PORT COMMISSION AGENDA
REGULAR MEETING
JANUARY 11, 2017 AT 7:00PM
VENTURA PORT DISTRICT OFFICE
1603 ANCHORS WAY DRIVE, VENTURA, CA

A Closed Session of the Board will be held at 5:30PM at the
Port District Office located at 1603 Anchors Way Drive, Ventura, CA,
to discuss the items on the Attachment to Agenda-
Closed Session Conference with Legal Counsel.

The Board will convene in Open Session at the Port District Office
located at 1603 Anchors Way Drive for its Regular Meeting at 7:00PM.

ADMINISTRATIVE AGENDA:

CALL TO ORDER: By Chair Jim Friedman.

PLEDGE OF ALLEGIANCE: By Chair Jim Friedman.

ROLL CALL: By the Clerk of the Board.

ELECTION OF OFFICERS
Pursuant to the Harbors and Navigation Code 6241.1 and 6248, the Board shall select a Chairman, Vice Chairman and Secretary.

ADOPTION OF AGENDA (3 minutes)
Consider and approve, by majority vote, minor revisions to agenda items and/or attachments and any item added to, or removed/continued from the Port Commission’s agenda. Administrative Reports relating to this agenda and materials related to an item on this agenda submitted after distribution of the agenda packet are available for public review at the Port District’s office located at 1603 Anchors Way Drive, Ventura, CA during business hours as well as on the District’s website - www.venturaharbor.com (Public Notices). Each item on the agenda shall be deemed to include action by an appropriate motion, resolution or ordinance to take action on any item.

APPROVAL OF MINUTES (3 minutes)
The Minutes of the December 7, 2016 Regular Meeting will be considered for approval.

PUBLIC COMMUNICATIONS (3 minutes)
The Public Communications period is set aside to allow public testimony on items not on today’s agenda. Each person may address the Commission for up to three minutes or at the discretion of the Chair.

CLOSED SESSION REPORT (3 minutes)
Closed Sessions are not open to the public pursuant to the Brown Act. Any reportable actions taken by the Commission during Closed Session will be announced at this time.
BOARD COMMUNICATIONS (5 minutes)
Port Commissioner’s may present brief reports on port issues, such as seminars, meetings and literature that would be of interest to the public and/or Commission, as a whole. Port Commissioner’s must provide a brief summary and disclose any discussions he or she may have had with any Port District Tenants related to Port District business.

STAFF COMMUNICATIONS (5 minutes)
Ventura Port District Staff will update the Commission on important topics if needed.

LEGAL COUNSEL REPORT   (5 minutes)

At this time the Port Commission will adjourn and convene as the Board of Directors of the Ventura Port District Public Facilities Corporation

Board of Directors of the Ventura Port District
Public Facilities Corporation

AGENDA

I. Call to Order the Annual Meeting of the Ventura Port District Public Facilities Corporation

   A. Election of Officers: President, Vice President, Secretary

   B. Ratify the Minutes of the Meeting held January 27, 2016

II. Adjourn the Annual Meeting of the Public Facilities Corporation

    Reconvene the Regular Meeting of the Ventura Port District Board of Port Commissioners

CONSENT AGENDA: (5 minutes)
Matters appearing on the Consent Calendar are expected to be non-controversial and will be acted upon by the Board at one time, without discussion, unless a member of the Board or the public requests an opportunity to address any given item. Approval by the Board of Consent Items means that the recommendation is approved along with the terms set forth in the applicable staff reports.

A) Approval of Out of Town Travel Request
Recommended Action: Voice Vote.
That the Board of Port Commissioners approve the out of town travel requests for Harbormaster, John Higgins, Consultant, Richard Parsons, Commissioner, Everard Ashworth, and Electrician, John Collins.

B) Approval of Professional Services Agreement with Noble Consultants, Inc.
Recommended Action: Voice Vote.
That the Board of Port Commissioners approve the Professional Services Agreement with Noble Consultants, Inc. to provide professional engineering services for the preparation of contract documents providing for the replacement of Docks G, H and the southern portion of D at Harbor Village.
C) Consideration of Rejection of Claim by Chubb Insurance  
Recommended Action: Voice Vote.  
That the Board of Port Commissioners approve the rejection of a claim filed against the Ventura Port District on October 5, 2016 by Chubb Insurance as Subrogee of Georgiana Denniston and authorize the General Manager to execute and mail a Notice of Rejection to Chubb Insurance.

STANDARD AGENDA:

1) Shellfish Grant – Leasing Alternatives and Operational Structures  
Recommended Action: Information.  
That the Board of Port Commissioners receives a memorandum by Plauché & Carr, LLP analyzing leasing alternatives and operational structures available to the District related to the Shellfish Grant.

REQUEST FOR FUTURE AGENDA ITEMS

ADJOURNMENT
ATTACHMENT TO PORT COMMISSION AGENDA
CLOSED SESSION CONFERENCE WITH LEGAL COUNSEL

WEDNESDAY, JANUARY 11, 2017

1. Conference with Real Property Negotiators - Per Government Code Section 54956.8:
   a) Property: 1559 Spinnaker Drive #205A
      Negotiating Parties: Oscar Peña, Brian Pendleton, Timothy Gosney
      Under Negotiation: Lease Terms with Ventura Harbor Comedy Club
   b) Property: 1575 Spinnaker Drive #101, #102, #103
      Negotiating Parties: Oscar Peña, Brian Pendleton, Timothy Gosney
      Under Negotiation: Lease Terms with The 805
   c) Property: 1559 Spinnaker Drive #108, #206
      Negotiating Parties: Oscar Pena, Brian Pendleton, Timothy Gosney
      Under Negotiation: New Lease Terms with Ventura Dive & Sport


BOARD OF PORT COMMISSIONERS

JANUARY 11, 2017

APPROVAL OF MINUTES

DECEMBER 7, 2016 MEETING
The Regular Meeting of the Ventura Board of Port Commissioners was called to order by Chairman Jim Friedman at 7:27PM at the Ventura Port District Office located 1603 Anchors Way Drive, Ventura, CA 93001.

**Commissioners Present:**
Jim Friedman, Chair  
Everard Ashworth, Vice Chair  
Gregory L. Carson  
Bruce E. Smith  
Nikos Valance

**Commissioners Absent:**
None

**Port District Staff:**
Oscar Peña, General Manager  
Brian Pendleton, Business Operations Manager  
Gloria Adkins, Accounting Manager  
John Higgins, Harbormaster  
Jennifer Talt-Lundin, Marketing Manager  
Robin Baer, Property Manager  
Frank Locklear, Marina Manager  
Richard Parsons, Consultant  
Jessica Rauch, Clerk of the Board

**Legal Counsel:**
Timothy Gosney  
Dominic Nunneri

**AGENDA**

**CALL TO ORDER:** By Chairman Jim Friedman at 7:27PM.

**PLEDGE OF ALLEGIANCE:** By Commissioner Friedman.

**ROLL CALL:** All Commissioners were present.

**ADOPTION OF AGENDA**

**ACTON:** Commissioner Smith moved, seconded by Commissioner Ashworth and carried by a vote of 5-0 to adopt the December 7, 2016 agenda.
APPROVAL OF MINUTES
The Minutes of November 9, 2016 Regular meeting were considered as follows:

ACTION: Commissioner Brennan moved, seconded by Commissioner Valance and carried by a vote of 5-0 to approve the minutes of the November 9, 2016 Regular meeting.

PUBLIC COMMUNICATIONS: Lynn Mikelatos, owner of The Greek and Margarita Villa congratulated the Board and staff on the Portside groundbreaking, which was a long time coming. She also gave the Commission a challenge to try the new Escape Rooms that recently opened in the Harbor.

CLOSED SESSION REPORT: Mr. Gosney stated that the Board met in closed session; discussed and reviewed all items on the closed session agenda. Staff was given instructions on as to how to proceed as appropriate on Items 1b and 2 and there was no action taken that is reportable under The Brown Act. On Item 1a, there was a consensus of the Board to eliminate Brighton Management from further consideration of the development of Parcels 5 and 8.

BOARD COMMUNICATIONS: Commissioner Ashworth reported that he has been working with Gloria on the Audit report and updated the Commission on the Shellfish initiative.

