



CITY OF MORRO BAY CITY COUNCIL AGENDA

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

Regular Meeting - Tuesday, March 28, 2017 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 - None
CLOSED SESSION REPORT
MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS
CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS
PRESENTATIONS

- Month of the Child Proclamation

PUBLIC COMMENT PERIOD

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 MARCH 1, 2017 CITY COUNCIL SPECIAL WORK SESSION; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF MINUTES FROM THE MARCH 14, 2017 SPECIAL CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-3 APPROVAL OF MINUTES FROM THE MARCH 14, 2017 CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-4 APPROVAL OF MINUTES FROM THE MARCH 15, 2017 CITY COUNCIL SPECIAL CLOSED SESSION; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-5 CHILD OF THE MONTH PROCLAMATION; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-6 ADOPTION OF RESOLUTION NO. 12-17 AUTHORIZING FISCAL YEAR 2016-17 BUDGET AMENDMENTS; (FINANCE)

RECOMMENDATION: Council adopt Resolution No. 12-17 Authorizing Fiscal Year 2016-17 Budget Amendments

A-7 ADOPTION OF RESOLUTION NO. 13-17 AUTHORIZING THE CITY OF MORRO BAY TO ENTER INTO A \$250,000 BOAT LAUNCHING FACILITY GRANT AGREEMENT WITH THE DIVISION OF BOATING AND WATERWAYS; (HARBOR)

RECOMMENDATION: Council approve Resolution No. 13-17, authorizing the City Manager to execute the \$250,000 grant agreement #C4128033 with the Division of Boating and Waterways for the first phase (design, engineering and permitting) of a \$1.7 Million grant-funded Boat Launching Facility rehabilitation project.

A-8 ADOPTION OF RESOLUTION NO. 14-17 AUTHORIZING EXECUTION OF A DEED OF TRUST FOR LEASE AGREEMENT ON LEASE SITE 144/144W (MORRO BAY OYSTER CO., LLC – 1287 EMBARCADERO); (HARBOR)

RECOMMENDATION: Council adopt Resolution No. 14-17, authorizing the Mayor to execute a Deed of Trust for Lease Site 144/144W with Morro Bay Oyster Company, LLC, and Cihan Corporation, a California Corporation, for a small loan to cover operating expenses at Lease Site 144/144W, located at 1287 Embarcadero.

A-9 WATER RECLAMATION FACILITY (WRF) PROGRAM UPDATE; (PUBLIC WORKS)

RECOMMENDATION: Council receive and file the status report of the WRF program.

B. PUBLIC HEARINGS – None.

C. BUSINESS ITEMS

C-1 CONSIDERATION OF DRAFT MASTER WATER RECLAMATION PLAN PRESENTATION; (PUBLIC WORKS)

RECOMMENDATION: Council review, consider and provide comments on the presentation of the Draft Master Water Reclamation Plan.

C-2 PRESENTATION AND DISCUSSION OF FISCAL YEAR 2015-16 CITY AUDIT REPORTS; (FINANCE)

RECOMMENDATION: Council receive and file the 2015-16 City audit reports, along with a presentation from the City's auditor, The Pun Group. This audit is for the period of July 1, 2015 through June 30, 2016.

C-3 DIRECTION REGARDING THE MARKET PLAZA REQUEST FOR QUALIFICATIONS; (COMMUNITY DEVELOPMENT)

RECOMMENDATION: Council review the staff report and associated materials, receive the presentation by staff, and provide direction in relation to going out with a Request for Qualifications to identify firms that are interested and qualified to develop plans for the improvement of the Market Plaza and Centennial Parkway area.

C-4 ADOPTION OF ORDINANCE NO. 611, REAUTHORIZING THE PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS CHANNEL FEE; (CITY ATTORNEY/FINANCE)

RECOMMENDATION: Council adopt, after reading by title only and with further reading waived, Ordinance No. 611: An Uncodified Ordinance of the City of Morro Bay, California, Reauthorizing the Public, Educational and Governmental (PEG) Access Channel Fee.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

There will be a Special Work Session (Goals) on **Tuesday, April 4, 2017 at 3:00 p.m.** at the Community Center Multi-Purpose Room located at 1001 Kennedy Way, Morro Bay, California. The next Regular Meeting will be held on **Tuesday, April 11, 2017 at 6:00 p.m.** 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 REASONABLE ARRANGEMENTS CAN BE MADE TO PROVIDE ACCESSIBILITY TO THE MEETING.

This Page Intentionally Left Blank

MINUTES - MORRO BAY CITY COUNCIL
SPECIAL MEETING – MARCH 1, 2017
VETERANS MEMORIAL HALL
209 SURF STREET – 4:00 P.M.

AGENDA NO: A-1
MEETING DATE: March 28, 2017

PRESENT:	Jamie Irons	Mayor
	Robert Davis	Councilmember
	John Headding	Councilmember
	Matt Makowetski	Councilmember
	Marlys McPherson	Councilmember
STAFF:	Dave Buckingham	City Manager
	Chris Neumeyer	Assistant City Attorney
	Dana Swanson	City Clerk
	Ikani Taumoepeau	Deputy City Manager
	Jody Cox	Acting Police Chief

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Irons established a quorum and called the meeting to order at 4:00 p.m. with all members present.

SPECIAL MEETING AGENDA ITEM:

- I. PROPOSITION 64 AND MARIJUANA LAW WORKSHOP
<https://youtu.be/lsPIKAFHVmQ?t=5s>

PUBLIC COMMENT

<https://youtu.be/lsPIKAFHVmQ?t=3m36s>

Mayor Irons opened public comment for items on the agenda.

Rick Morse of Medmar Clinic, Fresno, CA, shared his Clinic has been converted to a referral and consultation service. He believes in the medical aspect of marijuana but does not support recreational use.

Steve Babcock of Los Osos Collective Organics, provides medical marijuana delivery service in San Luis Obispo County and supports safe access for medical patients, including delivery to and brick and mortar dispensaries in Morro Bay.

Eric Powers, CEO of Megan's Organic Market, an organic cultivator and retail service, offered to answer questions, if needed.

Adam Pinterits of Ethnobotanica, a medical collective with patients across San Luis Obispo County, provided an information binder to the Council and offered to remain available to answer questions after the meeting

Rich Besco, driver for Ethnobotanica, spoke in support of medical and recreational marijuana use and asked the Council to have an open mind and consider all options.

Lindsay Schuban, Ethnobotanica, spoke in support of recreational and medical cannabis and shared the positive impact and need in our society.

Rigmor, Morro Bay, shared the positive impact medical marijuana has had on her friends and family members.

Megan of Megan's Organic Market, an organic commercial cannabis cultivator and retail delivery service, has been in operation four years and has 2,000 patients. She offered to answer questions, if needed.

Marie Roth, President of San Luis Obispo Cannabis Business Association, stated the goal of this non-profit association is to help the industry become legally compliant.

The public comment period was closed.

Assistant City Attorney, Chris Neumeyer, presented information for round table discussion by the Council and staff (PowerPoint available [here](#)).
<https://youtu.be/IsPIKAFHVmQ?t=15m22s>

Staff requested the Council consider possible further action on the following topics concerning Proposition 64 and marijuana law:

- Personal marijuana cultivation (indoor and outdoor);
- Personal marijuana use;
- Commercial marijuana operations (medical and recreational) which include dispensaries, cultivation sites, testing, manufacturing and delivery; and
- Marijuana taxation and fees.

Staff encouraged the Council consider definite further action to address the following issues which involve loss of local control if no action is taken:

- Regulation of indoor personal marijuana cultivation;
- Before January 1, 2018 determine whether to regulate or ban commercial marijuana operations which otherwise will be eligible for state licenses; and
- Before January 1, 2018 determine whether marijuana deliveries into the City, from lawful operations outside the City will be allowed or prohibited.

Following the presentation, the Council directed staff begin outreach with a community survey, conduct multiple community workshops divided by subject matter, then bring that community input back to Council. The proposed timeline was to allow six weeks for survey input, conduct workshops over the next two months, then report to Council.

The Council voted 5-0 to appoint Council Members Davis and McPherson to a marijuana subcommittee to review survey materials and provide input during the outreach process.

The Mayor reopened Public Comment:
<https://youtu.be/IsPIKAFHVmQ?t=2h3m7s>

Rick Morse, Medmar Clinic, stated there is a substantial difference between medical and recreational marijuana.

Adam Pinterits, Ethnobotanica, appreciated the discussion and suggested revenue might be considered a priority.

Eric Powers, Megan's Organic Market, discussed testing procedures, energy requirements for indoor gardens, and suggested rather than a lottery or first come first served, the City develop a selection process for choosing which businesses operate in the City

Cindy Gonzalez, Elite Care California, shared information regarding her business and the industry.

ADJOURNMENT

The meeting adjourned at 6:21 p.m.

Recorded by:

Dana Swanson
City Clerk

This Page Intentionally Left Blank

PRESENT:	Jamie Irons	Mayor
	Robert Davis	Council Member
	Matt Makowetski	Council Member
	Marlys McPherson	Council Member
ABSENT:	John Headding	Council Member
STAFF:	Dana Swanson	City Clerk

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Irons established a quorum and called the meeting to order at 3:38 p.m. with all but Council Member Headding present.

PUBLIC COMMENT

Mayor Irons opened the public comment period for items on the agenda; seeing none, the public comment period was closed.

SPECIAL MEETING AGENDA ITEM:

ADVISORY BOARD INTERVIEWS

- a. Tourism Business Improvement District Advisory Board for two openings:
 - i. One current vacancy for the remainder of a term ending 1/31/19 (Member-at-large)
 - ii. One current vacancy for the remainder of a term ending 1/31/21 (Hotelier Member-at-large)
- b. Citizens Transportation Advisory Committee (CTAC) for one opening:
 - i. One appointee to the CTAC countywide advisory board for a term to be determined
- c. Public Works Advisory Board interviews for one opening:
 - i. One current vacancy for the remainder of a term ending 1/31/21
- d. Citizens Oversight & Citizens Finance Committee interviews for two openings:
 - i. One current vacancy for a term ending 1/31/19
 - ii. One current vacancy for a term ending 1/31/22

Clerk Swanson announced Peter Hagen was unable to attend interviews for medical reasons and explained the Council Policies provide the option to make a motion to consider his application. No motion was made.

The following applicants were interviewed to fill two (2) current vacancies on the Tourism Business Improvement District (TBID) Advisory Board: Amanda Birdsong and Sean Green were considered for the Community Member-at-Large position and Steven Allen was considered for the Hotelier Member-at-Large position. Following interviews, the Council voted by written ballot and Ms. Swanson read the results. Mr. Green received three votes (Davis, Makowetski, McPherson) and Ms. Birdsong received one vote (Irons). Mr. Green appointed to the TBID

Member-at-Large position for a term ending January 31, 2019. Mr. Allen received four votes and was appointed to the TBID Hotelier Member-at-Large position for a term ending January 31, 2021 (Irons, Davis, Makowetski, McPherson).

The Council discussed establishing a set term for the City's appointee to the San Luis Obispo County Citizens Transportation Advisory Committee (CTAC).

MOTION: Council Member McPherson moved the Council establish a 4-year term ending January 31, 2021, for the City's appointee to the CTAC. The motion was seconded by Council Member Davis and carried 4-0-1 with Council Member Heading absent.

The following applicants were interviewed to fill a current vacancy as the City's appointee to the CTAC: James Costanzo, Walter Heath, Malcolm McEwen and Chuck Spagnola. Following interviews, the Council voted by written ballot and Ms. Swanson read the results. Mr. Spagnola received three votes (Davis, Makowetski, McPherson) and Mr. Costanzo received one vote (Irons). Mr. Spagnola and was appointed to the CTAC for a term ending January 31, 2021.

The following applicants were interviewed to fill a current vacancy on the Public Works Advisory Board (PWAB): Chris Erlendson, Walter Heath and Malcolm McEwen. Following interviews, the Council voted by written ballot and Ms. Swanson read the results. Mr. Erlendson received two votes (Irons, Makowetski), Mr. Heath received one vote (McPherson), and Mr. McEwen received one vote (Davis). Mr. Erlendson was appointed to the PWAB for a term ending January 31, 2021.

Council Member Davis requested the Clerk Swanson read the Council Policies & Procedures section regarding serving on multiple boards. Ms. Swanson read the following into the record:

Morro Bay Council Policies & Procedures Subsection 6.6.2.4

As a general policy, an applicant shall not be appointed to serve on more than one advisory board, except that a member may also serve on one technical or special-purpose committee at the same time. If appointed to another committee, then he/she will be expected to resign from one board upon being appointed to another.

The Council acknowledged exceptions had been made in the past to allow residents to serve on more than one advisory board when there were very few applicants; however, given the number of applications received, the Council would not make an exception at this time.

Mr. Reisner and Mr. Erlendson excused themselves. Ms. Swanson announced Jean Johnson submitted a letter withdrawing herself from the process earlier in the day.

The following applicants were interviewed to fill current vacancies on the Citizens Oversight & Citizens Finance Committee: Dawn Addis, Homer Alexander, Walter Heath, John Martin and Malcolm McEwen. Following interviews, the Council voted by written ballot and Ms. Swanson read the results. Ms. Addis received three votes (Irons, Makowetski, McPherson) and Mr. Alexander received one vote (Davis). Ms. Addis was appointed to fill the current vacancy for a term ending January 31, 2022. Mr. Heath received two votes (Davis, Makowetski), Mr. Alexander received one vote (McPherson) and Mr. Martin received one vote (Irons). Mr. Heath was appointed to fill the current vacancy for a term ending January 31, 2019.

ADJOURNMENT

The meeting adjourned at 5:28 p.m.

Recorded by:

Dana Swanson
City Clerk

This Page Intentionally Left Blank

PRESENT:	Jamie Irons	Mayor
	Robert Davis	Council Member
	John Headding	Council Member
	Matt Makowetski	Council Member
	Marlys McPherson	Council Member
STAFF:	Dave Buckingham	City Manager
	Joe Pannone	City Attorney
	Dana Swanson	City Clerk
	Ikani Taumoepeau	Deputy City Manager
	Craig Schmollinger	Finance Director
	Rob Livick	Public Works Director
	Scot Graham	Community Development Director
	Jody Cox	Acting Police Chief
	Steve Knuckles	Fire Chief
	Eric Endersby	Harbor Director

ESTABLISH QUORUM AND CALL TO ORDER

The meeting was called to order at 6:02 p.m., with all members present.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION

<https://youtu.be/rlnRVyuS578?t=1m49s>

The City Council, City Manager and Harbor Director recognized Becka Kelly, Jeremiah Jacobs, Marcos Green and Michael Talmadge, who were recently recognized by the Wake of Fame for excellence in personal watercraft rescue.

CLOSED SESSION REPORT – No Closed Session Meeting was held.

MAYOR AND COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS CITY MANAGER REPORTS, ANNOUNCEMENTS & PRESENTATIONS

PRESENTATIONS – None

PUBLIC COMMENT

<https://youtu.be/rlnRVyuS578?t=31m36s>

Paul and Kelly Boisclair, Morro Bay residents and owner of The Siren, provided the business spot. They purchased and renovated the property at Harbor and Main Streets (formerly Happy Jacks), and have been well received since opening. They expressed appreciation for the City's support and responsiveness.

Norma Wightman, Morro Bay, asked that as the City seeks to increase revenue, to keep in mind the importance of protecting City's natural environment as a unique attraction for visitors.

Jeff Heller, Morro Bay resident and member of the General Plan Advisory Committee, expressed concern about the potential cost of the water reclamation facility and suggested the City put the project on hold, create an executive committee to inspect the documents in place, and go back to Coastal Commission to see if it's possible to leave the plant at or near the existing plant.

The public comment period was closed.

A. CONSENT AGENDA
<https://youtu.be/rlnRVyuS578?t=41m44s>

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 FEBRUARY 14, 2017 CITY COUNCIL MEETING;
(ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF MINUTES FROM THE FEBRUARY 21, 2017 SPECIAL CITY COUNCIL MEETING – WORK SESSION; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-3 APPROVAL OF MINUTES FROM THE FEBRUARY 28, 2017 CITY COUNCIL SPECIAL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-4 APPROVAL OF MINUTES FROM THE FEBRUARY 28, 2017 CITY COUNCIL MEETING;
(ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

MOTION: Council Member Davis moved the Council approve Items on the Consent Agenda. The motion was seconded by Council Member McPherson and carried unanimously, 5-0.

By City Policy, Public hearing items cannot begin until 7:00. There was Council consensus to hear Item C-1 next.

C. BUSINESS ITEMS

C-1 ADOPTION OF PERSONNEL RULES & REGULATIONS; EMPLOYER-EMPLOYEE RELATIONS POLICY; POLICY PROHIBITING HARASSMENT, DISCRIMINATION AND RETALIATION; AND DRUG-FREE WORKPLACE POLICY; (ADMINISTRATION)
<https://youtu.be/rlnRVyuS578?t=42m57s>

City Clerk Swanson presented 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: Council Member Headding moved the Council approve the Personnel Rules & Regulations and other related policies by adopting the following: Resolution No. 07-17 rescinding Resolutions No. 46-74, 34-83, 127-89, 46-95, 90-98, 21-04, 58-

04 and 26-05 and establishing Personnel Rules & Regulations for full-time City Employees; Resolution No. 08-17 rescinding Resolution No. 74-69 and establishing Employer-Employee Relations; Resolution No. 09-17 adopting a Policy Prohibiting Harassment, Discrimination, and Retaliation, and Resolution No. 10-17 adopting a Drug-Free Workplace Policy. The motion was seconded by Council Member McPherson and carried unanimously, 5-0.

The Council took a short recess at 6:55 p.m. The meeting reconvened at 7:04 p.m.

B. PUBLIC HEARINGS

- B-1 ADOPTION OF URGENCY ORDINANCE NO. 610 AND INTRODUCTION OF ORDINANCE NO. 611, REAUTHORIZING THE PUBLIC, EDUCATIONAL AND GOVERNMENTAL (PEG) ACCESS CHANNEL FEE; (CITY ATTORNEY)
<https://youtu.be/rlnRVyuS578?t=55m35s>

City Attorney Pannone 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.

MOTION: Council Member Makowetski moved the Council adopt, after reading by title only and with further reading waived, Urgency Ordinance No. 610: An Uncodified Urgency Ordinance of the City of Morro Bay, California, Reauthorizing the Public, Educational and Governmental (PEG) Access Channel Fee; and introduce, for first reading by title only and with further reading waived, Ordinance No. 611: An Uncodified Ordinance of the City of Morro Bay, California, Reauthorizing the Public, Educational and Governmental (PEG) Access Channel Fee to be amended to correct references to Charter, not AT&T. The motion was seconded by Council Member Heading and carried unanimously, 5-0.

C. BUSINESS ITEMS

- C-2 COUNCIL GUIDANCE FOR FISCAL YEAR 2017-18 BUDGET COMPILATION; (FINANCE)
<https://youtu.be/rlnRVyuS578?t=1h2m48s>

Finance Director Schmollinger presented the staff report and responded to Council inquiries.

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

The Council discussed the staff recommendation to cut \$650,000 from the budget over the next three years, with \$250,000 in FY 17/18 from the Project Accumulation and Capital Improvement Funds. Council Member Heading recommended a more aggressive cost reduction plan to produce a minimum of \$650,000 per year without touching the accumulation funds.

There was support for the 3-year timeline targeting \$650,000 in cuts, with year one potentially from the Project Accumulation and Capital Improvement Plan. Staff will bring a list of budget options with prioritized list of cuts that may be considered during the upcoming budget meetings for this and future years.

MOTION: Council Member McPherson moved the Council direct staff to address financial concerns identified in the 10-year budget forecast by finding \$650,000 in cuts over

the next three years, with \$250,000 in FY 17/18 to include \$150,000 from Project Accumulation and \$100,000 from Capital Replacement, with the stipulation the City quickly address years 2 and 3 budget cuts of \$400,000 with options presented to Council. The motion was seconded by Council Member Davis.

Council Member Heading opposed the motion as it was insufficient to address the \$4 million budget gap for streets, facilities, personnel costs and CalPERS issues in the future.

The motion carried 4-1 with Council Member Heading voting no.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS
<https://youtu.be/rlnRVyuS578?t=3h8m5s>

Council Member Heading requested an update on the City's Tourism Division and the SLO County Tourism Marketing District. There was full Council support for this item.

E. ADJOURNMENT

The meeting adjourned at 9:17 p.m. The next Regular Meeting will be held on Tuesday, March 14, 2017 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

MINUTES – MORRO BAY CITY COUNCIL
SPECIAL CLOSED SESSION MEETING –
MARCH 15, 2017
CITY HALL CONFERENCE ROOM–6:00 P.M.

AGENDA NO: A-4

MEETING DATE: March 28, 2017

PRESENT:	Jamie Irons	Mayor
	Robert Davis	Council Member
	John Headding	Council Member
	Matt Makowetski	Council Member
	Marlys McPherson	Council Member
STAFF PRESENT:	Dave Buckingham	City Manager
	Joe Pannone	City Attorney

ESTABLISH QUORUM AND CALL TO ORDER – A quorum was established and the meeting was called to order with all members present.

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

CLOSED SESSION PUBLIC COMMENT - Mayor Irons opened the meeting for public comment for items only on the agenda; seeing none, the public comment period was closed.

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

CS-1 PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Title: City Attorney

RECONVENE IN OPEN SESSION - The City Council reconvened in Open Session. The Council did not take any reportable action pursuant to the Brown Act.

ADJOURNMENT

The meeting adjourned at 7:23 p.m.

Recorded by:

Dana Swanson
City Clerk

This Page Intentionally Left Blank

**A PROCLAMATION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY
DECLARING APRIL 2017 AS "MONTH OF THE CHILD"
AND "CHILD ABUSE PREVENTION MONTH"**

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

WHEREAS, the Morro Bay City Council recognizes that every moment in a child's life is an opportunity for that child to learn, that the quality of these experiences may determine whether a child succeeds in school and in life, and that all children need caring and loving adults in their lives; and

WHEREAS, April - "Month of the Child" and "Child Abuse Prevention Month" – mark a time to recognize that our community's children are precious assets, that the quality of their early years is our collective responsibility, and that we commit ourselves to ensuring that each and every child experiences a high quality early environment – at home, at child care, at school, and in the community – that will promote their optimal development; and

WHEREAS, Friday April 7, 2017, has been named a countywide "Wear Blue Day" to raise awareness about the many children in our midst who suffer daily from abuse and neglect, and to pledge support for strategies that strengthen families and protect our young ones; and

WHEREAS, Saturday, April 8, 2017, will commemorate the "Day of the Child" at the 39th Annual Children's Day in the Plaza celebration from 10:00am to 3:00pm in the San Luis Obispo Mission Plaza; this year's celebration where children and families will have the opportunity to discover creativity, individuality, diversity, and the arts while exploring community resources; and

WHEREAS, a variety of other events honoring Month of the Child will provide an opportunity to acknowledge the dedication of individuals and organizations to improve the lives of children and youth in our county, and raise the awareness of the community, employers, and elected officials of the need to improve the quality, availability, and accessibility of programs supporting children; and

WHEREAS, in this caring and connected county, we will, including and beyond the Month of the Child, continue to dedicate our efforts and our resources to investing in our community's future by investing in and supporting our community's children and youth; and may we remember to listen to and watch the children around us, to have patience and to allow them the opportunity to enjoy the journey of childhood, as exemplified in the San Luis Obispo County Children's Bill of Rights.

