



# CITY OF MORRO BAY CITY COUNCIL AGENDA

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*The City of Morro Bay provides essential public services and infrastructure to maintain a safe, clean and healthy place for residents and visitors to live, work and play.*

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## **Regular Meeting Tuesday, October 12, 2021 – 5:30 P.M. Held Via Teleconference**

ESTABLISH QUORUM AND CALL TO ORDER  
MOMENT OF SILENCE  
PLEDGE OF ALLEGIANCE  
RECOGNITION  
CLOSED SESSION REPORT  
MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS  
CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

### PRESENTATIONS

- Resolution commemorating the landing of the First Filipinos in US
- Domestic Violence Action Month Proclamation
- Hispanic Heritage Month Proclamation

### PUBLIC COMMENT

*Pursuant to Executive Order N-08-21, issued by Governor Newsom on June 11, 2021, this Meeting will be conducted telephonically through Zoom and broadcast live on Cable Channel 20 and streamed on the City website (click [here](#) to view). Please be advised that pursuant to the Executive Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, the Veterans' Hall will not be open for the meeting.*

### **Public Participation:**

*In order to prevent and mitigate the effects of the COVID-19 pandemic, and limit potential spread within the City of Morro Bay, in accordance with Executive Order N-08-21, the City will not make available a physical location from which members of the public may observe the meeting and offer public comment. Remote public participation is allowed in the following ways:*

- *Community members are encouraged to submit agenda correspondence in advance of the meeting via email to the City Council at [council@morrobayca.gov](mailto:council@morrobayca.gov) prior to the meeting and will be published on the City website with a final update one hour prior to the meeting start time. Agenda correspondence received less than an hour before the meeting start time may not be posted until after the meeting.*
- *Members of the public may watch the meeting either on cable Channel 20 or as streamed on the City [website](#).*
- *Alternatively, members of the public may watch the meeting and speak during general Public Comment or on a specific agenda item by logging in to the Zoom webinar using the information provided below. Please use the "raise hand" feature to indicate your desire to provide public comment. Each speaker will be allowed three minutes to provide input.*

Please click the link below to join the webinar:

- <https://us02web.zoom.us/j/82722747698?pwd=aWZpTzcwTHIRTk9xaTlmWVNWRFUQT09>  
Password: 135692
  
- Or Telephone Attendee: 1 (408) 638-0968 or 1 (669) 900 6833 or 1 (346) 248 7799; Webinar ID: 827 2274 7698; Password: 135692; Press \* 9 to “Raise Hand” for Public Comment

#### A. CONSENT AGENDA

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion. The public will also be provided an opportunity to comment on consent agenda items.

- A-1 APPROVAL OF MINUTES FOR THE AUGUST 24, 2021, CITY COUNCIL MEETING;  
(ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

- A-2 APPROVAL OF MINUTES FOR THE SEPTEMBER 14, 2021, CITY COUNCIL MEETING;  
(ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

- A-3 PROCLAMATION RECOGNIZING “OCTOBER 2021” AS DOMESTIC VIOLENCE  
ACTION MONTH”; (ADMINISTRATION)

**RECOMMENDATION: Approved as submitted**

- A-4 PROCLAMATION RECOGNIZING SEPTEMBER 15 – OCTOBER 15, 2021 AS  
“NATIONAL HISPANIC HERITAGE MONTH”; (ADMINISTRATION)

**RECOMMENDATION: Approved as submitted**

- A-5 APPOINTMENT OF REPRESENTATIVES ON DISCRETIONARY BOARDS, COUNCIL  
LIAISON ASSIGNMENTS AND COUNCIL SUB-COMMITTEES; (MAYOR HEADING)

**RECOMMENDATION: Review and approve the revised list of appointed representatives to serve on the various County or Regional Discretionary Boards, Council Liaison Assignments and Sub-Committees for the remainder of calendar year 2021.**

- A-6 ADOPTION OF RESOLUTION NO. 64-21 APPROVING A LEASE AMENDMENT 1  
EXTENDING FOR 3 YEARS THE LEASE AGREEMENT WITH CIANO REAL ESTATE,  
INC. FOR PROPERTY LOCATED AT 781 MARKET AVENUE; (COMMUNITY  
DEVELOPMENT DEPARTMENT)

**RECOMMENDATION: Staff recommends the Council adopt Resolution No. 64-21, approving Amendment 1 of the Ciano Real Estate lease, extending the lease for 3 years for a portion of the City owned property located at 781 Market Avenue (APN: 066-321-027).**

- A-7 ADOPTION OF RESOLUTION NO. 65-21, HONORING THE HISTORICAL AND CULTURAL SIGNIFICANCE OF MORRO BAY FOR THE FILIPINO AMERICAN COMMUNITY; (CITY MANAGER)

**RECOMMENDATION:** Staff recommends the Council adopt Resolution No. 65-21, recognizing the historical and cultural connection between Morro Bay and the Filipino American community, and committing the City to honor this significance through a variety of methods, including, but not limited to, placing the existing historical monument recognizing their arrival to North America in a more prominent location.

B. PUBLIC HEARINGS

- B-1 ADOPT RESOLUTIONS APPROVING 2020 URBAN WATER MANAGEMENT PLAN, WATER SHORTAGE CONTINGENCY PLAN, AND 2015 URBAN WATER MANAGEMENT PLAN APPENDIX G; (PUBLIC WORKS DEPARTMENT)

**RECOMMENDATION:** Staff recommends the City Council:

- 1) Conduct a public hearing to receive input on the 2020 Urban Water Management Plan, Water Shortage Contingency Plan, and the 2015 Urban Water Management Plan Appendix G (Reduced Reliance on the Sacramento-San Joaquin Delta).
- 2) Adopt Resolution No. 66-21 approving the 2020 Urban Water Management Plan and authorizing its submittal to the Department of Water Resources.
- 3) Adopt Resolution No. 67-21 approving the 2020 Water Shortage Contingency Plan and authorizing its submittal to the Department of Water Resources.
- 4) Adopt Resolution No. 68-21 approving the 2015 Urban Water Management Plan Appendix G (Reduced Reliance on the Delta) and authorizing its submittal to the Department of Water Resources.

C. BUSINESS ITEMS

- C-1 1) APPROVAL OF AMENDMENT TO CONTRACT WITH COGSTONE RESOURCES MANAGEMENT FOR CULTURAL RESOURCES MONITORING FOR THE WATER RECLAMATION FACILITY (WRF) LIFT STATION AND OFFSITE PIPELINES CONSTRUCTION PROJECT; 2) AMENDMENT TO CONTRACT WITH FAR WESTERN ANTHROPOLOGICAL RESEARCH GROUP, INC. FOR DATA RECOVERY EXCAVATIONS AT SITE CA-SLO-16 FOR THE WRF LIFT STATION AND OFFSITE PIPELINES CONSTRUCTION PROJECT, AND 3) APPROVAL OF CHANGE ORDER NO. 1 TO CONTRACT WITH ANVIL BUILDERS, INC FOR CONSTRUCTION SERVICES FOR THE WATER RECLAMATION FACILITY (WRF) LIFT STATION AND OFFSITE PIPELINES; (PUBLIC WORKS DEPARTMENT)

**RECOMMENDATION:** Staff recommends the City Council authorize the City Manager to execute the following:

- 1) Amendment No. 1 to the agreement with Cogstone Resource Management (Cogstone) for cultural resources monitoring services during construction of the WRF Lift Station and Offsite Pipelines for a total amount of \$740,803.22, which includes \$155,970 of optional, as-needed services for cultural resources monitoring, as directed by the City's Public Works Director, resulting in a total not to exceed amount of \$1,005,721.22.
- 2) Amendment No. 6 to the agreement with Far Western Anthropological Research Group, Inc. (Far Western) for data recovery excavations at cultural resources site CA-SLO-16, as identified in the Project EIR, and also known as construction Phase 2B of the Conveyance Facilities Project as outlined in the Programmatic Agreement between Environmental Protection Agency (EPA) and the State Historic Preservation Office (SHPO) regarding the City of Morro Bay WRF Project for the amount of \$463,086, which includes \$146,824 of optional as-needed services for the Phase 2B data recovery excavations, as directed by the City's Public Works Director, resulting in a total not to exceed amount of \$806,165.01.
- 3) Authorize the City Manager to execute contract change order (CCO) No. 1 to the agreement with Anvil Builders, Inc. (Anvil) for construction of the WRF Conveyance Facilities for the amount of \$674,485.00, resulting in a total not to exceed amount of \$32,168,160.

- C-2 RECEIVE SB 1383 SHORT-LIVED CLIMATE POLLUTANTS: ORGANICS WASTE REDUCTIONS UPDATE AND ADOPT RESOLUTION NO. 69-21 REAFFIRMING COMMITMENT TO REMAIN A MEMBER OF THE SAN LUIS OBISPO COUNTY INTEGRATED WASTE MANAGEMENT AUTHORITY;(PUBLIC WORKS DEPARTMENT)

**RECOMMENDATION: Staff recommends the City Council:**

- 1) Receive the SB 1383 update and provide comments or direction to staff as appropriate.
- 2) Direct staff to analyze the cost impact to the City to implement SB 1383 and bring forward a recommendation to fund these additional costs.
- 3) Adopt Resolution No. 69-21 reaffirming commitment to remain a member of the San Luis Obispo County Integrated Waste Management Authority.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, October 26, 2021 at 5:30 p.m.** via teleconference.

THIS AGENDA IS SUBJECT TO AMENDMENT UP TO 72 HOURS PRIOR TO THE DATE AND TIME SET FOR THE MEETING. PLEASE REFER TO THE AGENDA POSTED AT CITY HALL FOR ANY REVISIONS OR CALL THE CLERK'S OFFICE AT 805-772-6205 FOR FURTHER INFORMATION.

MATERIALS RELATED TO AN ITEM ON THIS AGENDA SUBMITTED TO THE CITY COUNCIL AFTER DISTRIBUTION OF THE AGENDA PACKET ARE AVAILABLE FOR PUBLIC INSPECTION UPON REQUEST BY CALLING THE CITY CLERK'S OFFICE AT 805-772-6205.

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN A CITY MEETING, PLEASE CONTACT THE CITY CLERK'S OFFICE AT LEAST 24 HOURS PRIOR TO THE MEETING TO INSURE REASONABLE ARRANGEMENTS CAN BE MADE TO PROVIDE ACCESSIBILITY TO THE MEETING.

*City Council conducted this meeting in accordance with California Governor Newsom’s Executive Order N-08-21 issued on June 11, 2021 in response to the present State of Emergency in existence due to the threat of COVID-19. This meeting was held via teleconference for all participants.*

PRESENT:	John Headding	Mayor
	Dawn Addis	Council Member
	Laurel Barton	Council Member
	Jeff Heller	Council Member
	Vacant	Council Member
ABSENT:	None	
STAFF:	Scott Collins	City Manager
	Chris Neumeyer	City Attorney
	Dana Swanson	City Clerk
	Sarah Johnson-Rios	Assistant City Manager/Admin Services Dir.
	Greg Kwolek	Public Works Director
	Scot Graham	Community Development Director
	Daniel McCrain	Fire Chief
	Jody Cox	Police Chief
	Eric Endersby	Harbor Director
	Rob Livick	City Engineer
	Kirk Carmichael	Recreation Services Manager
	Kyle Rohrer	WRF Program Manager (Carollo Eng.)

#### ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 5:30 p.m., with all but Council Member Barton present. Council Member Barton joined the meeting at 5:33 p.m.

#### MOMENT OF SILENCE

#### PLEDGE OF ALLEGIANCE

RECOGNITION – None

CLOSED SESSION REPORT – City Attorney Neumeyer stated no reportable action was taken by the City Council in accordance with the Brown Act.

#### MAYOR & COUNCILMEMBERS’ REPORTS, ANNOUNCEMENTS & PRESENTATIONS

<https://youtu.be/CA9iQWohk6g?t=237>

#### CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

<https://youtu.be/CA9iQWohk6g?t=966>

PRESENTATIONS - None

#### PUBLIC COMMENT

<https://youtu.be/CA9iQWohk6g?t=1067>

Betty Winholtz, Morro Bay, expressed concern regarding housing legislation being voted on by the State Senate (SB-9 and SB-10) and hoped the Council would agendize this as an emergency item.

Mayor Headding closed public comment.

The Council and staff responded to issues raised during public comment.

A. CONSENT AGENDA  
<https://youtu.be/CA9iQWohk6g?t=1334>

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion. The public will also be provided an opportunity to comment on consent agenda items.

A-1 APPROVAL OF MINUTES FOR THE AUGUST 10, 2021, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-2 THIRD AND FOURTH QUARTER INVESTMENT REPORTS (PERIOD FROM JANUARY 1, 2021 TO JUNE 30, 2021) FOR FISCAL YEAR 2020/21; (ADMINISTRATIVE SERVICES DEPARTMENT)

**RECOMMENDATION: Receive the attached Third and Fourth Quarter Investment Reports (period from January 1, 2021 to June 30, 2021) for Fiscal Year 2020/21.**

A-3 DESIGNATION OF VOTING DELEGATE AND ALTERNATE AT LEAGUE OF CALIFORNIA CITIES 2021 ANNUAL CONFERENCE BUSINESS MEETING; AND, AUTHORIZE THE VOTING DELEGATES TO APPROVE PROPOSED RESOLUTIONS AT THE ANNUAL MEETING; (CITY CLERK)

**RECOMMENDATION: Staff recommends the City Council:**

**1) Select Mayor Headding, as the voting delegate, and Council Members Addis and Barton, as the alternate voting delegates, for the upcoming annual business meeting to be held at the League of California Cities Annual Conference; and 2) Authorize City Clerk to sign the League of California Cities' form affirming the selection of the voting delegate and the alternate voting delegates (page 4 of Attachment 1); and 3) Authorize the selected voting delegate (or selected alternates as needed) to approve the proposed Resolutions provided as Attachment 2.**

A-4 ADOPTION OF RESOLUTION NO. 57-21 UPDATING THE CITY'S CONFLICT OF INTEREST CODE; (CITY CLERK)

**RECOMMENDATION: Staff recommends City Council update the City's Conflict of Interest Code by adopting the proposed Resolution No. 57-21.**

A-5 ADOPTION OF RESOLUTION NO. 58-21 DECLARING THE INTENT TO DISESTABLISH THE PREVIOUS MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT PURSUANT TO THE PARKING AND BUSINESS IMPROVEMENT AREA LAW OF 1989 AND TO SET A PUBLIC HEARING DATE; (CITY MANAGER)

**RECOMMENDATION: Staff recommends the Council adopt Resolution No. 58-21 declaring the intent to disestablish the previous Morro Bay Tourism Improvement District (MBTBID) formed in 2009 pursuant to the Parking and Business Improvement Area Law of 1989 ('89 Law) and set the public hearing date for September 14, 2021.**

A-6 FISCAL YEAR 2021-2022 ADOPTED BUDGET CORRECTIONS; (ADMINISTRATIVE SERVICES DEPARTMENT)

**RECOMMENDATION: Staff recommends the Council adopt Resolution No. 59-21 approving corrections to the FY 2021/22 Adopted Budget.**

Mayor Headding opened the public comment for the Consent Agenda; seeing none, the public comment period was closed.

MOTION: Council Member Addis moved approval of all items on the Consent Agenda. The motion was seconded by Mayor Headding and carried 4-0 by roll call vote.

B. PUBLIC HEARINGS – None

C. BUSINESS ITEMS

C-1 REVIEW WATER RECLAMATION FACILITY (WRF) QUARTERLY UPDATE REPORT AND APPROVAL OF CONTRACT AMENDMENTS; (PUBLIC WORKS)  
<https://youtu.be/CA9iQWohk6g?t=1405>

WRF program manager Rhorer provided the report and responded to Council inquires.

The public comment period for Item C-1 was opened.

Carole Truesdale, Morro Bay, requested clarification regarding the number of trees removed for the project and asked the Council to replace them on a 2:1 basis. She also posed questions regarding bridge financing.

Betty Winholtz, Morro Bay, restated comments submitted as agenda correspondence and raised questions regarding project cost and anticipated completion date. She also requested clarification regarding the number of trees removed for the project.

The public comment period for Item C-1 was closed.

MOTION: Mayor Headding moved to 1) receive the Q4 2021 WRF Quarterly Update Report; 2) authorize the City Manager to approve Amendment No. 6 to the WRF Design-Build Agreement; 3) authorize the City Manager to approve Amendment No. 2 to the agreement with Water Works Engineers, LLC; 4) direct staff to continue due diligence to determine whether bridge financing is needed to keep the WRF construction on track, given slow and unpredictable State Revolving Fund (SRF) reimbursement timelines and when appropriate bring back to Council proposals or recommendations if bridge financing is needed; 5) and direct staff to review tree replacement options for trees removed as part of the WRF project with the Planning Commission and Public Works Advisory Board and return to City Council with a finalized tree replacement plan and associated budget for implementation as soon as possible. The motion was seconded by Council Member Barton for discussion.

There was Council concurrence the Citizens Finance Advisory Committee should review the potential need for bridge financing. Following discussion, the motion carried 3-1 by roll call vote with Council Member Heller opposed.

C-2 CONSIDERATION OF A FREE PUBLIC CONCERT AT CLOISTERS PARK ON TRIAL BASIS; (CITY MANAGER)  
<https://youtu.be/CA9iQWohk6g?t=5184>

City Manager Collins provided the report and, along with Public Works Director Kwolek and City Engineer Livick, responded to Council inquiries.

The public comment period for Item C-2 was opened.

Marian Liebowitz, Morro Bay, spoke on behalf of the committee seeking to host concerts featuring curated artists representing diverse cultures. She requested the City fund this inaugural event to determine the level of community interest. If successful, they will seek out a partner agency to accept donations for future events.

Dawn Beattie, Morro Bay, spoke in support of the event and hoped it would be one of many outdoor concerts.

Jeff Bacon, Morro Bay, agreed the event provided a wonderful opportunity.

The public comment period for Item C-2 was closed.

MOTION: Council Member Addis moved to discuss a proposed free public concert event at Cloisters Park and direct staff to move forward with the support and planning for such an event to take place on October 24, 2021. The motion was seconded by Council Member Heller and carried 4-0 by roll call vote.

- C-3 RECEIVE PLANS FOR A “COMMUNITY FORUM ON MORRO BAY POWER PLANT STACKS – FACTS AND FIGURES” AND AUTHORIZE THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR PROFESSIONAL SERVICES TO COORDINATE WITH VISTRA CORP AND REGULATORY AGENCIES IN RESPONDING TO PUBLIC QUESTIONS AND CONCERNS REGARDING THE STACKS; (CITY MANAGER)  
<https://youtu.be/CA9iQWohk6g?t=6376>

City Manager Collins provided the report and responded to Council inquiries.

The public comment period for Item C-3 was opened; seeing none, the public comment period was closed.

MOTION: Council Member Addis moved 1) receive the plans for a community forum to provide the public with facts and figures about the stacks so that interested persons can have an informed basis for developing their input to the Council about the future of the stacks; 2) encourage broad public attendance in the Community Forum on the Stacks scheduled for 6:00-7:30 p.m., Wednesday, September 8, 2021, on the City’s Zoom link: <https://us02web.zoom.us/j/82722747698?pwd=aWZpTzcwTHIRtk9xaTlmWVNWRWFUQT09>, with password: 135692; 3) authorize the City Manager to execute an agreement with Don Maruska & Company, Inc., in a form approved by the City Attorney, to provide professional services to serve as project manager for the engagement efforts and work with Vistra Corp and regulatory agencies to be prepared to respond to public questions and concerns. The proposed agreement is for an initial fixed fee of \$24,000 with an option at the City Manager’s discretion to extend the agreement for up to an additional \$24,000 as determined based upon the needs for further public engagement to resolve the stacks issue. The motion was seconded by Mayor Heading and carried 3-1 by roll call vote with Council Member Heller opposed.

- C-4 AWARD CITY WAYFINDING SIGNAGE CONTRACT TO STATEWIDE SAFETY AND SIGN, INC. FOR \$188,200; AND, CITY WAYFINDING SIGNAGE PROGRAM INFORMATIONAL UPDATE; (PUBLIC WORKS DEPARTMENT)  
<https://youtu.be/CA9iQWohk6g?t=7393>

City Engineer Livick provided the report and responded to Council inquires.

The public comment period for Item C-4 was opened.

Erica Crawford, Morro Bay Chamber of Commerce, thanked the Council, Community Development and Public Works staff for moving the wayfinding signage program forward.

The public comment period for Item C-4 was closed.

MOTION: Mayor Headding moved to 1) reject the bid from Dekan Construction Corporation as non-responsive; 2) award a construction contract for the fabrication and installation of the City's Wayfinding Sign Program to Statewide Safety and Sign, Inc. for the base bid amount of one hundred eighty-eight thousand two hundred dollars and no cents (\$188,200.), and authorize City Manager to execute said contract in a form approved by the City Attorney; and 3) direct staff to return at Midyear with a budget amendment to increase the project budget in the Economic Development Fund by up to \$57,020. The motion was seconded by Council Member Addis.

Council Member Heller requested a friendly amendment to remove the 10% contingency.

AMENDED MOTION: Mayor Headding moved to 1) reject the bid from Dekan Construction Corporation as non-responsive; 2) award a construction contract for the fabrication and installation of the City's Wayfinding Sign Program to Statewide Safety and Sign, Inc. for the base bid amount of one hundred eighty-eight thousand two hundred dollars and no cents (\$188,200.), and authorize City Manager to execute said contract in a form approved by the City Attorney; and 3) direct staff to return at Midyear with a budget amendment to increase the project budget in the Economic Development Fund by up to \$38,200. The motion was seconded by Council Member Addis.

The motion carried 4-0 by roll call vote.

- D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS  
None

- E. ADJOURNMENT

The meeting adjourned at 7:23 p.m.

Recorded by:

Dana Swanson  
City Clerk

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*City Council conducted this meeting in accordance with California Governor Newsom’s Executive Order N-08-21 issued on June 11, 2021 in response to the present State of Emergency in existence due to the threat of COVID-19. This meeting was held via teleconference for all participants.*

PRESENT:            John Headding                            Mayor  
                         Dawn Addis                                Council Member  
                         Laurel Barton                              Council Member  
                         Jeff Heller                                 Council Member  
                         Vacant                                        Council Member

ABSENT:            None

STAFF:             Scott Collins                                City Manager  
                         Chris Neumeyer                            City Attorney  
                         Dana Swanson                              City Clerk  
                         Sarah Johnson-Rios                        Assistant City Manager/Admin Services Dir.  
                         Scot Graham                                Community Development Director  
                         Daniel McCrain                              Fire Chief  
                         Jody Cox                                     Police Chief  
                         Eric Endersby                               Harbor Director  
                         Rob Livick                                    City Engineer  
                         Aaron Miller                                 Police Officer  
                         Will Marvos                                 Police Detective

**ESTABLISH QUORUM AND CALL TO ORDER**

Mayor Headding called the meeting to order at 5:36 p.m., with all but Council Member Barton present. Council Member Barton joined the meeting at 5:42 p.m.

MOMENT OF SILENCE  
PLEDGE OF ALLEGIANCE  
RECOGNITION – None

CLOSED SESSION REPORT – City Attorney Neumeyer stated no reportable action was taken by the City Council in accordance with the Brown Act.

MAYOR & COUNCILMEMBERS’ REPORTS, ANNOUNCEMENTS & PRESENTATIONS  
<https://youtu.be/uh8UdfWOn08?t=196>

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS  
<https://youtu.be/uh8UdfWOn08?t=736>

PRESENTATIONS  
<https://youtu.be/uh8UdfWOn08?t=870>

- SLOCOG/Rideshare presentation regarding their 2021 Fall Campaign “Commute with Confidence” by Peter Williamson
- Lighthouse Century Cycling Event presented by Mary Ann Gustafson

PUBLIC COMMENT  
<https://youtu.be/uh8UdfWOn08?t=1446>

Erica Crawford, Morro Bay Chamber of Commerce, announced the Chamber would be partnering with Cal Poly to distribute free masks to all businesses in the Estero Bay region for their employees.

Dan Sedley, Morro Bay, asked what the current cost of the Water Reclamation Facility was, what is it projected to be and how many change orders were in the works.

Mayor Heading closed public comment.

The Council and staff responded to issues raised during public comment.

A. CONSENT AGENDA  
<https://youtu.be/uh8UdfWOn08?t=1813>

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion. The public will also be provided an opportunity to comment on consent agenda items.

A-1 APPROVAL OF MINUTES FOR THE JUNE 22, 2021, CITY COUNCIL SPECIAL MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-2 APPROVAL OF MINUTES FOR THE JUNE 22, 2021, CITY COUNCIL MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-3 APPROVAL OF MINUTES FOR THE AUGUST 25, 2021, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (ADMINISTRATION)

**RECOMMENDATION: Approve as submitted.**

A-4 UPDATE ON CITY PARTNERSHIP AGREEMENTS; (CITY MANAGER)

**RECOMMENDATION: City Council receive update on existing City partnership agreements.**

A-5 AUTHORIZATION TO ADD ONE FULL-TIME EQUIVALENT SENIOR CIVIL ENGINEER POSITION IN THE PUBLIC WORKS DEPARTMENT; (PUBLIC WORKS DEPARTMENT)

**RECOMMENDATION: Staff recommends the City Council take the following action:  
1. Authorize the City Manager to increase the Public Works Department by one Full-Time Equivalent (FTE) for a Senior Civil Engineer position.**

A-6 ADOPTION OF RESOLUTION NO. 60-21 APPROVING A LEASE AMENDMENT 1 EXTENDING FOR 3 YEARS THE LEASE AGREEMENT WITH ROCK HARBOR MARKETING FOR PROPERTY LOCATED AT 781 MARKET STREET; (COMMUNITY DEVELOPMENT DEPARTMENT)

**RECOMMENDATION: Staff recommends the Council adopt Resolution No. 60-21, approving Amendment 1 of the Rock Harbor Marketing lease, subject to city attorney approval, extending the lease for 3 years for the City owned property located at 781 Market Avenue (APN: 066-321-027).**

A-7 PROCLAMATION DECLARING “SEPTEMBER 19-25, 2021 AS THE 19<sup>TH</sup> ANNUAL SEA OTTER AWARENESS WEEK”; (ADMINISTRATION)

**RECOMMENDATION: Approved as submitted**

Mayor Headding opened the public comment for the Consent Agenda; seeing none, the public comment period was closed.

MOTION: Council Member Addis moved approval of all items on the Consent Agenda. The motion was seconded by Council Member Barton and carried 4-0 by roll call vote.

**B. PUBLIC HEARINGS**

B-1 CONDUCT A PUBLIC HEARING ON DISESTABLISHMENT OF THE PREVIOUS MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT FORMED IN 2009 PURSUANT TO THE PARKING AND BUSINESS IMPROVEMENT AREA LAW OF 1989; AND, INTRODUCE FOR FIRST READING BY TITLE ONLY WITH FURTHER READING WAIVED, ORDINANCE NO. 643, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA RESCINDING MORRO BAY MUNICIPAL CODE CHAPTER 3.60 AND DISESTABLISHING THE OLD MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT FORMED IN 2009; (CITY MANAGER)

<https://youtu.be/uh8UdfWOn08?t=1897>

City Manager Collins provided the report.

Mayor Headding opened the Public Hearing.

Mayor Headding opened Public Comment.

Dan Sedley, Morro Bay, asked if the new ad hoc committee would have the same representation and be able to adequately discuss how TBID monies are assessed and spent. He also inquired as to the potential use of TBID funds for infrastructure projects.

Staff responded to questions raised during public comment.

The Public Hearing was closed.

MOTION: Council Member Addis moved forward with the disestablishment of the previous Morro Bay Tourism Improvement District and Introduce for First Reading by Title Only with Further Reading Waived, Ordinance No. 643, An Ordinance of the City Council of the City of Morro Bay, California Rescinding Morro Bay Municipal Code Chapter 3.60 and Disestablishing the Old Morro Bay Tourism Business Improvement District formed in 2009. The motion was seconded by Council Member Heller and carried 4-0 by roll call vote.

**C. BUSINESS ITEMS**

C-1 DISCUSSION AND DIRECTION REGARDING 2022 SPECIAL ELECTION TO FILL A VACANT CITY COUNCIL SEAT AND APPOINTMENT TO TEMPORARILY FILL THE COUNCIL VACANCY UNTIL THE RESULTS OF THE 2022 SPECIAL ELECTION ARE CERTIFIED; (CITY MANAGER/CITY CLERK/HUMAN RESOURCES MANAGER)

<https://youtu.be/uh8UdfWOn08?t=2504>

City Clerk Swanson provided the report and responded to Council inquires.

The public comment period for Item C-1 was opened; seeing none, the public comment period for Item C-1 was closed.

**MOTION:** Council Member Addis moved to direct staff to return with the necessary resolutions to call a Special Municipal Election to be held on Tuesday, June 7, 2022, for the election of a Council Member for the remainder of a term ending December 2024 and for the request the County Board of Supervisors consolidate the special municipal election with the statewide primary election to be held on the same date. The motion was seconded by Council Member Heller and carried 4-0 by roll call vote.

The Council conducted interviews to temporarily fill the Council vacancy.

<https://youtu.be/uh8UdfWOn08?t=3124>

Mayor Headding reopened public comment for Item C-1.

Dan Sedley, Morro Bay, asked if the public would have an opportunity to ask questions.

Mayor Headding responded to questions raised during public comment.

The public comment period was closed.

**MOTION:** Council Member Addis moved to appoint Jen Ford to fill the existing vacant Council seat until the results of the Special Election are certified by the San Luis Obispo County Clerk Recorder's Office. The motion was seconded by Mayor Headding and carried 3-1 by roll call vote with Council Member Heller opposed.

City Clerk Swanson administered the Oath of Office to newly appointed Council Member Ford.

<https://youtu.be/uh8UdfWOn08?t=5796>

Council Member Ford was welcomed to the dais.

**C-2 LOCAL FIREARM SAFETY AND REGULATION: COMMUNITY EDUCATION ON FIREARM SAFETY AND GUN VIOLENCE RESTRAINING ORDERS; INTRODUCE FOR FIRST READING BY TITLE ONLY WITH FURTHER READING WAIVED, ORDINANCE NO. 644, AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, ADDING CHAPTER 9.36 (SAFE STORAGE OF FIREARMS) TO TITLE 9 (HEALTH AND SAFETY) OF THE MORRO BAY MUNICIPAL CODE, TO REQUIRE SAFE STORAGE OF FIREARMS LOCATED IN A RESIDENCE; FIREARM "BUY-BACK" PROGRAM; SUPPLEMENTAL MBPD OFFICER MASS/ACTIVE SHOOTER TRAINING; AND, LEGISLATIVE ADVOCACY LETTER FROM COUNCIL; (CITY ATTORNEY)**  
<https://youtu.be/uh8UdfWOn08?t=5898>

City Attorney Neumeyer provided the report and responded to Council inquires.

The public comment period for Item C-2 was opened.

Linda Winters, Morro Bay, appreciated the presentation on firearm safety and spoke of the importance of public education.

Dan Sedley, Morro Bay, appreciated the presentation and agreed education and training are most important. He was not in favor of the remaining items.

The public comment period for Item C-2 was closed.

**MOTION:** Council Member Addis moved to approve two annual in-person Morro Bay Police Department (“MBPD”) firearm safety trainings at the Community Center; as well as training to be held at Morro Bay High School for teachers and staff and potentially also students; as well as in-person training, educational meetings on “Active Shooter Response” and other topics; as well as the 74-minute educational series of videos that can be broken out into their vignettes. The motion was seconded by Mayor Heading.

Mayor Heading requested a friendly amendment to establish a cost not to exceed \$40,000 for the Firearms Educational Series. Council Member Addis agreed to amend the motion as requested. Following discussion, the motion and second were withdrawn.

**MOTION:** Council Member Addis moved to approve two annual in-person MBPD firearm safety trainings at the Community Center; and training to be held at Morro Bay High School for teachers and staff and potentially also students; and in-person training, educational meetings on “Active Shooter Response” and other topics; and to direct staff to come back with more detail regarding a Firearms Educational Series at a later date. The motion was seconded by Mayor Heading for discussion.

Following discussion, the Council requested staff perform a cost vs. benefit analysis of each component and bring that information back to Council for further consideration. The motion carried 4-1 by roll call vote with Council Member Heller opposed.

**MOTION:** Council Member Addis moved to introduce for first reading by title only with further reading waived, Ordinance No. 644, An Ordinance of the City Council of the City of Morro Bay, California, Adding Chapter 9.36 (Safe Storage of Firearms) to Title 9 (Health and Safety) of the Morro Bay Municipal Code, to Require Safe Storage of Firearms Located in a Residence. The motion was seconded by Mayor Heading for discussion.

Following discussion, the motion carried 4-1 by roll call vote with Council Member Heller opposed.

**MOTION:** Council Member Addis moved to approve supplemental MBPD Officer mass/active shooter training including: a) POST Certified Mass/Active Shooter Response training (16 officers); and b) 1 hour of overtime monthly for off duty firearms training (16 officers); and c) supplemental ammunition for MBPD mass/active shooter incident training. The motion was seconded by Council Member Ford for discussion.

Following discussion, the motion carried 5-0 by roll call vote.

**MOTION:** Council Member Addis moved the Council authorize a letter from Council to elected federal officials supporting all of following proposals from President Biden: a) close loopholes in the federal gun background check system; and b) ban assault weapons and high-capacity magazines; and c) repeal gun manufacturers’ immunity from civil liability; and d) invest in evidence-based community violence interventions; and national gun violence restraining order legislation (“red flag” laws) and incentivize states

to pass “red flag” laws of their own. The motion was seconded by Council Member Barton for discussion.

Following discussion, the motion carried 5-0 by roll call vote.

MOTION: Mayor Headding moved the Council direct staff to return at mid-year with budget increases necessary to implement. The motion was seconded by Council Member Addis and carried 5-0 by roll call vote.

MOTION: Council Member Addis moved the meeting go past 9:30 p.m. The motion was seconded by Council Member Heller and carried 5-0 by roll call vote.

C-3 STATUS UPDATE ON CITY EFFORTS TO IMPROVE THE DEVELOPMENT REVIEW PROCESS; (COMMUNITY DEVELOPMENT DEPARTMENT)

<https://youtu.be/uh8UdfWOn08?t=13753>

Community Development Director Graham provided the report and responded to Council inquires.

The public comment period for Item C-3 was opened.

Erica Crawford, Morro Bay Chamber of Commerce, thanked Mr. Graham for his leadership and commitment to this process.

The public comment period for Item C-3 was closed.

The Council did not take any formal action on this item.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

None

E. ADJOURNMENT

The meeting adjourned at 9:45 p.m.

Recorded by:

Dana Swanson  
City Clerk

**A PROCLAMATION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY RECOGNIZING  
OCTOBER 2021 AS DOMESTIC VIOLENCE ACTION MONTH**

**CITY COUNCIL  
City of Morro Bay, California**

**WHEREAS**, Domestic Violence ACTION Month calls attention to the fact that sexual and intimate partner violence is widespread and impacts every person in Morro Bay; and

**WHEREAS**, RISE and Stand Strong officially merged on July 1st, 2021 to form Lumina Alliance, an agency that serves survivors of sexual and intimate partner violence throughout all of San Luis Obispo County; and

**WHEREAS**, although progress has been made toward preventing and ending domestic violence and providing support to survivors and their families, important work remains to be done;

**WHEREAS**, there is a need to focus on the individualized needs of domestic violence survivors;

**WHEREAS**, the marginalization of certain groups in society, including undocumented individuals, transgender individuals, and those living with disabilities, increases their vulnerability to intimate partner violence; and

**WHEREAS**, LUMINA ALLIANCE continues to provide a safe environment to those affected by domestic violence with crisis intervention, counseling, education, legal services, and emergency safe housing, with the help of dedicated volunteers and professionals; and

**WHEREAS**, LUMINA ALLIANCE has provided services to more than one thousand eight hundred clients in the last year, including more than eight thousand collective nights provided for shelter clients, and more than six thousand four hundred hours of counseling; and

**WHEREAS**, LUMINA ALLIANCE has created San Luis Obispo's first social marketing campaign, ReDefine SLO, focused on parents and educators of preteen boys in an effort to prioritize frequent and quality conversations on topics such as gender, masculinity, and consent in an effort to prevent violence, harm, and assault in our community.

**WHEREAS**, the City of Morro Bay strongly supports the efforts of LUMINA ALLIANCE, how every segment of our society can work together to better address intimate partner violence, and how to help survivors connect with services; and

**NOW, THEREFORE, BE IT RESOLVED** that Morro Bay City Council does hereby recognize the important work done by domestic violence programs, do hereby proclaim the month of October to be National Domestic Violence Action Month.

IN WITNESS WHEREOF I have hereunto  
set my hand and caused the seal of the City  
of Morro Bay to be affixed this 12th day of  
October 2021

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JOHN HEADDING, Mayor  
City of Morro Bay, California

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**A PROCLAMATION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY RECOGNIZING  
SEPTEMBER 15 – OCTOBER 15, 2021  
AS “NATIONAL HISPANIC HERITAGE MONTH”**

**CITY COUNCIL  
City of Morro Bay, California**

**WHEREAS**, the City of Morro Bay is welcoming, inclusive, and dedicated to improving the quality of life for those who live, work, and visit here; and

**WHEREAS**, what began in 1968 as Hispanic Heritage Week under President Johnson and was expanded by President Reagan in 1988 to cover a 30-day period starting on September 15, the United States observes Hispanic Heritage Month; and

**WHEREAS**, Hispanic Heritage Month celebrates the histories, cultures and contributions, of those whose ancestors came to America from Spain, Mexico, the Caribbean, and Central and South America; and

**WHEREAS**, the purpose of Hispanic Heritage Month is to create awareness of the contributions of people of Hispanic Heritage to the American culture. Many people of Hispanic Heritage serve as civil rights leaders and community organizers, politicians, teachers, journalists, first responders, artists, healthcare professionals, athletes, inventors, entertainers, and more; and

**WHEREAS**, Hispanic Heritage Month is tied to the celebration of the rich tapestry of our community and reflects an array of distinct cultures;

**WHEREAS**, Morro Bay is fortunate to count among its population a large number of residents of Spanish and Latin American descent, who grow businesses, offer innovative ideas, strengthen our economy, create jobs, and contribute to our daily lives.

**NOW, THEREFORE, BE IT RESOLVED** that Morro Bay City Council does hereby proclaim September 15 - October 15, 2021 as "National Hispanic Heritage Month" and invite the community to learn more of the Hispanic culture, people, traditions and values that have positively enriched our community.

IN WITNESS WHEREOF I have hereunto  
set my hand and caused the seal of the City  
of Morro Bay to be affixed this 12th day of  
October 2021

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JOHN HEADDING, Mayor  
City of Morro Bay, California

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AGENDA NO: A-5  
MEETING DATE: October 12, 2021

# Council Report

**TO: City Council** **DATE: September 17, 2021**  
**FROM: John Heading, Mayor**  
**SUBJECT: Appointment of Representatives on Discretionary Boards, Council Liaison Assignments and Council Sub-Committees**

## **RECOMMENDATION**

Review and approve the revised list of appointed representatives to serve on the various County or Regional Discretionary Boards, Council Liaison Assignments and Sub-Committees for the remainder of calendar year 2021.

## **DISCUSSION**

### ***Representatives to serve on County or Regional Discretionary Boards***

The City Council Policies and Procedures Section 6.1 (“County or Regional Representation”) states:

“Annually the Mayor shall make appointments to a variety of County and/or regional committees and boards. One Member of the Council shall serve as a voting representative and one member shall serve as alternate. To the best of their ability, Voting Delegates shall reflect the majority view of the Council as a whole, rather than their own personal opinions.”

Consistent with Council Policies and Procedures Section 6.1, the Mayor may seek input from City Council regarding appointments to County and/or Regional Boards, but ultimately, the Mayor is responsible for the appointment of these positions. Attached for Council review is a list of proposed appointments to a variety of County and/or regional committees and boards for the remainder of calendar year 2021.

### ***Council Liaison Assignments***

The City Council Policies and Procedures Section 6.2.1 (“Council Liaison Assignments”) states:

“The City Council shall assign a Council liaison to each of the following advisory bodies: Recreation & Parks Commission, Harbor Advisory Board, Public Works Advisory Board, the Citizens Finance Advisory Committee, the Planning Commission and [the VisitSLO Tourism Business Improvement District Advisory Board]. Council liaisons will also be appointed to the special purpose advisory bodies.

Prepared By: JHeading/DS Dept Review: \_\_\_\_\_  
City Manager Review: SC City Attorney Review: CFN

The purpose of the liaison assignment is to facilitate communication between the City Council and the advisory body. The liaison also helps to increase the Council's familiarity with the membership, programs and issues of the advisory body. In fulfilling their liaison assignment, members should either attend advisory body meetings or watch the meeting broadcasts and maintain communication with the advisory body on a regular basis.

Council Members should be sensitive to the fact they are not participating members of the advisory body, but are there rather to create a linkage between the City Council and the advisory body. In interacting with advisory bodies, Council Members are to reflect the views of the Council as a body. Being an advisory body liaison bestows no special right with respect to advisory body business."

Pursuant to Council Policies and Procedures Section 6.2.1, the City Council shall assign Council Liaisons to the Advisory Bodies. Attached for review and approval is a list of the proposed Council Liaison assignments for the remainder of calendar year 2021.

### ***Council Sub-Committees***

The City Council Policies and Procedures Section 3.13 ("Council Sub-Committees") states:

"From time to time it may be desirable for the City Council may vote to appoint a sub-committee of the whole to address a particular issue. That is especially the case if the issue requires additional work or research. Per the Brown Act, sub-committees must consist of less than a quorum of the body and serve for a limited purpose and time. Therefore, the City Council sub-committees may consist of two members. Sub-committees shall report back to the full Council for discussion before any formal action can be taken on the pertinent issue. Establishing a subcommittee requires the body to define the purpose, parameters, and duration of the sub-committee. The City Clerk will keep the list of sub-committees and defined description as a record with Council liaison assignments for review annually."

Attached for review and approval is a list of the proposed Council sub-subcommittee assignments for the remainder of calendar year 2021.

### **ATTACHMENT**

1. Proposed Revised City Council Discretionary Appointments, Liaison Assignments and Council Sub-Committees for the remainder of 2021.

