

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

SLO Martin Properties, LLC
Attn: Tai Martin
P.O. Box 2359
Avila Beach, CA 93424

(Space Above For Recorder's Use)

**AGREEMENT BETWEEN THE CITY OF SAN LUIS OBISPO AND
SLO MARTIN PROPERTIES, LLC FOR PARK MAINTENANCE AND OUTDOOR DINING**

This Agreement made and entered into on December __, 2023 ("Effective Date") by and between the CITY of San Luis of San Luis Obispo (hereinafter, "CITY") and SLO Martin Properties, LLC, (hereinafter, "CONTRACTOR" (collectively referred to as the "Parties").)

RECITALS

WHEREAS, the CITY owns a parcel at 2163 Santa Barbara Street, San Luis Obispo, California, that serves as a gateway to the community, legally described in **Exhibit A-1***, attached hereto and incorporated herein by reference (hereinafter referred to as "City Owned Park Space"); and

WHEREAS, CONTRACTOR owns a parcel at 2138 Broad Street, San Luis Obispo, California, (hereinafter referred to as the "Contractor Property"), legally described in **Exhibit A-2**; and

WHEREAS, CONTRACTOR has an outdoor patio area in which a portion was built on the CITY-owned park space adjacent to CONTRACTOR's property at 2138 Broad Street, and

WHEREAS, CONTRACTOR's predecessor in interest, Village Host Pizza & Grill, and CITY had a previous agreement to maintain the City Owned Park Space, that expired on February 9, 2020, and

WHEREAS, CONTRACTOR's predecessor in interest previously improved and maintained the CITY-owned park space adjacent to CONTRACTOR's property at 2138 Broad Street, via a property use agreement, which agreement provided for Village Host's use of the outdoor dining area in consideration of Village Host's performance of terms and provisions in that Agreement; and

WHEREAS, CONTRACTOR's business benefits from the outdoor patio space and public art piece located in the CITY-owned park space.

NOW, THEREFORE, in consideration of the mutual promises, agreements, covenants and conditions herein set forth, CITY and CONTRACTOR mutually agree, and covenant as follows:

- 1. TERM.** The term of this agreement shall be for a period of fifteen (15) years from the date entered. The terms of the Agreement may be extended for a period of three to five years upon mutual agreement of the Parties.

*Should there be any discrepancies between the legal description set forth in Exhibit A-1 and the premises depicted in Exhibit B, the latter shall govern as to the area maintained by Contractor under this agreement.

- 2. OPERATION AND MANGEMENT PLAN.** In exchange for maintenance of the improvements made to the outdoor dining area partially located on City Owned Park Space and installation of the public art piece “The Dancers”, the CONTRACTOR shall be entitled to use the previously described space subject to the following conditions:

 - 2.1 CONTRACTOR shall maintain the City Owned Park Space in accordance with the approved landscape plan, attached and incorporated herein by reference as **Exhibit B**, and the detailed description of work at Level 3 incorporated herein by reference as **Exhibit C – SCOPE OF WORK AND SERVICE LEVEL**, to the satisfaction of the CITY's Parks Maintenance Supervisor.
 - 2.2 CONTRACTOR shall maintain the outdoor dining area, the City Owned Park Space, and the public art piece in a clean and safe manner at all times, and shall ensure proper functioning of the lighting on the public art piece.
 - 2.3 Items used for dining outdoors may not be left outside overnight, except for tables, chairs and umbrellas in the outdoor dining area.
 - 2.4 CONTRACTOR shall continue to pay all related utility costs toward maintenance of City Owned Park Space.
 - 2.5 CONTRACTOR and their tenant shall comply at all times with the San Luis Obispo Municipal Code and with state regulations related to landscape irrigation. CONTRACTOR shall not use potable water to irrigate non-functional turf, as defined by California Water Code § 996 and pursuant to the State Water Resources Control Board’s emergency regulation OAL 2023-0526-01 (June 5, 2023), a copy of which is attached as **Exhibit E**. CONTRACTOR acknowledges and agrees to comply with California Water Code § 10608.14 which will prohibit the use of potable water for irrigation of non-functional turf beginning January 1, 2027.
- 3. CITY OBLIGATIONS**

 - 3.1 CITY will periodically inspect the City Owned Park Space and public art piece to verify CONTRACTOR’s compliance with maintenance requirements.
 - 3.2 CITY shall permit the CONTRACTOR to serve alcoholic beverages in the outdoor dining area, subject to approval from the Alcoholic Beverage Control Board.
- 4. FEES.** In exchange for maintenance responsibilities undertaken by CONTRACTOR and the maintenance and upkeep of the required public art piece, no rent will be charged to CONTRACTOR for use by CONTRACTOR and its tenant of the outdoor dining area and the City Owned Park Space.
- 5. FAILURE TO PERFORM.** In the event that the City Owned Park Space is not maintained by CONTRACTOR and/or its tenant to an acceptable level, the CITY will provide written notice to the CONTRACTOR of the corrective work required for compliance with this Agreement. CONTRACTOR will have thirty (30) days from the date of receipt of the notice to remedy any deficiencies. If the CONTRACTOR fails to perform the requested work after thirty (30) days’ notice, CITY will obtain the services of a landscape contractor to restore the City Owned Park Space to the standards set forth in Paragraph 2.1 of this Agreement, at the sole expense of CONTRACTOR.
- 6. ALTERATIONS.** CONTRACTOR is not authorized to make any other alterations to City Owned Park Space other than those outlined in this agreement without prior written authorization from the CITY Parks Maintenance Supervisor.

7. INSURANCE & INDEMNIFICATION

7.1 Indemnification. To the fullest extent permitted by law (including, but not limited to California Civil Code Sections 2782 and 2782.8), CONTRACTOR shall defend, indemnify, and hold harmless the CITY, and its elected officials, officers, agents, employees and volunteers (herein for the purposes of this provision collectively referred to as "CITY INDEMNITEES") from and against any and all causes of action, claims, liabilities, obligations, judgments, losses, costs, expenses or damages, including reasonable legal counsels' fees and costs of litigation arising out of or in any way connected with CONTRACTOR'S or its tenant's use of the City Owned Park Space, and CONTRACTOR'S performance or failure to perform its obligations under this Agreement, including the CITY INDEMNITEES' active or passive negligence, except for such loss or damage arising from the sole negligence or misconduct of the CITY INDEMNITEES relating to CONTRACTOR'S use of the outdoor dining area and the City Owned Park Space under this AGREEMENT. In the event any CITY INDEMNITEE(S) is/are made a party to any action, lawsuit, or other adversarial proceeding arising from CONTRACTOR'S or its use of the CITY outdoor dining area and the City Owned Park Space encompassed by this agreement, CONTRACTOR'S performance of this Agreement, the CONTRACTOR shall have an immediate duty to defend the CITY INDEMNITEE(S) at CONTRACTOR'S cost, or at the CITY'S option, reimburse the CITY their costs of defense, including reasonable attorney's fees, incurred in defense of such matters.

