



CITY OF MORRO BAY CITY COUNCIL AGENDA

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.

Regular Meeting Tuesday, February 14, 2023 – 5:30 P.M. Veterans Memorial Hall 209 Surf St., Morro Bay, CA

Public Participation:

Public participation is allowed in the following ways:

- Community members may attend the meeting in person at the Morro Bay Veterans Hall.
- 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.

Please click the link below to join the webinar:

- <https://us02web.zoom.us/j/82722747698?pwd=aWZpTzcwTHlRTk9xaTlmWVNWRFUQT09>
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
- Members of the public may watch the meeting either on cable Channel 20 or as streamed on the City [website](#).
 - Community members are encouraged to submit agenda correspondence in advance of the meeting via email to the City Council at council@morrobayca.gov prior to the meeting. Agenda Correspondence received at council@morrobayca.gov by 10 a.m. on the meeting day will be posted on the City website.

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

- U.S. Small Business Administration Office of Disaster Recovery and Resilience Presentation by George Kostyrko

PUBLIC COMMENT

Members of the audience wishing to address the Council on City business matters not on the agenda may do so at this time. For those desiring to speak on items on the agenda, but unable to stay for the item, may also address the Council at this time.

Public comment is an opportunity for members of the public to provide input to the governing body. To increase the effectiveness of the Public Comment Period, the City respectfully requests the following guidelines and expectations be followed:

- Those desiring to speak are asked to complete a speaker slip, which are located at the entrance, and submit it to the City Clerk. However, speaker slips are not required to provide public comment.
- When recognized by the Mayor, please come forward to the podium to speak. Though not required, it is helpful if you state your name, city of residence and whether you represent a business or group. Unless otherwise established by the Mayor, comments are to be limited to three minutes.
- All remarks should be addressed to Council, as a whole, and not to any individual member thereof.
- The Council respectfully requests that you refrain from making slanderous, profane or personal remarks against any elected official, commission and/or staff.
- Please refrain from public displays or outbursts such as unsolicited applause, comments or cheering.
- Any disruptive activities that substantially interfere with the ability of the City Council to carry out its meeting will not be permitted and offenders will be requested to leave the meeting.
- Your participation in City Council meetings is welcome and your courtesy will be appreciated.
- The Council in turn agrees to abide by its best practices of civility and civil discourse according to Resolution No. 07-19.

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 JANUARY 10, 2023, CITY COUNCIL MEETING;
(CITY CLERK)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF MINUTES FOR THE JANUARY 24, 2023, CITY COUNCIL MEETING;
(CITY CLERK)

RECOMMENDATION: Approve as submitted.

A-3 APPROVAL OF MINUTES FOR THE JANUARY 25, 2023, CITY COUNCIL SPECIAL
CLOSED SESSION MEETING; (CITY CLERK)

RECOMMENDATION: Approve as submitted.

- A-4 APPROVAL OF MINUTES FOR THE JANUARY 27, 2023, CITY COUNCIL SPECIAL MEETING; (CITY CLERK)

RECOMMENDATION: Approve as submitted.

- A-5 APPROVAL OF MINUTES FOR THE JANUARY 30, 2023, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (CITY CLERK)

RECOMMENDATION: Approve as submitted.

- A-6 RESOLUTION MAKING FINDINGS RELATED TO THE CONTINUED EXISTENCE OF A STATE OF EMERGENCY DUE TO COVID-19 AND RE-AUTHORIZING FOR PUBLIC HEALTH AND SAFETY THE CONDUCT OF PUBLIC MEETINGS OF THE LEGISLATIVE BODIES OF THE CITY VIA REMOTE TELECONFERENCING (INCLUDING PARTIALLY REMOTE) FOR UP TO A 30-DAY PERIOD PURSUANT TO THE RALPH M. BROWN ACT AS AMENDED BY ASSEMBLY BILL NO. 361; UPDATE ON REMOTE MEETINGS PURSUANT TO NEW ASSEMBLY BILL NO. 2449; (CITY ATTORNEY)

RECOMMENDATION: Staff recommends Council consider adoption of attached Resolution No. 08-23 reauthorizing for public health and safety the conduct of public meetings of the legislative bodies of the City via remote teleconferencing (including partially remote) for up to (depending on whether the Governor ends, as he has indicated he will, the COVID-19 statewide State of Emergency on February 28, 2023) 30 days, thereby allowing the City Council and the City's advisory bodies to meet remotely (including partially remote) through March 16, 2023 (or earlier, being if/when the Governor ends the current statewide COVID-19 State of Emergency).

With approval of this motion and until such further notice, City Council and advisory bodies will continue to hold their meetings in public at the Veterans Hall, with the option for individual Councilmembers and advisory body members to teleconference consistent with AB 361 (which may no longer be an option after February 28, 2023) or otherwise as provided by law.

- B. PUBLIC HEARING ITEMS - NONE

- C. BUSINESS ITEMS

- C-1 RESOLUTION NO. 09-23 FOR AWARD OF BID – PROJECT NO. MB2020-ST02, CITY PARK TRANSIT HUB IMPROVEMENT PROJECT; (PUBLIC WORKS)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 09-23 approving an agreement with G. Sosa Construction, Inc. for Project No. MB2020-ST02, City Park Transit Hub Improvement Project in an amount not to exceed \$404,987. All agreements implementing such project work shall be processed and based on the review of the City Attorney's Office to be in form and substance acceptable to City staff and legal counsel.

- C-2 CONSIDERATION OF THE FORMATION OF A DOWNTOWN DESIGN DISTRICT; (COMMUNITY DEVELOPMENT DEPARTMENT)

RECOMMENDATION: City Council consider the formation of a downtown design district by either a subcommittee of the Planning Commission or ad hoc group to address height increase in the downtown and incorporate that effort into the City goals process.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, February 28, 2023 at 5:30 p.m.**

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, 595 HARBOR ST, MORRO BAY, CA 93442 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.

Pursuant to Assembly Bill 361 (2021-22) and Government Code section 54953 this Meeting will be conducted in a hybrid format with both in-person and virtual public participation.

PRESENT:	Carla Wixom	Mayor
	Jennifer Ford	Council Member
	Laurel Barton	Council Member
	Cyndee Edwards	Council Member
	Zara Landrum	Council Member
ABSENT:	None	
STAFF:	Scott Collins	City Manager
	Chris Neumeyer	City Attorney
	Dana Swanson	City Clerk
	Emily Conrad	Acting 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

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Wixom called the meeting to order at 5:32 p.m., with all but Council Member Barton present. Council Member Barton joined the meeting at 5:35 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/E_JWYsiBjz8?t=174

Mayor Wixom announced that due to the storm and to minimize travel, Item C-1, Advisory Board interviews would be continued to a future meeting, likely on January 24, 2023.

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

https://youtu.be/E_JWYsiBjz8?t=729

PRESENTATIONS

https://youtu.be/E_JWYsiBjz8?t=1065

- Proclamation commending and honoring Police Chief Jody Cox on his retirement

PUBLIC COMMENT

https://youtu.be/E_JWYsiBjz8?t=1545

Joan Behrick, Morro Bay, spoke in opposition to the Vistra battery storage project.

Bill Martony, Morro Bay, appreciated the City's storm response, suggested the decision to increase building heights in the downtown area be revisited by the current Council, and the Tri-W property was a better location for the Vistra battery storage project.

Sharon O'Leary, Morro Bay, provided an update on the outreach efforts being provided by the Community Resource Connections office.

Terry Simons, Morro Bay, spoke regarding the importance of clearing debris to prevent flooding.

Paul Donnelly, Morro Bay, spoke regarding yesterday's storm and associated traffic issues and commented on the WRF Project, asking when it was expected to be complete.

Nancy Bast, Morro Bay, shared her wish list for the City in 2023 as submitted in agenda correspondence.

Dan Sedley, Morro Bay, appreciated storm information shared via the City website Hot Topics, complimented retired Police Chief Jody Cox, and urged the Council to pay more attention to money being spent.

Steve Mathieu, Morro Bay, compared the City's response to the 1995 flood to this event, expressing frustration with the delayed response.

Kate DeWeese, Morro Bay, shared the effect the storm had on her home and business and need for FEMA help.

Linda Donnelly, Morro Bay, expressed concern for those who were displaced due to storm damage, asked for clarification regarding the City Park Transit Hub project, and inquired about a police car being parked at Morro Bay Blvd. and Kern Avenue.

Erica Crawford, Morro Bay Chamber of Commerce, provided an update on efforts to support the business owners during and after the storm.

Nattalia Merzoyan, Morro Bay, appreciated the work that was done during the storm and requested the annual water quality analysis be expanded to include other categories of contaminants and toxins and sent out in the water bill.

Carole Truesdale, Morro Bay, appreciated the City's storm response.

Linda Winters, Morro Bay, commented on the storm response and requested FEMA information be posted on the City website.

Mayor Wixom closed public comment.

Staff presented an emergency item for Council consideration:

- I. FINDINGS TO ADD EMERGENCY ITEM TO AGENDA; ADOPT RESOLUTION NO. 05-23 PROCLAIMING AND AFFIRMING THE EXISTENCE OF A LOCAL EMERGENCY, AND CONFIRMING AND RATIFYING PROCLAMATION BY CITY'S DIRECTOR OF EMERGENCY SERVICES OF EXISTENCE OF A LOCAL EMERGENCY, IN RESPONSE TO 2023 WINTER STORM SURGE; (CITY MANAGER)
https://youtu.be/E_JWySiBjz8?t=4373

City Manager Collins and City Attorney Neumeyer presented the item and recommended the City Council take the following action:

1. Make the necessary findings to add this agenda item as an emergency item to the agenda less than 72 hours prior to the meeting; and
2. Adopt Resolution No. 05-23 Proclaiming and Affirming the Existence of a Local Emergency and Confirming and Ratifying the Proclamation by the City's Director of Emergency Services of Existence of a Local Emergency in response to the 2023 Winter Storm Surge.

Mayor Wixom opened public comment regarding making findings to add the Emergency Item to the agenda.

https://youtu.be/E_JWySiBjz8?t=4748

Terry Simons, Morro Bay, suggested Council make a motion to add the item to the agenda.

The public comment period was closed.

MOTION: Council Member Barton moved the Council make the findings as stated on the agenda: 1. There is a need to take immediate action; and 2) the need for action came to the attention of the local agency subsequent to the agenda being posted; and 3) an emergency situation exists being an event "that severely impairs public health, safety or both" (Gov. Code section 54956.5). The motion was seconded by Council Member Edwards and carried 5-0 by roll call vote.

Mayor Wixom opened public comment regarding proclaiming and affirming the existence of a local emergency.

Terry Simons, Morro Bay, favored granting the City Manager the power to do take additional preemptive actions should we have a recurrence of the flood and to pursue County, State, and Federal funding.

Paul Donnelly, Morro Bay, recommended the City have emergency drills to ensure they can obtain necessary resources.

Joan Behrick, Morro Bay, spoke regarding needs of unsheltered residents.

Sharon O'Leary, Morro Bay, listed various services available to unsheltered residents including Transitions Mental Health, Laundry of Love, CAPSLO, Department of Social Services and others.

Linda Donnelly, Morro Bay, suggested using Nextdoor to request support and assistance from community members.

Sharon O'Leary, Morro Bay, added further comment regarding community needs and available support.

The public comment period was closed.

MOTION: Council Member Ford moved to adopt Resolution No. 05-23 Proclaiming and Affirming the Existence of a Local Emergency and Confirming and Ratifying the Proclamation by the City's Director of Emergency Services of Existence of a Local Emergency in response to the 2023 Winter Storm Surge. The motion was seconded by Council Member Barton and carried 5-0 by roll call vote.

A. CONSENT AGENDA

https://youtu.be/E_JWySiBjz8?t=6154

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 DECEMBER 13, 2022, CITY COUNCIL MEETING; (CITY CLERK)

RECOMMENDATION: Approve as submitted.

A-2 APPOINTMENT OF MAYOR PRO TEMPORE; ESTABLISH VARIOUS COUNCIL SUB-COMMITTEES FOR 2023; AND, APPOINTMENT OF REPRESENTATIVES ON DISCRETIONARY BOARDS, COUNCIL LIAISON ASSIGNMENTS AND COUNCIL SUB-COMMITTEES; (MAYOR WIXOM/CITY CLERK)

RECOMMENDATION: Appoint Council Member Jen Ford as Mayor Pro Tempore; establish various Council Sub-Committees for 2023; and appoint representatives to serve on the various County or Regional Discretionary Boards, Council Liaison Assignments and Sub-Committees for calendar year 2023 as shown on the attached appointment list.

A-3 RESOLUTION MAKING FINDINGS RELATED TO THE CONTINUED EXISTENCE OF A STATE OF EMERGENCY DUE TO COVID-19 AND RE-AUTHORIZING FOR PUBLIC HEALTH AND SAFETY THE CONDUCT OF PUBLIC MEETINGS OF THE LEGISLATIVE BODIES OF THE CITY VIA REMOTE TELECONFERENCING (INCLUDING PARTIALLY REMOTE) FOR A 30-DAY PERIOD PURSUANT TO THE RALPH M. BROWN ACT AS AMENDED BY ASSEMBLY BILL NO. 361; UPDATE ON REMOTE MEETINGS PURSUANT TO NEW ASSEMBLY BILL NO. 2449; (CITY ATTORNEY)

RECOMMENDATION: Staff recommends Council consider adoption of attached Resolution No. 01-23 reauthorizing for public health and safety the conduct of public meetings of the legislative bodies of the City via remote teleconferencing (including partially remote) for 30 days, thereby allowing the City Council and the City's advisory bodies to meet remotely (including partially remote) through February 9, 2023.

With approval of this motion and until such further notice, City Council and advisory bodies will continue to hold their meetings in public at the Veterans Hall, with the option for individual Councilmembers and advisory body members to teleconference.

