



Public Works Department

Memo

To: City Council
From: Jessica Kahn, Public Works Director
Date: June 12, 2024
Re: Item 8F: Construction Contract with Fuse Architects, Inc. for Wharf Improvements

Staff has made the following changes to Attachments 1 and 3 that were included in the original agenda packet for the June 13th City Council Meeting.

Attachment 1: The Wharf plans included in the staff report mistakenly featured outdated renderings of the donor panels' locations. The plans accompanying this memo contain the updated renderings. All components reflect the final approved layout by the Planning Commission, as presented to the City Council during the May 9, 2024 City Council Meeting.

Attachment 3: The Agreement has been updated to include language approved by the City Attorney and Fuse Architects, Inc.

Attachments:

1. Plan Set
3. Contract for fabrication and installation of Wharf Enhancements with Fuse Architects

**ARCHITECT /
APPLICANT**

FUSE ARCHITECTS + BUILDERS
512 CAPITOLA AVENUE
CAPITOLA, CA 95010
C: DAN GOMEZ
T: (831) 479-9295
E: GOMEZ@FUSEARCHITECTURE.COM

DRAWING INDEX

SHEET NUMBER	SHEET NAME
A0	COVER SHEET
A1.0	WHARF SITE PLAN - OVERALL
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A1.3	ENLARGED WHARF SITE PLAN - SECTION 03
A1.4	ENLARGED WHARF SITE PLAN - SECTION 04
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A1.5	ENLARGED WHARF SITE PLAN - SECTION 06
A1.5	ENLARGED WHARF SITE PLAN - SECTION 07
A2	REVISED SCHEMATIC - WHARF ENTRY
A3	WHARF ENTRY
A4	DONOR PANEL LAYOUT
A5	PHOTO RENDERINGS
A6	BATHROOM

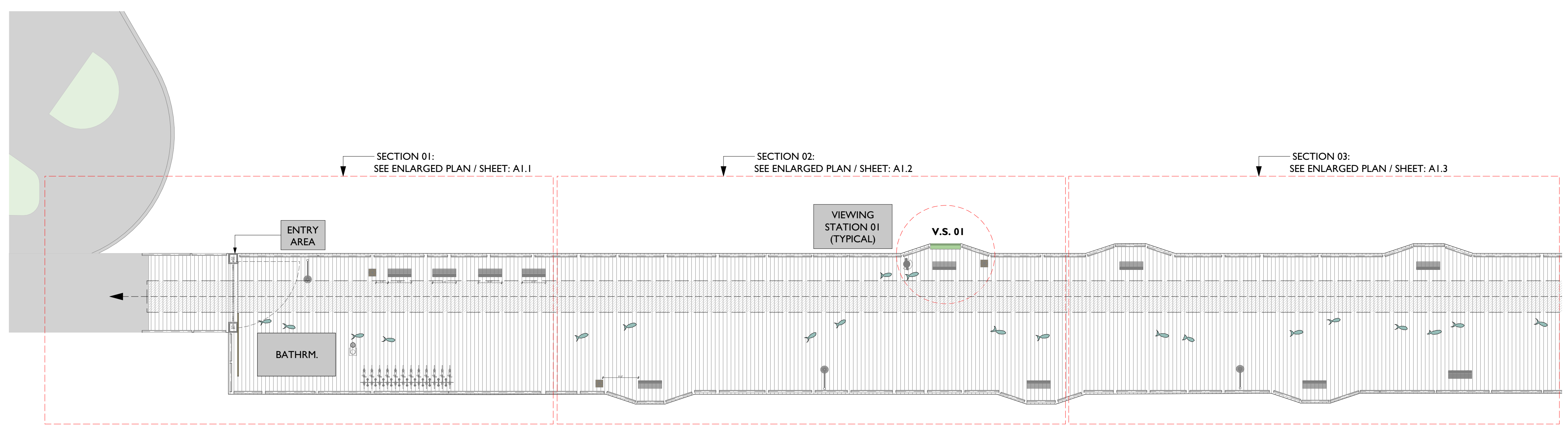


CAPITOLA WHARF ENTRY GATE

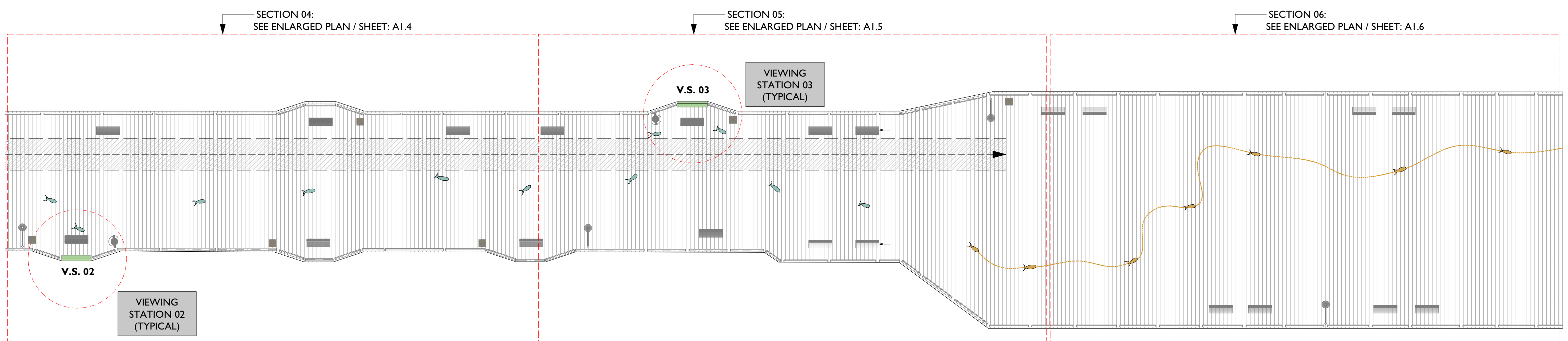
CITY OF CAPITOLA CAPITOLA CALIFORNIA
SCHEMATIC DESIGN - CONCEPTUAL PLAN
MARCH 21, 2024

CAPITOLA WHARF

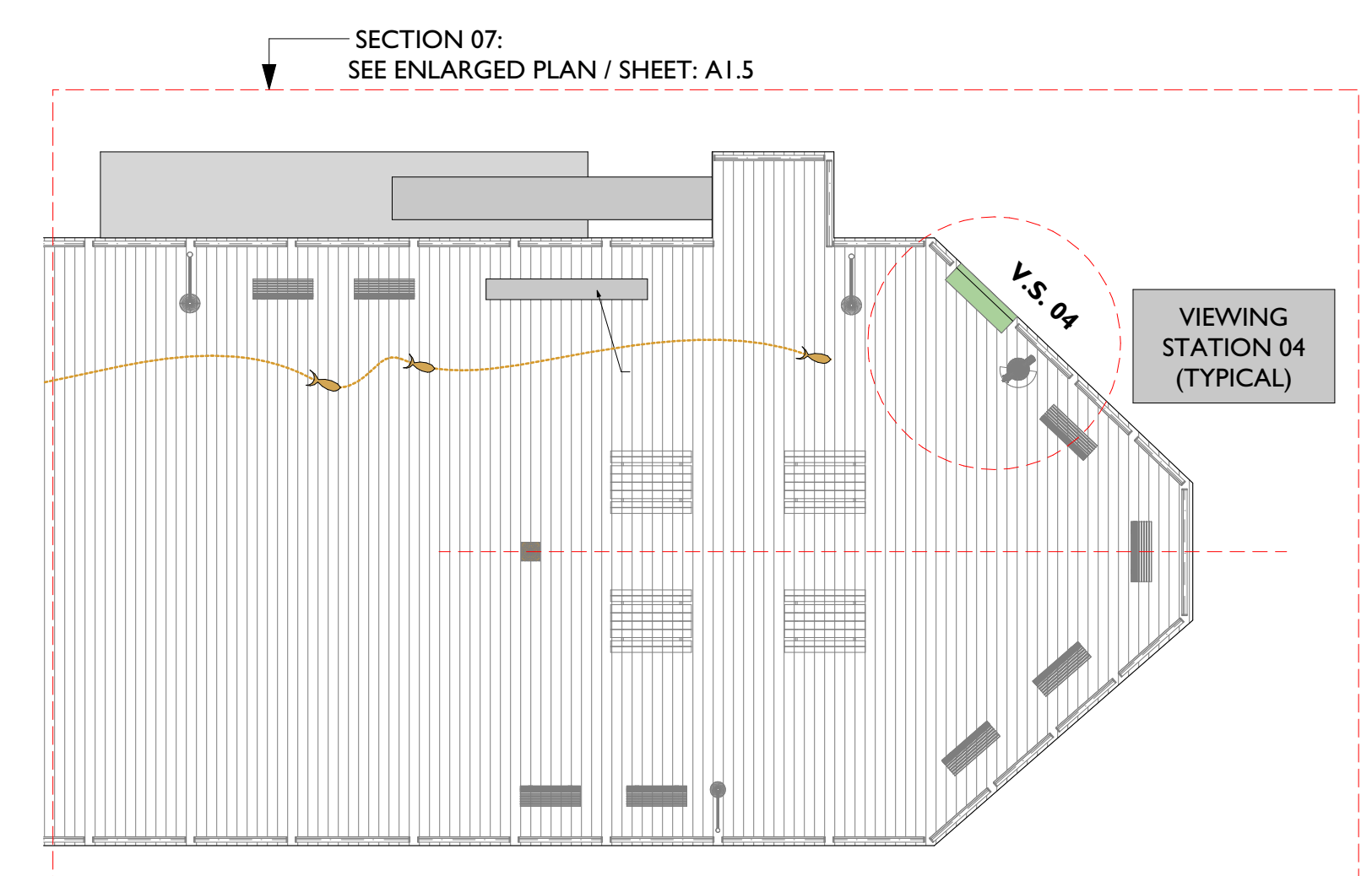
1400 Wharf Rd -Capitola
CA, 95010



OVERALL WHARF SITE MAP / SECTION #01 THROUGH #03



OVERALL WHARF SITE MAP - SECTION: #04 THROUGH #06



OVERALL WHARF SITE MAP - SECTION: #07

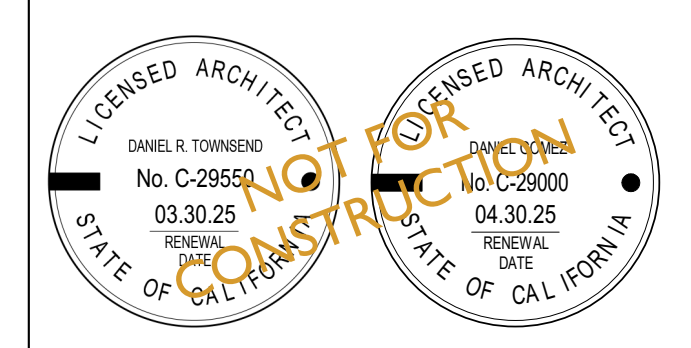
KEYNOTES

- <E> ASPHALT
- <E> WATER
- <E> ROOFING @ BATHROOM

KEY NOTES

Project Submittal Record		
Revision	Date	Issue Description
	03/07/2024	PLANNING SUBMITTAL
1	03/21/2024	PLANNING RE-SUBMITTAL

Seal/ Signature



Project Name
Capitola Wharf

Accessor's Parcel Number
APN #: 123-456-78

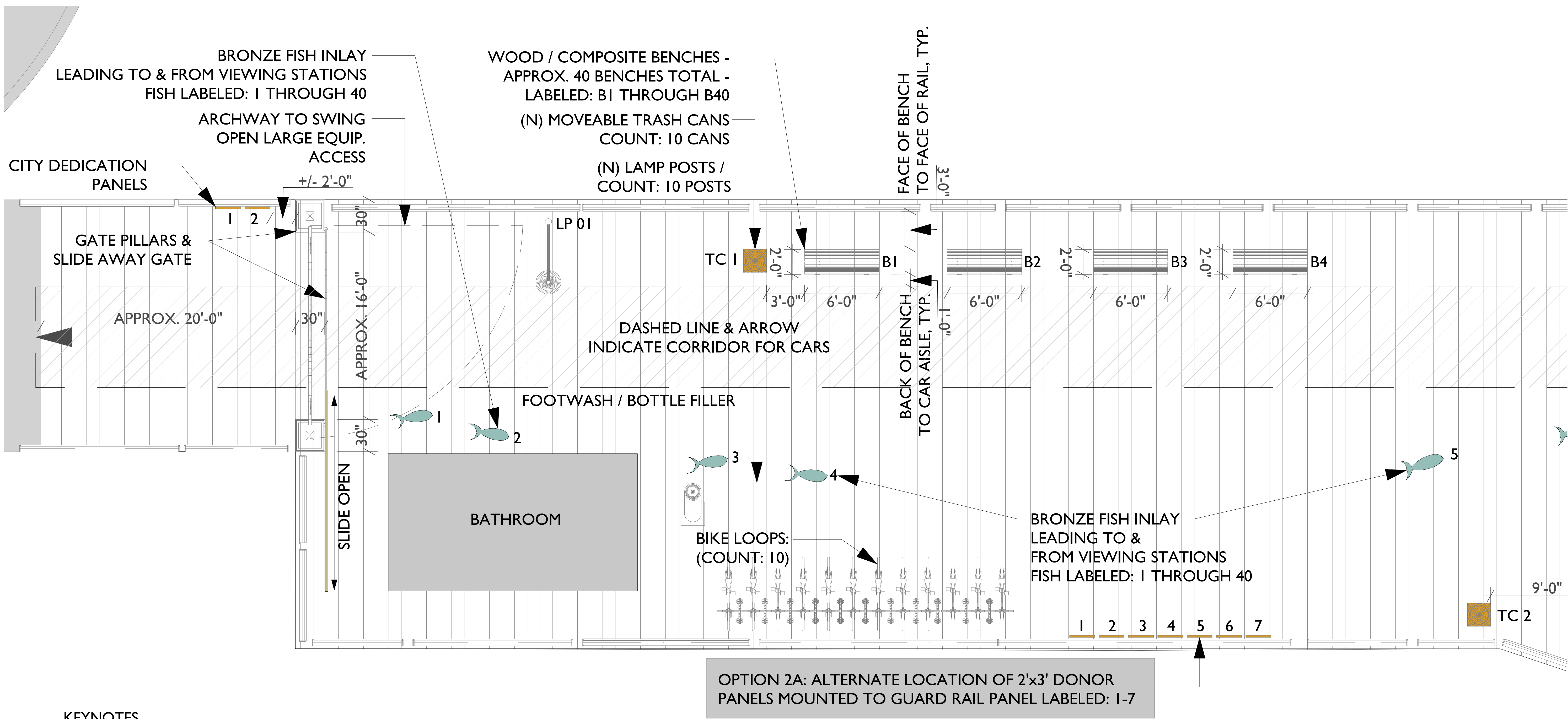
Sheet Title
WHARF SITE PLAN - OVERALL

Scale
As Indicated



CAPITOLA WHARF

1400 Wharf Rd -Capitola
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KEYNOTES

- <E> ASPHALT
- <E> WATER
- <E> ROOFING @ BATHROOM
- <N> WOOD DECKING
- <N> CAR DRIVE PATH

2

SITE PLAN SECTION 01

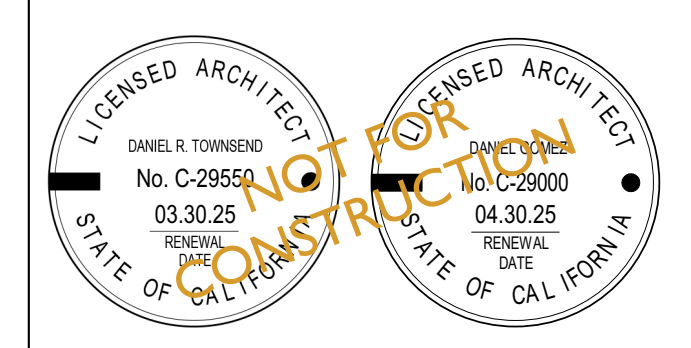
1/4" = 1'-0"

