



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor And Members Of City Council
FROM: Cathy Krysyna, Assistant Finance Manager
MEETING DATE: February 1, 2017
SUBJECT: Little Chapel by the Sea and Crematorium Lease
CEQA STATUS: CEQA Class 1 Categorical Exemption, Existing Facilities, as provided by Section 15301 of the CEQA guidelines, set forth in Title 14 of the California Code of Regulations

RECOMMENDATION

Authorize the City Manager to execute a lease with Service Corporation International (locally known as The Paul Mortuary) to lease and operate the Little Chapel by the Sea and Crematorium (the Little Chapel), for a term of five years.

DISCUSSION

In 1947, the City leased a section of the El Carmelo Cemetery for an initial term of 25 years with an option to renew for an additional 25 years. The lessee constructed a crematorium and chapel on the leased property in 1948 and subsequently provided the City a “bill of sale” for the improvements (the chapel and crematorium became City property). A new lease agreement with the City was entered into on July 1, 1994 and again on July 1, 2004 with the current lessee. On July 16, 2014, Council authorized an additional lease extension on a month-to-month basis pending the issuance of a Request for Proposals.

The City issued a Request for Proposals and received two submissions for the lease and operation of the Little Chapel. Staff determined The Paul Mortuary’s, the current leaseholder of the Chapel, proposal exceeded that of the second proposal received from Bermudez Family Cremations and Funerals, Monterey. The following provides the material terms of The Paul’s proposal in comparison to its existing lease terms.

	Current	Proposed
Monthly Base Rent	\$600	\$1,600
Annual Base Rent Increase	-	2%
Monthly Revenue Sharing	-	10% of chapel and crematorium fees
Capital Investment	-	\$75,000
Annual Cooperative Advertising		\$10,000
Term	Month-to-month	Five Years

In contrast to the above, the second proposal received was for significantly less base rent and revenue sharing, and did not include an improvement in capital investments or a cooperative advertising component. The Paul Mortuary, under different owners and affiliates, has been an active member of the Pacific Grove community since 1904.

This activity is proposed to qualify for a CEQA Class 1 Categorical Exemption as provided by Section 15301 of the CEQA guidelines, set forth in Title 14 of the California Code of Regulations. A Class 1 Exemption consists of permitting and leasing of existing facilities that involves negligible or no expansion of use.

FISCAL IMPACT

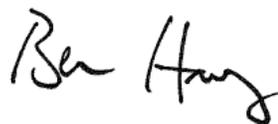
Staff anticipates an increase in rents collected from \$7,200 to approximately \$22,000 in the initial year of the lease. Rents are expected to increase over the remaining four years of the term due to the annual rent increase, the capital improvements, and the effect of focused marketing.

ATTACHMENTS

1. Ordinance

RESPECTFULLY SUBMITTED:

REVIEWED BY:



Cathy Krysyna
Assistant Finance Manager

Ben Harvey
City Manager

ORDINANCE NO. 17-xxx

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
PACIFIC GROVE APPROVING THE LEASE AND OPERATION
AGREEMENT BETWEEN THE CITY OF PACIFIC GROVE AND
SERVICE CORPORATION INTERNATIONAL, LOCALLY
KNOWN AS THE PAUL MORTUARY**

WHEREAS, The City issued a Request for Proposals for the lease and operation of the Little Chapel by the Sea and Crematorium; and

WHEREAS, Service Corporation International (locally known as The Paul Mortuary) submitted a proposal to the City of the highest and best use; and

WHEREAS, The City Charter, Article 15 (g) requires all leases of City property be approved by ordinance; and

WHEREAS, This activity qualifies for a CEQA Class 1 Categorical exemption as provided by Section 15301 of the CEQA guidelines, set forth in Title 14 of the California Code of Regulations as it consists of permitting and leasing of existing facilities that involves negligible or no expansion of use.

NOW THEREFORE, the City Council of the City of Pacific Grove does ordain as follows:

SECTION 1. The foregoing recitals are adopted as findings of the city council as though set forth fully herein.

SECTION 2. The Lease and Operation Agreement between the City of Pacific Grove and Service Corporation International is hereby approved. .