A-4 RESOLUTION NO. 02-23 APPROVING ADJUSTMENT TO LEASE SITE MAPS FOR LEASE SITES 65-66 AND 65W-66W AT 571 EMBARCADERO ROAD; (CITY ENGINEER)

RECOMMENDATION: Staff recommends City Council approve the adjustment to Lease Sites 65-66 and 65W-66W at 571 Embarcadero by adopting Resolution No. 02-23.

A-5 APPLICATION FOR GOVERNOR'S OFFICE OF TRAFFIC SAFETY GRANT; (FIRE DEPARTMENT)

RECOMMENDATION: Authorize the Fire Department to submit applications to the California Office of Traffic Safety (OTS) Grant program for hydraulic extrication equipment and airbags.

A-6 PROCLAMATION COMMENDING AND HONORING HARBOR DIRECTOR ERIC ENDERSBY ON HIS RETIREMENT; (ADMINISTRATION)

RECOMMENDATION: Approved as submitted

A-7 PROCLAMATION COMMENDING AND HONORING POLICE CHIEF JODY COX ON HIS RETIREMENT; (ADMINISTRATION)

RECOMMENDATION: Approved as submitted

Mayor Wixom opened the public comment for the Consent Agenda.

https://youtu.be/E_JWYsiBjz8?t=6173

Cathy Novak, Morro Bay, spoke on behalf of the leaseholder regarding Item A-4, responding to comments submitted via agenda correspondence.

Terry Simons, Morro Bay, asked to speak regarding items A-4, A-5, A-6 and A-7.

Betty Winholtz, raised questions on Item A-4, urged the Council to not adopt the monthly resolution provided in Item A-3, and commented on the discretionary appointments proposed in Item A-2.

Nicole Dorfman, Morro Bay, spoke in opposition to Item A-3.

Dan Sedley, Morro Bay, urged the Council to vote no on Item A-3.

Kristen Headland, Morro Bay, spoke regarding Item A-2

Terry Simons, Morro Bay, raised a procedural point of order, stating his belief the Council should pull items, then open public comment for individual items.

The public comment period was closed.

Mayor pulled Items A-2 & A-3. Council Member Edwards pulled Item A-4.

MOTION: Council Member Barton moved approval of Items A-1 and A-5 through A-7. The motion was seconded by Council Member Ford and carried 5-0 by roll call vote.

A-2 APPOINTMENT OF MAYOR PRO TEMPORE; ESTABLISH VARIOUS COUNCIL SUB-COMMITTEES FOR 2023; AND, APPOINTMENT OF REPRESENTATIVES ON DISCRETIONARY BOARDS, COUNCIL LIAISON ASSIGNMENTS AND COUNCIL SUB-COMMITTEES; (MAYOR WIXOM/CITY CLERK)

https://youtu.be/E_JWYsiBjz8?t=7285

Mayor Wixom recommended Council Member Edwards replace staff as the alternate to the County Water Resources Advisory Committee and asked to remove the REACH liaison for further review.

MOTION: Council Member Barton moved approval of Item A-2 with changes suggested for representative to the County Water Resource Advisory Committee and to remove REACH for further review and bring back to Council. The motion was seconded by Council Member Ford and carried 5-0.

A-3 RESOLUTION MAKING FINDINGS RELATED TO THE CONTINUED EXISTENCE OF A STATE OF EMERGENCY DUE TO COVID-19 AND RE-AUTHORIZING FOR PUBLIC HEALTH AND SAFETY THE CONDUCT OF PUBLIC MEETINGS OF THE LEGISLATIVE BODIES OF THE CITY VIA REMOTE TELECONFERENCING (INCLUDING PARTIALLY REMOTE) FOR A 30-DAY PERIOD PURSUANT TO THE RALPH M. BROWN ACT AS AMENDED BY ASSEMBLY BILL NO. 361; UPDATE ON REMOTE MEETINGS PURSUANT TO NEW ASSEMBLY BILL NO. 2449; (CITY ATTORNEY)

https://youtu.be/E_JWYsiBjz8?t=7342

MOTION: Mayor Wixom moved to deny extension of the state of emergency and deny Item A-3. The motion was seconded by Council Member Landrum and failed 2-3 with Council Members Barton, Edwards and Ford opposed.

MOTION: Council Member Barton moved to approve Item A-3. The motion was seconded by Council Member Ford and carried 3-2 by roll call vote with Council Member Landrum and Mayor Wixom opposed.

A-4 RESOLUTION NO. 02-23 APPROVING ADJUSTMENT TO LEASE SITE MAPS FOR LEASE SITES 65-66 AND 65W-66W AT 571 EMBARCADERO ROAD; (CITY ENGINEER)
https://youtu.be/E_JWySiBjz8?t=7853

MOTION: Council Member Edwards moved to approve Resolution No. 02-23 approving the adjustment to the lease site maps lease sites 65-66 and 65W-66W at 571 Embarcadero Road. The motion was seconded by Council Member Landrum and carried 5-0 by roll call vote.

The Council took a brief recess at 7:46 p.m. and reconvened at 8:02 p.m.

B. PUBLIC HEARINGS
None

C. BUSINESS ITEMS

C-1 ADVISORY BOARD INTERVIEWS

This item was continued to a future meeting.

C-2 ADOPT RESOLUTION NO. 03-23 FOR AWARD OF BID – PROJECT NO. MB2020-SD03, ELENA SLOPE REPAIR AND UTILITIES REPLACEMENT PROJECT; (PUBLIC WORKS DEPARTMENT)
https://youtu.be/E_JWySiBjz8?t=8994

Public Works Director Kwolek presented the staff report and, along with City Engineer Riddiough, responded to Council inquiries.

Mayor Wixom opened public comment for Item C-2.
https://youtu.be/E_JWySiBjz8?t=10147

Terry Simons, Morro Bay, took exception the low bidder must be awarded the bid, expressed concern about the work experience and history of the contractor selected and opposed the recommended project contingency.

Barry Branin, Morro Bay, noted this is a critical project and asked the City accelerate repair of the main sewer line at Beachcomber.

Paul Donnelly, Morro Bay, raised various concerns about the project.

Nattalia Merzoyan, Morro Bay, urged the Council to give preference to local contractors.

Bill Martony, Morro Bay, asked how the City can bring down the cost of these projects.

Betty Winholtz, Morro Bay, commented on the need to act efficiently and asked if City policy still allowed the Council to give preference to local bidders.

Linda Donnelly, Morro Bay, opposed the 20% contingency and importance of securing easements to avoid delays.

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

MOTION: Council Member Barton moved to adopt Resolution No. 03-23 to award the bid for this project, the Elena Slope Repair and Utilities Replacement Project, in an amount not to exceed \$411,838 to Rehak Construction. The motion was second by Council Member Edwards and carried 5-0 by roll call vote.

C-3 APPROVAL OF PURCHASE OF ELEVEN MOBILE LICENSE PLATE RECOGNITION CAMERAS FROM VIGILANT SOLUTIONS; (POLICE DEPARTMENT)
https://youtu.be/E_JWysiBjz8?t=12053

Interim Police Chief Watkins presented the staff report and responded to Council inquiries.

There was Council consensus the meeting go past 9:30 p.m. to complete the remaining business items.

Mayor Wixom opened public comment for Item C-3.
https://youtu.be/E_JWysiBjz8?t=13888

Terry Simons, Morro Bay, spoke in support of the item.

Nicole Dorfman, Morro Bay, opposed the purchase, expressing concern about the growing security and surveillance in our country.

Nattalia Merzoyan, Morro Bay, suggested starting with one camera for one year.

Betty Winholtz, Morro Bay, was concerned with how much time the coordinator will spend on the program.

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

MOTION: Mayor Wixom moved to approve Item C-3, approval of purchase of license plate recognition cameras. The motion was seconded by Council Member Ford and carried 5-0 by roll call vote.

C-4 ADOPTION OF RESOLUTION NO. 04-23 ESTABLISHING THE 2023 CITY COUNCIL MEETING CALENDAR, AND CITY GOALS AND BUDGET DEVELOPMENT SCHEDULE; (CITY MANAGER)
https://youtu.be/E_JWysiBjz8?t=14861

City Manager Collins presented the staff report and responded to Council inquiries.

Mayor Wixom opened public comment for Item C-4.

Terry Simons, Morro Bay, agreed the Council can accomplish the work needed in 21 meetings, recommended staff compress the agendas, and looked forward to goal development process.

Betty Winholtz, Morro Bay, objected to a July meeting break and asked to add a meeting in July.

Linda Donnelly, Morro Bay, requested Council meeting start time return to 6:00 p.m.

Erica Crawford, Morro Bay Chamber of Commerce, looked forward to participating in the goals development process and announced related upcoming events.

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

MOTION: Mayor Wixom moved approval of Item C-4. The motion was seconded by Council Member Barton and carried 5-0 by roll call vote.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS
None

E. ADJOURNMENT

The meeting adjourned at 9:54 p.m.

Recorded by:

Dana Swanson
City Clerk

Pursuant to Assembly Bill 361 (2021-22) and Government Code section 54953 this Meeting will be conducted in a hybrid format with both in-person and virtual public participation.

PRESENT:	Carla Wixom	Mayor
	Jennifer Ford	Council Member
	Laurel Barton	Council Member
	Cyndee Edwards	Council Member
	Zara Landrum	Council Member
ABSENT:	None	
STAFF:	Scott Collins	City Manager
	Chris Neumeyer	City Attorney
	Dana Swanson	City Clerk
	Greg Kwolek	Public Works Director
	Scot Graham	Community Development Director
	Daniel McCrain	Fire Chief
	Amy Watkins	Interim Police Chief
	Becka Kelly	Interim Harbor Director
	Cindy Jacinth	Senior Planner

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Wixom called the meeting to order at 5:30 p.m., with all but Council Member Barton present. Council Member Barton joined the meeting at 5:32 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/QJGYkVREKmk?t=147>

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

<https://youtu.be/QJGYkVREKmk?t=798>

PRESENTATIONS

<https://youtu.be/QJGYkVREKmk?t=861>

- Fourth of July Fireworks Show Concept Presentation by Cherise Hansson

PUBLIC COMMENT

<https://youtu.be/QJGYkVREKmk?t=1618>

Matt Makowetski, Morro Bay, announced the passing of Bob Keller; thanked the Council and City staff for helping residents in need during the recent storm; and appreciated past Councils, and current and past staff for their work on the new wastewater treatment plant.

Lee Johnson, Morro Bay, thanked the City team and partners for their response during the recent flooding; recognized past City Councils who made decision to move wastewater treatment plant out of the flood plain; and commented on future challenges facing the City--housing, infrastructure and generating more revenue.

Anne Johnson, Silver City Resort resident, commented on the need to clear debris from the stream each year prior to the rainy season and sought clarification regarding Fish & Wildlife restrictions.

Barry Branin, Morro Bay, requested Council agenda discussion of the proposed Vistra battery project.

Linda Winters, Morro Bay, appreciated City staff for all that was done during flood response.

Joan Behrick, Morro Bay, spoke against the proposed Vistra battery project and suggested appointing a citizens committee on this issue.

Nicole Dorfman, Morro Bay, expressed concerns and requested a public forum to discuss the proposed battery project.

Seychelle Cannes, Morro Bay, supported the request for a meeting on the Vistra battery project where the community can be heard.

Paul Donnelly, Morro Bay, raised question regarding the announced injection well testing results and commented on paving being done on Quintana Road.

Bill Martony, Morro Bay, commented on the paving work being done on south Main Street and opined Measure D would preclude the use of the North T-Pier for offshore wind.

Erica Crawford, Morro Bay Chamber of Commerce, announced upcoming events and echoed thanks to the City Council and staff for supporting the business community during the storm and recovery.

Judy Setting, Morro Bay, raised concerns regarding the proposed Vistra battery storage project and terms of the City's MOU with Vistra, and asked the Council to vote to preserve the current Zoning for that area.

Betty Winholtz, Morro Bay, responded to the comment regarding creek clearing and suggested the Council and Planning Commission have a joint meeting regarding the proposed BESS project. She inquired about the charging station near McDonalds and asked the Council agenda discussion of a shelter during rain and cold weather events.

Terry Simons, Morro Bay, shared information he received that Vistra was mounting a lobbying effort so the State will overturn any decision that is made locally to stop the project.

Betsy Gaudette-Cross, Morro Bay, spoke regarding the community survey on the Vistra master plan and asked that the Council not change zoning from visitor serving/commercial.

Linda Donnelly, Morro Bay, requested "as built" plans for the pipelines and restoration of the bike path.

Carole Truesdale, Morro Bay, raised various questions regarding the WRF Project, results of injection well testing, and total amount collected from the WRF surcharge.

Courtney Shepherd, Morro Bay, commented on the fireworks presentation and offered a drone light show as an alternative that is less traumatic for pets.

Mayor Wixom closed public comment.

At the Mayor's request, staff responded to issues raised during public comment.

A. CONSENT AGENDA
<https://youtu.be/QJGYkVREKMk?t=4862>

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 ADOPT RESOLUTION NO. 06-23 AUTHORIZING THE MORRO BAY FIRE DEPARTMENT TO SUBMIT AN APPLICATION FOR FEDERAL EMERGENCY MANAGEMENT AGENCY ASSISTANCE TO FIREFIGHTERS GRANT AND TO ACCEPT THE GRANT IF AWARDED; (FIRE DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 06-23 Authorizing the Morro Bay Fire Department (MBFD) to submit an application to the Federal Emergency Management Agency (FEMA) for an Assistance to Firefighter Grant for mobile radios and accept grant if awarded.

- A-2 AUTHORIZATION FOR ATTENDANCE AT THE C-MANC ANNUAL WASHINGTON, D.C., "WASHINGTON WEEK" MEETINGS; (CITY MANAGER)

RECOMMENDATION: Staff recommends the City Council authorize up to a three-person delegation consisting of the Mayor, Harbor staff member and either the City Manager or Public Works Director to attend the California Marine Affairs and Navigation Conference (C-MANC) 2023 "Washington Week" meetings in Washington, D.C. slated for February 28 – March 1, 2023 and to represent the City's interests in the nation's capital.