ABBREVIATION LEGEND:

- TC #00 - (N) MOVEABLE TRASH CAN W/ LOCATION NUMBER
- LP #00 - (N) LAMP POST MOUNTED TO WOOD DECK W/ LOCATION NUMBER
- PT #00 - (N) PICNIC TABLE W/ LOCATION NUMBER
- FISH #01 - (N) FISH CLEANING STATION / DIMENSIONS T.B.D.

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Project Name
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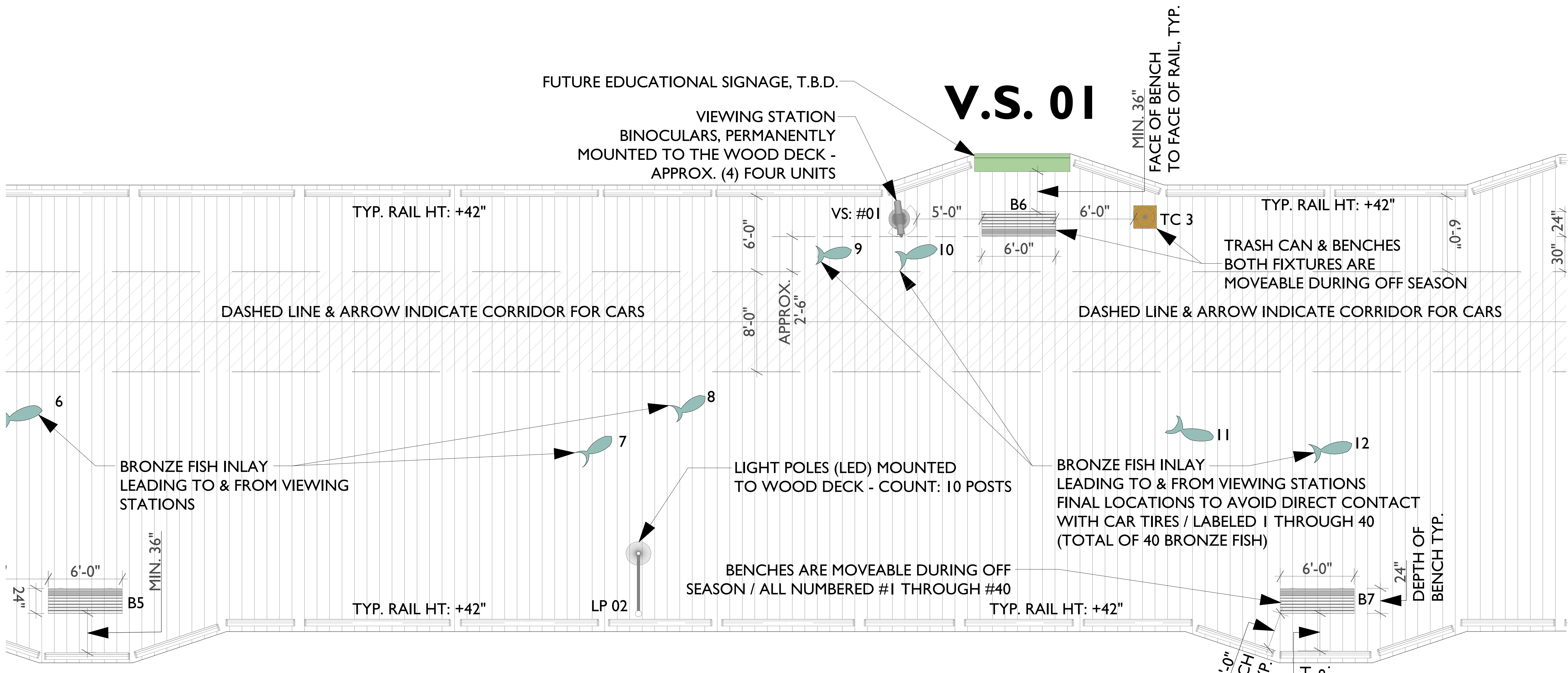
Sheet Title
ENLARGED WHARF SITE PLAN - SECTION 01

Scale
As Indicated



CAPITOLA WHARF

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SITE PLAN SECTION 02 1/4" = 1'-0"

KEYNOTES

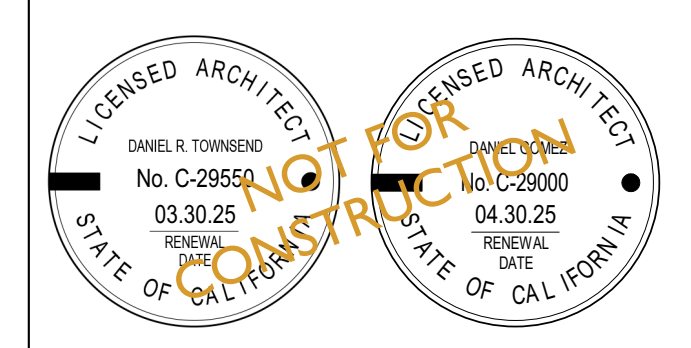
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- <E> WATER
- <E> ROOFING @ BATHROOM
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Project Name
Capitola Wharf

Accessor's Parcel Number
APN #: 123-456-78

Sheet Title
ENLARGED WHARF SITE PLAN - SECTION 02

Scale
As Indicated

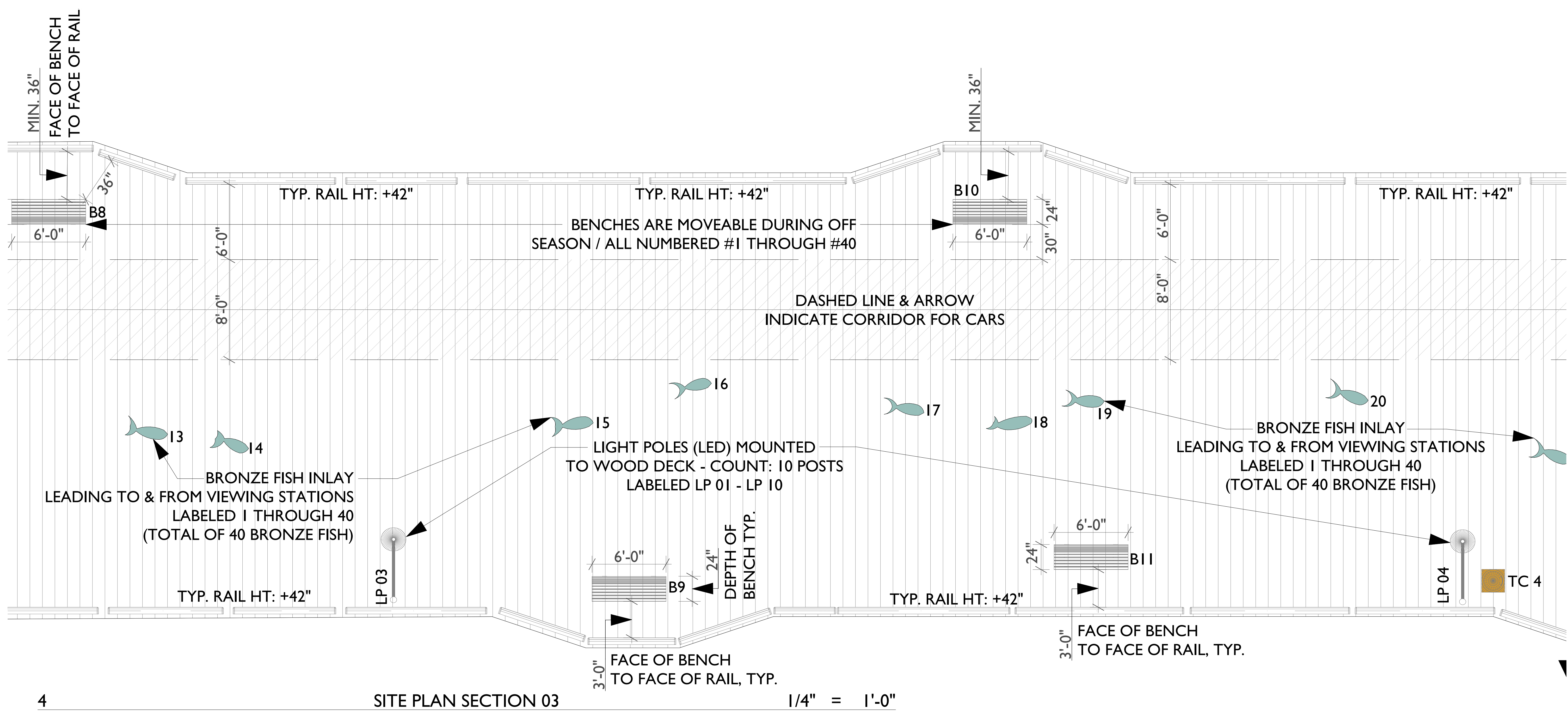


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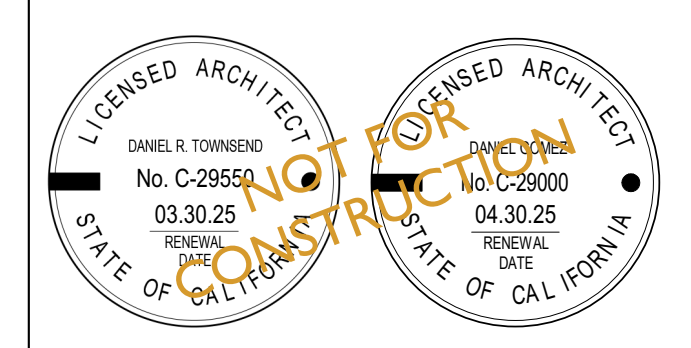


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fusearchitecture.com 831.479.9295



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Seal/ Signature



Project Name
Capitola Wharf

Accessor's Parcel Number
APN #: 123-456-78

Sheet Title
ENLARGED WHARF SITE PLAN - SECTION 03

Scale
As Indicated

A1.3

KEYNOTES

- <E> ASPHALT
- <E> WATER
- <E> ROOFING @ BATHROOM
- <N> WOOD DECKING
- <N> CAR DRIVE PATH

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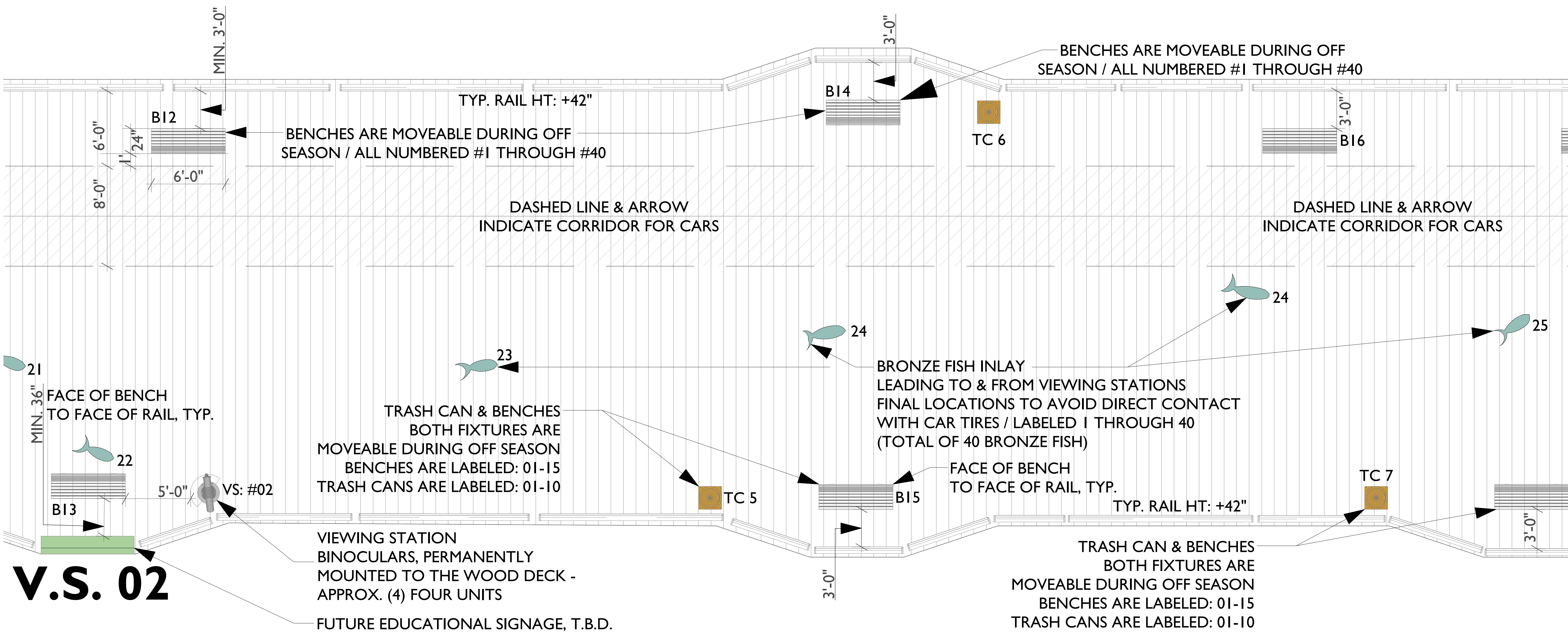
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V.S. 02