## CITY COUNCIL DISCRETIONARY APPOINTMENTS (OCT 2021)

INTEGRATED WASTE MANAGEMENT AUTHORITY (meets the 2<sup>nd</sup> Wednesday of every other odd numbered month; 130pm; Board of Supervisors Chambers, SLO Government Center)

Jeff Heller	Designee
Dawn Addis	Alternate

COUNTY WATER RESOURCES ADVISORY COMMITTEE (meets the 1<sup>st</sup> Wednesday of the month; 1:30-3:30pm; City County Library Room, 995 Palm, SLO)

Laurel Barton	Delegate
City Manager (or their designee)	Alternate

SAN LUIS OBISPO REGIONAL TRANSIT AUTHORITY (SLORTA) & SAN LUIS OBISPO AREA COORDINATING COUNCIL (SLOCOG) (RTA meets the 1<sup>st</sup> Wednesday of every other odd numbered month; 8:30am; Board of Supervisors Chambers, SLO County Government Center) (COG meets the 1<sup>st</sup> Wednesday of every other odd numbered month; at conclusion of RTA meeting; Board of Supervisors Chambers, SLO County Government Center)

John Headding	Delegate
Jen Ford	Alternate

AIR POLLUTION CONTROL DISTRICT (meets the 4<sup>th</sup> Wednesday of every other odd numbered month; 9am; Board of Supervisors Chambers, SLO County Government Center)

John Headding	Member
Jen Ford	Alternate

COMMUNITY ACTION PARTNERSHIP OF SAN LUIS OBISPO COUNTY, INC. (meets the 3<sup>rd</sup> Thursday of every month; 5pm; CAPSLO Board Room, 1030 Southwood, SLO). Morro Bay rotated off the Board in 2014. Los Osos CSD is the coastal city representative for 2017-21. The next opportunity to cycle back in, at CAPSLO's request, will be in 2022.

NATIONAL ESTUARY PROGRAM (Executive Committee meets quarterly; 3<sup>rd</sup> Wednesday of the month in February, May, August and November; 4-6pm)

Dawn Addis	Member
Laurel Barton	Alternate

CITY SELECTION COMMITTEE (as needed)

John Headding (Mayor)	Member
Jeff Heller (Mayor Pro Tem)	Alternate

LEGISLATIVE DELEGATE (as needed)

John Headding (Mayor)	Member
Jeff Heller (Mayor Pro Tem)	Alternate

SAN LUIS OBISPO COUNTY HOUSING TRUST FUND

City Manager or designee (Comm. Dev.) Member

HOMELESS SERVICES OVERSIGHT COUNCIL (meets the 3<sup>rd</sup> Wednesday of odd numbered months; 1-3pm; SLO Vets Building Lounge Room, 801 Grand, SLO)

Dawn Addis	Member
Laurel Barton	Alternate

FIRST 5 SLO COUNTY – CHILD CARE LIAISON FOR WE ARE THE CARE INITIATIVE

Dawn Addis	Liaison
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MORRO BAY TOURISM BUSINESS IMPROVEMENT DISTRICT BOARD (VISIT MORRO BAY)  
(meets the 3<sup>rd</sup> Thursday of the month in odd-numbered months; 9:00am; Virtually)

City Manager

Member

**CITY COUNCIL LIAISON ASSIGNMENTS (2021)**

PLANNING COMMISSION (meets 1<sup>st</sup> and 3<sup>rd</sup> Tuesday of every month; 6:00pm; Vets Hall)

Jeff Heller

Liaison

HARBOR ADVISORY BOARD (meets the 1<sup>st</sup> Thursday of the month, except January, April and July; 5:30pm; Vets Hall)

Dawn Addis

Liaison

RECREATION AND PARKS COMMISSION (meets the 3<sup>rd</sup> Thursday of the month in odd-numbered months; 6:00pm; Vets Hall)

Laurel Barton

Liaison

PUBLIC WORKS ADVISORY BOARD (meets the 3<sup>rd</sup> Wednesday of the month except July, November and December; 5:30pm; Vets Hall)

Jen Ford

Liaison

SAN LUIS OBISPO COUNTY TOURISM MARKETING DISTRICT ADVISORY COMMITTEE (VISIT SLOCAL) (meets semi-annually on the first Thursday of May and December at Embassy Suites, 333 Madonna Rd., SLO)

Jen Ford

Liaison

CITIZENS OVERSIGHT / FINANCE COMMITTEE (meets the 3<sup>rd</sup> Tuesday of the month except March, June, July, September and October: 3:00pm; Vets Hall)

John Headding

Liaison

**CITY COUNCIL SUB-COMMITTEES (2021)**

COUNCIL SUBCOMMITTEE ON EMPLOYEE GRIEVANCES (meets as needed)

John Headding

Member

Dawn Addis

Member

WATER RECLAMATION FACILITY / JPA SUB-COMMITTEE

John Headding

Member

Jeff Heller

Member

MORRO BAY POWER PLANT

John Headding

Member

Dawn Addis

Member

CHEVRON PROPERTY

Dawn Addis

Member

John Headding

Member

U.S. COAST GUARD

Jeff Heller

Member

Dawn Addis

Member

ESTERO BAY ALLIANCE OF CARE ("EBAC")

Laurel Barton	Member
Jen Ford	Member

BOEM INTERAGENCY TASK FORCE MEMBER ON WIND ENERGY

John Heading	Member
Jen Ford	Alternate

ADVISORY BOARD APPOINTMENT PROCESS REVIEW (added 2/9/2021)

John Heading	Member
Dawn Addis	Member

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AGENDA NO: A-6

MEETING DATE: October 12, 2021

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** September 27, 2021

**FROM:** Scot Graham, Community Development Director

**SUBJECT:** Adoption of Resolution No. 64-21 Approving a Lease Amendment 1 extending for 3 years the Lease Agreement with Ciano Real Estate, Inc. for property located at 781 Market Avenue

### RECOMMENDATION

Staff recommends the Council adopt Resolution No. 64-21, approving Amendment 1 of the Ciano Real Estate lease, extending the lease for 3 years for a portion of the City owned property located at 781 Market Avenue (APN: 066-321-027).

### ALTERNATIVES

The City Council could choose either (i) to approve the lease extension and direct staff to alter the agreement in a manner agreed upon by a majority of Council, or (ii) to discontinue leasing the space to Ciano Real Estate.

### FISCAL IMPACT

With approval of the Lease Amendment the City would starting November 1, 2021 receive \$2,080.00 a month in rent for the first twelve-month period (total of \$24,960.00 for first year). Monthly rent would increase by the percent change in the Consumer Price Index (CPI) for the Los Angeles area for years 2 and 3.

### BACKGROUND

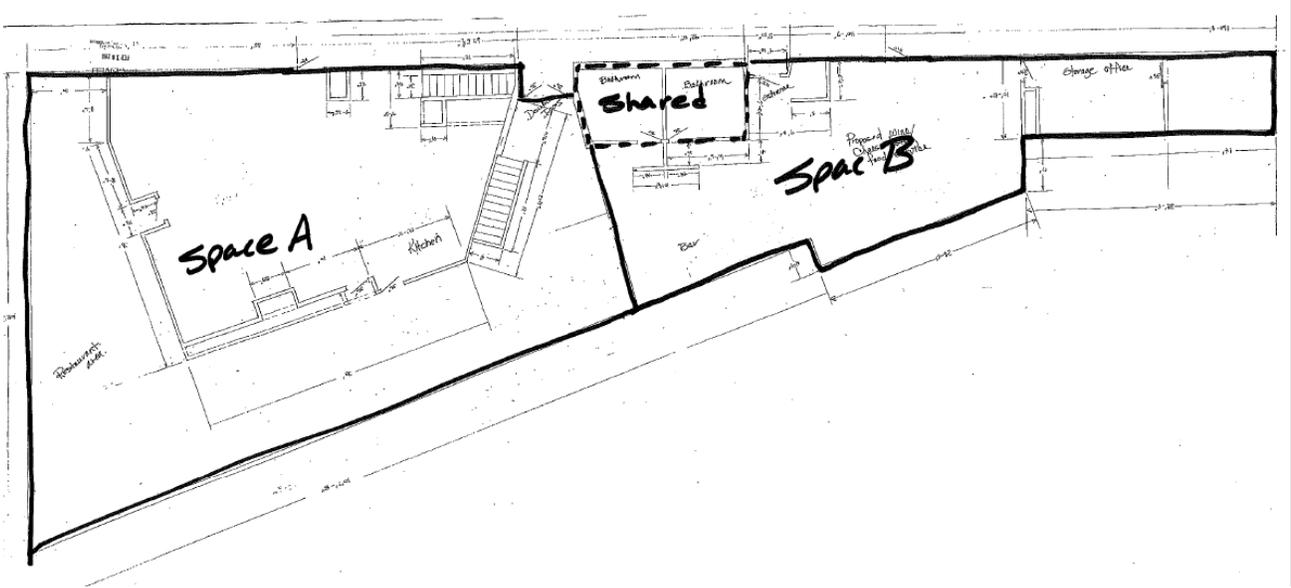
On December 10, 2019, the Council approved Resolution No. 98-19 authorizing the City to enter into a one-year lease agreement with Ciano Real Estate Inc. for a lease payment of \$2,000 per month. The lease term expired on December 10, 2020 and the lease has since been operating in a holdover state on a month-to-month basis, pursuant to that lease.

As Council is aware, the City is working on redevelopment of the 781 Market Avenue property, with the process likely to take two to three years for sale/lease and permitting. Given the 2- to 3-year timeline, it makes sense for City to continue lease of the building on a limited term basis. Leasing the property provides income generation for the City, and ensures the property is occupied and maintained by lessees.

The building is comprised of two floors; however, the lower floor is inaccessible from an Americans with Disabilities Act (ADA) standpoint (no elevator or ramp), and staff has not pursued lease of the

Prepared By: <u>SG</u>	Dept Review: <u>SG</u>
City Manager Review: <u>SC</u>	City Attorney Review: <u>JWP</u>

lower floor. The upper floor currently contains two lease spaces (A & B), totaling approximately 5,220 square feet with 1,413 square feet allocated to Space B, which is currently occupied by Rock Harbor Marketing and 3,807 square feet allocated to Ciano Real Estate (Space A). See figure below depicting upper floor building layout.



## **DISCUSSION**

Pursuant to the amendment, the term of the lease is extended by three years and includes rent increase based on the CPI for the Los Angeles Area. The current CPI for the Los Angeles area from August 2020 to August 2021 is 4%, which equates to an increase of \$80 per month. Based on the current CPI, the resulting rental rate increases from \$2,000 to \$2,080 per month for a total first (extended) year rent of \$24,960.00.

Moving to a three-year lease extension agreement will result in the following changes to the lease agreement:

- a. The Term of the Lease shall be extended through October 12, 2024, unless otherwise terminated as permitted by the Lease.
- b. Section 2.3 of the Lease is amended to add the following: City shall have the right to terminate this Lease within the Term upon providing Ciano Real Estate at least sixty-days' written notice City has entered into a purchase and sale agreement with any party for redevelopment of the Premises.
- c. As of November 1, 2021, the monthly Rent is increased to Two Thousand Eighty Dollars (\$2,080.00). As of October 13, 2022, and October 13, 2023, the Rent shall be increased in an amount equal to the increase in the then applicable Consumer Price Index for the Los Angeles area (Los Angeles-Long Beach-Anaheim) (CPI) for the twelve-month period immediately preceding each of those dates.

- d. Section 27 of the Lease is amended so the Rent shall increase in an amount equal to the then annual applicable CPI for the twelve-month period immediately preceding each October 13<sup>th</sup> if a month-to-month holdover remains in effect.

### **CONCLUSION**

Having tenants occupy the building while the City pursues sale/redevelopment of the property will serve to generate income for the City and will ensure the property is maintained and not left to deteriorate while the City pursues redevelopment opportunities. Staff recommends Council adopt Resolution No. 64-21, approving Amendment 1 extending the Ciano Real Estate lease for a period of three years for lease of Space A within the 781 Market Avenue building.

### **ATTACHMENTS**

1. Resolution No. 64 -21
2. Ciano Real Estate Lease Extension Agreement
3. 2020 Ciano Real Estate lease

**RESOLUTION NO. 64-21**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
APPROVING AMENDMENT 1 TO THE LEASE BETWEEN THE CITY OF  
MORRO BAY AND CIANO REAL ESTATE INC. EXTENDING THE LEASE  
FOR 3 YEARS FOR LEASE SPACE "A" AT 781 MARKET AVENUE**

**THE CITY COUNCIL  
City of Morro Bay, California**

**WHEREAS**, the City of Morro Bay (City) is the lessor of the property at 781 Market Avenue, in the City of Morro; and

**WHEREAS**, Ciano Real Estate, Inc. (Lessee) is proposing to lease Space A of the 781 Avenue Building; and

**WHEREAS**, City and Lessee have agreed to an amendment of the lease agreement to increase the term by 3 years, for a portion of the building located at 781 Market Avenue identified as Space A.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay, California, as follows:

1. The attached new Lease Amendment 1 for of Space A in the 781 Market Avenue Building Lease is hereby approved.
2. The Mayor is hereby authorized to execute said Lease Agreement.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12<sup>th</sup> day of October 2021 on the following vote:

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
JOHN HEADDING, Mayor

ATTEST:

\_\_\_\_\_  
DANA SWANSON, City Clerk

**AMENDMENT #1 TO LEASE AGREEMENT FOR  
PORTION OF 781 MARKET AVENUE**

This Amendment (this "Amendment #1") is made and entered into as of the 13<sup>th</sup> day of October, 2021, by and among the City of Morro Bay, a municipal corporation of the State of California, hereinafter called "City," and Ciano Real Estate, Inc., a California corporation, hereinafter called "Tenant." (Collectively, City and Tenant are sometimes referred to herein as the "Parties.")

**WHEREAS**, City and Tenant are parties to the certain lease, effective as of December 11, 2019 (the "Lease") for a portion of City-owned property at 781 Market Avenue, as further defined in the Lease (the "Premises");

**WHEREAS**, the Lease term ended on December 10, 2020, and, pursuant to the provisions of the Lease has operated in a holdover state on a month-to-month basis since; and

**WHEREAS**, City and Tenant desire to extend the term of the Lease with certain modifications.

**NOW THEREFORE**, City, and Tenant agree as follows:

1. Unless expressly stated herein, words used in this Amendment #1 shall have the same meaning as stated in the Lease, except to the extent the context requires otherwise.
2. The foregoing recitals are incorporated into this Amendment #1 as true and correct.
3. Tenant confirms to City Tenant has no actual knowledge or reasonable cause to believe any release of hazardous substance has come to be located on/or beneath the real property during the term of Tenant's occupation of the Premises that has not been reported pursuant to Health & Safety Code Section 253597.
4. City and Tenant agree to amend the Lease as follows:
  - a. The Term of the Lease shall be extended through October 12, 2024, unless otherwise terminated as permitted by the Lease.
  - b. Section 2.3 of the Lease is amended to add the following: City shall have the right to terminate this Lease within the Term upon providing Tenant at least sixty-days' written notice City has entered into a purchase and sale agreement with any party for redevelopment of the Premises.
  - c. As of November 1, 2021, the monthly Rent is increased to Two Thousand Eighty Dollars (\$2,080.00). As of October 13, 2022, and October 13, 2023,

the Rent shall be increased in an amount equal to the increase in the then applicable Consumer Price Index for the Los Angeles area (Los Angeles-Long Beach-Anaheim) (CPI) for the twelve-month period immediately preceding each of those dates.

d. Section 27 of the Lease is amended so the Rent shall increase in an amount equal to the then annual applicable CPI for the twelve-month period immediately preceding each October 13<sup>th</sup> if a month-to-month holdover remains in effect.

5. Except as expressly stated herein, all provisions of the Lease shall remain in full force and effect.

6. The Effective Date of this Amendment #1 is the date first written above, as long as it has been signed by the Parties.

**IN WITNESS WHEREOF**, the Parties have executed this Amendment #1 as of the date written above.

CITY OF MORRO BAY

CIANO REAL ESTATE, INC., A CALIFORNIA CORPORATION

By: \_\_\_\_\_  
John Headding, Mayor

By: \_\_\_\_\_  
\_\_\_\_\_

Its \_\_\_\_\_

By: \_\_\_\_\_  
Its \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Chris F. Neumeyer, City Attorney

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Dana Swanson, City Clerk

**COMMERCIAL LEASE AGREEMENT**

**By and Between**

**CITY OF MORRO BAY,  
a municipal corporation**

**“Landlord”**

**and**

**Ciano Real Estate, Inc.,  
a California corporation**

**“Tenant”**

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**Exhibit A**            Description and Depiction of Premises

## COMMERCIAL LEASE AGREEMENT

THIS COMMERCIAL LEASE AGREEMENT (“Lease”) is made effective this 11th day of December, 2019, by and between the CITY OF MORRO BAY, a municipal corporation (“Landlord”), and Ciano Real Estate, Inc., a California corporation (“Tenant”). Landlord and Tenant are sometimes individually referred to as a “Party” and jointly as the “Parties.”

### RECITALS:

A. Landlord owns, certain real property located in the City of Morro Bay, County of San Luis Obispo, as follows: (i) that certain real property, commonly identified as 781 Market Street, Morro Bay (APN 066-321-027), improved as a restaurant building containing two separate lease space areas and shared bathroom facilities identified as “Space A” and “Space B” on the Attached Exhibit A, with adjacent landscape areas.

The portion of the restaurant building identified as Space A, along with shared use of the bathrooms, as described and depicted on the attached Exhibit A, is the subject of this Commercial Lease Agreement, and is also referred to as the “Premises.”

B. The Premises are located in Landlord’s downtown (“Downtown Area”).

C. Tenant is a corporation, currently operating a real estate business “Ciano Real Estate Inc.

D. The Parties desire to enter into a written lease agreement and to confirm the rights and obligations of both Parties therein. Pursuant to the terms of this Lease, Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Premises, for Tenant’s sole exclusive use.

NOW, THEREFORE, in consideration of the above Recitals and the mutual promises of the Parties set forth in this Lease, Landlord and Tenant hereby agree as follows:

### 1. LEASE OF PREMISES; CONDITION OF PREMISES.

1.1. **Lease.** Landlord hereby leases to Tenant and Tenant hereby hires from Landlord the Premises (as defined in the Recitals incorporated herein) solely for the uses specified in Section 4.

1.2. **Condition of Premises.** Tenant acknowledges it has and shall accept the Premises from Landlord in its “AS IS” condition without representation or warranty. Tenant has inspected the premises and is aware of its condition. Pursuant to California Civil Code Section 1938, Tenant is advised that the Premises have not undergone an inspection by a Certified Access Specialist, and, therefore, Landlord is not aware if the Premises comply with the applicable construction-related accessibility standards pursuant to Civil Code Section 55.53.

### 2. EFFECTIVE DATE; TERM.

- 2.1. **Effective Date.** This Lease shall be deemed effective as of December 11, 2019 (“**Effective Date**”). All other Tenant’s rights and obligations under this Lease shall commence as of the Effective Date.
- 2.2. **Term.** The term of this Lease shall commence on the Effective Date for a fixed term of one year, and terminate without notice on December 10, 2020 (“**Term**”), unless otherwise amended by the Parties pursuant to Sections 2.4 and 30.15.
- 2.3. **Right to Terminate.** Tenant shall have the right to terminate this Lease at any time within the Term upon providing Landlord at least sixty (60) days’ written notice to Landlord.
- 2.4. **Exclusive Right to Negotiate Extension.** If Tenant has not been in default of any of its obligations under this Lease during the previous six months of the original Term (as defined in Section 2.2), then Tenant shall have the right (but not the obligation) to enter into a ninety-day period of exclusive negotiation with Landlord to extend this Lease upon mutually acceptable terms (including, but not limited to, rent payments) for an additional period up to one year (“**ENA Right**”). Tenant must exercise the ENA Right by sending a written notice to Landlord specifying its exercise of the ENA Right, which notice must be delivered to Landlord not less than 90 days prior to the expiration of the original Term (“**ENA Notice**”). Within fifteen business days after receipt of the ENA Notice, Tenant and Landlord will meet to begin negotiations for an amendment to this Lease to extend the Term. If prior to the end of the Term the Parties agree to an extension and other modifications, then such terms shall be effective only if this Lease is amended in accordance with Section 30.15. If the Parties do not agree to that amendment, then this Lease shall terminate without further notice at the end of the Term.

### 3. RENT & PERFORMANCE STANDARD.

- 3.1. **Monthly Rent.** Tenant agrees to pay Two Thousand Dollars (\$2,000) on a monthly basis, in advance, due no later than the 10<sup>th</sup> day of month for which rent is being paid (“**Rent**”). The first payment shall be due December 13, 2019.
- 3.2. **Performance Standards.** As material consideration for this Lease, Tenant covenants to comply with the following requirement (the “**Performance Standard**”): diligently maintain and repair the Premises, in compliance with Section 7.1.
- 3.3. **Payment of Rent.** All Rent and all other monetary obligations to be paid by Tenant to Landlord shall be in lawful money of the United States of America at the address specified in Section 30.13, or such other address as Landlord shall notify Tenant in writing.
- 3.4. **Late Payment.** Any payment of any sum to be paid by Tenant, not paid within ten days after its due date, shall be subject to a ten percent late charge.
- 3.5. **Security Deposit.** Tenant is not required to provide, and has not provided, a security deposit to Landlord.

4. USES.

4.1. Authorized Uses; Minimum Program Requirements & Reporting Obligations.

4.1.1. Authorized Uses. Tenant shall use the Premises solely as a commercial real estate office. As material consideration for this Lease, Tenant agrees to use the Premises and conduct all its business operations on the Premises under the designation of a real estate office, currently named "Ciano Real Estate." No other name shall be used with respect to the Premises without the prior written consent of Landlord, which may be granted or withheld in its sole discretion.

4.2. Prohibited Uses. Tenant shall not use, or permit the Premises, or any part thereof, to be used for any purpose or purposes other than those express uses specified in Section 4.1.1.

Tenant shall not sell or permit to be displayed, performed, sold, kept, or used in or about the Premises any conduct which may be prohibited by standard forms of fire insurance policies.

Tenant shall not violate any and all requirements, pertaining to the use of the Premises, of any insurance organization or company necessary for the maintenance of reasonable fire and public liability insurance, covering the buildings within the Premises and appurtenances.

Tenant shall not allow any animals on the Premises except service dogs as defined in federal and state law.

Tenant shall not permit smoking or vaping on any portion of the Premises.

Tenant shall not commit, or suffer to be committed, any waste upon the Premises, or any nuisance or other act or thing which may disturb the quiet enjoyment of any other tenant or occupant of the Premises or any adjacent Premises. Tenant shall not conduct or permit to be conducted any sale by auction in, upon or from the Premises, whether said auction be voluntary, involuntary, pursuant to any assignment for the payment of creditors, or pursuant to any bankruptcy or other solvency proceeding nor display any "going out of business" or similar sign.

Tenant shall not engage in any activity in, on or about the Premises that violates any Environmental Law, and shall promptly, at Tenant's sole cost and expense, take all investigatory and/or remedial action required or ordered by any governmental agency or Environmental Law for clean-up and removal of any contamination involving any Hazardous Material created or caused directly or indirectly, by Tenant. The term "Environmental Law" shall mean any federal, state or local law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environmental conditions on, under or about the Premises, including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Sections 9601, et seq.; (ii) the Resource Conservation and Recovery Act of

1976 ("RCRA"), 42 U.S.C. Sections 6901, et seq.; (iii) California Health and Safety Code Sections 25100, et seq.; (iv) the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5, et seq.; (v) California Health and Safety Code Section 25359.7; (vi) California Health and Safety Code Section 25915; (vii) the Federal Water Pollution Control Act, 33 U.S.C. Sections 1317, et seq.; (viii) California Water Code Section 13000, et seq.; and (ix) California Civil Code Section 3479, et seq., as such laws are amended and the regulations and administrative codes applicable thereto. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined or listed as a "hazardous waste", "extremely hazardous waste", "restrictive hazardous waste", "or "hazardous substance" or considered a waste, condition of pollution or nuisance under the Environmental Laws; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos; and/or (iv) substances known by the State of California to cause cancer and/or reproductive toxicity. It is the intent of the Parties hereto to construe the terms "Hazardous Materials" and "Environmental Laws" in their broadest sense. Tenant shall provide all notices required pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5, et seq. Tenant shall provide prompt written notice to Landlord of the existence of Hazardous Materials on the Premises and all notices of violation of the Environmental Laws received by Tenant. Notwithstanding the foregoing, Tenant is not responsible for the remediation or removal of any Hazardous Materials which Tenant did not directly or indirectly cause to be placed at the Premises.

4.3. **Abandonment.** Tenant shall not vacate or abandon the Premises at any time during the Term of this Lease. Upon termination of this Lease for any reason, any personal property belonging to Tenant and left on the Premises shall be deemed to be abandoned, at the option of Landlord, shall become the property of Landlord.

5. **REAL ESTATE TAXES.** Tenant shall pay any and all real property taxes applicable to Tenant's possessory interest in the Premises. All such payments shall be made at least ten days prior to the due date of the applicable installment. Tenant shall promptly (at least five days prior to the due date) furnish Landlord with satisfactory evidence that such taxes have been paid. If any such taxes to be paid by Tenant shall cover any period of time after the expiration or earlier termination of the Term hereof, Tenant's share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year that this Lease is in effect, and Tenant may apply to the County for reimbursement of any overpayments after such proration. Notwithstanding anything above to the contrary, to the extent any assessment is levied against the Premises payable in installments, Tenant shall pay all installments coming due and payable during the Term of this Lease.

Tenant acknowledges that although Landlord is a municipal entity exempt from real property taxes, Tenant's possessory interest under this Lease may be subject to real property taxation.

Upon request, Landlord agrees to work with Tenant to assist in providing information to the County Tax Assessor to reduce the valuation of Tenant's possessory interest in the Premises. Landlord provides no assurance to Tenant that it will be successful in such efforts and that Tenant may be required to pay real property taxes.

6. **PERSONAL PROPERTY TAXES.** During the Term, Tenant shall pay prior to delinquency all taxes assessed against the levied upon fixtures, furnishings, equipment and all other personal property owned by Tenant (excluding Landlord's personal property) located in the Premises, and when possible Tenant shall cause said fixtures, furnishings, equipment and other personal property to be assessed and billed separately from Landlord's personal property. In the event any or all of Tenant's fixtures, furnishings, equipment and other personal property shall be assessed and taxed with Premises, Tenant shall pay its share of such taxes within ten (10) days after delivery to Tenant by Landlord of a statement in writing setting forth the amount of such taxes applicable to Tenant's property.

7. **MAINTENANCE AND REPAIRS.**

7.1. **Maintenance and Repair by Tenant.** Except the specific maintenance obligations of Landlord as set forth in Section 7.2, Tenant shall at all times during the Term, and at Tenant's sole cost and expense, keep, maintain and repair the Premises in good and sanitary order, condition, and repair. Such maintenance obligations shall include, but not be limited to, any equipment installed by Tenant, furnishings (such as seating, carpeting and drapes, mirrors, and interior repainting) and landscaping.

Tenant shall also hire a cleaning service/custodian, who shall keep the Premises in good and sanitary order on a daily basis.

Tenant shall maintain a written record to evidence the regular performance of maintenance and upkeep of the facility consistent with the maintenance standards.

Upon termination of this Lease, the Premises shall be surrendered in a good, clean and sanitary condition except for reasonable use and wear. Tenant agrees to surrender the Premises in its original condition, together with all additional improvements or alternations which have been approved by Landlord and installed by Tenant pursuant to Section 8.1. If Landlord wants to reserve the right to require Tenant to remove any such additional improvements upon the expiration or earlier termination of this Lease, Landlord must reserve such right in its notice of approval. If Tenant is required to remove any improvements from the Premises upon termination of this Lease, Tenant shall do so at Tenant's sole cost and expense, and Tenant will repair any damage to the Premises caused by such removal. Tenant shall promptly notify Landlord in writing of any condition in the Premises that require repairs by Landlord ("**Repair Notice**") which shall be made by Landlord as set forth in Section 7.2.

Tenant acknowledges that Tenant's maintenance obligations under this Section are material consideration to Landlord for this Lease and, therefore, this Section 7.1 shall be construed liberally for the protection and preservation of the Premises.

7.2. **Limited Maintenance and Repair by Landlord.** Landlord shall only be responsible to maintain in good repair and in compliance with all applicable laws, ordinances and regulations, at Landlord's sole cost and expense, **only** (i) the physical structure of the Premises, such as the structural elements, roof, plumbing, water heating system,

electrical systems, HVAC equipment and exterior painting, and (ii) subject to the financial limitations set forth below.

Notwithstanding the foregoing, Landlord shall not be required to make repairs necessitated by reason of (i) the negligence or willful misconduct of Tenant, or any of Tenant's staff, volunteers, students, contractors, invitees, subtenants, patrons or customers; (ii) by reason of the failure of Tenant to perform or observe and promptly report to Landlord any conditions the repair of which are Landlord's responsibility; or (iii) by reason of the failure of Tenant to perform or observe the conditions or agreements in this Lease, or caused by unauthorized alterations, additions or improvements made by Tenant or anyone claiming under Tenant (collectively the "**Tenant Caused Damages**"). Tenant shall be solely responsible, at its sole cost and expense to repair any Tenant Caused Damages.

Upon receipt of a Repair Notice, Landlord shall have a reasonable period of time (not to exceed five business days) to commence said repairs. Upon commencement of repairs, Landlord shall use reasonable efforts to diligently complete same. Tenant and Landlord shall jointly conduct an annual inspection of the Premises every March to aid Landlord in determining if any repairs by Landlord may be necessary.

Any renovation work performed by Landlord to the Premises shall not unreasonably interfere with Tenant's operations.

Notwithstanding the foregoing, Landlord's repair obligations are **specifically limited** in that Landlord shall not be required to make repairs the cost of which exceeds the Rent actually received by Landlord from Tenant as set forth below. During the Term, Landlord shall maintain a cumulative on-going record of all Rent received by Landlord ("**Landlord Repair Fund**"). Any repairs and maintenance costs incurred by Landlord under this Section 7.2 shall reduce the Landlord Repair Fund. If at any time when a repair or maintenance item which is Landlord's responsibility under this Section 7.2, Landlord shall only be obligated to make such repair to the extent that the current balance of the Landlord Repair Fund is sufficient to pay the cost of such repair. However, if the repair item is critical for Tenant's operation of the Premises, then Landlord shall promptly make such repair but the cost of such shall reduce the Landlord Repair Fund. If Landlord elects, in its sole discretion, to make repairs notwithstanding the foregoing limitations, such election shall not be deemed a waiver of this limitation with respect to future repairs and the cost of such repairs shall reduce the Landlord Repair Fund.

## 8. ALTERATIONS

**8.1 To Premises.** Tenant shall not make any alterations to the Premises, or any part thereof, without the prior written consent of Landlord. If Tenant wishes to make additional improvements to the Premises, Tenant shall notify Landlord in writing specifying in reasonable detail the proposed alterations and the cost thereof. Within fifteen days after receiving such notice from Tenant, Landlord shall send written notice to Tenant indicating whether Landlord approves or disapproves of the contemplated improvements. The City Manager may act on behalf of Landlord for approvals or disapprovals under this Section. Landlord's approval shall not be unreasonably withheld and any disapproval shall be in writing and shall explain the reasons for the denial. However, as a condition to granting its approval to any of the improvements, Landlord may require Tenant to provide Landlord with reasonably satisfactory evidence of Tenant's financial ability to pay for the costs of the improvements and may require a completion bond be provided to Landlord or other security reasonably acceptable to Landlord. Any such alterations shall comply with all applicable laws and regulations. All improvements (excluding minor improvements as determined by Landlord) which are approved by Landlord shall be under the supervision of a licensed architect or structural engineer (at Tenant's cost) and made in accordance with plans and specifications approved in writing by Landlord prior to the commencement of such work. All work shall be done in a good and workmanlike manner, diligently prosecuted to completion and completed in compliance with Section 12. All such improvements shall immediately be deemed a part of the Premises and may not be removed by Tenant. Prior to commencing any work of improvement hereunder, Tenant shall notify Landlord so that Landlord can post and record an appropriate Notice of Non-Responsibility.

9. **COMPLIANCE WITH LAWS.** Except as to the specific obligations of Landlord under Section 7.2, Tenant shall, at its sole cost and expense, comply with all of the requirements of all municipal, state and federal authorities now in force or which may hereafter be in force pertaining to the use of the Premises, and shall faithfully observe in said use all municipal ordinances, including, but not limited to, the general plan and zoning ordinances, state and federal statutes, or other governmental regulations now in force or which shall hereinafter be in force. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any such order or statute in said use, shall be conclusive of that fact as between Landlord and Tenant.

## 10. INSURANCE.

- 10.1. **Landlord to Provide Property Insurance.** Landlord shall maintain, at Landlord's sole cost and expense, fire, and excess coverage insurance throughout the term of this Lease, on all buildings and improvements located on the Premises (and fixtures thereto), in an amount equal to one hundred percent of the replacement value of the Premises, together with such other insurance, coverages and endorsements as Landlord may determine in its sole discretion. Tenant hereby waives any right of recovery from Landlord, its officers and employees, and Landlord hereby waives any right of loss or damage (including consequential loss) resulting from any of the perils insured against as a result of said insurance.

**10.2. Tenant's Insurance Obligations.**

**10.2.1. Liability Insurance.** During the entire term of this Lease, Tenant shall, at Tenant's sole cost and expense, for the mutual benefit of Landlord and Tenant, maintain comprehensive general liability insurance insuring against claims for bodily injury, death or property damage occurring in, upon or about the Premises, written on a per occurrence basis in an amount not less than either (i) a combined single limit of Five Million Dollars (\$5,000,000) for bodily injury, death, and property damage or (ii) bodily injury limits of Five Hundred Thousand Dollars (\$500,000) per person, One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) products and completed operations and property damage limits of Two Hundred Fifty Thousand Dollars (\$250,000) per occurrence and One Million Dollars (\$1,000,000) in the aggregate.

**10.2.2. Worker's Compensation Insurance.** Tenant shall, at Tenant's sole cost and expense, maintain a policy of worker's compensation insurance in an amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both Tenant and Landlord against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Tenant in the course of conducting Tenant's business in the Premises.

**10.2.3. Business Automobile Coverage Insurance.** Tenant shall, at Tenant's sole cost and expense, for the mutual benefit of Landlord and Tenant, maintain Business Auto Coverage on ISO Business Auto Coverage from CA 00 01 including symbol 1 (Any Auto) or the exact equivalent, with combined single limits of liability not less than One Million Dollars (\$1,000,000) per accident. If Tenant owns no vehicles, then this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Tenant or Tenant's employees will use personal autos in any way for the operation of any business on the Premises, then Tenant shall provide evidence of personal auto liability coverage for each such person.

**10.2.4. General Provisions.** All of the policies of insurance required to be procured by Tenant pursuant to this Section 10.2 shall be primary insurance and shall name Landlord, its employees and agents as additional insureds. All policies shall waive all rights of subrogation and provide that said insurance may not be amended or canceled without providing thirty-days' prior written notice by registered mail to Landlord. Within ten business days after execution of this Lease by the last Party to sign, and at least thirty days prior to the expiration of any insurance policy, Tenant shall provide Landlord with certificates of insurance and full copies of the insurance policies evidencing the mandatory insurance coverages written by insurance companies acceptable to Landlord, licensed to do business in

California and rated A:VII or better by Best's Insurance Guide. Landlord may require an increase in the coverage and/or the types of coverage from time to time upon written notice to Tenant. Each of the Parties, on behalf of their respective insurance companies insuring such property of either Landlord or Tenant against such loss, waive any right of subrogation that it may have against the other.

- 11. INDEMNIFICATION.** Tenant shall indemnify, protect, defend and hold harmless the Premises, Landlord and its managers, officers, directors, members, employees, agents, contractors, partners and lenders, from and against any and all claims, and/or damages, costs, liens, judgments, penalties, permits, reasonable attorneys' and consultant's fees, expenses and/or liabilities arising out of, involving, or in dealing with, the occupancy of the Premises by Tenant, the conduct of Tenant's business, any act, omission or neglect of Tenant, its officers, directors, members, employees, agents or contractors, and out of any breach by Tenant in the performance in a timely manner of any obligation on Tenant's part to be performed under this Lease, except for matters which are the result of Landlord's gross negligence, intentional wrongful acts, or in default of this Lease. The foregoing shall include, but not be limited to, all costs of the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of claims made against Landlord) litigated and/or reduced to judgment. In case any action or proceeding is brought against Landlord by reason of any of the foregoing matters, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord and Landlord shall cooperate with Tenant in such defense. Landlord need not have first paid any such claim in order to be so indemnified. In addition, Landlord may require Tenant to pay Landlord's attorneys' fees and costs in defending against or participating in such claim, action or proceeding if Landlord shall decide, in its exercise of reasonable judgment, it is unsatisfied with the representation of its interest by Tenant or its counsel.

Landlord shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Tenant, Tenant's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, earthquake, flood, terrorism, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other any other cause, whether the said injury or damage results from conditions arising upon the Premises or from other source or places except if such injury or damage is the result of the gross negligence or willful misconduct of Landlord or Landlord's employees, contractors or agents.

- 12. NO LIENS.** Tenant shall keep the Premises, free from any liens arising out of any work performed, material furnished, or obligation incurred by Tenant or alleged to have been incurred by Tenant. If Tenant shall fail to pay any charge for which a mechanic's lien claim and suit to foreclose the lien have been filed, and shall not have obtained the release of said lien from the property subject to such lien, Landlord may (but shall not be so required to) pay said claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Tenant to Landlord, together with interest at the rate prescribed in Section 30.6, on the amount of the mechanic's lien claim.

**13. SIGNS.** Tenant shall not place or permit to be placed any signs upon the exterior or in the windows of the Premises without Landlord's prior written consent. Any sign installed without such approval shall be immediately removed by Tenant and, if said sign is not removed by Tenant within three days of written notice from Landlord to Tenant, then Landlord may remove and destroy said sign without Tenant's approval and without any liability to Tenant. Tenant shall not modify or alter any of the signs without the prior written approval of the City Manager for Landlord, which approval shall not be unreasonably withheld or delayed. Landlord shall reply to any proposed alteration within fourteen days from submission. Any revision shall comply with the Morro Bay Municipal Code requirements related to signage prior to any revisions actually being made to the signs. Tenant shall maintain the signs in good condition and repair at all times during the entire term at its sole cost and expense.

**14. UTILITIES.**

**14.1. Tenant's Responsibilities.** Tenant shall pay, before delinquency, all charges for water, gas, heat, electricity, power, sewer, telephone service, solid waste collection and all other services and utilities used in, upon, or about the Premises by Tenant or any of its subtenants, licensees, or concessionaires during the entire term of this Lease. Tenant shall pay such fees, assessments or charges as may be levied for the operation, maintenance and service of such facilities and shall comply with reasonable rules and regulations established from time to time for use thereof. Tenant shall insure that trash and debris produced by the activities on Premises do not accumulate on the Premises.

**15. ENTRY AND INSPECTION.** Tenant shall permit Landlord and its employees and agents to enter into and upon the Premises at all reasonable times for the purpose of inspecting the same, or for the purpose of making repairs, alterations or additions or performing the improvements to any portion of said building(s), including the erection and maintenance of such scaffolding, canopy, and fences as may be required, or for the purpose of posting notices of non-responsibility for alterations, additions or repairs, or for the purpose of placing upon the Premises any usual or ordinary signs for public safety as determined by Landlord. Landlord shall be permitted to do any of the above without any rebate of Rent and without any liability to Tenant for any loss of occupation or quiet enjoyment of the Premises thereby occasioned. Landlord shall make reasonable efforts to coordinate times for any repairs deemed necessary with Tenant to reduce to the extent practicable any interference with Tenant's use of the Premises. Tenant shall permit Landlord, at any time within ninety (90) days prior to the expiration of the Term, to place upon the Premises any usual or ordinary "For Lease" or "For Sale" signs, and during such ninety-day period, Landlord or its agents may, during normal business hours, enter upon said Premises and exhibit the same to prospective tenants or purchasers.

**16. DAMAGE AND DESTRUCTION.**

**16.1. Notice to Landlord.** Tenant shall give prompt notice to Landlord in case of any fire or other damage to the Premises.

- 16.2. **Partial Casualty to Premises.** If the Premises shall be damaged by any casualty including, but not limited to, civil unrest, vandalism, a fire, flood or earthquake, such that (i) the cost of replacement or repair of the Restaurant is less than or equal to fifty percent of the total replacement cost thereof; or (ii) the cost of replacement or repair of damage to the Restaurant, and any other structures comprising the Premises, when aggregated together is less than or equal to fifty percent of the total replacement cost thereof, then Landlord shall promptly repair and restore the same to substantially the condition thereof immediately prior to said damage or destruction. If insurance proceeds are forthcoming, Landlord shall not be obligated to commence the restoration and/or repair until Landlord has received said insurance proceeds. Landlord shall take all reasonable steps necessary so as to obtain such insurance proceeds promptly so as to prevent delay in restoring and/or repairing the Premises to its prior condition.
- 16.3. **Substantial Damage to Premises.** If the Premises shall be damaged or destroyed by any casualty (or the other matters described above), such that (i) the cost of replacement or repair of the Premises exceeds one years rent; or (ii) the cost of replacement or repair of damage to the Premises, and any of the other structures comprising the Premises, when aggregated together exceeds one years rent total, then Landlord may elect to either replace or repair the damage as aforesaid, cancel this Lease by written notice of cancellation given to Tenant within ninety days after the date of the casualty, or allow Tenant to cause repairs to be made to City standards. This Lease shall cease and terminate twenty days following Tenant's receipt of Landlord's cancellation notice, and Tenant shall vacate and surrender the Premises to Landlord in accordance with the terms of this Lease.
- 16.4. **Reconstruction.** In the event of any reconstruction of the Premises under this Section 16, Landlord shall be obligated to reconstruct the Premises only to the extent of the condition of the Premises prior to the damage.
- 16.5. **Rent Abatement.** In the event that any casualty to the Premises is such that operations are impossible or impractical during the reconstruction as determined by Tenant, Tenant shall be entitled to abatement of the Rent for actual number of business days closed based on a pro-rata ratio of the total days in the month.
- 16.6. **Termination.** Upon any termination of this Lease under any of the provisions of this Section 16, the Parties shall be released thereby without further obligations to the other Party coincident with the surrender of possession of the Premises to Landlord, except for obligations which have theretofore accrued and be then unpaid, and except for Tenant's obligations under Section 11.
- 16.7. **Determination of Percentage of Damage or Destruction.** If either Landlord or Tenant contends that the percentage of the damage or destruction referred to above exceeds one year's rent total and the other Party disagrees, the determination of the percentage shall be made in writing by a senior officer of the insurance company that is to make insurance proceeds available for replacement or repair. If said insurance company elects not to render such a determination in a timely manner, or no

determination is rendered for any other reason, then, in such event, upon fifteen-days' prior written notice to Tenant, Landlord's determination shall be deemed the agreed upon determination of the damage or destruction.