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

MOTION: Council Member Barton moved approval of all items on the Consent Agenda. The motion was seconded by Council Member Ford and carried 5-0 by roll call vote.

B. PUBLIC HEARINGS

- B-1 APPEAL OF PLANNING COMMISSION APPROVAL ON NOVEMBER 15, 2022 OF COASTAL DEVELOPMENT PERMIT #CDP21-035 AND CONDITIONAL USE PERMIT #CUP21-12 AND VARIANCE #VAR21-003 FOR REMOVAL OF EXISTING DWELLING UNIT AT 101 FIG ST. AND CONSTRUCTION OF A NEW 1,676SF SINGLE FAMILY HOME WITH 400SF GARAGE. THE PROPERTY IS IN THE R-2/PD ZONING DISTRICT AND IS LOCATED IN THE COASTAL APPEALS JURISDICTION. (APPELLANT: MR. TERRY SIMONS); (COMMUNITY DEVELOPMENT DEPARTMENT)
<https://youtu.be/QJGYkVREKMk?t=4921>

Senior Planner Jacinth provided the report and responded to Council inquiries.

Mayor Wixom opened the Public Hearing.
<https://youtu.be/QJGYkVREKMk?t=6515>

Terry Simons, Appellant, provided historical information regarding the parcel, raised issues relating to the garage setback and offered alternative plans.

Chuck Stevenson spoke on behalf of the applicant and responded to points raised by the Appellant.

Mayor Wixom opened Public Comment.

Bill Martony, Morro Bay, provided additional historical context and suggested moving the Little Red House next door to the City pocket park.

Betty Winholtz, Morro Bay, agreed with the appellant that requirements to grant a variance had not been met, restating points submitted as agenda correspondence.

Eric Meyer, Morro Bay, noted this area had been an artist colony.

Nattalia Merzoyan, Morro Bay, concurred with previous comments and hoped the Little Red House would not be moved or changed in any way.

The public comment period and Public Hearing were closed.

Council Member Landrum disclosed her ex parte conversation with Mr. Simons.

Staff responded to Council inquiries.

The Mayor reopened public hearing to allow the Applicant and Appellant an opportunity to respond to Council questions.

<https://youtu.be/QJGYkVREKmk?t=8379>

Mr. Stevenson stated the owner had reduced the size of the home to give homage to the Little Red House and was not interested in reducing it further.

Mr. Simons raised concerns about the location of the retaining wall to support a paver patio and restated his concerns about traffic impacts.

Mr. Stevenson refuted comments made by the Appellant.

Mayor Wixom closed the public hearing.

MOTION: Council Member Edwards moved to adopt Resolution No. 07-23, making the necessary findings to deny the appeal and uphold the Planning Commission approval of Coastal Development Permit #CDP21-035, Conditional Use Permit #CUP21-12, and Variance #VAR21-003 for the site at 101 Fig Street to allow removal of an existing dwelling unit commonly known as the “Little Red House” and new construction of a 1,676sf single family home with 400sf garage on a 3600sf lot. The motion was seconded by Council Member Ford and carried 5-0 by roll call vote.

C. BUSINESS ITEMS

C-1 JANUARY 9, 2023 WINTER STORM SURGE UPDATE; (CITY MANAGER)
<https://youtu.be/QJGYkVREKmk?t=9152v>

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

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

<https://youtu.be/QJGYkVREKmk?t=9894>

Paul Donnelly, Morro Bay, asked if the proposed BESS project location flooded and suggested a multi-agency task force like that in Monterey County would be helpful.

Terry Simons, Morro Bay, commented on the need to clear the willows downstream of the bridge on South Bay to prevent flooding.

Asia King, Morro Bay, encouraged the City to pursue FEMA funding for non-maintenance resiliency projects identified in its Emergency Management Plan.

Betty Winholtz, Morro Bay, encouraged Council to aggressively pursue a warming station.

Judy Setting, Morro Bay, agreed with previous speakers a warming center is needed and importance of clearing the willows to prevent flooding.

Linda Winters, Morro Bay, commented on the 1995 floods.

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

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

C-2 ADVISORY BOARD INTERVIEWS AND APPOINTMENTS; (CITY CLERK)

<https://youtu.be/QJGYkVREKmk?t=10590>

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

The public comment period for Item C-2 was opened; seeing none, the public comment period was closed.

Visit SLO County Board of Directors – Regional Board

<https://youtu.be/QJGYkVREKmk?t=10762>

- 1 vacancy commencing June 21, 2023 for a 3 year term ending June 20, 2026

The following applicant was interviewed to the Visit SLO County Board of Directors – Regional Board: Hemant Patel.

MOTION: Council Member Ford moved to appoint Hemant Patel to the Visit SLO County Board of Directors. The motion was seconded by Council Member Edwards and carried 5-0 by roll call vote.

Recreation & Parks Commission

<https://youtu.be/QJGYkVREKmk?t=11020>

- One (1) vacancy to fill remainder of a term ending January 31, 2026

The following applicant was interviewed to the Recreation and Parks Commission: June Swall.

MOTION: Council Member Ford moved to appoint June Swall to the Recreation and Parks Commission. The motion was seconded by Council Member Barton and carried 5-0 by roll call vote.

Citizens Oversight/Finance Advisory Committee

<https://youtu.be/QJGYkVREKMK?t=11323>

- Two (2) vacancies for a new 4-year term (Feb. 1, 2023 – Jan. 31, 2027)
- One (1) vacancy for the remainder of a term ending Jan. 31, 2026

The following applicants were interviewed for the Citizens Oversight/Finance Advisory Committee: Jean Johnson and Stephen Peck.

MOTION: Council Member Barton moved to appoint Jean Johnson and Stephen Peck to the Citizens Oversight/Finance Advisory Committee for a 4-year term ending January 31, 2027. The motion was seconded by Council Member Landrum and carried 5-0 by roll call vote.

The City Clerk's office will continue to recruit for the one unfilled vacancy.

Harbor Advisory Board

<https://youtu.be/QJGYkVREKMK?t=12123>

- One (1) vacancy representing Waterfront Leaseholders for a new 4-year term (Feb. 1, 2023 - Jan. 31, 2027)
- One (1) vacancy representing Recreational Boating for a new 4-year term (Feb. 1, 2023 – Jan. 31, 2027)

The following applicants were interviewed for the Harbor Advisory Board: Cherise Hansson and Cal Myers. The City Clerk announced Don Holmes was unable to attend interviews for medical reasons.

MOTION: Council Member Barton moved to appoint Cherise Hansson as Waterfront Leaseholder Representative and Cal Myers as Recreational Boating Representative to the Harbor Advisory Board. The motion was seconded by Council Member Edwards and carried 5-0 by roll call vote.

The City Clerk's office will continue to recruit for one unfilled vacancy to serve as an Alternate Member to the Morro Bay Commercial Fishermen's Organization for the remainder of a term ending January 31, 2025.

Public Works Advisory Board

<https://youtu.be/QJGYkVREKMK?t=13067>

- One (1) vacancy for a new 4-year term (Feb 1, 2023 - Jan. 31, 2027)

The following applicants were interviewed to the Public Works Advisory Board: Derek Dahlgren, Douglas Hill and Robert Nava.

The City Council voted by written ballot and City Clerk Swanson read the results:
Robert Nava (2 votes - Council Member Barton and Council Member Ford)
Douglas Hill (2 votes - Council Member Edwards and Mayor Wixom)
Derek Dahlgren (1 vote - Council Member Landrum)

The Council voted again to break the tie between Mr. Nava and Mr. Hill.

MOTION: Council Member Ford moved the meeting go past 9:30 p.m. The motion was seconded by Council Member Landrum and carried 5-0.

The City Council voted by written ballot and City Clerk Swanson read the results:

Robert Nava (3 votes - Council Member Barton, Council Member Edwards, Council Member Ford)

Douglas Hill (2 votes - Council Member Landrum, Mayor Wixom)

Mr. Nava was appointed to a 4-year term on the Public Works Advisory Board.

Planning Commission

<https://youtu.be/QJGYkVREKmk?t=14380>

- Two (2) vacancies for a new 4-year term (Feb. 1, 2023 – Jan. 31, 2027)

The following applicants were interviewed for the Planning Commission: Jesse Barron, Derek Dahlgren, Asia King, Eric Meyer and McKenzie Taffe. (Toni Woody was not present and did not notify staff of the reason for her absence).

The City Council voted by written ballot and City Clerk Swanson read the results:

Eric Meyer (5 votes - Council Member Barton, Council Member Edwards and Council Member Landrum, Council Member Ford and Mayor Wixom)

Asia King (3 votes - Council Member Barton, Council Member Edwards and Council Member Ford)

Jesse Barron (2 votes - Council Member Landrum and Mayor Wixom)

Mr. Meyer and Ms. King were appointed to 4-year terms on the Planning Commission.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

None

E. ADJOURNMENT

The meeting adjourned at 10:11 p.m.

Recorded by:

Dana Swanson

City Clerk

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MINUTES - MORRO BAY CITY COUNCIL
SPECIAL CLOSED SESSION MEETING –
JANUARY 25, 2023 – 3:00 P.M.
CITY HALL CONFERENCE ROOM

AGENDA NO: A-3
MEETING DATE: February 14, 2023

PRESENT: Carla Wixom Mayor
Laurel Barton Council Member
Cyndee Edwards Council Member
Zara Landrum Council Member

ABSENT: Jennifer Ford Council Member

STAFF: Scott Collins City Manager
Chris Neumeyer City Attorney
Scot Graham Community Development Director

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Wixom called the meeting to order at 3:12 p.m. with all but Council Member Ford present.

SUMMARY OF CLOSED SESSION ITEMS – The Mayor read a summary of Closed Session items and announced Item CS-1 was being pulled from the agenda.

CS-1 CONFERENCE WITH REAL PROPERTY NEGOTIATOR - GOVERNMENT CODE SECTION 54956.8

Property: 781 Market Avenue (APN 066-321-027)
Property Negotiator: Jack Smith, Morro Skateboard Group
Agency Negotiators: Scott Collins, City Manager; Scot Graham, Community Development Director; and
Chris Neumeyer, City Attorney
Negotiation: Price and Terms of Payment

CLOSED SESSION PUBLIC COMMENT – Mayor Wixom opened public comment for items on the agenda; seeing none, the public comment period was closed.

The City Council moved to Closed Session and heard the following item:

CS-2 CONFERENCE WITH REAL PROPERTY NEGOTIATOR - GOVERNMENT CODE SECTION 54956.8

Property: Morro Bay Maritime Museum site, located at 1210 Embarcadero, adjacent to Front
Street Parking Lot
Property Negotiator: Scott Mather, President; Bonnie Jones, Treasurer; on behalf of Central Coast
Maritime Museum Association
Agency Negotiators: Scott Collins, City Manager; Scot Graham, Community Development Director; and
Chris Neumeyer, City Attorney
Negotiation: Price and Terms of Payment

RECONVENE IN OPEN SESSION – The City Council reconvened in Open Session. The Council did not take any reportable action in accordance with the Brown Act.

ADJOURNMENT - The meeting adjourned at 3:48 p.m.

Recorded by:

Dana Swanson
City Clerk

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PRESENT: Carla Wixom Mayor
Laurel Barton Council Member
Cyndee Edwards Council Member
Jennifer Ford Council Member
Zara Landrum Council Member

ABSENT: None

STAFF: Scott Collins City Manager
Sarah Johnson-Rios Assistant City Manager/Admin Services Dir.
Heather Goodwin Deputy City Clerk

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Wixom established a quorum and called the meeting to order at 1:00 p.m. with all but Council Member Landrum present. Council Member Landrum arrived at 1:09 pm.

PUBLIC COMMENT FOR ITEMS ON THE AGENDA

Terry Simons, spoke on the format for the work session and hoped the Council would allow the public an opportunity to raise questions or provide input during the meeting.

Mayor Wixom closed public comment.

SPECIAL MEETING AGENDA ITEM:

- I. CITY COUNCIL WORK SESSION TO CONDUCT TEAM BUILDING EXERCISES, FACILITATED BY JANETTE WILLIAMS, THE CENTRE FOR ORGANIZATION EFFECTIVENESS

Janette Williams, Centre for Organization Effectiveness, facilitated a work session on team building training exercises. Council discussion ensued regarding definitions of establishing City Council values, learning Councilmembers' Communication Preferences, how to collaborate and coordinate on community needs and issues as a Council and how to cooperate as a Council. At the end of the work session, Councilmembers' made individual comments to the Council Team.

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

ADJOURNMENT

The meeting adjourned at 4:09 p.m.

Recorded by:

Heather Goodwin
Deputy City Clerk

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MINUTES - MORRO BAY CITY COUNCIL
SPECIAL CLOSED SESSION MEETING –
JANUARY 30, 2023 – 2:00 P.M.
TELECONFERENCE

AGENDA NO: A-5
MEETING DATE: February 14, 2023

City Council conducted this meeting in accordance with Assembly Bill 361 (2021-22) and Government Code section 54953 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: Carla Wixom Mayor
 Laurel Barton Council Member
 Jennifer Ford Council Member
 Cyndee Edwards Council Member
 Zara Landrum Council Member

ABSENT: None

STAFF: Scott Collins City Manager
 Chris Neumeyer City Attorney
 Colin Tanner Special Labor Counsel
 Sarah Johnson-Rios Asst. City Manager/Admin. Services Director
 Dana Swanson City Clerk
 Rachael Hendricks Human Resources/Risk Manager

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Wixom called the meeting to order at 2:00 p.m. with all Council Members present.

