



# CITY OF MORRO BAY CITY COUNCIL AGENDA

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

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## Regular Meeting Tuesday, August 8, 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](mailto:council@morrobayca.gov) prior to the meeting. Agenda Correspondence received at [council@morrobayca.gov](mailto: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

- Morro Bay Chamber of Commerce Quarterly Update

#### 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 JUNE 13, 2023, CITY COUNCIL MEETING; (CITY CLERK)

**RECOMMENDATION: Approve as submitted.**

A-2 APPROVAL OF MINUTES FOR THE JUNE 27, 2023, CITY COUNCIL SPECIAL MEETING; (CITY CLERK)

**RECOMMENDATION: Approve as submitted.**

A-3 APPROVAL OF MINUTES FOR THE JUNE 27, 2023, CITY COUNCIL MEETING; (CITY CLERK)

**RECOMMENDATION: Approve as submitted.**

A-4 APPROVAL OF MINUTES FOR THE JUNE 28, 2023, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (CITY CLERK)

**RECOMMENDATION: Approve as submitted.**

A-5 DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY FOR ABC LICENSE – 833 EMBARCADERO RD., SUITE C AND SUITE F; (POLICE DEPARTMENT)

**RECOMMENDATION: Staff recommends the City Council make the Determination of Public Convenience or Necessity to approve the request to allow sales of alcohol for off sale beer and wine type 20 license for HarborWalk Convenience at 833 Embarcadero Rd., Suite C; and for alcohol sales type 47 license at Umi Seafood Grill at 833 Embarcadero Rd., Suite F, and direct staff to provide the applicant with a letter of support.**

A-6 CONSIDERATION OF SPONSORSHIP FOR THE BRAIDING WATER PROJECT PRESENTED BY R.A.C.E. MATTERS SLO; (MAYOR PRO TEM/INTERIM CITY MANAGER)

**RECOMMENDATION: Approve the sponsorship request submitted by R.A.C.E. (Responsibility, Action, Culture, Education) Matters SLO and adopt Resolution No. 48-23 allocating \$1,000 from Fiscal Year (FY) 23-24 Community Grant Funds to sponsor “Braiding Water,” a multi-location Art & Cultural Festival and experience exploring and expanding our connections with water on the Central Coast.**

A-7 ADOPTION OF RESOLUTION NO. 49-23 APPROVING A 2-YEAR LEASE AGREEMENT WITH LET’S GET TUNED, LLC FOR PROPERTY LOCATED AT 781 MARKET STREET; (COMMUNITY DEVELOPMENT DEPARTMENT)

**RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 49-23 (Attachment 1), approving a 2-year Lease Agreement for the City property located at 781 Market Street (APN: 066-321-027).**

A-8 APPROVE AMENDMENT NO. 2 TO THE CONSULTANT SERVICES CONTRACT BETWEEN THE CITY OF MORRO BAY AND MICHAEL BRANNAGAN, DOING BUSINESS AS TERRA SOLUTIONS, TO PROVIDE GEOGRAPHIC INFORMATION SYSTEM (GIS) SERVICES TO THE CITY OF MORRO BAY FOR AN ADDITIONAL TWO YEARS; (COMMUNITY DEVELOPMENT DEPARTMENT)

**RECOMMENDATION: Staff recommends the City Council Authorize the City Manager to execute Amendment No. 2 (Amendment 2) to the Agreement with Michael Brannagan, doing business as (DBA) Terra Solutions, to provide GIS services to the City for the next two years for an additional not-to-exceed amount of \$120,000.00.**

A-9 ADOPTION OF RESOLUTION NO. 50-23 APPROVING AMENDMENT NO. 1 TO THE 2022-2024 MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MORRO BAY AND THE MORRO BAY FIREFIGHTERS ASSOCIATION (MBFFA), IAFF LOCAL 3725, CHANGING FIREFIGHTER PROBATION REQUIREMENTS AND DURATION; (FIRE DEPARTMENT/HUMAN RESOURCES)

**RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 50-23 approving Amendment No. 1 to the Memorandum of Understanding between the City of Morro Bay and the MBFFA Local 3725 (“MBFFA MOU 2022-2024”) reducing the entry level firefighter probationary period to twelve (12) months and removing the requirement to promote to Engineer as part of the probation process.**

B. PUBLIC HEARING ITEMS - NONE

C. BUSINESS ITEMS

C-1 REVIEW AND COMMENT ON SCOPE OF WORK FOR FISCAL YEAR (FY) 23-24 ECONOMIC DEVELOPMENT SERVICES CONTRACT WITH THE MORRO BAY CHAMBER OF COMMERCE; (INTERIM CITY MANAGER)

**RECOMMENDATION: Staff recommends the City Council review and comment on the proposed Scope of Work for FY 23-24.**

C-2 INFORMATION ITEM TO REVIEW MORRO BAY GARBAGE SERVICE PROPOSED INCREASE TO THE MAXIMUM RATE SCHEDULE AND PROPOSITION 218 PROCEDURES; (PUBLIC WORKS DEPARTMENT)

**RECOMMENDATION: Staff recommends the City Council receive the presentation on the Morro Bay Garbage Service (MBGS) proposed increase to the Maximum Rate Schedule (rate) and Proposition 218 procedures.**

C-3 RESOLUTIONS AUTHORIZING THE CITY MANAGER TO APPLY FOR STATE REVOLVING FUND FINANCIAL ASSISTANCE, EXECUTE SUCH AGREEMENTS, AND PERFORM ANY OTHER ACTION REQUIRED FOR THE PURPOSES OF OBTAINING THE CLEAN WATER AND DRINKING WATER STATE REVOLVING FUND GRANTS TO EVALUATE POTENTIAL CONSOLIDATION OF THE CITY AND RANCHO COLINA MUTUAL WATER COMPANY'S WATER AND WASTEWATER UTILITIES; (PUBLIC WORKS DEPARTMENT)

**RECOMMENDATION: Staff recommends the City Council adopt Resolutions No. 51-23 and 52-23 authorizing the City Manager to apply for State Revolving Fund Financial Assistance, execution of such Agreements, and any other action required for the purposes of the Clean Water and Drinking Water State Revolving Fund Grants to evaluate potential consolidation of the City and Rancho Colina Mutual Water Company's water and wastewater utilities.**

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, August 22, 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.

PRESENT:	Carla Wixom Laurel Barton Cyndee Edwards Jennifer Ford Zara Landrum	Mayor Council Member Council Member Council Member Council Member
ABSENT:	None	
STAFF:	Greg Carpenter Chris Neumeyer Dana Swanson Sarah Johnson-Rios Greg Kwolek Scot Graham Daniel McCrain Amy Watkins Ted Schiafone Janeen Burlingame Rachael Hendricks	Interim City Manager City Attorney City Clerk Assistant City Manager/Admin Services Dir. Public Works Director Community Development Director Fire Chief Police Chief Harbor Director Management Analyst Human Resources/Risk Manager

#### ESTABLISH QUORUM AND CALL TO ORDER

Mayor Wixom called the meeting to order at 5:30 p.m., with all members present.

#### 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/4RybFyYikxc?t=104>

#### CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

<https://youtu.be/4RybFyYikxc?t=390>

PRESENTATIONS - NONE

#### PUBLIC COMMENT

<https://youtu.be/4RybFyYikxc?t=679>

Ed Spera, Morro Bay, requested traffic control solutions to improve pedestrian and bicyclist safety on Main Street between Olive and Piney Way.

Garry Johnson, Morro Bay resident and Maritime Museum Board Member, announced upcoming events. Visit [morrobaymaritime.org](http://morrobaymaritime.org) for more information.

Gena Bentall, Director of Sea Otter Savvy, urged the City to consider potential wildlife impacts when deciding to host events such as Ironman and fireworks displays.

Linda Winters, Morro Bay, commented on the need to address traffic issues and pedestrian safety at the intersection of Hwy. 41 and Main Street.

Steven Kea, Morro Bay, spoke on behalf of the Morro Cove Homeowners' Association, requesting the Council schedule a formal hearing to resolve the issue of unauthorized tree plantings at the base of Franklin Riley Park.

Phil Hornburg, Morro Bay, added to Mr. Kea's comments and asked the Council to agendize the item as soon as possible.

Jeremiah O'Brien, Morro Bay, spoke on behalf of Morro Bay Commercial Fishermen's Organization regarding Item A-9, thanking the Council for considering approval of the gear storage lease agreement.

Jeff Heller, Morro Bay, expressed confidence and appreciation for the City Council.

Bill Martony, Morro Bay, asked if the offshore wind companies were told about Measure D and offered a potential solution for the issue raised by the Morro Cove Homeowners' Association.

Nancy Bast, Morro Bay, requested the Council hear Item C-4 earlier in the meeting.

Erica Crawford, Morro Bay Chamber of Commerce, shared results from a business survey about the Ironman event and announced upcoming events.

Betty Winholtz, Morro Bay, asked if there were plans to reopen the Visitor Center.

Margaret Carman, Morro Bay, complimented Council Members on their attentive presence during meetings.

Mayor Wixom closed public comment.

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

A. CONSENT AGENDA  
<https://youtu.be/4RybFyYikxc?t=2388>

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 MAY 9, 2023, CITY COUNCIL MEETING; (CITY CLERK)

**RECOMMENDATION: Approve as submitted.**

A-2 APPROVAL OF MINUTES FOR THE MAY 18, 2023, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (CITY CLERK)

**RECOMMENDATION: Approve as submitted.**

A-3 APPROVAL OF MINUTES FOR THE MAY 23, 2023, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (CITY CLERK)

**RECOMMENDATION: Approve as submitted.**

A-4 APPROVAL OF MINUTES FOR THE MAY 23, 2023, CITY COUNCIL MEETING; (CITY CLERK)

**RECOMMENDATION: Approve as submitted.**

A-5 APPROVAL OF MINUTES FOR THE MAY 24, 2023, CITY COUNCIL SPECIAL MEETING; (CITY CLERK)

**RECOMMENDATION: Approve as submitted.**

A-6 APPROVAL OF MINUTES FOR THE MAY 30, 2023, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (CITY CLERK)

**RECOMMENDATION: Approve as submitted.**

A-7 APPROVAL OF MINUTES FOR THE JUNE 5, 2023, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (CITY CLERK)

**RECOMMENDATION: Approve as submitted.**

A-8 APPROVAL OF ISSUANCE OF REQUEST FOR PROPOSALS ON LEASE SITES 49/49W AND 50-51/50W-51W; (HARBOR DEPARTMENT)

**RECOMMENDATION: Staff recommends the City Council approve the Request for Proposals (RFP) document for Lease Sites 49/49W and 50-51/50W-51W and authorize putting the site out to bid under the RFP as adopted by the Council.**

A-9 APPROVAL OF A NEW LEASE AGREEMENT WITH THE MORRO BAY COMMERCIAL FISHERMEN'S ORGANIZATION (MBCFO) FOR LEASE OF THE GEAR STORAGE AREA; (HARBOR DEPARTMENT)

**RECOMMENDATION: Staff recommends the Council adopt Resolution No. 34-23 to renew a ten-year lease for Commercial Fishing Gear Storage area located at 1622 Embarcadero.**

A-10 COUNCIL AUTHORIZATION TO DESIGNATE THE COMMUNITY DEVELOPMENT DIRECTOR AS SUBORDINATE OFFICER FOR DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY FOR PERSONS/PREMISES APPLYING FOR AN ALCOHOLIC BEVERAGE CONTROL (ABC) LICENSE (COMMUNITY DEVELOPMENT DEPARTMENT)

**RECOMMENDATION: Designate the Community Development Director as Subordinate Officer for the purposes of determining the Public Convenience or Necessity (PCN) for persons/premises applying for an ABC license in the City of Morro Bay.**

A-11 ADOPTION OF RESOLUTION NO. 35-23 AUTHORIZING THE CITY OF MORRO BAY TO ENTER INTO A 2023/2024 OIL RESPONSE EQUIPMENT FUNDING AGREEMENT WITH THE DEPARTMENT OF FISH AND WILDLIFE'S OFFICE OF SPILL PREVENTION AND RESPONSE (OSPR) IN THE AMOUNT OF UP TO \$40,000 FOR IMMEDIATE OIL SPILL RESPONSE NEEDS IN THE MORRO BAY HARBOR; (HARBOR DEPARTMENT)

**RECOMMENDATION: Staff recommend the City Council adopt Resolution No. 35-23 authorizing the Harbor Director to enter into a FY 2023/2024 Oil Response**

**Equipment Funding Agreement with the Department of Fish and Wildlife's OSPR in the Amount of up to \$40,000.**

Mayor Wixom opened public comment for the Consent Agenda.  
<https://youtu.be/4RybFyYikxc?t=2388>

Betty Winholtz, Morro Bay, spoke regarding Item A-10 urging the Council to take responsibility for making decisions regarding the issuance of ABC licenses.

The public comment period was closed.

Council Member Landrum pulled Item A-10.

MOTION: Council Member Landrum moved approval of all items on Consent except Item A-10. The motion was seconded by Council Member Edwards and carried 5-0 by roll call vote.

A-10 COUNCIL AUTHORIZATION TO DESIGNATE THE COMMUNITY DEVELOPMENT DIRECTOR AS SUBORDINATE OFFICER FOR DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY FOR PERSONS/PREMISES APPLYING FOR AN ALCOHOLIC BEVERAGE CONTROL (ABC) LICENSE (COMMUNITY DEVELOPMENT DEPARTMENT)  
<https://youtu.be/4RybFyYikxc?t=2531>

Council Member Landrum felt it was important for the Council to weigh in on issuance of licenses. Mayor Wixom was supportive of having Council review and approve licenses in areas of overconcentration.

MOTION: Council Member Landrum moved the Council have the authorization to designate itself as the officer for the purposes of determining the Public Convenience or Necessity for persons/premises applying for an Alcoholic Beverage Control (ABC) License in the City of Morro Bay. The motion was seconded by Mayor Wixom and carried 4-1 by roll call vote with Council Member Barton opposed.

**B. PUBLIC HEARINGS**

B-1 PUBLIC HEARING TO REPORT ON DELINQUENT SOLID WASTE COLLECTION ACCOUNTS AND ADOPT RESOLUTION NO. 36-23 AUTHORIZING SAN LUIS OBISPO COUNTY ASSESSOR TO ASSESS AMOUNTS DUE ON DELINQUENT SOLID WASTE COLLECTION ACCOUNTS AS TAX LIENS AGAINST THE PROPERTIES; (PUBLIC WORKS DEPARTMENT)  
<https://youtu.be/4RybFyYikxc?t=3128>

Management Analyst Burlingame provided the report.

Mayor Wixom opened the Public Hearing.

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

The Public Hearing was closed.

MOTION: Council Member Ford moved to receive the report on delinquent solid waste collection accounts and adopt Resolution No. 36-23 authorizing the San Luis Obispo County Tax Assessor to assess amounts due on delinquent solid waste collection accounts as tax liens against the properties. The motion was seconded by Council Member Landrum and carried 5-0 by roll call vote.

C. BUSINESS ITEMS

C-1 ADOPTION OF RESOLUTION NO. 37-23 APPOINTING YVONNE KIMBALL AS CITY MANAGER AND APPROVING A CITY MANAGER EMPLOYMENT AGREEMENT BETWEEN THE CITY OF MORRO BAY AND YVONNE KIMBALL; (INTERIM CITY MANAGER)

<https://youtu.be/4RybFyYikxc?t=3616>

Interim City Manager Carpenter provided the report.

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

<https://youtu.be/4RybFyYikxc?t=3797>

Terry Simons, Morro Bay, reviewed documents provided by the City and was impressed with Ms. Kimball's experience and qualifications.

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

MOTION: Mayor Wixom moved to adopt Resolution No. 37-23 appointing Yvonne Kimball as the City Manager of the City of Morro Bay and approve an employment agreement between the City of Morro Bay and Yvonne Kimball. The motion was seconded by Council Member Landrum and carried 5-0.

Mayor Wixom invited Ms. Kimball to the podium to make introductory comments.

<https://youtu.be/4RybFyYikxc?t=3934>

The Council took a brief recess at 6:40 p.m. The meeting reconvened at 6:54 p.m. with all members present.

C-2 ADOPTION OF ORDINANCE NO. 658 AUTHORIZING AN AMENDMENT TO THE CALPERS CONTRACT FOR EMPLOYEES SHARING ADDITIONAL COSTS; (HUMAN RESOURCES MANAGER)

<https://youtu.be/4RybFyYikxc?t=5019>

Human Resources Manager Hendricks provided the report.

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

MOTION: Council Member Barton moved to adopt, by second reading and by title only with further reading waived, Ordinance No. 658, "An Ordinance of the City Council of the City of Morro Bay, California authorizing an Amendment to the Contract Between the City of Morro Bay and the Board of Administration of the California Public Employees' Retirement System Implementing Section 20516 (Employees Sharing Additional Cost) for Local Members in the Service Employees International Union, Unrepresented Confidential, Unrepresented Management, and Unrepresented Department Heads." The motion was seconded by Council Member Landrum and carried 5-0 by roll call vote.

- C-3 ADOPT: RESOLUTION NO. 38-23 ADOPTING THE FISCAL YEAR 2023-24 OPERATING AND CAPITAL BUDGETS; RESOLUTION NO. 39-23 ADOPTING THE CITY'S FY 2023-24 SALARY SCHEDULE; RESOLUTION NO. 40-23 APPROVING THE PUBLIC WORKS INSPECTOR JOB CLASSIFICATION; RESOLUTION NO. 41-23 READOPTING THE CITY'S INVESTMENT POLICY; AND, RESOLUTION NO. 42-23 ADOPTING THE FY 2023-24 GANN APPROPRIATIONS LIMIT; (INTERIM CITY MANAGER/ADMIN SERVICES DEPARTMENT/HUMAN RESOURCES MANAGER)  
<https://youtu.be/4RybFyYikxc?t=5294>

Assistant City Manager/Admin Services Director Johnson-Rios provided the report.

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

- MOTION: Council Member Landrum moved to:
1. Adopt Resolution No. 38-23 adopting the Fiscal Year (FY) 2023-24 Operating and Capital Budgets; and
  2. Adopt Resolution No. 39-23 approving the FY 2023-24 Salary Schedule; and
  3. Adopt Resolution No. 40-23 approving Public Works Inspector Job Classification
  4. Adopt Resolution No. 41-23 readopting the City's Investment Policy; and
  5. Adopt Resolution No. 42-23 setting the FY 2023-24 GANN Appropriations Limit at \$34,249,744.

The motion was seconded by Council Member Ford and carried 5-0 by roll call vote.

- C-4 INTERSECTION IMPROVEMENTS AT STATE ROUTE 41, STATE ROUTE 1, AND MAIN STREET; (PUBLIC WORKS DEPARTMENT)  
<https://youtu.be/4RybFyYikxc?t=5853>

Public Works Director Kwolek and John Rogers from GHD Transportation provided the report and they, along with Caltrans Project Manager Paul Valadao and SLOCOG Transportation Manager John DeNunzio, responded to Council inquiries.

There was Council consensus to continue the meeting to 10:00 p.m.

The public comment period for Item C-4 was opened.  
<https://youtu.be/4RybFyYikxc?t=13187>

Scott Schalde, Morro Bay High School Principal, affirmed there was consensus among the student senators to favor the roundabout. He prioritized student safety and concurred with the staff recommendation.

Betty Winholtz, Morro Bay, commented on behalf of Jim Nance suggesting the County residents along Hwy 41 be consulted on this issue. She favored the No Build alternative with pedestrian safety improvements.

Terry Simons, Morro Bay, favored the roundabout.

Bill Martony, Morro Bay, suggested there were other alternatives that would improve the intersection.

Judy Setting, Morro Bay, questioned the cost estimates and stated her opposition to a roundabout.

Nancy Bast, Morro Bay, raised questions regarding cost, safety and cultural resources and urged the Council to not move forward with a roundabout.

Jim Curnutt, Morro Bay, supported the No Build option with pedestrian improvements or a traffic light with timed pedestrian crossing.

June Swall, Morro Bay, spoke on behalf of Carole Truesdale who preferred the No Build option with signalization as a second choice.

Linda Donnelly, Morro Bay, opposed the roundabout alternative and hoped the Council would postpone making a decision on this item.

Margaret Carman, Morro Bay, concurred with Ms. Donnelly.

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

This item was continued to either a special or regular meeting to be held on June 27, 2023. No action was taken.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS  
None

E. ADJOURNMENT

The meeting adjourned at 9:53 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: Greg Carpenter Interim City Manager  
Chris Neumeyer City Attorney  
Dana Swanson City Clerk  
Scot Graham Community Development Director  
Amy Watkins Police Chief

#### ESTABLISH QUORUM AND CALL TO ORDER

Mayor Wixom established a quorum and called the meeting to order at 3:30 p.m. with all but Council Member Barton present. Council Member Barton joined the meeting at 3:38 p.m.

#### PUBLIC COMMENT FOR ITEMS ON THE AGENDA

Mayor Wixom opened public comment.  
<https://youtu.be/7BML7eRWdrE?t=62>

Terry Simons, Morro Bay, favored rescheduling the Ironman event and urged the Council to defer action on Item I until the report was deemed complete.

Jeff Heller, Morro Bay, spoke regarding Item I, asking how the City would benefit from its participation.

Sean Green, Morro Bay, spoke in favor of moving the Ironman event to Sunday but was curious if Friday was an option. He suggested there be more outreach during event planning with a focus on functionality.

Nicole Dorfman, Morro Bay, raised concerns regarding Item I and recommended the Council defer action for now.

Betty Winholtz, Morro Bay, expressed concern about the idea of aligning housing elements across the county and urged more public input during the process.

Jeff Eckles, Morro Bay business owner and CEO of the Housing Trust Fund, shared that he participated as a member of the steering committee in the process of developing the HIP and urged the Council to support continued collaboration of the regional plan.

The public comment period was closed.

## SPECIAL MEETING AGENDA:

- I. REGIONAL HOUSING & INFRASTRUCTURE PLAN (HIP) REVIEW; (COMMUNITY DEVELOPMENT DEPARTMENT)  
<https://youtu.be/7BML7eRWdrE?t=932>

Community Development Director Graham introduced Carolyn Berg, CEO of Koble Collaborative, and Sara Sanders of SLOCOG, who provided the report and responded to Council inquiries.

MOTION: Council Member Ford moved to support the Regional Housing and Infrastructure Plan (HIP) as a recommitment to the 2020 San Luis Obispo County-Wide Regional Compact and direct staff to return to Council with ways to utilize and implement the Regional Housing and Infrastructure Plan (HIP). The motion was seconded by Council Member Edwards and carried 4-1 with Council Member Landrum opposed.

- II. APPROVAL TO AMEND THE IRONMAN 70.3 MORRO BAY DATES FOR YEARS 2024 & 2025; (POLICE DEPARTMENT)  
<https://youtu.be/7BML7eRWdrE?t=4062>

Police Chief Watkins and Michael Wambolt, Visit Morro Bay Executive Director, provided the report and, along with Tim Brosious from Ironman, responded to Council inquiries.

MOTION: Council Member Barton moved to authorize the City Manager and City Attorney to execute the contract amendment with IRONMAN of current dates of IRONMAN 70.3 Morro Bay from Saturday, May 18, 2024, to Sunday, May 19, 2024; and from Saturday, May 17, 2025, to Sunday, May 18, 2025. The motion was seconded by Council Member Landrum and carried 5-0.

## ADJOURNMENT

The meeting adjourned at 4:51 p.m.

Recorded by:

Dana Swanson  
City Clerk

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

ABSENT: None

STAFF: Greg Carpenter Interim City Manager  
Chris Neumeyer City Attorney  
Dana Swanson City Clerk  
Sarah Johnson-Rios Assistant City Manager/Admin Services Dir.  
Greg Kwolek Public Works Director  
Scot Graham Community Development Director  
Amy Watkins Police Chief  
Ted Schiafone Harbor Director  
Nancy Hubbard Contract 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 5:34 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/2T3ipMc\\_Ttg?t=103](https://youtu.be/2T3ipMc_Ttg?t=103)

#### CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

[https://youtu.be/2T3ipMc\\_Ttg?t=464](https://youtu.be/2T3ipMc_Ttg?t=464)

#### PRESENTATIONS

[https://youtu.be/2T3ipMc\\_Ttg?t=563](https://youtu.be/2T3ipMc_Ttg?t=563)

- Presentation of "Parks Make Life Better Month" Proclamation to Recreation Services Manager, Kirk Carmichael

#### PUBLIC COMMENT

[https://youtu.be/2T3ipMc\\_Ttg?t=879](https://youtu.be/2T3ipMc_Ttg?t=879)

Ed Spera, Morro Bay, repeated his concerns about traffic speeds on Main Street between Olive and Piney Way.

