



CITY COUNCIL STAFF REPORT

TO: Honorable Mayor and City Council **DATE:** January 6, 2020
FROM: Matthew Bronson, City Manager
PREPARED BY: Matthew Bronson, City Manager
SUBJECT: Lease Agreement for City-Owned Commercial Space

RECOMMENDATION

Approve a one-year lease agreement with a one-year extension available between the City and Monarch Grove Winery, Inc. for the City-owned commercial space at 180 Highway 1 and authorize the City Manager to execute the agreement on behalf of the City.

BACKGROUND

The City owns a 530-square foot commercial office building located at 180 Highway 1 at the Grover Beach train station. This building was used by the Grover Beach Chamber of Commerce until 2012 when the Grover Beach and Arroyo Grande Chambers of Commerce merged and relocated to a different space. In July 2013, the Council authorized the City to enter into a three-year lease agreement with Monarch Grove Winery to use this space as a tasting room facility to market and sell wine and other winery products made at a production facility in the city's industrial area. The use of this commercial space as a tasting room is consistent with the General Plan and Zoning Code and is considered a Visitor Serving Use relating to the use of the train station and nearby beachfront area.

The initial three-year lease expired in September 2016 at which time the Council approved a renewal of the lease agreement for a one-year term with the Council subsequently approving another one-year term in December 2017 with a one-year extension which was executed in December 2018. The lease is currently on a month-to-month status pending the completion of negotiations for a new lease and approval by the Council. Both the City and Monarch Grove Winery have an expressed interest in continuing the winery's long-standing tenancy at the site as a Visitor Serving Use at a key location in the city and have agreed on a new one-year lease agreement pending Council approval.

The proposed lease agreement decreases the rental amount from the current \$820 per month to \$620 per month due to a change in methodology for calculating usable space at the winery's request. The winery uses approximately 400 square feet for its tasting room with the remainder of the 530-square foot building taken up by City-used space including an exterior restroom and closet for City supplies. Staff agrees that basing the monthly rental amount on the usable space for the tasting room rather than the entire building is a fairer way of charging rent going forward. The rental amount offsets the City's costs for providing utilities for the facility with the winery responsible for refuse service. The rental amount equates to \$1.55 per square foot which is similar to the current square footage amount and comparable with other commercial spaces in the area. The agreement also includes a one-year extension available with the rental amount

incorporating a Consumer Price Index (CPI) adjustment similar to the City's practice in updating the annual master fee schedule (initially estimated at a 2% increase based on previous years).

FISCAL IMPACT

The proposed lease agreement will generate \$7,440 in revenue to the General Fund from January-December 2019 or a decrease of \$2,400 from the current annual rental revenue. This revenue will be reflected in the budgets for both the current and upcoming fiscal years.

ALTERNATIVES

The City Council has the following alternatives to consider:

1. Approve a one-year lease agreement with a one-year extension available between the City and Monarch Grove Winery, Inc. for the City-owned commercial space at 180 Highway 1 and authorize the City Manager to execute the agreement on behalf of the City;
or
2. Do not approve lease agreement with Monarch Grove Winery; or
3. Provide alternative direction to staff.

PUBLIC NOTIFICATION

The agenda was posted in accordance with the Brown Act.

ATTACHMENTS

1. Lease Agreement

LEASE AGREEMENT

THIS LEASE is made as of this 6TH day of January 2020, by and between **City of Grover Beach** ("Landlord") and **Monarch Grove Winery, Inc.** ("Tenant").

RECITALS

A. Landlord is the owner of a building ("Property") located in the City of Grover Beach at 180 Highway 1, Grover Beach, CA, consisting of approximately 530-square foot building located at the south side of the Grover Beach Train Station (APN 060-206-025). This Property includes a public restroom and closet space used by the Landlord with a usable commercial space for lease of approximately 400 square feet (Premises). Tenant wishes to rent the Premises from the Landlord for the purpose of operating a wine tasting room therein.

B. Landlord desires to lease the Premises not only for Tenant's intended use but also so that Tenant can provide interior space for City of Grover Beach tourism promotional materials and to provide the public with train and bus schedules. Tenant desires to lease the Premises from Landlord on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, the parties hereto agree as follows:

1. LEASED PREMISES AND PROPERTY

Landlord hereby leases to Tenant and Tenant leases from Landlord, the Premises, along with all appurtenant rights for Tenant's use thereof as provided herein. Tenant shall provide interior space for the placement of tourism and other promotional materials and shall keep said materials in an orderly condition. Tenant shall post and have available for the public at the premises the Amtrak train schedule.

