

City of Morro Bay

City Council Agenda

Mission Statement

The City of Morro Bay is dedicated to the preservation and enhancement of the quality of life. The City shall be committed to this purpose and will provide a level of municipal service and safety consistent with and responsive to the needs of the public.

REGULAR MEETING TUESDAY, JULY 12, 2016 VETERANS MEMORIAL HALL - 6:00 P.M. 209 SURF ST., MORRO BAY, CA

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 - None

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.

To increase the effectiveness of the Public Comment Period, the following rules shall be followed:

- When recognized by the Mayor, please come forward to the podium and state your name and city of residence for the record. Comments are to be limited to three minutes.
- All remarks shall 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.

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 FROM THE JUNE 14, 2016 CITY COUNCIL MEETING;
(ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-2 APPROVAL OF MINUTES FROM THE JUNE 28, 2016 CITY COUNCIL MEETING;
(ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-3 ADOPTION OF RESOLUTION NO. 57-16 ESTABLISHING THE COMPENSATION
AND BENEFITS FOR UNREPRESENTED MANAGEMENT EMPLOYEES OF THE
CITY OF MORRO BAY; (ADMINISTRATIVE SERVICES)

RECOMMENDATION: Adopt Resolution No. 57-16.

- A-4 APPROVAL OF SALES AGREEMENT WITH JEFF MAYER FOR THE PURCHASE
OF 2783 CORAL AVENUE (CORAL / SAN JACINTO); APN: 065-386-015;
(COMMUNITY DEVELOPMENT)

**RECOMMENDATION: Adopt Resolution No. 59-16 authorizing the sale of City-owned
property located at 2783 Coral Avenue.**

- A-5 WATER RECLAMATION FACILITY (WRF) PROGRAM UPDATE; (PUBLIC
WORKS)

RECOMMENDATION: Receive and file.

- A-6 ADOPTION OF RESOLUTION NO. 60-16 ESTABLISHING THE MAXIMUM
COMPENSATION AND BENEFITS FOR CERTAIN CITY DEPARTMENT HEAD
POSITIONS; (ADMINISTRATION)

RECOMMENDATION: Adopt Resolution No. 60-16.

B. PUBLIC HEARINGS

- B-1 APPROVAL OF REPORT ON THE MEASURES TAKEN TO ALLEVIATE
CONDITIONS PREVIOUSLY IDENTIFIED AND LEADING TO THE ADOPTION
OF URGENCY ORDINANCE 604 APPROVING A 45-DAY MORATORIUM
LIMITING THE NUMBER OF VACATION RENTALS IN THE CITY AND
CONSIDERATION AND ADOPTION OF ORDINANCE 605 APPROVING THE
EXTENSION OF THAT CITYWIDE MORATORIUM FOR TWENTY-TWO
MONTHS AND FIFTEEN DAYS; (COMMUNITY DEVELOPMENT)

RECOMMENDATION: Staff recommends the City Council (i) issue the “Report of the City Council of the City of Morro Bay on measures taken to alleviate the conditions previously identified and leading to the adoption of a moratorium on the issuance of any new Permit, License, Approval, or Entitlement for operation of more than 250 vacation rentals within City Ordinance 604,” Pursuant to Government Code Section 65858; and (ii) adopt, by reading the title only and waiving further reading, Ordinance No. 605: An Urgency Ordinance of the City Council of the City of Morro Bay approving extension of a Citywide Moratorium on the issuance of any new Permit, License, Approval, or Entitlement pertaining to a vacation rental for an additional twenty-two months and fifteen days within the City of Morro Bay and declaring the urgency thereof and establishing its effective date as July 28, 2016.

C. BUSINESS ITEMS

C-1 ADOPTION OF RESOLUTION NO. 58-16 APPROVING A NEW 30-YEAR MASTER LEASE BETWEEN THE CITY OF MORRO BAY AND MORRO BAY OYSTER COMPANY, LLC FOR LEASE SITE 144/144W, LOCATED AT 1287 EMBARCADERO; (HARBOR)

RECOMMENDATION: Adopt Resolution No. 58-16.

C-2 DESIGNATION OF VOTING DELEGATE AND ALTERNATE AT LEAGUE OF CALIFORNIA CITIES 2016 ANNUAL CONFERENCE BUSINESS MEETING; (ADMINISTRATION)

RECOMMENDATION: Discuss and select one voting delegate and up to two alternates for the upcoming annual business meeting to be held at the League of California Cities Annual Conference.

C-3 INTRODUCTION OF ORDINANCE NO. 606, WHICH AMENDS VARIOUS PROVISIONS OF THE MORRO BAY MUNICIPAL CODE RELATING TO CITY ORGANIZATIONAL MATTERS, POLITICAL ACTIVITIES BY EMPLOYEES, USE OF CITY PARKS AND RECREATION EQUIPMENT AND PROVIDES OTHER CLARIFICATIONS; (CITY ATTORNEY)

RECOMMENDATION: Discuss and introduce, for first reading by title only and with further reading waived, Ordinance No. 606: An Ordinance of the City Council of the City of Morro Bay, California, Amending Various Provisions of the Morro Bay Municipal Code Relating to City Organizational Matters, Political Activities by Employees, Use of City Parks and Recreation Equipment and Providing Other Clarifications.

C-4 INTRODUCTION OF ORDINANCE NO. 607, WHICH AMENDS SECTION 3.34.010 OF THE MORRO BAY MUNICIPAL CODE RELATING TO THE CITY’S MASTER FEE SCHEDULE; (CITY ATTORNEY)

RECOMMENDATION: Discuss and introduce, for first reading by title only and with further reading waived, Ordinance No. 607: An Ordinance of the City Council of the City of Morro Bay, California, Amending Section 3.34.010 of the Morro Bay Municipal Code Relating to the City’s Master Fee Schedule.

C-5 ADOPTION OF ORDINANCE NO. 601: LOCAL COASTAL PROGRAM AND ZONING TEXT AMENDMENT (#A00-029) AMENDING TITLE 17 PROVISIONS RELATED TO SECONDARY DWELLING UNITS AND GUESTHOUSES/ QUARTERS AND ACCESSORY LIVING AREAS; (COMMUNITY DEVELOPMENT)

RECOMMENDATION: Adopt, by title only with further reading waived, Ordinance 601: An Ordinance of the City Council of the City of Morro Bay, California Announcing Findings and Adopting Amendments to Title 17 of the Morro Bay Municipal Code to Establish Provisions for Review of Secondary Dwelling Units and Guesthouses, and direct staff to submit a Local Coastal Program (LCP) Amendment to Coastal Commission.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The Regular Meeting of July 26, 2016 was previously canceled. Consequently, the next Regular Meeting will be held on **Tuesday, August 9, 2016 at 6:00 pm** at the Veteran's Memorial Hall located at 209 Surf Street, Morro Bay, California.

THIS AGENDA IS SUBJECT TO AMENDMENT UP TO 72 HOURS PRIOR TO THE DATE AND TIME SET FOR THE MEETING. PLEASE REFER TO THE AGENDA POSTED AT CITY HALL FOR ANY REVISIONS OR CALL THE CLERK'S OFFICE AT 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 AT CITY HALL LOCATED AT 595 HARBOR STREET; MORRO BAY LIBRARY LOCATED AT 625 HARBOR STREET; AND MILL'S COPY CENTER LOCATED AT 495 MORRO BAY BOULEVARD DURING NORMAL BUSINESS HOURS.

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 THAT REASONABLE ARRANGEMENTS CAN BE MADE TO PROVIDE ACCESSIBILITY TO THE MEETING.

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JUNE 14, 2016
VETERAN’S MEMORIAL HALL – 6:00 P.M.

PRESENT:	Jamie Irons	Mayor
	Matt Makowetski	Councilmember
	John Headding	Councilmember
	Christine Johnson	Councilmember
	Noah Smukler	Councilmember
STAFF:	Dave Buckingham	City Manager
	Joe Pannone	City Attorney
	Dana Swanson	City Clerk
	Susan Slayton	Administrative Services Director
	Rob Livick	Public Works Director
	Damaris Hanson	Engineering Tech IV
	Scot Graham	Community Development Manager
	Eric Endersby	Harbor Director
CONTRACT STAFF:	Mike Nunley	WRF Program Manager

ESTABLISH QUORUM AND CALL TO ORDER

The meeting was called to order at 6:06 p.m., with all members present.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION - None

CLOSED SESSION REPORT - City Attorney reported that with regard to the Closed Session Items, the Council did not take any reportable action pursuant to the Brown Act.

MAYOR AND COUNCILMEMBERS’ REPORTS, ANNOUNCEMENTS & PRESENTATIONS

https://youtu.be/ns_qz8vc-xE?t=1m45s

CITY MANAGER REPORTS, ANNOUNCEMENTS & PRESENTATIONS

PRESENTATIONS - None

PUBLIC COMMENT

https://youtu.be/ns_qz8vc-xE?t=5m41s

Gregory Sigulas from the Gallery at Marina Square provided the business spot. The Gallery is open daily and features a variety of works by local artists.

The comment period was closed.

A. CONSENT AGENDA
https://youtu.be/ns_qz8vc-xE?t=8m28s

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion.

A-1 APPROVAL OF MINUTES FROM THE MAY 10, 2016 CITY COUNCIL MEETING;
(ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF MINUTES FROM THE MAY 24, 2016 SPECIAL CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-3 APPROVAL OF MINUTES FROM THE MAY 24, 2016 CITY COUNCIL MEETING;
(ADMINISTRATIVE SERVICES)

RECOMMENDATION: Approve as submitted.

A-4 APPOINTMENT OF VOTING DELEGATE(S) TO THE CALIFORNIA JOINT POWER INSURANCE AUTHORITY; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-5 STATUS REPORT OF A MAJOR MAINTENANCE & REPAIR PLAN (MMRP) FOR THE EXISTING WASTEWATER TREATMENT PLANT; (PUBLIC WORKS)

RECOMMENDATION: Receive and file.

A-6 ADOPT RESOLUTION NO. 42-16 AUTHORIZING SAN LUIS OBISPO COUNTY ASSESSOR TO ASSESS AMOUNTS DUE ON DELINQUENT SOLID WASTE COLLECTION ACCOUNTS AS TAX LIENS AGAINST THE PROPERTIES;
(PUBLIC WORKS)

RECOMMENDATION: Adopt Resolution No. 42-16.

A-7 ADOPT RESOLUTION NO. 43-16 CALLING A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2016, AND REQUESTING THE BOARD OF SUPERVISORS OF SAN LUIS OBISPO COUNTY TO CONSOLIDATE THE ELECTION WITH THE STATEWIDE GENERAL ELECTION;
(ADMINISTRATION)

RECOMMENDATION: Adopt Resolution No. 43-16.

A-8 ADOPT RESOLUTION NO. 44-16 ADOPTING REGULATIONS FOR CANDIDATES FOR ELECTIVE OFFICE, PERTAINING TO, AND COSTS OF, CANDIDATE STATEMENTS SUBMITTED TO THE VOTERS AT THE CONSOLIDATED GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 8, 2016; (ADMINISTRATION)

RECOMMENDATION: Adopt Resolution No. 44-16

A-9 ADOPT RESOLUTION NO. 46-16 RESCINDING RESOLUTIONS NO. 04-03, 07-04 AND 27-12 REGARDING STREET WORK DURING SUMMER MONTHS AND HOLIDAYS; (PUBLIC WORKS)

RECOMMENDATION: Adopt Resolution No. 46-16.

A-10 AWARD OF CONTRACT TO PACIFIC BEACH TOWER INC., OF MORRO BAY, CA FOR PROJECT NO. MB2016-MA04: SOLAR PHOTOVOLTAIC INSTALLATION PROJECT; (PUBLIC WORKS)

RECOMMENDATION: Award the contract to Pacific Beach Tower Inc. and authorize the City Manager to approve said contract.

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

Councilmember Smukler commented briefly on Agenda Item A-10.

Councilmember Makowetski pulled Agenda Item A-9.

MOTION: Councilmember Headding moved the Council approve all items on the Consent Agenda, except Item A-9. The motion was seconded by Councilmember Johnson and carried unanimously, 5-0.

A-9 ADOPT RESOLUTION NO. 46-16 RESCINDING RESOLUTIONS NO. 04-03, 07-04 AND 27-12 REGARDING STREET WORK DURING SUMMER MONTHS AND HOLIDAYS; (PUBLIC WORKS)
https://youtu.be/ns_qz8vc-xE?t=9m56s

Public Works Director Livick explained the purpose behind this resolution is not to disrupt business owners during the summer months, but to allow staff the flexibility to perform work when necessary during good weather months. Staff will reach out through the Chamber of Commerce and other methods to ensure businesses are notified. The Council directed staff develop and memorialize a business owner notification process to ensure businesses are notified in a consistent manner in the future.

MOTION: Councilmember Makowetski moved for approval of Item A-9. The motion was seconded by Councilmember Smukler and carried unanimously, 5-0.

Consistent with the posted Agenda, Business Items C-1, C-2 and C-2 were heard before the Public Hearing items.

C. BUSINESS ITEMS

C-1 ADOPT RESOLUTION NO. 47-16 APPROVING THE FISCAL YEAR 2016/17 BUDGET; (ADMINISTRATIVE SERVICES)
https://youtu.be/ns_qz8vc-xE?t=14m50s

City Manager Buckingham provided the staff report and responded to Council inquiries.

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

MOTION: Councilmember Heading moved for adoption of Resolution No. 47-16 approving the fiscal year 2016/17 budget. The motion was seconded by Councilmember Johnson and carried unanimously, 5-0.

C-2 ADOPT RESOLUTION NO. 49-16 REGARDING THE SAN LUIS OBISPO COUNTY SELF-HELP TRANSPORTATION INVESTMENT PLAN; (PUBLIC WORKS)
https://youtu.be/ns_qz8vc-xE?t=41m55s

Public Works Director Livick provided a brief overview and introduced Ron DiCarli of San Luis Obispo Council of Governments (“SLOCOG”), who provided the report and responded to Council inquiries.

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

Sandi Tannler, Morro Bay resident and Board Member of Central Coast Taxpayers Association, requested the Council vote not to put the sales tax initiative on the November ballot.

Ric Deschler, Morro Bay, urged the Council to support placing this item on the November ballot so voters can decide whether to support or reject the initiative.

James Worthy, SLOCOG staff, clarified the amendment process does not allow changes to the percentages; those are fixed. Within those fixed percentages, changes could be made.

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

The Council expressed support for the initiative and the possibility of having local control over a significant amount of funding for infrastructure improvements. There was also consensus the voters should have the opportunity to decide to support or reject the initiative.

MOTION: Councilmember Johnson moved for adoption of Resolution No. 49-16 approving the 2016 San Luis Obispo County Self-Help Transportation Investment Plan and requesting the San Luis Obispo County Board of Supervisors place a 9-Year Transportation Sales Tax Measure on the November 8, 2016 ballot. The motion was seconded by Councilmember Smukler and carried unanimously, 5-0.

The Council took a brief recess at 7:37 p.m. The meeting reconvened at 7:46 p.m. with all members present.

C-3 SELECTION OF TRI-W (SOUTH BAY BOULEVARD) AS PREFERRED SITE FOR PLANNING AND PERMITTING OF NEW WRF AND AMENDMENT TO AGREEMENT WITH BLACK & VEATCH CORPORATION; (PUBLIC WORKS)
https://youtu.be/Ss_5xgqIqk8?t=46s

City Manager Buckingham provided a brief overview then turned the item over to WRF Program Manager, Mike Nunley, who provided the staff report and responded to Council inquiries.

Mayor Irons disclosed ex parte conversations with Mr. Maino and Mr. Thoresen who own property near the proposed Tri-W / South Bay Boulevard site.

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

Barbara Doerr, Morro Bay, thanked Council for listening to the community and looking at site alternatives but expressed concern about potential impacts on the estuary.

Bonnie Sario, Morro Bay, spoke in support of the Tri-W-/ South Bay Boulevard site as it is less visible to the public with no neighbors or residents in close proximity.

Sandi Tannler, Morro Bay, urged the Council to listen to its advisory committee and remove Righetti from the list of potential sites.

James Pauly, Morro Bay, urged the Council to select Tri-W site as the preferred site and remove Righetti from the list of potential sites.

Mark Hanson, Morro Bay, stated the plant should have stayed at current site.

Donna Burke, Morro Bay, supported the WRFCAC recommendation to remove Righetti from the list of potential sites and supported the Tri-W site.

Lee Kleim, Morro Bay, read portions of a report he provided to the Council evaluating various sites for location of a wastewater reclamation facility and stated the most suitable is Giannini property or a joint project with Cayucos on Chevron property.

Lexie Bell, Morro Bay, National Estuary Program Executive Director, provided information on the Morro Bay watershed, noting the major focus is water quality for wildlife, residents and visitors.

Kal Huler, resident of Santa Ynez valley and Morro Bay property owner, encouraged the Council to remove Righetti property from consideration. He supported Tri-W and Chevron properties.

John Maino, property owner east of the proposed Tri-W site, discussed the current livestock management system and urged the Council to limit use for required WRF operation and maintenance with the smallest possible footprint.

Bob Keller, Morro Bay, spoke in support of the staff recommendation to consider the Tri-W / South Bay Boulevard site.

Rob Thoresen, property owner on Little Morro Creek Road, encouraged the City to choose the most southerly located Tri-W spot. He expressed concern about any potential public use.

Bart Beckman, Morro Bay, outlined steps to keep the project moving forward and recommended a schedule be brought forward to identify project milestones.

Tina Metzger, Morro Bay, urged the Council to remove Righetti property from the process.

Bill Martony, Morro Bay, suggested staff explore other sites on the Tri-W property within City limits.

Mary Jo DeSio, Morro Bay, expressed concern about funds spent to keep Righetti as an alternative and does not support a solar plant or corporation yard at the future location.

Bill Todd, Morro Bay, asked Council to remove Righetti as viable alternative and agreed Tri-W should only be used for primary purposes, keeping other uses at the current facility.

Stewart Skiff, Morro Bay, recommended the City build a smaller facility should Cayucos move forward on their own and urged the Council to move forward with the Tri-W site.

Linda Warwick, Morro Bay, urged the Council to remove Righetti from the list of potential sites.

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

Staff responded to questions raised during public comment and further questions from the Council.

The Council supported the staff recommendation to proceed with Tri-W (South Bay Boulevard) as the preferred site for planning and permitting and approved the contract amendment with Black & Veatch. There was concurrence to keep the Righetti property on the list for comparison as the project moves through the scoping process. Staff was encouraged to work expeditiously toward a memorandum of understanding with the Tri-W property owner and also work closely with nearby ranchers and neighbors across Highway 1.

MOTION: Mayor Irons moved the Council direct staff to proceed with the Tri-W (South Bay Boulevard) site nearest Highway 1 as the preferred WRF site for planning and permitting, and approve the contract amendment with Black & Veatch Corporation for the facility master plan. The motion was seconded by Councilmember Smukler and carried unanimously, 5-0.

The Council took a brief recess at 10:49pm. The meeting reconvened at 10:52pm with all members present.

MOTION: Mayor Irons moved the meeting go past 11:00pm. The motion was seconded by Councilmember Johnson and carried 4-1, with Councilmember Makowetski opposed.

There was Council consensus to hear Item B-2 next.

B. PUBLIC HEARINGS

B-2 ADOPTION OF URGENCY ORDINANCE NO. 604 APPROVING A 45-DAY MORATORIUM LIMITING THE NUMBER OF VACATION RENTALS IN THE CITY; (COMMUNITY DEVELOPMENT)
https://youtu.be/Ss_5xgqIqk8?t=3h3m40s

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

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

Barbara Doerr, Morro Bay, urged the Council to adopt the ordinance and hoped the maximum number allowed would be lowered, approve vacation rentals only for shared housing, or limit to mixed use, visitor serving areas.

Bob Keller, Morro Bay, recommended the number of allowed units be reduced to 177 and that vacation rentals be limited to commercial, R-1 or R-2 areas, not residential.

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

MOTION: Mayor Irons moved for introduction by number and title only, with further reading waived, of Urgency Ordinance No. 604 of the City Council of the City of Morro Bay, CA, approving a citywide 45-day moratorium on the issuance of any new vacation rental within the City of Morro Bay and declaring the urgency thereof and that it shall take effect immediately. The motion was seconded by Councilmember Heading and carried unanimously, 5-0.

B-1 ADOPT RESOLUTION NO. 45-16 APPROVING THE 2015 URBAN WATER MANAGEMENT PLAN; (PUBLIC WORKS)
https://youtu.be/Ss_5xgqIqk8?t=3h23m

Public Works Director Livick and Engineering Tech IV Hanson introduced Julia Aranda of MNS Engineers who presented the report and responded to Council inquiries.

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

MOTION: Councilmember Johnson moved for adoption of Resolution No. 45-16 approving the 2015 Urban Water Management Plan. The motion was seconded by Councilmember Heading.

Councilmember Smukler shared that based on his discussion with staff, he recommends renewable energy systems be folded into the OneWater Plan.

The motion carried unanimously, 5-0.

C. BUSINESS ITEMS

C-4 CONSIDERATION OF OPTIONS AND DIRECTION FOR NEW COAST GUARD STATION MORRO BAY BUILDING, HARBOR DEPARTMENT OFFICE BUILDING AND NORTH T-PIER PUBLIC RESTROOM BUILDING; (HARBOR DEPARTMENT)
https://youtu.be/Ss_5xgqIqk8?t=3h36m35s

Harbor Director Endersby provided the staff report and responded to Council inquiries.

The public comment period for Item C-4 was opened; seeing none, the public comment period was closed.

The Council expressed concern about moving forward with design and permitting without a memorandum of understanding that laid out the basic lease terms. There was concurrence to move through the RFP process for an architectural design consultant and bring those proposals back in 4-6 weeks.

MOTION: Mayor Irons moved the Council direct staff to pursue the recommended Option 1 for construction of an expanded USCG office and a new Harbor Office with public restroom and shower; to seek loan and grant opportunities to fund the City's cost, with the intent the loans and/or grants would be sought for both past and future costs; and to continue negotiations with the USCG for an MOU and terms of a new lease agreement, both to be approved by Council in open session. The motion was seconded by Councilmember Heading and carried unanimously, 5-0.

C-5 ADOPTION OF ORDINANCE NO. 603 AMENDING CHAPTER 13.20 OF THE MORRO BAY MUNICIPAL CODE REGARDING BUILDING LIMITATIONS AND RESOLUTION NO. 48-16 ALLOCATING WATER EQUIVALENCY UNITS FOR FY 16/17; (PUBLIC WORKS)
https://youtu.be/Ss_5xgqIqk8?t=4h9m27s

Mr. Livick provided the staff report and responded to Council inquiries.

The public comment period for Item C-5 was opened; seeing none, the public comment period was closed.

MOTION: Mayor Irons moved for adoption of Ordinance No. 603 amending Chapter 13.20 of the Morro Bay Municipal Code regarding Building Limitations by number and title only and waiving further reading, and adopt Resolution No. 48-16 allocating Water Equivalency Units for FY 2016/17. The motion was seconded by Councilmember Heading and carried unanimously, 5-0.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS
None

E. ADJOURNMENT

The meeting adjourned at 12:01am. The next Regular Meeting will be held on Tuesday, June 14, 2016 at 6:00 p.m. at the Veteran's Memorial Hall located at 209 Surf Street, Morro Bay, California.

Recorded by:

Dana Swanson,
City Clerk

AGENDA NO: A-2

MEETING DATE: July 12, 2016

AMENDED JULY 11, 2016

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – JUNE 28, 2016
VETERAN’S MEMORIAL HALL – 6:00 P.M.

PRESENT:	Jamie Irons	Mayor
	Matt Makowetski	Councilmember
	Christine Johnson	Councilmember
	Noah Smukler	Councilmember
ABSENT:	John Headding	Councilmember
STAFF:	Dave Buckingham	City Manager
	Joe Pannone	City Attorney
	Dana Swanson	City Clerk
	Susan Slayton	Administrative Services Director
	Rob Livick	Public Works Director
	Scot Graham	Community Development Manager
	Whitney McIlvaine	Contract Planner
	Steve Knuckles	Fire Chief

ESTABLISH QUORUM AND CALL TO ORDER

The meeting was called to order at 6:01 p.m., with all but Councilmember Headding present.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION - City Manager Buckingham presented a framed yellow jersey provided to the City by Amgen in honor of the Stage 4 start held on May 18, 2016.

<https://youtu.be/eLA0S-X6cDU?t=2m32s>

CLOSED SESSION REPORT - No Closed Session meeting was held.

MAYOR AND COUNCILMEMBERS’ REPORTS, ANNOUNCEMENTS & PRESENTATIONS

<https://youtu.be/eLA0S-X6cDU?t=4m41s>

CITY MANAGER REPORTS, ANNOUNCEMENTS & PRESENTATIONS - None

PRESENTATIONS - None

PUBLIC COMMENT

<https://youtu.be/eLA0S-X6cDU?t=12m27s>

Cherise Hansson of Under the Sea Gallery, located at 833 Embarcadero, provided the business spot. Under the Sea Gallery also has locations in Avila Beach and Kauai, and recently opened a second gallery in Morro Bay located at 725 Embarcadero.

Susan Stewart, Morro Bay resident and business owner, announced a meeting for business owners to review the draft General Plan Vision and Values statement will be held at Coalesce Bookstore on Wednesday, July 6 at 5:30 p.m. Also, Art in the Park will be held the July 4th weekend at City Park. Proceeds from that event support the Art Center and scholarships for high school and college students.

Joe Wallick, Morro Bay resident and small business owner, raised concern about illegal activity in the area behind the Teen Center and Skate Park and urged the City to address the issues.

Rick Morse, MedMar Clinic in Fresno, California, hoped the issue of medical marijuana in everyone's mind and looks forward to conversations early next year.

Eric Daniels, PG&E, announced the State Lands Commission approved PG&E's request to extend the lease and allow the Diablo Power Plant to operate to the end of its original operating licenses in 2024-2025. This was a critical first step for successful implementation of a joint proposal to increase investment in energy efficiency, renewables, and storage while phasing out PG&E's production of nuclear power in California by 2025.

The comment period was closed.

- A. CONSENT AGENDA
<https://youtu.be/eLA0S-X6cDU?t=27m30s>

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion.

- A-1 APPROVAL OF MINUTES FROM THE MAY 31, 2016 SPECIAL CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-2 APPROVAL OF MINUTES FROM THE JUNE 1, 2016 CLOSED SESSION CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-3 APPROVAL OF MINUTES FROM THE JUNE 14, 2016 CLOSED SESSION CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-4 ADOPTION OF RESOLUTION 50-16 ESTABLISHING THE ANNUAL PROPOSITION 4 APPROPRIATIONS LIMIT FOR THE FISCAL YEAR 2016/17; (ADMINISTRATIVE SERVICES)

RECOMMENDATION: Adopt Resolution 50-16.

A-5 ADOPTION OF RESOLUTION 51-16 SUPPORTING THE NATIONAL REVENUE NEUTRAL CARBON FEE AND DIVIDEND PROGRAM; (ADMINISTRATION)

RECOMMENDATION: Adopt Resolution 51-16.

A-6 AUTHORIZATION TO FILE NOTICE OF COMPLETION FOR PROJECT NO. MB2016-WW06, MMRP: BLENDING VALVES REPLACEMENT; (PUBLIC WORKS)

RECOMMENDATION: Receive and file.

A-7 APPROVAL OF LICENSE AGREEMENT FOR 570 DUNES STREET; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-8 ADOPT RESOLUTION NO. 55-16 ESTABLISHING THE COMPENSATION AND BENEFITS FOR UNREPRESENTED CONFIDENTIAL EMPLOYEES OF THE CITY OF MORRO BAY; (ADMINISTRATIVE SERVICES DIRECTOR)

RECOMMENDATION: Adopt Resolution No. 55-16.

A-9 ADOPTION OF RESOLUTION NO. 56-16 AMENDING THE EARLY RETIREMENT MANAGEMENT PROGRAM FOR THE FISCAL YEAR 2016/17 APPROVED BY RESOLUTION NO. 22-16; (ADMINISTRATION)

RECOMMENDATION: Adopt Resolution No. 56-16

The public comment period for the Consent Agenda was opened.

Tyler Conrad, Morro Bay resident and volunteer with Citizens Climate Lobby, spoke in support of the National Revenue Neutral Carbon Fee and Dividend Program.

George Garrigues, Morro Bay, urged the Council to adopt Resolution 51-16 supporting the Carbon Fee and Dividend Program.

Sharon Rippner, San Luis Obispo, urged the Council to adopt Resolution 51-16 supporting the Carbon Fee and Dividend Program.

The public comment period for the Consent Agenda was closed.

MOTION: Councilmember Smukler moved the Council approve all items on the Consent Agenda. The motion was seconded by Councilmember Johnson and carried 4-0-1, with Councilmember Heading absent.

City Policy requires Public Hearing items not begin before 7:00 p.m. and therefore the Council moved to hear Item C-1 next.

C. BUSINESS ITEMS

- C-1 ADOPTION OF RESOLUTION NO. 54-16 MEMORIALIZING THE HISTORIC PARKING CREDITS INTERPRETATION, TEMPORARILY SUSPENDING PARKING IN-LIEU FEES FOR THE EMBARCADERO AND DOWNTOWN AREAS, AND DIRECTING THE EVALUATION OF THE COMMERCIAL PARKING PROGRAM; (COMMUNITY DEVELOPMENT)
<https://youtu.be/eLA0S-X6cDU?t=33m32s>

Mayor Irons voluntarily recused himself from Items C-1 ~~and B-1~~ due to a conflict of interest based on his ownership of commercial property in the downtown area, and left the meeting at 6:37 p.m.

Community Services Manager Graham presented the staff report and responded to Council inquiries.

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

Erica Crawford, Morro Bay Chamber of Commerce, supported the proposed resolution noting parking in-lieu fees are the number one issue impeding business growth and development.

Jamie Irons, Morro Bay, speaking as a private citizen, supported grandfathering historic parking credits but was concerned waiving parking in-lieu fees would impact the City's ability to maintain infrastructure. He suggested parking in-lieu funds be used to update the parking management program or implement part of the current plan.

Rafael Torres, San Luis Obispo, business owner in the downtown area shared he recently expanded his business to include a deli and was asked to pay \$120k for required parking. He hoped for a policy that encourages business expansion.

Roger Ewing, Morro Bay, recommended in-lieu fees be lowered but not waived, as that would be unfair to both residents and businesses who have paid in-lieu fees in the past.

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

There was Council consensus to recognize historic parking credits on the Embarcadero and develop a comprehensive parking management solution as part of the GP/LCP update.

The Council discussed staff recommendation to limit the parking waiver to a maximum of seven for staff level review, require Planning Commission review of any parking in lieu fee waiver request exceeding seven spaces, and that the number of waived spaces be capped at 15 or 20 spaces before Council review is required. There was concern about the appropriateness of waiving in-lieu fees entirely and discussion about lowering fees to an amount that would demonstrate support for current business expansion yet be respectful of infrastructure and planning needs. It was agreed that even a nominal fee could help pay for ADA or bike parking needs.

MOTION: Councilmember Smukler moved for adoption of Resolution No. 54-16 memorializing historic parking credits, waiving in-lieu fees entirely for the first four spaces, reducing in-lieu fees to \$500 per space for any additional spaces required beyond the initial four, authorizing staff to administer the in-lieu fee program for approvals involving seven or fewer in-lieu spaces, requiring Planning Commission review for eight to fifteen in-lieu spaces, with Council review required for 16 or more in-lieu spaces. The motion was seconded by Councilmember Johnson and carried 3-0-2 with Councilmember Headding absent and Mayor Irons abstaining due to a conflict of interest.

MOTION: Councilmember Smukler moved to direct staff to bring to the Planning Commission for public review the striping component from the 2007 Parking Management Plan and return to Council with recommendations. The motion was seconded by Councilmember Makowetski and carried 3-0-2 with Councilmember Headding absent and Mayor Irons abstaining due to a conflict of interest.

B. PUBLIC HEARINGS

B-1 INTRODUCTION AND FIRST READING OF ORDINANCE 601, AS AMENDED, TO ENABLE THE USE OF SECONDARY DWELLING UNITS AS VACATION RENTALS SUBJECT TO CERTAIN CONDITIONS: LOCAL COASTAL PROGRAM AND ZONING TEXT AMENDMENT (#A00-029) AMENDING TITLE 17 PROVISIONS RELATED TO SECONDARY DWELLING UNITS AND GUESTHOUSES/QUARTERS AND ACCESSORY LIVING AREAS; (COMMUNITY DEVELOPMENT)

<https://youtu.be/eLA0S-X6cDU?t=1h59m27s>

Mayor Irons recused himself from Item B-1 due to a conflict of interest based on having an application to build a guest house recently approved by the City based on his ownership of property in the downtown area.

Contract Planner McIlvaine presented the staff report and responded to Council inquiries.

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

The Council expressed appreciation for Planning Commission's work on this item and supported the recommendation for additional language in subsection 17.48.320.H.1 providing the exemption would no longer apply upon sale of the property or upon any expansion of a secondary dwelling unit allowed to be used as a vacation rental. The proposed language was presented on page 2 of the staff report.

MOTION: Councilmember Johnson moved the Council accept the Planning Commission recommendation including revisions to subsection 17.48.320.H.1 providing the exemption would no longer apply upon sale of the property or upon any expansion of a secondary dwelling unit allowed to be used as a vacation rental, and move for introduction and first reading of Ordinance No. 601, an Ordinance of the City Council of the City of Morro Bay, California announcing findings and adopting

amendments to Title 17 of the Morro Bay Municipal Code to establish provisions for review of secondary dwelling units and guesthouses, and waive further reading; and direct staff to submit a Local Coastal Program (LCP) Amendment to Coastal Commission after second reading and adoption. The motion was seconded by Councilmember Makowetski and carried unanimously, 3-0-2 with Councilmember Headding absent and Mayor Irons abstaining due to a conflict of interest.

Mayor Irons rejoined the meeting at 8:12pm.

B-2 ADOPTION RESOLUTION 52-16 DIRECTING LEVY OF THE ANNUAL ASSESSMENT FOR THE CLOISTERS LANDSCAPING AND LIGHTING MAINTENANCE DISTRICT; (PUBLIC WORKS)

<https://youtu.be/eLA0S-X6cDU?t=2h9m11s>

Public Works Director Livick presented the staff report.

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

Dawn Beattie, Morro Bay, expressed appreciation for how the City is managing the assessment funds.

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

MOTION: Councilmember Makowetski moved for adoption of Resolution No. 52-16 directing levy of the annual assessment for the Cloisters Landscaping and Lighting Maintenance District. The motion was seconded by Councilmember Smukler and carried 4-0-1 with Councilmember Headding absent.

B-3 ADOPTION RESOLUTION 53-16 DIRECTING LEVY OF THE ANNUAL ASSESSMENT FOR THE NORTH POINT NATURAL AREA LANDSCAPING AND LIGHTING MAINTENANCE DISTRICT; (PUBLIC WORKS)

<https://youtu.be/eLA0S-X6cDU?t=2h15m15s>

Public Works Director Livick presented the staff report.

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

MOTION: Councilmember Johnson moved for adoption of Resolution No. 53-16 directing levy of the annual assessment for the North Point Natural Area Landscaping and Lighting Maintenance District. The motion was seconded by Councilmember Smukler and carried 4-0-1 with Councilmember Headding absent.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

<https://youtu.be/eLA0S-X6cDU?t=2h18m27s>

Councilmember Smukler requested a presentation or discussion regarding the closure of Diablo Power Plant and potential impacts on Morro Bay. It was agreed the timing of that would likely be after the Public Utilities Commission meeting. There was unanimous support for this item.

E. ADJOURNMENT

The meeting adjourned at 8:21pm. The next Regular Meeting will be held on Tuesday, July 12, 2016 at 6:00 p.m. at the Veteran's Memorial Hall located at 209 Surf Street, Morro Bay, California.

Recorded by:

Dana Swanson,
City Clerk

is approximately \$30,930, with \$23,589 in salary and benefits, and \$7,341 (1% of total Management Employee salaries) reserved for unfunded compensable liabilities, the cost of which is already included in the adopted FY 2016/17 Budget.

CONCLUSION

Staff recommends the City Council adopt Resolution No. 57-16, establishing compensation and benefits for the City's unrepresented management-designated employees for the FY 2016/17.

RESOLUTION NO. 57-16

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
ESTABLISHING THE COMPENSATION AND BENEFITS FOR
THE UNREPRESENTED MANAGEMENT DESIGNATED EMPLOYEES
OF THE CITY OF MORRO BAY**

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

WHEREAS, Section 36506 of the California Government Code requires that a city council fix the compensation of all appointive officers and employees by resolution or ordinance; and

WHEREAS, Morro Bay Municipal Code Section 2.20.020 also provides that the salaries and compensation of officers and employees of the City of Morro Bay (“City”) shall be as fixed and determined by resolution of the City Council, except as specifically fixed in Chapter 2.20 of the Morro Bay Municipal Code; and

WHEREAS, the City has established a system of classification for all positions within the City service with descriptive occupational titles, used to identify and distinguish classifications and/or positions from one another, based on job duties, essential functions, knowledge, skills, abilities and minimum requirements; and

WHEREAS, the Meyers-Milias-Brown Act (“MMBA”) (Government Code Secs. 3500 et.seq.) governs labor relations between local government employers and employees and Section 3507.5 thereof permits a public agency to adopt local rules and regulations providing for the designation of the “management” employees of the public agency and restricting such employees from representing any employee organization, which represents other employees of the public agency, on matters within the scope of representation; and

WHEREAS, the City’s Employer-Employee Relations Resolution, Resolution No. 74-69, represents the City’s adoption of local rules and regulations for the administration of employer-employee relations, including but not limited to the designation of “management” employees, summarized in brief from that resolution as generally defined as meaning those employees who are have significant responsibilities for formulating and administering City policies and programs and the authority to exercise independent judgment to hire, discipline, promote, discharge; assign, or transfer other employees or who have responsibility to use independent judgment to direct such employees, adjust their grievances, or recommend personnel action; and

WHEREAS, the City has designated such “management” employees as more fully identified and listed herein below; and

WHEREAS, the “management” employees identified and listed herein are “unrepresented,” meaning that they are not part of any City Council determined appropriate bargaining unit nor represented

by any recognized employee organization as defined by the City's Employer-Employee Relations Resolution and the MMBA; and

WHEREAS, the City Council deems it is in the best interest of the City to adjust the compensation of the unrepresented management employees, whose titles are listed herein, by a Cost of Living Adjustment (COLA) established by City Council for these employees for FY 2016/17.

NOW, THEREFORE, BE IT RESOLVED the Morro Bay City Council does hereby adopt the following Resolution, establishing compensation and benefits for the City of Morro Bay's unrepresented management employees and rescinding and replacing any prior compensation and benefits resolutions, contracts, agreements or memorandum for such employees, including, but not limited to, Resolution No. 67-14, Resolution No. 04-14, Resolution No. 41-12, Resolution No. 55-11, Resolution No. 78-08, Resolution No. 15-07, and Resolution No. 54-02:

A. CLASSIFICATION/POSITION LIST

The following are the FY 2016/17 authorized management positions:

1. Police Commander
2. Wastewater Division Manager
3. Executive Secretary/City Clerk
4. Capital Projects Manager
5. Consolidated Maintenance Superintendent
6. Information Systems Technician
7. Environmental Programs Manager
8. Tourism Manager
9. Management Analyst

B. NORMAL WORK HOURS

Management employees are expected to work during normal City business hours and may be required to work longer hours (more than an eight (8) hour day and more than five (5) days per week), but are not subject to overtime compensation, as they are considered *exempt* employees, within the definition of FLSA. The occasional use of alternative work schedules can be implemented upon approval of the City Manager.

C. EXEMPT TIME OFF

As stated in B above, management employees are considered *exempt* employees. However, the City provides various leave banks for employees' use, with accrual and use record-keeping being required to properly maintain the leave banks.

Time off of less than two (2) continuous hours in a day does not need to be recorded by exempt employees. Abuses of this exception, such as daily use or random periods within a day, will not be allowed; however, this exception is also not allowed to be combined with other leaves.

D. ADMINISTRATIVE LEAVE

Management employees receive seventy-two (72) hours annually in paid administrative leave in a lump sum accrual at the beginning of each fiscal year. The City Manager, or designee, upon recommendation by the management employee's Department Head, may grant additional administrative leave to the management employee. All leave time (vacation, sick leave, holiday, etc.) will be taken off on an hour-for-hour basis equaling employee actual time off from work during normal business hours, regardless of accumulation rates.

With each fiscal year end, up to twenty-four (24) hours of unused administrative leave from the prior fiscal year may be carried over to the next fiscal year by written request of the employee. The administrative leave bank may never accrue more than ninety-six (96) hours (72 + 24).

New management employees will be provided a pro-rata share of the annual seventy-two (72) hour administrative leave bank upon employment.

Administrative leave is a compensable leave, and any remaining hours in the employee's bank will be paid out upon separation from City service, at the employee's current hourly rate of pay.

E. VACATION LEAVE

Management employees accrue vacation, based on the schedule below:

<u>Service Years</u>	<u>Entitlement in Days</u>
1 thru 2	10
3 thru 4	11
5 thru 6	12
7 thru 8	13
9 thru 10	14
11 thru 12	15
13 thru 14	16
15 thru 16	17
17 thru 18	18
19 thru 20	19
21 or more	20

Management employees are subject to a maximum leave accumulation of three hundred (300) hours. Any hours, exceeding the maximum accumulation, as of the pay period containing November 1st will be paid out in the pay period including December 1st, based on the following options for those excess hours, as selected by the employee:

1. Cash out;
2. Convert hours to sick leave on an hour-for-hour basis;
3. Paid to deferred compensation account; or
4. Any combination of the above.

Payment shall be computed, based upon the employee's base hourly rate of pay as of June 30 of the same calendar year.

If the management employee has a specific need to retain the hours beyond the maximum accumulation, this need must be written and approved by both the employee's Department Head and the City Manager, or designee. All leave time (vacation, sick leave, holiday, etc.) will be taken off on an hour-for-hour basis equaling employee actual time off from work during normal business hours, regardless of accumulation rates.

Management employees may exercise the option to convert, into cash, a maximum of forty (40) hours of accrued vacation leave each fiscal year, at the employee's current hourly rate of pay.

Vacation accrual is a compensable leave, and any hours remaining in the employee's vacation bank will be paid out upon separation from City service, at the employee's current hourly rate of pay.