The CONTRACTOR'S obligation to indemnify, defend and hold harmless the CITY and/or CITY INDEMNITEES includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of CONTRACTOR, or its tenant's, officers, employees, agents, participants, representatives, or vendors.

7.2 Insurance. Without limiting CONTRACTOR'S indemnification of CITY, and prior to use of the City Owned Park Space, CONTRACTOR or its Tenant shall obtain, provide, and maintain at its own expense during the term of this Agreement, policies of insurance of the types and amounts set forth in this Section 7.2 and **Exhibit D** (attached hereto and incorporated herein by reference) and in a form that is satisfactory to CITY.

CONTRACTOR acknowledges that the insurance coverage and policy limits set forth in this Section 7.2 constitute the minimum amount of coverage required. Any insurance proceeds available to CONTRACTOR in excess of the limits and coverage identified in this Agreement and which is applicable to a given loss, claim or demand, will be equally available to CITY.

CITY reserves the right to require additional insurance coverage(s) not specified in this section, if, in the sole discretion of the CITY, such additional coverages are necessary to protect the CITY.

8. SAFETY. CONTRACTOR shall conform to the rules and regulations pertaining to safety established by OSHA and the California Division of Industrial Safety.

Whenever CONTRACTOR operations on the Contractor Property or the City Owned Park Space create a condition hazardous to the public or CITY employees, it shall, at its expense and without cost to the CITY, furnish, erect and maintain such fences, temporary railings, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent

accidents or damage or injury to the public and employees.

9. PRESERVATION OF CITY PROPERTY. The CONTRACTOR shall provide and install suitable safeguards, approved by the CITY, to protect CITY property from injury or damage. If CITY property is injured or damaged resulting from the CONTRACTOR or its tenant operations, it shall be replaced or restored at the CONTRACTOR'S expense. The facilities shall be replaced or restored to a condition as good as when the CONTRACTOR began the work on the City Owned Park Space.

10. TERMINATION.

10.1 Either party may terminate the Agreement for convenience, provided two hundred seventy (270) days written notice is given to the non-terminating party. The Agreement may be terminated by either party for cause, provided that written notice has been given in the manner specified herein stating the reasons for the intended termination and providing the other party at least ten (10) days to cure any alleged breach. If the party receiving notice fails or refuses to cure the alleged breach within ten (10) days, or to make substantial progress toward cure to the satisfaction of the party demanding cure, this Agreement may be terminated ten (10) days after receipt of the notice as specified herein. Nothing in this provision alters the procedure for termination of this Agreement because of CONTRACTOR'S failure to maintain, as set forth in Paragraph 5.

10.2 Notwithstanding any other provision of this Agreement, should CONTRACTOR cease operations at 2138 Broad Street, this Agreement will terminate. Any successor(s) in interest will be required to execute an agreement with the CITY for use of the outdoor patio space within sixty (60) days of commencing operations. This subparagraph is binding on successor(s) in interest during the Term of this agreement.

10.3 Should this Agreement be terminated, both Parties agree to execute a document indicating termination for recordation purposes.

11. AUTHORITY TO EXECUTE AGREEMENT. Both CITY and CONTRACTOR do covenant that each individual executing this agreement on behalf of each party is a person duly authorized and empowered to execute Agreements for such party.

12. COMPLIANCE WITH LAW. The CONTRACTOR shall keep him/her/itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Contractor shall at all times observe and comply with all such laws and regulations. The CITY, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Contractor to comply with this Section.

13. GOVERNING LAW. The CITY and CONTRACTOR understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in San Luis Obispo County Superior Court, regardless of other courts with jurisdiction over the matter.

14. BUSINESS LICENSE AND TAX. The CONTRACTOR shall maintain a valid CITY of San Luis Obispo business license & tax certificate when applicable before execution of the contract. Additional information regarding the CITY'S business license and tax program may be obtained by calling

(805) 781-7134. This Agreement creates an interest in real property that may be subject to a possessory interest tax. Contractor shall be responsible for any payment of any taxes due.

15. ASSIGNMENT. The CONTRACTOR shall not assign, transfer, convey or otherwise dispose of the contract, or its right, title or interest, or its power to execute such a contract to any individual or business entity of any kind without the previous written consent of the CITY. The CONTRACTOR shall have the right to assign its rights and obligations under this Agreement to a buyer of the Property subject to the CITY, CONTRACTOR and the buyer executing documentation affirming the continued obligations under the terms and conditions of this Agreement.

16. NON-DISCRIMINATION.

16.1 There shall be no discrimination against or segregation of any person or group of persons on account of race, religion, sex, sexual orientation, national origin or ancestry, age, physical, mental or economic status in the operation, lease, use, occupancy, tenure or enjoyment of the City Owned Park Space or the improvements thereon, or any part thereof, and permittee, or any person claiming under or through it, shall not establish or permit any such practice of discrimination or segregation with reference to the selection, location, number, use or occupancy of employees, contractors, subcontractors, laborers, or material men, tenants, lessees, subtenants, sublessees, invitees or vendees of the City Owned Park Space or the improvements thereon, or any part thereof.

16.2 CONTRACTOR shall not restrict access or use of the City Owned Park Space or the improvements thereon, or any portion thereof, on the basis of race, religion, sex, sexual orientation, national origin or ancestry, age, physical, mental, or economic status of any person.

17. COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed to be an original in which counterparts shall together contain the signatures of all the parties hereto and shall constitute a single, binding, and complete Agreement for Park Maintenance and Dining.