DEPARTMENTAL AND GENERAL MANAGER REPORTS: Mr. Parsons updated the Commission on the dredging appropriations. Ms. Talt-Lundin reported to the Commission that the Harbor View newsletter went out today. Also, thanked our sponsors for the Parade of Lights that is occurring in two weeks and to encourage boaters to enter since we have only 10 boats so far.

LEGAL COUNSEL REPORT: Counsel is currently working on updating their option and lease documents in anticipation of presenting a formal lease to one of the developers of the RFP in the not too distance future.

STANDARD AGENDA:

1) Annual Reserve Policy Review
Recommended Action: Voice Vote.
That the Board of Port Commissioners accept the current Ventura Port District Reserve Policy, Resolution No. 3225, dated August 28, 2013.

ACTION: Commissioner Valance moved, seconded by Commissioner Brennan and carried by a vote of 5-0 to accept the current Ventura Port District Reserve Policy, Resolution No. 3225, dated August 28, 2013.

2) Annual Investment Policy Review
Recommended Action: Roll Call Vote.
That the Board of Port Commissioners adopt Resolution No. 3326, which reflects minor changes to the Ventura Port District’s Investment Policy and rescind Resolution No. 3284.

ACTION: Commissioner Brennan moved, seconded by Commissioner Smith and carried by a vote of 5-0 to adopt Resolution No. 3326, which reflects minor changes to the Ventura Port District’s Investment Policy and rescind Resolution No. 3284.
3) Adoption of Ordinance No. 51 Authorizing Execution of the Lease Between Ventura Port District and Beer and Sausage, LLC dba BS Taproom/Beer Season

Recommended Action: Roll Call Vote.

That the Board of Port Commissioners:

1. Conduct a public hearing for the purpose of receiving input on proposed Ordinance 51;
2. Read proposed Ordinance No. 51 for the record; and
3. Adopt Ordinance No. 51, which authorizes execution of the Lease between Ventura Port District and Beer and Sausage, LLC dba BS Taproom/Beer Season New Restaurant Lease at 1591 Spinnaker Drive, #113 & #115.

ACTION: Chairman Friedman opened the public hearing at 7:55PM for the purpose of receiving input on proposed Ordinance 51. The reading of proposed Ordinance 51 was waived. There was one public comment. The public hearing was closed by Chairman Friedman at 7:56PM.

Public Comment: Orestis Simos thanked the Commission and staff for this opportunity and they are looking forward to developing a great business.

ACTION: Commissioner Brennan moved, seconded by Commissioner Ashworth and carried by a vote of 5-0 to adopt Ordinance No. 51, which authorizes execution of the Lease between Ventura Port District and Beer and Sausage, LLC dba BS Taproom/Beer Season New Restaurant Lease at 1591 Spinnaker Drive, #113 & #115.

4) Consideration of Legal Fees

Recommended Action: Voice Vote.

That the Board of Port Commissioners consider for approval the proposal submitted on July 13, 2016, which increases the hourly rates upon which the legal fees to the District are calculated.

ACTION: Commissioner Brennan moved, seconded by Commissioner Ashworth and carried by a vote of 4-0-1 (Valance abstained) to approve the proposal submitted on July 13, 2016, which increases the hourly rates upon which the legal fees to the District are calculated.

5) Information on IRC § 170

Recommended Action: Informational.

That the Board of Port Commissioners further explore the District’s potential solicitation of tax-deductible donations and application for grant funding under IRC § 170.

ACTION: The Commission asked for this topic to be a future workshop item to discuss how to go about receiving donations for Harbor Village projects.
6) Approval of 2017 Port Commission Meeting Schedule
Recommended Action: Voice Vote.
That the Board of Port Commissioners discuss and take appropriate action on the 2017 Port Commission meeting schedule.

ACTION: Commissioner Brennan moved, seconded by Commissioner Ashworth and carried by a vote of 5-0 to approve the 2017 Port Commission meeting schedule, with the following revisions:
- All meetings will be regular meetings. If the Commission would like a workshop topic, it can be agendized as such on a regular meeting agenda.
- All meetings will begin at 7:00PM. There will be no more regularly scheduled daytime meetings.
- November and December meetings will be the second Wednesday of the month.

REQUEST FOR FUTURE AGENDA ITEMS: None.

ADJOURNMENT: The meeting was adjourned at 8:44PM.

________________________________
Secretary
BOARD OF DIRECTORS
PUBLIC FACILITIES CORPORATION
JANUARY 11, 2017

APPROVAL OF MINUTES
JANUARY 27, 2016 MEETING
MINUTES OF THE ANNUAL MEETING
OF THE VENTURA PORT DISTRICT
PUBLIC FACILITIES CORPORATION
HELD ON JANUARY 27, 2016

At 8:38PM, Vice President Friedman called to order the Annual Meeting of the Ventura Port District Public Facilities Corporation. The meeting was held in the offices of the Ventura Port District located at 1603 Anchors Way Drive, Ventura, California.

ROLL CALL

Present: Jim Friedman, President
         Everard Ashworth, Vice President
         Bruce Smith, Director
         Gregory Carson, Director
         Nikos Valance, Director

Staff Present: Oscar Peña, Chief Financial Officer and Secretary
               Timothy J. Gosney, Legal Counsel
               Jessica Rauch, Clerk of the Board

Mr. Gosney advised the Board that the Ventura Port District Public Facilities Corporation is a free standing corporation and the members of the Corporation are the same as the Board of Port Commissioners. The Public Facilities Corporation was created when the District took back a portion of the leasehold interest in Harbor Village. According to the By-Laws of the Corporation, there must be an annual meeting of the Board of Directors for the purpose of selection of Directors and Officers, and the transaction of any other business.

ELECTION OF OFFICERS

ACTION: Director Smith moved, seconded by Director Carson and carried by a vote of 5-0 to elect the following officers:
         President – Jim Friedman
         Vice President – Everard Ashworth
         Secretary – Oscar Peña

APPROVAL OF MINUTES

ACTION: Director Ashworth moved, seconded by Director Carson and carried by a vote of 5-0 to ratify the minutes of January 22, 2014.

APPROVAL OF RESOLUTION AUTHORIZING FIRST AMENDMENT TO 2008 INSTALLMENT PURCHASE AGREEMENT

Recommended Action: Resolution No. 127.
That the Board of Directors of the Public Facilities Corporation adopt Resolution No. 127, authorizing the execution and delivery of a First Amendment to the 2008 Installment Purchase Agreement and related matters in connection therewith.
ACTION: Director Ashworth moved, seconded by Director Carson and carried by a vote of 5-0 to adopt Resolution No. 127, authorizing the execution and delivery of a First Amendment to the 2008 Installment Purchase Agreement and related matters in connection therewith.

ADJOURNMENT

There were no further items for discussion and at 8:44PM, President Friedman declared the meeting of the Ventura Port District Public Facilities Corporation adjourned.

_____________________________________
Secretary
BOARD OF PORT COMMISSIONERS

JANUARY 11, 2017

CONSENT AGENDA ITEM A

APPROVAL OF

OUT OF TOWN TRAVEL REQUEST
VENTURA PORT DISTRICT
BOARD COMMUNICATION

TO: Board of Port Commissioners
FROM: Oscar F. Peña, General Manager
SUBJECT: Out of Town Travel Requests

RECOMMENDATION:
That the Board of Port Commissioners approve the following out of town travel requests for:

A) Harbormaster, John Higgins to travel to Anaheim, California to participate in the 2017 Annual Liebert Cassidy Whitmore Annual Conference on March 8 – 10, 2017. Attending this Conference allows the District to stay up-to-date on Human Resources Issues, policies and procedures. Estimated cost for the travel is as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registration</td>
<td>$900.00</td>
</tr>
<tr>
<td>Lodging</td>
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<td>Meals</td>
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<td>Mileage</td>
<td>$106.57</td>
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<tr>
<td>Miscellaneous</td>
<td>$100.00</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$2,072.51</strong></td>
</tr>
</tbody>
</table>

B) Dredging Consultant, Richard Parsons to travel to Redondo Beach, California to participate in the 2017 CMANC Winter Meeting on January 18 – 20, 2017. Attending this meeting allows the District to meet with representatives of other California Ports and Harbors and to participate in discussions with the US Army Corps of Engineers about the refining of navigation goals. Estimated cost for the travel is as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registration</td>
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<td>Meals</td>
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<tr>
<td>Mileage</td>
<td>$95.02</td>
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<tr>
<td>Miscellaneous</td>
<td>$100.00</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$1,137.38</strong></td>
</tr>
</tbody>
</table>