F. HOLIDAYS

The following days are paid holidays for management employees:

Independence Day	July 4
Labor Day	1st Monday in September
Veteran's Day	November 11
Thanksgiving Day	4th Thursday in November
Day after Thanksgiving	Friday after Thanksgiving
Christmas Day	December 25
New Year's Day	January 1
Martin Luther King, Jr. Day	3rd Monday in January
Lincoln's Birthday	February 12
Washington's Birthday	3rd Monday in February
Memorial Day	Last Monday in May
Floating Holiday	Varies
Floating Holiday	Varies

Any holiday, which falls on a Saturday or Sunday, will be officially designated as a "HOLIDAY" on the prior Friday (if Saturday) or Monday (if Sunday).

For management employees, one holiday equals eight (8) hours unless the employee is working the 9/80 alternative work schedule where one holiday shall equal eight (8) or nine (9) hours depending on the normally scheduled work day being either an eight (8) or nine (9) hour work day for that employee.

When a holiday is proclaimed by the Mayor of the City, each employee shall be granted time off in the same number of equivalent hours scheduled for that work day. Such time off shall be authorized by the Department Head.

Floating holiday hours are recorded in a bank in July of each fiscal year, and may be carried over to the next fiscal year, to a maximum accumulation of forty-eight (48) hours holiday time. Hours of holiday time accumulated over forty-eight (48) hours will be paid out in December. All leave time (vacation, sick leave, holiday, etc.) will be taken off on an hour-for-hour basis equaling employee actual time off from work during normal business hours, regardless of accumulation rates.

Floating holiday pay is a compensable leave, and any remaining hours in the employee's bank will be paid out upon separation from City service, at the employee's current hourly rate of pay.

G. SICK LEAVE

All employees accrue ninety-six (96) hours per year in a sick leave bank to be used for employee illness, forty-eight (48) hours of which may be used in the care of the employee's family member for illness or for any other reason mandated by law. All leave time (vacation, sick leave, holiday, etc.) will be taken off on an hour-for-hour basis equaling employee actual time off from work during normal business hours, regardless of accumulation rates.

Upon retirement from City service, remaining unused sick leave converts to time served under the applicable contract between the City and the California Public Employees' Retirement System ("CalPERS"), if any.

Based on individual utilization of paid sick leave in the preceding calendar year, management employees may convert unused accumulated sick leave into paid vacation leave once per calendar year, pursuant to the formula below:

<u>Sick Leave Utilization</u>	<u>Sick Leave</u>	<u>Maximum Conversion to Vacation Leave</u>
0 hours	96 hours	48 hours
.25 to 8 hours	72 hours	36 hours
8.25 to 16 hours	48 hours	24 hours
16.25 to 25 hours	24 hours	12 hours
Over 25 hours	0 hours	0 hours

At least one-hundred sixty (160) accrued hours must remain in the management employee's sick leave bank for an employee to be eligible for conversion or for a conversion to be authorized. In addition, the right to convert does not carry over or rollover from calendar year to calendar year;

failure to request conversion in any calendar year eliminates the right to do so for that calendar year.

Upon the Service Retirement of a management employee, who has more than ten (10) years of service with the City, said employee shall be entitled to receive payment for up to the first seven hundred twenty (720) hours of his/her accrued sick leave at thirty-five percent (35%) of the employee's rate of pay, as of the date of service retirement. Sick leave converted to service credit for CalPERS purposes cannot be compensated (converted to dollars). Service Retirement is defined as service retirement from both the City and CalPERS. Voluntary separation or termination actions are excluded from this benefit.

H. RETIREMENT BENEFITS

All employees, enrolled in the CalPERS retirement system, bear the risk of payment of any increases in the employee contribution, above the current percentage, made by action of CalPERS, the California Public Employees Pension Reform Act of 2013 (“PEPRA”) or related legislation, and/or the State Legislature.

All employee CalPERS contributions are paid to CalPERS, based upon tax treatment currently permitted by the State Franchise Tax Board and the Internal Revenue Service (“IRS”).

The following is descriptive information on City CalPERS-contracted retirement plans:

CalPERS Miscellaneous Plans

All employees pay 100% of the employee contribution to CalPERS, which is currently:

1. Tier 1 Classic members = 8%
2. Tier 2 Classic members = 7%
3. Tier 3 PEPRA members = 6.25%

Tier 1: All employees, who were hired prior to December 10, 2011, receive the following CalPERS retirement formula and optional benefits (existing Tier 1 employees, promoted to another position within the City, will not be considered new hires, with respect to retirement formulas):

1. 2.7% @ 55 formula (Section 21354.5)
2. Unused Sick Leave Credit (Section 20965)
3. Military Service Credit (Section 21024 & 21027)
4. Final Compensation 1 Year (Section 20042)
5. 1959 Survivor Benefit, Level 4 (Section 21574)
6. Pre-Retirement Option 2W Death Benefit (Section 21548)

Tier 2: All employees, who were hired on or after December 10, 2011, but before January 1, 2013, and those hired on or after January 1, 2013, who meet the CalPERS definition of *classic member*, as determined by CalPERS under PEPRA and related legislation, receive the following CalPERS retirement formula and optional benefits:

1. 2% @ 60 formula (benefit factor increases to 2.418% @ 63+) (Section 21353)
2. Unused Sick Leave Credit (Section 20965)
3. Military Service Credit (Section 21024 & 21027)
4. Final Compensation 3 Years (Section 20037)
5. 1959 Survivor Benefit, Level 4 (Section 21574)
6. Pre-Retirement Option 2W Death Benefit (Section 21548)

Tier 3: All employees, who were hired on or after January 1, 2013, and meet the definition of *new member*, as determined by CalPERS under PEPRA and related legislation, receive the following CalPERS retirement formula and optional benefits:

1. 2% @ 62 formula (benefit factor increases to 2.5% @ 67+) (Section 7522.20)
2. Final Compensation 3 Years (Section 20037)
3. Member contribution rate of fifty (50) percent of the expected normal cost rate, which is currently 12.5% (6.25% is employee's portion)
4. Unused Sick Leave Credit (Section 20965)
5. Military Service Credit (Section 21024 and 21027)
6. 1959 Survivor Benefit, Level 4 (21574)
7. Pre-Retirement Option 2W Death Benefit (Section 21548)

CalPERS Safety Plans

All employees pay 100% of the employee contribution to CalPERS, which is currently:

1. Tier 1 and Tier 2 Classic members = 9%
2. Tier 3 PEPRA members = 11.5% (50% of the normal contribution rate)

Tier 1: All employees, who were hired prior to September 17, 2011, receive the following CalPERS retirement formula and optional benefits (existing Tier 1 employees, promoted to another position within the City, will not be considered new hires, with respect to retirement formulas):

1. 3% @ 50 formula (Section 21362.2)
2. Unused Sick Leave Credit (Section 20965)
3. Military Service Credit (Section 21024 & 21027)
4. Final Compensation 1 Year (Section 20042)
5. 1959 Survivor Benefit, Level 4 (Section 21574)
6. Pre-Retirement Option 2W Death Benefit (Section 21548)

Tier 2: All employees, who were hired on or after September 17, 2011, but before January 1, 2013, and those hired on or after January 1, 2013, who meet the definition of *classic member*, as determined by CalPERS under PEPRA and related legislation, receive the following CalPERS retirement formula and optional benefits:

1. 3% @ 55 formula (Section 21363.1)

2. Unused Sick Leave Credit (Section 20965)
3. Military Service Credit (Section 21024 & 21027)
4. Final Compensation 3 Years (Section 20037)
5. 1959 Survivor Benefit, Level 4 (Section 21574)
6. Pre-Retirement Option 2W Death Benefit (Section 21548)

Tier 3: All employees, who were hired on or after January 1, 2013, and meet the definition of *new member*, as determined by CalPERS under PEPRA and related legislation, receive the following CalPERS retirement formula and optional benefits:

1. 2.7% @ 57 formula
2. Final Compensation 3 Years (Section 20037)
3. Member contribution rate of fifty (50) percent of the expected normal cost rate, which is currently 23% (11.5% is employee's portion)
4. Unused Sick Leave Credit (Section 20965)
5. Military Service Credit (Section 21024 and 21027)
6. 1959 Survivor Benefit, Level 4 (21574)
7. Pre-Retirement Option 2W Death Benefit (Section 21548)

I. HEALTH/LIFE/VISION/DENTAL INSURANCE

Effective January 1, 2016, all employees receive the following contribution toward the purchase of CalPERS health insurance, which includes the required CalPERS monthly contribution:

- Employee only - up to \$715/month or cost of insurance, whichever is less
- Employee + 1 – up to \$1,109/month or cost of insurance, whichever is less
- Employee + family - up to \$1,326/month or cost of insurance, whichever is less

Life insurance is provided at \$50,000, and is paid for by the City for the employee only.

Effective January 1, 2016, all employees receive the following contribution toward the purchase of Life, Vision and Dental insurances:

	<u>Life</u>	<u>Vision</u>	<u>Dental</u>	<u>Total</u>	<u>Bank</u>	<u>EE Pays</u>
Employee only	\$7.50	\$ 8.86	\$ 55.47	\$ 71.83	\$ 68.90	\$ 2.93
Employee + 1	\$7.50	\$ 16.59	\$143.09	\$167.18	\$155.43	\$11.75
Employee + 2+	\$7.50	\$ 22.59	\$143.09	\$173.18	\$160.97	\$12.21

City will pay the remaining premium for life, vision and dental.

For retired employees, City contributes the required CalPERS monthly contribution towards CalPERS health plans, as selected by retiree.

J. LONG-TERM DISABILITY (“LTD”) INSURANCE PROGRAM

Management employees do not participate in the California State Disability Insurance program. City provides LTD to its management employees, and pays the cost for the plan.

K. DEFERRED COMPENSATION PROGRAM

Management employees receive a matching contribution up to \$1,500, per calendar year, paid to employee’s deferred compensation plan, or approved retiree medical savings plan. City matching contributions are paid on a 2:1 basis (e.g., employee contributes \$2, City contributes \$1).

L. SPECIAL PAY

Management employees may receive up to \$150 reimbursement per fiscal year, to purchase steel-toed shoes, as required in the performance of their job duties. Proof of purchase is required, and reimbursement is based on price paid, not to exceed \$150 per fiscal year. Once purchased, footwear must be worn while working.

M. COMPENSATION ADJUSTMENTS

Annual Cost of Living Adjustments (COLA) and/or equity adjustments may be given to management employees, as determined by the City Manager and approved by the City Council; neither is guaranteed. For the fiscal year 2016/17, City is providing a 2.25% COLA base salary increase to the management employees’ salary ranges, as reflected in Attachment A hereto, effective with the pay period containing July 1, 2016.

N. EDUCATION REIMBURSEMENT

City will reimburse its management employees for costs associated with job-related and job-required certifications, correspondence courses, and/or licenses (except Class III driver’s license), upon successful completion of the examination or course by the employee. Written authorization, from the employee’s Department Director, is required in advance. Reimbursement includes application fees, examination fees, and certificate fees. Renewal fees may be paid in advance by City. This provision does not apply to continuing education requirements.

City will provide a City vehicle, when available, for required transportation, and will permit paid time for employee to take examinations, scheduled during normal working hours. If no City vehicle is available, City will reimburse mileage for the use of the management employee’s personal vehicle, at current IRS mileage rates.

PASSED AND ADOPTED, by the City Council of the City of Morro Bay, at a regular meeting thereof held on the 12th day of July 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

ATTACHMENT A

MANAGEMENT SALARY SCHEDULE

<u>POSITION</u>	ANNUAL COMPENSATION RANGE				
	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
Police Commander	97,730	102,616	107,747	113,134	118,791
Wastewater Division Manager	95,936	100,733	105,770	111,058	116,611
Executive Secretary/City Clerk	81,800	85,890	90,185	94,694	99,428
Consolidated Maintenance Supt Information Systems Tech Capital Projects Manager Tourism Manager Environmental Programs Manager	74,002	77,703	81,588	85,667	89,950
Management Analyst	63,275	66,439	69,761	73,249	76,912



AGENDA NO: A-4

MEETING DATE: July 12, 2016

Staff Report

TO: Honorable Mayor and City Council **DATE:** July 01, 2016

FROM: Scot Graham, Community Development Manager

SUBJECT: Approval of Sales Agreement with Jeff Mayer for the Purchase of 2783 Coral Avenue (Coral / San Jacinto); APN: 065-386-015

RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 59-16 authorizing the sale of the vacant City owned property, located at 2783 Coral Avenue to Jeff Mayer.

ALTERNATIVES

The Council may decide not to sell the Coral Avenue property.

FISCAL IMPACT

The property is listed at \$799,000.00 and the City has received a full price offer. Through sale of the property, the City would receive the full sale price minus sales commissions, 50% of the escrow fees and closing costs. The City would also realize an increase in property tax based on both the sales price and later on any increase in value associated with development of the property.

BACKGROUND/DISCUSSION

The property is comprised of approximately one acre of vacant land located at 2783 Coral Avenue as further identified on the Maps figures provided below:

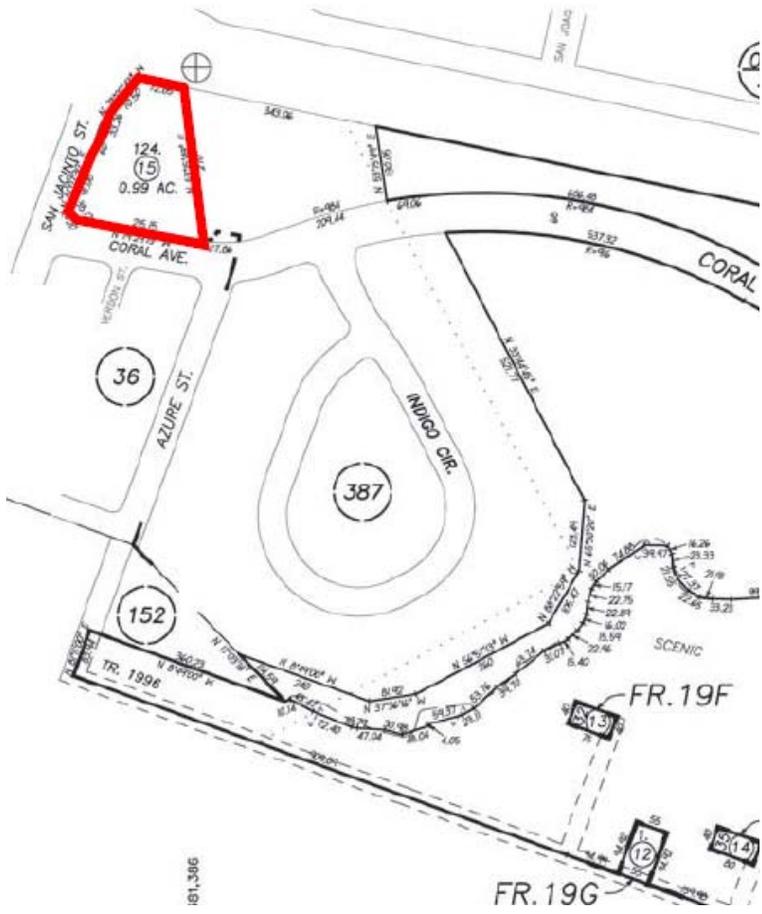
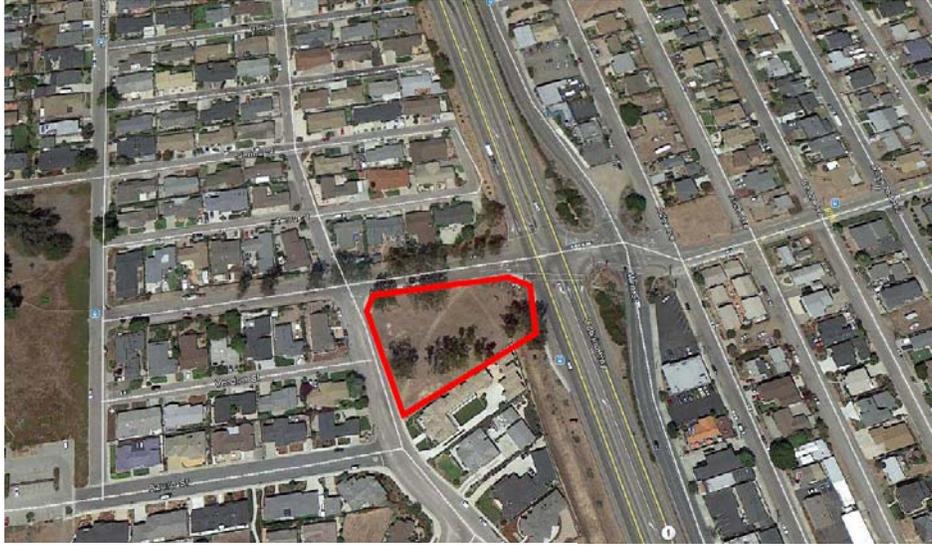
01181.0003/272189.1

Prepared By: SG

Dept Review: SG

City Manager Review: DWB

City Attorney Review: JWP



The property was previously dedicated to the City of Morro Bay for fire station purposes in association with the Cloisters residential subdivision. The City subsequently determined the site was not well suited for a fire station and the City Council directed sale of the property. The property maintains a Coastal Resource Residential (CR) zoning designation with Golf Course (GC) and Planned Development (PD) overlays.

In order to carry out the sale direction provided by the Council, the City hired Ciano Real Estate to act as the City's broker. The City received interest from two parties at the \$799,000 asking price; LVDC LLC (Gerald Robinson) and Jeff Mayer; however, Mr. Robinson eventually withdrew his offer, which allowed Mr. Mayer's offer to move forward without competition. Mr. Mayer's offer includes a 120-day escrow and the following stipulations:

- The City will cooperate with Mr. Mayer as is reasonably necessary during escrow in connection with California Coastal Commission issue requiring an amendment to the original Cloisters CDP A-4-MRB-91-044
- The City will cooperate, pursuant to City policy, regarding removal of eucalyptus tree removal on the property.

The above referenced stipulations will not obligate the City to the expenditure of substantial resources as they both involve permitting processes that currently exist in the City. In order to amend the existing Cloister's approvals, the Buyer will have to process project amendments through both the City and the Coastal Commission.

Removal of onsite trees, also involves an existing City permitting process that is laid out in Council Resolution No. 39-07(Major Vegetation Removal, Replacement and Protection Guidelines). Specifically, removal of major vegetation requires the approval of a Coastal Development Permit, which necessitates Planning Commission approval.

At its meeting on April 19, 2016, the Planning Commission determined the sale of the subject property is in conformity with the City's General Plan. Such a determination is required by Government Code section 65402 before the City can sell any real property it owns.

By sale of the property, the City is not committing to any future development or use of the property. Such use and development would be required to proceed through the City and Coastal Commission's land use entitlement procedures.

CONCLUSION

Staff recommends the City Council adopt Resolution No. 59-16 authorizing sale of the 2783 Coral Avenue property to Jeff Mayer in the amount of \$799,000.00 (See Attachment A).

RESOLUTION NO. 59-16

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AUTHORIZING THE SALE OF CITY OWNED PROPERTY LOCATED AT
2783 CORAL AVENUE APN: 065-386-015**

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

WHEREAS, the City of Morro Bay desires to sell certain City-owned property located at 2783 Coral Avenue in the City of Morro Bay, with APN: 065-386-015 (the "Sale Property"), bounded to the West by Coral Avenue, North by San Jacinto and East by State Highway 1; and

WHEREAS, Jeff Mayer has submitted an offer in the amount of \$799,000.00 to the City for purchase of the Sale Property; and

WHEREAS, the Planning Commission, on April 19, 2016, adopted Resolution No. 13-16 finding the sale of the vacant City-owned property consistent with the City of Morro Bay General Plan; and

WHEREAS, the Council finds there is no present or anticipated future use of the Sale Property, for public purposes; and

WHEREAS, the sale of the Sale Property is both consistent with the City's General Plan and is for the benefit of the City's citizens;

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

1. The City Council hereby finds the sale of the Sale Property is in the public interest.
2. The City Council hereby finds the sale of the Sale Property for the amount of \$799,000.00 is in the public interest for the common benefit of the City's citizens and is not below the fair market value of the Sale Property.
3. The City Council approves the sale of the Sale Property to Jeff Mayer in the amount of \$799,000.00 less sales commission, escrow and closing costs.
4. The City Manager or his designee is authorized to execute the Purchase Sale Agreement and all other documents to effectuate the sale of the Sale Property.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on this 12th day of July, 2016 on the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JAMIE L. IRONS, Mayor

ATTEST

DANA SWANSON, City Clerk



CALIFORNIA ASSOCIATION OF REALTORS®

ADDENDUM

(C.A.R. Form ADM, Revised 12/15)

No. 1

The following terms and conditions are hereby incorporated in and made a part of the: [X] Purchase Agreement, [] Residential Lease or Month-to-Month Rental Agreement, [] Transfer Disclosure Statement (Note: An amendment to the TDS may give the Buyer a right to rescind), [] Other

dated July 1, 2016, on property known as 2783 Coral Avenue Morro Bay, CA 93442

in which Jeff Mayer, & or Assignee is referred to as ("Buyer/Tenant") and City of Morro Bay is referred to as ("Seller/Landlord").

1. Seller to cooperate with Buyer as is reasonable necessary during escrow in connection with California Coastal Commission issue requiring an amendment to the original Cloisters CDP A-4-MRB-91-044

3. Seller to cooperate pursuant to City policy regarding removal of eucalyptus tree removal on the property.

The foregoing terms and conditions are hereby agreed to, and the undersigned acknowledge receipt of a copy of this document.

Date July 1, 2016 DocuSigned by:

Buyer/Tenant Jeff Mayer

Buyer/Tenant & or Assignee

Date

Seller/Landlord City of Morro Bay

Seller/Landlord

© 1986-2015, California Association of REALTORS®, Inc. United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL. This form is made available to real estate professionals through an agreement with or purchase from the California Association of REALTORS®. It is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

Published and Distributed by: REAL ESTATE BUSINESS SERVICES, INC. a subsidiary of the California Association of REALTORS® 525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by Date



ADM REVISED 12/15 (PAGE 1 OF 1)

ADDENDUM (ADM PAGE 1 OF 1)



CALIFORNIA ASSOCIATION OF REALTORS®

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(Selling Firm to Buyer) (As required by the Civil Code) (C.A.R. Form AD, Revised 12/14)

(If checked) This form is being provided in connection with a transaction for a leasehold interest exceeding one year as per Civil Code section 2079.13(k) and (m).

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A Fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

BUYER'S AGENT

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller.

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer. (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).

DocuSigned by: Jeff Mayer Date 07/01/2016

Buyer Seller Landlord Tenant Date & or Assignee

Agent DocuSigned by: Ciano Real Estate Inc. BRE Lic. # 01412309 Real Estate Broker (Firm)

By Frank M. Ciano BRE Lic. # Date 07/01/2016 (Salesperson or Broker-Associate)

Agency Disclosure Compliance (Civil Code §2079.14): When the listing brokerage company also represents Buyer/Tenant: The Listing Agent shall have one AD form signed by Seller/Landlord and a different AD form signed by Buyer/Tenant. When Seller/Landlord and Buyer/Tenant are represented by different brokerage companies: (i) the Listing Agent shall have one AD form signed by Seller/Landlord and (ii) the Buyer's/Tenant's Agent shall have one AD form signed by Buyer/Tenant and either that same or a different AD form presented to Seller/Landlord for signature prior to presentation of the offer. If the same form is used, Seller may sign here: Seller/Landlord Date Seller/Landlord Date City of Morro Bay

The copyright laws of the United States (Title 17 U.S. Code) forbid the unauthorized reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. Copyright © 1991-2010, CALIFORNIA ASSOCIATION OF REALTORS®, INC. ALL RIGHTS RESERVED.

Reviewed by Date



CIVIL CODE SECTIONS 2079.24 (2079.16 APPEARS ON THE FRONT)

2079.13 As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings: (a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. (b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. (c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee. (d) "Commercial real property" means all real property in the state, except single-family residential real property, dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, mobilehomes, as defined in Section 798.3, or recreational vehicles, as defined in Section 799.29. (e) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. (f) "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer. (g) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. (h) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent. (i) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (j) "Offer to purchase" means a written contract executed by a buyer acting through a selling agent that becomes the contract for the sale of the real property upon acceptance by the seller. (k) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property that constitutes or is improved with one to four dwelling units, any commercial real property, any leasehold in these types of property exceeding one year's duration, and mobilehomes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (l) "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase. (m) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (n) "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor. (o) "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. (p) "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

2079.14 Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgement of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows: (a) The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a). (c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgement of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgement of receipt is required. (d) The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

2079.15 In any circumstance in which the seller or buyer refuses to sign an acknowledgement of receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.16 Reproduced on Page 1 of this AD form.

2079.17 (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller.

(c) The confirmation required by subdivisions (a) and (b) shall be in the following form.

(Name of Listing Agent) (DO NOT COMPLETE. SAMPLE ONLY) is the agent of (check one): the seller exclusively; or both the buyer and seller.

(Name of Selling Agent if not the same as the Listing Agent) (DO NOT COMPLETE. SAMPLE ONLY) is the agent of (check one): the buyer exclusively; or the seller exclusively; or both the buyer and seller.

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

2079.18 No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

2079.19 The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20 Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21 A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written consent of the buyer. This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22 Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

2079.23 A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship.

2079.24 Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

Published and Distributed by:
REAL ESTATE BUSINESS SERVICES, INC.
a subsidiary of the California Association of REALTORS®
525 South Virgil Avenue, Los Angeles, California 90020

AD REVISED 12/14 (PAGE 2 OF 2)

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP (AD PAGE 2 OF 2)

Reviewed by _____ Date _____





VACANT LAND PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (C.A.R. Form VLPA, Revised 12/15)

Date Prepared: July 1, 2016

1. OFFER:

A. THIS IS AN OFFER FROM Jeff Mayer, & or Assignee ("Buyer"), B. THE REAL PROPERTY to be acquired is 2783 Coral Avenue, situated in Morro Bay (City), San Luis Obispo (County), California, 93442 (Zip Code), Assessor's Parcel No. 065-386-015 ("Property"). Further Described As

C. THE PURCHASE PRICE offered is Seven Hundred Ninety-Nine Thousand Dollars \$ 799,000.00

D. CLOSE OF ESCROW shall occur on (date) (or X 120 Days After Acceptance).

E. Buyer and Seller are referred to herein as the "Parties." Brokers are not Parties to this Agreement.

2. AGENCY:

A. DISCLOSURE: The Parties each acknowledge receipt of a X "Disclosure Regarding Real Estate Agency Relationships" (C.A.R. Form AD).

B. CONFIRMATION: The following agency relationships are hereby confirmed for this transaction:

Listing Agent Ciano Real Estate Inc. (Print Firm Name) is the agent of (check one): the Seller exclusively; or both the Buyer and Seller.

Selling Agent (Print Firm Name) (if not the same as the Listing Agent) is the agent of (check one): the Buyer exclusively; or the Seller exclusively; or X both the Buyer and Seller.

C. POTENTIALLY COMPETING BUYERS AND SELLERS: The Parties each acknowledge receipt of a X "Possible Representation of More than One Buyer or Seller - Disclosure and Consent" (C.A.R. Form PRBS).

3. FINANCE TERMS: Buyer represents that funds will be good when deposited with Escrow Holder.

A. INITIAL DEPOSIT: Deposit shall be in the amount of \$ 20,000.00

(1) Buyer Direct Deposit: Buyer shall deliver deposit directly to Escrow Holder by electronic funds transfer, cashier's check, personal check, other within 3 business days after Acceptance (or);

OR (2) Buyer Deposit with Agent: Buyer has given the deposit by personal check (or) to the agent submitting the offer (or to), made payable to . The deposit shall be held uncashed until Acceptance and then deposited with Escrow Holder within 3 business days after Acceptance (or). Deposit checks given to agent shall be an original signed check and not a copy.

(Note: Initial and increased deposits checks received by agent shall be recorded in Broker's trust fund log.)

B. INCREASED DEPOSIT: Buyer shall deposit with Escrow Holder an increased deposit in the amount of \$ within Days After Acceptance (or).

If the Parties agree to liquidated damages in this Agreement, they also agree to incorporate the increased deposit into the liquidated damages amount in a separate liquidated damages clause (C.A.R. Form RID) at the time the increased deposit is delivered to Escrow Holder.

C. ALL CASH OFFER: No loan is needed to purchase the Property. This offer is NOT contingent on Buyer obtaining a loan. Written verification of sufficient funds to close this transaction IS ATTACHED to this offer or Buyer shall, within 3 (or) Days After Acceptance, Deliver to Seller such verification.

D. LOAN(S):

(1) FIRST LOAN: in the amount of \$ 559,300.00

This loan will be conventional financing or FHA, VA, Seller financing (C.A.R. Form SFA), assumed financing (C.A.R. Form AFA), subject to financing, Other. This loan shall be at a fixed rate not to exceed % or, an adjustable rate loan with initial rate not to exceed %. Regardless of the type of loan, Buyer shall pay points not to exceed % of the loan amount.

(2) SECOND LOAN in the amount of \$

This loan will be conventional financing or Seller financing (C.A.R. Form SFA), assumed financing (C.A.R. Form AFA), subject to financing Other. This loan shall be at a fixed rate not to exceed % or, an adjustable rate loan with initial rate not to exceed %. Regardless of the type of loan, Buyer shall pay points not to exceed % of the loan amount.

(3) FHAVA: For any FHA or VA loan specified in 3D(1), Buyer has 17 (or) Days After Acceptance to Deliver to Seller written notice (C.A.R. Form FVA) of any lender-required repairs or costs that Buyer requests Seller to pay for or otherwise correct. Seller has no obligation to pay or satisfy lender requirements unless agreed in writing. A FHAVA amendatory clause (C.A.R. Form FVAC) shall be a part of this transaction.

E. ADDITIONAL FINANCING TERMS:

Buyer's Initials (JM) ()

Seller's Initials () ()

VLPA REVISED 12/15 (PAGE 1 OF 11)

VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 1 OF 11)



Property Address: 2783 Coral Avenue, Morro Bay, CA 93442

Date: July 1, 2016

- F. **BALANCE OF DOWN PAYMENT OR PURCHASE PRICE** in the amount of \$ 219,700.00
to be deposited with Escrow Holder pursuant to Escrow Holder instructions.
- G. **PURCHASE PRICE (TOTAL):** \$ 799,000.00
- H. **VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS:** Buyer (or Buyer's lender or loan broker pursuant to paragraph 3J(1)) shall, within **3 (or ___) Days** After Acceptance, Deliver to Seller written verification of Buyer's down payment and closing costs. (Verification attached.)
- I. **APPRAISAL CONTINGENCY AND REMOVAL:** This Agreement is (or is NOT) contingent upon a written appraisal of the Property by a licensed or certified appraiser at no less than the purchase price. Buyer shall, as specified in paragraph 19B(3), in writing, remove the appraisal contingency or cancel this Agreement within **17 (or 45) Days** After Acceptance.
- J. **LOAN TERMS:**
 - (1) **LOAN APPLICATIONS:** Within **3 (or ___) Days** After Acceptance, Buyer shall Deliver to Seller a letter from Buyer's lender or loan broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan specified in paragraph 3D. If any loan specified in paragraph 3D is an adjustable rate loan, the prequalification or preapproval letter shall be based on the qualifying rate, not the initial loan rate. (Letter attached.)
 - (2) **LOAN CONTINGENCY:** Buyer shall act diligently and in good faith to obtain the designated loan(s). Buyer's qualification for the loan(s) specified above **is a contingency** of this Agreement unless otherwise agreed in writing. If there is no appraisal contingency or the appraisal contingency has been waived or removed, then failure of the Property to appraise at the purchase price does not entitle Buyer to exercise the cancellation right pursuant to the loan contingency if Buyer is otherwise qualified for the specified loan. Buyer's contractual obligations regarding deposit, balance of down payment and closing costs **are not contingencies** of this Agreement.
 - (3) **LOAN CONTINGENCY REMOVAL:**
Within **21 (or 90) Days** After Acceptance, Buyer shall, as specified in paragraph 19, in writing, remove the loan contingency or cancel this Agreement. If there is an appraisal contingency, removal of the loan contingency shall not be deemed removal of the appraisal contingency.
 - (4) **NO LOAN CONTINGENCY:** Obtaining any loan specified above is NOT a contingency of this Agreement. If Buyer does not obtain the loan and as a result Buyer does not purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.
 - (5) **LENDER LIMITS ON BUYER CREDITS:** Any credit to Buyer, from any source, for closing or other costs that is agreed to by the Parties ("Contractual Credit") shall be disclosed to Buyer's lender. If the total credit allowed by Buyer's lender ("Lender Allowable Credit") is less than the Contractual Credit, then (i) the Contractual Credit shall be reduced to the Lender Allowable Credit, and (ii) in the absence of a separate written agreement between the Parties, there shall be no automatic adjustment to the purchase price to make up for the difference between the Contractual Credit and the Lender Allowable Credit.
- K. **BUYER STATED FINANCING:** Seller is relying on Buyer's representation of the type of financing specified (including but not limited to, as applicable, all cash, amount of down payment, or contingent or non-contingent loan). Seller has agreed to a specific closing date, purchase price and to sell to Buyer in reliance on Buyer's covenant concerning financing. Buyer shall pursue the financing specified in this Agreement. Seller has no obligation to cooperate with Buyer's efforts to obtain any financing other than that specified in the Agreement and the availability of any such alternate financing does not excuse Buyer from the obligation to purchase the Property and close escrow as specified in this Agreement.
- L. **SELLER FINANCING:** The following terms (or the terms specified in the attached Seller Financing Addendum) (C.A.R. Form SFA) apply ONLY to financing extended by Seller under this Agreement.
 - (1) **BUYER'S CREDIT-WORTHINESS:** Buyer authorizes Seller and/or Brokers to obtain, at Buyer's expense, a copy of Buyer's credit report. Within **7 (or _____) Days** After Acceptance, Buyer shall provide any supporting documentation reasonably requested by Seller.
 - (2) **TERMS:** Buyer's promissory note, deed of trust and other documents as appropriate shall incorporate and implement the following additional terms: (i) the maximum interest rate specified in paragraph 3D shall be the actual fixed interest rate for Seller financing; (ii) deed of trust shall contain a REQUEST FOR NOTICE OF DEFAULT on senior loans; (iii) Buyer shall sign and pay for a REQUEST FOR NOTICE OF DELINQUENCY prior to Close Of Escrow and at any future time if requested by Seller; (iv) note and deed of trust shall contain an acceleration clause making the loan due, when permitted by law and at Seller's option, upon the sale or transfer of the Property or any interest in it; (v) note shall contain a late charge of 6% of the installment due (or _____) if the installment is not received within 10 days of the date due; (vi) title insurance coverage in the form of a joint protection policy shall be provided insuring Seller's deed of trust interest in the Property (any increased cost over owner's policy shall be paid by Buyer); and (vii) tax service shall be obtained and paid for by Buyer to notify Seller if property taxes have not been paid.
 - (3) **ADDED, DELETED OR SUBSTITUTED BUYERS:** The addition, deletion or substitution of any person or entity under this Agreement or to title prior to Close Of Escrow shall require Seller's written consent. Seller may grant or withhold consent in Seller's sole discretion. Any additional or substituted person or entity shall, if requested by Seller, submit to Seller the same documentation as required for the original named Buyer. Seller and/or Brokers may obtain a credit report, at Buyer's expense, on any such person or entity.
- M. **ASSUMED OR "SUBJECT TO" FINANCING:** Seller represents that Seller is not delinquent on any payments due on any loans. Seller shall, within the time specified in paragraph 19, provide Copies of all applicable notes and deeds of trust, loan balances and current interest rates to Buyer. Buyer shall then, as specified in paragraph 19B(3), remove this contingency or cancel this Agreement. Differences between estimated and actual loan balances shall be adjusted at Close Of Escrow by cash down payment. Impound accounts, if any, shall be assigned and charged to Buyer and credited to Seller. Seller is advised that Buyer's assumption of an existing loan may not release Seller from liability on that loan. If this is an assumption of a VA Loan, the sale is contingent upon Seller being provided a release of liability and substitution of eligibility, unless otherwise agreed in writing. If the Property is acquired subject to an existing loan, Buyer and Seller are advised to consult with legal counsel regarding the ability of an existing lender to call the loan due, and the consequences thereof.

Buyer's Initials (MS) (_____)

Seller's Initials (_____) (_____)

VLPA REVISED 12/15 (PAGE 2 OF 11)

VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 2 OF 11)



Property Address: **2783 Coral Avenue, Morro Bay, CA 93442**

Date: **July 1, 2016**

4. SALE OF BUYER'S PROPERTY:

- A. This Agreement and Buyer's ability to obtain financing are NOT contingent upon the sale of any property owned by Buyer.
- OR B. This Agreement and Buyer's ability to obtain financing are contingent upon the sale of property owned by Buyer as specified in the attached addendum (C.A.R. Form COP).
- 5. **MANUFACTURED HOME PURCHASE:** The purchase of the Property is contingent upon Buyer acquiring a personal property manufactured home to be placed on the Property after Close Of Escrow. Buyer has has not entered into a contract for the purchase of a personal property manufactured home. Within the time specified in paragraph 19, Buyer shall remove this contingency or cancel this Agreement, (or this contingency shall remain in effect until the Close Of Escrow of the Property).
- 6. **CONSTRUCTION LOAN FINANCING:** The purchase of the Property is contingent upon Buyer obtaining a construction loan. A draw from the construction loan will will not be used to finance the Property. Within the time specified in paragraph 19, Buyer shall remove this contingency or cancel this Agreement (or this contingency shall remain in effect until Close Of Escrow of the Property).

7. ADDENDA AND ADVISORIES:

- A. ADDENDA:

<input checked="" type="checkbox"/> Addendum # 1 (C.A.R. Form ADM)
<input type="checkbox"/> Back Up Offer Addendum (C.A.R. Form BUO) <input type="checkbox"/> Court Confirmation Addendum (C.A.R. Form CCA)
<input type="checkbox"/> Septic, Well and Property Monument Addendum (C.A.R. Form SWPI)
<input type="checkbox"/> Short Sale Addendum (C.A.R. Form SSA) <input type="checkbox"/> Other

- B. BUYER AND SELLER ADVISORIES:

<input checked="" type="checkbox"/> Buyer's Inspection Advisory (C.A.R. Form BIA)
<input type="checkbox"/> Probate Advisory (C.A.R. Form PA) <input type="checkbox"/> Statewide Buyer and Seller Advisory (C.A.R. Form SBSA)
<input type="checkbox"/> Trust Advisory (C.A.R. Form TA) <input type="checkbox"/> REO Advisory (C.A.R. Form REO)
<input type="checkbox"/> Short Sale Information and Advisory (C.A.R. Form SSIA) <input type="checkbox"/> Other

8. OTHER TERMS: _____

9. ALLOCATION OF COSTS

- A. **INSPECTIONS, REPORTS AND CERTIFICATES:** Unless otherwise agreed, in writing, this paragraph only determines who is to pay for the inspection, test, certificate or service ("Report") mentioned; **it does not determine who is to pay for any work recommended or identified in the Report.**
 - (1) Buyer Seller shall pay for a natural hazard zone disclosure report, including tax environmental Other: _____ prepared by _____.
 - (2) Buyer Seller shall pay for the following Report _____ prepared by _____.
 - (3) Buyer Seller shall pay for the following Report _____ prepared by _____.

B. ESCROW AND TITLE:

- (1) (a) Buyer Seller shall pay escrow fee **one half each** _____.
- (b) Escrow Holder shall be **seller's choice** _____.
- (c) The Parties shall, within **5 (or _____) Days** After receipt, sign and return Escrow Holder's general provisions.
- (2) (a) Buyer Seller shall pay for **owner's** title insurance policy specified in paragraph 18E _____.
- (b) Owner's title policy to be issued by **seller's choice** _____.
- (Buyer shall pay for any title insurance policy insuring Buyer's **lender**, unless otherwise agreed in writing.)

C. OTHER COSTS:

- (1) Buyer Seller shall pay County transfer tax or fee _____.
- (2) Buyer Seller shall pay City transfer tax or fee _____.
- (3) Buyer Seller shall pay Homeowners' Association ("HOA") transfer fee _____.
- (4) Seller shall pay HOA fees for preparing all documents required to be delivered by Civil Code §4525.
- (5) Buyer to pay for any HOA certification fee.
- (6) Buyer Seller shall pay HOA fees for preparing all documents other than those required by Civil Code §4525.
- (7) Buyer Seller shall pay for any private transfer fee _____.
- (8) Buyer Seller shall pay for _____.
- (9) Buyer Seller shall pay for _____.

10. CLOSING AND POSSESSION: Possession shall be delivered to Buyer: (i) at 6 PM or (AM/ PM) on the date of Close Of Escrow; (ii) no later than _____ calendar days after Close Of Escrow; or (iii) at _____ AM/ PM on _____ . The Property shall be unoccupied, unless otherwise agreed in writing. Seller shall provide keys and/or means to operate all Property locks. If Property is located in a common interest subdivision, Buyer may be required to pay a deposit to the Homeowners' Association ("HOA") to obtain keys to accessible HOA facilities.

11. ITEMS INCLUDED IN AND EXCLUDED FROM SALE:

A. NOTE TO BUYER AND SELLER: Items listed as included or excluded in the MLS, flyers or marketing materials are **not** included in the purchase price or excluded from the sale unless specified in 11B or C.

Buyer's Initials (M) (_____)

Seller's Initials (_____) (_____)



Property Address: **2783 Coral Avenue, Morro Bay, CA 93442**

Date: **July 1, 2016**

B. ITEMS INCLUDED IN SALE:

- (1) All EXISTING fixtures and fittings that are attached to the Property;
- (2) The following items: **All documentation related to property in possession of Seller, including all maps, engineering, surveys, studies and reports.**
- (3) Seller represents that all items included in the purchase price, unless otherwise specified, are owned by Seller.
- (4) All items included shall be transferred free of liens and without Seller warranty.