Judy Salamacha, Morro Bay resident and member of the Chamber & Maritime Museum Board of Trustees, announced the arrival of the San Salvador on August 11, 2023. Visit <https://my805tix.com/e/sansalvador> for tickets and more information.

Rigmor, Morro Bay, spoke to Item B-1 and urged the Council to support staff recommendation to deny the appeal and allow Mr. Green's project to move forward.

Carocha, Yslash Carocha's Gallery & Art Studio, announced available classes and events. Visit [www.yslash.net](http://www.yslash.net) for more information.

Linda Winters, Morro Bay, announced Assembly Member Addis is introducing the Mobilehome Residency Law Protection Act, new legislation that would protect mobile home park residents.

Ray Riordan, Chair of the Morro Bay Chamber of Commerce Board of Directors, recognized Movement for Life and Project Surf Camp.

Terry Simons, Morro Bay, expressed appreciation for the Public Works Department's timely completion of the City Park project.

Art Lutschaunig, Morro Bay, spoke in support of the proposed project at 1175 Scott Street (Item B-1).

Betty Winholtz, Morro Bay, offered reflective thoughts on the Regional HIP presentation at the Special Meeting held earlier today.

Mayor Wixom closed public comment.

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

A. CONSENT AGENDA  
[https://youtu.be/2T3ipMc\\_Ttg?t=2068](https://youtu.be/2T3ipMc_Ttg?t=2068)

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 AGREEMENTS FOR STATE AND FEDERAL ADVOCACY REPRESENTATION TO SUPPORT CITY OF MORRO BAY INTERESTS AND FUNDING OPPORTUNITIES; (INTERIM CITY MANAGER/ ASSISTANT CITY MANAGER/ ADMINISTRATIVE SERVICES DIRECTOR)

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

- 1. Execute a 36-month (July 1, 2023 – June 30, 2026) agreement with Townsend Public Affairs, to support the City with State of California advocacy efforts, subject to City Manager approval substantively similar to the corresponding attachment, and**
- 2. Execute 36-month (July 1, 2023 – June 30, 2026) agreement with The Ferguson Group, to support the City with federal advocacy efforts, subject to City Manager approval substantively similar to the corresponding attachment.**

A-2 APPROVAL OF A NEW LICENSE AGREEMENT WITH CAL POLY CORPORATION FOR DEDICATED DOCKAGE SPACE ON THE NORTH T-PIER FOR A FLOATING RESEARCH AND EDUCATIONAL DOCK; (HARBOR DIRECTOR)

**RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 43-23 approving a two-year License Agreement with Cal Poly Corporation ("Cal Poly") for dedicated dockage space on the North T-Pier for a floating research and**

**educational dock, to include an option to extend the agreement for two two-year period.**

- A-3 APPROVAL OF AMENDMENT NO. 7 TO CONTRACT SERVICES AGREEMENT WITH ALESHIRE & WYNDER, LLP FOR CITY ATTORNEY SERVICES; (INTER CITY MANAGER)

**RECOMMENDATION: City Council approve Amendment No. 7 to the contract services agreement with Aleshire & Wynder, LLP for city attorney services.**

- A-4 PRESENTATION OF ANNUAL WATER SUPPLY AND DEMAND ASSESSMENT AND ALLOCATION OF WATER EQUIVALENCY UNITS (WEU) FOR FISCAL YEAR (FY) 2023/24; (PUBLIC WORKS DEPARTMENT)

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

- 1. Receive and file staff findings and strategies resulting from the Annual Water Supply and Demand Assessment;**
- 2. Allocate 50 WEUs for residential development (30 SFR and 20 MFR) and 65 for commercial development for a total of 115 WEUs for FY2023/24; and**
- 3. Approve Resolution No. 44-23 to allocate 50 WEUs for residential development and 65 for commercial development for a total of 115 WEUs for FY 2023/24.**

- A-5 PROCLAMATION DECLARING JULY 2023 AS PARKS MAKE LIFE BETTER MONTH; (ADMINISTRATION)

**RECOMMENDATION: Approved as submitted.**

Mayor Wixom opened public comment for the Consent Agenda.

[https://youtu.be/2T3ipMc\\_Ttg?t=2073](https://youtu.be/2T3ipMc_Ttg?t=2073)

Betty Winholtz, Morro Bay, asked for clarification regarding the percentage of water allocated to Morro Bay from the State Water Project (Item A-4).

The public comment period was closed.

Staff briefly responded to questions raised during public comment.

Council Member Landrum pulled Items A-1, A-3 and A-4.

MOTION: Council Member Ford moved approval of Items A-2 and A-5 on the Consent Agenda. The motion was seconded by Council Member Barton and carried 5-0.

- A-1 APPROVAL OF AGREEMENTS FOR STATE AND FEDERAL ADVOCACY REPRESENTATION TO SUPPORT CITY OF MORRO BAY INTERESTS AND FUNDING OPPORTUNITIES; (INTERIM CITY MANAGER/ ASSISTANT CITY MANAGER/ ADMINISTRATIVE SERVICES DIRECTOR)

[https://youtu.be/2T3ipMc\\_Ttg?t=2328](https://youtu.be/2T3ipMc_Ttg?t=2328)

Mayor Wixom announced the grant funding recently received and encouraged staff to pursue grant writing opportunities through these companies.

- A-3 APPROVAL OF AMENDMENT NO. 7 TO CONTRACT SERVICES AGREEMENT WITH ALESHIRE & WYNDER, LLP FOR CITY ATTORNEY SERVICES; (INTER CITY MANAGER)

[https://youtu.be/2T3ipMc\\_Ttg?t=2564](https://youtu.be/2T3ipMc_Ttg?t=2564)

Mr. Neumeyer responded to Council inquiries regarding upcoming anticipated legal expenses and how that would fit into the new rate structure.

- A-4 PRESENTATION OF ANNUAL WATER SUPPLY AND DEMAND ASSESSMENT AND ALLOCATION OF WATER EQUIVALENCY UNITS (WEU) FOR FISCAL YEAR (FY) 2023/24; (PUBLIC WORKS DEPARTMENT)  
[https://youtu.be/2T3ipMc\\_Ttg?t=2745](https://youtu.be/2T3ipMc_Ttg?t=2745)

Utilities Division Manager Hanson responded to Council inquiries regarding WEU allocation for varying residential vs. commercial development.

MOTION: Mayor Wixom moved approval of Items A-1, A-3 and A-4. The motion was seconded by Council Member Edwards and carried 5-0.

## B. PUBLIC HEARINGS

- B-1 APPEAL FILED RELATED TO PLANNING COMMISSION APPROVAL OF A PROPOSED COMMERCIAL/RESIDENTIAL PROJECT THAT INCLUDES A SINGLE HOTEL SUITE (WITH 4 BEDROOMS), PLUS MANAGER'S RESIDENTIAL UNIT TO BE LOCATED AT 1175 SCOTT STREET; (COMMUNITY DEVELOPMENT DEPARTMENT)  
[https://youtu.be/2T3ipMc\\_Ttg?t=2891](https://youtu.be/2T3ipMc_Ttg?t=2891)

Mayor Wixom announced she would recuse herself from this item due to the perception of a conflict of interest by having a family business located in the area.

Contract Planner Hubbard provided the report and responded to Council inquiries.

Mayor Pro Tem Ford opened the Public Hearing.  
[https://youtu.be/2T3ipMc\\_Ttg?t=2940](https://youtu.be/2T3ipMc_Ttg?t=2940)

Terry Simons, Appellant, requested the project be approved as a 3-unit hotel plus security residence subject to certain requirement, was concerned with granting of special privilege, disputed the proposed suite constitutes a single hotel room, and commented on the need for more creative parking solutions.

Sean Green, Applicant, disagreed with the basis of the appeal and had confidence in the thorough review by staff and unanimous support of the Planning Commission. He asked that Council deny the appeal and approve the project as proposed.

Mayor Pro Tem Ford opened Public Comment.  
[https://youtu.be/2T3ipMc\\_Ttg?t=4635](https://youtu.be/2T3ipMc_Ttg?t=4635)

Cal Myers, Morro Bay, spoke in support of Mr. Green's project.

Betty Winholtz, Morro Bay, spoke in favor of the appellant and asked that the issues raised in her agenda correspondence be addressed.

Travis Kinney urged the Council to allow Mr. Green's project to move forward.

Margaret Carman, Morro Bay, asked the Council to uphold appeal and deny the project.

Andrew Goodwin, Project Architect, clarified the size of a hotel room or suite is not codified but is dictated by the economics of the project.

The public comment period and Public Hearing were closed.

Staff responded to additional Council inquiries.

MOTION: Council Member Barton moved to adopt Resolution No. 45-23, denying the appeal and upholding the Planning Commission approval of the Coastal Development Permit CDP21-025, Conditional Use Permit CUP21-07 and Parking Exception PKG22-05 for the proposed new mixed-use project located at 1175 Scott Street. The motion was seconded by Council Member Edwards and carried 4-0-1 with Mayor Wixom having recused herself.

Mayor Wixom returned to the dais at 7:05 p.m.

- B-2 ADOPTION OF RESOLUTION NO. 46-23 DIRECTING THE LEVY OF THE ANNUAL ASSESSMENT FOR THE CLOISTERS LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (PUBLIC WORKS DEPARTMENT)  
[https://youtu.be/2T3ipMc\\_Ttg?t=5688](https://youtu.be/2T3ipMc_Ttg?t=5688)

Council Member Edwards recused herself from this item and left the dais.

Public Works Director Kwolek provided the report.

Mayor Wixom opened the Public Hearing.

Mayor Wixom opened Public Comment; seeing none, the public comment period was closed.

The Public Hearing was closed.

MOTION: Mayor Wixom moved to conduct the public hearing and approve the levy of the annual assessment for the Cloisters Landscaping and Lighting Maintenance Assessment District (LLMAD) by adopting Resolution No. 46-23. The motion was seconded by Council Member Landrum and carried 4-0-1 by roll call vote with Council Member Edwards having recused herself.

- B-3 ADOPTION OF RESOLUTION NO. 47-23 DIRECTING THE LEVY OF THE ANNUAL ASSESSMENT FOR THE NORTH POINT NATURAL AREA LANDSCAPING AND LIGHTING MAINTENANCE ASSESSMENT DISTRICT; (PUBLIC WORKS DEPARTMENT)  
[https://youtu.be/2T3ipMc\\_Ttg?t=5841](https://youtu.be/2T3ipMc_Ttg?t=5841)

Public Works Director Kwolek provided the report.

Council Member Edwards returned to the dais at 7:10 p.m.

Mayor Wixom opened the Public Hearing.

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

The Public Hearing was closed.

MOTION: Mayor Wixom moved to conduct the public hearing and approve the levy of the annual assessment for the North Point Natural Area Landscaping and Lighting Maintenance District (LLMAD) by adopting Resolution No. 47-23. The motion was seconded by Council Member Barton and carried 5-0.

The Council took a brief recess at 7:10 p.m. The meeting reconvened at 7:20 p.m. with all members present.

C. BUSINESS ITEMS

C-1 CONTINUED DISCUSSION ON THE INTERSECTION IMPROVEMENTS AT STATE ROUTE 41, STATE ROUTE 1, AND MAIN STREET; (PUBLIC WORKS DEPARTMENT)  
[https://youtu.be/2T3ipMc\\_Ttg?t=6596](https://youtu.be/2T3ipMc_Ttg?t=6596)

Public Works Director Kwolek provided a brief report and, along with John Rogers from GHD Transportation, Paul Valadao from Caltrans, and Emily Creel from SWCA Environmental Consultants, responded to Council inquiries.

The public comment period for Item C-1 was opened.  
[https://youtu.be/2T3ipMc\\_Ttg?t=10453](https://youtu.be/2T3ipMc_Ttg?t=10453)

Rita Johnson, Morro Bay, spoke in favor of a roundabout.

Terry Simons, Morro Bay, previously spoke in favor of a roundabout and suggested solving this intersection issue would open the door for significant development up the Hwy. 41 corridor.

James Costanzo, Morro Bay, stated there was not enough information to make a decision and expressed concern about having a roundabout in close proximity to the school.

Linda Winters, Morro Bay, asked that pedestrian safety for nearby residents be the first consideration and that crosswalks be moved away from the intersection to improve pedestrian safety.

Bev Shaw, Morro Bay, believed a solution was needed to space the students so they don't cross in a constant stream. She opposed the No Build option and opined the double stop light would back things up even more.

Donald Repucci, Morro Bay, opposed a roundabout at this location.

Jamie Irons, Morro Bay, encouraged the Council to go with the roundabout option.

June Swall, Morro Bay, expressed concern about pedestrian safety and was advised a roundabout may lead to more accidents that are less severe.

Betty Winholtz, Morro Bay, supported the No Build alternative with pedestrian safety improvements.

Linda Donnelly, Morro Bay, favored the No Build alternative with pedestrian safety improvements.

Margaret Carman, Morro Bay, was concerned about cost and urged the Council to not put the City in debt.

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

MOTION: Council Member Edwards moved to recommend the roundabout alternative to Caltrans for approval and, if approved, direct City staff to begin design phase and pursue additional funding opportunities. Additionally, recommend staff

include simulation and educational materials for both vehicles and pedestrian usage of the roundabout in the design phase and cap the City's funding at \$2.5 Million to meet the release of the SLOCOG money. The motion was seconded by Council Member Ford for discussion.

Mayor Wixom did not believe there was congestion that warranted a \$12 Million project, and expressed concern about cultural resources, imminent domain, traffic disruptions and harm to businesses. She did not support the use of Measure Q/E funds for the project.

Council Member Landrum did not believe the project was justified and opined the 4-way stop required drivers to be more aware.

There was Council consensus to go past 9:30 p.m. to finish this item.

Following discussion, the motion carried 3-2 with Council Member Landrum and Mayor Wixom opposed.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS  
[https://youtu.be/2T3ipMc\\_Ttg?t=14576](https://youtu.be/2T3ipMc_Ttg?t=14576)

Council Member Ford requested consideration of a \$1,000 sponsorship for Water Braiding, a film project produced by R.A.C.E. Matters, designated out of community grant funds. She received support to bring this item back to the first meeting in August.

E. ADJOURNMENT

The meeting adjourned at 9:37p.m.

Recorded by:

Dana Swanson  
City Clerk

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MINUTES - MORRO BAY CITY COUNCIL  
SPECIAL CLOSED SESSION MEETING –  
JUNE 28, 2023 – 4:00 P.M.  
CITY HALL CONFERENCE ROOM

AGENDA NO: A-4  
MEETING DATE: August 8, 2023

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

ABSENT: None

STAFF: Greg Carpenter Interim City Manager  
Chris Neumeyer City Attorney  
Ted Schiafone Harbor Director  
Emily Conrad Finance Manager

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Wixom called the meeting to order at 4:00 p.m. with all 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.

Chuck Nettnin, Three Stacks and a Rock Brewing Co. LLC, requested additional time to consult with an attorney and continue negotiations in an effort to reach an agreement fair and equitable to all.

Jamie Irons, Morro Bay, offered comments on Items CS-1, CS-2 and CS-4.

Giovanni DeGarimore, Giovanni's Central Coast Seafoods and Central Coast Fuel and Ice, provided a brief history about his family business and offered tours of the property.

The public comment period was closed.

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

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

Property: Lease Site 102/102W, 1001 Front Street, Giovanni's Central Coast Seafoods  
Property Negotiators: Giovanni DeGarimore and Giovanni Comin  
Agency Negotiators: Ted Schiafone, Harbor Director; Greg Carpenter, Interim City Manager; and Chris Neumeyer, City Attorney  
Negotiation: Price and Terms of Payment

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

Property: Lease Site 105.1W & 105.2W, 1001 Front Street, Central Coast Fuel and Ice  
Property Negotiators: Giovanni DeGarimore and Giovanni Comin  
Agency Negotiators: Ted Schiafone, Harbor Director; Greg Carpenter, Interim City Manager; and Chris Neumeyer, City Attorney  
Negotiation: Price and Terms of Payment

**CS-3 CONFERENCE WITH REAL PROPERTY NEGOTIATOR - GOVERNMENT CODE SECTION 54956.8**

Property: Lease Site 30W-33W, 201 Main Street, WBAM LLC., Bayfront Marina  
Property Negotiators: Greg and Kathy Shaffer (WBAM, LLC)  
Agency Negotiators: Ted Schiafone, Harbor Director; Greg Carpenter, Interim City Manager; and Chris Neumeyer, City Attorney  
Negotiation: Price and Terms of Payment

**CS-4 CONFERENCE WITH REAL PROPERTY NEGOTIATOR - GOVERNMENT CODE SECTION 54956.8**

Property: Lease Site 69-70/69W-70W, 595 Embarcadero  
Property Negotiators: Chuck Nettnin, Three Stacks and a Rock Brewing Co. LLC  
Agency Negotiators: Ted Schiafone, Harbor Director; Greg Carpenter, Interim City Manager; and Chris Neumeyer, City Attorney  
Negotiation: Price and Terms of Payment

**CS-5 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**

Significant exposure to litigation pursuant to Government Code subdivision 54956.9(d)(1)

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 6:05 p.m.

Recorded by:

Dana Swanson  
City Clerk



**AGENDA NO: A-5**

**MEETING DATE: August 8, 2023**

# Staff Report

**TO: Honorable Mayor and City Council**

**DATE: July 26, 2023**

**FROM: Amy Watkins, Police Chief**

**SUBJECT: Determination of Public Convenience or Necessity for ABC License – 833 Embarcadero Rd. Suite C and Suite F**

## **RECOMMENDATION**

Staff recommends the City Council make the Determination of Public Convenience or Necessity to approve the request to allow sales of alcohol for off sale beer and wine type 20 license for HarborWalk Convenience at 833 Embarcadero Rd., Suite C; and for alcohol sales type 47 license at Umi Seafood Grill at 833 Embarcadero Rd., Suite F, and direct staff to provide the applicant with a letter of support.

## **ALTERNATIVES**

City Council may choose to not make the Determination of Public Convenience or Necessity and reject the request to allow sales of alcohol for off sale beer and wine type 20 license at 833 Embarcadero Rd., Suite C; and for alcohol sales type 47 license at Umi Seafood Grill at 833 Embarcadero Rd., Suite F.

## **FISCAL IMPACT**

None

## **BACKGROUND/DISCUSSION**

In April 2023, the lease holder of Site 87-88/87W-88W, located at 833 Embarcadero Rd., Suite B, requested a letter of support from the Morro Bay Chief of Police for approval from California Alcohol and Beverage Control (ABC) to allow alcohol sales at two locations listed above. The lease holder provided two request letters, page 36 of a master lease agreement from the City of Morro Bay showing Section 13.05 Liquor License agreeing to support of said license, and a Harbor Walk Complete Site Plan of the listed locations (Attachment 1).

After a meeting and review of documents with the lease holder, the Police Department authored a letter of support for the requested alcohol sales at those locations. The lease holder submitted all documents to the ABC who returned said documents with an additional requirement of the following wording placed within the letter;

*According to California Business Section Code 23824 the city of Morro Bay is requesting that this*

**Prepared By:   AW**

**Dept Review: \_\_\_\_\_**

**City Manager Review:   GC**

**City Attorney Review:   LNL**

*property should be given the ability to sell alcohol because it benefits the public and the area. This is a visitor serving area that will attract more guests and meet the needs of the public.*

While these actions were taking place, the City Council, on June 13, 2023, voted in favor of all Determinations of Public Convenience or Necessity be presented to City Council for review and approval.

After reviewing the total calls for service related to alcohol sales along the Embarcadero and in the concentrated area, the Police Department found no good cause to deny the sale of alcohol at these locations and recommends the City Council direct staff to provide the applicant with a letter of support.

**ATTACHMENT(S)**

1. Application support materials provided by Lease Holder of Site 87-88/87W-88W (833 Embarcadero)

To the City staff of Morro Bay,

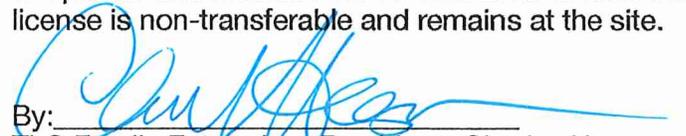
Under the Sea Gallery dba HarborWalk Convenience at lease site 87/88 and 87w/88w, 833 Embarcadero Rd Suite B, requests approval for an off sale beer and wine type 20 license. As the store is serving the public and its hotel guests on the second floor our patrons and guests would greatly benefit with this service. Our plan is to be a convenient location for hotel guests to stay on the Embarcadero to get all their necessities for an enjoyable stay on our waterfront

The entity requesting ABC license approval is:

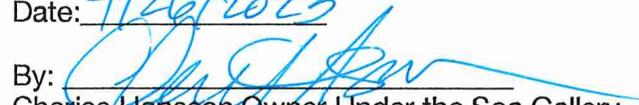
Under the Sea Gallery  
Dba: HarborWalk Convenience  
Lessees: Cherise Hansson Sole-proprietor

Mailing address & Place of license:  
833 Embarcadero Rd.  
Suite C  
Morro Bay CA 93442

We, TLC Family the master leaseholders at the stated address agree for Under the Sea Gallery to operate and maintain the off-sale Beer & Wine license while in business at this location. The license is non-transferable and remains at the site.

By:   
TLC Family Enterprises President- Cherise Hansson

Date: 4/26/2023

By:   
Cherise Hansson Owner Under the Sea Gallery

Date: 4/26/2023

To the City staff of Morro Bay,

According to our lease for 833 Embarcadero, 87/88 and 87w/88w, the master lease holder is granted an alcohol license approval by the City of Morro Bay. (Please see attached pages 36-37 of master lease)

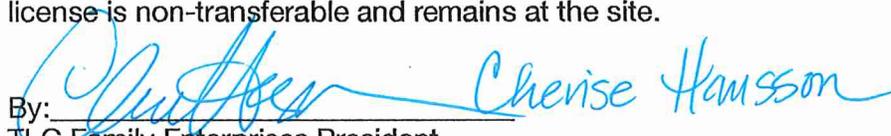
The entity requesting <sup>TYPE 47</sup> ABC license approval is:

Umi Grill Corp  
Dba: Umi Seafood Grill  
Lessees: Sang Yoon Han and San Pedro Yuzon

Mailing address:  
3300 Buena Vista Rd  
Suite C1  
Bakersfield, CA 93311

Place of license:  
833 Embarcadero Rd.  
Suite F  
Morro Bay CA 93442

We, TLC Family the master leaseholders at the stated address agree for the Umi Grill Corporation to operate and maintain the liquor license while in business at this location. The license is non-transferable and remains at the site.

By:  Chense Hamsson  
TLC Family Enterprises President

Date: 4/26/2023

required and TENANT does not agree with those changes, then CITY may impose the changes, including rescission of some of all of the rent credit, upon 120-days' written notice to TENANT. Unless extended by an amendment to this Lease, the provisions of this Paragraph A. shall terminate on the fifth full calendar year after the issuance of a final Certificate of Occupancy for the Project.

B. **Parking Spaces.** CITY shall reserve eight spaces at CITY'S parking lot located at the northeast corner of Pacific Street and Market Avenue (Parking Spaces) exclusively for overnight parking of vehicles of patrons staying at the hotel on the Premises (Parking Patrons) during the hours of 3:00 p.m. and 11:00 a.m. TENANT shall pay CITY \$3,400.00 (\$426.25 each) per year for that exclusive use of the Parking Spaces. The Parking Spaces shall be designated by signs (and standards/poles to attach the signs), all provided by TENANT, at its costs, indicating the Parking Spaces are so reserved for Parking Patrons. The signage and standards shall be approved by CITY'S Community Development Director and installed by CITY employees at no additional cost to TENANT. Annually, CITY'S City Council shall review this provision and determine if changes are required to best serve the general public and TENANT. If after consultation with TENANT, CITY determines changes are warranted and required and TENANT does not agree with those changes, then CITY may impose the changes, including rescission of permission to use the Parking Spaces, upon 120-days' written notice to TENANT.

