

AMENDMENT NO. 1

OPERATING AGREEMENT BETWEEN THE COUNTY OF SAN LUIS OBISPO AND THE CALIFORNIA DEPARTMENT OF PARKS AND RECREATION FOR THE USE AND OPERATION OF MORRO BAY STATE PARK GOLF COURSE, PECHO ROAD IN MONTANA DE ORO STATE PARK, BISHOP PEAK, AND THE BEACH, PIER, VETERANS' MEMORIAL HALL AND OLD CREEK IN CAYUCOS

THIS AMENDMENT is made and entered into this 1st day of July 2012 by and between the STATE OF CALIFORNIA, acting through the Department of Parks and Recreation, hereinafter referred to as "STATE", and the COUNTY of San Luis Obispo, hereinafter referred to as "COUNTY".

WITNESSETH:

**WHEREAS**, pursuant to Public Resources Code §5080.30 et seq., a twenty (20) year Operating Agreement (hereinafter referred to as "the Agreement") was entered into by and between the STATE and COUNTY effective September 1, 1999, to provide for recreational development, operation, control, and maintenance of those State Park properties known as the Morro Bay State Park Golf Course; Bishop Peak, Beach, Pier, Veteran's Memorial Building, and Old Creek located within Cayucos State Beach; and for STATE to establish and operate an entry kiosk on the COUNTY-owned property known as Pecho Valley Road within the boundaries of Montana de Oro State Park; and

**WHEREAS**, STATE seeks to collect entrance fees for public access to Montana de Oro State Park from Pecho Valley Road currently owned by COUNTY; and

**WHEREAS**, COUNTY agrees to transfer ownership of a portion of Pecho Valley Road to STATE to facilitate the collection of entrance fees in exchange for a rental reduction; and

**WHEREAS**, STATE and COUNTY desire to amend the Agreement to clarify the respective duties and responsibilities of parties;

1           **NOW, THEREFORE**, in consideration of the mutual covenants and benefits herein  
2 contained, the parties hereto agree as follows:

3  
4           **Paragraph 1, PROPERTY; amend 6<sup>th</sup> paragraph, page 4, lines 9-12 to read:**

5           COUNTY authorizes STATE to develop, equip, operate, control and  
6 maintain an entry kiosk on that COUNTY-owned property within Montana del Oro State  
7 Park known as Pecho Valley Road at STATE's sole cost and expense. COUNTY and  
8 STATE further agree that ownership of that portion of Pecho Valley Road west of the  
9 agreed upon kiosk location shall be relinquished by COUNTY to STATE upon approval of  
10 this Amendment No. 1 and completion of the requirements listed under Paragraph 9  
11 Ownership of Improvements. Such property is identified as Exhibit E, attached hereto  
12 and made part of the Agreement.

13  
14           **Paragraph 2, TERM; amend 1st paragraph, page 4, lines 19-20 to read:**

15           The term of this Agreement shall be for a period of twenty-five (25) years and shall  
16 commence September 1, 1999 and end on August 31, 2024.

17  
18           **Paragraph 5, RENTAL; amend 1<sup>st</sup> paragraph, page 10, lines 1-2 add the  
19 following paragraph to read:**

20           Upon approval of Amendment No.1, COUNTY shall pay to STATE, without  
21 demand, as quarterly rental, Five Percent (5%) of monthly receipts from Morro Bay State  
22 Park Golf Course operations through the remainder of this Agreement. COUNTY  
23 acknowledges its obligation to remit any outstanding unpaid or unabated rental payments  
24 to the STATE for prior payment shortages, which occurred between FY 2007-08 through  
25 FY2010-11, within 90 days following the completion of the 20<sup>th</sup> year (9/01/2019) of this  
26 Agreement. Should the joint efforts of COUNTY and STATE related to the collection of  
27 entrance fees on Pecho Valley Road fail, the quarterly rental described herein shall be  
28 increased to Ten Percent (10%) of monthly gross receipts from Morro Bay State Park Golf  
29 Course operations.

30  
31           **Paragraph 5, RENTAL; amend 3rd paragraph, page 11, lines 1-8 to read:**

32           Beginning with the 25<sup>th</sup> day of the month following the first quarter of  
33 commencement of this Agreement, and on or before the 25<sup>th</sup> day of the month following

1 each quarter throughout the term of this Agreement, COUNTY shall furnish STATE a  
2 verified statement of COUNTY'S receipts for the Premises for the preceding quarter.  
3 Such statement shall be in a format provided by the STATE and shall specify the current  
4 period and cumulative total of receipts for the premises through the end of the preceding  
5 quarter for the then current agreement year. With such Quarterly statement, COUNTY  
6 shall pay to STATE the percentage rental specified above.