## **17. ASSIGNMENT AND SUBLETTING.**

**17.1. Assignment and Subletting.** Tenant shall not sublet the Premises or assign this Lease without the prior written consent of Landlord. Landlord shall not unreasonably withhold its consent to an assignment or sublease to a proposed assignee or subtenant. In no event shall Landlord be required to approve of any assignment or sublease which would result in a violation of any other agreements to which Landlord is a party and/or for which all of the following criteria are not met:

- a. The proposed assignee or subtenant has submitted to Landlord financial statements showing that the proposed assignee's or subtenant's financial condition, including net worth and liquidity, is equal to or greater than Tenant's financial condition;
- b. The proposed assignee or subtenant is morally and financially responsible; and
- c. Tenant is not in default in the payment of Rent or the performance of any obligations under this Lease.

Any such assignment shall be subject to all of the terms and conditions of this Lease, including, but not limited to, the use restrictions, and the proposed assignee or subtenant shall assume the obligations of Tenant under this Lease in writing in form satisfactory to Landlord. The proposed assignee or subtenant shall simultaneously provide to Landlord an estoppel certificate in the form described in Section 21. Consent by Landlord to one assignment or subletting shall not be deemed to be consent to any subsequent assignment or subletting. Any assignment or subletting without the prior written consent of Landlord shall be void, shall constitute a material breach of this Lease, and shall, at the option of Landlord, terminate this Lease. Neither this Lease nor any interest therein shall be assignable as to the interest of Tenant by operation of law.

Landlord shall be under no obligation to consider a request for its consent to an assignment or sublease until Tenant shall have submitted in writing to Landlord a request for Landlord's consent to such assignment or sublease, a history of the proposed assignee's or subtenant's business experience and financial viability and such other information as required by Landlord to verify that the criteria set forth herein are met.

## **18. DEFAULT AND REMEDIES; TERMINATION.**

**18.1. Default by Tenant.** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant:

- (i) Failure to pay any Rent or other monetary payment required hereunder to Landlord within five days after receiving notice from Landlord of Tenant's failure to pay any such obligation when due under this Lease.
- (ii) Failure to perform any provision of this Lease (other than the payment of money), if the failure to perform is not cured within thirty days after receiving written notice of the default from Landlord. If the default cannot be reasonably cured within thirty days, Tenant shall not be in default of this Lease if Tenant commences to cure the default within the thirty-day period and diligently and in good faith continues to cure the default.
- (iii) Failure of Tenant to meet or comply with the Performance Standard.
- (iv) Vacation or abandonment of the Premises by Tenant.
- (v) Making a general assignment for the benefit of creditors.
- (vi) Filing of a voluntary petition in bankruptcy or the adjudication of Tenant as a bankrupt.
- (vii) Appointment of a receiver to take possession of all or substantially all the assets of Tenant located at the Premises or of Tenant's leasehold interest in the Premises.
- (viii) Filing by any creditor of Tenant of an involuntary petition in bankruptcy which is not dismissed within sixty (60) days after filing.
- (ix) Attachment, execution or other judicial seizure of all or substantially all of the assets of Tenant or Tenant's leasehold where such an attachment, execution or seizure is not discharged within sixty (60) days.

In the event of any such default or breach by Tenant, Landlord may at any time thereafter, without further notice or demand, rectify or cure such default, and any sums expended by Landlord for such purposes shall be paid by Tenant to Landlord upon demand and as additional Rent hereunder. In the event of any such default or breach by Tenant, Landlord shall have the right to continue the lease in full force and effect and enforce all of its rights and remedies under this Lease, including the right to recover the Rent as it becomes due under this Lease or Landlord shall have the right at any time thereafter to elect to terminate the Lease and Tenant's right to possession thereunder. Upon such termination, Landlord shall have the right to recover from Tenant:

- (a) The worth at the time of award of the unpaid Rent which had been earned at the time of termination;
- (b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of

award exceeds the amount of such Rent loss that Tenant proves could have been reasonably avoided; and

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such Rent loss that Tenant proves could be reasonably avoided.

The "worth at the time of award" of the amounts referred to in subparagraphs (a), b), and (c) above shall be computed by allowing interest (or by discounting in the case of subparagraph (c)) at three percent over the prime rate, but in no event greater than the maximum rate permitted by law.

"Rent" shall include all sums payable pursuant to this Lease on a regular basis; including reimbursement of real estate taxes and any similar amounts. The payment shall be computed on the basis of the average monthly amount thereof accruing during any preceding twelve-month period selected by Landlord, except that if it becomes necessary to compute such Rent before such a twelve-month period has occurred, then such Rent shall be computed on the basis of the average monthly amount hereof accruing during such shorter period.

Such efforts as Landlord may make to mitigate the damages caused by Tenant's breach of this Lease shall not constitute a waiver of Landlord's right to recover damages against Tenant hereunder.

Notwithstanding any of the foregoing, the breach of this Lease by Tenant, or an abandonment of the Premises by Tenant, shall not constitute a termination of this Lease, or of Tenant's right of possession hereunder, unless and until Landlord elects to do so, and until such time Landlord shall have the right to enforce all of its rights and remedies under this Lease, including the right to recover rent, and all other payments to be made by Tenant hereunder, as they become due. Failure of Landlord to terminate this Lease shall not prevent Landlord from later terminating this Lease or constitute a waiver of Landlord's right to do so.

- 18.2. **No Waiver.** Acceptance of any payment under this Lease shall not be deemed a waiver of any default or a waiver of any of Landlord's remedies.
- 18.3. **Landlord's Default.** Except as may be elsewhere expressly provided in this Lease, Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty days after written notice by Tenant to Landlord, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty days are required for performance then Landlord shall not be deemed in default if Landlord commences performance within the thirty (30) day period and thereafter diligently prosecutes the same to completion.
- 18.4. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity, except Tenant i) cannot seek money damages or pursue an action in law; and

ii) is instead limited to bringing a proceeding in the nature of specific performance, injunctive relief or mandamus, or any other action in equity.

**18.5. Termination.**

**18.5.1.** The Parties acknowledge that this Lease shall be terminated immediately at the occurrence of any of the following events:

- a. By expiration of the Lease;
- b. By mutual agreement of both Parties; or
- c. In the case of casualty as provided for in Section 16.6.

**18.5.2.** The Parties acknowledge that this Lease may be terminated by Landlord upon five-days' written notice if Tenant fails to meet the Performance Standard.

**18.5.3.** Except as set forth in Section 2.3, termination of this Lease shall not extinguish Tenant's obligations to pay Rent or its other obligations including indemnification of Landlord.

**19. SURRENDER OF PREMISES.** The voluntary or other surrender of the Premises by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subleases or licenses, or may, at the option of Landlord, operate as an assignment to it of any or all of such subleases or licenses.

**20. FORCE MAJEURE.** If either Party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations or other cause without fault and beyond the control of the Party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, nothing in this Section 20 shall excuse Tenant from the prompt payment of any Rent.

**21. ESTOPPEL CERTIFICATE.** Tenant shall, at any time and from time to time upon not less than twenty-days prior notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing certifying that this Lease is unmodified and is in full force and effect, and the dates to which the Rent has been paid, and stating whether or not to the best knowledge that Landlord is in default under this Lease, and, if in default, specifying in reasonable detail each such default, and such other matters as Landlord may reasonably request, it being intended that any such statement delivered by Tenant may be relied upon by Landlord or any prospective purchaser of the fee or any prospective mortgagee or encumbrancer thereof.

If Landlord desires to refinance or transfer the Premises, then Tenant agrees to deliver to Landlord or any lender or transferee designated by Landlord such financial information

concerning Tenant as may be reasonably required by such lender or transferee and is reasonably available to Tenant. All such financial information shall be received by Landlord in confidence.

**22. SUBORDINATION.** The rights of Tenant shall be and are subject and subordinate at all times to the lien of any mortgage now or hereafter in force against the Premises, and Tenant shall promptly execute and deliver such further instruments subordinating this Lease to the lien of any such mortgage as shall be requested by Landlord.

**23. CONDEMNATION.** In the event a condemnation or transfer in lieu thereof results in a taking of any substantial and/or material portion of the Premises, Landlord or Tenant may, upon written notice given to the other Party within thirty days after such taking or transfer in lieu thereof, terminate this Lease. In connection therewith, Landlord and Tenant acknowledge that:

- a. Landlord (acting as the City of Morro Bay) possesses the power to take the Premises through eminent domain proceedings; and
- b. The business to be conducted by Tenant upon the Premises is not a viable business without financial assistance from Landlord, therefore if Tenant must vacate the Premises, it will be extremely impractical, if not impossible, for Tenant to operate its business elsewhere.

Therefore, upon such termination Tenant shall have the right to claim and recover from Landlord and/or the condemning authority only the amount equal to the value of any improvements installed by Tenant. Tenant shall **not** receive any value related to the leasehold value of the property which shall be paid solely to Landlord.

**24. USE OF LANDLORD'S NAME.** Tenant shall not use Landlord's name for advertising or promotion without Landlord's prior written consent which may be granted or withheld in its sole discretion.

**25. TRADE FIXTURES.** Tenant has the right to use the Landlord's personal property located on the Premises but Tenant shall, at its own cost and expense, install and equip the Premises with all furniture, fixtures, trade fixtures, equipment and personal property reasonably required for the operation of Tenant's business. Any and all fixtures and appurtenances installed by Tenant shall conform with the requirements of all applicable laws and regulations. All furniture, equipment, and trade fixtures installed by Tenant shall remain the property of Tenant during the Term of this Lease but Tenant shall not be remove any trade fixtures during the Term hereof without Landlord's prior written consent, which may be provided by the City Manager on behalf of the Landlord, and which consent may be withheld or granted in Landlord's sole discretion. On termination of this Lease, Tenant may, provided Tenant is not in default of this Lease, remove at its own expense all trade fixtures, equipment and its personal property. At termination of this Lease, if Tenant has left any merchandise, furniture, equipment, signs, trade fixtures or other personal property in the Premises, Landlord may give Tenant written notice to remove such property. In the event such property is not removed within fifteen days after the date of said notice, Landlord may

dispose of said property in any manner whatsoever and Tenant hereby waives any claim or right to said property or any proceeds derived from the sale thereof. Any damage to the Premises resulting from the installation or removal of any of said trade fixtures or equipment shall be repaired by Tenant at Tenant's sole cost and expense.

**26. QUIET ENJOYMENT.** As long as Tenant is not in default under this Lease, Tenant shall have quiet enjoyment of the Premises during the Term.

**27. HOLDOVER.** Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Lease. Any holding over after the expiration of the term of this Lease, with the consent of Landlord, express or implied, shall be construed to be a tenancy from month to month, cancelable upon thirty-days' written notice, and at a monthly rent equal to two hundred percent of the rent set forth in Section 3.1 and upon terms and conditions as existed during the last month of the Term.

**28. NOTICE AND WAIVER REGARDING RELOCATION, GOODWILL, PROPERTY INTEREST AND CONDEMNATION**

**28.1.** Tenant knowingly and voluntarily acknowledges and agrees upon its vacation of the Premises at the end of the Lease term, upon the sooner termination thereof for any reason, or vacation, of the Premises under any circumstances, in no event shall Tenant be entitled or shall Landlord, including its employees, agents and assignees, be required to provide any relocation benefits, compensation for loss of goodwill, or assistance under any applicable federal, state, or local laws or regulations including without limitation, the Uniform Relocation Assistance Laws, California Government Code Section 7260 et seq. Further, Tenant being fully informed of any and all of its rights and obligations and all laws and regulations (including without limitation, the Uniform Relocation Assistance Laws, California Government Code Section 7260 et seq.) in connection therewith fully waives, releases and rejects any and all relocation assistance and benefits relating to or in any respect connected with Tenant vacating the Premises.

**28.2.** Tenant knowingly and voluntarily acknowledges and agrees upon its vacation of the Premises at the end of the Term, upon the sooner termination thereof for any reason, or vacation, of the Premises under any other circumstances, in no event shall Tenant be entitled or shall Landlord be required to provide any compensation or consideration to Tenant for the leasehold interest of Tenant, improvements pertaining to realty, personal property, fixtures and equipment, pre-condemnation damages, severance damages or interest and litigation expenses, whether based on condemnation, inverse condemnation or any other reason. Upon vacation of the Premises or termination of the Lease, Tenant knowingly waives and surrenders any claims or rights to the leasehold interest, improvements pertaining to realty, personal property, fixtures and equipment, pre-condemnation damages, severance damages or interest and litigation expenses.

## 29. MISCELLANEOUS.

- 29.1. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their successors and assigns and be governed by the laws of the State of California. Any litigation between the Parties hereto concerning this Lease shall be initiated in the Superior Court of the State of California for the County of San Luis Obispo.
- 29.2. **Partial Invalidity.** If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereof.
- 29.3. **Successors in Interest.** The covenants herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all the Parties hereto, and each and all, including the Party making the assignment, shall be jointly and severally liable hereunder.
- 29.4. **No Oral Agreements.** This Lease covers in full each and every agreement of every kind or nature whatsoever between the Parties hereto concerning this Lease, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein, and there are no oral agreements. Tenant acknowledges that no representations or warranties of any kind or nature not specifically set forth herein have been made by Landlord or its employees, agents or representatives.
- 29.5. **Interest.** Any sum due to Landlord under this Lease shall bear simple interest from and after its due date at a rate equal to ten percent (10%) per month until paid to Landlord, but not in excess of the maximum rate permitted by law.
- 29.6. **Authority.** Each individual executing this Lease on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant and that this Lease is binding upon Tenant in accordance with its terms.
- 29.7. **Time.** Time is of the essence of this Lease.
- 29.8. **Consistency.** Each provision herein shall be interpreted so as to be consistent with every other provision.
- 29.9. **Relationship of Parties.** The relationship of the Parties is that of Landlord and Tenant, and it is expressly understood and agreed that Landlord does not in any way or for any purpose become a partner of Tenant in the conduct of Tenant's business or otherwise, or a joint venture with Tenant.
- 29.10. **Non-Discrimination.** Tenant herein covenants by and for Tenant, Tenant's successors, heirs, executors, administrators and assigns, and all persons claiming under or through Tenant, and this Lease is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry, in the leasing, subleasing, transferring,

use, occupancy, tenure or enjoyment of the Premises, nor shall the Tenant, or any person claiming under or through Tenant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, Tenants, subtenants, subtenants or vendees of the Premises.

**29.11. Non-Collusion.** No official, officer, or employee of Landlord has any financial interest, direct or indirect, in this Lease, nor shall any official, officer, or employee of Landlord participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interest found to be "remote" or non interest pursuant to California Government Code Sections 1091 and 1091.5. Tenant represents and warrants that (i) it has not paid or given, and will not pay or give, to any third party including, but not limited to, Tenant or any of its officials, officers, or employees, any money, consideration, or other thing of value as a result or consequence of obtaining this Lease; and (ii) it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any official, officer, or employee of Landlord, as a result or consequence of obtaining this Lease. Tenant is aware of and understands that any such act(s), omission(s) or other conduct resulting in the payment of money, consideration, or other thing of value will render this Lease void and of no force or effect.

**29.12. Notices.** Wherever in this Lease it shall be required or permitted that notice and demand be given or served by either Party to this Lease to or on the other, such notice or demand shall be given or served in writing and shall not be deemed to have been duly given or served unless in writing, and personally served or forwarded by certified mail, postage prepaid, addressed as specified below. Either Party may change the address set forth below by written notice by certified mail to the other. Any notice or demand given by certified mail shall be effective one (1) day subsequent to mailing.

Landlord: City of Morro Bay  
Attn: City Manager  
595 Harbor Street  
Morro Bay, CA 94585

With a copy to: Aleshire & Wynder, LLP  
Attn: Christopher F. Neumeyer, City Attorney  
18881 Von Karman Ave., Suite 1700  
Irvine, CA 92612

Tenant: Ciano Real Estate, Inc.  
Attn: Frankie Ciano  
781 Market Street.  
Morro Bay, California 93442

- 29.13. **Not an Offer.** The submission of this Lease and any ancillary documents to Tenant shall not constitute an offer to lease, and Landlord shall have no obligation of any kind, express or implied, to lease the Premises to Tenant until Landlord has approved, executed and returned to Tenant a fully signed copy of this Lease.
- 29.14. **Amendments.** This Lease may be modified or amended only in writing executed by both Parties and approved by Landlord in accordance with applicable law.
- 29.15. **Exhibits.** Exhibit A is attached hereto and incorporated herein by reference.
- 29.16. **Acknowledgement of Content.** Each Party acknowledges that they have read and fully understand the contents of this Lease and have had an opportunity to consult with an attorney regarding the same. This Lease represents the entire and integrated agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral.

IN WITNESS WHEREOF, the Parties have duly executed this Lease on the day and year first above written in Morro Bay, California.

**LANDLORD:**

**CITY OF MORRO BAY,**  
a municipal corporation

By: [Signature]  
Scott Collins, City Manager

3/11, 2018 2020

**ATTEST:**

[Signature]  
Dana Swanson, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

**TENANT:**

CIANO REAL ESTATE, INC., a  
California corporation

By: [Signature]  
Frankie Ciano, owner

1-17, 2018 2020

By: [Signature]  
Notary  
Tis 21881376

1/17, 2018 2020

(Attach Notary Acknowledgements for  
Tenant)



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of San Luis Obispo )  
On 1/17/20 before me, Larissa Langley,  
Date Here Insert Name and Title of the Officer  
personally appeared Frankil Ciano  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Larissa Langley  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

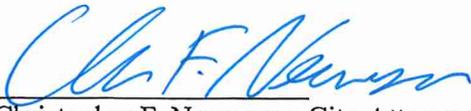
**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_  
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_  
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

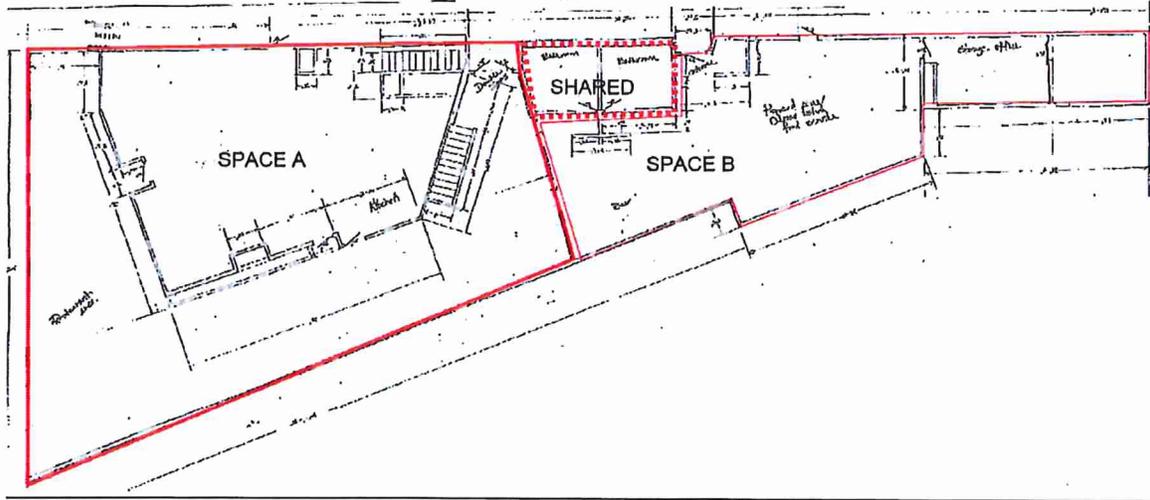
By:   
Christopher F. Neumeyer, City Attorney

**EXHIBIT A**

**DESCRIPTION AND DEPICTION OF PREMISES**

The Premises consist of Space A and shared use of the bathrooms as depicted on the figure below.

(APN: 066-321-027)









**EMPLOYERS PREFERRED INS. CO.**  
A Stock Company

Workers' Compensation and Employers Liability  
Insurance Policy

Policy Number	Policy Period
EIG 2707217 01	From 09/01/2019 To 09/01/2020
12:01A.M. Standard Time at the address of the Insured as stated herein	

**Transaction**

**RENEWAL DECLARATIONS**

**NCCI Carrier #** 31283    **WCIRB CARRIER#** 00920    **PRIOR POLICY NUMBER** EIG270721700

<b>1. Named Insured and Address</b>	<b>Agent</b>
-------------------------------------	--------------

CIANO REAL ESTATE 781 MARKET AVENUE MORRO BAY CA 93442	MACKEY & MACKEY INS AGENCY    1820000 PO BOX 1209 HANFORD, CA 93232  Telephone: 5595839393
--	--

Customer #	Carrier # 31283	FEIN # 605051855	Risk ID #	Entity of Insured CORPORATION
------------	--------------------	---------------------	-----------	----------------------------------

Additional Locations:

2. The Policy Period is from 09/01/2019 to 09/01/2020 12:01 a.m. Standard Time at the Insured's mailing address.
3. A. Workers Compensation Insurance: Part ONE of the policy applies to the Workers Compensation Law of the states listed here: CA  
  
B. Employers Liability Insurance: Part TWO of the policy applies to work in each state listed in Item 3A. The limits of our liability under Part TWO are:  

Bodily Injury by Accident	\$ 1,000,000	each accident
Bodily Injury by Disease	\$ 1,000,000	policy limit
Bodily Injury by Disease	\$ 1,000,000	each employee
- C. Other States Insurance: Part THREE of the policy applies to the states, if any, listed here: All states except HI, ND, OH, WA, WY and states listed in item 3.A.
- D. This policy includes these endorsements and schedules: See attached schedule.
4. The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates, and Rating Plans. All information required below is subject to verification and change by audit.

**SEE EXTENSION OF INFORMATION PAGE**

<b>Minimum Premium</b>	\$ 750	<b>Expense Constant</b>	\$ 160
		<b>Premium Discount</b>	\$
<b>Assessments and Taxes</b>	\$	<b>Total Estimated Annual Premium</b>	\$ 951

This is a Three Year Fixed Rate Policy

Premium Adjustment Period:     Annual;     Semiannual;     Quarterly;     Monthly

Countersigned this \_\_\_\_\_ Day of \_\_\_\_\_,

Issued Date: 07/11/2019

Issuing Office **EMPLOYERS PREFERRED INS. CO.**  
7110 NORTH FRESNO STREET, SUITE 250  
FRESNO, CA 93720-2999

  
 \_\_\_\_\_  
 Authorized Representative

Issued Date 07/11/2019  
WC990630 (5/98 Ed.)

INSURED COPY



EMPLOYERS PREFERRED INS. CO.  
 A Stock Company  
 7110 NORTH FRESNO STREET, SUITE 250  
 FRESNO, CA 93720-2999

WORKERS' COMPENSATION AND EMPLOYERS  
 LIABILITY INSURANCE POLICY

Policy Number: EIG 2707217 01
Named Insured: CIANO REAL ESTATE
Agent: MACKEY & MACKEY INS AGENCY 1820000

**EXTENSION OF INFORMATION PAGE**

CLASSIFICATION OF OPERATIONS

Code No.	Classification Description	Premium Basis Total Est. Annual Remuneration	Rate Per \$100 of Remuneration	Estimated Annual Premium
California				
Rating Period: 09/01/2019 through 09/01/2020				
Site 00001				
8741	REAL ESTATE AGENCIES - ALL EMPLOYEES - INCLUDING CLERICAL OFFICE EMPLOYEES AND OUTSIDE SALESPERSONS	350,000	0.140000	490.00
Site 00001 Total				\$ 490.00
Total of Sites for Rating Period				\$ 490.00
Rating Period Total				\$ 490.00
Rating Period: 09/01/2019 through 09/01/2020				
0900	EXPENSE CONSTANT			160.00
0990	BALANCE TO MINIMUM PREMIUM			100.00
0936	STATE W.C. FRAUD ASSESSMENT	925	0.002878	3.00
0935	STATE W.C. ADMINISTRATIVE ASSESSMENT	925	0.014479	13.00
0937	CA INSURANCE GUARANTY	925		
0938	CA UNINSURED EMPLOYERS FUND	925	0.000831	1.00
0939	CA SUBSEQUENT INJURY FUND	925	0.002737	3.00
0940	OSHF ASSESSMENT	925	0.003765	3.00
0943	LABOR ENFORCEMENT & COMPLIANCE	925	0.003431	3.00
9741	CATASTROPHE PREMIUM	350,000	0.020000	70.00
9740	TERRORISM PREMIUM	350,000	0.030000	105.00
Rating Period Total				\$ 461.00
State Total				\$ 951.00
Policy Total				\$ 951.00



EMPLOYERS PREFERRED INS. CO.  
A Stock Company  
7110 NORTH FRESNO STREET, SUITE 250  
FRESNO, CA 93720-2999

WORKERS' COMPENSATION AND EMPLOYERS  
LIABILITY INSURANCE POLICY

Policy Number: EIG 2707217 01
Named Insured: CIANO REAL ESTATE
Agent: MACKEY & MACKEY INS AGENCY 1820000

### SITE LOCATION SCHEDULE

State CA 1  
CIANO REAL ESTATE  
360 MORRO BAY BLVD  
MORRO BAY CA 93442-2142



EMPLOYERS PREFERRED INS. CO.

A Stock Company

7110 NORTH FRESNO STREET, SUITE 250  
FRESNO, CA 93720-2999

WORKERS' COMPENSATION AND EMPLOYERS  
LIABILITY INSURANCE POLICY

Policy Number:	EIG 2707217 01
Named Insured:	CIANO REAL ESTATE
Agent:	MACKAY & MACKAY INS AGENCY 1820000

### ENDORSEMENT SCHEDULE

State	Form Nbr.	Ed. Date	Description
CA	WC000000C	(1/15)	WC/EL INS. POLICY FORM BOOKLET
CA	WC000406A	(7/95)	PREMIUM DISCOUNT ENDORSEMENT
CA	WC000419	(1/01)	PREMIUM DUE DATE ENDORSEMENT
CA	WC000421D	(1/15)	CATASTROPHE PREMIUM ENDORSE
CA	WC000422B	(1/15)	TERRORISM RISK INSURANCE PROG
CA	WC040301D	(2/18)	CA POLICY AMENDATORY END
CA	WC040303C	(7/18)	OFFICERS, DIRECTORS COV/EXCL
CA	WC040310	(1/95)	DUTY TO DEFEND
CA	WC040360B	(1/15)	CA ELL AMENDATORY ENDORSEMENT
CA	WC040421	(1/08)	OPTIONAL PREM INCREASE ENDT
CA	WC040422	(1/12)	SHORT RATE PENALTY
CA	WC040601A	(12/93)	CANCELLATION ENDORSEMENT
CA	WC990405A	(3/07)	INSTALLMENT PAYMENT ENDORSE



Nationwide®  
is on your side

AMCO INSURANCE COMPANY  
1100 LOCUST ST DEPT 1100  
DES MOINES, IA 50391-2000

84 07624  
RENEWAL

# PREMIER BUSINESSOWNERS POLICY

## PREMIER OFFICE COMMON DECLARATIONS

Policy Number: **ACP BPO 7875782865**

Named Insured: **CIANO REAL ESTATE, INC**

Mailing Address: **781 MARKET AVE  
MORRO BAY, CA 93442-2121**

Agency: **MACKEY & MACKEY INSURANCE**  
Address: **HANFORD CA 93230-5784**

Agency Phone Number: **(559)583-9393**

Policy Period: **Effective From 01-16-20 To 01-16-21**  
**12:01 AM Standard Time at your principal place of business.**

Form of your business entity: **CORPORATION**

Description of your business: **REAL ESTATE AGENT**

IN RETURN FOR THE PAYMENT OF THE PREMIUM AND SUBJECT TO ALL THE TERMS OF THIS POLICY,  
WE AGREE TO PROVIDE THE INSURANCE STATED IN THIS POLICY.

**CONTINUATION PROVISION:** If we offer to continue your coverage and you or your representative do not accept, this policy will automatically terminate on the expiration date of the current policy period stated above. Failure to pay the required premium when due shall mean that you have not accepted our offer to continue your coverage. This policy will terminate sooner if any portion of the current policy period premium is not paid when due.

**RENEWAL POLICY NOTICE:** In an effort to keep insurance premiums as low as possible, we have streamlined your renewal policy by not including printed copies of policy forms or endorsements that have not changed from your expiring policies, unless they include variable information that is unique to you. Refer to your prior policies for printed copies of these forms. If you have a need for any form, they are available by request from your agent.

**IMPORTANT INFORMATION FOR CALIFORNIA POLICYHOLDERS:** Companies writing property and casualty insurance in California are required to participate in the California Insurance Guarantee Association. If a company becomes insolvent, the California Insurance Guarantee Association settles unpaid claims and assesses each insurance company for its fair share. California law requires all companies to surcharge policies to recover these assessments. If your policy is surcharged, "CA Surcharge" with an amount will appear on your premium notice.

**TOTAL POLICY PREMIUM \$ 705.00**

Previous Policy Number			
ACP BPO 7865782865	ENTRY DATE	10-30-19	
		Countersignature	Date

These Common Policy Declarations, together with the Common Policy Conditions, Coverage Form Declarations, Coverage Forms and any endorsements issued to form a part thereof, complete the Policy numbered above.

**PB 81 00 (01-01)**

**Page 1 of 2**

DIRECT BILL MACH

MAC

INSURED COPY

UID Z1

47 03020

# PREMIER BUSINESSOWNERS POLICY

PREMIER OFFICE

## SCHEDULE OF NAMED INSUREDS

Policy Number: ACP BPO 7875782865

From 01-16-20

Policy Period:  
To 01-16-21

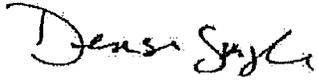
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Named Insured:

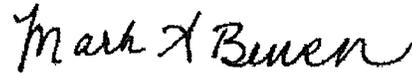
CIANO REAL ESTATE, INC

**AMCO INSURANCE COMPANY**

**IN WITNESS WHEREOF** the Company has caused this policy to be signed by its president and secretary and countersigned on the declarations page by a duly authorized representative of the company.



SECRETARY



PRESIDENT



# PREMIER BUSINESSOWNERS POLICY

## PREMIER OFFICE PROPERTY DECLARATIONS

Policy Number: **ACP BPO 7875782865**

Policy Period:  
From **01-16-20** To **01-16-21**

Description of Premises Number: **002** Building Number: **001** Construction: **FRAME**  
Premises Address **781 MARKET AVE** **MORRO BAY** **CA** **93442-2121**  
Premises ID

Occupancy **T** Classification: **REAL ESTATE AGENTS - INCLUDING CLERICAL & SALESMEN**

Described as: **REAL ESTATE OFFICE**

WE PROVIDE INSURANCE ONLY FOR THOSE COVERAGES INDICATED BY A LIMIT OR BY "INCLUDED".

The Property Coverage provided at this premises is subject to a **\$ 1,000** Deductible, unless otherwise stated.

<b>COVERAGES</b>	<b>LIMITS OF INSURANCE</b>
Building -	<b>NOT PROVIDED</b>
Business Personal Property - Replacement cost	<b>\$66,900</b>
<b>ADDITIONAL COVERAGES - the Coverage Form Includes other Additional Coverages not shown.</b>	
Business Income - ALS - 12 Months - NO Hour Waiting Period - 60 Day Ordinary Payroll Limit	<b>INCLUDED</b>
Extra Expense - Actual Loss Sustained (ALS) - 12 Months - NO Hour Waiting Period	<b>INCLUDED</b>
Equipment Breakdown	<b>INCLUDED</b>
Automatic Increase in Insurance - Building	<b>NOT PROVIDED</b>
Automatic Increase in Insurance - Business Personal Property	<b>2.9%</b>
Back Up of Sewer and Drain Water (limit shown per Building, subject to \$25,000 policy aggregate)	<b>\$5,000</b>

### OPTIONAL INCREASED LIMITS

	Included Limit	Additional Limit	
Account Receivable	\$25,000		\$25,000
Valuable Papers and Records (At the Described Premises)	\$25,000		\$25,000
Forgery and Alteration	\$10,000		\$10,000
Money and Securities - Inside the Premises	\$10,000		\$10,000
	Outside the Premises (Limited)	\$10,000	\$10,000
Outdoor Signs	\$2,500		\$2,500
Outdoor Trees, Shrubs, Plants and Lawns	\$10,000		\$10,000
Business Personal Property Away From Premises	\$15,000		\$15,000
Business Personal Property Away From Premises - Transit	\$15,000		\$15,000
Electronic Data	\$10,000		\$10,000
Interruption of Computer Operations	\$10,000		\$10,000
Building Property of Others	\$10,000		\$10,000

### OPTIONAL COVERAGES - Other frequently purchased coverage options.

Employee Dishonesty	<b>NOT PROVIDED</b>
Ordinance or Law - 1 - Loss to Undamaged Portion	<b>NOT PROVIDED</b>
2 - Demolition Cost and Broadened Increased Cost of Construction	<b>NOT PROVIDED</b>
Ordinance or Law Broadened	<b>NOT PROVIDED</b>
Office PLUS Endorsement (PB2005)	<b>INCLUDED</b>

### PROTECTIVE SAFEGUARDS

This premise has Protective Safeguards identified by symbols below. Insurance for Fire or Burglary and Robbery at this premise will be excluded if you do not notify us immediately if any of these safeguards are impaired. See **PB 04 30** for a description of each symbol. APPLICABLE SYMBOLS: **NOT APPLICABLE**

**PB 81 01 (04-11)**

**AMCO INSURANCE COMPANY**

Page 1 of 2

DIRECT BILL MACH

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UID Z1

47 03023

# PREMIER BUSINESSOWNERS POLICY

## PREMIER OFFICE

### MORTGAGEE ASSIGNMENT INFORMATION

Policy Period:  
From **01-16-20** To **01-16-21**

Policy Number: **ACP BPO 7875782865**

Additional Interest: **L** Interest Number: **1** Loan Number:  
Interest: **LEASED PRINTER VALUE \$40,000**  
**DELAGE LANDON FINANCIAL SERVIC**  
**PO BOX 5000, JOHNSTON, IA, 50131-5000**

Additional Interest: Interest Number: Loan Number:  
Interest:

# PREMIER BUSINESSOWNERS POLICY

PREMIER OFFICE

## LIABILITY DECLARATIONS

Policy Number: **ACP BPO 7875782865**

Policy Period:  
From **01-16-20** To **01-16-21**

### LIMITS OF INSURANCE

Each Occurrence Limit of Insurance	Per Occurrence	<b>\$1,000,000</b>
Medical Payments Coverage Sub Limit	Per Person	<b>\$1,000</b>
Tenants Property Damage Legal Liability Sub Limit	Per Covered Loss	<b>\$300,000</b>
Personal and Advertising Injury	Per Person Or Organization	<b>\$1,000,000</b>
Products— Completed Operations Aggregate	All Occurrences	<b>\$2,000,000</b>
General Aggregate (Other than Products— Completed Operations)	All Occurrences	<b>\$2,000,000</b>

### AUTOMATIC ADDITIONAL INSURED STATUS

The following persons or organizations are automatically insureds when you and they have agreed in a written contract or agreement that such person or organization be added as an additional insured on your policy.

Co-Owners of Insured Premises  
Controlling Interest  
Grantor of Franchise or License  
Lessors of Leased Equipment  
Managers or Lessors of Leased Premises  
Mortgagee, Assignee or Receiver  
Owners or Other Interest from Whom Land has been Leased  
State or Political Subdivisions - Permits Relating to Premises

### PROPERTY DAMAGE DEDUCTIBLE

NONE

### OPTIONAL COVERAGES

Hired Auto Liability Coverage	<b>Included in Each Occurrence Limit of Insurance</b>
Nonowned Auto Liability Coverage	<b>Included in Each Occurrence Limit of Insurance</b>

# PREMIER BUSINESSOWNERS POLICY

PREMIER OFFICE

## FORMS AND ENDORSEMENTS SUMMARY

Policy Number: **ACP BPO 7875782865**

Policy Period:  
From **01-16-20** To **01-16-21**

FORM NUMBER	TITLE
LI0021	0101 NUCLEAR ENERGY LIABILITY EXCLUSION
PB0002	1114 PREMIER BUSINESSOWNERS
PB0006	1114 PREMIER BUSINESSOWNERS LIABILITY COVERAGE FORM
PB0009	1114 PREMIER BUSINESSOWNERS COMMON POLICY CONDITIONS
PB0404	0101 HIRED AUTO AND NON-OWNED AUTO LIABILITY
PB2005	0411 OFFICE PLUS ENDORSEMENT
PB2998	0908 EXCLUSION - VIOLATION OF CONSUMER PROTEC
PB2999	0215 EXCLUSION - FUNGI OR BACTERIA
PB6302	0101 LIMITATION OF COVERAGE - REAL ESTATE OPERATIONS
PB9004	0120 CALIFORNIA AMENDATORY ENDORSEMENT
PB1504	1114 ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL INFORMATION
PB0523	0715 CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM
PB1203	0101 LOSS PAYABLE PROVISIONS

### IMPORTANT NOTICES

IN7406	0107 IMPORTANT FLOOD INSURANCE NOTICE
IN7809	1115 DATA BREACH & IDENTITY RECOVERY SERVICES
IN0001	0416 CONSUMER COMPLAINTS AND INFORMATION

# ACKNOWLEDGEMENT OF ADDITIONAL INSURED STATUS LESSORS OF LEASED EQUIPMENT

Person or Organization Designated as an Additional Insured:

**DELAGE LANDON FINANCIAL SERVIC**

**PO BOX 5000  
JOHNSTON IA 501315000**

Location of Leased Equipment:

**781 MARKET AVE  
MORRO BAY CA 934422121**

This form has been sent to you to acknowledge your status as an additional insured under our, meaning the issuing Company stated below, insurance policy issued to the Named Insured shown below.

Under our Premier Businessowners Liability Coverage Form, Section II. WHO IS AN INSURED provides as follows:

Any of the following persons or organizations are automatically insureds when you [i.e. the Named Insured stated below] and such person or organization have agreed in a written contract or agreement that such person or organization be added as an additional insured on your policy providing general liability coverage.

### Lessors of Leased Equipment

Any person or organization from whom you lease equipment by written contract or agreement is an additional insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of the equipment leased to you by that person or organization, subject to the following additional exclusion:

This insurance, including any duty we have to defend "suits", does not apply to "bodily injury" or "property damage" arising out of the sole negligence of such person or organization.

HOWEVER, their status as additional insured under this policy ends when their contract or agreement with you for such leased equipment ends.

The policy language set forth above is subject to all of the terms and conditions of the policy issued to the Named Insured shown below. For your information, our Named Insured, the Policy Number, Policy Term and Limits of Insurance are stated below.

Named Insured	<b>CIANO REAL ESTATE, INC</b>	
Issuing Company:	<b>AMCO INSURANCE COMPANY</b>	
Policy Number:	<b>ACP BPO 7875782865</b>	
Policy Term:	<b>01-16-20 To 01-16-21</b>	
Limits of Insurance:	<b>Per Occurrence</b>	<b>\$1,000,000</b>
	<b>All Occurrences</b>	<b>\$2,000,000</b>



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## OFFICE PLUS ENDORSEMENT

This endorsement modifies insurance provided under the following:

PREMIER BUSINESSOWNERS PROPERTY COVERAGE FORM  
**SCHEDULE**

Coverage Description	Limit of Insurance	Deductible
Lock Replacement Expenses	\$5,000	No Deductible
Contract Penalty	\$5,000	\$500
Fine Arts Coverage		\$500
Per Item Limit	\$10,000	
Per Occurrence Limit	\$50,000	
Laptop Computers – Worldwide Coverage	\$10,000	\$500
Unauthorized Business Card Use Additional Limit	\$5,000	Subject to Policy Deductible
Computer Fraud & Funds Transfer Fraud Additional Limit	\$10,000	Subject to Policy Deductible

**A. OPERATION OF THIS ENDORSEMENT**

This endorsement provides the coverage described herein arising at or from your office operation described in the declarations.

- B.** The following are added to the PREMIER BUSINESSOWNERS PROPERTY COVERAGE FORM, under Section A. Coverages, 5. Additional Coverages:

**1. Lock Replacement Expenses**

We will pay the expense you incur to repair or replace door locks or tumblers at the described premises due to the theft or other loss of the keys to such door locks or tumblers.

The most we will pay under this Additional Coverage for all loss or damage in any one occurrence is \$5,000.

This Lock Replacement Expenses Additional Coverage is in addition to the Limits of Insurance.

**2. Contract Penalty**

We will pay up to \$5,000 to cover contract penalties you are assessed as a result of any written clause in your contract for failure to timely deliver your product or service according to contract terms, provided the contract was executed prior to the loss or damage. The penalties must solely result from direct physical loss or damage by a Covered Cause of Loss to covered property.

**3. Fine Arts Coverage**

- a. We will pay for direct loss of or damage to Fine Arts, whether owned by:
  - (1) You; or
  - (2) Others, and in your care, custody or control.
- b. Fine arts includes, but is not limited to, antiques, paintings, etchings, drawings, tapestries, sculptures and fragile property such as porcelains, china and marble.
- c. The most we will pay for loss in any one occurrence under this Additional Coverage is \$50,000, but not more than \$10,000 for any one Fine Arts item. Our payment for loss of or damage to personal property of others will only be for the account of the owner of the property. The amount payable under this Additional Coverage is additional insurance over the insurance available for Business Personal Property.
- d. The value of fine arts will be the least of the following amounts:
  - (1) The actual cash value of that property at the time of loss;
  - (2) The cost of reasonably restoring that property to its condition immediately before loss; or

- (3) The cost of replacing that property with substantially identical property.

However, if an appraisal dated within a 3 year period prior to the date of loss is provided, the appraised value will be used to value that item.

- e. In the event of loss, the value of property will be determined as of the time of loss.

Under Section E. PROPERTY LOSS CONDITIONS, 5. Loss Payment, the following is added:

- (1) In case of loss to any part of a pair or set we will:
  - (a) Repair or replace any part to restore the pair or set to its value before the loss; or
  - (b) Pay the difference between the value of the pair or set before and after the loss.
- (2) You must arrange for fine arts to be packed and unpacked by competent packers.