2. TERM

The Lease shall commence on January 15, 2020 (the "Term Commencement Date") and shall expire one (1) year after the Term Commencement Date ("Lease Term"). The Tenant shall have the option to extend the Lease for one, one (1)-year period, upon giving Landlord written notice within sixty (60) days of the termination of the initial Lease Term. Landlord shall grant the extension unless Tenant is not in compliance with the terms of this Lease at the time of the requested extension. Any additional new term beyond the ones contemplated in this Lease will be subject to a new negotiated time period and monthly Lease payment.

3. LEASE PAYMENTS AND SECURITY DEPOSIT

Tenant shall pay to Landlord on the Term Commencement Date a monthly Lease payment of \$620.00. The monthly Lease payment for the one-year extension if exercised by the Tenant shall be adjusted by the Los Angeles/Riverside County Consumer Price Index for the preceding year. The payment shall be due on the 1st day of each month and considered late on the 5th day. Late payments or returned checks are subject to a late fee of \$25.00 for Landlord's administrative expenses in processing such late or returned payments. The rental payment amount for any partial calendar months included in the lease term shall be prorated on a daily basis.

4. HOLDING OVER

If Tenant, with Landlord's consent, remains in possession of the Premises after expiration or termination of the Lease, or after the date in any notice given by Landlord to Tenant terminating this Lease, such possession by Tenant shall be deemed to be a month-to-month tenancy with the amount of rent being equal to that payable under the Lease, terminable on thirty (30) days' notice given at any time by either party. All provisions of this Lease shall apply to the month-to-month tenancy.

5. USE OF THE PREMISES AND IMPROVEMENTS

Prior to Rent Commencement Date, Landlord shall, at its sole expense, complete all necessary repairs to have the Premises ready for Tenant. Any additional improvements, such as, decorative landscaping or other additions if desired shall be installed by or at the expense of Tenant. Tenant shall notify Landlord in writing at least ten (10) days prior to the commencement by Tenant of any work or alteration or repair. Any work performed by or on behalf of the Tenant must be in compliance with all applicable codes and pre-approved in writing by the City, which approval shall not be unreasonably withheld.

Tenant agrees that the Premises shall be used and occupied only for the purpose of a wine tasting room and related functions. Tenant shall obtain at Tenant's sold cost all permits, licenses, and other necessary approvals for the placement and operation of a wine tasting room in accordance with the terms of this Lease. Tenant shall also comply with all reasonable requirements of any insurance organization or company pertaining to the use of the Premises necessary for maintenance of all insurance required under the terms of this Lease. Tenant shall also be allowed to access the public restrooms with authorization from Landlord.

6. REPAIRS, MAINTENANCE, AND REPLACEMENT

Throughout the Term hereof, Tenant shall, at Tenant's sole cost, keep and maintain the Leased Premises, excluding the public restrooms and leased property, in first-class condition and repair in accordance with all applicable laws, rules, ordinances, orders, and regulations of all governmental authorities having jurisdiction over the Premises. Tenant shall be responsible for all janitorial expenses for the Leased Premises, excluding public restrooms. If Tenant fails to so maintain the Premises in first-class condition and repair, Landlord may, after giving Tenant thirty (30) days written notice (stating with reasonable specificity the matters requiring repair and maintenance), perform or contract for the performance of the necessary repairs and maintenance within thirty (30) days following delivery of said written notice and the sums so expended by Landlord together with interest as provided herein shall become due and payable or consider Tenant in breach and terminate the Lease subject to any cure notice provisions.

Tenant agrees to surrender to Landlord on the last day of the Term of this Lease, or upon sooner termination thereof, the Premises and any alterations, improvements, and/or replacements thereto. In such event, Tenant shall surrender the Premises in its renovated, remodeled or replaced condition, ordinary wear and tear excepted; provided, however, that if no uncured default by Tenant under this Lease then exists, and no uncured event which, with the giving of notice or passage of time or both, would constitute a default by Tenant under this Lease then exists, then Tenant may remove all furniture, fixtures, and equipment as are (a) then located on the Premises; (b) not permanently built into or affixed to the Premises; and (c) owned by Tenant or leased by Tenant from someone other than Landlord. Tenant shall promptly repair, at its sole

expense, any damage occasioned by the removal of any furniture, fixtures, or equipment from the Premises.

7. COMPLIANCE WITH LAW; HAZARDOUS SUBSTANCES

Tenant shall, at Tenant's sole cost and expense, at all times during the Term hereof, comply with all of the requirements, ordinances, regulations, and statutes of all municipal, state, and federal authorities currently in or which may thereafter be in force, pertaining to the Premises and which materially affect the use of occupancy thereof.

