AVALON CITY COUNCIL MEETING
WILL ALSO INCLUDE A MEETING OF THE
AVALON HOUSING AUTHORITY
TUESDAY, DECEMBER 20, 2016 – 6:00 P.M.
CITY COUNCIL CHAMBERS
410 AVALON CANYON ROAD, AVALON
A G E N D A

In compliance with the Americans with Disability Act, if you need special assistance to participate in this meeting, please contact Denise Radde, City Clerk (310) 510-0220. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35. 102-35.104 ADA Title II). All public records relating to an agenda item on this agenda are available for the public inspection at the time the records are distributed to all, or a majority of all, members of the City Council. Such records shall be available at City Hall located at 410 Avalon Canyon Rd.

CALL TO ORDER / PLEDGE OF ALLEGIANCE / INVOCATION / ROLL CALL

ANNOUNCEMENTS

WRITTEN COMMUNICATIONS

CITY MANAGER REPORT / CITY ATTORNEY REPORT

COUNCILMEMBER REPORTS / MAYOR REPORT

PRESENTATION

1. Safety presentation by Southern California Edison on Catalina's Propane Gas System.
2. A City of Avalon transit update will be provided by Audra McDonald, Administrative Analyst.

ORAL COMMUNICATION

Members of the public may address the City Council at this time. No action will be taken on non-agenda items at this meeting. Speakers should limit comments to three (3) minutes each.

CONSENT CALENDAR

All items listed on the Consent Calendar are considered to be routine by the Council and will be enacted with one motion. There will be no separate discussion of these items unless a specific item is removed from the Consent Calendar for further discussion and possible action.

1. Actions
   Although the live recording is the official record of public meetings, actions are prepared for the Council's approval.
   Recommended Action
   Approve actions from the December 6, 2016 regular City Council.

2. Expenditures Submitted for Approval
   - Warrants in the amount of $1,768,544.77.
   - Three payrolls in the amount of $649,039.81.
   - Four electronic fund transfers totaling $181,761.46.

   Recommended Action
   Approve total expenditure amount of $2,599,346.04.

3. Resolution Reciting the Facts of the November 8, 2016 Election
   On November 8, 2016 the City of Avalon had a Special Municipal Election for the for Measure X- Avalon Medical Cannabis Facility Act of 2016.
   Recommended Action
   Adopt resolution reciting the results of the Tuesday, November 8, 2016 Special Municipal and declaring the results.

4. Catalina Express Free Birthday Trips – Waiver of Wharfage Fees
   The City Council has waived the wharfage fee for all persons who arrived and departed the City of Avalon via the Catalina Express on the birthday promotion since April 2011. The Catalina Express would like to extend their promotion and has requested the City once again waive the wharfage fee for January 1, 2017- December 31, 2017.
   Recommended Action
   Authorize the waiver for not charging the wharfage fee for all persons who embark and debark the City of Avalon via the Catalina Express in conjunction with the Catalina Express's promotion of giving a free birthday trip.

5. Emergency Repairs to the South Beach Break Wall
   Surging harbor conditions impacted the South Beach Break Wall and caused a sink hole. Emergency repairs were necessary and due to tidal conditions work began late in the afternoon and proceeded into the night. This work was necessary to maintain the integrity of the sea wall to preserve the upper beach and maintain public safety.
   Recommended Action
   1. Determine that an emergency existed and ratify action by the Public Works Director to undertake necessary repairs at the South Beach Break Wall.
   2. Authorize the expenditures for these repairs to be funded by the General Fund 102-50-5701 in the amount of $10,030.30
   3. Adopt a resolution authorizing necessary repairs. **(A four-fifths vote is required.)**

6. Purchase Materials for Sewer/Salt Water System
   Environ Strategy maintains the City's sewer and salt water system, and as part of their contract responsibility they are required to maintain an inventory of parts and critical equipment.

Recommended Action
Approve expenditure not to exceed $12,000 for the purchase of materials for the sewer and salt water system maintenance.

7. Waterside Permit Modification Application – Catalina Adventure Sailing
Catalina Adventure Sailing has submitted a Waterside Project modification proposing to maintain a second permitted sailboat of no more than 50 feet as a back up vessel in case there is a mechanical problem with his primary vessel "Thesis".
Recommended Action
Make the affirmative finding that conditions set forth in the Avalon Municipal Code have been met and grant the Waterside Project Application modification of adding a back up vessel that will not require additional dock times to Catalina Adventure Sailing's waterside permit.

8. 2017 Waterside Permit Renewals
Prior to December of each year, the Harbor Master reviews all existing Waterside Permits which terms are to expire on December 31st. If the Harbor Master determines that, because of changed circumstances, a permit should not be renewed, or should be renewed on different terms and conditions, he shall forward his recommendation thereon to the City Council for action, together with a list of all permits that he recommends should be renewed for another term without change.
Recommended Action
1. The Harbor Master recommends renewing the attached list of Waterside Permits for the year 2017 except those listed in recommended actions 2, 3, 4 & 5 which have conditions for renewal.
2. Approve the renewal of Scotty's Sportfishing waterside permit only if outstanding Harbor Use Fee Reports for September 2016 and October 2016 are filed and paid by February 1, 2017.
3. Approve the renewal of Fishing Funatics waterside permit only if outstanding Harbor Use Fee Reports for September 2016 and October 2016 are filed and paid by February 1, 2017.
4. Approve the renewal of Action Flyboarding waterside permit only if outstanding Harbor Use Fee Reports for July 2016 through October 2016 are filed and paid by February 1, 2017.
5. Approve the renewal of NDEMIK waterside permit only if the required documents are supplied by February 1, 2017.

9. Authorization to Award Bid for the 2016 Global Capital Improvement Program RFP
On the December 15, 2015 City Council meeting, Council authorized Staff to publically bid the 2016 Global Capital Improvement Program as one RFP covering needed various infrastructure improvements including sewer, saltwater streets, and electrical

upgrades. The City received three proposals; however, one was withdrawn by the contractor.

Recommended Action

Authorize the award of a contract to the lowest responsive and responsible bidder, Colich & Sons L.P. for the 2016 and 2017 Global Capital Improvement Programs for an amount not to exceed $2,377,752, plus a 15% allowance for change orders.

10. City Fresh Water Master Plan

Staff is recommending that the City Council ask the Planning Commission to review the following recommendation to made part of the 2013 Avalon General Plan through the amendment process. *"The City of Avalon shall require that its fresh water provider to develop a water master plan that will describe a 5, 10 and 20 year goal to provide a sustainable year-round fresh water supply to Avalon residents and visitors. The City's water utility will coordinate development of this plan with the City of Avalon. The plan shall include a financing plan. Such a plan should include an examination of ground water supply and rain water sources.*

Recommended Action

Approve a request to the Planning Commission to review and comment on a proposed amendment to the City's 2013 General Plan to require a fresh water master plan for the City of Avalon in collaboration with officials of the City of Avalon.

11. Extension to Contract for Temporary Underwater Sculptures Installed in Casino Dive Park

On September 6, 2016 the City Council approved an agreement with the Parley Foundation for the Doug Aitken Workshop, in conjunction with the Museum of Contemporary Art, Los Angeles to temporarily place three underwater sculptures in Dive Park. This underwater art display has been installed and is currently in operation. The original contract provides that the underwater sculptures will be installed for a period of three months. That period ends at the end of December. The Parley Foundation has requested that the contract be extended in additional three months so that the installations may remain in place until the end of March 2017.

Recommended Action

Approve an extension to the agreement with the Parley Foundation for the underwater sculptures and authorize the City Manager to execute the agreement.

12. Casino Dock Restaurant Lease

At the October 4, 2016 City Council meeting, Council directed the City Manager to negotiate final terms and conditions for a lease agreement between the City and the Casino Dock Restaurant with Russ and Jenny Armstrong.

Recommended Action
Approve Casino Dock Restaurant Lease and authorize the City Manager to execute the lease.

GENERAL BUSINESS

13. Ordinances to Regulate Size of Autoettes Permitted in the City, Parking of Certain Autoettes and Replacement of Vehicles and Autoettes
At the December 6, 2016 meeting City Council directed Staff to draft an ordinance to amend the Avalon Municipal Code to allow the new size of Low-Speed Vehicle/Neighborhood Electric Vehicle autoettes in the City, along with a prohibition on parking Low-Speed Vehicle/Neighborhood Electric Vehicle autoettes in angled parking spaces in the City, and lastly, provide for a 1:1 ratio of replacing autoettes in the City.
Recommended Action
Adopt the ordinances to make changes to the City's laws and regulations governing the size of allowed Low-Speed Vehicle/Neighborhood Electric Vehicle autoettes, prohibit parking of same in angled parking spaces in the City and make other changes concerning oversized vehicles and the replacement of permitted vehicles and autoettes in the City.

CLOSED SESSION
******The item in Closed Session is the "City of Avalon acting for itself and the Avalon Housing Authority".**

1. CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: 206 East Whittley
Agency Negotiators: City Council, City Manager David Jinkens, and City Attorney Scott Campbell
Negotiating Parties: Unknown
Under Negotiation: Price and terms of payment

ADJOURN

NOTICE OF POSTING
I, Denise Radde, declare that the City Council Agenda for December 20, 2016 was posted Friday, December 16, 2016, on the City's website www.cityofavalon.com, and at City Hall, 410 Avalon Canyon Road. Copies of agendas and staff reports are available at City Hall.

Denise A. Radde

Denise A. Radde, City Clerk / Chief Administrative Officer

CITY OF AVALON CITY COUNCIL

MEETING DATE: December 20, 2016

AGENDA ITEM: _____

ORIGINATING DEPT: City Clerk

CITY MANAGER: _____

PREPARED BY: Denise Radde, City Clerk

SUBJECT: City Council Actions

RECOMMENDED ACTION(S): Approve actions from the December 6, 2016 regular City Council meeting.

REPORT SUMMARY: Although the live recording is the official record of public meetings, actions are prepared for the Council's approval.

FISCAL IMPACTS: N/A

GOAL ALIGNMENT: Not aligned,

CONSEQUENCES OF NOT FOLLOWING RECOMMENDED ACTION: N/A

FOLLOW UP ACTION: File Actions in the City Clerk's office.

ADVERTISING, NOTICE AND PUBLIC CONTACT: This item was properly listed on the posted agenda pursuant to the Brown Act.

ATTACHMENTS: Actions

CITY OF AVALON CITY COUNCIL
TUESDAY, DECEMBER 6, 2016
ACTIONS

CITY COUNCIL CALL TO ORDER 6:00 p.m.

ROLL CALL - Mayor Anni Marshall, Mayor Pro Tem Oley Olsen, and Councilmember Cinde Cassidy, Richard Hernandez, and Joe Sampson. Also present City Manager David Jinkens, Chief Administrative Officer/City Clerk Denise Radde and Legal Counsel Elizabeth Hull.

PRESENTATION
Ray McKewon from Xceptional Music gave a presentation on the Summer Concert series successes over the past seven years.

CONSENT CALENDAR
There were four items on the Consent Calendar. Item 3 was removed by Cinde Cassidy and Items 2 and 4 were removed by Richard Hernandez for further comment and question. Motion to approve Item 1 by Cinde Cassidy, seconded by Anni Marshall. (All Ayes)

1. Actions
   Approved actions from the November 15, 2016 regular City Council.

Pulled Items:

2. Adopt Ordinance to Adopt Changes to Title Nine of the Avalon Municipal Code to Authorize Administrative Approval of Minor Renovation Projects
   Councilmember Hernandez questioned if the amended code change addressed the issue of the trigger of fire suppression. Recommendation was if a parcel makes changes incrementally for rehabilitation, remodeling or reconstruction accumulatively of 50% or more of the gross square footage, in an existing single family dwelling, it would trigger the need for a fire sprinkling system. For a commercial building it would be an accumulation of 25% would trigger the required fire suppression. Council consensus was to adopt the presented ordinance as is and to bring an amended ordinance back with the suggested changes for a first reading. Motion by Oley Olsen, seconded by Joe Sampson. (All Ayes)

3. Approval of Park/Facility Monument Signs
   Approved the design and language for five park/facility monument signs and authorized Staff to purchase and install the signs at there intended locations. Changes to the sign size will be made to adhere to the City sign ordinance, addresses will be placed in a smaller font on the signs, and a slight name change to several signs was directed. Motion by Cinde Cassidy, seconded by Oley Olsen. (All Ayes)

4. Request Authorization to Solicit a Request for Qualifications for Development Impact Fees
   Clarification was made that this will be for fees going forward from this point. Authorized the City Manager to solicit proposals from professional firms to prepare a development impact fee study. Motion by Joe Sampson, seconded by Richard Hernandez. (All Ayes)

GENERAL BUSINESS

5. Discussion on Possible Code Amendment to Avalon Municipal Code Vehicle Section 4-4.1705(b)(2) - Maximum Length and Width of an Autoette Permit
   Comments were received from the audience. Much discussion followed amongst Councilmembers. Staff was directed to make the appropriate amendment to the Vehicle Code Section 4-4.1705(b)(2) to allow for the wider body style of SmartForTwo cars, and additionally the prohibition of these vehicles in the angle parking spots and to bring back a possible moratorium on increasinggolf carts. Councilmember Olsen brought forward the idea of only allowing one golf cart for every one or two golf carts off the Island, which is aligned with the full size vehicle code. Motion by Cinde Cassidy, seconded by Oley Olsen. (All Ayes)

Next two items in General Business is the City Council acting as the Housing Authority.

6. Housing Successor Agency Annual Report for Fiscal Year 2015-16
   Adopted Housing Authority Resolution 16-01 approving a Housing Authority Successor Agency Annual Report for Fiscal Year 2015-16. Motion by Joe Sampson, seconded by Cinde Cassidy. (All Ayes)

7. Approval of Exclusive Negotiating Agreement (ENA) with C&C Development
   Approved the Exclusive Negotiation Agreement and authorized the Executive Director to sign the ENA. Motion by Oley Olsen, seconded by Joe Sampson. (All Ayes)

ADJOURN

Mayor Marshall adjourned the City Council meeting at 8:32 p.m.

I, Denise Radde, City Clerk of the City of Avalon, do hereby certify that the DVD videotape of the City Council Meeting on December 6, 2016, is the official record of that Council Meeting and is on file and maintained in City Hall.

Denise A. Radde, City Clerk / Chief Administrative Officer

CITY OF AVALON CITY COUNCIL

MEETING DATE: December 20, 2016 **AGENDA ITEM:** 2

ORIGINATING DEP: Finance **CITY MANAGER:**

PREPARED BY: Robert Mescher, Finance Director

SUBJECT: Warrants

RECOMMENDED ACTION(S): Approve the total disbursements from November 7, 2016 to December 12, 2016 totaling $2,599,346.04.

REPORT SUMMARY: These disbursements from November 7, 2016 to December 12, 2016 are comprised of warrants totaling $1,768,544.77, three payrolls totaling $649,039.81, and four electronic funds transfers totaling $181,761.46.

US Bank Warrants #23486 – November 7, 2016 - $788.20
US Bank Warrants #23487-23488 – November 14, 2016 - $18,783.28
US Bank Warrant #23489-23579 – November 18, 2016 - $1,320,132.19
US Bank Warrant #23580-23737 – December 2, 2016 - $428,841.10
Payroll - $209,147.72 – November 10, 2016
Payroll - $221,082.73 – November 23, 2016
Payroll – $218,809.36 – December 10, 2016
EFT – CALPERS Retirement – November 15, 2016 -$33,285.85
EFT – CALPERS Retirement - November 28, 2016 - $34,360.27
EFT – CALPERS Health – December 6, 2016 - $79,400.47
EFT – CALPERS Retirement – December 12, 2016 - $34,714.87

GOAL ALIGNMENT: Ongoing meeting of City obligations.

FISCAL IMPACTS: There are sufficient funds available, and the expenditures are included in the adopted FY 16-17 budget.

CONSEQUENCES OF NOT FOLLOWING RECOMMENDED ACTION: N/A

FOLLOW UP ACTION: N/A

ADVERTISING, NOTICE AND PUBLIC CONTACT: Pursuant to the Brown Act.

ATTACHMENTS: Audit Certificate and Warrant List

CITY OF AVALON
DISBURSEMENTS FOR MONTHS OF NOVEMBER & DECEMBER 2016
December 20, 2016

DESCRIPTION	AMOUNT	DATE
US BANK WARRANTS CK# 23486	$ 788.20	11/7/2016
US BANK WARRANTS CK# 23487-23488	18,783.28	11/14/2016
US BANK WARRANT CK #23489-23579	1,320,132.19	11/18/2016
US BANK WARRANT CK# 23580-23737	428,841.10	12/2/2016
PAYROLL	209,147.72	11/10/2016
PAYROLL	221,082.73	11/23/2016
PAYROLL	218,809.36	12/10/2016
EFT - CALPERS RETIREMENT	33,285.85	11/15/2016
EFT - CALPERS RETIREMENT	34,360.27	11/28/2016
EFT - CALPERS HEALTH	79,400.47	12/6/2016
EFT - CALPERS RETIREMENT	34,714.87	12/12/2016
TOTAL DISBURSEMENTS	**$ 2,599,346.04**	

CERTIFICATE

IN ACCORDANCE WITH SECTION 32702 OF THE GOVERNMENT CODE, I CERTIFY THAT THE ABOVE DEMANDS ARE ACCURATE AND THAT FUNDS ARE AVAILABLE FOR PAYMENT.

I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED THIS 20TH DAY OF DECEMBER 2016

APPROVED AND AUDITED
THIS 20TH DAY OF DECEMBER 2016

AUDIT COMMITTEE - RICHARD HERNANDEZ

AUDIT COMMITTEE - CINDE CASSIDY

FINANCE DIRECTOR - ROBERT MESCHER

AVALON CITY COUNCIL
MEETING OF DECEMBER 20,2016

FY 17

CHECK NUMBER	DATE ISSUED	AMOUNT	PAYEE	DESCRIPTION
23486	11/7/2016	788.20	SMALL, JENNIFER	SERVICE - RECREATION
23487	11/14/2016	0.00	VOID - MULTI STUB CHECK	VOID - MULTI STUB CHECK
23488	11/14/2016	18,783.28	AMERICAN EXPRESS	CREDIT CARD CHGS - ALL DEPTS
23489	11/18/2016	27,255.57	AAA OIL, INC.	RESALE FUEL - FUEL DOCK
23490	11/18/2016	67.70	AIR SOURCE INDUSTRIES	SUPPLIES - FIRE
23491	11/18/2016	378.78	ALL THE KINGS FLAGS	SUPPLIES - FIRE
23492	11/18/2016	288.00	ALLIANT INSURANCE SERVICE	RENEWAL FEE - INSURANCE
23493	11/18/2016	249.40	AMERIFLEX	FSA ADMIN FEES
23494	11/18/2016	140.78	AMMA TRANSIT PLANNING	FREIGHT - ALL DEPTS
23495	11/18/2016	614.10	ANTHEM BLUE CROSS	RETIREE INSUR. - DEC 16
23496	11/18/2016	94.00	ASAP DRUG SOLUTIONS	EMPLOYEE SCREENINGS
23497	11/18/2016	441,910.08	ASSOCIATED PACIFIC CONSTRUCTOR	PROGRESS PYMT #9 - FD
23498	11/18/2016	41.71	AT & T	COMMUNICATIONS - ALL DEPTS
23499	11/18/2016	1,908.57	AT & T	COMMUNICATIONS - ALL DEPTS
23500	11/18/2016	19.66	AT & T LONG DISTANCE	LONG DISTANCE - ADMIN
23501	11/18/2016	126,467.79	AVALON ENVIRONMENTAL SVCS	CONTRACT SVCS - OCT 2016
23502	11/18/2016	763.81	AVALON FREIGHT SERVICES	FREIGHT - ALL DEPTS
23503	11/18/2016	890.93	BAY MARINE	SUPPLIES - GARAGE
23504	11/18/2016	128.50	BAZE, NHA	REIMB O/P COSTS
23505	11/18/2016	2,740.50	BEYOND SOFTWARE SOLUTIONS	CONTRACT SVC - IT
23506	11/18/2016	114.80	BONILLA, MIGUEL	REIMB O/P COSTS
23507	11/18/2016	129.00	CAMPOS, MIGUEL	REIMB O/P COSTS
23508	11/18/2016	334.79	CAREY & COMPANY	SUPPLIES - FIRE
23509	11/18/2016	261.40	CARUSO FORD	SUPPLIES - GARAGE
23510	11/18/2016	1,105.22	CATALINA BEVERAGE	SUPPLIES - ALL DEPTS
23511	11/18/2016	49.95	CATALINA BROADBAND SOLUTIONS	SERVICE - ALL DEPTS
23512	11/18/2016	859.00	CATALINA EXPRESS	TRAVEL - ALL DEPTS
23512	11/18/2016	57,619.80	CATALINA EXPRESS	SUBSIDY - OCT 2016
23513	11/18/2016	42.00	CIMC	EMPLOYEE SCREENINGS
23514	11/18/2016	1,945.51	CATALINA ISLAND PLUMBING	SERVICE - PUBLIC WKS
23515	11/18/2016	15.00	CATALINA YAMAHA	SUPPLIES - GARAGE
23516	11/18/2016	722.09	CDW GOVERNMENT	SUPPLIES - IT
23517	11/18/2016	135.00	CHARLES ABBOTT ASSOCIATES	CONTRACT SVCS - FOG
23518	11/18/2016	85.00	CHRISTENSEN, DAVID	REIMB O/P COSTS
23519	11/18/2016	100,000.00	COUNTY OF LA SHERIFF'S DEPT	BAL DUE - SEPT 2016
23519	11/18/2016	110,164.68	COUNTY OF LA SHERIFF'S DEPT	RESIDENT DEPUTY - OCT 2016
23520	11/18/2016	165.03	DAHL, TOM	LASD SUBSISTENCE
23521	11/18/2016	6,799.23	DELTA DENTAL	DENTAL - NOV 2016
23522	11/18/2016	3,420.00	CONSTRUCTORS PLUS	CONTRACT SVC - ADMIN
23523	11/18/2016	-	VOID - PRINTER ERROR	VOID - PRINTER ERROR
23524	11/18/2016	32.00	DEPARTMENT OF JUSTICE	SERVICE - ADMIN
23525	11/18/2016	180.00	DEWEY PEST CONTROL	SERVICE - ADMIN
23526	11/18/2016	1,793.62	DON MILLER & SONS	SUPPLIES - CITY RESTROOMS
23527	11/18/2016	27,249.15	EDISON	UTILITIES - ALL DEPTS
23528	11/18/2016	1,657.40	ESGIL CORPORATION	SERVICE - PLANNING
23529	11/18/2016	-	VOID - MULTI STUB CHECK	VOID - MULTI STUB CHECK
23530	11/18/2016	2,122.68	FIDELITY SECURITY LIFE INSUR.	VISION - NOV 2016
23531	11/18/2016	25.00	FELIX, KIM	REFUND - RECREATION
23532	11/18/2016	105.27	GALLIVER, JIM	LASD SUBSISTENCE
23533	11/18/2016	2,545.00	GDMS	SERVICE - IT
23534	11/18/2016	137.04	GRAINGER	SUPPLIES - FIRE

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AVALON CITY COUNCIL
MEETING OF DECEMBER 20,2016

CHECK NUMBER	DATE ISSUED	AMOUNT	PAYEE	DESCRIPTION
23535	11/18/2016	44,346.21	GREENFIELDS OUTDOOR FITNESS	BAL DUE - FIT TRAIL PROJ.
23536	11/18/2016	150.00	LUPO, KARLA	SERVICE - RECREATION
23537	11/18/2016	423.59	IDEXX DISTRIBUTION	SUPPLIES - CDO
23538	11/18/2016	339.00	IRON MOUNTAIN, INC	SERVICE - IT
23539	11/18/2016	42.50	ISLAND FIRE EXTINGUISHER	SERVICE - RECREATION
23540	11/18/2016	465.25	JORDAHL CONSTRUCTION	HHW DISPOSAL - GARAGE
23541	11/18/2016	1,248.00	KATIE'S KITCHEN	SENIOR MEALS - SEPT/OCT 16
23542	11/18/2016	525.00	LIEBERT CASSIDY WHITMORE	CONFERENCE FEES - HR
23543	11/18/2016	217.29	MACGUGAN-CASSIDY, CINDE	RIEMB O/P COSTS
23544	11/18/2016	101.68	MAIL FINANCE	MAIL MACHINE LEASE FEES
23545	11/18/2016	286.00	MANAGED HEALTH NETWORK	EAP - NOV 2016
23546	11/18/2016	946.30	MARSHALL, ANN	RIEMB O/P COSTS
23547	11/18/2016	1,079.91	MATTHEWS INTERNATIONAL	SUPPLIES - CEMETERY
23548	11/18/2016	76.00	MCDOWELL, LAWRENCE	REIMB O/P COSTS
23549	11/18/2016	105.17	MCMASTER-CARR	SUPPLIES - HARBOR
23550	11/18/2016	318.90	MED-TECH RESOURCES	SUPPLIES - FIRE
23551	11/18/2016	159.09	MORENO, TOMAS	REIMB O/P COSTS
23552	11/18/2016	246.00	MR. NING'S	SENIOR MEALS - OCT 2016
23553	11/18/2016	250.00	MYGOV	SERVICE - PLANNING
23554	11/18/2016	3,906.54	NAPA AUTO PARTS	SUPPLIES - GARAGE
23555	11/18/2016	69,801.25	PACIFIC TENNIS COURTS	PROG. PYMT - JMF/PEOPLES PK
23556	11/18/2016	88.91	PARTSTREE.COM	SUPPLIES - PUBLIC WKS
23557	11/18/2016	1,144.93	PEBBLY BEACH BUILDING SUPPLY	SUPPLIES - ALL DEPTS
23558	11/18/2016	652.07	POWERWERX	SUPPLIES - FIRE
23559	11/18/2016	64.13	PRAXAIR	SUPPLIES - GARAGE
23560	11/18/2016	560.00	PROVENCE, OWEN	DAMAGED VESSEL REIMBURSE.
23561	11/18/2016	425.45	QUILL CORP.	SUPPLIES - ALL DEPTS
23562	11/18/2016	6,232.54	MICHAEL BAKER INTERNATIONAL	CONTRACT SVCS - PLANNING
23563	11/18/2016	904.75	RICOH AMERICAS CORP.	COPIER LEASE - PLANNING
23564	11/18/2016	138,819.00	SANTA CAT. ISLAND RESORT SVCS	TRUE UP - CITY RENTS
23565	11/18/2016	200.00	SEALS - PAYTON	REFUND - CEMETERY FEES
23566	11/18/2016	470.88	SIR SPEEDY PRINTING	SUPPLIES - ADMIN
23567	11/18/2016	9,770.00	SIRIA'S CLEANING SERVICE	CONTRACT SVC - NOV 2016
23568	11/18/2016	997.46	STANDARD INSURANCE COMPANY	LIFE INSURANCE - NOV 2016
23569	11/18/2016	774.00	STATE OF CA FTB	BI WEEKLY PAYMENT
23570	11/18/2016	90.00	STEIN, MARY	SERVICE - FALLFEST
23571	11/18/2016	2,257.09	SUNGARD PUBLIC SECTOR	SOFTWARE LEASE - FINANCE
23572	11/18/2016	1,397.00	SUPERIOR COURT OF CALIFORNIA	PARKING CITATIONS - SEPT 2016
23573	11/18/2016	48.00	UNDERGROUND SERVICE ALERT	SERVICE - PUBLIC WKS
23574	11/18/2016	548.00	W.F OLSEN	REIMB O/P COSTS
23575	11/18/2016	148.96	WEST MARINE	SUPPLUES - GARAGE
23576	11/18/2016	1,400.00	WITTMAN ENTERPRISES	SERVICE - FINANCE
23577	11/18/2016	20,448.75	CATALINA TRANSPORTATION SVCS	CONTRACT SVC - SEPT/OCT 16
23578	11/18/2016	80,336.05	PARKING CONCEPTS, INC	CONTRACT SVCS JUN-OCT 16
23579	11/18/2016	3,546.00	CONSTRUCTORS PLUS	CONTRACT SVCS - ADMIN