SECTION 3. The City Manager is authorized to execute all documents and to perform all other necessary acts to implement the ordinance.

SECTION 4. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 5. This ordinance shall become effective on March 15, 2017.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this
day of , by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL KAMPE, Mayor

ATTEST:

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

DAVID LAREDO, City Attorney

CHAPEL AND CREMATORIUM LEASE

The Little Chapel By-The-Sea

Landlord: **City of Pacific Grove**

Tenant: **The Paul Mortuary**

65 ASILOMAR AVENUE, LOCATED IN THE CITY OF PACIFIC GROVE, CALIFORNIA

THIS CHAPEL AND CREMATORIUM LEASE (“Lease”) dated for reference purposes as of January 1, 2017 (“Effective Date”), is by and between the CITY of Pacific Grove, a Charter City of the State of California (“City” or “Landlord”), and The Paul Mortuary, a California Corporation (“Tenant”).

RECITALS

A. City owns certain real property commonly known as The Little Chapel By-the-Sea (“Chapel”) located in the City of Pacific Grove, County of Monterey, State of California, as more particularly described in **Exhibit A** attached hereto, which includes an operating crematorium, parking areas and related facilities.

B. The Chapel and crematorium are currently being operated and managed by The Paul Mortuary under contract with the City.

C. City has determined that Tenant has the necessary experience and qualifications to manage, operate and maintain the Chapel and crematorium to the mutual advantage of Tenant and the City, and to enhance and maximize the public use thereof.

D. City and Tenant wish to enter into this lease as the most cost-effective and beneficial means for City to satisfy its desire to improve, operate and maintain the Chapel as a high-value resource for residents and visitors to the city.

E. Tenant desires to lease from City and City desires to lease to Tenant, the Premises described herein upon and subject to the terms and conditions set forth below in this Lease.

Therefore, for mutually acknowledged valuable consideration, the Parties hereby covenant and agree as follows:

Section 1: Terms of Lease; Use; Operation

1.1 Lease. CITY hereby leases and lets to TENANT and TENANT hereby leases and takes from CITY the “Premises”, located at 65 Asilomar Avenue, Pacific

Grove, CA, chapel, crematorium, and the right in common with other users thereof to make use of the parking facilities located adjacent to the “Premises.”

1.2 Initial Term of Lease. The initial term of this lease agreement shall be for a period of five (5) years, commencing on the 1st day of _____ 2017, and terminating on the ____ day of _____, 2022.

1.3 Renewal. If, during the initial term of this agreement, TENANT has performed to the City’s satisfaction, the CITY shall have the option, at its sole discretion, to extend this agreement for two (2) five year (5) options to be determined with terms satisfactory to both parties. The CITY will inform TENANT within twelve (12) months Prior to the expiration of the current term, of its intention to exercise *each of* these options. *Failure to exercise either option within this time period shall not be deemed a breach of this agreement and shall act only to extend the period.*

1.4 Occupancy Prior to Commencement. If occupancy occurs prior to the commencement date, it is agreed that all terms and conditions of the agreement shall apply except that the monthly rents described in this agreement shall not take effect until _____, 2017.

1.5 Use of Premises.

- a. Use of Premises. Operate the chapel and crematory as an extension of its mortuary services, providing cremations and related services for the general public. However, the crematory shall not be used and no cremations allowed during the hours of 6 a.m. to 5 p.m., Pacific Standard Time, and 6 a.m. to 7 p.m. Pacific Daylight Time.
- b. File all required documents with the State Department of Vital Statistics and the Monterey County Health Department.

1.6 Exclusivity. TENANT shall have the exclusive right to operate the chapel and crematory as an extension of its mortuary services, providing cremations and related services during the term of this lease except as noted below:

- a. City anticipates relocating its cemetery office from City Hall to a portion of parking area during the term of this lease.

1.6 Operation.

- a. Hours of Operation: The crematory shall not be used and no cremations allowed during the hours of 6 a.m. to 5 p.m., Pacific Standard Time, and 6 a.m. to 7 p.m. Pacific Daylight Time.