**4. Laptop Computers – Worldwide Coverage**

- a. We will pay for direct physical loss or damage to laptop, palmtop, and similar portable computer equipment and accessories anywhere in the world, including while in transit, if such a loss or damage results directly from a Covered Cause of Loss.  
HOWEVER, we will not pay under this Additional Coverage for any loss or damage caused by, resulting from, or arising out of the theft of any property while it is in transit as checked baggage.
- b. The most we will pay under this Additional Coverage for the sum of all loss or damage resulting from a single occurrence is \$10,000.

**C. AMENDMENTS TO THE PREMIER BUSINESSOWNERS PROPERTY COVERAGE FORM:**

- 1. In Section A. COVERAGES, 5. ADDITIONAL COVERAGES, the following is added to v. Unauthorized Business Card Use:

**Additional Limits of Insurance - Unauthorized Business Card Use**

In addition to and excess over the limits of insurance provided for the Unauthorized Business Card Use Additional Coverage, we will pay an additional \$5,000 for loss or damage under the Unauthorized Business Card Use Additional Coverage.

- 2. In Section A. COVERAGES, 5. ADDITIONAL COVERAGES, the following is added to w. Computer Fraud And Funds Transfer Fraud:

**Additional Limits of Insurance – Computer Fraud And Funds Transfer Fraud**

In addition to and excess over the limits of insurance provided for the Computer Fraud And Funds Transfer Fraud Additional Coverage, we will pay an additional \$10,000 for loss or damage under the Computer Fraud And Funds Transfer Fraud Additional Coverage.

**D. DEDUCTIBLES**

- 1. No deductible applies to Lock Replacement Expenses Additional Coverage.
- 2. For the following Additional Coverages:
  - a. Contract Penalty;
  - b. Fine Arts Coverage; and
  - c. Laptop Computers – Worldwide Coverage,

We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Schedule of this endorsement. We will then pay the amount of loss or damage in excess of the Deductible up to the applicable Limit of Insurance shown in the Schedule of this endorsement.

- 3. The Unauthorized Business Card Use and Computer Fraud And Funds Transfer Fraud Additional Coverages are subject to the Business Personal Property deductible and these additional limits do not modify that deductible.

**All terms and conditions of this policy apply unless modified by this endorsement.**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## CALIFORNIA AMENDATORY ENDORSEMENT

This endorsement modifies insurance provided under the following:

PREMIER BUSINESSOWNERS COMMON POLICY CONDITIONS  
PREMIER BUSINESSOWNERS PROPERTY COVERAGE FORM  
PREMIER BUSINESSOWNERS LIABILITY COVERAGE FORM

### A. CANCELLATION

In the **COMMON POLICY CONDITIONS**, condition  
A. **CANCELLATION** is replaced by the following:

1. The first Named Insured shown in the Declarations may cancel this policy at any time by giving us advance written notice of the date cancellation is to take effect.
2. **By Us - Policies in Effect 60 Days or Less**
  - a. If this policy has been in effect for 60 days or less, and is not a renewal of a policy we issued, we may cancel this policy for any reason by mailing or delivering to the first Named Insured and the producer of record written notice of cancellation stating the reason for cancellation at least:
    - (1) Ten (10) days before the effective date of cancellation if we cancel for:
      - (a) Nonpayment of premium;
      - (b) Discovery of fraud by:
        - (i) Any insured, or insured person, or his or her representative in obtaining this Policy; or
        - (ii) You or your representative in pursuing a claim under this Policy.
    - (2) Thirty (30) days before the effective date of cancellation if we cancel for any other reason.
3. **By Us - Policies in Effect More Than 60 Days**
  - a. If this policy has been in effect for more than 60 days, or is a renewal of a policy we issued, we may cancel this policy only upon the occurrence, after the effective date of the policy, of one or more of the following:
    - (1) Nonpayment of premium, including payment due on a prior policy we issued and due during the current policy term covering the same risks.
    - (2) Discovery of fraud by:
      - (a) Any insured or his or her representative in obtaining this insurance; or
      - (b) You or your representative in pursuing a claim under this policy.
    - (3) Discovery of material misrepresentation by:
      - (a) Any insured or his or her representative in obtaining this insurance; or
      - (b) You or your representative in pursuing a claim under this policy.
    - (4) A judgment by a court or an administrative tribunal that you have violated any state law or any federal law, having as one of its necessary elements an act which materially increases any of the risks insured against.
    - (5) Discovery of willful or grossly negligent acts or omissions, or of any violations of state laws or regulations establishing safety standards, by you or your representative, which materially increase any of the risks insured against.
    - (6) Failure by you or your representative to implement reasonable loss control requirements, agreed to by you as a condition of policy issuance, or which were conditions precedent to our use of a particular rate or rating plan, if that failure materially increases any of the risks insured against.
    - (7) A determination by the Commissioner of Insurance that the:
      - (a) Loss of, or changes in, our reinsurance covering all or part of the risk would threaten our financial integrity or solvency; or

- (b) Continuation of the policy coverage would:
  - (i) Place us in violation of the laws of this state or the state of our domicile; or
  - (ii) Threaten our solvency.
- (8) A change by you or your representative in the activities or property of your commercial or industrial enterprise that results in a materially added, increased or changed risk, unless the added, increased or changed risk is included in the policy.
- b. If we cancel, we will mail or deliver advance written notice of cancellation, stating the reason for cancellation, to the first Named Insured and to the producer of record, at least:
  - (1) Ten (10) days before the effective date of cancellation if we cancel for a reason listed in 3.a.(1) or (2).
  - (2) Thirty (30) days before the effective date of cancellation if we cancel for any other reason listed in 3.a.
- 4. We will mail or deliver our notice to the first Named Insured at the address shown on the policy Declarations.
- 5. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- 6. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. However, our failure to make or offer a refund does not make the cancellation ineffective nor reinstate the policy.
- 7. If notice is mailed, proof of mailing will be sufficient proof of notice.
- 8. Instead of canceling your policy for any of the reasons stated in Paragraph 3.a.(3), (4), (5), (6), (7)(a) and (8) above, we may, at our sole option, revise your policy by:
  - a. Increasing your premium in accordance with our current rates and rules;
  - b. Reducing your policy Limits of Insurance; or
  - c. Changing the conditions of your coverage.
 If we exercise these rights, we will give the first Named Insured shown in the Declarations and the producer of record at least 30 days advance written notice of the effective date

and the reasons for such increase, reduction or change.

**9. Residential Property**

This provision applies to coverage on real property which is used predominantly for residential purposes and consisting of not more than four dwelling units, and to coverage on tenants; household personal property in a residential unit. If such coverage has been in effect for 60 days or less and is not a renewal of coverage we previously issued, we may cancel coverage for any reason, except that we may not cancel this Policy solely because:

- a. Corrosive soil conditions exist on the premises; or
- b. The first Named Insured has:
  - (1) Accepted an offer of earthquake coverage; or
  - (2) Cancelled or did not renew a policy issued by the California Earthquake Authority (CEA) that included an earthquake policy premium surcharge.

However, we shall cancel this Policy if the first Named Insured has accepted a new or renewal policy issued by the CEA that includes an earthquake policy premium surcharge but fails to pay the earthquake policy premium surcharge authorized by the CEA.

If a state of emergency under California Law is declared and the residential property is located in any ZIP Code within or adjacent to the fire perimeter, as determined by California Law, we may not cancel this Policy for one year, beginning from the date the state of emergency is declared, solely because the dwelling or other structure is located in an area in which a wildfire has occurred.

However, we may cancel:

- (1) When you have not paid the premium, at any time by letting you know at least 10 days before the date cancellation takes effect;
- (2) If willful or grossly negligent acts or omissions by the named insured, or his or her representatives, are discovered that materially increase any of the risks insured against; or

- (3) If there are physical changes in the property insured against, beyond the catastrophe damaged condition of the structures and surface landscape, which result in the property becoming uninsurable.

#### B. NONRENEWAL/CONDITIONAL RENEWAL

The following is added to the **COMMON POLICY CONDITIONS** and supercedes any provisions to the contrary:

##### 1. NONRENEWAL

- a. We may nonrenew your policy for any reason not prohibited by applicable law.
- b. If we decide not to renew this policy, we will mail or deliver written notice stating the reason for nonrenewal to the first Named Insured shown in the Declarations and to the producer of record, at least sixty (60) days, but not more than 120 days, before the expiration date.

##### 2. CONDITIONAL RENEWAL

Instead of nonrenewing your policy, we may, at our sole option, offer you a conditional renewal of your policy based upon a reduction of your policy Limits of Insurance, an elimination of coverages, an increase in deductibles and/or an increase of more than 25% in the rate upon which the premium is based. If we decide to offer a conditional renewal of this policy, we will mail or deliver written notice stating the reason for such conditional renewal to the first Named Insured shown in the Declarations and to the producer of record within the time periods specified in paragraph 1. above.

3. We will mail or deliver our notice of nonrenewal or conditional renewal to the first Named Insured at the address shown on the policy Declarations. Proof of mailing shall be sufficient proof of notice.
4. We are not required to send notice of nonrenewal in the following situations:
  - a. If the transfer or renewal of a policy, without any changes in terms, conditions, or rates, is between us and a member of our insurance group.
  - b. If the policy has been extended for 90 days or less, provided that notice has been given in accordance with paragraph B.1.
  - c. If you have obtained replacement coverage, or if the first Named Insured has agreed, in writing, within 60 days of

the termination of the policy, to obtain that coverage.

- d. If the policy is for a period of no more than 60 days and you are notified at the time of issuance that it will not be renewed.
- e. If the first Named Insured requests a change in the terms or conditions or risks covered by the policy within 60 days of the end of the policy period.
- f. If we have made a written offer to you, in accordance with the time periods shown in paragraph 1. above to conditionally renew the policy under changed terms or conditions or at an increased premium rate as specified in paragraph 2. above.

##### 5. Residential Property

This provision applies to coverage on real property used predominantly for residential purposes and consisting of not more than four dwelling units, and to coverage on tenants; household personal property in a residential unit.

We may elect not to renew such coverage for any reason, except that we will not refuse to renew coverage solely because:

- a. The first Named Insured has accepted an offer of earthquake coverage.
 

However, the following applies only to insurers who are associate participating insurers as established by Cal. Ins. Code Section 10089.16. We may elect not to renew such coverage after the first Named Insured has accepted an offer of earthquake coverage, if one or more of the following reasons applies:

  - (1) The nonrenewal is based on sound underwriting principles that relate to the coverages provided by this Policy and that are consistent with the approved rating plan and related documents filed with the Department of Insurance as required by existing law;
  - (2) The Commissioner of Insurance finds that the exposure to potential losses will threaten our solvency or place us in a hazardous condition. A hazardous condition includes, but is not limited to, a condition in which we make claims payments for losses resulting from an earthquake that occurred within the preceding two years and that required a reduction in policyholder surplus of

at least 25% for payment of those claims; or

(3) We have:

- (a) Lost or experienced a substantial reduction in the availability or scope of reinsurance coverage; or
- (b) Experienced a substantial increase in the premium charged for reinsurance coverage of our residential property insurance policies; and

the Commissioner has approved a plan for the the nonrenewals that is fair and equitable, and that is responsive to the changes in our reinsurance position.

- b. The first Named Insured has cancelled or did not renew a policy, issued by the California Earthquake Authority that included an earthquake policy premium surcharge.
- c. Corrosive soil conditions exist on the premises.

If a state of emergency under California Law is declared and the residential property is located in any ZIP Code within or adjacent to the fire perimeter, as determined by California Law, we may not cancel this Policy for one year, beginning from the date the state of emergency is declared, solely because the dwelling or other structure is located in an area in which a wildfire has occurred.

However, we may nonrenew:

- (1) If willful or grossly negligent acts or omissions by the named insured, or his or her representatives, are discovered that materially increase any of the risks insured against;
- (2) If losses unrelated to the postdisaster loss condition of the property have occurred that would collectively render the risk ineligible for renewal; or
- (3) If there are physical changes in the property insured against, beyond the catastrophe-damaged condition of the structures and surface landscape, which result in the property becoming uninsurable.

**C. AMENDMENTS TO THE PROPERTY COVERAGE FORM**

- 1. In Section A. **COVERAGES**, 5. Additional Coverages, j Civil Authority, under paragraph (1), in the event of a named wildfire, the one-mile restriction is removed for such wildfire area.
- 2. Under Section E. **PROPERTY LOSS CONDITIONS**, loss condition 2. Appraisal is replaced by the following:

**2. Appraisal**

If we and you disagree on the value of the property or the amount of loss, either may make written request for an appraisal of the loss. If the request is accepted, each party will select a competent and impartial appraiser and will advise the other party of the name of such appraiser within 20 days. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

- 3. Under Section E. **PROPERTY LOSS CONDITIONS**, loss condition 5. Loss Payment, paragraph e.(1)(b) is deleted and paragraphs e.(1)(c) and e.(5) are replaced by the following:

- (1) (d) We will not pay on a replacement cost basis for any loss or damage until the lost or damaged property is actually repaired or replaced. Prior to such repair or replacement, we will pay the "actual cash value" of the lost or damaged property. If the "actual cash value" does not exhaust the applicable limit of insurance, we will then pay the difference between the "actual cash value" and the replacement cost, provided that the repair or replacement is completed:

- (i) Within 12 months after we pay the "actual cash value"; or
- (ii) Within 36 months after we pay the "actual cash value" if the loss or damage relates to a state of emergency under California Law.

The following provision applies to real property which is used predominantly for residential purposes and consisting of not more than four dwelling units, and to coverage on tenants' household personal property in a residential unit:

If you, acting in good faith and with reasonable diligence, encounter a delay or delays in approval for, or reconstruction of, the residence that are beyond your control, we shall provide one or more additional extensions of six months for good cause. Circumstances beyond your control include, but are not limited to:

- i. Unavoidable construction permit delays;
- ii. The lack of necessary construction materials; or
- iii. The unavailability of contractors to perform the necessary work.

Nothing in this Paragraph (c) constitutes a waiver of our right to deny the claim for any valid reason or to restrict payment in cases of suspected fraud.

- (5) Tenants' Improvements and Betterments at:
  - (a) Replacement cost in accordance with the terms set forth in Paragraph E.5.e.(1)(d) above.
  - (b) A proportion of your original cost if the property is not repaired or replaced. We will determine the proportionate value as follows:
    - (i) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
    - (ii) Divide the amount determined in (i) above by the number of days from the installation of

improvements to the expiration of the lease.

If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.

- 4. Under Section G. **OPTIONAL COVERAGES**, 2. **Ordinance or Law Optional Coverages**, paragraph (c)(4)(b)(ii)ii. is replaced by the following:

- ii. Unless such repair or replacement is made within 36 months after our payment of the actual cash value of the property subject to the replacement cost coverage, if any, and if the loss or damage relates to a state of emergency under California Law; or 12 months after our payment for actual cash value in all other cases.

The following provision applies to real property which is used predominantly for residential purposes and consisting of not more than four dwelling units, and to coverage on tenants' household personal property in a residential unit:

If you, acting in good faith and with reasonable diligence, encounter a delay or delays in approval for, or reconstruction of, the residence that are beyond your control, we shall provide one or more additional extensions of six months for good cause. Circumstances beyond your control include, but are not limited to:

- (a) Unavoidable construction permit delays;
- (b) The lack of necessary construction materials; or
- (c) The unavailability of contractors to perform the necessary work.

- 5. With respect to an open policy, under Section H. **PROPERTY DEFINITIONS**, definition 2. "**Actual Cash Value**" is replaced by the following:
  - a. In the event of a total loss to a building or structure, "actual cash value" is calculated as the Limit of Insurance applicable to that building or structure or the fair market value of the building or structure, whichever is less.
  - b. In the event of a partial loss to a building or structure, "actual cash value" is calculated as b.(1) or b.(2), whichever is less:

- (1) The amount it would cost to repair, rebuild or replace the property less a fair and reasonable deduction for physical depreciation of the components of the building or structure that are normally subject to repair or replacement during its useful life. Physical depreciation is based upon the condition of the property at the time of loss; or
  - (2) The Limit of Insurance applicable to the property.
  - c. In the event of a partial or total loss to Covered Property other than a building or structure, "actual cash value" is calculated as c.(1) or c.(2), whichever is less:
    - (1) The amount it would cost to repair or replace the property less a fair and reasonable deduction for physical depreciation, based on the condition of the property at the time of loss; or
    - (2) The Limit of Insurance applicable to the property.
  - d. An open policy is a policy under which the value of Covered Property is not fixed at policy inception, but is determined at the time of loss in accordance with policy provisions on valuation.
6. Under Section E. Property Loss Conditions, loss condition 4. **Legal Action Against Us**, is replaced with the following:
- 4. Legal Action Against Us**
- No one may bring a legal action against us under this insurance unless:
- a. There has been full compliance with all of the terms of this insurance; and
  - b. The action is brought within 1 year after the date on which the direct physical loss or damage occurred or 2 years if the loss was related to a state of emergency.
4. Under Section A. **COVERAGES**, 5. **ADDITIONAL COVERAGES**, m. **Increased Cost Of Construction – Damaged Property**, paragraph (7)(a)(ii) is replaced by the following:
- (ii) Unless such repair or replacement is made within 36 months after our payment of the actual cash value of the property subject to the replacement cost coverage, if any, and if the loss or damage relates to a state of emergency

under California Law; or 12 months after our payment for actual cash value in all other cases.

The following provision applies to real property which is used predominantly for residential purposes and consisting of not more than four dwelling units, and to coverage on tenants' household personal property in a residential unit:

If you, acting in good faith and with reasonable diligence, encounter a delay or delays in approval for, or reconstruction of, the residence that are beyond your control, we shall provide one or more additional extensions of six months for good cause. Circumstances beyond your control include, but are not limited to:

- i. Unavoidable construction permit delays;
- i. The lack of necessary construction materials; or
- ii. The unavailability of contractors to perform the necessary work.

**D. AMENDMENTS TO THE LIABILITY COVERAGE FORM**

**1. ADDITIONAL LIABILITY EXCLUSION**

Under Section I. **COVERAGES**, the following exclusion is added to COVERAGES A and B:

This insurance, including any duty we have to defend "suits", does not apply to:

**Breach of Contract**

"Bodily injury", "property damage" or "personal and advertising injury" that arises out of or is a result of any breach of a written or oral contract, any breach of any other written or oral agreement, or any breach of an express or implied warranty.

**2. AMENDMENT TO THE AIRCRAFT, AUTO OR WATERCRAFT EXCLUSION**

Under Section I. **COVERAGES A.**

**COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, 2.

**EXCLUSIONS**, g. Aircraft, Auto Or Watercraft, paragraph (5) (a) is replaced by the following:

(5) "Bodily injury" or "property damage" arising out of:

- (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of

"mobile equipment" if it were not subject to a compulsory or financial responsibility law and other motor vehicle insurance and motor vehicle registration law where it is licensed or principally garaged; or

3. **AMENDED TERM - SPOUSE**

As used in the **LIABILITY COVERAGE FORM** and any endorsement thereto, the term spouse is replaced by the following:

Spouse or a registered domestic partner under California law.

4 Under Section V. **DEFINITIONS**, the "Auto" and "Mobile Equipment" definitions are replaced by the following:

"Auto" means:

- a. A land motor vehicle, "trailer" or semitrailer designed for use principally upon streets and highways; and
- b. Subject to the motor vehicle registration and financial responsibility laws of the state where it is registered or principally garaged.

HOWEVER, "Auto" does not include "mobile equipment".

"Mobile Equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - 1) Power cranes, shovels, loaders, diggers or drills; or
  - 2) Road construction or resurfacing equipment such as graders, scrapers or rollers.

- e. Vehicles not described in Paragraph a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - 1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - 2) Cherry pickers and similar devices used to raise or lower workers.
- f. Vehicles not described in Paragraph a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
  - 1) Equipment designed primarily for:
    - (a) Snow removal;
    - (b) Road maintenance, but not construction or resurfacing; or
    - (c) Street cleaning;
  - 2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
  - 3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well servicing equipment.

HOWEVER, "mobile equipment" does not include land vehicles that are designed for use principally upon streets and highways and subject to motor vehicle registration and financial responsibility laws of the state where they are registered or principally garaged.

**All terms and conditions of this policy apply unless modified by this endorsement.**



★★★★★★

**IMPORTANT INSURANCE INFORMATION**

★★★★★★

Please read this Notice carefully. No coverage is provided by this notice nor can it be construed to replace any provision of your policy. You should read your policy and review your declarations page for complete information on the coverages you are provided. If there is any conflict between the policy and this notice, the provisions of the policy shall prevail.

**CONSUMER COMPLAINTS AND INFORMATION**

Thank you for choosing Nationwide® to help you protect what's important to you. We value your business and want to ensure you have the current California service contact information if you need assistance.

**What you need to do**

Please keep this information with your insurance policy for reference.

**IF YOU SHOULD HAVE ANY QUESTIONS OR CONCERNS RELATED TO YOUR INSURANCE POLICY, YOU MAY CONTACT YOUR AGENT OR A COMPANY REPRESENTATIVE. THE CONTACT INFORMATION FOR YOUR AGENT IS LOCATED IN YOUR POLICY DOCUMENTS, AND THE CONTACT INFORMATION FOR A COMPANY REPRESENTATIVE FOLLOWS:**

**NATIONWIDE INSURANCE COMPANY  
ATTN: CUSTOMER RELATIONS DEPARTMENT  
ONE WEST NATIONWIDE BLVD  
COLUMBUS OH 43215 -2220  
TOLL FREE: 877-669-6877  
WEB: WWW.NATIONWIDE.COM**

**IF YOUR AGENT OR A COMPANY REPRESENTATIVE IS UNABLE TO RESOLVE YOUR CONCERN, YOU MAY ALSO CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE, CONSUMER SERVICES DIVISION AT:**

**CALIFORNIA DEPARTMENT OF INSURANCE  
CONSUMER SERVICES AND MARKET CONDUCT BRANCH  
CONSUMER SERVICES DIVISION  
300 SOUTH SPRING STREET, SOUTH TOWER  
LOS ANGELES, CA 90013  
1-800-927-HELP(4357)  
1-800-482-4833 (TDD)  
WEB: WWW.INSURANCE.CA.GOV**

**You can always count on us to be there**

We appreciate your business and look forward to continuing to serve you.

DECLARATIONS  
NEW ISSUE

COMMERCIAL UMBRELLA LIABILITY  
INSURANCE POLICY  
AMCO INSURANCE COMPANY  
1100 LOCUST ST DEPT 1100  
DES MOINES IA 503912000

Policy Number: **ACP CAA 7875782865**

ITEM 1

Named Insured: **CIANO REAL ESTATE, INC**

ITEM 2

Address: **781 MARKET AVE  
MORRO BAY CA 934422121**

Agent: **MACKEY & MACKEY INSURANCE**

Address: **HANFORD CA 93230 47 84 07624 0023**

PRODUCER: **MATTHEW JAMES CLEVENGER**

ITEM 3

Policy Period : From 12:01 A.M., **02/04/20** to 12:01 A.M., **01/16/21**

ITEM 4

Schedule of Underlying Insurance: See Endorsement No. UMB 00 01

ITEM 5

Retained Limit Aggregate: **NONE**

ITEM 6

Limits of Insurance: a) **\$4,000,000** Each Occurrence  
b) **\$4,000,000** Products - Completed Operations Aggregate  
c) **\$4,000,000** Other Aggregate

ITEM 7

Coverage  A - Excess Follow Form Liability Insurance  
 B - Umbrella Liability Insurance

ITEM 8

Premium : Amount  
**\$1,943.00**

ITEM 9

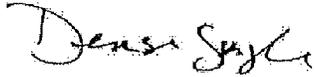
Endorsements: **UMB0001 0309 UMB0002 0413 10940 0789 UMB0039 0712 UMB0400 1298**  
**UMB0050 1102 UMB0052 0115 UMB0404 0413 UMB7010 0514 IN0001 0416**

Renewal or Replacement No.

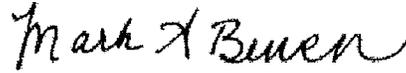
Countersigned By \_\_\_\_\_  
Authorized Representative

AMCO INSURANCE COMPANY

IN WITNESS WHEREOF the Company has caused this policy to be signed by its president and secretary and countersigned on the declarations page by a duly authorized representative of the company.



SECRETARY



PRESIDENT

AMCO INSURANCE COMPANY

COMMERCIAL UMBRELLA LIABILITY  
FORMS AND ENDORSEMENTS SUMMARY

Number: ACP CAA 7875782865

Period:  
From 02/04/20 To 01/16/21

FORM/ENDORSEMENT	DATE	TITLE
IN0001	0416	CONSUMER COMPLAINTS AND INFORMATION
UMB0001	0309	SCHEDULE OF UNDERLYING INSURANCE
UMB0002	0413	COMMERCIAL UMBRELLA LIABILITY POLICY
UMB0039	0712	EXCLUSION - SUBSIDENCE OF LAND - COVERAGE B
UMB0050	1102	DISCRIMINATION EXCLUSION - COVERAGE B
UMB0052	0115	CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM
UMB0400	1298	CALIFORNIA CHANGES - CANCELLATION AND NONRENEWAL
UMB0404	0413	CALIFORNIA DEFINITIONS - AUTO AND MOBILE EQUIPMENT - COVERAG
UMB7010	0514	EXCLUSION-ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL I
10940	0789	CA INSURANCE GUARANTEE ASSN

Policy Number: **ACP CAA 7875782865**  
 Policy Period: **02/04/20** to **01/16/21**

ITEM 4.

Schedule Of Underlying Insurance (as identified by the entry of a company name, policy number, policy period and limits):

Commercial General Liability or	Limits (\$)	
<b>X</b> Businessowners Liability	<b>2000000</b>	General Aggregate
<b>AMCO</b>	<b>2000000</b>	Products-Completed Operations Aggregate
Policy Number: <b>ACP BPO 7875782865</b>	<b>1000000</b>	Personal and Advertising Injury
Policy Period: <b>01/16/20</b> to <b>01/16/21</b>	<b>1000000</b>	Each Occurrence

Commercial Auto Liability	Limits (\$)	
		Each Accident
Policy Number:		
Policy Period:	to	

Employer's Liability or	Limits (\$)	
Stop Gap Liability		
Policy Number:		Bodily Injury by Accident - Each Accident
Policy Period:	to	Bodily Injury by Disease – Each Employee
		Bodily Injury by Disease – Policy Limit

	Limits (\$)	
Policy Number:		
Policy Period:	to	

	Limits (\$)	
Policy Number:		
Policy Period:	to	

	Limits (\$)	
Policy Number:		
Policy Period:	to	

	Limits (\$)	
Policy Number:		
Policy Period:	to	

IMPORTANT NOTICE: RESTRICTIONS, LIMITATIONS AND EXCLUSIONS TO THE ABOVE SCHEDULED UNDERLYING INSURANCE (OR ANY REPLACEMENTS THEREOF) WILL ACT AS RESTRICTIONS, LIMITATIONS AND EXCLUSIONS TO COVERAGE A OF THIS POLICY.

**QUICK REFERENCE**  
**COMMERCIAL UMBRELLA LIABILITY POLICY**

READ YOUR POLICY CAREFULLY

	Page Number
DECLARATIONS PAGE	
Named Insured Mailing Address	
Policy Period	
Coverages and Limits of Insurance	
Endorsements	
INSURING AGREEMENTS	2
DEFENSE AND SUPPLEMENTARY PAYMENTS	3
LIMITS OF INSURANCE	4
EXCLUSIONS	5
DEFINITIONS	12
CONDITIONS	16
NUCLEAR ENERGY LIABILITY EXCLUSION	19
ENDORSEMENTS – FOLLOWING THE LAST PAGE OF YOUR POLICY	

## COMMERCIAL UMBRELLA LIABILITY POLICY

Various provisions in this policy restrict coverage. Please read the entire policy and any "underlying insurance" carefully to determine rights, duties and what is covered and not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us", and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks are defined in this policy. These definitions are found in the Definitions section or the specific policy provision where they appear.

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### INSURING AGREEMENTS

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#### A. Coverage A - Excess Follow Form Liability Insurance

1. Under Coverage A, we will pay on behalf of the "insured" that part of "loss" covered by this insurance in excess of the total applicable limits of "underlying insurance", provided the injury or offense takes place during the Policy Period of this policy. The terms and conditions of "underlying insurance" are, with respect to Coverage A, made a part of this policy except with respect to:
  - a. any contrary provision contained in this policy; or
  - b. any provision in this policy for which a similar provision is not contained in "underlying insurance".
2. With respect to the exceptions stated above, the provisions of this policy will apply.
3. The amount we will pay for damages is limited as described in Limits of Insurance.
4. Notwithstanding anything to the contrary contained above, if "underlying insurance" does not cover "loss" for reasons other than exhaustion of an aggregate limit of insurance by payment of claims, then we will not cover such "loss".
5. We have no obligation under this insurance with respect to any claim or "suit" settled without our consent.

6. If we are prevented by law from paying on behalf of the "insured" for coverage provided under this insurance, then we will indemnify the "insured".
7. With respect to any coverage provided by "underlying insurance" that is on a claims-made basis:
  - a. this insurance does not apply to "injury or damage" which occurred before the Retroactive Date, if any, shown in the "underlying insurance", or which occurs after the policy period; and
  - b. the aggregate limit shall not be reinstated on this insurance except by endorsement thereon.

#### B. Coverage B - Umbrella Liability Insurance

1. Under Coverage B, we will pay on behalf of the "insured" damages the "insured" becomes legally obligated to pay by reason of liability imposed by law because of "bodily injury", "property damage", or "personal and advertising injury" covered by this insurance which takes place during the Policy Period and is caused by an "occurrence". We will pay such damages in excess of the Retained Limit Aggregate specified in the Declarations or the amount payable by "other insurance", whichever is greater.
2. Damages because of "bodily injury" include damages claimed by any person or organization for care or loss of services resulting at any time from "bodily injury".
3. This coverage applies anywhere.
4. The amount we will pay is limited as described in Limits of Insurance.
5. Coverage B will not apply to any loss, claim or "suit" for which insurance is afforded under "underlying insurance" or would have been afforded except for the exhaustion of the limits of insurance of "underlying insurance".
6. We have no obligation under this insurance with respect to any claim or "suit" settled without our consent.
7. If we are prevented by law from paying on behalf of the "insured" for coverage provided under this insurance, then we will indemnify the "insured".

8. This insurance applies to "bodily injury" and "property damage" only if:
  - a. The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
  - b. The "bodily injury" or "property damage" occurs during the "policy period"; and
  - c. Prior to the "policy period", no "insured" and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed "insured" or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the "policy period" will be deemed to have been known prior to the "policy period".
9. "Bodily injury" or "property damage" which occurs during the "policy period" and was not, prior to the "policy period", known to have occurred by any "insured" or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the "policy period".
10. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any "insured" or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
  - a. Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
  - b. Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
  - c. Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
11. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the "policy period".

control of the investigation, settlement or defense of any claim or "suit" against the "insured" for damages covered by this policy:

1. under Coverage A, when the applicable limit of "underlying insurance" has been exhausted by payment of claims; or
  2. under Coverage B, when damages are sought for "bodily injury", "property damage", or "personal and advertising injury" to which no "underlying insurance" or "other insurance" applies.
- B. In those circumstances where paragraph A. above applies, in addition to the applicable Limits of Insurance we will pay our expenses and the following to the extent that they are not included in "underlying insurance":
1. Up to \$3,000 for the cost of bail bonds. We do not have to furnish these bonds.
  2. The cost of bonds to release attachments, but only for bond amounts within the amount of insurance available. We do not have to furnish these bonds.
  3. All reasonable expenses incurred by the "insured" at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
  4. All court costs taxed against the "insured" in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the "insured";
  5. Pre-judgment interest awarded against the "insured" on that part of the judgment we become obligated to pay. However, if we make an offer to pay the applicable Limit of Insurance, we will not pay any pre-judgment interest based on that period of time after the offer.
  6. All interest awarded against the "insured" on that amount of any judgment that is within the applicable Limits of Insurance that we become obligated to pay that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court that part of the judgment we are obligated to pay.

These Payments will not reduce the limits of insurance.

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**DEFENSE AND SUPPLEMENTARY PAYMENTS**

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**Applicable to Coverage A and Coverage B**

A. We have the right and the duty to assume

C. In those circumstances where paragraph A. above does not apply we do not have the duty to assume control of the investigation, settlement or defense of any claim or "suit" against the insured. We do, however, have the right to participate in the investigation, settlement or defense of any claim or "suit" that we feel may create liability on our part under the terms of this policy. If we exercise this right, we will do so at our expense.

We will not defend any "suit" after we have exhausted the applicable Limit of Insurance as stated in the Declarations.

If we are prevented by law or otherwise from carrying out the provisions of this section, DEFENSE AND SUPPLEMENTARY PAYMENTS, we will pay any expense incurred with our consent.

**LIMITS OF INSURANCE**

**A. Applicable to Coverage A and Coverage B**

- 1. With respect to Coverage A and Coverage B, the Limits of Insurance shown in the Declarations and the rules below determine the most we will pay, regardless of the number of:
  - a. "insureds";
  - b. claims made or "suits" brought against any or all "insureds";
  - c. coverages provided under this policy; or
  - d. persons or organizations making claims or bringing "suits".
- 2. The Limits of Insurance of this policy will apply as follows:
  - a. The limit for Each Occurrence stated in the Declarations is the most we will pay for all damages arising out of any one "occurrence" even if such damages are covered, in whole or in part, under both Coverage A and Coverage B.

Any amount paid for damages arising out of an "occurrence" will reduce the amount of the applicable aggregate limit of insurance available for payment of damages arising out of any other "occurrence".

If the applicable aggregate limit of insurance has been reduced by payment of damages to an amount that is less than the limit of Each Occurrence stated in the Declarations, the remaining aggregate limit of insurance is the most that will be available for payment of damages arising out of any other "occurrence".

b. Subject to paragraph 2.a. above, the limit stated in the Declarations for the Products-Completed Operations Aggregate is the most we will pay for all damages under the "products-completed operations hazard".

c. Subject to paragraph 2.a. above, the limit stated in the Declarations for the Other Aggregate is the most we will pay for all damages under Coverage A, or separately under Coverage B, except for:

- 1) damage covered under the "products-completed operations hazard" or,
- 2) damage covered under "underlying insurance" to which no underlying aggregate limit applies.

3. The Limits of Insurance of this policy apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the Policy Period shown in the Declarations, unless the Policy Period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the preceding period for purposes of determining the Limits of Insurance.

**B. Applicable to Coverage A Only**

- 1. With respect to Coverage A and subject to paragraphs 2.a., 2.b. and 2.c. above:
  - a. if the limits of "underlying insurance" have been reduced by payment of "loss", this policy will immediately apply excess of the reduced underlying limit; or
  - b. if the limits of "underlying insurance" have been exhausted by payment of loss, this policy will continue in force as "underlying insurance".
- 2. The provisions of 1.a. and 1.b. above apply to injury or offense which takes place before the expiration of this policy or the underlying policy, whichever comes first.

**EXCLUSIONS**

**A. Applicable to Coverage A and Coverage B**

Under Coverage A and Coverage B, this insurance does not apply to:

1. **Workers' Compensation And Similar Laws**  
Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.
2. **E. R. I. S. A.**  
Any obligation of the insured under the Employees' Retirement Income Security Act of 1974 (E. R. I. S. A.), and any amendments thereto or any similar federal, state or local statute.
3. **Auto Coverages**  
Any loss, cost or expense payable under or resulting from any first-party physical damage coverage; no-fault law; personal injury protection or auto medical payments coverage; or uninsured or underinsured motorist law.
4. **Abuse or Molestation**  
"Injury or damage", "bodily injury", "property damage" or "personal and advertising injury" arising out of:
  - a. The actual or threatened abuse or molestation by anyone of any person while in the care, custody or control of any insured, or
  - b. The negligent:
    - 1) Employment;
    - 2) Investigation;
    - 3) Supervision;
    - 4) Reporting to the proper authorities, or failure to so report; or
    - 5) Retention;
 of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by Paragraph a. above.
5. **Cross Suits**  
"Injury or damage", "bodily injury", "property damage" or "personal and advertising injury" sustained by any Named insured shown in the Declarations arising out of the activities or operations of any other Named Insured shown in the Declarations.

6. **Damage To "Your Product"**  
"Injury or damage" or "property damage" to "your product" arising out of it or any part of it.
7. **Damage To "Your Work"**  
"Injury or damage" or "property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".  
This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.
8. **Employment-related Practices**  
"Injury or damage", "bodily injury" or "personal and advertising injury" to:
  - a. A person arising out of any:
    - 1) Refusal to employ that person;
    - 2) Termination of that person's employment; or
    - 3) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
  - b. The spouse, child, parent, brother or sister of that person as a consequence of "injury or damage", "bodily injury" or "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraph 1), 2) or 3) above is directed.  
This exclusion applies whether the injury-causing event described in Paragraph 1), 2) or 3) above occurs before employment, during employment or after employment of that person.  
This exclusion applies whether the insured may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the injury.
9. **Fungi Or Bacteria**
  - a. "Injury or damage", "bodily injury", "property damage" or "personal and advertising injury" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents,

regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such "injury or damage", "bodily injury", "property damage", or "personal and advertising injury".

- b. Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

**10. Punitive Damages**

Any punitive or exemplary damages, fines or penalties.

**11. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**12. Silica Or Silica-Related Dust**

- a. "Injury or damage", "bodily injury", "property damage" or "personal and advertising injury" arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, "silica" or "silica-related dust".

- b. Any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "silica" or "silica-related dust", by any insured or by any other person or entity.

**13. Asbestos, Electronic Emissions, Lead or Radon**

"Injury or damage", "bodily injury", "property damage" or "personal and advertising injury" arising out of:

- a. Asbestos including but not limited to any injury or damage related to, arising or alleged to have arisen out of any use, exposure, existence, detection, removal, elimination, avoidance, act, error, omission, failure to disclose or warn of the presence of asbestos or any other duty involving asbestos;
- b. Electromagnetic emissions or radiation including but not limited to any injury or damage related to, arising or alleged to have arisen out of any use, exposure, existence, detection, removal, elimination, avoidance, act, error, omission, failure to disclose or warn of the presence of electromagnetic emissions or radiation or any other duty involving electromagnetic emissions or radiation;
- c. Lead including but not limited to any injury or damage related to, arising or alleged to have arisen out of any use, exposure, existence, detection, removal, elimination, avoidance, act, error, omission, failure to disclose or warn of the presence of lead or any other duty involving lead; or
- d. Radon or any other radioactive emissions, manmade or natural, including but not limited to any injury or damage related to, arising or alleged to have arisen out of any use, exposure, existence, detection, removal, elimination, avoidance, act, error, omission, failure to disclose or warn of the presence of radon or any other radioactive emissions or any other duty involving radon or other radioactive emissions.

**B. Applicable to Coverage A Only**

The exclusions applicable to the "underlying insurance" also apply to this insurance. Additionally, this insurance does not apply to:

- 1. Damage To Property  
"Injury or damage" to:
  - a. Property:

- 1) You own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property; or
- 2) Owned or transported by the insured and arising out of the ownership, maintenance or use of a "covered auto".
- b. Premises you sell, give away or abandon, if the "injury or damage" arises out of any part of those premises;
- c. Property loaned to you;
- d. Personal property in the care, custody or control of the insured;
- e. That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "injury or damage" arises out of those operations; or
- f. That particular part of any property that must be restored, repaired or replaced because your work (as defined in the "underlying insurance") was incorrectly performed on it.

Paragraph **b.** of this exclusion does not apply if the premises are your work (as defined in the "underlying insurance") and were never occupied, rented or held for rental by you.

Paragraphs **a.2), c., d., e.** and **f.** of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs **c.** and **d.** of this exclusion do not apply to liability assumed under a written Trailer Interchange agreement.

Paragraph **f.** of this exclusion does not apply to "injury or damage" included in the "products-completed operations hazard".

**2. Auto Pollution**

"Injury or damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. That are, or that are contained in any property that is:

- 1) Being transported or towed by, handled or handled for movement into, onto or from the "covered auto";
- 2) Otherwise in the course of transit by or on behalf of the "insured"; or
- 3) Being stored, disposed of, treated or processed in or upon the "covered auto";
- b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the "covered auto"; or
- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the "covered auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph **a.** above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the "covered auto" or its parts, if:

- 1) The "pollutants" escape, seep, migrate or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- 2) The "injury or damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraphs **10.b.** and **10.c.** of the definition of "mobile equipment".

Paragraphs **b.** and **c.** above of this exclusion do not apply to "occurrences" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a "covered auto" if:

- 1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a "covered auto"; and
- 2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

**3. Other Than Auto Pollution**

- a. "Injury or damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
  - 1) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
    - a) "Injury or damage" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
    - b) "Injury or damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
    - c) "Injury or damage" arising out of heat, smoke or fumes from a "hostile fire";
  - 2) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - 3) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
    - a) Any insured; or
    - b) Any person or organization for whom you may be legally responsible; or
  - 4) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any

insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

- a) "Injury or damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "injury or damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
  - b) "Injury or damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
  - c) "Injury or damage" arising out of heat, smoke or fumes from a "hostile fire".
- 5) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

b. Any loss, cost or expense arising out of any:

- 1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- 2) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "injury or damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

**C. Applicable to Coverage B Only**

Under Coverage B, this insurance does not apply to:

1. Expected Or Intended Injury  
"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.
2. Contractual Liability  
"Bodily injury", "property damage" or "personal and advertising injury" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.  
This exclusion does not apply to liability for damages that the "insured" would have in the absence of the contract or agreement.
3. Liquor Liability  
"Bodily injury" or "property damage" for which any insured may be held liable by reason of:
  - a. Causing or contributing to the intoxication of any person;
  - b. The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

c. Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any "insured" allege negligence or other wrongdoing in:

- 1) The supervision, hiring, employment, training or monitoring of others by that "insured"; or
- 2) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage" involved that which is described in paragraph a., b., or c.

**4. Auto Coverages**

"Bodily injury" or "property damage" arising out of the ownership, maintenance or use of any "auto" within the United States of America, including its possessions and territories; Puerto Rico; and Canada, or while "autos" are being transported between these places.

**5. Employer's Liability**

"Bodily injury" to:

- a. An "employee" of the insured arising out of and in the course of:
  - 1) Employment by the insured; or
  - 2) Performing duties related to the conduct of the insured's business; or
- b. The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph a. above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

**6. Aircraft Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property

damage" involved the ownership, maintenance, use or entrustment to others of any aircraft or watercraft that is owned or operated by or rented or loaned to any "insured".

**7. Racing Activities**

"Bodily injury" or "property damage" arising out of the use of "mobile equipment" or "autos" in, or while in practice for, or while being prepared for, any prearranged professional or organized racing, speed, demolition, or stunting activity or contest.

