



CITY OF MORRO BAY CITY COUNCIL NOTICE OF SPECIAL MEETING

The City of Morro Bay provides essential public services and infrastructure to maintain a safe, clean and healthy place for residents and visitors to live, work and play.

SPECIAL MEETING AGENDA **Tuesday, June 28, 2022 @ 3:30 PM** **Veterans Memorial Hall** **209 Surf Street, Morro Bay**

Pursuant to Assembly Bill 361 (2021-22) and Government Code section 54953 this Meeting will be conducted in a hybrid format with both in-person and virtual public participation. Ways to watch this meeting and submit public comment are provided below.

Public Participation:

Public participation is allowed in the following ways:

- *Community members may attend the meeting in person at the Morro Bay Veterans Hall.*
- *Alternatively, members of the public may watch the meeting and speak during general Public Comment or on a specific agenda item by logging in to the Zoom webinar using the information provided below. Please use the “raise hand” feature to indicate your desire to provide public comment.*

Please click the link below to join the webinar:

- <https://us02web.zoom.us/j/82722747698?pwd=aWZpTzdwTHlRTk9xaTlmWVNWRFUQT09>
Password: 135692
- *Or Telephone Attendee: 1 (408) 638-0968 or 1 (669) 900 6833 or 1 (346) 248 7799; Webinar ID: 827 2274 7698; Password: 135692; Press *9 to “Raise Hand” for Public Comment*
- *Members of the public may watch the meeting either on cable Channel 20 or as streamed on the City [website](#).*
- *Community members are encouraged to submit agenda correspondence in advance of the meeting via email to the City Council at council@morrobayca.gov prior to the meeting. Agenda Correspondence received at council@morrobayca.gov by 10 a.m. on the meeting day will be posted on the City website.*

ESTABLISH QUORUM AND CALL TO ORDER

PUBLIC COMMENT FOR ITEMS ON THE AGENDA

SPECIAL MEETING AGENDA ITEMS:

- I. APPROVAL OF COMMUNITY BENEFIT LEASE AGREEMENT BETWEEN THE CITY OF MORRO BAY AND THE BOYS AND GIRLS CLUBS OF THE CENTRAL COAST FOR TEEN CENTER OPERATIONS AT 231 ATASCADERO ROAD

RECOMMENDATION: Staff recommends the City Council approve the Community Benefit Lease Agreement between the City of Morro Bay and the Boyd & Girls Clubs of the Central Coast for Teen Center operations at 231 Atascadero Road and authorize the City Manager to execute the agreement.

- II. REVIEW OF A THREE-YEAR AGREEMENT BETWEEN THE CITY OF MORRO BAY, VISIT MORRO BAY, AND WORLD TRIATHLON CORPORATION, INC. FOR THE CITY TO HOST AN IRONMAN 70.3-MILE, SWIM, BIKE AND RUN EVENT

RECOMMENDATION: Staff recommends the City Council authorize the City Manager to execute a three-year agreement with World Triathlon Corporation, Inc. (to be referred to as Ironman Group in remainder of this report) and Visit Morro Bay, for the City to host the IRONMAN 70.3 Morro Bay Triathlon from 2023 to 2025.

- III. APPROVAL OF AMENDMENT NO. 7 TO THE WATER RECLAMATION FACILITY (WRF) DESIGN-BUILD CONTRACT WITH FILANC BLACK & VEATCH

RECOMMENDATION: Staff recommends the City Council receive staff presentation and authorize the City Manager to execute Amendment No. 7 to the design-build contract with Filanc Black & Veatch (FBV).

ADJOURN

DATED: June 24, 2022



John Headding, Mayor

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN A CITY MEETING, PLEASE CONTACT THE CITY CLERK'S OFFICE AT LEAST 24 HOURS PRIOR TO THE MEETING TO INSURE REASONABLE ARRANGEMENTS CAN BE MADE TO PROVIDE ACCESSIBILITY TO THE MEETING.

and come back to Council at a future Closed Session with a draft lease agreement to review. Staff spent the last couple months developing a mutually agreeable draft contract with B&G Club representatives. Staff attached the product of those discussions, a draft agreement.

Below is a brief history on the Morro Bay Teen Center operations and an outline of the proposed lease agreement terms for City Council consideration.

Teen Center

The City took ownership of the property on which the current Morro Bay Teen Center and skate park sit (231 Atascadero) in September 2002, following bankruptcy proceedings from the previous owner. The property was owned by The World's Most Difficult Miniature Golf Course, LLC, who operated a private miniature golf course at that location. They fell on hard financial times and divested themselves of the property through bankruptcy proceedings. The City purchased the property with the plan to operate a teen center there, given its close proximity to Morro Bay High School.

In January 2003, the City began Teen Center operations in the building on that property that previously served as the miniature golf course administration/arcade building. The purpose of the Teen Center was to provide enrichment opportunities for teenagers. The intent was also to provide a safe place to teenagers to hang out, whom otherwise did not have afternoon activities to participate in or family members at home to watch over them.

The Teen Center operated from 2003 up through the beginning of the COVID-19 pandemic. According to staff, the Teen Center has struggled to serve roughly a maximum of 25 youth, struggled to maintain a relationship with Morro Bay High School, and struggled in general with maintaining a family friendly and positive environment. Over the years, the Teen Center has been considered for budget cuts or elimination several times; most recently, including in response to the Great Recession. The City also has struggled to maintain sufficient Teen Center staffing levels (due to budget and recruitment challenges) to make the Club an engaging opportunity for Morro Bay teenagers.

Skate Park

The skate park was added to the Teen Center parking lot in August 2009. There was a plan in the mid 2000's to develop a permanent skate park in the rear portion of the property behind the Teen Center. However, grant funds were not obtained to conduct those upgrades. Thus, the remaining property located behind the Teen Center has fallen into disrepair and has not been used for any City purpose beyond storage at times since the City took ownership of the property.

The current skate park is operated in the front parking lot of the Teen Center site and is moderately to heavily used by residents and visitors. The City maintains the skate park grounds.

DISCUSSION

B&G Club leadership and City staff see an opportunity to make better use of the Teen Center facility, extend services to teenagers in our community, and reduce City costs in the long run. The B&G Club organization, the South San Luis Obispo branch founded in 1994, has a long history of partnering with cities and other organizations to provide youth services. Currently, the organization serves over 700 youth in San Luis Obispo County offering academic assistance, character and leadership building (Smart Girls and Passport to Manhood), teen programs and

clubhouse (CLUB), special events, and limited sports programs. Their focus on the Central Coast is to connect youth in communities that have limited services to the B&G Club service offerings. Morro Bay fits that bill, as the City does provide youth services for kindergartners on through middle school (Kids Club/Camp, youth sports), but currently does not offer services for teenagers, other than the very popular summer Junior Lifeguard Program. The High School provides some after school activities, such as band and sports, but not all teenagers can participate in those specific activities for a variety of reasons. Thus, there is an opportunity to both expand services for teens in Morro Bay, as well as create a partnership between the City, B&G Club and potentially MBHS to help efficiently fulfill that service gap.

Given this opportunity for collaboration and service need, City staff and B&G Club representatives have developed a draft lease agreement that would provide the Teen Center to the B&G Club rent free for five years. In return, the B&G Club will offer services to teens in Morro Bay at the Teen Center. Some proposed conditions include the following:

Main Deal Points

Term: 5 years with option to extend 20 (four consecutive five-year terms)

Rent: Free

City will

- Provide list of activities so B&G Club will not duplicate services already provided by City (specific youth sports, childcare for K-5)
- Allow alterations to space – building interior and exterior, parking lot, skate park, outdoor surrounding property
- Allow for new construction or remodel
- Allow B&G to rent out facilities for fees to be used to maintain property
- Collaborate on bussing solutions for attendees
- Waive permit fees if needed for new construction or remodel
- Provide up to a one-time \$10,000 in direct expenses to help prepare the Teen Center facility and grounds for Boys and Girls Club operations. That is in addition to City staff time to help in that effort.

B&G Club will

- Pay for general maintenance and custodial of building and surrounding areas
- Pay for any modifications
- Pay for utilities
- Collaborate with other agencies to help serve community
- Hire, and supervise staff
- Provide all supplies

CONCLUSION

Staff recommends that City Council approve the proposed agreement with the Boys and Girls Club.

ATTACHMENTS

1. Proposed Agreement with Boys and Girls Club
2. Map of Teen Center

COMMUNITY BENEFIT LEASE AGREEMENT

by and between

**CITY OF MORRO BAY,
a municipal corporation**

“Landlord”

and

**Boys & Girls Clubs of the Central Coast,
a California non-profit public benefit corporation**

“Tenant”

TABLE OF CONTENTS

Section	Title	Page
1.	Lease of Premises; Condition of Premises	3
2.	Effective Date; Term	4
3.	Rent and Performance Standard	4
4.	Uses	5
5.	Real Estate Taxes	6
6.	Personal Property Taxes	7
7.	Maintenance & Repairs	8
8.	Alterations	9
9.	Compliance with Laws	9
10.	Insurance	9
11.	Indemnification	11
12.	No Liens	11
13.	Signs	12
14.	Utilities	12
15.	Entry and Inspection	12
16.	Damage and Destruction	12
17.	Assignment and Subletting	13
18.	Default and Remedies; Termination	14
19.	Surrender of Premises	16
20.	Force Majeure	16
21.	Estoppel Certificate	16
22.	Subordination	16
23.	Condemnation	16
24.	Use of Landlord's Name	17
25.	Trade Fixtures	17
26.	Quiet Enjoyment	17
27.	Holdover	17

28.	Notice and Waiver Regarding Relocation, Goodwill, Property Interest and Condemnation	17
29.	Miscellaneous	18

Exhibit A Description and Depiction of Premises

COMMUNITY BENEFIT LEASE AGREEMENT

THIS COMMUNITY BENEFIT LEASE AGREEMENT (“this Lease”) is made effective this ___ day of _____, 2022, by and between the CITY OF MORRO BAY, a municipal corporation (Landlord), and BOYS & GIRLS CLUBS OF THE CENTRAL COAST, a California non-profit public benefit corporation (Tenant). Landlord and Tenant are sometimes individually referred to as a “Party” and jointly as the “Parties.”

RECITALS:

A. Landlord owns, certain real property located in the City of Morro Bay, County of San Luis Obispo, as follows: that certain real property, commonly identified as 231 Atascadero Road, Morro Bay (APN 065-182-005) (Property), improved with a building used for community purposes (Building), with adjacent improved for landscaping, parking, and a recreational skate park. The building and abutting landscaped and parking areas, excluding the skate park, as described and depicted on the attached Exhibit A, is the subject of this Lease and is also referred to as the “Premises.”

B. Tenant is a non-profit corporation currently conducting activities for the benefit of community youth.

C. The Parties desire to enter into a written lease agreement and to confirm the rights and obligations of both Parties therein. Pursuant to the terms of this Lease, Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Premises, for Tenant’s sole exclusive use of benefitting the community.

NOW, THEREFORE, in consideration of the above Recitals and the mutual promises of the Parties set forth in this Lease, Landlord and Tenant hereby agree as follows:

1. LEASE OF PREMISES; CONDITION OF PREMISES.

- 1.1. **Lease.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises solely for the uses specified in Section 4.
- 1.2. **Condition of Premises.** Tenant acknowledges it has and shall accept the Premises from Landlord in its “AS IS” condition without representation or warranty, with the understanding Landlord agrees to expend up to \$10,000, not including Landlord’s staff time, to assist Tenant with cleaning up the Premises, as mutually agreed to by City’s Recreation Services Manager, and Tenant’s Chief Operations Officer. Tenant has inspected the premises and is aware of its condition. **Pursuant to California Civil Code Section 1938, Tenant is advised the Premises has not undergone an inspection by a Certified Access Specialist, and, therefore, Landlord is not aware if the Premises comply with the applicable construction-related accessibility standards pursuant to Civil Code Section 55.53** Tenant hereby agrees the skate park shall continue to be located at its current location and not be staffed by Tenant or Landlord.

1.3. Provide monthly report to City to include financials, number of youths served, and listing of programs

2. EFFECTIVE DATE; TERM.

2.1. **Effective Date.** This Lease shall be deemed effective as of _____, 2022 (Effective Date). All other Tenant's rights and obligations under this Lease shall commence as of the Effective Date.

2.2. **Term.** The initial term of this Lease shall commence on the Effective Date for a fixed term of five years, and terminate, without notice, at midnight on [the day of the effective date], 2027 (Initial Term). Tenant has the option of extending the Initial Term for four consecutive five-year periods (Extended Term). To extend the Initial Term and each Extended Term, Tenant must not be in default under this Lease and have given Landlord 60-days' written notice of Tenant's desire to extend the Initial Term or Extended Term, as applicable. The Initial Term and each Extended term can be amended, as provided in Section or terminated as provided in Sections 2.3, 7.2, 18.1 and 29.14.

3. RENT & PERFORMANCE STANDARDS.

3.1. **Monthly Rent.** Landlord agrees Tenant shall not pay any rent under this Lease.

3.2. **Performance Standards.** As material consideration for this Lease, Tenant covenants to comply with the following requirement (Performance Standard):

a. diligently maintain and repair the Premises, in compliance with Section 7.1,

b. on the first day of each full month following the Effective Date, provide Landlord's Recreation Services Manager a written monthly report that includes financial accounting for the previous month, as well as the number of youth served and a listing of programs/services provided for that previous month, and

c. on each annual anniversary of the first day of the month following the Effective Date, provide Recreation Services Manager a written report that includes financial accounting for the previous year, as well as the number of youth served and a listing of programs/services provided for that previous year.

3.3. **Payment of Obligations.** All monetary obligations to be paid by Tenant to Landlord shall be in lawful money of the United States of America at the address specified in Section 29.12, or such other address as Landlord shall notify Tenant in writing.

3.4. **Late Payment.** Any payment of any sum to be paid by Tenant, not paid within ten days after its due date, shall be subject to a ten percent late charge.

3.5. **Security Deposit.** Tenant is not required to provide, and has not provided, a security deposit to Landlord.

4. USES.

4.1. Authorized Uses; Minimum Program Requirements.

4.1.1. Authorized Uses. Tenant shall use the Premises solely to provide benefit to the community youth, as follows: services and activities to include academic enrichment; art programs; character and leadership development; drama instruction; organized sports; health and life skills; and community service projects, for students in kindergarten through 12th grade. As material consideration for this Lease, Tenant agrees to use the Premises and conduct all its operations on the Premises under the designation of The Boys & Girls Clubs of the Central Coast. No other name shall be used with respect to the Premises without the prior written consent of Landlord, which may be granted or withheld in its sole discretion. No programs or services provided by Tenant shall duplicate youth sports and childcare services provided by Landlord. Tenant may allow a third party to hire the Premises for a short-term use, such as for a birthday party, wedding, or reception; provided, that all other terms and conditions of this Lease are met.

4.2. Prohibited Uses. Tenant shall not use, or permit the Premises, or any part thereof, to be used for any purpose or purposes other than those express uses specified in Section 4.1.1.

Tenant shall not sell or permit to be displayed, performed, sold, kept, or used in or about the Premises any conduct which may be prohibited by standard forms of fire insurance policies.

Tenant shall not violate any and all requirements, pertaining to the use of the Premises, of any insurance organization or company necessary for the maintenance of reasonable fire and public liability insurance, covering the buildings within the Premises and appurtenances.

Tenant shall not allow any animals on the Premises except service dogs as defined in federal and state law.

Tenant shall not permit smoking or vaping on any portion of the Premises.

Tenant shall not commit, or suffer to be committed, any waste upon the Premises, or any nuisance or other act or thing which may disturb the quiet enjoyment of any other tenant or occupant of the Premises or any adjacent Premises. Tenant shall not conduct or permit to be conducted any sale by auction in, upon or from the Premises, whether said auction be voluntary, involuntary, pursuant to any assignment for the payment of creditors, or pursuant to any bankruptcy or other solvency proceeding nor display any “going out of business” or similar sign.