$ 1,339,703.67

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AVALON CITY COUNCIL
MEETING OF DECEMBER 20, 2016

CHECK NUMBER	DATE ISSUED	AMOUNT	PAYEE	DESCRIPTION
XXXXX	12/2/2016	0.00	VOID CKS 23580-23656	PRINTER ERROR
23657	12/2/2016	425.71	EBUS, INC.	SUPPLIES - GARAGE
23658	12/2/2016	4,361.64	EDISON	UTILITIES - CHARGING STATION
23659	12/2/2016	9,525.00	VEGA, EDMUNDO	CONTRACT SVC - DEC 2016
23660	12/2/2016	2,900.97	AAA OIL, INC.	FUEL - ALL DEPTS
23661	12/2/2016	2,000.00	AMMA TRANSIT PLANNING	SERVICE - TRANSIT
23662	12/2/2016	492.00	ANTONIO'S	SENIOR MEALS - OCT 2016
23663	12/2/2016	600.84	ART, CAPS N DESIGN	UNIFORMS - HARBOR
23664	12/2/2016	376.00	ASAP DRUG SOLUTIONS	EMPLOYEE SCREENINGS
23665	12/2/2016	41.52	AT & T	COMMUNICATIONS - ALL DEPTS
23666	12/2/2016	67.83	AVALON BOAT STAND	SUPPLIES - GARAGE
23667	12/2/2016	696.77	AVALON FREIGHT SERVICES	FREIGHT - ALL DEPTS
23668	12/2/2016	208.88	A-Z LOGICS SYSTEMS	SUPPLIES - HARBOR
23669	12/2/2016	162.93	B & H PHOTO	SUPPLIES - IT
23670	12/2/2016	4,457.99	BARCO PRODUCTS	SUPPLIES - RECREATION
23671	12/2/2016	2,335.50	BEYOND SOFTWARE SOLUTIONS	CONTRACT SVCS - IT
23672	12/2/2016	114.98	CANBY, CLAUDIA	SERVICE - HARBOR/PW
23673	12/2/2016	1,598.94	CARROLL, STEPHEN	REIMB O/P COSTS
23674	12/2/2016	1,845.00	CATALINA BOATYARD, INC	STORAGE FEES - HARBOR
23675	12/2/2016	1,896.83	CATALINA BROADBAND SOLUTIONS	SERVICE - ALL DEPTS
23676	12/2/2016	60.00	CHAMBER OF COMMERCE	CONFERENCE FEES - COUNCIL
23676	12/2/2016	100,067.00	CHAMBER OF COMMERCE	TOT - DECEMBER 2016
23677	12/2/2016	26,275.20	CATALINA EXPRESS	SUBSIDY - 1ST HLF NOV 16
23678	12/2/2016	1,093.00	CIMC	EMPLOYEE SCREENINGS
23679	12/2/2016	567.17	CATALINA ISLAND PLUMBING	SERVICE - HARBOR
23680	12/2/2016	208.00	CATALINA PEST CONTROL	SERVICE - HARBOR
23681	12/2/2016	325.00	CATALINA STEAM CLEANING	SERVICE - HARBOR
23682	12/2/2016	1,005.68	CDW GOVERNMENT	SUPPLIES - IT
23683	12/2/2016	255.50	CERTIFIED PHONE SOLUTIONS	SERVICE - ADMIN
23684	12/2/2016	8,792.36	CHARLES ABBOTT ASSOICATES	CONTRACT SVC - PLANNING
23685	12/2/2016	511.20	CHET'S HARDWARE	SUPPLIES - ALL DEPTS
23686	12/2/2016	43.00	DAPEER, ROSENBLIT & LIVAT	SERVICE - ADMIN
23687	12/2/2016	3,501.00	CONSTRUCTORS PLUS	CONTRACT SVC - ADMIN
23688	12/2/2016	4,680.00	CONSTRUCTORS PLUS	CONTRACT SVC - ADMIN
23689	12/2/2016	302.27	DEREK GEORGE	REIMB O/P COSTS
23690	12/2/2016	2,225.00	ECIVIS, INC	SOFTWARE RENEWAL
23691	12/2/2016	1,919.35	EDISON	UTILITIES - ALL DEPTS
23692	12/2/2016	11,988.58	EVOQUA	BIOXIDE - WWTP
23693	12/2/2016	1,125.41	ARIENS SPECIALTY BRANDS	UNIFORMS - HARBOR
23694	12/2/2016	172.78	GRAINGER	SUPPLIES - HARBOR
23695	12/2/2016	1,290.00	HART, DAVID	HOLIDAY BOXES
23696	12/2/2016	189.06	HD SUPPLY FACILITIES MAINT.	SUPPLIES - HBR/PW
23697	12/2/2016	4,300.00	HERNANDEZ, SALVADOR	YELLOW JACKET CONTROL
23698	12/2/2016	1,341.34	HINDERLITER, DE LLAMAS	CONTRACT SVC - FINANCE
23699	12/2/2016	3,711.54	HOME DEPOT CREDIT SERVICES	SUPPLIES - PUBLIC WKS
23700	12/2/2016	35,234.54	IDR ENVIRONMENTAL	HHW DISPOSAL - ALL DEPTS
23701	12/2/2016	330.00	ICMA	ANNL DUES - ADMIN
23702	12/2/2016	339.00	IRON MOUNTAIN, INC	SERVICE - IT
23703	12/2/2016	154.40	ISLAND THREADZ	SUPPLIES - ALL DEPTS
23704	12/2/2016	35.42	KRUG, MICHAEL	REIMB O/P COSTS
23705	12/2/2016	2,443.91	MAID IN AVALON	CONTRACT SVC - OCT 2016
23706	12/2/2016	286.00	MANAGED HEALTH NETWORK	EAP - DECEMBER 2016

AVALON CITY COUNCIL
MEETING OF DECEMBER 20, 2016

FY 17

CHECK NUMBER	DATE ISSUED	AMOUNT	PAYEE	DESCRIPTION
23707	12/2/2016	129.09	MATTHEWS INTERNATIONAL	SUPPLIES - CEMETERY
23708	12/2/2016	2,837.21	MCMASTER-CARR	SUPPLIES - ALL DEPTS
23709	12/2/2016	3,010.21	NAPA AUTO PARTS	SUPPLIES - GARAGE
23710	12/2/2016	950.25	NEOFUNDS	REFILL POSTAGE METER
23711	12/2/2016	61,583.75	PACIFIC TENNIS COURTS, INC	PROG. PYMT - JMF/PEOPLES PK
23712	12/2/2016	1.46	PARTSTREE.COM	SUPPLIES - PUBLIC WKS
23713	12/2/2016	596.58	PHILLIPS STEEL COMPANY	SUPPLIES - GARAGE
23714	12/2/2016	801.00	QUILL CORP.	SUPPLIES - ALL DEPTS
23715	12/2/2016	34,035.00	MICHAEL BAKER INTERNATIONAL	CONTRACT SVCS - ADMIN
23716	12/2/2016	676.44	RICOH USA, INC	COPIER LEASE - PLANNING
23717	12/2/2016	6,500.00	RUBIN, LLP - PINES, SANDIE	SETTLEMENT AGREEMENT
23718	12/2/2016	163.98	ALBERTSONS SAFEWAY	SUPPLIES - ALL DEPTS
23719	12/2/2016	436.25	SANCHEZ, PAUL	REIMB O/P COSTS
23720	12/2/2016	30,939.40	SANTA CAT. ISLAND RESORT SVCS	LEASE PAYMENTS - NOV/DEC
23721	12/2/2016	1,144.13	SIMPLEX GRINNELL	SERVICE - FIRE
23722	12/2/2016	948.50	SMALL, JENNIFER	SERVICE - RECREATION
23723	12/2/2016	14,967.72	SPECIALTY DOORS	FIRE STATION DOOR PROJ.
23724	12/2/2016	909.00	STATE OF CA FTB	BI-WEEKLY PAYMENT
23725	12/2/2016	4,300.00	TAEGER, KEVIN	YELLOW JACKET CONTROL
23726	12/2/2016	262.47	ULINE	SUPPLIES - GARAGE
23727	12/2/2016	6.00	UNDERGROUND SERVICE ALERT	SERVICE - PUBLIC WKS
23728	12/2/2016	177.97	UNITED PARCEL SERVICE	FREIGHT - HBR/PW/PL
23729	12/2/2016	250.00	UNITED PHOENIX FIREFIGHTER	SERVICE - FIRE
23730	12/2/2016	124.57	US BANK	CREDIT CARD CHGS - ADMIN
23731	12/2/2016	3,500.00	VANDERPOOL, SUSAN	RETAINER - CDBG PROJECT
23732	12/2/2016	905.73	VERIZON WIRELESS	COMMUNICATIONS - ALL DEPTS
23733	12/2/2016	303.59	W.F OLSEN	REIMB O/P COSTS
23734	12/2/2016	2,000.00	WEST COAST ARBORIST	SERVICE - PUBLIC WKS
23735	12/2/2016	1,631.76	WEST MARINE	SUPPLIES - GARAGE
23736	12/2/2016	5,590.00	WOIDZIK, CHRISTOPHER	CONTRACT SVC - FINANCE
23737	12/2/2016	277.00	ZAVIN'S UNIFORMS	UNIFORMS - HARBOR

$ 428,841.10

CCITY OF AVALON CITY COUNCIL

MEETING DATE: December 20, 2016 **AGENDA ITEM:** 3

ORIGINATING DEP: City Clerk **CITY MANAGER:**

PREPARED BY: Denise Radde, City Clerk

SUBJECT: Resolution Reciting Facts of the Special Municipal Election on Measure X

RECOMMENDED ACTION(S):
Adopt resolution reciting the results of the November 8, 2016 Special Municipal Election and declaring the results.

REPORT SUMMARY:
On November 8, 2016 the City of Avalon had a Special Municipal Election for the following measure.

"Shall the Avalon Municipal Code be amended to permit up to two medical marijuana dispensaries and similar facilities, both fixed and mobile, to operate within the City, and to permit the cultivation, manufacture and processing of medical marijuana products, subject to specified standards, and further subject to a $10,000 annual license tax and a 12% transaction fee/tax on each individual medical marijuana sale, until repealed by voters, and generating approximately $200,000 annually?"	**YES**	
	NO	

The Los Angels County Clerk submitted the Certificate of Canvass of the Election returns. Ballots cast for Measure X within the City of Avalon was 1148 total, YES-421 and NO-727.

FOLLOW UP ACTION:
File adopted resolution in the City Clerk's office

ADVERTISING, NOTICE AND PUBLIC CONTACT:
This item was properly listed on the posted agenda.

ATTACHMENT:
Resolution certifying the election results for Measure X.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AVALON, CALIFORNIA, RECITING THE FACTS OF THE SPECIAL MUNICIPAL ELECTION HELD ON NOVEMBER 8, 2016, DECLARING THE RESULT THEREOF AND SUCH OTHER MATTERS AS PROVIDED BY LAW

Whereas, a Special Municipal Election was conducted in the City of Avalon, California, on Tuesday, November 8, 2016, as required by law; and

Whereas, notice of the election was given in time, form and manner as provided by law; that voting precincts were properly established; that election officers were appointed and that in all respects the election was held and conducted and votes cast, received and canvassed and returns made and declared in time, form and manner as required by the provisions of the California Elections Code for the holding of special elections in general law cities; and

Whereas, the Registrar-Recorder/County Clerk canvassed the returns of the election and has certified the results to this Measure X, which are received, attached and made a part hereof.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AVALON DOES DETERMINE, FIND, RESOLVE AND ORDER AS FOLLOWS:

Section 1. That the whole number of ballots cast in the precincts, except the vote by mail ballots, was 797; that the whole number of vote by mail ballots cast in the City was 462; making a total of 1259 ballots cast in the City. The Los Angeles County Clerk's Certificate of Canvass (Exhibit A) and Final Official Statement of Votes Cast (Exhibit B) is attached.

Section 2. That the Measure voted upon was as followed:

"Shall the Avalon Municipal Code be amended to permit up to two medical marijuana dispensaries and similar facilities, both fixed and mobile, to operate within the City, and to permit the cultivation, manufacture and processing of medical marijuana products, subject to specified standards, and further subject to a $10,000 annual license tax and a 12% transaction fee/tax on each individual medical marijuana sale, until repealed by voters, and generating approximately $200,000 annually?"	**YES**	
	NO	

Section 3. The City Council does declare and determine that Measure X was failed and did not pass.

Section 4. The City Clerk shall enter on the records of the City Council of the City of Avalon a statement of the result of the election showing: (1) The whole number of ballots cast in the City; (2) the number of votes given at each precinct; and (3) the total number of votes given for Measure X.

Section 5. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED this 20th day of December, 2016.

Ayes:
Noes:
Abstain:
Absent:

_____
Ann H. Marshall, Mayor

ATTEST:

_____
Denise A. Radde, City Clerk

Exhibit A

Los Angeles County
Registrar-Recorder/County Clerk

Certificate of the Canvass of the Election Returns

I, DEAN C. LOGAN, Registrar-Recorder/County Clerk of the County of Los Angeles, of the State of California, DO HEREBY CERTIFY that pursuant to the provisions of Section 15300 et seq. of the California Elections Code, I did canvass the returns of the votes cast for each elective office and/or measure(s) for

Avalon City

at the General Election, held on the 8th day of November 2016.

I FURTHER CERTIFY that the Statement of Votes Cast, to which this certificate is attached, shows the total number of ballots cast in said jurisdiction, and that the whole number of votes cast for each candidate and/or measure(s) in said jurisdiction in each of the respective precincts therein, and the totals of the respective columns and the totals as shown for each candidate and/or measure(s) are full, true and correct.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 2nd day of December 2016.

REGISTRAR-RECORDER/COUNTY CLERK · COUNTY OF LOS ANGELES · CALIFORNIA

Dean C. Logan

DEAN C. LOGAN
Registrar-Recorder/County Clerk
County of Los Angeles

Exhibit B

FINAL OFFICIAL
STATEMENT OF VOTES CAST
BY PRECINCT

AVALON CITY SPECIAL MUNI
MEASURE X

LOCATION		REGIST-RATION	BALLOTS CAST	YES	NO
AVALON - 0500001A		527	254	80	147
VOTE BY MAIL	SERIAL 0124	0	143	49	83
TOTAL		527	397	129	230
AVALON - 0500003A		1271	540	190	303
VOTE BY MAIL	SERIAL 0125	0	319	101	193
TOTAL		1271	859	291	496
BALLOT GROUP 604 - 9990604A		0	0	0	0
VOTE BY MAIL	SERIAL 8604	0	3	1	1
TOTAL		0	3	1	1

Exhibit B

FINAL OFFICIAL
STATEMENT OF VOTES CAST
BY PRECINCT

AVALON CITY SPECIAL MUNI
MEASURE X

LOCATION	REGIST-RATION	BALLOTS CAST	YES	NO
PRECINCT TOTAL	1798	794	270	450
VBM TOTAL	0	462	150	276
GROUP TOTAL	0	3	1	1
GRAND TOTAL	1798	1259	421	727

	TOTAL
REGISTRATION	1798
BALLOTS CAST	1259

VOTE CAST % 70.02

PRES AND VICE PRES		
JILL STEIN	GRN	45
HILLARY CLINTON	DEM	629
GLORIA E LA RIVA	PF	9
DONALD J TRUMP	REP, AI	489
GARY JOHNSON	LIB	32
UNITED STATES SENATOR		
VOTER NOMINATED		
LORETTA L SANCHEZ	DEM	393
KAMALA D HARRIS	DEM	634
47TH CONGRESS DIST		
VOTER NOMINATED		
ANDY WHALLON	REP	422
ALAN LOWENTHAL	DEM	728
70TH ASSEMBLY DIST		
VOTER NOMINATED		
PATRICK O'DONNELL	DEM	595
M E FLORES-GIBSON	REP	523
JUDGE-SUPERIOR COURT #11		
STEVEN SCHREINER		382
DEBRA R ARCHULETA		546
JUDGE-SUPERIOR COURT #42		
EFRAIN M ACEVES		547
ALICIA MOLINA		356
JUDGE-SUPERIOR COURT #84		
JAVIER PEREZ		339
SUSAN J TOWNSEND		549
JUDGE-SUPERIOR COURT #158		
KIM L NGUYEN		379
DAVID A BERGER		510
SUPERVISOR 4TH DISTRICT		
STEVE NAPOLITANO		465
JANICE HAHN		547
STATE MEASURE 51		
YES		621
NO		522
STATE MEASURE 52		
YES		767
NO		343
STATE MEASURE 53		
YES		525
NO		564
STATE MEASURE 54		
YES		723
NO		350
STATE MEASURE 55		
YES		679
NO		446
STATE MEASURE 56		
YES		752
NO		425
STATE MEASURE 57		
YES		699
NO		440
STATE MEASURE 58		
YES		810
NO		314
STATE MEASURE 59		
YES		497
NO		583
STATE MEASURE 60		
YES		550
NO		580
STATE MEASURE 61		
YES		482
NO		639
STATE MEASURE 62		
YES		489
NO		641
STATE MEASURE 63		
YES		662
NO		486
STATE MEASURE 64		
YES		619
NO		562
STATE MEASURE 65		
YES		553
NO		570
STATE MEASURE 66		
YES		615
NO		440
STATE MEASURE 67		
YES		625
NO		491
COUNTY MEASURE A		
YES		752
NO		338
METRO TRANSP AUTH - MEAS M		
YES		714
NO		364
LONG BEACH USD SPC-MEAS E		
YES		797
NO		321
AVALON CITY SPC - MEAS X		
YES		421
NO		727

CITY OF AVALON CITY COUNCIL

MEETING DATE: December 20, 2016 **AGENDA ITEM:** 4

ORIGINATING DEP: Administration **CITY MANAGER:**

PREPARED BY: Denise Radde, Chief Administrative Officer/City Clerk

SUBJECT: Catalina Express Free Birthday Trips – Waiver of Wharfage Fees

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RECOMMENDED ACTION(S): Authorize the waiver for not charging the wharfage fee for all persons who embark and debark the City of Avalon via the Catalina Express in conjunction with the Catalina Express's promotion of giving a free birthday trip.

REPORT SUMMARY: Since April 2011 the City Council has waived the wharfage fee (currently $2.50) for all persons who arrived and departed the City of Avalon via the Catalina Express on their birthday promotion. The fee waiver only applies to persons traveling on their birthday, and does not apply to other persons traveling with the birthday individual.

The Catalina Express would like to extend their promotion from January 1, 2017- December 31, 2017 and has requested the City of Avalon to waive the wharfage fee for another year. The Express feels this program has proven to be a very successful marketing tool. With the City's waiver of the fee, visitors do not have to pay any charges to travel to Avalon on their birthday.

For the first ten months of 2016, the Catalina Express has provided 71,882 free birthday rides, equaling $179,705.00 of waived wharfage fees. Since January 2013 through December 2015 they have provided over 209,559 free birthday rides.

Staff recommends that the City continue its participation in the special birthday promotion because most birthday travelers bring along families or companions. The promotion increases the City's other visitor generated revenues such as transient occupancy tax, admissions tax, harbor use fees, and sales tax. Without the revenue generated from the birthday visitors, this other revenue could be lost. Additionally, it serves as an enticement for first-time visitors to visit and to return to Avalon in the future for longer stays.

FISCAL IMPACTS: The City's Harbor Fund receives the wharfage revenue. The birthday promotion waiver was included in the FY16-17 Budget. During the calendar year 2016 through October the estimated waiver was $179,705.00. It is anticipated that these fees may be more than offset by the City's collection of transient occupancy tax, admissions tax, sales taxes and Harbor use fees generated by the additional visitors that accompany those celebrating birthdays, although the exact amount is not known.

GOAL ALIGNMENT: Not aligned.

ADVERTISING, NOTICE AND PUBLIC CONTACT: This item was properly listed on the posted agenda pursuant to the Brown Act.

ATTACHMENTS: Letter of request from the Catalina Express.

City Manager Comments

I agree with the recommendation based on the comments made by Catalina Express and contained in this report. I have personally spoken with persons in town who have come over on their birthdays who have travelled here for the first time. Unanimously, they are impressed with Avalon and say that they will come back. Another year trial will give the City and Express more time to evaluate the program and the assumptions on which it is based about increased revenues overall. dmj

CATALINA EXPRESS

November 23, 2016

City Council Board
City of Avalon
410 Avalon Canyon Rd.
P.O. Box 707
Avalon, CA 90704

Dear City Council Members:

Catalina Express respectfully requests the City of Avalon to grant an extension to the waiving of the harbor landing fee for our new 2017 promotion, "Share Your Birthday Ride", for the period January 1 – December 31, 2017.

The "Share Your Birthday Ride" promotion will entitle a person traveling on their birthday and one guest to both travel for the price of one full adult fare. As you know, persons traveling to and from Avalon via boat must pay the $2.50 harbor landing fee to the City. To maximize the number of visitors taking advantage of this opportunity and to promote the fact that the birthday trip is free for the birthday guest, Catalina Express formally asks the City Council to waive the fee for persons traveling on Catalina Express on their birthday. The fee waiver would only apply to the person traveling on his or her birthday. The person traveling with the birthday guest will be required to pay all regular costs and fees.

For reference, the table below includes the number of one-way birthday travelers that Catalina Express has carried since 2013.

One way	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2013	2,018	2,690	4,152	5,260	5,136	6,752	8,370	8,654	7,298	5,292	3,168	2,056	62,859
2014	3,010	2,864	4,230	5,524	6,722	8,312	9,484	9,206	7,802	6,330	4,276	2,258	72,032
2015	3,218	4,232	6,166	7,020	7,094	8,822	10,798	10,966	2,598	6,852	4,304	2,598	74,668
2016	2,670	4,704	5,558	6,476	7,214	8,854	10,750	10,386	8,732	6,538			71,882

As you can see, the number of birthday program travelers increases each year, bringing more visitors and recognition to the Island. The "Share Your Birthday Ride" promotion will generate positive publicity and entice new and repeat visitors to come and explore Catalina Island.

Thank you for your consideration. We look forward to continuing our partnership with the City of Avalon and this very successful program.

Best Regards,

Greg Bombard
CEO

Reservations:
562-485-3300
800-995-4386

400 Oceangate, Suite 300
Long Beach, CA 90802
www.CatalinaExpress.com

Administration:
562-485-3200 Ext 1000
Fax 562-485-3201

CITY OF AVALON CITY COUNCIL

MEETING DATE: December 20, 2016 **AGENDA ITEM:** 5

ORIGINATING DEP: Public Works **CITY MANAGER:**

PREPARED BY: Dennis Jaich – Director Public Works

SUBJECT: Emergency Repairs to the South Beach Break Wall

RECOMMENDED ACTION(S):

1. Determine that an emergency existed and ratify action by the Public Works Director to undertake necessary repairs at the South Beach Break Wall.
2. Authorize the expenditures for these repairs to be funded by the General Fund 102-50-5701 in the amount of $10,030.30
3. Adopt a resolution authorizing necessary repairs. **(A four-fifths vote is required.)**

REPORT SUMMARY:
Surging harbor conditions impacted the South Beach Break Wall and on October 6, 2016 repairs of a developing sink hole were necessary. Due to tidal conditions work began at 4:30 PM, and proceeded into the night This work was necessary to maintain the integrity of the sea wall to preserve the upper beach and maintain public safety.

City crews could not perform this work due to time constraints, the equipment necessary, and staff availability. This contractor was able to perform all the work that was needed to completely stop the sink hole from enlarging or spreading. Once the excavations were made, concrete fill was placed in special locations, in order to stop the ocean erosion.

GOAL ALIGNMENT: City Infrastructure.

FISCAL IMPACTS: General Fund 102-50-5701

CONSEQUENCES OF NOT FOLLOWING RECOMMENDED ACTION:
Payment to the contractor for the emergency repair work will not be made.

