

CITY OF CAPITOLA

SPECIAL PROJECT SPECIFICATIONS

FOR CONSTRUCTION OF

CAPITOLA WHARF RESILIENCY AND PUBLIC ACCESS IMPROVEMENT PROJECT – PHASE 1

**FOR USE IN CONJUNCTION WITH
STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION
STANDARD SPECIFICATIONS AND STANDARD PLANS
DATED 2018 WITH MOST RECENT REVISIONS**

BIDS OPEN: WEDNESDAY, SEPTEMBER 15, 2021 AT 11:00 AM

THIS IS A PREVAILING WAGE PROJECT

**DO NOT DETACH THE PROPOSAL FROM
THE SPECIAL PROJECT SPECIFICATIONS**



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NOTICE TO CONTRACTORS

NOTICE INVITING SEALED PROPOSALS OR BIDS

NOTICE IS HEREBY GIVEN that the City of Capitola, County of Santa Cruz, State of California, hereby invites sealed proposals or bids for the following work, all as more particularly and in detail set forth in those certain plans, specifications, and contract documents adopted therefore, copies of which are on file with the City of Capitola, County of Santa Cruz, State of California, to wit:

Capitola Wharf Resiliency and Public Access Improvement Project - Phase 1

General work description: The City of Capitola, with support from the California Coastal Conservancy, is seeking bids for a steel pile repair project located at the Capitola Wharf. The project involves encasing six (6) existing steel piles with a jacket repair, isolated deck beam reinforcement, the removal of six (6) steel piles, and permit monitoring compliance.

The estimated cost of construction is **\$490,000**

The plans, and specifications and contract documents may be examined, and copies secured from the Director of Public Works, City Hall, 420 Capitola Avenue, Capitola, CA 95010 or accessible from the City's website <http://www.cityofcapitola.org>

No contractor or subcontractor shall be qualified to bid on, be listed in a bid proposal, or enter into any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. By submitting a bid or proposal to the City, Contractor is certifying that he or she has verified that all subcontractors used on this public work project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration to the City.

In accordance with California Labor Code Section 1771, all workers engaged in performance of the specified contract work shall be paid not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the project is to be performed, including for holiday and overtime work as determined by the Director of Industrial Relations. Prevailing rate of per diem wages are available online at:

<http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Notice is also hereby given that all bidders shall submit, with their proposals or bids, a sworn statement of their financial responsibility, technical ability and experience.

No sealed proposal or bid will be accepted from a contractor who has not been licensed in accordance with the provisions of Chapter 9, Division III of the Business and Professions Code, as amended. In addition, the project requires a valid California contractor's license for the following classification(s):

California Class A license. Bidders must provide satisfactory evidence of such license at the time of bid.

Each sealed proposal or bid shall be accompanied by a certified check, cashier's check or bidder's bond made payable to the order of the City of Capitola, for an amount not less than 10 percent of the amount of the proposal. The above-mentioned bid deposit shall be given as a guarantee that the bidder will enter into a contract, if awarded, and will be declared forfeited if the successful bidder refuses, or fails, to enter into said contract, and furnish required bonds within the time specified after being notified to do so by the City of Capitola.

All proposals for the above-mentioned work will be received by the City of Capitola, County of Santa Cruz, State of California by

WEDNESDAY, SEPTEMBER 15, 2021 AT 11:00AM

at the Capitola City Hall, 420 Capitola Avenue, Capitola, California 95010. All proposals shall be in sealed envelopes plainly endorsed:

**Capitola Wharf Resiliency and
Public Access Improvement Project - Phase 1**

Proposals/bids will be opened publicly and read aloud on Wednesday, September 15, 2021 at 11:00 AM at Capitola City Hall, 420 Capitola Avenue. Capitola, CA 95010.

Closing time to receive bids will be determined by a clock designated by the City of Capitola. Bidder shall be responsible to check the designated clock.

The successful bidder will be required to furnish a Labor and Material Bond in the amount equal to 100 percent of the contract price, and a Faithful Performance Bond in an amount equal to 100 percent of the contract price, said bonds to be issued by a corporate surety company in the form approved by the City Attorney. The contractor will be allowed ten calendar days after she/he has received written notice that the contract has been awarded to him/her by the City within which to deliver the agreement with his/her signature affixed thereto, together with the completed aforementioned bonds and insurance certificates, to the Director of Public Works of the City of Capitola.

The City of Capitola reserves the right to reject any and all bids and waive any irregularity or minor defects in any proposal received. Unless otherwise required by law, no bidder may withdraw his/her bid for a period of thirty days after the date set for the opening thereof. Where possible, bids will be compared on the basis of the Engineer's estimate of the quantities of work to be performed.

The City of Capitola hereby notifies all bidders that it will affirmatively insure that in any agreement entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.



INSTRUCTIONS TO BIDDERS

Capitola Wharf Resiliency and Public Access Improvement Project - Phase 1

All bidders' attention is directed to the City of Capitola's Special Project Specifications, Part 1 – Standard Provisions, Section 2 "Proposal Requirements and Conditions," for requirements related to bidding and bid proposals. Bids shall be submitted in writing on the proposal forms provided by the City. All information requested therein must be clearly and legibly set forth in the manner and form indicated. The City will not consider any proposal not meeting these requirements.

By submitting a proposal/bid, each bidder represents that they have carefully examined and investigated the site of the work contemplated and the Plans, Drawings, and Specifications therefore, in accordance with the City's Special Project Specifications.

Failure of the bidder to fulfill requirements for submittals required to be furnished after bid opening, including but not limited to bonds or escrowed bid documents, where applicable, may subject the bidder to an adverse determination of the bidder's responsibility in the event it is the apparent low bidder on a future public works contracts.

Bid protests and procedures therefore are set forth in the City's Special Project Specifications.

In the event the bidder has any questions as to the meaning of any part of the plans and specifications, or if the bidder finds any error, inconsistency, or ambiguity in the Contract Documents, the bidder shall make a written request for clarification prior to submitting its bid. All questions and comments regarding the plans and specifications should be directed to the Project Manager indicated below and will only be responded to if received in writing at least five (5) working days before the bid opening. Questions received after this time and date may not be responded to.

Kailash Mozumder, Project Manager
City of Capitola
420 Capitola Avenue
Capitola, CA 95010
Email: kmozumder@ci.capitola.ca.us

These "Instructions to Bidders" are hereby made a part of the Contract Documents.



PROPOSAL FORMS

BIDDER'S PROPOSAL

Enclosed is Bidder's proposal to furnish and deliver all materials and to do and perform all work in accordance with the plans and contract documents of the City of Capitola for

Capitola Wharf Resiliency and Public Access Improvement Project - Phase 1

and referred to the "Notice to Contractors/Notice Inviting Sealed Proposals of Bids", and to provide all necessary machinery, tools, apparatus, and other means of construction and do all work and furnish all materials required by said specifications, plans, and drawings in the manner prescribed therein.

The undersigned bidder understands that any quantities of work shown herein are approximate only and are subject to increase or decrease and offers to do the work whether the quantities are increased or decreased at the unit prices, if required, as stated in the following tabulation. The undersigned bidder agrees to take in full payment for the work, including all applicable State and local taxes, the amount shown on the bid sheet.

The undersigned also agrees as follows:

IT IS UNDERSTOOD THAT THIS BID IS BASED UPON COMPLETION OF THE WORK AS SPECIFIED IN THE SPECIAL PROVISIONS, WITHIN 30 (THIRTY) WORKING DAYS.

To do any extra work, not covered by the schedule of price, which may be ordered by the City, and to accept as full compensation therefore such prices as may be agreed upon in writing by the City and the Contractor in accordance with the Standard Specifications.

If awarded the contract, the undersigned hereby agrees to execute said contract, with necessary bonds and insurance certificates, of which this Proposal and Notice Inviting Bids, Standard Specifications, Plans and any and all other Contract Documents shall be a part, within 20 calendar days after receipt of notice of the award of said contract, and to begin work within 10 working days after receiving Notice to Proceed with the contract.

THE UNDERSIGNED BIDDER HAS CAREFULLY EXAMINED THE FORM OF THIS CONTRACT, THE STANDARD SPECIFICATIONS, THE PLANS, THE DRAWINGS, PERMIT CONDITIONS, THE NOTICE TO CONTRACTORS/NOTICE INVITING SEALED PROPOSALS OR BIDS, AND ALSO THE SITE OF THE WORK, AND WILL PROVIDE ALL NECESSARY MACHINERY, TOOLS, APPARATUS AND OTHER MEANS OF CONSTRUCTION AND DO ALL THE WORK AND FURNISH ALL MATERIALS REQUIRED THEREIN.

No bid will be considered for less than all items of this schedule and one contract will be awarded for the entire project.

The undersigned has carefully checked the bid prices, and all computations involved in the preparation of this bid and understands that the City of Capitola will not be responsible for any errors or omission on the part of the undersigned in making up this bid.

This proposal is made with a full knowledge of the kind, quantities and quality of the work and of the materials, equipment and plans required. This proposal is also made after a complete, careful and independent examination and investigation of the site of the work, local conditions affecting the same, and materials to be encountered.

The bidder furthermore agrees that in case of his/her default in executing said contract with necessary bonds and insurance certificates, the check or bond accompanying this Proposal and money payable shall become and remain the property of the City of Capitola.

Enclosed is bidder's bond, certified check or cashier's check no. _____

of the _____ Bank for \$ _____ which is not less than 10 percent of the bid submitted by the undersigned, payable to the City of Capitola, California, and which is given as a guarantee that the undersigned will enter into the contract if awarded the work.

The City of Capitola will award one contract to the lowest responsible bidder for any combination of bid schedules; however, it is understood and agreed that the City may reject any or all proposals or waive any informalities or minor defects in proposals received.

It is agreed that this bid may not be withdrawn over a period of 30 days from the opening thereof.

NOTE: Bidders must not add any conditions of qualifying statement to this bid as otherwise the bid may be declared irregular as being not responsive to the Advertisement for Bids.

Firm Name: _____

Signature of Bidder: _____

Printed Name: _____

Title: _____

Date: _____

Business Address: _____

Mailing Address: _____

Phone: _____

Email: _____

Tax ID No. or
Social Security No. _____

State Contractor’s License No.:

Expiration Date:

Classifications(s):

CA State DIR Registration No.:

Classification of Workers Used
on Job:

REQUIRED CONTRACTOR INFORMATION

NOTICE: In the case of a corporation, complete the following:

Corporation Name: _____
Business Address: _____
Mailing Address: _____
President: _____
Business Address: _____
Mailing Address: _____
Secretary: _____
Business Address: _____
Mailing Address: _____
Treasurer: _____
Business Address: _____
Mailing Address: _____
Manager: _____
Business Address: _____
Mailing Address: _____

BIDDER’S ACKNOWLEDGEMENT OF ADDENDUM(S)

Acknowledgement of Addendums(s): Receipt of the following addendum(s) issued during the time of bidding is acknowledged and the information contained therein has been considered in the preparation of this bid proposal.

Note: Failure to execute the following may be considered as an irregularity in the bid proposal.

Addendum No.: (None _____) (1 _____) (2 _____) (3_____) (4_____) (5_____)
Check appropriate space(s)

I certify under penalty of perjury that the representations made herein are true and correct to the best of my knowledge.

Signature of Bidder

Printed Name of Bidder

BID SCHEDULE

ITEM NO.	BID ITEM	UNIT	QTY	UNIT PRICE	UNIT TOTAL
1	Mobilization and Demobilization to Site	LS	1		
2	Beam Construction Beneath Bldg.	EA	3		
3	Remove Existing Steel Batter Pile Upper Portion	EA	6		
4	Cut Steel Pile and Construct Pile Jacket	EA	6		
5	Permit Compliance and Monitoring	LS	1		
6	All Contract Items Not Included in Items 1-5	LS	1		
Bid Amount					\$

Bid Amount in words: _____

The contingency is reserved for unforeseen project tasks. No payment will be made to the Contractor for any portion of the contingency unless a contract change order is approved by the City.

DEFINITION OF BID ITEMS

The intent of this section is to explain, in general, what is and what is not included in a contract bid item, and the limits or cut-off points where one item ends, and another begins.

BID ITEM NO. 1 – MOBILIZATION AND DEMOBILIZATION TO SITE

- A. Mobilization and Demobilization to Site consists of transporting all materials, equipment, and labor to the project site necessary to complete the work outlined in the contract drawings and specifications. At the completion of the project all materials, equipment, and labor must be moved from the project site.
- B. Unit of Payment: Lump Sum (LS)

BID ITEM NO. 2 – BEAM CONSTRUCTION BENEATH BUILDING

- A. Beam Construction Beneath Building consists of furnishing transportation, labor, materials, and equipment to furnish and install three beams beneath the restaurant building on the head of the wharf. Support Beam #1 shall have 2 – 3x12 or 1 – 6x12 located on each side of the pile. Support Beams #2 and #3 shall be a continuous 12x12 beam or composed of 3x12, 4x12, or 6x12 members such that the combined size of the beam is similar to a 12x12 beam. Support beams shall be connected to the existing pile caps with 4x4x3/8 tube steel with 1” coil rods. Holes can be cut in the deck to allow access to below deck to perform work. Work shall include the replacement of the entire length of deck planks removed to create access. The work includes

but is not limited to the installation of safety barriers, inspection of work, installation of timber beams, repair of defects, and clean up.

- B. Unit of Payment: Each (EA)

BID ITEM NO. 3 – REMOVE EXISTING STEEL BATTER PILE UPPER PORTION

- A. Remove Existing Steel Batter Pile Upper Portion consists of furnishing transportation, labor, materials, and equipment to cut and remove the upper portion of the existing steel batter piles. The steel batter piles shall be cut at -8 MLLW and the upper portion of the pile shall be removed. The work includes but is not limited to the installation of safety barriers, inspection of work, cutting steel piles, removal of a portion of steel piles, repair of defects, and clean up.
- B. Unit of Payment: Each (EA)

BID ITEM NO. 4 – CUT STEEL PILE AND CONSTRUCT PILE JACKET

- A. Cut Steel Pile and Construct Pile Jacket consists of furnishing transportation, labor, materials, and equipment to cut and remove the upper portion of the existing steel vertical piles and install a pile jacket. The work includes but is not limited to the installation of safety barriers, inspection of work, cutting steel piles, removal of cut portion of steel piles, removal of sand in existing steel piles, cleaning steel piles, jacketing pile, installation of reinforcement, attaching cap to jacketed pile, repair of defects, and clean up.
- B. Unit of Payment: Each (EA)

BID ITEM NO. 5 – PERMIT COMPLIANCE AND MONITORING

- A. Permit Compliance and Monitoring requires that the Contractor be in compliance with environmental statues, ordinances, and regulations and project-specific regulatory requirements. Work also includes being responsible for correctly maintaining permits, approvals, licenses, certificates, and other environmental regulatory requirement correspondence on-site or as required.
- B. Unit of Payment: Lump Sum (LS)

BID ITEM NO. 6 – ALL CONTRACT ITEMS NOT INCLUDED IN ITEMS 1-5

- A. Contract Items not Included in Items 1-5 consists of furnishing transportation, labor, materials, and equipment to perform work that is not listed in contract line items 1 through 5 but is included in the contract drawings and specifications.
- B. Unit of Payment: Lump Sum (LS)

LIST OF SUBCONTRACTORS

The Bidder shall list the name, location of place of business, the California contractor’s license number, the public works contractor registration number issued pursuant to California Labor Code Section 1725.5, and the dollar amount and proportion (in percent) of work of each subcontractor to whom the Bidder proposes to subcontract portions of the work.

Subcontractor Name	Location of Place of Business	CSLB License Number	Public Works Contractor Registration Number	Amount and Proportion of Subcontractor Work

CONTRACTOR REFERENCE INFORMATION

To complete this proposal, contractors shall list previous similar work performed, the agency for which work was performed, and the contact person.

Project Title **Company** **Contact Person/Phone Number**

WORKERS' COMPENSATION ACKNOWLEDGMENT CERTIFICATE

Labor Code section 1861 provides every contractor must submit the following certification prior to performing the work of the contract:

“I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed on _____[date], at _____[city], _____[state].

On behalf of Contractor by: _____

Its: _____

Signature

NONCOLLUSION DECLARATION

TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed on _____[date], at _____[city], _____[state].

Contractor/Bidder

JURAT CERTIFICATE

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____)

County of _____)

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, by _____, proved to me on the basis of satisfactory evidence to be the persons who appeared before me.

(This area for official notary seal)

Signature _____

BIDDER'S BOND

KNOW ALL MEN BY THESE PRESENT:

THAT WE, _____

AS PRINCIPAL, AND _____

AS SURETY, are held and firmly bound unto the City of Capitola in the penal sum of 100% PERCENT OF THE TOTAL AMOUNT OF THE BID of the Principal above named, submitted by said Principal to the City of Capitola for the work described below, for the payment of which sum in lawful money of the United States, well and truly to be made to the City of Capitola to which said bid was submitted, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents. In no case shall the liability of the surety hereunder exceed the sum of \$ _____
_____.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, WHEREAS, the Principal has submitted the above-mentioned bid to the City of Capitola, aforesaid, for certain construction specifically described as follows, for which bids are to be opened at

**Wednesday, September 15, 2021 at 11:00 AM,
Capitola City Hall, 420 Capitola Ave, Capitola CA 95010**

For:

**Capitola Wharf Resiliency and
Public Access Improvement Project - Phase 1**

NOW, THEREFORE, if the aforesaid Principal is awarded the contract and, within the time and manner required under the specifications, after the prescribed forms are presented to him/her for signature enters into a written contract. In the prescribed form, in accordance with the bid, and files the certificate of insurance and two bonds with the City, one to guarantee faithful performance, and the other to guarantee payment for labor and materials as required by law, then this obligation shall be null and void; otherwise, it shall be and remain in full force and virtue.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this _____ day of _____, 20____.

_____(Seal) _____(Seal)

_____(Seal) _____(Seal)

Principal

Surety

Address _____ Address _____

Note: Signatures of those executing for the surety must be properly acknowledged.

AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 20_____, by and between the CITY OF CAPITOLA, a municipal corporation, hereinafter called “City,” and _____, hereinafter called “Contractor;”

WITNESSETH, that the parties hereto do mutually agree as follows:

ARTICLE I

That for and in consideration of the covenants and agreements herein contained and the payments at the prices stated in the bid proposal attached hereto, and by this reference made a part hereof, the Contractor hereby covenants and agrees to furnish any and all required supervision, labor, equipment, “Standard Provisions” as hereinafter defined, and will bear any and all other expense necessary or incidental to the performance of certain work hereinafter specified, and to build, construct, reconstruct, pave or repave and complete improvements for:

**Capitola Wharf Resiliency and
Public Access Improvement Project - Phase 1**

General work description: The City of Capitola with support from the California Coastal Conservancy is seeking bids for a steel pile repair project located at the Capitola Wharf. The project involves encasing six (6) existing steel piles with a jacket repair, isolated deck beam reinforcement, the removal of six (6) steel piles, and permit monitoring compliance.

in strict conformity and compliance with the City’s Special Project Specifications, the Plans, and Drawings, and to do everything required by this agreement, and by said Standard Specifications as hereinafter defined.

ARTICLE II

It is expressly agreed and understood by the Contractor that the City’s Special Project Specifications consists of the documents on file at the Office of the Director of Public Works of the City of Capitola, entitled:

“City of Capitola Special Project Specifications”

All sections of the Standard Specifications of the State of California, Department of Transportation, dated 2018 with most recent revisions, (“State Specifications”), shall apply. Where conflicts arise between the City’s Special Project Specifications and the State Specifications, the City’s Special Project Specifications shall control and apply.

ARTICLE III

It is expressly agreed and understood by each and every party to this agreement that the Notice to Contractors/Notice Inviting Sealed Proposals or Bids, Instructions to Bidders, the City’s Special Project Specifications, including the Standard Provisions, Technical Provisions, and Special Provisions, the City’s Standard Details, the State Specifications, the Bid Proposal including all required forms and bonds, the Plans, and the Drawings are hereby incorporated and made a part of this contract (hereinafter the “Contract Documents”). The parties to this agreement do hereby expressly

acknowledge that they have read, understand, and promise to comply with each and every provision of Contract Documents.

ARTICLE IV

Contractor shall conform to all laws and regulations of the United States and the State of California, as well as laws of Capitola, as may be applicable to the project.

ARTICLE V

The City hereby contracts to pay said Contractor the prices provided for in the Bid Proposal in the manner, to the extent, and at the times set forth in the Contract Documents.

ARTICLE VI

It is agreed by the parties hereto that the acceptance of the Contractor's performance will be made only by an affirmative action of the City of Capitola, by approval of a Notice of Completion, and upon the filing by the Contractor of a Release of all Claims of every nature on account of work done under this contract, together with an affidavit that all claims have been fully paid. The acceptance by the Contractor of said final payment shall constitute a waiver of all claims against the City arising out of or in connection with this contract.

IN WITNESS WHEREOF, this contract is executed by the City Manager of the City of Capitola, and the Contractor has affixed his/her signature hereto the day and year first hereinabove written.

CITY OF CAPITOLA
A Municipal Corporation

CONTRACTOR:

By:

By:

Benjamin Goldstein
City Manager

Title: _____

Date: _____

Date: _____

Approved by the City Council on _____

ATTEST:

City Clerk

FAITHFUL PERFORMANCE & MAINTENANCE BOND

WHEREAS, the City of Capitola, a municipal corporation, in the County of Santa Cruz, State of California, has awarded to _____, hereinafter designated as the "Principal," a contract for constructing the work or improvement described in the contract documents entitled:

**Capitola Wharf Resiliency and
Public Access Improvement Project - Phase 1**

WHEREAS, said Principal is about to enter into the contract with the City of Capitola:

NOW, THEREFORE, we, the Principal, and _____, a corporation organized and existing under and by virtue of the laws of the State of California, as surety, are held and firmly bound unto the City of Capitola, a municipal corporation in the County of Santa Cruz, State of California, in the sum of _____ dollars (\$_____) being not less than one hundred percent (100%) of the estimated contract costs of the work, to be paid to the City of Capitola, for the payment of which sum, well and truly to be paid, we hereby jointly and severally bind ourselves, our heirs, administrators, executors, successors and assigns;

NOW, THEREFORE THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal, his/her heirs, executors, administrators, successors, or assigns shall in all things abide by and well and truly keep and perform the covenants, conditions and agreements in the said contract and any alteration thereof made as herein provided, on his/her or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to the true intent and meaning, and shall indemnify and save harmless the City of Capitola, its officers and agents as therein stipulated, that this obligation shall be discharged, otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the said contract, the above obligation in the amount of dollars _____ dollars (\$_____), being not less than one hundred percent (100%) of the estimated contract cost, shall remain in force for a period of one (1) year after the completion and acceptance of the said work, during which time if the Principal, his/her or its heirs, executors, administrators, successors or assigns shall fail to make full, complete and satisfactory repairs and replacements or totally protect the City of Capitola from loss or damage made evident during said period of one (1) year from the date of official acceptance of said work and resulting from or caused by defective materials or faulty workmanship in the prosecution of the work done, the above obligation in the sum of _____ dollars (\$_____), shall remain in full force and effect, otherwise the obligation shall be discharged. However, notwithstanding any other provisions of this paragraph, the obligation of the surety hereunder shall continue so long as any obligation of the Principal remains.

The surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder or the specifications shall in any way effect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions to the terms of the contract or to the work or to the specifications, and the surety does hereby waive its rights under California Civil Code Section 2819.

IN WITNESS whereof, the parties have executed this instrument under their seals, this____day of_____, 20____, by its undersigned representative, pursuant to the authority of its governing body, the day and year first hereinabove written.

PRINCIPAL

SURETY

LABOR AND MATERIAL BOND

WHEREAS, the City of Capitola, a municipal corporation in the County of Santa Cruz, State of California, has awarded to _____, hereinafter designated as the "Principal," a contract for constructing the work or improvement described in the contract documents entitled:

**Capitola Wharf Resiliency and
Public Access Improvement Project - Phase 1**

WHEREAS, said Principal is required under the terms of said contract to furnish a Labor and Material Bond, the surety of this bond will pay the same to the extent hereinafter set forth; and

WHEREAS the said Principal is about to enter into the annexed contract with the City of Capitola to complete the work or improvement referred to above for the City of Capitola, County of Santa Cruz, State of California, all as more particularly and in detail as shown upon the Special Project Specifications and Contract Documents filed in the Public Works Department of the City of Capitola.

NOW, THEREFORE, we the Principal, and _____ a _____ corporation organized and existing under and by virtue of the laws of the State of California, as surety, are held and firmly bound unto the City of Capitola in the sum of _____ dollars (\$_____) such sum being not less than one hundred percent (100%) of the estimated contract cost of the work, lawful money of the United States of America, to be paid to the City of Capitola, for the payment of which sum, well and truly to be made, we hereby bind ourselves, our heirs, administrators, executors, successors and assign jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said Principal or its heirs, executors, administrators, successors or assigns, shall fail to pay for any materials, provisions, vendor supplies, or equipment as provided in the contract documents, upon, for, or about the performance of the work contracted to be done, or for any work or waiver thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or fails to pay any of the persons authorized under Civil Code Section 9100 to assert a claim against a payment bond, or fails to pay for any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board for the wages of employees of the Principal or his/her subcontractor pursuant to Section 18806 of the Revenue and Taxation Code, or fails to pay for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the principal and all subcontractors with respect to such work and labor that the surety or sureties will pay for the same, in an amount not exceeding the sum specified in this bond, and also, in case suit is brought upon the bond, will pay, in addition to the face amount hereof, a reasonable attorney's fee, to be fixed by the Court.

The condition of this obligation is such that its terms inure to the benefit of any of the persons and entities authorized in Civil Code Section 9100 to assert a claim against a payment bond so as to give a right of action to such persons or entities or their assigns in any suit brought upon or action to enforce liability on the bond.

The surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder shall in any manner affect its obligation upon this bond, and it does hereby explicitly waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder, and further explicitly hereby waives its rights under Civil Code Section 2819.

IN WITNESS WHEREOF, the above parties have executed this instrument under their seals this _____ day of _____, 20__, and duly signed by its undersigned representation, pursuant to authority of its governing body.

PRINCIPAL

SURETY

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This escrow agreement is made on _____ and entered into by and between; City of Capitola whose address is 420 Capitola Avenue, Capitola, CA 95010, hereinafter called “City”, and _____ whose address is _____ hereinafter called “Contractor”, whose address is _____, and _____ whose address is _____, hereinafter called “Escrow Agent”

For the consideration hereinafter set forth, the City, Contractor, and Escrow Agent agree as follows:

- (1) Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by City pursuant to the Construction Contract entered into between the City and Contractor for _____ project in the amount of \$_____ dated _____ (hereinafter referred to as the “Contract”). Alternatively, on written request of the Contractor, the City shall make payments of the retention earnings directly to the Escrow Agent. When the Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the Owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the City and the Contractor. Securities shall be held in the name of the City of Capitola and shall designate the Contractor as the beneficial owner.
- (2) The City shall make progress payments to the Contractor for those funds which otherwise would be withheld form progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.
- (3) When the City makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the contractor until the time that the escrow created under this contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the City pays the Escrow Agent directly.
- (4) The Contractor shall be responsible for paying all fees for the expenses incurred by the Escrow Agent in the administering the Escrow Account and all expenses of the City. These expenses and payment terms shall be determined by the City, Contractor and Escrow Agent.
- (5) The interest earned on the securities, or the money market accounts held in Escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor t any time and from time to time without notice to the City.
- (6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to the Escrow Agent accompanied by written authorization from the City to the Escrow Agent that the City consents to the withdrawal of the amount sought to be withdrawn by the Contractor.
- (7) The City shall have the right to draw upon the securities in the event of default by the Contractor. Upon seven days’ written notice to the Escrow Agent from the City of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the City.

(8) Upon receipt of written notification from the City certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payment of fees and charges.

(9) The Escrow Agent shall rely on the written notifications from the City and the Contractor pursuant to Sections (5) to (8), inclusive, of this Agreement and the City and Contractor shall hold the Escrow Agent harmless from Escrow Agent’s release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the City and on behalf of the Contractor in connection with the foregoing, and examples of their respective signatures are as follows:

CITY	Contractor
_____	_____
Authorized Signer	Authorized Signer
Name: _____	Name: _____
Title: _____	Title: _____
Address: _____	Address: _____
City, State, Zip _____	City, State, Zip _____
Phone: _____	Phone: _____

On behalf of the Escrow Agent:

Authorized Signer

Name: _____

Title: _____

Address: _____

City, State, Zip _____

Phone: _____

PART 2: STANDARD PROVISIONS

SECTION 1

DEFINITIONS AND TERMS

Whenever in these specifications and other contract documents, the following abbreviations and terms or pronouns in place of them are used, the intent and meaning shall be interpreted as follows:

ABBREVIATIONS

AASHTO	American Association of State Highway and Transportation Officials
AAN	American Association of Nurserymen
ACI	American Concrete Institute
AGMA	American Gear Manufacturers Association
AIEE	American Institute of Electrical Engineers
AISI	American Iron and Steel Institute
AISC	American Institute of Steel Construction
ANSI	American National Standards Institute
AREA	American Railway Engineering Association
ASA	American Standards Association (United States of America Standards Instruction)
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigerating and Air Conditions Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society of Testing Materials
AWS	American Welding Society
AWPA	American Wood-Preservers' Association
AWWA	American Water Works Association
DIR	Department of Industrial Relations
FS	Federal Specification
IEEE	Institute of Electrical and Electronic Engineers
MUTCD	Manual on Uniform Traffic Control Devices
NBFU	National Board of Fire Underwriters
NEMA	National Electrical Manufacturers Association
SAE	Society of Automotive Engineers
SPSPWC	Special Project Specifications for Public Works Construction
UL	Underwriters Laboratories

All references to specifications, standards, or other publications of any of the above are understood to refer to the current issue as revised or amended at the date of receipt of bids/Contract.

SECTION 1
DEFINITIONS AND TERMS

1.01 Acceptance - The formal written acceptance by the City of the Contract which has been completed in all respects in accordance with the Drawings and Specifications and any modifications thereof previously approved.

1.02 Addendum - A change in the Specifications or Drawings issued prior to the opening of Proposals.

1.03 Approved, Directed, Ordered, or Required - Whenever these words or their derivatives are used, it is the intent, unless otherwise clearly stated, that approval or direction by the Engineer is indicated

1.04 Article - A numbered portion of a title Section of the Specifications

1.05 Bidder - Any individual, firm, partnership, corporation or combination thereof, submitting a proposal for the work contemplated, acting directly or through a duly authorized representative.

1.06 City - The City of Capitola.

1.07 Contract/Contract Documents - The written agreement covering the performance of the work and the furnishing of labor; materials, tools, and equipment in the construction of the work. The Contract shall include the Notice to Contractors, Proposal, Drawings, City Special Project Specifications, Addenda, and Contract Bonds; also, any and all supplemental agreements amending or extending the work in a substantial and acceptable manner. Supplemental agreements are written agreements signed by both parties covering alterations, amendments, or extensions to the Contract and include Contract change orders.

1.08 Contractor - The person or persons, firm, partnership, corporation, or combination thereof, private or municipal, who is the successful bidder and has entered into a contract with the City.

1.09 Council, City Council - The City Council of the City of Capitola.

1.10 Days - Working days, unless otherwise designated.

1.11 Director - The Director of the Public Works Department, acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties delegated to them.

1.12 Drawings - The official drawings, working drawings, detail drawings, and supplemental drawings, or reproductions thereof, which show the location, character, dimensions, and details of the work to be done, and which are to be considered as part of the Contract.

1.13 Engineer - The City Engineer acting either directly or through properly authorized agents, such agents acting within the scope of the particular duties delegated to them.

1.14 Liquidated Damages - The amount prescribed in the specifications, pursuant to the authority of Government Code Section 53069.85, and the Standard Specifications of the State of California, Department of Transportation dated 2018, with the most recent revisions, to be paid to the City or to be deducted from any payments due or to become due the Contractor for each day's delay in completing the whole or any specified portions of the work beyond the time allowed in the Specifications.

1.15 Plans, Constructions Plans - The Drawings which are a part of the Contract.

1.16 Project - The project, works of improvement, or other work identified in the Contract Documents.

1.17 Proposal - The offer of the Bidder for the work when made out and submitted on the prescribed Proposal Form, properly signed and guaranteed.

1.18 Special Provisions - The special provisions are specific clauses setting forth conditions or requirements peculiar to the work and supplementary to the Standard Provisions and Technical Provisions.

1.19 Specifications - The directions, provisions and requirements contained in the City's Special Project Specifications, including the Standard Provisions, Technical Provisions, and Special Provisions, and those incorporated by reference.

1.20 State Specifications - Wherever in these Specifications reference is made to the "State Specifications," reference shall be to specifications entitled, "State of California, Department of Transportation, Standard Specifications," 2018 edition with most recent revisions, and which are incorporated herein and made a part hereof by reference. Where the terms "State" or the "Engineer" are used in reference to the State Specifications, they shall be considered as meaning the "City" or "Director/Engineer" as defined hereinabove and as may be applicable.

1.21 Subcontractor - A person, firm or corporation that is obligated as a party to a contract with the Contractor to perform part of the Project work. For purposes of these General Conditions Subcontractors include, but are not limited to, those that are obligated as parties to a contract with the Contractor to specially fabricate and install a portion of the Project Work according to the Technical Specifications and/or Project Plans.

1.22 Work - All the work specified, indicated, shown or contemplated in the Contract to construct the improvements, including all alterations, amendments or extensions thereto made by supplemental agreements or written orders of the Director.

SECTION 2

PROPOSAL REQUIREMENTS AND CONDITIONS

2.01 OBTAINING PLANS AND SPECIFICATIONS – The City’s Special Project Specifications, Plans, and Drawings may be obtained at the location indicated on the Notice to Bidders and/or the Office of the Engineer, Capitola City Hall, 420 Capitola Ave, Capitola, California 95010.

2.02 CONTENTS OF PROPOSAL FORMS – Prospective bidders will be furnished proposal forms which describe the contemplated construction and, where appropriate, show the approximate estimate of the quantities of the various kinds of work to be performed or materials to be furnished, with a schedule of items for which bid prices are asked. The unit prices or lump sum amounts bid shall include full compensation for furnishing all labor, materials, tools, and equipment and doing all work complete in place as shown on the Drawings or stipulated in the Specifications for that particular item of work.

2.03 ESTIMATED QUANTITIES – The quantities given in the Proposal are approximate only, being given as a basis for the comparison of Proposals, and the City does not, expressly or by implication, agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount of any class or portion of the work, or to omit portions of the work, as may be deemed necessary or advisable. No allowance will be made for anticipated profit on work which is deleted or decreased.

2.04 EXAMINATION OF DRAWINGS, SPECIFICATIONS, AND SITE OF WORK – The Bidder shall carefully examine the site of the work contemplated and the Proposal, Drawings, and Specifications therefor. The submission of a Proposal will be conclusive evidence that the bidder has investigated and is fully aware of the conditions and difficulties to be encountered, of the character, quality and quantities of work to be performed and materials to be furnished, and of the requirements of the Proposal, Drawings, and Specifications; as to the nature and location of the work, the general and local conditions, particularly those bearing upon transportation, disposal, handling and storage of material, availability of labor, water, electric power, roads and uncertainties of weather, or similar physical conditions at the site; the conformation and conditions of the ground, the character and quality and quantity of surface and subsurface materials, including groundwater, to be encountered; the character of equipment and facilities needed preliminary to, and during the, prosecution of the work; and all other matters which can in any way affect the work or the cost thereof under this Contract. Any failure by the Contractor to acquaint themselves with all available information concerning these conditions will not relieve him/her from responsibility for estimating properly the difficulty or cost of successfully performing the work.