C. ITEMS EXCLUDED FROM SALE:

12. STATUTORY AND OTHER DISCLOSURES AND CANCELLATION RIGHTS:

- A. NATURAL AND ENVIRONMENTAL HAZARD DISCLOSURES AND OTHER BOOKLETS:** Within the time specified in paragraph 19A, Seller shall, if required by Law: (i) Deliver to Buyer earthquake guide(s) (and questionnaire), environmental hazards booklet; (ii) disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; and Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.
- B. WITHHOLDING TAXES:** Within the time specified in paragraph 19A, to avoid required withholding, Seller shall Deliver to Buyer or qualified substitute, an affidavit sufficient to comply with federal (FIRPTA) and California withholding Law (C.A.R. Form AS or QS).
- C. MEGAN'S LAW DATABASE DISCLOSURE:** Notice: Pursuant to Section 290.46 of the Penal Code, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the Department of Justice at www.meganslaw.ca.gov. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP Code in which he or she resides. (Neither Seller nor Brokers are required to check this website. If Buyer wants further information, Broker recommends that Buyer obtain information from this website during Buyer's inspection contingency period. Brokers do not have expertise in this area.)
- D. NOTICE REGARDING GAS AND HAZARDOUS LIQUID TRANSMISSION PIPELINES:** This notice is being provided simply to inform you that information about the general location of gas and hazardous liquid transmission pipelines is available to the public via the National Pipeline Mapping System (NPMS) Internet Web site maintained by the United States Department of Transportation at <http://www.npms.phmsa.dot.gov>. To seek further information about possible transmission pipelines near the Property, you may contact your local gas utility or other pipeline operators in the area. Contact information for pipeline operators is searchable by ZIP Code and county on the NPMS Internet Web site.
- E. CONDOMINIUM/PLANNED DEVELOPMENT DISCLOSURES:**
 - (1) **SELLER HAS: 7 (or ___) Days** After Acceptance to disclose to Buyer whether the Property is a condominium, or is located in a planned development or other common interest subdivision (C.A.R. Form VLQ).
 - (2) If the Property is a condominium or is located in a planned development or other common interest subdivision, Seller has **3 (or ___) Days** After Acceptance to request from the HOA (C.A.R. Form HOA1): (i) Copies of any documents required by Law; (ii) disclosure of any pending or anticipated claim or litigation by or against the HOA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of HOA minutes for regular and special meetings; and (v) the names and contact information of all HOAs governing the Property (collectively, "CI Disclosures"). Seller shall itemize and Deliver to Buyer all CI Disclosures received from the HOA and any CI Disclosures in Seller's possession. Buyer's approval of CI Disclosures is a contingency of this Agreement as specified in paragraph 19B(3). The Party specified in paragraph 9, as directed by escrow, shall deposit funds into escrow or direct to HOA or management company to pay for any of the above.

13. SELLER DOCUMENTATION AND ADDITIONAL DISCLOSURE:

- A.** Within the time specified in paragraph 19, if Seller has actual knowledge, Seller shall provide to Buyer, in writing, the following information:
 - (1) **LEGAL PROCEEDINGS:** Any lawsuits by or against Seller, threatening or affecting the Property, including any lawsuits alleging a defect or deficiency in the Property or common areas, or any known notices of abatement or citations filed or issued against the Property.
 - (2) **AGRICULTURAL USE:** Whether the Property is subject to restrictions for agricultural use pursuant to the Williamson Act (Government Code §§51200-51295).
 - (3) **DEED RESTRICTIONS:** Any deed restrictions or obligations.
 - (4) **FARM USE:** Whether the Property is in, or adjacent to, an area with Right to Farm rights (Civil Code §3482.5 and §3482.6).
 - (5) **ENDANGERED SPECIES:** Presence of endangered, threatened, 'candidate' species, or wetlands on the Property.
 - (6) **ENVIRONMENTAL HAZARDS:** Any substances, materials, or products that may be an environmental hazard including, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, and contaminated soil or water on the Property.
 - (7) **COMMON WALLS:** Any features of the Property shared in common with adjoining landowners, such as walls, fences, roads, and driveways, and agriculture and domestic wells whose use or responsibility for maintenance may have an effect on the Property.
 - (8) **LANDLOCKED:** The absence of legal or physical access to the Property.
 - (9) **EASEMENTS/ENCROACHMENTS:** Any encroachments, easements or similar matters that may affect the Property.
 - (10) **SOIL FILL:** Any fill (compacted or otherwise), or abandoned mining operations on the Property.
 - (11) **SOIL PROBLEMS:** Any slippage, sliding, flooding, drainage, grading, or other soil problems.
 - (12) **EARTHQUAKE DAMAGE:** Major damage to the Property or any of the structures from fire, earthquake, floods, or landslides.
 - (13) **ZONING ISSUES:** Any zoning violations, non-conforming uses, or violations of "setback" requirements.
 - (14) **NEIGHBORHOOD PROBLEMS:** Any neighborhood noise problems, or other nuisances.
- B. RENTAL AND SERVICE AGREEMENTS:** Within the time specified in paragraph 19, Seller shall make available to Buyer for inspection and review, all current leases, rental agreements, service contracts and other related agreements, licenses, and permits pertaining to the operation or use of the Property.
- C. TENANT ESTOPPEL CERTIFICATES:** Within the time specified in paragraph 19, Seller shall deliver to Buyer tenant estoppel certificates (C.A.R. Form TEC) completed by Seller or Seller's agent, and signed by tenants, acknowledging: (i) that tenants' rental or lease agreements are unmodified and in full force and effect (or if modified, stating all such modifications); (ii) that no lessor defaults exist; and (iii) stating the amount of any prepaid rent or security deposit.

Buyer's Initials (M) (_____)

Seller's Initials (_____) (_____)



Property Address: **2783 Coral Avenue, Morro Bay, CA 93442**

Date: **July 1, 2016**

- D. **MELLO-ROOS TAX; 1915 BOND ACT:** Within the time specified in paragraph 19, Seller shall: (i) make a good faith effort to obtain a notice from any local agencies that levy a special tax or assessment on the Property (or, if allowed, substantially equivalent notice), pursuant to the Mello-Roos Community Facilities Act, and Improvement Bond Act of 1915, and (ii) promptly deliver to Buyer any such notice obtained.
- E. **SELLER VACANT LAND QUESTIONNAIRE:** Seller shall, within the time specified in paragraph 19, complete and provide Buyer with a Seller Vacant Land Questionnaire (C.A.R. Form VLQ).
- 14. **SUBSEQUENT DISCLOSURES:** In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer of which Buyer is otherwise unaware, Seller shall promptly provide a subsequent or amended disclosure or notice, in writing, covering those items. **However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies disclosed in reports ordered and paid for by Buyer.**
- 15. **CHANGES DURING ESCROW:**
 - A. Prior to Close Of Escrow, Seller may engage in the following acts, ("Proposed Changes"), subject to Buyer's rights in paragraph 15B: (i) rent or lease any part of the premises; (ii) alter, modify or extend any existing rental or lease agreement; (iii) enter into, alter, modify or extend any service contract(s); or (iv) change the status of the condition of the Property.
 - B. At least 7 (or ____) Days prior to any Proposed Changes, Seller shall give written notice to Buyer of such Proposed Changes. Within 5 (or ____) Days After receipt of such notice, Buyer, in writing, may give Seller notice of Buyer's objection to the Proposed Changes, in which case Seller shall not make the Proposed Changes.
- 16. **CONDITION OF PROPERTY:** Unless otherwise agreed in writing: (i) the Property is sold (a) "AS-IS" in its PRESENT physical condition as of the date of Acceptance and (b) subject to Buyer's Investigation rights; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debris and personal property not included in the sale shall be removed by Close Of Escrow.
 - A. Seller shall, within the time specified in paragraph 19A, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, and make any and all other disclosures required by law.
 - B. Buyer has the right to conduct Buyer Investigations of the property and, as specified in paragraph 19B, based upon information discovered in those investigations: (i) cancel this Agreement; or (ii) request that Seller make Repairs or take other action.
 - C. **Buyer is strongly advised to conduct investigations of the entire Property in order to determine its present condition. Seller may not be aware of all defects affecting the Property or other factors that Buyer considers important. Property improvements may not be built according to code, in compliance with current Law, or have had permits issued.**
- 17. **BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:**
 - A. Buyer's acceptance of the condition of, and any other matter affecting the Property, is a contingency of this Agreement as specified in this paragraph and paragraph 19B. Within the time specified in paragraph 19B(1), Buyer shall have the right, at Buyer's expense unless otherwise agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations"), including, but not limited to, the right to: (i) inspect for lead-based paint and other lead-based paint hazards; (ii) inspect for wood destroying pests and organisms; (iii) review the registered sex offender database; (iv) confirm the insurability of Buyer and the Property; and (v) satisfy Buyer as to any matter specified in the attached Buyer's Inspection Advisory (C.A.R. Form BIA). Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations except for minimally invasive testing; or (ii) inspections by any governmental building or zoning inspector or government employee, unless required by Law.
 - B. Seller shall make the Property available for all Buyer Investigations. Buyer shall (i) as specified in paragraph 19B, complete Buyer Investigations and, either remove the contingency or cancel this Agreement, and (ii) give Seller, at no cost, complete Copies of all Investigation reports obtained by Buyer, which obligation shall survive the termination of this Agreement.
 - C. **Buyer indemnity and Seller protection for entry upon property:** Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs of Buyer's Investigations. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination or cancellation of this Agreement and Close Of Escrow.
- D. **BUYER IS STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY AND ALL MATTERS AFFECTING THE VALUE OR DESIRABILITY OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE ITEMS SPECIFIED BELOW. IF BUYER DOES NOT EXERCISE THESE RIGHTS, BUYER IS ACTING AGAINST THE ADVICE OF BROKERS. BUYER UNDERSTANDS THAT ALTHOUGH CONDITIONS ARE OFTEN DIFFICULT TO LOCATE AND DISCOVER, ALL REAL PROPERTY CONTAINS CONDITIONS THAT ARE NOT READILY APPARENT AND THAT MAY AFFECT THE VALUE OR DESIRABILITY OF THE PROPERTY. BUYER AND SELLER ARE AWARE THAT BROKERS DO NOT GUARANTEE, AND IN NO WAY ASSUME RESPONSIBILITY FOR, THE CONDITION OF THE PROPERTY. BROKERS HAVE NOT AND WILL NOT VERIFY ANY OF THE ITEMS IN THIS PARAGRAPH 17, UNLESS OTHERWISE AGREED IN WRITING.**
- E. **SIZE, LINES, ACCESS AND BOUNDARIES:** Lot size, property lines, legal or physical access and boundaries including features of the Property shared in common with adjoining landowners, such as walls, fences, roads and driveways, whose use or responsibility for maintenance may have an effect on the Property and any encroachments, easements or similar matters that may affect the Property. (Fences, hedges, walls and other natural or constructed barriers or markers do not necessarily identify true Property boundaries. Property lines may be verified by survey.) (Unless otherwise specified in writing, any numerical statements by Brokers regarding lot size are APPROXIMATIONS ONLY, which have not been and will not be verified, and should not be relied upon by Buyer.)
- F. **ZONING AND LAND USE:** Past, present, or proposed laws, ordinances, referendums, initiatives, votes, applications and permits affecting the current use of the Property, future development, zoning, building, size, governmental permits and inspections. Any zoning violations, non-conforming uses, or violations of "setback" requirements. (Buyer should also investigate whether these matters affect Buyer's intended use of the Property.)
- G. **UTILITIES AND SERVICES:** Availability, costs, restrictions and location of utilities and services, including but not limited to, sewerage, sanitation, septic and leach lines, water, electricity, gas, telephone, cable TV and drainage.

Buyer's Initials (jm) (_____)

Seller's Initials (_____) (_____)

VLPA REVISED 12/15 (PAGE 5 OF 11)

VACANT LAND PURCHASE AGREEMENT (VLPA PAGE 5 OF 11)



Property Address: **2783 Coral Avenue, Morro Bay, CA 93442**

Date: **July 1, 2016**

- H. **ENVIRONMENTAL HAZARDS:** Potential environmental hazards, including, but not limited to, asbestos, lead-based paint and other lead contamination, radon, methane, other gases, fuel, oil or chemical storage tanks, contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, nuclear sources, and other substances, including mold (airborne, toxic or otherwise), fungus or similar contaminant, materials, products or conditions.
 - I. **GEOLOGIC CONDITIONS:** Geologic/seismic conditions, soil and terrain stability, suitability and drainage including any slippage, sliding, flooding, drainage, grading, fill (compacted or otherwise), or other soil problems.
 - J. **NATURAL HAZARD ZONE:** Special Flood Hazard Areas, Potential Flooding (Inundation) Areas, Very High Fire Hazard Zones, State Fire Responsibility Areas, Earthquake Fault Zones, Seismic Hazard Zones, or any other zone for which disclosure is required by Law.
 - K. **PROPERTY DAMAGE:** Major damage to the Property or any of the structures or non-structural systems and components and any personal property included in the sale from fire, earthquake, floods, landslides or other causes.
 - L. **NEIGHBORHOOD, AREA AND PROPERTY CONDITIONS:** Neighborhood or area conditions, including Agricultural Use Restrictions pursuant to the Williamson Act (Government Code §§51200-51295), Right To Farm Laws (Civil Code §3482.5 and §3482.6), schools, proximity and adequacy of law enforcement, crime statistics, the proximity of registered felons or offenders, fire protection, other government services, availability, adequacy and cost of any speed-wired, wireless internet connections or other telecommunications or other technology services and installations, proximity to commercial, industrial or agricultural activities, existing and proposed transportation, construction and development that may affect noise, view, or traffic, airport noise, noise or odor from any source, abandoned mining operations on the Property, wild and domestic animals, other nuisances, hazards, or circumstances, protected species, wetland properties, botanical diseases, historic or other governmentally protected sites or improvements, cemeteries, facilities and condition of common areas of common interest subdivisions, and possible lack of compliance with any governing documents or Homeowners' Association requirements, conditions and influences of significance to certain cultures and/or religions, and personal needs, requirements and preferences of Buyer.
 - M. **COMMON INTEREST SUBDIVISIONS; OWNER ASSOCIATIONS:** Facilities and condition of common areas (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others), Owners' Association that has any authority over the subject property, CC&Rs, or other deed restrictions or obligations, and possible lack of compliance with any Owners' Association requirements.
 - N. **SPECIAL TAX:** Any local agencies that levy a special tax on the Property pursuant to the Mello-Roos Community Facilities Act or Improvement Bond Act of 1915.
 - O. **RENTAL PROPERTY RESTRICTIONS:** Some cities and counties impose restrictions that limit the amount of rent that can be charged, the maximum number of occupants and the right of a landlord to terminate a tenancy.
 - P. **MANUFACTURED HOME PLACEMENT:** Conditions that may affect the ability to place and use a manufactured home on the Property.
- 18. TITLE AND VESTING:**
- A. Within the time specified in paragraph 19, Buyer shall be provided a current preliminary title report ("Preliminary Report"). The Preliminary Report is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. Buyer's review of the Preliminary Report and any other matters which may affect title are a contingency of this Agreement as specified in paragraph 19B. The company providing the Preliminary Report shall, prior to issuing a Preliminary Report, conduct a search of the General Index for all Sellers except banks or other institutional lenders selling properties they acquired through foreclosure (REOs), corporations, and government entities. Seller shall within **7 Days** After Acceptance, give Escrow Holder a completed Statement of Information.
 - B. Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except for: (i) monetary liens of record (which Seller is obligated to pay off) unless Buyer is assuming those obligations or taking the Property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing.
 - C. Within the time specified in paragraph 19A, Seller has a duty to disclose to Buyer all matters known to Seller affecting title, whether of record or not.
 - D. At Close Of Escrow, Buyer shall receive a grant deed conveying title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's leasehold interest), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's supplemental escrow instructions. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.
 - E. Buyer shall receive a "CLTA/ALTA Homeowner's Policy of Title Insurance", if applicable to the type of property and buyer. A title company, at Buyer's request, can provide information about the availability, desirability, coverage, and cost of various title insurance coverages and endorsements. If Buyer desires title coverage other than that required by this paragraph, Buyer shall instruct Escrow Holder in writing and shall pay any increase in cost.
- 19. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS: The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph by either Buyer or Seller must be exercised in good faith and in writing (C.A.R. Form CR or CC).**
- A. **SELLER HAS: 7 (or ___) Days** After Acceptance to Deliver to Buyer all Reports, disclosures and information for which Seller is responsible under paragraphs 3M, 7A, 8, 9, 12A, B, and E, 13, 16A and 18A. Buyer after first Delivering to Seller a Notice to Seller to Perform (C.A.R. Form NSP) may cancel this Agreement if Seller has not Delivered the items within the time specified.
 - B. (1) **BUYER HAS: 17 (or 45) Days** After Acceptance, unless otherwise agreed in writing, to:
 - (i) complete all Buyer Investigations; review all disclosures, reports, and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property; and (ii) Deliver to Seller Signed Copies of Statutory Disclosures and other disclosures Delivered by Seller in accordance with paragraph 12A.
 - (2) Within the time specified in paragraph 19B(1), Buyer may request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to (C.A.R. Form RRRR) Buyer's requests.
 - (3) By the end of the time specified in paragraph 19B(1) (or as otherwise specified in this Agreement), Buyer shall Deliver to Seller a removal of the applicable contingency or cancellation (C.A.R. Form CR or CC) of this Agreement. However, if any report, disclosure or information for which Seller is responsible is not Delivered within the time specified in paragraph 19A, then Buyer has **5 (or ___) Days After** Delivery of any such items, or the time specified in paragraph 19B(1), whichever is later, to Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement.

Buyer's Initials (M) (_____)

Seller's Initials (_____) (_____)



Property Address: **2783 Coral Avenue, Morro Bay, CA 93442**

Date: **July 1, 2016**

(4) **Continuation of Contingency:** Even after the end of the time specified in paragraph 19B(1) and before Seller cancels, if at all, pursuant to paragraph 19C, Buyer retains the right, in writing, to either (i) remove remaining contingencies, or (ii) cancel this Agreement based on a remaining contingency. Once Buyer's written removal of all contingencies is Delivered to Seller, Seller may not cancel this Agreement pursuant to paragraph 19C(1).

C. SELLER RIGHT TO CANCEL:

(1) **Seller right to Cancel; Buyer Contingencies:** If, by the time specified in this Agreement, Buyer does not Deliver to Seller a removal of the applicable contingency or cancellation of this Agreement, then Seller, after first Delivering to Buyer a Notice to Buyer to Perform (C.A.R. Form NBP), may cancel this Agreement. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.

(2) **Seller right to Cancel; Buyer Contract Obligations:** Seller, after first delivering to Buyer a NBP, may cancel this Agreement if, by the time specified in this Agreement, Buyer does not take the following action(s): (i) Deposit funds as required by paragraph 3A or 3B or if the funds deposited pursuant to paragraph 3A or 3B are not good when deposited; (ii) Deliver a notice of FHA or VA costs or terms as required by paragraph 3D(3) (C.A.R. Form FVA); (iii) Deliver a letter as required by paragraph 3J(1); (iv) Deliver verification as required by paragraph 3C or 3H or if Seller reasonably disapproves of the verification provided by paragraph 3C or 3H; (v) Return Statutory Disclosures as required by paragraph 12A; or (vi) Sign or initial a separate liquidated damages form for an increased deposit as required by paragraphs 3B and 27B; or (vii) Provide evidence of authority to sign in a representative capacity as specified in paragraph 19. In such event, Seller shall authorize the return of Buyer's deposit, except for fees incurred by Buyer.

D. NOTICE TO BUYER OR SELLER TO PERFORM: The NBP or NSP shall: (i) be in writing; (ii) be signed by the applicable Buyer or Seller; and (iii) give the other Party at least **2(or ____) Days** After Delivery (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A NBP or NSP may not be Delivered any earlier than **2 Days** Prior to the expiration of the applicable time for the other Party to remove a contingency or cancel this Agreement or meet an obligation specified in paragraph 19.

E. EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES: If Buyer removes, in writing, any contingency or cancellation rights, unless otherwise specified in writing, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility and expense for Repairs or corrections pertaining to that contingency or cancellation right, or for the inability to obtain financing.

F. CLOSE OF ESCROW: Before Buyer or Seller may cancel this Agreement for failure of the other Party to close escrow pursuant to this Agreement, Buyer or Seller must first Deliver to the other Party a demand to close escrow (C.A.R. Form DCE). The DCE shall: (i) be signed by the applicable Buyer or Seller; and (ii) give the other Party at least **3 (or ____) Days** After Delivery to close escrow. A DCE may not be Delivered any earlier than **3 Days** Prior to the scheduled close of escrow.

G. EFFECT OF CANCELLATION ON DEPOSITS: If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, the Parties agree to Sign mutual instructions to cancel the sale and escrow and release deposits, if any, to the party entitled to the funds, less fees and costs incurred by that party. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. Except as specified below, **release of funds will require mutual Signed release instructions from the Parties, judicial decision or arbitration award.** If either Party fails to execute mutual instructions to cancel escrow, one Party may make a written demand to Escrow Holder for the deposit (C.A.R. Form BDRD or SDRD). Escrow Holder, upon receipt, shall promptly deliver notice of the demand to the other Party. If, within 10 Days After Escrow Holder's notice, the other Party does not object to the demand, Escrow Holder shall disburse the deposit to the Party making the demand. If Escrow Holder complies with the preceding process, each Party shall be deemed to have released Escrow Holder from any and all claims or liability related to the disbursement of the deposit. Escrow Holder, at its discretion, may nonetheless require mutual cancellation instructions. **A Party may be subject to a civil penalty of up to \$1,000 for refusal to sign cancellation instructions if no good faith dispute exists as to who is entitled to the deposited funds (Civil Code §1057.3).**

20. REPAIRS: Repairs shall be completed prior to final verification of condition unless otherwise agreed in writing. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. It is understood that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: (i) obtain invoices and paid receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of invoices and paid receipts and statements to Buyer prior to final verification of condition.

21. FINAL VERIFICATION OF CONDITION: Buyer shall have the right to make a final verification of the Property within **5 (or ____) Days** Prior to Close Of Escrow, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to paragraph 16; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement (C.A.R. Form VP).

22. ENVIRONMENTAL HAZARD CONSULTATION: Buyer and Seller acknowledge: (i) Federal, state, and local legislation impose liability upon existing and former owners and users of real property, in applicable situations, for certain legislatively defined, environmentally hazardous substances; (ii) Broker(s) has/have made no representation concerning the applicability of any such Law to this transaction or to Buyer or to Seller, except as otherwise indicated in this Agreement; (iii) Broker(s) has/have made no representation concerning the existence, testing, discovery, location and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property; and (iv) Buyer and Seller are each advised to consult with technical and legal experts concerning the existence, testing, discovery, location and evaluation of/for, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property.

23. PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS: Unless otherwise agreed in writing, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, rents, HOA regular, special, and emergency dues and assessments imposed prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment

Buyer's Initials (MS) (_____)

Seller's Initials (_____) (_____)



Property Address: **2783 Coral Avenue, Morro Bay, CA 93442**

Date: **July 1, 2016**

District bonds and assessments that are now a lien. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special assessments that are now a lien but not yet due. Property will be reassessed upon change of ownership. Any supplemental tax bills shall be paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller (see C.A.R. Form SPT or SBSA for further information). TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be made based on a 30-day month.

24. BROKERS:

- A. COMPENSATION:** Seller or Buyer, or both, as applicable, agrees to pay compensation to Broker as specified in a separate written agreement between Broker and that Seller or Buyer. Compensation is payable upon Close Of Escrow, or if escrow does not close, as otherwise specified in the agreement between Broker and that Seller or Buyer.
- B. SCOPE OF DUTY:** Buyer and Seller acknowledge and agree that Broker: (i) Does not decide what price Buyer should pay or Seller should accept; (ii) Does not guarantee the condition of the Property; (iii) Does not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) Does not have an obligation to conduct an inspection of common areas or areas off the site of the Property; (v) Shall not be responsible for identifying defects on the Property, in common areas, or offsite unless such defects are visually observable by an inspection of reasonably accessible areas of the Property or are known to Broker; (vi) Shall not be responsible for inspecting public records or permits concerning the title or use of Property; (vii) Shall not be responsible for identifying the location of boundary lines or other items affecting title; (viii) Shall not be responsible for verifying square footage, representations of others or information contained in Investigation reports, Multiple Listing Service, advertisements, flyers or other promotional material; (ix) Shall not be responsible for determining the fair market value of the Property or any personal property included in the sale; (x) Shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller; and (xi) Shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.

25. REPRESENTATIVE CAPACITY: If one or more Parties is signing the Agreement in a representative capacity and not for him/herself as an individual then that Party shall so indicate in paragraph 37 or 38 and attach a Representative Capacity Signature Addendum (C.A.R. Form RCSD). Wherever the signature or initials of the representative identified in the RCSD appear on the Agreement or any related documents, it shall be deemed to be in a representative capacity for the entity described and not in an individual capacity, unless otherwise indicated. The Party acting in a representative capacity (i) represents that the entity for which that party is acting already exists and (ii) shall Deliver to the other Party and Escrow Holder, within **3 Days** After Acceptance, evidence of authority to act in that capacity (such as but not limited to: applicable portion of the trust or Certification Of Trust (Probate Code §18100.5), letters testamentary, court order, power of attorney, corporate resolution, or formation documents of the business entity).

26. JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:

- A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder**, which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: paragraphs 1, 3, 4B, 5, 6, 7A, 8, 9, 12B, 18, 19G, 23, 24A, 25, 26, 32, 35, 36, 37, 38 and paragraph D of the section titled Real Estate Brokers on page 11. If a Copy of the separate compensation agreement(s) provided for in paragraph 24A, or paragraph D of the section titled Real Estate Brokers on page 10 is deposited with Escrow Holder by Broker, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions, if any, directly from Escrow Holder and will execute such provisions within the time specified in paragraph 9B(1)(c). To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller will execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow and, as directed by Escrow Holder, within **3 (or _____) Days**, shall pay to Escrow Holder or HOA or HOA management company or others any fee required by paragraphs 9, 12 or elsewhere in this Agreement.
- B.** A Copy of this Agreement including any counter offer(s) and addenda shall be delivered to Escrow Holder within **3 Days** After Acceptance (or _____). Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement. Escrow Holder shall provide Seller's Statement of Information to Title company when received from Seller. If Seller delivers an affidavit to Escrow Holder to satisfy Seller's FIRPTA obligation under paragraph 12B, Escrow Holder shall deliver to Buyer a Qualified Substitute statement that complies with federal Law.
- C.** Brokers are a party to the escrow for the sole purpose of compensation pursuant to paragraph 24A and paragraph D of the section titled Real Estate Brokers on page 11. Buyer and Seller irrevocably assign to Brokers compensation specified in paragraph 24A, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Buyer and Seller shall release and hold harmless Escrow Holder from any liability resulting from Escrow Holder's payment to Broker(s) of compensation pursuant to this Agreement.
- D.** Upon receipt, Escrow Holder shall provide Seller and Seller's Broker verification of Buyer's deposit of funds pursuant to paragraph 3A and 3B. Once Escrow Holder becomes aware of any of the following, Escrow Holder shall immediately notify all Brokers: (i) if Buyer's initial or any additional deposit is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.
- E.** A Copy of any amendment that affects any paragraph of this Agreement for which Escrow Holder is responsible shall be delivered to Escrow Holder within **3 Days** after mutual execution of the amendment.

Buyer's Initials (^{DS} JM) (_____)

Seller's Initials (_____) (_____)



Property Address: **2783 Coral Avenue, Morro Bay, CA 93442**

Date: **July 1, 2016**

27. REMEDIES FOR BUYER'S BREACH OF CONTRACT:

- A. Any clause added by the Parties specifying a remedy (such as release or forfeiture of deposit or making a deposit non-refundable) for failure of Buyer to complete the purchase in violation of this Agreement shall be deemed invalid unless the clause independently satisfies the statutory liquidated damages requirements set forth in the Civil Code.
- B. **LIQUIDATED DAMAGES:** If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. Buyer and Seller agree that this amount is a reasonable sum given that it is impractical or extremely difficult to establish the amount of damages that would actually be suffered by Seller in the event Buyer were to breach this Agreement. Release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award. **AT TIME OF ANY INCREASED DEPOSIT BUYER AND SELLER SHALL SIGN A SEPARATE LIQUIDATED DAMAGES PROVISION INCORPORATING THE INCREASED DEPOSIT AS LIQUIDATED DAMAGES (C.A.R.FORM RID).**

Buyer's Initials _____ / _____

Seller's Initials _____ / _____

28. DISPUTE RESOLUTION:

A. **MEDIATION:** The Parties agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action through the C.A.R. Consumer Mediation Center (www.consumermediation.org) or through any other mediation provider or service mutually agreed to by the Parties. The Parties also agree to mediate any disputes or claims with Broker(s), who, in writing, agree to such mediation prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. Mediation fees, if any, shall be divided equally among the Parties involved. If, for any dispute or claim to which this paragraph applies, any Party (i) commences an action without first attempting to resolve the matter through mediation, or (ii) before commencement of an action, refuses to mediate after a request has been made, then that Party shall not be entitled to recover attorney fees, even if they would otherwise be available to that Party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED. Exclusions from this mediation agreement are specified in paragraph 28C.

B. **ARBITRATION OF DISPUTES:** The Parties agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The Parties also agree to arbitrate any disputes or claims with Broker(s), who, in writing, agree to such arbitration prior to, or within a reasonable time after, the dispute or claim is presented to the Broker. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of transactional real estate Law experience, unless the parties mutually agree to a different arbitrator. The Parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part 3 of the Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act. Exclusions from this arbitration agreement are specified in paragraph 28C.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Buyer's Initials JM / _____

Seller's Initials _____ / _____

C. ADDITIONAL MEDIATION AND ARBITRATION TERMS:

- (1) **EXCLUSIONS:** The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; and (iii) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court.
- (2) **PRESERVATION OF ACTIONS:** The following shall not constitute a waiver nor violation of the mediation and arbitration provisions: (i) the filing of a court action to preserve a statute of limitations; (ii) the filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies; or (iii) the filing of a mechanic's lien.
- (3) **BROKERS:** Brokers shall not be obligated nor compelled to mediate or arbitrate unless they agree to do so in writing. Any Broker(s) participating in mediation or arbitration shall not be deemed a party to the Agreement.

29. SELECTION OF SERVICE PROVIDERS: Brokers do not guarantee the performance of any vendors, service or product providers ("Providers"), whether referred by Broker or selected by Buyer, Seller or other person. Buyer and Seller may select ANY Providers of their own choosing.

30. MULTIPLE LISTING SERVICE ("MLS"): Brokers are authorized to report to the MLS a pending sale and, upon Close Of Escrow, the sales price and other terms of this transaction shall be provided to the MLS to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS.

Buyer's Initials (JM) (_____)

Seller's Initials (_____) (_____)



Property Address: **2783 Coral Avenue, Morro Bay, CA 93442**

Date: **July 1, 2016**

- 31. ATTORNEY FEES:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorneys fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 28A.
- 32. ASSIGNMENT:** Buyer shall not assign all or any part of Buyer's interest in this Agreement without first having obtained the written consent of Seller. Such consent shall not be unreasonably withheld unless otherwise agreed in writing. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement unless otherwise agreed in writing by Seller (C.A.R. Form AOAA).
- 33. EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.
- 34. TERMS AND CONDITIONS OF OFFER:** This is an offer to purchase the Property on the above terms and conditions. The liquidated damages paragraph or the arbitration of disputes paragraph is incorporated in this Agreement if initialed by all Parties or if incorporated by mutual agreement in a counteroffer or addendum. If at least one but not all Parties initial, a counter offer is required until agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance. Buyer has read and acknowledges receipt of a Copy of the offer and agrees to the confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing.
- 35. TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the Parties are incorporated in this Agreement. Its terms are intended by the Parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Except as otherwise specified, this Agreement shall be interpreted and disputes shall be resolved in accordance with the Laws of the State of California. **Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.**
- 36. DEFINITIONS:** As used in this Agreement:
 - A. "Acceptance" means the time the offer or final counter offer is accepted in writing by a Party and is delivered to and personally received by the other Party or that Party's authorized agent in accordance with the terms of this offer or a final counter offer.
 - B. "Agreement" means this document and any counter offers and any incorporated addenda, collectively forming the binding agreement between the Parties. Addenda are incorporated only when Signed by all Parties.
 - C. "C.A.R. Form" means the most current version of the specific form referenced or another comparable form agreed to by the parties.
 - D. "Close Of Escrow" means the date the grant deed, or other evidence of transfer of title, is recorded.
 - E. "Copy" means copy by any means including photocopy, NCR, facsimile and electronic.
 - F. "Days" means calendar days. However, after Acceptance, the last Day for performance of any act required by this Agreement (including Close Of Escrow) shall not include any Saturday, Sunday, or legal holiday and shall instead be the next Day.
 - G. "Days After" means the specified number of calendar days after the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59 PM on the final day.
 - H. "Days Prior" means the specified number of calendar days before the occurrence of the event specified, not counting the calendar date on which the specified event is scheduled to occur.
 - I. "Deliver", "Delivered" or "Delivery", unless otherwise specified in writing, means and shall be effective upon: personal receipt by Buyer or Seller or the individual Real Estate Licensee for that principal as specified in the section titled Real Estate Brokers on page 11, regardless of the method used (i.e., messenger, mail, email, fax, other).
 - J. "Electronic Copy" or "Electronic Signature" means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either Party to modify or alter the content or integrity of this Agreement without the knowledge and consent of the other Party.
 - K. "Law" means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
 - L. "Repairs" means any repairs (including pest control), alterations, replacements, modifications or retrofitting of the Property provided for under this Agreement.
 - M. "Signed" means either a handwritten or electronic signature on an original document, Copy or any counterpart.
- 37. EXPIRATION OF OFFER:** This offer shall be deemed revoked and the deposit, if any, shall be returned to Buyer unless the offer is Signed by Seller and a Copy of the Signed offer is personally received by Buyer, or by Ciano Real Estate Inc., who is authorized to receive it, by 5:00 PM on the third Day after this offer is signed by Buyer (or by AM/ PM, on _____ (date)).

One or more Buyers is signing the Agreement in a representative capacity and not for him/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-B) for additional terms.

Date 07/01/2016 BUYER 
 (Print name) Jeff Mayer
 Date _____ BUYER
 (Print name) **& or Assignee**

Additional Signature Addendum attached (C.A.R. Form ASA).

Buyer's Initials () (_____)
 Seller's Initials (_____) (_____)



Property Address: **2783 Coral Avenue, Morro Bay, CA 93442**

Date: **July 1, 2016**

38. ACCEPTANCE OF OFFER: Seller warrants that Seller is the owner of the Property, or has the authority to execute this Agreement.

Seller accepts the above offer and agrees to sell the Property on the above terms and conditions, and agrees to the above confirmation of agency relationships. Seller has read and acknowledges receipt of a Copy of this Agreement, and authorizes Broker to Deliver a Signed Copy to Buyer.

(If checked) SELLER'S ACCEPTANCE IS **SUBJECT TO ATTACHED COUNTER OFFER (C.A.R. Form SCO or SMCO) DATED:** _____

One or more Sellers is signing the Agreement in a representative capacity and not for him/herself as an individual. See attached Representative Capacity Signature Disclosure (C.A.R. Form RCSD-S) for additional terms.

Date _____ SELLER _____

(Print name) **City of Morro Bay**

Date _____ SELLER _____

(Print name) _____

Additional Signature Addendum attached (C.A.R. Form ASA).

(_____/_____) (Do not initial if making a counter offer.) **CONFIRMATION OF ACCEPTANCE:** A Copy of Signed Acceptance was personally received by Buyer or Buyer's authorized agent on (date) _____ at _____

(Initials)

AM/ PM. **A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement; it is solely intended to evidence the date that Confirmation of Acceptance has occurred.**

REAL ESTATE BROKERS:

A. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.

B. Agency relationships are confirmed as stated in paragraph 2.

C. If specified in paragraph 3A(2), Agent who submitted the offer for Buyer acknowledges receipt of deposit.

D. COOPERATING BROKER COMPENSATION: Listing Broker agrees to pay Cooperating Broker (**Selling Firm**) and Cooperating Broker agrees to accept, out of Listing Broker's proceeds in escrow, the amount specified in the MLS, provided Cooperating Broker is a Participant of the MLS in which the Property is offered for sale or a reciprocal MLS. If Listing Broker and Cooperating Broker are not both Participants of the MLS, or a reciprocal MLS, in which the Property is offered for sale, then compensation must be specified in a separate written agreement (C.A.R. Form CBC). Declaration of License and Tax (C.A.R. Form DLT) may be used to document that tax reporting will be required or that an exemption exists.

Real Estate Broker (Selling Firm) Ciano Real Estate Inc. CalBRE Lic. # 01412309

By Frank M. Ciano CalBRE Lic. # 01412309 Date 07/01/2016

By 82FA54475599487 CalBRE Lic. # _____ Date _____

Address _____ City _____ State _____ Zip _____

Telephone _____ Fax _____ E-mail _____

Real Estate Broker (Listing Firm) Ciano Real Estate Inc. CalBRE Lic. # 01412309

By Frank M. Ciano Frank M. Ciano CalBRE Lic. # 01412309 Date 07/01/2016

By 82FA54475599487 CalBRE Lic. # _____ Date _____

Address 360 Morro Bay Blvd. City Morro Bay State CA Zip 93442

Telephone _____ Fax (805)771-9889 E-mail frankie@cianoalestate.com

ESCROW HOLDER ACKNOWLEDGMENT:

Escrow Holder acknowledges receipt of a Copy of this Agreement, (if checked, a deposit in the amount of \$ _____), counter offer numbers _____ Seller's Statement of Information and _____

, and agrees to act as Escrow Holder subject to paragraph 26 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised that the date of Confirmation of Acceptance of the Agreement as between Buyer and Seller is _____

Escrow Holder _____ Escrow # _____

By _____ Date _____

Address _____

Phone/Fax/E-mail _____

Escrow Holder has the following license number # _____

Department of Business Oversight, Department of Insurance, Bureau of Real Estate.

PRESENTATION OF OFFER: (_____) Listing Broker presented this offer to Seller on _____ (date).

Broker or Designee Initials

REJECTION OF OFFER: (_____) (_____) No counter offer is being made. This offer was rejected by Seller on _____ (date).

Seller's Initials

©1996- 2015, California Association of REALTORS®, Inc. United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats.

THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL DS

Published and Distributed by:
REAL ESTATE BUSINESS SERVICES, INC.
a subsidiary of the CALIFORNIA ASSOCIATION OF REALTORS®
®525 South Virgil Avenue, Los Angeles, California 90020

VLPA REVISED 11/14 (PAGE 11 OF 11)

Buyer's Acknowledge that page 11 is part of this Agreement (_____) (_____)

Reviewed by _____
Broker or Designee _____





CALIFORNIA ASSOCIATION OF REALTORS®

BUYER'S INSPECTION ADVISORY

(C.A.R. Form BIA, Revised 11/14)

Property Address: 2783 Coral Avenue, Morro Bay, CA 93442 ("Property").

- 1. IMPORTANCE OF PROPERTY INVESTIGATION: The physical condition of the land and improvements being purchased is not guaranteed by either Seller or Brokers. You have an affirmative duty to exercise reasonable care to protect yourself, including discovery of the legal, practical and technical implications of disclosed facts, and the investigation and verification of information and facts that you know or that are within your diligent attention and observation. A general physical inspection typically does not cover all aspects of the Property nor items affecting the Property that are not physically located on the Property. If the professionals recommend further investigations, including a recommendation by a pest control operator to inspect inaccessible areas of the Property, you should contact qualified experts to conduct such additional investigations.
2. BROKER OBLIGATIONS: Brokers do not have expertise in all areas and therefore cannot advise you on many items, such as those listed below. If Broker gives you referrals to professionals, Broker does not guarantee their performance.
3. YOU ARE STRONGLY ADVISED TO INVESTIGATE THE CONDITION AND SUITABILITY OF ALL ASPECTS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO THE FOLLOWING. IF YOU DO NOT DO SO, YOU ARE ACTING AGAINST THE ADVICE OF BROKERS.
A. GENERAL CONDITION OF THE PROPERTY, ITS SYSTEMS AND COMPONENTS: Foundation, roof (condition, age, leaks, useful life), plumbing, heating, air conditioning, electrical, mechanical, security, pool/spa (cracks, leaks, operation), other structural and nonstructural systems and components, fixtures, built-in appliances, any personal property included in the sale, and energy efficiency of the Property.
B. SQUARE FOOTAGE, AGE, BOUNDARIES: Square footage, room dimensions, lot size, age of improvements and boundaries. Any numerical statements regarding these items are APPROXIMATIONS ONLY and have not been verified by Seller and cannot be verified by Brokers. Fences, hedges, walls, retaining walls and other barriers or markers do not necessarily identify true Property boundaries.
C. WOOD DESTROYING PESTS: Presence of, or conditions likely to lead to the presence of wood destroying pests and organisms.
D. SOIL STABILITY: Existence of fill or compacted soil, expansive or contracting soil, susceptibility to slippage, settling or movement, and the adequacy of drainage.
E. WATER AND UTILITIES; WELL SYSTEMS AND COMPONENTS; WASTE DISPOSAL: Water and utility availability, use restrictions and costs. Water quality, adequacy, condition, and performance of well systems and components. The type, size, adequacy, capacity and condition of sewer and septic systems and components, connection to sewer, and applicable fees.
F. ENVIRONMENTAL HAZARDS: Potential environmental hazards, including, but not limited to, asbestos, lead-based paint and other lead contamination, radon, methane, other gases, fuel oil or chemical storage tanks, contaminated soil or water, hazardous waste, waste disposal sites, electromagnetic fields, nuclear sources, and other substances, materials, products, or conditions (including mold (airborne, toxic or otherwise), fungus or similar contaminants).
G. EARTHQUAKES AND FLOODING: Susceptibility of the Property to earthquake/seismic hazards and propensity of the Property to flood.
H. FIRE, HAZARD AND OTHER INSURANCE: The availability and cost of necessary or desired insurance may vary. The location of the Property in a seismic, flood or fire hazard zone, and other conditions, such as the age of the Property and the claims history of the Property and Buyer, may affect the availability and need for certain types of insurance. Buyer should explore insurance options early as this information may affect other decisions, including the removal of loan and inspection contingencies.
I. BUILDING PERMITS, ZONING AND GOVERNMENTAL REQUIREMENTS: Permits, inspections, certificates, zoning, other governmental limitations, restrictions, and requirements affecting the current or future use of the Property, its development or size.
J. RENTAL PROPERTY RESTRICTIONS: Some cities and counties impose restrictions that limit the amount of rent that can be charged, the maximum number of occupants, and the right of a landlord to terminate a tenancy. Deadbolt or other locks and security systems for doors and windows, including window bars, should be examined to determine whether they satisfy legal requirements.
K. SECURITY AND SAFETY: State and local Law may require the installation of barriers, access alarms, self-latching mechanisms and/or other measures to decrease the risk to children and other persons of existing swimming pools and hot tubs, as well as various fire safety and other measures concerning other features of the Property.
L. NEIGHBORHOOD, AREA, SUBDIVISION CONDITIONS; PERSONAL FACTORS: Neighborhood or area conditions, including schools, law enforcement, crime statistics, registered felons or offenders, fire protection, other government services, availability, adequacy and cost of internet connections or other technology services and installations, commercial, industrial or agricultural activities, existing and proposed transportation, construction and development that may affect noise, view, or traffic, airport noise, noise or odor from any source, wild and domestic animals, other nuisances, hazards, or circumstances, protected species, wetland properties, botanical diseases, historic or other governmentally protected sites or improvements, cemeteries, facilities and condition of common areas of common interest subdivisions, and possible lack of compliance with any governing documents or Homeowners' Association requirements, conditions and influences of significance to certain cultures and/or religions, and personal needs, requirements and preferences of Buyer.

