to meet that need by income level. If sites identified for lower-income housing are developed with less units than identified in the Housing

Element or developed for a higher income group, the City shall either identify and rezone adequate substitute sites or demonstrate that the land inventory already contains adequate substitute sites so that there is no net loss of residential unit capacity.

Sites Inventory and Density

The City must demonstrate in its Housing Element the ability to meet its RHNA allocation, through the provision of sites suitable for residential development. To meet the assigned housing needs, the Housing Element will identify sites that may be suitable for residential development, including vacant and non-vacant sites throughout the City. In addition, the City will include an estimate of ADUs projected to be constructed during the planning period based on development trends. The sites inventory analysis will demonstrate that the City has adequate capacity to accommodate the RHNA for the 2023-2031 6th cycle planning period. The City will also be required to specify the projected housing type/density for each identified site.

The statutory deadline for the Housing Element update is December 31, 2023. State law requires that the adequate sites for RHNA must be available for the entire duration of the Housing Element planning period. Therefore, upon the deadline of the Housing Element update, adequate sites (with appropriate designation/zoning and development standards) must be available, or the Housing Element must commit to a program to address the shortfall of sites within a specified timeframe.

If sites are made available after the statutory deadline (through rezoning), those sites are subject to higher standards:

- Zoning districts and sites to accommodate lower income RHNA must provide a density range with a “minimum density of 20 du/ac and a maximum density of at least 20 du/ac”. While this language may seem confusing, it is reflective of current state law.
- Sites for lower income RHNA must be able to accommodate at least 16 units on site.
- Non-residential zones to accommodate lower income RHNA must allow standalone residential and for mixed use development – cannot require more than 50% of the floor area as non-residential.
- Must permit by right approval if project includes 20% affordable to lower-income.

If sites are made available before the statutory deadline (through rezoning), these conditions do not apply. To avoid the above conditions, the rezoning must be completed on or before the statutory deadline of December 31, 2023, and concurrent or before the Housing Element adoption.

The rezoning process also requires a minimum six-month review period to be adopted locally and then certified by the California Coastal Commission. Staff plans to evaluate the necessary density zoning adjustments for the Updated Housing Element and to work toward Planning Commission, City Council and California Coastal Commission approval of density rezoning before the end of this year (2023) to avoid unwanted complications and/or restrictions.

Public Participation

The 2023-2031 Housing Element update process has provided, and will continue to provide, residents and other interested parties with opportunities to review draft documents and proposed policies, and to provide recommendations for consideration by decision-makers pursuant to Government Code §65583. To date, the following public outreach efforts have been made during the update process:

- Online Housing Needs Survey (currently ongoing)
- Stakeholder Interviews

The following public outreach efforts will be conducted throughout the remainder of the update process:

- Planning Commission Study Session (February 2, 2023)
- City Council Meeting (February 9, 2023)

- Community Workshop #1 (February 2023, date TBD)
- Public Review of Draft Housing Element (30 days; Spring 2023)
- Community Workshop #2 (During Public Review period)

Next Steps

City staff and RRM will coordinate on providing the following for the 6th cycle Housing Element Update:

- Proceed with the sites inventory analysis;
- Host two community workshops;
- Draft the Housing Element document and housing programs;
- Periodically report to the Planning Commission for recommendations and input;
- Prepare and refine draft CEQA documents;
- Submittal to HCD (14 days after close of Public Review);
- HCD Mandatory Review of Draft Housing Element (90 days);
- Respond to HCD comments; and
- Conduct Planning Commission/City Council hearings for adoption of the Housing Element (Fall/Winter 2023)

As part of the upcoming process, the draft housing element will be available for public review and will require an initial review period by HCD of 90 days. Subsequent review cycles of review by HCD will be in increments of 30 days.

Fiscal Impact: There is no fiscal impact associated with this report.

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