7  
8 **Paragraph 5, RENTAL; amend 4<sup>th</sup> paragraph, page 11, Lines 9-13 to read:**

9 Quarterly payments to STATE as prescribed above shall be made to the order of  
10 the department of Parks and Recreation and mailed or delivered to the office of the  
11 District superintendent, San Luis Obispo Coastal District, 750 Hearst Castle Road, San  
12 Simeon, CA 93452 or at such other location as may from time to time be designated by  
13 STATE.

14  
15 **Paragraph 5, RENTAL; after the 4<sup>th</sup> paragraph, insert a 5<sup>th</sup> paragraph to read:**

16 In consideration of specific facility improvement projects completed by  
17 COUNTY at STATE properties covered by this Agreement, upon prior written approval of  
18 STATE, COUNTY may abate future rental payments by the actual STATE-approved  
19 expenditures beyond those amounts clearly defined within Paragraph 7  
20 CONSTRUCTION. The COUNTY shall maintain a record of such facility improvement  
21 expenditures throughout the STATE's fiscal year reporting period. STATE-approved  
22 expenditures for such projects credited against the rent may not exceed the amount of  
23 rent due to STATE, and apply to the fiscal year following project completion and STATE's  
24 receipt of documented facility improvement expenditures described in this Paragraph.  
25 However, should COUNTY's facility improvement project expenditures for any given fiscal  
26 year exceed the amount of rent due to STATE, the excess expenditure may accrue to the  
27 following fiscal year with prior written approval from STATE.

28  
29 **Paragraph 7, CONSTRUCTION; replace in its entirety to read:**

30 Within five (5) years from the commencement of this Agreement, COUNTY or its  
31 agent shall expend a minimum of Four Hundred Thousand Dollars (\$400,000) on facility  
32 improvement projects at Morro Bay Golf Course. Such projects may include, but are not  
33 limited to, the following:

1           A.     Replacement of six-inch water main (approximately one mile) at an  
2 approximate cost of \$250,000.

3           B.     Replacement of irrigation control system at an approximate cost of  
4 \$100,000.

5           C.     Renovation of clubhouse and restaurant at an approximate cost of  
6 \$250,000.

7           D.     Removal and replacement of approximately 700 diseased Monterey Pine  
8 trees at an approximate cost of \$210,000.

9           E.     Removal and replacement of water storage tank at an approximate cost of  
10 \$300,000.

11           Parties agree that COUNTY improvement obligation to expend a minimum of  
12 \$400,000 on facility improvements has been met for years 1 through 10.

13           The COUNTY shall expend an additional Four Hundred Seventy-Five Thousand  
14 Dollars (\$475,000) on facility improvements at the golf course between the 11<sup>th</sup> and 25<sup>th</sup>  
15 years of the Agreement, or earlier at sole option of COUNTY.

16           Upon completion of said projects, COUNTY shall provide STATE, for its review  
17 and approval, an accounting of its expenditures for the subject projects. If the total  
18 amount expended by COUNTY, as verified and accepted by STATE, is less than a total of  
19 \$875,000 following year 25 of the Agreement, then COUNTY shall, within 30 days of  
20 written notice by STATE, deposit the difference in the Facility Improvement Account  
21 described below. For the purposes of determining project cost, it is hereby agreed that  
22 COUNTY's planning, supervision and overhead expenses, inclusive of administrative,  
23 shall not exceed fifteen percent (15%) of the total cost of the specified project.

24           Prior to any major refurbishment or replacement by the COUNTY of any  
25 existing structures or improvements at the GOLF COURSE and prior to  
26 construction of any new facilities or improvements, consent of STATE shall first  
27 be given to the proposal and as to the inadequacy of any structures or  
28 improvements to be replaced. STATE shall not unreasonably withhold such  
29 approval. Additionally, prior to making any major change in existing structures  
30 and/or facilities, the COUNTY shall first submit plans and specifications for the  
31 approval of the STATE. The COUNTY shall use the Plan Approval Procedure,  
32 Exhibit "F" attached to and made a part of this Agreement to obtain STATE's  
33 approval. STATE's approval or acceptance of the work, contracts, plans,

1 specifications, working drawings, or other documents required by this paragraph  
2 or elsewhere in the Agreement shall be for the purpose of determining that such  
3 work conforms in scope and quality to STATE's policies and requirements and  
4 shall in no way relieve COUNTY or its contractors or subcontractors from the  
5 responsibility for performing such work accurately and completely, and in  
6 conformance with industry standards and all applicable laws, codes or  
7 regulations.

8 With the exception of the capital projects as described above and the  
9 addition of a park entrance kiosk on Pecho Valley Road, it is the specific intent of  
10 the parties hereto that there shall be no gross or material change in the subject  
11 facilities as presently constituted during the term hereof.

