



City of San Leandro

Meeting Date: November 19, 2018

Staff Report

File Number: 18-574 **Agenda Section:** CONSENT CALENDAR

Agenda Number: 8.O.

TO: City Council

FROM: Jeff Kay
City Manager

BY: Tom Liao
Community Development Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for a Resolution of the City of San Leandro City Council to Approve a Non-Exclusive License Agreement with PropSF for Non-Exclusive Access to the Wes McClure Public Boat Launch and Associated Parking to Conduct Daily Private Charter Ferry Service at the San Leandro Shoreline.

SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council adopt the attached Resolution that would approve a Non-Exclusive License Agreement between the City of San Leandro and PropSF for non-exclusive access to the Wes McClure public boat launch and associated parking to conduct daily private charter ferry service at the San Leandro Shoreline.

BACKGROUND

The San Leandro Shoreline area includes a number of amenities that are used by lessees and the public at large for recreation-related activities, including the Wes McClure boat launch, which is located near the intersection of Monarch Bay and Pescador Point Drives. This boat launch and its associated parking are available to the public for loading and unloading of vessels.

PropSF ("Prop") is a commercial maritime transportation company that provides a private charter ferry service under contract to various entities who desire to travel by water, and has ongoing operations in other areas of the San Francisco Bay Area. Prop's mission is to offer an "innovative ferry service" that provides a shorter and more consistent commute for employees throughout the Bay Area. Prop has approached the City with a request to utilize the City's public boat launch in order to pick up and drop off passengers associated with Prop's private charter service. In addition, Prop desires non-exclusive access for its customers to use parking spaces within the adjacent parking area, which are open and available for public parking.

Prop is currently working with Genentech, a biotechnology corporation that wants to utilize Prop's services to provide private charter boat service to help its employees commute to Genentech's headquarters in South San Francisco. The proposed boats from San Leandro would be just one

part of Genentech's transportation program, which provided over 1.25 million rides in 2017 alone.

Genentech has approximately 600 employees located within a 20-minute drive time of San Leandro and has heard from a number of employees interested in a San Leandro service. With an approximate 25-minute ride across the Bay, travelling by boat greatly reduces the commute time for Genentech employees while also helping to encourage alternate means of transportation that help minimize traffic and air pollution region-wide. Prop currently provides private charter boat services for Genentech and other employers out of marinas in Emeryville, Berkeley, Richmond, Benicia, and Tiburon.

Analysis

Under the proposed Non-Exclusive License Agreement, Prop will be permitted to utilize the public dock up to eight times per weekday, with four pick-ups and four drop-offs. Prop plans to have shuttle service generally occur once per hour between the hours of 5:00 - 9:00 AM and 3:00 - 7:00 PM. Prop's boats seat 36 people, with a potential for up to 144 riders per day. Prop will be required to obtain a Business License.

Riders of the Prop boats would be able to park vehicles in a variety of public parking spaces in the Shoreline area, where free parking is available all day. There are a number of parking spaces currently available within the area surrounding the boat launch, including portions of the parking lot adjacent to the boat launch, and along Monarch Bay and Pescador Point Drives (see Exhibit B of License attached to Resolution). Prop and Genentech will work with the riders to provide them direction as to where they should park, as well as provide them with parking tags for easy identification by City staff. Signage will also be installed along Pescador Point, setting aside reserved spaces for other patrons of the boat launch as well as the Spinnaker Yacht Club.

In order to better serve users, Prop and Genentech would also make improvements to the docks at the public boat launch. Under the terms of the agreement, Prop may perform improvements and upgrades to the dock with City approval and would dedicate such improvements to the City for public use. Additional provisions are included to ensure that Prop performs such work in keeping with applicable regulations and provides appropriate insurance for the dock work as well as its ongoing operations.

The agreement is for a term of one year, with additional terms permitted on a one-year basis with City Manager approval. Amendments to the agreement are permitted with approval of both parties and there is a provision for cancellation of the agreement with 30 days' notice. Prop's initial service at the boat launch is intended to act as a pilot project, with potential for changes and additional provisions in the agreement as the Shoreline area is developed.

The City currently has an exclusive negotiating rights agreement (ENRA) with Cal-Coast Development, LLC for development of a portion of the Shoreline Property, north of Fairway Drive. Under the terms of the ENRA, the City may enter into a long-term lease of portions of the Shoreline property that will result in the relocation of the Wes McClure public dock. Staff discussed the planned redevelopment of the Shoreline area with Prop and Genentech. Additionally, Cal-Coast is aware of the proposal and open to exploring long-term options for their use that work with the planned development.

The agreement acknowledges that the existing boat launch location, and in particular, availability of parking spaces, will likely see disruption and change as a part of the new development. Genentech provides a wide network of bus shuttle service to its employees across the Bay Area and will explore providing bus shuttle service to employees to the San Leandro Shoreline from an off-site lot in the future. Despite these proposed changes to the future facilities, Prop and Genentech remain highly interested in using the boat launch in the interim.