C) Commissioner, Everard Ashworth to travel to Redondo Beach, California to participate in the 2017 CMANC Winter Meeting on January 18 – 19, 2017. Attending this meeting allows the District to meet with representatives of other California Ports and Harbors and to participate in discussions with the US Army Corps of Engineers about the refining of navigation goals. Estimated cost for the travel is as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registration</td>
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</tr>
<tr>
<td>Lodging</td>
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</tr>
<tr>
<td>Meals</td>
<td>$95.00</td>
</tr>
<tr>
<td>Mileage</td>
<td>$79.82</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>$100.00</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$921.00</strong></td>
</tr>
</tbody>
</table>
D) Electrician, John Collins to travel to the Port of Los Angeles, California to participate in the Noribachi Conference and Plant Tour on January 26 – 27, 2017. Attending this meeting allows the District to start the journey into finding L.E.D retro fit fixtures for replacement lighting infrastructure. Estimated cost for the travel is as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registration</td>
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<tr>
<td>Lodging</td>
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<td>Meals</td>
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<td>Mileage</td>
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<td>Miscellaneous</td>
<td>$0.00</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$366.93</strong></td>
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</table>
BOARD OF PORT COMMISSIONERS

JANUARY 11, 2017

CONSENT AGENDA ITEM B
APPROVAL OF PROFESSIONAL SERVICES AGREEMENT WITH NOBLE CONSULTANTS, INC.
TO:         Board of Port Commissioners  
FROM:      Richard Parsons, Project Manager  
SUBJECT: Approval of Professional Services Agreement with Noble Consultants, Inc.  

RECOMMENDATION:  
That the Board of Port Commissioners approve the Professional Services Agreement with Noble Consultants, Inc. to provide professional engineering services for the preparation of contract documents providing for the replacement of Docks G, H and the southern portion of D at Harbor Village.

SUMMARY:  
In 2005, the District replaced Docks E, F, I and the northern portion of D due to their advanced state of deterioration. Docks G, H and the southern portion of D are now in a similar state of deterioration and must be replaced in the near future. Noble Consultants has submitted a proposal, dated, December 6, 2016, to prepare the necessary performance specifications contract documents that will enable the District to solicit formal construction bids for the replacement effort.

In anticipation of this effort, a Coastal Development Permit for the project was secured from the California Coastal Commission in February 2016, and a letter of Permission has just been received from the U.S. Army Corps of Engineers. An application filed with the Los Angeles Regional Water Quality Control Board is still pending, but is not expected to create any problems.

FISCAL IMPACTS:  
The District’s FY16-17 Capital Improvement Budget includes $125,000 for the engineering and design effort associated with the dock replacement effort. Noble’s proposal calls for a fee of $124,896.

The ultimate cost of the docks replacement effort is estimated at $4.5 Million and is expected to be financed with a 20 to 30 year debt instrument.

ATTACHMENTS:  
Attachment 1– PSA with Noble Consultants, Inc.
VENTURA PORT DISTRICT

STANDARD FORM CONTRACT FOR
PROFESSIONAL SERVICES AGREEMENT
(Over $25,000)

With

NOBLE CONSULTANTS, INC.

THIS AGREEMENT, entered into this 11th day of January 2017, by and between the VENTURA PORT DISTRICT, an independent special district, hereinafter referred to as “DISTRICT” and NOBLE CONSULTANTS, INC., hereinafter referred to as “CONSULTANT.”

DISTRICT AND CONSULTANT AGREE AS FOLLOWS:

1. CONSULTANT’S SERVICES. CONSULTANT agrees to perform services, set forth in Exhibit A, during the term of this Agreement for the rehabilitation of D, G, and H Docks in the Ventura Harbor Village Marina.

2. PAYMENT FOR SERVICES. DISTRICT shall pay CONSULTANT $124,896.00, set forth in Exhibit “B”, for the services, set forth in Exhibit “A”, performed by CONSULTANT.

3. TERM OF AGREEMENT. The term of this Agreement shall commence January 11, 2017, and shall terminate on or before December 31, 2017.

4. TIME FOR PERFORMANCE. CONSULTANT shall not perform any work under this Agreement until CONSULTANT furnishes proof of insurance as required under paragraph 9 of this Agreement.

5. STATUS OF CONSULTANT. The DISTRICT and CONSULTANT agree that CONSULTANT, in performing the services herein specified, shall act as an independent contractor and shall have control of all work and the manner in which it is performed. CONSULTANT shall be free to contract for similar service to be performed for other persons or entities while under contract with DISTRICT. CONSULTANT is not an agent or employee of DISTRICT and is not entitled to participate in any pension plan, insurance, bonus or similar benefits DISTRICT provides for its employees.

6. DESIGNATED REPRESENTATIVES:
   a) Jon T. Moore, P.E. shall be the designated CONSULTANT Representative and shall be responsible for job performance, negotiations, contractual matters, and coordination with the DISTRICT Representative. CONSULTANT’S professional services shall be actually performed by, or shall be immediately supervised by, the CONSULTANT Representative.
   b) Oscar F. Peña shall be the designated DISTRICT Representative.

7. ASSIGNMENT. This Agreement is for the professional services of CONSULTANT. Any attempt by CONSULTANT to assign the benefits or burdens of this Agreement without prior written approval of DISTRICT shall be prohibited and shall be null and void.
8. **RECORDS AND INSPECTIONS.** The CONSULTANT shall maintain full and accurate records with respect to all services and matters covered under this Agreement. The DISTRICT shall have free access at all reasonable times to such records, and the right to examine and audit the same and to make transcripts therefrom, and to inspect all program data, documents, proceedings and activities.

9. **INSURANCE.** CONSULTANT shall procure and maintain insurance of the type, for the period, with the coverages and limits, and in accordance with the terms, conditions, and requirements (including, but not limited to the Proof of Insurance requirements) set forth in the attached Exhibit “C” and incorporated into this Agreement.

10. **HOLD HARMLESS.** CONSULTANT shall save harmless and indemnify, and, at the DISTRICT’S request, defend the DISTRICT, its officers, officials, employees, agents, representatives, and volunteers from and against any and all claims, demands, actions, damages, expenses, suits, accidents, injuries, liability, or proceedings of any character whatever (including without limitation, reimbursement of reasonable attorney’s fees), brought for or on account of, or to the extent resulting from or arising out of or in connection with, any negligent act, error or omission, negligence, wrongful conduct, or other negligent action by CONSULTANT or any of CONSULTANT’S officers, agents, employees, representatives, subconsultants, or subcontractors in connection with or in the performance of this Agreement.

11. **COVENANTS AND CONDITIONS.** Each term and each provision of this Agreement to be performed by CONSULTANT shall be construed to be both a covenant and a condition.

12. **TERMINATION.** At any time, with or without cause, the DISTRICT or CONSULTANT shall have the right to terminate this Agreement by giving written notice pursuant to Paragraph 19 of this Agreement. There shall be no period of grace after giving the notice of termination. Termination shall become effective immediately upon the giving of notice as provided in Paragraph 19 of this Agreement.

13. **EFFECT OF TERMINATION.** Upon termination as stated in Paragraph 12 of this Agreement, DISTRICT shall be required to compensate CONSULTANT only for work done by CONSULTANT up to and including the date of termination of this Agreement unless the termination is for cause, in which event CONSULTANT need be compensated only to the extent required by law.

14. **OWNERSHIP OF CONSULTANT’S WORK PRODUCT.** DISTRICT shall be the owner of any and all computations, plans, correspondence and/or other pertinent data and information gathered or prepared by CONSULTANT in performance of this Agreement and shall be entitled to possession of the same upon reasonable notice and upon completion of the work under this Agreement, or upon reasonable notice at any earlier or later time when the same may be requested by DISTRICT.

15. **TAXPAYER IDENTIFICATION NUMBER.** CONSULTANT shall provide DISTRICT with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 12-87), as issued by the Internal Revenue Service.