NOW, THEREFORE, the Morro Bay City Council is proclaiming April 2017 as the "Month of the Child", and "Child Abuse Prevention Month" and April 8, 2017 as "Day of the Child".

IN WITNESS WHEREOF I have hereunto set my hand and caused the seal of the City of Morro Bay to be affixed this 28th day of March, 2017.

JAMIE L. IRONS, MAYOR
City of Morro Bay, California

This Page Intentionally Left Blank



AGENDA NO: A-6

MEETING DATE: March 28, 2017

Staff Report

TO: Honorable Mayor and Council Members **DATE:** March 22, 2017

FROM: Craig Schmollinger, Finance Director/City Treasurer

SUBJECT: Adoption of Resolution No. 12-17 Authorizing Fiscal Year 2016-17 Budget Amendments

RECOMMENDATION

Council adopt Resolution No. 12-17 authorizing amendments to the City's Fiscal Year (FY) 2016/17 amended budget.

DISCUSSION

On February 14, 2017, the City Council reviewed the Mid-Year Budget figures for FY2016/17, and approved staff's recommended budget amendments by passing Resolution No. 06-17. At that time, known needed/requested revisions to the budget were noted for approval; however, since that time, several additional amendments have been needed for the items identified below.

Vehicle Purchase

During the current FY, the City sold two surplus pieces of equipment, with \$38,000 in revenue being received that was not budgeted for. That equipment consisted a 1979 Caterpillar Motor Grader, and a 2008 Asphalt Zipper. The consolidated maintenance division has indicated there is not a current need to replace this equipment, and a more pressing need exists to replace a maintenance truck that the City no longer has in its Fleet. This truck will allow City crews to more expeditiously respond to issues/service calls, perform work duties independently, and better meet the needs of both internal and external clients.

The request is to allocate \$38,000 in un-anticipated revenue to the purchase of the truck, with the required budget amendments made to the Vehicle Replacement Fund (050) to account for this purchase/receipt of revenue.

Measure Q "District Transaction Tax"

During the FY 2016/17 Mid-Year update presentation, Citizen's Oversight/Finance Advisory Committee (CFAC) Chairperson Barbara Spagnola gave a presentation on the CFAC groups review of "Measure Q" expenditures for the FY 2015/16 year (the City's ½ cent sales tax measure, known as a district transaction tax). During CFAC review, the group recommended Council authorize the allocation of \$55,448 to supplemental street funding work. The \$55,448 represents the difference between budgeted carryforward balance from last year (FY 2015/16) to the current year (FY 2016/17), and actual amounts available for carryforward. When the budget is compiled each year in the spring, carryforward revenue balances are estimated as these amounts will not be known until generally late fall. Given this timing difference, coupled with a similar scenario where total estimated expenditures are estimated before year end (June 30) for budget compilation purposes, an additional \$55,448 of Measure Q money is available for appropriation.

This CFAC recommended and staff supported request is to allocate this \$55,448 of Measure Q money to supplemental street paving work this FY.

Prepared by: _____CS_____	Dept Review: __CS_____
City Manager Review: _____	City Attorney Review: _____

Water Reclamation Facility (WRF)

Also noted during the FY 2016/17 Mid-Year Budget presentation was the need to move all budgeted WRF related revenues and expenditures out of the Fund utilized to account for current Waste Water Treatment Plant operations for the City of Morro Bay/Cayucos Sanitary District jointly owned facility (599 Fund). This requirement was made clear by the City's auditors this past winter, so actual expenses have already been moved over from the 599 fund to the WRF "Department" budget in the Sewer Operating Fund (321 Fund). This current request will satisfy the Auditor's requirements, ensure accounting for the WRF project remains separate and distinct from other sewer activities (e.g. in its own "Department", Department 8312), and is a simple transfer of previously approved budgeted revenues and expenditures.

The net result of this request is no increase in revenues and expenditures approved for this FY; rather moving where these revenues/expenditures are budgeted.

Coastal Commission Grant

In 2016, Council authorized staff to submit a grant application for the round three Coastal Commission grant. The application was successful and the City received notice of the \$200K grant award in August 2016, followed by execution of the grant agreement in March 2017. This funding is intended to be utilized for the General Plan/Local Coastal Program/Zoning Code Update, and will help defray the City's cost of completing the project.

The requested budget amendment is needed to account for the \$200K in Coastal Commission grant revenue received, as well as anticipated expenditures of a like amount. This is a simple cleanup item to account for these currently unbudgeted revenues/expenditures, while assuring we address previous year audit findings relating to some departments having greater actual expenditures than approved budgeted expenditures at year end.

ALTERNATIVES

The Council can choose to not approve one or all the requested amendments, or choose to allocate the supplemental Measure Q or vehicle purchase funding to another source. If Council decides not to approve the Coastal Commission amendment, there could be a risk of project delay or need to return the noted \$200K. If Council decides not to move forward with the WRF budget amendment, there could be audit findings in the current year relating to not addressing the auditor's requirements.

ATTACHMENT

Resolution No. 12-17 Approving Amendments to the FY 2016/17 Operating and Capital Budgets

RESOLUTION NO. 12-17

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA,
AUTHORIZING AMENDMENT TO THE CITY'S 2016/17
OPERATING AND CAPITAL BUDGETS**

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

WHEREAS, the City of Morro Bay is required to appropriate and expend public funds to conduct its day-to-day business activities; and

WHEREAS, the City Council adopted the original Operating and Capital Improvement Budgets on June 14, 2016, by Resolution No. 47-16; and

WHEREAS, the City Council amended the original Operating and Capital Improvement Budgets on February 14, 2017, by Resolution No. 06-17; and

WHEREAS, the City Council deems it necessary to further amend said budgets.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, that the operating budgets of the City of Morro Bay are amended by the additional revenues and expenditures, as shown on the attached schedules.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 28th day of March 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

**2016/17 Budget Adjustments - March 28, 2017 Agenda Item
Resolution Exhibit A**

<u>Fund/Department</u>		<u>WRF Budget Amendments</u>			
		<u>2016/17 Budget</u>			
<u>Revenues</u>	<u>Account #</u>	<u>Description</u>	<u>Current</u>	<u>Proposed</u>	<u>Change</u>
MB/CS Waste Water Treatment Plant Relocation	599-5255-3499	Other Revenue/Current Service Revenues	\$8,333,856	\$2,387,051	\$ (5,946,805)
Sewer Fund /Waste Water Treatment Plant Relocation	321-7710-3499	Other Revenue/Current Service Revenues	\$ -	\$ 5,946,805	\$ 5,946,805
		<u>Total</u>	\$8,333,856	\$ 8,333,856	\$ -
<u>Expenditures</u>					
MB/CS Waste Water Treatment Plant Relocation	599-8312-6105	Consulting Services	\$3,546,605	\$ -	\$ (3,546,605)
MB/CS Waste Water Treatment Plant Relocation	599-8312-6106	Contractual Services	\$2,400,000	\$ -	\$ (2,400,000)
Sewer Fund /Waste Water Treatment Plant Relocation	321-8312-6105	Consulting Services	\$ -	\$ 3,546,605	\$ 3,546,605
Sewer Fund /Waste Water Treatment Plant Relocation	321-8312-6106	Contractual Services	\$ -	\$ 2,400,000	\$ 2,400,000
		<u>Total</u>	\$5,946,605	\$ 5,946,605	\$ -

		<u>Remaining Budget Amendments</u>			
<u>Revenues</u>					
Gen. Gov. Vehicle Replacement/Public Works	050-1111-3990	Other Misc. Revenues	\$0	\$38,000	\$ 38,000
Capital Projects -Community Development Grants	915-8700-3371	State Grant Public Service	\$0	\$200,000	\$ 200,000
Sales Tax Measure Q/Interfund Transactions	003-9614-XXXX	Use of Fund Balance From FY 2015/16 Unexpended Funds	\$0	\$55,448	\$ 55,448
		<u>Total</u>	\$0	\$293,448	\$293,448
<u>Expenditures</u>					
Capital Projects -Community Development Grants	915-8700-6106	Contractual Services	\$0	\$200,000	\$ 200,000
Gen. Gov. Vehicle Replacement/Public Works	050-5205-7202	Trucks	\$70,000	\$108,000	\$ 38,000
Sales Tax Measure Q/Pavement Management Plan	003-9614-6106	Contractual Services	\$982,328	\$1,037,776	\$ 55,448
		<u>Total</u>	\$1,052,328	\$1,345,776	\$293,448



AGENDA NO: A-7

MEETING DATE: March 28, 2017

Staff Report

TO: Honorable Mayor and City Council

DATE: March 14, 2017

FROM: Eric Endersby, Harbor Director

SUBJECT: Adoption of Resolution No. 13-17, Authorizing the City of Morro Bay to Enter Into a \$250,000 Boat Launching Facility Grant Agreement with the Division of Boating and Waterways

RECOMMENDATION

Staff recommend the City Council approve Resolution No. 13-17, authorizing the City Manager to execute the attached \$250,000 grant agreement #C4128033 with the Division of Boating and Waterways for the first phase (design, engineering and permitting) of a ~\$1.7 Million grant-funded Boat Launching Facility (BLF) rehabilitation project.

ALTERNATIVES

The City Council could opt to not approve this resolution and BLF grant acceptance.

FISCAL IMPACT

No direct fiscal impacts anticipated beyond staff time and ancillary administrative costs.

BACKGROUND

Morro Bay's BLF was constructed decades ago with (then) California Department of Boating & Waterways, now Division of Boating & Waterways (DBW) grant funding. In the early 1990's, again with DBW grant funding, our BLF underwent a major renovation and upgrade, including the current fish cleaning station, Tidelands Park restroom and Tidelands side-tie dock. The City built Tidelands Park at the same approximate time from a then-empty dirt lot.

In the early 2000's, again with DBW funding, new boarding floats and pilings were installed, and the approach piers to the old docks were removed to arrive at the current configuration.

Currently, the concrete ramp into the water is seriously eroded with missing chunks of concrete and exposed rebar. The docks, while relatively intact, are also due for replacement and upgrade with modern design and materials. In late 2013, staff began discussion with DBW to design and fund a facility rehabilitation with the following elements:

1. Replacing the concrete ramp and boarding float abutments in their entirety,
2. Installing new boarding floats (pilings to remain),
3. Parking lot grind and overlay,
4. Replacing and covering the fish cleaning station, to include user protection from weather and aggressive bird activity, and improved bird-proof fish carcass dumpster,
5. ADA-accessibility improvements to the entirety of the facility, including the public restroom,

Prepared By: EE

Dept Review: EE

City Manager Review: _____

City Attorney Review: JWP

6. Potentially adding a low-freeboard kayak launching float separate from the main vessel launching floats, and
7. New signage throughout.

The project was scoped and cost-estimated by DBW, which provided the backbone for the City's \$1.734 Million application for grant funding the project under DBW's BLF grant program. A concept overview of the proposed project is included with this staff report as Attachment 1.

At their March 6, 2014, meeting, the Harbor Advisory Board reviewed the proposed project concept and gave it their unanimous support, including providing some specific project comment details that will be considered in the design phase.

In June, 2016, DBW informed staff \$250,000 of Morro Bay's BLF application funding was in the Governor's budget, and slated to be approved by the DBW Commission in February, 2017. A copy of DBW's letter to the City on this account is included with this staff report as Attachment 2.

In January of this year, DBW staff began working with City staff on the requirements and logistics of accepting the grant, including the scheduled DBW Commission hearing, now slated for April 4-5, information needed for the feasibility report and coordinating an on-site meeting with a DBW Commissioner to view the proposed project area. Those works are ongoing.

DISCUSSION

This \$250,000 grant is for the first phase of the project, specifically, for design to the approximately 60% level, and obtaining necessary permits. Once design is at 60%, we will be in a position to determine an accurate working project cost, and apply for the final design, construction and management costs in a second, and final, grant. That second grant could come in the 2017/2018 Fiscal Year, or the 2018/2019 Fiscal Year, depending on the Governor's budgeting.

CONCLUSION

The project will go through the City's Planning Commission/City Council and other permitting as necessary steps in public and CEQA review processes, with opportunities to comment and make changes to the specific design and other elements as-appropriate.

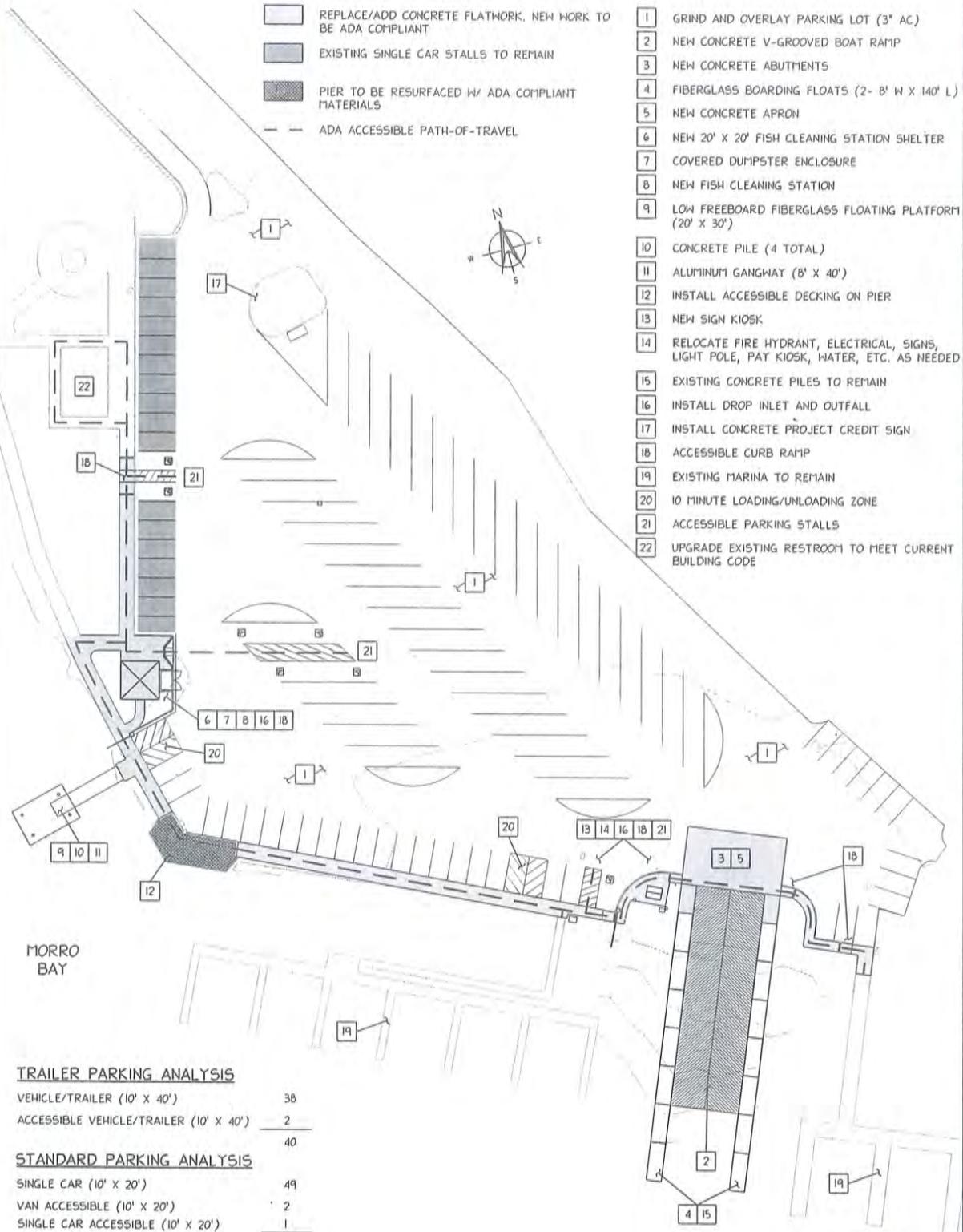
In order to continue with this grant-funded opportunity from DBW to rehabilitate Morro Bay's BLF, staff recommend the City Council approve Resolution No. 13-17 as-proposed, which will enable the City to enter into the attached grant agreement and follow-on design, permitting and construction steps.

ATTACHMENTS

1. DBW-produced BLF renovation concept overview plan.
2. June, 2016 letter from DBW notifying the City of the grant funding approval.
3. Morro Bay BLF grant and associated paperwork.
4. Proposed Resolution No. 13-17

LOCAL ASSISTANCE PLANNING MORRO BAY BOAT RAMP REPLACEMENT

MORRO BAY
SAN LUIS OBISPO COUNTY CALIFORNIA
JANUARY, 2014



- REPLACE/ADD CONCRETE FLATWORK, NEW WORK TO BE ADA COMPLIANT
- EXISTING SINGLE CAR STALLS TO REMAIN
- PIER TO BE RESURFACED W/ ADA COMPLIANT MATERIALS
- ADA ACCESSIBLE PATH-OF-TRAVEL

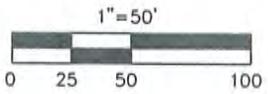
- 1 GRIND AND OVERLAY PARKING LOT (3' AC)
- 2 NEW CONCRETE V-GROOVED BOAT RAMP
- 3 NEW CONCRETE ABUTMENTS
- 4 FIBERGLASS BOARDING FLOATS (2- 8' W X 140' L)
- 5 NEW CONCRETE APRON
- 6 NEW 20' X 20' FISH CLEANING STATION SHELTER
- 7 COVERED DUMPSTER ENCLOSURE
- 8 NEW FISH CLEANING STATION
- 9 LOW FREEBOARD FIBERGLASS FLOATING PLATFORM (20' X 30')
- 10 CONCRETE PILE (4 TOTAL)
- 11 ALUMINUM GANGWAY (8' X 40')
- 12 INSTALL ACCESSIBLE DECKING ON PIER
- 13 NEW SIGN KIOSK
- 14 RELOCATE FIRE HYDRANT, ELECTRICAL, SIGNS, LIGHT POLE, PAT KIOSK, WATER, ETC. AS NEEDED
- 15 EXISTING CONCRETE PILES TO REMAIN
- 16 INSTALL DROP INLET AND OUTFALL
- 17 INSTALL CONCRETE PROJECT CREDIT SIGN
- 18 ACCESSIBLE CURB RAMP
- 19 EXISTING MARINA TO REMAIN
- 20 10 MINUTE LOADING/UNLOADING ZONE
- 21 ACCESSIBLE PARKING STALLS
- 22 UPGRADE EXISTING RESTROOM TO MEET CURRENT BUILDING CODE

TRAILER PARKING ANALYSIS

VEHICLE/TRAILER (10' X 40')	38
ACCESSIBLE VEHICLE/TRAILER (10' X 40')	2
	40

STANDARD PARKING ANALYSIS

SINGLE CAR (10' X 20')	49
VAN ACCESSIBLE (10' X 20')	2
SINGLE CAR ACCESSIBLE (10' X 20')	1
	42



1 Capitol Mall, Ste. 500
Sacramento, CA 95814

K:\CAPITAL_OUTLAY\STAFF\Kari_Rose\Local_Assistance\Morro_Bay\1031--Morro_Bay_Launching_Facility_Boat_Ramp_Replacement\1_PLANNING\DWG1031--Morro-Bay-Proposed.dwg 1/17/14 7:36am krose



State of California • Natural Resources Agency

Edmund G. Brown Jr., Governor

DEPARTMENT OF PARKS AND RECREATION

Division of Boating and Waterways
One Capitol Mall, Suite 500
Sacramento, California 95814

Lisa Ann L. Mangat, Director

Mr. Eric Endersby
Harbor Director
City of Morro Bay Harbor Department
1275 Embarcadero
Morro Bay, CA 93442



JUN 07 2016

State Budget Notification for FY 2016/17 Funding

Dear Mr. Endersby:

The Department Parks and Recreation, Division of Boating and Waterways (DBW) is pleased to inform you that funding for the proposed projects below was included as a part of the California State FY2016/17 Budget.

DBW anticipates the projects will be presented at the tentatively scheduled Boating and Waterways Commission (Commission) meetings noted below for public and Commission advice and comment:

August 9-10, 2016

- o Silver Lake BLF \$910,000

November 8-9, 2016

- o Doran Park BLF \$990,000
- o San Francisco Marina East Loan \$8,000,000
- o Treasure Island Loan \$4,200,000

February 2017 (Dates to be determined)

- o Morro Bay BLF \$250,000
- o Redondo Beach BLF \$580,000

May 2017 (Dates to be determined)

- o Trinity Center BLF \$1,640,000
- o East Park Reservoir BLF \$150,000
- o Stony Gorge Reservoir BLF \$150,000

Approximately six to eight weeks before the scheduled Commission meeting, someone from my staff will be in contact with you to schedule a site visit and discussion for development of DBW's Feasibility Report. This report will identify the scope and recommended funding for the potential project and future agreement. DBW is prohibited from reimbursing for work occurring prior to the execution of an agreement. If your agency proceeds with work prior to execution, it is at its own risk and expense.

DBW appreciates your interest in developing these boating facilities and I look forward to working with you to continue our partnership in developing the proposed projects. Please feel free to contact me if you have any further questions or concerns at keren.dill@parks.ca.gov or (916) 327-1809.

Sincerely,

Keren Dill, Chief
Boating Facilities Development and Financing Unit

State of California – Natural Resources Agency
DEPARTMENT OF PARKS AND RECREATION
DIVISION OF BOATING AND WATERWAYS

GRANT AGREEMENT

GRANTEE: City of Morro Bay, Harbor Department

GRANT PERFORMANCE PERIOD is from: Effective date and continues to February 1, 2019.

GRANT AGREEMENT PERFORMANCE PERIOD is from: Effective date and continues 20 years from Date of Acceptance of Project.

PROJECT TITLE: Morro Bay Boat Launching Facility (#1116) **GRANT NUMBER:** C4128033

The Grantee agrees to the terms and conditions of this grant, hereinafter referred to as Agreement, and the State of California, acting through its Director of Parks and Recreation, pursuant to the State of California agrees to fund the total State grant amount indicated below for the project identified in the Feasibility Report which is a part of the agreement consisting of: Exhibit A "Small Craft Launching Facility Construction Grant and Operation Agreement", Exhibit A, Attachment 1 "Department of Parks and Recreation, Division of Boating and Waterways Maintenance Guidelines", Exhibit B "Morro Bay Boat Launching Facility Feasibility Report", Exhibit C "General Terms and Conditions", ____ total pages.