FOLLOW UP ACTION:
Payment for the emergency work to the contractor.

ADVERTISING, NOTICE AND PUBLIC CONTACT:
Pursuant to the Brown Act.

ATTACHMENTS: Jordahl Construction Invoice

City Manager Comments

I authorized the Public Works Department to proceed with the work because there was a serious safety condition that warranted immediate action. dmj

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AVALON, CALIFORNIA AUTHORIZING EMERGENCY REPAIRS TO THE SOUTH BEACH BREAK WALL

WHEREAS, Significant ocean swells and weather conditions impacted Avalon Harbor in October of 2016, especially the South Beach break wall causing a sink hole to form on the upper beach; and

WHEREAS, the South Beach break wall is crucial to maintaining the security and safety of property and the general public, and

WHEREAS, due to the serious nature of the compromised break wall, it was agreed to by City Staff that the repairs must take place as soon as possible before the regularly scheduled City Council meeting and Council approval and allow payment for the emergency repairs conducted by the contractor including excavation and concrete fill; these monies will come from General Fund 102-50-5701; and

WHEREAS, City crews could not perform this work due to time constraints, the equipment necessary, and staff availability; and

WHEREAS, Public Contract Code Sections 1102 and 20168 permit the City to award a contract without compliance with the competitive bidding requirements if it determines that public interest and necessity demand the immediate expenditure of public money in order to safeguard life, health or property when an unexpected and sudden occurrence poses a clear and imminent danger requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services; and

WHEREAS, Public Contract Code Sections 20168 and 22050, further require that any emergency expenditure of funds be approved by a four-fifth's vote of the City Council after making findings based on substantial evidence set forth in the minutes of the meeting that the emergency will not permit a delay resulting from a competitive solicitation for bids, and that the action is necessary to respond to the emergency; and

WHEREAS, an emergency as defined by Public Contract Code Section 1102 may occur between regular City Council meetings; and

NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF AVALON HEREBY DOES THE FOLLOWING:

Section 1. The above recitals are hereby incorporated as though fully set forth herein.

Section 2. The City Council on substantial evidenced presented by the City Staff finds and determines as follows:

a. That the South Beach sink hole posed a clear and imminent danger of damage to the City's property and threat to public health and safety;

b. That the problem constituted an "Emergency" as defined in Public Contract Code Section 1102 and required immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services;

c. That public interest and necessity demanded the immediate expenditure of public funds to remediate the emergency pump in order to safeguard the City's property and public health and safety; and

d. That the circumstances required immediate action in response to the emergency and would not have allowed for a delay resulting from competitive solicitation for bids.

Section 3. The City Council authorizes the Interim Public Works Director to make payments to the contractor.

PASSED, APPROVED AND ADOPTED this 20th day of December, 2016.

Ayes:
Noes:
Absent:
Abstain:

_____
Ann H. Marshall, Mayor

ATTEST:

_____
Denise A. Radde, City Clerk

JORDAHL CONSTRUCTION, INC.

P.O. Box 265 Avalon, CA 90704
General Engineering Contractor
CA State License #727811
310.510.0648 * 310.510.0166 fx
jrhjci@sbcglobal.net

Bill To

CITY OF AVALON
P.O. BOX 707
AVALON, CA. 90704

South Beach
sink hole

Invoice

Date	Invoice #
10/30/2016	7048

P.O. No.	Terms
DENNIS JAICH	DUE UPON RECEIPT

Item	Description	Qty	Rate	Serviced	Amount
	REPAIR SEAWALL & REMOVE ROCK FROM UNDER PIER				
	4:30 P.M. START: LOW TIDE REPAIR NECESSARY				
E-42 ...	EXCAVATOR 135 O/T JH	4.5	190.00	10/6/2016	855.00
L-1 O/T	LABORER O/T BS	4.5	87.00	10/6/2016	391.50
L-1 O/T	LABORER O/T JG	4.5	87.00	10/6/2016	391.50
L-1 O/T	LABORER O/T RH	4.5	87.00	10/6/2016	391.50
L-1 O/T	LABORER O/T AT	4.5	87.00	10/6/2016	391.50
	DELIVER SAND AND CONCRETE FOR PIPE BEDDING & SEAWALL				
E-34 ...	10 WHEEL DUMP TRUCK & DRIVER O/T ER	2	142.50	10/6/2016	285.00
E-34 ...	10 WHEEL DUMP TRUCK & DRIVER O/T SM	2	142.50	10/6/2016	285.00
CT-D ...	CEMENT TRUCK DRIVER OVER TIME MM	5.25	35.00	10/6/2016	183.75
	MATERIALS				
S	SAND (PER TON)	22	70.00	10/6/2016	1,540.00T
CT	CEMENT TICKET #7891 8 YDS	1	2,600.25	10/6/2016	2,600.25
FS	FUEL SURCHARGE 8 YDS	8	10.00	10/6/2016	80.00
CT	CEMENT TICKET #7892 8 YDS	1	2,409.00	10/6/2016	2,409.00
FS	FUEL SURCHARGE 8 YDS	8	10.00	10/6/2016	80.00
	SALES TAX		9.50%		146.30

Received In Satisfactory Condition

Fund — Department — Account

Rec'd — Ok For Paym'nt — Dept. Head

Audited — Ok For Paym't — Fin. Director

Invoice Paid

We appreciate your business, thank you.

Total $10,030.30

CITY OF AVALON CITY COUNCIL

MEETING DATE: December 20, 2016 **AGENDA ITEM:** 6

ORIGINATING DEP: Public Works **CITY MANAGER:**

PREPARED BY: Dennis Jaich – Director Public Works

SUBJECT: Purchase Materials for Sewer/Salt Water System

RECOMMENDED ACTION(S): Approve expenditure not to exceed $12,000 for the purchase of materials for the sewer and salt water system maintenance.

REPORT SUMMARY: Environ Strategy maintains the City's sewer and salt water system, and as part of their responsibility and a requirement of the Cease and Desist Order, Order No. R4-2012-0077, ("Cease and Desist Order") issued by the Los Angeles Regional Water Quality Control Board ("Regional Board") the City is required to maintain and Operations and Maintenance Program element of the SSMP. This includes maintaining equipment and replacement part inventories; maintain critical spare parts and equipment on hand to ensure uninterrupted operation of the sanitary sewer system.

As part of maintaining an inventory ES has provided a list of critical equipment needed to ensure the operations of the system continues.

GOAL ALIGNMENT: City Infrastructure.

FISCAL IMPACTS: The expenditure for the purchase of materials not to exceed $12,000 is included in the FY16-17 Budget in the Sewer Fund and Saltwater Fund, accounts 10725-5124 and 11225-5124,

CONSEQUENCES OF NOT FOLLOWING RECOMMENDED ACTION:
Payment to the contractor for the emergency repair work will not be made. Our ability to ensure we have the proper parts and fittings for any emergency repairs will not be possible. Severe delays and shutdowns with any salt or sewer piping failures will be imminent should we have to order any needed materials.

FOLLOW UP ACTION: Purchase equipment and add to inventory and maintenance routine.

ADVERTISING, NOTICE AND PUBLIC CONTACT: Pursuant to the Brown Act.

ATTACHMENTS: ES Equipment list.

water & wastewater services

Additional Services Request Form

Acct No	Project Name	Additional Services Project Number		Emergency	Quote Date		Budget Fund	Sum Of Project Cost
690B	Salt Water Distribution System	2015		No	9/7/2016		Salt Water Fund	$ 11,749.54

Task Description	Position	Position	Position	Position	Position	Position		Extended Price
	Project Manager	O&M Specialist	Field Tech 2	Field Tech 1				
Total Hours	0.00	0.00	0.00					
Hourly Rate	110.00	85.00	75.00	65.00				
Estimated ESCI Labor Cost	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -

Part	Quantity	Materials	Unit Cost		
	5	Saddle 4" X 1" IP D/S BRZ SS Strap Mueller BR2S0474IP100	$ 83.71	$ 418.55	
	5	Saddle 4" X 3/4" IP D/S BRZ SS Strap Mueller BR2S0474IP075	$ 90.64	$ 453.20	
	5	Saddle 6" X 1" IP D/S BRZ SS Strap Mueller BR2S0684IP100	$ 98.61	$ 493.05	
	5	Saddle 6" X 3/4" IP D/S BRZ SS Strap Mueller BR2S0684IP075	$ 106.78	$ 533.90	
	5	Saddle 8" X 1" IP D/S BRZ SS Strap Mueller BR2S0899IP100	$ 122.07	$ 610.35	
	5	Saddle 8" X 3/4" IP D/S BRZ SS Strap Mueller BR2S0899IP075	$ 132.18	$ 660.90	
	5	Saddle 10" X 1" IP D/S BRZ SS Strap Mueller BR2S1104IP100	$ 151.23	$ 756.15	
	5	Saddle 10" X 3/4" IP D/S BRZ SS Strap Mueller BR2S1104IP075	$ 163.76	$ 818.80	
	6	Mueller 1" H15028N Ground Key Corp AWWA MIP X CTS Comp Low Lead	$ 39.02	$ 234.12	
	6	Mueller 3/4" H15028N Ground Key Corp AWWA MIP X CTS Comp Low Lead	$ 25.77	$ 154.62	
	2	CROSS 6" MJ	$ 148.50	$ 297.00	
	2	CROSS 8" MJ	$ 175.50	$ 351.00	
	2	CROSS 10" MJ	$ 250.20	$ 500.40	
	2	ELL 6" 90 MJ	$ 77.44	$ 154.88	
	2	ELL 8" 90 MJ	$ 116.02	$ 232.04	
	2	ELL 10" 90 MJ	$ 162.90	$ 325.80	
	2	ELL 6" 45 MJ	$ 57.60	$ 115.20	
	2	ELL 8" 45 MJ	$ 83.33	$ 166.66	
	2	ELL 10" 45 MJ	$ 136.44	$ 272.88	
	2	Saddle 6" X 2" IP D/S BRZ SS Strap Mueller BR2S0684IP200	$ 127.94	$ 255.88	
	2	Saddle 8" X 2" IP D/S BRZ SS Strap Mueller BR2S0899IP200	$ 144.47	$ 288.94	
	2	Saddle 10" X 2" IP D/S BRZ SS Strap Mueller BR2S1104IP200	$ 184.18	$ 368.36	
	2	TEE 6" MJ C153 DI	$ 93.64	$ 187.28	
	2	TEE 6" MJ C153 DI	$ 140.66	$ 281.32	
	2	TEE 6" MJ C153 DI	$ 199.65	$ 399.30	
	1	Taxes	$ 886.41	$ 886.41	
			SubTotal	$ 10,216.99	
			15% Markup	$ 1,532.55	
			Total Materials	$ 11,749.54	$ 11,749.54

Sub-Contractor Cost					
			SubTotal		
			15% Markup		
			Total Sub Contractor Cost	$ -	$ -
			PROJECT TOTAL ►		$ 11,749.54

Please note that shipping and handling charges are not included in this quote. Sales tax will be added to orders shipped to California unless tax exempt information is provided.

Acceptance: By signing, we accept this quotation and the terms & conditions.

Client Approval _____

CITY OF AVALON CITY COUNCIL

MEETING DATE: December 20, 2016 **AGENDA ITEM:** 7

ORIGINATING DEPT: Harbor **CITY MANAGER:**

PREPARED BY: Brian Bray, Harbor Master

SUBJECT: Waterside Permit Modification Application – Catalina Adventure Sailing

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RECOMMENDED ACTION(S): City Council make the affirmative finding that conditions set forth in the Avalon Municipal Code have been met and grant the Waterside Project Application modification of adding a back up vessel that will not require additional dock times to Catalina Adventure Sailing's waterside permit.

REPORT SUMMARY: Ryan Ramming of Catalina Adventure Sailing has submitted a Waterside Project modification proposing to maintain a second permitted sailboat of no more than 50 feet as a back up vessel in case there is a mechanical problem with his primary vessel "Thesis". The additional vessel would be kept on his son Justus Ramming's leased mooring in Hamilton Cove. The additional vessel would not require additional dock times as it would only operate in place of the applicants' current permitted vessel.

Section 10-2.416 of the Municipal Code provides that a waterside permit may only be granted where the City Council is able to make the following affirmative findings:

(1) The project will not result in a substantial alteration of the City's present or planned waterside uses of the Avalon Harbor.

(2) With regard to transportation and circulation, the project (i) will not generate substantial additional boat trips, including shoreboat trips, or other movement within Avalon Harbor; (ii) will not have a substantial negative impact upon existing mooring, docking, or other anchorage facilities; (iii) will not have a substantial impact on other modes and systems of transportation; (iv) will not result in substantial alterations of present patterns of circulation or movement of people and /or goods; (v) will not increase traffic hazards to swimmers, boaters, or other existing activities; and (vi) will not restrict or alter existing coastal access;

(3) The project will not have a substantial impact upon and will not result in a need for new or altered governmental services, including but not limited to fire, police, maintenance of facilities, and harbor department services

(4) The project will not result in the use of substantial amounts of fuel or other forms of energy or substantially increase the demand upon existing energy or require the development of new sources of energy;

(5) The project will not result in the need for new utility systems or a substantial alteration of existing sources or systems for power, natural gas, communications, water, sewage disposal or solid waste

(6) The project will not obstruct any scenic vista or view open to the public, and will not result in the creation of an aesthetically offensive site which is open to public view;

(7) The project will not result in a substantial negative impact upon the quality and quantity of existing recreational opportunities or result in alterations or restrictions to coastal access.

(8) The applicant is fit to be entrusted with the privileges of a permit, in that he has not engaged in prior violations of the City's harbor regulations, including the provisions of this article, has timely paid any harbor-related fees and has not presented checks returned for insufficient funds.

The Municipal Code also provides that the "City Council may deny the permit where the impacts listed in paragraphs (1) through (8) above are cumulatively significant, even though the individual impacts are limited. The City Council may approve a project where mitigation measures eliminating significant impacts are incorporated into the project, and the approval shall be conditioned upon the implementation of such mitigation measures. The failure to comply and maintain any mitigation measures shall be a basis for suspension or revocation of a waterside permit."

GOAL ALIGNMENT: Offer recreational activities in the Avalon area.

FISCAL IMPACTS: Unknown, potential Harbor Use Fees.

CONSEQUENCES OF NOT FOLLOWING RECOMMENDED ACTION: Operator would not be able to add a back up vessel to his current Waterside Permit.

FOLLOW UP ACTION: Notify Catalina Adventure Sailing of the City Council's decision.

ADVERTISING, NOTICE AND PUBLIC CONTACT: Pursuant to the Brown Act.

ATTACHMENTS:

1. Waterside Permit Application
2. Waterside Permit Standard List of Conditions

Standard List of Conditions Relating to Waterside Project Applications

1. Section 1-6.01 Public Liability Insurance

Sec. 1-6.01 Public Liability Insurance. Applicants for permits or franchises and parties to leases and contracts with the City of Avalon may be required by the Avalon Municipal Code or the City Manager to maintain a policy of public liability insurance. Such policy shall:

(a) Contain broad form commercial general liability insurance, or in the case of marine operations, the substantial equivalent, with respect to the Premises, as applicable and the permittee, franchisee, contractor or lessees' activities with a combined single limit of not less than $1,000,000 per occurrence and aggregate. Such insurance shall be produced by an insurer authorized to do business in California with a then current Best's Insurance Guide Rating of not less than A-VII. , shall name the City of Avalon, its officers, agents and employees as additional insureds, and shall contain a provision that prohibits cancellation, modification or; and

(b) Name the City as additional insured and contain a waiver of subrogation against the named insured or respective officers, employees, agents; and

(c) Provide that it may not be canceled without at least thirty (30) days prior written notice to the City; and

(d) Provide primary and not excess coverage Insurance coverage shall be subject to the approval of the City.

The applicant shall provide evidence of such insurance coverage by providing the City with a copy of the policy and/or a copy of a fully explanatory certificate of insurance, as determined by the City.

2. Section 10-2.402 Use of Harbor Related Facilities: Use Fees

Wharfage, dockage, landing and use fees for the use of or impact upon any harbor or harbor-related facility owned or controlled by the City of Avalon shall be as follows:

(a) Except as otherwise specifically provided in this article, for all boats, ships, vessels, airplanes or other transportation facilities carrying passengers for hire or charter, whether operating under the authority of the California Public Utilities Commission or not, which land, discharge, load, or embark passengers on, to, or from such City harbor facilities Two Dollars and Fifty Cents ($2.50) per passenger so landed, discharged, loaded or embarked.

(b) Except as otherwise provided in paragraph (1) below, for all cruise ships, Two Dollars and Fifty Cents ($2.50) per passenger, which fee shall be levied upon eighty (80%) percent of the manifest passengers, excluding persons employed upon the vessel. As used in this section "cruise ship" means a vessel which lists Avalon as a port-of-call and which anchors so as to permit passengers to disembark and to return to the same vessel.

(c) For businesses engaged in the operation of excursion boats using such facilities for landing, discharging, loading or embarking passengers on, to, or from such facilities, seven (7%) percent of the gross receipts of such business derived from such use. For the purpose of this section, "excursion boats" shall mean vessels operating from points in the City and returning thereto for sightseeing scenic tours or as pleasure cruises, and carrying passengers for hire, but not providing facilities for overnight stays.

(d) For businesses engaged in the operation of "shore boats," as defined herein, and using such facilities for landing, discharging, loading or embarking passengers on, to, or from such facilities, seven (7%) percent of the gross receipts of such business derived from such use, excepting therefrom receipts for transportation of passengers to and from "cruise ships," as defined in subsection (b) herein, or as otherwise provided in an applicable franchise agreement issued pursuant to Section 10-2.410. For the purpose of this section, "shore boats" shall mean vessels carrying passengers or freight for hire to and from boats moored within or without City waters to the shore in Avalon, between such boats in City waters or between points on the shore in Avalon.

(e) Operators of fishing tournaments whose participants use City harbor facilities during the course of such tournaments shall comply with the provisions of Title 3, Chapter 3 regarding admissions taxes as applied to entry fees charged for participation in such tournament.

(f) For all other businesses not otherwise expressly provided for in this Section 10-2.402 carrying passengers for hire by vessel from points in the City and returning thereto, or from one point in the City to another point therein, or engaged in the renting, leasing, or chartering of boats, paddle boards, rafts, or other floating watercraft for hire and using City harbor facilities, or whose patrons regularly use such facilities for launching, landing, boarding, unloading, embarking or disembarking, docking, or other similar uses, or whose business activities involve the use of such facilities, seven (7%) percent of the gross receipts derived from such use.

(g) The fees for the use of such facilities by those not falling within the classifications set forth in subsections (a) through (d) of this section shall be determined initially by a schedule adopted by the Council or shall be incorporated into the flat rental of any contract, permit, lease, franchise or other agreement entered into for use of the facilities.

3. <u>Section 10-2.410 Permits; Franchises to Conduct Business</u>

a. All businesses operating in the harbor, except those enumerated in paragraph (b) of this section, shall maintain a shore base of operations or an office in Santa Catalina Island. Such office shall have a business telephone, which is covered twenty four (24) hours a day. An answering service or mechanical means of answering may be used provided messages are checked no less than three (3) times per day.

4. In addition to the provisions of Section 10-2.402, all businesses operating within the harbor, except those operating pursuant to a franchise issued by the City shall:

(ii.) In the case of waterside permit holders other than cross-channel carriers, pay to the City a non-refundable use fee deposit of One Thousand ($1000.00) Dollars, payable in two (2) installments of Five Hundred ($500.00) Dollars each, the first installment on the inception of operations within the Avalon Harbor and the second on August 1. The use fee deposit may be applied against use fees due and owing under Section 10-2.402 at such time that the permittee has made timely payment of use fees for thirteen (13) consecutive months.

(iii.) In all cases where the business operates seven (7) or more months during any twelve (12) month period, pay to the City use fees under Section 10-2.402 no fewer than seven (7) months of any twelve (12) month period, and in no event less than the sum of twenty five ($25.00) Dollars per month for each month the business is operating and reports sales receipts.

(iv.) In all cases where the business operates fewer than seven (7) months during any twelve (12) month period, pay to the City a use fee of Two Hundred ($200.00) Dollars for each month the business is closed or does not report any sales receipts.

6. All vessels over sixteen (16) feet in length operated for hire or used to conduct work in the harbor shall be equipped with a marine radio which shall be monitored at all times that the vessel is in operation.

7. All businesses operating in the harbor shall maintain all equipment, materials, facilities, machinery and vessels utilized in the operation of the licensed business in a good working condition, and such businesses shall only employ workers who are qualified to conduct the duties appropriate to the licensed business.

4. <u>Resolution 96-36 Mandatory Activation Dates for Waterside Permits</u>

Section 4. All newly permitted businesses must have proof of insurance, other required permits and/or leases, and all required deposits in place prior to commencing business operations in Avalon Harbor. All new permits issued before January 31 will expire on April 1 of the year of issuance unless the business is operating as of that date. All new permits issued after January 31 will expire sixty (60) days after issuance unless the business is operating as of that time. The Harbor Master shall have the authority to grant one extension of thirty (30) days of the time within which a business must be operating, upon showing a good cause.

CITY OF AVALON CITY COUNCIL

MEETING DATE: December 20, 2016 **AGENDA ITEM:** 8

ORIGINATING DEP: Harbor **CITY MANAGER:**

PREPARED BY: Brian Bray, Harbor Master

SUBJECT: 2017 Waterside Permit Renewals

RECOMMENDED ACTION(S):

1. The Harbor Master recommends renewing the attached list of Waterside Permits for the year 2017 except those listed in recommended actions 2, 3, 4 & 5 which have conditions for renewal.

2. Approve the renewal of Scotty's Sportfishing waterside permit only if outstanding Harbor Use Fee Reports for September 2016 and October 2016 are filed and paid by February 1, 2017.

3. Approve the renewal of Fishing Funatics waterside permit only if outstanding Harbor Use Fee Reports for September 2016 and October 2016 are filed and paid by February 1, 2017.

4. Approve the renewal of Action Flyboarding waterside permit only if outstanding Harbor Use Fee Reports for July 2016 through October 2016 are filed and paid by February 1, 2017.

5. Approve the renewal of NDEMIK waterside permit only if the required documents are supplied by February 1, 2017.

REPORT SUMMARY:

Prior to December of each year, the Harbor Master reviews all existing Waterside Permits which terms are to expire on December 31st. If the Harbor Master determines that, because of changed circumstances, a permit should not be renewed, or should be renewed on different terms and conditions, he shall forward his recommendation thereon to the City Council for action, together with a list of all permits that he recommends should be renewed for another term without change.

All permit renewals are subject to verification by the Finance Department to make sure the permit holder is in good standing with respect to harbor use fees, rents, admission taxes and insurance requirements. With respect to fees, rents and admission taxes, good standing includes execution of and compliance with a payment plan.

The Finance Department reports as of December 12, 2016, Scotty's Sport Fishing and Fishing Funatics are delinquent reporting their Harbor Use Fees for the months of September and October 2016 which were due to be filed by September 30, 2016 and November 30, 2016 respectively.

Action Flyboarding started business in late July 2016 and apparently has not reported Harbor Use Fees for July, August, September or October due to a misunderstanding with their ticket seller regarding who would be filing the Harbor Use Fee reports. I have contacted the Belinda Bain of Action Flyboarding and she will promptly file the reports and pay the Harbor Use Fees due.

NDEMIK submitted their Harbor Use Fee deposit, their City business license and insurance documentation in order to activate their waterside permit in April 2016. When they submitted their insurance documents, the insurance was under Hel-En On Water LLC which is only licensed to do business in Florida. We have been working with NDEMIK to provide the necessary documentation to show the relationship between NDEMIK and the LLC, and to show that both can legally do business in California. To date, no such documentation has been provided and the waterside permit has not been issued. It is staffs recommendation to require NDEMIK to supply all necessary documents by February 1, 2017 or the permit will not be renewed.

GOAL ALIGNMENT: Renew waterside permits.

FISCAL IMPACTS: N/A

CONSEQUENCES OF NOT FOLLOWING RECOMMENDED ACTION:

FOLLOW UP ACTION: Notify all waterside permit holders of renewal status.

ADVERTISING, NOTICE AND PUBLIC CONTACT: Pursuant to the Brown Act.

ATTACHMENTS: List of 2016 Waterside Permit Holders to be renewed for 2017

WATERSIDE PERMITS AS OF DECEMBER 2016

	# BOATS	#SKIFFS
ACTION FLYBOARDING	3	0
AFISHINADO CHARTERS	2	1
AVALON BOAT STAND	94	3
AVALON MOORING SERVICE	1	2
CALM SEAS & COMPANY	1	1
CANBY MARINE SERVICE	0	1
CAT TOW, INC.	4	1
CATALINA ADVENTURE SAILING	1	1
CATALINA BREAKFAST BOAT	0	1
CATALINA COASTAL TOURS	3	0
CATALINA SHUTTLE SERVICE	1	0
CATALINA SNORKEL & SCUBA ADVENTURES	0	0
CORSARIO OCEAN ADVENTURES	1	0
DESCANSO BEACH OCEAN SPORTS	1	0
DISCOUNT MARINE, DIVE AND DELIVERY	0	2
DIVE CATALINA	1	1
FISHIN FUNATICS	1	0
HEADPUMPERS	1	0
ISLAND CHARTERS, INC.	1	0
ISLAND ENTERPRISES GLASS BOTTOM BOATS	2	0
ISLAND WATER CHARTERS & PARASAIL	3	0
MEMORY MAKER FISHING CHARTERS	1	0
NDEMIK	1	0
PARASAIL CATALINA	3	1
SCI COMPANY & SUBSIDIARIES	5	3
SCOTTY'S SPORTFISHING	1	0
SCUBA CAT INC.	1	0
SHERRILL'S MARINE	0	3
SHORECO	0	0
SNORKELING CATALINA	1	1
THE BARGE	6	1
WETSPOT RENTALS	20	1
Totals	155	25

CITY OF AVALON CITY COUNCIL

MEETING DATE: December 20, 2016 **AGENDA ITEM:** 9

ORIGINATING DEP: Public Works **CITY MANAGER:**

PREPARED BY: Dennis Jaich, Director of Public Works

SUBJECT: Authorization to Award Bid for the 2016 Global Capital Improvement Program RFP

RECOMMENDED ACTION(S): Authorize the award of a contract to the lowest responsive and responsible bidder, Colich & Sons L.P. for the 2016 and 2017 Global Capital Improvement Programs for an amount not to exceed $2,377,752, plus a 15% allowance for change orders.