By signing below, Buyers acknowledge that they have read, understand, accept and have received a Copy of this Advisory. Buyers are encouraged to read it carefully.

Buyer Jeff Mayer Buyer & or Assignee

© 1991-2004, California Association of REALTORS®, Inc. THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL.

Published and Distributed by: REAL ESTATE BUSINESS SERVICES, INC. a subsidiary of the California Association of REALTORS® 525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by Date



BIA REVISED 11/14 (PAGE 1 OF 1)

BUYER'S INSPECTION ADVISORY (BIA PAGE 1 OF 1)



CALIFORNIA ASSOCIATION OF REALTORS®

POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER - DISCLOSURE AND CONSENT

(C.A.R. Form PRBS, 11/14)

A real estate broker (Broker), whether a corporation, partnership or sole proprietorship, may represent more than one buyer or seller. This multiple representation can occur through an individual licensed as a broker or salesperson or through different individual broker's or salespersons (associate licensees) acting under the Broker's license. The associate licensees may be working out of the same or different office locations.

Multiple Buyers: Broker (individually or through its associate licensees) may be working with many prospective buyers at the same time. These prospective buyers may have an interest in, and make offers on, the same properties. Some of these properties may be listed with Broker and some may not. Broker will not limit or restrict any particular buyer from making an offer on any particular property whether or not Broker represents other buyers interested in the same property.

Multiple Sellers: Broker (individually or through its associate licensees) may have listings on many properties at the same time. As a result, Broker will attempt to find buyers for each of those listed properties. Some listed properties may appeal to the same prospective buyers. Some properties may attract more prospective buyers than others. Some of these prospective buyers may be represented by Broker and some may not. Broker will market all listed properties to all prospective buyers whether or not Broker has another or other listed properties that may appeal to the same prospective buyers.

Dual Agency: If Seller is represented by Broker, Seller acknowledges that broker may represent prospective buyers of Seller's property and consents to Broker acting as a dual agent for both seller and buyer in that transaction. If Buyer is represented by Broker, buyer acknowledges that Broker may represent sellers of property that Buyer is interested in acquiring and consents to Broker acting as a dual agent for both buyer and seller with regard to that property.

In the event of dual agency, seller and buyer agree that: (a) Broker, without the prior written consent of the Buyer, will not disclose to seller that the Buyer is willing to pay a price greater than the offered price; (b) Broker, without the prior written consent of the seller, will not disclose to the buyer that seller is willing to sell property at a price less than the listing price; and (c) other than as set forth in (a) and (b) above, a dual agent is obligated to disclose known facts materially affecting the value or desirability of the property to both parties.

Offers not necessarily confidential: Buyer is advised that seller or listing agent may disclose the existence, terms, or conditions of buyer's offer unless all parties and their agent have signed a written confidentiality agreement. Whether any such information is actually disclosed depends on many factors, such as current market conditions, the prevailing practice in the real estate community, the listing agent's marketing strategy and the instructions of the seller.

Buyer and seller understand that Broker may represent more than one buyer or more than one seller and even both buyer and seller on the same transaction and consents to such relationships.

Seller and/or Buyer acknowledges reading and understanding this Possible Representation of More Than One Buyer or Seller - Disclosure and Consent and agrees to the agency possibilities disclosed.

Seller City of Morro Bay Date
Seller Date
Buyer Jeff Mayer Date 7/5/2016
Buyer & or Assignee Date

Real Estate Broker (Firm) Ciano Real Estate Inc. CalBRE Lic # 01412309 Date 07/01/2016
By Frank M. Ciano CalBRE Lic # 01412309 Date

Real Estate Broker (Firm)
By CalBRE Lic # Date
CalBRE Lic # Date

© 2014, California Association of REALTORS®, Inc. United States copyright law (Title 17 U.S. Code) forbids the unauthorized distribution, display and reproduction of this form, or any portion thereof, by photocopy machine or any other means, including facsimile or computerized formats. THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ACCURACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL. This form is made available to real estate professionals through an agreement with or purchase from the California Association of REALTORS®. It is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.

Published and Distributed by: REAL ESTATE BUSINESS SERVICES, INC. a subsidiary of the California Association of REALTORS® 525 South Virgil Avenue, Los Angeles, California 90020

Reviewed by Date



PRBS 11/14 (PAGE 1 OF 1)

POSSIBLE REPRESENTATION OF MORE THAN ONE BUYER OR SELLER (PRBS PAGE 1 OF 1)



AGENDA NO: A-5

MEETING DATE: July 12, 2016

Staff Report

TO: Honorable Mayor and City Council **DATE:** June 30, 2016
FROM: Mike Nunley, PE – Water Reclamation Facility Program Manager
SUBJECT: Water Reclamation Facility (WRF) Program Update

RECOMMENDATION

Staff recommends Council receive and file this update.

ALTERNATIVES

No alternatives are recommended.

FISCAL IMPACT

All current outreach efforts and studies are being performed under existing contracts and authorizations. No additional expenditures are proposed as part of this report.

DISCUSSION

Staff provides this report as a monthly update to the progress made to date on the new WRF project. With the denial of the permit for the WWTP project in its current location, the City has embarked on a process for a new WRF. This staff report provides a review of what has occurred to date, since the last update.

Accomplishments and Milestones

The City's Program Management team and technical consultants performed the following tasks since the June 14th Council Meeting, where Council voted to move forward with the South Bay Boulevard site.

- Completed field work for the Geotechnical Fatal Flaws study of the South Bay Boulevard site
- Continued biological and cultural fatal flaws studies for the South Bay Boulevard site
- Initiated topographic and boundary survey of the South Bay Boulevard site
- Updated community outreach program (attached)
- Reinitiated the CEQA/EIR efforts and coordination with the Facility Master Plan team
- Updated program schedule (attached)
- Met with Regional Water Quality Control Board staff to discuss permit renewal

Prepared By: MN

Dept Review: RL

City Manager Review:

City Attorney Review: JWP

- Attended July 5 WRFCAC meeting

Public Outreach Program Update. Public outreach has been and will continue to be a critical component to the success of the WRF program. It is a multi-faceted program that includes several diverse outreach approaches:

1. *Key stakeholder interviews and Neighborhood Workshops*
2. *Community workshops/Open Houses/Farmer's Markets*
3. *Technical presentations*
4. *Water Reclamation Facility Citizens Advisory Committee (WRFCAC) meetings*
5. *City Council study sessions and hearings*
6. *Formal Environmental Review process*
7. *Coordination with outside permitting agencies*
8. *WRF Program website, Facebook and e-blasts*
9. *Newsletters and other mailings*

The overall objective of the outreach program is to educate and gain public feedback in as many ways as possible, all for the purpose of resulting in the best project possible in the context of competing community perspectives and the overall community project goals for the project.

The current outreach program for the WRF project was developed in September 2015, and since that time, many WRFCAC meetings, City Council study sessions, neighborhood and community workshops, stakeholder interviews, and technical presentations have been conducted, all for the purpose of allowing the public to better understand the overall process, and to provide forums for feedback to help guide and refine that process. The program has created a website and produced a variety of educational materials to make it easier for the public to be actively engaged in the process. Public outreach will continue as appropriate through the next phases of the project, based on the attached schedule. That schedule updates the original outreach program developed in September 2015. Table 2 in the schedule summarizes the following:

- Outreach efforts that have occurred since September 2015
- Projected outreach efforts expected to occur in the short-term (July through December 2016)
- Long-Term outreach efforts, the dates of which cannot be accurately determined at this time (2017 and beyond)

Next Steps: through December 2016. The next six months will see continued outreach efforts in support of the key technical efforts related to the program, including completion of the Facility Master Plan (FMP) and the first stages of the environmental review (CEQA) process to analyze and disclose potential significant environmental impacts associated with implementing the FMP, which will address development of the WRF at the South Bay Boulevard (Tri-W) site, as well as all pipeline infrastructure needed to support that facility. The CEQA process will also programmatically examine the potential significant environmental impacts of implementing the Master Reclamation Plan.

Key highlights of the upcoming outreach efforts over the next six months include the following:

- Release of the Notice of Preparation (NOP) for the Environmental Impact Report (EIR)
- EIR Scoping Meeting (to determine scope and gain public input on potential alternatives examined in the EIR)
- Coordination with the ongoing General Plan/LCP Update effort
- WRFCAC meetings as needed (to provided project updates)
- Community Workshop on the Facility Master Plan (FMP)
- WRFCAC and City Council study sessions on the FMP
- City Council adoption of the FMP as the basis of the project for study in the EIR
- Adjacent property owner meetings as needed
- Newsletters and/or postcard mailer as needed
- Website, Facebook and e-blast updates
- News releases as needed

Long-term: 2017 and beyond. Once the FMP is adopted, the EIR can be prepared and completed. As stated earlier, the EIR will also consider the programmatic potential significant environmental impacts of the Master Reclamation Plan, which will be prepared during this time. Key long-term outreach efforts in 2017 and beyond include (dates to be determined):

- Technical presentations on the Master Reclamation Plan process and content
- Community Workshops on the Master Reclamation Plan (at least 2 workshops)
- Formal EIR process (including providing for public input and comments on the Draft EIR)
- WRFCAC and City Council study sessions as needed
- Permitting agency consultation (as needed)
- Resource organization outreach (as needed, in support of the permitting process)
- Website updates and educational materials
- Community and stakeholder outreach (as needed)

It should be noted the outreach program has been conceived from the outset as a dynamic process, and we expect it will be modified as appropriate to address issues that may arise throughout the program.

Project Schedule

Staff has updated the project schedule based on the City's decision to move forward with project planning at the South Bay Boulevard site. The detailed project schedule is attached.

The schedule for significant milestones is summarized below:

Draft Facility Master Plan	November 2016
Draft Environmental Impact Report	August 2016 – October 2017
Draft Master Reclamation Plan	March 2017
Certification of Final EIR and Approval of Project	November 2017
Procurement and Selection of Design/Construction Team (WRF)	November 2017 – May 2018
Completion of Lift Station and Force Main Design	December 2018
Lift Station and Force Main Construction	April 2019 – August 2020
Phase 1 WRF Construction	July 2019 – May 2021 (with startup & commissioning through August 2021)

ATTACHMENTS

1. Program Schedule
2. Community Outreach Program Update (6-28-2016)

Morro Bay Water Reclamation Facilities Project
Program Schedule

ID	Task Mode	Task Name	Duration	Start	Finish	Timeline																																															
						4Q14	1Q15	2Q15	3Q15	4Q15	1Q16	2Q16	3Q16	4Q16	1Q17	2Q17	3Q17	4Q17	1Q18	2Q18	3Q18	4Q18	1Q19	2Q19	3Q19	4Q19	1Q20	2Q20	3Q20	4Q20	1Q21	2Q21	3Q21	4Q21																			
1	✓	Preliminary Project Planning/Site Studies	269 days	Tue 12/10/13	Fri 12/19/14	[Gantt bar from 12/10/13 to 12/19/14]																																															
15	📅	City Council Decision on WRF Site	0 days	Tue 6/14/16	Tue 6/14/16	[Milestone diamond at 6/14/16]																																															
16	📅	Property Negotiation	813 days	Thu 11/13/14	Mon 12/25/17	[Gantt bar from 11/13/14 to 12/25/17]																																															
17	📅	South Bay Boulevard Site	45 days	Tue 6/14/16	Mon 8/15/16	[Gantt bar from 6/14/16 to 8/15/16]																																															
18	📅	Fatal Flaw Assessments	45 days	Tue 6/14/16	Mon 8/15/16	[Gantt bar from 6/14/16 to 8/15/16]																																															
19	📅	Survey	29 days	Wed 6/22/16	Mon 8/1/16	[Gantt bar from 6/22/16 to 8/1/16]																																															
20	📅	Righetti Site	56 days	Mon 11/9/15	Mon 1/25/16	[Gantt bar from 11/9/15 to 1/25/16]																																															
26	📅	MacElvaine Site	307 days	Thu 11/13/14	Fri 1/15/16	[Gantt bar from 11/13/14 to 1/15/16]																																															
29	📅	Property Procurement	20 mons	Tue 6/14/16	Mon 12/25/17	[Gantt bar from 6/14/16 to 12/25/17]																																															
30	📅	RFP/Selection of Program Management Consultant	20.4 wks	Mon 3/23/15	Tue 8/11/15	[Gantt bar from 3/23/15 to 8/11/15]																																															
31	📅	Task 106 - Grant and Loan Pursuit and Management	809 days	Wed 7/15/15	Mon 8/20/18	[Gantt bar from 7/15/15 to 8/20/18]																																															
32	✓	Review of Proposition 1 / SWRCB Planning Grant/Funding Opportunities	2 mons	Wed 8/12/15	Tue 10/6/15	[Gantt bar from 8/12/15 to 10/6/15]																																															
33	✓	Preparation and Coordination of SWRCB Recycled Water Planning Grant Application	5 mons	Wed 7/15/15	Tue 12/1/15	[Gantt bar from 7/15/15 to 12/1/15]																																															
34	📅	Preparation and Coordination of Clean Water SRF Design/Planning Loan - SWRCB Division of Financial Assistance	9.8 mons	Wed 12/2/15	Wed 8/31/16	[Gantt bar from 12/2/15 to 8/31/16]																																															
35	📅	Clean Water SRF Construction Loan - SWRCB Division of Financial Assistance	709 days	Wed 12/2/15	Mon 8/20/18	[Gantt bar from 12/2/15 to 8/20/18]																																															
51	✓	Task 108 - Select and Implement PM System	94 days	Wed 8/12/15	Mon 12/21/15	[Gantt bar from 8/12/15 to 12/21/15]																																															
52	📅	Task 109 - Development of Program Office	8 wks	Wed 8/12/15	Tue 10/6/15	[Gantt bar from 8/12/15 to 10/6/15]																																															
53	📅	Task 110 - Develop and Update Program Management Plan	12.7 mons	Wed 8/12/15	Mon 8/1/16	[Gantt bar from 8/12/15 to 8/1/16]																																															
54	📅	Task 201 - Master Reclamation Plan	483 days	Fri 5/15/15	Tue 3/21/17	[Gantt bar from 5/15/15 to 3/21/17]																																															
55	✓	Phase 2 Task 4 - Feasibility Screening of Lower Morro Valley	68 days	Wed 9/9/15	Fri 12/11/15	[Gantt bar from 9/9/15 to 12/11/15]																																															
58	✓	Phase 2 Task 5 - Subsurface Investigation	40 days	Wed 9/9/15	Tue 11/3/15	[Gantt bar from 9/9/15 to 11/3/15]																																															
59	📅	Reconnaissance of Reuse Opportunities in Morro and Chorro Valleys	55 wks	Mon 12/14/15	Fri 12/30/16	[Gantt bar from 12/14/15 to 12/30/16]																																															
60	📅	Salinity Identification and Control Plan	364 days	Fri 5/15/15	Wed 10/5/16	[Gantt bar from 5/15/15 to 10/5/16]																																															
65	📅	Development of Recharge Alternatives	17 mons	Wed 12/2/15	Tue 3/21/17	[Gantt bar from 12/2/15 to 3/21/17]																																															
66	📅	Expanded Groundwater Modeling	7.6 mons	Mon 8/1/16	Tue 2/28/17	[Gantt bar from 8/1/16 to 2/28/17]																																															
67	📅	RFP/Selection of Facilities Master Plan Consultant	155 days	Thu 12/11/14	Wed 7/15/15	[Gantt bar from 12/11/14 to 7/15/15]																																															
75	📅	Task 204 - Facilities Master Plan Coordination	374 days	Wed 7/15/15	Mon 12/19/16	[Gantt bar from 7/15/15 to 12/19/16]																																															
76	✓	Background and Support Documentation to Date	2 days	Wed 7/15/15	Thu 7/16/15	[Gantt bar from 7/15/15 to 7/16/15]																																															
77	✓	Historical and Current WW Flow and Constituent Loading Data	8 days	Wed 7/15/15	Fri 7/24/15	[Gantt bar from 7/15/15 to 7/24/15]																																															
78	✓	201.1 – TM – Summary of Reviewed Documents	40 days	Thu 7/16/15	Wed 9/9/15	[Gantt bar from 7/16/15 to 9/9/15]																																															
79	✓	401.1/402.1 – TM – Influent Waste Characterization, Sampling Program, Flow Projections	46 days	Thu 7/16/15	Thu 9/17/15	[Gantt bar from 7/16/15 to 9/17/15]																																															
80	✓	403.1 – TM - Initial Working Effluent Discharge Requirements	46 days	Thu 7/16/15	Thu 9/17/15	[Gantt bar from 7/16/15 to 9/17/15]																																															
81	✓	303.1 – TM – Morro Bay WWTP Decommissioning	51 days	Thu 7/16/15	Thu 9/24/15	[Gantt bar from 7/16/15 to 9/24/15]																																															
82	📅	301.1 – TM – Onsite Support Facilities Requirements	66 days	Thu 7/16/15	Thu 10/15/15	[Gantt bar from 7/16/15 to 10/15/15]																																															
83	✓	403.2 – TM – Final Working Effluent Discharge Requirements	71 days	Thu 7/16/15	Thu 10/22/15	[Gantt bar from 7/16/15 to 10/22/15]																																															
84	📅	302.1 – TM – Offsite Support Facilities Evaluation (update)	50 days	Mon 6/20/16	Fri 8/26/16	[Gantt bar from 6/20/16 to 8/26/16]																																															

MB Reclamation Program Schedule Date: Thu 6/30/16	Task		Inactive Task		Start-only		Path Driven Successor Normal Task		Path Driven Successor Milestone Task	
	Split		Inactive Milestone		Finish-only		Path Predecessor Milestone Task		Critical	
	Milestone		Inactive Summary		Deadline		Path Driving Predecessor Milestone Task		Critical Split	
	Summary		Manual Task		Path Successor Milestone Task		Path Predecessor Summary Task		Progress	
	Project Summary		Duration-only		Path Successor Summary Task		Path Driving Predecessor Summary Task			
	External Tasks		Manual Summary Rollup		Path Driven Successor Summary Task		Path Predecessor Normal Task			
External Milestone		Manual Summary		Path Successor Normal Task		Path Driving Predecessor Normal Task				

Memorandum

Date: June 28, 2016 (updates original September 22, 2015 memo)

To: Morro Bay City Council; Water Reclamation Facility Citizen Advisory Committee

From: WRF Program Management Outreach Team (John Rickenbach, AICP; and Debbie Rudd, AICP)

Subject: City of Morro Bay Water Reclamation Facility, Community Outreach Program

Community outreach throughout the City of Morro Bay (City) Water Reclamation Facility (WRF) Program is key to helping the process run smoothly and with success. The following memorandum describes the outreach strategy that the Project Team is undertaking to engage the community throughout the WRF process. This outreach program includes involving a broad cross-section of the greater Morro Bay community, in a variety of ways and settings, to get quality feedback. The primary components of the program include:

1. *Key stakeholder interviews and neighborhood workshops*
2. *Community workshops*
3. *Technical presentations*
4. *Water Reclamation Facility Citizens Advisory Committee (WRFCAC) meetings*
5. *City Council study sessions and hearings*
6. *Formal Environmental Review process*
7. *Coordination with outside permitting agencies*
8. *WRF Program website and promotional materials*

Though this program outlines various likely outreach activities, it is important to remain flexible and allow for redirection and variations of the exercises and activities as the process evolves. This will allow the Program Management Team to learn from the community and customize the workshop and meetings to optimize their effectiveness.

A. Overall Strategic Framework

The success of the outreach program depends on reaching a variety of audiences, each with its own interests relative to implementing the new facility. **Table 1** summarizes the key stakeholder groups, their objectives in the context of the project, and how the program intends to involve them in the overall process.

Table 1. Strategic Framework for Targeting Key Stakeholders		
Stakeholder Group	Objectives for the Group	Outreach Approach(es)
General Public	<ul style="list-style-type: none"> • Education on City process • Understand impacts to water rates • Project updates • Receive feedback to guide program 	<ul style="list-style-type: none"> • Informal communication • Stakeholder interviews • Workshops/farmer's markets/ open houses • Website/Newsletters/postcard updates/E-blasts/Surveys
Neighborhoods and Individuals Living Near Potential WRF sites	<ul style="list-style-type: none"> • Education, updates and feedback 	<ul style="list-style-type: none"> • Interviews/site visits/meetings • Focused Neighborhood Workshops/meetings (HOA meeting, open forum)
City Council/WRFCAC	<ul style="list-style-type: none"> • Affirmation of stated goals • Education on City process • Project updates • Present technical information • Receive feedback and direction • Relationship of risk, cost, schedule 	<ul style="list-style-type: none"> • Workshops/Study Sessions • Status reports • Formal Presentation of Draft Deliverables
Potential Recycled Water Customers	<ul style="list-style-type: none"> • Education on City process • Determine level of interest • Identify key motivations to participate • Identify critical path items to achieve reclamation 	<ul style="list-style-type: none"> • Informal communication • Stakeholder interviews • Technical workshops
Interested Public Agencies	<ul style="list-style-type: none"> • Education on City process • Identify permitting requirements • Identify needs and constraints • Project updates • Investigate recycled water opportunities • Identify and complete critical path items • Prevent surprises 	<ul style="list-style-type: none"> • Informal communication/meetings • Ongoing updates • Formal consultation • Workshops
Industry	<ul style="list-style-type: none"> • Promote fair competition • Get best value for City • Reduce risk to City 	<ul style="list-style-type: none"> • Technical workshops • Website with registration/ contact sharing

B. Outreach Program Components and Timing

As noted in the introduction, our team is using a variety of approaches and forums to reach the various general stakeholder groups described in **Table 1** above, and we intend to gain feedback through the life of the program. This is crucial in order to allow both the technical team and elected officials to adjust the program as needed to respond to evolving perspectives in the community.

Although we have a very good idea how the next several months are likely to proceed, it is not possible to accurately predict what long-term outreach strategies will need to be employed in order to most effectively realize the City's overall goals. For that reason, our plan addresses both short-term and long-term approaches, and the likely timeframe associated with the use of the various outreach methods. We intend to update this program periodically as the overall process evolves.

The intent and conceptual understanding of each outreach approach is briefly described below. **Table 2** then summarizes how each component would be used during the program, and its timing in the context of the overall program schedule. Note also that each approach is color-coded in the descriptions below (and keyed to its inclusion within **Table 2**) to more clearly show how the various outreach components relate to one another over the length of the program.

1. Key Stakeholder Interviews and Neighborhood Workshops. Communicating with stakeholders early in the process allows stakeholders to express any concerns, issues, and ideas in a private setting before we hold the community workshop and before we begin designing. These interviews open up the communication paths for future connections throughout the process.

The PM team has already completed extensive stakeholder interviews and/or neighborhood workshops on several occasions in 2015 and 2016, notably before various groups or individuals with interests in the following issues or sites:

- Facility Master Plan contents, reclamation issues, and other project input (stakeholder interviews; October 2015)
- Righetti site (neighborhood workshop; February 2016)
- Open House/Farmers Markets—4 total meetings (April 2016)
- Madonna site (stakeholder interviews; March-April 2016)
- South Bay Blvd (Tri-W) site (stakeholder interviews and community outreach; May-June 2016)
- Updates via newsletters and postcard mailers (March and May 2016)

Debbie Rudd of RRM Design Group is leading the stakeholder interviews and neighborhood outreach, supported by John Rickenbach.

2. Community workshops. The program management team will facilitate community workshops that focus on two key aspects of the program:

- *Facilities Master Plan*
- *Master Water Reclamation Plan*

In the near term, workshops will focus on different aspects of the Facilities Master Plan (FMP). Specifically, we will be seeking input from the community on possible amenities that could be included in the facility or on the site, as well as the visual aspects of the design, including architectural and massing issues to ensure community compatibility. We will convey this input to the FMP team, who will use it to inform the overall master plan, in the context of achieving adopted city goals related to these issues. Once we have a draft plan available, a second workshop will be conducted to present the key plan components, which will provide the community an opportunity to confirm whether or not we are on the right track from their perspective. The WRFCAC and City Council can then use this feedback to fine-tune their stated goals, if needed, as the project moves forward.

Workshops related to the Master Water Reclamation Plan will follow once the FMP is near completion, and the wastewater treatment aspects of the project are well understood. In all likelihood, these workshops will occur in 2016, and follow a similar pattern to those associated with the FMP: an initial workshop to educate and receive feedback, with a second workshop to convey how the draft Master Water Reclamation Plan responded to this input, with more feedback as needed.

John Rickenbach and Debbie Rudd are leading the community workshops.

3. Technical presentations. The program includes a variety of presentations that describe various technical aspects of the FMP or the Master Water Reclamation Plan. Many of these were completed in late 2015, focused on a variety of technical memoranda that are essential to the production of the FMP. Others will focus on the Master Reclamation Plan. These have been (or will be) conducted as public workshops, with a primary focus on education, so that the general public and decisionmakers can understand provide meaningful feedback far in advance of the completion of these technical documents, which form the basis of the overall project that will be implemented.

The primary authors of the reports will conduct these presentations: Black & Veatch in the case of the FMP, and MKN in the case of the Master Water Reclamation Plan.

4. Water Reclamation Facility Citizens Advisory Committee (WRFCAC) meetings. The WRFCAC has both a key technical and advisory role in the overall process. The WRFCAC has been, and will continue to be, a crucial forum to present technical information, gain crucial feedback, and make recommendations to the City Council to move the WRF program forward. WRFCAC meetings are held monthly, but when additional input is needed, we expect that their meeting schedule may be accelerated. This was the case, for example, during the preparation of the FMP. At other times, fewer meetings may be needed, when there is less to report on, such as during the preparation of the Draft

EIR.

5. *City Council study sessions and hearings.* Similar to the WRFCAC, the City Council has several important roles in the overall process. In addition to approving contracts and providing general direction guiding the process, the City Council's most important role is to set the goals that drive the entire program. The Council will be asked from time to time to affirm or modify these goals as needed to respond to evolving conditions associated with implementing the WRF program. The City Council serves as an important forum for various study sessions related both to community workshop and interview input, as well as technical input from consultants associated with the overall process. The City Council will have an ongoing role throughout the entire process.

6. *Formal environmental review (CEQA and NEPA) process.* The project will be subject to formal environmental review under the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA).

The CEQA process includes a formal public scoping meeting, as well as coordination of public and agency comments regarding the scope received during a 30-day period following the release of the Notice of Preparation. Once the Draft Environmental Impact Report (EIR) is released to the public, a 45-day review period begins, during which the City and its environmental consulting team will formally respond to comments, which will ultimately be considered in the Final EIR. This process has the potential to result in changes to the proposed project that would lessen potential impacts to the environment.

7. *Coordination with outside permitting agencies.* The WRF will require a variety of permits from state and federal resource regulatory agencies. It is crucial to initiate a dialogue with these agencies from the outset, in order to better understand their permitting requirements, and whatever critical path items there may be in order to secure needed permits.

Key resource regulatory permitting agencies for this project could include:

- *State Water Resources Control Board*
- *Regional Water Quality Control Board*
- *California Department of Fish and Wildlife*
- *U.S. Army Corps of Engineers*
- *NOAA Fisheries*
- *Bureau of Reclamation*
- *San Luis Obispo County Air Pollution Control District (SLOCAPCD)*

The WRF will also require a variety of permits from state and federal land use permitting agencies, notably the California Coastal Commission among others. Annexation of the project site will also require coordination with San Luis Obispo Local Agency Formation Commission (LAFCo). Coordination with San Luis Obispo County will also be required, because while the facility is allowed at that location under its LCP, a specific alternatives analysis will be required to support that finding. In addition, a Caltrans encroachment permit would be needed if pipelines will be located within the Caltrans right-of-way.

As with the resource regulatory agencies, early consultation will be crucial, which will help define and guide the most time-effective approach to implementing the WRF. Key land use permitting agencies could include:

- *California Coastal Commission*
- *LAFCo (annexation to the City)*
- *City of Morro Bay (consistency with GP/LCP and local land use permits)*
- *San Luis Obispo County (coordination on LCP consistency and Morro Bay Golf Course recycled water use opportunities)*
- *California Department of Transportation (Caltrans Encroachment Permit)*

It is anticipated that coordination with these permitting agencies will occur throughout the process, and will consist of informal meetings, formal consultation, and the permit application process. In many cases, the permit application process will need to be coordinated with the environmental review process.

In addition, we are coordinating with several resource-oriented organizations, whose input will be crucial for developing the WRF. Input from these organizations will also be useful in the permitting process. These include:

- *Coastal San Luis Resource Conservation District*
- *Morro Bay National Estuary Program*
- *Coastal Conservancy*

8. *WRF Program website and promotional materials.* The entire program depends on clear communication and easy access to the many reports and other materials associated with the effort. To this end, the program management team, led by Konig Media and MKN, have put together a website dedicated to the WRF program. This functions as a platform for the dissemination of program materials, and will also be used to inform the public about the schedule, upcoming events, and future opportunities to participate in the process.

The team, led by RRM Design Group, has also provide a logo design to brand the WRF program and use on documents, website, and exhibits. As the program moves forward, the team will also prepare graphics and exhibits to put on the website, e-blasts, newsletters, postcard updates, and use during meetings.

Table 2 summarizes these key outreach components and how they would be coordinated within the schedule of the overall WRF program.

Table 2. Summary of Outreach Program and Schedule
--

Forum	Purpose	Key Topics	Timing
Completed Outreach (Aug 2015-June 2016)			
City Council study session	Education and Feedback	<ul style="list-style-type: none"> Overall Program Near-Term Schedule Outreach Concept Master Reclamation Plan 	August 17, 2015
WRFCAC meeting	Education and Feedback	<ul style="list-style-type: none"> Facility Master Plan Update CEQA/NEPA Consultant Selection Concept on Outreach Program 	September 1, 2015
Interagency coordination (various agencies and locations)	Public Agency Outreach: <ul style="list-style-type: none"> Gain input on permitting needs, critical path items, and agency concerns Gain input on funding opportunities 	Informal meetings with the following agencies: <ul style="list-style-type: none"> California Coastal Commission SLO County RWQCB State Water Resources Control Board (including Division of Drinking Water) LAFCo CDFW Army Corps of Engineers NOAA Fisheries Caltrans Bureau of Reclamation 	Ongoing from Sept 2015 through life of project; Formal meetings TBD as needed
City Council study session	Education and Feedback	<ul style="list-style-type: none"> Outreach Program FMP Progress Update 	September 22, 2015
Website development and promotional materials	<ul style="list-style-type: none"> Program Branding Creating Mechanisms for Distributing Information Industry Outreach 	<ul style="list-style-type: none"> Website creation Program Logo Newsletters/Flyers E-Blasts Registration for potential industry to facilitate teaming and sharing of information 	<ul style="list-style-type: none"> Media created Sept-Nov 2015 Information sharing ongoing
WRFCAC meeting	Review and Feedback	<ul style="list-style-type: none"> Review CEQA/NEPA scope Update on grant/loan opportunities 	October 6, 2015
City Council hearing	Feedback	<ul style="list-style-type: none"> Selection of CEQA/NEPA consultant 	October 13, 2015
Stakeholder Interviews	Feedback	<ul style="list-style-type: none"> Get focused feedback on: <ul style="list-style-type: none"> ✓ Key Concerns in Process ✓ Facilities to include ✓ Reclamation Issues 	October 14-15, 2015
Technical Presentation #1:	Education	<ul style="list-style-type: none"> Technical presentation on Alternative Delivery approaches 	October 17, 2015
WRFCAC meeting	Technical Review	<ul style="list-style-type: none"> Interim report on progress of FMP 	October 20, 2015
Community Workshop #1:	Process and Goals Review, Education and Feedback	<ul style="list-style-type: none"> Review of City goals Overview of FMP Process Community input on: <ul style="list-style-type: none"> ✓ facilities programming ✓ visual/design issues 	October 29, 2015
WRFCAC meeting	Technical Review	<ul style="list-style-type: none"> Receive comments from WRFCAC on Technical Memoranda 2 (Flows 	November 3, 2015

Table 2. Summary of Outreach Program and Schedule			
Forum	Purpose	Key Topics	Timing
		and Loadings), 3 (WWTP Decommissioning), and presentation from prior meeting <ul style="list-style-type: none"> • FMP Tech Memorandum 6 (Biosolids Treatment) 	
City Council study session	Education and Update	<ul style="list-style-type: none"> • Program budget and schedule update • Property research and negotiation update • WRFCAC input on FMP 	November 2015
WRFCAC meeting	Technical Review	<ul style="list-style-type: none"> • FMP Tech Memoranda 7 (Liquid Treatment Processes) and 8 (Future Potable Reuse) 	November 17, 2015
Technical Presentation #2: (joint Council/WRFCAC)	Education	<ul style="list-style-type: none"> • Liquid treatment technologies evaluated in FMP 	December 1, 2015
Technical Presentation #3:	Education	<ul style="list-style-type: none"> • Organic waste disposal and energy conversion 	Dec 2015 - Jan 2016
City Council study session	Education and Update	<ul style="list-style-type: none"> • Program budget and schedule update • Property research and negotiation update 	January 2016
Neighborhood Workshop	Discussion of Righetti site with neighbors	<ul style="list-style-type: none"> • Input on Righetti site 	February 25, 2016
WRFCAC meeting	Technical Review	<ul style="list-style-type: none"> • Consideration of Potential WRF sites 	March 1, 2016
Stakeholder Interviews and Community Outreach	Feedback	<ul style="list-style-type: none"> • Get focused feedback on: <ul style="list-style-type: none"> ✓ Madonna Site 	March and April 2016
Community Outreach (newsletter and postcard mailer)	Education	<ul style="list-style-type: none"> • Provide communitywide project updates 	March and May 2016
Community Workshop #2:	Presentation and Feedback	<ul style="list-style-type: none"> • WRF Site selection • Community feedback 	April 7 and 10, 2016
Farmer's Market Outreach	Education and feedback	<ul style="list-style-type: none"> • WRF Site selection • Community feedback 	April 9 and 14, 2016
WRFCAC meeting	Presentation and feedback	<ul style="list-style-type: none"> • WRF Site Selection • Feedback and recommendation to Council for WRF site selection 	May 3, 2016
City Council hearing	Presentation and feedback	<ul style="list-style-type: none"> • Receive Community Input on WRF site selection 	May 10, 2016
Stakeholder Interviews and Community Outreach	Feedback	<ul style="list-style-type: none"> • Get focused feedback on: <ul style="list-style-type: none"> ✓ South Bay Blvd Site 	May and June 2016
City Council hearing	Presentation and feedback	<ul style="list-style-type: none"> • WRF site selection 	June 14, 2016
Short-Term Program			

Table 2. Summary of Outreach Program and Schedule			
Forum	Purpose	Key Topics	Timing
<i>(July-Dec 2016)</i>			
Release of NOP for EIR	CEQA Notice of Preparation for EIR	<ul style="list-style-type: none"> No meeting; begins 30-day public review period for scope 	August 2016
EIR Scoping meeting	Formal CEQA scoping meeting	<ul style="list-style-type: none"> Public feedback on EIR scope 	Aug-Sept 2016 (date TBD)
WRFCAC meeting	Presentation and feedback	<ul style="list-style-type: none"> Progress update 	August 2016
General Plan/LCP Workshop	Education and feedback	<ul style="list-style-type: none"> Describe General Plan/LCP concepts in the context of the FMP Discuss common issues and coordination 	TBD; Sept-October 2016
WRFCAC meeting	Presentation and feedback	<ul style="list-style-type: none"> Progress update 	October 2016
Community Workshop #3:	Presentation and Feedback	<ul style="list-style-type: none"> Preliminary site concepts for draft FMP Visual simulations for WRF site and influent lift station site Community feedback 	October 2016 (date TBD)
WRFCAC meeting	Presentation and feedback	<ul style="list-style-type: none"> Draft FMP Feedback and recommendation to Council 	November 2016
City Council Study Session	Presentation and feedback	<ul style="list-style-type: none"> Draft FMP Input from WRFCAC 	November 2016
City Council hearing	Presentation, feedback and FMP adoption	<ul style="list-style-type: none"> Adoption of FMP as project basis Direction to Program Management team for completing the FMP Provide direction on Master Reclamation Plan Formal update of schedule, budget, and cashflow 	December 2016
Long-Term Program (2017 and beyond)			
Community Workshops #4 and #5	Process and Goals Review, Education and Feedback	<ul style="list-style-type: none"> Input on Master Water Reclamation Plan; Presentation of Plan in response to feedback 	Early to mid-2017
Environmental Review Process	Formal environmental documentation and public review	Environmental review of FMP and Master Reclamation Plan (likely CEQA+ process)	Jan-Dec 2017; includes formal public review and workshops
Technical Presentation #4:	Education	<ul style="list-style-type: none"> Reclamation Opportunities and Best Options for moving forward 	Early 2017
WRFCAC meetings	Various; TBD	<ul style="list-style-type: none"> Technical memos Reclamation Plan CEQA/NEPA documentation Recommendation for selection of 	Monthly (or as needed) in 2017 and beyond

Table 2. Summary of Outreach Program and Schedule			
Forum	Purpose	Key Topics	Timing
		Alternative Delivery Design team	
City Council study sessions and hearings	Various; TBD	<ul style="list-style-type: none"> • Confirmation of project goals; • Modifications to WRF Program as needed • Technical memos • Review and adoption of Reclamation Plan • Review and Certification of CEQA/NEPA documentation • Request for Proposal Review and approval of contractors for design and alternative delivery • Select Alternative Delivery Design team 	As needed in 2017 and beyond
Additional Community Workshops	Various; TBD	TBD	TBD, as needed
Interagency coordination (various agencies and locations)	Public Agency Outreach: <ul style="list-style-type: none"> • Gain input on permitting needs, critical path items, and agency concerns • Initiate permitting process as appropriate 	Informal and formal consultation and permitting as needed with the following agencies: <ul style="list-style-type: none"> • California Coastal Commission • SLO County • RWQCB • State Water Resources Control Board (including Division of Drinking Water) • LAFCo • CDFW • Army Corps of Engineers • NOAA Fisheries • Caltrans • Bureau of Reclamation 	2017 and beyond, as needed
Resource And Conservation Organization coordination (various organizations and locations)	Organization Outreach: <ul style="list-style-type: none"> • Coordinate project design related to resource conservation • Coordinate water reclamation efforts • Gain input that will be useful in the formal permitting process 	Coordination and outreach as needed with the following organizations: <ul style="list-style-type: none"> • Coastal San Luis Resource Conservation District • Morro Bay National Estuary Program • Coastal Conservancy 	2017 and beyond, as needed
Website development and promotional material	Update as needed	TBD	2017 and beyond, as needed



AGENDA NO: A-6

MEETING DATE: July 12, 2016

Staff Report

TO: Honorable Mayor and City Council

DATE: July 6, 2016

FROM: David Buckingham, City Manager

SUBJECT: Adoption of Resolution No. 60-16 Establishing the Maximum Compensation and Benefits for Certain City Department Head Positions

RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 60-16, establishing maximum compensation and benefits for certain City Department Heads. This resolution primarily provides the City Manager parameters within which he/she may negotiate new contracts with future City employees.

FISCAL IMPACT

There is no direct cost to implementing the broad provisions of this resolution. Attachment A does approve the same 2.25% Cost of Living Adjustment for current department heads as included in the already adopted FY 2016/17 budget, approved for Confidential employees and recommended for approval for Management Employees.

BACKGROUND

Section 36506 of the California Government Code requires that a city council fix the compensation of all appointive officers and employees by resolution or ordinance. The City's unrepresented Department Head's compensation and benefits are reviewed on an annual basis, along with the compensation and benefits of all City employees. The City Manager negotiates individual contracts with each Department Head. The City did not previously have this kind of resolution that established negotiation parameters for Department Head contracts.

DISCUSSION

This resolution provides the City Manager appropriate parameters within which to negotiate contracts. Any proposed contract outside of the parameters set forth in this resolution would have to be approved by the City Council in open session. Department Head contracts consistent with the resolution can be executed by the City Manager.

CONCLUSION

Staff recommends the City Council adopt Resolution No. 60-16, establishing maximum compensation and benefits for certain City Department Heads.

Prepared By: DWB Dept Review: _____
City Manager Review: DWB
City Attorney Review: _____

RESOLUTION NO. 60-16

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING THE MAXIMUM COMPENSATION AND BENEFITS
FOR CERTAIN CITY DEPARTMENT HEAD POSITIONS**

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

WHEREAS, Section 36506 of the California Government Code requires that a city council fix the compensation of all appointive officers and employees by resolution or ordinance; and

WHEREAS, Morro Bay Municipal Code Section 2.20.020 also provides that the salaries and compensation of officers and employees of the City of Morro Bay (“City”) shall be as fixed and determined by resolution of the City Council, except as fixed in Chapter 2.20 of the Morro Bay Municipal Code; and

WHEREAS, the Morro Bay City Manager has authority to appoint, remove, promote and demote any officers and employees of the City, including Directors, except the city attorney, pursuant to Morro Bay Municipal Code Section 2.12.090; and

WHEREAS, the City currently has department heads that include the Administrative Services Director, Assistant City Manager, Community Development Director, Deputy City Manager, Fire Chief, Harbor Director, Police Chief, and Public Works Director (hereinafter collectively referred to as “Directors”); and

WHEREAS, the salaries and compensation of the Directors have been fixed pursuant to the Executive Salary Schedule adopted by the City as part of the fiscal year budget process as updated from year to year; and

WHEREAS, the City Council now desires to approve the compensation range and benefits for the City’s Directors such that the City Manager shall be authorized to appoint Directors and provide for salary and benefits within the limitations of this resolution, without requiring the City Council to individually approve each Director’s employment contract; and

WHEREAS, the City Council now desires to adopt a resolution of salaries, compensation and benefits for the Directors.