16. **NON-APPROPRIATION OF FUNDS.** Payments due and payable to CONSULTANT for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of the DISTRICT. In the event the DISTRICT has not
appropriated sufficient funds for payment of CONSULTANT services beyond the current fiscal year, this Agreement shall cover only those payments for services incurred up to the conclusion of the current fiscal year.

17. **MODIFICATION OF AGREEMENT.** The tasks described in this Agreement and all other terms of this Agreement may be modified only upon mutual written consent of DISTRICT and CONSULTANT.

18. **USE OF TERM “DISTRICT”**. Reference to “DISTRICT” in this Agreement includes General Manager or any authorized representative acting on behalf of DISTRICT.

19. **NOTICES.** All notices given or required to be given pursuant to this Agreement shall be in writing and may be given by personal delivery or by U.S. Mail. Notice sent by U.S. Mail shall be addressed as follows:

   TO DISTRICT: Ventura Port District
   Attention: General Manager
   1603 Anchors Way Drive
   Ventura, CA  93001-4229

   CONSULTANT: Noble Consultants, Inc.
   Attention: Jon T. Moore, P.E.
   2201 Dupont Drive, Suite 620
   Irvine, CA 92612-7509

and, when addressed in accordance with this paragraph, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices shall be deemed given at the time of actual delivery. Changes may be made in the names or addresses of persons to whom notices are to be given by giving notice in the manner prescribed in this paragraph.

20. **PERMITS AND LICENSES.** CONSULTANT, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

21. **WAIVER.** A waiver by the DISTRICT of any breach of any term, covenant, or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement whether of the same or different character.

22. **GOVERNING LAW.** The terms of this Agreement shall be interpreted according to the laws of the State of California. Should litigation occur, venue shall be in the Superior Court of Ventura County.

23. **INTEGRATED AGREEMENT.** This Agreement represents the entire Agreement between the DISTRICT and the CONSULTANT and all preliminary negotiations and agreements are deemed a part of this Agreement. No verbal agreement or implied covenant shall be held to vary the provisions of this Agreement. This Agreement shall bind and inure to the benefit of the parties to this Agreement and any subsequent successors and assigns.
24. **CUMULATIVE REMEDIES.** All right and remedies of either party hereto are cumulative of each other and of every other right or remedy such party may otherwise have at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent of subsequent exercise of other rights or remedies.

25. **SEVERABILITY.** If any term or provision of this Agreement shall be deemed invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and in force to the fullest extent permitted by law.

26. **CONFLICT.** Consultant hereby certifies that it has no business or contractual relationship with any current member of the DISTRICT’S Board of Port Commissioners:

   Jim Friedman, Chairman
   Everard Ashworth, Vice Chairman
   Bruce E. Smith, Commissioner
   Nikos Valance, Commissioner
   Brian Brennan, Commissioner

VENTURA PORT DISTRICT

By: ______________________________
   Oscar F. Peña, General Manager

Date: ____________________________

NOBLE CONSULTANTS, INC.

By: ______________________________
   Jon T. Moore, P.E.

Date: ____________________________
December 6, 2016

Ventura Port District
Mr. Oscar Peña, General Manager
1603 Anchors Way Drive
Ventura, CA 93001-4229

RE: Proposal for Professional Engineering Services
   Rehabilitation of D, G, and H Docks, Ventura Harbor Village Marina
   For the Ventura Port District

Dear Mr. Peña:

Noble Consultants (NC) is pleased to present this proposal for professional engineering services connected with rehabilitation of portions of the Ventura Harbor Village Marina. The timber docks were originally built over 30 years ago and are now in need of replacement. Docks E, F, and a portion of D and I Docks were renovated with new floats, utilities, and gangways approximately eleven years ago. The purpose of our services shall be to prepare the necessary performance specification contract documents that will enable the District to solicit formal construction bids for rehabilitation of Docks G, H, the remainder of Dock D, and construction of a connecting walkway between C and D Docks. The approximate projects limits are shown below. The new docks shall be concrete to match the construction of the recently renovated Dock I, F, and portion of D Dock.


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A performance specification contract document defines the dock’s features, design criteria, layout geometry, and technical requirements that must be met by a dock builder to fulfill an expected outcome and acceptable standard. In this form of contracting, the dock manufacturer performs more detailed engineering and submits construction plans that are unique to his proprietary product and responsive to the contract’s specifications.
Our scope of services shall be as described in the following paragraphs.

**SCOPE of SERVICES**

**Task 1 Site Survey and Data Collection**

The Port District shall be responsible to conduct and furnish a current detailed bathymetric survey of the project site to show existing depths and contours within the dock replacement footprint and the elevations and contours of the submerged portion of the existing slope protection along the west side. The data shall consist of a digital AutoCad DWG file map that shows one foot contour elevations and spot elevations. A digital point number, northing, easting, depth, description (PNEZD) ASCII text file of all survey points and control benchmarks shall also be provided. Horizontal datum shall be referenced to North American Datum (NAD) 1983 California State Plane Zone 5. Vertical datum shall be North American Vertical Datum (NAVD) 1988 with reference to Mean Lower Low Water datum.

Our subconsultant, Geospatial Professional Solutions, Inc. shall perform a low altitude aerial flight of the visible portions of the project site to photograph and map locations of existing docks, guide piles, gangways, and landside topography and culture. Photography shall be flown with a ground sample distance resolution of 0.15 feet (2 inches) between digital pixel centers. Digital planimetric maps shall be prepared in one inch equals 20 and 40 foot scales to show the visible locations and elevations of the existing floating docks, guide piles, gangways, gangway landings, upper revetment, and sidewalk improvements and culture adjacent to the marina. Elevation contours shall be mapped in one foot intervals with appropriate spot elevation notation. In order to perform the aerial survey our subconsultant VCE shall locate, set, and survey five ground aerial targets to the horizontal and vertical precision required by the aerial photographer.

The results of the bathymetric and aerial site surveys shall be combined to prepare the construction base map for the project.

*Data Collection* - We shall visit the District offices to obtain available and relevant design data and information. The Port District shall furnish us with copies of the recent dock replacement plans, specifications, engineering calculations, pile driving records, and utilities plans.

**Task 2 Geotechnical Engineering Evaluation**

Our subconsultant, Gorian and Associates (GAA), shall perform a brief geotechnical engineering evaluation of the foundation requirements for the new guide piles at D Dock and the combined G and H Docks (G/H). It is assumed that the existing gangway landing at G Dock shall be used for gangway access to the new G/H Dock to utilize existing utility points of connection.
The recommendations of GAA shall be based upon existing geotechnical data, reports, and information furnished to us by the Port District. Based upon a review of the existing subsurface soils information, historical pile driving records, and lateral load requirements for dock restraint, GAA shall provide recommendations for minimum guide pile embedment and gangway landing foundation requirements.

Deliverable: At the completion of this task our deliverable to the District shall be a brief geotechnical memorandum that summarizes GAA's findings and design recommendations.

Task 3 Dock Replacement Design Criteria

We shall review berthing requirements in collaboration with the Port District to determine appropriate design criteria for the replacement of D Dock and G/H Dock. Specifications shall include maximum wave height, current, and operational mooring and berthing forces to be resisted by the new dock system. This analysis will include assessment of the greater mooring and berthing loads associated with the large purse seiners that are anticipated to use the docks. The Port District shall provide us with an estimate of the probable vessel sizes (length, beam, and gross tonnage) that may be expected to call at the new slips.

Task 4 Utilities and Gangways Design

The existing gangways shall be salvaged and reused at the new docks. No new gangways shall be designed or specified. The new G/H Dock shall be accessed from the existing G Dock gangway landing.

Our subconsultant Intrinsic Engineering (IE) shall design the landside power utility service to the gangway landing points for the connection at the new G/H Dock and D Dock replacement. We shall determine and confirm the existing and proposed power service demands and points of connection for the new Dock G/H and D Dock replacement based upon power center outlet specifications provided to us by the Port District. Power design shall also be provided for C Dock. Power design shall review if high voltage should be carried to the docks or transformed onshore.

Existing landside potable water and fire protection points of connection shall be used for service to the new G/H Dock and D Dock replacement.