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

ATTEST:

CITY OF SAN LUIS OBISPO, A Municipal Corporation

By: _____
City Clerk

By: _____
City Manager

APPROVED AS TO FORM:

By: _____
Sadie Symens, Deputy City Attorney

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

State of California

County of _____

On _____ before me, _____, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

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

CONTRACTOR

By: _____
Tai Martin, CEO
SLO Martin Properties, LLC

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

State of California

County of _____

On _____ before me, _____, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

**EXHIBIT A-1
LEGAL DESCRIPTION OF CITY-OWNED PARCEL**

RECORDED BY
WHEN RECORDED RETURN TO:
Department of Transportation
P. O. Box L
San Luis Obispo, CA 93406

02125419F 800000.00 REC.
02125419F 800000.00CA

19270
REC. NO.
OFFICIAL RECORDS
SAN LUIS OBISPO, CAL.

JUN 19 1975

WILLIAM E ZIMARIK
COUNTY RECORDER
TIME 1:40 P.M.

Accepted under Tax 1
Department of Transportation
P. O. Box L
San Luis Obispo, CA 93406
X
Department of Transportation
P. O. Box L
San Luis Obispo, CA 93406

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DIRECTOR'S DEED

MAY 1975

DISTRICT	COUNTY	ROUTE	POST-MILE	NUMBER
05	SLO	227	12.6	DD3166-01-01

The STATE OF CALIFORNIA, acting by and through its Director of Transportation, does hereby grant to
THE CITY OF SAN LUIS OBISPO

all that real property in the City of San Luis Obispo

County of San Luis Obispo, State of California, described as:

That part of the portion of Lot 14 in Block 3 of the McBride Tract in the City of San Luis Obispo as conveyed to the State of California by deed recorded May 24, 1973 in Volume 1726 at page 7 of Official Records of said County lying northeasterly of Course 1 and northerly of Course 2 of the following described line:

Beginning on the easterly line of Chorro Street distant northerly along said line 46.56 feet from the intersection of said line with the north-easterly line of Broad Street (State Highway 227) as said lines are shown on the map of said tract filed March 21, 1887 in Book B of Maps at page 31 records of said County; thence (1), S. 31° 02' 13" E., 456.77 feet; thence (2), southerly tangent to last described course along a curve to the left with a radius of 5.00 feet through an angle of 142° 20' 46" for an arc length of 12.02 feet to the easterly line of Lot 14 distant northerly along said line 62.97 feet from the intersection of said line with said northeasterly line of said Highway as shown on said map.

Excepting and reserving therefrom a temporary easement for construction and utility purposes upon, over and across that part of said portion of said Lot 14 being a 10-foot wide strip of land lying northeasterly of

MAIL TAX
STATEMENTS TO: City of San Luis Obispo
Kenneth E. Schwartz - Mayor
990 Palm Street,
San Luis Obispo, CA 93401

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and contiguous to Course 1 and northerly of and contiguous to Course 2 of the above described line and westerly of and contiguous to that portion of said easterly line of said portion of Lot 14 that extends northerly from the northeasterly terminus of above described Course 2.

Said temporary easement shall cease and terminate upon completion of construction, but in any event, shall cease and terminate not later than January 1, 1979.

Bearings and distances used herein are based on the California Coordinate System Zone 5.

It is expressly made a condition herein that the conveyed property be used exclusively for public purposes; that if said property ceases to be used exclusively for public purposes, all title and interest in said property shall revert to the State of California, Department of Transportation, and the interest held by the grantee(s), named herein, or its/their assigns, shall cease and terminate at such time. It is understood and agreed by the grantee(s), herein named, and its/their assigns, that the foregoing provision constitutes a forfeiture and will cause all interest to revert in the State of California, Department of Transportation, if the conveyed property ceases to be used for public purposes.

19270

Subject to special assessments if any, term limits, reservations, and encumbrances of record.

This conveyance is executed pursuant to the authority vested in the Director of Transportation by law and, in particular, by the Streets and Highways Code.

WITNESS my hand and the seal of the Department of Transportation of the State of California, this 22nd day of May, 1975.

NOTARY PUBLIC
Erwin W. Thomas
DEPARTMENT OF PUBLIC UTILITIES

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
HOWARD C. ULTRICH
DIRECTOR OF TRANSPORTATION

By *Edwin C. Thomas*
Attorney in Fact

STATE OF CALIFORNIA
COUNTY OF SACRAMENTO } sv.

On this 22nd day of May, 1975, before me, J. L. McCarty, a Notary Public in and for the State of California, residing therein, duly commissioned and sworn, personally appeared Erwin W. Thomas known to me to be the person whose name is subscribed to the within instrument as the Attorney in Fact of HOWARD C. ULTRICH, Director of Transportation of the State of California, and known to me to be the person who executed the within instrument on behalf of the State of California, and he acknowledged to me that he subscribed the name of HOWARD C. ULTRICH as Director of Transportation, and his own name as Attorney in Fact, and that the State of California executed the same.

WITNESS my hand and official seal.

J. L. McCarty
Notary Public
1120 N Street, Sacramento, CA 95814

J. L. McCarty
Notary Public

THIS IS TO CERTIFY That the California Highway Commission has authorized the Director of Transportation to execute the foregoing deed at its meeting regularly called and held on the 22nd day of May, 1975, in the City of Bakersfield.

Dated this 23rd day of May, 1975.

Harold A. Richard

HAROLD A. RICHARD
Assistant Secretary of the
California Highway Commission

19970

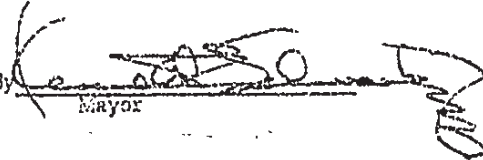
CERTIFICATE OF ACCEPTANCE

THIS IS TO CERTIFY that the interest in real property conveyed
by the DIRECTOR'S DEED dated May 27
1975, from Department of Transportation, State of
California

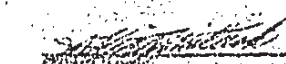
to the CITY OF SAN LUIS OBISPO, a Political Corporation, is
hereby accepted by the undersigned officer on behalf of the City
Council pursuant to authority conferred by Resolution No. 549
(1959 Series), recorded May 26, 1959, in Volume 1002, Official
Records, Page 292, San Luis Obispo County, California, and the
Grantee consents to recordation thereof by its duly authorized
officer or his agent.