**8. War**

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**9. Damage To Property**

"Property damage" to:

- a. Property:
  - 1) You own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property; or
  - 2) Owned or transported by the insured and arising out of the ownership, maintenance or use of a "covered auto".
- b. Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- c. Property loaned to you;
- d. Personal property in the care, custody or control of the insured;
- e. That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing

operations, if the "property damage" arises out of those operations; or

- f. That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

**10. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- a. A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- b. A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**11. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- a. "Your product";
- b. "Your work"; or
- c. "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**12. Professional Services**

"Bodily injury", "property damage" and "personal and advertising injury" due to the rendering of or failure to render any professional service. This includes but is not limited to:

- a. Legal, accounting or advertising services;
- b. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings or specifications;

- c. Inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which you serve as construction manager;
- d. Engineering services, including related supervisory or inspection services;
- e. Medical, surgical, dental, X-ray or nursing services treatment, advice or instruction;
- f. Any health or therapeutic service treatment, advice or instruction;
- g. Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming or therapy;
- h. Any service, treatment, advice or instruction relating to physical fitness, including service, treatment, advice or instruction in connection with diet, cardio-vascular fitness, body-building or physical training programs;
- i. Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
- j. Body piercing or tattooing services;
- k. Services in the practice of pharmacy;
- l. Law enforcement or firefighting services; and
- m. Handling, embalming, disposal, burial, cremation or disinterment of dead bodies.

This exclusion applies even if the claims against any "insured" allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that "insured", if the "occurrence" which caused the "bodily injury", "property damage" or "personal and advertising injury" involved the rendering of or failure to render any professional service,

**13. Recording And Distribution Of Material Or Information In Violation Of Law**

"Bodily injury", "property damage" or "personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;

- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- c. The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or
- d. Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

**14. "Personal and Advertising Injury"**

- a. **Knowing Violation Of Rights Of Another**  
Caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".
- b. **Material Published With Knowledge Of Falsity**  
Arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.
- c. **Material Published Prior To Policy Period**  
Arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period.
- d. **Criminal Acts**  
Arising out of a criminal act committed by or at the direction of the insured.
- e. **Breach Of Contract**  
Arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".
- f. **Quality Or Performance Of Goods – Failure To Conform To Statements**  
Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".
- g. **Wrong Description Of Prices**  
Arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

**h. Infringement Of Copyright, Patent, Trademark, Trade Secret Or Trade Name**

Arising out of the infringement of copyright, patent, trademark, trade secret, trade name, or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement". However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

**i. Insureds In Media And Internet Type Businesses**

Committed by an insured whose business is:

- 1) Advertising, broadcasting, publishing or telecasting;
- 2) Designing or determining content of websites for others; or
- 3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **13.a.**, **b.** and **c.** of "personal and advertising injury" under the **DEFINITIONS** section, **C. Applicable to Coverage B Only.**

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

**j. Electronic Chatrooms Or Bulletin Boards**  
Arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

**k. Unauthorized Use Of Another's Name Or Product**

Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

**15. Pollution**

**a. Bodily injury", "property damage" or "personal and advertising injury" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time; or**

**b. Any loss, cost or expense arising out of any:**

- 1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- 2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

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**DEFINITIONS**

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**A. Applicable to Coverage A and Coverage B**

As used in Coverage A and Coverage B:

- 1. "Auto" means:
  - a. a Land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment; or
  - b. any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".
- 2. "Covered auto" means only those "autos" to which "underlying insurance" applies.
- 3. "Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.
- 4. "Loss" means those sums actually paid in the settlement or satisfaction of a claim which the "insured" is legally obligated to pay as damages because of injury or offense, after making proper deductions for all recoveries and salvage.
- 5. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
  - a. bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

- b. vehicles maintained for use solely on or next to premises you own or rent;
- c. vehicles that travel on crawler treads;
- d. vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - 1) power cranes, shovels, loaders, diggers or drills; or
  - 2) road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - 1) air compressors, pumps and generators including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - 2) cherry pickers and similar devices used to raise or lower workers;
- f. vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- 1) equipment designed primarily for:
  - a) snow removal;
  - b) road maintenance, but not construction or resurfacing; or
  - c) street cleaning;
- 2) cherry pickers, and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- 3) air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

6. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

7. "Other insurance" means a policy of insurance affording coverage that this policy also affords. "Other insurance" includes any type of self-insurance or other mechanism by which an "insured" arranges for funding of legal liabilities.

"Other insurance" does not include "underlying insurance" or a policy of insurance specifically purchased to be excess of this policy affording coverage that this policy also affords.

8. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

9. "Products-completed operations hazard" means all "injury or damage", "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- a. products that are still in your physical possession; or
- b. work that has not yet been completed or abandoned. "Your work" will be deemed completed at the earliest of the following times:

- 1) when all of the work called for in your contract has been completed;
- 2) when all the work to be one at the site has been completed if your contract calls for work at more than one site; or
- 3) when that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

This hazard does not include "injury or damage", "bodily injury" or "property damage" arising out of:

- 1) the transportation of property, unless the "injury or damage" "bodily injury" or "property damage", arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by loading or unloading of that vehicle by any insured; or
  - 2) the existence of tools, uninstalled equipment or abandoned or unused materials
10. "Silica" means silicon dioxide (occurring in crystalline, amorphous and impure forms), silica particles, silica dust or silica compounds.
11. "Silica-related dust" means a mixture or combination of silica and other dust or particles.
12. "Suit" means a civil proceeding in which injuries or damages to which this insurance applies are alleged. "Suit" includes:
- a. an arbitration proceeding in which such damages are claimed and to which you must submit or do submit with our consent; or
  - b. any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.
13. "Underlying insurance" means the policy or policies of insurance listed in the Schedule of Underlying Insurance forming a part of this policy, including any type of self-insurance or alternative method by which the "insured" arranges for funding of legal liabilities that affords coverage that this policy covers.
- "Underlying insurance" does not include any Extended Reporting Periods on the policies shown in the Declarations. Extended Reporting Periods must be endorsed onto this policy by us.
14. "Underlying insurer" means any insurer who provides any policy of insurance listed in the Schedule of Underlying Insurance.
15. "Your product" means:
- a. any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
    - 1) you;
    - 2) others trading under your name; or
    - 3) a person or organization whose business or assets you have acquired; and

- b. containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

"Your product" includes:

- a. warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- b. the providing of or failure to provide warnings or instructions.

"Your product" does not include vending machines or other property rented to or located for use of others but not sold.

16. "Your work" means:

- a. work or operations performed by you or on your behalf; and
- b. materials, parts or equipment furnished in connection with such work or operations.

"Your work" includes:

- a. warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- b. the providing of or failure to provide warnings or instruction.

**B. Applicable to Coverage A Only**

As used in Coverage A:

- 1. "Injury or damage" means any injury or damage covered in the applicable "underlying insurance" arising from an "occurrence".
- 2. "Insured" means:
  - a. the Named Insured stated in the Declarations;
  - b. any person or organization, other than an additional insured, included as an "insured" in "underlying insurance"; and
  - c. any additional insured under any policy of "underlying insurance" will automatically be an "insured" under this insurance.

Subject to the LIMITS OF INSURANCE section, if coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is:

- 1) the minimum amount of insurance required by the contract or agreement, less any amounts payable by any "underlying insurance"; or
- 2) the amount of insurance available under the applicable Limits of Insurance shown in the Declarations:  
whichever is less.
- 3. "Covered auto" means only those "autos" to which "underlying insurance" applies.
- 4. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

**C. Applicable to Coverage B Only**

As used in Coverage B:

- 1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters.
- 2. "Bodily injury" means physical injury, sickness or disease to a person and, if arising out of the foregoing, mental anguish, mental injury, shock or humiliation, including death at any time resulting therefrom.
- 3. "Coverage territory" means anywhere in the world with the exception of any country or jurisdiction which is subject to trade or other economic sanctions or embargo by the United States of America.
- 4. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- 5. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by laws or any other similar governing document.
- 6. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
  - a. it incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. you have failed to fulfill the terms of a contract or agreement;
 if such property can be restored to use by:
  - a. the repair, replacement, adjustment or removal of "your product" or "your work";
  - b. your fulfilling the terms of the contract or agreement.

7. "Insured" means:

- a. If you are designated in the Declarations as:
  - 1) An individual, you and your spouse, but only with respect to the conduct of a business of which you are the sole owner.
  - 2) A partnership or joint venture, your members, partners and their spouses are also "insureds", but only with respect to the conduct of your business.
  - 3) A limited liability company, any member, but only with respect to the conduct of your business. Your managers are "insureds" but only with respect to their duties as your managers.
  - 4) An organization other than a partnership, joint venture or limited liability company, your "executive officers" and directors, but only with respect to their duties as your officers or directors. Your stockholders are also "insureds", but only with respect to their liability as stockholders.
- b. Any organization over which the Named Insured maintains majority interest and to which more specific insurance does not apply, other than one which you newly acquire or form;
- c. Any newly acquired or formed organization over which the Named Insured maintains majority interest and to which more specific insurance does not apply; provided that this policy does not apply to any injury or damage that took place before you acquired or formed the organization;
- d. Your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" are insureds for "bodily injury" or "personal and advertising injury":

- 1) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" in the course of his or her employment or performing duties related to the conduct of your business;
  - 2) To the spouse, child, parent, brother or sister of that co-"employee" as a consequence of Paragraph 1) above; or
  - 3) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph 1) or 2) above.
- e. any person or organization while acting as your real estate manager; or
  - f. your legal representative if you die, but only with respect to duties as such.

No person or organization is an "insured" with respect to the conduct of any current, past or newly formed partnership or joint venture that is not designated within the Declarations of this policy as Named Insured.

- 8. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does include a "temporary worker".
- 9. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses committed in the course of your business:
  - a. false arrest, detention or imprisonment;
  - b. malicious prosecution;
  - c. the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  - d. oral or written publication of material that slanders or libels a person or organization or disparages a person's or organizations goods, products or services;

- e. oral or written publication of material that violates a person's right of privacy;
- f. discrimination, unless insurance coverage therefore is prohibited by law or statute;
- g. the use of another's advertising idea in your "advertisement"; or
- h. infringing upon another's copyright, trade dress or slogan in your "advertisement".

10. "Property damage" means:

- a. physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. loss of use of tangible property that is not physically injured. All such loss shall be deemed to occur at the time of the "occurrence" that caused it.

11. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

12. "Tort liability" means a liability that would be imposed by law in the absence of any contract or agreement.

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**CONDITIONS**

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**Applicable to Coverage A and Coverage B**

The following Conditions are applicable to both Coverage A and Coverage B.

1. Appeals

At our option we can initiate or participate in an appeal of a judgment against any "insured" if the judgment is for more than the amount of the Retained Limit Aggregate stated in the Declarations or the Limits of Insurance of "underlying insurance". If we initiate or participate in an appeal, we will pay our costs of the appeal. These payments will be in addition to the Limits of Insurance of this policy.

2. Audit of Books and Records

We may audit the "insured's" books and records at any time during the term of this insurance or within three years after expiration or termination.

3. Bankruptcy or Insolvency

a. Bankruptcy or Insolvency of Insured

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of our obligations under this policy.

- b. Bankruptcy or Insolvency of Underlying Insurer  
 Bankruptcy or insolvency of the "underlying insurer" will not relieve us of our obligations under this policy.  
 However, this insurance will not replace the "underlying insurance" in the event of bankruptcy or insolvency of the "underlying insurer". This insurance will apply as if the "underlying insurance" were in full effect.
- 4. Cancellation
  - a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
  - b. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
    - 1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
    - 2) 30 days before the effective date of cancellation if we cancel for any other reason.
  - c. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
  - d. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
  - e. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
  - f. If notice is mailed, proof of mailing will be sufficient proof of notice.
- 5. Changes  
 Notice to any agent or knowledge possessed by any agent or by any other person will not effect a waiver or change in any part of this policy. This policy can only be changed by a written endorsement that becomes part of this policy.
- 6. Duties in the Event of "Occurrence", Claim or "Suit"
  - a. You must see to it that we and your "underlying insurers":

- 1) are notified as soon as possible of any "occurrence" which may result in a claim if the claim may involve this policy or any "underlying insurance";
- 2) receive notice of the claim or "suit" as soon as possible;
- 3) are helped, at our request, to enforce any right against any person or organization which may be liable to the "insured" because of injury or damage to which this insurance applies; and
- 4) receive the "insured's" full cooperation as stated in this policy or in any "underlying insurance".
- b. Additionally, it is a requirement of this policy that:
  - 1) the "insured" not make any admission of liability; and
  - 2) the "insured" not, unless we agree, incur any expense or make any payment other than for first aid. Any such unauthorized expenses will be the "insured's" own cost.
- 7. First Named Insured  
 The person or organization first named in the Declarations is primarily responsible for the payment of all premiums. The first Named Insured will act on behalf of all other "insureds" for the giving and receiving of notice of cancellation and the receiving of any return premiums that become payable under this policy.
- 8. Inspections and Surveys
  - a. We have the right but are not obligated to:
    - 1) make inspections and surveys at anytime;
    - 2) give you reports on the conditions we find; and
    - 3) recommend changes.
  - b. Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

- 1) are safe or healthful; or
  - 2) comply with laws, regulations, codes or standards.
  - c. This condition applies not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
9. Maintenance of Underlying Insurance
- a. While this policy is in effect you agree to maintain "underlying insurance" in full force. This means that:
    - 1) "underlying insurance" may not be cancelled or non-renewed by either you or the insurance company without notifying us;
    - 2) renewals or replacements of "underlying insurance" will not be more restrictive in coverage;
    - 3) terms, conditions and endorsements of "underlying insurance" will not materially change;
    - 4) collectability of "underlying insurance" limits as listed in the Schedule of Underlying Insurance, or replacements thereof, must be available regardless of the bankruptcy or insolvency of the "underlying insurers"; and
    - 5) limits of "underlying insurance" will not change except for any reduction in the aggregate limits of insurance by payment of loss.
  - b. Your failure and/or your "underlying insurer's" failure to comply with this condition will not invalidate this policy, but in the event of such failure we will only be liable to the same extent as if there had been compliance with this condition.

10. "Other Insurance"

If "other insurance" applies to claims covered by this policy, the insurance under this policy is excess and we will not make any payments until the "other insurance" has been exhausted by payment of claims. This insurance is not subject to the terms or conditions of any "other insurance".

10. "Other Insurance"

If "other insurance" applies to claims covered by this policy, the insurance under this policy is excess and we will not make any payments until the "other insurance" has been exhausted by payment of claims. This insurance is not subject to the terms or conditions of any "other insurance".

11. Other Umbrella Liability Policies

If this policy and any other umbrella liability policy issued to you by us or any affiliated Company apply to the same "occurrence", the total maximum amount payable under all policies shall not exceed the highest applicable limit of liability under any one policy.

12. Policy Period

- a. If the "underlying insurance" applies on a claims-made basis, this insurance will respond to injury or damage only if a claim for damages is first received and recorded, in the manner prescribed by the "underlying insurance", during the policy period of this insurance shown in the Declarations, including any Extended Reporting Period applicable to this insurance, regardless of any Extended Reporting Period applicable to "underlying insurance".
- b. If the "underlying insurance" does not apply on a claims-made basis, this insurance will respond to injury or damage that occurs or arises from an offense committed during the policy period of this insurance shown in the Declarations.

13. Premium

The premium for this policy as stated in of the Declarations is a flat premium. It is not subject to adjustment unless an endorsement is attached to this policy.

14. Representations or Fraud

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us;
- c. We issued this policy in reliance upon your representations; and
- d. This policy is void in any case of fraud by you as it relates to this policy or any claim under this policy.

**15. Separation of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned to the first Named Insured, this insurance applies:

- a. as if each Named Insured were the only Named Insured; and
- b. separately to each "insured" against whom claim is made or "suit" is brought.

**16. Transfer of Rights and Duties**

Your rights and duties under this insurance may not be transferred without our written consent. If you die, then your rights and duties will be transferred to your legal representative, but only while acting within the scope of duties as your legal representative. Until your legal representative is apportioned, anyone having temporary custody of your property will have your rights and duties, but only with respect to that property.

**17. Transfer of Rights of Recovery**

- a. If the "insured" has rights to recover all or part of any payment we have made under this insurance, those rights are transferred to us. The "insured" must do nothing after loss to impair them. At our request, the "insured" will bring "suit" or transfer those rights to us and help us enforce them.
- b. Any amount recovered will be apportioned in the inverse order of payment of loss to the extent of actual payment. The expenses of all such recovery proceedings will be apportioned in the ratio of respective recoveries.

**18. When Loss is Payable**

This policy will not apply until the "insured", or the "insured's" "underlying insurer", is obligated to pay the full amount of the underlying limit or Retained Limit Aggregate. When the amount of "loss" has finally been determined, we will promptly pay on behalf of the "insured" the amount of "loss" which falls within the terms of this policy. The first Named Insured will promptly reimburse us for any amount within the Retained Limit Aggregate paid by us.

**1. Under any Liability Coverage, to "bodily injury" or "property damage":**

- a. With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- b. Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

**2. Under any Medical Payments Coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.**

**3. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:**

- a. The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (b) has been discharged or dispersed therefrom;
- b. The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or

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**NUCLEAR ENERGY LIABILITY EXCLUSION**

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- A. The insurance does not apply:

c. The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this Exclusion c. applies only to "property damage" to such "nuclear facility" and any property thereat.

**B.** As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties;

"Nuclear material" means "source material", "Special nuclear material" or "by-product material";

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor";

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed

primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- (a) Any "nuclear reactor";
- (b) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", or (3) handling, processing or packaging "waste";
- (c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"Property damage" includes all forms of radioactive contamination of property.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION – SUBSIDENCE OF LAND – COVERAGE B**

This endorsement modifies insurance provided under the following:

### COMMERCIAL UMBRELLA LIABILITY POLICY

- A. Under EXCLUSIONS, C. Applicable to Coverage B Only**, the following exclusion is added:  
Under Coverage B, this insurance does not apply to:  
"Subsidence" of Land  
"Property damage" included within the "products-completed operations hazard" arising out of the "subsidence" of land.
- B. Under DEFINITIONS, C. Applicable to Coverage B Only**, the following definition is added:  
"Subsidence" means earth movement, resulting from:  
**a.** Any natural event; or  
**b.** Any artificial cause, specifically including "your work" or the work of any other person or organization.  
Earth movement includes, but is not limited to, landslide, mud flow, erosion, contraction, settling, sinking, rising or shifting.

**All terms and conditions of this policy apply unless modified by this endorsement.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ENDORSEMENT - DISCRIMINATION EXCLUSION - COVERAGE B**

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

Under **EXCLUSIONS, Applicable to Coverage B Only**, the following exclusion is added:

Discrimination

It is agreed that, with respect to Coverage B, all references in the policy to discrimination are deleted and no coverage is provided.

All other terms and conditions remain unchanged.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM**

This endorsement modifies insurance provided under the following:

### COMMERCIAL UMBRELLA LIABILITY POLICY

- A.** If aggregate insured losses attributable to terrorist acts certified under the federal Terrorism Risk Insurance Act exceed \$100 billion in a Calendar Year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.
- "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" included in the following:
1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
  2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
- B.** The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for injury or damage that is otherwise excluded under the Policy.

**All terms and conditions of this policy apply unless modified by this endorsement.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**CALIFORNIA CHANGES - CANCELLATION AND NONRENEWAL**

This endorsement modifies insurance provided under the following:

**COMMERCIAL UMBRELLA LIABILITY POLICY**

- A. Paragraphs b. and c. of the Cancellation Policy Condition are replaced by the following:
  - b. All Policies In Effect For 60 Days Or Less
 

If this policy has been in effect for 60 days or less, and is not a renewal of a policy we have previously issued, we may cancel this policy by mailing or delivering to the first Named Insured at the mailing address shown in the policy and to the producer of record, advance written notice of cancellation, stating the reason for cancellation, at least:

    - 1) 10 days before the effective date of cancellation if we cancel for:
      - a) Nonpayment of premium; or
      - b) Discovery of fraud or material misrepresentation by:
        - i) Any insured or his or her representative in obtaining this insurance; or
        - ii) You or your representative in pursuing a claim under this policy.
    - 2) 30 days before the effective date of cancellation if we cancel for any other reason.
  - c. All Policies In Effective For More Than 60 Days
    - 1) If this policy has been in effect for more than 60 days, or is a renewal of a policy we issued, we may cancel this policy only upon the occurrence, after the effective date of the policy, of one or more of the following:
      - a) Nonpayment of premium, including payment due on a prior policy we issued and due during the current policy term covering the same risks.
- b) Discovery of fraud or material misrepresentation by:
  - i) Any insured or his or her representative in obtaining this insurance; or
  - ii) You or your representative in pursuing a claim under this policy.
- c) A judgment by a court of an administrative tribunal that you have violated a California or Federal law, having as one of its necessary elements an act which materially increases any of the risks insured against.
- d) Discovery of willful or grossly negligent acts or omissions or of any violations of state laws or regulations establishing safety standards by you and your representative, which materially increase any of the risks insured against.
- e) Failure by you or your representative to implement reasonable loss control requirements, agreed to you as a condition of policy issuance, or which were conditions precedent to our use of a particular rate or rating plan, if that failure materially increases any of the risks insured against.
- f) A determination by the Commissioner of Insurance that the:
  - i) Loss of, or change in, our reinsurance covering all or part of the risk would threaten our financial integrity or solvency; or
  - ii) Continuation of the policy coverage would:

1. Place us in violation of California laws or the laws of the state where we are domiciled; or
  2. Threaten our solvency.
- g) A change by you or your representative in the activities or property of the commercial or industrial enterprise, which results in a materially added, increased or changed risk, unless the added, increased or changed risk is included in the policy.
- 2) We will mail or deliver advance written notice of cancellation, stating the reason for cancellation, to the first Named Insured at the mailing address shown in the policy, and to the producer of record, at least:
- a) 10 days before the effective date of cancellation if we cancel for a reason listed in paragraph c.1)a) or c.1)b); or
  - b) 30 days before the effective date of cancellation if we cancel for any other reason listed in paragraph c.1).

B. The following is added and supersedes any provisions to the contrary:

Nonrenewal

1. Subject to the provisions of Paragraph B.2. below, if we elect not to renew this policy, we will mail or deliver written notice stating the reason for nonrenewal to the first Named Insured shown in the Declarations and to the producer of record, at least 60 days, but not

more than 120 days, before the expiration or anniversary date.

We will mail or deliver our notice to the first Named Insured, and to the producer of record, at the mailing address shown in the policy.

2. We are not required to send notice of nonrenewal in the following situations:
  - a. If the transfer or renewal of a policy, without any change in terms, conditions, or rates, is between us and a member of our insurance group.
  - b. If the policy has been extended for 90 days or less, provided that notice has been given in accordance with paragraph B.1.
  - c. If you have obtained replacement coverage, or if the Named Insured has agreed, in writing within 60 days of the termination of the policy, to obtain that coverage.
  - d. If the policy is for a period of no more than 60 days and you are notified at the time of issuance that it will not be renewed.
  - e. If the first Named Insured requests a change in the terms or conditions or risks covered by the policy within 60 days of the end of the policy period.
  - f. If we have made a written offer to the first Named Insured, in accordance with the timeframes shown in paragraph B.1., to renew the policy under changed terms or conditions or at an increased premium rate, when the increase exceeds 25%.

All other terms and conditions remained unchanged.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**CALIFORNIA DEFINITIONS – AUTO AND MOBILE EQUIPMENT – COVERAGE A AND COVERAGE B**

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

Under **DEFINITIONS, A. Applicable to Coverage A and Coverage B**, definition 1. "Auto" and definition 5. "Mobile equipment" are replaced by the following:

1. "Auto" means:
  - a. A land motor vehicle, trailer or semitrailer designed for use principally upon streets and highways; and
  - b. Subject to the motor vehicle registration and financial responsibility laws of the state where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

5. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
  - a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - b. Vehicles maintained for use solely on or next to premises you own or rent;
  - c. Vehicles that travel on crawler treads;
  - d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - 1) Power cranes, shovels, loaders, diggers or drills; or
    - 2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
  - e. Vehicles not described in Paragraph **a., b., c. or d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

- 1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
- 2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in Paragraph **a., b., c. or d.** above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- 1) Equipment designed primarily for:
  - a) Snow removal;
  - b) Road maintenance, but not construction or resurfacing; or
  - c) Street cleaning;
- 2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- 3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include land vehicles that are designed for use principally upon streets and highways and subject to the motor vehicle registration and financial responsibility laws of the state where they are registered or principally garaged.

**All terms and conditions of this policy apply unless modified by this endorsement.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**EXCLUSION – ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL INFORMATION AND DATA-RELATED LIABILITY – WITH LIMITED BODILY INJURY EXCEPTION**

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA LIABILITY POLICY

**A. Under Exclusions, A. Applicable to Coverage A and Coverage B, Exclusion 11.** Electronic Data is replaced by the following:

This insurance does not apply to:

**11. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability**

Damages and "personal and advertising injury" arising out of:

- a. Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- b. The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph a. or b. above.

However, unless Paragraph a, above applies, this exclusion does not apply to damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which

are used with electronically controlled equipment.

**B. For the purposes of this endorsement, the following definitions are added to Definitions, B. Applicable to Coverage A Only:**

"Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters.

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

"Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses committed in the course of your business:

- a. false arrest, detention or imprisonment;
- b. malicious prosecution;
- c. the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. oral or written publication of material that slanders or libels a person or organization or disparages a person's or organizations goods, products or services;
- e. oral or written publication of material that violates a person's right of privacy;
- f. discrimination, unless insurance cover-age therefore is prohibited by law or statute;
- g. the use of another's advertising idea in your "advertisement"; or
- h. infringing upon another's copyright, trade dress or slogan in your "advertisement".

**All terms and conditions of this policy apply unless modified by this endorsement.**

**CALIFORNIA INSURANCE GUARANTEE ASSOCIATION**  
**IMPORTANT INFORMATION FOR CALIFORNIA POLICYHOLDERS**

Companies writing property and casualty insurance business in California are required to participate in the California Insurance Guarantee Association. If a company becomes insolvent the California Insurance Guarantee Association settles unpaid claims and assesses each insurance company for its fair share.

California law requires all companies to surcharge policies to recover these assessments. If your policy is surcharged, "CA Surcharge" with an amount will be displayed on your premium notice.





AGENDA NO: A-7

MEETING DATE: October 12, 2021

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** October 7, 2021

**FROM:** Scott Collins, City Manager

**SUBJECT:** Adoption of Resolution No. 65-21, honoring the historical and cultural significance of Morro Bay for the Filipino American community.

## RECOMMENDATION

Staff recommends the Council adopt Resolution No. 65-21, recognizing the historical and cultural connection between Morro Bay and the Filipino American community, and committing the City to honor this significance through a variety of methods, including, but not limited to, placing the existing historical monument recognizing their arrival to North America in a more prominent location.

## ALTERNATIVES

None.

## FISCAL IMPACT

Approval of this recommendation will result in a minor fiscal impact to the City's General Fund, to cover the costs of supporting a rededication event for the relocated monument, as well as installing lighting, landscaping, and signage at the new location to boost awareness of the monument.

## BACKGROUND/DISCUSSION

Morro Bay is the site of the first Filipinos' arrival in North America, on October 18, 1587. This marks a major historical importance for the Filipino community and the Filipino American National Historical Society (FAHNS).

Given this importance, the City worked closely with FANHS to establish a historical monument in the City in October 1995. A historical marker was located near Coleman Beach to honor this important moment in history and the connection between Filipino American history and the Morro Bay community. The City also recognized this importance for several years with resolutions of awareness.

However, this recognition by the City has waned in recent years. In fact, it was discovered in the summer of 2020 that the City had inadvertently placed a trash dumpster in front of the monument. The City added dumpsters in tourist-serving areas that summer to account for the significant increase in trash resulting from takeout dining during COVID-19 restriction periods. A member of the Filipino community witnessed this unfortunate obstruction of the monument and raised the matter to City leadership.

Prepared By: <u>  SC  </u>	Dept Review: _____
City Manager Review: <u>  SC  </u>	City Attorney Review: _____

City staff responded quickly by removing the dumpster and began a yearlong dialogue with FANHS to not only correct this error, but to find a better home for the monument and honor the special importance of Morro Bay to the Filipino community. As a result, City staff has moved the monument to a much more prominent location on the Harbor Walk (as exhibited in the photo below).



Since that conversation began, Asian Americans have also experienced a significant rise in discrimination and associated violence in various areas of the United States. The City of Morro Bay has taken a stand against racism. The City now has an opportunity to both raise awareness about the historical connection between Morro Bay and the Filipino American history, and also support the Asian American community at large by committing the City to honoring their significance annually through Council resolution.

Staff is recommending adoption of Resolution No. 65-21, which commits the City to the following actions to support the Filipino-American community:

- 1) Relocate the historical monument to a more appropriate and visible location between Coleman Beach and the Morro Rock (completed),
- 2) Support FANHS and other Filipino organizations in planning to host a rededication ceremony of the monument in the new location in October 2022,
- 3) Work with the Central Coast of California Chapter of FANHS to establish signage expressing the importance of the historical monument and history of Filipino Americans,

- 4) Add landscaping at the new location of the monument that includes, if at all possible, native plants of the Philippines,
- 5) Install lighting around the new location of the monument,
- 6) Ensure that no structures are built or objects placed in close proximity around the monument that would obstruct it and the view of Morro Rock from that specific location,
- 7) Continue to honor Filipino American History month each October, and
- 8) Seek further opportunities to support the FANHS and collectively address violence and hate against Asian Americans and Pacific Islander communities.

### **CONCLUSION**

The historical connection between the City of Morro Bay and Filipino American community is significant. Approval of this recommendation will ensure that bond is strengthened moving forward.

### **ATTACHMENT**

1. Resolution No. 65 -21

**RESOLUTION NO. 65-21**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA, HONORING THE  
HISTORICAL AND CULTURAL SIGNIFICANCE OF MORRO BAY FOR  
THE FILIPINO AMERICAN COMMUNITY**

**THE CITY COUNCIL  
City of Morro Bay, California**

**WHEREAS**, the importance of Morro Bay to the Filipino community and the Filipino American National Historical Society (FANHS) cannot be overstated; and

**WHEREAS**, the City Council and staff of the City of Morro Bay recognize the importance of honoring the Filipino history, culture and contributions to the United States, California, the Central Coast, and Morro Bay; and

**WHEREAS**, on October 18, 1587, "Luzon Indios" came ashore from the Spanish galleon Nuestra Senora de Esperanza and landed at what is now Morro Bay, California, representing a monumental moment in history as the first Filipinos landed in North America, and

**WHEREAS**, the City worked closely with FANHS in establishing a historical monument in October 1995, locating an historical marker near Coleman Beach to honor this important moment in history and the connection between Filipino American history and Morro Bay; and

**WHEREAS**, the City has recognized Filipino American History Month in October for several years since that time, as Filipino Americans represent the second largest Asian American group in the nation, and the third largest ethnic group in California and have made an indelible contribution to our country and the State of California; and

**WHEREAS**, with violence and discrimination against Asian Americans and Pacific Islander communities on the rise in our country, it is more important than ever to support and honor the Filipino community and FANHS, and take further measures to relay that importance to and seek support from our community, and

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay, California, the City will expand its support of FANHS, by committing to doing the following:

- 1) Relocate the historical monument to a more appropriate and visible location between Coleman Beach and the Morro Rock,
- 2) Support FANHS and other Filipino organizations in planning to host a rededication ceremony of the monument in the new location in October 2022,
- 3) Work with the Central Coast of California Chapter of FANHS to establish signage expressing the importance of the historical monument and history of Filipino Americans,
- 4) Add landscaping at the new location of the monument that includes, if at all possible, native plants of the Philippines,
- 5) Install lighting around the new location of the monument,
- 6) Ensure that no structures are built or objects placed in close proximity around the monument that would obstruct it and the view of Morro Rock from that specific location,
- 7) Continue to honor Filipino American History month each October, and

- 8) Seek further opportunities to support the FANHS and collectively address violence and hate against Asian Americans and Pacific Islanders communities.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12<sup>th</sup> day of October 2021 on the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
JOHN HEADDING, Mayor

ATTEST:

\_\_\_\_\_  
DANA SWANSON, City Clerk

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**AGENDA NO: B-1**

**MEETING DATE: October 12, 2021**

# Staff Report

**TO: Honorable Mayor and City Council**

**DATE: October 4, 2021**

**FROM: Greg Kwolek, Director of Public Works  
Damaris Hanson, Acting Utilities Division Manager**

**SUBJECT: Adopt Resolutions Approving 2020 Urban Water Management Plan, Water Shortage Contingency Plan, and 2015 Urban Water Management Plan Appendix G**

## **RECOMMENDATION**

Staff recommends the City Council:

1. Conduct a public hearing to receive input on the 2020 Urban Water Management Plan, Water Shortage Contingency Plan, and the 2015 Urban Water Management Plan Appendix G (Reduced Reliance on the Sacramento-San Joaquin Delta).
2. Adopt Resolution No. 66-21 approving the 2020 Urban Water Management Plan and authorizing its submittal to the Department of Water Resources.
3. Adopt Resolution No. 67-21 approving the 2020 Water Shortage Contingency Plan and authorizing its submittal to the Department of Water Resources.
4. Adopt Resolution No. 68-21 approving the 2015 Urban Water Management Plan Appendix G (Reduced Reliance on the Delta) and authorizing its submittal to the Department of Water Resources.

## **ALTERNATIVES**

The Urban Water Management Plan is a requirement of the California Water Code. Staff does not have any recommended alternatives.

## **FISCAL IMPACT**

The adoption of the Urban Water Management Plan is a requirement for all State water and wastewater funding including the Clean Water State Revolving Fund, which partially funds Morro Bay's Water Reclamation Facility project.

## **BACKGROUND**

Every five years, urban water suppliers providing over 3,000 acre-feet of water annually or service to more than 3,000 urban connections must submit an Urban Water Management Plan (UWMP). The purpose of this UWMP is to conduct long-term resource planning and establish management measures to ensure adequate water supplies are available to meet existing and future demands. The UWMP provides a framework to help water suppliers maintain efficient use of urban water supplies, continue to promote conservation programs and policies, ensure that sufficient water supplies are available for future beneficial use, and provide a mechanism for response during drought conditions or other water supply shortages. The City's draft 2020 UWMP is available for download at: [www.morrobayca.gov/2020UWMP](http://www.morrobayca.gov/2020UWMP)

Prepared By: <u>   DH   </u>	Dept Review: <u>   GK   </u>
City Manager Review: <u>   SC   </u>	City Attorney Review: <u>   CMC/CFN_   </u>

**DISCUSSION**

After a review of proposals submitted by five qualified water planning consultants, the City selected Water Systems Consulting (WSC) to prepare the City’s 2020 UWMP. WSC utilized water and wastewater data provided by the City, as well as City planning documents including Plan Morro Bay and the One Water Plan in preparation of the 2020 UWMP. California Water Code (CWC) Section 10621(b) and Delta Plan Policy WR P1 require water suppliers notify stakeholders that the UWMP, Water Shortage Contingency Plan (WSCP), and reduced reliance on the Delta watershed documentation are being updated and reviewed. The CWC specifies this must be done at least 60 days prior to the public hearing. To fulfill this requirement, the City sent letters of notification of preparation of the 2020 UWMP, WSCP, and reduced reliance on the Delta watershed documentation to San Luis Obispo County, Central Coast Water Authority (CCWA) and San Luis Obispo Council of Governments (SLOCOG) 60 days prior to this public hearing.

*2020 Urban Water Management Plan*

The 2020 UWMP considers water demands and supplies through the year 2045, incorporating projected growth and proposed development. Demand estimates were determined by multiplying the gallons per capita per day by projected population. Importantly, the UWMP does not make predictions on population growth. Rather, it pulls populations projections from existing council approved planning documents (such as the recently approved General Plan update). Supply sources include groundwater from the Morro Valley Basin and imported water from the State Water Project via the San Luis Obispo County Flood Control and Water Conservation District. The City’s Water Reclamation Facility is currently under development and the City plans to use indirect potable reuse (IPR) as a supplemental supply source in the future.

WSC’s comparison and analysis of the City’s future demands and available supplies indicates the City will have sufficient water supply to meet its demands, even during single and multiple dry year events as indicated by the table below.

5-Year Drought Scenario – Morro Bay		
	Available supply Acre-Ft	2045 Demand Acre-Ft
Year 1	3151	1445
Year 2	2967	1445
Year 3	1702	1445
Year 4	1445	1445
Year 5	1720	1445

In the five-year drought scenario described in the table above, historical data on state water allocations and stored state water trends were used along with Morro Valley Basin groundwater and future potable IPR water output. The scenario shows that supply amounts exceed demands in years 1-3 and 5, while supply amounts meet demand in Year 4. Of note, the 2045 Demand Acre-Feet data contained in the table does not take into account water conservation efforts. Such efforts, if enacted during a drought, would decrease overall demand and further ensure the City is able to provide enough water to meet demands.

*Water Shortage Contingency Plan*

CWC Section 10632 includes an updated requirement to separately adopt the WSCP. In the 2015 UWMP cycle, the WSCP was part of the UWMP. For the 2020 UWMP, the WSCP is a standalone

document so that it can be updated independently of the UWMP. However, it still must be referenced in and attached to the 2020 UWMP.

The WSCP is a detailed plan describing how the City intends to identify and respond to foreseeable and unforeseeable water shortages. A water shortage occurs when the water supply is reduced to a level that cannot support typical demand at any given time or a reduction in demand is otherwise needed. The WSCP is used to provide guidance to the City, staff, and the public by identifying anticipated shortages and response actions to allow for efficient management of any water shortage with predictability and accountability. The WSCP is intended to provide options to manage water shortages. Official water shortage declarations and water shortage mitigation measures by the City, such as water conservation requirements, may include any combination of components described in the WSCP.

The City will conduct an Annual Supply and Demand Assessment as part of the WSCP each year. This assessment is a short-term outlook for supplies and demands to determine whether the potential for a supply shortage exists and whether there is a need to trigger a water shortage level response and implement stricter water conservation measures.

#### *2015 UWMP Appendix G*

Appendix F in the 2020 UWMP demonstrates the City's consistency with Delta Plan Policy WR P1, Reduce Reliance on the Delta Through Improved Regional Water Self-Reliance (California Code Reg., tit.23, §5003). This Appendix document is also being included as Appendix G to the 2015 UWMP and is only being adopted to report reduced reliance on the Delta. Because the City receives water through the State Water Project (SWP), it may be subject to water supply benefits from a "covered action" as defined by the Delta Plan Policy WR P1. DWR was not charged with developing specific recommendations for the policy in 2015, but they realize not complying, starting with the 2015 UWMP, could make some SWP customers vulnerable to non-compliance impacts. Therefore, the DWR is recommending urban water suppliers add the appendix to 2015 and 2020 UWMPs to maintain compliance with WR P1 separately from the UWMP requirements.

#### **CONCLUSION**

Staff recommends City Council conduct a public hearing and receive input on the 2020 UWMP, WSCP, and 2015 UWMP Appendix G, then adopt Resolution No. 66-21 approving the UWMP, Resolution No. 67-21 approving the WSCP, and Resolution No. 68-21 approving the 2015 UWMP Appendix G, and lastly authorize and instruct the City Clerk to submit these documents to the Department of Water Resources.

#### **WEBLINKS**

1. [Link](#) to 2020 Urban Water Management Plan

#### **ATTACHMENTS**

1. Resolution No. 66-21 Approving the Urban Water Management Plan and authorizing submittal to Department of Water Resources
2. Resolution No. 67-21 Approving the Water Shortage Contingency Plan and authorizing submittal to Department of Water Resources
3. Resolution No. 68-21 Approving the 2015 Urban Water Management Plan Appendix G (Reduced Reliance on the Delta) and authorizing its submittal to the Department of Water Resources
4. Staff Presentation

**RESOLUTION NO. 66-21**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
ADOPTING THE 2020 URBAN WATER MANAGEMENT PLAN**

**THE CITY COUNCIL  
City of Morro Bay, California**

**WHEREAS**, the California Urban Water Management Planning Act, Water Code Section 10610 et seq. (the Act), mandates that every urban supplier of water providing water for municipal purposes to more than 3,000 customers or supplying more than 3,000 acre feet of water annually, prepare an Urban Water Management Plan; and

**WHEREAS**, the Act requires periodic review and update of the Urban Water Management Plan (“UWMP”) every five years; and

**WHEREAS**, the City of Morro Bay City Council has reviewed the 2020 UWMP, determined that the 2020 UWMP is consistent with the Act and the California Department of Water Resources 2020 UWMP Guidebook, and is an accurate representation of the water system, current and projected water uses, sources of water, water supply reliability, water shortage contingency planning and demand management measures; and

**WHEREAS**, on August 9, 2021 the City of Morro Bay issued a notice of preparation of the Draft 2020 UWMP for review and comment; and

**WHEREAS**, on September 28, 2021 the City of Morro Bay issued a notice of public hearing and availability of the Draft 2020 UWMP for review and comment; and

**WHEREAS**, on October 12, 2021 the Morro Bay City Council conducted a public hearing pursuant to California Water Code sections 10642 and 10608.26 to consider and receive input on the Draft 2020 UWMP; and

**WHEREAS**, all prerequisites to adoption of the UWMP have occurred.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay, California

1. The facts set forth in the Recitals are true and correct.
2. The UWMP [www.morrobayca.gov/2020UWMP](http://www.morrobayca.gov/2020UWMP) is adopted as the City’s 2020 Urban Water Management Plan.
3. The City Manager is authorized and directed to implement the attached UWMP.
4. The City Manager shall cause periodic reviews of the attached UWMP to occur, consistent with the Act, and shall present to the City Council any changes or amendments deemed necessary or appropriate in accordance with the Act.

5. The Council finds and determines that, under the California Water Code Section 10652, the adoption of the UWMP and this resolution does not constitute a project under the California Environmental Quality Act.

6. The City Clerk is directed to file a certified copy of the attached UWMP with the California State Department of Water Resources ("DWR") and take all other necessary further administrative action for adoption of the UWMP.