Tenant shall not engage in any activity in, on or about the Premises that violates any Environmental Law, and shall promptly, at Tenant’s sole cost and expense, take all

investigatory and/or remedial action required or ordered by any governmental agency or Environmental Law for clean-up and removal of any contamination involving any Hazardous Material created or caused directly or indirectly, by Tenant. The term "Environmental Law" shall mean any federal, state or local law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environmental conditions on, under or about the Premises, including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Sections 9601, et seq.; (ii) the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Sections 6901, et seq.; (iii) California Health and Safety Code Sections 25100, et seq.; (iv) the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5, et seq.; (v) California Health and Safety Code Section 25359.7; (vi) California Health and Safety Code Section 25915; (vii) the Federal Water Pollution Control Act, 33 U.S.C. Sections 1317, et seq.; (viii) California Water Code Section 13000, et seq.; and (ix) California Civil Code Section 3479, et seq., as such laws are amended and the regulations and administrative codes applicable thereto. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined or listed as a "hazardous waste", "extremely hazardous waste", "restrictive hazardous waste", "or "hazardous substance" or considered a waste, condition of pollution or nuisance under the Environmental Laws; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos; and/or (iv) substances known by the State of California to cause cancer and/or reproductive toxicity. It is the intent of the Parties hereto to construe the terms "Hazardous Materials" and "Environmental Laws" in their broadest sense. Tenant shall provide all notices required pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5, et seq. Tenant shall provide prompt written notice to Landlord of the existence of Hazardous Materials on the Premises and all notices of violation of the Environmental Laws received by Tenant. Notwithstanding the foregoing, Tenant is not responsible for the remediation or removal of any Hazardous Materials which Tenant did not directly or indirectly cause to be placed at the Premises.

4.3. **Abandonment.** Tenant shall not vacate or abandon the Premises at any time during the Initial Term or Extended Term, as applicable, of this Lease. Upon termination of this Lease for any reason, any personal property belonging to Tenant and left on the Premises shall be deemed to be abandoned and, at the option of Landlord, shall become the property of Landlord.

5. **REAL ESTATE TAXES.** Tenant shall pay any and all real property taxes applicable to Tenant's possessory interest in the Premises. All such payments shall be made at least ten days prior to the due date of the applicable installment. Tenant shall promptly (at least five days prior to the due date) furnish Landlord with satisfactory evidence that such taxes have been paid. If any such taxes to be paid by Tenant shall cover any period of time after the expiration or earlier termination of the Initial Term and Extended Term, as applicable, hereof, then Tenant's share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year that this Lease is in effect, and Tenant may apply to the County for reimbursement of any overpayments after such proration. Notwithstanding anything above to the contrary, to the extent any assessment is levied against the Premises

payable in installments, Tenant shall pay all installments coming due and payable during the Initial Term and Extended Term, as applicable of this Lease.

Tenant acknowledges although Landlord is a municipal entity exempt from real property taxes, Tenant's possessory interest under this Lease may be subject to real property taxation.

Upon request, Landlord agrees to work with Tenant to assist in providing information to the County Tax Assessor to reduce the valuation of Tenant's possessory interest in the Premises. Landlord provides no assurance to Tenant that it will be successful in such efforts and that Tenant may be required to pay real property taxes.

6. PERSONAL PROPERTY TAXES. During the Initial Term and Extended Term, as applicable, Tenant shall pay prior to delinquency all taxes assessed against the levied upon fixtures, furnishings, equipment, and all other personal property owned by Tenant (excluding Landlord's personal property) located in the Premises, and when possible, Tenant shall cause said fixtures, furnishings, equipment and other personal property to be assessed and billed separately from Landlord's personal property. In the event any or all of Tenant's fixtures, furnishings, equipment, and other personal property shall be assessed and taxed with Premises, Tenant shall pay its share of such taxes within ten (10) days after delivery to Tenant by Landlord of a statement in writing setting forth the amount of such taxes applicable to Tenant's property.

7. MAINTENANCE AND REPAIRS.

7.1. **Maintenance and Repair by Tenant.** Except the specific maintenance obligations of Landlord as set forth in Section 7.2, Tenant shall at all times during the Initial Term and Extended Term, as applicable, and at Tenant's sole cost and expense, keep, maintain and repair the Premises in good and sanitary order, condition, and repair. Such maintenance obligations shall include, but not be limited to, any equipment installed by Tenant, furnishings (such as seating, carpeting and drapes, mirrors, and interior repainting) and landscaping.

Tenant shall also hire a cleaning service/custodian, who shall keep the Premises in good and sanitary order on a daily basis.

Tenant shall maintain a written record to evidence the regular performance of maintenance and upkeep of the facility consistent with the maintenance standards.

Upon termination of this Lease, the Premises shall be surrendered in a good, clean, and sanitary condition except for reasonable use and wear. Tenant agrees to surrender the Premises in its original condition, together with all additional improvements or alternations, which have been approved by Landlord and installed by Tenant pursuant to Section 8.1. If Landlord wants to reserve the right to require Tenant to remove any such additional improvements upon the expiration or earlier termination of this Lease, Landlord must reserve such right in its notice of approval. If Tenant is required to remove any improvements from the Premises upon termination of this Lease, then Tenant shall do so at Tenant's sole cost and expense, and Tenant will repair any damage to the Premises caused by such removal. Tenant shall promptly notify

Landlord in writing of any condition in the Premises that require repairs by Landlord (Repair Notice), which shall be made by Landlord, subject to Section 7.2.

Tenant acknowledges Tenant's maintenance obligations under this Section are material consideration to Landlord for this Lease and, therefore, this Section 7.1 shall be construed liberally for the protection and preservation of the Premises.

- 7.2. **Limited Maintenance and Repair by Landlord.** Landlord shall only be responsible to maintain in good repair and in compliance with all applicable laws, ordinances, and regulations, at Landlord's sole cost and expense, **only** (i) the physical structure of the Premises, such as the structural elements, roof, plumbing, water heating system, electrical systems, HVAC equipment and exterior painting, and (ii) subject to the sole discretion of Landlord's City Council. If the City Council does not approve that maintenance and that deems the Premises uninhabitable, then this Lease shall automatically terminate when Tenant vacates the Premises do to that uninhabitability.

Notwithstanding the foregoing, Landlord shall not be required to make repairs necessitated by reason of (i) the negligence or willful misconduct of Tenant, or any of Tenant's staff, volunteers, students, contractors, invitees, subtenants, patrons or customers; (ii) by reason of the failure of Tenant to perform or observe and promptly report to Landlord any conditions the repair of which are Landlord's responsibility; or (iii) by reason of the failure of Tenant to perform or observe the conditions or agreements in this Lease, or caused by unauthorized alterations, additions or improvements made by Tenant or anyone claiming under Tenant (collectively the Tenant Caused Damages). Tenant shall be solely responsible, at its sole cost and expense to repair any Tenant Caused Damages.

Upon receipt of a Repair Notice, Landlord shall have a reasonable period of time to decide whether to commence the repairs and then to commence the repairs. Upon commencement of repairs, Landlord shall use reasonable efforts to diligently complete same. Tenant and Landlord shall jointly conduct an annual inspection of the Premises every March to aid Landlord in determining if any repairs by Landlord may be necessary.

Any renovation work performed by Landlord to the Premises shall not unreasonably interfere with Tenant's operations.

8. ALTERATIONS

8.1 To Premises. Tenant shall not make any alterations to the Premises, or any part thereof, without the prior written consent of Landlord. If Tenant wishes to make additional improvements to the Premises, then Tenant shall notify Landlord in writing specifying in reasonable detail the proposed alterations and the cost thereof. Within fifteen days after receiving such notice from Tenant, Landlord shall send written notice to Tenant indicating whether Landlord approves or disapproves of the contemplated improvements. The City Manager may act on behalf of Landlord for approvals or disapprovals under this Section. Landlord's approval shall not be unreasonably withheld, and any disapproval shall be in writing and shall explain the reasons for the denial. However, as a condition to granting its approval to any of the improvements, Landlord may require Tenant to provide Landlord with reasonably satisfactory evidence of Tenant's financial ability to pay for the costs of the improvements and may require a completion bond be provided to Landlord or other security reasonably acceptable to Landlord. Any such alterations shall comply with all applicable laws and regulations. All improvements (excluding minor improvements as determined by Landlord) which are approved by Landlord shall be under the supervision of a licensed architect or structural engineer (at Tenant's cost) and made in accordance with plans and specifications approved in writing by Landlord prior to the commencement of such work. All work shall be done in a good and workmanlike manner, diligently prosecuted to completion, and completed in compliance with Section 12. All such improvements shall immediately be deemed a part of the Premises and may not be removed by Tenant. Prior to commencing any work of improvement hereunder, Tenant shall notify Landlord so that Landlord can post and record an appropriate Notice of Non-Responsibility.

9. **COMPLIANCE WITH LAWS.** Except as to the specific obligations of Landlord under Section 7.2, Tenant shall, at its sole cost and expense, comply with all of the requirements of all municipal, state and federal authorities now in force or which may hereafter be in force pertaining to the use of the Premises, and shall faithfully observe in said use all municipal ordinances, including, but not limited to, the general plan and zoning ordinances, state and federal statutes, or other governmental regulations now in force or which shall hereinafter be in force. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any such order or statute in said use, shall be conclusive of that fact as between Landlord and Tenant.

10. INSURANCE.

10.1. **Landlord to Provide Property Insurance.** Landlord shall maintain, at Landlord's sole cost and expense, fire, and excess coverage insurance throughout the term of this Lease, on all buildings and improvements located on the Premises (and fixtures thereto), in an amount equal to one hundred percent of the replacement value of the Premises, together with such other insurance, coverages and endorsements as Landlord may determine in its sole discretion. Tenant hereby waives any right of recovery from Landlord, its officers and employees, and Landlord hereby waives any right of loss or damage (including consequential loss) resulting from any of the perils insured against as a result of said insurance.

10.2. **Tenant's Insurance Obligations.**

10.2.1. Liability Insurance. During the entire term of this Lease, Tenant shall, at Tenant's sole cost and expense, for the mutual benefit of Landlord and Tenant, maintain comprehensive general liability insurance insuring against claims for bodily injury, death or property damage occurring in, upon or about the Premises, written on a per occurrence basis in an amount not less than either (i) a combined single limit of Two Million Dollars (\$2,000,000) for bodily injury, death, and property damage or (ii) bodily injury limits of Five Hundred Thousand Dollars (\$500,000) per person, One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) products and completed operations and property damage limits of Two Hundred Fifty Thousand Dollars (\$250,000) per occurrence and One Million Dollars (\$1,000,000) in the aggregate.

10.2.2. Worker's Compensation Insurance. Tenant shall, at Tenant's sole cost and expense, maintain a policy of worker's compensation insurance in an amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both Tenant and Landlord against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Tenant in the course of conducting Tenant's business in the Premises.

10.2.3. Business Automobile Coverage Insurance. Tenant shall, at Tenant's sole cost and expense, for the mutual benefit of Landlord and Tenant, maintain Business Auto Coverage on ISO Business Auto Coverage from CA 00 01 including symbol 1 (Any Auto) or the exact equivalent, with combined single limits of liability not less than One Million Dollars (\$1,000,000) per accident. If Tenant owns no vehicles, then this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Tenant or Tenant's employees will use personal autos in any way for the operation of any business on the Premises, then Tenant shall provide evidence of personal auto liability coverage for each such person.

10.2.4. General Provisions. All of the policies of insurance required to be procured by Tenant pursuant to this Section 10.2 shall be primary insurance and shall name Landlord, its employees and agents as additional insureds. All policies shall waive all rights of subrogation and provide that said insurance may not be amended or canceled without providing thirty-days' prior written notice by registered mail to Landlord. Within ten business days after execution of this Lease by the last Party to sign, and at least thirty days prior to the expiration of any insurance policy, Tenant shall provide Landlord with certificates of insurance and full copies of the insurance policies evidencing the mandatory insurance coverages written by insurance companies acceptable to Landlord, licensed to do business in

California and rated A:VII or better by Best's Insurance Guide. Landlord may require an increase in the coverage and/or the types of coverage from time to time upon written notice to Tenant. Each of the Parties, on behalf of their respective insurance companies insuring such property of either Landlord or Tenant against such loss, waive any right of subrogation that it may have against the other.

11. INDEMNIFICATION. Tenant shall indemnify, protect, defend and hold harmless the Premises, Landlord and its managers, officers, directors, members, employees, agents, contractors, partners and lenders, from and against any and all claims, and/or damages, costs, liens, judgments, penalties, permits, reasonable attorneys' and consultant's fees, expenses and/or liabilities arising out of, involving, or in dealing with, the occupancy of the Premises by Tenant, the conduct of Tenant's business, any act, omission or neglect of Tenant, its officers, directors, members, employees, agents or contractors, and out of any breach by Tenant in the performance in a timely manner of any obligation on Tenant's part to be performed under this Lease, except for matters which are the result of Landlord's gross negligence, intentional wrongful acts, or in default of this Lease. The foregoing shall include, but not be limited to, all costs of the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of claims made against Landlord) litigated and/or reduced to judgment. In case any action or proceeding is brought against Landlord by reason of any of the foregoing matters, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord and Landlord shall cooperate with Tenant in such defense. Landlord need not have first paid any such claim in order to be so indemnified. In addition, Landlord may require Tenant to pay Landlord's attorneys' fees and costs in defending against or participating in such claim, action or proceeding if Landlord shall decide, in its exercise of reasonable judgment, it is unsatisfied with the representation of its interest by Tenant or its counsel.

Landlord shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Tenant, Tenant's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, earthquake, flood, terrorism, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other any other cause, whether the said injury or damage results from conditions arising upon the Premises or from other source or places except if such injury or damage is the result of the gross negligence or willful misconduct of Landlord or Landlord's employees, contractors or agents.

12. NO LIENS. Tenant shall keep the Premises, free from any liens arising out of any work performed, material furnished, or obligation incurred by Tenant or alleged to have been incurred by Tenant. If Tenant shall fail to pay any charge for which a mechanic's lien claim and suit to foreclose the lien have been filed, and shall not have obtained the release of said lien from the property subject to such lien, Landlord may (but shall not be so required to) pay said claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Tenant to Landlord, together with interest at the rate prescribed in Section 30.6, on the amount of the mechanic's lien claim.

13. SIGNS. Tenant shall not place or permit to be placed any signs upon the exterior or in the windows of the Premises without Landlord's prior written consent. Any sign installed without such approval shall be immediately removed by Tenant and, if said sign is not removed by Tenant within three days after written notice from Landlord to Tenant, then Landlord may remove and destroy the sign without Tenant's approval and without any liability to Tenant. Tenant shall not modify or alter any of the signs without the prior written approval of Landlord's City Manager, which approval shall not be unreasonably withheld or delayed. Landlord shall reply to any proposed alteration within fourteen days from submission. Any revision shall comply with the Morro Bay Municipal Code requirements related to signage prior to any revisions actually being made to the signs. Tenant shall maintain the signs in good condition and repair at all times during the entire term at its sole cost and expense.

14. UTILITIES.

14.1. **Tenant's Responsibilities.** Tenant shall pay, before delinquency, all charges for water, gas, heat, electricity, power, sewer, telephone service, internet, solid waste collection and all other services and utilities used in, upon, or about the Premises by Tenant or any of its subtenants, licensees, or concessionaires during the entire term of this Lease. Tenant shall pay such fees, assessments or charges as may be levied for the operation, maintenance and service of such facilities and shall comply with reasonable rules and regulations established from time to time for use thereof. Tenant shall insure trash and debris produced by the activities on Premises do not accumulate on the Premises.