If there is any doubt as to the true meaning of any part of the Plans, Specifications, or other Contract Documents, or if discrepancies in, or omissions from, the Drawings or Specifications are found, a request should be made to the Director for an interpretation or correction thereof, which will be given in the form of addenda to all bidders, if time permits. Otherwise, in figuring the work, bidders shall consider that any discrepancies or conflict between Drawings and Specifications shall be governed by Article 5.17 of these Specifications.

No payment shall subsequently be made to the Contractor because of error on his/her part or of negligence or failure to acquaint himself/herself with the existing conditions, limitations, or features of the site or requirements of the contract documents; or by reason of any estimate, tests, or representations of any officer, employee or agent of the City.

Where investigation of subsurface conditions has been made by the City in respect to foundation or other design, bidders may inspect the records of the City as to such investigation, including examination of samples and drill cores, if any. When logs of test borings showing a record of the data obtained by the City's investigation of subsurface conditions are made available, said logs represent only the opinion of the City as to the character of materials encountered in its test borings and are made available only for the convenience of bidders.

Investigations of subsurface conditions are made for the purpose of design, and the City assumes no responsibility whatever in respect to the sufficiency of test borings or accuracy of the log of test borings, of other preliminary investigations, or of the interpretation thereof. There is no guarantee expressed or implied that the conditions indicated are representative of those existing throughout the work, or any part of it, or that unforeseen developments may not occur.

Making such information available to bidders is not to be construed in any way as a waiver of the provisions of the first paragraph of this Article and bidders must satisfy themselves through their own investigations as to conditions to be encountered.

No information derived from such inspection of records or preliminary investigation made by the City, or from the Director, or from his/her assistants, or from the maps, Specifications, profiles, or Drawings will in any way relieve the Contractor from any risk or from properly fulfilling all the terms of the Contract. Records of such preliminary investigations as may have been made by the City may be inspected at the office of the Director of Public Works, Capitola City Hall, 420 Capitola Ave, Capitola, California 95060, or at such other locations as may be stated in the Notice to Contractors.

2.05 PROPOSAL FORM – The Proposal forms furnished by the City or its representatives, when filled out by the bidder and executed, shall be submitted as his/her Proposal. Neither the Proposal form nor any other portion of the Contract Documents or Specifications shall be detached therefrom. Proposals submitted on forms detached shall be disregarded. All Proposals should give the prices proposed, both in writing and in figures in the respective spaces provided, and shall be signed by the bidder, who should fill out all blanks in the Proposal form as therein required. In the event of a discrepancy between writing and figures, the writing shall prevail over the figures. If the unit price and the total amount named for any item do not agree, the unit price will be considered as representing the Bidder's intention.

A copy of each addendum to the Specifications or Drawings shall be attached securely to the Specifications containing the Proposal (refer to Article 2.13).

2.06 QUERIES ON BIDDING – Questions regarding the Specifications or Drawings or any other portion of the Contract or any addenda thereto shall be directed to the Director, at Capitola City Hall, 420 Capitola Ave, Capitola, California 95060, in writing. No interpretation of the meaning of the Specifications, Drawings, or other pre-bid documents will be made to any bidder orally.

2.07 REJECTION OF PROPOSALS – Proposals may be rejected if they show any alterations of form, additions not called for, conditional bids, incomplete bids, erasures, or irregularities of any kind. Proposals in which the prices, in the opinion of the City, are unbalanced, may be rejected. When Proposals are signed by an agent, other than the officer or officers of a corporation authorized to sign contracts on its behalf, or a member of a partnership, a written authorization or Power of Attorney should be on file with the City prior to opening Proposals or submitted with the Proposal; otherwise, the Proposal may be rejected as irregular and unauthorized.

2.08 PROPOSAL GUARANTEE/BIDDER'S SECURITY – All Proposals shall be presented under sealed cover and accompanied by one of the following forms of bidder's bond executed by an admitted surety, made payable to the City of Capitola. The security shall be in an amount equal to at least ten percent (10%) of the total contract price in the Proposal. A Proposal will not be considered unless one such form of bidder's security is enclosed with it.

A bidder's bond will not be accepted unless it substantially conforms to the bond form included with the Proposal form and is properly filled out and executed. If desired, the bond form included therein, properly filled out as directed, may be executed and used as the bidder's bond. Blanks conforming to this form may be obtained by request from the City.

2.09 WITHDRAWAL OF PROPOSALS – Any Proposal may be withdrawn at any time prior to the time fixed in the Notice to Contractors for the opening of Proposals only by written request for the withdrawal of the Proposal filed with the Director of Public Works. The request shall be executed by the bidder or his/her duly authorized representative. The withdrawal of a Proposal does not prejudice the right of the bidder to file a new Proposal. This article does not authorize the withdrawal of any Proposal after the time fixed in the Notice to Contractors for the opening of Proposals.

2.10 PUBLIC OPENING OF PROPOSALS – Proposals will be opened and read publicly at the time and place indicated in the Notice to Contractors.

2.11 JOINT PROPOSALS – If two or more bidders desire to bid jointly on a single project or desire to combine their assets for so doing, they shall file an affidavit of joint venture with the City in the form approved by the City Attorney and such affidavit of joint venture will be valid only for the specified project for which it is filed. If such affidavit of joint venture is not filed as aforesaid and approved by the City prior to the time for opening Proposals on the specified project for which it is submitted, a joint proposal submitted by the same bidders may be disregarded.

2.12 DISQUALIFICATION OF BIDDERS – More than one Proposal form from an individual, firm, partnership, corporation, or a combination thereof under the same or different names will not be considered. If there is reason for believing that collusion exists among the bidders, none of the participants in such collusion will be considered for award for this Contract.

Contractors or subcontractors who are ineligible under Labor Code sections 1777.1 and 1777.7 are prohibited from working on the Project.

2.13 ADDENDUM – Addenda may be issued prior to opening of Proposals and shall become a part of the original Specifications and Drawings. The additions or changes contained in such addenda shall be considered by the bidder in preparation of his/her Proposal. These addenda will be sent to each prospective bidder at the address indicated in his/her application for a Proposal form. A copy of each addendum so issued shall be attached to the Specifications containing the Proposal submitted by the bidder to the City Clerk.

2.14 LIST OF SUBCONTRACTORS – The Contractor shall perform with his/her own organization and with workers under his/her immediate supervision work of a value not less than fifty percent (50%) of the value of all work embraced in the contract, except when certain items may be exempted by the Special Provisions from said fifty percent requirement.

In accordance with Public Contract Code sections 4100 *et seq.*, the Subletting and Subcontracting Fair Practices Act, each proposal shall have listed on the form provided with the Proposal, (a) the name, the location of the place of business, the California contractor license number, and public works contractor registration number issued pursuant to California Labor Code Section 1725.5 of each subcontractor

who will perform work or labor or render service to the general contractor in or about the construction of the work or improvement in an amount in excess of one-half of one percent (0.5%) of the general contractor's total bid or \$10,000.00, whichever is greater, and, (b) the portion of the work which will be done by each such subcontractor.

If a Contractor fails to specify a subcontractor for any portion of the work to be performed under this contract in excess of one-half of one percent of the total bid, s/he agrees to perform that portion him/herself.

No Contractor or Subcontractor may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5. A Contractor or Subcontractor shall not be qualified to bid on, be listed in a bid proposal, or enter into any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. By submitting a bid or proposal to the City, Contractor is certifying that he or she has verified that all subcontractors used on this project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration to the City as part of the Proposal.

A Contractor's inadvertent error in listing a Subcontractor who is not registered pursuant to Labor Code section 1725.5 in response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive provided that any of the following apply: (1) the Subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the Subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the Subcontractor is replaced by another registered subcontractor pursuant to Public Contract Code section 4107.

2.15 COMPETENCY OF BIDDER – The bidder shall be licensed under the applicable provisions of the Business and Professions Code of the State of California to do the type of work contemplated in the project and shall be skilled and regularly engaged in the general class or type of work called for under this contract.

It is the intention to award a contract only to a bidder who furnishes satisfactory evidence that s/he has the requisite experience and ability and that s/he has sufficient capital, facilities, and plans to enable him/her to prosecute the work successfully and promptly, and to complete it within the time stated in the contract.

To determine the degree of responsibility to be credited to a bidder, any relevant evidence will be considered that the bidder, or personnel guaranteed to be employed in responsible charge of the work, has satisfactorily performed other contracts of like nature and magnitude or comparable difficulty at similar rates of progress.

2.16 RELIEF OF BIDDERS – Attention is directed to the provisions of Public Contract Code sections 5100 *et seq.*, which sections are incorporated herein by this reference, concerning relief of bidders and in particular to the requirement therein that if the bidder claims a mistake was made in his/her bid, the bidder shall give the City written notice within five (5) days after the opening of the bids of the alleged mistake, specifying in the notice in detail how the mistake occurred.

2.17 BID PROTESTS – Any contractor who unsuccessfully bids on a City contract awarded by the City in accordance with the provisions of the Capitola Municipal Code (CMC), Chapter 3.16, or any trade association representing workers who would have potentially been employed by such a contractor, may file a bid protest.

The bid protest shall be in writing and filed with the Director of Public Works within five days of the bid opening date. The City Engineer or their designated representative shall hear the bid protest prior to award of the contract. The protesting party may protest the bid award for the City's or successful bidder's failure to comply with the requirements of CMC, Chapter 3.16, the bid documents, or any other applicable provision of the CMC. The bid protest shall clearly set forth the basis for the bid protest.

Grounds not set forth in the written protest may not be considered by the City at the bid protest hearing. The City shall sustain a bid protest if the protesting party demonstrates by clear and convincing evidence that, as specified above, the City would act improperly in awarding the bid. The decision of the City Engineer shall be considered by the City Council at time of award of contract.

SECTION 3

AWARD AND EXECUTION OF CONTRACT

3.01 CONSIDERATION OF PROPOSALS – After the proposals have been opened and read, they will be checked for accuracy and compliance with these Specifications.

The right is reserved to reject any or all proposals; to waive an irregularity in a bid or bidding procedure; and to accept one schedule of a proposal and reject another unless the bidder specifically stipulates to the contrary.

3.02 AWARD OF CONTRACT – The award of the Contract, if it is awarded, will be to the lowest responsible bidder whose Proposal complies with the requirements prescribed and who is appropriately licensed in accordance with law. Such award, if made, will be made within 30 days after the opening of the Proposals or as specified in the Proposal or Special Provisions. If the lowest responsible bidder refuses or fails to execute the Contract, the City may award the Contract to the second lowest responsible bidder. Such award, if made, will be made within 45 days after the opening of the Proposals. If the second lowest responsible bidder refuses or fails to execute the Contract, the City may award the Contract to the third lowest responsible bidder. Such award, if made, will be made within 60 days after the opening of the Proposals. The periods of time specified above within which the award of contract may be made shall be subject to extension for such further period as may be agreed upon in writing between the City and the bidder concerned.

All proposals will be compared on the basis of the City’s estimate of the quantities of work to be done.

3.03 RETURN OF PROPOSAL GUARANTEES – Within ten days after the award of the Contract to the lowest responsible bidder, the City will return the proposal guarantees, other than bidder’s bonds, accompanying such of the Proposals as are not to be further considered in making the award. Retained proposal guarantees will be held until the contract has been finally executed after which all proposal guarantees, except bidder’s bonds and any guarantees which have been forfeited, will be returned to the bidders whose Proposals they accompany.

3.04 CONTRACT BONDS – Prior to the execution of the Contract, the Contractor shall file with the City one or more surety bonds in the amounts and for the purpose noted below, duly executed by a solvent surety company satisfactory to the City, and (s)he shall pay all premiums and costs thereof and incidental thereto. The bonds shall contain a provision that the surety thereon waives the provisions of Section 2819 of the Civil Code of the State of California. Contractor and Surety shall warrant to the City that the Surety is licensed by the California Secretary of State to conduct business in the State of California and Surety shall provide proof of its authorization to conduct business in the State of California.

Each bond must be signed by both the Contractor and the Sureties.

The “**Bond for Labor and Material**” shall be in an amount of one hundred percent (100%) of the contract price as determined from the prices in the Proposal form and shall inure to the benefit of persons performing labor or furnishings materials in connection with the work of the proposed contract. This bond shall be maintained in full force and effect until all work under the Contract is completed and accepted by the City, and until all claims for materials and labor have been paid.

The “**Bond for Faithful Performance**” shall be in an amount of one hundred percent (100%) of the contract price as determined from the prices in the Proposal form and shall be so conditioned as to

insure the faithful performance by the Contractor of all work under the Contract. It shall also ensure the replacing of, or making acceptable, any defective materials or faulty work.

The Bond for Faithful Performance shall remain in effect to guarantee the repair and replacement of defective equipment, materials and work, discovered within one (1) year, after final payment has been accepted by the Contractor and the payment to the City of all damages sustained by it on account of such defects, discovered within one (1) year, or in lieu thereof, a bond equal to 100% of the full amount of the contract, may be substituted for the faithful performance bond upon completion and final acceptance and final payment for the work performed under the contract, which shall remain in effect for a period of one (1) year to guarantee the repair and replacement and payment of damage. In all respects, the substitute bond shall satisfy the requirements and conditions of the original Faithful Performance Bond.

Should any surety or sureties be deemed unsatisfactory at any time by the City, notice will be given the Contractor to that effect, and s(he) shall forthwith substitute a new surety or sureties satisfactory to the City. No further payment shall be deemed due or will be made under this Contract until the new sureties shall qualify and be accepted by the City.

All alterations, extensions of time, extra and additional work, and other changes authorized by these Specifications, or any part of the Contract may be made without securing the consent of the surety or sureties on the contract bonds.

3.05 EXECUTION OF CONTRACT – The Contract shall be signed by the successful bidder and returned, together with the contract bonds, within twenty days, not including Sundays and legal holidays, after the bidder has received the Contract for execution or as specified in the proposal or Special Provisions.

3.06 FAILURE TO EXECUTE CONTRACT – Failure of the lowest responsible bidder, the second lowest responsible bidder, or the third lowest responsible bidder to execute the Contract and file acceptable bonds as provided herein within twenty days or as specified in the Proposal form or Special Provisions, not including Sundays and legal holidays, after such bidder has received the Contract for execution shall be just cause for the annulment of the award and forfeiture of the proposed guarantee.

3.07 CONTRACTOR'S INSURANCE

3.07.01 General - Without limiting the responsibility of the Contractor for damages as set forth in Article 7.18, the Contractor must obtain all insurance required under this Article, in a form approved by the City, and Contractor must not allow any Subcontractor to commence work on any Subcontract until all insurance required of Contractor has been likewise obtained by the Subcontractor, and such insurance is approved by the City. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder. Contractor shall procure and maintain for the duration of the Contract, and at least 5 years thereafter, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

3.07.02 Minimum Scope and Limit of Insurance - Without limiting any of the other obligations or liability of Contractor, Contractor shall provide and maintain, until the work is completed and accepted by the City, the following minimum insurance coverages, unless otherwise specified in the particular specifications.

- a. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Such CGL shall include, or be endorsed to include, the following:
 - i. Cross Liability Coverage
 - ii. Blanket Contractual Liability Coverage
 - iii. Contractor's Protective Liability Coverage
 - iv. Products and Completed Operations Coverage
 - v. Broad Form Property Damage Coverage
 - vi. Explosion, Collapse and Underground Property Damage Liability Coverage
- b. **Workers' Compensation Insurance** as required by the State of California, with Statutory Limits. The Contractor and any subcontractors engaged in performance of the Work must secure payment of workers compensation in accordance with California Labor Code Section 3700 and other applicable law. The Contractor must verify that all Subcontractors comply with this requirement.
- c. **Employers' Liability Insurance** with a limit of no less than \$1,000,000 per accident for bodily injury or disease.
- d. **Automobile Liability Insurance** coverage all automobiles, trucks, tractors, trailers, motorcycles, or other automotive equipment, whether owned or rented by Contractor or owned by employees of Contractor. Such insurance shall be on Insurance Services Office Form Number CA 0001 covering Code 1 (any auto), with limits no less than \$1,000,000 per accident for bodily injury and property damage.
- e. **Professional Liability** (Error's & Omissions), with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.
- f. **Contractors Pollution Legal Liability and/or Asbestos Legal Liability** with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

3.07.03

Insurance Provisions - The insurance provided by the above insurance policies shall name as additional insured the City of Capitola, its officer, agents, and employees and shall be primary insurance to the full limits of liability stated above to said additional insured. If said additional insured have other insurance against the loss covered by said policy, that other insurance shall be excess insurance only. The comprehensive general liability policy shall be endorsed to provide insurance to said additional insured with respect to omissions and supervisory acts or omissions, including passive negligence with respect to said work, and shall not be subject to reduction or cancellation without thirty (30) days prior written notice to the City of Capitola.

In the event the work called for in this contract is to be performed as a joint project with the State of California, or a County, or any City within a County, or other agency, or is to be performed on lands under the jurisdiction of the State of California, or a County, or any City within a County, the policy of insurance required by paragraph 3.07.02, entitled

“Minimum Scope and Limit of Insurance” shall name the State of California, that County, and/or that City or other agency additional insured in addition to naming City and the statement contained in paragraph 3.07.03, entitled, “Insurance Provisions,” shall be modified accordingly.

SECTION 4
SCOPE OF WORK

4.01 WORK TO BE DONE – The work to be done consists of furnishing all labor, methods or processes, implements, tools, machinery, construction equipment, materials of any kind, and installed manufactured equipment, except as otherwise specified herein to be furnished by the City or from sources provided by the City, which are required to construct in a good and professional manner all the work herein provided for.

4.02 MAINTENANCE AND CLEAN-UP – Throughout the construction period, the Contractor shall keep the site of the work in a neat and clean condition, shall dispose of any surplus materials in an approved manner off the site, keep debris out of drainage ditches, and maintain proper housekeeping practices to the satisfaction of the Director.

When any material is to be disposed of outside of the easement or street or highway right-of-way, the Contractor shall first obtain written permission from the owner on whose property the disposal is to be made. Disposal must conform to grading ordinances of the jurisdiction in which the work is performed.

Upon completion of the work, and prior to requesting final inspection, the Contractor shall thoroughly clean the site of the work of all rubbish, excess materials, falsework, temporary structures, and equipment, and all portions of the work shall be left in a neat and orderly condition. The final inspection, acceptance, and final payment will not be made until this has been accomplished.

4.03 CHANGES & CHANGE ORDERS – The City may increase or decrease quantities of work to be done under the Contract, make revisions to the Drawings or Specifications, or require the performance of extra work and furnishing of materials therefor by the Contractor as the City requires for the proper completion or construction of the whole work contemplated. The City, at its option, may furnish said materials.

When alterations in quantities of work for which unit prices are shown in the proposal are ordered and performed, the adjustment in the contract amount shall be determined on the basis of such unit prices for the actual quantities of work done. Adjustments, if any, in the amount to be paid the Contractor by reason of any other modifications of the work as set forth in a contract change order, shall be determined by one or more of the following methods:

- a. **Lump Sum Price.** By an acceptable lump-sum proposal from the Contractor. Said proposal shall be based on a cost estimate as to materials, equipment, and labor, to which total may be added a maximum of 15 percent for overhead, profit, and all other expenses; this 15 percent limitation shall apply for work done directly by the Contractor's organization or by his/her subcontractors and shall be added only once.
- b. **Unit Prices.** By unit prices fixed by agreement between the City and the Contractor.
- c. **Force Account.** By ordering the Contractor to proceed with the work and to keep and present in such form as the Director may order, a correct account of the cost of the change, together with all vouchers therefor.

The changes will be set forth in written Contract Change Orders which specify the work to be done in connection with the changes, the basis of compensation for the work, and any adjustments of contract time. Such Change Orders shall be approved by the Director.

Upon receipt of an approved Contract Change Order, or of a written authorization from the Director setting forth a description of the change and agreed upon changes in contract price, the Contractor shall proceed with the work so ordered. The Contractor may request the issuance of Change Orders. In the absence of an approved Contract Change Order or written authorization, the Contractor shall not be entitled to payment for any changed or extra work or any adjustment of Contract time.

When the changes increase or decrease the cost of the work, an adjustment of the Contract price will be made as set forth in the Change Order. At the option of the City, the work which is changed may be paid for on the basis of force account.

New and unforeseen items of work will be classed as extra work when the item cannot be covered by any of the various items or combination of items for which there is a bid price. The Contractor shall do such work and furnish such materials and equipment as may be required in writing by Director but shall do no extra work except upon written order from the Director, and in the absence of such written order, (s)he shall not be entitled to payment for such extra work. All bills for extra work done in any month shall be filed in writing with the Director before the fifteenth of the following month. For such extra work, the Contractor shall receive compensation at the prices previously agreed upon in writing, or upon a failure to agree upon prices, (s)he shall be paid on force account.

If the work is done on force account, compensation shall be in accordance with Article 9.04 of these Specifications. The City reserves the right to furnish any material deemed expedient and the Contractor shall have no claim for profit on the cost of such materials. All Contractors shall have no claim for profit on the cost of such materials. All extra work shall be adjusted daily upon report sheets furnished to the Director by the Contractor and signed by both parties, which daily reports shall thereafter be considered the true record of extra work done.

4.04 PROTESTS – If the Contractor considers any work demanded of him/her to be outside of the requirements of the Contract, or considers any record or ruling or act or omissions of the Director to be unfair, s/he shall immediately, upon such work being demanded, or such record or ruling being made, ask in writing for written instructions or decision, whereupon (s)he shall proceed without delay to perform the work or to conform to the record or ruling, within 30 days after the date of receipt of the written instruction or decision, (s)he shall file a written protest with the Director stating clearly and in detail the basis of his/her protest. Except for such protests as are made of record in the manner herein specified and within the time limit stated, the records, rulings, instructions, decisions, and acts or omissions of the Director shall be final and conclusive. Instructions and decisions of the Director contained in letters transmitting Drawings to the Contractor shall be considered as written instructions and decisions subject to protest in the manner herein described.

4.05 DUST CONTROL – During the performance of all work under this contract, the Contractor shall assume all responsibility for dust control and shall furnish all labor, equipment, and means required to carry out proper and efficient measures wherever and whenever dust control is necessary to prevent the operations from producing dust damage and nuisance to persons and property. Any claims resulting therefrom shall be borne solely by the Contractor.

Full payment for dust control shall be included in the unit price bid for other items of work and no additional allowance or direct payment will be made therefor.

SECTION 5
CONTROL OF WORK

5.01 AUTHORITY OF DIRECTOR – The Director shall decide all questions which may arise as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate or progress of the work; all questions which may arise as to the interpretation of the Drawings and Specifications; and all questions as to the acceptable fulfillment of the Contract on the part of the Contractor. His/her decision shall be final, and s/he shall have authority to enforce and make effective such decision and orders which the Contractor fails to carry out promptly.

5.02 DRAWINGS TO BE FURNISHED BY THE CONTRACTOR – The Drawings listed in the Specifications shall be supplemented by the Contractor with such working drawings as may be required for the prosecution of the work and approval of equipment. Such data may include shop detail drawings, reinforcing steel details, fabrication drawings, falsework and formwork drawings, pipe layouts and similar classes of drawings, which shall be favorably reviewed by the Director before any work involving these drawings is performed. No change shall be made by the Contractor in any working drawing after it has been favorably reviewed by the Director. Drawings shall contain all required detailed information of reasonable scale with enough views to clearly show the work to be done or the item to be furnished and shall be properly checked.

Working drawings will be subject to approval insofar as the details affect the character of the finished work, but details of design will be left to the Contractor who shall be responsible for successful construction of the work and operation of the equipment.

It is expressly understood, however, that approval of the Contractor’s working drawing shall not relieve the Contractor of any responsibility for accuracy of dimensions and details, or for mutual agreement of dimensions and details. It is mutually agreed that the Contractor shall be responsible for agreement and conformity of his/her working Drawings and Specifications.

The sequence of submission of working drawings shall be such that all information is available to the Director for review of each drawing as it is received. A minimum of five prints of each working drawing shall be submitted. Three prints will be retained, and the balance returned within 20 calendar days with the Director’s action indicated thereon. The Contractor shall make any necessary corrections and revisions to returned Drawings and shall resubmit the Drawings in the same routine as before within 20 calendar days after receipt.

Responsibility will be upon the Contractor to furnish Drawings in sufficient time for approval action including resubmittal, without delaying construction.

The cost of furnishing all working Drawings shall be included in the Contract prices for work to which the Drawings are appurtenant.

5.03 DRAWINGS AND DATA TO BE FURNISHED BY THE CITY – The City may issue supplemental Drawings for the construction work under the Contract. These drawings will show additional details as required for construction purposes. Installation instructions for City furnished materials will be furnished if required.

5.04 CONFORMITY WITH DRAWINGS AND ALLOWABLE DEVIATIONS – Finished work in all cases shall conform with the lines, grades, cross sections, and dimensions shown on the approved

Drawings furnished by the City. Deviations from the drawings as may be required by the exigencies of construction will be determined by the Director.

5.05 MAINTENANCE & OPERATION MANUALS – For use in the subsequent operation, the Contractor shall furnish two copies of maintenance and operation instructions supplied by the manufacturer for all equipment items. They shall be bound and suitably indexed in heavy, loose-leaf binders.

5.06 SUPERINTENDENCE – The Contractor shall designate in writing before starting work, an authorized representative who shall have complete authority to represent and act for the Contractor. Where the Contractor is comprised of two or more persons, partnerships or corporations, functioning on a joint venture basis, said Contractor shall designate in writing to the Director the name of their authorized representative who shall have full authority to direct the work and to whom orders will be given by the Director, to be received and obeyed by the Contractor. Said authorized representative of the Contractor shall normally be present at the site of the work at all times while work is suspended, arrangements acceptable to the Director shall be made for any emergency work which may be required.

Whenever the Contractor or his/her authorized representative is not present on any part of the work where it may be desired to give direction, orders will be given by the Director, which shall be received and obeyed by the Superintendent or foreman or authorized representative who may have charge of the particular work in reference to which the orders are given. Any order given by the Director, which shall be received and obeyed by the Superintendent or foreman or authorized representative who may have charge of the particular work in reference to which the orders are given. Any order given by the director, not otherwise required by the Specifications to be in writing, will, on request of the Contractor, be given or confirmed by the Director in writing.

5.07 LAYOUT OF WORK AND SURVEYS – The work performed in connection with “Survey Monumentation” shall conform to the requirements of the County Surveyor of the County of Santa Cruz, and shall consist of locating, referencing, resetting existing survey monuments to finish grade, and in conformance with these special provisions.

Attention is also directed to Section 8771 of the California Business and Professions Code for the requirements concerning survey monumentation. Existing survey monuments shall be located and referenced by or under the direction of a licensed land surveyor or registered civil engineer prior to construction operations, and a corner record or record of survey shall be filed with the County Surveyor of the County of Santa Cruz. Existing survey monuments shall be reset to finish grade, and a corner record or record of survey shall be filed with the County Surveyor of the County of Santa Cruz prior to the recording of the certificate of completion for the project.

5.08 INSPECTION – The Director and his/her representatives shall at all times have access to the work during its construction and shall be furnished with every reasonable facility for ascertaining that the materials and the work are in accordance with the requirements and intentions of the Drawings and Specifications. All work done and all materials furnished shall be subject to his inspection and approval.

The right of general supervision shall not make the Contractor an agent of the City and the liability of the Contractor for all damages to persons or to public or private property arising from the execution of the work shall not be lessened because of such general supervision.

The day-to-day inspection performed by the various inspectors employed by the City shall not constitute approval or ratification of work improperly done by the Contractor. The Director is the only person authorized to recommend acceptance or rejection of work and materials.

The presence or absence of an inspector during performance of the work shall not relieve the Contractor of any of his/her obligations to fulfill his/her Contract as prescribed. It shall be the duty of the Contractor to see that the provisions of these Specifications are complied with in detail, irrespective of the inspection given the work during its progress by the Director or his representatives. Any plan or method suggested to the Contractor by the Director or an inspector, but not specified or required, if adopted or followed in whole or in part, shall be used at the risk and responsibility of the Contractor; and the City and the Director will assume no responsibility therefor.

Defective work shall be made good, and unsuitable materials may be rejected notwithstanding that such defective work or unsuitable materials have been previously inspected by the Director or that payment therefor has been included in the progress estimate.

Projects financed in whole or part with Federal or State funds shall be subject to inspection at all times by the Federal or State Agency involved.

5.09 REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORKS – All work which has been rejected shall be remedied or removed and replaced by the Contractor in an acceptable manner at no additional cost to the City. Any work done beyond the lines and grades shown on the Drawings or established by the City, or any extra work done without written authority, will be considered as unauthorized and will not be paid for. Work so done may be ordered, remedied, removed, or replaced, in the City's sole discretion.

If the Contractor should fail to comply promptly with any order of the Director made under the provisions of this Article, the Director may cause rejected or unauthorized work to be remedied, removed, or replaced, and the costs thereof to be deducted from any monies due or to become due the Contractor.

If any portion of the work done or materials furnished under the contract shall prove defective or not in accordance with the specifications and contract drawings, and if the imperfection in the same shall not be of sufficient magnitude or importance to make the work dangerous or undesirable, the Director shall have the right and authority to retain the work instead of requiring it to be removed and reconstructed, but s/he shall make such deductions therefore in the payment due or to become due the Contractor as may be just and reasonable.

5.10 CONSTRUCTION EQUIPMENT AND PLANTS – Only equipment and plants suited to produce the quality of work required will be permitted to operate on the work. Plants shall be designed and constructed in accordance with general practice for such equipment and shall be of sufficient capacity and of such character to ensure the production of sufficient material to carry the work to completion within the time limit.

The Contractor shall provide adequate and suitable equipment and plants to meet the above requirements; and, when ordered by the Director, shall remove unsuitable equipment from the work and discontinue the operation of unsatisfactory plant.

Each machine or unit of equipment shall be operated by a person experienced in handling the particular make of machine or unit of equipment in use and shall not be operated at a speed or rate of production in excess of that recommended by the manufacturer.

The Contractor shall identify each piece of equipment, other than hand tools, by means of an identifying number plainly stenciled or stamped on the equipment at a conspicuous location. In addition, the make, model number and empty gross weight of each unit of compacting equipment shall be plainly stamped

or stenciled in a conspicuous place on the unit. The gross weight shall be either the manufacturer's rated weight or the scale weight.

5.11 ALTERNATIVE CONSTRUCTION EQUIPMENT – While certain of these Specifications may provide that equipment of a particular size and type is to be used to perform portions of the work, it is to be understood that the development and use of new or improved equipment is to be encouraged.

The Contractor may request, in writing, permission from the Director to use equipment of a different size or type in place of the equipment specified.

The Director, before considering or granting such request, may require the Contractor to furnish, at their expense, evidence satisfactory to the Director that the equipment proposed for use by the Contractor is capable of producing work equal to, or better than, that which can be produced by the equipment specified.

If such permission is granted by the Director, it shall be understood that such permission is granted for the purpose of testing the quality of work actually produced by such equipment and is subject to continuous attainment of results which, in the opinion of the Director, are equal to, or better than that which can be obtained with the equipment specified. The Director shall have the right to withdraw such permission at any time the Director determines that the alternative equipment is not producing work that is equal, in all respects, to that which can be produced by the equipment specified. Upon withdrawal of such permission by the Director, the Contractor will be required to use the equipment originally specified and shall, in accordance with the direction of the Director, remove and dispose of or otherwise remedy, at his/her expense, any defective or unsatisfactory work produced with the alternative equipment.

Neither the City nor the Contractor shall have any claim against the other for either the withholding or the granting of permission to use alternative equipment, or for the withdrawal of such permission.

Permission to use alternative equipment in place of equipment specified will only be granted where such equipment is new or improved and its use is deemed by the Director to be in furtherance of the purposes of this Article. The approval for use of particular equipment on any project shall in no way be considered as an approval of the use of such equipment on any other project.

Nothing in this Article shall relieve the Contractor of his/her responsibility for furnishing materials or producing finished work of the quality specified in these Specifications.

5.12 USE OF COMPLETED PORTIONS – The City shall have the right at any time during the progress of the work, to take over and place in service any completed or partially completed portions of the work, notwithstanding the fact that time for completion of the entire work or such portions may not have expired; but such taking possessions thereof shall not be deemed an acceptance of any other portions of the work, nor work on those portions not completed in accordance with the contract documents.

5.13 LEGAL ADDRESS OF THE CONTRACTOR – Both the address given in the proposal and Contractor's office in the vicinity of the work are hereby designated as places to either of which drawings, letters, notices, or other articles of communication to the Contractor may be mailed or delivered. The mailing or delivery at either of these places shall be deemed sufficient notice thereof upon the Contractor. Nothing herein contained shall be deemed to preclude the service of any drawing, letter, notice, article or communication to or upon the Contractor or his/her representative personally. The address named in the proposal may be changed at any time by written notice, from the Contractor to the City.

5.14 FINAL INSPECTION – When the work authorized by the Contract has been completed, the Director will make the final inspection.

5.15 ACCEPTANCE OF CONTRACT – When the Director has made the final inspection in accordance with these Specifications and determines that the Contract has been completed in all respects in accordance with the Drawings and Specifications, the Director will recommend that the City Council formally accept the Work of Improvement.

5.16 COORDINATION OF SPECIFICATIONS AND DRAWINGS – The Standard Provisions, Technical Provisions, Special Provisions, Drawings, Contract Change Orders, and all supplementary documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In case of conflict, the following shall be the rules of interpretation:

Drawings shall govern over the Standard Provisions; the Technical Provisions shall govern over both the Standard Provisions and the Drawings; the Special Provisions shall govern over the Technical Provisions, the Standard Provisions and the Drawings.

Detail Drawings shall govern over general Drawings. Figures written on Drawings shall govern over the drawings themselves.

5.17 INTERPRETATION OF SPECIFICATIONS AND DRAWINGS – The work herein provided for is to be done in accordance with the Specifications and Drawings on file in the Department of Public Works. All corrections of readily apparent errors or omissions in Specifications or Drawings may be made by the Director when such corrections are necessary for the proper fulfillment of their intention as construed by him/her. The misplacement, addition or omission of any work, letter, figure or punctuation mark which has no substantive legal effect will in no way change the due spirit, intent, or meaning of these Specifications.

Any part of the work which is not mentioned in these Specifications but is shown on the Drawings, or any part of the work not shown on the Drawings but described in these Specifications, or any part not shown on the Drawings or described in these Specifications, but which is reasonably or ordinarily implied by either, shall be furnished and installed by the Contractor as if fully described in these Specifications and shown upon the Drawings.

Should it appear that the work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Specifications or on the Drawings, or if the Contractor discovers any discrepancies during the course of the work between the Contract Drawings and conditions in the field, or any errors or omissions in the Contract Drawings, the Specifications, or in the layout given by stakes, points, or instructions, the bidder or Contractor shall apply in writing to the Director for such further explanations as may be necessary and shall conform to them as part of the Contract. In the event of any doubt or questions arising respecting the true meaning of the Specifications or Drawings, reference shall be made in writing to the Director, whose decision thereon shall be final. Any work done after such discovery until authorized by the Director, will be done at the Contractor's risk.