KEYNOTES

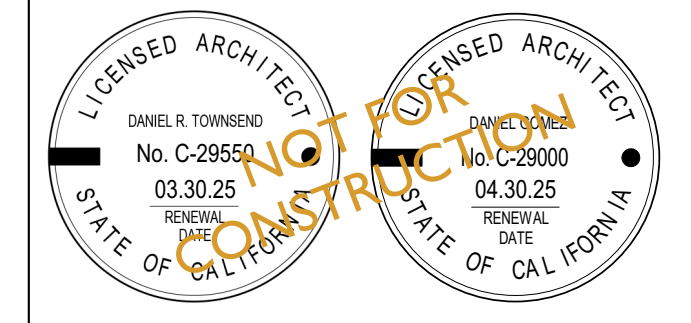
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ABBRIVIATION LEGEND:

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Project Name
Capitola Wharf

Accessor's Parcel Number
APN #: 123-456-78

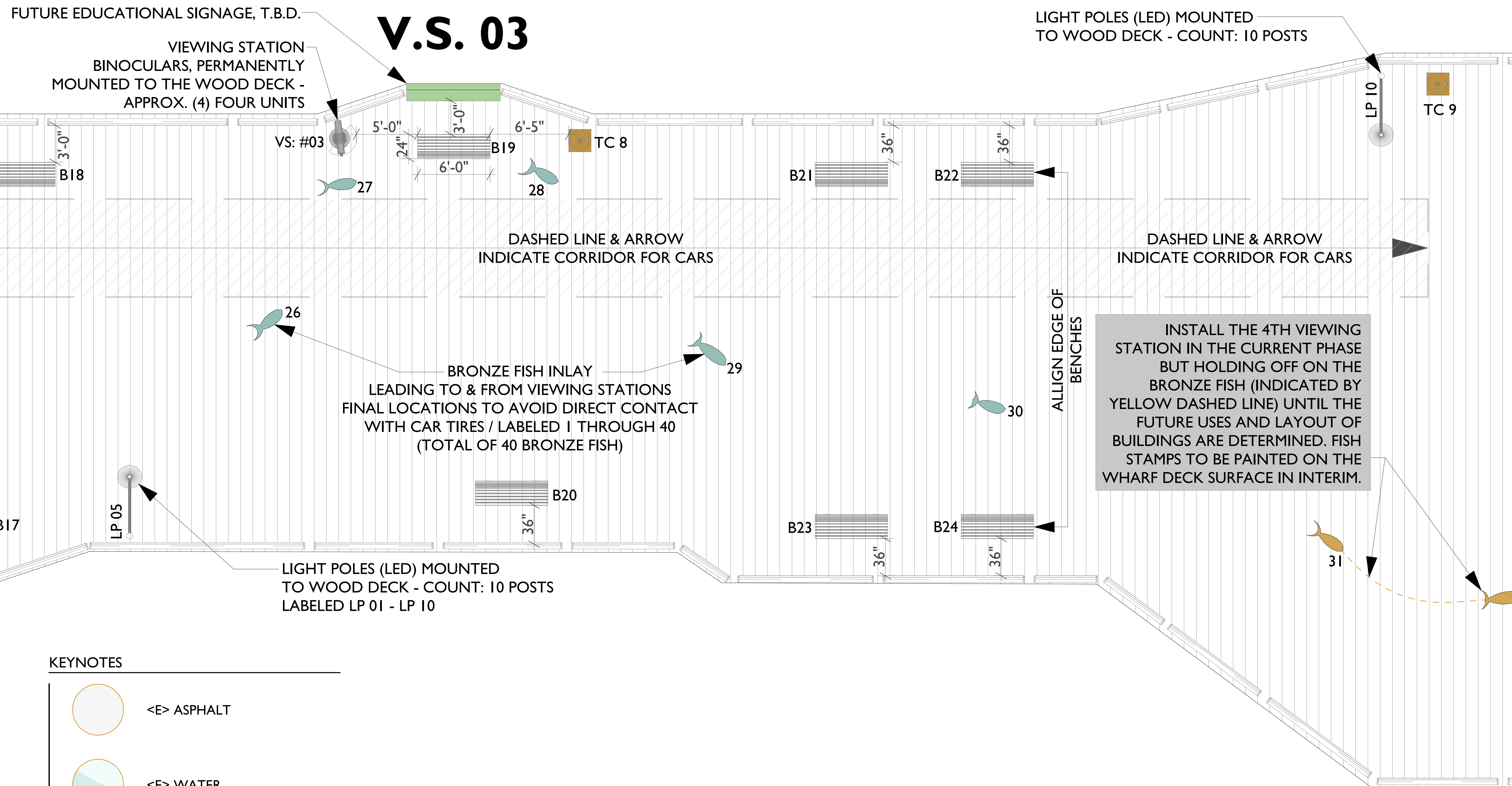
Sheet Title
ENLARGED WHARF SITE PLAN - SECTION 04

Scale
As Indicated



CAPITOLA WHARF

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INSTALL THE 4TH VIEWING STATION IN THE CURRENT PHASE BUT HOLDING OFF ON THE BRONZE FISH (INDICATED BY YELLOW DASHED LINE) UNTIL THE FUTURE USES AND LAYOUT OF BUILDINGS ARE DETERMINED. FISH STAMPS TO BE PAINTED ON THE WHARF DECK SURFACE IN INTERIM.

KEYNOTES

- <E> ASPHALT
- <E> WATER
- <E> ROOFING @ BATHROOM
- <N> WOOD DECKING
- <N> CAR DRIVE PATH

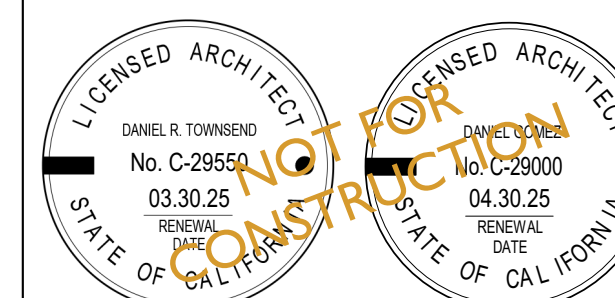
ABBREVIATION LEGEND:

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Seal/ Signature



Project Name

Capitola Wharf

Accessor's Parcel Number

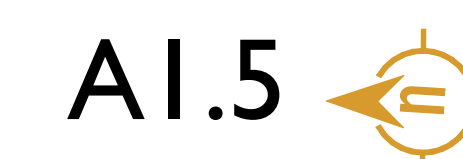
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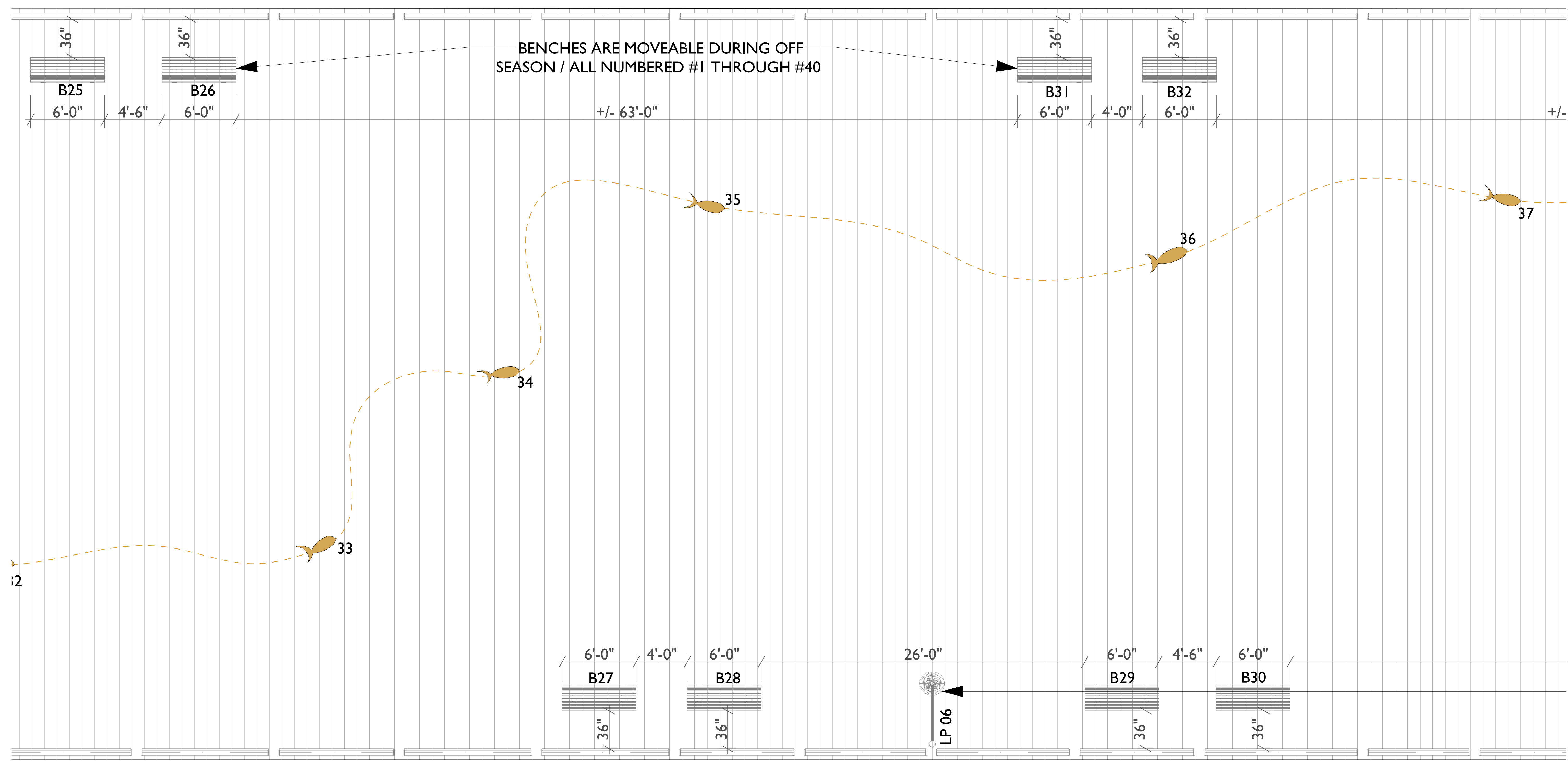
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As Indicated



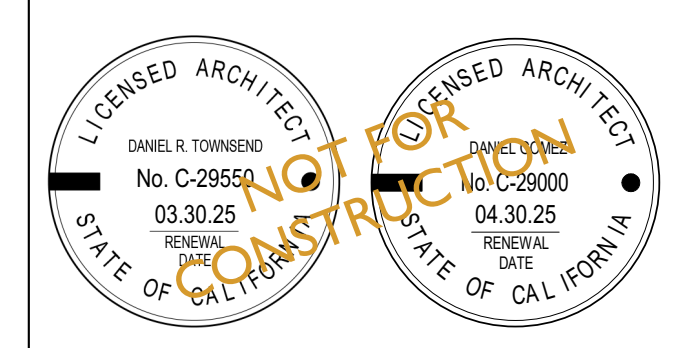
CAPITOLA WHARF

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CA, 95010



Project Submittal Record		
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1	03/21/2024	PLANNING RE-SUBMITTAL

Seal/ Signature



Project Name
Capitola Wharf

Accessor's Parcel Number
APN #: 123-456-78

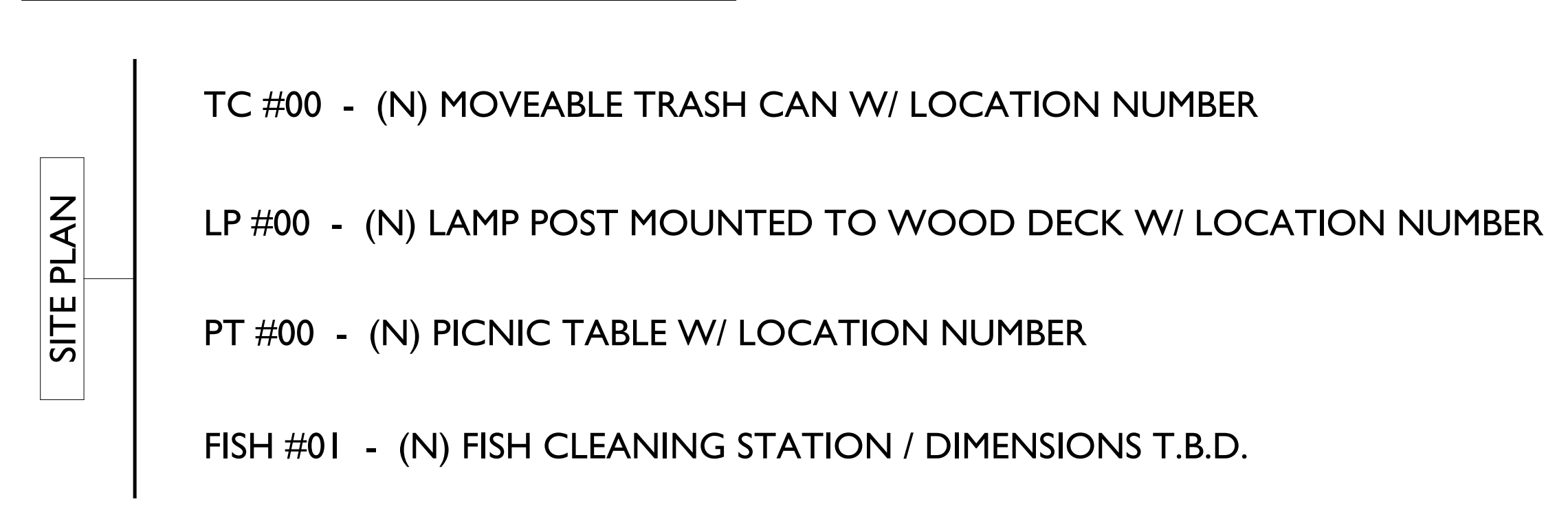
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ENLARGED WHARF SITE PLAN - SECTION 06