15. ENTRY AND INSPECTION. Tenant shall permit Landlord and its employees and agents to enter into and upon the Premises at all reasonable times for the purpose of inspecting the same, or for the purpose of making repairs, alterations or additions or performing the improvements to any portion of said building(s), including the erection and maintenance of such scaffolding, canopy, and fences as may be required, or for the purpose of posting notices of non-responsibility for alterations, additions or repairs, or for the purpose of placing upon the Premises any usual or ordinary signs for public safety as determined by Landlord. Landlord shall be permitted to do any of the above without any liability to Tenant for any loss of occupation or quiet enjoyment of the Premises thereby occasioned. Landlord shall make reasonable efforts to coordinate times for any repairs deemed necessary with Tenant to reduce to the extent practicable any interference with Tenant's use of the Premises.

16. DAMAGE AND DESTRUCTION.

16.1. **Notice to Landlord.** Tenant shall give prompt notice to Landlord in case of any fire or other damage to the Premises.

16.2. **Partial Casualty to Premises.** If the Premises shall be damaged by any casualty including, but not limited to, civil unrest, vandalism, a fire, flood or earthquake, such that (i) the cost of replacement or repair of the Restaurant is less than or equal to fifty percent of the total replacement cost thereof; or (ii) the cost of replacement or repair of damage to the Restaurant, and any other structures comprising the Premises, when

aggregated together is less than or equal to fifty percent of the total replacement cost thereof, then Landlord shall promptly repair and restore the same to substantially the condition thereof immediately prior to said damage or destruction. If insurance proceeds are forthcoming, then Landlord shall not be obligated to commence the restoration and/or repair until Landlord has received said insurance proceeds. Landlord shall take all reasonable steps necessary so as to obtain such insurance proceeds promptly so as to prevent delay in restoring and/or repairing the Premises to its prior condition.

- 16.3. **Substantial Damage to Premises.** If the Premises shall be damaged or destroyed by any casualty (or the other matters described above), such that (i) the cost of replacement or repair of the Premises exceeds one years rent; or (ii) the cost of replacement or repair of damage to the Premises, and any of the other structures comprising the Premises, when aggregated together exceeds on years rent total, then Landlord may elect to either replace or repair the damage as aforesaid, cancel this Lease by written notice of cancellation given to Tenant within ninety days after the date of the casualty, or allow Tenant to cause repairs to be made to City standards. This Lease shall cease and terminate twenty days following Tenant's receipt of Landlord's cancellation notice, and Tenant shall vacate and surrender the Premises to Landlord in accordance with the terms of this Lease.
- 16.4. **Reconstruction.** In the event of any reconstruction of the Premises under this Section 16, Landlord shall be obligated to reconstruct the Premises only to the extent of the condition of the Premises prior to the damage.
- 16.5. **Termination.** Upon any termination of this Lease under any of the provisions of this Section 16, the Parties shall be released thereby without further obligations to the other Party coincident with the surrender of possession of the Premises to Landlord, except for obligations, which have theretofore accrued and be then unpaid, and except for Tenant's obligations under Section 11.
- 16.6. **Determination of Percentage of Damage or Destruction.** If either Landlord or Tenant contends the percentage of the damage or destruction referred to above exceeds one-year's rent total and the other Party disagrees, then the determination of the percentage shall be made in writing by a senior officer of the insurance company that is to make insurance proceeds available for replacement or repair. If said insurance company elects not to render such a determination in a timely manner, or no determination is rendered for any other reason, then, in such event, upon fifteen-days' prior written notice to Tenant, Landlord's determination shall be deemed the agreed upon determination of the damage or destruction.

17. ASSIGNMENT AND SUBLETTING.

- 17.1. **Assignment and Subletting.** Tenant shall not sublet the Premises or assign this Lease without the prior written consent of Landlord. Notwithstanding the forgoing, Tenant may allow someone to rent the Premises for a private function as a cost agreed

to by Tenant and the person, subject to the terms of this Lease. That rent may be retained by Tenant. Tenant shall ensure he person so using the Premises shall

18. DEFAULT AND REMEDIES; TERMINATION.

18.1. **Default by Tenant.** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

- (i) Failure to perform any provision of this Lease (other than the payment of money) if the failure to perform is not cured within thirty days after receiving written notice of the default from Landlord. If the default cannot be reasonably cured within thirty days, then Tenant shall not be in default of this Lease if Tenant commences to cure the default within the thirty-day period and diligently and in good faith continues to cure the default and cures it within one hundred eighty days after commencement.
- (ii) Failure of Tenant to meet or comply with the Performance Standard.
- (iii) Vacation or abandonment of the Premises by Tenant.
- (iv) Making a general assignment for the benefit of creditors.
- (v) Filing of a voluntary petition in bankruptcy or the adjudication of Tenant as a bankrupt.
- (vi) Appointment of a receiver to take possession of all or substantially all the assets of Tenant located at the Premises or of Tenant's leasehold interest in the Premises.
- (vii) Filing by any creditor of Tenant of an involuntary petition in bankruptcy which is not dismissed within sixty (60) days after filing.
- (viii) Attachment, execution, or other judicial seizure of all or substantially all the assets of Tenant or Tenant's leasehold where such an attachment, execution or seizure is not discharged within sixty (60) days.

In the event of any such default or breach by Tenant, Landlord may at any time thereafter, without further notice or demand, rectify or cure such default, and any sums expended by Landlord for such purposes shall be paid by Tenant to Landlord upon demand. In the event of any such default or breach by Tenant, Landlord shall have the right to continue the lease in full force and effect and enforce all of its rights and remedies under this Lease, or Landlord shall have the right at any time thereafter to elect to terminate the Lease and Tenant's right to possession thereunder. Upon such termination, Landlord shall have the right to recover from Tenant any damages incurred by Landlord as a result of the termination.

Such efforts as Landlord may make to mitigate the damages caused by Tenant's breach of this Lease shall not constitute a waiver of Landlord's right to recover damages against Tenant hereunder.

Notwithstanding any of the foregoing, the breach of this Lease by Tenant, or an abandonment of the Premises by Tenant, shall not constitute a termination of this Lease, or of Tenant's right of possession hereunder, unless and until Landlord elects to do so, and until such time Landlord shall have the right to enforce all of its rights and remedies under this Lease, including the right to recover rent, and all other payments to be made by Tenant hereunder, as they become due. Failure of Landlord to terminate this Lease shall not prevent Landlord from later terminating this Lease or constitute a waiver of Landlord's right to do so.

18.2. **No Waiver.** Acceptance of any payment under this Lease shall not be deemed a waiver of any default or a waiver of any of Landlord's remedies.

18.3. **Landlord's Default.** Except as may be elsewhere expressly provided in this Lease, Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty days after written notice by Tenant to Landlord, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty days are required for performance then Landlord shall not be deemed in default if Landlord commences performance within the thirty (30) day period and thereafter diligently prosecutes the same to completion.

18.4. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity, except Tenant i) cannot seek money damages or pursue an action in law; and ii) is instead limited to bringing a proceeding in the nature of specific performance, injunctive relief or mandamus, or any other action in equity.

18.5. **Termination.**

18.5.1. The Parties acknowledge that this Lease shall be terminated immediately at the occurrence of any of the following events:

- a. By expiration of the Lease;
- b. By mutual agreement of both Parties; or
- c. In the case of casualty as provided for in Section 16.6.

18.5.2. The Parties acknowledge this Lease may be terminated by Landlord upon five-days' written notice if Tenant fails to meet the Performance Standard.

18.5.3. Except as set forth in Section 2.3, termination of this Lease shall not extinguish Tenant's obligations to pay taxes and of defense and indemnification.

- 19. SURRENDER OF PREMISES.** The voluntary or other surrender of the Premises by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subleases or licensees, or may, at the option of Landlord, operate as an assignment to it of any or all of such subleases or licenses.
- 20. FORCE MAJEURE.** If either Party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations or other cause without fault and beyond the control of the Party obligated (financial inability excepted), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.
- 21. ESTOPPEL CERTIFICATE.** Tenant shall, at any time and from time to time upon not less than twenty-days' prior notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing certifying that this Lease is unmodified and is in full force and effect, and the dates to which the Rent has been paid, and stating whether or not to the best knowledge that Landlord is in default under this Lease, and, if in default, specifying in reasonable detail each such default, and such other matters as Landlord may reasonably request, it being intended that any such statement delivered by Tenant may be relied upon by Landlord or any prospective purchaser of the fee or any prospective mortgagee or encumbrancer thereof.

If Landlord desires to transfer the Premises, then Tenant agrees to deliver to Landlord or any transferee designated by Landlord such financial information concerning Tenant as may be reasonably required by such lender or transferee and is reasonably available to Tenant. All such financial information shall be received by Landlord in confidence.

- 22. SUBORDINATION.** The rights of Tenant shall be and are subject and subordinate at all times to the lien of any mortgage now or hereafter in force against the Premises, and Tenant shall promptly execute and deliver such further instruments subordinating this Lease to the lien of any such mortgage as shall be requested by Landlord.
- 23. CONDEMNATION.** In the event a condemnation or transfer in lieu thereof results in a taking of any substantial and/or material portion of the Premises, Landlord or Tenant may, upon written notice given to the other Party within thirty days after such taking or transfer in lieu thereof, terminate this Lease. In connection therewith, Landlord and Tenant acknowledge that:
- a. Landlord (acting as the City of Morro Bay) possesses the power to take the Premises through eminent domain proceedings; and
 - b. The business to be conducted by Tenant upon the Premises is not a viable business without financial assistance from Landlord, therefore if Tenant must vacate the Premises, it will be extremely impractical, if not impossible, for Tenant to operate its business elsewhere.

Therefore, upon such termination Tenant shall have the right to claim and recover from Landlord and/or the condemning authority only the amount equal to the value of any improvements installed by Tenant. Tenant shall **not** receive any value related to the leasehold value of the property which shall be paid solely to Landlord.

- 24. USE OF LANDLORD’S NAME.** Tenant shall not use Landlord’s name for advertising or promotion without Landlord’s prior written consent which may be granted or withheld in its sole discretion.
- 25. TRADE FIXTURES.** Tenant has the right to use the Landlord’s personal property located on the Premises but Tenant shall, at its own cost and expense, install and equip the Premises with all furniture, fixtures, trade fixtures, equipment and personal property reasonably required for the operation of Tenant’s business. Any and all fixtures and appurtenances installed by Tenant shall conform with the requirements of all applicable laws and regulations. All furniture, equipment, and trade fixtures installed by Tenant shall remain the property of Tenant during the Initial Term and Extended Term, as applicable, of this Lease but Tenant shall not remove any trade fixtures during the Initial Term and Extended Term, as applicable, hereof without Landlord’s prior written consent, which may be provided by the City Manager on behalf of the Landlord, and which consent may be withheld or granted in Landlord’s sole discretion. On termination of this Lease, Tenant may, provided Tenant is not in default of this Lease, remove at its own expense all trade fixtures, equipment, and its personal property. At termination of this Lease, if Tenant has left any merchandise, furniture, equipment, signs, trade fixtures or other personal property in the Premises, Landlord may give Tenant written notice to remove such property. In the event such property is not removed within fifteen days after the date of said notice, Landlord may dispose of said property in any manner whatsoever and Tenant hereby waives any claim or right to said property or any proceeds derived from the sale thereof. Any damage to the Premises resulting from the installation or removal of any of said trade fixtures or equipment shall be repaired by Tenant at Tenant’s sole cost and expense.
- 26. QUIET ENJOYMENT.** As long as Tenant is not in default under this Lease, Tenant shall have quiet enjoyment of the Premises during the Initial Term and Extended Term, as applicable.
- 27. HOLDOVER.** Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Lease. Any holding over after the expiration of the Initial Term and Extended Term, as applicable, of this Lease, with the consent of Landlord, express or implied, shall be construed to be a tenancy from month to month, cancelable upon thirty-days’ written notice, and at a monthly rent equal to \$500 per month and upon terms and conditions as existed during the last month of the Initial Term or extended Term, as applicable.
- 28. NOTICE AND WAIVER REGARDING RELOCATION, GOODWILL, PROPERTY INTEREST AND CONDEMNATION**

28.1. Tenant knowingly and voluntarily acknowledges and agrees upon its vacation of the Premises at the end of the Lease term, upon the sooner termination thereof for any

reason, or vacation, of the Premises under any circumstances, in no event shall Tenant be entitled or shall Landlord, including its employees, agents and assignees, be required to provide any relocation benefits, compensation for loss of goodwill, or assistance under any applicable federal, state, or local laws or regulations including without limitation, the Uniform Relocation Assistance Laws, California Government Code Section 7260 et seq. Further, Tenant being fully informed of any and all of its rights and obligations and all laws and regulations (including without limitation, the Uniform Relocation Assistance Laws, California Government Code Section 7260 et seq.) in connection therewith fully waives, releases and rejects any and all relocation assistance and benefits relating to or in any respect connected with Tenant vacating the Premises.

- 28.2. Tenant knowingly and voluntarily acknowledges and agrees upon its vacation of the Premises at the end of the Initial Term and Extended Term, as applicable, upon the sooner termination thereof for any reason, or vacation, of the Premises under any other circumstances, in no event shall Tenant be entitled or shall Landlord be required to provide any compensation or consideration to Tenant for the leasehold interest of Tenant, improvements pertaining to realty, personal property, fixtures and equipment, pre-condemnation damages, severance damages or interest and litigation expenses, whether based on condemnation, inverse condemnation or any other reason. Upon vacation of the Premises or termination of the Lease, Tenant knowingly waives and surrenders any claims or rights to the leasehold interest, improvements pertaining to realty, personal property, fixtures and equipment, pre-condemnation damages, severance damages or interest and litigation expenses.

29. MISCELLANEOUS.

- 29.1. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their successors and assigns and be governed by the laws of the State of California. Any litigation between the Parties hereto concerning this Lease shall be initiated in the Superior Court of the State of California for the County of San Luis Obispo.
- 29.2. **Partial Invalidity.** If any term, covenant, condition, or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, then the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereof.
- 29.3. **Successors in Interest.** The covenants herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all the Parties hereto, and each and all, including the Party making the assignment, shall be jointly and severally liable hereunder.
- 29.4. **No Oral Agreements.** This Lease covers in full each and every agreement of every kind or nature whatsoever between the Parties hereto concerning this Lease, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein, and there are no oral agreements. Tenant acknowledges that no

representations or warranties of any kind or nature not specifically set forth herein have been made by Landlord or its employees, agents, or representatives.

- 29.5. **Interest.** Any sum due to Landlord under this Lease shall bear simple interest from and after its due date at a rate equal to ten percent (10%) per month until paid to Landlord, but not in excess of the maximum rate permitted by law.
- 29.6. **Authority.** Each individual executing this Lease on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant and that this Lease is binding upon Tenant in accordance with its terms.
- 29.7. **Time.** Time is of the essence of this Lease.
- 29.8. **Consistency.** Each provision herein shall be interpreted so as to be consistent with every other provision.
- 29.9. **Relationship of Parties.** The relationship of the Parties is that of Landlord and Tenant, and it is expressly understood and agreed that Landlord does not in any way or for any purpose become a partner of Tenant in the conduct of Tenant's business or otherwise, or a joint venture with Tenant.
- 29.10. **Non-Discrimination.** Tenant herein covenants by and for Tenant, Tenant's successors, heirs, executors, administrators and assigns, and all persons claiming under or through Tenant, and this Lease is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises, nor shall the Tenant, or any person claiming under or through Tenant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, Tenants, subtenants, subtenants or vendees of the Premises.
- 29.11. **Non-Collusion.** No official, officer, or employee of Landlord has any financial interest, direct or indirect, in this Lease, nor shall any official, officer, or employee of Landlord participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interest found to be "remote" or non interest pursuant to California Government Code Sections 1091 and 1091.5. Tenant represents and warrants that (i) it has not paid or given, and will not pay or give, to any third party including, but not limited to, Tenant or any of its officials, officers, or employees, any money, consideration, or other thing of value as a result or consequence of obtaining this Lease; and (ii) it has not engaged in any act(s), omission(s), or other conduct or

collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any official, officer, or employee of Landlord, as a result or consequence of obtaining this Lease. Tenant is aware of and understands that any such act(s), omission(s) or other conduct resulting in the payment of money, consideration, or other thing of value will render this Lease void and of no force or effect.