5.18 STATE SPECIFICATIONS – Where specifically required and referenced, the work set forth in these Specifications shall be accomplished in accordance with appropriate provisions of the State Specifications with most recent revisions insofar as they apply. Said Specifications are herein referred to as the "State Specifications" and are, by reference, made a part of these Specifications the same as though as set out in full. In the event of conflict between the State Specifications and the Standard,

Special, or Technical Provisions of the City’s Special Project Specifications or the Drawings, the City’s Special Project Specifications and Drawings shall apply.

5.19 REASONABLENESS OF INTERPRETATIONS – All interpretations of these Specifications and the Drawings by the City and decisions made thereon by the Director will not be arbitrary, capricious, or unreasonable.

5.20 POTENTIAL CLAIMS AND DISPUTE RESOLUTION – No claims for extra work, materials, labor, equipment, or costs shall be considered or permitted if Contractor fails to timely notify the City of the claim and thereafter diligently pursue and exhaust all the administrative remedies and processes set forth in the Contract Documents and State Specifications, including but not limited to Change Orders, Differing Site Conditions, Initial Potential Claim Records, Supplemental Potential Claim Records, and Full and Final Potential Claims Records. Contractor must exhaust all such processes in order to preserve and pursue any claim, and failure to do so shall be deemed a waiver of the claim.

- A. In accordance with California Public Contract Code Section 20104.2, presuming Contractor has diligently pursued and exhausted the administrative procedures of the Contract, the following procedures apply to claims of \$375,000 or less between the Contractor and the City:
 - 1. The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.
 - 2. For claims of less than fifty thousand dollars (\$50,000), the City shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the City may have against the Contractor.
 - i. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the City and the Contractor.
 - ii. The City’s written response to the claim, as further documented, shall be submitted to the Contractor within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the Contractor in producing the additional information, whichever is greater.
 - 3. For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the City shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the City may have against the Contractor.
 - i. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the City and the Contractor.
 - ii. The City’s written response to the claim, as further documented, shall be submitted to the Contractor within 30 days after receipt of the further

documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

4. If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within 15 days of receipt of the City's response or within 15 days of the City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the City shall schedule a meet and confer conference within 30 days for settlement of the dispute.
 5. Following the meet and confer conference, if the claim or any portion remains in dispute, the Contractor shall file a claim for money or damages as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code, prior to filing a civil action to resolve the disputed claim. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.
 6. This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.
- B. In accordance with California Public Contract Code Section 20104.4, the following procedures apply to civil actions to resolve claims of \$375,000 or less between the City and the Contractor:
1. Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.
 2. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.
 - i. Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in

construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

- ii. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

3. The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

C. In accordance with California Public Contract Code Section 20104.6:

1. The City shall not fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.
2. In any suit filed under Public Contract Code Section 20104.4 concerning this contract, the City shall pay interest at the legal rate on any arbitration award or judgment. Such interest shall accrue from date the suit was filed.

D. Claim for money or damages required. For any all claim not covered the procedures set forth in Article 5.20, Contractor shall file a claim for money or damages as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code, prior to filing a civil action to resolve the claim. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to subdivision (a) until the time that claim is denied by the City, including any period of time utilized by the meet and confer process.

SECTION 6

CONTROL OF MATERIALS AND INSTALLED EQUIPMENT

6.01 FURNISHING AND QUALITY OF MATERIALS & EQUIPMENT – The Contractor shall furnish all materials and equipment required to complete the work, except materials or equipment that are designated in the Special Provisions to be furnished by the City or materials furnished by the City in accordance with Article 4.03.

Notwithstanding any prior inspection or approval, only materials and equipment conforming to the requirements of the Specifications shall be incorporated in the work.

The materials and equipment furnished and used shall be new and unused and of the highest commercial quality currently available. The materials and equipment shall be manufactured, handled, and used in a workmanlike manner to ensure completed work in accordance with the Drawings and Specifications.

The Contractor shall be required to furnish a written guaranty covering certain items of material and equipment for varying periods of time from the date of acceptance of the Work of Improvement. The material and equipment to be guaranteed, the form of guaranty, and the time limit of the guaranty are as specified in Article 9.09. Said guaranty shall be signed and delivered to the Director before Acceptance of the Project. Upon completion of the Work of Improvement, the amounts of the Contract bonds required in Article 3.04 may be reduced to conform to the total amount of the Contract bid prices for the items to be guaranteed and this amount shall continue in full force and effect for the duration of the guaranty period.

6.02 SOURCE OF MATERIAL AND EQUIPMENT SUBMITTALS - The Contractor shall furnish a list of his/her sources of materials and equipment to the Director. The list shall be furnished on a City form and shall be furnished to the Director in sufficient time to permit proper inspection and testing of materials and equipment to be furnished from such listed sources in advance of their use. The Contractor shall furnish without charge such samples as may be required. Inspection and tests will be made, and reports rendered, but it is understood that such inspection and tests shall not be considered as a guarantee of acceptance of any material or equipment which may be delivered later for incorporation in the work. No equipment or materials which, after approval, have in any way become unfit for use, shall be used in the work.

The Contractor shall submit five copies of approval data for the materials, and equipment proposed for installation. The data shall be submitted in the same routine as prescribed for working drawings in Article 5.02. Approval data shall consist of complete material and equipment lists accompanied by catalog data sheets, cuts, performance curves, diagrams or similar descriptive material. Material and equipment lists shall give, in each case, the name of the manufacturer, trade name, catalog reference, size, finish, and all other pertinent data. It is intended that approval data should not include such materials as small pipe and small pipe fittings, conduit and conduit fittings, or tubing. Data submitted as specified herein for each major subdivision of mechanical and electrical work shall be bound together under a hard cover, provided with a complete index, and properly identified on the cover. Individual sheets shall be easily removable without tearing or other damage. The Contractor shall furnish operation and maintenance manuals or instructions if required by the Technical Provisions.

At the option of the Director, the source of supply of each of the materials shall be approved by him/her before the delivery is started. All materials proposed for use may be inspected or tested at any time

during their preparation and use. After trial, if it is found that sources of supply which appeared satisfactory do not furnish a uniform product, or if the product from any source proves unacceptable at any time, the Contractor shall furnish approved material from other sources.

6.03 STORAGE OF MATERIALS AND EQUIPMENT - Materials and equipment shall be so stored as to ensure the preservation of their quality and fitness for the work. They shall be placed under cover when directed and shall be sorted in a manner that will facilitate prompt inspection. Unless specifically authorized by the Director, no materials shall be stored overnight upon any public right of way within the City.

6.04 DEFECTIVE MATERIALS - All materials not conforming to the requirements of the Specifications and Drawings shall be considered as defective and all such materials shall be rejected, whether in place or not. They shall be removed immediately from the site of the work, unless otherwise permitted by the Director. No rejected material, the defects of which have been subsequently corrected, shall be used unless approval in writing has been given by the Director. If the Contractor should fail to comply promptly with any order of the Director made under the provisions of this Article, the Director may cause defective materials to be removed and replaced, and the costs thereof to be deducted from any monies due or to become due the Contractor.

6.05 TRADE NAMES AND ALTERNATIVES - For convenience in designation on the Drawings or in the Specifications, certain equipment or materials to be incorporated in the work may be designated under a trade name or the name of a manufacturer and his/her catalog information. The use of alternative equipment or material which is of equal quality and of the required characteristics for the purpose intended will be permitted, subject to the following requirements:

The burden of proof as to the comparative quality and suitability of alternative equipment or materials shall be upon the Contractor and s/he shall furnish, at their own expense, six copies of complete description, information and performance data showing the quality of the materials or equipment offered to those specified, and such other necessary or related information as may be required by the Director. The Director will be the sole judge as to the comparative quality and suitability of alternative equipment or materials and this decision shall be final. The Contractor, pursuant to Public Contract Code, Section 3400 et seq., shall have at least 35 days after award of the Contract for submission of data substantiating a request for a substitution of "or equal" item.

6.06 TESTING MATERIALS - Unless otherwise specified in the Special Provisions or Technical Provisions called for on the drawings, all tests of materials and work, for determining compliance with requirement, shall be performed in accordance with the methods in use by the laboratory of the State Department of Transportation or by nationally recognized testing organizations, at a laboratory approved by the Director.

Whenever a reference is made to a specification or test method either of the American Society of Testing Materials, the American Water Works Association, or any other authority, and the number accompanying the specification or test method representing the year of its acceptance is omitted, the reference shall mean the specification or test method in effect on the date of the Notice to Contractors.

Whenever a specification or test method of the American Society for Testing Materials, the American Water Works Association, or any other authority, includes a test procedure or test requirements, the Contractor shall submit two copies of certified test results, unless the requirement therefore is waived. No material will be accepted until these data have been passed upon by the Director and accepted.

Samples of all materials entering into the work shall be furnished by the Contractor without charge, when requested by the Director.

Materials may be tested at any time during progress of the work.

6.07 PLANT INSPECTION - Materials and equipment which become a part of the completed work will be subject to inspection at the place of production or manufacture, at the shipping point, or at the site of the work. Materials and equipment requiring inspection at the place of production or manufacture will be designated by the Director. Where plant inspection is so designated, the Director shall be given 14 days advance notice of the start of manufacture or production. The Contractor's purchase orders for materials and equipment for which plant inspection has been designated by the Director shall bear a suitable notation advising suppliers and subcontractors of inspection requirements.

The Director or an authorized representative shall have free entry at all times to such parts of the plant as concerns the manufacture or production of materials and equipment for the City. Adequate facilities shall be furnished free of charge to make the necessary inspection.

The City assumes no obligation to inspect material or equipment at the place of manufacture or production, or at the shipping point.

6.08 CITY FURNISHED MATERIALS - Materials furnished by the City will be available at locations designated in the Special Provisions. They shall be loaded, unloaded and hauled to the site of the work by the Contractor at his\her expense. The Contractor shall be held responsible for all materials furnished to him\her, and s\he shall pay all demurrage and storage charges. The cost of handling and placing City furnished material shall be considered as included in the price paid for the Contract item involving such City furnished material.

SECTION 7

LEGAL RELATIONS AND RESPONSIBILITY

7.01 LAWS TO BE OBSERVED – The Contractor shall remain fully informed of all existing and future State and Federal laws and County and Municipal ordinances and regulations which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. S\he shall at all times observe and comply with, and shall cause all his/her agents and employees to observe and comply with, all such applicable existing and future laws, ordinances, regulations, orders and decrees of bodies or tribunals having any jurisdiction of authority over the work; and shall protect and indemnify the City, the City Council, the Director and Consulting Engineer, and all of its and their officers and agents and servants against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by him or herself or his/her employees. If any discrepancy or inconsistency is discovered in the Drawings, Specifications, or Contract for the work in relation to any such law, ordinance, regulation order, or decree, the Contractor shall forthwith report the same to the Director in writing.

7.02 LABOR DISCRIMINATION – Attention is directed to the following sections of the Labor Code:

1735. No discrimination shall be made in the employment of persons upon Public Works because of race, color, national origin or ancestry, or religion of such persons and every Contractor for Public Works violating this section is subject to all the penalties imposed for a violation of this chapter.

1420. It shall be unlawful employment practice, unless based upon a bonafide occupational qualification, or except where based upon applicable security regulations established by the United States or the States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, or ancestry of any person, to refuse to hire or employ him/her or to bar or to discharge from employment such person, or to discriminate against such person in compensation or in terms, conditions or privileges of employment.

Contractor agrees to abide by all of the foregoing statutes, regulations, ordinances and resolutions.

7.03 REMOVED.

7.04 PREVAILING WAGES, APPRENTICESHIP, PAYROLL RECORDS – In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the work is to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the Public Works Department and shall be made available on request. The Contractor shall cause a copy of these wage rates to be posted at each job site. The Contractor and subcontractors engaged in the performance of the Work shall pay no less than these rates to all persons engaged in performance of the Work. These rates are set forth in the Notice to Contractors and excludes contracts for projects of \$25,000 or less for construction work, or projects of \$15,000 or less for alteration, demolition, repair, or maintenance work.

In accordance with California Labor Code Section 1777.5, the Contractor, on behalf of the Contractor and any subcontractors engaged in performance of the Work, will be responsible for ensuring

compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.

In accordance with California Labor Code Section 1775, the Contractor and any Subcontractors engaged in performance of the Work shall forfeit a penalty of up to \$200 per day for each worker engaged in the performance of the Work that the Contractor or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner. The Contractor or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the Work is not paid the general prevailing per diem wages by the subcontractor, the Contractor is not liable for any penalties therefore unless the Contractor had knowledge of that failure or unless the Contractor fails to comply with all of the following requirements:

1. The contract executed between the Contractor and the subcontractor for the performance of part of the Work must include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
2. The Contractor must monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.
3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Contractor must diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the Work.
4. Prior to making final payment to the subcontractor, the Contractor must obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages employees engaged in the performance of the Work and any amounts due pursuant to California Labor Code Section 1813.

In accordance with California Labor Code Section 1776, the Contractor and each subcontractor engaged in performance of the Work, must keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating that the information contained in the payroll record is true and correct and that the employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project. The payroll records required pursuant to California Labor Code Section 1776 must be certified and must be available for inspection by the City and its authorized representatives, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations and must otherwise be available for inspection in accordance with California Labor Code Section 1776. Contractor and their subcontractors shall furnish the payroll records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by Labor Code section 1771.4.

The work of installing, assembling, repairing or reconditioning, or other work of any nature on machinery, equipment, or tools used in or upon the work shall be considered a part of the work to be performed under the Contract any laborers, workers, or mechanics working on such machinery, equipment, or too

The construction, erection, and operation of material production, proportioning, or mixing plants from which material is used wholly on the Contract or on contracts under the supervision of the City, shall be

considered a part of the work to be performed under the Contract and any laborers, workers, or mechanics working on such plants shall be subject to all of the requirements relating to labor set forth in the Contract.

In case it becomes necessary for the Contractor or any subcontractor engaged in performance of the Work to employ on the Work any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Contractor must pay the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by that person. The minimum rate thus furnished will be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

7.05 HOURS OF LABOR – Eight hours labor constitutes a legal day's work. The Contractor shall forfeit as a penalty to the City up to \$25 for each worker employed in the execution of the Contract by the Contractor or by any subcontractor for each day during which such worker is required or permitted to labor more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of Labor Code Sections 1810 to 1815, inclusive, except as provided for under Labor Code Section 1815.

7.06 APPRENTICES – The Contractor's attention is directed to the provisions of 1770 *et seq.* of the Labor Code concerning the employment of apprentices by the Contractor or any Subcontractor under him\her.

Section 1777.5, as amended, requires the Contractor or subcontractor employing tradespersons in any apprenticeship occupation to apply to the joint apprenticeship committee nearest the site of the Public Works project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of apprentices to journeymen that will be used on the performance of the Contract. The ratio of apprentices to journeymen in such cases shall not be less than one to five except:

- A. When unemployment in the area of coverage by the Joint Apprenticeship committee has exceeded an average of 15 percent in the 3 months prior to the request for certificate,
- B. When the number of apprentices in training in the area exceeds a ratio of one to five,
- C. When the trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis statewide or locally, or
- D. When assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

The Contractor is required to make contributions to funds established for the administration of apprenticeship programs if (s)he employs registered apprentices or journeymen in any apprenticeship trade on such contracts and if other Contractors on the Public Works site are making such contributions.

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

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

7.07 PERMITS AND LICENSES – The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the work. The Contractor shall note and comply all permit conditions provided in the Special Provisions or Technical Provisions, if any.

7.08 PATENTS AND COPYRIGHTS – The Contractor shall assume all costs arising from the use of, and shall indemnify, defend, hold harmless, and save the City and the Council, its officers, agents, and employees, harmless from liability of any nature and kind, including costs and expenses, for or on account of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article, equipment, device, or appliance manufactured, furnished, or used by him/her in the performance of the Contract, including their use by the City, unless otherwise specifically stipulated in the Specifications.

7.09 SANITARY FACILITIES – The Contractor shall conform to the rules and regulations pertaining to sanitary provisions as established by the State of California, the County of Santa Cruz and the City of Capitola, as may be applicable.

7.10 PUBLIC SAFETY – In accordance with generally accepted construction practices and applicable law, the Contractor will be solely and completely responsible for conditions of the Work site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours. For purposes of California Labor Code Section 6400 and related provisions of law the Contractor and the Contractor’s privities and any other entities engaged in the performance of the Work will be “employers” responsible for furnishing employment and a place of employment that is safe and healthful for the employees, if any, of such entities engaged in the performance of the Work. Neither the City nor its officials, officers, employees, agents, volunteers or consultants will be “employers” pursuant to California Labor Code Section 6400 and related provisions of law with respect to the Contractor, the Contractor’s privities or other entities engaged in the performance of the Work.

Furthermore, the Contractor shall, at his/her own expense, furnish, erect and maintain such fences, barriers, lights, bridges, and signs and provide such flaggers and guards as are necessary to give adequate warning to the public of the construction and of any dangerous conditions to be encountered as a result thereof.

No material or equipment shall be stored where it will interfere with the safe passage of public traffic, and at the end of each day’s work and at other times when construction operations are suspended for any reason, the Contractor shall remove all equipment and other obstructions from that portion of the roadway open for use by public traffic. Spillage resulting from hauling operations along or across any public traveled way shall be removed promptly.

Whenever the Contractor’s operations require one-way traffic or creates a condition hazardous to the public traffic, s\he shall provide and station competent flaggers whose sole duties shall consist of directing the movement of public traffic through or around the work.

7.11 ACCIDENT PREVENTION – The Contractor shall comply with all pertinent safety orders of the State of California, Department of Industrial Relations, Division of Industrial Safety, and U.S.

Department of Labor, OSHA, and will also take or cause to be taken such additional measures as may be necessary for the prevention of accidents.

Prior to commencement of work, the Contractor shall (1) submit in writing the proposals for effectuating his/her provisions for accident prevention, and (2) meet in conference with the Director to discuss and develop mutual understandings relative to administration of an overall safety program.

During the performance of work under the Contract, the Contractor shall institute controls and procedures for the control and safety of persons visiting the job site.

The Contractor shall maintain an accurate record of, and shall report to, the Director in writing, exposure data and all accidents resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies or equipment incident to work performed under the Contract.

The Director will notify the Contractor of any noncompliance with the foregoing provisions. The Contractor shall after receipt of such notice, immediately take corrective action. If the Contractor fails or refuses to comply immediately, the matter will be referred to the proper authority. No part of the time lost due to any stop order issued by proper authority shall be made the subject or claim for extension of time for extra costs or damages by the Contractor.

Compliance with the provisions of this Article by subcontractors will be the responsibility of the Contractor.

No direct payment will be made by reason of the provisions of this Article and all costs in connection therewith shall be included in the prices paid for various contract items of work.

7.12 EXPLOSIVES AND STREAM POLLUTION – When the use of explosives is necessary for the prosecution of work, the Contractor shall not endanger life or property, and will be required to obtain a permit for use of explosives within City limits. All explosives shall be stored in accordance with the provisions of Division XI of the Health and Safety Code, and any applicable County or local ordinances.

Attention is called to the necessity of obtaining a permit from the Department of Fish and Wildlife of the State of California in advance of use of underwater explosives. Attention is directed to the Fish and Game Code relating to stream pollution, particularly, Section 5650.

7.13 FIRES – The Contractor shall obtain any necessary fire permits from the properly constituted authority and comply with all regulations of the County in which the work is to be performed.

7.14 INTERFERENCE WITH FIRE HYDRANTS, HIGHWAYS, AND FENCES – The Contractor shall so conduct his/her operations so as not to close or obstruct any portion of any highway, road, or street, or prevent in any way free access to fire hydrants until s\he has obtained permits therefor from the proper authorities. If any highway required to be kept open shall be rendered unsafe by the Contractor's operation s\he shall make such repairs or provide such temporary guards as shall be acceptable to the authorities having jurisdiction and to the Director. Any highway or street maintenance or repair work required by local authorities in connection with necessary operations under the Contract shall be performed by the Contractor at his/her own cost and expense. Fences subject to interference shall be maintained as effective barriers consistent with the original intent, but upon approval of the Director, they may be moved or rearranged to facilitate prosecution of the work until the work is finished, after which they shall be restored to their original or better condition.

7.15 PRESERVATION OF PROPERTY – Due care shall be exercised to avoid damage to existing improvements, utility facilities, and adjacent property. The fact that any pipe or underground facility is not shown on the drawings shall not relieve the Contractor of responsibility or ascertaining the existence

of any underground improvements or facilities which may be subject to damage by reason of the operation.

Any obstruction along the line of work, such as mailboxes or paper-boxes, posts, fences, culverts, improvements, etc., which interferes with the Contractor's operation shall be carefully removed and replaced by the Contractor as soon as possible in a satisfactory condition. Trees and shrubbery that are not to be removed, and pole lines, fences, signs, survey markers and monuments, buildings and structures, conduits, under- or above-ground pipelines, and any other improvements and facilities adjacent to the work shall be protected from injury or damage, and if ordered by the Director, the Contractor shall provide and install suitable safeguards to protect such objects from injury or damage.

If such objects are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored at the Contractor's expense. The facilities shall be replaced or restored to a condition as good as when the Contractor entered upon the work, or as good as required by the Specifications accompanying the work being performed under the Contract. When it becomes necessary for the Contractor to remove an existing fence as an obstruction to the work, the Contractor shall provide the necessary temporary fencing to be functionally as effective as the original for protection of livestock, equipment, or property.

Only those trees specifically designated for removal on the contract drawings shall be removed except with specific approval of the Director. Tree branches that extend over the work and must be removed, shall be cut off at the bole in a competent manner. The Contractor shall then remove other branches so that the tree will present a balanced appearance. Scars resulting from the removal of branches shall be treated with a heavy coat of an approved tree seal. The Director may make or cause to be made such temporary repairs as are necessary to restore to service any damaged facility.

The cost of such repairs shall be borne by the Contractor and may be deducted from any monies due or to become due the Contractor under the Contract.

No direct payment will be made by reason of the provisions of this article and all costs in connection therewith shall be included in the prices paid for the various contract items of work.

The Contractor, employee, and agents, shall at all times observe and comply with all conditions imposed by any instrument granting the right to enter upon property for the purpose of performing the work provided for herein, including, but not limited to, all conditions relative to the prevention and suppression of fires.

7.16 PUBLIC CONVENIENCE – Unless otherwise provided in the Special Provisions, all public traffic shall be permitted to pass through the work, and the Contractor shall so conduct operations as to offer the least possible obstruction and inconvenience to the public. The Contractor shall have under construction not greater length or amount of work than can be prosecuted properly with due regard to the rights of the public, and the Director shall be the sole judge of the length or amount of work which will afford proper convenience to the public.

In addition to the requirements for furnishing facilities for public safety as specified in Article 7.10, the Contractor shall erect such warning and directional signs as may be necessary, for expediting the passage of public traffic through or around the work and the approaches thereto. All such signs and traffic maintenance shall be subject to the approval of the Director, and (s)he shall be notified 24 hours in advance of any disturbance of existing traffic patterns. No changes shall be made until approved by the Director.

Traffic signs, existing within the limits of the project, such as STOP signs, shall be maintained in an upright secure position, and located so as to properly control traffic, whenever it is necessary to remove them from their permanent location due to construction of the work, and shall be reinstalled in their permanent location at the earliest possible time.

Where pipelines are to be installed under the contract across certain designated streets or highways, as noted on the plans, the Contractor will only be permitted to open the trench one-half the width of the pavement at any one time so that one-way traffic can be maintained.

Construction operations shall also be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners. Water or dust palliative shall be applied if ordered by the Director for the alleviation or prevention of dust nuisance caused by the Contractor's operations. Convenient access to driveways, houses, and buildings along the line of work shall be maintained fully by the Contractor, and temporary approaches to crossings or intersecting roads or streets shall be provided and kept in good condition. When traffic control signals are shut down as provided in Section 86-1.05 of the State Specifications, the Contractor shall control traffic by use of flaggers, as directed by the Director, at those locations set forth in the Special Provisions. No STOP signs will be permitted at these locations. The flaggers required for this operation shall be paid for by the Contractor.

All of the foregoing requirements shall apply on weekends and holidays, if considered necessary by the Director. The Director may take action as necessary to provide for public convenience and charge the cost thereof to the Contractor if no representative of the Contractor is available to do same.

7.17 CONTRACTOR'S RESPONSIBILITY FOR WORK – Until the formal acceptance of the work, the Contractor shall have the charge and care of the work – and of the materials to be used therein, and shall bear the risk of injury, loss, or damage, to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-execution of the work. The materials to be used in the work include both those furnished by the City and those furnished by the Contractor, including materials for which the Contractor has received partial payment as provided in Article 9.06.

7.18 RESPONSIBILITY FOR DAMAGES; INDEMNIFICATION – The City, the City Council, the Engineer, and all officers and employees of the City shall not be answerable or accountable in any manner, for any loss or damage that may occur to the work or any part thereof; or for any of the materials or other things used or employed in performing the work; or for injury to any person or persons, either workers or the public; for damage to property from any cause which might have been prevented by the Contractor or his/her workers, or anyone employed by his/her; against all of which injuries or damages to persons and property the Contractor having control over such work must properly guard.

The Contractor shall be responsible for any damage to any person or property resulting from defects or obstructions or from any cause whatsoever during the progress of work or at any time before its completion and final acceptance and during the period of the project guarantee. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the City and its Directors, officers, officials, members, managers, departments, divisions, agents, representatives, volunteers, and employees (collectively "Indemnitee(s)"), from and against any and all claims, suits, actions, legal or administrative proceedings, judgments, debts, demands, injuries (including, without limitation, injury or death to any person or persons), damages (including, without limitation, damage to any property including loss of use resulting therefrom, and incidental and consequential damages), liabilities, losses, debts, interest, penalties, costs, attorneys' fees, and expenses of whatsoever kind of nature (collectively "Loss(es)"), whether arising before, during, or after commencement or completion of this Contract, which in any manner, directly or indirectly, in whole or in part, result from, relate to, or arise from (or are

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claimed to result from, relate to, or arise from) the work called for by this Contract, or any act, omission, fault, recklessness, negligence (whether active or passive), or willful misconduct of Contractor or any of his/her/its subcontractors, or any of their respective officers, directors, agents, employees, or anyone acting under their direction, authority, control, or on their behalf or for whose acts or omissions either of them may be liable (collectively “Contractor Agent(s)”), or the condition of the premises while in the control of the Contractor or any Contractor Agent, even though the same may have resulted from the joint, concurrent, or contributory negligence, or from the passive negligence of an Indemnitee or any other person or persons. Except as provided in Section 3.07, this provision shall not be deemed to require the Contractor to indemnify the City or other Indemnitee for any Loss proximately caused by the sole negligence of an Indemnitee, or to the extent such Loss is proximately caused by the active negligence or willful misconduct of an Indemnitee. Notwithstanding anything to the contrary contained herein, Contractor’s indemnification obligations shall not apply to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of the Contract.

Contractor specifically acknowledges and agrees that he/she/it has an immediate and independent obligation to defend the City and the other Indemnitees from any Loss that falls within the scope of this Section 7.18 (Responsibility for Damages; Indemnification), which obligation arises at the time such Loss is tendered to Contractor by the Indemnitee and continues at all times until finally resolved.

Contractor’s obligations under this Section 7.18 will survive the termination of the Contract.

7.19 PAYMENT OF TAXES – The Contract prices paid for the work shall include full compensation for all taxes which the Contractor is required to pay, whether imposed by the Federal, State or local government.

7.20 COOPERATION BETWEEN CONTRACTORS – Should construction be underway by other forces or by other Contractors within or adjacent to the limits of the work specified or should work of any other nature be underway by other forces within or adjacent to said limits, the Contractor shall cooperate with all such other Contractors or other forces to the end that any unnecessary delay or hindrance to their work will be avoided. The right is reserved to perform other or additional work at or near the site (including designated material sources) at any time by the use of other forces.

When two or more Contractors are employed on related or adjacent work or are to obtain materials from the same designated material source, each shall conduct his/her operations in such a manner as not to cause any unnecessary delay or hindrance to the other. Each Contractor shall be responsible to the other for all damage to work to person or property caused to the other by his/her operations, and for loss caused the other due to his/her unnecessary delays or failure to finish the work within the time specified for completion.

7.21 PROPERTY RIGHTS IN MATERIAL – Nothing in the contract shall be construed as vesting in the Contractor any right of property in the materials used after they have been attached or affixed to the work or the soil, or after payment has been made for 80 percent of the value of materials delivered to the site of the work, whether or not they have been so attached or affixed. All such materials shall become the property of the City upon being so attached or affixed upon payment of such 80 percent of the value of materials delivered by the Contractor on the ground and not used, as provided in Article 9.06.

7.22 RIGHTS IN LAND AND IMPROVEMENTS – Nothing in these Specifications shall be construed as allowing the Contractor to make any arrangements with any person to permit occupancy or use of any land, structure, or building within the limits of the Contract for any purpose whatsoever, either with

or without compensation, in conflict with any agreement between the City and any owner, former owner, or tenant of such land, structure or building.

7.23 TITLE TO MATERIALS FOUND ON THE WORK – The title to all water and to the right to the use of all water, to all soil, stone, gravel, sand, minerals, and all other materials developed or obtained in the excavation or other operations by the Contractor or any subcontractor, or any of their employees, and the right to use or dispose of the same, are hereby expressly reserved in the City and neither the Contractor, nor any subcontractor, nor any of their employees shall have any right, title, or interest in or to any part thereof; neither shall they, nor any of them, assert or make any claim thereto. The Contractor may be permitted to use in the work without charge any such materials which meet the requirements of these Specifications.

7.24 PERSONAL LIABILITY – Neither the members of the City Council, the Director, the Consulting Engineer, nor any other officer or employee of the City shall be personally responsible for any liability arising under the Contract.

7.25 TRESPASS – The Contractor shall be responsible for all damage or injury which may be caused on any property by trespass by the Contractor, any subcontractor or their employees in the course of their employment, whether the said trespass was committed with or without the consent or knowledge of the Contractor.

7.26 SUBCONTRACTING – The Contractor shall comply with Public Contract Code Sections 4100 *et seq*, inclusive, relating to subletting and subcontracting.

No contractor or subcontractor may be listed on a bid or proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or enter into any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. By submitting a bid or proposal to the City, Contractor is certifying that he or she has verified that all subcontractors used on this public work project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration to the City.

Space is provided in the Proposal for listing subcontractors, and their DIR registration information, to be employed on the Project.

In no case shall the use of subcontractors in any way alter the position of the Contractor or his/her sureties with relation to this Contract. When a subcontractor is used, the responsibility for every portion of the work shall still remain with the Contractor.

7.27 PROTECTION OF PUBLIC UTILITIES – In accordance with California Government Code Section 4215, the City assumes the responsibility for the timely removal, relocation or protection of existing main or trunk line utility facilities located on the Work site if such utilities are not identified in the plans and specifications made a part of the invitation for bids. The City will compensate the Contractor for the costs of locating, repairing damage not due to the Contractor's failure to exercise reasonable care, and removing or relocating existing main or trunk line utility facilities located at the Work site and not identified with reasonable accuracy in plans and specifications made a part of the invitation for bids. The City will also compensate the Contractor for the cost of equipment on the Project necessarily idled during such work. The Contractor will not be assessed liquidated damages for Work completion delays caused by the City's failure to provide for removal or relocation of such main or trunk line utility facilities.

Nothing in this provision or the Contract Documents will be deemed to require the City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the

Work site can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the Work site; provided, however, that nothing in this provision or the Contract Documents shall relieve the City from identifying main or trunk lines in the plans and specifications made a part of the invitation for bids.

Nothing in this provision or the Contract Documents will preclude the City from pursuing any appropriate remedy against the utility for delays which are the responsibility of the utility.

Nothing in this provision or the Contract Documents will be construed to relieve the utility from any obligation as required either by law or by contract to pay the cost of removal or relocation of existing utility facilities.

If the Contractor while performing the Work discovers utility facilities not identified by the City in the plans and specifications made a part of the invitation for bids, the Contractor must immediately notify the City and utility in writing.

Either the City or the utility, whichever owns existing main, or trunk line utility facilities located on the Work site, shall have sole discretion to effect repairs or relocation work or to permit the Contractor to perform such repairs or relocation work at a reasonable price

The Contractor will be required to work around public utility facilities that are to remain in place within the construction area or that are to be relocated and relocation operations have not been completed, and (s)he will be held liable to the owners of such facilities for any damage or interference with service resulting from his/her operations.

The exact locations of underground facilities and improvements within the construction area shall be ascertained by the Contractor before using equipment that may damage or interfere with service resulting from his/her operations. It shall be the Contractor's responsibility to notify public utilities that (s)he is working in the vicinity of their facilities.

Other forces may be engaged in moving or reconstructing utility facilities or maintaining service of utility facilities, and the Contractor shall cooperate with such forces and conduct his/her operation in such a manner as to avoid unnecessary delay or hindrance to the work being performed by such other forces.

The Santa Cruz City Municipal Utilities (SCMU) and Soquel Creek Water District (SCWD) owns, operates and maintains its own water distribution systems; the County of Santa Cruz owns, operates and maintains its own sewer collection systems, and will cooperate with the Contractor insofar as it is reasonable and practicable. Water, as required for City projects, may be obtained at SCMU or SCWD-owned fire hydrants provided that application is made to the SCMU or SCWD and permission obtained with provision for payment.

Full compensation for conforming to the requirements of this article, not otherwise provided for, shall be considered as included in the prices paid for the various contract items of work and no additional allowance will be made therefor.

7.28 PUBLICATIONS – The Contractor shall submit and obtain written approval from the Director prior to the publication of any technical articles, descriptions, or news releases, concerning this project. Approval shall be granted providing that the City is properly acknowledge, technical innovations are properly acknowledged, and such publication is in the best interest of the City.

7.29 LANDS AND RIGHTS-OF-WAY – The City shall provide the lands rights-of-way, and easements upon which the work under this contract is to be done, and such other lands as may be

designated on the contract drawings for the use of the Contractor and the Contractor shall confine his/her operations to within these limits.

The Contractor shall provide at his/her own expense any additional land and access thereto that may be required for temporary construction facilities or for storage of materials.

7.30 ASSIGNMENT OF UNFAIR BUSINESS PRACTICE CLAIMS – In accordance with California Public Contract Code Section 7103.5, the Contractor and any subcontractors offer and agree to assign to the City all rights, title, and interest in and to all causes of action the Contractor or any subcontractors may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to this contract. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor, without further acknowledgement by the parties.

7.31 TRENCHING REQUIREMENTS – Pursuant to Labor Code section 6705 and these Specifications, before the excavation of any trench or trenches, five (5) feet or more in depth, where the estimated contract expenditure is twenty-five thousand dollars (\$25,000) or more, the Contractor shall submit a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards, established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer. No excavation shall be started until said plan has been approved by the City Engineer. When the estimated contract expenditure is less than twenty-five thousand dollars (\$25,000) the above-mentioned shoring plan may be required at the discretion of the City Engineer prior to or during the course of construction.

Pursuant to Public Contract Code section 7104, for any project which involves digging trenches or other excavations that extend deeper than four (4) feet:

1. The Contractor shall promptly, and before the following conditions are disturbed, notify the local public entity, in writing, of any:
 - a. Material that the contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - b. (2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.
 - c. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.
2. The City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the contract.
3. In the event that a dispute arises between the City and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the contract but shall proceed with all work to be performed under the contract. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the parties.

