

# City of Capitola Agenda

Mayor: Michael Termini  
Vice Mayor: Jacques Bertrand  
Council Members: Ed Bottorff  
Stephanie Harlan  
Kristen Petersen  
  
Treasurer: Peter Wilk



## CAPITOLA CITY COUNCIL REGULAR MEETING

THURSDAY, JUNE 14, 2018

7:00 PM

CITY COUNCIL CHAMBERS  
420 CAPITOLA AVENUE, CAPITOLA, CA 95010

### CLOSED SESSION – 5:30 PM CITY MANAGER’S OFFICE

*An announcement regarding the items to be discussed in Closed Session will be made in the City Hall Council Chambers prior to the Closed Session. Members of the public may, at this time, address the City Council on closed session items only. There will be a report of any final decisions in City Council Chambers during the Open Session Meeting.*

#### **CONFERENCE WITH LABOR NEGOTIATOR [Govt. Code § 54957.6]**

Negotiator: Dania Torres Wong

Employee Organizations: (1) Association of Capitola Employees; (2) Capitola Police Captains, (3) Capitola Police Officers Association, (4) Confidential Employees; (5) Mid-Management Group; and (6) Department Heads

#### **CONFERENCE WITH LEGAL COUNSEL, EXISTING LITIGATION**

**[Govt. Code § 54956.9 (d)(1)]**

City of Capitola v. Water Rock Construction, Inc.  
Santa Clara Superior Court Case No. 16CV295795

#### **PUBLIC EMPLOYEE PERFORMANCE EVALUATION [Govt. Code § 54957(b)]**

City Council’s Performance Evaluation of the City Attorney

June 14, 2018

**REGULAR MEETING OF THE CAPITOLA CITY COUNCIL – 7 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.*

*All matters listed on the Regular Meeting of the Capitola City Council Agenda shall be considered as Public Hearings.*

**1. ROLL CALL AND PLEDGE OF ALLEGIANCE**

Council Members Kristen Petersen, Jacques Bertrand, Ed Bottorff, Stephanie Harlan, and Mayor Michael Termini

**2. REPORT ON CLOSED SESSION**

**3. ADDITIONAL MATERIALS**

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

**4. ADDITIONS AND DELETIONS TO AGENDA**

**5. PUBLIC COMMENTS**

*Oral Communications allows time for members of the Public to address the City Council on any item not on the Agenda. Presentations will be limited to three minutes per speaker. 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. All speakers are requested to print their name on the sign-in sheet located at the podium so that their name may be accurately recorded in the minutes. A MAXIMUM of 30 MINUTES is set aside for Oral Communications at this time.*

**6. CITY COUNCIL / CITY TREASURER / STAFF COMMENTS**

*City Council Members/City Treasurer/Staff may comment on matters of a general nature or identify issues for staff response or future council consideration.*

**7. BOARDS, COMMISSIONS AND COMMITTEES APPOINTMENTS**

A. Historical Museum Board Appointments

RECOMMENDED ACTION: Make appointments as recommended by the Historical Museum Board.

**8. CONSENT CALENDAR**

*All items listed in the "Consent Calendar" 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 public or 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 the May 24, 2018, City Council Regular Meeting Minutes

RECOMMENDED ACTION: Approve minutes.

- B. Consider the City's Investment Policy  
RECOMMENDED ACTION: Confirm the City's Administrative Policy Number III-1, Investment Policy.
- C. Consider the Adoption of a Resolution Setting the Fiscal Year 2018/2019 Appropriation Limit  
RECOMMENDED ACTION: Adopt the resolution.
- D. Consider Brommer Street Complete Street Project Regional Transportation Improvement Program Funding Award and Award of an Engineering Design Contract  
RECOMMENDED ACTION: Accept a Regional Transportation Improvement Program award from the Santa Cruz County Regional Transportation Commission in the amount of \$470,000 for the Brommer Street Complete Street Project and award an engineering design contract to Kimley-Horn in the amount of \$85,400.
- E. Consider Updated Capitola Village and Wharf Business Improvement Area Contract  
RECOMMENDED ACTION: Authorize the City Manager to enter into an updated agreement with the Capitola Village and Wharf Business Improvement Area.

**9. GENERAL GOVERNMENT / PUBLIC HEARINGS**

*All items listed in "General Government" 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. Receive Report on Construction Bids Received for Capitola Branch Library Project  
RECOMMENDED ACTION: Receive report and provide direction to staff.
- B. Receive Report on Status of Measure F Projects on the Beach Jetty, Flume and Wharf and Consider a Contract Amendment for Moffatt and Nichol for These Projects  
RECOMMENDED ACTION: Approve a contract amendment to Moffatt and Nichol's contract in the amount of \$524,500 for engineering services for the permitting, engineering, and conceptual design of the Wharf, Flume, and Jetty Improvement Projects.
- C. Consider Capitola Beach Festival Special Event Permit  
RECOMMENDED ACTION: Review the Capitola Beach Festival Committee's request for a Special Event Permit, including an Encroachment Permit, Amplified Sound Permit, and Banner Permit for the proposed Capitola Beach Festival and provide direction.
- D. Consider a Resolution for the Levy of Capitola Village and Wharf Business Improvement Area Assessments for Fiscal Year 2018/2019  
RECOMMENDED ACTION: Conduct the public hearing and adopt the proposed Resolution levying the Fiscal Year 2018-2019 Capitola Village and Wharf Business Improvement Area (CVWBIA) Assessments and accepting the CVWBIA Annual Plan and budget.
- E. Introduce an Ordinance Amending Chapter 5.24 of the Capitola Municipal Code Pertaining to Entertainment Permits  
RECOMMENDED ACTION: Approve the first reading of an ordinance amending Municipal Code Chapter 5.24.

## 10. ADJOURNMENT

**Note:** Any person seeking to challenge a City Council decision made as a result of a proceeding in which, by law, a hearing is required to be given, evidence is required to be taken, and the discretion in the determination of facts is vested in the City Council, shall be required to commence that court action within ninety (90) days following the date on which the decision becomes final as provided in Code of Civil Procedure §1094.6. Please refer to code of Civil Procedure §1094.6 to determine how to calculate when a decision becomes “final.” Please be advised that in most instances the decision become “final” upon the City Council’s announcement of its decision at the completion of the public hearing. Failure to comply with this 90-day rule will preclude any person from challenging the City Council decision in court.

**Notice regarding City Council:** The City Council meets on the 2nd and 4th Thursday of each month at 7:00 p.m. (or in no event earlier than 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](http://www.cityofcapitola.org) and at Capitola City Hall and at the Capitola Branch Library, 2005 Wharf Road, Capitola, 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](http://www.cityofcapitola.org) by clicking on the Home Page link “**Meeting Video.**” Archived meetings can be viewed from the website at anytime.



## CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF JUNE 14, 2018

FROM: City Manager Department  
SUBJECT: Historical Museum Board Appointments

**RECOMMENDED ACTION:** Make appointments as recommended by the Historical Museum Board.

**BACKGROUND/DISCUSSION:** In March, Historical Museum Board Member Stephanie Tetter submitted her resignation, creating an open unfinished term through June 2019. In addition, three of the Historical Museum Board's seven seats expire on June 13, 2018. Two of those members, David Peyton and Pamela Greeninger, have asked to be reappointed, and a new applicant, Rebecca Hobson, submitted an application (Attachment 1).

Pursuant to the Museum Board's bylaws, the board interviewed applicants at its June 5 meeting and has made the following recommendations (Attachment 2):

- Reappoint David Peyton and Pamela Greeninger
- Appoint Rebecca Hobson to fill the remaining term of Stephanie Tetter

**ATTACHMENTS:**

1. Hobson Museum application
2. Museum Board recommendation

Report Prepared By: Linda Fridy  
City Clerk

**Reviewed and Forwarded by:**

Jamie Goldstein, City Manager

6/7/2018



# CITY of CAPITOLA BOARDS AND COMMISSIONS APPLICATION

Application for:

- Art & Cultural Commission  
*[Artist; Arts Professional; At Large Member]*  
*Please underline category above.*
- Architectural & Site Committee  
*[Architect; Landscape Architect; Historian]*  
*Please underline category above.*
- Finance Advisory Committee  
*[Business Representative; At Large Member]*  
*Please underline category above.*
- Traffic & Parking Commission  
*[Village Resident; Village Business Owner; At Large Member]*  
*Please underline category above.*
- Historical Museum Board
- Planning Commission
- Library Advisory Committee
- Other Committee \_\_\_\_\_

Name: Hobson Rebecca  
Last First

Residential Neighborhood: Capitola / Soquel

Occupation: Office Manager - Margaritaville, Capitola

Describe your qualifications and interest in serving on this Board/Commission/Committee: \_\_\_\_\_

- Have lived & worked in the area for past 10 years.  
 - Previously served on the Capitola Begonia Festival  
 Fund Raising Committee and on the ad-hoc council  
 for the Capitola library.  
 - Have a background in business & marketing and  
 a keen interest in history & all things Capitola.

(Use additional paper, if necessary)

**Please Note:** Appointment to this position may require you to file a conflict of interest disclosure statement with the City Clerk. This information is a public record and these statements are available to the public on request.

5/20/18  
Date

Rebecca Hobson  
Signature of Applicant

Mail or Deliver Application to:  
Capitola City Hall  
Attn: City Clerk  
420 Capitola Avenue, Capitola, CA 95010

All information contained in this page of the application is public data and will be made available for public review and copying for anyone requesting it, and may be posted on the website of the City of Capitola. All information in this page will be provided to the Capitola City Council in a public forum and will be reviewed in public. It will therefore be part of the public record.

Attachment: Hobson Museum application (Historical Museum Board Appointments)

June 6, 2018

At the June 5, 2018, meeting, the Capitola Historical Museum Board of Trustees voted to recommend the re-appointment of David Peyton and Pamela Greeninger. The board interviewed applicant Rebecca Hobson and recommends that she be appointed to fill the one year remaining on the term of Stephanie Tetter.

Sincerely,

Frank Perry, Curator  
Capitola Historical Museum





## CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF JUNE 14, 2018

FROM: City Manager Department

SUBJECT: Consider the May 24, 2018, City Council Regular Meeting Minutes

---

RECOMMENDED ACTION: Approve minutes.

DISCUSSION: Attached for City Council review and approval are the minutes of the regular meeting of May 24, 2018.

ATTACHMENTS:

1. 5-24 draft minutes

Report Prepared By: Linda Fridy  
City Clerk

**Reviewed and Forwarded by:**

A handwritten signature in blue ink, appearing to be "JG", is written over a horizontal line.

Jamie Goldstein, City Manager

6/5/2018



**DRAFT  
CAPITOLA CITY COUNCIL  
REGULAR MEETING ACTION MINUTES  
THURSDAY, MAY 24, 2018**

**CALL TO ORDER**

Mayor Termini called the meeting to order at 6 p.m. with the following item to be discussed in Closed Session:

**CONFERENCE WITH LABOR NEGOTIATOR [Govt. Code § 54957.6]**

Negotiator: Dania Torres Wong

Employee Organizations: (1) Association of Capitola Employees; (2) Capitola Police Captains, (3) Capitola Police Officers Association, (4) Confidential Employees; (5) Mid-Management Group; and (6) Department Heads

There was no public comment; therefore, the City Council recessed to Closed Session in the City Manager's Office.

**REGULAR MEETING OF THE CAPITOLA CITY COUNCIL - 7 PM**

**1. ROLL CALL AND PLEDGE OF ALLEGIANCE**

Council Member Stephanie Harlan: Present, Council Member Ed Bottorff: Present, Mayor Michael Termini: Present, Vice Mayor Jacques Bertrand: Present, Council Member Kristen Petersen: Present.

Treasurer Peter Wilk was absent.

**2. PRESENTATIONS**

A. Capitola Public Safety Foundation Update

Lin Banks of the Public Safety and Community Service Foundation provided an overview of the 13-year-old nonprofit, which supports the Capitola Police Department, community partners, and other nonprofits. The foundation presented a check for \$2,500 to Operation Surf, one of the events it sponsors. This year the foundation's total donations will exceed \$50,000.

**3. REPORT ON CLOSED SESSION**

City Manager Jamie Goldstein noted the Council received a report from the labor negotiator and took no reportable action.

**4. ADDITIONAL MATERIALS**

A. Item 10.B – Seven public communications

**5. ADDITIONS AND DELETIONS TO AGENDA – None**

**6. PUBLIC COMMENTS**

Gary Arnold spoke about his concern regarding the erosion of local government.

## CAPITOLA CITY COUNCIL REGULAR MEETING MINUTES

May 24, 2018

Laurie Hill congratulated Council Member Ed Bottorff on his selection as the Chamber of Commerce's Man of the Year. She noted the former Begonia Festival has two donations on the consent agenda, and the Capitola Beach Festival is hoping to follow the festival tradition. She hopes it can include a lighted boat parade.

**7. CITY COUNCIL / CITY TREASURER / STAFF COMMENTS**

Public Works Director Steve Jesberg noted the annual closure of Soquel Creek and creation of the lagoon was completed this afternoon.

Mayor Termini said the City's Regional Transportation Commission board members will be discussing the Progressive Rail negotiations and he expressed ongoing concerns about the safety of allowing trains to cross the trestle in its current state.

**8. BOARDS, COMMISSIONS AND COMMITTEES APPOINTMENTS****A. Consider Area Agency on Aging Appointments**

RECOMMENDED ACTION: Appoint both a representative and alternate.

City Manager Jamie Goldstein and City Clerk Linda Fridy provided background and confirmed that the alternate position has been vacant for the current term and appointments are needed for the July 2018 to June 2020 term.

Council Member Harlan, the current representative, said she has taken applicant Carolyn Sigstedt with her to meetings but would like her attend more before her appointment.

Mayor Termini said he has spoken with the applicant as well and is comfortable making the appointment at this time.

<b>MOTION:</b>	<b>APPOINT STEPHANIE HARLAN AS THE REPRESENTATIVE FOR THE TERM BEGINNING JULY 2018 AND APPOINT CAROLYN SIGSTEDT AS THE ALTERNATE BEGINNING IMMEDIATELY AND FOR THE NEW TERM.</b>
<b>RESULT:</b>	<b>ADOPTED [4 TO 1]</b>
<b>MOVER:</b>	Ed Bottorff, Council Member
<b>SECONDER:</b>	Jacques Bertrand, Vice Mayor
<b>AYES:</b>	Ed Bottorff, Michael Termini, Jacques Bertrand, Kristen Petersen
<b>NAYS:</b>	Stephanie Harlan

**9. CONSENT CALENDAR**

<b>MOTION:</b>	<b>APPROVE AND ACCEPT AS RECOMMENDED</b>
<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Jacques Bertrand, Vice Mayor
<b>SECONDER:</b>	Kristen Petersen, Council Member
<b>AYES:</b>	Harlan, Bottorff, Termini, Bertrand, Petersen

A. Consider the May 10, 2018, City Council Regular Meeting Minutes  
RECOMMENDED ACTION: Approve minutes.

B. Planning Commission Action Minutes  
RECOMMENDED ACTION: Receive minutes.

CAPITOLA CITY COUNCIL REGULAR MEETING MINUTES  
May 24, 2018

- C. Approval of City Check Registers Dated April 6, April 13, April 20 and April 27, 2018.  
RECOMMENDED ACTION: Approve check registers.
- D. Consider a Resolution of Intention to Levy Business Improvement Assessments for Fiscal Year 2018-2019[140-05]  
RECOMMENDED ACTION: Adopt **Resolution No. 4112** receiving the Capitola Village and Wharf Business Improvement Area Annual Report and the proposed Fiscal Year 2018-2019 Budget, and set and notice a public hearing.
- E. Accept a Donation to the Historical Museum and the Art and Cultural Commission from the Former Begonia Festival  
RECOMMENDED ACTION: Accept donations.
- F. Adopt an Ordinance Amending Chapter 13.02 Pertaining to Water Conservation Plumbing Fixture Retrofit Requirements  
RECOMMENDED ACTION: Approve the second reading and adopt **Ordinance No. 1018** amending Municipal Code Chapter 13.02.- Water Conservation Plumbing Fixture Retrofit Requirements.
- G. Adopt an Ordinance Amending Chapter 10.36.170 Curb Markings  
RECOMMENDED ACTION: Approve the second reading and adoption of the **Ordinance No. 1019** amending Municipal Code Chapter 10.36.170 Curb Marking to allow establishment of site-by-site time limits in loading zones.

**10. GENERAL GOVERNMENT / PUBLIC HEARINGS**

- A. Food Cupboard Current Zoning Update  
RECOMMENDED ACTION: Accept staff presentation and continue to prohibit unsupervised food distribution in residential areas.

Council Member Harlan recused herself and left the dais since she lives near the cupboard referenced in the staff report.

Community Development Director Katie Herlihy presented the staff report and recent history of the issue. Cupboards are allowed as an accessory use in commercial zones and she walked the Council through the different standards given the recent zoning update that has not yet taken effect in the coastal zone. Another option is a food pantry distribution sites, which are allowed as an accessory use, often with a conditional use permit.

Mayor Termini clarified that allowing cupboards in residential areas would require a change in the zoning code and additional staff to monitor the food.

Melanie Arao, resident and emergency room nurse, said she opposes cupboards because she has seen many cases where children ingest dangerous items, most recently a child that apparently got marijuana-laced gummy bears and is in a coma. She worries what items may end up in unsupervised cupboards.

Council Member Bertrand said he supports the staff recommendation and members concurred. Mayor Termini noted he had promised a full discussion to supporters.

CAPITOLA CITY COUNCIL REGULAR MEETING MINUTES  
May 24, 2018

<b>MOTION:</b>	<b>ACCEPT THE REPORT AND CONTINUE TO PROHIBIT UNSUPERVISED FOOD DISTRIBUTION IN RESIDENTIAL AREAS</b>
<b>RESULT:</b>	<b>ADOPTED [4 TO 0]</b>
<b>MOVER:</b>	Jacques Bertrand, Vice Mayor
<b>SECONDER:</b>	Ed Bottorff, Council Member
<b>AYES:</b>	Ed Bottorff, Michael Termini, Jacques Bertrand, Kristen Petersen
<b>RECUSED:</b>	Stephanie Harlan

B. Review Potential Traffic Calming Options for Topaz Street and the Jewel Box Neighborhood

**RECOMMENDED ACTION:** Review options for traffic calming for Topaz Street and the Jewel Box neighborhood, receive public testimony, and authorize staff to proceed with a facilitated public workshop.

Director Jesberg presented the staff report and history of the recent discussions to address traffic concerns in the neighborhood. These efforts now focus on measures that would not require California Environmental Quality Act review or permits. He reviewed five options and a sample of how they could be combined to slow traffic and discourage cut-through traffic.

He offered some options to move discussions forward:

- Continue to refine and further develop traffic calming plans
- Conduct another survey
- Conduct additional traffic monitoring
- traffic counts (measure volume & speed)
- Blue tooth and license plate surveys (measure traffic patterns)
- Develop a speed table/speed bump policy

Council Member Bertrand confirmed there would be some lost parking installing a bulb out. Director Jesberg also responded that the earliest a community meeting could be held would be three to four weeks and explained the options for tracking traffic through Bluetooth or license plates.

Most public comment was supportive of the new options, although some residents expressed frustration with how long the process has taken. Specific concerns include the ability of larger vehicles to maneuver around traffic circles and notes that 49<sup>th</sup> Avenue is wider than 47<sup>th</sup> Avenue. Many neighbors want to avoid more divisiveness.

The following members of the public spoke:

Neil Savage, Opal Street  
 Beverly, Emerald Street  
 Alan Cable, Topaz Street  
 Annie Morocco, Topaz Street  
 Christie Donaldson, Opal Street and 47th Avenue (full comments on file)  
 John Nicol, 49<sup>th</sup> Avenue  
 Mick Routh, Crystal Street  
 Karl Shubert, Topaz Street  
 Marcos Vescovi, Topaz Street  
 Jim Donaldson, Opal Street  
 Ron Burke, 47<sup>th</sup> Avenue

CAPITOLA CITY COUNCIL REGULAR MEETING MINUTES  
May 24, 2018

Al Carlson, Jewel Street  
David Aaron, Garnet Street  
Cherry McDonald, Jewel Street  
Rose Filicetti, Opal Street  
Judy Panick, Emerald Street

Council Member Harlan supports an ongoing conversation on the options and noted more traffic counts may be needed.

Council Member Bertrand said although Topaz neighbors started the conversation, the problem is neighborhood-wide. He appreciates support for the new direction with traffic calming as the goal. He supports a neighborhood meeting, perhaps with a facilitator.

Council Member Peterson also supports the direction toward calming efforts and a community meeting.

Council Member Bottorff said the reason he supported rescinding the first decision was because of difficulties that arose with permitting. He would still like a solution that stops cars from coming into the Jewel Box and keeps traffic on Capitola Road and Portola. Any solution will have some impact on residents. He asked if traffic on Jade Street could be closed, at least eastbound.

Mayor Termini wants to be sure that a speed table policy is one of the options developed and that the policy addresses how costs are shared.

<b>MOTION:</b>	<b>DIRECT STAFF TO DEVELOP A SPEED TABLE POLICY AND TO HOLD A COMMUNITY MEETING THAT INCLUDES THE PRESENTED OPTIONS ALONG WITH INVESTIGATING CLOSING JADE STREET TO THROUGH TRAFFIC OR ONE-WAY TRAFFIC WESTBOUND.</b>
<b>RESULT:</b>	<b>ADOPTED [UNANIMOUS]</b>
<b>MOVER:</b>	Kristen Petersen, Council Member
<b>SECONDER:</b>	Jacques Bertrand, Vice Mayor
<b>AYES:</b>	Harlan, Bottorff, Termini, Bertrand, Petersen

11. **ADJOURNMENT**

The meeting adjourned at 8:36 p.m.

\_\_\_\_\_  
Michael Termini, Mayor

ATTEST:

\_\_\_\_\_  
Linda Fridy, City Clerk

Attachment: 5-24 draft minutes (Approval of City Council Minutes)



## CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF JUNE 14, 2018

FROM: Finance Department  
SUBJECT: Consider the City's Investment Policy

**RECOMMENDED ACTION:** Confirm the City's Administrative Policy Number III-1, Investment Policy.

**BACKGROUND:** California Government Code §53630 et seq. contains State requirements for the deposit of City funds. GC § 53635 requires that all money belonging to, or in the custody of, a local agency be deposited in certain allowable instruments. The current Investment Policy was approved by the City Council on August 9, 2001, by adoption of Resolution No. 3149 affirming the City's Investment Policy, and was incorporated into the City's Administrative Policies. A copy of the Investment Policy, which was most recently confirmed by the City Council on June 8, 2017, is attached.

**DISCUSSION:** California Government Code requires a city to review its Investment Policy on an annual basis. The City's current Investment Policy and Investment Portfolio comply with all applicable state law requirements.

**FISCAL IMPACT:** None

**ATTACHMENTS:**

1. III-1 Investment Policy

Report Prepared By: Jim Malberg  
Finance Director

**Reviewed and Forwarded by:**

Jamie Goldstein, City Manager

6/5/2018





# ADMINISTRATIVE POLICY

Number: III-1  
Issued: May 9, 1996  
Revised: August 9, 2001  
Jurisdiction: City Council

## INVESTMENT POLICY

The policy for the investment of public funds shall at all times conform, by law, to Section 53601, et seq., of the California Government Code. In order of importance, the investment policy shall:

1. Provide for the safety of the funds
2. Assure the liquidity of the funds
3. Acquire earnings of the funds

This investment policy, or any modification thereof, shall be formulated by the City Treasurer and approved by the City Council and copies made available upon request.