Grantee: City of Morro Bay,
Harbor Department
Address: 1275 Embarcadero
Morro Bay, CA 93442

Agency: Department of Parks and Recreation
Division of Boating and Waterways
Address: One Capitol Mall, Suite 500
Sacramento, CA 95814

DRAFT

BY: _____
(Authorized Signature)

BY: _____
(Authorized Signature)

(Printed Name and Title of Authorized Representative)

LYNN SADLER, DEPUTY DIRECTOR
(Printed Name and Title of Authorized Representative)

Date _____

Date _____

**CERTIFICATE OF FUNDING
(FOR STATE USE ONLY)**

GRANT C4128033	AMENDMENT NO	CALSTARS VENDOR NO 4000000048-03		PROJECT NO
AMOUNT ENCUMBERED BY THIS DOCUMENT \$250,000.00	FUND TITLE HARBORS AND WATERCRAFT REVOLVING FUND		AGENCY BILLING CODE NO 053709	
PRIOR AMOUNT ENCUMBERED BY THIS DOCUMENT \$0.00	ITEM 3790-101-0516	CHAPTER 23	STATUTE 2016	FISCAL YEAR 2016/17
TOTAL AMOUNT ENCUMBERED TO DATE \$250,000.00	INDEX 1709	OBJECT CODE 702	PCA CODE 61016	PROJECT/WORK PHASE
T.B.A. NO	<i>I hereby certify upon my own personal knowledge that the budgeted funds are available for this encumbrance.</i>			
B.R.NO	ACCOUNTING OFFICER'S SIGNATURE		DATE	

**SMALL CRAFT LAUNCHING FACILITY
CONSTRUCTION GRANT AND OPERATION AGREEMENT**

TABLE OF CONTENTS

ARTICLE 1 – DEFINITIONS 3

ARTICLE 2 - GRANTEE'S WARRANTIES 4

ARTICLE 3 - TERM OF AGREEMENT 4

ARTICLE 4 – BUDGET CONTINGENCY 5

ARTICLE 5 - DISBURSEMENT OF GRANT 5

ARTICLE 6 – DESIGN AND CONSTRUCTION OF PROJECT 6

ARTICLE 7- COMPLETION OF PROJECT 9

ARTICLE 8 - OPERATION AND MAINTENANCE OF PROJECT 9

ARTICLE 9 – BREACH OF AGREEMENT 11

ARTICLE 10 - LIABILITY AND FIRE INSURANCE 12

ARTICLE 11 – INSTALLATION OF OTHER FACILITIES 13

ARTICLE 12 - SIGN REFERRING TO DEPARTMENT FINANCING 14

ARTICLE 13 – DIRECTIONAL SIGNS 14

ARTICLE 14 – WAIVER OF RIGHTS 15

ARTICLE 15 – PROJECT REPRESENTATIVES 15

ARTICLE 16 – REMEDIES NOT EXCLUSIVE 15

**SMALL CRAFT LAUNCHING FACILITY
CONSTRUCTION GRANT AND OPERATION AGREEMENT**

ARTICLE 17 - OPINIONS AND DETERMINATIONS.....15

ARTICLE 18 - ASSIGNMENT.....15

ARTICLE 19 - SUCCESSORS AND ASSIGNS OBLIGATED.....16

ARTICLE 20 -LIABILITY.....16

ARTICLE 21 - TERMINATION..... 16

ARTICLE 22 – SUPERSEDING GENERAL TERMS AND CONDITIONS 17

ARTICLE 1 – DEFINITIONS

- A. "Account": An interest bearing account to be established by the Grantee for the deposit of Grant funds when grant funds are disbursed in advance (see Article 5); such account is to be designated the "Boating Grant – Morro Bay Boat Launching Facility Development Fund" which shall reflect all receipts and expenditures of grant funds.
- B. "Budget Act": The Legislature enactment of a budget in support of on-going programs (appropriations) in accordance with the provisions of Section 12 of Article IV of the Constitution of the State of California.
- C. "CEQA": The California Environmental Quality Act.
- D. "Commission": The Boating and Waterways Commission.
- E. "Date of Acceptance": The date specified on the Project Completion Certification and which denotes the beginning of the twenty (20) year portion of the Grant term in accordance with Article 3 (A) of this Exhibit.
- F. "Department": The Department of Boating and Waterways.
- G. "Effective Date": The effective date of this Agreement is either the start date or the approval date by the Department of General Services, whichever is later. No work shall commence until the Effective Date.
- H. "Exhibit B": The feasibility report exhibit presents the proposed project in "concept" form only. The actual Project layout shall be determined by the Grantee and the engineer of record (to be determined) during the design process taking actual site conditions and public safety into account. The Project must meet the scope, cost and intent of this report and shall conform to Department guidelines.
- I. "Grant": Funds provided pursuant to Harbors and Navigation Code section 72.5 to finance all or part of the Project Costs.
- J. "Grantee": The Entity identified on the Standard Agreement STD 213.
- K. "Project": The construction and development of a small craft launching facility as described in Exhibit B.
- L. "Project Area": The real property, and improvements thereto, identified in Exhibit B, within which the Project will be undertaken.
- M. "Project Completion Certification": A fully executed Notice of Completion, or equivalent, which states the Grantee, has accepted the Project as complete on a specific date (Date of Acceptance).
- N. "Project Costs": Management, design, material and construction costs that are incurred by

the Grantee for the purpose of completing the Project. However, Project costs incurred:

1. For indirect or overhead charges may only be reimbursed with prior written approval by the Department and may be no greater than the combined maximum budget allocation for *Engineering, Inspection* and *Permits* Costs as identified in Exhibit B (Feasibility Report – Cost Estimate Table),
2. For engineering, inspection, and management services provided by Grantee or Grantee's personnel may only be reimbursed with prior written approval of Department, and
3. Shall not include any expenses incurred prior to the Effective Date of this Agreement.

ARTICLE 2 - GRANTEE'S WARRANTIES

- A. Grantee warrants that the obligation created by this Agreement will not create an indebtedness or liability contrary to the provisions of Section 18 of Article XVI of the Constitution of the State of California.
- B. Grantee warrants that it has title to, or adequate interests in, the Project Area. Adequate interests include, but are not limited to, the following:
 1. Access to the Project Area by a maintained public way,
 2. A right of passage over a waterway, open to the public, between the Project Area and navigable waters, and
 3. Easements or other rights of way outside the Project Area sufficient to provide utilities and services to the Project.
- C. Grantee warrants that there is no encumbrance, lien, easement, license, title, cloud or other interest that may interfere with the Project Area or use thereof by the public.

ARTICLE 3 - TERM OF AGREEMENT

- A. This Agreement, subject to any provision for prior termination, shall begin on the Effective Date and shall continue for twenty (20) years from the Date of Acceptance by the Grantee.
- B. This Agreement may be extended, amended or cancelled upon the written agreement of the parties.

ARTICLE 4 – BUDGET CONTINGENCY

- A. Only funds that have been appropriated by the Legislature and approved for expenditure on the Project by the Commission, on or before the Effective Date of this Agreement, are authorized for disbursement through this Agreement.
- B. In the event that the Legislature or Commission, for any reason, do not approve sufficient funding for this project, or should the Grantee be unable to complete the Project within the established budget or otherwise be unable to fund any costs over the established budget, and provided that Grantee has not accepted any grant funds, Department shall have no liability to pay any funds whatsoever to Grantee or to furnish any other consideration under this Agreement and Grantee shall not be obligated to perform any provision of this Agreement; this Agreement shall be of no further force and effect.
- C. In the event that the Legislature or Commission do not approve sufficient funds to complete the Project, or should the Grantee be unable to complete the Project within the established budget or otherwise be unable to fund any costs over the established budget, and Grantee has drawn grant funds:
 - 1. Grantee shall repay all drawn grant funds within ninety (90) days of the end of the fiscal year that such approval is denied, or
 - 2. Grantee shall complete the Project within the scheduled timeline using Grantee's own funds, or
 - 3. Department and Grantee may agree upon a reduced scope version of the Project to be completed within the scheduled timeline and all funds in excess of those previously appropriated necessary to complete the Project shall come from Grantee, or
 - 4. Department and Grantee may, within ninety (90) days of knowledge of such denial, agree that the expenditure of such funds toward the Project constitutes construction completion. The date of such agreement shall become the Date of Acceptance of the Project and Grantee shall be obligated to perform all non-construction provisions of this Agreement for twenty (20) years beyond the Date of Acceptance.

ARTICLE 5 - DISBURSEMENT OF GRANT

The Department shall provide a Grant to the Grantee in the maximum amount stated on STD 213 line 3 of this Agreement, however.

- A. No funds shall be disbursed for work performed prior to the Effective Date of this Agreement.
- B. The Department shall have no obligation to disburse any of the Grant unless and until the Grantee demonstrates that it has acquired all permits necessary to construct and operate the Project.
- C. The Department shall have no obligation to disburse any of the Grant unless and until the Grantee demonstrates that it has satisfactorily complied with the California Environmental Quality Act (CEQA) for the Project.
- D. Grant disbursements to cover Project Costs shall be disbursed in arrears as follows:
 - 1. The Grantee may request a Grant disbursement in arrears at least quarterly, but no more frequently than monthly using the form provided by the Department unless Grantee has a form otherwise approved by Department in writing. Paid invoices or other evidence of Grantee's payment of Project Costs must accompany such requests.
 - 2. The Department may withhold from Grant disbursements an amount equal to ten Percent (10%) of each disbursement until the Department has accepted the Project as complete and has approved all Project Costs.
 - 3. The Grantee shall request final disbursement no later than sixty (60) days following the Date of Acceptance of the Project by the Grantee.
- E. The Department may withhold any Grant disbursement if the Grantee fails to comply with any of the provisions of this Agreement.

ARTICLE 6 – DESIGN AND CONSTRUCTION OF PROJECT

- A. The Grantee shall obtain from the Department advance written approval of the following:
 - 1. All bid documents prior to advertisement,
 - 2. All contracts prior to award, and
 - 3. All change orders of \$5,000 or more, for any work performed under this Agreement, and
 - 4. All changes to project schedule discussed in Subpart D of this Article, of 30 days or more.
- B. All architectural and engineering contracts for plans and specifications shall require that the plans and specifications:
 - 1. Be prepared by persons licensed by the State of California to undertake the type of design work required by the Project (engineer's/architect's certificate number to appear on construction contract design documents),

2. Be prepared in conformance with the most recent version of the Department of Boating and Waterways' *Layout, Design and Construction Handbook for Small Craft Boat Launching Facilities*,
 3. Be submitted to the Department and Grantee in 11" X 17" hardcopy and on CD or DVD in full sized and 11" X 17" PDF format. Specifications shall also be submitted in hardcopy and in PDF format,
 4. Become the property of the Grantee,
 5. Provide for all Project facilities set forth in Exhibit B,
 6. Provide for shoreside facilities for removing waste from vessel holding tanks in accordance with the Harbors and Navigation Code section 654.1.
- C. All construction contracts for the Project shall:
1. Be awarded in accordance with all applicable laws and regulations,
 2. Contain the following clause: "The Department of Boating and Waterways and its agents may, at any and all reasonable times during the term of this Agreement, enter the Project Area for purposes of inspecting the Project Area."
 3. Contain a clause stating that the Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee who is employed in the work covered by such contracts or against any applicant for such employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age, marital status, and denial of family care leave, and that such provisions shall include, but not be limited to: employment, upgrading, promotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship,
 4. Contain a clause that the construction contractor shall comply with all air pollution and environmental control rules, regulation, ordinances and statutes which apply to the Project and any work performed pursuant to this Agreement,
 5. Require that the Project be constructed according to the plans and specifications prepared for the Project, and that quality control shall be performed, and compliance with specifications shall be verified, by qualified professionals selected by the Grantee or Grantee's representative, and
 6. Require the preparation of a concrete test panel as specified in subsection F of this Article.

7. Shall contain the requirements of Article 10 Liability and Fire Insurance and Article 20 Liability of this Agreement.
- D. The Grantee shall, within sixty (60) days of approval of this Agreement, provide the Department with a Project schedule showing the proposed dates of the following Project phases or milestones:
1. Beginning and ending dates of Project design consultant selection by Grantee,
 2. Submission of the consultant services agreement to the Department for approval,
 3. Beginning and ending of Project design,
 4. Submission of final plans and specifications to the Department for approval at 30%, 60%, 90% and 100% completion,
 5. Beginning and ending dates of Grantee advertising of Project for bids,
 6. Project bid opening date,
 7. Submission of the construction Agreement to the Department for approval,
 8. Beginning and ending dates of Project construction,
 9. Acceptance of Project by the Grantee, and
 10. Submission of a Project Completion Certification to the Department.
- E. The Grantee shall provide the Department with a Construction Schedule showing all construction milestones, including the date the v-grooving test panel will be prepared and ready for Department inspection as required by Section F below.
- F. No placement or v-grooving of concrete for boat launching ramps on the Project shall be allowed until the construction contractor demonstrates proficiency in creating a satisfactory v-grooved surface by preparing a concrete test panel measuring no less than 6 feet by 4 feet. A Department representative must accept the test panel before the construction contractor shall be allowed to place or v-groove concrete for boat launching ramps. Precast boat launching ramp panels are exempt from the test panel requirement but must also be approved by a Department representative prior to placement or installation. Test panels must be adjacent to, but not part of, any ramp work to be completed and must remain accessible until all ramp work is completed and accepted by Department. Contractor may incorporate test panel into other concrete work (i.e. trash enclosure, etc.).
- G. Prior to the commencement of the construction of the Project, the Grantee shall cause the contractor and a corporate surety acceptable to the Department to furnish in favor of the Grantee and the Department, as their interests may appear, bonds or other security interests as allowed pursuant to Public Contract Code sections 10263 and 22300 in the minimum amounts indicated below:

1. Faithful performance – one-hundred Percent (100%) of the total contract bid price.
 2. Labor and materials – one-hundred Percent (100%) of the total contract bid price.
- H. The Grantee shall provide at least quarterly written reporting to the Department as to the progress and status of the project using the form provided by the Department unless Grantee has a form otherwise approved by the Department in writing.

ARTICLE 7-COMPLETION OF PROJECT

- A. The Grantee shall complete the Project no later than February 1, 2019.
- B. The Grantee shall provide the following to the Department within sixty (60) days of the Date of Acceptance:
 1. A Project Completion Certificate (or equivalent)
 2. An accounting of all Grant funds

ARTICLE 8- OPERATION AND MAINTENANCE OF PROJECT

- A. The Grantee shall not transfer its interest in the Project Area without the written approval of the Department.
- B. The Project and all other improvements constructed or placed in the Project Area shall be operated solely as a recreational boat launching facility. Other uses of the facility such as for craft fairs, festivals, SNO-PARKS, special events, storage, transient parking, camping, etc., are not allowed without the prior written permission of the Department.
- C. The Project Area shall be open to all recreational vessels, including vessels powered by 2-stroke and 4-stroke gasoline engines, at all times during the term of this Agreement except as approved by the Department and Commission. Notwithstanding Harbors and Navigation Code section 660, any non-emergency restrictions related to time-of-day use, speed zones, special-use areas, or pollution control measures in the Project Area which result in closure or partial closure of waterways in the project area to any recreational vessel shall be subject to prior approval by the Department and Commission. Failure to obtain prior approval of the Department and Commission for such restrictions shall constitute a breach of this Agreement and may result in penalties set forth in Article 9 of this Exhibit.
- D. The Grantee (or any lessee or concessionaire operating under the authority of the Grantee) shall not charge any fee or combination of fees totaling more than: \$13.00 to include but not limited to fees for: vessel launch and retrieval, parking, entry, day-use, and water-use. Such

- funds *may* be collected and used only to make repairs, renewals, and replacements necessary for the efficient operation of the small craft launching facility and to keep the facility in good repair at all times. The total fee charged may be adjusted annually in accordance with percentage changes in the *United States Bureau of Labor Statistics Consumer Price Index (CPI)* using the *U.S. City Average, All Items, 1982-84 = 100*, as of the Effective Date of this Agreement. Any adjustment exceeding the annual percentage change in the CPI shall be made only after the Grantee obtains the written approval of the Department.
- E. The Grantee shall maintain the Project Area and all improvements funded by this Agreement in accordance with the Department of Boating and Waterways Maintenance Guidelines (Guidelines”), a copy of which is attached to and made a part of this Agreement. The Department and its agents may, at any and all reasonable times during the term of this Agreement, enter the Project Area for purposes of inspecting the Project Area to determine if the facility is being maintained according to the Guidelines.
1. The Grantee shall provide to the Department, within sixty (60) days of the Effective Date of this Agreement, a maintenance schedule for approval detailing how each objective of the attached Guidelines will be addressed within the Project Area over the term of this Agreement. Each objective of the Guidelines must be considered; any objectives that are not applicable to a Grantee shall be included in the schedule with notation that such objective does not apply to this Project Area. The Department shall not unreasonably withhold its approval; however, it is the Grantee's responsibility to ensure that such maintenance schedule adequately addresses Grantee's responsibilities and each objective. The Department's written approval of the maintenance schedule shall be required before any funds are disbursed.
 2. The Grantee shall comply with the approved maintenance schedule throughout the term of this Agreement. Failure to maintain the facility according to the maintenance schedule is a breach of this Agreement and shall preclude the Grantee from receiving any future grants.
 3. Any changes to the maintenance schedule must be approved in writing by the Department.
- F. The Department shall not be liable for any costs of maintenance, management, control or operation of the Project Area.
- G. The Project Area shall be open and accessible for the use and enjoyment by the general public on equal and reasonable terms.

- H. All Project Area facilities shall be maintained and operated with due regard to public safety and in accordance with all applicable laws, ordinances, and regulations. All contracts relating to the operation of the Project shall include a nondiscrimination and compliance clause as referenced in Article 6 (C) of this Exhibit.
- I. All concession agreements for the operation and maintenance of the Project Area must have the written approval of the Department prior to award. The Department will approve such concession agreements only when the Grantee can demonstrate that private sector operation is the best available alternative. Concession agreements of a short-term duration (five years or less) are preferred, with renewal based upon performance reviews by both the local governmental agency and the Department. Any concession agreement for operation and maintenance of greater than five (5) years shall require the concessionaire to make a capital investment, acceptable to the Department, in the Project Area.
- J. All concession agreements for operation of the Project shall provide the following:
 - 1. Fees paid to the Grantee by the concessionaire for the operation and maintenance of the Project (usually a percentage of gross receipts) may only be for "reasonable administrative charges" so as not to motivate the Grantee to turn over the operation and maintenance of the Project for purely profit considerations.
 - 2. Fees paid to the concessionaire for use of the facility shall be no greater than those allowed in this Agreement.
 - 3. The concessionaire shall operate the Project and all other improvements placed in the Project Area solely as a recreational boat launching facility unless receiving written permission from the Grantee and the Department for other permanent or special event uses.
 - 4. The Project Area shall be open and accessible for the use and enjoyment by the general public on equal and reasonable terms.
 - 5. All Department signs shall be kept permanently in place.

ARTICLE 9 – BREACH OF AGREEMENT

The Department through written notice may require the Grantee to remedy (to Department's satisfaction) any breach of this Agreement within ninety (90) days of the date of such notice. The Department may extend the time permitting remedy of the breach if the Grantee begins such remedy within the said period; however, if the Grantee fails to proceed with or complete any remedial action within the time allowed, then the Department may take one or more of the following steps:

- A. The Department may take any action to correct the breach. The Grantee shall be liable for all costs, including administrative costs, incurred in the course of correcting the breach;
- B. The Department may require the Grantee to repay the Department for all Project Costs funded by the Grant; the Grantee shall make such repayment within one-hundred and eighty (180) days of the close of the fiscal year within which Department demands repayment. Repayment shall be determined by the Department on a prorated unexpired term basis (the remainder of the twenty (20) year term as determined in Article 3 (A)).
- C. In the event the Grantee adopts time-of-day, speed zones, special-use area, pollution control measures, or any other restrictions which restrict any or all of the Project Area, or result in its closure or partial closure to any form of recreational vessel, the Department may determine the percentage of boaters affected and, with the concurrence of the Commission, may require the Grantee to repay the Grant on a prorated unexpired term basis for that percentage of all Project Costs funded by the Grant. The Grantee shall make such repayment within one-hundred and eighty (180) days of the close of the fiscal year within which a Department demands repayment. Repayment shall be made according to a schedule determined by the Department after consultation with Grantee.

ARTICLE 10 - LIABILITY AND FIRE INSURANCE

- A. The Grantee shall continuously insure the Project Area through one of the following alternatives:

ALTERNATIVE I

The Grantee shall maintain in full force and effect during the term of this Agreement the following insurance in the minimum amounts specified:

Bodily Injury or Death:	\$1,000,000 each person \$1,000,000 each occurrence
Property and Product Damage	\$1,000,000 each occurrence \$1,000,000 aggregate
Fire Insurance	90% of the full insurable value of all insurable components of the Project.

ALTERNATIVE II

- 1. The Grantee agrees that all contracts between it and the contractor (or contractors) responsible for construction of the Project shall contain a clause which requires the

contractor(s) to obtain insurance in the minimum amounts specified in Alternative I, and

2. The Grantee prior to acceptance and operation of the Project shall procure and maintain in full force and effect during the remainder of the term of this Agreement insurance in the amounts specified in Alternative I.

ALTERNATIVE III

1. The insurance requirements specified in the preceding Alternative I may be satisfied to the extent that the Grantee can provide comparable protection for the Grantee and the Department by virtue of the Grantee's participation in any "risk management" plan, self insurance program, insurance pooling arrangement, or any combination of these, provided that the protection plan has been reviewed by the Department.
- B. Copies of any policy or policies, including any new or renewal policy, shall be in a form satisfactory to the Department. Copies of such policy or policies shall be submitted to the Department at least twenty (20) days prior to the effective date or dates thereof.
- C. Under Alternative I above, any policy or policies shall contain the following endorsement:
The State of California, its officers, agents, employees and servants are hereby declared to be additional insured under the terms of this policy, as to activities of both the Grantee and the Department in respect to the Project, and this policy shall not be cancelled without thirty (30) days prior written notice to the Department.
- D. Loss under any fire insurance policy shall be payable to the Department for deposit in an appropriate trust fund with the State of California. The proceeds may be paid to the Grantee upon the Grantee's application for the reconstruction of the destroyed facilities.
- E. The Department shall not be responsible for the payment of any premiums or assessments on Grantee's insurance policies.
- F. Grantee shall provide proof of insurance to the Department annually and upon written request by the Department.

ARTICLE 11 - INSTALLATION OF OTHER FACILITIES

- A. The Grantee may at its own expense place or cause to be placed within the Project Area any structure, alteration, and/or improvement in addition to those set forth and described in Exhibit B, provided that such facilities:

1. Are constructed, maintained and operated for the use, enjoyment protection and service of the public,
 2. Are in compliance with Article 8 of this Exhibit,
 3. Do not directly or indirectly reduce the service capabilities for the boating public called for in Exhibit B including the sanitary and parking facilities, and
 4. Have the prior written approval of the Department. Approvals shall not be unreasonably withheld.
- B. The Department shall not be obligated to make or cause to be made any alteration, improvement, or repair to any facilities within the Project Area in addition to the original construction to the Project as provided for herein.