7.32 THIRD PARTY CLAIMS – The City shall timely notify Contractor of the receipt of any third-party claim relating to the Contract, and the City shall be entitled to recover its reasonable costs incurred in providing such notice.

SECTION 8

PROSECUTION AND PROGRESS OF WORK

8.01 ASSIGNMENT - The performance of the Contract may not be assigned except upon the written consent of the City. Consent will not be given to any proposed assignment which would relieve the original Contractor or his/her surety of their responsibilities under the Contract.

The Contractor may assign monies due or to become due him/her under the Contract and such assignment will be recognized by the City, if given proper notice thereof, to the extent permitted by law, but any assignment of moneys shall be subject to all proper setoffs in favor of the City and to all deductions provided for in the Contract and particularly all money withheld, whether assigned or not, shall be subject to being used by the City for the completion of the work in the event that the Contractor should be in default therein.

8.02 COMMENCEMENT OF WORK – The Contractor shall not begin work until s/he has received a Notice to Proceed from the City, and shall upon receiving notice, begin work within the time specified in the notice. After receipt of said notice, the Contractor shall provide written notice to the Director of the Contractor’s intention to start work, specifying the date on which s/he intends to start at least 24 hours in advance.

8.03 WORK IN PROGRESS SCHEDULE – Unless not required by the Special Provisions, the Contractor or the bidder to whom the Contract is awarded shall, prior to beginning work, submit to the Director a practicable work schedule in the form required by the Special Provisions showing the order and dates within which the Contractor proposes to carry out the work.

8.04 TEMPORARY SUSPENSION OF WORK – The Director shall have the authority to suspend the work wholly, or in part, for such period as (s)he may deem necessary when work is being performed in unsuitable weather, or when any other conditions are considered unfavorable for the proper prosecution of the work. The Director shall also have authority to suspend the work wholly or in part because of failure on the part of the Contractor to carry out orders given or to perform any provisions of the Contract. The Contractor shall immediately comply with the written order of the Director to suspend the work wholly or in part. Work suspended wholly or in part shall be resumed by the Contractor on written order of the Director when conditions are favorable, and methods corrected.

8.05 TEMPORARY SUSPENSION OF WORK FOR THE CONVENIENCE AND BENEFIT OF THE CITY – The Director may order the Contractor, in writing, to temporarily suspend all or any part of the work for such period of time as may be determined by the Director to be necessary or desirable for the convenience and benefit of the City. Where such suspension has been ordered in writing as above provided and where such suspension unreasonably delays the progress of the work, the Director may make an equitable adjustment in the contract price and contract time.

8.06 SUSPENSION OF WORK BECAUSE OF CONDITIONS BEYOND CONTROL OF CITY OR CONTRACTOR – Should the work of this contract be suspended for a period of over one (1) year due to war conditions, labor conditions, legal actions, or for any other reason beyond the control of either the City or the Contractor, the work may be terminated by mutual agreement subject to the following conditions. The City shall be responsible for payment for the actual work accomplished only, based on bid prices. The pro-rated cost of such work, where not fully covered by unit costs or bid items, shall be determined by the City’s evaluation of the work done and the bid costs.

8.07 TERMINATION OF UNSATISFACTORY SUBCONTRACTS – When any portion of the work which has been subcontracted by the Contractor is not being prosecuted in a satisfactory manner, the subcontract for such work shall be terminated immediately by the Contractor upon written notice from the Director, and the subcontractor shall not again be employed on the type of work in which his/her performance was unsatisfactory.

8.08 CHARACTER OF WORKERS – If any subcontractor or person employed by the Contractor or subcontractor shall fail or refuse to carry out the directions of the Director or shall appear to the Director to be incompetent or to act in a disorderly or improper manner, (s)he shall be removed from the work immediately on the request of the Director, and such persons shall not again be employed on the work.

8.09 TIME OF COMPLETION AND LIQUIDATED DAMAGES – The Contractor shall complete all the work under the Contract within the number of days set forth in the Special Provisions or the Proposal form. When a delay occurs due to unforeseen causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of nature, acts of the public enemy, governmental acts, fires, floods, epidemics, strikes (except as caused by improper acts or omissions of the Contractor), the time of completion shall be extended for a period justified by the effect of such delay on the completion of the work. A delay of a subcontractor or supplier due to the above circumstances will be taken into consideration for extensions of time of completion.

Acts of nature means an earthquake, flood, cloudburst, cyclone, or other cataclysmic phenomena of nature beyond the power of the Contractor to foresee or to make preparation in defense against but does not include ordinary precipitation. The number of days provided for the work as set forth in the Special Provisions includes a normal number of days for downtime due to weather according to the time of year in which the Contract will be operational.

Should any of the unforeseen circumstances as described in the preceding portion of this Article occur, the Contractor shall file written notice with the Director within the 10 days of the beginning of such delay. The notification shall be accompanied by documentary evidence to the fact and effect of the circumstances. Circumstances of which no notification has been given within 10 days of their occurrence shall not afterward be claimed as grounds for extension of time of completion. The Director will determine the facts in the matter and his/her findings shall be final and conclusive.

If the Contract is revised by a Contract Change Order and the Director determines that such revision will cause delay in completion of the work, the Change Order will provide for extension of the time of completion.

It is agreed by the parties to the Contract that in case all the work called for under the Contract in all parts and requirements is not finished or completed within the number of days as set forth in the Special Provisions, damage will be sustained by the City, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the City will sustain in the event of a reason of such delay; and it is therefore agreed that the Contractor will pay to the City the sum set forth in the Special Provisions per day for each and every day's delay in finishing the work in excess of the number of days prescribed; and the Contractor agrees to pay said liquidated damages herein in the amount of \$1,900 per day herein provided for in the State Specifications, provided for, and further agrees that the City may deduct the amount thereof from any monies due or that may become due to the Contractor under the Contract.

8.10 TERMINATION OF CONTRACT – If the Contractor should fail to supply sufficient workers, material, supplies, and equipment, the City shall give written notice to the Contractor, which notice shall require that the Contractor supply sufficient workers, supplies, materials, and equipment to diligently

prosecute the project. If the Contractor fails to resume diligent prosecution of the work within 48 hours after such notice is delivered, the City may eject the Contractor from the job, take over all supplies, equipment and material of the Contractor on the job site, and may either obtain another Contractor to finish the project or the City may finish the project with its own forces. In such event, the Contractor shall be liable to the City for damages including but not limited to the full cost of completing the project.

8.11 RIGHT-OF-WAY DELAYS – If performance of the Contractor’s work is delayed as the result of the failure of the City to acquire or provide rights-of-way, an extension of time will be granted pursuant to provisions of Article 8.09.

8.12 CONTRACTOR’S COST DATA – The City, or any of its duly authorized representatives shall, until the expiration of three years after final payment under this Contract or any subcontractor under it, have access to and the right to examine any of the Contractor’s or subcontractor’s payrolls, records of personnel, invoices of materials, records of plant and equipment costs, and any and all other directly pertinent books, documents, papers, and records of such Contractor or subcontractor, involving transactions related to said Contract or subcontracts. In the event State or Federal funds are involved in the financing of the project, the State or Federal Government shall have the same rights of inspection as the City.

8.13 COORDINATION WITH UTILITIES – The Contractor shall be required to coordinate the work with the removal or relocation of any utility facility by any utility company or public agency where the utility facility is shown on the plans or specified in the Special Provisions to be removed or relocated by such company or agency. It shall be the Contractor’s sole responsibility to effect said coordination, and it shall be deemed, upon his/her submission of a Proposal and Schedule to do Work, that the Contractor has reviewed his/her working plans with, and coordinated any utility facility removal or relocation with, all appropriate utility companies and public agencies.

In general, the location of existing utility facilities as shown on the drawings are approximate. This information has been obtained from utility maps furnished by the various agencies involved, and the City does not guarantee either the correctness of locations or the extent of such location. Minor lines such as house water, gas and sewer facilities are not shown. It shall be the responsibility of the Contractor to ascertain the exact location of the utility facilities, and no additional compensation may be claimed for additional work involved because the actual location is different than that shown on the plans.

Unless otherwise indicated on the Drawings or specified in the Special Provisions, the Contractor shall maintain in service all drainage, water, gas, and sewer lines, including house services, power, lighting and telephone conduits, and any other surface or subsurface structure of facility of any nature that may be affected by the work; provided, however, that the Contractor for his/her convenience may arrange with the owner to temporarily disconnect house service lines or other facilities along the line of the work. The cost of disconnecting and restoring such utilities shall be borne by the Contractor.

The Contractor is responsible for the protection of and for any damage to any utility facility encountered on the project during the prosecution of the work. Any such damage to a utility facility shall be repaired to the satisfaction of the utility owning the same. The City reserves the right, if so, requested by the owner, to permit the owner to repair such damage. All expenses of whatever nature arising from such damage shall be borne by the Contractor.

8.14 RESPONSIBILITY FOR ACCURACY – The Contractor shall obtain all necessary measurements for and from the Work, and shall check dimensions, elevations, and grades for all layout and construction work and shall supervise such work, for the accuracy of all of which s/he shall be

responsible. Each subcontractor shall adjust, correct, and coordinate his/her work with the work of others so that no discrepancies will result in the whole work. Unless authorized by the Director, any work done without liens, levels, or grades established by the Director shall be done at the Contractor's risk.

8.15 TEMPORARY FACILITIES AND SERVICES - The Contractor shall be responsible for providing and maintaining the necessary storage places, field office, temporary roads, fences, guards, etc., and required utilities, such as telephone, electric, and water service, at his/her expense. No water shall be withdrawn from fire hydrants for construction purposes until the Contractor has approval of the owner for such a connection.

8.16 UNFAVORABLE WEATHER AND OTHER CONDITIONS - During unfavorable weather and other conditions, the Contractor shall pursue only such portion of the work as will not be damaged thereby. No portions of the work of which the satisfactory quality or efficiency will be affected by any unfavorable conditions shall be constructed while these conditions remain, unless the Contractor employs special means or precautions, approved by the Director to overcome them.

8.17 CONSTRUCTION HOURS – Construction hours shall be limited between the hours of 8:00 a.m. and 5:00 p.m. on weekdays. Construction shall be prohibited on weekends or legal holidays except in case of an emergency work approved by the Director.

It is understood, however, that two or three shift operations may be established as a regular procedure by the Contractor if (s)he first obtains written permission from the Director. Such permission may be revoked by the Director at any time if the Contractor fails to maintain adequate force and equipment for reasonable prosecution and to justify inspection of the work or fails to provide sufficient artificial light to permit the work to be carried on properly and to permit proper inspection.

The Contractor shall give the Director 24 hours prior notice of any work to be done on weekends with the location and type of work to be done specified; and any work done without such notice and without the supervision of an inspector may be ordered removed and replaced at the Contractor's expense.

SECTION 9
MEASUREMENT AND PAYMENT

9.01 WORK TO BE DONE WITHOUT DIRECT PAYMENT – Whenever it is specified that the Contractor is to do work or furnish materials of any class for which no price is fixed in the proposal, it shall be understood that s\he is to do such work or furnish such materials without extra charge or allowance or direct payment of any kind. The cost of doing such work or furnishing such materials is to be included in the price bid for such other items of work as s\he may consider appropriate unless it is expressly specified in the Special Provisions that such work or materials is to be paid for as extra work.

9.02 MEASUREMENT OF QUANTITIES – Payment for all work bid at a price per unit of measurement will be based upon the actual quantities of work as measured upon completion. The City does not expressly or by implication agree that the actual amount of work or materials of any class will correspond to the estimated quantities given in the proposal. The Contractor shall make no claim for anticipated profits, for loss of profit, for damages, or for any extra payment whatever because of any difference between the amount of work actually done or materials furnished and the estimated amount.

Items bid on a "Lump Sum", or "Job" basis shall result in a complete structure, operating plant or system in satisfactory working condition with respect to the functional purposes of the installation, and no extra compensation will be allowed for anything omitted but implied.

9.03 REMOVED.

9.04 FORCE ACCOUNT WORK

9.04.01 General – Where extra work is to be paid for on a force account basis, the extra work will be paid for at the actual necessary cost as determined by the Director, plus an allowance for superintendence, general expense, and profit. Such an allowance will be made in accordance with the following schedule:

<u>Actual Necessary Cost</u>	<u>Allowance</u>
Labor	20 Percent
Materials	15 Percent
Equipment	15 Percent

The actual necessary cost for labor, material or equipment will be computed in accordance with Articles 9.04.02, 9.04.03, and 9.04.04, respectively. Office expense, general superintendence, and other general expense will not be included in the computation of actual necessary costs.

It is understood that labor, materials, and equipment may be furnished by the Contractor or by the subcontractor or by others on behalf of the Contractor.

When extra work paid for on a force account basis is performed by forces other than the Contractor's organization, the Contractor shall reach agreement with such other forces as to the distribution of the payment made by the City for such work and no additional payment therefor will be made by the City.

The Contractor shall furnish the Director daily report sheets covering the direct costs of labor and materials and charges for equipment, whether furnished by the Contractor, subcontractor, or other forces and said report sheets shall be signed by the Contractor or his\her authorized agent. The daily report sheets shall provide names or identifications and classifications of workers, and hours worked;

size, type and identification number of equipment, and hours operated. Material charges shall be substantiated by valid copies of vendor's invoices.

The Director will make any necessary adjustments and compile the costs of force account work on daily extra work report forms furnished by the City. When these reports are agreed upon and signed by both parties, they shall become the basis of payment for the work performed but shall not preclude subsequent adjustment based on a later audit.

9.04.02 Labor – The cost of labor used in performing the work by the Contractor, a subcontractor, or other forces will be the sum of the following:

- a. The actual wage paid which shall include any employer payments to, or on behalf of, workers for fringe benefits including health and welfare, pension, vacation, and similar purposes.
- b. To the actual wages, as defined in Article 9.04.02(a), will be provided a percentage set forth in the Special Provision, which percentage shall constitute full compensation for all payment imposed by State and Federal laws including, but not limited to, compensation insurance, and social security payments.
- c. The amount paid for subsistence and travel required by collective bargaining agreements.

At the beginning of the Contract and as later requested by the Director, the Contractor shall furnish the Director three copies of a certificate from the insurance company showing labor compensation rates.

9.04.03 Materials – The cost of materials used in performing the work will be the cost to the purchaser, whether Contractor, subcontractor, or other forces, from the supplier thereof, except as the following are applicable:

- a. Cash or trade discounts available to the purchaser shall be credited to the City notwithstanding the fact that discounts may not have been taken.
- b. In materials secured by other than a direct purchase and direct billing to the purchase, the cost shall be deemed to be the price paid to the actual supplier as determined by the Engineer. Markup except for actual costs incurred in the handling of such materials will not be allowed.
- c. Payment for materials from sources owned wholly or in part by the purchaser for similar materials from said sources on Contract items or the current wholesale price for such materials delivered to the job site, whichever price is lower.
- d. If, in the opinion of the Director, the cost of materials is excessive, or the Contractor does not furnish satisfactory evidence of the cost of such materials, then the cost shall be deemed to be the lowest current wholesale price for the quantity concerned delivered to the job site less cash or trade discounts.

The City reserves the right to furnish materials for the work and no claim shall be made by the Contractor for costs and profit on such materials.

9.04.04 Equipment – The allowance made for such equipment used on force account work shall be determined from the latest schedule of equipment rental rates in use at the date hereof by the California State Transportation Department and incorporate herein by reference the same as though set out in full. Equipment shall be in good operating condition when starting work covered by the order.

Rental time will not be allowed while equipment is inoperative due to breakdowns. Allowance for equipment ownership expense for use of items of equipment not listed with the Board shall be established in conformance with the items listed.

When extra work is ordered, the Contractor shall furnish a complete description of each item of equipment to be used on such extra work, listing the make, model, size, capacity, mounting, type of power and cost.

Allowance determined in accordance with this Article include all costs of operating equipment such as servicing labor and equipment, labor and parts for minor field repairs, fuel, oil, grease, and supplies, but not operating crew labor. No additional payment or allowance will be made in extra work orders for these items other than operating labor in addition to the amounts allowed for equipment use.

When equipment is obtained for the extra work from beyond the limits of the Contract, in addition to the rental rates paid while the equipment is actually in use on the work, the City will pay the cost of loading, unloading, and transporting to and from work subject to the following conditions:

- a. The point from which the equipment is to be transported shall be agreed to by the Director in advance.
- b. Transportation on low bed trailers shall not exceed rates of established haulers or applicable minimum rates of the Public Utilities Commission.
- c. Saturdays, Sundays, and Holidays will not be paid for unless directed by the Director.
- d. The City will pay an amount not to exceed the charge for moving the equipment to the work if the equipment is returned to a location other than from which it was obtained.
- e. Payment for transportation, loading, and unloading will not be made if the equipment is used on the work under the Contract in any other way than upon extra work paid for on a force account

9.05 RETENTION – In accordance with the Contract Documents and applicable law, the City may retain out of any payment due the Contractor up to 5% of the payment. In no event shall the City’s total retention proceeds exceed 5% of the contract price.

Under no circumstances shall any provision of this section be construed to limit the ability of the City to withhold 150 percent of the value of any disputed amount of work from the final payment, as provided for Public Contract Code section 7107(c). In the event of a good faith dispute, nothing in this section shall be construed to require a public entity to pay for work that is not approved or accepted in accordance with the proper plans or specifications.

9.05.010 SECURITIES IN LIEU OF RETENTION – In accordance with Public Contract Code Section 22300, except where federal regulations or polices do not permit substitution of securities, the Contractor may substitute securities for any moneys withheld by the City to ensure performance of the Work. At the Contractor’s request and expense, securities equivalent to the amount withheld will be deposited with the City, or with a state or federally chartered bank in California as the escrow agent, who will then pay those moneys to the Contractor under the terms of an Escrow for Security Deposit agreement. The Escrow for Security Deposit agreement is provided in the Contract Documents. Upon satisfactory completion of the Work, the securities will be returned to the Contractor.

Alternatively, at the Contractor’s request and expense, the City will pay retentions earned directly to the escrow agent. At the Contractor’s expense, the Contractor may direct investment of the payments into

securities. Upon satisfactory completion of the Work, the Contractor will receive from the escrow agent all securities, interest, and payments received by the escrow agent from the City pursuant to this provision and the terms of the Escrow for Security Deposit agreement. The Contractor will, within 20 days of receipt of payment, pay to each subcontractor the respective amount of interest earned, less costs of retention withheld from each Subcontractor, on monies withheld to ensure the Contractor's performance of the Work.

Securities eligible for investment in accordance with this provision include those listed in Government Code Section 16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the City.

The Contractor will be the beneficial owner of any securities substituted for moneys withheld and will receive any interest thereon.

9.06 PARTIAL PAYMENT – At monthly intervals, as fixed by the City, the Contractor will prepare an estimate in writing of the total amount of work done and the acceptable materials furnished and delivered by the Contractor on the ground and not used, to the time of such estimate, and the value thereof. Acceptable materials shall be those materials which will become a part of the finished construction work. The basis for partial payments of lump sum or other unit Contract items will be determined by agreement between the Director and the Contractor. No such estimate of payment shall be required to be made when, in the judgment of the Director the work is not proceeding in accordance with the provisions of the Contract, or when in his/her judgment the total value of the work done since the last estimate amounts to less than \$500. No such estimate or payment shall be considered to be an acceptance of any defective work or improper materials. All progress estimates and payments shall be subject to correction in the final estimate.

9.07 FINAL ESTIMATE AND PAYMENT – As soon as practicable after completion of the work, the Director will prepare in writing and furnish to the Contractor the final estimate of the quantities of work done and all payments due under the Contract, which estimate will show deductions for prior payments and any other amounts to be retained. The amount determined due, less the amount retained, will be paid. This retained amount will not be due or payable until 35 days after the completion of the work and the filing of Notice of Completion and Acceptance in the manner provided by law and until after the Contractor has furnished the City a release by all claims by the Contractor against the City arising by virtue of the Contract except such claims in definite amounts as the Contractor may specifically exempt from the operation of the release.

At the earliest practicable time after having filed a claim, either during the performance of the work or after its completion as specified in the foregoing paragraph, it shall be the responsibility of the Contractor to submit in writing the basis for each claim, reference to the applicable provisions of the Specifications, the method of computation of the amount claimed due, and all other factual data pertaining thereto. Failure to submit such information and details within the 90 days after filing said claims will be sufficient cause for denying the claims. No claim will be considered where there has been a failure to comply with the requirements of Article 4.04.

9.08 SCOPE OF PAYMENT - Payment for all items of work at the unit or lump sum price shall be considered as full compensation for furnishing all labor, materials, tools, equipment, and incidentals necessary to complete the items of work, and no additional allowance will be made therefor.

9.09 GUARANTEE - Should any failure of the work occur within a period of one year after acceptance of the project by the City, which can be attributed to faulty materials, poor work, or defective equipment,

or should discovery be made within this period of any non-compliance with the Plans and Specifications, the Contractor shall promptly make the needed repairs, replacement, or installation at his/her expense.

The City is hereby authorized to make such repairs if the Contractor fails to make or undertake with due diligence the aforesaid repairs within ten days after s\he is given written notice of such failure; provided, however, that in case of emergency where, in the opinion of the Director, delay would cause serious loss or damages, or a serious hazard to the public, the repairs may be made, or lights, signs, and barricades erected without prior notice to the Contractor, and the Contractor shall pay the entire costs thereof.

Unless otherwise set forth in the Special Provisions, as a condition precedent to the acceptance of the Contract, the Contractor shall furnish a corporate surety bond, of an acceptable surety company authorized to do business in the State of California, to protect the City against the results of such faulty materials, poor work, or defective equipment and to guarantee the Contractor's responsibility as outlined above, for period of one year after completion and acceptance of the project by the City. Said bond shall be a sum not less than ten (10%) of the Contract amount.

PART 3: TECHNICAL PROVISIONS

Whenever reference is made to “Standard Specifications”, it shall be interpreted to mean the State of California Department of Transportation Standard Specifications 2018 as revised by the “Revised Standard Specifications,” dated 10-18-2019, issued by the State of California Department of Transportation. Here the term “Special Provisions” is used in the Standard Specifications, it shall be understood to mean these Specifications.

The *Standard Specifications* including *Revised Standard Specifications (RSS)* as revised by these special provisions will apply to this project.

Special provisions are under headings that correspond with the main-section headings of the *Standard Specifications*. A main-section heading is a heading shown in the table of contents of the *Standard Specifications*.

Each special provision begins with a revision clause that describes or introduces a revision to the *Standard Specifications* or *Revised Standard Specifications (RSS)*.

Any paragraph added or deleted by a revision clause does not change the paragraph numbering of the *Standard Specifications* or *RSS* for any other reference to a paragraph of the *Standard Specifications* or *RSS*.

When the word “Department” appears in the Specifications, it refers to the “City.”

Revisions to Standard Specifications and Revised Standard Specifications (RSS)

In the event of conflict between the Standard Specifications and these Special Provisions, the latter shall take precedence over and be used in lieu of such conflicting portions. The listing of certain salient sections from the Standard Specifications and these Special Provisions shall not in any way relieve the Contractor of complying with each and every section of the Standard Specifications.

SECTION 10.01 – PILE JACKET SYSTEM

PART 1 – GENERAL

1.1 DESCRIPTION

1.1.1 This section covers repair of existing steel piles using a pile jacket that encapsulates a reinforced grout which provides a structural repair to restore strength capacity for the steel piles. All components required for the complete repair is referred herein as the pile repair system.

1.2 GENERAL REQUIREMENTS

1.2.1 The components of the pile repair system shall have a demonstrated performance compatible in the marine environment for load bearing piles.

1.2.2 The Contractor shall verify at site all existing conditions and dimensions relating to the work. Notify the City in writing of any unsuitable conditions. Commencement of work without such notification shall be construed as acceptance of all conditions.

1.2.3 All work shall conform to the recommendations of the manufacturer for the component of the pile repair system.

1.3 SUBMITTALS

1.3.1 Prior to installation of the pile repair system, submit to the City for approval, product information on the components of the system including but not limited to the following:

- Fiberglass jacket or HDPE pipe
- Grout
- Reinforcement material

1.3.2 Submit evidence that the pile repair system manufacturer has a track record producing pile repair systems to restore structural capacity and provide protection of timber piles against marine borer infestation for at least 5 years. All products incorporated by the Contractor into the pile repair system shall be furnished by a single manufacturer.

1.4 DELIVERY, HANDLING, AND STORAGE

1.4.1 Protect all materials before, during, and after delivery to the job site, and protect the installed work and materials.

1.4.2 Deliver the materials to the job site and store, all in a safe area, out of the way of traffic, and shored up off the ground surface.

1.4.3 In the event of damage, immediately make all repairs and replacements necessary to the approval of the City and at no additional cost.

PART 2 – PRODUCTS

2.1 PILE JACKET

Pile Jacket shall be either of the following:

2.1.1 Fiberglass Jacket

The fiberglass jacket shall be a minimum of 1/8 inch thick, constructed of layers of roving and mat.

Jacket shall allow visual inspection during the injection of grout.

Jacket shall have injection ports or a means to fill all void space with grout within the damaged pile and jacket.

The jackets shall have standoffs inserted through the jacket to maintain an even annular spacing between the pile and jacket.

The fiberglass jacket shall have the following properties:

Ultimate Tensile Strength	14,000 psi	ASTM D638
UV Stability	400 Hr. Pass	ASTM G23

The jacket shall be manufactured to allow joining in the field. All joints shall be sealed such that no grout will leak from the annular space during installation.

2.1.2 HDPE Jacket

High density polyethylene (HDPE) per ASTM D3350 and D638.

Size as shown. Verify outside diameter of steel piles to ensure jacket will fit over existing pile.

Submit certificates of jacket material for approval prior to mobilization.

2.2 UNDERWATER GROUT

2.2.1 Underwater grout shall be a non-shrink “wash-out” resistant cementitious grout.

2.2.2 Grout shall be in a thixotropic consistency for placement underwater, displacing water and resisting cement wash-out. Grout shall have a flowable consistency to allow filling all voids in the annular space between the pile jacket and pile.

2.2.3 Grout shall attain a minimum compressive strength of 3,000 psi at 28 days and flexural strength of 1200 psi per ASTM C-109.

2.2.4 Grout shall have a minimum bond strength of 1300 psi per ASTM C-882.

2.3 MARINE EPOXY GROUT

2.3.1 Shall be 100% solids multi component epoxy, suitable for application in the marine environment and underwater use suitable for use in the fiberglass jacket system.

2.3.2 Grout shall meet have a consistency suitable for trowel application.

2.3.3 Grout shall develop bond to dry or damp surface.

2.4 REINFORCEMENT

2.4.1 Reinforcement shall be either:

- Steel weld wire fabric, 4x4-W4.0xW4.0T
- ASTM A615 Grade 40, No.3 steel reinforcement

PART 3 – EXECUTION

3.1 PILE REMOVAL

3.1.1 The portions of the steel piles and steel batter piles shall be removed prior to installation of pile jacket.

3.1.2 Cut portion of pile shall become property of the contractor and shall be disposed of legally offsite.

3.2 INSTALLATION

3.2.1 Installation shall be in accordance with the sequences shown and the pile jacket manufacturers' recommendations.

3.2.2 Steel Pile shall be thoroughly cleaned to remove marine growth and delaminated steel.

3.2.3 No grout shall be allowed to leak from jackets during placement.

The grout placement and pump system shall be completely sealed to prevent grout from being deposited into the water and outside the pile jacket.

END OF SECTION

SECTION 10.03 – PERMITTING COMPLIANCE

PART 1 – GENERAL

1.1 DESCRIPTION

1.1.1 This section covers permitting compliance as a bid item. Permitting compliance requires that the Contractor be in compliance with all federal, state, and local environmental regulatory requirements as well as compliance with all project-specific regulatory requirements.

PART 2 – PRODUCTS

(NOT USED)

PART 3 – EXECUTION

3.1 COMPLIANCE WITH ENVIRONMENTAL STATUTES, ORDINANCES AND REGULATIONS

3.1.1 The Contractor shall be knowledgeable of and comply with all applicable federal, state and local environmental regulatory requirements dealing with the prevention of environmental pollution and the preservation of public natural resources that affect or may affect this Project and which pertain to this scope of work.

3.2 COMPLIANCE WITH PROJECT-SPECIFIC REGULATORY REQUIREMENTS

3.2.1 In addition to the requirements listed above, the Contractor shall be knowledgeable of, and comply with the following identified and obtained permits and approvals (also attached in Appendix A), along with any other identified permits and approvals that the Contractor may also need to obtain to complete the proposed work (i.e., local building permit(s), etc.).

- A. US Army Corps of Engineers Permit No. 2020-00076S
 - 1. National Marine Fisheries Service Letter of Concurrence ref No. WCR-2020-03352
 - 2. US Fish and Wildlife Service Letter of Concurrence ref No. 08EVEN00-2021-I-0111
 - 3. State Historic Preservation Office Letter of Concurrence ref No. COE-2021-0301-001 - Tribal monitoring will not be required for this project
- B. Regional Water Quality Control Board 401 Water Quality Certification ref No. 34420WQ13
- C. California Coastal Commission Coastal Development Permit ref No. 3-20-0431 - Except Special Condition 2a, c, and d. No hydroacoustic monitoring or planning will be necessary for this project.
- D. California Environmental Quality Act Initial Study/ Mitigated Negative Declaration- Appendix F Mitigation Monitoring and Reporting Program
- E. Other local construction/building permits, if deemed necessary. These will be obtained by either the City, Project Engineer, or Contractor (yet to be determined). All included measures and conditions shall be adhered to by the Contractor.

3.2.2 Permit Compliance shall be a bid item. The Contractor shall be responsible for correctly maintaining these permits, approvals, licenses, certificates and other environmental regulatory requirement correspondence on-site or as required. Bid item includes:

- A. Wildlife monitoring/ marine mammal monitoring as described in the permits
- B. Pollution prevention measures
- C. Debris containment measures
- D. Other measures as described in attached permits

END OF SECTION

PART 4: SPECIAL PROVISIONS

11.01 COVID-19 Construction Guidance – The Contractor shall be responsible for complying with the Santa Cruz County Health Officer Order of May 1, 2020 and all subsequent amendments.

COVID-19 – Control and Prevention / Construction Guidance:

<https://www.osha.gov/coronavirus/control-prevention/construction>

Appendix A
Project Permits



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102

DEPARTMENT OF THE ARMY PERMIT

PERMITTEE: Kailash Mozumder, City of Capitola

PERMIT NO.: SPN-2020-00076

ISSUING OFFICE: San Francisco District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate District or Division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below:

PROJECT DESCRIPTION: The City of Capitola proposes to widen a section of the Capitola Wharf structure and make various necessary structural repairs. The proposed widening would be along a 458-foot long section of the trestle, widening this section from its existing 20-foot width to approximately 36 feet to allow a separate lane of travel for pedestrians. This widening would require the installation of up to 120 15-inch fiberglass piles to support the structure. In addition, various improvements would be made to the trestle that would not expand the area of the over-water structure itself.

The project would also conduct maintenance and repairs of existing structural components, including:

- replacing approximately 21 12-inch damaged creosote treated piles with timber or fiberglass piles
- repairing up to 12 steel piles at the Wharf head
- replacing existing exposed ACZA treated timber decking
- replacing 260 linear feet of pile caps and 680 linear feet of stringers
- repairing the hoist landing area by replacing damaged components
- relocating wharf utilities above deck

Future maintenance may include the repair and replacement of any of the wharf structure members (piles and deck), as well as appurtenances (utilities, lighting railing, etc.). These repairs and replacements would not exceed:

- 5 piles per year (with up to two piles being driven during any given day)
- 10 percent of decking or approximately 3,500 square feet
- approximately 300 linear feet of deteriorated stringers
- approximately 200 linear feet of railing

Finally, the project would remove 30 creosote-treated derelict piles that are adjacent to the Wharf.

All work shall be completed in accordance with the plans and drawings titled "USACE File #2020-00076, Capitola Wharf Resiliency and Public Access Improvement Project, in 9 sheets," provided as enclosure 1.

PROJECT LOCATION: Capitola Wharf, Wharf Road, City of Capitola, Monterey County, California

PERMIT CONDITIONS:

GENERAL CONDITIONS:

1. The time limit for completing the work authorized ends on August 31, 2026. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. For your convenience, a copy of the water quality certification or waiver is attached. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.
7. You understand and agree that, if future operations by the United States require the removal, relocation or other alteration of the structure or work authorized herein, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, you will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

SPECIAL CONDITIONS:

1. The USFWS and NMFS concurred with the determination that the project was not likely to adversely affect southern sea otter (*Enhydra lutris neries*), CCC coho salmon (*Oncorhynchus kisutch*), CCC steelhead (*O. mykiss*), North American green sturgeon (*Acipenser medirostris*), green sea turtle (*Chelonia mydas*), leatherback sea turtle (*Dermochelys coriacea*), loggerhead sea turtle (*Caretta caretta*), Olive Ridley sea turtle (*Lepidochelys olivacea*), Guadalupe fur seal (*Arctocephalus townsendi*), blue whale (*Balaenoptera musculus*), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), killer whale (*Orcinus orca*), North Pacific right whale (*Eubalaena japonica*), Sei whale (*B. borealis*) and sperm whale (*Physeter catodon*), and designated critical habitat for these species. This concurrence was premised, in part, on project work restrictions outlined in enclosures 3 and 4, respectively. These work restrictions are incorporated as special conditions to this authorization for your project to ensure unauthorized incidental take of species and loss of critical habitat does not occur.
2. To minimize potential impacts to cultural resources, the permittee shall coordinate with the Coastanoan Ohlone Rumsen-Mutsun Tribe to retain a qualified cultural tribal monitor for the project's ground-disturbing activities, including pile removal work above mean higher high water. The permittee shall provide this monitor with the

construction schedule at least two weeks prior to the start of ground disturbing activities that would require monitoring, and give the monitor access to the construction site.

3. The permittee must submit a post-construction report documenting the completion of the wharf widening activities 45 days after the conclusion of these activities. The report shall contain as-built drawings (if different from drawings submitted with application) and include before and after photos.
4. The permittee shall submit annual reports on January 31 of each year for the previous year's maintenance activities to the Corps. This report shall include a summary of the repair activities conducted by type and confirmation of compliance with all the conservation measures outlined in the correspondence from the U.S. Fish and Wildlife Service dated February 3, 2021, and from the National Marine Fisheries Service, dated June 4, 2021.

FURTHER INFORMATION:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
 - (X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403).
 - () Section 404 of the Clean Water Act (33 U.S.C. Section 1344).
 - () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. Section 1413).
2. Limits of this authorization:
 - a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the

circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate. (See Item 4 above.)
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 C.F.R. § 325.7 or enforcement procedures such as those contained in 33 C.F.R. §§ 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 C.F.R. § 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

- 6. Extensions: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

Digitally signed by Kailash Mozumder
 DN: cn=Kailash Mozumder, o=City of Capitola, ou=Public Works,
 email=kmozumder@ci.capitola.ca.us, c=US
 Date: 2021.08.09 14:05:25 -07'00'

8-9-2021

(PERMITTEE)

(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.