**Section 13.04 TENANT to Financially Participate in Centennial Parkway Concept Plan Project**

TENANT agrees to contribute \$20,000 to assist CITY with funding installation of the Centennial Parkway Concept Plan Project, at such time CITY develops that project and within 30 days after a written request from CITY for such contribution.

**Section 13.05 Liquor License**

CITY agrees to support TENANT'S application for an On-Sale General for Bona-Fide Public Eating Place (T-47) liquor license from the Alcohol Beverage Control Board pursuant to Section 23824 of the California Business and Professions Code.

from the State of California, or to premises owned by the State of California, any incorporated city, county, city and county, airport district, or other district or public corporation of the State of California or to premises leased to the State of California or to any city or county, so long as the premises are operated as a bona fide public eating place, provided, however, that civic auditoriums owned by any incorporated city, county, city and county, or other district or any premises leased to the State of California or to any county or city for use as a civic auditorium and directly operated by a public entity shall be subject to the limitations provided by Section 23816, but shall not be required to be operated as a bona fide public eating place. The civic auditorium shall further not be subject to the provisions of Section 23793.

(b) Licenses issued on premises owned by the state, incorporated city, county, city and county, airport district, or other district or public corporation of the State of California, or issued on premises leased to the State of California or to any county or city, shall be renewable as set forth in Section 24048. These licenses shall be excluded from the number of premises used in determining application of the limitations provided by this article. These licenses shall only be transferable from person to person at the same premises. Prior to the issuance of these licenses, the governmental agency owning or leasing the premises shall file with the department a written request that the license be issued and a written statement setting forth the reasons why issuance of the license would be in the public interest.

(c) A written request filed with the department by the governmental agency owning or the city or county leasing premises used as a civic auditorium and directly operated as a public entity that the license be issued need not contain a written statement setting forth the reasons why issuance of the license would be in the public interest.

#### HISTORY:

Added Stats 1955 ch 1801 § 1. Amended Stats 1957 ch 1149 § 3; Stats 1961 ch 533 § 1; Stats 1967 ch 809 § 1; Stats 1976 ch 1021 § 1; Stats 1983 ch 966 § 1, effective September 21, 1983; Stats 1993 ch 85 § 1 (AB 374), effective July 8, 1993; Stats 2000 ch 7 § 1 (AB 1525), effective March 28, 2000, ch 979 § 3.5 (AB 2759); Stats 2019 ch 29 § 40 (SB 82), effective June 27, 2019.

**Editor's Notes**—Stats 1955 ch 1801 § 4, which provided that B & P C §§ 23824 and 23399.1 and the amendment to B & P C § 23399 should remain in effect only to the ninety-first day after final adjournment of the 1957 Regular Session, was repealed by Stats 1957 ch 1149 § 1.

#### Amendments:

**1957 Amendment:** Added the last sentence.

**1961 Amendment:** (1) Amended first paragraph by (a) substituting "Section 23816" for "this article"; and (b) adding "and operated as a bona fide eating place" after "State of California"; and (2) amended second paragraph by substituting (a) "renewable as set forth in Sections 24048.1 and 24048.3" for "excluded from the number of premises used in determining application of the limitations provided by this article"; and (b) the last three sentences for former last sentence which read: "Such license shall be exempt from the provisions of Section 23954.5 and shall be nontransferable."

**1967 Amendment:** (1) Substituted "or to premises leased to any county, so long as any such premises are" for "and" following "State of California" in the first paragraph; and (2) amended second paragraph by adding (a) "or issued on premises leased to any county," in the first sentence; and (b) "or the county leasing" in the last sentence.

**1976 Amendment:** (1) Amended the first paragraph by adding (a) all that part following "public eating place" in the first sentence; and (b) the second sentence; (2) amended the first sentence in the second paragraph by (a) substituting "Section" for "Sections"; and (b) adding "or city"; and (3) added the third and fourth paragraphs.

**1983 Amendment:** Added (1) "city or" after "leased to any" in the first paragraph, and after "owning or the" in the third paragraph; and (2) "or city" in the fourth sentence of the second paragraph.

**1993 Amendment:** In addition to making technical changes, amended the second paragraph by substituting (1) "Section 24048" for "Section 24048.1 or 24048.3" at the end of the first sentence; and (2) "an original fee of six thousand dollars (\$6,000)" for "the provisions of Section 23954.5" in the second sentence.

**2000 Amendment (ch 7):** (1) Added "to the State of California or to" wherever it appears after "premises leased to"; (2) amended the first paragraph by substituting (a) "the" for "any such" after "so long as" in the first sentence; and (b) "The" for "such" in the second sentence; and (3) deleted "the county or city" after "owning or" in the last sentence of the second paragraph.

**2000 Amendment (ch 979):** Added "located on land owned by and leased from the State of California, or to premises" in the first paragraph.

**2019 Amendment (ch 29):** Added designations (a)-(c); substituted "only be" for "be subject to an original fee of six thousand dollars (\$6,000) and shall be only" in the third sentence of (b); and deleted the former concluding paragraph which read: "Funds derived from fees collected pursuant to the amendments made to this section at the 1975-76 Regular Session of the Legislature shall be deposited in the General Fund."

#### ATTORNEY GENERAL'S OPINIONS

On-sale or off-sale general license issued under section as not subject to transfer. 34 Ops. Cal. Atty. Gen. 209.

#### RESEARCH REFERENCES AND PRACTICE AIDS

##### Cross References:

Renewal of licenses: B & P C § 24048.

##### Treatises:

Cal. Legal Forms, (Matthew Bender) §§ 18.01[2], 18.30[1], 18.126, 18.200[1], 18.242[1].

#### § 23824.1. Convention and event centers

(a) The provisions of Section 23824 shall apply to convention centers and event centers which are



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AGENDA NO: A-6

MEETING DATE: August 8, 2023

# Council Report

**TO:** Honorable Mayor and City Council

**DATE:** July 27, 2023

**FROM:** Jennifer Ford, Mayor Pro Tem  
Greg Carpenter, Interim City Manager

**SUBJECT:** Consideration of Sponsorship for the Braiding Water Project presented by R.A.C.E. Matters SLO

## **RECOMMENDATION**

Approve the sponsorship request submitted by R.A.C.E. (Responsibility, Action, Culture, Education) Matters SLO and adopt Resolution No. 48-23 allocating \$1,000 from Fiscal Year (FY) 23-24 Community Grant Funds to sponsor “Braiding Water,” a multi-location Art & Cultural Festival and experience exploring and expanding our connections with water on the Central Coast.

## **BACKGROUND/DISCUSSION**

At the June 27, 2023 Council Meeting, Mayor Pro Tem Ford requested and received support to bring forward consideration of a request for a \$1,000 sponsorship toward the 2023 Braiding Water Project presented by R.A.C.E. Matters SLO. If approved, the City logo would be printed on promotional materials for the event which will be held at multiple locations throughout San Luis Obispo County in September and October 2023. As of the date of this report, the program will include a film screening and discussion of “Wade in the Water,” a journey into black surfing and aquatic culture, at the Bay Theatre in Morro Bay on Monday, September 18th.

In line with our City Council’s Adopted Goal of Community Engagement, which includes developing an outreach and communication plan to reach a broad spectrum of residents, supporting organizations like R.A.C.E. Matters SLO would be considered part of this action. Founded as a response to the need for local racial and social justice engagement, R.A.C.E. Matters SLO has become a well-known and respected platform in our community. Their commitment to creating Black-centered spaces, promoting cultural content, and amplifying Black voices in the San Luis Obispo area aligns with our City goal of broadening our outreach. They foster a sense of inclusive and supportive community through artistic, cultural, educational, and social experiences. Some of their programs, such as Noire SLO and RaiseUp SLO, create connections within the local Black community and strive to build an environment that benefits children of color through community building, education, and advocacy.

Grants and Council bequests are a mechanism by which the City Council and City of Morro Bay can assist non-profit and other government agencies in providing direct or indirect services to the

Prepared By: JFord/DS

Dept Review: \_\_\_\_\_

City Manager Review: GC

City Attorney Review: CFN

Morro Bay residents and communities. The City Council annually allocates grant funds to various community groups and organizations. These bequests have ranged from a total of approximately \$7,000 in FY 2015-2016 up to a total award of \$60,000 in FY 2022-23 (\$35,000 from General Fund and \$25,000 from ARPA funds for programs impacted by COVID-19). The FY 2023-24 adopted budget also includes \$35,000 community grant funds from the General Fund and \$25,000 from ARPA funds.

In accordance with the City's adopted Community Grant Policy (link provided as Attachment 3), following adoption of the annual budget, the City accepts applications for funding requests during an approximate 30-day period then reviews those requests using the criteria in the Grant Policy to formulate recommendations which are brought to the Council for approval in September-October. If required to adhere to this timeline, the City would miss an opportunity to sponsor the Braiding Water event.

### **CONCLUSION**

Approve the sponsorship request submitted by R.A.C.E. Matters SLO and adopt Resolution 48-23 allocating \$1,000 from FY 23-24 Community Grant Funds to sponsor "Braiding Water," a multi-location Art & Cultural Festival and experience exploring and expanding our connections with water on the Central Coast.

### **ATTACHMENTS**

1. R.A.C.E. Matters Sponsorship Flyer
2. Decommissioned Lifeguard Station Project
3. [Link](#) to Resolution No. 67-19 approving the Community Grant Policy
4. Resolution No. 48-23 approving a \$1,000 contribution from the FY 23-24 Community Grant funds

# R.A.C.E. MATTERS

BELONGING 2023 PRESENTS

## BRAIDING WATER



SLO COUNTY / SEPT & OCT 2023

An Art & Cultural Festival  
Celebrating Our Water  
Resources & Rituals

***From drinking to washing, fishing to farming, surfing to winemaking, storms to droughts, water is present – or absent – in all of our lives. . . and its impact reveals both dramatic difference and shared commonality.***

R.A.C.E. Matters and visiting artist [April Banks](#) invite you to sponsor *Braiding Water*, our multi-location cultural experience exploring and expanding our connections with water on the Central Coast. By centering the experiences of local Black, Indigenous and other People of Color, *Braiding Water* invites all to imagine sustainable and just water futures. This project is supported by [California Humanities](#) and will be extended through 2024 with the [San Luis Obispo Museum of Art](#).

### \$10,000 and above

Sponsor logo on Braiding Water promotional poster

Sponsor logo on print advertisements

Recognition on signage at event entrance or other high visibility area

Social Media thank you, Dedicated post

### \$5,000-9,999

Sponsor logo on print advertisements

Recognized on signage at event entrance or other high visibility area

Social Media thank you, Dedicated Post

### \$2,500-4,999

Recognized on signage at event entrance or other high visibility area

Social Media thank you, Dedicated post

### \$1,000-2,499

Recognized on signage at event entrance or other high visibility area

Social Media thank you, Shared post

*\*RM staff will follow up with all pledged donors to obtain logos.*

Make Donation [here](#), or  
Mail check payable to RACE Matters SLO County to P.O. Box 5215  
San Luis Obispo, Ca 93403

# BRAIDING WATER



**Repurposed Lifeguard Station**

Sept - Oct, 2023

R.A.C.E. MATTERS | SLOMA | APRIL BANKS

**R.A.C.E. Matters SLO and artist April Banks are modifying an existing decommissioned lifeguard station as an outpost for several free activities for the public.**

**R.A.C.E. Matters San Luis Obispo County, San Luis Obispo**  
Project Director: Courtney Haile

**April Banks** is a renowned artist from Los Angeles. You can see some of April Bank's work here:

<https://www.aprilbanks.com/>

We will also be partnering with the **San Luis Obispo Museum of Art** for an exhibition in 2024.

The announcement that accompanies our grant award for from Cal Humanities:

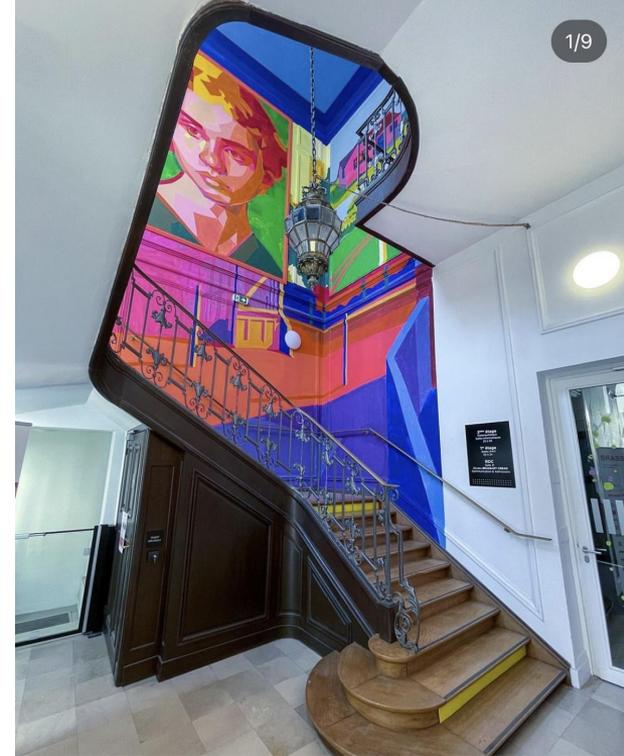
(<https://calhum.org/california-humanities-awards-250000-to-10-new-humanities-projects/>):

## **Braiding Water: An Art and Cultural Festival Celebrating Our Water Resources and Rituals**

“Braiding Water” is a two-month long, multi-location, multimedia arts experience centering water and local BIPOC communities’ relationships to it through culture and art, which will be held in San Luis Obispo County during September-October 2023, with a culminating living archive/gallery exhibition January-March 2024. A collaboration between R.A.C.E. Matters, the San Luis Obispo Museum of Art (SLOMA), and Southern-California based visiting artist April Banks, the project foregrounds the aquatic connections of populations historically marginalized from public water resources and discussions about water planning and conservation, asserts a critical lens of environmental justice into public dialogue, engages participants in an exploration of water’s varied meanings for the region’s diverse communities, and invites all community members to brainstorm and envision a sustainable and racially just water future. Events will include a poolside opening ceremony/ community forum, community painting of a beach lifeguard station to serve as a hub for a variety of beach events, an oceanside mini film festival, pier-based live storytelling event, world-building zine workshop, a web experience, and program archive/gallery exhibition and panel discussion.

Existing Station





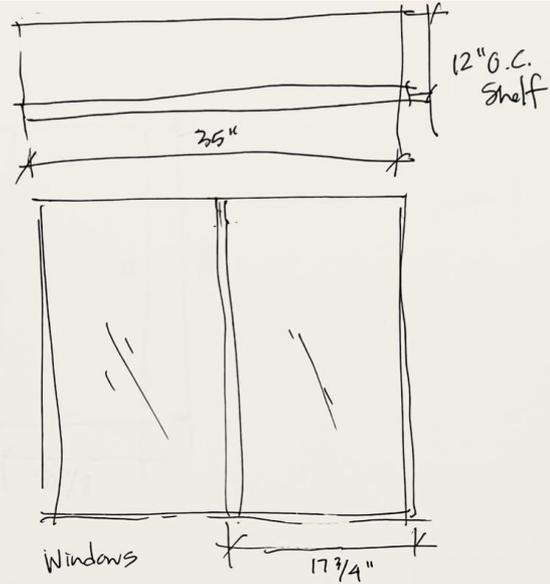
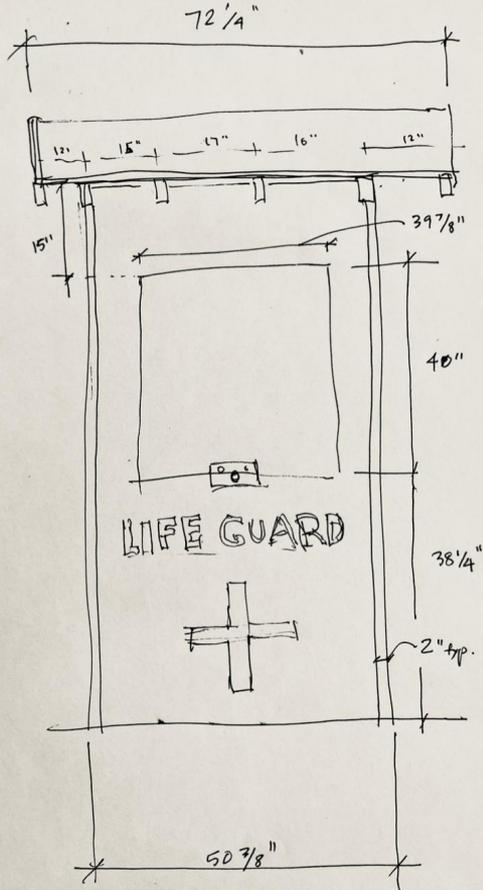
Interior options:

Paint and/or applied objects

We imagine creating several “backdrops” for visitor photos with painted roll down window shades

Reference image: painted interior with existing exterior as, creates a high contrast visual

Left side



Notes:

- Exterior is 4'-2" w x 4'-2" d x approx 8' tall
- The interior floor space is approx 40" x 40"
- The door will be replaced



The nomadic option is on a trailer like this, approx the size of one parking space



1980s: The station was originally on a platform

**RESOLUTION NO. 48-23**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
APPROVING AN ALLOCATION OF \$1,000 IN FY 2023-24  
COMMUNITY GRANT FUNDS TO R.A.C.E. MATTERS SLO**

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

**WHEREAS**, grants and Council bequests are a mechanism by which the City Council and City of Morro Bay can assist non-profit and other government agencies in providing direct or indirect services to the Morro Bay residents and communities; and

**WHEREAS**, the Morro Bay City Council annually allocates grant funds to various community groups and organizations; and

**WHEREAS**, in the current Fiscal Year (FY) 2023-24 operating budget year adopted by the City Council budget in June included up to \$35,000 total for community grant awards from the General Fund;  
and

**WHEREAS**, the City received a sponsorship request from R.A.C.E. (Responsibility, Action, Culture, Education) Matters SLO to support the 2023 Braiding Water Project, a multi-location Art & Cultural Festival and experience exploring and expanding our connections with water on the Central Coast; and

**WHEREAS**, the timing of the program which includes events at multiple locations throughout San Luis Obispo County, including Morro Bay, in the months of September and October 2023 does not allow the program to go through the normal application and approval process; and

**WHEREAS**, the City will continue to solicit grant applications from local nonprofits and City staff will review those applications consistent with the Community Grants Policy guidelines and provide recommendations to Council to make funding awards that are anticipated to have a positive impact on the community of Morro Bay.

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

1. \$1,000 in FY 2023-24 Community Grant funds are awarded to R.A.C.E. Matters SLO to sponsor the Braiding Water film project; and
2. The City Manager is hereby authorized to execute agreements with the Grantee, reviewing and adjusting insurance requirements in coordination with the California JPIA and the City Attorney's office depending on the level of risk associated.

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**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 8<sup>th</sup> day of August 2023 on the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:  
RECUSED:

\_\_\_\_\_  
CARLA WIXOM, Mayor

ATTEST:

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



AGENDA NO: A-7

MEETING DATE: August 8, 2023

# Staff Report

**TO:** Honorable Mayor and City Council **DATE:** July 28, 2023

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

**SUBJECT:** Adoption of Resolution No. 49-23 Approving a 2-Year Lease Agreement with Let's Get Tuned, LLC for property located at 781 Market Street

## RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 49-23 (Attachment 1), approving a 2-year Lease Agreement for the City property located at 781 Market Street (APN: 066-321-027).

## ALTERNATIVES

The City Council could choose not to approve the Lease Agreement and direct staff to either alter the Agreement in a manner agreed upon by a majority of Council or the Council may choose to not lease the space to Let's Get Tuned.

## FISCAL IMPACT

With approval of the Lease Agreement the City would receive \$5,216.00 a month in rent resulting in a total rent payment for the first year of the lease of \$62,592.00. Rent would increase by the Consumer Price Index for All Urban Consumers Los Angeles-Long Beach-Anaheim Area on the anniversary date of the lease for the second year of the lease term. The Lease Agreement is provided as Attachment 3 to this staff report.

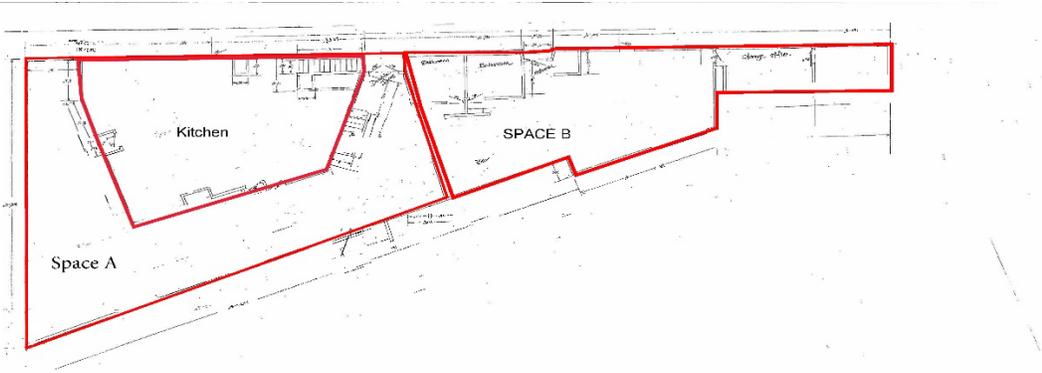
## BACKGROUND/DISCUSSION

The 781 Market Street property is owned by the City and contains two vacant lease spaces. The two lease spaces were previously occupied by Ciano Real Estate and Rock Harbor Marketing.

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

The building has two floors, but given the lower floor is inaccessible from an Americans with Disabilities Act (ADA) standpoint (no elevator or ramp), staff does not propose to lease the lower floor. The upper floor currently contains two lease spaces (A & B), totaling approximately 5,220 square feet with approximately 1,413 square feet allocated to Space B and 3,807 square feet allocated to Space A. See Figure below depicting upper floor building layout.

Prepared By: <u>SG</u>	Dept Review: <u>SG</u>
City Manager Review: <u>GC</u>	City Attorney Review: <u>LNL</u>



Let's Get Tuned is proposing to lease both space A & B which excludes the kitchen. The combined square footage of both lease spaces totals 3,726 square feet. The Lease Agreement also includes the following terms:

- Rent payment starts 30-days from Lease execution
- Lease term is 24 months with ability for either City or lessee to terminate the Lease with 60-day notice.
- Security deposit equal to 1-month of rent
- Rent increase for second year by LA area CPI

Lets Get Tuned is operated by Natalie Teichmann and Jon Nowaczyk and has been in business for the last seven years operating without a brick and mortar location. They intend to use the lease space as a yoga and sound studio with unique class offerings, educational workshops and teacher training with the intent to attract people from all over country. An expanded description of their business can be found in their business description flier provided as Attachment 2 to this staff report.

### **CONCLUSION**

Having tenants occupy the 781 Market building while the City pursues sale/lease and redevelopment of the property will serve to generate income for the City and while also ensuring the property is maintained and not left to deteriorate while the City pursues redevelopment opportunities. Staff, therefore, recommends Council adopt Resolution No. 49-23, approving a new 2-year Lease Agreement with Let's Get Tuned, LLC for lease of the 781 Market Street building for a lease rate of \$5,216.00 per month, pursuant to the terms in the Lease Agreement provided as Attachment 3 to this staff report.

### **ATTACHMENTS:**

1. Resolution No. 49 -23
2. Let's Get Tuned business description flier
3. Let's Get Tuned Lease Agreement

**RESOLUTION NO. 49-23**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
APPROVING A 2-YEAR LEASE AGREEMENT FOR  
THE UPPER FLOOR OF THE 781 MARKET STREET BUILDING BETWEEN  
THE CITY OF MORRO BAY AND  
LET'S GET TUNED, LLC**

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

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

**WHEREAS**, Let's Get Tuned, LLC (Lessee) is proposing to lease the upper floor (Excluding Kitchen) of 781 Market Street Building; and

**WHEREAS**, City and Lessee have agreed to a new 2-year lease agreement, for the upper floor (excluding kitchen) of the building located at 781 Market Street.