The Treasurer's investment portfolio contains pooled investments of funds by both the City and of benefit assessment districts within the City. The earnings from pooled investments are shared proportionately with each investor.

City investment funds shall only be invested in the following permitted investments:

1. State of California Local Agency Investment Fund
2. U.S. Treasury T-Bills
3. Negotiable Certificates of Deposit
4. Guaranteed Investment Contracts (GIC) of AAA quality, for a term not to exceed fifteen (15) months\*

The following limitations shall apply to permitted investments:

T-Bills: Total dollar investment not to exceed 60% of total portfolio at time of investment.

Certificates of Deposit:

- A. Total dollar investment not to exceed 20% of total portfolio at time of investment.
- B. Maturity date of securities shall not be more than 365 days from date of purchase.
- C. Issuer must be one of top 20 national or state chartered banks, one of top 20 state or federal savings associations, or one of top 10 state licensed foreign banks as compiled by American Banker from Merrill Lynch.
- D. CD's may be purchased only from the issuer, a federal or state chartered bank, a federal or state association, or a brokerage firm designated as a primary dealer by the Federal Reserve Bank.
- E. The deposit shall not exceed the total of the paid-up capital and the surplus of any depository bank, nor shall the deposit exceed the net worth of any depository association.

City funds placed in a qualified Other Post Employment Benefit (OPEB) Trust Fund for retiree healthcare can be invested in accordance with Government Codes 53620-53622.

  
Peter Wilk, City Treasurer

Attachment: III-1 Investment Policy (City investment policy)





# CAPITOLA CITY COUNCIL AGENDA REPORT

## MEETING OF JUNE 14, 2018

FROM: Finance Department

SUBJECT: Consider the Adoption of a Resolution Setting the Fiscal Year 2018/2019  
Appropriation Limit

RECOMMENDED ACTION: Adopt the resolution.

BACKGROUND: On November 6, 1979, California voters approved Proposition 4, commonly known as the Gann Initiative, establishing Article XIII B of the State Constitution. This proposition, which has been amended twice, places annual limits on the appropriation of tax proceeds that can be made, based on the 1978-79 base year and adjusted each year for population growth and cost-of-living factors. It precludes state and local government from retaining “excess” revenues above the appropriation limit and requires the state to reimburse local government for the cost of certain mandates.

The appropriations limit on the amount of revenue that can be spent applies only to tax proceeds. Charges for services, fees, grants, loans, donations, and other non-tax based proceeds are excluded.

The State Constitution requires that prior to June 30 of each year, Council ratify the calculation factors and set the City’s appropriations limit for the following fiscal year.

DISCUSSION: The Appropriations Limit for a given fiscal year is established in the months preceding the beginning of that fiscal year. California Revenue and Taxation Code, Section 2227, mandates that the State Department of Finance transmit an estimate of the percentage change in population to local governments. Capitola uses this percentage change in population factor for January 1, 2018, in conjunction with the County-issued “Change in California Per Capita Income” to calculate the Appropriation Factor used in determining the limit.

The 2018-19 calculation is:

Annual % change in City Population minus Exclusions	x	Change in California per capita Income =	=	Appropriation Factor	x	FY 2017-18 Appropriation Limit	=	FY 2018-19 Appropriation Limit
0.9993		1.0367		1.0360		\$ 28,137,314		\$ 29,150,257

Appropriation Limit  
June 14, 2018

The 2018-19 Proposed Budget tax revenues are:

Source of Tax Revenue	2018-19 Proposed Budget
Sales Tax (1%)	\$ 5,793,851
District Taxes (Measures O & F)	2,186,980
Property Tax and In-Lieu	2,473,833
Transient Occupancy Tax	1,528,913
Franchise Taxes	540,816
Business License Tax	302,304
Interest Income from tax revenue	2,500
Total Tax Revenue	\$ 12,829,197

The 2018-19 percent of appropriations limit used is:

Fiscal Year ended:	2016-17	2017-18	2018-19
Appropriations Limit	\$ 27,065,519	\$ 28,137,314	\$ 29,150,257
Tax revenue	\$ 12,052,399	\$ 12,713,254	\$ 12,829,197
Remaining to limit	\$ 15,013,120	\$ 15,424,060	\$ 16,321,060
% of limit used	44.53%	45.18%	44.01%
Limit vs. prior year	\$ 1,536,827	\$ 1,071,795	\$ 1,012,943
Incr./(Decr.) vs. pr. yr.	6.0%	4.0%	3.6%

**FISCAL IMPACT:** The appropriations limit increased \$1,012,943 to \$29.1 million, or 3.6 percent, from Fiscal Year 2017/18 to Fiscal Year 2018/19.

Report Prepared By: Mark Sullivan  
Senior Accountant

**Reviewed and Forwarded by:**

Jamie Goldstein, City Manager

6/5/2018

Appropriation Limit  
June 14, 2018

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

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA  
SETTING THE 2018-19 FISCAL YEAR APPROPRIATION LIMIT PURSUANT  
TO ARTICLE XIII B OF THE CALIFORNIA CONSTITUTION**

**WHEREAS**, before June 30 of each year, the City Council must select the factors to calculate the appropriation limit for the ensuing fiscal year and set the appropriation limit accordingly.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** by the City Council of the City of Capitola that the 2018-19 Fiscal Year Appropriation Limit shall be \$29,150,257 calculated as follows:

Population change within the city:	0.9993
Change in California per capita Income	1.0367

2017-18 Appropriation Limit:	\$ 28,137,314
Adjustment Factor (1.00xx x 1.0xxx)	x 1.0360
2018-19 Appropriation Limit:	<u>\$ 29,150,257</u>

**I HEREBY CERTIFY** that the foregoing Resolution was passed and adopted by the City Council of the City of Capitola on the 14th day of June, 2018, by the following vote:

**AYES:**  
**NOES:**  
**ABSENT:**  
**ABSTAIN:**

\_\_\_\_\_  
Michael Termini, Mayor

ATTEST:

\_\_\_\_\_  
Linda Fridy, City Clerk



## CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF JUNE 14, 2018

FROM: Public Works Department

SUBJECT: Consider Brommer Street Complete Street Project Regional Transportation Improvement Program Funding Award and Award of an Engineering Design Contract

**RECOMMENDED ACTION:** Accept a Regional Transportation Improvement Program award from the Santa Cruz County Regional Transportation Commission in the amount of \$470,000 for the Brommer Street Complete Street Project and award an engineering design contract to Kimley-Horn in the amount of \$85,400.

**BACKGROUND:** On December 7, 2017, the Santa Cruz County Regional Transportation Commission (RTC) approved a \$470,000 allocation in the 2018 Regional Transportation Improvement Program (RTIP) for the Brommer Street Complete Street Project, with funding becoming available in July 2018. In addition, the proposed Capitola Fiscal Year 2018-19 budget includes allocating \$300,000 of RTC Measure D funds to this project, bringing the total project funding to \$770,000.

Kimley-Horn, the City's on-call engineer, prepared the scope of services for this project detailed in Attachment 1. Phase 1 was successfully completed as part of the staff augmentation contract resulting in the RTIP allocation. The remaining phases of the contract are for engineering design services, permitting, right-of-way acquisition if necessary, and public outreach necessary to complete the project.

**DISCUSSION:** This project will reconstruct Brommer Street from 41<sup>st</sup> Avenue to the western city boundary just west of 38<sup>th</sup> Avenue to improve access for bicyclists, pedestrians, vehicles, and large commercial trucks. When completed, continuous sidewalks and bike lanes will run the length of the project and the roadway will be repaved.

The schedule for the project is as follows:

Design and Permitting	January 2019
Right of Way	March 2019
Bid Project	June 2019
Award Contract	August 2019
Construction	Fall 2019

**FISCAL IMPACT:** \$770,000 is allocated in the 2018-19 budget for this project. Kimley-Horn's

Brommer Street Grant and Engineering Contract  
June 14, 2018

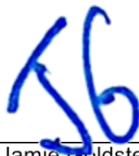
fee of \$77,100 for Phase 2 of the proposal was anticipated in the RTIP funding request.

ATTACHMENTS:

1. Kimley-Horn Scope of Services

Report Prepared By: Steve Jesberg  
Public Works Director

**Reviewed and Forwarded by:**



---

Jamie Goldstein, City Manager

6/5/2018

October 3, 2017

Steve Jesberg, PE  
Public Works Director  
City of Capitola  
420 Capitola Ave.  
Capitola, CA 95010

**Subject: Proposal for Brommer Complete Street Improvements**

Dear Steve,

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or “Consultant”) is pleased to submit this letter agreement (the “Agreement”) to the City of Capitola (“Client”) for providing engineering services per the Master Agreement for Continuing Professional Services First Amendment dated March 24, 2016 which is incorporated herein by reference. The following outlines our scope of services for this project.

## Project Understanding

The City of Capitola proposes to construct complete street roadway improvements on Brommer Street from the westerly City limits and between 38<sup>th</sup> Avenue and 41<sup>st</sup> Avenue to improve access for bikes and pedestrians. A continuous sidewalk on the north side of Brommer is proposed to provide pedestrian gap closure, and the westbound approach to the Brommer / 41<sup>st</sup> signalized intersection will be reconfigured for truck and vehicle circulation. The project will also repave Brommer Street from the westerly City limits to 41<sup>st</sup> Avenue as well as reconstruct driveways and curb ramps to meet ADA standards.

The City is applying for a County Regional Transportation Improvement Program grant to help fund the project, and the grant application is due in October.

## Scope of Services

Kimley-Horn will provide the services specifically set forth below.

### Phase 1 Scope

#### Task 1.0 Grant Writing

Kimley-Horn will prepare, in collaboration with the City, the 2018 Santa Cruz County Regional Transportation Improvement Program (RTIP) grant application for the proposed Brommer Complete Street project. Project details will be obtained via City of Capitola staff guidance. Kimley-Horn will complete all required RTIP grant application documents and figures and will work with the City to refine the project description, project timelines, and data requirements. For the grant application, the consultant will estimate the project schedule, cost estimate, and scope of work from conceptual design layouts using aerial photos, County GIS data, and field observations.

One draft application packet will be submitted to the City for review. The Consultant will address one round of consolidated comments and will submit a final application packet for City staff for signature and submittal to RTC before the application deadline on October 23, 2017. The Consultant has budgeted up to 54 hours for this task.

*Deliverables:*

- *Draft and Final submitted RTIP grant application*
- *Preliminary Concept Exhibit, Cost Estimate, Project Schedule, Site Photos*

Based on the results of the RTC Grant Application in Task 1 and direction from the City, Kimley-Horn can initiate an additional Phase 2 scope which will involve full engineering design and support of the Brommer Complete Street Project augmented with public outreach, topographic survey, utility coordination, PS&E, and construction support. A summary of the Phase 2 scope is detailed below.

**Phase 2 Scope****Task 2.0 Project Management**

Kimley-Horn will provide project management oversight of our team's activities and coordinate with the City of Capitola throughout the project's duration. The Consultant has budgeted up to 60 hours for this task.

**Sub-Task 1a: Project Coordination**

The Kimley-Horn Project Manager and task managers will supervise, coordinate, and monitor the planning and design of the Project for conformance with standards and policies established between the City and Kimley-Horn at the beginning of the project. Kimley-Horn will coordinate with the City, and with various planning and design functional groups, including sub-consultants, for the delivery of products.

**Sub-Task 1b: Project Administration**

Kimley-Horn staff's administration efforts include initial development of work plan, filing system and processing timely invoices.

*Deliverables:*

- *Monthly Invoices*
- *Internal Project Files & Work Plan (retained at Kimley-Horn offices for up to three years)*

**Sub-Task 1c: Project Meetings**

Kimley-Horn's project manager and/or engineering staff will attend meetings with the City. We assume monthly project development conference calls and 1 meeting with City Staff after project submittal to discuss comments.

*Deliverables:*

- *Attendance at meeting (1 meeting after submittal, 2 Kimley-Horn Staff)*

**Task 3.0 Data Gathering and Survey**

The Kimley-Horn team will coordinate its efforts to perform field reconnaissance and gather readily available data/information. This task will consist of data collection including field investigation, assembling readily available information provided by the City, topographic surveys, and gathering readily available utility facility information. The Consultant has budgeted up to 31 hours for this task.

Kimley-Horn assumes the City will provide any as-built information for the various improvements in the area, including past roadway and drainage improvements, as well as existing signal equipment information.

The Consultant will coordinate with a sub-consultant to obtain a topographic survey of the existing Brommer Street for this project. The survey includes the services to establish existing control, set a site benchmark, a topographic survey, and right-of-way. The topographic survey will comprise of a survey of existing surface features, including edge of pavement, existing back of walk, fencing/wall locations, observable ground utilities, and centerline control. The topographic survey will be used to develop a contour interval map to be used in the development of the Brommer Complete Street design. The surveyor will also utilize record maps, title, and field information for right-of-way determination within project limits of the survey.



The Consultant and/or surveyor will send out utility request letters to the utility owners in the immediate area to gather information on existing facilities. We will review and compile the received information to incorporate into our proposed design. We will work to identify potential conflicts and our design intent will be to avoid existing utilities. If our design cannot avoid conflicts with an existing facility, additional coordination with the utility owner will occur to address the conflict, including adjustments, relocations, and protection in place. Our scope and fee assume that the utility owner will provide all utility design services related to adjustment, relocation, or protection of their facilities.

Kimley-Horn will evaluate the existing pavement condition by engineers experienced in pavement maintenance projects by performing a field walk-through and visual inspection. Potential rehabilitation treatments will be documented in a Pavement Evaluation Memo and discussed with the City prior to including the selected pavement rehabilitation treatment in the 30% plan set. Kimley-Horn assumes the City will provide the R-value for consideration in evaluating the pavement rehabilitation treatments. If the City would like to have physical testing performed, these services can be provided for additional scope and fee.

*Deliverables:*

- *Topographic survey of project site and necessary background data for use in PS&E submittal*
- *Site visit and Pavement Evaluation Memo*

**Task 4.0 Design Alternatives & Public Outreach:**

The Consultant will analyze the topographic survey and background data to determine design alternatives for complete street access. Up to 2 sets of conceptual level concept exhibits will be prepared to highlight the right-of-way, existing topography, and proposed roadway and sidewalk improvements on a scaled aerial. The roadway alternatives will evaluate different striping and median options for the eastbound approach at the Brommer / 41<sup>st</sup> intersection and will include details for roadway paving and sidewalk. The design and methodology will be reviewed first with the City before preparing the preferred design alternative for public outreach and proceeding with the PS&E submittal.

Throughout the project, the Consultant will attend up to 2 City stakeholder meetings in the City of Capitola to aid in answering questions about the proposed roadway alternatives, discussing the project with stakeholders, or hosting public workshops for community feedback. The Consultant will work with City staff to facilitate the community meetings and will prepare materials including agendas, exhibits, meeting minutes, and PowerPoint presentations. The Consultant has budgeted up to 76 hours for this task. If the City desires public outreach efforts beyond the scope provided, those efforts would be treated as additional services.

*Deliverables:*

- *Up to 2 Alternative concept exhibits of the project site (22x34 or larger), property impact exhibits, and public outreach materials*
- *Attendance at up to 2 public outreach or City Council meetings (2 Kimley-Horn staff)*

**Task 5.0 Prepare 65% Construction Drawings:**

Kimley-Horn will prepare 65% construction documents for the project. The construction documents will be prepared in general accordance with the City of Capitola policies, procedures, manuals, and standards. Kimley-Horn follows a structured QA/QC process that will be implemented throughout the life of the project. We have designated a senior roadway engineer to perform independent reviews ahead of major submittals (65%, 95%, and Final). The Consultant has budgeted up to 174 hours for this task.

Kimley-Horn will prepare plan sheets in imperial units. An estimated sheet breakdown is as follows.

The following is an estimated plan sheet breakout:

Cover Sheet and General Notes	1 Sheet
Typical Section	1 Sheet
Standard Details	1 Sheet
Demolition Plans	1 Sheet
Layout Plans	2 Sheets
Grading Plans	1 Sheet
Construction Details	1 Sheet
Drainage & Utility Details	1 Sheet
Pavement Delineation and Signing	1 Sheet
Temporary Erosion Control Plans	1 Sheet
Temporary Traffic Control Plans	1 Sheet

Estimated Total Sheets: 12 Sheets

The following is a general description for each sheet and the description of services.

Cover Sheet:

The cover sheet will include a legend, project site map, vicinity map, index of drawings, and project description.

General Notes Sheet:

The General Notes will include City of Capitola standard notes and consultant design clarification notes. This assumes that the City of Capitola notes will be furnished by the City.

Typical Section:

The typical cross-sections sheet of Brommer Street will include right-of-way, curb, gutter, driveway, and sidewalk locations.

Demolition Plan:

Consultant will prepare a demolition plan for the pavement rehabilitation and roadway improvements showing the removal and protection of existing facilities.

Layout and Grading Plans:

The Consultant will prepare plan and profile sheets for the Brommer Street improvements. The layout and grading plans will include the limits of pavement rehabilitation, horizontal and vertical design of the sidewalk, horizontal and vertical design of all curb ramps to ADA standards, and horizontal and vertical design of access driveways.

The Consultant will coordinate with the City to minimize impacts to the existing properties and driveways; however, ADA compliance in public right-of-way is required and may create significant impacts to the residential driveways. The City will need to obtain right of entry to construct ADA compliant improvements. It is assumed that the City will be responsible for communicating the impacts to the property owners.

Construction, Utility and Drainage Details:

Details of any new or impacted utilities, drainage facilities or retaining walls will also be provided. Based on topographic survey and background data collected, the preferred design will incorporate as much of the existing utility and drainage as possible into the design and will minimize the need to relocate or replace these facilities.

Pavement Delineation and Signing:

The improvement plan will show locations of striping and signage along the Brommer Complete Street project. Signage and striping will be prepared in conformance with the latest version of California MUTCD.

Erosion Control Plan:

The Consultant will prepare erosion control plans for the proposed improvements in general accordance with the City of Capitola standards. The erosion control plan is expected to consist of erosion control details, general erosion control notes, and a plan view showing locations of temporary BMPs.

Traffic Control Plan:

The Consultant will prepare traffic control plans showing temporary striping, signage, construction staging details for the Brommer Complete Street project. Signage and striping will be prepared in conformance with the latest version of California MUTCD.

Opinion of Probable Costs:

The Consultant will prepare quantity takeoffs and an opinion of probable construction cost (OPCC) for the proposed Brommer Complete Street improvements. Unit costs will be established using recent contractor bids for construction projects located in the surrounding area. The Consultant cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its OPCC.

Technical Specifications:

It is assumed that Caltrans, and AASHTO Greenbook Specifications are sufficient for the project design parameters and will be incorporated into the City's Master Spec format. It is assumed that no additional specifications or special provisions will be required for this project.

Deliverables:

- 65% PS&E documents in PDF format including plans, specifications, and estimate

**Task 6.0 Prepare 95% Construction Documents PS&E:**

The Consultant will submit 65% construction documents (first submittal), for review and comment by the City of Capitola. This scope assumes the plan check review will be limited to the City of Capitola engineering and public works departments. The Consultant will meet with the City of Capitola one time to go over review comments, proposed responses, and to resolve conflicts between comments from different department reviewers.

Upon completion of the plan checking process, the Consultant will prepare and submit the 95% construction documents (second submittal) that will incorporate City review comments from the first submittal. The Consultant has budgeted up to 59 hours for this task.

Deliverables:

- Attendance at one meeting to review comments (2 Kimley-Horn staff)
- 95% PS&E documents in PDF format including plans, specifications, and estimate

**Task 7.0 Prepare Final PS&E:**

The Consultant will submit 95% construction documents (second submittal), for review and comment by the City of Capitola. Upon completion of the plan checking process, the Consultant will prepare and submit the Final PS&E submittal and approval document package. The Consultant has budgeted up to 41 hours for this task.

Deliverables:

- Final PS&E documents in 22x34 bond copies and PDF format
- Wet signed full size plan sets for bid distribution upon request

**Task 8.0 Bid and Construction Support Services:**

The Consultant will provide professional construction phase services for the Brommer Complete Street improvements. The Consultant has budgeted up to 30 hours for this task and additional work will be billed on a time and material basis. The bid and construction support services are specifically stated below:

*Bid Document Preparation and Contractor Notification.* Consultant will prepare and assemble construction bidding documents, including specifications for the subject Work and the construction contract, based on "Standard General Conditions of the Construction Contract" (EJCDC No. C-700, 2013 edition) prepared by

the Engineers Joint Contract Documents Committee. Consultant will issue bid packages for the submittal of quotations to perform the work and conduct pre-bid meetings with potential bidders. We will tabulate the bids received and evaluate the compliance of the bids received with the bidding documents. We will prepare a written summary of this tabulation and evaluation. If requested by the Client, Consultant will notify the selected Contractor.

*Pre-Construction Conference.* Consultant will conduct [or attend] a Pre-Construction Conference prior to commencement of Work at the Site.

*Visits to Site and Observation of Construction.* Consultant will provide on-site construction observation services during the construction phase. Consultant will make visits at intervals as directed by Client in order to observe the progress of the Work. Such visits and observations by Consultant are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress. Observations are to be limited to spot checking, selective measurement, and similar methods of general observation of the Work based on Consultant's exercise of professional judgment. Based on information obtained during such visits and such observations, Consultant will evaluate whether Contractor's work is generally proceeding in accordance with the Contract Documents, and Consultant will keep Client informed of the general progress of the Work.

The purpose of Consultant's site visits will be to enable Consultant to better carry out the duties and responsibilities specifically assigned in this Agreement to Consultant, and to provide Client a greater degree of confidence that the completed Work will conform in general to the Contract Documents. Consultant shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall KHA have authority over or responsibility for the means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, nor for any failure of Contractor to comply with laws and regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.

*Recommendations with Respect to Defective Work.* Consultant will recommend to Client that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, Consultant believes that such work will not produce a completed Project that conforms generally to Contract Documents.

*Clarifications and Interpretations.* Consultant will respond to reasonable and appropriate Contractor requests for information and issue necessary clarifications and interpretations of the Contract Documents to Client as appropriate to the orderly completion of Contractor's work. Any orders authorizing variations from the Contract Documents will be made by Client.

*Change Orders.* Consultant may recommend Change Orders to Client, and will review and make recommendations related to Change Orders submitted or proposed by the Contractor.

*Shop Drawings and Samples.* Consultant will review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs.

*Substitutes and "or-equal."* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor in accordance with the Contract Documents, but subject to the provisions of applicable standards of state or local government entities.

*Inspections and Tests.* Consultant may require special inspections or tests of Contractor's work as Consultant deems appropriate, and may receive and review certificates of inspections within Consultant's area of responsibility or of tests and approvals required by laws and regulations or the Contract Documents. Consultant's review of such certificates will be for the purpose of determining that the results certified

indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Consultant shall be entitled to rely on the results of such tests and the facts being certified.

*Disagreements between Client and Contractor.* Consultant will, if requested by Client, render written decision on all claims of Client and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the progress of Contractor's work. In rendering such decisions, Consultant shall be fair and not show partiality to Client or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

*Applications for Payment.* Based on its observations and on review of applications for payment and accompanying supporting documentation, Consultant will determine the amounts that Consultant recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Consultant's representation to Client, based on such observations and review, that, to the best of Consultant's knowledge, information and belief, Contractor's work has progressed to the point indicated and that such work-in-progress is generally in accordance with the Contract Documents subject to any qualifications stated in the recommendation. In the case of unit price work, Consultant's recommendations of payment will include determinations of quantities and classifications of Contractor's work, based on observations and measurements of quantities provided with pay requests.