REPORT SUMMARY: On the December 15, 2015 City Council meeting, Council authorized staff to publically bid the 2016 Global Capital Improvement Program (CIP) as one RFP covering needed various infrastructure improvements including sewer, saltwater streets, and electrical upgrades.

The RFP was released on October 18, 2016, and a mandatory Pre-Bid Conference was held on November 15, 2016. Six contractors attended the conference, and thus were the only contractors eligible to bid. The City received three proposals, with the lowest responsible bid totaling $2,377,752.00. The engineers estimate cost range for the project in the advertisement was $1,650,000 - $1,850,000.

Three bids were submitted, however, one was withdrawn by the contractor. The two eligible bids were:

- Colich & Sons L.P. - $2,377,752
- Sully-Miller Contracting Co. - $2,973,000

For FY16-17, $1,983,000 was budgeted for this project, a difference of just under $400,000. To ensure the CIP is completed timely and within budget, the project is being phased in two stages. The bulk of the work in Phase I will be completed in the current FY16-17, and the balance, or Phase II, will be budgeted and completed in FY17-18.

The year-to-date revenue for excavation permits has already exceeded the budget by $60,000 and is also available to fund the CIP. Staff is requesting that the $60,000 revenue in excess of budget also be allocated to fund the CIP.

GOAL ALIGNMENT: Infrastructure reliability and safety, and CDO compliance.

FISCAL IMPACTS: The total cost of the 2016 and 2017 Global Capital Improvement Programs is $2,377,752 with a 15% allowance for change orders up to $356,700, to be funded by:

$1,983,000	FY16-17 Budget, accounts 10825-6521, 11325-6552, 11550-6746
60,000	Excavation permit revenue excess in the account 10225-7515A
751,700	FY17-18 proposed budget for sewer, saltwater, and street CIP
$2,794,700	Total Global CIP

CONSEQUENCES OF NOT FOLLOWING RECOMMENDED ACTION: The 2016 Capital Improvement Program RFP will not be awarded and the needed infrastructure improvements to increase reliability and safety will be delayed.

FOLLOW UP ACTION: Allow staff to schedule and proceed on the 2016 Capital Improvement Program with the contractor, by issuing an Award of contract, then the Notice to Proceed.

ADVERTISING, NOTICE AND PUBLIC CONTACT: This item was properly listed on the posted agenda pursuant to the Brown Act.

ATTACHMENTS: None.

City Manager's Comments:
I am advised that the Finance Director and staff have verified that there are adequate funds in the existing budget and will be adequate funds in next year's budget to complete the work in the two proposed phases in this and the next fiscal year. dmj

CITY OF AVALON CITY COUNCIL

MEETING DATE: December 20, 2016 **AGENDA ITEM:** 10

ORIGINATING DEP: Administration **CITY MANAGER:**

PREPARED BY: City Manager David Jinkens

SUBJECT: **CITY FRESH WATER MASTER PLAN**

RECOMMENDED ACTION(S):
Approve a request to the Planning Commission to review and comment on a proposed amendment to the City's 2013 General Plan to require a fresh water master plan for the City of Avalon in collaboration with officials of the City of Avalon.

REPORT SUMMARY:
In order to implement goals of the Avalon General Plan to "Achieve effective long-term management of water resources so that demand is in balance with efficient, sustainable supplies." and "Provide a safe and adequate water supply that effectively meets the demand for the existing and future population..." and to serve our visitor population, the City of Avalon needs developed a water master plan that is available and regularly updated to inform the public and private sector of needs, timelines, and financing for same.

The City Council should ask the Planning Commission to review the following recommendation to made part of the 2013 Avalon General Plan through the amendment process.

"The City of Avalon shall require that its fresh water provider to develop a water master plan that will describe a five, ten and 20 year goal to provide a sustainable year-round fresh water supply to Avalon residents and visitors. The City's water utility will coordinate development of this plan with the City of Avalon. The plan shall include a financing plan. Such a plan should include an examination of ground water supply and rain water sources.

By having benefit of this plan the City can be a better partner with its water utility to identify needed improvements and seek funding for those improvements through State and Federal sources.

GOAL ALIGNMENT: Section IV. Conservation Element, Avalon General Plan

FISCAL IMPACTS: Costs for the utility to prepare such a plan is not yet known.

CONSEQUENCES OF NOT FOLLOWING RECOMMENDED ACTION: The City lacks and will not have a fresh water plan to ensure a sustained fresh water supply and provide clarity to residents and businesses about fresh water supply issues.

FOLLOW UP ACTION: Refer the matter to the Planning Commission for review and return of recommendations to the City Council. Proceed with a General Plan amendment in the policies section of the Conservation Element.

CITY OF AVALON CITY COUNCIL

MEETING DATE: December 20, 2016 **AGENDA ITEM:** 11

ORIGINATING DEP: Harbor **CITY MANAGER:**

PREPARED BY: Brian Bray, Harbor Master

SUBJECT: Extension to Contract for Temporary Underwater Sculptures Installed in Casino Dive Park

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RECOMMENDED ACTION(S):
Staff recommends that the City Council approve an extension to the agreement with the Parley Foundation for the underwater sculptures and authorize the City Manager to execute the agreement.

REPORT SUMMARY: At September 6, 2016 City Council meeting, the City Council approved an agreement with the Parley Foundation for the Doug Aitken Workshop, in conjunction with the Museum of Contemporary Art (MOCA), Los Angeles to temporarily place three underwater sculptures in Avalon Bay. This underwater art display has been installed and is currently in operation. The original contract provides that the underwater sculptures will be installed for a period of three months. That period ends at the end of December, and the installations must be removed promptly thereafter. The Parley Foundation has requested that the contract be extended in additional three months so that the installations may remain in place until the end of March, 2017.

In consideration of the contract extension, staff has requested that the applicant: (1) pay to the City $300 for the costs of preparing the extension, and (2) add mooring weights and safety lines to the pavilions. At the time of this report, the Parley Foundation has not agreed to the terms of the extension. Revised terms may be presented at the time of the meeting. The purpose of the fee is to offset the costs of negotiating and preparing the extension, which may rise depending on the circumstances. The purpose of installing the additional weights and lines is to further secure the installations, in light of a recent storm. At its September 6 meeting, the City Council took action delegating to the City Manager or his designee the approval of any changes in the design. The City Manager or his designee will review and approve any revised design plans before installation.

The extension indicates that the City will also extend any associated permits to correspond to with the contract length. All other terms and conditions of the original contract and permit will remain the same.

GOAL ALIGNMENT: Enhance Recreation Opportunities; Natural Resources

FISCAL IMPACTS: There are no costs to the City associated with authorizing the placement of the underwater sculptures in the Casino Dive Park. Additional revenue will likely be generated by the increased tourism resulting from the installation of the underwater sculptures. The contract will include terms to offset the costs of preparing the extension.

CONSEQUENCES OF NOT FOLLOWING RECOMMENDED ACTION: The temporary underwater sculptures will have to be removed within 7 days after December 31.

FOLLOW UP ACTION: Finalize and execute the extension subsequently monitor compliance with agreement provisions.

ADVERTISING, NOTICE AND PUBLIC CONTACT: Pursuant to the Brown Act.

ATTACHMENTS:

1. Draft Amendment to Contract with Parley Foundation
2. Original Contract for Installation of Temporary Underwater Pavilions
3. Temporary Underwater Pavilions Installation and Removal Plan

FIRST AMENDMENT TO AGREEMENT FOR PLACEMENT OF THREE TEMPORARY MOORING INSTALLATIONS IN AVALON BAY

1. **Recitals.** On or about September 7th, 2016, the City of Avalon ("City") and Parley LLC ("Parley") entered an agreement to allow for three temporary mooring installations within Avalon Bay ("Agreement"). The Agreement requires the installations to remain in place for three months and to be removed by December 31, 2016. The parties now desire to extend the Agreement.

2. **Extension.** The installations may remain in place for an additional period of 3 months, beginning on January 1, 2017, and ending on March 31, 2017. Any permits issued by the City related to the installations shall be extended consistent with this timeframe. All terms in the Agreement related to removal upon completion of the term shall remain unchanged.

3. **Additional Moorings.** For each installation, Parley shall install an additional mooring weight to so as to double the existing weight. This shall result in 7 additional weights, with 12 additional safety lines connecting to the installation. The additional equipment shall be installed as soon as reasonably practicable but in no event later than January 1, 2017.

4. **Consideration.** As consideration for this extension, Parley shall pay $300 to the City of Avalon prior to January 1, 2017.

5. **Full Force and Effect.** Except as expressly set forth herein, all other terms of the Agreement shall remain in full force and effect and shall not be modified by this Amendment.

PARLEY, LLC	**CITY OF AVALON**
By:_____	By:_____
Name and Title:	Name and Title:
_____	_____
Attest:	*Attest*:_____ City Clerk
By: _____	
Its: Secretary	*Approved as to form:*
	Best Best & Krieger LLP
	_____ City Attorney

AN AGREEMENT TO ALLOW FOR THE PLACEMENT OF THREE TEMPORARY MOORING INSTALLATIONS IN THE CITY'S JURISDICTIONAL WATERS OF AVALON BAY

1. Parties and Date.

This Agreement (the "Agreement") is made and entered into this 7th day of September, 2016, by and between the City of Avalon, a municipal corporation organized under the laws of the State of California with its principal place of business at 410 Avalon Canyon Road, Avalon, California 90704 ("City") and Parley LLC, a Delaware Limited Liability Company with its principal place of business at 187 Lafayette Street, 5th Floor, New York, New York 10013 ("Parley"). City and Parley are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

2. Recitals

2.1 Parley, in conjunction with the artist Doug Aitken (the "Artist"), has created Underwater Pavilions Project (the "Project"), as a temporary mooring installation (the "Installation") in Avalon Bay, within the jurisdictional waters of the City. The Project will coincide with a major survey of Artist's work, which will open at the Museum of Contemporary Art, Los Angeles in September 2016.

2.2 The Installation will be installed in September 2016 for a period of three months.

2.3 The Installation will consist of three pavilion structures—approximately 11' by 13'geometric design with mirrored surfaces to reflect the underwater landscape and create a kaleidoscopic effect. The temporary moorings will be placed within the dive park to anchor the three pavilion structures and other elements necessary to secure the Installation, including video devices, cabling, and equipment to provide for the live feed and lighting. The Installation will be placed within the City's Dive Park, outside of the Marine Protected Area at Casino Point.

2.4 Except as varied by this Agreement, the Installation shall be in substantially the same format as proposed by Parley in the document attached hereto as Exhibit A, which shall be incorporated herein by this reference.

2.5 City intends to allow the Installation, conditional upon approval and issuance of a waterside permit and subject to the terms and conditions stated herein.

3. Terms and Conditions

3.1 City's Authorization

3.1.1 Revocable License. City authorizes the Installation within the City's jurisdictional waters, subject to the terms and conditions stated herein. Parley shall not install anything in City's jurisdictional waters except as expressly authorized herein. The Installation shall not be modified without City's express written consent. As a condition precedent to any rights under this license, Parley shall first obtain a waterside permit in accordance with the

Avalon Municipal Code and shall comply with all terms and conditions of the waterside permit. Nothing herein shall be construed as a right to approval of a waterside permit.

3.1.2 Consideration. The parties agree and acknowledge that each party has received good and valuable consideration. Neither party shall owe compensation to the other party, except as set forth herein. City shall not pay or reimburse any expenses incurred by Parley in relation to this Agreement.

3.2 Coastal Commission Approval

3.2.1 Coastal Development Permit. As a condition precedent to City's authorization of the Installation, Parley shall first obtain either a Coastal Development Permit ("CDP") from the California Coastal Commission ("CCC") or a waiver from the CCC indicating that a CDP is not required.

3.2.2 Plans. Parley's application for a CDP shall contain detailed and accurate plans for the design and installation, including engineering and design plans for securing the Installation in place. Parley's application for a waiver shall contain complete and accurate information.

3.2.3 Compliance. If a CDP is required, the Installation must be consistent with the CDP and any plans submitted with the CDP application. Parley shall comply with all terms and conditions of the CDP and any other requirements of the CCC. If a waiver is granted, the Installation shall be consistent with all material information provided in support of the waiver application, and Parley shall not perform any acts that are inconsistent with the waiver or that would otherwise require a CDP.

3.3 Location.

3.3.1 Designated Area. The Installation shall be contained entirely within the Dive Park, in an area designated by the City as shown on Exhibit B, attached hereto and incorporated herein by this reference (the "Designated Area"). The City reserves the right in its sole discretion to modify Exhibit B. No part of the Installation may be installed or be able to drift outside of the Designated Area.

3.4 Engineering, Design, and Installing

3.4.1 Standard of Care. Parley shall perform this Agreement and shall design and install the Installation in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Parley represents and maintains that all persons involved in the design, installation, or performance of this Agreement are skilled in the professional calling necessary to perform the work assigned. Parley warrants that all employees and subconsultants shall have sufficient skill and experience to perform the work assigned to them. Parley represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work and that such licenses and approvals shall be maintained throughout the term of this Agreement.

3.4.2 Preparation of Plans. Parley shall prepare plans for the Installation showing the design and engineering of the Installation, including the design and engineering of all moorings and other facilities securing the Installation. Plans shall be reviewed by a naval architect or engineer experienced in marine related design and fabrication. Plans shall be submitted to the City prior to the start of any installation.

3.4.3 Minimum Standards. The Installation must be engineered to remain secure and to withstand all currents, swells, and surges up to the maximum level that may occur as can be reasonably predicted at the time of installation. The Installation shall be designed and engineered so that the various components of the Installation do not collide with each other.

3.4.4 Drifting. The mooring/anchoring system for the installation shall be designed so as to prevent the Installation from drifting outside of the Designated Area and shall prevent drifting into the Marine Protected Area or any vessel travel lanes. Parley shall be solely responsible for ensuring that the Installation does not drift into the Marine Protected Area or any vessel travel lanes. Parley shall make its inquiry of the proper and safe location and shall not be entitled to rely on Exhibit B or any document provided by the City for determining the location of the Marine Protected Area or any vessel travel lanes.

3.4.5 Hazards. The Installation shall be designed so as to be free of hazardous conditions for experienced divers. There shall be no sharp-to-the-touch points or edges. Moorings shall be visible and shall be designed so as not to entangle divers. Rooms within the sculpture shall be designed to remain open so that divers may enter and exit without risk of entrapment. Materials used shall not cause pollution or other harmful conditions.

3.4.6 Installing. Parley shall be responsible for installing the Installation.

3.4.7 Warranties. Parley represents and warrants that the design and installation of the Installation shall be in accordance with the terms of this agreement and with the applicable standard of care.

3.5 Duration and Removal

3.5.1 Three-Month Period. The Installation shall remain in place for a period of 3 months, commencing on September ____, 2016, and completed on December _____, 2016. In no event shall the Installation remain in place after December 31, 2016. This section may only be modified with City's express written consent. At the end of the three-month period, Parley shall completely remove the Installation. Parley shall remove the Installation within 7 calendar days, unless removal within this time is not reasonably safe due to conditions outside of Parley's control, in which case removal shall be completed as soon as it is reasonably safe to do so. It shall not be necessary for City to request or demand removal. The 7-day removal period may be modified by City in accordance with its right to require early removal. Parley may remove the Installation prior to the expiration of the three-month period, but it shall leave the mooring blocks in place.

3.5.2 Early Removal Order. The City may order that Parley completely remove the Installation at any time in accordance with this section. Upon an early removal order, Parley shall completely remove the Installation within the earlier of 7 calendar days or such other time

as is necessary to prevent damage to persons or property. The City may determine the time necessary to prevent damage to persons or property in its sole discretion. The grounds for early removal shall be: (i) Parley materially breaches this Agreement; (ii) Parley fails to maintain the Installation in a continuously secure state, (iii) the Installation drifts beyond the Designated Area or into the Marine Protected Area or any vessel travel lanes; (iv) the Installation is determined to be a risk to any person or property or causes injury to a person or property; (v) the Installation was installed without being in compliance with the CDP or the engineering plans; (vi) the engineering plans are determined to not meet the standard of care; (vii) the Installation is subject to litigation or determined to be unlawful or is ordered removed by a court or administrative tribunal; (viii) the Installation results or is reasonably believed to result in a detrimental effect to the ocean, the ocean floor, marine life or plants, or the environment; (ix) Parley materially misrepresents any representations contained in this Agreement or otherwise made to the City, (x) existing or expected weather conditions require that removal is necessary to prevent injury to persons or property; or (xi) the Installation is determined by the City in its sole discretion to be detrimental to the public interest. In the event that removal cannot be accomplished within the time set forth in this section because removal is not reasonably safe due to conditions outside of Parley's control, then removal shall be completed as soon as it is reasonably safe to do so.

3.5.3 Removal of Unsecured Components. In the event that any component of the Installation becomes unsecured, Parley shall take all necessary steps to ensure that the unsecured component does not result in injury to person or property. The unsecured component may be re-secured as necessary for safety but must then be immediately removed at the earliest time for safe removal.

3.5.4 Costs of Removal and Damages. Parley shall bear all costs of removal. In the event that Parley does not timely remove the Installation, or any component thereof, City may immediately proceed with removal and charge the costs to Parley. Costs shall be based on City's actual costs, with a 10% surcharge for City's administration. Nothing herein shall prevent City from recovering from Parley any actual or consequential damages that City incurs as a result of Parley's failure to timely remove the Installation or any component thereof. Parley hereby waives any claim against City for damage or destruction incurred during removal as a result of Parley's failure to timely remove the Installation.

3.5.5 Restoration of Existing Conditions. Upon removal, Parley shall return and restore the bay floor and all other areas affected by the Installation to their prior existing condition. Parley shall remove all components of the Installation, except for the mooring blocks, and shall not leave behind any trash or debris. Upon notice of removal by Parley, the City shall inspect the site within three (3) business days and will report any concerns regarding the condition of the site; however, City's inspection or failure to inspect shall not waive any of City's rights or Parley's obligations under this Agreement. If City performs any restoration work, Parley shall be responsible for the costs of such work.

3.5.6 Performance Deposit. Prior to installing any portion of the Installation, Parley shall deposit the amount of Twenty Thousand Dollars ($20,000) (the "Deposit") to the City's escrow account as a guarantee of the performance of all obligations of Parley herein, including but not limited to timely removal of the Installation and restoration of the existing conditions. Parley shall obtain routing information for the City's escrow account from the City

Manager or his designee. If Parley shall fully observe and perform all of the terms of this Agreement, the Deposit shall be returned to Parley at the end of the Agreement.

3.5.7 Mooring Blocks. At the end of the exhibition, the mooring blocks shall be donated to the City for City's use. Once installed, and notwithstanding anything else in this Agreement to the contrary, the mooring blocks shall not be removed and shall remain in place. Upon termination or expiration of this Agreement or upon the removal of the other components of the Installation, ownership of the mooring blocks shall automatically transfer to the City, and the mooring blocks shall be immediately available for City's use.

3.6 Operations

3.6.1 Maintenance. Parley shall maintain the Installation and keep the Installation in a continuously safe and clean state. Parley shall be responsible for ensuring that the moorings and all other safety and security elements are in proper functioning condition. City, in its discretion and in consultation with Parley, may perform day-to-day maintenance and cleaning as needed. City may, but is not obligated to, remove or alter the Installation as needed to remove any hazardous or dangerous condition.

3.6.2 Safety. In its performance of this Agreement, Parley shall act so as to avoid injury or damage to any person or property. In carrying out the Agreement, Parley shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees and the public appropriate to the nature and the conditions under which this Agreement is to be performed.

3.6.3 Emergency Planning. Prior to installing the Installation, Parley shall develop a contingency plan for any emergencies that may arise as a result of the Installation, including but not limited to a plan to recover any component of the Installation that may become unsecured and a plan to completely remove the Installation in a quick and efficient manner in the event of an imminent weather event or other potential risk. Parley shall communicate any emergency plans to City. Parley shall provide City with emergency contact information where Parley's emergency representative Ian Griffith, or his designee may be reached 24 hours a day in the event of an emergency. In the event Parley's representative expects to be unavailable, he or she shall provide City with an alternative emergency contact.

3.6.4 Parley's Representatives. Parley hereby designates Cyrill Gutsch, or his or her designee, to act as its representative for the performance of this Agreement. Parley's representative shall have full authority to represent and act on behalf of the Parley for all purposes under this Agreement. Parley agrees to work closely with City staff in the performance of this Agreement and shall be available to City's staff at all reasonable times.

3.7 Rights in the Installation

3.7.1 Parley's Ownership. Parley shall continue to own the Installation. City shall not obtain any ownership interest in the Installation.

3.7.2 Representation and Warranty. Parley represents and warrants that the Installation is the original work of the Artist and that the Artist owns all intellectual property

rights therein. Parley further represents and warrants that Parley has obtained from Artist all rights, licenses, or other authorizations necessary for Parley to convey the rights that are conveyed to City under this Agreement.

3.7.3 Copyright. The Artist shall retain all rights under Copyright Act of 1976 for original works produced under this Agreement except as otherwise provided in this Agreement. City and its assigns are not responsible for any third party infringement of Artist's copyright and for protecting the intellectual property rights of Artist. Any registration of a copyright under the State's Register of Copyrights shall be the sole responsibility of the Artist, and the costs of such registration shall be borne by the Artist.

3.7.4 Promotion. Parley, with due and lawful consent of the Artist, grants to City and its assigns an irrevocable license and right to document the Installation, distribute and authorize the making, display, and distribution of such documentation (e.g. photographs, drawings, etc.) for noncommercial purposes, including but not limited to advertising, brochures, media publicity, educational and promotional materials, postcards, booklets, catalogues and other similar publications. Any material created pursuant to this Article 3.7.4, including but not limited to photographs needs to be approved by the Artist before its publication or use by or for the City, which approval shall not be unreasonably withheld. This Section shall not in any way be construed as a license to City to make actual replications or reproductions of the Installation or to install those replications or reproductions. Parley is not required to give credit to City in any public showing under Parley's control or in documentation of the Installation. All uses of documentation by City are required to contain a copyright notice "© 2016 Doug Aitken" and credit to Doug Aitken.

3.7.5 Waiver. Parley, on behalf of and with the express consent of Artist, waives any and all claims arising against the City, its elected and appointed officials, employees and assigns, and its agents, officers and employees, arising under the Federal Visual Artist Rights Act, the California Art Preservation Act, and any other local, State, Federal or international laws that convey rights of the same nature as those conveyed under the California Civil Code or any other type of moral right protecting the integrity of works of art. City has no obligation to pursue claims against third parties to remedy or prevent alteration of the work.

3.7.6 Indemnification. Parley shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity related to the Installation.

3.8 Insurance

3.8.1 Time for Compliance. Parley shall not commence installing the Installation under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Parley shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this

Agreement for cause. (As used in this Agreement, the term "subconsultant" shall refer to any person or entity hired by Parley to perform installation and removal of the Installation.)

3.8.2 Minimum Requirements. Parley shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by Parley, its agents, representatives, employees or subconsultants. Parley shall also require all of its subconsultants to procure and maintain the same level of insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

3.8.2.1 Marine General Liability. Parley shall maintain limits no less than $1,000,000.00 per occurrence. In addition to $1,000,000.00 marine general liability policy, Parley shall maintain a $5,000,000.00 umbrella coverage.

3.8.2.2 Worker's Compensation and Employer's Liability. The minimum scope and amount of Worker's Compensation coverage shall be as required by the State of California and Employer's Liability Insurance. Employer's Liability shall have limits of $1,000,000 per accident for bodily injury or disease.

3.8.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Parley shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

3.8.3.1 Marine General Liability. The marine general liability policy shall include or be endorsed (amended) to state that: (1) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Work or operations performed by or on behalf of the Parley, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Parley's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Parley's insurance and shall not be called upon to contribute with it in any way.

3.8.3.2 All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents, and volunteers. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by Parley.

3.8.4 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance

shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents, and volunteers.

3.8.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Parley shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents, and volunteers; or (2) the Parley shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

3.8.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

3.8.7 Verification of Coverage. Parley shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.8.8 Reporting of Claims. Parley shall report to the City, in addition to Parley's insurer, any and all insurance claims submitted by Parley in connection with the Services under this Agreement.

3.9 Indemnification

3.9.1 Scope of Indemnity. To the fullest extent permitted by law, Parley shall defend, indemnify and hold harmless the City, and its directors, officials, officers, employees, volunteers and agents, from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable legal counsels' fees and costs of litigation, arising out of, incident to, or related to the Installation or this Agreement, including the City's active or passive negligence, except for such loss or damage arising from the sole negligence or willful misconduct of the City.

3.9.2 Additional Indemnity Obligations. Parley shall defend, with counsel of City's choosing and at Parley's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Parley's duty to indemnify City that may be brought or instituted against City or its directors, officials, officers, employees, volunteers or agents. Parley shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, volunteers or agents as part of any such claim, suit, action or other proceeding. Parley shall also reimburse City for the cost of any settlement paid by City or its directors, officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Parley shall reimburse City and its directors, officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs

incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Parley's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents, or volunteers.