Utilization of Prop's proposed service from San Leandro has the potential to improve the quality of life for their riders, reducing their daily commute time and allowing them to use that time for more productive use (e.g., utilizing Prop's onboard Wi-Fi). Prop's service also has environmental benefits, reducing carbon emissions by encouraging individuals to lessen their vehicle miles travelled. .

Legal Analysis

This Agreement was reviewed by the City Attorney and approved as to form.

Fiscal Impacts and Budget Authority

This Agreement will have no cost to the City, with the licensee, PropSF, performing additional work at the Shoreline at its own cost and obtaining an annual permit to utilize the public boat launch.

ATTACHMENT(S)

Attachment to Resolution

- Non-Exclusive License Agreement

PREPARED BY: Katie Bowman, Economic Development Manager, Community Development Department



City of San Leandro

Meeting Date: November 19, 2018

Resolution - Council

File Number: 18-575 **Agenda Section:** CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Jeff Kay
City Manager

BY: Tom Liao
Community Development Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION of the City of San Leandro City Council to Approve and Authorize the City Manager to Execute a Non-Exclusive License with PropSF, for Access to the Wes McClure Public Boat Launch

WHEREAS, the City is the owner and operator of the Wes McClure Public Boat Launch;
and

WHEREAS, PropSF provides a private charter ferry service under contract to various entities through ongoing operations in other areas of the San Francisco Bay Area; and

WHEREAS, PropSF desires to schedule a stop at the Wes McClure public dock located at the Shoreline Property in order to pick up and drop off passengers associated with Prop's private charter ferry service; and

WHEREAS, staff supports and recommends PropSF's charter ferry service and desires to permit PropSF's vessels access to use the Wes McClure public boat launch for the purposes of picking up and dropping off passengers, to permit the non-exclusive use of parking of passenger vehicles, and to make public improvements to operate PropSF's charter ferry service at PropSF's expense; and

WHEREAS, a non-exclusive license (the "License") has been presented to the City Council of the City of San Leandro ("City Council"); and

WHEREAS, the City Council is familiar with the contents thereof; and

WHEREAS, the City Manager recommends approval of the License.

NOW, THEREFORE IT IS RESOLVED THAT:

1. The License substantially in the form presented is hereby approved and execution by the City Manager is hereby authorized.
2. The City Manager is authorized to make non-substantial revisions to the License, subject to the approval of the City Attorney.
3. The City Manager or his designees are authorized and directed to take all actions necessary to implement this Resolution, including without limitation the execution of any amendments or modifications to the License, the execution of any additional documents required by the License, or the execution of any other necessary instruments as applicable.

NON-EXCLUSIVE LICENSE – PROP SF- WES MCCLURE PUBLIC BOAT LAUNCH

This non-exclusive license (this “**License**”) is entered into as of [INSERT DATE] (the “**Effective Date**”) by and between the City of San Leandro, a California charter city (“**City**”), and Prop SF (“**Prop**”), a Limited Liability California Corporation, to provide Prop with access to the Wes McClure Public Boat Launch (defined below) in order to conduct a daily private charter ferry service to destinations determined by agreements between Prop and the entity arranging for such charter service. City and Prop are sometimes individually referred to as “**Party**” and sometimes collectively referred to as “**Parties**” throughout this License.

RECITALS

WHEREAS, City is the owner of that certain real property situated in the City of San Leandro, Alameda County, California, as more particularly described in Exhibit A, attached hereto and incorporated herein by reference (“**Shoreline Property**”); and

WHEREAS, the Shoreline Property includes certain improvements which are used by lessees and the public at large for recreation-related activities, including, but not limited to several leased structures, a harbor master’s office, marina, dock improvements and numerous parking spaces; and

WHEREAS, the dock improvements located at the Shoreline Property include a boat launch (the “**Wes McClure Public Boat Launch**”), which is available to members of the public for loading and unloading of vessels; and

WHEREAS, Prop provides a private charter ferry service under contract to various entities who desire to travel by water and has ongoing operations in other areas of the San Francisco Bay Area; and

WHEREAS, Prop desires to schedule an additional stop at the Wes McClure Public Boat Launch in order to pick up and drop off passengers up to eight times (four pick-ups and four drop-offs) Monday through Friday in connection with Prop’s private charter service; and

WHEREAS, the location of the Wes McClure Public Boat Launch is depicted on Exhibit B, attached hereto and incorporated herein by reference ; and

WHEREAS, Prop desires non-exclusive access to use parking spaces within the adjacent parking area located primarily to the south and east of the Shoreline Property (the “**Parking Area**”), as depicted on Exhibit B; and

WHEREAS, Prop desires to permit it’s riders to use the Parking Area on a non-exclusive basis between the hours of 5:00 a.m. and 7:00 p.m. on Monday through Friday; and

WHEREAS, City is supportive of Prop’s provision of a charter ferry service at the Shoreline Property and desires to permit Prop vessels to use the Wes McClure Public Boat Launch for the purpose of picking up and dropping off passengers up to eight times per day (four pick-ups and four drop-offs) on Monday through Friday in connection with Prop’s private charter service and to permit the non-exclusive use of the Parking Area for the parking of passenger vehicles, in accordance with the terms and conditions of this License.