Date: June 5, 1975

CITY OF SAN LUIS OBISPO

By 
Mayor

ATTEST:


City Clerk

19270

EXHIBIT A-2
LEGAL DESCRIPTION OF CONTRACTOR-OWNED PARCEL

Real property in the City of San Luis Obispo, County of San Luis Obispo, State of California, described as follows:

PARCEL 1:

ALL THAT PORTION OF LOT 14 IN BLOCK 3 OF MCBRIDE TRACT, IN THE CITY OF SAN LUIS OBISPO, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO MAP RECORDED MARCH 21, 1887, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTHERLY LINE OF SAID LOT; WHICH SAID POINT IS DISTANT SOUTH 88° 51' WEST 73.75 FEET FROM THE NORTHEAST CORNER OF SAID LOT; THENCE RUNNING FROM SAID POINT OF COMMENCEMENT SOUTH 88° 51' WEST 83.42 FEET ALONG THE NORTHERLY LINE OF SAID LOT TO THE NORTHWEST CORNER THEREOF AND A POINT ON THE NORTHEASTERLY LINE OF BROAD STREET; THENCE SOUTH 32° 58' EAST 50.00 FEET ALONG THE SAID NORTHEASTERLY LINE OF BROAD STREET AND ALONG THE SOUTHWESTERLY LINE OF SAID LOT TO THE SOUTHWEST CORNER OF THE PROPERTY CONVEYED TO CHARLES NOLAN, BY DEED DATED JULY 19, 1905, AND RECORDED IN BOOK 67, PAGE 94 OF DEEDS; THENCE LEAVING SAID STREET AND LOT LINES AND RUNNING SOUTH 87° 51' EAST ALONG THE SOUTH LINE OF THE PROPERTY SO CONVEYED, 57.11 FEET TO A 2" X 2" STAKE SET IN SAID LOT; THENCE NORTH 1° 09' WEST 45.78 FEET TO THE POINT OF COMMENCEMENT.

EXCEPT THEREFROM THAT PORTION THEREOF CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED APRIL 5, 1974, IN BOOK 1772, PAGE 810 OF OFFICIAL RECORDS.

PARCEL 2:

THAT PORTION OF LOT 14 IN BLOCK 3 IN THE MCBRIDE TRACT, IN THE CITY OF SAN LUIS OBISPO, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO MAP RECORDED MARCH 21, 1887, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 13 IN BLOCK 3 OF SAID MCBRIDE TRACT; THENCE SOUTH 88° 51' WEST ALONG THE LINE BETWEEN LOT 13 AND 14, 73.75 FEET TO THE NORTHEAST CORNER OF THE PROPERTY CONVEYED TO PHILLIP E. MARTINEZ BY DEED DATED DECEMBER 9, 1944, AND RECORDED IN BOOK 375, PAGE 110 OF OFFICIAL RECORDS; THENCE SOUTH 1° 09' EAST ALONG THE EAST LINE OF THE PROPERTY SO CONVEYED 44.78 FEET TO THE SOUTH LINE OF THE PROPERTY CONVEYED TO J.F. HOOVER, SR., BY DEED DATED MARCH 8, 1939, AND RECORDED IN BOOK 257, PAGE 95 OF OFFICIAL RECORDS; THENCE SOUTH 87° 51' EAST ALONG SAID SOUTH LINE 68.88 FEET TO THE EAST LINE OF SAID LOT 14; THENCE NORTH 4° 34' EAST ALONG SAID EAST LINE, 50 FEET TO THE POINT OF BEGINNING.

PARCEL 3:

LOT 12 AND THAT PORTION OF LOT 25 IN BLOCK 3 OF THE MCBRIDE TRACT, IN THE CITY OF SAN LUIS OBISPO, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO MAP RECORDED MARCH 21, 1887, IN BOOK B, PAGE 31 OF MAPS, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 25; THENCE EAST ALONG THE SOUTH LINE OF LOTS 25 AND 12, 194 FEET TO THE SOUTHEAST CORNER OF SAID LOT 12; THENCE NORTH ALONG THE EAST LINE OF SAID LOT 12, 50 FEET TO THE NORTHEAST CORNER OF SAID LOT, SAID POINT BEING THE SOUTHEAST CORNER OF THE PROPERTY CONVEYED TO BELLA OLSON BY DEED RECORDED AUGUST 20, 1937, IN BOOK 221, PAGE 316 OF OFFICIAL RECORDS; THENCE WEST ALONG THE SOUTH LINE OF THE PROPERTY SO CONVEYED TO THE SOUTHWESTERLY LINE OF SAID LOT 25; THENCE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY LINE TO POINT OF BEGINNING.

EXCEPT THEREFROM THAT PORTION THEREOF DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA RECORDED NOVEMBER 16, 1973, IN BOOK 1753, PAGE 718 OF OFFICIAL RECORDS.

PARCEL 4:


LOT 13 IN BLOCK 3 OF THE MCBRIDE TRACT, IN THE CITY OF SAN LUIS OBISPO, COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, ACCORDING TO MAP RECORDED MARCH 21, 1887, IN BOOK B, PAGE 31 OF MAPS.

APN: 003-748-036

EXHIBIT B

LANDSCAPE PLAN FOR CITY PARK @ SANTA BARBARA AND BROAD ST.,
SAN LUIS OBISPO, CALIFORNIA.

PLANT DETAILS

No.	Common Name	Scientific Name	Picture	Size (Gal.)	No. of Plants
1	Fortnight Lily	<i>Dietes bicolor</i> 'Moraea b.'		1-2	19
2	Daydream	<i>America ps.</i> 'dreameria'		1	16
3	Sunset Gold	<i>Coleonema pul.</i>		2-5	03
4	Brilliance	<i>Salvia microphylla x</i> 'greggi'		1-2	04
5	Blue Flare	<i>Agapanthus praecox</i>		1	12
6	Blue Flame	<i>Agave 'Blue Flame'</i>		2-7	05
7	Purple Trailing	<i>Lantana</i> <i>montevidensis</i>		1	06

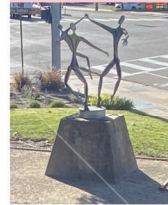
8	Pinkie	<i>Raphiolepis indica</i>		1-5	04
9	Cousin Itt	<i>Acacia cognata</i>		2-5	19
10	Striped Rush	<i>Machaerina rubiginosa</i> 'Variegata'		2-5	10
11	Huntington Carpet	<i>Rosmarinus officinalis</i>		1-5	09
12	Arctic Frost	<i>Lomandra longifolia</i>		1-5	13
13	Japanese Boxwood	<i>Microphylla japonica</i>		1	11



GOLDEN COLOR BOULDERS



ART INSTALLATION (E)



MATERIALS

DG Pathways (Tan Color)



3/8" Gold Granite



Existing Trees

- 01. Oak Tree (*Quercus robur*) 20'-27" Dia.
- 02. Arbutus Tree (*Arbutus menziesii*) 4' Dia.
- 03. London Plane Tree (*Platanus hispanica*) 8'-10" Dia.