3.9.3 Legal Challenges. Parley agrees to defend, indemnify, and hold the City harmless, with counsel of City's choosing, from costs and expenses, including attorney fees, incurred by the City or held to be the liability of the City in connection with the City's defense of its actions in any proceeding brought in any State or Federal court, or any administrative tribunal, challenging the City's actions with respect to this Agreement, the Installation, or any authorization, approval or other procedure related to this Agreement or the Installation, including but not limited to actions related to environmental review pursuant to CEQA. Parley understands and acknowledges that the City is under no obligation to defend any legal actions.

3.9.4 Waiver of Damages. It is acknowledged by the parties that City is entering into this Agreement to provide a location for Parley's Installation. Parley understands and agrees that City would not have entered this Agreement if it were to be liable in damages for breach of this Agreement. As a result, Parley understands and agrees that City shall not be liable for damages to Parley or any successor for breach of this Agreement or for any cause of action that arises from this Agreement. Parley's remedies shall be limited removal of the Installation.

3.10 Miscellaneous

3.10.1 No Employment Relationship. Parley is not an employee, agent or representative of the City. Parley shall maintain complete control over its employees and its subcontractors/subconsultants and shall pay all wages, salaries and other amounts due such personnel in connection with their performance as required by law. Parley shall be responsible for all reports and obligations respecting such personnel, including but not limited to, social security taxes, income tax withholdings, unemployment insurance, and workers' compensation insurance.

3.10.2 Labor Laws. Parley shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the Installation, including all Cal/OSHA requirements, and shall give all notices required by law. Parley shall be liable for all violations of such laws and regulations. By its signature hereunder, Parley certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the work.

3.10.3 Business License. Parley, and all subconsultants shall obtain a City of Avalon business license.

3.10.4 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Los Angeles County.

3.10.5 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.10.6 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.10.7 Construction; References; Captions. Because the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Parley include all personnel, employees, agents, and subconsultants of Parley, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Agreement.

3.10.8 Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.10.9 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

3.10.10 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.10.11 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.10.12 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.10.13 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

3.10.14 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.10.15 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

[SIGNATURES ON FOLLOWING PAGE]

PARLEY, LLC By: _____ Name and Title: _____ *Attest*: By: _____ Its: Secretary	**CITY OF AVALON** By: _____ Name and Title: David Jinkens, City Manager *Attest*: _____ City Clerk *Approved as to form:* Best Best & Krieger LLP _____ City Attorney

EXHIBIT A

Installation and Removal Plan with Identification of Designated Area

PROJECT #16025

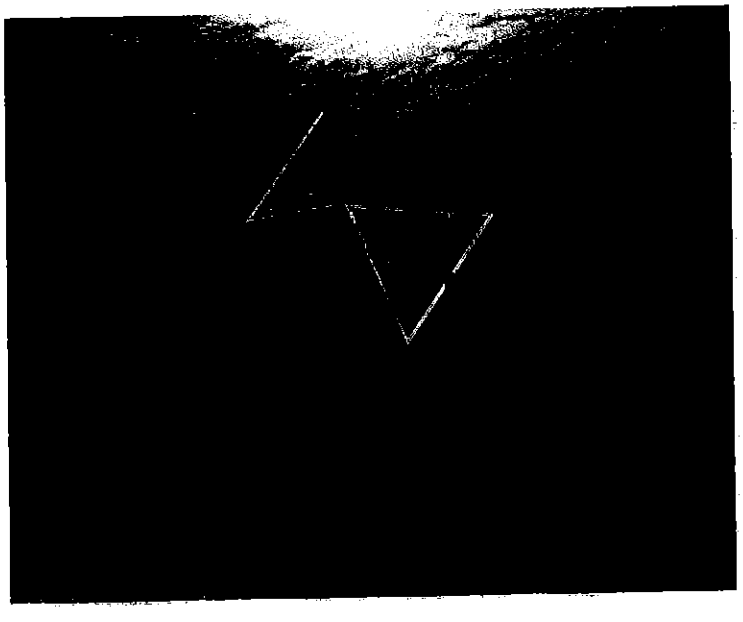
DOER
Deep Ocean Exploration and Research

Underwater Pavilions

Installation and Removal Plan

Created by DOER Marine on behalf of the Parley Foundation

August 2016



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Project Description

The Underwater Pavilions Project is an anticipated 3-month temporary mooring installation planned to begin in September 2016 in the City of Avalon Dive Park off the coast of Santa Catalina Island, California. The scope of work has been streamlined to conform to existing City of Avalon mooring protocols (attached) and no longer includes a floating platform. The project requires the addition of seven 2500-lb moorings to ensure safety and stability. The temporary moorings will be placed within the dive park to anchor the three pavilion structures. When the Pavilions are removed, the mooring blocks will be repurposed to the dive park for use at the end of service. With one central mooring block to the three pavilions, and two more per pavilion, the pavilions have been engineered for the duration of the installation. See the 3D concept view below for a rough rendering of the configuration.

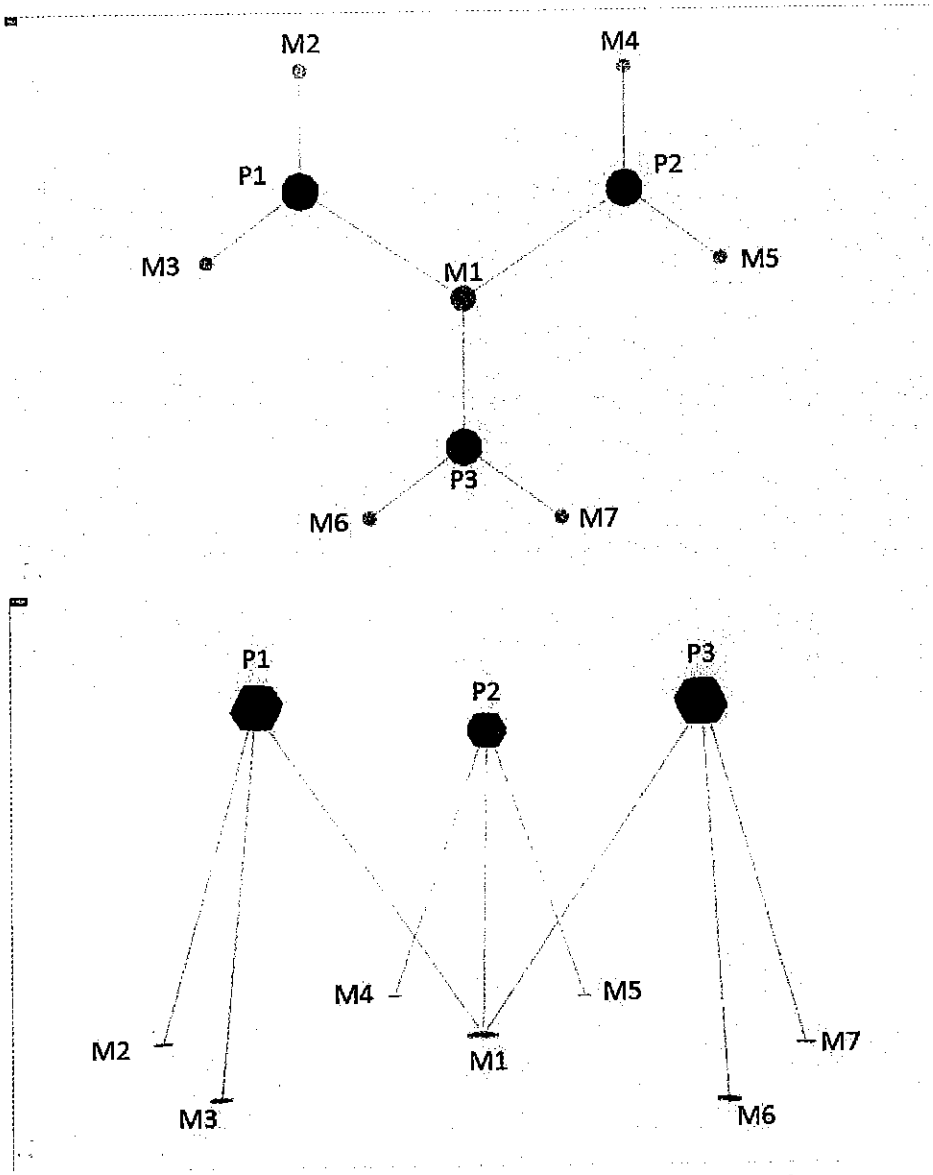

Figure 1: Plan view (top) and 3D side view (bottom) of pavilion/mooring configuration.

Local Avalon companies will be utilized for the project. This not only meets the City requirements for mooring installations but also ensures that local insurances and standards have been met. Examples of work that will be carried out by Avalon based firms include transporting the pavilion structures to Avalon, assisting with final assembly in the Catalina Boat Yard, and securing of the mooring blocks by Avalon Mooring & Diving Service, Inc. (referred to in the remainder of this document simply as Avalon Mooring).

DOER Marine will provide GPS coordinates to Avalon Mooring for the placement of the seven mooring blocks (see Figure 2 on next page). The full system will fall within the dive park boundaries but outside the marine protected area. The area identified within the dive park for the temporary moorings is one that is not subject to close/passing vessel traffic and is in a remote area of the dive park that has low utilization. This location is optimal for safety of the pavilions, boating traffic and visitors. Divers visiting this section of the park are typically the most experienced visitors, most with advanced diving certifications. The pavilions and their mooring lines represent no entanglement hazard.

The project also includes the installation of a live feed video system. This is similar to the existing live feed from Avalon Harbor. It provides visitors with a way to enjoy the pavilions without ever entering the water. It also allows monitoring for early detection of any problem that might arise.
Avalon Mooring will assist with the installation of this feature. A single cable will run to shore from an electrical housing anchored to the central mooring block. On shore, the cable will be routed to a temporary shed behind the Catalina Casino via rubber cable protector mats. Power will be provided by the Casino.

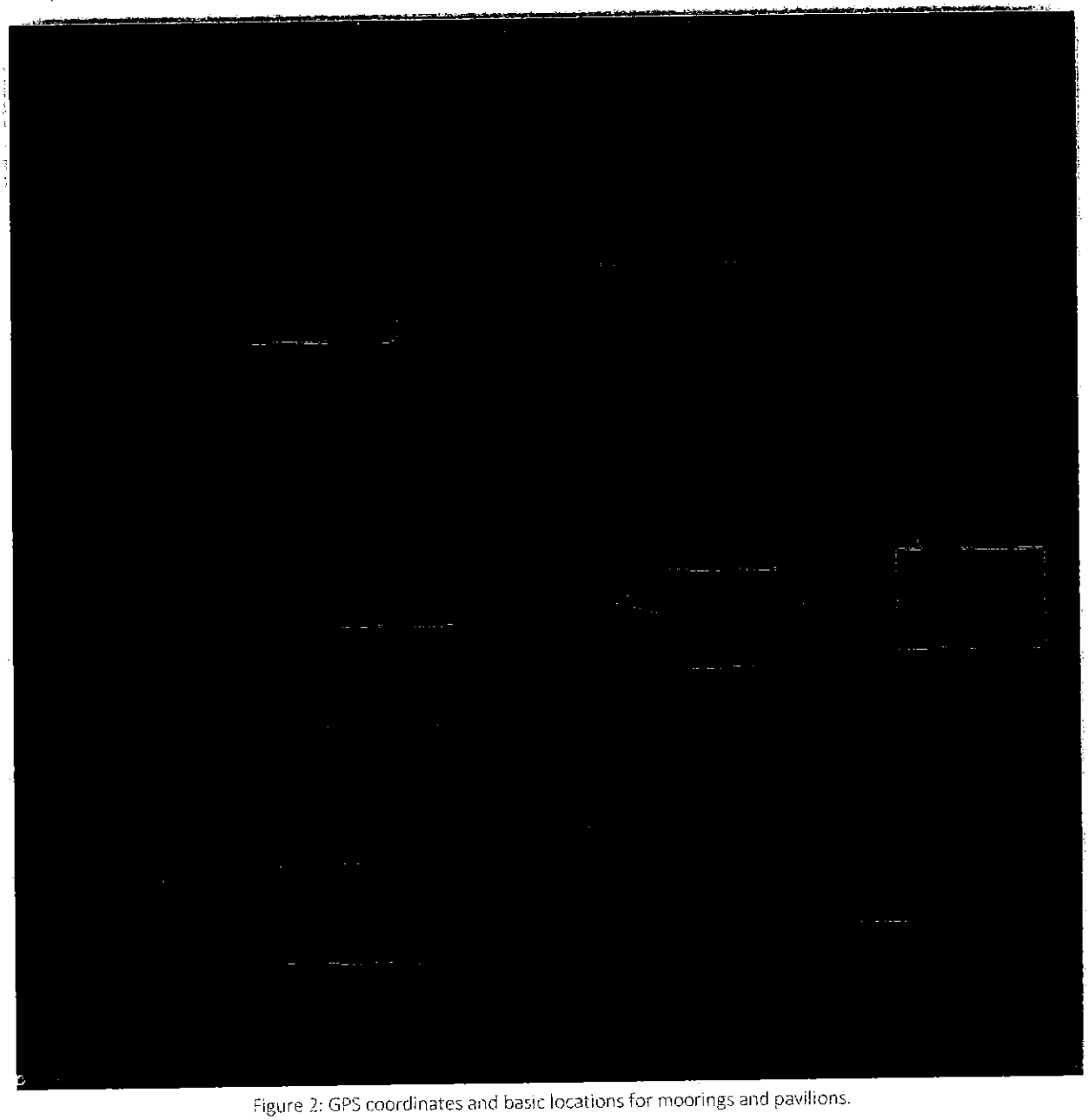

Figure 2: GPS coordinates and basic locations for moorings and pavilions.

Install Plan

The pavilions will be shipped in semi-disassembled pieces from the Port of Los Angeles/San Pedro to Pebbly Beach in Catalina by Avalon Freight Services. Avalon Freight Services will load the pieces onto a flatbed truck and deliver them to the designated space in the Catalina Boat Yard. Project personnel will complete the assembly of each pavilion.

The moorings and pavilions will be installed by Avalon Mooring. The timeline of the install plan is as follows:

Day 1: Install Mooring Blocks

Avalon Mooring will manufacture the seven mooring blocks (see Figure 3 for example) and install the blocks at the GPS coordinates provided by DOER Marine. Because Avalon Mooring already handles the existing moorings in the dive park, they are familiar with the boundaries of the park and best practices for placement. One day has been set aside for mooring block install, with one additional day for contingency.

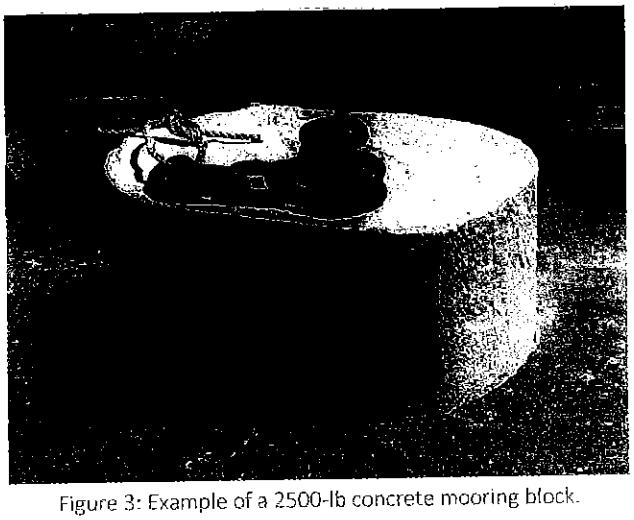

Figure 3: Example of a 2500-lb concrete mooring block.

Day 2: Install Live Feed

Avalon Mooring will again provide their boat and crew for one day. A team of their divers will assist DOER Marine with installation of the camera interface housing at the central mooring, plus laying the cable securely and safely along the bottom to shore. DOER Marine will provide on-shore components.

Day 3-5: Install Pavilion Structures

One day per pavilion has been set aside for installation of the buoyant pavilion structures. The process will begin with the Catalina Boat Yard assisting with using a launch trailer to dispatch a pavilion into the water. Avalon Mooring will tow the pavilion across to the dive park. They will then winch down each structure, and their dive team will secure the polypropylene lines to the mooring chains. Camera system will be positioned and wet mated (plugged in) at this time.

Removal Plan

At the end of the installation, the pavilions will need to be removed from Catalina. This is planned for December which is a normal end to the dive season. As previously mentioned, the mooring blocks will be repurposed to the dive park.

Day 1-3: Remove Pavilion Structures

One day per pavilion has been set aside for removal of the system. This includes removal of the cable, , camera system, and pavilion structures. A team of divers will release the mooring line shackles, causing the buoyant pavilion structures to float to the surface. Once at the surface, Avalon Mooring will tow the pavilions back to the Catalina Boat Yard for disassembly. At the end of the project, the pavilion parts will be shipped back via the Avalon Freight Service for the Doug Aitken Studio's future use.

Potential Obstacles

DOER Marine has studied recent historical weather and climate conditions (i.e. wave height, wind speeds, etc.) in and near Catalina. In addition, we have listened to some of the long time divers in the area and met with Avalon Mooring to validate the data and to obtain a good cross section of experience for reference and planning. Common experiences with Santa Ana Winds, Catalina Eddy, and the possibility of hurricanes all point to the necessity of having an emergency removal plan for the pavilions.

DOER will monitor such conditions in advance and plan accordingly. For example, Avalon experienced the effects of Hurricane Marie in 2014. Hurricane Marie started as a tropical wave that crossed Central America. By the time it was classified as a hurricane, it was still south of Mexico. Even with some warning, Avalon still sustained numerous damages to moorings, boats, and beaches. If another storm were to occur this season, the project would err on the side of caution, and be ready to make a storm-condition controlled removal of the pavilions well in advance of it reaching Catalina. Please see the contingency plan for details.

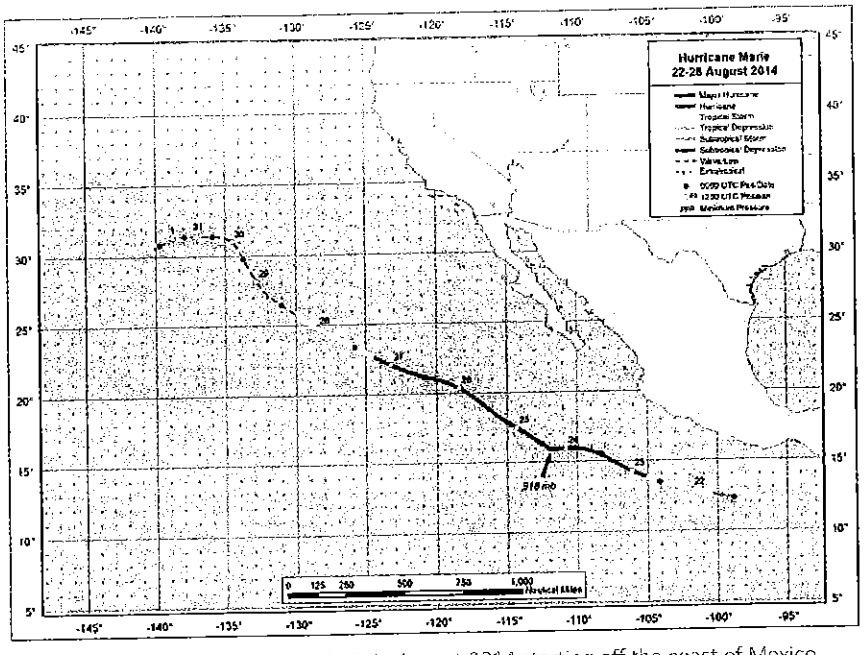

Figure 4: Path of Hurricane Marie in August 2014 starting off the coast of Mexico
[Courtesy of NOAA: http://www.nhc.noaa.gov/data/tcr/EP132014_Marie.pdf]

Contingency Plan for Removal

According to Avalon Mooring, it would take a day to remove the structures in storm conditions. A diver team would unplug the camera system and release the shackles on the lines, allowing the pavilions to float to the surface. Avalon Mooring would then tow the pavilions to the Cabrillo Mole Crane, where each one would be lifted to shore. The pavilions would be lifted to a flatbed truck that would take them back to the Catalina Boat Yard, where they would stay until further notice.

The moorings can remain in place under these circumstances. The camera system components will not require removal as they can be securely anchored in place to endure storm conditions.

Summary

DOER Marine and Avalon Mooring both believe that the Pavilions should fall under a temporary-replacement mooring category. This provides a safe and proven effective methodology that is familiar to the maritime businesses in Avalon and to the Harbormaster. The pavilions meet the parameters for a temporary mooring installation yet represent far less risk than a traditional mooring. Because there are no fuels or oils, there is no pollution risk. Because the project is in the dive park, there is no navigational hazard for other vessels. Because certified divers will be visiting the pavilions, there is no additional liability to the City than what they might normally experience in public dive park operations. The pavilions plan has been modified to eliminate the floating platform. This was the element that the City had expressed primary concern about in regard to safety. The park already has submerged points of interest

including giant kelp, a submerged platform, moorings, and two wrecks. The pavilions are no more hazardous than these existing features. Local dive shops that rent the majority of gear used in the park and provide air fills already utilize liability releases and waivers which provide an additional layer of protection to dive operators and to the City of Avalon for any injury resulting from use of the dive park. The principals of the pavilions project will carry all of the normal marine insurance required under the City's mooring permit and like any other mooring proposal, will be reviewed and overseen by the Harbormaster.

The Pavilions project will bring greater, "beyond art" awareness about the importance of ocean health and protection to the general public and will help promote Avalon as a City that people can point to as an example of good ocean stewardship.

Contact information

For DOER Marine:
Liz Taylor or Ian Griffith
510-530-9388
Liz@doermarine.com or ian@doermarine.com

For Parley Foundation:
Bill Samuels or Iva Rukelj
bill@wrsamuelslaw.com or iva@wrsamuelslaw.com

For Doug Aitken Studio:
Doug Aitken
310-822-6550
dougaitken1@gmail.com

CITY OF AVALON

WATERSIDE PERMIT APPLICATION

An application fee of $217.00 is due at the time the application is submitted to the Harbor Department. Applications should be sent to the Avalon Harbor Department, P.O. Box 1085, Avalon, CA 90704, or delivered to the Harbor Master's office, #22 Pleasure Pier, Avalon, CA.

Deadline for new applications is December 15th of each year.

Please complete this application in full detail. Questions that require further details should be answered on an attached sheet.

1. Name of Applicant: Parley Foundation
2. Address: 187 Lafayette St City New York Zip 10013
3. Phone (Home) 201-482-1020 (Avalon business) 510-530-9388
4. Name of Business/Project: Pavilions underwater exhibit
5. Location of Avalon Base of Operations: Avalon Dive Park
6. Please attach a detailed Project/Business description to this application and label the attachment as Exhibit A.
7. On the map provided, sketch the project/business activities, showing the proposed locations of all waterborne traffic and activity.
8. Duration:

   Hours of Operation _____

   Days of Operation _____

   Months of Operation Sept - Dec 2016

9. Does this activity include overnight accommodations on boat ☐ or shore ☐?
10. Describe the number, length, and types of watercraft which will be added to the City waters? N/A

    Number_____ Trips per day_____ Type_____

    Schedule _____

11. For scheduled services, including shore boats, where will queuing be and for what duration? N/A

12. How will people be transported to the facility? people can swim to it

How often? during dive park hours of operation

Number of passengers per trip? N/A

13. What berthing/mooring will be required? Moorings (temporary)

14. If the proposed business/activity requires a new structure or modification to harbor facilities or the harbor itself, including the moles and pier, attach the proposed plans. N/A

15. How many new employees would be Avalon-based? Using existing Avalon business

16. Communications:

VHF Channels: N/A Phone: _____

If answering machine, hours of operation: _____

17. If a sign will be required, list the size and submit a drawing. Please note that a Sign Permit Application must be obtained from and submitted to the Planning Department for approval. N/A

18. Please attach all permits and certifications required to legally perform the activity being applied for in this application.

Coastal Commission Waiver applied for
ACOE permit/waiver - applied for
Contract with City of Avalon - pending
Install plan attached to this document

Applicant Acknowledgement

Applicant agrees that if this Waterside Permit is granted, he/she will conduct his/her business in accordance with all federal, state, and local laws, including the City's planning and zoning laws. Applicant also agrees to abide by the terms of this Permit and all rules, regulations, and/or restrictions placed upon it by the City Council. Applicant must follow all regulations regarding the use of City facilities. This Permit may be revoked, suspended, or further conditioned at any time by the City Council for violations of the foregoing, or immediately in the City Manager's discretion if the public's health, safety, or well-being is threatened by the actions or inactions of the Applicant. Failure to pay use fees shall also be a violation of the terms of this Permit. Any decision made by the City Council regarding this Permit is final and conclusive. Decisions of the City Manager may be appealed to the City Council if the City is notified within 10 days of the City Manager's decision, but the City's Manager's decision shall remain in effect until the next regular meeting of the City Council at which an appeal may be heard.