SUMMARY OF CLOSED SESSION ITEMS – The Mayor read a summary of Closed Session items.

CLOSED SESSION PUBLIC COMMENT – Mayor Wixom opened public comment for items on the agenda; seeing none, the public comment period was closed.

The City Council moved to Closed Session and heard the following items:

CS-1 PUBLIC EMPLOYEE PERFORMANCE EVALUATION
City Manager pursuant to Government Code section 54957.

CS-2 PUBLIC EMPLOYEE EMPLOYMENT
Interim City Manager pursuant to Government Code section 54957.

RECONVENE IN OPEN SESSION – The City Council reconvened in Open Session. The Council did not take any reportable action in accordance with the Brown Act.

ADJOURNMENT - The meeting adjourned at 3:09 p.m.

Recorded by:

Dana Swanson
City Clerk

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AGENDA NO: A-6

MEETING DATE: February 14, 2023

Staff Report

TO: Honorable Mayor and City Council

DATE: February 9, 2023

FROM: Chris F. Neumeyer, City Attorney

SUBJECT: Resolution Making Findings Related to the Continued Existence of a State of Emergency Due to COVID-19 and Re-Authorizing for Public Health and Safety the Conduct of Public Meetings of the Legislative Bodies of the City via Remote Teleconferencing (including partially remote) for up to a 30-Day Period Pursuant to the Ralph M. Brown Act as Amended by Assembly Bill No. 361; Update on Remote Meetings Pursuant to new Assembly Bill No. 2449

RECOMMENDATION

Staff recommends Council consider adoption of attached Resolution No. 08-23 reauthorizing for public health and safety the conduct of public meetings of the legislative bodies of the City via remote teleconferencing (including partially remote) for up to (depending on whether the Governor ends, as he has indicated he will, the COVID-19 statewide State of Emergency on February 28, 2023) 30 days, thereby allowing the City Council and the City’s advisory bodies to meet remotely (including partially remote) through March 16, 2023 (or earlier, being if/when the Governor ends the current statewide COVID-19 State of Emergency).

With approval of this motion and until such further notice, City Council and advisory bodies will continue to hold their meetings in public at the Veterans Hall, with the option for individual Councilmembers and advisory body members to teleconference consistent with AB 361 (which may no longer be an option after February 28, 2023) or otherwise as provided by law.

ALTERNATIVES

Do not consider adoption of the attached resolution and/or provide further direction to staff.

FISCAL IMPACT

No immediate fiscal impact.

BACKGROUND

On March 4, 2020, the Governor proclaimed a State of Emergency to exist in California because of the spread of COVID-19. Beginning in March, 2020 the Governor also issued a number of Executive Orders (e.g., N-25-20, N-29-20, N-35-20) (the “Brown Act Orders”) for the public health and safety that waived requirements in the Brown Act that expressly or impliedly required the physical presence of City Councilmembers, staff, or the public at meetings of the City Council, Planning Commission and other City boards, commissions and committees (“legislative bodies”) that are subject to the

Prepared By: <u> CFN </u>	Dept Review: _____
City Manager Review: <u> SC </u>	City Attorney Review: <u> CFN </u>

Brown Act. The Brown Act Orders allowed City legislative bodies that are subject to the Brown Act to modify how meetings were conducted to protect the health and safety of staff and the public while ensuring transparency and accessibility for open and public meetings. The most recent Brown Act Order expired on September 30, 2021.

On September 16, 2021, Governor Newsom signed Assembly Bill 361 (“AB 361”) into law. AB 361 was made effective on October 1, 2021, on an urgency basis, to correspond to the timing of expiration of the Brown Act Orders. AB 361 provides for the ability to teleconference (whether completely or hybrid) Brown Act meetings of City legislative bodies for public health and safety reasons under certain conditions, akin to the authority to do so under the Brown Act Orders.

DISCUSSION

A. Assembly Bill 361 – Teleconferencing during COVID-19 Declared State of Emergency

Assembly Bill 361 allows City legislative bodies to utilize remote/virtual platforms for public meetings (consistent with certain statutory requirements) during a state of emergency proclaimed by the Governor that includes the City if certain conditions are met.

On October 26, 2021, the City Council adopted Resolution No. 70-21 making findings related to the continued existence of a state of emergency due to COVID-19 and re-authorizing for public health and safety the conduct of public meetings of City’s legislative bodies via remote teleconferencing for an initial 30-day period pursuant to the Ralph M. Brown Act as amended by Assembly Bill No. 361. Thereafter the City has adopted multiple AB 361 resolutions.

Assembly Bill 361 allows City legislative bodies to utilize remote/virtual platforms for public meetings, consistent with certain statutory requirements, during a state of emergency proclaimed by the Governor that includes the City, provided that **one** of the following three criteria is met with respect to the public meeting:

1. State or local officials have imposed or recommended measures to promote social distancing;
or
2. The legislative body is meeting for the purpose of determining, by majority vote, whether as a result of the state of emergency, meeting in person would present imminent risks to the health or safety of attendees; **or**
3. The legislative body has previously determined, by majority vote, pursuant to No 2 above, that, as a result of the state of emergency, meeting in person would present imminent risks to the health or safety of attendees.

These provisions of AB 361 are effective until January 1, 2024. These provisions may be invoked when there is a proclaimed state of emergency by the Governor, whether for a pandemic, wildfires, or another emergency. The proclaimed state of emergency by the Governor related to COVID-19 remains in effect. Accordingly, if one of the three foregoing AB 361 criteria are met, then the City’s legislative bodies can conduct meetings remotely, pursuant to Government Code § 54953(e) as amended by AB 361, subject to compliance with certain alternative noticing and public participation requirements as provided by AB 361. The first criteria of AB 361 listed above is presently satisfied as of the writing of this report. The California Department of Public Health continues to recommend measures to promote social distancing as one method to reduce the spread of COVID-19.

AB 361 Resolution No. 01-23, which was adopted on January 10, 2023, expired by its own terms on February 9, 2023, as AB 361 resolutions are effective for thirty days. Adoption of the proposed resolution under AB 361 authorizes the City's legislative bodies to hereafter hold public meetings pursuant to Government Code § 54953(e) for up to 30 days.

The Governor has stated that he intends to end the statewide COVID-19 State of Emergency on February 28, 2023. Lifting of the statewide State of Emergency by the Governor removes a precondition for the proposed local use of AB 361.

Staff, unless directed otherwise, does not intend to bring back any further AB 361 resolutions after this meeting, unless conditions warrant such an agenda item.

B. Assembly Bill 2449 – Teleconferencing after COVID-19 Declared State of Emergency

Governor Newsom announced he intends to rescind the California state of emergency related to COVID-19 on February 28, 2023. Absent the use of AB 361, Councilmembers may use traditional Brown Act requirements for teleconferenced participation **or** may use new provisions for teleconferenced participation contained in Assembly Bill No. 2449.

1. Traditional Teleconferencing Law

The Brown Act has long prescribed the following requirements for a legislative body member to participate in a meeting using teleconference technology (absent a declared state of emergency):

- Legislative body may use (if follow certain requirements) teleconferencing for all purposes during any meeting. At least a quorum of the legislative body must participate from locations within the local agency's jurisdiction. The agency may make additional teleconference locations available for the public.
- The meeting notice and agenda must specifically identify the teleconference location, including a full address and room number, as applicable. The agenda must be posted at each teleconference location 72 hours before a regular meeting, even if a hotel room or residence.
- The public must have access to each teleconference location and have technology, such as a speakerphone, to enable the public to participate.
- The agenda must provide the opportunity for the public to address the legislative body directly at each teleconference location. The legislative body must vote by roll call.

2. New Teleconferencing Law

The Governor signed AB 2449 in 2022 (effective January 1, 2023; sunsets January 1, 2026) which allows less than a quorum of Councilmembers to utilize teleconferencing without publicly noticing their location and making the location accessible to the public in certain circumstances:

- "Just cause," which includes: (i) necessary caregiving to a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner; (ii) having a contagious illness, (ii) having a physical or mental disability that is not otherwise accommodated; or (iv) traveling on official business of the local agency or another state or local agency. *A member of the legislative body who participates remotely for "just cause" is limited to two such remote meetings per calendar year.*

- “Emergency circumstance,” which includes a physical or family medical emergency that prevents a member from attending in person. Remote participation due to an emergency circumstance must be approved by the legislative body at each meeting.

AB 2449 provides for various procedures to be followed for a member to use either “just cause” or “emergency circumstances” for remote teleconferencing participation. When a meeting is held with remote participation by Councilmembers, there must be live video and/or audio stream that also allows members of the public to participate remotely through the audio/visual platform or telephonic service. The legislative body must vote by roll call. A Councilmember may participate solely through teleconference for no more than three consecutive months or 20 percent of the regular meetings of the City Council within a calendar year or no more than two meetings if the legislative body meets fewer than ten times per calendar year. AB 2449 also provides for various other requirements for use of the new teleconferencing law.

CONCLUSION

Staff recommends Council consider adoption of the proposed Resolution No. 08-23 making the findings required to re-authorize use of AB 361. Doing so will allow meetings of the City Council, City boards and City commissions to occur by teleconference (including under a hybrid format) for the public health and safety. Continued reliance on AB 361 (if the State of Emergency continues per Governor’s Order) will require adoption of a new resolution making the required findings every 30 days thereafter.

ATTACHMENT

1. Resolution No. 08-23

RESOLUTION NO. 08-23

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
MAKING FINDINGS RELATED TO THE CONTINUED EXISTENCE OF A STATE OF
EMERGENCY DUE TO COVID-19 AND RE-AUTHORIZING FOR PUBLIC HEALTH AND
SAFETY THE CONDUCT OF PUBLIC MEETINGS OF THE LEGISLATIVE BODIES OF THE
CITY VIA REMOTE TELECONFERENCING FOR A
30-DAY PERIOD PURSUANT TO THE RALPH M. BROWN ACT
AS AMENDED BY ASSEMBLY BILL NO. 361**

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

WHEREAS, the City Council of the City of Morro Bay (“City”) is committed to preserving and nurturing public access and participation in meetings of the Legislative Bodies (as that term is defined in Government Code §54952, including the City Council, commissions, boards and committees subject to the Brown Act) of the City; and

WHEREAS, all meetings of the Legislative Bodies are open and public as required by the Ralph M. Brown Act, codified as Government Code §§ 54950 *et seq.*, so that any member of the public may attend, participate, and observe the Legislative Bodies conduct their business; and

WHEREAS, the Brown Act, at Government Code § 54953(e), as amended by Assembly Bill (AB) 361 effective October 1, 2021, makes provision for remote teleconferencing participation in public meetings by members of a Legislative Body without compliance with the provisions of Government Code § 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, a required condition under Government Code § 54953(e) for its initial use is that the meeting is held during a state of emergency that has been declared by the Governor pursuant to Government Code § 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code § 8558; and

WHEREAS, a proclamation is made when there is an actual incident, threat of disaster, or extreme peril to the safety of persons and property within the jurisdictions that are within the City’s boundaries, caused by natural, technological, or human-caused disasters

WHEREAS, a required condition under Government Code § 54953(e) for its initial use is that state or local officials have imposed or recommended measures to promote social distancing, or that the legislative body is meeting to determine or has previously determined that meeting in person would present imminent risks to the health or safety of attendees; and

WHEREAS, starting in March 2020, in response to the spread of COVID-19 in the State of California, the Governor proclaimed a state of emergency for the State of California and thereafter issued a number of executive orders aimed at containing COVID-19; and

WHEREAS, on March 19, 2020, the City Council adopted Resolution No. 23-20, proclaiming and affirming the existence of a local emergency, and confirming and ratifying proclamation by City's Director of Emergency Services of Existence of a Local Emergency, in response to COVID-19 (Coronavirus). The Legislative Bodies have since conducted meetings via remote teleconferencing consistent with the declaration of local emergency and executive orders issued by the Governor; and

WHEREAS, the executive orders issued by the Governor, among other things, for the public health and safety waived requirements of the Brown Act expressly or impliedly requiring the physical presence of members of the legislative body, the clerk or other personnel of the body, or of the public as a condition of participation in or for the purpose of establishing a quorum for a public meeting; and

WHEREAS, on June 11, 2021, the Governor issued Executive Order N-08-21, which rescinded the modifications made by the aforementioned executive orders, effective September 30, 2021. On September 16, 2021, the Governor signed AB 361, creating a modified set of provisions for local agencies for compliance with the Brown Act relative to remote meetings. AB 361 was made effective on October 1, 2021; and

WHEREAS, on October 26, 2021, the City Council adopted Resolution No. 70-21 making findings related to the continued existence of a state of emergency due to COVID-19 and re-authorizing for public health and safety the conduct of public meetings of City's legislative bodies via remote teleconferencing for an initial 30-day period pursuant to the Ralph M. Brown Act as amended by Assembly Bill No. 361; and

WHEREAS, On November 9, 2021, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 78-21 authorizing such meetings for an additional thirty days; and

WHEREAS, On November 18, 2021, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 81-21 authorizing such meetings for an additional thirty days; and

WHEREAS, On December 14, 2021, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 84-21 authorizing such meetings for an additional thirty days; and

WHEREAS, On January 11, 2022, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 03-22 authorizing such meetings for an additional thirty days; and

WHEREAS, On January 25, 2022, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 07-22 authorizing such meetings for an additional thirty days; and

WHEREAS, On February 22, 2022, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 16-22 authorizing such meetings for an additional thirty days; and

WHEREAS, On March 22, 2022, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 25-22 authorizing such meetings for an additional thirty days; and

WHEREAS, On April 12, 2022, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing (including partially remote) for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 29-22 authorizing such meetings for an additional thirty days; and

WHEREAS, On May 10, 2022, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing (including partially remote) for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 40-22 authorizing such meetings for an additional thirty days; and

WHEREAS, On May 24, 2022, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing (including partially remote) for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 43-22 authorizing such meetings for an additional thirty days; and