ARTICLE 12 - SIGN REFERRING TO DEPARTMENT FINANCING

The Grantee shall cause a permanent sign to be installed within the Project Area, which shall include the Department's logo (to be provided by Department) and a statement that the Department financed the Project. The sign may contain additional statements, which recognize the participation of other government agencies in the Project. The sign shall be installed before the Project is made available to the public. The standard Department of Boating and Waterways precast concrete sign shall be used unless the Grantee is required to use a different sign style or motif. An electronic drawing of the standard Department project credit sign shall be furnished by the Department to the Grantee for inclusion in the plans and specifications. The location of the project credit sign and make-up of a non-standard sign, including the dimensions, materials and lettering, requires the prior approval of the Department.

ARTICLE 13 - DIRECTIONAL SIGNS

The Grantee shall at the direction of the Department cause permanent directional signs to be installed, which shall provide adequate directions for reaching the Project Area. The signs shall be installed on major roads in the area and in as close proximity as possible to freeway exits in conformance with the provisions of the Local Agency's Development Code and the State Department of Transportation (CalTrans) policy. The locations and make-up of the signs, including the dimensions, materials, and lettering, require the prior approval of the Department.

ARTICLE 14 - WAIVER OF RIGHTS

Any waiver by either party hereto of its rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any other default or matter.

ARTICLE 15 – PROJECT REPRESENTATIVES

The Grantee and the Department shall each designate specific staff representatives for the purposes of communication between parties. Grantee's representative shall be by delegation of authority, signed by the person designated by Resolution to sign the contract or any amendments, and to make decisions concerning the contract.

ARTICLE 16 - REMEDIES NOT EXCLUSIVE

The use by either the Department or the Grantee of any remedy specified in this Agreement for the enforcement of this Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

ARTICLE 17 - OPINIONS AND DETERMINATIONS

Where the terms of this Agreement provide for action to be based upon the opinion, judgment, approval, review, or determination of either the Department or Grantee, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious or unreasonable.

ARTICLE 18– ASSIGNMENT

No assignment or transfer of this Agreement or any part hereof, rights hereunder, or interest herein by the Grantee shall be valid unless and until it is approved by the Department in writing. The Department's approval shall be granted at its sole discretion and may be made subject to such reasonable terms and conditions as the Department may impose.

ARTICLE 19 - SUCCESSORS AND ASSIGNS OBLIGATED

This Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.

ARTICLE 20 - LIABILITY

- A. The Grantee waives all claims and recourse against the Department, including the right to contribution for any losses or damages arising from, growing out of, or in any way connected with or incident to this Agreement.
- B. The Grantee agrees to indemnify, defend and hold harmless, the Department, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm, entity or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and/or from any and all claims and losses accruing or resulting to any person, firm, entity or corporation who may be injured or damaged by Grantee in the performance of this Agreement
- C. The Grantee shall indemnify, hold harmless, and defend the Department, its officers, agents and employees against any and all claims, demands, damages, costs, expenses or liability connected with or arising out of the acquisition, design, construction, operation, maintenance, existence or failure of the Project.
- D. If the Department is named as a co-defendant, the Grantee shall notify the Department and represent it unless the Department elects to represent itself. If the Department undertakes its own defense, it shall bear its own litigation costs, expenses and attorney's fees.

ARTICLE 21 - TERMINATION

- A. Prior Termination. This Agreement shall terminate on the date specified in Article 7 (A) of this Exhibit if by such date (1) the Grantee has not met all conditions precedent to disbursement under this Agreement, or (2) the Department has disbursed no part of the Grant funds.
- B. Termination. In addition to the Department's right to terminate pursuant to Exhibit C, and as otherwise provided in this Agreement, the Department may terminate this Agreement without cause upon a thirty (30) calendar days advance written notice to the Grantee.

- C. The Grantee shall promptly return all advanced funds to the Department.

ARTICLE 22 – SUPERSEDING GENERAL TERMS AND CONDITIONS (GTC)

- A. The reference to the Contractor in Exhibit C is the Grantee in this Agreement.
- B. Notwithstanding Paragraph 13 in Exhibit C, payment to Grantee for expenses shall be limited as provided for in Article 5 of this Exhibit.
- C. Paragraph 5 in Exhibit C is replaced by Article 20 of this Exhibit.

Department of Parks and Recreation, Division of Boating and Waterways Maintenance Guidelines

Introduction

This document presents guidelines for meeting the minimum maintenance standards for the operation and maintenance of publicly owned boat launching facilities that are funded by the California Department of Parks and Recreation, Division of Boating and Waterways (DBW).

Because DBW funds these publicly owned facilities, the State has a financial stake in their success. The attached guidelines, developed by DBW, are intended to ensure that DBW funded boat launch facilities are managed and maintained in a manner compatible with DBW's mission – *to provide safe and convenient boating access* – and that the public entity owning the facility (the "Agency") is fulfilling its responsibilities. The Agency's primary responsibility in this context is maintaining the value of the property, including both tangible site improvements and the intangible value of the boat launch facility's reputation with the boating public.

Scope

The scope of these guidelines is limited to those items that reflect the quality of the boat launch facility (BLF) and its operations. The seven categories that are addressed are: (1) regular maintenance, (2) major maintenance, (3) boat launch facility staff, (4) boat launch facility operations and administration, (5) boat launch facility regulations, (6) security, and (7) amenities.

The scope does not include financial measures and other items that would be covered separately when a Memorandum of Understanding (MOU), Operating Agreement, Concession Agreement or Lease Agreement occurred between an Agency and an operator. In addition, these guidelines are separate from, and complementary to, the conditions and expectations set forth in any contractual agreement that might exist between the Agency and an operator. These guidelines were developed under the assumption that any contractual obligations, such as financial performance, reporting, and lease payments from an operator to an Agency, would be monitored separately. However, in the event that an Agency contracts out the operation of a BLF to an operator, any agreement between the Agency and the operator must specify that the operator must apply these guidelines and operate and maintain the BLF to at least the minimum condition that would be achieved by following these guidelines.

These guidelines should be applied within the context of the existing maintenance conditions of the boat launch facility. Likewise, they should reflect long-term goals for the boat launch facility.

The three key long-term goals that apply to most publicly owned boat launch facilities are as follows:

- Maintain the boat launch facility to a standard that attracts boaters to the boat launch facility
- Meet current and long-range needs of the community and of boaters in the region
- Produce, or set aside, revenues sufficient to maintain the boat launch facility infrastructure

The following guidelines represent the minimum that shall be required of an Agency to operate and maintain a DBW funded BLF.

Guidelines

The following table documents, in categories, the minimum outcomes that must be met in a properly maintained DBW funded BLF. The Agency is responsible for preparing, and updating, a maintenance schedule describing, in detail, how each of the objective/outcomes will be addressed by the Agency during the term of the BLF contract. During the grant term, the maintenance schedule shall be updated every five years, and whenever there are changes to the property, expected or unexpected, that might normally require changes in maintenance levels (examples include, but are not limited to, new construction or other major physical and non-physical changes including storm damage, faster than anticipated erosion, or higher than expected usage). In the event that such a change will not require a change in maintenance levels an updated maintenance schedule is still required; and, the Agency must clearly document why no change in service is required.

In order to verify that Agencies are maintaining facilities as required, DBW will make periodic and random inspections of funded BLFs. After an inspection, Agencies will be provided with DBW's inspection results. In the event that facilities are not being maintained to DBW's guidelines, the Agency will be required to respond and take corrective action immediately. Agencies that do not maintain their facilities to at least these guidelines will not be considered for future DBW funding.

Category	Objectives/Outcomes
A. Regular Maintenance	Maintenance of existing and new structures and facilities is conducted on a regular basis to maintain viability of the boat launch facility. Taking into account the initial condition of the boat launch facility, the facilities, including ramps, boarding floats, restrooms, lighting, and landscaping are maintained in a safe, neat, sanitary, and orderly condition.
B. Major Maintenance	Inspections for possible major maintenance problems are conducted to prevent the need for premature replacement of facilities. The boat launch facility structures are maintained in an acceptable manner, enhancing the long-term viability of the boat launch facility and reducing risk to users, the Agency, and DBW. The facility is maintained in an insurable condition and is free of defects caused by neglect. Major maintenance of necessary items is scheduled and completed in a timely manner and minimizes degradation of the boat launch facility.
C. Staff	Boat launch facility staff, where provided, are qualified, competent, and experienced. Staff are (1) knowledgeable about boats and boating, (2) available every day including peak season holidays, (3) friendly, (4) professional in appearance, and (5) proactive in meeting the needs of customers.

Category	Objectives/Outcomes
C. Staff (<i>cont.</i>)	Boat launch facility staff, where provided, are responsive to customers and maintain a service orientation. A mechanism to reach staff or other personnel in off-hours or emergencies is in place.
D. Operations and Administration	<p>The Operator has a long-range plan to maintain viability of the boat launch facility that is realistic and reflective of DBW's mission.</p> <p>The staff management plan specifies staffing levels and availability of staff, and procedures for responses to complaints. All facilities and services are operated in accordance with hours authorized in the contract/operating agreement.</p>
E. Regulations	The boat launch facility is in compliance with applicable federal, state, and local laws, rules, regulations, contracts, and restrictions.
F. Security	Boat launch facility security is maintained to appropriate guidelines for the region. The Boat launch facility security system is in place and operational and law enforcement incidents at the boat launch facility are at levels similar to other boat launch facilities in the region.
G. Amenities	Amenities provided are in good condition, and help draw customers to the facility.

EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

RESOLUTION NO. 13-17

**RESOLUTION OF THE CITY COUNCIL
OF CITY OF MORRO BAY, CALIFORNIA
AUTHORIZING THE CITY TO ENTER INTO
GRANT AGREEMENT #C4128033
WITH THE STATE OF CALIFORNIA,
DIVISION OF BOATING & WATERWAYS
IN THE AMOUNT OF \$250,000 FOR A REHABILITATION
PROJECT OF THE MORRO BAY BOAT LAUNCHING FACILITY**

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

WHEREAS, the City of Morro Bay in 2014 applied for a \$1,734,220 grant from the Division of Boating & Waterways (DBW) under their Boat Launching Facility (BLF) grant program; and

WHEREAS, the Governor of the State of California included \$250,000 in the state FY 2016/2017 budget for the first phase of the City of Morro Bay's BLF grant project, subject to DBW Commission approval; and

WHEREAS, the DBW Commission is scheduled to consider approval of Morro Bay's first phase BLF grant at their April 4-5, 2017 meeting.

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

1. The City of Morro Bay is hereby authorized to enter into BLF grant agreement #C4128033 with DBW for the first phase of Morro Bay's BLF project.
2. City Manager David W. Buckingham is hereby authorized to execute the grant agreement.
3. Harbor Director Eric Endersby is hereby authorized to act as the City's agent in regard to all aspects of the grant agreement.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 28th day of March, 2017 on the following vote:

AYES:
NOES:
ABSENT:

Jamie L. Irons, Mayor

ATTEST:

Dana Swanson, City Clerk

October of 2016. MBOC is requesting approval of a Deed of Trust to Cihan Corporation, a California Corporation, as security for a small, short-term loan to cover their operating expenses during the prolonged rainfall closure.

MBOC is in the final stages of completing and getting operational a “wet storage” tank system on the lease site where oyster product can be harvested prior to or during rainfall periods and stored in isolation from the bay, thus ensuring marketable product through rainy periods. Funds are needed to cover payroll expenses as well as lab fees that will be incurred during the validation process for the “wet storage” tank system, the final step to get the system up and running.

CONCLUSION

Staff recommends the City Council adopt Resolution No. 14-17 approving the Deed of Trust as presented to enable continued operation of MBOC through this unusually rainy winter.

ATTACHMENTS

1. Resolution No. 14-17
2. Cihan Corporation Deed of Trust for Lease Site 144/144W

RESOLUTION NO. 14-17

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
CONSENTING TO THE ENCUMBRANCE, WITH A DEED OF TRUST, OF THE LEASE
AGREEMENT BETWEEN THE CITY OF MORRO BAY AND
MORRO BAY OYSTER COMPANY, LLC, FOR LEASE SITE 144/144W LOCATED AT
1287 EMBARCADERO ROAD, MORRO BAY.**

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

WHEREAS, the City of Morro Bay (“City”) is the lessor of property known as Lease Site 144/144W located at 1287 Embarcadero (the “Lease Site”); and

WHEREAS, Morro Bay Oyster Company, LLC (“MBOC”) is the current lessee of the Lease Site, pursuant to that certain lease between City and MBOC (the “Lease”); and

WHEREAS, MBOC is financing a small loan for its continued operating expenses (the “Financing”); and

WHEREAS, MBOC’s lender, Cihan Corporation, is requesting approval of a subordinate deed of trust to secure the Financing using the Lease as security; and

WHEREAS, the City Attorney has reviewed and approved the attached deed of trust.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, the Deed of Trust, attached hereto as Exhibit A and to be recorded against the Lease, is hereby approved and the Mayor is hereby directed to execute, as necessary, a deed of trust, substantially similar to Exhibit A, and any other document necessary thereto.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 28th day of March, 2017, on the following vote:

AYES:
NOES:
ABSENT:

Jamie L. Irons, Mayor

ATTEST:

Dana Swanson, City Clerk

RECORDING REQUESTED BY
First American Title Company

AND WHEN RECORDED MAIL DOCUMENT TO:
Cihan Corporation
PO Box 790
Morro Bay CA 93443

Space Above This Line for Recorder's Use Only

A.P.N.:

File No.: _____

DEED OF TRUST WITH ASSIGNMENT OF RENTS
(LONG FORM)

THIS DEED OF TRUST, made this ___ day of _____, 2017, between

TRUSTOR: Morro Bay Oyster Company, LLC

whose address is 1287 Embarcadero, Morro Bay, CA 93442

TRUSTEE: First American Title Company, a California Corporation

and BENEFICIARY: Cihan Corporation, a California Corporation

WITNESSETH: For valuable consideration, Trustor irrevocably grants, transfers and assigns to Trustee in trust, with power of sale, for the benefit of Lender as Beneficiary, all of Trustor's right, title, and interest in, to and under the Lease described below (the "Lease") of the following described real property, (the "Real Property") located in San Luis Obispo County, State of California:

Lease Site 144/144W

A copy of said Map is attached hereto as Exhibit A and made a part hereof by reference.

The Real Property or its address is commonly known as Lease Site 144/144W, 1287 Embarcadero, Morro Bay, CA 93442.

Trustor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) **all of Trustor's right, title, and interest in and to the Lease and any future leases of the Property approved by the City of Morro Bay pursuant to the Lease ("Future Leases")** and all Rents from the Property generated by the Lease or any Future Lease. This is an absolute assignment of Rents generated by the Lease or any Future Lease made in connection with an obligation secured by real property pursuant to California Civil Code Section 2938

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST.

A. To protect the security of this Deed of Trust, Trustor agrees:

- 1) To keep said property in good condition and repair, not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefore, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon, not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.
- 2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
- 3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.
- 4) To pay, at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all cost, fees and expenses of this Trust

If Trustor fails to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may; make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

- 5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

B. It is mutually agreed:

- 1) Any award in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.
- 2) By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require payment when due of all other sums so secured or to declare default for failure so to pay.

- 3) At any time or from time to time, without liability therefore and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easements thereon, or join in any extension agreement or any agreement subordinating the lien or charge hereof.
- 4) Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto".
- 5) As additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right: prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collecting of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
- 6) Upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of said having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of trustee and of this Trust, including costs of evidence of title in connection with sale, Trustee shall apply to proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount

allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

- 7) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.
- 8) This Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
- 9) Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.
- 10) Trustor requests that copies of the notice of default and notice of sale be sent to Trustor's address as shown above.

Beneficiary requests that copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust be sent to Beneficiary's address, as set forth on page one of this Deed of Trust, as provided by Section 2924(b) of the California Civil Code.

If the Trustor shall sell, convey or alienate said property, or any part thereof, or any interest therein, or shall be divested of his title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of the Beneficiary being first had and obtained, then Beneficiary shall have the right, at its option, except as prohibited by law, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any Note evidencing the same, immediately due and payable.

MORRO BAY OYSTER COMPANY, LLC

by: **Neal Maloney**
Its: **Managing Member**

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

STATE OF _____)SS
COUNTY OF _____)

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

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

WITNESS my hand and official seal.

Signature

This area for official notarial seal

-----DO NOT RECORD-----
REQUEST FOR FULL RECONVEYANCE
To be used only when note has been paid.

To: First American Title Company, a California Corporation , Trustee

Dated: _____

The undersigned is the legal owner and holder of all indebtedness secured by the within Deed of Trust. All sums secured by said Deed of Trust have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel all evidences of indebtedness, secured by said Deed of Trust, delivered to you herewith together with said Deed of Trust, to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, the estate now held by you under the same.

Mail Reconveyance to:

By _____

By _____

NOTE: Signatures on this Request for Full Reconveyance must be notarized.

Do not lose or destroy this Deed of Trust OR THE NOTE which it secures.
Both must be delivered to the Trustee for cancellation before reconveyance will be made.



AGENDA NO: A-9
MEETING DATE: March 28, 2017

Staff Report

TO: Honorable Mayor and City Council **DATE:** March 21, 2017
FROM: Mike Nunley, PE – Water Reclamation Facility (WRF) Program Manager
SUBJECT: WRF Program Update

RECOMMENDATION

Staff recommends City Council receive and file the status report of the WRF program.

ALTERNATIVES

No alternatives are recommended.

FISCAL IMPACT

No additional fiscal impact is proposed within this update. All work is proceeding within the City's project budget for the Water Reclamation Facility.

BACKGROUND

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 the following:

- Review of what has occurred to date. See the list of major milestones or accomplishments since the last update to WRFCAC below. This summary is typically provided each month.
- Update on program schedule

DISCUSSION

Accomplishments and Milestones

The City's Program Management team and technical consultants performed the following tasks since the February program update:

- Received and reviewed administrative draft report summarizing modeling results from GSI Water Solutions, Inc.
- Completed administrative draft Master Reclamation Plan and submitted to City staff and State Water Resources Control Board for review
- Initiated rate study update with Bartle Wells Associates
- Coordinated review of financing options by Kestrel Consulting for use in rate study
- Planned and attended preproposal meeting for WRF Lift Station and Pipelines Design Engineering Services
- Updated program schedule
- Completed the Draft Master Water Reclamation Plan

Program Schedule Update

FY 16/17 activities are primarily planning, permitting, and procurement of consultants for elements of the Phase I WRF. Specific objectives include completion of the Facility Master Plan, Master

Prepared By: <u> MN </u>	Dept Review: <u> </u>
City Manager Review: <u> </u>	City Attorney Review: <u> </u>

Reclamation Plan, initial review and procurement activities for the design-build team, preliminary design, technical studies and initial drafts of the Environmental Impact Report, and procurement of the State Revolving Fund Planning and Design Loan.

The anticipated schedule for significant milestones and Council decisions is summarized below and all critical path efforts are on schedule. An updated program schedule is attached.

Item	Date
Public Release Draft Master Water Reclamation Plan and on this Council Agenda as a Separate Item	March 21, 2017
Confirmation of Phase I and Phase II WRF Budget	April 2017
Council Selection and Award for Phase I WRF Offsite Improvements (Lift Station and Pipelines)	April 2017
RFQ for Design/Construction of Phase I WRF Onsite Improvements	June 2017
Release of Public Draft EIR	August 2017
RFP for Design/Construction of Phase I WRF Onsite Improvements	October 2017
Certification of Final EIR (Critical Timeline for Grant Pursuit)	November 2017
Completion of acquisition of preferred site	December 2017
Negotiation/Award of Contract for Phase I WRF Onsite Improvements	May 2018
Award of Contract for Construction of Phase I Offsite Improvements (Lift Station and Pipelines)	April 2019
Completion of Phase I WRF Improvements	May 2021

Second Quarter 16/17 Summary

A budget update for the second quarter of fiscal year 2016/17 (2Q16/17) has been prepared. It should be noted that the final consultant invoices and charges through December 31 of FY 16/17 have not all been received and approved by City staff.

As discussed in prior meetings, MKN and City staff developed a budget and expense report format with input from the WRFCAC Financial Subcommittee. The summary is attached, and includes all City expenses (including staff time with benefits, copies, and other office expenses) in addition to consultant contracts. The second page provides a higher level of detail on budget status of individual consultant contracts since inception of the Project. This report will be provided quarterly to City Council and WRFCAC, and currently represents expenses through December 31, 2016.

The following sections provide an analysis and overview of the City’s WRF budget. The budget summary presents budget information on quarterly, annual (based on the fiscal year for the City between July and June) and total project time periods. All costs for a given period are based on the invoice dates (except for consultant costs as described below).

EXPENDITURES: The following table describes the line items from Attachment 1, as well as any comments regarding budget status.

Object Name (from Attachment 1)	Description	Comments
Past Siting Studies	Contractual services for studies completed prior to initiating the Facility Master Plan process (2013-2015)	These work efforts were completed, contracts expired, and there are no further encumbrances
Current Consultant Contracts	Summary of Page 2 from Attachment 1	Work efforts are under budget for FY 16/17. In order to facilitate a more automated reporting process, consultant costs for a given period will be based on the dates work was performed instead of invoice or payment dates.
Water Rights Legal Support	Contract attorney fees for input on water reuse alternatives and legal constraints	--
Labor and Benefits	City staff labor and benefits (also called "fully burdened labor") for the WRF Program	Current FY 16/17 efforts included wastewater sampling, meeting attendance, administrative support, collection system flow monitoring, and all activities related to the WRF Program
Laboratory/Sampling	Contract laboratory services for wastewater analysis to support Facility Master Plan and future detailed design efforts	--
Printing and Advertising	Costs from outside vendors for copies, printing, and postage to develop and distribute WRF Program materials	--
Software License and Fees	Fee for Procore Project/Construction Management Software	Procore software is used to manage and track consultant budgets and contracts, store program documents and deliverables, coordinate and record meetings, and track work efforts during the planning/permitting phase. During construction, the software will be used for tracking contractor submittals, pay requests, field observations, and other work efforts. Annual fee is \$42,205 over the next 5 to 8 years.
Property Acquisition	Cost to purchase property & appraisal	--
Program Office Equipment	Copier, monitor, telephone, and other office equipment to equip the Program Office in the City Hall Annex	--

REVENUE: At this time, the City is funding the project through user rates, the Recycled Water

Facilities Planning Grant, and Supplemental Environmental Project (SEP) money from California Department of Corrections and Rehabilitation for California Men's Colony. SEP funds were intended to offset costs for the CMC evaluations completed last year.