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

Section 1. The City Council hereby approves the Executive Salary Schedule effective July 1, 2016 attached as **Attachment A**.

Section 2. Directors with an existing employment contract with the City are entitled only to the level of salary and benefits contained herein or already existing in their respective contracts prior to the adoption of this resolution should those pre-existing contracts be amended or replaced with new contracts. Accordingly, this resolution shall not be deemed to limit compensation or benefits provided for in an existing employment contract with the City that is inconsistent with this resolution. Implementation of the accrual caps herein shall not result in loss of existing or vested leave balances as of the date of adoption of this resolution.

Section 3. The City Council hereby approves the maximum level of benefits and other compensation, not including salary, for Directors as set forth below. In the event the City Manager desires to exceed any of the parameters set forth herein, City Council authorization shall be required.

A. **Workweek and Hours.** Directors are expected to engage in the hours of work that are necessary to fulfill the obligations of the position, must be available at all times, and must devote a great deal of time outside the normal office hours to the business of the City. The proper performance of duties will require Directors to generally observe normal business hours (currently 8:00 a.m. to 5:00 p.m., Monday through Friday, including a standard one-hour lunch period), as set by the City and as may be duly revised from time-to-time by the City, and will also often require the performance of necessary services outside of normal business hours.

B. **At-Will Employment.** The employment of Directors with the City is “at-will,” and Directors serve at the pleasure of the City Manager pursuant to Section 2.12.090 of the Morro Bay Municipal Code. As such, subject to Section 4 of this resolution, the City Manager may terminate a Director’s employment at any time, with or without cause and with or without advance notice.

C. **Exempt Status.** Employees subject to this resolution are considered to be “exempt” employees within the definition of the Fair Labor Standards Act (FLSA), and shall not receive overtime compensation for time worked outside of the regular work schedule.

D. **Professional Development and Professional Dues.**

1. **Professional development.** Subject to the prior written approval of the City Manager, the City shall pay for travel and subsistence expenses of Directors for official travel, meetings and seminars necessary to continue professional development, and to adequately pursue necessary official and other functions for the City in accordance with approved budgetary limitations.

2. **Professional dues.** Subject to the prior written approval of the City Manager, the City shall pay the professional dues and subscriptions necessary for Directors’ participation in such national, regional, state, and/or local associations and organizations as are necessary and desirable for continued professional participation growth and advancement and for the good of the City, in accordance with approved budgetary limitations.

F. Vacation Leave.

1. Accrual rate. Directors shall be entitled to paid vacation leave as provided below. City Manager shall have the authority to decide service years as the City Manager sees fit. The standard vacation time is eight (8) hours equals one (1) day.

Service Years	Vacation Days
0-2	12
2-4	14
4-6	16
6-8	18
8+	20

2. Advances. The City Manager shall have the authority, in his or her discretion, to advance up to a total of ten (10) vacation days to a new Director at the start of the Director's appointment and at no other time.

3. Other Vacation Leave Requirements. All other contract language relating to vacation leave, including Accrual Caps, Cash Out and Usage, will be consistent with the adopted City Council Management Employees Compensation and Benefit Resolution in force at the time the Department Head contract is executed.

G. Holiday Leave.

1. Directors shall be entitled to the following holidays and paid eight (8) hours for each holiday:

- New Year's Day
- Martin Luther King Day
- Lincoln's Birthday
- President's Day
- Memorial Day
- Independence Day
- Labor Day
- Veteran's Day
- Thanksgiving Day
- Day after Thanksgiving Day
- Christmas Day
- Two (2) floating holidays

2. Employees may accumulate up to a maximum of forty-eight (48) hours holiday time. Hours of holiday accumulated over forty-eight (48) hours will be paid off. Holiday time is a compensable leave, and any hours remaining in the employee's holiday bank will be paid out upon separation from City service, at the employee's current hourly rate of pay.

H. Administrative Leave.

1. Accrual rate. Each Director is eligible to earn eighty (80) hours of administrative leave per fiscal year. The time during the fiscal year, at which an employee may take administrative leave, shall be determined by the City Manager. The City Manager may, due to exceptional and documented circumstances warranting additional administrative leave, grant administrative leave in excess of the eighty (80) hour limit but no more than one hundred twenty (120) hours.

2. Accrual cap/ cash out. Up to forty (40) hours of administrative leave may be rolled over into the following fiscal year, not to exceed one hundred twenty (120) total banked hours of accrued leave in any fiscal year. Administrative leave is a compensable leave, and any hours remaining in the employee's administrative leave bank will be paid out upon separation from City service, at the employee's current hourly rate of pay.

3. Advances. The City Manager shall have the authority, in his or her discretion, to advance up to a total of five (5) days administrative leave to a new Director.

4. Usage. Administrative leave time must be taken off on an hour-for-hour basis equaling employee actual time off, regardless of accumulation rates. Up to eighty (80) hours of administrative leave per fiscal year may be taken by a Director, subject to written advance approval of the City Manager.

I. Sick Leave.

1. Accrual rate. Directors shall accrue one (1) day paid sick leave per month. Directors shall be entitled to receive cash payment for up to 50% of unused sick leave upon termination of employment, provided that such amount shall not exceed \$4,500. Directors are entitled to payment for unused sick leave, pursuant to this section, upon resignation, only if thirty (30) days written notice of intent to resign is given to the City.

2. Conversion. Directors may convert up to ninety-six (96) hours of unused, accumulated sick leave into paid vacation once during the following fiscal year on a ration of two sick leave hours for one vacation hour. At least twenty-four (24) hours shall remain in a Director's sick leave bank after any conversion is authorized. In addition, the right to convert does not carry over or rollover from calendar year to calendar year; failure to request conversion, in any calendar year, eliminates the right to do so for that calendar year. Sick leave that is compensated or converted to vacation cannot be used towards the California Public Employees' Retirement System ("CalPERS") sick leave credit option at retirement.

3. Advances. The City Manager shall have the authority, in his or her discretion, to advance up to a total of five (5) days sick leave to a new Director.

4. Usage. Sick leave time must be taken off on an hour-for-hour basis equaling employee actual time off during normal City business hours, regardless of accumulation rates.

J. Retirement Benefits

1. City contributions. The City will pay the employer portion of retirement contribution to the California Public Employees' Retirement System (CalPERS). Employees are required to pay their full member contributions for whichever plan they are eligible for pursuant to the City's contract with CalPERS. (As of the date of adoption of this resolution, contributions rates are as follows: 1) classic members, Tier 1 - 8% Miscellaneous/9% Safety; 2) classic members, Tier 2 - 7% Miscellaneous/9% Safety; or 3) PEPRA members, Tier 3 — 6.25% Miscellaneous/11.5% Safety.)

2. CalPERS contract provisions.

(a) Tier I Miscellaneous— Miscellaneous Directors who were hired prior to January 1, 2012 shall be provided with the following CalPERS retirement formula and optional benefits (existing employees promoted to another position within the City will not be considered new hires with respect to retirement formulas):

- (i) 2.7% @ 55 formula (Section 21354.5)
- (ii) Unused Sick Leave Credit (Section 20965)
- (iii) Military Service Credit (Section 21024 & 21027)
- (iv) Final Compensation 1 Year (Section 20042)
- (v) 1959 Survivor Benefit, Level 4 (Section 21574)
- (vi) Pre-Retirement Option 2W Death Benefit (Section 21548)

(b) Tier II Miscellaneous— Miscellaneous Directors who were hired on or after January 1, 2012, but before January 1, 2013, and those hired on or after January 1, 2013 who are determined to be a “classic” member by CalPERS shall be provided with the following CalPERS retirement formula and optional benefits:

- (i) 2% @ 60 formula (benefit factor increases to 2.418% @ 63+) (Section 21353)
- (ii) Unused Sick Leave Credit (Section 20965)
- (iii) Military Service Credit (Section 21024 & 21027)
- (iv) Final Compensation 3 Years (Section 20037)
- (v) 1959 Survivor Benefit, Level 4 (Section 21574)
- (vi) Pre-Retirement Option 2W Death Benefit (Section 21548)

(c) Tier III (PEPRA) Miscellaneous— Pursuant to the California Public Employees' Pension Reform Act of 2013 (PEPRA), effective January 1, 2013, Directors hired, who meet the definition of “new” member under PEPRA as determined by CalPERS, will be covered by following retirement formula and receive the following CalPERS optional benefits:

- (i) 2% @ 62 formula (benefit factor increases to 2.5% @ 67+) (Section 7522.20)
- (ii) Final Compensation 3 Years (Section 20037)

- (iii) Member contribution rate of fifty (50) percent of the expected normal cost rate, which is currently 12.5% (6.25% is employee's portion)
- (iv) Unused Sick Leave Credit (Section 20965)
- (v) Military Service Credit (Section 21024 and 21027)
- (vi) 1959 Survivor Benefit, Level 4 (21574)
- (vii) Pre-Retirement Option 2W Death Benefit (Section 21548)

(d) Tier I Safety– CalPERS Safety Directors, who were hired prior to September 17, 2011, shall be provided the following CalPERS retirement formula and optional benefits (existing employees, promoted to another position within the City, will not be considered new hires, with respect to retirement formulas):

- (i) 3% @ 50 plan (Section 21362.2)
- (ii) Unused Sick Leave Credit (Section 20965)
- (iii) Military Service Credit (Section 21024 & 21027)
- (iv) Final Compensation 1 Year (Section 20042)
- (v) 1959 Survivor Benefit, Level 4 (Section 21574)
- (vi) Pre-Retirement Option 2W Death Benefit (Section 21548)

(e) Tier II Safety– CalPERS Safety Directors, who were hired on or after September 17, 2011, and those hired on or after January 1, 2013 who meet the definition of a “classic” member under PEPRA as determined by CalPERS, shall be provided the following CalPERS retirement formula and optional benefits:

- (i) 3% @ 55 plan (Section 21363.1)
- (ii) Unused Sick Leave Credit (Section 20965)
- (iii) Military Service Credit (Section 21024 & 21027)
- (iv) Final Compensation 3 Years (Section 20037)
- (v) 1959 Survivor Benefit, Level 4 (Section 21574)
- (vi) Pre-Retirement Option 2W Death Benefit (Section 21548)

(f) Tier III (PEPRA) Safety- Pursuant to PEPRA, effective January 1, 2013, Safety Directors hired, who meet the definition of “new” member under PEPRA as determined by CalPERS, will be covered by following retirement formula and receive the following CalPERS optional benefits:

- (i) 2.7% @ 57 formula (benefit increases to ...)
- (ii) Final Compensation 3 Years (20037)
- (iii) Member contribution rate of fifty (50) percent of the expected normal cost rate (currently 11.5%)
- (iv) Sick Leave Option (Section 20965)
- (v) Military Service Credit (Section 21024)
- (vi) 1959 Survivor Benefit Level 4 (Section 21574)
- (vii) Pre-Retirement Death Option 2W (Section 21548)

K. Health, Life, Dental and Vision. Effective January 1, 2016, all Directors receive the following contribution toward the purchase of CalPERS health insurance, which includes the required CalPERS monthly contribution:

- Employee only - up to \$715/month or cost of insurance, whichever is less
- Employee + 1 – up to \$1,109/month or cost of insurance, whichever is less
- Employee + family - up to \$1,326/month or cost of insurance, whichever is less

Life insurance is provided at \$50,000, and is paid for by the City for the employee only.

Effective January 1, 2016, all Directors receive the following contribution toward the purchase of Life, Vision and Dental insurances:

	<u>Life</u>	<u>Vision</u>	<u>Dental</u>	<u>Total</u>	<u>Bank</u>	<u>EE Pays</u>
Employee only	\$7.50	\$ 8.86	\$ 55.47	\$ 71.83	\$ 68.90	\$ 2.93
Employee + 1	\$7.50	\$ 16.59	\$143.09	\$167.18	\$155.43	\$11.75
Employee + 2+	\$7.50	\$ 22.59	\$143.09	\$173.18	\$160.97	\$12.21

For retired Directors, City contributes the required CalPERS monthly contribution towards CalPERS health plans, as selected by retiree.

L. Long-Term Disability (“LTD”) Insurance Program. Management employees do not participate in the California State Disability Insurance program. City provides LTD to its management employees, and pays the cost for the plan.

M. Deferred Compensation. Directors shall have the option to participate in the deferred compensation program offered by the City, subject to the terms and conditions of the 1978 Revenue Act and Section 457 of the Internal Revenue Code. The City will contribute up to \$3,500 per calendar year to the deferred compensation program. Any required match, from no match to a 2:1 match, will be negotiated by the City Manager.

N. Automobile Allowance. Directors shall receive \$250.00 per month or the use of a take home City vehicle as determined by the City Manager.

O. Cost of Living Adjustments (COLA). Salary increases to the established salary ranges in Attachment A shall only be as dictated and approved by City Council. The movement between steps of a salary range are entirely within the purview of the City Manager.

P. Uniforms. The Police Chief and Fire Chief shall receive uniform allowances in an amount consistent with the highest ranking subordinate classification in their Department.

Q. Bonding. The City shall bear the full cost of any fidelity or other bonds required for a Director under any law or ordinance.

R. Education Incentives. The City shall reimburse the costs for job-related and job-required certifications, correspondence courses, and licenses upon successful completion of the examination or course by the employee, having written authorization in advance from the City Manager. This shall include application fees, examination fees, and certificate fees. Renewal fees may be paid in advance by the City. This provision does not apply to continuing education requirements.

S. Severance. Directors shall be entitled to severance only as provided in this section. Any and all severance rights are conditioned upon and in consideration for execution of a standard agreement of separation, severance, and general release in a form acceptable to and approved by the City Attorney. The severance rights provided for herein shall constitute the sole and only entitlement of a Director with respect to severance pay in the event of the termination, other than for cause.

1. Amount. In the event a Director is terminated without cause and does not challenge such termination, including but not limited to by means of appeal or civil or administrative claim, then the City shall pay severance in an amount equal to the monthly base salary of the Director then in effect (excluding the value of any other benefits) multiplied by four (4). The severance payment shall not include the monetary value of benefits during said time, but salary only. Prior to such termination, in order to be eligible for severance as provided in this Section, a Director must have worked for the City a minimum of six (6) months.

Should a Director be terminated for cause, as defined in this section below, the City shall have no obligation to pay the severance provided for above. Additionally, should a Director resign or otherwise initiate termination of his or her employment with the City, then the City shall have no obligation to pay the severance provided for above.

2. “Cause” defined. For the purposes of this resolution, “cause” for termination shall include, but not be limited to, the following: (1) willful or persistent material breach of duties or inattention to duties, (2) résumé fraud or other acts of material dishonesty, (3) unauthorized or excessive absence or leave, (4) conviction of a misdemeanor involving moral turpitude (i.e., offenses contrary to justice, honesty, or morality), (5) conviction of a felony under California law, (6) violation of the City’s anti-harassment policies and/or a finding that legally prohibited personal acts of harassment against a City official or employee or legally prohibited personal acts of discrimination against a City official or employee has occurred, (7) violation of state law or the City’s Municipal Code or ordinances, rules, and regulations, (8) use or possession of illegal drugs in violation of state law and/or City policy, (9) engaging in conduct tending to bring embarrassment or disrepute to the City, (10) any illegal or unethical act involving personal gain, including conviction of theft or attempted theft, (11) significant mismanagement of City finances, (12) any pattern of repeated, willful and intentional failure to carry out materially significant and legally constituted directions or policy decisions of the City Council or City Manager, (13) gross misfeasance or gross malfeasance, or (14) any similar cause. For any of the foregoing, the City may, in its discretion, place a Director on paid or unpaid administrative leave until resolution.

3. Limitation. Government Code Section 53260 provides that all contracts of employment with a city must include a provision limiting the maximum cash settlement for the termination of the contract to the monthly salary (excluding benefits) multiplied by the number of months left on the unexpired term, but not more than eighteen (18) months if the unexpired term exceeds eighteen (18) months. Accordingly, should such proposed severance payment exceed the amount authorized to be paid under Government Code Section 53260, then the amount paid to Employee shall be reduced in the amount necessary to comply with such statute. (For example, if termination occurs with two (2) months left in the term, severance would be equal to the monthly base salary multiplied by two (2) rather than the four (4) months provided herein.)

T. Relocation Reimbursement. The City Manager shall have the discretion to reimburse a newly-hired Director for the Director’s actual costs of relocation in order to work for the City, up to \$5,000 for in-state relocations, and up to \$10,000 for out of state relocations. Prior to such reimbursement, the newly hired Director shall provide to the City Manager receipts or other reasonable proof documenting the costs incurred in relocation. The expenses eligible for reimbursement shall be only those expressly stated herein and only include the following items/categories: hiring of a moving service or rental of a moving truck or equipment; renting a temporary home, apartment or hotel costs while house-hunting for a more permanent residence; lease cancelation fees; shipping and temporary storage of personal belongings and furniture; ad travel costs from prior residence to new residence, whether temporary or not.

If, following reimbursement for relocation expenses as provided in this section, a Director voluntarily leaves City employment, then Director shall be responsible for repayment to the City the amount of relocation reimbursement as follows:

Duration of employment	Percentage of relocation reimbursement owed to City
Less than one year	100%
1 – 2 years	50%
2 – 3 years	25%
3 + years	0%

Any relocation reimbursement repayment required pursuant to this section shall be made to the City no later than the Director’s last day of City employment. The City shall have the right, but is not limited to this form of recovery only, to deduct any relocation reimbursement amount owed to the City pursuant to this section from a Director’s accrued leave to be paid out upon separation.

In the event a Director is terminated, then no repayment to the City for relocation reimbursement shall be required.

Section 4. The position of Police Chief remains entitled to all protections and rights afforded under California law, including, but not limited to, those set forth in the Public Safety Officers Procedural Bill of Rights Act (Gov’t Code 3300-3313). The position of Fire Chief remains entitled to all protections and rights afforded under California law, including, but not

limited to, those set forth in the Firefighters Procedural Bill of Rights Act (Gov't Code 3250-3262).

PASSED AND ADOPTED by the City Council, City of Morro Bay at a regular meeting thereof held on the 12th day of July, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

ATTACHMENT A

DIRECTORS SALARY SCHEDULE

POSITION	ANNUAL SALARY RANGE				
	1	2	3	4	5
Assistant City Manager	126,790	133,130	139,786	146,775	154,114
Fire Chief					
Harbor Director					
Police Chief	124,248	130,460	136,983	143,833	151,024
Administrative Services Dir					
Public Works Director	121,973	128,072	134,475	141,199	148,259
Community Development Dir					
Deputy City Manager					
Finance Director	117,588	123,467	129,640	136,122	142,928



AGENDA NO: B-1

MEETING DATE: July 12, 2016

Staff Report

TO: Honorable Mayor and City Council

DATE: July 1, 2016

FROM: Scot Graham, Community Development Manager

SUBJECT: Approval of Report on the Measures Taken to Alleviate Conditions Previously Identified and Leading to the Adoption of Urgency Ordinance 604 Approving a 45-day Moratorium Limiting the Number of Vacation Rentals in the City and Consideration and Adoption of Ordinance 605 Approving the Extension of that Citywide Moratorium for Twenty-two Months and Fifteen Days

RECOMMENDATION

Staff recommends the City Council (i) issue the “Report of the City Council of the City of Morro Bay on measures taken to alleviate the conditions previously identified and leading to the adoption of a moratorium on the issuance of any new Permit, License, Approval, or Entitlement for operation of more than 250 vacation rentals within City Ordinance 604,” Pursuant to Government Code Section 65858; and (ii) adopt, by reading the title only and waiving further reading, Ordinance No. 605: An Urgency Ordinance of the City Council of the City of Morro Bay approving extension of a Citywide Moratorium on the issuance of any new Permit, License, Approval, or Entitlement pertaining to a vacation rental for an additional twenty-two months and fifteen days within the City of Morro Bay and declaring the urgency thereof and establishing its effective date as July 28, 2016.

ALTERNATIVES

1. Reject the vacation rental moratorium
2. Revise, add to, remove or otherwise alter Ordinance language.

FISCAL IMPACT

Allowing vacation rental numbers to increase beyond the 250-unit limitation would result in additional income to the City in the form of Transient Occupancy Tax.

BACKGROUND/DISCUSSION

On June 14, 2016, the City Council adopted Urgency Ordinance No. 604 implementing a 45-day moratorium where no permits, licenses, approvals, or entitlements may be issued or applications accepted for the operation of more than 250 vacation rentals within the City of Morro Bay. The Council also directed staff to study appropriate modifications to the City’s vacation rental rules regulations and

Prepared By: SG

Dept Review: SG

City Manager Review: DWB

City Attorney Review: JWP

laws to reduce and mitigate the negative effects created by the allowance of vacation rentals in residential neighborhoods. The City Council found without requirements specific to the number, location and distance between vacation rentals, there exists the potential to degrade the quality of the City's neighborhoods.

Moratorium Process

The City Council held a noticed public hearing on June 14, 2016, and by four-fifths vote adopted Urgency Ordinance No. 604 implementing a 45-day moratorium.

In order to extend the 45-day moratorium the City Council must hold a second noticed public hearing, again requiring a four-fifths vote, which then extends the moratorium for a period 22-months and 15-days.

As part of the second extension, Council must also review and approve a written report detailing the measures taken to alleviate the condition which led to the adoption of the ordinance (see Attachment A). The second extension involve adoption of Urgency Ordinance No. 605 (provided as Attachment B), which will extend the moratorium for 22-months and 15-days.

Finally, ten days prior to the expiration of the second extension to the interim ordinance the Council is required to adopt a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance. Said review will likely take place on May 22, 2018.

CONCLUSION/RECOMMENDATION

In order to extend the vacation rental moratorium beyond the initial 45-day period, the Council must first adopt a Report detailing the measures taken by the City to alleviate the conditions previously identified and leading to the adoption of the initial 45-day moratorium. Staff recommends adoption of the Report provided in Attachment A.

On June 14, 2016, the Council adopted Urgency Ordinance 604, implementing a 45-day vacation rental moratorium, capping the number of registered vacation rentals at 250 and further directing staff to develop a more comprehensive vacation rental ordinance as part of the General Plan/Local Coastal Program update process. The General Plan/Local Coastal Program Update is due to be completed in December of 2017 necessitating the need to extend the moratorium beyond the initial 45-day period. To that end, staff has prepared Ordinance No. 605, included as Attachment B to this staff report, further extending the moratorium for an additional 22-months and 15-days. Staff recommends adoption of Ordinance 605.

ATTACHMENTS

A – Council Report on Measures Taken to Alleviate Conditions Leading to the Moratorium

B – Ordinance No. 605, Extension of 45-day vacation rental moratorium for an additional 22-months and 15-days.

ATTACHMENT A
CITY OF MORRO BAY

REPORT OF THE CITY COUNCIL OF THE CITY OF MORRO BAY IDENTIFYING MEASURES TAKEN TO ALLEVIATE THE CONDITIONS PREVIOUSLY IDENTIFIED AND LEADING TO THE ADOPTION OF A MORATORIUM ON THE ISSUANCE OF ANY NEW PERMIT, LICENSE, APPROVAL, OR ENTITLEMENT PERTAINING TO VACATION RENTALS WITHIN THE CITY (ORDINANCE NO. 604), PURSUANT TO GOVERNMENT CODE SECTION 65858

In adopting Ordinance No. 604, the City Council made certain findings respecting the necessity of the moratorium in order to protect the public health, safety, and welfare. In sum, the City Council found and determined:

SECTION 1. The City Council makes the following findings:

- A. The City of Morro Bay (the "City") has adopted a General Plan, including strategies to invigorate the City's prosperous community as well as its well-planned and designed community.
- B. Protection of public health, safety and welfare is fully articulated in the General Plan.
- C. State law requires the City's zoning laws, found in Title 17 of the Morro Bay Municipal Code ("MBMC"), conform with the General Plan's goals and policies.
- D. The City currently has a process for permitting vacation rentals, as defined in MBMC Section 5.47.030, but without any specific regulations as to number, location or other similar use requirements.
- E. The City currently has issued 174 permits for the operation of vacation rentals within the City, and estimates it may have as many as 100 more vacation rentals being operated within the City without required permits.
- F. The communities around the County have enacted stringent regulations applicable to vacation rentals within those communities and other coastal communities within the State have done the same to better protect the public health, safety and welfare issues that can result from vacation rentals.

- G. The City is currently processing a complete update to its General Plan and Zoning Code, which process could include the regulation of vacation rentals but will be a 14- 18-month process.
- H. The public has recently again raised concerns about the negative impact vacation rentals can have on quality of life, access to permanent housing, single-family neighborhoods, which were also part of the reasons other communities adopted more stringent regulations regarding vacation rentals.
- I. The City Council finds the continued operation of vacation rentals without specific regulations regarding number, location and similar issues can change the character of a neighborhood, cause blight and impact quality of life and potentially property values, as well as compromising the public trust in its local government to ensure the public health, welfare and safety are protected.
- J. The City Council finds the MBMC's current provisions regarding vacation rentals must be fully reviewed to ensure the public health, welfare and safety of all persons are properly protected regarding the operation of vacation rental.
- K. The City Council also finds including that review as part of the currently ongoing update to the City's General Plan and Zoning Code is the most cost effective and comprehensive method to be sure all interests regarding vacation rentals are considered and served.
- L. Based on the foregoing, it is urgent the City prohibit the proliferation of vacation rentals while it undertakes a review of its current vacation rental regulations in order to determine whether additional regulations are needed to ensure the public health, safety, and welfare remain protected.

SECTION 2. The City Council reports as follows:

- A. The findings and determinations in Section 1 are and remain true and correct.
- B. The Community Development Department of the City of Morro Bay has begun the process of incorporating the vacation rental policy discussion into the City's ongoing update of the General Plan, Local Coastal Program and Zoning Code in order to study and determine required changes to the City's zoning and business laws to address vacation rentals. Since the

Report of the City Council - (Adoption of Moratorium, Ordinance No. 604)
July 12, 2016
Page 3 of 3

June 14, 2016, enactment of the moratorium, staff has researched existing vacation rental policies throughout San Luis Obispo County to identify possible policy language for use in preparation of a Vacation Rental Ordinance. Staff has also been reviewing and monitoring the actions of other cities in California who have enacted vacation rental moratoriums including the Cities of Laguna Beach, Del Mar, Anaheim, and Carpinteria.

ORDINANCE NO. 605

**AN URGENCY ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
APPROVING EXTENSION OF A CITYWIDE MORATORIUM
ON THE ISSUANCE OF ANY NEW PERMIT, LICENSE, APPROVAL, OR
ENTITLEMENT PERTAINING TO A VACATION RENTALS FOR AN
ADDITIONAL TWENTY-TWO MONTHS AND FIFTEEN DAYS WITHIN THE
CITY OF MORRO BAY AND DECLARING THE URGENCY THEREOF AND
ESTABLISHING ITS EFFECTIVE DATE AS JULY 28, 2016**

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

**THE CITY COUNCIL OF THE CITY OF MORRO BAY DOES HEREBY
ORDAIN AS FOLLOWS:**

SECTION 1. The City Council makes the following findings:

- A. The City of Morro Bay (the "City") has adopted a General Plan, including strategies to invigorate the City's prosperous community as well as its well-planned and designed community.
- B. Protection of public health, safety and welfare is fully articulated in the General Plan.
- C. State law requires the City's zoning laws, found in Title 17 of the Morro Bay Municipal Code ("MBMC"), conform with the General Plan's goals and policies.
- D. The City currently has a process for permitting vacation rentals, as defined in MBMC Section 5.47.030, but without any specific regulations as to number, location or other similar use requirements.
- E. The City currently has issued 194 permits for the operation of vacation rentals within the City, and estimates it may have as many as 100 more vacation rentals being operated within the City without required permits.
- F. The communities around the County have enacted stringent regulations applicable to vacation rentals within those communities and other coastal communities within the State have done the same to better protect the public health, safety and welfare issues that can result from vacation rentals.
- G. The City is currently processing a complete update to its General Plan, Local Coastal Program and Zoning Code, which process could include the regulation of vacation rentals but will be a 14- 18-month process.
- H. The public has recently again raised concerns about the negative impact vacation rentals can have on quality of life, access to permanent housing, single-family neighborhoods, which were also part of the reasons other communities adopted more stringent regulations regarding vacation rentals.

- I. The City Council finds the continued operation of vacation rentals without specific regulations regarding number, location and similar issues can change the character of a neighborhood, cause blight and impact quality of life and potentially property values, as well as compromising the public trust in its local government to ensure the public health, welfare and safety are protected.
- J. The City Council finds the MBMC's current provisions regarding vacation rentals must be fully reviewed to ensure the public health, welfare and safety of all persons are properly protected regarding the operation of vacation rental.
- K. The City Council also finds including that review as part of the currently ongoing update to the City's General Plan, Local Coastal Program and Zoning Code is the most cost effective and comprehensive method to be sure all interests regarding vacation rentals are considered and served.
- L. Based on the foregoing, the City Council adopted urgency Ordinance No. 604 to prohibit the proliferation of vacation rentals while it undertakes a review of its current vacation rental regulations in order to determine whether additional regulations are needed to ensure the public health, safety, and welfare remain protected.

SECTION 2. The City Council orders as follows:

- A. The findings and determinations in Section 1 are true and correct.
- B. Based on the foregoing, the City Council finds and declares there is a current, continued and immediate threat to the public health, safety or welfare and upon that basis has determined an extension of the moratorium adopted by Ordinance No. 604, pursuant to Government Code Section 65858, is warranted and, therefore, this Ordinance shall take effect on July 28, 2016.
- C. For a period of twenty-two months and fifteen days from and after the date of July 28, 2016, no permits, licenses, approvals, or entitlements may be issued or applications accepted for the operation of more than 250 vacation rentals within the jurisdiction of the City.
- D. For the purpose of this Ordinance, vacation rentals shall have the same meaning as in Section 5.47.030 of the MBMC.
- E. City staff is directed, as part of the City's current General Plan, Local Coastal Program and Zoning Code update, to study appropriate modifications to the City's vacation rental rules, regulations and law to reduce and mitigate negative secondary effects created by the number, location, and other impacts vacation rentals can causes. Pending the completion of such studies and the adoption of an ordinance to establish appropriate operational and zoning regulations and for the immediate preservation of the public health, safety, and welfare, it is necessary for this ordinance to take effect on July 28, 2016. In the absence of immediate ordinance extending the vacation rental moratorium, uses in the City may be in conflict with regulations or requirements established with respect thereto.

- F. This Ordinance shall not preclude the operation of no more than 250 lawfully operating vacation rentals; provided, that this ordinance does not permit any person to own, operate or maintain any vacation rental within the City without fully and continually complying with all the requirements of Chapter 5.47 of the MBMC and all other provisions of the MBMC.
- G. This Ordinance does not create or grant any vested rights to any person for the continued operation of any vacation rental (i) during the time this ordinance is effective or its effectiveness may be extended, as permitted by law, or (ii) that is not, at all times, in full compliance with any new regulations that may be adopted regarding vacation rentals as part of the process described herein.

SECTION 3. In order to protect the public health, safety and welfare it is necessary to enact this Ordinance as an urgency measure to go into effect on July 28, 2016 upon its adoption, and that to enact this Ordinance after giving notice, holding public hearings and two readings thereof, and thereafter to await thirty days for said Ordinance to become effective, will be detrimental to the public health, safety and welfare, in that during the interim period further vacation rentals may be established without the benefit of proper criteria and regulations. It is, therefore, necessary for this Ordinance to go into effect on July 28, 2016.

SECTION 4. The City Council finds this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; rather it prevents changes in the environment pending the completion of the contemplated municipal code review.

SECTION 5. This ordinance is an urgency ordinance enacted under California Government Code Section 65858(a). This urgency ordinance will be effective as of July 28, 2016, and will extend for a period of twenty-two months and fifteen days after that date, at which time it will automatically expire, in accordance with California Government Code Section 65858.

SECTION 6. The City Clerk, or her duly appointed deputy, shall certify to the adoption of this Ordinance and shall cause this Ordinance to be posted as required by law.

THIS URGENCY ORDINANCE NO. 605 WAS DULY PASSED, APPROVED, AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, HELD ON July 12, 2016, by motion of _____, seconded by _____, by the following vote:

**AYES:
NOES:
ABSENT:**

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

JOSEPH W. PANNONE, City Attorney



AGENDA NO: C-1

MEETING DATE: July 12, 2016

Staff Report

TO: Honorable Mayor and City Council

DATE: July 1, 2016

FROM: Eric Endersby, Harbor Director

SUBJECT: Adoption of Resolution No. 58-16 Approving a New 30-Year Master Lease Between the City of Morro Bay and Morro Bay Oyster Company, LLC for Lease Site 144/144W, Located at 1287 Embarcadero

RECOMMENDATION

Staff recommends Council adopt Resolution No. 58-16, approving a new 30-year Master Lease Agreement for Lease Site 144/144W, as-proposed.

ALTERNATIVE

Council may elect not to approve Resolution No. 58-16 for the proposed lease agreement, and direct staff accordingly.

FISCAL IMPACT

No immediate fiscal impact will result from the new lease because the annual minimum rent remains unchanged. If approved, then, with the conversion of the front office space to retail oyster and other seafood sales, and exercising of the lease option as outlined later in this report, there is the likely to be positive fiscal impact with additional percent gross sales rent to the City in the future.

BACKGROUND

Lease Site 144/144W, previously owned by Charles and Sandra Marciel, dba M&M Refrigeration, is under a 13-year lease executed in 2012. That lease was negotiated with the tenants agreeing to complete interior plumbing and electrical upgrades, exterior painting and roofing, repairs to the dock gangway and replacement of windows. Those improvements have been completed. In addition, there is an option in the lease to extend the term for up to 20 years for completion of a project to extend the current dock in the water portion of the lease site to the full length of the site.

In early 2011, Morro Bay Oyster Company (MBOC) sublet a portion of lease site 144/144W from the Marciels to operate commercial oyster nursery and deprivation tanks and oyster seed production for MBOC's commercial oyster leases in the back bay. The Marciels agreed to sell their lease to MBOC and the assignment was approved by City Council in January, 2015, with MBOC's intent to expand their

Prepared By: EE

Dept Review: EE

City Manager Review: DWB

City Attorney Review: JWP

operation utilizing the additional area for office space, a workshop for production assembly, as well as for development of a tank system to hold market-ready product for wholesale distribution. Retail sales and direct-to-the-public sales were contemplated as a possibility for the future.

Late last year and into this year, MBOC approached and worked with staff to develop a proposal to redevelop the current building and wharf for the uses contemplated. That proposal would bring the site to fuller utilization, provide for potential increased revenues for the City due to addition of retail sales of commercial aquaculture and seafood sales, as well as support the commercial aquaculture industry in Morro Bay. On April 13, 2016, the City Council, in closed session, provided negotiation instructions to staff to move forward with MBOC's proposal for a new lease.

DISCUSSION

In order to complete conversion of the lease site from one of primarily a waterfront and vessel refrigeration and marine repair shop to that of commercial oyster aquaculture and oyster wholesale and retail sales, significant structural, layout and other improvements are necessary. As with all City waterfront lease agreements, significant tenant-completed improvements are negotiated to generally garner increases in the subject lease agreement's term, or for a new lease altogether, so the tenant can adequately amortize the cost of the improvements over time.

With Council's direction, staff have worked with MBOC on terms and conditions for a new lease agreement, which is now being presented for approval. The lease is on the standard "modern" City lease format, and includes commercial aquaculture/mariculture uses, which are compliant with Measure D's commercial and recreational fishing-dependent restrictions.

Of particular note in the new proposed lease:

1. Section 1.01 Term: 30-year lease term predicated on the ~9 years left on the current lease's term, and an additional 21 years for redeveloping the site to fuller use and revenue potential through: (i) conversion of office-use space to aquaculture/seafood retail, (ii) bringing the downstairs restroom into ADA compliance for staff and retail customer use, (iii) conversion of the workshop space to aquaculture, retail and education use, and iv) repair of an estimated five deteriorated pilings under the wharf. In addition, the 21-year addition is in partial recognition for significant structural improvements made to the site including pile caps, brackets, joists, decking and seawall repairs, and roofing, tank room flooring, painting and siding.
2. Section 2.01: Annual Minimum Rent: annual minimum rent based on the current new FY 16/17 rent of \$7,400.
3. Section 2.02: CPI Adjustment to Annual Minimum Rent, standard.
4. Section 2.03: Calculation of New Annual Minimum Rent: first reappraisal and rent-setting in 2018 (as scheduled in the current lease), then reappraisals as standard every five years thereafter.
5. Section 2.04 Percentage Rent: as in the current lease - 0% for wholesale aquaculture/seafood sales, 3% for retail aquaculture/seafood sales, 5% for food service, 10% for vessel tie-up and 5%

for ancillary/related retail sales.

6. Section 3.01 Permitted Uses: (i) marine refrigeration and repair, (ii) commercial or recreational fishing vessel repair, maintenance and tie-up, (iii) aquaculture, wholesale and retail aquaculture and seafood sales, (iv) raw bar supporting licensed commercial or aquaculture fishing activities, including sales of retail goods associated with the tenant's other operations, such as t-shirts, apparel or other goods with tenant's logo or supporting the Morro Bay area and the seafood industry and (v) vessel passenger loading and unloading to support tenant's aquaculture operations and education, subject to any approvals required under the City's Conditional, Minor or Temporary Use Permit processes.
7. Section 13.02 Completion of Improvements: complete improvements as described in "Term" section above by timelines proscribed.
8. Section 13.03 Option to Extend: option for up to 20 years of additional lease term for extension of the wharf and deck area to the maximum extent possible in the southern portion of the lease site. This option must be requested prior to July 1, 2022. MBOC is not proposing to extend the dock to achieve the 20-year option provided in the existing lease because significant eelgrass in the subject area would likely deem that project financially infeasible, if not impossible, under the current regulatory framework.
9. Section 13.04 Requirement to Cost Share the City's HarborWalk Project: as in the Tognazzini's Dockside and Crill's Saltwater Taffy leases, requires the tenant either pay for the portion of the HarborWalk project that will eventually skirt the lease site up to a maximum of \$25,000 if the City constructs it, or to bear the full cost, if the tenant chooses to construct it prior to the City doing so.

CONCLUSION

MBOC is currently a tenant in good standing and has a good track record of lease and property management to date. In addition, MBOC has presented a good Measure D-supporting proposal to bring the lease site to eventual full-utilization, which will likely result in additional percent gross revenues to the City. Therefore, staff is recommending adoption of Resolution No. 58-16, approving a new 30-year Master Lease Agreement for Lease Site 144/144W, which could be extended to 50 years with the options, as-proposed and agreed-upon by MBOC and the City.

ATTACHMENTS

1. Resolution 58-16
2. Proposed Master Lease Agreement
3. Overhead view of lease site

RESOLUTION NO. 58-16

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING A 30-YEAR LEASE AGREEMENT FOR
LEASE SITE 144/144W BETWEEN THE CITY OF MORRO BAY AND
MORRO BAY OYSTER COMPANY, LLC LOCATED AT 1287 MBARCADERO**

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

WHEREAS, the City of Morro Bay is the lessor of certain properties on the Morro Bay Waterfront described as City Tidelands leases and properties; and

WHEREAS, Morro Bay Oyster Company, LLC. has been the lessee of Lease Site 144/144W since 2015 and is a tenant in good standing; and

WHEREAS, Morro Bay Oyster Company, LLC is proposing to continue to operate as a nursery and deprivation tanks for oysters and oyster seed production, engage in wholesale and retail aquaculture and seafood sales and use the additional leased area for office space, a workshop for production assembly as well as for development of a tank system to hold market-ready product; and

WHEREAS, in accordance with the City's Master Lease Policy, the City and lessee have agreed to a new 30-year lease agreement, with options to extend the term to 50 years, for Lease Site 144/144W, located at 1287 Embarcadero.

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 Lease Site 144/144W is hereby approved.
2. The Mayor is hereby authorized to execute said Lease Agreement.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 12th day of July, 2016 on the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

L E A S E

This Lease is made and entered into by and between the CITY OF MORRO BAY, a municipal corporation of the State of California herein called CITY, and MORRO BAY OYSTER COMPANY, LLC a California limited liability company herein called TENANT (sometimes referred to, individually, as the Party or collectively, as the “Parties”).

WITNESSETH

WHEREAS, the State of California granted certain tide and submerged lands located within the CITY limits of CITY to the County of San Luis Obispo and to its successors, being Chapter 1076, Statutes of 1947, as amended by Chapter 413, Statutes of 1955, Chapter 1874, Statutes of 1957, and Chapter 70, Statutes of 1960, first extraordinary session; which Statutes may be amended from time to time by the Legislature of the State of California; all of which Statutes are expressly recognized and agreed to be in full force and effect by the Parties hereto; and

WHEREAS, the Parties hereto recognize and agree on July 17, 1964, CITY succeeded to all of the right, title and interest of the County of San Luis Obispo in and to all of the tide and submerged lands conveyed to said County by the State of California pursuant to the above mentioned acts; and

WHEREAS, judgment has been entered on October 14, 1968, in the case of CITY, Plaintiff, versus County of San Luis Obispo, and State of California, Defendants, by the Superior Court of the State of California in and for the County of San Luis Obispo, #30417, adjudging and decreeing, among other things, that the title to said tide and submerged lands so conveyed by the State of California to the County of San Luis Obispo in trust, as set forth above, passed automatically to CITY upon the date of its incorporation as a CITY on the 17th day of July, 1964; and

WHEREAS, TENANT accepts this Lease with full knowledge that there is no warranty of title in and to the within described premises by CITY to TENANT; and

WHEREAS, in order to develop and improve Morro Bay Harbor and to assist in carrying out the provisions of the tideland grant as aforesaid, and in order to provide facilities for the accommodation of those using Morro Bay Harbor, CITY desires to lease to TENANT the within described property upon the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the covenants to be performed and the rental to be paid by TENANT to CITY, CITY leases to TENANT, and TENANT leases from CITY, all of the following premises (herein collectively referred to as the "Premises") in CITY, County of San Luis Obispo, State of California, described as follows: Lease Site 144/144W (the "Premises").

The Premises is delineated on Parcel Map of CITY No. 68-30, which map was recorded on October 10, 1968, in Book 3, Page 10 of Parcel Maps in the Office of the County Recorder, San Luis Obispo County, California. A copy of the Map is attached hereto as Exhibit A and made a part hereof by reference.