Task 5 Preparation of Contract Documents

We shall prepare the contract documents bid package in collaboration with the Port District. The plans and specifications for demolition of existing improvements and construction of new floating docks and utilities shall be prepared in a performance specifications format. We shall prepare the detailed design, plans, and specifications for any new guide piles required. We shall prepare the detailed plans and specifications for all landside electrical
power to the gangways. This task will likely be limited to specification of new circuit breakers at the main electrical panel. At this time, we believe that the existing underground conduit and conductor between the main panel and gangway points of connection can be utilized to power the new and replaced docks.

We assume that the fire protection and potable water service to the existing G Dock and Dock D is adequate and simply needs to be temporarily disconnected during construction of the new G/H Dock and rehabilitation of the new Dock D.

Performance specifications shall be prepared for design, detailing, and fabrication of qualified proprietary floating dock systems, utilities, and ancillary products on the floating docks to meet the minimum design criteria and service specifications for the Ventura Harbor Village Marina project requirements. This format shall specify that the qualified contractor will be required to design his proprietary floating dock system and utilities to the design criteria and performance requirements specified by the contract documents. The replacement dock layout shall conform to that approved in the District’s regulatory entitlements. All guide piles shall be removed and replaced. A preliminary outline of the construction plans and contract documents package is outlined below.

a. Title sheet
b. Existing conditions and utilities
c. Topography, bathymetry, and survey control
d. Demolition plan
e. Project plan, general and construction notes
f. Guide pile plan and detail
g. D Dock replacement plan detail
h. G/H Dock replacement plan detail
i. Dock replacement details
j. Dock replacement details
k. Electrical plan and details
l. Plumbing plan and details
m. Fire protection plan and details

The contract documents package shall include the following items:

n. Notice inviting bids
o. Instructions to bidders
p. Bid forms
q. Agreement and bonds
r. District standard specifications
s. Special provisions
t. Contract drawings (Items a. through m. above)
u. Permits
The District shall furnish us with copies of all permit documents for incorporation within the contract documents. The District shall also furnish copies of its standard specifications, bid forms, and agreement and bonds in electronic digital format (Microsoft Word format.)

The District shall be responsible to obtain all regulatory and building permits. We have allocated 10 hours of time to support VPD staff during their effort to apply for and process an electrical power permit from the City of Ventura. Our services do not include time for us to apply for building permits, process plan checks, or respond to comments from City of Ventura building officials. We are prepared to provide these services if necessary for an additional fee.

**Deliverables:** Our deliverables to the District shall be in accordance with the following:

- **75% complete plans, contract documents, and opinion of probable construction cost**
- **100% complete plans, contract documents, and final opinion of probable construction cost**

One copy of the 75% deliverables shall be submitted to the Port District in electronic digital copy (Adobe PDF format). Two hard copies shall be furnished to the Port District for distribution. The 100% complete final camera ready submittal shall be submitted in Adobe PDF digital format for the District’s use to distribute and reproduce multiple copies for bid solicitation and distribution.

**Task 6 Meetings and Project Coordination**

We have allocated 24 hours of time for meetings and miscellaneous communications to collaborate with District staff to discuss design issues, review deliverables, and perform miscellaneous project coordination.

**Task 7 Consultation during Bid Solicitation**

We have allocated 16 hours of time to assist District staff during the bid solicitation phase of the project. Our services may consist of reviewing bid proposals, responding to bidder questions, and providing other miscellaneous consultation services as requested by the District.

**FEE ESTIMATE**

We propose to provide our services on a time and expenses basis in accordance with our Standard Schedule of Charges as attached. Our total not to exceed fee to complete Tasks 1 through 7 will be $124,896. A breakdown of this fee estimate is provided below in Table 1.
Table 1. Fee Estimate Summary with Survey Scope Alt 1

<table>
<thead>
<tr>
<th>Task No.</th>
<th>NC</th>
<th>GAA</th>
<th>VCE</th>
<th>GPSI</th>
<th>IE</th>
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$81,460  $10,000  $3,360  $2,910  $21,500  $124,896

NC = Noble Consultants; GAA = Gorian and Associates; VCE = VCE Services, Inc.; GPSI = Geospatial Professional Solutions; IE = Intrinsic Engineering

A more detailed breakdown of this fee is provided on Attachment A to this proposal. We estimate that our services for Task Nos. 1 through 6 shall be complete within 19 weeks or receipt of your Notice to Proceed as outlined in Attachment B to this proposal. The actual schedule will depend upon the amount of review time required by the Port District, the length of time required by the Port District to secure all permits, or other unforeseen events. The time to complete Task 7 will depend upon the District’s timeframe to advertise the bid and complete the review process.

We appreciate the opportunity to submit this proposal to the Port District for your consideration. Please call should you have any questions or if you need additional information. We hope we can be of service and assist the District to successfully complete this important Ventura Harbor Village Marina dock replacement project.

Sincerely,

Noble Consultants-G.E.C., Inc.

\[Signature\]

Jon T. Moore, P.E.

Attachment: Attachment A – Fee Estimate Spreadsheet
Attachment B – Estimated Schedule
Attachment C – Schedule of Charges
# Fee Estimate Spreadsheet

**Project:** Ventura Harbor Village Marina - Docks D,G,H Replacement  
**Client:** Ventura Port District  
**Date of Estimate:** 6-Dec-16

<table>
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<th>Task</th>
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<th>PE</th>
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<th>CM</th>
<th>Eng III</th>
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**Subconsultants**

- Gorian and Associates: Geotechnical assessment - guide piles and gangway landing $10,000
- Surveying
  - Port District: Bathymetry
  - VCE Services: Set aerial targets $3,360
  - GPSI: Aerial photo mapping $2,910
- Intrinsic Engineering: Power design $21,500

**Total Subconsultants**

- Handling Charge @ 15% = $5,666 Sub-total $43,436

**Expenses**

- Car Mileage: 4 trips Irvine to Ventura $475
- Communications $100
- Courier
- Reproduction $500
- Other

**Total Reimbursable Expenses**

- Handling Charge @ 15% = $161 Sub-total $1,236

**Grand Total**

$124,896
## Fee Estimate Summary - Subconsultants

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<tr>
<th>Subconsultant</th>
<th>Scope</th>
<th>Estimate</th>
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<tr>
<td>Gorian and Associates</td>
<td>Data review, estimate lateral pile capacity and tip embedment, gangway landing foundation recommendations, memo report</td>
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<tr>
<td>VCE Services</td>
<td>Set and get ground coordinates and elevations on the aerial targets</td>
<td>$3,360</td>
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<tr>
<td>GPSi</td>
<td>Fly site, prepare digital orthophoto, site mapping</td>
<td>$2,910</td>
</tr>
<tr>
<td>Intrinsic Engineering</td>
<td>Two meetings for technical review with staff. Electrical power design for landside point of connection, confirm existing gear sufficient for new demand, review if high voltage should be carried to docks or transformed onshore. Prepare performance book specification for power to docks from point of connection. Prepare electrical power drawings for docks including legends, symbols, and abbreviations; single line diagram and panel schedules; overall electrical plan; electrical G/H Dock plan detail; electrical D Dock plan detail; and Prepare opinion of probable construction cost</td>
<td>$21,500</td>
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Total subconsultants                                                                                      $37,770
## SCHEDULE OF CHARGES

### 2012-2016

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<th>Labor* (per hour)</th>
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<td>Associate Economist</td>
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* Depositions, mediations, arbitrations, and court appearance labor is twice the rate shown and billed in 1/2-day increments.

### Reimbursable Expenses**

#### In-house

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<th>Item</th>
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<td>RTK-DGPS Surveying</td>
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<td>Locus DGPS Surveying</td>
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<td>DGPS Navigation System</td>
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<td>Inspector Boat</td>
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<td>Automobile</td>
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### Out-of-Pocket

Travel, Subconsultants, Printing, Communication, etc.

** In-house at scheduled rate plus 15%. Out-of-pocket at cost plus 15%.

### Invoices

Bills are due and payable on presentation. Interest at 1.5% per month (but not exceeding the maximum rate allowable by law) is payable on any amounts not paid within 30 days.
Exhibit “C”
Proof of Insurance Requirements

VENTURA PORT DISTRICT PROFESSIONAL SERVICES AGREEMENT

With

NOBLE CONSULTANTS, INC.