Scale
As Indicated

KEYNOTES



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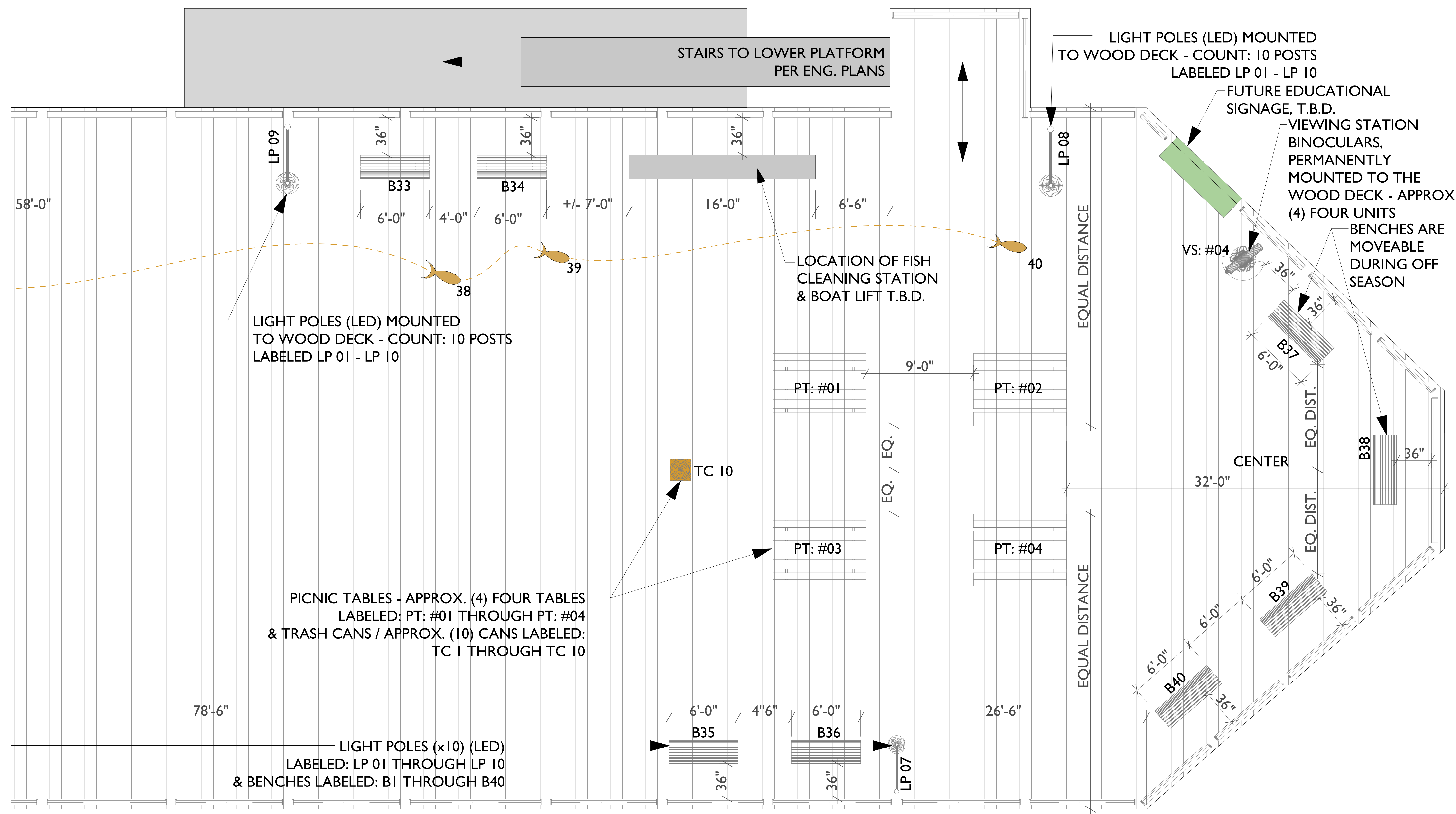


CAPITOLA WHARF

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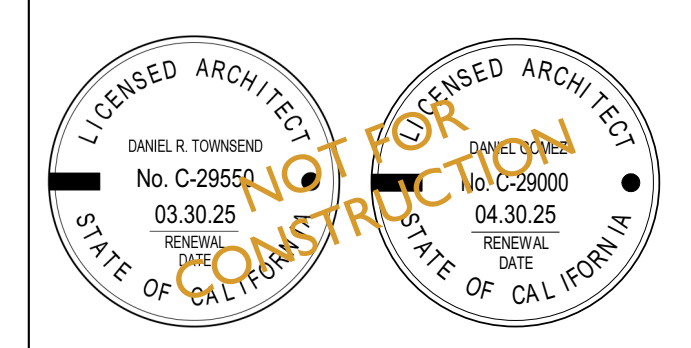


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Seal/Signature



Project Name
Capitola Wharf

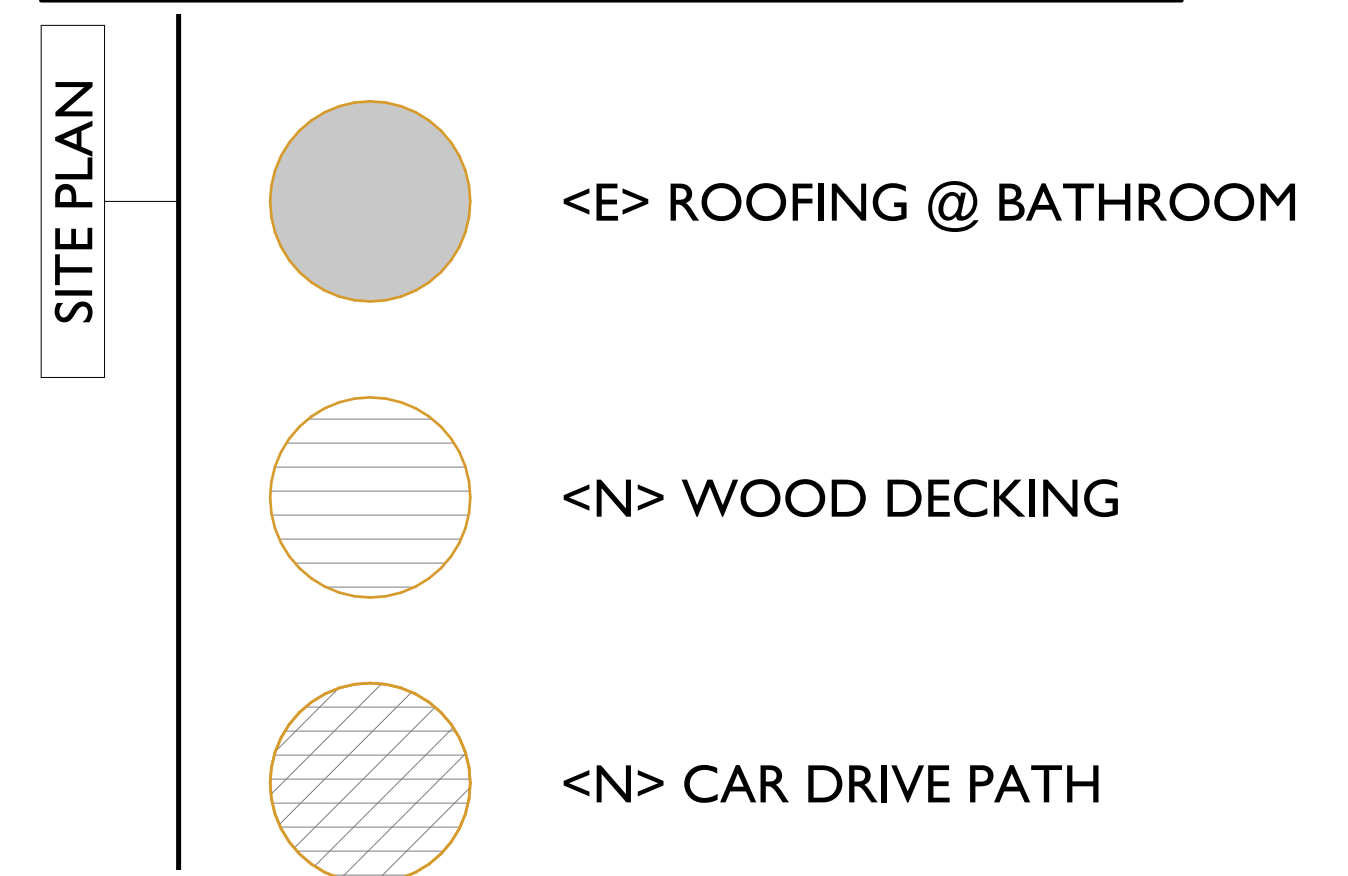
Accessor's Parcel Number
APN #: 123-456-78