By recommending any payment, Consultant shall not thereby be deemed to have represented that its observations to check Contractor's work have been exhaustive, extended to every aspect of Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Consultant in this Agreement. It will also not impose responsibility on Consultant to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, nor to determine that title to any portion of the work in progress, materials, or equipment has passed to Client free and clear of any liens, claims, security interests, or encumbrances, nor that there may not be other matters at issue between Client and Contractor that might affect the amount that should be paid.

*Substantial Completion.* Consultant will, promptly after notice from Contractor that it considers the entire Work ready for its intended use, in company with Client and Contractor, conduct a site visit to determine if the Work is substantially complete. Work will be considered substantially complete following satisfactory completion of all items with the exception of those identified on a final punch list. If after considering any objections of Client, Consultant considers the Work substantially complete, Consultant will notify Client and Contractor.

*Final Notice of Acceptability of the Work.* Consultant will conduct a final site visit to determine if the completed Work of Contractor is generally in accordance with the Contract Documents and the final punch list so that Consultant may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Consultant shall also provide a notice that the Work is generally in accordance with the Contract Documents to the best of Consultant's knowledge, information, and belief based on the extent of its services and based upon information provided to Consultant upon which it is entitled to rely.

*Limitation of Responsibilities.* Consultant shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing the Work. Consultant shall not have the authority or responsibility to stop the work of any Contractor.

## Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:



- Additional Survey
- Landscaping
- SWPPP
- Storm Water Control Plans
- Drainage Analysis
- Environmental Support & Permitting

## Information Provided By The Client

We shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. The Client shall provide all information requested by Kimley-Horn during the project, including but not limited to the following:

- As-builts, survey data, and relevant project files
- Supporting documentation (meeting minutes with staff, review comments, etc.)

## Schedule

We will provide our services as expeditiously as practicable to meet a mutually agreed upon schedule.

## Fee and Expenses

Kimley-Horn will perform the services in Tasks 1-8 on a labor fee plus expense basis with the maximum labor fee shown below.

<b>Phase 1 Total Labor Fee</b>	<b>\$8,300</b>
Task 1 Grant Writing	\$8,300
<b>Phase 2 Total Labor Fee</b>	<b>\$77,100</b>
Task 2 Project Management	\$9,000
Task 3 Data Gathering and Survey	\$12,100
Task 4 Design Alternatives & Public Outreach	\$12,600
Task 5 Prepare 65% Construction Documents	\$24,900
Task 6 Prepare 95% Construction Documents	\$8,600
Task 7 Prepare Final PS&E	\$5,900
Task 8 Bid and Construction Support Services	\$4,300
<b>Total Maximum Labor Fee</b>	<b>\$85,400</b>

Kimley-Horn will not exceed the total maximum labor fee shown without authorization from the Client. Individual task amounts are provided for budgeting purposes only. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary.

Labor fee will be billed on an hourly basis according to our then-current rates. As to these tasks, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.10 times cost. A percentage of labor fee will be added to each invoice to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project may be billed hourly. All permitting, application, and similar project fees will be paid directly by the Client. Should the Client request Kimley-Horn to advance any such project fees on the Client's behalf, a separate invoice for such fees, with a ten percent (10%) markup, will be immediately issued to and paid by the Client.

Payment will be due within 30 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

### Closure

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Consultant" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to City of Capitola.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:

\_\_\_\_ Please email all invoices to \_\_\_\_\_

\_\_\_\_ Please copy \_\_\_\_\_

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute both copies of this Agreement in the spaces provided below, retain one copy, and return the other to us. We will commence services only after we have received a fully-executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

To ensure proper set up of your projects so that we can get started, please complete and return with the signed copy of this Agreement the attached Request for Information. Failure to supply this information could result in delay in starting work on your project.

We appreciate the opportunity to provide these services to you. Please contact me if you have any questions.

Very truly yours,

KIMLEY-HORN AND ASSOCIATES, INC.

Frederik Venter P.E.  
#64621

Derek Wu P.E.  
#81401

Attachment: Kimley-Horn Scope of Services (Brommer Street Grant and Engineering Contract)



**KIMLEY-HORN AND ASSOCIATES, INC.  
STANDARD PROVISIONS**

(1) **Consultant's Scope of Services and Additional Services.** The Consultant's undertaking to perform professional services extends only to the services specifically described in this Agreement. However, if requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.10 times cost.

(2) **Client's Responsibilities.** In addition to other responsibilities described herein or imposed by law, the Client shall:

- (a) Designate in writing a person to act as its representative with respect to this Agreement, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
- (b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project including all numerical criteria that are to be met and all standards of development, design, or construction.
- (c) Provide to the Consultant all previous studies, plans, or other documents pertaining to the project and all new data reasonably necessary in the Consultant's opinion, such as site survey and engineering data, environmental impact assessments or statements, upon all of which the Consultant may rely.
- (d) Arrange for access to the site and other private or public property as required for the Consultant to provide its services.
- (e) Review all documents or oral reports presented by the Consultant and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of the Consultant.
- (f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary for completion of the Consultant's services.
- (g) Cause to be provided such independent accounting, legal, insurance, cost estimating and overall feasibility services as the Client may require.
- (h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the scope, timing, or payment of the Consultant's services or any defect or noncompliance in any aspect of the project.
- (i) Bear all costs incidental to the responsibilities of the Client.

(3) **Period of Services.** Unless otherwise stated herein, the Consultant will begin work timely after receipt of a properly executed copy of this Agreement and any required retainer amount. This Agreement is made in anticipation of conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that the Consultant does not control. If such delay or suspension extends for more than six months (cumulatively), Consultant's compensation shall be renegotiated.

(4) **Method of Payment.** Compensation shall be paid to the Consultant in accordance with the following provisions:

- (a) Invoices will be submitted periodically for services performed and expenses incurred. Invoices are due and payable upon presentation. Client shall pay Consultant a time-price differential of one and one-half percent (1.5%) of the outstanding amount of each invoice that is overdue for more than 30 days. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant for the duration of the project and applied against the final invoice. If the Client fails to make any payment due to the Consultant under this or any other agreement within 30 days after presentation, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid in full and may commence proceedings, including recording liens, to secure its right to payment under this Agreement.
- (b) If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
- (c) If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due within 25 days of receipt.
- (d) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.

(5) **Use of Documents.** All documents, including but not limited to drawings, specifications, reports, and data or programs stored electronically, prepared by the Consultant are related exclusively to the services described in this Agreement, and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use, partial use or reuse by the Client or others on extensions of this project or on any other project. Any modifications made by the Client to any of the Consultant's documents, or any use, partial use or reuse of the documents without written authorization or adaptation by the Consultant will be at the Client's sole risk and without liability to the Consultant, and the Client shall indemnify, defend and hold the Consultant harmless from

all claims, damages, losses and expenses, including but not limited to attorneys' fees, resulting therefrom. The Consultant's electronic files and source code developed in the development of application code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client, and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern. Because data stored in electronic media format can deteriorate or be modified without the Consultant's authorization, the Client has 60 days to perform acceptance tests, after which it shall be deemed to have accepted the data.

(6) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.

(7) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, or upon thirty days' written notice for the convenience of the terminating party. If any change occurs in the ownership of the Client, the Consultant shall have the right to immediately terminate this Agreement. In the event of any termination, the Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by the Consultant as a result of such termination. If the Consultant's compensation is a fixed fee, the amount payable for services will be a proportional amount of the total fee based on the ratio of the amount of the services performed, as reasonably determined by the Consultant, to the total amount of services which were to have been performed.

(8) **Insurance.** The Consultant carries Workers' Compensation insurance, professional liability insurance, and general liability insurance. If the Client directs the Consultant to obtain increased insurance coverage, the Consultant will take out such additional insurance, if obtainable, at the Client's expense.

(9) **Standard of Care.** The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by the Consultant's undertaking herein or its performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

(10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent of the law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of, resulting from or in any way related to the services under this Agreement from any cause or causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. Under no circumstances shall the Consultant be liable for extra costs or other consequences due to changed conditions, or for costs related to the failure of contractors to perform work in accordance with the plans and specifications. This Section 10 is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section 10 shall require the Client to indemnify the Consultant.

(11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.

(12) **Certifications.** The Consultant shall not be required to execute certifications or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.

(13) **Dispute Resolution.** All claims by the Client arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the Construction Industry Mediation Procedures of the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.

(14) **Hazardous Substances and Conditions.** In no event shall Consultant be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to professional analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant shall notify the Client of hazardous substances or conditions not contemplated in the scope of services of which the Consultant actually becomes aware. Upon such notice by the Consultant, the Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.

(15) **Construction Phase Services.**

(a) If the Consultant's services include the preparation of documents to be used for construction and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.

(b) If the Consultant provides construction phase services, the Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

(c) The Consultant is not responsible for any duties assigned to the design professional in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and for its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.

(16) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.

(17) **Confidentiality.** The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of facts, data and information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.

(18) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State of California. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Provided, however, that any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement.



## CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF JUNE 14, 2018

FROM: Finance Department

SUBJECT: Consider Updated Capitola Village and Wharf Business Improvement Area Contract

**RECOMMENDED ACTION:** Authorize the City Manager to enter into an updated agreement with the Capitola Village and Wharf Business Improvement Area.

**BACKGROUND:** On September 8, 2005, the City of Capitola entered into an agreement with the Capitola Village and Wharf Business Improvement Area (CVWBIA). The agreement was necessary to implement the CVWBIA program authorized by Chapter 5.10 of the Capitola Municipal Code.

**DISCUSSION:** The 2005 agreement between the City and the CVWBIA defined the roles and responsibilities for both entities regarding budgeting, billing, and accounting. That agreement stated that all assessments would be billed by the City, remitted directly to the CVWBIA, maintained in a separate bank account held by the CVWBIA, and that all accounting would be performed by a bookkeeper hired by the CVWBIA. Over the past 13 years, the roles and responsibilities of each entity have shifted slightly to provide operational efficiencies.

Each year City staff has worked with the CVWBIA to prepare an annual budget, levy assessments to the businesses within the CVWBIA, and provide accounting and maintenance services. The proposed agreement memorializes the updated roles and responsibilities of the City and CVWBIA.

The primary changes are that assessment revenues are remitted directly to the City, as opposed to the CVWBIA; are accounted for in a separate Special Revenue Fund; and are deposited into the City's main checking account. In addition, accounting duties are performed by City staff, not a third-party bookkeeper. Expenditures continue to be authorized by the CVWBIA and are paid by the City from the dedicated Special Revenue Fund. The contract with red-lined changes is Attachment 1.

Furthermore, the proposed agreement includes language that the CVWBIA must provide documentation that it is duly incorporated and authorized to do business as a not-for-profit corporation under the laws of the State of California. (Attachment 2)

**FISCAL IMPACT:** There is no fiscal impact to the city. CVWBIA billing and accounts payable costs incurred by the City are reimbursed by the CVWBIA.

CVWBIA Contract  
June 14, 2018

ATTACHMENTS:

1. Capitola BIA contract - Red Line
2. Articles of Incorporation State Filing

Report Prepared By: Jim Malberg  
Finance Director

**Reviewed and Forwarded by:**



---

Jamie Goldstein, City Manager

6/5/2018

## PROFESSIONAL SERVICES AGREEMENT

### STANDARD FORM

THIS AGREEMENT is entered into on June , 2018, ~~September 8, 2005,~~ by and between the City of Capitola, a Municipal Corporation, hereinafter called "City" and Capitola Village and Wharf Business Improvement Area, a California non-profit corporation, 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 set forth 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.

Consultant shall meet with Jamie Goldstein, Richard Hill, City Manager, ~~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.

#### 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~~ City Manager may authorize a staff person to serve as his or her representative for conferring with Consultant relative to Consultant's services. 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.

The City shall, upon reasonable notice, be provided access to and the right to examine such books, documents, papers or records as may be reasonably required for the purpose of auditing CVWBIA's assessment revenues and expenditure of funds appropriated under the terms of this agreement. Such review is recommended annually or more frequently at the request of the City Manager.

#### SECTION 4 Fees and Payment

In consideration for the City's agreement to authorize Consultant to perform the services set forth in Appendix One in lieu of the City itself providing those services, Consultant's services shall be provided to City on a voluntary basis at no cost to City.

Consultant shall reimburse City for cost incurred for review(s) on a cost-recovery basis up to \$1,500 per year. Beginning on July 1, 20~~18~~<sup>07</sup> and each subsequent year thereafter on July 1<sup>st</sup>, the cost-recovery basis shall be adjusted to reflect costs of living increases or decreases that have occurred over the preceding 12-month period. That cost of living adjustment shall be determined in accordance with the U.S. Department of Labor, Bureau of Labor Statistics, figures in accordance with the United States Consumers All Items Price Index in the San Francisco-Oakland-San Jose Area, All Urban Consumers Index. The percent change figure for the one-year ending period ending in ~~April~~ December shall be used in this computation. If the described index shall no longer be published, another generally recognized as authoritative shall be submitted by agreement of the parties. At the discretion of the City, such adjustments shall be increments of \$100.

City review services expenditure shall be included in the CVWBIA annual budget. Refer to Section 3 "Duties of City" for further detail.

#### 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 the City to pay monetary compensation to Consultant shall be approved in advance in writing by the City.

#### SECTION 6 Time of beginning and Schedule for Completion

Consultant shall begin work upon its receipt of a written Notice to Proceed from ~~Director~~ City Manager. The Notice to Proceed shall not be issued until after this Agreement has been approved and authorized by the City Council.

In the event Consultant is delayed in performance of its services by circumstances beyond its control, the City will grant Consultant a reasonable additional time for completion provided that to do so would not frustrate the City's objective for entering into this Agreement. All claims for adjustments in



the schedule of work must be submitted to City by Consultant 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 thirty 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.

**SECTION 8  
Insurance**

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

***Minimum Scope of Insurance***

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial Liability coverage (occurrence Form CG 0001).
2. Workers' Compensation insurance as required by the State of California.

***Minimum Limits of Insurance***

Consultant shall maintain limits no less than:

- |   |  |
|---|--|
| <ol style="list-style-type: none"> <li>1. General Liability:<br/>(including operations,<br/>products and<br/>completed operations)</li> </ol> | <b>\$1,000,000</b> per occurrence and \$2,000,000 in aggregate<br>for bodily injury, personal and property damage. |
|---|--|

***Other Insurance Provisions***

The commercial general 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 insureds 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,

Attachment: Capitola BIA contract - Red Line (CVWBIA Contract)

- 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 by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, 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.

### *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

Consultant ~~and City~~ agrees to indemnify, defend and hold City, its ~~one another and hold harmless the other's~~ officers, agents and employees (collectively the "City"), from and against any and all claims, demands, actions, damages, or judgements, including reasonable associated costs of defense ~~to the extent caused by~~ from Consultant's ~~their~~ negligence or intentional misconduct in the performance of this Agreement. ~~-In addition,~~ should Consultant subcontract with any person or firm in connection with the services to be provided to City pursuant to Appendix One Consultant shall require said person or firm to similarly indemnify 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. Either the Santa Cruz County Superior or Municipal Court shall have jurisdiction over any such action and that Court shall be authorized to determine which party is the prevailing party and what amount constitutes reasonable attorneys' fees to be awarded to the prevailing party.

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 that 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.

SECTION 14  
**Miscellaneous Provisions**

1. *Project Manager.* ~~Director~~ City Manager 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 and Corporate Status.* Consultant warrants that ~~it he or she~~ has complied with any and all applicable governmental licensing requirements, and that it is duly incorporated and authorized to do business as a not-for profit corporation under the laws of the State of California.
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 records or other documents generated by Consultant pursuant to this Agreement are, and shall remain, the property of the City. The Consultant shall be permitted to retain copies for information and reference. The

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.

8. *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  
Attention: ~~Richard Hill~~ Jamie Goldstein  
420 Capitola Avenue  
Capitola, CA 95010

CONSULTANT

Capitola Village and Wharf Business  
Improvement Area  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CITY OF CAPITOLA

By \_\_\_\_\_  
Jamie Goldstein, ~~Richard Hill~~, City Manager

Dated \_\_\_\_\_

CONSULTANT

By \_\_\_\_\_  
[insert]

Dated \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Anthony P. Condotti, ~~John G. Barisone~~  
City Attorney

Attachment: Capitola BIA contract - Red Line (CVWBIA Contract)

## APPENDIX ONE Scope of Services

Consultant shall provide administrative services to the City necessary to implement the Capitola Village and Wharf Business Improvement Area program authorized by Chapter 5.10 of the Capitola Municipal Code pursuant to the Parking and Business Improvement Area Law of 1989, California Streets and Highways Code section 36500 et seq. To this end, in accordance with the Capitola Village and Wharf Business Improvement Area Financial Policy attached to this Scope of Services, Consultant shall:

1. Prepare and submit on an annual basis a recommended CVWBIA budget. Said recommended budget shall be submitted no later than June 15<sup>th</sup>, 2018 and April 15<sup>th</sup> each year thereafter during which this Agreement is in effect, and shall set forth the amount of assessments proposed to be levied, collected, and apportioned and shall specifically delineate the activities and programs for which the proposed assessment revenues are to be expended and the amount to be expended upon each activity and program.

2. Furnish an annual report to the City Council on or before April 15 each year. The report shall comply with the annual reporting requirements of California Streets and Highways Code section 36533 and shall include, but not be limited to:

- a. Any proposed changes to the Capitola Village and Wharf Business Improvement Area or its zones;
- b. The programs and activities to be prepared for the upcoming year;
- c. A proposed budget for said programs and activities;
- d. The method proposed to levy assessments to underwrite the costs of said programs and activities;
- e. The amount of any surplus or deficit assessment revenues or other revenues carried over from the prior year;
- f. The amount of any contributions made from sources other than assessments that were received during the prior year or which are anticipated in the upcoming year;

~~A final accounting for all monies spent in the prior year and the programs and activities upon which those assessment funds were spent shall be submitted to the City Council by September 30 each year.~~

g. Evidence that its status as a not-for-profit corporation has remained active and that it is duly authorized to conduct business in the State of California for the upcoming fiscal year.

3. ~~Consultant~~City shall be the sole receiving agent for all assessments levied by the City and, using said assessment funds, Consultant shall carry on all activities and programs for the Capitola Village and Wharf Business Improvement Area that are approved by the City Council after it receives the afore-referenced annual report, approves or modifies the report and levies assessments for the upcoming year. Consultant shall be directly and solely responsible to the City Council for the use and expenditure of -assessment funds. Consultant, as permitted by the annual CVWBIA budget approved by the City Council and at no additional expense to City may hire necessary staff and pay all necessary administrative expenses relative to the conduct of such activities and programs.

4. Upon the City Council's annual adoption of the resolution approving or modifying the annual report and levying assessments for the upcoming year, ~~Consultant~~City shall bill for and collect all assessments and account for same to the City.

5. If Consultant's annual reports to the City reveal that assessment funds have not been expended by Consultant in accordance with the annual budget previously approved by the City Council, or if City makes this determination by any other method, Consultant shall repay the City for any improperly expended assessment funds.

~~6. Consultant shall establish a separate account for the placement of assessment funds collected pursuant to this Agreement and said funds shall not be intermingled with any other funds that Consultant may acquire or use in the course of Consultant's business operations. City shall deposit assessment funds in its general bank account and track all receipts and disbursements through a separate fund setup specifically for the operations of Consultant.~~

7. The Consultant financial policy to be followed under this Agreement is set forth in Attachment A of this Appendix One.

## ATTACHMENT A

### CAPITOLA VILLAGE AND WHARF BUSINESS IMPROVEMENT AREA FINANCIAL POLICY

#### I. Budgeting

An annual budget proposal will be prepared by the Executive Committee with input from members of the BIA and approved by a majority vote of the Board of Directors (“Board”) each fiscal year. The budget will be submitted to the City Council by June 14<sup>th</sup>, 2018 and April 15 of each year thereafter during which this Agreement is in effect.

1. The Executive Committee is authorized to approve reallocation of expenses between budget line items, as long as the total expenses remain the same.
2. The fiscal year of the Capitola Village & Wharf Business Improvement Area (CVWBIA) will begin on July 1<sup>st</sup> and end June 30<sup>th</sup>.
3. Budget amendments require City Council approval.

#### II. Bank Account

III.

~~IV. A checking account will be established for the Capitola Village & Wharf Business Improvement Area financial transactions in accordance with the following:~~

~~V. The financial institution will be a federal or state chartered bank.~~

~~VI. The account name will be “Capitola Village and Wharf Business Improvement Area.”~~

~~VII. The federal employer identification number will be that of the CVWBIA, not the City of Capitola federal employer identification number.~~

~~VIII. The account funds will be insured as follows:~~

~~IX. Federal Deposit Insurance Corporation (FDIC) insured up to \$100,000~~

~~X. The remaining funds (considered government public funds) will be collateralized for the amount in excess of the FDIC insurance amount up to the bank’s shareholder’s equity amount.~~

#### XI.II. Investment Policy

The policy for the investment of public funds shall at all times conform, by law, to Section 53601, et seq., of the California Government Code. In order of importance, the investment policy shall:

1. Provide for the safety of the funds
2. Assure the liquidity of the funds
3. Acquire earnings of the funds

All funds of the CVWBIA will be held in the City’s main checking account. CVWBIA funds will **not** be permitted for investment purposes.



### XII.III. Bookkeeper

~~The bookkeeper as retained by the CVWBIA with approval from the~~ The City is responsible for managing the bank account, invoicing members, accounts receivable, accounts payable, and all other accounting functions.

1. The ~~bookkeeper-City~~ will report to the Treasurer, and may also report as needed to the Executive Committee.
2. The financials of the CVWBIA will be kept in accordance with generally accepted accounting principles (GAAP), on a cash-basis of accounting.
3. ~~The accounting database used by the contracted bookkeeper is the property of the CVWBIA. If in the event the bookkeeper contract is dissolved, the complete accounting database will be immediately provided to the CVWBIA.~~
3. ~~The bookkeeper-City~~ will ensure compliance with the CVWBIA financial policies.
4. Consultant shall reimburse City for bookkeeping services in the amount set forth in Consultant's annual budget.

### XIII.IV. Cash Flow Management

1. Monetary Deposits -- The cash and checks will be deposited daily or at a minimum, weekly into the ~~Capitola BIA~~City's checking account. All Capitola BIA funds (cash and checks) will be properly safeguarded.
2. Reserve Funds – The Capitola BIA ~~fund cash balance~~~~checking account~~ shall maintain a minimum balance of \$4,000 for contingency/emergency purposes. In no event shall the ~~checking account~~~~fund cash~~ balance be below \$4,000.
3. Debt –No other debt arrangement is permitted for the CVWBIA.
4. Payment Terms – net 30 days, unless otherwise approved.

### Check Signing Authority

~~The general policy will be that the Board President, Vice President and Treasurer, will have signing authority over financial accounts.~~

~~The board will approve the specific signatories on all accounts at the beginning of each fiscal year.~~

1. ~~Additional signatories may be added for one year if approved by a majority vote of the Board.~~
- 2.1. ~~The Board authorized individuals can sign checks for up to \$5,000 with one signature.~~
3. ~~Checks for \$5,000 or more require two Board authorized signatures.~~
4. ~~Check signatories will reflect only the current authorized signatories, with the removed signatories promptly reported to the bank.~~
5. ~~Wire fund transfers will not be permitted on the checking account.~~

#### XIV.V. Check Requests

Check requests shall be submitted in writing.