7. This resolution shall take effect immediately upon its adoption by the City Council.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12<sup>th</sup> day of October 2021 by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
JOHN HEADDING, Mayor

ATTEST:

\_\_\_\_\_  
DANA SWANSON, City Clerk

**RESOLUTION NO. 67-21**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
ADOPTING THE WATER SHORTAGE CONTINGENCY PLAN**

**THE CITY COUNCIL  
City of Morro Bay, California**

**WHEREAS**, the California Urban Water Management Planning Act, Water Code Section 10610 et seq. (the Act), mandates that every urban supplier of water providing water for municipal purposes to more than 3,000 customers or supplying more than 3,000 acre feet of water annually, prepare an Urban Water Management Plan (UWMP); and

**WHEREAS**, as part of the UWMP, Water Code section 10632 requires urban water suppliers to prepare and adopt a Water Shortage Contingency Plan (WSCP); and

**WHEREAS**, the City of Morro Bay meets the Act's definition of an urban retail water supplier required to submit an UWMP and WSCP; and

**WHEREAS**, a WSCP is a standalone document that is created separately from the UWMP and included as part of the UWMP; and

**WHEREAS**, on August 9, 2021, the City of Morro Bay issued a notice of preparation of the Draft 2020 UWMP and WSCP for review and comment; and

**WHEREAS**, on September 28, 2021 the City of Morro Bay issued a notice of public hearing and availability of the Draft 2020 UWMP and WSCP for review and comment; and

**WHEREAS**, on October 12, 2021 the Morro Bay City Council conducted a public hearing pursuant to California Water Code sections 10642 and 10608.26 to consider and receive input on the Draft 2020 UWMP and WSCP; and

**WHEREAS**, all prerequisites to adoption of the WSCP have occurred.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay, California:

1. The facts set forth in the Recitals are true and correct.
2. The City hereby adopts the 2020 WSCP [www.morrobayca.gov/WSCP](http://www.morrobayca.gov/WSCP) , for the City of Morro Bay and authorizes it to be filed with the California Department of Water Resources.
3. The Council finds and determines that, under the California Water Code Section 10652, the adoption of the WSCP and this resolution does not constitute a project under the California Environmental Quality Act.
4. The City Clerk is directed to file a certified copy of the attached WSCP with the California State Department of Water Resources and take all other necessary further administrative action for adoption of the WSCP.

5. This resolution shall take effect immediately upon its adoption by the City Council.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12<sup>th</sup> day of October 2021 by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
JOHN HEADDING, Mayor

ATTEST:

\_\_\_\_\_  
DANA SWANSON, City Clerk

**RESOLUTION NO. 68-21**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
ADOPTING APPENDIX G TO THE 2015 URBAN WATER MANAGEMENT PLAN**

**THE CITY COUNCIL  
City of Morro Bay, California**

**WHEREAS**, the California Urban Water Management Planning Act, Water Code Section 10610 et seq. (the Act), mandates that every urban supplier of water providing water for municipal purposes to more than 3,000 customers or supplying more than 3,000 acre feet of water annually, prepare an Urban Water Management Plan; and

**WHEREAS**, pursuant to recent amendments to the Act, urban water suppliers are encouraged by the California Department of Resources (DWR) and the Delta Stewardship Council (DSC) to consider adopting an Appendix to their 2015 Plan to demonstrate consistency with the Delta Plan Policy WR P1 to Reduce Reliance on the Delta Through Improved Regional Water Self-Reliance, Cal. Code Regs. tit. 23, § 5003; and

**WHEREAS**, the City of Morro Bay meets the Act's definition of an urban retail water supplier; and

**WHEREAS**, the City has prepared Appendix G to Morro Bay's 2015 Urban Water Management Plan (UWMP) in accordance with Delta Plan Policy WR P1, and in accordance with applicable legal requirements, has undertaken certain coordination, notice, public involvement, public comment, and other procedures in relation to its Addendum; and

**WHEREAS**, in accordance with the Act and Delta Plan Policy WR P1, the City has prepared its Appendix to the 2015 UWMP in cooperation with other governmental agencies, and has utilized and relied upon industry standards and the expertise of industry professionals in preparing its Appendix to its 2015 UWMP, and has also utilized the California Department of Water Resources Guidebook for Urban Water Suppliers to Prepare 2020 UWMPs, including its related appendices, in preparing its Addendum to the 2015 Plan; and

**WHEREAS**, on August 9, 2021, the City of Morro Bay issued a notice of preparation of the Draft 2020 UWMP, WSCP, and Appendix to the 2015 UWMP for review and comment; and

**WHEREAS**, on September 28, 2021, the City of Morro Bay issued a notice of public hearing and availability of the Draft 2020 UWMP, Water Shortage Contingency Plan (WSCP), and Appendix to the 2015 UWMP for review and comment; and

**WHEREAS**, on October 12, 2021, the Morro Bay City Council conducted a public hearing pursuant to California Water Code sections 10642 and 10608.26 to consider and receive input on the Appendix to the 2015 UWMP.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Morro Bay, California as follows:

1. The facts set forth in the Recitals are true and correct.

2. The City hereby adopts Appendix G to the 2015 UWMP, [www.morrobayca.gov/ReducedDeltaReliance](http://www.morrobayca.gov/ReducedDeltaReliance) , for the City of Morro Bay, and authorizes it to be filed with the California Department of Water Resources.

3. The Council finds and determines that, under the California Water Code Section 10652, the adoption of Appendix G to the 2015 UWMP and this resolution does not constitute a project under the California Environmental Quality Act.

4. The City Clerk is directed to file a certified copy of the attached Appendix G to the 2015 UWMP with the California State Department of Water Resources and take all other necessary further administrative action for adoption of the WSCP.

5. This resolution shall take effect immediately upon its adoption by the City Council.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12<sup>th</sup> day of October 2021 by the following vote:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
JOHN HEADDING, Mayor

ATTEST:

\_\_\_\_\_  
DANA SWANSON, City Clerk

# Urban Water Management Plan - Draft

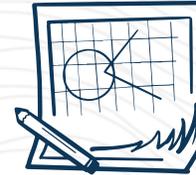
October 12, 2021



# Agenda



**Background**



**Water Reliability**



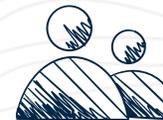
**Elements**



**Demand Management Measures**



**Water Use**



**Water Shortage Contingency Plan**



**Water Supply**



**Conclusion**

# About Urban Water Management Plans (UWMPs)

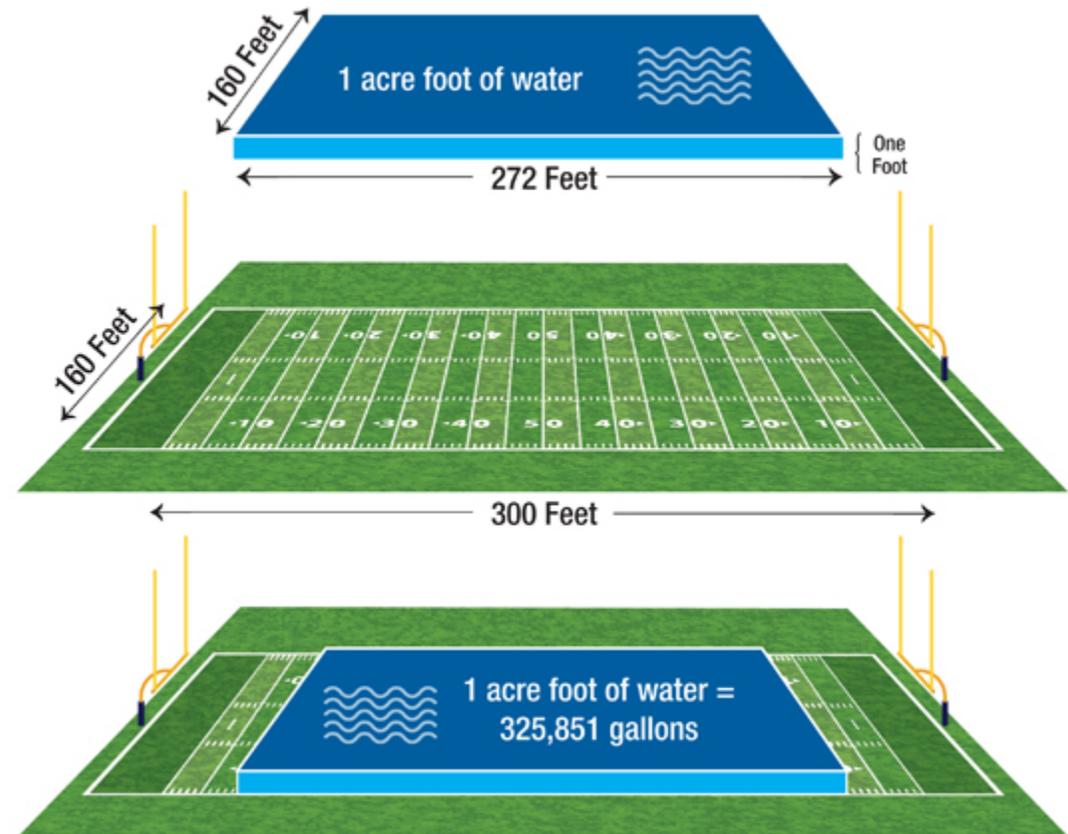
- Urban Water Management Plans (UWMPs) are required by the California Water Code
- UWMPs must be updated every 5 years and submitted to DWR
- Supports long-term water supply and drought planning
- Coordinated with local land use planning agencies
- Ensure supplies meet existing and projected demands over a 20-year horizon through 2040
- Provides framework for conservation and drought response
- Pre-requisite for certain loans and grants

# UWMP Elements

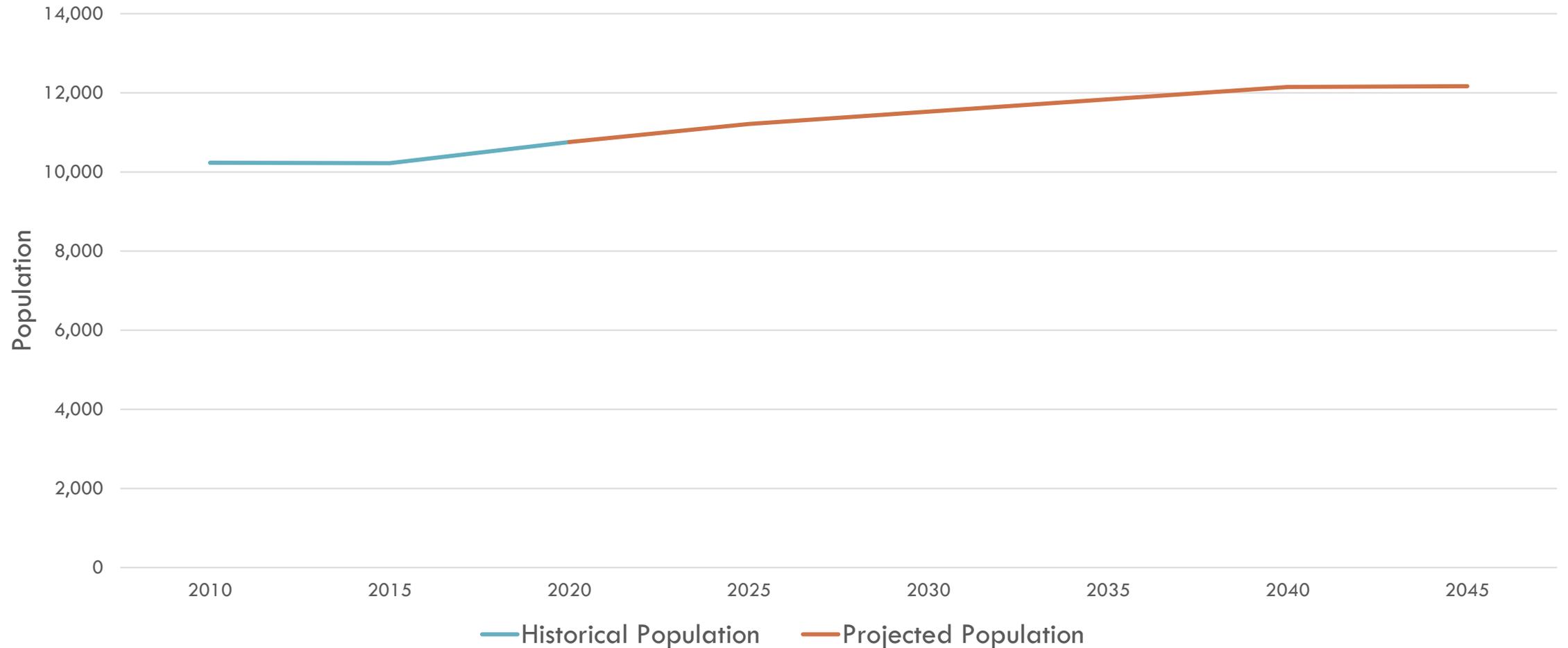
Introduction and Lay Description	Water Supply Characterization
Plan Preparation	Water Service Reliability and Drought Risk Assessment
System Description	Water Shortage Contingency Plan
Water Use Characterization	Demand Management Measures
Senate Bill x7-7 Baselines, Targets and 2020 Compliance	Plan Adoption, Submittal, and Implementation

# UWMP Units

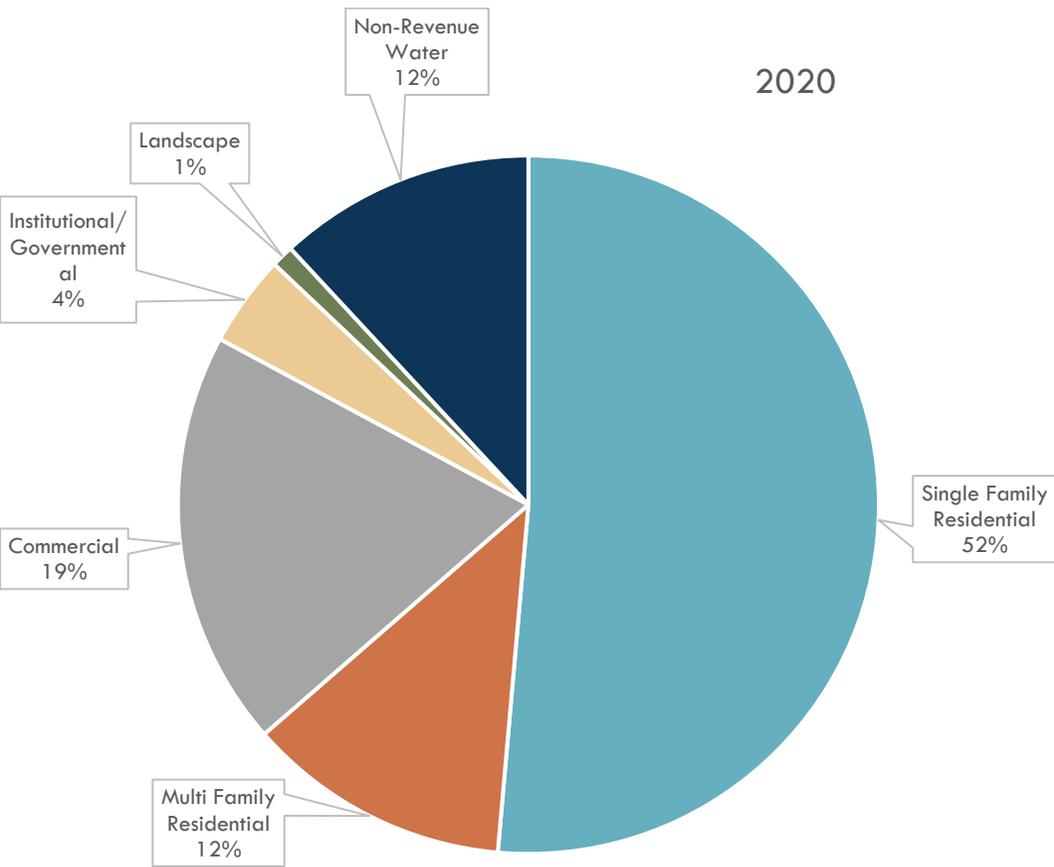
Unit	Description
Acre Feet per Year (AFY)	The acre-foot is a unit of volume commonly used in the United States in reference to large-scale water resources.
Gallons/Per Capita/Day (GPCD)	per capita water use is a metric representing an individual's share of a community's average daily water needs
	$\text{GPCD} \times \text{Population} \times 365 \text{ days} = \text{Gallons} / 325,851 = \text{AFY}$



# Population Projection



# Water Use Characterization & SB X7-7 for SLVWD



USE TYPE	PROJECTED WATER USE				
	2025	2030	2035	2040	2045
Single-Family Residential	687	704	722	745	745
Multi-Family Residential	163	167	171	176	176
Commercial	303	311	319	329	329
Institutional/Governmental	65	67	68	71	71
Landscape	22	23	23	24	24
Losses	92	95	97	100	100
<b>TOTAL</b>	<b>1,333</b>	<b>1,366</b>	<b>1,400</b>	<b>1,445</b>	<b>1,445</b>

Note:

1. Water deliveries for the Industrial customer class totaled less than 1 AFY and were not included in this table

### OPTIONAL ADJUSTMENTS TO 2020 GPCD

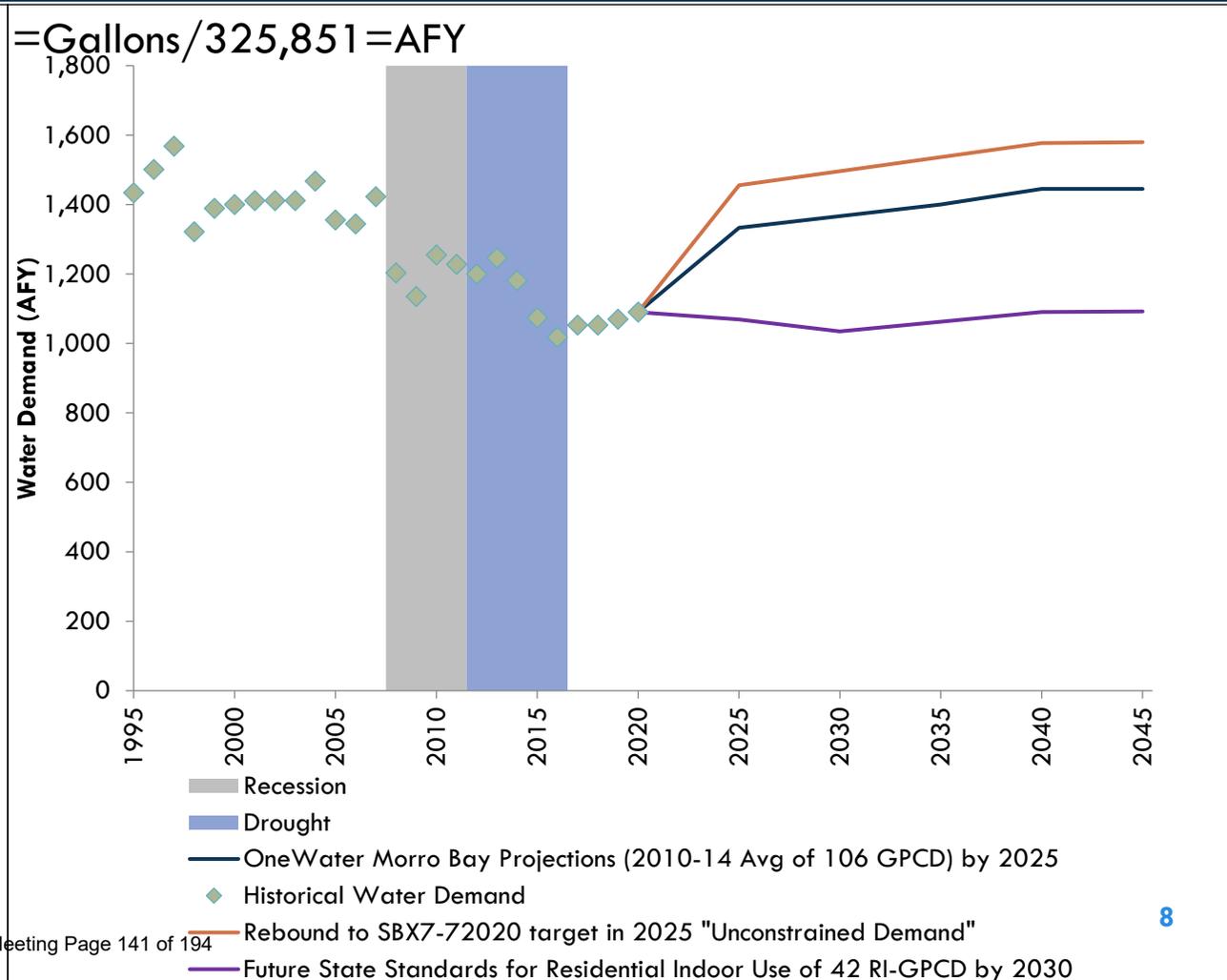
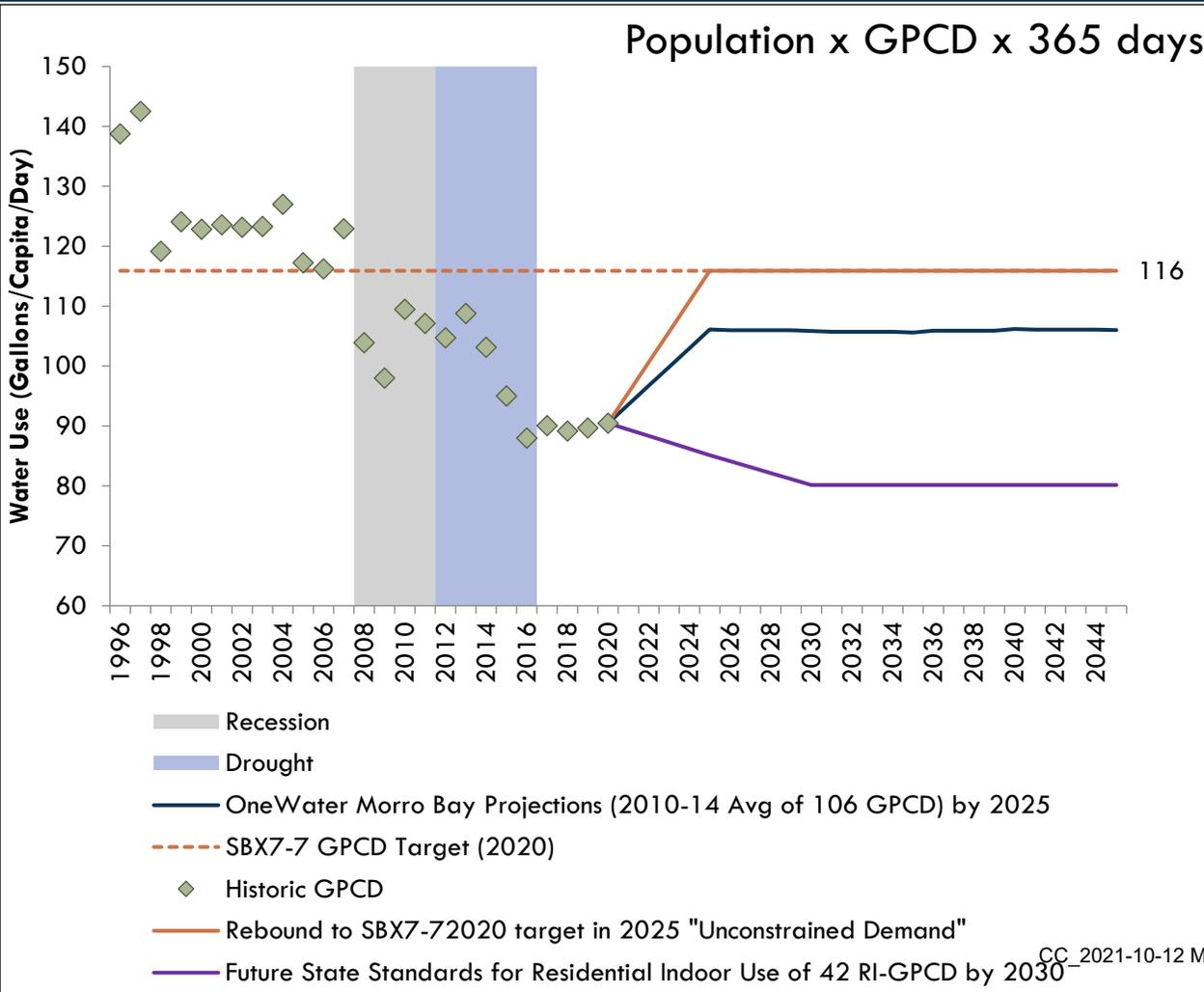
ACTUAL 2020 GPCD*	EXTRAORDINARY EVENTS*	ECONOMIC ADJUSTMENT*	WEATHER NORMALIZATION*	TOTAL ADJUSTMENTS*	ADJUSTED 2020 GPCD*	2020 CONFIRMED TARGET GPCD*	SUPPLIER ACHIEVED TARGETED REDUCTION IN 2020
90	0	0	0	0	90	116	Yes

\*All values are in Gallons per Capita per Day (GPCD)

\*All cells in this table are populated manually from the supplier's SBX7-7 Verification Form.

- Single Family Residential
- Multi Family Residential
- Commercial
- Institutional/ Governmental
- Landscape
- Non-Revenue Water

# Water Use and Future Demand Projections



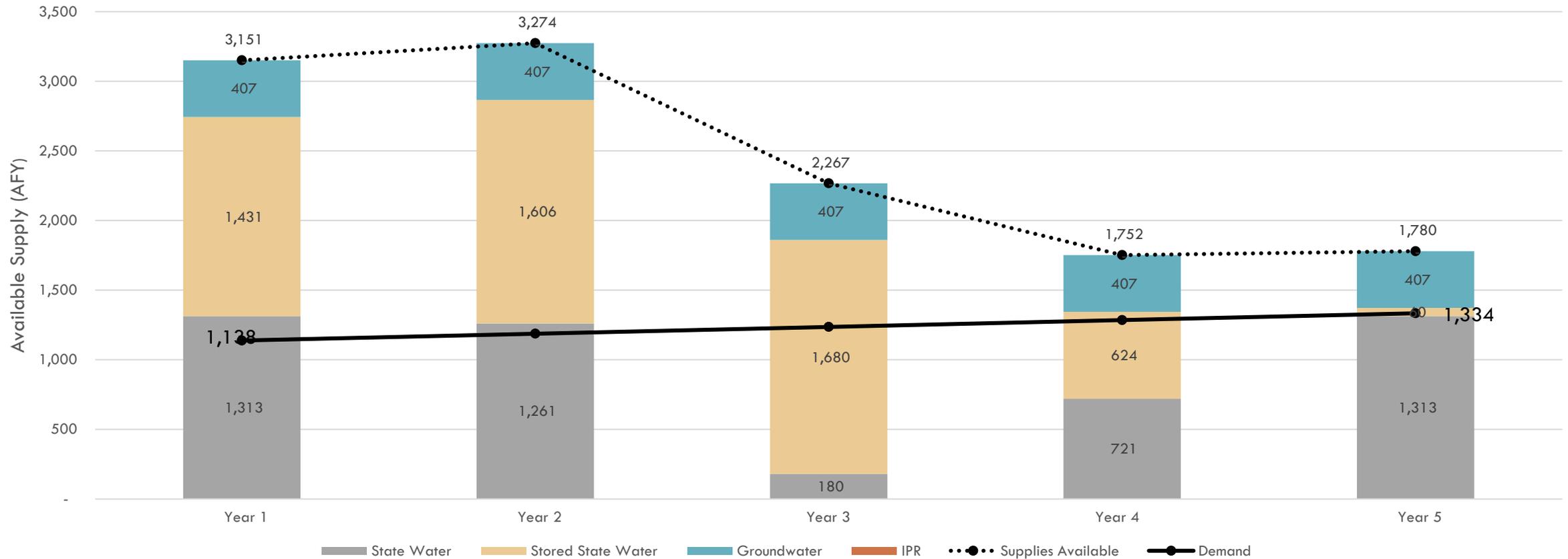
# Water Supply

WATER SUPPLY	ADDITIONAL DETAIL ON WATER SUPPLY	2020	2020	2025	2030	2035	2040	2045
		WATER PRODUCTION (AFY)	REASONABLY AVAILABLE VOLUME (AFY)	REASONABLY AVAILABLE VOLUME (AFY)	REASONABLY AVAILABLE VOLUME (AFY)	REASONABLY AVAILABLE VOLUME (AFY)	REASONABLY AVAILABLE VOLUME (AFY)	REASONABLY AVAILABLE VOLUME (AFY)
Purchased or Imported Water	State Water	1,029	1,313	1,313	1,313	1,313	1,313	1,313
Groundwater (not desalinated)	Morro Valley Basin	61	407	407	407	407	407	407
<b>TOTAL:</b>		<b>1,090</b>	<b>1,720</b>	<b>1,720</b>	<b>1,720</b>	<b>1,720</b>	<b>1,720</b>	<b>1,720</b>

# Water Reliability & Drought Risk Assessment

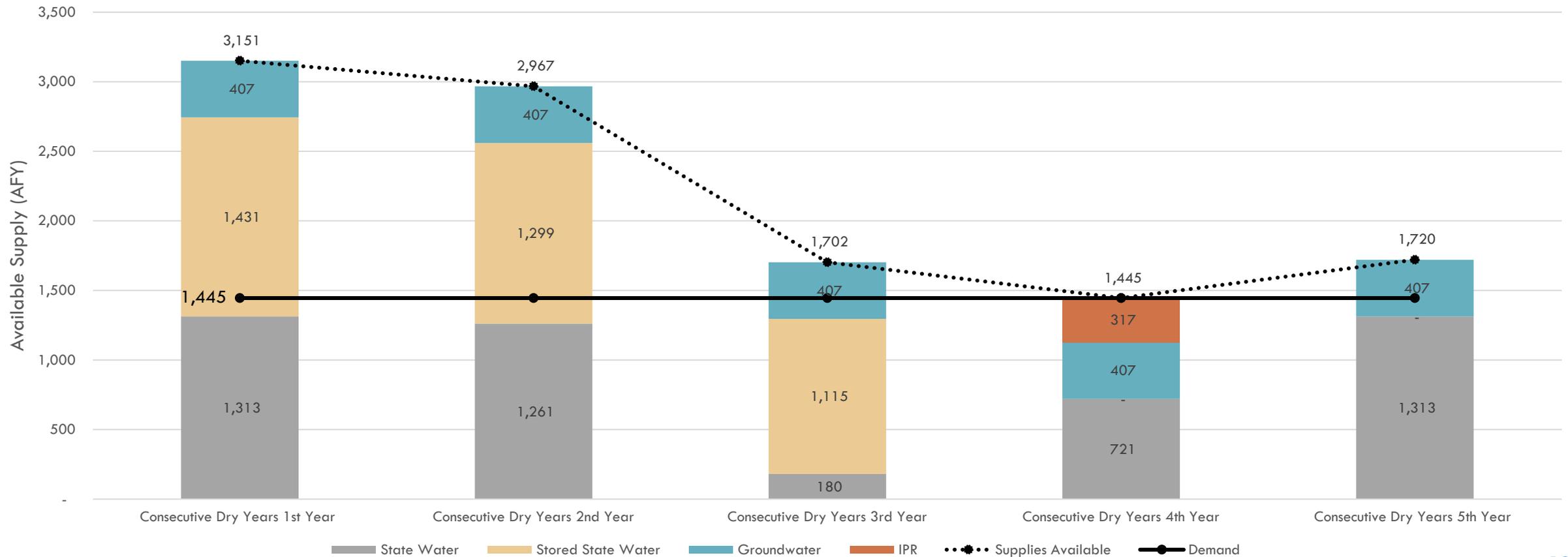
		STATE WATER PROJECT		GROUNDWATER FROM MORRO VALLEY BASIN	
-		AVAILABLE SUPPLY IF YEAR TYPE REPEATS		AVAILABLE SUPPLY IF YEAR TYPE REPEATS	
YEAR TYPE	BASE YEAR	VOLUME AVAILABLE (AFY)	PERCENT OF AVERAGE SUPPLY	VOLUME AVAILABLE (AFY)	PERCENT OF AVERAGE SUPPLY
AVERAGE YEAR	2019	1313	100%	407	100%
SINGLE-DRY YEAR	2014	180	14%	407	100%
CONSECUTIVE DRY YEARS 1ST YEAR	2012	1313	100%	407	100%
CONSECUTIVE DRY YEARS 2ND YEAR	2013	1261	96%	407	100%
CONSECUTIVE DRY YEARS 3RD YEAR	2014	180	14%	407	100%
CONSECUTIVE DRY YEARS 4TH YEAR	2015	721	55%	407	100%
CONSECUTIVE DRY YEARS 5TH YEAR	2016	1313	100%	407	100%

# Water Reliability & Drought Risk Assessment



# Water Reliability & Drought Risk Assessment

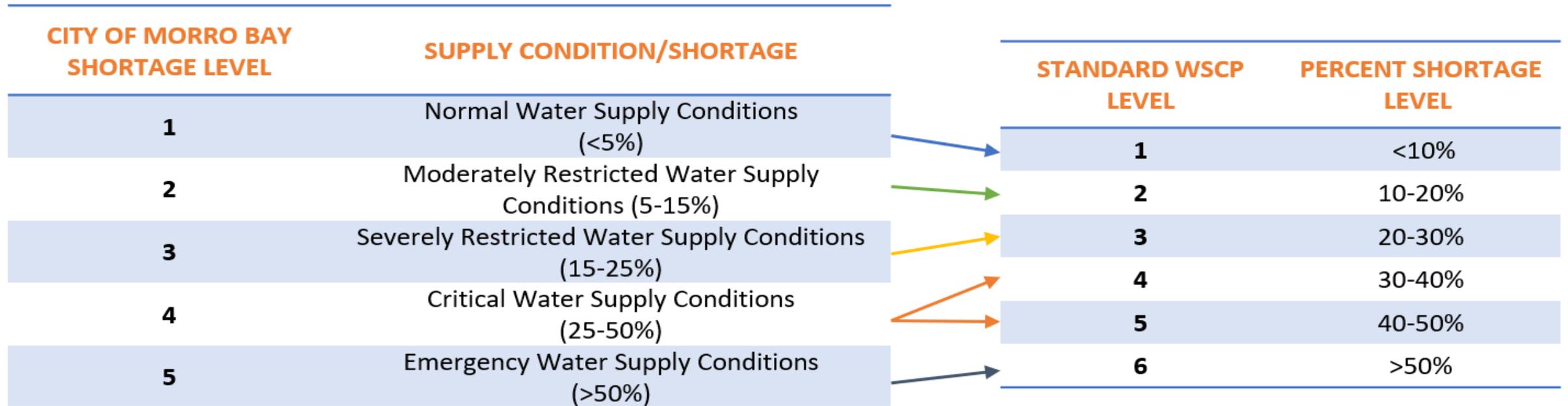
## Multiple Dry Years Supply and Demand Comparison for 2045



# Water Shortage Contingency Plan

- A WSCP is used to provide guidance to the City, staff, and the public by identifying anticipated shortages and response actions to allow for efficient management of any water shortage with predictability and accountability.
- The WSCP is a detailed proposal for how the City intends to act in the case of an actual water shortage condition.
- Water shortages can be triggered by a hydrologic limitation in supply (i.e., a prolonged period of below normal precipitation), limitations or failure of supply and treatment infrastructure, compliance with State mandates for water use efficiency, or a combination of conditions.

# Water Shortage Contingency Plan - Stages



# WSCP – Shortage Response Actions

## Stage 1 Normal Water Supply Conditions:

- Outdoor water use for washing vehicles, boats, paved surfaces, buildings or other similar uses shall be attended and have hand-controlled water devices, typically including spring-loaded shutoff nozzles.
- Outdoor irrigation resulting in excessive gutter runoff is prohibited.
- Marinas and waterfront installations: all hoses shall have spring-loaded shutoff nozzles or similar controlling devices.
- Restaurants shall serve drinking water only in response to a specific request by the customer.

## Stage 2 Moderately Restricted Water Supply Conditions:

- No water shall be used for cleaning driveways, patios parking lots, sidewalks, streets, or other such uses except where necessary to protect the public health or safety.
- Outdoor Irrigation.
  - Outdoor irrigation is prohibited between the hours of ten a.m. and four p.m.
  - All consumers are directed to use no more water than necessary to maintain landscaping.

## Stage 3 Severely Restricted Water Supply Conditions:

- Marinas and Waterfront Installations Use of fresh water to wash down boats, docks, or other incidental activities is prohibited.
- Emptying and refilling of swimming pools and commercial spas is prohibited except to prevent structural damage and/or to comply with public health regulations.
- Use of potable water for compaction or dust control purposes in construction activities is prohibited.
- Any dysfunctional water fixtures in public or commercial facilities shall be repaired within three days of receipt of notification by the city.

## Stage 4 Critical Water Supply Conditions:

- Outdoor Water Use (Except Irrigation).
  - Washing cars by use of a hose is prohibited. Use of a bucket is permitted subject to non-wasteful applications.
- Outdoor Irrigation.
  - Irrigation of private and public landscaping, turf areas, and gardens is permitted at even-numbered addresses only on Wednesdays and Sundays, and at odd-numbered addresses only on Tuesdays and Saturdays.

## Stage 5 Emergency Water Supply Conditions:

- The City Council may impose water-rationing requirements as it deems appropriate with Sections 13.04.330 and 13.04.340

# WSCP – Shortage Response Actions

- Flexible guidelines for City Council, staff, and the public for identifying response actions to allow for efficient management of any water shortage

LEVEL	SUPPLY CONDITION/SHORTAGE, %	NORMAL SUPPLY, AF	REQUIRED SAVINGS <sup>1</sup> , AF	ESTIMATED SAVINGS FROM QUANTIFIABLE ACTIONS <sup>2</sup> , AF	ESTIMATED SAVINGS FROM UNQUANTIFIABLE ACTIONS, AF
1	<5%	1,090	55	1	54
2	5-15%	1,090	164	3	161
3	15-25%	1,090	273	348	166
4	25-50%	1,090	545	374	171
5	>50%	1,090	556	374	182

<sup>1</sup> Required savings may be met through a combination of quantifiable and unquantifiable actions.

<sup>2</sup> Quantifiable savings are estimated based on various published sources and are provided as a guide. The degree of implementation of actions can vary in each stage and can result in a wide range of savings.

# Demand Management Measures

DMM	Status
1. Water waste prevention ordinances	✓
2. Metering	✓
3. Conservation pricing	✓
4. Public education and outreach	✓
5. Real water loss management programs and systems	✓
6. Water conservation program and staffing support	✓
7. Other Demand Management Measures <ul style="list-style-type: none"> <li>➤ Residential Plumbing Retrofit</li> <li>➤ Residential Rebate Programs</li> </ul>	✓

# 2020 UWMP Conclusions

- Supply is expected to meet current and projected demands through 2045 with continued water use efficiency and recycled water use
- 2020 SBx7-7 water use target compliance achieved
- The UWMP is anticipated to meet all DWR requirements

**Thank You!**



# Questions?





AGENDA NO: C-1

MEETING DATE: October 12, 2021

# Staff Report

**TO:** Honorable Mayor & City Council **DATE:** October 5, 2021

**FROM:** Greg Kwolek – Public Works Director  
Kyle Rhorer – Water Reclamation Facility (WRF) Program Manager

**SUBJECT:** 1) Approval of Amendment to Contract with Cogstone Resources Management for Cultural Resources Monitoring for the Water Reclamation Facility (WRF) Lift Station and Offsite Pipelines Construction Project; 2) Amendment to Contract with Far Western Anthropological Research Group, Inc. for Data Recovery Excavations at Site CA-SLO-16 for the WRF Lift Station and Offsite Pipelines Construction Project, and 3) Approval of Change Order No. 1 to Contract with Anvil Builders, Inc for Construction Services for the Water Reclamation Facility (WRF) Lift Station and Offsite Pipelines

## RECOMMENDATION

Staff recommends the City Council authorize the City Manager to execute the following:

1. Amendment No. 1 to the agreement with Cogstone Resource Management (Cogstone) for cultural resources monitoring services during construction of the WRF Lift Station and Offsite Pipelines for a total amount of \$740,803.22, which includes \$155,970 of optional, as-needed services for cultural resources monitoring, as directed by the City’s Public Works Director, resulting in a total not to exceed amount of \$1,005,721.22.
2. Amendment No. 6 to the agreement with Far Western Anthropological Research Group, Inc. (Far Western) for data recovery excavations at cultural resources site CA-SLO-16, as identified in the Project EIR, and also known as construction Phase 2B of the Conveyance Facilities Project as outlined in the Programmatic Agreement between Environmental Protection Agency (EPA) and the State Historic Preservation Office (SHPO) regarding the City of Morro Bay WRF Project for the amount of \$463,086, which includes \$146,824 of optional as-needed services for the Phase 2B data recovery excavations, as directed by the City’s Public Works Director, resulting in a total not to exceed amount of \$806,165.01.
3. Authorize the City Manager to execute contract change order (CCO) No. 1 to the agreement with Anvil Builders, Inc. (Anvil) for construction of the WRF Conveyance Facilities for the amount of \$674,485.00, resulting in a total not to exceed amount of \$32,168,160.

## FISCAL IMPACT

### **Cogstone Resources Group**

The cost for Amendment No. 1 is \$584,833.22, plus an additional \$155,833.22 for optional monitoring tasks. If the amendment is approved, then the total not to exceed amount for the Cogstone agreement will increase from \$264,918.40 to \$849,751.62 (base scope) or \$1,005,721.22 if the proposed optional tasks are authorized per Public Works Director direction.

Prepared By: AC

Dept Review: GK

City Manager Review: SC

City Attorney Review: JWP

**Far Western Archaeological Research Group, inc.**

The cost for Amendment No. 6 is \$316,262 plus optional monitoring Tasks 1, 2 and 3 of \$45,187, \$41,137, and \$60,500 respectively, for a total optional task amount of \$146,824. If the amendment is approved, then the total not to exceed amount for the Far Western agreement will increase from \$397,079.01 to \$713,314 (base scope) or \$860,165.01 if the proposed optional tasks are authorized per Public Works Director direction.

**Anvil Builders, Inc. (Anvil)**

The total cost for CCO No. 1 is \$674,485. The table below lists each PCO and their respective values. If approved, Anvil’s new total contract amount will be \$32,168,160, which will not result in an increase to the WRF Project overall budget or the rates paid by the City’s water or wastewater customers. The value of CCO No. 1 will be covered by the Conveyance Facilities budget contingency for the Project budget, as outlined in the FY 20/21 Q4 quarterly report.