User rates fund the City's sewer enterprise, including efforts not related to the new WRF. Incoming revenue is not directed into a specific fund for the WRF. The budget tables include the revenue anticipated for the WRF which is 75% of \$75M, or \$56.25M, with 25% of debt service coverage (assumed in the Rate Study) to increase the projected available revenue up to \$70.3. This assumed debt service coverage would be reduced and/ reallocated by reprioritizing other wastewater capital projects. It is assumed revenue for the project would come from grants and loans. User rates would repay the loans in accordance with financing terms and conditions, which can vary depending on the program.

The City increased sewer rates in 2015 in anticipation of the WRF project, but those funds are not directed into a specific fund for the WRF. As budgeted and presented in the 2015 Rate Study, the City would receive \$10M through loan proceeds to fund WRF expenses from FY 2014/15 through FY 2016/17; \$4M was budgeted through FY 15/16; \$6M was budgeted for FY 2016/17; and 50% of the FY 2016/17 (\$3M) has been budgeted through 2Q16/17. Since the loan was approved in January 20, 2017, WRF expenditures have been paid from excess sewer revenues over expenses. After paying all of the WRF expenditures submitted through December 31, 2016, the fund still has revenues in excess of expenditures of \$1,236,156 according to an income statement provided by City staff.

The City was awarded a \$10.3M planning and design loan from the State Water Resources Control Board (SWRCB) State Revolving Fund and the loan agreement was executed on January 20, 2017. As the City pays consultant expenses, staff can submit the invoices to SRWCB staff and request reimbursement.

The goal of the Facility Master Plan and Master Water Reclamation Plan is to develop a more refined WRF project budget than the range of estimates from the 2014 Site Options Report (which assumed a project would be constructed at the Rancho Colina site and was the origin of the \$75M Phase I budget in the 2015 Rate Study).

ATTACHMENTS

1. Updated Program Schedule (as of March 1, 2017)
2. Quarterly Budget Summary for 2Q2016/17

City of Morro Bay
Water Reclamation Facility Advisory Committee (WRFAC) Quarterly Budget Review Summary 2Q16/17

EXPENDITURES

Key Definitions	
Quarter Projected Budget	Portion of Fiscal Year Budget Management Expects Necessary to Meet Quarter Expenditures
YTD Projected Budget	Sum of Current Quarter Projected Budget and All Prior Quarter Projected Budgets

Accounts		Current Quarter				Fiscal Year To Date (YTD)			
Fund/Code	Object Name	Projected Budget	Expenditures	Percent Expended	Variance	Projected Budget	YTD Expenditures	Percent Expended	Variance
599-8312	Contractual Services								
6105	Past Siting Studies (Completed - no further encumbrance)	--	--	--	--	--	--	--	--
6105	Current Consultant Contracts (see P. 3)	\$802,851	\$201,356	25.08%	\$601,495	\$3,211,405	\$488,674	15.22%	\$2,722,731
6105	Water Rights Legal Support (See Note 2)	\$0	\$0	--	--	\$0	\$0	--	--
6105	Rate Study	\$0	\$0	--	--	\$0	\$0	--	--
	Subtotal	\$802,851	\$201,356	25.08%	\$601,495	\$3,211,405	\$488,674	15.22%	\$2,722,731
599-8312	Labor (Fully Burdened)								
4910,4999	Labor and Benefits	\$15,000	\$13,333	88.89%	\$1,667	\$60,000	\$29,502	49.17%	\$30,498
	Subtotal	\$15,000	\$13,333	88.89%	\$1,667	\$60,000	\$29,502	49.17%	\$30,498
599-8312	Other Costs								
6105, 6162	Laboratory/Sampling	\$34,500	\$843	2.44%	\$33,657	\$138,000	\$11,697	8.48%	\$126,303
5199,6106, 6105,6710	Printing and Advertising	\$0	\$4,560	--	(\$4,560)	\$0	\$9,508	--	(\$9,508)
5199	Software license and fees	\$0	\$0	--	--	\$42,204	\$0	0.00%	\$42,204
5199,7101	Property Acquisition	\$0	\$0	--	--	\$2,425,000	\$0	0.00%	\$2,425,000
5199, 6106, 6750	Program office equipment	\$500	\$1,277	255.39%	(\$777)	\$2,000	\$1,781	89.03%	\$219
5199, 6514	Travel expense	\$0	\$0	--	--	\$0	\$0	--	--
	Subtotal	\$35,000	\$6,680	19.09%	\$28,320	\$2,607,204	\$22,986	0.88%	\$2,584,218
	TOTALS	\$852,851	\$221,369	25.96%	\$631,482	\$5,878,609	\$541,161	9.21%	\$5,337,448
	Difference from City Adopted Budget					(\$67,996)			
	City Adopted Budget					\$5,946,605			

REVENUE

Key Definitions	
Quarter Projected Budget	Portion of Fiscal Year Budget Management Expects To Be Recognized During Quarter
YTD Projected Budget	Sum of Current Quarter Projected Budget and All Prior Quarter Projected Budgets

Accounts (See Note 1)		Current Quarter				Fiscal Year To Date (YTD)			
Funding Source	Revenue Name	Projected Budget	Recognized Revenue	Percent Recognized	Variance	Projected Budget	YTD Recognized Revenue	Percent Recognized	Variance
SWRCB	Grants								
	Recycled Water Planning Grant	\$0	\$0	0.00%	\$0	\$0	\$0	0.00%	\$0
	Subtotal	\$0	\$0	0.00%	\$0	\$0	\$0	0.00%	\$0
SWRCB	Supplemental Environmental Project								
	SEP from California Men's Colony	\$0	\$0	0.00%	\$0	\$0	\$0	0.00%	\$0
	Subtotal	\$0	\$0	0.00%	\$0	\$0	\$0	0.00%	\$0
SWRCB	State Revolving Fund (SRF) Loan								
	SRF Planning Loan Proceeds	\$852,851	\$0	0.00%	(\$852,851)	\$5,878,609	\$0	0.00%	(\$5,878,609)
	SRF Construction Loan Proceeds	\$0	\$0	0.00%	\$0	\$0	\$0	0.00%	\$0
	Subtotal	\$852,851	\$0	0.00%	(\$852,851)	\$5,878,609	\$0	0.00%	(\$5,878,609)
User Rates	Cash funds from Current Operations								
	Cash funds from Current Operations	\$0	\$221,369	--	\$221,369	\$0	\$541,161	--	\$541,161
	Subtotal	\$0	\$221,369	--	\$221,369	\$0	\$541,161	--	\$541,161
	TOTALS	\$852,851	\$221,369	25.96%	(\$631,482)	\$5,878,609	\$541,161	9.21%	(\$5,337,448)

Notes:
1) Unless shown otherwise, current project expenses are funded by revenue from user rates and fees. There is no separate revenue fund for the WRF.
2) Budgets for water rights legal support and property acquisition have not yet been established. Detailed budget development will take place after completing the project descriptions in the Facility Master Plan and Master Reclamation Plan.
3) Encumbrance balance is only calculated for expenditures associated with contracts.
4) Total Project Amended Budget based on May 2015 Water and Sewer Rate Study. Original budget was \$75M including 25% participation from Cayucos SD which was removed in this analysis. 25% debt coverage (on City's contribution only) was included in the rate study and in this calculation.
5) Expenditures for Current Consultant Contracts for a period (quarter or fiscal year) are based on the dates on which the work was performed, and not on invoice or payment date.
6) Total Project Amended Budget is calculated from FY1617 Projected Budget plus Total Project Expenditures from end of FY1516. Detailed budget development will take place after completing the project descriptions in the Facility Master Plan and Master Reclamation Plan.
7) City adopted budget differs from WRF budget sheet for fiscal year 2016/2017 presented at June 14, 2016 City Council Meeting.

City of Morro Bay						
Water Reclamation Facility Advisory Committee (WRFAC) Quarterly Budget Review Summary 2Q16/17						
EXPENDITURES						
Key Definitions						
				Encumbrance Balance	Sum Of All Project Contracts Less Actual Expenditures Against Contracts (See Note 3)	
Accounts			Total Project			
Fund/Code	Object Name	Amended Budget	Expenditures	Encumbrance Balance	Percent Expended	Variance
599-8312	Contractual Services					
6105	Past Siting Studies (Completed - no further encumbrance)	\$534,418	\$448,057	\$0	83.84%	\$86,361
6105	Current Consultant Contracts (see P. 3)	\$4,653,067	\$1,934,735	\$2,718,332	41.58%	\$2,718,332
6105	Water Rights Legal Support (See Note 2)	\$0	\$7,880	--	--	(\$7,880)
6105	Rate Study	\$0	\$1,457	--	--	(\$1,457)
	Subtotal	\$5,187,485	\$2,392,129	\$2,718,332	46.11%	\$2,795,356
599-8312	Labor (Fully Burdened)					
4910,4999	Labor and Benefits	\$400,000	\$242,514	--	60.63%	\$157,486
	Subtotal	\$400,000	\$242,514	--	60.63%	\$157,486
599-8312	Other Costs					
6105, 6162	Laboratory/Sampling	\$200,000	\$35,335	--	17.67%	\$164,665
5199,6106, 6105,6710	Printing and Advertising	\$0	\$22,867	--	--	(\$22,867)
5199	Software license and fees	\$371,205	\$42,206	\$329,000	11.37%	\$329,000
5199,7101	Property Acquisition	\$2,425,000	\$30,500	--	1.26%	\$2,394,500
5199, 6106, 6750	Program office equipment	\$2,000	\$6,032	--	301.59%	(\$4,032)
5199, 6514	Travel expense	\$0	\$379	--	--	(\$379)
	Subtotal	\$2,998,205	\$137,319	\$329,000	4.58%	\$2,860,886
	TOTALS	\$8,585,690	\$2,771,963	\$3,047,331	32.29%	\$5,813,727
Difference from City Adopted Budget						
City Adopted Budget						
REVENUE						
Key Definitions						
Accounts (See Note 1)			Total Project			
Funding Source	Revenue Name	Amended Budget	Recognized Revenue		Percent Recognized	Variance
SWRCB	Grants					
	Recycled Water Planning Grant	\$75,000	\$0		0.00%	(\$75,000)
	Subtotal	\$75,000	\$0		0.00%	(\$75,000)
SWRCB	Supplemental Environmental Project					
	SEP from California Men's Colony	\$87,361	\$87,361		100.00%	\$0
	Subtotal	\$87,361	\$87,361		100.00%	\$0
SWRCB	State Revolving Fund (SRF) Loan					
	SRF Planning Loan Proceeds	\$10,375,000	\$0		0.00%	(\$10,375,000)
	SRF Construction Loan Proceeds	\$59,937,500	\$0		0.00%	(\$59,937,500)
	Subtotal	\$70,312,500	\$0		0.00%	(\$70,312,500)
User Rates	Cash funds from Current Operations					
	Cash funds from Current Operations	\$0	\$2,684,601		0.00%	\$2,684,601
	Subtotal	\$0	\$2,684,601		0.00%	\$2,684,601
	TOTALS	\$70,474,861	\$2,771,963		3.93%	(\$67,702,898)

Notes:

- 1) Unless shown otherwise, current project expenses are funded by revenue from user rates and fees. There is no separate revenue fund for the WRF.
- 2) Budgets for water rights legal support and property acquisition have not yet been established. Detailed budget development will take place after completing the project descriptions in the Facility Master Plan and Master Reclamation Plan.
- 3) Encumbrance balance is only calculated for expenditures associated with contracts. P. 2 of 3
- 4) Total Project Amended Budget based on May 2015 Water and Sewer Rate Studies. Original budget was \$75M including 25% participation from Cayucos SD which was removed in this analysis. 25% debt coverage (on City's contribution only) was
- 5) Expenditures for Current Consultant Contracts for a period (quarter or fiscal year) are based on the dates on which the work was performed, and not on invoice or payment date.
- 6) Total Project Amended Budget is calculated from FY1617 Projected Budget plus Total Project Expenditures from end of FY1516. Detailed budget development will take place after completing the project descriptions in the Facility Master Plan a
- 7) City adopted budget differs from WRF budget sheet for fiscal year 2016/2017 presented at June 14, 2016 City Council Meeting.

**City of Morro Bay
Water Reclamation Facility Advisory Committee (WRFCAC) Consultant Contract Summary (From Inception through 12-31-2016)**

Current Consultant Contracts												
Number	Title	Status	Total	Approved Change Orders	Total With Approved Change Orders	Draw Requests	Total Payments	Total Remaining	% Paid	% Complete	Pending Change Orders	Vendor
SC--001	Facility Master Plan	Approved	\$710,123.00	\$123,819.00	\$833,942.00	\$669,484.42	\$623,925.04	\$210,016.96	74.82%	80.28%	\$0.00	Black & Veatch
SC--002	CEQA/NEPA Documentation and Consulting	Approved	\$346,538.00	\$0.00	\$346,538.00	\$41,594.88	\$36,349.08	\$310,188.92	10.49%	12.00%	\$0.00	ESA
SC--003	Fatal Flaw Cultural Resources	Approved	\$18,260.87	\$0.00	\$18,260.87	\$22,660.87	\$18,260.87	\$0.00	100.00%	124.10%	\$40,056.56	Far Western
SC--005	MacElvaine Property - Fatal Flaw - Biological Resources	Approved	\$12,835.00	\$0.00	\$12,835.00	\$11,240.00	\$11,240.00	\$1,595.00	87.57%	87.57%	\$0.00	Kevin Merk Associates
SC--006	Survey - Righetti Property	Approved	\$15,644.00	\$0.00	\$15,644.00	\$12,502.50	\$12,502.50	\$3,141.50	79.92%	79.92%	\$0.00	JoAnn Head Land Surveying
SC--007	Survey - Highway 41 and MacElvaine Property	Approved	\$45,050.00	\$0.00	\$45,050.00	\$47,820.50	\$47,820.00	(\$2,770.00)	106.15%	106.15%	\$0.00	JoAnn Head Land Surveying
SC--008	Salinity Identification Study	Approved	\$23,640.00	\$37,080.00	\$60,720.00	\$52,717.83	\$49,687.83	\$11,032.17	81.83%	86.82%	\$0.00	Larry Walker Associates
SC--009	MacElvaine Property (SE) - Fatal Flaw - Geotech and Initial Hydrologic File	Approved	\$38,600.00	\$47,800.00	\$86,400.00	\$86,364.95	\$86,364.95	\$35.05	99.96%	99.96%	\$0.00	Fugro
SC--010	Grant and Loan Funding - Tracking and SRF Support	Approved	\$65,752.00	\$0.00	\$65,752.00	\$36,294.47	\$36,294.47	\$29,457.53	55.20%	55.20%	\$0.00	Kestrel
SC--011	2015 Program Management	Approved	\$920,808.00	\$0.00	\$920,808.00	\$769,601.63	\$725,245.82	\$195,562.18	78.76%	83.58%	\$0.00	MKN & Associates, Inc.
SC--012	Evaluate Alternative Concepts for Disposal of Treated Effluent	Approved	\$22,000.00	\$74,947.00	\$96,947.00	\$96,889.19	\$81,986.55	\$14,960.45	84.57%	99.94%	\$61,000.00	GSI Water Solutions
SC--013	Geotechnical Services Righetti II Site	Approved	\$35,902.00	\$0.00	\$35,902.00	\$27,325.35	\$27,325.35	\$8,576.65	76.11%	76.11%	\$0.00	Yeh and Associates
SC--014	Survey Services for South Bay Blvd Site	Approved	\$29,850.00	\$0.00	\$29,850.00	\$27,774.00	\$23,314.00	\$6,536.00	78.10%	93.05%	\$0.00	JoAnn Head Land Surveying
SC--015	Geotechnical Services South Bay Blvd Site	Approved	\$33,600.00	\$0.00	\$33,600.00	\$32,464.59	\$32,464.59	\$1,135.41	96.62%	96.62%	\$0.00	Yeh and Associates
Total			\$2,318,602.87	\$283,646.00	\$2,602,248.87	\$1,934,735.18	\$1,812,781.05	\$789,467.82	69.66%	74.35%	\$101,056.56	

Notes: 1) Contract SC-004 was unused and was combined with Contract SC-003. 2) Contracts SC--006 and SC--007 for JoAnn Head Land Survey are one amended contract with the City.
 2) Scope amendment for contract SC-003 was in approval process, but final amendment had not been signed prior to invoicing.
 3) Total Draw Requests are equivalent to Total Project Expenditures for Current Consultant Contracts on Page 2.

This Page Intentionally Left Blank



AGENDA NO: C-1

MEETING DATE: March 28, 2017

Staff Report

TO: Honorable Mayor and City Council **DATE:** March 21, 2017

FROM: Mike Nunley, PE – Water Reclamation Facility (WRF) Program Manager

SUBJECT: Consideration of Draft Master Water Reclamation Plan Presentation

RECOMMENDATION

Staff recommends that City Council review, consider and provide comments on the presentation of the Draft Master Water Reclamation Plan.

ALTERNATIVES

No alternatives are recommended.

FISCAL IMPACT

No additional fiscal impact is proposed within this update. All work is proceeding within the City's project budget for the Water Reclamation Facility (WRF) and is partially funded with a Proposition 1 Recycled Water Planning grant.

DISCUSSION

The [Draft Master Water Reclamation Plan](#) ("Draft MWRP") was released on March 21, 2017, and was made available to the public on the City's WRF Project website and hard copies will be available at various public facilities. A presentation of the Draft MWRP will be provided for your consideration.

Brief Summary of Draft MWRP

The Draft MWRP was developed to consider recycled water opportunities in light of the adopted community goals for the new WRF, identify the feasible recycled water projects, and evaluate the potential projects. The MWRP pulled relevant information from previous reports, current hydrogeological studies and permitting evaluations; refreshed the recycled water market assessment through outreach to the community and potential users; and developed updated cost opinions for the feasible alternatives. The MWRP is partially funded through the State Water Resource Control Board Recycled Water Planning Grant Program and follows the State's suggested outline.

Major components of the MWRP include the following:

- Review of existing and future water demands, wastewater flows and loadings, and proposed WRF treatment technology to achieve recycled water suitable for project alternatives.
- Identification and investigation of recycled water opportunities in the community, determination of treatment requirements for reuse, and assessment of potential user requirements
- Analysis of project alternatives, including quantitative and qualitative benefits, facilities needed for each project, and comparative preliminary cost estimates.

Prepared By: <u> MN </u>	Dept Review: <u> RL </u>
City Manager Review: <u> </u>	City Attorney Review: <u> </u>

- Evaluation of environmental considerations, and potential legal and institutional issues.
- Construction financing plan.

Alternatives Analysis

An investigation of previously identified recycled water users and opportunities in the City and the surrounding area was conducted. New opportunities were investigated using aerial mapping and Geographic Information Systems (GIS) software, community outreach to determine potential reuse customers, preliminary pipeline alignments and design criteria, and stakeholder interviews. Evaluation criteria included pipeline hydraulics, capital and operating costs, treatment requirements, regulatory requirements, legal or institutional issues, likelihood the project schedule would meet City Council goals, and the potential to provide a water supply benefit to the City.

Recycled water project alternatives considered included various methods of substituting recycled water for potable water where possible and repurposing recycled water to benefit the City’s water supply. Recycled water project alternatives were developed based on groupings of recycled water opportunities and water quality requirements. A total of twelve different reuse alternatives were identified, and seven were determined infeasible, as summarized in Table 1.

Table 1: Summary of Reuse Opportunities

Alternative	Evaluated Further	Comments
No Recycled Water Project	✓	No water supply benefit to the City Lowest treatment requirements of all alternatives
Urban Reuse	✓	Distribution system to urban irrigation opportunities within the City Limits would need to be constructed by the City Potential to offset City potable water demand and fertilizer costs Generally lower treatment requirements than agricultural irrigation
Agricultural Irrigation		Costly distribution system would need to be constructed by the City Does not increase City's potential water supply, only increases likelihood of withdrawing full allocation from Morro Valley Initial outreach indicated general unwillingness to participate Additional treatment for removal of salts necessary
Exchange of Recycled Water with Agricultural Users for Reduced Groundwater Pumping		Distribution system to Morro Valley would need to be constructed by the City Basin-wide groundwater management plan would be required to receive full benefit Does not increase City's potential water supply, only increases likelihood of withdrawing full allocation from Morro Valley Initial outreach indicated general unwillingness to participate Additional treatment for removal of salts necessary
Exchange of Recycled Water with Agricultural Users for Riparian Rights to Withdraw Groundwater		Distribution system to Morro Valley would need to be constructed by the City Complex legal issues surrounding Riparian Rights Initial outreach indicated general unwillingness to participate Additional treatment for removal of salts necessary

Table 1: Summary of Reuse Opportunities

Alternative	Evaluated Further	Comments
Exchange of Recycled Water with Agricultural Users for Pumped Groundwater Delivered to the City	✓	Distribution system to Morro Valley and return pipeline to water treatment facilities would need to be constructed by the City Initial outreach indicated agricultural users would only be interested if delivered water was less expensive than their current costs or higher quality Additional treatment for removal of salts necessary
Indirect Potable Reuse, Groundwater Replenishment Using Surface Application		Limited water supply benefit, especially during wet years City must acquire land for percolation ponds City must staff and maintain percolation ponds Higher treatment requirements than all alternatives but groundwater injection
Indirect Potable Reuse, Groundwater Replenishment Using Subsurface Application at the Narrows	✓	Injection wells in the Morro Valley Aquifer near the “Narrows” Pilot testing and additional modeling required for permitting and refined supply benefit estimates Highest mandated treatment requirements of all alternatives Highest potential water supply benefit Satisfies Council Adopted Community Goals for highest and Best use for Reclaimed Water
Indirect Potable Reuse, Groundwater Replenishment Using Subsurface Application at the Narrows Near Bike Path Adjacent to Lila Keiser Park	✓	Injection wells in the Morro Valley Aquifer near the bike path at Lila Keiser Park Pilot testing and additional modeling required for permitting and refined supply benefit estimates Highest mandated treatment requirements of all alternatives Highest potential water supply benefit Satisfies Council Adopted Community Goals for highest and Best use for Reclaimed Water
Groundwater Injection for Seawater Intrusion Barrier		City would likely need to install new injection wells Limited water supply benefit as majority of injected water lost to ocean Highest mandated treatment requirements of all alternatives
Streamflow Augmentation		Regulatory challenges in present and future Long term or permanent commitment to dedicated stream discharge Requires expansion of water treatment facilities to treat surface water Majority of streamflow in Chorro Creek goes to ocean with minimal percolation
Direct Potable Reuse		Not currently legal in California Future regulatory challenges

The following five recycled water project alternatives were evaluated based on the community goals for the project:

- Alternative 0: No Recycled Water Project

- Alternative 1: Urban Reuse
- Alternative 2: Agricultural Exchange
- Alternative 3: Indirect Potable Reuse – East
- Alternative 4: Indirection Potable Reuse – West

Evaluation criteria include capital cost, operating cost, neighborhood compatibility, reliability, and potential water supply benefit. The following main conclusions were made:

- The highest water supply benefit would be realized through indirect potable reuse (IPR) (Alternatives 3 and 4). Based on preliminary modeling, it appears Alternative 4 could support the majority, if not all, of the City’s current water demand with an estimated water supply benefit of over 1100 AFY. This could significantly reduce or eliminate reliance on imported water.
- The least expensive alternative is no recycled water project (Alternative 0), followed by urban reuse (Alternative 1). Alternative 0 provides no water supply benefit and Alternative 1 provides the least, an estimated 45.4 AFY water supply benefit.
- The capital costs for agricultural exchange (Alternative 2) and IPR (Alternatives 3 and 4) are similar, but IPR has significantly higher water supply benefit if a higher exchange rate is not possible for Alternative 2. Agricultural exchange relies on successful contract negotiations with landowners, adding some uncertainty.