WHEREAS, On June 14, 2022, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing (including partially remote) for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 50-22 authorizing such meetings for an additional thirty days; and

WHEREAS, On June 28, 2022, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing (including partially remote) for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 61-22 authorizing such meetings for an additional thirty days, and by its own terms Resolution No. 61-22 expired on July 28, 2022; and

WHEREAS, On August 9, 2022, the City Council adopted Resolution No. 72-22 making findings related to the continued existence of a state of emergency due to COVID-19 and re-authorizing for public health and safety the conduct of public meetings of City's legislative bodies via remote teleconferencing (including partially remote) for a 30-day period pursuant to the Ralph M. Brown Act as amended by Assembly Bill No. 361; and

WHEREAS, On August 23, 2022, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing (including partially remote) for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 78-22 authorizing such meetings for an additional thirty days; and

WHEREAS, On September 13, 2022, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing (including partially remote) for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 83-22 authorizing such meetings for an additional thirty days; and

WHEREAS, On October 11, 2022, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing (including partially remote) for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 87-22 authorizing such meetings for an additional thirty days; and

WHEREAS, On October 25, 2022, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing (including partially remote) for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 94-22 authorizing such meetings for an additional thirty days; and

WHEREAS, On November 22, 2022, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing (including partially remote) for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 96-22 authorizing such meetings for an additional thirty days; and

WHEREAS, On December 13, 2022, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing (including partially remote) for public health and safety as authorized by AB 361, and upon making necessary findings, adopted Resolution No. 105-22 authorizing such meetings for an additional thirty days; and

WHEREAS, On January 10, 2023, the City Council reviewed the need for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing (including partially remote) for public health and safety as authorized by AB 361, and upon making

necessary findings, adopted Resolution No. 01-23 authorizing such meetings for an additional thirty days, and by its own terms Resolution No. 01-23 expired on February 9, 2023; and

WHEREAS, On February 14, 2023, the City Council adopted Resolution No. 08-23 making findings related to the continued existence of a state of emergency due to COVID-19 and re-authorizing for public health and safety the conduct of public meetings of City's legislative bodies via remote teleconferencing (including partially remote) for a 30-day period pursuant to the Ralph M. Brown Act as amended by Assembly Bill No. 361; and

WHEREAS, the Governor's proclaimed state of emergency and the City's proclaimed local emergency related to COVID-19 remain in effect and encompass the jurisdictional boundaries of the City; and

WHEREAS, the California Department of Public Health continues to impose or recommend measures to promote social distancing, and the Centers for Disease Control and Prevention ("CDC") continues to impose or recommend measures to promote social distancing; and

WHEREAS, Government Code Section 54953(e)(3) requires that the City Council review the need and make findings for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing as authorized by AB 361 at least once every thirty days until the Governor terminates the state of emergency, or reconsider reauthorization if a relevant thirty day period has elapsed; and

WHEREAS, for the public health and safety the Council wishes to affirm the need and findings necessary for continuing the conduct of public meetings of City's legislative bodies via remote teleconferencing as authorized by AB 361; and

WHEREAS, the City Council does hereby intend that, as a consequence of the persisting state of emergency and the imposed or recommended social distancing measures, the Legislative Bodies shall be authorized to conduct their meetings without compliance with paragraph (3) of subdivision (b) of Government Code § 54953, as authorized by subdivision (e) of Government Code § 54953, and that the Legislative Bodies shall comply with the requirements to provide the public with access to the meetings as prescribed in paragraph (2) of subdivision (e) of Government Code § 54953; and

WHEREAS, consistent with AB 361, during the effectiveness of this Resolution, the Legislative Bodies meeting pursuant to the requirements of Government Code § 54953(e)(2) and their staff will give notice of the manner by which members of the public may access the Legislative Bodies' meetings and offer public comment; identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option; and allow members of the public to access the meeting, and the agenda shall include an opportunity for members of the public to address the Legislative Body directly.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The foregoing recitals are true and correct and are incorporated herein by reference.

SECTION 2. The City Council hereby acknowledges and affirms the continued effectiveness of the Governor’s proclaimed state of emergency and the City’s proclaimed local emergency (as may have been amended since their initial proclamation) which encompass their jurisdictional boundaries.

SECTION 3. The City Council finds as follows: 1) they have reconsidered the circumstances of the state of emergency; 2) the state of emergency remains active within their jurisdictional boundaries; 3) the state of emergency continues to directly impact the ability of the City Council, the City’s Legislative Bodies, City staff and the public to meet safely in person; and 4) State officials continue to impose or recommend measures to promote social distancing.

SECTION 4. The Legislative Bodies and staff are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution, including conducting all open and public meetings of the Legislative Bodies in accordance with Government Code § 54953(e) and other applicable provisions of the Brown Act.

SECTION 5. This Resolution shall take effect immediately upon its adoption by the City Council and shall be effective for until the earlier of (i) March 16, 2023, or (ii) such time as the City Council adopts a subsequent resolution in accordance with Government Code §54953(e)(3) to extend the time during which the Legislative Bodies may continue to teleconference without compliance with paragraph (3) of subdivision (b) of Government Code §54953. If the Governor ends the COVID-19 State of Emergency prior to March 16, 2023 than the effectiveness of this resolution will be consistent with the mandates of the Government Code.

SECTION 6. Should any provision, section, paragraph, sentence or word of this Resolution be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Resolution as hereby adopted shall remain in full force and effect.

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SECTION 7. The City Clerk shall certify to the adoption of this Resolution and enter it into the book of original Resolutions.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 14th day of February 2023 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

CARLA WIXOM, Mayor

ATTEST:

DANA SWANSON, City Clerk

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AGENDA NO: C-1

MEETING DATE: February 14, 2023

Staff Report

TO: Honorable Mayor and City Council

DATE: January 26, 2023

FROM: Eric Riddiough, PE – City Engineer
Pamela Newman, Associate Engineer

SUBJECT: Resolution No. 09-23 for Award of Bid – Project No. MB2020-ST02, City Park Transit Hub Improvement Project

RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 09-23 approving an agreement with G. Sosa Construction, Inc. for Project No. MB2020-ST02, City Park Transit Hub Improvement Project in an amount not to exceed \$404,987. All agreements implementing such project work shall be processed and based on the review of the City Attorney’s Office to be in form and substance acceptable to City staff and legal counsel.

ALTERNATIVE

The alternative to the recommended action is to reject all bids and take other action as City Council deems appropriate. Staff does not recommend this due to the favorable pricing of the low bid, which is approximately six percent (6%) under the Engineer’s Estimate of \$392,973 for the base bid.

FISCAL IMPACT

There is no fiscal impact to the General Fund for this project. Funding for this project comes from previously awarded transportation grants (State of Good Repair and Rural Transit Fund) and City Transit funds (Transportation Development Act Local Transportation Fund) budgeted in Fiscal Year (FY 2021/22).

Staff recommends supplementing the project budget with \$44,544 from the Transit Fund for the City Park Transit Hub Improvement Project Capital Fund. If approved, the allocation of Transit Fund monies will be brought back to the City Council during the City’s mid-year budget adjustment in late February 2023. With the additional allocation of \$44,544 to the City Park Transit Hub Improvement Project, the total funds for the project will be \$524,137.

Revenue Sources

	<u>Amount</u>
Transportation Grant: State of Good Repair	\$ 312,951.00
Transportation Grant: Rural Transit Fund	\$ 124,632.00
Transit Fund: Local Transportation Funds	\$ 42,010.00

<u>Additional Funds:</u> allocation from Transit Fund for City Park Transit Hub Improvement Capital Fund project	\$ 44,544.00
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Total Revenue Sources for Project \$ 524,137.00

Prepared By: <u>PM/ER</u>	Dept Review: <u>GK</u>
City Manager Review: <u>SC</u>	City Attorney Review: <u>LNL</u>

<u>Estimated Expenditures</u>	<u>Amount</u>
<u>Contract Costs</u>	
Award (Base Bid)	\$ 368,170.00
Contingency (10%)	<u>\$ 36,817.00</u>
	\$ 404,987.00
 <u>Other costs (already approved / implemented for project)</u>	
Two (2) Shelter costs	\$ 29,618.00
PG&E Service, Tree trimming, other site prep	\$ 6,500.00
Design/Bid Support, Construction Plans, Management, Inspection, and Testing	<u>\$ 83,032.00</u>
	\$ 119,150.00
Total Expenditures Authorized by Council for Project	<u>\$ 524,137.00</u>

BACKGROUND

The City Park transit hub is served by the San Luis Obispo Regional Transit Authority (RTA) and the San Luis Coastal Unified School District (SLCUSD), as well as the City’s Morro Bay Transit program, which includes the year round deviated fixed route and seasonal trolley services. The current bus shelter at City Park was constructed in the early 1980’s and has not been significantly updated or improved since its initial construction.

An initial study was conducted in FY18/19 to evaluate the existing conditions and identify potential improvements at the City Park transit stop. A final report with a recommended project program and four potential transit shelter locations was presented to the Public Works Advisory Board in August 2019 and City Council in October 2019. Staff recommendations for the selected shelter location and project were approved by City Council at the October 2019 meeting. In the FY19/20 and FY20/21 funding cycles, Staff applied for and received award of two State of Good Repair grants and a Rural Transit Fund grant, which partially fund this project and are outlined in the Fiscal Impact section of this report.

The project was approved by City Council on October 8, 2019, and on June 23, 2020, when City Council adopted the FY20/21 operating and capital budget that included this project and its description. The project addresses deficiencies identified in the initial study relating to lighting, ADA, safety, and seating capacity that would be addressed by providing improvements to vehicle pull in/pull out, wheelchair loading/unloading area, construction of new passenger shelters with improved visibility, installation of new benches, bike racks, lights, and capability for real time traveler information display, as well as ADA improvements to the sidewalk where transit vehicles pull in, crosswalk ramps at either end of the transit hub, and sidewalk access from the transit hub to the public restroom.

There is a painted mural on the interior walls of the existing passenger shelter and concrete “sofa” in the shelter that were part a public art donation from the Morro Bay Public Art Foundation approved by the City Council in early 2012 under the City’s Public Art Policy. Since the passenger shelter is to be replaced as part of the improvements to the transit hub, staff has kept the Morro Bay Art Association apprised on the plans to replace these art features with an art component on the new passenger shelters after they are installed. With award of the bid and initiation of the construction phase of the project, the City will move forward with releasing a Call for Artists to submit concepts for a mural or mosaic to be installed on the new transit shelters. The submitted concepts will be brought to the Public Works Advisory Board for review and recommendation to the City Council on the artist concept for selection.

DISCUSSION

Engineering plans and specifications were created and a notice to bidders posted with a public bid opening conducted on Thursday, January 12, 2023, at City Hall. A report of the bids received,

summarizing the detailed proposal of each of the bidders, can be found in Attachment 2. The second lowest bid received is responsive to the City's Invitation to Bid, and the bidder is well regarded as having successfully completed similar public works projects in the recent past. The lowest bidder is not eligible for award due to their bid submittal being found non-responsive to the requirements of the bid documents.

PROJECT DATA

Apparent Low Bid:	\$368,170.00
High Bid:	\$509,621.00
No. Bids Received:	5
Engineer's Estimate:	\$392,973.00
Bid Opening:	2:00 p.m. on 1/12/2023
Contract Time Allowed:	45 WORKING DAYS

The project shall include providing all tools, materials, labor, equipment, and incidentals necessary for the removal and replacement of a bus shelter, sidewalk, driveway approach, curb ramp, spandrel, fencing, bike rack, lighting, irrigation, sign, asphalt pavement restoration, slurry seal and traffic markings. Two street trees that have uplifted sidewalk and curb and gutter are being removed with the project and replaced with four new trees to be planted on the park grounds. All utilities not replaced will be protected in place including manholes and returned to their prior condition. The work will also include any required traffic control, signage, public notifications, stormwater control, formwork, and all other work necessary to render the infrastructure/facility complete and operational, as shown on the Project Plans and Specifications.

IMPACT TO THE COMMUNITY

The work is being performed at City Park along Harbor Street. Motorists, cyclists, and the walking public may experience inconveniences during the project's construction due to temporary closures of streets, traffic lanes, the presence of the construction equipment, and traffic control efforts. Project rollout will include public notification and temporary "No Parking" signs as applicable. These efforts are intended to allow residents to prepare for the project impacts by adjusting their routes of travel and/or schedules during construction work.

ATTACHMENTS

1. Resolution No. 09-23
2. Bid Results Form
3. Form of Agreement for Services
4. City Park Transit Hub Improvement Site Plan

RESOLUTION NO. 09-23

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING AN AGREEMENT WITH G. SOSA CONSTRUCTION, INC., FOR PROJECT NO.
MB2020-ST02, CITY PARK TRANSIT HUB IMPROVEMENT PROJECT**

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

WHEREAS, the City of Morro Bay formally advertised for Project No. MB2020-ST02, City Park Transit Hub Improvement Project; and

WHEREAS, the Notice Inviting Bids was published and posted in compliance with applicable sections of the Public Contract Code; and

WHEREAS, bids were publicly opened at 2:00 p.m. on January 12, 2023, in the City Hall Conference Room; and

WHEREAS, the City received 5 bids and the low bid was found to be non-responsive, lacking required documents as requested in the Notice to Bidders; and

WHEREAS, the second low bid was found to be responsive and to include all required documentation, bid bonds, and signatures; and

WHEREAS, funds for this project have been secured from transportation grants, the City's Local Transportation Funds, and the City's State of Good Repair Transit Operator Allocation; and

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

1. The City Manager, or designee, is hereby authorized and directed to execute for and on behalf of the City of Morro Bay, a public works agreement with G. Sosa Construction Inc. for Project No. MB2020-ST02, City Park Transit Hub Improvement Project, in the amount \$368,170 (the "Agreement"); and
2. The award of said bid and approval of said Agreement are conditioned upon execution of the Agreement by the successful bidder in the form and upon the terms set forth therein by the City. All agreements implementing such project work shall be processed and based on the review of the City Attorneys' Office to be in form and substance acceptable to City staff and legal counsel; and
3. The City Manager, or designee, is hereby authorized and directed to designate funds from the available budgeted accounts identified in the accompanying Staff Report for this approved project in the total amount of \$368,170; and
4. The City Manager, or designee, is hereby authorized as the duly authorized representative to approve minor, non-substantive or non-material changes to the Agreement, including Contract Change Orders, through contract amendments so long as expenditures do not exceed the contingency allotment of \$36,817 and the overall funding approved for the project of \$524,137; and

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5. The City Clerk is hereby authorized to make minor changes herein to address clerical errors, so long as substantial conformance of the intent of this document is maintained. In doing so, the City Clerk shall consult with the City Manager and City Attorney concerning any changes deemed necessary.