Plants

- 01. Fortnight Lily (*Diets bicolor* 'Moraea b.') 1-2 Gal.
- 02. Daydream (*America ps.* 'dreameria') 1 Gal.
- 03. Sunset Gold (*Coleonema pul.*) 2-5 Gal.
- 04. Brilliance (*Salvia microphylla x 'gregg'*) 1-2 Gal.
- 05. Blue Flame (*Agave 'Blue Flame'*) 1 Gal.
- 06. Blue Flame (*Agave 'Blue Flame'*) 2-7 Gal.
- 07. Purple Trailing (*Lantana montevidensis*) 1 Gal.
- 08. Pinkie (*Rhaphiolepis indica*) 1-5 Gal.
- 09. Cousin Itt (*Acacia cognata*) 2-5 Gal.
- 10. Striped Rush (*Machaerina rubiginosa 'Variegata'*) 2-5 Gal.
- 11. Huntington Carpet (*Rosmarinus officinalis*) 1-5 Gal.
- 12. Arctic Frost (*Lomandra longifolia*) 1-5 Gal.
- 13. Japanese Boxwood (*Microphylla japonica*) 1 Gal.

Project Name:
LANDSCAPE PLAN
SANTA BARBARA & BROAD STREET,
SAN LUIS OBISPO, CALIFORNIA.

Orion Designs

Other Consultants:

CONTRACTOR:
SLO MARTIN PROPERTIES LLC,
ATTN: TAI MARTIN

Site Map:

Rev.	Date	Description	Made by

Drawing Dates: LANDSCAPE DRAWINGS

Date:	28.12.2023
Scale:	200 # AZ
Designed By:	THARNOU MANAWADU
Drawn By:	THARNOU MANAWADU
Project no.:	299

COPYING OR THE REPRODUCTION OF THIS DRAWING IS
STRICTLY PROHIBITED WITHOUT THE CONSENT OF
ORION DESIGNS.

Drawing Title:
LANDSCAPE PLAN

Drawing No.:
299/01/01

Client File Path:
PROJECTS/2023/299

RO

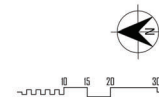


EXHIBIT C
SCOPE OF WORK

DETAILED DESCRIPTION OF WORK

1. Litter Control.

Ground Litter. The Contractor shall pick up litter as encountered during scheduled visits to the locations listed in Contract Proposal, taking particular care to remove fecal matter from turf areas and from areas that are highly traveled and highly visible, including parking lots.

Posted Material. The Contractor shall remove all posters, flyers, signs, and advertisements including staples, tacks, nails, and tape that are attached to trees, poles, and any other structures.

Disposal of Gathered Litter and Material. Disposal of collected litter shall be at the Contractor's expense and not deposited in site garbage cans and dumpsters. The City shall remove trash from site garbage cans unless otherwise specified.

2. Walkway Maintenance.

Litter Control. The Contractor shall remove all trash, weeds, and foreign objects from walkway surfaces as established for each Service Level. The Contractor shall then remove all trash, weeds and foreign objects from the site.

Blow Pack Use. In the downtown area, blow packs may be used between 7:00 a.m. and 10:00 a.m. In residential areas blow packs may be used between 8:00 a.m. and 5:00 p.m. All litter swept with a blow pack shall be picked up and removed from the site. Because of inherent noise and dust problems, the Contractor shall display courtesy and consideration towards citizens and businesses whenever a blow pack is used and shut down or direct blowing away from pedestrians.

Washing. Washing walkways shall not be permitted unless specifically authorized by the City's Contract Manager and undertaken with proper controls to prevent pollution of stormwater.

Pruning. In addition to the specified scheduled pruning, the Contractor shall prune trees, shrubs and groundcovers whenever necessary to keep walkways clear and to maintain pedestrian safety.

Equipment Pads. Equipment pads shall receive the same maintenance as walkways.

3. Irrigation.

Manual Irrigation. The Contractor shall manually irrigate vegetation as required to maintain proper plant growth. This manual irrigation shall include watering with hoses, hose bibs, quick couplers, nozzles, and sprinklers furnished by the Contractor. Manual irrigation may be required in addition to, in conjunction with, or in the absence of automatic irrigation. The Contractor shall irrigate at times of the day that shall ensure maximum plant health and minimum inconvenience for people using the area. The Contractor shall avoid water runoff onto roadways, walkways and other hard surfaces. Recycled water shall be prevented from landing on picnic tables and drinking fountains.

Schedules. On January 1, April 1, July 1, and October 1 of each year, the Contractor shall submit a proposed irrigation time of day schedule for all areas for the next 3 months. This schedule form will be provided by the city and the schedule must be approved by the City's Contract Manager.

Automatic Irrigation. The Contractor shall operate all automatic irrigation systems. Automatic irrigation shall normally take place during night or early morning hours. The Contractor shall program automatic controllers for seasonal water requirements.

During periods of rain, the contractor shall deactivate all automatic programming and go into "rain shut down.". The contractor shall notify the City when "rain shut down" is both activated and deactivated. Failure to activate "rain shut down" during rainy weather will result in the contractor being liable for the cost of water used, per location, during rainy periods.

If plant material dies due to inadequate water or over watering, the Contractor shall replace all dead plant material within 3 weeks of written notification, at no cost to the City.

Irrigation System Inspection and Repair. The contractor shall maintain all irrigation systems in proper adjustment to avoid water runoff or overspray onto adjacent properties, roadways, walkways and other hard surfaces.