The Consultant shall procure and maintain for the duration of the term of the Agreement limits against claims for injuries to persons or damage to property which may arise from, or in connection with, the performance of the work covered by the Agreement by the Consultant, her/its employees, agents, representatives, sub-consultants or subcontractors. Evidence of adequate insurance coverage in the form of a Certificate of Insurance naming the Ventura Port District as additional insured on the policy(ies) of insurance which shall not be canceled without first giving the District ten (10) days’ written notice. The actual policy(ies) shall have the following minimum limits of insurance:

<table>
<thead>
<tr>
<th>COVERAGE PER OCCURRENCE</th>
<th>ISO FORM</th>
<th>SINGLE LIMIT</th>
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<td>Professional Liability/Errors and Ommissions</td>
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</tbody>
</table>

Consultant shall provide certificates of insurance naming as additional insured the Ventura Port District ("District"), its officers, officials, employees and representatives.
CONSIDERATION OF REJECTION OF CLAIM BY CHUBB INSURANCE
VENTURA PORT DISTRICT  
BOARD COMMUNICATION  
TO: Board of Port Commissioners  
FROM: Jessica Rauch, Clerk of the Board  
SUBJECT: Consideration of Rejection of Claim by Chubb Insurance  

RECOMMENDATION:  
That the Board of Port Commissioners approve the rejection of a claim filed against the Ventura Port District on October 5, 2016 by Chubb Insurance as Subrogee of Georgiana Denniston and authorize the General Manager to execute and mail a Notice of Rejection to Chubb Insurance.

INFORMATION FOR DISCUSSION:  
On August 5, 2016, Harbor Patrol received a report from a Keys resident that a large cement dock float was adrift near the end of the finger between Bayshore and Surfrider. Harbor Patrol responded to the call, looped a line around it and attempted to pull on it, but it would not track behind the boat; it was uncontrollable, which made it unsafe to tow down the channel. Harbor Patrol secured it to the closest empty dock and contacted that resident who gave permission to leave the float on her dock until the owner could retrieve it.

Major Engineering was called to tow the float, but was unable to do so with their crane. After a week, the tides caused the cement float to slip under the dock causing the dock to break in half. It was decided to remove the float from under the dock and anchor it about four feet away until Major Engineering were able to remove it.

Chubb Insurances’ claim was submitted to the District’s Legal Counsel and Risk Manager for review and it is recommended that the Board reject the claim as submitted. A Notice of Rejection has been prepared for the General Manager’s signature.

ATTACHMENTS:  
Attachment 1 – Carl Warren Report, dated January 3, 2017  
Attachment 2 – Notice of Rejection
January 3, 2017

To: Ventura Port District  
Attn: Jessica Rauch  

(Sent via e-mail)  

RE: Principal: CJPIA  
    Member: Ventura Port District  
    Claimant: Chubb Insurance as Subrogee of Georgiana Denniston  
    Date of Event: 8/5/2016  
    Our File: 1951057-LFM  

We have reviewed the above referenced claim and request that you take the action below:

CLAIM REJECTION- Please send a standard rejection letter to:

Chubb Insurance  
Attn: Corey A. Ring  
PO Box 1685  
Salem, VA 24153  
Claim #77116606

Please send us a copy of the rejection letter. If you have any questions or concerns, contact the undersigned.

Sincerely,  
Carl Warren & Company  

Lisa Frye  
Claims Examiner II
NOTICE OF REJECTION OF CLAIM

TO: Chubb Insurance
    Attn: Corey A. Ring
    PO Box 1685
    Salem, VA 24153
    Claim #77116606

Notice is hereby given that the claim which you presented to the Ventura Port District on October 5, 2016, was rejected by action of the Board of Port Commissioners at its meeting held on January 11, 2017.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the United States mail to file a state court action on this claim. (See Government Code Section 945.6)

This time limitation applies only to causes of action arising under California law for which a claim is mandated by the California Government Tort Claims Act. Government Code Sections 900 et. seq. Other causes of action, including those arising under federal law, may have different time limitations for filing.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

Dated: January 11, 2017

VENTURA PORT DISTRICT

By: __________________________
    Oscar F. Peña
    General Manager
BOARD OF PORT COMMISSIONERS

JANUARY 11, 2017

STANDARD AGENDA ITEM 1

SHELLFISH GRANT - LEASING ALTERNATIVES AND OPERATIONAL STRUCTURES
RECOMMENDATION:
That the Board of Port Commissioners receives a memorandum by Plauché & Carr, LLP analyzing leasing alternatives and operational structures available to the District related to the Shellfish Grant.

SUMMARY:
On September 28, 2016 the Board of Port Commissioners authorized funding in the amount of $8,500 to retain outside legal services provided by Plauché & Carr, LLP to analyze and report on leasing alternatives and operational structures related to the Shellfish Grant.

The Ventura Port District, in collaboration with the Ventura Shellfish Enterprise (VSE), was awarded a two year, approximately $300,000 Sea Grant ($265,000 funding directly to the District) to contract with qualified consultant(s) that will enable development of a permitting strategy and all necessary permitting components required for sustainably cultivated shellfish production to be landed at Ventura Harbor.

There has been significant progress made in Task 1 of the Shellfish Grant, which is the research and development of a permitting strategy as outlined above. However, it has become evident that the scope and funding allocated from the Sea Grant for Task 1 legal services is insufficient to more fully evaluate the complex issues of leasing alternatives and operational structures. Given that the State California Department of Fish and Wildlife (“CDFW”) has issued very few leases for offshore aquaculture over the past two decades (primarily renewals), there has been a lack of clarity as to what leasing structures may be available to this District, or other government entities, and cooperatives such as the VSE.

Attached is the memorandum prepared by Robert Smith, Plauché & Carr, LLP that summarizes several leasing alternatives and operational structures available to the District to facilitate development of twenty (20) 100-acres plots for growing mussels cultivated in state waters within the Santa Barbara channel near Ventura Harbor.

BACKGROUND:
Plauché & Carr, LLP is a Seattle-based law firm with a practice focused on environmental, land use, and natural resource-based issues. Plauché & Carr, LLP has represented a number of non-profit, private, and governmental entities regarding environmental and regulatory matters ranging from regulatory compliance/permitting, to administrative litigation, to litigation in state and federal courts, to conservation land acquisition. On October 14, 2015 the District selected Plauché & Carr, LLP and Robert Smith as lead counsel to provide the Task 1 legal services for the Shellfish Grant. This contract was extended by the Commission on September 28, along with other consultants providing services contemplated by the Grant.

For this additional task, Robert Smith has served as lead counsel to the District. Mr. Smith is an attorney with ten years’ experience working in California on land use and environmental issues, on behalf of both private and public clients. During his previous employment at two Los Angeles-based firms, Robert advised and represented numerous clients regarding compliance
with the California Environmental Quality Act (“CEQA”) and National Environmental Policy Act (“NEPA”) and represented several coastal cities and private clients before the California Coastal Commission (“CCC”), California Department of Fish and Wildlife (“CDFW”), Los Angeles County, and U.S. Army Corps of Engineers (“Corps”).

The Shellfish Grant contemplated the Ventura Port District, as a member of VSE would hold all entitlements for a group of offshore aquaculture leases that will in turn be subleased to individual producer-fishermen for shellfish farming. While the CDFW has allowed subleasing, they are reviewing these leasing requirements and evaluating options while seeking input from potential lessees. Mr. Smith’s memorandum provides analysis of likely alternatives that CDFW may permit, and important considerations of each alternative for the District. Mr. Smith will present the findings of his memorandum to the Commission on Wednesday, January 11th.

As a follow up, Mr. Smith can assist the District in preparing draft lease documents and negotiating with CDFW. However, staff believes it is premature to authorize this work which is preliminarily estimated at $10,000 because it is anticipated that further analysis of the leasing alternatives and organizational structures by Mr. Smith, District staff and general counsel will be necessary.

**FISCAL IMPACT:**
The additional legal services for Plauché & Carr, LLP was in an amount not to exceed $8,500, however there may be some follow-up travel to Sacramento for meetings with CDFW which may necessitate a contract amendment for additional expense. Staff will advise the Commission of any necessary additional costs.