- b. General method of operation. TENANT shall operate the business on the Property continuously during the entire term of this Lease with such due diligence and efficiency as will reasonably produce the maximum return to TENANT.
- c. Management. TENANT shall maintain a trained staff available to perform cremations daily in order to provide a convenient service schedule for the public.
- d. Licenses and permits. TENANT shall secure the required permits and authorization for cremation and provide the public their services for scattering of ashes at sea, mailing cremated remains, and providing urns for holding cremated remains at home.

Section 2: Rent, Late Payments.

2.1 Rent: General. TENANT shall pay to CITY rent for the Premises in the amounts set forth below:

- Base monthly rent (Section 2.2)
- and
- Percentage of monthly gross sales (Section 2.3)
- and
- One-time capital investment (Section 2.5)
- and
- Annual Cooperative Advertising (Section 2.6)

2.2 Base Monthly Rent. TENANT shall pay to CITY a base monthly rent. The base monthly rent is payable in advance on the first day of each month. The first and last payments shall be prorated respectively to reflect the number of days from the occupancy date or to the end of the term. Late payment charges accrue as set forth in Section 2.5

The base monthly rent is One Thousand Six Hundred Dollars (\$1,600.00) for the first year. For each year after that, the base monthly rent shall be increased automatically beginning _____ of each year of this agreement by two percent (2%). This adjustment pertains only to the “Base Rent” and does not pertain to the “Percentage Rent.”

2.3 Percentage of Monthly Gross Sales Rent. In addition to the base rent, the TENANT shall also pay a monthly percentage of total monthly gross sales as a “percentage rent.” The percentage rent shall be determined as follows:

- a. Ten percent (10%)
- b. The Percentage of Monthly Gross Sales Rent shall be paid within 15 days after the end of the previous month.

2.4 Definition of Gross Sales. Gross sales include the full sale price at which all services and other such goods, room rental fees, specialty contracted services, wares and merchandise are sold at any time during the term of the Agreement by TENANT, its employees or agents in, licensees and concessionaires upon, or from the premises.

Gross sales shall exclude the following:

- A. All sales taxes, and retailers' excise taxes, paid or collected by or payable by Operator provided such taxes are added to the selling price and separately stated from the selling price of merchandise or services and collected from customers.
- B. Credit Card service charges that are not included in the sales price to customers.
- C. Proceeds from the sale of any of TENANT's trade fixtures or equipment not in the ordinary course of TENANT's business.
- D. Tips to TENANT's employees /sub-TENANT's or service charges charged to customers and turned over to employees/sub-TENANT's in lieu of tips.
- E. License fees and other consideration paid to or received from any licensee, concessionaire, TENANT, or other operator under concession, license, or other arrangement for operation of any portion of the facilities.

2.5 One-time Capital Investment. In year one of the Term, TENANT shall contribute the sum of Seventy Five Thousand Dollars (\$75,000) to capital improvements and beautification of the Premises as approved by City. This sum shall be in addition to the periodic contributions made by Tenant for the maintenance of the premises. Tenant shall not be obligated to expend moneys for improvements, additions or upgrades to the Premises that result from the relocation of the City's Cemetery Office from City Hall to the Premises.

2.6 Annual Cooperative Advertising. TENANT shall advertise and promote El Carmelo Cemetery by developing City approved sales material, featuring prominent photographs and visual displays of the cemetery in its arrangement offices, and invest Ten Thousand Dollars (\$10,000.00) annually in marketing, promotion, direct mailings, and advertising co-branded with The Paul Mortuary.

2.7 Late Payment. TENANT acknowledges that late payment to CITY of rent or the percentage of monthly gross sales may cause CITY to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Therefore, if any installment of rent or percentage of sales due from TENANT is not received by CITY within ten days of the due date, TENANT shall pay to CITY an additional sum of ten percent per month of the overdue amount as a late charge (calculated from the due date). The parties agree that this late charge represents a fair and reasonable estimate of the costs that CITY will incur by reason of the late payment. Acceptance of any late charge shall not constitute a waiver of default with respect to the overdue amount, nor prevent CITY from exercising any of its other rights and remedies.