The contractor is responsible for repairs and replacements from the lateral line up, including swing-joints, risers, irrigation heads, drip emitters, and tubing. The City shall be responsible for any other irrigation system repairs.

The Contractor shall perform monthly irrigation system inspections by turning the system on, checking for leaks, overspray and other coverage issues, and making necessary adjustments and repairs. The Contractor shall notify the City of the inspection and submit an irrigation report the first of every month during the irrigation season.

The Contractor shall report any irrigation problems that are the City's responsibility, to the City as soon as noted, particularly any repairs needed for irrigation controllers, or improper coverage that could lead to plant death or site runoff. The Contractor shall manually irrigate an area as needed while an irrigation controller is being repaired. Before fertilization the Contractor shall check each automatic irrigation system for proper operation and adjustment.

Non-Potable recycled) water training. Worker safety training is required for all workers working in identified areas that use non-potable (recycled) water. The training will be provided by the city and scheduled once the reclaimed systems are operable.

Water Conservation. All irrigation schedules shall comply with any watering restrictions imposed by the City of San Luis Obispo Utilities Department during drought conditions. When the Utilities Department has imposed watering restrictions, the Contractor shall consult with the City's Contract Manager to determine the best allocation of available water, considering plant species, time of year, location, and other environmental factors. Each month the Contractor shall monitor the effects of manual irrigation. During periods of officially declared water use restrictions, the Contractor shall report each month the amount of water used at each work location. Failure to comply with any mandatory restrictions may result in the contractor being liable for the cost of water used per location.

4. Disease and Pest Control.

Protection of Vegetation and the Public. The Contractor shall control and eliminate weeds, insects, rodents, and diseases that harm vegetation. In performing this pest control work, the Contractor shall use only materials and methods that will not harm the vegetation or the public. The City strongly encourages the use of Integrated Pest Management concepts in all parks.

Application Plan. The Contractor shall provide an application plan to the City's Contract Manager for approval. This plan shall include the disease or pest to be treated, the type and name of the product proposed to be used and copies of both the product label and Material Safety Data Sheet (MSDS).

Following any pesticide application, the Contractor shall submit to the City's Contract Manager on the first of the month a copy of all pesticide use reports identifying the type and brand name of the chemical, the date, rate and specific location of application.

Pesticide Application Licenses and Permits. The Contractor and its employees and subcontractors shall have and maintain all required permits and licenses required by the State of California before applying any pesticide.

Pesticide Acceptability. Any pesticide used shall be selected from the list approved by the State of California Department of Pesticide Regulations. Restricted materials may only be used with approval from the City and a permit issued by the San Luis Obispo County Agricultural Commissioner.

Rodent Traps. The Contractor shall not use rodent traps without prior written approval from the City's Contract Manager for the location and type of trap to be used. Traps will not be allowed in any area where children could be expected to play.

5. Groundcover Maintenance.

Edging. The Contractor shall edge all groundcover areas as specified for each Service Level. The primary purpose for edging the groundcover is to prevent it from growing onto walkways, roadways, hard surfaces, fences.

and walls. The Contractor shall not use chemical edging methods without prior approval from the City's Contract Manager.

Fertilizing. The Contractor shall fertilize all groundcover areas as specified for each Service Level. Following application, fertilizer shall be thoroughly watered into the soil within 24 hours. The Contractor shall notify the City's Contract Manager via the submitted monthly schedule a minimum of one week before a fertilizer application.

The groundcover fertilizer shall be a complete balanced low release fertilizer with a ratio of 12-12-12. The Contractor shall evenly broadcast the fertilizer at a minimum rate of ten pounds per 1,000 square feet of groundcover area per application. Any fertilizer landing outside the groundcover area shall be swept up and removed. The Contractor shall submit to the City written documentation of the quantities of fertilizer applied at each specified work location.

Weed Control. The Contractor shall maintain groundcover areas in a *weed free condition*. This weeding may be performed by hand or by using selective herbicides.

6. Shrub Maintenance

Pruning. The Contractor shall prune all shrubbery at the locations as specified for each Service Level. The primary purpose for pruning the shrubbery shall be to encourage healthy and attractive growth according to prescribed industry practices. Such pruning shall encourage the graceful, natural growth of the shrub and shall maintain plant health through removal of dead, diseased, or injured wood. The secondary purpose for pruning the shrubbery shall be to prevent it from growing onto walkways, roadways, and other hard surfaces. Where the specified pruning frequency is two times per year, the shrubs shall be pruned in the spring and fall. When required, the Contractor shall remove dead shrubbery.

Fertilizing. The Contractor shall fertilize all shrub areas at the locations as specified for each Service Level. Where the specified fertilizing frequency is twice a year, the shrubs shall be fertilized in April and September. Where the specified frequency is other than twice a year, the application dates shall be approved by the City's Contract Manager. Immediately following application, fertilizer shall be thoroughly watered into the soil. The Contractor shall notify the City's Contract Manager one week before a fertilizer application. The shrub fertilizer shall be a complete balanced low release fertilizer with a ratio of 12-12-12. The Contractor shall evenly broadcast the fertilizer at a minimum rate of ten pounds per 1,000 square feet of shrub bed area per application. The Contractor shall submit to the City written documentation of the quantities of fertilizer applied at each specified work location.

Weed Control. The Contractor shall maintain all shrub beds in a *weed free condition*. At a minimum, the contractor shall perform weeding at the locations as specified for each Service level. This weeding may be performed by hand or by using selective herbicides. When weeding is completed, the Contractor shall rake the shrub beds clear of all leaves and debris.

7. Tree Maintenance.

Pruning. The only purposes for pruning the trees shall be to maintain proper pedestrian clearances and to remove suckers. The Contractor shall not make structural changes to the trees. The Contractor shall report the need for any additional pruning to the City's Contract Manager.

Staking. The Contractor shall make minor staking repairs to all trees as required. Minor repairs shall include replacing or repairing ties, and refastening boards and braces. The Contractor shall report the need for more extensive repairs to the City's Contract Manager.

8. Miscellaneous Weed Control.

The Contractor shall maintain all fence lines, light standard bases, tree wells, buildings, walls, sidewalks, curbs, gutters, asphalt berms, parking lots, signs structures, and equipment pads etc. in a *weed free condition*. All non-landscaped areas shall be *weed free*. Herbicides used for weed control must have prior approval from the City's Contract Manager. The contractor shall perform all annual weed abatement in late May or as required by the San Luis Obispo Fire Department.