PCO #	DESCRIPTION	Amount
1	SHPO Delay (35 days no dig moratorium)	\$443,000
2	Add 2 Each 10-in Valves and 10-in Tee	\$ 23,498
3	PS-B MAS-Relay Pump Protection Module per DC-01	\$ 13,477
4	PS-A & PS-B Conduit Changes per DC-02	\$ 6,436
7	Extend Waterline Relocation from Sta 71+00 to Sta 77+43	\$131,096
12	CA-SLO-2232H Work Interruptions from Stat 147 to Sta 150	\$56,978

**Overall Fiscal Impact**

Acceptance of all three contract amendments and optional tasks would not result in an increase in the overall WRF Project baseline budget as adopted in the FY 2021-22 City Budget, nor would it require any increase in rates paid by customers. The total revised amount between Cogstone, Far Western, and Anvil is within the Conveyance Facilities Project contingency and within the revised FY20/21 Q4 Quarterly Report WRF Program budget of \$144,674,877. The budget for these increases comes from the project’s conveyance facilities contingency budget, which will have \$652,710 remaining after approval of these amendments.

**DISCUSSION**

**Cogstone Resource Management, Inc.**

The City of Morro Bay and Cogstone entered into an agreement, as of January 27<sup>th</sup>, 2021, for cultural resource monitoring services related to the WRF Lift Station and Offsite Pipelines, which is currently under construction. Monitoring is required for ground disturbances throughout the project, per the Final Environmental Impact Report (FEIR) for the WRF, as well as agreements between the City’s funder (U.S. Environmental Protection Agency – EPA) and the State Historic Preservation Office (SHPO). The original scope for Cogstone did not anticipate the number of locations or extent of cultural resources monitoring, which includes archaeological, paleontological, and Native American monitoring that is actually occurring throughout the duration of construction. The number of monitoring sites has expanded to keep pace with the number of active work sites on the pipeline route. Anvil, the pipeline contractor, is working in multiple sites in order to maintain the project schedule, following delays related to the EPA – SHPO agreement and some construction related challenges.

This scope amendment outlines the scope of services required to meet the cultural resources monitoring requirements to maintain the project schedule while also meeting the cultural resources

mitigation measures set forth in the FEIR for the WRF project, and the monitoring and mitigation measures outlined in the Phase 2 Monitoring Plan. The original scope of work for cultural resources monitoring during construction included the following:

#### Phase 1: Pre-Construction Activities

- Task 1.1 – Project Team Coordination
  - o Coordination between City, WRF Program Team, Native American representatives, and the Contractor.
- Task 1.2 – Construction Worker Cultural and Paleontological Resource Sensitivity Training
  - o Sensitivity training in coordination with the Native American representatives prior to any ground disturbance for the Project.

#### Phase 2: Construction Monitoring and Mitigation Site Monitoring and Regulatory Reporting

- Task 2.1 – Mitigation Monitoring During Construction
  - o Cogstone will provide an archaeologist who is cross-trained in paleontology to conduct cultural and paleontological resources monitoring for the project.
  - o Working with construction crews to visually inspect and evaluate sediments immediately upon exposure for evidence of fossils and ancient or historic sites as within areas outlined in the Project's EIR.
  - o Authority to halt construction, if necessary, to investigate any potentially significant archaeological or paleontological resources deposits.
  - o Maintain and provide daily logs by all monitors on site describing the observations throughout the day's ground-disturbing activities.
  - o Testing, evaluation, and data recovery in accordance with Phase 2 Monitoring Plan of significant archaeological and paleontological resources that are found
- Task 2.2 – Coordination with Tribal Monitors
  - o Subcontract Native American monitoring for the project using three Tribes: *yak tityu tityu (Northern Chumash Tribe)*, *Salinan Tribe of Monterey and San Luis Obispo Counties*, and *the Northern Chumash Tribal Council*.
- Task 2.3 – On-call Cultural Resources Monitoring
  - o Cogstone provides a monitor on an on-call basis described under the Mitigation Monitoring During Construction scope to respond to any unanticipated archaeological and/or paleontological discoveries during the project.
- Task 2.4 – Reporting
  - o Cogstone will provide the City with weekly status reports which include monitoring activities and any discoveries from both archaeological and Native American daily monitoring logs.
  - o Should no archaeological resources be identified during the Project, an Archaeological Resources Monitoring Report, which presents the results of the monitoring efforts, will be presented to the City.
  - o Should significant resources be identified, a larger monitoring compliance report outlining monitoring and mitigation efforts for resources encountered and coordination and compliance with state and national agencies will be required and provided to the City.

The additional work for cultural resource monitoring services during construction are listed as follows:

- The additional work is for a timeline of 120 days (24 weeks).
- Eight additional cultural resources sensitivity trainings are included.
- Included additional one-hour weekly lookahead meetings for the remaining 35 weeks for the

- Project as these meetings have been added since the original scope.
- Per the Phase 2 Monitoring Plan, paleontological resource monitoring and a paleontological site assessment are required. Paleontological monitoring as well as additional archaeological monitoring, estimated to be five 8-hour days per week for 24 weeks (120 days). Additionally, five overtime hours for archaeological and paleontological monitoring has been included each week.
  - Included additional on-call responses to inadvertent finds due to increased duration of Project.
  - Additional Native American monitoring time has been added due to the need for three to six monitors every day instead of the previously scoped one monitor per day due to the Contractors multiple construction areas throughout the conveyance project. A single Native American monitor must be present at each work location that is further than 200 feet from each other, the standard distance used during professional monitoring services.
  - Additional task management, supervision, and reporting time has been added due to the increased scope, scheduling complexities, and tribal coordination for the duration of the Project. This includes attendance at 35 one-hour weekly lookahead meetings and on-boarding of the Xolon Salinan Tribe, as well as associated management of this additional Tribe to the Project.
  - Previously authorized out-of-scope services, which included survey of PG&E laydown yard that was to be included in the project Area of Potential Effects (APE).
  - Out of scope Native American Monitoring that was required during construction to provide enough project coverage at multiple locations.

Optional Tasks included in this Amendment are listed as follows:

- Additional task management and communication time coordinating with up to five tribal members for 11 weeks, if needed.
- Additional time for archaeological, paleontological resources and Native American night monitoring under Optional Monitoring Tasks, which is anticipated to be three 6-hour nights.
- Additional archaeological and paleontological monitoring for two 8-hour days for 11 weeks with two hours of overtime per week is included, if needed
- Additional Native American monitoring for two Native American monitors for five 9-hour days for 11 weeks, if needed
- Additional supervision is included for the Principal Investigator and Supervisor for 11 weeks, if needed

**Far Western Anthropological Research Group, Inc.**

The City of Morro Bay and Far Western executed Amendment No. 5 to their original contract on February 23<sup>rd</sup>, 2021. Amendment No. 5 scope of services included additional pre-construction testing and data recovery excavation for the WRF Conveyance Facilities Project. Amendment No. 5 originally included the scope of services to clear and mitigate impacts to cultural resources at the utility bridge crossing Morro Creek and the pipeline between Stations 27+00 to 37+00 of the Conveyance Facilities project. Ground disturbance on this section of the Project was halted due to consultation issues with SHPO splitting the conveyance facilities into Phase 2A and 2B to facilitate construction on Phase 2A without delay, while Phase 2B underwent further consultation between EPA and SHPO and impact mitigation re-design by Waterworks Engineers. Far Western requested permission from the City, on April 22, 2022, to utilize \$75,000 of Amendment No. 5 budget and eliminate the cultural resources investigation within Phase 2B from their Amendment No. 5 scope in order to perform cultural resources investigation for the future pilot injection well construction. This was approved by the City. This proposed Amendment No. 6 includes the Phase 2B cultural resources monitoring and mitigation scope of services, which takes into consideration the

engineering re-design completed by Waterworks Engineers which significantly reduced the anticipated budget for Far Western.

The scope of work for Amendment No. 6 for Far Western is listed below:

Project Management:

- The Far Western Project Manager and accounting team will oversee quality control, scheduling, costs, project administration, staff coordination, billing, and other administrative duties throughout the entirety of this scope.

Field Investigation:

- Archaeological data recovery excavations are necessary for the pipe bridge footings on the north and south banks of Morro Creek, and the pipeline alignment from Station 27+00 to 33+00 and 35+00 to 37+00, However, excavation of the pipeline alignment from Station 27 to 33 is not expected to encounter archaeological deposits but will need to be mechanically cleared under the direction of an archaeologist. Due to logistical constraints and project excavation sequencing, it is assumed that this will require four separate mobilizations by the archaeological team.
- At each of the bridge footings and the pipeline alignment from Station 35 to 37, fieldwork will include with a series of small test trenches to assess integrity, followed by hand excavation of a controlled volume of intact deposits. Subsequently, the remaining Area of Direct Impact will be mechanically cleared to ensure that no human remains and/or distinct features are present.
- It is estimated this mitigation work will require three separate mobilizations, each spanning 10 days (inclusive of travel) by a crew of six archaeologists. Clearing the pipeline alignment from Station 27 to 33 will require a fourth mobilization by a crew of two archaeologists over the course of 10 days.
- All fieldwork will be overseen by a local Native American monitor reimbursed by Far Western yet coordinated by Cogstone.

Laboratory Analysis and Reporting:

- Laboratory analysis will be conducted as described in the approved treatment plan and will include:
  - o Cataloging and general classification of all material recovered from fieldwork and flotation processing of up to 15 soil samples.
  - o Detailed analysis of each class of artifact (stone tool, debitage, modified bone and shell artifacts).
  - o In-house sourcing analysis of obsidian artifacts.
  - o Analysis of vertebrae, fish, shellfish, and archaeobotanical samples.
  - o AMS radiocarbon dating of 1 samples.
  - o Curation of 4 boxes of cultural materials.
- Documentation of all archaeological data recovery work in a single technical report which will include a full accounting of methods and results inclusive of maps, photos, site records, analysis files, artifact catalogues, and other material generated during the study.
- Coordination of technical report submittal to City, EPA, interested Native American groups, SHPO, and California Historic Resources Information System (CHRIS).

Optional Tasks included in this Amendment are listed as follows:

- Excavation and Analysis of Ten Human Graves
  - o It is unknown if human remains and/or intact human graves will be encountered during the course of field investigations. In the event human remains are uncovered,

this option task covers excavation and analysis of up to ten human graves. *Note, if human remains or graves are discovered, delays may occur while consultation with the appointed Most Likely Descendent are conducted.*

- Public Outreach:
  - o This optional task is to comply with Stipulation III.D.2 of the Programmatic Agreement between the EPA and SHPO in regards to the WRF Project, which includes public outreach as an additional mitigation measure for the Project. This optional task is to comply with this stipulation if the City chooses to do so. Public outreach will document the findings of the archaeological studies in one or more formats that can include public displays and/or interpretive panels, classroom teaching materials, and presentations or webpages.
- Complete Testing for Construction Phase 3 (Final Injection Well Field):
  - o Testing was recently completed for the pilot injection well, the performance of which will determine the number and location of additional injection wells in close proximity to site CA-SLO-16. It is not possible, at this time, to accurately budget costs to complete archaeological testing for this construction phase since it has not been designed. At the request of the City, an optional services budget has been included to quickly address the testing needs for Construction Phase 3 as they arise.

### **Anvil Builders, Inc. (Anvil)**

The City of Morro Bay and Anvil entered into an agreement as of November 10, 2020, for construction of the WRF conveyance facilities (the “Contract”). CCO No. 1 consists of five potential change orders (PCO) that were negotiated between Anvil and the construction management team.

#### PCO No. 1 –State Historic Preservation Office (SHPO) Delay:

Project notice to proceed was issued on December 14, 2020. The City issued a stop-work order to Anvil on February 16, 2021 based on a notification from SHPO that the City was not permitted to conduct any ground-disturbing activities on any portion of the pipeline project. Upon resolution of SHPO requirements, Anvil was permitted to begin most project ground-disturbing activities 35 calendar days later on March 15, 2021.

The work stoppage resulted from the WIFIA Program Section 3 Consultation between U.S. Environmental Protection Agency (EPA) and SHPO that was required as part of the City’s Water Infrastructure Finance and Innovation Act (WIFIA) loan. The process for gaining approval for ground-disturbing activities included submittal of a cultural resources monitoring plan to EPA that SHPO needed to approve before any ground-disturbing activities could begin. The Monitoring Plan was submitted to EPA on October 3, 2020, and EPA sent the document to SHPO in early November 2020. SHPO has a statutory requirement to provide a response within 30 days and EPA received SHPO comments in February 2021, which was past the 30-day limit.

Under the regulations, EPA and the City could have begun conducting ground-disturbing activities, since SHPO did not respond within the statutory 30-day requirement. However, EPA was not willing to permit the City to begin conducting any ground-disturbing activities on any portion of the project without SHPO approval. SHPO provided approval on March 15, 2021. Anvil subsequently filed a delay claim and time impact analysis to substantiate impacts to construction operations resulting from the moratorium of any ground-disturbing activities on any portion of the project during the work stoppage time period.

The time impact analysis substantiated the claim, and the contract time extension of 40 calendar days. Because Anvil was not allowed to perform any ground disturbing activities during the work stoppage period, the cost of the PCO includes the cost for already-acquired rented equipment that

would be used for construction activities, permanent labor assigned to the project, re-starting inefficiencies, re-acquisition of temporary labor, and project management and coordination with subcontractor services that had to be postponed during the work stoppage period. PCO No. 1 is a regulatory agency requirement change order.

PCO No. 2 – Add two 10-inch valves and 10-inch tee:

Anvil exposed the existing Waterline near Sta 121+30 to relocate the line as required by the Contract. The existing piping configuration was discovered to be different from what was shown on the City's as-built drawings. After review, City staff concluded that a new 10" Valve and 10" Tee fitting were needed to replace the existing piping. This change will increase the reliability and operability of the water distribution system. PCO No. 2 is a required change order requested by the City.

PCO No. 3 – Pump Station B MAS Pump Relay Module Per DC-01:

The Design Engineer issued Clarification No. 1 on March 12, 2021, indicating the Pump Station B Pumps have been provided with a different pump protection system than is shown in the design. The conduit and wire changes are required to incorporate the pump protection module. As a result, conduit/wiring revisions were necessary at PS-B on Drawings 20-E-02, 03, 04, 05, 08 & and 20-I-01. PCO No. 3 is a required change order requested by the City.

PCO No. 4 – Pump Station A & Pump Station B Conduit Changes Per DC-02:

The Design Engineer issued Clarification No. 2 on April 19, 2021, indicating isolation of AC and DC signals is desired to prevent potential signal interferences. These revisions will isolate the AC signals from the DC signals. As a result, conduit/wiring revisions were necessary at PS-A on Drawings 10-E-3, 10-E-6, and 10-E-7, and at PS-B on Drawings 20-E-4, 20-E-5, 20-E-8, and 20-E-9. PCO No. 4 is a required change order requested by the City.

PCO No. 7 – Extend 12-inch RO Waterline Relocation:

The Contract includes relocating an existing 12" Waterline on Quintana between Sta 77+43 and Sta 82+05, due to the waterline being in conflict with the force main/brine pipeline joint trench. The existing waterline is not located where the City's as-built drawings show it, and it entered the joint trench alignment at Sta 73+50, which is approximately 400 feet more than was shown on the Drawings. After additional potholing, the City decided to extend the water line relocation back to Sta 71+00 (adding approximately 643 LF of waterline relocation to the Contract). PCO No. 7 is a differing site condition change order.

PCO No. 12 – CA-SLO-2232H Work Interruptions:

Trenching operations on Quintana Rd near South Bay Blvd (Sta 147 to Sta 150) was significantly impacted by two known archaeological sites (CA-SLO-2232/H and CA-SLO-1183), one of which contains recently discovered human burials. This area needed to have excavations treated differently in that direct loading of trucks was not allowed without first confirming the soil was negative for resources or remains. These instructions were provided and enforced by State mandated archeological and tribal monitors assigned to the project. PCO No. 12 is a regulatory agency requirement change order.

**CONCLUSION**

The requested contract amendments for Cogstone, Far Western, and Anvil have been thoroughly reviewed and refined by the project management team and City staff. With the addition of these Contract modifications, the WRF conveyance facilities project will continue to meet the timing and regulatory agency requirements of the entire WRF project.

## **ATTACHMENTS**

1. Amendment No. 1 scope and fee to the agreement with Cogstone Resource Management, Inc. for cultural resource monitoring services during construction of the Water Reclamation Facility (WRF) Lift Station and Offsite Pipelines.
2. Amendment No. 6 scope and fee to the agreement with Far Western Archaeological Research Group, inc. for data recovery excavations at cultural resources site CA-SLO-16 for the WRF Conveyance Facilities Phase 2B.
3. Contract Change Order No. 1 to the agreement with Anvil Builders, Inc. (Anvil) - execution form and description of change document.

CITY OF MORRO BAY

AMENDMENT NO. 1 TO THE AGREEMENT  
FOR CONSULTANT SERVICES  
BETWEEN THE CITY OF MORRO BAY  
AND COGSTONE RESOURCE MANAGEMENT

This Amendment No. 1 is entered by and between the City of Morro Bay, a municipal corporation ("City") and Cogstone Resource Management, a California corporation ("Consultant").

**RECITALS**

WHEREAS, City and Consultant entered into an agreement as of January 12, 2021, for cultural resources monitoring and management services related to the Water Reclamation Facility Lift Station and Offsite Pipelines Project (the "Project"), which was approved by the City Council for a not-to-exceed amount of \$264,918 (the "Agreement").

WHEREAS, the Agreement when prepared and signed had a typo showing the not-to-exceed amount was \$261,918.40;

WHEREAS, the Parties now agree to amend the Agreement to provide for monitoring and project management services for the Project, which work requires an expansion of the tasks to be provided by Consultant pursuant to the Agreement;

WHEREAS, Consultant has specific knowledge and experience to provide technical oversight needed to accomplish necessary tasks required to meet the City Council's goals for the Project, and

WHEREAS, due to the expansion of tasks to be provided, the compensation payable pursuant to the Agreement must be increased.

NOW THEREFORE, City and Consultant mutually agree to amend the Agreement as follows:

1. City and Consultant agree the total not-to-exceed amount of the Agreement was intended to be and is in fact \$264,918.
2. The additional services to be provided by Consultant, pursuant to the Agreement, as hereby amended, shall include Tasks 1.1, 1.2, 2.1, 2.2, 2.3, 2.4 and 3 of the Scope, with optional tasks A, B, C, D and E as set forth in Exhibit A, attached hereto and incorporated herein by this reference (the "Additional Work"). The Additional Work shall be satisfactorily commenced immediately after October 12, 2021, and completed no later than June 30, 2022. Optional Tasks A through E shall be provided by Consultant as directed by the City Manager.

3. The compensation for the Additional Work shall not exceed \$740,803.22, which includes \$155,970.00 of further additional tasks. All Additional Work and further additional tasks shall be paid in accordance with the hourly rates set forth in Exhibit B, attached hereto and incorporated herein by this reference (the "hourly rates") and the process established by the Agreement on a time and materials basis. With the amount added for satisfactory completion of the Additional Work and further additional tasks, if all are requested to be performed, the total compensation paid pursuant to the Agreement shall not exceed \$1,005,721.22.

4. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to (i) include as additional insureds the City of Morro Bay and its officials, employees and agents, Morro Bay Power Company (MBPC), and the California State Water Resources Control Board (SWRCB), using standard ISO endorsement No. CG 2010 with an edition prior to 1992 and (ii) provide a waiver of subrogation and primary noncontributory status as to MBPC and California SWRCB to that coverage. Consultant also agrees to require all of its subconsultants and subcontractors to do likewise.

5. Except as expressly stated herein, all terms and conditions in the Agreement shall remain in full force and effect.

6. The effective date of this Amendment No. 1 shall be deemed to be October 12, 2021.

IN WITNESS WHEREOF, the parties have caused this Amendment No. 1 to be executed by their duly authorized representatives as of the day first written above.

CITY OF MORRO BAY

CONSULTANT

By: \_\_\_\_\_  
Scott Collins,  
City Manager

By: \_\_\_\_\_  
Its \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_  
Dana Swanson, City Clerk

Approved As To Form:

\_\_\_\_\_  
Chris Neumeyer, City Attorney



CITY OF MORRO BAY

AMENDMENT NO. 6 TO THE AGREEMENT  
FOR CONSULTANT SERVICES  
BETWEEN THE CITY OF MORRO BAY AND  
FAR WESTERN ANTHROPOLOGICAL RESEARCH GROUP, INC.

This Amendment No. 6 is entered by and between the City of Morro Bay, a municipal corporation ("City") and Far Western Anthropological Research Group, Inc., a California corporation ("Consultant").

**RECITALS**

WHEREAS, City and Consultant entered into an agreement as of January 1, 2019, for consulting services related to the Water Reclamation Facility (the "Project") for a not to exceed amount of \$124,644.01 (the "Agreement");

WHEREAS, the Parties amended the Agreement as of February 1, 2020, to include additional services and established a not to exceed amount of \$260,922.01 for the entire Agreement (Amendment No. 2), which amendment was approved by act of the City Council, as required;

WHEREAS, the Parties amended the Agreement as of July 13, 2020, to include additional services and established a not to exceed amount of \$282,014.01 for the entire Agreement (Amendment No. 3);

WHEREAS, the Parties amended the Agreement as of January 25, 2021, to provide for additional time for the entire Agreement (Amendment No. 4);

WHEREAS, the Parties amended the Agreement as of February 23, 2021, to include additional services and established a not to exceed amount of 397,079.01 for the entire Agreement (Amendment No. 5).

WHEREAS, the Agreement and Amendment No. 1, No. 2, No. 3, No. 4, and No. 5 are hereinafter referred to as the "Amended Agreement;"

WHEREAS, the Parties now agree it is time to again amend the Amended Agreement to provide for additional pre-construction archeological exploration and mitigation of known cultural resource sites for the Conveyance Facilities component of the Project, which work requires an expansion of the tasks to be provided by Consultant pursuant to this Amendment No. 6;

WHEREAS, Consultant has specific knowledge and experience to provide technical oversight needed to accomplish necessary tasks required to meet the City Council's goals for the Project; and

WHEREAS, due to the expansion of the tasks to be provided, the compensation payable pursuant to the Amended Agreement must be increased.

NOW THEREFORE, City and Consultant mutually agree to amend the Amended Agreement as follows:

1. The additional services to be provided by Consultant, pursuant to the Amended Agreement, as amended by this Amendment No. 6, shall include the Scope of Work, as set forth on pages 1 through 3 of Exhibit A, attached hereto and incorporated herein by this reference (the "Additional Work"). The Additional Work shall be satisfactorily commenced immediately upon execution of this Amendment No. 6, and satisfactorily completed by June 30<sup>th</sup>, 2022.
2. The compensation to be paid for the Additional Work shall not exceed \$463,086, which includes \$146,824 of additional tasks, as described on pages 3 of Exhibit A, for a total not to exceed amount of \$806,165.01 for the Amended Agreement, as amended herein.
3. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to (i) include as additional insureds the City of Morro Bay and its officials, employees and agents, Morro Bay Power Company (MBPC), and the California State Water Resources Control Board (SWRCB), using standard ISO endorsement No. CG 2010 with an edition prior to 1992 and (ii) provide a waiver of subrogation and primary noncontributory status as to MBPC and California SWRCB to that coverage. Consultant also agrees to require all of its subconsultants and subcontractors to do likewise.
4. Except as expressly stated herein, all terms and conditions in the Amended Agreement shall remain in full force and effect.
5. The effective date of this Amendment No. 5 shall be deemed to be October 12, 2021 (Effective Date).

IN WITNESS WHEREOF, the parties will be deemed to have caused this Amendment No. 6 to be executed by their duly authorized representatives as of the Effective Date.

CITY OF MORRO BAY

CONSULTANT (2 signatures required)

By: \_\_\_\_\_

By: \_\_\_\_\_

Scott Collins  
City Manager

\_\_\_\_\_,  
Its \_\_\_\_\_

[Signatures continued on Page 3.]

[Signatures continued from Page 2.]

Attest:

\_\_\_\_\_  
Dana Swanson, City Clerk

By: \_\_\_\_\_  
\_\_\_\_\_,  
Its \_\_\_\_\_

Approved As To Form:

\_\_\_\_\_  
Chris Neumeyer, City Attorney



October 1, 2021

Scott Collins  
City Manager  
City of Morro Bay  
595 Harbor Street  
Morro Bay, CA 93442

*Re: Water Reclamation Facility Project, Construction Phase 2B, Budget Augment Request for Data Recovery Excavations (Mitigation) at Site CA-SLO-16 and Completion of Archaeological Testing for Construction Phase 3 (injection wells)*

Dear Scott:

Per your request, the following serves as a scope of work and cost estimate for data recovery excavations at site CA-SLO-16 for the Water Reclamation Facility (WRF) Construction Phase 2B (conveyance pipelines and utility bridge).

#### **SCOPE OF WORK**

##### **Project Management**

The Far Western Project Manager and accounting team will oversee quality control, scheduling, costs, project administration, staff coordination, billing, and other administrative duties.

##### **Field Investigations**

As detailed in the recent Finding of Adverse Effect for Construction Phase 2B (Kaijankoski and Whitaker 2021), archaeological data recovery excavations are necessary for the pipe bridge footings on the north and south banks of Morro Creek, and the pipeline alignment from Station 35 to 37. Additionally, excavation of the pipeline alignment from Station 27 to 33 is not expected to encounter archaeological deposits but will need to be mechanically cleared under the direction of an archaeologist. Due to logistical constraints and project excavation sequencing, it is assumed that this will require four separate mobilizations by the archaeological team. If the excavation work for these four activities can be conducted concurrently there will be a substantial savings in both labor and direct costs.

At each of the bridge footings and the pipeline alignment from Station 35 to 37, fieldwork will begin with a series of small test trenches to assess integrity, followed by hand excavation of a controlled volume of intact deposits. Subsequently, the remaining Area of Direct Impact will be mechanically cleared to ensure that no human remains and/or distinct features are present. This will be done with an excavator outfitted with a flat blade slowly removing soil under the direction of an archaeologist. It is estimated that this mitigation work will require three separate

mobilizations, each spanning 10 days (inclusive of travel) by a crew of six archaeologists. Clearing the pipeline alignment from Station 27 to 33 will require a fourth mobilization by a crew of two archaeologists over the course of 10 days. Lastly, all fieldwork will be overseen by a local Native American monitor reimbursed by Far Western yet coordinated by Cogstone.

### **Laboratory Analysis and Reporting**

Laboratory analysis will be conducted as described in the approved treatment plan and will include: cataloging and general classification of all material recovered from fieldwork and flotation processing of up to 15 soil samples; detailed analysis of each class of artifact (including stone tool, debitage, modified bone and shell artifacts); in-house sourcing analysis of obsidian artifacts, analysis of vertebrate, fish, shellfish, and archaeobotanical samples; and AMS radiocarbon dating of 12 samples. Curation of 4 boxes of cultural material is also included in the scope.

All aspects of the archaeological data recovery work will be documented in a single technical report that includes a full accounting of methods and results inclusive of maps, photos, site records, analysis files, artifact catalogues, and other relevant materials generated during the study. These results will be discussed in light of the research questions presented in the Archaeological Research Design and Treatment Plan. In accordance with the Programmatic Agreement for the project, the report will be submitted to the City of Morro Bay, the Environmental Protection Agency, interested Native American groups, the State Historic Preservation Officer, and the California Historical Resources Information System.

### **Optional Task 1 – Excavation and Analysis of Ten Human Graves**

It is unknown if human remains and intact human graves will be encountered during the course of field investigations. If present delays may occur while consultation with the appointed Most Likely Descendent are conducted. In the event that human remains are uncovered this optional task covers excavation and analysis of up to ten human graves.

### **Optional Task 2 - Public Outreach**

Stipulation III.D.2 (Treatment of Historic Properties) of the Programmatic Agreement included a provision for public outreach as an additional mitigation measure. This optional task is to comply with this stipulation should the City choose to do so at this time. Public outreach will document the findings of the archaeological studies in one or more formats that can include public displays and/or interpretive panels, classroom teaching materials and presentations, or webpages.

### **Optional Task 3 – Complete Testing for Construction Phase 3 (Injection Wells)**

Testing was recently completed for the pilot injection well, the performance of which will determine the number and location of additional injection wells in close proximity to site SLO-16. This testing required vegetation removal, mechanical trenching, deep hydraulic continuous coring, and hand excavation. It is not possible at this time to accurately budget costs to complete archaeological testing for this construction phase since it has not been designed. At the request of the City a placeholder amount has been included in this cost estimate quickly address the testing needs for Construction Phase 3 as they arise.

Far Western has prepared this data recovery scope of work with the following assumptions:

- The Draft Finding of Adverse document (Kaijankoski and Whitaker 2021) and approach to mitigation presented here will be approved by the State Historic Preservation Officer.
- Project contractor will provide excavator, operator, shoring, and site security.
- This scope does not include additional data recovery work at site CA-SLO-16 that may be required for Construction Phase 3 (injection wells).

## BUDGET

The attached budget proposes a *not-to-exceed* amount of \$316,262 with the three optional tasks increasing the *not-to-exceed* amount to \$463,086 and details hours and direct costs for the tasks needed to complete the tasks outlined above. If you have any questions, please contact me at phil@farwestern.com at 530-756-3941.

Thank you for your consideration.

Best Regards,

A handwritten signature in black ink, appearing to read "Philip Kaijankoski".

Philip Kaijankoski  
Principal Investigator

Enclosure: Cost Estimate

## References Cited

Kaijankoski, Philip and Adrian Whitaker

- 2021 *Morro Bay Water Reclamation Facility Construction Phase 2B: CA-SLO-16 Evaluation, Finding of Effect, and Mitigation Plan, San Luis Obispo County, California*. Far Western Anthropological Research Group, Inc., Davis. Prepared for the City of Morro Bay. August 2021 DRAFT.

**BUDGET SUMMARY**

PROJECT TITLE: Morro Bay WRF  
 TASK: SLO-16 Mitigation and Testing for Construction Phase III

CONTRACTOR: City of Morro Bay  
 CONTRACTOR CONTACT: Scott Collins

TASK	LABOR HOURS	LABOR COST	OTHER DIRECT COSTS	SUBCONSULTANTS	SUBTOTAL
MANAGEMENT	72	\$ 8,375	\$ -	\$ -	\$ 8,375
PREFIELD	58	\$ 6,178	\$ 246	\$ -	\$ 6,425
FIELD	1,600	\$ 131,707	\$ 41,767	\$ 36,432	\$ 209,906
LAB	468	\$ 38,287	\$ 9,900	\$ 5,500	\$ 53,687
DELIVERABLE	288	\$ 37,869	\$ -	\$ -	\$ 37,869
Optional Task 1 - Exc. of 10 burials	400	\$ 28,670	\$ 5,517	\$ 11,000	\$ 45,187
Optional Task2 - Public Outreach	152	\$ 19,137	\$ 22,000	\$ -	\$ 41,137
Optional Task 3 - Complete Constructor	0	\$ -	\$ 60,500	\$ -	\$ 60,500
<b>GRAND TOTAL</b>					<b>\$ 463,086</b>

## BUDGET SUMMARY

Rates valid until September 30, 2021.

A Cost of Living adjustment of up to three percent will be applied annually on October 1.

PROJECT TITLE: Morro Bay WRF  
TASK: SLO-16 Mitigation and Testing for Construction Phase III

CONTRACTOR: City of Morro Bay  
CONTRACTOR CONTACT: Scott Collins

POSITION/CLASSIFICATION	EMPLOYEE NAME	CONTRACT RATE	MANAGEMENT		PREFIELD		FIELD		LAB		DELIVERABLE		Optional Task 1 - Exc. of 10 burials		Optional Task 2 - Public Outreach		Optional Task 3 - Complete Construction Phase 3 Testing		TOTAL	
			Hours	(\$)	Hours	(\$)	Hours	(\$)	Hours	(\$)	Hours	(\$)	Hours	(\$)	Hours	(\$)	Hours	(\$)	Hours	(\$)
Principal Investigator	Hildebrandt, William	\$179.15	-	\$ -	-	\$ -	-	\$ -	-	\$ -	12	\$ 2,150	-	\$ -	-	\$ -	-	\$ -	12	\$ 2,150
Principal Investigator	Rosenthal, Jeffrey	\$173.13	-	\$ -	-	\$ -	-	\$ -	-	\$ -	12	\$ 2,078	-	\$ -	-	\$ -	-	\$ -	12	\$ 2,078
Principal Investigator	Whitaker, Adrian	\$171.79	16	\$ 2,749	-	\$ -	120	\$ 20,615	24	\$ 4,123	80	\$ 13,743	-	\$ -	12	\$ 2,061	-	\$ -	252	\$ 43,291
Project Accountant	Artega, Israel	\$63.25	24	\$ 1,518	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	24	\$ 1,518
Principal Investigator	Wohlgemuth, Eric	\$121.44	-	\$ -	-	\$ -	-	\$ -	8	\$ 972	8	\$ 972	-	\$ -	-	\$ -	-	\$ -	16	\$ 1,943
Principal Investigator	Parker, Ashley	\$103.73	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	16	\$ 1,660	-	\$ -	16	\$ 1,660
Geoarchaeologist	Kajankoski, Phil	\$139.15	16	\$ 2,226	24	\$ 3,340	120	\$ 16,698	12	\$ 1,670	80	\$ 11,132	-	\$ -	24	\$ 3,340	-	\$ -	276	\$ 38,405
Lab Assistant	Aviles, Anthony	\$54.40	-	\$ -	-	\$ -	-	\$ -	80	\$ 4,352	-	\$ -	-	\$ -	-	\$ -	-	\$ -	80	\$ 4,352
GIS Supervisor	DeArmond, Shannon	\$139.15	-	\$ -	2	\$ 278	-	\$ -	-	\$ -	4	\$ 557	-	\$ -	-	\$ -	-	\$ -	6	\$ 835
GIS Analyst	Bradeen, Jill	\$78.43	-	\$ -	8	\$ 627	-	\$ -	-	\$ -	24	\$ 1,882	-	\$ -	-	\$ -	-	\$ -	32	\$ 2,510
GIS Technician	Deutsch, Kyle	\$63.25	-	\$ -	4	\$ 253	-	\$ -	-	\$ -	4	\$ 253	-	\$ -	-	\$ -	-	\$ -	8	\$ 506
Lab Director	Harold, Laura	\$103.73	-	\$ -	-	\$ -	-	\$ -	24	\$ 2,490	-	\$ -	-	\$ -	-	\$ -	-	\$ -	24	\$ 2,490
Lab Assistant	Armstrong-Ingram, Angela	\$84.76	-	\$ -	-	\$ -	-	\$ -	80	\$ 6,781	-	\$ -	-	\$ -	-	\$ -	-	\$ -	80	\$ 6,781
Lab Assistant	Eubanks, Jill	\$78.18	-	\$ -	-	\$ -	-	\$ -	120	\$ 9,382	-	\$ -	-	\$ -	-	\$ -	-	\$ -	120	\$ 9,382
Lab Assistant	Galindo Arias, Patricia	\$70.99	-	\$ -	-	\$ -	-	\$ -	120	\$ 8,519	-	\$ -	-	\$ -	-	\$ -	-	\$ -	120	\$ 8,519
Art Director	Norton, Tammara	\$120.76	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	100	\$ 12,076	-	\$ -	100	\$ 12,076
Production Director	Pardee, Michael	\$96.14	-	\$ -	-	\$ -	-	\$ -	-	\$ -	12	\$ 1,154	-	\$ -	-	\$ -	-	\$ -	12	\$ 1,154
Production Specialist	Kramm, Jacqueline	\$77.29	-	\$ -	-	\$ -	-	\$ -	-	\$ -	24	\$ 1,855	-	\$ -	-	\$ -	-	\$ -	24	\$ 1,855
Production Specialist	Montgomery, Kathleen	\$73.37	-	\$ -	-	\$ -	-	\$ -	-	\$ -	24	\$ 1,761	-	\$ -	-	\$ -	-	\$ -	24	\$ 1,761
Senior Archaeologist	Wall, Bridget	\$103.73	-	\$ -	8	\$ 830	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	8	\$ 830
Staff Archaeologist	Simpson, Lucinda	\$68.31	-	\$ -	-	\$ -	320	\$ 21,859	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	320	\$ 21,859
Senior Archaeologist	Davis, Kathy	\$83.49	-	\$ -	-	\$ -	-	\$ -	-	\$ -	4	\$ 334	-	\$ -	-	\$ -	-	\$ -	4	\$ 334
Staff Archaeologist	Garvey, Devin	\$78.18	-	\$ -	-	\$ -	320	\$ 25,018	-	\$ -	-	\$ -	200	\$ 15,636	-	\$ -	-	\$ -	520	\$ 40,654
Staff Archaeologist	DeOrnellas, Briann	\$65.17	-	\$ -	-	\$ -	240	\$ 15,641	-	\$ -	-	\$ -	200	\$ 13,034	-	\$ -	-	\$ -	440	\$ 28,675
Logistics Coordinator	Townsend, Valarie	\$68.31	-	\$ -	8	\$ 546	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	8	\$ 546
Project and Proposal Director	Johnson, Melissa	\$106.26	8	\$ 850	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	8	\$ 850
Director of Finance	Langer, Ashley	\$129.03	8	\$ 1,032	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	8	\$ 1,032
Operations Supervisor	Tarnner, Ashley	\$75.90	-	\$ -	4	\$ 304	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	4	\$ 304
Technician A	Technician A	\$66.41	-	\$ -	-	\$ -	480	\$ 31,877	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	480	\$ 31,877
<b>LABOR TOTAL</b>			<b>72</b>	<b>\$ 8,375</b>	<b>58</b>	<b>\$ 6,178</b>	<b>1600</b>	<b>\$ 131,707</b>	<b>468</b>	<b>\$ 38,287</b>	<b>288</b>	<b>\$ 37,869</b>	<b>400</b>	<b>\$ 28,670</b>	<b>152</b>	<b>\$ 19,137</b>	<b>-</b>	<b>\$ -</b>	<b>3038</b>	<b>\$ 270,224</b>

OTHER DIRECT COSTS	UNIT	UNIT RATE	Qty	(\$)	Qty	(\$)	Qty	(\$)	Qty	(\$)	Qty	(\$)	Qty	(\$)	Qty	(\$)	Qty	(\$)	TOTAL
Per Diem (Motel)	day	\$ 96.00	-	\$ -	-	\$ -	180	\$ 17,280	-	\$ -	-	\$ -	20	\$ 1,920	-	\$ -	-	\$ -	\$ 19,200
Meals/Incidentals	day	\$ 55.00	-	\$ -	-	\$ -	180	\$ 9,900	-	\$ -	-	\$ -	20	\$ 1,100	-	\$ -	-	\$ -	\$ 11,000
Meals/Incidentals	half day	\$ 41.25	-	\$ -	-	\$ -	40	\$ 1,650	-	\$ -	-	\$ -	4	\$ 165	-	\$ -	-	\$ -	\$ 1,815
Mileage	mile	\$ 0.560	-	\$ -	400	\$ 224	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	\$ 224
Vehicle Rental	Truck per week	\$ 415.00	-	\$ -	-	\$ -	16	\$ 6,640	-	\$ -	-	\$ -	2	\$ 830	-	\$ -	-	\$ -	\$ 7,470
Gasoline	at cost		-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ 500	-	\$ -	-	\$ -	\$ 2,500
Supplies			-	\$ -	-	\$ -	-	\$ 500	-	\$ -	-	\$ -	-	\$ 500	-	\$ -	-	\$ -	\$ 1,000
Interpretive pannels			-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ 20,000	-	\$ -	-	\$ -	\$ 20,000
Supplies			-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	\$ -
Reproduction			-	\$ -	-	\$ -	-	\$ -	-	\$ -	100	\$ -	-	\$ -	-	\$ -	-	\$ -	\$ -
Radiocarbon		\$ 350.00	-	\$ -	-	\$ -	-	\$ -	12	\$ 4,200	-	\$ -	-	\$ -	-	\$ -	-	\$ -	\$ 4,200
Curation		\$ 1,200.00	-	\$ -	-	\$ -	-	\$ -	4	\$ 4,800	-	\$ -	-	\$ -	-	\$ -	-	\$ -	\$ 4,800
Placeholder for Testing estimate	at cost		-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ 55,000	\$ 55,000
<b>SUBTOTAL DIRECT COSTS</b>				<b>\$ -</b>		<b>\$ 224</b>		<b>\$ 37,970</b>		<b>\$ 9,000</b>		<b>\$ -</b>		<b>\$ 5,015</b>		<b>\$ 20,000</b>		<b>\$ 55,000</b>	<b>\$ 127,209</b>
<b>FEE ON DIRECT COSTS</b>	10%		-	\$ -	-	\$ 22	-	\$ 3,797	-	\$ 900	-	\$ -	-	\$ 502	-	\$ 2,000	-	\$ 5,500	\$ 12,721
<b>OTHER DIRECT COSTS TOTAL</b>				<b>\$ -</b>		<b>\$ 246</b>		<b>\$ 41,767</b>		<b>\$ 9,900</b>		<b>\$ -</b>		<b>\$ 5,517</b>		<b>\$ 22,000</b>		<b>\$ 60,500</b>	<b>\$ 139,930</b>

SUBCONSULTANTS	UNIT	UNIT RATE	Qty	(\$)	Qty	(\$)	Qty	(\$)	Qty	(\$)	Qty	(\$)	Qty	(\$)	Qty	(\$)	Qty	(\$)	TOTAL
None																			\$ -
Native American	hour	\$ 100.00	-	\$ -	-	\$ -	320	\$ 32,000	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	\$ 32,000
Mileage	mile	\$ 0.560	-	\$ -	-	\$ -	2000	\$ 1,120	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	\$ 1,120
Osteologist			-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ 10,000	-	\$ -	-	\$ -	-	\$ -	\$ 10,000
Faunal Analyst (fish bone)			-	\$ -	-	\$ -	-	\$ -	-	\$ 5,000	-	\$ -	-	\$ -	-	\$ -	-	\$ -	\$ 5,000
<b>SUBTOTAL SUBCONSULTANTS</b>				<b>\$ -</b>		<b>\$ -</b>		<b>\$ 33,120</b>		<b>\$ 5,000</b>		<b>\$ -</b>		<b>\$ 10,000</b>		<b>\$ -</b>		<b>\$ -</b>	<b>\$ 48,120</b>
<b>FEE ON SUBCONSULTANTS</b>	10%		-	\$ -	-	\$ -	-	\$ 3,312	-	\$ 500	-	\$ -	-	\$ 1,000	-	\$ -	-	\$ -	\$ 4,812
<b>SUBCONSULTANT TOTAL</b>				<b>\$ -</b>		<b>\$ -</b>		<b>\$ 36,432</b>		<b>\$ 5,500</b>		<b>\$ -</b>		<b>\$ 11,000</b>		<b>\$ -</b>		<b>\$ -</b>	<b>\$ 52,932</b>

<b>TOTAL PRICE</b>				<b>\$ 8,375</b>		<b>\$ 6,425</b>		<b>\$ 209,906</b>		<b>\$ 53,687</b>		<b>\$ 37,869</b>		<b>\$ 45,187</b>		<b>\$ 41,137</b>		<b>\$ 60,500</b>	<b>\$ 463,086</b>
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CITY OF MORRO BAY

AMENDMENT NO. 1 TO THE AGREEMENT  
FOR CONSTRUCTION SERVICES  
BETWEEN THE CITY OF MORRO BAY  
AND ANVIL BUILDERS, INC.