PASSED AND ADOPTED by the City Council of the City of Morro Bay, California, at a regular meeting held on the 14th day of February 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RECUSED:

CARLA WIXOM, Mayor

ATTEST:

DANA SWANSON, City Clerk

DETAILED BID RESULTS CITY OF MORRO BAY
 E-MAIL: eriddiough@morrobayca.gov & pneman@morrobayca.gov



PROJECT: CITY PARK TRANSIT HUB IMPROVEMENT PROJECT BID NO.: MB2020-ST02 BID OPENING DATE: 1/12/2023				\$ 291,270.31		\$ 368,170.00		\$ 392,493.00		\$ 463,040.00		\$ 510,621.00			
DESCRIPTION				ENGINEER'S ESTIMATE		Lic. # 1095401		Lic. #788272		Lic. #479476		Lic. #751220		Lic. #939644	
				UNIT PRICE	ESTIMATED TOTAL	UNIT PRICE	TOTAL COST	UNIT PRICE	ESTIMATED TOTAL	UNIT PRICE	ESTIMATED TOTAL	UNIT PRICE	ESTIMATED TOTAL	UNIT PRICE	ESTIMATED TOTAL
ITEM#	BASE BID ITEMS	QUANTITY	UNIT	UNIT PRICE	ESTIMATED TOTAL	UNIT PRICE	TOTAL COST	UNIT PRICE	ESTIMATED TOTAL	UNIT PRICE	ESTIMATED TOTAL	UNIT PRICE	ESTIMATED TOTAL	UNIT PRICE	ESTIMATED TOTAL
1	Construction Coordination	1	LS	\$ 20,000.00	\$ 20,000.00	\$ 5,200.00	\$ 5,200.00	\$ 26,468.00	\$ 26,468.00	\$ 27,000.00	\$ 27,000.00	\$ 30,000.00	\$ 30,000.00	\$ 32,275.00	\$ 32,275.00
2	Traffic Control, Construction Area Signs, Postings and Notifications	1	LS	\$ 6,500.00	\$ 6,500.00	\$ 6,000.00	\$ 6,000.00	\$ 7,000.00	\$ 7,000.00	\$ 17,000.00	\$ 17,000.00	\$ 22,000.00	\$ 22,000.00	\$ 7,925.00	\$ 7,925.00
3	Water Pollution Control Plan	1	LS	\$ 2,500.00	\$ 2,500.00	\$ 5,000.00	\$ 5,000.00	\$ 1,500.00	\$ 1,500.00	\$ 6,300.00	\$ 6,300.00	\$ 3,500.00	\$ 3,500.00	\$ 1,250.00	\$ 1,250.00
4	Remove Concrete	5,700	SF	\$ 10.00	\$ 57,000.00	\$ 4.93	\$ 28,101.00	\$ 5.00	\$ 28,500.00	\$ 1.31	\$ 7,467.00	\$ 4.50	\$ 25,650.00	\$ 12.00	\$ 68,400.00
5	Remove Concrete Curb and Gutter	567	LS	\$ 20.00	\$ 11,340.00	\$ 4.93	\$ 2,795.31	\$ 13.00	\$ 7,371.00	\$ 13.00	\$ 7,371.00	\$ 10.00	\$ 5,670.00	\$ 11.00	\$ 6,237.00
6	Remove Tree	2	EA	\$ 5,000.00	\$ 10,000.00	\$ 1,500.00	\$ 3,000.00	\$ 2,400.00	\$ 4,800.00	\$ 3,360.00	\$ 6,720.00	\$ 1,800.00	\$ 3,600.00	\$ 2,065.00	\$ 4,130.00
7	Clearing and Grubbing	1	LS	\$ 623.00	\$ 623.00	\$ 5,288.00	\$ 5,288.00	\$ 5,000.00	\$ 5,000.00	\$ 7,600.00	\$ 7,600.00	\$ 7,000.00	\$ 7,000.00	\$ 7,575.00	\$ 7,575.00
8	Minor Concrete-Driveway Approach	140	SF	\$ 25.00	\$ 3,500.00	\$ 32.00	\$ 4,480.00	\$ 18.00	\$ 2,520.00	\$ 27.00	\$ 3,780.00	\$ 100.00	\$ 14,000.00	\$ 37.00	\$ 5,180.00
9	Minor concrete-Curb and Gutter	567	LF	\$ 60.00	\$ 34,020.00	\$ 53.00	\$ 30,051.00	\$ 84.00	\$ 47,628.00	\$ 80.00	\$ 45,360.00	\$ 60.00	\$ 34,020.00	\$ 127.00	\$ 72,009.00
10	Minor concrete-Walk	3,900	SF	\$ 20.00	\$ 78,000.00	\$ 14.50	\$ 56,550.00	\$ 12.00	\$ 46,800.00	\$ 12.00	\$ 46,800.00	\$ 13.00	\$ 50,700.00	\$ 17.00	\$ 66,300.00
11	Minor concrete-Curb Ramp	365	SF	\$ 40.00	\$ 14,600.00	\$ 24.00	\$ 8,760.00	\$ 21.00	\$ 7,665.00	\$ 38.00	\$ 13,870.00	\$ 75.00	\$ 27,375.00	\$ 38.00	\$ 13,870.00
12	Minor concrete-Spandrel	200	SF	\$ 30.00	\$ 6,000.00	\$ 30.00	\$ 6,000.00	\$ 21.00	\$ 4,200.00	\$ 45.00	\$ 9,000.00	\$ 95.00	\$ 19,000.00	\$ 39.00	\$ 7,800.00
13	Structural Concrete-Bus Shelter Pad	250	SF	\$ 50.00	\$ 12,500.00	\$ 60.00	\$ 15,000.00	\$ 40.00	\$ 10,000.00	\$ 43.00	\$ 10,750.00	\$ 70.00	\$ 17,500.00	\$ 43.00	\$ 10,750.00
14	Adjustment-Utility Box & Lid to Finish Surface	5	EA	\$ 375.00	\$ 1,875.00	\$ 800.00	\$ 4,000.00	\$ 700.00	\$ 3,500.00	\$ 625.00	\$ 3,125.00	\$ 675.00	\$ 3,375.00	\$ 975.00	\$ 4,875.00
15	Install Tranist Shelter	2	EA	\$ 10,000.00	\$ 20,000.00	\$ 2,000.00	\$ 4,000.00	\$ 4,000.00	\$ 8,000.00	\$ 2,500.00	\$ 5,000.00	\$ 7,500.00	\$ 15,000.00	\$ 8,000.00	\$ 16,000.00
16	Bike Rack-4 Bike Single Sided	1	EA	\$ 1,500.00	\$ 1,500.00	\$ 1,200.00	\$ 1,200.00	\$ 1,500.00	\$ 1,500.00	\$ 1,115.00	\$ 1,115.00	\$ 1,800.00	\$ 1,800.00	\$ 1,740.00	\$ 1,740.00
17	Fence-6 Foot Tall	60	LF	\$ 110.00	\$ 6,600.00	\$ 55.00	\$ 3,300.00	\$ 125.00	\$ 7,500.00	\$ 130.00	\$ 7,800.00	\$ 100.00	\$ 6,000.00	\$ 91.00	\$ 5,460.00
18	Fence-42 Inch Tall	185	LF	\$ 65.00	\$ 12,025.00	\$ 37.00	\$ 6,845.00	\$ 102.00	\$ 18,870.00	\$ 106.00	\$ 19,610.00	\$ 90.00	\$ 16,650.00	\$ 80.00	\$ 14,800.00
19	Relocate Sign and Post	1	EA	\$ 250.00	\$ 250.00	\$ 700.00	\$ 700.00	\$ 200.00	\$ 200.00	\$ 345.00	\$ 345.00	\$ 800.00	\$ 800.00	\$ 550.00	\$ 550.00
20	Locate and Place Trash Cans	2	EA	\$ 250.00	\$ 500.00	\$ 500.00	\$ 1,000.00	\$ 200.00	\$ 400.00	\$ 1,150.00	\$ 2,300.00	\$ 300.00	\$ 600.00	\$ 550.00	\$ 1,100.00
21	Slurry Seal Type II	25,000	SF	\$ 0.40	\$ 10,000.00	\$ 2.00	\$ 50,000.00	\$ 1.10	\$ 27,500.00	\$ 1.50	\$ 37,500.00	\$ 2.50	\$ 62,500.00	\$ 2.25	\$ 56,250.00
22	Traffic Striping and Markings	1	LS	\$ 6,840.00	\$ 6,840.00	\$ 10,000.00	\$ 10,000.00	\$ 15,060.00	\$ 15,060.00	\$ 16,000.00	\$ 16,000.00	\$ 6,500.00	\$ 6,500.00	\$ 14,790.00	\$ 14,790.00
23	Plant Trees	2	EA	\$ 1,500.00	\$ 3,000.00	\$ 1,000.00	\$ 2,000.00	\$ 1,700.00	\$ 3,400.00	\$ 1,000.00	\$ 2,000.00	\$ 900.00	\$ 1,800.00	\$ 1,950.00	\$ 3,900.00
24	Remove and Relocated Irrigation	1	LS	\$ 3,000.00	\$ 3,000.00	\$ 7,000.00	\$ 7,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00	\$ 20,000.00	\$ 20,000.00	\$ 9,855.00	\$ 9,855.00
25	Lighting	1	LS	\$ 22,500.00	\$ 22,500.00	\$ 10,000.00	\$ 10,000.00	\$ 31,520.00	\$ 31,520.00	\$ 32,950.00	\$ 32,950.00	\$ 26,000.00	\$ 26,000.00	\$ 25,475.00	\$ 25,475.00
26	Electrical	1	LS	\$ 28,500.00	\$ 28,500.00	\$ 10,000.00	\$ 10,000.00	-	\$ 43,268.00	\$ 45,230.00	\$ 45,230.00	\$ 27,000.00	\$ 27,000.00	\$ 41,210.00	\$ 41,210.00
27	Remove Existing Concrete Shelter	1	LS	\$ 20,000.00	\$ 20,000.00	\$ 5,000.00	\$ 5,000.00	-	\$ 5,000.00	\$ 7,500.00	\$ 7,500.00	\$ 15,000.00	\$ 15,000.00	\$ 10,915.00	\$ 10,915.00
TOTAL BASE BID:					\$ 392,973.00		\$ 291,270.31		\$ 368,170.00		\$ 392,493.00		\$ 463,040.00		\$ 510,621.00
APPARENT LOW BIDDER'S LISTED SUBCONTRACTORS (Work Performed/Bid Items)				OTHER BIDS											
Asphalt Maintenance (21) Costal Tree Experts, Inc. (6) R,Cameron Construction (23 &24)															
Toste Construction (22) Lee Wilson Electric Co. (25 & 26) Central Coast Fence (17 & 18)															
Disqualified and deemed non-responsive															

AGREEMENT
CITY OF MORRO BAY
STATE OF CALIFORNIA
CONTRACT FOR
MB2020-ST02 – CITY PARK TRANSIT HUB IMPROVEMENT PROJECT
IN THE CITY OF MORRO BAY, CALIFORNIA

THIS AGREEMENT (“this Contract” or “this Agreement”) is made and entered into in triplicate this _____ day of FEBRUARY, 2023, by and among the City of Morro Bay, a municipal corporation, hereinafter referred to as “City” and **G Sosa Construction, Inc.**, hereinafter referred to as “Contractor”. In consideration of the mutual covenants, conditions, promises, and agreements herein contained, City and Contractor hereby mutually covenant and agree as follows:

ARTICLE I – SCOPE OF WORK:

Each work order issued pursuant to this Agreement and each amendment, as provided herein, shall be based on the unit prices included in the bid upon which this Agreement was awarded. For all work provided pursuant this Agreement and every amendment provided for herein (the “WORK”), Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor and materials necessary to perform and complete in a workmanlike manner, and in strict accordance with the Contract Documents, (defined in Article 6 herein) the WORK of: **CITY PARK TRANSIT HUB IMPROVEMENT PROJECT: MB2020-ST02**, in the City of Morro Bay, State of California, as called for in the drawings and specifications adopted by City, which said drawings and specifications are identified by the signature of the parties of this Agreement. It is understood and agreed the tools, equipment, apparatus, facilities, labor, and materials shall be furnished, and the WORK performed and completed as required in said Contract Documents, and subject to the approval of City and duly authorized representatives.