Sheet Title
ENLARGED WHARF SITE PLAN - SECTION 07

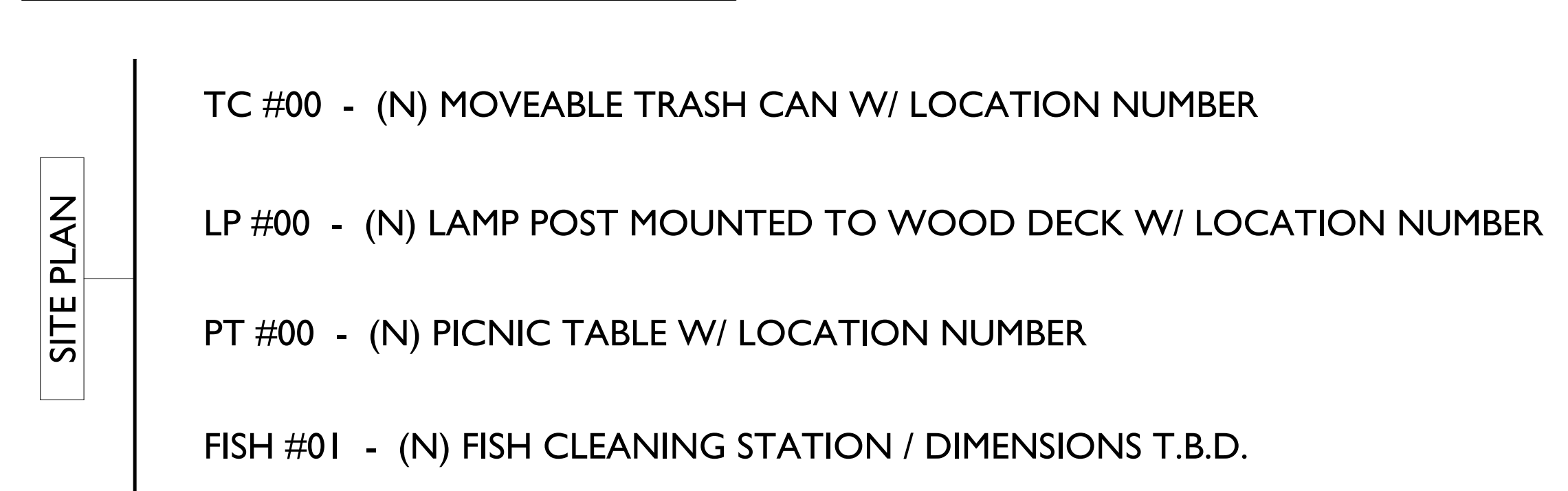
Scale
As Indicated

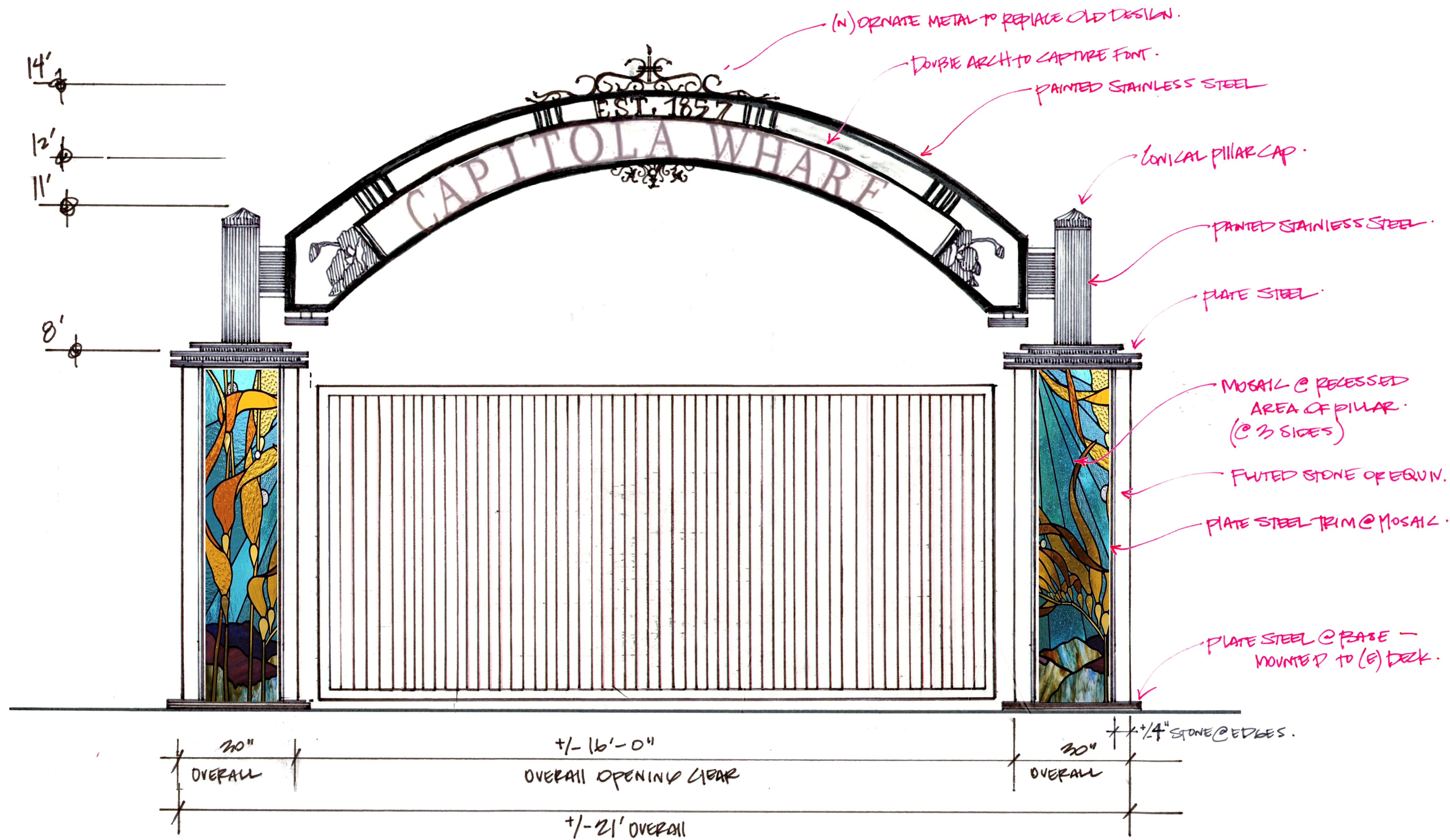


KEYNOTES



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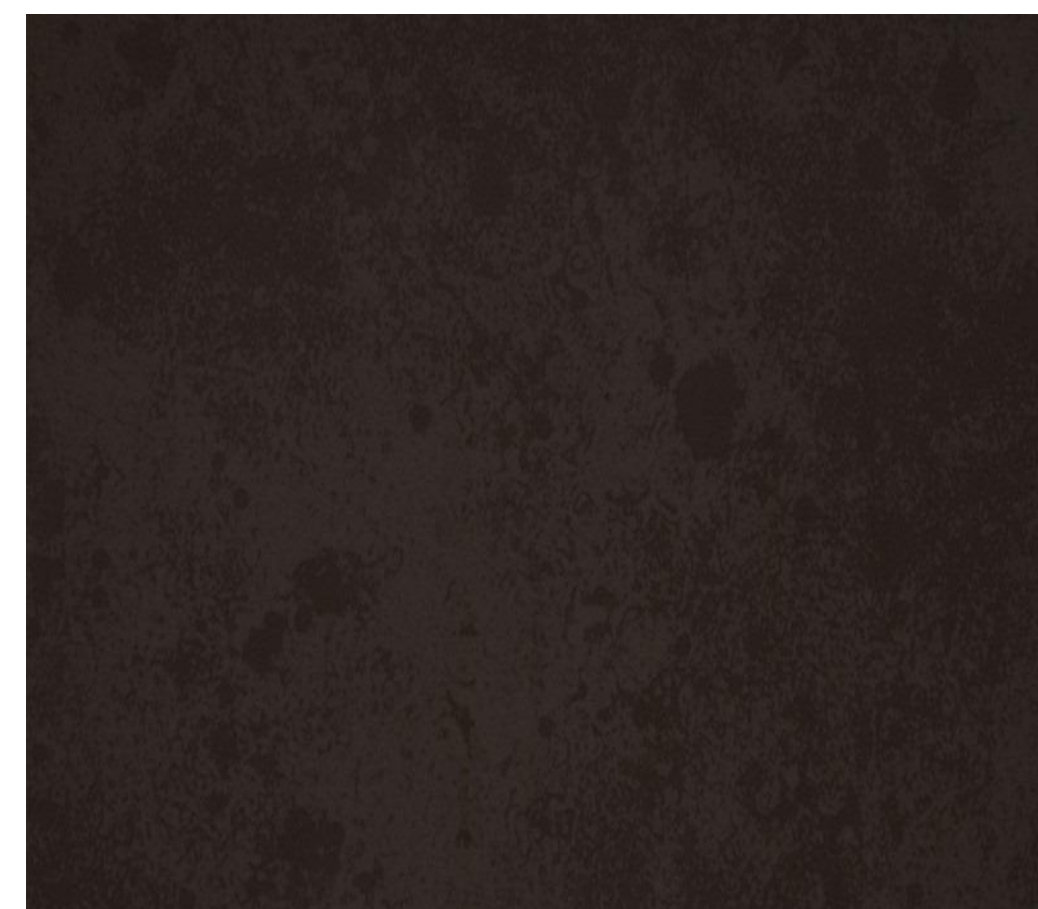




4

REVOI 3

1:0.66



PAINTED STAINLESS STEEL



FLUTED STONE



MOSAIC / GLASS TILE

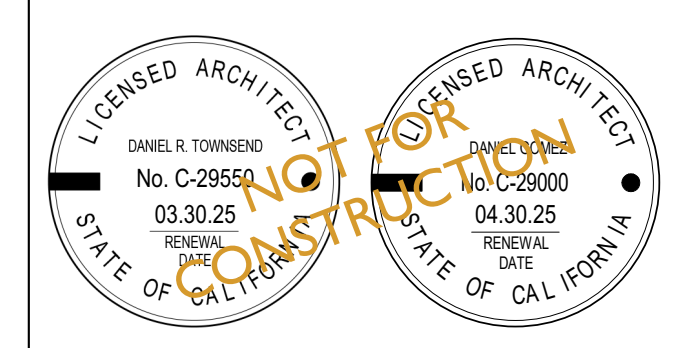
CAPITOLA WHARF

1400 Wharf Rd -Capitola CA, 95010



Project Submittal Record		
Revision	Date	Issue Description
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1	03/21/2024	PLANNING RE-SUBMITTAL

Seal/Signature



Project Name
Capitola Wharf

Accessor's Parcel Number
APN #: 123-456-78

Sheet Title
REVISED SCHEMATIC - WHARF ENTRY

Scale
As Indicated

A2

CAPITOLA WHARF

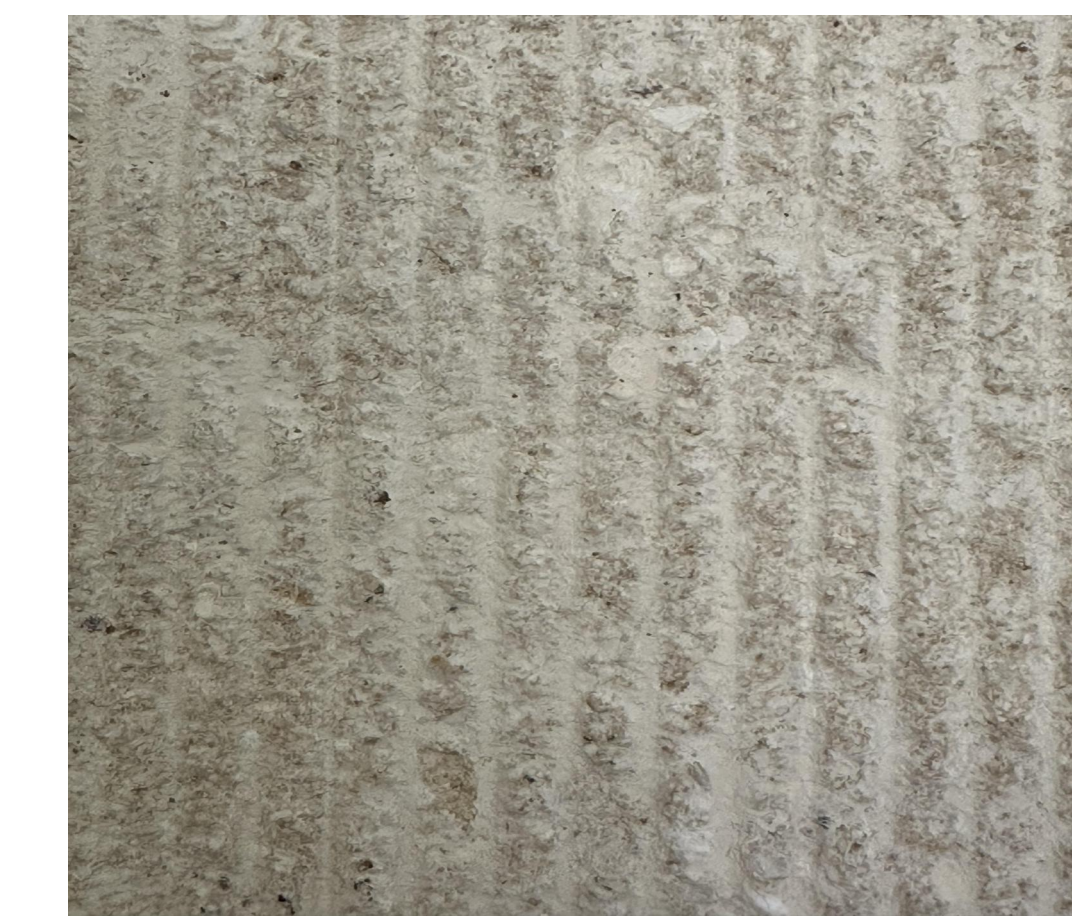
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CA, 95010

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fusearchitecture.com 831.479.9295

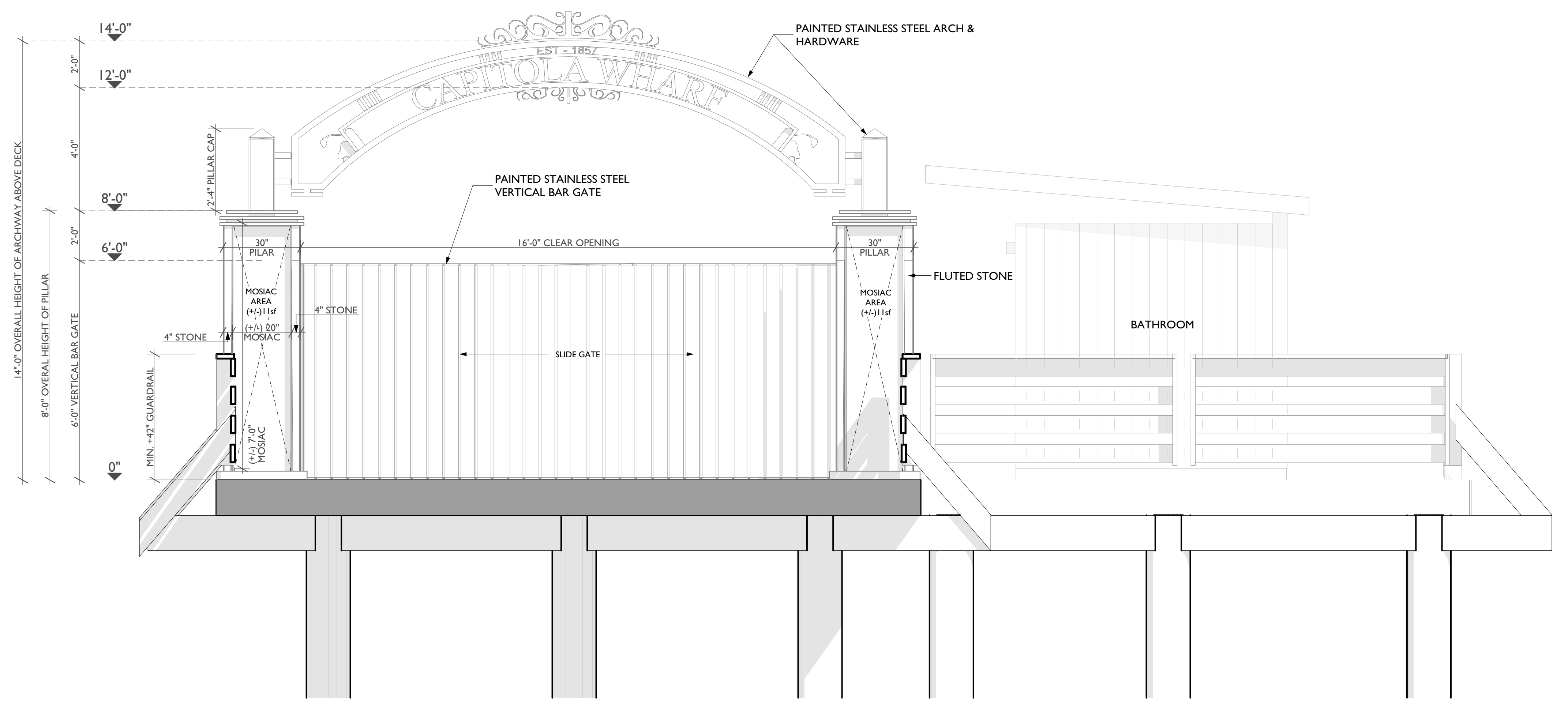
MATERIALS:



PAINTED STAINLESS STEEL



FLUTED STONE



ENTRY WHARF

1/2" = 1'-0"



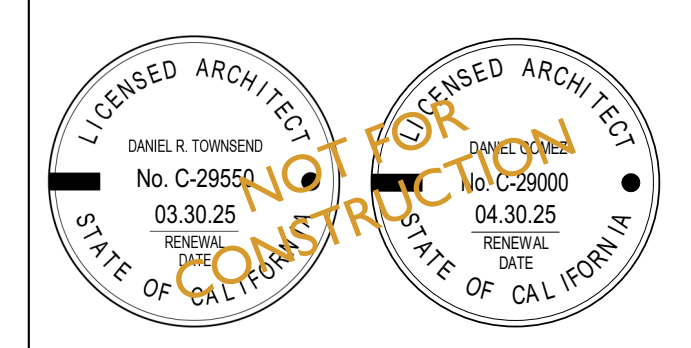
3D IMAGE TO ILLUSTRATE DESIGN INTENT



3D IMAGE TO ILLUSTRATE DESIGN INTENT - PILLAR DETAIL

Project Submittal Record		
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Seal/ Signature



