

**Memorandum of Agreement**  
**Between City of Capitola and Wharf to Wharf Race**  
**Re: Capitola Wharf Enhancement Project Fundraising Campaign**

This Memorandum of Agreement (the “Agreement”) is entered into by and between Wharf to Wharf Race, a California nonprofit public benefit corporation and §501(c)(3) tax-exempt organization (“WWR”), and the City of Capitola, a California municipal corporation (“City”), effective as of the date this Agreement is fully executed by WWR and the City (the “Effective Date”). The City and WWR are referred to in this Agreement, collectively, as the “Parties” and each, individually, as a “Party.”

WHEREAS WWR and City desire to work together and with interested community organizations to raise funds to support improvements to the City of Capitola Wharf (the “Wharf”) that will not otherwise be funded through (i) Measure F funds awarded to City by the California State Coastal Conservancy (\$1.9 mi) and the U.S. Department of Housing and Urban Development (\$3.5 mi) for the Wharf Resiliency and Public Access Improvement Project, or (ii) funds to be provided by the Federal Emergency Management Agency (“FEMA”) for storm-related repairs to the Wharf. The Wharf enhancement project contemplated by this Agreement is referred to herein as the “Wharf Enhancement Project” or the “Project.”

WHEREAS the Parties desire to set forth in this Agreement that the Wharf Enhancement Project will include such specific improvements as are agreed to by and between WWR and City in writing (the “Improvements”) on or before November 30, 2023 (or such later date as may be mutually agreed by the Parties in writing) and may include such improvement as are generally described in Exhibit A attached hereto, and that the funds raised by the Parties under this Agreement shall not be used for any other purpose without the prior written consent of both Parties, except as may otherwise be provided in the Agreement.

The Parties desire and agree to work together in raising funds for the Project through a fundraising campaign (the “Campaign”) on the following terms and conditions:

**1. City’s responsibilities shall include:**

- 1.1 Working directly with RRM Design Group to determine the initial and final scope of the Project, subject to City consulting with WWR (or its designee) with respect to such scope. The City is not required to incorporate WWR’s (or its designee’s) input in determining the final scope of the Project;
- 1.2 Determining the initial estimated cost and final cost of the Project and making a recommendation as to campaign fundraising targets with the final fundraising target (the “Final Fundraising Target”) to be as agreed in writing by the Parties, who may also agree in writing to interim fundraising targets for specific improvements or phased completion of the Project to allow for funds to be disbursed to complete specific improvements or distinct phases of the Project.
- 1.3 Providing an authorized initial contact person for the Project (**Jamie Goldstein**, **[jgoldstein@ci.capitola.us](mailto:jgoldstein@ci.capitola.us)**), who may be changed from time to time with written notice to WWR.

- 1.4 Establishing a separate account for all funds to be raised in support of the Project (the “Project Funds”).
- 1.5 Contracting with third parties to complete the Improvements in accordance with all applicable federal, state and local laws, rules and regulations (including, without limitation, all laws governing competitive bids and the payment of wages).
- 1.6 Overseeing construction of the Improvements.
- 1.7 Disbursing all funds to pay the contractors or subcontractors engaged by City to construct, complete, or otherwise finish the Improvements and ensuring that all invoices paid are for work completed to City’s satisfaction.
- 1.8 Reporting to WWR quarterly with respect to City’s expenditure of the Project Funds as set forth in Section 7 below.

**2. WWR’s responsibilities:**

- 2.1 Soliciting and receiving contributions and grants in support of the Wharf Enhancement Project.
- 2.2 Providing quarterly reports to City with respect to the Project Funds raised and any expenses incurred by WWR related to its fundraising efforts and those of its community partners, which the Parties agree may be paid from the Project Funds.
- 2.3 Consulting with City Staff to ensure clarity on Campaign goals and progress.
- 2.4 Disbursing the Project Funds to City (less WWR’s fundraising expenses and reasonable legal and accounting fees related to this Agreement and the Campaign) upon City’s authorization of a contract or purchase order to complete all or any part of the Improvements.
- 2.5 Providing an authorized initial contact person for Project (**Scott McConville, scott@wharftowharf.com**), who may be changed from time to time with written notice to City.

**3. Term of Campaign.** The Campaign shall commence on July 1, 2023 (the “Commencement Date”) and ends when the Final Fundraising Target has been met, or two years from the Effective Date of this Agreement, whichever is the first to occur. The Parties may agree in writing to extend the term of this Agreement and the Campaign.

**4. Early Termination.** Either Party may terminate this Agreement for any reason with 30 days’ written notice to the other Party; provided that the following obligations of the Parties shall survive the termination of this Agreement:

- (i) City’s obligation to expend the Project Funds on the Project (except as otherwise agreed in writing by the Parties);
- (ii) City’s reporting obligations as set forth in Section 7 below; and

(iii) the indemnification obligations of the Parties set forth in Section 8 below.

In the event of the termination of this Agreement, WWR shall provide a final accounting to City at the end of the 30-day period and distribute to City any Project Funds (less its fundraising and legal and accounting expenses related to the Project) as provided above.