12

13 **Paragraph 9 OWNERSHIP OF IMPROVEMENTS; after the 1<sup>st</sup> paragraph, add**  
14 **the following paragraphs to read:**

15 Prior to the establishment of any permanent kiosk along any portion of  
16 Pecho Valley Road while under COUNTY jurisdiction, STATE acknowledges it  
17 will serve as the lead agency to conduct any required environmental reviews;  
18 comply with COUNTY General Plan, with the exception of any provision that may  
19 conflict with this Amendment, and Coastal Act requirements; and pursue findings  
20 for relinquishment under the Public Resources Code and the Streets and  
21 Highways Code to provide for the relinquishment of the right-of-way of Pecho  
22 Valley Road west of the State Park boundary.

23 Prior to construction of any permanent park entrance station on Pecho  
24 Valley Road while COUNTY retains ownership, STATE shall propose a site  
25 location and submit working drawings, specifications and cost estimates to  
26 COUNTY for review and approval. COUNTY shall not unreasonably withhold  
27 such approval. COUNTY'S approval or acceptance of the work plans,  
28 specifications, working drawings, or other documents required under this  
29 paragraph or elsewhere shall in no way relieve STATE or its contractors or  
30 subcontractors from the responsibility of securing any necessary permits or  
31 approvals, or performing such work accurately and completely and in  
32 conformance with industry standards and all applicable local, state, and federal  
33 laws, codes and regulations.

1 COUNTY acknowledges and supports STATE'S efforts to commence fee  
2 collections at Pecho Valley Road without permanent construction through non-  
3 permanent facilities pending completion of the transfer of ownership following  
4 approval of this Amendment No. 1.

5 Once the transfer of ownership of that portion of Pecho Valley Road to  
6 STATE is complete, STATE retains the jurisdiction and authority to establish a  
7 park entrance station and fee collection in accordance with STATE statute, rules,  
8 regulations and policies. COUNTY agrees to assist and support efforts related  
9 to road relinquishment by attending public meetings and bringing forth before  
10 County Board of Supervisors any and all required actions for the relinquishment  
11 of Pecho Valley Road. COUNTY agrees to provide an encroachment permit for  
12 access to the remaining portion of COUNTY-controlled Pecho Valley Road once  
13 a kiosk plan is agreed to by both parties.

14 As a condition of relinquishment of Pecho Valley Road, STATE agrees to  
15 maintain Pecho Valley Road open to public access and shall not close Pecho  
16 Valley Road except for reasons of maintenance and public safety and such road  
17 will be maintained to a standard at least equal to that of other State Park roads  
18 within Montana de Oro State Park. COUNTY acknowledges that the STATE may  
19 implement a vehicle day use fee in accordance with provisions of this  
20 Agreement.

21  
22 **Paragraph 18 Notices; amend STATE address, page 21, lines 15-18 to**  
23 **read:**

24 Department of Parks and Recreation  
25 San Luis Obispo Coast District  
26 750 Hearst Castle Road  
27 San Simeon, California 93452  
28

29 **Paragraph 23 Agreement in Writing; after the 1<sup>st</sup> paragraph, add the**  
30 **following paragraphs to read:**

31 To the extent an amendment/modification to this Agreement has no fiscal  
32 impact, the Director of San Luis Obispo County General Services has the  
33 authority to modify or amend this Agreement on behalf of the COUNTY, and all

1 such modifications/amendments shall be in writing and signed by the Director of  
2 San Luis Obispo County General Services.

3 All other terms and conditions of the Agreement shall remain the same and in full  
4 force and effect.

5

1 The effective date of this AMENDMENT shall be July 1, 2012, or the date of  
2 approval by California Department of General Services, whichever is later.

3  
4 COUNTY OF SAN LUIS OBISPO

STATE OF CALIFORNIA  
DEPARTMENT OF PARKS AND  
RECREATION

5  
6  
7  
8  
9 \_\_\_\_\_  
Chair, Board of Supervisors

\_\_\_\_\_

10  
11 Date: \_\_\_\_\_

Janelle Beland, Acting Director  
Date: \_\_\_\_\_

12  
13 CALIFORNIA DEPARTMENT  
14 OF GENERAL SERVICES

15  
16 ATTEST:

17  
18 Julie L. Rodewald  
19 County Clerk and Ex-Officio of the Board of Supervisors

20  
21  
22 By: \_\_\_\_\_

23  
24  
25  
26  
27 APPROVED AS TO FORM AND  
28 LEGAL EFFECT:

29  
30 Rita L. Neal  
31 County Counsel

32  
33  
34 By:  \_\_\_\_\_