In the further event said percentage payments, plus late charges, are not timely paid as outlined above, CITY may give TENANT written notice to make said payments plus late charges, and if TENANT shall fail to do within ten (10) days of demand, CITY may, at its option, terminate this agreement and TENANT shall be liable to CITY for all damages suffered by CITY by reason of the default of TENANT resulting in a termination, including but not limited to all cost and attorney's fee's.

Section 3: Utilities.

3.1 CITY agrees that it will make available to the Premises facilities for the distribution within the Premises of potable water, the removal of sewage, electricity, natural gas, and telephones.

TENANT shall contract directly for all utility services. TENANT agrees, at their own expense, to pay for all water, sewer service, electricity, telephone and cable and/or satellite TV services. Garbage pick-up service shall be contracted directly by TENANT. CITY shall provide, maintain, and pay for the costs of the building security system; except that all false alarm charges resulting from the misuse of the alarm system by TENANT, including employees, shall be the responsibility of TENANT.

CITY is not liable in damages or otherwise for any failure or interruption of any utility service being furnished the Premises, and no such failure or interruption shall entitle TENANT to terminate this Lease.

3.2 Maintenance and Repair of Premises – TENANT TENANT shall be responsible, at its sole cost, to keep and maintain the interior of the Little Chapel, crematorium, storage areas, restrooms and public entry and walkways, and structures, improvements, fixtures, trade fixtures, equipment and utility systems which may now or hereafter exist thereon, including, without limitations, the maintenance and repair of all doors, windows, locks, window casements, glazing, plumbing, pipes, fixtures, electrical wiring, conduits, outlets, flooring, walls, ceiling, furnishings, and equipment in good, operable, usable and sanitary order and repair and in a good and safe condition

throughout the term of this agreement. Such repairs and replacement, rebuilding, and restoration as may be required throughout the term of this Lease shall be made known to CITY, in writing, for approval thereof.

For the purpose of this agreement and to better define plumbing and electrical maintenance, repair, and replacement responsibilities, TENANT will be responsible for all maintenance, replacement, and repair of plumbing and electrical which are caused by the TENANT's operations. Any infrastructure repair or replacement to plumbing within the restrooms located within the Chapel and electrical located within the walls, ceiling or floors which are caused by age, act of nature or other sources originating from the exterior, will be the responsibility of CITY.

TENANT shall provide maintenance services for the restrooms located in the Little Chapel, including the maintenance of fixtures, providing supplies and custodial care at least one time per day or more as needed.

TENANT shall be responsible to replace consumable materials and supplies, including but not limited to interior light bulbs and paper products and to provide, repair and maintain all CITY approved signs used in conjunction with the Little Chapel operation. TENANT agrees to provide exterior window cleaning services.

TENANT shall be responsible, at its sole cost, for any alterations or capital improvements to the interior of the premises, except as set forth below. TENANT hereby waives all right to make repairs at the expense of CITY. All such repairs and/or modifications or additions of a permanent nature to the facilities shall have approval, in writing, by CITY prior to implementation by TENANT.

TENANT shall make no changes in or alterations or additions to or remove any part of any portion of the building, grounds, or equipment belonging to CITY or to add interior decorations, including signs, without first securing the consent of CITY in writing. Any approved changes to the buildings or grounds, which are built-in and permanently affixed to the structure, shall become the property of CITY. Exceptions to this would include decorative doors, panels, windows, and lamp shades installed by TENANT, which shall remain the property of TENANT and may be removed at the termination of the lease at TENANT's expense, providing that the structure is restored to its original condition, also at TENANT's expense.

If it notes any deficiencies in the repair, custodial care, or maintenance, CITY shall send written notice of the deficiency to TENANT. TENANT shall repair or maintain the noted item(s) within a reasonable time as stated in the notice.

Should TENANT fail, after ten (10) days notice from CITY of the need thereof, to respond to its obligations required hereunder, CITY, in addition to all other available remedies may, but shall not be obligated to, exercise its right of entry as provided in Section enter upon the premises and perform TENANT's failed obligations, using any equipment or materials on the premises suitable for such purposes. TENANT shall, on

demand, reimburse CITY within thirty (30) days after completion for cost so incurred, including direct and indirect overhead cost, as determined by CITY.