**ATTACHMENT:**
Attachment 1 – Plauché & Carr, LLP Memorandum
MEMORANDUM

TO: Ventura Port District Board of Port Commissioners
FROM: Robert M. Smith, Plauché & Carr, LLP
DATE: January 5, 2017
RE: Aquaculture Project Formation Options

This memorandum summarizes several operational structures available to the Ventura Port District (“District”) to facilitate development of twenty 100-acre plots for growing Mediterranean mussels cultivated on submerged longlines in state waters within the Santa Barbara channel near Ventura Harbor.

The District has a number of potential options. Selecting the best option for the District depends on a variety of factors, including (1) the amount of direct control the District wants to have over aquaculture operation and development; (2) whether the District wants to participate financially in the project, either through a joint venture or some other form of public-private partnership; and (3) the amount of investment, either through District administrative resources or financial investment, the District is willing to commit.

The options available to the District, in order of lesser-to-greater District involvement, include: (1) the District acquiring a lease from the California Fish and Game Commission (“CA FG C”) and then subleasing to individual shellfish companies; (2) developing a “pre-permitting” or general permit process, where the District obtains all permits for the project and then designates sublocations for individual farms (this is the option contemplated in the Grant); (3) development of a cooperative where the District leases the land through a master lease and then subleases to a shellfish cooperative group responsible for the day-to-day operation of the project, such as the Ventura Shellfish Enterprise (“VSE”); and/or (4) the District takes a proprietary role in the ownership and operation of the mussel farms. Note that many of these options overlap and several permutations are possible based on the District’s evaluation of the three factors listed above.¹

¹ While all of these options can be legally pursued by the District, there are a number of legal issues that must be considered when developing a specific process for the selected alternative. These considerations include (but may not be limited to) compliance with the Brown Act (Gov. Code § 54950 et seq.), prohibitions on the gift of public
A. Permitting Process and Costs

Generally, a company seeking to start a new shellfish farm must obtain five main discretionary permits and approvals. First, it must obtain a lease from the CA FGC. Second, the growing area waters must be certified by the California Department of Public Health ("CA DPH"). Third, it must obtain a coastal development permit ("CDP") from the California Coastal Commission. Fourth, it must obtain a permit from the U.S. Army Corps of Engineers ("Corps") pursuant to its jurisdiction under Section 10 of the Rivers and Harbors Act (associated with installation of structures in navigable waters) and Section 404 of the Clean Water Act ("CWA") (associated with the discharge of dredged or fill material into waters of the United States). Prior to issuance of its permit, the Corps must consult with the National Marine Fisheries Service ("NMFS") and U.S. Fish and Wildlife Service ("USFWS") for consistency with the Endangered Species Act and Magnuson-Stevens Fishery Conservation and Management Act. Fifth, it must obtain approval from the Los Angeles Regional Water Quality Control Board ("RWQCB") for CWA Section 401 Water Quality Certification.

The shellfish company must also comply with state and federal environmental review requirements, the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA"). Considering the scale of the project, it is likely that the above regulatory agencies would require preparation of an environmental impact report ("EIR") under CEQA, an environmental assessment under NEPA, and a biological assessment and essential fish habitat analysis to assist NMFS and USFWS in its consultation. In many circumstances, CEQA and NEPA review may be combined and served by a single environmental review document. Further, it may be possible to utilize environmental review previously conducted by other agencies, including the CA FGC mitigated negative declaration for Santa Barbara Mariculture and the Humboldt Bay Harbor, Recreation, and Conservation District’s ("Humboldt Harbor District") Humboldt Bay Mariculture Pre-Permitting Project EIR, to maximize efficient environmental review of the proposed project.

The above permitting requirements and environmental review are the most common reasons cited by the aquaculture industry concerning issues preventing expansion of the industry in California. While regulatory costs are not unique to the aquaculture industry, the multifaceted review process and significant upfront costs, in combination with the time required to install a farm and grow a shellfish product, currently limits the expansion of the industry, particularly in terms of diversifying the industry beyond the companies currently operating in California.

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2 While there are a number of additional ministerial approvals required for shellfish cultivation, including approvals from the U.S. Coast Guard, California State Lands Commission, and California Department of Fish and Wildlife ("CA DFW"), these permits represent the most significant hurdles in terms of project planning.
3 The VSE has already started testing potential growing area waters for certification from CA DPH.
4 This conclusion is based on the environmental review processes recently required by state and federal regulatory agencies during the Humboldt Harbor District’s Pre-Permitting process, discussed below.
If an individual applicant sought to develop a mussel farm independently of the District, it is likely that it would take between one to three years to obtain permitting and required environmental review from all the required state and federal regulatory agencies. The estimated cost of conducting the required environmental review, consultant fees, and permitting fees, can be between $60,000 and $500,000, depending on the scale and location of the project. Many of the options discussed below would eliminate these delays and costs for potential aquaculture operations and reduce inefficiencies through permitting all proposed mussel farms at one time. Such an arrangement would make the proposed project site an ideal location for shellfish companies seeking to cultivate shellfish in California. Note that the VSE has already started a number of the processes required above, such as collection of water testing for CA DPH certification; therefore, the District or VSE may be able to obtain the required permits in less time than estimated above.

B. Operational Considerations in Establishing a Mussel Farm

Below are several options that the District may consider in the development of its project, with a summary of the potential advantages and disadvantages.

1. Option 1: District Lease from CA FGC and Sublease

The 2015 NOAA Sea Grant Aquaculture Extension and Technology Transfer Grant (the “Grant”) issued to the District contemplates that the District will obtain a lease from the CA FGC for the project. While the CA FGC has not frequently considered aquaculture subleases, there is nothing in the Fish and Game Code that prohibits aquaculture subleases and CA FGC staff appear willing to entertain such an arrangement, provided that the sublease maintains consistency with the master lease and contains appropriate enforcement provisions.\(^5\) We are in the process of discussing these options with CA FGC staff. In this scenario, the CA FGC would approve the lease to the District and would then approve a sublease or subleases between the District and individual shellfish companies.\(^6\) While the initial lease must be approved by the CA FGC at a public hearing, the most recent aquaculture sublease was reviewed and approved by the CA FGC Executive Director without a public hearing.

This option would provide the District with some amount of control over the project, with minimal commitment of staff resources and cost. However, revenue from the project would similarly be limited. Under this option, while the shellfish companies would be primarily responsible for compliance with the lease and sublease terms, the District would still be responsible for compliance with the master lease with the CA FGC. The District would also retain joint enforcement authority with the CA FGC in its role as landlord over the project site. However, the District would not have direct management over the day-to-day operations of the project, provided that the sublessee operates in compliance with the lease provisions. In the

\(^5\) The District would generally be able to lease the project area, even if it is outside the boundaries of the District, pursuant to Harbors & Navigation Code §§ 6203 and 6294.

\(^6\) While the District could legally acquire the lease and then assign the lease to another entity, like the VSE, it is unclear what benefit would accrue to the District under such an approach. In the event that the District prefers that the lease be held by a different entity (as opposed to a sublease), it should work to revise the Grant award parameters and have the other entity seek the lease and permitting.
event that a sublessee does not comply with lease conditions, the District or CA FGC could evict the sublessee and replace the sublessee with a different tenant.

The District would not incur significant permitting costs associated with this option. The costs of obtaining the lease and drafting the sublease would likely be paid for through the Grant. Further, the CA FGC could issue the lease without going through CEQA review, provided that final approval of the project is conditioned on CEQA review.\(^7\) The primary costs associated with this option would be enforcement costs associated with patrol of the leased areas, which are estimated by the VSE to cost $200,000 annually, based on costs associated with two staff and one vessel.\(^8\)

Generally, most state agencies that enter into aquaculture subleases disfavor subleases that increase rental rates above those incurred under the master lease. This is to discourage entities from obtaining state leases and marketing them to other companies or entities at a profit. While this concern is less likely when the lessee is a public agency, the CA FGC may believe that any additional amount paid by the sublessee under this option should go to the state as opposed to the District. Given that the District would be the first public entity in the state to enter into an aquaculture sublease, it is unclear at this time whether the CA FGC would approve a sublease that provides more rental revenue to the District as sublessor.