Recommendations and Program Cost Estimates

Based on the analyses presented in the Draft MWRP, the recommended recycled water project is IPR, Alternative 3 or 4, with the main difference consisting of the general locations for injection and extraction wells. **The IPR alternative best fulfills the Council adopted community project goals of producing reclaimed water and provides the highest and most reliable potential water supply benefit.** Supplementing the potable water supply with highly treated recycled water is the best allowable beneficial reuse, and will allow the City to reduce or eliminate reliance on imported water.

The City is planning to construct the new WRF within the next five years. If a recycled water project is pursued, then there could be significant savings realized by completing the construction at the same time as the WRF. The estimated total program capital costs for Alternatives 0 through 4 are summarized in Table 2. The total program costs include the total cost for the WRF as presented in the Facility Master Plan, which includes, additional estimated program costs including decommissioning of the existing WWTP, property acquisition for the WRF, permitting and environmental mitigation, and construction management and estimated recycled water project costs as presented earlier in this section.

Alternative 0 (No Recycled Water Project) presents a WRF that produces secondary disinfected effluent which is discharged to the ocean for an estimated total program cost of approximately \$124 million. Alternatives 3 and 4, the recommended recycled water project, consists of a WRF and full IPR recycled water program for an estimated total cost of approximately \$167 million.

Table 2: Comparison of Total Estimated Program Costs

	Alternative 0	Alternative 1	Alternative 2	Alternative 3	Alternative 4
	No Recycled Water Project (Secondary only)	Urban Reuse	Agricultural Exchange	IPR East	IPR West
WRF Capital Costs					
Estimated WRF Capital Construction Cost	\$79,350,000	\$89,710,000	\$89,710,000	\$89,710,000	\$89,710,000
Engineering/Design (WRF)	\$7,730,000	\$8,740,000	\$8,740,000	\$8,740,000	\$8,740,000
Procurement (4% WRF)	\$3,174,000	\$3,588,400	\$3,588,400	\$3,588,400	\$3,588,400
Project Admin & CM (12% WRF)	\$9,522,000	\$10,765,200	\$10,765,200	\$10,765,200	\$10,765,200
Permitting, monitoring, and mitigation (1% WRF)	\$793,500	\$897,100	\$897,100	\$897,100	\$897,100
Existing WWTP Demolition	\$3,300,000	\$3,300,000	\$3,300,000	\$3,300,000	\$3,300,000
Property Acquisition (WRF)	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000
Recycled Water Project Capital Costs					
Estimated Recycled Water Project Capital Construction Cost	\$0	\$8,940,000	\$18,440,000	\$17,820,000	\$18,110,000
Engineering/Admin (RW)	\$0	\$2,630,000	\$5,430,000	\$5,250,000	\$5,323,000
Subtotal Program Capital Cost Opinion (rounded)	\$104,200,000	\$128,900,000	\$141,700,000	\$140,400,000	\$140,700,000
Construction Contingency	\$19,320,000	\$24,040,000	\$26,370,000	\$26,220,000	\$26,290,000
Total Program Capital Cost Opinion	\$123,520,000	\$152,940,000	\$167,570,000	\$166,620,000	\$166,990,000

Notes:

- 1) Estimated WRF Capital Construction Cost includes the WRF Project (lift station, pipelines, and treatment plant) without any recycled water components, based on costs presented in the Draft FMP, not including construction contingency or engineering/design, which are shown separately.
- 2) Cost assumptions for Alternative 0 are based on secondary treatment only, SBR option as described in **Section 7.3**. Alternative 0 does not fulfill the community project goals to produce tertiary disinfected wastewater or to produce reclaimed water.

Table 2: Comparison of Total Estimated Program Costs

	Alternative 0	Alternative 1	Alternative 2	Alternative 3	Alternative 4
	No Recycled Water Project (Secondary only)	Urban Reuse	Agricultural Exchange	IPR East	IPR West
3) WRF costs for Alternatives 1 – 4 assume the MBR option from the Draft FMP. Based on estimates in the Draft FMP, the total program capital cost opinion for Alternatives 1 – 4 would be approximately \$2M less with the SBR option.					
4) Construction contingency consists of 25% of construction cost subtotal(s).					

Next Steps

To further refine the project assumptions and costs, the recommended next steps are summarized as follows:

- Rate study update
- Consultation with Water Board Division of Drinking Water (DDW)
- Siting study for injection wells
- Pilot study for injection and extraction
- Groundwater modeling update (after/with pilot study)
- Assessment of groundwater treatment and blending options at existing Brackish Water Reverse Osmosis WTP
- Design of recycled water system, including advanced treatment, injection wells, pumps and pipelines

Rate Study and Public Outreach

Based on the community project goals and City Council’s direction over the past year, most recently confirmed at the February 21, 2017, Council Work Session, staff is preparing a Sewer Rate Study Update to evaluate rate impacts for the IPR project alternative recommended in the Draft MWRP. The Rate Study Update will be presented at the April 25th City Council meeting, after first being presented to various City advisory boards (WRFCAC, CFAC and PWAB). A WRF Project Update mailer is currently being drafted to provide a project update to the community, summarize the main findings of the Draft MWRP, and advertise the WRF Project Update Information Forum planned for early June.

CONCLUSION

Staff is seeking direction from Council regarding what, if any, recycled water options are to be included as part of the WRF project.



AGENDA NO: C-2

MEETING DATE: March 28, 2017

Staff Report

TO: Honorable Mayor and Council Members **DATE:** March 21, 2017

FROM: Craig Schmollinger, Finance Director/City Treasurer

SUBJECT: Presentation and Discussion of Fiscal Year 2015-16 City Audit Reports

RECOMMENDATION

Receive and file the 2015-16 City audit reports, along with a presentation from the City's auditor, The Pun Group. This audit is for the period of July 1, 2015 through June 30, 2016.

DISCUSSION

In 2015, the City issued a Request for Proposals (RFP) for auditing services, and because of that RFP, the Pun Group was engaged to perform auditing services for the fiscal years ending June 30, 2015, 2016 and 2017, with the option to renew for two additional fiscal years (2018 and 2019). The auditors were onsite in October 2016 to begin the data gathering process for the FY 2015-16 Audit. That gathering process included review of expenditures paid, revenues received, contracts, and general accounting processes for both accuracy and internal controls (fraud prevention). After the audit team collected its information, the issues discovered were presented in the single-audit report as **audit findings**.

There are levels of *findings*, depending on the severity of the evidence found; those levels are 1) *significant deficiencies*; and 2) *material weaknesses*. A *deficiency in internal control* exists when the design, or operation of a control, does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis, with *timely basis* meaning by the fiscal year-end and prior to the auditor's field work. A *deficiency in design* exists when a control, necessary to meet a stated objective, is missing, or an existing control is not properly designed, so that even if the control operates as designed, the control's objective would not be met. A *deficiency in operation* exists when a properly designed control does not operate as planned, or the person performing the control does not possess the necessary authority, or competence, to perform the control effectively to meet the desired objective.

A *material weakness* is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. Adopted Financial Policies and Procedures would abate that issue, as the City would have clearly defined procedures in one manual. Staff members do follow position process instructions and checklists; however, there is no all-encompassing financial policy and procedure manual on which to rely.

A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. The existence of *significant deficiencies* or *material weaknesses* may already be known to management and may represent a conscious decision by management, or those charged with governance, to accept the risk associated with the deficiencies because of cost or other considerations. City management is responsible for making decisions concerning costs to be

Prepared by: _____CS_____	Dept Review: __CS_____
City Manager Review: _____	City Attorney Review: _____

incurred and related benefits. The auditor's responsibility is to communicate *significant deficiencies* and *material weaknesses* regardless of management's decisions or intentions. The City, by its continued action of maintaining a small accounting and finance staff, has agreed to accept the risk associated with the deficiencies. Staff does have as many checkpoints in place as possible, but there are areas determined by both the auditor and Management Partners (such as Purchase Orders) to further eliminate potential fraud. It should be noted; the auditors did not find any indication of fraud or misappropriation of public moneys.

The Pun Group issued its findings in the Audit, which include one material weakness, and three significant deficiencies. A snapshot of those findings is included below, as well as attached separately to this staff report.

Material Weakness

- 1) Finding 2016-001 – Internal Control over Financial Reporting: Some Journal Entries did not have evidence of appropriate review prior to posting.

Response: The Finance Director now must approve all Journal Entries prior to posting in the financial system.

Significant Deficiency

- 1) Finding 2016-002 – Financial Condition: Noted reduction in net positions, for both the General Fund and Harbor Enterprise Fund, predominately related to new Government Accounting Standards Board (GASB) Statement No. 68 relating to how pension obligations should be accounted for.

Response: Outside the new GASB accounting standards relating to pension accounting, the City is making corrections to operating procedures to help ensure the finding is corrected.

- 2) Finding 2016-003 – Accounting Policies and Procedures: The City does not have a consolidated policies and procedures guide for finance staff utilization.

Response: The focus of four out of five staff members in the Finance Department new since October 2016 has been getting up-to-speed on operations to this point. Staff are aware of this finding, and will work towards developing a comprehensive accounting policies and procedures guide.

- 3) Finding 2016-004 – Bond Coverage Ratio: The City's agreement to purchase state water through the San Luis County Flood Control and Water Conservation District contains a provision requiring the City to collect water ratepayer rates annually to cover 125% of contract payments for such water. The City currently is at a 116% bond coverage ratio, which is below the noted 125% bond coverage threshold.

Response: The City has taken efforts to meet that bond coverage ratio requirement through the adoption of new water ratepayer's rates on May 26 2015. The 116%-coverage represents an increase from 77% in summer 2015. The City anticipates the 125% coverage ratio will be achieved during the current year (FY2016/17). The City has never missed a payment for the state water purchased through the noted entity.

Staff are taking steps to correct the deficiencies identified. For example, accounting policies and procedures are being drafted to address one of the findings.

Our Finance Department is both understaffed for the tasks it is charged with, and with having four out of five full-time employees new since October 2016. That is, we likely have too few finance personnel, which is exacerbated by new employees.

Both the past auditor, and the recent 2015 Management Partners review expressed concern with the capacity of our finance staff. In their report a year ago, Management Partner stated:

The Finance Division is very leanly staffed, yet few related functions are contracted. Because of the lean staffing, the department's ability to provide financial and budgeting information and assistance to operating departments is limited. In addition, the division has limited capacity for innovation and planning, and, for example, does not prepare a Comprehensive Annual Financial Report (CAFR), a Government Finance Officers Association best practice.

There is inadequate time and funding allowed for training and participation in professional organizations. Even getting routine work done is difficult when in the midst of audit or budget preparation. While this "belt tightening" can work for short periods of time, it is not sustainable over the long run.

While we have not considered hiring additional finance personnel at this point, the City Manager has taken concrete steps to focus the Finance Department on finance. The Finance Department's previous supervisory responsibility for IT and Human Resources was moved to other departments in late calendar year 2016.

CONCLUSION

Kenneth Pun from our audit firm, The Pun Group, will present the 2015/16 audit reports. There are five reports: one City audit (Comprehensive Annual Financial Report, or "CAFR"), one on internal controls, and three for Transportation Taxes (Transit, Bike Pathways, Roads).

DOCUMENTS AVAILABLE FOR REVIEW AT CITY HALL AND THE CITY WEBSITE:

1. [City's 2015-16 CAFR](#)
2. [Report on Internal Controls](#)
3. [Transit Audit](#)
4. [Bike Pathways Audit](#)
5. [Roads Audit](#)

This Page Intentionally Left Blank



AGENDA NO: C-3 MEETING DATE: March 28, 2017
--

Staff Report

TO: Honorable Mayor & City Council **DATE:** March 20, 2017

FROM: Scot Graham, Community Development Director

SUBJECT: Direction Regarding the Market Plaza Request for Qualifications

RECOMMENDATION

Staff recommends the City Council review the staff report and associated materials, receive the presentation by staff, and provide direction in relation to going out with a Request for Qualifications (RFQ) to identify firms that are interested and qualified to develop plans for the improvement of the Market Plaza and Centennial Parkway area.

ALTERNATIVES

The Council could opt to leave the property as it is and not go out with an RFQ or the Council could provide some other direction deemed acceptable to a majority of the Council.

FISCAL IMPACT

Issuance of an RFQ has no direct fiscal impact beyond the staff time spent to create, issue and evaluate responses to the RFQ.

BACKGROUND

The City Council, on February 28, 2017, reviewed the RFQ request for Market Plaza and acknowledged that area represents a significant economic development opportunity for the City (see Attachment 1 for Feb. 28, 2017 Council Minutes). While the Council was supportive of the RFQ process, there was a desire to obtain additional input from the General Plan Advisory Committee (GPAC), given its was scheduled to review the Downtown Waterfront Strategic Plan (DWSP) at their March 8, 2017 meeting.

The Council also expressed interest in reviewing the draft RFQ document prior to release. To that end, staff has taken the GPAC input noted below and incorporated it into a draft RFQ that is provided as Attachment 2 to this staff report.

Staff conducted a site-specific discussion with the GPAC concerning Opportunity Site 7 of the DWSP, which contains the Market Plaza and Centennial Stair area. Overall the GPAC supported revitalization of the area, finding general consensus for the following:

- Mixed-use hotel, restaurant and retail development. Don't describe hotel as "high end," but instead use "full service"
- Include Centennial Plaza development
- Do not include the Off the Hook lease site in the RFQ. There was a common feeling it was not fair to pull back the RFP process that was already underway, given proposers had already expended significant effort and investment in the development of draft conceptual designs for the lease site.

Prepared By: <u>SG</u>	Dept Review: <u>SG</u>
City Manager Review: <u>DWB</u>	City Attorney Review: _____

- No large monolithic structure/development
- Incorporate a parking garage to replace lost parking
- Step the development down the slope
- Include differing roof lines
- Museum may not be the best use in this location
- Retail/restaurant on East side of Embarcadero at street level
- Seafood/Artisanal product market ok if it doesn't detract from existing seafood establishments and support the overall fishing industry

Additional History

Market Plaza Property

The City Council, in December of 2015, authorized staff to move forward with the purchase of the property containing DiStasio's Restaurant (Market Plaza Property), including the adjacent 40-space parking lot at the corner of Market and Pacific Street. The City was able to re-acquire the property for \$150,000 as a result of the Salwasser bankruptcy and because the City held a note on the property for \$1.2 Million. For the purpose of discussion, the "Market Plaza" property includes the City-owned "front street" parking lot below DiStasio's and adjacent to Centennial Parkway.

Centennial Parkway Project

As part of the Fiscal Year 2015/2016 Goal setting process, the City Council identified one of the objectives as the need for preparation of a plan that would both widen the Embarcadero sidewalk along the water side of the street and provide a new vision for the Centennial Stair area. The Centennial Stair redesign has been termed the Centennial Parkway Project and was recently adopted by Council on January 24, 2017.

January 2016 Council Direction

Staff brought the Market Plaza property forward to the Council for discussion at the January 26, 2016, Council meeting. Council directed staff to obtain substantial public input related to redevelopment options for this area. Specifically, Council directed staff to incorporate the Market Plaza concept discussion into the ongoing efforts for Centennial Parkway and the General Plan/Local Coastal Program update.

Staff has incorporated the Market Plaza discussion into outreach efforts for both the Centennial Parkway Project and the Downtown Waterfront Strategic Plan. The discussion related to the Centennial Parkway Project centered on ways in which the City could fund construction. Given City budgetary constraints, the improvements identified in the adopted Centennial Parkway Project are unlikely to be funded through the General Fund. Instead, outreach discussion focused on looking at opportunities associated with public/private partnerships. Specifically, the Centennial Parkway Project area, on the east side of the Embarcadero, could be developed as part of a public/private partnership endeavor involving redevelopment of the following City-owned "Market Plaza" properties: DiStasio's, portions of Market Street, the City Parking lot below DiStasio's and the parking lot at the northeast corner of Market and Pacific. See Market Plaza/Centennial Parkway Map provided below:



Staff also wrapped the Market Plaza discussion into the public outreach effort associated with the Downtown Waterfront Strategic Plan (DWSP). Staff, along with the Michael Baker consulting team, conducted outreach for the DWSP in the form of stakeholder interviews and three public workshops. Those outreach efforts served to identify the Market Plaza site as Opportunity Site 7 in the draft DWSP. Potential catalyst projects associated with the Market Plaza site (Opportunity Site 7) include the following:

- Cultural/Maritime/Historical Museum
- Seafood Market, including produce, flowers and artisanal products
- High end Hotel with restaurant/bar/retail and possible conference facilities
- Ecotourism
- Parking Facility (recommended by staff based on other public input)

DISCUSSION

To move the Centennial Parkway and Market Plaza projects forward, staff is recommending going out with a RFQ to identify companies that would be interested in partnering with the City to develop the area in a manner consistent with the direction provided above. The current draft RFQ incorporates the input provided by the GPAC on March 8, 2017. Staff is requesting Council review the input provided by the GPAC and provide direction related to the following two items:

- a. Are the items/uses identified by the GPAC the correct items to be included in the RFQ?
- b. **Inclusion of the Off the Hook lease site in the RFQ.** Staff has not included the Off the Hook lease site into the RFQ, consistent with direction provided by GPAC. If the

Council wishes to incorporate the Off the Hook lease site into the RFQ, then specific direction will be needed.

Current Status of the Off the Hook RFP

The initial response to the RFP included three proposals. Staff then evaluated the proposals and provided response letters outlining possible project related design issues. Revised proposals were due on March 15, 2017. Two of the three proposers resubmitted revised project designs on March 15th. Staff is reviewing the revised submittals and has tentatively scheduled them for Council consideration on April 11, 2017.

CONCLUSION

In order to support a robust local economy and, begin to achieve Council Goal #1 (Achieve Fiscal and Economic Sustainability), staff is recommending the Council consider going out with a RFQ for revitalization of the Centennial Parkway and Market Plaza properties and possibly including the Off the Hook lease site. If Council authorizes the RFQ, then staff will develop a mailing list of potential companies that may have interest in such a combined project. Staff will also post the RFQ to the City's website and to some of the online sites that host similar bid type postings.

Issuance of an RFQ will not bind the City, in any way, to future revitalization of the Market Plaza area. The RFQ will simply identify investors who have the experience and capacity to conduct such a project. Follow-up steps will include working closely with certain RFQ respondents to craft a project consistent with our land use plans, emerging General Plan / Local Coastal Plan documents, and our Community vision.

ATTACHMENTS

1. February 28, 2017 Council minutes
2. Draft RFQ

MINUTES - MORRO BAY CITY COUNCIL
REGULAR MEETING – FEBRUARY 28, 2017
VETERAN'S MEMORIAL HALL – 6:00 P.M.

AGENDA NO: A-4
MEETING DATE: March 14, 2017

PRESENT:	Jamie Irons	Mayor
	Robert Davis	Council Member
	John Heading	Council Member
	Matt Makowetski	Council Member
	Marlys McPherson	Council Member
STAFF:	Dave Buckingham	City Manager
	Joe Pannone	City Attorney
	Dana Swanson	City Clerk
	Ikani Taumoepeau	Deputy City Manager
	Craig Schmollinger	Finance Director
	Rob Livick	Public Works Director
	Scot Graham	Community Development Director
	Jody Cox	Acting Police Chief
	Steve Knuckles	Fire Chief
	Eric Endersby	Harbor Director

ESTABLISH QUORUM AND CALL TO ORDER

The meeting was called to order at 6:03 p.m., with all members present.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION - None

CLOSED SESSION REPORT – No Closed Session Meeting was held.

MAYOR AND COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

CITY MANAGER REPORTS, ANNOUNCEMENTS & PRESENTATIONS

PRESENTATIONS – None

PUBLIC COMMENT

<https://youtu.be/y4HLlclGGHg?t=8m19s>

Cyndee Edwards of the Skin Stop provided the business spot. Cyndee is a licensed aesthetician offering alternative skin care treatments, including micro-current and other core treatments Complimentary consultations are available, please call (805) 459-3792.

Liz Moore, teacher at Morro Bay High School teacher, announced the upcoming Just 1 Job Fair, an opportunity for local businesses to hire one student for the summer. Morro Bay, San Luis Obispo and Coast Union High School students will have the opportunity to learn interview and work skills. For more information contact Ms. Moore at lmoores@slcusd.org.

Rigmor, Morro Bay, advocated for a medical marijuana dispensary in Morro Bay and opposed placing trash receptacles close to the bay.

Kerry Heller, Morro Bay, spoke on behalf of her husband, Jeff Heller, regarding Item C-1. Mr. Heller fully supports the project concept but is concerned about the long lasting financial effects and wants to be sure soft costs receive the same scrutiny as hard costs.

The public comment period was closed.

Council and staff responded to questions raised during Public Comment.

- A. CONSENT AGENDA
<https://youtu.be/y4HLlclGGHg?t=8m19s>

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 JANUARY 30, 2017 JOINT MEETINGS (ETHICS TRAINING); (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-2 APPROVAL OF MINUTES FROM THE JANUARY 31, 2017 SPECIAL CITY COUNCIL MEETING – GOALS FORUM; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-3 APPROVAL OF MINUTES FROM THE FEBRUARY 14, 2017 SPECIAL CLOSED SESSION CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-4 ADOPTION OF 2017-18 CITY GOALS AND PROGRAM OBJECTIVES; (CITY MANAGER)

RECOMMENDATION: Council adopt the 2017-18 City Goals and Objectives, as presented.

- A-5 FY17 GOALS STATUS UPDATE; (CITY MANAGER)

RECOMMENDATION: Council receive and file this update.

- A-6 APPROVAL OF LICENSE AGREEMENT BETWEEN THE CITY OF MORRO BAY AND SAAP TRUST FOR 1150 FRONT STREET (BAYFRONT INN) AND 1154 FRONT STREET (FRANKIE & LOLA'S FRONT STREET CAFÉ) FOR USE OF PUBLIC PROPERTY IN THE FRONT STREET PARKING LOT AREA FOR TRASH ENCLOSURES; (PUBLIC WORKS)

RECOMMENDATION: Council approve the license agreement for use of public property for a trash enclosure at 1196 Front Street, as proposed.