Project Name
Capitola Wharf

Accessor's Parcel Number
APN #: 123-456-78

Sheet Title
WHARF ENTRY

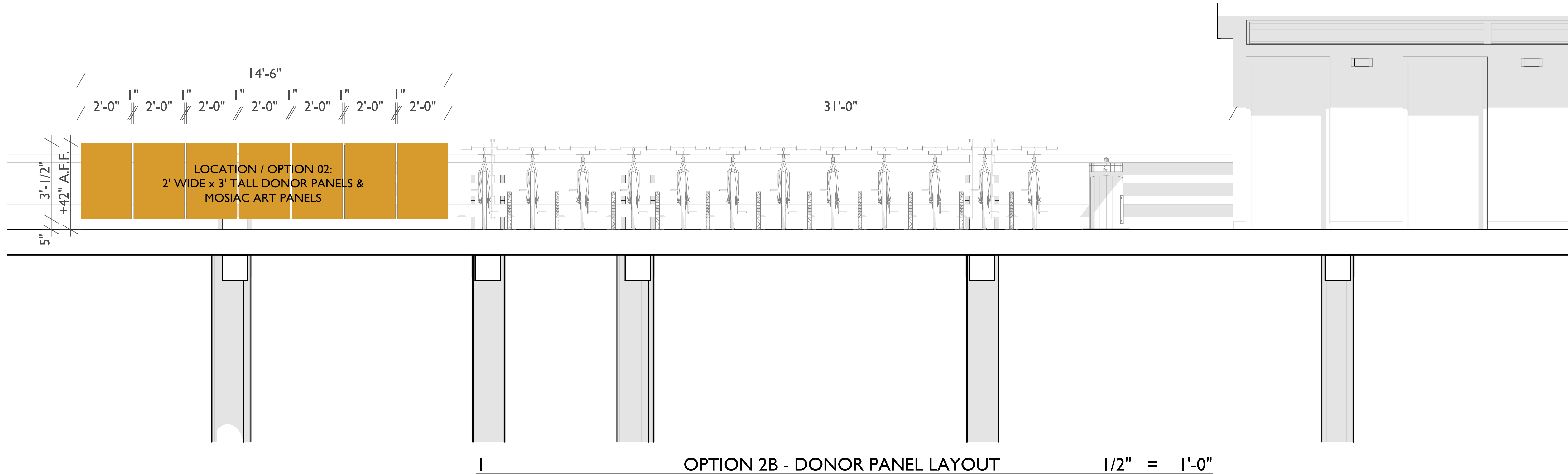
Scale
As Indicated

A3

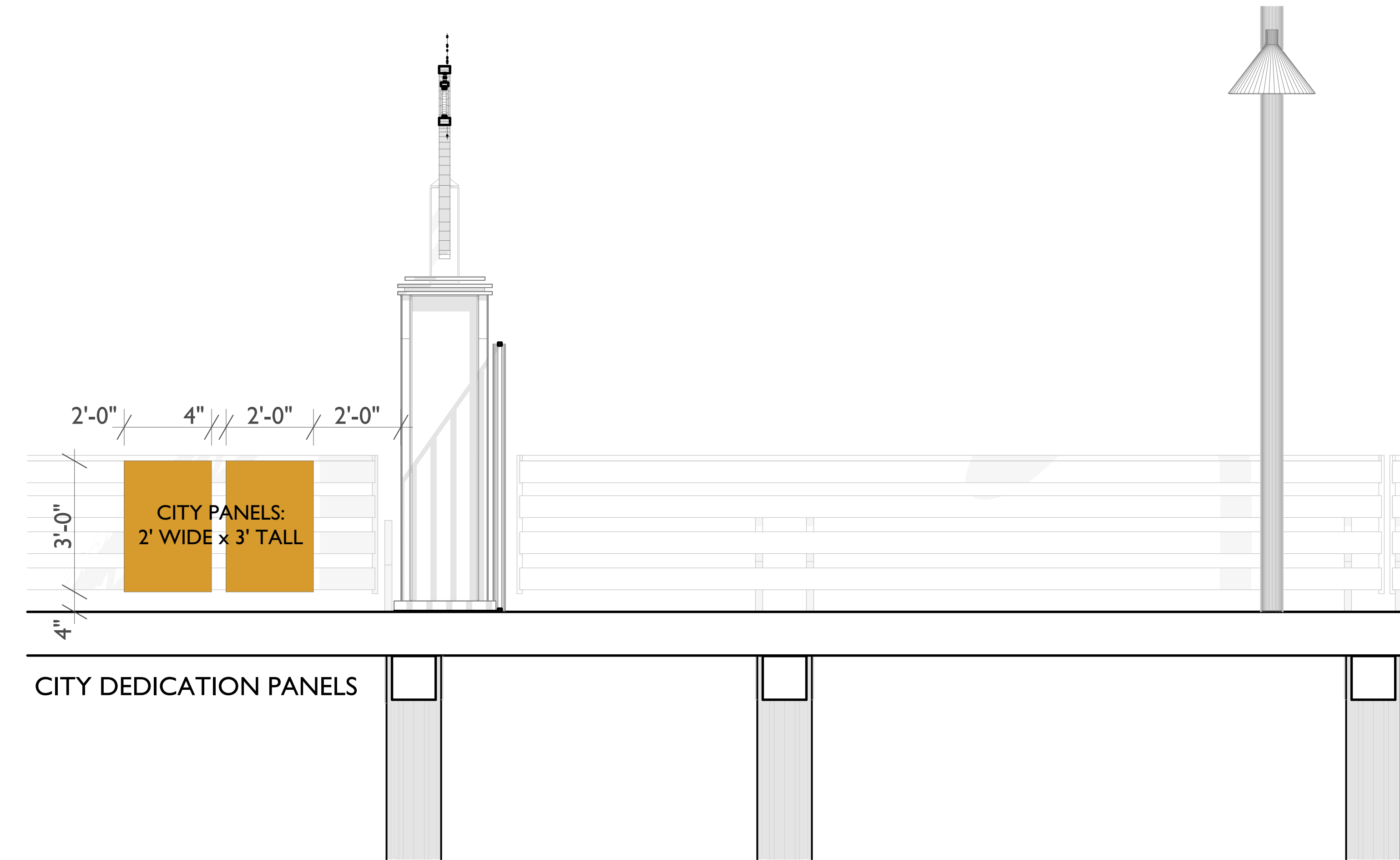
CAPITOLA WHARF

1400 Wharf Rd -Capitola
CA, 95010

fuse architects + builders
512 Capitola Ave + Capitola + California + 95010
fusearchitecture.com 831.479.9295



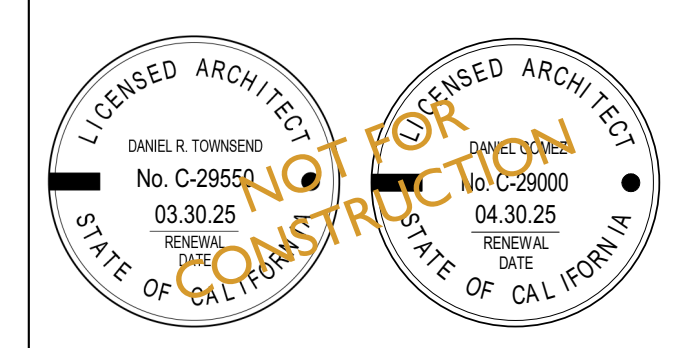
ENTRANCE VIEWS



Project Submittal Record

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Seal/ Signature



Project Name
Capitola Wharf

Accessor's Parcel Number
APN #: 123-456-78

Sheet Title
DONOR PANEL LAYOUT

Scale
As Indicated

A4



ENTRANCE VIEW

**CAPITOLA
WHARF**

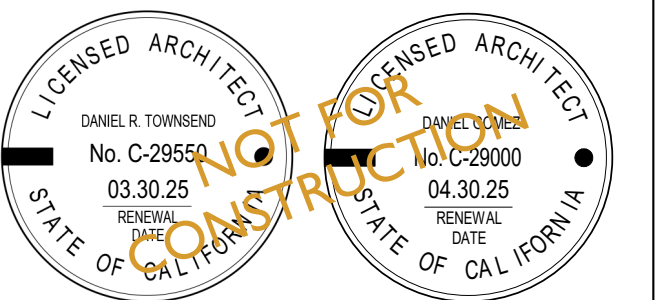
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Seal/ Signature



Project Name
Capitola Wharf

Accessor's Parcel Number
APN #: 123-456-78

Sheet Title
PHOTO RENDERINGS

Scale
As Indicated

A5

CAPITOLA WHARF

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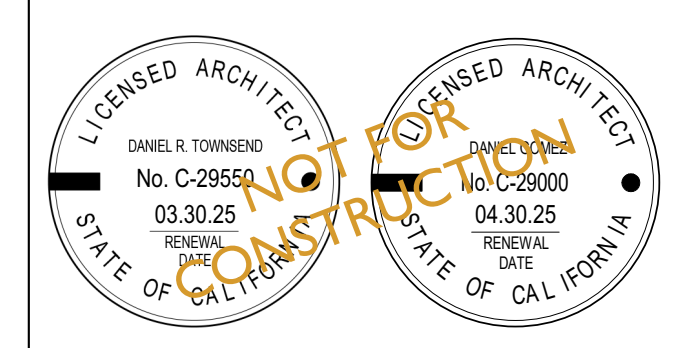


CLAD THE BATHROOM IN COMPOSITE WOOD PRESERVING ALL STAINLESS STEEL

Project Submittal Record

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Seal/ Signature



Project Name
Capitola Wharf

Accessor's Parcel Number
APN #: 123-456-78

Sheet Title
BATHROOM

Scale
As Indicated

A6

CITY OF CAPITOLA (OWNER)

420 Capitola Avenue, Capitola, CA 95010

CONTRACT

Capitola Wharf Improvements, DATE: June 13, 2024

1. Identification of Contractor.

CONTRACTOR: Fuse Architects, Inc

LICENSE NO: 991296

2. Scope of The Work. See Scope of Work attached as Appendix A.

Compensation for Work. Contractor's total compensation for the Work performed under this Agreement (**Contract Sum**) is \$199,325, to be paid as (**check one**): (1) lump sum; (2) lump sum with progress payments; (3) per attached schedule of rates and charges, up to a guaranteed not-to-exceed amount of \$199,325. All payments (**check one**): shall shall not be subject to a five percent retention.

Contractor's hourly rates are listed in Exhibit A, Scope of Work and Cost Proposal. In the event payments to Contractor equal the "not to exceed" amount, and absent a written modification to this Agreement signed by the Owner, Contractor shall complete all services required under this Agreement without further compensation or cost reimbursement.

3. Schedule of Performance for the Work. Contractor shall commence and complete the Work by the following dates:

Commencement Date shall be on the date established in the Notice to Proceed. Owner reserves the right to modify or alter the Commencement Date of the Work.

Substantial Completion Date: Within 90 calendar days of Commencement Date.

Final Completion Date: Within 30 calendar days of Substantial Completion.

3.01 Liquidated Damage Amounts.

A. As liquidated damages for delay Contractor shall pay Owner \$500 for each Day that expires after the time specified herein for Contractor to achieve Substantial Completion of the entire Work, until achieved.

B. As liquidated damages for delay Contractor shall pay Owner \$500 for each Day that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work, until achieved.

3.02 Scope of Liquidated Damages

A. Contractor and Owner agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of such actual damages incurred by Owner because of a delay in completion of all or any part of the Work. Contractor and Owner agree that specified measures of liquidated damages shall be presumed to be the amount of such damages actually sustained by Owner, and that because of the nature of the Project, it would be impracticable or extremely difficult to fix the actual damages.

B. Liquidated damages for delay shall cover administrative, overhead, interest on bonds, and general loss of public use damages suffered by Owner as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from Defective Work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from Owner (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof. Owner may deduct from any money due or to become due to Contractor subsequent to time for completion of entire Work and extensions of time allowed pursuant to provisions hereof, a sum representing then-accrued liquidated damages.

4. Terms and Conditions.

4.01 Contractor shall perform the Work in accordance with the terms and conditions of this Agreement and the following attachments (together, **Contract Documents**):

A. Appendix A – Scope of Work

B. Appendix B – General Conditions

City of Capitola Contract

C. Appendix C – Insurance

D. Appendix D – Construction Performance Bond

E. Appendix E – Construction Labor and Materials Payment Bond

F. Appendix F – Apprenticeship Program and Skilled and Trained Workforce Requirements

G. Appendix G - Supplemental Conditions, if applicable

4.02 The Contract Documents are the sole and exclusive provisions that govern the Work described herein. Any provision contained in any purchase order issued in connection with this Agreement or the Work described herein shall be null and void and shall have no force or effect.

Agreement number must appear on all invoices and correspondence. Send invoices in duplicate immediately upon performance of Work ordered hereon to:

City of Capitola
420 Capitola Avenue
Capitola, CA 95010

CITY OF CAPITOLA:

By: _____
Jamie Goldstein, City Manager

ATTEST:

By: _____
Julia Gautho, City Clerk

APPROVED AS TO FORM:

By: _____
Samantha Zutler, City Attorney

CONTRACTOR: FUSE ARCHITECTS, INC

Name: _____

By: _____
Dan Townsend

Its: _____
Title (If Corporation: Chairman, President or Vice President)

By: _____
Dan Gomez

Its: _____
Title (If Corporation: Chairman, President or Vice President)

1099 INFORMATION

Contractor Taxpayer I.D. No.: _____
Incorporated: Yes No

Appendix A to Contract
SCOPE OF WORK

Item Name	Total
0.00 - Mobilization	
Mobilization	\$30,150.00
Insurance	\$1,675.00
0.00 - Mobilization	\$31,825.00
1.00 - Entry Arch	
Decorative / Structural Steel	\$48,800.00
Stone @ Pillar Corners	\$7,500.00
Base Deck Beam / Structural Tie-In	\$15,000.00
Gate, Mechanisms, Slide & Track	\$20,000.00
Metal Painting	\$7,000.00
1.00 - Entry Arch	\$98,300.00
2.00 - Donor Walls	
Donor Panels & City Panels	\$11,000.00
City Panels	\$8,000.00
2.00 - Donor Walls	\$19,000.00
4.00 - Bathrooms	
4.00 - Bathrooms Siding	\$30,000.00
5.00 - Supervision	
1.01 - Construction P.M.	\$7,000.00
1.03 - Superintendent	\$13,200.00
5.00 - Supervision	\$20,200.00
Project Total	\$199,325.00

(End of Appendix A)

**Appendix B to Contract
GENERAL CONDITIONS**

ARTICLE 1 TERMS OF PERFORMANCE

1.01 Construction Services Agreement (Agreement) Force and Effect. The provisions of the Agreement and other Contract Documents constitute the entire agreement between the Contractor and Owner regarding the Work described herein. No representation, term or covenant not expressly specified in the Contract Documents shall, whether oral or written, be a part of this agreement. The Agreement and other Contract Documents shall govern the Work described herein (whenever performed), and shall supersede all other purchase orders and agreements between Contractor and Owner, and any proposal, with respect to the Work described herein.