In the event that the CA FGC did not permit such an arrangement, the revenue available to the District under this option would be limited to landings revenue. The proposed project would represent a significant increase in the acreage available for mussel cultivation within the United States. Currently, there is a significant demand for mussels. NOAA estimates a total annual domestic mussel aquaculture production of 699,000 lbs.\(^9\) The total volume produced in California is estimated to be approximately 400,000 lbs. (Northern Economics 2013).\(^10\) The VSE has estimated that the proposed project can provide a two-year production cycle of up to 20 million lbs. of mussels, although yield estimates can vary significantly. Based on the landing fee of $0.03/lb. proposed by the VSE\(^11\), this would result in $600,000 of gross revenue for the District each harvest cycle, or approximately $300,000 - $450,000 annually based on shellfish growth and projected growth rates.

This option provides several advantages to the District and potential lessees. First, it would give the District control over the location of the proposed lease areas, thereby permitting the District to fully consider and evaluate any potential conflicts with other uses that operate in

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\(^7\) See 14 CCR § 15004(b)(2)(A) (“agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has conditioned the agency’s future use of the site on CEQA compliance”); Saltonstall v. City of Sacramento, 234 Cal.App.4\(^{th}\) 549, 571-72 (2015). However, it is unclear if the CA FGC and CA DFW would be willing to approve the lease without CEQA review.

\(^8\) The VSE pro forma anticipates that these costs would be incurred by the VSE or individual shellfish companies.


\(^10\) Northern Economics, The Economic Impact of Shellfish Aquaculture in Washington, Oregon and California (April 2013). Note that the survey methodologies employed by NOAA and Northern Economics are different; therefore, the results are not directly comparable and may be affected by underreporting.

\(^11\) This is consistent with the production-based rent required by the Washington State Department of Natural Resources (“WA DNR”), although it is more than that required by WA DNR when combined with CA DFW’s required privilege tax required under Fish & Game Code § 15003.
and near Ventura Harbor. Second, it would eliminate an additional point of uncertainty for shellfish companies, in that they would not need to seek and negotiate lease terms with the CA FGC. Third, it would provide a consistent source of additional revenue for the District, either through production-based rent or landings revenue. Fourth, as mentioned above, it provides the District direct control over potential lessees, with direct enforcement mechanisms and/or eviction options available to the District as a landlord if the lessee is in non-compliance or not meeting the expectations of the lease. This option would likely provide a steady revenue stream to the District without significant financial costs or risk.

If the District chose to no longer pursue a lease, the VSE or individual shellfish companies could seek a lease directly from the CA FGC; however, the Grant would need to be amended to propose that the lease be issued to a different entity. While amendment of the Grant is possible, it could delay the project and may eliminate any direct control over the project by the District.

2. **Option 2: District Lease, Sublease and General Permit**

The second option would be for the District to assume the initial leasing and permitting responsibilities. This is the option that is most similar to the process contemplated by the Grant. The Grant includes funds for “preparation and submittal of all necessary permit applications as well as documentation needed for government agency reviews and clearances,” including preparation of an EIR. Under this option, in addition to entering into a lease with the CA FGC, the District would be the general permit holder for the project and seek approvals from each of the agencies listed in Section A. The District could seek a regional general permit from the Corps. This would be similar to the approach that the Humboldt Harbor District is currently in the process of implementing as part of its Pre-Permitting Project. Upon approval, the shellfish company would only need to execute a sublease with the District to begin cultivation.

This alternative would be particularly attractive to potential shellfish companies. As noted above, the most frequent complaint in the shellfish industry is the time and expense required to obtain permits. By obtaining the required discretionary permits on behalf of potential shellfish companies, the District would have a competitive advantage over other Southern California jurisdictions which could facilitate the rapid growth and expansion of aquaculture operations within the proposed project area. Permitting of a comprehensive plan for aquaculture development by the District would also provide a cost-effective option for permit review as compared to individual permits. Upon obtaining the necessary permits, the District may be able to charge a premium for such leases, given that the lessees will avoid the need to navigate the permitting process. As compared to Option 1, it is more likely under this option that the District could charge a more significant landing fee or production-based rent, given its significant participation in the permitting process. While it is difficult to project how much of a premium the District could charge under this option, given that it would be based both on market demand and approval from the CA FGC, it is possible that the District could increase potential revenue by 20 – 40% (as compared to Option 1), based upon comparable lease premiums charged by the

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12 Note that the Humboldt Harbor District’s project involves certain complexities which are not relevant to the Ventura Port District’s project, including complex questions regarding tideland ownership and interactions between eelgrass and shellfish culture.
Humboldt Harbor District as part of its Pre-Permitting Project. The District would also have more control over the permit conditions of approval, mitigation measures, and monitoring requirements to ensure that other existing uses are protected.

This option would incur some additional costs and resources to the District. District staff would need to be more involved in seeking the required permits and would be required to represent the District at all required public hearings and meetings with the regulatory agencies. As the permittee, the District would need to dedicate resources to renew permits prior to expiration; however, the permit renewal process is generally much less demanding than the initial permitting process provided that the permittee is in compliance with all permit conditions. Further, in the event that the Grant does not fully cover the costs of obtaining the required permits and environmental review, the District would be responsible for any cost overages.

Based on the Humboldt Harbor District’s Pre-Permitting Project, there is a significant market and desire for this framework. It provides advantages for shellfish companies, who can immediately start cultivation practices and dedicate capital to production costs as opposed to permitting and regulatory costs, as well as the relevant governmental agencies, who can consider the overall impacts associated with the proposed cultivation at one time and conduct mitigation and monitoring for the entire project as opposed to piecemeal environmental and regulatory review.

3. **Option 3: District Lease, Shellfish Cooperative Sublease**

This option adds an additional layer to Options 1 and 2, in that the District would play a role in the day-to-day management of the farm and the project would involve a different organizational structure. Under this option, the District would not sublease portions of the project area to individual companies, but would instead sublease the area to a cooperative, which would be primarily responsible for operating the shellfish farm(s). This could be the VSE or another entity. The cooperative, which could be organized as a limited liability company, would be responsible for maintaining all required permits, managing cooperative membership, sharing some operational expenses, and supervising overall management and operation of the shellfish farm. Note that if the VSE sought to manage the cooperative, it would need to be registered with the State of California as a valid legal entity prior to execution of the sublease. The District could be included as a member of the cooperative to oversee day-to-day operations.

While cooperative shellfish farms are common in many places on the East Coast, such as New Jersey, Connecticut, and Rhode Island, there are no existing cooperatives on the West Coast. Similar to Option 2 above, a cooperative approach would reduce the permitting and operation costs associated with each individual mussel farm project and would permit sharing resources that are generally applicable to the project area, such as vessel, monitoring, and enforcement costs. The District would also have a simpler and more predictable lease arrangement as compared to issuing individual subleases. However, there are some disadvantages associated with the cooperative approach. First, given the operational limitations associated with a cooperative, all farm locations would need to be in a single centralized location, which would limit permitting options. Second, given that this is an unfamiliar organizational structure for the West Coast shellfish industry, it is unclear if potential applicants...
will be amenable to a cooperative organizational structure, or would prefer operational autonomy and independence from other shellfish companies.

4. **Option 4: Joint Venture or Public-Private Partnership**

The final option is for the District to take an active proprietary role in the development and operation of the proposed mussel farm. Under this option, the District would enter into a joint venture agreement or another form of public/private partnership with the VSE or a shellfish company or companies to jointly permit, develop, and operate the aquaculture operation.\(^{13}\) This option would provide the greatest potential revenue stream to the District, which would not only obtain lease revenue but also revenue from sales of the shellfish produced. Given that mussels have a typical 1.5 to 2-year growth cycle, the VSE pro forma anticipates estimated losses of approximately $750,000 in year one, gaining profitability by year three, and generating approximately $800,000 in profit by year five. These amounts are in addition to landings fees that could be collected by the District or waived depending on its level of involvement in the partnership. The disadvantage of this option is that it would entail the most risk and upfront financial and resources investment by the District in an industry that is relatively new in Southern California.

\(^{13}\) This memorandum does not address any legal constraints or additional processes that may be required for the District to establish such a joint venture or public/private partnership. While it appears that the District has general authority to enter into such partnerships pursuant to Harbor and Navigation Code § 6297 (authorizing incurrence of indebtedness for valid District purposes), § 6300 (permitting the contribution of money to defray costs of projects within or without the limits of the District when such work will improve commerce within the waters of the District), and § 6301 (authorizing work to aid in the improvement of commerce within the District), additional analysis would be required in the event that the District is interested in pursuing this option.