Digitally signed by Katerina Galacatos
 Date: 2021.08.11 19:30:02 -07'00'

 Katerina Galacatos
 South Branch Chief, Regulatory Division

(DATE)

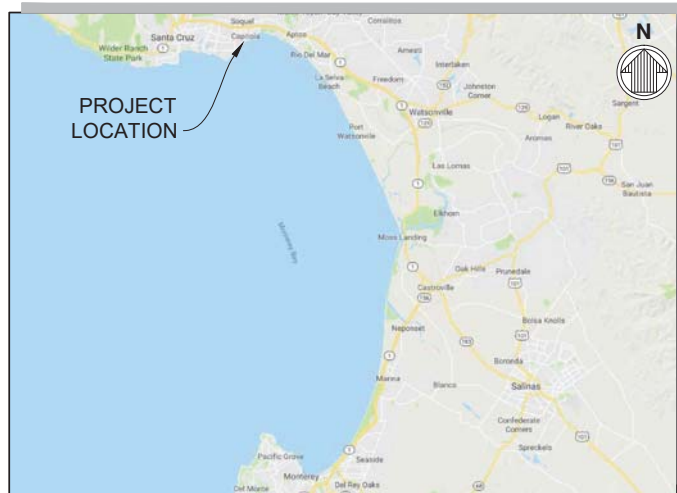
When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE)

(DATE)

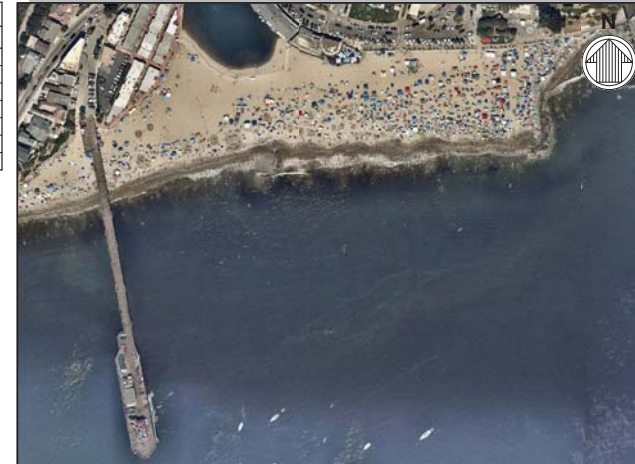
CAPITOLA WHARF

RESILIENCY AND PUBLIC ACCESS IMPROVEMENT



VICINITY MAP
 SCALE: NTS

INDEX OF DRAWINGS	
SHEET NO	SHEET TITLE
G-001	TITLE SHEET
C-100	OVERALL WHARF PLAN
C-101	EXISTING WHARF
C-102	WIDENING WHARF PLAN AND SECTION
C-103	WHARF PILE REPAIRS
C-104	WHARF RESTROOMS
C-121	TYPICAL DETAILS



TIDAL DATUM (MONTEREY GAUGE)

MEAN HIGHER HIGH WATER (MHHW)	+5.33ft
MEAN SEA LEVEL (MSL)	+2.83ft
MEAN LOWER LOWER WATER (MLLW)	0ft
NORTH AMERICAN VERTICLE DATUM (NAVD) 88	-0.13ft

LEGEND

- EXISTING FEATURE
- PROJECT FEATURE

ABBREVIATIONS

- APPROX APPROXIMATE
- (E) EXISTING
- UNON UNLESS OTHERWISE NOTED

USACE File # SPN-2020-00076S



US Army Corps of Engineers

Capitola Wharf Resiliency and
 Public Access Improvement Project

Monterey County, California

Date: July 30, 2021

9 sheets



No.	DATE	DESCRIPTION	BY	CHECKED

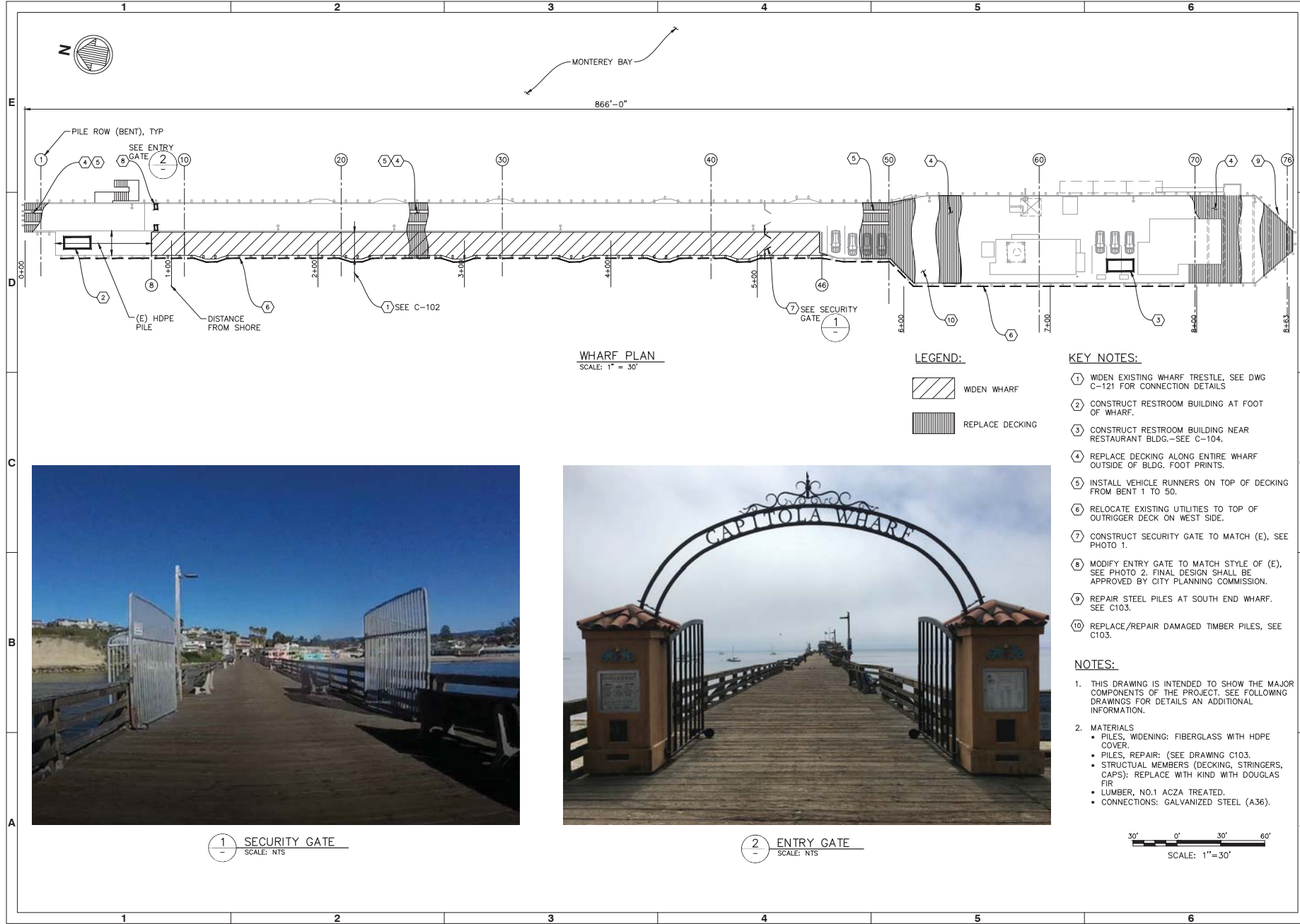
CAPITOLA WHARF
 RESILIENCY AND PUBLIC ACCESS
 IMPROVEMENT
 TITLE SHEET

Date: 03/20/20 03-05-2020 M&P Project No.: 015401 Drawing scale: Drawing scale: 1" = 10'-0" (SEE IT)	Design by: BR Design by: AC Checked by: MARY J. MCKINLEY Date: 3/16/2020 2:52 PM by: PORTER, BRAD. Sheet: 3/16/2020 1:47 PM by: PMLA
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11555 CALIFORNIA BLVD.
 SUITE 100
 WALNUT CREEK, CA 94596



Sheet Reference No.
G-001
 DEX: 1 OF 7



Rev.	Date	Description

**CAPITOLA WHARF
RESILIENCY AND PUBLIC ACCESS
IMPROVEMENT**

OVERALL WHARF PLAN

Date: 03/20/2020	Drawn by: MATT WILSON	Drawn scale: 1" = 30'
03-05-2020	MMR Project No.: 0194-01	Revised: 11/03/2021

Designed by: MATT WILSON	Checked by: MATT WILSON
Drafted by: PH	Reviewed by: MATT WILSON

31858 CALIFORNIA BLVD.
SUITE 100
WALNUT CREEK, CA 94596

REGISTERED PROFESSIONAL ENGINEER
No. 04276
Exp. 03/31/2024
CIVIL
STATE OF CALIFORNIA

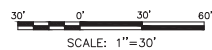
Sheet Reference No.
C-100
INDEX: 2 OF 7



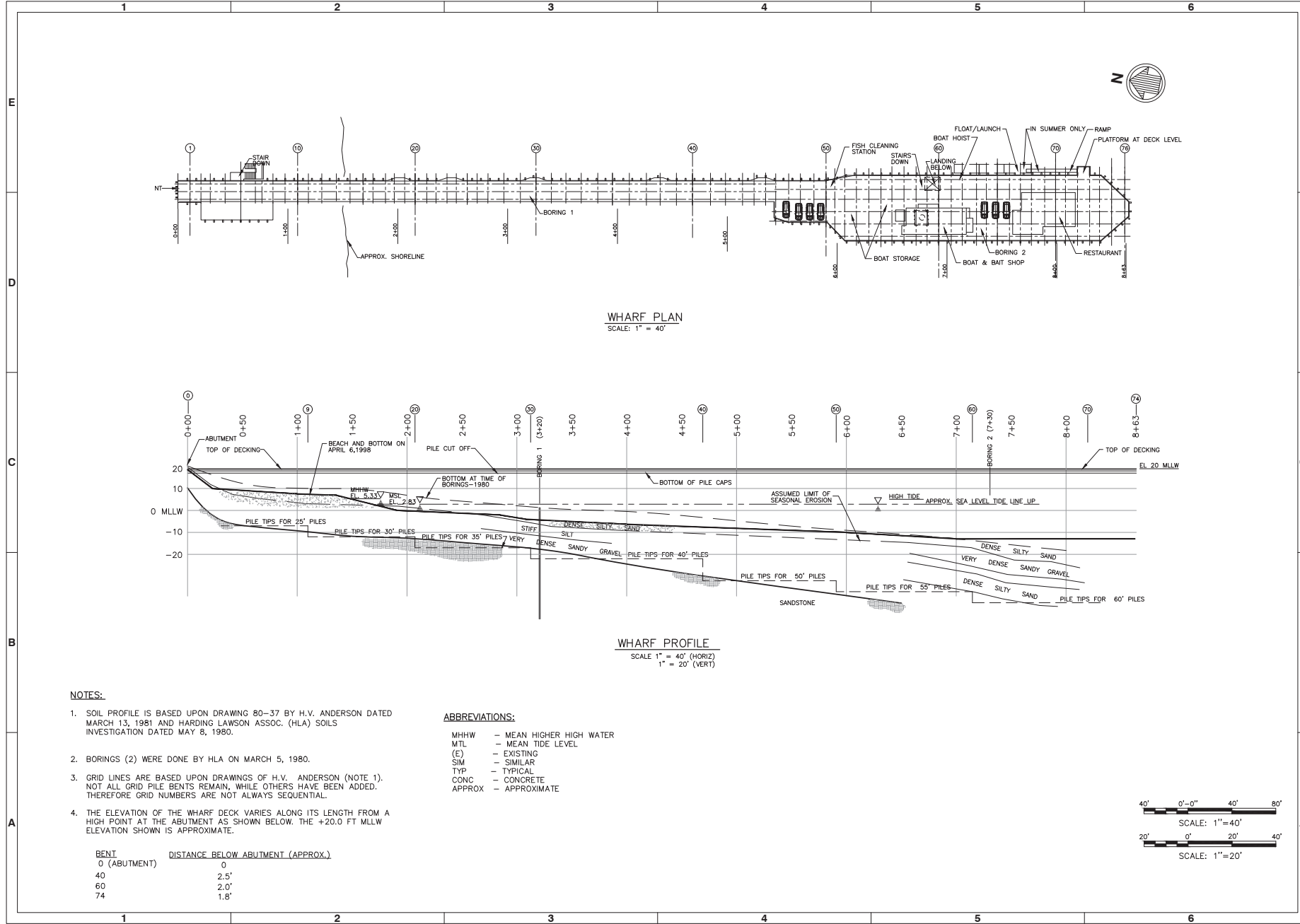
1
SECURITY GATE
SCALE: NTS



2
ENTRY GATE
SCALE: NTS



DRAWING SCALES SHOWN BASED ON 22"x34" DRAWING



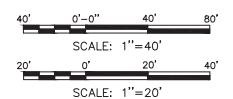
NOTES:

- SOIL PROFILE IS BASED UPON DRAWING 80-37 BY H.V. ANDERSON DATED MARCH 13, 1981 AND HARDING LAWSON ASSOC. (HLA) SOILS INVESTIGATION DATED MAY 8, 1980.
- BORINGS (2) WERE DONE BY HLA ON MARCH 5, 1980.
- GRID LINES ARE BASED UPON DRAWINGS OF H.V. ANDERSON (NOTE 1). NOT ALL GRID PILE BENTS REMAIN, WHILE OTHERS HAVE BEEN ADDED. THEREFORE GRID NUMBERS ARE NOT ALWAYS SEQUENTIAL.
- THE ELEVATION OF THE WHARF DECK VARIES ALONG ITS LENGTH FROM A HIGH POINT AT THE ABUTMENT AS SHOWN BELOW. THE +20.0 FT MLLW ELEVATION SHOWN IS APPROXIMATE.

ABBREVIATIONS:

- MHHW - MEAN HIGHER HIGH WATER
- MTL - MEAN TIDE LEVEL
- (E) - EXISTING
- SIM - SIMILAR
- TYP - TYPICAL
- CONC - CONCRETE
- APPROX - APPROXIMATE

BENT	DISTANCE BELOW ABUTMENT (APPROX.)
0 (ABUTMENT)	0
40	2.5'
60	2.0'
74	1.8'



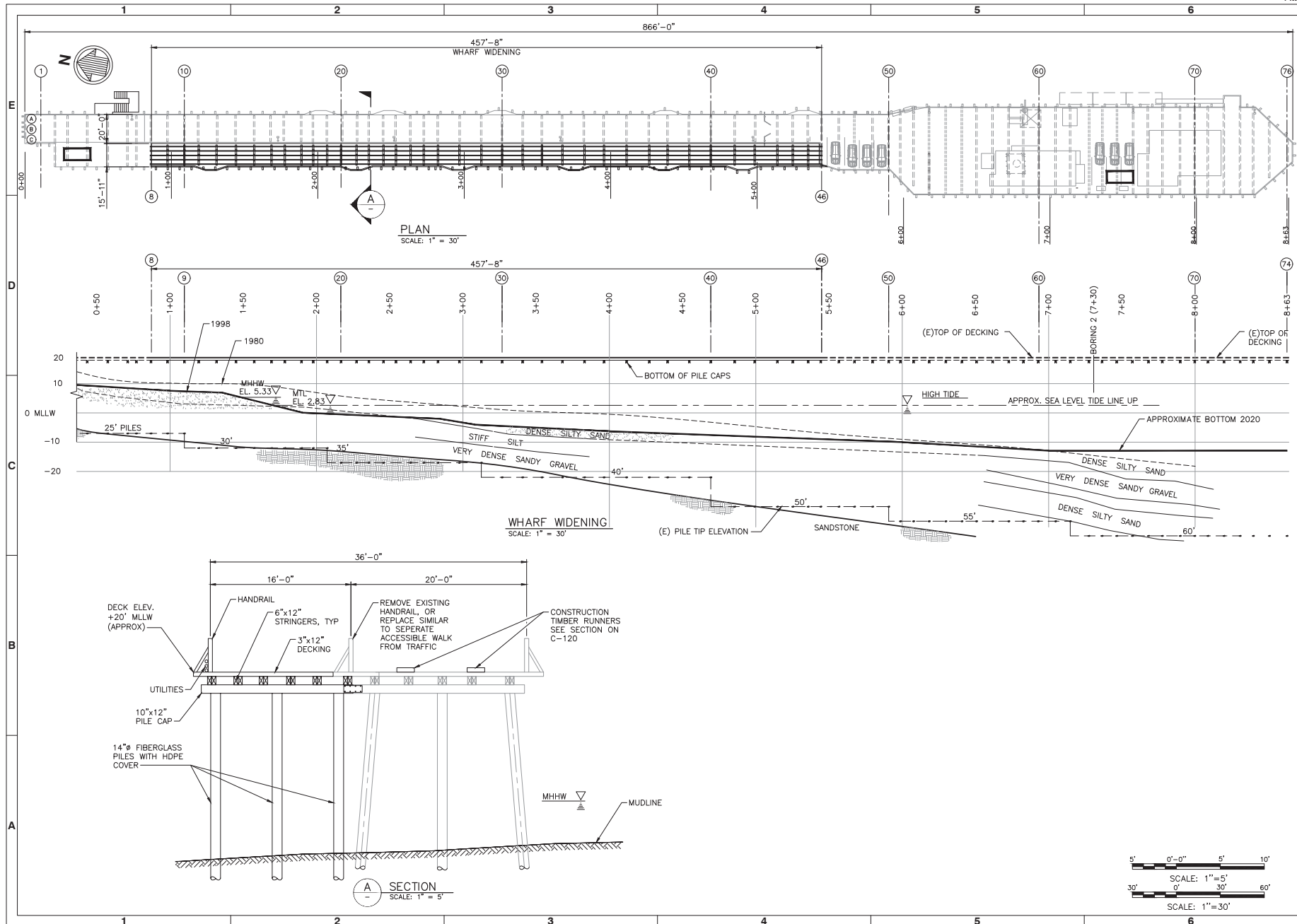


**CAPITOLA WHARF
 RESILIENCY AND PUBLIC ACCESS
 IMPROVEMENT**

EXISTING WHARF

Date: 03/20/20	Rev: 00-05-2020	Drawing scale: 1" (D-SHEET)	Drawing date: 11/02/2021
Design by: B	Drawn by: AC	Reviewed by: MARY K. MOORE	Permit No.: 17192002.2-80 PM BY ACHABANE
3185 CALIFORNIA BLVD. SUITE 200 WALNUT CREEK, CA 94596			
			
			
Sheet Reference No. C-101 INDEX: 3 OF 7			

DRAWING SCALES SHOWN BASED ON 22"x34" DRAWING



CITY OF CAPITOLA
 INCORPORATED 1984

CAPITOLA WHARF RESILIENCY AND PUBLIC ACCESS IMPROVEMENT
WHIDENING WHARF PLAN AND SECTION

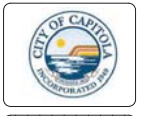
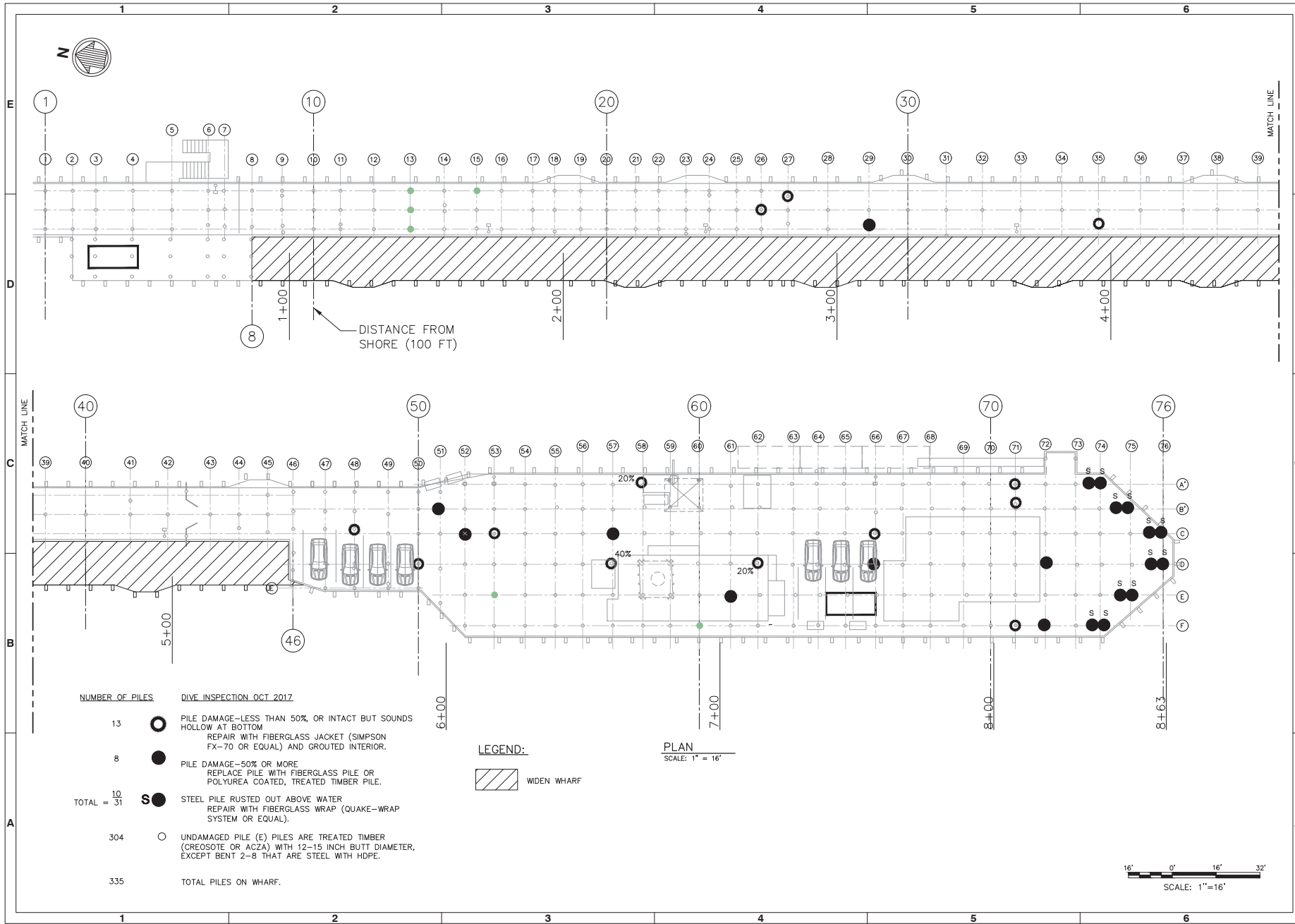
Date: 03/31/2020
 Design by: EP
 Drawn by: AC/PH
 Checked by: [Signature]
 2188 N. CALIFORNIA BLVD.
 SUITE 100
 WALNUT CREEK, CA 94596

Scale: 1" = 5'
 Scale: 1" = 30'

Sheet Reference No. **C-102**
 INDEX: 4 OF 7

PROFESSIONAL ENGINEER
 No. 042795
 CIVIL
 STATE OF CALIFORNIA

DATE: 03/31/2020
 TIME: 2:54 PM
 BY: PORTER_BROAD



NO.	REVISION	DATE	BY

CAPITOLA WHARF RESILIENCY AND PUBLIC ACCESS IMPROVEMENT

WHARF PILE REPAIRS

Design by: W&M	Date: 03/20/20	Drawn by: W&M	Checked by: W&M
Design by: PH	Date: 03-05-2020	Drawn by: PH	Checked by: PH
Design by: W&M	Date: 03-05-2020	Drawn by: W&M	Checked by: W&M
Design by: W&M	Date: 03-05-2020	Drawn by: W&M	Checked by: W&M

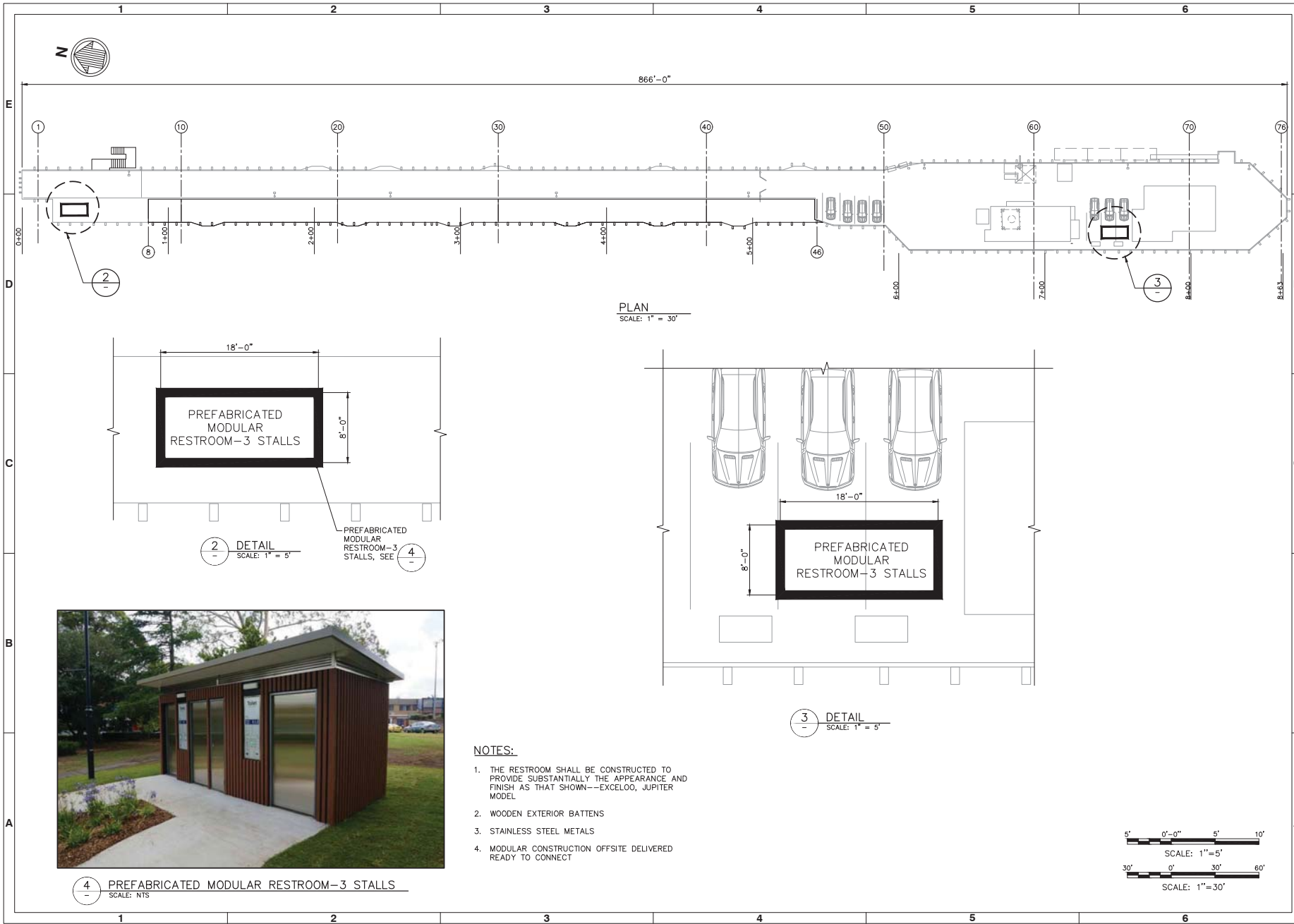
3855 CALIFORNIA BLVD.
 SUITE 200
 WALNUT CREEK, CA 94596

W&M CONSULTANTS



Sheet Reference No. C-103
INDEX: 5 OF 7

DRAWING SCALES SHOWN BASED ON 22"x34" DRAWING



PLAN
 SCALE: 1" = 30'

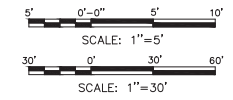
2
 DETAIL
 SCALE: 1" = 5'

3
 DETAIL
 SCALE: 1" = 5'

4
 PREFABRICATED MODULAR RESTROOM-3 STALLS
 SCALE: NTS

NOTES:

1. THE RESTROOM SHALL BE CONSTRUCTED TO PROVIDE SUBSTANTIALLY THE APPEARANCE AND FINISH AS THAT SHOWN--EXCELOO, JUPITER MODEL
2. WOODEN EXTERIOR BATTENS
3. STAINLESS STEEL METALS
4. MODULAR CONSTRUCTION OFFSITE DELIVERED READY TO CONNECT



NO.	DATE	DESCRIPTION	BY	CHK.

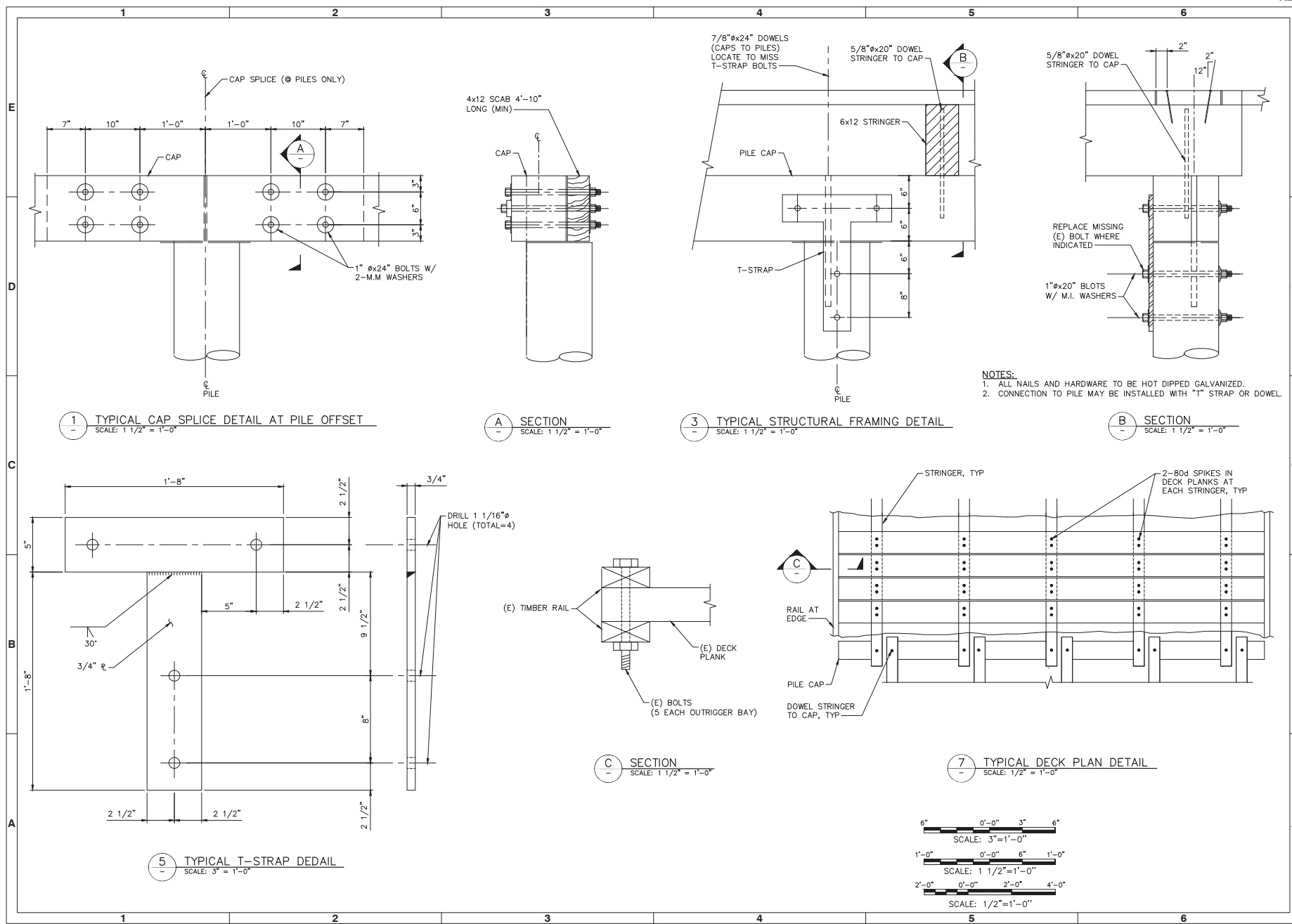
**CAPITOLA WHARF
 RESILIENCY AND PUBLIC ACCESS
 IMPROVEMENT**

WHARF RESTROOMS

Drawn by: [Name]
 Checked by: [Name]
 Date: 03/23/2020
 Scale: 1" = 30'
 Project No: 015401
 Drawing No: [Number]
 Revision: 1 (0.20.20)
 Prepared by: [Name]
 Checked by: [Name]
 Date: 03/23/2020
 Scale: 1" = 30'
 Project No: 015401
 Drawing No: [Number]
 Revision: 1 (0.20.20)

Sheet Reference No.
C-104
 INDEX: 6 OF 7

DRAWING SCALES SHOWN BASED ON 22"x34" DRAWING



Rev.	Date	By	Check

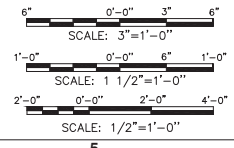
**CAPITOLA WHARF
 RESILIENCY AND PUBLIC ACCESS
 IMPROVEMENT**

TYPICAL DETAILS

Drawn by: AC	Checked by: AC	Scale: 1/2" = 1'-0"
Drawn by: AC	Checked by: AC	Scale: 1/2" = 1'-0"
Drawn by: AC	Checked by: AC	Scale: 1/2" = 1'-0"
Drawn by: AC	Checked by: AC	Scale: 1/2" = 1'-0"
Drawn by: AC	Checked by: AC	Scale: 1/2" = 1'-0"
Drawn by: AC	Checked by: AC	Scale: 1/2" = 1'-0"
Drawn by: AC	Checked by: AC	Scale: 1/2" = 1'-0"
Drawn by: AC	Checked by: AC	Scale: 1/2" = 1'-0"
Drawn by: AC	Checked by: AC	Scale: 1/2" = 1'-0"
Drawn by: AC	Checked by: AC	Scale: 1/2" = 1'-0"



Sheet Reference No.
C-121
 INDEX: 7 OF 7



DRAWING SCALES SHOWN BASED ON 22"x34" DRAWING



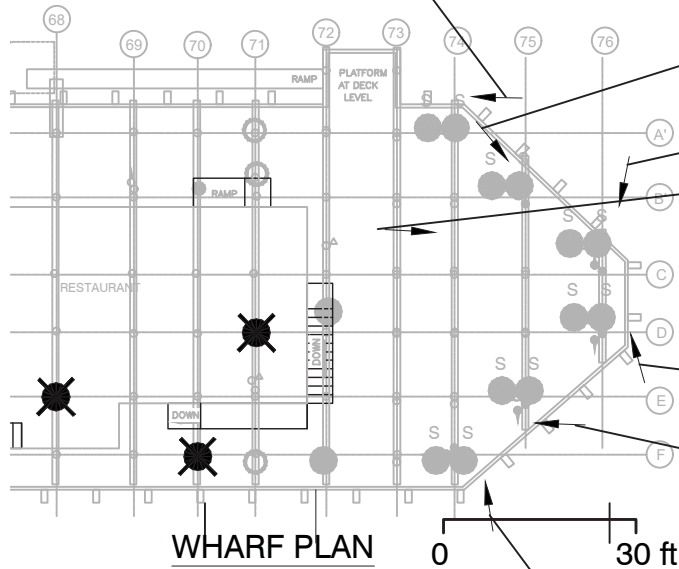
1-BENT 74 A



2-BENT 75B



3-BENT 76C



WHARF PLAN

0 30 ft

7-WHARF DECK



SAG IN WHARF STRUCTURE



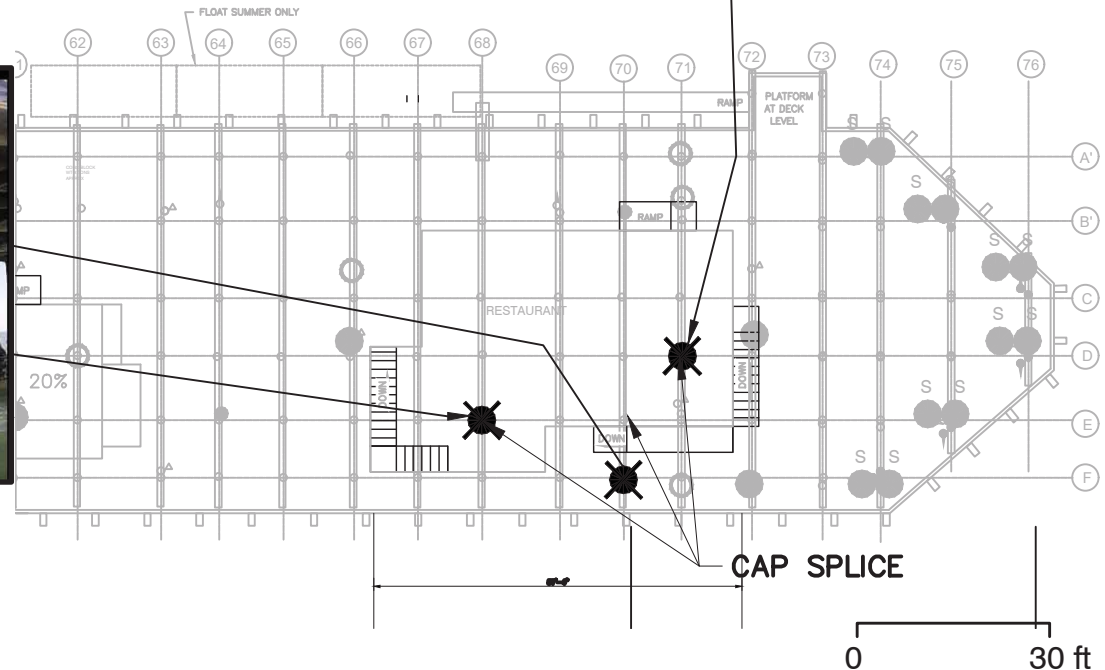
6-BENT 75F



5-BENT 75E



4-BENT 76D



NOTES:

1. BENTS 68, 70 WERE OBSERVED ON 12/10/2020 BY BOAT. THERE IS A CAP SPLICE/Joint ALONG LINE E AT BOTH BENTS 68 AND 70, WHICH RESULTS IN SIGNIFICANT LOSS OF CAPACITY ALONG ON BENTS 68 AND 70 BETWEEN LINES E AND F.
2. BENTS 71D WAS OBSERVED BY WHARF STAFF ON JAN 11, 2021

PLAN-BENTS 68, 70, 71 PILES



MISSING OR SEVERED PILE

PILE >50% LOSS

moffatt & nichol
 2185 N. California Blvd, Suite 500
 Walnut Creek, CA 94596

**CAPITOLA WHARF
 STORM DAMAGE TO PILES
 JAN 11, 2021**



GAVIN NEWSOM
GOVERNOR



JARED BLUMENFELD
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Coast Regional Water Quality Control Board

February 9, 2021

Kailash Mozumder
City of Capitola
420 Capitola Avenue
Capitola, CA 95010
Email: kmozumder@ci.capitola.ca.us

VIA ELECTRONIC MAIL

Dear Mr. Mozumder:

WATER QUALITY CERTIFICATION NO. 34420WQ13 FOR CAPITOLA WHARF RESILIENCY AND PUBLIC ACCESS IMPROVEMENT AND MAINTENANCE PROJECT, SANTA CRUZ COUNTY

Thank you for the opportunity to review your August 3, 2020 application for water quality certification of the Capitola Wharf Resiliency and Public Access Improvement and Maintenance Project (Project). The application was completed on August 13, 2020. All supplemental information requested was received on February 8, 2021. The project, if implemented as described in your application and with the additional mitigation and other conditions required by this Clean Water Act Section 401 Water Quality Certification (Certification), appears to be protective of beneficial uses of State waters. We are issuing the enclosed Certification. Should new information come to our attention that indicates a water quality problem, we may require additional monitoring and reporting, issue waste discharge requirements, or take other action.