1. The Treasurer will approve check requests.
2. All purchases will be documented with the amount, date, to whom the check was written, and the appropriate expense category.
3. Required documentation can include a receipt, invoice, and/or copy of the contract, if appropriate.
4. No check will be payable to “cash.”
5. The ~~bookkeeper~~City will maintain a file of all requests for auditing purposes.
6. The ~~bookkeeper~~City will provide a monthly check register report to the Treasurer, with a copy to the Board.

#### XV.VI. Reimbursement Requests

Reimbursement requests shall be submitted in writing with receipts attached.

The Treasurer will approve reimbursement requests in accordance with the purchasing policy below.

#### XVI.VII. Purchasing Policy

- A. Purchases over \$2,000 up to \$10,000 (Excluding Taxes and Freight) Purchase Order Form Required (Exhibit A) and Quote Summary (Exhibit C):
  1. Purchasing Process: The purchaser is responsible for protecting the best interests of the CVWBIA and making the most cost-effective purchase.
  2. Authority: The CVWBIA Treasurer is authorized for purchases/contracts up to \$2,000. The CVWBIA Executive ~~d~~Director is authorized for purchases/contracts between \$2,000 and \$10,000.
  3. Documentation: Three quotes must be documented in writing on the Telephone Quote Form (Exhibit C) and submitted to the CVWBIA Executive Director with the Purchase Order Form (Exhibit A). The quotes must be documented in writing and referenced in the written report to CVWBIA Board for review at the next monthly meeting. The CVWBIA will keep a record of all open market responses for a period of at least one-year.
  4. Payment: A copy of the Purchase Order and the Invoice is required for payment.
- B. Purchases over \$10,000 (Excluding Taxes and Freight):
  1. Purchasing Process: Purchases of services supplies, equipment and materials, must be based on a minimum of three **formal written** bids/quotes and

awarded to the lowest responsible respondent. *General Service agreements may be based on a Request for Proposal (RFP) process.*

2. Authority: Purchases of supplies, equipment and materials or for services over \$10,000 will be made by a **formal written** RFP or Invitation To Bid process and awarded by the CVWBIA Board to the respondent submitting the lowest price in a bid. If it is an RFP, the most qualified respondent based on the awarding criteria in the RFP will be awarded the contract.
3. Documentation: The quotes must be documented in writing and referenced in the written report to the CVWBIA Board for approval. The CVWBIA will keep a record of all open market responses for a period of at least one-year.
4. Payment: A copy of the Purchase Order and the Invoice is required for payment.
5. Exceptions: The quotation procedure under this section may be dispensed with for purchases where supplies and equipment are purchased through cooperative purchasing arrangements with the State or other group of multiple governmental entities. Exceptions may also be made in the case of Emergency and Sole Source Purchases.

### C. Sole Source:

#### 1. Purchases:

- a. Definition. Sole source purchases are used where no secondary source is reasonably available precluding the use of a competitive process. Sole source purchases are not allowed unless a required good or service is available from only one supplier under the prevailing circumstances. The following are examples of circumstances, which could necessitate sole source procurements:

- 1) Where compatibility of equipment, accessories or replacement parts is the paramount consideration;
- 2) Where public utility services are to be procured;
- 3) Where a sole supplier's item is needed for trial use or testing;
- 4) Where a used item is offered at a bargain price and subject to prior sale;
- 5) Where a cooperative purchasing agreement has been developed with another public agency that utilized a competitive selection process.

#### 2. Consultant or General Services:

- a. In the case where a consulting firm has satisfactorily performed the previous stage of a project (e.g. a pre-design), or has acquired extensive background and working knowledge, the firm may be

selected for follow-up work without solicitations from other firm upon written justification and recommendation of the CVWBIA Board and approval by the City Manager or designee.

- b. If a firm is a highly recognized authority in a field or specialty, or has unique specific knowledge regarding the project, then the firm may be selected without other solicitations for contracts and upon written justification and recommendation of the CVWBIA Board and approval by the City Manager or designee.

3. Documentation. It is the responsibility of the requesting CVWBIA member to supply to the CVWBIA Board and City Finance Director with a complete, written justification of the sole source purchase in advance.
6. Authorization & Reporting. All sole source purchases of more than \$2,000 are authorized by the CVWBIA Board and fully disclosed in the written report. Sole source purchases less than \$2,000 are authorized by the CVWBIA Executive Director.

D. Emergency:

- (1) A sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services, or proclaimed pursuant to City of Capitola Municipal Code 8.08.60.

## XVII.VIII. Contracts

All contracts will be approved by a majority vote of the Board.

1. The Board President and one other member of the Executive Committee will sign contracts.
2. If bids are required, as stated above, bid results must be summarized and retained in accordance with record retention policy.
3. It will be the general policy of the Board for contracts to be reviewed by outside counsel prior to signing. This policy can be waived with Board approval.
4. Contract payment terms will be “net 30 days.”
5. Contract term is recommended for one fiscal year, with multi-year contracts to include clause stating that such contract is effective only to the extent that budget appropriations are available in future years.
6. Professional Services contract shall include the following clauses:
  - a. **Changes in Work:** Capitola BIA 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 above in Section “\_\_\_” shall be made without the CVWBIA written approval. Any change requiring compensation in excess of the sum specified in Section “\_\_\_” shall be approved in advance in writing by the CVWBIA-

- b. **Termination** – CVWBIA shall have the right to terminate this Agreement at any time. Consultant may terminate this Agreement provided he/she meets his/her legal and ethical obligations to the CVWBIA. In the event of termination, Capitola BIA shall pay the Consultant for all services performed and accepted under this Agreement up to the date of termination.
- c. **Indemnification** - Consultant and CVWBIA agree to indemnify one another and hold harmless the other’s officers, agents and employees, from and against any and all claims, demands, actions, damages, or judgments, including reasonable associated costs of defense to the extent caused by their negligence or intentional misconduct in the performance of this Agreement.

Consultant shall require each of its contractors to indemnify and hold harmless the city of Capitola, its officers, agents, employees and volunteers from and against any and all claims or other injury, costs of litigation and attorneys' fees, arising from or in connection directly or indirectly, result from this agreement.

#### XVIII.IX. Fixed Assets and Capitalization Policy

1. Purchase -- Fixed asset purchases will be made in accordance with the approved budget.
2. Capitalization – The capitalization of fixed assets should have three (3) attributes:
  - a. Tangible Property
  - b. Useful life of two (2) or more years
  - c. Cost or assigned value of \$15,000 or more ~~for all assets~~
3. Depreciation – depreciation expense will not be posted into the general ledger for the CVWBIA. Rather, the depreciation will be kept in an Excel spreadsheet. The capital assets will be depreciated using the ‘straight line’ depreciation method with the following useful lives:
 

a. Computer	5 years
b. Equipment	10 years – 15 years
c. Furniture	20 years
d. Vehicle	5 years
4. Disposition or Retirement of Fixed Assets – Disposition or retirement of fixed assets (i.e. due to surplus, damaged or inoperative equipment) requires written notification and authorization by both the Treasurer and President. If properly approved, the fixed asset disposition information shall be forward to the Citybookkeeper for recording. The Executive Committee will determine the most cost effective means of fixed asset disposition, on a case-by-case basis (i.e. auction, dump, etc).

**XIX.X. Monthly Review of Financial Accounts**

At least monthly, or sooner at the request of the Executive Committee or the Treasurer, the ~~bookkeeper~~City will provide financial statements and reports for review

1. The financial statements and reports will include:
  1. Current balance sheet,
  2. Income statement (adopted budget versus actual columns)
  - ~~3. Assessment Revenue Detail — budget vs. actual assessment by business entity~~
  - ~~4.3.~~Accounts Receivable -- Summary, Detail and Aging Report.
  - ~~5.4.~~Monthly Check Register (with payee, check amount and description)
  - ~~6. Bank Reconciliation Summary~~
2. The above financial statements and reports will be presented to the Board at each regularly scheduled board meeting.

**XX. Annual Review of Financial Accounts Annual Audit**

1. Consultant's fund will be audited on an annual basis by an independent auditor as part of the City's annual audit process. The City's annual audit report for the prior fiscal year will be presented to City Council by the end of each calendar year, and will include audited financials for the Consultant's fund.
- ~~1. The City of Capitola has the rights to review all accounting records, reports and statements of the CVWBIA. Such financial review is recommended annually or more frequently at the request of the City Manager. CVWBIA will reimburse the City for accounting review services on a cost-recovery basis, with a maximum review cost of \$1,500 annually.~~

~~Beginning on July 1, 201807 and each subsequent year thereafter on July 1<sup>st</sup>, the cost-recovery basis shall be adjusted to reflect costs of living increases or decreases that have occurred over the preceding 12-month period. That cost of living adjustment shall be determined in accordance with the U.S. Department of Labor, Bureau of Labor Statistics, figures in accordance with the United States Consumers All Items Price Index in the San Francisco-Oakland-San Jose Area, All Urban Consumers Index. The percent change figure for the one-year ending period ending in April shall be used in this computation. If the described index shall no longer be published, another generally recognized as authoritative shall be submitted by agreement of the parties. At the discretion of the City, such adjustments shall be increments of \$100. City review services expenditure shall be included in the CVWBIA annual budget. Refer to Section 3 "Duties of City" for further detail.~~

- ~~2. The City Financial Review expenditure will be an expenditure included in the CVWBIA annual budget to Council. Findings will be presented to the CVWBIA Board and City Council.~~
- ~~3. By July 31<sup>st</sup> of each year, the CVWBIA is to provide its prior year financial statements to the City Finance Department. The financial statements shall include the following:
 
  - ~~a. Balance Sheet at June 30<sup>th</sup>~~
  - ~~b. Income Statement for fiscal year ended June 30<sup>th</sup> with budget vs. actual~~
  - ~~c. Assessment Revenue Detail — budget vs. actual assessment by business entity~~
  - ~~d. Accounts Receivable Outstanding and Aging Report~~~~

- e. ~~Annual Check Register (with payee, check amount and description).~~
4. ~~By September 31<sup>st</sup> of each year, City Staff to present CVWBIA annual financial reports to City Council.~~

### ~~XXI.XI.~~ **File Storage and Record Retention**

Consistent with the general guidelines for City of Capitola record retention policy, all financial files shall be kept at least five years. These files include copies of all minutes and copies of all tax documents, all relevant financial records (checks, bank records, journal entries, etc.), contracts, bid records, and auction records (donors, auction receipts, etc.). These documents will be stored in an organized and labeled manner at the Capitola/Soquel Chamber of Commerce office.



**EXHIBIT A**

**PURCHASE ORDER FOR AMOUNT UP TO \$10,000**

[ click here & enter today's date ]

[ enter Vendor name]  
[ enter Attention: (delete if none)]  
[ enter mailing address]  
[ enter City, State & Zip]

RE: Approved Purchase Order

To whom it may concern,

The following purchase for the Capitola Village & Wharf Business Improvement Area has been approved. Unless otherwise stated payment terms are NET 30 days. Please include the following Purchase Order Number on all related invoices: [ [ **CLICK HERE & ENTER YOUR FIRST & LAST NAME INITIALS** ] [ **CLICK HERE & ENTER TODAY'S MONTH, DAY & YEAR (MMDDYY)** ] C ]

Quantity	Description	\$ Amount
TOTAL		
		Total can't exceed \$10,000

Authorized by:

[ Enter name of CVWBIA Board Member]  
[ Enter Title]

For purchases in excess of \$2,000, CVWBIA Executive Director approval is necessary:

[ Enter name of CVWBIA Exec Dir]  
CVWBIA Executive Director

Internal Use

1. Print this form on City Letterhead and deliver to your vendor (if required). Retain a copy for your records.
2. FOR PAYMENT SUBMIT FORM TO BOOKEEPER WITH: 1) STAMPED INVOICE 2) COPY OF PO 3) PROOF OF THREE BIDS

This form is required for all purchases between \$2,000 - \$9,999. It must be signed by authorized person. For purchases between \$2,000 - \$10,000, CVWBIA Executive Director approval is mandatory and a copy of this form must be attached to all related invoices and delivered to the Bookkeeper. For purchases in excess of \$10,000, CVWBIA Board Approval is required.

Attachment: Capitola BIA contract - Red Line (CVWBIA Contract)

**EXHIBIT B**

**PURCHASE ORDER FOR AMOUNT OVER \$10,000**

[ click here & enter today's date ] PO#  
[enter Council's Meeting Date & Item #]

[ enter Vendor name]  
[ enter Attention: (delete if none)]  
[ enter mailing address]  
[ enter City, State & Zip]

RE: Approved Purchase Order

To whom it may concern,

The following purchase for the Capitola Village & Wharf Business Improvement Area has been approved. Unless otherwise stated payment terms are NET 30 days. Please include the following Purchase Order Number on all related invoices.

This contract was approved at the CVWBIA Board meeting held on [ enter date of meeting].

Quantity	Description	\$ Amount
TOTAL		

Authorized by:

\_\_\_\_\_  
[ Enter name of CVWBIA Board Member]  
[ Enter Title]

For purchases in excess of \$10,000, CVWBIA Board approval is necessary:

\_\_\_\_\_  
[ Enter name of CVWBIA Exec Dir]  
CVWBIA Executive Director

Internal Use \_\_\_\_\_

1. PO# = date of Council meeting & item # (example 061803#5B)
2. Print this form on CVWBIA Letterhead and deliver to your vendor (if required). Retain a copy for your records.
3. FOR PAYMENT SUBMIT FORM TO BOOKKEEPER WITH: 1) STAMPED INVOICE 2) COPY OF PO 3) PROOF OF THREE **FORMAL WRITTEN BIDS**

This form is required for all purchases over \$10,000. It must be signed by authorized persons. For purchases between \$2,000 - \$10,000, CVWBIA Executive Director approval is mandatory and a copy of this form must be attached to all related invoices and delivered to the Bookkeeper. For purchases in excess of \$10,000, CVWBIA Board Approval is required.

Attachment: Capitola BIA contract - Red Line (CVWBIA Contract)

## EXHIBIT C

### BID QUOTE SUMMARY

**CAPITOLA VILLAGE & WHARF BUSINESS IMPROVEMENT AREA**  
**BID QUOTE SUMMARY**

Contact Person: \_\_\_\_\_ Extension: \_\_\_\_\_

**#1**

Date: \_\_\_\_\_ Vendor Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_ Phone \_\_\_\_\_

	QUANTITY	UNIT	UNIT COST	DESCRIPTION	SALES	TAX	
(1)	10		-		yes	\$	-
(2)			-			\$	-
(3)			-			\$	-
(4)			-			\$	-
(5)			-			\$	-
Freight - if applicable					no	\$	-

TOTAL BID

**#2**

Date: \_\_\_\_\_ Vendor Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_ Phone \_\_\_\_\_

	QUANTITY	UNIT	UNIT COST	DESCRIPTION	SALES	TAX	
(1)	10		-		yes	\$	-
(2)			-			\$	-
(3)			-			\$	-
(4)			-			\$	-
(5)			-			\$	-
Freight - if applicable					no	\$	-

TOTAL BID

**#3**

Date: \_\_\_\_\_ Vendor Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_ Phone \_\_\_\_\_

	QUANTITY	UNIT	UNIT COST	DESCRIPTION	SALES	TAX	
(1)	10		-		yes	\$	-
(2)			-			\$	-
(3)			-			\$	-
(4)			-			\$	-
(5)			-			\$	-
Freight - if applicable					no	\$	-

TOTAL BID

**Procedures:**

The CVWBIA Board member is responsible for obtaining and documenting quotes  
 Circle the number of the bid that you are awarding  
 Quotes are submitted with request for Purchase Order (PO) . - Please complete on your PC  
 Sales Tax - in the "SALES" column enter either yes or no  
 Freight is entered in the far right column

Attachment: Capitola BIA contract - Red Line (CVWBIA Contract)



Secretary of State
Articles of Incorporation of a
Nonprofit Mutual Benefit Corporation

ARTS-MU

FILED
Secretary of State
State of California

APR 30 2018

This Space For Office Use Only

IMPORTANT — Read Instructions before completing this form.

Filing Fee - \$30.00

Copy Fees - First page \$1.00; each attachment page \$0.50;
Certification Fee - \$5.00

Note: A separate California Franchise Tax Board application is required to obtain
tax exempt status. For more information, go to https://www.ftb.ca.gov.

1. Corporate Name (Go to www.sos.ca.gov/business/be/name-availability for general corporate name requirements and restrictions.)

The name of the corporation is Capitola Village and Wharf Business Improvement Area

2. Business Addresses (Enter the complete business addresses. Item 2a cannot be a P.O.Box or "in care of" an individual or entity.)

Table with 4 columns: Address, City, State, Zip Code. Row 1: 209 Capitola Avenue, Capitola, CA, 95010. Row 2: P.O. Box 806, Capitola, CA, 95010.

3. Service of Process (Must provide either Individual OR Corporation.)

INDIVIDUAL — Complete Items 3a and 3b only. Must include agent's full name and California street address.

Table with 4 columns: Name, Middle Name, Last Name, Suffix, City, State, Zip Code. Row 1: Janelle, Lynn, Cox, 18370 Berkshire Court, Morgan Hill, CA, 95037.

CORPORATION — Complete Item 3c. Only include the name of the registered agent Corporation.

c. California Registered Corporate Agent's Name (if agent is a corporation) — Do not complete Item 3a or 3b

4. Purpose Statement (Do not alter the Purpose Statement.)

This corporation is a nonprofit Mutual Benefit Corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law.

5. Additional Statements (The following statements are for tax-exempt status in California. See Instructions and Filing Tips.)

- a. The specific purpose of this corporation is to promote, stimulate, and improve the economic health and climate of the Capitola Village and Wharf Business Improvement Area
b. Notwithstanding any of the above statements of purposes and powers, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purposes of this corporation.

6. Read and Sign Below (This form must be signed by each incorporator. See Instructions. Do not include a title.)

Signature [Handwritten Signature]

Janelle Cox
Type or Print Name

Attachment: Articles of Incorporation State Filing (CVWBIA Contract)



I hereby certify that the foregoing transcript of \_\_\_\_\_ page(s) is a full, true and correct copy of the original record in the custody of the California Secretary of State's office.

MAY 12 2018

Date: \_\_\_\_\_

*Alex Padilla*

ALEX PADILLA, Secretary of State



## CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF JUNE 14, 2018

FROM: Public Works Department

SUBJECT: Receive Report on Construction Bids Received for Capitola Branch Library Project

**RECOMMENDED ACTION** Receive report and provide direction to staff.

**BACKGROUND:** On June 6, 2018, the City received the following three bids for the construction of the Capitola Branch Library:

Otto Construction	\$12,325,000
Swenson	\$12,383,557
Prowest Constructors	\$13,997,000

All bids were determined to be in order. The bids also included pricing for three additional work items beyond the base construction. The Otto Construction's bid is the low bid regardless of whether any, or all of the three additional work items are included in the project. A summary of the bids is included in Attachment 1.

**DISCUSSION:** The low bid was \$2,336,670 (23 percent) over the construction estimate and budget. Given the very small spread between the low bid and the second lowest bid, staff believes the bids are an accurate representation of the market conditions. Staff is working with our project manager to determine what next steps are appropriate.

Based on staff's preliminary analysis, the options appear to be:

- Award a contract to Otto Construction and then negotiate some deductive change orders to reduce the overall costs
- Reject all bids and re-bid the project using an alternative delivery method such as design-build to encourage collaborative efforts to reduce costs
- Re-design the building and re-bid the project
- Identify additional funding sources

Staff will provide additional information on these options or others developed at the Council meeting.

**FISCAL IMPACT:** The project budget is \$13.15 million. The current projected cost allocation is

Library Construction Bid Update  
June 14, 2018

as follows:

Construction	\$ 9,990,130
Architectural and Engineering	\$ 1,332,432
Permitting and Inspections	\$ 130,000
Project Management	\$ 298,608
Misc.	\$ 26,000
Furniture, Fixtures & Equipment	\$ 637,300
<u>Contingency</u>	<u>\$ 730,000</u>
Total	\$13,144,470

ATTACHMENTS:

1. Library Bid Results

Report Prepared By: Steve Jesberg  
Public Works Director

**Reviewed and Forwarded by:**



---

Jamie Goldstein, City Manager

6/7/2018



**CAPITOLA LIBRARY - BID OPENING RESULTS**

City of Capitola

Bid Opening Date:

June 6, 2017

Contractor Name	Otto Construction	Swenson	Prowest Constructors
Base Bid	1 \$ 12,325,000.00	\$ 12,383,557.00	\$ 13,997,000.00
Daily Rate for Compensable Delay	2 \$ 2,564.00	\$ 1,169.00	\$ 2,500.00
Multiplier	3 30	30	30
Subtotal (Row 2 x Row 3)	4 \$ 76,920.00	\$ 35,070.00	\$ 75,000.00
Total - Basis of Determining Apparent Low Bidder (Row 1 + Row 4)	5 \$ <b>12,401,920.00</b>	\$ <b>12,418,627.00</b>	\$ <b>14,072,000.00</b>
Estimate / Construction Budget	6 \$ 9,988,330	\$ 9,988,330	\$ 9,988,330
Over / (Under) Compared to Base Bid (Row 1 - Row 6)	7 \$ 2,336,670.00	\$ 2,395,227.00	\$ 4,008,670.00
Alternate 1: Trellis at Children's Deck	8 \$ 107,000.00	\$ 108,747.00	\$ 275,000.00
Alternate 2: Exterior Perimeter Building Illumination (Fixture E7)	9 \$ 61,000.00	\$ 61,540.00	\$ 100,000.00
Alternate 3: Concrete Pavers	10 \$ 18,000.00	\$ 17,727.00	\$ 55,000.00
Total Bid Alternates (Total Row 8 through Row 10)	11 \$ 186,000.00	\$ 188,014.00	\$ 430,000.00
<b>Total Bid + Bid Alternates Basis of Determining Apparent Low Bidder (Row 5 + Row 11)</b>	12 \$ <b>12,587,920.00</b>	\$ <b>12,606,641.00</b>	\$ <b>14,502,000.00</b>
Total Bid + Bid Alternates (Row 1 + Row 11)	13 \$ 12,511,000.00	\$ 12,571,571.00	\$ 14,427,000.00
Completed and signed BID FORM.	✓	✓	✓
Completed and signed BID BOND form or other Bid Security.	✓	✓	✓
Completed NON-COLLUSION AFFIDAVIT	✓	✓	✓
Completed DIR Registration Statement	✓	✓	✓
Completed Certification of Eligibility to Contract	✓	✓	✓
Confirmation all the insurance requirements have been reviewed and can be met.	✓	✓	✓

Attachment: Library Bid Results (Library Construction Bid Update)



## CAPITOLA CITY COUNCIL AGENDA REPORT

MEETING OF JUNE 14, 2018

FROM: Public Works Department

SUBJECT: Receive Report on Status of Measure F Projects on the Beach Jetty, Flume and Wharf and Consider a Contract Amendment for Moffatt and Nichol for These Projects

**RECOMMENDED ACTION:** Approve a contract amendment to Moffatt and Nichol's contract in the amount of \$524,500 for engineering services for the permitting, engineering, and conceptual design of the Wharf, Flume, and Jetty Improvement Projects.