1.02 No Modification or Waiver. The Contract Documents may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by fully authorized representatives of Owner and Contractor. Contract Documents headings are for convenience only and do not affect the construction of the Contract Documents.

1.03 Performance of Work/No Assignment. Time is of the essence in the performance of the Work. Contractor will perform the Work in a skillful and workmanlike manner; comply fully with criteria established by Owner, and with applicable laws, codes, and all applicable industry standards. Contractor shall maintain its work area in a clean and sanitary condition, clear debris and trash at the end of each work day, and shall not damage or disrupt any property unless specifically part of the scope of the Agreement. Contractor shall not contract any portion of the Work or otherwise assign the Agreement without prior written approval of Owner, and any assignment without Owner's prior written approval shall be null and void. (Contractor shall remain responsible for compliance with all terms of the Contract Documents, regardless of the terms of any such assignment.) The Contractor shall permit Owner (or its designees) access to the work area, Contractor's shop, or any other facility, to permit inspection of the Work at all times during construction and/or manufacture and fabrication. The granting of any progress payment, and any inspections, reviews, approvals or oral statements by any Owner representative, or certification by any governmental entity, shall in no way limit Contractor's obligations under the Contract Documents. Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require strict performance of any provision of the Contract Documents, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every provision hereof. Owner shall have, at all times, set-off rights with respect to any payment and Contractor's failure to perform the terms of the Contract Documents.

ARTICLE 2 LEGAL AND MISCELLANEOUS

2.01 Records and Payment Requests. Contractor shall submit all billings with all necessary invoices or other appropriate evidence of proper performance, after which Owner shall make payment within thirty (30) days. Upon Owner's written request, Contractor shall make available to Owner, its authorized agents, officers, or employees, any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the Work or the expenditures and disbursement charged to Owner, and all correspondence, internal memoranda, calculations, books and accounts, records documenting its Work under the Agreement, and invoices, payrolls, timecards, records and all other data related to matters covered by the Agreement. Contractor shall furnish to Owner, its authorized agents, officers, or employees, such other evidence or information as Owner may require with regard to the Work or any such expenditure or disbursement charged by Contractor. Contractor shall maintain all such documents and records prepared by or furnished to Contractor during the course of performing the Work for at least five years following completion of the Work, except that all such items pertaining to hazardous materials shall be maintained for at least thirty (30) years. Contractor shall permit Owner to audit, examine and make copies, excerpts and transcripts from such records. The State of California or any federal agency having an interest in the subject of the Agreement shall have the same rights conferred to Owner by this section. Such rights shall be specifically enforceable.

2.02 Independent Contractor. Contractor is an independent Contractor and does not act as Owner's agent in any capacity, whatsoever. Contractor is not entitled to any benefits that Owner provides to Owner employees including, without limitation, insurance, worker's compensation benefits or payments, pension benefits, health benefits or insurance benefits. Terms within the Contract Documents regarding directives apply to and concern the result of the Contractor's provision of Work not the means, methods, or scheduling of the Contractor's Work. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures with respect to its provision of Work under the Contract Documents. Contractor shall pay all payroll taxes imposed by any governmental entity and will pay all other federal, state, or local taxes not specifically identified in the Contract Documents as Owner's responsibility.

2.03 Indemnity/Liability. Contractor shall defend, indemnify, and save harmless, to the fullest extent permitted by law, the Owner and each of its council members, officers, directors, representatives, agents, employees, and volunteers (**Owner Indemnities**), against all claims, suits, actions, loss, cost, damage, expense, and liability arising from or related to bodily injury to or death of any person or damage to any property, or resulting from any breach and/or Contractor's negligence in performing the Work pursuant to the Contract Documents. Notwithstanding any provision of the Contract Documents, Owner shall not be liable to Contractor or anyone claiming under it, in contract or tort, for any special, consequential, indirect or incidental damages arising out of or in connection with the Contract Documents or the Work. Owner shall not be liable to Contractor for any reason resulting from the Contract Documents or award of the contract to Contractor. Owner's rights and remedies, whether under the Agreement or other applicable law, shall be cumulative and not subject to limitation. Contractor's obligations to defend, indemnify, and save harmless the Owner Indemnities are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained within this Agreement. Contractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

2.04 Defective Work; Warranties. Contractor warrants that all construction services shall be performed in accordance with generally accepted professional standards of good and sound construction practices, all Contract Documents requirements, and all laws, codes, standards, licenses, and permits. Contractor warrants that all materials and equipment shall be new, of suitable grade of their respective kinds for their intended uses, and free from defects. Contractor hereby grants to Owner for a period of one year following the date of completion its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all labor, materials and equipment provided by Contractor and its Subcontractors of all tiers. If either prior to completion of the Work, or within one year after completion, any Work (completed or incomplete) is found to violate any of the foregoing warranties (**Defective Work**), Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions, correct, remove and replace the Defective Work with conforming Work, and correct, remove and replace any damage to other Work or other property resulting therefrom. If Contractor fails to do so, Contractor shall pay all of the Owner's resulting claims, costs, losses and damages. Where Contractor fails to correct Defective Work, or defects are discovered outside the correction period, Owner shall have all rights and remedies granted by law.

2.05 Compliance with Laws; Conflict of Interests. Contractor agrees to comply with all applicable federal and state laws, regulations and policies, as amended, including those regarding discrimination, unfair labor practices, anti-kick-back, collusion, and the provisions of the Americans with Disability Act. Contractor, its officer, partners, associates, agents, and employees, shall not make, participate in making, or in any way attempt to use the position afforded them by the Contract Documents to influence any governmental decision in which he or she knows or has reason to know that he or she has a financial interest under applicable state, federal and local conflict of interest regulations. Contractor warrants that no person or agency has been employed or retained to solicit or obtain the Agreement upon an agreement or understanding for a contingent fee, except a bona fide

employee or agency. Contractor shall not engage in unlawful employment discrimination including, but not limited to, discrimination based upon a person's race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship, sexual orientation, or sexual identity as prohibited by state or federal law.

2.06 Termination; Suspension; Disputes. Owner may direct Contractor to terminate, suspend, delay, interrupt or accelerate Work, in whole or in part, for such periods of time as Owner may determine in its sole discretion. Owner will issue such directives in writing, and may do so, in whole or in part, for its convenience or due to Contractor's fault. Owner will compensate Contractor for extra costs resulting from such directives only to the extent that Owner issues such directives for its convenience and not due to Contractor's fault (but Owner shall not compensate Contractor for costs, profit or overhead anticipated to be earned or incurred on Work terminated for Owner's convenience.) Contractor shall continue its Work throughout the course of any dispute, and Contractor's failure to continue Work during a dispute shall be a material breach of the Contract Documents. All claims by Contractor against Owner shall be submitted in writing to Owner, and shall be governed by Public Contract Code Sections 9204 and 20104 – 20104.6, after which time the one year time period in Government Code Section 911.2 shall be, pursuant to Government Code Section 930.2, reduced to 90 days. Should Contractor be terminated for default, and such termination is subsequently determined to be wrongful, such termination will be converted to a termination for convenience as provided herein.

2.07 Execution; Venue; Limitations. The Agreement shall be deemed to have been executed in City of Capitola, California. Enforcement of the Contract Documents shall be governed by the laws of the State of California, excluding its conflict of laws rules. Except as expressly provided in the Contract Documents, nothing in the Contract Documents shall operate to confer rights or benefits on persons or entities not party to the Agreement. As between the parties to the Agreement, any applicable statute of limitations for any act or failure to act shall commence to run on the date of Owner's issuance of the final Certificate for Payment, or termination of the Contract Documents, whichever is earlier, except for latent defects, for which the statute of limitation shall begin running upon discovery of the defect and its cause.

2.08 Employee Wages; Records; Apprentices; Skilled Workforce. Contractor shall pay prevailing wages to its employees on any contract in excess of \$1,000.00. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are on file at the City's Public Works Department and may be obtained from the California Department of Industrial Relations website [<http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>].

Contractor shall comply with the 8-hours per day/40 hours per week/overtime/working hours restrictions for all employees, pursuant to the California Labor Code. Contractor and all subcontractors shall keep and maintain accurate employee payroll records for Work performed under the Agreement. The payroll records shall be certified and submitted as required by law, including Labor Code Sections 1771.4 (if applicable) and 1776, including to the Labor Commissioner no less frequently than monthly. Contractor shall comply fully with Labor Code Section 1777.5 in the hiring of apprentices for work relating to the Agreement. If the Agreement exceeds \$2,000 and is funded with federal funds, then Contractor shall pay federal Davis Bacon wages and comply with applicable federal requirements. Contractor shall also comply with the Apprenticeship Program and Skilled and Trained Workforce Requirements attached hereto as Appendix F.

2.09 Mandatory Contractor and Subcontractor Registration. Pursuant to Labor Code Section 1771(a), Contractor represents that it and all of its Subcontractors are currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. Contractor covenants that any additional or substitute Subcontractors will be similarly registered and qualified.

2.10 Worker's Compensation. Pursuant to Labor Code Sections 1860 and 1861, in accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his employees. Contractor represents that it is aware of the provisions of Labor Code Section 3700 that 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 Contractor shall comply with such provisions before commencing the performance of the Work.

2.11 Construction Performance Bond; Construction Labor and Materials Payment Bond; Securities in Lieu of Retention Escrow Account.

A. If Contract Sum under the Agreement exceeds (or is expected to exceed) **200,000**, Contractor shall provide a construction performance bond in form attached hereto as Appendix D – Construction Performance Bond and a construction labor and material payment bond, in accordance with Civil Code Section 9550 and in form attached hereto Appendix E – Construction Labor and Materials Payment Bond. Contractor may not substitute cash in lieu of the required bond(s).

B. If the Agreement specifies performance retention, Contractor may elect to substitute securities or direct payment to an escrow account, pursuant to Public Contract Code Section 22300 (incorporated herein by this reference).

2.12 Earthwork and Underground Facilities. If the Work involves digging trenches or other excavations that extend deeper than four feet below the surface, Contractor shall notify Owner in writing of any material that Contractor believes may be hazardous waste that is required to be removed in accordance law, subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids, or unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents, pursuant to Section 7104 of the Public Contract Code. For any Work involving trench shoring that costs in excess of \$25,000, Contractor shall submit and Owner (or a registered civil or structural engineer employed by Owner) must accept, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, pursuant to Labor Code Section 6705. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer. Consistent with Government Code Section 4215, as between Owner and Contractor, Owner will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Site only if such utilities are not identified in the Contract Documents or information made available for bidding.

2.13 Public Records Act. Contractor is aware that this Agreement and any documents provided to the Owner may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Contractor to clearly identify information in those documents it considers to be confidential under the California Public Records Act. To the extent that Owner agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

2.14 Claims.

A. Should any clarification, determination, action or inaction by Owner, Work, or any other event, in the opinion of Contractor, exceed the requirements of or not comply with Contract Documents, or otherwise result in Contractor seeking additional compensation in time or money or damages for any reason (collectively "Disputed Work"), then Contractor and Owner will make good faith attempts to resolve informally any and all such issues, claims and/or disputes. Before commencing the Disputed Work, or within seven Days after Contractor's first knowledge of the Disputed Work, whichever is earlier, Contractor shall file a written notice and cost proposal for the Disputed Work with City stating clearly and in detail its objection and reasons for contending the Work or interpretation is outside the requirements of Project Documents. If a written notice and cost proposal for Disputed Work is not issued within this time period, or if Contractor proceeds with the Disputed Work without first having given the notice required by this paragraph, Contractor shall waive its rights to further claim on the specific issue.

B. Owner will review Contractor's timely notice and cost proposal for Disputed Work and provide a decision. If, after receiving the decision, Contractor disagrees with it or still considers the Work required of it to be outside of the requirements of Project Documents, it shall so notify

Owner, in writing, within seven Days after receiving the decision, by submitting a notice of potential claim, stating that a formal claim will be issued. Within 30 Days of receiving the decision, Contractor shall submit its claim in the form specified herein and all arguments, justification, cost or estimates, schedule analysis, and detailed documentation supporting its position. Contractor's failure to furnish notification within seven Days and all justifying documentation within 30 Days will result in Contractor waiving its right to the subject claim.

C. Claim Format

1. A. Contractor shall submit the claim justification in the following format:

(a) Cover letter and certification;

(b) Summary of claim, including underlying facts, entitlement, schedule analysis, quantum calculations, Project provisions supporting relief;

(c) List of documents relating to claim including Specifications, Drawings/Plans clarifications/requests for information, schedules, notices of delay, cost calculations and any others;

(d) Chronology of events and correspondence;

(e) Analysis of claim merit;

(f) Analysis of claim cost; and

(g) Attach supporting documents referenced in paragraph 2.14.C.1(c), above.

D. Required Provisions on Contract Claim Resolution

1. Public Contract Code Section 9204 specifies provisions on resolving contract claims of any size, and Public Contract Code Section 201014, et seq., specifies required provisions on resolving contract claims less than \$375,000. Those statutes constitute a part of this Contract. In the event any other Contract provision violates such statutes, the applicable statute controls.

(End of Appendix B)

**Appendix C to Contract
INSURANCE**

1. Commercial General Liability Insurance, written on an "occurrence" basis, which shall provide coverage for bodily injury, death and property damage resulting from operations, liability for slander, false arrest and invasion of privacy, blanket contractual liability, broad form endorsement, and completed operations, personal and advertising liability, with limits of not less than **\$1,000,000** general aggregate and **\$2,000,000** each occurrence, subject to a deductible of not more than **\$10,000** payable by Contractor.