NOW THEREFORE, the parties hereto agree as follows:

1. Grant of Permit

A. City hereby grants permission to Prop to access the Wes McClure Public Boat Launch in order to pick up and drop off passengers up to eight times (four pick-ups and four drop-offs) Monday through Friday in connection with with Prop's private charter service and in order to allow Prop access to City property to make necessary improvements for operation of Prop's private charter service pursuant to the terms of this License.

B. In exchange for the Public Improvements to be constructed in accordance with Section 5 below, the City will waive the fees to use the Wes McClure Boat Launch from and including the Effective Date through the Expiration Date (defined below). The City reserves the right to charge fees following any extension of this License in accordance with Section 2.

C. City agrees to provide non-exclusive access for use of parking spaces within the Parking Area, Monday through Friday between the hours of 5:00 a.m. and 7:00 p.m. in order to permit passengers of Prop to park their vehicles in the Parking Area. The Parties acknowledge that no specific number of parking spaces is guaranteed by this License.

D. Prop shall not use or occupy, nor permit or cause, the Shoreline Property or any part thereof to be used or occupied for any unlawful, noisy, hazardous or illegal business, use or purpose, or for any business, use or purpose in violation of any present or future laws, ordinances or regulations of the City or any other federal, state or local governmental entity. Prop shall obtain and maintain in good standing all permits and entitlements from, and make all submittals required by, agencies with jurisdiction over Prop's contemplated activities under this License. Prop shall, at all times, conduct its activities hereunder in compliance with any and all said permits and entitlements and shall immediately notify the City, in writing, of any violation or notice of violation any permits or entitlements. In the event Prop violates or receives notice of violating any of the permits and entitlements, it shall take immediate action to cure or remedy the violation in accordance with applicable laws and/or the directives of the agency whose permit or entitlement has been violated.

E. Prop shall at all times keep the Shoreline Property free and clear of all liens and encumbrances affecting title to the Shoreline Property in connection with any work performed by the Prop under this License. Upon notice of any such lien or claim, Prop may bond and contest in good faith the validity and the amount of such lien, but Prop shall immediately pay any judgment rendered, shall pay all proper costs and charges, and shall have the lien or claim released at its sole expense.

F. Prop shall comply with all applicable state, federal and local laws, regulations, rules and orders, with respect to this License, including, without limitation, all Environmental Laws (defined in **Exhibit C**, attached hereto). Prop shall not cause or permit any Hazardous Material (defined in **Exhibit C**) to be generated, brought onto, used, stored, or disposed of in or about the Shoreline Property. Prop shall provide evidence of such compliance to City upon request.

2. Term of License

This License shall commence on the Effective Date and will expire on the first anniversary of

the Effective Date (the “**Expiration Date**”). This License may be extended in writing for additional one-year terms upon mutual agreement of the Parties. Prop shall notify City in writing of Prop’s desire to seek an extension ninety days prior to the Expiration Date, or any subsequent expiration date.

Prop acknowledges that City has entered into an exclusive negotiating rights agreement with Cal Coast Development, LLC for development of the Shoreline Property (the “**ENRA**”). Pursuant to the terms of the ENRA, the Shoreline Property may enter into a long-term lease and result in the loss of use or relocation of the Wes McClure Public Boat Launch. Changes to the use of the Shoreline Property may require modifications to, or termination of, this License.

Either Party may terminate this License without fault or penalty upon providing a thirty (30) days written notice to the other the other Party. City may also terminate this License Agreement by notice to Prop following Prop’s breach of any of its obligations under this License. Termination for breach shall be effective upon Prop’s receipt of notice from City. Prop’s indemnity obligations set forth in this License survive termination of this License for any reason.

3. Conditions of Access

Prop acknowledges and represents:

- i. that Prop is entering into this License solely in reliance on Prop’s own investigation, and that no other representations or warranties of any kind whatsoever, express or implied, have been made by City or its respective elected and appointed officers, officials, employees, agents, consultants, and contractors;
- ii. that Prop has reviewed, fully understands, accepts and shall perform its obligations hereunder in compliance with all applicable provisions of the California Harbors and Navigation Code and all federal, state and local laws, rules and regulations pertinent to the Shoreline Property;
- iii. that Prop has had ample opportunity and access to all relevant parts of the Shoreline Property to inspect and ascertain, to its entire satisfaction, whether the Shoreline Property is suitable to its needs and can be improved, used, maintained and operated in accordance with this License;
- iv. that Prop has had ample access to and has read, understands and finds acceptable all reports, investigations, studies, evaluations and all other documents regarding the Shoreline Property including, but not limited to, the City’s files pertaining thereto, environmental studies, bathymetrical reports, and other reports and documents Prop deemed necessary to its decision to enter this License: and
- v. that Prop is entirely satisfied as to the Shoreline Property's:
 - (1) compliance or noncompliance with applicable laws, codes, rules and regulations, including but not limited to fire safety, health safety, hazardous materials and other code standards and all other applicable governmental and other requirements: and