Upon the termination of this Lease or vacation of the Premises, Tenant shall at Tenant's sole expense and in compliance with all applicable federal, state, and local statutes, ordinances, regulations, rules, orders, and other laws, remove all Hazardous Substances used, stored, or otherwise brought onto the Premises by Tenant or its employees, contractors, agents, customers, invitees, and licensees. Tenant shall provide Landlord with copies of all records related to any Hazardous Substances that are required to be maintained by any applicable federal, state, or local statutes, regulations, or other laws.

Tenant shall indemnify, protect, defend and hold harmless and reimburse Landlord from and against any and all liabilities, damages, suits, penalties, judgments, and environmental cleanup, removal, response, assessment, or investigation or remediation cost ("Environmental Cost") arising from contamination of the Premises or release of any Hazardous Substances, in, on or under the Premises which is caused by Hazardous Substances handled, stored, used or otherwise brought onto, or transported to or from, the Premises, by Tenant or any of Tenant's employees, contractors, agents, customers, invitees, or licensees. This indemnity shall survive the expiration or sooner termination of this Lease.

8. WASTE

Tenant shall not commit, or cause to be committed, any waste on said Premises, or any nuisance or other act or thing which may disturb the quiet enjoyment of the Premises or by Landlord or other tenants.

9. UTILITIES

Landlord shall provide for water, wastewater, power, light, and heat and the costs for providing said utilities will be included in the Lease payment. Landlord represents and warrants that the infrastructure for refuse collection, and telephone service is in place and, subject to Tenant's ordering of such services, are available to the Premises. Landlord shall not be liable to Tenant for any subsequent failure, interruption, rationing, or other curtailment of any utilities from whatever cause (other than Landlord's negligence or willful misconduct) and Tenant shall not be entitled to terminate this Lease or to any reduction in or abatement of rent by reason of any of the foregoing.

10. DAMAGE OR DESTRUCTION

A. Casualty.

If during the Term of this Lease the Premises are totally or partially destroyed from any cause rendering the Improvements totally or partially inaccessible or unusable, Landlord shall restore the Premises to substantially the same condition they were in immediately before the

destruction if the restoration can be made under existing laws and can be completed within one hundred twenty (120) business days after the date of destruction. Such destruction shall not terminate this Lease, provided, however, that if the restoration cannot be made in the time stated above, then within fifteen (15) days after the parties determine that the restoration cannot be made in the time stated in this Subsection A, which time period for determination shall not be longer than thirty (30) days, Tenant can terminate this Lease effective as of the date of destruction by giving written notice to Landlord within said fifteen-day period. Tenant shall not be responsible for rent during the time the Premises are being restored and Landlord is unable to allow Tenant occupancy if the destruction and requirement for restoration was not caused by any negligent acts of Tenant. If existing laws do not permit the restoration or if the cost of restoration exceeds ten percent (10%) of the then replacement cost of the Improvements that are destroyed, either party can terminate this Lease by giving notice to the other party within fifteen (15) days after the parties determine that existing laws do not permit the restoration or after determining the restoration cost and replacement value but not later than thirty (30) days after the date of destruction, which termination shall be deemed effective as of the date of destruction.

B. Obligation to Continue Payment of Rent.

Except as otherwise expressly provided in this Lease, this Lease shall not terminate or be affected in any manner by reason of any damage or destruction, by fire or other casualty, in whole or in part, of the Premises or the improvements thereon, or by reason of the untenability of the Premises, except as may be otherwise be expressly provided herein.

C. Abatement of Rent; Termination

(a) This Lease shall not be terminated by any damage to or destruction of the Premises except as expressly provided herein, and Tenant hereby waives the provisions of Section 1932(2) and 1933(4) of the California Civil Code with respect to any such damage or destruction.

(b) Upon the termination of this Lease pursuant to the exercise of any termination right granted to Landlord or Tenant by this Section 10, Tenant shall be released from any further liability under this Lease as of the date of the destruction except for: (i) obligations incurred by Tenant or otherwise accruing prior to the date of termination (including the payment of all rent accrued through the date of termination) and (ii) obligations which by the express terms of the Lease are stated to survive a termination.

D. Option to Terminate Lease

Notwithstanding the above provisions of Section 10, Landlord and Tenant shall each have the option to terminate this Lease when any casualty occurs which would preclude the Tenant from operating its business for a period more than one hundred twenty (120) continuous days Landlord and Tenant shall each have thirty (30) days from the date of the casualty to elect to terminate the Lease.