This Amendment No. 1 is entered by and between the City of Morro Bay, a municipal corporation ("City") and Anvil Builders, inc., a California corporation ("Contractor").

**RECITALS**

WHEREAS, City and Contractor entered into an agreement as of November 10, 2020, for construction services for Contractor to complete the work for the Water Reclamation Facility Lift Station and Offsite Pipelines Project, (the "Project") which was approved by the City Council for a not to exceed amount of \$31,493,765 ("The Agreement").

WHEREAS, the Parties now agree to amend the Agreement because the construction services for the Project require an expansion of the tasks to be provided by Contractor pursuant to the Agreement;

WHEREAS, due to the expansion of tasks to be provided, the compensation payable pursuant to the Agreement must be increased.

NOW THEREFORE, City and Contractor mutually agree to amend the Agreement as follows:

1. The additional services to be provided by Contractor, pursuant to the Agreement, as hereby amended, shall include Change Orders 1, 2, 3, 4, 7, and 12 of the out of scope items identified throughout the Project, as set forth in Exhibit A, attached hereto and incorporated herein by this reference (the "Change Orders"). The Change Orders shall be satisfactorily commenced immediately after October 12, 2021, and completed no later than June 30, 2022.
2. The compensation for the Change Orders shall not exceed \$674,485. Change Orders shall be paid in accordance with the amounts set forth in Exhibit A, attached hereto and incorporated herein by this reference (the "Change Order Log") and the process established by the Agreement on a lump sum basis. With the amount added for the Additional Work, the total compensation paid pursuant to the Agreement shall not exceed \$32,168,160.
3. Contractor shall not be compensated for any services rendered in connection with its performance of the Agreement which are in addition to those set forth herein.
4. Except as expressly stated herein, all terms and conditions in the Agreement shall remain in full force and effect.
5. The effective date of this Amendment No. 1 shall be deemed to be October 12, 2021.

IN WITNESS WHEREOF, the parties have caused this Amendment No. 1 to be executed by their duly authorized representatives as of the day first written above.

CITY OF MORRO BAY

CONTRACTOR

By: \_\_\_\_\_  
Scott Collins,  
City Manager

By: \_\_\_\_\_  
Its \_\_\_\_\_

Attest:  
  
\_\_\_\_\_  
Dana Swanson, City Clerk

By: \_\_\_\_\_  
Its \_\_\_\_\_

Approved As To Form:

\_\_\_\_\_  
Chris Neumeyer, City Attorney



**City of Morro Bay**  
**Water Reclamation Facility**  
**Lift Stations and Offsite Pipelines Project**  
**CHANGE ORDER 001**

**Project:** WRF Lift Stations and OffSite Pipelines Project      **Contractor:** Anvil Builders, Inc.  
**Date:** September 13, 2021      **Project Manager:** Matt Scholfield, PE

Upon mutual acceptance and execution of this document by the City of Morro Bay (City) and Anvil Builders, Inc. (Contractor), Contractor is hereby directed to make the following changes for the consideration set forth below:

See following page(s) for Descriptions and Reasons for Change

PCO #	DESCRIPTION	Reason For Change	Amount	Contract Time (Calendar Days)
1	SHPO Delay (35 days no dig moratorium)	REG	\$ 443,000.00	40 Days
2	Add 2 Each 10-in Valves and 10-in Tee	CR1	\$ 23,498.00	0 Days
3	PS-B MAS-Relay Pump Protection Module per DC-01	CR1	\$ 13,477.00	0 Days
4	PS-A & PS-B Conduit Changes per DC-02	CR1	\$ 6,436.00	0 Days
7	Extend Waterline Relocation from Sta 71+00 to Sta 77+43	DSC	\$ 131,096.00	0 Days
12	CA-SLO-2232H Work Interruptions from Stat 147 to Sta 150	REG	\$ 56,978.00	0 Days
NET CHANGE ORDER ADJUSTMENT			\$ 674,485.00	40 Days

ORIGINAL CONTRACT AMOUNT	\$ 31,493,675.00
Previous Change Orders	\$ -
Previous Contract Amount	\$ 31,493,675.00
Adjustments by this Change Order	\$ 674,485.00
New Contract Amount	\$ 32,168,160.00

CURRENT FINAL COMPLETION DATE	2/22/2022
Extension Days s (Calendar)	40 Days
NEW FINAL COMPLETION	4/3/2022

Acceptance of this Change Order constitutes an agreement between the City and Contractor, and the work is to be performed subject to the same terms and conditions as are contained in the Agreement with Contractor and for work on the above-mentioned project.

By signature of this Change Order, the Contractor acknowledges that the adjustments to the Contract Cost and Time contained in the Change Order are in full satisfaction and accord and so waives any right to claim any further cost and time impacts at any time during and after completion of the Contract for the changes encompassed by this Change Order.

When signed by the Owner and Construction Manager and received by Contractor, this document becomes effective IMMEDIATELY, and the Contractor shall proceed with the change(s) described above.

ACCEPTED  
 Anvil Builders Inc.  
 Contractor (Company Name)  
 \_\_\_\_\_  
 (Authorized Signature) (Date)  
 Matt Scholfield - Project Manager  
 (Print Name and Title)

APPROVED  
 Carollo Engineers Inc  
 Construction Manager  
 \_\_\_\_\_  
 Authorized Signature (Date)  
 Paul Amico - Project Manager  
 (Print Name and Title)

ACCEPTED  
 City of Morro Bay  
 Owner  
 \_\_\_\_\_  
 Authorized Signature (Date)  
 Scott Collins - City Manager  
 (Print Name and Title)



**City of Morro Bay**  
**Water Reclamation Facility**  
**Lift Stations and Offsite Pipelines Project**  
**CHANGE ORDER 001**

**Project:** WRF Lift Stations and OffSite Pipelines Project  
**Contractor:** Anvil Builders, Inc.  
**Date:** September 13, 2021

PCO #	TITLE	DESCRIPTION OF CHANGE	Reason For Change
1	SHPO Delay	Project NTP was issued on 12-14-20. Based on a notification from SHPO, a stop work order was issued by the City on 2-16-21 restricting Anvil from conducting any ground-disturbing activities. Upon resolution of SHPO concerns, Anvil was allowed to begin most project ground-disturbing activities on 3-15-21 (35 calendar days later). This issue arose from the Section 3 Consultation between EPA and SHPO required as part of the City's WIFIA loan. The process included submittal of a Monitoring Plan to EPA that SHPO needed to approve before any ground-disturbing activities could begin. The Monitoring Plan was submitted to EPA on 10-3-2020, and EPA sent the document to SHPO in early November 2020. SHPO has a statutory requirement to provide a response within 30 days. EPA received SHPO comments in February 2021, past the 30 day limit. Under the regulations, EPA and the City could have moved forward since the statutory 30 day requirement was not met. However, EPA was not willing to do so. Consequently, the City was not approved by SHPO to move forward with any ground disturbing activities until 3-15-2021. Anvil subsequently filed a delay claim and time impact analysis resulting in this change order.	REG
2	Add 2 Each 10-in Valves and 10-in Tee	Anvil exposed the existing Waterline near Sta 121+30 as required to relocate the line per Contract. The existing piping configuration was discovered to be different from what was shown on the as-built drawings. After a review, City staff concluded that a new 10" Valve and 10" Tee fitting were needed to replace the existing piping configuration. This change will increase the reliability and operability of the water distribution system.	CR1
3	PS-B MAS Pump Relay Module per DC-01	The electrical Design Engineer issued Clarification No. 1 on 3-12-2021, indicating that the Pump Station B Pumps have been provided with a different pump protection system than shown in the design. The conduit and wire changes are required to incorporate the pump protection module. As a result conduit/wiring revisions were necessary at PS-B on Drawings 20-E-02, 03, 04, 05, 08 & and 20-I-01.	CR1
4	PS-A & PS-B Conduit Changes per DC-02	The electrical Design Engineer issued Clarification No. 2 on 4-19-2021, indicating that isolation of AC and DC signals is desired to prevent potential signal interferences. The following revisions will isolate the AC signals from the DC signals. As a result conduit/wiring revisions were necessary at PS-A on Drawings 10-E-3, 10-E-6, and 10-E-7, and at PS-B on Drawings 20-E-4, 20-E-5, 20-E-8, and 20-E-9.	CR1
7	Extend 12" RO Waterline Relocation	The original Contract includes relocating an existing 12" Waterline on Quintana between Sta 77+43 and Sta 82+05, due to the waterline being in conflict with the main Joint trench. Anvil's trenching crew on Quintana encountered the waterline entering the main Joint Trench alignment at Sta 73+50. After additional potholing, the City decided to extend the water line relocation back to Sta 71+00 (adding approximately 643 LF of waterline relocation).	DSC
12	CA-SLO-2232H Work Interruptions	Trenching operations on Quintana Rd near South Bay Blvd (Sta 147 to Sta 150) was significantly impacted by two known archaeological sites (CA-SLO-2232/H and CA-SLO-1183), one of which contains recently discovered human burials. This area needed to have excavations treated differently in that direct loading of trucks was not allowed without first confirming the soil was negative for resources or remains. These instruction were provided and enforced by State mandated archeological and tribal monitors assigned to the project.	REG

**REASON FOR CHANGE CODES**  
CR1: City requested (required)  
CR2: City requested (Optional)  
E&O: Design Error or Omission  
ABI: Anvil request / claim item  
DSC: Differing Site Conditions  
REG: Regulatory Agency Item

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AGENDA NO: C-2

MEETING DATE: October 12, 2021

# Staff Report

**TO:** Honorable Mayor and Council Members **DATE:** October 5, 2021

**FROM:** Greg Kwolek, Public Works Director  
Janeen Burlingame, Management Analyst

**SUBJECT:** Receive SB 1383 Short-Lived Climate Pollutants: Organics Waste Reductions Update and Adopt Resolution No. 69-21 Reaffirming Commitment to Remain a Member of the San Luis Obispo County Integrated Waste Management Authority

## **RECOMMENDATION**

Staff recommends the City Council:

1. Receive the SB 1383 update and provide comments or direction to staff as appropriate.
2. Direct staff to analyze the cost impact to the City to implement SB 1383 and bring forward a recommendation to fund these additional costs.
3. Adopt Resolution No. 69-21 reaffirming commitment to remain a member of the San Luis Obispo County Integrated Waste Management Authority.

## **FISCAL IMPACT**

Compliance with SB 1383 will result in additional costs to the City, the San Luis Obispo Integrated Waste Management Authority (IWMA), and the City's waste hauler, Waste Connections (a.k.a. Morro Bay Garbage Service). The City is currently analyzing these costs in collaboration with IWMA and Waste Connections. Some of these costs will begin to be incurred in January 2022. Depending on the magnitude of the costs, rate increases by these three entities may be required (through a Proposition 218 process). Staff will return to Council with additional detail and to seek direction in December 2021.

## **BACKGROUND**

In September 2016, Governor Brown signed into law SB 1383 that established methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants (SLCP) in various sectors of California's economy, including waste disposal. This law is the most comprehensive solid waste legislation adopted in California in the last 30 years and expands on the requirements of AB 341 (Mandatory Commercial Recycling) and AB 1826 (Mandatory Commercial Organics).

Organic waste in landfills emits 20% of the state's methane. Organic waste such as food scraps, yard trimmings, paper, and cardboard make up half of what Californians send to landfills. SB 1383 establishes the reduction of organic waste disposal by more than 75% by 2025. In addition, the law requires the state to increase edible food recovery by 20% by 2025.

### Who is Impacted?

SB 1383 regulations apply to all persons and entities that generate organic materials such as food scraps and plant trimmings. These generators are required to divert their organic materials from landfilled garbage while certain entities that provide food will be required to donate their excess food to food banks or other organizations to feed people.

Prepared By: <u>JB</u>	Dept Review: <u>GK</u>
City Manager Review: <u>SC</u>	City Attorney Review: <u>LNL</u>

Generators include:

- Residents – includes those living in single family or multi-family premises
- Commercial Entities – includes for-profit and non-profit organizations, government offices and agencies, and industrial facilities
- Non-Local Entities – includes special districts, state/federal facilities, and prisons
- Education Agencies – includes schools, community colleges, and universities

Additionally, cities will be impacted as described in the SB 1383, see the “Areas of Focus” section of this report below.

From 2016-2020, the California Department of Resources, Recycling and Recovery (CalRecycle) worked to develop regulations to achieve the goals set in SB 1383. The new regulations were finalized by CalRecycle in November 2020.

SB 1383 will take effect January 1, 2022, with enforcement, including assessment of penalties, beginning on January 1, 2024. This progressive approach is intended to provide ample time for notification to solid waste generators on what is required of them and achieve compliance before penalties are required to be issued by the City.

After the final regulations were released in November 2020, staff began working with the IWMA to develop programs, policies, draft ordinances, and draft franchise amendments to address SB 1383 requirements as they relate to:

- Evaluating the readiness and capacity to implement SB 1383, including organics collection, recycling, and edible food recovery capacity;
- Providing organic waste collection to all residents and businesses (service provided automatically and not relying on generator to subscribe);
- Establishing an edible food recovery program that recovers and diverts edible food from the waste stream;
- Conducting outreach and education to all affected parties;
- Procuring recycled organic waste products like compost, mulch, renewable natural gas (RNG), and electricity;
- Inspecting and enforcing compliance with SB 1383; and
- Maintaining accurate records for timely submittal to CalRecycle for SB 1383 compliance.

In preparation of this major work effort, the IWMA issued a Request for Proposals to hire a consultant to develop a strategic plan and related services to plan for SB 1383 implementation, as well as assist IWMA member agencies with project management and implementation support.

Patti Toews, Interim Executive Director for the IWMA, gave a presentation of SB 1383 regulations to the Morro Bay Public Works Advisory Board at its September 15, 2021, meeting and answered questions from Board members. Items discussed included organic waste collection strategies and educational outreach to the community. The Board suggested staff work on additional education to residents and commercial businesses on what materials go in what containers above what the IWMA is already doing.

### **SB 1383 – AREAS OF FOCUS**

Attachment 1 is a summary of the main areas of focus originally prepared by the IWMA consultant based on CalRecycle’s regulations. Staff updated the document to include action items as City staff works through each area for implementation. It highlights key requirements for compliance the IWMA has been working on over the past year in coordination with its waste haulers and member jurisdictions, including Morro Bay.

There are eight major areas of focus:

#### **1. Collection & Processing**

Every household, business, and multi-family premises will be provided with a 3-container system that the City’s franchised hauler will collect and process: organics (green containers), recycling (blue containers), and other discarded waste (grey containers). The

IWMA, City, and legal staff have been drafting an amendment to the current waste hauler franchise agreement to align with SB 1383 regulations. Once complete, the City will forward the draft agreement to the waste hauler for review, negotiations, and approval before it's brought to the City Council for final approval to execute.

2. Edible Food Recovery

An edible food recovery program is to be implemented to educate commercial edible food generators about SB 1383 regulations and increasing access to food recovery programs. The IWMA has identified Tier 1 and Tier 2 commercial edible food generators and has met with almost all of them to provide information on SB 1383's requirements to not let their edible food spoil, to collect it and have a service transport it to a food bank where it can go back for edible human food consumption. The IWMA will also conduct inspections for those businesses as required in the regulation and notify the City after January 1, 2024, of those that are non-compliant and need code enforcement action.

3. Procurement Requirements

SB 1383 sets a procurement target for each jurisdiction based on population where the jurisdiction is required to procure material that is generated from the processing of organic material collected (for example compost). HZI, the anaerobic digestion plant where the City's current organic material collected from generators is taken to be processed, produces compost, electricity, and renewable natural gas (RNG) that could be procured to satisfy the state target requirement. The City has identified potential procurement materials, including an annual compost/mulch giveaway in the franchise amendment, to help with meeting the City's procurement target. In addition, the City will be working with the franchised hauler and State to determine if the RNG produced from the HZI facility and used in the collection trucks and some of the electricity generated from the facility can be credited towards meeting the City's required target.

In addition to the procurement target, the City will be required to procure paper products with a minimum of 30% recycled content. This includes office and janitorial paper products. The IWMA has prepared a draft paper product purchasing policy for City review and developed a tracking spreadsheet that can be used for capturing all the required data needed for reporting to the State.

Staff has developed an internal purchase tracking and record keeping system and each department will be trained on using when making purchases that fall under the SB 1383 requirements. This information will be submitted to the IWMA on a monthly basis after January 1, 2022.

4. Enforcement & Penalties

The franchised hauler will need to provide data to the IWMA for compiling, analyzing, and reporting to the State that are required under the regulation. The IWMA will handle contamination monitoring to determine if generators are complying with the regulations and provide follow up noticing and education where there is non-compliance.

The City will handle code enforcement for non-compliance should it be needed when notified by the IWMA. The City will follow the current code enforcement process to handle these situations which will include: review of documentation from the IWMA on its activities related to notifying, educating, and seeking compliance; contacting those who are non-compliant to provide the regulations for compliance one more time; giving a timeframe to come into compliance; and notification that further noncompliance will result in penalties being assessed as outlined in the Municipal Code Administrative Citation section. The idea is to seek compliance through education and give an opportunity to residents and businesses to correct any issue that arises and using code enforcement as a last resort.

5. Education & Outreach

The City's franchised hauler will provide addresses for where they provide collection services so the IWMA can conduct educational outreach about SB 1383 requirements. In addition, the City will provide information on businesses that could potentially be self-haulers to the IWMA so they can do similar educational outreach. The IWMA will be the lead for

investigating complaints and do follow up education for any non-compliance issues that may arise. The City will handle code enforcement for non-compliance should it be needed in the manner described above under Enforcement & Penalties.

6. Record Keeping & Reporting

The franchised hauler will provide data to the IWMA for compiling, analyzing, and reporting to the State. The IWMA will also handle other reporting requirements to the State relating to the edible food recovery program, contamination monitoring, and procurement and purchasing.

7. Ordinances & Franchise Amendment

SB 1383 regulations will require updates to various sections of the City's municipal code as it pertains to solid waste management, building codes, and water efficient landscaping requirements. The IWMA developed a draft ordinance for cities to review, modify, and when ready, bring to its individual councils for adoption. Changes to the solid waste management code section is being handled through the Public Works Department and the building code and water efficient landscaping requirements through the Community Development Department.

Once the Council adopts the Organics Waste Disposal Reduction ordinance, the City will prepare an authorizing document outlining which activities the City would be delegating to the IWMA on its behalf for execution by both parties.

In addition, a franchise amendment will need to be developed and approved to align the agreement with SB 1383 requirements. City and legal staff are working on a draft amended agreement that, when ready, can be forwarded to the franchised hauler for review and approval. There are complications relating to needed SB 1383 implementation fee increases as discussed later in this report that need to be resolved before the draft amended agreement is ready for review and approval. Once the City and franchised hauler agree on the amended agreement, staff will bring it to the City Council for approval and authorization to execute.

8. Amendment to Memorandum of Agreement Between the IWMA and Member Jurisdictions

SB 1383 regulations allow jurisdictions to designate a private or public entity the authority to implement and enforce SB 1383 regulations. An amendment to the existing JPA agreement was approved by the IWMA Board at its June 2021 meeting for the purpose of implementing SB 1383, and a second amendment is being prepared to address the San Luis Obispo County Board of Supervisors recent withdrawal as a member agency from the IWMA. Once this second amendment is approved by the IWMA Board, the amendments will be forwarded to the remaining member agencies for approval and signature.

After approval of the amendment to the JPA agreement to address implementation of SB 1383, the City will prepare an authorizing document outlining which activities the City would be delegating to the IWMA on its behalf and are outlined more in Attachment 1, Areas of Focus (e.g. memorandum of understanding, letter of designation).

**SB 1383 FEE INCREASES**

Public Resources Code Section 42652.5 authorizes local jurisdictions to collect reasonable and necessary fees to recover the costs of implementing SB 1383 regulations.

Staff anticipates three different fee increases or new fees for Morro Bay solid waste ratepayers needed to implement the various regulations related to SB 1383, all of which would need to go through a Proposition 218 process:

1. **Franchise Hauler:** The solid waste hauler will have additional responsibilities to comply with the new law and an associated rate adjustment application to cover these SB 1383 activities is expected to be submitted in 2022. This is separate from the hauler's CPI adjustment beginning in calendar year 2022 previously approved by the City Council in February 2020 and the next base year rate adjustment application for existing services' operating costs. The hauler anticipates submitting this rate adjustment application together with the SB 1383

implementation fee increase to the City sometime in late summer 2022.

2. **IWMA:** The IWMA has studied its costs and any necessary fee increase associated with SB 1383 implementation. The IWMA Board approved a 1.25% fee increase in June 2021 for this purpose; however, subsequent actions taken by the San Luis Obispo County Board of Supervisors at its September meeting to withdraw from the IWMA resulted in the IWMA Board directing its staff to reanalyze SB 1383 implementation costs without County participation, and return with updated cost information and, if there would be a different fee amount from the one previously approved, a resolution rescinding that fee increase and approving the new fee increase. Staff anticipates the revised cost analysis and fee increase to be brought to the IWMA Board at its October meeting. Once this occurs, IWMA staff will distribute the reanalyzed cost analysis and fee increase amount to the cities so they can proceed with a Proposition 218 process.
3. **City:** The City will be taking on additional responsibilities to implement SB 1383 to comply with new procurement, enforcement, monitoring, and reporting requirements. Staff has not yet identified the precise cost impacts to staff time and resources needed to comply with SB 1383; however, the City will have the option to (i) absorb these costs in the General Fund or (ii) impose an administrative fee upon the franchised hauler to cover the City's administrative costs, which administrative fee is likely to be passed-through to rate payers via the franchised hauler's rates.

#### **REAFFIRMATION OF IWMA SUPPORT AND MEMBERSHIP**

The IWMA was formed as a Joint Powers Authority (JPA) on May 10, 1994, by the County of San Luis Obispo and its cities. Since that time, the IWMA has been instrumental in planning for and developing programs to implement solutions for waste management issues in the region, such as the local effort to comply with SB1383.

Recently, the San Luis Obispo County Board of Supervisors voted to withdrawal participation from the IWMA. Because of this, the IWMA is currently preparing an amendment to the JPA addressing the County's withdrawal. As mentioned, once this amendment is approved by the IWMA board it will be forwarded to the remaining member agencies for approval and signature. The City's approval of this amendment will allow the City and the IWMA to continue its more than 27-year positive working relationship to address solid waste issues in the Morro Bay community.

#### **CONCLUSION**

Staff recommends the City Council receive the SB 1383 update, provide direction to Staff to analyze the cost impact to the City to implement SB 1383 and bring forward a recommendation to fund these additional costs, and adopt a resolution reaffirming commitment to remain a member of the San Luis Obispo County Integrated Waste Management Authority.

#### **ATTACHMENTS**

1. SB 1383 Areas of Focus
2. Resolution No. 69-21 Resolution Reaffirming Commitment to Remain a Member of the San Luis Obispo County Integrated Waste Management Authority

## SB 1383 Areas of Focus

### Ordinances & Policies – Action Items

1. Adopt enforceable ordinance(s) or similar mechanism(s) requiring compliance with various SB 1383 requirements, including but not limited to: 14 CCR 18984.9.a-e, 18984.9-11, 18988.1-3, 18989.1-3, 18991.5, and 18993.1.a (**14 CCR 18981.2.a**).
  - Develop organics waste disposal reduction, CALGreen recycling requirements, and model water efficient landscaping ordinances to align with SB 1383 regulations
  - Present final draft ordinances to City Council for their review and adoption

#### **FOLLOW UP ACTIONS**

- Develop and submit finalized draft ordinances to City legal staff for review
    - Organics Waste Disposal Reduction ordinance (Public Works) – draft ordinance submitted to City legal staff for review
    - CalGreen and MWELo ordinances (Community Development) – under review with the Building Division and then will go to the Planning Commission for review
  - Agendize for City Council ordinance review and adoption
    - Organics reduction ordinance (Public Works) – tentative date for City Council 1<sup>st</sup> reading is at 11/9/21 meeting with 2<sup>nd</sup> reading on 12/14/21
    - CalGreen and MWELo ordinances (Community Development)
  - After adoption of Organics Waste Disposal Reduction ordinance, staff will develop authorization document outlining activities City delegating to IWMA for SB 1383 implementation and management for execution by City and IWMA
2. Require organic haulers to identify their organics facilities as a condition of their contract or other authorization (**14 CCR 18988.1**).
    - Develop franchise hauler amended agreement to align with SB 1383 regulations

#### **FOLLOW UP ACTIONS**

- Complete draft of amended agreement and submit to City legal staff for review
  - Submit draft amended agreement to franchise hauler for review and scheduling of negotiation meeting(s)
  - Agendize for City Council approval of franchise hauler approved amended agreement
3. Amendment to Memorandum of Agreement Between IWMA and Member Jurisdictions
    - SB 1383 regulations allow jurisdictions to designate a private or public entity the authority to implement and enforce SB 1383 regulations
    - An amendment to the existing JPA agreement was approved by the IWMA Board at its June 2021 meeting for the purpose of implementing SB 1383
    - A second amendment is being prepared to address the San Luis Obispo County Board of Supervisors recent withdrawal as a member agency from the IWMA.
    - Once the second amendment is approved by the IWMA Board, the two amendments will be forwarded to the remaining member agencies for approval and signature.

#### **FOLLOW UP ACTIONS**

- After approval of the amendments to address implementation of SB 1383, prepare authorizing document outlining activities City to delegate to the IWMA on its behalf

## **Collection & Processing – Action Items**

1. Provide organic waste collection services (including paper and cardboard collection) to all organic waste generators, except self-haulers, using compliance options listed below **(14 CCR 18984)**
  - City selecting the three-container collection system **(14 CCR 18984.1)**
    - Green containers will be utilized for the collection of organic waste, and this container will be transported to a facility that recovers source-separated organic waste.
    - Blue containers will be utilized for collection of nonorganic recyclables (except for paper products, printing and writing paper, wood and dry lumber), and this container will be transported to a facility that recovers the materials designated for collection in the blue container.
    - Gray containers will be utilized for collection of nonorganic waste such as textiles, carpets, plastic coated paper, and human or pet waste. Jurisdictions may allow organics waste, such as food waste, to be collected in the gray container as long as it is transported to a facility that meets or exceeds the organic waste content recovery requirements specified in Section 30.3.

### **FOLLOW UP ACTIONS AND STATUS**

- Complete final draft of amended agreement adding details of 3-container collection system requirements and submit to City legal staff for review
  - Submit final draft amended agreement to franchise hauler for review and scheduling of negotiation meeting(s)
  - Agendize for City Council approval of franchise hauler approved amended agreement
2. Conduct route reviews of randomly selected containers for contaminants with all routes inspected annually, or conduct waste evaluations twice a year for blue, green, and gray containers (quarterly for gray containers in performance-based approach) **(14 CCR 18984.5)**
    - City to authorize IWMA to conduct contamination monitoring activities, notification of non-compliance with follow up education to correct behavior, and notification to City when enforcement action is needed; and
    - City to handle enforcement action when needed

### **FOLLOW UP ACTIONS AND STATUS**

- Include in delegation authorization document for City and IWMA execution
  - Confirm with IWMA monitoring activities process and timing when activities to occur
  - Coordinate with IWMA to identify process when IWMA notifies City of need for code enforcement action (assessment of penalties to begin January 1, 2024)
  - Develop internal protocol for code enforcement activities once notified by IWMA (same as existing code enforcement process with additions made to address SB 1383 requirements related to recordkeeping)
3. Notify generators of recycling requirements if contamination is found **(14 CCR 18984.5.b, 18984.5.c)**
    - City to authorize IWMA to notify generators on contamination issues and provide educational materials on recycling requirements

### **FOLLOW UP ACTIONS AND STATUS**

- Include in delegation authorization document for City and IWMA execution
- Confirm with IWMA non-compliance notification process and timing when to occur (City received draft non-compliance letter for review and comment)

4. Provide collection containers to generators that comply with color requirements when replacing containers after January 1, 2022, or by January 1, 2036, whichever comes first (Note: Use of containers purchased prior to January 1, 2022 is allowed) **(14 CCR 18984.7)**
  - MBGS to provide containers; using existing gray, blue, and green and phase out with new color-coded container requirements as they are replaced

**FOLLOW UP ACTIONS AND STATUS**

- Include container color coding requirements in hauler franchise agreement amendment

5. Label all new containers or lids with SB 1383-compliant labels commencing January 1, 2022 **(14 CCR 18984.8)**
  - IWMA to provide labels to affix to current containers (need to identify who placing labels on containers)

**FOLLOW UP ACTIONS AND STATUS**

- Confirm with IWMA they have labels ready to affix to containers and identify who is doing that (discussion in previous IWMA Board meeting, if have MBGS do it requires staff costs will need to be paid)

6. Allow limited generator waivers for de minimis volumes and physical space constraints; maintain related records **(14 CCR 18984.11)**
  - City to authorize IWMA to handle processing/monitoring/documents recordkeeping of waivers (de minimis and space constraint waivers only)

**FOLLOW UP ACTIONS AND STATUS**

- Include in delegation authorization document for City and IWMA execution
- Confirm with IWMA process for application, review, and approval (City has received draft application for review and comment)

7. Determine if jurisdiction meets CalRecycle criteria for low-population, high elevation, or rural waivers; in which case, jurisdiction does not need to perform the above tasks in those geographic regions **(14 CCR 18984.12)**

**NOT APPLICABLE FOR CITIES, ONLY THE COUNTY.**

## **Edible Food Recovery – Action Items**

1. Implement food recovery program that educates commercial edible food generators and increases access to food recovery programs **(14 CCR 18991.1)**

- City to authorize IWMA to provide develop program and educate generators

### **FOLLOW UP ACTIONS AND STATUS**

- Include in delegation authorization document for City and IWMA execution
- Confirm with IWMA what doing and their plan to educate generators

2. Identify Tier 1 and Tier 2 commercial edible food generators **(14 CCR 18991.1)**

- City to authorize IWMA to identify edible food generators
- IWMA has identified and developed a list of Tier 1 and Tier 2 generators

### **FOLLOW UP ACTIONS AND STATUS**

- Include in delegation authorization document for City and IWMA execution
- Confirm with IWMA who are Tier 1 and Tier 2 generators for Morro Bay

3. Increase edible food recovery capacity if current capacity is insufficient **(14 CCR 18991.1)**

- City to authorize IWMA to identify if capacity is needed and develop plan for how to increase capacity

### **FOLLOW UP ACTIONS AND STATUS**

- Include in delegation authorization document for City and IWMA execution
- Confirm with IWMA what doing to identify capacity

4. Prior to February 1, 2022, annually thereafter, maintain list of food recovery organizations/services **(14 CCR 18985.2.a)**

- City to authorize IWMA to maintain list of food recovery organizations/services
- IWMA has identified and created a list of food recovery organizations/services

### **FOLLOW UP ACTIONS AND STATUS**

- Include in delegation authorization document for City and IWMA execution
- Confirm with IWMA who is on current list and how they will maintain list annually

5. Prior to February 1, 2022, annually thereafter, provide Tier 1/Tier 2 commercial edible food generators with information on their requirements, food recovery programs, and food recovery organizations/services **(14 CCR 18985.2.b)**

- City to authorize IWMA to provide educational material/information on requirements, programs, and organizations/services

### **FOLLOW UP ACTIONS AND STATUS**

- Include in delegation authorization document for City and IWMA execution
- Confirm with IWMA what doing and schedule for when educational material sent out

## **Procurement Requirements – Action Items**

1. Procure a quantity of recovered organic waste, such as compost, mulch, renewable natural gas, or electricity from biomass, that meets or exceeds the annual organic waste product procurement target determined by CalRecycle and where products meet standards specified in SB 1383; procurement may be satisfied by direct service provider(s) to the jurisdiction (Note: Rural jurisdictions do not need to comply until after December 1, 2026 **(14 CCR 18993.1)**
  - Sent CalRecycle procurement tool and City’s target to franchise hauler to identify which combination of items will generate enough to reach require target (current estimate from hauler shows City will meet target using electricity generated from HZI facility and RNG for trucks used in City services; does not yet include compost when calculating target)

### **FOLLOW UP ACTIONS AND STATUS**

- Confirm with franchise hauler on electricity and RNG usage discussions with the CalRecycle
- Add franchise agreement amendment language regarding RNG usage for vehicles, electricity generation (City share), and compost delivery for City and public use

2. Purchase paper products and printing and writing paper with at least 30% post-consumer, recycled-content fibers, that are recyclable; require businesses from whom it purchases these products to certify in compliance in writing **(14 CCR 18993.3)**
  - Each department to identify a staff person who will be responsible for record keeping and tracking
  - Each department will be responsible for paper products/printing/writing paper it purchases
  - Each department will be responsible for collecting compliance certifications for each purchase
  - Each department will submit information/certification to City point person who will report to IWMA monthly

### **FOLLOW UP ACTIONS AND STATUS**

- Received draft purchasing policy from the IWMA and in process of finalizing policy for distribution to all departments
- Provide information to each department on new purchasing requirements, including recorded IWMA purchasing webinar and link to purchasing section on CalRecycle website
- Set up tracking spreadsheet for record keeping and reporting to IWMA

## **Enforcement & Penalties – Action Items**

1. Implement desk-top compliance monitoring program for multi-family and commercial organic waste generators with two cubic yards or more of materials per week and inspection program for Tier One/Tier Two edible food generators, and food recovery organizations and services by January 1, 2022 **(14 CCR 18985.1.a)**
  - City to authorize IWMA to handle compliance monitoring program for multi-family and commercial organic waste generators and Tier 1 and Tier 2 food generators and food recovery organizations/services inspection program

### **FOLLOW UP ACTIONS AND STATUS**

- Confirm with IWMA non-compliance notification process and timing when to occur (request information)
- Include in delegation authorization document for City and IWMA execution

2. Provide educational materials to regulated entities not in compliance in 2022 and 2023 **(14 CCR 18995.1.a)**
  - City to authorize IWMA to provide educational material to those not in compliance

### **FOLLOW UP ACTIONS AND STATUS**

- Confirm with IWMA notification process and timing for educational material when there is non-compliance (request information)
- Include in delegation authorization document for City and IWMA execution

3. Investigate and maintain records of all complaints received alleging non-compliance with SB 1383 **(14 CCR 18995.3)**
  - City to authorize IWMA to investigate and maintain records of complaints

### **FOLLOW UP ACTIONS AND STATUS**

- Confirm with IWMA complaint investigation process (request information)
- Include in delegation authorization document for City and IWMA execution

4. Take enforcement actions, including issuing notices of violations and assessing penalties in amounts consistent with those specified in SB 1383 by January 1, 2024 **(14 CCR 18995.1.a.5, 18997.2)**
  - City to handle enforcement actions as needed
  - City and IWMA to develop notification process for when City enforcement action is needed.

### **FOLLOW UP ACTIONS AND STATUS**

- Confirm with IWMA process when notify City need for enforcement action (request information)
- Include in delegation authorization document for City and IWMA execution
- Identify City enforcement action process once receive notification from IWMA

## **Education & Outreach – Action Items**

1. Prior to February 1, 2022 and annually thereafter, provide generators using two or three-container systems with information on properly separating materials, organic waste prevention, on-site recycling, methane reduction benefits, how to recycle organic waste, approved haulers, self-haul requirements, and edible food donation **(14 CCR 18985.1.a)**

- City to authorize IWMA to develop and provide educational materials

### **FOLLOW UP ACTIONS AND STATUS**

- Include in delegation authorization document for City and IWMA execution
- Confirm with IWMA what doing (request information)

2. Prior to February 1, 2022 and annually thereafter, provide generators using single-container system information on organic waste prevention, on-site recycling, methane reduction benefits, how to recycle organic waste, a list of approved haulers, self-haul requirements, edible food recovery donation information, and information that waste is processed at a high diversion organic waste processing facility **(14 CCR 18985.1.b)**

**NOT APPLICABLE - Will be implementing a 3-container system**

3. Provide communications in non-English languages spoken by a substantial number of the public that are provided organic waste collection services, consistent with requirements of Government Code Section 7295 **(14 CCR 18985.1.e)**

- City to authorize IWMA to develop and provide

### **FOLLOW UP ACTIONS AND STATUS**

- Include in delegation authorization document for City and IWMA execution
- Confirm with IWMA what doing (request information)

4. Annually, commencing in 2022, provide Tier One and Tier Two commercial edible food generators with information on City's edible food recovery program, generator requirements, and food recovery organizations **(14 CCR 18985.2)**

- City to authorize IWMA to develop and provide information.

### **FOLLOW UP ACTIONS AND STATUS**

- Include in delegation authorization document for City and IWMA execution
- Confirm with IWMA what doing (request information)

## **Record Keeping & Reporting – Action Items**

1. By April 1, 2022, file initial compliance report containing ordinance(s) or other enforceable mechanism(s) adopted and reporting items listed in the annual reporting section **(14 CRR 18994.1)**

- City to authorize IWMA to handle record keeping and reporting activities

### **FOLLOW UP ACTIONS AND STATUS**

- Include in delegation authorization document for City and IWMA execution
- Coordinate with IWMA on documentation they will need from the City for initial report

2. By October 1, 2022, and August 1 annually thereafter, submit annual SB 1383 compliance report **(14 CCR 18994.2)**

- City to authorize IWMA to submit annual compliance report

### **FOLLOW UP ACTIONS AND STATUS**

- Include in delegation authorization document for City and IWMA execution
- Coordinate with IWMA to identify records generated by City activities and develop protocol for transferring documents needed for the annual report

3. Maintain all implementation records in a central location (physical or electronic) that can be made available to or accessed by CalRecycle within ten business days **(14 CCR 18995.2)**

- City to authorize IWMA to maintain all implementation records for activities where it's designated to handle on behalf of City

### **FOLLOW UP ACTIONS AND STATUS**

- Include in delegation authorization document for City and IWMA execution
- Identify records generated by City activities and work with IWMA on protocol for transferring those documents into the implementation record.

4. Report *(by counties only)* on capacity planning activities conducted in accordance with 14 CCR 18992.1, 18992.2, 18992.3 beginning August 1, 2022, then August 1, 2024, 2029, and 2034 **(14 CCR 18992.3, 18994.2.i)**

### **NOT APPLICABLE FOR CITY**

## **Capacity Planning – Action Items**

1. *Counties*, in coordination with jurisdictions and regional agencies, are responsible for the following activities:
  - Conduct organics waste recycling and edible food recovery capacity planning described below **(14 CCR 18992.1, 18992.2, 18992.3)**
  - Estimate amount of organic waste disposed, identify amount of verifiable organic waste recycling capacity available to the jurisdiction, and estimate amount of new or expanded capacity required **(14 CCR 18992.1)**
  - Estimate amount of edible food that will be disposed by Tier One/Tier Two commercial edible food generators; identify food recovery capacity available; identify new or expanded capacity; and calculate minimum capacity needed for edible food recovery from Tier One/Tier Two commercial edible food generators **(14 CCR 18992.2.a)**

**FOLLOW UP ACTIONS – No action needed at this time.**

2. If County *determines* existing, new, or planned organic waste recycling or edible food recovery capacity is insufficient for one or more jurisdiction's needs, notify jurisdiction(s); jurisdictions shall submit an implementation schedule (including timelines and milestones) demonstrating how capacity will be secured by the end of the reporting period **(14 CCR 18992.1, 14 CCR 18992.2.c)**

**FOLLOW UP ACTIONS – No action needed at this time.**

**RESOLUTION NO. 69-21**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
REAFFIRMING COMMITMENT TO REMAIN A MEMBER OF THE  
SAN LUIS OBISPO COUNTY INTEGRATED WASTE MANAGEMENT AUTHORITY**

**THE CITY COUNCIL  
City of Morro Bay, California**

**WHEREAS**, the Integrated Waste Management Authority (IWMA) was formed as a Joint Powers Authority (JPA) in 1994 by the County of San Luis Obispo and its cities for the purpose of facilitating the development of waste diversion programs and projects and provide economies of scale on a regional basis; and

**WHEREAS**, the functions of the IWMA have included but are not limited to education and public information, source reduction, household hazardous waste, composting, facilities, funding, market development, compliance, enforcement, analytical coordination, and monitoring and reporting; and

**WHEREAS**, the City's implementation of previous solid waste laws and regulations, such as the California Integrated Waste Management Act of 1989 (AB 939), Mandatory Commercial Recycling (AB 341), and Mandatory Commercial Organics (AB 1826) require regional coordination; and

**WHEREAS**, SB 1383 was signed into law establishing methane emissions reduction goals of 50 percent in the level of statewide landfill disposal or organic waste from the 2014 level by 2020 and 75% by 2025; and

**WHEREAS**, the Department of Resources Recycling and Recovery (CalRecycle) has developed regulations in Title 14 Division 7, Chapter 12 of the California Code of Regulations to implement the Short-Lived Climate Pollutant goals in Senate Bill 1383 (Senate Bill 1383 regulations); and

**WHEREAS**, Senate Bill 1383 regulations require jurisdictions to implement an organic waste diversion program that includes providing organic waste collection services to businesses and residences, edible food recovery goals, public education and outreach, contamination monitoring and sampling activities, recordkeeping and reporting, organic and edible food recovery, infrastructure capacity planning, procurement of recovered organic waste products, and enforcement; and

**WHEREAS**, it is in the interest of Morro Bay solid waste ratepayers to continue participation in the IWMA for an efficient and regionally consolidated effort to implement SB 1383 and other future changes affecting solid waste management and realize cost savings by achieving economies of scale; and

**WHEREAS**, the City Council of the City of Morro Bay reaffirms and finds true the purpose and findings in supporting continued membership in the IWMA.

**NOW, THEREFORE, BE IT RESOLVED** the City Council of the City of Morro Bay, California hereby reaffirms its commitment to remain a member of the San Luis Obispo Integrated Waste Management Authority.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12<sup>th</sup> day of October 2021 by the following vote:

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
JOHN HEADDING, Mayor

ATTEST:

\_\_\_\_\_  
DANA SWANSON, City Clerk