**BACKGROUND:** In 2016 voters approved the Measure F sales tax to protect the wharf and beach from storms and rising sea levels, to protect essential city services and facilities such as police and safety programs, and maintain and improve parks, sidewalks and bike lanes.

The City has identified three priority improvement projects that are critical to maintaining the City's wharf and beach. Specifically, those projects include the repair and reconstruction of the existing flume and jetty as well as increasing the strength, stability, and resiliency of the wharf through widening the existing structure. These projects have been developed in coordination with Moffatt and Nichol, an engineering firm that has served as the City's marine engineering team for approximately the past two decades.

Phase 1 of the Moffatt and Nichol contract to design the wharf, flume and jetty projects was awarded in September 2017. The initial phase focused on conceptual design, understanding that total project costs/needs would be refined as the details of the project were developed. Under the first phase of the scope of work, Moffatt and Nichol completed survey investigations, held two public stakeholder meetings, developed options and cost estimates, and identified environmental constraints that could impact the projects.

Due to the desire to expedite permitting, design, and construction of the jetty and flume projects, staff worked with the engineering team to create an updated Phase 2 of the project. The scope of Phase 2 was expanded to go beyond preliminary design (original scope) and now includes regulatory permitting and final design for the jetty and flume. Phase 2 will still include preliminary design of the wharf and buildings, but will allow the schedule for the jetty and flume project to move ahead on a faster time table.

**DISCUSSION:** The scope of services in Attachment 1 identifies the key goals for each project. The following chart provides the estimated construction costs that have been refined as the project components have been further developed. This includes the October 2016 estimate used when Measure F was being considered by voters and the potential full scope with

Measure F Project Update and contract amendment  
June 14, 2018

renovations of the wharf buildings.

Measure F Project Update and contract amendment  
June 14, 2018

Structure	Element	October 2016 Estimate	Phase 1 Estimated Range (September 2017)		Phase 2 Refined Estimate (June 2018)	
			Low	High	Low	High
<b>Wharf Structure</b>						
	Widening	\$2,000,000	\$2,000,000	\$2,198,400	\$2,000,000	\$2,750,000
	Steel Piles	\$350,000	\$250,000	\$350,000	\$250,000	\$350,000
	Utilities	\$750,000	\$300,000	\$500,000	\$300,000	\$500,000
	Decking	-	\$1,200,000	\$1,417,600	\$1,200,000	\$1,775,000
	<b>Sub Total</b>	<b>\$3,100,000</b>	<b>\$3,750,000</b>	<b>\$4,466,000</b>	<b>\$3,750,000</b>	<b>\$5,375,000</b>
<b>Wharf Buildings</b>						
	Restaurant	-	\$600,000	\$1,000,000	\$875,000	\$1,500,000
	Boat Shop	-	\$480,000	\$800,000	\$875,000	\$1,200,000
	Restroom 1	\$400,000	\$250,000	\$400,000	\$250,000	\$400,000
	Restroom 2	-	\$250,000	\$400,000	\$250,000	\$400,000
	<b>Sub Total</b>	<b>\$400,000</b>	<b>\$1,580,000</b>	<b>\$2,600,000</b>	<b>\$2,250,000</b>	<b>\$3,500,000</b>
<b>Flume</b>						
	Lining	-	\$200,000	\$300,000	\$200,000	\$300,000
	Cutoff Walls	-	\$80,000	\$120,000	\$80,000	\$120,000
	<b>Sub Total</b>	<b>-</b>	<b>\$280,000</b>	<b>\$420,000</b>	<b>\$280,000</b>	<b>\$420,000</b>
<b>Jetty</b>						
	Rock Replacement	-	\$250,000	\$800,000	\$500,000	\$800,000
	Walkway	-	\$100,000	\$125,000	-	-
	<b>Sub Total</b>	<b>-</b>	<b>\$350,000</b>	<b>\$925,000</b>	<b>\$500,000</b>	<b>\$800,000</b>
	<b>Grand Total</b>	<b>\$3,500,000</b>	<b>\$5,960,000</b>	<b>\$8,411,000</b>	<b>\$6,780,000</b>	<b>\$10,095,000</b>

**FISCAL IMPACT:** The original cost estimate for the total Moffatt and Nichol's engineering/design contract was \$948,000 to \$1,285,000. Phase 1 was awarded in September 2017 for \$183,100. With this amendment for Phase 2 (\$524,500) the total amount authorized will be \$707,600, approximately 55 percent of the originally estimated effort. A breakdown of costs by phase and structure are included in the attached proposal.

A conceptual design report for the wharf improvements will be prepared at the conclusion of Phase 1 and presented to the City Council.

**ATTACHMENTS:**

1. Moffatt & Nichol Contract Amendment

Report Prepared By: Kailash Mozumder

Measure F Project Update and contract amendment  
June 14, 2018

**Reviewed and Forwarded by:**



---

Jamie Goldstein, City Manager

6/7/2018

1<sup>st</sup> AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH MOFFATT AND NICHOL FOR CONCEPT DESIGN AND ENGINEERING FOR THE CAPITOLA WHARF FLUME AND JETTY IMPROVEMENTS

between

CITY OF CAPITOLA AND MOFFATT & NICHOL

The City of Capitola and Moffatt & Nichol, hereby agree to the following Amendment to the Contract dated September 28, 2017:

- 1) Increase the contract budget amount by \$524,500 for Phase 2 Engineering Services, Capitola Wharf and Beach

All other terms and conditions of the original Phase 1 Agreement remain in full force and effect.

**CONTRACTOR: MOFFATT & NICHOL**

\_\_\_\_\_  
By: Brad Porter

Date: \_\_\_\_\_

**CITY OF CAPITOLA**

\_\_\_\_\_  
By: Benjamin Goldstein, City Manager

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Anthony Condotti, City Attorney

Date: \_\_\_\_\_

Attachment: Moffatt & Nichol Contract Amendment (Measure F Project Update and contract amendment)



2185 N. California Blvd., Ste. 500  
Walnut Creek, CA 94596-3500

(925) 944-5411  
www.moffattnichol.com

May 31, 2018

Mr. Steve Jesberg, Public Works Director  
City of Capitola  
420 Capitola Avenue  
Capitola, CA 95010

**Subject: Proposal for Phase 2 Engineering Services, Capitola Wharf and Beach**  
Job No.: 9154-01

Dear Steve:

We are writing to describe further services we propose to provide the City to implement the projects to improve Capitola's attractive waterfront. These include the Wharf, Beach Jetty, and Soquel Creek Flume. Based on our current work in Phase 1 (Conceptual Design), we propose to provide the following services as Phase 2:

### Scope of Services

#### 1. Preliminary Design and Permit Applications for Jetty and Flume

Project Goals:

- **Jetty:** return to the original configuration
- **Flume:** provide waterproof lining and install cut-off walls beneath.

Prepare preliminary design (approximately 30% design level) drawings, in sufficient detail to submit applications for regulatory approval. We will engage DUDEK to provide the required Biological Assessment and prepare CEQA documents, as described in **Attachment A**.

Deliverables:

- Biological Assessment
- 30% Design Level Drawings
- CEQA Documents and Permit Applications.

#### 2. Final Design for Jetty and Flume Projects

With regulatory approval, we will further the design drawings and provide drawings and specifications suitable to be issued for contractor bids. We will provide an engineer's cost estimate based on the final construction drawings and specifications. Additionally, we will assist the City in preparation of bid documents sufficient for advertisement.

Deliverables:

- Construction Drawings



- Calculations Report
- Specifications
- Engineer's Estimate.

### 3. Preliminary Design for Wharf Buildings and Structure

Based on the conceptual design effort (currently underway), we will incorporate the results of the public outreach and the City's design objectives to further the design of the Wharf improvements to the 30% design level.

We will engage FUSE Architects to further the design of the buildings and other improvements, as described in **Attachment B**.

We will provide two alternative concept options for the Wharf improvements, including preliminary plans and architectural renderings. The City will select the preferred alternative, and we will provide 3D views and architectural visualizations (renderings) of the preferred alternative.

We will further the structural design of the Wharf to incorporate the new buildings and other improvements, and we will develop a draft project description suitable for use in preparing the permit application in Phase 3.

We anticipate two further public outreach meetings to gather public comments.

Deliverables:

- Presentation Materials for Public Outreach Meetings
- 30% Design Drawings
- 30% Calculations Report
- Draft Project Description.

### 4. Regular Coordination, Meetings, QA/QC, and Project Management

As the project advances, we will provide the City regular project status updates. We anticipate that will meet in-person five times at major decision points or with regulators, and more regularly as-needed via phone/web conferences.

### 5. Optional Task: Contingency for As-Needed Additional Services

Based on our experience, unforeseen elements may influence the project progress. We propose to include a contingency to provide services that cannot be identified at this time; these may include:

- Further Permitting Support or Agency Coordination
- Additional Public Outreach Support
- Grant Funding Application Support
- Additional City-Requested Services.

**Schedule**

We understand the City seeks to progress the project expeditiously and meet major milestones including:

Beach Jetty and Flume

- Permits in August 2018
- Out for Bid in September
- Award Construction Contract in November
- Construction Complete in April 2019.

Wharf Buildings

- Continued Design throughout 2018
- Prepare for Construction in Winter Season 2019-2020.

**Total Project Costs**

In order to evaluate the scale of proposed project elements, order-of-magnitude project costs are provided based on the progress of the Phase 1 activities.

*Order-of-Magnitude Estimated Costs*

Structure	Element	Low	High
Wharf Resiliency Measures	Widening <sup>1</sup>	\$ 2,000,000	\$ 2,750,000
	Steel Piles	\$ 250,000	\$ 350,000
	Utilities	\$ 300,000	\$ 500,000
	Decking <sup>1</sup>	\$ 1,200,000	\$ 1,775,000
	Sub Total	\$ 3,750,000	\$ 5,375,000
Wharf Buildings Replacement	Restaurant <sup>2</sup>	\$ 875,000	\$ 1,500,000
	Boat Shop <sup>3</sup>	\$ 875,000	\$ 1,200,000
	Restroom 1	\$ 250,000	\$ 400,000
	Restroom 2	\$ 250,000	\$ 400,000
	Sub Total	\$ 2,250,000	\$ 3,500,000
Flume	Lining	\$ 200,000	\$ 300,000
	Cutoff Walls	\$ 80,000	\$ 120,000
	Sub Total	\$ 280,000	\$ 420,000
Jetty	Rock Replacement	\$ 250,000	\$ 800,000
	Walkway <sup>4</sup>	\$ -	\$ -
	Sub Total	\$ 250,000	\$ 800,000
<b>Total</b>		<b>\$ 6,530,000</b>	<b>\$ 10,095,000</b>

**Notes:**

1. Based on the illustrative concepts presented at the Public Outreach Meeting on May 15, 2018 the wharf layout may include an expanded area at the Head, which is included in the High estimate.
2. The restaurant replacement cost assumes a 2500 sq. ft. replacement building with costs provided by Fuse Architects ranging from \$350 to \$600 per sq. ft.
3. The bait shop replacement cost assumes a 2500 sq. ft. replacement building with costs provided by Fuse Architects ranging from \$350 to \$480 per sq. ft.
4. Based on Phase 1 work, the walkway on the jetty is no longer being considered.

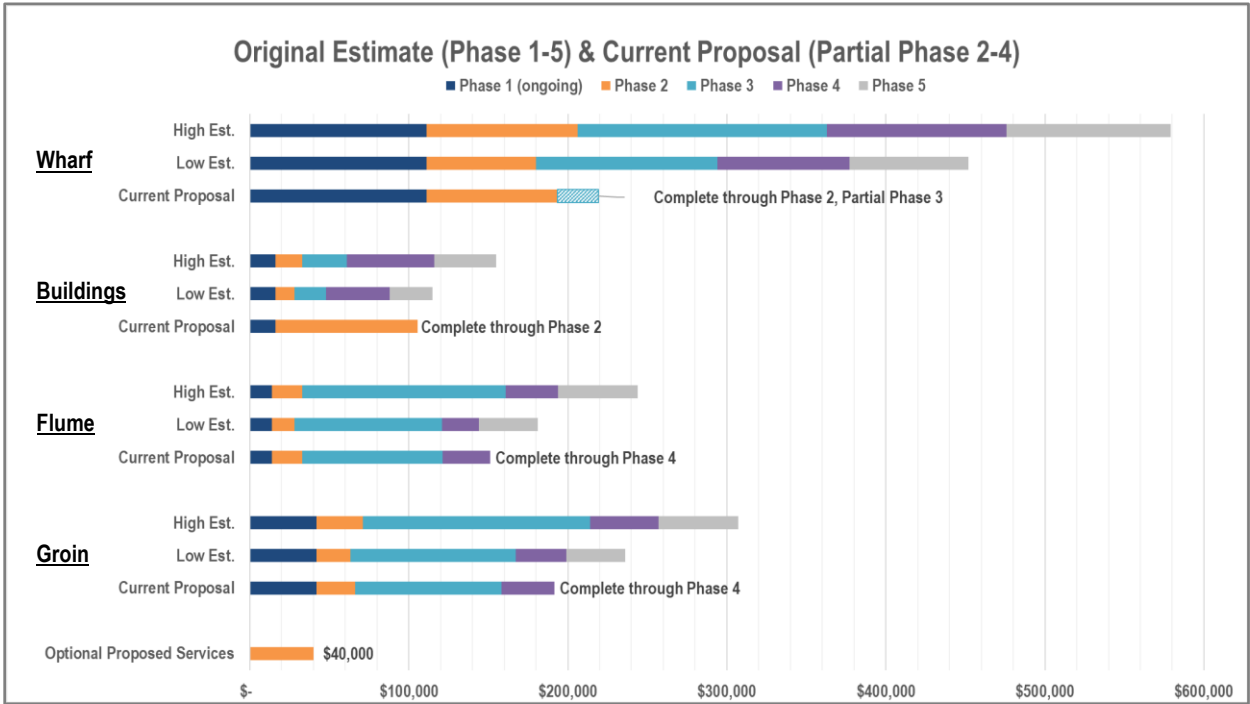
**Fee**

We estimate our fee to provide the above services as follows:

Item	Task	Fee	Hours
1	Preliminary Design and Permit Applications for Jetty and Flume	\$ 42,800	200
	Dudek (Attachment A)	\$ 70,660	
2	Final Design for Jetty and Flume	\$ 127,600	700
3	Preliminary Design for Wharf Buildings and Structure	\$ 120,000	600
	FUSE Architects (Attachment B)	\$ 70,500	
4	Regular Coordination, Meetings, QA/QC, and Proj. Management	\$ 38,790	120
	Sub Mark-Up (10%)	\$ 14,150	
<b>Total</b>		<b>\$ 484,500</b>	<b>1620</b>
	<b>Optional Task</b>		
5	Contingency for As-Needed Additional Services	\$ 40,000	
<b>Optional Total</b>		<b>\$ 524,500</b>	

We propose to provide these services on a time and materials basis, in accordance with our existing agreement, and will not exceed this amount without your prior written approval.

Previously, we provided the City an estimate of the resources required to progress the project through to completion (proposal dated September 15, 2017). The scope of work described above includes a portion of the scope previously proposed as Phases 2, 3, and 4. The proposed scope of work includes the following effort for each of the project elements:



Attachment: Moffatt & Nichol Contract Amendment (Measure F Project Update and contract amendment)



Phase	Project Element					Original Estimate	
	Wharf	Bldgs.	Flume	Groin	Total	Low	High
1	\$ 111,000	\$ 16,000	\$ 14,000	\$ 42,100	\$ 183,100	\$ 183,100	\$ 183,100
2	\$ 82,300	\$ 89,400	\$ 18,800	\$ 24,000	\$ 214,500	\$ 116,000	\$ 160,000
3	\$ 26,000		\$ 88,500	\$ 92,000	\$ 206,500	\$ 331,000	\$ 456,000
4			\$ 30,000	\$ 33,500	\$ 63,500	\$ 178,000	\$ 244,000
5						\$ 176,000	\$ 242,000
<b>Sub-Total (2-4)</b>	<b>\$ 108,300</b>	<b>\$ 89,400</b>	<b>\$ 137,300</b>	<b>\$ 149,500</b>	<b>\$ 484,500</b>		
<b>Total (1-4)</b>	<b>\$ 219,300</b>	<b>\$ 105,400</b>	<b>\$ 151,300</b>	<b>\$ 191,600</b>	<b>\$ 667,600</b>	<b>\$ 984,100</b>	<b>\$ 1,285,100</b>
<b>Original Low</b>	<b>\$ 452,000</b>	<b>\$ 115,000</b>	<b>\$ 181,000</b>	<b>\$ 236,100</b>	<b>\$ 984,100</b>		
<b>High</b>	<b>\$ 579,000</b>	<b>\$ 155,000</b>	<b>\$ 244,000</b>	<b>\$ 307,100</b>	<b>\$ 1,285,100</b>		

The proposed effort (\$ 484,500) would bring the total authorized project effort to \$ 667,600, approximately 52% of the originally estimated high effort. The proposed effort is generally consistent with the originally estimated effort, with the exception being the Building Renovation.

We look forward to being of further assistance to the City. Please contact us with any questions or comments regarding our proposal.

Sincerely,

MOFFATT & NICHOL



Sam Tooley, PE  
Project Manager



Brad Porter, PE  
Project Principal

Attachment: Moffatt & Nichol Contract Amendment (Measure F Project Update and contract amendment)



To: Brad Porter, Moffatt and Nichol  
From: Stephanie Strelow  
RE: Capitola Beach Jetty-Groin and Flume – CEQA and Permitting Proposal  
Date: May 24, 2018

As a follow-up to our recent discussions, I am pleased to submit an estimate for preparation of CEQA documents and permitting for the groin and flume repair projects at Capitola Beach. The goal of the project is to restore deteriorated elements of these structures.

The existing rock/rip-rap groin at the southeastern end of Capitola Beach was constructed to capture sand and form a stable beach near the mouth of Soquel Creek. The original design was a trapezoidal configuration; the rocks on the groin have become scattered over time, leading to beach erosion. The current proposal is to rebuild the rock groin to its original design within the existing footprint and potentially add a walkway on top for beachgoers.

The flume is a concrete rectangular pipe that carries flows from Soquel Creek across the beach to the ocean. The structure is buried beneath Capitola Beach most of the year, except during summer months. In late May, the City constructs a berm at the mouth of Soquel Creek to create a freshwater lagoon for habitat and public access purposes; all required permits were recently updated/obtained for the operation/maintenance of the lagoon in 2017. Water seepage and cracks on the inside of the flume have caused water leaks leading to sudden collapse of the beach, resulting in hazards to the public. The project is proposing to install a liner inside the flume and baffle plates below the flume to prevent flows underneath and reduce collapse hazard.

The following scope and cost estimate are based on our preliminary review of the project information as a result of preparing a memorandum summarizing CEQA and permitting issues and approach. We also reviewed the preliminary project plans and sand transport study that we received last week.

## Work Plan and Scope of Work

1. Meetings and Site Visit. A start-up meeting will be conducted to review project plans, proposed construction scheduling and methods, and permitting approach. A site visit will be conducted at this time to review site conditions. Existing documents and permits will be obtained and reviewed. The cost includes two additional meetings with Moffatt and Nichol and some additional consultation time as may be needed. We also propose a discussion with the staff of the Monterey

Bay National Marine Sanctuary (MBNMS) to confirm that no MBNMS permits or approvals are required as is currently anticipated.

2. CEQA Review. At this time, no potentially significant impacts are anticipated for either project, except for potential construction-related water quality impacts due to inadvertent transport of construction materials or debris into adjacent water bodies. However, it is assumed that standard Best Management Practices (BMPs) will be identified by Moffatt & Nichol that will implemented during construction to prevent water quality impacts.

No significant biological impacts are anticipated. Based on our knowledge of the area, Capitola Beach does not support special status bird nesting, but this will be confirmed. A Dudek biologist will review of existing databases and studies regarding special status species and sensitive habitats. No special status species known or expected to occur on Capitola Beach. It is our understanding that no work will be conducted in Soquel Creek, and thus, no impacts related to special status fish species would occur. However, Dudek will prepare a stand-alone reconnaissance-level biological resources evaluation report that compiles existing biological resources information (e.g., as available from prior studies and surveys) and provide a baseline inventory of existing natural resources in the project vicinity. The report will provide background information regarding subtidal resources, sensitive habitats, and potential occurrence of special-status species, which are primarily related to listed fish species in Soquel Creek. This report is intended to enable more rapid agency review of the project by providing a current assessment of existing biological resources and facilitating better understanding of potential project effects. It is our understanding that Don Alley, the City's fishery consultant, can provide input on resources and possible avoidance measures if needed.

Potential environmental issues that could arise with the groin rebuilding and restoration include regulatory agency concerns related to impacts on beach erosion and sediment transport, which is addressed in a sand transport study by Moffatt & Nichol that concludes that restoration of the jetty will not obstruct the longshore transport of sand once the retained beach returns to its original profile. The restoration of the groin to its original permitted design would not be expected to result in impacts to scenic views or resources.

Environmental issues related to the flume repairs are expected to be minimal due to the limited extent of the repairs. There is the potential for construction impacts on special status species (if present near the work area during construction, e.g., fish in Soquel Creek) and water quality, which can be addressed through incorporation of appropriate avoidance and minimization measures and standard Best Management Practices (BMPs).

This cost assumes that a Notice of Exemption can be prepared for each project, but if potentially significant issues arise, modification of the scope and cost may be needed. A clear and concise Project Description will be developed that can be used for subsequent permit applications.

3. **Assist with Regulatory Permitting.** To facilitate an effective agency review of permit applications, Dudek's staff will prepare for and attend a pre-application interagency meeting with the Army Corps of Engineers (ACOE) to explain the project and receive agency input prior to submittal of the applications. This meeting takes place on the second Thursday of each month in San Francisco. Dudek staff will prepare permit applications and supporting materials to facilitate permit authorizations. Up to two days of time is included for coordination and follow-up with the City and/or agencies after the City has submitted permit applications, if needed, to help facilitate agency processing of applications. For the purpose of this scope/cost estimate, it is conservatively assumed that separate applications will be needed for each of the flume and jetty repairs. However, one application could be prepared for both projects based on input received at the pre-application interagency meeting.

At this time, it is our understanding that the City will be taking care of the California Coastal Commission coastal development permit application, and this proposal does not include time for preparation of this application. Additionally, at this time, no permits are anticipated from the Monterey Bay National Marine Sanctuary (MBNMS). The MBNMS prohibits disturbance of submerged lands with the exception of construction and rehabilitation of docks and piers. Thus, sanctuary authorization does not appear to be required, but this will be confirmed during the first work task.

The anticipated permits are identified below and are drawn from the Permitting Strategy developed in our technical memo to Moffatt & Nicol, dated February 22, 2018 and refined based on review of project plans and further discussion with Moffatt & Nicol staff subsequent to transmittal of this memo.