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

1. The attached new Lease Agreement for the upper floor (excluding kitchen) of the 781 Market Street Building Lease is hereby approved.
2. The City Manager is hereby authorized to execute said Lease Agreement.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 8<sup>th</sup> day of August 2023 on the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:  
RECUSED:

\_\_\_\_\_  
CARLA WIXOM, Mayor

ATTEST:

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

Let's Get Tuned



sound & yoga studio



Natalie  
Teichmann



Jon  
Nowaczyk

### Contact

letsgettuned@gmail.com

www.letsgettuned.com

619-804-7305



# Community Vision

## Introduction

Morro Bay does not currently have a wellness center that offers a large variety of classes, educational courses and a place to gather to connect with others. Let's Get Tuned Sound & Yoga Studio would offer a unique studio experience that will fill provide just that- a full schedule of offerings, a place to lounge and enjoy the view and company of others as well as a place to further one's knowledge in the areas of sound, mindfulness, movement and relaxation.

Our studio's mission is to bring wellness to people of all ages and backgrounds, with each class accessible to all. Our specialty will be providing professional sound baths and trainings to empower others. We also sell high end sound healing instruments drawing in clientele from around the state and nation.

## Wellness & Relaxation

Sound baths are an ancient tradition that are making a modern comeback. Just as the breath & movement are used to reduce stress and shift energy, sound baths interact with the nervous system to bring deep rest & restoration.

## Community & Connection

Each class is an invitation to connect to yourself and to others. Instructors bring the group together and there is always space after class to stay and chat.

## Unique Classes & Offerings ♥ Accessible to All ♥

- Gong Cocoon Sound Baths
- Special workshops & events
- Yoga Nidra Sound Baths
- Teacher trainings and education
- Classes for Veterans led by a Veteran
- Crystal Bowls, Gongs, Tuning Forks & Chimes for sale
- Kundalini , Hatha, Restorative & Yin Yoga Classes

## About us

Jon and Natalie are the founders of Let's Get Tuned. Their mission is to spread love, kindness and wellness through the power of sound, mindfulness and yoga. Natalie is also a school teacher and curriculum writer. She has taught in schools around the world since 2008. She has over 1,000 hours of yoga teacher trainings and has written her own 200 hour YTT training. Jon has always been an entrepreneur. If you are a Slocal you might know him from his unicycling and juggling as part of Something Ridiculous. He has brought joy and laughter to millions of people around the globe and looks forward to bringing the same light-hearted loving energy to Morro Bay.

## We belong here

We have been successful as a small business with no brick & mortar location for the last 7 years. We are now looking to expand our reach to the community. We know we would be a great addition to the community and tourism in Morro Bay Please consider our mindful approach to creating a happier community



**COMMERCIAL LEASE AGREEMENT**

**By and Between**

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

**“Landlord”**

**and**

**Let’s Get Tuned, LLC  
“Tenant”**

## COMMERCIAL LEASE AGREEMENT

THIS COMMERCIAL LEASE AGREEMENT (“**Lease**”) is made effective this 9th day of August 2023, by and between the CITY OF MORRO BAY, a municipal corporation (“**Landlord**”), and Let’s Get Tuned, LLC a California Limited Liability Corporation (“**Tenant**”). Landlord and Tenant are sometimes individually referred to as a “**Party**” and jointly as the “**Parties.**”

### RECITALS:

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

The portion of the building identified as Space A and Space B and excluding use of the kitchen as described and depicted on the attached Exhibit A, is the subject of this Commercial Lease Agreement, and is also referred to as the “**Premises.**”

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

**C.** Tenant is a Limited Liability Corporation, currently operating a sound and yoga studio business.

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

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

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

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

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

## 2. EFFECTIVE DATE; TERM.

- 2.1. **Effective Date.** This Lease shall be deemed effective as of August 9, 2023 (“**Effective Date**”). All other Tenant’s rights and obligations under this Lease shall commence as of the Effective Date.
- 2.2. **Term.** The term of this Lease shall commence on the Effective Date for a fixed term of twenty-four (24) months, and terminate without notice on August 9, 2025 (“**Term**”), unless otherwise amended by the Parties pursuant to Sections 2.4 and 29.14.
- 2.3. **Right to Terminate.** Tenant shall have the right to terminate this Lease at any time within the Term upon providing Landlord at least sixty (60) days’ written notice to Landlord. Landlord shall have the right to terminate this Lease at any time within the Term upon providing Tenant at least sixty (60) days’ written notice.
- 2.4. **Exclusive Right to Negotiate Extension.** If Tenant has not been in default of any of its obligations under this Lease during the previous six months of the original Term (as defined in Section 2.2), then Tenant shall have the right (but not the obligation) to enter into a ninety-day period of exclusive negotiation with Landlord to extend this Lease upon mutually acceptable terms (including, but not limited to, rent payments) for an additional period up to one year (“**ENA Right**”). Tenant must exercise the ENA Right by sending a written notice to Landlord specifying its exercise of the ENA Right, which notice must be delivered to Landlord not less than ninety days prior to the expiration of the original Term (“**ENA Notice**”). Within fifteen business days after receipt of the ENA Notice, Tenant and Landlord will meet to begin negotiations for an amendment to this Lease to extend the Term. If prior to the end of the Term the Parties agree to an extension and other modifications, then such terms shall be effective only if this Lease is amended in accordance with Section 29.14. If the Parties do not agree to that amendment, then this Lease shall terminate without further notice at the end of the Term.

## 3. RENT & PERFORMANCE STANDARD.

- 3.1. **Monthly Rent.** Tenant agrees to pay Five Thousand Two Hundred Sixteen Dollars (\$5,216) on a 30-day basis, in advance, due no later than the 10<sup>th</sup> day of first calendar month of each the ten calendar months for the 30-day period for which rent is being paid (“**Rent**”); with the first payment being due on September 8, 2023. Starting after the first year following the Effective Date and each anniversary thereafter, said Rent amount shall be adjusted based on the change in the Consumer Price Index for All Urban Consumers Los Angeles-Long Beach-Anaheim CUURS49ASA0 applied over the immediately preceding year period ending March 31 of such year.
- 3.2. **Performance Standards.** As material consideration for this Lease, Tenant covenants to comply with the following requirement (the “**Performance Standard**”): diligently maintain and repair the Premises, in compliance with Section 7.1.

- 3.3. **Payment of Rent.** All Rent and all other monetary obligations to be paid by Tenant to Landlord shall be in lawful money of the United States of America at the address specified in Section 29.12, or such other address as Landlord shall notify Tenant in writing.
- 3.4. **Late Payment.** Any payment of any sum to be paid by Tenant, not paid within ten (10) days after its due date, shall be subject to a ten percent late charge.
- 3.5. **Security Deposit.** Concurrently with Tenant's delivery of this Lease, Tenant shall deposit with Landlord the sum equal to the Rent stated in item 3.1 of the Rent & Performance Standards (the "**Security Deposit**"), to be held by Landlord as security for the full faithful performance of the Tenant's obligation under this Lease. Upon any breach of the foregoing obligations by Tenant, Landlord may apply all or part of the Security Deposit as full or partial compensation. If any portion of the Security Deposit is so applied, Tenant shall within 5 days after written demand by Landlord deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount. Landlord shall not be required to keep this Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on the Security Deposit. In no event may Tenant utilize all or any portion of the Security Deposit as a payment toward any Rental sum due under this Lease. Any unapplied balance of the Security Deposit shall be returned to Tenant within 30 days following the termination of this Lease and Tenant's vacation of the Premises.

#### 4. USES.

##### 4.1. **Authorized Uses; Minimum Program Requirements.**

4.1.1. **Authorized Uses.** Tenant shall use the Premises solely as a Sound and Yoga Studio. As material consideration for this Lease, Tenant agrees to use the Premises and conduct all its business operations on the Premises under the designation of a commercial Sound and Yoga Studio, currently named "Let's Get Tuned". No other name shall be used with respect to the Premises without the prior written consent of Landlord, which may be granted or withheld in its sole discretion.

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

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

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

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

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

Tenant shall not engage in any activity in, on or about the Premises that violates any Environmental Law, and shall promptly, at Tenant’s sole cost and expense, take all investigatory and/or remedial action required or ordered by any governmental agency or Environmental Law for clean-up and removal of any contamination involving any Hazardous Material created or caused directly or indirectly, by Tenant. The term “Environmental Law” shall mean any federal, state or local law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environmental conditions on, under or about the Premises, including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), 42 U.S.C. Sections 9601, et seq.; (ii) the Resource Conservation and Recovery Act of 1976 (“RCRA”), 42 U.S.C. Sections 6901, et seq.; (iii) California Health and Safety Code Sections 25100, et seq.; (iv) the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5, et seq.; (v) California Health and Safety Code Section 25359.7; (vi) California Health and Safety Code Section 25915; (vii) the Federal Water Pollution Control Act, 33 U.S.C. Sections 1317, et seq.; (viii) California Water Code Section 13000, et seq.; and (ix) California Civil Code Section 3479, et seq., as such laws are amended and the regulations and administrative codes applicable thereto. The term “Hazardous Material” includes, without limitation, any material or substance which is (i) defined or listed as a “hazardous waste”, “extremely hazardous waste”, “restrictive hazardous waste”, “or “hazardous substance” or considered a waste, condition of pollution or nuisance under the Environmental Laws; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos; and/or (iv) substances known by the State of California to cause cancer and/or reproductive toxicity. It is the intent of the Parties hereto to construe the terms “Hazardous Materials” and “Environmental Laws” in their broadest sense. Tenant shall provide all notices required pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5, et seq. Tenant shall provide prompt written notice to Landlord of the existence of Hazardous Materials on the Premises and all notices of violation of the Environmental Laws received by Tenant. Notwithstanding the foregoing, Tenant is not responsible for the remediation or removal of any Hazardous Materials which Tenant did not directly or indirectly cause to be placed at the Premises.

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

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

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

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

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

7. **MAINTENANCE AND REPAIRS.**

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

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

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

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

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

- 7.2. **Limited Maintenance and Repair by Landlord.** Landlord shall be responsible to maintain in good repair and in compliance with all applicable laws, ordinances and regulations, at Landlord's sole cost and expense, **only** (i) the physical structure of the Premises, such as the structural elements, roof, plumbing, water heating system, electrical systems, HVAC equipment and exterior painting, and (ii) subject to the financial limitations set forth below.

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

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

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

Notwithstanding the foregoing, Landlord's repair obligations are **specifically limited** in that Landlord shall not be required to make repairs the cost of which exceeds the Rent actually received by Landlord from Tenant as set forth below. During the Term,

Landlord shall maintain a cumulative on-going record of all Rent received by Landlord (“**Landlord Repair Fund**”). Any repairs and maintenance costs incurred by Landlord under this Section shall reduce the Landlord Repair Fund. If at any time when a repair or maintenance item, which is Landlord’s responsibility under this Section, then Landlord shall only be obligated to make such repair to the extent the current balance of the Landlord Repair Fund is sufficient to pay the cost of such repair. However, if the repair item is critical for Tenant’s operation of the Premises, then Landlord shall promptly make such repair, but the cost of such shall reduce the Landlord Repair Fund. If Landlord elects, in its sole discretion, to make repairs notwithstanding the foregoing limitations, then such election shall not be deemed a waiver of this limitation with respect to future repairs and the cost of such repairs shall reduce the Landlord Repair Fund.

## 8. ALTERATIONS

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

9. **COMPLIANCE WITH LAWS.** Except as to the specific obligations of Landlord under Section 7.2, Tenant shall, at its sole cost and expense, comply with all of the requirements of all municipal, state and federal authorities now in force or which may hereafter be in force pertaining to the use of the Premises, and shall faithfully observe in said use all municipal ordinances, including, but not limited to, the General Plan and zoning ordinances, state and federal statutes, or other governmental regulations now in force or which shall hereinafter be in force. The judgment of any court of competent jurisdiction, or the admission of Tenant in

any action or proceeding against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any such order or statute in said use, shall be conclusive of that fact as between Landlord and Tenant.

## 10. INSURANCE.

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

### 10.2. Tenant's Insurance Obligations.

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

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

**10.2.3. Business Automobile Coverage Insurance.** Tenant shall, at Tenant's sole cost and expense, for the mutual benefit of Landlord and Tenant, maintain Business Auto Coverage on ISO Business Auto Coverage from CA 00 01 including symbol 1 (Any Auto) or the exact equivalent, with combined single limits of liability not less than One Million Dollars (\$1,000,000) per accident. If Tenant owns no vehicles, then this requirement may be satisfied by a non-owned auto endorsement to the

general liability policy described above. If Tenant or Tenant's employees will use personal autos in any way for the operation of any business on the Premises, then Tenant shall provide evidence of personal auto liability coverage for each such person.

**10.2.4. General Provisions.** All of the policies of insurance required to be procured by Tenant pursuant to this Section 10.2 shall be primary insurance and pursuant to Subsections 10.2.1 and .3 shall name Landlord, its employees and agents as additional insureds. All policies shall waive all rights of subrogation and provide that said insurance may not be amended or canceled without providing thirty-days' prior written notice by registered mail to Landlord, unless the cancellation is for non-payment of a premium and then such written notice shall be no less than ten days. Within ten business days after execution of this Lease by the last Party to sign, and at least thirty days prior to the expiration of any insurance policy, Tenant shall provide Landlord with certificates of insurance and full copies of the insurance policies evidencing the mandatory insurance coverages written by insurance companies acceptable to Landlord, licensed to do business in California and rated A:VII or better by Best's Insurance Guide. Landlord may require an increase in the coverage and/or the types of coverage from time to time upon written notice to Tenant. Each of the Parties, on behalf of their respective insurance companies insuring such property of either Landlord or Tenant against such loss, waive any right of subrogation that it may have against the other.

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

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

**12. NO LIENS.** Tenant shall keep the Premises, free from any liens arising out of any work performed, material furnished, or obligation incurred by Tenant or alleged to have been incurred by Tenant. If Tenant shall fail to pay any charge for which a mechanic's lien claim and suit to foreclose the lien have been filed, and shall not have obtained the release of said lien from the property subject to such lien, then Landlord may (but shall not be so required to) pay said claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Tenant to Landlord, together with interest at the rate prescribed in Section 29.5, on the amount of the mechanic's lien claim.

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

**14. UTILITIES.**

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

**15. ENTRY AND INSPECTION.** Tenant shall permit Landlord and its employees and agents to enter into and upon the Premises at all reasonable times for the purpose of inspecting the same, or for the purpose of making repairs, alterations or additions or performing the

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

## **16. DAMAGE AND DESTRUCTION.**

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

**16.2. Damage.** In the event the Premises are destroyed or damaged by fire or other casualty or act of God as to be rendered uninhabitable ("Casualty"), this Lease may be terminated by either party in its sole discretion upon written notice to Tenant within thirty (30) days of such occurrence. If the Lease is not terminated by Landlord or Tenant, Tenant shall be responsible to repair the damage to the Premises and Landlord shall be responsible to repair any damage to the buildings or common areas (other than the leased Premises areas) unless such was caused by Tenant or its employees, agents or invitees in which event Tenant shall, at its sole cost and expense repair the damage.

**16.3. Repair of Damage by Landlord.** Tenant agrees to notify Landlord in writing promptly of any damage to the Premises resulting from a Casualty, as defined above. If the Premises are damaged by a Casualty or any common areas of the Premises' building providing access to the Premises are damaged by a Casualty such that Tenant does not have reasonable access to the Premises and neither Landlord nor Tenant has elected to terminate this Lease, Landlord shall promptly and diligently restore such common and building areas to substantially the same condition as existed before the Casualty, except for modifications required by building codes and other laws and except for any other modifications to the common areas considered desirable by Landlord. In making these modifications, Landlord shall reasonably endeavor to avoid impairing Tenant's access to the Premises. Landlord's obligation to restore is subject to the availability of insurance proceeds and shall further be subject to reasonable delays for insurance adjustments and other matters beyond Landlord's reasonable control and subject to the other clauses of this Lease.

**16.4. Rent Abatement.** In the event any casualty to the Premises is such that operations are impossible or impractical during the reconstruction as determined by Tenant,

Tenant shall be entitled to abatement of the Rent for actual number of business days closed based on a pro-rata ratio of the total days in the month.

- 16.5. Termination.** Upon any termination of this Lease under any of the provisions of Section 16 or Section 2.3, the Parties shall be released thereby without further obligations to the other Party coincident with the surrender of possession of the Premises to Landlord, except for obligations which have theretofore accrued and be then unpaid, and except for Tenant's obligations under Section 11.
- 16.6. Determination of Percentage of Damage or Destruction.** If either Landlord or Tenant contends the percentage of the damage or destruction referred to above exceeds one-year's rent total and the other Party disagrees, then the determination of the percentage shall be made in writing by a senior officer of the insurance company that is to make insurance proceeds available for replacement or repair. If said insurance company elects not to render such a determination in a timely manner, or no determination is rendered for any other reason, then, in such event, upon fifteen-days' prior written notice to Tenant, then Landlord's determination shall be deemed the agreed upon determination of the damage or destruction.

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

- 17.1. Assignment and Subletting.** Tenant shall not sublet the Premises or assign this Lease without the prior written consent of Landlord. Landlord shall not unreasonably withhold its consent to an assignment or sublease to a proposed assignee or subtenant. In no event shall Landlord be required to approve of any assignment or sublease, which would result in a violation of any other agreements to which Landlord is a party and/or for which all of the following criteria are not met:
- a. The proposed assignee or subtenant has submitted to Landlord financial statements showing the proposed assignee's or subtenant's financial condition, including net worth and liquidity, is equal to or greater than Tenant's financial condition;
  - b. The proposed assignee or subtenant is morally and financially responsible; and
  - c. Tenant is not in default in the payment of Rent or the performance of any obligations under this Lease.

Any such assignment shall be subject to all of the terms and conditions of this Lease, including, but not limited to, the use restrictions, and the proposed assignee or subtenant shall assume the obligations of Tenant under this Lease in writing in form satisfactory to Landlord. The proposed assignee or subtenant shall simultaneously provide to Landlord an estoppel certificate in the form described in Section 21. Consent by Landlord to one assignment or subletting shall not be deemed to be consent to any subsequent assignment or subletting. Any assignment or subletting without the prior written consent of Landlord shall be void, shall constitute a material breach of this Lease, and shall, at the option of Landlord, terminate this Lease.

Neither this Lease nor any interest therein shall be assignable as to the interest of Tenant by operation of law.

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

## 18. DEFAULT AND REMEDIES; TERMINATION.

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

- (i) Failure to pay any Rent or other monetary payment required hereunder to Landlord within five days after receiving notice from Landlord of Tenant's failure to pay any such obligation when due under this Lease.
- (ii) Failure to perform any provision of this Lease (other than the payment of money), if the failure to perform is not cured within thirty days after receiving written notice of the default from Landlord. If the default cannot be reasonably cured within thirty days, then Tenant shall not be in default of this Lease if Tenant commences to cure the default within the thirty-day period and diligently and in good faith continues to cure the default, but within no more than one hundred eighty days from commencement of the cure.
- (iii) Failure of Tenant to meet or comply with the Performance Standard.
- (iv) Vacation or abandonment of the Premises by Tenant.
- (v) Making a general assignment for the benefit of creditors.
- (vi) Filing of a voluntary petition in bankruptcy or the adjudication of Tenant as a bankrupt.
- (vii) Appointment of a receiver to take possession of all or substantially all the assets of Tenant located at the Premises or of Tenant's leasehold interest in the Premises.
- (viii) Filing by any creditor of Tenant of an involuntary petition in bankruptcy which is not dismissed within sixty days after filing.
- (ix) Attachment, execution or other judicial seizure of all or substantially all of the assets of Tenant or Tenant's leasehold where such an attachment, execution or seizure is not discharged within sixty days.

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

(a) The worth at the time of award of the unpaid Rent which had been earned at the time of termination;

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such Rent loss that Tenant proves could have been reasonably avoided; and

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

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

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

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

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

to terminate this Lease shall not prevent Landlord from later terminating this Lease or constitute a waiver of Landlord's right to do so.

**18.2. No Waiver.** Acceptance of any payment under this Lease shall not be deemed a waiver of any default or a waiver of any of Landlord's remedies.

**18.3. Landlord's Default.** Except as may be elsewhere expressly provided in this Lease, Landlord shall not be in default, unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty days after written notice by Tenant to Landlord, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty days are required for performance, then Landlord shall not be deemed in default if Landlord commences performance within that thirty-day period and thereafter diligently prosecutes the same to completion.

**18.4. Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity, except Tenant i) cannot seek money damages or pursue an action in law; and ii) is instead limited to bringing a proceeding in the nature of specific performance, injunctive relief or mandamus, or any other action in equity to enforce any applicable provision of this Lease.

**18.5. Termination.**

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

- a. By expiration of the Lease (including the right to terminate in Section 2.3);
- b. By mutual agreement of both Parties; or
- c. In the case of casualty as provided for in Section 16.

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

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

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

**20. FORCE MAJEURE.** If either Party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor

troubles, inability to procure materials, restrictive governmental laws or regulations or other cause without fault and beyond the control of the Party obligated (financial inability excepted), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, nothing in this Section shall excuse Tenant from the prompt payment of any Rent.

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

If Landlord desires to refinance or transfer the Premises, then Tenant agrees to deliver to Landlord or any lender or transferee designated by Landlord such financial information concerning Tenant as may be reasonably required by such lender or transferee and is reasonably available to Tenant. All such financial information shall be received by Landlord in confidence.

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

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

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

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

24. **USE OF LANDLORD'S NAME.** Tenant shall not use Landlord's name for advertising or promotion without Landlord's prior written consent, which may be granted or withheld in its sole discretion.
25. **TRADE FIXTURES.** Tenant has the right to use the Landlord's personal property located on the Premises, but Tenant shall, at its own cost and expense, install and equip the Premises with all furniture, fixtures, trade fixtures, equipment and personal property reasonably required for the operation of Tenant's business. Any and all fixtures and appurtenances installed by Tenant shall conform with the requirements of all applicable laws and regulations. All furniture, equipment, and trade fixtures installed by Tenant shall remain the property of Tenant during the Term of this Lease, but Tenant shall not remove any trade fixtures during the Term hereof without Landlord's prior written consent, which may be provided by the City Manager on behalf of the Landlord, and which consent may be withheld or granted in Landlord's sole discretion. On termination of this Lease, Tenant may, provided Tenant is not in default of this Lease, remove at its own expense all trade fixtures, equipment and its personal property. At termination of this Lease, if Tenant has left any merchandise, furniture, equipment, signs, trade fixtures or other personal property in the Premises, then Landlord may give Tenant written notice to remove such property. In the event such property is not removed within fifteen days after the date of said notice, Landlord may dispose of said property in any manner whatsoever and Tenant hereby waives any claim or right to said property or any proceeds derived from the sale thereof. Any damage to the Premises resulting from the installation or removal of any of said trade fixtures or equipment shall be repaired by Tenant at Tenant's sole cost and expense.
26. **QUIET ENJOYMENT.** As long as Tenant is not in default under this Lease, Tenant shall have quiet enjoyment of the Premises during the Term.
27. **HOLDOVER.** Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or earlier termination of this Lease. Any holding over after the expiration of the term of this Lease, with the consent of Landlord, express or implied, shall be construed to be a tenancy from month to month, cancelable upon thirty-days' written notice, and at a monthly Rent equal to two hundred percent of the Rent set forth in Section 3.1 and upon terms and conditions as existed during the last month of the Term.
28. **NOTICE AND WAIVER REGARDING RELOCATION, GOODWILL, PROPERTY INTEREST AND CONDEMNATION**
- 28.1. Tenant knowingly and voluntarily acknowledges and agrees upon its vacation of the Premises at the end of the Lease term, upon the sooner termination thereof for any reason, or vacation, of the Premises under any circumstances, in no event shall Tenant be entitled or shall Landlord, including its employees, agents and assignees, be required to provide any relocation benefits, compensation for loss of goodwill, or assistance under any applicable federal, state, or local laws or regulations including without limitation, the Uniform Relocation Assistance Laws, California Government Code section 7260 *et seq.* Further, Tenant being fully informed of any and all of its rights and obligations and all laws and regulations (including without limitation, the Uniform Relocation Assistance Laws, California Government Code section 7260 *et*

*seq.*) in connection therewith fully waives, releases and rejects any and all relocation assistance and benefits relating to or in any respect connected with Tenant vacating the Premises.