ARTICLE 2 - TIME OF COMPLETION:

- A. The WORK, as defined in the specifications, per the following: The work shall include, but is not limited to, providing all tools, materials, labor, equipment, and incidentals necessary for the removal of failed, localized pavement areas and replacement with asphalt materials in roadways denoted on the plans and as described in the specifications. All utilities will be protected in place or adjusted and returned to their prior condition. The work will also include traffic control, removal and reinstallation of traffic striping and pavement markings, public notifications, and all work necessary to render the infrastructure/facility complete and operational.
- B. Once the Notice to Proceed has been issued, the Contractor shall have forty-five (45) WORKING days to complete their installation. The Contractor shall pay to the City the sum of Five Hundred Dollars (\$500.00), for each and every calendar day, or portion thereof, delay in finishing that installation work in excess of the above-required completion time.
- C. City and Contractor recognize time is of the essence, and the City will suffer losses if the WORK is not completed in the time specified in paragraphs A and B. They also recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by City if the WORK is not completed on time. Accordingly, instead of requiring any such proof, City and Contractor agree, as liquidated damages for delay (but not as a penalty) Contractor shall pay City amounts for each day, or portion thereof, that expires after the time and amounts specified in Article 2.A and 2B.

ARTICLE 3 - CONTRACT PRICE:

City will pay Contractor in current funds for the full, complete and satisfactory performance the sum of: **THREE HUNDRED SIXTY-THREE THOUSAND, ONE HUNDRED SEVENTY DOLLARS EVEN (\$368,170.00).**

ARTICLE 4 – PAYMENT PROCEDURES:

- A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.
- B. The acceptance by Contractor of final payment shall be and shall operate as a full and unconditional release to the City of all claims and all liability to Contractor for all things done or furnished in connection with the WORK and for every act and neglect of City and others relating to or arising out of the WORK. No payment, however, final or otherwise, shall operate to release Contractor or sureties from any obligations under this Contract or the Performance and Payment Bond.
- C. The amount of retention on the project shall be five percent (5%) of the WORK completed to date including stored materials, if any.

ARTICLE 5 – CONTRACTOR’S REPRESENTATIONS:

In order to induce City to enter into this Agreement the Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the WORK.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the WORK.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."
- E. Contractor has considered the information known to Contractor; information commonly known to Contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the WORK; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor’s safety precautions and programs.

- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the WORK at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the WORK as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the WORK.

ARTICLE 6 – CONTRACT DOCUMENTS:

This Contract shall consist of the following identified documents herein referred to as the Contract Documents: Invitation to Bidders, Instructions for Bidders, Bid Form, Supplements to Bid Form, Agreement, Bond Requirements and Bond Forms, Substitution of Securities, Guarantees, Insurance and Indemnification Requirements, Standard General Conditions, Specifications, City Standard Specifications, and attached supplemental information, Drawings, and any Addenda, for the project, as those documents exist on the date of the first signature to this Contract. There are no other Contract Documents except those listed above. This Contract shall include all labor, materials, equipment, transportation, and services necessary for the proper execution of the WORK. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 7 – LAW AND VENUE:

This Agreement has been executed and delivered in the County of San Luis Obispo, State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. The duties and obligations of the parties created hereunder are performable in the City of Morro Bay and as such the County shall be the venue for any action of proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

ARTICLE 8 - CONFLICTS OF INTERESTS:

No official of City who is authorized on behalf of City to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction, or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this Contract or in any part thereof. No officer, employee, architect, attorney, engineer, or inspector of or for City who is authorized on behalf of City to exercise any executive, supervisory or other similar function in connection with the construction of the project shall become directly or indirectly interested personally in this Contract or in any part thereof.

ARTICLE 9 – ASSIGNMENT:

No assignment by a party hereto of any rights under or interests in this Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

ARTICLE 10 – SUCCESSORS:

City and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

ARTICLE 11 – SEVERABILITY:

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

ARTICLE 12 – CONFLICTS:

In the event of a conflict between the General Conditions; Bid Documents and this Agreement, the terms and conditions of this Agreement shall control.

ARTICLE 13 – BONDS:

- A. PERFORMANCE BOND: Pursuant to Section 20129 of the California Public Contract Code, the successful Bidder shall, within ten (10) working days after award of this Contract simultaneously with the execution and delivery of this Agreement, execute a Faithful Performance Bond in an amount equal to one hundred percent (100%) of the Contract price, secured from a surety company admitted in the State of California and satisfactory to City. The Bond shall be issued on the Performance Bond form contained in these Contract Documents.
- B. PAYMENT BOND: Pursuant to Sections 9550 through 9560, inclusive, of the California Civil Code, the successful bidder shall, within eight (8) working days after award of this Contract exceeding \$25,000, simultaneously with the execution and delivery of the Agreement, execute a Payment Bond in the amount equal to 100% of the Contract price, secured from a surety company admitted in the State of California and satisfactory to City. The Bond shall be issued on the Payment Bond form contained in these Contract Documents.

ARTICLE 14 - SUBSTITUTIONS OF SECURITIES FOR RETENTION AMOUNTS:

Substitution of certain securities for retention amounts are allowed under the Public Contract Code at the option of the Contractor. The Contractor is required to formally request the substitution and to conform to the specific provisions of Public Contract Code section 22300.

- A. Acceptable Securities: Whenever retention of monies is authorized to insure performance of Contract conditions, the Contractor shall be permitted to substitute securities for the amount withheld in accordance with Public Contract Code section 22300. Securities eligible for deposit under this procedure shall consist of bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, securities listed in Government Code Section 16430, or any other security mutually agreed to by the Contractor and the public agency. The Contractor shall be the beneficiary of the City of any securities substituted for monies withheld and shall receive any interest thereon.
- B. Value of Securities: The value of securities being deposited shall be based upon market value as of the date of deposit and not necessarily on face value of the securities. Market value shall be determined by the City Public Works Director. If deposit is made into an escrow, escrow instructions must clearly state, in addition to the items mentioned in, that the escrow agent must

convert the securities to cash in whole or in part upon a unilateral written demand for such conversion by the City Manager; and further, that any amount demanded by City shall be paid to City upon unilateral written demand for payment. Escrow instructions used must be substantially similar to the form set forth in Public Contract Code section 22300. City will only make such demand for conversion in payment when the conditions of the Contract would have warranted an expenditure by City of a cash retention expenditure without any securities substitution. All escrow expenses shall be paid by Contractor.

- C. Release of Securities: Securities deposited hereunder shall be released back to Contractor when the City Manager has certified in writing to the escrow holder that the project has been satisfactorily completed. The recording of Notice of Completion does not constitute such certification. All retention times called for in these Contract Documents must have passed, including the time after recording of Notice of Completion, before City will certify to satisfactory completion of the Contract.

ARTICLE 15 – GUARANTEES AND WARRANTIES:

- A. GUARANTEE FOR TOTAL WORK: Prior to acceptance of the WORK by City, the Contractor shall submit a guarantee in the form of a written warranty on Contractor’s own letterhead as follows:

“WARRANTY FOR CITY PARK TRANSIT HUB IMPROVEMENT PROJECT: MB2020-ST02: This WORK has been constructed in accordance with the Contract Documents, and the WORK as installed will fulfill the requirements of this warranty, and any other warranty therefor, included in the Contract Documents. We agree to repair or replace any and all of our WORK together with any other adjacent WORK which may be displaced by so doing, that prove to be defective in its workmanship or material for the period of one (1) year (except when otherwise required in this Contract to be for a longer period) from date of acceptance of the above mentioned structure by City, ordinary wear and tear and unusual abuse or neglect excepted. Said date of acceptance shall be the date of acceptance and filing of the Notice of Completion by the City Council.

In the event of our failure to comply with the above-mentioned conditions within seven (7) days after being notified in writing, we collectively or separately, do hereby authorize City to proceed to have said defects repaired and made good at our expense and we will honor and pay the cost and charges therefor on demand.

Signed:

_____ Contractor

_____ License Number

- B. ADDITIONAL GUARANTEES: Additional Guarantees shall be provided as required in the technical sections of the Contract Documents.

ARTICLE 16 – INSURANCE:

The parties expressly agree the indemnification and insurance clauses in this Contract are an integral part of the performance exchanged in this Contract. The compensation stated in this Contract includes compensation for the risks transferred to Contractor by the indemnification and insurance clauses.

Attention is invited to the provisions of the Insurance Code of the State of California with reference to the writing of insurance policies and bonds covering risks located in this state, and the premiums and commissions thereon. Contractor shall obtain, and maintain, at his own expense, all the insurance required by this section. The insurance requirements must be met within the time period allowed for Contract execution as defined in the 00 41 13 BID FORM herein.

Required insurance forms are attached as Appendix "A" to these Specifications.

The Notice to Proceed with the WORK under this Contract will not be issued, and Contractor shall not commence WORK, until such insurance has been approved by City. Contractor shall not allow any subcontractor to commence WORK on his subcontract until all similar insurance required for the subcontractor has been obtained. Such insurance shall be maintained in full force and effect at all times during the prosecution of the WORK and until the final completion and acceptance thereof.

A. General Requirements: The following requirements apply to all insurance to be provided by Contractor:

1. A Certificate of Insurance and all required insurance endorsements and documents shall be furnished to City along with contract documents within three (3) days of the receipt of the Notice of Award.
2. Certificates and policies shall state the policies not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to City, except if cancelation is for non-payment and then notice shall be ten (10) days.
3. Approval of the insurance by City shall not relieve or decrease the extent to which the Contractor may be held responsible for payment of damages resulting from Contractor's services or operations pursuant to this Contract.

B. Commercial General Liability (CGL):

1. Contractor shall maintain in full force and effect, for the period covered by this Contract, Commercial General Liability insurance with the following coverages.
 - a. Personal Injury and Bodily Injury, including death resulting therefrom.
 - b. Property Damage.
2. The amount of insurance shall not be less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom and property damage coverage in an amount not less than \$2,000,000 per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.
3. The following endorsements must be provided in the policy:
 - a. If the insurance policy covers an "accident" basis, it must be changed to "occurrence".
 - b. The policy must cover personal injury as well as bodily injury.
 - c. Blanket contractual liability must be afforded and the policy must be afforded and the policy must contain a cross liability or severability of interest endorsement.
4. The City of Morro Bay, its officials, officers, employees and agents shall be named as additional insurer under the policy using standard ISO endorsement No. CG 2010. Contractor also agrees to require all subcontracting to do likewise. The policy shall provide that the insurance will operate as primary insurance. No other insurance effected by the City, whether commercial or self-insurance will be called upon to contribute to a loss hereunder. Nothing

contained in this Contract shall be construed to require Contractor's insurance to indemnify City in contravention of Insurance Code 11580.04.

- C. **Workers' Compensation and Employer's Liability Insurance:** Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000) for Contractor's employees in accordance with the laws of the State of California, Section 3700 of the Labor Code. In addition, Contractor shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California, Section 3700 for all of the subcontractor's employees.

Contractor shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

- D. **Business Auto Coverage** on ISO Business Auto Coverage from CA 00 01 including symbol 1 (Any Auto) or an acceptable equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Contractor owns no vehicles, then this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described in B., above. If Contractor or Contractor's employees or subcontractors will use personal autos in any way on this project, then Contractor shall provide evidence of personal auto liability coverage for each such person.
- E. **Umbrella or excess liability insurance.** *[if required to meet higher limits.]* Contractor shall obtain and maintain an umbrella liability insurance policy with limits that will provide bodily injury, personal injury, and property damage liability coverage, including commercial general liability, auto liability, and employer's liability. Such policy or policies shall include the following terms and conditions:
- a. A drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason, other than bankruptcy or insolvency of said primary insurer;
 - b. "Pay on behalf of" wording as opposed to "reimbursement";
 - c. Concurrency of effective dates with primary policies.

Should Contractor obtain and maintain an excess liability policy, such policy shall be excess over commercial general liability, auto liability, and employer's liability policies. Such policy or policies shall include wording that the excess liability policy follows the terms and conditions of the underlying policies.

- F. **Waiver of subrogation.** All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against Agency, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow Vendor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Vendor hereby waives its own right of recovery against Agency and shall require similar written express waivers and insurance clauses from each of its subconsultants.
- G. **Duration of coverage.** Contractor shall procure and maintain for the contract period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the performance

of the Work hereunder by Contractor, their agents, representatives, employees, or subconsultants. Contractor must maintain general liability and umbrella or excess liability insurance for as long as there is a statutory exposure to completed operations claims. Agency and its officers, officials, employees, and agents shall continue as additional insureds under such policies.

- H. **Products/completed operations coverage.** Products/completed operations coverage shall extend a minimum of three (3) years after project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the Policy must include work performed “by or on behalf” of the insured. Policy shall contain no language that would invalidate or remove the insurer’s duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer. The Agency, its officials, officers, agents, and employees, shall be included as additional insureds under the Products and Completed Operations coverage.

ARTICLE 17 – INDEMNIFICATION:

- A. Except as otherwise provided in subparagraphs B. and C. below, Contractor shall defend, indemnify and save harmless City, and entities’ agents, officials, officers and employees, from any and all claims demands, damages, costs expenses, judgments, attorney fees or liability relating to any act or omission by the Contractor, or its agents, employees, or certain independent Contractors (described below) which relates in any way to this Contract; regardless of whether said act or omission is willful, negligent or non-negligent. The preceding sentence applies to any theory of recovery relating to said act or omission, including but not limited to the following:
1. Violation of statute, ordinance, or regulation.
 2. Professional malpractice.
 3. Willful, intentional or other wrongful acts, or failures to act.
 4. Negligence or recklessness.
 5. Furnishing of defective or dangerous products.
 6. Completed operations.
 7. Premises liability.
 8. Strict liability.
 9. Inverse condemnation.
 10. Violation of civil rights.
 11. Violation of any federal or state statute, regulation, or ruling resulting in a determination by the Internal Revenue Service, California Franchise Tax Board or any other California public entity responsible for collecting payroll taxes, when Contractor is not an independent contractor. The certain “independent contractors” referenced above refer to independent contractors which are either hired by Contractor, directly responsible to Contractor, or under the direction or control of Contractor.
- B. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for liability arising from proven willful misconduct of City.
- C. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for that portion of any liability attributable to the active negligence of City provided, however, this exception for active negligence shall not apply to (1) liability arising from the passive negligence of City, or (2) that portion of any liability attributable to any act or omission, whether willful misconduct or active or passive negligence on the part of the Contractor.