It is hereby understood and agreed by TENANT that CITY does not have any duty nor shall it be called upon to make any improvements, replacements or repairs whatsoever to the premises and any structures, improvements, fixtures, trade fixtures, equipment, and utilities during the term hereof, excepting as to such items of maintenance as CITY specifically hereinafter agrees to perform.

3.3 Maintenance and Repair of Premises – CITY. City agrees to repair and maintain in good condition, the exterior of the premises, including exterior walls, roof, heating and air conditioning systems, painting, doors, locks, windows, door frames, and plate glass, lighting, except for any damage caused by any act, omission, or negligence of TENANT, or its responsible employees, agents, invitees, licensees or sub-TENANT s. For the purpose of this agreement, the term “exterior” as used herein shall be construed to mean that portion of the premises that begins from the exterior walls of the building outward.

City agrees to repair and replace any plumbing fixtures located within the public restrooms at the Clubhouse. Any infrastructure repair or replacement to plumbing and electrical located within the walls, ceiling or floors which are caused by age, act of nature or other sources originating from the exterior, will be the responsibility of the CITY.

City shall provide TENANT with written notice at least 30 days before it begins substantial repairs or modifications to the Little Chapel or parking lot, which would have the effect of impairing the TENANT’s business.

Except as provided in this paragraph and section, CITY shall not be obligated to make repairs, replacements or improvements of any kind to any equipment, wiring, plumbing, furnishings, floor covering, wall covering, window covering, personal property or fixtures of any kind contained therein.

3.4 Maintenance and Repair of Equipment and Furnishing. TENANT agrees to maintain and repair if necessary, equipment and furnishings, whether provided initially by TENANT or CITY. TENANT shall maintain these items in good clean and efficient order and repair.

If any equipment purchased by CITY fails to operate properly, TENANT shall notify CITY and attempt to have the equipment repaired or replaced under a warranty, if one exists. If no such warranty exists, the cost to repair the equipment shall be split evenly between the CITY and the TENANT, except for the repair to equipment caused by any act, omission or negligence of TENANT, or its responsible employees, agents, invitees, licensees or sub-TENANT s, in which case, the TENANT shall be solely responsible for the cost of repair.

The CITY and TENANT shall evenly split the costs to replace furnishings and equipment initially provided by the CITY, except for the replacement of equipment or furnishings caused by any act, omission or negligence of TENANT, or its responsible employees, agents, invitees, licensees or sub-TENANT s, in which case, the TENANT shall be solely responsible for the cost of replacement. All equipment and furnishings shall remain the property of the CITY.

Before replacing any furnishings or equipment purchased by CITY, TENANT shall obtain CITY'S approval of the replacement item and brand.

If it notes any deficiencies in the repair or maintenance, CITY shall send written notice of the deficiency to TENANT. TENANT shall repair or maintain the noted item (s) within a reasonable time as stated in the notice. If TENANT fails to do so, CITY may perform the necessary maintenance or repairs and require reimbursement from the TENANT

Section 4: Insurance and Indemnification. Without limiting TENANT's duty to indemnify, TENANT shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

4.1 Commercial general liability insurance, no less broad than Insurance Services Office (ISO) CG 00 01, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products/Completed Operations, with minimum limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Umbrella Liability Insurance. If TENANT maintains higher limits than the specified minimum limits, City requires and shall be entitled to coverage for the higher limits maintained by TENANT.

4.2 Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

4.3 Workers' Compensation Insurance, if TENANT employs others in the performance of services under this Lease, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

4.4 Professional liability insurance, if required for the services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for

malpractice or errors or omissions made in the course of rendering services. If professional liability insurance is written on a “claims-made” basis rather than an occurrence basis, the retroactive date shall be no later than the commencement of the work. Coverage applicable to the work performed under this Agreement shall be continued for three (3) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.

4.5 Other Insurance Requirements. All insurance required by this Agreement shall be with a company acceptable to the City and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date TENANT completes its performance of services under this Agreement.