- A-7 ADOPTION OF RESOLUTION NO. 07-17 AMENDING THE COUNCIL POLICIES AND PROCEDURES REGARDING THE COUNCIL OUTREACH AND STAFF SUPPORT; (CITY ATTORNEY)

RECOMMENDATION: Council adopt Resolution No. 07-17 amending the Council Policies and Procedures regarding Council outreach and staff support.

- A-8 APPOINTMENT OF COUNCIL LIAISON TO THE ESTERO BAY ALLIANCE OF CARE (EBAC) AND CONFIRMATION OF COUNCIL SUB-COMMITTEES; (MAYOR)

RECOMMENDATION: Council approve the appointment of Mayor Irons and Council Member McPherson as liaisons to the Estero Bay Alliance of Care (EBAC) and affirm

Council sub-committees for the Aquarium project, Morro Bay Power Plant, and Chevron properties.

A-9 AUTHORIZATION FOR CITY MANAGER TO EXECUTE DOCUMENTS RELATED TO A RURAL TRANSIT FUND GRANT AWARD FOR PURCHASE OF A NEW MORRO BAY TRANSIT VEHICLE; (PUBLIC WORKS)

RECOMMENDATION: Council authorize the City Manager to execute all necessary documents related to the Rural Transit Fund (RTF) grant awarded by the San Luis Obispo Council of Governments on April 6, 2016, for the purchase of a new replacement Morro Bay Transit vehicle.

A-10 ADOPTION OF RESOLUTION NO. 05-17 APPROVING AMENDMENT NO. 1 TO THE LEASE FOR LEASE SITE 53-56/53W-56W (ESTERO LANDING, LOCATED AT 501 EMBARCADERO) BETWEEN THE CITY OF MORRO BAY AND ESTERO LANDING, INC.; (HARBOR)

RECOMMENDATION: Council adopt Resolution No. 05-17, approving Amendment No. 1 to the current lease for Lease Site 53-56/53W-56W, providing ten additional years of lease term for substantial tenant improvement investment completed.

A-11 DISCUSSION OF AGENDA FOR THE CALIFORNIA MARINE AFFAIRS AND NAVIGATION CONFERENCE (C-MANC) ANNUAL "WASHINGTON WEEK" MEETINGS IN WASHINGTON, D.C.; (HARBOR)

RECOMMENDATION: Council receive this report and provide any desired input on the elements herein.

A-12 APPROVAL OF EXTENSION OF THE CENTRAL COAST AQUARIUM CONSENT OF LANDOWNER AGREEMENT FOR REDEVELOPMENT OF THE MORRO BAY AQUARIUM LEASE SITE 69-70/69W-70W; (HARBOR)

RECOMMENDATION: Council approve extensions of all performance compliance dates by one year each on Central Coast Aquarium's (CCA) current Consent of Landowner (COL) agreement to facilitate CCA's continued pursuance of funding and intent to redevelop lease site 69-70/69W-70W. Staff further recommends the compliance dates be extended to 9 months after loan approval if such approval is granted by the USDA before December 31, 2017.

A-13 AUTHORIZATION TO ENTER INTO AN AGREEMENT FOR ALLOCATION OF CONSTRUCTION AND FINANCING COSTS FOR AN ANIMAL SERVICES SHELTER; (CITY MANAGER/POLICE)

RECOMMENDATION: Council authorize the City Manager to execute an Agreement for Allocation of Construction and Financing Costs for an Animal Services Shelter at 865 Oklahoma Avenue in San Luis Obispo, California, between the Cities of Atascadero, Arroyo Grande, Grover Beach, Morro Bay, Paso Robles, Pismo Beach, San Luis Obispo, and the County of San Luis Obispo.

A-14 RECEIVE DRAFT PERSONNEL RULES & REGULATIONS; EMPLOYER-EMPLOYEE RELATIONS POLICY; POLICY PROHIBITING HARASSMENT, DISCRIMINATION AND RETALIATION; AND DRUG-FREE WORKPLACE POLICY FOR CONSIDERATION AT THE MARCH 14, 2017, CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Staff has prepared the report and attached documentation as a Consent item to allow the Council adequate time to review the materials in preparation for presentation and adoption at the March 14, 2017, City Council meeting.

On March 14, the Council will be asked to approve the Personnel Rules & Regulations (“Personnel Rules”) and other related policies by adopting the following:

1. Resolution rescinding Resolutions No. 46-74, 34-83, 127-89, 46-95, 90-98, 21-04, 58-04 and 26-05 and establishing Personnel Rules & Regulations for full-time City Employees,
2. Resolution rescinding Resolution No. 74-69 and establishing Employer-Employee Relations,
3. Resolution adopting a Policy Prohibiting Harassment, Discrimination, and Retaliation, and
4. Resolution adopting a Drug-Free Workplace Policy

A-15 ADOPTION OF CITY MISSION STATEMENT; (CITY MANAGER)

RECOMMENDATION: Council adopt the following mission statement for the City of Morro Bay: “The City of Morro Bay provides essential public services and infrastructure to maintain a safe, clean and healthy place for residents and visitors to live, work and play.”

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

Council Member Headding pulled Item A-11. Council Member McPherson pulled Items A-4 and A-12. Council Member Makowetski pulled Item A-9. Council Member Davis pulled Item A-6. Mayor Irons pulled Item A-7.

MOTION: Council Member Headding moved the Council approve Items A-1 through A-3, A-5, A-8, A-10, and A-13 through A-15 on the Consent Agenda. The motion was seconded by Council Member Davis and carried unanimously, 5-0.

A-11 DISCUSSION OF AGENDA FOR THE CALIFORNIA MARINE AFFAIRS AND NAVIGATION CONFERENCE (C-MANC) ANNUAL “WASHINGTON WEEK” MEETINGS IN WASHINGTON, D.C.; (HARBOR)
<https://youtu.be/y4HLIclGGHg?t=23m23s>

Council Member Headding appreciated the time and effort spent preparing letters on behalf of the City. Council Member Makowetski noted the dredging efforts would cease without support gained through C-MANC.

MOTION: Council Member McPherson moved for approval of Item A-11. The motion was seconded by Council Member Makowetski and carried unanimously, 5-0.

A-4 ADOPTION OF 2017-18 CITY GOALS AND PROGRAM OBJECTIVES; (CITY MANAGER)
<https://youtu.be/y4HLIclGGHg?t=30m59s>

Council Member McPherson requested further discussion of the objectives under Goal #1 to ensure they are prioritized appropriately and consistent with community values. She asked that specific steps within each objective be brought to Council to analyze which provide more return for investment of staff time. There was Council consensus to continue the item for further discussion at a Council work session.

MOTION: Council Member McPherson moved the Council continue Item A-4 to the next meeting for discussion. The motion was seconded by Council Member Headding and carried unanimously, 5-0.

A-12 APPROVAL OF EXTENSION OF THE CENTRAL COAST AQUARIUM CONSENT OF LANDOWNER AGREEMENT FOR REDEVELOPMENT OF THE MORRO BAY AQUARIUM LEASE SITE 69-70/69W-70W; (HARBOR)
<https://youtu.be/y4HLlclGGHg?t=38m48s>

Mr. Buckingham shared the Central Coast Aquarium has raised \$20,000 of the \$40,000 needed for the feasibility study since the first of the year.

MOTION: Council Member McPherson moved for approval of Item A-12. The motion was seconded by Council Member Heading and carried unanimously, 5-0.

A-9 AUTHORIZATION FOR CITY MANAGER TO EXECUTE DOCUMENTS RELATED TO A RURAL TRANSIT FUND GRANT AWARD FOR PURCHASE OF A NEW MORRO BAY TRANSIT VEHICLE; (PUBLIC WORKS)
<https://youtu.be/y4HLlclGGHg?t=42m>

Council Member Makowetski pulled this item to highlight a new transit vehicle will be purchased with these grant funds.

MOTION: Council Member Makowetski moved the Council approve Item A-9. The motion was seconded by Council Member Heading and carried unanimously. 5-0.

A-6 APPROVAL OF LICENSE AGREEMENT BETWEEN THE CITY OF MORRO BAY AND SAAP TRUST FOR 1150 FRONT STREET (BAYFRONT INN) AND 1154 FRONT STREET (FRANKIE & LOLA'S FRONT STREET CAFÉ) FOR USE OF PUBLIC PROPERTY IN THE FRONT STREET PARKING LOT AREA FOR TRASH ENCLOSURES; (PUBLIC WORKS)
<https://youtu.be/y4HLlclGGHg?t=44m15s>

There was concern about placing trash dumpsters along the Embarcadero, discussion of potential view shed issues, and a desire to amend language regarding reimbursement of installation costs should the City terminate the agreement.

Mayor Irons opened public comment for Item A-6.

Peter Behman, owner of Bayfront Inn, stated based on the current configuration, there is no space on their property to place the trash dumpsters. He requested the Council provide a minimum of three years to amortize the estimated cost of \$3,000 for the enclosure.

Following discussion, the Council agreed to amend Item 10 of the agreement from a 5-year amortization to a 3-year amortization.

MOTION: Council Member Heading moved the Council approve the agreement, revising Item 10 from a 5-year amortization to a 3-year amortization. The motion was seconded by Council Member McPherson and carried unanimously, 5-0.

A-7 ADOPTION OF RESOLUTION NO. 07-17 AMENDING THE COUNCIL POLICIES AND PROCEDURES REGARDING THE COUNCIL OUTREACH AND STAFF SUPPORT; (CITY ATTORNEY)
<https://youtu.be/y4HLlclGGHg?t=1h6m7s>

MOTION: Mayor Irons moved the Council approve Resolution No. 07-17, but striking item #2 for discussion. The motion was seconded by Council Member Heading.

Mayor Irons suggested striking item #2 of the resolution to allow time to discuss the process with other mayors in the County. There was Council support to continue the item to gather further input.

Mayor Irons withdrew the motion. Council Member Headding withdrew the second.

MOTION: Council Member McPherson moved the Council continue Item A-7. The motion was seconded by Council Member Headding and carried unanimously, 5-0.

The Council took a short recess at 7:12 p.m. The meeting reconvened at 7:22 p.m.

B. PUBLIC HEARINGS - NONE

C. BUSINESS ITEMS

C-1 APPROVE THE ANNUAL CONTRACT AUTHORIZATION FOR PROGRAM MANAGEMENT SERVICES FOR THE WATER RECLAMATION FACILITY AS CONTEMPLATED BY THE AGREEMENT BETWEEN THE CITY AND MICHAEL K. NUNLEY & ASSOCIATES, INC.; (PUBLIC WORKS)

<https://youtu.be/y4HLlclGGHg?t=1h16m11s>

Public Works Director presented the staff report and, along with City Manager Buckingham, responded to Council inquiries.

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

The Council appreciated the level of detail provided in the contract amendment and were satisfied concerns previously raised were addressed during the February 21 Council work session. Mayor Irons confirmed a link to that work session will be provided on the City website. Council stressed the importance of overall fiscal management and requested financial information be provided in a format that is easier to read.

MOTION: Council Member Headding moved the Council authorize the City Manager to execute Amendment No. 2 to the Water Reclamation Facility Program Management agreement with Michael K. Nunley. The motion was seconded by Council Member Makowetski and carried unanimously, 5-0.

C-2 DIRECTION ON MARKET PLAZA REQUEST FOR QUALIFICATIONS; (COMMUNITY DEVELOPMENT)

<https://youtu.be/y4HLlclGGHg?t=1h26m54s>

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

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

The Council recognized the importance of economic development and the potential opportunity for this area. There was consensus the RFQ should not be too limiting and allow developers to bring forward an economically viable project for community review and input. There was Council support for the RFQ process but a desire to gather more community input from the General Plan Advisory Committee ("GPAC") before releasing the RFQ. Staff offered to include discussion of

this item at the March 8 GPAC Meeting during review of the Downtown Waterfront Strategic Plan. Following that meeting, staff will bring the RFQ to Council for approval.

No formal action on this item.

- C-3 CONSIDERATION OF AND DIRECTION REGARDING A REQUEST FROM *BY THE SEA PRODUCTIONS* FOR A REDUCTION OR WAIVER OF APPLICATION FEES FOR SPECIAL USE PERMIT (UP0-446) ALLOWING COLOCATION OF A LIVE THEATER IN AN EXISTING CHURCH IN A RESIDENTIAL ZONE AT 545 SHASTA AVENUE; (COMMUNITY DEVELOPMENT)
<https://youtu.be/y4HLlclGGHg?t=2h31m48s>

Mayor Irons explained he had previously recused himself from Council discussion when this item was agenzized at the December 13, 2016, meeting because he lives within 500 feet of the property.

Mr. Pannone explained the factual situation has changed since that time. In December, it was not yet established whether the theater would be located at this property. Since the decision at that time could potentially affect the real property value, the Mayor had to recuse himself. The facts now are the theater location is set and the decision is limited to a fee waiver, which does not affect the value of the real property the theater sits on, therefore there is no conflict of interest.

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

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

Janice Peters, Morro Bay resident and Board Member of By the Sea Productions, shared financial information to date for the first production and appreciated the staff recommendation. If fees could not be reduced, she requested the City accept installment payments.

The Council expressed appreciation for the theater and its benefit to the community. Council Member McPherson supported waiving all fees, while Council Members Headding and Makowetski supported charging for noticing and environmental fees for a total of \$398.

Council Member Davis supported live theater but wanted to remain consistent with Council direction to recoup 100% of the cost for issuing planning and building permits and be fair and equitable to Morro Bay businesses and taxpayers. Mayor Irons was supportive of reducing permit fees from \$5,706 to \$2,100.

Mr. Pannone clarified the Council has flexibility to determine what benefit the community is receiving and make certain concessions and that would not be a gift of public funds.

MOTION: Council Member McPherson moved the Council collect noticing and environmental fees (hard costs) in the amount of \$398. The motion was seconded by Council Member Headding and carried 3-2 with Mayor Irons and Council Member Davis voting no.

- C-4 DISCUSSION AND DIRECTION OF WASHINGTON DC REPRESENTATION FOR WATER RECLAMATION FACILITY (WRF) PROJECT; (CITY MANAGER)
<https://youtu.be/y4HLlclGGHg?t=2h57m31s>

Mr. Buckingham presented 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.

There was Council support to negotiate a longer-term retainer agreement with the Ferguson Group. Council Member McPherson preferred to negotiate a short-term agreement to develop a Federal agenda and work plan and see what comes from that. Council Members Davis and Makowetski supported either a short-term or long-term agreement.

MOTION: Council Member Headding moved the Council direct staff to negotiate a longer-term retainer agreement as low cost as possible to build a Federal agenda, advocate for the City, and provide Federal grant-writing assistance to support the Water Reclamation Facility project, according to fiscal impact outlined in the staff report. The motion was seconded by Council Member Davis and carried unanimously, 5-0.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

<https://youtu.be/y4HLlclGGHg?t=3h23m33s>

None

E. ADJOURNMENT

The meeting adjourned at 9:30 p.m. The next Regular Meeting will be held on Tuesday, March 14, 2017 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



REQUEST FOR QUALIFICATIONS

to

DESIGN AND CONSTRUCT AND OPERATE A MIXED-USE HOTEL PROJECT AND PUBLIC PLAZA IN MORRO BAY, CALIFORNIA

Approved:

Project Representative:

Scot Graham, Community Development Director

955 Shasta Avenue

Morro Bay, CA 93442

(805)-772-6291

sgraham@morrobayca.gov

Issue Date:

Closing Date:

Table of Contents

1.	OVERVIEW.....	3
2.	DEFINITIONS & ACRONYMS.....	5
3.	REQUEST FOR QUALIFICATIONS PROCESS.....	5
4.	POST-RFQ SUBMITTALS.....	7
5.	Deliverables For Statement of Qualifications.....	9
6.	RFQ EVALUATION CRITERIA & SCORING MATRIX.....	11
7.	RFQ SUBMISSION REQUIREMENTS.....	12
8.	Submittal of Questions and Requests for Clarification.....	12
9.	CONFLICTS OF INTEREST.....	12
10.	LIMITATIONS, OBLIGATIONS & RESERVED RIGHTS.....	13

1. Overview

1.1 Project Objective

The City of Morro Bay is interested in receiving responses from firms specializing in development of a mixed-use hotel facilities in beach communities along the California Coast. The City is considering the development of a full-service hotel (minimum 50 rooms) with associated mixed-use development of retail, restaurant, public plaza and parking solution (the "Project"). The City intends to identify qualified firms and possibly solicit proposals from such firms for design, development and operation of a mixed-use hotel project, including possible retail, restaurant, public plaza and parking structure through a public/private partnership. This Request For Qualifications (RFQ) seeks to identify potential providers of those services. One or more firms that respond to the RFQ by submitting statements of qualification may be determined to be especially qualified and capable of delivering what the City is seeking and may be deemed eligible to receive the City's Request for Proposal (RFP) for further consideration by the City as a possible "Developer" for the potential projects.

To meet that goal this Request for Qualifications (RFQ) is seeking submittals from fully qualified parties for the economically feasible design, installation and operation of the Project.

1.2 RFQ Respondents

It is anticipated the individual/joint-venture respondents to this RFQ will have extensive experience in developing mixed-use hotel projects, as well as having the capacity to finance and facilitate, directly or indirectly, the design, installation and operation of the Project. In addition, the City is willing to consider different or alternative approaches to the Project, such as private or public/private partnerships. The City is also in the process of developing various economic development incentives, including a Transient Occupancy Tax reinvestment program that may be available to respondents to the potential RFP.

All respondents to the RFQ are subject to instructions communicated in this document, and are cautioned to completely review the entire RFQ and follow instructions carefully. The City retains the right to reject any or all statements of qualifications or subsequent submittals and proposals, and to waive technicalities, irregularities, and informalities, and retains the right to cancel or conclude this process at any time without selecting a firm to provide the any of the what is described in this RFQ, without any liability to any respondents, or any other person or entity, and is under no obligation to make an award to this RFQ or prospective RFP to any person or entity.

1.3 City of Morro Bay

Incorporated in 1964, the City of Morro Bay is a general law city on the Central Coast of California, located halfway between Los Angeles and San Francisco on scenic Highway One. It is a spectacular setting, with magnificent Morro Rock, harbor, rolling breakers in the ocean, a sand spit and quiet inner bay. The community enjoys a

peaceful way of life with miles of sandy beaches and offers plentiful opportunities for outdoor activities.

Tourism and commercial fishing are the main features of the local economy, with the City's "working waterfront" being a prime cultural and economic feature. Morro Bay's population is 10,500.

1.4 Project Background

As part of the Fiscal Year 2015/2016 Goal setting process, the City Council identified one of the objectives as the need for preparation of a plan that would both widen of the Embarcadero sidewalk along the waterfront side of the street and provide a new vision for the Centennial Stair area. The Centennial stair redesign has been termed the Centennial Parkway project. On January 24, 2017, the City Council approved the conceptual Centennial Parkway Plan. **The approved concept plan for the Centennial Parkway can be found at:** <http://www.morro-bay.ca.us/833/Planning-Hot-Topics>

The City is in the process of a comprehensive update to its General Plan, Local Coastal Program and Zoning Code. As part of that update, the City Council also authorized preparation of a Downtown Waterfront Strategic Plan (DWSP) to better connect the downtown and waterfront. Two of the Opportunity Sites identified in the draft DWSP are both the Centennial Parkway (site 2) and the City lots at Embarcadero and Pacific comprising the Market Plaza site (site 7). **An aerial view of the Centennial Parkway and Market Plaza properties is included herein as Attachment A.**

The City owns the properties associated with Opportunity Sites 2 and 7 and is interested in pursuing development of the properties under possible private efforts, a private/public partnership or a combination of both. **The Draft DWSP and associated General Plan/Local Coastal Program update information can be found at:** <http://www.morro-bay.ca.us/943/PlanMB>

The Project is envisioned to be a joint endeavor involving the City's Harbor, Community Development and Public Works Departments, and with key participation from the City Council and various City Commissions, Board and staff and the community.

1.5 Project Goals

The City envisions a new mixed-use hotel facility with a public plaza to be an immediate enhancement and key connector between the downtown and waterfront. While not seeking to be overly prescriptive on design, the City expects the development will exemplify exceptional architecture, while complementing the surrounding waterfront design theme and providing viable commercial and/or restaurant space. The Project will also exemplify environmentally sustainable technology related to design, construction and efficient operation. The eventual development and design of the Project should allow for maximum flexibility in order to respond to changes in community and market needs over coming decades.

The respondents to this RFQ are expected to pay special attention to the draft design guidelines identified in the Draft DWSP and may include some or all of the following design and operational aspects/parameters:

- Full-service mixed-use hotel, restaurant and retail development.
- Centennial Plaza development and integration
- Appropriate parking facilities, including possible parking garage. Parking facility to accommodate both the parking demand for the Project and replacement parking for the two public surface parking lots that can potentially be incorporated into the Project.
- Development stepped down the slope
- Include differing roof lines
- Retail/restaurant on East side of Embarcadero at street level
- Possible inclusion of local Seafood/Artisanal product market
- No large monolithic design components

2. Definitions & Acronyms

- 2.1** City – City of Morro Bay
- 2.2** DIY - Do It Yourself
- 2.3** QRC - Qualifications Review Committee
- 2.4** Qualified Respondent – those individuals or joint-ventures responding to this RFQ chosen by the City to submit a proposal, if a RFP is issued. Also known as the “short list.” RFP - Request for Proposals
- 2.5** RFQ - Request for Qualifications
- 2.6** SOQ - Statement of Qualifications

3. Request for Qualifications Process

3.1 Inquiries

All inquiries related to this RFQ are to be directed, in writing (by mail or email), to the Project Representative, as listed on the front cover of this RFQ. Information related to this RFQ obtained from any other source, unless directed by the Project Representative, is not official and should not be relied upon. Respondents to this RFQ are invited and encouraged to contact the Project Representative with any questions, comments or needs for information. All responses from the Project Representative will be made available to all those persons who have been provided this RFQ.

3.2 Documents Available

The following public documents are available for review upon request:

- 3.2.1 Draft Downtown Waterfront Strategic Plan
- 3.2.2 2017 Centennial Parkway Plan

3.3 Closing Date

Three complete hard copies, including one with an original signature as outlined in Section 3.7, and one electronic copy of each response must be received **before 5:00 p.m., Pacific Daylight Saving Time, XXXXX** at the address on the front cover of this RFQ. Responses sent by facsimile (“fax”) will not be accepted. Responses and their envelopes should be clearly marked with the name and address of the Respondent and the project title. Responses to this RFQ that are mailed or delivered by courier should allow sufficient time to ensure the receipt by the City by the established deadline.

3.4 Late Responses and Closing Date Extensions

Late responses will not be accepted. If an extension to the closing date and time is to be provided, then that will be done by the City Manager, with at least 48-hours’ advance noticing before the existing published closing date and time. Any extension to the closing date would be granted at the sole discretion of the City and only for reasons that best serve the City’s interests in the Project, as determined by the City Manager or City Council.