Applicant Name: Liz Taylor Email Address: Liz@doermarine.com

Business/Activity Name: Parley - Underwater Pavilions

Applicant Signature: [signature] Date: 25 August 2016

Application Presented at the City Council Meeting on: _____

Application Approved: ____

Application Denied: ____

Application Approved with Attached Conditions: ____

_____

_____

_____

_____

_____

_____ City Manager _____ Date

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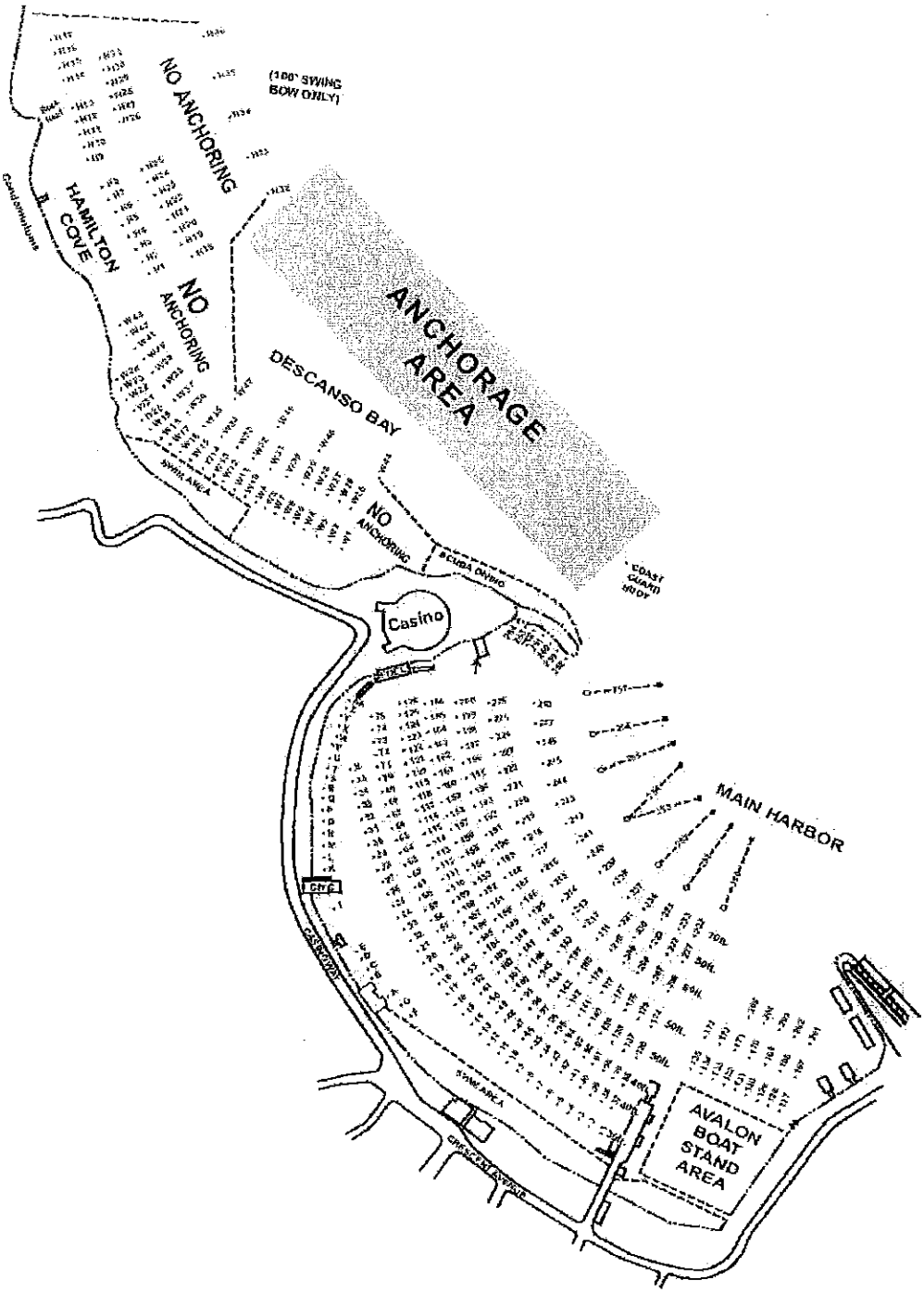

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CITY COUNCIL OF THE CITY OF AVALON

MEETING DATE: December 20, 2016 **AGENDA ITEM:** 12

ORIGINATING DEP: Administration **CITY MANAGER:**

PREPARED BY: David Jinkens, City Manager

SUBJECT: **LEASE FOR THE CASINO DOCK RESTAURANT**

RECOMMENDED ACTION
Approve Casino Dock Restaurant Lease and Authorize the City Manager to sign same.

REPORT SUMMARY:
At its meeting of October 4, 2016 the City Council, on a motion by MPT Olsen, seconded by Council Member Sampson and approved unanimously authorized and directed the City Manager to negotiate final terms and conditions for a lease agreement between the City and Russ and Jenny Armstrong. The agreement before you is the product of this negotiation. The City Attorney's Office has prepared a lease agreement that is attached.

The motion to proceed was based on assumptions about cost at that time to build the building shell and interior of the café and the term needed to recoup funds invested in the property.

1. **Amount** - Minimum $4,000 base rent or 8% whichever is higher. At a minimum the base rent is paid whether the restaurant is open or not open. As the business grows, the 8% will grow the rent. The incentive to the owner is to keep the restaurant open. .
2. **Term** 15, 10, and 5 (*the extra 5 years is needed to align the term of the agreement with the term of the loan to the lessee to build the building)*
3. **A CPI** (Consumer Price Index (Los Angeles / Long Beach) on the base rent be calculated at the beginning of each 4th year of the agreement.
4. **Open** -The restaurant would be open a minimum of 9 months per year weather permitting but the lessee will endeavor to keep it open longer weather and business climate permitting.
5. **Taxes** - The lessee will pay a possessory interest tax as determined by the LA County Assessor. Since the building will be built and paid for by the lessee but become property of the City, the lessee will not be paying property taxes on the building according to the City Attorney's Office. Lessee will have to pay water, sewer, gas, saltwater, and refuse charges as would any other business.
6. **Amount of Leased Space** - The lessee will be leasing interior and exterior space of approximately 2000 square feet. Should additional *substantive* lease space be needed or requested by lessee, additional costs would be incurred.
7. **Cost of the Building** – The Armstrong's are to pay for the construction of both the building shell and interior improvements and building would become property of the City. The estimated construction cost of the exterior and interior building is $600,000. This cost is $100,000 higher than the estimated cost previously reported. I am informed

by the Public Works Director that this increase in cost is consistent with previous City estimates to have the City build the building shell only. Had the City built the building, costs for construction were estimated in a bid previously received to be 30% higher than if built by the lessee. For this reason the term of the agreement is proposed to be extended by 5 years to allow the lessee to have a term on the loan consistent with the term of the debt. The interest rate on the loan is reported to be 3.5%.

8. **Transfer or Conveyance of Title** – City approval is needed before the property can be transferred in title to any other party along with payment of a 5% City transfer fee unless the property is transferred or otherwise conveyed to a member of the immediate family. (See Section 18, pages 13-14 of lease agreement.)

As a reference, the cost to finance $600,000 construction of the building and interior improvements over thirty years at an interest rate of 3.5% is calculated as follow:

Loan term (years):

30 years

Interest rate:

3.5%

Loan amount:

$600,000.00

Total monthly loan payment

$2,694.27

GOAL ALIGNMENT: The proposed lease of City lands in a public and transparent process is consistent with sound governmental policy and promotes maintaining a healthy local business climate.

FISCAL IMPACTS: Had the City constructed the casino dock restaurant, the low bid (Alternate Bid for the building shell alone was $539,000 several months ago). The City is getting a new structure that is paid for by the lessee. The City lease payment amount reflects the contribution made by the lessee to the construction of the new building and its transfer of title to the city upon completion. .

CONSEQUENCES OF NOT FOLLOWING RECOMMENDED ACTION: The City would have to seek other proposals to build and operate the restaurant if the lease agreement is not approved.

FOLLOW UP ACTION: Complete all attachments to the lease and obtain all insurance and signatures.

ADVERTISING, NOTICE AND PUBLIC CONTACT: This item was properly listed on the posted agenda pursuant to the Brown Act.

Attachment (1) Casino Dock Lease Agreement

LEASE AGREEMENT

This Lease Agreement ("Lease"), effective _____, 2016 ("Effective Date"), is entered into between the CITY OF AVALON, a municipal corporation ("Lessor"), and Russell and Jenny Armstrong, dba Casino Dock Cafe ("Lessee"), (each individually a "Party" and collectively the "Parties").

RECITALS

A. Lessor is the owner of certain real property, including the improvements thereon, located in the City of Avalon, referred to as the Casino Dock and more accurately described in Exhibit 1 (the "Property").

B. Lessee desires to lease from Lessor, and Lessor desires to lease to Lessee, a portion of the Property as described in more detail in the Lease on the terms and conditions set forth herein.

C. Lessee desires to construct a restaurant building improvements on the Property (the "Restaurant"), which has been approved by Lessor. Lessee shall be solely responsible and bear all costs for the construction, operation and maintenance of the Restaurant in conformity with Lessor's approvals during the term of this Lease, but Lessor shall own the Restaurant during and after the Lease term.

LEASE

NOW THEREFORE, the Parties agree as follows:

1. Recitals. The above recitals are true and correct and incorporated herein.

2. Property. Lessor leases to Lessee, and Lessee leases from Lessor the Property, described in Exhibit 1 attached hereto and incorporated herein by reference, consisting of approximately 2,000 square feet of interior and/or exterior space. Lessor and Lessee agree that if Lessor makes additional space available to Lessee and Lessee accepts such space, that space shall automatically be included in the Property and the terms of this Lease shall automatically apply thereto, unless otherwise agreed by the Parties.

3. Term.

(a) *Initial Term.* This Lease shall be effective and binding from and after the Effective Date and will continue, unless sooner terminated in accordance with the provisions of this Lease, for fifteen (15) years following completion of the Restaurant as defined in Section 8(h) below ("Initial Term"). Within ten (10) days following completion of the Restaurant, as defined in Section 8(h), Lessor and Lessee shall confirm the exact dates of the Initial Term in writing.

(b) *Renewal Terms.* Lessor shall have two successive options to renew this Lease, the first for a ten (10) year period and the second for a five (5) year period (each period a "Renewal Term") on the same terms and conditions as the Initial Term (except for any exercised Renewal Terms), provided Lessor gives Lessee written

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notice of intent to renew the Lease at least sixty (60) days but no more than one hundred eighty (180) days prior to the end of the Initial Term or first Renewal Term, as applicable. Lessor's failure to exercise the first Renewal Term shall waive its right to exercise the second Renewal Term. The Initial Term and Renewal Terms are referred to collectively herein as the "Term."

(c) *Termination.* Lessee may terminate the Lease on sixty (60) days' written notice to the Lessor.

4. Rent.

(a) *A Set Monthly Amount or Calculated on a Percentage of Total Sales Basis.* Lessee shall pay Lessor rent each month, the higher of either:

i. Four thousand ($4,000) per month as the base rent plus any adjustment pursuant to Section 4(a)(ii) below. This is based on approximately 2,000 square feet of interior/exterior space.

ii. An amount equal to eight percent (8%) of all gross receipts at the Property. Gross receipts shall mean the total amounts received from all revenue sources during the relevant period, except admission taxes, sales taxes, California redemption taxes, City of Avalon Use Taxes/fees, reasonable commissions which are paid to third parties and amounts received from activities upon which City Harbor and Use Fees and Admission Taxes are based. For purposes of calculating Gross Receipts, such commissions paid to third parties shall not exceed 20% of the price paid by the consumer/customer.

In the event that Lessor makes additional space available for Lessee's use, that space may be included in the Property, as defined in Section 1 of this Lease, provided that Lessor and Lessee execute an amendment to the Lease to address any additional terms and conditions, including any increase in rent.

The amount of the base rent in Section 4(a)(i) shall be automatically increased at the start of each fourth year of the Initial Term and continuing for any Renewal Term on July 1 in an amount equal to any increase in the most recent Consumer Price Index (Los Angeles / Long Beach) released annually by the U.S. Bureau of Labor Statistics . In the event the Consumer Price Index decreases, no change in rent shall be made.

(b) *Payment Procedures.* Lessee shall remit its monthly rent by no later than the thirtieth day after the end of each month during the Term of this Lease to Lessor at the address stated herein. There shall be no off-season period where rent is reduced or not due; rent shall be due on the thirtieth day of each month regardless of whether the Property was open for business during the month. Lessee is responsible for making the payments required by this section and Lessor will not and is under no obligation to send monthly invoices to Lessee regarding any such payments.

(c) *Under-Payment Penalties.* In addition to the late payment penalties described in Section 19 of this Lease, if Lessor determines that Lessee has under-

reported its income resulting in a rent payment of less than what it should have paid, the following penalties apply:

(i) If the under-reporting of total sales resulted in a rent payment of greater than 90% of the correct rental amount, Lessee shall immediately pay to Lessor the difference, plus a penalty equal to 10% of the difference.

(ii) If the under-reporting of total sales resulted in a rent payment of less than or equal to 90% of the correct rental amount, Lessee shall immediately pay to Lessor the difference, plus a penalty payment equal to the entirety of that month's rent, for each month the under-reporting occurred.

(d) *Disclosure.* At the time that Lessee is required to pay rent each month pursuant to this Section 4, Lessee must provide Lessor with detailed information regarding the total gross receipts for each month, regardless of whether Lessee is required to pay the base rent in Section 4(a)(i).

(e) *Year-end Annual Reconciliation.* Within 30 days after the end of every calendar year during the Term, based on the information provided by Lessee and any independent audit of Lessor, Lessor shall determine: (1) the amount Lessee would have paid for the entire calendar year if Lessee paid the base rent in Section 4(a)(i) each month; and (2) eight percent (8%) of the Lessee's total gross receipts as defined in Section 4(a)(ii), for the entire calendar year. Lessee is responsible for paying Lessor the higher of the two amounts ("Higher Amount"). If Lessee's monthly rent payments paid to Lessor for the entire year are less than the Higher Amount, Lessee shall pay Lessor the difference between what was paid and the Higher Amount within thirty days of receipt of such information from Lessor. If Lessee's monthly rent payments paid to Lessor for the entire year equal more than the Higher Amount, Lessor shall reimburse Lessee the difference between what was paid and the Higher Amount within thirty days of making the determination in this Section 4(e).

5. Use.

(a) *Use.* Lessee shall occupy and use the Property for restaurant purposes, including the installation, maintenance and use of furniture fixtures and improvements necessary to provide and accommodate the preparation of food and beverages, conduct food and beverage sales and consumption and for no other purpose whatsoever. After its construction, the Restaurant shall be open for business at least nine (9) months each year for the Term of the Lease and Lessee may determine their own hours and days of operation. Lessee shall endeavor to keep the restaurant open for a longer period of time subject to favorable weather and business conditions.

(b) *Compliance with Law.* Lessee shall, at all times and at Lessee's expense, comply with all applicable federal, state and local laws, rules, regulations, and orders, and all covenants and restrictions of record regulating the Property and Lessee's use of the Property, including but not limited to any license or permit issued by the Alcohol and Beverage Control Division regarding the Property. Lessee shall not use nor permit the use of the Property in any manner that will violate the same or disturb other property owners or tenants in the areas surrounding the Property or Property.

(c) *Condition of Property.* Lessee has examined the Property and agrees to take possession in an "as is" condition. Lessee acknowledges and agrees that Lessor has made no representations, guarantees or warranties regarding the Property, or its fitness for any particular purpose, or regarding any common areas or improvements thereon, nor has Lessor made representations, guarantees or warranties regarding whether the Property and common areas and improvements thereon comply with applicable laws, rules, regulations, orders, or any covenants or restrictions of record in effect at the Effective Date of this Lease. Lessee assumes all responsibility regarding the California Occupational Safety Health Act, the legal use and adaptability of the Property and compliance with all applicable laws, rules, regulations, orders and covenants or record in effect during the Term of this Lease relating to the Property except as otherwise specifically stated in this Lease.

6. Hazardous Waste and Trash Disposal. Lessee shall not use, generate, store or dispose of any Hazardous Materials on the Property or permit the contamination of the Property by Hazardous Materials. For the purpose of this section, Hazardous Materials shall include, without limitation, substances defined as "hazardous substances," "hazardous materials," "toxic substances," hazardous wastes," "extremely hazardous wastes" or "restricted hazardous wastes" or stated to be known to cause cancer or reproductive toxicity, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. sections 9601, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. sections 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. sections 6901, *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. sections 1317, *et seq.*; sections 25115, 25117, 25122.7, 25140, 25249.5, 25249.8, 25281, 25316 or 25501 of the California Health & Safety Code; or any substances so defined or stated in any of the regulations adopted and publications promulgated pursuant to said laws as they may be amended from time to time. Notwithstanding any other provision of this Lease, Lessee agrees to comply promptly, and at Lessee's sole cost, with all applicable federal, state and local laws, rules regulations, permits and orders governing the use, management, storage, handling, cleanup, removal, disposal and shipping of Hazardous Materials. Lessee shall dispose of all trash and waste generated at the Property in a trash container at a location designated by Lessor.

7. Special Conditions.

(a) *Outdoor Dining Tables and Chairs.* Outdoor dining tables and chairs on the Property are not required to be brought indoors during hours in which the Lessee is not operating a business on the Property.

(b) *Compliance with City Outdoor Dining Guidelines.* Lessee must comply with all of the requirements of the City of Avalon's current Guidelines for Outdoor Dining as approved by the City Council.

8. Construction of Restaurant.

(a) General. Lessee shall have the right, at Lessee's sole cost and expense, to construct the Restaurant and related improvements on the Property in accordance with the provisions of this Section 8.

(b) Approvals. Lessee shall construct the Restaurant in conformity with the permits and approvals issued by City of Avalon. Lessee shall use reasonable efforts to apply for and obtain any additional final licenses, permits, authorizations, consents, certificates, waivers and approvals required by (i) applicable government and private agencies or boards having jurisdiction, and (ii) any utility provider (each individually, an "Approval Authority"), as may be necessary for the development, construction and operation of the Restaurant on the Property, including, but not limited to, environmental licenses, permits, authorizations, consents, certificates, waivers and approvals, land development approvals, site plan approvals, zoning permits, use permits, building permits, occupancy permits, zoning changes, zoning relief (such as variances and special exceptions), any modifications or amendments to existing agreements or approvals with any Approval Authority as may be necessary for the development, construction and operation of the Restaurant, and any easements (that do not burden the Property, unless approved by Lessor, which approval shall not be unreasonably withheld, conditioned or delayed) necessary in connection with such development, construction and operation of the Restaurant (collectively, the "Approvals").

(c) Lessor's Review of Plans. Prior to commencing any construction, Lessee shall comply with the following:

i. Lessee shall submit to Lessor schematic drawings depicting in concept the new construction. Lessor shall not unreasonably withhold its approval in concept. Any disapproval shall be in writing and shall specify the reasons therefor, and failure to so disapprove within twenty (20) business days after delivery of such schematics to Lessor shall constitute approval.

ii. Lessee shall submit to Lessor for Lessor's approval a copy of Lessee's complete final construction plans and specifications, a copy of Lessee's contract with the general contractor, evidence of the general contractor's financial condition and satisfactory evidence that Lessee has obtained all necessary governmental permits and approvals necessary for the construction of the improvements in accordance with Lessee's complete final construction plans and specifications.

(i) Final working plans and specifications shall substantially conform to the schematic plans previously approved by Lessor. Changes from the schematic plans shall be considered to be within the scope of the schematic plans and shall not require Lessor's approval if they are not substantial or if they are made to comply with suggestions, requests or requirements of a governmental agency or official in connection with the application for a permit or approval.

(ii) Lessor and Lessee shall execute, enter into and deliver to each other, originals of an assignment of plans and specifications which shall give Lessor the right but not the obligation to acquire Lessee's rights and to assume Lessee's obligations with respect thereto should Lessee default. Lessee shall deliver to Lessor an original of an architect's consent and certification duly executed and entered into by Lessee's architect.

(iii) The contract shall give Lessor the right but not the obligation to acquire Lessee's rights and to assume Lessee's obligations under that

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contract should Lessee default. Lessor and Lessee shall execute, enter into and deliver to each other, originals of an Assignment of Construction Contract as to each contract to which Lessee is a party, and Lessee shall deliver to Lessor an original of a Contractor's Consent and Certification as to each party who contracts with Tenant, duly executed and entered into by such party.

(iv) The plans and specifications and construction contract shall bear evidence of having been approved by Lessee's construction lender, if any.

(v) If Lessor does disapprove any item submitted for its approval, it shall state the specific reasons therefor in writing, and the failure to so disapprove within twenty (20) business days after delivery to Lessor shall constitute approval.

(d) Notice of Nonresponsibility. No work of any kind shall be commenced on and no building or other materials shall be delivered for any improvements, nor shall any other building or land development work be commenced or building materials be delivered to the Property until at least ten (10) days after written notice has been given by Lessee to Lessor of the anticipated commencement of such work or the anticipated delivery of such materials. Lessor shall, at any and all times during the term of his Lease, have the right to enter the Property and to post and maintain on the Property and to record as required by law any notice or notices of non-responsibility provided for by the mechanics' lien laws of the State of California. The work prohibited by this section until ten (10) days' written notice thereof has been given to Lessor includes actual construction work, any site preparation work, installation of utilities, street construction or improvement work, or any grading or filling of the Property.

(e) Compliance. All work done pursuant to this Section 8 shall be done in full compliance with all applicable statutes, regulations, ordinances, orders, rules, conditions, codes and other laws pertaining to such work. Lessee specifically acknowledges that construction on the Property will be subject to the Americans with Disabilities Act (the "ADA") and all regulations issued pursuant thereto. All work performed on the Property shall be done in good workmanlike manner and only with materials of good quality and high standard.

(f) Clean Up. Lessee shall at all times keep the Property free from unreasonable or hazardous accumulations of waste materials and/or rubbish caused by any work on the Property. Immediately after full and final completion of the work, Lessee shall remove from and about the Property all waste materials and rubbish and all tools, construction equipment, construction machinery and surplus materials. All work required by this section shall be done at Lessee's sole cost.

(g) Notice. Should any claims of lien be filed against the Property or the improvements located thereon, or any action affecting the title to such property be commenced, the party receiving notice of such lien or action shall forthwith give the other party written notice thereof.

(h) Completion. Lessee shall diligently pursue completion of the construction of all improvements, additions and alterations. Lessee shall complete

construction within one hundred eighty (180) days after the commencement of construction; provided, however, that the time for completion shall be extended for as long as Lessee shall be prevented from completing the construction by Lessor Delay or Force Majeure. However, regardless of cause, failure to complete all construction within one (1) year following commencement of construction shall at Lessor's election terminate this Lease. For the purposes of this Lease, construction shall be deemed to have been completed when a valid certificate of occupancy has been issued for such improvements and Lessee's architect shall have furnished Lessor with a written certification that the improvements were completed substantially in accordance with the approved final plans and specifications.

i. Lessor Delay. "Lessor Delay" shall mean any delays caused in whole or in part by or through Lessor and/or Lessor's employees, representatives or agents, including, without limitation, Lessor's failure to reasonably cooperate with Lessee in the procurement of Approvals, and/or failure to approve any item requiring Lessor's approval in the timeframes provided (and if no timeframe is provided, than in a reasonably timeframe), and/or any unreasonable interference by any of Lessor's employees, representatives and/or agents with any obligations to be performed on the part of Lessee. In the event Lessee notifies Lessor of circumstances that could result in a potential delay in the construction of the Restaurant, Lessor and Lessee shall at all times act reasonably and cooperate with each other to mitigate such delay.

ii. Force Majeure. "Force Majeure" shall mean an act of God, an act of the public enemy, strike, lockout, boycott, picketing, riot, insurrection, fire, or any governmental law, order, rule, regulation or ordinance, or any other occurrence not within the reasonable control of the party claiming Force Majeure, excluding financial inability to pay debts. Any prevention, delay, nonperformance or stoppage due to Force Majeure shall excuse nonperformance for a period equal to any such prevention, delay, nonperformance or stoppage, except the obligations imposed by this Lease for the payment of rent, taxes, insurance or other monetary obligations, provided the party claiming such excuse notifies the other party of the force majeure event allowing the excuse within ten (10) business days of the first day of the event.

(i) As-Built Plans. Within ninety (90) days after completion of construction, Lessee shall furnish Lessor, at Lessee's expense, with one set of Mylar or Cronoflex "As-Built" plans, according to scale, showing such improvements as constructed in detail, including the location of underground and above ground utility lines.

(j) Indemnity. Lessee shall, to the maximum extent permitted by law, indemnify, defend and hold Lessor harmless from any and all claims, demands, liens, damages, losses, actions, liabilities, injuries and/or expenses (including, without limitation, reasonable attorneys' fees), in any manner related to, arising out of and/or resulting from, the performance or nonperformance of any work done pursuant to this Lease by or on behalf of Tenant, or the payment or nonpayment therefor. Lessor's indemnity rights under this section shall also inure to the benefit of any and all of Lessor's employees, agents, trustees, heirs, beneficiaries, trusts, successors, assigns, transferees and representatives, and to the benefit of any and all persons and/or legal entities who are, could be, or are alleged to be, liable for the obligations of Lessor and all of Lessor's employees, agents, trustees, heirs, beneficiaries, trusts, successors, assigns, transferees

and representatives. The rights and obligations of indemnity provided in this section shall not be exclusive and shall be in addition to such other rights and obligations as otherwise exist independent of the provisions of this section. The rights and obligations created by this section shall survive the completion of the construction and installation work, the payment therefor, and the acceptance thereof.

(k) Alterations. Lessee shall make no alterations to the completed improvements without the prior written consent of Lessor which approval shall not be unreasonably withheld. Notwithstanding the foregoing, Lessee shall be entitled to make alterations which are neither structural nor visible from the exterior or which cost less than TEN THOUSAND DOLLARS ($10,000) without Lessor's consent, so long as Lessee gives Lessor at least ten (10) days advance written notice of its intention to make such alterations.

(l) Mechanics' Liens. At all times during the term of this Lease, Lessee shall keep the Property and all building and improvements now or hereafter located on the Property free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Property.

i. Should Lessee fail to pay and discharge or cause the Property to be released from any such lien or claim within twenty (20) days after service on Lessee of written request from Lessor to do so, Lessor may pay, adjust, compromise, and discharge any such lien or claim of lien on such terms and manner as Lessor may deem appropriate. In such event, Lessee shall, on or before the first day of the next calendar month following any such payment by Lessor, reimburse Lessor for the full amount paid by Lessor in paying, adjusting, compromising, and discharging such lien or claim of lien, including any attorney's fees or other costs expended by Lessor, together with interest at the rate of ten percent (10%) per annum from the date of payment by Lessor to the date of repayment by Tenant.

ii. Lessee agrees to and shall defend, indemnify, protect and save Lessor harmless against liability, loss, damages, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for Lessee or persons claiming under it and from any other matter arising out of or in connection with the design or construction of any improvements under this Lease; provided, however, that nothing in this section shall be construed as a provision, clause, covenant or agreement which, under the provisions of Civil Code Section 2782 would be against public policy and void and unenforceable. All indemnity rights and duties shall survive the expiration or termination (for any cause) of the term of this Lease.

iii. In the event any lien is recorded, Lessee shall, within thirty (30) days after receipt of notice thereof, furnish the bond described in California Civil Code Section 3143 or any successor statute, which results in the removal of such lien from the Property.