- 29.12. **Notices.** Wherever in this Lease it shall be required or permitted that notice and demand be given or served by either Party to this Lease to or on the other, such notice or demand shall be given or served in writing and shall not be deemed to have been duly given or served unless in writing, and personally served or forwarded by certified mail, postage prepaid, addressed as specified below. Either Party may change the address set forth below by written notice by certified mail to the other. Any notice or demand given by certified mail shall be effective one (1) day subsequent to mailing.

Landlord: City of Morro Bay
Attn: City Manager
595 Harbor Street
Morro Bay, CA 94585

Tenant: Boys & Girls Clubs of the Central Coast
Attn: _____

- 29.13. **Not an Offer.** The submission of this Lease and any ancillary documents to Tenant shall not constitute an offer to lease, and Landlord shall have no obligation of any kind, express or implied, to lease the Premises to Tenant until Landlord has approved, executed, and returned to Tenant a fully signed copy of this Lease.
- 29.14. **Amendments.** This Lease may be modified or amended only in writing executed by both Parties and approved by Landlord in accordance with applicable law.
- 29.15. **Exhibits.** Exhibit A is attached hereto and incorporated herein by reference.
- 29.16. **Acknowledgement of Content.** Each Party acknowledges they have read and fully understand the contents of this Lease and have had an opportunity to consult with an attorney regarding the same. This Lease represents the entire and integrated agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or agreements, either written or oral.

IN WITNESS WHEREOF, the Parties have duly executed this Lease on the day and year first above written in Morro Bay, California.

LANDLORD:

CITY OF MORRO BAY,
a municipal corporation

By: _____
Scott Collins, City Manager

_____, 2022

ATTEST:

Dana Swanson, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Chris Neumeyer, City Attorney

TENANT:

**BOYS & GIRLS CLUBS OF THE
CENTRAL COAST,** a California non-
profit public benefit corporation

By: _____

Its _____

_____, 2022

By: _____

Its _____

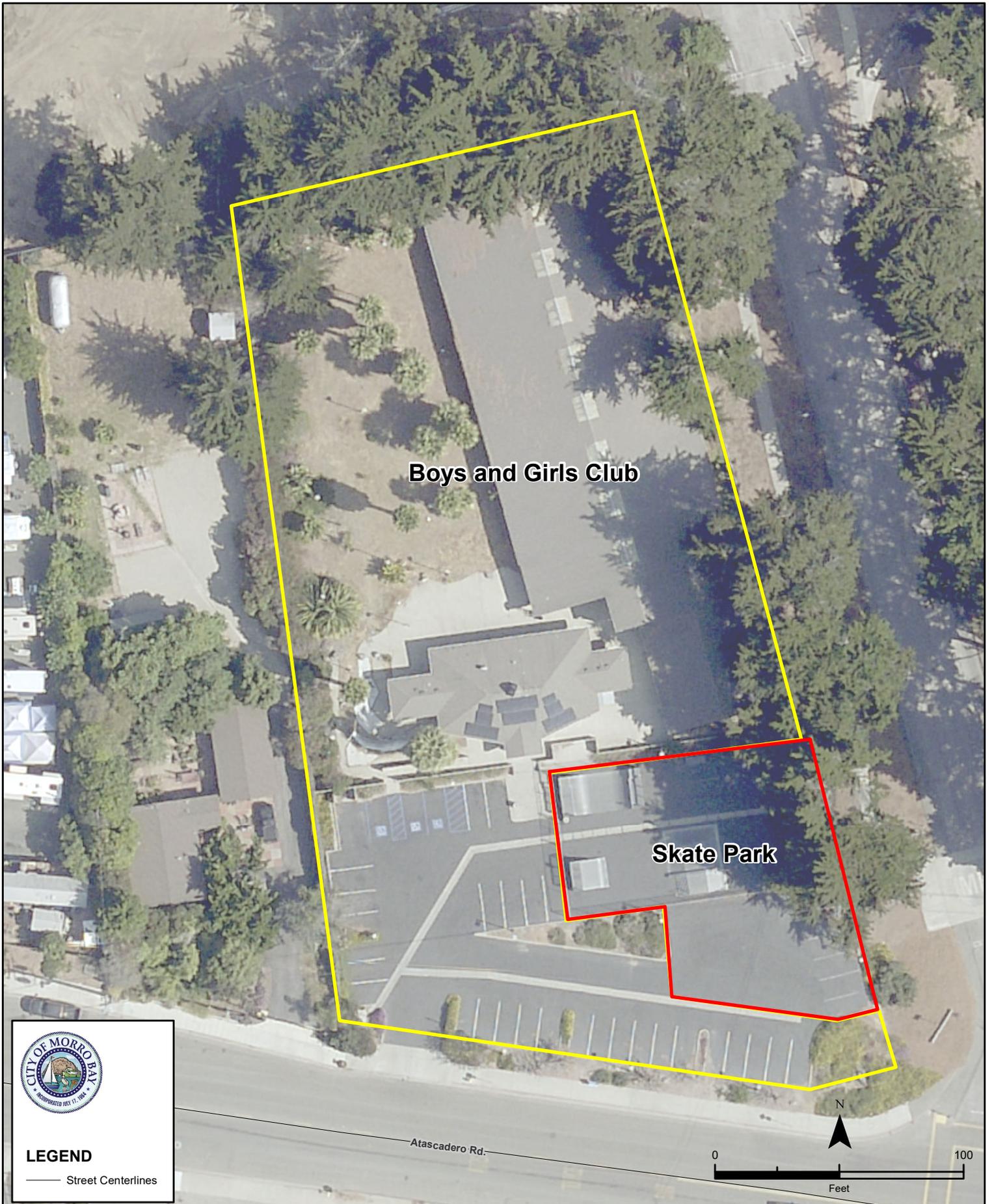
_____, 2022

(Attach Notary Acknowledgements for
Tenant)

EXHIBIT A

DESCRIPTION AND DEPICTION OF PREMISES

City of Morro Bay Teen Center and Skate Park



Boys and Girls Club

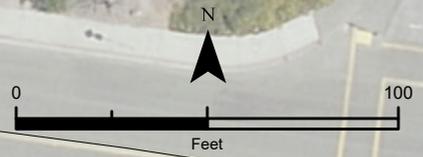
Skate Park

Atascadero Rd.



LEGEND

— Street Centerlines



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AGENDA NO: II
MEETING DATE: June 28, 2022

Staff Report

TO: Honorable Mayor and City Council **DATE:** June 24, 2022
FROM: Scott Collins, City Manager
SUBJECT: Review of a Three-year Agreement between the City of Morro Bay, Visit Morro Bay and World Triathlon Corporation, Inc. for the City to Host an IRONMAN 70.3-Mile, Swim, Bike and Run event

RECOMMENDATION

Staff recommends the City Council authorize the City Manager to execute a three-year agreement with World Triathlon Corporation, Inc. (to be referred to as Ironman Group in remainder of this report) and Visit Morro Bay, for the City to host the IRONMAN 70.3 Morro Bay Triathlon from 2023 to 2025.

FISCAL IMPACT

The Ironman event is projected to cost the City approximately \$55,000 annually as detailed below, of which the City anticipates up to \$25,000 in expenses will be reimbursed by the Ironman Group. The City costs are primarily due to various department staffing and overtime costs and may change slightly over time based on salary and benefit increases, as well as logistical support for the event.

It is anticipated that the City will support the event in the following areas (estimated numbers):

1. Staff costs (Police, Fire/EMS, Lifeguards, etc.)	\$40,000
2. Logistics (Parking, Shuttling, Waste management, etc.)	\$15,000
Estimated City Event Costs	\$55,000
Ironman Group reimbursements to City	
Staffing Costs	\$20,000
Shuttle Costs	\$5,000

Total Annual Costs for City	\$30,000
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As outlined in the draft agreement, Ironman Group will reimburse the City for 50% of staffing/overtime costs, not to exceed \$20,000, and up to \$5,000 in shuttling costs. Given the nexus between hosting this event and potential benefit to the local economy, staff would recommend use of economic

Prepared By: SC Department Review: _____
City Manager Review: SC City Attorney Review: CFN

development funds to cover any residual City costs related to the event not covered by Ironman Group. City staff will bring forward a budget amendment for the Fiscal Year (FY) 2022/23 Budget to account for these costs following the 2023 Ironman event.

Given that the City is a sponsor of this event, alongside Visit Morro Bay, and Ironman Group, the City will waive City permit fees and parking lot fees for the event.

In addition, Visit Morro Bay will cover the annual fee to Ironman Group for hosting the event, which will be \$30,000 in year one and year two, and \$25,000 in year three of the agreement. Visit Morro Bay will also cover complimentary hotel room nights for Ironman Group staff.

Lastly, overall, immediate return from hosting the event will be felt in thousands of hotel and vacation rental overnight stays, economic activity at local restaurants, retail shops, grocery stores, gas, etc. and in the form of tax revenues to the City. To that end, Ironman Group has committed to the best extent possible to both use local suppliers for implementation of the event, as well as partner exclusively with properties located within City limits for event-related athlete and staff room blocks. In all the expected tax revenue return to the City during the week of the event is anywhere from \$200,000 to \$300,000. Staff anticipates the greater return will come to the City post-event over time through the worldwide exposure of Morro Bay as a recreation tourist destination.

BACKGROUND/DISCUSSION

Ironman Group and Ironman 70.3 Event Overview

The Ironman Group is synonymous with the endurance sport industry, particularly triathlons (events that include swim, bike and run components all in one). Ironman Group started out as a small grass roots group with a few fellow endurance athletes self-organizing events in the late 1970s, testing their endurance across the three modalities of swimming, biking and running. The Ironman Group grew from those humble beginnings into a multi-million-dollar, world renowned company that hosts 374 events (triathlons, bike road races, mountain bike races, and runs), in 53 countries, on 6 continents. The market for endurance sport has grown significantly over that same period of time, as has interest in the SLO County region to train for and participate in triathlons.

California has played host to several Ironman events, including current long-standing events in Santa Cruz and Oceanside. Both of those events are 70.3-mile triathlon (swim, bike, run) events. The Ironman Group is now looking to expand its footprint in the growing California endurance sport market. Ironman Group representatives reached out to City staff and representatives of Visit Morro Bay in early 2022, expressing their strong interest in conducting a 70.3-mile triathlon event in Morro Bay beginning in 2023.

Ironman Group representatives conducted a site visit in Morro Bay in March 2022 to get a lay of the land for a potential event. During that site visit, they met with City staff to discuss racecourse options, event logistics and community benefits and impacts. The Ironman Group then conducted extensive market research and determined an event in Morro Bay would complement their event offerings in Oceanside and Santa Cruz. They have proposed entering into a formal agreement with the City to host an Ironman 70.3 event to take place in April/May over the next three years beginning in April/May 2023 and hosting the event through April/May 2025. The Ironman Group is seeking City Council support to move forward with such an agreement and get the greenlight to begin preparations for 2023.

City Council received a staff presentation and overview of a proposal to bring a 70.3 Ironman event

to Morro Bay for three years, beginning in May 2023. City Council provided direction to staff to develop a three-year agreement with Ironman Group and Visit Morro Bay and bring it back to Council for review by the June 28, 2022 Council meeting.

Proposed Morro Bay Ironman Event

The Ironman Group proposes hosting a 70.3-mile Ironman event in the mid-May timeframe, because of the warmer weather and the fact it wouldn't conflict with their other California events (Oceanside and Santa Cruz). They anticipate upwards of 2,500 participants and several thousand spectators to attend alongside participants.

They propose using the waterfront as the focal point of the event. They plan to place their event tents on the Embarcadero, likely on City parking lot(s), as it will be close in proximity to the event start location (Harbor area), transition area between swimming and biking and running (Tidelands Park parking lot) and the finish line area (Embarcadero). The event would run all day on a Saturday, kicking off early morning and finishing no later than late afternoon. Event set-up begins several weeks in advance, but actual impacts to the Embarcadero would be felt just a few days in advance, with full road closure just during the event day. The boat launch ramp would also be closed just the day of the event.

The event would kick-off with the swim portion in the Harbor that morning. They will send participants off in waves for safety purposes, queuing participants. Participants will swim in the Harbor, with specific entry and exit points to be determined. Athletes will exit the water and enter the transition zone (somewhere on the Embarcadero) and from there, they will head out on the Embarcadero and through town most like onto Highway 1. Ironman Group is working with Caltrans on various bike course options. Riders will complete the ride portion of the event and re-enter the Embarcadero and transition to the run portion of the event. Participants will run either through town or out to Los Osos and back (to be determined after further evaluation). The exact details of the courses, road closures, notifications of community members, and similar considerations will be further developed and refined through the permitting process.

City Commitments

The City would need to provide the Ironman Group with parking lots (on the Embarcadero and the Morro Rock parking lot) and other City facilities to host their main hub, which includes the finish line, medical area, athlete registration, Ironman store, VIP hospitality, and another location for a supply depot and race office for six days leading up to the event, and the day following the event for cleanup. The City would need to secure road closures for the biking and run portions of the event.

The City permit team (Police, Fire, Public Works, Harbor and Recreation) will closely coordinate with the Ironman Group on permitting, racecourse design, parking/shuttling, and logistics. In addition, the City will provide staff (law enforcement, paramedics, and lifeguards) during the event to ensure safety of all involved, including participants, staff, spectators and community members. The City will help link Ironman Group to local volunteers and help secure hotel accommodations for Ironman staff during the event week.

Ironman will be responsible for obtaining any outside agency permits (such as State Parks, CalTrans, SLO County Sheriff, and California Highway Patrol).

Expected economic impact and other benefits

According to athlete surveys conducted by the Ironman Group, participants average \$247,000 in annual household income, 81% book hotel/vacation rentals when traveling to Ironman events, 69%

of participants stay 4 or more nights in market during the week of the event, and a quarter of participants travel to the market to train in the weeks and months leading up to the event. Based on this and the fact of an influx of thousands of spectators, a typical Ironman event has a direct economic impact of \$10 Million on the specific market. Participating markets experience on average an \$800,000 impact on all tax revenues (federal, state and local combined). Attached is an economic report conducted by Tourism Economics on the cities of Indian Wells and La Quinta for their joint Ironman event. According to the report, the Ironman event generated a total of nearly \$10 Million in economic activity to the region, and \$319,000 in local taxes alone.

Participating communities also benefit from Ironman's marketing impact. The Ironman Group has a total digital reach of 6.4 million individuals worldwide. A Morro Bay event would be marketed through all of Ironman's channels (Facebook, Twitter, Instagram, websites, apps, etc.).

Morro Bay has worked hard to link outdoor recreation enthusiasts with our community as a prime destination for those activities. What started with the AMGEN Tour of California pro bicycle race, Rock to Pier Run, and local triathlon events, would be strengthened significantly by hosting an Ironman event that has international reach.

Ironman representatives work closely with the local business community for partnerships and also connect with local non-profits through their community partnership program. A representative from the Ironman Group will present this and other relevant information to City Council at the June 28, 2022 Council meeting and be available for questions.