9. Site Inspection and Reporting.

Review entire site on each occasion that a site visit is made for any reason. Correct any problems, including irrigation, damage, graffiti or user issues, the same day.

SERVICE LEVELS

Level 3 - Moderate level maintenance associated with locations that have moderate to low levels of development or visitation. Every Two weeks.

Walkway and Turf Maintenance: Perform all aspects of Walkway Maintenance and mowing, edging and weed control work of Turf Maintenance every ten working days.

Aeration: Complete aeration when turf vigor is low and prior to fertilization.

Reseeding / sod: Reseed or install sod in bare spots for areas larger than 25 square feet.

Fertilizer: Apply fertilizer when turf vigor is low at a minimum complete a low level application once per year.

Litter Control: Complete all aspects of Litter Control, at a minimum, once every ten working days. High use may dictate higher levels during the warm season.

Tree, Shrub and Groundcover Maintenance: Complete all aspects of tree, shrub and groundcover maintenance; Complete all aspects of Tree, Shrub and Groundcover Maintenance when required for health, safety, walkway clearance or reasonable appearance. Usually twice per year but in some species or locations may need pruning more frequently.

Disease and Pest Control: Disease and Pest control shall be performed as needed to prevent loss of vegetation.

Surfaces: Clean surfaces once every ten working days.

Exhibit D

INSURANCE REQUIREMENTS

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

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

Workers' compensation insurance. Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000). Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

Property insurance. Upon commencement of construction of Contractor improvements and betterments, or installation of equipment, with approval of City, Contractor shall obtain and maintain insurance on Contractor's improvements and betterments. Policy shall be provided for replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy.

Commercial property insurance *(if applicable)*

Covering the leased premises, fixtures, equipment, building, all property situated in, on, or constituting a part of the premises and any improvements. Coverage shall be at least as broad as the Insurance Services Offices broad causes of loss form CP 10 20 and approved of in writing by City. Coverage shall be sufficient to insure 100% of the replacement value and there shall be no coinsurance provisions. The policy shall include an inflation guard endorsement, 100% rents coverage, contents coverage, coverage for personal property of others, ordinance or law and increased cost of construction coverage. City shall be included as an insured and as loss payee on any such insurance. City shall not be liable for any business income or other consequential loss sustained by Contractor. City shall not be liable for any loss of Contractor's personal property even if such loss is caused by negligence of City, City's employees, or agents.

Proof of insurance. Contractor shall provide certificates of insurance and required endorsements to City as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with

Exhibit D

City for the contract period and any additional length of time required thereafter. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. Contractor shall procure and maintain for the contract period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the performance of the Work hereunder by Contractor, their agents, representatives, employees, or subconsultants.

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

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

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

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City and shall require similar written express waivers and insurance clauses from each of its subconsultants. Enforcement of contract provisions (non estoppel). Contractor acknowledges and agrees that any actual or alleged failure on the part of the City to inform Contractor of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given

Exhibit D

coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Notice of cancellation. Contractor agrees to oblige its insurance agent or broker and insurers to provide the City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. If any of the Contractor's insurers are unwilling to provide such notice, then Contractor shall have the responsibility of notifying the City immediately in the event of Contractor's failure to renew any of the required insurance coverages or insurer's cancellation or non-renewal.

Additional insured status. General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that City and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies. Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

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

Pass-through clause. Contractor agrees to ensure that its subconsultants, subcontractors, and any other party who is brought onto or involved in the project/service by Contractor (hereinafter collectively "subcontractor"), provide the same minimum insurance coverage and endorsements required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. However, in the event Contractor's subcontractor cannot comply with this requirement, which proof must be submitted to the City, Contractor shall be required to ensure that its subcontractor provide and maintain insurance coverage and endorsements sufficient to the specific risk of exposure involved with subcontractor's scope of work and services, with limits less than required of the Contractor, but in all other terms consistent with the Contractor's requirements under this agreement. This provision does not relieve the Contractor of its contractual obligations under the agreement and/or limit its liability to the amount of insurance coverage provided by its subcontractors. This provision is intended solely to provide Contractor with the ability to utilize a subcontractor who may be otherwise qualified to perform the work or services but may not carry the same insurance limits as required of the Contractor under this agreement given the limited scope of work or services provided by the subcontractor. Contractor agrees that upon request, all agreements with subcontractors, and

Exhibit D

others engaged in the project, will be submitted to City for review.

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

Self-insured retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible, or require proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention through confirmation from the underwriter.

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

Additional insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection. Contractor's personal property, fixtures, equipment, inventory, and vehicles are not insured by City against loss or damage due to fire, theft, vandalism, rain, water, criminal or negligent acts of others, or any other cause.

Verification of Coverage. Contractor shall furnish the City with a certificate of insurance showing maintenance of the required insurance coverage, as well as endorsements effecting general liability coverage.. All endorsements are to be received and approved by the City before work commences.

EXHIBIT E

State Water Resources Control Board's Emergency Regulation OAL 2023-0526-01

**State of California
Office of Administrative Law**

In re:
State Water Resources Control Board

Regulatory Action:

Title 23, California Code of Regulations

Adopt sections: 996

Amend sections:

Repeal sections:

NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION

Government Code Sections 11346.1 and
11349.6

OAL Matter Number: 2023-0526-01

OAL Matter Type: Emergency Readopt (EE)

This emergency rulemaking action by the State Water Resources Control Board renews, with modifications, emergency regulations originally adopted in OAL Matter No. 2022-0606-03E to restrict the use of potable water for the irrigation of non-functional turf at commercial, industrial, and institutional sites.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 6/5/2023 and will expire on 6/5/2024. The Certificate of Compliance for this action is due no later than 6/4/2024.