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

## 29. MISCELLANEOUS.

- 29.1. **Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their successors and assigns and be governed by the laws of the State of California. Any litigation between the Parties hereto concerning this Lease shall be initiated in the Superior Court of the State of California for the County.
- 29.2. **Partial Invalidity.** If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, then the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereof.
- 29.3. **Successors in Interest.** The covenants herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all the Parties hereto, and each and all, including the Party making the assignment, shall be jointly and severally liable hereunder.
- 29.4. **No Oral Agreements.** This Lease covers in full each and every agreement of every kind or nature whatsoever between the Parties hereto concerning this Lease, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein, and there are no oral agreements. Tenant acknowledges no representations or warranties of any kind or nature not specifically set forth herein have been made by Landlord or its employees, agents or representatives.
- 29.5. **Interest.** Any sum due to Landlord under this Lease shall bear simple interest from and after its due date at a rate equal to ten percent per month until paid to Landlord, but not in excess of the maximum rate permitted by law.
- 29.6. **Authority.** Each individual executing this Lease on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant and that this Lease is binding upon Tenant in accordance with its terms.

- 29.7. **Time.** Time is of the essence of this Lease.
- 29.8. **Consistency.** Each provision herein shall be interpreted so as to be consistent with every other provision.
- 29.9. **Relationship of Parties.** The relationship of the Parties is that of Landlord and Tenant, and it is expressly understood and agreed Landlord does not in any way or for any purpose become a partner of Tenant in the conduct of Tenant's business or otherwise, or a joint venture with Tenant.
- 29.10. **Non-Discrimination.** Tenant herein covenants by and for Tenant, Tenant's successors, heirs, executors, administrators and assigns, and all persons claiming under or through Tenant, and this Lease is made and accepted upon and subject to the following conditions: that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, sexual preference or identity or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises, nor shall the Tenant, or any person claiming under or through Tenant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, Tenants, subtenants, subtenants or vendees of the Premises.
- 29.11. **Non-Collusion.** No official, officer, or employee of Landlord has any financial interest, direct or indirect, in this Lease, nor shall any official, officer, or employee of Landlord participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interest found to be "remote" or non interest pursuant to California Government Code Sections 1091 and 1091.5. Tenant represents and warrants that (i) it has not paid or given, and will not pay or give, to any third party including, but not limited to, Tenant or any of its officials, officers, or employees, any money, consideration, or other thing of value as a result or consequence of obtaining this Lease; and (ii) it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any official, officer, or employee of Landlord, as a result or consequence of obtaining this Lease. Tenant is aware of and understands that any such act(s), omission(s) or other conduct resulting in the payment of money, consideration, or other thing of value will render this Lease void and of no force or effect.
- 29.12. **Notices.** Wherever in this Lease it shall be required or permitted that notice and demand be given or served by either Party to this Lease to or on the other, such notice or demand shall be given or served in writing and shall not be deemed to have been duly given or served unless in writing, and personally served or

forwarded by certified mail, postage prepaid, addressed as specified below. Either Party may change the address set forth below by written notice by certified mail to the other. Any notice or demand given by certified mail shall be effective one (1) day subsequent to mailing.

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

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

Tenant: Let's Get Tuned  
Attn: Natalie Teichmann  
2530 Nutmeg Ave., Morro Bay CA, 93443

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

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

**LANDLORD:**

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

By: \_\_\_\_\_  
Greg Carpenter, Interim City Manager

\_\_\_\_\_, 2023

**ATTEST:**

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

APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP

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

**TENANT:**

NATALIE TEICHMANN, dba LET'S  
GET TUNED, a Limited Liability  
Corporation

  
\_\_\_\_\_

July 31, 2023

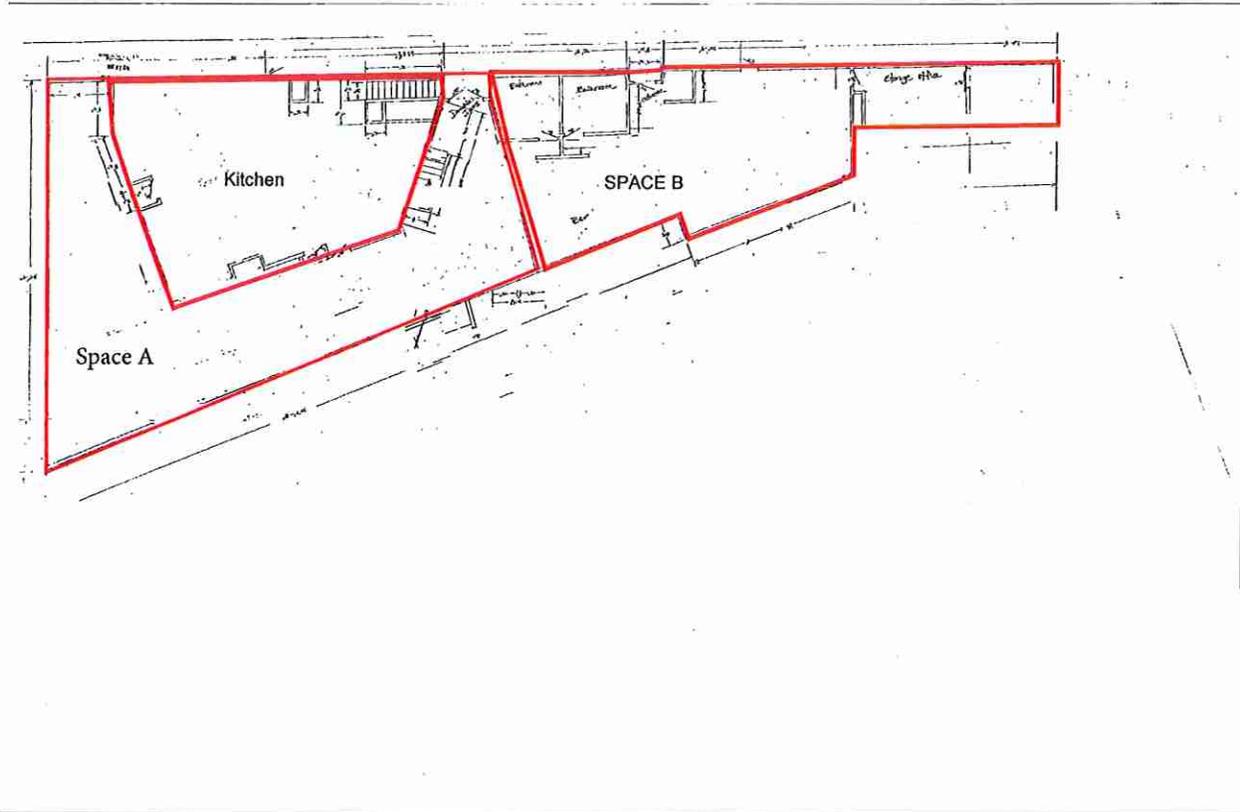
\_\_\_\_\_, 2023

**EXHIBIT A**

**DESCRIPTION AND DEPICTION OF PREMISES**

The Premises consist of Space's A & B and exclude the kitchen as depicted on the figure below.

(APN: 066-321-027)



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AGENDA NO: A-8

MEETING DATE: August 8, 2023

# Staff Report

**TO:** Honorable Mayor and City Council **DATE:** August 2, 2023

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

**SUBJECT:** Approve Amendment No. 2 to the Consultant Services Contract Between the City of Morro Bay and Michael Brannagan, doing business as Terra Solutions, to Provide Geographic Information System (GIS) Services to the City of Morro Bay for an Additional Two Years

## RECOMMENDATION

Staff recommends the City Council authorize the City Manager to execute Amendment No. 2 (Amendment 2) to the Agreement with Michael Brannagan, doing business as (DBA) Terra Solutions, to provide GIS services to the City for the next two years for an additional not-to-exceed amount of \$120,000.00.

## ALTERNATIVES

The City Council could choose not to approve the Amendment 2 and direct staff to either alter the Agreement in a manner agreed upon by a majority of Council or the Council may choose to not extend the Agreement.

## FISCAL IMPACT

The cost of Amendment 2 to the current consultant contract is \$120,000.00 which will bring the total contract amount to \$360,000.000 since original contract execution in July of 2019. Community Development collects an I.T. Service fee that pays for a third of the contract and Public Works (Water and Wastewater) pays two thirds of the contract.

## BACKGROUND/DISCUSSION

The original Agreement with Mike Brannagan (Terra Solutions) was entered into in July of 2019 to provide GIS support to the City and more specifically to support Cityworks, the City's project tracking, asset management and work order system, which is utilized predominately by the Community Development and Public Works Departments. Cityworks is GIS based and can only be maintained/supported by someone with significant GIS experience. The Agreement includes the following tasks (See Cost proposal provided in Attachment 1):

- Maintenance of the City's ArcGIS Server,
- Cityworks support,
- GIS data management (parcel, owner info., address updates),
- Development of additional applications and support of same,
- GIS Mapping and Map Production,
- GPS date Collection and other related tasks,

GIS is a critical component of the services Community Development and Public Works provide to the Community and Mr. Brannagan's expertise is an essential component of those services. Mr.

Prepared By: <u>SG</u>	Dept Review: <u>SG</u>
City Manager Review: <u>GC</u>	City Attorney Review: <u>CFN</u>

Brannagan has over 20-years' of GIS experience and bills his service at \$60.00 per hour.

**CONCLUSION**

Mr. Brannagan is a well-qualified GIS consultant that has been working with the City for several years and as such has significant familiarity with the City's GIS, Cityworks and associated applications, allowing him to provide excellent service to the City. Staff, therefore, recommends Council authorize the City Manager to execute Amendment 2 to the Agreement with Mike Brannagan, DBA Terra Solutions (See Amendment No. 2 provided as Attachment 2).

**ATTACHMENTS**

1. Cost Proposal
2. Amendment No. 2 to the Agreement for Consultant Services

June 20, 2023

Scot Graham/Greg Kwolek  
955 Shasta Avenue  
Morro Bay, CA. 93442

**Subject: City of Morro Bay GIS Services**

Scot/Greg,

Thank you for the opportunity to submit a cost proposal to provide GIS support to the City of Morro Bay.

My proposal is to continue to provide GIS services consistent with the 2-year GIS Services agreement that began July 1, 2019.

Terra Solutions proposes to perform the scope of work described herein on a Not to Exceed without Your Approval basis. The proposed cost to perform the work defined is **\$120,000.00** for the 2 year fiscal period beginning July 1<sup>st</sup> 2023. I calculated this total by multiplying 100 weeks (2 50 week years) by 20 hours per week (4 5-hour work days per week) multiplied by \$60 per hour (my normal billing rate). I then broke down that total by an estimate per each task.

Task	Time/Hours	Rate (\$)	Total (\$)
1. ArcGIS Server/Cityworks Support	800	60	48,000
2. GIS Data Management/Geodatabase Management	800	60	48,000
3. Parcel Management (Parcel, owner, address updates)	75	60	4,500
4. Additional Application Support	150	60	9,000
5. GIS Mapping and Map Production	150	60	9,000
6. GPS Data Collection and Miscellaneous Tasks	25	60	1,500
Total	2000	60	\$120,000

Thank you for the opportunity to submit this cost estimate. If you have any questions please call me at 805-235-0632.

Sincerely,

Mike Brannagan

AMENDMENT NO. 2 TO THE AGREEMENT  
FOR CONSULTANT SERVICES BETWEEN  
THE CITY OF MORRO BAY AND MICHAEL BRANNAGAN, DBA TERRA SOLUTIONS

This Amendment No. 2 to the Agreement for Consultant Services (“Second Amendment”) is entered by and between the City of Morro Bay, a municipal corporation (“City”) and Michael Brannagan, dba Terra Solutions (“Consultant”), effective as of July 1, 2023 (the “Effective Date”). City and Consultant are sometimes referred to herein collectively, as the “Parties”.

**RECITALS**

WHEREAS, City and Consultant entered into an Agreement for Consultant Services dated effective as of July 1, 2019 to provide Geographic Information Systems (GIS) services to the City for a not-to-exceed amount of \$120,000.00 (the “Agreement”); and

WHEREAS, on July 1, 2021, the City and Consultant entered into a First Amendment to the Agreement to extend the Consultant’s services for a period of two (2) years at additional compensation of \$120,000, bring the Agreement as amended by the First Amendment to a total not-to-exceed amount of \$240,000, and revise scope of services. The Agreement as amended by the First Amendment is referred to as the “Agreement”; and

WHEREAS, the Parties now agree to amend the Agreement and to extend the term of the Agreement for an additional two (2) years to allow for the completion of the services set forth in the Agreement; and

WHEREAS, due to the additional work required to be provided under the Agreement, the compensation payable pursuant to the Agreement must be amended again, and therefore, the Parties desire to amend the Agreement as set forth herein.

**TERMS**

NOW THEREFORE, the Parties mutually agree to amend the Agreement as follows:

1. Recitals: The above recitals are affirmed and ratified by the Parties as true and correct.
2. Additional Work Required Under the Agreement: The additional services to be provided by Consultant, pursuant to the Agreement as amended by this Second Amendment, shall be as set forth on Exhibit A attached to this Second Amendment and incorporated herein by this reference (the “Additional Work”). The Additional Work shall be satisfactorily completed in accordance with the schedule set forth in Exhibit A to this Second Amendment.
3. Amendment to Compensation: The compensation to be paid for the Additional Work described in Exhibit A to this Second Amendment shall not exceed \$120,000. The total not to exceed amount stated in Section 5(a) of the Agreement (as amended hereby) shall be amended and revised to not exceed \$360,000.

4. Amendment to Term of the Agreement. The Agreement shall remain and continue in effect until all tasks required under the Agreement (including the Additional Work hereunder) are satisfactorily completed, but in no event later than June 30, 2025, unless sooner terminated pursuant to the provisions of the Agreement as amended by this Second Amendment.

5. Continuing Effect of Agreement. Except as expressly amended by this Second Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Second Amendment, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement, as amended by this Second Amendment.

6. Affirmation of Agreement. City and Consultant each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each party represents and warrants to the other that the Agreement is currently an effective, valid, and binding obligation.

7. Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Second Amendment.

8. Authority. The persons executing this Second Amendment on behalf of the Parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Second Amendment on behalf of said party, (iii) by so executing this Second Amendment, such party is formally bound to the provisions of this Second Amendment, and (iv) the entering into this Second Amendment does not violate any provision of any other agreement to which said party is bound.

8. Counterparts. This Second Amendment may be executed in counterparts, and all so executed shall constitute an agreement binding on the Parties. The Parties further agree that a digital or electronic signature shall have the same force and effect as a manual or wet-ink signature, and that a facsimile copy or a copy in pdf format of the executed counterparts shall have the same force and effect as an original.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties shall be deemed to have caused this Second Amendment to be executed by their duly authorized representatives as of the Effective Date.

**CITY**

CITY OF MORRO BAY

**CONSULTANT**

MICHAEL BRANNAGAN, dba TERRA SOLUTIONS

By: \_\_\_\_\_  
Name: Greg Carpenter  
Title: Interim City Manager

By: \_\_\_\_\_  
Name:  
Title:

**Attest:**

By: \_\_\_\_\_  
Name:  
Title:

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

**Approved As To Form:**

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



AGENDA NO: A-9  
MEETING DATE: August 8, 2023

# Staff Report

**TO:** Honorable Mayor and City Council **DATE:** August 2, 2023

**FROM:** Daniel McCrain, Fire Chief  
Rachael Hendricks, Human Resources/Risk Manager

**SUBJECT:** Adoption of Resolution No. 50-23 approving Amendment No. 1 to the 2022-2024 Memorandum of Understanding between the City of Morro Bay and the Morro Bay Firefighters Association (MBFFA), IAFF Local 3725, changing Firefighter Probation Requirements and Duration

### RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 50-23 approving Amendment No. 1 to the Memorandum of Understanding between the City of Morro Bay and the MBFFA Local 3725 (“MBFFA MOU 2022-2024”) reducing the entry level firefighter probationary period to twelve (12) months and removing the requirement to promote to Engineer as part of the probation process.

### ALTERNATIVES

Take no action, thereby maintaining the promotion to Engineer requirement and 18-month probation period.

### FISCAL IMPACT

Approximately \$2,683 per Firefighter in annual savings during second year of employment which equals difference between step 2 Firefighter pay scale and step 1 Engineer pay scale.

### BACKGROUND

Currently, the MBFFFA MOU 2022-2024 provides for an 18 month probationary period for Fire Fighters, which includes Engineer training as a condition of probation. After the successful completion of this probationary period, the Fire Fighter is promoted to Engineer. Specifically, the MOU states, in part, in section 3.3.1, “It is recognized, in principle, as long as the full-time MBFFFA personnel complement of the Morro Bay Fire Department remains at ten (10) or less, that efficient operation of the Department requires an increase in the authorized number of Fire Engineers. Accordingly, CITY agrees to promote to Fire Engineer all personnel classified as Fire Fighter hired after the effective date of this MOU provided that they have served for eighteen (18) months with the CITY in the Fire Fighter classification; that at the completion of eighteen months of employment, they have been recommended by the Fire Chief for promotion and have demonstrated, through successful completion of written and practical examinations that they have successfully completed six semester units of Fire Science courses at an institution approved by the Fire Chief. The CITY shall make every effort to schedule the examination to be completed prior to the expiration of eighteen months. The content and passing grade of the written and practical examinations will be determined by the Fire Chief subject to the approval of the City Manager.”

Prepared By: DM/RH Dept Review: \_\_\_\_\_  
City Manager Review: GC City Attorney Review: MCH

If the City Council approves the proposed Amendment No. 1 to the MBFFA MOU, this language would be deleted, and new language would be added specifying a 12 month probation period for Fire Fighters.

The current 18 month probationary period for Fire Fighters is consistent with Section 8.A. of the City's Personnel Rules, which provides that "all sworn personnel in the Fire Fighter classifications shall serve an eighteen (18) month probationary period of actual and continuous service." The Personnel Rules will return to Council at a future date to be amended to 12 months from the current 18 months, for consistency with the new MBFFA MOU 2022-2024 language.

## **DISCUSSION**

Staff believes reducing the probationary period for entry level Firefighters from eighteen (18) to twelve (12) months and removing Engineer training as part of the probation process would be beneficial for the City's Fire Department. The focus of the firefighter probation will be entry level firefighter tasks to build a strong foundation of skills and knowledge. The change also creates an incentive for future personal development as they would have to participate in a competitive recruitment process to promote to the Engineer rank. Accordingly, in recent months staff met with MBFFA representatives to meet and confer regarding amending the MBFFA MOU 2022-2024 to implement this proposed change. City representatives and MBFFA representatives have agreed to language amending the MBFFA MOU 2022-2024, which is attached as Exhibit 1 to Resolution No. 50-23. The proposed changes in Amendment No. 1 to the MBFFA are explained below.

In addition to reducing the probationary period for entry-level Fire Fighters from 18 to 12 months, Engineer training would be part of the entry level Firefighter task book for months 12 -18 as part of the required training, or as a recommended training depending on union input, but not a condition of probation. Once the Engineer training is complete and they have passed a Morro Bay "Acting Engineer" test, they would be qualified to work out of class as an "Acting Engineer." The employee would be eligible for out of class pay if they were assigned in that capacity either on an hour-for-hour basis or limited term situation to cover a vacancy. The number of FTE Engineer positions will be established based on current staffing and number of staffed stations then once a vacancy in this job classification was identified there would be a competitive promotional exam. This practice is consistent with how promotions from Engineer to Captain are currently managed and is an industry standard for promotion from Firefighter to Engineer at most departments.

Being trained in the role above your position is essential to succession planning and employee development. It also makes sense from an operational standpoint at a small department to have employees trained to fill multiple roles, however there is value staying in your assigned rank and learning the intricacies of that role before promoting up to build a strong foundation of knowledge and skills. Having the promotion to the next rank as a goal to strive for encourages continued personal development. The process of a competitive examination ensures that the most qualified candidates are appointed to the role. In the event that there are not enough qualified internal applicants for a promotional exam, the Fire Chief could at their discretion fill the position with a Limited Term appointment or conduct an open recruitment.

The standard at most agencies is an additional 12-month probation in the new rank while completing a task book upon promotion from Firefighter to Engineer, from Engineer to Captain, and Captain to Battalion Chief. This standard would be applied to Morro Bay personnel that are promoted to a new

rank.

The Amendment to the MBFFA MOU 2022-2024 would also provide that the probationary period may be extended up to 3 years to allow for completion of the Paramedic program for employees hired with the requirement to become a Paramedic. This allows for greater flexibility to recruit qualified candidates that do not already possess a Paramedic License. Finally, the amendment would change the eligibility to re-test for a promotion from 6 months to 3 months. This will allow for the candidate to remediate and become better prepared for the promotional opportunity without delaying the department's ability to conduct promotional examinations.

**CONCLUSION**

Staff recommends the City Council adopt Resolution No. 50-23 approving Amendment No. 1 to the MBFFA MOU 2022-2024 reducing the entry level firefighter probationary period to twelve (12) months and removing the requirement to promote to Engineer as part of the probation process.

**ATTACHMENT**

Resolution No. 50-23

**RESOLUTION NO. 50-23**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA  
APPROVING AMENDMENT NO. 1 TO THE MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF MORRO BAY AND THE MORRO BAY FIRE FIGHTERS  
ASSOCIATION, IAFF LOCAL 3725 CHANGING FIREFIGHTER PROBATION  
REQUIREMENTS AND DURATION**

**THE CITY COUNCIL  
Morro Bay, California**

**WHEREAS**, the City of Morro Bay (“City”) has, and continues to recognize, the Morro Bay Fire Fighters Association, IAFF Local 3725 (“MBFFA”), as the sole exclusive bargaining agent for the City’s fire fighting employees, for all matters concerning wages, hours and working conditions; and

**WHEREAS**, the current Memorandum of Understanding between the City and MBFFA (“MBFFA MOU 2022-2024”) was duly approved by the City Council and is in effect from July 1, 2022 through June 30, 2024; and

**WHEREAS**, the City’s labor relations representatives and MBFFA representatives have participated in ongoing good faith meet and confer labor negotiations over the terms of an amendment to the MBFFA MOU 2022-2024 (“Amendment No. 1”) regarding probation requirements and duration; and

**WHEREAS**, the City and MBFFA have agreed, contingent on City Council approval to an Amendment No. 1 whereby the probationary period for Fire Fighters would be shortened from eighteen (18) months to twelve (12) months; and

**WHEREAS**, the City and MBFFA have also agreed to remove the requirement to meet the Engineer requirements as part of the entry level Firefighter probation; and

**WHEREAS**, this Amendment No. 1 was ratified by the MBFFA on June 20, 2023; and

**WHEREAS**, this Amendment No. 1 is subject to City Council acceptance and approval, which is made a part hereof by this reference.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, AS FOLLOWS:**

The City Council hereby approves Amendment No. 1 to the MBFFA MOU 2022-2024, a copy of which is attached hereto as Exhibit 1, effective beginning August 9, 2023. Amendment No. 1 shall not be in full force and effect until approved by resolution of the City Council and fully executed.