Staff Recommendation

There will undoubtedly be impacts to our community from an Ironman event, in the form of event day road closures and associated traffic. Further, the waterfront would be closed to traffic and parking and the boat launch ramp would be closed to boaters and other users the day of the event. Staff will need to spend a considerable amount of time coordinating the event, when their time otherwise could be used elsewhere. There will also be a financial commitment from the City to cover overtime costs for law enforcement, paramedics and lifeguards (upwards of \$55,000, of which up to \$25,000 will be reimbursed by the Ironman Group, see discussion above).

However, it is staff's belief City commitments can be met and, in close coordination with the Ironman Group team, the City and Ironman can deliver a safe and successful event in our community. This is based upon City staff's experience with working with the Ironman team in their Santa Cruz event, and observing the Oceanside Ironman event earlier this year.

The economic benefits to the local business community, tax revenue to the City and long-term exposure to a world-wide audience, in the opinion of staff, far outweigh the impacts of the event.

CONCLUSION

Therefore, staff recommends City Council approve the three-year agreement between the City, Ironman Group and Visit Morro Bay, for the City to host an Ironman event (70.3-mile swim, bike and run) in May for three years, beginning in 2023.

ATTACHMENT

1. Ironman Venue Agreement
2. Economic Impact Report



HOST VENUE AGREEMENT

IRONMAN 70.3® (2023-2025)

This Host Venue Agreement (this “Agreement”) is made as of June ____, 2022 (the “Effective Date”) by and between **WORLD TRIATHLON CORPORATION**, a Florida corporation (“WTC”), on the one hand, and **CITY OF MORRO BAY**, a California municipal corporation (“City”) and **VISIT MORRO BAY**, a California non-profit corporation (“VMB”) (collectively City and VMB known as “Host”), on the other hand. WTC, Host, City and VMB are sometimes referred to herein individually as “Party” and collectively as “Parties.”

RECITALS

- A. WTC and its subsidiaries own and operate IRONMAN 70.3®-branded triathlon events.
- B. Host desires to have WTC conduct, and WTC desires to conduct, an IRONMAN 70.3 triathlon annually in and around Morro Bay, California (collectively, the “Venue”), subject to the terms of this Agreement.
- C. In consideration of WTC selecting the Venue as the site for the Events (as defined below), Host desires, subject to the terms of this Agreement, to provide the Host Support Services (as defined herein) and to make certain payments, and grant certain rights, to WTC.
- D. In consideration of Host allowing WTC the use of the Venue as the site for the Events (as defined below), WTC desires, subject to the terms of this Agreement, to perform certain obligations as defined herein.

AGREEMENT

The Parties agree as follows:

- 1. **The Events**. Subject to the terms of this Agreement:
 - (a) **Authorization; Ownership**. Host authorizes WTC to prepare and conduct an Event (as defined below) in and around the Venue during the years 2023, 2024, and 2025 (each, a “Race Year”). WTC is and will be the owner of each Event and nothing herein constitutes a license by WTC to Host or to any third party to establish or operate any Event or Race (as defined below).
 - (b) **Races**. In each Race Year, WTC shall be responsible for operating, in and around the Venue, an IRONMAN 70.3-branded endurance triathlon (comprising, subject to cancellation of any part thereof due to weather conditions or other reasons, a 1.2-mile swim, 56-mile bicycle ride, and 13.1-mile run) (the “Race”) and performing certain administrative, operational, and sales and marketing functions related thereto (collectively, and together with the Race and any additional races added under Section 1(g), an “Event”).

- (c) Name. The official name of the Event will be **IRONMAN® 70.3® MORRO BAY**. WTC may elect to add the name of a “title” sponsor and/or “presenting” sponsor to the official name of the Event (e.g., “[*Title Sponsor*] IRONMAN® 70.3® MORRO BAY, presented by [*Presenting Sponsor*]”), subject to approval of Host, such approval to not be unreasonably withheld. When referring to any Event, Host shall (and shall use reasonable efforts to cause relevant third parties to) at all times use such official name of the Event (including mention of the official title sponsor, if any, and the official presenting sponsor, if any).
- (d) Race Dates. The Race each year of the Term will occur on the following applicable dates (each, a “Race Date”):
- (i) May 20, 2023
 - (ii) May 18, 2024
 - (iii) May 17, 2025
- (e) Event Changes. WTC may in its reasonable discretion, in order to improve any Event, institute (at no increase in material cost or expense to Host) changes in the implementation or structure of such Event; provided, however, that no material change may be made to any previously confirmed location or venue(s) without the prior written consent of both Parties.
- (f) World Championship Entries. With respect to certain eligible top finishers of the Race, WTC will award non-transferable qualifying slots for entry in the applicable IRONMAN 70.3 World Championship (“Championship Slots”). The number of Championship Slots applicable to each Race will be determined by WTC in its sole discretion, and may change each year.
- (g) Additional Races. WTC shall have the option to conduct, as part of any or all Events, a WTC-owned 5K Fun Run and/or a 5150™, IRONKIDS® and/or IRON GIRL® triathlon, duathlon, or run contemporaneously (e.g., during the same weekend) with the Race. WTC may create additional, race-specific logos for any such additional races conducted, and such logos will be subject to the same restrictions applicable to the Event Logo (as defined in Exhibit C) under this Agreement.

2. **Term of Agreement**. This Agreement is effective beginning on the Effective Date, and will continue in effect until the date that is thirty (30) days after the 2025 Event, unless this Agreement is sooner terminated in accordance with the terms of this Agreement (the “Term”).

3. **Financial Matters**.

- (a) Annual Payments to WTC. With respect to each Event, Host shall, under the terms of Exhibit A, pay WTC the amounts stated in Exhibit A (each, an “Annual Payment”).
- (b) Sponsorship & Expo Vendors. Host shall not grant or sell sponsorships, official designations, Expo space, or any other rights at or in connection with the Event to any third parties.
- (c) Taxes. The Annual Payment(s) set forth in Exhibit A are exclusive of taxes or fees, which are the responsibility of Host.
- (d) Entry Fees; Other Revenues. Except as may be otherwise expressly specified in this Agreement, WTC shall be entitled to receive and retain all Event/Race entry fees, and all

other revenues and value in-kind in connection with the Events, including without limitation all revenues from merchandise sales, sponsorships, hospitality passes, VIP passes, exposition booth sales, product licenses, television licenses, and photograph sales.

- (e) Costs. To the extent Host does not timely provide any portion of the Host Support Services (as defined below), then, upon written request from WTC, Host shall, within thirty (30) days after delivery of such notice to Host, if during such thirty (30) day period following receipt of such notice Host fails to cure the nonperformance, reimburse WTC to the extent WTC incurs, or will incur, any reasonable costs to obtain or provide any such Host Support Services not provided by Host. Such right of reimbursement does not limit WTC's remedies with respect to Host failing to provide any of the Host Support Services.
- (f) Costs of Additional Security Measures. Should local and/or governmental authorities determine that enhanced security measures are necessary and must be implemented surrounding the Event, and should such measures have additional costs associated with them, the Parties will work together to discuss a reasonable and appropriate allocation of expenses to cover such costs.

4. Certain Obligations of Host.

- (a) Host Support Services. Host shall timely provide to WTC (or, as the case may be, shall timely provide for WTC's benefit), the services, equipment, value in-kind, personnel, and other items set forth in Exhibit B (collectively, the "Host Support Services") for each Event. Parties acknowledge that certain of the Host Support Services will be provided by City (and not by VMB) and certain other of the Host Support Services will be provided by VMB (and not be City). Unless otherwise expressly agreed to in this Agreement, Host shall provide the Host Support Services at Host's own cost. Host Support Services may be modified, with written approval by Host, from time to time by WTC in its reasonable discretion, provided that no such change (i) results in any material additional cost or expense to Host or (ii) requires Host to do anything Host is not authorized, or does not have legal jurisdiction, to do or cause to be done.
- (b) Compliance with Law. In connection with each Event and Host's performance of its obligations under this Agreement, Host shall comply with all applicable laws, rules, and regulations.
- (c) Operational Aspects. In order to facilitate proper and timely planning, implementing, and conducting of each Event by WTC, Host shall, and shall cause each of its representatives, agents, and contractors to, follow reasonable instructions, solely regarding Event-related operational or technical issues under the purview of WTC consistent with this Agreement, from WTC or any third party designated by WTC.
- (d) Intellectual Property of WTC. Except with respect to the Event Logo (the use of which by Host being subject to Section 10), Host shall not, without WTC's prior written consent, use any intellectual property rights of WTC, including without limitation the Ironman[®], 70.3[®], Iron Girl[®], IRONKIDS[®], Velothon[®], Cape Epic[®], 5150[®], and Rock 'n' Roll[®] marks and names, the "M-Dot" logo, and the "K-Dot" logo. Host shall promptly, upon actual knowledge by Host, inform WTC of any possible misuse or infringement by any person or entity of the Event Logo or any other intellectual property of WTC.

- (e) Information Updates. Host shall, upon request from WTC, promptly inform WTC as to the status of the performance of Host's obligations hereunder, including without limitation regarding the Host Support Services.
 - (f) Representations. Host covenants that each of the representations and warranties made by Host in Section 9 will be true and complete at all times during the Term.
5. **Certain Obligations of WTC.** Subject to the terms of this Agreement, and with respect to each Event:
- (a) Operations, Equipment, and Personnel. Except to the extent required to be provided or obtained by Host as part of the Host Support Services, or as may be otherwise required under this Agreement, WTC shall provide for (or cause to be provided) all Race-related equipment, supplies, personnel (including volunteers and a local Race Director), training of personnel (including volunteers), Race manuals/programs, Race course route determination and design, Race course set-up and tear-down, online and on-site athlete registration and check-in, welcome functions, award ceremonies, procurement of facilities, facility decoration, and all other technical and operational aspects of the Race. WTC may require that each Event use Race timing, registration, photography, or other services provided by WTC or any of its affiliates, designees, or service providers.
 - (b) Expo. WTC shall provide for a multi-day vendor exposition at each Event (the "Expo"), which Expo may be referred to as the "IRONMAN Village" or other name chosen by WTC. At the Expo, WTC (or its designee) may sell official IRONMAN[®]-branded (or any other) merchandise and services, and, to the extent approved in writing by WTC, Event sponsors and other Expo vendors may sell or otherwise distribute other merchandise and services. Except as may otherwise be required by applicable law, Host shall not charge or assess any fee, tax, surcharge, or other cost to or on any vendor, contractor, or any other party in connection with the Expo, or any athlete entry fees, sponsorships, or any other aspect of the Event.
 - (c) Website; Media; Broadcasts. WTC shall provide and maintain the official website that markets the Event (the "Event Website"), including a live global streaming webcast of the Race. WTC shall retain the rights to all imagery and audiovisual works in connection with each Event, including but not limited to, television broadcast or cablecast (live or tape-delay), radio broadcast, Internet broadcast (audio or video), videotaping, filming, and photography, all of which, as between WTC and Host, is the sole property of WTC and will not be reproduced, remarketed, or otherwise distributed or publicly displayed by Host without the written permission of WTC. WTC may, in its sole discretion, grant or license any or all of these rights to third parties or to Host.
 - (d) Complimentary Sponsorship Package for Host. WTC shall provide Host with a sponsorship benefits package (for use solely by Host) to include a prime Expo booth space each for City and VMB, prominent signage (advertising only the Host) at certain prime locations along the Race course, prominent placement of Host's logo on all public Event-related printed and internet material produced by WTC, and prominent placement of Host's logo and Host's banner advertisements on the Event Website. Host advertising material and logo shall be provided by Host to WTC and use as-provided shall not be unreasonably withheld.

- (e) Complimentary Hospitality Package for Host. WTC shall provide Host with a hospitality package (for use solely by Host) to include: (i) eighteen (18) complimentary VIP sponsor hospitality passes for the Event for use by Host's employees and representatives, which passes grant access to certain selective benefits at the Event and the Race day tent, and (ii) seven (7) complimentary race entries (i.e., to participate as an age-group athlete) for the Event, for use by Host, which race entries are for only the specific Race and the specific Race year, and cannot be used for, or deferred for, entry in any other race or the designated Race in a later year. WTC reserves the right to deny the use by any specific individual(s) of any hospitality passes.
- (f) Compliance with Law. In connection with each Event and WTC's performance of its obligations under this Agreement, WTC shall comply with all applicable laws, rules, and regulations.
- (g) Information Updates. WTC shall, upon request from Host, promptly inform Host as to the status of the performance of WTC's obligations hereunder.
- (h) Representations. WTC covenants that each of the representations and warranties made by WTC in Section 9 will be true and complete at all times during the Term.
- (i) Liability Waiver. WTC shall ensure that each race participant executes a hold harmless liability waiver, in a form acceptable to Host with consent to not be unreasonably withheld, pursuant to which the participant assumes the risk of injury, damages, or death and releases the Host from all liability in connection with the Event.
- (j) Local Suppliers. WTC shall, to the best extent possible and in compliance with applicable law, use local suppliers for the implementation of each Event provided that, WTC does not have existing series, national, or regional partners and such local suppliers provide reasonable and competitive rates.
- (k) Local Accommodations. Subject to availability restrictions (if any), WTC shall partner exclusively with properties located within the City of Morro Bay (i.e., within City limits) for all Event-related athlete block rooms. Subject to availability restrictions (if any), WTC shall contract exclusively with properties located within the City of Morro Bay (i.e., within City limits) for Event staff room blocks.

6. **Official Announcements; Promotions by Host.**

- (a) Host Website. Host, on its website, shall prominently advertise the Event and the fact that Host is hosting the Event, and at all times during the Term shall prominently display a link, on its website, to the Event Website.
- (b) Announcements. Host shall not make any public announcements of a marketing or promotional nature (whether in writing, orally, via the Internet, or otherwise) of any Event without the prior written consent of WTC in each instance (which consent will not be unreasonably withheld), except that no such consent will be required to the extent such announcements are required of Host as part of the Host Support Services (or otherwise required of Host under the terms of this Agreement), or that:

- (i) are entirely administrative in nature, such as announcements informing the public regarding operational logistics or public safety matters (e.g., road closures, Event dates, Venue access);
 - (ii) include only information in the public domain; and
 - (iii) are not for purposes of marketing or promotion.
- (c) **Other Matters.** Host shall not use the Event, any marketing opportunity related thereto or arising out of the Event, or the like, for any purpose other than to promote the Venue in a positive and universally appealing manner. To the extent Host is not prohibited by law from doing so, Host shall not permit (to extent of Host authority) any political statements, political campaign propaganda, or the like to be made (or made available) at the Event, or otherwise to be associated (or purported to be associated), whether directly or indirectly, with the Event or the marketing thereof.

7. **Ambush Marketing.**

- (a) “**Ambush Marketing**” means selling (e.g., including, but not limited to, sponsorship, merchandise, vendor space), advertising, or marketing, by any third party that is not a WTC-authorized sponsor, merchandiser, and/or vendor of the Event, where such selling, advertising, or marketing (i) is in connection with, or in proximity to, the Event, or (ii) otherwise has the effect of exploiting the goodwill of the Event and/or gaining market exposure by way of intrusive and/or associative marketing practices.
- (b) Host shall not cause, engage in, or permit (to extent of Host authority) any Ambush Marketing, and, except to the extent Host is prohibited by law from doing so, Host shall prevent and stop Ambush Marketing at, near, or in connection with the Event, including without limitation by:
- (i) Causing its employees and agents to promptly report, upon actual knowledge by Host employees and agents, to WTC and the proper Host authorities, any marketing or activity reasonably appearing to be Ambush Marketing;
 - (ii) Ensuring, prior to and during the Event, that the Event perimeter and any other key advertising locations under the Host's control do not carry any form of temporary advertising or promotional material relating to the Event, except as may be approved in writing by WTC (in WTC's sole discretion);
 - (iii) Using, invoking, and applying Host's powers to protect all trademarks and copyrights associated with the Event;
 - (iv) Preventing the distribution of product samples, premiums, promotional literature and other commercial and non-commercial materials within the established Event perimeter or adjacent to the Event site, except where expressly authorized by WTC;
 - (v) Causing all signage and other physical items of Ambush Marketing to be taken down, moved, removed, and/or confiscated immediately by Host or, if applicable, law enforcement personnel; and

- (vi) Cooperating with WTC to prevent Ambush Marketing, as may reasonably be requested by WTC.