**5. No Guarantee of Success.** WWR and City shall each exercise reasonable best efforts to reach the Final Fundraising Target (and any interim fundraising targets agreed to by the Parties to facilitate the completion of specific improvements or any distinct phase of the Project). The Parties agree that there is no guarantee or requirement of success by either Party. In the unlikely event that insufficient funds are raised for the Project (or any agreed specific improvements or phase of the Project), or the Project is not completed by City, or the Campaign needs to be suspended for any reason, City and WWR agree that WWR shall donate the Project Funds to Santa Cruz Community Foundation (“Community Foundation”) to be held in a donor advised fund to be called “The Capitola Wharf Enhancement Fund,” and that the Project Funds (and all investment returns thereon) shall be used for improvements to, and the enhancement of the Wharf, as shall be determined by the donor advisors to The Capitola Wharf Enhancement Fund. The Parties further agree that any subsequent agreement creating The Capitola Wharf Enhancement Fund entered into between WWR and the Community Foundation shall provide for be three (3) donor advisors, with two (2) donor advisors appointed by WWR, and one (1) donor advisor appointed by City.

**6. City’s Authority Regarding Use of Project Funds.** Each Party acknowledges that City has final authority over and responsibility for the Improvements made with the Project Funds raised under this Agreement, subject to its obligation to expend the Projects Funds on the Improvements described in the attached and incorporated Exhibit A except as otherwise may be agreed in writing by WWR.

**7. City’s Reporting Obligations.** Commencing on the 15<sup>th</sup> day of the fourth month following the first disbursement of Project Funds by WWR to City, City shall provide quarterly reports to WWR that identify each expenditure of the Project Funds by the City, and that provide sufficient detail for the WWR to verify that the Project Funds have been expended on the agreed Improvements set forth in Exhibit A.

## **8. Mutual Indemnification**

To the fullest extent allowed by law, WWR shall defend (with legal counsel reasonably acceptable to City) indemnify and hold harmless the City, its officials, agents, employees, and volunteers (collectively, “City Indemnitees”) from and against any and all claims, losses, or injuries of any kind that arise out of, pertain to, or result from any negligence, recklessness, or willful misconduct of WWR or anyone acting on its behalf. WWR’s obligation to defend, indemnify and hold harmless the City Indemnitees shall not apply to the extent that any damages are caused in whole or in part by the negligence, recklessness, or willful misconduct of City or anyone acting on its behalf.

To the fullest extent allowed by law, City shall defend (with legal counsel reasonably acceptable to WWR), indemnify and hold harmless WWR, its officers, directors, agents, employees, and volunteers (collectively, “WWR Indemnitees”) from and against any and all claims, losses, or injuries of any kind that arise out of, pertain to, or relate to (i) the design, construction or completion of the Improvements or the compensation paid (or alleged not to have been paid) to any person or firm to perform services related to the design, construction or completion of the Improvements, or (ii) any negligence, recklessness, or willful misconduct of City or anyone acting on its behalf. City’s obligation to indemnify and defend the WWR Indemnitees shall not apply to the extent that any

damages are caused in whole or in part by the negligence, recklessness, or willful misconduct of WWR or anyone acting on its behalf.

**9. Notices.** Any notices or reports to be provided by the Parties under this Agreement may be sent by first class U.S. mail or electronic mail (with a read receipt) or by personal delivery to the Parties at the addresses listed below:

**WWR:**

Wharf to Wharf Race  
P.O. Box 307  
Capitola, CA 95010  
Attn: Scott McConville  
Email: [scott@wharftowharf.com](mailto:scott@wharftowharf.com)

**City:**

City of Capitola  
402 Capitola Avenue  
Capitola, CA 95010  
Attn: City Manager  
Email: [jgoldstein@ci.capitola.ca.us](mailto:jgoldstein@ci.capitola.ca.us)

Or for hand delivery to WWR:

1938 Lotman Drive  
Santa Cruz, CA 95062  
Attn: Mark McConnell

**10. Miscellaneous.** This Agreement may not be modified or amended except by a written agreement signed by both Parties. This Agreement shall be governed by and construed in accordance with the law of the State of California. This Agreement may be signed in two or more counterparts and by electronic signature.

The Parties indicate their approval and consent to this Agreement by their signatures below:

**WHARF TO WHARF RACE**

\_\_\_\_\_  
David Murphy, President

\_\_\_\_\_  
Date

**CITY OF CAPITOLA**

\_\_\_\_\_  
Jamie Goldstein, City Manager

\_\_\_\_\_  
Date

## **EXHIBIT A**

### **WHARF ENHANCEMENT PROJECT (General Description of Potential Agreed Improvements)**

The Parties contemplate that the Improvements may include the following:

- Upgraded Lighting Standards (Project Funds to be used for excess cost of upgraded lighting standards over planned standards)
- Additional lighting (exmp. under railing lighting)
- Upgraded benches and seating (Project Funds to be used for excess cost of upgraded benches over planned benches and/or to provide for additional benches or seating)
- Upgraded tables (Project funds to be used for excess cost of upgraded tables over planned tables and/or for additional tables)
- Upgraded trash and recycling stations ((Project Funds to be used for excess cost of upgraded trash and recycling stations over planned trash and recycling stations)
- Upgraded bicycle parking
- Shade structure(s)
- Water fountains/bottle filling stations
- Viewing stations with viewing telescopes
- Historical plaques and/or informational signage as to sea life
- Fishing pole holders
- Fish cleaning stations (adult and child)
- Public art features (e.g. sculptures, artistic signage, etc.)
- Interactive features for children
- New wharf entry feature(s)