Article 1 FIXED TERM

Section 1.01 Term.

The term of this Lease shall be a period of 30 years, commencing July 1, 2016 (the "Commencement Date") and terminating, without notice, on June 30, 2046, unless sooner terminated as herein provided (the "Term").

Section 1.02 No Extensions.

The Term shall not be extended nor shall this Lease be renewed, except as provided by Section 13.03. Other than as permitted by Section 13.03, any requests for continued use of the Premises after the Term, including as may be extended pursuant to Section 13.03, shall be treated as an application for a new lease and shall require appropriate application to CITY with all required supporting information and documents, CITY'S City Council approval and the execution of a new CITY lease, containing the then most current terms, covenants, conditions and rent schedules.

Section 1.03 Hold Over.

If TENANT holds the Premises after the expiration of the Term with the consent of CITY, express or implied, then such holding over (in the absence of a written agreement between CITY and TENANT with respect thereto) shall be deemed to create a tenancy from month-to-month, terminable on thirty-days' (30-days') written notice from either party to the other, at a monthly rental equal to two hundred percent (200%) of the average total Rent per month for the twelve (12) months immediately preceding the expiration of this Lease, and otherwise subject to each and every term, covenant and condition of this Lease.

Section 1.04 Replacement.

As of the Commencement Date, this Lease shall extinguish and replace every prior lease between CITY and TENANT respecting the Premises, if any. Any right or interest held by the TENANT pursuant to any existing lease with respect to the Premises which is not granted pursuant to this Lease shall be extinguished as of the Commencement Date of this Lease.

Article 2 RENT

Section 2.01 Annual Minimum Rent.

TENANT agrees to pay to CITY a minimum guaranteed annual rental for the use and occupancy of the Premises, in an initial amount of \$7,400.00 per year (the "Annual Minimum Rent"), payable in advance in monthly installments on the 1st of each month each year during the term of the Lease starting July 1, 2016. All Rent, including the Annual Minimum Rent and the Percentage Rent, shall be paid in lawful money of the United States of America, without offset or deduction and shall be paid to CITY at City Hall located at 595 Harbor Street, Morro Bay, California, or at such other place or places CITY may from time to time designate by written notice delivered to TENANT.

Section 2.02 CPI Adjustment to Annual Minimum Rent.

(1) The Parties agree, commencing July 1, 2017, as of every July 1 following the Commencement Date (each, a "CPI Adjustment Date"), except as outlined in section 2.03 hereof, the Annual Minimum Rent shall be adjusted in direct proportion to any upward or downward movement in the Consumer Price Index for January 1, 2016 which is hereby agreed to be 247.155 (Base Index). The percentage adjustment for any given year shall be based on the monthly average Index for the calendar year immediately preceding the CPI Adjustment Date as compared with the Base Index. The Consumer Price Index referred to herein is the Consumer Price Index (all items indexes, all urban consumers) for Los Angeles - Anaheim - Riverside, California, compiled and published by the United States Department of Labor, Bureau of Labor Statistics, 1982-84 Base Year = 100 (the "Index")

(2) The Annual Minimum Rent shall be adjusted as of each CPI Adjustment Date, and will remain in effect as adjusted until the next CPI Adjustment Date. As an illustration only, if the Base Index (Jan. 1, 1999 CPI) is 166.1 and the monthly average CPI for 2000 is 171.6, then the percentage increase is equal to 3.31%. Therefore, the Annual Minimum Rent would be increased by 3.31% as of July 1, 2001, and would continue at that rate through June 30, 2002.

(3) If the United States Department of Labor, Bureau of Labor Statistics, shall cease to compile and make public the Index as now constituted and issued, but shall substitute another index in its place, then said substituted index shall be used for the purpose of adjusting the Annual Minimum Rent for the Premises. If the Index is changed so that the base year differs from that in effect on the Lease Commencement Date, then the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics.

Section 2.03 Calculation of New Annual Minimum Rent.

Starting with calculation of the New Annual Minimum Rent for the 2017/2018 Fiscal Year, and then at the end of each five-year period thereafter, a new Annual Minimum Rent shall be calculated for the following five-year period (each, a "Subsequent Rental Period") as follows:

(1) The Annual Minimum Rent shall be subject to adjustment by appraisal for the 2017/2018 Fiscal Year, and then every five years thereafter (each, an "Appraisal Adjustment Date"). CITY, at its own cost and expense, shall retain an independent qualified appraiser for determination of the fair market value of said premises. Not more than nine (9) months prior to each Appraisal Adjustment Date, CITY shall provide written notice to TENANT of the pending appraisal and the appraiser selected by CITY to determine the fair market value of the Premises, excluding fixtures and improvements unless such are expressly included in the description of the leasehold hereinabove. If TENANT does not reject CITY's appraiser in writing and within thirty (30) days after CITY's notice of its determination, then the Annual Minimum Rent for the Subsequent Rental Period shall be in the amount determined by CITY as outlined in this Section 2.03. If TENANT rejects CITY's appraiser within thirty (30) days following CITY's notice to TENANT, then within fifteen (15) days after such thirty-day period, each party, at its own cost, shall select an independent professionally designated appraiser who is a member of the American Institute of Real Estate Appraisers, or the Society of Real Estate Appraisers with a designation of MAI (Member of American Institute), SRPA (Senior Real Estate Analysis), to appraise the fair market value of the Premises. CITY may rely on its original appraisal, or select a new appraiser, at its cost. If a party does not appoint an appraiser within fifteen (15) days after the other party has given notice of the name of its appraiser, then the single appraiser appointed shall be the sole appraiser. Each appraiser shall conduct an independent appraisal within thirty (30) days after appointment. If the Parties are unable to agree on the Annual Minimum Rent for the Subsequent Rental Period within thirty (30) days after receiving the appraisal(s), then each Party shall select one member of a three-member committee. The two so selected members shall select the third member, and that committee shall by majority vote select one or the other of the appraisals. The

Annual Minimum Rent determined on the basis of the selected appraisal shall be final and binding and all costs associated with the three-member committee shall be paid equally by CITY and TENANT.

(2) In the event the appraisal process is not concluded on or before the Appraisal Adjustment Date, the Annual Minimum Rent shall be adjusted retroactively to such Appraisal Adjustment Date as set out hereinbelow when said appraisal process is completed.

(3) The total Rent payable, including both the Annual Minimum Rent and the Percentage Rent for each year within the applicable previous five-year period, shall be averaged to produce the average annual total Rent payable for such previous period.

(4) The new Annual Minimum Rent for the five-year period commencing on each Appraisal Adjustment Date shall be the greater amount of seventy-five percent (75%) of the average of the total yearly Rent payable during the previous five-year period (as set out in subparagraph 2.03 (3), above) or eight percent (8%) of the fair market value of the Premises (as established in subparagraph 2.03 (1), above.) The new Annual Minimum Rent shall be divided by two to determine the semiannual payments and shall be paid by TENANT to CITY on the first of each January and July thereafter. This new Annual Minimum Rent shall be adjusted each following year in proportion to any increase in the Consumer Price Index as set out in Section 2.02 of this Lease. The base index shall be adjusted upon each Calculation of new Annual Minimum Rent as set out in this section so that the Base index for CPI adjustment shall be the Consumer Price Index for January 1 of the year of the calculation of new Annual Minimum Rent.

Section 2.04 Percentage Rent.

(1) In addition to the Annual Minimum Rent, TENANT agrees to pay to CITY, at the time and in the manner hereinafter specified as additional Rent for the use and occupancy of the Premises, a percentage of TENANT'S Gross Sales, as detailed in Exhibit B, attached hereto, less the amount of the Minimum Rent paid for the reporting period pursuant to this Lease (the "Percentage Rent").

(2) The term "Gross Sales," as used herein, shall mean (subject to the exceptions and authorized deductions as hereinafter set forth): (i) the total selling price and the total gross amount received by TENANT from all rentals, merchandise sold and services rendered in, on or from the Premises by TENANT, its sublessees, licensees, or concessionaires, both for cash and on credit including, but not limited to, rentals of dockage space, leasing and servicing operations and ticket sales, and if on credit whether or not payment be actually made therefore, all charges for services, alterations or repairs made in or upon the Premises, (ii) the gross amount received by TENANT for merchandise sold pursuant to orders received in the Premises, though filled

elsewhere and (iii) the gross amount received by TENANT from any and all other sources of income derived from the business conducted upon the Premises.

(3) Notwithstanding the other provisions of this Section 2.04, the term "Gross Sales" shall not include the following items, and such items may be deducted from Gross Sales to the extent they have been included therein or have been included in a prior computation of Gross Sales or for which a Percentage Rent has been paid under this Lease to CITY:

- a) Credits and refunds made to customers for merchandise returned or exchanged,
- b) Any sales or excise taxes otherwise includable in Gross Sales as defined in this Section because such taxes are part of the total selling price of merchandise or services rendered in, from, or on the Premises, where TENANT must account for and remit the taxes to the government entity or entities by which they are imposed,
- c) With respect to credit card sales, fees retained or withheld by the issuer or merchant bank pursuant to TENANT'S credit card acceptance agreement, and
- d) Rental payments to TENANT from sublessees whose total gross sales are included in gross sales computations.

(4) TENANT shall keep or cause to be kept full, complete, and accurate records, and books of account in accordance with accepted accounting practices showing the total amount of Gross Sales, as defined herein, made each calendar month in, on or from the Premises. TENANT shall keep said records and books of account within San Luis Obispo County and shall notify CITY in advance of their location at all times. Furthermore, TENANT shall at the time of sale and in the presence of the customer cause the full selling price of each piece of merchandise, each rental received and each service rendered in, on or from the Premises to be recorded in a cash register or cash registers that have cumulative totals and are sealed in accordance with standard commercial practices. Those records, books of account and cash register tapes, including any sales tax reports that TENANT may be required to furnish any government or governmental agency, shall at all reasonable times be open to the inspection of CITY, CITY'S auditor, or other authorized representative or agent of CITY. TENANT consents to the release of sales tax information to CITY and on demand will furnish to CITY a copy of the sales tax reports, quarterly reports and any audit reports of sales for confidential internal use of CITY in determining Gross Sales for TENANT. TENANT consents and authorizes CITY to request such information directly from the State Board of Equalization or other state agency with which sales tax information is filed.

(5) By July 31 of each year, TENANT shall furnish CITY with a statement, to be certified by TENANT as current, true and accurate, which shall set forth the Gross Sales of each department, sublease, licensee and concession operating, on or from the Premises for the previous twelve (12) calendar months, ending June 30, just concluded, and the authorized

deductions, if any, therefrom; and with it TENANT shall pay to CITY the amount of the Percentage Rent which is due to CITY as shown thereby. If TENANT shall at any time cause an audit of sales of TENANT'S business to be made by a public accountant, then TENANT shall furnish CITY with a copy of said audit without cost or expense to CITY. CITY may, once in any twelve-month period, cause an audit of the business of TENANT to be made by a public accountant of CITY'S own selection. TENANT shall, upon receiving written notice of CITY'S desire for such an audit deliver and make available all such books, records and cash register tapes to the public or certified public accountant selected by CITY. Furthermore, TENANT shall promptly on demand reimburse CITY for the full cost and expense of said audit, if the audit discloses the questioned statement or statements understated Gross Sales by five percent (5%) or more but less than ten percent (10%). In the event an audit performed at CITY'S request discloses TENANT understated Gross Sales by less than 5%, the cost of such audit shall be paid by CITY. In the event any audit or other review of records discloses that the amounts reported as Gross Sales was understated by TENANT by ten percent (10%) or more, CITY shall not only be entitled to recover from TENANT all costs of audit and review but shall also be entitled to recover from TENANT a penalty equal to two times the Percentage Rent due pursuant to this Lease on such unreported amounts. Whenever any audit discloses Gross Sales were understated by any amount, TENANT shall immediately pay the additional Percentage Rent therein shown to be payable by TENANT to CITY, together with interest at the Default Rate thereon, from the date the Percentage Rent was payable until the date paid.

(6) CITY shall be entitled at any time within five (5) years after the receipt of any such Percentage Rent payment, to question the sufficiency of the amount thereof and/or the accuracy of the statement or statements furnished by TENANT to justify the same. For the purpose of enabling CITY to check the accuracy of any such statement or statements, TENANT shall, for that period of five (5) years after submission to CITY of any such statement, keep all of TENANT'S records, including sales tax returns, all cash register tapes and other data which in any way bear upon or are required to establish in detail TENANT'S Gross Sales and shall upon request make the same available to CITY for examination.

Section 2.05 Reimbursements.

If TENANT fails to perform any term or covenant of this Lease, then CITY may, but is not obligated to, perform such term or covenant, and TENANT shall reimburse CITY for the costs incurred by CITY for such performance as additional Rent hereunder. As an illustration and not as a limitation, if TENANT fails to procure the insurance required by this Lease, then CITY may, but is not obligated to, obtain such insurance, with the cost of the premiums, plus 5%, being due to CITY upon demand as additional Rent.

Section 2.06 Penalty and Interest.

(1) If any Rent is not received within ten (10) days following the date on which the Rent first became due, then TENANT shall pay a late penalty of ten percent (10%) of the amount of the Rent in addition to the Rent.

(2) In addition to the penalty, TENANT shall pay interest at the rate of one percent (1%) per month or fraction thereof or the maximum amount permitted by law as of the date this Lease is signed, whichever is greater (the "Default Rate"), on the amount of the Rent, exclusive of the penalty, from the date on which Rent first became delinquent until paid. The term "Rent" includes any sums advanced by CITY and any unpaid amounts due from TENANT to CITY.

Article 3 USE OF PREMISES

Section 3.01 Permitted Uses.

The Premises shall, during the term of this Lease, be used only for the purpose of operating and conducting thereon and therein marine refrigeration and repair, commercial or recreational fishing vessel repair, maintenance and tie-up, aquaculture, wholesale and retail aquaculture and seafood sales, raw bar supporting licensed commercial or aquaculture fishing activities, including sales of retail goods associated with TENANT's other operations, such as t-shirts, apparel or other goods with TENANT's logo or supporting the Morro Bay area and the seafood industry, vessel passenger loading and unloading to support TENANT's aquaculture operations and education, subject to any approvals required under the CITY's Conditional, Minor or Temporary Use Permit processes.

Section 3.02 Unauthorized Use.

TENANT agrees to conduct and allow only those uses authorized in Sections 3.01 and 3.02 at the Premises. Any unauthorized use of the Premises shall constitute a breach of this Lease and shall, at the option of CITY, terminate this Lease.

Section 3.03 Operation of Business - Hours of Operation.

Failure to actively and diligently conduct the business authorized herein constitutes a breach of this Lease and shall, at the option of CITY, terminate this Lease.

(1) TENANT shall during the term of this Lease conduct business of the nature specified in Section 3.01 of this Lease on the Premises in an efficient and diligent manner and keep the Premises open for the conduct of business continuously and without interruption for at least six hours each day of the year, except one day each week and legal holidays. This provision shall

not apply if the Premises shall be closed and the business of TENANT is temporarily shut down for a period not to exceed fourteen (14) calendar days in any calendar year to make necessary repairs, maintenance or other construction deemed necessary by TENANT. This provision shall not apply if the Premises shall be closed and the business of TENANT is temporarily shut down as authorized or required by CITY'S City Manager or on account of strikes, walkouts, or causes beyond the control of TENANT or for not more than three (3) days out of respect to the memory of an officer, employee, or close relative of any officer or employee of TENANT.

(2) TENANT shall operate TENANT'S business on the Premises with due diligence and efficiency and in like manner as comparable businesses operated in CITY or the coastal area of San Luis Obispo County, so as to produce the maximum amount of Gross Sales and gross receipts from services which may be produced from TENANT'S business; and TENANT at all times shall carry on Premises, a stock or merchandise of such size, character, and quality as is reasonable, designed to produce the maximum return to TENANT, when the sale of merchandise is a permitted use under this Lease.

Section 3.04 Competition.

During the term of this Lease, TENANT shall not directly nor indirectly acquire or establish any similar or competing business within a radius of two (2) miles from the location of the Premises; provided, however, that TENANT may, own or operate more than one business, whether or not competing and similar along the Embarcadero upon CITY lease sites. The purpose of this section is to prevent and prohibit TENANT from reducing revenue to CITY by diverting business from the operation at the Premises to another business owned by TENANT located within the area included in that radius, but not upon a CITY lease site from which CITY is paid rent based on Gross Sales.

Section 3.05 Hazardous Materials.

(1) TENANT shall not transport, use, store, maintain, generate, dispose, release, treat or discharge any "Hazardous Material" (as defined below) upon or about the Premises (such activities being hereafter referred to as "Hazardous Materials Activities"), nor permit TENANT'S employees, agents, or contractors to engage in Hazardous Materials Activities upon or about the Premises, except as allowed by applicable law. The term "Hazardous Material" for purposes hereof shall mean any chemical, substance, material or waste or component thereof which is now or hereafter listed, defined or regulated as a hazardous or toxic chemical, substance, material or waste or component thereof by any federal, state or local governing or regulatory body having jurisdiction, or which would trigger any employee or community "right-to-know" requirements adopted by any such body. All Hazardous Materials Activities at the Premises shall be

conducted strictly in accordance with all applicable laws and regulations. If TENANT shall transport any hazardous waste from the Premises, then such transportation shall be done only by a contractor duly licensed to haul hazardous waste and shall use only a duly licensed disposal site approved by TENANT'S liability insurer.

(2) TENANT shall promptly notify CITY of: (i) any enforcement, cleanup or other regulatory action taken or threatened by any governmental or regulatory authority with respect to the presence of any Hazardous Material on the Premises or the migration thereof from or to other property, (ii) any demands or claims made or threatened by any party against TENANT or the Premises relating to any loss or injury resulting from any Hazardous Material on or from the Premises, and (iii) any matters where TENANT is required by applicable law to give a notice to any governmental or regulatory authority respecting any Hazardous Material on the Premises. CITY shall have the right (but not the obligation) to inspect the Premises, to take such remedial action on the Premises, as CITY may deem appropriate, and to join and participate, as a party, in any legal proceedings or actions affecting the Premises initiated in connection with any environmental, health or safety law.

(3) If any Hazardous Material is released, discharged or disposed of by TENANT or its employees, agents or contractors, on or about the Premises in violation of the foregoing provisions, then TENANT shall immediately notify CITY. CITY may elect either to take such remedial action as CITY deems appropriate, in which event TENANT shall reimburse CITY for all costs thereof within ten (10) days after demand, or direct TENANT to perform such remediation. If CITY directs TENANT to perform the remediation, then TENANT shall immediately take such remedial action, as CITY shall direct. TENANT shall, properly and in compliance with applicable laws clean up and remove the Hazardous Material from the Premises and any other affected property at TENANT'S expense. If CITY directs TENANT to perform remediation hereunder and if TENANT fails to comply with the provisions of this Section within five (5) days after written notice by CITY, or such shorter time as may be required by applicable law or in order to minimize any hazard to persons or property, then CITY may (but shall not be obligated to) arrange for such compliance directly or as TENANT'S agent through contractors or other parties selected by CITY at TENANT'S expense (without limiting CITY'S other remedies under this Lease or applicable law).

Section 3.06 Tidelands Trust.

TENANT shall use and occupy the Premises in strict compliance with the Tidelands Trust purposes under which the Premises or any portion thereof are held by CITY pursuant to the grants from the State of California as set forth in this Lease.

Section 3.07 Compliance with Law.

TENANT shall, at no cost to CITY, comply with all of the requirements of all local, municipal, county, state and federal authorities now in force, or which may hereafter be in force, pertaining to the Premises, and shall faithfully observe in the use of the Premises all local, municipal and county ordinances, rules, regulations and orders and state and federal statutes, rules, regulations and orders now in force or which may hereafter be in force (collectively, "Legal Requirements") provided that TENANT shall not be required to comply with any Legal Requirement imposed by CITY that would substantially deprive TENANT of a material benefit under this lease unless such Legal Requirement has been imposed or required by a county, state or federal authority. The judgment of any court of competent jurisdiction, or the admission of TENANT in any action or proceeding against TENANT, whether CITY be a party thereto or not, that TENANT has violated any such Legal Requirement in the use of the Premises shall be conclusive of that fact as between CITY and TENANT.

Section 3.08 Waste or Nuisance.

TENANT shall not commit or permit the commission by others of any waste on the Premises; TENANT shall not maintain, commit, or permit the maintenance or commission of any nuisance as defined by law on the Premises; and TENANT shall not use or permit the use of the Premises for any unlawful purpose.

Section 3.09 Use by CITY.

(1) Subject to TENANT's rights hereunder to possession of the Premises, CITY may grant licenses to, or otherwise authorize, other persons and entities permitting uses of the Morro Bay Harbor.

(2) CITY also retains and reserves for itself, its successors and assigns, all oil, gas, petroleum and other mineral or hydrocarbon substances in and under the lands leased hereby together with right to prospect and extract all such substances.

Article 4 CONSTRUCTION, ALTERATION AND REPAIRS

Section 4.01 Construction Approval.

(1) TENANT shall not make or permit any other person to make any alterations or structural additions or structural modifications to the Premises or to any structure thereon or facility appurtenant thereto if the cost thereof shall exceed Ten Thousand Dollars (\$10,000), without the prior written consent of CITY. The consent to be obtained pursuant to this Section 4.01(1) shall be requested from CITY'S Harbor Director, or CITY'S designee. If the

Harbor Director or any future successor to the duties of the Harbor Director, or CITY'S designee, gives such consent to proceed, it is understood that such consent is given by CITY only in its capacity as the landlord under this Lease and not as the permit-issuing authority. TENANT remains obligated to obtain any needed building permits and comply with all applicable planning processes.

(2) Where required by the Morro Bay Municipal Code, California Coastal Act, Corps of Engineers or any other state or federal agency having authority over the proposed project, then all Conditional Use Permits, Concept Plans, Precise Plans, Coastal Development Plans, and any other required plans or permits shall be applied for and approved prior to any construction, alteration or repairs.

Section 4.02 Construction Bond.

(1) Prior to the commencement of any construction the cost of which is greater than the amount of One Hundred Thousand Dollars (\$100,000), TENANT shall file with the CITY'S City Clerk a final detailed Civil Engineer's, Registered Architect's or Licensed and Bonded General Contractor's estimate of the cost of construction and installation of improvements on the Premises. Said estimate must be submitted to CITY'S City Engineer for approval. TENANT shall file with CITY'S City Clerk a faithful performance bond, in a form and issued by a corporate surety company satisfactory to CITY, in an amount satisfactory to CITY, but not in excess of one hundred percent (100%) of the final detailed cost estimate, securing the faithful performance of TENANT or its contractor in the completion of said construction.

(2) TENANT shall also file with CITY'S City Clerk a labor and materials bond, in a form and issued by a corporate surety company satisfactory to CITY, in an amount satisfactory to CITY but not in excess of one hundred percent (100%) of the final detailed cost estimate, securing the payment of all claims for the performance of labor or services on, or the furnishing of materials for, the performance of said construction.

(3) In lieu of the above referenced bonds, TENANT may post cash deposits or may make other mutually satisfactory arrangements to guarantee the completion of construction projects. In the event the contractor bonds the project, CITY may be named as additional indemnitee to comply with these requirements.

Section 4.03 Mechanics' Liens.

At all times during the term of this Lease, TENANT shall keep the Premises and all buildings, installations and other improvements now or hereafter located on the Premises free and clear of all liens and claims of liens for labor, services, materials, supplies, or equipment

performed on or furnished to the Premises. TENANT further agrees to at all times, save CITY free and harmless and indemnify CITY against all claims for labor or materials in connection with any improvement, repairs, or alterations on the Premises, and the cost of defending against such claims, including reasonable attorneys' fees. If TENANT fails to pay and discharge or cause the Premises to be released from such liens or claim of liens within ten (10) days after the filing of such lien or levy, then TENANT shall upon written notification be required to immediately deposit with CITY a bond conditioned for payment in full of all claims on which said lien or levy has been filed. Such bond shall be acknowledged by TENANT as principal and by a company or corporation, licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety. The beneficiary of any security instrument which instrument is on record with CITY, shall have the right to file such a bond on behalf of TENANT. CITY shall have right to post and keep posted on the Premises notices of non-responsibility and any other notices that may be provided by law or which CITY may deem proper for the protection of CITY and Premises from such liens. TENANT shall give CITY notice at least twenty (20) days prior to commencement of any work on the Premises to afford CITY the opportunity to post such notices.

Section 4.04 Ownership of Improvements.

The Parties agree CITY has the option and right to require TENANT to remove all buildings, structures, installations, improvements of any kind or other property belonging to or placed upon the Premises by TENANT at the termination of this Lease, however occurring, providing CITY gives notice, in writing, no later than thirty (30) days prior to the termination of the Lease, of its decision to require such improvements be removed. The Parties agree if CITY exercises its option, then at the termination of this Lease, however occurring, TENANT shall have sixty (60) days thereafter to remove all buildings, structures, facilities, installations, improvements and other property belonging to TENANT from the Premises. If CITY exercises such option and TENANT fails to remove all such improvements and other property within sixty (60) days after the termination of this Lease, then CITY shall have the right to have any or all such improvements and other property removed at the expense of TENANT. If CITY does not exercise its option to remove (or require the removal of) the improvements and other property, then title to such improvements and other property shall vest in CITY and TENANT shall not remove same.

Article 5 LEASEHOLD MORTGAGES

Tenant shall not mortgage, securitize or hypothecate the leasehold interest in whole or any part without the prior written approval of CITY as evidenced by a resolution of CITY'S City Council.

Article 6 REPAIRS, MAINTENANCE AND RESTORATION

Section 6.01 Maintenance by TENANT.

At all times during the term of this Lease, TENANT shall, at TENANT'S own cost and expense, keep and maintain all improvements now or hereafter on the Premises in good order and repair and in a safe and clean condition. Furthermore, TENANT shall, at TENANT'S own cost and expense, maintain at all times during the term of this Lease the whole of the Premises in a clean, sanitary, neat and orderly condition. CITY may, at the sole option of CITY, clean and clear the Premises, at TENANT'S cost and expense, in the event TENANT fails to clean and clear the Premises in accordance with this Section to the satisfaction of CITY after fifteen-days' written notice to TENANT from CITY of CITY'S intent to exercise this option.

Section 6.02 Seawalls and Revetment.

TENANT understands and agrees by entering into this Lease TENANT is taking and accepting the improvements, pilings, bulkheads, seawalls, revetment, piers, posts and any structures or other improvements located in the water portion of the Premises (the "Seaside Improvements") in their AS-IS condition and without any express or implied warranty of condition or usability CITY. With that understanding, at all times during the term of this Lease, TENANT shall, at TENANT'S own cost and expense, repair, maintain, replace and rebuild ("Repairs") as necessary, the Seaside Improvements. Further, TENANT, at TENANT'S own cost and expense, shall, as often as reasonably needed to properly meet the obligations set forth in this Section 6.02, conduct maintenance surveys to locate and determine needed Repairs and as soon as possible, thereafter, commence and complete Repairs deemed necessary by each survey. CITY, at TENANT'S costs, may, but is not required to, have one or more of those surveys conducted if TENANT fails to obtain a survey within thirty days after CITY provides a written demand that a survey be completed, if CITY, in its discretion, decides to transmit that demand. No default of this Lease will result due to the failure to obtain a survey with or without a written demand. However, if a survey is obtained, then a material breach of this Lease will result if Seaside Improvements are not completed as recommended by a survey.

Section 6.03 Legal Requirements.

At all times during the term of this Lease, TENANT, at no cost to CITY, shall:

(1) Make all alterations, additions, or repairs to the Premises or the improvements or facilities on the Premises required by any Legal Requirements (as defined in Section 3.07, above) now or hereafter made or issued;

(2) Observe and comply with all Legal Requirements now or hereafter made or issued respecting the Premises or the improvements or facilities located thereon;

(3) Obtain all required permits pursuant to the Morro Bay Municipal Code or State law prior to the initiation of any repair or maintenance activity; and

(4) Indemnify, defend and hold harmless CITY and each of its officers and employees and the property of CITY, including the Premises, from any and all liability, loss, damages, fines, penalties, claims and actions resulting from TENANT'S failure to comply with and perform the requirements of this section.

Section 6.04 Failure to Repair.

In the event failure to repair results in a hazardous or unsafe condition, CITY shall have the right and option, but not the obligation, to close and prohibit access to the unsafe portion of the Premises until such repairs are completed and accomplished and the Premises rendered safe for public use. In addition, if TENANT fails to repair any hazardous or unsafe condition within ten (10) days of written notice thereof from CITY, then CITY shall have the right, but not the obligation, to perform such repair at TENANT'S expense. TENANT shall reimburse CITY for any such repair undertaken by CITY, promptly upon CITY'S demand, as additional Rent. Failure by CITY to enforce any of the provisions of this Article shall not constitute a waiver of those provisions and CITY may at any time enforce all of the provisions of this Article, requiring all necessary repairs, rebuilding or replacement.

Section 6.05 Inspection by CITY.

CITY or CITY'S agents, representatives, or employees may enter the Premises at all reasonable times for the purpose of inspecting the Premises to determine whether TENANT is complying with the terms of this Lease and for the purpose of doing other lawful acts that may be necessary to protect CITY'S interest in the Premises under this Lease or to perform CITY'S duties under this Lease.

Section 6.06 TENANT'S Duty to Restore Premises.

(1) Except as provided in Section 6.07, below, if at any time during this Lease, any improvements now or hereafter on the Premises are destroyed in whole or in part by the

elements, or any other cause not the fault of TENANT or CITY, then this Lease shall continue in full force and effect and TENANT, at TENANT'S own cost and expense, shall repair and restore the damaged or destroyed improvement(s) according to the original plan thereof or according to such modified plans therefore as shall be approved in writing by CITY. The work of permitting, repair and restoration shall be commenced by TENANT within one hundred eighty (180) days after the damage or destruction occurs shall be pursued with due diligence, and shall be completed not later than one year after the work is commenced, unless the Parties mutually agree, in writing, to an extension. In all other respects, the work of repair and restoration shall be done in accordance with the requirements for construction work on the Premises set forth in Article 4 of this Lease. Any failure by TENANT either to commence or to complete repair and restoration as required by this Section 6.06 shall be a material default under this Lease.

(2) Any and all insurance proceeds that become payable at any time during the term of this Lease because of damage to or destruction of any improvements on the Premises shall be paid to TENANT and applied by TENANT toward the cost of repairing and restoring the damaged or destroyed improvements in the manner required by this Section 6.06, or, if this Lease is terminated, then applied as provided in Section 6.07. Except as set forth in Section 6.08 below, TENANT'S obligation to restore pursuant to this Section shall exist whether or not funds are available from insurance proceeds.

Section 6.07 Termination of Lease for Destruction.

(1) Notwithstanding the provisions of Section 6.06 of this Lease, TENANT shall have the option of terminating this Lease as provided in this Section 6.07 if:

(a) During the Term of this Lease, any improvements now or hereafter on the Premises are so damaged or destroyed by the elements or any cause not the fault of TENANT or CITY, that they cannot be repaired and restored as required by Section 6.06 of this Lease at a cost not exceeding thirty-five percent (35%) of the cost of replacing all improvements if they had been totally destroyed at the time of such damage; or

(b) During the last ten (10) years of the term of this Lease, any improvements now or hereafter on the Premises are so damaged or destroyed by the elements or any cause not the fault of TENANT or CITY, that they cannot be repaired and restored as required by Section 6.06 of this Lease at a cost not exceeding fifteen percent (15%) of the cost of replacing all improvements if they had been totally destroyed at the time of such damage.

(2) TENANT may exercise its right to terminate pursuant to this Section 6.07 by providing written notice to CITY within one hundred eighty (180) days following damage or

destruction as described herein. Such termination shall be effective on the last day of the calendar month following the month in which TENANT provides its notice.

(3) If TENANT fails to commence or complete repair and restoration as required by Section 6.06, then CITY shall have all rights and remedies with respect to TENANT's default, including, but not limited to, termination of this Lease pursuant to Article 11.

(4) If this Lease is terminated as a result of damage or destruction, then any insurance proceeds received with respect to the improvements shall be applied or distributed in the following order:

(a) first, to the demolition of the improvements and removal of all demolition debris; then

(b) to any accrued and unpaid Rent as of the effective date of the termination; then

(c) to each Lender under a Leasehold Encumbrance, in order of lien priority, an amount not to exceed the amount due under such Leasehold Encumbrance; then

(d) to CITY, an amount equal to the present value, as of the date of termination, of the total Annual Minimum Rent for the remainder of the Term; then

(e) the remaining proceeds, if any, to TENANT.

Section 6.08 Destruction Due to Risk Not Covered by Insurance.

Notwithstanding anything to the contrary in Section 6.06 of this Lease, TENANT shall have the right to terminate this Lease at any time if the improvements on the Premises are damaged or destroyed by a casualty for which TENANT is not required under this Lease to carry insurance and the cost to repair or restore such improvements exceeds fifty percent (50%) of the fair market value of all the improvements on the Premises immediately prior to the damage or destruction.

Article 7 INDEMNITY AND INSURANCE

Section 7.01 Indemnity Agreement.

(1) TENANT shall indemnify, defend and hold harmless CITY, and the property of CITY (including the Premises and any improvements now or hereafter on the Premises), and each of CITY'S officers, officials, employees and volunteers from any and all liability, claims, loss, damages, and expenses, including reasonable attorney's fees and litigation expenses

("Damages"), resulting from any act or omission relating to this Lease of TENANT or any of its officers, employees, agents, representatives, subtenants, contractors, subcontractors or anyone for whom TENANT may be liable, specifically including, without limitation, any liability, claim, loss, damage, or expense arising by reason of:

(a) The death or injury of any person, including TENANT or any person who is an employee or agent of TENANT, or by reason of the damage to or destruction of any property, including property owned by TENANT or by any person who is an employee or agent of TENANT, from any cause whatever while such person or property is in or on the Premises or in any way connected with the Premises or with any of the improvements or personal property on the Premises;

(b) The death or injury of any person, including TENANT or any person who is an employee or agent of TENANT, or by reason of the damage to or destruction of any property, including property owned by TENANT or any person who is an employee or agent of TENANT, caused or allegedly caused by either (i) the condition of the Premises or any improvement placed on the Premises by TENANT, or (ii) any act or omission on the Premises by TENANT or any person in, on, or about the Premises with or without the permission and consent of TENANT;

(c) Any work performed on the Premises or materials furnished to the Premises at the instance or request of TENANT or any person or entity acting for or on behalf of TENANT;
or

(d) TENANT'S failure to perform any provision of this Lease or to comply with any Legal Requirement imposed on TENANT or the Premises.

(2) TENANT'S obligations pursuant to this Section to indemnify and hold harmless apply only to the extent TENANT or any of its officers, employees, agents, representatives, subtenants, contractors or subcontractors or anyone for whom TENANT may be liable caused Damages.

Section 7.02 Liability Insurance.

During the term of this Lease, TENANT shall maintain at its cost Commercial General Liability insurance with coverages at least as broad as ISO Forms labeled "City of Morro Bay Insurance requirements for Lessees," Certificate of Insurance – City of Morro Bay", and "Additional Insureds – Managers or Lessors of Premises" attached hereto as Exhibit C and made a part hereof as may be updated or changed from time to time at the sole discretion of the CITY, insuring against claims for bodily injury (including death), property damage, contractual liability, personal injury and advertising injury occurring on the Premises or from operations located in

any part of the Premises. Such insurance shall afford protection in amounts no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage, provided that if insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to the Premises or the general aggregate limit shall be twice the occurrence limit stated in this Section. All liability insurance carried by TENANT hereunder shall name CITY, its officers, officials, employees and volunteers as additional insureds, and shall be primary insurance with respect to such additional insureds. TENANT shall include all its subtenants as insureds under TENANT's liability policies or shall furnish separate certificates and endorsements for each subtenant. All coverages for subtenants shall comply with all requirements of this Article Seven.

Section 7.03 Worker's Compensation.

TENANT shall maintain at TENANT'S own expense and keep in full force and effect during the term of this Lease, Worker's Compensation Insurance as provided by law. Said insurance shall contain a waiver of subrogation rights against CITY. TENANT shall also maintain employer's liability insurance with minimum coverage of \$1,000,000 per accident for bodily injury or disease.

Section 7.04 Property Insurance.

TENANT shall, at its cost, at all times during the term of this Lease keep all improvements and other structures on the Premises, as well as any and all additions, improvements and betterments thereto, insured for one hundred percent (100%) of their full replacement cost with no co-insurance provision against loss or destruction by the perils covered by "all risk" (excluding earthquake) property damage insurance policies. Any loss payable under such insurance shall be payable to TENANT, CITY, and any Lender under a Leasehold Encumbrance pursuant to Article 5 of this Lease, as their interests may appear, and such proceeds shall be used and applied in the manner required by Article 6 of this Lease.

Section 7.05 Additional Coverage.

TENANT shall also maintain, at its expense, the insurance described in this Section 7.05.

(1) If TENANT has (or is required by any Legal Requirement to have) a liquor license and is selling or distributing alcoholic beverages on the Premises, then TENANT shall maintain liquor liability coverage in appropriate amounts. TENANT shall require any subtenant who has (or is required by any Legal Requirement to have) a liquor license and who is selling or distributing alcoholic beverages on the Premises, to maintain such coverage.

(2) TENANT shall maintain "all risk" (excluding earthquake) property damage insurance covering TENANT's personal property located at the Premises, in amounts not less than the full replacement value of such personal property. CITY shall have no interest in the proceeds of such insurance.

(3) TENANT shall, at TENANT's own expense, obtain and maintain any additional insurance coverages that CITY may reasonably require. As illustration only and not as a limitation, in appropriate circumstances such additional insurance may include increased general liability limits, business interruption coverage, business automobile liability, boiler and machinery insurance and/or builder's risk insurance. However, TENANT shall not be required to maintain additional coverages that are in excess of those typically maintained by similarly situated tenants in the Morro Bay area.

Section 7.06 General Requirements.

Except as specifically provided to the contrary, all the insurance required pursuant to this Article Seven shall be subject to the requirements of this Section 7.06.

(1) Maintenance of proper insurance coverage is a material element of this Lease and failure to maintain or renew coverage or to provide evidence of coverage and/or renewal may be treated by the CITY as a material breach of contract. TENANT shall forward CITY'S specifications and forms to TENANT'S insurance agent for compliance.

(2) CITY may at any time require TENANT to increase the minimum coverage limits for insurance required by this Lease, but every such increase shall be reasonable under the circumstances.

(3) All policies shall be issued by insurance companies authorized to issue such insurance in California, with an A.M. Best's rating of no less than A:VII.

(4) Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees and volunteers; or the TENANT shall provide a financial guarantee satisfactory to CITY guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(5) Each insurance policy required by this Lease shall be endorsed to state that coverage shall not be cancelled or reduced, except after thirty-days' prior written notice by certified mail, return receipt requested, has been given to CITY.

(6) TENANT shall furnish CITY with certificates and amendatory endorsements effecting the coverage required by this Lease. The endorsements shall be on forms provided by CITY or on other than CITY's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by CITY before use of the Premises, and promptly following any renewal or replacement. CITY reserves the right at any time to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

(7) TENANT'S insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be excess of TENANT'S insurance and shall not contribute with it.

Section 7.07 No Subrogation.

TENANT agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, TENANT shall look solely to its insurance for recovery. TENANT hereby grants to the CITY, on behalf of any insurer providing insurance to either TENANT or CITY with respect to TENANT'S occupancy of the Premises, a waiver of any rights to subrogation which any such insurer of said TENANT may acquire against the CITY by virtue of the payment of any loss under such insurance. Each insurance policy required under this Lease including those insuring TENANT against claims, expense, or liability for injury to persons or property shall provide that the insurer shall not acquire by subrogation any right to recovery which TENANT has expressly waived in writing prior to the occurrence of the loss.

Section 7.08 TENANT'S Waiver.

TENANT hereby waives any right of recovery against CITY for each claim, expense, liability, or business interruption, or other loss, except where caused by CITY'S active negligence or willful misconduct. TENANT agrees, to the extent TENANT fails to acquire insurance, TENANT shall not have any claim against CITY for any loss that results from a risk or peril that would have been included in such insurance.

Section 7.09 Insurance Not a Limit.

The insurance requirements of this Article 7 are independent of, and do not limit or modify, TENANT'S indemnification and other obligations pursuant to this Lease.

Article 8 TAXES AND FEES

Section 8.01 TENANT to Pay Taxes.

TENANT shall pay, before delinquency, all taxes and assessments levied upon or assessed to TENANT on the Premises by reason of this Lease or of any equipment, appliances, improvement, or other development of any nature whatsoever, erected, installed, or maintained by TENANT or by reason of the business or other activity of TENANT upon or in connection with the Premises. TENANT shall be solely responsible to pay all possessory interest taxes applicable to the Premises.

Section 8.02 TENANT to Pay License and Permit Fees.

TENANT shall pay any fees imposed by law for licenses or permits for any business or activities including construction by TENANT upon the Premises.

Section 8.03 Utilities.

TENANT shall pay, or cause to be paid, and hold harmless CITY and the property of CITY, including the Premises, from all charges for the furnishing of gas, water, electricity, telephone service, and for other public utilities to the Premises during the term of this Lease and for the removal of garbage and rubbish from the Premises during the term of this Lease.

Article 9 CONDEMNATION

Section 9.01 Total Condemnation.

If title and possession to all of the Premises is permanently taken for any public or quasi-public use under any statute, or by the right of eminent domain, then this Lease shall terminate on the date that possession of the Premises is taken, and both CITY and TENANT shall thereafter be released from all obligations, including Rent, all of which shall be prorated to the date of termination, except those specified in Section 9.02 of this Lease.

Section 9.02 Condemnation Award.

Any compensation or damages awarded or payable because of the permanent taking of all or any portion of the Premises by eminent domain shall be allocated between CITY and TENANT as follows:

(1) All compensation or damages awarded or payable for the taking by eminent domain of any land that is part of the Premises shall be paid to and be the sole property of CITY free and clear of any claim of TENANT or any person claiming rights to the Premises through or under TENANT.

(2) All compensation or damages awarded or payable which is specifically attributed by the taking party to the "good will" of TENANT'S business shall be paid to and be the sole property of TENANT.

(3) All compensation or damages awarded or payable because of any improvements constructed or located on the portion of the Premises taken by eminent domain where only a portion of the Premises is taken by eminent domain, and TENANT is not entitled to or does not terminate this Lease, shall be applied in the manner specified in Section 9.04 toward the replacement of such improvements with equivalent new improvements on the remaining portions of the Premises.