Your Certification application and submitted documents indicate that project activities have the potential to affect beneficial uses and water quality. The Central Coast Regional Water Quality Control Board (Central Coast Water Board) issues this Certification to protect water quality and associated beneficial uses from project activities. We need reports to determine compliance with this Certification. All technical and monitoring reports requested in this Certification, or any time after, are required per section 13383 of the California Water Code. Failure to submit reports required by this Certification, or failure to submit a report of technical quality acceptable to the Executive Officer, may subject you to enforcement action per section 13385 of the California Water Code.

Any person affected by this Central Coast Water Board action may petition the State Water Resources Control Board (State Water Board) to review this action in accordance with California Water Code section 13320; and Title 23, California Code of Regulations, sections 2050 and 3867-3869. The State Water Board, Office of Chief Counsel, PO Box 100, Sacramento, CA 95812, must receive the petition within 30 days of the date of this Certification. We will provide upon request copies of the law and regulations applicable to filing petitions.

DR. JEAN-PIERRE WOLFF, CHAIR | MATTHEW T. KEELING, EXECUTIVE OFFICER

City of Capitola

Certification No. 34420WQ13

February 9, 2021

If you have questions please contact **Kim Sanders** at (805) 542-4771 or via email at Kim.Sanders@waterboards.ca.gov, or Phil Hammer at (805) 549-3882. Please mention the above certification number in all future correspondence pertaining to this project.

Sincerely,



Digitally signed by Phillip Hammer

Date: 2021.02.09 17:23:34 -08'00'

for
Matthew T. Keeling
Executive Officer

Enclosure: Action on Request for CWA Section 401 Water Quality Certification

cc: With enclosures

Taylor Meyers
Moffatt & Nichol
E-mail: tmeyers@moffattnichol.com

CWA Section 401 WQC Program
Division of Water Quality
State Water Resources Control Board
E-mail: Stateboard401@waterboards.ca.gov

Katerina Galacatos
U.S. Army Corps of Engineers
E-mail: Katerina.galacatos@usace.army.mil

Tessa Gallagher
Central Coast Water Board
E-mail: Tessa.Gallagher@waterboards.ca.gov

Randi Adair
California Department of Fish and Wildlife
E-mail: Randi.Adair@wildlife.ca.gov

Harvey Packard
Central Coast Water Board
Email: Harvey.Packard@waterboards.ca.gov

Wesley Stokes
California Department of Fish and Wildlife
Email: Wesley.Stokes@wildlife.ca.gov

Kim Sanders
Central Coast Water Board
E-mail: Kim.Sanders@waterboards.ca.gov

Jennifer Siu
U.S. Environmental Protection Agency
E-mail: siu.jennifer@epa.gov

Action on Request for
Clean Water Act Section 401 Water Quality Certification
for Discharge of Dredged and/or Fill Materials

PROJECT: Capitola Wharf Resiliency and Public Access Improvement and Maintenance

PERMITTEE: Kailash Mozumder
City of Capitola
420 Capitola Avenue
Capitola, CA 95010

ACTION:

1. Order for Standard Certification
2. Order for Technically-Conditioned Certification
3. Order for Denial of Certification

STANDARD CONDITIONS:

1. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment per section 13330 of the California Water Code and section 3867 of Title 23 of the California Code of Regulations (23 CCR).
2. This Certification action is not intended to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed per 23 CCR subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license was being sought.
3. The validity of any non-denial Certification action (Actions 1 and 2) is conditioned upon total payment of the fee required under 23 CCR section 3833, unless otherwise stated in writing by the certifying agency.

ADMINISTRATIVE CONDITIONS:

1. This Certification is subject to the acquisition of all local, regional, state, and federal permits and approvals as required by law. Failure to meet any conditions contained herein or any conditions contained in any other permit or approval issued by the State of California or any subdivision thereof may result in the revocation of this Certification and civil or criminal liability.
2. In the event of a violation or threatened violation of this Certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification.

City of Capitola

Certification No. 34420WQ13

February 9, 2021

3. In response to a suspected violation of any condition of this Certification, the Central Coast Water Board may require the holder of any permit or license subject to this Certification to furnish, under penalty of perjury, any technical or monitoring reports the Central Coast Water Board deems appropriate, provided that the burden, including costs, of the reports shall have a reasonable relationship to the need for the reports and the benefits obtained from the reports.
4. In response to any violation of the conditions of this Certification, the Central Coast Water Board may add to or modify the conditions of this Certification as appropriate to ensure compliance.
5. The Central Coast Water Board reserves the right to suspend, cancel, or modify and reissue this Certification, after providing notice to the Permittee, if the Central Coast Water Board determines that the Project fails to comply with any of the terms or conditions of this Certification.
6. A copy of this Certification, the application, and supporting documentation must be available at the Project site during construction for review by site personnel and agencies. A copy of this Certification must also be provided to the contractor and all subcontractors who will work at the Project site. All personnel performing work on the proposed Project shall be familiar with the content of this Certification and its posted location on the Project site.
7. The Permittee shall grant Central Coast Water Board staff, or an authorized representative, upon presentation of credentials and other documents as may be required by law, permission to enter the Project site at reasonable times, to ensure compliance with the terms and conditions of this Certification and/or to determine the impacts the Project may have on waters of the State.
8. The Permittee must, at all times, fully comply with the application, engineering plans, specifications, and technical reports submitted to support this Certification; all subsequent submittals required as part of this Certification; and the attached Project Information and Conditions. The conditions within this Certification and attachment(s) supersede conflicting provisions within Permittee submittals.
9. The Permittee shall notify the Central Coast Water Board within 24 hours of any unauthorized discharge to waters of the U.S. and/or State; measures that were implemented to stop and contain the discharge; measures implemented to clean-up the discharge; the volume and type of materials discharged and recovered; and additional BMPs or other measures that will be implemented to prevent future discharges.
10. This Certification is not transferable to any person except after notice to the Executive Officer of the Central Coast Water Board. The Permittee shall submit this notice in writing at least 30 days in advance of any proposed transfer. The notice must include a written agreement between the existing and new responsible party containing a specific date for the transfer of this Certification's responsibility and coverage between the current responsible party and the new responsible party. This agreement shall include an acknowledgement that the existing responsible party is liable for compliance and violations up to the transfer date and that the new responsible party is liable from the transfer date on.
11. This Order and all of its conditions contained herein continue to have full force and effect regardless of the expiration or revocation of any federal license or permit issued for the

City of Capitola

Certification No. 34420WQ13

February 9, 2021

Project. For purposes of Clean Water Act, section 401(d), this condition constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements of state law. This Order expires five years from the date of this Order.

12. The total certification fee for this project is \$1,949. The remaining certification fee payable to the Central Coast Water Board is \$0. Annual fees may apply.

CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS:

1. Environmental Review

On June 4, 2020, the City of Capitola, as lead agency, adopted an initial study/mitigated negative declaration (IS/MND) (State Clearinghouse (SCH) No. 2020040104) for the Project and filed a Notice of Determination (NOD) at the SCH on June 8, 2020. The Central Coast Water Board is a responsible agency under CEQA (Pub. Resources Code section 21069) and in making its determinations presumes that City of Capitola's adopted environmental document comports with the requirements of CEQA and is valid. (Pub. Resources Code section 21167.3.) The Central Coast Water Board has reviewed and considered the environmental document and the environmental effects of the Project on water quality and beneficial uses. (Cal. Code Regs., tit. 14, section 15096, subd. (f).)

2. Incorporation by Reference

CEQA project impacts, including those discussed in subsection C below, are analyzed in the Project Final IS/MND which is incorporated herein by reference. Requirements under the purview of the Central Coast Water Board in the mitigation monitoring and reporting program are incorporated herein by reference. The Permittee's application for this Order, including all supplemental information provided, is incorporated herein by reference.

CENTRAL COAST WATER BOARD CONTACT PERSON:

Kim Sanders
(805) 542-4771
Kim.Sanders@waterboards.ca.gov

Please refer to the above certification number when corresponding with the Central Coast Water Board concerning this project.

WATER QUALITY CERTIFICATION:

I hereby issue an order certifying that as long as all the conditions listed in this Certification are met, any discharge from the Capitola Wharf Resiliency and Public Access Improvement and Maintenance Project shall comply with the applicable provisions of sections 301 ("Effluent Limitations"), 302 ("Water Quality Related Effluent Limitations"), 303 ("Water Quality Standards and Implementation Plans"), 306 ("National Standards of Performance"), and 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. This discharge is also regulated pursuant to State Water Board Water Quality Order No. 2003-0017-DWQ, which requires compliance with all conditions of this Certification.

Except insofar as may be modified by any preceding conditions, all Certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the Permittee's project description, Certification conditions, and the attached Project Information and Conditions, and (b) compliance with all applicable

City of Capitola

Certification No. 34420WQ13

requirements of the Central Coast Water Board's policies and Water Quality Control Plan (Basin Plan).



Digitally signed by Phillip Hammer
Date: 2021.02.09 17:24:32 -08'00'

for _____
Matthew T. Keeling
Executive Officer
Central Coast Water Board

February 9, 2021
Date

Mr. Mozumder

Certification No. 34420WQ13

February 9, 2021

PROJECT INFORMATION AND CONDITIONS

Application Date	Received: August 3, 2020 Completed: August 13, 2020
Permittee	Kailash Mozumder City of Capitola 420 Capitola Avenue Capitola, CA 95010 Email: kmozumder@ci.capitola.ca.us 831-479-8879
Permittee Representatives	Taylor Meyers Moffatt & Nichol 2185 N. California Blvd, Ste 500 Walnut Creek, CA E-mail: tmeyers@moffattnichol.com 206-622-0222
Project Name	Capitola Wharf Resiliency and Public Access Improvement and Maintenance
Application Number	34420WQ13
Type of Project	Boating and Navigation
Project Location	Capitola Latitude: 36° 58' 16.02" N Longitude: 121° 57' 13.35" W
County	Santa Cruz
Receiving Water(s)	Monterey Bay 304.00 Big Basin Hydrologic Unit
Water Body Type	Bay, ocean

<p>Designated Beneficial Uses</p>	<p>Industrial Water Supply; Water Contact and Non-Contact Recreation, Including Aesthetic Enjoyment; Navigation; Commercial and Sport Fishing; Mariculture; Preservation and Enhancement of Designated Areas of Special Biological Significance; Rare and Endangered Species; Marine Habitat; Fish Migration; Fish Spawning and Shellfish Harvesting</p>
<p>Project Description (purpose/goal)</p>	<p>The purpose of this project is to expand a section of the wharf's existing narrow trestle system and complete necessary repairs that will improve wharf resiliency and public safety. Central Coast Regional Water Quality Control Board (Central Coast Water Board) staff understands that the project includes the following activities:</p> <ol style="list-style-type: none"> 1. Installing 120 new 16-inch fiberglass piles; 2. Repairing or replacing approximately 21, 12-inch damaged creosote treated piles; 3. Repairing twelve steel piles at the wharf head; 4. Replacing the exposed existing treated timber decking; 5. Placing 4,500 square feet of treated timber decking on top of the replaced decking to serve as vehicle runners; 6. Replacing up to 260 linear feet of pile caps and 680 linear feet of stringers; 7. Replacing damaged timber or fiberglass members and metal connection hardware in kind; 8. Relocating wharf utilities above deck; 9. Installing a new security gate on the trestle; 10. Modifying the gate at the front of the wharf near the store; 11. Constructing a new bathroom facility; 12. Installing a new hoist for the boat ramp; 13. Removing approximately 30 abandoned derelict creosote treated piles from Hooper's Beach that were installed between 1921 and 1930 to support a boathouse; and 14. Maintaining the wharf on an as needed basis including replacement or repair of the following: <ol style="list-style-type: none"> a. Up to five piles per year (with up to two piles being driven during any given day); b. Up to 10 percent of decking or approximately 3,500 square feet; c. Up to approximately 300 linear feet of deteriorated stringers; d. Up to approximately 200 linear feet of railing; e. Repair of the under-pier sewage pump; and f. Repair of damaged utility lines (electric, sewer, water).
<p>U.S. Army Corps of Engineers Permit No.</p>	<p>Individual Permit number 2020-00076S</p>
<p>CEQA Information</p>	<p>Mitigated Negative Declaration Lead Agency: City of Capitola</p>
<p>Total Certification Fee</p>	<p>\$1,949</p>

Total Authorized Project Fill/Excavation Quantity									
Aquatic Resource Type	Temporary Impact			Permanent Impact					
				Physical Loss of Area			Degradation of Ecological Condition		
	Acres	CY ¹	LF ¹	Acres	CY	LF	Acres	CY	LF
Ocean/bay/ Estuary:									
120 New Fiberglass Piles				0.0039		160			
21, 12-inch Timber Piles	0.0004		21	0.0003		7			
Steel Piles and Ongoing Maintenance of Piles				0.0006		33			
Required Project Mitigation Quantity for Temporary Impacts									
Aquatic Resource Type	Units	Method ²							
		Est.	Re-est.	Reh.	Enh.	Pres.			
Ocean/Bay/ Estuary	Acres			0.0004					
	LF			21					
Required Project Compensatory Mitigation Quantity for Permanent Physical Loss of Area									
Aquatic Resource Type	Mit. Type ³	Units	Method						
			Est.	Re-est.	Reh.	Enh.	Pres.		
Ocean/Bay/ Estuary	PR	Acres			0.00063				
		LF			30				
Mitigation Requirements	<ol style="list-style-type: none"> Mitigation shall include removal of approximately 30 abandoned derelict creosote treated piles from Hooper's Beach located immediately adjacent to the existing wharf structure, as identified on Capitola Wharf Resiliency and Public Access Improvement plan sheet: C100, dated March 13, 2020. Mitigation shall be implemented within 12 months of completion of project construction. 								
Project Requirements	<u>The Permittee shall comply with the following requirements:</u> <ol style="list-style-type: none"> All personnel who engage in construction activities or their oversight at the project site (superintendent, construction manager, foreman, crew, contractor, biological monitor, etc.) must attend trainings on the conditions 								

¹ Cubic Yards (CY); Linear Feet (LF)

² Methods: establishment (Est.), reestablishment (Re-est.), rehabilitation (Reh.), enhancement (Enh.), preservation (Pres.)

³ Mitigation Type: in-lieu fee (ILF); mitigation bank (MB); permittee responsible (PR)

	<p>of this Certification and how to perform their duties in compliance with those conditions. Every person shall attend an initial training within five working days of their start date at the project site and follow-up trainings annually. Trainings shall be conducted by a qualified individual with expertise in 401 Water Quality Certification conditions and compliance.</p> <ol style="list-style-type: none">2. All work performed within waters of the State shall be completed in a manner that minimizes impacts to beneficial uses and habitat. Measures shall be employed to minimize land disturbances that will adversely impact the water quality of waters of the State. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete Project implementation.3. Construction BMPs shall be implemented and maintained in accordance with all specifications governing their proper design, installation, operation, and maintenance.4. Any material stockpiled that is not actively being used during construction shall be covered and surrounded with a linear sediment barrier.5. The Permittee shall retain a spill plan and appropriate spill control and clean up materials (e.g., oil absorbent pads) onsite in case spills occur.6. The Permittee shall confine all trash and debris in appropriate enclosed bins and dispose of the trash and debris at an approved site daily.7. All construction vehicles and equipment used on site shall be well maintained and checked daily for fuel, oil, and hydraulic fluid leaks or other problems that could result in spills of toxic materials.8. The Permittee shall designate a staging area for equipment and vehicle fueling and storage at least 100 feet away from waterways, in a location where fluids or accidental discharges cannot flow into waterways.9. All vehicle fueling and maintenance activity shall occur at least 100 feet away from waterways and in designated staging areas, unless a requested exception on a case-by case basis granted by prior written approval has been obtained from Central Coast Water Board staff.10. Dewatering and diversion measures are not authorized based on the application. If the project requires dewatering or diversion, the Permittee shall submit detailed dewatering/diversion plans for Central Coast Water Board staff approval at least 21 days prior to any dewatering or diversion. Dewatering/diversion plans shall include the area to be dewatered, timing of dewatering, and method of dewatering to be implemented. All temporary dewatering/diversion methods shall be designed to have the minimum necessary impacts to waters of the State to isolate the immediate work area. All dewatering/diversion methods shall be removed immediately upon completion of dewatering/diversion activities. Dewatering or diversion shall not commence until the Permittee has obtained Central Coast Water Board staff approval of the dewatering/diversion plans. Any dewatering/diversion must be implemented in compliance with approved dewatering/diversion plans.11. All construction-related equipment, materials, and any temporary BMPs no longer needed shall be removed and cleared from the site upon completion of the project.12. Central Coast Water Board staff shall be notified if mitigations as described in the 401 Water Quality Certification application for this project are altered by the imposition of subsequent permit conditions by any local, state or federal regulatory authority. The Permittee shall inform Central
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	<p>Coast Water Board staff of any modifications that interfere with compliance with this Certification.</p>
<p>Monitoring and Reporting Requirements</p>	<p>The Permittee shall conduct the following monitoring:</p> <ol style="list-style-type: none"> 1. Visually inspect the project site and areas of waters of the State adjacent to project impact areas annually to assess impacts on water quality. If the project does cause water quality impacts, contact the Central Coast Water Board staff member overseeing the project. You will be responsible for obtaining any additional permits necessary for implementing plans for restoration to prevent further water quality problems. <p>The Permittee shall provide the following reporting to RB3_401Reporting@waterboards.ca.gov [Note: Annual fees are based on submittal and approval of reporting item 1 below]:</p> <ol style="list-style-type: none"> 1. Certification Termination Report – To terminate Certification coverage, the Permittee must submit for Central Coast Water Board staff review and approval a Certification Termination Report demonstrating mitigation and monitoring completion. The Certification Termination Report shall include all information required for Annual Project Status Reports as specified below. The Certification Termination Report may serve as the final Annual Project Status Report. The Certification Termination Report submittal must include “Certification Termination Report” in the title. 2. Annual Project Status Report – The Permittee shall submit to the Central Coast Water Board an Annual Project Status Report by May 31 of each year following the issuance of this Certification, regardless of whether project construction has started or not. At a minimum, Annual Project Status Reports shall address activities conducted during the prior calendar year. The Permittee shall submit Annual Project Status Reports until the Permittee has conducted all required monitoring and mitigation, and the Permittee has submitted a Certification Termination Report. Each Annual Project Status Report shall include at a minimum: <ol style="list-style-type: none"> a. The status of the project: construction not started, construction started, or construction complete. b. The date of construction initiation, if applicable. c. A description of project construction and maintenance activities including: <ol style="list-style-type: none"> i. A summary of daily construction and maintenance activities, monitoring and inspection observations, and problems incurred and actions taken; ii. Identification of when site personnel trainings occurred, description of the topics covered during trainings, and confirmation that every person that engaged in construction activities or their oversight at the project site was trained initially and annually thereafter. iii. A description of the results of the annual visual inspection of the project site and areas of waters of the State adjacent to project impact areas, including: <ol style="list-style-type: none"> 1. Water quality and beneficial use conditions; and 2. Clearly identified photo-documentation of representative construction and maintenance areas, prior to and after project construction.

City of Capitola

Certification No. 34420WQ13

February 9, 2021

	<ul style="list-style-type: none">d. Mitigation reporting, if mitigation implementation has started, including the following information:<ul style="list-style-type: none">i. Date of initiation of mitigation and date mitigation was completed;ii. If mitigation implementation was completed, confirmation mitigation was implemented according to the requirements of this Certification and as described in the application, and any other associated submittals;iii. Any remedial or maintenance actions taken or needed; andiv. Photo-documentation representative of the mitigation area.e. A description of mitigation completion status that certifies and demonstrates that mitigation is complete.
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United States Department of the Interior

U.S. FISH AND WILDLIFE SERVICE

Ecological Services

Ventura Fish and Wildlife Office

2493 Portola Road, Suite B

Ventura, California 93003



IN REPLY REFER TO:
08EVEN00-2021-1-0111

February 3, 2021

Frances Malamud-Roam
Regulatory Division
San Francisco District, U.S. Army Corps of Engineers
450 Golden Gate Avenue
San Francisco, California 94102

Subject: Informal consultation on the Capitola Wharf Resiliency and Public Access Improvement Project, Santa Cruz County, California, Corps File Number 2020-00076S

Dear Frances Malamud-Roam:

We are responding to your request, dated December 9, 2020, for our concurrence with your determination that the proposed Capitola Wharf Resiliency and Public Access Improvement Project (project) may affect, but is not likely to adversely affect the federally threatened southern sea otter (*Enhydra lutris nereis*). This consultation request includes information from the applicant's biological assessment and addendum (Dudek 2020, Moffatt and Nichol 2020), and our electronic mail correspondence on February 2, 2021. Your request and our response are made pursuant to section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

The U.S. Army Corps of Engineers (Corps) proposes to authorize the City of Capitola (applicant) to place fill and conduct work within approximately 1 acre of jurisdictional waters of the United States, pursuant to section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act. The project would involve widening the wharf by 16 feet, installing up to 120 15-inch fiberglass piles, removing 30 derelict creosote-treated piles, replacing a bathroom, installing benches and a new bathroom on the deck of the wharf, and improving lighting. The improvement would take 9 months to complete. The project also includes routine maintenance of the wharf, which may include replacement of up to 5 timber piles per year with timber or fiberglass piles, and repair of 12 steel piles, existing utilities, the pier sewage pump, and wharf elements such as stringers, railing, and decking. The Corps permit would authorize the activities for 5 years.

The applicant would install the piles from the deck of the wharf to the maximum extent practical, and may also use small boats. The applicant would stage material and equipment on the deck of the wharf or on a barge. The applicant would remove piles using a crane and vibratory hammer, and would install piles using vibratory hammer, hydraulic jetting, or impact methods. The majority of piles would be installed using a vibratory hammer.

Francis Malamud-Roam

2

Southern sea otter

Southern sea otters occur in the project area and may be impacted by project activities. The activity and noise of project actions may disturb sea otters, causing them to temporarily avoid the area. Sea otters may be negatively affected by accidental discharges of materials or liquids into the water, which could lower water quality. Additionally, replacing piles may result in localized, temporary increases in underwater noise and turbidity. To avoid effects of the project to the southern sea otter, the applicant has proposed the following:

1. A biologist, approved by the U.S. Fish and Wildlife Service (Service), will monitor activities to determine if southern sea otters are being disturbed. Monitoring will occur at all times when work is occurring (a) in water, or (b) onshore within 100 feet of tidal waters. The biological monitor will have the authority to stop project activities if southern sea otters approach or enter the exclusion zone or if, in the professional judgment of the monitor, sea otters outside the exclusion zone display a significant and alarming reaction to construction activity. Biological monitoring will begin 0.5 hour before work begins and will continue until 0.5 hour after work is completed each day. Work will commence only with approval of the biological monitor to ensure that no southern sea otters are present in the exclusion zone.
2. An exclusion zone will be implemented at all times when construction work is occurring (a) in water, or (b) onshore within 100 feet of tidal waters. The radius of the exclusion zone will be a minimum of 49 feet to prevent the injury of southern sea otters from machinery. If construction activities (such as pile driving) generate underwater noise, an exclusion zone will be implemented that includes all areas where underwater sound pressure levels are expected to reach or exceed 160 dB re 1 μ Pa. For this project, the applicant expects underwater noise will reach 160 dB re 1 μ Pa up to 63 meters from the source of timber pile impact driving, so the exclusion zone will be at least 63 meters from the source of noise. If a sea otter enters the exclusion zone during pile driving work, work will stop until the animal leaves the exclusion zone. Pile extraction or driving will not commence (or re-commence following a shutdown) until sea otters are not sighted within the exclusion zone for a 15-minute period.
3. To reduce the risk of potentially startling southern sea otters with a sudden intensive sound, the construction contractor will begin construction activities gradually each day by moving around the project area and starting tractors or other heavy equipment one at a time.
4. If southern sea otters are present within the work area, they will be allowed to leave on their own volition.
5. In-water construction work will occur during daylight hours when feasible. If work is tidal dependent, it will occur within 1 hour before sunrise and 1 hour after sunset.
6. Numerous best management practices will be followed, as detailed in Dudek 2020 and Moffatt and Nichol 2020, to avoid impacts to water quality and accidental discharges of materials of liquids.

Francis Malamud-Roam

3

We concur with your determination that the project may affect, but is not likely to adversely affect the southern sea otter. Our concurrence is based on the following:

1. The increase in water turbidity from in-water work is expected to be minor, localized, and temporary.
2. The applicant will implement best management practices to prevent accidental discharges of materials or liquids into the water.
3. The applicant proposes to implement avoidance measures for the southern sea otter; in particular, monitoring a 63-meter exclusion zone around pile installation, and halting work if a southern sea otter enters the zone.

As a reminder, in the unlikely event that a federally listed species enters the project site and cannot or does not move out of harm's way on its own accord, all construction activities must halt and the Corps must contact the Service to initiate formal consultation. If you have any questions, please contact Danielle Fagre by electronic mail at danielle_fagre@fws.gov.

Sincerely,

**LEILANI
TAKANO** Digitally signed by
LEILANI TAKANO
Date: 2021.02.03
13:58:38 -08'00'

Leilani Takano
Assistant Field Supervisor

LITERATURE CITED

Dudek. 2020. Biological technical report for the Capitola wharf resiliency and public access improvement project. Auburn, California.

Moffatt and Nichol. 2020. Addendum to the biological technical report for the Capitola wharf resiliency and public access improvement project, with maintenance. Updated January 25, 2021. Walnut Creek, California.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

NATIONAL MARINE FISHERIES SERVICE
West Coast Region
777 Sonoma Avenue, Room 325
Santa Rosa, California 95404-4731

June 11, 2021

Refer to NMFS No: WCR-2020-03352

James Mazza
Acting Chief, Regulatory Division
Department of the Army
San Francisco District, Corps of Engineers
450 Golden Gate Avenue, 4th Floor, Suite 0134
San Francisco, California 94102-3406

Re: Endangered Species Act Section 7(a)(2) Concurrence Letter and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Capitola Wharf Resiliency and Public Access Improvement Project

Dear Mr. Mazza:

On December 9, 2020, NOAA's National Marine Fisheries Service (NMFS) received your request for a written concurrence that the U.S. Army Corps of Engineers' (Corps) proposed permit for the City of Capitola's (Applicant) Capitola Wharf Resiliency and Public Access Improvement Project (Project) under Section 404 of the Clean Water Act of 1972, as amended, 33 U.S.C. § 1344 et seq., and Section 10 of the Rivers and Harbors Act of 1899, as amended, 33 U.S.C. § 403 et seq., is not likely to adversely affect (NLAA) species listed as threatened or endangered or critical habitats designated under the Endangered Species Act (ESA). This response to your request was prepared by NMFS pursuant to section 7(a)(2) of the ESA and implementing regulations at 50 CFR 402.

Thank you also for your request for consultation pursuant to the essential fish habitat (EFH) provisions in Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. 1855(b)) for this action.

If you think there is a potential that marine mammals could be affected by the proposed action, it is good practice to contact NMFS' Protected Resources Division (PRD) Permits and Conservation Division at our headquarters office (jolie.harrison@noaa.gov; 562-980-3232) as early as possible in the consultation process. PRD will assist with Marine Mammal Protection Act compliance for the proposed action.

This letter underwent pre-dissemination review using standards for utility, integrity, and objectivity in compliance with applicable guidelines issued under the Data Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106-554). The document will be available within two weeks at the Environmental Consultation Organizer [<https://eco.fisheries.noaa.gov>]. A complete record of this consultation is on file at the NMFS North Central California Coast Office in Santa Rosa, California.



Consultation History

On December 9, 2020, we received a request from the Corps for informal consultation on the Project. By email to the Corps on December 23, 2020, we requested additional information on the project description and recommended the Corps include several additional species in the consultation. On February 1, 2021, we closed the consultation because we had not received the information we requested on December 23, 2020.

On February 2, 2021, the Corps emailed NMFS an updated addendum to the Biological Technical Report (BTR) (Moffat & Nichol 2021), which included additional species and Project details. Between February 8 and February 23, 2021, NMFS and the Corps discussed the species and critical habitat present within the action area. Based on previous survey data, the Corps made a no effect determination for several species, including black abalone, due to presumed absence in action area.

On March 4, 2021, we requested additional information regarding the proposed new deck lighting configurations and potential impacts on listed steelhead. The Applicant responded to us on March 8, 2021, and we initiated consultation on the same day.

On April 16, 2021, we provided by email a draft impact pile driving analysis for the Applicant to review and suggested additional avoidance and minimization measures (AMMs) be adopted for listed steelhead. Between April 22 and May 11, NMFS and the Applicant discussed measures that would minimize impacts to listed steelhead from pile driving activities, which included establishing a pile driving work window that avoids the steelhead migration seasons. The Applicant provided additional AMMs by memo on May 7, 2021, and an updated construction schedule on May 13, 2021.

Proposed Action and Action Area

Capitola Wharf (Wharf) extends approximately 866 feet from the shore, and is primarily used for recreational and commercial activities, including a restaurant and a boat shop. The Wharf extends from Wharf Road at Capitola Beach into Monterey Bay and supports one lane of combined vehicular and pedestrian traffic. Large storm events and floating logs have damaged piles and resulted in Wharf closures.

The proposed action would enhance the resiliency of the Wharf and improve public safety by: expanding a section of the Wharf's narrow, 543 feet long trestle system; completing necessary repairs; widening the bridge deck to allow a separate lane for pedestrian traffic; and constructing two new restroom facilities for beach and Wharf users. The Wharf expansion will increase the 30,900 square foot Wharf by 7,400 square feet. The expansion will consist of a new fiberglass and timber structure. Up to 120, 15 inches in diameter fiberglass piles with high-density polyethylene (HDPE) covers will be added. Construction is anticipated to begin between September and November of 2022, and pile driving activities will likely occur for two to three months.

The proposed action also includes maintenance activities that will occur over the next five years and could occur throughout the year. The Applicant has identified some initial repair work that will need to occur in 2021. This will include replacing approximately 21 12 inches in diameter

damaged creosote treated piles with 12 inches in diameter ACZA treated, polyurea-coated timber piles or fiberglass piles; replacement in kind of ACZA treated timber decking; and repair of 12 steel piles by either splicing new steel pipe to the existing piles or placing fiberglass jackets around the piles and grouting the inside. Following the initial maintenance work, existing, deteriorated Wharf elements would be repaired or replaced as needed. The Applicant anticipates future maintenance activities, beyond the initial maintenance work, will include:

- Replacement of up to five existing treated timber piles per year;
- Replacement of up to 10 percent of ACZA treated timber decking or approximately 3,500 square feet of decking per year;
- Replacement of up to approximately 300 linear feet of deteriorated ACZA pressure treated timber stringers per year;
- Replacement of up to approximately 200 linear feet of ACZA pressure treated timber railing per year;
- Repair of existing under pier sewage pump; and
- Repair of damaged existing utility lines (electric, sewer, water).

The Project will require the use of cranes, diesel impact pile driver, and vibratory hammer for pile driving, power chain saw, pneumatic tools, electric power and hand tools. Timber decking will be constructed with timber treated with ammoniacal copper zinc arsenate (ACZA), which protects the timber from fungus, termites and marine boring species. Construction materials will be kept away from the Wharf edge and materials that are not actively being used will be placed in a storage location. Once, activities are complete, all temporary construction-related equipment and material will be removed from the site.