(m) Ownership of Improvements. Lessor shall own all improvements built on the Property after their completion as defined in Section 8(h).

9. Lessee's Repair and Maintenance Obligations.

(a) Lessee shall keep in good order, condition and repair, and shall replace, if necessary, the Property and every part thereof, structural and nonstructural occupied or used by Lessee, whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements, or the age of such portion of the Property. This includes, but is not limited to, glazing, plumbing, heating, air conditioning, ventilation, electrical and lighting fixtures and facilities, all equipment within the Property, fixtures, walls (interior and exterior), ceilings, floors, windows, doors, plate glass, skylights, landscaping, tree-trimming, and all fences and signs located on the Property, as well as the outdoor seating area.

(b) The paint color of the exterior of the Property shall at all times be the colors to which the Lessor has chosen at the time of execution of this Agreement. If Lessor changes the color of the Casino Dock building at any time during the Term, Lessee is required, upon thirty (30) day written notice by the Lessor, to paint the exterior of the Property to be the same color as the new color of the Casino Dock identified in the notice at Lessee's own cost.

(c) To the extent that any such repairs, maintenance, or painting obligations imposed by this Section 9 involve, in the determination of the Lessor, the leased property of another tenant(s) of Lessor who leases space in the same building, such as a common roof, Lessee's obligations under this Section 9 will be divided proportionately between Lessee and the other tenants of Lessor, if any, based on the number of square feet leased by each.

10. Surrender; Ownership of Improvements and Fixtures. On the last day of the Term of this Lease, or on the date this Lease is earlier terminated, Lessee shall surrender the Property to Lessor in an operable, well-maintained condition, ordinary wear and tear and damage by casualty excepted, clean and free of debris. Notwithstanding the fact that Lessee shall be constructing the improvements to the Property, from and after the commencement date of the Lease, Lessor shall own all improvements and fixtures constructed or placed on, under and above the Property by Lessee, and Lessee's interest shall be a leasehold interest In the Property. Lessor shall have no obligation to maintain the improvements or the Property during the Lease Term. Lessee hereby agrees to indemnify and defend Lessor against, and hold it harmless from, any damage or liability incurred by Lessor as a result of the Property not being in good condition, normal wear and tear excepted, upon Lease Termination. Lessee's improvements and fixtures shall remain on the Property following the expiration or the earlier termination of this Lease and shall be surrendered to Lessor. However, any restaurant-related fixtures such as ovens, stoves, and freezers shall be the property of Lessee, except that upon expiration or the earlier termination of the Lease Lessor shall have the option to purchase the restaurant-related fixtures for their fair market value as calculated at the time of Lease expiration or termination. In the event Lessor does not purchase the restaurant-related fixtures, Lessee may remove such restaurant-related fixtures and shall repair any damage to the Property occasioned by such removal.

11. Lessor's Right to Undertake Lessee's Obligations. If Lessee fails to perform any of Lessee's obligations under any section of this Lease, Lessor may, at its option (but

shall not be required to), enter upon the Property after ten (10) days' prior written notice to Lessee (except in the case of an emergency, as determined by Lessor, in its sole discretion, in which case no notice shall be required), and perform such obligations on Lessee's behalf. Any costs incurred by Lessor pursuant to this section, including interest thereon, shall become due and payable to Lessor together with Lessee's next rent installment.

12. Damage to Property. In the event that repairs are necessary to alleviate structural hazards because the Property is damaged by circumstances not caused by the negligence or willful misconduct of Lessee, its employees, contractors, agents, invitees or guests, Lessee shall inform Lessor in writing of such necessity. Lessor shall then have the option, in its sole discretion, to either immediately terminate this Lease or to provide for the necessary repairs. In the event Lessor elects to terminate this Lease, no rent shall accrue or be payable to the Lessor after the date Lessor terminates the Lease. If repairs which are made by Lessor prevent the Lessee from occupying a portion of the Property, but Lessee is able to operate on the Property during such repairs, Lessee shall be entitled to a proportionate reduction in the monthly rent, based on the ratio the floor area which Lessee is unable to occupy, from the date such repairs are commenced until the date the entire Property is available for Lessee's occupancy. If the damage prevents Lessee from operating on the Property, then no rent shall be due from the date of damage, as determined by Lessor in its sole discretion, until completion of repairs. Lessee expressly waives the benefit of any statute now or hereinafter in effect which would otherwise afford Lessee the right to make repairs at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the Property in good order, condition and repair.

13. Alterations and Additions. Except for the placement of tables, chairs and umbrellas as approved by the City Manager and provided that such placement is consistent with the City of Avalon's current Guidelines for Outdoor Dining, Lessee shall not make any alterations, improvements, additions, Utility Installations exceeding $5,000 (Five Thousand Dollars) in value, hang or paint any signs visible from the exterior of the Property, or make any change to the exterior of the Property, without Lessor's prior written consent. The term "Utility Installation" shall mean installation of carpeting, window coverings, air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, plumbing, and structural changes. If Lessor authorizes any alterations, improvements, additions, or Utility Installations, all such improvements and any required Approvals shall be Lessee's sole responsibility and such improvements shall be installed and removed at Lessee's sole cost and expense. Upon the removal of any improvement, alteration, addition or Utility Installation, Lessee shall restore the Property to its prior condition. Lessor may require Lessee to provide Lessor, at Lessee's sole cost and expense, a lien and completion bond in an amount equal to one and one-half times the estimated cost of such improvements. Should Lessee make any alternations, improvements, additions or Utility Installations without the prior approval of Lessor, Lessor may require that Lessee immediately remove any or all of the same.

14. Release of Claim For Relocation Benefits. Lessee hereby acknowledges and agrees that Lessee has no claim or right to relocation benefits or compensation of any kind or nature upon termination of this Lease for any reason, even if such termination was made by the unilateral election of Lessor in its sole discretion. Lessee expressly waives any and all claims or rights to receive relocation benefits or compensation of any

kind or nature. Lessee acknowledges that Lessor would not enter into this Lease but for this acknowledgment and waiver by Lessee. During any period of repair or reconstruction by Lessor during the Term of this Lease that requires Lessee to vacate the Property, Lessor shall be under no obligation to provide alternative space to Lessee, but Lessee shall be relieved of the obligation to pay rent during such time that Lessee is unable to utilize the Property. Lessee shall vacate the Property within sixty (60) days' written notice to vacate for such purpose and shall be solely responsible for all costs of vacating from and relocating to reconstructed or newly constructed space, if any is available.

15. Insurance. The Lessee shall provide the Lessor with a copy of insurance upon execution of the Lease and upon renewal of insurance as follows:

(a) *Workers Compensation Insurance.* The Lessee is required to provide evidence of workers' compensation coverage as follows:

i. Workers' Compensation insurance with statutory limits as required by the Labor Code of the State of California.

ii. Employers Liability with limits of 1,000,000 per Accident; 1,000,000 Disease per employee; 1,000,000 Disease per policy.

iii. The policy must include a written waiver of the insurer's right to subrogate against the City of Avalon.

(b) *Liability Insurance.* For the Term of the Lease, Lessee shall maintain and keep in full force Commercial General Liability Insurance no less broad than ISO form CG 00 01 against any liability arising out of the ownership, use occupancy, or maintenance of the Property, and operation of Lessee's business at the Property and all appurtenant thereto when used by Lessee. Such insurance be no less than the following:

i. Minimum Limits: 1,000,000 per Occurrence; 2,000,000 General Aggregate; the General Aggregate shall apply separately to each location.

ii. Prior written consent is required if the insurance has a deductible or self-insured retention in excess of $25,000.

iii. The City of Avalon must be an additional insured for liability arising out the ownership, maintenance or use of that part of the premises leased to the Tenant/Lessee/Concessionaire (ISO form CG 20 11 or equivalent).

iv. The insurance provided to the City of Avalon as an additional insured must apply on a primary and non-contributory basis with respect to any insurance or self-insurance program maintained by the City of Avalon.

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v. The policy must cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately.

(c) Property Insurance.

i. Prior to Lessee's entry upon the Property and for the Term of the Lease, Lessee shall obtain and keep in full force and effect a policy of insurance covering loss or damage to the Property, in the amount of the full replacement value thereof, against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, commonly known as "broadform coverage." Lessee shall provide Lessor a copy of this insurance policy upon execution of this Lease.

ii. Lessee shall also insure its fixtures, equipment and Lessee improvements on the Property at its sole cost and expense.

iii. The limits of said insurance shall not, however, limit the liability of Lessee hereunder.

iv. Lessee must name the City as Loss Payee on its property policy.

(d) *Course of Construction.* Until construction is completed on the Property, or during any improvements construction, Course of construction insurance in an amount not less than the full value of the improvements constructed on the Property covering all construction activities on the Property.

(e) Restrictions; Endorsements.

i. Lessee shall not do or permit to be done anything which shall invalidate the insurance policies during the Term of this Lease. All policies of insurance shall be endorsed to: (1) name Lessor (and at Lessor's option, any additional parties designated by Lessor) as an additional insured; (2) provide that such insurance is primary to any policy of Lessor, which shall not be called upon to contribute in any way; and (3) provide that the policy shall not be cancelled, terminated or modified without first providing thirty (30) days' prior written notice to Lessor.

ii. All insurance policies must be issued by an insurer with an A.M. Best rating of at least A:VII. Lessee shall provide immediate written notice if (1) any of the required insurance policies are terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.

16. Indemnification and Release.

(a) *Indemnification.* Lessee shall indemnify, defend, reimburse and hold harmless Lessor from and against any and all demands, claims, losses, damages or liabilities of any kind or nature, including claims for damage to property or persons, including wrongful death ("Claim"), arising from or in connection with any act or omission of Lessee, including Lessee's active and passive negligence or Lessee's use of the Property or Property under this Lease, including, without limitation, any activity, work or things done, permitted or suffered by Lessee in or about the Property or elsewhere on the Property and any breach or default by Lessee of this Lease. If any action or proceeding is brought against Lessor by reason of any such Claim, Lessee's obligation to defend the same shall be done with counsel approved in advance by Lessor.

(b) *Release.* Lessee hereby agrees that Lessor shall not be liable for, and hereby waives and releases Lessor from, any injury to Lessee's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, agents, invitees, guests, or any other person on the Property, nor shall Lessor be liable for injury to the person of Lessee, Lessee's employees, agents, contractors, guests or invitees caused by any reason whatsoever, including without limitation, by fire, steam, electricity, gas, water, rain, the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures on the Property or Property, or from any other cause or condition arising upon the Property or upon other portions of the Property which the Property are a part, or from other sources or places and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Lessee except to the extent such injury or loss is caused by Lessor's sole gross negligence or willful misconduct. Lessor shall not be liable for any damages arising from any act or neglect of any other lessees or possessors, if any, of the Property.

17. Utilities. Lessee shall arrange and timely pay for all gas, heat, light, disposal, power, and any other utilities and services needed or supplied to the Property, together with any taxes thereon.

18. Assignment and Subletting.

(a) Except as otherwise provided below, Lessee shall not convey, assign, transfer, mortgage, pledge, sublet or encumber any interest in the Property during the Term of this Lease, nor allow any other person (the employees, agents, servants and invitees of Lessee excepted) to occupy or use the Property, or any portion thereof, without Lessor's prior written consent, which may not be unreasonably withheld.

(b) Any attempted conveyance, assignment, transfer, mortgage, pledge, sublet, or encumbrance shall be void where such consent has not been obtained, and the original Lessee shall remain responsible for any unpaid rents, fines, fees, or other liabilities arising from or related to the Property.

(c) Any subletting approved by Lessor shall not relieve Lessee of any of its obligations or liabilities under this Lease, and both Lessee and any subsequent lessor(s) will be deemed to be bound by this Lease.

(d) Any dissolution, merger, consolidation, or other reorganization of Lessee or sale which results in a change of controlling persons shall be deemed an assignment of this Lease. Any such assignment or subletting without advance written consent of Lessor shall be void, and shall, at the option of the Lessor, constitute a default under the terms of this Lease.

(e) Lessee may transfer this Lease upon the sale of the business or other transfer of substantially all of the assets of Lessee in connection with the business at the Property, including but not limited to the restaurant business, the good will associated with the restaurant business, equipment, and furniture, provided Lessee first (1) provides Lessor with a copy of any purchase and sale agreement; (2) obtains Lessor's written consent, which shall not be unreasonably withheld; and (3) pays to Lessor a lease transfer fee equal to five percent (5%) of the sale price of Lessee's business ("Transfer Fee"). The Transfer Fee shall not apply to a transfer of this Lease upon the transfer of a controlling interest in Lessee's business to a member of the immediate family of such controlling person, or to a transfer of the controlling interest to an inter vivos trust in which such controlling person is the trustee of the trust and a member of the immediate family. "Immediately family" means spouse, parents, children, and brothers and sisters.

19. Defaults and Remedies.

(a) *Defaults.* In addition to those items already designated to be a breach or default of this Lease elsewhere in the Lease, the occurrence of any of the following events shall be a material breach of this Lease and shall constitute an event of default:

i. Abandonment, vacation, or surrender of the Property by Lessee without Lessor's prior written consent (failure to occupy and/or operate the Property for ten (10) consecutive days shall be deemed an abandonment and vacation, unless at least ten (10) days before failing to occupy or operate the Property Lessee gives Lessor written notice that Lessee intends to continue using the Property and will continue maintaining the Property while it is vacant, or the dispossession of Lessee from the Property (other than by Lessor by process of law or otherwise).

ii. The failure by Lessee to make any payment of rent or any reimbursement or payment required to be made by Lessee hereunder, as and when due, where such failure shall continue for a period of three (3) days after written notice thereof from Lessor to Lessee.

iii. The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, if the failure has continued for a period of ten (10) days after Lessor demands in writing that Lessee cure the failure, provided however, that if the nature of Lessee's default is such that more than ten (10) days are reasonably required for its cure, in Lessor's sole discretion, Lessee shall not be deemed to be in default if Lessee commenced such cure within said 10-day period and thereafter diligently prosecutes such cure to completion to the satisfaction of Lessor.

iv. The making by Lessee of any general arrangement or assignment for the benefit of any creditor, Lessee becoming a "debtor" as defined in 11 U.S.C. 101; the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Property or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Property or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days.

(b) *Remedies.* In the event of any such material breach or default by Lessee, Lessor may at any time thereafter, with or without notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such default or breach, do any of the following:

i. Terminate the Lease on thirty (30) days' written notice to Lessee, in which case Lessee shall immediately surrender possession of the Property to Lessor on the termination date specified by Lessor. In such event, Lessor shall be entitled to recover from Lessee all damages incurred by Lessor by reason of Lessee's default including, but not limited to, the cost of recovering possession of the Property, including all attorneys' fees and court costs incurred, if any; expenses of reletting, including necessary renovation and alteration of the Property, reasonable attorneys' fees, and any real estate commission actually paid in connection with such reletting; the value of the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Lessor proves could not reasonably be avoided; and that portion of the leasing commission, if any, paid by Lessor for the unexpired Term of this Lease.

ii. Pursuant to California Civil Code section 1951.4, maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee shall have abandoned or vacated the Property. In such event, Lessor shall be entitled to enforce all of Lessor's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder.

iii. Pursue any other remedy available to Lessor at law or in equity.

20. <u>Encumbrances Of Leasehold Estate; Mortgagee Protection.</u>

(a) Leasehold Mortgage Authorized; Fee Not Subordinated. Lessee may, at any time and from time to time during the term of this Lease, encumber Lessee's leasehold estate in favor of a "Lender," as hereinafter defined, under a leasehold mortgage, deed of trust or mortgage or other security instrument (collectively the "mortgage") without the consent of Lessor, so long as such leasehold estate is the primary security for the debt evidenced thereby.

(b) The mortgage, deed of trust or other security instrument shall affect only Lessee's leasehold estate, and shall be subject to all of the terms and provisions of this Lease. In that regard, Lessor's fee interest shall not be encumbered or subordinated.

(c) As used in this Lease, the term Lender shall refer to a savings bank, savings and loan association, commercial bank, trust company, credit union, insurance company, college, university real estate investment trust or pension fund, or any other lender of substance which performs functions similar to any of the foregoing and has assets in excess of SEVENTY-FIVE MILLION DOLLARS ($75,000,000.00) at the time of the lending.

(d) Notice to and Service on Lender. Lessor shall mail to Lender a duplicate copy of any and all notices Lessor may from time to time give to or serve on Lessee pursuant to or relating to this Lease. Lessee shall at all times keep Lessor informed in writing of the name and mailing address of Lender and any changes in Lender's mailing address. Any notices or other communications permitted by this or any other section of this Lease or by law to be served on or given to Lender by Lessor shall be deemed duly served on or given to Lender when deposited in the United States mail, first-class, postage prepaid, addressed to Lender at the last mailing address for Lender furnished in writing to Lessor by Lessee or Lender. Lessor's failure to send notice to Lender shall in no way invalidate any action taken with respect to Lessee, or extend any cure period which Lessee might otherwise have had.

21. Real Property Taxes. Lessee hereby recognizes that this Lease may create a possessory interest subject to property taxation pursuant to Revenue and Taxation Code section 107.6, and that Lessee may be subject to the payment of property taxes levied on such interest.

22. Late Charges. Lessee acknowledges that late payment of rent or any sums due under this Lease will cause Lessor to incur costs not contemplated herein, the exact amount of which will be extremely difficult to ascertain. Accordingly, if any sum due from Lessee is not received by the day it is due, then without requirement for notice to Lessee, Lessee shall pay a late charge of ten percent (10%) per month, plus interest at the rate of ½ of 1% (.005%) per month or portion thereof, from the date the rent becomes due. The Parties agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of late payment. Acceptance of such late charge shall in no event constitute a waiver of Lessee's default, nor prevent Lessor from exercising any of the other rights and remedies granted in this Lease. In the event that a late charge is payable for three (3) consecutive installments of rent, then the minimum monthly rent shall automatically become due and payable quarterly in advance, rather than monthly. The quarterly advance payments of rent will continue until Lessor notifies Lessee in writing.

23. Severability. If any portion of this Lease is ruled by a court of competent jurisdiction to be invalid, the remaining portions shall remain in full force and effect.

24. Entire Agreement; Amendments. This Lease contains all agreements of the Parties with respect to the Property. No prior agreement or understanding pertaining to any such matter shall be effective, whether oral or in writing. This Lease may only be modified in writing, signed by the Parties.

25. Notices. Any notice required or permitted to be given under this Lease shall be in writing and given by personal delivery or by first class mail to the address and

person below. Either Party may, by notice to the other, specify a different address for notice purposes. Notice given by personal delivery shall be deemed received upon personal delivery. Notice given by mail shall be deemed received three (3) days after deposit in the U.S. Mail.

Lessor:	City of Avalon P.O. Box 707 Avalon, California 90704 Tele: (310) 510-0220 Fax: (310) 510-2478 Attention: Administration- Leases
Lessee:	Casino Dock Cafe Russell and Jenny Armstrong PO Box 1448 Avalon, California, 90704 Tele: 310-510-2755 Fax: Attention: Russell and Jenny Armstrong

26. Waivers. The waiver or failure to enforce any provision of this Lease by Lessor shall not be deemed to be a waiver of any future breach of that same provision or of any other provision of this Lease. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to or approval of any subsequent act by Lessee. The acceptance of rent by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any provision of this Lease, other than the failure of Lessee to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

27. Holding Over. Lessee has no right to retain possession of the Property or any part thereof beyond the expiration or termination of this Lease. If Lessee, with Lessor's consent, remains in possession of the Property or any part of the Property after the expiration or termination of the Term of this Lease, such occupancy shall be a tenancy from month to month subject to all the provisions of this Lease.

28. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies available at law or in equity.

29. Binding Effect; Choice of Law. This Lease shall be binding upon and inure to the benefit of the Parties, their personal representatives, heirs, successors and assigns. This Lease shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in Los Angeles County.

30. Attorneys' Fees and Costs. If either Party brings an action to enforce the Terms of this Lease or declare the rights of the Parties under this Lease, the prevailing Party shall be entitled to recover all costs and expenses incurred in such action, including reasonable attorneys' fees as fixed by the court or arbitrators.

31. Right to Enter Property. Lessor and Lessor's agents shall have the right to enter the Property, at reasonable times for the purpose of inspecting the same, showing the same to prospective purchasers, lenders, or lessees, and making such alterations, repairs, improvements or additions to the Property or Property as Lessor may deem necessary or desirable. Lessor may, at any time, place on or about the Property any "For Sale" signs and Lessor may, at any time, during the last 120 days of the Term of this Lease place on or about the Property any "For Lease" signs.

32. Records; Audit. Lessee shall keep records, reports and books of account substantially in accordance with general accepted accounting principles to reflect accurately the gross receipts, expenditures and net income of Lessee concerned with and related to its operations and activities under this Lease. Lessor shall have the right to inspect and audit Lessee's financial accounts, books and records to ensure Lessee's compliance with this Lease, at any time during the Term of this Lease. Lessor will provide a minimum written notice of the request to audit forty-eight (48) hours in advance of the audit.

33. Nondiscrimination. Lessee covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through it, and this Lease is made and accepted upon and subject to the requirement 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 use, occupancy, tenure, or enjoyment of the Property, nor shall the Lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of employees, contractors or vendors in the Property.

34. Quiet Possession. Upon Lessee's payment of the rent for the Property and observing and performing all of the covenants, conditions and provisions to be observed and performed under this Lease, Lessee shall be entitled to have quiet possession of the Property for the Term of this Lease subject to all of the provisions of this Lease.

35. Compliance with Lessor's Rules for Use of Property. Lessee agrees that it will abide by, keep and observe all reasonable rules and regulations which Lessor may make from time to time for the management of the Property, including, without limitation, the delivery of supplies, the parking of vehicles and the preservation of the good order. The violations of any such rules and regulations shall be deemed a material breach of this Lease.

36. Third-Party Beneficiaries. There are no intended or incidental third-party beneficiaries of this Agreement.

37. Counterparts. This Lease may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument and a fully executed Lease.

38. Compliance with California Civil Code Section 1938. Pursuant to and in compliance with California Civil Code section 1938, Lessee is notified that the Property has not undergone inspection by a Certified Access Specialist.

39. Authority to Execute. The individuals executing this Lease on behalf of each Party represent and warrant that they are fully authorized and legally capable of executing this Lease on behalf of that respective Party, and binding that Party thereto.

40. Memorandum of Lease. Lessor and Lessee, at the request of either Party, will promptly execute and deliver to the requesting Party a Memorandum of Lease, duly acknowledged and in recordable form in substantially the same form as that attached as Exhibit 2. The Memorandum of Ground Lease may be recorded by either Lessor or Lessee, at Lessee's cost.

[Signatures to Lease Agreement on Next Page]

DRAFT

Signature Page to Lease Agreement

The Parties hereto have executed this lease on the date stated below:

Dated: _____

Lessee

_____

By: _____

Its: _____

_____

By: _____

Its: _____

Dated: _____

City of Avalon

_____

David Jinkens, City Manager

DRAFT

EXHIBIT 1
to
Lease Agreement

LEGAL DESCRIPTION OF PROPERTY
[Insert behind this page]

DRAFT

EXHIBIT 2
to
Lease Agreement

FORM OF MEMORANDUM OF LEASE

Return original to and
Recording Requested by:

City of Avalon
410 Avalon Canyon Road
P.O. Box 707
Avalon, California 90704

Attn: Planning Director

No Recording Fee Required -
Government Code Section 6103

DRAFT

MEMORANDUM OF LEASE

THIS MEMORANDUM OF GROUND LEASE (this "**Memorandum**") is entered into as of the ___ of _____, 20___, by and between CITY OF AVALON, a municipal corporation ("Lessor"), and Russell and Jenny Armstrong, dba Casino Dock Cafe ("Lessee"), (each individually a "Party" and collectively the "Parties").

1. Ground Lease; Premises. Lessor leases to Lessee, and Lessee leases from Lessor, on the terms and conditions set forth in that certain ground lease dated _____, 2016 (the "**Lease**"), certain property as more particularly described on Exhibit A attached hereto and in the Lease (the "**Property**"). The provisions of the Lease are incorporated herein.

2. Term. This Lease will be effective and binding from and after the Effective Date and will continue for fifteen (15) years following completion of the Restaurant.

3. Extended Term. There are two options to extend the Term of the Lease for a period of five (5) years each which may be exercised by Lessor.

4. Permitted Use. Lessee shall occupy and use the Property for restaurant purposes, including the installation, maintenance and use of furniture fixtures and improvements necessary to provide and accommodate the preparation of food and beverages, conduct food and beverage sales and consumption and for no other purpose whatsoever. After its

construction, the Restaurant shall be open for business at least nine (9) months each year for the Term of the Lease and Lessee may determine their own hours and days of operation.

5. Counterparts. This Memorandum may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement.

6. Successors and Assigns. This Memorandum shall be binding upon and inure to the benefit of the respective successors in interest and assigns of the parties hereto.

7. Provisions Binding on Parties. The provisions of the Lease to be performed by Lessor and/or Lessee are intended to and shall bind or benefit the respective parties and their assigns or successors, as applicable, at all times.

8. Purpose of Memorandum of Lease. This Memorandum is prepared solely for purposes of recordation, and in no way modifies the provisions of the Lease.