(4) All compensation or damages awarded or payable because of any improvements constructed or located on the portion of the Premises taken by eminent domain where this Lease is terminated because of the taking by eminent domain, whether all or only a portion of the Premises is taken by eminent domain, shall be allocated between CITY and TENANT as follows:

(a) That percentage of the compensation or damages awarded or payable because of the improvements that equals the percentage of the full term of this Lease that has, at the time of the taking, not expired shall belong to and be the sole property of TENANT.

(b) That percentage of the compensation or damages awarded or payable because of the improvements that equals the percentage of the full term of this Lease that has, at the time of the taking, expired shall belong to and be the sole property of CITY.

(c) The term "time of taking" as used in this Section shall mean 12:01 a.m. of the date that the agency or entity exercising the eminent domain power, takes, title, or the date that it takes physical possession of the portion of the Premises, whichever shall first occur.

(5) Any severance damages awarded or payable because only a portion of the Premises is taken by eminent domain shall be the sole and separate property of CITY.

Section 9.03 Termination for Partial Taking.

If, during the term of this Lease, title and possession of only a portion of the Premises is taken for any public or quasi-public use under any statute, or by right of eminent domain, then TENANT may, at TENANT'S option, terminate this Lease by serving written notice of termination on CITY within ninety (90) days after TENANT has been deprived of actual physical possession of the portion of the Premises taken for such public use. This Lease shall terminate on the first day of the calendar month following the calendar month in which the notice

of termination described in this section is served on CITY. On termination of this Lease pursuant to this Article, all subleases and subtenancies in or on the Premises or any portion of the Premises created by TENANT under this Lease shall also terminate and the Premises shall be delivered to CITY free and clear of all such subleases and subtenancies; provided, however, that CITY may, at CITY'S option, by mailing written notice to a subtenant allow any subtenant to attorn to CITY and continue such subtenant's occupancy on the Premises as a TENANT of CITY. On termination of this Lease pursuant to this section, however, both CITY and TENANT shall be released from all obligations under this Lease, except those specified in Section 9.02 of this Lease.

Section 9.04 Rent Abatement for Partial Taking.

If, during the term of this Lease, title and possession of only a portion of the Premises is taken under the power of eminent domain by any public or quasi-public agency or entity and TENANT does not terminate this Lease, then this Lease shall terminate as to the portion of the Premises taken under eminent domain on the date actual physical possession of the portion taken by eminent domain is taken by the agency or entity exercising the eminent domain power. Furthermore, the Rent payable under this Lease shall, as of that time be reduced in the same proportion of the Premises taken by eminent domain bears to the full value of the Premises at that time; provided, however, that TENANT shall make a good faith effort to replace any improvements or facilities with equivalent new facilities on the remaining portion of the Premises and do all other acts at TENANT'S own cost and expense required by the eminent domain taking to make the remaining portion of the Premises fit for the use specified in this Lease.

Section 9.05 Conveyance in Lieu of Eminent Domain.

A voluntary conveyance by CITY, with the consent of TENANT, of title to all or a portion of the Premises to a public or quasi-public agency or entity in lieu of and under threat by such agency or entity to take the same by eminent domain proceedings shall be considered a taking of title to all or such portion of the Premises under the power of eminent domain subject to the provisions of this Article.

Section 9.06 Temporary Taking.

If the possession of the Premises or any portion thereof should be taken under the power of eminent domain by any public or quasi-public agency or entity for a limited period not extending beyond the term of this Lease, then this Lease shall not terminate (except as provided in this Section 9.06) and TENANT shall continue to perform all its obligations hereunder, except

only to the extent that TENANT is prevented from performing such obligations by reason of such taking. TENANT shall be entitled to receive the entire amount of compensation or damages awarded because of such temporary taking. If a temporary taking extends for more than thirty-six (36) months, then TENANT shall have the right to terminate this Lease, and TENANT shall be entitled to receive, out of the compensation or damages awarded because of such temporary taking, the amount that is attributable to the period of time up until the effective date of TENANT'S termination of this Lease.

Article 10 ASSIGNMENT AND SUBLEASING

Section 10.01 No Assignment Without CITY'S Consent.

Except as provided in this Article 10, TENANT shall not assign or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the Premises or any of the improvements that may now or hereafter be constructed or installed on the Premises without the express written consent of CITY evidenced by resolution first had and obtained. Any assignment or transfer by TENANT without the prior written consent of CITY, whether it be voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of CITY, terminate this Lease. A consent by CITY to one assignment shall not be deemed to be a consent to any subsequent assignment of this Lease by TENANT. CITY shall not unreasonably nor arbitrarily withhold its approval to the assignment or transfer of this Lease to an assignee who is financially reliable and qualified to conduct the business for which this Lease was granted. It is mutually agreed TENANT'S qualifications are a part of the consideration for granting of this Lease and said party does hereby agree to maintain active control and supervision of the operation conducted on the Premises.

Section 10.02 Change of Ownership as Assignment.

For purposes of this Article 10, the following transactions will be deemed to be assignments or transfers:

(1) If TENANT is a partnership or limited liability company:

(a) A change in ownership effected voluntarily, involuntarily, or by operation of law, within a twelve-month (12-month) period, of twenty-five percent (25%) or more of the partners or members or twenty-five percent (25%) or more of the partnership or membership interests; or

(b) The dissolution of the partnership or limited liability company without its immediate reconstitution.

(2) If TENANT is a closely held corporation (i.e., one whose stock is not publicly held and not traded through an exchange or over the counter):

(a) The sale or other transfer, within a twelve-month (12-month) period, of more than an aggregate of twenty-five percent (25%) of the voting shares of TENANT (other than to immediate family members by reason of gift or death); or

(b) The dissolution, merger, consolidation, or other reorganization of TENANT.

Section 10.03 Application for Assignment.

A condition of an assignment shall be TENANT shall file with the CITY an application to assign the leasehold prepared by the prospective assignee. Concurrently with filing the application, TENANT shall pay a reasonable fee associated with the cost of processing said application, in cash or certified or cashier's check to enable CITY adequately to investigate the proposed assignee's qualifications as a permitted assignee. CITY shall not be required to account for the use of the sum paid. If the proposed assignee's net worth on the date of assignment is not sufficient to reasonably guarantee successful operation of the Premises in compliance with all applicable CITY, County, State and federal requirements, then CITY may withhold approval of the assignment or condition it upon TENANT'S guarantee of such assignee's obligations hereunder for such period as CITY deems advisable. Net worth shall mean the amount by which the total of all assets shall exceed the total of all liabilities as determined in accordance with general accepted accounting principles as approved by CITY'S auditor, or other authorized representative or agent.

Section 10.04 Probate Transfer of Assignment.

If TENANT is an individual, then nothing herein contained will prevent the transfer of this Lease by will, or by operation of law under the intestacy provisions of the California Probate Code as it may be amended from time to time. Probate sale of the leasehold interest will not be permitted without the consent of the CITY, evidenced by resolution, first had and obtained.

Section 10.05 No Sublease Without CITY'S Consent.

TENANT shall not sublease the whole nor any part of the Premises, or license, permit, or otherwise allow any other person (the employees of TENANT excepted) to occupy or use the Premises, or any portion thereof, without the prior written consent of CITY'S Harbor Director, or any future successor to the duties of CITY'S Harbor Director. A consent to one subletting, occupation, licensing or use shall not be deemed to be a consent to any subsequent subletting, occupation, licensing or use by another person. Any sublease or license without CITY'S

written consent shall be void, and shall at CITY'S option, terminate this Lease. CITY shall not unreasonably nor arbitrarily withhold its consent to sublet to one who is qualified and financially reliable. CITY'S consent to any occupation, use, or licensing shall be in CITY'S sole and absolute discretion. Notwithstanding any provisions herein to the contrary, the terms "assignment," "subletting," "occupation," or "use," shall not be construed or interpreted to mean or include the temporary, short term renting or leasing of boat slips, motel, hotel, or apartment accommodations on the premises.

Section 10.06 Subtenant Subject to Lease Terms.

Any and all subleases shall be expressly made subject to all the terms, covenants, and conditions of this Lease. In no event shall the term of any sublease extend beyond the term of this Lease. Subject to Section 10.09, termination of this Lease prior to the expiration of this Lease term shall also terminate any and all subleases. A breach of the terms of this Lease by a subtenant shall constitute a breach on the part of TENANT and shall subject both the subtenant and TENANT to all the remedies provided to CITY herein and by law. Failure by any subtenant to report Gross Sales or to pay Percentage Rent due from subtenant shall constitute a breach of this lease. TENANT hereby agrees to and does guarantee payment of such Percentage Rent due by a subtenant under the terms of this lease.

Section 10.07 Consent Form Agreement.

Prior to any consent by CITY to any sublease hereof, TENANT shall cause to be executed between TENANT and any subtenant an agreement making the CITY a third party beneficiary, in a form acceptable to CITY, whereby the subtenant agrees to be bound by all of the terms, covenants and conditions of this Lease. Further, it is agreed by TENANT any default by the subtenant of any of the terms, covenants and conditions of this Lease shall be deemed to be violations by TENANT of this Lease and that all remedies of CITY for such violation, including termination of this Lease, shall immediately be enforceable by CITY against TENANT. TENANT shall apply any and all monies received from any subtenant first to the payment of obligations of the subtenant to CITY.

Section 10.08 TENANT and Guarantor Remain Liable.

Prior to approval by CITY to any sublease hereof, TENANT shall agree to be primarily and jointly and severally liable to CITY for all obligations due CITY by any subtenant, including the payment of rents, and TENANT shall agree CITY may proceed directly against TENANT for any obligation owing CITY by the subtenant. If this Lease is guaranteed, then neither the

sublease nor CITY'S approval thereof shall release the guarantor from its obligations pursuant to the guaranty.

Section 10.09 Nondisturbance.

On the terms set forth below, CITY may enter into agreements with subtenants providing that in the event of any termination of this Lease prior to the expiration date, CITY will not terminate or otherwise disturb the rights of the subtenant under such sublease, but will instead honor such sublease as if such agreement had been entered into directly between Landlord and such subtenant, conditioned upon such subtenant's agreement to attorn to Landlord and full performance of all obligations under the sublease in question ("Non-Disturbance Agreement"). CITY agrees to execute a Non-Disturbance Agreement in connection with a particular sublease provided that Tenant provides CITY with a copy of the sublease, and the Non-Disturbance Agreement is customary in form and substance and otherwise reasonably acceptable to CITY.

Article 11 DEFAULT AND TERMINATION

Section 11.01 Abandonment by TENANT.

If TENANT breaches this Lease and abandons all or any part of the Premises prior to the scheduled expiration of the term of this Lease, then CITY may continue this Lease in effect by not terminating TENANT'S right to possession of the Premises, in which event CITY shall be entitled to enforce all CITY'S rights and remedies under this Lease including the right to recover the Rent specified in this Lease as it becomes due under this Lease.

Section 11.02 Termination for Breach by TENANT.

All covenants and agreements contained in this Lease are declared to be conditions to this Lease and to the term hereby demised to TENANT. If TENANT fails to perform any covenant, condition, or agreement contained in this Lease, except for payment of any Rent or other monetary amount due, and such failure is not cured within thirty (30) days after written notice thereof is served on TENANT, then CITY may terminate this Lease immediately, and in the event of such termination, TENANT shall have no further rights hereunder and TENANT shall thereupon forthwith remove from the Premises and shall have no further right or claim thereto and CITY shall immediately thereupon have the right to re-enter and take possession of the Premises, subject only to appropriate legal process.

Section 11.03 Termination for Failure to Pay Rent.

If any payment of Rent is not made as herein provided and such failure to pay is not cured within three (3) days after written notice thereof is served on the TENANT, then CITY

shall have the option to immediately terminate this Lease; and in the event of such termination, TENANT shall have no further right or claim thereto and CITY shall immediately thereupon have the right to re-enter and take possession of the Premises, subject only to appropriate legal process.

Section 11.04 Lender May Cure Default.

CITY shall afford the Lender under any Leasehold Encumbrance of record with CITY, as provided in Article 5 of this Lease, the right to cure any default by TENANT of the covenants, conditions, or agreements hereof.

Section 11.05 Damages for Breach.

If TENANT defaults in the performance of any covenant, condition or agreement contained in this Lease and the default be incurable or not be cured within the time period set forth hereinabove, then CITY may terminate this Lease and:

(1) Bring an action 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 of the Lease;

(b) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination of the Lease until the time of award exceeds the amount of rental loss that TENANT proves could have been reasonably avoided;

(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 rental loss that TENANT proves could be reasonably avoided; and

(d) Any other amount necessary to compensate CITY for all detriment proximately caused by TENANT'S failure to perform its obligations under this Lease; and

(2) Bring an action, in addition to or in lieu of the action described in subparagraph (1) of this Section, to re-enter and regain possession of the Premises in the manner provided by the laws of unlawful detainer of the State of California then in effect.

Section 11.06 Cumulative Remedies.

The remedies available to CITY in this Article shall not be exclusive but shall be cumulative with and in addition to all remedies now or hereafter allowed by law or elsewhere provided in this Lease.

Section 11.07 Waiver of Breach.

The waiver by CITY of any breach by TENANT of any of the provisions of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach by TENANT either of the same or a different provision of this Lease.

Section 11.08 Surrender of Premises.

On expiration or sooner termination of this Lease, TENANT shall surrender the Premises, and, subject to Section 4.04, all improvements in or on the Premises, and all facilities in any way appertaining to the Premises, to CITY in good, safe, and clean condition, reasonable wear and tear excepted.

Article 12 MISCELLANEOUS

Section 12.01 Notices.

Any and all notice or demands by or from CITY to TENANT, or TENANT to CITY, shall be in writing. They shall be served either personally, or by registered or certified mail. Any notice or demand to CITY may be given to:

Harbor Director
1275 Embarcadero
Morro Bay, CA 93442

with a copy to:

City Manager of the City of Morro Bay
City Hall
595 Harbor Street
Morro Bay, CA 93442

Any notice or demand to TENANT may be given at:

Morro Bay Oyster Company
Dwight Maloney
15 Dunsmoor CT
Danville, CA 94526

with a copy to:

Morro Bay Oyster Company
Neal Maloney
1287 Embarcadero
Morro Bay, CA 93442

Such addresses may be changed by written notice by either party to the other party.

Section 12.02 Governing Law and Jurisdiction.

This Lease, and all matters relating to this Lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this Lease or any decision concerning this Lease arises. CITY and TENANT consent to exclusive personal and subject matter jurisdiction in the Superior Court of the State of California in and for the county where the Premises are located, and each party waives any claim that such court is not a convenient forum. Each party hereby specifically waives the provisions of California Code of Civil Procedure Section 394, and any successor statute thereto.

Section 12.03 Binding on Successors.

Subject to the provisions herein relating to assignment and subletting each and all of the terms, conditions, and agreements herein contained shall be binding upon and inure to the benefit of the successors and assigns of any and all of the Parties; and all of the Parties shall be jointly and severally liable hereunder.

Section 12.04 Partial Invalidity.

If any provision of this Lease is held by a court of competent jurisdiction to be either invalid, void, or unenforceable, then the remaining provisions of this Lease shall remain in full force and effect unimpaired by the holding.

Section 12.05 Sole and Only Agreement.

This Lease, including all exhibits incorporated by reference, constitutes the sole and only agreement between CITY and TENANT respecting the Premises and the leasing of the Premises to TENANT. Any other agreements or representations respecting the Premises and their leasing to TENANT by CITY, which are not expressly set forth in this Lease, are null and void. The lease terms herein specified correctly set forth the obligations of CITY and TENANT as of the date of this Lease. No modification, amendment, or alteration of this Lease shall be valid unless it is in writing and signed by both parties.

Section 12.06 Modification.

This Lease shall not be modified except pursuant to a written agreement executed by CITY'S Mayor and City Clerk pursuant to prior CITY's City Council approval. Notwithstanding CITY'S City Council approval, no agreement shall become effective until such agreement is in fact executed by CITY'S Mayor and City Clerk. TENANT understands this Lease may not be modified by oral statements by any person representing CITY, including CITY'S Mayor and City Clerk. TENANT specifically agrees not to rely on oral statements, purported oral waivers, or purported oral modifications and agrees not to rely upon purported written modifications unless they meet the requirements of this paragraph and are approved in writing pursuant to formal City Council action and a subsequent written modification signed by CITY'S Mayor and City Clerk. If the title of any person authorized to act for CITY under this Lease shall be changed during the term of this Lease, then the person who succeeds to substantially the same responsibilities with respect to CITY shall have the authority to act for CITY under this Lease.

Section 12.07 Time of Essence.

Time is expressly declared to be the essence of this Lease.

Section 12.08 Memorandum of Lease for Recording.

CITY and TENANT shall, at the request of either at any time during the term of this Lease, execute a memorandum or "short form" of this Lease, which shall describe the Parties, set forth a description of the Premises, specify the Term, and incorporate this Lease by reference.

Article 13 SPECIAL PROVISIONS PECULIAR TO THIS LEASE SITE

The following provisions apply to this Lease site only:

Section 13.01 Rescission of Old Lease

CITY and TENANT understand and agree this Lease rescinds and revokes the previous lease between CITY and TENANT more particularly described as that certain lease originally assigned to TENANT and commencing July 1, 2012 for the Premises, including all amendments made thereto.

Section 13.02 Completion of Improvements

TENANT must complete improvements to the Premises to include the following at a minimum and with a hard construction cost estimation of \$202,000.00:

1. Convert the front office/storage space to seafood/aquaculture retail, including upgrading of electrical, flooring and windows and ADA compliance and begin seafood/aquaculture retail sales. Completion of this element shall occur no later than January 1, 2019.
2. Bring the downstairs restroom into ADA compliance. Completion of this element shall occur no later than January 1, 2019.
3. Convert the current workshop area to aquaculture use and retail sales, and to include an aquaculture educational aspect with school and other tours of the facility and TENANT'S oyster farm. Completion of this element shall occur no later than July 1, 2023.
4. Repair an estimated five deteriorated pilings under the wharf with epoxy encapsulation and/or steel sleeves. Completion of this element shall occur as deemed necessary by a qualified engineer's inspection, but in no case later than July 1, 2026. Completion shall mean when a qualified engineer has given final inspection approval.

Except for element 4., above, for purposes of this Section 13.02, completion for each of the elements of improvement shall mean when each is entitled to issuance of a certificate of occupancy or final inspection approval, as applicable, from City.

In addition, it is recognized and documented TENANT has recently completed significant wharf structural repairs including pile caps, brackets, joists, decking and seawall, and building

improvements including roofing, tank room flooring, painting and siding at an approximate cost of \$97,000.00

Section 13.03 Option to Extend

TENANT may request an extension of this Lease for a maximum of 20 years, but only after issuance of a Conditional Use Permit for waterside improvements on the Premises to extend the wharf and deck area to the maximum extent possible into the southern portion of the Lease Site (the “Waterside Improvements”). The specific term of the extension will be determined once any and all required governmental permits for the Waterside Improvements are approved and TENANT provides a detailed cost estimate for the Waterside Improvements.

This option must be requested in writing prior to July 1, 2022, and implemented by an amendment to this Lease approved by the City Council. Prior to amending this Lease to extend the term, TENANT shall submit for and receive all required permits to complete the Waterside Improvements. Any amendment to extend the term of this Lease shall include deadlines for completion of Waterside Improvements within a proscribed timeframe and the specific number of years this Lease will be extended.

Section 13.04 Requirement to Cost-Share the City’s HarborWalk Project

CITY has approved plans to build an 8-foot sidewalk in an east to west orientation along TENANT’S southern lease boundary and partially on the Premises as a part of the CITY’S HarborWalk project. At this time, that project is not funded by CITY. TENANT hereby gives CITY permission to construct the HarborWalk improvements on the Premises at any time during this Lease if CITY is able to fund project. Further TENANT agrees to share the cost for the HarborWalk improvements, as follows:

A. If CITY constructs the HarborWalk project, then TENANT shall be responsible for the portion of CITY’S costs for that project constructed on the Premises not to exceed \$25,000. Any costs in excess of \$25,000 for that project shall be borne solely by CITY. CITY may construct that project at any time at the sole discretion of CITY. If CITY completes that project on the Premises, as determined by CITY, then TENANT shall reimburse CITY on the next following January 1 after completion of that project by five annual payments each due on January 1 of \$5,000 each. By reason of example, if CITY completes the HarborWalk project on the Premises on November 1, 2016 then TENANT shall make payments under this clause of \$5,000 on January 1, 2017, \$5,000 on January 1 2018, etc. TENANT shall be solely responsible for any other sidewalk or entry work TENANT desires to complete on TENANT’S premises in excess of the HarborWalk.

B. TENANT may construct the portion of the HarborWalk project on the Premises at TENANT'S own cost, if TENANT desires, prior to the CITY constructing that project. In that case, TENANT must construct that project in accordance with CITY designs and specifications for the HarborWalk project as determined by CITY'S City Engineer. In that case the TENANT will bear all costs for that portion of that project.

C. TENANT shall be responsible for all maintenance and repair of said HarborWalk on the Premises after construction by either CITY or TENANT. TENANT shall also bear any additional costs beyond the 8-foot wide boardwalk if TENANT desires expanded sidewalk improvements in the area of entry/walk-up window to TENANT'S business.

Section 13.05 Construction of Improvements

TENANT acknowledges TENANT'S construction of any and all proposed improvements of the Premises requires, but may not be limited to, obtaining a permit from the California Coastal Commission, U.S. Army Corps of Engineers, and a CITY Building Permit. It is TENANT'S obligation to fully investigate the issues and costs in obtaining those permits. Failure to obtain any and all required permits and approvals for said construction shall not be a reason for failure to comply with any of the obligations of this Lease. TENANT further acknowledges construction of TENANT'S improvements may require repair or replacement of all or portions of the docks, existing buildings, revetments, access ways, sidewalks, drainage systems and other current improvements on the Premises to the standards of CITY'S City Engineer and TENANT agrees to meet those standards through review and revision of final Building Plans prior to issuance of a Building Permit for the construction of improvements on the Premises.

During construction of all improvements contemplated in this Lease, TENANT shall take all measures to:

- A. Avoid any pollution of the atmosphere or littering of land or water by or originating in or about the Premises or caused by TENANT'S construction activities,
- B. Keep the noise level on the Premises to a minimum so persons in the neighborhood will be able to comfortably enjoy business and facilities in the area,
- C. Prevent any pollutants, including but not limited to petroleum products, from entering Morro Bay waters,
- D. Avoid negative impacts on surrounding businesses,
- E. Prohibit storage of materials or equipment on public property and avoid parking or traffic delays or impairment without prior consent of CITY and
- F. Keep the construction site in a sightly, orderly, and safe manner at all times.

EXECUTED on _____, 2016, at _____,
_____ County, California.

CITY OF MORRO BAY

TENANT

Morro Bay Oyster Company, LLC a California
limited liability company

Jamie L. Irons, MAYOR

By: _____
Neal Maloney, Member

By: _____
Dwight Maloney, Member

APPROVED AS TO FORM:

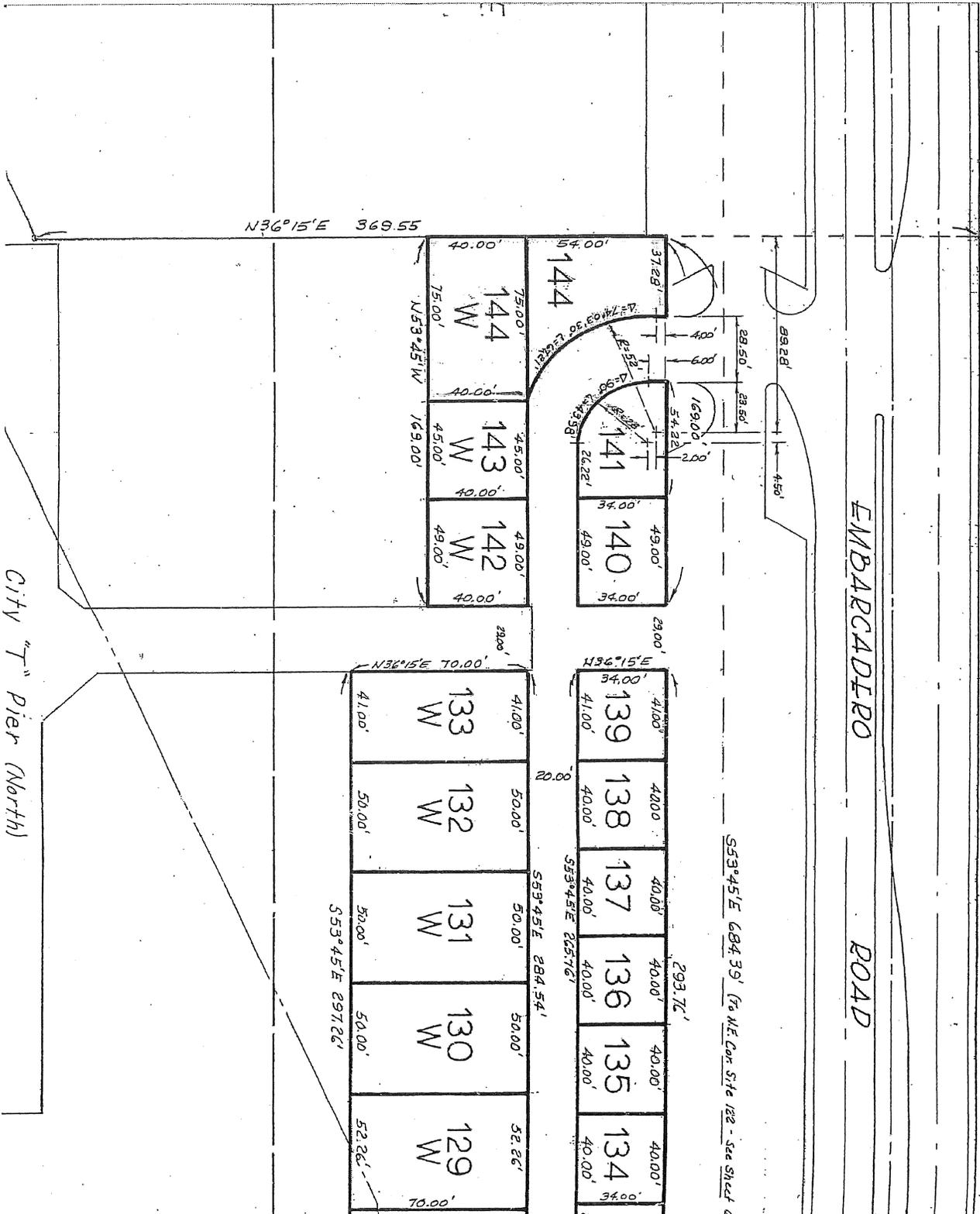
Joseph W. Pannone, CITY ATTORNEY

ATTEST:

Dana Swanson, CITY CLERK

EXHIBIT A
COPY OF PARCEL MAP

EXHIBIT A COPY OF PARCEL MAP



L E A S E

by and between

the CITY OF MORRO BAY

("CITY")

and

MORRO BAY OYSTER COMPANY, LLC ("TENANT")

TABLE OF CONTENTS

Article 1	FIXED TERM.....	2
	Section 1.01 Term.....	2
	Section 1.02 No Extensions.....	2
	Section 1.03 Hold Over.....	2
	Section 1.04 Replacement.....	3
Article 2	RENT	3
	Section 2.01 Annual Minimum Rent.....	3
	Section 2.02 CPI Adjustment to Annual Minimum Rent.....	3
	Section 2.03 Calculation of New Annual Minimum Rent.....	4
	Section 2.04 Percentage Rent.....	5
	Section 2.05 Reimbursements.....	7
	Section 2.06 Penalty and Interest.....	8
Article 3	USE OF PREMISES.....	8
	Section 3.01 Permitted Uses.....	8
	Section 3.02 Unauthorized Use.....	8
	Section 3.03 Operation of Business - Hours of Operation.....	8
	Section 3.04 Competition.....	9
	Section 3.05 Hazardous Materials.....	9
	Section 3.06 Tidelands Trust.....	10
	Section 3.07 Compliance with Law.....	11
	Section 3.08 Waste or Nuisance.....	11
	Section 3.09 Use by CITY.....	11
Article 4	CONSTRUCTION, ALTERATION AND REPAIRS	11
	Section 4.01 Construction Approval.....	11
	Section 4.02 Construction Bond.....	12
	Section 4.03 Mechanics' Liens.....	12
	Section 4.04 Ownership of Improvements.....	13

Article 5	LEASEHOLD MORTGAGES	14
Article 6	REPAIRS, MAINTENANCE AND RESTORATION	14
	Section 6.01 Maintenance by TENANT.....	14
	Section 6.02 Seawalls and Revetment.....	14
	Section 6.03 Legal Requirements.....	15
	Section 6.04 Failure to Repair.....	15
	Section 6.05 Inspection by CITY.....	15
	Section 6.06 TENANT'S Duty to Restore Premises.....	15
	Section 6.07 Termination of Lease for Destruction.....	16
	Section 6.08 Destruction Due to Risk Not Covered by Insurance.....	17
Article 7	INDEMNITY AND INSURANCE	17
	Section 7.01 Indemnity Agreement.....	17
	Section 7.02 Liability Insurance.....	18
	Section 7.03 Worker's Compensation.....	19
	Section 7.04 Property Insurance.....	19
	Section 7.05 Additional Coverage.....	19
	Section 7.06 General Requirements.....	20
	Section 7.07 No Subrogation.....	21
	Section 7.08 TENANT'S Waiver.....	21
	Section 7.09 Insurance Not a Limit.....	21
Article 8	TAXES AND FEES.....	22
	Section 8.01 TENANT to Pay Taxes.....	22
	Section 8.02 TENANT to Pay License and Permit Fees.....	22
	Section 8.03 Utilities.....	22
Article 9	CONDEMNATION.....	22
	Section 9.01 Total Condemnation.....	22
	Section 9.02 Condemnation Award.....	22
	Section 9.03 Termination for Partial Taking.....	23

	Section 9.04	Rent Abatement for Partial Taking.....	24
	Section 9.05	Conveyance in Lieu of Eminent Domain.....	24
	Section 9.06	Temporary Taking.	24
Article 10	ASSIGNMENT AND SUBLEASING		25
	Section 10.01	No Assignment Without CITY'S Consent.	25
	Section 10.02	Change of Ownership as Assignment.....	25
	Section 10.03	Application for Assignment.....	26
	Section 10.04	Probate Transfer of Assignment.	26
	Section 10.05	No Sublease Without CITY'S Consent.....	26
	Section 10.06	Subtenant Subject to Lease Terms.	27
	Section 10.07	Consent Form Agreement.	27
	Section 10.08	TENANT and Guarantor Remain Liable.....	27
	Section 10.09	Nondisturbance.	28
Article 11	DEFAULT AND TERMINATION.....		28
	Section 11.01	Abandonment by TENANT.....	28
	Section 11.02	Termination for Breach by TENANT.....	28
	Section 11.03	Termination for Failure to Pay Rent.	28
	Section 11.04	Lender May Cure Default.	29
	Section 11.05	Damages for Breach.....	29
	Section 11.06	Cumulative Remedies.	29
	Section 11.07	Waiver of Breach.	30
	Section 11.08	Surrender of Premises.....	30
Article 12	MISCELLANEOUS		30
	Section 12.01	Notices.	30
	Section 12.02	Governing Law and Jurisdiction.....	31
	Section 12.03	Binding on Successors.	31
	Section 12.04	Partial Invalidity.....	31
	Section 12.05	Sole and Only Agreement.....	31

	Section 12.06	Modification.....	32
	Section 12.07	Time of Essence.....	32
	Section 12.08	Memorandum of Lease for Recording.....	32
Article 13	SPECIAL PROVISIONS PECULIAR TO THIS LEASE SITE		33
	Section 13.01	Rescission of Old Lease.....	33
	Section 13.02	Completion of Improvements	33
	Section 13.03	Option to Extend.....	34
	Section 13.04	Requirement to Cost-Share the City’s HarborWalk Project	34
	Section 13.05	Construction of Improvements	36

EXHIBIT B

PERCENTAGE RENT FOR GROUND LEASES

		% GROSS SALES
FOOD SERVICE:	Restaurant, Dining Room	3
	Snack Bar, Delicatessen,	5
	Fast Food, Convenience Food	5
	Bar/Lounge, Beer & Wine Sales	5
FISH & SEAFOOD:	Retail Sales	3
	Wholesale Sales	0
MOORINGS, TIES & SLIPS:	Pier/Fixed Piles	10
	Pier/Floating	10
MARINE REPAIR:	Boat & Marine Repair	3
	Refrigeration Repair	3
RETAIL:	Apparel or other Goods	5
ALL OTHER USES:		5

Percentage Rental is to be based on the gross amount received from any and all sources of income derived from the lease site.

EXHIBIT C

CITY OF MORRO BAY

595 Harbor St.
Morro Bay, CA 93442
(805) 772-6200
FAX (805) 772-7329

INSURANCE REQUIREMENTS FOR LESSEES (NO AUTO RISKS)

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
2. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance (for lessees with employees).
3. Property insurance against all risks of loss to any tenant improvements or betterments.

Minimum Limits of Insurance

Lessee shall maintain limits no less than:

1. General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.
3. Property Insurance: Full replacement cost with no coinsurance penalty provision.

City of Morro Bay
Insurance Requirements for Lessees

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Lessee shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of ownership, maintenance or use of that part of the premises leased to the Lessee.
2. The Lessee's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

Verification of Coverage

Lessee shall furnish the City with original certificates and amendatory **endorsements** effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the City **before** use of City premises. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

City of Morro Bay
Insurance Requirements for Lessees

Sub-lessee

Lessee shall include all sub-lessees as insureds under its policies or shall furnish separate certificates and endorsements for each sub-lessee. All coverages for sub-lessees shall be subject to all of the requirements stated herein.

City of Morro Bay
Insurance Requirements for Lessees

Reproduction of Insurance Services Office, Inc. Form

INSURER: ISO Form CG 20 11 11 85 (Modified)
POLICY NUMBER: Commercial General Liability
ENDORSEMENT NUMBER:

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED -- MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

1. Designation of Premises (Part Leased to You):
2. Name of Person or Organization (Additional Insured): City of Morro Bay
3. Additional Premium:

(If no entry appears above, the information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person or organization shown in the schedule.

Modifications to ISO form CG 20 11 11 85:

1. The Insured scheduled above includes the Insured's elected or appointed officers, officials, employees and volunteers.
2. This insurance shall be primary as respects the Insured shown in the schedule above, or if excess, shall stand in an unbroken chain of coverage excess of the Named Insured's scheduled underlying primary coverage. In either event, any other insurance maintained by the Insured scheduled above shall be in excess of this insurance and shall not be called upon to contribute with it.
3. The insurance afforded by this policy shall not be canceled except after thirty days prior written notice by certified mail return receipt requested has been given to the City.

Signature-Authorized Representative

Address

CG 20 11 11 85 Insurance Services Office, Inc. Form (Modified)



AGENDA NO: C-2

MEETING DATE: July 12, 2016

Staff Report

TO: Honorable Mayor and City Council **DATE:** July 5, 2016

FROM: David Buckingham, City Manager

SUBJECT: Designation of Voting Delegate and Alternate at League of California Cities 2016 Annual Conference Business Meeting

RECOMMENDATION

Staff recommends the City Council select one delegate and up to two alternates for the upcoming annual business meeting to be held at the League of California Cities Annual Conference.

ALTERNATIVES

The City Council may choose not to select any delegates; however, the City would not have voting rights at the annual business meeting.

BACKGROUND

In order to conduct the annual business meeting held in conjunction with the League of California Cities Annual Conference, every represented city must have its City Council designate a voting representative who will be registered at the conference and present at the annual business meeting (the General Assembly). Each member city may also appoint up to two alternates, one of whom may vote in the event the designated voting is unable to serve in that capacity. A voting card will be issued to the designated city official at the conference.

Conference attendance provides an exceptional opportunity for elected officials to hear from leading experts, expand their knowledge regarding municipal government, and view innovative resources that could benefit the delivery of services, enhance resources, and strengthen the City.

DISCUSSION

The League of California Cities 2016 Annual Conference is scheduled for October 5-7, 2016, in Long Beach, California. Policy committee meetings are typically scheduled to be held at 9:00 a.m. and 10:30 a.m. on Wednesday, October 5. The Opening General Session is scheduled to begin at

Prepared By: DS Dept Review: DWB
City Manager Review: DWB
City Attorney Review: JWP

3:00 p.m. on Wednesday, October 5, and the first education session is scheduled to begin the following day at 8:00 a.m. on Thursday, October 6. The League's annual business meeting will be held at 12 Noon on Friday, October 7. **The voting delegate must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only.**

Once the League has determined the Resolutions to be considered by the General Assembly (anticipated in early August), staff will schedule the matter for Council consideration and input for the City's designated voting delegate and alternate(s).

In order to vote at the League of California Cities 2016 Annual Conference Business Meeting, the City Council must select a voting delegate. In the event the designated voting delegate is unable to serve in this capacity, the City Council may appoint up to two alternate voting delegates.

CONCLUSION

Staff recommends the City Council select one delegate and up to two alternates for the upcoming annual business meeting to be held at the League of California Cities Annual Conference.

ATTACHMENT

Informational materials from the League of California Cities regarding designation of voting delegate and alternate(s).

Council Action Advised by July 31, 2016

June 10, 2016

TO: Mayors, City Managers and City Clerks

**RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES
League of California Cities Annual Conference – October 5 – 7, Long Beach**

The League's 2016 Annual Conference is scheduled for October 5 – 7 in Long Beach. An important part of the Annual Conference is the Annual Business Meeting (during General Assembly), scheduled for noon on Friday, October 7, at the Long Beach Convention Center. At this meeting, the League membership considers and takes action on resolutions that establish League policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote in the event that the designated voting delegate is unable to serve in that capacity.

Please complete the attached Voting Delegate form and return it to the League's office no later than Friday, September 23, 2016. This will allow us time to establish voting delegate/alternate records prior to the conference.

Please note the following procedures that are intended to ensure the integrity of the voting process at the Annual Business Meeting.

- **Action by Council Required.** Consistent with League bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates must be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.
- **Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. To register for the conference, please go to our website: www.cacities.org. In order to cast a vote, at least one voter must be present at the

Business Meeting and in possession of the voting delegate card. Voting delegates and alternates need to pick up their conference badges before signing in and picking up the voting delegate card at the Voting Delegate Desk. This will enable them to receive the special sticker on their name badges that will admit them into the voting area during the Business Meeting.

- **Transferring Voting Card to Non-Designated Individuals Not Allowed.** The voting delegate card may be transferred freely between the voting delegate and alternates, but *only* between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the Business Meeting, they may *not* transfer the voting card to another city official.
- **Seating Protocol during General Assembly.** At the Business Meeting, individuals with the voting card will sit in a separate area. Admission to this area will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate. If the voting delegate and alternates wish to sit together, they must sign in at the Voting Delegate Desk and obtain the special sticker on their badges.

The Voting Delegate Desk, located in the conference registration area of the Long Beach Convention Center, will be open at the following times: Wednesday, October 5, 8:00 a.m. – 6:00 p.m.; Thursday, October 6, 7:00 a.m. – 4:00 p.m.; and Friday, October 7, 7:30–10:00 a.m. The Voting Delegate Desk will also be open at the Business Meeting on Friday, but will be closed during roll calls and voting.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city's voting delegate and alternates.

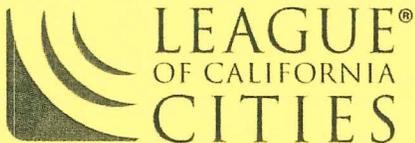
Once again, thank you for completing the voting delegate and alternate form and returning it to the League office by Friday, September 23. If you have questions, please call Kayla Gibson at (916) 658-8247.

Attachments:

- Annual Conference Voting Procedures
- Voting Delegate/Alternate Form

Annual Conference Voting Procedures

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to League policy.
2. **Designating a City Voting Representative.** Prior to the Annual Conference, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the Voting Delegate Form provided to the League Credentials Committee.
3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the Voting Delegate Desk in the conference registration area. Voting delegates and alternates must sign in at the Voting Delegate Desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the Business Meeting.
4. **Signing Initiated Resolution Petitions.** Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the Credentials Committee at the Voting Delegate Desk, may sign petitions to initiate a resolution.
5. **Voting.** To cast the city's vote, a city official must have in his or her possession the city's voting card and be registered with the Credentials Committee. The voting card may be transferred freely between the voting delegate and alternates, but may not be transferred to another city official who is neither a voting delegate or alternate.
6. **Voting Area at Business Meeting.** At the Business Meeting, individuals with a voting card will sit in a designated area. Admission will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate.
7. **Resolving Disputes.** In case of dispute, the Credentials Committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the Business Meeting.



CITY: _____

2016 ANNUAL CONFERENCE
VOTING DELEGATE/ALTERNATE FORM

Please complete this form and return it to the League office by Friday, September 23, 2016. Forms not sent by this deadline may be submitted to the Voting Delegate Desk located in the Annual Conference Registration Area. Your city council may designate one voting delegate and up to two alternates.

In order to vote at the Annual Business Meeting (General Assembly), voting delegates and alternates must be designated by your city council. Please attach the council resolution as proof of designation. As an alternative, the Mayor or City Clerk may sign this form, affirming that the designation reflects the action taken by the council.

Please note: Voting delegates and alternates will be seated in a separate area at the Annual Business Meeting. Admission to this designated area will be limited to individuals (voting delegates and alternates) who are identified with a special sticker on their conference badge. This sticker can be obtained only at the Voting Delegate Desk.

1. VOTING DELEGATE

Name: _____

Title: _____

2. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

3. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

PLEASE ATTACH COUNCIL RESOLUTION DESIGNATING VOTING DELEGATE AND ALTERNATES.

OR

ATTEST: I affirm that the information provided reflects action by the city council to designate the voting delegate and alternate(s).