11. INDEMNITY: TENANT'S LIABILITY AND PROPERTY INSURANCE

A. Indemnification Agreement.

This Lease is made upon the express condition that Landlord is to be free from all liability and claims for damages by reason of any injury to any person (including Tenant) and damage to

any property (including Tenant's), resulting from any cause whatsoever while in, upon, about, or in any way connected with the Premises during the Lease Term or any extension thereof, except that Landlord shall be liable for all damage or liability resulting from the negligence or willful misconduct of Landlord or its agents, contractors, or employees. Tenant hereby covenants and agrees to indemnify, defend, and hold harmless from all liability, loss, cost, and obligation, including, but not by way of limitation, reasonable attorneys' fees, arising from or attributed to any such injury or damage, except to the extent that such damage was caused by the negligence or willful misconduct of Landlord or its agents in which case Landlord agrees to indemnify, defend and hold harmless Tenant.

B. Insurance.

(a) Insurance.

Tenant further agrees to maintain in force throughout the Lease Term hereof, at Tenant's sole cost and expense, public liability insurance against any liability to the public incident to the use or resulting from any accident occurring in or about said Premises, the liability under such insurance to be not less than Two Million Dollars (\$2,000,000.00) for one or more persons injured in any one accident, and Two Million Dollars (\$2,000,000.00) for property damage. Said policies shall insure the contingent liability of Landlord and Landlord shall be named as additional insureds in such policies.

(b) Tenant's Property Insurance.

Tenant, at its own cost shall, at all times during the Lease Term, maintain on all the personal property and removable fixtures and equipment situated in, on, or about the Premises, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, in an amount equal to the full replacement cost thereof. The proceeds of any such policy that becomes payable due to damage, loss or destruction of such property shall be made payable to Tenant and shall be used by Tenant for the repair or replacement thereof.

(c) Proof of Insurance.

A copy of the insurance policies required under this Lease shall be issued by insurers rated no less than A+ VI in the most recent edition of Best's Insurance Reports. Tenant agrees to obtain a written obligation on the part of the insurance carriers to notify Landlord in writing at least sixty (60) days prior to any cancellation or non-renewal of any policy required of Tenant hereunder, and Tenant further agrees that if Tenant does not keep such insurance in full force and effect, Landlord may obtain the necessary insurance and pay the premium such payment shall be deemed to be Rent and shall be paid at the time that the next installment of the rent becomes due.

12. DEFAULT

If default shall at any time be made by Tenant in the payment of rent when due to Landlord as herein provided, and if said default shall continue for fifteen (15) days after written notice thereof shall have been given to Tenant by Landlord, or if default shall be made in any of the other covenants or conditions to be kept, observed, and performed by Tenant, and such default shall continue for thirty (30) days after notice thereof in writing to Tenant by Landlord without correction thereof then having been commenced and thereafter diligently prosecuted, Landlord may declare the term of this Lease ended and terminated by giving Tenant written notice of such intention, and

if possession of the Leased Premises is not surrendered, Landlord may reenter said premises. Landlord shall have, in addition to the remedy above provided, any other right or remedy available to Landlord on account of any Tenant default, either in law or equity. Landlord shall use reasonable efforts to mitigate its damages.

13. ASSIGNING, SUBLETTING AND HYPOTHECATING

Tenant shall not sell, transfer or assign this Lease or any part thereof, or interest therein, or hypothecate or grant any rights hereunder, without in each case obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld. This Section 13 shall not preclude Tenant from assigning this Lease to an entity, provided, however, that (i) the originally named Tenant owns not less than fifty percent (50%) of the beneficial ownership of that entity; and (ii) notwithstanding the assignment of this Lease to the entity, the originally named Tenant shall remain liable under this Lease.

14. SECURITY DEPOSIT

The Security Deposit shall be held by Landlord without liability for interest and as security for the performance by Tenant of Tenant's covenants and obligations under this Lease, it being expressly understood that the Security Deposit shall not be considered an advance payment of rental or a measure of Landlord's damages in case of default by Tenant. Unless otherwise provided by mandatory non-waivable law or regulation, Landlord may commingle the Security Deposit with Landlord's other funds. Landlord may, from time to time, without prejudice to any other remedy, use the Security Deposit to the extent necessary to make good any arrearages of rent or to satisfy any other covenant or obligation of Tenant hereunder. Following any such application of the Security Deposit, Tenant shall pay to Landlord on demand the amount so applied in order to restore the Security Deposit to its original amount. If Tenant is not in default at the termination of this Lease, the balance of the Security Deposit remaining after any such application shall be returned by Landlord to Tenant. If Landlord transfers its interest in the Premises during the term of this Lease, Landlord may assign the Security Deposit to the transferee and thereafter shall have no further liability for the return of such Security Deposit.