DRAFT

LESSOR:

City of Avalon

_____
David Jinkens, City Manager

LESSEE:

By:_____
Name:_____
Its:_____

By:_____
Name:_____
Its:_____

CITY OF AVALON CITY COUNCIL

MEETING DATE: December 20, 2016 **AGENDA ITEM:** 13

ORIGINATING DEP: City Attorney **CITY MANAGER:** _____

PREPARED BY: City Attorney Scott Campbell

SUBJECT: Ordinances to Regulate Size of Autoettes Permitted in the City, Parking of Certain Autoettes and Replacement of Vehicles and Autoettes

---

RECOMMENDED ACTION(S):
Adopt the attached ordinances to make changes to the City's laws and regulations governing the size of allowed Low-Speed Vehicle/Neighborhood Electric Vehicle autoettes, prohibit parking of same in angled parking spaces in the City and make other changes concerning oversized vehicles and the replacement of permitted vehicles and autoettes in the City.

REPORT SUMMARY:
At the City Council meeting of December 6, 2016, City Staff and members of the public presented testimony to the City Council regarding the fact that certain Low-Speed Vehicle/Neighborhood Electric Vehicle autoette manufacturers have built new models of autoettes that are 4.55 inches wider than the most recent models, and that these changes to the width of the autoettes were made to make the autoettes safer and more stable in their normal operation and use.

The City Council directed that staff draft an ordinance to amend the Avalon Municipal Code (the "Code) to allow the new size of Low-Speed Vehicle/Neighborhood Electric Vehicle autoettes in the City, along with a prohibition on parking Low-Speed Vehicle/Neighborhood Electric Vehicle autoettes in angled parking spaces in the City, such as those along Metropole Avenue (by way of example only) and further that the ordinance should provide for a 1:1 ratio of replacing autoettes in the City.

The City Attorney's office consulted with Mayor Pro Tem Olsen concerning the draft ordinance, including additional changes to the Code previously directed by the Council, such as clarifying requirements related to oversized vehicle permits and replacement of both vehicles and autoettes under the Code.

The Code generally prohibits the issuance of permits for vehicles over 200" in length or 80" in width. In order to obtain a permit for an oversized vehicle, the Hearing Officer considering the vehicle permit application must find that (1) the weight, length, width and nature of the vehicle is necessary for the proposed use, (2) a smaller vehicle cannot satisfy the applicant's

transportation requirements and (3) the vehicle will not have a deleterious impact on traffic congestion, traffic safety, parking, and noise.

Because the permit is based on the particular vehicle being considered, the permit is not a general authorization for the applicant to obtain an oversized vehicle. However, staff recently became aware of an incident where an applicant may have replaced a permitted oversized vehicle with an even larger vehicle. Staff believes that providing clarity as to what the Code allows in such circumstances will better serve the community.

The proposed amendment therefore adds Section 4-4.1705.1, which specifically states that a permitted oversized vehicle may only be replaced by another vehicle that is no larger than the vehicle previously permitted. If a larger vehicle is desired, the Hearing Officer must first make the appropriate findings to allow the larger vehicle. Additionally, the amendment clarifies that the findings allowing an oversized vehicle do not apply to autoettes, which are subject to other size limitations contained in the Code.

Specifically, the ordinance also amends Section 4-4.1705 of the Code, which governs the width of Low-Speed Vehicle/Neighborhood Electric Vehicle autoettes, to accommodate for the new-sized vehicle while still ensuring optimal circulation, noise reduction, safety and parking in the City. For example, the Council recognized that parking of Low-Speed Vehicle/Neighborhood Electric Vehicle autoettes has presented a challenge where drivers park or attempt to park in designated and marked parking stalls in the City that are designed and installed at other than a right-angle to the curb, street, sidewalk or building, or parallel to the road.

Accordingly, the ordinance also adds a new Section 4-4.1203 to the Code to prohibit Low-Speed Vehicle/Neighborhood Electric Vehicle autoettes from parking in any Angled Parking Space within the City. "Angled Parking Space" is defined in the ordinance as any designated and marked parking stall that is designed and installed at other than a right-angle to a curb, street, sidewalk or building, or parallel to a roadway.

Finally, the draft ordinance adds a new Section 4-4.1705.1 to the Code to govern the replacement of vehicles permitted in the City and specifically provides that the holder of a valid vehicle permit may replace the vehicle with a vehicle in the same category, provided that the replacement vehicle is within the size limits established by Section 4-4.1705(a) of the Code. Additionally, an oversized vehicle that has been issued an oversized vehicle permit may not be replaced by a larger vehicle unless the Hearing Officer authorizes the larger vehicle after making the findings required under Section 4-4.1705(a).

If the Council adopts this ordinance, the vehicle clerk and/or city council may have to establish a waiting list procedure.

The City Attorney's Office has prepared two ordinances and recommends that the Council adopt both of them. The ordinances are substantively the same, with the exception that the urgency ordinance includes the facts and findings necessary under Government Code Section 36937(b), which authorizes the City Council to adopt by a four-fifths vote an urgency

ordinance, effective immediately upon passage, if the ordinance relates to the "immediate preservation of the public peace, health or safety" and such ordinance contains a declaration of the facts constituting the urgency. Out of an abundance of caution, the second, non-urgency ordinance would adopt the proposed changes pursuant to the customary procedure of two readings followed by a 30-day waiting period until the ordinance goes into effect.

ENVIRONMENTAL REVIEW:

The amendments to the Code are exempt from the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) ("CEQA") pursuant to State CEQA Guidelines (Cal. Code Regs., § 15000 et seq.) section 15060(c)(3) because this activity is not a project as defined by State CEQA Guidelines section 15378. Further, the amendments are exempt under State CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that they will not have a significant effect or physical change to the environment. The amendments make no substantive changes to the Code apart from a minor adjustment to the width of Low-Speed Vehicle/Neighborhood Electric Vehicle autoettes permitted (less than 5 inches), and do not expand the number or types of vehicles requiring or receiving vehicle permits and instead further clarify the limits and restrictions of the current permitting program.

FISCAL IMPACTS:
Unknown at this time.

CONSEQUENCES OF NOT FOLLOWING RECOMMENDED ACTION:
New model Low-Speed Vehicle/Neighborhood Electric Vehicle autoettes with an updated design to make the autoettes safer and more stable in their normal operation and use would not be allowed in the City, thereby presenting a public health and safety risk in the City.

FOLLOW UP ACTION:
Publish the ordinance as required by law. Determine whether the Vehicle Clerk or the City Council will establish procedures for any waiting list necessary to implement and administer any portion of the Code amendments.

ADVERTISING, NOTICE AND PUBLIC CONTACT:
Notice pursuant to the Brown Act.

ATTACHMENTS:
Urgency and Regular Ordinance.

City Manager Comments
I understand that the City Council may act on the ordinance as written or make modifications to it as you think is appropriate. Staff will implement whatever direction is provided by the City Council. If a moratorium is put in place vehicle licensing staff should also be directed to examine and evaluate these and other changes that may be needed in the vehicle licensing code based on their long history of managing the program. There is no doubt that the vehicle licensing program needs to be reviewed. Staff is already working to have illegal vehicles (i.e. for size, DMV, City sticker, oversized) made legal or removed from the City. The Sheriff's Department will assist in this regard. Voluntary compliance is always the preferred course of action. dmj

URGENCY ORDINANCE No. ___

AN URGENCY ORDINANCE OF THE CITY OF AVALON, CALIFORNIA AMENDING SECTION 4-4.1705, ADDING NEW SECTIONS 4-4.1705.1, 4-4.1203 AND 4-4.1704(d) TO THE AVALON MUNICIPAL CODE TO ADJUST THE SIZE OF AUTOETTES AND VEHICLES PERMITTED IN THE CITY, RESTRICT THE PARKING OF AUTOETTES AND GOVERN THE REPLACEMENT OF PERMITS FOR VEHICLES AND AUTOETTES

WHEREAS, the California Legislature has adopted California Vehicle Code section 21100.5 that applies to Avalon and provides, among other things, that that "local authorities of any city with is on a natural island . . . may, if they determine such rules and regulations to be necessary in view of the special problem existing thereon with respect to the size and nature of the streets of the city and with respect to the characteristics and nature of the city itself, adopt rules and regulations by ordinance or resolution . . . regulating the number of vehicles permitted on streets under their jurisdiction"; and

WHEREAS, pursuant to Section 4-4.1701 of the City of Avalon (City) Municipal Code (Code), the City Council has found that there are special problems existing in the City relating to the size and nature of the streets and the characteristics and nature of the City itself and, in view of these special problems, the Council has determined that special rules regulating the size, number, noise, speed, and classes of vehicles used, permitted, or operated on the streets under its jurisdiction are necessary; and

WHEREAS, Avalon Municipal Code Sections 4-4.1705(b)(1) and (b)(2) set forth the maximum length and width of Low-Speed Vehicle/Neighborhood Electric Vehicle autoettes that may qualify for an autoette permit under the Code; and

WHEREAS, the City Council has been informed that Low-Speed Vehicle/Neighborhood Electric Vehicle autoette manufacturers have built new models of autoettes that are 4.55 inches wider than the most recent models, and that these changes to the width of the autoettes were made to make the autoettes safer and more stable in their normal operation and use; and

WHEREAS, the City Council seeks to ensure that the City's laws and regulations take into consideration the safety and well-being of drivers and passengers in Low-Speed Vehicle/Neighborhood Electric Vehicle autoettes, as well as the safety and well-being of pedestrians, drivers and passengers of all vehicles and autoettes in the City; and

WHEREAS, the City Council also recognizes that the width of Low-Speed Vehicle/Neighborhood Electric Vehicle autoettes in general has presented a challenge where drivers of those Low-Speed Vehicle/Neighborhood Electric Vehicle autoettes park or attempt to park in designated and marked parking stalls in the City that are designed and installed at other than a right-angle to the curb, street, sidewalk or building, or parallel to the road ("Angled Parking Spaces"); and

WHEREAS, the City Council hereby finds that Low-Speed Vehicle/Neighborhood Electric Vehicle autoettes as defined in the Code are too wide to safely and efficiently park in Angled Parking Spaces and seeks to prevent autoettes from parking in Angled Parking Spaces in the City to ensure safe and appropriate accommodation of parked vehicles throughout the City; and

WHEREAS, the City Council also seeks to amend the City's laws and regulations regarding the maximum length and width of non-autoette vehicles permitted in the City and further to establish laws and regulations governing the replacement of vehicles and autoettes in the City; and

WHEREAS, California Government Code Section 36937(b) authorizes the City Council to adopt by a four-fifths vote an urgency ordinance, effective immediately upon passage, if the ordinance relates to the "immediate preservation of the public peace, health or safety" and such ordinance contains a declaration of the facts constituting the urgency; and

WHEREAS, based on public input received and the recommendations of City Staff, the City Council finds that this ordinance must be adopted and take effect immediately to preserve the public peace, health and safety insofar as a significant number of residents in the City currently lease or own electric-powered autoettes that meet the definition of "Low-Speed Vehicle/Neighborhood Electric Vehicle" as defined in either California Vehicle Code section 385.5 or 49 CFR 571.500; that many of these residents intend to buy or lease the newer, 4.55-inch-larger models of these Low-Speed Vehicle/Neighborhood Electric Vehicle autoettes; and that the City's current laws and regulations do not adequately address this circumstance; further, the City Council finds that noise, parking, circulation and traffic challenges in the City warrant additional changes to the City's laws and regulations governing the parking of Low-Speed Vehicle/Neighborhood Electric Vehicle autoettes in Angled Parking Spaces and the replacement of all vehicles and autoettes in the City as a complement to the new laws and regulations governing the width of Low-Speed Vehicle/Neighborhood Electric Vehicle autoettes.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF AVALON DOES ORDAIN AS FOLLOWS:

Section 1. The recitals set forth above are hereby adopted as the urgency findings of the City Council in connection with the adoption of this Urgency Ordinance.

Section 2. Avalon Municipal Code Section 4-4.1705 is hereby amended to read in its entirety as follows:

"Section 4-4.1705 Maximum Length and Width

Except as otherwise set forth below or unless the applicant demonstrates and the Hearing Officer finds, for non-autoette permits only, that (1) the weight, length, width and nature of a vehicle is necessary for the proposed use, (2) a smaller vehicle cannot satisfy the applicant's transportation requirements, and (3) the vehicle will not have a deleterious impact on traffic congestion, traffic safety, parking, and noise, no vehicle permit for any vehicle authorized by Section 4-

4.1703 shall be issued nor transferred pursuant to Section 4-4.1707, unless the vehicle satisfies the following size limitations:

(a) No full-sized vehicle shall exceed two hundred inches (200") in length, including front and rear bumpers or eighty inches (80") in width as measured from the widest part of the vehicle, including but not limited to, mirrors and door handles;

(b) Except as specified in subsection (1) and (2) below, an autoette permit shall not be issued for any vehicle that exceeds fifty-five (55") inches in width, as measured from the widest part of the autoette.

(1) An autoette permit may be issued to an otherwise qualified person for an electric-powered autoette that meets the definition of "Low-Speed Vehicle/Neighborhood Electric Vehicle" as defined in either California Vehicle Code section 385.5 or 49 CFR 571.500 as it existed on January 1, 2010, provided such vehicle is registered with the California Department of Motor Vehicles, has a length of one hundred thirty-eight (138") inches or less, including front and rear bumpers, and a width of sixty-six (66") inches or less, as measured from the widest part of the vehicle, but not including mirrors or door handles."

(2) An autoette permit may be issued to an otherwise qualified person for a Smart Fortwo, provided such vehicle is registered as a motor vehicle with the California Department of Motor Vehicles and has a width of sixty-six (66") inches or less, as measured from the widest part of the vehicle, but not including mirrors or door handles.

The foregoing shall not apply to any full-sized vehicle that exceeds the maximum length or width for which a resident vehicle permit (blue sticker) was issued as of January 1, 1989, and shall not prevent renewal of such permits provided that the vehicle remains in the ownership and possession of the permit holder of record as of that date; nor shall it apply to any full-sized vehicle or autoette which exceeds the maximum width for which a vehicle permit was issued prior to June 1, 1999, and shall not prevent renewal of such permits provided that the vehicle remains in the ownership and possession of the permit holder of record as of that date.

All measurements specified above shall be based on the vehicle as originally equipped by the manufacturer pursuant to the requirements of California Vehicle Code §28001. No vehicle that exceeds the length limitation specified above for which a resident vehicle permit or autoette permit, as applicable, was first issued after April 18, 1989 shall be parked on public streets between the hours of midnight and 6:00 a.m. No vehicle that exceeds the width limitation specified above for which a residence vehicle permit or autoette permit, as applicable, was first issued after June 5, 1999, shall be parked on public streets between the hours of midnight and 6:00 a.m."

Section 3. A new Section 4-4.1705.1 is hereby added to the Avalon Municipal Code to read in its entirety as follows:

> "**Section 4-4.1705.1 Replacement of Vehicles.**
>
> The holder of a valid vehicle permit may replace the vehicle with a vehicle in the same category, provided that the replacement vehicle is within the size limits established by Section 4-4.1705(a). An oversized vehicle that has been issued an oversized vehicle permit may not be replaced by a larger vehicle unless the Hearing Officer authorizes the larger vehicle after making the findings required under Section 4-4.1705(a)."

Section 4. A new Section 4-4.1203 is hereby added to the Avalon Municipal Code to read in its entirety as follows:

> "**4-4.1203 Low-Speed Vehicle/Neighborhood Electric Vehicle Autoettes Prohibited from Parking in Angled Parking Spaces.**
>
> No Low-Speed Vehicle/Neighborhood Electric Vehicle autoette as defined in this Code may be parked in any Angled Parking Space within the City. "Angled Parking Space" means any designated and marked parking stall that is designed and installed at other than a right-angle to a curb, street, sidewalk or building, or parallel to a roadway."

Section 5. A new subsection (d) is hereby added to Section 4-4.1704 the Avalon Municipal Code to read in its entirety as follows:

> "(d) *Autoette Vehicle Permits.* A new autoette vehicle permit of any nature (whether residential, commercial or any other type validly issued under this Code) shall be issued only upon the expiration, nonrenewal or revocation of one of the same such permits."

Section 6. **Severability**. If any section, subsection, subdivision, sentence, clause, or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, such decisions shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause, or phrase be declared unconstitutional.

Section 7. **CEQA Exemption**. The City Council finds that adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15358 (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Further, the City Council finds that this ordinance is exempt under CEQA pursuant to Section

15061(b)(3) (there exists no possibility that the activity will have a significant adverse effect on the environment) of the CEQA Guidelines because this Ordinance will not cause a change in any of the physical conditions within the area affected by the Ordinance.

Section 8. **Certification.** The City Clerk of the City of Avalon shall certify the passage and adoption of this Ordinance and shall cause the same, or a summary thereof, to be published and/or posted in the manner required by law.

INTRODUCED at a regular meeting of the City Council of the City of Avalon on the ____ day of December 2016, by the following vote:

AYES:
NAYS:
ABSENT:
ABSTAIN:

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Avalon on this ____ day of January, 2017, by the following vote:

AYES:
NAYS:
ABSENT:
ABSTAIN:

_____

Ann H. Marshall, Mayor

ATTEST:

_____

Denise A. Radde, City Clerk

APPROVED AS TO FORM:

_____

Scott Campbell, City Attorney
Best Best & Krieger, LLP

ORDINANCE No. ___

AN ORDINANCE OF THE CITY OF AVALON, CALIFORNIA AMENDING SECTION 4-4.1705, ADDING NEW SECTIONS 4-4.1705.1, 4-4.1203 AND 4-4.1704(d) TO THE AVALON MUNICIPAL CODE TO ADJUST THE SIZE OF AUTOETTES AND VEHICLES PERMITTED IN THE CITY, RESTRICT THE PARKING OF AUTOETTES AND GOVERN THE REPLACEMENT OF PERMITS FOR VEHICLES AND AUTOETTES

WHEREAS, the California Legislature has adopted California Vehicle Code section 21100.5 that applies to Avalon and provides, among other things, that that "local authorities of any city with is on a natural island . . . may, if they determine such rules and regulations to be necessary in view of the special problem existing thereon with respect to the size and nature of the streets of the city and with respect to the characteristics and nature of the city itself, adopt rules and regulations by ordinance or resolution . . . regulating the number of vehicles permitted on streets under their jurisdiction"; and

WHEREAS, pursuant to Section 4-4.1701 of the City of Avalon (City) Municipal Code (Code), the City Council has found that there are special problems existing in the City relating to the size and nature of the streets and the characteristics and nature of the City itself and, in view of these special problems, the Council has determined that special rules regulating the size, number, noise, speed, and classes of vehicles used, permitted, or operated on the streets under its jurisdiction are necessary; and

WHEREAS, Avalon Municipal Code Sections 4-4.1705(b)(1) and (b)(2) set forth the maximum length and width of Low-Speed Vehicle/Neighborhood Electric Vehicle autoettes that may qualify for an autoette permit under the Code; and

WHEREAS, the City Council has been informed that Low-Speed Vehicle/Neighborhood Electric Vehicle autoette manufacturers have built new models of autoettes that are 4.55 inches wider than the most recent models, and that these changes to the width of the autoettes were made to make the autoettes safer and more stable in their normal operation and use; and

WHEREAS, the City Council seeks to ensure that the City's laws and regulations take into consideration the safety and well-being of drivers and passengers in Low-Speed Vehicle/Neighborhood Electric Vehicle autoettes, as well as the safety and well-being of pedestrians, drivers and passengers of all vehicles and autoettes in the City; and

WHEREAS, the City Council also recognizes that the width of Low-Speed Vehicle/Neighborhood Electric Vehicle autoettes in general has presented a challenge where drivers of those Low-Speed Vehicle/Neighborhood Electric Vehicle autoettes park or attempt to park in designated and marked parking stalls in the City that are designed and installed at other than a right-angle to the curb, street, sidewalk or building, or parallel to the road ("Angled Parking Spaces"); and

WHEREAS, the City Council hereby finds that Low-Speed Vehicle/Neighborhood Electric Vehicle autoettes as defined in the Code are too wide to safely and efficiently park in Angled Parking Spaces and seeks to prevent autoettes from parking in Angled Parking Spaces in the City to ensure safe and appropriate accommodation of parked vehicles throughout the City; and

WHEREAS, the City Council also seeks to amend the City's laws and regulations regarding the maximum length and width of non-autoette vehicles permitted in the City and further to establish laws and regulations governing the replacement of vehicles and autoettes in the City; and

WHEREAS, based on public input received and the recommendations of City Staff, the City Council finds these certain changes to the Code would benefit the community.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF AVALON DOES ORDAIN AS FOLLOWS:

Section 1. The recitals set forth above are hereby adopted as the findings of the City Council in connection with the adoption of this Ordinance.

Section 2. Avalon Municipal Code Section 4-4.1705 is hereby amended to read in its entirety as follows:

"Section 4-4.1705 Maximum Length and Width

Except as otherwise set forth below or unless the applicant demonstrates and the Hearing Officer finds, for non-autoette permits only, that (1) the weight, length, width and nature of a vehicle is necessary for the proposed use, (2) a smaller vehicle cannot satisfy the applicant's transportation requirements, and (3) the vehicle will not have a deleterious impact on traffic congestion, traffic safety, parking, and noise, no vehicle permit for any vehicle authorized by Section 4-4.1703 shall be issued nor transferred pursuant to Section 4-4.1707, unless the vehicle satisfies the following size limitations:

(a) No full-sized vehicle shall exceed two hundred inches (200") in length, including front and rear bumpers or eighty inches (80") in width as measured from the widest part of the vehicle, including but not limited to, mirrors and door handles;

(b) Except as specified in subsection (1) and (2) below, an autoette permit shall not be issued for any vehicle that exceeds fifty-five (55") inches in width, as measured from the widest part of the autoette.

(1) An autoette permit may be issued to an otherwise qualified person for an electric-powered autoette that meets the definition of "Low-Speed Vehicle/Neighborhood Electric Vehicle" as defined in either California Vehicle Code section 385.5 or 49 CFR 571.500 as it existed on January 1, 2010, provided

such vehicle is registered with the California Department of Motor Vehicles, has a length of one hundred thirty-eight (138") inches or less, including front and rear bumpers, and a width of sixty-six (66") inches or less, as measured from the widest part of the vehicle, but not including mirrors or door handles."

(2) An autoette permit may be issued to an otherwise qualified person for a Smart Fortwo, provided such vehicle is registered as a motor vehicle with the California Department of Motor Vehicles and has a width of sixty-six (66") inches or less, as measured from the widest part of the vehicle, but not including mirrors or door handles.

The foregoing shall not apply to any full-sized vehicle that exceeds the maximum length or width for which a resident vehicle permit (blue sticker) was issued as of January 1, 1989, and shall not prevent renewal of such permits provided that the vehicle remains in the ownership and possession of the permit holder of record as of that date; nor shall it apply to any full-sized vehicle or autoette which exceeds the maximum width for which a vehicle permit was issued prior to June 1, 1999, and shall not prevent renewal of such permits provided that the vehicle remains in the ownership and possession of the permit holder of record as of that date.

All measurements specified above shall be based on the vehicle as originally equipped by the manufacturer pursuant to the requirements of California Vehicle Code §28001. No vehicle that exceeds the length limitation specified above for which a resident vehicle permit or autoette permit, as applicable, was first issued after April 18, 1989 shall be parked on public streets between the hours of midnight and 6:00 a.m. No vehicle that exceeds the width limitation specified above for which a residence vehicle permit or autoette permit, as applicable, was first issued after June 5, 1999, shall be parked on public streets between the hours of midnight and 6:00 a.m."

Section 3. A new Section 4-4.1705.1 is hereby added to the Avalon Municipal Code to read in its entirety as follows:

"Section 4-4.1705.1 Replacement of Vehicles.

The holder of a valid vehicle permit may replace the vehicle with a vehicle in the same category, provided that the replacement vehicle is within the size limits established by Section 4-4.1705(a). An oversized vehicle that has been issued an oversized vehicle permit may not be replaced by a larger vehicle unless the Hearing Officer authorizes the larger vehicle after making the findings required under Section 4-4.1705(a)."

Section 4. A new Section 4-4.1203 is hereby added to the Avalon Municipal Code to read in its entirety as follows:

"4-4.1203 Low-Speed Vehicle/Neighborhood Electric Vehicle Autoettes Prohibited from Parking in Angled Parking Spaces.

No Low-Speed Vehicle/Neighborhood Electric Vehicle autoette as defined in this Code may be parked in any Angled Parking Space within the City. "Angled Parking Space" means any designated and marked parking stall that is designed and installed at other than a right-angle to a curb, street, sidewalk or building, or parallel to a roadway."

Section 5. A new subsection (d) is hereby added to Section 4-4.1704 the Avalon Municipal Code to read in its entirety as follows:

"(d) *Autoette Vehicle Permits.* A new autoette vehicle permit of any nature (whether residential, commercial or any other type validly issued under this Code) shall be issued only upon the expiration, nonrenewal or revocation of one of the same such permits."

Section 6. **Severability**. If any section, subsection, subdivision, sentence, clause, or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, such decisions shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause, or phrase be declared unconstitutional.

Section 7. **CEQA Exemption**. The City Council finds that adoption of this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15358 (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Further, the City Council finds that this ordinance is exempt under CEQA pursuant to Section 15061(b)(3) (there exists no possibility that the activity will have a significant adverse effect on the environment) of the CEQA Guidelines because this Ordinance will not cause a change in any of the physical conditions within the area affected by the Ordinance.

Section 8. **Certification**. The City Clerk of the City of Avalon shall certify the passage and adoption of this Ordinance and shall cause the same, or a summary thereof, to be published and/or posted in the manner required by law.

INTRODUCED at a regular meeting of the City Council of the City of Avalon on the ____ day of December 2016, by the following vote:

AYES:
NAYS:
ABSENT:
ABSTAIN:

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Avalon on this ____ day of January, 2017, by the following vote:

AYES:
NAYS:
ABSENT:
ABSTAIN:

_____

Ann H. Marshall, Mayor

ATTEST:

_____

Denise A. Radde, City Clerk

APPROVED AS TO FORM:

_____

Scott Campbell, City Attorney
Best Best & Krieger, LLP