(2) physical condition, environmental condition, title, and all other aspects of the Shoreline Property to be used by Prop and each component thereof, including but not limited to, investigation of the presence of any hazardous wastes, substances or materials as those terms may be defined by any law, ordinance and/or regulation of any regulatory agency with jurisdiction, at and surrounding such properties; determination of suitability of such properties for the uses contemplated herein; investigation of conditions, at, of and surrounding such properties, including, but not limited to, geotechnical, soils, drainage, flooding, subsidence, erosion, stormwater, earthquake, fault rupture, ground shaking, liquefaction, seiche, tsunami, unstable soils, expansive soils, effect of tides, (including, but not limited to King Tide conditions), parking, access, lighting, and utility availability; investigation and determination of the costs and other financial considerations associated with this License and the uses and improvements contemplated herein and/or the fitness of such properties or any improvements located thereon, for Prop's intended use, and/or the compliance of such properties and/or any improvements located thereon with any applicable laws, rules and regulations, including, without limitation, the Americans With Disabilities Act of 1990.

Prop warrants and represents that it is an experienced owner, operator, manager and developer of ferry services, and is familiar and experienced with the requirements for the development, management, financing, operation and ownership of same.

4. Scheduled Docking Times

At least ten business (10) days prior to the start of Prop's chartered service at the Shoreline Property, and at least ten (10) business days prior to any change of service, Prop will provide to City a written notice of the schedule of the pick-up and drop-off times ("Scheduled Docking Times") associated with Prop's charter service at the Shoreline Property. Prop expressly acknowledges that the Wes McClure Public Boat Launch is a public dock accessible to the public at large and the access of Prop as set forth in this License is non-exclusive. Therefore, the City does not guarantee unimpeded access to the Wes McClure Public Boat Launch at the Scheduled Docking Times.

5. Public Improvements

Prop shall, at its sole cost and expense, install any public improvements necessary to permit Prop's private chartered ferry service to use the Wes McClure Public Boat Launch, including, but not limited to, repairs to or replacement of the existing loading dock for the safety of Prop's passengers. All public improvements installed by Prop shall be dedicated to the City for use by the public. Prop shall enter into a separate agreement with the City for access to City property to make any improvements and shall obtain all necessary permits and entitlements to construct any such works of public improvement. This License does not entitle Prop to perform any public improvements or entitle Prop to any right to construct any public improvements.

6. Indemnity

A. The City shall not, in any event whatsoever, be liable for any injury or damage to any property or to any person in or about the Shoreline Property and its improvements or appurtenances, nor for any injury or damage to any property belonging to Prop or Prop's

passengers or to any other person which may be caused by any cause whatsoever, including, but not limited to: the presence of any hazardous wastes, substances or materials as those terms may be defined by any law, ordinance and/or regulation of any regulatory agency with jurisdiction, at and surrounding the Shoreline Property; the effects of any geotechnical, soils, drainage, flooding, subsidence, erosion, stormwater, earthquake, fault rupture, ground shaking, liquefaction, seiche, tsunami, unstable soils, expansive soils, tides, (including, but not limited to King Tide conditions) conditions, the condition or availability of the Parking Area or parking, access, lighting, and utility availability, any fire, breakage, leakage, flooding or defect or by water, flooding or rain that may leak into, issue or flow from or to any part of the Shoreline Property, Parking Area or areas of egress or ingress to such properties; the use, misuse or abuse of any of the Shoreline Property structures or improvements located thereon, areas of egress or ingress, or which may arise from any other cause whatsoever, except to the extent caused by the gross negligence or willful misconduct of City or its respective elected and appointed officers, officials, employees, agents, consultants, and contractors or breach of any of the representations and/or obligations of City hereunder.

B. Prop shall indemnify, defend, protect, and hold harmless City and its respective elected and appointed officers, officials, employees, agents, consultants, and contractors, with counsel approved by City, from and against all liabilities, suits, obligations, fines, damages, penalties, demands, claims, costs, charges and expenses, including without limitation reasonable fees of attorneys, architects and consultants, which may be imposed upon or incurred by or asserted against City arising directly or indirectly out of any of the following except to the extent caused by the gross negligence or willful misconduct of City or its respective elected and appointed officers, officials, employees, agents, consultants, and contractors:

- i. any work, act or event occurring on the Shoreline Property or any part thereof, or any work, act or event occurring in any area adjacent to such properties and related to the activities of Prop or Prop's agents;
- ii. Prop's uses authorized by this License including claims by Prop, its officers, agents, employees, guests, invitees, or passengers arising out of or relating to the condition use, possession, occupation, alteration, repair, operation, maintenance or management of the Shoreline Property or the fitness of said property for the uses contemplated herein, including, but not limited to, any claims or damages that may result from any of the conditions set forth in Section 6.A, above;
- iii. any act or omission on the part of Prop or any of Prop's passengers, contractors, employees, agents, licensees or invitees;
- iv. any lien or claim which may be alleged to have arisen against or on the Shoreline Property under the laws of the State of California or of any other governmental authority as a result of Prop's activities hereunder;
- v. any breach by Prop of any of its representations and/or obligations under this License;
- vi. any violation of any Environmental Law (as defined in **Exhibit C**), applicable fire safety, health safety, building code standard or any other standard, regulation or law by Prop.