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**PASSED AND ADOPTED**, by the City Council of the City of Morro Bay, at a regular meeting thereof held on the 8<sup>th</sup> day of August 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RECUSED:

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CARLA WIXOM, Mayor

ATTEST:

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DANA SWANSON, City Clerk

## EXHIBIT 1

### AMENDMENT NO. 1 TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MORRO BAY AND THE MORRO BAY FIREFIGHTERS ASSOCIATION, IAFF LOCAL 3725

JULY 1, 2022 – JUNE 30, 2024

WHEREAS, the City of Morro Bay (“City”) has, and continues to recognize, the Morro Bay Fire Fighters Association, IAFF Local 3725 (“MBFFA”), as the sole exclusive bargaining agent for the City’s fire fighting employees, for all matters concerning wages, hours and working conditions; and

WHEREAS, the current Memorandum of Understanding between the City and MBFFA (“MBFFA MOU 2022-2024”) was duly approved by the City Council and is in effect from July 1, 2022 through June 30, 2024; and

WHEREAS, the City’s labor relations representatives and MBFFA representatives have participated in ongoing good faith labor negotiations over the terms of an amendment to the MBFFA MOU 2022-2024 regarding probation requirements and duration; and

WHEREAS, the City and MBFFA have agreed, contingent upon City Council approval to an amendment to the MBFFA MOU 2022-2024, that the probationary period for Fire Fighters be shortened from eighteen (18) months to twelve (12) months; and

WHEREAS, the City and MBFFA have also agreed to remove the requirement to meet the Engineer requirements as part of the entry level Fire Fighter probation; and

WHEREAS, the City’s labor relations representatives and MBFFA representatives desire to memorialize this agreement by means of a first amendment to the MBFFA MOU 2022-2024 (“Amendment No. 1”), pursuant to the Meyers-Milias-Brown Act (“MMBA”) (Gov’t Code Section 3500-3511); and

WHEREAS, the representatives of the City and MBFFA have jointly prepared this Amendment No.1, which was ratified by MBFFA on June 20, 2023, and is presented to City Council of the City of Morro Bay for its consideration; and

WHEREAS, this Amendment No. 1 shall not be in full force and effect until adopted by resolution by the City Council of the City; and

WHEREAS, except as provided in this Amendment No. 1 to the MBFFA MOU 2022-2024, all other provisions of the MBFFA MOU 2022-2024 shall remain in full force and effect.

NOW, THEREFORE, it is hereby agreed that the MBFFA MOU 2022-2024 is amended in the following particulars only:

Section 1. Article 3, Section 3.3 of the MBFFA MOU 2022-2024 shall be amended to read as follows (deletions in ~~striketrough~~, additions in ***bold italics***):

~~“FIRE ENGINEER RATING PROMOTION PROCESS AND PROBATIONARY PERIOD~~

- 3.3.1 ~~It is recognized, in principle, as long as the full-time MBFFA personnel complement of the Morro Bay Fire Department remains at ten (10) or less, that efficient operation of the Department requires an increase in the authorized number of Fire Engineers. Accordingly, CITY agrees to promote to Fire Engineer all personnel classified as Fire Fighter hired after the effective date of this MOU provided that they have served for eighteen (18) months with the CITY in the Fire Fighter classification; that at the completion of eighteen months of employment, they have been recommended by the Fire Chief for promotion and have demonstrated, through successful completion of written and practical examinations that they have successfully completed six semester units of Fire Science courses at an institution approved by the Fire Chief. The CITY shall make every effort to schedule the examination to be completed prior to the expiration of eighteen months. The content and passing grade of the written and practical examinations will be determined by the Fire Chief subject to the approval of the City Manager. When vacancies are identified in the ranks of Fire Engineer, Fire Captain, these vacancies shall be filled by a competitive testing process. This process may be done as an internal recruitment or an open testing process based on the number of qualified internal candidates as determined by the Fire Chief. The current number of full-time Fire Engineer positions is nine (9) and the number of Captains is three (3).~~
- 3.3.2 An individual recommended for promotion, and failing to attain a passing grade in either the written or practical examination, shall not be eligible for reexamination until ~~six (6)~~ ***three (3)*** months after the date of failure.
- 3.3.3 ***The probationary period for new-hire employees and employees promoted to a new rank or position shall be twelve (12) months. There shall be a job position task book for the positions of Firefighter, Fire Engineer and Fire Captain that must be completed prior to the end of the probationary period. The probationary period may be extended an additional three (3) years to allow for completion of Paramedic training for employees hired with the requirement of obtaining a Paramedic certification. Successful completion of a probationary period includes receiving passing scores on all written and manipulative tests, satisfactory evaluations, completion of “capstone testing” if required by the position, and successfully obtaining any required certifications for the position. Internal candidates may be promoted prior to completing all required certifications for the position and will have the duration of the probationary period to complete and obtain all required certifications.”***

Section 2. Except as expressly provided for in this Amendment No. 1 to the MBFFA MOU 2022-2024, all other provisions of the MBFFA MOU 2022-2024 shall remain in full force and effect.

Section 3. Furthermore, this Amendment No. 1 to the MBFFA MOU 2022-2024 shall not be in full force and effect until approved by resolution of the City Council of the City of Morro Bay and fully executed.

**IT IS SO AGREED:**

CITY OF MORRO BAY

MORRO BAY FIREFIGHTERS ASSOCIATION

BY: \_\_\_\_\_  
Greg Carpenter  
Interim City Manager

BY: \_\_\_\_\_  
Travis Hasch  
President

BY: \_\_\_\_\_  
Rachael Hendricks  
Human Resources Manager

BY: \_\_\_\_\_  
\_\_\_\_\_  
its \_\_\_\_\_



AGENDA NO: C-1

MEETING DATE: August 8, 2023

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** August 1, 2023

**FROM:** Greg Carpenter, Interim City Manager

**SUBJECT:** Review and Comment on Scope of Work for Fiscal Year (FY) 23-24 Economic Development Services Contract with the Morro Bay Chamber of Commerce

## **RECOMMENDATION**

Staff recommends the City Council review and comment on the proposed Scope of Work for FY 23-24.

## **ALTERNATIVE**

No alternatives are recommended at this time.

## **FISCAL IMPACT**

There are no additional costs associated with this action. The City and the Chamber of Commerce are currently under contract to provide these services for \$90,000 (plus qualifying expenses).

## **BACKGROUND**

The City has utilized various approaches to providing economic development services. These include having dedicated staff assigned to just this role, having staff perform this role along with other responsibilities and most recently, contracting for this service with the Morro Bay Chamber of Commerce.

In 2018, the City and Chamber entered into a one-year agreement for Fiscal Year 2019/20, for the Chamber to provide economic development services on behalf of the City. This contract has been amended twice since that time to extend the term, change the scope of work, and amend the price and terms to reflect the amended scope. The current agreement expires at the end of FY23-24 unless mutually extended by both parties.

## **DISCUSSION**

The scope of work was developed three years ago and while many of the tasks and assignments are still relevant, some have been completed. The agreement contemplates that scope will evolve over time based on changes to the economy or changes to the City's needs. The agreement allows for the scope to be changed by the parties administratively. However, given the amount of City Council and public interest in this matter, staff felt it was desirable to agendaize this item for information and input.

In preparation for this discussion, members of the City's Executive Team and the Executive Director of the Chamber of Commerce have reviewed the prior scope of work and recommended changes

Prepared By: GC City Attorney Review: CFN  
City Manager Review: GC

(see attached Proposed Scope of Work). Staff believes revisions more closely align with the City Council adopted 2023-2025 Strategic Plan as well as current operational needs of the City. Examples of some of the suggested updates to the Scope include:

- Assisting, as needed, with the Downtown Design District effort
- Assisting the new City Manager with developing relationships
- Assisting the City with establishing an enhanced communications program and providing economic development related content
- Enhanced assistance to the Harbor Director in tenant relations and promotions

### **CONCLUSION**

Staff believes that the services provided under that agreement have been productive and helpful to both City and the business community. Staff would like to update the Scope of Services to be more reflective of our current needs and objectives and maximize the benefits of the arrangement. Staff would like to hear public or City Council thoughts or suggestions prior to finalizing the Scope.

### **ATTACHMENT(S)**

Proposed Scope of Work

**ATTACHMENT 1**  
**TO**  
**RESTATED AND AMENDED AGREEMENT**  
**BY AND BETWEEN THE CITY OF MORRO BAY**  
**AND THE MORRO BAY CHAMBER OF COMMERCE FOR**  
**ECONOMIC DEVELOPMENT SERVICES FOR**  
**FISCAL YEARS 2021/2022, 2022/2023, and 2023/2024**

**SCOPE OF SERVICES**

This scope supports City staff work in Economic Vitality and Community Engagement from the [City of Morro Bay 2023-2025 Goals and Short Term Actions](#).

\*Note – Tasks to be deleted are shown in ~~strikethrough~~ and additions to the scope are shown in RED

1. Designated Proactive Representation

- ~~a. Attend regularly scheduled meetings with the City Manager, Community Development Director and relevant City Departments to coordinate economic development activities in the community and region.~~
- ~~b. Attend Development Review Team meetings as needed and monitor permitting progress for the purpose of expediting commercial projects.~~
- a. Serve as the City of Morro Bay’s designee for Economic Development activities by attending regularly scheduled meetings of the REACH Economic Development Practitioners Network, serving on working subcommittees of the Network, and attending quarterly meetings of the Cal Poly Local Economic Development Council.
- ~~b. Collaborate, through virtual meetings, telephonic calls and meetings with regional Economic Development entities such as the County of San Luis Obispo, Cal Poly Small Business Development Center, Cal Poly Center for Economic Innovation and Entrepreneurship, REACH, and the Cal Poly Local Economic Development Council to align Morro Bay’s economic recovery, reinvention and resiliency efforts with those of the region.~~
- b. Plan and hold monthly team meetings for Economic Development, including Harbor, Community Development, Finance, and Public Works Departments.
- c. Attend Downtown Design District meetings as needed.
- d. Assist the new city manager with establishing relationships with the business community, to include hosting meet-and-greet tours with key groups or individuals.
- e. Meet regularly with property owners and managers to stay current with property availability city-wide and serve as conduit to connect perspective businesses with available properties.
- f. Investigate a public-private partnership for the City to enter into with a Downtown business that provides public restrooms.

## 2. Tactical Execution of ED Strategy

- a. ~~Lead the effort to rebrand Morro Bay as a place to conduct business with the tagline “New Day in Morro Bay,” to promote Morro Bay to the region and beyond as a desirable place to do business.~~
  - i. ~~Contact and meet with owners of opportunity sites that are identified in the Economic Development Strategic Plan.~~
  - ii. ~~Connect with commercial brokers and developers in the region.~~
  - iii. ~~Monitor and engage in implementation and results of Permit Process Improvement Study (2020) recommendations to enhance business/commercial development.~~
- b. ~~Convene developer and commercial broker roundtables to share opportunities and assess Morro Bay’s competitive position.~~
  - a. Chamber host an Economic Development page content to include “Talking to the City” and “Starting your Business,” developed in collaboration with City staff when appropriate.
  - b. ~~Create and host a link to a public access relocation guide on the Chamber website.~~
  - b. *Provide direct assistance to new businesses using the Chamber’s “Roadmap to Success” program, and other strategies, that expands their marketing channels and equips them with the tools necessary to plan for key challenges that new businesses in Morro Bay may encounter. - relocated to new category below.*
  - c. Provide business and entrepreneurship training events (virtual and/or in person) that are available to the general business community on demand-driven topics. Collaborate with SBA funded business resource agencies in the region to deliver this content, as needed.
  - d. ~~Collaborate with Morro Bay Tourism Business Improvement District (MBTBID) to align local and regional economic development efforts with Morro Bay’s Tourism industry.~~
  - d. *Produce Economic development community education engagement opportunities, including the Resilience Roadmaps (Certified Economic Development Strategy) and Offshore Wind.*
  - e. *Assist with selecting, onboarding, and creating content for the City’s forthcoming communications contractor.*
  - f. *Assist the Harbor Department (as requested) with tenant relations, advertising lease opportunities, events and promotions, place-making initiatives, and parking strategies.*
  - g. *Provide assistance with City property disposition strategy for properties identified as catalyst, opportunity, and watch sites in the Economic Development Strategic Plan.*

## 3. ~~Preserve and Materially Enhance Morro Bay’s Small Town Character~~

- a. ~~Execute creative placemaking initiatives to benefit economic centers citywide. Initiatives to include a flagpole banner program in the Downtown Waterfront Strategic Plan area and future projects as identified. External cost~~

- ~~b. Monitor and assist with completion of city wide wayfinding signage.~~
- ~~c. Assess need and feasibility of the formation of a Business Improvement District in the Downtown Waterfront Strategic Plan area. Serve as project manager to oversee stakeholder engagement and production of a Feasibility Study with a professional consultancy firm. External cost \$10k~~

3. Business and Applicant Assistance

- a. Provide direct assistance to new and existing businesses using the Chamber's "Roadmap to Success" program and other strategies that expand their marketing channels and equip them with the tools necessary to plan for key challenges that new and existing businesses in Morro Bay may encounter.
- b. Provide site selection assistance, and serve as a resource to developers or businesses wishing to locate or expand business in Morro Bay.

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AGENDA NO: C-2

MEETING DATE: August 8, 2023

# Staff Report

**TO:** Honorable Mayor and City Council

**DATE:** August 4, 2023

**FROM:** Greg Kwolek – Public Works Director  
Janeen Burlingame – Management Analyst

**SUBJECT:** Information Item to Review Morro Bay Garbage Service Proposed Increase to the Maximum Rate Schedule and Proposition 218 Procedures

## STAFF RECOMMENDATION

Staff recommends the City Council receive the presentation on the Morro Bay Garbage Service (MBGS) proposed increase to the Maximum Rate Schedule and Proposition 218 procedures.

## FISCAL IMPACT

The City's waste hauler, MBGS, an affiliate of Waste Connections, proposes to increase waste collection rates by 20.20% effective October 15, 2023, with an additional 18.38% temporary increase for the first nine months. The proposed increase to waste collection rates will have two impacts on the City. First, City facilities utilize waste collection services at a cost, and this cost would increase the expenditure budget by approximately \$48,000 for the FY 2023-24 budget. These funds are included in the adopted budget and no budget amendment is required. Second, the City's Franchise Fee, which is a 10% fee MBGS pays to the City based on gross revenues received by MBGS, is expected to increase the FY 2023-24 revenue budget by approximately \$92,000.

Beyond impacts to the City, an increase in waste collection rates will impact MBGS's customers in the City. These increases are detailed in the report below.

## BACKGROUND / DISCUSSION

On December 5, 2022, the City received a Rate Application from MBGS proposing to increase the Maximum Rate Schedule effective March 1, 2023 (Attachment 1). Receipt of this application obligated the City to the following processes and procedures:

- The City must evaluate the Rate Application for reasonableness and discuss findings with MBGS,
- The City must follow Proposition 218 noticing requirements,
- The City must facilitate a protest process,
- The City Council must hold a public hearing and vote on the requested rate increase.

The purpose of this staff report is to inform the City Council of the progress, work completed, and next steps on these items.

## Rate Application

The initial Rate Application submitted by MBGS in December showed a \$956,532 shortfall projection in revenue needed to provide the residential and commercial solid waste, recycling, and organic materials services in the City's Franchise Agreement (Agreement) between the City and MBGS. To cover this shortfall, MBGS originally proposed a 30.62% increase to solid waste, recycling, and organic materials collection, processing, and disposal rates.

The Rate Application stated several factors as the basis for the proposed increase, including

Prepared By: <u>JB</u>	Dept Review: <u>GK</u>
City Manager Review: <u>GC</u>	City Attorney Review: <u>LNL</u>

increased wages and materials costs due to inflation. The Rate Application also stated reduced revenues from recyclables contributed to the shortfall. This is largely due to the recycling market not rebounding after initial downturns, as well as excess global supply of recyclables due to limited overseas acceptance of materials during and since the pandemic.

Pursuant to Article 8.3E of the Agreement, the City retained R3 Consulting Group (R3) to evaluate the Rate Application for reasonableness of the rate increase and for compliance with State law. Specifically, R3 staff reviewed the projected revenue and expenditures submitted in the Rate Application and requested additional information from MBGS, including audited financial statements that would provide the base documentation for R3's review. Staff from the City and R3 met with MBGS several times to gather more information. This resulted in the following recommended changes to the MBGS's Rate Application, which were accepted by MBGS:

- Depreciation
  - Change in depreciation schedule for containers and vehicles
  - \$19,488 decrease to the Rate Application submitted
- Company Return
  - Change based on industry standards and cost adjustments noted above
  - \$306,515 decrease to the Rate Application submitted
- Franchise Fees
  - Change in calculation to more accurate method based on industry standard
  - \$36,151 decrease to the Rate Application submitted

In short, after reviewing MBGS' rate proposal and financial data, staff and R3 were able to find means of negotiating-down several of MBGS' proposed rates, while still allowing the company to recover its costs of providing refuse service as permitted by Proposition 218. After factoring in changes to various expense categories identified above, the total projected expenses in the Rate Application submitted were reduced from \$4,534,126 to \$4,171,972 (\$362,154). As such, the total revenue required to provide solid waste, recycling, and organic materials collection, processing, and disposal services in the Agreement based on the changes to the Rate Application submitted are now \$4,171,972. Table 1 below summarizes the adjustments to projected costs and revenue requirement.

Table 1: Rate Application Projected Expenses and R3 Recommended Adjustments

	Proposed 2023	Adjustment	Adjusted 2023
<b>MBG Expenses</b>			
Direct Labor and Benefits	\$941,290	\$0	\$941,290
Truck	\$423,690	\$0	\$423,690
Depreciation	\$410,591	-\$19,488	\$391,103
Facilities and Utilities	\$74,135	\$0	\$74,135
Organics Processing	\$293,945	\$0	\$293,945
Tip Fees	\$554,800	\$0	\$554,800
Administrative Salaries & Benefits	\$175,691	\$0	\$175,691
Insurance and Risk Management	\$286,454	\$0	\$286,454
Bad Debt	\$3,036	\$0	\$3,036
Interest	\$40,813	\$0	\$40,813
Other Administrative	\$234,637	\$0	\$234,637
Rate Study Cost*	\$36,168	\$0	\$36,168
AB 939/Regulatory Fees	\$34,800	\$0	\$34,800
<b>Total</b>	<b>\$3,510,049</b>	<b>-\$19,488</b>	<b>\$3,490,561</b>
<b>Company Return</b>			
<b>Total</b>	<b>\$606,897</b>	<b>-\$306,515</b>	<b>\$300,382</b>
<b>Franchise Fees</b>			
<b>Total</b>	<b>\$453,348</b>	<b>-\$36,151</b>	<b>\$417,197</b>
<b>Revenue Requirement</b>	<b>\$4,534,126</b>	<b>-\$362,154</b>	<b>\$4,171,972</b>

\*The Rate Study Cost is a one-time expense and is not included in the regular percent rate increase but instead is treated as an independent temporary rate increase. This cost has been removed from the calculated Revenue Requirement above.

R3 also reviewed the total projected revenues in the Rate Application. Based on information provided by MBGS, R3 found MBGS's revenue projections for residential and commercial revenues to be reasonable and in alignment with audited financial statements. Total projected revenues for 2023 without any increase to the Maximum Rate Schedule are \$3,470,742.

The Rate Application projected a \$956,532 shortfall in revenue needed to cover projected expenditures to provide the solid waste, recycling, and organic materials services in the Agreement. With the recommended adjustments detailed above, the projected shortfall in revenue needed to cover costs decreased to \$701,230.

R3 prepared and submitted to the City and MBGS a report (Attachment 2) on its review of the Rate Application with recommendations on adjustments to various costs as noted previously resulting in a reduction of the proposed rate increase from 30.62% to 20.20%. However, the original requested rate increase was to go into effect on March 1, 2023, was then pushed back to October 15, 2023, due to the thorough review of rates and negotiations with MBGS. Since the increased costs of service claimed by MBGS have continued to be incurred, MBGS is seeking an additional, temporary retroactive increase of 18.38% for nine months following the effective date of October 15, 2023, in order to recoup the costs of providing waste services in the interim period.

In sum, the City's independent consultant, R3, reviewed, audited and in conjunction with City staff negotiated the proposed waste collections rate schedule to a level found to be requisite for covering the costs of providing services for refuse, recyclables, and organic collection and processing and as in accordance with applicable law.

Consumer Price Index Adjustments

Proposition 218, specifically Government Code Section 53756, allows for five years of inflationary adjustments to be made to the Maximum Rate Schedule with year 1 being the time when the Maximum Rate Schedule is adopted. As the Maximum Rate Schedule is proposed to be effective October 15, 2023, that would be year 1, and the next inflationary adjustment (year 2 of 5) would occur January 1, 2024, followed by years 3 through 5 inflationary adjustments occurring January 1 of 2025, 2026, and 2027 as illustrated below:

Year 1	Year 2	Year 3	Year 4	Year 5
10/15/23 Maximum Rate Schedule Adoption	1/1/24-12/31/24 CPI Increase	1/1/25-12/31/25 CPI Increase	1/1/26-12/31/26 CPI Increase	1/1/27-12/31/27 Final CPI Increase

After five years, the solid waste rates would remain as the rates set in that fifth year's Maximum Rate Schedule until another Proposition 218 public hearing process is performed to enact another five years of automatic inflationary adjustments.

An example illustrating the percentage increase breakdown for the most subscribed-to residential account is shown below:

Current 32-gallon rate (49% of residential subscriptions)	\$ 24.95
20.20% Rate Increase (after R3 adjustments agreed to 08/01/23)	\$ 5.04
<hr/>	
32-gallon rate before temporary retroactive amount included	\$ 29.99
R3 Consulting Rate Review Cost (temporary retroactive)	\$ 0.38
Retroactive rate dollar amount 7 months lost revenue to cover increased expenses and 9 months to recapture that revenue	\$ 4.22
<hr/>	
<b>32-gallon cart rate effective 10/15/23 with temp retroactive included</b>	<b>\$ 34.59</b>
Jan. 1, 2024 CPI (estimated 3%)*	\$ 0.90
Jan. 1, 2024 Rate through duration of Retro thru June 30, 2024	\$ 35.49
Less Retroactive at expiration (June 30, 2024)	\$ (4.60)
July 1, 2024 Rate Following Retro Roll Off*	\$ 30.89

\*Note: Estimated CPI at 3%. Actual CPI to be calculated based on Sept. 2023 vs Sept. 2022 change.

Regional Rate Comparison

R3’s report also provides information on solid waste rates charged to surrounding communities to get an understanding of the industry in the Central Coast region, including rates from various locations in Monterey and Santa Barbara counties. While not a complete apple to apple comparison as each community has unique factors that affect its solid waste rates, a general comparison can be made to evaluate the reasonableness of the proposed rates in Morro Bay to those charged within the region.

With the proposed 20.20% increase in rates, the City remains competitive when compared to other communities in the San Luis Obispo county region. The most popular residential levels of service in Morro Bay are 19- and 32-gallon carts, and the proposed rates for these service levels are 39.43% and 33.85% lower than the average rates in the region resulting in most City residents paying significantly less than neighboring communities for the same service. These two levels of service represent about 75% of residential accounts (26% 19-gallon and 49% 32-gallon).

Additionally, the rate for the 64-gallon cart is lower than the average at 13.24%. This level of service represents about 20% of residential accounts.

The 96-gallon cart was slightly higher than the average at 2.87%. This level of service represents about 5% of residential accounts.

While a comparison of commercial rates was not performed for all the different permutations of service levels, the most common commercial service level for a 2-yard container was compared to the region and found to be 10.09% higher than average.