2. Business Automobile Liability Insurance with limits not less than **\$1,000,000** each occurrence including coverage for owned, non-owned and hired vehicles, subject to a deductible of not more than **\$10,000** payable by Contractor.

3. Workers' Compensation Employers' Liability limits not less than **\$1,000,000** each accident, **\$1,000,000** per disease and **\$2,000,000** aggregate. Contractor's Workers' Compensation Insurance policy shall contain a Waiver of Subrogation against the City of Capitola, its council members, officers, directors, officials, agents, employees and volunteers. In the event Contractor is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California.

4. Builder's Risk Insurance including, without limitation, coverage against loss or damage to the Work by fire, lightning, wind, hail, aircraft, riot, vehicle damage, explosion, smoke, falling objects, vandalism, malicious mischief, collapse, and other such hazards as are normally covered by such coverage. Such insurance shall be in amount equal to the replacement cost (without deduction for depreciation and subject to stipulated value in lieu of average clause) of all construction constituting any part of the Work, excluding the cost of excavations, of grading and filling of the land, and except that such insurance may be subject to deductible clauses not to exceed **\$1,000,000** for any one loss. Such insurance will not cover loss or damage to Contractor's equipment, scaffolding or other materials not to be consumed in the construction of the Work. The insurer shall waive all rights of subrogation against Owner.

5. Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Owner Indemnitied as Additional Insureds. The requirements for coverage and limits shall be the greater of either the minimum coverage and limits specified in this Agreement or the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured.

6. Insurance policies in this Appendix C shall contain an endorsement containing the following terms:

6.01 Owner Indemnitied shall be named as Additional Insureds, but only with respect to liability arising out of the activities of the named insured, and there shall be a waiver of subrogation as to each named and Additional Insured. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Owner has received a waiver of subrogation endorsement from the insurer.

6.02 The policies shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.

6.03 Written notice of cancellation, non-renewal or of any material change in the policies shall be mailed to City of Capitola thirty (30) days in advance of the effective date thereof.

6.04 Contractor insurance shall be primary insurance as to Owner and no other insurance or self-insured retention carried or held by any named or Additional Insureds other than Contractor shall be called upon to contribute to a loss covered by insurance for the named insured.

6.05 Certificates of Insurance and Endorsements shall have clearly typed thereon the Project Name, shall clearly describe the coverage and shall contain a provision requiring the mailing of written notices of cancellation described in clause 6.03 above. Contractor shall furnish the Owner with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Owner before work commences. However, failure to obtain the required documents prior to the work beginning shall not

waive the Contractor's obligation to provide them. The Owner reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

7. All policies of insurance shall be placed with insurers acceptable to Owner. The insurance underwriter(s) must be duly licensed to do business in the State of California and (other than for workers' compensation) must have an A. M. Best Company rating of **A-VIII** or better. Required minimum amounts of insurance may be increased should conditions of Work, in the opinion of Owner, warrant such increase. Contractor shall increase required insurance amounts upon direction by Owner.

8. The insurance coverage limits may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of Owner and Additional Insureds, to the extent required by this Agreement, before the Owner's insurance or self-insurance may be called upon to protect Owner as a named insured.

9. All self-insured retentions (SIR) must be disclosed to Owner for approval and shall not reduce the limits of liability coverage. Policies containing and SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Contractor/named insured or Owner.

10. Contractor agrees to include with all subcontractors in their subcontracts the same requirements and provisions of this Agreement that is required of Contractor including, without limitation, the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Contractor shall agree to be bound to Contractor and Owner in the same manner and to the same extent as Contractor is bound to Owner under this Contract and its accompanying documents. Subcontractors shall further agree to include these same provisions with any lower tier subcontractors. A copy of the indemnity and insurance provisions of this Agreement will be furnished to the Subcontractor upon request. Contractor shall require all subcontractors to provide a valid Certificate of Insurance and the required endorsements included in the subcontract agreement, and will provide proof of compliance to the Owner prior to commencement of any work by the subcontractor.

11. Special Risks or Circumstances: City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

(End of Appendix C)

Appendix D to Contract

CONSTRUCTION PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

1. THAT WHEREAS, City of [_____], a political subdivision of the State of California (**Owner**) has awarded to [**Name of Contractor**] _____, as Principal, a Purchase Order Agreement, dated the _____ day of _____, 20__ (**Agreement**), titled THE _____ PROJECT in the amount of \$ _____, which Agreement is by this reference made a part hereof, for the work described as follows:

2. (Describe Agreement Work) _____

3. AND WHEREAS, Principal is required to furnish a bond in connection with the Agreement, guaranteeing the faithful performance thereof;

4. NOW, THEREFORE, we, the undersigned Principal and _____ as Surety are held and firmly bound unto Owner in the sum of 100% OF THE CONTRACT SUM to be paid to Owner or its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

5. THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by Owner, shall promptly and faithfully perform the covenants, conditions, and agreements of the Agreement during the original term and any extensions thereof as may be granted by Owner, with or without notice to Surety, and during the period of any guarantees or warranties required under the Agreement, and shall also promptly and faithfully perform all the covenants, conditions, and agreements of any alteration of the Agreement made as therein provided, notice of which alterations to Surety being hereby waived, on Principal's part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify, defend, protect, and hold harmless Owner as stipulated in the Agreement, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and effect.

6. No extension of time, change, alteration, modification, or addition to the Agreement, or of the work required thereunder, shall release or exonerate Surety on this bond or in any way affect the obligation of this bond; and Surety does hereby waive notice of any such extension of time, change, alteration, modification, or addition.

7. Whenever Principal shall be and declared by Owner in default under the Agreement, Surety shall promptly remedy the default, or shall promptly:

7.01 Undertake through its agents or independent contractors, reasonably acceptable to Owner, to complete the Agreement in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Agreement including, without limitation, all obligations with respect to warranties, guarantees, indemnities, and the payment of liquidated damages; or

7.02 Obtain a bid or bids for completing the Agreement in accordance with its terms and conditions, and, upon determination by Owner of the lowest responsible bidder, reasonably acceptable to Owner, arrange for a contract between such bidder and Owner and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Sum, and to pay and perform all obligations of Principal under the Agreement including, without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages; but, in any event, Surety's total obligations hereunder shall not exceed the amount set forth in the third paragraph hereof. The term "balance of the Contract Sum," as used in this paragraph, shall mean the total amount payable by Owner to the Principal under the Agreement and any amendments thereto, less the amount Owner paid to Principal.

8. Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Agreement, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the others. Surety may not use Contractor to complete the Agreement absent Owner's written consent.

9. No right of action shall accrue on this bond to or for the use of any person or corporation other than Owner or its successors or assigns.

10. Surety may join in any proceedings brought under the Agreement and shall be bound by any judgment.

11. Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, 20__.

CONTRACTOR AS PRINCIPLE

Company: _____ (Corp. Seal)

Signature

Name

Title

Street Address

City, State, Zip Code

SURETY

Company: _____ (Corp. Seal)

Signature

Name

Title

Street Address

City, State, Zip Code

(End of Appendix D)

Appendix E to Contract

CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

1. THAT WHEREAS, the **City of** [____], a political subdivision of the State of California (**Owner**) has awarded to (**Name of Contractor**) _____, as Principal, a Construction Services Agreement, dated the _____ day of _____, 20____ (**Agreement**), titled THE _____ PROJECT located at _____ in the amount of \$ _____, which Agreement is by this reference made a part hereof, for the work described as follows:
(Describe Agreement Work) _____

Name

Title

Street Address

City, State, Zip Code

2. AND WHEREAS, Principal is required to furnish a bond in connection with the Agreement to secure the payment of claims of laborers, mechanics, material suppliers, and other persons as provided by law;

SURETY

3. NOW, THEREFORE, we, the undersigned Principal and _____ as Surety, are held and firmly bound unto Owner in the sum of 100% OF THE CONTRACT SUM (\$ _____), for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Company: _____ (Corp. Seal)

Signature

4. THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by Owner, or its subcontractors shall fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the State of California Unemployment Insurance Code with respect to work or labor performed under the Agreement, or for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to California Unemployment Insurance Code Section 13020 with respect to such work and labor, that Surety will pay for the same in an amount not exceeding the sum specified in this bond, plus reasonable attorneys' fees, otherwise the above obligation shall become and be null and void.

Name

Title

Street Address

City, State, Zip Code

5. This bond shall inure to the benefit of any of the persons named in California Civil Code Section 9100, as to give a right of action to such persons or their assigns in any suit brought upon this bond. The intent of this bond is to comply with the California Mechanic's Lien Law.

(End of Appendix E)

6. Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Agreement, or to the work to be performed thereunder, shall in any way affect the obligation of this bond; and it does hereby waive notice of any such extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Agreement, or to the work to be performed thereunder.

7. Surety's obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection with the Agreement; and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the other.

8. Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

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

CONTRACTOR AS PRINCIPLE

Company: _____ (Corp. Seal)

Signature

APPRENTICESHIP PROGRAM AND SKILLED AND TRAINED WORKFORCE REQUIREMENTS

ARTICLE 1 COMPLIANCE REQUIRED

1.01 Contractor and Subcontractors shall comply with the requirements of Labor Code Sections 1776, 1777.5, and 1777.6 concerning the employment of apprentices by Contractor or Subcontractors. Willful failure to comply may result in penalties, including loss of the right to Bid on or receive public works contracts.

ARTICLE 2 CERTIFICATION OF APPROVAL

2.01 Labor Code Section 1777.5, as amended, requires a Contractor or Subcontractor employing tradespersons in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of a public works project and which administers the apprenticeship program in that trade for a certification of approval. The certificate shall also fix the ratio of apprentices to journeypersons that will be used in performance of the Contract. The ratio of work performed by apprentices to journeypersons in such cases shall not be less than one *hour* of apprentices work for every five *hours* of labor performed by journeypersons (the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeypersons), except:

- A. When unemployment for the previous three month period in the area exceeds an average of 15 percent;
- B. When the number of apprentices in training in the area exceeds a ratio of one to five;
- C. When a trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis state-wide or locally; or
- D. Assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyperson.

ARTICLE 3 FUND CONTRIBUTIONS

3.01 Contractor is required to make contributions to funds established for administration of apprenticeship programs if Contractor employs registered apprentices or journeypersons in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.

ARTICLE 4 APPRENTICESHIP STANDARDS

4.01 Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of the California Department of Industrial Relations, or from the Division of Apprenticeship Standards and its branch offices.

ARTICLE 5 APPRENTICESHIP STANDARDS

5.01 Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of the California Department of Industrial Relations, or from the Division of Apprenticeship Standards and its branch offices.

ARTICLE 6 SKILLED AND TRAINED WORKFORCE REQUIREMENTS

6.01 Contractor, if and to the extent otherwise required by law, shall meet the requirements of Public Contract Code § 2601(d) subject to certain exceptions set forth therein, that the required percentage of the skilled journeypersons or skilled journeyman hours employed to perform work on the Project by the Contractor and all subcontractors are graduates of an apprenticeship program for the applicable apprenticeable occupation.

6.02 "Skilled Journeyman" means a worker who either:

A. Graduated from an apprenticeship program for the applicable occupation that was approved by the Chief or apprenticeship program located outside California and approved for federal purposes, pursuant to the apprenticeship regulations adopted by the Federal Secretary of Labor.

B. Has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program that is approved by the Chief.

6.03 A graduate of an apprenticeship program means either of the following:

A. An individual that has been issued a certificate of completion under the authority of the California Apprenticeship Council for completing an apprenticeship program approved by the Chief pursuant to Section 3075 of the Labor Code; or

B. An individual that has completed an apprenticeship program located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

6.04 Pursuant to Public Contract Code section 2602 and if and to the extent otherwise required by law, Contractor shall certify that it, and all its contractors and subcontractors at every tier will comply with the Skilled and Trained Workforce Requirements of Public Contract Code Chapter 2.9 (Sections 2600 through 2603). Prime Contractor also understands and acknowledges that it shall provide the Owner a monthly report, in the form in Attachment A below or a substantially similar form, demonstrating compliance with the Skilled and Trained Workforce Requirements listed in Public Contract Code Chapter 2.9 (Sections 2600 through 2603). If Contractor fails to provide the monthly report, or a report that is incomplete, Owner will withhold future payments until a complete report is provided. The definitions, obligations, rights and remedies set forth in Public Contract Code Section 2600-2603 are hereby incorporated by reference and made a part of this agreement.

Skilled and Trained Workforce Monthly Compliance Report

DIRECTIONS: This form is required to be submitted by the Contractor for all contractors regardless of tier by the 15th of the following month for work performed corresponding to this reporting period. Items with a red asterisk (*) indicate a required field.

Project Title:	
*Project Number:	
*Prime Contractor:	
*Subcontractor:	
*Contact Name:	
*Contact Number:	

Month	Year
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Exceptions:*

***Work Month & Year:**

*Report: Please fill out the following report of all apprenticeable occupations utilized in this reporting period.

SKILLED JOURNEYPERSON (SJ) REPORT							
*Apprenticeable Occupation	*Required minimum SJ: Apprentice Graduate % (see 2 nd page attachment)	Number of Skilled Journeypersons (SJ) employed by the contractor to perform work on the project		SJ ratio between the number of SJ: Apprentice Graduates to SJ: On-The-Job Experience Workers	Number of hours worked by SJ employed by the contractor to perform work on the project		SJ ratio of hours worked by SJ: Apprentice Graduates compared with SJ: On-The-Job Experience Workers
		*SJ: Apprentice Graduate	*SJ: On-The-Job Experience		*SJ: Apprentice Graduate	*SJ: On-The-Job Experience	
EXAMPLE Laborer	40%	7	3	70%	30	70	30%

Terms	Definitions
Apprentice	Defined in Labor Code 3077
Skilled Journeyperson: Apprentice Graduate	Defined in Public Contracts Code 2601 (e) (1)
Skilled Journeyperson: On-The-Job-Experience	Defined in Public Contracts Code 2601 (e) (2)

(End of Appendix F)

APPENDIX G TO CONTRACT
SUPPLEMENTAL CONDITIONS
(If Applicable)

(End of Appendix G)