C. This Section and each subsection hereof shall survive termination of this License.

7. Insurance

A. Throughout the term of this License, Prop and all contractors working on behalf of Prop with respect to this License shall maintain a commercial general liability policy in the amount of Five Million Dollars (\$5,000,000) combined single limit, or such other policy limit as City may require in its reasonable discretion, including coverage for bodily injury, property damage, products, completed operations and contractual liability coverage. Such policy or policies shall be written on an occurrence basis and shall name City and its respective elected and appointed officers, officials, employees, agents and representatives as additional insureds. There shall be no exclusion in the general liability policy for boarding and debarking of the vessel while at the dock.

B. Throughout the term of this License, Prop shall maintain Jones Act coverage in the amount required under applicable federal law, covering Prop's employees, if any, at work upon the Shoreline Property or engaged in services or operations in connection with this License or on the Shoreline Property. Prop shall require that any contract entered into by Prop with respect to this License or activities pursuant to this License include a contractual undertaking by the contractor to provide worker's compensation insurance for its employees in compliance with applicable state law.

C. Throughout the term of this License, Prop shall maintain pollution liability insurance coverage, for losses arising from or in any way related to pollution conditions, both sudden and non-sudden (gradual), which arise from or in connection with Prop's transportation services used in connection with the License. The pollution liability insurance shall include minimum liability limits of \$2,000,000 per loss and \$4,000,000 in the aggregate.

D. Companies writing the insurance required hereunder shall be licensed "on an Admitted or Non-Admitted bases" to do business in the State of California. Insurance shall be placed with insurers with a current A.M. Best's rating of no less than A: VII. Prior to the Effective Date, Prop shall furnish City with certificates of insurance in form acceptable to City evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. The certificates shall contain a statement of obligation on the part of the carrier to notify City of any material change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation, termination or non-renewal, except in the event of non-payment of premium a ten (10) day notice will be provided. Coverage provided by Prop shall be primary insurance and shall not be contributing with any insurance, or self-insurance maintained by City, and the policies shall so provide. The insurance policies shall contain a waiver of subrogation for the benefit of the City. Prop shall provide City with certified copies of the required insurance policies upon City's request.

8. Notices

All notices pursuant to this License shall be addressed as set forth or as either party may subsequently designate by written notice and shall be sent through the United States mail or by personal delivery:

Prop SF LLC
James Jaber, CEO
3100 Gibbons Dr.
Alameda, CA 94501

City of San Leandro
835 E. 14th Street
San Leandro, CA 94577
Attn.: City Manager

9. Assignment

Prop shall not assign this License without the express written consent of the City, which consent may be withheld for any or no reason whatsoever. Unless otherwise provided herein, the terms, covenants and conditions herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the Parties hereto, all whom shall be jointly and severally liable hereunder.

10. Entire Agreement

This License together with Exhibits A through C attached hereto and incorporated herein by reference, constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statement with respect thereto. This License may be amended only by a written instrument executed by the Parties hereto.

11. Severability

If any term, provision, or condition of this License is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this License shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged thereby.

12. Waiver

A waiver by either party of the performance of any covenant or condition herein shall not invalidate this License nor shall the delay or forbearance by either party in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

13. Captions; Interpretation

The section headings used herein are solely for convenience and shall not be used to interpret this License. The provisions of this License shall be construed as a whole according to their common meaning, and not strictly for or against any party, in order to achieve the objectives and purposes of the Parties.

14. Attorney's Fees

In any action at law or in equity, arbitration or other proceeding arising in connection with this License, the prevailing party shall recover reasonable attorney's fees and other costs, including but not limited to court costs and expert and consultants' fees incurred in connection with such action, in addition to any other relief awarded.

15. Counterparts

This License may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

16. Governing Law; Venue

This License, and the rights and obligations of the Parties, shall be governed by and interpreted in accordance with the laws of the State of California without regard to principles of conflicts of law. Any action to enforce or interpret this License shall be filed in the Superior Court of Alameda County, California or in the Federal District Court for the Northern District of California.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties have each caused this Agreement to be duly executed as of the date first written above.

PROP:

Prop SF

By: _____

Print Name: _____

Title: _____

CITY:

CITY OF SAN LEANDRO

Jeff Kay, City Manager

Attest:

Leticia I. Miguel, City Clerk

Approved as to form:

Richard Pio Roda, City Attorney

3077287.2

Exhibit A

Legal Description of Shoreline Area

The land referred to herein is situated in the State of California, County of Alameda, City of San Leandro and described as follows:

TRACT ONE:

Parcel One:

Beginning at the point of intersection of the center line of West Avenue 132, formerly First Avenue, with the Rancho San Leandro Grant Line, distant on said center line South 62° 30' West, 306.94 feet from the center line of Neptune Drive, formerly Bay Street, as said Grant Line, First Avenue and Bay Street are shown on the Map of "Mulford Gardens Addition, Alameda County, California" filed February 1, 1928 in [Book 7 of Maps at Page 55](#), in the Office of the County Recorder of Alameda County; thence West 3834.07 feet, more or less along the Southern line of the parcel of land described in the deed from Bank of America National Trust and Savings Association to Oakland Scavenger Company, dated June 11, 1948, recorded June 15, 1948, in [Book 5529 of Official Records of Alameda County, Page 349](#), to the line of Alameda Basin, as said basin line is shown on Map No. 1 of Salt Marsh and Tide Lands situate in the County of Alameda, State of California, a copy of said Map being on file in the Office of the State Lands Commission of the Department of Finance (formerly the Office of the Surveyor General) of the State of California; thence Southeasterly along said basin line to the Northern line of the Mulford Canal, as said canal is shown on the last mentioned Map; thence East along the last mentioned line to its intersection with the Western boundary line of the Rancho San Leandro; thence Northwesterly along the last mentioned line to the point of beginning.