Date: June 5, 2023



Kevin D. Hull
Senior Attorney

For: Kenneth J. Pogue
Director

Original: Eileen Sobeck, Executive
Director

Copy: Garrett Lenahan

EMERGENCY REGULATIONS SUBMISSION

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION REGULATIONS SUBMISSION

STD. 400 (REV. 10/2019)

For use by Secretary of State only

OAL FILE NUMBERS Z-	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER 2023-0526-01EE	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY State Water Resources Control Board			AGENCY FILE NUMBER (If any)

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JUN 05 2023

GA 1:42 PM

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Drought Conservation Emergency Regulation		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2022-0606-03E	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 996		
	AMEND		
	REPEAL		
TITLE(S) 23			
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input checked="" type="checkbox"/> Other (Specify) Water Code Sec 1058.5	
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify)			
7. CONTACT PERSON Garrett Lenahan	TELEPHONE NUMBER (916) 341-5179	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE Eileen Sobeck, Executive Director <small>Digitally signed by Eileen Sobeck, Executive Director Date: 2023.05.26 13:03:52 -0700</small>	DATE 5/26/2023
TYPED NAME AND TITLE OF SIGNATORY Eileen Sobeck, Executive Director, State Water Resources Control Board	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUN 05 2023

Office of Administrative Law

ADOPTED EMERGENCY REGULATION TEXT

Title 23. Waters

Division 3. State Water Resources Control Board and Regional Water Quality Control Boards

Chapter 3.5. Urban Water Use Efficiency and Conservation

Article 3. Prevention of Drought Wasteful Water Uses

§ 996. Urban Drought Response Actions

(a) As used in this section:

(1) "Commercial, industrial and institutional" refers to commercial water users, industrial water users, and institutional water users as respectively defined in Water Code, section 10608.12, subdivisions (e), (i), and (j), and includes homeowners' associations, common interest developments, community service organizations, and other similar entities but does not include the residences of these entities' members or separate interests.

(2) "Common interest development" has the same meaning as in section 4100 of the Civil Code.

(3) "Community service organization or similar entity" has the same meaning as in section 4110 of the Civil Code.

(4) "Homeowners' association" means an "association" as defined in section 4080 of the Civil Code.

(5) "Non-functional turf" means turf that is solely ornamental and not regularly used for human recreational purposes or for civic or community events. Non-functional turf does not include sports fields and turf that is regularly used for human recreational purposes or for civic or community events.

(6) "Plant factor" has the same meaning as in section 491.

(7) "Separate interest" has the same meaning as in section 4185 of the Civil Code.

(8) "Turf" has the same meaning as in section 491.

~~(9) "Urban water supplier" has the same meaning as Water Code section 10617.~~

~~(10) "Water shortage contingency plan" means the plan required by Water Code section 40632.~~

~~(b) Each urban water supplier shall submit to the Department of Water Resources a preliminary annual water supply and demand assessment consistent with section 10632.1~~

of the Water Code no later than June 1, 2022 or the effective date of this section, whichever comes later, and submit a final annual water supply and demand assessment to the Department of Water Resources no later than the deadline set by section 10632.1 of the Water Code.

~~(c) (1) Each urban water supplier that has submitted a water shortage contingency plan to the Department of Water Resources shall implement by June 10, 2022, at a minimum, all demand reduction actions identified in the supplier's water shortage contingency plan adopted under Water Code 10632 for a shortage level of ten (10) to twenty (20) percent (Level 2).~~

~~(2) Notwithstanding subdivision (c)(1), urban water suppliers shall not be required to implement new residential connection moratoria pursuant to this section.~~

~~(3) Notwithstanding subdivision (c)(1), an urban water supplier may implement the actions identified in subdivision (d) in lieu of implementing the demand reduction actions identified in the supplier's water shortage contingency plan adopted under Water Code section 10632 for a shortage level of ten (10) to twenty (20) percent (Level 2), provided the supplier meets all of the following:~~

~~(i) The supplier's annual water supply and demand assessment submitted to the Department of Water Resources demonstrates an ability to maintain reliable supply until September 30, 2023.~~

~~(ii) The supplier does not rely on, for any part of its supply, the Colorado River, State Water Project, or Central Valley Project, and no more than ten (10) percent of its supply comes from critically overdrafted groundwater basins as designated by the Department of Water Resources.~~

~~(iii) The supplier's average number of gallons of water used per person per day by residential customers for the year 2020 is below 55 gallons, as reported to the Board in the Electronic Annual Report.~~

~~(d) Each urban water supplier that has not submitted a water shortage contingency plan to the Department of Water Resources shall, by June 10, 2022, and continuing until the supplier has implemented all demand reduction actions identified in the supplier's water shortage contingency plan adopted under Water Code 10632 for a shortage level of ten (10) to twenty (20) percent (Level 2), implement at a minimum the following actions:~~

~~(1) Initiate a public information and outreach campaign for water conservation and promptly and effectively reach the supplier's customers, using efforts such as email, paper mail, bill inserts, customer app notifications, news articles, websites, community events, radio and television, billboards, and social media.~~

~~(2) Implement and enforce a rule or ordinance limiting landscape irrigation with potable water to no more than two (2) days per week and prohibiting landscape irrigation with potable water between the hours of 10:00 a.m. and 6:00 p.m.~~

~~(3) Implement and enforce a rule or ordinance banning, at a minimum, the water uses prohibited by section 995. Adoption of a rule or ordinance is not required if the supplier has authority to enforce, as infractions, the prohibitions in section 995 and takes enforcement against violations.~~

(e) (1) To prevent the unreasonable use of water and to promote water conservation, the use of potable water is prohibited for the irrigation of non-functional turf at commercial, industrial, and institutional sites.

(2) Notwithstanding subdivision (e)(1), the use of water is not prohibited by this section to the extent necessary to ensure the health of trees and other perennial non-turf plantings or to the extent necessary to address an immediate health and safety need.

(3) Notwithstanding subdivision (e)(1), an urban water supplier may approve a request for continued irrigation of non-functional turf where the user certifies that the turf is a low water use plant with a plant factor of 0.3 or less, and demonstrates the actual use is less than 40% of reference evapotranspiration.

(f) The taking of any action prohibited in subdivision (e) is an infraction punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs. The fine for the infraction is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(g) A decision or order issued under this section by the Board, or an officer or employee of the Board, is subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the Water Code.

Authority: Section 1058.5, Water Code.

References: Article X, Section 2, California Constitution; Sections 4080, 4100, 4110, and 4185, Civil Code; Section 8627.7, Government Code; Sections 102, 104, 105, 275, 350, 377, 491, 1058.5, 1122, and 10608.12, 10617, 10632, and 10632.4, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463; *Stanford Vina Ranch Irrigation Co. v. State of California* (2020) 50 Cal.App.5th 976