Piles will be installed by a combination of hydraulic jetting and/or vibratory hammer; an impact hammer will be used only if needed for the last few feet of penetration. If impact pile driving is needed, it will take approximately 20 blows per 15 inches in diameter fiberglass pile and 50 blows per 12 inches in diameter timber pile. For the expansion, up to 8 fiberglass and 10 timber piles will be installed per day. Work under either of these installation methods will be performed from the Wharf deck or a barge. To minimize in-water noise, pile installation will be conducted during low tide, when feasible, from one hour before sunrise to one hour after sunset. Use of a wood cushion block or other sound-reducing method will be implemented if impact pile driving is to be employed. Replacement piles could either be 12 inches in diameter ACZA treated polyurea coated timber piles or 15 inches in diameter fiberglass piles with high-density polyethylene (HDPE) covers. For maintenance repairs, no more than two plies would be driven during any given day.

Additionally, as mitigation for the expansion of the bridge deck, 30 abandoned creosote-treated timber piles immediately adjacent to the Wharf will be removed from the area and disposed in an appropriate facility. The piles are 12 inches in diameter and embedded in the sediment approximately 20 feet deep and cover approximately 23 square feet of benthic habitat. The tops of the piles are broken and only rise above the seafloor approximately 2 feet. The piles will be removed using a mobile crane from the Wharf deck. If the piles cannot be reached from the Wharf deck, a track mounted crane will access the piles at low tide. A vibratory hammer will be used to break the piles free and they will be extracted by lifting upwards. Attempts to remove the

pile intact will be made, however if the pile breaks during removal it will be cut below the lowest observed sand line. This will ensure that the piles will not be exposed during any time of the year. About 5 to 10 piles will be removed per day.

Avoidance and Minimization Measures

Pile driving will commence with a soft start procedure in order to alert nearby wildlife, allowing them to move out of the area. For impact pile driving, contractors will be required to provide an initial set of strikes from the hammer at reduced percent energy, each strike followed by no less than a 30 second waiting period. This procedure will be repeated two additional times before impact pile driving begins. If a vibratory hammer is used, contractors will initiate sound from the vibratory hammers for 15 seconds at reduced energy followed by a 1-minute waiting period. This procedure will be repeated two additional times before full energy may be achieved.

During the active migratory window for listed steelhead (December 1-June 15), and after the Soquel Creek sandbar breaches, impact pile driving will be limited to an hour after sunrise to an hour prior to sunset. Pile driving will cease during stormflow events indicated by elevated streamflow (generally greater than 10 cfs) at the USGS gage in Soquel Village and rainfall. Impact pile driving may resume the day after the descending limb of stormflow has passed, the storm event has ended, and after streamflow has declined for approximately 8 hours after the latest peak of the stormflow at the stream gage.

The Applicant will establish an underwater marine mammal “exclusion zone” defined as the distance where underwater noise levels will exceed 120 decibel root-mean-squared (dB RMS) for continuous noise (410 meters) or 160 dB RMS for impact noise (63 meters). Vibratory and impact pile installation will not occur if any part of the exclusion zones are obscured by weather or sea conditions. Marine mammal monitoring of the exclusion zone will be conducted prior to start of the pile installation. A qualified protected species observer (PSO) will determine the appropriate observation location for monitoring (likely from the Wharf deck). If necessary, observations may occur from two locations simultaneously. The PSO will document and report any marine mammal that approaches or enters an exclusion zone throughout the day. The PSO will scan the exclusion zone using binoculars for the presence of marine mammals 30 minutes before, during, and for 30 minutes after vibratory and impact pile installation activities. The PSO will notify construction personnel to immediately stop operations if a marine mammal approaches or enters the exclusion zone. Pile installation will not begin until there are no sightings of marine mammals for 15 minutes within the exclusion zone.

In addition to marine mammal exclusion zones, a 100-meter underwater exclusion zone will be established for all sea turtles during pile driving activities to avoid interaction between pile driving equipment and sea turtles. Visual monitoring will begin 30 minutes prior to start of pile driving activities each day and after each break of more than 30 minutes. All in-water Project activities will cease if a sea turtle is observed within the monitoring zone. In-water activities will not begin until 15 minutes have passed since the turtle was last seen in the monitoring zone.

Biological monitoring reports will be submitted to NMFS within 60 days from completion of construction activities for the calendar year.

The Applicant has proposed the implementation of general avoidance and minimization measures for the Project. Tarps or other appropriate debris collection devices will be used to capture debris, sawdust, particulates, oil, grease, rust, dirt, and spills. Land-based equipment will be the primary method used. In-water work will be avoided to the maximum extent possible and limited to pile installation/removal and pile repair. The Applicant will retain a response vessel ready to retrieve construction materials that fall into the ocean within 10 to 20 minutes of the incident. Divers will be available during the construction period and will be used to retrieve material that sinks to the ocean floor. A spill plan with appropriate control and clean-up materials (e.g., oil absorbent pads) will be retained on site. All construction vehicles and equipment used on site will be checked daily for fuel, oil and hydraulic fluid leaks and maintained accordingly. All creosote treated material, pile stubs and associated sediments (if any) will be disposed of by the contractor at an appropriate landfill. Installation and application of epoxy, resin, or cementitious grout/fill will be conducted when predicted weather and ocean conditions allow effective control and full containment, and will remain dry until cured. Pile jackets will be installed during low tide to the extent feasible. Work will cease during inclement weather (large waves or heavy rain). Environmental training for construction crews will occur prior to in-water construction regarding the status and sensitivity of the listed species.

Action Area

The action area is located in the Monterey Bay National Marine Sanctuary, near the City of Capitola, Santa Cruz County, California. The action area comprises the Wharf plus a 410 meter area in the surrounding marine environment where sound effects from vibratory or pile driving will occur. The Wharf is just west of the mouth of Soquel Creek, which empties into Soquel Cove of Monterey Bay. Land cover within the action area is predominantly subtidal coastal wetland but also includes intertidal sandy beach, sandy beach and developed, landscaped areas. The marine habitats in the area surrounding the Wharf consist of various intertidal and open-water habitats, including kelp forest. Benthic substrates in the Project vicinity are predominantly soft, sandy sediments. The open water habitat in the area surrounding the Wharf includes a variety of pelagic marine invertebrates such as jellyfish, squid and shrimp, as well as various groundfish, pelagic, and highly migratory fish species. Monterey Bay has abundant and diverse species of cetaceans (whales, dolphins, etc.), however, the proximity of the action area to the coast, precludes most cetaceans from occurring in the action area. There are several pinniped species that reside in Monterey Bay and occur in the action area, including California sea lions and harbor seals.

Background and Action Agency's Effects Determination

The Corps has determined that the proposed project may affect, but is not likely to adversely affect (NLAA) the species (Distinct Population Segments [DPS] and Evolutionary Significant Units [ESU]) and designated critical habitats listed below. The Corps determination is based on the limited scope of the Project activities and the proposed avoidance and minimization measures.

- Leatherback sea turtle (*Dermochelys coriacea*)**
endangered (June 2, 1970, 35 FR 8491)
critical habitat (January 26, 2012, 77 FR 4170);
- North American green sturgeon southern DPS (*Acipenser medirostris*)**
threatened (April 7, 2006, 71 FR 17757)
critical habitat (October 9, 2009, 74 FR 52300);
- Central California Coast (CCC) steelhead DPS (*Oncorhynchus mykiss*)**
threatened (January 5, 2006, 71 FR 834);
- Central California Coast (CCC) coho salmon ESU (*O. kisutch*)**
endangered (June 28, 2005, 70 FR 37160);
- Southern Resident DPS killer whale (SRKW) (*Orcinus orca*)**
endangered (70 FR 69903; November 18, 2005);
- Humpback whale Central America DPS (*Megaptera novaengliae*)**
endangered (September 8, 2016, 81 FR 62259);
- Humpback whale Mexico DPS (*M. novaengliae*)**
threatened (September 8, 2016, 81 FR 62259);
- Blue whale (*Balaenoptera musculus*)**
endangered (December 2, 1970, 35 FR 18319);
- Fin whale (*B. physalus*)**
endangered (December 2, 1970, 35 FR 18319);
- Sei whale (*B. borealis*)**
endangered (December 2, 1970, 35 FR 18319);
- Sperm whale (*Physeter macrocephalus*)**
endangered (December 2, 1970, 35 FR 18319);
- North Pacific right whale (*Eubalaena glacialis*)**
endangered (March 6, 2008, 73 FR 12024);
- Gray whale, Western North Pacific DPS (*Eschrichtius robustus*)**
endangered (December 2, 1970, 35 FR 18319);
- Guadalupe fur seal (*Arctocephalus townsendi*)**
threatened (December 16, 1985, 50 FR 51251);
- Loggerhead sea turtle (*Caretta caretta*)**
threatened (July 28, 1978, 43 FR 32800);
- Green sea turtle (*Chelonia mydas*)**
threatened (July 28, 1978, 43 FR 32800);
- Olive Ridley sea turtle (*Lepidochelys olivacea*)**
threatened (July 28, 1978, 43 FR 32800).

Fin, Sperm, Sei, North Pacific Right, Blue, Gray, SRKW and Humpback Whales. While many of the large whale species occur near Monterey Bay, it is highly unlikely these species will be found near the action area (i.e., within 410 m from shore). Blue, gray, Southern resident killer, and humpback whales may come closer to shore than other cetaceans. However, the chance that they will approach the action area for any considerable time and be affected by construction activities is extremely unlikely.

Loggerhead, Green, and Olive Ridley Sea Turtles. Loggerhead, green, and olive ridley sea turtles are rarely observed in northern California waters. Occurrences are infrequent and their

presence is believed to be related to warm off-shore current conditions such as during El Niño conditions, rather than routine, inshore habitat utilization. There is no current incidence of warmer than normal sea surface temperatures near-shore in the action area.

Guadalupe Fur Seals. Guadalupe fur seals range from Mexico to Canada, but primarily occur in warm waters following their main prey species. Breeding occurs almost exclusively in Mexico (García-Aguilar et al. 2018), but within the U.S., they also haul out on offshore islands including the Channel Islands and Farallon Islands, California. Their potential to occur in the action area is considered extremely unlikely.

Leatherback Sea Turtles. The life history and latest status review on leatherback sea turtles is summarized by NMFS and USFWS (NMFS and USFWS 2013). California oceanic waters represent an important foraging region for leatherback turtles, with the greatest densities found feeding on jellyfish offshore in the coastal waters of California in the summer and fall seasons (Benson et al. 2007). Critical habitat for this species was designated along the U.S. west coast in 2012 (77 FR 4169; January 26, 3012). It contains one primary constituent element, occurrence of prey, primarily Scyphomedusae (jellyfish) of the order Semaestomeae (e.g., *Chrysaora*, *Aurelia*, *Phacellophora*, and *Cyanea*).

CCC Coho Salmon. The life history of CCC coho salmon is summarized by NMFS (1995; 2016a). The CCC coho salmon ESU is the southern-most extant population and ranges from Humboldt County south to Aptos Creek in Santa Cruz County. CCC coho salmon are anadromous, spending some time in both freshwater and saltwater. The lifespan of CCC coho salmon is predominantly three years. Adult coho salmon migration in California occurs between November and February, and smolt outmigration occurs between March and June, peaking March through May (Fukushima and Lesh 1998). After entering the ocean as immature salmon, they initially remain in the nearshore waters close to their natal stream before gradually migrating north along the continental shelf (Brown et al 1994). There are streams north and south of the action area where CCC coho salmon critical habitat is designated. Occurrence in the action area is unlikely, but may occur during their migration out to sea as juveniles or upon their return to spawn in natal streams.

CCC Steelhead. The life history of steelhead is summarized by NMFS (1996; 2016). CCC steelhead are anadromous, spending some time in both freshwater and saltwater. Steelhead are capable of spawning multiple times and in central California they typically first spawn after one to two years at sea (Busby et al. 1996). In California coastal streams, adult steelhead migration occurs between December and April, peaking in March and April, while smolt outmigration occurs between January and June, peaking in March through May (Fukushima and Lesh 1998). Several spawning streams of CCC steelhead are located to the north and south of the action area including Soquel Creek/Lagoon which falls within the action area. Soquel Lagoon is manually closed through construction of a sand berm typically around Memorial Day each year. Over the last 20 years, Soquel Lagoon has been manually closed between the dates of May 21 and June 20 (Alley 2021). During the spring and summer, the lagoon is a nursery for juvenile steelhead. The sandbar to Soquel Lagoon typically breaches in November or December after the first winter storms and flow in Soquel Creek increases over 10 cfs (D.W. Alley, personal communication 2021). A managed flume helps to facilitate passage into and out of lagoon when the sandbar is

closed and water levels are sufficient to make the flume operable. Because Soquel Creek has active CCC steelhead runs and is located approximately 150 meters from the Wharf, NMFS expects adult and sub-adult CCC steelhead may be present in the action area during Project activities.

Green Sturgeon Southern DPS. The life history of green sturgeon in California is summarized by NMFS (2015). Green sturgeon are anadromous and adults spawn in deep turbulent sections of the upper Sacramento River. As juvenile green sturgeon age, they migrate downstream and rear in the lower delta and bays, entering the ocean during the first one to four years of their life history (Nakamoto et al. 1995). Monterey Bay is included in critical habitat for green sturgeon (October 9, 2009, 74 FR 52300) and provides foraging habitat. Green sturgeon have been observed in the marine waters of Monterey Bay during summer and fall months (Lindley et al. 2008). NMFS expects that a small number of adult and subadult green sturgeon may be present in the action area during Project activities.

More detailed information on the general life history and status of the above species can be found at: <https://www.fisheries.noaa.gov/find-species>.

The Corps has determined the proposed action may adversely affect EFH for fish species managed under the Pacific Coast Salmon, Coastal Pelagic Species, and the Pacific Coast Groundfish Fisheries Management Plans (FMP). This determination is based on the temporary noise impacts and short-term increases in turbidity associated with some of the project activities.

ENDANGERED SPECIES ACT

Effects of the Action

Under the ESA, “effects of the action” are all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action (50 CFR 402.02). In our analysis, which describes the effects of the proposed action, we considered 50 CFR 402.17(a) and (b). When evaluating whether the proposed action is not likely to adversely affect listed species or critical habitat, NMFS considers whether the effects are expected to be completely beneficial, insignificant, or discountable. Completely beneficial effects are contemporaneous positive effects without any adverse effects to the species or critical habitat. Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Effects are considered discountable if they are extremely unlikely to occur.

The effects of the proposed action include: (1) underwater sound pressure waves from pile driving; (2) increased turbidity from underwater work; (3) exposure to construction equipment and toxic materials; and (4) shade and benthic habitat conversion from Wharf expansion.

Repairs and widening of the Wharf will also perpetuate in-water structure related effects in the action area because the purpose of the Project is to improve public access and increase the

resiliency and structural integrity of the Wharf. The continued existence and increase in size of the Wharf is considered in our analysis below.

Fin, Sperm, Sei, North Pacific Right, Blue, Gray, SRKW and Humpback Whales occur near Monterey Bay, however, it is highly unlikely these species will be found near the action area (i.e., within 410 m from the wharf). Fin, sperm and sei whales prefer much deeper water than found in the action area, typically along the continental shelf. North Pacific right whales are exceedingly rare and unlikely to be found in nearshore areas. Blue, gray, Southern resident killer, and humpback whales may come closer to shore than other cetaceans. However, the chance that they will approach the action area for any considerable time and be affected by construction activities is extremely unlikely. The action area is a busy recreational area with shallow depths and represents a very minor footprint of suitable habitat in Monterey Bay. The whales would not forage underneath the wharf and, therefore, effects of the Project are limited to sound pressure waves produced from pile driving. Furthermore, if these species do occur near the active construction site, the Project AMMs, such as visual monitoring and cessation of construction activities when individuals are nearby, will sufficiently avoid and minimize the potential for individuals to be exposed to potential impacts. Therefore, potential adverse effects to these species is considered extremely unlikely, and therefore discountable.

Their potential for loggerhead, green, olive ridley sea turtles, and Guadalupe Fur Seals to occur in the action area is considered extremely unlikely. Therefore, potential adverse effects to these species is considered extremely unlikely, and therefore discountable.

Sound Pressure Waves

CCC coho salmon, CCC steelhead, green sturgeon, and Pacific leatherback sea turtles occur within the action area frequently enough to potentially be exposed to underwater sound pressure waves from pile driving. Pile driving can adversely affect salmonids and green sturgeon through exposure to high underwater sound pressure levels. These sound pressure levels are generated as piles are struck by impact hammers used to drive them into the bed of waterbodies and adjacent areas such as exposed tidal mudflats or streambanks. The drastic changes in underwater sound pressure caused by pile driving with an impact hammer can hemorrhage and rupture internal organs, including a fish's swim bladder and kidneys, leading to injury and death (Gisiner 1998, Gaspin 1975, Hastings and Popper 2005, Popper 2006, Hastings 1995, Halvorsen et al. 2011). In addition, exposure to high underwater sound pressures may cause damage to fish sensory systems such as auditory tissue (Hastings et al. 1996, Enger 1981).

To determine the sound pressures levels that fish are exposed to from pile strikes, NMFS uses a dual metric acoustic criteria of 206 decibels (dB) referenced to one micropascal (re: 1 μ Pa) peak sound pressure level (SPL) for any single strike, and a daily cumulative sound exposure level (SEL) of 187 dB re: 1 μ Pa 2-sec for fish greater than or equal to 2 grams. NMFS also uses a 150 dB RMS threshold for sub-injury (i.e., behavioral responses) for fish. Listed fish in the action area would be adults or juveniles over 2g. Based on our assessment, 12 inches in diameter timber piles and 15 inches in diameter fiberglass piles are not anticipated to generate sound pressure levels that will injure or kill fish from any single peak pile strike. However, repeated striking may accumulate to sound pressure levels high enough to affect listed salmonids or green sturgeon if they were to remain near (within 6 meters for timber piles and 1 meter for fiberglass

piles) a pile for the duration it would take to install 10 12 inches in diameter timber or 15 inches in diameter fiberglass piles. NMFS expects the likelihood of this occurring to be so remote as to be discountable. Salmonids and green sturgeon will be able to vacate areas near piles as construction equipment is moved on site, readied for use, and as the first few strikes of a pile occurs. NMFS uses a 150 dB RMS pressure threshold for behavioral responses for salmonids and green sturgeon. Based on this threshold, pile driving may also produce behaviors such as a startle response in salmonids and green sturgeon within 100 meters of 12 inches in diameter timber piles and 41 meters of 15 inches in diameter fiberglass piles (Table 1).

Table 1. Modeled radial extent of impact hammer sound pressure levels for 12 inches in diameter timber and 16 inches in diameter fiberglass piles.

Modeling Scenario ¹	Distance to onset of fish physical injury (meters)			
	SPL	SEL		RMS
	206 dB	187 dB	183 dB	150 dB
12 inches in diameter Timber Piles – Impact Hammer: 10 piles per day, 50 blows per pile				
meters	0	6	12	100
16 inches in diameter Fiberglass Piles – Impact Hammer: 8 piles per day, 20 blows per pile				
meters	0	1	2	41

NMFS does not believe the behavioral impacts to salmonids or green sturgeon such as startle responses or leaving the site of pile driving will have any adverse effects on these fish when pile driving occurs. Monterey Bay provides salmonids and green sturgeon with large areas in which to move once they are disturbed by pile driving, making it unlikely that predators will be able to wait in certain areas that concentrate fish trying to avoid pile driving areas. Because of the short duration of sound pressure waves (each pile strike), and miniscule impacts to the availability of areas for green sturgeon foraging and migrating, impacts to green sturgeon critical habitat are expected to be insignificant. In addition, based on these factors and others described above, impacts to listed fish in in the action area from sound pressure waves generated by the project are expected to be insignificant.

Regarding underwater noise effects to leatherback sea turtles, there are currently no specific guidelines for safety criteria that directly relate to sea turtle injuries or behavioral response changes resulting from elevated sound pressure levels. In general, NMFS and other federal agencies have relied upon the noise criterion for marine mammals (cetaceans or pinnipeds) and the safety zones that have been employed for projects to minimize the risk of injury to these species as a conservative proxy for managing impacts of very loud sound on sea turtles. While sea turtle hearing has not been studied nearly as much as marine mammal hearing, the general consensus is that, given what is known about the relative complexity of hearing and underwater communication abilities of many marine mammal species compared to sea turtles, it is likely that most, if not all, marine mammal species are more sensitive to underwater sound than sea turtles. McCauley et al. (2000) documented erratic swimming activity for loggerhead and green sea

¹ The modeled scenario is based on data reported in Iafrate et al. 2016. The referenced source measured sound pressure levels are for 16 inches in diameter fiberglass piles which are slightly larger than the 15 inches in diameter fiberglass piles proposed for the project.

turtles in a caged environment during periods of received sound in excess of 175 dB RMS. The authors concluded these behaviors were marking the relative point where avoidance would occur for unrestrained turtles in that acoustic environment. The sound level expected from this proposed project will not exceed 175 dB RMS, therefore, NMFS does not expect changes in sea turtle behavior to occur. In addition, as described above, the applicant will implement AMMs aimed at reducing the potential for sea turtles to be exposed to pile driving noise. Therefore, NMFS considers the effects of sound produced during pile driving on leatherback sea turtles from the project to be insignificant.

Although the Project does occur within leatherback sea turtle critical habitat, pile driving activities are not expected to adversely affect their prey species to a point that would decrease the condition, distribution, diversity, abundance, and density necessary to support individual as well as population growth, reproduction, and development of leatherbacks. Jellyfish do not have auditory structures and are not typically bottom dwelling species so should be unaffected by the Project construction activities. We, therefore, consider the effects of the project on leatherback sea turtle critical habitat to be insignificant.

Turbidity

The proposed project includes activities that may increase turbidity that could affect green sturgeon, listed salmonids, and leatherback sea turtles. As pile replacement, pile removal and other underwater repairs are performed, disturbance of the sandy bottom in the project footprint will likely result in short-term and localized levels of increased turbidity. Turbidity can affect fish by disrupting normal feeding behavior, reducing growth rates, and increasing stress levels (Benfield and Minello 1996; Nightingale and Simenstad 2001). However, long-term or high-level turbidity plumes are not anticipated because the substrate at the project location is sandy; sand particles tend to settle quickly and do not generate large or long-lasting sediment plumes. Project activities such as hydraulic jetting will create temporary discharge of sediments into already turbid surface water. Because the action area is subject to significant water motion in the form of waves, currents, and tides, turbidity plumes in the sandy substrate bottom will rapidly dissipate.

Because of quick dispersion by currents, NMFS expects the response of salmonids exposed to this turbidity will be limited to avoidance reactions if salmonids occur near project-related suspended sediment and turbidity. NMFS expects salmonids are likely to avoid these areas of temporary suspended sediment and turbidity by swimming away from them. Similar to sound pressure waves, if salmonids are disturbed by turbidity, the large areas available to them to move will ensure that they are not forced into areas that concentrate them, exposing them to higher rates of predation. Green sturgeon may also avoid areas with turbidity from the project, or, because they are more accustomed to foraging in marine areas with sediment and turbidity, they may not respond to the small amounts of sediment and turbidity from the project.

Any exposure of green sturgeon critical habitat to sedimentation resulting from the project will likely be very small, temporary, and localized because of the small amount of marine substrate disturbed by pile driving or removal. The impact on the total amount of habitat space or forage for green sturgeon and leatherback sea turtles will be very small, if any, and insignificant; much

larger areas will be undisturbed by these projects. Because of the short duration of turbidity from the project, and unlikely impacts to the availability of areas for green sturgeon foraging and migration habitats, effects to critical habitat from sediment and turbidity are likely insignificant.

Leatherback sea turtles exposed to turbidity from the project may temporarily vacate the areas with higher turbidity. Because sea turtles are mobile, and turbidity episodes are anticipated to be short and minor (due to project size and timing), NMFS expects any leatherback sea turtle behavioral response will not affect their ability to find food, avoid predators, or any other essential life functions.

Any amount of sedimentation resulting from the project will likely be very small and localized because of the small amount of marine substrate disturbed by project activities. The impacts on the total amount of leatherback sea turtle critical habitat space or prey items is expected to be very small and insignificant.

Exposure to Construction Equipment and Toxic Materials

Active construction equipment can injure or kill salmonids, green sturgeon, and sea turtles if these species are exposed to construction equipment, including vessels. For example, boats or barges could collide with sea turtles. Construction equipment can also leave fluids and other materials in work areas that may result in species exposure to toxic materials.

NMFS expects salmonids and green sturgeon will avoid the construction area as construction equipment is moved on site making the chance of collision with construction equipment discountable. The project will also implement measures to reduce the chance of toxins entering Monterey Bay. Pollution control measures, such as checking heavy equipment daily for leaks will be implemented. Due to these measures, NMFS expects that toxic chemical contamination of the action area will be minimized to levels that are insignificant and unlikely to adversely affect any fish exposed to these toxic chemicals.

Because of the proposed AMMs, such as visual surveys for turtles, checking heavy equipment daily for leaks, etc., NMFS does not expect leatherback sea turtles to be injured or killed by construction equipment. Similarly, NMFS does not expect leatherback sea turtles or their critical habitat to be exposed to more than insignificant levels of toxic materials from the project.

The use of treated piles in the Wharf structure has the potential to impact marine species from potential leaching of contaminants used to preserve the wood. ACZA piles have generally replaced creosote piles over time as a preferred treatment since it is injected into the pile as opposed to coating the outside of the pile with a toxic substance. However, ACZA piles could release copper or other toxins into the immediate environment as the pile is exposed to marine organisms and degrades over time. Juvenile salmonids are particularly sensitive to copper because it affects their sensory capabilities and reduces their ability to evade predators (Sandahl et al. 2007). Generally, concerns regarding use of treated wood piles arises in estuarine and lake environments where velocities are low and local concentration surrounding the pilings can become elevated (NOAA 2009). The action area has significant water motion in the form of waves, currents and tides to ensure quick and constant mixing. The ACZA piles are coated with

polyurea as an additional measure to contain the chemical treatment of the wood piles and provide a barrier to marine boring organisms. Copper leaching could still occur if the polyurea coating is physically damaged or degraded exposing the underlying ACZA coating. The highest leaching occurs in the first few days after exposure and in the marine environment the concentrations would be diluted quickly. The Project plans to repair and replace degraded creosote or ACZA timber piles during their initial construction and subsequent maintenance work. Due to these measures, NMFS expects that toxic chemical contamination of the action area will be minimized to levels that are insignificant and unlikely to adversely affect salmonids, green sturgeon, and leatherback sea turtles exposed to these toxic chemicals. Additionally, the removal of 30 creosote-treated timber piles will improve approximately 23 square feet of benthic habitat and also improve water quality through the removal of creosote-treated wood from the marine environment.

Shade and Benthic Habitat Conversion

Wharf expansion can degrade leatherback sea turtle and green sturgeon critical habitat through shading, replacement of soft bottom habitat with placement of piles and other supporting structures, modifying water circulation by temporarily affecting water column habitat during construction activities, and disturbance via activities associated with the use and operation of the facilities (Nightingale and Simenstad 2001). The shadow cast by an overwater structure affects both the plant and animal communities below the structure by limiting light for photosynthesizers, such as diatoms and benthic algae, eelgrass, and other macrophytes (Kahler et al. 2000, Haas et al. 2002), and by increasing predation by providing cover and perching platforms for piscivores (Helfman 1981). Wave energy and water transport alterations can impact the nearshore, detrital foodweb by altering the size, distribution, and abundance of substrate and detrital materials.

The project would result in approximately 0.17 acre (7,400 square feet) of new above-water structures and 0.005 acre (218 square feet) of fill from installation of the new piles. The removal of 30 creosote-treated timber piles will restore 23 square feet of benthic habitat from fill. The expansion of above-water structure would result in reduced light levels directly beneath and beside the Wharf and the additional piles needed to support the above-water structure will permanently alter the substrate. However, the expansion would not create a barrier for fish or turtle movement or occur over submerged aquatic vegetation. Any alteration in fish or sea turtle behavior is expected to be minor due to the small footprint of the Wharf within the bay. Effects on prey species for salmonids is expected to be minimal. Salmonids primarily prey on pelagic species more common in deeper waters away from the shore where the Wharf is located. Green sturgeon are accustomed to foraging in muddy intertidal areas at night and it is unlikely that they or their prey base would be affected by reduced lighting caused by the Wharf expansion in the sandy intertidal area. Leatherback sea turtles prey on jellyfish in open waters away from the Wharf. Therefore, NMFS considers that effects from reduced light levels nearshore and alteration of benthic habitat due to Wharf expansion will be discountable to green sturgeon, leatherback sea turtle and their critical habitat, and insignificant to CCC coho and CCC steelhead.

Conclusion

Based on this analysis, NMFS concurs with the Corps that the proposed action is not likely to adversely affect the subject listed species and designated critical habitats.

Reinitiation of Consultation

Reinitiation of consultation is required and shall be requested by the Corps or by NMFS, where discretionary Federal involvement or control over the action has been retained or is authorized by law and (1) the proposed action causes take; (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the written concurrence; or (4) a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR 402.16). This concludes the ESA consultation.

MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT

Section 305(b) of the MSA directs Federal agencies to consult with NMFS on all actions or proposed actions that may adversely affect EFH. Under the MSA, this consultation is intended to promote the conservation of EFH as necessary to support sustainable fisheries and the managed species' contribution to a healthy ecosystem. For the purposes of the MSA, EFH means "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity", and includes the associated physical, chemical, and biological properties that are used by fish (50 CFR 600.10). Adverse effect means any impact that reduces quality or quantity of EFH, and may include direct or indirect physical, chemical, or biological alteration of the waters or substrate and loss of (or injury to) benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality or quantity of EFH. Adverse effects may result from actions occurring within EFH or outside of it and may include direct, indirect, site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions (50 CFR 600.810). Section 305(b) of the MSA also requires NMFS to recommend measures that can be taken by the action agency to conserve EFH. Such recommendations may include measures to avoid, minimize, mitigate, or otherwise offset the adverse effects of the action on EFH (50 CFR 600.905(b)).

The project is located within an area identified as EFH for various life stages of fish species managed with the following Fishery Management Plans (FMP) under the MSA:

- Pacific Coast Groundfish FMP;
- Pacific Coast Salmon FMP; and
- Coastal Pelagic Species FMP.

There are no Habitat Areas of Particular Concern (HAPC) located in the Action Area. The nearest HAPC is canopy kelp which is located 250 feet east of the action area (Dudek 2020).

NMFS determined the proposed action would adversely affect EFH as follows: (1) underwater sound pressure waves from pile driving; (2) increased turbidity from underwater work; (3) exposure to construction equipment and toxic materials; and (4) shade and benthic habitat conversion from Wharf expansion. These effects are analyzed in the ESA section of this letter, and are applicable for the EFH analysis. This Project contains adequate measures to avoid, minimize, mitigate, or otherwise offset the adverse effects to EFH such as removing abandoned creosote piles and repairing and replacing degraded wood piles with ACZA polyurea coated piles. The removal of 30 abandoned creosote-treated timber piles will improve approximately 23 square feet of EFH in the action area. Therefore, NMFS has no practical EFH conservation recommendations to provide to avoid or reduce the magnitude of Project effects.

The Corps must reinitiate EFH consultation with NMFS if the proposed action is substantially revised in a way that may adversely affect EFH, or if new information becomes available that affects the basis for NMFS' EFH conservation recommendations (50 CFR 600. 920(l)). This concludes the MSA portion of this consultation.

Please direct questions regarding this letter to Yvette Redler-Medina, Central Coast Office in Santa Cruz, California at (562) 676-2162, or via email at yvette.redler-medina@noaa.gov.

Sincerely,



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COASTAL DEVELOPMENT PERMIT 3-20-0431
City of Capitola (Capitola Wharf Improvements)
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Coastal development permit (CDP) number 3-20-0431 was approved by the California Coastal Commission on July 8, 2021. CDP 3-20-0431 provides for public access and wharf resiliency improvements consisting of: widening along 458 linear feet of the wharf, including the addition of approximately 120 16-inch fiberglass pilings with polyethylene sleeves and 7,400 square feet of timber decking; separation of pedestrian and vehicular access; repair of the boat hoist landing area and replacement of the boat hoist; relocation of the wharf's utilities from beneath to above the wharf's deck; replacement of 21 damaged creosote pilings with new fiberglass piles; repair of 12 steel pilings at the head (terminus) of the wharf; relocation of the existing wharf entryway sign; replacement of existing lighting; installation of a security gate; replacement of existing benches; installation of two new restrooms (one each near the foot and the head of the wharf); removal of derelict creosote pilings located adjacent to the wharf; and a long-term repair and maintenance authorization. CDP 3-20-0431 is subject to certain terms and conditions, including the standard and special conditions beginning on page 2 of this CDP.

By my signature below, the CDP is issued on behalf of the California Coastal Commission:


Susan Craig

Susan Craig, Central Coast District Manager, for John Ainsworth, Executive Director

Acknowledgement

The undersigned Permittee acknowledges receipt of this coastal development permit and agrees to abide by all terms and conditions thereof. The undersigned Permittee acknowledges that Government Code Section 818.4 (which states in pertinent part that "a public entity is not liable for injury caused by the issuance of any permit") applies to the issuance of this coastal development permit.

Please note that this coastal development permit is not valid unless and until a copy of it with the signed acknowledgement has been returned to the California Coastal Commission's Central Coast District Office (14 Cal. Admin. Code Section 13158).

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 Signature of Authorized City of Capitola Representative

 7-27-21
 Date
Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

Special Conditions

This permit is granted subject to the following special conditions:

1. **Approved Project.** This CDP authorizes Capitola Wharf improvements as specified in the proposed project materials (see "Application for Coastal Development Permit for the Capitola Wharf Resiliency and Public Access Improvement Project including Maintenance" dated received in the Commission's Central Coast District Office on July 21, 2020; see Appendix A) as modified by the terms and conditions of the CDP. Following completion of initial construction activities, the wharf shall remain open for general public use and enjoyment 24 hours/day and 365 days/year, except (a) that the portion of the wharf seaward of the security gate (see **Exhibit 3**) may be closed to general public use during nighttime hours (i.e., from one-hour after sunset to one-hour before sunrise); and (b) when the wharf must closed for limited periods of time due to documented public safety reasons, subject to Executive Director concurrence.