Parcel Two:

Portion of Lots 15 and 16 in Section 4, Township 3 South, Range 3 West of the Mount Diablo Base and Meridian, and a portion of Lot 9, in Section 3, in said Township and Range, as said lots and Sections are shown on "Map No. 1 of Salt Marsh and Tidelands situate in the County of Alameda, State of California," copy of said map having been filed in the Office of the State Lands Commission of the Department of Finance (formerly the Office of the Surveyor General) of the State of California, and particularly described as follows:

Beginning at the point of intersection of the centerline of West Avenue 132, formerly First Avenue, with the Rancho San Leandro Grant Line, distant on said centerline South 62° 30' West, 306.94 feet from the centerline of Neptune Drive, formerly Bay Street, as said Grant Line, First Avenue and Bay Street are shown on that certain map entitled 'Mulford Gardens Addition, Alameda County, California,' filed February 1, 1928, in [Book 7 of Maps at Page 55](#), Records of Alameda County California; thence West 1000.00 feet along the Southern line of the parcel of land described in the deed from Bank of America National Trust and Savings Association to Oakland Scavenger Company, dated June 11, 1948 and recorded June 15, 1948 in [Book 5529 at Page 349](#), Records of Alameda County, California, said line being parallel with the Southern line of said Lots 15, 16 and 9; thence on a direct line to the Northeast corner of said Lot 15, said corner being also the Northwest corner of said Lot 16; thence Easterly along the North line of said Lot 16 to its intersection with said grant line; thence Southeasterly along said grant line to the point of beginning, said grant line also being the Easterly line of said Lots 16 and 9.

Assessors Parcel No: [079A-0475-009-04](#)

TRACT TWO:

Commencing at Station 3, as shown on the State Lands Commission Map of the State Grant, Chapter 1028 Statutes of 1955 recorded October 25, 1956 in [Book 40 of Maps, Page 76](#), Alameda County Records, being an angle point on the City of San Leandro boundary line as established by Ordinance No. 976 N.S, and shown on the map entitled "Map Delineating Boundary of Territory Annexed to the City of San Leandro, California, by Ordinance No. 976 N.S. Under Annexation of Uninhabited

Territory Act of 1939", filed July 29, 1955 in [Book 32 of Maps, Page 94A](#), Alameda County Records; thence North 63° 21' 15" East 301.60 feet (this course being taken as the basis of bearings for this description) to an angle point on the Northeastern line of the territory annexed to the City of San Leandro by said Ordinance No. 976 N.S.; thence North 20° 42' 15" West 1197.47 feet along the last mentioned line to the Southern line of the Mulford Canal; thence Easterly along said line 450.45 feet to the ACTUAL POINT OF BEGINNING, said point being the point of intersection of the said Southern line of the Mulford Canal with a line drawn South 57° 28' 30" East from the point of intersection of the Northern line of said Mulford Canal and the Southwestern line of the Tideland Lots; thence South 57° 28' 30" East 5610.97 feet, more or less, to the Western line of Salt Marsh and Overflowed Land Survey No. 208, being the Western line of the Trojan Powder Company property; thence Northwesterly along the last mentioned line, and along the Western line of the parcel of land described in the deed from Gertrude H. Collins and Robert H. Collins, her husband, to A. H. Breed and Sons, a corporation, dated August 27, 1928, recorded September 14, 1928, in [Book 1973, Page 50](#), Official Records of Alameda County, and along the Western line of Correction Survey No. 1272 of Swamp and Overflowed Land surveys No. 140 and 222 in Section 3 Township 3 South, Range 3 West, Mount Diablo Base and Meridian to the said Southern line of the Mulford Canal; thence Westerly along the last mentioned line to the point of beginning.