8. **Exclusivity.**

- (a) **Use of Racecourse and Event-Related Areas.** Notwithstanding anything to the contrary in this Agreement: During the period between (and including) the Monday preceding the Race Date until (and including) the Friday following the Race Date (collectively, the “Event Period”), Host shall not produce, conduct, host, or permit (to extent of Host authority) any event (other than such Event) that takes place, in whole or in part, on any portion of the Race course or at any Event-related area; provided, however, that during the Event Period (excluding Race day) private functions and corporate events may take place but only if (to the extent Host has authority over such functions and events), such events do not do or include any of the following:
 - (i) include any endurance-, running-, road cycling-, or swimming-related race, competition or event;
 - (ii) include any vendor exposition, tradeshow, and/or the selling of any merchandise and/or services;
 - (iii) occur on the Race course or at any other area where any part of the Event is being conducted, or adversely affect the ingress or egress to or from any such areas;
 - (iv) in any way jeopardize or adversely impact Event production or operations;
 - (v) infringe on any WTC intellectual property rights; or
 - (vi) include or constitute Ambush Marketing (as defined in Section 7(a)) or otherwise promote themselves as purportedly being part of or in connection with the Event).
- (b) **Advertising Other Triathlon, Running, & Cycling Companies or Long-Distance Triathlons, Marathons, & Cycling Races.** During the Term, Host shall not permit its website to display any marketing, promotion, advertisement, reference, or the like, of (i) any other triathlon event series or company, including but not limited to World Triathlon (formerly known as “International Triathlon Union”), Revolution3 Triathlon, Life Time Fitness Triathlon, Challenge Family Triathlon, Clash Endurance, and HITS Triathlon (or any of their respective successors or assigns), (ii) any person, entity, or group (other than WTC or any subsidiary or licensee thereof) that operates, organizes, produces, or is otherwise involved in any triathlon having a distance longer than that of an “Olympic” distance triathlon (as such distance is defined by the International Triathlon Union), or (iii) any triathlon having a distance longer than that of an “Olympic” distance triathlon (as such distance is defined by the International Triathlon Union), unless such triathlon is owned or operated by WTC or any subsidiary or licensee of WTC.
- (c) **Non-Competition.** During the Term and the thirteen (13)-month period thereafter, Host shall not produce, support, advertise, promote, conduct, host, permit, or contract or partner with any person or entity (other than WTC or a subsidiary thereof) for or in connection with, any other triathlon, running event, or cycling event located, in whole or in part, within the Venue or anywhere within 75 miles of the Venue if such event features any race distance longer than that of: an “Olympic” distance triathlon (as such distance is defined by World Triathlon) or 60k cycling event.

9. **Representations and Warranties.** Each Party represents and warrants that:

- (a) It has the full right and legal authority to enter into and fully perform this Agreement in accordance with the terms and conditions contained herein;
- (b) This Agreement is a legal, valid, and binding obligation of such entity, enforceable against such entity in accordance with its terms; and
- (c) Neither the execution, delivery, nor performance of this Agreement by it violates or will violate or cause a breach of any other agreements or obligations to which it is a party or to which it is bound, and no approval, consent, notice, or other action by or to any third party or any commission, board, or other governmental authority or agency (collectively, “Authorities”) is required in connection with the execution, delivery, or performance of this Agreement (except, with respect to WTC, certain permits, approvals, consents, notices, and other actions by Authorities may be required in connection with performance by WTC of this Agreement).

10. **Limited License to Use the Event Logo.**

- (a) **Grant of Limited Rights.** Subject to the terms of this Agreement, WTC hereby grants to Host the limited, non-assignable, non-sublicensable, non-exclusive license to use, during the Term, the Event Logo (as defined in Exhibit C) in all reasonable forms of advertising and marketing, but only to the extent related to promotion of the Events, and subject in each instance to WTC’s prior written approval, which will not be unreasonably withheld. All uses of the Event Logo by Host must comply with the Trademark Standards & Usage Guidelines set forth in Exhibit C.
- (b) **No Use on Products.** Host shall not use, and shall not authorize, license, or permit (to extent of Host authority) any third party to use, the Event Logo on or in connection with any products, merchandise, souvenirs, or other goods or services, in each instance unless pre-approved by WTC in writing.
- (c) **Ownership; Goodwill.** Host acknowledges that WTC is the owner of the Event Logo and Host shall not register, or apply to register, the Event Logo, any service mark, trademark, or domain name that is similar in any manner to, or that incorporates, the Event Logo, any of WTC’s other trademarks or other intellectual property, or any mark with the word “IRON,” or any equivalent term or phrase in any language. All goodwill and rights accruing or arising under the Event Logo, or in any copyrights or other intellectual property of WTC used in connection with this Agreement or any Event, enures solely to the benefit of WTC.

11. **Indemnification.**

- (a) To the greatest extent allowed by law, WTC shall indemnify, protect, defend and hold harmless the City and VMB, each of their parents, subsidiaries, and affiliates, and each of their respective directors, officers, employees, contractors, volunteers, representatives, and agents (“Indemnitees”), from and against any and all claims, liabilities, losses, damages, injuries, demands, actions, causes of action, suits, proceedings, judgments, and expenses, including without limitation, attorneys’ fees, court costs, and other legal expenses, arising out of, directly or indirectly, or in connection with the Events and/or WTC’s obligations under this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of Indemnitees. WTC’s indemnification shall include any and all costs, expenses, attorney’s fees, expert fees and liability assessed against of incurred by the Indemnitees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, WTC at its own expense shall, upon written request by any

Indemnitee, defend any such suit or action brought against such Indemnitee resulting or arising from the conduct, tortious acts or omissions of WTC. WTC's indemnification of Indemnitees shall not be limited by an prior or subsequent declaration by WTC.

- (b) This Section 11 will survive the expiration or termination of this Agreement for any reason.

12. **Insurance.** WTC shall, throughout the Term, obtain and maintain its own comprehensive general liability insurance for each Event from a reputable insurance company for, without limitation, any and all claims of bodily injury, death, property damage, and advertising liability, and any and all litigation, arbitration and settlement costs, related to any claims for or by any Event participants, volunteers, referees, officials, scorekeepers, spectators, sponsors, and staff with a minimum combined single limit equal to but not less than two million U.S. dollars (\$2,000,000.00) per occurrence for any one incident or accident, and not less than five million U.S. dollars (\$5,000,000.00) in aggregate, which limits may be satisfied with any combination of primary and excess coverage; provided, that, any such excess coverage follows form of the primary coverage. WTC shall cause Host to be named as an additional insured in connection with each Event. Certificates evidencing the foregoing required insurance must be provided, upon request, to the Host.

13. **Termination.**

- (a) Subject to Section 13(b): If either Party breaches a material provision of this Agreement, the non-breaching Party may terminate this Agreement upon thirty (30) days' written notice to the other Party (which notice must include a description of such breach) if, during such thirty (30) day period following receipt of such notice, the breaching Party fails to cure such breach.
- (b) Notwithstanding anything to the contrary herein, WTC may immediately terminate this Agreement:
- (i) at any time if WTC gives written notice to Host that WTC has determined, in its reasonable judgment, that an Event is unlikely to occur or be sufficiently profitable to WTC whether due to: (A) revocation or cancellation of, or failure to timely obtain, any of the Approvals & Permits (as defined in Exhibit B); (B) an insufficient number of paid entries or sponsorships received; or (C) any condition with respect to the Venue that could jeopardize the practicability of conducting the Race as planned, or that could create a safety risk for any Race participants or other Event visitors;
 - (ii) if Host files, or in good faith has filed against it, a petition in bankruptcy, or is adjudicated bankrupt or insolvent, or makes an assignment for the benefit of creditors, or an arrangement pursuant to any bankruptcy law; or
 - (iii) if Host causes, engages in, or permits (to extent of Host authority) any Ambush Marketing.
- (c) Notwithstanding anything to the contrary herein, after the conclusion of the 2024 Event, Host may terminate this Agreement between the dates of June 2024 and August 2024 with no further Annual Payment(s) due from Host to WTC and no other obligations due from Host to WTC under this Agreement:
- (i) if Host gives written notice to WTC that Host has determined, in its reasonable

judgment, that future Events are unlikely to be sufficiently profitable in regard to (A) the marketing of City of Morro Bay as a tourist destination, (B) as to generation of economic benefits to the City of Morro Bay, or (C) for other reasons as reasonably determined by Host.

(d) Effects of Termination; Survival.

- (i) Expiration or termination of this Agreement for any reason will not relieve either Party from its obligation to perform under this Agreement to the extent such performance is due prior to the effective time of such termination.
- (ii) If this Agreement is terminated by WTC under the terms of Section 13(b)(i), then WTC shall promptly reimburse Host all Annual Payment amounts made to date for the applicable Event(s) that are no longer taking place.
- (iii) Each Party reserves all other rights and remedies hereunder and otherwise permitted by law that have accrued prior to the effective time of such expiration or termination.
- (iv) All rights and obligations under this Agreement that arose or accrued prior to termination or expiration of this Agreement, and that, by their nature, should survive any such termination or expiration, will survive any such termination or expiration, including without limitation the rights and obligations set forth in Sections 3, 8, 11, 13(d), and 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24.

14. **Force Majeure.** In the event either Party is prevented from performing any of its obligations under this Agreement by reason of any event outside of such Party's control, including, without limitation, fire, weather, unsafe conditions, volcano, explosion, flood, landslide, epidemic, acts of nature, war, terrorism, or other hostilities, strike, civil commotion, domestic or foreign governmental acts, orders, or regulations ("Force Majeure Event"), then such obligations of such Party during the duration of such Force Majeure Event, and for a reasonable time thereafter, will be suspended. In the case of cancellation of an Event due to a Force Majeure Event, the Parties agree to negotiate a date to reschedule such Event if practicable. If such canceled Event cannot reasonably be rescheduled or relocated within the Venue, neither Party shall be deemed to be in breach of this Agreement solely because of such cancellation. Neither any such cancellation, rescheduling, or relocation, nor the inability to reschedule or relocate, will, by itself, cause this Agreement to terminate. For purposes of this Agreement, neither the cancellation by WTC of any leg of the Race (e.g., the swim leg), nor the modification of the Race (e.g., distances, routes, etc.), will be deemed to be a cancellation of the Event.

15. **Confidentiality.**

- (a) During the Term and the 36-month period thereafter, each Party (the "Receiving Party") shall, other than as inconsistent with applicable law (e.g., the California Public Records Act) and as provided herein, keep confidential and not use or disclose, directly or indirectly, any of the terms of this Agreement, any trade secrets, confidential, or proprietary information, or any other knowledge, information, documents, or materials, owned, developed, or possessed by the other Party, whether in tangible or intangible form (collectively, "Confidential Information").

- (b) “Confidential Information” does not include any information that the Receiving Party conclusively establishes: (i) entered the public domain without Receiving Party’s breach of any obligation owed to the disclosing Party; (ii) became known to the Receiving Party prior to the disclosing Party’s disclosure of such information to such Receiving Party; (iii) is permitted to be disclosed by the prior written consent of the disclosing Party; (iv) became known to the Receiving Party from a source other than the disclosing Party, other than by breach of any obligation of confidentiality owed to the disclosing Party; or (v) was independently developed by the Receiving Party without breach of this Agreement.
- (c) The Receiving Party shall take all lawful measures to prevent the unauthorized use and disclosure of Confidential Information, and to prevent unauthorized persons or entities from obtaining or using Confidential Information. The Receiving Party shall refrain from directly or indirectly taking any action that would constitute or facilitate the unauthorized use or disclosure of Confidential Information.
- (d) The Receiving Party may disclose Confidential Information to its officers and employees to the extent necessary to enable the Receiving Party to perform its obligations hereunder, but only if such officers and employees shall have entered into appropriate confidentiality agreements for secrecy and nonuse of Confidential Information which by its terms shall be enforceable by injunctive relief by the disclosing Party. The Receiving Party shall be liable for any unauthorized use and disclosure of Confidential Information by any of its officers or employees.
- (e) The Receiving Party may disclose the terms of this Agreement to (i) its attorneys and other professional advisors who have a professional duty to the Receiving Party to keep confidential such information or (ii) a third party that has entered into a reasonably standard confidentiality agreement with the Receiving Party that prohibits such third party from disclosing such terms, where such third party requires to review this Agreement for purposes of evaluating a proposed (A) purchase by such third party of assets of or equity interests in the Receiving Party or (B) financing transaction involving the borrowing of funds or establishing a credit facility or other financing arrangement, in each case where Receiving Party would be the borrower or guarantor of such debt.
- (f) If the Receiving Party is required to disclose Confidential Information in order to comply with applicable law, regulations, court order, or other legal process, the Receiving Party agrees to provide reasonable advance written notice to the disclosing Party and each of the Parties shall use its reasonable efforts to secure confidential treatment of the Confidential Information to be disclosed (whether through protective orders or otherwise) and to ensure that only the minimum amount of Confidential Information necessary to comply with such requirements is disclosed.

16. **Assignment; Binding Effect.** No rights or obligations under this Agreement may be assigned or delegated by Host without the prior written consent of WTC. Any purported assignment or delegation in violation of this Section is void *ab initio*. All of the terms of this Agreement will apply to, be binding upon, and enure to the benefit of the Parties hereto, their successors, and permitted assigns. Subject to the immediately preceding sentence, no third party will have any rights or remedies under this Agreement.

17. **Relationship of the Parties.** The Parties are acting herein solely as independent contractors. Nothing herein contained will create or be construed as creating a partnership, joint venture, or agency relationship between the Parties. Each Party acknowledges and agrees that it neither has nor will give the

appearance or impression of having any legal authority to bind or commit the other Party in any way. Each Party will be solely responsible for all wages, income taxes, worker’s compensation, and any other requirements for all personnel it supplies in connection with this Agreement.

18. **Jurisdiction and Attorneys’ Fees.**

- (a) **Governing Law.** Notwithstanding the place where this Agreement may be executed by either Party, this Agreement and any claim, controversy, dispute or other matter arising hereunder or related hereto (whether by contract, tort or otherwise) shall be governed in accordance with the laws of the State of California, without regard to the conflict of laws provisions thereof that would result in the application of the laws of any other jurisdiction. In any litigation arising out of or relating to this Agreement, the Parties agree that venue shall be solely in either the United States District Court, Central District of California, or a California state court located in San Luis Obispo County, California.
- (b) **Attorneys’ Fees.** If either Party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney’s fees. Attorney’s fees shall include attorney’s fees on any appeal, and in addition a Party entitled to attorney’s fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

19. **Rights and Remedies.** The rights and remedies provided by this Agreement are given in addition to any other rights and remedies either Party may have by law, statute, ordinance or otherwise. All such rights and remedies are intended to be cumulative, and the use of any one right or remedy by either Party shall not preclude or waive its right to any or all other rights or remedies.

