

FACILITY USE AGREEMENT
BETWEEN THE CITY OF CAPITOLA AND THE CAPITOLA WHARF &
VILLAGE BUSINESS IMPROVEMENT AREA

THIS FACILITY USE AGREEMENT ("Agreement") dated January 22, 2026, ("Effective Date") is made and entered into by and between the City of Capitola, a municipal corporation, ("City"), and the Capitola Wharf & Village Business Improvement Area organization ("BIA"). City and BIA are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. WHEREAS, City is the owner of real property located at 420 Capitola Avenue, Capitola, California 95010, in the County of Santa Cruz, State of California (the "Premises").

B. WHEREAS, BIA is in need of a reliable meeting room to conduct regular Board meetings and to plan and execute BIA events such as annual Sip N' Strolls; and

C. WHEREAS, it is the intent of the City to make its Community Room ("Facilities"), located within the Premises, available for use by the BIA when not needed for City related business.

NOW, THEREFORE, with regard to the above recitals and for good and sufficient consideration, the adequacy of which is hereby acknowledged, the Parties agree to the following:

AGREEMENT

1. **Term.** The term ("Term") of this Agreement shall run for three (3) years from the Effective Date set forth above, and will automatically renew for subsequent one (1) year periods unless terminated in accordance with section 2 of this Agreement.

2. **Termination.** Either Party may terminate this Agreement for any reason by ninety (90) days' advance written notice. If any actions by BIA are creating a hazard or causing damage to the facilities, City may terminate this Agreement immediately.

3. **Fees, Costs, and Charges.** BIA agrees to pay the non-profit rate for use of the Community Room if and when the City Council adopts fees for the use of the Community Room during the term of this Agreement.

4. **BIA's Use of City's Premises.**

a. City will make available to BIA the Facilities for the purpose of conducting BIA Board Meetings ("Meetings") on the second Tuesday of each month, from 8:30 a.m. until the conclusion of the meeting, and for planning meetings for BIA events such as the Sip N' Stroll, as communicated with City staff on an annual basis. If a conflict arises wherein the City needs to use the Facilities at the same time as the BIA is scheduled to use the Facilities, City will

have priority in using the Facilities. City agrees to provide the BIA as much notice as practically possible so that the BIA may notify its members of the change in venue in a timely manner. The organization may request use of the Facilities on other dates and times as needed, and the City may approve or deny such requests in its discretion. If the request is approved, City and BIA agree that no further payment obligations will arise unless by separate agreement of the Parties. The BIA may further use the Facilities for special meetings based on availability.

- b. City shall pay for all water, gas, electricity, light, heat, telephone, power, and other utilities and communications services for the Premises during the Term of this Agreement.
- c. City will provide BIA a code to access the Facilities prior to the first meeting in February 2026.
- d. During its use of the Facilities, BIA shall maintain the Facilities in a lawful, fully operable, safe, neat, clean, and sanitary condition, free from waste and debris. BIA shall not permit any waste or nuisance in or about the Facilities, nor store materials hazardous to health or safety of the public, nor shall BIA permit the use of the Facilities for any illegal purposes at all times during the Term of this Agreement. After the conclusion of each Meeting, BIA shall return the Facilities to the condition it was in prior to when the Meeting began.
- e. Should BIA not maintain Facilities in a fully operable, safe, neat, clean, and sanitary condition, free from waste and debris, the City shall be entitled to additional payments from the BIA to recover costs necessary to return the property to fully operable, safe, neat, clean, and sanitary condition, free from waste and debris. Such costs shall be determined at City's sole discretion.
- f. The BIA acknowledges this agreement does not include City staff/technical assistance to help set up or troubleshoot issues prior to or during meetings.
- g. BIA shall report any personal injuries or property damage arising at any time during, and/or in any way connected with, BIA's use or occupancy of the Facilities to City staff in writing and as soon as practicable.
- h. City will make available the following equipment and services for each Board Meeting:
 - i. Tables

ii. Chairs, and

iii. Television

5. **Indemnification.** BIA shall indemnify, defend, and hold harmless City and its officers, employees, and agents from any and all losses, costs, expenses, claims, liabilities, actions, or damages, including liability for injuries to any person or persons or damage to property arising at any time during and/or arising out of or in any way connected with BIA's use or occupancy of the Facilities, unless solely caused by the active negligence or willful misconduct of City or its officers, employees, or agents.

6. **Insurance Requirements.**

- a. BIA must hold adequate general liability insurance for bodily injury and property damage that applies to that person or group's use of the Facilities. The insurance should provide coverage of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Proof of such insurance must be furnished upon request by City.
- b. BIA must hold employer's liability insurance of at least \$1,000,000 per accident for bodily injury and property damage.
- c. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits, or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. BIA may meet its obligation in this section through equivalent self-insurance.

7. **Assignment; Subleases; Transfers.** BIA shall not voluntarily or by operation of law assign, transfer, sublet, mortgage, or otherwise transfer or encumber all or any part of BIA's interest in this Agreement or the Facility.

8. **Severability.** Each provision of this Agreement is severable from the other provisions. If any provision of this Agreement is held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect to the fullest extent permitted by law.

9. **No Waiver.** The failure of either Party to this Agreement to insist at any time upon the strict observance or performance of any of the provisions of this Agreement, or to exercise any right or remedy as provided in this Agreement, shall not impair any such right or remedy or be construed as a waiver or relinquishment of such right or remedy with respect to subsequent defaults.

10. Miscellaneous.

- a. BIA shall comply with all local, state, and federal laws and regulations related to the use of the Facilities. BIA agrees to abide by all applicable federal and state accessibility standards and regulations.
- b. Each Party agrees that this Agreement is made and accepted on and subject to the condition that there be no discrimination against or segregation of any person or group of persons, on account of race, color, sex, sexual orientation, age, handicap, marital status, religion, nation origin or ancestry in the use, occupancy, tenure or enjoyment of the Facilities, nor shall any Party, or any person claiming under or through it, establish or permit any practice or practices of discrimination or segregation with reference to the Facilities.
- c. BIA shall not admit a larger number of individuals than can lawfully, safely, and freely move about the Facilities. In no event may BIA admit a number of individuals than that permitted by the Fire Marshal for the Facilities.

11. Applicable Law and Venue. The execution, interpretation, and performance of this Agreement shall in all respects be controlled and governed by the laws of the State of California. Venue for any action filed with respect to the Agreement shall be in the courts of the County of Santa Cruz and all Parties agree to submit to the jurisdiction of said courts.

12. Notices. Should any notice be required, such notice shall be in writing and delivered either in person at the normal offices of the other party, or, in the alternative, may be given by depositing such notice in the United States mail, postage fully prepaid, and addressed to the parties as follows:

CITY OF CAPITOLA
420 Capitola Ave
Capitola, CA 95010
Attn: City Manager

**CAPITOLA WHARF &
VILLAGE BUSINESS IMPROVEMENT AREA
P.O. Box 501
Capitola, CA, 95010**

13. Entire Agreement. This Agreement, including any specified attachments, constitutes the entire agreement between the Parties with respect to use of the Facilities and supersedes and replaces any and all previous agreements entered into or/and negotiated between City and BIA relating to the Facilities covered by this Agreement. No change to this Agreement shall be valid unless made by supplemental written agreement executed and approved by City and

BIA. Except as otherwise provided herein, any and all amendments, additions, or deletions to this Agreement shall be null and void unless approved by City and BIA in writing.

14. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, City and BIA have executed this Agreement as of the date first written above.

CITY OF CAPITOLA

CAPITOLA WV BIA

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Date: _____

Date: _____