3.5 Qualifications Review Committee

The QRC will be appointed by the City Manager to rate and score the RFQ responses and SOQ’s on a qualitative basis. The City and QRC may use appropriate technical resources to provide assistance in evaluating the responses.

3.6 Review and Selection of Short List

The QRC will rate and score (in the QRC’s collective sole discretion) each respondent’s response to this RFQ, based on the Evaluation Criteria and Scoring Matrix as shown in Section 5. Failure of a response to this RFQ to meet all RFQ requirements may render that response non-responsive, as determined by the City Council upon a recommendation of the QRC. The extent to which a respondent meets or exceeds Evaluation Criteria will be rated by the QRC and be reflective of the QRC’s scoring (in the QRC’s collective sole discretion).

In its sole discretion, the QRC may hold interviews, ask written questions of the respondents, seek written clarifications, conduct discussions on the SOQ’s, and solicit updated SOQ’s during the evaluation process.

After considering the recommendations of the QRC, the City Council may decide to develop a “short-list” of Qualified Respondents who would then be provided the opportunity to respond to an RFP the City may issue for the Project.

3.7 Signed Responses

One of the complete hard copy responses must include an original “wet” signature or signatures of the individual respondents, or principals of the joint-venture respondents.

Signature(s) will be those that are required to legally bind each respondent to a contract.

3.8 Effect of Responses and Review

This RFQ, responses to it and the City's evaluation of SOQs responsive to this RFQ are not a binding agreement or guarantee the City will issue an RFP for the Project. Respondents to this RFQ will be assessed in light of the Evaluation Criteria and if chosen as a Qualified Respondent, will be provided the opportunity to submit a proposal to an RFP for the Project, if one is issued.

4. Post-RFQ Submittals (RFP)

Each Qualified Respondent who chooses to respond to an RFP issued for the Project, if any, will be expected to submit the following as part of the RFP submittal, including narratives, visuals and other supporting documentation:

4.1 Description of Service of the Developer

The City considers the services which are envisioned and generally described herein to be broad spectrum in nature. Respondents shall not assume them to be mandatory. The actual, final scope of services, however, may differ, may be greater or lesser, and shall be determined prior to execution of a prospective future Agreement with a successful firm after the RFP process. The relationship of the selected respondent to the City is envisioned to be that of an independent entity, regardless of eventual financial arrangements selected for actual development. It is recognized the "Developer team" will likely eventually be made up of multiple entities (Developer, Financing Partner, Architect, Contractor, Operator, etc.). The development, design, construction, and operation of the Project will be governed by a development agreement, lease or other agreement. The selected respondent, if any, will be responsible for:

1. Thoroughly evaluating the analyses conducted to date concerning the project area (General Plan, Local Coastal Program, Downtown Waterfront Strategic Plan, and zoning code).
2. Assembling a suitable development team experienced in the development, financing, design, construction, implementation, branding, and operational management of mixed use hotel projects.
3. Entering into a public-private arrangement such that the present and future economic, operational and connectivity goals and objectives of the City are aligned with the selected private-sector development entity. This includes utilization of the selected respondent's ("Developer") experience and abilities in the development of the Project. The eventual Developer and Developer team will be responsible for all aspects of the envisioned Project through final occupancy, with coordinated approval of the City. The Developer, including through the services of its Architect shall have overall responsibility for the design of all elements of the Project in accordance with all applicable laws, the requirements of Developer and City, and all technical services necessary or required in connection with the design of the Project. Developer shall be responsible for all services

provided whether such services are provided directly by Developer or by the Financing Partner, Architect, Operator or any of its team or subconsultants. The scope of the basic services to be provided relative to the Project shall include, but not be limited to, the following disciplines to the extent necessary to provide a complete, and fully coordinated development:

- Land Use Planning
- Financial Analysis
- Financial Planning
- Financing
- Hospitality Market Analysis
- Community engagement
- Architecture
- Civil Engineering
- Structural Engineering
- Mechanical Engineering
- Electrical Engineering
- Construction and Construction Administration
- Plumbing and Fire Protection Engineering
- ADA design
- Acoustic design
- Code compliance
- Interior design
- Sustainability, energy modeling, and building analysis
- Traffic and Pedestrian planning
- Wayfinding/Signage
- Hotel Operation

The successful Developer and team will be well-versed in full-service hospitality industry best practices, appropriate hotel design, hotel building codes, and the use, selection, and availability of construction materials trending in the hospitality sector. The Developer and team will have experience in the oversight of mixed-use hotel projects, including extensive experience in providing leadership in projects that utilize highly-technical building methods and applications. The Developer will have extensive experience in a leadership position utilizing the integrated services of architects, engineers, construction managers, financial staff, and project managers, and shall have the demonstrated ability to do so successfully.

Responsibilities of the Developer will also include: conceptual and entitlement processing, logistical planning during preconstruction, construction; operating plan development, provision of project quality control systems, insurance, safety and compliance programs, monitoring construction building controls and milestone schedules; review of reports, and developed standards from providers of inspection, testing, commissioning, and training services. The Developer and team will have the responsibility for overseeing and implementing the Project on a daily basis pursuant to its agreement(s)/permits with the City, and will provide the resources and expertise

necessary to effectively monitor, review, and help coordinate as necessary, on the City's behalf, services performed by others involved in the Project.

The Developer will keep the City well-informed of the progress of the Project through all phases, and will ensure that the relevant City agreements/permits are being adhered to. The Developer, as a part of its services, will provide collegial collaboration, guidance, and assistance. The City will insist all Developer team members for this Project approach it with a spirit of teamwork, openness, and partnership. The Developer will be responsible for providing, through the remaining RFP process and prospective development agreement and permitting, all elements of suitable and successful mixed use hotel development and operation. The operator for the Hotel must possess an established history of successfully managing similar sized projects, preferably in a mixed-use, coastal environment.

5. Deliverables for Statements of Qualifications

The Statements of Qualifications must be submitted in accordance with the instructions provided below and must be responsive to all requested information below:

At this RFQ stage, the City is interested in receiving specific qualifications information about the interested firms and known team members only. It is anticipated that many interested Developer firms will not establish expanded teams until later in the prospective RFP process. However, deliverables are requested below in such a way as to also provide the City with general information on the firm's past project teams, the firm's ability to assemble qualified teams, and team members potentially available to the firm for inclusion in this Project.

A. Experience and Qualifications

- 5.1** Provide basic company information: company name, address, name of primary proposing contact, telephone number, fax number, e-mail address, and company website (if available). If the firm has multiple offices, the qualification statement shall include information about the parent company and branch office separately. Identify office from which project will be managed and this office's proximity to the City. Provide form of ownership, including state of residency or incorporation, and number of years in business. Is the respondent a sole proprietorship, partnership, corporation, limited liability Corporation, or other structure?
- 5.2** Provide information pertaining to the principal personnel including but not limited to: Principal in Charge, Lead Project Manager and all other key personnel. Please include resumes and professional registration information for personnel identified. Provide an Organization Chart for the principal known team. Provide information on level of commitment for proposed senior personnel and key members of principal team.
- 5.3** Provide experience of key resources on relevant projects of the firm including professional qualifications and description of involvement/experience for proposed project staff. This should include the degree of apparent relevant competencies of the principal professional(s) and lead staff relative to the project and services required, and evidence of competence. Provide information in regard to experience

with team cooperation (listing past team members), understanding of the hospitality and convention industry as it relates to development, and other relevant experience. (At this stage, firms are asked for information on lead staff only, but each firm may list qualifications and experience on more than one lead individual who are being proposed for services).

- 5.4** Provide information on the firm's demonstrated record of successfully developing mixed-use hotel projects of a comparable size and scope to that envisioned. Describe relevant projects in order of most relevant to least relevant, which demonstrate the firm's capabilities to provide services for the City. For each program or project, the following information should be provided:
- a. Project name, image or rendering of completed project
 - b. Client entity name, project location and dates during which services were performed.
 - c. Clear description of overall project (size, cost) and services performed by each team member.
 - d. Description of the financing structure, including public/private structure, if applicable.
 - e. Construction Delivery Method of the project.
 - f. Exact duration of project services provided by your firm.
 - g. Client contact information including contact names and telephone numbers. (Include Public client)
 - h. Worst problem encountered in the project and how it was overcome.
- 5.5** Provide a statement on the firm's experience and qualifications in an executive developer role over multiple providers and phases of planning, financing, preconstruction, design, construction, branding, and successful operation for similar projects. Include any oversight of projects of relevance or extreme complexity. Include any certifications, industry ratings, and national or international achievement recognitions, etc., to attest to the level of experience and success. Describe innovations that the firm might have introduced or employed to increase the development's adherence to guiding objectives.
- 5.6** Specifically address the firm's proven ability to completely fulfill the requirements as it relates to the Project.
- 5.7** Has the firm ever been removed from a contract or failed to complete a contract as assigned? Explain.

B. Suitability

Provide any information that may serve to differentiate your firm from other firms in suitability for the Project, including, but not limited to:

- 5.8** Furnish evidence of the firm's fit to the Project and needs of the City, any special or unique qualifications for the Project, or unique approaches to this particular Project.
- 5.9** Supply current and projected workloads.
- 5.10** Describe any special or enhanced capabilities offered by the firm or known team members that may be particularly suitable for this Project.
- 5.11** Describe ability to gather resources in vicinity to the Project, and any knowledge of the Project area, current area developments, and/or area history which may uniquely benefit the firm and Project.
- 5.12** Provide a statement of suitability which includes the firm's ability to assemble appropriate and suitable team members. Include a list of potential appropriate team members the firm believes will be available to contract with the firm for Project services.

6. RFQ Evaluation Criteria

6.1 Experience and Qualifications

The following Evaluation Criteria are considered mandatory for all RFQ submissions:

- 6.1.1 Qualifications of respondent's team members and key personnel.
- 6.1.2 Respondent's organizational structure and governance.
- 6.1.3 Respondent's years of experience in the industry.
- 6.1.4 Experience, within the last 15 years, with a project similar to the Project, including planning/permitting, funding, construction/execution, and operation.
- 6.1.5 Proven financial and organizational capacity to deliver the Project
- 6.1.6 Financial plan for successful completion and operation of the Project.
- 6.1.7 Statement responsive to the evaluation criteria elements.
- 6.1.8 Portfolio of developed and operated projects within the last 15 years, preferably similar to the Project.
- 6.1.9 Respondent team vision and creativity.

6.2 Evaluation Scale

The Qualification Review Committee will evaluate Statements of Qualifications using the following criteria:

- **15% Factor:** Stability and resources of the submitting firm, including the firm's history, status, growth, overall resources of the firm, form of ownership, litigation history, financial information, and other evidence of stability.

- **40% Factor:** Firm's relevant experience and qualifications, including the demonstrated ability of the firm in effective development services for projects comparable in complexity, size, and function. This includes relevant experience and qualifications of the principal and lead staff and level of experience in all phases of project development, and evidence of proficiency and success in mixed use hotel development proximate to the coast.
- **30% Factor:** Firm's apparent suitability to provide services for project, including the firm's apparent fit to the project type and/or needs of the City, any special or unique qualifications for the project, suitability for active mixed use hotel development, understanding of the hospitality industry and/ proven ability to assemble appropriate teams and gather resources in location of service, proposed quality control/quality assurance procedures, special or enhanced capabilities.
- **15% Factor:** Past performance evidence of the submitting firm and its teams, including level of quality of the services of the firm to previous customers, customer's statements of that quality, the firm's ability to meet established time requirements, the firm's response to project needs during development phases, the firm's control of quality and budget.

7. RFQ Submission Requirements

- 7.1 Letter of submittal and statement of interest and understanding of the Project
- 7.2 Responses to Evaluation Criteria
- 7.3 At least three each of written professional and financial references

8. Submittal of Questions and Requests for Clarification

- 8.1 Questions about any aspect of the RFQ, or the Project, shall be submitted prior to the **XXXXXXDeadline**, and shall be submitted in writing to:

Scot Graham, Community Development Director
 City of Morro Bay
 955 Shasta Avenue
 Morro Bay, CA 92442
 e-mail: sgraham@morrobayca.gov

- 8.2 The deadlines for submission of questions relating to the RFQ are the times and dates noted in 8.1 above. At any time prior to the submission date, the City may issue an RFQ addendum to further clarify any part of this RFQ, amend this RFQ or issue instructions or further information. Each such addendum will be posted and/or distributed to all respondents. In addition, the City may adjust any timelines related to the project referenced herein or otherwise.

9. Conflicts of Interest

A conflict of interest exists wherever an individual could benefit directly or indirectly from

access to information or from a decision over which they may have influence, and also includes a perceived conflict where someone might reasonably perceive there to be such benefit and influence. A conflict of interest occurs when a staff member or consultant attempts to promote a private or personal interest that results in an interference with the objective exercise of their job responsibilities, or gains any advantage by virtue of his/her position. Conflicts of interest may be real, potential or perceived.

Respondents should disclose conflicts of interest, or potential conflicts of interest, in writing, in their submittals. The QRC will consider the nature of each respondent's responsibilities and the degree of potential or apparent conflict in deciding the course of action the respondent needs to take to remedy the conflict of interest.

10. Limitations, Obligations & Reserved Rights

10.1 The City reserves the right to select one, more than one or no respondents to move onto the "short-list" proposal phase, should one be conducted, as a result of this process.

10.2 In connection with this process, the City reserves to itself all rights (which rights shall be exercisable by the City in its sole discretion) available to it under the law, including without limitation, the following, with or without cause and with or without notice:

- 10.2.1 The right to cancel, withdraw, postpone or extend this RFQ or subsequent RFP in whole or in part at any time prior to the execution by the City of a contract/agreement, without incurring any obligations or liabilities.
- 10.2.2 The right to issue a new RFQ.
- 10.2.3 The right to reject any and all responses, submittals and proposals received at any time.
- 10.2.4 The right to modify all dates set or projected in this RFQ.
- 10.2.5 The right to terminate evaluations of responses received at any time.
- 10.2.6 The right to revise and modify, at any time prior to any RFP submittal date, factors the City will consider in evaluating responses to this RFQ and the subsequent RFP, if issued, and to otherwise revise its evaluation methodology.
- 10.2.7 The right to waive or permit correction to data submitted with any response to this RFQ until such time the City declares in writing a particular stage or phase of its review of the responses to this RFQ is completed and closed.
- 10.2.8 The right to issue addenda, supplements and modifications to this RFQ, including, but not limited to, modifications of evaluation criteria or methodology and weighting of evaluation criteria.
- 10.2.9 The right to permit submittal of addenda and supplements to data previously provided with any response to this RFQ, until such time as the City declares in writing a particular stage or phase of its review of the responses to this RFQ is completed and closed.
- 10.2.10 The right to hold meetings and conduct discussions and correspondence with one or more of the respondents responding to this

RFQ to seek an improved understanding and evaluation of the responses to this RFQ.

- 10.2.11 The right to seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFQ, including the right to seek clarifications from Respondents.
 - 10.2.12 The right to add or delete respondent responsibilities from the information contained in this RFQ or subsequent RFP, if one is issued.
 - 10.2.13 The right to appoint and change appointees of any QRC.
 - 10.2.14 The right to use assistance of technical and legal experts and consultants in the evaluation process.
 - 10.2.15 The right to waive deficiencies, informalities and irregularities in an SOQ.
 - 10.2.16 The right to disqualify any respondent that changes its submittal without written City approval.
 - 10.2.17 The right to change the method of award between the advertisement of the RFQ and the advertisement of the RFP, if one is issued.
 - 10.2.18 The right to respond to all, some, or none of the inquiries, questions and requests for clarification received relative to the RFQ.
- 10.3** City assumes no obligations, responsibilities or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to or responding to this RFQ, or any subsequent RFP, if one is issued. All such costs shall be borne solely by each respondent and its team members.
- 10.4** City retains the right to retain, indefinitely, possession of all information and data provided in response to this RFQ.
- 10.5** To the extent required by law, City may release to the public information obtained from a response to this RFQ and the RFP, if issued,
- 10.6** By submitting a proposal in response to this RFQ, each respondent agrees to indemnify, defend and hold harmless the City and its officers, agents, employees, and consultants free and harmless against any and all liability, including the costs of claims, suit and reasonable attorney's fees, arising from, growing out of, or incidental to the actual or alleged use of any copyrighted composition, secret or proprietary process, patented or unpatented invention, article or appliance.
- 10.7** Nothing in this RFQ or in any subsequent RFP or any agreement entered into with the City related to the Project shall constitute, create, give rise to or otherwise be recognized as a partnership or formal business organization of any kind between or among the City of Morro Bay or respondent teams.
- 10.8** No person who is an officer, employee, contractor or consultant of a respondent shall be an officer or employee of the City. No rights of the City's civil service, retirement or personnel rules accrue to any respondent,

its officers, employees, contractors, or consultants. Each respondent shall have the total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, other benefits and taxes and premiums appurtenant thereto concerning its officers, employees, contractors, and consultants. Each respondent shall indemnify, defend and hold harmless, save and hold the City and each of its officers, employees and agents harmless with respect to any and all claims for payment, compensation, salary, wages, bonuses, retirement, withholdings, unemployment compensation, other benefits and taxes and premiums in any way related to a respondent's officers, employees, contractors and consultants.

10.9 All respondents shall be required to be in compliance with the Naturalization Reform Act of 1986 and all the rules and regulations thereunder.

10.10 In its employment policies and practices, public accommodations and provision of services, each respondent shall comply with all relevant and applicable federal, state and local laws, regulations and standards relating to discrimination, bias, and/or limitations, such as, but not limited to, Titles VI and VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, and the Unruh Civil Rights Act.

THANK YOU FOR YOUR INTEREST IN THIS PROJECT

ATTACHMENT A

Market Plaza and Centennial Parkway





AGENDA NO: C-4

MEETING DATE: March 28, 2017

Staff Report

TO: Honorable Mayor and City Council **DATE:** March 22, 2017

FROM: Joseph W. Pannone, City Attorney
Craig Schmollinger, Finance Director

SUBJECT: Adoption of Ordinance No. 611, Reauthorizing the Public, Educational and Governmental Access Channel Fee

RECOMMENDATION

Staff recommends Council adopt, after reading by title only and with further reading waived, Ordinance No. 611: An Uncodified Ordinance of the City of Morro Bay, California, Reauthorizing the Public, Educational and Governmental (PEG) Access Channel Fee.

FISCAL IMPACT

The proposed Ordinance will allow the City of Morro Bay (City) to continue to collect PEG fees from Charter Communications as the operator of the City's cable TV provider. Those fees are typically \$28,000 to \$32,000 per year.

BACKGROUND/DISCUSSION

Subdivision 5870(n) of the Public Utilities Code, which was enacted as the Digital Infrastructure and Video Competition Act of 2006, authorized the City to adopt an ordinance establishing a fee on state-franchised video service providers to support PEG access channel facilities. On February 13, 2013, the City adopted Ordinance Number 582, codified as Morro Bay Municipal Code (MBMC) Section 5.30.010, "Fee for support of local cable usage," to establish such a fee.

Subdivision 5870(n) of the Public Utilities Code states such an ordinance shall expire, and may be reauthorized, upon the expiration of a state franchise. California Video Franchise Certificate Franchise No. 0002, granted to Charter Communications, which franchise includes the City, will expire on March 30, 2017.

In addition, other state-issued Video Franchise Certificate Franchises within the City's jurisdiction will expire in coming years, each of which expirations will trigger the need for renewal of MBMC Section 5.30.010. The proposed uncodified Ordinance is intended to establish an evergreen renewal of MBMC Section 5.30.010, until such time as the City Council takes action to repeal such reauthorizations.

At its March 14, 2017 meeting, the City Council adopted Urgency Ordinance No. 610 which took immediate effect reauthorizing the fee charged by the City to telecommunication companies to support PEG channel facilities until Ordinance No. 611 takes effect 30 days after adoption.

ATTACHMENT

- 1) Ordinance No. 611

Prepared By: <u>DS</u>	Dept Review: <u>JWP</u>
City Manager Review: _____	City Attorney Review: <u>JWP</u>

ORDINANCE NO. 611

**AN UNCODIFIED ORDINANCE OF THE CITY OF
MORRO BAY, CALIFORNIA, REAUTHORIZING THE
PUBLIC, EDUCATIONAL AND GOVERNMENTAL (PEG)
ACCESS CHANNEL FEE**

THE CITY COUNCIL
City of Morro Bay, California

WHEREAS, Subdivision 5870(n) of the Public Utilities Code, which was enacted as the Digital Infrastructure and Video Competition Act of 2006, authorized the City of Morro Bay (the "City") to adopt an ordinance establishing a fee on state-franchised video service providers to support PEG access channel facilities;

WHEREAS, on February 13, 2013, the City adopted Ordinance No. 582, codified as Morro Bay Municipal Code (MBMC) Section 5.30.010, "Fee for Support of Local Cable Usage," to establish such a fee;

WHEREAS, Subdivision 5870(n) of the Public Utilities Code states such an ordinance shall expire, and may be reauthorized, upon the expiration of a state franchise;

WHEREAS, California Video Franchise Certificate Franchise No. 0002, granted to Charter Communications, which franchise includes the City, will expire on March 30, 2017. In addition, other state-issued Video Franchise Certificate Franchises within the City's jurisdiction will expire in coming years, each of which expirations will trigger the need for renewal of MBMC Section 5.30.010. This uncodified Ordinance is intended to establish an evergreen renewal of MBMC Section 5.30.010, until such time as the City Council takes action to cease such reauthorizations; and

WHEREAS, this uncodified ordinance will reauthorize the fee charged by the City to telecommunication companies to support PEG channel facilities.

NOW, THEREFORE, the City Council of the City of Morro bay does ordain as follows:

SECTION 1: The above recitals are true and correct and incorporated fully herein.

SECTION 2: The City Council hereby reauthorizes the fee on state-franchised video service providers to support PEG channel facilities adopted in Ordinance Number 582. The fee shall remain unchanged and in full effect as to all state-franchised video service providers.

SECTION 3: Commencing from, and after, the effective date of this Ordinance, the City's PEG fee in Ordinance No. 582 (MBMC section 5.30.010) shall automatically be reauthorized upon the expiration of any existing or future Video Franchise Certificate Franchise(s) held by any state-franchised video service provider operating within the City. Ordinance No. 582 (MBMC section 5.30.010) shall so renew upon the future expiration of Video Franchise Certificate Franchise(s), unless the City Council takes formal affirmative action to cease the renewals and repeal this Ordinance, which action may be taken at any time and without notice, except as required by the Ralph M. Brown Act, California Government Code section 54950 *et seq.*

SECTION 4: Adoption of this uncodified Ordinance is exempt from the California Environmental Quality Act under CEQA Guidelines section 15061(b)(3) because it can be seen with certainty there is no possibility the amendment may have a significant effect on the environment.

SECTION 5: If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 6: 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 of the City Council of the City, held on the 14th day of March, 2017, by motion of Council Member Makowetski, seconded by Council Member Heading.

PASSED AND ADOPTED on the ____ day of _____, 2017, 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