20. **Notices.** All notices, requests, demands, and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given if emailed, hand delivered, or delivered by certified or registered mail or by overnight delivery service:

If to Host:

CITY OF MORRO BAY
 595 Harbor Street
 Morro Bay, California 93442
 Attention: City Clerk
 E-mail: cityclerk@morrobayca.gov

and

VISIT MORRO BAY
 695 Harbor Street
 Morro Bay, California 93442
Attention:
E-mail:

(Or to such other addresses as Host furnishes to WTC in writing in accordance with this Section)

If to WTC:

WORLD TRIATHLON CORPORATION
3407 W. Dr. Martin Luther King Jr. Blvd., Suite 100
Tampa, Florida 33607
Attention: Chief Legal Officer
E-mail: Legal@ironman.com

(Or to such other address as WTC furnishes to Host in writing in accordance with this Section)

21. **No Oral or Implied Waivers or Modifications.** If either Party fails to enforce any of the provisions of this Agreement or any rights hereunder or fails to exercise any election provided in this Agreement, it will not be considered to be a waiver of those provisions, rights or elections or in any way affect the validity of this Agreement. The failure of either Party to exercise any of these provisions, rights or elections will not preclude or prejudice such Party from later enforcing or exercising the same or any other provisions, rights or elections which it may have under this Agreement. No waiver will be of any force or effect unless set forth in a writing signed by the Party whose right is being waived. Subject to the immediately preceding sentence, no modifications to this Agreement will be binding upon the Parties unless modified, amended, cancelled, renewed, or extended in a writing signed by both Parties.

22. **Entire Agreement.** This Agreement (including all exhibits hereto) sets forth the entire agreement and understanding of the Parties relating to the subject matter hereof, and, with respect to such subject matter, supersedes all prior agreements, arrangements and understandings, written or oral, between the Parties. Except as may be expressly set forth herein, there are no promises, conditions, representations, understanding, interpretations or terms of any kind as conditions or inducement to the execution hereof or in effect between the Parties.

23. **Interpretation.** The section headings included in this Agreement are for convenience of reference only and will not affect or be utilized in construing or interpreting this Agreement. If any term, clause or provision hereof is held invalid or unenforceable by the arbitrator or a court of competent jurisdiction, such invalidity will not affect the validity or operation of any other term, clause or provision and such invalid term, clause, or provision will be deemed to be severed from this Agreement, provided that both the economic and legal substance of the transactions that this Agreement contemplates are not affected in a manner materially adverse to either Party. This Agreement may be executed in counterparts, each of which will be deemed an original binding document but all of which will constitute one and the same instrument. Neither this Agreement nor any provision herein will be construed in favor or against either Party based on which Party drafted this Agreement or such provision. The exchange of copies of this Agreement and of signature pages by facsimile transmission, by e-mail, in “portable document format” (PDF) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by a combination of any such means, constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of an original Agreement or signature pages for all purposes. For the avoidance of doubt: signatures of the Parties transmitted by facsimile, email, or other electronic means will be deemed to be their original signatures for all purposes.

24. **Non-liability of City Officers and Employees.** No officer or employee of City shall be personally liable to WTC, or any successor in interest, in the event of any default or breach by Host or for any amount

which may become due to WTC or to its successor, or for breach of any obligation of the terms of this Agreement.

[Signature page directly follows this page]

The Parties have executed this Agreement to be effective as of the Effective Date.

WTC:

**WORLD TRIATHLON CORPORATION, a
Florida corporation**

By: _____
Name: SHANE FACTEAU
Title: CHIEF OPERATING OFFICER

HOST:

**CITY OF MORRO BAY, a California
municipal corporation**

By: _____
Name:
Title:

**VISIT MORRO BAY, a California non-profit
corporation**

By: _____
Name:
Title:

[Exhibits to this Agreement follow this page]

EXHIBIT A

Annual Payments;
Wire Transfer Instructions

Regarding the Event for Race Year	Annual Payment to be paid by Host to WTC	Annual Payment Due Date
2023	\$30,000.00	December 1, 2022
2024	\$30,000.00	December 1, 2023
2025	\$25,000.00	December 1, 2024

Time is of the essence with respect to each such payment. To remove all doubt, Visit Morro Bay will be responsible for making these payments. All payments to WTC that are required or contemplated under this Agreement must be made in immediately available U.S. dollars via the following wire transfer instructions:

Bank Name: Bank of America, NY NY
 Routing Number: 026009593
 Account Name: World Triathlon Corporation
 Account Number: 898052297785
 SWIFT Code: BOFAUS3N

[HOST TO INSERT] Host's billing contact information:

- Contact Name: [REDACTED]
- Email address: [REDACTED]
- Telephone number: [REDACTED]

EXHIBIT B

Host Support Services

With respect to each Event, and at **no cost to WTC (unless otherwise stated below)**, Host shall, as the case may be, do, obtain, or provide (or cause to be done, obtained, or provided) the following:

- B-1. **Approvals & Permits.** Host will in good faith and to the extent reasonable feasible, shall assist WTC with timely receiving all governmental, regulatory, and third-party approvals, permits, access rights, business licenses, consents, ordinance exemptions, commitments, and licenses necessary or useful in connection with performance by Host or WTC of this Agreement, including without limitation the conducting of the Event, the Race, and the Expo, closures of roadways, use of amplified sound and music by WTC in connection with the Event, and Host's provision of the Host Support Services (collectively, the "Approvals & Permits"). Host shall waive all City related permits fees; however, WTC will be responsible for covering costs of all other governmental permit fees and other similar or related fees. To the extent reasonably feasible, Host shall assist WTC in receiving, 180 days prior to the Event, all Approvals & Permits with respect to the Event are obtained, and that all Approvals & Permits will remain in effect for and during the Event; in each case of City specific permit and similar fees at no cost to WTC (e.g., no charges for site fees, access fees, rental fees, closure fees, licensee fees, application fees, environmental impact fees, permit fees, etc.). To remove all doubt, City is not responsible for obtaining permits from other governmental agencies and entities.
- B-2. **Coordination of Auxiliary Workspace.** Host will provide good and efficient locations for auxiliary work space, including warehouse/storage space. Host shall supply the necessary workspace for the following Event needs and functions:
- Victory celebration area (Finish Area)
 - Press conference – media and business center
 - Meeting rooms
 - Communications Room/Incident Command Post
 - Paved area for operations, logistics, shipping, and receiving
- B-3. **Coordination of Welcome Experience with Host Hotels.** With respect to all official Event/Host hotels Host shall, with reasonable cooperation of WTC:
- Coordinate all official Event/Host hotel partners & housing services for the Events
 - Conduct pre-Event training with hotel staff to understand demographic of IRONMAN's guests
 - Coordinate welcome signage onsite
 - Be responsible for Event information inventory at each official Event/Host hotel
- B-4. **Electrical Services & Equipment.** Host shall provide a special event electricity system (which shall meet the specific demands of each Event) and ultra-quiet generators for satellites and special Event sites including, but not limited to, all medical emergency areas and the finish line. Host shall cause power hook-ups to be provided by certified technicians under the applicable construction codes and regulations.

- B-5. **Hotel Rooms.** Host shall provide (or cause to be provided) to IRONMAN twenty (20) complimentary hotel room nights **prior to each Event week** and thirty (30) complimentary hotel room nights **during Event week** at the official Event/Host hotel(s). All such hotels must be within five (5) miles of the Event's swim start location. Host shall also assist IRONMAN with the coordination of local hotels for additional IRONMAN hotel room night needs and other entities to facilitate arrangements for local accommodations, travel, and tourist activities. To remove all doubt, Visit Morro Bay will be responsible for coordination with local hotels and for covering the complimentary hotel room nights.
- B-6. **Lead Agency.** Host shall serve as the "lead agency" to support the operational activities of the Race, including but not limited to facility and venue acquisition, permitting, police and emergency services acquisition, parking acquisition, communications acquisition, local accommodations, travel, volunteer recruitment, media, public awareness, and advocacy.
- B-7. **Local Promotion & Advertising of the Event.** Host shall run radio, outdoor, print and digital advertising (tagged with the Event information and the Event Logo (except for on radio)), in markets up to 250 miles away from the Venue. Advertising within the greater MORRO BAY market will include pre-Event notification information, particularly as related to traffic impact reports required by government agencies and/or permits (as applicable). All content for Event-related advertising must be pre-approved in writing by IRONMAN. As may be requested from time to time by IRONMAN, Host shall assist with public relations for the Event. Host shall promote the Event in Host's owned media including coverage on its website, magazines, frequent social media posts, and emails to its residents.
- B-8. **Medical Professionals and Ambulance Services; Police and Emergency Services; Cost-Sharing.**
- a. **Medical Professionals and Ambulance Services.** Host shall ensure that ambulances will be distributed strategically at the Venue, transition area, celebration areas, along the Race route, and the Event medical area. IRONMAN shall provide its official medical plan to Host and shall provide a reasonable opportunity for Host to review and comment on the official medical plan prior to execution of this Agreement. Host will reasonably accommodate staffing needs and work with IRONMAN to determine number of licensed medical professionals needed for the Event. Host shall ensure that dedicated EMS units will be on hand to respond to emergency transport needs and the general public on the day of the Event.
 - b. **Police and Emergency Services.** Host shall ensure that the City police services will command and ensure all emergency services needed to maintain public safety throughout the duration of each Event. Host shall install a special command post (temporarily installed near the site) that will bring together all three emergency services (police, fire and ambulance), private security, volunteer security personnel, and communications.
 - c. **Cost-Sharing.** The Parties will share the costs of the services in this Item B-8 evenly, with WTC paying to City fifty percent (50%), but no more than twenty thousand dollars (\$20,000), of all City and regional related staffing costs for such services.
- B-9. **No Construction.** Unless reasonably required and unavoidable, Host shall not begin, permit, and/or effect any structural, engineering, beautification, or related works during the Event and the week prior to the Event.

- B-10. **Parking and Shuttle Services.** Host shall provide (or to the extent reasonably feasible, cause to be provided) satellite parking lots (with parking lot attendants) outside of the operations perimeter. Host will not charge WTC for use of City owned/controlled parking lots. WTC responsible for any associated costs related to securing private lots or public lots outside the City’s control. Host will split shuttle costs 50% with WTC.

- B-11. **Race Course Exclusivity and Condition.** Host shall ensure that all roads, waterways, and all other public spaces, under control of the Host, to be used for the Race are closed to the public during the Race (and for a reasonable period before and after the Race) and are made exclusively available to IRONMAN during such periods. Host shall ensure that all Race routes within Venue limits, within the City of Morro Bay, are in good condition during the Event.

- B-12. **Street Cleaning.** Host shall be responsible for sweeping and cleaning up all streets and other areas prior to and after each Event within City Jurisdiction.

- B-13. **Traffic Control Services and Devices.** Host shall provide all traffic control services and devices for each Event (including, without limitation, all personnel, devices, engineering diagrams, variable message boards, barricades, cones for traffic control, special event traffic signage, parking signs, temporary traffic light systems, traffic control vehicles equipped with yellow arrows, and plans to assure maximum road safety in partnership with local and regional police services). Traffic control services and devices expenses for City shall not exceed \$5,000, with costs above and beyond that amount, covered by WTC.

- B-14. **Venues/Facilities.** Host shall provide venues for the Event which shall consist of a large centralized area for the transition area(s), swim bike and run routes, finish line, athlete recovery area, parking, merchandise sales, and spectator viewing. Host shall also provide adequate space to accommodate athlete check-in, consumer expo, merchandise sales, secured warehouse/storage space and parking. Host acknowledges that certain facilities will be required from the Tuesday before each Race until the Monday immediately following each Race.

- B-15. **Volunteer Recruitment.** Host shall assist WTC in recruiting volunteers for the Event.

- B-16. **Waste Management Services.** Host shall maintain and ensure a clean environment at all times on its properties in connection with the Event.

* * * * *

EXHIBIT C

TRADEMARK STANDARDS & USAGE GUIDELINES: EVENT-SPECIFIC LOGO

Sample Event Logo

Each Event will feature one or more IRONMAN 70.3[®]-branded logos customized by WTC for such Event (each, an “Event Logo”). WTC will design, create, and provide each Event Logo. The following is an example of an event logo *from a different event*:



WTC may elect to, from time to time, modify the Event Logo by adding the name of a “title” sponsor or “presenting” sponsor to such logo, subject to section 1(c).

General

The Event Logo must be used consistently and not altered. Modifications, variations, and incorrect uses of any Event Logo dilute the IRONMAN[®] brand and create consumer confusion, and are therefore not permitted. You play a vital role in protecting the integrity of WTC’s intellectual property, such as the Event Logo. Please familiarize yourself with the following TRADEMARK STANDARDS & USAGE GUIDELINES, which you are required to follow when using any Event Logo in connection with any Event.

Pre-Approval Requirement

Without exception, all proposed uses of the Event Logo must be submitted to WTC for review **PRIOR TO USAGE**. All approval requests for use of any Event Logo must be submitted, along with a high resolution PDF image of the proposed use, to approvals@ironman.com for review by WTC. Please allow at least ten (10) business days for all approval requests to be answered. Any proposed use or item submitted that is not approved by WTC in writing within fifteen (15) days shall be deemed disapproved.

Trademark Ownership & Required Notice

Each Event Logo is, and shall remain, the property of WTC. Any and all rights to, in, and under the Event Logo, or any copyright or other intellectual property of WTC, shall enure solely to the benefit of WTC.

Notice must be given to the public that World Triathlon Corporation claims ownership of the Event Logo. Therefore, the following legal notice must clearly appear, in no smaller than 6-point size typeface, on all of your printed materials, products, websites, and all other items on which any Event Logo is used:

IRONMAN 70.3[®]
is a registered trademark of World Triathlon Corporation.
Used herein by permission.

Other Requirements

Each use by Host of the Event Logo must:

- Be solely and directly related to performing Host’s obligations, or exercising its rights, under this Agreement;
- Not be on any merchandise or services for sale or distribution (except to the extent expressly and specifically authorized by this Agreement or separate written agreement with WTC);
- Not constitute or involve transfer or assignment of the License or sub-license of any Event Logo; and
- Not have anything embedded in, added to, or superimposed on the Event Logo, or have any colors or color scheme different than that approved by WTC.

General

Do not use “iron” (or any foreign translation thereof) as a prefix for, or component of, any words – whether displayed as one word (e.g., “ironwoman”, “ironfamily”, or “ironmate”), as two separate words (e.g., “iron woman”, “iron family”, or “iron mate”), or as a hyphenated word (e.g., “iron-woman”, “iron-family”, or “iron-mate”). (Exceptions include IRONMAN[®], IRONKIDS[®], and IRON GIRL[®], all of which are trademarks owned by WTC.)

Please adhere to the following regarding use of the terms “IRONMAN[®]” and “IRONMAN[®] 70.3[®]”:

- IRONMAN[®] must be a single word, never hyphenated, and never capitalized as “IronMan”.
- IRONMAN[®] and 70.3[®] must be two (2) separate words separated by no more and no less than one (1) character space.
- IRONMAN[®] is a brand name – an identifier of a specific source of goods and services. It is not an indicator of distance. “IRONMAN” must never be used as a standalone term or to denote distance. (e.g., never as “Ironman distance” or “Iron distance”).
- IRONMAN[®] 70.3[®] is a brand name – an identifier of a specific source of goods and services. It is not an indicator of distance. “IRONMAN” must never be used as a standalone term or to denote distance. (e.g., never as “half ironman”, “half ironman distance”, or “half iron distance”).
- 70.3[®] is a brand name – an identifier of a specific source of goods and services. It is not an indicator of distance. “70.3” must never be used as a standalone term to denote distance. (e.g., never as “70.3 miles”).
- IRONMAN[®] should never be abbreviated as “IM.”
- IRONMAN[®] 70.3[®] should never be abbreviated as “IM70.3.”
- Stand-alone references to “an IRONMAN” or “a 70.3” are improper. Please add “triathlon” to such phrases (e.g., “an IRONMAN[®] 70.3[®] triathlon”).

Please adhere to the following regarding use of the terms “IRONKIDS[®]”:

- IRONKIDS[®] must be a single word, never hyphenated, and “IronKids” is always capital letter “I” and capital letter “K” when used in title case.