- D. Contractor shall have the burden of proving the exception described in paragraphs B and C above.
- E. It is the intent of the parties to provide City the fullest indemnification, defense, and “hold harmless” rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, then said word(s) shall be severed from this Contract and the remaining language shall be given full force and effect.

ARTICLE 18 – COMPLIANCE WITH LAWS:

Federal and State Laws and Regulations: The project shall be constructed under the complete jurisdiction of all applicable laws of the United States and State of California governing construction including, without limitation, the following:

- A. The California Health and Safety Code and all applicable administrative code regulations pursuant thereto.
- B. All laws governing the employment of labor, qualifications for employment of aliens, payment of employees, convict-made materials, domestic and foreign materials and accident prevention.
- C. Title 19 of the California Administrative Code entitled “Public Safety” Chapter 1, State Fire Marshall, Sub-Chapter 1, “General Fire and Panic Safety”.
- D. General Industrial Safety Orders: Each and every Contractor shall observe and conform to the provisions of Title 8, California Administrative Code bearing upon safe and proper use, construction, disposal, etc., of materials, machinery, and building appurtenances as therein set forth.
- E. Code Rules and Safety Orders: All work and materials shall be in full accordance with the latest - substantive rules and regulations of the State Fire Marshall, the safety orders of the Division of Industrial Safety, Department of Industrial Relations; the Uniform Building Code, National Electric Code, Uniform Mechanical Code, Uniform Plumbing Code, and other applicable State Laws or Regulations. Nothing in these plans and specifications is to be construed to permit WORK not conforming to these codes.

Note: The procedural aspects of the Uniform Codes referred to above may not apply to the WORK of this Contract, but the substantive provisions do apply. All of the above laws and regulations though referred to herein, are as much a part of the Contract as if they were incorporated in their entirety in these General Conditions.

F. Prevailing Wage Law:

a.) Public Work. The Parties acknowledge that the work to be performed under this Agreement is a “public work” as defined in Labor Code Section 1720 and that this Agreement is therefore subject to the requirements of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works contracts and the rules and regulations established by the Department of Industrial Relations (“DIR”) implementing such statutes. The work performed under this Agreement is subject to compliance monitoring and enforcement by the DIR. Contractor shall post job site notices, as prescribed by regulation.

b.) Registration with DIR. Pursuant to Labor Code section 1771.1, Contractor and all subcontractors must be registered with, and pay an annual fee to, the DIR prior to and during the performance of any work under this Agreement.

c.) Prevailing Wages. Contractor shall pay prevailing wages to the extent required by Labor Code Section 1771. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at City Hall and will be made available to any interested party on request. By initiating any work under this Agreement, Contractor acknowledges receipt of a copy of the DIR determination of the prevailing rate of per diem wages, and Contractor shall post a copy of the same at each job site where work is performed under this Agreement. Contractor assumes responsibility for the payment of prevailing wages and shall indemnify City and hold City harmless from any and all claims made by the State of California, the DIR, any subcontractor, any worker, or any other third party with respect thereto.

d.) Penalty for Failure to Pay Prevailing Wages. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Contractor or by any subcontractor.

e.) Payroll Records. Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Contractor and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the City of the location of the records.

f.) Apprentices. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6, and 1777.7 and California Code of Regulations Title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Agreement, Contractor and each of its subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Agreement.

g.) Eight-Hour Work Day. Contractor acknowledges that eight (8) hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code Section 1810.

h.) Penalties for Excess Hours. Contractor shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public work upon compensation for all hours

worked in excess of 8 hours per day at not less than one and one-half (1½) times the basic rate of pay.

i.) Workers' Compensation. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees if it has employees. In accordance with the provisions of California Labor Code Section 1861, Contractor certifies as follows: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

j.) Contractor's Responsibility for Subcontractors. For every subcontractor who will perform work under this Agreement, Contractor shall be responsible for such subcontractor's compliance with Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, and shall make such compliance a requirement in any contract with any subcontractor for work under this Agreement. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a review of the certified payroll records of the subcontractor on a periodic basis or upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any such failure by any subcontractor.

--SIGNATURES ON NEXT PAGE--

IN WITNESS, WHEREOF, the parties to these presents have hereunto set their hands the year and date first above written.

CITY OF MORRO BAY

ATTEST:

SCOTT COLLINS, City Manager

DANA SWANSON, City Clerk

CONTRACTOR:

APPROVED AS TO FORM:

By: _____
Its: _____

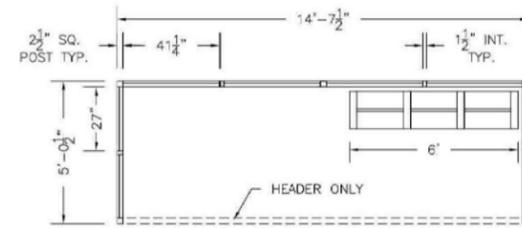
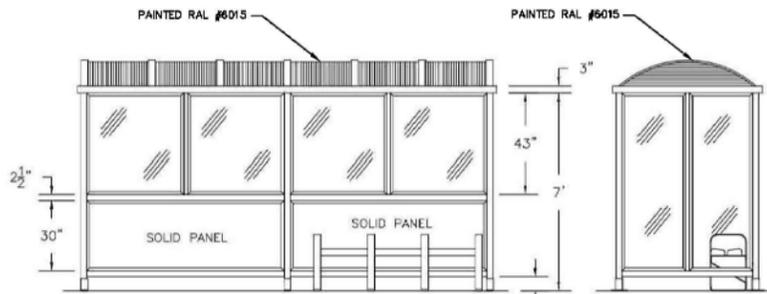
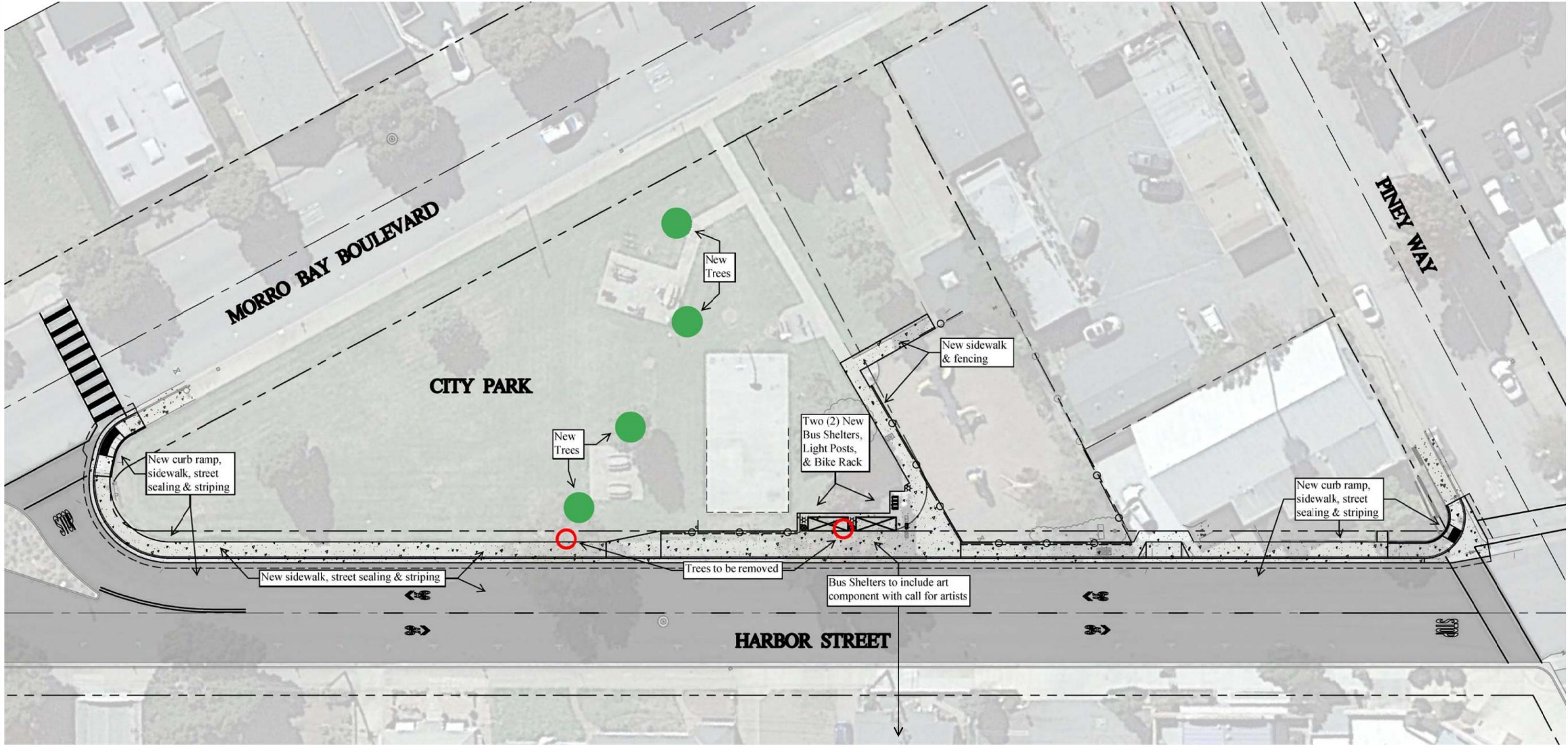
CHRIS F. NEUMEYER, City Attorney

By: _____
Its: _____

Licensed in accordance with an act providing for the registration of Contractors.

License No. _____; Classification _____; Expires ____ / ____ /20 ____

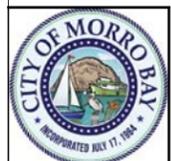
CITY PARK TRANSIT HUB IMPROVEMENT SITE PLAN



42250 CITY OF MORRO BAY

ALUMINUM: 6063-T52
FINISH: POWDER COATED - RAL TBD
GLAZING: 1/4" CLEAR TEMPERED GLASS AND
SOLID PANEL COLOR BLACK OR SILVER
ROOF PANELS: 1/4" BRONZE OR WHITE TWIN WALL
POLYCARBONATE
BENCH/BACKREST: EXTRUDED ALUMINUM

- NOTES:**
1. INSTALL SOLAR LIGHT HANDI-HUT MODEL #STH-1401
2. BUS SHELTER TO BE PROVIDED BY CITY



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AGENDA NO: C-2

MEETING DATE: February 14, 2023

Staff Report

TO: Honorable Mayor and City Council DATE: February 7, 2023

FROM: Scot Graham, Community Development Director

SUBJECT: Consideration of the Formation of a Downtown Design District Committee

RECOMMENDATION

City Council consider the formation of a downtown design district by either a subcommittee of the Planning Commission or ad hoc group to address height increase in the downtown and incorporate that effort into the City goals process.

ALTERNATIVES

Council could, by majority, choose to:

- 1) not form a downtown design district committee;
- 2) request that the height increase policy (Section 17.08.030 (B) recently approved as part of the zoning code update be brought back to Council for reconsideration; or
- 3) provide direction to staff to address community concern related to the height increase in the downtown in some other manner agreed upon by a majority of Council.

FISCAL IMPACT

The cost associated with this item, in the near term, will be reflective of staff time spent on the project. There may be a need in the future for architectural services to support this initiative and if that need transpires staff will incorporate that request into the upcoming budget discussions.

BACKGROUND

On October 25, 2022, City Council voted to introduce Ordinance 654 (New Zoning Code) for adoption and first reading. The Council accepted the Planning Commission’s (PC) September 20, 2022 recommendation reflected in PC Resolution No. 08-22 with one change to commercial downtown heights which would allow for up to 37 feet instead of 30 feet (Zoning Code section 17.08.030(B)). On November 22, 2022, City Council adopted Ordinance No. 654, which included the height increase from 30-feet to 37-feet in the downtown corridor running down Morro Bay Boulevard from the roundabout and extending north on Main Street to Beach.

At the end of the November 22, 2022 Council meeting, a majority of Council, under future agenda items, requested that the formation of a downtown design district committee be brought back for Council consideration.

DISCUSSION

The PC originally requested, in 2022, Council authorization for the formation of a downtown design district subcommittee, to include two planning commissioners, when they made the recommendation

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to Council for removal of height increase to 37-feet in the downtown. The preference of the majority of the PC was to form the subcommittee and to engage the community and stakeholders in a discussion related to height increase in the downtown. The PC indicated the height increase discussion may be enhanced if the City could better define where and when it was appropriate. The PC also expressed interest in developing a form-based policy for the downtown, in addition to considering policy changes that might incentivize both housing and affordable housing.

An alternative to directing the PC to work on the downtown design district is to use the existing housing ad hoc committee that includes planning commissioners, city councilmembers, chamber representatives, and staff. Council could create a separate ad hoc group of similar or different members, including business owners in the downtown and Morro Bay citizens. Lastly, Council could choose to direct staff to bring back the height increase policy (Section 17.08.030 (B) of the recently approved zoning code for reconsideration on the issue of heights downtown.

As noted above, the City has formed ad hoc committees in the past; one was formed for development of the short-term rental ordinance and a second was more recently formed by the City Manager to consider land use and zoning changes that might bring about increased residential density in the southern portion of the city for properties that surround the Casa De Flores/Bayside Care Center facilities. The City Manager formed housing ad hoc committee includes 2-PC members, 2-councilmembers, Chamber representatives and staff and is still active.

CONCLUSION/RECOMMENDATION

Staff is seeking City Council direction on the whether there is support for the formation of either a PC subcommittee or an ad hoc committee to investigate the development of a downtown design district. Ultimately, should Council decide to from any type of committee associated with the development of a downtown design district, the item should be incorporated into the City Council goal setting process.

ONLINE LINKS:

1. Draft Zoning code (see section 17.08.030(B), page 68, for height increase in downtown): https://www.morrobayca.gov/DocumentCenter/View/17256/2022-Zoning-Code_IP