EXCEPTING therefrom all that portion thereof described in deed from Continental Service Company, a California corporation, to Alameda County Flood Control and Water Conservation District, dated March 11, 1953, recorded April 21, 1958, under Recorder: [Series No. AP/ 38924](#), in Book 8650 of Official Records of Alameda County, Page 313, described as follows:

Portion of Lots 6 and 7, in Section 10 of Township 3 South, Range 3 West, Mount Diablo Base and Meridian, lying Westerly of the Western boundary line of Swamp and Overflowed Land Survey No. 208, as said lots are shown on "Sale Map No. 10 of Salt Marsh and Tide Lands, County of Alameda, State of California", filed June 9, 1888, in [Book 17 of Maps, Page 30](#), Records of Alameda County, California, described as follows:

Beginning at a point on the Western line of said Swamp and Overflowed Land Survey No. 208, distant thereon South 20° 00' 00" East (the bearing of said Western line being taken as South 20° 00' 00" East for the purpose of making this description) 797.81 feet from the Northern line of the aforesaid Section 10; and running thence South 46° 00' 00" West, 440.55 feet; thence South 44° 00' 00" East 200.00 feet to a line drawn parallel with and 200.00 feet Southeasterly, right angle measurement, from the aforesaid line bearing South 46° 00' 00" West; thence along the line so drawn North 46° 00' 00" East 351.50 feet to the aforesaid Western line of Swamp and Overflowed Land Survey No. 208; thence along said Western line North 20° 00' 00" West 218.93 feet to the point of beginning.

ALSO excepting therefrom all that portion lying within Parcel 1, as shown and delineated on Parcel Map No. 6768, filed May 15, 1996, in [Book 223 of Maps, Pages 50-53](#).

Assessors Parcel No: [080G-0900-00 1-08](#)

TRACT THREE:

All that lot of land situated in the City of San Leandro, County of Alameda, State of California, described as follows:

A portion of that certain parcel of land designated as Mulford Canal, lying within the boundary lines of Sections 3 and 4, Township 3 South, Range 3 West, Mount Diablo Base and Meridian, according to "Map No. 1 of Salt Marsh and Tide lands, situate in the County of Alameda, State of California", certified copies of which said map are on file in the Office of the State Lands Commission of the Department of Finance (formerly the Office of the Surveyor General) of the State of California, and in the Office of the Recorder of the City and County of San Francisco, bounded as follows:

Beginning at the most Western corner of Lot 28, in said Section 4; running thence due East along the Southern line of said Mulford Canal, 3267 feet, more or less, to a point on the Western boundary line of Survey No. 140, Swamp and overflowed Lands, in said Alameda County; thence Northerly along the said last mentioned line 365 feet, more or less, to a point on the Northern line of said Mulford Canal; thence due West along the said last mentioned line 3333 feet, more or less, to the

Southwestern corner of Lot 21 in said Section 4; thence along the Eastern line of Alameda Basin South 21° 48' East, 392.38 feet, more or less, to the point of beginning.

Excepting therefrom all that portion lying Westerly of the direct extension Northerly of the Eastern line of Lot 30, Section 4, in Township 3 South Range 3 West.

Also excepting therefrom all that portion lying within Parcel 1, as shown and delineated on Parcel Map No. 6768, filed May 15, 1996, in [Book 223 of Maps, Pages 50-53](#).

Assessors Parcel No: [080G-0900-004-01](#)

TRACT FOUR:

Parcel One:

Beginning at the intersection of the Southeastern line of Second Avenue (West Avenue 137) 30' wide, with the Southwestern line of Aurora Drive (Kenmore Avenue) as shown on the map of Mulford Gardens Manor, filed May 1, 1929, in Map [Book 8, Page 5](#), Alameda County Records; thence along the Western boundary of said Mulford Gardens Manor the following courses: North 27° 30' West 200.30 feet, South 62° 30' West 350 feet, and North 27° 30' West 797.40 feet to the Southeastern line of Mulford Gardens Addition as shown on the map filed February 1, 1928, in Map [Book 7, Page 55](#), Alameda County Records; thence along the boundary line of said Mulford Gardens Addition the following courses: South 62° 30' West 425 feet, North 27° 30' West 423 feet, and South 62° 30' West 300 feet, to the Southern corner of Lot 14 in Block "V", as said lot and block are shown on the last mentioned map; thence South 27° 30' East 1,420.70 feet, more or less, to the Southwesterly prolongation of the said Southeastern line of Second Avenue; thence North 62° 30' East 1,075 feet, more or less, along said prolongation to the point of beginning.

Parcel Two:

Beginning at the intersection of the Western line of the Rancho San Leandro and the Southeastern line of First Avenue (West Avenue 132) as shown on the Map of Mulford Gardens Addition, filed February 1, 1928 in Map [Book 7, Page 55](#), Alameda County Records; thence North 62° 30' East 479.57 feet along the last said line to the most Westerly corner of Lot 14 Block U, as said lot and block are shown on said map; thence South 27° 30' East along the Westerly line of said Block U and the Southeasterly prolongation of said line 2,030.20 feet, more or less, to its intersection with the Southwesterly prolongation of the Southeastern line of Second Avenue (West Avenue 137), 30 feet wide, as said avenue is shown on the Map of Mulford Gardens Manor dated May 1, 1929 in Map [Book 8, Page 5](#), Alameda County Records; thence South 62° 30' West along said prolongation to the Western line or Correction Survey No. 1272 of Swamp and Overflowed Land Surveys 140 and 222 in Section 3, Township 3 South, Range 3 West, Mount Diablo Base and Meridian; thence Northwesterly along said line and along the Western line of the Rancho San Leandro to the point of beginning.