Waste Connection Affiliates Surrounding Areas in SLO County							
Service Size	Morro Bay (current)	Cambria	Cayucos	Los Osos CSD <sup>1</sup>	SLO City	Morro Bay w/20.2% Increase (18.38% retro not included)	Morro Bay w/20.2% Increase (18.38% retro included)
19 Gallon	\$ 15.39	N/A	N/A	\$ 34.94	\$ 14.31	\$ 18.50	\$ 21.33
32 Gallon	\$ 24.95	\$ 40.30	\$ 31.65	\$ 49.68	\$ 22.84	\$ 29.99	\$ 34.58
64 Gallon	\$ 49.90	\$ 80.59	\$ 37.39	\$ 76.28	\$ 45.69	\$ 59.98	\$ 69.15
96 Gallon	\$ 74.86	\$ 120.92	\$ 43.18	\$ 81.81	\$ 68.54	\$ 89.98	\$ 103.74
2 yard (1X/WK)	\$ 186.27	\$ 196.06	\$ 178.95	\$ 288.02	\$ 179.82	\$ 223.90	\$ 258.13

Non-Waste Connection Affiliates Surrounding Areas in SLO County						
Service Size	Atascadero	Paso Robles	Templeton	San Miguel <sup>2</sup>	Mid-State Area (rural North SLO County, Santa Margarita) <sup>4</sup>	SLO County Regional Average
19 Gallon	N/A	\$ 37.11	N/A	N/A	N/A	\$ 30.87
32 Gallon	\$ 32.23	\$ 42.14	\$ 39.45	\$ 45.42	\$ 58.98	\$ 40.30
64 Gallon	\$ 51.28	\$ 55.86	\$ 55.65	\$ 63.99	\$ 86.33	\$ 61.45
96 Gallon	\$ 64.43	\$ 61.86	\$ 61.53	\$ 83.90	\$ 113.61	\$ 77.75
2 yard (1X/WK)	\$ 167.35	\$ 183.23	\$ 152.37	\$ 163.70	\$ 320.89	\$ 203.38

When comparing the percentage increase of rates to other communities in the region operated by Waste Connections affiliates, the proposed 20.20% ranks the second lowest behind the 17.75% increase to City of San Luis Obispo rates, and ahead of Cambria, Cayucos, and Los Osos with increases of 41.46%, 43.30%, and 50.97% respectively before any temporary retroactive amount is factored in.

When comparing the percentage increase of rates to other communities in the region not operated by Waste Connection affiliates, the proposed 20.20% ranks lowest behind the 22.19% increases for Arroyo Grande, Grover Beach, and Pismo Beach respectively before any temporary retroactive amount is factored in.

Jurisdiction	Rate Increase %	Temp. Retro %	Total RI% + Temp.	Effective Date
Los Osos CSD	50.97%	31.25%	82.22%	4/1/2023
Cayucos	43.30%	0%	43.30%	10/1/2022
Cambria	41.46%	20.73%	62.19%	10/1/2022
Arroyo Grande	22.19%	5.12%	27.31%	6/15/2022
Grover Beach	22.19%	5.12%	27.31%	6/15/2022
Pismo Beach	22.19%	0%	22.19%	5/1/2022
<b>Morro Bay</b>	<b>20.20%</b>	<b>18.38%</b>	<b>38.58%</b>	<b>10/15/2023</b>
City of SLO	17.75%	8.88%	26.63%	5/1/2022

### Previous Rate Adjustment

The last adjustment to solid waste rates occurred July 1, 2022, where rates increased by 9.07%. Several factors contributed to this rate increase including increased costs associated with capital investments for truck replacements due to California Air Resources Board regulations, increased demand of the food/organics program to comply with SB 1383 regulations, replacement of collection containers and equipment, as well as increased costs associated with the anaerobic digester facility that processes organic waste. The anaerobic digester is an important facility in our region's effort to meet SB 1383 requirements and City goals to be carbon neutral. It was the first of its kind in the United States and there were unanticipated challenges in initial plant construction, quality and quantity of feedstock resulting in the need for more frequent equipment and parts maintenance, and lower than expected gas production resulting in additional Fats, Oils, and Grease ("FOG") processing equipment purchases not originally contemplated.

Audited financial statements were not completed in time for MBGS to prepare one rate adjustment application in 2022 that would include both the adjustments needed for the anaerobic digester increased costs, SB 1383 capital and operating costs, and increased operating and capital costs resulting from impacts due to the pandemic and other cost increases outpacing annual CPI. Consequently, MBGS proposed the City process two separate rate adjustment applications: the previous rate adjustment application that was adopted and was effective July 1, 2022, and the current Rate Application that will go through the Proposition 218 process and become effective October 15, 2023 should no majority protest occur and the City Council approve.

Handling the two rate adjustment applications in this manner will result in lower incremental increases to the rate payers when compared with one large rate adjustment request in 2023. The total rate increase to the rate payers for both these rate adjustments comes to 29.27% (temporary retroactive amount not included).

### **Noticing, Protest Process, and Public Hearing**

On September 13, 2022, the City Council approved the Restated Solid Waste, Recycling, and Organic Services Franchise Agreement (Agreement) with MBGS to provide solid waste, recycling, and organic materials services to City of Morro Bay residential and commercial customers. The Agreement added required elements of SB 1383 as well as updated the rate setting process to reflect requirements of Proposition 218. As such, the process for rate adjustments changed from the previous San Luis Obispo Rate Setting Manual methodology of a base year setting of rates plus two annual Consumer Price Index (CPI) adjustments to a process with a Maximum Rate Schedule to set rates and five annual adjustments based on the CPI changes.

The terms of how new rates are set are established in the Agreement. Article 8 of the Agreement outlines compensation and rates for MBGS, setting and adjusting a Maximum Rate Schedule, as well as Proposition 218 compliance to determine revenue adequacy while ensuring the community is receiving quality service at reasonable rates. Additionally, Article 8.2A states the City and MBGS "may mutually agree to adjustments or increases to the Maximum Rate Schedule" and that "any increases to the Maximum Rate Schedule are strictly subject to the assent of the City and compliance with Proposition 218." Article 8.3D states "the City will exercise its powers reasonably and in good faith and shall favorably consider and shall accord proper weight to a Maximum Rate Schedule proposal if accompanied by substantial supporting evidence."

### Proposition 218

Per the Agreement, the City must follow Proposition 218 noticing and hearing requirements when considering rate increases for solid waste services. The requirements are as follows:

- **Noticing Requirement:** A notice of the proposed rate increase to both property owners and customers must be mailed out at least 45 days in advance of the public hearing. The notice must specify the basis of the fee, the reason for the fee, and the date/time/location of the public hearing where the proposed rates will be considered/adopted. This notice is prepared and sent by the waste hauler, but City staff will review prior to mailing.

- Public Hearing: The City must hold a public hearing prior to adopting the proposed rate increase.
- Majority Protest: A proposed rate increase is subject to majority protest. If more than 50% of affected property owners submit a written protest against the proposed rate increase, the increase cannot be adopted. Written protests must be received prior to the close of the public hearing and cannot be submitted electronically. The person signing the protest must either be the property owner or the customer of record. In the event a protest is submitted by the owner and also by the tenant responsible for payment of the bill, one valid protest is counted for the parcel.

Proposition 218 enacted Article XIID, §6 of the California Constitution in 1996, which regulates the development of rate increases. Specifically, it requires:

1. Revenues derived from fees or charges for property-related service not to exceed the cost to provide service;
2. Revenues derived from fees or charges not to be used for any purpose other than that for which it was imposed;
3. The amount of a fee or charge upon an account not to exceed the proportional cost of the service attributable to the parcel;
4. No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property; and,
5. No fee or charge may be imposed for general governmental services.

More specifically, California Constitution Article XIID, § 2 defines “fee” or “charge” as “including a user fee or charge for a property related service.” Notably, these “property-related fees” are a category of charges distinct from other exactions regulated by Proposition 218, such as “assessments” or “taxes,” and as such property-related fees bear a unique procedural protocol - i.e., the “majority protest” process. Proposition 218 expressly permits a service provider (whether direct municipal services or via contracted services) to recover their costs of providing such property-related services.

Morro Bay Municipal Code Sections 8.18.040 through 8.18.060 state all single-family, multi-family, and commercial premises are to subscribe to and pay for the City’s three-container collection services for weekly collection of recyclable materials, organic materials, and solid waste generated. As such, refuse rates related to these subscriptions are “property-related” as a requirement of owning or operating a site within the City. Due to this, the City is required to go through the public hearing and notification process outlined in Proposition 218 for solid waste rate adjustments.

Next Steps

The next step to the rate increase process is the preparation of a Proposition 218 notice for mail out to the property owners and accountholders in the City. The notices will be sent by MBGS in a form substantially similar to historical practices for Proposition 218 notices on waste collection rates. Once received, MBGS customers and property owners in Morro Bay will have the opportunity to submit a written protest to the City Clerk before the close of the public hearing, which will be held at the City Council’s October 10, 2023 meeting.

**CONCLUSION**

Staff recommends the City Council receive the presentation on the Morro Bay Garbage Service proposed increase to the Maximum Rate Schedule and Proposition 218 procedures.

**ATTACHMENTS**

1. Morro Bay Garbage Service Rate Adjustment Application Submitted 12/5/22
2. R3 Consulting Group, Inc. August 5, 2023 Review of 2023 Rate Adjustment Request Report



- SAN LUIS GARBAGE
- SOUTH COUNTY SANITARY
- MISSION COUNTRY DISPOSAL
- MORRO BAY GARBAGE



*Safety • Integrity • Service*

December 5, 2022

Ms. Janeen Burlingame  
City of Morro Bay  
595 Harbor Street  
Morro Bay, CA 93442

Subject: Morro Bay Garbage 2023 Adjustments to the Maximum Rate Schedule

Dear Ms. Burlingame,

Please find attached Morro Bay Garbage's (MBG) support for adjusting the maximum rate schedule. As you are aware, there has been significant upward pressure on solid waste and recycling rates from almost every direction. This letter summarizes the forces that are contributing to this increase and lays out the proposed timeline for implementing the increase. Ultimately, we request a rate adjustment of 30.62 %, effective March 1, 2023.

#### **Forces Contributing to Increase**

The City showed foresight in granting MBG's request for a 9.07% extraordinary increase in July 2022. At that time, we identified specific cost drivers of organics processing and capital replacement requirements. We also explained that the extraordinary increase was a down payment to cushion the effect of numerous additional cost pressures that are accounted for in this maximum rate schedule request. Our revenue offset calculation, which represents our current revenue run rate prior to this request, includes an annualization of the July 2022 increase that ensures that ratepayers receive credit for it.

The historical test period used is the 12 months ended August 31, 2022. To estimate the effect of 2023 general inflation, our projection includes a 9.0%<sup>1</sup> increase to most general costs. Recycling commodity markets are a special concern to our industry. Supply of commingled materials and cardboard now exceeds demand and market prices have tumbled dramatically since the middle of Q2 of 2022. Our projection includes an increase in processing costs over the test period.

The previous base year of 2019 reflected pre-pandemic times, and an economy that did not anticipate the labor and supply chain problems that have increased the wages we must pay to retain drivers, the cost of steel to purchase and repair containers and trucks, the cost of petroleum and related products, such as tires, and the everyday costs of items generally used in

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<sup>1</sup> Equals the percentage change in the US City Average CPI-U, seasonally adjusted, for 12 months ended June 30, 2022

business. Our historical year, indexed for 2023, reflects how these and other cost drivers have specifically affected MBG as opposed to a generic urban consumer.

When our current 30.62% request is combined with the mid-year increase of 9.07%, City rate payers will experience a combined adjustment of 40% over a two-year period. These increases are not unique to Morro Bay. In the north coast area Cambria and Cayucos are up over 50% during the same period. In addition, the Los Osos CSD and the County portion of the north coast are looking at increases over 50-70%. The mid-year increase really helped spread out the cost to the City of Morro Bay community.

### **Timing**

We understand these are increases come at a time when inflation is high, but we can meet and discuss any part of the maximum rate schedule adjustment. We previously discussed a schedule to release a Proposition 218 notice in late December or early January for a rate hearing in February 2023. New maximum rates would become effective on March 1, 2023.

Our management team has reviewed and accepts responsibility for this rate request. This application is based upon what our management team feels is the best course of action based on the conditions outlined in this letter.

We appreciate our continued partnership between the City and Morro Bay Garbage and allowing us to service our community's solid waste and recycling collection needs.

Sincerely,



Jeffrey Clarin, P.E.  
District Manager  
Morro Bay Garbage Company  
Waste Connections  
Cell: 805-748-8041



## Morro Bay Garbage

### Rate Adjustment Application For Rates to Be Effective March 1, 2023

#### **Financial Information**

	Projected Base Year 2023
7. Direct Labor and Benefits	\$941,290
8. Tipping Fees (Solid Waste & Recycling)	\$554,800
9. Organics Processing	\$293,945
10. Truck	\$423,690
11. Depreciation	\$410,591
12. Facilities and Utilities	\$74,135
13. <b>Operating Costs</b>	<b>\$2,698,450</b>
14. Administrative Salaries & Benefits	\$175,691
15. Insurance and Risk Management	\$286,454
16. Bad Debt	\$3,036
17. Interest	\$40,813
18. Other Administrative	\$234,637
19. <b>Administrative Costs</b>	<b>\$740,631</b>
20. Franchise Fees	\$346,497
21. AB 939/Regulatory Fees	\$34,800
22. <b>Regulatory Costs</b>	<b>\$381,297</b>
23. <b>Hauler Service Fee</b>	<b>\$606,897</b>
24. <b>Revenue Requirement</b>	<b>\$4,427,274</b>

## Morro Bay Garbage

### Rate Adjustment Application For Rates to Be Effective March 1, 2023

#### Calculation of Rate Adjustment

	Projected Base Year <b>2023</b>
<b>Base Year Revenue (without a price adjustment)</b>	
25. Total Residential	\$ 1,779,838
26. Total Commercial and Multifamily Revenue	\$ 1,685,129
27. Other Income	\$ 5,776
28. Adjustments to Base Year Revenue	\$ -
<b>29. Total Base Year Revenue before Price Adjustment</b>	<b>\$ 3,470,742</b>

#### Calculation of Surplus (Shortfall) and Revenue Adjustment Percentage

30. Revenue Requirement (from Page 2)	\$ 4,427,274
31. Base Year Revenue from Above	\$ 3,470,742
32. Net Surplus (Shortfall)	\$ (956,532)
<b>33. Percentage Increase/(Decrease) required to Base Rates to Eliminate Surplus(Shortfall)</b>	<b>27.56%</b>

#### Percentage Change in Rates

34. Total Residential and Commercial Revenue without Increase in Base Year (pg.3, lines 19+39)	\$ 3,470,742
35. Percent Change in Residential and Commercial Revenue Requirement	27.56%
36. <u>Franchise Fee Adjustment Factor</u>	90%
37. Percent Change in Existing Rates	<b>30.62%</b>

# REPORT

City of Morro Bay

## Review of 2023 Rate Adjustment Request

*Submitted electronically: August 4, 2023*







August 4, 2023

Ms. Janeen Burlingame  
Management Analyst  
Public Works Department  
955 Shasta Avenue  
Morro Bay, CA 93442  
*submitted via email: jburlingame@morrobayca.gov*

**SUBJECT: Review of Morro Bay Garbage Company's 2023 Rate Adjustment Request – Report**

Dear Ms. Burlingame,

R3 Consulting Group (R3) is engaged by the City of Morro Bay (City) to review the 2023 Rate Adjustment Request by its franchised hauler, Morro Bay Garbage Company (MBG), a subsidiary of Waste Connections. This report presents the results of R3's review of the 2023 rate adjustment request for MBG.

MBG's original Rate Adjustment Request calculated a net shortfall in revenues for 2022 of approximately **\$956,532** with a requested rate increase of **30.62%**. However, it was determined in the initial review that MBG miscalculated franchise fees and as a result, the revised request calculated a net shortfall of **\$1,063,384**, with a requested rate increase of **30.64%**. Subsequent to completion of the review, the Rate Adjustment Request was revised to reflect a rate increase of **20.20%**, based on a revised revenue shortfall of approximately **\$701,230**.

Any rate adjustment resulting from this rate request from MBG was scheduled to be implemented on March 1, 2023. However, because of the size and complexity of the request and the need to engage an outside firm with specific knowledge, the process took a number of months to evaluate and negotiate this rate adjustment. Therefore City staff and MBG have agreed to recommend an additional but temporary "retro-active" rate adjustment for the prior 9-months to allow MBG to regain lost revenue from implementing a rate adjustment in October rather than March 1, 2023.

\* \* \* \* \*

We appreciate the opportunity to be of service to the City and would like to thank MBG's staff for their support during the review. Staff were very responsive and provided us with requested information in a timely fashion.

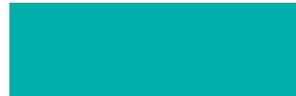
Sincerely,

Jordan Muratsuchi | *Sr. Project Analyst*  
**R3 Consulting Group, Inc.**  
916.655.2104 | jmuratsuchi@r3cgi.com

Scott Hanin | *Principal*  
**R3 Consulting Group, Inc.**  
510.812.7144 | shanin@r3cgi.com

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# 1. INTRODUCTION

## Background

### Service Areas

The City has an exclusive franchise agreement with MBG to collect and remove for disposal and recycling, residential and commercial solid waste and recyclable materials (including organic materials), which expires On December 31, 2040, with the City's option to extend up to three years.

MBG's parent company, Waste Connections, services multiple communities in San Luis Obispo County and services multiple other franchise regions with individual agreements.

### Overview of Rate Setting Process

MBG contacted the City to request a rate study to evaluate their rate adjustment request to determine the actual cost of providing service compared to the revenue generated by service rates. The City agreed to the study and hired R3 to assist in evaluating MBG's request.

Historically, the rate setting process was governed by the City of San Luis Obispo Rate Setting Manual. However, in the City's new Agreement with MBG, signed in 2022, the process moves away from the historical San Luis Obispo Rate Setting Manual and relies primarily on annual adjustments based on the Consumer Price Index (CPI). This approach is becoming quite common throughout California in an effort to simplify rate setting and shift most of the risk to the service provider based on their experience and rates agreed to at the start of the agreement. Because of this change, the new Agreement does not provide guidance or structure for a detailed rate setting review/rate study, as would be common with this type of engagement. Therefore, most of the requested adjustments are reviewed based on historical precedent, industry standards and best practices.

Article 8 of the Agreement discusses the rate adjustment process. This Article covers the annual CPI adjustment process and the requirements for following Proposition 218. Particularly, Section 8.3 (D) states that the Agreement "contemplates that the City will exercise its powers reasonably and in good faith, and shall favorably consider and shall accord proper weight to a Maximum Rate Schedule proposal if accompanied by substantial supporting evidence." As a result, the City has the power to exercise discretion in approving rate adjustments but shall also favorably consider such adjustments if accompanied by approved support for the request.

### Rate Adjustment Request Review Process

As supporting documentation for the request, MBG submitted financial statements for the previously completed fiscal year, which serve as the base documents for the Rate Adjustment Request. The review of the Rate Adjustment Request confirmed financial status by evaluating audited financial statements from 2020-2022 as well as the projected expenses for 2023. MBG also provided substantial supporting documentation to support its application as requested by R3.

### Proposition 218

To increase rates for solid waste services, the City intends to comply with Article XIID, Section 6 of the California Constitution, which was enacted by Proposition 218 in 1996. This Section requires that (1) revenues derived from fees or charges for property-related service not exceed the cost to provide service; (2) revenues derived from fees or charges not to be used for any purpose other than that for which it was imposed; (3) the amount of a fee or charge upon an account not exceed the proportional cost of the service attributable to the parcel; (4) no fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property; and, (5) no fee or charge may be imposed for general governmental services.

The procedural requirements of Proposition 218 for all solid waste rate increases are as follows:

- › Noticing Requirement: The City must mail a notice of proposed rate increases to all affected property owners. The notice must specify the basis of the fee, the reason for the fee, and the date/time/location of a public rate hearing at which the proposed rates will be considered/adopted.
- › Public Hearing: The City must hold a public hearing prior to adopting the proposed rate increases. The public hearing must be held not less than 45 days after the required notices are mailed.
- › Rate increases Subject to Majority Protest: At the public hearing, the proposed rate increases are subject to majority protest. If more than 50% of affected property owners submit written protests against the proposed rate increases, the increases cannot be adopted.

The review of MBG's rate request was based on the projected costs to provide solid waste collection and post-collection services to all accounts (i.e., residential and commercial) in the City. The proposed rate adjustment is based on the overall revenue required to fund all of MBG's Morro Bay operations, and rates will be adjusted similarly across all lines of business, consistent with past practice and common in the solid waste industry.

## Scope of Analysis

***The review of the Rate Adjustment Request included but was not limited to the following:***

- › Reviewed and documented the prior 2019 Base Year Rate Application adjustments, and their potential application to the 2023 Rate Adjustment;
- › Reviewed the 2023 Rate Adjustment Request for consistency with the Franchise Agreement;
- › Reviewed the 2023 Rate Adjustment Request for mathematical accuracy;
- › Reviewed MBG's 2020, 2021, and 2022 audited financial statements;
- › Reviewed 2022 and 2023 projected revenues and expenses for reasonableness, including general consistency with changes in reported revenues, accounts, and tonnages; and
- › Reviewed MBG's survey of rates in neighboring communities.

## 2. REVIEW OF RATE APPLICATION

All expenses were examined, and supporting documentation and justification was requested from MBG and reviewed by R3. R3, MBG and the City held multiple discussions on several cost items. Based on industry standards, our industry experience, and consistency with City operations and the County's communities, R3 recommends the following adjustments to the Rate Adjustment Request. The adjustments R3 recommends are discussed in this section.

**Table 1** below illustrates the Revenue Requirement, showing the expenses of MBG's original request alongside R3's proposed adjustments.

**Table 1: MBG's Requested Expenses (Rates) and R3's Adjustments**

	Proposed 2023	Adjustment	Adjusted 2023
<b>MBG Expenses</b>			
Direct Labor and Benefits	\$941,290	\$0	\$941,290
Truck	\$423,690	\$0	\$423,690
Depreciation	\$410,591	-\$19,488	\$391,103
Facilities and Utilities	\$74,135	\$0	\$74,135
Organics Processing	\$293,945	\$0	\$293,945
Tip Fees	\$554,800	\$0	\$554,800
Administrative Salaries & Benefits	\$175,691	\$0	\$175,691
Insurance and Risk Management	\$286,454	\$0	\$286,454
Bad Debt	\$3,036	\$0	\$3,036
Interest	\$40,813	\$0	\$40,813
Other Administrative	\$234,637	\$0	\$234,637
Rate Study Cost*	\$36,168	\$0	\$36,168
AB 939/Regulatory Fees	\$34,800	\$0	\$34,800
<b>Total</b>	<b>\$3,510,049</b>	<b>-\$19,488</b>	<b>\$3,490,561</b>
<b>Company Return</b>			
<b>Total</b>	<b>\$606,897</b>	<b>-\$306,515</b>	<b>\$300,382</b>
<b>Franchise Fees</b>			
<b>Total</b>	<b>\$453,348</b>	<b>-\$36,151</b>	<b>\$417,197</b>
<b>Revenue Requirement</b>	<b>\$4,534,126</b>	<b>-\$362,154</b>	<b>\$4,171,972</b>

\*The Rate Study Cost is a one-time expense and is not included in the regular percent rate increase but instead is treated as an independent temporary rate increase. This cost has been removed from the calculated Revenue Requirement above.

### Operating Costs

#### Depreciation

MBG projected \$410,591 in 2023 Depreciation expenses, citing the need for new vehicles to comply with the Agreement, which states collection vehicles cannot be older than 10 years. MBG also included costs for new SB 1383 approved containers. MBG used a 10-year straight-line method for calculating its

## Review of Rate Application

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depreciation on vehicles and a 7-year straight-line method for depreciation on containers. The use of a 10-year depreciation schedule for vehicles is in alignment with the Agreement that no vehicles shall be older than 10 years. However, today most franchises agree to a longer depreciation schedule for containers.

### Assessment

MBG provided their depreciation inventory and calculations. The majority of MBG's depreciation is on vehicles and containers. MBG allocates depreciation from their total company amount to each individual franchise based on percentages of container counts, customer counts, and vehicle driver hours.

Upon discussion with the City and MBG, it was agreed that containers would also be depreciated on a 10-year schedule. Additionally, it was found that MBG's final depreciation calculation actually used a 7-year depreciation schedule instead of the agreed upon 10-year schedule, which R3 adjusted.

Depreciation expenses were reduced as a result of depreciating vehicles and containers over a 10-year period.

### Adjustments

Reduced Depreciation expenses to \$391,103.

## Company Return

Service rates are based on a projected revenue requirement that is intended to cover all of the company expenses, pass through costs, city fees and a reasonable return. The actual amount of the return depends on the then-current economic conditions, actual expenses and management decisions. Because the actual company expenses are higher than originally anticipated when developing the initial rates for the new agreement and therefore were not generating what was believed to be a fair rate of return based on current industry norms, the company requested an adjustment to their return.

### Assessment

R3 adjusted MBG's projected return based on industry standards and to accommodate the other adjustments discussed above.