TENANT shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, TENANT shall forthwith obtain and submit proof of substitute insurance. Should TENANT fail to immediately procure other insurance, as specified, to substitute for any canceled policy, the City may procure such insurance at TENANT’s sole cost and expense.

Commercial general liability and automobile liability policies shall provide an endorsement naming the City of Pacific Grove, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the TENANT’S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the City and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the TENANT’S insurance. The required endorsement form for Commercial General Liability Additional Insured is **ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000).** The required endorsement form for Automobile Additional Insured endorsement is **ISO Form CA 20 48 02 99.**

The general liability policy shall cover inter-insured suits and include a “separation of Insureds” or “severability” clause which treats each insured separately.

TENANT shall provide to City an endorsement that the insurer waives the right of subrogation against the City, its officers, officials, employees, agents and volunteers.

Prior to the execution of this Agreement by the City, TENANT shall file certificates of insurance with the City’s contract administrator and City’s Contracts/Purchasing Division, showing that the TENANT has in effect the insurance

required by this Agreement. The TENANT shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

TENANT shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by City, annual certificates to City's Contract Administrator and City's Contracts/Purchasing Division. If the certificate is not received by the expiration date, City shall notify TENANT and TENANT shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by TENANT to maintain such insurance is a default of this Agreement which entitles City, at its sole discretion, to terminate this Agreement immediately.

4.5 Indemnification. TENANT agrees to hold harmless and indemnify CITY and its officers and employees from and against any and all claims, loss, liability, damage, and expense arising from performance of this agreement by TENANT, including claims, loss, liability, damage, and expense caused or claimed to be caused by passive negligence of CITY, its officers or employees. TENANT agrees to defend CITY, its officers or employees against any such claims. This provision does not apply to claims, loss, liability or damage or expense arising from the sole negligence, willful misconduct, or active negligence of CITY.

Section 5: Records; Taxes; Permits; Licenses; Other Financial Responsibilities.

5.1 Records and Accounting. TENANT shall keep proper records and accounts of the gross sales. Such records and accounts, including any sales tax reports that TENANT is required to furnish to any governmental authority, shall be open at all reasonable times to the inspection of the CITY or CITY'S auditor or authorized representative, with prior notice and during business hours. Monthly accounting of gross sales shall be compiled and furnished to the CITY and attached to the payment of Monthly Gross Sales Rent.

TENANT shall provide annual compiled financial statements of TENANT's business at the premises. These financial statements will be compiled by a Certified Public Accountant and are due to CITY within three (3) months after the end of each twelve (12) month operating period.

5.2 Taxes. TENANT shall pay, when due, all taxes and assessments levied upon the Premises and personal property situated in the Premises.

TENANT recognizes and understands that this Lease may create a real property possessory interest tax that may subject the TENANT to real property taxes.

5.3 Permits and Licenses. TENANT shall procure all permits and licenses and pay all charges and fees incidental to the lawful conduct of the services, and keep fully informed on all existing future Federal, State and local laws, ordinances, and regulations which in any manner affect the fulfillment of this agreement.

Section 6: Health and Sanitation.

The CITY reserves the right to require ancillary medical tests as may reasonably become necessary, and further reserves the right to have TENANT remove from the Premises any of TENANT's employees who impose a health or safety threat upon any of its clients or employees.

TENANT understands and shall comply with City Council Policy 300-6, Drug Free Workplace, the provision of which shall be applicable to TENANT and Tenant's employees.

Section 7: Default; Remedies.

7.1 Defaults. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by TENANT:

- a. The vacating or abandonment of the Premises by TENANT.
- b. The failure by TENANT to make any payment of rent or any other payment required to be made by TENANT, when due, where such failure shall continue for period of ten days after written notice from CITY of the overdue amount.
- c. The failure by TENANT to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by TENANT, other than described in subparagraph (b) above, where such failure continues for a period of 30 days after written notice from CITY; provided, however, that, if the nature of the default is such that more than 30 days are reasonably required for its cure, then TENANT shall not be deemed to be in default if TENANT commences such cure within the 30-day period and thereafter diligently prosecutes such cure to completion.
- d.
 - i. The making by TENANT of any general assignment for the benefit of creditors,
 - ii. The institution of any bankruptcy proceedings by or against TENANT ;
 - iii. The appointment of a trustee or receiver to take possession of substantially all of TENANT's assets located at the Premises or of TENANT'S interest in this Lease, where possession is not restored to TENANT within 30 days.