**Permitting anticipated for the jetty-groin:**

- *ACOE permit pursuant to Section 404 of the Clean Water Act:* The jetty-groin should qualify for a Nationwide Permit 3, Maintenance. We anticipate the ACOE would append project activities to NOAA Fisheries' NLAA Programmatic Biological Opinion for compliance with the Endangered Species Act (ESA). During the permit review process the ACOE will request original design plans and associated permits for the groin to demonstrate its restoration is not larger than the original project footprint
- *RWQCB 401 Water Quality Certification pursuant to Section 401 of the Clean Water Act:* The RWQCB will likely require a sediment transport study to demonstrate there will not be adverse impacts resulting from restoration of the jetty-groin. It is assumed that Moffatt & Nichol will provide this study. As indicated in our Permitting Approach memo, the RWQCB may also require an alternatives analysis that considers alternatives with a smaller footprint (less discharge of rock) below high tide line or bioengineered approaches. Since the repair is intended to restore the groin to its original configuration, it is possible that area of existing fill may be reduced than what



currently exists the rocks on the groin have become scattered over time,. Preparation of an alternatives analysis is not included in this scope of work

- *California Department of Fish and Wildlife (CDFW) Streambed Alteration Agreement (SAA) pursuant to Section 1602 of the California Fish and Game Code:* Typically, CDFW does not exert this jurisdiction in tidal waters. However, CDFW has done that in a limited number of cases. A SAA is potentially required for the jetty-groin repair based on potential impacts to the flow, bed, channel, or banks of Soquel Creek.
- *California State Lands Commission (SLC) Surface and Submerged Lands Lease:* The jetty-groin repair may require a lease amendment, which would likely require completion of the SLC's Short-Form application and authorization of a Protective Structure. We assume the City has an existing lease for the current jetty-groin configuration.

#### Permitting anticipated for the flume:

- *ACOE permit pursuant to Section 404 of the Clean Water Act:* The flume should qualify for a Nationwide Permit 3, Maintenance. The Corps may pursue a no-effect determination with respect to ESA compliance. However, if the Corps determines there are potential impacts to species or migratory fish listed under the federal ESA, then the Corps could initiate consultation under NOAA Fisheries' NLAA Programmatic. The ACOE will request original design plans to understand limits of construction.
- *RWQCB 401 Water Quality Certification pursuant to Section 401 of the Clean Water Act:* the RWQCB will consider best management practices (BMPs) to limit any type of discharge waste into regulated waters during project construction. The RWQCB may also require a mini alternatives analysis that considers alternatives with a smaller footprint below high tide (if the project proposes a larger project footprint). Preparation of an alternatives analysis is not included in this scope of work.
- *California Department of Fish and Wildlife (CDFW) Streambed Alteration Agreement (SAA) pursuant to Section 1602 of the California Fish and Game Code:* Typically, CDFW does not exert this jurisdiction in tidal waters. However, CDFW has done that in a limited number of cases. A SAA is potentially required for the flume repair if it proposes impacts the flow, bed, channel, or banks of Soquel Creek.

## Assumptions

To complete the work tasks, the scope of work and cost estimate are based on the assumption that the project description will not be changed once permit applications are submitted to the aforementioned agencies. The scope and following cost estimate assume that:

- a) The existing plans for the groin and proposed plans for the flume repairs have been provided by Moffatt & Nicol. It is assumed that Moffatt & Nicol will provide a description of construction techniques and construction BMPs, and can calculate estimated discharge amounts once jurisdictional areas are defined. It is assumed that these materials will be available upon project initiation.
- b) Moffatt & Nicol will provide supporting sediment transport analyses and tidal elevation data, including high tide data.
- c) Revisions to site plans requested by agencies can be completed by Moffatt & Nichol within the requested schedule.
- d) Focused hydrology/hydraulic studies will not be required.
- e) Formal consultation with USFWS and NMFS will not be required. If the Corps makes a determination during the permit review process that formal consultation is necessary with either USFWS or NMFS, an additional scope of work would be submitted to the City for approval.
- f) Permit processing and filing fees for RWQCB and CDFW to be the responsibility of the City.
- g) Any changes to the project description or requests for additional information as a result of City or agency reviews could result in the need to modify the scope, cost and/or schedule.

## Cost Estimate

The cost for the work tasks are summarized below, and a spreadsheet is included at the end that identifies hours per staff/task. Invoices will be submitted on a time-and-material basis, and no charges will be invoiced if any of the tasks/costs are not needed.

	Task	Cost
1	Meet/Coordination with Moffatt & Nichol/City	\$ 7,740
2	Biological Resources Evaluation Report	9,090
3	CEQA Review	5,790
4	Regulatory Permitting	47,740
	Expenses	300
	<b>TOTAL</b>	<b>\$ 70,660</b>

## Schedule

A draft schedule is presented below based on receipt of authorization to proceed by May 29, 2018. The schedule reflects the City's desire to obtain permit approvals by September. This is a fairly aggressive schedule considering typical review times by agencies; however, we will endeavor to meet this schedule by engaging the agencies during the application review process. The actual timing will be determined by the agencies.

		Start	End
1	Meet/Coordination with Moffatt & Nichol/City	May 29, 2018	June 1, 2018
2	CEQA Review		
	Biological Report	May 15, 2018	June 14, 2018
	City Review	June 18, 2018	June 22, 2018
	Draft NOEs	June 4, 2018	June 14, 2018
	City Review	June 18, 2018	June 22, 2018
	Final CEQA Documents and File with County Clerk		June 25, 2018
3	Regulatory Permitting		
	Early Agency Contact-Pre-Application Meeting (Assumes projects plans are available)	May 29, 2018	June 14, 2018
	Draft Applications	June 1, 2018	June 22, 2018
	City Review	June 22, 2018	June 27, 2014
	Revise and Submit Applications	June 27, 2018	June 29, 2018
	Agency Review	July 2, 2018	August 31, 2018
	Anticipated Permit Issuance		August 31, 2018

We would be happy to discuss and adjust this proposal upon your review. We are looking forward to working with you and the City on this project.

Sincerely,



Stephanie Strelow  
Principal  
831-425-6523

**Capitola Jetty-Groin & Flume CEQA and Permitting**

Task	Stephanie StreLOW	Laurie Monarres	Dave Wickens	Catherine Wade	Jayne Timberlake	Graphics Staff	Pubs Staff - Printing	Subtotal	Direct Costs	Total
	\$240	\$225	\$225	\$165	\$165	\$135	\$95		5%	
1 <i>Meet with M&amp;N and City</i>										
Meetings with Client, City, MBNMS	14	4	14	2				\$ 7,740	\$ 100	\$ 7,840
2 <i>Biological Report</i>										
Biological Resources Evaluation Report	4				46	4		\$ 9,090	\$	9,090
3 <i>CEQA Review</i>										
Notice of Exemption & NOD	4			26		4		\$ 5,790	\$	5,790
4 <i>Permitting</i>										
Applications and Consult with Staff	2	80	116	8		8	8	\$ 47,740	\$ 200	\$ 47,940
<b>Total</b>	<b>24</b>	<b>84</b>	<b>130</b>	<b>36</b>	<b>46</b>	<b>16</b>	<b>8</b>	<b>\$ 70,360</b>	<b>\$ 300</b>	<b>\$ 70,660</b>



**DATE: 5.2.18**

**Capitola Wharf Project:**

**Prime Consultant:**

Moffatt & Nichol  
2185 N. California Blvd. Suite 500  
Walnut Creek, CA 94596  
Contact: Sam Tooley and Brad Porter

**Sub Consultant:**

Fuse Architects Inc.  
411 Capitola Ave  
Capitola, CA 95010  
Contact: Dan Townsend and Dan Gomez

**Phase 2: Schematic Design**

**Description of Service**

**Task #1**

Conduct studies to progress the design (loose sketches, plans and some 3D). Interior floor plan layouts for restaurant and bait shop (based on tenant and City input). We will meet with tenants insure that all space is allocated and meet code. This section of work will be loose in nature.

**Task #2**

Prepare design concept options (2 options), options will have the same floor plans. The 2 options will show different materials, and different exterior design concepts. These options will be for: restaurant, bait shop, public restrooms, wharf seating. These options will be presented to MN, City of Capitola, and the tenants.

**Task #3**

Coordinate with MN and City, in preparation for presentation.

**Task #4**

Prepare for and attend meetings with MN and City (2 meetings).

**Task #5**

Assist in cost estimating, "ball park" numbers. The estimates will be based on square footage, and other general methods.

**Task #6**

Prepare exterior design drawings for selected scheme, 3D imagery (3 views), plans (schematic), elevations (schematic), material selections, for the restaurant, bait shop, public restrooms, and wharf seating. Deliverables will be PDF's, printed documents, and a materials board.



2185 N. California Blvd., Suite 500  
Walnut Creek, CA 94596-3500

(925) 944-5411 Fax (925) 944-4732  
www.moffattnichol.com

**Proposed Fee: Fuse Architects Inc**

Description	Original Fee Estimate	
	Low	High
Phase 1: Conceptual Design (see table below for detail)		
<b>Phase 2: 30% Design (Fuse calls this schematic design)</b>	50,000	75,000
Phase 3: CEQA, Permit, Grant Appl., 60% Design		
Phase 4: Final Design and Construction Documents		
Phase 5: Construction Support Services		
<b>Total</b>		

Estimated fees shown are total cost, they include all sub consultants and expenses for the scope of services described for all the elements of the project program.

Phase 2: Schematic Design

Task	Description	Fee
1	Conduct studies to progress the design (loose sketches, plans and some 3D). Interior floor plan layouts for restaurant and bait shop(based on tenant and City input).	13,000 (85 hrs)
2	Prepare design concept options (2 options), options will have the same floor plans. The 2 options will show different materials, and different exterior design concepts. These options will be for: restaurant, bait shop, public restrooms, wharf seating.	20,000 (132 hrs)
3	Coordinate with MN and City	5,000 (33 hrs)
4	Prepare for and attend meetings with MN and City (2 meetings)	8,000 (53 hrs)
5	Assist in cost estimating, “ball park” numbers	1,500 (9 hrs)
6	Prepare exterior design drawings for selected scheme, 3D imagery (3 views), plans (schematic), elevations (schematic), material selections	23,000 (150 hrs)
	Note: hours listed are estimated and not	
	<b>Total estimated</b>	<b>70,500</b>

The fee is proposed for the above services as time and materials in accordance with the rate schedule.

Attachment: Moffatt & Nichol Contract Amendment (Measure F Project Update and contract amendment)



## CAPITOLA CITY COUNCIL AGENDA REPORT

**MEETING OF JUNE 14, 2018**

FROM: Capitola Police Department

SUBJECT: Consider Capitola Beach Festival Special Event Permit

**RECOMMENDED ACTION:** Review the Capitola Beach Festival Committee's request for a Special Event Permit, including an Encroachment Permit, Amplified Sound Permit, and Banner Permit for the proposed Capitola Beach Festival and provide direction.

**BACKGROUND:** The Capitola Beach Festival is a new special event jointly proposed by the Beach Festival Committee (formerly the Begonia Festival Committee), the Wharf to Wharf Race, and the Capitola-Soquel Chamber of Commerce. The Beach Festival Committee is organizing the event. On May 24 City Council conceptually reviewed the proposed Festival and provided the event organizers and staff with initial feedback.

**DISCUSSION:** The Capitola Beach Festival Committee is requesting a Special Event Permit to host various "family-oriented" activities during the weekend of September 29-30, 2018. The stated purpose of the festival is to provide the local community with fun entertainment and family-centered activities.

On the morning of Saturday, September 29, 2018, the Wharf to Wharf Race Committee will present the "Little Wharf to Wharf," a three-mile fun run that is expected to attract up to 5,000 participants. The run will begin at 7 a.m. in the East Cliff Shopping Center located on East Cliff Drive near 16<sup>th</sup> Avenue. The course will follow East Cliff Drive to 41<sup>st</sup> Avenue, onto Opal Cliff Drive to Cliff Drive, and then down Cliff Drive across the Stockton Avenue Bridge, onto Esplanade, with the run concluding near San Jose Avenue. As required, the Village will be posted "No Parking" by race staff at least 72 hours before the event, announcing closure of the Village from 6:30 a.m. until approximately 10:30 a.m.

Road signage and barriers will be provided by Public Works and race staff will be positioned at each traffic control point. Staff from the Police Department will ensure the signage is sufficient, the roadways are closed properly, and that all traffic control points are appropriately staffed and monitored by race officials. The Capitola Police Department will not be providing police personnel to staff the traffic control points. Promoters anticipate the last runner will cross the finish line at approximately 9:15 a.m. A band will play on the Bandstand in Esplanade Park between 9:00 a.m. and 11 a.m. to entertain guests and greet runners. Those times are consistent with the City's adopted Bandstand Policy.

Race participants wishing to utilize the shuttle service for a return ride to their vehicles parked at the Capitola Mall will be directed to Wharf Road via the Stockton Bridge for a short walk to the shuttles positioned in the Shadowbrook parking lot. From there they will be shuttled to the mall.



Capitola Beach Festival Special Event Permit  
June 14, 2018

Staff will maintain necessary road closures until much of the pedestrian congestion has cleared from the Village. It is anticipated that the streets will re-open at approximately 10 a.m. Staff will work with the organizers to ensure race participants are informed regarding the parking/shuttle plans.

The other main event on Saturday is a lighted float parade scheduled to begin at sunset or approximately 7 p.m. The designated parade route is between the trestle and the lagoon, featuring up to 12 light-decorated barges. Public Works staff will drop off the barges on Friday evening at the pumphouse located adjacent to the Stockton Bridge. Decoration of the "floats" will occur on the creek from 10 a.m. until the start of the event. For parade participants choosing to decorate their floats north of the trestle, they will be instructed to "cue-up" at 7 p.m. near the trestle and refrain from lighting their entries until they are properly positioned for the start of the parade. The parade will conclude at 8:30 p.m. in the lagoon with all floats turning off their lights. Assigned creek marshals will escort the parade participants to their original launching point. It is anticipated that Stockton Bridge will re-open to vehicles at approximately 9 p.m.

Parade organizers have agreed to contract with the City of Santa Cruz Fire Department to provide certified lifeguards for the event. Four marshals will assist with managing parade participants, and Capitola Beach Festival staff members will be assigned to monitor the Soquel Creek pathway and the main beach during the event.

Lighting will be strung along the creek pathway and two light standards will be placed on the main beach near the lagoon. Organizers will be required to post the necessary advisory language and hire two security officers to restrict travel onto the railroad trestle and prevent persons from trespassing.

Access to the trestle will be restricted on Saturday from 6 p.m. to 9 p.m. during the float parade. Organizers have also agreed to contract with First Alarm Security to provide security officers at each end of the trestle to prevent spectators from gathering at this location. If approved, the Police Department will provide additional staffing to close Stockton Avenue from Capitola Avenue to Wharf Road/Cliff Drive during the lighted float parade and to provide security for the observers and participants in the areas of the bridge, beach, and creek pathway.

The only other event on Saturday will be a horseshoe competition on the main beach from 10 a.m. to 4 p.m. It is not anticipated that this event will require city staff or resources.

Four events are scheduled for Sunday, September 30, as follows:

Fishing Derby on the Wharf	6:30 a.m. to noon
Sand Sculptures	8 a.m. to noon
Chalk Art at the Seawall	9 a.m. to noon
Rowboat Races	1 p.m. to 4 p.m.

Event organizers are requesting eight reserved parking spaces in the Village for the duration of this special event. A total of nine portable toilets will be provided for the event, with eight placed in the Barry Swenson parking lot and one placed under the railroad trestle on Riverview Avenue. It is the responsibility of event organizers to ensure that float parade participants dispose of any trash after the parade. As such, a dumpster will be placed under the trestle for participants to dispose of any decorations or trash after the float parade.

FISCAL IMPACT: The Beach Festival Committee will be billed for any staff time associated with the event, in addition to the required permit fees. Therefore, there will be no fiscal impact to the

Capitola Beach Festival Special Event Permit  
June 14, 2018

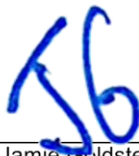
City.

ATTACHMENTS:

1. Capitola Beach Festival SEP Application

Report Prepared By: Terry McManus  
Police Chief

**Reviewed and Forwarded by:**

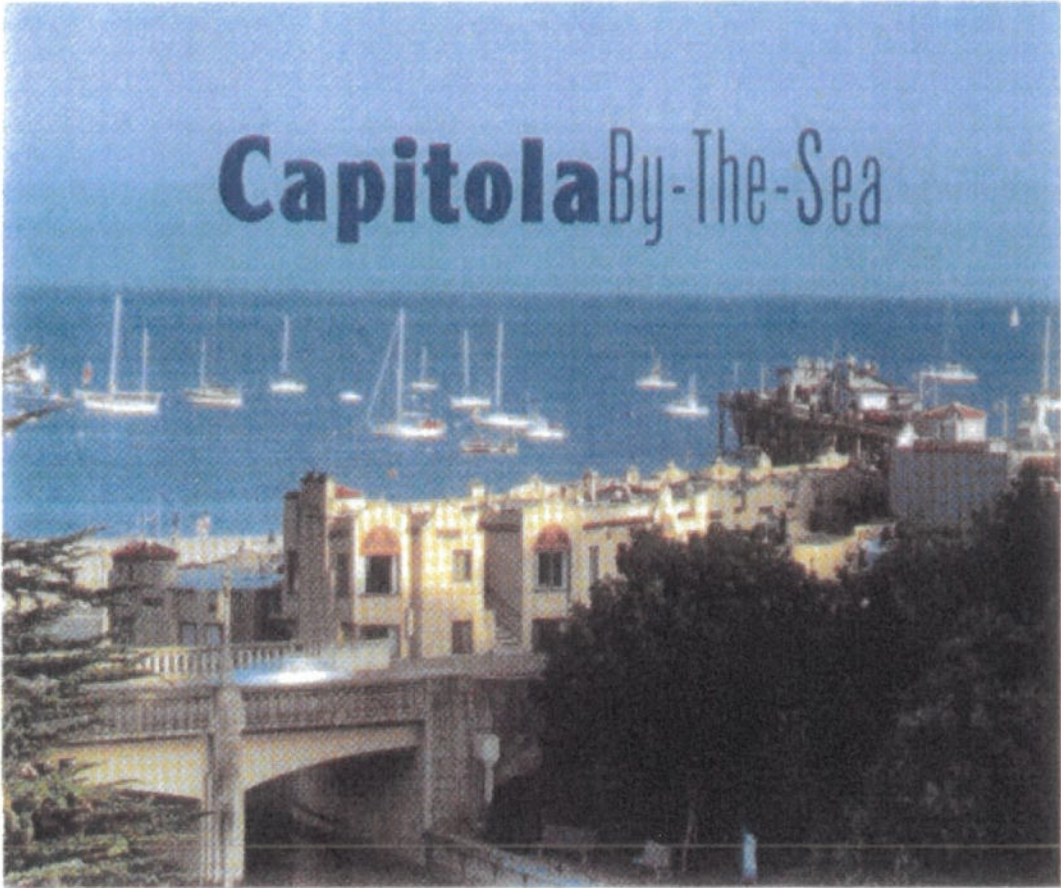


---

Jamie Goldstein, City Manager

6/7/2018

**GENERAL SPECIAL EVENT  
PERMIT  
APPLICATION**



**CITY OF CAPITOLA**

Attachment: Capitola Beach Festival SEP Application (Capitola Beach Festival Special Event Permit)

**SPONSORING ORGANIZATION AND APPLICANT INFORMATION**

- α Event Name: Capitola Beach Festival
- α Event Description: Fun run, various family centered events,
- α Event Purpose: Community Goodwill
- α Sponsor: Beach Festival Committee & Wharf to Wharf
- α Sponsor's Address: PO Box 501  
Capitola Ca street 95010-0501  
city state zip code
- α Sponsoring Organization's Phone: ( 831 ) 475-6522 (Chamber of Commerce)
- α FAX Number: ( ) none E-Mail Address: capitolabeachfestival@gmail.com
- α Contact Person's Name: Michael Termini, President
- α Business Phone: ( ) Cellular Phone: ( 831 ) 476-6206
- α FAX Number: ( ) E-Mail Address: 4766206@gmail.com

Will you be using a professional Special Event Organizer? If yes, please include all foregoing information about the organizer on a separate sheet of paper and attach to your application.

**EVENT INFORMATION**

- α Type of event:  Run  Festival  Parade  Sale  Motion Picture  Block Party  Fishing Derby
- α Other (specify) Sand Sculpture, Horsehoe, Rowboat race, Nautical Parade
- α Event Location: Capitola Beach, Whaft to Wharf, Soquel Creek, Cliff Dr.
- α Event Dates: 9/29, 9/30 Anticipated Attendance: 5,000
- α Web Site Information: \_\_\_\_\_ E-Mail Address: capitolabeachfestival@gmail.com
- α Will the public be invited?  Yes  No

Actual hours open to the public or "advertised" event hours:

- α Date: 09/29/2018 Time: 7 AM/PM to 12 AM/PM Fun Run
- α Date: 09/29/2018 Time: 7 AM/PM to 9 AM/PM Float building & Nautical Parade
- α Date: 09/30/2018 Time: 8 AM/PM to 12 AM/PM Sand Sculpture
- α Has this event taken place before?  Yes  No Any changes to this event?  Yes  No
- α If yes, what changes? Reduced Dates & Events / Little Whaft Fun run
- α If yes, please attach a copy of your last permit for this event, if available.
- α Will this event be promoted, advertised or marketed in any manner?  Yes  No
- α Will there be live media coverage during your event?  Yes  No
- α If yes, please explain: Local Print media & Possible Local TV

- 9/30 6:30AM-12PM Fishing Derby
- 9/30 1:00PM-4 PM Rowboat Races
- 9/29 10:00AM-4PM Horseshoes
- 9/30 9:00AM-12PM Chalk Art
- 9/29 7:00PM-9PM Lighted Float Parade

Attachment: Capitola Beach Festival SEP Application (Capitola Beach Festival Special Event Permit)

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

If yes, explain: Public admission fees: \$ NA per person

Participant entry fees: \$ NA per person

Vendor fees: \$ NA per booth

Number of vendors: NA

How many vendors are for profit? \_\_\_\_\_

How many vendors are nonprofit? \_\_\_\_\_

\$ 20,000 Total estimated gross receipts, including tickets, product and sponsorship sales from this event. Explain how this amount was computed. Indicate amount per item.

- \$ \_\_\_\_\_ Admission fees
- \$ \_\_\_\_\_ Product fees
- \$ 20,000 Sponsorship
- \$ \_\_\_\_\_ Participant entry fees
- \$ \_\_\_\_\_ Other (Please specify): \_\_\_\_\_

\$ 15,000 Total estimated expenses for this event.

- \$ 500 Advertising
- \$ \_\_\_\_\_ Wages, salaries
- \$ 3,500 City services (police, fire, street closures)
- \$ 4,500 Insurance
- \$ \_\_\_\_\_ Business license fee
- \$ 6,500 Other (Please specify): Prizes & Administration

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

\$ 0 Projected amount of revenue the Sponsoring Organization(s) will receive as a result of this event.

Specify the organization(s) to receive funding: \_\_\_\_\_

City sponsorship requested?  Yes  No If yes, please describe: Grant to Cover Permit Fees

**OVERALL EVENT DESCRIPTION**

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

If yes, begin day/date: 9/28 Start time: 9  AM  PM

Location: Stockton River Access

Description of the scope of the setup/assembly work (Attach additional pages and drawings as needed): Deliver floats to River

Attachment: Capitola Beach Festival SEP Application (Capitola Beach Festival Special Event Permit)



∞ If yes, dismantle day date: 10/01 Completion time: 9 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: \_\_\_\_\_

Saturday 9/29 Esplanade 4:00 am-11:30 am  
Monterey 7:30 am-10:30 am (On Esplanade side of Capitola Ave  
Stockton/Cliff Dr 7:30 am - 10:30 am  
San Jose/Wharf Rd 7:30 am - 10:30 am

Nautical Parade Saturday 6:00PM - 9:00 PM Stockton only

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: \_\_\_\_\_

Posted 72 hrs. Before Event;

Esplanade spaces 148-149 ALL DAY For Horseshoes (Sat) and Sand Sculpture (Sun)  
Margaritaville space 101 ALL DAY For Nautical Parade sound (Sat) & Rowboat races (Sun)  
Wharf space 412 5am-ALL DAY for Fishing Derby (Sun)  
Palm spaces 201-204 (4) ALL DAY Chalk Art (Sun) Logistic vehicles (Sat & Sun)

Posting under Trestle for dumpster & Porta Potty

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.