Excepting from Parcel Two, all that portion lying within Parcels 1, 2, and 3, as shown and delineated on Parcel Map No. 6768, filed May 15, 1996, in [Book 223 of Maps, Pages 50-53](#).

Assessors Parcel No.'s [079A-0590-001-05](#), [079A-0590-001-07](#), [079A-0590-001-08](#), [079A-0590-002](#), [079A-0590-003](#)

Parcel Three:

Parcels 1, 2, and 3, as shown and delineated on Parcel Map No. 6768, filed May 15, 1996, in [Book 223 of Maps, Pages 50-53](#).

Assessors Parcel No.'s [079A-0590-004](#), [079A-0590-005](#), [079A-0590-006](#)
APN: [079A-0475-009-04](#), [080G-0900-001-08](#), [080G-0900-004-01](#), [079A-0590-001-05](#),
[079A-0590-001-07](#), [079A-0590-001-08](#), [079A-0590-002](#), [079A-0590-003](#), [079A-0590-004](#),
[079A-0590-005](#), and [079A-0590-006](#)

Exhibit B

Location of Wes McClure Public Boat Launch and Public Parking

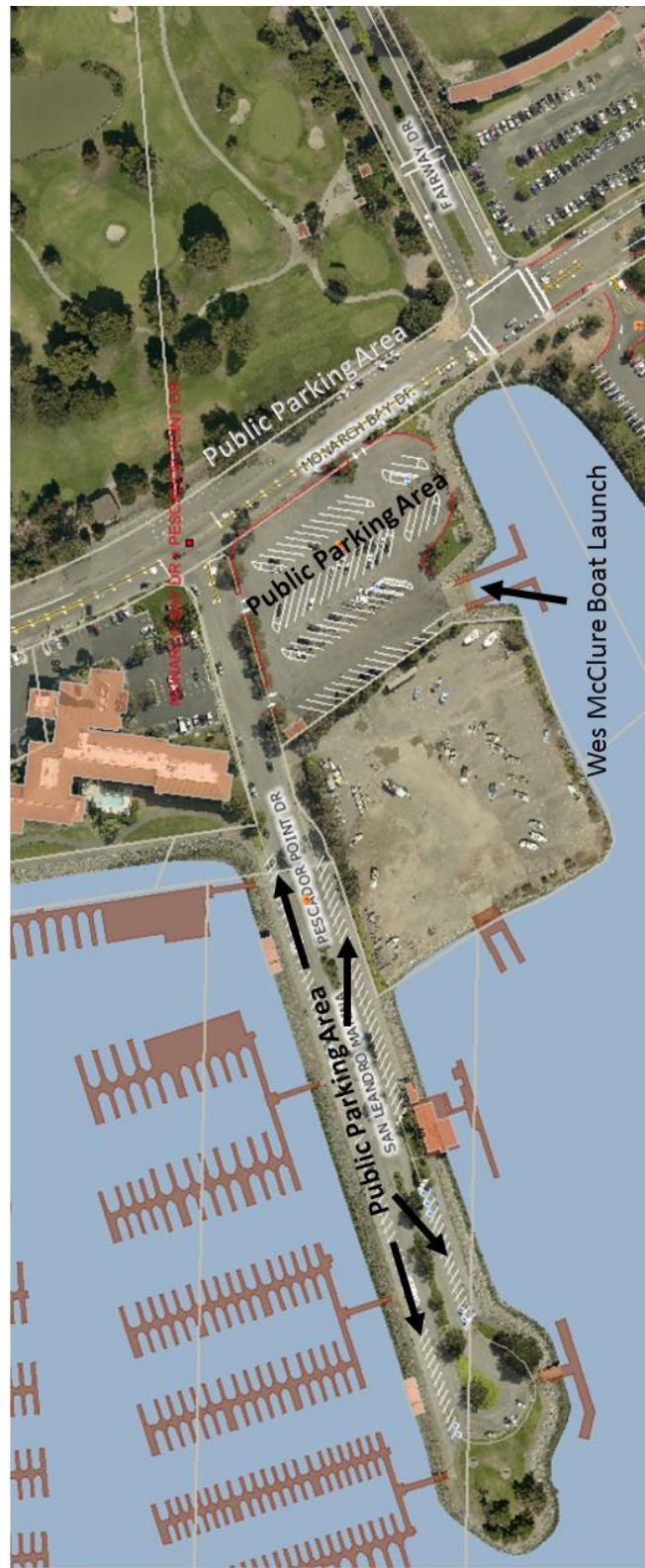


Exhibit C

DEFINITION OF HAZARDOUS MATERIAL, ENVIRONMENTAL LAWS

As used in this License Agreement, the term “**Hazardous Material**” means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws (defined below) as a “hazardous substance”, “hazardous material”, “hazardous waste”, “extremely hazardous waste”, infectious waste”, toxic substance”, toxic pollutant”, or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term “hazardous material” shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable as fuel, perchlorate, and methy tert butyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

As used in this License Agreement, the term "Environmental Laws" means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Materials, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Oil Pollution Act (33 U.S.C. § 2701 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 et seq.), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 et seq.), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, et seq.), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 et seq.), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 et seq.), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 et seq.), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 et seq.).

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