- iv. The attachment, execution or other judicial seizure of substantially all of TENANT's assets located at the property or of TENANT's interest in this Lease, where such seizure is not discharged within 30 days.
- e. The failure by TENANT to conform to any

7.2 Remedies in Default. In the event of any such default or breach by TENANT, CITY may at any time thereafter, with or without notice or demand, and without limiting CITY in the exercise of any right or remedy which CITY may have by reason of such default or breach:

- a. Terminate TENANT's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and TENANT shall immediately surrender possession of the property to CITY. In such event, CITY shall be entitled to recover from TENANT all damages incurred by CITY by reason of TENANT's default including, but not limited to,
 - i. The reasonable cost of recovering possession of the Premises;
 - ii. Reasonable expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees and any real estate commission actually paid;
 - iii. The worth at the time of the award by the Court having jurisdiction thereof of the amount by which the unpaid rent for the balance of the term of the Lease after the time of such award exceeds the fair market rental value of the Premises for the same period, such amount payable by TENANT in equal monthly installments over the balance of the term of the Lease as if the Lease had not been terminated.
- b. Maintain TENANT's right to possession, in which case this Lease shall continue in effect whether or not TENANT has abandoned the Premises. In such event, CITY is entitled to enforce all of its rights and remedies under this Lease, including the right to recover the rent as it becomes due.
- c. Pursue any other remedy now or hereafter available to CITY under the laws or judicial decisions of California.

7.3 Breach by CITY. TENANT may not terminate this Lease except for a material breach of the Lease by CITY.

Section 8: General Provisions.

8.1 Assignment and Subletting. The CITY has relied on the personal experience and past performance of TENANT in entering into this Lease. TENANT

shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber any of TENANT's interest in this Lease or in the Premises without CITY'S prior written consent.

8.2 Subordination. TENANT interest in the Premises and this leasehold shall at all times be subordinated to the lien of any mortgage, deed of trust, or other encumbrances placed upon the real property by CITY from time to time or by its successors except as provided below:

- a. All such mortgages, deeds of trust and/or encumbrances shall provide that as long as TENANT is not in default hereunder, neither TENANT interest nor TENANT quiet possession and enjoyment of the Premises shall be disturbed or interfered with by any such mortgage, trustee, beneficiary, or encumbrance holder.
- b. This provision for subordination is self-operative and no further instrument of subordination is necessary. Nevertheless, in confirmation of such subordination, TENANT shall execute promptly any instruments that CITY may reasonably request.

8.3 Surrender. At the end of the term or upon sooner termination of this Lease, TENANT shall surrender the leased Premises and the Tenant Improvements to the CITY in good order, condition and repair, ordinary wear and tear, unavoidable depreciation and obsolescence excepted. All Tenant Improvements, including City-supplied Furnishings and Equipment shall remain the property of CITY. All improvement affixed to the Premises (for example, ventilation systems, light fixtures, etc.) shall remain on the Premises.

TENANT's furnishings and equipment and other items provided by TENANT remain the property of TENANT and TENANT may remove them only at the end of the term of this Lease or upon mutual termination notwithstanding anything to the contrary in this Section 8.3. In case of transfer of the Lease to a new operator, TENANT can transfer any rights remaining to smallwares. Any damage to the Premises occasioned by TENANT's removal of its furnishings and equipment shall be repaired by TENANT.

8.4 Entry and Inspection. CITY reserves the right to enter the Premises to inspect for Lease compliance, to make necessary repairs and improvements which TENANT has failed to make, to supply necessary services, and for other legitimate purposes, at any reasonable time. This right of entry shall, except in an emergency, be exercised only during TENANT's business hours and after 24-hour notice.