Name: _____ E-mail _____

Mayor or City Clerk _____ Phone: _____
(circle one) (signature)

Date: _____

Please complete and return by Friday, September 23, 2016

League of California Cities
ATTN: Kayla Gibson
1400 K Street, 4th Floor
Sacramento, CA 95814

FAX: (916) 658-8240
E-mail: kgibson@cacities.org
(916) 658-8247



AGENDA NO: C-3

MEETING DATE: July 12, 2016

Staff Report

TO: Honorable Mayor and City Council

DATE: June 29, 2016

FROM: Joseph W. Pannone, City Attorney

SUBJECT: Introduction of Ordinance No. 606, which Amends Various Provisions of the Morro Bay Municipal Code Relating to City Organizational Matters, Political Activities by Employees, Use of City Parks and Recreation Equipment and Provides Other Clarifications

RECOMMENDATION

Staff recommends Council discuss and introduce, for first reading by title only and with further reading waived, Ordinance No. 606: An Ordinance of the City Council of the City of Morro Bay, California, Amending Various Provisions of the Morro Bay Municipal Code Relating to City Organizational Matters, Political Activities by Employees, Use of City Parks and Recreation Equipment and Providing Other Clarifications.

FISCAL IMPACT

There is no anticipated fiscal impact which would result from the introduction and adoption of Ordinance No. 606.

BACKGROUND/DISCUSSION

The Staff and City Attorney periodically review the Morro Bay Municipal Code (MBMC) to update its provisions. In addition, as issues and circumstances present themselves, Staff and the City Attorney discover provisions of the MBMC that need updating.

Ordinance No. 606 is another example of those efforts. As stated in the title of the Ordinance, it proposes changes to the MBMC references to organizational issues with the City, clarifies prohibited political activities by City employees, updates the references to City parks and recreational equipment, as well as clarifies the duties for the position of Finance Director.

The proposed organizational changes more clearly comply with the City Manager form of local government. Under that form of government, the City Manager is charged with administering the operation of the City organization. With the changes proposed for MBMC section 2.12.100, that will be

01181.0001/302532.1

Prepared By: JWP

Dept Review: JWP

City Manager Review: DWB

City Attorney Review: JWP

made clearer, but still require the City Council to receive notice of such a decision. Per Section 2.12.060 and its approval of the annual budget, the City Council retains authority to overrule or modify any reorganization approved by the City Manager.

The changes proposed in Ordinance No. 606 relating to employee, officer, Mayor, City Clerk and City Treasurer compensation restate the process salaries for employees are determined, accurately describes the timing of when the payment of the Mayor's extra stipend has always been made and deletes superfluous references to salaries paid to the City Clerk and City Treasurer. In addition, the repeal of the bonding requirements for the City Clerk and City Treasurer reflects the City's decision, many years ago and at a significant reduced cost, to provide insurance coverage in the amount of \$1 Million to cover all employees for criminal acts and dishonesty.

The changes proposed in Ordinance No. 606 dealing the recreation services of the City conform to the reorganization of that division, which was established by the City Manager and ratified by the City Council with the adoption of the Fiscal Year 2016/2017 Budget. In addition, those proposed changes conform to the rules and regulations recently adopted by the City Council for use of City parks and equipment.

The proposed changes to the provisions regarding employee political activity better implement the intent of the existing section, which seems to be to implement Government Code section 3702.¹ That section states the City Council can prohibit political activity on City property and during working hours. The current version of MBMC 2.32.130 states: "The political activities of city employees shall conform to pertinent provisions of state law." Although it seems the intent of that section is to prohibit the political activities described in Section 3702, technically, that Section does not impose such restrictions on such activities. It grants the City authority to do that. The proposed amendment to MBMC section 2.32.130 affirmatively applies the provisions of Section 3702.

CONCLUSION

Staff recommends Council discuss the proposed Ordinance No. 606 and introduce it for first reading by title only.

ATTACHMENTS

Proposed Ordinance No. 606

Highlighted changes to the MBMC proposed by Ordinance No. 606

¹ § 3207 Any ... [city council] ... may prohibit or otherwise restrict the following: (a) Officers and employees engaging in political activity during working hours. (b) Political activities on the premises of the [city].

ORDINANCE NO. 606

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF MORRO BAY, CALIFORNIA, AMENDING
VARIOUS PROVISIONS OF THE MORRO BAY MUNICIPAL CODE
RELATING TO CITY ORGANIZATIONAL MATTERS,
POLITICAL ACTIVITIES BY EMPLOYEES,
USE OF CITY PARKS AND RECREATION EQUIPMENT
AND PROVIDING OTHER CLARIFICATIONS**

THE CITY COUNCIL
City of Morro Bay, California

WHEREAS, the Morro Bay Municipal Code (MBMC) establishes laws and rules to govern the City;

WHEREAS, since the years of the City's incorporation provisions have been added to the MBMC that may go beyond that purpose;

WHEREAS, staff periodically reviews the MBMC and recommends changes for Council consideration to update and streamline the MBMC; and

WHEREAS, this Ordinance makes such changes to the MBMC.

NOW, THEREFORE, the City Council of the City of Morro Bay does ordain as follows:

SECTION 1: Sections 2.12.100 of the MBMC is hereby amended to read as follows:

2.12.100 - Reorganization of positions and department.

It shall be the duty and responsibility of the city manager to make reorganization decisions for the various city positions, departments or units under his/her direction, as he/she determines are in the best interests of responsive, efficient, effective and economical operation of the city's business. The city manager shall inform the city council of those decisions in a reasonable manner.

SECTION 2: Sections 2.16.040 and 2.16.050 are hereby repealed

SECTION 3: Section 2.16.090 is added to the MBMC to read as follows:

Section 2.16.090 – Finance Director.

The city manager shall appoint a finance director, who shall serve and perform the duties of the city's chief financial officer and city treasurer, as set forth in

Government Code relating to obligations of a city treasurer. Pursuant to Government Code section 37209, the finance director shall also carry out the duties imposed on the city clerk by Government Code sections 37203 and 37208.

SECTION 4: Section 2.20.105 of the MBMC is amended to read as follows:

2.20.015 - Additional compensation for mayor.

The mayor, in addition to the compensation enumerated in Section 2.20.010 shall receive the sum of two hundred dollars, per month, as additional compensation as provided by California Government Code 36516.1.

SECTION 5: Sections 2.20.20 of the MBMC is hereby amended to read as follows:

2.20.020 - Officers and employees.

The salaries and compensation of officers and employees of the city shall be as fixed and determined by resolution of the city council, after due consideration of employees' bargaining rights, as established by the Meyers-Milias-Brown Act, except those fixed in this chapter.

SECTION 6: Sections 2.20.030 and 2.20.020 are hereby repealed.

SECTION 7: The title of Chapter 2.24 of the MBMC is hereby amended to read as follows:

Chapter 2.24 – USE OF CITY PARKS

SECTION 8: Sections 2.24.010, 2.24.020 and 2.24.090 are hereby repealed.

SECTION 9: Section 2.24.030 of the MBMC is hereby amended to read as follow:

2.24.030 - Use of parks.

All city parks are intended for the recreational use of the residents of the city of Morro Bay. When not in use for city business or recreation programs, the parks may be used by local groups and individuals for social, cultural and recreational activities, subject to rules and policies recommended by the Recreation and Parks Commission and approved by the City Council (the "Park Rules and Regulations").

SECTION 10: Section 2.24.040 of the MBMC is hereby amended to read as follows:

2.24.040 - Uses of parks requiring permits.

A. Except to the extent the use is in conjunction with some other permitted event occurring at the park, any person, group or organization desiring to use any portion of a park for any of the purposes listed in this subdivision must first obtain a permit, pursuant to this section and in accordance with the Park Rules and Regulations:

1. to erect or maintain a table, booth or similar structure,
2. for a group exceeding seventy-five persons,
3. to reserve a park for exclusive use,
4. to use the park for commercial purposes,
5. to hold a contest, demonstration or exhibit in a park for which an admission or entrance fee is charged,
6. to engage in the sale or consumption of an alcoholic beverage, as defined in Chapter 9.18 of this code or
7. before dawn or after dusk.

B. If an application for a permit is found in good order and in compliance with the Park Rules and Regulations, then the person, group or organization shall be granted use of the park, as requested.

C. In the event the manager of the Recreation Services Division, or his/her written designee, refuses to grant the permit, the applicant may appeal such refusal in writing to the Recreation and Parks Commission by filing notice thereof in writing with the City Clerk within thirty days following refusal of the permit. The Recreation and Parks Commission shall consider such appeal at its next regular meeting following the filing of such appeal. The Recreation and Parks Commission, by majority vote, may affirm or overrule the refusal and may, if overruling, impose such conditions or changes as the Recreation and Parks Commission deems reasonable.

D. Each permit issued pursuant to this chapter is to be honored by all persons, groups and organizations upon presentation of a valid copy of the permit.

SECTION 11: Section 2.24.050 of the MBMC is hereby amended to read as follows:

2.24.050 - Use of City recreational equipment.

In accordance with the Park Rules and Regulations, the manager of the Recreation Services Division, or his/her designee, may issue a permit for a person, group or organization to use City-owned recreational equipment for a period not exceeding four consecutive days after the date of issuance of the permit

SECTION 12: Section 2.32.130 of the MBMC is hereby amended to read as follows:

2.32.130 - Improper political activity.

Pursuant to the authority set forth in Section 3207 of the California Government Code, city employees shall not engage in political activities during their working hours for the city, or on any premises of the city at any time.

SECTION 13. This Ordinance shall take effect 30 days after its adoption. The City Clerk, or her duly appointed deputy, shall attest to the adoption of this Ordinance and shall cause this Ordinance to be published and posted in the manner required by law.

INTRODUCED at a regular meeting the of the City Council of Morro Bay, held on the 12th day of July, 2016, by motion of _____, seconded by _____.

PASSED AND ADOPTED on the __ day of _____, 2016, by the following vote:

AYES:

NOES:

ABSENT:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

JOSEPH W. PANNONE, City Attorney

**CHANGES TO VARIOUS SECTIONS OF CHAPTERS 2.12, 2.16, 2.20, 2.24 and 2.32
OF THE MORRO BAY MUNICIPAL CODE, AS APPROVED BY ORDINANCE NO.**

XXXX

(Additions noted as double underline; deletions noted as ~~strikethrough~~)

2.12.100 - Reorganization of offices.

It shall be the duty and responsibility of the city manager to make reorganization decisions for the various city ~~reecommend to the city council such reorganization of offices, positions, departments or units under his/her direction, as he/she determines are may be indicated in the best interests of responsive, efficient, effective and economical operation conduct of the city's business.~~ The city manager shall inform the city council of those decisions in a reasonable manner.

~~2.16.040 - City clerk - Bond.~~

~~The city clerk upon the entry to his duties of office shall execute a bond to the city in conformity with bonds of public officers, and in conformity with the provisions of the Government Code of the state relating thereto, in the amount of seven thousand five hundred dollars.~~

~~2.16.050 - City treasurer - Bond.~~

~~The city treasurer upon the entry of office shall execute a bond to the city in conformity with bonds of public officers, and in conformity with provisions of the Government Code of the state relating thereto, in the amount of one hundred thousand dollars.~~

Section 2.16.090 - Finance Director.

The city manager shall appoint a finance director, who shall serve and perform the duties of the city's chief financial officer and city treasurer, as set forth in Government Code relating to obligations of a city treasurer. Pursuant to Government Code section 37209, the finance director shall also carry out the duties imposed on the city clerk by Government Code sections 37203 and 37208.

2.20.015 - Additional compensation for mayor.

The mayor, in addition to the compensation enumerated in Section 2.20.010 shall receive the sum of two hundred dollars, per month, as additional compensation as provided by California Government Code 36516.1.

~~2.20.030 - City treasurer.~~

~~The city treasurer shall receive a salary of one dollar per month.~~

~~2.20.040 - City clerk.~~

~~The city clerk shall receive a salary of one dollar per month.~~

2.20.020 - Officers and employees.

The salaries and compensation of officers and employees of the city shall be as fixed and determined by resolution of the city council, after due consideration of employees' bargaining rights, as established by the Meyers-Milias-Brown Act, except those fixed in this chapter.

Chapter 2.24 - USE OF CITY PARKS RECREATION AND PARKS DEPARTMENT

~~2.24.010 - Recreation and parks department established.~~

~~A recreation and parks department is established for the city. The functions of this department are to provide opportunities for wholesome, year-round public recreation service for all age groups. The recreation and parks department shall further be responsible for development and maintenance of park and recreation facilities, and the planning of facilities and standards in the city.~~

2.24.020 – Recreation and parks director.

The city manager shall appoint a recreation and parks director to administer the recreation and parks department under the direction of the city manager. The recreation and parks director, or a duly appointed representative, shall be responsible for permitting use of parks and facilities by persons or organizations provided such person or organization makes application as required.

2.24.030 - Use of parks/facilities.

All city parks and facilities are intended for the recreational use of the residents of the city of Morro Bay. When not in use for city business or recreation programs, the parks and facilities may be used by local groups and individuals for social, cultural and recreational activities, subject to rules and policies recommended by the Recreation and Parks Commission and approved by the City Council (the “Park Rules and Regulations”).

2.24.040 - Uses of parks/facilities requiring permits.

A. Except to the extent the use is in conjunction with some other permitted event occurring at the park, any persons, group or organizations desiring to use any portion of any public recreational facilities, parks or other public property of the city for any of the purposes listed in this subdivision must first obtain a permit, pursuant to this section and in accordance with the Park Rules and Regulations: provided in this chapter, in the manner set forth by the recreation and parks commission:

1. to erect or maintain a table, booth or similar structure,
2. for a group exceeding seventy-five persons,
3. to reserve a park for exclusive use,
4. to use the park for commercial purposes,
5. to hold a contest, demonstration or exhibit in a park for which an admission or entrance fee is charged,
6. to engage in the sale or consumption of an alcoholic beverage, as defined in Chapter 9.18 of this code or
7. before dawn or after dark.

B. If application for permit is found in good order and in compliance with the Park Rules and Regulations, then guidelines adopted by the recreation and parks commission, the persons, group or organizations shall be granted use of the facility, park and/or city land, as requested.

C. In the event the manager of the Recreation Services Division, director or his/her written designee, a duly appointed representative refuses to grant the permit, the

applicant may appeal such refusal in writing to the Recreation and Parks Commission by filing notice thereof in writing with the City Clerk-director within thirty days following refusal of the permit. The Recreation and Parks Commission shall consider such appeal at its next meeting following the filing of such appeal. The Recreation and Parks Commission, by majority vote, may affirm or overrule the refusal-action of the director and may, ifn overruling, impose such conditions or changes as the Recreation and Parks Commission deems reasonable.

D. ~~Uses requiring a person or organization to obtain a permit include the following:~~

- ~~1. — Persons or groups proposing to erect or maintain a table, booth or similar structure;~~
- ~~2. — Groups of persons, exceeding seventy five in number;~~
- ~~3. — Persons or groups desiring to reserve a facility or park for a limited time for their exclusive use;~~
- ~~4. — Any persons or groups desiring to make solicitations or sales;~~
- ~~5. — Any person or group desiring to hold a contest, demonstration or exhibit in a park or facility for which an admission or entrance fee is charged;~~
- ~~6. — Any person or group engaging in the sale or consumption of an alcoholic beverage as defined in Chapter 9.18 of this code.~~

E. ~~Each All~~ permits issued pursuant to this chapter ~~is~~ are to be honored by all persons, ~~or groups and organizations upon presentation of~~ when presented with a valid copy of ~~theis~~ permit.

2.24.050 - Use of City personal property — Recreational equipment.

In accordance with the Park Rules and Regulations, the manager of the Recreation Services Division, or his/her designee, Personal property, specifically play or recreational equipment, may be issued a permit for a person, to any group or organization individual to use City-owned recreational equipment for a period not exceeding four consecutive days from the date of issuance of the permit by the director of recreation and parks or a duly appointed representative, in accordance with regulations for use of such equipment.

2.32.130 - Improper political activity.

Pursuant to the authority set forth in Section 3207 of the California Government Code, city employees shall not engage in political activities during their working hours for the city, or on any premises of the city at any time. The political activities of city employees shall conform to pertinent provisions of state law.



AGENDA NO: C-4

MEETING DATE: July 12, 2016

Staff Report

TO: Honorable Mayor and City Council

DATE: June 29, 2016

FROM: Joseph W. Pannone, City Attorney

SUBJECT: Introduction of Ordinance No. 607, which Amends Section 3.34.010 of the Morro Bay Municipal Code Relating to the City's Master Fee Schedule

RECOMMENDATION

Staff recommends Council discuss and introduce, for first reading by title only and with further reading waived, Ordinance No. 607: An Ordinance of the City Council of the City of Morro Bay, California, Amending Section 3.34.010 of the Morro Bay Municipal Code Relating to the City's Master Fee Schedule.

FISCAL IMPACT

The proposed Ordinance will allow the City Council to impose some fees that are market driven, which may be more than the actual costs for the services provided.

BACKGROUND/DISCUSSION

The Staff and City Attorney periodically review the Morro Bay Municipal Code (MBMC) to update its provisions. In addition, as issues and circumstances present themselves, Staff and the City Attorney discover provisions of the MBMC that need updating.

Section 3.34.010 of the MBMC requires the City's Master Fee Schedule to be limited to the City's cost of services and references Article XIIB Section 8(c) of the California Constitution for that limitation. That Section of the MBMC does not reflect the current state of the law, as provided by Proposition 26, which allows some fees to be market based. The proposed Ordinance No. 607 updates Section 3.34.010 to reflect that less restrictive authority.

CONCLUSION

Staff recommends Council discuss the proposed Ordinance No. 607 and introduce it for first reading by title only.

ATTACHMENT

Proposed Ordinance No. 607

01181.0001/302635.1

Prepared By: JWP

Dept Review: JWP

City Manager Review: _____

City Attorney Review: JWP

ORDINANCE NO. 607

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF MORRO BAY, CALIFORNIA, AMENDING
SECTION 3.34.010 OF THE MORRO BAY MUNICIPAL CODE
RELATING TO THE CITY'S MASTER FEE SCHEDULE**

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

WHEREAS, Section 3.34.010 of the Morro Bay Municipal Code (MBMC) establishes a Master Fee Schedule is to be adopted by the City Council;

WHEREAS, that section also states the Master Fee Schedule shall not establish a fee that exceeds the cost of the City of providing the service reimbursed by that fee and refers to Article XIII B, section 8(c) of the California Constitution;

WHEREAS, that Section of the Constitution and stated limitation does not reflect the authority the City has, pursuant to Proposition 26, to set certain fees based on market rates; and

WHEREAS, this Ordinance amends the MBMC to reflect the current state of the law regarding City fees.

NOW, THEREFORE, the City Council of the City of Morro Bay does ordain as follows:

SECTION 1: Sections 3.34.010 of the MBMC is hereby amended to read as follows:

3.34.010 - Established.

The city Master Fee Schedule is established, which shall set forth a consolidated listing of fees as fixed and adopted by the city council, in accordance with all applicable provisions of state and city laws. ~~the appropriate municipal and state codes~~ Such fees shall in no case exceed the actual cost of providing the related service, ~~in compliance with Article XIII B, Section 8(c) of the California Constitution.~~

SECTION 2: This Ordinance shall take effect 30 days after its adoption. The City Clerk, or her duly appointed deputy, shall attest to the adoption of this Ordinance and shall cause this Ordinance to be published and posted in the manner required by law.

INTRODUCED at a regular meeting the of the City Council of Morro Bay, held on the 12th day of July, 2016, by motion of _____, seconded by _____.

PASSED AND ADOPTED on the ___ day of _____, 2016, by the following vote:

AYES:

NOES:

ABSENT:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

JOSEPH W. PANNONE, City Attorney

I, Dana Swanson, City Clerk for the City of Morro Bay, hereby certify that the foregoing ordinance was duly and regularly introduced at a meeting of the City Council on the 12th day of July, 2016, and hereafter the said ordinance was duly and regularly adopted at a meeting of the City Council on the _____ day of _____, 2016, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Morro Bay, California, this _____ day of _____, 2016.

City Clerk of the City of Morro Bay



AGENDA NO: C-5

MEETING DATE: July 12, 2016

Staff Report

TO: Honorable Mayor and City Council **DATE:** June 29, 2016

FROM: Whitney McIlvaine, Contract Planner

SUBJECT: Adoption of Ordinance 601: Local Coastal Program and Zoning Text Amendment (#A00-029) amending Title 17 provisions related to Secondary Dwelling Units and Guesthouses/quarters and accessory living areas

RECOMMENDATION

Staff recommends the City Council adopt, by title only with further reading waived, Ordinance 601: An Ordinance of the City Council of the City of Morro Bay, California Announcing Findings and Adopting Amendments to Title 17 of the Morro Bay Municipal Code to Establish Provisions for Review of Secondary Dwelling Units and Guesthouses, and direct staff to submit a Local Coastal Program (LCP) Amendment to Coastal Commission.

ALTERNATIVE

- 1) Defer adoption of Ordinance 601 and direct staff to return to Planning Commission for reconsideration.

FISCAL IMPACT

The proposed amendments will have negligible effect on City finances.

DISCUSSION

Ordinance 601 was brought before the City Council for introduction and first reading on June 28, 2016. The Council voted 3 to 1, with Mayor Irons recusing himself and Councilman Heading absent, to adopt Ordinance 601, with the changes recommended by the Planning Commission as shown in Section 17.48.320.H.1 in the attached Exhibit A to Ordinance 601. The section cited reflects Council direction to enable permitted secondary dwelling units with active vacation rental licenses as of March 1, 2016 to continue operation under certain conditions. Overall, adoption of the ordinance would resolve inconsistencies with State law regarding secondary dwelling units and provide clear guidelines for the establishment of secondary dwellings and guesthouses and accessory living areas.

ATTACHMENT: A - Ordinance No. 601 with Exhibit A

Prepared By: WM Dept Review: _____
City Manager Review: _____ City Attorney Review: JWP

ORDINANCE NO. 601

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
ANNOUNCING FINDINGS AND ADOPTING AMENDMENTS TO TITLE 17
OF THE MORRO BAY MUNICIPAL CODE TO ESTABLISH PROVISIONS FOR
REVIEW OF SECONDARY DWELLING UNITS AND GUESTHOUSES**

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

Case No. A00-029 (Local Coastal Plan/Zoning Ordinance Amendment)

WHEREAS, it is the purpose of Title 17 of the Morro Bay Municipal Code (“MBMC”) (the “Zoning Ordinance”) to establish a precise and detailed plan for the use of land in the City based on the General Plan; and

WHEREAS, it is important to have clear, consistent, and easy to use and interpret regulations within the Zoning Ordinance; and

WHEREAS, California State Law §65852.2 requires cities to establish standards to allow for secondary dwelling units so as to increase the supply of smaller, affordable housing compatible with the surrounding neighborhood; and

WHEREAS, the proposed amendments are intended to meet the intent of State Law by providing an option to build a secondary dwelling unit in certain zones that permit single-family dwellings and have no more than one existing single-family home on the property; and

WHEREAS, after duly noticed Public Hearings on January 5, 2016, February 16, 2016, and May 3, 2016, the Planning Commission of the City of Morro Bay did forward a recommendation, by adoption of Planning Commission Resolution No. 14-16, to the City Council to amend the Zoning Ordinance to comply with the State legislation (AB 1866) and also clarify review standards for secondary dwelling units and guesthouses; and

WHEREAS, a Negative Declaration was prepared to evaluate the environmental impacts as a result of amendments to Title 17 of the MBMC regarding secondary dwelling units and guesthouses, and determined no significant impacts would result.

NOW, THEREFORE, the City Council of the City of Morro Bay does ordain, as follows:

SECTION 1: The City Council finds:

1. The above recitations are true and correct and constitute the findings of the Council in this matter.
2. The Zoning Ordinance Amendment proposal is consistent with the State Statute AB 1866 and includes similar language, which was previously in effect.
3. The previous amendments to the Zoning Ordinance, adopted by Ordinance No. 576, did not reflect the values of the community.
4. The proposed Zoning Ordinance Amendments will not be injurious or detrimental to the health, safety, comfort, general welfare or well-being of the persons residing or working in the neighborhood.
5. The proposed amendment is in general conformance with the City's General Plan and Local Coastal Plan because they forward the objective of creating a variety of affordable housing types and ensure protection of coastal resources.
6. The Local Coastal Program Implementation Program (Zoning Ordinance) Amendments are in compliance with the intent, objectives, and applicable policies and provisions of the California Coastal Act because a finding of no adverse impact on coastal resources is required in order to approve any application for a secondary dwelling unit or guesthouse, and because neither are allowed in the Commercial Visitor Serving zoning district.
7. The proposed amendment is consistent with and implements Housing Element Policy H-10 (Secondary Units) which states, "Allow for the development of secondary housing units as an affordable housing option throughout the city."
8. For purposes of the California Environmental Quality Act, on November, 29, 2011, a Negative Declaration (State Clearing House number 2011101073) was prepared for the then proposed amendments to Title 17 regarding secondary dwelling units and guesthouses. The Negative Declaration concluded those proposed text changes to the Local Coastal Program and Zoning Ordinance would not result in any significant adverse impacts to the built or natural environment. Nothing in the revisions established by this Ordinance materially alters that conclusion.
9. Pursuant to Morro Bay Municipal Code Section 17.64.080, no amendment to Title 17 shall be legally effective in the coastal zone until the amendment is certified by the Coastal Commission. If the Coastal Commission certifies this Ordinance conditioned on substantive changes being made, then the Council will introduce and adopt another ordinance to incorporate those substantive changes. If the Coastal Commission certifies this Ordinance conditioned on non-substantive changes being made to this Ordinance, then the City Clerk is authorized to amend this Ordinance to reflect those non-substantive changes.

SECTION 2: The City Council hereby repeals Ordinance No. 507, Ordinance No. 576, and Ordinance No. 585.

SECTION 3: Based upon all the foregoing, Title 17 of MBMC is amended set forth in Exhibit “A,” attached hereto and made a part of this Ordinance.

SECTION 4: This Ordinance shall become effective on the 31st day after its adoption but shall not become operative until it is certified by the Coastal Commission.

INTRODUCED at the regular meeting of the City Council held on the 28th day of June 2016, by motion of Councilmember Johnson and seconded by Councilmember Makowetski.

PASSED, APPROVED, AND ADOPTED, by the City Council of the City of Morro Bay, on the ____ day of _____, 2016, on the following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

JOSEPH W. PANNONE, City Attorney

I, Dana Swanson, City Clerk for the City of Morro Bay, hereby certify that the foregoing ordinance was duly and regularly introduced at a meeting of the City Council on the 28th day of June, 2016, and hereafter the said ordinance was duly and regularly adopted at a meeting of the City Council on the _____ day of _____, 2016, by the following vote, to wit:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the City of Morro Bay, California, this _____ day of _____, 2016.

City Clerk of the City of Morro Bay

EXHIBIT A

*The changes to the City's Zoning Ordinance (Title 17), and Local Coastal Program are shown in underline for additions, while ~~strikethrough~~ indicates deletions. Plain text indicates existing zoning ordinance language to be retained. **Bold italics** indicate recommended general changes.*

CHAPTER 17.12 DEFINITIONS

Delete Section 17.12.295, definition for “Granny Unit,” and replace with new definition for “Secondary Dwelling Unit” as follows:

~~17.12.295~~ ~~GRANNY UNIT~~

~~“Granny Unit” means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons (accessory to a single family residence in specific zones permitting such use). It shall include permanent provisions for living, sleeping, eating, cooking and sanitation on the same parcel as the single family dwelling.~~

17.12.295 Secondary dwelling unit.

“Secondary dwelling unit” means a dwelling unit that (i) is detached from or attached to the primary residential dwelling unit, which provides complete independent living facilities for one or more persons, (ii) includes permanent provisions for living, sleeping, eating, cooking, and sanitation on the same lot as the primary residential dwelling unit and (iii) “second unit,” as set forth in Sections 65852.150 and 65852.2 of the California Government Code.

Delete Section 17.12.300, definition for “Guesthouse,” and replace with new definition for “Guesthouse / Accessory living area” as follows:

~~17.12.300~~ ~~Guesthouse.~~

~~“Guesthouse” means any attached or detached accessory building which does not have enclosed access directly to the interior of the principle residence, which has any bathroom facility and which does not contain a kitchen, cooking facilities, or food preparation or storage facilities, and where no compensation in any form is received or paid for use thereof.~~

17.12.300 Guesthouse / Accessory living area.

“Guesthouse / Accessory living area” means an attached or detached habitable area that is used in conjunction with a primary single-family dwelling on the same lot and may have bathroom facilities, but does not have enclosed access to the interior of that primary single-family dwelling and does not contain a kitchen or any cooking or food preparation facilities, nor more than one bedroom.

In general, replace all references in the Zoning Ordinance to “granny unit” with “secondary dwelling unit”. This includes references in Chapter 17.44, Parking and Chapter 17.24, Primary Districts (discussed below).

CHAPTER 17.24 PRIMARY DISTRICTS

The following changes shall be made to the tables in the Chapter 17.24 in designated areas zoned for single-family and multi-family use:

- *In the AG, RA, R-1, R-2, R-3, and R-4 districts, delete the requirement for a minor use permit for secondary dwelling units that meet the applicable standards in Section 17.48.320 “Secondary Dwelling Units.”*
- *In the AG, RA, R-1, R-2, R-3, and R-4 districts, delete the requirement for a minor use permit for guesthouses that meet the applicable standards in Section 17.48.315 “Guesthouse / Accessory living area.”*
- *Delete references to “granny unit”.*

CHAPTER 17.48 GENERAL REGULATIONS, CONDITIONS AND EXCEPTIONS

17.48.315 ~~GUESTHOUSES/QUARTERS AND ACCESSORY LIVING AREAS~~ Guesthouse / Accessory living area.

Where provided by this Title, guesthouses and habitable structures for accessory living areas may be permitted in conjunction with a ~~dwelling unit~~ primary single-family dwelling, subject to the below requirements:

A. ~~Guesthouse Restrictions.~~ Size.

A guesthouse / accessory living area shall not contain more than six hundred forty (640) square feet of habitable floor area ~~containing not more than one bedroom and bathroom~~ nor shall it exceed thirty (30) percent of the floor area of the primary single-family dwelling, ~~and no cooking or food preparation or food storage facilities shall be provided.~~

B. ~~Use-Permit Requirements.~~

~~A guesthouse may be permitted only after obtaining a Minor Use Permit pursuant to Chapter 17.60. In all cases, the Director shall require the recordation of a deed restriction limiting the use to guest purposes only and prohibiting its rental or occupation as a second unit. Such deed restriction shall be subject to the approval of the City Attorney. (Ord. 288 Exh. B (part), 1986; Ord. 263 § 1 (part), 1984)~~

1. Outside the Coastal Commission appeal jurisdiction, guesthouses and accessory living areas may be permitted only after obtaining an administrative coastal development permit pursuant to Chapter 17.58 “Coastal Development Permits and Procedures.”

2. In the CRR zone, a conditional use permit is required pursuant to Chapter 17.60.

3. Inside the Coastal Commission appeal jurisdiction, guesthouses and accessory living may be permitted only after obtaining a regular coastal development permit pursuant to Chapter 17.58 “Coastal Development Permits and Procedures.”

C. Location.

Guesthouses and accessory living areas may be established on any lot zoned R-A, R-1, R-2, R-3, R-4, AG and CRR, with the required permit, in accordance with District Tables in Chapter 17.24, where a primary single-family dwelling has been constructed or is proposed to be constructed in conjunction with the guesthouse or living area. Only one guesthouse / accessory living area or secondary dwelling unit is permitted on the same lot; provided, that both may be permitted on any lot which is a minimum of 7,500 square feet in size, subject to approval of a conditional use permit. Guesthouses and accessory living areas are prohibited in the S.2B Overlay.

D. Development Standards.

Guesthouses and accessory living areas shall comply with all development standards applicable to the zoning of the site on which they are located, including, but not limited to, building height, separation, setbacks, and lot coverage, cumulatively with the primary residence.

E. Parking.

As part of the permit process, additional parking may be required for guesthouses and accessory living areas.

F. Design.

Guesthouses and accessory living areas shall be consistent and compatible with the architectural style of the primary single-family dwelling and the neighborhood, and shall be located on the same lot as the primary residence.

G. Covenant Agreement.

Prior to the issuance of any building or grading permit, a covenant agreement shall be recorded which discloses the structure’s approved floor plan and status as a “guesthouse / accessory living area.” That agreement shall be recorded in the Office of the County Recorder for San Luis Obispo County to provide constructive notice to future property owners. The covenant agreement also may contain authorization for inspections, and to allow the city, upon reasonable time and notice, to inspect the premises for compliance with the agreement and to verify continued compliance with requirements of this section and State and local health and safety codes.

H. No Separate Rental.

A guesthouse / accessory living area may not be rented separately from the primary single-family dwelling. Public notice of each application for a proposed guesthouse or an accessory living area shall clearly state within the project

description it may not be rented separately from the primary single-family dwelling on site.

I. Consistency with the Coastal Act.

Establishment of a guesthouse / accessory living area shall not adversely impact coastal resources such as public access and recreation, public views, and sensitive habitat areas.

17.48.320 ~~Granny Units~~ Secondary dwelling units.

The purpose of this Section is to provide affordable low- and moderate-income housing. ~~Pursuant to Government Code Section 65852.2, in zones where designated, a permit may be granted allowing a granny second unit on lots where there is one single family residence, subject to the following provisions: The following supplemental regulations~~ are intended to comply with Government Code sections 65852.150 and 65852.2 on second units and implement the General Plan, by allowing secondary dwelling units subject to the following requirements. Nothing in Government Code sections 65852.2 or 65852.150 shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act, except that the City shall not be required to hold public hearings for coastal development permit applications for second units. (Government Code subsection 65852.2(j).) Noticing for interested parties and surrounding properties shall be the same as required for coastal development permits. An approval of any secondary dwelling unit in the California Coastal Commission appeal jurisdiction will continue to be appealable to the Coastal Commission.

~~A. Minor Use Permit and Deed Restriction Required~~

~~A granny second unit may be permitted only after obtaining a Minor Use Permit pursuant to Chapter 17.60. A deed restriction in a form approved by the City Attorney shall be recorded limiting the use of said real property to residential purposes only.~~

~~A.B. Location.~~

~~Said A secondary dwelling unit may be located, as an accessory use, on any lot zoned for single family or multi family uses zoned R-A, R-1, R-2, R-3, R-4, and AG, in accordance with District Tables in Chapter 17.24, where a primary single-family residential use has been established or is proposed to be constructed in conjunction with that unit. Only one guesthouse / accessory living area or secondary dwelling unit is permitted on the same lot; provided, that both may be permitted on any lot which is a minimum of 7,500 square feet in size, subject to approval of a conditional use permit. A secondary dwelling unit may be allowed on any lot zoned AG only if the unit is expressly designated and used for farm laborer quarters.~~

~~B.C. Lot Coverage Development Standards.~~

~~Maximum lot coverage allowed for the District that they are located in. Secondary dwelling units shall comply with all development standards applicable to the~~

zoning of the site on which they are located, including, but not limited to, building height, separation, setbacks, and lot coverage, cumulatively with the primary residence.

C.D. Design.

~~Said~~ A secondary dwelling unit shall be consistent and compatible with the architectural style of the main residence primary single-family dwelling and the neighborhood, and shall be located on the same lot as the primary single-family dwelling. All secondary dwelling units shall have a separate outdoor entrance in addition to any enclosed access to the interior of the primary single-family dwelling.

D.E. Size.

~~The total floor area, not including a garage, for a granny second unit shall not exceed 1,200 square feet.~~ The total floor area, including a garage, for a detached secondary dwelling unit shall not exceed the lesser of 900 square feet, as per State guidelines or fifty percent of the living area of the primary single-family dwelling on the same lot; provided, that up to 1,200 square feet, including a garage, may be allowed for a detached secondary dwelling unit with a Conditional Use Permit pursuant to Chapter 17.60 "Use Permits, Procedures, Notices and Variances." The floor area of an attached secondary dwelling unit shall not exceed thirty percent of the living area of the primary single-family dwelling.

E.F. Parking.

A minimum of one additional parking space per bedroom, not to exceed two spaces, shall be provided. The parking spaces may be open and uncovered and may be located in setback areas, however they may not be in tandem with the required parking of the primary single-family dwelling. When more than one space is required for a secondary dwelling unit, tandem spaces shall only be allowed for those two spaces with a Conditional Use Permit pursuant to Chapter 17.60. The primary single-dwelling unit must conform to the parking requirements of Chapter 17.44 "Parking, Driveway and Loading Facilities." Off-street parking shall be permitted in setback areas or through tandem parking, unless the following specific findings are made:

- ~~1. That parking in setback areas or tandem parking is not feasible based upon specific site topography constraints or adverse fire and life safety conditions, or~~
- ~~2. That it is not permitted anywhere else in the City.~~

G. Water Equivalencies and Other Public Facilities.

~~The developer shall obtain and/or pay for all applicable water equivalency and other public facility improvements at the standard set for an apartment unit prior to issuance of a building permit, but will not be subject to a residential unit allocation under the provisions of Measure F.~~

H. Compliance with Title 14.

~~A granny secondary dwelling unit shall be in conformance with all applicable provisions of Title 14 of the Morro Bay Municipal Code in addition to the applicable requirements for height, setback, lot coverage, etc. pursuant to the provisions of Chapter 17.24.~~

F. Water Service and Meter Requirements.

A separate water service and meter is required for detached secondary dwelling units pursuant to Title 13 of the Morro Bay Municipal Code. An attached secondary dwelling unit may be served by a separate water service and meter or may share the water service and meter with the primary single-family dwelling.

G. Permit Requirements.

1. No use permit shall be required for secondary dwelling units except as noted in this section and where a secondary dwelling unit is proposed as an addition to a nonconforming structure pursuant to Chapter 17.56 "Nonconforming Uses and Structures."

2. Outside the Coastal Commission appeal jurisdiction, an administrative coastal development permit, which does not require approval at a Planning Commission hearing but does require noticing, shall be required for secondary dwelling units.

3. Inside the Coastal Commission appeal jurisdiction, a regular coastal development permit, which does not require approval at a Planning Commission hearing but does require noticing, shall be required for secondary dwelling units.

H. Prohibited Use as Vacation Rental.

Secondary dwelling units shall not be rented as vacation rentals. Public notice of applications for secondary dwelling units shall clearly state within the description of the project that they may not be used as vacation rentals.

1. Exemption. Each legal conforming secondary dwelling unit for which the City has issued a valid business tax certificate prior to March 1, 2016, for use of that unit as a vacation rental, may continue to be used as a vacation rental, provided, that (i) the business tax certificate has remained valid continuously from that date, (ii) ownership of that secondary unit is not transferred in any way, by sale, foreclosure, inheritance or otherwise and (iii) the habitable area of that secondary dwelling unit is not enlarged in any way. If any or all of the conditions set forth in (i), (ii), and (iii) are not met, then the rental activity shall immediately cease and said secondary dwelling unit shall no longer be exempt from prohibition of use as a vacation rental.

I. Consistency with the Coastal Act.

Establishment of a secondary dwelling unit shall not adversely impact coastal resources such as public access and recreation, public views, and sensitive habitat areas.

J. Density.

A secondary dwelling unit, which conforms to the requirements of this section, shall not be considered to exceed the allowable density for the lot upon which it is located.

K. No Subdivision of Property.

The secondary dwelling unit shall not be sold separately and no subdivision of property shall be allowed where a secondary dwelling unit has been constructed, unless the subdivision meets all requirements of zoning and subdivision regulations. Nothing in this section shall prohibit joint ownership of the property where a secondary dwelling unit has been constructed.

L. Covenant Agreement.

Prior to the issuance of any building or grading permit, a covenant agreement shall be recorded which discloses the structure's approved floor plan and status as a "secondary dwelling unit." This agreement shall be recorded in the Office of the County Recorder for San Luis Obispo County to provide constructive notice to all future owners of the property. The covenant agreement also may contain authorization for inspections, and to allow the city, upon reasonable time and notice, to inspect the premises for compliance with the agreement and to verify continued compliance with requirements of this section and State and local health and safety codes.

M. Acceptance of Existing Secondary Dwelling Units.

1. Exemption. Each secondary dwelling unit that existed on or before March 1, 2016, ("Existing Secondary Dwelling Unit") and that meets the requirements of the Uniform Housing Code, as determined by the Building Inspector, on a lot that includes the required number of parking spaces for both the primary single-family dwelling and the secondary dwelling unit, is exempt from the unit size and design requirements of this section; provided that to be able to benefit from this exemption an Existing Secondary Dwelling Unit must be issued a timely Acceptance Certificate, as provided in subsection 2., below.

2. Acceptance Certificate Required. To obtain an Acceptance Certificate, an owner of an Existing Secondary Dwelling Unit must file an application with the Community Development Department for acceptance of the unit on or before [DATE]. (within two years of certification of this ordinance)

3. Application and Procedure. An application for a certificate timely filed must include a site and floor plan, documentation of ownership, additional materials as

required to establish the approximate date the secondary dwelling unit was built, and a fee, as established by City Council resolution. Upon receipt of the application, the Building Inspector will schedule an inspection.

4. If the secondary dwelling unit meets basic health and safety standards as identified in the then current Uniform Housing Code, then an Acceptance Certificate will be issued and the secondary dwelling unit address will be entered into the City's database indicating the secondary dwelling unit is legal.

5. If the required inspection determines the secondary dwelling unit does not meet health and safety standards identified in the then current Uniform Housing Code, and it is brought into compliance within a period of not more than 12 months after the date of inspection, then an Acceptance Certificate will be issued and the secondary dwelling unit address will be entered into the City's database indicating the secondary dwelling unit is legal.

6. If the required inspection determines the secondary dwelling unit does not meet health and safety standards identified in the then current Uniform Housing Code, and it is not brought into compliance within a period of not more than 12 months after the date of inspection, then that unit shall be deemed an illegal non-conforming use and demolished within 6 months after notice from the City.

7. Notwithstanding the foregoing application, inspection and certification process, no person shall rent or occupy a secondary dwelling unit that fails to meet the standards required by the Uniform Housing Code.

8. A secondary dwelling unit, which receives an Acceptance Certificate, but does not meet site development standards, will be considered a legal nonconforming unit.

Chapter 17.58 COASTAL DEVELOPMENT PERMITS AND PROCEDURES

17.58.020(G) Additions to Single-Family Homes.

2.b. Regular coastal permit required for additions greater than ten percent of gross floor area, fences, garages, and other ancillary structures, ~~including secondary units~~ (secondary dwelling units) and guesthouses and accessory living areas.

17.58.020(I) Secondary Dwelling Units.

1. Outside the Coastal Commission appeal jurisdiction, an administrative coastal development permit, which does not require approval at a Planning Commission hearing but does require noticing, shall be required for secondary dwelling units.

2. Inside the Coastal Commission appeal jurisdiction, a regular coastal development permit, which does not require approval at a Planning Commission hearing but does require noticing, shall be required for secondary dwelling units.