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2. **Hydroacoustic Testing Plan.** PRIOR TO ISSUANCE OF THIS CDP, the Permittee shall submit two copies of a Hydroacoustic Testing Plan (HTP) for review and written approval by the Executive Director. The HTP shall outline an underwater hydroacoustic testing program to be implemented during the installation of an initial subset of timber and fiberglass piles using an impact hammer and/or a vibratory hammer to determine the appropriate exclusion zones specific to individual marine species (i.e. cetaceans, sea turtles, sea otters, sea lions, harbor seals, etc.) to be implemented during all future pile driving and related activities at the Capitola Wharf. The HTP shall provide for and include the following elements:
 - a. **Determining Exclusion Zones for Future Pile Driving.** The HTP shall identify all underwater hydroacoustic testing parameters to be used for establishing exclusion zones (during the installation of an initial subset of a small number of timber and fiberglass piles using an impact hammer and/or a vibratory hammer) that will be implemented in all future piling installation that uses a vibratory or an impact hammer. Such exclusion zones shall be defined by the distance between the work site and the locations at which the maximum recorded peak sound pressure level (SPL) or cumulative sound exposure level (SEL) falls below the temporary threshold shift (TTS) and permanent threshold shift (PTS) levels for marine species in the area. The maximum SPL or SEL thresholds used to determine the exclusion zones shall be based on the best available science on TTS and PTS levels for special status fish species and the National Oceanic and Atmospheric Administration’s (NOAA) most up-to-date Marine Mammal Acoustic Technical Guidance.
 - b. **Exclusion Zones to be Implemented During Hydroacoustic Testing.** The following minimum exclusion zones (EZs) (consistent with the requirements of National Marine Fisheries Service) shall be implemented during all pile driving activities done concurrently with hydroacoustic testing: 1) a 410-meter EZ for all marine mammals species (except sea otters) during fiberglass or timber pile installation with a vibratory hammer; 2) a 100-meter EZ for sea turtles during all pile driving activities regardless of pile or hammer type; 3) a 63-meter EZ for all marine mammals (except sea otters) during timber pile installation with an impact hammer; and 4) a 63-meter EZ for sea otters during all pile driving activities regardless of pile or hammer type.
 - c. **Hydroacoustic Testing Report.** No more than 30 days after the completion of the required initial hydroacoustic testing activities, the Permittee shall submit a hydroacoustic testing report to the Executive Director for review and approval. The report shall include a description of all initial pile driving activities, a description of the hydroacoustic testing equipment and protocols that were used during such activities, the results of the hydroacoustic testing, a determination of the necessary marine wildlife exclusion zones to be implemented during all future

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pile driving activities, and a description of any observable marine wildlife behavior that took place during hydroacoustic testing activities. The Executive Director shall sign off on all exclusion zones prior to commencement of future pile driving activities.

- d. Hydroacoustic Testing Parameters.** The HTP shall fully describe the underwater hydroacoustic testing program, the monitoring equipment, the number of proposed hydroacoustic testing sessions, the hydrophone locations along the wharf and in the ocean waters off of the wharf, the distance of hydrophones from active pile work areas, the type of pilings being installed, the type of pile driving hammers being used, and the rationale for how the program will capture a representative amount of readings that address changes in bathymetry and substrate in the waters surrounding the wharf. During hydroacoustic testing, underwater hydroacoustic testing devices (capable of recording both SPL and SEL at the frequencies corresponding with the hearing capabilities of special status fish species and other marine wildlife anticipated to be present in the project area) shall be placed at an array of increasing distances from the site of active pile driving to fully monitor the project area and allow for multiple readings of the SPL and SEL levels associated with temporary and permanent threshold shifts (TTS and PTS).
 - e. Modifying Exclusion Zones.** If during hydroacoustic testing the SPL or SEL threshold levels are exceeded beyond the exclusion zones used during HTP implementation and/or if the Marine Wildlife Monitor (see **Special Condition 3**) observes dead or injured fish in the vicinity of active pile driving operations or otherwise finds that the size of the exclusion zones should be adjusted to be greater than defined in **subsection (b)** above, the EZs shall be expanded and/or the Permittee shall implement additional feasible power reduction and/or sound dampening measures, and the Permittee shall notify the Executive Director of the change.
 - f. Marine Wildlife Monitor (MWM).** The HTP shall identify protocols for communicating hydroacoustic testing results, including any changes in the boundaries of the exclusion zones, to the MWM.
- 3. Marine Wildlife Protection.** PRIOR TO ISSUANCE OF THIS CDP, the Permittee shall prepare a Marine Wildlife Protection Plan (MWPP) for review and written approval by the Executive Director. The MWPP shall incorporate the following parameters to be implemented during all pile driving activities (including during hydroacoustic testing activities) that are done using an impact or a vibratory hammer:

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- a. **Soft Starts.** An initial ramp-up period or "soft start" procedure at the commencement of any impact hammer pile-driving activities, or after a break in impact hammer driving of 30 minutes or more, shall be implemented to avoid potential impacts to marine species that may be present in the exclusion zones. The "soft start" shall consist of an initial set of three strikes made by the impact hammer at 40 percent energy, followed by a one-minute waiting period, then two subsequent three-strike sets, before initiating continuous driving. In addition, the pile driver shall employ sound dampening techniques and/or devices (such as wooden blocks, pile cushions, and/or caps) during all impact hammer pile driving activities. An initial ramp-up period or "soft start" procedure shall also apply to vibratory pile-driving activities, except that this shall constitute a gradual ramp up of vibratory intensity.
- b. **Marine Wildlife Monitor.** One qualified marine wildlife monitor (MWM), or more if required to effectively observe all of the identified exclusion zones, shall be present to conduct observations during all pile driving activities. Each MWM shall be a qualified wildlife biologist, approved by the Executive Director, with experience observing marine wildlife and differentiating normal behavior from signs of injury or distress. MWM duties shall be dedicated to observing marine wildlife only, and MWMs shall not be assigned other duties. MWMs shall have the appropriate safety and monitoring equipment (e.g., binoculars) adequate to conduct monitoring activities and shall be located at an effective vantage point in order to observe all exclusion zones without obstruction.
- c. **Construction Halts.** If the MWM(s) observe any marine wildlife within the specified exclusion zones, then the MWM(s) shall notify City staff and/or the pile driving contractor staff as appropriate and require an immediate shut down of pile driving activities. Such activities may restart once such wildlife are observed to have left the specified exclusion zones or are not observed within the specified exclusion zones for at least 30 minutes. If the exclusion zones are not entirely visible (e.g., due to darkness, fog, etc.), pile driving shall not commence or continue to proceed (if it is underway) until visual conditions have improved and the entirety of the exclusion zones is visible to the MWMs.
- d. **Reporting.** MWMs shall maintain a daily log of observed marine wildlife behavior that shall be of sufficient detail to determine whether the project causes observable effects to marine wildlife. A copy of the MWM's logs shall be submitted to the Executive Director when mitigation measures (i.e., shut down or delay of pile driving activities) are implemented five or more times within a seven-day period. At a minimum, the daily log observations shall include: (1) the date and time that monitored pile driving activity begins and ends; (2) pile driving activities (e.g., the number and type of piles being driven and their location on the wharf, the type of hammer being used (i.e. impact or vibratory) occurring during

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each observation period); (3) weather parameters (e.g., wind speed and direction, percent sky cover, visibility, precipitation, etc.); (4) ocean conditions (e.g., water level fluctuation, tide, etc.); (5) a map showing species, numbers, location, and, if possible, sex and age class of all observed marine wildlife; (6) a description of any observable marine wildlife behavior patterns, including those in response to pile driving activities, including their location and distance relative to the work site, direction of travel, and if possible, the correlation of behavior to SPLs; (7) a description of implementation of any required mitigation measures (e.g., shutdown or delay of piling driving activities, etc.); and (8) a description of other human activities in the area (e.g., fishing, diving, swimming, etc.). A final report summarizing the results of monitoring activities shall be submitted to the Executive Director following completion of construction activities. The report shall include daily log observations from MWMs, descriptions of any project delays or cessation of operations due to the presence in the project area of marine wildlife subject to protection, and an evaluation of monitoring protocol effectiveness all determined by the MWMs.

The requirements of the approved MWPP shall be implemented during all pile driving activities at the wharf.

- 4. Nesting Bird Protection.** Nesting birds and their nests shall be protected during construction by use of the following measures:
 - a. Nesting Bird Surveys.** For any construction work that would occur during the avian breeding season (i.e., February 15th to September 1st), pre-construction surveys shall be completed by a qualified wildlife biologist, approved by the Executive Director, with experience in observing reproductive and nesting behavior to identify displays of nesting behavior and/or active nests (i.e., as occupied by eggs or nestlings). The following shall apply:
 - 1. Timing.** Surveys shall commence no more than 30 days prior to the initiation of construction and may occur weekly thereafter over the breeding season, with the last survey occurring no more than 72 hours prior to the start of construction in any given area. The Permittee shall submit all nesting bird surveys to the Executive Director within 7 days of completion.
 - 2. Coverage.** Surveys may be focused on specific work areas rather than necessarily covering the entire wharf, and they may be sequenced as needed to address specific work areas and schedules over the course of the breeding season. Surveys shall be performed extending 300 feet from the project work area to locate any active non-raptor nests and within 500 feet to locate

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any active raptor (bird of prey) nests, including areas above the wharf's deck (e.g., rooftops, eaves, etc.) and below the wharf's deck (e.g., substructures viewed from the water), as well as adjacent bluffs meeting the distance criteria.

- b. **Nest Identification and Buffers.** If it is determined that construction may affect active nests, the qualified biologist shall establish a no-disturbance buffer around the nests and all project work shall halt within the buffer until the qualified biologist determines the nest is no longer in use. These buffer distances are 300 feet for non-raptors and 500 feet for raptors, unless evidence is provided to the Executive Director to conclusively show that a different distance is appropriate, and the Executive Director concurs with that determination. Maps identifying the location of any active nests detected shall be provided, showing the date of survey and nest stage (e.g., eggs, nestlings, etc.) and all buffers.
- c. **Buffer Exceptions.** Minor maintenance and repair efforts limited to the use of hand tools and light power tools (e.g., hand drills but not jack-hammers or power saws) is allowed within established buffers, provided that a buffer of no less than 50 feet within which no activity is allowed shall be applied to active nests in consultation with the qualified biologist. In addition, blinds and similar materials shall be placed between the active nests and the work area to avoid visually disturbing nesting birds. The placement of the blinds shall be overseen by the qualified biologist, who will observe nest sites and parent behavior over the course of activities, or until he/she is satisfied that the nesting birds will not be significantly disturbed by the work in that area. Any birds that begin nesting within an active construction area or buffers amid construction activities may be assumed to be habituated to construction-related noise and disturbance levels. No prescribed buffers are required to be established around active nests in these cases; however, further encroachment shall be avoided, the nests shall continue to be monitored by the qualified biologist and if the nesting birds begin to show distress associated with construction activities, then the prescribed no-disturbance buffers shall be reestablished.
- d. **Construction Halts.** If under any circumstances either construction staff or the qualified biologist observe signs of nesting distress (e.g., parents flush from the nest and do not readily return as activities continue, anxious warning calls, etc.), then work shall be stopped immediately, and the qualified biologist shall consult with the Executive Director to determine necessary modifications to activities. Activities shall resume only after the biologist is satisfied that the modifications are sufficient to avoid continued disturbance to the nests.
- e. **Reporting.** Annual monitoring reports shall be provided to the Executive Director within 90 days of construction completion and shall include: the maps from each

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nest survey conducted that year; a brief narrative describing the survey methods and observations of the species' tolerances to noise, vibration, and visual disturbance cues; a record of maintenance and repair activities carried out during the nesting season, including their location relative to active nests; and a discussion of any incidents that have resulted in a need for further consultation with the qualified biologist and/or the Executive Director.

- 5. Construction Plan.** PRIOR TO CONSTRUCTION, the Permittee shall submit two copies of a Construction Plan to the Executive Director for review and written approval. The Construction Plan shall, at a minimum, include and provide for the following:
- a. Construction Areas.** The Construction Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. All such areas within which construction activities and/or staging are to take place shall be minimized to the fullest extent feasible in order to have the least impact on public access to and along Capitola Main Beach, Hooper Beach, the Pacific Ocean, and other coastal resources. Special attention shall be given to siting and designing construction areas in order to minimize impacts on the ambiance and aesthetic values of the shoreline area, including but not limited to public views in the beach area.
 - b. Construction Methods.** The Construction Plan shall specify the construction methods to be used, including all methods to be used to keep construction areas separated from public use areas as much as possible (including through use of unobtrusive fencing and/or other similar measures to delineate construction areas). The plan shall also include verification that equipment operation and equipment and material storage will not significantly degrade public views or beach ambiance during construction. The Plan shall limit construction activities to avoid coastal resource impacts as much as possible.
 - c. Construction Timing.** The Construction Plan shall provide that all work shall take place during non-weekend/holiday and non-summer (i.e., the day after Labor Day to the Friday prior to the Memorial Day weekend, inclusive) days during daylight hours (i.e., from one-hour before sunrise to one-hour after sunset) except that wharf widening and rehabilitation may include work on Saturdays. The Executive Director may also authorize non-pile-driving and non-in-water nighttime work due to demonstration of extenuating circumstances, and subject to all appropriate mitigation measures to minimize lighting of coastal water and beaches, and to avoid coastal resources impacts, as much as possible.
 - d. Construction Best Management Practices (BMPs).** The Construction Plan shall identify the type and location of erosion control/water quality best

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management practices that will be implemented during construction to protect coastal water quality and related coastal resources, including at a minimum all of the following:

1. **Equipment BMPs.** Equipment washing, refueling, and/or servicing shall take place at an appropriate location inland of the beach to prevent leaks and spills of hazardous materials at the project site, preferably on an existing hard surface area (e.g., a road) or an area where collection of materials is facilitated. All construction equipment shall also be inspected and maintained at a similar inland location to prevent leaks and spills of hazardous materials at the project site.

2. **Good Housekeeping BMPs.** The construction site shall maintain good construction housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the project site; etc.).

3. **Selection of Treated Wood.** For all components of the wharf that the applicant proposes to construct using preservative-treated wood, a type of treated wood shall be selected that minimizes the risk of aquatic and sediment toxicity.
 - a. All treated wood shall be treated to the standards of the lowest appropriate "Use Category" for each component, to ensure that the treated wood does not exceed the minimum preservative retention level. This will minimize the amount of preservative in the wood that may leach into coastal waters. Use Categories, as specified by the American Wood Protection Association, are based on factors such as whether the wood is subject to saltwater splash vs. immersion, and whether the component is critical and difficult to replace.

 - b. Where available, only treated wood that has been certified as produced for use in aquatic environments shall be used (as indicated by a BMP Quality Mark or Certificate of Compliance), in accordance with industry standards such as the Best Management Practices for the Use of Treated Wood in Aquatic and Wetland Environments by the Western Wood Preservers Institute, et al.

4. **Construction Using Treated Wood in the Aquatic Environment.** Treated wood sawdust and debris shall not be allowed to enter coastal waters. If

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treated wood is saw-cut, drilled, or sanded during demolition, removal, installation, or maintenance of the docks, all sawdust and debris generated shall be contained and removed. Field-treatment of Copper Naphthenate preservative shall be applied sparingly to cut ends and drilled holes in treated wood, and drips or spills of Copper Naphthenate shall not be allowed to enter coastal waters. Treated wood and treated wood debris shall be stored a minimum of 50 feet from coastal waters, drainage courses, and storm drain inlets; shall be stored on an impervious surface; and shall be covered during rain events.

- 5. Rubber-tired Construction Vehicles.** Only rubber-tired construction vehicles are allowed on the beach and in the intertidal zone, except track vehicles may be used if the Executive Director determines that they are required to safely carry out construction.
- 6. Construction Material Storage.** All construction materials and equipment placed on or adjacent to the beach during daylight construction hours shall be stored beyond the reach of tidal waters. All construction materials and equipment shall be removed in their entirety from these areas by one hour after sunset each day that work occurs.
- 7. Debris Containment and Disposal.** All debris shall be effectively contained, collected, and properly disposed of. For all work over sandy beach areas, containment netting or similar measures shall be placed under the wharf to collect such debris, including to avoid debris contact with beach areas. For all work over ocean areas, such containment netting and/or other floating containment measures (contained via booms, boats, or a combination of same) shall be applied to avoid debris making it into the ocean. Tarps or other devices shall be used to capture all debris, sawdust, oil, grease, rust, dirt, drips, and spills resulting from overwater construction and demolition activities, to protect the quality of coastal waters. Any such debris that makes it to the ocean shall be immediately collected (e.g., from a boat using seine nets).
- e. Restoration.** All sandy beach and other public recreational use areas and all beach access points impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction. Any native materials impacted shall be filtered as necessary to remove all construction debris.
- f. Construction Site Documents.** The Construction Plan shall provide that copies of the signed CDP and the approved Construction Plan be maintained in a conspicuous location at the construction job site at all times, and that such copies

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be available for public review on request. All persons involved with project construction shall be briefed on the content and meaning of the CDP (including explicitly its terms and conditions) and the approved Construction Plan, and the public review requirements applicable to them, prior to commencement of construction.

- g. Construction Coordinator.** The Construction Plan shall provide that a construction coordinator be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and that his/her contact information (i.e., address, phone numbers, email address, etc.) including, at a minimum, a telephone number (with message capabilities) and an email that will be made available 24 hours a day for the duration of construction, is conspicuously posted at the job site where such contact information is readily visible from public viewing areas while still protecting public views as much as possible, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and emergencies). The construction coordinator shall record the contact information (e.g., address, email, phone number, etc.) and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry. All complaints and all actions taken in response shall be summarized and provided to the Executive Director within one week of receipt of the complaints.
 - h. Construction Specifications.** The construction specifications and materials shall include appropriate provisions that require remediation for any work done inconsistent with the terms and conditions of the CDP.
 - i. Notification.** The Permittee shall notify planning staff of the Coastal Commission's Central Coast District Office at least three working days in advance of commencement of construction, and immediately upon completion of construction.
- 6. Ongoing Repair and Maintenance.** This CDP authorizes future maintenance as described in this special condition. The Permittees acknowledge and agree on behalf of themselves and all successors and assigns that it is the Permittee's responsibility to: (a) maintain the approved project and all related development in a structurally sound manner, and in their approved and required states.
- a. Maintenance.** "Maintenance," as it is understood in this condition, means development that would otherwise require a CDP whose purpose is to repair and/or maintain the overall permitted structure including specifically: replacement of up to five piles per year (with up to two piles being driven in any one day);

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replacement of up to 10 percent of decking (approximately 3,500 square feet) per year; replacement of up to 300 linear feet of deteriorated stringers per year; replacement of up to 200 linear feet of railing per year; repair of the under-wharf sewage pump; repair of any damaged utility lines; and maintenance of coating on the treated wood decking (see below).

- b. Maintenance of Coating on Treated Wood Wharf Decking.** The polyurea/Arcisoy or other non-toxic sealant applied to the ACZA-treated wood used for the wharf decking (to seal the treated wood and thereby reduce leaching of the preservative chemicals into coastal waters) shall be periodically monitored during the life of the structure, and shall be repaired or replaced if it begins to deteriorate.
 - 1. Application of coatings or sealants to treated wood shall be conducted a minimum of 50 feet from coastal waters, drainage courses, and storm drain inlets, if feasible. Overwater application of coatings to treated wood shall be minimized. If a coating or sealant must be reapplied to treated wood overwater, containment devices shall be used to prevent any potential drips or spills from entering the water below.
 - 2. To the extent feasible, treated wood shall not be pressure-washed, sanded, or scraped, as this may increase the leaching of wood preservatives and the discharge of treated wood particles into coastal waters. If treated wood is sanded or scraped for repair or maintenance, all sawdust and debris generated shall be contained and removed, to prevent treated wood particles from entering the water below.
 - 3. Deck cleaners and brighteners, especially those containing acid-based or highly oxidizing chemicals (such as bleach, sodium hydroxide, sodium percarbonate, oxalic acid, and citric acid) shall not be used for maintenance of treated wood, as they may increase the leaching of wood preservatives, and contain chemicals that may directly harm aquatic life.
- c. CDP Duration for Ongoing Repair and Maintenance Activities.** The ongoing repair and maintenance activities authorized by this CDP may take place for five years from the date of Commission approval (i.e., until July 8, 2026). The CDP duration for ongoing repair and maintenance activities may be extended if a CDP amendment application is submitted and the permit is extended prior to July 8, 2026.
- d. Annual Work Plan Reports.** The Permittee shall submit, for review and written approval by the Executive Director, an Annual Work Plan that includes project plans and lists of all anticipated activities for the upcoming repair cycle within 90

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days prior to commencement of construction activities. The Permittee shall also submit, for Executive Director review and approval, a Post-Activity report within 90 days of construction completion that compares the anticipated activities with those completed during the repair cycle. The Post-Activity report shall include a description of any issues encountered in terms of ensuring compliance with that year's Annual Work Plan.

- 7. Army Corps of Engineers Approval.** PRIOR TO CONSTRUCTION, the Permittee shall submit written evidence that the United States Army Corp of Engineers (ACOE) has authorized the proposed project or that no such authorization is required. The Permittee shall inform the Executive Director of any changes to the project required by ACOE, and any such changes shall not be incorporated into the project until the Permittee obtains a Commission amendment to this CDP, unless the Executive Director determines that no amendment is legally required.
- 8. Minor Modifications.** The Permittee shall undertake development in conformance with all of the above conditions and approved plans. Minor adjustments to the terms and conditions of this CDP may be allowed by the Executive Director if such adjustments: (1) are deemed reasonable and necessary; (2) do not adversely impact coastal resources; and (3) do not legally require a permit amendment.

Capitola Wharf Resiliency and Public Access Improvement Project

MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Introduction

This document is the Mitigation Monitoring and Reporting Program (MMRP) for the Capitola Wharf Resiliency and Public Access Improvement Project (Project). This MMRP has been prepared pursuant to Section 21081.6 of the California Public Resources Code, which requires public agencies to “adopt a reporting and monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment.” A MMRP is required for the proposed Project because the Initial Study/Mitigated Negative Declaration (IS/MND) has identified mitigation measures to reduce potential impacts to less than significant.

Mitigation Monitoring and Reporting Program

As the lead agency, the City of Capitola will be responsible for monitoring compliance with all mitigation measures. Different departments within the City are responsible for aspects of the Project. It is expected that one or more departments will coordinate efforts to ensure compliance. The MMRP is presented in tabular form on the following pages. The components of the MMRP are described briefly below:

- **Mitigation Measure:** The mitigation measure(s) are taken from the IS/MND, in the same order that they appear in the IS/MND.
- **Method of Verification:** Identifies the potential method(s) that will be used to confirm that each mitigation measure has been implemented.
- **Timing of Verification:** Identifies at which stage of the Project the mitigation must be completed.
- **Monitoring Responsibility:** Identifies the City as responsible for mitigation monitoring and other parties potentially needed to facilitate implementation.
- **Verification (Date and Initials):** Provides a contact who reviewed the mitigation measure and the date the measure was determined complete.

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Mitigation Monitoring and Reporting Program (MMRP)					
Mitigation/Avoidance Measure	Method(s) of Verification	Timing of Verification	Monitoring Responsibility	Verification (Date/Initials)	
Biological Resources					
BIO-1 A biologist shall lead on-site environmental training for work crews prior to the start of the proposed Project. Any new crew members brought onto the job prior to Project commencement must undergo the environmental training before starting work on the Project. Pre-construction training shall involve discussion on the status and sensitivity of the target species in the area and the actions to be taken to avoid or minimize impacts in the event of a target species entering the work area. This measure shall be included on the construction plans.	Biologist compliance documentation (e.g. record date and time of training)	Prior to starting work	City/ City Biologist/ City Contractor		
BIO-2 The contractor shall use a wood cushion block, or other comparable noise dampening device, during pile driving activities. This measure shall be included on the construction plans.	Contractor agreement and work logs	Prior to and during work	City/City Contractor		
BIO-3 A pile installation “exclusion zone” defined as the distance where underwater and in-air sound levels exceed the Level B harassment threshold (160 dB RMS threshold for impulse noise; and 120 dB RMS for continuous noise) shall be established. The exclusion zone distance(s) shall be from the active pile driving/installation source as detailed below or an alternative distance(s) if required by the Project’s regulatory permits. Exclusion zones by pile type and installation method are as follows: Underwater exclusion zone <ol style="list-style-type: none"> Fiberglass pile vibratory installation – 410 meters Fiberglass pile impact proofing – 8.8 meters Timber pile impact driving – 63 meters In-air exclusion zone <ol style="list-style-type: none"> Fiberglass pile vibratory installation – 7.1 meters (seals) and 2.8 meters (sealions) Fiberglass pile impact proofing – 30.3 meters (seals) and 12.1 meters (sealions) Timber pile impact driving – 11.4 meters (seals) and 4.5 meters (sealions) Marine mammal monitoring of the exclusion zone shall be conducted prior to commencement of pile installation. Pile-installation activities shall not commence until marine mammals are not sighted in the exclusion zone for 15 minutes. This measure shall be included on the construction plans.	Biologist compliance documentation and/or Contractor work logs	During pile driving and pile vibratory installation	City/ City Biologist/ City Contractor (Biologist-trained designated construction monitor)		
BIO-4 If Project construction begins outside of nesting bird season, no additional mitigation is required. If Project construction begins within the nesting bird season (e.g. February 15 – September 15), a pre-construction nesting bird survey shall be conducted. No	Biologist compliance documentation	No more than one week prior to work, if	City/ City Biologist		

Wharf Resiliency and Public Access Improvement Project

Mitigation Monitoring and Reporting Program (MIMRP)					
Mitigation/Avoidance Measure	Method(s) of Verification	Timing of Verification	Monitoring Responsibility	Verification (Date/Initials)	
more than one week prior to initiation of construction activities, a qualified biologist shall conduct a nesting bird survey to determine if active nests of bird species protected by the Migratory Bird Treaty Act and/or the California Fish and Game Code are present in the nesting bird monitoring area. If active nests are found, construction activities within 300 feet of the nests (or as determined by the qualified biologist) shall be modified, postponed or halted, until the nest is vacated, the young have fledged, and/or there is no evidence of a second attempt at nesting. Monitoring shall not extend beyond Cliff Drive because the effects and noise environment beyond that location is dominated by roadway and train effects.		construction is scheduled to begin during the nesting season (February 15-September 15)			
Cultural Resources					
<p>CUL-1 Prior to City approval of the Project's final 100% design plans, the City's Architectural & Site Review Committee shall perform a focused review of the draft 100% design plans for consistency with the design plans reviewed and recommendations provided in the Project's April 2020 (or as amended) <i>Secretary of the Interior's Standards and Historic Integrity Review</i>. The City's focused review shall evaluate consistency with the following elements:</p> <ul style="list-style-type: none"> a. Compatible texture and finish of proposed exterior of the new piles and repaired piles; b. Compatible design, scale, materials, location, etc., of the prefabricated restrooms; c. Design, scale, materials, etc., of the altered entrance gates; and d. Design, scale, materials, etc., of the new security gates. <p>Should the focused review determine the above listed elements in the draft 100% design plans are consistent with the design plans reviewed and recommendations provided in the <i>Secretary of the Interior's Standards and Historic Integrity Review</i>, no additional mitigation shall be required. Should an inconsistency be identified, modifications to the draft 100% design plans shall be made until the Architectural & Site Review Committee determines consistency has been met.</p>	Architectural & Site Review Committee review documentation	Prior to City approval of 100% design plans	City/ Architectural & Site Review Committee		
Hydrology and Water Quality					
<p>HWQ-1 The City shall obtain all necessary permits from applicable agencies with jurisdiction over the Project. The contractor will implement and document compliance with permit conditions and BMP practices required by the permits per agency requirements and for City records. Proof of implementation may include but is not limited to the use of before-and-after photo documentation, copies of receipts and/or construction management logs.</p>	e.g. before and after photos; receipts and/or Contractor work logs	Prior to and during work	City/ City Contractor		
Noise					

Wharf Resiliency and Public Access Improvement Project

Mitigation Monitoring and Reporting Program (MMRP)				
Mitigation/Avoidance Measure	Method(s) of Verification	Timing of Verification	Monitoring Responsibility	Verification (Date/Initials)
<p>NOI-1 Pile Driving Notification Plan – The City shall implement a pile driving notification plan as described herein to keep residents informed of the Project’s pile driving schedule. Prior to pile driving activities and within 2 weeks after award and execution of the construction contract, the Contractor shall provide the City with a pile driving schedule that identifies: (1) start date of pile driving, (2) anticipated weekly work zones by estimated date shown on an aerial map (or plan sheet overview), (3) estimated pile driving completion date, and (4) website address for accessing the pile driving schedule on-line. The Contractor shall be required to post and maintain the schedule onsite near the Wharf Foot. The Contractor shall update the schedule at least every two weeks and provide the schedule to the City by the following day for posting on the City’s website.</p>	<p>Pile driving schedule posted near the Wharf foot and on the City’s website</p>	<p>Prior to pile driving and within 2 weeks after award and execution of the construction contract</p>	<p>City/ City Contractor</p>	
<p>NOI-2 Pile Driving Soft Start – Pile-driving shall commence with a soft start procedure (ramping up) in order to reduce the potential for startle and annoyance of nearby receptors. This shall be noted on the Project’s construction plans.</p>	<p>Contractor agreement and contractor work logs</p>	<p>Prior to and during pile driving</p>	<p>City/ City Contractor</p>	



**DEPARTMENT OF PARKS AND RECREATION
OFFICE OF HISTORIC PRESERVATION**

Armando Quintero, Director

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June 08, 2021

In reply refer to: COE_2021_0301_001

VIA ELECTRONIC MAIL

Frances Malamud-Roam
Project Manager
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450 Golden Gate Ave, 4th Floor, Suite 0134
P.O. Pox 36152
San Francisco, CA 94102

RE: Continuing consultation for the Capitola Wharf Resiliency, Santa Cruz County

Dear Frances Malamud-Roam:

The U.S. Army Corps of Engineers (COE) is consulting with the State Historic Preservation Officer (SHPO) to comply with Section 106 of the National Historic Preservation Act of 1966 (as amended) and its implementing regulation at 36 CFR § 800. By letter received on May 14, 2021, the COE is addressing comments on their description of the Undertaking and identification efforts. The COE submitted the following document to further address these comments:

- *Capitola Wharf Resiliency and Public Access Improvement Project (USACE Ref# 2020-00076S) -Response to Additional Information Request from SHPO(Moffatt & Nichol 2021)*

The COE initiated consultation with the SHPO on March 1, 2021, proposing to issue a permit for expanding the length of an existing public access wharf and to conduct maintenance and repairs to the wharf structure located at 1400 Wharf Road at Capitola Beach on Monterey Bay in the City of Capitola, Santa Cruz County. Project activities include widening 458-linear foot section of the trestle by 16 feet, repairing, removing and replacing structure piles, replacing ACZA-treated timber decking and adding decking for vehicle runners, maintenance and repair of pile caps, stringers, and the hoist landing, relocating wharf utility lines including water, sewer and electric, improving public amenities including restroom facilities, and removing 30 creosote treated derelict piles, adjacent to but not part of, the wharf. The APE is defined as the entire 1-acre project footprint, to a maximum vertical depth of 60 feet for pile driving and includes the adjacent Venetian Court Apartments to consider indirect effects to the building. Efforts to identify historic properties include a review of the built environment, a records search, site visit, and Native American outreach.

The COE requested a Sacred Lands File from the Native American Heritage Commission (NAHC) returning positive results and contacted Native American entities listed by the NAHC as having cultural ties to the project area. The COE received a response from the Coastanoan Ohlone

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Rumsen-Mutsun Tribe requesting the presence of a Native American monitor during ground-disturbing activities. Resulting from this communication, the COE will incorporate this request as a special condition to the permit. The COE received no further responses.

Efforts to identify historic properties resulted in the identification of the Capitola Beach Cultural Landscape District (a.k.a. Soquel Landing, a.k.a. Capitola Beach P-44-001149) and the Capitola Wharf (P-44-001150) as within the APE.

The Venetian Court Apartments are listed on the National Register as a Historic District. This district is outside the APE, but the COE has determined the second possible historic property, the Capitola Wharf (P-44-001150) is a contributing element of that Historic District. The COE has determined the Historic District to be a contributing feature of the Capitola Beach Cultural Landscape District (P-44-001149). A possible historic property adjacent to the APE is P-44-000090, which the COE states was destroyed during the construction of a parking lot.

The COE stated the project will be implemented following the *Secretary of the Interior's Standards for Treatment of Historic Properties –Rehabilitation Standards*, revised 1990, and therefore, the project will not alter or adversely affect the historical use, character, distinctive materials, or features of the property; the project will repair rather than replace where possible and replace with similar in-kind components when necessary; and the widening of a section of the wharf will be compatible with the existing historic structure and will not alter the integrity of the property.

By letter issued on April 7, the SHPO commented that the proposed project activities did not appear to be described in their entirety, containing a list of “possible future” actions that were not detailed. Clarity was requested on how these might affect contributing elements of the historic properties/districts. In the current correspondence, the COE referred to the Moffatt & Nichol memo (2021) which detailed the proposed ongoing maintenance activities.

On April 7, 2021, the SHPO requested photos of current conditions of the structural elements, such as the security and entrance gates (and a rendering of the replacements). The COE submitted the requested images for review via the Moffatt & Nichol memo (2021).

On April 7, 2021, the SHPO commented that the supplemental materials repeatedly state that the currently proposed project did not propose to modify or physically come into contact with the raised or stable portions of Capitola’s land areas, and ground disturbance is also only in areas extremely close to the existing and original piles. However, project activities include utility replacement which were noted by the consultant, but not shown, on design maps. Clarification was requested on proposed ground disturbance including locations of proposed utility replacement and consideration of the effects of that project activity upon historic properties, including possible subsurface archaeological deposits. In the current correspondence, the COE referred to the Moffatt & Nichol memo (2021) which states that utilities would be relocated from below deck to the top of the deck to reduce damage to utility conduits from wave impact and will not involve ground disturbance.

By letter issued April 7, 2021, the SHPO commented that pile replacements were listed as a project activity as well as widening of the Wharf by 16-feet and noted that the consultant’s report (Archives & Architecture 2020a, pg 3) disclaims that the consultant has not undertaken an analysis of the site to evaluate the potential for subsurface resources. It was recommended that an analysis of the site be conducted to evaluate the potential for subsurface archaeological deposits in the areas of expected ground disturbance in subtidal areas. In the current consultation, the COE referred to the

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Moffatt & Nichol memo (2021) which states that underwater sediments located at the shallow depths in the locations of the proposed pile installations as these areas are in constant flux due to the high-energy wave environment.

On April 7, 2021, the SHPO recommended a pedestrian survey if new project information indicated ground disturbing activities would occur in order to identify possible historic properties and to ground-truth the current conditions (extant/non-extant in the APE) of the adjacent archaeological site P-44-000090. In the current correspondence, the COE referred to the Moffatt & Nichol memo (2021) which reiterated that no ground disturbing activities will occur aside from the pile installations.

- Pursuant to 36 CFR 800.4(c)(2), the COE has determined P-44-001149, the Capitola Beach Cultural Landscape District is eligible for the National Register under Criterion A for its association with local economic development and tourism with a period of significance from 1857-1969. **I concur.**
- The COE determined P-44-001150, the Capitola Wharf (a.k.a. Capitola Pier) is individually eligible for the National Register under Criterion A with a period of significance from 1857-1967. **I concur.**
- The COE determined P-44-001150, the Capitola Wharf (a.k.a. Capitola Pier) is a contributing element of the NRHP listed Venetian Apartments Historic District, and that this Historic District is a contributing feature of P-44-001149. **I concur.**

The COE has concluded that issuing a permit would have no adverse effect on historic properties and has requested review and comment on their finding of effect for the proposed undertaking. After reviewing the letter and supporting documentation, **I do not object** to a finding of *no adverse effect to historic properties* for this undertaking pursuant to 36 CFR § 800.5(c)(1). Be advised that under certain circumstances, such as unanticipated discovery or a change in project description, the COE may have additional future responsibilities for this undertaking under 36 CFR § 800. If you require further information, contact Elizabeth Hodges of my staff at (916) 445-7017 or Elizabeth.Hodges@parks.ca.gov.

Sincerely,



Julianne Polanco
State Historic Preservation Officer