### Adjustments

Adjusted MBG's projected return to \$300,382.

## Other Costs

### Franchise Fees

MBG remits to the City a monthly Franchise Fee of 10% of gross revenues. This fee is considered a pass-through cost adjusted each year equal to any rate adjustment.

### Assessment

Franchise Fees are to be projected as 10% of projected gross revenues. MBG projected a 2023 Franchise Fee expense of \$453,348. MBG provided supporting calculations for the franchise fee, however R3's analysis identified a recommended adjustment to the franchise fee calculation method to match projected revenue more accurately with required revenue. This is described in more detail later in this report.

### Adjustments

Reduced Franchise Fees to \$417,197 based on the adjustments noted above.

## Review of Rate Application

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### Total Projected Expenses

MBG's total projected expenses yields the total revenue requirement - the total annual revenue required from rate payers. The total revenue requirement based on the revised Rate Application is \$4,171,972, reduced from the original Rate Application of \$4,534,126. This does not include the cost of the Rate Study, which is addressed as part of the "retro-active" amount that will be calculated as noted previously in this report.

### Total Projected Revenues

MBG projected a 1.00% increase in total revenues for 2023 as compared to the current 2022 projected revenues, resulting in projected 2023 revenue of \$3,470,742 (without any rate adjustment).

### Assessment

MBG provided calculations supporting their projected revenues. MBG provided actual total revenues. We assessed the reasonableness of MBG's projected residential and commercial revenues and based on this analysis we found MBG's revenue projections to be reasonable and in alignment with audited financial statements.

### Adjustments

No adjustment.

### 3. FRANCHISE FEE CALCULATION

MBG included an additional franchise fee calculation step that was taken from the previously-used San Luis Obispo (City) Rate Setting Manual’s methodology. The Rate Setting Manual calculates the “Percent Change in Residential and Non-Residential Revenue Requirement” by dividing the net revenue shortfall/surplus by the total rate revenue expected without a Base Year increase.

The Rate Setting Manual then instructs the applicant to further adjust the calculated result, to account for additional franchise fees to be paid on the net revenue shortfall.

Table 2 can be used to follow MBG’s rate request to arrive at the final proposed revenue and franchise fee expense, including the adjustment for additional franchise fees on the revenue shortfall.

**Table 2: MBG's Franchise Fee Calculation Flow from Original Application**

	FYE 6/30/22	Initial Increase	Before Gross Up	Additional Fee Gross Up	Company Proposal
Revenue	3,470,742	956,532	4,427,274	106,210	\$ 4,533,484
<i>% Increase on 2022 revenue base</i>		27.56%		3.06%	30.62%
Franchise Fees	\$346,497	95,653	\$442,150	\$11,198	\$453,348
<i>% Increase on 2022 fee base</i>		27.61%		3.23%	30.84%

This method of calculating franchise fees is less accurate than the industry standard method and is no longer recommended for use. The mathematical formulas for both methods are shown below.

**The following calculations demonstrate the Rate Setting Manual's methodology that was used by MBG:**

**A**

$$\% \text{ Change in Rate Rev. Requirement} = \frac{\text{Net Shortfall (Surplus)}}{\text{Total Rate Revenue without an Adjustment}} * 100\%$$

**B**

$$\% \text{ Total Change in Existing Rates} = \frac{\% \text{ Change in Rate Rev. Requirement}}{100\% - \text{Franchise Fee \%}} * 100\%$$

**The recommended calculation is presented below:**

$$\% \text{ Change in Existing Rates} = \left( \frac{\text{Revenue Requirement}}{\text{Total Rate Revenue without an Adjustment}} - 1 \right) * 100\%$$

This recommended change was made to MBG’s rate application and should represent accurate Franchise Fee generation for the duration of the term.

## 4. FINDINGS

### Revised Rate Adjustment

MBG's original 2023 Rate Adjustment Request calculated a net shortfall in revenues for 2022 of approximately \$956,532 with a requested rate increase of 30.62%. However, it was determined in the initial review that MBG miscalculated franchise fees and as a result, the revised request calculated a net shortfall of **\$1,063,384**, with a requested rate increase of **30.64%**. Subsequent to completion of the review, the Rate Adjustment Request was revised to reflect a rate increase of **20.20%**, based on a revised revenue shortfall of approximately **\$701,230**.

***The difference between the adjusted rate adjustment and MBG's calculated rate adjustment is due to the following:***

- › Reduced Depreciation by \$19,488.
- › Reduced operating return because of the above adjustments.
- › Reduced franchise fees because of the above adjustments.

## 5. RATE COMPARISON

When adjusting solid waste rates, it's common to also compare the City's rates to surrounding communities to get a general understanding for the regional industry. No rate comparison is perfect and every community has unique factors that affect their own solid waste rates. However, general comparisons can be made to evaluate whether the City's rates are within the reasonableness of the region. Should the City be a major outlier in terms of its rates, there may be factors at play that could be further assessed.

Including a proposed 20.20% increase to rates, Morro Bay remains competitive among regional communities. The City's rate for a 19-Gallon cart is 38.65% lower than the average, while the City's rate for a 32-Gallon cart is 24.56% lower than the average. It's worth noting that the 19-Gallon and 32-Gallon cart sizes are by far the most popular option among the City's residents with the purpose of maximizing recycling and reducing disposal. The majority of the City's residents are therefore paying significantly less for the same service in neighboring and regional communities.

The 64-Gallon cart is 7.09% higher than the average, whereas the 96-Gallon cart is 29.30% higher than the average. This higher cost likely influences some customers to migrate to smaller, less expensive garbage cart sizes.

The rate for a 2 cubic yard commercial bin serviced once a week (the most common commercial subscription level) is 5.41% higher than the average and is thus in line with the regional industry.

The City's solid waste rates are largely competitive and for most customers the rates compare favorably to several regional communities.

**Table 3: Community Rate Comparison**

	Community	19-Gallon Cart	32-Gallon Cart	64-Gallon Cart	96-Gallon Cart	2 CY Bin 1x/Wk
Waste Connections Affiliates	Cambria		\$ 40.30	\$ 80.59	\$ 120.92	\$ 196.06
	Cayucos		\$ 31.65	\$ 37.39	\$ 43.18	\$ 178.95
	Los Osos CSD <sup>1</sup>	\$ 34.94	\$ 49.68	\$ 76.28	\$ 81.81	\$ 288.02
	City of San Luis Obispo	\$ 14.31	\$ 22.84	\$ 45.69	\$ 68.54	\$ 179.82
	Morro Bay (current)	\$ 15.59	\$ 24.95	\$ 49.90	\$ 74.86	\$ 186.27
	Morro Bay (Proposed 20.20% increase)	\$ 18.74	\$ 29.99	\$ 59.98	\$ 89.98	\$ 223.90
Non-Waste Connections	Atascadero		\$ 32.23	\$ 51.28	\$ 64.43	\$ 167.35
	Templeton		\$ 39.45	\$ 55.65	\$ 61.53	\$ 152.37
	Solvang		\$ 34.72	\$ 43.45	\$ 52.60	\$ 246.52
	Buelton		\$ 37.65	\$ 44.98	\$ 52.40	\$ 261.28
	San Miguel		\$ 45.42	\$ 63.99	\$ 83.90	\$ 163.70
	Paso Robles	\$ 37.11	\$ 42.14	\$ 55.86	\$ 61.86	\$ 183.23
	Monterey County	\$ 35.81	\$ 43.53	\$ 68.27	\$ 85.33	
	City of Santa Maria		N/A	\$ 36.73	\$ 44.60	\$ 166.72
	Santa Barbara County (Orcutt)		\$ 31.44	\$ 35.96	\$ 40.32	
	City of Santa Barbara		\$ 46.55	\$ 57.70	\$ 68.85	\$ 256.38
	Mid-State Area (rural North SLO County, Santa Margarita) <sup>2</sup>		\$ 58.98	\$ 86.33	\$ 113.61	\$ 320.89
<b>Average without Morro Bay</b>		<b>\$ 30.54</b>	<b>\$ 39.76</b>	<b>\$ 56.01</b>	<b>\$ 69.59</b>	<b>\$ 212.41</b>
<b>Difference Between Proposed Morro Bay and Average</b>		<b>\$ (11.80)</b>	<b>\$ (9.77)</b>	<b>\$ 3.97</b>	<b>\$ 20.39</b>	<b>\$ 11.49</b>
<b>Percent Difference</b>		<b>-38.65%</b>	<b>-24.56%</b>	<b>7.09%</b>	<b>29.30%</b>	<b>5.41%</b>

<sup>1</sup> Includes a temporary retroactivity component.

<sup>2</sup> Includes a temporary retroactivity component.



**AGENDA NO: C-3**  
**MEETING DATE: August 8, 2023**

# Staff Report

**TO: Honorable Mayor and City Council**

**DATE: July 25, 2023**

**FROM: Gregory Kwolek, Public Works Director  
Damaris Hanson, Utilities Division Manager**

**SUBJECT: Resolutions Authorizing the City Manager to Apply for State Revolving Fund Financial Assistance, Execute Such Agreements, and Perform any Other Action Required for the Purposes of Obtaining the Clean Water and Drinking Water State Revolving Fund Grants to Evaluate Potential Consolidation of the City and Rancho Colina Mutual Water Company’s Water and Wastewater Utilities**

**RECOMMENDATION**

Staff recommends the City Council adopt Resolutions No. 51-23 and 52-23 authorizing the City Manager to apply for State Revolving Fund Financial Assistance, execution of such Agreements, and any other action required for the purposes of the Clean Water and Drinking Water State Revolving Fund Grants to evaluate potential consolidation of the City and Rancho Colina Mutual Water Company’s water and wastewater utilities.

**FISCAL IMPACT**

Under the terms of the Cost Share Agreement with Rancho Colina Mutual Water Company (Rancho Colina) the City will be reimbursed for up to a maximum of \$25,000 in costs to prepare the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) Planning Grant applications. It is anticipated the costs to prepare and submit these grant applications will not exceed \$25,000 and there will be no fiscal impact to the sewer or water fund or other City funds.

If awarded, the Planning Grants will provide the funding necessary to complete the water and wastewater utility consolidation feasibility evaluation, design of Rancho Colina water and wastewater connections and necessary upgrades to City water/wastewater infrastructure (via OneWater projects) and applications for the CWSRF/DWSRF Construction Grants. If consolidation is determined feasible and beneficial to the City by City Council, then the City would apply for CWSRF/DWSRF Construction Grants to fund the necessary expansions and upgrades to the City’s water and wastewater systems to connect Rancho Colina and accommodate the additional water demand and wastewater flows.

It is envisioned the feasibility evaluation, design and construction of infrastructure to connect Rancho Colina to the City’s water and wastewater utilities will not be funded using City water and sewer funds and that the available funding from the CWSRF/DWSRF grants will assist in reducing the costs to City rate payers for implementing projects that are necessary to address existing deficiencies in the City’s systems and to accommodate connecting Rancho Colina to the City’s utilities. However, the City will learn more about any potential fiscal impacts during the planning process and will bring back to City Council any funding decisions that involve the water or sewer funds.

Prepared By: <u>  GK  DH  </u>	Dept Review: <u>                  </u>
City Manager Review: <u>  GC  </u>	City Attorney Review: <u>  LNL  </u>

## **BACKGROUND/DISCUSSION**

### **Rancho Colina**

Rancho Colina Mutual Water Company provides water and wastewater services to the Rancho Colina Mobile Home Community and RV Park, which is located on Highway 41, approximately a ½ mile east of the existing City Limits and provides water, wastewater and other services for approximately 69 Mobile Homes and 57 Recreational Vehicle (RV) camping sites. The Rancho Colina Wastewater Treatment Facility is in need of significant upgrades and repairs to meet the requirements of the new General Permit for wastewater treatment facilities discharging <100,000 gallons per day. Additionally, the Rancho Colina groundwater wells have elevated concentrations of Nitrates and have nearly run dry during recent droughts, forcing Rancho Colina to occasionally truck in water from other wells in the Morro Basin.

The Regional Water Quality Control Board (RWQCB) contacted the City regarding the potential for Rancho Colina to connect to the City's water and wastewater utilities to address these significant challenges. Due to the fact the Rancho Colina Mobile Home Community is classified as a Disadvantaged Community, there is significant grant funding available in the CWSRF and DWSRF programs to pay for infrastructure upgrades to the City's water and wastewater systems to accommodate the consolidation and connections to Rancho Colina's systems. Based on information provided by the RWQCB and Division of Drinking Water (DDW) funding representatives, RVs are potentially not eligible for consolidation funding. The following table outlines the potential available funding from these programs under the existing configuration of Mobile Homes and RVs at Rancho Colina.

<b>Rancho Colina Grant Funding Summary</b>	
<b>Rancho Colina Units</b>	
<b>Mobile Homes</b>	<b>69</b>
<b>Recreational Vehicles</b>	<b>57</b>
<b>Total Units</b>	<b>126</b>
<b>CWSRF (Wastewater)</b>	
<b>Maximum Funding Amount (per connection)</b>	<b>\$100,000</b>
<b>CWSRF Potential Available Funding (Mobile Homes)</b>	<b>\$6,900,000</b>
<b>DWSRF (Water)</b>	
<b>Funding Amount (per connection)</b>	<b>\$70,000</b>
<b>DWSRF Potential Available Funding (Mobile Homes)</b>	<b>\$4,830,000</b>
<b>Total Potential Funding Available (Mobile Homes)</b>	<b>\$11,730,000</b>

Additional outside funding, up to \$10M total from CWSRF and up to \$6M total for DWSRF, could potentially be available for the RV units depending on how they are categorized by the CWSRF/DWSRF funding agencies or if they were converted to Mobile Homes by the operators of the Rancho Colina RV Park.

On September 13, 2022, the City Council approved the execution of the cost share agreement with Rancho Colina to prepare the CWSRF and DWSRF Planning Grant Applications. Confluence Engineering Solutions, Inc., was selected to support preparation of the grant applications and initiated those efforts. Prior to submitting the applications, the City must adopt the attached Authorizing Resolutions to provide the City Manager with the necessary authorities to move forward with the planning grants, if awarded. On June 21, 2023, the City's Public Works Advisory Board (PWAB) approved City Staff's recommendation that the City Council adopt the authorizing resolutions for the CWSRF and DWSRF Planning Grant Applications.

### **Approach**

Preliminary analysis indicates to connect Rancho Colina to its water and wastewater utilities, the City would likely need to complete two key OneWater projects – the Main/Atascadero Street Sewer Replacement (\$7.9M) and the Nutmeg Tank Replacement (\$17.9M) – to accommodate the additional water demand and sewer flows. Connecting Rancho Colina to the City's water and wastewater systems presents the opportunity for the City to access CWSRF/DWSRF funding to reduce the costs to the City's rate payers of these OneWater projects, which are needed regardless of connecting Rancho Colina.

To fund the evaluation of connection feasibility, design and construction of water and wastewater system upgrades and the development of the grant funding applications at limited to no cost to the City, the City and Rancho Colina developed the following proposed approach.

1. Rancho Colina executes a Cost Share Agreement to reimburse the City for the preparation of the CWSRF and DWSRF Planning Grant Applications (completed)
2. City/Rancho Colina consultants prepare the Planning Grant Applications (in progress)
3. Staff receives authorization from City Council to submit grant application
4. If awarded, the costs for preparing the Planning Grant Applications are reimbursed to the City through the grant and then reimbursed to Rancho Colina
5. If awarded, Staff brings consultant selection recommendation to City Council to complete the consolidation feasibility evaluation, design and permitting of Rancho Colina water and wastewater connections, design of necessary upgrades to City water/wastewater infrastructure, evaluation of facilities ownership structure and additional operations and maintenance needs, analysis of potential benefits/savings for City rate payers and applications for the CWSRF/DWSRF Construction Grants
6. Staff presents evaluation to the Public Works Advisory Board and City Council with a recommendation on whether to apply for construction grant application
7. Pursue CWSRF/DWSRF Construction Grants, if identified as the preferred approach, to fund the Rancho Colina/Morro Bay water and wastewater consolidation and portions of upgrades to City water/wastewater infrastructure (i.e., OneWater projects) to address Rancho Colina connections and other City infrastructure needs
8. If grants are awarded to the City, staff brings award of contract to City Council

Utilizing this approach, the feasibility evaluation and design and construction of infrastructure to connect Rancho Colina's systems to the City's water and wastewater utilities will not be funded using City water and sewer funds and those costs will be borne by Rancho Colina and the CWSRF/DWSRF grants. Limited City Staff time will be required to coordinate with consultants, Rancho Colina and funding/regulatory agencies, but will be offset by the potential to obtain significant grant funding to reduce the costs to City rate payers for necessary water and wastewater infrastructure improvement projects.

**ATTACHMENTS**

- Attachment A: Clean Water State Revolving Fund Grant Application Authorizing Resolution
- Attachment B: Drinking Water State Revolving Fund Grant Application Authorizing Resolution

**RESOLUTION NO. 51-23**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA,  
AUTHORIZING THE CITY MANAGER TO APPLY FOR STATE  
REVOLVING FUND FINANCIAL ASSISTANCE, AND AUTHORIZING THE  
EXECUTION OF SUCH AGREEMENT, AND ANY OTHER ACTION REQUIRED, FOR  
PURPOSES OF THE CLEAN WATER STATE REVOLVING FUND GRANT**

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

**WHEREAS**, on September 13, 2022, the City of Morro Bay (the "City") City Council authorized the City Manager to execute a Cost Share Agreement with Rancho Colina Mutual Water Company (Rancho Colina) to fund the preparation of Clean Water and Drinking Water State Revolving Fund Planning Grant applications; and

**WHEREAS**, if awarded, then the Planning Grants will provide the funding necessary to complete the water and wastewater utility consolidation feasibility evaluation, design of Rancho Colina water and wastewater connections and necessary upgrades to City water/wastewater infrastructure (via OneWater projects) and applications for the Clean Water State Revolving Fund (CWSRF)/Drinking Water State Revolving Fund (DWSRF) Construction Grants; and

**WHEREAS**, Rancho Colina is located on Highway 41, approximately a ½ mile east of the existing City jurisdictional limits and provides water, wastewater and other services for approximately 69 Mobile Homes and 57 Recreational Vehicle (RV) camping sites; and

**WHEREAS**, Rancho Colina's Wastewater Treatment Facility is in need of significant upgrades and repairs to meet the requirements of the new General Permit for wastewater treatment facilities discharging <100,000 gallons per day; and

**WHEREAS**, the Regional Water Quality Control Board (RWQCB) has contacted the City regarding the potential for Rancho Colina to connect to the City's wastewater utilities. Due to the fact Rancho Colina provides wastewater services to the Rancho Colina Mobile home community, which is classified as a Disadvantaged Community, there is significant grant funding available in the in the CWSRF (up to \$10M) programs to pay for infrastructure upgrades to the City's wastewater systems and connections to Rancho Colina; and

**WHEREAS**, preliminary analysis indicates to connect Rancho Colina, the City would likely need to complete Main/Atascadero Street Sewer Replacement (\$7.9M) to accommodate the additional sewer flows; and

**WHEREAS**, connecting Rancho Colina to the City's wastewater system would allow the City to access CWSRF funding to reduce the costs to the City's rate payers for funding other necessary City projects.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORRO BAY, AS FOLLOWS:**

SECTION 1. The City Manager (the "Authorized Representative") or designee is hereby authorized and directed to sign and file, for and on behalf of the City, a Financial

Assistance Application for a grant agreement from the State Water Resources Control Board for evaluation of a potential consolidation of wastewater infrastructure with Rancho Colina (the "Project").

SECTION 2. This Authorized Representative, or his/her designee, is designated to provide the assurances, certifications, and commitments required for the financial assistance application, including executing a Financial Assistance Agreement from the State Water Resources Control Board and any amendments or changes thereto.

SECTION 3. The Authorized Representative, or his/her designee, is designated to represent the City in carrying out the City's responsibilities under the financing agreement, including certifying disbursement requests on behalf of the City and compliance with applicable state and federal laws.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 8th day of August 2023 by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:  
RECUSED:

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CARLA WIXOM, Mayor

ATTEST:

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DANA SWANSON, City Clerk

**CERTIFICATE OF ATTESTATION AND ORIGINALITY**

I, Dana Swanson, City Clerk of the City of Morro Bay, hereby attest to and certify that the foregoing Resolution No. 51-23 is the original resolution adopted by the Morro Bay City Council at its regular meeting held on the 8<sup>th</sup> day of August 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RECUSED:

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Dana Swanson, City Clerk

**RESOLUTION NO. 52-23**

**RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MORRO BAY, CALIFORNIA,  
AUTHORIZING THE CITY MANAGER TO APPLY FOR STATE  
REVOLVING FUND FINANCIAL ASSISTANCE, AND AUTHORIZING THE EXECUTION  
OF SUCH AGREEMENT, AND ANY OTHER ACTION REQUIRED, FOR PURPOSES OF THE  
DRINKING WATER STATE REVOLVING FUND GRANT**

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

**WHEREAS**, on September 13, 2022, the City of Morro Bay (the "City") City Council authorized the City Manager to execute a Cost Share Agreement with Rancho Colina Mutual Water Company (Rancho Colina) to fund the preparation of Clean Water and Drinking Water State Revolving Fund Planning Grant applications; and

**WHEREAS**, If awarded, then the Planning Grants will provide the funding necessary to complete the water and wastewater utility consolidation feasibility evaluation, design of Rancho Colina water and wastewater connections and necessary upgrades to City water/wastewater infrastructure (via OneWater projects) and applications for the Clean Water State Revolving Fund (CWSRF)/Drinking Water State Revolving Fund (DWSRF) Construction Grants; and

**WHEREAS**, Rancho Colina is located on Highway 41, approximately a ½ mile east of the existing City jurisdictional limits and provides water, wastewater and other services for approximately 69 Mobile Homes and 57 Recreational Vehicle (RV) camping sites; and

**WHEREAS**, Rancho Colina's groundwater wells have elevated concentrations of Nitrates and have nearly run dry during recent droughts, forcing Rancho Colina to truck in water from other wells in the Morro Basin; and

**WHEREAS**, the Regional Water Quality Control Board (RWQCB) has contacted the City regarding the potential for Rancho Colina to connect to the City's water utilities. Due to the fact Rancho Colina provides water services to the Rancho Colina Mobile home community, which is classified as a Disadvantaged Community, there is significant grant funding available in the DWSRF (up to \$6M) programs to pay for infrastructure upgrades to the City's water systems and connections to Rancho Colina; and

**WHEREAS**, preliminary analysis indicates to connect Rancho Colina, the City would likely need to complete the Nutmeg Tank Replacement projects (\$17.9M) to accommodate the additional water demand; and

**WHEREAS**, connecting Rancho Colina to the City's water system would allow the City to access DWSRF funding to reduce the costs to the City's rate payers for funding other necessary City projects.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORRO BAY, AS FOLLOWS:**

SECTION 1. The City Manager (the "Authorized Representative") or designee is hereby authorized and directed to sign and file, for and on behalf of the City, a Financial Assistance

Application for a grant agreement from the State Water Resources Control Board for evaluation of a potential consolidation of drinking water infrastructure with Rancho Colina (the "Project").

SECTION 2. This Authorized Representative, or his/her designee, is designated to provide the assurances, certifications, and commitments required for the financial assistance application, including executing a Financial Assistance Agreement from the State Water Resources Control Board and any amendments or changes thereto.

SECTION 3. The Authorized Representative, or his/her designee, is designated to represent the City in carrying out the City's responsibilities under the financing agreement, including certifying disbursement requests on behalf of the City and compliance with applicable state and federal laws.

**PASSED AND ADOPTED** by the City Council of the City of Morro Bay at a regular meeting thereof held on the 8th day of August 2023 by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:  
RECUSED:

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CARLA WIXOM, Mayor

ATTEST:

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DANA SWANSON, City Clerk

**CERTIFICATE OF ATTESTATION AND ORIGINALITY**

I, Dana Swanson, City Clerk of the City of Morro Bay, hereby attest to and certify that the foregoing Resolution No. 52-23 is the original resolution adopted by the Morro Bay City Council at its regular meeting held on the 8<sup>th</sup> day of August 2023, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:  
RECUSED:

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