8.5 Alterations. TENANT shall not make any alterations or structural or other changes, including the installation of major equipment and appliances in the Premises without the prior consent of the City. City may condition its consent to any alterations or change in the Premises to TENANT agreeing to restore the premises to their prior condition upon the termination of this Agreement.

Any change or alteration initiated by TENANT and approved by City other than the installation of major equipment and appliances paid by TENANT that are removable shall belong to City. City shall not be liable for the cost or expense of making any change or alteration initiated by the TENANT.

8.6 Waste. TENANT shall not commit, or allow to be committed, any waste, or damage or nuisance on the Premises.

8.7 Liens. TENANT shall keep the Premises free and clear from any liens arising out of any work performed, material furnished, or obligation incurred by TENANT.

8.8 Destruction of Premises. If the buildings or improvements within the Premises are destroyed or made unusable by fire, flood, vandalism or any other causes so as to make it impossible to carry on business, this agreement and its provisions, may be terminated by election of either CITY or TENANT, delivered in writing to the other party within thirty (30) days after such destruction.

8.9 Claims. TENANT shall promptly notify City, in writing, of any occurrences at the Premises which involve any injury to person or property including a full description of the facts and with a map or plat attached, of the place, circumstances, nature and results, and names and addresses of persons involved. TENANT will promptly provide City with copies of any claims for damage of any sort, including complaints in any court actions involving such claims. Likewise, if City is involved in any claims that affect the Premises or affect the TENANT's use of the Premises, City shall promptly notify TENANT in writing.

8.10 Holding Over. If TENANT remains in possession of the Premises after the expiration of the term and without executing a new Agreement, then such holding over shall be construed as a tenancy from month to month, subject to all of the applicable terms and conditions of this Agreement.

8.11 Waivers. The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions of any ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

8.12 Mediation. Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation except for disputes based upon non-payment of rent. The parties shall meet in mediation within 30 days of a request. The mediating parties shall agree to the mediator; in the absence of an agreement, the parties shall each submit one name from mediators listed by the American Arbitration Association, the California State Board of Mediation and Conciliation, or other agreed-upon service. The

mediator shall be selected by a "blindfolded" process.

The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

8.13 Successors. The terms and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the successors of the parties hereto.

8.14 Nondiscrimination.

a. General: No person shall, on the grounds of race, color, national origin, religious affiliation or non-affiliation, marital status, medical condition, sex, age, handicap, sexual orientation or political affiliation, be excluded from participation in, be denied the benefits, or be subjected to discrimination under this agreement.

b. Employment: TENANT shall ensure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under this agreement. TENANT's personnel policies shall be made available to City upon request.

8.15 Modifications. This agreement may be varied, modified, or altered by the mutual consent of the parties. No alterations, amended modifications, or variations of the terms of this Agreement shall be valid unless made in writing and signed by duly authorized representatives of the City and TENANT.

8.16 Agreement Contains All Understandings; Amendment. This document represents the entire and integrated agreement between City and TENANT and supersedes all prior negotiations, representations, and agreements, either written or oral.

This document may be amended only by written instrument, signed by both City and TENANT.

8.17 Governing Law. This agreement shall be governed by the laws of the State of California.

8.18 Compliance with Law. TENANT agrees it will faithfully observe in the use of the Premises all municipal ordinances and state and federal statutes now in force or which may hereafter be in force, including requirements imposed by the Americans with Disabilities Act.

8.19 Recitals as Part of Agreement. The recitals set forth above are incorporated herein and constitute an integral part of this Agreement.

8.20 Independent Contractor. The parties agree that TENANT is an independent Contractor and that TENANT is not an employee of City.

8.21) Notices. All notices by either party to the other shall be in writing. Notices shall be addressed as follows:

CITY: City Manager
City of Pacific Grove
300 Forest Avenue
Pacific Grove, CA 93950

TENANT: The Paul Mortuary
390 Lighthouse Avenue
Pacific Grove, CA 93950

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate as of the date first herein above written.

Name of TENANT

By _____

"TENANT"

CITY OF PACIFIC GROVE

By _____

MAYOR

By _____

CITY CLERK

"CITY"

APPROVED AS TO FORM:

David C. Laredo, City Attorney