- IRONKIDS® is a brand name – an identifier of a specific source of goods and services. It is not an indicator of distance. “IRONKIDS” must never be used as a standalone term or to denote distance. (e.g., never as “IronKids distance”).
- IRONKIDS® should never be abbreviated as “IK.”
- Stand-alone references to “an IRONKIDS” are improper. Please add “dip ‘n’ dash” or “fun run” or other applicable word to such phrase (e.g., “an IRONKIDS® fun run”).

Please adhere to the following regarding use of the terms “Iron Girl®”:

- Iron Girl® must be two (2) separate words on the same line and “Iron Girl” is always capital letter “I” and capital letter “G.”
- Iron Girl® should never be abbreviated as “IG”.
- Iron Girl® is a brand name – an identifier of a specific source of goods and services. It is not an indicator of distance. “Iron Girl” must never be used as a standalone term or to denote distance. (e.g., never as “Iron Girl distance”).
- Stand-alone references to “an Iron Girl” are improper. Please add “half marathon” or “triathlon” or other applicable word to such phrase (e.g., “an Iron Girl® triathlon”).

Bob Thibault | Vice President of Marketing
Greater Palm Springs Convention and Visitors Bureau
70100 Highway 111
Rancho Mirage, CA 92270

RE: Economic Impact Analysis of Ironman Indian Wells & La Quinta
February 6, 2020

Dear Mr. Thibault,

This letter report provides Tourism Economics' economic impact analysis of the Ironman Indian Wells & La Quinta event of December 8th, 2019.

The Ironman event in Indian Wells/La Quinta was the grand finale of the North American circuit for Ironman events. 2,400 racers participated with about 5,000 other event attendees. As stated in the event summary provided by the Greater Palm Springs Convention and Visitors Bureau and corresponding with survey research done at other, similar Ironman events, the majority of the attendees are from out-of-town and staying overnight. These non-local attendees are considered visitors to the City and their spending drives local jobs, wages, and tax revenues. The economic impacts reported here are driven by non-local, visitor spending only. In addition to visitor spending, total direct spending includes estimated host organization, media and sponsor spending in the local economy as well.

With the provided \$206 ADR for rooms around the event and using the \$600,000 in organizer spending stated, Tourism Economics estimates the direct business sales around the Ironman to be \$6.4 million and total impact on business sales in the Greater Palm Springs region of \$9.9 million.

Event Impact Summary

Destination: Greater Palm Springs CVB

Event Parameters		Key Results	
Event Name:	Ironman Indian Wells & La Quinta	Business Sales (Direct):	\$6,352,908
Organization:	Greater Palm Springs CVB	Business Sales (Total):	\$9,918,422
Event Type:	Championships	Jobs Supported (Direct):	5,005
Start Date:	12/8/2019	Jobs Supported (Total):	6,319
End Date:	12/8/2019	Local Taxes (Total):	\$341,553
Overnight Attendees:	4985	Net Direct Tax ROI:	\$319,715
Day Attendees:	2455	Estimated Room Demand:	8,902

Of the \$6.4 million in direct spending, event organizers spent \$600,000 locally with nearly \$5.8 million spent by visitors to the region for the Ironman event.

\$1.8 million was spent at lodging facilities – including hotels and private home rentals. \$1.3 million was spent on recreational activities with between \$800 and \$900 thousand spent on transportation, food & beverage, and retail industries.

The \$6.4 million in direct spending supported another \$3.6 million in indirect and induced spending for a total business sales impact of \$9.9 million. This economic activity supported about 6,300 person-shifts – equivalent to nearly 80 annual full-time employees with total earnings of \$3.2 million.



Economic Impact Details			
	Direct	Indirect/Induced	Total
Business Sales	\$6,352,908	\$3,565,514	\$9,918,422
Personal Income	\$2,256,650	\$1,000,903	\$3,257,553
Jobs Supported			
Persons	5,005	1,314	6,319
Annual FTEs	63	16	79
Taxes and Assessments			
<u>Federal Total</u>	<u>\$589,515</u>	<u>\$300,579</u>	<u>\$890,094</u>
<u>State Total</u>	<u>\$330,572</u>	<u>\$91,718</u>	<u>\$422,290</u>
sales	\$275,842	\$64,625	\$340,467
income	\$30,783	\$13,654	\$44,437
bed	\$0	-	\$0
other	\$23,947	\$13,440	\$37,386
<u>Local Total (excl. property)</u>	<u>\$319,715</u>	<u>\$21,838</u>	<u>\$341,553</u>
sales	\$57,071	\$13,371	\$70,441
income	\$0	\$0	\$0
bed	\$210,883	-	\$210,883
per room charge	\$0	-	\$0
tourism district	\$36,675	-	\$36,675
restaurant	\$0	\$0	\$0
other	\$15,086	\$8,467	\$23,553
property tax	\$92,293	\$35,788	\$128,081

Local tax revenues amounted to over \$340,000, coming primarily in bed taxes and sales tax revenues.



These estimates were developed based on input data covering the number of event attendees, estimated shares of local versus non-local attendees, average visitor spending and length of stay, and host organization, media, and sponsor spending. These inputs were entered into the Destinations International Economic Impact Calculator. Tourism Economics made additional calibrations to the model output in order to capture jobs, income, and tax revenues generated in the region.

Please let us know if you have any questions regarding this analysis.

Best regards,

Adam Sacks
President | Tourism Economics

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AGENDA NO: III

MEETING DATE: June 28, 2022

Staff Report

TO: Honorable Mayor & City Council **DATE:** June 22, 2022

FROM: Greg Kwolek – Public Works Director
Paul Amico, PE – Water Reclamation Facility (WRF) Program Manager

SUBJECT: Approval of Amendment No. 7 to the Water Reclamation Facility (WRF) Design-Build Contract with Filanc Black & Veatch

RECOMMENDATION

Staff recommends the City Council receive staff presentation and authorize the City Manager to execute Amendment No. 7 to the design-build contract with Filanc Black & Veatch (FBV).

FISCAL IMPACT

Approval of Amendment No. 7 of this contract will increase the contract amount up to \$2 Million to \$78,697,995. However, this increase was anticipated in the recently updated WRF project budget of \$159.8 Million and consequently does not increase the overall WRF Project budget, once adopted by City Council as part of the FY 2022-23 City Budget. Approval of this amendment does not require any increase in rates paid by water and sewer customers.

BACKGROUND/DISCUSSION

The schedule of the WRF Lift Station and Offsite Pipelines Project (Pipelines Project) currently being constructed by Anvil Builders Inc., has been by impacted by contractor-caused delays associated with dewatering at Pump Station A and inefficiencies constructing the pipelines, and delays associated with approval of the cultural resources monitoring plan and associated excavation clearance activities required by the City’s Water Infrastructure Finance and Innovation Act (WIFIA) loan. Consequently, the pipelines and pump stations being constructed in the Pipelines Project will not be completed and commissioned when FBV is ready to receive wastewater and commission the WRF. The delay in WRF startup is currently estimated to be approximately six months, which will change the WRF substantial completion date from July 12, 2022, to January 20, 2023, and the final completion date from September 7, 2022, to March 20, 2023. This timing will not impact the City’s ability to meet the Time Schedule Order for substantial completion by February 20, 2023, established by the Regional Water Quality Control Board regarding discharge to the ocean.

Key terms of Amendment No. 7, in addition to the extended substantial and final completion dates, include:

1. Commencement of the Guarantee that the WRF will remain free of defects in workmanship and materials for a period of one year starting on the original substantial completion date of July 12, 2022. The manufacturer’s warranty for the membrane bioreactor and reverse osmosis membranes will begin upon membrane installation.
2. Extension of FBV’s builder’s risk insurance through final completion.

Prepared By: AC

Dept Review: GK

City Manager Review: SC

City Attorney Review: JWP

3. Release of retainage for work completed prior to the original substantial completion date of July 12, 2022.
4. Clarifying that the City will pay the increased costs associated with the extended testing and maintenance period outside of the Guaranteed Maximum Price (GMP) and that the increased costs will not impact the City's or FBV's ability to collect the shared savings associated with FBV delivering the WRF under the GMP.

CONCLUSION

The requested contract amendment for FBV has been thoroughly reviewed and refined by the project management team and City staff. Staff recommends City Council authorize the City Manager to execute Amendment No. 7 to the design-build contract with Filanc Black & Veatch (FBV).

ATTACHMENTS

Amendment No. 7 agreement with FBV

**AMENDMENT NO. 7 TO THE
AGREEMENT FOR DESIGN/BUILD SERVICES
AMONG THE CITY OF MORRO BAY AND
OVERLAND CONTRACTING INC. AND
J.R. FILANC CONSTRUCTION COMPANY, INC.**

This Amendment No. 7 is entered by and among the City of Morro Bay, a municipal corporation (“City”) and Overland Contracting Inc., a Delaware corporation, dba KS OVERLAND Contracting, INC. (OCI) and J.R. FILANC CONSTRUCTION COMPANY, INC., a California corporation (JRF), the latter two acting as FBV Morro Bay Joint Venture (collectively, OCI and JRF are referred to as the Design Build Entity, the Design/Build Entity or the Design-Build Entity). City and Design Build Entity are sometimes referred to individually as “Party” and collectively “Parties.”

RECITALS

WHEREAS, City and the Design Build Entity entered into an agreement as of October 23, 2018, to design and construct a new Water Reclamation Facility (Project), which was approved by the City Council for a Cost Plus with Guaranteed Not to Exceed Amount of \$67,234,512 (Agreement);

WHEREAS, the Parties amended the Agreement, as of May 14, 2019, to provide for design and construction of additional elements for the Project and to increase the Cost Plus with Guaranteed Not to Exceed Amount for the construction of the Project to \$68,870,571 for those additional elements (Amendment No. 1);

WHEREAS, the Parties amended the Agreement, as of April 21, 2020, to provide for updated Davis Bacon Wage Requirements for the Project and to increase the Cost Plus with Not to Exceed Amount for the construction of the Project to \$68,934,508 (Amendment No. 2);

WHEREAS, the Parties amended the Agreement, as of May 20, 2020, to provide design and construction of additional elements for the Project and to increase the Cost Plus with Not to Exceed Amount for the construction of the Project to \$74,926,725 (Amendment No. 3);

WHEREAS, the Parties amended the Agreement, as of November 17, 2020, to provide design and construction of additional elements for the Project and to increase the Cost Plus with Not to Exceed Amount for the construction of the Project to \$75,761,822 (Amendment No. 4);

WHEREAS, the Parties amended the Agreement, as of March 9, 2021, to provide changes and adjustments to the design and construction of the Project and to decrease the Cost Plus with Not to Exceed Amount for the construction of the Project to \$75,565,877 (Amendment No. 5);

WHEREAS, the Parties amended the Agreement, as of August 24, 2021 to provide changes and adjustments to the design and construction of the Project and to increase the Cost Plus with Not to Exceed Amount for the construction of the Project to \$76,697,994 (Amendment No. 6);

WHEREAS, the Agreement, together with all previous amendments, being Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4, Amendment No. 5 and Amendment No. 6, are collectively referred to herein as the Amended Agreement; and

WHEREAS, due to no fault of either Party and at the request of City, the Parties agree the date for Substantial Completion of the Project must be extended and other related amendments to the Amended Agreement are needed.

NOW THEREFORE, City and the Design Build Entity mutually agree to amend the Amended Agreement as follows:

1. Unless otherwise expressly stated or the context requires, all terms shall be as defined in the Amended Agreement.
2. The date for Substantial Completion shall be extended as shown in the Milestone Schedule attached as Attachment A to this Amendment No. 7.
3. The one-year time period for the Guarantee set forth in Section 3.18 and all other relevant sections of the Amended Agreement relating to the Guarantee shall commence on July 12, 2022, except for the RO and MF membranes, which shall instead commence when those membranes have been properly installed.
4. The builder's risk insurance required by Subsection 12.1.1 d. of the Amended Agreement shall remain in full force and effect until Substantial Completion; provided, that extension of that insurance shall be contingent on City paying the cost for the extension of that insurance from October 23, 2022 until Substantial Completion. In addition, due to the fact that insurance was already extended, at the request of City through October 22, 2022, as part of the change order resulting from the delay that is the subject of this Amendment, City will pay the cost of that extension from July 12, 2022, through October 22, 2022,
5. The second sentence of Section 6.10 of the Amended Agreement is hereby amended to read in its entirety as shown below with a new third and fourth sentences added immediately following the revised second sentence, with all existing subsequent sentences remaining:

“Effective July 12, 2022, if City has received the applicable release of claims referenced in Section 6.2 of the Amended Agreement, then (i) City shall reduce funds withheld for retainage to an amount equal to not less than 125% of the estimated value of the Work yet to be completed (excluding the estimated value of any Work, which has been delayed and is the subject of Amendment No, 7, as reasonably determined solely by the City, plus 125% of all timely received and active stop notices for which a stop notice release bond has not been submitted and (ii) pay the excess funds to the Design/Build Entity within 30 days after the City's receipt and approval of an invoice from the Design/Build Entity received after July 12, 2022. All retainage, to which the Design Build Entity would have been

entitled as of July 12, 2022, will be subject to simple interest at the annual prime interest rate that would have been applicable for each calendar month, or part thereof, that retainage should have been paid.”

6. City acknowledges and agrees the additional scope and delay costs made necessary by the extension for Substantial Completion will result in increased costs for the Project (Increased Costs), as set forth in the extension budget and in an O&M plan that shall be mutually agreed upon by the Design/Build Entity and the City by or before July 12, 2022, but subject to Paragraph 7., below.

7. City agrees to pay the Increased Costs, when submitted by the Design Build Entity in full accordance with the payment terms of the Amended Agreement and the change order process set forth in the Amended Agreement.

8. City agrees the Increased Costs shall not be used to determine whether the Design Build Entity is entitled to sharing of up to 50% of the net savings not to exceed \$2,000,000, pursuant to Section 6.13 of the Amended Agreement and that the Increased Costs are outside of the GMP. For the net savings, to which the Design Build Entity would have been entitled on September 7, 2022, but for the delay which is the subject of this Amendment No. 7, City will pay the Design/Build Entity interest on those retained net savings at the simple annual prime interest rate that would have been applicable for each calendar month, or part thereof those net saving were retained after that September date,. Interest will be paid as part of the monthly invoice and not be considered part of the GMP.

9. Except as expressly stated herein, all terms and conditions in the Agreement remain in full force and effect.

10. The effective date of this Amendment No. 7 shall be June 28, 2022.

IN WITNESS WHEREOF, the Parties have caused this Amendment No. 7 to be executed by their duly authorized representatives.

CITY OF MORRO BAY
a municipal corporation

DESIGN BUILD ENTITY

Overland Contracting Inc.

By: _____
Scott Collins, City Manager

By: _____
Charles Mitchell,
Its Attorney in Fact

Dated: _____, 2022

Dated: _____, 2022

J.R. FILANC CONSTRUCTION
COMPANY, INC.

Attest:

By: _____
Omar Rodea,
Its President

Dana Swanson, City Clerk

Dated: _____, 2022

Acting together as FBV Morro Bay
Joint Venture, PWCR #947773 –
Classification A

Approved As To Form:

Chris Neumeyer, City Attorney

Exhibit A(Revised)
(Revised thru Amendment No. 7)
Project Milestone Schedule

The Project Milestones for the Water Reclamation Facility Project (Project) are defined below. The Project is composed of two (2) phases:

- Design Phase
- Construction Phase

Separate Notices to Proceed (NTPs) will be issued for each phase of the Project. If the NTP dates change, the subsequent dates may change accordingly.

Project Milestones

Project Milestones	Milestone Date
Design NTP	November 5, 2018
Construction NTP	March 20, 2020
Warranty Start Date*	July 12, 2022
Pipelines and Pumpstations Complete	October 3, 2022
Substantial Completion	January 20, 2023
Final Completion	March 20, 2023

*MF and RO membrane warranty will start once membranes are installed.