15. TAXES

The Tenant is hereby notified pursuant to Section 107.6 of the Revenue and Taxation Code when a public entity, such as the City of Grover Beach, enters into a written contract with a private party, the possessory interest subject to property taxation may be created and that the property tax levied on the possessory interest shall be the responsibility of the Tenant. Tenant shall be responsible for paying all personal property taxes with respect to Tenant's personal property at the Premises.

16. SIGNS

Tenant shall not inscribe, paint, or affix any signs, advertisements, placards, or awnings to the exterior of the Premises or elsewhere, except as expressly set forth herein. Subject to compliance with all applicable laws, Tenant shall have the right to install a monument sign on the parking lot and an illuminated signage on the front of the building containing the Premises, if allowed by City of Grover Beach sign ordinances subject to Landlord's approval, which approval shall not be unreasonably withheld. The signage shall include Tenant's name and logo, and Tenant shall pay all fees and obtain all permits necessary to install the signage.

17. WAIVER OF BREACH

Any waiver, express or implied, by any parties hereto, of any breach by any party of any covenant or provision of this Lease, shall not be, nor be construed to be, a waiver of any subsequent breach of any term or provision hereof.

18. ENTRY BY LANDLORD

Tenant shall permit Landlord or Landlord's agents to enter into and upon said Premises at all reasonable times with not less than twenty-four (24) hours prior written notice to Tenant (except in the case of an emergency, which shall not require any notice) for the purpose of inspecting the same, or for any other lawful purpose contemplated by the provisions of this Lease. Landlord shall conduct any such allowed entry of the Premises in a manner that will cause the least possible inconvenience, annoyance or disturbance to Tenant.

19. NOTICES

All notices hereunder shall be in writing and shall be given by sending the same by registered mail; postage prepaid, to the parties at their respective addresses as set forth below, or at such other addresses as the parties may from time to time notify each other in writing:

If to Tenant, at: Joe Wais
Owner
Monarch Grove Winery, Inc.
921 Griffin #A
Grover Beach, CA 93433

If to Landlord at: City Manager
City of Grover Beach
154 S. Eighth Street
Grover Beach, CA 93433

20. CONFLICT RESOLUTION

Any controversy or claim arising out of, or related to, this Lease between the Landlord and the Tenant, other than Landlord's unlawful detainer claim shall be mediated prior to initiation of any legal proceeding. Costs of such mediation shall be equally shared by the parties.

21. BINDING ON SUCCESSORS, JOINT AND SEVERAL LIABILITY

Landlord and Tenant agree that each of the terms, conditions and obligations of this Lease shall extend to and bind, or inure to the benefit of (as the case may require), not only the parties thereto, but to each and every one of the heirs, executors, administrators, representatives, successors, and assigns of Landlord and Tenant. The obligations of Tenant are joint and several.

22. ATTORNEYS' FEES

In the event that any legal action (including mediation in accordance with Section 20 hereof) is instituted by either of the parties hereto to enforce or construe the terms, conditions and

covenants of this Lease, or the validity thereof, the party prevailing in any such action shall be entitled to recover from the other party all court costs and reasonable attorneys' fees.

23. PARTIAL INVALIDITY

If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

24. GOVERNING LAW

This Lease shall be governed exclusively by the provisions hereof and by the laws of the State of California (without giving effects to its choice of law provisions), as the same from time to time exists.

25. COMPLETE AGREEMENT

This Lease constitutes the entire agreement between the parties and may not be altered, amended, modified, or extended except by an instrument in writing signed by the parties hereto.

26. AUTHORITY TO EXECUTE

Each party executing this Lease on behalf of an entity represents and warrants that the party has the authority to execute this Lease individually and on behalf of the entity represented and that such entity has entered into the appropriate resolution or authorization for granting such authority and that said signature is for an on behalf of the named entity.

IN WITNESS WHEREOF, the parties have executed this Lease on the respective day and year set forth above.

Landlord:
CITY OF GROVER BEACH

Tenant:
MONARCH GROVE WINERY

By: Matthew Bronson, City Manager

By: Joe Wais, Owner

Attest:

Wendi B. Sims, City Clerk

Approved as to form:

David P. Hale, City Attorney