- 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)

α Please describe how food will be served at the event: None

\_\_\_\_\_

α Will food be cooked in the event area?  Yes  No

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

\_\_\_\_\_

α Does the event involve the sale or use of alcoholic beverages?  Yes  No

α If yes, please describe: \_\_\_\_\_

α If alcohol is to be sold, how will the alcohol sales be regulated? \_\_\_\_\_

\_\_\_\_\_

Please attach a copy of your ABC license.

α Will there be items or services sold at the event?  Yes  No

α If yes, please describe: \_\_\_\_\_

Artist will be selling event posters

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

α Do the vendors have City of Capitola business licenses?  Yes  No

**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: 1 (Recommended 1 per 400 people)
- ∞ Number of recycling containers: 1 (Voluntary)
- ∞ Describe the plan for cleanup and removal of waste and garbage during and after the event:

Sunday float builders will dispose of their own trash

---

Porta Potties will be located in Theater parking lot & one under the Trestle on Riverview

---

One Dumpster under the trestle

---



---



---



---

(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.

Attachment: Capitola Beach Festival SEP Application (Capitola Beach Festival Special Event Permit)



---

---

---

---

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

---

---

---

---

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

Yes  No

α 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.

α

---

---

---

---

SEE LITTLE WHARF MAP

---

---

---

---

α Does this event involve a fixed venue site?  Yes  No

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

**SAFETY - SECURITY**

- ∞ Is there a professional security organization to handle security for this event?  Yes  No
- ∞ If yes, please name security company: \_\_\_\_\_
- ∞ If no, do you wish to contract police services from the Capitola Police Dept.?  Yes  No (See fee schedule)
- ∞ Security company's address: \_\_\_\_\_  
street
- \_\_\_\_\_ city state zip code
- ∞ Security Director's name: \_\_\_\_\_
- ∞ Security Director's phone number: ( \_\_ ) \_\_\_\_\_
- ∞ Security company's state license number: \_\_\_\_\_
- ∞ Security company's business license number: \_\_\_\_\_
- ∞ Security company's insurance carrier: \_\_\_\_\_ City or privately secured?
- ∞ On-site contact person (security supervisor): \_\_\_\_\_
- ∞ Any searches prior to entering? Yes  No
- ∞ Bottle and can check? Yes  No
- ∞ Metal detectors? Yes  No
- ∞ How many security guards at each entrance? NA

**Parking Lot Patrol (Private Security):**

- ∞ Security company: NA
- ∞ Contact person (security supervisor): NA
- ∞ Number of security guards patrolling the parking lot: NA

**Lighting:**

- ∞ If this is an evening event, please state how the event and surrounding areas will be illuminated to ensure the safety of the participants and spectators.  
Lights along creek

**Medical:**

- ∞ Indicate what arrangements have been made for providing first-aid staffing:  
Contract with Lifeguards during Nautical Parade, First Aid Station for Race Provided by Wharf to Wharf

Attachment: Capitola Beach Festival SEP Application (Capitola Beach Festival Special Event Permit)



**INSURANCE REQUIREMENTS**

**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): Michael Termini  
Title: Pres. Beachfront Center Assoc  
Signature of Applicant: [Signature] Date: 5/14/18

**Submit to Capitola PD**

Attachment: Capitola Beach Festival SEP Application (Capitola Beach Festival Special Event Permit)











## CAPITOLA CITY COUNCIL AGENDA REPORT

**MEETING OF JUNE 14, 2018**

FROM: Finance Department

SUBJECT: Consider a Resolution for the Levy of Capitola Village and Wharf Business Improvement Area Assessments for Fiscal Year 2018/2019

**RECOMMENDED ACTION:** Conduct the public hearing and adopt the proposed Resolution levying the Fiscal Year 2018-2019 Capitola Village and Wharf Business Improvement Area (CVWBIA) Assessments and accepting the CVWBIA Annual Plan and budget.

**BACKGROUND:** On June 23, 2005, the City Council adopted Ordinance No. 889 adding Chapter 5.10 to the Capitola Municipal Code establishing the Capitola Village and Wharf Business Improvement Area (CVWBIA). The CVWBIA assessments fund various programs that benefit the businesses within the CVWBIA district boundaries and are renewed annually.

**DISCUSSION:** On May 24, 2018, the City Council adopted Resolution No. 4112, Resolution of Intention to Levy Business Improvement Assessments for Fiscal Year 2018-2019, which set a public hearing for June 14, 2018, in accordance with state law and Chapter 5.10 of the Capitola Municipal Code. Notice of this public hearing was published in the *Santa Cruz Sentinel* newspaper and was mailed to affected business owners by the CVWBIA.

The billing for City services identified in the CVWBIA plan was based on past agreements. The current billing rates are \$3,000 for public works and \$4,200 for accounting services. The annual report and budget are included as Attachment 1.

During the public comment portion of this hearing, written and oral protests may be made pertaining to the proposed levy of assessments, the amount of the proposed assessments, and the proposed improvements and activities in accordance with California Streets & Highways Code §36524 and §36525.

Staff recommends the Council adopt the proposed Resolution confirming the Fiscal Year 2018-2019 CVWBIA Assessments and adopting the Annual Plan and Fiscal Year 2018-2019 budget, as approved by the Council on May 24, 2018, unless it receives oral and written protests from the owners of businesses that will pay 50 percent or more of the assessments.

**FISCAL IMPACT:** There is no fiscal impact to the City. All administrative costs for billing and collections incurred by the City are reimbursed by the CVWBIA.

CVWBIA Assessments for FY 18/19  
June 14, 2018

ATTACHMENTS:

1. CVWBIA Exhibit A 2018-19 (PDF)

Report Prepared By: Mark Sullivan  
Senior Accountant

**Reviewed and Forwarded by:**



---

Jamie Goldstein, City Manager

6/5/2018



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

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA  
CONFIRMING THE FISCAL YEAR 2018/2019 CAPITOLA VILLAGE AND WHARF BUSINESS  
IMPROVEMENT AREA ASSESSMENTS AND ADOPTING THE ANNUAL PLAN  
AND FISCAL YEAR 2018/2019 CVWBIA BUDGET**

**WHEREAS**, the Capitola Village and Wharf Business Improvement Area (CVWBIA) has prepared a report to the City of Capitola for Fiscal Year 2018/2019 pertaining to the Business Improvement Area assessments for the CVWBIA under California Streets and Highways Code §36533; and

**WHEREAS**, that report was filed with the City Clerk on May 14, 2018; and

**WHEREAS**, Capitola Municipal Code §5.10.050 requires annual assessments to be imposed within the CVWBIA pursuant to a formula set forth in City Council Resolution No. 3453 referenced in Capitola Municipal Code §5.10.030, and later amended by Resolution No. 3546 and Resolution No. 4023; and

**WHEREAS**, on May 24, 2018, the City Council adopted Resolution No. 4112 stating its intention to levy business improvement assessments for Fiscal Year 2018/2019, receiving the Annual Report and Fiscal Year 2018/2019 Budget, and approving the CVWBIA Assessment Basis/Business Addresses and Assessment Method; and

**WHEREAS**, pursuant to Resolution No. 4112 the City Council, in accordance with California Streets and Highways Code Section §36535, held a public hearing on June 14, 2018, as provided for in Streets and Highways Code Sections §36524 and §36525, at which time it considered the annual report, the levy of business improvement assessments for Fiscal Year 2018/2019, and received oral and written protests and endorsements to the regularity or sufficiency of the proposed business improvement assessments.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CAPITOLA AS FOLLOWS:**

1. The Fiscal Year 2018/2019 Capitola Village and Wharf Business Improvement Area Annual Report, including the Fiscal Year 2018/2019 budget, as filed with the City Clerk on May 14, 2018, and received by the City Council on May 24, 2018, as part of Resolution No. 4112, is hereby confirmed and adopted.

2. The adoption of this Resolution shall constitute the Fiscal Year 2018/2019 levy of assessments provided for in Chapter 5.10 of the Capitola Municipal Code pertaining to the Capitola Village and Wharf Business Improvement Area zone and rate of assessments adopted by the City Council on June 14, 2018.

**I HEREBY CERTIFY** that the above and foregoing resolution was passed and adopted by the City Council of the City of Capitola at its regular meeting held on the 14<sup>th</sup> day of June, 2018, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

**EXHIBIT A**  
**Resolution No. 4112**

**Annual Report & Proposed Fiscal Year 2018-2019 Budget**  
**CVWBIA Assessment Basis**  
**CVWBIA Business Listing and Assessment Method**

**Mission Statement**

The objective of the CVWBIA is to provide a unified organization to promote, stimulate and improve the business conditions in the designated area, primarily during the shoulder season, September – May. The belief is that if the lodging properties and short-term rentals are full, the rest of the businesses in the area will benefit.

This can be achieved by the CVWBIA continuing to fund activities and projects that will:

- Improve access to information regarding the businesses and services provided by the Village and Wharf BIA to likely visitors to the area via newsletters, the internet and print advertising.
- Provide fun, family-oriented events throughout the year emphasizing the attributes of the Village and Wharf, by working in partnership with the Capitola/Soquel Chamber of Commerce.
- Improve and enhance the appearance of the Village and Wharf in partnership with the City of Capitola.
- Enhance the ability of the CVWBIA to serve as a liaison between the business community and local governments.

**As the CVWBIA begins its thirteenth year, we will continue and expand successful programs from prior years, which include the following:**

1. **Website** – We maintain a recently updated, mobile compatible, website ([www.capitolavillage.com](http://www.capitolavillage.com)) for ease of use and connectivity to BIA member's businesses, lodging and short-term rentals. Each member has a unique page with links to their individual websites. There is a schedule of events and other helpful features. Visitors can sign up on the site to receive newsletters and enter contests to win gift certificates from member businesses.
2. **Social Media** – The Communications Manager creates a monthly newsletter, which is emailed to over 10,500 subscribers. Our Facebook page has over 10,868 fans. Our contests on Facebook have an average engagement of 5,000. On Facebook, our top 5 cities are Santa Cruz, San Jose, Capitola, Modesto and Sacramento. Our Instagram has 4,442 followers with an average of 250 website visits from our account per week. We are new to Twitter with 550 followers and growing. We have many professional photographs posting to our pages.

3. **Print Advertising** – While placing an emphasis on our social media development, there is still a need for carefully placed advertising in quality visitor publications. We are constantly monitoring these publications for the ones with the most effective online presence. The CVWBIA will continue to co-op with Visit Santa Cruz to promote Capitola Village and Wharf in their visitor magazine, their map and on their website.
4. **Village Brochures** – We print 25,000 brochures and distribute them throughout Santa Cruz County. We contract with Certified Display Service. This company has exclusive rights to lobby racks in the hotels, resorts and visitor centers in the county. These brochures are also available in various places of business throughout the Village and Wharf. We feel it is important to make visitors to other areas in the county aware of Capitola Village and Wharf through these brochures.
5. **Branding and Logo Development** – The Marketing & Events Committee is interviewing graphic designers and agencies to review our branding, with possible changes in the logo, to be used in advertising and social media.
6. **Winter Festivities** – Every year we plan to improve the decorations in the village to further our brand as the Holiday Village and Lights, with a consistent theme and increased location of specialty lighting. A tree lighting ceremony, community caroling and window decorating contest are components of the winter festivities with other events in the planning stages.
7. **Membership Breakfast** – These breakfasts, hosted by Paradise Beach Grille, are an opportunity to inform members about current activities and receive valuable input. Educational presentations, as well as reports by city representatives, are given at these breakfasts.
8. **Public Works** – The CVWBIA contributes annually to the City of Capitola Public Works Department. Our contribution is used to help maintain the Village and Wharf.
9. **Chamber of Commerce** – The CVWBIA contributes annually to support community interest projects and events in the Village.

## Capitola Village & Wharf Business Improvement Area Assessment Basis

The method of assessment classifies businesses within the CVWBIA boundaries into seven categories:

1. Retail / Service businesses
2. Restaurant / Bar / Take-out food and beverage businesses
3. Restaurant - Limited
4. Office and Professional businesses / Specialty
5. Short-term Rental businesses
6. Seasonal Foods
7. Hotel / Motel / Inn businesses

Assessment fees are assigned to these seven business categories by number of full-time equivalent employees, a flat rate, and a per unit amount. Registered non-profits are exempt from assessment fees.

The following table shows the assessment fees for the proposed CVWBIA. Assessment fees have not increased from the prior year and a discount is offered to businesses that pay their assessment by the due date.

Business Category	Number of Full-Time Equivalent Employees*		
	0 – 5 employees	6 – 10 employees	More than 10 employees
Retail / Service	\$462	\$924	\$1,386
Restaurant / Bar / Take-out	\$528	\$1,056	\$1,584
	Flat Fee		
Restaurant – Limited**	\$308		
Office / Professional / Specialty	\$132		
Short-term Rental***	\$198		
Seasonal Food Service	\$308		
	Per Unit Fee		
Hotel / Motel / Inn	\$396 per unit		

**Footnote\*** “Full-time employee” is an employee who works 2,000 hours per year or more. Multiple part-time employees are combined into a single full-time employee for the basis of this assessment calculation. (i.e. “fulltime equivalents”)

**Footnote\*\*** “Restaurant-Limited” businesses are defined as small, informal cafes serving simple foods, baked goods, and/or drinks, for consumption on or off the premises, that may or may not have seating, including, but not limited to, coffee stores, juice bars, bakeries, delicatessens, and confectioneries. Annual gross receipts are \$150,000 or less.

**Footnote\*\*\*** “Short-term rental” businesses are defined as those dwellings which, at least once per fiscal year, are rented to a tenant for a tenancy of less than thirty days.

**In-Lieu Payments/Trades.** The City Manager is authorized to approve “in lieu” assessment payments in the form of Gift Certificates from CVWBIA retail, food or lodging business members whereby these businesses tender retail, restaurant and lodging gift certificates for use by the CVWBIA in connection with its promotional activities. The amount of “in lieu” assessment payments will be fixed per category, with exceptions that may be authorized by the City Manager.

Business Category	Assessment if paid after 8/31/18	Discount	Amount due WITHOUT In-lieu/trade	In-lieu/trade for timely payment	Amount due paid by 8/31/18
Retail/Service (0 - 5 Employees)	\$462	\$42	\$420	\$75	\$345
Retail/Service (6 - 10 Employees)	\$924	\$84	\$840	\$150	\$690
Retail/Service (11+ Employees)	\$1,386	\$126	\$1,260	\$225	\$1,035
Restaurant/Bar (0 - 5 Employees)	\$528	\$48	\$480	\$75	\$405
Restaurant/Bar (6 - 10 Employees)	\$1,056	\$96	\$960	\$150	\$810
Restaurant/Bar (11+ Employees)	\$1,584	\$144	\$1,440	\$225	\$1,215
Restaurant – Limited	\$308	\$28	\$280	\$0	\$280
Office / Professional /Specialty	\$132	\$12	\$120	\$0	\$120
Hotel / Motel / Inn	\$396 per unit	\$36 per unit	\$360 per unit	50%	\$180 per unit
Short-term Rental	\$198	\$18	\$180	\$0	\$180
Seasonal Food Service	\$308	\$28	\$280	\$0	\$280

**Associate Membership.** CVWBIA is authorized to accept “associate membership” financial contributions from businesses outside the CVWBIA, which may wish to participate in the CVWBIA’s promotional activities, but are not subject to the CVWBIA assessments.

**New Business Assessment.** Assessments will be prorated by the quarter in which a business opens. “In Lieu” payments will be accepted.

**Business Closing.** A business notifying the CVWBIA before the end of the first quarter of the fiscal year (September 30th) that it will close before December 31<sup>st</sup> will be exempt from paying the assessment for that fiscal year. If the business does not close before December 31st, it must pay the year's assessment in full.

**Discount.** There will be a discount for paying the assessment by the due date of August 31, 2018.

**Delinquencies.** CVWBIA has a clear policy relative to delinquent assessments. Businesses that have not paid their assessment by October 31, 2018, will be removed from the CVWBIA website and brochure. Assessments that have not been paid by January 31, 2019, will be sent to collections.

**Capitola Village & Wharf Business Improvement Area**  
**Estimated Actual for FY 2017-2018 and Proposed Budget for FY 2018-2019**

	FY 16/17 Actual	FY 17/18 Budget	FY 17/18 Est. Actual	FY 18/19 Proposed
<b>Beginning Fund Balance</b>	\$ (2)	\$ 11,848	\$ 11,848	\$ 8,000
<b>Revenues</b>				
BIA Assessment Revenues - Village*	57,810	60,000	59,028	60,000
Assessment Associate	-	-	-	1,450
BIA Assessment Revenues - Trade**	12,670	13,000	13,230	13,000
BIA Assessment Late Fees	748	-	1,040	150
Interest Revenue	186	100	540	150
Misc. Revenue (iSkate)	-	-	3,189	-
<b>Total Revenues</b>	71,414	73,100	77,027	74,750
<b>Total Source of Funds</b>	<b>\$ 71,412</b>	<b>\$ 84,948</b>	<b>\$ 88,875</b>	<b>\$ 82,750</b>
<b>Expenditures</b>				
Advertising & Consulting	\$ 44,063	\$ 60,750	\$ 62,440	\$ 57,350
Maintenance - City Public Works	3,000	3,000	3,000	3,000
Billing/Collection - City Accounting	4,200	4,200	4,200	4,200
Capitola Soquel Chamber Of Commerce	3,000	3,000	3,000	3,000
Services	-	-	-	3,800
Supplies	5,300	800	8,235	400
Doubtful Accounts	-	3,000	-	3,000
<b>Total Expenditures</b>	59,563	74,750	80,875	74,750
<b>Ending Fund Balance</b>	<b>\$ 11,848</b>	<b>\$ 10,198</b>	<b>\$ 8,000</b>	<b>\$ 8,000</b>

The following tables provide detail for selected items of the proposed FY 18/19 Budget:

Assessment Revenue Detail*	Proposed FY 18/19
Retail / Service	\$ 19,320
Restaurant / Bar / Take-out	\$ 15,840
Restaurant - Limited	\$ 2,520
Office / Professional / Specialty	\$ 2,880
Hotel / Motel / Inn	\$ 18,360
Short-term Rentals	\$ 14,040
Associate Member	\$ 1,440
Seasonal Foods	\$ -
<b>Subtotal</b>	<b>\$ 74,400</b>

Advertising Detail	Proposed FY 18/19
Gift Certificates**	\$ 13,000
Directories	4,454
VSC Partnership	7,680
Various Advertising	6,800
Website Management	1,000
Consulting	10,500
Holiday	6,500
Projects	5,400
Insurance	1,100
Unanticipated Events	916
<b>Total</b>	<b>\$ 57,350</b>

\* 18/19 Proposed Budget revenues reduced from roster estimates based on prior year actual information

\*\* Gift Certificates are provided from "Trade" revenues

Attachment: CVWBIA Exhibit A 2018-19 (CVWBIA Assessments for FY 18/19)

## **Capitola Village & Wharf Business Improvement Area Budget Discussion**

The CVWBIA will begin Fiscal Year 2018-2019 with an estimated fund balance of \$8,000.

**Revenues:** The proposed revenue is derived from the CVWBIA business roster and corresponding assessment rates. The allocation of cash and in-lieu revenue is based upon FY 2017-2018 actuals.

### **Expenditures:**

**Summary.** The proposed expenditures include advertising and related services of \$57,350, City public works maintenance for beautification of \$3,000, City accounting staff of \$4,200 for billing and accounts payable services and \$3,000 for the partnership with the Chamber of Commerce. This year's proposed budget also includes \$3,000 for doubtful accounts and \$400 for supplies.

### **Advertising is the CVWBIA's principal expenditure.**

- **Advertising (\$14,480)** In addition to social media, the CVWBIA advertises in various visitor information magazines and in projects in partnership with Visit Santa Cruz (VSC). The past year included SF Guide, Monterey Bay Travel Magazine, Summer Magazine, Explore Silicon Valley, VSC Map, VSC Travel Guide and a VSC TV partnership covering SF, Sacramento & the Central Valley. Each of these is considered on an individual basis each year.
- **Gift Certificates (\$13,000):** Members may satisfy a portion of their annual fee with gift certificates. These certificates are used to promote specific businesses in the Village through donations to various activities in the Village and promotional incentives to potential visitors to Capitola.
- **Winter Festivities:** This year we have budgeted \$6,500 for holiday decorations & events.
- **Brochures (\$4,454):** We print approximately 25,000 brochures, which are available at all local merchants and distribution centers throughout the area.
- **Website Management (\$1,000):** Our website [www.capitolavillage.com](http://www.capitolavillage.com) is now thirteen years old and was overhauled in 2015-16.
- **Communications Manager and Village Ambassador (\$10,500):** The consultants filling these positions communicate directly with members to promote the village and individual businesses on all forms of social media. They produce twelve visitor-newsletters and approximately six member-newsletters per year.
- **Social Media Boost (\$1,000):** The recent increase in social media advertising results in a shift from traditional advertising to web-based advertising.
- **Unanticipated Events:** We have also provided \$916 for unanticipated events as we add new members with new ideas.

The following is a roster of open businesses in the assessment area as of May 14, 2018.

## Capitola Village & Wharf Business Improvement Area Business Listing and Assessment Method

Business Type	Assessment Method	Estimate Assessment	
F = FOOD (Larger restaurants)	Per employee category: 0-5; 6-10; >10 employees	F	\$15,840
RL = RESTAURANT LIMITED	Flat fee	RL	\$2,520
H = HOTEL/MOTEL/INN	Flat fee per unit or room	H	\$18,360
O = OFFICE/PROFESSIONAL	Flat fee	O	\$2,880
R = RETAIL/SERVICE	Per employee category: 0-5; 6-10; >10 employees	R	\$19,320
SF = SEASONAL FOOD	Flat fee	SF	\$0
SR = SHORT TERM RENTALS	Flat fee per unit	SR	\$14,040
AM = Associate Member	Associate Member	AM	\$1,440
		<b>Total</b>	<b>\$74,400</b>

<u>Business Address</u>	<u>Business Name</u>	<u>TYPE</u>	<u>FY18/19 Est. Size</u>	<u>FY18/19 Est. Amt Due</u>
504 Bay Avenue	Gayle's Bakery & Rosticceria	AM	> 10	\$1,440
1400 Wharf Road	Wharf House Restaurant	F	6 - 10	\$960
209A Esplanade	Pizza My Heart	F	6 - 10	\$960
215 Esplanade	Paradise Beach Grille	F	> 10	\$1,440
1750 Wharf Road	Shadowbrook Restaurant	F	> 10	\$1,440
203 Esplanade	Zelda's	F	> 10	\$1,440
110 Monterey Avenue	Britannia Arms Pub & Rest.	F	> 10	\$1,440
231 Esplanade #101	Margaritaville	F	> 10	\$1,440
316 Capitola Avenue	Bella Roma Café	F	0 - 5	\$480
123 Monterey Avenue	El Toro Bravo	F	0 - 5	\$480
231 Esplanade #100	Mr. Toots Coffee & Tea	F	0 - 5	\$480
200 Monterey Avenue #1	Souza's Ice Cream & Candy	F	0 - 5	\$480
103 Stockton Avenue	Armida Winery	F	0 - 5	\$480
200 Monterey Avenue #3	Geisha Japanese Restaurant & Tea House	F	0 - 5	\$480
209B Esplanade	Bay Bar & Grill	F	0 - 5	\$480
207 Esplanade	Sea Side Siam	F	0 - 5	\$480
115 San Jose Avenue Ste #6	Caruso's Tuscan Cuisine	F	0 - 5	\$480
211 Esplanade	The Sand Bar	F	0 - 5	\$480
427 Capitola Avenue	Avenue Café	F	0 - 5	\$480
104 Stockton Avenue	Beach Break by Marianne's	F	0 - 5	\$480
231 Esplanade Suite 102	Sotola Bar & Grill	F	0 - 5	\$480
200 Monterey Avenue #2	Mijos Taqueria	F	0 - 5	\$480
210 Esplanade	Capitola Hotel II, LLC	H	10	\$3,600
5000 Cliff Drive	Capitola Beach Suites aka Harbor Lights	H	10	\$3,600
250 Monterey Avenue	Inn at Depot Hill	H	12	\$4,320
1500 Wharf Road	Venetian Hotel	H	19	\$6,840
321 Capitola Avenue	Vice Salon	O		\$120

Attachment: CVWBIA Exhibit A 2018-19 (CVWBIA Assessments for FY 18/19)



<u>Business Address</u>	<u>Business Name</u>	<u>TYPE</u>	<u>FY18/19 Est. Size</u>	<u>FY18/19 Est. Amt Due</u>
312E Capitola Avenue	57 Design Inc.	O		\$120
312D Capitola Avenue	Beach House Rentals	O		\$120
301 Capitola Avenue	David Lyng & Associates	O		\$120
411 Capitola Avenue	Fuse Architects	O		\$120
415 Capitola Avenue	James B. Colip Insurance	O		\$120
201 Monterey Avenue Suite H	Landmark Properties	O		\$120
425 Capitola Avenue #3	Kathy Macdonald Association	O		\$120
314 Capitola Avenue	Katz & Lapidés	O		\$120
331 Capitola Avenue #B	Michael Lavigne Real Estate	O		\$120
331 Capitola Avenue Suite K	Newman & Marcus,LLP	O		\$120
413 Capitola Avenue	Richard Emigh, Land Use	O		\$120
331 Capitola Avenue #D	Suess Insurance Agency	O		\$120
208 San Jose Avenue	Capitola Surf & Paddle	O		\$120
220 Capitola Avenue	Psychic Mermaid	O		\$120
331 Capitola Avenue	Capitola Village Real Estate	O		\$120
314 Capitola Ave	Law Offices of Sam Storey	O		\$120
425 Capitola Avenue Suite #1	Bodhi Adiction Treatment and Wellness	O		\$120
314 Capitola Avenue	John H. McSpadden	O		\$120
314 Capitola Avenue	Miles J. Dolinger, Attorney at Law	O		\$120
112 Stockton Avenue Suite B	Visions by Sheena	O		\$120
331 Capitola Avenue	Capitola Village Massage	O		\$120
200 Monterey Avenue #A1	La Bella Fiori	O		\$120
207 Monterey Avenue Suite 100	Yellow Bus	O		\$120
115 San Jose Avenue Suite #G	Capitola Wine Bar & Merchants	R	0 - 5	\$420
1400 Wharf Road	JFS Inc. dba Capitola Boat & Bait	R	0 - 5	\$420
131 Monterey Avenue	MRA Sales, dba Capitola Beach Co.	R	0 - 5	\$420
417 Capitola Avenue	Betsy's Summerhouse Antiques	R	0 - 5	\$420
217 Capitola Avenue	Big Kahuna Hawaiian Shirts	R	0 - 5	\$420
209 Capitola Avenue	Craft Gallery	R	0 - 5	\$420
207 Capitola Avenue	Craft Gallery Annex	R	0 - 5	\$420
114 Stockton Avenue	Euphoria Rio Mix	R	0 - 5	\$420
110 Capitola Avenue #2	Free to Ride	R	0 - 5	\$420
212 Capitola Avenue	Gaia Earth Treasures	R	0 - 5	\$420
219 Capitola Avenue	Hot Feet	R	0 - 5	\$420
201 Monterey Avenue #B	Kickback	R	0 - 5	\$420
120 Stockton Avenue	Latta	R	0 - 5	\$420
202 Capitola Avenue	Nubia Swimwear	R	0 - 5	\$420
204 Capitola Avenue	Oceania	R	0 - 5	\$420
110 Capitola Avenue #1	Panache Bath & Body Shop	R	0 - 5	\$420
107 Capitola Avenue	Phoebe's	R	0 - 5	\$420
116 San Jose Avenue	Rainbow City Limit	R	0 - 5	\$420

<u>Business Address</u>	<u>Business Name</u>	<u>TYPE</u>	<u>FY18/19 Est. Size</u>	<u>FY18/19 Est. Amt Due</u>
216 Capitola Avenue	Slap Happy	R	0 - 5	\$420
214 Capitola Avenue	Super Silver	R	0 - 5	\$420
117 Capitola Avenue	Surf n Shack	R	0 - 5	\$420
120 San Jose Avenue	Sweet Asylum	R	0 - 5	\$420
121 San Jose Avenue	Thomas Kinkade Gallery	R	0 - 5	\$420
201 Capitola Avenue	Village Mouse	R	0 - 5	\$420
122 Capitola Avenue	Yvonne	R	0 - 5	\$420
115 San Jose Avenue	Southstar PM, Inc. - Parking at the Mercantile	R	0 - 5	\$420
120 Monterey Avenue	Uchiyama - Swenson - Parking at the Theater	R	0 - 5	\$420
201 Monterey Avenue #A	Village Sea Glass	R	0 - 5	\$420
112 Capitola Avenue Suite, 100	Lumen Gallery	R	0 - 5	\$420
115 Capitola Avenue	Capitola Reef	R	0 - 5	\$420
409 Capitola Avenue	Art Inspired	R	0 - 5	\$420
115 San Jose Avenue	Om Rhythms	R	0 - 5	\$420
224 Esplanade	RNTF LLC dba Bedroom Desserts	R	0 - 5	\$420
112 Stockton Avenue	Sea Level T's	R	0 - 5	\$420
115 San Jose Avenue	Carousel Taffy & Treats	R	0 - 5	\$420
115 San Jose Avenue	BFF Boutique	R	0 - 5	\$420
215 Capitola Avenue	Vanity by the Sea	R	0 - 5	\$420
116 Stockton Avenue	Xandra Swimwear	R	0 - 5	\$420
300 Capitola Avenue	Quality Market	R	0 - 5	\$420
115 San Jose Avenue Suite D	Reclaimed in Love	R	0 - 5	\$420
109 Capitola Avenue	Capitola Seashells	R	0 - 5	\$420
110 Capitola Avenue Unit 3	Carmel Bay Company	R	0 - 5	\$420
309 Capitola Avenue	Neil Simmons Photography	R	0 - 5	\$420
208 Monterey Avenue	Jade Allen	R	0 - 5	\$420
205 Capitola Avenue	Capitola Candy Company	R	0 - 5	\$420
126 San Jose Avenue	Pueblo Viejo Imports	R	0 - 5	\$420
115 San Jose Avenue	Santa Cruz Poke	RL	0 - 5	\$280
210 Monterey Avenue #1	Thai Basil	RL	0 - 5	\$280
105 Stockton Avenue	Sea Side Coffee	RL	0 - 5	\$280
311 Capitola Avenue	Calypso's Cove	RL	0 - 5	\$280
201 Monterey Avenue #C	Castagnola Deli & Café	RL	0 - 5	\$280
110 Stockton Avenue	Bouchees	RL	0 - 5	\$280
115 San Jose Avenue Suite Q	Off The Block	RL	0 - 5	\$280
312-B Capitola Avenue	Cork and Fork LLC	RL	0 - 5	\$280
107 San Jose Avenue Suite #8	Left Coast Sausage Worx	RL	0 - 5	\$280
222 San Jose Avenue	Avonne Stone Jacobs, Judy Jacobs	SR	1	\$180
303 Cherry Way	Cal & Carla Cornwell	SR	1	\$180
305 Riverview Avenue	Capitola Pelican House	SR	1	\$180
1500 Wharf Road #5	Colleen Merle Lund	SR	1	\$180

<u>Business Address</u>	<u>Business Name</u>	<u>TYPE</u>	<u>FY18/19 Est. Size</u>	<u>FY18/19 Est. Amt Due</u>
116 Esplanade	Dorean Moore	SR	1	\$180
310 Riverview Avenue	Eleanor Glover	SR	1	\$180
1500 Wharf Road #14	Erline Mello	SR	1	\$180
318 Capitola Avenue #2	Fred & Sharon Andres	SR	1	\$180
215 Monterey Avenue #A	Greg & Maxine Sivaslian	SR	1	\$180
206 Monterey Avenue	Jay & Pamela Chesavage	SR	1	\$180
5005 Cliff Drive #3	Jean Ladoucour	SR	1	\$180
301 Cherry Way	Jeff & Kathie Gaylord	SR	1	\$180
208 Monterey Avenue C	Pat Castagnola	SR	1	\$180
327 Riverview Avenue A	Paulo Franca	SR	1	\$180
109 Monterey Avenue #4	Sharon Dougan	SR	1	\$180
1500 Wharf Road #7	Viola M Carr	SR	1	\$180
1500 Wharf Road #1	Bob Coe	SR	1	\$180
1500 Wharf Road #20	Leonard Tyson	SR	1	\$180
4960 Cliff Drive #2	Tim & Stacy Hopkins	SR	1	\$180
1500 Wharf Road #11	Jeri Chestnut	SR	1	\$180
225 San Jose Avenue	Michelle & Stephen Murphy	SR	1	\$180
318 Capitola Avenue #1	Janet Lau	SR	1	\$180
4995 Cliff Drive #B	David Johnson	SR	1	\$180
1500 Wharf Road #2	Albert Ribisi & Mary Scolari	SR	1	\$180
5005 Cliff Drive Unit 1	Tom & Susan Baines	SR	1	\$180
4950 Cliff Drive	Lou Bergma	SR	1	\$180
318 Capitola Avenue #4	Deborah Cohen	SR	1	\$180
206 California Avenue	Vito Mazzarino	SR	1	\$180
131 Lawn Way	Sunshine Villa	SR	1	\$180
320 Riverview Avenue	Leslie Vineyard	SR	1	\$180
409 Riverview Avenue	Creekside Cottage	SR	1	\$180
417 Riverview Avenue	Bridget Taylor	SR	1	\$180
309 Cherry Avenue	Pan American Investments	SR	1	\$180
102 Lawn Way	Craig & Mimi French	SR	1	\$180
5005 Cliff Drive #6	Alanna Harvey	SR	1	\$180
1500 Wharf Road #9	Grandma's Nest	SR	1	\$180
109 Monterey Avenue #10	Kelli Aita	SR	1	\$180
211 Stockton Avenue #1	Bookman Rental Property	SR	1	\$180
317 Riverview Avenue	BHR Property Management	SR	1	\$180
112 Capitola Avenue #200	BHR Property Management	SR	1	\$180
119 Lawn Way	BHR Property Management	SR	1	\$180
208 Stockton Avenue	John McEnery	SR	1	\$180
105 Park Place	Capitola Village Deco Beach House	SR	1	\$180
214 California Avenue	Talbot Family	SR	1	\$180
4995 Cliff Drive #A	Chris Rasmussen	SR	1	\$180

<u>Business Address</u>	<u>Business Name</u>	<u>TYPE</u>	<u>FY18/19 Est. Size</u>	<u>FY18/19 Est. Amt Due</u>
1500 Wharf Road #16	Jacqui Rice Property Management	SR	1	\$180
317 & 327 Riverview Avenue B	Steve & Linda Woodside	SR	2	\$360
5005 Cliff Dr #4, 314 Riverview Ave	Sue Norris	SR	2	\$360
1500 Wharf Road #3,4	Watson Family Limited Partnership (Mike Newell)	SR	2	\$360
109 Cherry Avenue Units A & B	Bill & Julie Kenney	SR	2	\$360
209 Stockton Avenue A & B	Castillo Properties	SR	2	\$360
215 San Jose Avenue #A & #B	Beach House Rentals	SR	2	\$360
4980 Cliff Drive Unit A & B	Steve Pericone	SR	2	\$360
207 San Jose Avenue A & B	Surf City Rentals	SR	2	\$360
397 & 399 Riverview Avenue	Castellanos Properties - Windmill Properties	SR	2	\$360
402 Bluegum Avenue A & B	Lynda Paulsen	SR	2	\$360
122 San Jose #4 & 6	Khasrow Haghshenas/SJ Apartment LLC	SR	2	\$360
207 Monterey Avenue #200 & 201	207 Monterey Avenue #200 & 201	SR	2	\$360
201 Monterey Avenue #1 & #2	BHR Property Management	SR	2	\$360
231 Esplanade #301, #300, #200	Robert Chestnut	SR	3	\$540
212 Monterey Avenue #1, 3, 4	Joseph Minigione	SR	3	\$540

**\$74,400**



## CAPITOLA CITY COUNCIL AGENDA REPORT

**MEETING OF JUNE 14, 2018**

FROM: Capitola Police Department

SUBJECT: Introduce an Ordinance Amending Chapter 5.24 of the Capitola Municipal Code Pertaining to Entertainment Permits

**RECOMMENDED ACTION:** Approve the first reading of an ordinance amending Municipal Code Chapter 5.24.

**BACKGROUND:** The City Council adopted Ordinance 699 on October 25, 1990, introducing Chapter 5.24 of the Capitola Municipal Code to properly permit and regulate entertainment businesses. Entertainment permits are separated into three classifications based upon type and potential impact to the community and staff resources. The three classifications are as follows:

- Single-Event Entertainment Permit: issued for activities that will occur within a single seven-day period.
- Minor Entertainment Permit: issued for a business that offers entertainment incidental to the primary business, does not qualify for a Single-Event permit, and which has no dance floor or elevated stage and which never has a cover charge.
- Regular Entertainment Permit: issued for a business which offers entertainment, but which does not qualify for a Single-Event Permit or a Minor Event Permit.

The City of Capitola currently has five Minor Entertainment Permits and four Regular Entertainment Permits that are re-issued on an annual basis after staff review of renewal applications. There were no Single-Event Permits issued for the 2017 calendar year, and there have been no permits issued to date in 2018.

**DISCUSSION:** The proposed ordinance amending Chapter 5.24 of the Capitola Municipal Code is intended to update the language related to the issuance of permits and the process for imposing specific conditions upon the permit. Specifically, the proposed ordinance will codify the process established by the City Council in 2005, which called for the renewal of regular entertainment permits at a staff level.

Additionally, the amended language is intended to clarify the revocation, non-renewal, and appeal process to properly reflect existing staff protocols, best practices, and Chapter 2.52 of the Capitola Municipal Code.

Amend 5.24 Entertainment Permit  
June 14, 2018

Finally, staff recommends removing the requirement that Village entertainment permittees steam clean their sidewalks on a minimum bi-monthly basis. This recommended change is due to water quality regulations and water district requirements, as well as the City's expanded sidewalk cleaning program which includes steam cleaning sidewalks in front of the Village restaurants and bars two times per month and the entire Village one time per month during the summer months.

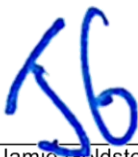
FISCAL IMPACT: None

ATTACHMENT:

1. Draft Ordinance

Report Prepared By: Terry McManus  
Police Chief

**Reviewed and Forwarded by:**



---

Jamie Goldstein, City Manager

6/5/2018

Amend 5.24 Entertainment Permit  
June 14, 2018

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CAPITOLA  
AMENDING CAPITOLA MUNICIPAL CODE CHAPTER 5.24 - ENTERTAINMENT PERMITS**

THE CITY COUNCIL OF THE CITY OF CAPITOLA DOES ORDAIN AS FOLLOWS:

Section 1: Chapter 17.24 - Entertainment Permits of the Capitola Municipal Code is hereby amended to read as follows:

**“5.24.005 Findings.**

.....  
The City Council finds as follows:

A. Entertainment often produces noise which is obtrusive to persons not patronizing the business or activity which produces the noise.

B. The availability of entertainment is often a significant factor in attracting patrons who infringe upon the peace and quiet and nightly sleep of non-patrons, and is exacerbated by any of the following:

1. The entertainment is offered in conjunction with the distribution of alcohol.

2. The entertainment is offered by businesses which are open after nine p.m. and do not, like theaters, have fixed beginning and ending times at which most of the patrons enter and exit.

3. The entertainment is offered in an area where there is a concentration of similar businesses, thereby resulting in the area becoming an after-hours draw and the patrons of those businesses frequently entering and exiting the other establishments.

4. The entertainment is offered in locations where many of the patrons, when leaving, pass through or near areas where people reside.

C. To protect the peace and quiet of non-patrons and their nightly ability to sleep it is necessary to have a licensing system and to thereby limit and condition the establishments offering such entertainment.

D. Policing and monitoring entertainment licenses entails considerable expense to the city, such that it is appropriate to collect a portion of such expenses from the entities providing the entertainment.

**5.24.010 Entertainment defined.**

.....  
“Entertainment,” as used in this chapter, means and includes:

A. A performance by live entertainers for the purpose of entertaining the patrons of a business;

Amend 5.24 Entertainment Permit  
June 14, 2018

or

B. Playing recorded music, whether with or without video, for the specific purpose of entertaining the patrons, invitees or visitors of a business, commercial establishment or meeting facility.

“Entertainment,” as used in this chapter, does not include a speech, pantomime or enactment (whether live or recorded), the primary purpose of which is to convey ideas of a political or religious nature, or to explain or critique the activities of public figures or of governmental or other institutions. It does not include mere background (“Muzak”) music played at moderate levels. (Ord. 745 § 2, 1992; Ord. 699 (part), 1990)

#### **5.24.020 Entertainment permit required.**

No owner, manager or operator of any business or establishment (except theaters, as defined in Section 5.24.025) may arrange for or allow entertainment to be conducted on the premises of any such business or establishment without obtaining an entertainment permit as provided in this chapter. No person shall arrange for or promote entertainment on any publicly-owned park, street or facility without first obtaining an entertainment permit as provided in this chapter. However, entertainment which is entirely enclosed within a structure and which cannot, at any time, be audible outside of that structure, need not have any entertainment permit.

#### **5.24.025 Theater defined.**

“Theater,” for purposes of this chapter, means an establishment:

A. Whose primary activity is showing movies or staging theatrical productions which have fixed beginning and ending times; and

B. Primarily offer food or drinks only to those attending the movie of theatrical event.

#### **5.24.030 Permit classifications.**

Entertainment permits shall be classified as follows:

A. A Single-Event entertainment permit may be issued for activities that will all occur within a single seven-day period.

B. A Minor Entertainment permit is for a business which offers entertainment incidental to the primary business, does not qualify for a Single-Event permit, and which has no dance floor or elevated state and which never has a cover charge.

C. A Regular Entertainment permit is for businesses which offer entertainment, but which do not qualify for a Single-Event entertainment permit or a Minor Entertainment permit.

#### **5.24.040 Permit issuance.**

A. The city council shall issue new Regular Entertainment permits.



Amend 5.24 Entertainment Permit  
June 14, 2018

B. The city manager or department head designee may issue recurring Regular Entertainment permits, Single Event entertainment permits and Minor Entertainment permits. The city manager, in the exercise of his or her discretion, may refer any Single Event entertainment permit application, recurring Regular Entertainment permit, or Minor Entertainment permit application to the city council for its consideration.

C. Entertainment permits may be issued as herein provided for upon the city council's or city manager's finding that:

1. No significant number of non-patrons will be disturbed by the entertainment, which is the subject of the permit application or, by the goings and comings of the people patronizing the entertainment events, which are the subject of the permit application;
2. The establishment at which the entertainment is to be provided or the entity which is applying for the entertainment permit is currently in compliance with all applicable state and local building, zoning, fire, and other regulations pertaining to public health and safety as well as any other statutes, ordinances, regulations, or permits that pertain to the establishment or the property on which the establishment is situated.

D. When necessary to assure that the entertainment which is the subject of the permit application will not result in disturbance to non-patrons, the city council or city manager may condition the permit to assure non-disturbance by imposing permit-specific conditions relating to, but not limited to, days of operation, hours of operation, best practices to minimize public safety issues, noise level limitations, noise reduction and other, similar measures.

#### **5.24.045 Appeals.**

A permit applicant whose application for a Single Event entertainment permit, recurring Regular Entertainment permits or Minor Entertainment permit is denied by the city manager, or who is dissatisfied with the conditions imposed upon the permit issued by the city manager, may appeal to the city council in accordance with Chapter 2.52 of this code. The city council's decision with regard to the issuance and conditions of new Regular Entertainment permits and the city council's decision on appeal or city manager referral with regard to Single Event or Minor Entertainment permits shall be final.

#### **5.24.050 Duration of permits.**

The operative period of time for a Single Event entertainment permit shall be set forth in the permit itself. All other permits shall expire no later than one year from the date of issuance. The issuance of a permit for one year does not establish a vested right to a renewal of the permit. If, during any permit period, the nature of the business activity or the circumstances surrounding the event to which the permit pertains change from the way it was initially permitted, the city in its sole discretion may require any permit holder to immediately apply for a new permit.

#### **5.24.060 Revocation or nonrenewal.**

A permit may be revoked by the city council, with at least five days' written notice to the permit

Amend 5.24 Entertainment Permit  
June 14, 2018

holder (who shall have an opportunity to be heard) for failure to comply with permit conditions or for having supplied false information in obtaining the permit. The City manager, or department head designee, may suspend or impose new conditions with at least five days' written notice to the permit holder for failure to comply with permit conditions.

**5.24.065 Violation of permit conditions.**

Whenever a permit is suspended due to a violation of this chapter or of permit conditions, the city manager shall so report such suspension to the city council.

**5.24.070 Fees.**

The city council may establish fees for applications for any of the permits described in Section 5.24.030 of this chapter. It may also prescribe fees for the issuance of the permit itself. Any schedule or formula of permit fees may be based on reasonable estimations of the cost to the city of monitoring or enforcing permit compliance.

**5.24.080 Application forms.**

The city manager may develop application forms pertinent to this chapter. Applicants may be required to submit any nonprivileged information reasonably related to the concerns expressed in Section 5.24.005.

**5.24.090 Violations.**

The operation of any business or entertainment activity contrary to the provisions of this chapter shall constitute a nuisance subject to abatement as provided in Title 4 of this code. Operating a business contrary to the business's entertainment permit and associated conditions, or violations of this chapter are also criminal acts subject to penalties provided in Section 1.01.090 and Title 4 of this code.

Section 2. Effective Date. This ordinance shall be in full force and effect thirty (30) days from the date of its adoption by the City Council.

This ordinance was introduced on the 14<sup>th</sup> day of June, 2018, and was passed and adopted by the City Council of the City of Capitola on the \_\_\_\_ day of \_\_\_\_, 2018, by the following vote: